

# Healthy Aging with a Criminal Record in Hampden County MA

A health impact assessment about the use of Criminal Offender Registration Information (CORIs) in housing decisions

*November 2021*



**PUBLIC HEALTH INSTITUTE  
OF WESTERN MASSACHUSETTS**  
PARTNERS FOR HEALTH EQUITY



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Dear Reader,

We are grateful for your time in reading and digesting this important health impact assessment (HIA). Housing is paramount to all human beings' wellbeing.

We are grateful to the Massachusetts Community Health and Healthy Aging Fund and the Tufts Health Plan Foundation that underwrote this work and to the Advisory Committee that crystalized the immense amount of material, issues and ultimately recommendations for action.

We want to underscore that this HIA is done in the context of our regional housing crisis. The scale and capacity of current systems relative to the need is unmatched. The recommendations put forth are critical and must begin. Also, comprehensive solutions to address this issue and the concomitant health concerns laid out require significant investment in building and sustaining the field of practice to support the re-entry populations' housing needs.

Beyond local housing authority efforts to change and augment their current policies and practices, as are suggested in this report, the housing development sector must be encouraged and resourced to step up to produce new housing stock, in order to increase capacity and availability of supportive housing opportunities. We applaud and amplify the regional coalition work that has been beating that drum for years.

This HIA is emblematic of how human health is dependent on various sectors working together with the very people that they impact. It takes each sector— financing, housing, criminal legal, municipal, federal policy makers and more — to collaborate on the creation of sustainable solutions for all people. This HIA gives voice to people that know best the devastating consequences of sectors not working together and the very practical solutions that could give grace and dignity to so many.

Please join us in making both the straightforward as well as comprehensive policy changes happen.

Best,

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## Health Equity Statement

A history of social, economic, and environmental inequities, such as racism and gender-based discrimination, are embedded in societal institutions and result in poor health. These unjust inequities affect communities differently with some bearing a great burden of poorer health. These inequities can influence health more than individual choices or access to health care. The Public Health Institute of Western Massachusetts recognizes its responsibility to dismantle these injustices by promoting health through policies, practices and organizational systems that benefit all.

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# Executive Summary

In 2019, the Public Health Institute of Western Massachusetts' Age Friendly City housing assessment found that older Black men in Springfield who had a criminal record had a shared experience of not being able to secure affordable housing because of CORI (Criminal Offender Record Information) checks.<sup>1</sup> These findings mirrored those of a 2018 City of Springfield housing study,<sup>2</sup> prompting our further examination.

The Public Health Institute of Western Massachusetts explored how potential changes to housing providers' policies and practices regarding criminal background checks might impact the health of members of our target population—older people with a CORI. This health impact assessment was conducted in collaboration with an Advisory Committee made up of housing providers, organizations that represent community members with a criminal record who have been denied housing, legal advocates, law enforcement led-reentry organizations, and systems change advocates. We researched how six policies, listed below, impact three social determinants of health: accessing affordable housing, keeping people from further involvement with the criminal legal system, and safety.

The policies under consideration were to:

1. Establish formal partnerships between housing providers and others including reentry organizations; behavioral health providers; and organizations that provide services to people experiencing homelessness and housing instability.
2. Use only CORIs that fall under exclusions mandated by the U.S. Department of Housing and Urban Development in housing admissions decisions once eligibility is determined.
3. Allow applicants to submit evidence of mitigating circumstances before denial without any requirement to disclose past convictions.
4. Create explicit screening criteria for denial that is available publicly.
5. Share population-level data about number of people denied housing, along with reasons for denials (including criminal background check), number of people requesting hearings, and the results of those hearings.
6. Permit current residents to house family members with a CORI as an authorized occupant, except those that fall under the U.S. Department of Housing and Urban Development mandated exclusions.

## Methods

We used the methodology of health impact assessment, which is a six-step research and public engagement tool, to predict changes in health and equity on potential policy or practice decisions. We reviewed scientific literature; surveyed older adults who had been denied housing due to their CORI; interviewed experts from housing, treatment service providers, criminal legal system, elder affairs, and health agencies; and analyzed secondary data provided by local and state agencies.

## Key Findings

### **Being unable to access affordable housing because of a CORI harms older adults and others with a criminal record, their loved ones, and their communities.**

People with a criminal history are estimated to have 11 times higher risk of homelessness than people without one.<sup>3</sup> Homelessness is highly harmful to one's physical, mental, and social wellbeing.<sup>4 5 6 7 8 9 10 11</sup> People who experience homelessness suffer from elevated rates of premature mortality, with an estimated average age of death about 30 years below that of the general population<sup>12 13</sup> due to exposure to extreme temperatures, violence, infectious diseases, and more. Serious mental illness, anxiety, depression, substance misuse, self-harm and suicide are all more prevalent in people experiencing homelessness and those with marginal housing than in the general public.

A national study with more than 64,000 surveys of sheltered and unsheltered people across the United States found that unsheltered people experiencing homelessness averaged 21 contacts with police and 81% had spent at least one night in jail in the six months prior to taking the survey.<sup>14</sup> Because a criminal history can impede the procurement of housing, this creates a vicious cycle of continued incarceration and housing trouble. Importantly, research shows homeless older adults who manage to obtain housing subsequently have fewer depressive symptoms and a lower rate of acute care use.<sup>15</sup>

### **Older adults with a criminal record are at high risk for homelessness and housing instability but at low risk for committing crime.**

It is more and more common for older adults to experience homelessness for the first time during old age, and experience homelessness for longer periods than younger people.<sup>16</sup> The Boston Reentry Project found that people over the age of 44 who are leaving prisons are twice as likely as those under age 30 to have marginal or unstable housing six months after release.<sup>17</sup>

However, research overwhelmingly finds that safety risk (measured by repeat crime) decreases precipitously with age, regardless of the crime for which one was originally convicted.<sup>18</sup> In Massachusetts, people leaving prison over age 55 become re-incarcerated for new crimes at a rate of about 8%, compared to the overall recidivism rate for new crimes of 28%.<sup>19</sup> One study found a 3% recidivism rate for a cohort of people with an average age of 64 who were sentenced to life in prison but released after serving, on average, more than 30 years.<sup>20</sup>

### **The potential number of people in Hampden County who need affordable housing and cannot get it due to their CORI is in the hundreds, given the limited supply of local affordable housing stock and wait times.**

An average of 6308 adults in Hampden County are on probation or have returned from jail or prison annually.<sup>21 22 23 24</sup> While much of this cohort does not qualify as “older,” our survey revealed that applicants have been denied housing due to incidents on their criminal background checks that took place up to 40 years prior. We estimate that 6 to 23 percent of public housing denials are due to applicants’ background checks.<sup>25 26 27 28</sup> Further, marks on one’s CORI can cause problems, including eviction, for family members.<sup>29</sup>

In our survey with people over age 50 who had experienced housing problems due to their CORI, the majority made less than \$15,000 a year. This level of income is not unusual for people with a criminal history for many reasons, and it points out how much need there is for affordable housing with this population.

Each of the four communities studied in our health impact assessment has about half of the affordable housing units for extremely low-income residents as are needed. According to a recent report by the Donahue Institute, the demand for housing in the Pioneer Valley has exceeded available housing by over 11,000 units.<sup>30</sup> Wait times reported by local housing authorities for public housing range from one to five years, while the wait time for the state’s federally subsidized Section 8 housing is about ten years.

### **People of color are left out of housing at higher rates than Whites due to exclusionary policies about the use of criminal background checks in housing decisions.**

Decades of mass incarceration policies and practices have greatly expanded the ranks of people with a criminal record. About 1 out of every 3 people in the United States has an arrest record.<sup>31 32</sup> Almost half (45%) of Americans has had the experience of having a family member incarcerated.<sup>33</sup>

These effects have been felt unevenly among people of different races. For example, the practice of “stop and frisk” by police has resulted in disproportionately more Black and Brown people being stopped and arrested, which feeds the racially unequal pipeline to mass incarceration.<sup>34</sup> In many other levels of the criminal legal system we see that the US punishes

people of color at much higher rates than Whites. This inequity is replicated locally: Blacks and Latinos/as are consistently incarcerated in the Hampden County jail at a rate about 3.5 times that of Whites.<sup>35</sup>

Simultaneously, laws mandating or encouraging consideration of applicants' criminal histories have been inserted into housing policy decision-making, meaning that Blacks and Latinos/as are more likely to find themselves excluded from housing due to their CORI than are Whites.<sup>36</sup> Blacks and Latinos/as in Hampden County experience homelessness at more than double their rate in the population.<sup>37</sup>

There is no systematically collected data on who is denied housing due to a criminal background. Of the few studies we found, none were disaggregated by race. However, denying housing because of a criminal record is likely to have a disparate impact by race, due to inequities by race in the criminal legal system, and could thus be a violation of the Fair Housing Act, as advised by the U.S. Department of Housing and Urban Development in 2016 guidance.<sup>38</sup>

### **Partnerships between housing agencies and organizations that provide services to people with CORIs have evidence-based positive outcomes and are well regarded by all parties involved.**

In our research, we came across a wealth of successful partnership programs between housing providers and other organizations that provide case management and treatment. Such partnerships help participants maintain housing, stay clear of the criminal legal system, improve their employment prospects, and maintain their health.

Results from these programs are promising. Studies find that:

- A majority of chronically homeless adults with behavioral health disorders who moved into supportive housing achieved housing success, regardless of criminal background.<sup>39 40 41</sup>
- People in supportive housing had lower rates of recidivism and reincarceration than a control group one year after release.<sup>42</sup>
- People with permanent supportive housing had lower medical spending, were less likely to use the emergency room and have inpatient hospital visits, and were more likely to obtain mental health services.<sup>43</sup>
- Even just supplying housing with no services for people after prison, compared to reentry without housing, showed better outcomes.<sup>44 45</sup>

These types of partnerships are highly accepted among housing agencies, service providers, and residents. While there are a variety of programs in Hampden County that include housing vouchers and wraparound services, their expansion is arguably one of the biggest opportunities we identify in our assessment.

While the value of programs that pair services with housing vouchers or units is proven, not all people with a conviction in their history want or need services in order to be successfully housed,<sup>46 47</sup> so we must be careful not to require services when none are needed.

### **The process of applying for housing is arduous, and information surrounding that process is scarce.**

People with criminal records who apply for public housing or vouchers often believe that they will be denied, and the application process does not clearly and simply communicate otherwise. Even for our team of experienced researchers, navigating local housing authorities' tenant screening criteria proved a challenge. In our survey, we found confusion about eligibility ultimately discourages people with a record from applying.

While in fact we found that local housing authorities encourage all to apply, decades of federal guidance on "one-strike and you're out" policies have had a chilling effect. We believe greater transparency about the screening process, including having local housing authorities publish aggregated data on denials and list "absolute disqualifiers" on the front page of housing applications, would alleviate this issue to some extent.

**People are denied public housing for more than what is required by the federal government. While local housing authorities are very willing to consider how a person may have moved on in their lives, the barriers to presenting that documentation can be high.**

The U.S. Department of Housing and Urban Development mandates only two types of convictions that result in automatic denial: manufacturing or producing methamphetamine on premises of federally assisted housing, and lifetime registration requirement under a state sex offender registration program.<sup>48</sup> However, people are denied housing for convictions beyond those mandatory denials.<sup>49</sup>

Local housing authorities are very willing to discuss what are known as “mitigating circumstances” with people who are applying, such as a record of service in the community, having completed drug treatment programs, or getting a recommendation from a probation officer. However, there is a disconnect between the perception of being able to get housing and the stated practice of willingness to consider those with a criminal history. Because of a perception among some people with a criminal record that they will be denied housing, some do not apply. And the barriers to compiling documentation of mitigating circumstances for someone who is struggling with homelessness or a mental health issue, for example, are high.

About two-thirds of people nationally who are released from prison and jail turn to family members for support in finding housing, making the ability to live with loved ones arguably one of the highest needs for people reentering— and sometimes the only choice they have.<sup>50 51</sup> Local housing authorities require that people joining family members in public housing go through the same application process, and because of a history of more strict denials, people sometimes do live with family members without notifying the local housing authority. An innovative Family Reentry Program in New York City provides a pathway for people reentering to live with their loved ones along with support services.<sup>52</sup>

**Local housing authorities have a heavy responsibility.**

Local housing authorities take seriously their mission to provide housing for people with very low incomes, including people with a CORI, as well as their responsibility to ensure a peaceful and safe environment for all residents of public housing. They must therefore weigh the desire to help more people with CORIs access housing against the likelihood that they will disturb or endanger other residents. The local housing authorities we talked with in Hampden County state that they will consider the whole person in admissions decisions, including individual circumstances that mitigate the perception that a person is a risk. Local housing authorities struggle with safety concerns and barriers to eviction in housing court, although it is unclear how much of these factors are related to people with CORIs or the general population.

**We didn't find any studies or evidence of whether people with criminal backgrounds are more likely than other residents of public housing to commit crimes.**

A study of over 10,000 people found that most criminal offenses have no statistically significant impact on whether a household will have a negative housing outcome, defined as “losing or risking housing stability.”<sup>53</sup> Because of the very low recidivism rate for people over the age of 50, we propose several pilot programs that start with housing older adults with a CORI, which would be evaluated for potential expansion to younger ages.

**The criminal legal system struggles to help people with housing upon release.**

The Massachusetts Department of Correction and county Houses of Correction are responsible for providing reentry services to ensure successful transitions from prison and jail into the community. In 2020, the Massachusetts State Auditor's office found that 37% of the files they audited did not have evidence that an “Individual Reentry Plan” was reviewed with the inmate, signed by the inmate, and given to the inmate before release from Massachusetts Department of Correction custody.<sup>54</sup> Locally, a 2019 report from the Hampden County Sheriff's Department found that 40% to 55% of people released from the Hampden County jail are released with an unstable or transient home plan without permanent housing. Ten percent are completely homeless and will go to shelters.<sup>55</sup>



## Recommendations

Sources for recommendations included best practices from the literature, key informant interviewees, and suggestions from directly impacted people that arose during our survey and review of the findings. This resulted in 26 recommendations for revising practices, implementing pilot programs, or changing policy. A high-level summary includes:

- State and local housing authorities should implement pilot projects with people over the age of 50 who have a CORI, evaluate the pilots, and expand to people who are younger if successful. Pilots detailed more fully in the full health impact assessment include:
  - Family Reintegration Pilot Project – enabling people with records to live with their family members in subsidized housing, along with supports; and
  - Graduated Reintegration Pilot Project – creating a prison-to-housing pipeline, with support and oversight.
- Expand the number of public housing beds and vouchers that are available specifically to people with a criminal record. This could happen by increasing Massachusetts budget line item [0339-1011](#) and passing MA House Bill 4041 as two examples.
- Expand programs where housing providers (local housing authorities, Massachusetts Department of Housing and Community Development, U.S. Department of Housing and Urban Development) provide vouchers or housing units in collaboration with service providers (reentry organizations, behavioral health treatment, and homelessness reduction providers).
- Local housing authorities should follow a standard set of practices that clearly articulates the application process, inclusion and exclusion criteria on the front page of the application, how to request a hearing in case of denial, and ensuring that staff are trained in how to read a CORI. While many local housing authorities feel they are implementing these practices, experiences in the community indicate that clarity and more transparency would be helpful.

## Conclusion

While housing authorities' criminal background check policies are not exclusively responsible for the inability of the people with criminal histories to secure housing, our research has shown they do constitute a sizeable and recurring barrier for many—and pose a potential hurdle to many more. Moreover, they are a factor over which policymakers have significant discretion and therefore an attractive target for advocates wishing to improve the well-being of some of those most sorely in need of assistance.

At the same time, we acknowledge that local housing authorities must balance their missions of housing low-income people and creating a safe, peaceful environment for residents. With thoughtful implementation of the recommendations included in this health impact assessment, we believe that policymakers and housing providers in Hampden County, and across Massachusetts, can improve health and equity outcomes for people who have been convicted of a crime and have served their “debt to society,” as well as all people who need housing to be secure and stable.

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# About the Health Impact Assessment

## Goal

Our goal was to estimate the potential health impacts of the adoption of housing policies and practices related to criminal background checks related to healthy aging. We focused on six distinct policies or practices, listed below, and their impact along three dimensions of health: access to affordable housing, involvement with the criminal legal system, and safety.

## Methods

Health Impact Assessment (HIA) is an established research and public engagement methodology designed to make predictions about how a policy or practice change would impact health and equity.

### Step 1 - Screening: Why conduct this HIA?

In 2019, the Public Health Institute of Western Massachusetts' (PHIWM) Age Friendly City Assessment on Transportation and Housing<sup>56</sup> found that older Black men in Springfield with a criminal record had a shared experience of not being able to secure affordable housing because of CORI (Criminal Offender Record Information) checks. The 2018 City of Springfield Housing Study concluded the same.<sup>57</sup> Black and Latino/a individuals are consistently incarcerated in the Hampden County Jail at a rate about 3.5 times that of Whites<sup>58</sup>, which means CORI checks have a disproportionate impact on people of color.

### HIA is a six-step process that includes:

1. **Screening** – identify a policy or practice change that is of most concern to communities facing inequitable health.
2. **Scoping** – identify research questions of greatest interest to community stakeholders and decision-makers. Create the research and engagement plan.
3. **Assessment** – gather baseline data and make predictions about how health and equity will change if the policy or practice changes are implemented.
4. **Recommendations** – identify health- and equity-based recommendations responsive to the predictions made in the HIA.
5. **Reporting** – create a report and other communications products to disseminate HIA findings in a strategic and inclusive way.
6. **Monitoring and Evaluation** – continue engagement of all stakeholders and collect data to ensure recommendations are implemented.

### Step 2 - Scoping: Research questions, goals, and bounds

In this HIA we sought to answer the question, “If housing providers changed policies and practices about criminal background checks, what effect would that have on health?” More specifically, our Advisory Committee guided us to consider how the six housing practices or policies detailed below would impact three social determinants of health: access to affordable housing, involvement in the criminal legal system, and safety.

The **geographic scope** of our assessment was Hampden County, with a focus on engaging local housing authorities (LHAs) in Chicopee, Holyoke, Springfield, and Westfield, as well as Way Finders, the regional administrator (RA) for Section 8, Mass Rental Voucher Program (MRVP), and other affordable housing programs.

The **priority population** was older adults, which we defined as age 50+. While there is no official age at which one is termed a “senior”, a common cut-off is age 62. We chose 50 because studies find that people who have been exposed to incarceration and homelessness experience premature aging of at least 10 years as compared to the general public.<sup>59 60 61</sup> In recognition of this, the National Institute of Corrections and the Bureau of Justice Statistics define elderly as 50 and 55, respectively.<sup>62</sup> While we prioritize older adults, we also hope that the findings of this HIA will be useful for all people that experience barriers to affordable housing due to their record.

### The six policies or practices are:

1. Establish formal partnerships between housing providers and reentry organizations; behavioral health providers; and organizations that provide services to people experiencing homelessness and housing instability.
2. Use only CORIs that fall under exclusions mandated by U.S. Department of Housing and Urban Development (HUD)\* in housing admissions decisions once eligibility is determined.
3. Allow applicants to submit evidence of mitigating circumstances during the initial application period without any requirement to disclose past convictions.
4. Create explicit screening criteria for denial that is available publicly.
5. Share population-level data about number of people denied housing, along with reasons for denials (including criminal background check), number of people requesting hearings, and the results of those hearings.
6. Permit current residents to house family members with a CORI as an authorized occupant, excepting those that fall under HUD mandated exclusions.

\* The only criminal background that HUD mandates exclusion from public housing are 1) being registered on the lifetime sex offender registration list and 2) conviction for producing methamphetamines on federal property. Exclusion for any other crimes is left to the discretion of individual LHAs.

### Step 3 - Assessment

For this assessment, we used a mixed-methods data collection approach, including:

- Literature review on the use of criminal background checks in housing decisions and in particular the impact on older adults.
- A hybrid survey/interview, designed in collaboration with two community-based organizations who serve people with a criminal history, Men of Color Health Awareness (MOCHA) and New North Citizen's Council (NNCC), and administered to 39 people in Hampden County who had experienced barriers to accessing housing due to a criminal record. Eligibility included: being age 50 or older, having a CORI, and previous experience of difficulty accessing housing due to their record. One respondent was removed from the dataset because they did not meet eligibility. Of the 38 remaining respondents:
  - The majority were male (68% male, 32% female);
  - The majority were Black or African American (76%) and 26% identified as Latino/a; and
  - Most participants (87%) lived in Springfield, with the remaining 13% coming from Chicopee, Holyoke, West Springfield, and Blandford.

Quotes from this hybrid survey/interview can be found throughout the report and are referenced as "HIA Survey Participant".

- Key informant interviews with LHAs, statewide housing and criminal legal system agencies, local programs that provide reentry and other services, and advocates. For a complete list of organizations and agencies that we interviewed, see the Appendix A.
- Secondary data from housing providers, the Hampden County Sheriff's Department, and Massachusetts Department of Corrections (DOC).

### Step 4 – Recommendations

Our process of creating and prioritizing recommendations was iterative. Sources for draft recommendations included best practices from the literature, key informant interviewees, and suggestions from directly impacted people that arose during our survey and review of the findings. With the help of our Advisory Committee, we crafted a preliminary set of

recommendations, which were refined and prioritized with input from a broad group of key stakeholders. Final prioritization assistance came from our Advisory Committee.

### **Step 5 - Reporting**

The draft HIA was reviewed by public health, housing, and economic development experts internal and external to PHIWM and then reviewed by the HIA Advisory Committee. We will develop multiple reporting products for various audiences (agencies, elected officials, community members, and others). We will disseminate the HIA widely among all participants (the four Hampden County LHAs that we interviewed (Chicopee, Holyoke, Springfield, and Westfield Housing Authorities), Way Finders, service providers working with this population, Healthy Aging advocates, housing and criminal legal system advocates, the Massachusetts Department of Housing and Community Development (DHCD), the Massachusetts Office of HUD, anyone we interviewed, municipal and state agencies, and beyond).

### **Step 6 - Evaluation and Monitoring**

We intend to do a short process evaluation once the report has been completed to assess level of participation in the HIA. We will commence monitoring of any changes in the housing or criminal legal system practices or policies after the dissemination period of the HIA has ended. Monitoring will consist of ongoing conversations with organizations and agencies contacted during data collection as well as community-based monitoring with people directly impacted to determine if there are any changes in access to affordable housing.

## **Limitations**

The following are limitations of our HIA:

- **Limited Local Data:** We attempted to base our predictions on local data (e.g. number of people declined because of their CORI at each housing authority under study and other indicators), but much of the data was unavailable. To address gaps, we relied on data from other communities as well as from the literature. We recognize that this is a limitation because not all communities are alike. In addition, it was challenging to obtain information on the actual number of people who are older adults with a CORI who are seeking housing in Hampden County. Many different agencies are responsible for collecting data, with varying degrees of completeness and accessibility: police, courts, sheriffs, the state DOC, the probation department, organizations serving people experiencing homelessness, and regional planning organizations.
- **Survey:** There were limitations with our survey design and implementation. Due to resource constraints, we set out to survey a small number of people (40). Because of the small number of people surveyed and the fact that it was a convenience sample, we can only draw conclusions based on those interviewed and cannot generalize. Despite several revisions of the survey instrument in collaboration with our community partners, some of the questions were complex, which led to some questions not asked as intended. The COVID-19 pandemic created a barrier for interviewer trainings as well as administration of the survey.
- **HIA Scope:** The scope of this HIA is large. Due to resource limitations, we primarily focused on public housing across Hampden County and not as much on policies that impact private landlords, who make decisions when a person has a Section 8 or MRVP. We do include some data and recommendations relating to private landlords.

Despite these limitations, we feel that our mixed methods approach provided us with sufficient information to inform our predictions and recommendations.

## A note about language

We strive to use language that is person-centered and recognizes the dignity of all people and does not define people by a mistake they may have made. To that end we do not use terms such as ex-offender, former inmate, ex-convict, or criminal. Instead we use “person with a record” or, as many people in Massachusetts say, “person with a CORI”. We also use “formerly incarcerated” if a person spent time in prison or jail. Similarly, we do not use the term “the homeless” and instead recognize that people sometimes experience homelessness.

Because there are varying definitions of justice, we use the term “criminal legal system” in place of “criminal justice system.” We may use the term “caught up” in the criminal legal system because for many reasons, the system is a sticky web that is difficult to exit once a person is involved. Laws are put in place for many reasons, but these laws can make it challenging for people to get back on their feet, e.g., being denied affordable housing due to a record.

We use “older adult” to identify the population of people over age 50. Most people, even those much older than 50, do not prefer the term “elderly” or “senior citizen”, and “older adult” is the most factual and neutral term there is.



# Background

## High level findings

- **Review of a person’s criminal background for subsidized housing takes place once a person reaches the top of the waiting list, which might take anywhere from 6 months to 10 years.**
- **Federal policy makers have systematically inserted consideration of criminal history in housing decisions into housing policy and practice.**
- **Policies of mass incarceration have led to many more people with records, who are disproportionately Black and Latino/a.**
- **People living with mental health challenges, with substance use disorders, and in poverty are often arrested and incarcerated due to behaviors related to their health and income.**
- **More older adults are leaving prison and jail than in the past, therefore housing is paramount.**

### **Review of a person’s criminal background for subsidized housing takes place once a person reaches the top of the waiting list, which might take anywhere from 6 months to 10 years.**

Application processes vary, but generally the first step for applicants for subsidized housing is to submit an application. In this initial application (sometimes called “pre-application” by LHAs) the only screening done is whether the person qualifies based on their income, then they are put on a waiting list. Waiting lists range from 6 months to 10 years, depending on the city and type of housing. When applicants near the top of the wait list, the LHA will reach out for more information, including permission to run a background check, among other information. Generally, for applicants with an LHA, the LHA will confirm the person’s income and collect the following background information: Criminal Offender Registration Information (CORI), Sex Offender Registry Information (SORI), credit check, and housing court check for past evictions.

If the LHA denies the application, the applicant has the right to request a hearing. With state-funded public housing, if the hearing with the LHA doesn’t reverse the decision, the applicant can request another hearing through DHCD.

In the instance of subsidized vouchers such as Housing Choice Vouchers (otherwise known as Section 8), the person or family does not live in housing run by an LHA but rather in housing owned by an owner on the private rental market. In these cases, the administrator (such as an LHA or Way Finders in Western MA) runs a criminal background check, but the ultimate decision about whether to rent is the private property owners. Private landlords may use a commercial company to do a background check instead of the state-run CORI system, a practice which has its own set of limitations and biases built in, although that is beyond the scope of this HIA.<sup>63</sup>

The Department of Criminal Justice Information Service (DCJIS) manages and administers the Commonwealth’s law enforcement information and criminal records system. DCJIS has specific requirements for housing providers that use the CORI system. Before accessing the CORI system, an individual must complete a training, and their registration must be renewed annually.<sup>64</sup> Any individual organization that submits five or more CORI requests annually shall maintain a CORI policy which must meet the minimum standards of the DCJIS model CORI policy.<sup>65</sup> Even though there is a mandatory training and registration requirement, staff from the DHCD and the Boston Housing Authority talked to us about the importance of training both in how to interpret a criminal record and how to be compassionate and unbiased. As staff from the Boston Housing Authority said in relation to how complicated reading criminal records is:

*“Looking at a criminal record that’s 100 pages long, doesn’t really mean anything. We look at when was the last charge? If the person has sealed a crime on their record, then it shouldn’t be part of our consideration.”*

— Boston Housing Authority staff

## **Federal Policy makers have systematically inserted consideration of criminal history in housing decisions into housing policy and practice.**

In the 1980s and 1990s, at the national level policy makers widened the reach of post-conviction sanctions by excluding people with criminal histories from many aspects of mainstream life, including temporary or permanent ineligibility for life-sustaining social benefits such as subsidized housing, many types of employment, and public benefits. Though this punitive turn in the criminal legal system over the last quarter century was fueled by a rising concern about crime and public disorder, these policy changes had collateral consequences, making a conviction often a life-long sentence that lasts long after a person completes their “debt to society.” In particular, a series of federal laws addressed violent crime and the role of drugs in violent crime in public housing communities. These included the following (with more detail in Appendix B): <sup>66 67 68 69 70</sup>

### **Restrictive Years**

- In the 1980s to 1990, three federal Acts supported LHAs’ right to exclude applicants with a criminal history, funded LHAs to eliminate drug crimes and thus incentivized them to exclude people with any drug convictions, and encouraged eviction of people who engaged in drug use. These laws gave discretion to LHAs to determine which applicants were possible risks.
- In mid-1990 through 2000, federal laws mandated law enforcement to comply with LHA criminal background requests, strengthened eviction rules, and further incentivized LHAs to decline people with a criminal background by creating a security metric in federal reviews of LHAs. Laws also passed creating permanent bans for people registered for life because of past sex offenses and anyone convicted of producing methamphetamines in public housing.
- In 2002, the Supreme Court unanimously upheld the rights of LHAs to evict an entire household based on the criminal activity of one member or guest without specific proof that the leaseholding tenant had knowledge of the activity.

### **More Promising Years**

- The Second Chance Act (2008) funded hundreds of reentry grants to (a) develop multifaceted reentry plans; (b) create reentry task forces; (c) collect data and measure outcomes; and (d) facilitate collaboration between criminal legal and social service systems, including housing.
- From 2011 to 2016, HUD released a series of letters, notices, and guidance to LHAs in support of reentry, including: encouraging LHAs to allow people with a criminal history to reunite with their families, advising housing providers that their admission policies must comply with the Fair Housing Act, reminding LHAs that HUD no longer supports one-strike policies that automatically deny applicants with criminal records, and stating that intentional refusal of people with a criminal history likely had an unjustified and disproportionate racial impact and therefore could be discriminatory in direct violation of the Fair Housing Act.
- In 2015, the Supreme Court affirmed the long-standing disparate impact theory, which means that housing providers may be held liable for discrimination under the Fair Housing Act for actions with an unjustified disparate impact even if they do not intend to discriminate.

While these letters, notices, and guidance from 2011 forward offer some hope for change in LHA practices, there is no enforcement mechanism built in. Thus, if no one challenges LHA practices, they may remain the same. Generally, LHAs have continued to operate under many of the same admission and eviction procedures with some slight modifications, while typically having more stringent policies than federally required.<sup>71</sup>

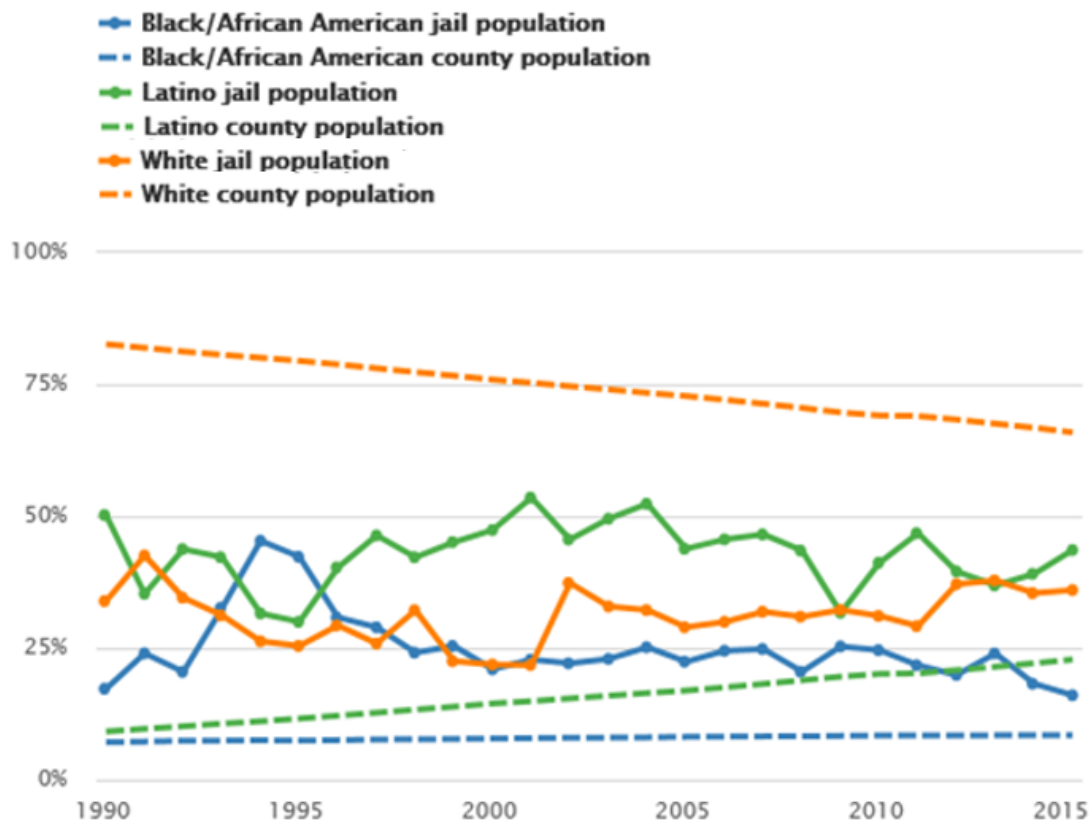
The Fair Housing Act, passed in 1968, remains one of the most significant protections for people who feel that they have been discriminated against in housing decisions. The Fair Housing Act prohibits discrimination in the sale, rental, and financing of housing based on race, religion, national origin, or sex. In 1988 the Act was amended to also prohibit discrimination based on disability or family status.<sup>72</sup>

**Policies of mass incarceration have led to many more people with records, who are disproportionately Black and Latino/a.**

The criminal legal system is pervasive. About 1 out of every 3 people in the United States has an arrest record.<sup>73 74</sup> Almost half (45%) of Americans has had the experience of having a family member incarcerated.<sup>75</sup> The growth of mass incarceration is often attributed to the *War on Drugs*, which was “declared” in the 1970s. While framed as an effort to address a rise in recreational drug use, President Nixon’s domestic policy chief later revealed that the Nixon administration knowingly used the *War on Drugs* to disrupt Black communities and the anti-war Left.<sup>76</sup>

In the 1980s and 1990s, policymakers furthered the *War on Drugs* by enacting sentencing laws that resulted in more people convicted and locked up for longer periods of time because judges had no discretion to consider each individual’s circumstances or history. Some well-known examples include mandatory minimum sentences and truth-in-sentencing, which

Figure 1. Disparities in jail incarceration, Hampden County



Source: Vera Institute of Justice. Incarceration Trends. Jail Incarceration, Hampden County, MA.

abolished or curbed parole so people in prison serve the entire period they were sentenced to without possibility of early release. As a result, the United States' incarceration rate is much higher than any other country in the world.<sup>77</sup>

Behind several guidance documents issued by HUD between 2011 and 2016 was a recognition by the federal government that policies and practices of the criminal legal system have resulted in disproportionate and unjust criminalization of people of color. HUD explicitly states that because of the extreme inequities in the criminal legal system, housing providers who deny people admission based on their criminal record may be unintentionally breaking the law under the Fair Housing Act due to racial discrimination.<sup>78</sup>

Policies and practices of the criminal legal system have resulted in extreme inequities by race. For example, a former sentencing policy passed into law directly built racism in by requiring longer sentences for crack (found mostly in communities of color) than for cocaine (used mostly by Whites).<sup>79</sup> And the practice of "stop and frisk" by police resulted in disproportionately more people being stopped, which leads to more arrests among people of color. In many other examples, the U.S. punishes people of color at much higher rates than Whites.<sup>80</sup>

We see this play out in Hampden County. Figure 1 above shows the disparity in incarceration by race. Though 8.5% of the population of Hampden County is Black, Black people make up 16.1% of those in jail. Similarly, 23% of the county's population is Latino/a compared to 44% of the jailed population. Conversely, while 66% of the county's population is White, only 36% of those in jail are White.<sup>81</sup>

Through the efforts of people who are directly impacted by incarceration, their allies, and policymakers on both sides of the aisle, efforts to reform the criminal legal system have led to uneven declines in mass incarceration across the U.S. However, progress is slow. A Vera Institute of Justice study found that it would take 149 years before the U.S. reached incarceration rates as low as they were in 1970 at the current pace.<sup>82</sup>

### **People living with mental health challenges, with substance use disorders, and in poverty are often arrested and incarcerated due to behaviors related to their health and income.**

Our jails and prisons are full of people who have been convicted due to behaviors arising from mental illnesses and substance use disorders. About one-third to one-half of people in jails and prisons have a mental health illness, compared to about 18% in the general population.<sup>83</sup> In Massachusetts prisons, 27% of the population has a serious mental illness,<sup>84</sup> and 65% have a substance use disorder.<sup>85</sup> Behavioral health issues need treatment, not punishment, and incarceration can often exacerbate these issues.<sup>86</sup>

Jails have become the defacto largest providers of behavioral health care<sup>87</sup> as a result of over four decades of the *War on Drugs*, "tough on crime" policies, and the deinstitutionalization movement to close mental hospitals without appropriate funding of community mental health services.<sup>88</sup> However, jails lack the expertise and resources to provide sufficient care.<sup>89 90</sup> In Hampden County, the state funds the Hampden County Sheriff's Department to provide involuntary substance use disorder treatment rather than behavioral health providers.<sup>91</sup>

Similarly, many people are incarcerated while still presumed innocent because they do not have the money for bail pre-trial or because they cannot afford the fines and fees of the criminal legal system.<sup>92</sup>

### **More older adults are leaving prison and jail than in the past.**

Between 1999 and 2015, the percentage of people incarcerated in U.S. prisons over the age of 55 increased by 264%. During the same period, the percentage under age 55 increased by 5%. Massachusetts has the highest proportion of incarcerated people over the age of 55 in the country.<sup>93</sup>

Additionally, people who are incarcerated are older and stay incarcerated longer. The average age of people incarcerated in Massachusetts prisons in 2019 was 42 years old, compared to 39 in 2011, and the average amount of time that people spend

in Massachusetts prisons increased from about 2 years in 2011 to 4.5-5.1 years in 2019.<sup>94 95</sup> This is mainly due to a trend toward longer sentences, in part fueled by laws requiring mandatory minimum sentences and truth in sentencing, which significantly decreased the ability to be paroled earlier than one's sentence.

In 2018, the median minimum sentence in Massachusetts prisons was 42 months, compared to 36 months in 2010. The comparison for the same years in Massachusetts jails was 18 months in 2018 compared to 6 months in 2010.<sup>96 97</sup>

# Priority Factors that Determine Health

The priority factors we consider in this HIA - housing, involvement in the criminal legal system, and safety - all influence our health. These conditions, known as social determinants of health, can determine the length and quality of one's life.

In this section, we provide:

- Why the priority social determinant of health is important, and
- What the status of the social determinant of health is in Hampden County.

In the following sections, we address how each of the policies or practices under study affects these three social determinants of health.

## Accessing Affordable Housing

### High level findings

- **Not being able to access affordable housing can affect mental and physical health.**
- **People who are over age 50 with a record have a high risk for homelessness and housing instability, especially older adults of color.**
- **There is not enough affordable housing in Hampden County to meet the need.**
- **There is a limited amount of state and federally funded public housing and vouchers.**
- **The proportion of people denied housing by LHAs due to a past criminal record is estimated to range from 6% to 23%.**

## Why it's important

### Not being able to access affordable housing can affect mental health.

Research reveals the terrible toll that the lack of affordable housing can take on people who end up homeless. Serious mental illness, anxiety, depression, substance misuse, self-harm and suicide all show up at higher rates among people who are homeless than in the general population,<sup>98 99 100</sup> with older homeless men at particular risk of suicide.<sup>101</sup>

Most people in our survey (84%) said that the barrier of their record to accessing affordable housing had caused an increase in stress in their lives. More than half reported increases in depression and anxiety.

*"It messed me up. I can't find no place to live."*

*-HIA Survey Participant*

Housing instability, not being homeless but experiencing transience or marginal housing, also has mental health impacts. A study found that people behind on their rent or who had experienced eviction in the prior year were significantly more likely to experience anxiety, depression, and report hazardous alcohol use than stably housed counterparts.<sup>102</sup> Survivors of

intimate partner violence are at higher risk of PTSD and depression if they are also experiencing housing instability.<sup>103</sup> There is a high rate of surviving domestic violence among women in jails and prison.<sup>104</sup>

*“It’s stressful, with me being homeless [because I can’t get housing due to my CORI and credit history], not being able to find something to eat, not knowing where I’m going to sleep. Am I going to be on the street? Am I going to be able to take my medication? That’s critical because I’m diabetic, I’m manic depressive, and I have chronic PTSD. So it affects my whole world.”*

-HIA Survey Participant

On a positive note, research finds that homeless older adults who managed to obtain access to housing subsequently had fewer depressive symptoms and a lower rate of acute care use.<sup>105</sup>

**Not being able to access affordable housing can affect physical health.**

Homeless populations suffer from higher rates of premature mortality. Data from other countries illustrate the stark impact on mortality; researchers found that people living on the streets died on average around age 40.<sup>106 107</sup> Older people who are homeless tend to exhibit health characteristics that are more consistent with non-homeless people approximately 10 years older than them.<sup>108</sup> No similar studies have been done in the United States.

A lower life expectancy may be the result of a higher rate of illness such as respiratory disease, accidents, violence, tuberculosis, HIV/AIDS, diabetes, hepatitis C, and minor ailments like skin conditions and problems with their feet that result from their day-to-day living conditions.<sup>109</sup> Prolonged exposure to cold, damp, and heat/sun/weather conditions can make recovery from

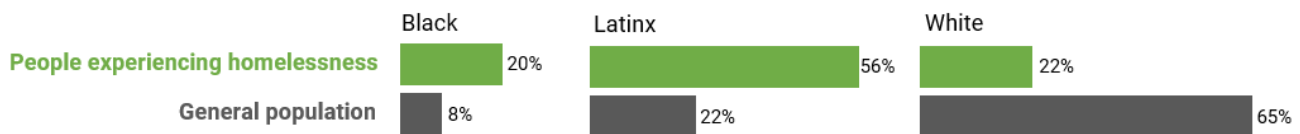
preexisting conditions slow and difficult so that many health problems become long-standing.<sup>110</sup> On top of this, many studies find that both homelessness and housing instability are associated with not having a usual source of health care, postponing needed care and medications, and increased use of the emergency department and hospitalization.<sup>111 112 113</sup>

**What is the status?**

**People who are over age 50 with a record have a high risk for homelessness and housing instability, especially older adults of color.**

Older adults are becoming increasingly at risk for homelessness. Nationally, the number of sheltered homeless adults over age 62 increased by 39% between 2007 and 2015.<sup>114</sup> It is more and more common for older adults to experience homelessness for the first time during old age, and experience homelessness for longer periods than younger people.<sup>115</sup> People of color have higher rates of homelessness compared to their proportion in the general population. In Hampden County, Black and Latino/a people have higher rates of homelessness than White people despite making up a smaller percentage of the population in Hampden County (Figure 2).<sup>116</sup> Decades of unequal treatment by race in the criminal legal system is one driver of disproportionate rates of homelessness by race.<sup>117</sup>

**Figure 2. Homelessness in Hampden County by Race/Ethnicity, 2015-2017**



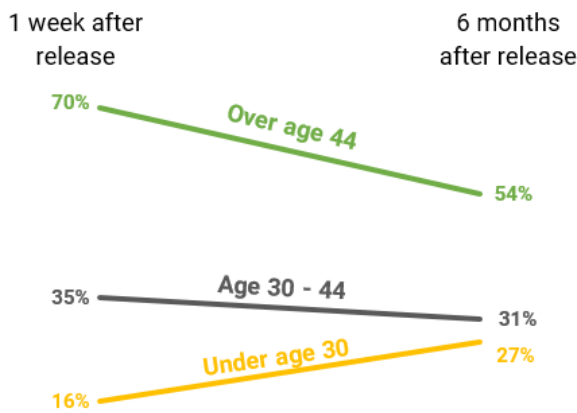
Source: City of Springfield Housing Department: Springfield-Hampden County Continuum of Care

In addition, people who are formerly incarcerated are at high risk for homelessness. A 2008 study on the U.S. Jail population found that jailed persons were 7.5 to 11.3 times more likely than the general population to have been homeless, and jailed persons who had been homeless made up 15% of the jailed population.<sup>118</sup>

Of the older adults we surveyed in Hampden County, only half live in stable housing. A large majority (87%) have experienced homelessness or unstable housing, with 21% responding that they experience chronic homelessness.

A study among people leaving prison in Massachusetts found that about 54% of people over age 44 are still experiencing housing instability six months after release, a rate much higher than that of their younger counterparts (Figure 3).<sup>119</sup>

**Figure 3. Percent of people with marginal or unstable housing after release from prison, 2012**



Source: Boston Reentry Project, Harvard University

extremely low income. Our findings align with those of a Brookings Institute study, which found that about 85% of those examined reported making \$15,000 or less per year in the three years before prison, with 80% reporting that same level in the two years after incarceration.<sup>121</sup>

Housing is considered affordable if the monthly rent does not exceed 30% of household income. A 2020 Analysis of Impediments to Fair Housing in 4 cities in Hampden County found that that less than 50% of units needed were available and affordable for “extremely low-income households” (Table 1).<sup>122</sup> According to the 2021 Donahue Institute’s Greater Springfield Regional Housing Analysis, more than half (55%) of renters in Hampden County were considered housing cost burdened in 2018, and rental affordability has a disproportionate impact on people of color.<sup>123</sup>

According to the Donahue Institute analysis, housing unit demand in Pioneer Valley exceeded available housing units by over 11,000 units. Projections for the next five years show the population over age 60 is expected to grow in Pioneer Valley, which will increase demand for housing because aging population generally requires more housing units per person than younger households. If housing production levels remain the same, there will be a projected shortfall of almost 19,000 units by 2025.<sup>124</sup>

### There is not enough affordable housing in Hampden County to meet the need.

A household is considered “extremely low income” if they make less than 30% of the county’s median income. By race, Black and Latino/a households in Hampden County make up a disproportionate share of extremely low-income households.<sup>120</sup>

People with a criminal record have lower incomes. In our survey, more than three-quarters (76%) of the men and women have annual incomes of \$15,000 or less, falling into the category of

*“Honestly, my involvement with the legal system has destroyed [my chances for] any type of housing I’ve tried to obtain.”*

—HIA Survey Participant

**Table 1. Percent of affordable units available for extremely low-income people out of units needed, 2018**

Area	Percent of units
Chicopee	51%
Holyoke	55%
Springfield	46%
Westfield	45%
Hampden County	47%

Source: PVPC, Donahue Institute, MFHC. 2020. 4 City Analysis of Impediments to Fair Housing



**There is a limited amount of state and federally funded public housing and vouchers.**

Table 2 shows how many units each of the LHAs in the HIA have. While public housing and vouchers are not the only affordable housing available, they are the only guaranteed affordable housing with a mission to provide housing for people with the highest need.

**Table 2. Number of units and vouchers available for each LHA under study**

	Elderly public housing (state & state/fed combo)	Family public housing (state & state/fed combo)	Special occupancy public housing units (state)	MRVP (state)	Federally assisted public housing or rental vouchers	Total
Chicopee*	816 <sub>a</sub>			588 <sub>b</sub>	383 <sub>c</sub>	1787
Holyoke	60	12	8	213	2534	2827
Springfield	429	92	47	308	4758	5634
Westfield	338	87	9	152	436	1022
Way Finders	0	0	0			

Sources: HHA Annual Plan 2021, SHA Annual Plan 2022, WHA Annual Plan 2022, CHA website

\*CHA’s Annual Plan did not have number of units listed, so we used available information on their website, which was not categorized the same way as Annual Plans categories. They listed (a) all types of state-aided public housing; (b) both state and federal vouchers; and (c) federal public housing only.

Not surprisingly, there are lengthy waiting lists for public housing and vouchers. The statewide list for federally subsidized Section 8 housing has a wait list of about 10 years.



**The proportion of people denied housing by LHAs due to a past criminal record is estimated to range from 6% to 23%.**

None of the LHAs were able to supply data regarding the proportion of people denied housing due to a criminal background (for more information, see the section below on “Publicly available data”). Due to the absence of local data or an overall national estimate, we used estimates supplied from other LHAs across the country to estimate the percent of people denied housing due to their criminal record, which was the only data available. We found the following estimates:

- **Boston Housing Authority** said that up to 90% or more of people applying for housing have a criminal record, and they estimated that about 7% to 10% of applicants are determined ineligible due to their criminal record. Some denials are mandated by federal law (lifetime registration for past sex offenses or past methamphetamine production on federally assisted property) and some denials occur because people do not provide evidence of mitigating circumstances.<sup>125</sup>

*“They put me on the list one time, I was number 12,000, and I’m still waiting*

—HIA Survey Participant

- **Winnebago County Housing Authority, IL:** We interviewed the Director of this LHA because of their innovative reentry housing program. He shared that 23% of all program applicants had been denied in the past two years for criminal behavior.
- **Oakland Housing Authority, CA (OHA):** According to data that OHA provided to the research team in 2016, from 2006 through 2016 6% of the more than 31,000 applicants who were screened failed the criminal background screening.<sup>126</sup> Of note, the number of people who failed the background screening decreased dramatically in 2011 due to a lawsuit brought against OHA from Bay Area Legal Aid due to illegal screening practices.<sup>127</sup>
- **Seattle Housing Authority, WA:** In analyzing data from informal hearings requested after being denied, researchers found that 42% of those requesting hearings had originally been denied because of their criminal background and for many, other reasons as well. About 12% were denied solely due to their criminal background.<sup>128</sup>

None of these analyses disaggregated information by age, so we are unable to estimate how many people over the age of 50 are turned down for housing due to their criminal record.

These estimates represent only a fraction of people who are turned down from affordable housing, as there is no way to estimate how many people are denied housing due to their record in the private market.

# Keeping people from further involvement in the criminal legal system

## High level findings

- Involvement in the criminal legal system has dramatic effects on mental and physical health.
- People age 50 and older with a record are at low risk for committing crime.
- The criminal legal system touches a large proportion of people in Hampden County.
- Homelessness among people with criminal legal system involvement can contribute to further arrests and incarceration.
- The criminal legal system struggles to help people with housing upon release.

## Why it's important

### Involvement in the criminal legal system has dramatic effects on mental health.

While there is a high rate of people who have mental health disorders who end up incarcerated, jail or prison can cause or exacerbate these problems. Incarceration includes exposure to:

- overcrowding and lack of privacy;
- physical violence and verbal emotional abuse;
- isolation from loved ones;
- forced solitary confinement, which has increased with COVID-19<sup>129</sup>;
- physical internal searches;
- insecurity about employment and reuniting with family after incarceration;
- lack of timely and appropriate mental health care.<sup>130</sup>

These experiences could traumatize anyone, and layering these exposures due to incarceration on top of preexisting stress and illness can result in poor mental health, including suicide.<sup>131 132 133 134</sup> The stigma associated with having a criminal record and the challenges of reentry can lead to poor mental health outcomes such as:

- increased stress,
- isolation and loneliness,
- unhealthy coping behaviors,
- avoidance of accessing mental and physical health care.<sup>135 136</sup>

One study found that people who perceived discrimination due to their record had more than double the level of distress as those who reported low levels of discrimination.<sup>137</sup>

*“Once you’re released, you start another sentence – any little thing you do, you could be right back. It’s scary and stressful over time. Every time the phone rings and I would see it was my parole officer. I would just get really scared, ‘what did I do?’<sup>138</sup>*

All the mental health conditions are present for people over the age of 50 at higher rates than younger incarcerated people. A systematic review of studies of the health of America's aging prison population found that older people who are incarcerated have higher rates of mental health issues than their younger counterparts, with the most commonly mentioned issues being depression, anxiety, and fear of or desire for death or suicide.<sup>139</sup> Researchers found that anxiety about death, stemming from lack of adequate health care and indifference of prison staff to injury and illness, were related to poor mental and physical health among older incarcerated women.<sup>140</sup>

Unfortunately, prisons and jails have not been taking the specialized needs of older adults into consideration until relatively recently, as evidenced by the fact that cognitive impairment and dementia are two conditions that state prisons are least likely to track.<sup>141</sup>

### **Involvement in the criminal legal system affects physical health.**

Examining mortality among New York state adult parolees over a 10-year period, a 2015 study found that each year spent in prison corresponded with a two-year reduction in life expectancy.<sup>142</sup> This statistic says much about the types of exposures listed above and their impact on length of life. As a paper by the Robert Wood Johnson Foundation on mass incarceration and health equity stated,

*“Longitudinal studies have found strong and pervasive links between incarceration and many adverse health indicators across the lifespan, even after considering health before incarceration. According to the U.S. Department of Justice, one-third of illness-related deaths in state prisons have resulted from conditions that were not present at the time of admission.”<sup>143</sup>*

Experiencing incarceration or other aspects of involvement in the criminal legal system puts people at higher risk for violence, infectious disease, and lack of medical care than people in the general population. About one in every five men in U.S. prisons experiences some sort of assault, whether from other incarcerated people or guards.<sup>144 145</sup> People in prisons and jails also have a higher risk of infectious disease as seen in the past with tuberculosis, HIV, and hepatitis C and more recently with the alarmingly high rates of COVID-19.<sup>146</sup> Hampden County jails saw a higher number of COVID-19 infections than any other jail in Massachusetts.<sup>147</sup> Limited and complicated access to care, poor nutritional content of food, limitations on physical activity, and high rates of smoking in prison also contribute to poor physical health.<sup>148</sup>

Older incarcerated adults are more likely than their younger counterparts to have chronic health conditions, including hypertension, diabetes mellitus, liver disease, arthritis, cancer, among others. Older incarcerated adults are also more likely to have more than one chronic health issue. Older adults also experience health conditions that are not common in younger adults, such as hearing problems, vision problems, and menopause. Additionally, older adults experience difficulty with activities of daily living (ADL) such as basic hygiene, and prison activities of daily living (PADL) such as dropping to the floor for alarms, standing for count, hearing orders from staff, walking while handcuffed, and climbing on and off top bunks.<sup>149</sup> These conditions are exacerbated by poor access to health care for all people in prisons and jails, but particularly for older adults. The criminal legal system is just coming to recognize the health care needs of older adults in their care are different than those who are younger.<sup>150</sup>

## **What is the status?**

### **People age 50 and older with a record are at low risk for committing crime.**

Researchers of criminology and corrections experts universally agree that a person's average likelihood of committing crime declines sharply with advancing age, regardless of the crime for which the person was originally convicted and sent to prison.<sup>151 152</sup> One study found a 3% recidivism rate for a cohort of people with an average age of 64 who were sentenced to life in prison but released after serving, on average, more than 30 years (they were released because of improper jury

instructions at time of their trial).<sup>153</sup> The U.S. Sentencing Commission found that people released when they are older are substantially less likely to recidivate following release compared to younger cohorts.<sup>154</sup>

In Massachusetts, people leaving prison over age 55 recidivate (measured as a return to incarceration for new crimes) at a rate of about 8%, compared to the overall recidivism rate for new crimes of 28%.<sup>155</sup>

### **The criminal legal system touches a large proportion of people in Hampden County.**

In Hampden County, we found that approximately 6,308 people annually over age 18 return to Hampden County from jail, prison, or are on probation.<sup>i</sup> We include all those over age 18 because in our survey, people were sometimes denied housing due to something on their record between 10 to 40 years prior, so a conviction at age 25 can block a person from accessing housing at age 50.

People are often denied housing not only for felony convictions but also misdemeanors and even arrests (more information below in the policy on using only mandatory HUD guideline convictions for denials). While LHAs written regulations by law state that they do not look at arrests, in interviews and even by implication in the regulations, it is clear that arrests play a part in screening decisions. Even so, we used only the number of people released from local jail and prison annually, and how many people are on probation, and did not include those arrested. This is a conservative estimate because it does not include those arrested but not convicted, and only includes an annual number instead of a cumulative number.

Springfield is heavily impacted by the number of people with criminal records who are looking for affordable housing, as over 60% of people released from the Hampden County Jail return to Springfield.<sup>156</sup>

### **Homelessness among people with criminal legal system involvement can contribute to further arrests and incarceration.**

People who are homeless have a high likelihood of getting caught up in the criminal legal system, due to laws that criminalize activities that people who are homeless often have no choice about: sleeping in public spaces, panhandling, public urination, and other behaviors.<sup>157</sup>

A national study with more than 64,000 surveys of sheltered and unsheltered people across the United States found that unsheltered people experiencing homelessness averaged 21 contacts with police and 81% had spent at least one night in jail in the six months prior to taking the survey.<sup>158</sup> In our survey, among those who experienced homelessness before they were incarcerated, 83% reported that being homeless was part of the reason they were incarcerated. This is not an unusual situation for people with a record.

### **The criminal legal system struggles to help people with housing upon release.**

The Massachusetts DOC is responsible for providing reentry services to ensure successful transition from prison into the community. For each person, DOC creates an Individual Reentry Plan (IRP) that is supposed to address post-release housing; eligibility for MassHealth; employment opportunities; community resources; and physical or mental health services including providing medications and scheduling physical and mental health appointments upon release. In 2020, the Massachusetts State Auditor's office found that 37% of the files they audited did not have evidence that the IRP was reviewed with the inmate, signed by the inmate, and given to the inmate before release from DOC custody.<sup>159</sup>

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<sup>i</sup> This number was calculated using data from the Hampden County Sheriff's Department on number of people released annually from 2017 – 2019; publicly available data from the Massachusetts Department of Corrections on the number of people released annually from 2017-2019; an estimate of number of people on probation each year; information on proportion of people released from incarceration who are on probation or parole. For more detail on how we calculated this number, see Appendix C.

Locally, a 2019 report from the Hampden County Sheriff’s Department found that 40% to 55% of people released from the Hampden County jail are released with an unstable or transient home plan without permanent housing. Ten percent are completely homeless and will go to shelters.<sup>160</sup> Data supplied from the Sheriff’s Department for this HIA corroborate these numbers (Table 3).<sup>161</sup>

**Table 3. People experiencing homelessness upon being released from Hampden County jails**

	Men		Women	
	Number	Percentage	Number	Percentage
2019	209	4.2%	166	9.3%
2020	142	3.1%	103	8.5%

Source: Hampden County Sheriff’s Department

Of those in our survey (people age 50+ with a CORI) who had been incarcerated, more than two-thirds (69%) did not have access to housing upon their release. Only 22% were provided with a discharge plan that addressed housing needs,

half of whom received a plan to enter a homeless shelter. When asked where they stayed in the immediate period following their release, 25% of respondents stayed in a homeless shelter and 6% (2 people) stayed on the streets. Others stayed with family members (29%), friends (11%), partners or spouses (8%), or in a residential treatment facility (11%).

*“Basically, once I was getting out, I didn’t have no help as far as getting what I needed as far as housing. I was running around, doing this, doing that, everything I needed to do – the different parts as far as after incarceration. Basically, I didn’t receive any kind of help whatsoever. I felt like they picked and chose whoever they wanted to get help. That’s how I felt.”*

—HIA Survey Participant

# Housing is a Safety Intervention

## High level findings

- **Housing is a safety intervention.**
- **Despite concerns about violence among people with CORIs, most people with CORIs did not commit a violent offense. Among people who have committed a violent crime, studies show they are unlikely to commit another violent crime upon release.**
- **Being homeless puts individuals in unsafe conditions, with heightened risk of physical harm.**
- **Further involvement with the criminal legal system is a safety risk for people in the system.**
- **Older adults are not likely to be a safety risk.**
- **Evidence does not support that housing people with a criminal history, especially those over the age of 50, leads to higher rates of crime in public housing.**
- **LHAs need appropriate policies and services to ensure they can house all types of people and support a positive, high quality of life environment.**

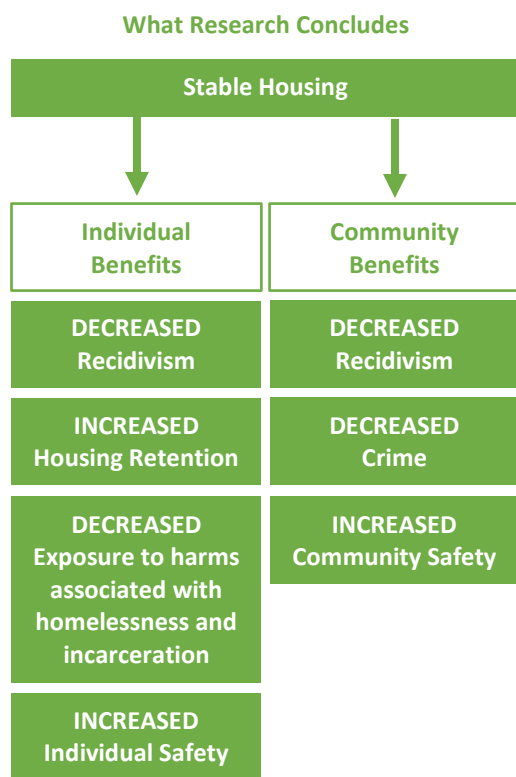
## *Why it's important*

### **Housing is a safety intervention.**

Many studies have concluded that being stably housed reduces the likelihood that people who have been in prison or jail will commit another crime,<sup>162 163 164 165</sup> improving safety for everyone in the community. Most studies looked at people who received housing plus some level of wraparound services. However, several evaluations considered programs where the only change to the typical reentry process was the provision of housing. For example, an evaluation of a housing voucher program implemented by the Washington State Department of Corrections found that giving people released from prison a voucher that covered their entire rent for 3 months, even with no services other than typical probation or parole oversight, was associated with fewer new felony and misdemeanor charges.<sup>166</sup>

Similarly, a randomized controlled trial found that people leaving prison who received 6 months of free housing subsidies were less than half as likely (25% vs. 57%) to be rearrested in one year. In this case, the only additional assistance beyond probation or parole was housing navigation help. Researchers concluded that “evidence suggests that stable housing on its own is important for reducing the risk of recidivism.”<sup>167</sup> A case-control comparison study of 244 people returning from 13 prisons in Ohio to supportive housing found that people in supportive housing were significantly less likely to be rearrested and reincarcerated than people who did not have housing. Rearrest rates were 40% lower and reincarceration rates were 61% lower for people getting housing compared to those released from prison without supportive housing.<sup>168</sup>

Figure 4. Flowchart of housing to safety research



**Despite concerns about violence among people with CORIs, most people with CORIs did not commit a violent offense. Among people who have committed a violent crime, studies show they are unlikely to commit another violent crime upon release.**

When most people consider safety and its relationship to people with a CORI, they think about violent offenses. It is important to note that any involvement with the Massachusetts criminal court system triggers the creation of a criminal record in the CORI system – that means driving arrests, pending criminal cases, misdemeanors, drug possession – as well as crimes labeled as violent. Non-violent offenses are much more common, for example, a 2019 Hampden County Sherriff’s Department report finds that almost 70% of those released in 2017 were incarcerated for non-violent offenses.<sup>169</sup> Even so, having had a violent crime in one’s background also does not mean a person is more likely to commit another violent crime. In fact, people with convictions for violent crimes, especially older adults who have a violent offense in their background, are less likely to recidivate. A study of 3000 older adults released from prison for murder or negligent manslaughter found that only 3 people committed another crime of the same sort, and only 9 were reincarcerated for any crime. Almost every study of repeat murder or manslaughter find recidivism rates at or below 1%. The analysis finds that people released after imprisonment for violent crimes recidivate at a lower rate than releases who served time for any other category of crime, and in particular older adults’ recidivism rates are much lower.<sup>170</sup>

## What is the status?

### Being homeless puts individuals in unsafe conditions, with heightened risk of physical harm.

While we do not have data on local injuries or illness of people experiencing homelessness, a report by the National Coalition for the Homeless details the types of violent crimes perpetrated against people who are homeless: harassment, murder, assault, sexual assault, and law enforcement brutality.<sup>171</sup> About half of people experiencing homelessness surveyed had been threatened with violence, 56% of women had been raped, and 72% had been physically assaulted.<sup>172 173</sup> Older people who are homeless encounter violence on the streets and in shelters and can face higher threats to safety than their younger counterparts because they are often seen as easy targets.<sup>174</sup> Homelessness creates a high risk for illness and death due to exposure to extreme weather<sup>175</sup> and infectious disease.<sup>176</sup> A lack of safety in people experiencing homelessness can lead to further re-traumatization of the proportion of people who already have mental health issues.<sup>177</sup>

*“[People experiencing homelessness] face health problems and literal risk of death from being outdoors. All face a frightening lack of safety.”*

— Western Massachusetts Network to End Homelessness<sup>178</sup>



### Further involvement with the criminal legal system is a safety risk for people in the system.

People who experience homelessness are at high risk of being criminalized by being arrested for behaviors such as camping and panhandling.<sup>179 180</sup> People who are homeless have more than 20 contacts with police in a six-month period.<sup>181</sup> In Springfield, like in many cities across the country, there is risk of physical harm from police.<sup>182</sup> Further incarceration carries safety risks. As stated above, experiencing incarceration or other aspects of involvement in the criminal legal system puts people at higher risk for violence from guards and other incarcerated people than people in the general population.<sup>183 184 185</sup>

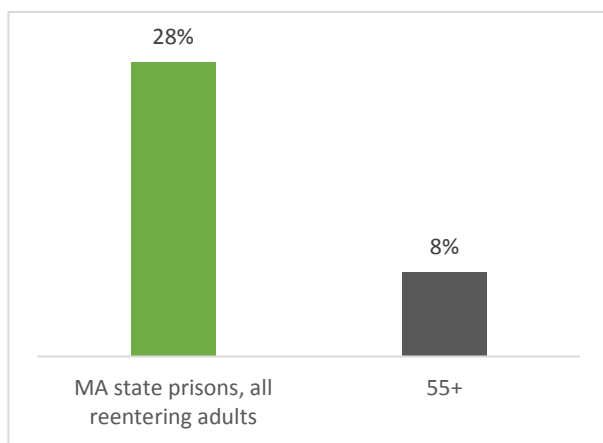
*“If we only provided services instead of having police response! If instead we as a society put resources into services, we would have a safer society.”*

— Homelessness Service Provider

### Older adults are not likely to be a safety risk.

Adults over the age of 50 are a low safety risk. In Massachusetts, 28% of people released from state prison return to prison within three years due to committing a new crime. In Figure 5, we see that only 8% of those over the age of 55 return to prison for a new crime.<sup>186</sup> A study in other states showed that by the time people reach age 65 or more, only about 1-3% return to prison for new crimes.<sup>187</sup>

**Figure 5. 3-Year Recidivism Rate for New Crimes in Massachusetts Prisons**



Source: Massachusetts DOC, 2020. MA DOC Three-Year Recidivism Rates; 2015 Release Cohort

### Evidence does not support that housing people with a criminal history, especially those over 50, leads to higher rates of crime in affordable housing.

Though there are generally higher rates of crime in public housing,<sup>188</sup> the vast majority of evidence examined did not find that allowing people with criminal records to live in public housing impacted crime levels. In fact, researchers looking into the history of the use of criminal background checks in admissions decisions for assisted housing conclude that “there is limited empirical support for excluding individuals from housing opportunities based solely on their criminal backgrounds.”<sup>189</sup>

One large study that examined the association between criminal offenses and negative housing outcomes did not find a statistically significant association between most types of criminal offenses and negative housing outcomes, defined as “losing or risking housing stability.” The study examined 10,500 households who

resided in one of four affordable housing developments between 2010 and 2017. In this study about 3 out of every 10 households had at least one adult with a criminal conviction in their history. Researchers did not find a statistically significant association between most criminal offenses they studied - including prostitution, marijuana possession, alcohol-related offenses, minor public order offenses, disorderly conduct, DUI, and other offenses – and housing outcomes. They did find a statistically significant increase in negative housing outcomes among households where people had criminal offenses of fraud, property offenses, major drug offenses and assault, though the observed increase in negative housing outcomes was only estimated to be 3-9%. The researchers share that the negative impact of these types of offenses may be overstated due to their inability to control for certain factors that could have an impact on housing success, such as employment and housing history in the past.<sup>190</sup>

Several studies note that even the most challenging residents (for example those with long criminal histories and periods of homelessness) can be as successful at being consistently housed – and thus not re-incarcerated – as residents without criminal histories, given the right support.<sup>191 192 193 194</sup>

### **LHAs need appropriate policies and services to ensure they can house all types of people and support a positive, high quality of life environment.**

LHAs take their mission very seriously. The missions of the four LHAs that we talked with in Hampden County include providing decent, safe, affordable housing for low-income families, free from discrimination, and managing resources efficiently. All the LHAs we talked with encouraged all people to apply and were open to considering the life events and mitigating circumstances for people who have a CORI. They talked about providing safe housing for all – for those who currently live in their buildings and to those looking for a place to live.

LHAs shared that they have experienced problems from people who have moved in with family who were not approved tenants. As we indicate below in the policy section about allowing family members to let someone with a CORI live with them, there is a widely held belief that people with a criminal record will be denied. Because of this chilling effect, people will sometimes move in with their family member without going through the application process. If the LHA is notified of illegal behavior that risks safety, the LHA may evict the person and the entire household.

It is unknown if any of these types of issues take place if a person over age 50 with a criminal record moves into housing. We were not able to get any data on this question. When asked about barriers for people over the age of 50 with CORIs, LHAs often ended up talking about older adults who had younger people with records move in with them, not the other way around.

Many LHAs stressed the importance of supportive services and programming for tenants with records, saying it is helpful in protecting safety and a peaceful environment for all residents. Some of the LHAs called out how helpful it can be if a person with a record has substance use treatment providers, case managers from reentry services, probation officers, the Department of Mental Health (DMH), and other people providing services and advocating for them. LHAs and the service providers felt that they could work with the person and provide at times an early warning system or a way to intervene before behavior got to the point of eviction or illegal behavior.

While the value of programs that pair services with housing vouchers or units is proven (see “Partnerships” section below), not all people with a conviction in their history want or need services in order to be successfully housed,<sup>195 196</sup> so we must be careful not to require services when none are needed.

*“I agree that those kinds of programs help people. Those programs have workers that work with them every day. Most [housing] applicants don’t have any services. Do you understand how much riskier it is when you don’t have someone checking up on you every day and you put them in public housing...it could affect everyone else in the development.”*

— Chicopee Housing Authority staff

# Policies That Could Mitigate Impacts of CORIs on Housing Opportunities

## Many LHAs are actively engaging in how they consider criminal histories in housing decisions.

The following are some of the ways that LHAs are addressing access to housing for people with a criminal history:

- Providing site-based vouchers and mobile vouchers for different programs that include people with a criminal history (see Partnerships section);
- Considering life circumstances of people with a CORI that mitigate housing provider risk at varying stages in the application process; and
- Participating in this HIA. Four LHAs in Hampden County agreed to be interviewed for this HIA (Chicopee, Holyoke, Springfield, and Westfield), which demonstrates willingness to problem-solve on this issue. Additionally, Springfield Housing Authority served on the HIA Advisory Committee.

## The policies or practices under consideration in this HIA are not currently in practice at LHAs in Hampden County, with several exceptions.

After consideration of policies and practices that are changing across the country, the HIA Advisory Committee chose the following six policies for research (Table 4). In order to assess the baseline existing conditions at the four LHAs under study in the HIA, we read each LHA’s Admissions and Continued Occupancy Plan (ACOP), Administrative Plan, recent Annual Plans, and interviewed each LHA. Table 4 summarizes our findings about whether LHAs are currently practicing the policies under consideration, but each policy is considered in more detail in the ensuing sections.

### LEGEND



Yes



Partially



No

**Table 4. Summary of Existing Conditions of Proposed Policies for 4 Hampden County Housing Authorities**

Policy or practice under study	Is the Housing Authority currently practicing this?			
	Chicopee H.A.	Holyoke H.A.	Springfield H.A.	Westfield H.A.
Establish <b>formal reentry partnerships between housing providers and: reentry; behavioral health; and homelessness reduction providers.</b>	✓	✓	✓	✗
<b>Use only CORIs that fall under exclusions mandated by HUD*</b> in housing admissions decisions once eligibility is determined.	✗	✗	✗	✗
<b>Allow mitigating circumstances to be submitted during the initial application</b> period without any requirement to disclose past convictions.	✗	✗	✗	✗
<b>Create explicit criteria for denial</b> that is available publicly.	✓	◐	◐	✗
<b>Share population-level data about number of people denied housing</b> , along with reasons for denials (including criminal background check), number of people requesting hearings, and the results of those hearings.	✗	✗	✗	✗
<b>Permit current residents to house family members with a CORI</b> as an authorized occupant, excepting those that fall under HUD mandated exclusions.	✗	✗	✗	✗

\*The only criminal background that HUD mandates exclusion from public housing are 1) being registered on the lifetime sex offender registration list and 2) conviction for producing methamphetamines on federal property. Exclusion for any other crimes is left to the discretion of individual LHAs.

# Establish formal partnerships between housing providers with reentry, behavioral health, and homelessness reduction organizations

## High level findings

- **Partnerships that provide housing along with case management or other services help people stay housed, stay clear of the criminal legal system, improve recovery, and stay healthy.**
- **There are many people in Hampden County who could benefit from these types of organizational partnerships.**
- **Partnerships of these sorts are highly valued by housing providers, service providers, and the people who reside in them.**
- **There are many examples of these types of partnerships in Hampden County.**

## *What this practice entails*

The types of partnerships envisioned in this potential practice change typically include service providers delivering case management and potentially treatment services while housing providers make subsidized housing units or vouchers available.

## *How this practice would help*

### **Partnerships that provide housing along with case management or other services help people stay housed, stay clear of the criminal legal system, improve recovery, and stay healthy.**

Supportive housing combines affordable housing with supportive services that can include coordinated case management; health, mental health, and substance abuse treatment services; educational services; vocational training and employment services. People in these types of programs, with services that respond to participants' needs, have better outcomes than comparison groups of people with the same challenges who are not participating in supportive housing.

#### **People with supportive housing:**

- **Succeed at staying housed.** Studies find that a majority (72% to 84%) of chronically homeless adults with behavioral health disorders who moved into supportive housing achieved housing success, regardless of criminal background.<sup>197</sup>  
<sup>198 199</sup> While the partnership between the Springfield and Holyoke Housing Authorities and the Hampden County Continuum of Care has not been evaluated, a partnership in Boston to house people who are identified as chronically homeless has produced promising results. Four years after the program began, 70% of the people enrolled remained housed with the Boston Housing Authority, 8% had moved to other BHA or non-BHA housing, and only 5% had been evicted.<sup>200</sup>
- **Commit less crime.** Consistently people in supportive housing have lower rates of recidivism. For example, one supportive housing study showed 40% less likelihood to be rearrested and 61% less likelihood to be reincarcerated

than a control group one year after release from prison.<sup>201</sup> Another resulted in a 54% reduction in how many days participants were in jail.<sup>202</sup>

- **Stay healthier.** The Massachusetts Blue Cross/Blue Shield Foundation found that people with Housing First permanent supportive housing were less likely to use the emergency room and have inpatient hospital visits and were more likely to obtain mental health services. People with housing had 17% lower medical spending.<sup>203</sup> A HUD demonstration project also found promising outcomes in reductions of psychiatric symptoms and alcohol use for formerly chronically homeless people with co-occurring disorders who were participants in supportive housing.<sup>204</sup>

All the studies we found were done with people who had one or more of the types of issues mentioned above: chronic homelessness, substance use disorder, mental health issues. Many of the studies looked at a particular supportive housing model, Housing First, which does not require sobriety or taking psychiatric medications as a condition of receiving or maintaining housing, but offers optional services and support for such health issues. One report said, “Our Housing First model has maintained a housing retention rate of 92% in contrast to a 45% success rate for programs requiring people to get clean and sober and take psychiatric medications prior to receiving housing.”<sup>205</sup> One randomized controlled trial specifically considered the impact of housing with people over age 50 who are homeless and have mental health issues, and found a significant effect on number of days stably housed.<sup>206</sup>

### **There are many people in Hampden County who could benefit from these types of partnerships.**

An estimated 6308 adults annually return to Hampden County from jail or prison or are on probation (see estimate earlier in this report and in the Appendix C). Housing providers hold past incarceration and convictions against people for decades. Partnerships between service providers and housing providers are extremely valuable for successful reentry.

Many people caught up in the criminal legal system struggle with mental health illnesses and substance use disorder, making behavioral health partnerships with housing providers very useful. As stated earlier, people with a record struggle with homelessness. We estimate that on a given night in Hampden County, about 346 people are homeless older adults with a criminal record.<sup>207 208 209 210</sup> ii Having a CORI is one of the biggest reasons those who are homeless are denied housing, reported Gerry McCafferty, who leads the Springfield-Hampden County Continuum of Care, a coordinated system that helps people experiencing homelessness find housing.<sup>211</sup> For this reason, partnerships with homelessness reduction providers and housing providers are extremely valuable.

### **Partnerships of these sorts are highly valued by housing providers, service providers, and the people who reside in them.**

*“There are lots of benefits for landlords of these types of arrangements. They appreciate our involvement. Not that they don’t have headaches, but we are there to negotiate and support.”*

—MA Dept. of Mental Health staff

Every LHA we talked with spoke positively about these types of partnerships. They pointed to the benefits of having wraparound support services and very active case management for residents who need those services. Interviews with LHAs and service providers show that even if residents come to housing with challenges (past incarceration, substance misuse, homelessness, and other challenges), they are more likely to be successful due to the supports provided by the service provider partners. Another benefit to the LHA is if a problem arises with the person or the family, the LHA can contact the service provider to intervene. In that scenario, the situation is less likely to escalate to a bigger problem, or even eviction.

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ii Estimate is based on the 2019 Point-in-Time count of people who are homeless on one night in January in Hampden County, studies that find that at least one-third of homeless adults are over age 50, and studies from around the country of how many homeless adults have a criminal record.

*“This is the best kind of partnership – to have someone proactively say to us: hey this person isn’t succeeding in this housing situation, we’re going to move him [to a situation that better supports him].”<sup>i</sup>*

—Way Finders staff

*(About the CHESSE partnership with All Inclusive Support Services through the Hampden County Sheriff’s Department, see below for more information):*

*“The participants go to a specific landlord AISS got through a Request for Proposal, and go through a program with heavy support services. We’ve had very few incidences with this program. Because of the mandated program (see below), people are in contact with them following up. It is different than releasing people and leaving them to their own devices.”*

—Springfield Housing Authority staff

## Current practice

There are a variety of programs in Hampden County that include housing with vouchers from an LHA in conjunction with wraparound case management or other social services. There are, however, waiting lists for these programs, indicating that there are not enough to meet the need.

### Reentry service provider partnerships with housing providers

<i>Name of program(s) that house people with a record</i>	<b>Community Housing - Earned Safe and Supportive (CHESSE)</b>
<i>Service provider</i>	All Inclusive Support Services (AISS), a program of the Hampden County Sheriff’s Department
<i>Housing provider</i>	Springfield Housing Authority (since 2012), Holyoke Housing Authority (since 2018)
<i>Population served</i>	Anyone in the region who has been incarcerated or has a CORI
<i>Program description</i>	People apply for the CHESSE program either directly with Sheriff’s Department staff or via community partners. If deemed eligible, the wait is 6 months to 2 years. Once in the program, there is a 3-phase process that starts with 1) close monitoring and case management by AISS staff in scattered site housing, moves through 2) decreased level of monitoring but ongoing support by AISS while the person accesses a project-based voucher, and if they continue to do well 3) they get a Section 8 mobile voucher.
<i>Number of units (if known)</i>	Step 1: 12 beds Step 2: 7 units Step 3: mobile vouchers
<i>Funding sources (if known)</i>	Hampden County Sheriff’s Department for AISS case management
<i>Cost (if known)</i>	Unknown

<i>Name of program(s) that house people with a record</i>	<b>Western Mass Reentry Center</b>
<i>Service provider</i>	Community Resources for Justice (CRJ)
<i>Housing provider</i>	Quality Inn in West Springfield
<i>Population served</i>	People reentering directly from prison or jail or under community supervision (probation or parole), i.e., still in DOC or HOC custody. The West Springfield site is for all genders, including people who identify as non-binary and gender-fluid.
<i>Program description</i>	People who are being released from prison or jail are referred to CRJ typically through probation or parole departments. CRJ works with people who have felonies, who are typically hard to house. They provide transitional housing, which can last about 6 months, but if a person is struggling to transition it can be extended. Because people in this program are still technically in custody, there is a higher level of oversight which can include Medication Assisted Treatment for substance use disorder and other community supervision. Staff help with immediate needs such as healthcare needs, and then make referrals for employment, therapeutic groups, substance use treatment, and whatever else the person needs to work toward independence, stability, and security.
<i>Number of units (if known)</i>	30 beds in Western Massachusetts
<i>Funding sources (if known)</i>	State of Massachusetts, through the Massachusetts Probation Service
<i>Cost (if known)</i>	The budget line item statewide has varied since 2018, but it was just over \$8 million statewide in Fiscal Year 2020 <sup>212</sup> and just over \$9.6 million in FY 2021. <sup>213</sup>

AISS is an example of a law enforcement reentry service provider partnering with housing authorities to provide housing paired with supportive services. CRJ is not a part of law enforcement but is closely associated. CRJ’s funding comes through the Probation Department, and in the case of Hampden County, the housing that CRJ provided for the first 1.5 years was actually in the Western Massachusetts Recovery Center facility, located in one of the Hampden County jail facilities.

In communities across the country, there are many reentry providers who are external to law enforcement that provide similar care and services, paired with housing. A New Way of Life in Los Angeles is one that has been in existence for many years, started by a formerly incarcerated woman. Brookdale House in Roxbury, MA has been partnering and providing housing and services for women and their families for many years, and while they are not a formal reentry organization, they have served that role well. Both examples have had good outcomes over many years.

Community-based organizations that help people as they are reentering from jail or prison pointed out the importance of encouraging housing providers to create the same sort of partnerships with organizations that provide reentry services in the community that are not affiliated with law enforcement. In other words, they encourage LHAs to provide vouchers or housing units in collaboration with, for example, organizations like Clean Slate, Catholic Charities, the Debra Hunt Center, and any other organizations that would be willing.

*“Not everyone coming back to the community [after incarceration] is happy about being tethered to the Sheriff’s Department [i.e., AISS].”*

*—Reentry service provider*

## Homelessness reduction provider partnerships with housing providers

<i>Name of program(s) that house people with a record</i>	<b>Hampden County Continuum of Care (CoC)*</b>
<i>Service provider</i>	Services are provided through the many community organizations and agencies that the Hampden County Continuum of Care (CoC) has partnerships with. Providers include Mental Health Associates, Catholic Charities, CHD, Springfield Partners for Community Action, and many others.
<i>Housing provider</i>	Springfield Housing Authority, Holyoke Housing Authority
<i>Population served</i>	People experiencing homelessness
<i>Program description</i>	Once a service provider (homeless shelter, Sheriff’s Department, substance use disorder provider, or any number of organizations) refers a person who is homeless into the Coordinated Entry system, the CoC identifies them as a potential for the SHA or HHA vouchers.
<i>Number of units (if known)</i>	SHA has provided 70 – 80 vouchers and HHA has provided Section 8 vouchers to chronically homeless individuals and families. Individuals have wraparound services at first, and if they are successful for one year then they can get a mobile voucher.
<i>Funding sources (if known)</i>	HUD funds the CoC
<i>Cost (if known)</i>	Unknown

*\*Multiple programs actually house people, but housing navigation is funded through and sometimes directly provided by the CoC. CoC targets people who are homeless or at risk of homelessness, of which a subset has a record.*

*“I really wish there was a way to get to people that people did their time, they deserve a second chance. As long as people are moving in the right direction...why don’t we give these folks a break? I’ve seen a lot of people once they get that break, their life turns around, it’s so inspirational.”*

*—Homelessness service provider*

<i>Name of program(s) that house people with a record</i>	<b>Worthington Street</b>
<i>Service provider</i>	Clinical & Support Options (CSO) operates Friends of the Homeless (FOH) program
<i>Housing provider</i>	CSO owns and operates the 110 units however they are provided through the Springfield Housing Authority (SHA).
<i>Population served</i>	People experiencing homelessness
<i>Program description</i>	FOH provides housing navigation support for people who want to live at FOH. People apply to the Springfield Housing Authority and staff at FOH help with navigating the application process. Once people have been in housing for one year, they are eligible to get a mobile voucher from SHA. FOH provides case management and refers to community-based organizations and agencies for services.
<i>Number of units (if known)</i>	110 low-income housing units at the FOH campus in Springfield; most are efficiencies but about 20 are apartments
<i>Funding sources (if known)</i>	Units are subsidized by either the Massachusetts Rental Voucher Program (MRVP, through DHCD) or federally funded vouchers (Section 8 funded through HUD). Vouchers are supplied through the Springfield Housing Authority.
<i>Cost (if known)</i>	Unknown



## Behavioral health provider partnerships with housing providers

<i>Name of program(s) that house people with a record</i>	<b>Serenity Program</b>
<i>Service provider</i>	Gándara
<i>Housing provider</i>	Chicopee Housing Authority (CHA)
<i>Population served</i>	Adult women reentering from the women’s jail in Chicopee, unaccompanied by children, who need a sober living situation
<i>Program description</i>	CHA provides the housing units and Gándara provide substance use disorder treatment, supportive services, and case management. CHA conducts the housing screening including a CORI, however, as staff at Gándara state, “Women who might have been turned down for housing elsewhere may get in because we provide the support, the backup documentation of the women’s participation in substance use disorder services. Probably more than 50% of the residents have a CORI.” Women stay anywhere from 6 months to 3 years.
<i>Number of units (if known)</i>	10 efficiency units. In the last fiscal year, the Serenity Program served 15 women.
<i>Funding sources (if known)</i>	Units supplied by the CHA. Funding for the Serenity Program staff is the Massachusetts Bureau of Substance Addiction Services (BSAS).
<i>Cost (if known)</i>	In the last fiscal year, the Gándara budget for both the Serenity Program and Community Housing Program (below) was ~ \$244,000.

*“We get women directly from the Chicopee Women’s Jail. We have a great working relationship with Gándara’s counselors. In a year or two when women can get themselves back into the work world, be productive in terms of income, and have gone through counseling, they apply while they are in Serenity House for public housing, and eventually they can get permanent housing.”<sup>1</sup>*

— Chicopee Housing Authority

<i>Name of program(s) that house people with a record</i>	<b>Community Housing Program (CHP)</b>
<i>Service provider</i>	Gándara
<i>Housing provider</i>	Way Finders
<i>Population served</i>	Families where the head of household is over 18, has a substance use disorder, and has at least one dependent child under the age of 18.
<i>Program description</i>	Gándara provides case management and substance use disorder treatment support. People can stay until their youngest child turns 18, so this can be a longer-term option. While the primary population that accesses this housing may not necessarily have a CORI, some of the population does.
<i>Number of units (if known)</i>	25 scattered site family housing programs (21 families in Holyoke and 4 in Leeds), with services attached. In the last fiscal year, CHP served 80 family members.
<i>Funding sources (if known)</i>	Massachusetts Rental Voucher Program (MRVP, through DHCD). Funding for the CHP staff is the Massachusetts Bureau of Substance Addiction Services (BSAS).
<i>Cost (if known)</i>	In the last fiscal year, the Gándara budget for both the Serenity Program and Community Housing Program was ~ \$244,000.

Staff from Gándara offered an example from the Community Housing Program about how having service providers involved can help keep people in housing: “I had one landlord, he wanted people out due to some behaviors – everyday stuff, kids were restless due to COVID - and the landlord had already contacted a lawyer. We did a lot of case work, made a really good plan about how the family could make amends, and they are now still there. The whole situation could have blown up and led to a family being homeless but having the service provider (us) meant there was a buffer.”<sup>214</sup>

<i>Name of program(s) that house people with a record</i>	<b>Miracle House</b>
<i>Service provider</i>	Gándara
<i>Housing provider</i>	Springfield Housing Authority (SHA)
<i>Population served</i>	Spanish-speaking men in recovery. Staff state that men are generally age 50 or older, and approximately 80% have a CORI.
<i>Program description</i>	Once people move into Miracle House, the House Manager and case workers meet regularly with residents for case management, identifying goals, and support in meeting those goals. People tend to stay for about 2 years. Evaluations show that 80% have planned exits with referral to the next appropriate housing/program setting. This extraordinarily high completion rate among opioid users reflects the efficacy of culturally nuanced programming. Since the voucher is project-based, once men leave, they must find other housing (it is not a mobile voucher).
<i>Number of units (if known)</i>	8 units of project-based vouchers from SHA. Miracle House has served 20 men in the last 5 years.
<i>Funding sources (if known)</i>	Vouchers are provided through SHA.
<i>Cost (if known)</i>	In the last fiscal year, the Gándara budget for Miracle House was ~\$95,000.

*“It’s a 3-way partnership – the tenant, service provider, and housing provider. It’s not ‘us against them’. Strong interventions and programs working collaboratively with the housing authority.”*

*—Gándara Mental Health Center staff*

<i>Name of program(s) that house people with a record</i>	<b>Dept. of Mental Health Rental Assistance program</b>
<i>Service provider</i>	Massachusetts Department of Mental Health (DMH) subcontracts out to local mental health providers. In Hampden County, it is Mental Health Association (MHA).
<i>Housing provider</i>	
<i>Population served</i>	Person is required to be a DMH client
<i>Program description</i>	With these beds, the service provider signs the lease, i.e., DMH is the tenant and the client is basically a subleasee. DMH guarantees the rent, the local mental health provider provides case management and if needed mental health services, and they know the clients and will get involved if there are any problems. DMH staff state that they do not stop landlords if they want to run a CORI, but because DMH is the responsible party there is less need.
<i>Number of units (if known)</i>	~ 70 – 75 DMH beds in Hampden County. Western Massachusetts has about 300 beds in 4 counties.
<i>Funding sources (if known)</i>	DMH line item in the state budget.
<i>Cost (if known)</i>	Statewide - \$17 million for 1600 DMH-sponsored units.

Except partnerships with reentry service providers, most of the partnerships serve another population that also happens to include many people who have an incarceration and criminal record, such as people with mental illnesses and people experiencing homelessness. One innovative model in Illinois provides housing to people directly as they are leaving prison.

### **CASE STUDY: LHAs partnering with the DOC and reentry service providers is an emerging practice**

The Winnebago and Boone County Housing Authority in Illinois has obtained set-aside housing units for a creative pilot project that sets people up with public housing when they are still incarcerated, enabling them to participate in pre-release courses and be released early directly to a home in public housing. The original program is called the Graduated Reintegration Program (GRP), with 10 set-aside units provided through HUD. Several years later, the Illinois Housing Department Authority (IHDA) has provided 30 Special Demonstration Reentry Vouchers in Winnebago and Boone County, and 70 more vouchers elsewhere in the state.

In the GRP, there are several phases. In the pre-release phase participants are housed together and receive pre-release services in their respective correctional institutions. Services include anger management, financial literacy, critical thinking, etc. In the post-release phase participants are released approximately 3-6 months prior to parole eligibility on electronic monitoring into public housing provided as part of the GRP and assigned a Treatment Alternatives for Safe Communities (TASC) Case Manager. Participants successfully completing the program can become regular housing tenant, releasing the GRP set-aside unit or voucher to assist the next participant. The Special Demonstration Reentry Vouchers is built upon the GRP and follows that model.

The Executive Director of the Winnebago and Boone County Housing Authority accessed expertise and support from the Vera Institute of Justice and the New York City Maron Institute of Urban Management in providing technical assistance services in setting up and evaluating the program.

*“Criminal records impact people of color, people who are poor, victims of domestic violence. The criminal record impacts so many areas, but it really impacts housing. [People coming back from prison] came from this community. This is a Fair Housing problem.”*

*—Winnebago County Housing Authority staff*

## Use only CORIs that fall under exclusions mandated by HUD in housing admissions decisions once eligibility is determined

### High level findings

- HUD Regulations give LHAs broad discretion over whom they admit and deny public housing.
- LHAs consider criminal legal system involvement beyond the mandatory HUD exclusion criteria.
- LHAs go beyond looking at convictions and consider arrests in housing decisions.
- LHAs state that they face Housing Court challenges evicting someone who has violated the terms of their lease.
- Private owners have discretion on whom they rent to, but federal and local fair housing protections significantly limit this discretion.

### *What this policy entails*

One of the policies we explored through this HIA was limiting tenant selection criteria to HUD's mandatory exclusions after determining eligibility based on other criteria. HUD's mandatory exclusions refers to two types of criminal convictions that result in automatic and permanent denial: (1) manufacturing or producing methamphetamine on premises of federally assisted housing, and (2) lifetime registration requirement under a state sex offender registration program. HUD identifies that LHAs may also consider if a person has been evicted from public housing for drug related criminal activity for three years after the date of eviction and if they show a pattern of illegal drug use, but the LHA is not mandated to do so.

HUD, the federal agency that oversees public and other subsidized housing for low-income individuals and families, provides funding and oversight to local public housing authorities.<sup>215</sup> Federal law sets some basic eligibility requirements which all LHAs are required to follow (24 CFR § 960.202 – 205), but otherwise, LHAs have broad discretion in establishing tenant selection criteria. One significant limitation is that this discretion is subject to the federal Fair Housing Act, which prohibits discrimination based on race, religion, national origin, sex, ability, or family status.

### *How this policy would help*

Limiting tenant selection criteria to the two types of convictions for which HUD requires denial would mean there would be fewer exclusions, so more people with a record could access housing. As stated earlier in this report, research indicates that tenants with a record can be as successful as those without,<sup>216</sup> and the access to stable housing this policy would allow is associated with lower rates of recidivism and crime.

Reducing the number of "red flags" in applications would reduce the burden on applicants (and LHAs), as fewer people would have to go through the process of providing mitigating circumstances to prove why they would be a good tenant despite their record.<sup>217</sup>

Adopting this policy would in effect negate or decrease the need for several of the other policies and practices under consideration in this HIA. Limiting tenant selection criteria to only the two mandatory HUD crimes would also enable more people to come home to live with their loved ones.

Research shows that LHAs deny people housing for many types of crimes beyond the mandatory two types of convictions.<sup>218</sup> <sup>219</sup> Because every LHA denies people for more than the mandatory crimes, there is no research that we can draw upon about the impacts of this type of policy change. Additionally, because LHAs deny for many crimes that are beyond the two mandatory crimes, if LHAs changed policy to only consider the two crimes that HUD mandates denials for, fewer people would be denied.

## *Current Practice*

### **HUD Regulations give LHAs broad discretion over whom they admit and deny public housing.**

HUD requires all LHAs to establish and adopt written policies for the admission of tenants.<sup>220</sup> For public housing, a description of selection criteria and screening procedures can be found in an LHA's ACOP.<sup>221</sup> For the Housing Choice Voucher Program, written admissions policies can be found in LHA's Administrative Plans. Although HUD sets some basic eligibility requirements, LHAs have significant discretion and are ultimately responsible for screening suitability for tenancy.

For an individual or family to receive an offer of housing, they must meet both the eligibility criteria (e.g. household income) AND the applicant selection criteria (as detailed in LHA's ACOPs and Administrative Plans).

The HUD regulations state that LHAs may consider all relevant information when screening an applicant for public housing, including:

- An applicant's past performance in meeting financial obligations, especially rent;
- A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and
- A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants.<sup>222</sup>

The HUD regulations empower LHAs to deny "applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment."<sup>223</sup> This gives LHAs broad discretion over whom they admit and deny into federally funded public housing and, as the Shriver Center on Poverty Law concluded in a 2015 report on this topic, discretion often leads to denial.<sup>224</sup>

It is important to note that the Fair Housing Act is a significant limitation on LHA discretion. The Fair Housing Act creates liability for housing practices with an unjustified discriminatory effect, even if those practices were not motivated by discriminatory intent. In 2016, HUD released guidance stating that because "African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population...criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers."<sup>225</sup> Thus, the Fair Housing Act does provide boundaries on LHA discretion on housing admission decisions.

### **LHAs consider criminal legal system involvement beyond the mandatory HUD exclusion criteria.**

All the LHAs we examined consider criminal legal system involvement beyond the mandatory HUD exclusion criteria. Each has their own rules for what types of convictions disqualify applicants and for what length of time. Some are very specific while others are broad, leaving lots of room for discretion. None of the LHAs had different criteria regarding criminal background for people over the age of 50.

### *Chicopee Housing Authority*

- Chicopee Housing Authority does not provide a comprehensive list of the types of offenses that would result in denial.
- They do list several reasons an applicant might be denied, such as applicants with a conviction of drug trafficking are denied admission for ten years, and applicants may be denied for five years for an arrest or conviction record that indicates that the applicant may be a threat and/or negative influence on other residents.
- Lookback period – Chicopee Housing Authority states that the five-year period referenced above shall begin on the date of the last reported act, completion of sentence and/or probation period.

### *Holyoke Housing Authority*

- Holyoke Housing Authority’s ACOP and Administrative Plan lists more than 30 different types of offenses resulting in denial. For each type of offense, there is a specific lookback period, which is the period of time that the Holyoke Housing Authority will consider the offense(s) part of its decision-making.
- Sections for types of offenses are: Crimes Against Persons, Crimes Against Property, and Crimes Against Society.
- The lookback period varies depending upon whether it is a felony or other type of conviction.<sup>226</sup>

### *Springfield Housing Authority*

- Springfield Housing Authority’s ACOP states that an applicant can be denied for “a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that affect the health, safety, or right to peaceful enjoyment of the premises by other residents”.
- Springfield Housing Authority does not list or provide examples of the types of offenses that would lead to denial.<sup>227</sup> In their Administrative Plan, Springfield Housing Authority offers additional detail, stating that they may, but are not required to, deny housing assistance if a person has evidence of drug-related criminal activity; violent criminal activity; and criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises.
- Lookback period – Springfield Housing Authority does not specifically define the lookback period and only refers to “recent history” generally, although in the Administrative Plan they state that evidence may include a conviction or arrest of drug-related or violent criminal activity within the past 5 years.<sup>228</sup>

### *Westfield Housing Authority*

- Westfield Housing Authority also considers criminal activity beyond HUD’s mandatory exclusion categories, noting in an interview that drug-related crime and a conviction for murder could potentially result in declination (though they will consider mitigating circumstances).

For Housing Choice Voucher Programs, the Chicopee Housing Authority and the Springfield Housing Authority note that owners are responsible for screening tenants and may consider factors such as “criminal activity that is a threat to the health, safety or property of others”. LHAs determine eligibility based on income and family size and will obtain criminal history reports. Chicopee Housing Authority notes in their Administrative Plan that they may offer the owner (upon written request) other information in their possession about the family, including drug trafficking by family members.<sup>229</sup> Springfield Housing Authority states in their Administrative plan that they will perform background checks as part of their eligibility screening, but they will *not* provide criminal histories to the owner.<sup>230</sup>

## **LHAs go beyond looking at convictions and consider arrests in housing decisions.**

Each of the LHAs we examined goes beyond looking at *convictions* and considers *arrests* when making housing decisions, though not exclusively. All the LHAs work in close collaboration with their local police departments and access arrest data from them. In November 2015, HUD released guidance for LHAs and Owners of Federally Assisted Housing about excluding the use of arrest records in housing decisions, noting that they are often inaccurate or incomplete. The guidance states, “the fact that an individual was arrested is not evidence that he or she has engaged in criminal activity. Accordingly, the fact that there has been an arrest for a crime is not a basis for the requisite determination that the relevant individual engaged in criminal activity warranting denial of admission, termination of assistance, or eviction.”<sup>231</sup> This aligns with the 2016 fair housing guidance from HUD, and advises all housing providers (not just LHAs) from engaging in arrest record discrimination.<sup>232</sup> Neither document mentions any differential criteria regarding people over the age of 50 related to arrests.

With regard to screening tenants for public housing admission, the ACOPs of Chicopee, Holyoke, and Springfield Housing Authorities state that they consider arrests but do not disqualify an applicant based solely on an arrest but rather consider the “conduct underlying an arrest”. HUD’s guidance supports this practice as long as these housing authorities have evidence of the underlying conduct separate from the fact of the arrest. HUD has stated: “Although a record of arrest(s) may not be used to deny a housing opportunity, [housing authorities] and owners may make an adverse housing decision based on the *conduct underlying an arrest* if the conduct indicates that the individual is not suitable for tenancy and the [housing authority] or owner has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions.”<sup>233</sup> Without separate evidence, the housing authority cannot factor a person’s arrest record in its decision-making on whether to deny or admit.

Additionally, Holyoke Housing Authority’s ACOP states that if they identify a pending criminal investigation, they will suspend the eligibility determination until the criminal investigation is complete.

With the Section 8 Housing Choice Voucher Program, the LHAs’ written policies that we were able to access state that they consider arrests. They use the same explanation, stating that it is not the arrest itself that warrants denial but the underlying conduct it represents. Although they are not used exclusively to decide whether or not to admit an applicant, in essence, arrest records, not just convictions, can pose a barrier to accessing affordable housing.

## **LHAs state that they face Housing Court challenges evicting someone who has violated the terms of their lease.**

When asked if there were ways of improving the application process to ease the burden for people with a CORI, one LHA stated:

*“It’s more about the relationship with the court system. We allow [people] to come into public housing knowing you have a CORI. So that’s your second chance right there. If you blow the chance...at that point, that’s where the housing court needs to support us.”*

—LHA staff

*“It has totally affected me. Because of my CORI, I have been denied repeatedly from different housing authorities and Way Finders because of the CORI. Even things I hadn’t been convicted of they were holding against me – they held my arrest record along with my conviction record against me. And I haven’t been incarcerated or in trouble for 11 years.”*

—HIA Survey Participant

LHAs have stated that they are willing to consider some of the policies and practices suggested in this HIA, however the difficulty in Housing Court of evicting someone if they have violated the terms of their lease make them wary of relaxing CORI policies. LHAs state that their experience is that at Housing Court, people get “many get of out jail cards”, which result in continued negative behaviors, which impacts other residents.

LHAs have suggested “guaranteed evictions”, “a specific kind of rule that goes with the application for people with a CORI that if you violate a policy at public housing then Public Housing would have more support at court”, “lease language to include specific agreements between the landlord and tenant that would ensure that if said tenant violated any of the special lease agreement for folks with CORI’s, the lease is terminated”.

However, anyone accepted into housing of any kind already signs a lease that states that tenants must not “use the unit for unlawful purposes: engage in or permit unlawful activities in the unit, in the common areas, or on the project grounds”; and that noncompliance with the lease can include any violations of the lease that “disrupt the livability of the project; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and facilities.”<sup>234</sup> A concern is that requiring people with CORIs to sign special clauses in their lease would further structural racism, given that the criminal court system has a disproportionate impact on people of color, which then has a disproportionate impact of people of color who apply for housing, as laid out in HUD’s 2016 guidance.<sup>235</sup> There are also concerns with the potential disproportionate impact that requiring a different lease policy for people with CORIs might have on people with disabilities such as substance use disorder, who often have CORIs due to their health behaviors resulting in arrest and conviction.

Housing Court has a less stringent burden of proof requirement. In criminal court the prosecution must prove beyond a reasonable doubt that the person committed the offense charged. In housing court the plaintiff must prove their case by a preponderance of evidence, meaning that it is more likely than not that the plaintiff’s version of the facts is correct.<sup>236</sup> Community Legal Aid staff said, “It’s not a high burden but there are evidentiary rules,”<sup>237</sup> meaning that the plaintiff (in this case the LHA) must have evidence. Community Legal Aid also noted that there are times when all parties will come to a voluntary agreement to avoid an eviction and not go to trial, in the effort to avoid homelessness.

Clearly, however, the practices of Housing Court need consideration and study due to the impact that these practices have on housing providers’ willingness to consider altering their practices. As one LHA stated:

*“The whole system, including the court process, needs to be looked at. We wouldn’t be opposed [to some of these policy changes] if we knew that once we admitted someone into property and they committed crime [that we could] evict...we have to look out for the health and safety of [all residents].”*

### **Private owners have discretion on whom they rent to, but federal and local fair housing protections significantly limit this discretion.**

Although the LHA or a statewide organization that maintains voucher databases<sup>iii</sup> may maintain a waitlist and do some initial eligibility screening, private owners are ultimately responsible for screening applicants for vouchers. These owners are not subject to the same HUD regulations described above that govern vouchers and HUD-assisted housing generally. They are, however, subject to the federal Fair Housing Act and its prohibitions against discrimination. HUD’s 2016 fair housing guidance advised housing providers, including those participating in the voucher program, that their use of criminal records screening could give rise to a violation of the Fair Housing Act given the racial disparities that exist throughout the criminal legal system.

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<sup>iii</sup> GoSection8 or MassNAHRO, the Massachusetts chapter of the National Association of Housing and Redevelopment Officials



Some communities have codified the guidance and added protections that limit how private landlords may make decisions based on criminal records, such as Seattle, Newark, and Cook County (Illinois).<sup>238 239</sup>

While beyond the scope of this HIA, multiple key informants stated that the ban on housing people on the sex offender registry, combined with other laws limiting where a person with a sex offense conviction can live, makes it nearly impossible for people to find any housing whatsoever. Interviewees also mentioned serious problems with the Sex Offender Registry Information (SORI) system.

## Allow applicants to submit evidence of mitigating circumstances before denial without requirement to disclose past convictions

### *What this policy entails*

#### High level findings

- **No LHAs consider age (over age 50) as a mitigating factor.**
- **Some LHAs consider mitigating circumstances before issuing a denial.**
- **Some LHAs are very willing to consider mitigating circumstances.**
- **Once applicants are able to present mitigating circumstances, there are varying rates of overturning the denial decision.**
- **Although applicants can request hearings, there are many barriers to doing so.**
- **Having an advocate or navigator to help with mitigating circumstances is helpful in success with overturning denials due to a criminal record.**
- **People with records face additional barriers accessing affordable housing because of other collateral consequences of conviction.**

Another policy examined is the use of mitigating circumstances before denial for a more holistic screening review. Examples of documentation include: participation in rehabilitative programs, counseling records, probation and parole records, employment documentation, school and technical training records, documents evidencing work with social and nonprofit organizations, letters from a criminal defense attorney, community volunteer work, the effects that a denial may have on other members of the family who were not involved in the action, the seriousness of the case, and the time elapsed since it occurred.<sup>240 241</sup>

### *How this policy would help*

By considering mitigating factors, affordable housing providers are better able to determine the extent to which a person will be able to fulfill their responsibilities as a tenant by looking at applicants more holistically. The information found in a criminal background check does not account for present circumstances that may decrease an applicant's likelihood of committing a crime. Applying "a one-size-fits-all policy that is not narrowly tailored and fails to consider mitigating circumstances may violate the [Fair Housing Act of 1968] if it has a disparate impact on a protected class of people, including racial minorities".<sup>242</sup>

The timing of when mitigating circumstances would be considered is important. There was general consensus among housing providers, housing advocates, and legal advocates that we interviewed that requesting mitigating circumstances during the *initial* application period (often called pre-application by housing providers) would create a burdensome amount of paperwork and take a lot of time for LHAs. It could also potentially harm applicants who might provide details about a conviction that would not even have been considered by the time they reached the top of the waitlist.

One advocate noted that if you set up a parallel process for applicants who have a criminal record, “it would put a whole new burden on people who are already dealing with a lot of burdens. You need to consider when a policy creates more work for the impacted people and when does it shift the work to the housing providers.”<sup>243</sup>

A better time for housing providers to request documentation of mitigating circumstances and hold conferences or meetings is before a formal denial is issued, as part of their standard application process, so the burden doesn’t sit with the applicant to request a hearing.

### **CASE STUDY: Conferences as part of standard application process may result in more people with a record housed**

The Housing Authority of New Orleans (HANO) is considered a model for their revised criminal background screening policy, in which they review each person’s case on an individual basis. Adopted in 2016, HANO has a two-step process in which they use a grid, listing specific crimes and lookback periods, to assess an applicant’s history and determine whether it warrants further review. If further review is required, the applicant can submit supporting documentation and attend a three-person panel to make the case for their admission.<sup>244</sup> The panel consists of two HANO officials and a resident representative. Additionally, HANO and managers are encouraged to designate one or more staff members as program coordinators to guide applicants throughout the process, which could include explaining the process, presenting options to the applicant, gathering documents for Further Review.<sup>245</sup>

HANO’s Criminal Background Screening Policy states that the applicant bears no burden of proof, but they are invited to submit relevant materials, such as letters or comments from probation/parole officer; letter or comments from a case worker/counselor/therapist; letter from family members or others who know the applicant well; proof of employment; certificate of completion of training programs, and more. The procedures outline the factors the Panel will take into consideration including criminal history (e.g. time since most recent conviction, number of convictions); rehabilitation (e.g. treatment participation); community ties/support (e.g. involvement in community groups); employment history. The panel can consider any other factors they deem relevant. If the panel decides to deny admission, the applicant has seven days to seek an appeal.<sup>246</sup>

Because this policy change about five years ago, evidence about its impact is limited, but it is promising. From August 2016 to March 2019, HANO received 52 panel review requests, and of those, only one person was denied.<sup>247</sup>

## Current Practice

Federal law requires LHAs to consider certain types of mitigating circumstances in their tenant screening. The regulations state, “In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant’s conduct.”<sup>248</sup> LHAs are not required but may also give consideration to factors which might indicate a “reasonable probability of favorable future conduct”, such as evidence of rehabilitation or evidence of the applicant’s willingness to participate in social service or other appropriate counseling service programs. When determining whether to deny admission for illegal drug use or alcohol abuse (or a pattern of such), the LHA may consider whether the applicant is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.<sup>249</sup>

*“There are a lot of potential mitigations around drug or violent crimes, and we wanted to be very understanding – for example, with the opioid crisis. You can do a lot of recovery in three years.”*

—DHCD staff

### No LHAs consider age (over age 50) as a mitigating factor.

Criminologists universally agree that a person’s average likelihood of committing any type of crime declines sharply with advancing age. By the time a person turns 50, his or her likelihood of committing another crime drops precipitously.<sup>250 251 252</sup> Despite this, no LHA considers age of applicant as a mitigating factor.

*“Housing providers should have a flat policy that older age itself is a mitigating factor. If a person is over age 50 and hasn’t recidivated in 7 years they are very unlikely to do so.”*

—Ben Forman, Mass Inc

CORI law allows people to expunge felonies after 7 years without breaking the law. The time limit was decided in a political context and did not consider older adults’ risk of recidivism. In 2017, a United States Sentencing Commission released a report on the effects of aging on recidivism for people released from federal prisons. They found that the median time to rearrest (for those who are arrested again)— a much wider measure of recidivism than reincarceration— for people age 50 to 59 is 25 months, and for those 60 and over is 28 months.<sup>253</sup> A more

evidence-based period of time for older adults might be two years, given what the U.S. Sentencing Commission found. However, those findings are based on arrest not conviction or incarceration, which may not be related to tenancy. Advocates suggest an automatic mitigation for all older adults.

### Some LHAs consider mitigating circumstances before issuing a denial.

Because of the limited stock of affordable housing and thus long waitlists, LHAs wait to conduct any criminal background screenings until the applicant approaches the top of the waitlist; a wait that can range from about 2 – 5 years for public housing and up to 10 years for Section 8 vouchers.<sup>254 255 256 257</sup> The application process has two phases. First, LHAs determine applicant’s eligibility (“pre-application”) and they are put on a waiting list. When an applicant rises to the top of the list, there is a lengthier application and screening process, which includes running a CORI, a credit check, a check on prior evictions, and other checks.

Prior to denying an applicant based on information related to criminal record or lifetime sex offender registration, both Holyoke Housing Authority and Springfield Housing Authority notify the applicant in writing of the *proposed denial* and provide access to their CORI. The applicant has ten days to dispute the accuracy or relevance of the information (i.e. provide mitigating circumstance). If undisputed, the LHA will issue an official denial letter, after which applicants have another opportunity to refute the information by requesting an informal hearing.<sup>258 259 260 261</sup>

*“If we run the CORI and it’s bad, we will tell them they have a bad CORI, and they can explain why they have it. We can consider them. They can send a letter from social service agencies, parole officer, counselor...”*

—Westfield Housing Authority staff

Chicopee Housing Authority and Westfield Housing Authority also consider mitigating circumstances. Chicopee Housing Authority’s ACOP states that if they receive unfavorable information with respect to an applicant, “consideration shall be given to the time, nature, and extent of the applicant’s conduct or factors which might indicate a reasonable probability of favorable future conduct.” Chicopee Housing Authority’s ACOP offers examples including evidence of rehabilitation and evidence of the applicant family’s participation or willingness to participate in social service or other appropriate counseling. All

applicants will be notified in writing of “initial ineligibility” and the basis for that determination. Ineligible applicants have the right to an information hearing. In our interview with Chicopee Housing Authority, they stated, “People can present mitigating circumstance when they get denied”, and if they don’t like the Chicopee Housing Authority’s decision, they can also go to DHCD for a hearing.<sup>262</sup>

### **Some LHAs are very willing to consider mitigating circumstances.**

In interviews, the LHAs in Hampden County as well as staff at DHCD we spoke with were clear that they consider each person who requests a hearing individually and they encourage people to apply even if they have a criminal background.

*“I tell everyone – if you get a denial, you need to request a meeting...It isn’t flat out denial, you have the opportunity to appeal.”*

—Springfield Housing Authority staff

*“It’s helpful when applicants who are applying who have a CORI or something that might not make them the perfect applicant – that they actually apply and not assume they will be automatically rejected.”*

—DHCD staff

### **Once applicants are able to present mitigating circumstances, there are varying rates of overturning the denial decision.**

In the few LHAs where we were able to find data, rates of overturning the decision varied widely, speaking to the fact that individuals have different circumstances and chances and that LHAs approach these decisions differently. From 15% to 65% of decisions are overturned in the LHAs where we found data (Seattle, WA; Oakland, CA; Winnebago County, IL).<sup>263 264 265 266</sup> In our survey of people over age 50 who were denied housing due to their CORI in Hampden County, 10 of 31 (32%) who were denied chose to appeal the denial. Of those 10 who appealed, 3 had the denial overturned (30%).

### **Although applicants can request hearings, there are many barriers to doing so.**

Although applicants have multiple opportunities to request a hearing (at proposed denial and at denial) there are several barriers to doing so.

One barrier is *applying for housing in the first place*. We interviewed 38 individuals from Hampden County with previous criminal legal system involvement who had been denied housing due to their CORI. Half of the respondents said they have chosen not to apply or withdrew an application to public or affordable housing because they thought they would not be eligible.

We heard time and time again throughout the HIA process that *it is a feat to remain active on a waiting list* for years. Applicants must ensure that their contact information is up to date and respond to periodic written inquiries to show they are still interested. During an interview, a Community Legal Aid staff attorney noted, “The waiting list is exceptionally long, so if you make it to the end of a 10 year waitlist, you’ve already won an endurance challenge of some kind, and it reflects some minimal level of stability in life.”<sup>267</sup>

As previously noted, if an applicant makes it to the top of the list, is screened, and the LHA determines there is an issue with their CORI, they will send the applicant a letter saying they are proposing denial, giving them 10 days to respond and request a hearing. Ten days is not a very long time when you consider an applicant may be on a waitlist for 2-3 years, may be homeless or transient and so may not receive the letter immediately, and may face other barriers to communication with the LHA.

*“For years – for over a 10 year period – I have been on a waiting list.”*

—HIA Survey Participant

*“It sounds intimidating - a “hearing” – you have to send a letter, get evidence, etc. For someone who might be discouraged to begin with, it’s a lot. For someone who is experiencing mental health issues, it’s overwhelming. Many things keep people from doing formal hearings.”*

—LHA staff

*“She told me they was going to deny me anyway, so I just didn’t go through the process. Because to me, at that time, it didn’t make sense.”*

—HIA Survey Participant

*“I’m just lost out here in the system because of my CORI, my background. I don’t have anybody to help me do anything, really.”*

—HIA Survey Participant

*“They ask for an exuberant amount of information, which is tedious at best. In regards to trying to get housing assistance applications, or asking for information that as a person struggling or in the midst of addiction, it’s hard to obtain. So I just gave up.”*

—HIA Survey Participant

CORIs are supposed to be the final step in the application screening process, after an applicant is otherwise deemed eligible.<sup>268</sup> Even so, several of the individuals we interviewed were denied prior to reaching the top of the waiting list — 42% were told not to apply in the first place; 16% were denied in the initial application phase; 29% were denied while on the waiting list; and 10% were denied after being called because they were at the top of the waiting list.

As Community Legal Aid staff noted in their interview, they only see a small portion of denials. It is unclear how many people do not appeal because they don’t think it is worth it; do not appeal because they miss the timeframe in which it is allowed; or represent themselves in an appeal. “Because we are attorneys and we do this work, we are able to put together pretty neatly packaged mitigating information, and to help prep people to answer really hard questions and having to talk about things that are really upsetting or really personal. It is hard if you are not going in there with someone else.” Less than half of respondents in our survey (45%) sought legal support due to a housing application denial, eviction, or discrimination.

It is not just the cumbersome process of getting a hearing in the first place, but *the experience of the hearing itself that may be a barrier to some*. Community Legal Aid staff noted, “The process of providing mitigating information is asking housing providers to see people as people. And that is a really hard truth of this work. This is the position we are in, to ask people to see you as more than probably one of the worst moments of your entire life, and you know, we all have things in life we are not proud of. For people with criminal records, they don’t get to keep it quiet. It’s out for everyone to see and they are put in position where they have to talk about it over and over again.”

### **Having an advocate or navigator to help with mitigating circumstances is helpful in success with overturning denials due to a criminal record.**

Nearly all the people we interviewed for this HIA agreed that requesting an appeal and assembling materials as evidence of mitigating circumstances can be intimidating and overwhelming. Having the support of an advocate can make all the difference. In an interview with DHCD, a staff person noted, “Unless someone has an advocate or someone to help them walk through an appeal or file a grievance and all the documentation around mitigation, it can be really hard for folks who would otherwise be eligible, because sometimes it takes a little extra effort.” This sentiment was echoed by Marilyn O’Sullivan of the MA HUD Office. In reflecting on her time at the Boston Housing Authority, she said, “One of the greatest things we learned, if someone wasn’t working with an advocate, they were less likely to understand what to submit for mitigation documents. Marrying a person with those supportive services is key. To gather that mitigating info and submit it.”

*It’s helpful when people who are applying who have a CORI ... have someone help them with their appeal, and to have that mitigation right there. Sometimes unless someone has an advocate or someone to help them walk through an appeal or file a grievance and all the documentation around mitigation, it can be really hard for folks who would otherwise be eligible, because it takes extra effort.”*

—DHCD staff

However, LHAs should also be creating systems that allow people access in the first place, not relying on whether individuals are able to access an advocate. In other words, “the ideal is not for people to need an advocate to walk them through the system but rather a system that people can walk through themselves.”<sup>269</sup>

*“They do credit checks now, and my credit sucks due to me being incarcerated and not being able to build my credit. And also because of my CORI, because of my incarceration charges. So that affected my housing because they won’t approve me.”*

—HIA Survey Participant

### **People with records face additional barriers accessing affordable housing because of other collateral consequences of conviction.**

Other factors impact housing eligibility among those who have a criminal record, including gaps in employment history, challenges finding employment, poor or no credit, and unstable housing history. Similar to policies that have made it much more difficult for people with a criminal history to access housing, there is a history of laws that bar people with criminal histories from many types of jobs or professional licenses, adding to the difficulty of reentry.<sup>270</sup> Additionally, unstable housing makes it difficult to even stay on waiting list, as it requires responding to periodic mailings. Because LHAs do

not systematically collect data on denials and the reasons for denials, it is difficult to know which barrier leads to the most denials. An analysis of data of hearings from the Seattle Housing Authority found that from 2007 – 2011, there were 145 requests for appeals for all reasons. While many had more than one reason for original denial, 61 of those included the criminal background as one of the reasons. Only 17 were denied solely because of their criminal record. The most commonly cited reason was “insufficient rental history, with criminal history the second most common.”<sup>271</sup> There was no age-specific data in this analysis.

Several survey respondents noted a lack of income as another barrier to accessing housing. Addressing the collateral consequences of incarceration with regard to accessing housing requires revisiting more than just screening policies related to criminal backgrounds.

## Create explicit screening criteria for denial that is publicly available

### High level findings

- **Criminal record criteria for denial are often broad and open to individual interpretation.**
- **Screening criteria can be challenging to access.**
- **Some people with records don't bother applying because they assume they will be denied.**

### *What this policy entails*

Another policy/practice explored through this HIA was for affordable housing providers to create explicit criteria for denial that is available publicly.

### *How this policy would help*

General or overbroad categories of criminal convictions can potentially discriminate against applicants whose past criminal legal involvement shows little to no demonstrable risk toward the safety of others or one's ability to meet their obligations as a tenant. If denial criteria are more explicit, applicants will have more knowledge going into the process, which might result in more applications submitted, more appeals requested, and more access to housing. Additionally, accessible data means more accountability.

### *Current Practice*

Any housing provider that excludes applicants due to a prior criminal history, or CORI check, must "prove that its policy is necessary to serve a substantial, legitimate, and nondiscriminatory interest".<sup>272</sup> Protocols for denial should be standardized and should "meet strict criteria that directly relates to public safety", for example, why a particular applicant may pose a risk to the safety of other tenants.<sup>273</sup> Even then, criteria should allow space for considering mitigating circumstances (see previous section).

### **Criminal record criteria for denial are often broad and open to individual interpretation.**

The LHAs we assessed in this HIA offer varying degrees of specificity in their denial criteria (see section above about "limiting tenant selection criteria to mandatory HUD guidelines once eligibility is determined"). Holyoke Housing Authority provides detailed list of convictions and associated lookback period that will result in denial. The language employed by Springfield Housing Authority and Chicopee Housing Authority is broader.

In the report, "When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing", the Shriver Center on Poverty Law critiques overbroad categories of criminal activity<sup>274</sup> like that found in Chicopee Housing Authority's ACOP and Administrative Plan, which states the applicants may be denied for "An arrest or conviction record that indicates that the applicant may be a threat and/or negative influence on other residents."<sup>275 276</sup> The Shriver Center notes that "This highly subjective standard departs significantly from the federal categories and covers all types of criminal activity, even if the activity is minor or irrelevant to a person's ability to live peacefully in federally subsidized



housing. Because of this over breadth, an applicant would be hard-pressed to hold a housing provider accountable for abusive application of this criteria.”<sup>277</sup>

When asked about how to potentially make the application process more transparent and easier for people with a criminal history, DHCD stated:

*“There needs to be some public education that for the application, it’s not a ‘one strike and you are out’. That there are no hard and fast rules, but that the criminal behavior has to be repeated behavior, or dangerous, or something that is a risk to other tenants. If you could get that word out a little more, then perhaps it would be less scary.”*

—DHCD staff

However, as a criminal legal system advocate noted, “even if LHAs and other housing providers say they will take people with a criminal history, there is significant distrust because there has been a history of denying people for a long time. Public education is necessary, but so is restoring trust with would-be residents.”<sup>278</sup>

### **Screening criteria can be challenging to access.**

Although tenant screening criteria is publicly available online for most of the LHAs, it can be difficult to locate (even for master’s level researchers), and the criteria is buried in a massive document that can be intimidating and challenging to make sense of.

*“...when an applicant applies, they don’t really know about CORI unless they look at our ACOP online or the state regulations. We do give them a CORI form once they get to the final screening which explains what it is about.”*

- Chicopee Housing Authority staff

Per HUD guidance, “Applicant selection policies should be set forth clearly, in writing, in each [housing authority’s] Admissions and Continued Occupancy Policy (ACOP).” It goes on to say that, “Applicants must be informed about the applicant selection policy and what aspects of their background will be checked. If an applicant is disabled and limited English proficiency that requires an alternative form of communication, the [housing authority] should ensure that it provides this information in the appropriate format and manner. It is the legal obligation of the [housing authority] to communicate effectively with all applicants, including those who are limited English proficiency.”<sup>279</sup> There is, however, no requirement to summarize the eligibility criteria in the application package. One Advisory Committee member suggested that LHAs summarize screening criteria on the first page of the housing application.

*“There’s a challenge around people being able to understand the complexities of the application. And it gets more complex and confusing as you proceed. So a suggestion – on the very first page: there are the absolute disqualifiers. And if you’re unsatisfied with the termination, then you automatically can appeal. Those things should be on the very first page because that informs the process going forward.”*

- Reentry service provider

In the applications we were able to access online (Springfield Housing Authority, DHCD-CHAMP, Westfield Housing Authority), applicants are informed that the housing authority would request a CORI and perform credit checks on adult household members. As is common practice and is noted above, the LHAs do not have clear screening criteria or describe how the information will be used for the decision-making process. Without clear screening criteria, it is possible for someone to assume that any crime or any felony (since that is what is asked in the application) would result in denial. Holyoke Housing

Authority's "pre-application" for the waitlist does not mention criminal background checks, and we were not able to obtain a copy of the full application.

All of the LHAs said that staff inform applicants about the application and screening process. When asked if they felt successful in making sure applicants are aware of the policy, staff from several of the LHAs we talked with stated that they didn't know what else they could do. Another staff person felt that it was not the Housing Authority's responsibility to get this information out to potential participants. One staff person felt that if early in the application process you tell applicants who may have a CORI that the LHA would consider their CORI, those applicants may be deterred from applying.<sup>280</sup>

### **Some people with records don't bother applying because they assume they will be denied.**

Through our interviews, people shared that they chose not to apply because they assumed or were told that they would be denied because of their record.

*"They told me not to. They told me, based on my prior criminal history, that they couldn't help me. This is for federal housing."*

*-HIA Survey Participant*

*"I never went to Housing to fill out an application for housing – in the back of my mind I knew that my criminal record would be my downfall. I think I would be denied. So I never went that route to get an apartment, which I really need."*

*-HIA Survey Participant*

## Share population-level data about number of people denied housing, along with reasons for denials (including criminal background check), number of people requesting hearings, and the results of those hearings

### High level findings

- LHAs are judged by a measurement system that includes incentives to monitor and evict residents for drug-related activity.
- Systematic tracking of denials based on a criminal background is very limited.
- Measuring incentivizes behaviors.

### *What this policy entails*

The policy examined is that LHAs and RAs would be required to share population-level data about number and proportion of:

- people denied housing;
- reasons for denials (including criminal background checks);
- people requesting hearings; and
- people who ultimately had the denial reversed and got housing.

These data would be aggregate or summarized data that does not identify individuals. The policy requirement would also include the LHA or RA disaggregating data by age, gender, race, ethnicity, and disability status.

A suggestion from the HUD's Massachusetts Office for Public Housing was to add another data point to the list: the number of people *withdrawn* from the waiting list, and for what reason. Some common reasons people are withdrawn include failing to respond to a letter asking if they want to remain on the list and missing final interviews that were sent via mail, which may be challenging for people who are transient or have other life situations that are barriers to receiving and responding to mail.

### *How this policy would help*

What gets measured matters. If something is never measured, then it gets less attention than things that are measured consistently and reported publicly. If an outcome is never measured, it is challenging to define as a problem and to assess improvement.

We have found in the course of researching this HIA that there is very little focus on measuring whether people with records are able to access housing, despite the fact that housing is a recidivism reduction intervention.<sup>281</sup> If LHAs gather data, disaggregate it, share it with a central agency such as DHCD and/or HUD, and make it publicly available, then LHAs and housing agencies could use the data for process improvement, to evaluate their own systems, and assess need for services such as hearings and housing navigation. LHAs would also be more transparent about outcomes as they relate to screening criteria.

**Measuring incentivizes behaviors.** Examples abound in business (human resource indicators),<sup>282</sup> education (No Child Left Behind as one example),<sup>283</sup> criminal justice (recidivism),<sup>284</sup> and many other industries and systems. We offer an example in the affordable housing system below.

## *Current practice*

### **LHAs are judged by a measurement system that includes incentives to monitor and evict residents for drug-related activity.**

An example about how measurement ends up directing actions which then impact outcomes comes from historical policies around housing. In 1990, the Cranston-Gonzalez National Affordable Housing Act (NAHA) created security indicators that HUD used to assess the performance of LHAs by and tied indicators to incentives or sanctions for effective implementation. In 1996, HUD created a new security metric to adhere to admission and eviction procedures according to one-strike rules (no second chances if a public housing rule is broken) and track and report criminal activity. LHAs are measured according to the Public Housing Management Assessment Program (PHMAP).<sup>285</sup> The NAHA provided that specific indicators be used in the PHMAP to assess the management performance of LHAs and designate troubled LHAs. Some examples of the types of initiatives that the LHA would be given points for include demonstrated evidence of:<sup>286</sup>

- adequate efforts to secure police protection in the LHA
- reduction in drug-related arrests, crime or vandalism
- enforcement of lease policies regarding drug use or trafficking and that the policies are very stringent (ex: # of dismissals or other enforcement actions resulting from lease policies regarding drug use and trafficking)

Knowing that LHAs were being measured by efforts to decrease crime escalated LHAs' incentive to deny housing to anyone with a criminal record. A survey conducted following the implementation of this policy found that **LHA applicants were denied at double the rate** than the 6 months prior to its enactment.<sup>287</sup>

### **Systematic tracking of denials based on a criminal background is very limited.**

Three of the four LHAs included in this study in Hampden County, Way Finders, DHCD, and the Boston Regional Office for HUD were not able to share data on number of people denied housing due to their criminal record, how many requested hearings, and how many of the denials were overturned. The Springfield Housing Authority provided data on number of appeals and appeals that were overturned. However, they were not able to share number and proportion of denials due to a criminal record.

Numerous barriers were described by interviewees for compiling the data, including lack of infrastructure for summarizing data, lack of documentation of reason for denial in database, and limited ability to parse out reason for denial because denial is often due to multiple factors. Lack of a requirement to track for HUD or DHCD was acknowledged as well.

HUD requires that LHAs keep the data suggested in this policy on site and available in case of a HUD audit, however HUD does not require LHAs to compile and supply data on a regular basis. Our experience trying to access these data is not unique to Hampden County. Studies in Seattle<sup>288</sup> and Oakland<sup>289</sup> find that even with Freedom of Information requests and intervention by elected officials, LHAs were unable to provide complete information about this question. Not having the data accessible in a way to regularly review and utilize makes it difficult to track and assess the need for process improvement.

## Permit current residents to house family members with a CORI as an authorized occupant, excepting those that fall under HUD mandated exclusions

### High level findings

- **Allowing family members to house relatives with a CORI would arguably address one of the largest needs for people returning from prison and jail.**
- **LHAs require the same background check of family members who wish to join the lease as the leaseholder. As we earlier found, this policy that denies people housing for more than HUD mandated exclusions.**
- **Family members, in addition to the person with the record, are often evicted despite not having committed any crime themselves.**
- **Some people with a criminal record live with family members in subsidized housing without going through required application process.**
- **One option is a structured program of housing plus services and support wrapped around the individual with a record and the family.**

### *What this policy entails*

The policy or program under consideration is to permit family members to house people with a CORI, excepting mandatory HUD guidelines. One example that we provided as we talked with LHAs is the Family Reentry Pilot Program (FRPP), implemented by the New York City Housing Authority (NYCHA).

### *How this policy or program would help*

The majority of people who are reentering from prison or jail rely on their families or loved ones for housing. A national study found that two-thirds of people (67%) who were formerly incarcerated turned to family members for support in finding housing after release, and 58% lived with family members when they returned to the community.<sup>290</sup> In a study of people returning from prison in Illinois, 72% of respondents reported expectations of living with a family member upon release.<sup>291</sup> Study after study confirm these findings.

Additionally, ties with family members can help with being successful in the community. One study found that 26% of people released from prison said that support from their family was the most important factor in staying out of prison, three times more than those who mentioned employment.<sup>292</sup>

### **Allowing family members to house relatives with a CORI would arguably address one of the largest needs for people returning from prison and jail.**

We propose a pilot program similar to that of NYCHA that pairs wraparound services with family unification in housing. As we have seen in the Partnerships section above and in the NYCHA Family Reentry Program (FRP) evaluation findings below, this type of program can be very successful. Also, there is a protective effect of allowing people with criminal histories to live with

their families. A study of over 10,000 families in affordable housing found that the likelihood of a negative housing outcome (loss of housing or housing stability) decreased in households with more than 1 adult.<sup>293</sup>

Of interest, the largest proportion of people reentering from prison or jail who participated in the NYCHA FRP were older adults – nearly half (44%) were over age 40, with many quotes in the evaluation from people over age 50 who were living with their adult children or elderly parents.<sup>294</sup>

## Current practice

**LHAs require the same background check of family members who wish to join the lease as the leaseholder. As we earlier found, this policy denies people housing for more than HUD’s mandated exclusions.**

*“If someone wants to add someone to their lease, they have to put it in writing, and they have to run a CORI also. It’s the same as the regular CORI policy. They can make themselves look better [with mitigating circumstances].”*

—Westfield Housing Authority staff

In general, if a current leaseholder would like to add anyone to the lease, they need to notify the landlord, whether that be an LHA or private landlord, who would screen the person as they do any applicant. If the person has a criminal background, all of the policies and procedures outlined in the above section on “Use only mandatory HUD guidelines” apply. Thus, depending on the nature of the criminal background, it is likely that the request to add a person to the lease would be denied. Just like with a regular application process, if the individual wished to request a hearing and present documentation of mitigating circumstances, they would have that option.

As a result of these rules, people with criminal backgrounds who wish to be reunited with their families in subsidized housing - if they do not have other options - have a difficult choice to make: ask their families to move, which is usually unrealistic; return home in violation of regulations and put their families at risk of eviction; seek housing in under-resourced shelters or transitional housing that have open beds; live in substandard housing; or live on the streets.

**Family members, in addition to the person with the record, are often evicted despite not having committed any crime themselves.**

In the national survey of formerly incarcerated people and their families, nearly one in five families (18%) faced eviction, were denied housing, or did not qualify for public housing once their formerly incarcerated family member returned.<sup>295</sup> In our survey in Hampden County, 37% of respondents said that they or a family member they were staying with had faced eviction due to their CORI. In some cases, housing providers offered reasons in addition to the CORI including illegal or drug activity (36%), nonpayment of rent (21%), and lease violations (7%).

*“...in public housing, an unauthorized occupant is one of the most frequent grounds for eviction that we see.”*

—Community Legal Aid staff

Community Legal Aid also mentioned that in Western Massachusetts, LHAs are fairly receptive to keeping the family member who allowed their loved one into their home, contingent on implementing a no trespass order against the person alleged to have broken the rules.<sup>296</sup>

## Some people with a criminal record live with family members in subsidized housing without going through required application process.

*“We’ve incentivized breaking the rules if you have loved ones who have records. If you make it so hard and cumbersome for people coming home, even to sleep on the couch - people are going to do it anyway.”*

—Henry Oostrom-Shah, advocate

As stated earlier, people believe that they will be turned down if they go through the regular application in order to live with their loved ones. Thus, people returning from prison or jail who have very few housing options may move in without going through the required screening procedure.

Because of this, it is likely that LHAs only find out that a person with a record is living with a loved one because of a problem. If a person lives with a family member but does not create a problem, the LHA may not hear about them. This may lead to a skewed view of this practice, i.e., that all people with records who live with their loved ones create problems. The LHAs we spoke with all talked about this issue anecdotally but did not supply data on how often this happens.

When discussing this practice among people with a record over age 50, most LHAs instead spoke about older adults who have someone younger come to live with them who is coming out of jail or prison, not older adults with a record who come to live with their loved ones. As such, we were unable to assess how common it is for someone over age 50 to seek housing with a family member or loved one in subsidized housing.

A lack of trust between residents and LHAs factors into whether people will formally apply to live with their families, and sometimes families worry that they will get in trouble for even asking. This lack of trust is due to the historical practice of denying people due to their criminal record. Evaluators of the NYCHA Family Reentry Pilot Program found that uptake of the program was slower than they expected due to longstanding trust issues between NYCHA and residents, and suggested that to build trust, the LHA should spend time making sure that residents are aware of current policies and dispel myths about LHA practices, and to partner with community organizers or legal aid advocates in this effort.<sup>297</sup>

*We have a problem with people moving in without telling us anyway. They are not likely to tell us when they have a criminal background. We may have let them move in [if they had applied].*

—Westfield Housing Authority staff

## One option is a structured program of housing plus services and support wrapped around the individual with a record and the family.

The NYCHA’s Family Reentry Program wraps services and support around the family and the person with a record who is reentering from prison or jail. Given the evidence-based support for these types of programs that we shared in the section above looking at partnerships, we suggest that Hampden County and Massachusetts consider the case study below.

### **CASE STUDY: Family Reentry Program (FRP)- One Housing Authority’s demonstration project to allow people with a criminal history to join family members in public housing**

In November 2013, the NYCHA began the Family Reentry Pilot Program (FRPP) to reunite formerly incarcerated people with their families who live in NYCHA housing and connect them to services that would improve their quality of life and decrease the likelihood that they would have further involvement with the justice system. Vera Institute of Justice evaluated the pilot, and the FRP is now an ongoing program.

People who have been released from incarceration within the last three years are referred to the FRP at NYCHA by one of 13 identified reentry service providers. Once a person is accepted into the program, they sign a contract detailing the FRP requirements and develop a 6-month action plan with their case manager at the referring organization or agency which they revisit continuously. Action plans may include finding employment, meeting terms of their probation or parole, continuing their education, participating in substance use counseling, remaining crime-free, and other activities.

In order to implement the FRP, NYCHA gives temporary permission to the formerly incarcerated person to join a household. Typically, temporary permission lasts for one year, but for the FRPP, NYCHA extends it to two years. NYCHA changed housing eligibility requirements for the FRP only, giving participants a two-year suspension from NYCHA's rules denying the application of those with previous convictions that would have permanently excluded them. Applications were reviewed by a screening committee.

If the person successfully completes the pilot program the family can request to add them to the lease. At that time, NYCHA runs a criminal background check to assess if the person has not been convicted of anything while in the program. Crimes prior to enrollment in the FRP are not considered.<sup>298</sup>

An evaluation of the FRP pilot showed that in the time frame of the evaluation:

- Only 1 out of 85 participants was convicted of a new arrest
- 4 were arrested for a new offense
- 41 found jobs or maintained employment
- 24 were in school or training for job certifications
- 15 were in substance use treatment

Evaluators also found that reuniting with family members resulted in social and financial support for both participants and family members. Several of those reentering helped to caretake for older relatives, which helped elders (reminding about medication, helping get elders to healthcare appointments) and decreased the stress on other relatives who had been taxed by those tasks. Other participants were reunited with their children and spouses. Many expressed that there was a period of stress as family members learned to trust each other again and how to live together.



# Predictions

The purpose of the predictions in an HIA is to estimate, given the best available evidence, how health and equity outcomes might change if particular policies or practices were implemented. We have already addressed the impact of our three social determinants of health (access to affordable housing, involvement in the criminal legal system, and safety) on physical and mental health outcomes in the “Priority Factors that Determine Health” section.

For our predictions, we mainly focus on the effect that the policies and practices proposed would have on access to affordable housing. Because having stable housing decreases recidivism, we predict that any increases in being stably housed would result in less involvement with the criminal legal system and increased safety.

The predictions do not take into account a major factor, which is the basic lack of available affordable housing.

**CONFIDENCE LEVEL KEY**

- \* No direct studies on this practice or policy directly
- \*\* A limited number of direct studies plus logic
- \*\*\* Multiple studies on this practice or policy

**Table 5. Predictions of how policies or practices under study in the HIA would increase access to affordable housing**

<p><b>Establish formal reentry partnerships between housing providers and reentry, behavioral health, and homelessness reduction providers.</b></p>	<p>Expanding these types of partnerships would result in an increase in people with a CORI being stably housed. Multiple studies show that people supplied with affordable housing plus supportive services, whether it be mental health, substance use treatment, case management, or simply housing navigation, are more successful.</p>	<p>***</p>
<p><b>Limit the use of CORIs in housing application decisions to only HUD mandated exclusions once eligibility is determined.</b></p>	<p>Issuing denials only for the HUD mandated exclusions would result in more people with a CORI being stably housed. A study of housing denials in Seattle found that of the 65 people denied housing due in part because of the criminal background, none of them had been denied for the 2 mandatory crimes.</p>	<p>**</p>
<p><b>Allow mitigating circumstances to be submitted when people get to the top of the waiting list, and before being denied.</b></p>	<p>Enabling people to submit mitigating circumstances before denial but after getting to the top of the list would result in more people being housed. In a program in New Orleans that implemented this practice, of 52 requests to submit mitigating circumstances before a panel prior to denial, only one person was denied. In general, when people submit mitigating circumstances, some people’s denials are overturned.</p>	<p>**</p>
<p><b>Create explicit criteria for denial that is available publicly.</b></p>	<p>People in Hampden County who we surveyed who had experienced difficulty getting housing due to their CORI told us that they did not bother to apply for housing because they assumed they would be denied. If criteria were easily available and communicated by a trusted source, more people would apply and potentially get housing.</p>	<p>*</p>
<p><b>Make data (unidentifiable and aggregate) about denials publicly available.</b></p>	<p>When HUD created crime-related indicators to measure LHAs’ annual performance, the number of people denied housing due to their criminal record doubled in short time. Making data about how many people are denied housing due to their criminal record publicly available would enable LHAs and advocates to understand the extent to which people are denied due to the CORI, and it would help hold housing providers and policy makers accountable to fair housing practices.</p>	<p>*</p>
<p><b>Permit family members to house people with a CORI, including wraparound services for the person returning from prison or jail.</b></p>	<p>A large majority of people reentering after incarceration seek housing assistance from their family members. Some people take in their returning family member without notifying the LHA because of the assumption that the LHA will deny such a request. This type of program could result in more people housed successfully given that they will be able to access case management services.</p>	<p>***</p>

Using evidence detailed in the “Priority Factors that Determine Health” section, we predict that with more people who have a criminal record able to access affordable housing (often the studies consider housing that is supported by services or case management, but sometimes just accessing affordable housing), we would see:

- **A decrease in homelessness**
- **A decrease in shelter use**
- **A decrease in recidivism**
- **A decrease in crime**
- **A decrease in number of days spent in jail**
- **An increase in community safety**

We also predict that implementation of these policies would start to help balance the extreme inequities that Black and Latino/a individuals experience accessing housing due to the inequities of the criminal legal system.

# Recommendations

A wide range of recommendations arose from this HIA, targeting different actors (LHAs, DHCD, HUD, The Legislature, the criminal legal system, etc.) and different levels of change (policy, systems, and environment). For more information about the process to develop these recommendations, please see Methods section.

The **Massachusetts Legislature and/or Governor** should take action to help older adults with CORIs access and maintain affordable housing by **increasing funding** for:

- Formal partnerships between LHAs and 1) reentry organizations (run both by community-based organization and law enforcement); 2) substance use disorder and mental health providers; and 3) homelessness reduction providers. Some of these exist already and should be expanded and some would have to be created. Some that exist already:
  - “Community-based reentry programs” (MA budget line item [0339-1011](#));
  - [Behavioral Health Justice Initiative](#) (funded through MassHealth)
- A demonstration program for LHAs, modeled after NYCHA’s Family Reentry Pilot Program that enables people age 50 and older who are reentering from prison or jail to join their families in public housing or in their voucher unit with wraparound services. We propose that this program be piloted with people over 50 and then, pending evaluation conducted by an organization external to the implementing organization or agency, to phase in those younger than 50.
- A Graduated Reintegration Program, like the Winnebago County Housing Authority in Illinois, that would be piloted with adults 50 or older who are being released from prison or jail. The pilot should be evaluated by an external evaluator to understand impact and to inform expansion to those under age 50.
- Legal Aid representatives to aid people who have been denied housing due to their CORI, similar to the CORI and Reentry Project of Franklin County and the North Quabbin Region.
- Public education about people’s housing rights as it pertains to the criminal background, conducted by entities like Community Legal Aid, Massachusetts Fair Housing Center, or Way Finders.

The **Massachusetts Legislature and/or Governor** should take action to support older adults with CORIs access and maintain affordable housing by **passing legislation**:

- Pass legislation making it a civil rights violation to refuse to engage in a real estate transaction based on specific components of one’s criminal record, similar to SB 1780 in Illinois and the 2016 HUD guidance stating that denying someone housing based on their criminal record could be a violation of the Fair Housing Act.
- Pass statewide legislation mandating that LHAs collect, collate, and publish population-level data about number of denials, reasons for denials, number of people seeking informal hearings, and results of those hearings. Data should be disaggregated by age, gender, race/ethnicity, and family make-up. (Model: Illinois Senate Bill 206)

**DHCD and HUD** should take action to support older adults with CORIs access to affordable housing by **changing certain requirements for LHAs**:

- Require LHAs to consider advanced age (50 or more) an automatic mitigating circumstance as long as the person’s CORI demonstrates that they have not reoffended in two years.
- Require LHAs to consider mitigating circumstances prior to issuing a denial and to designate a staff person or housing navigator based in the community to assist applicants through the process (similar to HANO).
- Require annual trainings for all LHA staff who screen applicants on how to read a criminal background record check who do not already do this, with documentation of training in the LHA annual plan. In Massachusetts, this should go beyond the annual DCJIS training to include other criminal background checks. This should happen even if an LHA is small and makes infrequent CORI requests.

**LHAs** that are not already doing so should take action to support older adults with CORIs' access to affordable housing by **changing certain procedures and practices:**

- In the application on the front page (or screen), list “absolute disqualifiers” and information about the opportunity to appeal.
- Only follow the mandatory denials<sup>iv</sup> for people aged 50+ who have not had another conviction in 3 years. This practice should be evaluated by an organization external to LHAs and then phase in for people under age 50 based on evaluation results.
- Improve how LHAs inform applicants who have been denied about their right to seek legal help, and better direct them to local legal aid (Community Legal Aid or Massachusetts Fair Housing Center in western MA, for example) or community-based organizations trained in helping applicants with a CORI.
- Those who review applications and handle appeals must be trained by Fair Housing legal advocates (external to LHA) on how to review cases systematically and fairly.

**The criminal legal system** should take action to support older adults with CORIs' access to affordable housing:

- The Massachusetts Department of Probation should:
  - Expand the types of programs that are eligible to apply for Community-based Reentry Program funding to include community-based programs led by people with experience of incarceration, such as New Beginning Reentry Services and Justice4Housing in Boston; and to seed reentry providers in Hampden County such as Clean Slate Initiative, Catholic Charities, and others who do not currently run transitional housing to be able to do so.
  - Expand the criteria for eligibility for these Community-based Reentry Programs to include not only the people who are immediately reentering but to those who continue to struggle with housing access due to their criminal record—in particular to people over the age of 50.
- The MA DOC and all Houses of Correction across the state should improve their reentry services to ensure that people reentering have true housing plans and are not being released to homeless shelters.

**Other state-level agencies** should take action to support older adults with CORIs' access to affordable housing:

- Aggregate data on Individual Reentry Plans (IRP) should be publicly available and monitored by the Massachusetts Office of the State Auditor to enforce that people reentering have reviewed, signed, and been given their IRP, i.e. have participated in creating and approving their reentry plans.
- Mass Behavioral Health Partnership should partner with AISS and other community organizations that serve people reentering to publicize among potentially eligible community members the expansion to Hampden County of the Behavioral Health Partnership with Justice-Involved Individuals pilot project.
- The Governor should create a state-level Task Force or Working Group to quantify the unmet need for Permanent Supportive Housing for people who have a conviction or are returning from jail or prison. This Working Group should produce their report along with recommendations in no more than 9 months and include people who are directly impacted by and advocating on this issue.
- The Massachusetts Trial Court Department of Research and Planning or the Massachusetts State Auditor should evaluate Housing Courts to see if decisions made regarding evictions due to criminal behavior from public or subsidized housing fairly reflect evidence provided.

**Advocates and local stakeholders** should take action to support older adults with CORIs' access to affordable housing:

- Increase public education about people's housing rights as it pertains to the criminal background, for example Community Legal Aid, Mass Fair Housing Center, or Way Finders.
- Convene statewide stakeholders to address the barrier of the criminal background checks for housing. Stakeholders should include 1) housing, 2) criminal legal system, 3) mental health and substance use treatment, 4) reentry providers, 5) directly impacted communities, 6) homelessness, and 7) healthy aging stakeholders and advocates.

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<sup>iv</sup> Mandatory denials are for being listed on a lifetime sex offender registry and being convicted for methamphetamine production on a federal property.

- DHCD or LHAs in Hampden County should financially support an intentional public education campaign conducted by trusted community leaders (not LHAs or government institutions) and reentry service providers.

While this HIA didn't explore private landlords and the private housing market in depth, recommendations related to **private landlords** and the **housing market** arose based on our conversations with various stakeholders.

- To address the affordable housing shortage:
  - Pass [MA H.4071](#), which amends Chapter 40B guidelines to include a tax incentive for developers that reserve at least for 5% for eligible tenants with a criminal record.
  - Leverage Low Income Housing Tax Credits and investor interest in a [Pay For Success](#) model to build new housing for people with a criminal history, such as was done in Denver, Colorado.
- To address private owner hesitation:
  - Pass a Fair Housing Ordinance similar to several other cities that would regulate how private landlords consider CORIs.
  - Work with Mass Landlords Association to incorporate an official education process into their CML (Certified Massachusetts Landlord) that trains landlords in how to understand and assess criminal records and not just deny if something comes back on a CORI. This should be part of the official certification process.
  - Study the possibility of offering a mitigation fund or Bonding Insurance (similar to that for employers who hire people with a CORI) to landlords who are willing to rent to people who are formerly incarcerated or have a conviction on their record.

## Conclusion

While housing authorities' criminal background check policies are not exclusively responsible for the inability of the people with criminal histories to secure housing, our research has shown they do constitute a sizeable and recurring barrier for many—and pose a potential hurdle to many more. Moreover, they are a factor over which policymakers have significant discretion and therefore an attractive target for advocates wishing to improve the well-being of some of those most sorely in need of assistance.

At the same time, we acknowledge that LHAs must balance their missions of housing low-income people and creating a safe, peaceful environment for residents. At present, it is not known if people with a past record commit any more crime than anyone else coming into public housing.

Nevertheless, with thoughtful implementation of the recommendations included in this HIA, we believe that policymakers and housing providers in Hampden County, and across Massachusetts, can improve health and equity outcomes for people who have been convicted of a crime, served their “debt to society,” and need housing to be secure and stable.

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# Appendix A. Organizations and agencies interviewed as part of the assessment phase of the HIA

## Housing Providers

Boston Housing Authority  
Chicopee Housing Authority  
Holyoke Housing Authority  
Massachusetts Department of Housing and Community Development (DHCD)  
Massachusetts Executive Office of Elder Affairs (EOEA)  
Springfield Housing Authority  
United States Department of Housing and Urban Development (HUD), Massachusetts Public Housing Field Office  
Way Finders  
Westfield Housing Authority  
Winnebago and Boone County Housing Authority (Illinois)

## Service Providers

All Inclusive Support Services – Hampden County Sheriff’s Department  
Behavioral Health Network  
City of Springfield, MA Office of Housing / Springfield/Hampden County Continuum of Care  
Clinical Support Options – Friends of the Homeless  
Community Resources for Justice – Western MA Recovery Center  
Gándara Mental Health Center  
Massachusetts Department of Mental Health – DMH Sponsored Rental Assistance program  
Massachusetts Probation Services  
Mass Health – Behavioral Health and Justice Initiative

## Advocates

Community Legal Aid  
Citizen’s Housing and Planning Association (CHAPA)  
Greater Boston Legal Services  
Mass Law Reform Institute  
MassINC  
Shriver Center on Poverty Law  
Mass Fair Housing Center  
Justice4Housing  
Healthy Aging Collaborative

## Appendix B. More detailed listing of federal actions taken related to criminal background and housing

- Quality Housing and Work Responsibility Act of 1984 supported LHAs' right to exclude applicants with a criminal history and use their discretion to determine which applicants were possible risks to the safety of the community.
- Anti-Drug Abuse Act (1988) gave LHAs funds to eliminate drug crimes and required LHAs to construct clauses in their leases to evict tenants who engaged in drug use or other behaviors that could threaten the safety of other tenants.
- Cranston-Gonzalez National Affordable Housing Act (NAHA) (1990) allowed LHAs to use criminal records for admissions determinations, imposed a mandatory 3-year ban on readmission of tenants evicted for drug-related crimes, and developed security indicators to judge LHAs.
- Housing Opportunity Program Extension Act (1996) mandated law enforcement to comply with LHA criminal background requests, strengthened eviction rules, and allowed LHAs to deny applicants who were found to have a pattern of alcohol or drug use that might threaten the health or safety of other tenants.
- Notice PIH 96-16 (1996) provided stricter admission and eviction procedures to support *One Strike and You're Out* policies. A subsequent notice (PIH 96-52) created a new security metric to adhere to admission and eviction procedures according to one-strike rules and track and report criminal activity.
- Quality Housing and Work Responsibility Act (1998) expanded the discretion of Public Housing Authorities (PHAs) to determine admissions eligibility and established a permanent ban for lifetime sex offender registrants.
- The Independent Agencies Appropriations Act (1999) barred households with any member who was convicted of producing methamphetamines in public housing.
- *U.S. Department of Housing and Urban Development v. Rucker (2002)*. The Supreme Court unanimously upheld the rights of LHAs to evict an entire household based on the criminal activity of one member or guest without specific proof that the lease holding tenant had knowledge of the activity.
- Second Chance Act (2008) funded hundreds of reentry grants to (a) develop multifaceted reentry plans; (b) create reentry task forces; (c) collect data and measure outcomes; and (d) facilitate collaboration between criminal justice and social service systems, including housing. However, LHAs have continued to operate under many of the same admission and eviction procedures, and have more stringent policies than federally required.
- HUD letters to PHAs encouraging PHAs to allow people with a criminal history to reunite with their families (2011).

- Unfortunately, the 2011 letters did not include guidance to support HUD’s goal<sup>v</sup> to, “achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing.” The letters, cited in multiple publications, are no longer available publicly on the huduser website.
- *The Texas Department of Housing & Community Affairs (TDHCA) v. Inclusive Communities Project, Inc.* (2015). The Supreme Court ruled organizations can be held liable for violating the Fair Housing Act even if they do not intend to discriminate. Disparate impact in the Fair Housing Act applies not just to intent but when practices are discriminatory in operation. Although returning citizens are not a protected named class in the Fair Housing Act, *blanket* bans on individuals with criminal records are considered discriminatory in practice since African Americans and Hispanics are disproportionately arrested, convicted, and imprisoned.
- Notice PIH 2015–19 (2015) informed housing providers that their admission policies must comply with the Fair Housing Act. HUD reminded PHA that they no longer support one-strike policies that automatically deny applicants with criminal records.
- HUD guidance stating that intentional refusal of people with a criminal history is in direct violation of the Fair Housing Act and likely to have disproportionate impact on people of color (2016). HUD issued guidance to housing providers outlining the discriminatory effects of denying housing to individuals with criminal history. The guidance concluded that seemingly neutral screening policies could still constitute race discrimination under the Fair Housing Act. HUD said, “a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race, national origin, or other protected class, and such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.”<sup>vi</sup> While this guidance offers some hope for continued change in PHA practices, if no one challenges PHA practices, they may remain the same.
- In 2016, Shaun Donovan, HUD Secretary at the time, wrote to public housing authorities, saying, “People who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future [and] part of that support means helping ex-offenders gain access to one of the most fundamental building blocks of a stable life—a place to live.”<sup>vii</sup>

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# Appendix C. Explanation of the estimate of the number of people annually in Hampden County with a criminal record

We estimate that there are **6,308 people in Hampden County in a given year with a criminal record**. A portion of these people are experiencing barrier to accessing affordable housing. We include all those over age 18 because in our survey, people were sometimes denied housing due to something on their record between 10 to 40 years prior, so a conviction at age 25 can block a person from accessing housing at age 50.

Because of limitations in what data was available, we relied on several sources to calculate this estimate. Here is how we arrived at that number:

- Publicly available reports from the Hampden County Sheriff's Department shows that on **average 3,318 adults are released annually from jail**. This includes people held who have been convicted and those who are being held pre-trial.<sup>viii ix</sup>
- Publicly available data from the Massachusetts Department of Corrections finds that on **average about 226 adults are released annually from state prisons** to Hampden County. This average is based on three years of data (2017-2019).<sup>x</sup>
- This means there is an average of about **3,544 adults being released annually from jail AND prison combined to Hampden County** ( $3,318 + 226 = 3544$ ).
- A report from the Prison Policy Institute<sup>xi</sup> found that in 2018, 893 people per 100,000 were on probation and 26 people per 100,000 were on parole in Massachusetts. If we apply those rates to the adult population in Hampden County (population of 366,727 per U.S. Census Bureau<sup>xii</sup>), we find that **3,369 adults in 2018 were under some form of community supervision in 2018** (probation or parole).
- Some people are placed under community supervision instead of being incarcerated, while others are placed under some form of community supervision upon release. To arrive at the number of Hampden County residents with a criminal record, we can't just add together the number released from jail and prison with the number on probation or parole as it will double count people who were incarcerated and on probation or parole. A publicly available report from the Executive Office of Public Safety and Security shows that of those released to the community from Massachusetts Department of Corrections custody, **62% were under community supervision** (probation, parole or both),<sup>xiii</sup> and a publicly available report from the Hampden County Sheriff's Department found that **14%** of those released from the Hampden

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<sup>viii</sup> Lyman M. 2020. House of Correction Recidivism Report, 2017 & 2015 releases. Hampden County Sheriff's Department. Available at <http://hcsdma.org/wp-content/uploads/2019/04/2017-2015-recidivism-report.pdf>

<sup>ix</sup> Hampden County Sheriff's Department. CHES: Community Housing, Earned, Safe, and Supportive. A Housing Pilot Designed to Improve Public Safety and Reduce Homelessness. The Council on Collaborative Consequences of a Criminal Conviction.

<sup>x</sup> Massachusetts Department of Correction. Releases to the Community 2017-2019. Available at <https://public.tableau.com/profile/madoc#!/vizhome/MADOCReleasestoCommunity/ReleaseToCommunity>

<sup>xi</sup> Jones A. 2018. Correctional Control 2018: Incarceration and supervision by state. Prison Policy Institute. Available at <https://www.prisonpolicy.org/reports/correctionalcontrol2018.html>

<sup>xii</sup> U.S. Census Bureau, ACS 2019 1-year

<sup>xiii</sup> Matthews H, Wang L. 2020. MA Dept. of Correction Three-Year Recidivism Rates: 2015 Releases. Massachusetts Executive Office of Public Safety and Security. Office of Strategic Planning and Research

County jail are under community supervision.<sup>xiv</sup> To estimate the number of people released from jail or prison and placed under community supervision, we applied those percentages to the average number of people being released each year.

- As noted above there is an average of 3,318 adults released annually from jail to Hampden County, and 14% are on probation or parole. 14% of 3,318 is **465**. There is an average of 226 adults released annually from state prisons to Hampden County, and 62% are on probation or parole. 62% of 226 is **140**. The total estimated number of people being released from prison or jail and placed under community supervision is **605**.
- To estimate the number of adults in Hampden County with a criminal record, we took the number being released from prison and jail each year minus the number who are released from prison or jail and placed under community supervision to avoid duplication ( $3,544 - 605 = 2,939$ ). Then we added this to the number of adults on probation or parole ( $2,939 + 3,369 = 6,308$ ).

## Limitations

- These numbers represent annual numbers of people who have been gone to court and have been convicted and incarcerated or received a sentence of community supervision. While they also include the number of people who served time in jail without necessarily having been convicted (held pre-trial because they could not make bail or were not given the option of bail), it is possible that this number is an underestimate because it does not include people who have been arrested but not gone to court. While LHAs are by law not supposed to use arrest records to determine housing eligibility, we found in our survey and key informant interviews that people had been denied housing due to arrest records.
- These numbers are annual numbers and do not include a cumulative total of all people who live with an arrest record. Nationally, 1 out of every 3 people in the United States has an arrest record.<sup>xv xvi</sup> If we applied this number to Hampden County population ( $33\% * 366,727 = 121,020$ ), it would mean that over 121,000 adults in Hampden County have an arrest record.

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<sup>xiv</sup> Lyman M. 2020. House of Correction Recidivism Report, 2017 & 2015 releases. Hampden County Sheriff's Department. Available at <http://hcsdma.org/wp-content/uploads/2019/04/2017-2015-recidivism-report.pdf>

<sup>xv</sup> Brame R, Turner MG, Paternoster R, Bushway SD. Cumulative prevalence of arrest from ages 8 to 23 in a national sample. *Pediatrics*. 2012;129(1):21-7.

<sup>xvi</sup> Clark D. 2017. How many U.S. adults have a criminal record? Depends on how you define it. PolitiFact. Available at <https://www.politifact.com/factchecks/2017/aug/18/andrew-cuomo/yes-one-three-us-adults-have-criminal-record/>