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## Criminal Record Based Housing Discrimination Harms Public Safety

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Christopher Poulos\*

I have a felony drug conviction resulting from my conduct during an untreated drug and alcohol addiction in my early twenties. A combination of grace, privilege, hard work, and a strong support system led me from federal prison to college and then to law school.

During my second year of law school, I met Michael Botticelli, President Obama’s Director of National Drug Control Policy. He was commonly referred to as the nation’s “Drug Czar,” and people in the recovery advocacy community affectionately called him the “Recovery Czar” because he is openly in long-term recovery from addiction.<sup>1</sup>

My meeting with Mr. Botticelli ultimately led to an offer to intern at the White House Office of National Drug Control Policy (ONDCP) during the fall of my third year in law school.<sup>2</sup> The federal government utilizes a hiring policy commonly referred to as “Ban the Box,” which prohibits questions about criminal history on the initial employment application.<sup>3</sup>

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<sup>1</sup> *Michael Botticelli*, OFF. OF NAT’L DRUG CONTROL POL’Y, <https://obamawhitehouse.archives.gov/ondcp/botticelli-bio> [https://perma.cc/6VZF-ET29].

<sup>2</sup> Juliet Eilperin, *From the Big House to the White House*, WASH. POST (Mar. 8, 2016), [https://www.washingtonpost.com/politics/from-the-big-house-to-the-white-house/2016/03/08/cd5ad77e-d4b6-11e5-be55-2cc3c1e4b76b\\_story.html](https://www.washingtonpost.com/politics/from-the-big-house-to-the-white-house/2016/03/08/cd5ad77e-d4b6-11e5-be55-2cc3c1e4b76b_story.html) [https://perma.cc/MXZ9-JMTA].

<sup>3</sup> See Beth Avery & Han Lu, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies*, NAT’L EMP. L. PROJECT (Sept. 30, 2020), <https://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/#:~:text=The%20federal%20government%20embraced%20%E2%80%9Cban,for%20federal%20agencies%20and%20contractors.&text=Effective%20December%2020>

In my case, a conditional offer of employment was made pending the results of a background investigation. The investigation took substantially longer for me than it does for most interns. Still, I was ultimately granted “national security position clearance” to intern at ONDCP, which provided me with unfettered, 24/7 access to the drug policy offices and daytime access to much of the White House compound.

My law school was in Maine, so I needed to find an apartment in Washington, D.C. When I found an apartment that I was interested in, I learned that the leasing company categorically banned anyone with a felony drug conviction. I had been granted national security position clearance to intern at the White House, but I could not rent an apartment. I was eventually able to rent a room in a house from someone I connected with through social media. This person was also in recovery from addiction and willingly took me in.

Facing rental housing discrimination was not surprising to me because it had happened to me before. During an earlier law school internship in D.C. at The Sentencing Project, my experience when I attempted to rent was more troubling. I could not just fill out a rental application because my past conviction would lead to rejection. However, my network and privilege provided me with access to a Georgetown University housing resource website, and I was able to sublet a room. Even then, my name could not be put on the lease, and I had to essentially sneak in and out of the building, hoping never to be questioned by the building’s security. I sent my rent money via PayPal from D.C. to a recent law school graduate who had accepted a job in California and subleased his room to me without sanction from the rental company. He then sent my money back to D.C. to pay the rental company. I was reluctant to do this because this type of “sneaky” behavior was reminiscent of my former criminal lifestyle, and I wanted to

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1%2C%20the%20law,the%20job%20to%20the%20applicant [https://perma.cc/RK32-K2J2].

avoid that type of behavior during my recovery. I did this out of pure necessity.

People with convictions are routinely forced to live outside of the rules and even the laws, and recidivism is often driven by harmful exclusions which prevent successful reentry into society. I was excluded from the normal process to secure housing, so I made my way outside of the normal policy, as have millions of others living with convictions. The idea that people with criminal records do not live in many apartment buildings simply because the lease terms prohibit us is an illusion. We do live in the units but are forced to occupy them “off the books” and “under the radar,” which means at least a slight return to the type of thinking and behaviors that led many of us to incarceration in the first place.

Although the barriers I faced were challenging, the privilege I had allowed me to secure housing, which protected me from potentially losing these coveted internship opportunities. As a white male who generally left for work and returned from work in a business suit, I was never questioned about the legitimacy of my tenancy in the building. I blended right in with the sea of affluent millennials also living in that building. Even with all my privilege as a third-year, white male law student and White House intern, I still could not get approved to rent an apartment through normal channels. Imagine how much more daunting it is to secure housing for someone without my inherent privilege, network, and resources.

Other people have not had the same advantages and experiences. My friend, Carolina Landa, is a Mexican-American woman with a young child who has a disability. Carolina, who also has a criminal record, has sadly had a vastly more challenging experience with obtaining housing. Carolina attempted to relocate to Olympia for college and applied for tenancy at four separate apartment complexes. Each application required a non-refundable fee. Once a background check was completed, Carolina was immediately denied housing due to her past conviction history alone, *despite meeting all other eligibility criteria*. Not only was Carolina denied housing for her and

her son, she also lost all the money spent paying the application fees at the multiple complexes to which she applied. Finally, Carolina found a landlord who was open to discussing her past, and the landlord agreed to accept Carolina and her son as tenants. Carolina's experience of the process to attain housing while carrying a criminal record is typical. My experience of relatively easily jumping the hurdles placed in front of me is atypical.

Access to safe, stable, and affordable housing is fundamental to successful community reintegration following incarceration. It is the foundation that almost all other factors conducive to successful reentry rely upon, including but not limited to maintaining employment, setting and successfully making it to healthcare (and all other) appointments, building a healthy support network, fostering familial and other social relationships, caring for children, and attaining or maintaining recovery from substance use disorder.

My background working with currently and formerly incarcerated people stems from experiencing my own incarceration, mentoring incarcerated youth, representing incarcerated youth as a student attorney, and performing my current role with the Washington Statewide Reentry Council. In my experience, the overwhelming majority of people released from our prisons and jails do not come home planning to commit additional crimes, particularly with the knowledge that these crimes could land them back in jail or prison, or even cost them their lives. Recidivism generally stems from desperation rather than ill-intention.<sup>4</sup> When all doors of opportunity are locked, people will eventually revert to old behaviors when doing so is necessary to survive. Locking people out of the rental market ultimately increases crime and is detrimental to public safety, while allowing formerly incarcerated people to secure housing does the exact opposite.<sup>5</sup>

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<sup>4</sup> Ashleigh LaCourse et al., *Recidivism and Reentry: The Role of Individual Coping Styles*, 65 CRIME & DELINQ. 46, 47 (2018), <https://journals.sagepub.com/doi/full/10.1177/0011128718790497> [<https://perma.cc/GPK4-RXZ4>].

<sup>5</sup> Faith E. Lutze et al., *Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State's Reentry Housing Program for High Risk Offenders*, 41 CRIM. JUST. &

Many areas of the country are currently facing a shortage of affordable housing, and Washington state is no exception. For every one hundred extremely low-income renter households in Washington, only thirty-one units exist.<sup>6</sup> People with prior arrest and conviction records face all the same barriers as every other applicant competing for units. The challenges of these common barriers are often exacerbated for people with records. For example, a person who recently exited jail or prison, particularly after a long sentence, almost invariably will not have the requisite credit score, references, rental history, and income to be approved as a tenant. To add insult to injury, on the rare occasion that the stars align and all the normal requirements are met, people with records are regularly and systemically discriminated against in the rental housing market based on their conviction record alone.<sup>7</sup> People of color, particularly Black, Indigenous, and Hispanic people, are arrested and convicted at disparate rates.<sup>8</sup> Therefore, it is likely that they face housing discrimination based on their criminal records at higher rates than the general population.<sup>9</sup>

Three steps should be taken immediately to begin mitigating the housing crisis facing people with criminal records. First, pass a law addressing rental housing discrimination; second, subsidize housing for people with records who could otherwise not attain housing; and third, further utilize public lands and vacant buildings to house people with records.

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BEHAV. 471 (2004), <https://s3.wp.wsu.edu/uploads/sites/436/2014/11/Criminal-Justice-and-Behavior-2014-Lutze-471-91.pdf> [<https://perma.cc/ELT9-M9B9>].

<sup>6</sup> *The Gap: A Shortage of Affordable Rental Homes*, NAT'L LOW INCOME HOUS. COAL., <https://reports.nlihc.org/gap> [<https://perma.cc/FN6J-A42Y>].

<sup>7</sup> Helen R. Kanovsky, *Office of Geneneral Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, U.S. DEP'T OF HOUS. & URB. DEV. (Apr. 4, 2016), [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF) [<https://perma.cc/4NK6-YJS4>].

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

There is currently no state law directing how and when it is permissible to deny someone housing based solely on a past criminal record.<sup>10</sup> The result of this is widespread, and often arbitrary, housing discrimination against broad categories of people with past records. For example, many rental-housing companies prohibit anyone with a felony conviction from tenancy—for life. In 2017, Washington Attorney General Bob Ferguson fined several companies for having these types of blanket policies which run afoul of the Federal Housing Act and Washington Law Against Discrimination laws.<sup>11</sup> Unfortunately, that action did not end the problem because criminal record based housing discrimination remains rampant, and prospective tenants have no remedy.

Across the nation, various cities including the District of Columbia<sup>12</sup> have passed ordinances addressing the issue. Ordinances range from the simple, less controversial, and less positively impactful measures, to measures that provide guidelines to landlords, and finally, to measures that prohibit landlords from checking the criminal history of prospective tenants. The Ban the Box model removes the prior criminal history questions from the initial tenant application but offers no further guidance and no actual substantive protection from discrimination. There are also measures that both ban the box and provide landlords with guidance on how to make their final decisions. Finally, Seattle's Fair Chance Housing Ordinance, the *strongest ordinance in the country*, categorically prohibits landlords from checking past criminal

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<sup>10</sup> See Charlotte West, *Seattle's Fair Housing Law Is the Most Progressive in the Country. But Now, Landlords Are Challenging It.*, NBC NEWS (May 19, 2019, 2:03 AM), <https://www.nbcnews.com/news/nbcblk/seattle-s-fair-housing-law-most-progressive-country-now-landlords-n1004321> [<https://perma.cc/8GN9-JSSB>].

<sup>11</sup> Press Release, AG Takes on Discriminatory Blanket Housing Bans on Renters with Criminal Histories (Jan. 23, 2017), <https://www.atg.wa.gov/news/news-releases/ag-takes-discriminatory-blanket-housing-bans-renters-criminal-histories> [<https://perma.cc/P3TF-WNGA>].

<sup>12</sup> D.C. CODE § 42-3541 (2017).

records and only allows review of the sex offense registry.<sup>13</sup> Even then, a landlord must make an individual analysis of the applicant and cannot have a blanket policy of denying all applicants with any sex-related conviction. In the 2020 Washington legislative session, Senator Jeannie Darneille introduced a bill to address rental housing discrimination at the state level.<sup>14</sup> This bill offered the strongest anti-discriminatory protections for prospective tenants with records ever introduced in a state legislature. This has turned into a multiple session effort, as expected, and it is imperative that the issue finally be addressed by state law.

Another means of addressing this crisis is providing subsidized housing for people with records who would otherwise experience homelessness. One straightforward first step would be expanding the Department of Correction's (DOC) housing voucher program, which provides for a small amount of rent money for certain eligible people being released from DOC custody for a very limited amount of time.<sup>15</sup> Currently, the only people eligible are those released to community supervision, commonly referred to as probation. This program could expand eligibility to include everyone being released that cannot attain housing due to their record. This expansion would help meet the dire need for housing for people who are being released from prison and do not have community supervision, which constitute around 50% of annual releases. The state could also include county jail releases. There would be an expense associated with expanding this type of program, but it pales in comparison with the expense of not funding this type of program. It is vastly more expensive to cycle people in and out of the court system and

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<sup>13</sup> Mariko Lockhart, *Seattle Office for Civil Rights: Fair Housing*, SEATTLE.GOV, <https://www.seattle.gov/civilrights/civil-rights/fair-housing> [https://perma.cc/4FR8-LRTN].

<sup>14</sup> S.B. 6490, 66th Leg., Wash. Sess. Laws (Wash. 2019).

<sup>15</sup> *Earned Release Date (ERD) Housing Voucher Program*, WASH. DEP'T OF CORR., <https://www.doc.wa.gov/information/policies/files/350210a1.pdf> [https://perma.cc/H3CD-7VCN]. The maximum payable benefit of \$500 per month could also be increased to more adequately meet the financial needs of formerly incarcerated individuals attempting to attain housing. *Id.*



incarceration than it is to subsidize rent and housing, which has been shown to dramatically decrease new criminal convictions and readmission to prison for new crimes.<sup>16</sup>

Finally, utilizing public space and vacant buildings is another way to address housing instability for people with criminal records. This is likely the least expensive and least controversial recommendation. Weld, a Seattle organization, has focused on providing both employment and housing for people exiting prisons and jails and has implemented this approach.<sup>17</sup> An example of how this has been used to help the general population experiencing homelessness is Olympia's Quixote Village.<sup>18</sup> Quixote Village came about through the advocacy of people living in a homeless encampment in Olympia who partnered with a non-profit organization and eventually received local, state, and federal government funding to build tiny homes on public land in Olympia. Thurston County leased the property to the non-profit Panza at a rate of one dollar per year for forty-one years. While tiny homes and transitional group living situations are not often suitable for permanent housing, they can bridge the essential gap between release and long-term, stable housing and greatly contribute to promoting successful reentry and societal reintegration.

A related idea proposed by a man I met during one of my prison visits who has subsequently been released is to utilize the already existing prison factories and workshops to build transportable modular housing units for people exiting our prisons and jails. These units could then be transferred directly to vacant public lots. I am hesitant to suggest new ways of making incarcerated people work due to the inherently problematic nature of prison labor being performed without the payment of minimum wage. However,

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<sup>16</sup> Lutze et al., *supra* note 5.

<sup>17</sup> *Weld & Developers*, WELD,

<https://www.weldseattle.org/donate-houses> [<https://perma.cc/U83B-T9XV>].

<sup>18</sup> *Quixote Village – The Original Quixote Community*, QUIXOTE COMMUNITIES, <http://www.quixotecomunities.org/olympia-quixote-village.html> [<https://perma.cc/K2UL-RDUE>].

because incarcerated people who can work are required to work, shifting the focus of their work to producing a resource for people exiting incarceration creates ownership of the task while simultaneously giving back to each other and the community.

Access to safe and affordable housing remains a primary barrier to successful reentry and societal reintegration following incarceration. This issue can be addressed by prohibiting criminal record based rental housing discrimination and further investing in housing for people exiting our prisons and jails. Safe and stable housing is the foundation of successful reentry upon which all else is built. By earnestly tackling this issue, we will promote successful reentry, strengthen families and communities, and increase public safety by reducing recidivism.

