

# REPEALING THE THURMOND AMENDMENT:

## Restoring Fair Housing Protections for Individuals with Drug Distribution Convictions

### KEY TAKEAWAYS:

- **The Thurmond Amendment excludes people with a drug distribution conviction from Fair Housing protections—a right guaranteed to all other Americans.** As a result, the Thurmond Amendment makes it impossible for someone with a drug distribution conviction to be protected if a provider denies them housing because of a single drug distribution conviction without considering any other typical measures used to calculate risk for a prospective tenant like income, credit score, or rental history.
- **The Thurmond Amendment jeopardizes successful reentry.** Without secure housing, research suggests people are at higher risk of being rearrested and reincarcerated, and a lack of housing complicates maintaining steady employment.
- **Repealing the Thurmond Amendment would preserve landlords' autonomy to set their admission standards.** However, when the Thurmond Amendment is repealed, applicants denied housing based on a drug distribution conviction will be able to access the fair housing protections that they were previously denied.

### BACKGROUND

#### The Fair Housing Act Protects Tenants and Homebuyers from Discrimination

In 1968, Congress passed the Fair Housing Act, which protects people from discrimination by housing providers by declaring such discrimination illegal. The Fair Housing Act applies to most housing, including private and public housing and housing that receives federal funding.

Notably, the Fair Housing Act allows tenants and homebuyers to pursue legal recourse if they believe they have experienced discrimination when applying to rent an apartment, buy a home in the public or private housing market, or take out a mortgage from a bank.

#### The Thurmond Amendment Excludes People With Drug Distribution Convictions from Fair Housing Protections

In 1988, Congress passed the Fair Housing Amendments Act, which included a provision to exclude individuals with a drug distribution conviction from fair housing protections.

Commonly referred to as the Thurmond Amendment because Senator Strom Thurmond introduced the amendment, the provision makes it impossible for someone with a drug distribution conviction to be protected if a provider denies them housing because of it without considering any other typical measures used to calculate risk for a prospective tenant (e.g. income, credit score, or rental history).

By excluding people with drug distribution convictions from fair housing protections, people with these convictions cannot use the Fair Housing Act as a recourse if they believe they experienced housing discrimination because of their criminal convictions.

**People with drug distribution convictions are the only population denied civil rights and protections guaranteed by the Fair Housing Act.**

## IMPACT

Since the Thurmond Amendment was enacted in 1988, an estimated 2.9 million people have received felony convictions in state courts for selling drugs.<sup>1</sup> An additional 483,700 people received a federal felony conviction for drug trafficking since 1990.<sup>2</sup>

For all other convictions, the Department of Housing and Urban Development (HUD) requires an individual assessment of people's applications, considering factors such as the nature of the crime, time since conviction, evidence of rehabilitation, rental history, credit score, and income.<sup>3</sup> A recently proposed HUD rule would also limit the criminal record lookback period to three years for prospective tenants in public housing.

However, due to the exclusions of the Thurmond Amendment, some large rental property owners and tenant screening companies use the Thurmond Amendment as cover to deny anyone with a drug distribution conviction—without taking into account the circumstances of the conviction or considering other typical risk measures used in the rental market.

As a result, the Thurmond Amendment makes it impossible for someone with a drug distribution conviction to be protected if a provider denies them housing because of it without considering any other typical measures used to calculate risk for a prospective tenant like income, credit score, or rental history.

## REPEALING THE THURMOND AMENDMENT WOULD:

- **Support Successful Reentry:** Formerly incarcerated people, including people with drug distribution convictions, typically exit into low-income communities where affordable and accessible housing is scarce. Yet, research shows successful reentry relies on finding a safe and affordable residence.<sup>4</sup> Barriers like the Thurmond Amendment's exclusions from fair housing protections put people who have already

served their time at risk of housing instability and homelessness. Studies also suggest that housing insecurity is associated with an increased risk of rearrest among people who are formerly incarcerated or on parole. Repealing the Thurmond Amendment would remove one factor keeping people from stable housing and likely reduce their risk of rearrest and re-incarceration. Reducing this barrier to housing would also help people focus on securing employment, education, and career training to help them achieve long-term goals.

- **Help People Focus on Recovery:** The majority of people arrested for drug-related offenses meet the criteria for substance use disorder (SUD).<sup>5</sup> Once housing is stabilized, many individuals are better equipped to engage in positive social and health behaviors. Housing, in particular, has also been identified as a protective factor for people navigating SUD.<sup>6</sup> Ensuring that individuals can access stable housing can provide the stability needed to complete addiction treatment and maintain recovery.
- **Preserve Landlord Autonomy:** Repealing the Thurmond Amendment would not mandate that landlords must rent to someone with a drug distribution conviction. Repealing the Thurmond Amendment would only encourage—not mandate—that landlords holistically consider an application from a person with a drug distribution conviction (just like they already do with other types of convictions) rather than automatically disqualifying the applicant. This is why realtors and apartment groups like the Wisconsin Realtors Association, the Apartment Association of Southeastern Wisconsin, and the Ohio Apartment Association support repealing the Thurmond Amendment.

**Because housing is key to economic mobility and successful re-entry, Congress must repeal the Thurmond Amendment.**

## END NOTES

1. See endnote 1 for full source list. Analysis conducted with support of Prison Policy Initiative (October 2024).
2. Id.
3. What you should know about eiv – hud. Accessed November 15, 2024. [https://www.hud.gov/sites/dfiles/PIH/documents/about\\_eiv\\_updated.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/about_eiv_updated.pdf).
4. Burrowes, Kimberly. 2019. "Can Housing Interventions Reduce Incarceration and Recidivism?" Housing Matters. February 27, 2019. <https://housingmatters.urban.org/articles/can-housing-interventions-reduce-incarceration-and-recidivism>.
5. Chandler, Redonna K., Bennett W. Fletcher, and Nora D. Volkow. 2019. "Treating Drug Abuse and Addiction in the Criminal Justice System." JAMA 301 (2): 183. <https://doi.org/10.1001/jama.2008.976>.
6. Sahvanah Prescott. 2024. "How Stable Housing Supports Recovery from Substance Use Disorders." Opioid Principles. June 5, 2024. <https://opioidprinciples.ihsph.edu/how-stable-housing-supports-recovery-from-substance-use-disorders/>.

## SOURCES

To estimate felony convictions for drug trafficking offenses in state courts between 1988 – 2006, we use data from Table I.Ia of the Bureau of Justice Statistics report National Judicial Reporting Program, 1988; Table I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 1990; Table I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 1992; Table 2 of the Bureau of Justice Statistics report Felony Sentences in the United States, 1994; Table I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 1996; Table I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 1998; Table I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 2000; Table I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 2002; the Bureau of Justice Statistics report State Court Sentencing of Convicted Felons, 2004; and Table I.I of the Bureau of Justice Statistics report Felony Sentences in State Courts, 2006.

For years between 1988 – 2006 in which the Bureau of Justice Statistics did not release a report on felony sentences in states courts, numbers are estimated based on the midpoint of the previous and following year. The numbers of felony convictions for drug trafficking from 2007 – 2023 are estimated based on the estimated number of adult arrests for drug trafficking, published in the FBI's Crime in the U.S. reports/Crime Data Explorer and the most recent known ratio of felony convictions for drug trafficking to arrests (i.e. 62%, found in Table 2I of the Bureau of Justice Statistics report Felony Defendants in Large Urban Counties, 2009).

Numbers of felony drug convictions for drug trafficking in 1988 and 1989 could not be found, as sentencing guidelines were being implemented at that time. To estimate felony convictions for drug trafficking offenses in felony courts from 1990 – 2014, we use data from the Sourcebook of Federal Sentencing Statistics. For 2015 – 2023, we use numbers from the U.S. Sentencing Commission dashboard.

Since reports publish the number of annual felony convictions – and not the number of unique felony convictions, we estimate the number of unique felony convictions for drug trafficking using Table IO of the Bureau of Justice Statistics report Felony Defendants in Large Urban Counties, 2009, which shows that 51% of people whose most serious arrest charge was drug trafficking had no prior felony convictions.