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# Report to the New York City Housing Authority on Applying and Lifting Permanent Exclusions for Criminal Conduct

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# Introduction

The New York City Housing Authority (NYCHA) is conducting an internal review of one aspect of its termination of tenancy policies: applying and lifting permanent exclusions (PE) for criminal conduct on NYCHA grounds or involving NYCHA residents. Permanent exclusion occurs when a NYCHA tenant—rather than risk eviction—agrees to enter into a stipulation that those associated with the resident who have engaged in non-desirable behavior are barred from entering the apartment. It also occurs as a result of an administrative hearing where NYCHA seeks to terminate the tenancy, but the hearing officer opts to preserve the tenancy and bars the offending person from the apartment. The policy review and reform comes on the heels of recent efforts in conjunction with New York City Mayor Bill de Blasio’s administration to improve the safety of NYCHA residents. It also aligns with guidance and opinions from the United States Department of Housing and Urban Development (HUD), which prohibits the use of arrests without further investigation as evidence of criminal activity when determining admissions to public housing, and which calls for individualized assessments of a person’s criminal conduct or dangerous behavior.<sup>1</sup>

NYCHA partnered with the Vera Institute of Justice (Vera) and John Jay College of Criminal Justice at the City University of New York (John Jay) to gain a deeper understanding of how NYCHA might better balance its varying commitments to the safety of the public housing community, the stability of its tenants’ families, and the successful reentry of formerly incarcerated people. This partnership began in January 2016. This report addresses permanent exclusion for criminal activity and does not consider NYCHA’s use of permanent exclusion for other forms of non-desirable conduct as defined by NYCHA which may include nuisance conduct and threats to health. Vera and John Jay reviewed the existing policy on PE, the practices associated with applying and lifting PE, and the social science research on future offending and risk mitigation. This report is also informed by the perspectives of NYCHA residents who were knowledgeable of the PE process, NYCHA staff involved in applying and lifting PE, legal service providers, and community organizers.

# Summary

This report aims to guide NYCHA as it revises its policies and practices around PE proceedings. The following recommendations reflect an extensive review of existing policies and practices around PE, interviews with NYCHA staff, a meeting with NYCHA residents, and social science research on risk mitigation and future offending.

Based on the findings, Vera and John Jay recommend the following:

## ***Permanent exclusion process (on page 10)***

1. Restructure prioritization of PE cases to focus on drug dealing and violent cases, and be more transparent about new priorities moving forward.
2. Clarify what ages, crimes, and mitigating factors will be relevant in disfavoring and/or deferring PE proceedings, to the extent that distinctions by age do not violate federal, state, or city law.

## ***Lifting permanent exclusion (on page 12)***

3. When NYCHA moves to exclude a person, documents associated with the disposition (e.g., PE stipulation, hearing disposition, or other informational materials) should include clear language describing the process for lifting the exclusion.
4. Implement two paths to lift PE based on evidence of reduced risk of future violence.
5. Create a mechanism for NYCHA's investigator to contact the head of household to let him or her know that lifting PE on the grounds of "passage of time" alone may be a viable option. This outreach should initially focus on households that signed PE stipulations prior to the policy changes that NYCHA is currently considering.
6. Revise forms and documents associated with PE so that they are written in clear and accessible language. NYCHA documents and communications associated with PE should also be available in the multiple languages commonly spoken by NYCHA's residents.
7. Revise the current application form for a lifting of PE so that it contains explicit reference to the two pathways available for the lifting of PE: providing evidence of reduced risk of future violence or passage of time as sufficient evidence of reduced risk.
8. If NYCHA denies a request to lift a PE, NYCHA should make available its reasoned decision for its judgment and create an avenue for appeal and review.

## ***Transparency and accountability (on page 19)***

9. Launch a communications campaign to help tenants understand PE and the corresponding lifting process and make documents available online.

10. Ensure the NYCHA staff involved in applying PE and reviewing applications to lift PE have the appropriate training and knowledge to make informed decisions.
11. Offer implicit bias training for NYCHA staff working on the PE process as the new policies and procedures are implemented.
12. Assist the public in understanding the new PE process by providing relevant statistics on the types of termination of tenancy actions NYCHA initiates; the outcomes of those actions; the number of applications made to lift exclusions; and the outcomes of such applications.

## Background

As a landlord, NYCHA must take into account strategies to address the distinct crime challenges facing its developments that threaten the safety of its tenants.<sup>2</sup> Tenants and other neighborhood stakeholders not only consistently express elevated fear of crime in surveys, but also make demands to NYCHA and public officials for increased efforts to ensure their safety.<sup>3</sup> Certain forms of violent crime—particularly those related to narcotics trafficking—pose a security risk to public housing communities. As an extensive body of research makes clear, tackling such crimes can produce real security gains and are not simply a futile game of “whack-a-mole.”<sup>4</sup> However, these crimes cannot be adequately addressed through regular police enforcement and may require other mechanisms to safeguard communities, such as through exclusion and eviction.

When residents are found to be in violation of their tenancy because of criminal behavior, NYCHA has procedures in place to remove such residents. However, NYCHA cannot act capriciously. Households subject to termination of tenancy proceedings are afforded certain rights. Significantly, through *Escalera v. New York City Housing Authority*, tenants facing termination of tenancy have due process protections.<sup>5</sup> Since 1974 through the *Tyson-Randolph* consent decrees, NYCHA must also offer alternative sanctions other than full termination of tenancy to innocent tenants faced with evictions based on the independent criminal behavior of family members no longer in the household.<sup>6</sup>

Concerned with increasing crime rates on its developments, NYCHA moved to modify the *Escalera* requirements in the early 1990s. In particular, NYCHA sought to utilize New York State’s Bawdy House Law—statutes that allow landlords and public officials to evict tenants using their property for illegal purposes—to evict residents involved or engaged in drug trafficking more swiftly.<sup>7</sup> Although the Legal Aid Society of New York challenged the modifications, claiming that its broad application violates the “rights of innocent family members,” NYCHA prevailed.<sup>8</sup>

At the national level, changes in eviction policy for public housing residents further broadened the class of people at risk of eviction. In 1998, Congress amended the Anti-Drug Abuse Act of 1988 to allow housing authorities nationally to evict residents for:

“any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control.”<sup>9</sup>

In 2002, the U.S. Supreme Court’s decision in *HUD v. Rucker* confirmed the law’s broad reach, supporting housing authorities’ ability to evict tenants for the drug-related criminal activity of anyone in their household, regardless of what efforts a tenant might have made to stop the behavior or where the offense might have taken place. Although *Rucker* and the amended Anti-Drug Abuse Act grant housing authorities broad eviction powers, neither requires that housing authorities oust tenants for the lawless behavior of household members.<sup>10</sup> Thus, NYCHA attempts a balanced approach by offering “permanent exclusion” to residents: rather than evict an entire household when confronted with serious criminal behavior, NYCHA generally has made the head of household’s lease conditional on the offending individual’s exclusion from that apartment, an exclusion that can be lifted.<sup>11</sup> Lifting an exclusion only means that the formerly excluded person may now visit that apartment—for the person to live in the apartment, the head of household must apply to add that person to the lease.

## The process of being permanently excluded

When NYCHA has deemed a person’s action to be “non-desirable,” NYCHA has the authority to initiate termination of tenancy proceedings. While NYCHA may prefer excluding one individual to evicting the whole family, it must still bring a termination action against the entire household associated with the person found to have engaged in “non-desirable” actions. NYCHA defines non-desirability as an action by a tenant or person occupying the premises of a tenant, which can include:

- an action that poses a danger to the health and safety of other tenants;
- conduct on or in NYCHA that is in the nature of a sex or morals offense;
- behaviors or actions that are a source of danger or can cause damage to NYCHA employees, premises, or property;
- behaviors or actions that are hazardous to the occupation of other tenants; or
- a common law nuisance.<sup>12</sup>

Permanent exclusion is a potential *outcome* of termination of tenancy proceedings and effectively removes the person who has engaged in non-desirable behavior while protecting the rest of the household members from losing their NYCHA apartment. While the majority of permanent exclusions result from a person’s alleged criminal behavior, NYCHA’s role as landlord means it is often able to make exclusion decisions based on a holistic consideration of the evidence before the criminal justice system—which has different procedural considerations, institutional goals, and social functions—renders a criminal judgment or reaches a final disposition.

NYCHA works closely with the New York City Police Department (NYPD), which refers information regarding people arrested on or near NYCHA grounds for serious crimes to NYCHA for further investigation. Many of these cases will lead to termination of tenancy actions—but not all. Although NYCHA investigates all cases referred by the NYPD, it does not proceed toward termination on every case. NYCHA may decide not to proceed on a case for a variety of reasons, including:

- NYCHA determines that it cannot establish a connection between the alleged perpetrator and the tenant of record;
- there is insufficient proof of the offense to warrant proceeding;
- duplication of cases (i.e., there was already a termination of tenancy case pending); or
- NYCHA does not deem the crime or the individual perpetrator to be a substantial enough risk as to warrant action.

If NYCHA brings a termination action based on a person’s non-desirable activity, it can offer the household a settlement. Settlement options include: (1) probation; (2) permanent exclusion; or (3) permanent exclusion with probation. PE stipulations reached by settlement include consent by the tenant to permit inspections by NYCHA to ensure compliance with the terms of the PE. If the matter proceeds to a hearing, the potential dispositions a hearing officer can reach include: (1) termination of the tenancy; (2) a finding that the tenant is eligible to continue their residency; (3) a finding that the tenant is eligible to continue their residency subject to probation; or (4) a disposition of the permanent exclusion of a person, who may not be an authorized resident. A permanent exclusion disposition by a hearing officer does not permit NYCHA to conduct inspections to ensure compliance. It is important to note that a case can be withdrawn at any point after the termination action is initiated. (See Figure 1 on page 9 for a flow of cases that result in a permanent exclusion.)

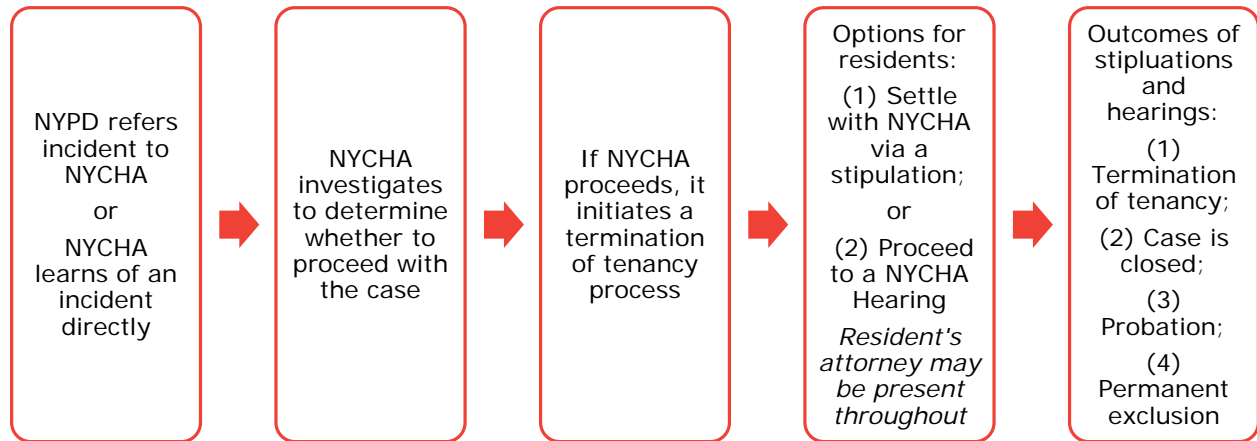
In 2014, out of over 1,321 non-desirability cases closed, more than half were closed after investigation and before a tenant was even charged. Moreover, in a sample of cases reviewed by NYCHA in 2015, approximately 65 percent of people excluded were unauthorized occupants at the time of the exclusion. And while Vera and John Jay are recommending improving the process for lifting PE, some residents



have been successful in navigating the current process. In 2014, 200 people applied to lift a PE and 85 (43 percent) were lifted.

**Figure 1.**

**General flow of cases that result in a permanent exclusion**



## Guiding principles

NYCHA should ground its policies and procedures on principles that take into account its role as a landlord and its commitment to the safety of all its residents. Accordingly, the recommendations in this report aim to adhere to the following principles:

1. Policies and practices should honor NYCHA's obligations to provide safe housing for tenants through a focus on reducing the risk of violent harm to the public housing community. NYCHA's policies and practices should not be shaped by a desire for punishment, moral judgment, or concern over criminal activity that poses little risk of violence.
2. Policies and practices should follow, where possible, the best available social science research and research on risk.
3. Policies and practices should recognize minors and young adults have unique needs, and PE for younger residents must be handled differently than the PE of adult residents, where permitted by law.

4. Policies and practices should be clearly stated, be made broadly and readily available, and be transparently applied. Likewise, this principle argues that NYCHA should collect, preserve, and make public statistics regarding its use of PE.
5. Policies and practices should aim to use PE only as a policy of last resort.
6. Policies and practices should reflect the fact that PE is a civil rather than criminal remedy. Accordingly, legitimate policies and practices that contribute to NYCHA's ability to meet its obligations as a landlord will vary, at times, from those of the criminal justice system.
7. Policies and practices should reflect that NYCHA's first obligation is as a landlord to its tenants of record and that PE is an alteration to the lease-based relationship with those tenants.

## Recommendations

### Permanent exclusion process

Recommendation 1: Restructure prioritization of PE cases to focus on drug dealing and violent cases, and be more transparent about new priorities moving forward.

NYCHA should prioritize cases for exclusion that involve drug dealing and violence. Drug dealing can be a catalyst for violence for the seller, the buyer, and bystanders. In particular, drug dealers' vulnerability to robbery encourages them to arm themselves and so narcotics markets often increase the risk of violence broadly in a neighborhood by increasing the number of guns in a community. Moreover, even when no actual drug crimes are being committed, the crowds of armed people that accompany drug markets often instill fear into neighbors, discouraging the informal social control necessary to keep communities safe.<sup>13</sup> Responding to such threats wisely requires NYCHA to consider a number of factors, including the person's level of involvement with the criminal enterprise, the nexus between the drug dealing and NYCHA property or apartments, the frequency of the drug dealing, and the extent to which the drug dealing involves or poses a risk of violence.

Gang involvement associated with drug dealing should be given particular consideration in PE proceedings and should be prioritized when NYCHA is considering exclusions in an attempt to minimize and/or mitigate future violence. Social science research has established links between gang involvement, drug dealing, and increased violence. For example, gang members who sell drugs engage in violence at a higher rate than gang members who do not sell drugs and drug sellers who are not gang involved.<sup>14</sup> Factors in assessing relevant gang involvement include the nature of the conduct the gang engages in (e.g., violent or intimidating conduct or drug dealing), and the extent and nature of the offenders' involvement with a gang.

Additionally, NYCHA should consider the number of prior convictions a person has when making decisions on permanent exclusion. Prior convictions are associated with higher rates of recidivism, with people with lengthier and more serious criminal offense histories posing a greater risk than people with shorter and minor criminal histories.<sup>15</sup>

This effort is meant to preserve public safety and minimize residents' risk of harm. It is also meant to maximize efficiency in NYCHA's exclusion process for serious cases so that people who pose significant threats to public safety are removed from the development quickly, minimizing the risk for future violence to occur. These recommendations align with Mayor de Blasio's strategy to boost safety in NYCHA housing. In December 2015, Mayor de Blasio called for a streamlined exclusion process that would expedite removing the most dangerous people from NYCHA and improve communication between NYCHA and the NYPD to accurately and quickly identify people whose criminal act warrants exclusion.<sup>16</sup>

Recommendation 2: Clarify what ages and crimes will be disfavored and/or deferred for PE proceedings to the extent that distinctions by age do not violate federal, state, or city law.

It is important that NYCHA informs its approach toward exclusion based on research showing that young adults—defined here as people between the ages of 16 and 24—have unique needs.<sup>17</sup> Recent behavioral and neuroscience research confirms that our brains continue to develop into our early 20s, particularly the prefrontal cortex which regulates impulse control, reasoning, and decision-making.<sup>18</sup> This can lead to a “maturity gap” where young adults have more similarities to adolescents in thought and behavior, yet may have fully developed adult bodies.<sup>19</sup> During this time, young adults have difficulty regulating emotions in intense situations, leading to risk-seeking behavior and decisions made with little heed for the future.

As a large body of research makes clear, criminal offending peaks in the mid-to late-teenage years and then rapidly declines in the early 20s.<sup>20</sup> Although the timing of such peaks vary by gender, reporting source, crime type, and socio-economic status, criminologists broadly agree the age-curve matters for offending.<sup>21</sup>

When a young adult is being considered for permanent exclusion, NYCHA should defer the exclusion when possible. Young adults who are actively engaged in diversion programs or probation by the justice system should be considered for a probationary disposition by NYCHA instead of exclusion, pending completion of the program. Though statistics on recidivism support the unique treatment of young adults, there is a compelling moral argument for avoiding punishing young adults as if they are adults. Preventing exclusions when possible allows young people to rebuild credibility with NYCHA while remaining home with their families. When young adults are involved in a program, they not only demonstrate an effort to

avoid criminal behavior but are also under an additional layer of supervision that can help mitigate against offending in the future. Conversely, justice system involvement and a destabilization or loss of housing can make successful transition to adulthood much more difficult, increasing the likelihood of future criminal activity.

However, there may be legal barriers preventing NYCHA from taking age into account, such as anti-discrimination laws. Instead, NYCHA should consider creating a policy that, regardless of age, takes a person's participation in diversion or alternatives-to-incarceration programs, or other risk-reducing programs, into account when determining whether to seek exclusion.

## Lifting permanent exclusion

Recommendation 3: When a stipulation is decided, include clear language in the stipulation or in associated documents describing the process for lifting the exclusion.

The process to lift PE should be more transparent and accessible for tenants, particularly given potential differences in the NYCHA charge and the criminal justice case disposition charge and the timing of those decisions. Materials given to tenants should include language explaining when the excluded person is likely to qualify to have a PE lifted based on the amount of time that has passed (see Path 2 on page 14).

Recommendation 4: Implement two paths to lift PE based on evidence of reduced risk of future violence.

NYCHA should consider instituting two primary paths toward the lifting of a PE. Both paths would be based on demonstrated evidence of significantly reduced risk for future violent crime posed by the excluded person. With the support of the head of household, people would be eligible to apply under either path.

The first of these paths would allow residents to demonstrate that excluded people have transformed their lives and no longer pose an elevated risk of violence to the NYCHA community; the second would allow a resident to point to the passage of time with no criminal justice system contact by the excluded person to make such a demonstration. This dual-path approach contains key advantages for the excluded person and for NYCHA. Path 1 permits the lifting of PE sooner where merited and provides guidance on the kinds of relevant factors that NYCHA will consider as part of a holistic analysis. Path 1 would be an available option any time after the exclusion.

Path 2 alleviates the burden of proof for the applicant when the excluded person has not committed crimes for a number of years. The factors and frameworks NYCHA selects under the proposed paths should serve as guidance, not strict rules. Path 2 would become a viable option once the threshold of time with no criminal conduct is met; it would not be automatic.

### **Path 1: Evidence of reduced risk of future violence**

NYCHA should allow excluded people to demonstrate that they have turned their lives around in a sustained fashion to such a degree that they no longer pose a heightened risk of violence to the NYCHA community. Such applications for the lifting of a PE through this path should be considered by NYCHA at any time after a PE's imposition.

Examples of such evidence include:

- a positive record while incarcerated (e.g., program participation, low rates of incidents, etc.);
- completion of a higher education degree or vocational program;<sup>22</sup>
- steady employment or holding of a position of meaningful responsibility for at least two years in the case of adults or one year in the case of minors;<sup>23</sup>
- steady school attendance and passing grades with no adverse school events (suspension or other disciplinary action) for one year for minors;<sup>24</sup>
- successful completion of established drug rehabilitation program;<sup>25</sup>
- completion of a restorative justice program;<sup>26</sup>
- completion of an anger management program;<sup>27</sup>
- letters of support from community groups, parole officers, employers, or other responsible parties in a position to vouch for the excluded person. Such letters should be written using a letter template made readily available by NYCHA in order to insure both the verifiability and relevance of this support to NYCHA's consideration of the application;
- assuming a sustained, significant, and primary caregiver role for an ailing family member given the impact of taking on such responsibilities in changing one's behavior and self-identity;<sup>28</sup>
- having been selected for or having completed a New York State Department of Corrections and Community Supervision work release program; or
- a determination by the criminal justice system that someone else committed the crime underlying NYCHA's PE action.

NYCHA should make clear to applicants, however, that no one piece of evidence will be considered as sufficient to justify the lifting of a PE and that NYCHA's assessment will consider the totality of evidence made available to NYCHA by the applicant.

## **Path 2: Evidence of reduced risk of future violence through passage of time**

Although significant empirical research has demonstrated recidivism by the formerly incarcerated generally occurs fairly quickly after release, it is equally true that, with the passage of time, the risk of violent reoffending by those with a criminal record approaches that of the risk posed by those without a record.<sup>29</sup> NYCHA's policies and procedures related to applying and lifting a PE should reflect both of these realities.

NYCHA should create "look-back" periods for excluded people that reflect the period of time without justice involvement before their statistical risk of arrest for a violent offense approaches that of a member of the general population. Should an excluded person remain free of justice system involvement for the length of their respective look-back period, NYCHA should—as a matter of policy—look favorably upon an application for a lifting of PE.

Because PE is a civil action, NYCHA can and should base its decisions regarding the offense underlying a PE—and therefore, the appropriate look-back period—on all legally available evidence rather than simply the disposition of the criminal justice system. Such a holistic approach to a person's risk of violence is appropriate and necessary given NYCHA's obligations as a landlord to maintain the safety of its tenants.

Finally, look-back periods should be different for young people, given the special housing needs and recidivism risks associated with this population. (See Recommendation 2.) As noted before, however, anti-discrimination case law may render impossible such a recommendation.

### **Criminal record factors influencing recidivism**

Knowing whom NYCHA should keep out, and whom (statistically) they can safely let back in is no easy actuarial task. Any such calculation of risk carries weight and meaning only to the degree it reflects the demographics of the excluded and the nature and frequency of their offenses. The young, for example, recidivate more frequently than the old; people convicted of theft more than people convicted of murder; and those with longer criminal histories more than people with one prior criminal conviction. Unfortunately, no existing empirical study or statistical dataset closely mirrors the population that NYCHA has excluded.

Because of the countless factors associated with criminal reoffending, NYCHA cannot simply pull a study off the shelf to conclude which people are most likely to reoffend. Accordingly, rather than

recommend one study over another, the following are addressed: (1) factors that the recidivism literature emphasizes as significantly influencing the statistical likelihood of reoffending, and (2) three possible approaches and their respective limitations.

The severity of people's convictions, their nature, and their frequency influence the statistical likelihood of a person committing another crime. However, the impact of these factors is not always aligned with popular notions of "hardened criminals" versus "non-violent" offenders. As one study reveals, "the current offense one commits is a very poor predictor of the next offense."<sup>30</sup> There is little evidence to conclude that a person arrested for a non-violent drug crime is somehow unlikely to commit a violent offense the next time; similarly, very few people paroled who were convicted of murder in New York State go on to commit another crime or re-commit the same crime type.<sup>31</sup> However, a person's criminal history profoundly predicts their statistical likelihood of being re-arrested. For example, in a 2016 U.S. Sentencing Commission study of 25,431 people released in 2005 from federal correctional institutions, rates for re-arrest within eight years varied from 30.2 percent for first-timers to 80.1 percent for those with extensive criminal histories.<sup>32</sup> With these considerations in mind, three factors were identified for NYCHA to consider in evaluating a person's continued risk when they apply to lift a PE.

#### Risk Factor 1: Crime type

Recidivism varies by both the initial and subsequent crime types. The likelihood of recidivism for people who commit crimes for the first time will depend on the nature of their first offense; likewise, people recidivate at different rates for violent and non-violent crimes. In all cases, the likelihood of recidivism goes down with time. Because NYCHA's primary concern is violent crime, its policies should be shaped by research documenting the statistical hazard for future violence rather than simply non-violent recidivism. For example, in New York State, after 8.8 years from the date of arrest, the risk to society for violence from a first-time, non-violent drug offender approaches society's risk of violence from someone without a record.<sup>33</sup>

#### Risk Factor 2: Prior convictions

Prior convictions powerfully predict the statistical likelihood of future violence.<sup>34</sup> NYCHA's efforts to provide safe housing for its tenants must consider the extent of excluded people's criminal histories when calculating look-back periods. Treating people with one criminal conviction in the same vein as those with lengthy criminal histories ignores social science research on recidivism, as does overlooking a record of past offenses. Available research can help NYCHA understand and calculate the additional statistical risk that prior convictions reveal for the possibility of future violence.

#### Risk Factor 3: Age

To the extent permissible by law, NYCHA's look-back periods should take age into account so that the formerly excluded are held to the risk threshold of their age group rather than the general population. Research indicates that the likelihood of engaging in criminal behavior decreases as people get older and because the general population includes many who, by virtue of being older, are less crime-prone, any risk threshold referencing that population will be lower than a risk threshold for a younger cohort.<sup>35</sup> Such a schema has the advantage of shortening look-back periods for many of the excluded.

### **Recommended approach to determining time periods**

Vera and John Jay recommend that NYCHA build hazard coefficients using the studies by Blumstein and Nakamura and Shawn Bushway to quantify key factors, including age, number of prior convictions, and crime type, to determine appropriate look-back periods. Blumstein and Nakamura studied the relationship between the types of crimes for people's first arrest and the crime type of possible subsequent arrests.<sup>36</sup> Bushway estimated the time that needs to lapse before someone can be considered to be unlikely to commit another crime. His estimates of "redemption times" are based on age and number of prior convictions at the time of the offense.<sup>37</sup>

Research on risk does not map perfectly onto NYCHA's policy context, and thus there is no hard and fast application. Nevertheless, NYCHA can use risk research to develop a heuristic to help guide decision-makers and inform policy on how to weigh and apply relevant risk factors. Using this approach involves an exercise where different risk factors have values as guidance only when they are considered relative to each other.

Bushway's "redemption times" can be turned into "look-back coefficients" by calculating the difference between the redemption times for the various age/conviction combinations in the study. A similar process can be done for the redemption times proposed by Blumstein and Nakamura, which looks at age and crime type. While each study uses two different risk factors, the research in both studies is presented in such a way as to enable the isolated use of individual factors. For example, while Blumstein and Nakamura look at both crime type and age, their research can be used to approximate the elevated risk level for crime type only.

A risk coefficient itself could be based on the rate of increased risk of recidivism relative to other iterations in that risk factor. For example, a risk coefficient could be assigned to "one prior conviction" that is an expression of the increased risk of recidivism of *one prior* conviction relative to *no prior* convictions. So if the risk of recidivism goes up by 15 percent, 15 percent could be adapted as a risk coefficient. The same could be done for other factors.

This model would use these coefficients to generate look-back periods that would start at the point of release from incarceration or final disposition, whichever is more recent. To take risk coefficients into



account, look-back periods would have to have a base-line number of look-back period of months or years. The coefficients then would function to either raise or lower the amount of time of that base-line number.

This model would be consistent with current approaches that calculate look-back periods from the point of release from incarceration. Such a look-back period policy would be consistent with several principles: it could be tailored to crime type, allowing a risk assessment based on risk of recidivism for violent crime; and it would be grounded in research on risk and take into account the most salient risk factors, including the number of prior convictions. Below are examples of this approach.

- Model 1: Age/Number of convictions: After setting a baseline look-back period, look-back periods will vary by age and number of convictions by the same proportions as those in the Bushway study.
- Model 2: Age/Number of convictions/Crime type: This model builds on Model 1, factoring in an additional coefficient based on crime type constructed from the look-back periods in Blumstein and Nakamura.
- Model 3: Number of convictions/Crime type: This a variation of Model 2 but removes age as a factor in the event use of age is prohibited or disfavored by law.

Limitations of these models include:

- The Bushway study examines risk of general recidivism, not violent recidivism. NYCHA's focus, as noted above, should be on the risk of future violence rather than chance of simply violating the law (or the condition of parole or probation supervision).
- The Bushway study measures look-back periods from date of conviction, not release. Thus, it does not provide a basis for choosing a baseline look-back period, or for mooring the look-back period to release rather than arrest or conviction.
- The models above rest upon statistical studies that look at populations that vary in significant ways from those NYCHA has excluded. In particular, unlike the cohorts of the above studies, NYCHA's PE population is overwhelmingly people of color, frequently has multiple convictions, and has often been incarcerated. As a consequence, true recidivism rates for the NYCHA PE cohort could likely be higher—and so fully reflective look-back periods would be longer—than such studies might suggest.

Recommendation 5: Create a mechanism for the NYCHA division responsible for investigating apartments with permanent exclusions to contact Heads of Households at the end of the look-back periods discussed under Path 2 to let them

know that lifting PE is an available option. NYCHA can focus initially on PE stipulations signed prior to the policy changes that NYCHA is currently considering.

When sufficient time has passed to meet the eligibility criteria for lifting an exclusion based on passage of time alone, a NYCHA investigator should notify the head of household that an application to lift PE based on passage of time alone might be viable. This mechanism would ensure that the head of household's sense of safety is protected and prioritized should they prefer to keep the exclusion in place. If, however, the head of household would like to apply to lift the exclusion, but was uncertain as to when sufficient time would have passed for Path 2 to become a viable option, this mechanism would assist the head of household in applying as soon as they became Path 2 eligible. This mechanism, accordingly, empowers the heads of household to make the decision they believe is best for their household.

Recommendation 6: Revise forms and documents associated with PE where necessary so that they are written in clear and understandable language. NYCHA documents and communications associated with PE should also be available in the multiple languages commonly spoken by NYCHA's residents.

Recommendation 7: Revise the current application form to lift PE so that it contains explicit references to the two pathways available for the lifting of PE.

It is difficult to find information about how to lift a PE. For example, the current NYCHA website and tenant handbook lack information about the process of lifting an exclusion. Additionally, the stipulation documents provided at the time of exclusion have insufficient information on how to lift an exclusion, stating merely: "The Tenant may apply in writing to the Office of Impartial Hearings for removal of the Permanent Exclusion at any time a substantial positive change has occurred concerning the excluded person." Though this language does inform tenants that PE is not always permanent, it does not provide specific information on what conditions or time period would qualify someone for a lifting. The stipulation should be amended to include further guidance, or the application form and any documents about the process of lifting a PE should accompany both a stipulation and a final determination imposing a PE by NYCHA's Hearing Office.

Recommendation 8: If the lifting request is denied, NYCHA must make available its reasoned decision for the denial and create an avenue for appeal and review of the decision.

As the process for lifting exclusions is clarified and made more user-friendly, so too should the appeals process in the event that a previously excluded tenant's request for lifting is denied. It is important that tenants and excluded people are clear about the specific ways they can demonstrate a lifting is appropriate and be better prepared for the process.

## Transparency and accountability

Recommendation 9: Launch a communications campaign to help tenants understand PE and the lifting process and make the relevant documents available online.

Currently, there is no information online about the PE policy or about how to apply to lift an exclusion. Likewise, the tenant handbook provides little helpful information. For this process to be understandable to tenants and to legal service providers who may represent them, there needs to be information—including a Frequently Asked Questions list—and forms available online and guidance on who in NYCHA to speak with for more information or where to turn in forms. A communications campaign will be extremely helpful to spread the word on the updated policies. Proposed methods include flyers and information displayed in NYCHA developments, presentations to tenant advisory boards, and media exposure.

Recommendation 10: Ensure the NYCHA staff involved in applying PE and reviewing applications to lift PE have the appropriate training and knowledge to make informed decisions.

Given NYCHA's interest in having a policy informed by the best available social science research, its decisions about staffing should be similarly rigorous. NYCHA should consider having a reentry specialist or a staff person with similar expertise involved in reviewing cases that are on the border and are being considered for a PE or for lifting of a PE. By involving staff with appropriate knowledge and expertise on prison and jail reentry, rehabilitative programs, and the social service landscape in New York City, NYCHA can make more informed decisions.

Recommendation 11: Offer implicit bias and cultural competency training for NYCHA staff working on the PE process as the new policies and procedures are implemented in order to foster a more fair system.

Implicit bias can be defined as unconscious stereotyping or attitudes that can affect our understanding, actions, and decisions independent of declared beliefs.<sup>38</sup> There has been considerable attention recently by criminal justice actors such as law enforcement, jurors, and judges on the role of implicit bias given the discretion they have in decisions shaping a person's trajectory through the justice system.<sup>39</sup> NYCHA staff—notably attorneys and hearing officers—may benefit from implicit bias training, in part because implicit bias is so pervasive, but largely due to the high volume of cases NYCHA staff process and the repetitive nature of the task. Proposing such training is not a direct reflection of staff performance, but rather an acknowledgement of the nature of their work.<sup>40</sup>

Recommendation 12: Assist the public in understanding the new PE process by providing relevant statistics on the types of termination of tenancy actions NYCHA initiates; the outcomes of those actions; the number of applications made to lift exclusions; and the outcomes of such applications.

NYCHA is committed to transparency and accountability and has an existing platform for sharing data online with the public in fact sheets and reports. NYCHA should continue this trend and publish annual statistics on the exclusion, termination, and lifting processes. This will help build trust and credibility between the community and NYCHA and clarify misinformation.

## Conclusion

Vera and John Jay are encouraged by NYCHA's willingness to reconsider the policies related to applying and lifting permanent exclusions. In developing the report, Vera and John Jay have benefited from conversations with community organizers, legal service providers, NYCHA residents, and others who have a stake in the safety of public housing in New York City. Their stories and perspectives have provided helpful context to the policy and implementation considerations. Vera and John Jay welcome the opportunity to assist NYCHA in finalizing and implementing any of the recommendations described above.

## Endnotes

<sup>1</sup> For guidance on the use of arrests in determining admissions to public housing, see U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, “Guidance for Public Housing Authorities (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrests in Housing Decisions,” Notice PIH 2015-19 (Washington, DC: HUD, November 2, 2015), 1-7, <https://perma.cc/UP78-DVSH>.

<sup>2</sup> As John Jay professors Chris Hermann and Fritz Umbach learned during research conducted for this report, nearly one-quarter of all rapes in New York City and more than one-third of all of its shootings occur on, or within 500 feet, of a NYCHA development. These figures stand out, in part, because NYCHA residents represent only between 5 and 10 percent of the city’s population (depending on estimates of NYCHA’s unofficial resident population).

<sup>3</sup> In 2010, NYCHA’s Safety and Security Task Force surveyed 10,000 households across 12 developments to understand the safety and security issues faced by NYCHA residents on a daily basis. Of the 1,100 surveys that were completed, 59 percent reported serious crime in their development in the past 12 months, and three of four respondents reported being very or somewhat fearful of crime in their development. For more on the survey, see NYCHA, “Resident Safety and Security Survey Committee,” *Safety and Security Task Force Report* (New York, NY: NYCHA, 2011), 2. In 2012, another survey was conducted for 520 NYCHA residents living in 10 developments in Lower Manhattan. Sixty-five percent of the respondents did not feel there were sufficient protections against trespassers, and 49 percent thought there was not enough police presence in their building; see Scott Stringer, Daniel Squadron, and Brian Kavanagh, *Protecting NYCHA Communities* (New York, NY: Offices of the Manhattan Borough President Scott M. Stringer, State Senator D. Squadron, and State Assemblyman Brian Kavanagh, 2012), 5-6.

<sup>4</sup> As many criminologists have observed, low-level drug arrests—unless sustained over long periods with significant police presence—rarely disrupt drug markets and the violence they produce. The reason is simple: arrested participants are quickly replaced. But winnowing out the most violent of dealers can disrupt the “conduct” of markets to make them less dangerous; similarly, incapacitating higher-level participants and sustained crackdowns can disrupt such markets because buyers and sellers stop expecting the other to be present. As the criminologist David Boyum and his co-authors note, the notion that disrupted markets are quickly replaced is not supported “by either theory or evidence.” See David Boyum, Jonathan Caulkins, Mark Kleiman, “Drugs, Crime, and Social Policy” in

*Crime and Public Policy* edited by James Q. Wilson and Joan Petersilia (New York, NY: Oxford University Press, 2011).

<sup>5</sup> *Escalera v. New York City Housing Authority*, 425 F.2d 853 (1970).

<sup>6</sup> Robert S. Golden, "Toward a Model of Community Representation for Legal Assistance Lawyering: Examining the Role of Legal Assistance Agencies in Drug-Related Evictions from Public Housing," *Yale Law & Policy Review* 17, 1 (1998): 551.

<sup>7</sup> The Bawdy House laws allows landlords and public officials to evict tenants using their property for illegal purposes, see Scott Duffield Levy, "The Collateral Consequences of Seeking Order Through Disorder: New York's Narcotics Eviction Program," *Harvard Civil Rights-Civil Liberties Law Review* 43, no. 2 (2008): 543-544.

<sup>8</sup> Golden, 1998, 550-551; Fritz Umbach, *The Last Neighborhood Cops: The Rise and Fall of Community Policing in New York Public Housing* (Newark, NJ: Rutgers University Press, 2010), 65, 149-156

<sup>9</sup> 42 U.S.C. § 1437(d)(1)(6) (1994 ed. Supp. V).

<sup>10</sup> Umbach, 2010, 156-160.

<sup>11</sup> Umbach, 2010, 156-160.

<sup>12</sup> NYCHA, "Grievance Procedures," (New York: NYCHA, August 1997), 4, <https://perma.cc/YL8Q-FNR9>.

<sup>13</sup> For a discussion on drug dealing and violence, see Patrick Seffrin and Bianca Domalhidí, "The Drug-Violence Nexus: A Systematic Comparison of Adolescent Drug Dealers and Drug Users," *Journal of Drug Issues* 44, no. 4 (2014): 394-413; Beth Huebner, Sean Varano, Timothy Bynum, "Gangs, Guns, and Drugs: Recidivism Among Serious, Young Offenders," *Criminology and Public Policy* 6, no. 2 (2007): 187-222.

<sup>14</sup> For more on gang violence, drugs, and disadvantaged neighborhoods, see Paul E. Bellair and Thomas L. McNulty, "Gang Membership, Drug Selling, and Violence in Neighborhood Context," *Justice Quarterly* 26, no. 4 (2009): 644-669.

<sup>15</sup> For discussions on prior convictions and risk of reoffending, see Cassia Spohn and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders," *Criminology* 40, no.2 (2002): 333. In New York City, parolees who were re-arrested, re-convicted, or had their parole revoked had longer criminal histories and more prior convictions than those who did not recidivate, see Bryn Herrschaft and Zachary Hamilton, *Recidivism Among Parolees in New York City, 2001-2008* (New York, NY: Center for Court Innovation, 2011), 5.

<sup>16</sup> The City of New York Office of the Mayor, "De Blasio Administration Announces Improvements to Permanent Exclusion Process to Protect NYCHA Residents," press release (New York, NY: Office of the Mayor, December 2, 2015). <https://perma.cc/2UGZ-CYHE>.

- <sup>17</sup> Young adults who are involved in the criminal justice system may be classified as people between the ages of 18 and 24. However, in some jurisdictions such as New York, people as young as 16 will be referred to the adult criminal justice system following an arrest. See The Council of State Governments Justice Center, *Reducing Recidivism and Improving Other Outcomes for Young Adults in the Juvenile and Adult Criminal Justice Systems* (New York: The Council of State Governments Justice Center, 2015).
- <sup>18</sup> Recent studies conclude that the brain is still developing for young adults up to the age of 24 or 25, and may impact their decision-making capacity and impulsivity. See Vincent Schiraldi, Bruce Western and Kendra Bradner, "Community-Based Responses to Justice-Involved Young Adults," *Bulletin 1: New Thinking in Community Corrections* (Washington, DC: U.S. Department of Justice, National Institute of Justice, 2015, NCJ 248900) 3-4.
- <sup>19</sup> For more on the gap between cognitive and psychosocial capacities in adolescents, see Terrie Moffitt, "Adolescence-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy," *Psychological Review* 100, no. 4 (1994): 674-701.
- <sup>20</sup> Most research suggests that criminal activity peaks between the ages of 15 and 19, and declines in the early 20s. The figures gathered from self-reports resulted in earlier peaks while those using official measures such as police contacts, arrests, and convictions resulted in later peaks. For more on research examining criminal activity prevalence and age, see Alex Piquero, David Hawkins, Lila Kazemian, and David Petechuk, *Bulletin 2: Criminal Career Patterns - Study Group on the Transitions Between Juvenile Delinquency* (Washington, DC: U.S. Department of Justice; prepared under award number 2008-ICJ-CX-K402, 2013), 1-6.
- <sup>21</sup> For more on the factors that influence peaks in criminal activity, see Piquero, et al., 2013; and Rolf Loeber, David Farrington, and David Petechuk, *Bulletin 1: From Juvenile Delinquency to Young Adult Offending - Study Group on the Transitions between Juvenile Delinquency and Adult Crime* (Washington, DC: U.S. Department of Justice, 2013; prepared under award number 2008-IJ-CX-K402).
- <sup>22</sup> This study lists various programs and opportunities that prevent against future violence involvement for people who are at a high risk of being involved in violence. See Steven Sumner, James Mercy, Susan Hillis, Matthew Maenner, and Christina Socias, "Elevated Rates of Urban Firearm Violence and Opportunities for Prevention—Wilmington, Delaware," Final report for the Delaware Department of Health and Social Services (Washington, DC: Centers of Disease Control and Prevention, 2015), 13-14.
- <sup>23</sup> Ibid.
- <sup>24</sup> Ibid.
- <sup>25</sup> Ibid.



- <sup>26</sup> For a discussion on the effects of restorative justice interventions on offending, see Hennessey Hayes and Kathleen Daly, "Youth Justice Conferencing and Reoffending" *Justice Quarterly* (2003) no. 20(4), 725–64; and Jeff Latimer, Craig Dowden, & Danielle Muise, "The effects of restorative justice practices: a meta-analysis" *The Prison Journal*, no. 85(2) (2005): 127–144.
- <sup>27</sup> For meta-analytic reviews of anger control interventions, see Nana Landenberger and Mark Lipsey, "The positive effects of cognitive-behavioral programs for offenders: a meta-analysis of factors associated with effective treatment," *Journal of Experimental Criminology* (2005) no.1: 451-476; and Craig Dowden and D.A. Andrews, "Effective correction treatment and violent reoffending: a meta-analysis," *Canadian Journal of Criminology*, no. 42 (2000): 449-467.
- <sup>28</sup> Some scholars have attributed desistance from crime as a result of people severing, or "knifing off," ties to harmful environments, negative social networks, or the past as it relates to criminal behavior. Other opportunities and events, such as assuming the role of a provider or parent, impacts one's desistance from crime even if people remain in the same environment. See Shadd Maruna and Kevin Roy, "Amputation or Reconstruction: Notes on 'Knifing Off' and Desistance from Crime," *Journal of Contemporary Criminal Justice* 23 no. 1 (2007): 116, 120.
- <sup>29</sup> More than a third of people released from prison who were rearrested within five years were arrested within the first six months of release, with more than half being arrested by the end of the first year, see Matthew R. Durose, Alexia D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, (Washington, DC: Bureau of Justice Statistics, 2014), 1, 7. Within the first year after being released from federal prison, more than 16 percent of those released were rearrested. The number of people who were arrested upon release decreased in subsequent years, see Kim Hunt and Robert Dumville, *Recidivism Among Federal Offenders: A Comprehensive Overview* (Washington, DC: U.S. Sentencing Commission, 2016), 16. In New York State, the risk to society for violence from a first-time, non-violent drug offender approaches society's risk of violence from someone without a record after several years have passed, see Alfred Blumstein and Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of State Arrests, and Racial Differences* (Washington, DC: U.S. Department of Justice; prepared under award number 2009-IJ-CX-0008, 2012).
- <sup>30</sup> For a discussion on the challenges of predicting future criminal offending, see Robert J. Sampson, "The Incarceration Ledger: Toward a New Era in Assessing Societal Consequences," *Criminology and Public Policy* 10, no.3 (2011): 823.
- <sup>31</sup> Six out of 368 people convicted of murder who were granted parole between 1999 and 2003 returned to prison for a new felony conviction. See Mike Brodheim, "Paroled Killers Rarely Re-Offend," *Prison Legal News*, July 15, 2011, <https://perma.cc/MEC3-7WXY>

- <sup>32</sup> People with longer criminal histories had an increased likelihood of recidivating, see Hunt and Dumville, 2016, 5, 24.
- <sup>33</sup> Blumstein and Nakamura, 2012. See table 12 with a “C1” of “drugs” and a “C2” of “violent.”
- <sup>34</sup> For more on the influence of criminal history on a person’s redemption time, see Shawn D. Bushway, Paul Nieuwebeerta, and Arjan Blokland, “The Predictive Value Of Criminal Background Checks: Do Age And Criminal History Affect Time To Redemption?” *Criminology* 49, no. 27 (2011).
- <sup>35</sup> For a discussion on the impact of age on recidivism, see Hunt and Dumville, 2016, 5; United States Sentencing Commission, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guideline* (Washington, DC: U.S. Sentencing Commission, 2004), 12, 28.
- <sup>36</sup> Blumstein and Nakamura, 2012.
- <sup>37</sup> Bushway and his colleagues reviewed a cohort of Dutch males over the age of 12 with criminal histories varying from zero to more than seven prior convictions. The article estimated redemption times based on age and number of prior convictions. The major insights are (1) hazard of re-conviction decreases by age and increases by number of convictions and (2) convictions increase redemption time exponentially the older a person was at time of the measuring conviction. See Bushway, et al., 2011.
- <sup>38</sup> For a detailed explanation on implicit bias, see Kirwan Institute for the Study of Race and Ethnicity, “Understanding Implicit Bias,” <https://perma.cc/F4LY-J5PQ> .
- <sup>39</sup> For a discussion on the role of implicit bias in the criminal justice system, see Jessica Eaglin and Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails, Recommendations for Local Practice* (New York, NY: Brennan Center for Justice at New York University School of Law, 2015).
- <sup>40</sup> For more on the various types of implicit biases, see Howard Ross, *Everyday Bias: Further Explorations into How the Unconscious Mind Shapes Our World at Work* (Silver Spring, MD: Cook Ross, 2014).