

Addressing Criminal History Barriers to Affordable Housing in Travis County, Texas

Austin/Travis County Reentry Roundtable

Community Development Commission
January 10, 2017



Presentation Agenda

1. Why this Matters
2. Background
3. Methodology
4. Results
5. Next Steps
6. Q + A

Background

Report Overview

Report: “Locked Out: Criminal History Barriers to Affordable Rental Housing in Austin & Travis County, Texas”

- Overview of Roundtable findings + recommendations
- This information had never been gathered at the local level before
- Intended audience: local government officials, policymakers, housing industry professionals, and other community leaders

Report aims to inform improved

- Policies
- Strategies
- Resources to reduce criminal history barriers to affordable housing

Austin/Travis County Reentry Roundtable Overview¹

The Austin/Travis County Reentry Roundtable is a coalition of local stakeholders

- The Roundtable collaboratively promotes public safety through the effective reentry and reintegration of individuals with criminal histories

Goal of Roundtable work

- Bring partners and stakeholders together to strategically develop plans that bring about system change, ensuring the safety and well-being of all

Why this matters

The U.S. Department of Housing and Urban Development (HUD) is increasingly scrutinizing federally subsidized properties for racially discriminatory practices

- Racial and ethnic minorities are disproportionately arrested and imprisoned²
- By extension, those groups are also disproportionately affected by rental screening processes related to criminal background screening

Our data was newly uncovered because there's a lack of monitoring on property processes related to criminal activity

- Our data provides a foundation for creating that monitoring process

Why this matters

As housing barriers increase for people with criminal records, so does their likelihood of homelessness

- Of those who enter prison, roughly **one out of ten will have experienced homelessness** in the recent past.³
- Of those who leave prison, **one out of ten will experience homelessness** in the future⁴
- Without stable housing, the ability to avoid criminal justice system diminishes⁵
- Those without adequate housing are **more than twice as likely** to commit another crime as those with adequate housing^{6, 7}
- Visibility of homelessness is becoming more contentious in Austin

Our audience may include potential advocates who can improve this situation

Background Issues: Criminal Barriers

Reentry - the process by which incarcerated persons return to the community.

This process should begin at arrest and continue through community integration

- Securing housing is the most immediate challenge that persons with criminal backgrounds face upon release from prison, state jail, or county jail
- Whether or not a person was incarcerated, having a criminal background can present immense barriers to securing safe and decent housing

Disproportionality

Evidence of disproportionality is well-documented throughout the criminal justice system, including our local system; Blacks are more likely than Whites, Hispanics, or others to be booked into jail in Travis County¹³

- **People identifying as Black account for about 21% of people booked into jail, but only 8% of Travis County's adult population¹⁴**

Disparate Impact Theory

Disparate impact - A legal theory by which a policy may be held to be discriminatory if the policy has a disproportionate “adverse impact” against a protected class of persons

The theory applies even where policies or practices are **facially-neutral** and without discriminatory **intent**, enabling individuals to challenge practices that have a “disproportionately adverse effect” on a protected class and are not otherwise “necessary to serve a substantial, legitimate, nondiscriminatory interest”¹²

Literature Review

The 2015 report, *When Discretion Means Denial: A National Perspective on Criminal barriers to Federally Subsidized Housing*, published by the Sargent Shriver National Center on Poverty Law helped us structure our report²³

- The report was national in scope, and was based on a review of more than 300 written criminal background screening policies used by federally subsidized housing developments
- By contrast, we look at subsidized housing in Travis County

Literature Review

The Shriver Center identified four key barriers in federally subsidized housing developments

- Unreasonable lookback periods
- Failure to consider mitigating circumstances
- Equating arrests with convictions
- Using overbroad categories of criminal activity

We used those barriers as metrics to evaluate the criminal screening criteria used by affordable rental properties in Travis County

Methodology

Approach

The Roundtable referred to the City of Austin's inventory of multifamily affordable housing properties, and identified 113 relevant properties to include in our survey²⁴

- Roundtable contacted 107 of the 113 properties, and obtained data from 80

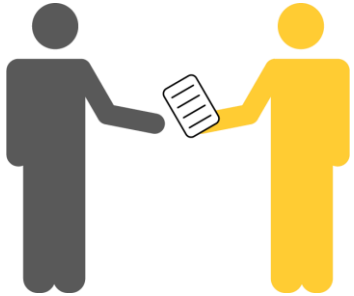
Why multifamily subsidized housing properties?

- We have the most influence to effect change since these properties are governed by city, county, and/or federal funding

Approach

Roundtable collected properties' criminal screening criteria

- We did not receive screening criteria from 33 properties for various reasons (i.e. property closed, unreachable property manager, etc)



55 Criteria were collected in person



18 Collected via property manager contacts



7 Collected via the City of Austin's Neighborhood Housing & Community Development Dept.

Approach

We applied HUD's three overarching categories of criminal activity to conduct the analysis. HUD has granted properties discretion in making decisions to accept or deny housing for these three categories²⁵

- Drug-related criminal activity
- Violent criminal activity
- Criminal activity that poses a threat to the health, safety, and welfare of other residents

We collated the criminal screening criteria and analyzed them according to the barriers identified by the Shriver Center

Results

Key Findings

The findings from the Roundtable's research correlate with the four barriers previously identified by the Shriver Center, and identified additional local barriers

1. Unreasonable lookback periods
2. Failure to consider mitigating circumstances
3. Equating arrests with convictions
4. Using overbroad categories of criminal activity
5. Lack of transparency and compliance with Texas Property Code
6. Third-party screening companies
7. Confusing and Circular Language

Key Finding: Unreasonable Lookback Periods

Lookback period - refers to the length of time that an offense remains relevant to the decision to accept or deny a request for housing

HUD has issued no formal guidance on lookback periods, but recommends lookback periods of five to seven years²⁶

- Based on studies showing that an individual with a prior criminal history but no new offense for at least seven years is no more likely to reoffend than someone who has no criminal history²⁷

Key Finding: Unreasonable Lookback Periods

The Roundtable compared the properties' lookback periods to the Housing Authority of the City of Austin (HACA)'s Housing Choice Voucher Program (HCV Program)²⁸

- HACA's HCV Program chosen as a local reference point because of its relationship to the affordable housing market
- Compared with other PHAs, HACA's HCV program screening policies are more tolerant

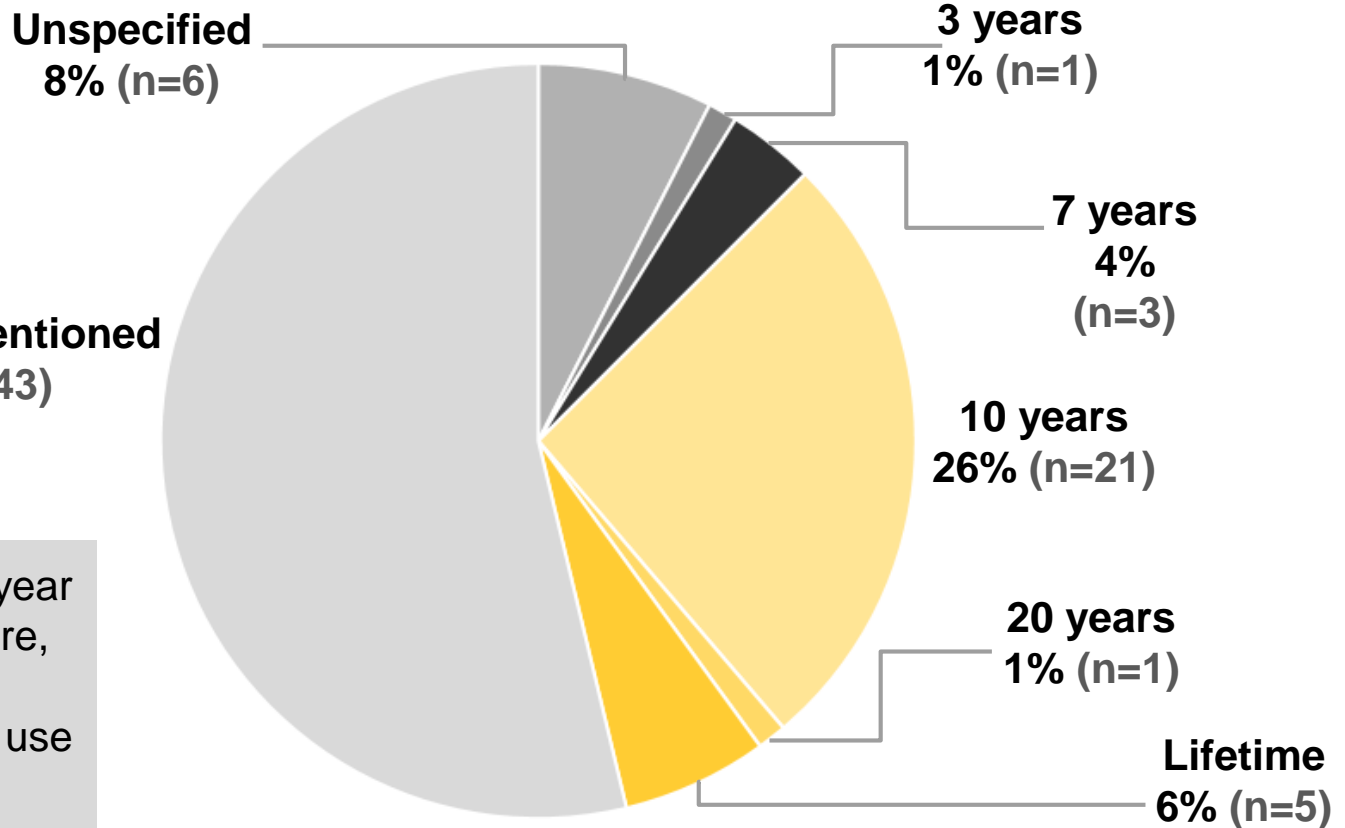
Our data illustrates that some individuals who are eligible for HACA's program are unable to access other affordable housing properties due to their criminal history

Key Finding: Unreasonable Lookback Periods

Compared with HACA, most of the surveyed properties include more stringent lookback periods across HUD's three categories of criminal activity

- Lookback periods for each offense varied greatly, indicating how subjective assigning lookback periods appears to be

Drug-Related Offense: Lookback Periods



HACA applies a 4-year ban on manufacture, distribution, possession, and/or use of drugs

Key Finding: Unreasonable Lookback Periods

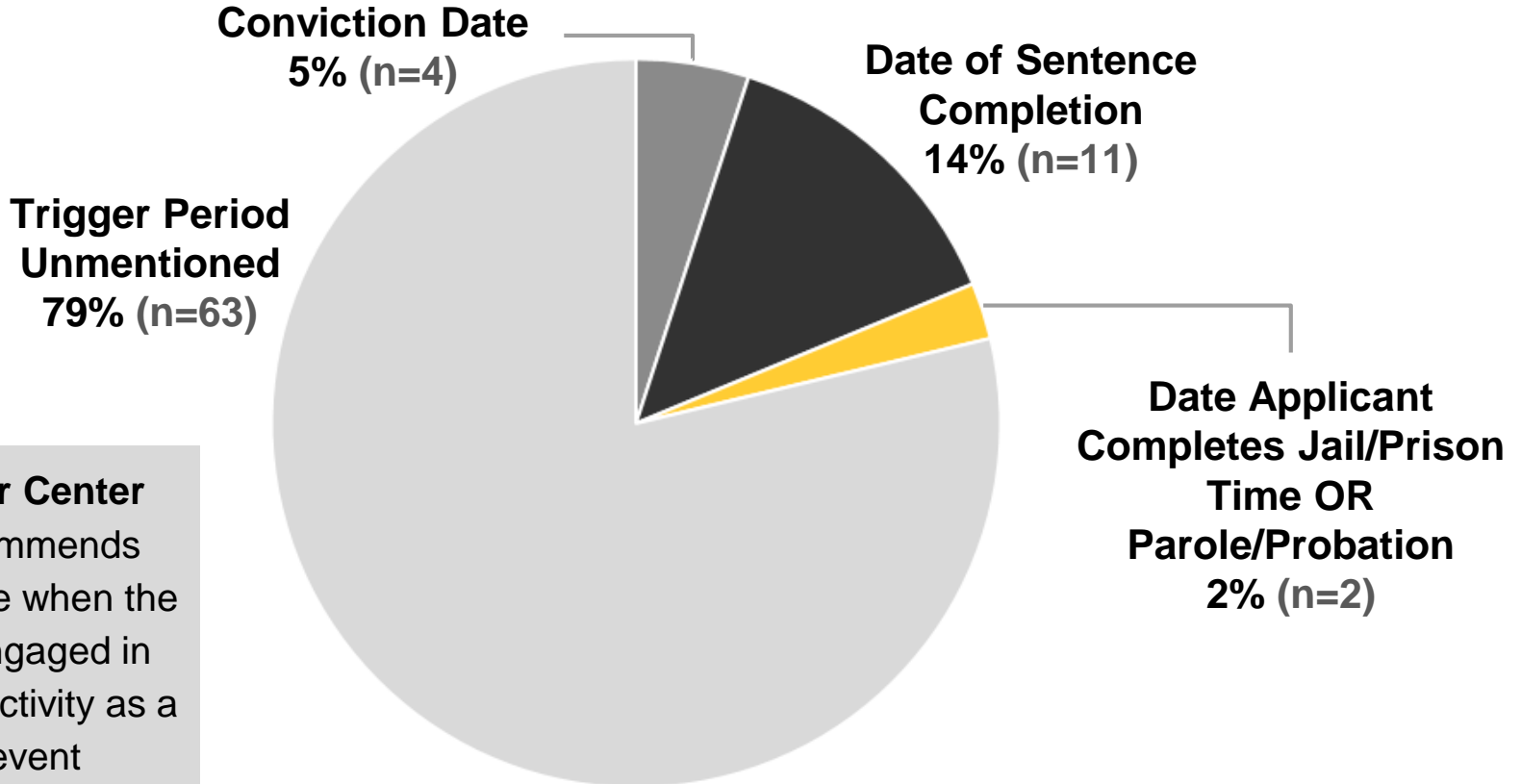
Most of the admissions policies did not indicate which of the following events must occur within the lookback period to trigger the denial (the so-called “trigger event”)²⁹

- The criminal act itself
- The applicant’s arrest
- The applicant’s conviction
- The applicant’s release from incarceration or other correctional supervision

HUD has no clear guidance on what the recommended trigger period should be

- The Shriver Center report recommends using the date when the applicant engaged in the criminal activity as a trigger event³⁰

Trigger Periods



The **Shriver Center** report recommends using the date when the applicant engaged in the criminal activity as a trigger event

Key Finding: Failure to Consider Mitigating Circumstances

Only a third of the surveyed properties (25 out of 80) outlined a denial process for applicants in the screening criteria. Of those 25 properties, only 15 allow for appeals

- Examples of mitigating circumstances include: time since offense, nature of offense, employment history, or participation in treatment or case management services

Key Finding: Failure to Consider Mitigating Circumstances

The opportunity to offer mitigating circumstances may provide second chances for individuals who have the capacity to make good tenants when they might otherwise have been denied

- Some properties that use third-party companies to manage their tenant screening may outline the appeals process only in the applicant's denial letter
 - Requiring applicants to apply for housing in order to learn about a property's screening criteria could deter applicants with criminal backgrounds

Key Finding: Equating Arrests with Convictions

About one quarter of the properties surveyed (18 out of 80) consider an applicant's arrest history as evidence of criminal activity, regardless of final court disposition

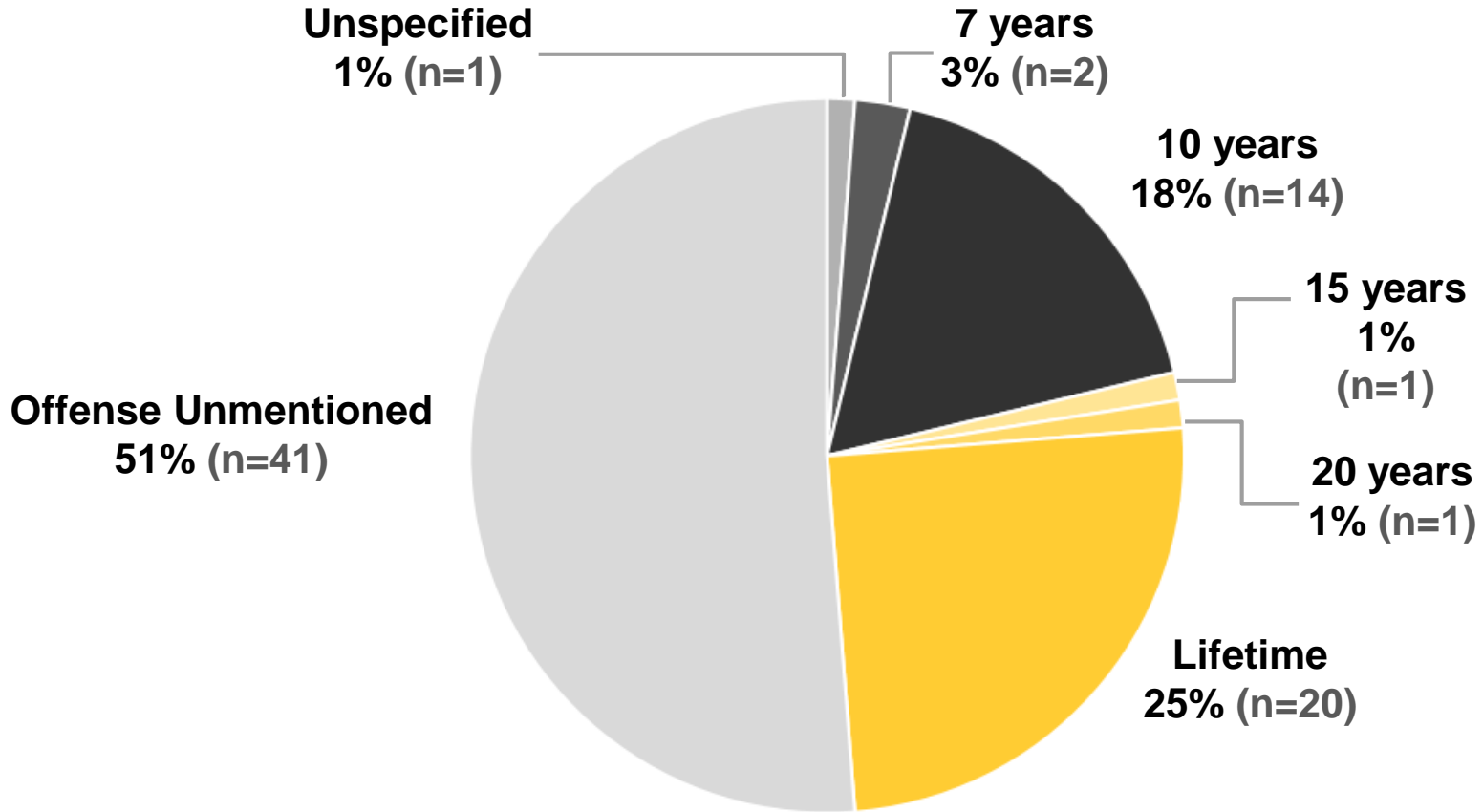
- One third of U.S. felony arrests do not result in conviction³¹
- Because arrests disparately impact racial minorities in the U.S., such practices may have a disparate impact on access to housing for protected classes
- Recent HUD Guidance discourages properties from using arrests to deny housing

Key Finding: Overbroad Categories of Criminal Activity

Some of the surveyed properties ban overbroad categories of criminal activity. Examples include

- Bans on all criminal activity (n=3, 2 / 3 apply time-limited blanket bans on all criminal activity in the past five years)
- Felonies (n=39)
- Crimes against society (n=1)
- Crimes related to public justice (n=3)
- Anti-social offenses (n=1)
- Morals-related crimes (n=1)
- Financial crimes (n=1)
- Unclassified offenses (n=20)

Felonies: Lookback Periods



Key Finding: Overbroad Categories of Criminal Activity

The surveyed properties ban a total of 134 unique offenses. By comparison

- HUD requires denial of housing for only two offenses: production of methamphetamines on federally assisted premises and sex offenses requiring lifetime registry³²
 - HUD grants properties discretion in the offenses it can consider in their screening criteria as long as they are relevant to an applicant's ability to be a good tenant³³
- HACA only reviews 13 violent offenses under its criminal screening guidelines, and 7 offenses under criminal activities that pose a threat to the health, safety, and welfare of other residents

Key Finding: Overbroad Categories of Criminal Activity

Properties justify such additional offenses with statements like

““We reserve the right to determine whether an act qualifies as violent for the purposes of screening our applicants””

““All other offenses not specified...will be looked at on an individual basis and will be assessed to determine if that particular offense threatens the health, safety, and rights to peaceful enjoyment of the property by other residents and their guests or health and safety of the owner, employees, contractors, subcontractors, or agents of the owner””

Key Finding: Overbroad Categories of Criminal Activity

20 properties list “unclassified offenses” as possible grounds for denial in their screening criteria

- This enables properties to deny applicants based on a variety of unrelated offenses
- The Roundtable obtained only two tenant selection plans with examples of “unclassified offenses.” Those two properties listed examples of “unclassified offenses” that seem irrelevant to an applicant’s ability to be a good tenant

One property applies a 10-year ban on “unclassified offenses”

Key Finding: Overbroad Categories of Criminal Activity

Example irrelevant offenses found in the survey include

- Hunting/fishing violations (5-year ban for misdemeanors)
- Horse racing (10-year ban-felonies, 7-gross misdemeanors, & 3-misdemeanors)
- Eavesdropping (10-year ban-felonies, 7-gross misdemeanors, & 3-misdemeanors)
- Loan sharking (10-year ban-felonies, 7-gross misdemeanors, & 3-misdemeanors)
- Animal-related (n=13, though only 4 allow pets, 8 do not, and 1 property's pet policy is unknown)

Key Finding: Overbroad Categories of Criminal Activity

One of the surveyed properties even bans sodomy, an offense that was legalized in Texas in 2003 through *Lawrence v. Texas*³⁴

- Inclusion of this ban could arguably violate City of Austin Housing Ordinance No. 20141211-050, which added sexual orientation as a protected class in 2014
- This suggests that some properties may need to update their criminal screening criteria to adjust for outdated offenses

Key Finding: Lack of Transparency & Compliance with Texas Property Code

The Texas Property Code requires that³⁵

“At the time an applicant is provided with a rental application, the landlord shall make available to the applicant printed notice of the landlord's tenant selection criteria and the grounds for which the rental application may be denied.”

Key Finding: Lack of Transparency & Compliance with Texas Property Code

32 properties provided incomplete or vague criminal screening criteria

- This reveals the ambiguity in how to interpret and apply the Texas Property Code

Only one property posts its criteria on its website

- This results in a more time-consuming housing search process and difficulty for people with limited access to transportation

Key Finding: Third-Party Screening

Properties increasingly rely on third-party screening company services to receive instant results from criminal background checks

- Leaves applicants little ability to explain their convictions or any efforts at rehabilitation³⁶

The services that third-party screening companies offer have been found to have numerous errors³⁷

- They may use arrest records or expunged convictions
- Properties simply provide a toll free number to contact instead of being able to directly interact with a housing provider³⁹

Key Finding: Third-Party Screening

Although many, if not all, of the properties contacted use a third-party vendor to screen applicants, only 29 of the 80 properties clearly notify the applicant of their use of a third-party company in the tenant screening criteria

- Only half of those 29 properties (14) list the third-party vendor used, allowing the applicant to contact the company with further questions on the criteria prior to applying
- For the remaining 15 properties, the tenant selection criteria stated that the applicant would be provided with the third party's contact information only after being denied tenancy

Key Finding: Third-Party Screening

Even if a property provided contact information for a third-party vendor, there could be additional barriers to applicants trying obtain criminal screening criteria before applying

- We tried contacting a few of the third-party companies to learn more about the properties' criminal criteria and experienced a few challenges
 - Some customer service representatives refused to provide the criminal criteria used by the property; instead, they referred us back to the property, assuring them the property has the information, but the property advised us to call their third-party for that information
 - A few customer service representatives at the third-party companies verbally explained the criminal criteria but refused to provide a copy in writing.

Key Finding: Confusing and Circular Language

Overall, many of the tenant screening criteria collected were challenging to interpret. Some tenant selection criteria are poorly written and include nonsensical and circular sentences such as the following

“ Applicants or occupants that have a history involving offenses that are not classified on the applicable screening materials will be considered to be offenses requiring rejection unless otherwise shown to be offenses that do not require rejection.”

Next Steps

Recommended Approach

The Roundtable is eager to convene relevant stakeholders, including property owners and managers, to discuss the findings in this report and develop strategies that enhance access to housing opportunities for persons with criminal backgrounds

- The Roundtable wants to serve as a resource for properties
- Based on the results of this study, the Roundtable developed recommended approaches and corresponding actions for future conversations

The Roundtable Offers the Following Approach

Partner

Engage all property owners (public, private, including those without subsidized properties) on the new fair housing guidance and to support more holistic screening processes

Educate

Help property mgmt, and their third-party vendors, understand their legal obligations under the Fair Housing Act & helping them align their policies and practices with recent HUD guidance

Ensure Accountability

Assist affordable housing funders, including HUD, in strengthening scoring criteria and monitoring processes to ensure subrecipient compliance with affirmatively furthering fair housing duties

Recommended Actions

Based on the report, the Roundtable suggests the following recommended actions

- Inclusion of clearly defined and reasonable criminal history lookback periods for both misdemeanors and felonies, along with an appeals process for admission
- Requirement that properties receiving funding or support through HUD-funded entities post tenant selection criteria online and have it readily available in the property's office
- Requirement that properties that accept HCVs from HACA or Travis County do not apply their own criminal screening criteria since applicant was already screened and approved for an HCV

Recommended Actions

- Increase in funding for fair housing testing of landlords with respect to criminal selection policies to determine if they are violating the Fair Housing Act through either disparate treatment or impact
- Creation of sample policies incorporating these practices to ensure fair housing rights for persons with criminal histories and encourage uniform screening

These Goals Are Achievable: New Orleans Case Study

Other communities have proven that our goals are achievable.

- In March 2016, the Housing Authority of New Orleans (HANO) Board of Commissioners adopted revised criminal background procedures that offer prospective tenants with criminal histories significantly greater protection, and address many of the key barriers discussed⁴⁰

Notably, the new procedures apply to all HANO properties, including HANO-managed public housing sites, third-party managed public housing sites, and admission to the HCV Program.

These Goals Are Achievable: Local Initiatives

There are several local initiatives committed to promoting fair housing and prohibiting discrimination in Austin and Travis County

- City of Austin⁴¹ and Travis County Fair Housing Action Plans⁴²
- HousingWorks Austin⁴³
- Travis County Affordable Housing Policy Committee⁴⁴
- House Bill 1510⁴⁵

These Goals Are Achievable: Local Initiatives

From its work tracking criminal barrier data, ECHO has found that on average, 82% of the Veteran households it serves have some criminal barrier⁴⁷

In 2015, the Ending Community Homelessness Coalition (ECHO), was able to partner with five multifamily properties in Austin, negotiating lower criminal screening barriers for Veteran households experiencing homelessness

- In 2012, before the negotiated partnerships with the five multifamily properties in Austin, it took 238 days to house a Veteran experiencing homelessness; as of 2016, it takes less than 90 days⁴⁸

Example Negotiated Criminal Screening Criteria: Mayors Challenge, Austin, TX⁴⁹

Offense Category	Terms Before Negotiation	Terms After Negotiation
Violent Felonies	Felony <i>convictions</i> or <i>deferred adjudication</i> of felonies, or <i>charges</i> for felonies in past 10 years will be denied	Deny for <i>convictions</i> if within the last 10 years , but allow for appeals & consideration of extenuating circumstances
Nonviolent Felonies	Felony <i>convictions</i> or <i>deferred adjudication</i> of felonies, or <i>charges</i> for felonies in past 10 years will be denied	Deny for <i>convictions</i> if within the last 3 years , but allow for appeals & consideration of extenuating circumstances
Violent Misdemeanors	Any within the past 5 years will be denied	Deny for violent crime (misdemeanor) against a person within the last year
Nonviolent Misdemeanors		Do not deny for any misdemeanor convictions; to include Class A, B, & C charges within the last year
Arrests		Do not deny for arrests wherein the applicant was not convicted, nor for any perceived patterns of arrests or convictions
Automatic Denials	Charges of a sexual nature, any registered sex offenders, and unverifiable criminal histories	Charges of a sexual nature, any registered sex offenders, and unverifiable criminal histories

Q + A