



CRIMINAL RECORDS SCREENING AND FAIR HOUSING

A Toolkit for Consumers





The Equal Rights Center is a civil rights organization that identifies and seeks to eliminate unlawful and unfair discrimination in housing, employment, and public accommodations in its home community of greater Washington D.C. and nationwide. The ERC's core strategy for identifying unlawful and unfair discrimination is civil rights testing.

When the ERC identifies discrimination, it seeks to eliminate it through the use of testing data to educate the public and business community, support policy advocacy, conduct compliance testing and training, and if necessary, take enforcement action.

The ERC is the only private fair housing organization dedicated to serving the greater Washington D.C. region and may be able to assist individuals who believe they have experienced housing discrimination in greater Washington D.C. region by:

THE EQUAL RIGHTS CENTER



CONDUCTING CIVIL RIGHTS TESTING



ASSISTING WITH FILING A HOUSING
DISCRIMINATION COMPLAINT



SUBMITTING REASONABLE ACCOMMODATION
AND MODIFICATION REQUESTS



PROVIDING REFERRALS TO OTHER LOCAL
RESOURCES

THE EQUAL RIGHTS CENTER

820 First St NE, Suite LL160
Washington, D.C. 20002

202-234-3062
Toll free 866-719-4372
Relay 711

www.equalrightscenter.org

One of the most effective ways to find out whether housing discrimination has happened is through civil rights testing, or mystery shopping for housing. The ERC is a **leading expert in civil rights testing** and may be able to assist you by conducting an investigation if you think you have experienced housing discrimination.

TESTER 1



TESTER 2



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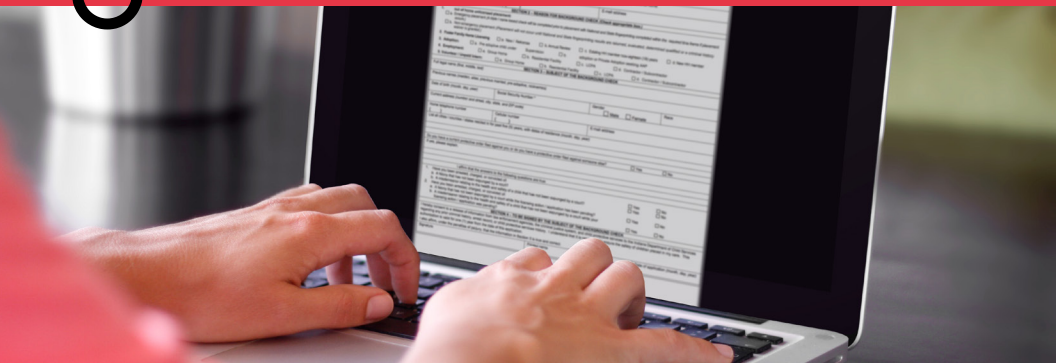
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**The information contained in this publication is not legal advice and should not be construed as such. For legal advice, please contact an attorney.*



BACKGROUND:

CRIMINAL RECORDS SCREENING POLICIES IN HOUSING



Housing providers may require individuals to undergo a criminal background check as part of the application process. A provider may use results of the criminal background check to determine whether an individual qualifies for a housing unit.

However, not all housing providers use criminal background checks in the same way. Some housing providers check to see if a person has a criminal background and, if so, whether the particular details of that history would prevent an applicants' from being a safe and reliable tenant. But other housing providers have rules that restrict anyone with a criminal record from living at a property, regardless of the specific circumstances surrounding the record. This type of policy is based on misguided and inaccurate assumptions that individuals with criminal histories are more dangerous than others. It is likely illegal under the federal Fair Housing Act.

Finally, it is critical that housing providers apply their criminal records screening policies to all applicants in the same manner, regardless of factors like an applicant's race or national origin.

BACKGROUND:

THE CRIMINAL LEGAL SYSTEM

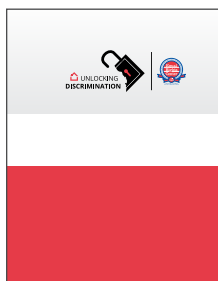


Decades of “tough on crime” policies, including the War on Drugs, have yielded a prison population in the U.S. that is, by far, the largest in the world. Nearly one-third of the U.S. population has a criminal record of some sort. Across the country, some people are more likely to have a criminal record than others. This is true because of a variety of policy trends and social factors, not necessarily because such groups are more likely to commit crimes.

For example, across the board, the burden of involvement with the criminal legal system has fallen much more heavily on people of color than whites. Nationally, African Americans and Hispanics are arrested, convicted, and incarcerated at rates disproportionate to their share of the general population. This trend holds true in the Washington D.C. region.



In addition, people with disabilities are dramatically over-represented in prisons and jails across the country, and many survivors of domestic violence have a criminal record related to the violence perpetrated against them.



In October 2016, the ERC released a report based on civil rights testing of this issue. In total, 47% of tests conducted revealed differential treatment from a housing provider that favored the white tester. Further, 28% of tests revealed a criminal records screening policy in place that may have an illegal disparate impact on the basis of race.



BACKGROUND:

HOUSING RELATED LEGAL PROTECTIONS THAT MAY COVER PEOPLE WITH CRIMINAL RECORDS

THE FAIR HOUSING ACT

The federal Fair Housing Act prohibits discrimination in housing related transactions on the basis of a person's:

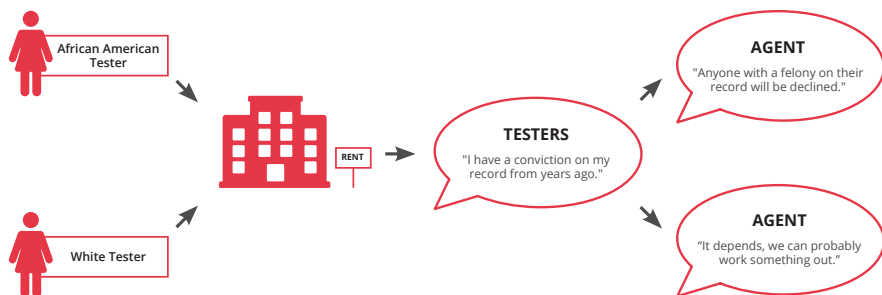
- *Race*
- *Color*
- *National Origin*
- *Religion*
- *Sex*
- *Disability*
- *Familial Status (whether or not a household includes kids under 18)*

The U.S. Department of Housing and Urban Development and the U.S. Department of Justice are responsible for enforcing the Fair Housing Act. Even though having a criminal record is not a protected identity under the Fair Housing Act, both agencies have released information about how the Fair Housing Act may apply to criminal records screening policies in 2016. Three major takeaways from that guidance are:

1. A Fair Housing Act violation occurs when a housing provider treats individuals with comparable criminal histories differently because of race (or some other protected characteristic). For example, it would be illegal under the Fair Housing Act for a landlord to require a background check for African American applicants but not white applicants. ERC testing on this subject indicates that differential treatment like this is fairly common.

BACKGROUND:

HOUSING RELATED LEGAL PROTECTIONS THAT MAY COVER PEOPLE WITH CRIMINAL RECORDS



2. Criminal records based restrictions for housing opportunities will violate the Fair Housing Act if their burden falls more often on one protected group of people over another without a substantial, legitimate business justification.* For example, because of the stark racial disproportionalities that exist across the criminal legal system, a ban on any applicant with a criminal record in an apartment community would likely violate the Act because it would severely limit housing opportunities for Black and Latinx housing applicants without making the community safer.
3. Criminal records screening policies based on arrests alone, and not actual convictions, will not be able to successfully claim that such a policy assists in achieving the substantial, legitimate, nondiscriminatory interest of protecting resident safety and/or property because, as the Supreme Court has stated, “an arrest shows nothing more than that someone probably suspected the person apprehended of an offense.”

** Due to language in the Fair Housing Act itself, this does not apply to the denial of housing due to a person's conviction for drug manufacturing and distribution.*



BACKGROUND:

HOUSING RELATED LEGAL PROTECTIONS THAT MAY COVER PEOPLE WITH CRIMINAL RECORDS

It is important to understand that there are numerous additional, in-depth criminal history related restrictions and provisions in relation to public and other types of federally subsidized housing. For more information about this, you can contact the Equal Rights Center.

In addition to coverage provided by the federal Fair Housing Act, there are also local and state protections against housing discrimination. The District of Columbia boasts one of the most expansive human rights ordinances in the country, with protections against housing discrimination on the basis of the seven federally protected classes, along with:

- *Marital status*
- *Age*
- *Personal appearance*
- *Sexual orientation*
- *Gender identity or expression*
- *Family responsibilities*
- *Political affiliation*
- *Matriculation*
- *Source of income*
- *Place of residence or business*
- *Status as a victim of an intra-family offense*

When it comes to ensuring that people with criminal records have access to safe housing, such protections may also be helpful and they should be used to the greatest extent possible for that purpose.

BACKGROUND:

HOUSING RELATED LEGAL PROTECTIONS THAT MAY COVER PEOPLE WITH CRIMINAL RECORDS



Protections for Survivors of Domestic Violence with Criminal Records

Many survivors of domestic violence have a criminal record because of the violence perpetrated against them. There are various housing-related protections available to survivors of domestic violence. These include the Violence Against Women Reauthorization Act of 2013, local and state fair housing laws, and the Fair Housing Act itself.



UP TO 98%

of incarcerated women
have experienced trauma
prior to incarceration.

Protections for People with Disabilities and Criminal Records

People with disabilities are also disproportionately involved in the criminal legal system. As a result, people with disabilities may be illegally, adversely affected by blanket bans that prevent anyone with a criminal record from living in a housing unit. Further, individuals that have a criminal record related to their disability may be able to request a reasonable accommodation to a housing provider's criminal record screening policy.



RED FLAGS FOR DISCRIMINATION

DISCRIMINATION IS OFTEN SUBTLE.

If you are a person with a criminal record, here are some signs you can look out for that suggest you may have experienced illegal housing discrimination:



You believe that a housing provider only requires some applicants to undergo a criminal background check.



You aren't even able to submit an application because of a felony conviction on your record.



A housing provider has a criminal records screening policy in place that bans all applicants with any criminal history, regardless of factors like the nature of the crime, how long ago it occurred, or actions an individual has taken to rehabilitate themselves since.



A housing provider makes derogatory remarks based on stereotypes about crime based on protected areas of your identity. For example, a housing provider tells a trans person that she does not want trans renters because all trans individuals are sex workers, or a landlord tells a grandmother with teenage grandsons residing with her that he does not rent to families with teenage boys because teenage boys commit crimes so often.

RED FLAGS FOR DISCRIMINATION



A housing provider tells you that they make decisions about applicants based on arrest records.



You overhear a housing provider asking some applicants about their criminal history but not others.



You have a criminal record related to your disability, and request a reasonable accommodation to a criminal records screening policy but are denied.



You are experiencing domestic violence and are arrested due to that violence, and a housing provider tells you that you need to move because you've been arrested.



HOW TO RECOGNIZE DISCRIMINATORY BANS IN HOUSING



Discriminatory criminal history related bans in housing can be implemented in many different ways. One of the most egregious examples that the ERC has encountered involves a housing provider website application portal that requires an applicant to disclose whether or not they or any other household applicant has a felony conviction on their record:

Have you are any other applicant or occupant ever been convicted of a felony? i

Yes

No

Yes

We are unable to lease to anyone who has been convicted of a felony. Should you have any questions, please contact the leasing office for this community.

Save

Save & Continue

[f](#) [in](#)

The only choices available to answer the question, which occurs very early on in the application, are “yes” and “no”.

HOW TO RECOGNIZE DISCRIMINATORY BANS IN HOUSING



If an applicant chooses “yes”- regardless of what the conviction was for, when it was incurred, how old the individual with the conviction was at the time of the conviction, or what the individual has done to rehabilitate themselves since the conviction, the applicant is unable to proceed with their application and, therefore, unable to submit it.

reslising.securecafe.com says: X

We are unable to reserve an apartment for you at this time due to your answer regarding Felony convictions. Should you have any questions, please contact the leasing office for this community.




OK

Have you are any other applicant or occupant ever been convicted of a felony? i

Yes ▼

Save

Save & Continue





WHAT YOU CAN DO

Finding a home that meets your needs if you or a household member has a criminal record can be challenging. Remember that you have rights and that there are organizations available to assist you! Here are some steps that you can take if you are looking for a home and it feels like a criminal record you've moved on from is getting in your way:



Carefully document your interactions with landlords and agents. This could help uncover discriminatory conduct. Take detailed notes during your housing search, including:

- *Property name, address, and phone number*
- *Name and title of the agent(s) you spoke with*
- *Date and time of the call/visit*
- *Was there a criminal background check required –and, if so, what was the fee for it?*
- *Were there any apartments available within your move-in date? If not, what was the earliest availability date?*
- *How much was the rent and security deposit? What utilities were included?*
- *Do you know the rent and terms of other tenants?*

Save copies of the listings, rental applications, correspondence such as business cards and any emails and letters that you compile during your housing search. Even after you have moved into your unit, take detailed notes of your conversations with your landlord, including the date the conversations took place. Save copies of all correspondence, documents, and receipts.

WHAT YOU CAN DO



If a housing provider denies your application, ask them why they did so. If they tell you that it's because of something that came up in a criminal background check, ask them for the name, address, and phone number of the consumer reporting company that supplied the report, then obtain a copy of it (you're legally entitled to a free copy).

Review it closely and ensure that the information included in it is accurate. If the information is not accurate, dispute it with the reporting company. It is your right to do so under the Fair Credit Reporting Act. Research indicates that criminal background reports regularly mismatch people with similar names or birth dates; neglect crucial information about a case; include sealed or expunged information; provide misleading information; and/or misclassify offenses. If a reporting company will not investigate and/or change inaccurate information on the report, you can file a complaint with the Federal Trade Commission.

If you identify inaccurate information in the report and are still interested in living in the home you applied for, you can always try explaining the inaccuracies to the housing provider and asking them to reconsider their decision.



WHAT YOU CAN DO



If a housing provider tells you that they do not accept any applicants with an arrest and/or conviction record, ask for their policy in writing. Take notes and document your interactions to the greatest extent possible.

- *If you are still interested in renting a home from them, provide them with a copy of the April 2016 HUD guidance on criminal records screening policies and fair housing included in the Additional Resources section. Explain that it may be illegal for them to have such a broad policy, explain why you will make a great tenant, and ask them to reconsider your application. Consider reporting the outcomes of your experience to the ERC.*
- *If the provider denies your request for reconsideration or you are not interested in living at the property any longer but are interested in filing a fair housing complaint, contact your local fair housing center. In the greater Washington D.C. area, that would be the ERC. Even if you are not interested in filing a complaint, consider reporting your experiences.*

WHAT YOU CAN DO



If you have a criminal record related to a disability and your record is leading to a denial of housing, you may be able to request a reasonable accommodation to a housing provider's criminal records screening policy. If you need assistance with making a reasonable accommodation request or if you feel that a request has been illegally denied, contact your local fair housing center.



If you are a survivor of domestic violence with a criminal record that is related to the violence you experienced, there may be some legal protections you can access based on the kind of housing you are applying to live in and/or where you live. Keep a detailed record of your interactions with the housing provider and contact your local fair housing center or domestic violence service provider for more advice and assistance. The ERC can help you locate the appropriate contact information.



HOW TO GET HELP



If you believe that you have experienced discrimination, you have the right to file a complaint with the Department of Housing and Urban Development or your local governmental agency that conducts fair housing investigations. For example, individuals who believe they experienced discrimination in Washington, D.C., can report to the D.C. Office of Human Rights.

The Equal Rights Center can help you start this process, or connect you with a fair housing organization near you.

Be prepared to provide the information listed under “What You Can Do” on page 10.

THE EQUAL RIGHTS CENTER

820 First St NE, Suite LL160

Washington, D.C. 20002

202-234-3062

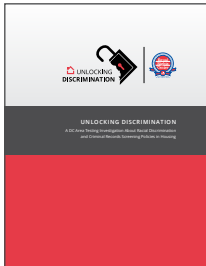
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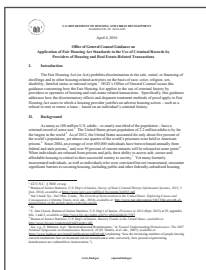
ADDITIONAL RESOURCES

SOME ADDITIONAL RESOURCES THAT YOU MIGHT FIND HELPFUL INCLUDE:



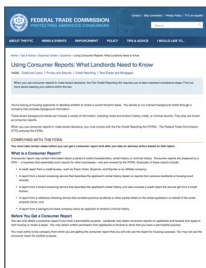
Unlocking Discrimination: A DC Area Testing Investigation About Racial Discrimination and Criminal Records Screening Policies in Housing by the Equal Rights Center

<https://equalrightscenter.org/wp-content/uploads/unlocking-discrimination-web.pdf>



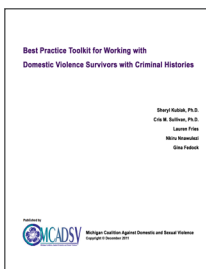
Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions by HUD

<https://portal.hud.gov/hudportal/documents/huddoc?id=hudogcguidappfhastandcr.pdf>



Using Consumer Reports: What Landlords Need to Know

<https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>



Best Practice Toolkit for Working with Domestic Violence Survivors with Criminal Histories by the Michigan Coalition Against Domestic and Sexual Violence

<http://ocadvsa.org/wp-content/uploads/2014/04/Best-Practice-Toolkit-for-Working-with-DV-Victims-with-Criminal-Histories.pdf>



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