



HOUSING

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Hidden or “collateral consequences” are additional penalties that may result from criminal convictions. They have a direct impact on critical areas of life such as: employment, housing, education, public benefits, parental rights, and voting, and can hinder an individuals’ ability to successfully reintegrate. Understanding the relevant legal and regulatory framework that creates these sanctions can be helpful to criminal defense attorneys, other advocates, and all residents of New Jersey affected by incarceration. Please note that these laws can and do change, and you should inquire about updates before relying on this information. [June 2006]

SUMMARY: Finding housing in New Jersey is difficult for all low-income residents. Those returning from prison face additional difficulties, a result not only of barriers to employment and public benefits, but also of a number of state and federal laws limiting access to private and public housing for those with criminal convictions, particularly drug-related offenses.

New Jersey’s anti-discrimination law, which includes protection against housing discrimination, does not protect against discrimination on the basis of criminal convictions, and federal laws can limit access to public housing for those with criminal convictions. Moreover, poor housing options prior to prison strongly correlate with patterns of incarceration.

- Nationally, more than 10 percent of those coming in and out of prisons and jail are homeless in the months before their incar-

ceration. For those with mental illness, the rates are even higher – about 20 percent.

- Recent studies in New York City reveal that more than 30 percent of single adults entering shelters under the Department of Homeless Services are persons recently released from city and state correctional institutions.
- A study by the Vera Institute of Justice found that parolees who entered homeless shelters were seven times more likely to abscond during the first month after release than those who had some form of housing.¹

This fact sheet outlines barriers arising from laws restricting access to private and public housing. Here you can find the enabling statutes, identify specific convictions triggering a sanction, its consequences, and remedies where they exist.

Private Housing

STATUTE OR REGULATION	CONVICTION OR OFFENSE	CONSEQUENCES	REMEDIES
N.J.S.A. § 2A: 18-61.1(q)	Conviction; adjudicated delinquent; or pled guilty to an offense under the “Comprehensive Drug Reform Act of 1987” involving the use, possession, manufacture, dispensing or distribution of a controlled dangerous substance, analog, or drug paraphernalia within or	Tenant can be evicted from the premises.	Tenant can avoid eviction by 1) successfully completing a drug rehabilitation program; or 2) being admitted to and continue upon probation while completing a drug rehabilitation program.

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	upon the leased premises or the building or the complex of buildings – or the land next to the buildings.		
N.J.S.A. § 2A: 18-61.1(q)	A tenant or lessee knowingly allows someone who has been convicted or plead guilty to a drug offense to occupy the premises continuously or intermittently. (Not including juveniles)	Tenant can be evicted from the premises.	No action for removal may be brought pursuant to this subsection more than two years after the adjudication or conviction or more than two years after the person's release from incarceration whichever is the later.

Public Housing

STATUTE OR REGULATION	CONVICTION OR OFFENSE	CONSEQUENCES	REMEDIES
42 U.S.C. § 13663(a)	Any household member who has been convicted of methamphetamine production on the premises of a federally funded housing.	Federal law requires public housing agencies and providers of Section 8 and other federally assisted housing to deny housing to applicants who commit this offense.	None.
24 C.F.R. § 960.204(a)(3)	Any household with a member who is subject to a lifetime registration requirement under a state sex offender registration program.	Federal law requires public housing agencies and providers of Section 8 and other federally assisted housing to deny housing to applicants who commit this offense.	None.
42 U.S.C. § 13661(a) ²	Any household who has been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity of a household member.	The housing provider has sole discretion to decide if the tenant is ineligible for public or federally assisted housing for three years.	The housing provider has the discretion to shorten or waive the three-year period if the person who engaged in the drug-related criminal activity successfully completes a rehabilitation program approved by the local housing provider, or the circumstances leading to the conviction no longer exist (i.e. the person has

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			died or is imprisoned.) The three-year period begins to run from the date of the eviction.
42 U.S.C. § 13661(b)	Any household member who is abusing alcohol or using another drug illegally, and whose illegal use or pattern of alcohol abuse or illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.	The housing provider has sole discretion to decide if the tenant is ineligible for public or federally assisted housing.	The housing provider may permit the household to be admitted or remain in such housing if the person who abused alcohol or illegally used drugs demonstrates that he or she is not currently abusing alcohol or illegally using drugs and has been rehabilitated in any one of the following three ways: 1) Participation in a supervised alcohol or drug rehabilitation program; 2) Completion of a supervised alcohol or drug rehabilitation program; and 3) Another successful form of rehabilitation.
42 U.S.C. § 13661(c) and 42 U.S.C. § 13661(c)(2)	Adult applicants with histories of crimes of violence or other criminal acts that could adversely affect other residents.	Public Housing Authorities are permitted to perform criminal background checks and can deny admission to any applicant with a criminal record. ³	Public Housing Authorities can ban a person for a reasonable period of time and require the applicant, as a condition of admission to a housing program or to federally assisted housing, to submit evidence sufficient to ensure that whoever in the household engaged in previous criminal activity has not engaged in any further criminal activity during the ban period.
42 U.S.C. 13661(c)	Individuals who engaged in 1) any drug-related criminal activity; 2) any violent criminal activity; or any other criminal activity that would	Public Housing Authority may deny admission.	Denial of admission is considered on a case-by-case basis, which means that the individual Public Housing Authority has the right to decide if the applicant

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	negatively affect the health, safety, or right to peaceful enjoyment of the premises if the criminal activity occurred a “reasonable” time before the applicant seeks admission.		should be admitted or denied admission based on the offenses listed. (Check with the housing authority occupancy manager to determine the exact criteria).

¹ Reentry Policy Council statistics, http://www.reentrypolicy.org/rp/main.aspx?dbID=DB_StatisticsbySubject789.

² In *Housing and Urban Development v. Rucker*, 122 S. Ct. 1230 (2002), the United States Supreme Court upheld the general validity of these regulations (although there is still a lack of clarity about breadth of the decision’s applicability). Once evicted, tenants are barred from receiving any kind of federal housing assistance for three years. Notably, legal services organizations that receive funding from the Legal Services Corporation are prohibited from representing individuals being evicted from public housing due to criminal activity.

³ Public Housing Authorities must consider “evidence of rehabilitation” when denying admission to applicants. For example, the Newark Housing Authority can waive the ineligibility if the person in question can show that he or she is no longer using drugs or alcohol, has successfully completed or is participating treatment, or is otherwise rehabilitated. The waiver is granted at the discretion of the housing authority, and may be difficult to obtain depending upon the nature of the conviction.

* For more information and additional citations see N. Fishman, Briefing Paper: Legal Barriers to Prisoner Reentry, New Jersey Institute for Social Justice (Newark, April 2003), which can be downloaded at www.njisj.org.