

# Standard Operating Policy # 2-26

**Name of Policy:** Violent, Drug, Alcohol, or Other Criminal Activity Related Disturbances for Applicants and Participants

**CFR Reference Number:** 982.551, 982.552 & 982.553

**Approved by Board Resolution #:** 812-10

**Effective Date:** April 1, 2011

**Definitions:** Drug-Related Criminal Activity is the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use a controlled substance.

Violent Criminal Activity includes any criminal activity that contains, at minimum, one of the following elements: the use, attempted use, or threatened use of physical force, substantial enough to cause, or be reasonably likely to cause serious body injury against a person or property.

Reasonable Time is 3 years\* from the date of the conviction.

## **Applicants:**

Federal Regulations give the Housing Authority the right to establish standards that allow the PHA to prohibit admission for participation in subsidized housing programs, if any household member is currently engaging in, or has engaged in during a reasonable time before admission:

- a.) Drug-related criminal activity;
- b.) Violent criminal activity;
- c.) Other criminal activity that may threaten the health, safety or right to peaceful enjoyment of the premises by other residents;
- d.) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent).

## **Participants:**

The Federal Regulations require that the Housing Authority establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligations under Section 982.551:

- a.) not to engage in any drug-related criminal activity
- b.) not to engage in any violent criminal activity
- c.) not to engage in any other criminal activity which may threaten the health or safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.

Federal Regulation 982.553 states Section 8 Applicants and Participants **MUST** be denied rental assistance, have their application terminated or their rental assistance terminated if:

- A. Any household member is convicted of drug-related activity for manufacture or production of methamphetamine on the premises of federally subsidized housing.
- B. Any member of the household is subject to a permanent/lifetime or Tier III registration under a State sex offender registration program.
- C. Persons have been evicted from federally assisted housing for drug-related activity less than 3 years ago.
- D. The PHA determines that any member of the household is currently engaging in illegal use of a drug.
- E. The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

Federal Regulations permit the FMHA to deny or terminate rental assistance for the following:

- A. Drug-related criminal activity;
- B. Violent criminal activity;
- C. Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or
- D. Other criminal activity which may threaten the health or safety of the owner, property management staff or persons performing a contract administration function or responsibility on behalf of the PHA.

Therefore, FMHA will deny or terminate rental assistance for one conviction for the following, unless otherwise noted within this policy:

- A. Any offense under Ohio Revised Code 2925: Drug Offenses.
- B. Violent criminal activity. If a case has been "pled down" to a lesser charge the FMHA will make the determination of ineligibility based on the lesser charge definition, and may examine other court evidence if available, including the incident report(s). If the lesser charge definition does not include acts of violence, this conviction will fall under the said lesser charge.
- C. Any offense under Ohio Revised Code 2907. Additionally, any individual required to register as a Sex Offender will be ineligible during their period of registration.
- D. Any offenses under Ohio Revised Code 2923: Conspiracy, Attempt, and Complicity; Weapons Control: Corrupt Activity.
- E. A felony conviction of any type.
- F. Other criminal activity, not defined above, which may threaten the health, safety or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity which includes, unless otherwise noted within this policy:

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|----------------------------------|----------------------------------|
| 1. Aggravated Menacing           | 9. Public indecency (M1-M3)      |
| 2. Menacing by Stalking          | 10. Criminal mischief (M1-M2)    |
| 3. Unlawful Restraint            | 11. Child endangerment           |
| 4. Coercion                      | 12. Violating a protection order |
| 5. Aggravated trespass           | 13. Resisting arrest             |
| 6. Tampering with coin machines  | 14. Illegal conveyance           |
| 7. Passing Bad Checks (M1)       | 15. Receiving stolen property    |
| 8. Theft (valued @ \$50 or more) | 16. Arson                        |

For a conviction of obstructing justice, an incident report will be reviewed to determine the nature of the crime. If the actual crime falls under any portion of this policy, denial or termination will occur accordingly.

G. FMHA will deny or terminate rental assistance for two convictions of any of the following, whether or not they are of the same nature:

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|-------------------------------------|-------------------------------------|
| 1. Menacing                         | 5. Disorderly Conduct               |
| 2. Public Indecency (M4)            | 6. Criminal Mischief (M3)           |
| 3. Criminal Trespass                | 7. Theft (valued @ \$49.99 or less) |
| 4. Criminal Damaging or endangering |                                     |

H. One conviction for a probation or parole violation. In this case, the Housing Authority will make a decision regarding denial or termination based on the conviction of the actual violation or original charge. Based on the Housing Authority's experience, the individual is found guilty of the original charge as a result of the probation or parole violation.

The regulations also require that the authority establish standards that allow the PHA to terminate or deny rental assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

1. Two or more police verified incidents or disturbances caused by the use of alcohol in the past 3 years.

Additionally, FMHA will deny or terminate rental assistance for any of the following:

- A. The family has brought weapons, concealed or not, onto the premises of the Housing Authority.
- B. The family has engaged in violent behavior, as defined by Addendum 15-3 of the Administrative Plan, towards Housing Authority personnel.
- C. If an applicant or participant is fleeing to avoid prosecution, custody, or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (See NOTES below for the definition of a "Fleeing Felon.")

**Notes:** A fleeing felon is an individual who is avoiding prosecution or custody (jail or prison) for a crime, or an attempt to commit a crime, that is classified by state law as a felony.

The existence of an outstanding felony warrant for a person's arrest does not automatically establish the person is fleeing for purposes of the HCV program. A person wanted for a felony may not have fled their home or the local area. They may not have initiated actions to conceal themselves or to avoid arrest. The police may know where the person is but choose to not arrest them at this time.

Staff must determine what actions have been taken to rectify the situation and verify the agency which issued the warrant has elected to avoid any further prosecution in the matter. This will resolve any outstanding questions in determining whether or not the individual is fleeing and determine the individual's eligibility for the program. In any case, the person must not have been convicted of a crime involving violence, the manufacture or sale of drugs, or crimes of a sexual nature.

Examples of fleeing felon:

*Example 1: There is a felony warrant for a client's arrest. The police know where the client is living and have chosen not to pick them up. Absent other facts, this person is not a fleeing felon.*

*Example 2: A client is wanted in another state for a felony conviction. The former state knows where they reside and has not decided if they want to extradite the client. Absent other facts, this person is not a fleeing felon.*

*Example 3: A client applied for housing assistance. She left another state less than 10 years ago. FMHA staff learns after calling the other state to verify the client's income there, that the client had felony arrest warrants and was due to be in court within that 10 year time frame to answer the charges. She is a fleeing felon and is ineligible for FMHA housing assistance.*

*Example 4: A client moved to Ohio and later learned there is a felony warrant. He contacted the other state and told them where he is. He offered to return to the other state if they will pay his travel costs, as he cannot afford the trip. The state declined to arrange to transport him to that state through arrest and extradition or any other means. This person is not a fleeing felon.*

*Example 5: A client learns of the arrest warrant but due to mental health issues is unable to pursue the steps needed to resolve the issue. This person is not a fleeing felon.*

*Example 6: A client is informed of the felony warrant and declined to turn herself in or make attempt to resolve the warrant. Absent other facts, this person is a fleeing felon.*

*Example 7: A client was convicted of a felony and moved away prior to confinement. He is a fleeing felon.*

*Example 8: The police report a person is a fleeing felon on October 16. On October 20, the first fleeing felon letter is sent to the client notifying them of the problem and giving them 20 days to resolve the issue. No response is received by November 10. Notice of termination of benefits is immediately sent effective immediately.*

*Example 9: The person was convicted of a felony and was sentenced to probation. He moved to Ohio from the state where he was serving his probation thinking he had permission. He learned after 10 years that there was a warrant for his arrest for failure to complete his probation. He informs that state of his current address and asks for forbearance such as quashing the warrant. He is not a fleeing felon. If he learned of such a warrant under these circumstances but before 10 years, the FMHA will continue his assistance for 90 days to give him an opportunity to clear the matter with the other state. If he is unsuccessful, his assistance will be terminated at the end of the 90-day period.*

**Appeal Process:** Applicants or participants denied assistance or terminated from the Housing Choice Voucher Program will receive a letter giving them 10 days to dispute the decision. The letter will include notification of the reason for denial or termination, a copy of the termination policy, and instructions on how to request an "INFORMAL REVIEW."

**Waivers:** FMHA may waive denial or termination of assistance if the family member(s) involved in the prohibited activity:

1. No longer resides with the family. The remaining family member(s) will be required to provide acceptable verification and to certify that the family member who committed the prohibited activity is no longer living in the assisted rental unit and will not return to the household while the remaining family member(s) are participating in the Housing Choice Voucher Program. Acceptable verification(s) may include but are not limited to:
  - a. The family member's new address;
  - b. A copy of the family member's lease at the new address;
  - c. The family member(s) landlord's name and address;
  - d. Notarized affidavit from the person with whom the family member will reside;

- e. Verification that the remaining parent, or guardian, has filed for child support;
- f. Divorce/separation documents.
- g. Protection Order.

Any information regarding an applicant's or participant's criminal record will be kept confidential, not misused or improperly disseminated and only released according to HUD and PHA guidelines (SOP 2-08, Information Provided to HCV Owners).