

Topic: CoC Training: Working with Clients with Criminal Histories: What Criminal Convictions Can and Can't Tell Us + Special Considerations for Participants on the Sex Offense (290) Registry

Dec 13, 2021 0

Meeting Recording:

https://homebaseccc.zoom.us/rec/share/9hoHzJP-oBnE0GLID83g3O_ayPPUddQ_I-U1F_uBOX-r0a8ZgwyIqqZ6Sm65ADLq.sBelYv_4ysVmftWt

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Working With Clients With Criminal Histories

Zoom Tips

We love to see your faces! If possible, please turn on your **video**.

As you have **questions or comments** during the presentations, please add them to the chat box.

You were automatically placed on **mute** when you entered the meeting.

We will be **recording** today's session.

Introduction: Homebase



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The content in this presentation is provided for informational purposes only and does not constitute legal advice. This presentation reflects relevant agency guidance, but does not capture regulatory requirements in their entirety. Homebase does not enter into attorney–client relationships.

What is the Homebase Criminal Legal System Initiative (CLSI)?

True public safety requires that everyone have access to safe, stable housing.

Criminal Legal System Initiative Areas of Focus

- Cross-Sector Workshops and Fostering Partnerships**
- Visioning, Planning, Troubleshooting, and Implementation**
- Curated Tools and Resources**
- Peer-to-Peer Learning and Community Building**

Goals

Understand the intersectional nature of housing, homelessness, race, and the criminal legal system

Identify what criminal histories can and can't tell you about your clients

Learn new ways to recognize and minimize barriers to housing for clients with past convictions

Explore specific considerations for people on the 290 registry

Agenda



Why Talk About
Criminal
Histories?

Limitations



Special Population
Spotlight: People on
290 Registry

Considerations
and Tips



Why Talk about Criminal Histories?

Three major reasons for housing providers and housing systems...

1. They matter when we consider broader **equity issues**;
2. They create barriers to finding and sustaining **stable housing**;
3. Understanding them can help **serve our clients better**.



Why Talk about Criminal Histories?

Reason **#1**:

They matter when
we consider
equity.



National Lens on Equity

Formerly incarcerated community members are **nearly ten times more likely to experience homelessness** than the general population.

Black, Indigenous, and other people of color (BIPOC), and LGBTQ+ individuals are **disproportionately represented** in both homelessness and criminal legal systems.

Black Adults Make up 12% of the U.S. Population

but 33% of the U.S. prison population, and 43% of adults experiencing homelessness in our country.

LGBT Individuals Make up 4.5% of the Population

but LGBT people are 3x as likely to be incarcerated, and one study indicated that LGBT young adults experienced prior-year homelessness or housing instability at a rate over double that of non-LGBT individuals.

California Context

Black Californians = 6% of the state population, but 29% of people ex. Homelessness.

Black Californians are incarcerated at almost 7x the rate of White people and 2x the rate of Latinx people.

California sees higher rates of unmet mental health needs for Black, Latinx people than the rest of the population.

Local Context – Contra Costa County

Black people in Contra Costa County = 8.8% of the population.

Black people make up 28.4% of Contra Costa County arrests.

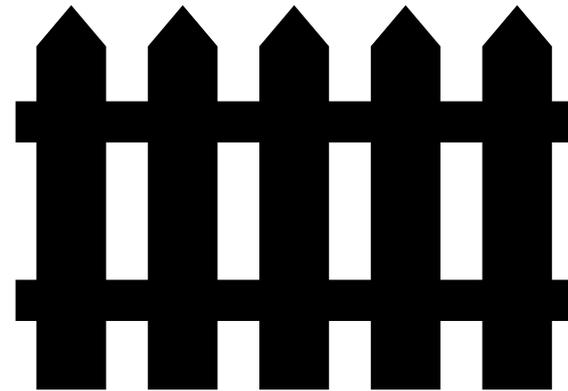
29% of people experiencing homelessness in Contra Costa County identify as Black or African American.

Sources: <https://www.bscc.ca.gov/wp-content/uploads/Contra-Costa.pdf>; <https://cchealth.org/h3/coc/pdf/PIT-report-2020.pdf>.

Why Talk about Criminal Histories?

Reason **#2**:

They create
barriers to finding
and sustaining
stable housing.



Long-Term Consequences of Convictions

Also called “collateral consequences.” These are consequences put in place by *law or regulation* that limit people convicted of crimes from accessing employment, business and occupational licensing, housing, voting, education, and other rights, benefits, and opportunities.



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Collateral Consequences → Scope

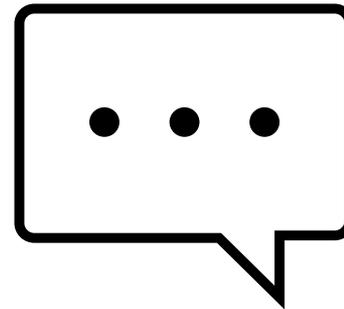
Every year, over 600,000 people enter *prison* and 10.6 million people enter *jail*.

74% of people held by jails are not convicted of any crime.

Technical violations are the main reason for incarceration of people on probation or parole.

What Do You Think?

What kinds of barriers do your clients who have been impacted by the criminal legal system experience?



Why Talk about Criminal Histories?

Reason **#3**:

Understanding
them can help
serve our clients
better.



Poll

How does your organization or agency use criminal history information?

- Eligibility screening
- Housing placements
- Referrals to community resources
- Case management plans
- All of the above
- Other

What **Can't** We Learn By Looking At Client Criminal Histories?

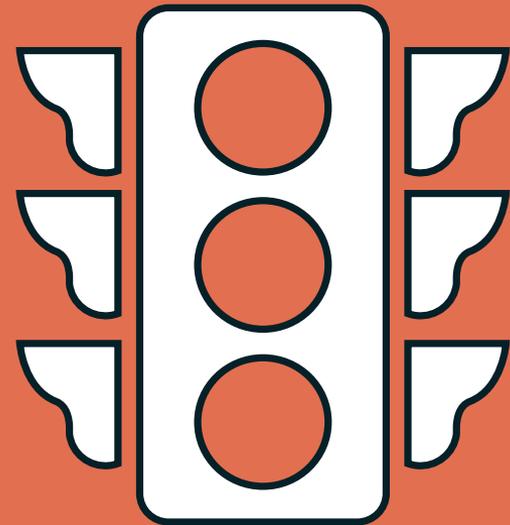
- Final outcome (depending on source)
- Whether our clients are dangerous to themselves, other clients, or staff
- Whether our clients are trustworthy
- Deservedness

What **Can** We Learn By Looking At Client Criminal Histories?

- Ability to target services
- Ability to ensure housing options/supports are aligned with any community supervision requirements
- Ability to understand whole client
- Ability to use trauma-informed approaches specific to custodial trauma
- Ability to build rapport

Limitations on Considering Criminal Histories

In addition to the practical limitations, there are legal limitations as well.



Civil Rights and Fair Housing

The **California Department of Fair Employment and Housing** investigates and enforces California's civil rights laws, including

- Fair Employment and Housing Act (FEHA)
- Ralph Civil Rights Act
- Unruh Civil Rights Act
- Disabled Person's Act

Civil Rights and Fair Housing Cont.

Relevant housing laws apply to:

- Single Family Homes
- Multi-family housing;
- Apartments;
- Condos
- Sober living homes;
- Transitional housing;
- Supportive housing;
- Residential motels or hotels
- Shared-economy
• housing/Airbnb
- Shelters (emergency, homeless, DV survivors)

What is Your Role?

Housing Provider

- Make sure that your program is not unlawfully excluding people.

Housing Case Manager & Advocate

- Help prevent discrimination against your clients as they are looking for other housing.

FEHA Fair Housing Regulations

Protects people against housing discrimination based on certain protected characteristics

Cannot base housing decisions on criminal history information (CHI) without having a legitimate justification for doing so

Examples of “CHI” include arrests, convictions, and deferrals



Limitations on Considering Criminal History for Housing

Convictions only

- It is **unlawful to seek or consider** the following in denying housing:
 - Arrests (only)
 - Information indicating your client has been questioned, apprehended, taken into custody, detained, or held for investigation by law enforcement
 - Infractions such as speeding, an illegal u-turn, or other vehicle code violation
 - Diversion or deferred entry judgment program
 - Criminal convictions that have been sealed, dismissed, expunged
 - Adjudications or matters processed in the juvenile justice system

Limitations on Considering Criminal History for Housing Cont.

Must be directly related to housing

- Considered CHI must have a direct and specific negative bearing on the housing provider's substantial, legitimate, and non-discriminatory interest or purpose
- To help determine if a conviction is directly related to housing, consider the following:
 - Nature and severity of the crime
 - The amount of time that has passed since the criminal conduct occurred

Limitations on Considering Criminal History for Housing Cont.

No blanket bans

- It is illegal for landlords to advertise blanket statements such as "No Felons" or "We Do Not Accept Criminals."
- Landlords who use criminal backgrounds in decision-making processes should align with FEHA

Limitations on Considering Criminal History for Housing Cont.

Other Considerations

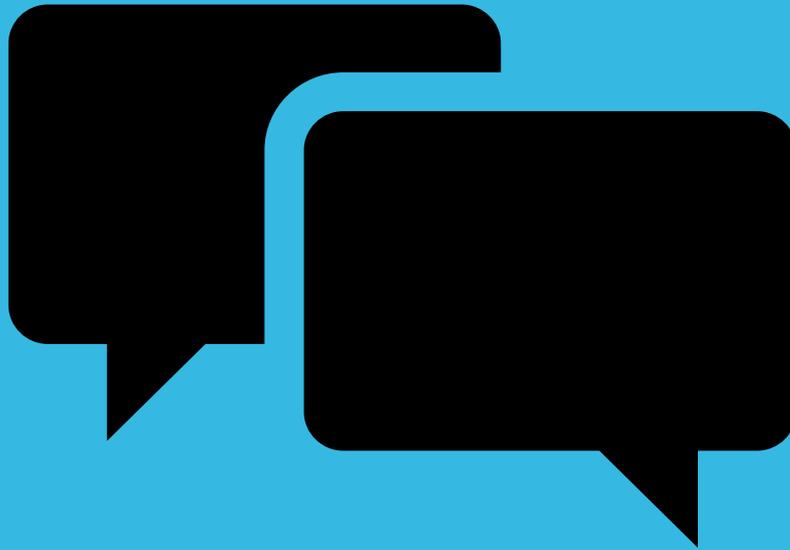
- Background check policies should be in writing
- Policies should include that the housing provider will give applicants a copy of the criminal history record that they reviewed so that they can **make sure that everything is accurate** and **respond with mitigating information**
- Housing providers should consider all mitigating information they receive
- Housing case managers should help clients obtain mitigating information.

What is Mitigating Information?

Information provided that explains that the applicant is **not likely to pose a demonstrable risk** to the health and safety of others, the property, or other legitimate and non-discriminatory goal of the housing provider.

Examples: Age when criminal conduct occurred, positive tenancy record since conviction, evidence of rehabilitation (e.g., program certificates), letters from law enforcement, etc.

Questions? Concerns? Comments?



Special Population: Working With Clients on the 290 Registry



What Do We Know About the 290 Registry?

California requires people convicted of any one of over 100 crimes to register their whereabouts with local law enforcement periodically.

- Examples of convictions that frequently require registration: public nakedness, selling a sculptures or paintings depicting child pornography, sexting, rape, urination in public, child trafficking.

People on the registry reflect a full spectrum of economic statuses, racial and ethnic demographics, sexual orientations, gender identities, and were convicted of a wide range of criminalized acts.

- The CA Department of Justice, Megan's Law website publicly posts many registrants' name, address, conviction history, and appearance.

Being on the registry significantly restricts certain freedoms otherwise available to non-registrants.

- For example, under state law, two people on the registry cannot live together unless they are related by blood, marriage, or adoption.

Registry Facts and Assumptions

Fact

Many people on California's registry are there because of discriminatory laws.

Fact

In 2017, California spent \$140 million a year to register youth, yet designated only \$46,000 for victim's services and prevention.

Fact

California's new tiering law is not automatic for those on the registry.

Registry Facts and Assumptions

Assumption

Sex offense registries prevent reoffending

Assumption

Registries are necessary to help law enforcement and the public track people who present the greatest risk to the community

Assumption

Restricting housing options for people on registries improves public safety

Current Registry Considerations

FEHA applies to all CHI, regardless of the nature of the alleged crime.

- **This means that any exclusion based on someone's requirement to appear on the 290 registry must meet FEHA requirements.**
- It is important to think about this in the context of interim rule language that many providers in CA still rely upon

“If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.”

Current Registry Considerations

Effective January 1, 2021, California' sex offense registration scheme is tier-based.

- **Tier One: 10 years.** Low level offenses. People convicted of these offenses must register for at least ten years.
- **Tier Two: 20 years.** Mid level offenses. People convicted of these offenses must register for at least 20 years.
- **Tier Three: Lifetime.** High level offenses. People convicted of these offenses must register for life and are not allowed to petition for removal.
- For people on the registry for juvenile convictions there is a separate re-tiering scheme.

Considerations and Tips

What can providers do to address barriers and increase housing access for people impacted by the criminal legal system?



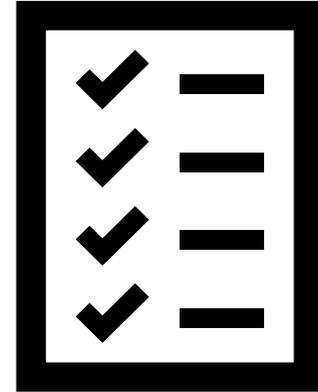
Tips to Reduce Conviction-Related Housing Barriers

- **Understand FEHA Restrictions**

- No blanket bans
- Convictions only
- Directly related to housing

- **Rethink Document Readiness**

- Conduct in-reach
- Mitigation documentation
 - Consider it as someone who is a housing gatekeeper
 - Help clients obtain it as a case manager
- Work with the client's attorneys to understand their situation and obtain accurate documents



Tips to Reduce Conviction-Related Housing Barriers

- **Help your client reduce barriers**
 - Develop a targeted plan and all barriers
 - Learn about the range of housing programs and resources available to address those barriers
 - Work with community partners (e.g., parole officers, other service providers, client support systems, etc.)
 - Reframe the narrative
 - Refer to legal services

The Contra Costa Public Defender's Clean Slate Program may be able to assist with record clearance options.

Your and/or your client can learn more by going to <https://www.cocopublicdefenders.org/clean-slate>

Tips to Reduce Conviction-Related Housing Barriers

- **Be an educator and advocate**
 - Educate landlords
 - Take stock of your personal biases, as well as practices that your agency engages in that might lead to discrimination against people based on their criminal history information.



Tips to Reduce Conviction-Related Housing Barriers for Clients on the 290 Registry

- **Landlord outreach and incentives**
- **Use the 290 Registry as a resource**
 - Reminder: Do NOT encourage clients who are registrants to access the Megan's Law website themselves.
- **Leverage Community Resources**

[Friends Outside Toolkit](#) – includes a section for people on the registry with supportive orgs and group info

Tips to Reduce Conviction-Related Housing Barriers **for Clients on the 290 Registry**

- **Help with post-housing denial advocacy**
 - PHAs
 - Private landlords
- **Help clients request tiering information and confirm accuracy**
- **Help eligible clients petition to terminate registration requirement**

The Contra Costa Public Defender's Clean Slate Program may be able to assist with 290 registry re-tiering.

Your and/or your client can learn more by going to <https://www.cocopublicdefenders.org/clean-slate>

References

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- [California Department of Fair Employment and Housing – Fair Housing and Criminal History FAQ](#)
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- [HUD - Interim Rule - 24 CFR § 5.856, 578.93, § 960.204\(a\)\(4\), and § 982.553\(a\)\(2\)](#)
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- [National Alliance to End Homelessness - Homelessness By The Numbers](#)
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- [Registered Lifetime Sex Offenders in Federally Assisted Housing](#)
- [Root and Rebound – Roadmap to Reentry](#)
- [USA Today – Fact Check, SB 145](#)
- [The Vera Institute - An Unjust Burden](#)
- [Statement from Office of Senator Scott Wiener re passage of SB 145](#)

Questions?

Reach out anytime -- we'd love to talk to you: clsi@homebaseccc.org

THANK YOU!