

Locked out of Housing: How a Criminal Record Heightens Existing Obstacles

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Criminalization of Homelessness, Fall 2021

If inmates leave prison homeless and jobless with nothing but maybe a few dollars in their hands, it is unsurprising that survival crimes such as theft and trespassing result in their return to prison. Furthermore, for reasons this Note will cover, formerly incarcerated persons are nearly ten times more likely than the general population to become homeless.¹ As of the latest report from the U.S. Department of Justice, 6,756,300 persons in Florida had a criminal record, constituting 32% of Florida’s population.² Reducing recidivism by reducing homelessness and vice-versa, is just one of many motives to address equitable access to housing. Approaches will require a close look at systemic obstacles including but not limited to housing shortages, housing denials to those with prior criminal records, and opportunities for housing assistance while in prison. By relying on primary sources such as constitutions, case law, and statutes, this Note will cover the government’s role in providing access to rental housing, with a focus on Miami-Dade County. Then, relying on secondary sources, this Note will explore the many challenges and recommendations to accessing the housing rental market, with a focus on formerly incarcerated persons.

¹ Lucius Couloute, *Nowhere to Go: Homelessness among formerly incarcerated people* (Aug 2018) <https://www.prisonpolicy.org/reports/housing.html> [hereinafter *Nowhere to Go*].

² U.S. Dep’t of Justice Bureau of Justice Statistics, *Overview of state criminal history record systems, December 31, 2018*, Table 1, <https://www.ojp.gov/pdffiles1/bjs/grants/255651.pdf>; United States Census Bureau, *County Population Totals: 2010-2019*, <https://www.census.gov/data/tables/time-series/demo/popest/2010s-counties-total.html>.

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PART I. BACKGROUND:

1. The revolving door phenomenon, incarceration, and homelessness connection

Homelessness can be blamed as both a cause and result of one's criminal record. Returning to prison after released defines the revolving door phenomenon which further contributes to homelessness.³ As of 2017, nearly one out of every four released inmates in Florida returned to prison because of a new conviction or for a parole violation.⁴ A report released earlier this year compared incarceration rates across states in the U.S. with all countries whose populations exceeded 500,000.⁵ Florida ranked in thirteenth place.⁶ In Miami-Dade, as of August 2021, 3,355 individuals were homeless.⁷ Greater Miami, made up of three counties including Miami-Dade, represents the seventh least-affordable large metro in the world characterized by a surplus of luxurious housing but insufficient affordable housing.⁸ Greater Miami's housing unaffordability applies to both ownership and rent where Miami ranks next to cities such as Washington D.C., despite the latter's significantly higher median income.⁹ Unless financially supported by others, entering the rental housing market poses a challenge for those

³ *Nowhere to Go*, supra note 1. The latest study found inquiring into the percentage of the homelessness population who had been formerly incarcerated was in 2008 where for every 10,000 homeless persons, 279 had been incarcerated more than once, 141 incarcerated only once, and 21 represented the general population. A similar study limited to Miami-Dade County was not found.

⁴ Florida Department of Corrections, *Florida Prison Recidivism Report: Releases from 2008 to 2019* 7 (July 2021) <http://www.dc.state.fl.us/pub/recidivism/RecidivismReport2021.pdf>.

⁵ Emily Widra et al., *States of Incarceration: The Global Context 2021* (Sept. 2021) <https://www.prisonpolicy.org/global/2021.html>.

⁶ *Id.*

⁷ Karli Barnett, *Pandemic Bright Spot: Miami-Dade's Homeless Population Declined* (Sept. 2021) <https://miami.cbslocal.com/2021/09/20/miami-homeless-population-decline/>.

⁸ Miami Urban Future Initiative, *Miami's Housing Affordability Crisis*, 5 (2019)

<https://digitalcommons.fiu.edu/mufi-reports/6/> (Metropolitans defined as having more than 5 million people).

⁹ *Id.*

with a criminal record, especially after serving many years in prison. Given the correlation between incarceration and homelessness discussed above, it does not appear that friends and family function as a reliable support system. Furthermore, friends and family who offer to house a former inmate risk an eviction for violating their lease agreements which usually prohibit "unauthorized occupants."¹⁰ In another recent study of current inmates across the country, access to affordable housing was one of the most popular responses when asked, "What services or programs would have helped to keep you from committing the crime(s) that led to your incarceration?"¹¹ Thus, stable housing plays a crucial role in reducing recidivism.¹²

Low-level offenses disguised as means to criminalize the homeless can be partly to blame for high recidivism and incarceration rates.¹³ When formerly incarcerated persons are released back into society, but without adequate options for shelter, they may need to sleep in public areas such as in parks after hours. This life-sustaining activity is paradoxically also labeled as a misdemeanor in many cities, thereby provoking engagement with law enforcement officers.¹⁴ The extent in which officers in the City of Miami may arrest violators, however, is limited by Miami Police Departmental Order 11.¹⁵ This protocol, *inter alia*, provides that activities such as

¹⁰ The Housing Center, *A Never-Ending Sentence: The Impact Of Criminal Conviction In Project-Based Section 8 Housing Tenant Selection Plans In Cuyahoga County* 7 (Jan. 2020) <https://www.thehousingcenter.org/wp-content/uploads/2019/12/A-Never-Ending-Sentence-2020.pdf>

¹¹ Nicole Lewis, *What Could Have Kept Me Out of Prison* (Oct. 2020)

<https://www.themarshallproject.org/2020/10/27/what-could-have-kept-me-out-of-prison>.

¹² Kimberly Burrowes, *Can Housing Interventions Reduce Incarceration and Recidivism?* (Feb. 2019). <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism> [hereinafter Burrowes].

¹³ National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: Ending the Criminalization of Homelessness in U.S. Cities* 51 (2019) <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [hereinafter *Housing Not Handcuffs*].

¹⁴ See, e.g., *id.* at 41.

¹⁵ MIA. POLICE DEP'T, DEPARTMENTAL ORDS. 564–68, Chapter 10 (Feb. 27, 2018),

sleeping in parks, living in vehicles, loitering in restrooms, shall only result in arrests if a homeless person refuses shelter when space is available.¹⁶ However, other activities such as eating, congregating, or walking in public are “non-life sustaining conduct misdemeanors” and may warrant detainment or arrest by an officer who deems so appropriate.¹⁷

Even without an arrest, a homeless person may still eventually disqualify from housing or even get funneled “back through the revolving door of the criminal justice system.”¹⁸ For example, any violation may lead to a civil penalty in the form of fines and if such fines are unpaid for, a driver’s license suspension may result.¹⁹ If not serious enough that losing a driver’s license could prevent someone from going to work, and thereby losing his job, an unpaid, and uncontested fine may “open the door” for criminal liability.²⁰ A violation for an activity related to homelessness makes it nearly impossible for the recipient to become aware of any court notice if he does not have a home address in which to send those notices.²¹ An absence at a mandatory court hearing may result in an arrest warrant, thereby disqualifying one from subsidized housing.²² Policies criminalizing acts such as public urination overlook how housing and shelter options could prevent “criminals” from relying on public spaces to meet such basic, human needs. Furthermore, these policies criminalizing homelessness activities “contribute directly to

https://www.miami-police.org/DeptOrders/MPD_Departmental_Orders.pdf (resulting from the evolution of *Pottinger v. City of Miami*, including but not limited to the consent decree (810 F. Supp. 1551 (S.D. Fla. 1992)[hereinafter *Pottinger*]; and Order Granting Joint Motion to Approve Settlement (No. 88-cv-2406 (S.D. Fla. Mar. 10, 2014)).

¹⁶ *Pottinger v. City of Miami*, No. 88-cv-2406, at *3-4 (S.D. Fla. Mar. 10, 2014).

¹⁷ *Id.* at *6.

¹⁸ *Nowhere to Go*, supra note 1.

¹⁹ *Housing Not Handcuffs*, supra note 13 at 50.

²⁰ *Id.*

²¹ *Id.* at 52.

²² *Id.*

racial inequity in the criminal justice system” where since 1980, enforcement of misdemeanors have disproportionately affected certain racial groups across the nation.²³

Criminalizing life-sustaining activities and incarceration in general, also overlook the implications on employment. Those who wish to pursue their due process rights may miss hours of work by having to attend multiple court hearings.²⁴ Just as with losing a driver’s license, missed work will likely result in termination. Unemployed and with a criminal record, such an individual now faces a serious obstacle to get re-employed given the practice of background checks to filter out applicants.²⁵ Residents attempting to successfully re-enter into society struggle to find employment which makes relying on federally subsidized apartments or vouchers unavoidable for many. At the national level, laws such as is found in Florida incentivize employers to do background checks to ground an employer’s potential defense as non-negligent from an employee’s intentional tort.²⁶

Understanding the impact of incarceration and homelessness on people of color is necessary for certain affordable-housing claims, which this Note will later discuss in-depth. At the national level, formerly incarcerated Black men experience higher rates of unsheltered homelessness than White or Hispanic men.²⁷ Similarly, both formerly incarcerated Black and Hispanic women experience higher rates of unsheltered homelessness than Whites.²⁸ Single male Blacks, Hispanics, and Native Americans constitute the major groups experiencing homelessness

²³ *Id.* at 51.

²⁴ *Id.* at 64.

²⁵ *Id.*

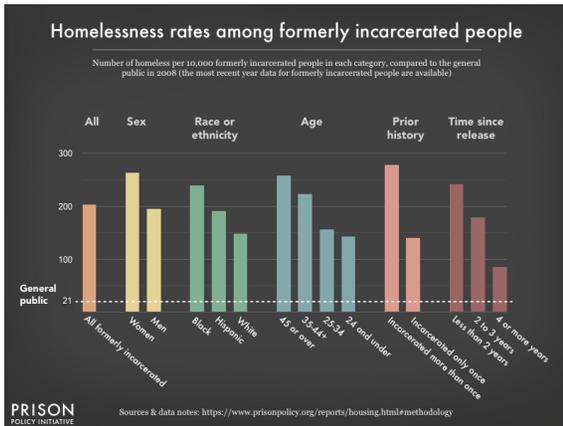
²⁶ Fla. Stat. §768.096

http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0700-0799/0768/Sections/0768.096.html

²⁷ *Nowhere to Go*, supra note 1; see table 2.

²⁸ *Id.*

(see figure 1).²⁹ The disproportionate rates of homelessness for people of color at the national level represents disparities in Miami-Dade as well, but the differences in Miami-Dade are greater for Blacks where the “safety net” is not as sturdy when compared to other racial groups.³⁰ Although Blacks in Miami-Dade represent 18% of the general population, they represent 57% of the homelessness population.³¹ White Hispanics also disproportionately represent the homeless population across all Continuum of Care (CoC) components (see figure 2).³²



	African-American/Black	White Non-Hispanic ¹	White Hispanic ²
All CoC Components	57%	11%	30%
CoC Component			
Emergency Shelter & Transitional Housing	58%	12%	28%
Rapid Re-Housing	66%	11%	21%
Permanent Supportive Housing (PSH)	53%	9%	35%
Successful Exits to Permanent Housing	58%	13%	27%

PERCENTAGE OF MIAMI-DADE COUNTY GENERAL POPULATION:
 1. 18% WHITE NON-HISPANIC (U.S. CENSUS BUREAU FACTS 2018)
 2. 10% HISPANIC OF WHICH 6% ARE WHITE HISPANIC (U.S. CENSUS BUREAU FACTS 2018)

Figure 1 (top), Figure 2 (bottom)

Racist practices, regardless if one has a criminal record, is another challenge in accessing affordable and decent housing.³³ In a study from the Housing Urban Development (HUD) people of color experience discrimination in terms of rental units shown, denials based on credit history, offered rental prices, and pre-move-in costs such as deposits.³⁴ In summary, these disproportions across incarceration, homelessness, and housing demonstrate how the struggles for accessing affordable housing are generally greater for people of color than for Whites.

2. Saving in prison to afford rent is nearly impossible

The criminal justice system is not designed to prepare inmates for a successful reentry into society. The low wages paid in prisons exemplifies one of the many hindrances to an inmate’s ability to prepare for reentry.³⁵ As of April, 2017, inmates in Florida could earn between \$0-\$50.00 per month for regular jobs (non-industry) and \$0.20-\$0.55 per hour for jobs

²⁹ *Id.*

³⁰ Karen M. Mahar, *Not Getting By: Poverty Management and Homelessness in Miami* 4 (2012) <https://digitalcommons.fiu.edu/cgi/viewcontent.cgi?article=1889&context=etd> (safety net resources include “public benefits, private assistance, community programs, and personal networks.”).

³¹ Homeless Trust, *Miami-Dade Racial Disparity Among Persons Experiencing Homelessness* (Nov. 2020) <https://www.homelesstrust.org/resources-homeless/library/racial-disparity-highlights.pdf>.

³² *Id.*

³³ *Housing not Handcuffs*, supra note 13.

³⁴ *Id.* at 32.

³⁵ Wendy Sawyer, *How much do incarcerated people earn in each state?* (Apr. 2017) <https://www.prisonpolicy.org/blog/2017/04/10/wages/>.

in state-owned businesses (“Correctional Industries”).³⁶ Many prisons across the country, including in Florida, charge “pay to stay fees” for things such as medical costs.³⁷ Additionally, the Florida Department of Corrections is currently proposing to charge inmates to print letters from family or friends, rather than giving the letters directly to the recipients.³⁸ Evidently, saving while incarcerated to afford housing upon release seems implausible in Miami-Dade. Thus, inmates will likely have to eventually rely on limited government vouchers or subsidized apartments.

PART II. AFFORDABLE HOUSING DEMAND AND SUPPLY

1. How public housing assistance programs work

For those who cannot afford rental costs, HUD - the country’s primary government housing assistance program - offers, *inter alia*, public housing and Section 8 housing choice vouchers (Section 8).³⁹ The federal government subsidizes public housing owned by local public housing authorities (PHAs) for eligible applicants who earn at or below 80% of the area’s median income.⁴⁰ Alternatively, HUD’s Section 8 voucher program gives applicants an opportunity to enter the private market.⁴¹ The voucher program funds public housing agencies

³⁶ Prison Policy Initiative, *State and federal prison wage policies and sourcing information* (Apr. 10, 2017) https://www.prisonpolicy.org/reports/wage_policies.html.

³⁷ Brennan Center for Justice, *Is Charging Inmates to Stay in Prison Smart Policy?* (Sept. 2019) <https://www.brennancenter.org/our-work/research-reports/charging-inmates-stay-prison-smart-policy>.

³⁸ Danielle Ivanov, *Handwritten letters are all Florida prisoners have left. Now FDC wants to take that away* (Aug. 2021) <https://www.gainesville.com/story/news/2021/08/02/florida-department-corrections-moves-digitize-inmate-mail-in-prison/8008627002/>.

³⁹ Congressional Research Service, *Overview of Federal Housing Assistance Programs and Policy*, 10-12 (Mar. 27, 2019) <https://crsreports.congress.gov/product/pdf/RL/RL34591>

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 10.

who pay landlords directly so that qualifying tenants pay the difference between the market-rate rent and the subsidy.⁴²

2. Affordable housing demands far exceed supply

Unfortunately, in Miami-Dade, the demand for access to housing via subsidies or vouchers far exceeds the supply. Due to insufficient funding, housing agencies’ waitlists are discouragingly long.⁴³ Of the five-hundred largest housing authorities, Miami-Dade (through the Miami Dade Public Housing and Community Development group) has the highest waitlist period where in 2020, the average wait time was eight years.⁴⁴ In the latest Miami-Dade waitlist which closed in 2014, there were 28,362 applicants.⁴⁵ Presuming from the lengthy waitlist and the number of homeless persons in Miami-Dade, the shortage of affordable housing leaves those in need of housing with little hope. For formerly incarcerated persons who face obstacles attributed to their statuses, the chances are even more dire...

3. Even if lucky enough to get a voucher, housing discrimination persists

Not only are those with criminal records often rejected by employers, but also by federally subsidized housing providers and landlords.⁴⁶ Public housing agencies who administer federally subsidized housing programs at the local level have great discretion in denying

⁴² *Id.*

⁴³ Sonya Acosta et. al., Center on Budget and Policy Priorities, *Families Wait Years for Housing Vouchers Due to Inadequate Funding* (July 22, 2021) <https://www.cbpp.org/research/housing/families-wait-years-for-housing-vouchers-due-to-inadequate-funding>

⁴⁴ *Id.*

⁴⁵ Miami-Dade County, *Public Housing and Community Development 2014 Public Housing Waiting List* (Sept. 2014) <https://www.miamidade.gov/housing/library/reports/waiting-list-2014-public-housing.pdf>.

⁴⁶ Shriver Center on Poverty Law, *Housing: The Key to Successful Reentry for People with Criminal Records* (June 15, 2017) <https://www.povertylaw.org/article/housing-the-key-to-successful-reentry-for-people-with-criminal-records/>.

assistance to those with a criminal record.⁴⁷ In a 2015 study in fourteen states, including Florida, 79% of the 712 individuals reported either being ineligible for or denied housing because of their conviction history.⁴⁸ HUD, in 2016, sought to address the issue of high rejection rates for former inmates by providing guidelines prohibiting landlords from denying housing based on arrest records and criminal histories.⁴⁹ Yet, landlords still have discretion to deny housing so long as they think the applicant imposes a risk to other tenants or neighbors.⁵⁰

The Florida Fair Housing Alliance (FFHA), an organization founded by Ryan J. Turizo who served 10 years in Florida prison for nonviolent felonies, provided insights into the effect of the HUD guidelines.⁵¹ During my interview with Turizo in November 2021, Turizo shared that FFHA is on a mission to catch property owners who screen out convicted felons during investigatory testing. Since the organization's inception, Turizo's team has caught and incentivized hundreds of landlords or property managers to change their policies so that they are in accordance with the HUD guidelines. The threat of costly litigation holds these violators accountable to changing their policies and to train their employees on how to avoid future violations.⁵² Those who conduct blanket bans against applicants with a criminal record are also often in violation of local ordinances that ban discrimination against Section 8 vouchers.⁵³

⁴⁷ *Id.*

⁴⁸ Saneta DeVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families* 26 (2015), <http://whopaysreport.org/who-pays-full-report/>.

⁴⁹ See Appendix.

⁵⁰ *Id.*

⁵¹ Phone interview with Ryan Turizo (Nov. 8, 2021); see also Florida Fair Housing Alliance website <https://www.floridafairhousingalliance.org/> [hereinafter Turizo].

⁵² Phone interview with Jibrael S. Hindi (Nov. 8, 2021); see also PRWeb, *The Law Offices of Jibrael S. Hindi Wins Victory for Low Income Tenants* (Oct. 12, 2021) <https://www.prweb.com/releases/the-law-offices-of-jibrael-s-hindi-wins-victory-for-low-income-tenants/prweb18255900.htm>.

⁵³ Turizo, supra note 51; see also Miami-Dade County, Sec. 11A-12. - Unlawful housing practices <https://library.municode.com/fl/miami> -

Most landlords and property managers are not aware that the HUD guidelines exist and even if they are, they take advantage of applicants with a criminal record who are not aware of such protections by rejecting them without any explanation.⁵⁴ Rejected applicants, unfamiliar with the HUD guidelines, then continue applying to different places.

PART III. GOVERNMENT & COURT ROLES IN AFFORDABLE HOUSING

I thought serving my time in prison was my punishment. A lack of pathways to successful reentry meant I faced a life sentence long after leaving prison . . . What I needed was someone who had been to prison and was successfully navigating reentry to mentor me. I needed someone to tell me that applying for a job, for housing, or for a loan was different for folks with a felony conviction.⁵⁵

1. Florida statute: Release Orientation Program

The above testimony was taken from a former inmate who was given a check for \$50 and a bus voucher when he left a Texas prison.⁵⁶ Turizo shared that during his ten years in confinement at Florida's Department of Corrections, there were "no resources to adequately put someone back in society with confidence."⁵⁷ Recognizing the struggles returning citizens face to find stable housing, Florida in 2019 added a "Release Orientation Program" to its statutes requiring that correctional departments "shall provide participation in a standardized release orientation program to every eligible inmate."⁵⁸ The statute provides a list of topics to cover,

[_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH11ADI_ARTIIHO_S11A-12UNHOPR](https://www.municode.com/fl/miami-dade-county/codes/code_of_ordinances?nodeId=PTIICOOR_CH11ADI_ARTIIHO_S11A-12UNHOPR).

⁵⁴ Turizo, supra note 51.

⁵⁵ Lewis Conway, *Recidivism Will Only Decrease if Successful Reentry is Embraced as an Antidote for Mass Incarceration* (May 29, 2020) <https://www.aclu.org/news/smart-justice/recidivism-will-only-decrease-if-successful-reentry-is-embraced-as-an-antidote-for-mass-incarceration/>.

⁵⁶ *Id.*

⁵⁷ Turizo, supra note 51.

⁵⁸ Fla. Stat. §944.705 (LexisNexis, Lexis Advance through the 2021 Regular and First Extraordinary Sessions).

including housing, but does not define eligibility.⁵⁹ The statute also requires a toll-free hotline for “released inmates seeking to obtain post-release referrals for community-based reentry services.”⁶⁰

2. Miami-Dade County: Reentry Program Services Bureau

The importance of reentry services is at least recognized at both the local and state levels. For inmates seeking referrals while still imprisoned, the Miami-Dade Corrections and Rehabilitation Department, through its Reentry Program Services Bureau, offers inmates referrals to housing services prior to release from jail.⁶¹ In an effort to obtain more details about these assistant programs, I spoke with Dora from the Department of Corrections and Rehabilitation in September 2021 who stated, “Once they’re released, that’s it. We can refer them to community housing.”⁶² Evidently, on-going support that a mentor could provide is not currently offered to Miami-Dade inmates. Additionally, although not an obligation, the Attorney General is “authorized” to make grants for programs that plan for housing “to facilitate reentry into the community.”⁶³

3. County and State: Recognizing low-income and former inmates’ demands for housing

At the county level, besides protections against Section 8 voucher discrimination, the mandated orientation program, and referrals, Miami-Dade has also sought to address the problem

of insufficient housing by providing programs such as Thrive305.⁶⁴ The program’s goal is to “provide long-term supportive housing for people returning from the criminal justice system so that they can reintegrate seamlessly back into the community.”⁶⁵ Thrive305’s objectives include incentivizing development of new housing using county-owned land, partnering with community-based organizations, and creating incentives for landlords.⁶⁶ On November 8, 2021, I contacted the mayor’s office for a status report on Thrive305, but as of December 15, I have not yet received a response.

At the state level, Florida recognizes the need for affordable “[d]ecent, safe, and sanitary housing” for those with very low-to-moderate incomes.⁶⁷ Additionally, the Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 encouraged “the creation of State Interagency Councils on Homelessness and the formulation of jurisdictional 10-year plans to end homelessness at State, city, and county levels.”⁶⁸ Florida’s legislative findings also recognized the importance of government involvement at all levels when it found that “private capital and existing state housing programs do not provide an adequate remedy.”⁶⁹ Thus, “Public-private partnerships are an essential means of bringing together resources to provide affordable housing.”⁷⁰ These goals, however, are general in that they lack attention to those with a criminal record. Although the chapter on housing in Florida’s statute mentions “homeless” nearly one-hundred-and fifty times, it does not set out separate goals to assist those with a criminal record.⁷¹

⁵⁹ *Id.*; I reached out on Nov. 8, 2021 to Daniel Junior from the Corrections and Rehabilitation Department for more details on the eligibility requirements, but as of Dec. 15, 2021 I have not yet received a response.

⁶⁰ Fla. Stat. §944.705.

⁶¹ Miami-Dade Government, Engage 305 (2014) (the Reentry Program Services Bureau was made possible through an agreement with the Miami-Dade Homeless Trust) <https://www.miamidade.gov/engage305/inmates.asp> [hereinafter Engage 305].

⁶² Phone interview with Dora (Sept. 5, 2021) (The initial contact was made by me calling 786-263-7000 where I was then transferred to Dora whose last name I did not record).

⁶³ 34 U.S.C.S. § 10631 (LexisNexis, Lexis Advance through Public Law 117-52, approved October 31, 2021).

⁶⁴ Engage 305, *supra* note 61.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Fla. Stat. § 420.6015 (LexisNexis, Lexis Advance through the 2021 Regular and First Extraordinary Sessions) [hereinafter Fla. Stat. § 420.6015].

⁶⁸ Will Sarvis, *The Homelessness Muddle Revisited*, 49 Urb. Law. 317 (2017).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Fla. Stat. § 420.6015, *supra* note 67.

4. Federal: Fighting housing discrimination and shortages through litigation

Although the federal government is not constitutionally obligated to provide housing, the Fair Housing Act (FHA) recognizes a need for fair housing.⁷² The FHA defines fair housing as prohibiting discrimination in the housing market based on “race, color, religion or national origin.”⁷³ FHA seeks to decrease housing segregation and discrimination while increasing housing opportunities for minorities.⁷⁴

Advocates seeking to help former inmates reintegrate into society, such as the Florida Fair Housing Alliance, have utilized the FHA as an avenue for litigation. Fair housing litigation is “an emerging area of the law” relative to employment law where more research has been done accounting for race and criminal records.⁷⁵ A denied applicant with a criminal record claiming a FHA violation may have a cause of action under a disparate-impact theory, which prohibits actions “that create a discriminatory effect upon a protected class of persons or that perpetuate housing segregation without any concomitant legitimate reason.”⁷⁶ As the Court explained in *Texas Department of Housing & Community Affairs v. Inclusive Communities Project*, disparate-impact liability “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. In this way, disparate impact liability may prevent segregated housing patterns that might otherwise result from covert and illicit

⁷² 42 U.S.C.S. § 3601 (“It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”).⁷²

⁷³ *Id.*

⁷⁴ Valerie Schneider, *In Defense of Disparate Impact: Urban Redevelopment and the Supreme Court's Recent Interest in the Fair Housing Act*, 79 Mo. L. Rev. 539, 543 (Summer 2014) [hereinafter *Urban Redevelopment*].

⁷⁵ Reentry Housing Committee, *A Never Ending Sentence* 10 (Jan. 2020) <https://www.thehousingcenter.org/wp-content/uploads/2019/12/A-Never-Ending-Sentence-2020.pdf> [hereinafter *Reentry Housing Committee*].

⁷⁶ 5 Thompson on Real Property, Thomas Editions § 43.03 (2021) (quoting *Invs., LLC v. City of Yuma*, 818 F.3d 493, 503 (9th Cir. 2016)), cert. denied, 137 S. Ct. 295 (2016)).

stereotyping.”⁷⁷ Even when the race of the potential tenant is unknown - in other words, if the discrimination is unintentional - under the FHA, a disparate-impact theory may still provide a remedy.⁷⁸

The following two federal cases illustrate how litigation seeking to protect those with a criminal record is a novel, complex area of law because of the challenges in proving a disparate impact.⁷⁹ In *Fortune Society*, the plaintiff, a non-profit organization providing reentry services to current and former New York inmates, sued an apartment complex for denying housing to twenty of its clients.⁸⁰ Plaintiff argued that defendant had a blanket-ban policy against anyone with a criminal conviction from renting or living in its apartments and that this policy violated the FHA because it had “the purpose or effect of discriminating against African-American and Latino persons.”⁸¹ Although not a party to the case, the U.S. Department of Justice issued a “statement of interest” supporting plaintiff’s analysis that the FHA prohibits “blanket bans based on criminal history.”⁸² Plaintiff provided transcript evidence of defendant’s employees saying they “would not rent to ex-offenders, and that a criminal record was a red flag.”⁸³ However, even if assumed that a blanket ban existed, the court found conflicting expert testimony on the impact of such a ban.⁸⁴ Because plaintiff had failed to demonstrate “as a matter of law” that a blanket ban had a “disparate impact on African-American and Latino persons”, its motion for partial

⁷⁷ 135 S. Ct. 2507 519, 541 (2015).

⁷⁸ *Urban Redevelopment*, supra note 74.

⁷⁹ See *Fortune Soc’y v. Sandcastle Towers Hous. Dev. Fund Corp.*, 388 F. Supp. 3d 145 (E.D.N.Y. 2019); *Alexander v. Edgewood Mgmt. Corp.*, No. CV 15-01140 (RCL), 2016 WL 5957673 (D.D.C. July 25, 2016).

⁸⁰ *Fortune Soc’y*, at 160.

⁸¹ *Id.* at 152.

⁸² *Reentry Housing Committee*, supra note 75.

⁸³ *Fortune Soc’y*, at 173.

⁸⁴ *Id.* at 176.

summary judgment on the issue was denied.⁸⁵ This case, however, was not a loss for plaintiff because the court, *inter alia*, denied defendant's cross-motion for summary judgment and its motion to dismiss for lack of standing.⁸⁶ The disparate-impact issue was still pending when defendant settled to pay \$1,187,500.⁸⁷

In *Alexander v. Edgewood Management Corporation*, Alexander sued under the FHA and the District of Columbia Human Rights Act after he was rejected by three federally assisted housing providers based on his seven-year-old, non-violent, and non-drug-related-offenses.⁸⁸ Alexander alleged that these wrongful denials amounted to "a disparate and discriminatory effect on African-American applicants."⁸⁹ The district judge found that "given the demographics in the area and the historical conviction rates, African Americans are statistically more likely to fall into that category and thus be excluded by defendants' unpublished policy."⁹⁰ Furthermore, defendant's denial ran "afoul of the law as articulated in recent HUD guidance."⁹¹ Thus, defendant's motion to dismiss was denied because Alexander had established a plausible claim that defendant's housing policy "exceeded the bounds of law and may have a disparate impact on African Americans."⁹² Defendants filed an appeal, but the case resulted in a dismissal following a settlement.⁹³ Since both *Fortune Society* and *Alexander* ended in settlements, housing discrimination laws for those with a criminal record does not guarantee sturdy grounds of

⁸⁵ *Id.*

⁸⁶ *Id.* at 179.

⁸⁷ Reentry Housing Committee, *supra* note 74; *see also* Docket No. 1:14-cv-06410 (E.D.N.Y. Oct 30, 2014) *stipulation of dismissal ordered* (Oct. 17, 2019).

⁷⁷ *Alexander*, at *1.

⁸⁹ *Id.*

⁹⁰ *Id.* at *4.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Docket No. 19-07071 (D.C. Cir.) *appeal docketed* (Jul. 29, 2019), *settlement filed* (Nov. 1, 2019), *voluntary dismissed* (Jan. 17, 2020).

protection to potential plaintiffs. Nevertheless, these cases demonstrate that courts are at least acknowledging the purposes of the HUD guidelines to protect applicants with a criminal history.

Advocates addressing the needs of general homelessness may have additional arguments outside of the FHA. In *LA Alliance for Human Rights v. City of Los Angeles*, a coalition of city residents prevailed on a §1983 substantive due process claim arguing that the city's inaction in "developing sustainable solutions to the homelessness crisis" created a disparate impact on Black homeless individuals.⁹⁴ The court denied the city's motion to dismiss as to the Equal Protection Claim.⁹⁵ However, the Ninth Circuit later vacated the injunction requiring the city to fund shelter for all downtown-homeless residents on the grounds of, *inter alia*, plaintiff's lack of standing for its race-based and due process claims.⁹⁶ Considering plaintiff's loss in this case relative to *Fortune Society* and *Alexander* where at least those plaintiffs had standing, housing advocates may be more likely to prevail under a disparate-impact, FHA claim than substantive due process claims against the government.

PART IV. RECOMMENDATIONS

This section provides recommendations categorized by four goals where the first two arguably would have a greater impact on the general homelessness population than the latter two. Additionally, the latter two would likely require less resources and thus, less persuasive efforts than the former. In other words, these recommendations are generally organized by highest, to lowest "hanging fruit."

⁹⁴ *LA All. for Hum. Rts. v. Cty of Los Angeles.*, No. LA CV 20-02291-DOC-(KESx), 2021 U.S. Dist. LEXIS 89867, at *15 (C.D. Cal. May 11, 2021).

⁹⁵ *Id.*

⁹⁶ *LA All. for Hum. Rts. v. Cty. of Los Angeles*, 14 F.4th 947 (2021).

To expedite solutions regarding the various housing gaps highlighted in this Note, all goals at a minimum must achieve the following: collaboration within entities of the public sector and with the private sector, including enforcement against the private sector. Florida's current and at-risk to be homeless population cannot afford to depend on the government or private realtors in isolation. Entities within the public sector include, but are not limited to, public housing agencies, law enforcement, correctional departments, and other government departments such as the Miami-Dade County Homeless Trust.⁹⁷ The private sector, as used in this Note, refers to for-profit developers.

1. Amend Florida's Constitution to include a homeless bill of rights

Constitutional rights alone do not solve the issues that declared rights seek to protect. Yet, these rights have the power to incentivize multiple stakeholders from both the public and private sector to collaborate in addressing the needs of the homeless. Furthermore, constitutional rights provide crucial foundations for homeless advocates to rely upon for their arguments. Knowing that litigants can rely on the language of their state's constitution to base their arguments, government and private actors would be held accountable to adhere to what the constitution seeks to protect.

Florida's constitution supports the argument that the legislature alone cannot effectuate change. Despite its strong and specific language granting the state a "paramount duty" to "assure" that all "children attending public schools" receive a "high quality education",

⁹⁷ Miami-Dade County Homeless Trust Business Plan Fiscal Years: 2021 and 2022 (Mar. 2021) <https://www.miamidade.gov/performance/library/business-plans/FY-2021-22-homeless-trust.pdf> (The Miami-Dade County Homeless Trust Department's mission is to "Administer the proceeds of the portion of the one percent Food and Beverage Tax and other revenue sources dedicated to activities for the homeless; advise the Board of County Commissioners (BCC) on issues related to homelessness; and implement the Miami-Dade County Community Homeless Plan: Priority Home").

skepticism as to the extent in which this has been accomplished is warranted.⁹⁸ A research center gave Florida a C+ grade, ranking it at 32nd place within the country on its "chance-for-success" index when it considered factors such as pre-school enrollment, K-12 proficiency in reading and math, and high-school graduation rates.⁹⁹ Nevertheless, readers should not infer that the effects of Florida's constitution on quality education were futile. Despite the need for progress, if Florida's constitution lacked the ambitious language above, perhaps the situation today would be more dire.

A Florida homeless bill of rights could enumerate, for example, a series of provisions covering guidelines for law enforcement officers, basic shelter guarantees, and guidelines for transitional housing assistance programs. The *Pottinger* agreement, which prohibited criminalizing certain life-sustaining activities in the City of Miami is one example of protections a Florida homeless bill of rights could provide.¹⁰⁰ Such a bill could also emulate multiple jurisdictions in declaring a right to shelter such as Puerto Rico where a multi-sector council, including at least two currently or formerly homeless representatives, was assigned the task of eradicating homelessness.¹⁰¹ Lastly, a provision granting a right to identification forms required for voting, employment, and emergency care, could require reentry programs of correctional institutions and transitional assistance housing programs to offer such services.¹⁰²

⁹⁸ Fla. Const. Art. IX, § 1

⁹⁹ Education Research Center, *Quality Counts 2021: Educational Opportunities and Performance in Florida* (Sept. 1 2021) <https://www.edweek.org/policy-politics/quality-counts-2021-educational-opportunities-and-performance-in-florida/2021/01>.

¹⁰⁰ *Pottinger*, supra note 15.

¹⁰¹ National Law Center on Homelessness & Poverty, *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation* 11 (2014).

¹⁰² *See id.* at 34.

Other progressive jurisdictions such as New York City and California have sought “to build upon the critical protections of the Fair Housing Act” by explicitly including in their laws a requirement by the state to provide shelter.¹⁰³ As noted by scholars, New York’s Constitution broadly calls for the state to provide “aid, care and support.”¹⁰⁴ The provision, however, is not limited by this broad remark. It includes specific language establishing “a right to shelter for all homeless men in New York City” with minimum standards on health and safety in the shelters.¹⁰⁵ To what extent any progress in the homelessness issue can be attributed to the state’s constitution is a matter for another Note. However, just as we can speculate as to what the conditions would look like today without any remark to high quality education, we can also apply the same considerations to homelessness support. Furthermore, the language in New York’s constitution arguably helped to pave the way for other housing protections such as rent control and rent stabilization.¹⁰⁶ Florida offers neither rent control nor rent stabilization.

Although specificity describing rights is preferred over general language for a slew of reasons, the more absolute the right is, the more wary the state’s legislature may be to commit. For example, last year, California’s democrat governor Gavin Newsom vetoed a bill to add to the state’s welfare code a “right to safe, decent, and affordable housing.”¹⁰⁷ The estimated cost at

¹⁰³ Vincent Halloran, *Solving the Housing Crisis Half-a-House at a Time: Incremental Housing as a Means to Fulfilling the Human Right to Housing*, 52 U. Miami Inter-Am. L. Rev. 95, 113 (2020).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See e.g., Report by the International Human Rights Committee of The New York City Bar Association (2016) <https://www2.nycbar.org/pdf/report/uploads/20072632-AdvancingtheRighttoHousingIHR2122016final.pdf>; see also New York State of Opportunity, *Rent Stabilization and Rent Control Fact Sheet* (2020) <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-01-09-2020.pdf>.

¹⁰⁷ California Legislature (2019–2020 Regular Session), AB-2405 Right to safe, decent, and affordable housing https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB2405

over \$10 billion annually deterred his support.¹⁰⁸ In his veto message, he noted, “to make progress, we need more than policy goals. We need tangible funding strategies and legal requirements”¹⁰⁹

The fact that the U.S. has signed, but not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) also demonstrates hesitation to commit to enumerated rights.¹¹⁰ The ICESCR recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹¹¹ The extent of subjectivity in these rights would arguably open the floodgates to endless litigation as parties argue over what defines an “adequate standard.”

Where is the “Goldilocks Zone” of policy reform if too broad of language pertaining to a government’s duty lacks teeth for progress, but specific language discourages support from lawmakers? South Africa’s constitution exemplifies a compromise in which Florida lawmakers may aspire towards. South Africa requires its states “to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing.”¹¹² This requirement provides more specificity as opposed to vague language to serve the needy, but at the same time, is not so absolute that the language would automatically result in any government defendant to lose a case based on a failure to meet anyone’s housing need. Furthermore, by keeping the language broad enough, all groups

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ International Covenant on Economic, Social and Cultural Rights, Chapter IV Human Rights (1976) https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4

¹¹¹ *Id.*

¹¹² *Government of the Republic of South Africa and Others v. Grootboom and Others*, 2000 SACLR LEXIS 126, 2000 (11) BCLR 1169 (CC).

regardless of status such as formerly incarcerated, veterans, elderly, etc. are covered. Cities and states would have the burden to prove that they could not meet their obligations due to lack of available resources.

Critics may disfavor the language in South Africa’s constitution by noting that such a declaration would demand more from courts than they are authorized to provide.¹¹³ However, while Courts cannot *create* budget-setting priorities without stepping outside of its judicial limits, they can and should be able to *ensure* through for example, consent decrees, that the government is allocating its resources accordingly based on its coordinated programs.

Adapting a Florida homeless bill of rights, even with broad language, can effectively improve the conditions for current and at-risk homeless populations given the opportunities to incentivize various stakeholders who without an incentive, lack an interest in addressing the needs of the homeless. For example, the government could incentivize private developers through tax deductions to allocate a portion of their projects for public housing development. The government could also, through tax deductions, incentivize employers to hire applicants with a criminal record (more on this below). Businesses concerned about losing customers may also be incentivized to support homelessness causes if advocates could design their proposals in ways that articulate the advantages of a reduced homeless population near the stakeholders’ businesses. Because of the various opportunities for incentivizing stakeholders to work in collaboration with advocates, the impact of a homeless bill of rights seems arguably greater than the government’s lofty education goals.

2. Invest in temporary and permanent housing programs

¹¹³ See, Cass R. Sunstein, *Social and Economic Rights? Lessons from South Africa* 3 (2001).

As David Peery, a former class representative of *Pottinger* straightforwardly says, the solution to homelessness is easy: create more affordable housing.¹¹⁴ For all currently or at-risk homeless populations, coordination within communities, including the local government, non-profits, and private sector with agencies such as HUD is crucial to increase temporary and permanent housing. Furthermore, as elaborated above, sufficient temporary and permanent housing is fundamental to reduce recidivism. Programs based on the Housing First or the Continuum of Care (CoC) models provide alternatives to shelters for low-income persons and can have positive effects on crime reduction.¹¹⁵ For example, municipal violations in Milwaukee County, Wisconsin decreased by 82% after just one year of implementing Housing First.¹¹⁶ While this Note will not discuss the advantages and disadvantages of each model, the government must effectively coordinate with former and current homeless persons to understand which programs would better serve the demands of those in need within Miami-Dade. Florida has demonstrated some acknowledgment on the importance of coordination as demonstrated by its State Housing Initiatives Partnership Program finding “that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households.”¹¹⁷ Furthermore, Miami-Dade has

¹¹⁴ Class 11 (Nov. 10, 2021).

¹¹⁵ See Fla. Stat §420.6275 (LexisNexis, Lexis Advance through the 2021 Regular and First Extraordinary Sessions) (describing the Housing First model); see HUD, Continuum of Care (current as of Nov. 16, 2021) https://www.hud.gov/program_offices/comm_planning/coc (describing CoCs); Burrowes, supra note 12 (illustrating the reducing effect on criminal activity from the Housing First and CoC models).

¹¹⁶ Burrowes, supra note 12.

¹¹⁷ Fla. Stat. § 420.9072, (LexisNexis, Lexis Advance through the 2021 Regular and First Extraordinary Sessions) (“The Legislature finds that affordable housing is most effectively

encouraged CoC providers to embed Housing First principles which this Note supports: street outreach, emergency shelter, and permanent housing.¹¹⁸

These recommendations are, however, inexhaustive. Regarding street encounters with the homeless, Miami-Dade should create an ordinance to incorporate what the *Pottinger* agreement sought to protect. Warning, citing, and potentially arresting the homeless for life-sustaining activities are not only inconducive to helping the homeless, but also propel the prison-revolving door phenomenon. For both emergency and permanent housing, an increase in funding can further the goal which most of the nation supports as a top national priority to provide “safe, decent, affordable homes” to all residents.¹¹⁹ Such funding could be raised from an emergency bill, as part of a larger infrastructure bill, or a new source of tax revenue.¹²⁰

In 2019, Miami’s mayor, Francis Suarez joined nineteen other task force members across the country to address the housing crisis.¹²¹ One solution called for an increase in federal funding.¹²² Other recommendations included offering renter tax-credits to property owners who rent to low-income families and expanding fair housing to include source of income.¹²³ It is imperative that Florida have a secured source of funding for housing programs and that trust

provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households.”); Miami-Dade Homeless Continuum of Care Systemwide Housing First Framework (Sept. 3, 2020) <https://www.homelesstrust.org/resources-homeless/library/housing-first-framework.pdf>.

¹¹⁹ National League of Cities, *Homeward Bound* 42 (2019) https://www.nlc.org/wp-content/uploads/2020/10/nlc-Homeward-Bound_The-Road-to-Affordable-Housing_WEB-1.pdf [hereinafter NLC].

¹²⁰ *Id.*

¹²¹ *Id.* at 44.

¹²² *Id.*

¹²³ *Id.*

funds dedicated to providing such funding, such as the Sadowski Fund, are not hampered with to the detriment of its beneficiaries.¹²⁴

3. Discourage landlords from discriminating against those with a criminal record

The obstacles PHAs and landlords place for applicants with a criminal record have not been resolved for lack of ideas on how to reduce their discrimination. Rather, the motive to change existing policies and norms is muddled with a mix of private preferences by those concerned about the risks involved in having a neighbor with a criminal record. Despite these concerns, government leaders must review and modify policies that allow landlords to reject potential tenants based on their criminal records.¹²⁵ PHAs and landlords should treat those with a criminal record as a protected group under the Fair Housing Act.

If prior criminal convictions do not receive protections under the FHA, another progressive approach could encourage cities and states to “ban the box” where landlords would be prohibited from asking about criminal records on housing applications.¹²⁶ However, this approach would not allow for landlords to have any discretion and thus, would not be treated as low-hanging-fruit by policymakers. Given the likely lack of support, pursuing such a progressive approach may not be as efficient as say, targeting landlords and housing providers who violate the HUD guidelines.

¹²⁴ See Orlando Sentinel Editorial Board, *Realtors doing what Legislature wouldn't: Protect affordable housing fund* | Editorial (July 2021) <https://www.orlandosentinel.com/opinion/editorials/os-op-florida-realtors-constitutional-amendment-affordable-housing-20210713-tsmv15a2jbc1lbt6boi7q7x2he-story.html>.

¹²⁵ NLC, supra note 119 at 13.

¹²⁶ National Low-Income Housing Coalition, *Formerly Incarcerated People Are Nearly 10 Times More Likely to be Homeless* (Aug. 2018) <https://nlihc.org/resource/formerly-incarcerated-people-are-nearly-10-times-more-likely-be-homeless>.

Of course, landlords could not deny housing to applicants with a criminal record reported by a background check if there was never a conviction in the first place. Hence, recognizing that landlords may hold a bias against those who committed a crime years or even decades ago, some advocates argue for expungement so that people can “move forward in their life with a clean slate.”¹²⁷ Government leaders should convene to agree upon factors that would warrant expungement such as a non-violent offense committed thirty-years ago.

4. Provide long-term housing assistance, beginning in prison

Reentry efforts, including providing housing assistance to current inmates until they have found stable housing, can be enhanced with greater coordination among grant-making agencies and grantees. States, including Florida, need to do a better job of ensuring that inmates – before they leave prison – have a housing plan facilitated by a reentry program. Other services besides housing, but related to, include providing “adequate state-issued identifications, access to Healthcare services, drug treatment placements and employment services.”¹²⁸ Such programs could rely on volunteers who function as mentors assisting former inmates as they reintegrate into society. In 2011, a federal government study on inmate reentry programs found that agencies such as the Department of Justice, Labor, and Health and Human Services could better serve inmates if they coordinated to understand what approaches are most effective.¹²⁹ By extending this list beyond these agencies to include the Florida Department of Corrections, HUD, non-profits focused on reentry services, and local programs (such as Miami-Dade’s Thrive305 –

¹²⁷ Equal Justice Under Law, *Ending Cost-Prohibitive Expungements* (last visited Dec. 15, 2021) <https://equaljusticeunderlaw.org/expungements-1>.

¹²⁸ Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. Rev. 255, 276 (2004).

¹²⁹ U.S. Government Accountability Office, *Inmate Reentry Programs* (Dec. 2012) <https://www.gao.gov/assets/gao-13-93-highlights.pdf>.

Priority 4), local and state providers of reentry programs could more effectively utilize the federal grants because these agencies would better understand how to remove any overlaps and fill any gaps. Effective coordination fundamentally requires understanding the needs of those who are to benefit from the reentry grants.

Miami-Dade, in implementing programs such as Thrive305 and enforcing Florida law regarding orientation programs, should reach out to non-profits such as the Florida Fair Housing Alliance. Turizo (founder of FFHA) shared that despite the local press coverage of his organization and the recent wins in court, the government has not once reached out to FFHA for collaboration.¹³⁰ From Turizo’s experience, “It’s like the good ole boys’ network . . . they don’t let too many outsiders in.”¹³¹ This lack of coordination was affirmed by an email response from a representative of Miami-Dade who shared that besides the mayor’s office that interacts with various entities, there is not a liaison role; instead, “County departments *may* interact with private entities within their scope of work.”¹³² A government liaison role tasked with coordinating among non-profit, private, and public entities to enhance local and state programs and statutes, respectively, could significantly further the goals of ensuring “decent, safe, and sanitary housing”, regardless of one’s income or criminal background.

PART V. CONCLUSION

Besides insufficient income, one’s race can also factor into the height of the obstacle in entering Miami-Dade’s rental housing market. If one is low-income, a person of color, *and* has a criminal record, then accessing affordable housing is likely impossible. The HUD guidelines

¹³⁰ Turizo, *supra* note 51.

¹³¹ *Id.*

¹³² Email exchange with Marta Martinez-Aleman, Senior Advisor to Director Public Housing and Community Development (PHCD) at Miami-Dade County (Nov. 8, 2021).

prohibiting blanket bans against those with a criminal record, Florida’s State Housing Initiatives Partnership Program, and the multiple programs at the county level seeking to support successful reentries into society are just the start of much needed progress. The lack of coordination, not only among public and private sector entities, but most importantly, with currently incarcerated and homeless populations, is a major gap found across Miami-Dade and Florida. Unless the government makes a greater effort to work not *for*, but *with* the current and at-risk homeless populations the government seeks to serve, former inmates will continue to be, as Truizo articulated, “locked out of housing.”

PART VI. APPENDIX

Federal law, via the Fair Housing Act, prohibits denying housing to protected classes which includes race, but does not include those with a criminal record. However, acknowledging the racial disparities amongst those with a criminal record, HUD’s Office of General Counsel noted that it cannot prohibit housing providers from considering an applicant’s criminal history, but doing so may subject the landlord to violations of the Fair Housing Act based on a discriminatory effect.¹³³ Thus, HUD created the following guidelines¹³⁴:

This guidance prohibits landlords from:

- Denying housing based on arrest records
- Blanket bans on anyone with a criminal history.
- Conducting background checks inconsistently, performing them on some and not others based on stereotypes or fear.

Further, a landlord must:

- Consider individuals on a case-by-case basis and evaluate the nature and severity of the crime and consider the length of time that has passed since that crime was committed.
- Make a determination based on facts and evidence, and not a perceived threat

¹³³ HUD, *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 2* (Apr. 2016) https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF.

¹³⁴ *Id.*; see also Fair Housing Center for Rights and Research, *For People with a Criminal History* (2018) https://www.thehousingcenter.org/wp-content/uploads/2020/02/CriminalHistory_Tri-revised-082018.pdf (summarizing the guidelines).