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NDRN

Housing and People with Criminal Records-(Dual: Streamtext/Zoom)

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>> ...Marie Claire, director of legal impact network and Eric Sirota, director of housing justice, both from Shriver and from Disability Rights California, it's a pleasure to have Navneet, litigation council for the Civil Rights practice group and Nubyaan Scott, staff attorney in Civil Rights practice group.

In our first webinar of the series, participants identify the need for housing, for formally incarcerated people with disabilities as far and away the most pressing entry need and most-challenging one to address. This is unsurprising as access to affordable housing is one of the most-challenging problems facing all working people in this country.

For people with criminal records, the added burdens of discrimination, stigma and racism further limit housing options in expensive and tight housing markets.

For people with sex-related offenses, there's even more burdens.

For people with disabilities who also have a criminal record, particularly at the moment when they're re-entering society after a period of incarceration, the obstacles to obtaining housing are more-daunting.

As we discussed in prior webinars, people with disabilities serve longer sentences. They have limited, if any, access to re-entry program while incarcerated.

Further complicating the situation for the formally incarcerated person with a disability, as we discussed last week, is their vulnerability to frequent supervision violations for actions related to their disabilities, repeatedly landing them back in prison and repeating the same cycle of re-entry after release again and again.

We know access to housing is critical for people with disabilities and that have experienced institutionalization in the community, aside from incarceration.

Housing is a necessary condition for them to avoid repeated institutionalization or incarceration, itself.

Within of our main goals today is to encourage P&As to address the needs of formerly incarcerated people, all P&As are already working with people who have criminal records and history of incarceration, although, many don't quite realize that.

People with psychiatric, physical and developmental disabilities make up an enormous portion of the incarcerated population. As we all know, people with disabilities are often the poorest people in this country and disproportionately people of color. Which also describes people subjected to incarceration in this country.

People with criminal records are a significant portion of the client base and housing advocacy for people with disabilities is a core activity for most P&As.

We'll address the particular housing needs, a broad slice of your client population.

For some who may have little or no experience with issues affecting formerly incarcerated people, much of this information might be brand new or at least unfamiliar.

This presentation we want to encourage questions and comments from all of you watching today. At the end of each main subject area, as we go along, there'll be opportunities for you to ask questions of our presenters.

There's two ways you could ask a question. As you're listening, you can just put a question in the chat box, so, I will read out loud at the appropriate time.

In some cases, we may answer those questions in the chat. Alternatively, if you'd rather ask your question out loud or make a comment directly and verbally, raise your hand and let me know you have a question. I'll announce that we have a question, I'll state your name and we will unmute you.

If you're listening only on the phone, press star 9 to raise your hand and we'll follow the same process. We only ask that you be respectful of all our participants and keep your questions and comments focused and relevant to the topic.

We want to have as broad a discussion as possible in this virtual format, but we likely won't get to every question or comment. There's lots of you here, which is great. Contact information for each of our presenters will be available to you and you can ask them questions after the presentation.

And one more thing before we get started. I want to do a quick poll to find out who is watching right now, so we know who is here.

The question is, what is your role at your P&A? Are you an attorney, non-attorney advocate, administrative or operations staff, Advisory Council member, P&A board member or not affiliated with a P&A at all? We'll give a few more minutes for that one.

Okay, looks like more than half of you are non-attorneys, which is interesting and useful to know.

56%. 36% are attorneys and about 5% are administrative or operations staff and it looks like one person, not with the P&A. Thank you so much.

We can take that down, Marcia, please.

I'd like to introduce the presenters from the Shriver Center.

>> I'm Marie and I want to thank NDRN for giving us the opportunity to talk about the intersection of housing and disability status in the criminal legal system.

Just very few quick notes before we start is, number one, the topics today, could easily take up a webinar or more. We want to acknowledge that.

We want to give you a high level overview of pressing issues today.

And are all happy to make ourselves available for more in depth discussion at a later point.

And the issue areas that we're going to -- broad issue areas that we're going to discuss are federally-subsidized housing, Civil Rights protections, such as the Fair Housing Act and also tenant screening companies.

For each of these topics, we're hoping to give folks an overview of the law, as well as practical tips for policy and individual advocacy.

So, moving to the presentation, I want to just set the stage for why this is an important issue and also, kind of continuing on Philip's comments.

Every year, more than 650,000 people leave the state and federal prisons and local jails process more than 11 million people. Securing housing often presents challenges for individuals immediately after release, as well as years after exiting the criminal legal system.

It's an ongoing problem. And in 2015 survey of formally incarcerated individuals, nearly four out of five reported that because of their criminal history, they were denied admission or deemed ineligible for housing.

Part of this is that incarceration and homelessness are deeply connected. Being a formerly incarcerated person, makes a person ten times more likely to experience homelessness than the general population.

These odds increase for women, as compared to men. For black and Latinx individuals, as compared to white individuals. These chances increase as a person gets older.

In other words, older adults with records are more likely to be homeless than younger adults. It also increases the more a person is incarcerated. So, it does become a revolving door and so, something where intervention is, is really necessary.

And the likelihood of experiencing homelessness is at its highest during the period after release from an institution.

You know, because it's, we are, you know, still dealing with this pandemic, this has been an ongoing issue, especially in the early days, where folks were trying to help people get released from prisons and jails because of the dangers of spreading COVID in congregate settings.

So, a lot of people were released, but a lot of them still are in this precarious time period where housing instability could lead them to go back into the system.

So, it's really important to find housing for this, for this population. And then, homelessness, of course, is only part of the problem. There's larger housing instability that happens when people are living in motels or they're doubling up with families and so, this is a widespread issue.

And just as incarceration is a risk factor for homelessness, the reverse is true, homelessness can also be a risk-factor for incarceration.

This cycle can be very, can be very harmful for folks and especially harmful for people with disabilities.

So, Nubyaan will take it from here.

>> Nubyaan: I'm a youngish black woman with a medium skin tone and long braids. As we've discussed, people with disabilities are over-represented in the criminal legal system. According to 2016 data, from the Bureau of Justice Statistics, nearly 40% of folks in prison had at least one disability. And nearly 1/4 of those individuals reported they had a cognitive disability.

I think we're all familiar with the fact that people of color are disproportionately impacted by incarceration. More-specifically, according to data from the NAACP, a black person is five times more likely to be stopped by police without just cause than a white person is.

And as we've covered, as has been covered by a great deal of investigative reporting and research, we know that black people are overpoliced in many areas, but especially when it comes to drug-related offenses.

Studies have found that while black and white Americans use illegal drugs at similar rates, black Americans are nearly six times more likely to be imprisoned for drug-related offenses.

And while black and Latinx Americans make up 32% of the U.S., we represent 56% of those incarcerated.

Similarly, Native Americans are impacted in that they're almost twice as likely to be jailed than white and Latinx Americans. Where there are large populations of Native Americans, they're incarcerated up to seven times that of white Americans.

It's evident how much people of color with disabilities are disproportionately impacted by incarceration.

I think, through this series, you've developed a sense of why re-entry into the community is so difficult for folks. We'll talk about issues that make it harder for people with disabilities to re-enter the community and avoid recidivism.

More broadly, there are nearly 50,000 legal restrictions in place that prevent people with arrest and conviction records from accessing all of the things that they need in order to avoid recidivism. Those are things like jobs, housing and educational opportunities.

And just a quick addition, while we're not going to focus on employment and re-entry here, I think it's important for us to keep in mind that research has shown that joblessness is the single-most important predictor of recidivism.

And further complicating folks lives is the fact that even after being released from prisons and jails, they're often still subject to government supervision and have to navigate that extra layer of difficulty.

One in every 37 adults in the U.S. is under some form of correctional supervision and as Marie Claire mentioned, while 650,000 Americans

return to communities from prisons each year, about half of them will return to prison within a few years.

We recognize that people with disabilities face their own unique barriers when attempting to re-enter the community.

Next slide, please? I mentioned earlier how a significant number of individuals in prison have cognitive disabilities, while we know that oftentimes, folks also have inadequate or no access to behavioral health or Health Care, more broadly, while in prison.

So disabilities are often negatively impacted because a person was in prison. That makes the need that much greater for an individual to have access to appropriate community supports and services.

As quickly as possible upon their release. Yet, we know there are very limited supports and services available.

A related issue, next slide, please. Is the prevalence -- pardon me, we can go back. The prevalence of crime-free or nuisance ordinances.

Those, very often, are going to have discriminatory effects on individuals with disabilities.

Imagine a person with a psychiatric condition, and they're having difficulty accessing treatment, upon re-entering the community.

That person may need to call 911 two or three times in a month for help or they may be expressing themselves in a way that causes five or six different neighbors to call the employees them during a short period of time.

Under many of these ordinances, that person would be subject to eviction and what if that same person is interacting with the police, even a couple of times?

We know that folks with all manner of disabilities are often not going to have helpful interactions with the police.

In fact, it's very possible that their interactions with the police are result in arrests and further harm.

So, in these scenarios, it's not uncommon for people to end up in addictions and arrests. You can look at HUD's December 2020 press release, regarding their voluntary compliance agreement with the city. Several of the city's programs lacked an exception for calls of victims of domestic violence or other crimes and didn't have safeguards for individuals with disabilities.

Another prevalent issue is that many individuals with disabilities often need accessible housing. That could be a person who uses a wheelchair needing mobility features.

It could be someone with an auditory or visual disability. These are barriers for people attempting to re-enter the community, if they're able to locate housing that will accept their criminal record that's affordable, available housing may not meet their accessibility needs.

Some folks can navigate around a lack of accessibility features, but other people don't have that option. They may end up locked out of housing as a result.

This is obviously an area of work that's very important for P&As to support.

I know that many P&As are just starting to get involved in this work, which is great. Disability Rights California as an agency recently began supporting re-entry work about a year and a half ago.

We have a disability in law enforcement and internal working group that has members from all of our practice groups and while disability in law enforcement is a much-broader issue to focus on, we have actually found it to be vitally important in helping us frame and attempt to address re-entry issues.

In fact, all of the members of our re-entry group are members of that larger disability and law enforcement working group.

We've also expanded our group to outside agencies that focus specifically on this work.

In that broader group, we meet quarterly to share things like legislative and advocacy updates, as well as case developments and opportunities for collaboration.

I will hand it back over to you, folks, to discuss federally-subsidized housing.

>> Thanks, Nubyaan. We're going to move to federally subsidized housing. Very big bucket and at the end, we have a list of resources to dive a little deeper into this.

But, the reason we wanted to focus on this, specifically, is because, for a lot of folks with arrest and conviction records, with limited income, federally-subsidized houses is an important source of housing.

And there are several different types of subsidies, but for now, we'll focus on the three biggest programs that are administered by HUD. The first is the housing choice voucher program, which is commonly known as section 8.

That program, generally an attendant takes the voucher to find housing on the private rental market at a reduced rent and voucher stays with the tenant.

The second is Public Housing, a program that people tend to be familiar with and is site-based.

The last is project-based section 8, a voucher that stays, typically, with the unit as opposed to a tenant. I'll return to that later and we'll talk later about the tax credit programs.

Out of the three, I think clients are probably most-likely to be dealing with issues with the voucher program because of, kind of, where the state of Public Housing is.

And that, just won't thing to note is, you know, the way that usually works is that, I think a client has to apply to get a voucher from a Public Housing Authority. The Public Housing Authority makes a decision on whether to admit them to the program or not and then they take the voucher and go to the private rental market and they have to get approval from the landlord to enter into these.

There are layers of approval there. In the voucher setting, it's important to understand what the rules are for HUD, but it's also important to understand fair housing, which we'll talk about later, which covers all housing, including the private rental market.

And so, contrary to sort of, popular belief, there are, federal law requires Public Housing authorities and project owners to deny, only, in very small narrow situations.

For the vast majority of offenses, Public Housing authorities and project owners actually enjoy quite a bit of discretion.

So, on the screen here, I've listed the specific instances where a mandatory ban is required by federal law. And, and they, they're very, very specific circumstances.

So, one is, if a person has, in the past, been convicted of manufacturing amphetamine on federal property, anyone who has been subject to a lifetime registration requirement for a sex offense, current users of illegal drugs, and abusers of alcohol, or folks that have a pattern of doing so, that interferes with the health, safety, or peaceful enjoyment of others.

And the last one is a pretty narrow band, which is that, within the past three years, somebody who has been evicted from federally-subsidized housing for drug-related criminal activity.

There are instances where even that can be, where a person could still be admitted, is whether there's proof of drug rehabilitation or circumstances no longer exist.

The discretionary bans are lists here. You know, if a Housing Authority wanted to, they could only -- they could only deny based on the mandatory bans.

There's one Housing Authority in Illinois, Housing Authority of Champagne County, who has undertaken that. They really, they've committed themselves to making sure that folks in their county are housed and they did that about a year ago.

For the vast majority of other Public Housing authorities, they use their discretion to have, to deny for other criminal activity beyond the mandatory bans.

So, federal law allows Public Housing authorities to deny for the following. Drug related criminal activity, violent criminal activity and other

criminal activity that would adversely affect the health, safety and right to peaceful enjoyment of the premises by other residents.

So, two things to note here. One is that this last category, is not a catch all provision. It is supposed to -- you're supposed to really -- [talking simultaneously]

-- limit the offenses for which they deny and one area where this has been particularly, for me, representing folks, been a problem is, for example, representing folks with shoplifting convictions.

The other thing I want to point out. The operative word for here, for a lot of advocates is criminal activity. Advocates have been successful and are doing that. A mere arrest doesn't necessarily fit the standard. The arrest shows a person has been suspected of the underlying offense, but not that the person has engaged in actual activity.

An arrest will come up again later in the fair housing setting. And so, I think, you know, we talked about mandatory and discretionary.

So, there's a lot of discretion, but what folks should remember is that there are real limits, like, true limits on that discretion. Sometimes public -- some Public Housing authorities say they'll have a lot of bandwidth here.

There are two important limits. One is that their Civil Rights laws, including the Federal Fair Housing Act, which we'll address later and the other is time.

The HUD regs are very specific. The criminal activity must have occurred within a reasonable time before the screening takes place.

HUD hasn't defined how long reasonable time is. But, I think advocates have to push back, I think, on an especially-long time periods or the lack of time periods at all.

Because, there are guideposts. Earlier, we talked about evictions for drug-related criminal activity. In federally subsidized housing.

Congress decided that that was only going to be [indiscernible] for three years. Anything longer than that, I think, really, the Housing Authorities really have to, have to, really be able to explain it.

Now, of course, there's Housing Authorities that have longer periods, but trying to find other guideposts from, you know, similarly-situated Housing Authorities can be something HUD hasn't, had some instances where they talked about that period.

That's something that I think is really important to remember.

The last thing I'll touch upon there, is, in the federally-subsidized context, some good language and good documents from HUD.

I listed the notice here. I won't go through all three of them -- or all five of them, but I want to hone in on some of them. Applicants and tenants have due process rights. Two things I want to pull out, if a person's going to be denied housing, they have a right to look at what the criminal background check has.

That's quite a problem that comes up a lot. They're also supposed to get an opportunity to show mitigating evidence and sometimes that happens before the denial. Sometimes it happens after the denial.

But that's also something really important that, that people, opportunity show they're more in the four corners of their criminal background check.

With that, I'll turn things over to Navneet for tips in the advocacy space.

>> Navneet: Marie Claire went through the federal law that's applicable to subsidized housing, which is critical. When I'm doing advocacy for our client, I also want to know what any state or local protections are. Because those protections will, in most situations, apply in addition to the federal law.

So, with that said, Marie Claire spoke about the discretion that Housing Authorities have in setting their screening policies with regards to criminal history. And criminal activity.

But, that discretion shouldn't be done on an ad hoc basis.

What Housing Authorities should be doing is putting their discretionary policies into public plans.

For example, for Public Housing, that plan is called admissions and continued occupancy plan.

For the voucher program, that's called the, the administrative plan. And the key thing about these plans is that they have to be both publicly available, but they're also open to public comment on an annual basis.

And importantly, if residents comment, the Housing Authority has to respond to their comments. I think that one key piece of advocacy that I've worked on in the past, in collaboration with others, is to really push for fair screening policies, with regards to criminal records, in these plans.

And as a practical matter, it usually involves having a coalition of groups, ask for those changes to be made, to the plans and it can also take several years to get the housing authority to agree to adopt those.

And in some cases, they still haven't. But I will say that some of the things that have helped, Marie Claire's report that is listed at the end of these slides, when discretion meets denial is really helpful, thorough survey of.

A number of Housing Authorities and what best practices should be with regard to screening based on criminal history. The HUD guidance is helpful for advocacy as well.

Why is it important getting the HUD policies in these plans? The reason it's helpful is that once a Housing Authority puts those policies into those plans, they are bound to follow them.

They can't veer from those decisions. So, if you have a client that comes in and let's just give an example. So, you have a client who comes to you and says they were denied admission to Public Housing. So, as required, the Housing Authority gave them a written notice of denial and it says that your client was convicted for drug possession five years ago.

And was arrested for disorderly conduct three years ago. So, in that situation, what I would do is I would look at the Housing Authority's admissions and continued occupancy plan and figure out what their actual screening policies are.

And because you've been so successful in getting really fair policies that have short look-back periods, that don't consider arrests for

admissions, then what you can do is you can point out the discrepancy and note that the drug possession conviction shouldn't be considered at all.

Because it's beyond the look back period. And then, with regard to the arrests, you can work on getting documentation that demonstrates that the alleged activity didn't occur, pushing the Housing Authority to prove it did occur, saying they don't have the evidence.

And also, addressing any mitigating circumstances if it did occur.

So, it gives you the opportunity to also, then, be able to represent individual clients without having to get into, you know, a full Fair Housing Act analysis.

But rather, on the Authority's own plan. I have seen that Housing Authority do ignore their own plan or don't check it when making the denial.

>> We're running a little behind on time, so I'm going to go through these things quickly. One is, first, Navneet tomorrow going through that. I think it's important to understand the important advocacy piece and how that can be very localized, but have a lot of really important implications for clients.

I wanted to just raise this, put in front of people, the attention to emergency housing vouchers. This is a specific type of voucher and it was created earlier this year, under the American Rescue Plan.

It's only available to about 600 of the, over 3,000 Public Housing authorities out there. But the -- if, I wanted to note, if it comes across, and is available in your Public Housing Authority and you have clients in need of housing, this can be a very powerful need for housing.

The vouchers are targeted to people who are at risk of homelessness or who are homeless, who are fleeing, or attempting to flee domestic violence, dating violence, sexual assault, stalking, human trafficking or who are recently homeless and have a high-risk of housing instability.

It's targeted and they have -- they want to get these vouchers out quickly to get people housed. This was part of the American Rescue Plan in response to COVID.

And so, as part of this process, HUD has waived some of the discretionary basis for -- denied for criminal activity.

HUD has said that Housing Authorities cannot deny vouchers at all for drug-related criminal activity.

And out of specific recognition that addiction may be part of the root cause of homelessness. So, that's a powerful change for the specific program and then, for violent criminal activity and other criminal activity that would adversely affect the health, safety and right to peaceful enjoyment of the premises by other residents, the time period is limited to 12 months.

I've seen places that have this open-ended denial and even some of the ones that are more, that have shorter time periods, they're still like in the three to five-year range.

Here, there's a specific program where they limit it to 12 months. If you have clients that fall within this, I'd try to seek it out. It'll probably only be available for the next year. The other thing I'll note, we've spent a lot of time talking about these HUD-related programs. There's another program that is significant, the low-income housing tax credit program.

It's the largest source of financing for affordable housing, so, it is responsible for a lot of affordable housing units in the country.

Because it's administered by treasury and not HUD, a lot of the regulations that we talked about, in terms of the times -- discretion, versus mandatory bans, due process rights, things like that, they don't apply.

So, it can be very, very difficult. I think, when you represent somebody who has a record. So, it's really a need for advocacy there.

The HUD program side, regulations don't apply, but the HUD 2016 criminal records guidance does.

We'll go into more detail around that.

The other reason I wanted to bring it up, sometimes they are, some of the most-egregious of the property owners we see out there, when we wrote the report back in 2015, we had our hands on policies that said they'd deny people for 99 years.

I hope they fixed it since then. Those are the places where we've seen a lot of really, really onerous policies.

And so, there's also policy advocacy opportunities here. Because states have to come up with policies at the state level and how to allocate these plans. Some states have been very successful in these efforts.

Georgia and Ohio are examples, as well as Pennsylvania and North Carolina. But, it's still, it's still an uphill process and so, just for folks to keep in mind. That these properties can be -- there's a little bit of a different advocacy for these type of properties.

>> Navneet: I'll be super fast since we're behind. I did want to note, I put language in this slide from an actual entirety of a tenant screening policy that we obtained in a recent advocacy that we've been engaging in with Tenants Association. With a tax credit property.

I just want to highlight that this policy is, is all of the bad things that Marie Claire has said. It doesn't have a look back period. It says that any individual who is convicted of a felony and/or misdemeanor or any individual who may constitute a direct threat to the health and safety of other individuals, the complex or property of others will be denied.

With no time limitation. I also want to highlight this one because it uses the language of reasonable accommodation law, around there being an exception to reasonableness of accommodation request.

There's a direct threat to the health and safety of others in the disability context. This policy, in my opinion, already anticipates rejecting people with disabilities.

And then it's also vague, it can -- doesn't say anything about arrests. And so, it -- you know, Marie Claire talked about this advocacy can be more difficult, but I do think that it's important to, when you see policies like this, to push back, even if it's just for those buildings.

Because, often they just don't know what they're doing, quite-frankly. In these properties.

So, I'll end there. Just so we can move forward.

>> We want to pause. We've given a lot of information here, just pause for a minute or two to see if there are any questions from the audience?

>> Philip: Haven't seen any in the chat, but if people want to ask a question, directly, raise your hand. Calculating the look-back period, time period from conviction. The context is ambiguous in some states. I'm presuming that the counting -- we're counting the conviction date from release from incarceration or release from conviction?

>> Marie Claire: Our recommendation is the date from conviction, but a lot of folks, a lot of Housing Authorities and housing providers are pretty nebulous. The policy that's up on the screen, you know, you could argue that it's -- you can argue that it's, since conviction, but I'm almost positive that this property owner probably thinks it's release from incarceration or completion of sentence.

Which is especially onerous for folks on probation or some community-based supervision where they still need housing or still need jobs, but their lookback period hasn't started yet.

>> Philip: Thank you. Looks like we don't have any other questions in the chat.

>> Eric: I'm director of housing in justice at the Shriver Center on Poverty Law. Thank you for inviting us and my colleagues, it's been an extremely helpful presentation thus far. A lot of this, I'll touch on --

So, I'm going to be talking about the intersection of Civil Rights and housing and how that intersects with folks who have records of arrest or conviction.

I'm going to be focusing on the primary federal law, protecting Civil Rights and housing which is the Fair Housing Act, which prohibits discrimination in the sale or rental of housing.

As was discussed there, are state and local fair housing protections which may be more expansive than the federal law and some, which actually may specifically address criminal records protections, which federal law doesn't, which we'll get into.

Even on the state and local level, these are unfortunately, exceptions.

It's worth noting that the Fair Housing Act, again, has been discussed, is broad in its coverage. It applies to private housing providers. It can apply to state policies. It applies to the subsidized housing programs, my colleagues were talking about and the Public Housing authorities that administer those programs.

It also applies to a broad array of housing, of housing transactions. It covers not just admission to housing, it can also cover the provision of housing services, it can cover evictions, it can cover admission to subsidized housing programs and the like and we'll talk about later in the presentation, it can apply to tenant screening companies and tenant screening practices, which we're going get into.

So, the Fair Housing Act also includes an accessibility requirement and the obligation to make reasonable accommodations of persons with disabilities.

Like other fair housing law, like other federal Civil Rights laws, it protects certain specific classes from discrimination.

So, race, religion, sex, which, probably includes sexual orientation and gender identity, under a recent Supreme Court decision. Familial status. Criminal records status is not a protected class.

There's nothing in the Fair Housing Act stating the landlord can't discriminate against those with a record, however, using someone's criminal record to exclude them from housing could still violate the Fair Housing Act.

I'm not going to pause for too long on this because we're behind on time. If you want to brainstorm in the chat, why would the Fair Housing Act be relevant to the use, to excluding people from criminal records, even though criminal record status is not a protected class under the Fair Housing Act. Which I think is what a bunch of the rest of my talk will get into.

Write any ideas you have in the chat.

I should also say -- my apologies, I'm a white guy, I'm in his 30s, I have dark brown hair and a beard and I'm wearing glasses.

So, in addition to the failure to write reasonable accommodations, courts have recognized that the Fair Housing Act primarily prohibits two types of discrimination and those are disparate treatment discrimination and impact.

Intentional discrimination, intentionally treating someone differently because they're a member of a potential class. Disparate impact discrimination refers to policies that, maybe, don't intend to discriminate, but have especially negative effects for some protected classes without justification.

So, I think with, with that additional information, I'd encourage people to kind of keep brainstorming the continued -- the previous question about how the Fair Housing Act may apply to exclusions based on criminal records.

So, in 2016, HUD actually addressed this question head on with guidance. So, HUD released guidance applying the Fair Housing Act to the use of criminal records by landlords.

They applied their analysis, specifically to race, but the guidance also specifically states that the analysis is potentially applicable to other protected classes.

And as stated by my colleagues, there was a lot of data and personal experience showing that folks with disabilities are disproportionately likely to have an arrest or conviction record and this is further exacerbated by the disability and other protected class statuses like race or sex.

But the current guidance focuses on race. The guidance focuses, discusses both disparate treatment, and disparate impact discrimination.

A landlord can't give housing to a white person with certain convictions and refuse housing to a black person with a similar conviction history.

Disparate impact is trickier, which is why the HUD guidance spends more time. So, the guidance basically says three things.

First, is that policies, that exclude people based on arrest history or conviction history, often disproportionately, negatively impact certain

groups and again, this guidance focuses primarily on black and Latinx people.

That, alone, doesn't make exclusions based on criminal history illegal, it only makes them illegal if the policies are not otherwise justified.

And landlords try to justify these policies often on public safety grounds.

So, HUD gives specific examples in the guidance of criminal history policies, which can't be justified on public safety grounds or generally otherwise.

There are two major examples of policy which HUD says, probably have discriminatory affects and can't generally be justified on public safety grounds.

So, one of those are policies which exclude people based on arrests that don't result in convictions.

And the second is blanket bans on people with convictions.

Instead, the HUD guidance says that, instead the HUD guidance says that if, before a landlord excludes an applicant based on their conviction history, the landlord should engage in an individualized assessment that takes into account their particular circumstances, which includes the nature of the underlying conduct, how recent it was, how severe it was, and mitigating circumstances, for example, if the conduct was symptomatic of a disability, if that, if that symptom is now in remission.

Those should all be things that are taken -- those should all be things that are taken into account.

So, again, kind of in summary, the notion is that, the notion is that policies or practices that exclude people from housing based on their records has an especially-negative effect on certain classes of people.

The landlord has an opportunity to justify these policies, but can't justify policies which exclude people based on arrests that didn't reach convictions.

Or which exclude people based on convictions without conducting an individualized assessment of the relevance of the conviction of that individual's potential qualities.

Next slide, please? So, a separate, but related issue I want to talk about are certain types of local laws that encourage landlords to exclude tenants. These are called crime free nuisance ordinances.

Municipal laws that punish property owners, often landlords. If their property is associated with "nuisance" which could be too many 911 calls, members they've arrests or a guest being arrested on the property.

Crime free nuisance ordinances pose similar problems as landlords using arrest and conviction records.

The crime free nuisance ordinances are, they're policies imposed by often a government act or municipality.

As a result, HUD also put out guidance in 2016 specifically addressing fair housing discrimination under, as applied to crime-free nuisance organizations.

So, the guidance mostly focuses on how these laws hurt survivors of domestic violence, because lots of phone calls to the police from the house may obligate the landlord to take action against the household and therefore, these laws intend to have an illegal disparate impact on women.

Because women are disproportionately likely to be domestic abuse survivors. Again, however, the analysis in this guidance can also apply to other protected classes, which municipalities intentionally hurt these laws or which these laws have a disproportionate effect on.

I can post links to these guidance in the chat. I believe that one of my colleagues was briefly going to discuss some examples of how these, of how these laws interact with housing access for folks with disabilities.

>> Thank you, Eric, I apologize I didn't introduce myself earlier. My name is Navneet Grewal with Disability Rights California. I'm a middle aged brown woman with a headset on and a green sweater.

So, one thing that keeps coming up in our practice is that nuisance ordinances and in California these nuisance ordinances, I think, are slightly different in each city.

We've seen nuisance ordinances, as well as simply, just public nuisance being used to, either target housing, for people with disabilities, or to prevent access to housing in a number of other ways.

The thing we've also noticed, aside from one really excellent law review article, there's not a lot of literature out there that can help support our legal arguments about the impact of these ordinances on people with disabilities.

So, one project that we're working on right now is to work with a local law school clinic to do, and you know, academically-approved survey of people with disabilities who have been impacted by a nuisance ordinance. So that we can really, sort of start to identify in a systemic way, what the impacts are and use that in that advocacy.

I think that's, that can be replicated in other places as well. Since there's such a dearth of information right now.

>> Nubyaan: Marie Claire, if we could go to the next couple slides. There we go. We wanted to give you all examples of some more forward-policy movement that's happened in our area, which is the state of California.

California's Fair Housing Enforcement Agency, the department of Fair Employment and Housing recently promulgated several sets of regulations that are pertinent to our discussion today. We have reasonable accommodations that address various facets of the law, interactive process, denials and assistance animals.

All of these regs are currently posted on the FEH's website and we definitely encourage you all to look at that.

We also have regulations regarding the use of criminal histories in housing decisions.

Next slide. As a result of these new regulations regarding criminal histories and housing decisions.

While housing providers may still use lawful housing criminal checks, they may not have policies in place that result in unjustified discriminatory effect on protected classes.

There are explicit provisions regarding certain aspects of a criminal record that cannot be used in housing decisions.

Such as arrests that didn't result in convictions. Diversion programs, and expunged convictions.

And as we discussed earlier, the protected class that's often most-affected by these discriminatory criminal history policies are people of color and people with disabilities.

Of course, people of color with disability are exponentially impacted. One important piece of the regulations is that a housing provider cannot base their denial on a conviction that is not directly related.

Under the regulation, that's defined as a conviction that has a direct and specific negative bearing on a substantial legitimate and nondiscriminatory interest or purpose of the housing provider, such as safety of other residents, the housing provider's employees or the property.

Another important component of these regulations is the use of mitigating information, if we can go to the next slide.

Housing providers are encouraged to consider information when they're making housing decisions. While not required to consider mitigating information under these regulations, DSEH does consider mitigating factors under its evaluation of a person's complaint.

Including whether a housing provider allowed an applicant to submit mitigating information or if the provider considered things like the amount of time that has passed since the conviction, a positive tenant history. Evidence of rehabilitation efforts or whether the underlying conduct arose because of an individual's disability.

Essentially, housing providers are incentivized to consider mitigation because that information would be considered by the FEH if a meritorious complaint is filed against a housing provider.

We heard Marie Claire discuss earlier, how Public Housing agencies are required to consider mitigating the circumstances.

So, one great affect of the fact that California now has these regulations in place, is that they now apply to all housing in California. Rather than just Public Housing.

If we can go to the next slide, please? A related issue, sorry -- one more slide. A related issue that DFEH addressed through regulations are these crime-free or nuisance ordinances that we've been discussing today.

Those laws can absolutely have a discriminatory effect on several groups, including people with disabilities and domestic violence survivors.

In addressing that issue, DFEH found that any ordinance that outlaws nuisance activities is going to be unlawful.

If that ordinance has the discriminatory effect on a protected class and there's no legally sufficient justification for it.

And some of those nuisance organizations go as far as requiring a housing provider evict an individual that is arrested for a crime or convicted of a crime. These DFEH regulations prohibit enforcement of those ordinances.

We included some specific sites to the code of regulations in the slides, because we think it'd be a great reference point for those who don't have regulations on the books or have less than helpful regulations on the books.

If you have the opportunity to do local and state policy advocacy, I'd encourage you to review the DFEH regulations and see whether there's space for you to push for the same or similar policy changes in your own area.

And I will now pass it back to you all.

>> The California regs are very exciting and I know there were the product -- there's a whole suite of regulations over a decade of advocacy.

And up until June of this year, they were the only real state-level, there's a general movement of folks working at this issue of the state and local level. New Jersey has a, has a law that regulates you know, what

kind of record you can use, doing things like arrest records, off limits, and then, also, limits what kind of convictions you can use in the housing transaction and also talks about a process, in terms of, you know, what, what rights the applicant has to look at the criminal record and to look at, and to have an opportunity to provide mitigating circumstances.

So, there's a very clear theme, I think, in a lot of this, that really trying to make sure that people know it's being used against them and people have opportunities to show that they're more than the four corners of the criminal background check.

So, these state level developments have been very exciting. They, they also build off of a lot of movement that's been happening at the local level.

For the last, probably, decade or so. Around fair chance housing ordinances and just for the purposes of the discussion right now, I'll just share two. One is the Seattle Fair Housing, fair Chance housing ordinance. Out of all of them is the most-progressive of the ordinances.

It prohibits housing procedures from considering criminal history all together. It doesn't have carve-outs for drug-related activity, violent criminal activity. It really says that these are off limits.

And that is the result of a very-successful coalition that was led by and centered the experiences of directly-impacted folks who are gone through the system and tried to find housing.

And then, another example of a law is in Cook County, in 2019, our organization had been involved with passing the just housing amendment to the Cook County human rights ordinance and that provides protections for people with records.

It's a little -- there are some carve-outs compared to Seattle, but that is what we, what we're really proud of for that law is that it's within a fair housing framework.

And that, our Human Rights Commission has that authority to go out and do enforcement activity.

The Fair Housing Act does have a very explicit -- the Federal Fair Housing Act has a very explicit exception for protections of people convicted of manufacturing cold substances.

If you're a housing applicant that's been convicted of those offenses, you don't enjoy the same protections under the disparate impact theory.

What these local and state ordinances do, they help cover that big exception.

And so, again, just kind of more-continued progress. I think we work with a lot of coalitions and a lot of different states, and if that's something that folks are interested in in your phosphate, connecting with us, I think we can definitely connect you with other folks that are working in this space.

With that, I think we'll pause again, there does seem to be a couple of -- well... we can pause, Phil, I'll take your lead. If you want us to pause and do questions or move into the last part of the presentation.

>> Phil: We do have a couple questions and really focusing on the, on how to handle a criminal record in general.

Have you been convicted of X-type of criminal activity and if the answer is yes, you need to detail when it happened and the details around it.

If the applicant has convictions that were prior to the look back period.

They required to list those or to answer yes to the question.

And similarly, there's a related question about how to handle a pardon and whether a pardon offense is subject to discretionary ban, similarly, does a pardon have to be reported to HUD?

>> I can start and others can jump in. To Libby's question about the application, sometimes it depends on where you're, where you are in terms of your jurisdiction, so, I know, for example, like if some of the local laws explicitly prohibit housing providers from asking these questions, at the application stage, in their model, ban the box employment, in the employment arena. Essentially, in Cook County, for example, you -- a

landlord cannot ask you about your criminal history until they determine that you are financially qualified.

And meet all other financial requirements for renting.

And so, in Cook County, this application question would be off limits.

If you don't have those sort of protections, then, it's a tricky -- it's very tricky because if it says look back period and you kind of interpret it that it's outside look back period, I think you have a good argument that, according to policy of the housing provider, that you shouldn't have to list it.

But on a practical level, I find, sometimes, housing providers are a little bit -- they don't always follow their own policies and we alluded to that earlier with Public Housing authorities not always following written policies.

If I had a client in front of me, this would be a back and forth question we'd try to talk about.

If they gave information, I'd almost advise them to give more additional information. I would like to hear what others who have had clients deal with questions like this, see what they think.

>> The only thing I'd add, I agree with everything you said, but win thing I've had to deal with a lot in California is Housing Authorities that both illegally obtain juvenile records and don't disclose juvenile offenses.

In our state -- those offenses -- those records are not supposed to be shared and also, I think the law actually says that it is not considered a crime that you have to list.

And so, that's the only nuance I'd add. They'll explain, if there's an expungement or a certain type of record, I don't know the answer for pardons.

I haven't had to deal with it. There'll be a list of like, this is not a crime. So, that you can say, well, you know, you can make that argument of why you didn't list it.

>> If I had a client in front of me that had a pardon, I'd probably tell them to list it, but really, we would try to advocate for that mitigating. Evidence that they should consider and this, this comes up, in the pardon context, it comes up in just like, saying kind of like, juveniles that are

supposed to be sealed in Illinois. There's sealed records and expunge records and I, you know, the arguments I've made before, the governor or the state legislature has made a public policy decision that these are not supposed to be used and so, that seems to suggest that they shouldn't be used in the housing decision.

I might reveal it if it's part of the public record. I know that varies from state-to-state on whether things, records like sealed records or expunged records are part of the public record.

>> I was going to say briefly, under, the 2016 guidance I was speaking about before, refers to both subsidized housing providers and totally private market housing providers and to piggyback off what Marie Claire just said, if there's a policy that has a disproportionate effect on a protected class, the landlord has to justify the policy with legitimate interest with, which somebody already discussed.

It's harder to show there's legitimate interest in excluding people from record pardons.

>> Philip: It seems like, with a look-back period, if one didn't disclose it, you'd be turned down for failure to list it. Even though you have a good argument for it.

It sounds like practice might be to disclose. I defer to you guys. Okay, I think that's it for questions right now. Forge ahead, thank you.

>> Navneet: All right, so, we talked about the guidance that HUD has out for subsidized properties, we talked about the Fair Housing Act and disparate impact.

I want to talk about how reasonable accommodations, under Civil Rights laws can be used on a case by case basis.

First, I do want to acknowledge that the right to reasonable accommodation grows out of Section 504 of the Rehabilitation Act, the ADA as well as the Fair Housing Act.

I'll mostly be referring to the Fair Housing Act because I think that the reasonable accommodation process is most-helpful in private housing.

Because it doesn't have all of the regulation that, that subsidized housing does. Reasonable accommodation requests might be bread and butter for many P&A staff, but it's less-familiar to others.

I'll do a brief overview of the law, but not get into many of the nuances and details that are inherent in a law that is considered on a case by case basis.

So, what is a reasonable accommodation? A reasonable accommodation is a change in a rule, policy, practice or service. That may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.

I'll break that all down in a minute. But I want to focus on the language right now, that the accommodation is a change in a rule, policy or practice.

Because, this, this part of the Fair Housing Act recognizes that in order for people with disabilities to be, to have equal opportunity to access housing among other things, that they may need to be treated differently than others with regards to the neutral rules, policies or practices.

And tenant screening policies with regard to criminal history are rules, policies or practices.

So, before I get started on the next slide, I do want to address, there's basically one that I think is the most-favorable. It's also the most-recent. And I don't think that a coincidence, I think that the work that's been done through HUD and other advocacy has really bolstered this, the argument.

But, that, that case, which I've listed in the materials, states that the law sometimes requires accommodating an applicant with convictions.

So, what I think that leaves us wondering is what are those times?

If we could move forward...

So, in general, when does a landlord have to provide a reasonable accommodation request? First the person has to be a person who meets the federal definition of disability, unless you're using your state or local law. That definition being that a person who has a mental or physical impairment that substantially limits a major life activity.

I want to note, I have this in the slides a little further. People with substance dependency disorders do, are considered to have a disability unless they're a current legal user of those substances.

So, past substance abuse is considered a disability.

So, if that person makes an accommodation request, that is both necessary to use and enjoy the dwelling and it's reasonable, then the landlord has to grant the accommodation.

What does it mean for an accommodation to be necessary? That's not defined in statute, but the most-frequently-cited definition is this from a seventh circuit case that says that necessary means that the accommodation that's requested, affirmatively enhances the tenant's quality of life. By ameliorating the effects of the disability.

When I read this, it ties in so much to the language, with HUD and you know, California's fair housing regulations about mitigating, mitigating circumstances. I also think of this as like, it's going to mitigate the effects of the disability.

And then, the requested accommodation also needs to be reasonable. So, that means it's not an undue and financial -- undue financial and administrative burden. And that it can't fundamentally change the nature of the program.

You can't say, let me into your housing -- I want admission to this tenancy so I can run an arcade out of this apartment. That would fundamentally change the nature of the housing.

That said, and this comes up a lot in this context is a landlord can say that a requested accommodation is not reasonable because that individual's behavior constitutes a direct threat to the health and safety of others. Or significant property damage that cannot be reduced by another reasonable accommodation.

And so, I think that the best way to talk about how this applies to criminal history and admission is to walk through a hypothetical.

So, if we could move forward. Okay. So, here is our client, Evan. Evan applied to a project-based section 8 unit, but was denied due to prior criminal activity.

And if you guys remember, back to the beginning of this session, Marie Claire noted that the three major types of hub-subsidized housing, they'll have their own tenant screening policies at each individual landlord.

Very similar to private housing, I used this example. You can think about this in the private housing context as well as project-based section 8.

Evan has several convictions on his record, including for assault, indecent exposure, and disturbing the peace.

His most-recent conviction occurred nine years ago. Evan experienced severe depression and substance dependence.

Evan acknowledges that all of his prior criminal activity is related to alcohol and drug abuse.

So, how can we use the reasonable accommodation process to help Evan? Can we move forward one slide?

So, in the slides, I listed a host of things to consider and the reason I put this host of things to consider is that hopefully you have thought about everything else we've talked about in this presentation. Hopefully you've considered what kind of housing is this?

Does this kind of housing have certain rules that apply to it? Have I looked at the actual screening policy for this housing. Have I looked at state or local law that applies?

Great, all of those should come into play.

Here, you're like, well, I still think I need to use a reasonable accommodation.

If we could move forward one more.

What, I think, Evan is going to want to do is to first, figure out whether any of those convictions were related to his disability. We talked about that substance dependency can be considered a disability, so long as someone's not currently using illegal substances.

So, if I were working with Evan, I'd ask, do you have any evident of rehabilitation? Did you go through a treatment program?

Another really compelling fact is that there's, there hasn't been any conviction for nine years, right?

So, I would get all that together so he does, in fact, have a qualified disability. And then, I think, the key is identifying the Nexus, the connection between the disability and the action here.

So, Evan has told you that his prior arrest and convictions were related to that substance dependency.

Being able to document that, being able to connect that is really critical.

And I want to talk about that a little in the context of the cases that exist. If you could move forward. Another one.

So, in the case Simmons versus TM Associates Management. The main really good case in the admissions context, with regard to reasonable accommodations and criminal history, the, the court considered essentially an individual who had an episode related to schizophrenic disorder and he took his clothes off and was arrested for indecent exposure.

He applied to live with his mother and the landlord said no. They could just have a blanket ban.

The court actually found that the housing provider did have to consider a reasonable accommodation here, because the son in the situation, after that incident, had gotten treatment, was stable, was getting the care that he needed and there was no evidence that there was any threat to any other resident's health and safety.

And so, you know, the court said that, you know, when you talk about blanket denials, that regardless of disability status, even if the criminal conduct arrived from the applicant's disability, that that's not allowed.

And I want to actually give one more quote from this that I think is really helpful.

The other case that I have listed is Evans versus UDR Associates, a negative case. Of the court said that accommodated criminal history is not equivalent -- Evans had said -- this is the bad case. It's not equivalent to accommodating her mental disability.

And the Simmons court said, the point is that the two allegedly go hand-in-hand.

Plaintiffs are not seeking an accommodation of a conviction. But, rather, an accommodation of a disability by mitigating its effects. IE, by disregarding the conviction.

So, that is all to say that, that these will be very individualized and will often require a lot more documentation than your run of the mill accommodations.

But, they can be successful, if you can really tie those two issues together.

The disability and the conviction and then you can show that there's really not, that the there's not going to be concern that there'd be any threat to the health and safety of others.

And it has been successful, even though there's only a few cases published in the admissions context. There are also, I want to note, even though not a lot of great cases in the admissions context, there are a lot of very good cases in the evictions context. And the termination of subsidy, as well as in the employment context.

That you can really use to help bolster these accommodation requests. And I think that's all I have time for. Unless folks have questions later.

But I will kick it over to Nubyaan.

>> Thank you, Navneet. We just wanted to include this advocacy tip around expungement clinics. Much of the advocacy that we've talked about today has either been targeted toward public agencies or landlords or in representing clients who are more-immediately facing a problem.

But another strategy that some of my colleagues have found invaluable is focusing on expungement work. Depending on your state, expungements can be fairly complicated, but it does provide a proactive opportunity to work with individuals that are trying to access more stable or affordable housing.

It can be really empowering for everyone involved. It can be specially useful to partner with organizations that already have established expungement clinics and support their work. And we will -- I will go ahead and pass it over to Eric for the next portion.

>> Eric: So, I want to briefly discuss tenant screening companies. So, folks are probably somewhat familiar with this, often, when a potential renter applies to rent a unit, or someone applies for subsidized, to be part of a government subsidized program, the landlord or the program, the Housing Authority, for example, will run a tenant screening report, have a tenant background check.

Which, are similar to running a credit check, but it's sort of more-specifically aimed at vetting potential tenants.

And somewhat analogous to a credit score, these tenant screening companies will often give -- or the reports will often have a renter recommendation.

So, that could either be its own type of score, like Transunion's tenant screening process gives a score that kind of indicate how reliable of a tenant the person will be. And then, it can also, others can give a thumbs-up or thumbs down, saying, telling the landlord you should or shouldn't rent to this person. Often information can be incomplete.

They can be incorrect. I have a case where the conviction, the record shows, was within the last two or three years, which would be within the lookback period when it's actually older.

These, these records are, the screen reports are also very opaque. It's hard to know what goes into a recommendation. And it's unlikely the recommendations can assess an applicant as an individual [indiscernible].

There are two main federal laws that provide potential recourse to problematic tenant screening practices.

The first is the Fair Credit Reporting Act that helps ensure that credit reports are accurate and consumers have a process to dispute inaccuracy.

Tenant screening companies are generally considered credit reporting agencies under the FCRA, the Fair Credit Reporting Act and

tenant screening reports are generally considered credit reports under the Fair Credit Reporting Act.

As such, tenant screening companies have to have procedures in place to ensure maximum possible accuracy is the wording and if there's incorrect or misleading information on a report, the applicant can dispute the information and the screening company has to have a process in place to evaluate the disputes and correct the information if it's wrong.

This generally comes to an applicants attention if the applicant is turned down for housing. If the applicant is turned down for housing, the landlord has to give an adverse action notice to the -- excuse me, if a tenant -- if an applicant is turned down for housing based on screening reports, the landlord who turned the person down has to give an adverse action notice to the turned-down applicants, giving information about the screening company and about the basis -- the information they got from the screening company that served as a basis for termination.

It can also be a good idea to ask landlords for a copy of the report and if there's -- it can be inaccurate or just misleading or incomplete information, the tenant screening company should have an address to, or an online portal through which the disputes can be filed.

The Fair Housing Act may also apply to tenant screening companies. There was a case out of the federal district of Connecticut, which I cited here. Which states that a tenant screening company, especially when it makes a rental recommendation to a landlord, is potentially responsible for the housing outcomes. The tenant screening company can be liable under the Fair Housing Act, if they base their recommendation on, for example, the type of racially-biased or data that's biased against persons with disabilities or biased against women.

In the ways that we kind of discussed previously in this presentation.

So, if, if a tenant screening company uses racially-biased data and makes a negative recommendation based on it, they might also have been considered to deny someone housing under the Fair Housing Act, in a way that makes them potentially [indiscernible].

I think I'm done and that's all I have. And I want to pass it back to Philip with any -- for folks to ask any questions.

>> Philip: Well, unfortunately, I think we're out of time. Thank you to the presenters. This was extraordinary and a great deal of information. I put the contact information and e-mail addresses for each of our presenters, for those who are watching. A lot of information we've covered here. It's complicated, but I think we've got a good starting point to understand all of that.

Please fill out the evaluations and in particular, let us know if there's other areas you want more training or if you want more on this particular issue, which is extremely complex, and some issues we just kind of touched on.

Thank you to all our presenters and for all of you for being here today, and we look forward to future presentations and working with you again. Thank you all very much.

[Call concluded at 2:31 p.m. ET].

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