

SB 518

Measure Title: RELATING TO PUBLIC HOUSING.

Report Title: State Low Income Public Housing; Criminal Background; Prohibited Criteria

Description: Prohibits the Hawaii public housing authority from considering a prospective tenant's conviction for a minor crime that occurred five years or more before the application date. Provides exceptions for crimes involving drugs, violence, sexual offenses, and alcohol.

Companion:

Package: Keiki, Women

Current Referral: HMS, JDL

Introducer(s): SHIMABUKURO, CHUN OAKLAND, Ige, Ruderman, L. Thielen

January 30, 2013

TESTIMONY IN SUPPORT OF SB518

Senate Committees on Human Services and Judiciary and Labor
February 5, 2013 at 1:15 p.m.

Hawaii Public Housing Authority has a legitimate concern to limit admissions to individuals who will be good tenants. Because the Federal government has years of experience in developing admission policies that withstand legal challenges, I suggest that the Federal PHA rules be used as a guideline. I support this bill, however, I believe the bill itself needs editing.

Certain basic principles emerge from statutory framework and case law for federal public housing. PHAs are allowed to consider criminal activity that would threaten the health, safety or right to peaceful enjoyment of the premises by other residents or would threaten the health and safety of the PHA or staff. However, an applicant should not be denied admission for criminal behavior that would not affect the tenancy.

Automatic denials against broad categories of applicants with criminal records are particularly vulnerable to fair housing challenges. Fair housing concerns include whether a PHA criminal history policy has a disparate impact based on an applicant's race. Because racial minorities have disproportionately more contact with the criminal justice system than the general population, housing policies that ban people with criminal records adversely affects racial minorities. HUD guidance instructs PHAs not to screen to exclude former users of illegal drugs since the Fair Housing Act and Section 504 may apply if the applicant formerly abused drugs but it not a current user.

Policies must also consider an applicant's individual attributes and the time, nature and extent of the applicant's conduct, including the seriousness of the offense. Many applicants for housing will have histories that include information that may be considered adverse. The PHA should have a policy on how to respond to such adverse information. The policy should address how, when and under what circumstances mitigating factors will be considered. Consideration may be given to evidence of rehabilitation, the applicant's willingness to participate in social service programs and other factors indicating favorable future conduct. Applicants should be notified that the PHA will consider mitigating circumstances.

HUD suggests that PHAs differentiate what is a reasonable period for different categories of criminal activities. A permanent ban is allowed for methamphetamine production and lifetime registered sex offenders. HUD suggests a five year ban for a serious offense; Congress suggests a three year ban for a drug offense.

Federal rules and statues provide explicit definitions for offenses which affect admission and this would be helpful for state public housing. “Violent criminal activity” is defined as the use, attempted use, or threatened use of physical force substantial enough to cause or be reasonably likely to cause serious bodily injury or property damage. Congress also allows banning of applicants who are currently engaging in criminal activity. “Currently engaging in” is defined to mean the individual has engaged in the behavior recently enough to justify a reasonable belief that the individual’s behavior is current.

“Abuse of alcohol” is defined as a pattern of abuse which will interfere with the health, safety or right to peaceful enjoyment of the premises by other residents. As with any applicant, an alcoholic may be rejected if he cannot meet the obligations of tenancy. As a practical matter, an applicant may not be denied for abuse of alcohol when he does not engage in conduct that interferes with the health, safety or quiet enjoyment of other residents. An applicant who drinks to excess and falls asleep every evening while watching television should not be excluded because of the addiction.

Under federal rules, the PHA has discretion in developing tenant selection plans. These plans must be in writing and must be reasonably related to an applicant’s ability to perform the obligations of the lease. PHAs must make tenant selection plans available to applicants and the public. However, there is no requirement of resident or applicant involvement in the development of the tenant selection plan.

Thank you for the opportunity to testify.

Sincerely,

Sheila P. Lippolt
Housing Attorney

The Legal Aid Society of Hawaii (Legal Aid) is the only legal service provider with offices on every island in the state, and in 2011 provided legal assistance to over 10,000 Hawai’i residents in the areas of consumer fraud, public assistance, family law, the prevention of homelessness, employment, protection from domestic violence, and immigration. Our mission is to achieve fairness and justice through legal advocacy, outreach and education for those in need.

Suggested bill:

(b) Notwithstanding any other law to the contrary, in the selection of tenants, the authority shall not consider a conviction for a violation, petty misdemeanor, or misdemeanor as provided in the

Hawaii Public Code that occurred five years or more prior to the tenant application date provided that the authority may consider any conviction for a violation, petty misdemeanor, or misdemeanor involving:

- (1) a history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants;
- (2) persons engaging in illegal use of a drug when HPHA determines that the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current and this behavior would adversely affect the health, safety or welfare of other tenants;
- (3) persons convicted of methamphetamine production are permanently banned;
- (4) persons subject to a lifetime registered offender requirement under a sex offender registration program are permanently banned;
- (5) persons that show a pattern of abuse of alcohol and HPHA determines that it has reasonable cause to believe 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;
- (6) HPHA selection criteria are subject to protections for victims of domestic violence, dating violence, or stalking;
- (7) in the event of the receipt of unfavorable criminal history with respect to an applicant, consideration shall be given to the time, nature and extent of the applicant's conduct (including the seriousness of the offense) and facts which might indicate a reasonable probability of favorable future conduct. For example;
 - (a) evidence of rehabilitation; and

(b) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;

(8) before HPHA denies admission on the basis of a criminal record, HPHA must notify the household of the proposed action and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record;

(9) the cost of obtaining the criminal record will not be passed along to the applicant;

(10) the tenant selection plan will be available to the general public and to applicants at the time of application.



Westside Service Provider Network

Providers from Kapolei to Kaena Pt

Testimony to the Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair
Members of the Committee

Tuesday, February 5, 2013
1:15 pm
Conference Room 016
State Capitol
415 South Beretania Street

Testimony in SUPPORT
Raelene Tenno – Westside Service Provider Network

Bill No. and Title: SB 517

Purpose: Permits clotheslines in state and federal public housing projects.

It takes a family of 4, 2 adults & 2 children, over \$20.00 per week to run the coin operated Laundry at a Housing complex.

This will not only be essential to the family but the environment and bring down costs of maintenance and repairs to the dryers and ducts. This is a WIN for all.

Some may argue that clotheslines are unsightly. Set parameters to allow clothes to be hung between certain hours.



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Testimony of Hawai'i Appleseed Center for Law and Economic Justice
Supporting and Commenting on SB 518 Relating to Public Housing
Senate Committee on Human Services
Scheduled for Hearing on Tuesday, February 5, 2013, 1:15 PM, Room 016

Thank you for an opportunity to testify in support of and propose amendments to Senate Bill 518, which would prohibit the Hawai'i Public Housing Authority from considering a prospective tenant's conviction for most minor crimes that occurred over five years or more before the application date.

Hawai'i Appleseed Center for Law and Economic Justice is a nonprofit, 501(c)(3) law firm created to advocate on behalf of low income individuals and families in Hawai'i on civil legal issues of statewide importance. Our core mission is to help our clients gain access to the resources, services, and fair treatment that they need to realize their opportunities for self-achievement and economic security.

This policy of a maximum "look back" period balances the community's need for safety with an ex-offender's need for housing and a second chance. United States Secretary of the Department of Housing and Urban Development Shaun Donovan has stressed the importance of a second chance for ex-offenders in a 2011 letter to public housing authorities: "People who have paid their debt to society deserve the opportunity to become productive citizens and caring parents, to set the past aside and embrace the future. Part of that support means helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." A wide degree of discretion can encourage the denial applicants as a result of any conviction, no matter how minor.

We thank you for hearing this important bill and respectfully propose stronger protections for public housing applicants who are capable of being responsible tenants. We encourage the committee to create an even stronger statute that would prevent the Hawai'i Public Housing Authority from considering crimes committed at any time that do not affect health, safety, or their fitness for tenancy. Should the committee decide not to adopt such language, we encourage amendments reducing the maximum "look-back" period from five to two or three years, and to narrow the classes of convictions more than five years old that may still be considered under the current bill:

356D-42 (b)(1) Drug-related criminal activity, including the illegal use of a controlled substance; except the possession of marijuana for personal use;

356D-42(b)(4) Abuse of alcohol endangering the health or safety of others.

Thank you again for this opportunity to testify in support of and propose amendments to SB 518.



Committee: Committee on Human Services
Hearing Date/Time: Tuesday, February 05, 2013, 1:15 p.m.
Place: Conference Room 016
Re: Testimony of the ACLU of Hawaii in Opposition to S.B. 518, Relating to Public Housing

Dear Chair Chun Oakland and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii (ACLU of Hawaii) stands in opposition to S.B. 518, which permits public housing authorities to discriminate against prospective tenants who have committed crimes involving drugs, violence, and alcohol. Whereas current policy justly mandates that tenants be selected based on need, S.B. 518 unduly allows authorities to ban certain low-income individuals with criminal records—further exasperating the latter’s economic woes and alienating a group from society.

Individuals with criminal convictions face a host of barriers to obtaining housing, employment, education, and subsistence benefits for themselves and their families. Public housing is oftentimes a person’s only option as he or she attempts to reintegrate into society. By permitting authorities to consider past convictions, relating to drugs, alcohol, or violence, S.B. 518 creates a new class of homeless and fails to treat these issues as a public health concern. Past crimes should not indefinitely and detrimentally impact individuals’ ability to succeed, punishing them as they strive to sustain a home, job, or education.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society’s most vulnerable members are denied, everyone’s rights are imperiled.

American Civil Liberties Union of Hawaii
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From: mailinglist@capitol.hawaii.gov
To: [HMS Testimony](#)
Cc: ldurr@ymail.com
Subject: Submitted testimony for SB518 on Feb 5, 2013 13:15PM
Date: Friday, February 01, 2013 1:37:36 PM

SB518

Submitted on: 2/1/2013

Testimony for HMS on Feb 5, 2013 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lois C. Durr	Individual	Support	No

Comments: I believe that minor offenses should not prevent someone from being considered for Public Housing. I hope they will still monitor all of the tenants for current infractions.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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