

TESTIMONY OF THE LEGAL ACTION CENTER

Joint Assembly Public Hearing on
Corrections and Transitional Services
Devising a Smart Supportive Housing Strategy for Ex-Offenders upon Reentry
Executive Budget FY 2016-2017

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Hello, my name is Sebastian Solomon. I am the Director of New York State Policy at the Legal Action Center. The Legal Action Center is the only public interest law and policy organization in New York and the United States whose sole mission is to fight discrimination against and protect the privacy of people in recovery from substance use disorders, individuals living with HIV/AIDS, and people with criminal records. I am also the co-chair of the Coalition of Reentry Advocates, a group of organizations that seeks to eliminate barriers that keep too many people with criminal records out of jobs and housing.

I want to thank the Committees for organizing a hearing on this important topic. People who have been involved with the criminal justice system face a number of significant obstacles. These obstacles prevent them from succeeding as full community members by limiting their access to essential needs and benefits, including family, shelter, work, education, civic participation, and financial stability.

Finding and securing quality, stable housing is among the most difficult challenges faced by this population. In a City that already suffers from a significant lack of safe, stable affordable housing, those who have been involved in the criminal justice system are often among the populations least able to find a safe place to live. While New York State has had laws protecting people with criminal records from discrimination in employment and licensing for nearly forty years,¹ no such protections exist for housing. As a result, landlords regularly deny housing to applicants with criminal records irrespective of the severity of their crime, the time that has elapsed since committing the crime, or

¹ Governor Hugh L. Carey's Memoranda Approving Article 23-A, McKinney's Session Laws 1976, p 2458, "The great expense and time involved in successfully prosecuting and incarcerating the criminal offender is largely wasted if upon the individual's return to society his willingness to assume a law-abiding and productive role is frustrated by senseless discrimination."

evidence of rehabilitation. In fact, landlords in New York can even deny an individual housing based solely on an arrest that did not result in a conviction.

As a result, people with criminal records often end up in unsafe housing conditions or in the shelter system. In fact, analyses of the NYC Department of Homeless Services shelter populations indicate that 20 to 23% of homeless adults have been incarcerated at some point in the two years prior to entering shelter and about 19% of persons released from NY State prisons listed shelters as their first known address.^{2,3} Yet, safe, stable housing is essential to the ability of individuals to participate in society and is a key component in avoiding recidivism. Housing enables individuals to achieve the stability that they need to find and maintain employment. Housing also enables people to take care of their health, which in turn also contributes significantly to their ability to work. This impact is particularly significant for the large numbers of individuals who have been involved in the criminal justice system who suffer from chronic health conditions such as HIV/AIDS, substance use disorders and mental disorders. When this population is unable to take care of its health, it is more likely to use expensive resources such as hospitals and detox facilities. It is also more likely to have further involvement with the criminal justice system.

The last several years have seen a number of changes in housing policies affecting individuals with histories of criminal justice involvement. In 2014, both San Francisco, California and Newark, New Jersey passed ordinances that bar housing providers from asking about certain types of criminal record information, delay the timing of legally permissible inquiries until later in the rental process and require that the provider perform an individualized determination in making a decision about

² Burt et al. 1999; Eberle et al. 2001; Kushel et al. 2005; Schlay & Rossi 1992

³ Navarro, Mireya. November 14, 2013. Ban on Former Inmates in Public Housing Is Eased. The New York Times.

whether to admit the individual into the housing.^{4,5} Madison and Dane County, Wisconsin had similar policies from the 1970s until 2011 when the Wisconsin legislature passed legislation eliminating these protections. In fact, Madison's ordinance made it illegal for landlords to consider most criminal record information if more than two years had passed since the tenant was placed on probation, paroled, released from incarceration, or paid a fine. The city also required that the landlord use a uniform written process for checking arrest and conviction records. Dane County, meanwhile, forbade housing discrimination based on conviction records unless they presented a justifiable fear for safety of residents or employees.⁶

Additionally, in November 2015, the U.S. Department of Housing and Urban Development (HUD) issued guidance for public housing authorities and owners of federally-assisted housing to inform them that arrest records alone could not be the basis for denying admission, terminating assistance or evicting tenants, and to remind these entities of their obligation to safeguard the due process rights of applicants and tenants and to comply with the civil rights requirements in the Fair Housing Act.⁷ Then, in April 2016, HUD offered guidance to all housing providers and real estate entities regarding the possibility that taking adverse housing actions – such as a refusal to rent or renew a lease – on the basis of on an individual's criminal history could constitute illegal race discrimination based on the fact that African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.⁸

⁴ <http://www.jacksonlewis.com/sites/default/files/media/pnc/5/media.2595.pdf>

⁵ <https://newark.legistar.com/LegislationDetail.aspx?ID=2246774&GUID=4520C077-5A1E-4EF8-BC34-2F01BA1A0C4B&FullText=1>

⁶ <http://www.tenantresourcecenter.org/discrimination>

⁷ <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>

⁸ http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf

Both New York City and New York State have also begun to take steps to ease some of the barriers to housing listed above. In September 2015, Governor Cuomo announced that he was adopting 12 recommendations developed by the New York State Council on Community Re-Entry and Reintegration, of which Legal Action Center is a member, including⁹:

- Adopting new anti-discrimination guidance for New York State-financed housing;
- Creating new housing and treatment capacity for mentally ill people leaving state prison;
- Including formerly incarcerated people as a target population for supportive housing; and
- Allowing individuals returning home from State prison to live with spouses and partners, following an individualized determination regarding risk of domestic violence.

These measures are important steps that will help limit the instability faced by individuals leaving jails and prisons. They also provide important ways by which New York City and State can decrease homelessness among people coming out of prisons and jails. We look forward to continuing to work with the State to help implement and enforce these new policies.

The Legal Action Center is also a member of the steering committee of the Three Quarter House Reform Coalition, a group of organizations advocating for just treatment of Three Quarter House tenants and those likely to end up in Three Quarter Houses, many of whom are people coming out of incarceration. Three-Quarter Houses are unlicensed facilities that rent beds in apartments and houses for profit and falsely claim to provide supportive and other services. The Coalition has made a number of legislative and policy recommendations to the City and State, including calling for the creation of a rent subsidy for those living in or at risk of living in these houses. Last year, partly as a way of addressing the circumstances in Three-Quarter Houses, New York City created the Special

⁹ <https://www.governor.ny.gov/news/governor-cuomo-announces-executive-actions-reduce-barriers-new-yorkers-criminal-convictions>

Exit and Prevention Supplement (SEPS)¹⁰ to provide services and rental subsidies to eligible individual adults and families to assist them in obtaining stable housing. A similar program was piloted in Washington State in 2007; two years after implementation, recipients of the subsidy – all formerly incarcerated – were significantly less likely to have a new conviction, have their community supervision revoked, and/or be readmitted to prison,¹¹ demonstrating that these subsidies can be an important tool in moving people out of predatory and unsafe living conditions into stable housing, and helping them to succeed in the community.

The Legal Action Center is also a member of the steering committee for the “NYCHA Permanent Exclusion Working Group,” which has been collaborating with the New York City Housing Authority (NYCHA) on changes to its “permanent exclusion” policy, through which NYCHA has barred thousands of individuals from living in or even visiting NYCHA properties, often based on an arrest or low-level conviction. These needlessly punitive exclusions exacerbate the problems associated with reentry and do little to maintain the safety of those living in NYCHA facilities. Furthermore, in a City already lacking in affordable housing, the policy prevents individuals from rejoining their families, thereby increasing competition for the limited existing affordable housing stock, as well as removing the potential stability provided by returning to live with family. NYCHA has already taken steps to reduce some of the harm caused by these policies. We look forward to continuing to work with them to achieve fair policies that maintain the safety of individuals, the NYCHA community, and all New York City residents without unfairly penalizing individuals and families and limiting access to stability and safe housing.

¹⁰ <http://www1.nyc.gov/site/dhs/permanency/seps.page>

¹¹ Faith E Lutze & Jeffrey W. Rosky, *Washington State’s Reentry Housing Pilot Program Evaluation: Year 3 Final Report*, WASHINGTON STATE UNIVERSITY (2009), <http://www.doc.wa.gov/aboutdoc/measuresstatistics/docs/WAStatesReentryhousingPilotProgamEvaluation-FaithLutzeWSU2011.pdf>

At the same time, housing needs for this population, as with other segments of the population, exist on a continuum. Many individuals coming out of incarceration may simply need a safe, stable place to live. Others may need some basic level of services to help them reintegrate and readjust to life in the community. Others, however, need the more significant menu of services that are offered by high quality supportive housing. This population often has some of the highest needs, making it among the most challenging and expensive to serve. Partly as a result, as I described previously in regards to other segments of the housing market, those with criminal histories are often the least able to obtain the supportive housing services they need, even as the proportion of incarcerated individuals diagnosed with mental illness has climbed dramatically over the last decade, increasing the need for these types of housing and support services.

Thee Legal Action Center, therefore, joins our many partners in calling for the City and the State to dedicate 15% of newly built supportive housing units to appropriately targeted individuals returning from prison or jail. However, because the obstacles faced by people in need of supportive housing who have criminal justice histories are similar to those faced by all special needs populations, we recommend that 15% of each category of special needs housing created in any new initiative be targeted to serve people in this population group, rather than creating a separate “justice involved” target population. Furthermore, those with a history of justice involvement who are eligible for supportive housing should not be segregated by their status as individuals with criminal records, but instead should be integrated with other populations based on their level of care needs. It is also important that structures and incentives be put in place to ensure that the most vulnerable of those with a history of criminal justice involvement not be excluded from this housing so that they can receive the supportive services they need. Lastly, it is essential that the supportive services offered be comprehensive and appropriate to the specific needs of the targeted population.

To help achieve these goals, the working group assembled by the Corporation for Supportive Housing (CSH), of which LAC is a member, has developed recommendations of factors that should be used to identify and serve appropriate individuals, as well as mechanisms for ensuring that this population is being appropriately targeted. A copy of these recommendations is included with my testimony.

The effectiveness of these types of interventions has been demonstrated by pilots, such as CSH's Frequent Users of Systems Engagement (FUSE) model, a supportive housing pilot for justice-involved populations in NYC. An evaluation of this pilot found that participants had reduced usage of jails, emergency rooms, and shelters. Furthermore, each individual housed through the pilot generated \$15,000 in public savings, paying for over two thirds of the intervention costs.¹²

For decades, individuals who have been involved with the criminal justice system who have significant physical and behavioral health needs have all too often faced overwhelming barriers to reentry and participation in society, while receiving little or no support to help them reintegrate. As a result, too many of these individuals end up cycling back and forth between incarceration and the community. These individuals are also often among the most frequent users of expensive shelters, emergency rooms and detox facilities. Targeting supportive housing services at this population will help move individuals out of this costly and counterproductive cycle so that they can maintain their health and better contribute to society, while making better use of limited City and State resources.

Thank you again for your time and for holding this important hearing.

¹² Aidala, Angela A. et. al. New York City FUSE II Evaluation Report, Columbia University Mailman School of Public Health, March 2014.