

Misunderstanding Criminal Recidivism: DCHA’s Public Housing Policies on Sex Offenders and Substance Abuse Do Not Foster Safer Communities

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ABSTRACT

Experts on criminal recidivism are in consensus that housing instability is a risk factor for reoffending. Academic studies and common sense find that justice-involved individuals are more likely to suffer from financial stressors that would allow them to qualify for and need public housing assistance. To curb the cyclical nature of recidivism and housing instability, local and federal governments should promote policies that support housing for criminal offenders. DCHA, and more broadly, HUD, have public housing admission policies that are inconsistent with best practices described by scholars and thus should be updated to foster reintegration of offenders, divert people from the criminal legal system, and create a safer community for all. Current DCHA policies include strict rules proscribing admission to sex offenders and those with a history of illegal drug use, with the goal of promoting a safe environment for residents. This Note argues that by creating admissions policies that are more inclusive of sex and drug offenses, DCHA could participate in disrupting the cyclical nature of housing instability and the criminal legal system and better promote public safety for all District of Columbia residents.

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I. INTRODUCTION

There is a cyclical relationship between housing instability and criminal legal system involvement. Lacking access to quality affordable housing makes one more likely to become involved in the criminal legal system, and being involved in the criminal legal system makes one more likely to lack access to quality affordable housing.¹ A way to break this cycle is to remove the barriers to housing justice-involved individuals face.

Justice-involved individuals face financial barriers in accessing the increasingly expensive Washington, D.C., housing market.² Justice-involved individuals face financial barriers resulting from challenges securing employment. Justice-involved individuals struggle to find employment due to criminal background checks and social stigma, and the jobs they are eligible for are often low paying.³ Even though D.C. has implemented “ban-the-box” provisions, which limits employers’ ability to inquire about individuals’ criminal histories to after a conditional offer of employment, employers may decide to terminate offers upon discovering their criminal record if they can articulate a “legitimate business reason” for the termination, undercutting much of the protection the provision would otherwise provide.⁴ As a result of these barriers to employment, justice-involved individuals have lower incomes than their otherwise similarly situated peers. For example, a U.S. Census Bureau study reported that the median income for those released from prison in 2006 was \$10,090 by 2018, which was about \$10,000 lower than that of their similarly situated peers who lacked criminal justice involvement.⁵ In 2018, the average cost of a one-bedroom apartment in D.C. was \$2,184, and a studio was \$1,834,

1. Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL. INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

2. HUD FAIR MARKET RENTS DATASET, HUD OFF. OF POL’Y DEV. & RSCH., <https://www.huduser.gov/portal/datasets/fmr.html#year2000> (median rent for a two-bedroom apartment in D.C. has increased from \$618 in 2000 to \$1,785 in 2021).

3. Amy Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, 270 NAT’L INST. OF JUST. J. 42, 48 (July 2011).

4. The District of Columbia Fair Criminal Record Screening Amendment Act of 2014, D.C. CODE § 32–1342 (2024).

5. Keith Finlay, *Dim Job Outlook for People Released From Prison During Great Recession*, U.S. CENSUS BUREAU (Feb. 15, 2022), <https://www.census.gov/library/stories/2022/02/dim-job-outlook-for-people-released-from-prison-during-great-recession.html> (“People released from prison in 2006 had average annual income of \$8,065 in 2007 and \$10,090 in 2018.”); Keith Finlay and Michael Mueller-Smith, *Justice Involved Individuals in the Labor Market since the Great Recession*, 695 ANNALS OF THE AM. ACAD. POL. & SOC. SCI., 107, 122 (2021).

according to the D.C. Office of Revenue Analysis.⁶ Therefore, it is exceedingly difficult for a justice-involved individual to independently afford market-rate housing in D.C., considering the struggles justice-involved individuals face in finding employment. Even if an individual were able to afford an apartment, many landlords have policies, grounded in safety promotion, that exclude people with prior convictions, like illegal drug use or violent offenses, from being eligible to rent.⁷

Justice-involved individuals often meet the financial qualifications for public housing assistance. The U.S. Department of Housing and Development (HUD) set the 2023 income limit for a single person to qualify as Extremely Low Income at \$31,650, Very Low Income at \$52,750, and Low Income at \$66,750; HUD provides varying levels of assistance to renters who fall into each category.⁸ In D.C., the relevant Public Housing Authority (PHA) is the District of Columbia Housing Authority (DCHA). DCHA, with directives from HUD, determines the admission requirements and policies for screening and admitting individuals seeking public housing for over 8,300 public housing units.⁹

DCHA admission requirements entitle DCHA to exclude a large proportion of justice-involved individuals. HUD provides a list of mandatory disqualifiers all PHAs must adhere to, but they leave a large amount of discretion to individual PHAs to enact their own criminal history policies. DCHA policies exclude from admission people who have been involved in “drug-related criminal activity” in the past five years, anyone known to have used illegal drugs in the past three months, anyone with any criminal sexual conduct within the last five years, or anyone registered on any state lifetime sex registry.¹⁰ But a Supreme Court decision and HUD regulations have restricted the reach of DCHA criminal history policies in recent years. In *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, codified at 24 C.F.R. § 100.500, the Court held that if housing policies have even an unintentional but disparate impact on a protected class, and the housing provider is unable to provide a “substantial, legitimate, non-discriminatory” goal for advancing the policy, or if their legitimate goal could be achieved by another practice with a less discriminatory effect, then the policy violates the Fair Housing Act.¹¹ HUD accordingly instructs PHAs that blanket bans on provision of housing to people with criminal histories violate the Fair Housing Act, as the disproportionate impact the criminal legal system has on people of color leads to a disparate impact in housing for people of color, and a

6. Fahad Fahlimullah, *A Study of the District of Columbia's Apartment Rental Market from 2000 to 2015: The Impact of Millennials* 1, 5 D.C. OFF. OF REVENUE ANALYSIS (2018).

7. Finlay & Mueller-Smith, *supra* note 5, at 118.

8. *FY 2023 Income Limits Documentation System for DC*, DEP'T HOUS. & URB. DEV., <https://www.huduser.gov/portal/datasets/il.html> (last visited Mar. 28, 2024).

9. *DCHA by the Numbers*, D.C. HOUS. AUTH. (2023), <https://www.dchousing.org/wordpress/about-us/dcha-by-the-numbers/> (last visited Dec. 1, 2023).

10. D.C. HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY § III.B: REQUIRED DENIAL OF ADMISSION (2023), https://www.dchousing.org/wordpress/wp-content/uploads/2023/02/ACOP_2.14.23.pdf.

11. *Tex. Dep't Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 547 (2015).

PHA's legitimate goal of safe communities could be served by a more nuanced, less discriminatory criminal history policy.¹²

However, even in light of these improvements, DCHA still has the discretion to exclude many justice-involved individuals. Through the use of vague definitions of disqualifying criminal conduct, and overly inclusive categories of disqualifying offenses, DCHA can prevent many justice-involved individuals from obtaining the housing aid they need, especially as it pertains to those with any history of drug use in the past five years and sex offense convictions. As of 2012, at least 67,000 Washington, D.C. residents had at least one criminal conviction. This accounts for nearly 10% of the District's population.¹³ While DCHA does not bar all criminal convictions, many of these 67,000 residents could be denied access to public housing provided by DCHA based on the current language of DCHA Admissions and Continued Occupancy Policy (ACOP).

DCHA must promote policies in line with the fact that when a person commits even the most egregious crime, if they are not sentenced to death or life without parole, that person will rejoin society. When that happens, it is all of society's goal that the person will not reoffend. In even the most unsympathetic light to the offender, that goal is best served by ensuring the person has all the tools available to them that can reduce their risk of recidivism and allow them to reintegrate into society. One of the most important tools in reducing that risk is stable housing, and DCHA should update its ACOP to expand access to justice-involved individuals. By precluding these individuals from access to affordable quality housing, DCHA is ignoring the argument of crime and housing policy experts, that access to stable housing is foundational to reducing recidivism.¹⁴ By administering these policies, DCHA effectively passes the buck on promoting the safety of the greater public. This Note will identify a non-exhaustive list of discriminatory DCHA criminal history admission policies regarding sex offenses and drug use, and will argue that admission for both categories of offenders should be expanded; it also argues for the elimination of policies that encourage applicants to remove and discard a disqualified justice-involved family member in exchange for housing assistance.

II. HOUSING INSTABILITY AND RECIDIVISM IN GENERAL ACROSS ALL OFFENSES

Housing instability and criminal recidivism go hand in hand. Countless studies have found that housing stability is a strong predictor of reoffending across all

12. HELEN R. KANOVSKY, DEP'T HOUS. & URB. DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS 5–6, 10 (April 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

13. BRIAN COGNATO, ET AL., A DATA NEEDS ASSESSMENT FOR THE MAYOR'S OFFICE ON RETURNING CITIZEN'S AFFAIRS 21 (2015), <https://orca.dc.gov/sites/default/files/dc/sites/orca/publication/attachments/GW%20Report%20%281%29.pdf>.

14. See, e.g., Benjamin Steiner et al., *Examining the Effects of Residential Situations and Residential Mobility on Offender Recidivism*, 61 CRIME & DELINQUENCY 375, 391 (2015).

offense categories. One study found that each time a parolee moved their likelihood of reoffending increased by 25%.¹⁵ In another study of 2,453 probationers, housing instability was found to be the number one predictor of recidivism among measured risk categories.¹⁶ In a nationwide study, probationers who moved at least once during their supervision period were almost twice as likely to have had a disciplinary hearing.¹⁷

The reasons behind this relationship are logical. When a person has access to stable housing, they have the necessary foundation to build all the other necessary skills and tools needed to reintegrate and lead a law-abiding life. Stable housing makes it much easier to obtain and maintain employment, build meaningful social relationships, and develop a community network of support. DCHA, as an affordable housing provider, is in a strong position to help justice-involved individuals break the cycle of housing instability and criminal legal involvement. However, DCHA's policies as they are written do not promote that goal.

III. DCHA'S SEXUAL OFFENSE POLICIES ARE INCONGRUENT WITH THE NATURE OF SEX OFFENSES AND SEX OFFENSE RECIDIVISM

DCHA policy on sex offenses is broad and therefore over-inclusive. HUD mandates that all PHAs deny any application with a member who is subject to any state's lifetime sex offender registration requirement.¹⁸ DCHA's policies go further than the mandatory HUD bar, however, and ban any household that has a member who in the last five years engaged in "criminal sexual conduct, *including but not limited to* sexual assault, incest, open and gross lewdness, or child abuse."¹⁹

Focusing first on HUD's mandatory denial policy, states have varying levels of what behavior constitutes a lifetime-registration offense making the policy overly broad. While this mandatory denial for only lifetime registration on any state's registry is better than a mandatory ban on anyone ever on a registration, it still casts a wide net over some relatively minor offenders. In some states like Alabama, a life-time registration offense can constitute behavior as relatively minimal as peeping.²⁰ Based on HUD's mandatory denial policy, an individual

15. TAMMY MEREDITH ET AL., APPLIED RSCH. SERVS., INC., ENHANCING PAROLE DECISION-MAKING THROUGH THE AUTOMATION OF RISK ASSESSMENT 15 (2003).

16. Leah A. Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence from a Sample of People on Probation in San Francisco*, 47 CRIM. JUST. & BEHAVIOR, 1097, 1106 (2020) ("We found each residential circumstance predicted recidivism, above and beyond demographic markers, criminal risk, behavioral health problems, social support, and financial insecurity.").

17. Jennifer Schulenberg, *Predicting Noncompliant Behavior: Disparities in the Social Locations of Male and Female Probationers*, 9 JUST. RSCH. & POL'Y 26, 45 (2007).

18. D.C. HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY § 3-III.B. REQUIRED DENIAL OF ADMISSION (2023).

19. *Id.* at § 3-III.C. PERMITTED DENIAL OF ADMISSION (2023) (emphasis added).

20. *50-State Comparison: Relief from Sex Offense Registration Obligations*, RESTORATION RTS. PROJECT, <https://cresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/> (last visited Dec. 1, 2023).

convicted of peeping in Alabama and placed on Alabama's life-time registration would be barred from admission to every state's public housing, even though the vast majority of states do not view peeping as a life-time registration offense.²¹ Therefore, even HUD's limit on only lifetime-registration offenders is an overly broad policy as it allows individuals who are guilty of relatively minor behavior that was committed in a stricter registration state to be barred from public housing in states where that behavior would not qualify for a life registration.

DCHA's policy is even broader than HUD's. By defining "criminal sexual conduct" exclusively by a non-exhaustive list of offenses, DCHA created a policy that effectively grants officials discretion to deny admission to anyone who has been convicted of any form of a sex offense in the previous five years, no matter how minor. In order for these policies to be justified from the safety perspective on which DCHA bases them, one would assume that the nature of sex offenses and sex offense recidivism has a close tie to the victim and perpetrator's residence. However, this is not the case with sex offenses, making these policies inconsistent with the current understandings of both the recidivism risk of sex offenders and the nature in which most sex offenses occur.

First, sex offenders have remarkably low recidivism rates compared to other categories of crime, and yet face greater barriers to admission in DCHA ACOP policies. In a survey from 2018 measuring recidivism rates over a ten-year period of people released from prison in 2008 across 24 states, the Department of Justice concluded that of all those who were released after serving time for rape or sexual assault conviction, only 6% had been rearrested for rape or sexual assault.²² Comparing that with the recidivism rates for other violent crimes, which showed a 44% re-offense rate, or property crimes, with a 64% re-offense rate, sex offenders are drastically less likely than other categories of justice-involved individuals to reoffend.²³ So while sex offenders amount to one of the least likely-to-reoffend groups of justice-involved individuals, DCHA nonetheless created the strictest bar on their admission.

Additionally, the nature and circumstances regarding how sex offenses occur do not provide support for the exclusionary nature of DCHA policies. In the few cases where an individual does commit a new sex crime, it is overwhelmingly true that the offender's residence location is almost never a factor in the offense. For example, in a study analyzing 224 sex offenders who committed a new sex offense within a 15-year period following their release from prison, only 27 of those offenders met their victims within one mile of their residence.²⁴ Another study of approximately 500 Californian sex offenders determined that sex

21. *See id.*

22. LEONARDO ANTENANGELI & MATTHEW R. DUROSE, BUREAU OF JUST. STAT., RECIDIVISM OF PRISONERS RELEASED IN 24 STATES IN 2008: A 10-YEAR FOLLOW-UP PERIOD (2008-2018) 10 (2021).

23. *Id.*

24. Jill Levenson et al., *Sex Offender Residence Restrictions: Sensible Crime Policy or Flawed Logic*, 71 FED. PROBATION 1, 3 (2007).

offenders' residential proximity to children did not increase their likelihood of reoffending.²⁵

Re-offenders instead more frequently establish contact through an existing personal connection to their victim, like a family relation or a social network.²⁶ It is therefore true that a person's neighbors could be at higher risk of being the victim of a recidivating sex offender than a complete stranger. However, this is not a sufficient reason to bar admission to DCHA public housing for sex offenders. Barring sex offenders from public housing will not cause them to cease to exist. Sex offenders who have reentered society must live somewhere. It is equally undesirable that any neighbor, be it in a public housing complex or in a market rate apartment building, be at an increased chance of being the victim of a sexual offense. However, because lacking stable housing is a known factor that increases sexual offense recidivism,²⁷ a sex offender in public housing would be safer for society as a whole, supporting the argument for their admission to DCHA public housing.

Considering sex offenders' uniquely low recidivism rate and the relatively arbitrary role residential location plays in reoffending, DCHA policy on restricting access to sex offenders is more broad and exclusionary than necessary to promote DCHA's goals of safety.

IV. A JUDICIAL SOLUTION TO DCHA'S SEX OFFENSE POLICY

An FHA disparate impact claim could likely be brought to challenge DCHA's ACOP provisions on sex offenders.²⁸ In order to succeed with this disparate impact claim, a harmed party must show that a housing provider's policies unjustifiably discriminate against a member of a given race, national origin, or other protected class.²⁹ To show this, the plaintiff must show that (i) the policy has a disproportionate effect on a protected class, (ii) there is a robust causal link between the practice and effect, (iii) the disparity caused is significant, and (iv) a direct relationship between the injury and the conduct exists.³⁰ A showing of intentional discrimination is irrelevant to the success of the claim. Upon establishing a *prima facie* case, housing providers have the opportunity to present the defense that their policy furthers a substantial, legitimate, nondiscriminatory

25. SARAH TOFTE & JAMIE FELLNER, HUMAN RIGHTS WATCH, NO EASY ANSWERS, SEX OFFENDER LAWS IN THE US (Ian Gorvin et al. eds., 2007), <https://www.hrw.org/report/2007/09/11/no-easy-answers/sex-offender-laws-us>.

26. ALEXANDRA THOMPSON & SUSANNAH TAPP, US BUREAU OF JUST. STAT., CRIMINAL VICTIMIZATION 2022 (Edrienne Su ed., 2023), <https://bjs.ojp.gov/library/publications/criminal-victimization-2022>.

27. Jason Rydberg et al., *Investigating the Effect of Post-Release Housing Mobility on Recidivism: Considering Individuals Convicted of Sexual Offenses*, 35 SEX ABUSE 539–567, 556 (2023) (“[I]ncreases in housing mobility enhance then likelihood of rearrest for individuals with sexual convictions against both children and adults.”).

28. See Fair Housing Act, 42 U.S.C. § 3604(a) (“[O]r otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin”).

29. *Tex. Dep't Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 547 (2015).

30. *Id.* at 521.

interest.³¹ However, that defense can be defeated by a showing of a different practice that could serve those goals in a less discriminatory way.³²

Here, DCHA's policy on sex offenders most likely results in the discriminatory denial of Black applicants at rates disproportionate to white applicants. D.C. does not publish race data of sex offenders, so it cannot be said for certain that D.C. sex offenders are disproportionately Black with current available data. However, if D.C. sex offender demographics align with the rest of the country, there would be a strong basis for the claim.

Unsurprisingly, like most criminal offenses, national sex offender demographics reflect the criminal legal system's widespread systemic bias against Black people. According to a study assessing data from the 49 states that collect sex offender race demographics, in every state but Michigan, Black people had a higher sex offender registration rate than white people.³³ The highest disparity is shared among eight states, where Black people are three times as likely to be registered sex offenders.³⁴ Nationwide, the average Black registration rate is over two times more frequent than white rates.³⁵ In total, almost 1% of all Black American men are registered sex offenders.³⁶

Therefore, if D.C. has similar data, there would be grounds to raise a disparate impact claim. By barring all lifetime sex offender registrants and allowing denial for any sex offense within the last five years, DCHA policy likely disproportionately denies Black people's admission to the public housing program at a higher rate compared to white people. If this is the case, plaintiffs could show that (i) DCHA policy of denying admission to sex offenders has a disproportionate effect of denying admission to Black people, (ii) the policy has a robust link to the harm of Black people being denied from DCHA public housing, (iii) the disparity between Black and white admission is significant, and (iv) there is a direct relationship between DCHA's conduct and Black people's injury. Therefore, upon a collection of data, a plaintiff alleging a disparate impact claim against DCHA policy would likely have made out a *prima facie* case.³⁷

While D.C. does not collect sex-offender demographics, D.C.'s available broader crime statistics show that Black people are convicted of crimes at rates disproportionate to their 45% proportion³⁸ of the D.C. population. In 2022, of 6,985 violent crime offenders recorded by the D.C. Metropolitan Police Department, 4,502 (65%) of the offenders were Black, compared to only 187

31. *Id.*

32. *Id.* at 522.

33. Trevor Hoppe, *Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies*, 41 L. & SOC. INQUIRY 573, 583–84 (2016).

34. *Id.* at 583–584.

35. *Id.*

36. *Id.*

37. See *Tex. Dep't Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 542 (2015).

38. *Quick Facts District of Columbia*, U.S. CENSUS BUREAU (2024), <https://www.census.gov/quickfacts/fact/table/DC/PST045223>.

white offenders (less than 3%).³⁹ Additionally, analysis of race demographics collected by the D.C. Department of Corrections (DOC) reveals that 87.8% of all inmates are Black as of January 2024.⁴⁰ While approximately 50% of inmates at DOC facilities are awaiting trial and therefore are not a direct representation of the demographics of those actually convicted of crimes,⁴¹ the 87.8% of Black inmates reflects the stark overrepresentation of Black people involved in the criminal legal system in D.C., and this percentage is unlikely to vary significantly to those serving time at DOC who have been convicted. Therefore, even in the absence of sex offender race demographics, D.C.'s broader crime statistics reflect an overrepresentation of Black people in the criminal legal system that could extend to Black people's overrepresentation in sex offense statistics necessary for supporting a *prima facie* case.

DCHA would have the opportunity to present the defense that its policy serves the legitimate interests of promoting resident safety and maintaining a crime-free environment.⁴² While this would undoubtedly be found to be a legitimate interest, as all housing providers wish to promote safe and healthy environments, the following are alternatives to DCHA's policies that would likely be less discriminatory and still promote DCHA's interests.

The mandatory ban on life-time sex offenders is more like a blanket ban on criminal history proscribed by HUD than it is a nuanced and well-reasoned policy that is required by *Inclusive Communities Project*.⁴³ Without any regard for how long ago the offense happened, what the details of the offense were, or any rehabilitation steps a person has taken, they are nonetheless automatically barred from accessing DCHA public housing. Removing the mandatory denial for sex offender registrants would be a first step in creating a less discriminatory policy. However, this would involve overruling HUD mandatory directives on mandatory denials. This would prove challenging as it would involve overruling a federal agency's policies, as opposed to local DCHA policies, which is a more significant request of a court.

39. *Crime Data Explorer*, FED. BUR. INVEST., <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend> (last visited Mar. 28, 2024).

40. *DC Department of Corrections Facts and Figures January 2024*, D.C. DEPT. CORRECTIONS (Jan. 2024), https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20January%202024_0.pdf.

41. *Id.* at 9.

42. D.C. HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY § 1-I.D. THE PHA'S COMMITMENT TO ETHICS AND SERVICE (2023).

43. *Inclusive Cmty. Project*, 576 U.S. at 521; U.S. DEP'T HOUS. & URB. DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS 6 (April 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF (PHAs who impose "blanket prohibitions on any person with any conviction record – no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then," will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest).

Separate from HUD's mandatory ban, DCHA's policy of a mandatory ban of any "criminal sexual conduct" within the past five years is also more discriminatory than necessary to serve DCHA's goals.⁴⁴ As outlined above, sexual offender recidivism is frequently unrelated to the offender's residential proximity to the victim. DCHA could proscribe admission therefore to only those who have committed serious sexual offenses in the last five years, whose offenses were facilitated in a major way by the individual's residential proximity to the victim. Based on the reality that most sexual offender recidivists do not meet their victims near their residence, creating a case-by-case policy barring admission only to the few whose offenses are linked to their residence would allow DCHA to advance their goal of resident safety, while not being more discriminatory than necessary.

V. DCHA POLICY ON DRUGS IGNORES THE ISSUES SUBSTANCE ABUSE POSES AS A MEDICAL ISSUE

DCHA's policy on drug use preclusion from admission is similarly broad and harmful to the estimated 65% of justice-involved individuals who have served prison sentences that are found to meet the medical criteria of substance abuse disorder during their incarceration period. HUD requires DCHA to deny admission if any household member is currently engaged in the use of illegal drugs.⁴⁵ DCHA defines "currently" as within the past three months.⁴⁶ HUD also requires DCHA to deny admission if "DCHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents."⁴⁷

Separately from HUD's required policies, DCHA policy additionally states that if any household member "is currently engaged in or has engaged in [drug-related criminal activity] within the past five years, the family will be denied admission."⁴⁸ Drug-related criminal activity is defined in the policy as "the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with the intent to manufacture, sell, distribute, or use the drug."⁴⁹ DCHA does, however, allow Admissions to consider whether a person has completed a DCHA approved drug rehabilitation program within the last five years and, in some circumstances, may grant admission.⁵⁰

This policy largely ignores the reality that substance abuse is a medical issue, not a criminal issue. The War on Drugs and modern scientific understandings of

44. D.C. HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY § 3-III.C OTHER PERMITTED REASONS FOR DENIAL OF ADMISSION (2023).

45. D.C. HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY § 3-III.B REQUIRED DENIAL OF ADMISSION (2023).

46. *Id.*

47. *Id.*

48. *Id.* at § 3-III.C.

49. *Id.*; 24 C.F.R. § 100.500 (2023).

50. *Id.* at § 3-III.E.

drug addiction have proven the futility of treating substance abuse punitively and as an individual shortcoming or failing.⁵¹ Instead of focusing on punishment and isolation, recentering substance abuse as a medical issue means focusing on and treating the underlying causes of substance abuse.

One major cause of substance abuse is housing instability. Lacking access to stable affordable housing actively works against a person's ability to recover from or address substance abuse disorders. Chronic stress as a result of challenges in paying rent and the looming threat of eviction is a trigger for many to begin abusing and exacerbates the issue for those already experiencing substance abuse disorders.⁵² Stable housing is a requisite preliminary step in addressing substance abuse disorders.

Access to stable housing, like DCHA public housing would provide, has been shown to statistically improve outcomes for those experiencing substance abuse or those at risk of substance abuse. In a study evaluating substance abuse outcomes based on those living in stable versus unstable or marginal (patterns of homelessness) housing, unstable housing resulted in significantly higher rates of continued substance abuse by duration and frequency.⁵³ Stable housing even had similarly positive outcomes for alcohol abuse prevention as did "sober living housing" environments.⁵⁴

Additionally, DCHA's mitigating consideration of whether an individual has completed a rehabilitation program is insufficient to justify banning drug users. Many people experiencing substance abuse disorders cannot afford to attend rehabilitation programs, either at all or in their entirety.⁵⁵ Both low economic status and housing instability are associated with people foregoing treatment or having to leave treatment before completion.⁵⁶

Both low economic status and housing instability are also reasons why people apply for D.C. public housing. If a person qualifies for public housing, they do not have a large disposable income, and likely cannot afford rehabilitation

51. Nora Volkow, *Addiction Should Be Treated, Not Penalized*, 46 NEUROPSYCHOPHARMACOLOGY 2048, 2048 (2021) ("One analysis by the PEW Charitable Trusts found no statistically significant relationship between state drug imprisonment rates and three indicators of state drug problems: self-reported drug use, drug overdose deaths, and drug arrests.").

52. Rajita Sinha, *Chronic Stress, Drug Use, and Vulnerability to Addiction*, 1141 ANNALS OF THE N.Y. ACAD. OF SCI. 105, 120 (2008); Morgan Hoke & Courtney Boen, *The Health Impacts of Eviction: Evidence from the National Longitudinal Study of Adolescent to Adult Health*, 273 SOC. SCI. MED. 1, 1–12 (2021).

53. Douglas Polcin & Rachel Korcha, *Housing Status, Psychiatric Symptoms, and Substance Abuse Outcomes Among Sober Living House Residents over 18 Months* (Sep. 1, 2018) (unpublished manuscript) (available online through PubMed Central, Nat'l Ctr. for Biotech. Info), *reprinted in* 16 ADDICTIVE DISORDERS & THEIR TREATMENT 138–50 (2017).

54. *Id.* at 9 (finding that marginal housing has more severe drug abuse rates than both sober living housing and stable housing, albeit sober living drug rates less severe than stable housing; and that alcohol abuse rates are equally less severe in stable housing and sober living housing compared to marginal housing).

55. *Barriers to Addiction Treatment: Why Addicts Don't Seek Help*, AM. ADDICTION CTRS. (Jan. 30, 2024), <https://americanaddictioncenters.org/rehab-guide/treatment-barriers>.

56. *Id.*

programs if they lack insurance.⁵⁷ Allowing a person access to lower-cost public housing could allow that person to allocate the funds they save on housing to rehabilitation after gaining affordable housing. Additionally, if a person was incapable of completing treatment due to lacking stable housing entirely, gaining stable housing with DCHA would eliminate that barrier to completing treatment. Therefore, if DCHA wishes to maintain evidence of rehabilitation as a mitigating factor, they should, at a minimum, change the requirement of rehabilitation programs for those experiencing substance abuse to kick in *after* gaining access to public housing, and only then if the family or individual is able to show they have available funds.

Proponents of current DCHA policies might argue that DCHA *does* view their policies as treating drug abuse as a medical problem, but from the perspective that those experiencing substance abuse are infectious agents of the disease of substance abuse.⁵⁸ They argue that allowing admission of a person who abuses drugs leads to the spread of the abuse issue and to violence within the public housing community. Even from this point of view, the argument in support of DCHA's policies is not persuasive.

Similarly to denying admission for sexual offenses, denying admission to those experiencing substance abuse does not cause them to disappear, and instead only aggravates their abuse challenges. They will continue to face the stressors of lacking access to affordable stable housing which can exacerbate abuse challenges. Taking DCHA policy proponents' argument as true, this would make them more infectious agents, exposed to the greater community instead of DCHA residents. Therefore, from a harm reduction standpoint, even if individuals experiencing substance abuse are viewed as spreading a disease within their community, that spread would be better controlled by broadening those individuals' access to public housing support.

A litigation challenge to DCHA's drug policy based on the disparate impact theory that is available for sex-offense policy is likely unavailable here. While a showing of increased denial based on substance use would likely find a disparate impact in the exclusion of Black people at higher rates than white people resulting from the systemic issues in the criminal legal system,⁵⁹ DCHA's legitimate

57. See Mir Ali et al., *Reasons for Not Seeking Substance Use Disorder Treatment: Variations by Health Insurance Coverage*, 44 J. BEHAV. HEALTH SERVS. RSCH. 63–74 (2017).

58. See U.S. Dep't Hous. & Urb. Dev. v. Rucker, 535 U.S. 125, 134 (2002) (holding that HUD properly gives PHAs discretion to evict tenants based on drug behavior of a houseguest or household member that the tenant is unaware of because "a tenant who 'cannot control drug crime . . . which threaten[s] health or safety of other residents, is a threat to other residents and the project.' . . . With drugs leading to 'murders, muggings, and other forms of violence against tenants,' and to the 'deterioration of the physical environment . . .'" (quoting Public Housing Lease and Grievance Procedures, 56 Fed. Reg. 51567 (Oct. 11, 1991) (revising 24 C.F.R. § 966.4) and 42 U.S.C.A. § 11901 (West 1999))).

59. See *Facts and Figures January 2024*, D.C. DEP'T CORRECTIONS (Jan. 2024), https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20January%202024_0.pdf.

goal of promoting their residents' safety would likely carry the day in court. It would be hard to show that DCHA's goal of resident safety could be met as adequately with a less discriminatory, alternative policy. Legislative and community organizers that advocate for stable housing for those experiencing substance abuse from community safety perspective therefore should challenge the policy.

VI. REMOVAL OF A DISQUALIFYING PERSON DISINCENTIVIZES FAMILY SUPPORT AND EXACERBATES ISSUES THE DISQUALIFIED PERSON FACES

Finally, DCHA disincentivizes family support by encouraging families to cut ties with a justice-involved individual who would disqualify the household for admission.⁶⁰ This further intensifies the issues that a person faces by nature of being justice-involved. When a family is informed that a member of their household is disqualified from admission, DCHA ACOP grants them the option to remove that person from the application and, as a condition of their acceptance to DCHA housing, agree that the disqualified family member may never come to the premises.⁶¹

Family support provides both necessary physical and emotional resources needed for the maintenance of law-abiding behavior.⁶² A person's housing, economic, physical, social, and emotional needs being met are associated with lower rates of criminal recidivism and can all be provided in some degree by family support.⁶³ DCHA policy can cause a justice-involved individual to lose access to all of those sources of support through one admission policy.

Many justice-involved individuals lack the support of their families.⁶⁴ However, those who do retain their support better integrate into society and are less likely to recidivate than those who lack it.⁶⁵ In a study of sex offenders, those who retained constructive family support systems had significantly fewer

60. D.C. HOUS. AUTH., ADMISSIONS AND CONTINUED OCCUPANCY POLICY § 3-III.E. CRITERIA FOR DECIDING TO DENY ADMISSION (2023) (“Should DCHA’s screening process reveal that an applicant’s household includes an individual subject to state lifetime registered sex offender registration, DCHA must offer the family the opportunity to remove the ineligible family member For other criminal activity, DCHA may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 960.203(c)(3)(i)]”).

61. *See id.* (“As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the public housing unit.”).

62. *See* Thomas Mowen et al., *Family Matters: Moving Beyond “If” Family Support Matters to “Why” Family Support Matters during Reentry from Prison*, 56 J. RSCH. IN CRIME & DELINQ. 483, 484–85 (2019).

63. *Id.*

64. *See id.* at 484–88.

65. *Id.* at 500–09 (“[I]ndividuals who are reincarcerated during the SVORI time frame report significantly lower levels of family emotional, interactional, and instrumental support than individuals who are not reincarcerated [R]esults demonstrated that higher family instrumental support related to lower odds of reincarceration and lower levels of substance use and criminal offending.”).

re-offense incidents than those who lost family support.⁶⁶ Similarly, those experiencing substance abuse who have the active support of their families are both more likely to recover from the disorder, and less likely to be ensnared by the criminal legal system again.⁶⁷ This DCHA policy of incentivizing the termination of family support therefore actively makes justice-involved individuals more likely to recidivate, thus perpetuating harm in the greater community.

Additionally, the families who choose not to ostracize a member of their family and instead forego affordable stable housing are effectively punished by DCHA for performing beneficial social behavior. DCHA's policy of allowing households to exclude disqualifying members of their family in exchange for admission therefore disincentivizes family support, and actively harms the greater D.C. community by decreasing justice-involved individuals' chances of leading law-abiding lives.

VII. CONCLUSION

There are limited DCHA public housing units. DCHA's current policies of effectively limiting admission to only the "worthy poor" through wide bans on people with sexual or drug offenses actively contribute to justice-involved individuals' risk of recidivism and harmful behavior. While DCHA's policies promote the organization's image as a safe place to live and could potentially marginally improve the safety of other residents in DCHA public housing, the detrimental effects felt by the greater community outweigh DCHA's interests in preventing admission of many justice-involved individuals. DCHA should update their policies including, but not limited to, expanding access to most sex offenders, those experiencing substance abuse, and families who are supporting an otherwise disqualified justice-involved individual. These policies would help lift justice-involved individuals out of the cycle of housing instability and criminal recidivism.

66. Allyson Walker et al., *The Role of Family Support in the Explanation of Patterns of Desistance Among Individuals Convicted of a Sexual Offense*, 35 J. INTERPERSONAL VIOLENCE 3643, 3643–44 (2020).

67. *Caring Together: Families as Partners in the Mental Health and Addiction System I*, FAM. MENTAL HEALTH ALL. (Nov. 2006), https://ontario.cmha.ca/wp-content/uploads/2006/11/caring_together_2006.pdf.