

Recording link: <https://youtu.be/lUgb66i923c>

Working With Clients With Criminal Histories

Contra Costa Continuum of Care

February 13, 2023

The content in this training is provided for information purposes only and does not constitute legal advice.

Zoom Tips

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

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

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

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

About Us

Homebase: Our mission is to build community capacity to end homelessness and reduce poverty, and to foster thriving, inclusive communities.

The Criminal Legal System Initiative seeks to improve outcomes for those impacted by the criminal legal system, decrease system-involvement through housing solutions, improve public safety outcomes, and reduce strain on public resources. Areas of focus include:

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

During This Training...

We Will:

- Discuss the intersectional nature of housing, homelessness, race, & the CLS
- Identify what criminal histories can/can't tell you
- Learn new ways to recognize & minimize housing barriers for clients with past convictions
- Explore specific considerations for people on the 290 registry

We Might

- Identify questions we can't answer here
- Share relevant life or work experiences
- Disagree productively

We Won't:

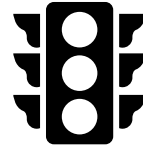
- Pretend the work is easy
- Identify new housing resources
- Provide legal advice
- Finish the conversation
- Come to conclusions or solutions

Agenda



Why Talk About
Criminal
Histories?

Limitations



Fair Housing Law

Special
Population
Spotlight: People
on 290 Registry



Why Talk about Criminal Histories?

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

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



Why Talk about Criminal Histories?

Reason **#1**:

They matter when
we consider
equity.



National Lens on Equity

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

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

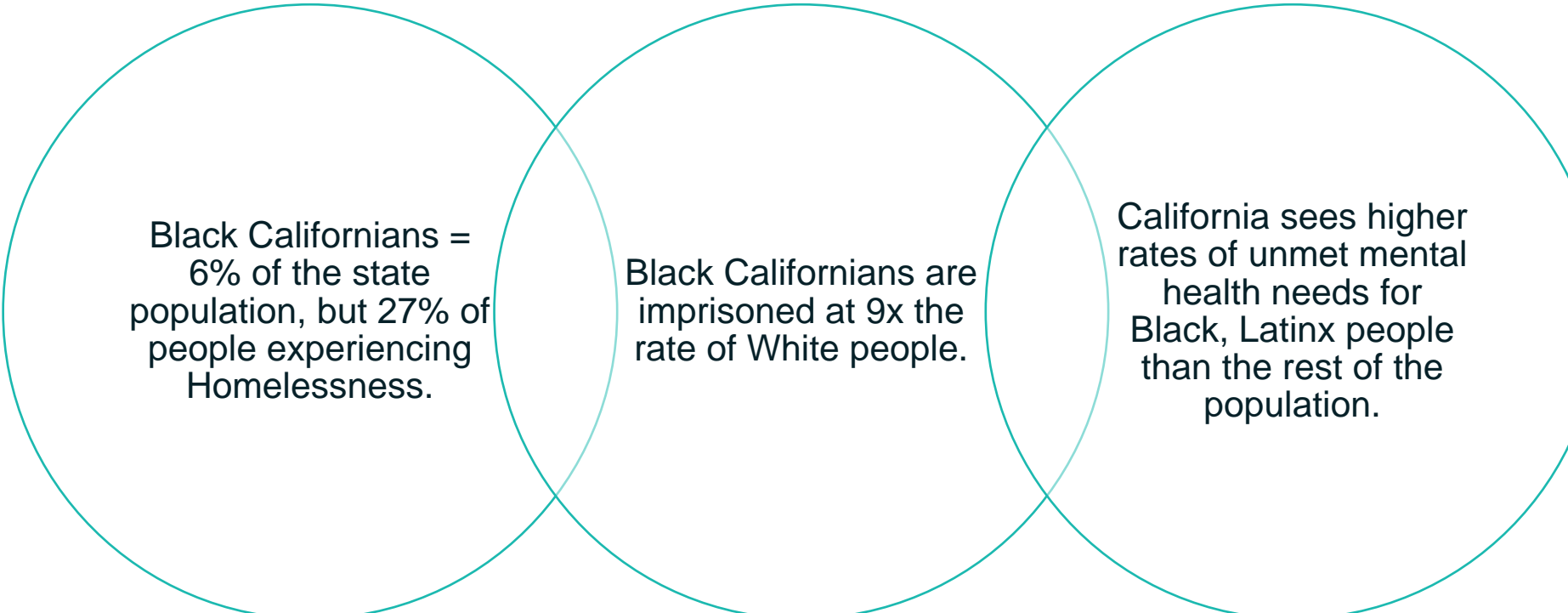
Black Adults Make up 12% of the U.S. Population

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

LGBT Individuals Make up 4.5% of the Population

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

California Context



Black Californians =
6% of the state
population, but 27% of
people experiencing
Homelessness.

Black Californians are
imprisoned at 9x the
rate of White people.

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

Local Context – Contra Costa County

Black people in Contra Costa County = 9%

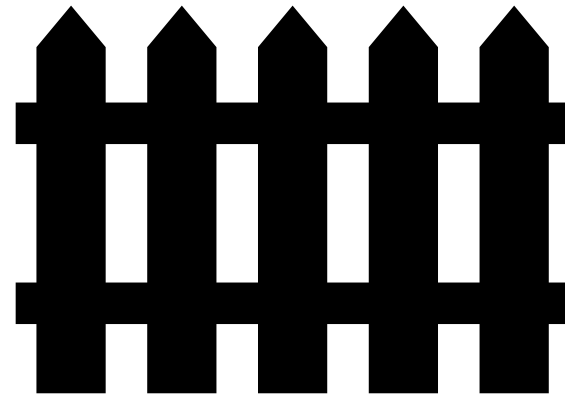
Black people experiencing homelessness in Contra Costa County = 38%

Black people in Contra Costa County jail = 40%

Why Talk about Criminal Histories?

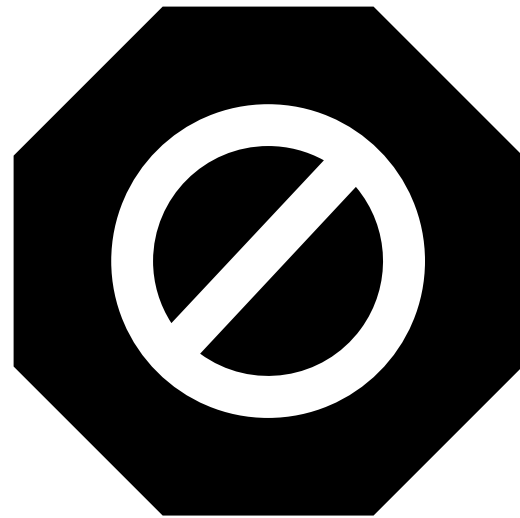
Reason **#2**:

They create
barriers to finding
and sustaining
stable housing.



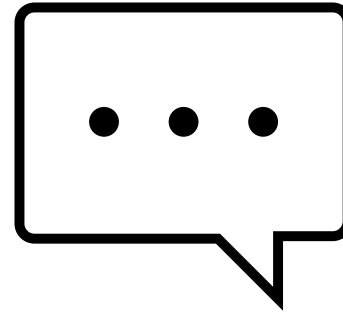
Long-Term Consequences of Convictions

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



What Do You Think?

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



Collateral Consequences → Scope

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

67% of people held by jails have not been convicted of any crime.

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

Why Talk about Criminal Histories?

Reason **#3**:

Understanding
them can help
serve our clients
better.



Poll

How does your organization or agency use criminal history information?

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

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

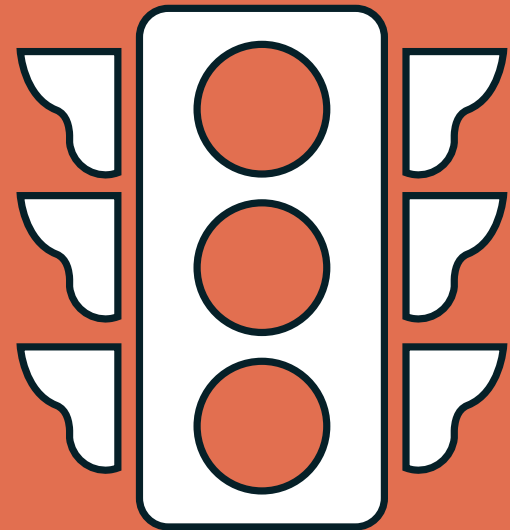
- Final outcome (depending on source)
- Whether our clients are dangerous to themselves, other clients, or staff
- Whether our clients are trustworthy
- Deservedness

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

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

Limitations on Considering Criminal Histories

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



Civil Rights and Fair Housing

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

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

Civil Rights and Fair Housing Cont.

Relevant housing laws apply to:

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

What is Your Role?

Housing Provider

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

Housing Case Manager & Advocate

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

FEHA Fair Housing Regulations

Protects people against housing discrimination based on certain protected characteristics

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

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



Limitations on Considering Criminal History for Housing

Convictions only

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

Limitations on Considering Criminal History for Housing Cont.

Must be directly related to housing

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

Limitations on Considering Criminal History for Housing Cont.

No blanket bans

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

Additional Factors

- Background check policies should be **in writing**
- Policies should state **what they look at and why**
- Policies should include that the housing provider will give applicants **a copy of the criminal history record** that they reviewed so that they can make sure that everything is accurate and respond with mitigating information
- Landlords should **consider all mitigating information** they receive

Housing case managers should help clients obtain mitigating information.

What is Mitigating Information?

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

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

Reporting FEHA Violations

If your client believes that a landlord or other housing provider has violated FEHA, you can help them report violations to the Department of Fair Employment and Housing.

<https://calcivilrights.ca.gov/complaintprocess/>

Questions? Concerns? Comments?



Working With Clients on the Sex Offense Registry



Check In

- What does this discussion bring up for me?
- What assumptions do I have about people on the registry? Where do those ideas come from?
- How might these ideas impact my work with people on the registry?
- How can I challenge those assumptions? What other education or resources do I need to make this happen?

Why Talk about the Sex Offense Registry?



Many providers either screen out clients on the registry or have clients who can't find housing because they are on the registry.



People on the registry are highly stigmatized and have some of the highest barriers to accessing housing of anyone in our society.



We cannot end homelessness if we don't confront our biases and assumptions about people involved with the criminal legal system, including those on the registry.

What Do We Know about the Sex Offense Registry?

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

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

People on the registry **reflect a full spectrum** of economic statuses, racial and ethnic demographics, sexual orientations, gender identities, and ages.

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

California's New Tiered Registry

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

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

FEHA and the Sex Offense Registry

FEHA applies to all criminal history information, **regardless of the nature of the alleged crime...** and that includes sex offenses!

This means that any housing exclusion **based on someone's sex offense registry status** must meet FEHA requirements... including no blanket bans.

Housing providers must take an **individualized approach** to reviewing applications to make sure exclusions are **directly related to housing**.

HUD-Funded Housing and the Sex Offense Registry

CoC Program Interim Rule: If the housing program is site-based and has in residence at least one family with a child under the age of 18, the housing program **may exclude** registered sex offenders from the project.

Section 8 and Public Housing: HUD only requires that Public Housing Authorities deny access to people **required to register for life** on a sex offense registry... Anything more is discretionary!

And remember...**FEHA applies to HUD-funded housing in CA.** This means that anything beyond what HUD excludes may violate FEHA.

Considerations and Tips

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



Tips to Reduce Conviction-Related Housing Barriers

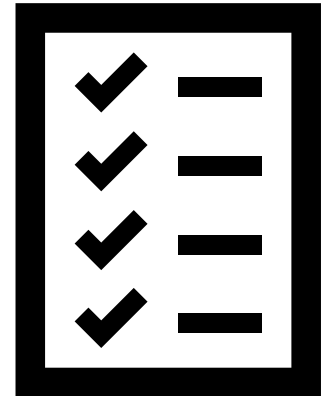
- **Review record with client**
 - Is it accurate?
 - What barriers will it cause?
- **Develop a targeted plan to address barriers**
 - Learn about the range of resources & programs
 - Who can help?
- **Refer to legal services for record clearance**

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

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

Tips to Reduce Conviction-Related Housing Barriers

- **Understand FEHA Restrictions**
 - No blanket bans
 - Convictions only
 - Directly related to housing
- **Rethink Document Readiness**
 - Help obtain mitigating documentation
- **Help your client frame their narrative**



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

- **Help with post-housing denial advocacy**
 - PHAs & private landlords
- **Use the 290 Registry as a resource**
 - Registrants themselves CANNOT access the Megan's Law website.
- **Help clients request tiering information and confirm accuracy**
- **Help eligible clients petition to terminate registration requirement**

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

<https://www.cocopublicdefenders.org/clean-slate>

Thank You!

Please reach out to us any time at
clsi@homebaseccc.org