

# Promoting Access to Stable, Permanent Housing for All New Yorkers

## Reentry Housing - 2015

There are very few housing resources for persons exiting the criminal justice system in New York. Yet, many of these individuals require affordable housing and supportive services in order to maintain stability once they are released. This lack of suitable housing puts the well over 100,000 New Yorkers exiting New York prisons and jails each year at high risk of homelessness and recidivism. One part of the solution is supportive housing, a proven, cost-effective vehicle for stopping the revolving door of homelessness, incarceration, and crisis service use. Through a combination of affordable housing and integrated supportive services, supportive housing ensures that people with histories of homelessness facing persistent obstacles, such as serious mental illness, substance use disorders, or chronic medical problems, are able to maintain their housing. Regardless of whether supportive housing is the advisable intervention, all persons with a criminal justice-involved history need fair access, consistent with public safety, to affordable and market-rate housing in order to support their successful reentry and reduce the risk of their reincarceration.

The following recommendations are intended to strengthen New York City and State's efforts to address the housing needs of persons with criminal justice histories. Much progress has been made in improving access to housing for this population since the release of the authors' 2014 reentry housing platform, but these advances are not nearly enough to address the full scope of the problem. The recommendations and research included below build upon decades of work by providers, researchers, and advocates. The first section of this report introduces the problems and recommendations to address them through improved access to supportive, affordable, public, and market rate housing resources. The second section provides a research base for the recommendations.

## The Challenge

An estimated 25,000 people are released from New York State prisons each year and, of these, nearly half return to New York City.<sup>1</sup> In addition, over 77,000 people were released from New York City Department of Corrections jails in FY 2015.<sup>2</sup> Of all the issues facing returning prisoners, the need to secure housing is one of the most essential. Many of those released each year are homeless and have traditionally cycled out of prison and into the shelter system or unlicensed, unregulated three-quarter houses.<sup>3</sup> In fact, analyses of the NYC Department of Homeless Services shelter populations indicate that between 20 and 23% of homeless adults have been incarcerated at some point in the two years prior to

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<sup>1</sup> NYS DOCCS. 2010. 2007 Releases: Three Year Post Release Follow-up. Albany: New York State Department of Corrections and Community Supervision.

<sup>2</sup> NYC Mayor's Office of Operations, Preliminary Fiscal 2015 Mayor's Management Report

<sup>3</sup> Metraux, Stephen, Caterina Roman, & Richard S. Cho. 2007. "Incarceration and Homelessness." Washington, DC: US Dept. of Health and Human Services.

entering shelter and about 19 percent of persons released from NY State prisons listed shelters as their first known address.<sup>4,5</sup>

Because affordable housing is scarce, people with criminal records are often the first to be excluded, even though housing them is a cost-effective way to accomplish the same public safety goals driving their exclusion.<sup>6</sup> Similarly, decades of social science research have shown that aging and the passage of time best mitigate recidivism, so that people with criminal records eventually have no more risk of re-offending than someone without a record.<sup>7,8</sup>



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<sup>4</sup> Burt et al. 1999; Eberle et al. 2001; Kushel et al. 2005; Schlay & Rossi 1992.

<sup>5</sup> Navarro, Mireya. November 14, 2013. *Ban on Former Inmates in Public Housing Is Eased*. The New York Times.

<sup>6</sup> NYC Department of Health & Mental Hygiene et al., *New York/New York III: Interim Utilization & Cost Analysis 1–3* (2011).

<sup>7</sup> Robert Sampson & John Laub, *Life-Course Desisters? Trajectories of Crime Among Delinquent Boys Followed to Age 70*, 41 *CRIMINOLOGY* 3, 555–592 (2003); Shawn Bushway, et al., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, 49 *Criminology* 1, 29 (2011).

<sup>8</sup> Blumstein, A. and Nakamura, K. (2009). Redemption in the Presence of Widespread Criminal Background Checks. *Criminology*, 47: 327–359. DOI: 10.1111/j.1745-9125.2009.00155.x <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9125.2009.00155.x/abstract> and/or Alfred Blumstein, Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences*, Final Report Submitted to the National Institute of Justice, October 2012

# Recommendations

## Supportive Housing

**2015 Update:** New York City Mayor Bill de Blasio's Task Force on Behavioral Health and the Criminal Justice System Action Plan was released in December 2014 and includes significant expansions of public health services at almost every step of the criminal justice system. The plan includes a proposal to increase access to supportive housing and services for people reentering the community from the criminal justice system. The plan envisions launching a 267 unit scattered-site supportive housing program focused on individuals with behavioral health needs and a history of cycling through the criminal justice system and homelessness. The supportive housing will be based on the Frequent Users of Systems Engagement (FUSE) model. The new housing program, called Justice Involved Supportive Housing, is set to begin in October 2015, with 120 of the units already awarded to reentry housing providers. Additionally, in May, the NY State Office of Mental Health released a request for proposals for 100 new units of supported housing for people with serious mental illness being released from State prisons and returning to NYC. The Task Force Plan also establishes a housing planning team to assess access to more supportive, affordable, and public housing for justice-involved individuals with behavioral health issues.

**Problem: There are not enough supportive housing resources available to persons with criminal justice backgrounds.**

There is not enough supportive housing to meet the record high level of need and the current City-State supportive housing production initiative, the New York/New York III Agreement (NY/NY III), will expire this year. People with criminal justice histories have been shortchanged in every supportive housing agreement to date, and thus, very few supportive housing units in New York City have been targeted at this population. The need is growing, as the proportion of inmates diagnosed with mental illness has climbed dramatically over the last decade, currently making up about 40 percent of the population of Rikers.<sup>9</sup>

### Solutions:

1. Mayor de Blasio and New York Governor Andrew Cuomo must finalize a new City-State supportive housing agreement and dedicate 15% of new supportive housing resources to individuals and families with criminal justice histories.
  - The obstacles faced by people in need of housing who have criminal justice histories are similar to those faced by all special needs populations, including young adults, families, and single adults. Therefore, each category of special needs housing in the agreement should target 15% of the units to people with criminal justice histories.<sup>10</sup>

<sup>9</sup> Winerip, Michael and Schwartz, Michael. April 10, 2015. *For Mentally Ill Inmates at Rikers Island, a Cycle of Jail and Hospitals*. The New York Times.

<sup>10</sup> This percentage is based on the estimated portion of the current shelter population with a criminal justice history. Sources indicate that 20-23% of individuals in the DHS shelter system have been incarcerated at some point in the two years prior to entering the shelter system (Burt et

- Reentry supportive housing should be specifically designed to serve criminal justice-involved persons, including the provision of including specialized services that assist tenants to successfully make the transition from institutions to the community, facilitate connection to and continuity of benefits, and promote the avoidance of behaviors that lead to criminal justice involvement and emergency public service use.
  - Enhanced operating and service funding should be allocated to reentry supportive housing providers to serve the special needs of this population.
2. The City should create a supportive housing pilot program for 18-25 year olds with juvenile justice or criminal justice involvement.
    - This Pilot should target youth with juvenile or criminal justice histories and have a substance use or mental health disorder.
    - The City should explore using asset forfeiture funds through the Manhattan District Attorney's Office Criminal Justice Investment Initiative to fund the five year Pilot.
    - This program would be the first of its kind nationally, and has the potential to demonstrate reductions in utilization of the criminal justice system, crisis services, child welfare system, shelters, and other services.
  3. Target supportive housing resources to highest need individuals and families.
    - Supportive housing resources should target the most vulnerable persons involved with the criminal justice system, including those who are high users of other public systems such as shelter and emergency/crisis health services.
    - Eligibility for supportive housing should include persons recently released from the criminal justice system who are currently homeless or living in three-quarters houses or other unstable housing conditions and have one of the following conditions: a serious mental illness, a substance use disorder, or a disabling medical condition.
  4. Improve access to supportive housing for reentry population by expanding and strengthening referral networks.
    - As NYC works to develop a Coordinated Access and Placement System, the City should make it a priority to connect and support persons exiting the criminal justice system to improve early access to housing resources. This will include developing a referral flow and supports to help individuals move from the correction system to NYC Human Resources Administration, and finally to the housing provider.
    - The referral networks should be expanded to allow individuals to apply for supportive housing placement prior to their release from prison or jail. The City-State agreement should encourage the City and State Corrections agencies to provide referrals to supportive housing.

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al. 1999; Eberle et al. 2001; Kushel et al. 2005; Schlay & Rossi 1992.) Levels of criminal justice involvement among homeless families are lower including one study which found 6.6% of homeless mothers had a criminal justice history (Bassuk, Buckner, Weinreb et al. Homelessness in female-headed families: childhood and adult risk and protective factors. *Am J Public Health*. 1997 February; 87(2): 241–248)

**Problem: Current definition of “homeless” and “chronically homeless” doesn’t include persons transitioning between incarceration and homelessness.**

People who have been recently released from State or City correctional facilities and are homeless should be eligible for the housing and support services they need to reenter their communities. Currently, in order to access many of the existing supportive housing units, individuals must meet the City’s definition of “chronically homeless,” requiring the individual to spend nine months on the streets or in shelter during a two-year period. This doesn’t include time spent in City or State correctional facilities and, thus, doesn’t capture high-need individuals who have been cycling between homelessness and incarceration for years. This definition also doesn’t include persons who have been incarcerated for longer periods of time or other “institutionally” homeless individuals, including those who have spent time in hospitals, treatment or recovery programs, jails and/or halfway houses.

**Solutions:**

1. The City should explore adopting a definition of chronic homelessness that includes episodic homelessness in order to include persons cycling between shelters and the criminal justice system. This could be modeled on the U.S. Department of Housing and Urban Development (HUD) definition, which includes individuals who have four documented episodes of homelessness in the past three years.
2. The City should allow people exiting incarceration who otherwise meet eligibility criteria and would be released to three-quarter houses or shelters to access supportive housing. These individuals are especially vulnerable to homelessness and incarceration due to lack of family and community supports during reentry. These units should be funded through City or State resources as these funds are not subject to HUD restrictions.

**Problem: Limited housing resources for reentry population lead to inappropriate placements and lack of strategies for people moving on from supportive housing.**

**Solutions:**

1. Improve access to and expand other parts of the housing continuum for the reentry population.
  - Individuals exiting the criminal justice system have a range of needs and issues. While many are able to thrive over time in fully independent living or in independent supportive housing, some have more impaired functioning that requires additional supervision and support, such as persons with mental health and psychiatric issues. These individuals require alternative service-enriched models of supportive housing with more intensive on-site supports such as licensed community residences and apartment treatment programs.
    - The City and State should fund training for providers in evidence-based practices including targeting, recidivism, and effective collaboration with community corrections.

- Outreach programs should be expanded to ensure that vulnerable individuals with special needs who have landed post-release in unsafe or unstable housing, such as three-quarters houses, can be connected with the supportive services and housing they need.
- Ensuring access to affordable and, where possible, market-rate housing options is critical for assisting this population in finding housing initially and in moving on from supportive housing when appropriate. Short and long-term rental subsidy programs can help make ends meet for families and individuals moving to market-rate housing while homelessness prevention programs like Homebase can support them during a short term crisis in order to keep them housed stably.

## Affordable Housing

**2015 Update:** New York State Homes and Community Renewal (HCR) has made a huge step in reducing barriers for people with criminal justice histories in accessing State-funded affordable housing. HCR is in the process of revising their policies to include a requirement in regulatory agreements with all State-financed affordable housing projects to prevent housing discrimination based on criminal justice history.<sup>11</sup> The new policy eliminates outmoded eligibility standards barring people with certain criminal justice backgrounds and gives State-funded affordable housing greater discretion in establishing standards for admission and continued occupancy. This is the first such policy by any state and is a huge step in creating new housing opportunities for those with a history of criminal justice involvement.

There also has been increased attention to three-quarter houses this year as lawsuits, indictments and media coverage in the past nine months have exposed the fraudulent Medicaid billing that underpins many of these operations.

Three-quarter houses are unlicensed privately operated for-profit residences, some of which masquerade as treatment facilities or programs that accept the public assistance shelter allowance or a portion of other benefits as rent. In October 2014 and again in March 2015, the leadership of Narco Freedom, a large non-profit organization that operated 20 three-quarter houses, was indicted by the New York Attorney General for accepting kickbacks and other financial improprieties and was also sued by the United States Attorney for the Southern District of New York for engaging in a Medicaid fraud scheme through operation of its three-quarter houses. Narco Freedom, which billed almost \$40 million to Medicaid annually, stands accused of stealing \$27 million in Medicaid funds. The judge awarded a preliminary injunction and appointed a receiver to take over operations of the non-profit agency's clinics and three-quarter houses. The houses were recently granted emergency temporary licenses to operate as Supportive Living Residences.

In May 2015, the New York Times exposed the practices of another three-quarter house operator who encouraged tenants with substance use disorders to relapse in order to remain eligible for treatment at various outpatient substance use disorder programs that provided the operator with substantial kickbacks. Following the publication of this article, Mayor de Blasio appointed a multi-agency taskforce to conduct emergency inspections of three-quarter houses and allocated \$5 million to taskforce efforts. At least sixty-three houses have been inspected to date. Additionally, 225 residents have been moved out and are being provided with relocation services, including temporary housing and assistance obtaining permanent housing. According to the City, Department of Homeless Services Living in Communities (LINC) subsidies are being made available to those who meet the required eligibility criteria and new subsidy, the Special Exit and Prevent Supplement Program (SEPS) was just rolled out and will be made available to relocated three-quarter house tenants.

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<sup>11</sup> New York State Register of Rule Making Activities, July 22, 2015 (pp.18-19)  
<http://docs.dos.ny.gov/info/register/2015/july22/pdf/rulemaking.pdf>

**Problem: Widespread housing discrimination prevents persons with criminal justice backgrounds from accessing affordable housing.**

It is widespread practice to engage in blanket discrimination based on an applicant's history of contact with the criminal justice system, including when screening applicants for affordable housing supported, in whole or in part, by public funding. Too often, applicants are rejected, without fair consideration, solely because of their records. There are strong public policy reasons that housing supported by public dollars should contribute to a range of outcomes that make communities safer and healthier, including reduced recidivism, and reduced spending on incarceration and other services.

**Solutions:**

1. The City should adopt policy changes similar to that of New York State Homes & Community Renewal and include a requirement in regulatory agreements with all City-funded projects to prevent housing discrimination based on criminal justice history. Protections against blanket discrimination based on a criminal record should be enforced, with stringent reviews of rejections based on criminal record.
2. The State (and the City if it adopts regulations around admission of those with conviction histories) should provide education, monitoring and enforcement of new regulations.
3. Landlords should not be allowed to consider arrests that did not lead to conviction or convictions that have been sealed.
4. "Ban the box" protections should be applied to the screening and qualification process for affordable housing, requiring that record of conviction be considered only at the stage that an individual has been determined eligible for an apartment.
5. When providing background checks to housing providers and developers, both the City and State should adopt a policy regarding what information can and cannot be considered, such as sealed records or information older than specified cutoff.
6. Disqualification because of a record should meet strict criteria directly related to public safety. This decision should be based only upon actual conviction of a crime that justifies a finding of current risk, with length of time and evidence of rehabilitation since conviction considered, requiring an individualized assessment rather than blanket exclusion based upon the conviction(s) alone. However, if a person has been at liberty for 3 years without a criminal conviction, evidence of conviction prior to that period should not be considered in determining eligibility for affordable housing.

**Problem: Low-income and vulnerable New Yorkers are forced into unsafe and illegal housing because there are not enough affordable housing resources available.**

Affordable housing options for single, very low-income New Yorkers have dwindled over the past four decades. The most difficult loss has been the virtual disappearance of Single Room Occupancy (SRO) units, which formerly provided a crucial housing resource for single adults who were unable to afford full apartments. But New York City experienced a dramatic reduction of SRO units between the 1950s and the 1980s. In 2005, low-income residents lost another critical housing resource when the City cut off Section 8 vouchers that many vulnerable single adults had used to help pay their rent. The City also took steps to evict families who had allowed family members with criminal conviction histories to reside with them in New York City Housing Authority (NYCHA) buildings without permission from NYCHA.

Currently, much of this very low-income, vulnerable population (which includes individuals with mental health disorders, drug or alcohol addiction and/or histories of incarceration who either have no family or are not able to reunite with family due to NYCHA residency restrictions) has no option but to rely on the New York State public assistance shelter allowance. While median apartment rents in New York City rose by 75%, from 2000-2012, the shelter allowance has remained unchanged at \$215/month for single adults since 1988.<sup>12</sup> With only this amount to spend on rent, it is almost impossible for single public assistance recipients to find safe, legal housing.

**Solutions:**

1. Expand housing options for vulnerable, very low-income individuals, in particular formerly incarcerated persons and those with criminal conviction histories.
  - Allocate funding for New York State Office of Alcoholism and Substance Abuse Services residential facilities to develop additional transitional housing with support services for individuals coming out of detoxification facilities and substance use disorder residential treatment programs.
  - Repeal the prohibition on shared household arrangements that include more than three unrelated adults. The prohibition drives for-profit residences, such as three-quarter houses, underground and obstructs opportunities to provide safe, cost-effective and lawful housing alternatives for very low-income single adults.
  - Develop legal shared housing options for unrelated adults. The City should explore lifting the ban on the construction of new Single Room Occupancy (SRO) housing, which provides fundamental housing of last resort for very low-income adults.

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<sup>12</sup> Office of the New York City Comptroller, Bureau of Fiscal & Budget Studies, *The Growing Gap: New York City's Housing Affordability Challenge* 4-5 (April 2014), available at: [http://comptroller.nyc.gov/wp-content/uploads/documents/Growing\\_Gap.pdf](http://comptroller.nyc.gov/wp-content/uploads/documents/Growing_Gap.pdf)

## **Problem: Three-quarter houses are unregulated and unsafe, and some are facing imminent closures.**

Three-quarter houses tend to be overcrowded, with multiple housing code violations.<sup>13</sup> Frequently, tenants who fail to attend a treatment program affiliated with the building owner (the programs generally collect Medicaid payments for these services, in addition to the shelter allowance), even if a tenant doesn't need treatment or has already completed a treatment program, are evicted with no notice and no court process. Mayor de Blasio's aforementioned multi-agency Task Force has taken some important steps to address hazardous conditions in some three-quarter houses. Three-quarter house residents being displaced due to a vacate order issued by a City agency or foreclosure action are eligible for the City's new emergency measure called Special Exit and Prevention Supplement, a rental subsidy to prevent people from entering the shelter system.<sup>14</sup> However, the Task Force does not have a long-term plan for developing alternative housing models for this population. It is unclear how residents who are eligible will access supportive housing, given the dearth of available beds, or what options will be available to those at risk of entering three-quarter houses to prevent future Narco Freedoms.

Three-quarter housing creates instability in the lives of extremely vulnerable individuals, including those attempting to rebuild their lives post-incarceration. A recent assessment of 461 three-quarter house tenants submitted in a federal court case found that 76% were formerly homeless, with over half having previously lived in the shelter system. 62% percent reported having a mental health disorder, and 55% reported having a physical disability. 89% reported having no other housing options. Although the report did not examine how many had previously been incarcerated, 18% of the respondents reported being subject to a criminal justice mandate.<sup>15</sup>

## **Solutions:**

1. Improve safety and program standards in existing three-quarter houses
  - The City should pilot a program that provides an enhanced shelter allowance rate to three-quarter houses that meet uniform building and program standards as enforced by the City. Models for such a pilot could include the Suffolk County sober home pilot and/or the San Diego Independent Living Association project, which provides technical assistance and training, and includes regular inspections. Houses that participate and meet basic standards are added to a centralized referral resource.<sup>16</sup>

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<sup>13</sup> Prisoner Reentry Institute, John Jay College of Criminal Justice, *Three-Quarter Houses: The View from the Inside* (hereinafter "PRI Report") 5-6 (October 2013), available at <http://johnjayresearch.org/pri/files/2013/10/PRI-TQH-Report.pdf>. For background on policies that fed the growth of three-quarter houses, see Coalition for the Homeless, *Warehousing the Homeless: The Rising Use of Illegal Boarding Houses to Shelter Homeless New Yorkers* (hereinafter "Warehousing the Homeless") 5-7 (January 2008), available at [http://coalhome.3cdn.net/d4c8dd543ded03ff12\\_lpm6bh1cr.pdf](http://coalhome.3cdn.net/d4c8dd543ded03ff12_lpm6bh1cr.pdf).

<sup>14</sup> Stewart, Nikita. August 30, 2015. *Mayor de Blasio Authorizes Emergency Measure to Aid Homeless People*. The New York Times.

<sup>15</sup> Samaritan Village, "Narco Freedom: Summary Assessment and Recommendations to the Federal Court Appointed Receiver," June 25, 2015 at 22-24.

<sup>16</sup> See, e.g. The Corporation for Supportive Housing, *Year 2: Evaluation of the San Diego Independent Living Association* (June 2014), available at: [http://ilasd.org/ilawp/wp-content/uploads/2012/09/FINAL\\_ILAEvaluationReport06-14.pdf](http://ilasd.org/ilawp/wp-content/uploads/2012/09/FINAL_ILAEvaluationReport06-14.pdf); Suffolk County Department of Social Services, Request for Recovery Home Services, RFQ No. DSS 13/001, available at: <http://www.suffolkcountyny.gov/portals/0/socialservices/pdfs/rfqdss13001.pdf>

- Funding should be provided to assist landlords in correcting unsafe conditions, especially fire safety violations.
  - The New York State Department of Corrections and Community Supervision, Office of Alcoholism and Substance Abuse Services and City agencies should prioritize programs that meet basic standards when making referrals by utilizing the list of programs receiving enhanced rate through Pilot and referring to public record.
2. Close three-quarter houses that cannot meet basic safety standards
- The State and City should commit to ensuring that all people displaced directly as a result of litigation or other actions by government, including those displaced as a result of the Narco Freedom litigation, are either relocated to safe, decent housing or provided a housing subsidy to secure their own housing. The protections should cover both those displaced by City vacate orders and those displaced by private landlords in order to fix code violations.
  - Existing subsidy and supportive housing eligibility criteria should expand the definition of “homeless” to encompass three-quarter house residents, recognizing that such living situations are unstable, temporary, and often unsafe.
3. Reduce demand on three-quarter houses long-term
- The State and City should increase the HRA Shelter Allowance to a level that recipients of public assistance are able to find safe, legal housing. Removing barriers to other housing as described in other sections will reduce need and demand on three-quarter houses.

## Public Housing

**2015 Update:** In a city with an affordability crisis, NYCHA housing is one of the few options for permanent, stable housing for low-income New Yorkers. NYCHA has recently taken tremendous strides towards promoting reentry by revising the admission policy so that a single violation conviction no longer creates an automatic bar, starting the ineligibility “clock” at time of release from jail or prison, and by looking at whether the exclusion period has been met at the time that a person reaches the end of the waiting list rather than at the time of application, and also creating the Family Reunification Pilot. Housing Authorities nationwide have been looking to NYCHA, alongside other communities, to lead the way in improving access for the reentry population.<sup>17</sup> But NYCHA still bars thousands of New Yorkers based on arrests and convictions. Mandatory ineligibility timeframes and permanent exclusions undermine successful reentry by making it difficult for people to reunify with their families. This year, NYCHA began piloting lifting permanent exclusions through the NYCHA Family Reentry Pilot Program. As of December 2014, the Pilot began considering applications from persons with a permanent exclusion. If accepted into the pilot, the permanent exclusion will be temporarily suspended while they participate. If the individual successfully completes the program, the participant has the opportunity to have the exclusion permanently closed. NYCHA also has begun reviewing the permanent exclusion policy for individuals outside the pilot.

**Problem: Persons with criminal justice backgrounds have difficulty accessing public housing.**

### **Solutions:**

1. No conviction should be used as a basis for termination or exclusion from tenancy unless NYCHA demonstrates that it has made an individualized decision based on factors directly related to current risk. All applicants must be given an opportunity to review and explain any conviction record, and NYCHA must consider the explanation and challenge to accuracy. Even when NYCHA determines that a conviction bears a substantial relationship to tenancy, NYCHA should not reject the application based on the conviction if three years have passed since the applicant was placed on probation, paroled or released.
2. The maximum length of exclusion from a household based on conviction or non-desirability should be three years at liberty. There must be a clear process to apply to lift exclusions sooner, based on evidence of rehabilitation.
3. NYCHA should not exclude children under the age of 21 unless it can demonstrate that the youth poses an immediate threat to other tenants (or the general public). Research has found that keeping youth connected to their family can promote better outcomes for youth, families, and communities.

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<sup>17</sup> Peters, Mark. U.S. News: Out of Jail but Still Barred --- Cities Rethink Tough-on-Crime Strategies Banning Ex-Cons From Public Housing. May 13, 2014. The Wall Street Journal.

4. NYCHA should never consider arrests or other unproven allegations, or any sealed records when assessing an application or as a factor when making a determination regarding a permanent exclusion or termination proceeding.
5. NYCHA should never begin termination proceeding based upon arrest before a case has been resolved and should not use information that is sealed or confidential to terminate a tenant.

## Private / Market Rate Housing

**2015 Update:** In October 2014, the Fortune Society filed a federal lawsuit against a large private landlord in New York City, arguing that their blanket ban on renting apartments to people with criminal records is a civil rights violation under the Fair Housing Act since such bans disproportionately and unjustifiably impact African-Americans and Hispanics and result in a disparate, even if unintended, impact. In June 2015, the U.S. Supreme Court upheld the “disparate impact” theory allowing a person to bring a housing discrimination action under the Federal Fair Housing Act without proving intentional discrimination, making this lawsuit even more viable.

**Problem: Private landlords currently can discriminate against persons with criminal justice backgrounds.**

The NYC Human Rights Law (§ 8-107 (11)) prohibits any inquiry about or adverse action based on *arrests not followed by a conviction* in connection with employment or licensing, but not for housing. Under the Fair Chance Act, passed in 2015, the Human Rights Law (§ 8-107 (9-11)) was amended to bar questions regarding sealed convictions or actions based on such records (in line with the State Human Rights Law), prohibit blanket discrimination in employment and licensing based on conviction history and establish “ban the box” protections for public and private employers. However, no parallel protections exist in the housing context.

### Solutions:

1. Amend HRL § 8-107 (11) to cover private landlords, and amend HRL § 8-107 (10-11) to create a fair chance protection for housing, specifying that:
  - a. Private landlords must never consider arrests, other unproven allegations or information about cases that have been sealed or are confidential in assessing an application.
  - b. Private landlords may not implement “blanket” bans on housing applicants based on convictions.
  - c. Private landlords may not consider conviction history until a conditional offer to lease an apartment has been made.
  - d. No conviction should be used as a basis for termination or exclusion from tenancy unless the landlord demonstrates that s/he conducted an individualized assessment and considered: (1) the nature of the conduct and how it bears on the safety and security of other residents; (2) the gravity of the conduct; (3) the time that has passed since the conviction and/or after release or placement on probation or parole; and (4) evidence of the applicant / resident’s rehabilitation.
    - All applicants must be given an opportunity to review and explain any conviction record.
  - e. Private landlords may not inquire about convictions if three years have passed since the applicant was placed on probation, paroled or released.

# Conclusion

This document was jointly prepared by experienced, thoughtful re-entry housing and service providers, gathered together by CSH, a national leader in supportive housing. It builds upon years of previous work by a wide array of coalitions and task forces and, in effect, stands upon the shoulders of work done by a broad community of advocates and service providers.

We believe that, by implementing these recommendations, thousands of New Yorkers will avoid recidivism, reconnect with families, find stable housing and begin to lead productive lives in our communities. We will continue to provide our support and expertise in order to make these recommendations a reality.

## **Submitted on behalf of:**

The Bridge, Inc.

The Bronx Defenders

Brooklyn Community Housing and Services

CASES

Community Service Society of New York

CSH

The Fortune Society

From Punishment to Public Health

Greenhope Services for Women

Hour Children

Housing Plus Solutions

Legal Action Center

MFY Legal Services, Inc.

Neighbors Together

The Osborne Association

Prisoner Reentry Institute, John Jay College of Criminal Justice

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## Research Base

**Incarceration and Homelessness.** Individuals suffering from homelessness seek refuge in public areas such as parks, subway facilities, and playgrounds. Several studies have documented the high rates of untreated mental illness and substance use disorder problems among members of this population.<sup>18</sup> The failure to treat these underlying problems, compounded with limited housing resources, increase the likelihood for homeless individuals to be subjected to low-level law enforcement, leading to contact with the criminal justice system. Individuals who are homeless and have a behavioral health disorder are overrepresented in the criminal justice system.<sup>19</sup> Moreover, homeless individuals are found to be arrested and re-arrested at higher rates than those who have stable housing.<sup>20</sup> 20% of the homeless population will be incarcerated at some point in their life and one-tenth of the current jail and prison population were homeless prior to admission.<sup>21</sup>

**The Problem in NYC.** One study found that 38% of New York State prisoners who entered NYC shelters were re-incarcerated within two years of their release.<sup>22</sup> The rates of shelter entry and prison readmission were even higher for persons incarcerated for a parole violation and for those with mental illness. A study of administrative data on public shelter use in New York City found that approximately 10% of shelter users in New York City were 'episodic' users of shelter, and were more likely "to have mental health, substance abuse, and medical problems" and that "much of the periods they spend outside of shelter may be spent in hospitals, jails, detoxification centers, or on the street. Indeed, one could argue that part of the very reason that these individuals are not defined as chronically homeless or long-term shelter residents is their frequent exit to inpatient treatment programs, detoxification services, or to penal institutions. Nevertheless, these clients often find their way back to shelters."<sup>23</sup>

**Impact on Families with Children.** Roughly 105,000 children in New York State have parents who are incarcerated.<sup>24</sup> Parental incarceration, and the resulting instability of the family unit, can severely impact children's health and educational outcomes. The Center for Disease Control has recognized parental incarceration as an "adverse childhood experience" in which children experience a unique combination of trauma, shame and stigma. For these children, who are "the collateral damage of the justice system," the effects of separation due to parental incarceration can result in a host of added difficulties, including "failure to thrive, depression, delinquency and academic problems." In addition, the lives of these

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<sup>18</sup> Speigman, R. and Rex Green. Homeless and Non-Homeless Arrest: Distinctions in Prevalence and in Sociodemographic Drug Use and Arrest Characteristics Across DUF Sites, Final Report. National Institute of Justice. 2002: 1-48.

<sup>19</sup> National Health Care for the Homeless Council. Criminal Justice, Homeless, & Health. 2011: 1-4.

<sup>20</sup> Metraux, S., Roman, C. and Cho, R. Incarceration and Homelessness. 2007 National Symposium on Homeless Research. 2007: 1-31.

<sup>21</sup> Metraux, S., Roman, C., and Cho, R. 2007: 1-13

<sup>22</sup> Metraux, S., Culhane, D. "Homeless Shelter Use and Reincarceration Following Prison Release", *Criminology & Public Policy*, 3 (2), 139-160.

<sup>23</sup> Kuhn, R., Culhane, D. 1998, "Applying Cluster Analysis to Test a Typology of Homelessness by Pattern of Shelter Utilization: Results from the Analysis of Administrative Data". *American Journal of Community Psychology*. 1998: 26-2

<sup>24</sup> Krupat, T., Gaynes, E., and Lincroft, Y. (2011) *A Call to Action: Safeguarding New York's Children of Incarcerated Parents*. New York, NY: New York Initiative for Children of Incarcerated Parents, The Osborne Association.

children are often characterized by frequent changes in caregivers, homes and schools, long periods of separation, and anxiety.<sup>25</sup>

**Supportive Housing for Reentry.** Reentry Supportive Housing is supportive housing that is specifically designed to serve criminal justice-involved persons who are homeless or at immediate risk of homelessness, many of whom have chronic physical and/or behavioral health challenges, in order to break their high-cost cycle of incarceration, homelessness, and emergency service utilization.<sup>26</sup> As with typical supportive housing, supportive services in Reentry Supportive Housing are provided using a client-centered case management model, in which individually tailored service plans are created and implemented in conjunction with each tenant. Services are intended to maximize housing stability and address a variety of health and psychosocial needs. In addition to these services, Reentry Supportive Housing includes additional specialized services that assist tenants to successfully make the transition from institutions to the community, facilitate connection to and continuity of benefits, and promote the avoidance of behaviors that lead to criminal justice involvement and emergency public service use.<sup>27</sup>

**FUSE.** An evaluation of the Frequent Users Services Enhancement (FUSE) initiative in New York City conducted by Columbia University suggests that supportive housing effectively improves outcomes for the reentry population and decreases public systems use.<sup>28</sup> The FUSE initiative is a supportive housing program developed by CSH with support from private foundations and various government agencies that provided housing and support services to individuals who were frequently cycling in and out of jails and homeless shelters. FUSE participants were identified by conducting a data match between jail and public shelters to identify individuals who had at least four shelter stays and four jail stays over the last five years prior to entry into the program. The two-year evaluation found that FUSE participants spent significantly fewer days in jails and shelters and engaged in less cycling between public systems. In particular:

- FUSE participants averaged 15 days in shelters in the 24 months after FUSE housing placement compared to a comparison group that averaged 162 days in shelters over the same time period.
- FUSE participants had a lower percentage of recent hard drug use than the comparison group.
- Through reduced usage of jails, health services and shelters, each individual housed through FUSE generated \$15,000 in public savings, paying for over two-thirds of the intervention cost.

This study's use of a comparison group and data on service utilization allowed Columbia to determine personal outcomes that improved as a result of supportive housing.

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<sup>25</sup> Bowlby, J. (1980) as cited in Katz, L. (2002). *Services for Children of Incarcerated Mothers with Co-occurring Disorders*. Delmar, New York: Gains Center Series. Policy Research Associates.

<sup>26</sup> Hopper, et.al. (1997) "Homelessness, severe mental illness, and the institutional circuit" *Psychiatric Services*. 48 (5):659-65.; Lurigio et. al., 2000; Ventura et. al, 1998; Hartwell and Orr, 1999; Lamberti et. al, 2004.

<sup>27</sup> Metraux, Roman, and Cho (2007). "Incarceration and Homelessness," in *Towards Understanding Homelessness: The 2007 National Symposium on Homelessness Research*, eds. Deborah Dennis, Gretchen Locke, and Jill Khadduri. Washington DC: US Department of Housing and Urban Development. <http://www.huduser.org/publications/homeless/p9.html>

<sup>28</sup> Aidala, Angela; McAllister, William; Yomogida, Maiko; Shubert, Virginia. 2013. "Reducing Homelessness, Incarceration and Costs through Supportive Housing – The New York City FUSE Evaluation". Columbia University Mailman School of Public Health.