

Incarceration, Homeless Status, and Access to CoC-Funded Programs

Background

The Department of Housing and Urban Development's (HUD) Continuum of Care (CoC) Program funds low-barrier rental assistance programs for people experiencing homelessness, including those with criminal records.¹ **This makes the CoC Program an ideal resource for the significant number of people leaving jail or prison who are at risk of homelessness.**

However, CoC-funded programs can only serve people who fit HUD's definition of homeless or chronically homeless, and **periods of incarceration may impact this designation because of HUD's institutional stays rule** (also referred to as the "90-day" rule).²

This guide provides information on the institutional stays rule and suggests three actions that CoCs can take to limit the impacts of this rule on people in reentry.

Note that in order to benefit from this document, readers should familiarize themselves with the HEARTH Act's definitions of chronic homelessness and homelessness.

When Incarceration Can Impact Homeless Status

Impacts to homeless status are listed below based on their HEARTH Act category and definition:³

Impacts to Category 1: Literal Homelessness⁴

People leaving jail or prison **are considered literally homeless the day they are released** if:

- they were incarcerated for 90 days or less, and
- they resided in an emergency shelter or place not meant for human habitation immediately before being incarcerated.

If they were incarcerated for more than 90 days or were not residing in an emergency shelter or place not meant for human habitation immediately before incarceration, they are **not considered literally homeless the day they are released**.

- This will also impact someone's chronic homeless status because they must be literally homeless to meet that definition as well.
- Note that this just describes someone's status **on the day of release** and their eligibility for CoC-funded permanent housing programs that only serve people in Category 1. If

¹<https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-additional-requirements/fair-housing-and-equal-access/criminal-history/>;

https://www.usich.gov/sites/default/files/document/Housing_First_Checklist_FINAL.pdf.

² <https://files.hudexchange.info/resources/documents/Institutional-Stays-and-CoC-and-ESG-Eligibility.pdf>.

³ Note that this document does not address Category 2 or Category 3 because CoC-funded programs do not currently serve those populations.

⁴ <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/four-categories/category-1/>.

someone spends **even one night** in an emergency shelter or place not meant for human habitation, they will be considered literally homeless the next day.

Impacts to Chronic Homelessness⁵

People who have been incarcerated for 90 days or more⁶ are **not considered chronically homeless on the day of discharge**, because HUD considers such a lengthy stay a “break” in homelessness that renders prior episodes of homelessness irrelevant.⁷

People exiting incarceration after 90 days or more may also not be considered **literally homeless** on the day they are released, which is a requirement to be considered chronically homeless (see *Impacts to Category 1* above).

Incarceration Does not Impact Category 4: Fleeing/Attempting to Flee Domestic Violence⁸

CoC-funded programs that are authorized to serve people in Category 4 **can accept people directly from institutions, including jails and prisons**.⁹ This is because people in Category 4 (fleeing or attempting to flee domestic violence,¹⁰ dating violence, sexual assault, stalking, or human trafficking) do not have to be literally homeless to receive assistance.

Note that **many people in reentry will fall into this category** because of the large overlap between criminal legal system involvement, survivorship, and housing instability. For example, studies have shown that 79% of women in federal and state prisons reported histories of physical abuse, and over 60% reported past sexual abuse.¹¹ In addition, about 18% of men in state prisons report having been sexually or otherwise physically abused.¹²

Three Actions CoCs Can Take

Access to stable, affordable housing is a necessary component of successful reentry. Below are three important actions that CoCs can take to improve access to coordinated entry resources for people leaving incarceration.

Work with corrections to establish a jail or prison “in-reach” team to assess people before discharge, or to educate people about how to access coordinated entry after release. Some CoCs have the misconception that they cannot assess people while they are incarcerated or immediately upon release because they are not yet experiencing homelessness. However, this

⁵ <https://www.hudexchange.info/resource/4847/hearth-defining-chronically-homeless-final-rule/>.

⁶ This footnote acknowledges the confusing fact that the period of incarceration for Category 1 ineligibility is *more than 90 days*, while it is *90 days or more* for chronic homelessness.

⁷ https://www.hud.gov/program_offices/comm_planning/coc/faqs.

⁸ <https://www.hudexchange.info/homelessness-assistance/coc-esg-virtual-binders/coc-esg-homeless-eligibility/four-categories/category-4/>.

⁹ https://nnev.org/wp-content/uploads/2020/08/Library_Policy_HEARTH_Creating_Access_for_Survivors.pdf.

¹⁰ Please note that the Violence Against Women’s Act’s 2022 reauthorization expanded the definition of “domestic violence to include technological abuse and economic abuse.

https://www.hud.gov/sites/dfiles/Main/documents/VAWA_Letter_CoC_ESG_Grantees.pdf.

¹¹ <https://survivedandpunished.org/quick-statistics>.

¹² <https://bjs.ojp.gov/content/pub/pdf/parip.pdf>.

is inaccurate as HUD does not require people to be experiencing homelessness to be assessed.

As a practical matter, it may make sense for someone to wait until they are actively experiencing homelessness to request an assessment because then the assessment will better capture their circumstances, but that should be the decision of the person being assessed. They can also request a reassessment once their situation changes after release.

Establish a clear, written policy that coordinated entry access points must offer to assess people for CoC-funded resources regardless of how long they were incarcerated.

Some access points have declined to assess people in reentry because of the belief that individuals will never be prioritized for resources, or they will not be eligible for CoC-funded programs. However, people who are incarcerated are often some of the most vulnerable individuals in a community, and while not all coordinated entry prioritization processes account for these vulnerabilities, access points should not circumvent the prioritization process by denying access to assessments for people who may “score low.”

In addition, eligibility for CoC-funded programs is determined at program enrollment, not at assessment. Therefore, access point staff should not attempt to predict eligibility based on information available during assessment.

Thoroughly train CoC Program staff on determining eligibility for people who have been incarcerated, providing examples to illustrate how someone can regain their homeless status after release.