CHAPTER I  HOUSING

Needs and Barriers – Housing

Regardless of an individual’s status as an ex-prisoner, housing is one of life’s most basic necessities. Whether the individual is living in his or her own abode, in transitional housing, homeless shelter, public housing, mental institution, or simply living with friends or relatives, housing is needed upon release from prison. In fact, more often than not, housing placement is a condition of the ex-prisoner’s parole. In their “First Friday Webinar” teleconference, The Michigan Poverty Law Program (MPLP) (2008) indicated that, “[i]ncreasingly, clients are having housing problems related to criminal records” (p. 31). However, housing is a concern that must be addressed immediately upon an individual’s release from prison. For the most part, all other concerns related to prisoner reentry will take a back seat to this very basic need.

Furthermore, as noted by Travis (2005), housing is “the lynchpin that holds the reintegration process together” (p. 219). Concurring, as well as looking at housing as it relates to recidivism, the Fortune Society and John Jay College of Criminal Justice (n.d., b), in its case study on prisoner reentry and homelessness, state that “homelessness, especially in the first 90 days, post release, significantly increases the high risk of reoffending” (p. 3)

So, where do most ex-prisoners reside immediately upon their release from prison? They more than often first reside with family members (usually their mothers) or friends who choose to welcome them into their homes. This, too, can be problematic, especially if the ex-prisoner’s parole conditions prohibit him or her from associating with individuals who may have criminal records. As well, living in the homes of family and/or friends’ homes may or may not be a viable option because these dwellings may or may not be stable, financially or otherwise, there may have been past incidents of household discord and/or violence, and the like. Additionally, a
recently released ex-offender may be precluded by law from receiving shelter loved ones who live in public housing. Thus, in all, if family and/or friends’ dwellings are not an option for the ex-prisoner, he or she may be forced to reside in a transitional housing environment, homeless shelter, or simply join the ranks of America’s homeless population, which after one year was estimated to be “10 to 25 percent of released prisoners” (Travis, 2005, p. 240).

Ex-prisoners will also find that there is limited housing in America, be it private or public housing. In her comprehensive book on prisoner reentry, When Prisoners Come Home: Parole and Prisoner Reentry, Petersilia (2003) indicates that the private housing market represents approximately 97 percent of the housing stock (p. 121). However, if housing is located by the ex-prisoner, it is usually beyond his or her reach financially. That is to say, it is unlikely that they will be able to afford the first month’s rent and the security deposit, which could be double the amount of the monthly rent. This is especially true if the ex-prisoner has not secured employment. Ted Phillips, UCHC’s executive director, in addressing the challenges faced by ex-prisoners seeking housing in the private market, states:

Ex-prisoners often lack funds for a security deposit and first month’s rent to be able to move directly into market rate housing. Even when these costs might be covered or they have the funds to pay them[,] they often lack a steady income to enable them to convince a landlord that they can pay the monthly rent once they are in the housing. Once they are in, they are often facing an eviction within a few months when they fall behind in rent. Because of their lack of income[,] they are also more likely to find substandard housing, with landlords who do not have a lot of tenants who will rent that housing (T. Phillips, personal communication, August 28, 2013).
Furthermore, many property owners and/or managers now conduct both credit and criminal background checks. As for the latter, it is safe to say that after a conviction has been found – particularly one that has resulted in imprisonment – the potential landlord will often opt not to offer tenancy to the ex-prisoner. Additionally, Travis (2005) indicated that “[a] survey of property managers and owners found that 67 percent inquired about criminal history on rental applications. Forty-three percent said they would reject an applicant with a criminal conviction” (p. 223, italics added). Finally, there may also be community opposition to ex-prisoners relocating to the neighborhood, particularly to group home settings.

As for public housing, Travis (2002) noted that in the late 1990s, Congress created a “web of collateral sanctions that transformed a conviction for certain state crimes into ineligibility for federal benefits” (p. 23). These laws left many ex-prisoners, especially who have been convicted of drug and/or violent and/or sex-related offenses, ineligible to apply for public housing residency. According to Petersilgia (2003), these laws have authorized public housing agencies, or PHAs, and providers of Section 8 vouchers and other federally assisted housing to providing housing to ban

• individuals who have been evicted from public, federally assisted, or Section 8 housing because of drug-related criminal activity [ineligible for public and federally assisted housing for 3 years]

• any household with a member who is subject to a lifetime registration requirement under a state sex-offender registration program

• any household with a member who is currently abusing alcohol or is illegally using drugs … (p. 122).
In order to address the so-called “criminal element,” the drug dealers and others engaged in criminal activity, in his 1996 State of the Union address, President Bill Clinton urged the local PHAs (Public Housing Authority), which had wide discretion in determining who would and who would not be allowed public housing tenancy, to adopt the “One strike and you’re out” policy, which gave the PHA’s financial incentives to screen out those individuals who were allegedly engaged in criminal activity. This led to fewer individuals – and their families – residing in public housing (Travis, 2005, p. 232). Though the Department of Housing and Urban Development (HUD) rule faced several court challenges, e.g. in Department of Housing and Urban Development v. Rucker et al. (2002), the United States Supreme Court decided that PHA’s could evict lease-holding tenants for the drug-related criminal activity of their household members and/or guests whether the lease-holding tenant was aware of the activity or not. According to Hornstein (2011-2012), “The Court rejected arguments by the tenants that Congress never intended to authorize the eviction of innocent tenants and held that those who had not committed any criminal act and had not engaged in any drug-related activity was not a violation of due process” (p. 6). In addressing the public housing issue as it relates to prisoner reentry, Ted Phillips, a long-standing advocate of the homeless, offers these insights:

The housing that many ex-prisoners could afford is Section 8 or public housing, both of which base rent and utility costs on a percent of the tenant’s adjustable income (30%). The biggest problem that ex-prisoners have that most of this type bars persons with a criminal history. Some sites may limit that criminal history to drug-related or violent crimes but[,] as general rule[,] the nicest subsidized housing usually has the most restrictive rules and the most problem housing has the fewest. Sites that have a history of
criminal activity … will be the easiest for an ex-prisoner to find housing[,] and they will be likely to be the worst long-term benefit [to] the ex-prisoner (T. Phillips, personal communication, August 28, 2013).

Thus, policies like these can adversely impact, again, on one of life’s most basic necessities: shelter. Families can be ripped apart because of the past and/or present criminal activity or family members or guests while they are tenants in public housing. The lease-holders may be forced to choose between keeping the family together in these dwellings, surrendering their housing subsidy, or forcing the offender(s) and/or ex-prisoner(s) to vacate the premises. If the latter of these three options is chosen, where does that leave the ex-prisoner? More than likely, as noted earlier, if the ex-prisoner has no other family or friends to rely on to secure housing, he or she may be forced to find transitional housing or a homeless shelter – both options that have very limited bed space – or be forced into homelessness.

Direct and/or Indirect Legal Services Challenges – Housing

We have seen that ex-prisoners face a variety of challenges in attempting to secure affordable housing. Be it denials based upon their lack of resources, mainly income, which prohibit them from obtaining private housing, or on their ex-prisoner status, which limit them from obtaining public housing, it is no wonder that they are a fast-growing segment of America’s homeless population. In his article entitled Navigating the Hidden Obstacles to Ex-offender Reentry, which takes a look at how the legal community might assist in successful prisoner reentry, Thompson (2004) states that, “[h]ousing has always presented a problem for individuals returning to their communities following a period of incarceration” (p.278). These
studies pointing out the challenges of finding housing reflect conditions that existed before the financial crisis of 2008-2009, the Great Recession that followed, and the lingering period of anemic economic growth that continues today. One has to assume that the growth in homelessness since 2008 has also had a more severe impact of ex-offender.

In this section of my essay, I offer some insights by authors, scholars, and attorneys who see the addition of legal services as a viable and much-need component in the area of prisoner reentry, calling for those responsible for administering reentry programs to rethink the issue and either incorporate a legal services component within their existing programs or develop partnerships with outside legal services organizations. I will also point out some strategies employed by various legal services entities which challenge the barriers to housing that are faced by ex-prisoners.

One such advocate is Henry (2008), whose research article is one of the few of its kind. With little or no data to consult about the reentry program-legal services link, she posed the question of “whether the legal needs of formerly incarcerated individuals are being met” (p. 15). She concluded that they were not, stating that there was a need for partnerships between re-entry programs and legal services organizations to close the gap in providing wrap-around services to this group. She focused on areas such as housing, employment, higher education, etc., indicating that given the sweeping impact criminal convictions and their collateral consequences had on successful re-entry, it would seem apparent that many re-entry programs would have incorporated legal representation into their efforts.

Echoing this sentiment is Smyth (2005), who advanced the idea of incorporating a civil component, based upon the collateral consequences, when handling the cases of indigent criminal defendants. Calling “the real repeat offenders poverty and despair” (p. 480), the author
indicated that when issues such as employment, housing, and the like become beyond the reach of an ex-prisoner (or defendant), recidivism is more likely, especially if that person is poor and without hope. Noting that nearly 64 million individuals have a criminal record, he states that at least 80 percent of these individuals are poor and, thus, are unable to retain legal representation. Along with Henry (2008), the author calls for increased partnerships between re-entry programs and legal services organizations in order to “serve the whole person – a person with complex needs, a family, and who is a part of a community….” (p. 490).

Another proponent of the incorporation of free legal services into the realm of prisoner reentry is Thompson (2004), who suggests that “public defender offices could evolve into a less specialized and integrated role through which they could represent ex-offenders in a variety of matters related to reentry …. [and] law schools could provide students with clinical opportunities through which to explore creative, non-traditional solutions to representation of ex-prisoners” (p. 255). The author asserts that this collaboration between lawyers and the community will provide ex-offenders with the resources that they need to make a successful transition into society.

Finally, Works (2003) argues that both “civil legal aid attorneys and public defenders who undertake representation of the indigent have a responsibility to be aware of the many challenges their clients face as they make the transition back to their communities. Without the assistance from [these entities], many ex-offenders fall prey to recidivism, ending up on the docket of the same public defender who helped them on the very offense for which they were originally incarcerated” (p. 330, italics added).

In challenging the barriers to private housing faced by ex-prisoners, it goes without saying that this is extremely difficult, but MPLP (2008) indicates that “… a landlord cannot evict [an] individual who has a valid lease just because a person has a criminal record.” (Tenants with
Criminal Records in Private Housing section, para. 3). The landlord may have conducted a criminal background check on an ex-prisoner and opt not to lease to that individual. Or the landlord may have a clause in the lease which indicates that a tenant may be evicted for criminal activity during the leasing of a property. But if the landlord decides to evict that individual after he or she has obtained a valid lease, the eviction can be contested in court. In the words of Marilyn Mullane: “Once the person has ‘climbed that mountain’ and has obtained a valid lease, that person can only be evicted if he or she has violated some terms in the lease.” (M. Mullane, personal communication, August 29, 2013).

When private housing at market rates prove to be unaffordable for most ex-prisoners, they will usually seek subsidized housing (public housing or Section 8 voucher housing), or housing whose rent is based upon an individual’s monthly income. In her research article, which examines the potential partnership between reentry programs and legal services providers, Henry (2008) notes that the Anti-Drug Abuse Act of 1988 has not only prohibited ex-prisoners convicted of certain offenses from obtaining public housing for themselves, it has also prohibited ex-prisoners’ loved ones from offering shelter to them as well (p. 16). Thus, the HUD sanctioned limitations implemented by the approximately 3,400 Public Housing Authorities (PHAs) across the country (Travis, 2005, p. 228) not only adversely impact ex-prisoners, they also have dire effects on the housing stability of their families, leaving them without a potential income boost from the ex-prisoners who may find employment.

In returning to MPLP (2008), it is noted that there are three types of denials in subsidized housing: mandatory, presumptive, and discretionary. Mandatory denials involve individuals who have been convicted of sex-related or methamphetamine production offenses. Presumptive denials involve individuals evicted from subsidized housing within the last three years for drug-
related activity, household members who are currently engaged in criminal activity, and/or household members who are currently abusing alcohol—denials that can be rescinded after the completion of PHA-approved substance abuse programming or the circumstances no longer exist (Admission to Subsidized Housing: Presumptive Denial, para. 1–3). In discretionary denials, admission to subsidized housing may be denied to any household member who is engaged in drug-related and/or violent crimes, as well as offenses that “affect the health, safety or right to peaceful enjoyment of residents, staff . . . , or PHA contractor” (Admission to Subsidized Housing: Discretionary Denial, para. 1). It must be noted that while the federal government sets the base-line rules for the PHAs to follow, these PHAs have a wide range of discretion when admitting anyone into public housing. Legal service providers should review the admissions policies of the PHA in question because the admissions rules for them are not uniform. However, in requests for reconsideration of discretionary denials to subsidized housing, legal services providers should point out to the PHA that there is “sufficient evidence” the household member is not currently engaged in criminal activity, and has not engaged in such activity over a reasonable period of time prior to admission. As well, legal services providers should address to the PHA the seriousness of the alleged activity, the extent of household member’s culpability, show evidence of rehabilitation (i.e., substance abuse treatment), and speak to the adverse effect the denial will have on non-offending members of the household (Admission to Subsidized Housing: Getting Clients in Despite a record, para. 1–2).

The same policy criteria for mandatory admissions to subsidized housing will apply to mandatory termination from subsidized housing. That is to say, if an individual who is subject to lifetime sex offender registration or has been convicted of methamphetamine production on the premises of federally subsidized housing, he or she must be [italics added] evicted. With regard
to discretionary termination, the PHAs have the latitude to evict an individual if he or she is
engaging in illegal drug or alcohol use, has furnished false information about substance abuse, is
currently engaged in criminal activity, or is a fleeing felon or parole violator. These violations
may be grounds for termination. Further, according to Hornstein (2011-2012):

HUD has taken the position that One-Strike evictions require proof of a statutory or
common-law crime …. Beyond holding a housing authority to its burden of proving that
there has indeed been a criminal act covered under the statute, tenants [with the
assistance of free legal services] can and should explore raising as affirmative defenses
the housing authority’s abuse of its discretion … and the breach of its implied duty to act
in good faith. These two affirmative defenses are available regardless of whether the
housing authority is able to prove the commission of a crime…. An abuse of discretion
defense and implied duty of good-faith defense permit a tenant to simultaneously
challenge the housing authority’s claim that a crime has been committed and present to
the court, or jury, a theory why, even if a crime has been committed, eviction is
nevertheless unlawful and unfair (pp. 49-50).

Like PHA admissions policies, legal service providers should review the termination policies of
the PHA in question because these rules are not uniform.

In their report entitled *Every Door Closed: Barriers Facing Parents with Criminal
Records*, which addresses the issue of the impact of having a criminal record has on areas such as
employment, housing, public benefits, etc., Community Legal Services, Inc. (2002) offers some
policy recommendations that might improve ex-prisoners’ access to housing. They include:
• Requir[ing] Public Housing Authorities to evaluate evictions on a case-by-case basis, to look for mitigating circumstances, and weigh fully the consequences of a loss of subsidized housing for the family.

• For families with children, Public Housing Authorities should use the “best interest of the child” standard when determining whether to grant admission to an offender or evict families based on criminal activity.

• Congress should supply sufficient funding to the stock of subsidized housing so that parents reentering the community after their incarceration can rebuild their lives (p. 3).

Finally, the Fortune Society and John Jay College of Criminal Justice (n.d., b) offer another alternative, though, admittedly, a costly one. The authors state that “considerable attention is being directed … at ‘permanent supportive housing’ as an ‘effective and efficient approach to meeting the housing and specialized service needs of ex-offenders [e.g., employment assistance, substance abuse treatment, mental health care, etc.] in one comprehensive program’” (p. 3).

Thus, the issue of housing ex-prisoners is a very important one. It can determine whether an ex-prisoner successfully reintegrates into society or recidivates. To deny an individual the human right to shelter says more about the society in which we live than anything that we can say about those individuals who have been incarcerated. With private housing out of the financial reach of most ex-prisoners, family and friends either unwilling or unable to accommodate them, and public housing being ever restrictive, many ex-prisoners find themselves scrambling for temporary shelter in department of corrections-administered halfway houses, transitional housing, homeless shelters, or on the streets. When these are the only
alternatives left for many of these desperate individuals, legal services can step in and assist them with referrals. As noted by Thompson (2004), “Developing and maintaining a strong referral process means identifying the range of services that clients need” (p. 29).