

With the Fair Chance Access to Housing Act, Minnesota will Lead the Way in Increasing Access to Housing and Providing Second Chances

Every Minnesotan deserves a place to call home. And for people rebuilding their lives after arrest or incarceration, a stable home is an essential foundation. Studies show that securing housing is crucial to education, health, and economic mobility.¹ Stable housing has also been linked to decreased crime and improved public safety.² However, many people with conviction histories are shut out of the rental market. With the Fair Chance Access to Housing Act, Minnesota can give people with conviction histories increased access to housing and a chance to thrive.

This bill limits the use of criminal background checks in rental application processes, allowing Minnesotans with conviction histories a chance to secure housing.

Why should Minnesota pass the Fair Chance Access to Housing Act?

- A conviction history does not indicate whether or not someone will be a good tenant.**
 After reviewing the available evidence, the U.S. Department of Housing and Urban Development (HUD) stated that conviction history “is not a good predictor of housing success.”³ Research also finds that most people with a conviction in their past do not have another conviction.⁴
- Conviction histories are not an effective tool for screening prospective tenants.**
 HUD recommends screening tenants based on more relevant criteria, such as ability to pay rent, prior rental history, or personal references.⁵ A criminal background check provides information about a person at the time of their last conviction, but it says nothing about their current status and progress during and after incarceration (for example, gains in education, employment, and stability).⁶ Additionally, many background checks include wrong, old, or misleading information.⁷
- People with conviction histories face impossible barriers when securing housing.**
 In Minnesota, more than one million people have a record of arrest.⁸ The 2018 Minnesota Homeless Study found that 51 percent of adults experiencing homelessness had previously been incarcerated, and 29 percent of adults experiencing homelessness cited a history of criminal legal system involvement as a barrier to finding housing.⁹ In general, people who are formerly incarcerated are almost 10 times more likely than the general public to be unhoused.¹⁰
- Housing is integral to successful reentry and public safety.**
 Research shows that stable housing is the foundation for a successful transition from incarceration back into the community: people with housing are more likely to find and keep employment, rebuild supportive networks, and avoid additional convictions, stabilizing our communities and making Minnesota safer.¹¹
- Denying housing on the basis of conviction histories may violate the Fair Housing Act.**
 Studies from jurisdictions as different as Louisiana and Washington, DC suggest that housing providers often use conviction histories to discriminate against Black applicants, applying different screening policies to white applicants.¹² This practice, as well as other inconsistent uses of conviction screening, can constitute a violation of the Fair Housing Act under three different theories of liability.¹³ Recently, court cases have settled in favor of plaintiffs raising disparate impact claims.¹⁴

Endnotes

- ¹ Kriti Ramakrishnan, Elizabeth Champion, Megan Gallagher, et al., *Why Housing Matters for Upward Mobility* (Washington, DC: Urban Institute, January 2021), perma.cc/U42U-EWME.
- ² Richard Rosenfeld and Amanda Grigg, eds., *The Limits of Recidivism: Measuring Success After Prison* (Washington, DC: National Academies Press, 2022), 86, doi.org/10.17226/26459.
- ³ Calvin Johnson, “Tenant Screening with Criminal Background Checks: Predictions and Perceptions Are Not Causality,” PD&R Edge, May 17, 2022, perma.cc/JR29-NQDA. The article further states: “A study of housing outcomes among tenants participating in an intervention based on the Housing First model found that the performance of tenants with a criminal history was similar to that of participants without a criminal history. Although few studies examine the association between criminal history and housing success, no empirical evidence exists to justify a ‘blanket exclusion’ of people with criminal histories from housing.” For the cited study, see Daniel K. Malone, “Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders,” *Psychiatric Services* 60, no. 2 (2009), 224–230, ps.psychiatryonline.org/doi/pdf/10.1176/ps.2009.60.2.224.
- ⁴ Shawn D. Bushway, Brian G. Vegetabile, and Nidhi Kalra, et al., *Providing Another Chance: Resetting Recidivism Risk in Criminal Background Checks* (Santa Monica, CA: RAND Corporation, 2022), rand.org/pubs/research_reports/RRA1360-1.html.
- ⁵ Demetria L. McCain (Principal Deputy Assistant, Secretary for Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development) to Office of Fair Housing & Equal Opportunity, Fair Housing Assistance Program Agencies, and Fair Housing Initiatives Program Grantees, “Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions” memorandum, June 10, 2022, 8, perma.cc/9SGW-W86B.
- ⁶ Bushway et al., *Providing Another Chance*, 2022.
- ⁷ Consumer Financial Protection Bureau (CFPB), “CFPB Reports Highlight Problems with Tenant Background Checks,” press release, November 15, 2022, perma.cc/5HEA-3JZT.
- ⁸ Becki R. Goggins and Dennis A. DeBacco, *Survey of State Criminal History Information Systems, 2020* (Sacramento, CA: SEARCH Group, 2022), 33, perma.cc/WNG8-7S7P.
- ⁹ Brian Pittman, Stephanie Nelson-Dusek, Michelle Decker Gerrard, et al., *Homelessness in Minnesota: Detailed Findings from the 2018 Minnesota Homeless Study* (St. Paul, MN: Wilder Research, 2020), 39, perma.cc/CM4D-FKFE.
- ¹⁰ Lucius Couloute, “Nowhere to Go: Homelessness among Formerly Incarcerated People,” Prison Policy Initiative, August 2018, perma.cc/2JST-EEJC.
- ¹¹ Jocelyn Fontaine and Jennifer Biess, *Housing as a Platform for Formerly Incarcerated Persons* (Washington, DC: Urban Institute, April 2012), perma.cc/9JMQ-4H2Y; and Phillippa Carnemolla and Vivienne Skinner, “Outcomes Associated with Providing Secure, Stable, and Permanent Housing for People Who Have Been Homeless: An International Scoping Review,” *Journal of Planning Literature* 36, no. 4 (2021), 508–525, doi.org/10.1177/08854122211012911. For more on housing and recidivism, see Leah A. Jacobs and Aaron Gottlieb, “The Effect of Housing Circumstances on Recidivism: Evidence from a Sample of People on Probation in San Francisco,” *Criminal Justice and Behavior* 47, no. 9 (2020), 1097–1115, doi.org/10.1177/0093854820942285. Paywall-free prepublication version available at: perma.cc/7YT4-HX9L.
- ¹² Greater New Orleans Fair Chance Housing Action Center, *Locked Out: Criminal Background Checks as a Tool for Discrimination* (New Orleans: Greater New Orleans Fair Housing Action Center, 2015), perma.cc/H7UY-CXZ2; and Equal Rights Center, *Unlocking Discrimination* (Washington, DC: Equal Rights Center, 2016), perma.cc/G8AT-Y2AH.
- ¹³ Guidance issued by HUD in 2016 outlines the three theories of liability under which conviction screening may lead to violations: “discriminatory intent (also known as disparate treatment), discriminatory effects, and refusal to make reasonable accommodations.” See McCain, “Implementation of the Office of General Counsel’s Guidance on Application of Fair Housing Act Standards,” 2022, 3.
- ¹⁴ For example, *The Fortune Society v. Sandcastle Towers Housing Development Fund Corp.* No. 1:14-cv-6410 (E.D.N.Y.), (Amended Complaint filed May 1, 2015), perma.cc/UA76-UGKP.