

Improving Access to Housing for People with Criminal Records

WA STATE CONFERENCE ON ENDING HOMELESSNESS

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Overview

- ▶ As advocates for housing access, we daily see the barriers people who are homeless face as they seek resources.
- ▶ Today, we will explore the impacts and limitations of housing admission policies that use criminal background screenings.
- ▶ We will share ideas to expand housing opportunity using proven screening policies and review practices that have supported housing stability for thousands of formerly homeless households.
- ▶ Talk with us about the ideas and collective action of nonprofit housing coalitions and their partners to meaningfully answer questions about risk and fair housing.

UNINTENDED CONSEQUENCES OF RESTRICTIVE SCREENING POLICIES

RESTRICTIVE SCREENING POLICIES: EXAMPLES

Restrictive Policies



Welcome Home to [REDACTED] we are offering studio and one bedroom apartment homes in historical downtown Tacoma. Economical, Adorable, and now under new management these units are available for your immediate move in! By bus or trolley it's easy access to downtown living, Tacoma waterfront and the theater district.

Office is open Monday, Wednesday and Friday for your private showing! To take advantage of this amazing rent your income must be below \$23,450 per year. Please call for questions.

\$500 deposit (\$200 non-refundable)
\$40 application fee

*We do not accept criminal background, owing other properties money or prior evictions.

6. Except for driving-related offenses, rental applications are denied for individuals that have been convicted of a gross misdemeanor or felony, or plead guilty to a gross misdemeanor or felony, or no contest to a gross misdemeanor or felony. Sex offenders and registered sex offenders are not allowed to lease from [REDACTED] If you fail to tell the landlord in advance of such a crime or any other criminal matter prior to completing the rental application, then it shall constitute a reason for denial of this application.

Restrictive Policies

■ “Time and Crime” Bans

may be denied. Applicants are automatically denied for certain crimes, including:

- Eviction from public housing for illegal drug activity within 3 years
- Current use of illegal drugs
- Methamphetamine production in public housing or elsewhere
- Sex offenses requiring sex offender registration
- A record indicating a pattern of alcohol abuse
- Misdemeanor or drug crimes within 2 years
- Felony drug crimes within 5 years
- Sexual assault within 10 years
- Felony assault within 5 years
- Misdemeanor assault within 2 years
- Four or more assaults of any kind within 10 years
- Arson within 10 years
- Homicide within 20 years
- Burglary within 2 years
- Robbery within 5 years
- Armed robbery within 10 years
- Kidnapping within 7 years
- Prostitution within 2 years
- Domestic abuse within 5 years
- Any other felony convictions within 3 years
- Any crimes that indicate habitual criminal behavior

This does not include time spent incarcerated.

Fair Housing: Different Treatment vs. Disparate Impact

Different Treatment

- ▶ Applying different policies or procedures based on a protected class

Disparate Impact

- ▶ Neutral policies that have a predictable discriminatory effect on a protected class

What is discriminatory effect under the Fair Housing Act ?

Discriminatory effect: A neutral practice actually or predictably results in a discriminatory effect on a group of people protected by law.

- ▣ Laws, rules, decisions, standards, policies, practices, or procedures, including those that allows for discretion or the use of subjective criteria.
- ▣ The burden shifts to housing provider to show substantial and legitimate non-discriminatory reason for policy.

What are
substantial
and
legitimate
business
reasons for a
housing
policy?

LAWS THAT PERMIT
OR REQUIRE A
PARTICULAR POLICY
OR PRACTICE

FEDERAL PROGRAMS
OR FUNDING
SOURCES THAT
REQUIRE A
PARTICULAR POLICY
OR PRACTICE

PRACTICES
REQUIRED BY THE
RESIDENTIAL
LANDLORD TENANT
ACT OR OTHER LOCAL
LAW/ORDINANCE

Disparate Impact: HUD Rule 24 CFR 100.500

“A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons . . . because of race, color, religion, sex, handicap, familial status, or national origin.”

HUD Rule, Continued

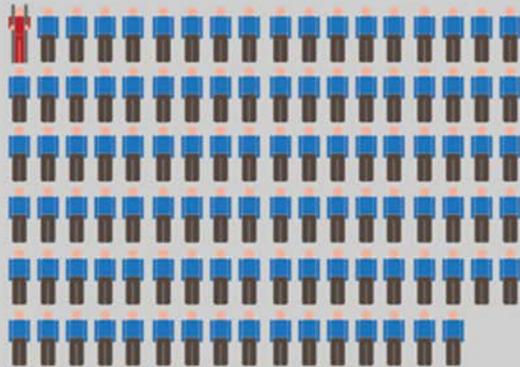
- “A legally sufficient justification exists where the challenged practice
 - Is necessary to achieve **substantial, legitimate and non-discriminatory** interest and
 - Those interests could not be served by another practice that has a **less discriminatory effect**

Disparities in the Criminal Justice System

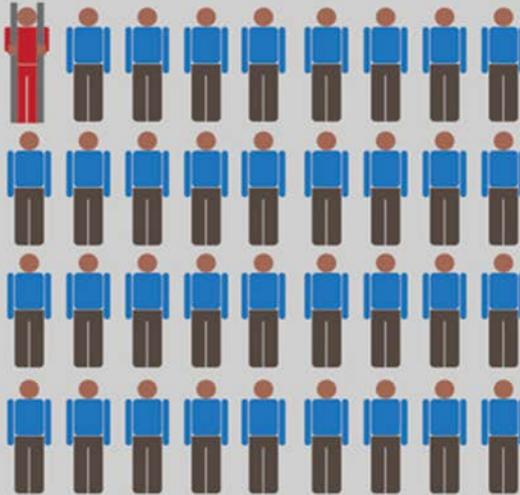
U.S. INCARCERATION RATE, 1971-2011



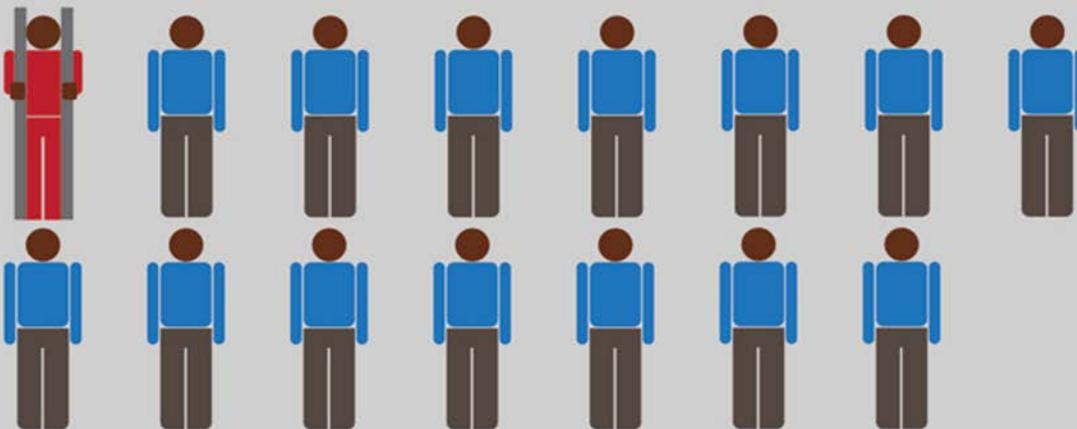
1 IN EVERY 106 WHITE MALES AGE 18 OR OLDER IS INCARCERATED. 5



1 IN EVERY 36 HISPANIC MALES AGE 18 OR OLDER IS INCARCERATED. 5



1 IN EVERY 15 BLACK MALES AGE 18 OR OLDER IS INCARCERATED. 5



Incarceration increases risk of homelessness

- Approximately 10% of people incarcerated were homeless before admission
- People who serve time in prison are 4 to 6 times more likely to be homeless than the general population.
- Men with incarceration records experience 69% greater odds of housing insecurity

Source: F. Lutze, *Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State's Reentry Housing Program for High Risk Offenders*, Criminal Justice and Behavior (2014)

BACKGROUND CHECKS

Business Reason: Funding Source

Mandatory

- 24 U.S.C. 13663: State lifetime sex offender registration
- 42 USC 1437n: Convicted of manufacturing methamphetamine on premises of HUD subsidized property

Permitted

- 24 CFR 5.855(a): Currently engaged in or has engaged in a reasonable time frame in:
 - Drug related criminal activity
 - Violent criminal activity
 - Other criminal activity that would threaten health, safety, or right to peaceful enjoyment of residents or employees
 - May reconsider decision if individual circumstances

Business Reason

Housing providers want tenants who:

- Pay bills on time
- Maintain property
- Respect other residents and staff
- Can comply with any programmatic requirements

The Gap

What the Background Check Says:

State Background Check

Assault 4 (2005)

Status: Guilty

Sentence: 2 days \$100 fine

What You Want to Know:

Does this person pose a risk to property, staff, or other residents?

Background Checks Can Be Inaccurate or Misleading

- Mismatch the subject of report with another person
- Omit information about how the case was resolved
- Report inaccurate charges
- Mischaracterize the seriousness of the charges (felony v. misdemeanor)
- Repeat the same charge multiple times
- Incorrect dates (conviction date v. closing date)

Selecting a quality screener

- What source information does the screener use?
- How frequently does it update its databases? If it relies on another's database, how often is that updated?
- Does the screener confirm public record information against the original source?
- What's the format? Are all charges related to a single incident reported as a single entry?
- What criteria does the screener use to match an applicant with a record (name, date of birth, gender, race, physical description, driver's license number?)

Even when technically accurate, background checks may be insufficient

ARREST 1

DATE OF ARREST: 03/28/1992

NAME USED: [REDACTED]

CONTRIBUTING AGENCY: WA0170700 KENT POLICE DEPARTMENT

LOCAL ID: 11167 PCN: N/A TCN: N/A

ARREST OFFENSES

DISPOSITION

| CONTRIBUTOR OR RESPONSIBLE AGENCY:
| WA017033J AUKEEN DISTRICT COURT
| COURT CASE NO: [REDACTED]

| STATUS: GUILTY
| 08459 MUNICIPALITIES CODE VIOLATION
| RCW: 35.00.000
| MISDEMEANOR
| STATUS DATE: 08/18/1992

| COMMENT: SALE OR POSSESSION OF
| DANGEROUS DRUGS

| SENTENCE: FINE: \$250.00
|

9.12.20 Sale, possession or use of dangerous drugs

It is unlawful to **sell, offer to sell, purchase, offer to purchase, give away, barter, exchange, distribute, possess or use any dangerous drug** except as now or hereafter authorized or permitted by the laws of the state or except upon the written or oral order or prescription of a physician, surgeon, dentist, or veterinary surgeon, licensed to practice in the state, which order or prescription shall not be refilled without the written or oral order of the prescriber.

from a street source as well as a Confidential Reliable Informant, that [REDACTED] is living at the NEW BEST MOTEL and is dealing cocaine on a regular basis.

The driver, [REDACTED], then exited the vehicle. While Officer DENNIS ran a computer check on the subjects, I spoke with [REDACTED]. I asked her if she was aware that CH [REDACTED] may be involved in drug dealing. She said no, that she was just giving him a ride. I asked her if the vehicle was hers and she said yes. I then asked [REDACTED] if there were any drugs in the car and she said no, do you want to search it, go ahead. [REDACTED] said that she works for an attorney and is not involved in drugs.

[REDACTED] was holding a purse. I asked her if I could take a look in her purse first. She said okay and opened the purse. While holding the purse, she moved the items around so I could see. While filing through the purse, I noticed a cigarette package containing suspected marijuana. I seized the suspected marijuana.

[REDACTED] [REDACTED] lot is a well lighted lot with several lights. I

Other examples:

Theft 1: Not reporting attempted reconciliation with spouse while receiving public assistance

Malicious Mischief: Breaking a CD in an argument

Manufacturing, sale, delivery or possession of a controlled substance: Possession of less than ½ g of cocaine

Obstructing a law enforcement officer: Running away from a police officer pointing a Taser at defendant

Assault: Victim of domestic violence convicted of assaulting her abuser

Note: Plea Agreements

- 97% of federal convictions and 94% of state convictions are the result of a plea bargaining process.

A Note about Warrants: Post-Disposition

- Probation
- Legal Financial Obligations
 - Mandatory fines/fees restitution on all convictions
 - Imposed on some deferrals/stipulations
 - 12% interest unless waived
 - Non-payment can result in further appearances/violation/incarceration

**IS THE OFFENSE RELATED TO
BEING A GOOD TENANT?**

**WHAT OTHER FACTORS
MATTER?**

Homelessness and Reentry

- **Study of Washington's Reentry Housing Pilot Program found:**
 - Program successful in significantly reducing new convictions and readmission to prison for new crimes
 - Periods of homelessness significantly elevate the risk of recidivism

Criminal history among chronically homeless people is not predictive of their ability to retain housing

- DESC conducted the first peer-reviewed study examining correlation of previous criminal history to housing retention.
- Presence of a criminal background did not predict housing failure.
- Suggests that policies and practices that keep homeless people with criminal records out of housing may be unnecessarily restrictive.

Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults With Behavioral Health Disorders - *Psychiatric Services* (February 2009)



Associated with reduction in recidivism

- Age at time of release
- Drug treatment
- Stable housing
- Mental health treatment
- Completion of high school/ higher education
- Employment services (job skill development and placement)
- Meaningful employment
- Community supports

Recidivism in Washington

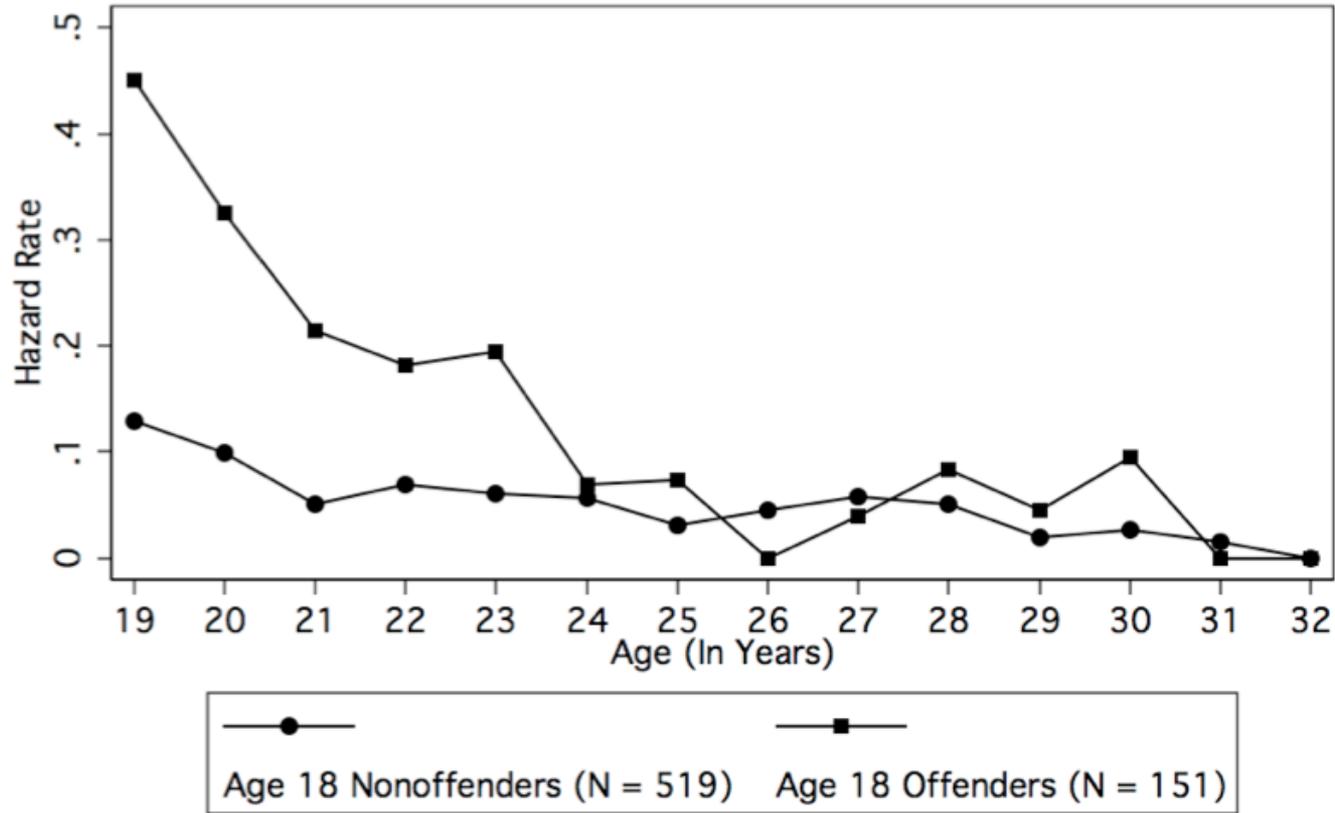
Table 1b: New Washington State Recidivism Rates for All Offenses (Percent)*

Year Since Release	Released from Prison in Calendar Year													
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Year 1	10.2	8.6	8.4	8.5	9.0	9.6	9.4	8.9	9.6	10.7	12.2	13.5	13.7	13.1
Year 2	8.8	9.0	9.4	8.5	8.8	10.2	9.1	10.3	11.2	11.8	13.7	13.3	13.3	13.4
Year 3	5.1	5.8	5.7	6.0	6.0	5.9	6.4	6.2	6.9	6.8	7.2	7.4	7.8	7.9
Year 4	3.6	4.3	3.7	3.7	3.9	4.3	4.2	4.6	4.5	4.9	4.2	4.6	4.4	4.5
Year 5	2.9	3.0	2.8	3.1	2.9	3.1	3.0	2.9	3.1	3.2	3.0	2.9	3.0	2.8
Total	30.5	30.7	30.0	29.8	30.6	33.1	32.0	32.9	35.3	37.4	40.3	41.6	42.3	41.7

“Redemption Studies”

- Measures time period that must elapse before a person’s risk of recidivism approximates the general population’s risk of committing a crime.
- Studies show hazard rates equalize around 7 years.

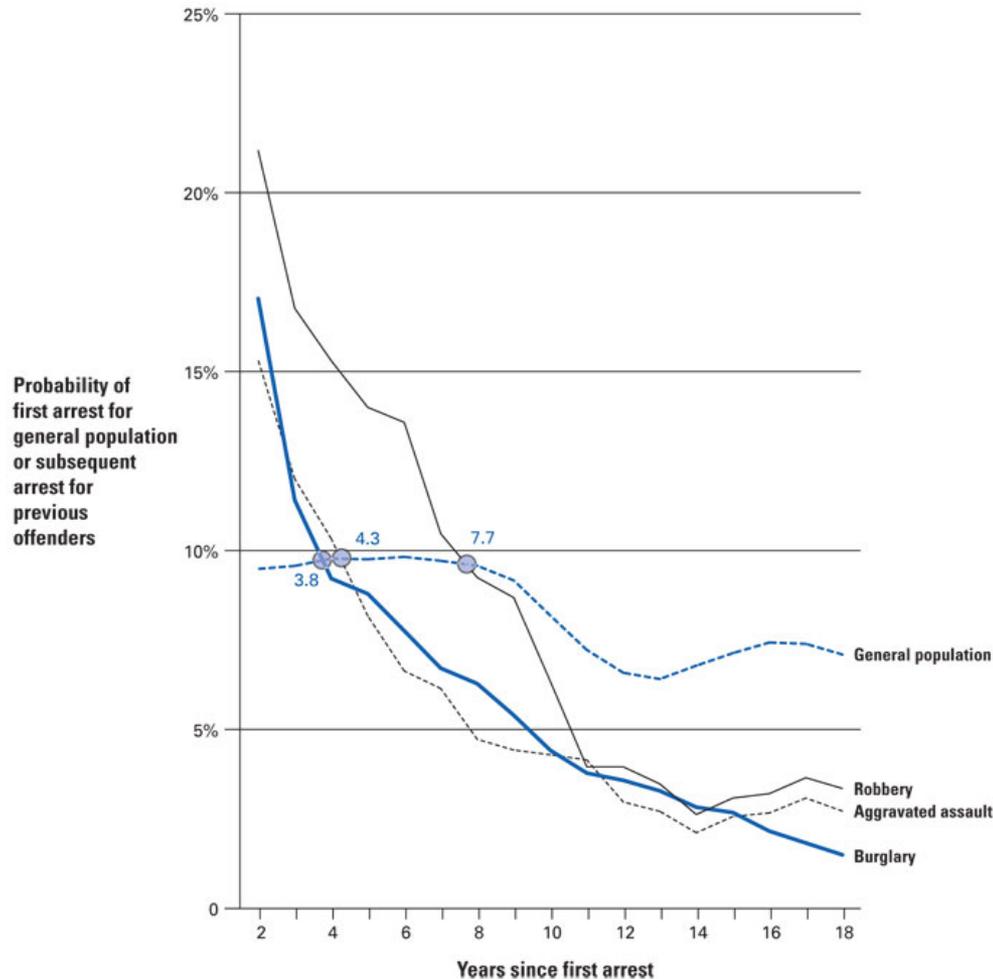
Redemption Studies



Kurlychek, et al. "Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?," 2006

Redemption Studies

The probability of new arrests for offenders declines over the years and eventually becomes as low as the general population.



Years to
general
risk:

Burglary:
3.8

Assault:
4.4

Robbery:
7.7

Blumsten and Nakamura,
"Redemption in the Presence
of Widespread Criminal
Background Checks"

Models for change: Housing Providers





Our Mission

Plymouth Housing Group works to eliminate homelessness and address its causes by preserving, developing and operating safe, quality, supportive housing and by providing homeless adults with opportunities to stabilize and improve their lives.



Plymouth Housing Group: What we offer

Housing and Programs

- ▶ **Plymouth operates 13 buildings in Seattle, housing over 1000 people.**
 - ▶ 10 are supportive housing with 24 hour desks and supportive services onsite.
 - ▶ 1 is supportive housing for people living with AIDS/HIV with lightly staffed services.
 - ▶ 2 buildings are affordable housing for people with incomes between 30% AMI and 60% AMI.
 - ▶ A building for tenants no longer needing supportive services opened January 2016.
- ▶ **For more than 20 years, Plymouth has partnered with King County to operate the Shelter Plus Care program. 1100 people are housed each year in scattered sites.**
 - ▶ Permanent rental assistance for formerly homeless households with disabilities with incomes below 50% AMI.
 - ▶ Housing First program focus. Chronically homeless households have priority.
 - ▶ Partnerships with 16 service agencies in King County for referral and ongoing supportive services.

Plymouth Housing Group:

Supportive Housing/24 hour staffing

Screening

- ▶ Plymouth uses low-barrier screening criteria in filling units in our supportive housing buildings.
- ▶ Criminal background screenings are used to review information about applicants with convictions involving violence, property damage, or dealing drugs.
- ▶ The application process uses criminal background reports to seek additional information and plan support services.
- ▶ Applications for supportive housing are rarely denied, occurring in less than 2% of the applications received each year.

Plymouth Housing Group:

Supportive Housing/24 hour staffing

Review Process

- ▶ The review panel is made up of 3 leadership members with oversight from the Fair Housing Coordinator.
- ▶ Applicants are offered the opportunity to provide information and support for their application review.
- ▶ Third party support statements and documents that address convictions are very welcome.
- ▶ Each applicant should have a voice in sharing their history—an opportunity to discuss their experience and insights.
- ▶ By individually reviewing applicants, Plymouth aims to develop relationship and trust with applicants while determining the best way to address service needs and concerns.



DESC exists to end the homelessness of vulnerable people.

- 2,500 men & women daily
 - Shelter & Day Services
 - Mental Health Care
 - Chemical Dependency Treatment
 - Supported Employment
 - Crisis Diversion & Stabilization
- Permanent Supportive Housing
 - 1,250 units: 950 site-based
300 scattered site
 - 91 units in development



Permanent Supportive Housing

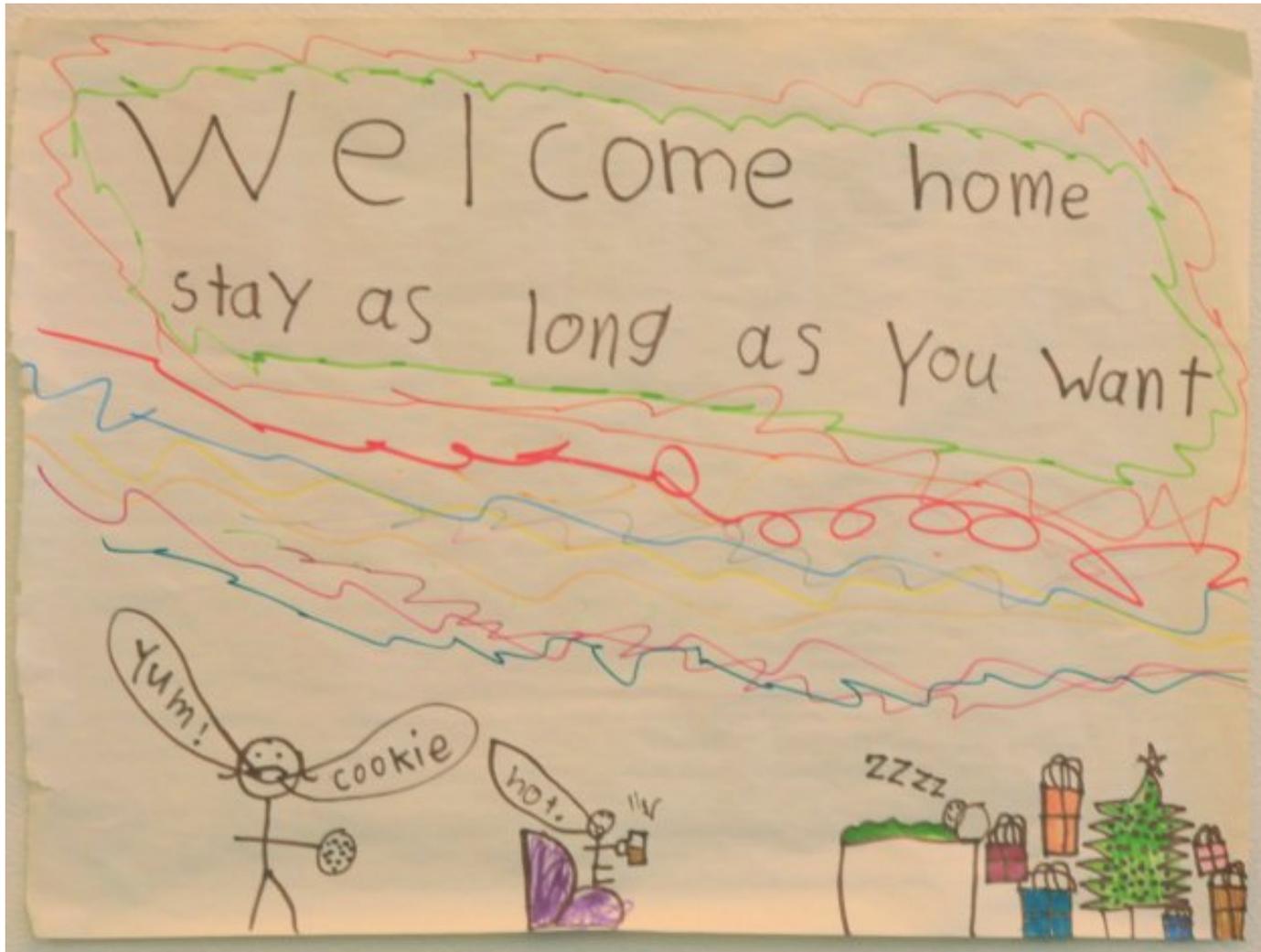


Integrates affordable housing with on-site tenancy supports





Housing First approach



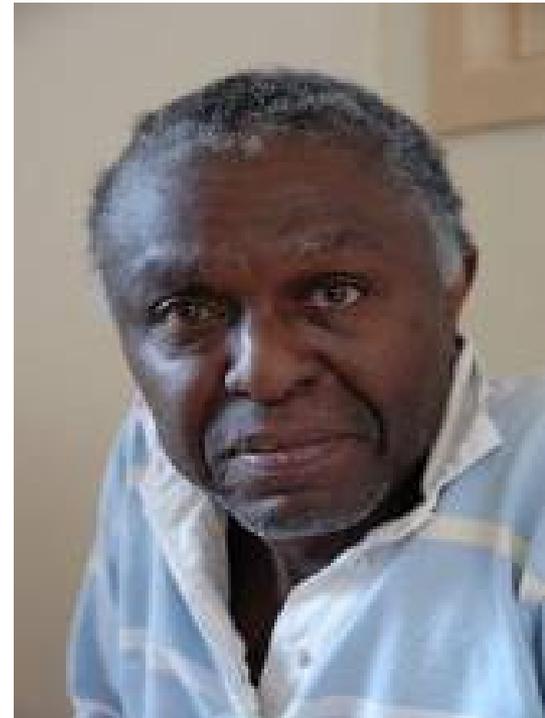
Housing first standards

1. Targeted to the most vulnerable.
2. Move in directly from the street; no preconditions of treatment acceptance or compliance.
3. Robust services in the housing.
4. Not dependent on participation in services.
5. Harm reduction rather than mandate abstinence.
6. Leases and tenant protection under the law.
7. Either project-based or scattered site model.



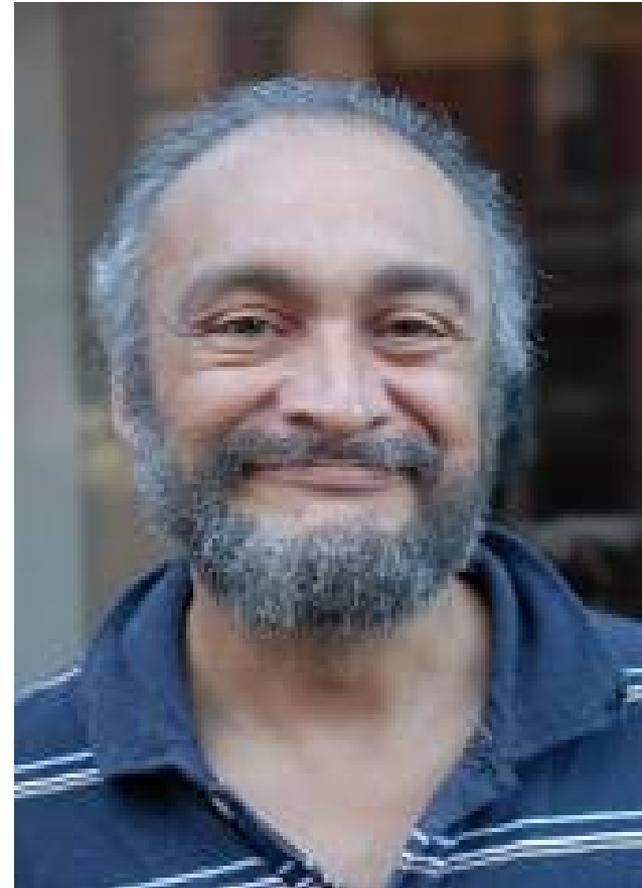
HUD Coordinated Entry Policy Brief, February 2015

- **Qualities of Effective Coordinated Entry**
 - “ensures the people with the greatest needs receive priority for any type of housing and homeless assistance available in the CoC”
 - “The coordinated entry process does not screen people out of assistance because of perceived barriers to housing or services, including, but not limited to, lack of employment or income, drug or alcohol use, or having a criminal record.”
 - “In addition, housing and homelessness programs lower their screening barriers in partnership with the coordinated entry process.”



DESC tenant screening process

- Prioritize most vulnerable to continued life on the streets
- Assess for eligibility (income, homelessness, disability)
- Clinical stability or participation in treatment services not required
- Review each prospective resident individually



DESC's tenant screening, cont.

- Low Barrier Focus / Minimal rule outs:
 - No automatic rule-outs for those who meet funding/regulatory eligibility and DESC priority (vulnerable / high utilizer).
 - No rule outs for criminal history. Criminal background reviewed to inform service delivery approach.
 - Exception: Some neighborhood agreements to rule out sex offenders. We can house sex offenders elsewhere in our housing portfolio.



DESC tenant screening, cont.

- No prospective resident deemed vulnerable enough to qualify as a priority resident will be refused acceptance to DESC supportive housing
- Rule outs are rare:
 - Evidence for concern for the safety of other residents or staff,
 - Indication of the person's inability to live independently



HELPING INDIVIDUALS NAVIGATE THE SCREENING PROCESS

Getting Criminal History Records

- For Washington, most reliable source is court records
 - Individuals can go to any courthouse and request a copy of their “DCH” or “Defendant’s Criminal History”
 - With case numbers on DCH, individuals can access copies of many court records
- Out of state, the National HIRE network has a database that includes each state’s criminal history repository,
<http://www.hirenetwork.org/clearinghouse>

Facts of the Case

- Applicant's statement
- Statements from probation/attorney/counselor
- Statutes (search for RCW online)
- Law enforcement records
 - Police reports
 - Incident reports
- Court records
 - Information
 - Statement of defendant on plea of guilty
 - Judgment and sentence
 - Case dockets

Questions to consider

- What are the essential housing requirements?
- What supports does housing provide?
- What specific offenses may demonstrate inability to meet those requirements?
- What is the time period for exclusions?
- What other factors matter?
- Who can I consult with and what research can I review to help make these decisions?

Changed Circumstances

- Applicant statement
- Recommendations from
 - Employer
 - Coworkers
 - Volunteer Supervisor
 - Teachers/ School Officials
 - Training Programs
- Statements from social service providers
- Statements from court/law enforcement personnel
- Certificates of completion or participation
 - Treatment
 - Training

Questions?

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