

Screened Out

**How Tenant Screening
Reports Deprive Tenants of
Equal Access to Housing**

January 2020

**Shriver
Center on
Poverty
Law**



**Screened Out:
How Tenant Screening Reports
Undermine Fair Housing Laws and
Deprive Tenants of Equal Access to Housing in Illinois**

**By
Tex Pasley
University of Virginia Powell Fellow in Legal Services**

**Henry Oostrom-Shah
Advocacy Program Associate**

**Eric Sirota
Director of Housing Justice**

January 2021

Acknowledgments

The authors extend their sincere gratitude to their Shriver Center supervisors and colleagues, Eric Sirota, Marie Claire Tran-Leung, and Kate Walz for their encouragement and guidance. This report also benefited greatly from the feedback of Mary Frances Charlton at the Chicago Coalition for the Homeless, Eric Dunn at the National Housing Law Project, Ariel Nelson at the National Consumer Law Center, and Anna Reosti at the American Bar Foundation.



This report was made possible with a grant from The Chicago Community Trust, a community foundation dedicated to strengthening the Chicago region and improving the lives of the people who call it home.

Introduction

Access to quality, affordable housing is a critical part of creating family and community stability. Yet racism, both systemic and individual, has blocked communities of color from fair access to housing. Housing discrimination did not end with the passage of the federal Fair Housing Act in 1968.¹ Rather, housing discrimination became more sophisticated, especially with the dawn of technology. In “the New Jim Code,” technology—algorithms, artificial intelligence, cloud computing—confines, controls and discriminates against Black, Latino/a/x, and other tenants of color, depriving them of housing opportunities and sustain longstanding inequities.²

The goal of this report is to help advocates understand one of these central technologies—tenant-screening reports. We explain what a screening report is, how to read it, and how it can be used as tenants apply for housing. We also identify how tenant screening reports enable continued discrimination in housing. To address the problems within the industry, we provide an overview of federal, state, and local legal protections that apply to the use of tenant screening reports. Finally, we make recommendations for practitioners and policymakers to better protect individuals seeking housing from being denied because of a tenant screening report.

The Origin of Tenant Screening Reports

Over the past several decades, technology has fundamentally changed how landlords decide whether to rent to a tenant. Tenant screening reports have changed a simple business transaction to an evaluation of risk—will this potential tenant pose a threat to my property or to other tenants?³

The tenant screening report industry came to life in the 1970s. By the 1990s, tenant screening reports were a common and regular part of how landlords considered applicants for their housing.⁴ Tenant screening reports today often include an applicant’s rental history, their credit report, a criminal background check of the applicant, and records of civil cases where the applicant is a party, such as eviction or debt collection cases.

¹ Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

² Ruha Benjamin, *Race After Technology: Abolitionist Tools for the New Jim Code* (2019).

³ See David Thacher, *The Rise of Criminal Background Screening in Rental Housing*, 33 LAW & SOC. INQUIRY 5 (2008).

⁴ See *id.*; see also Robert W. Benson & Raymond A. Biering, *Tenant Reports as an Invasion of Privacy: A Legislative Proposal*, 12 LOY. L.A. L. REV. 301, 305-06 (1979) (noting, forty years ago, that “[t]he magic of the modern computer allows U.D. Registry [a tenant screening agency] to search records easily, maintain and update files, and release specific information upon request”); Rudy Kleysteuber, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1346 (2007) (discussing “trend of gathering information about tenants, which began to raise eyebrows almost thirty years ago”); Paula A. Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 667 n. 38 (2018) (noting that tenant blacklists have existed since the 1970s, but that they “have grown exponentially in the past several decades, due in large part to the advent of quicker and more accessible technologies”).

In recent years, more landlords have taken advantage of these reports as part of the application process.⁵ Landlords, if they are willing to pay more, can purchase reports that synthesize the underlying records and then produce a score, like a credit score, that purports to tell the landlord if the applicant would make a good or bad tenant.

What Is in a Tenant Screening Report?

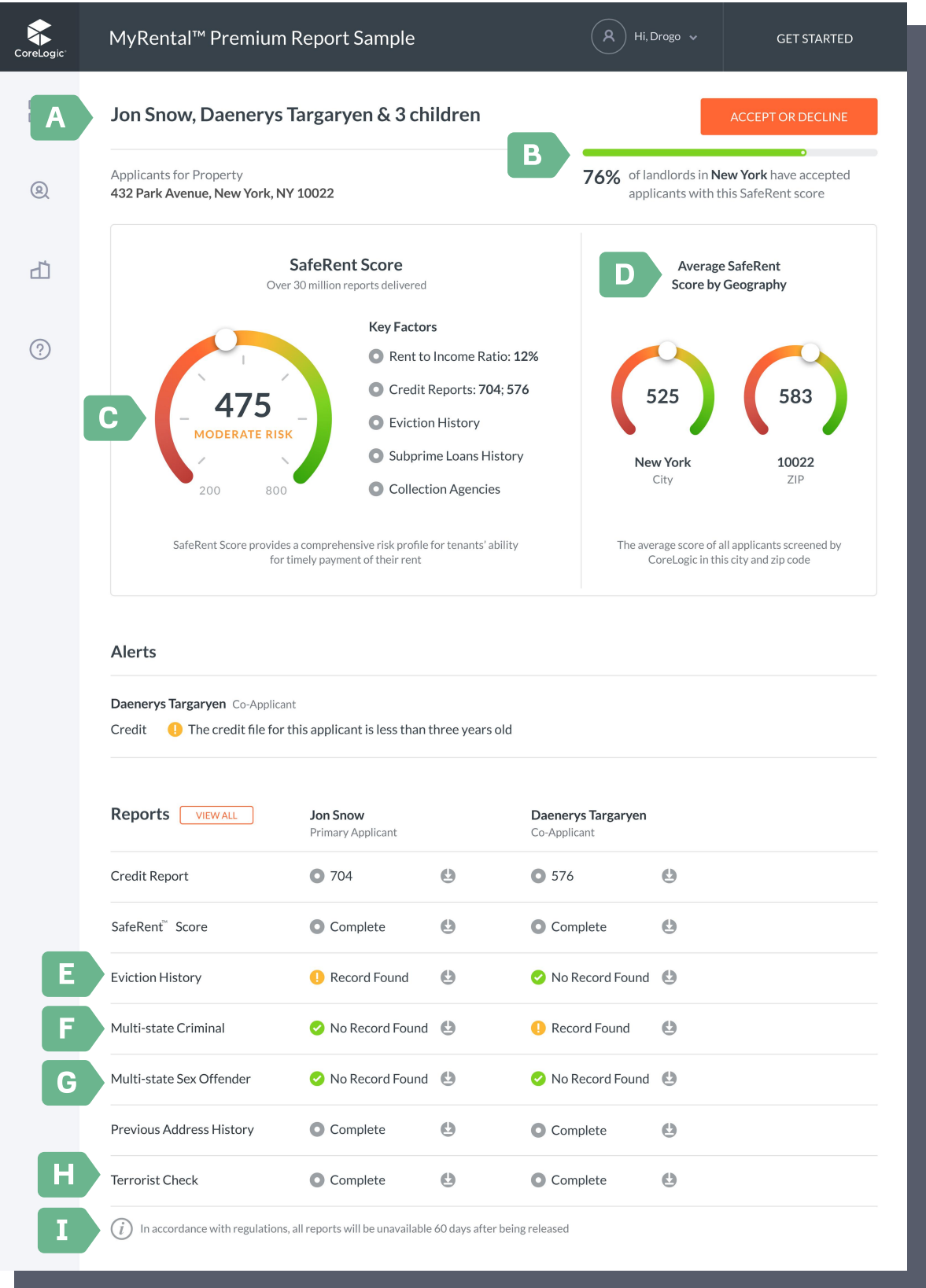
Tenant screening reports are difficult documents to understand. As the graphic on the following pages shows, tenant screening reports are full of information and data that result in scores or ranking of the applicant. The screening reports also evaluate the applicant in terms of where they live, looking at their ZIP code, county, and region, to compare the applicant to other potential tenants. Tenant screening reports often rely upon invisible criteria and recommend rejecting or accepting applicants without showing the reasons why.

Tenant screening reports primarily rely upon arrest and conviction records to describe a person's "criminal history." A landlord can easily purchase a person's criminal history data from all fifty states with one of the tenant screening report websites and receive the information almost immediately.

⁵ Eric Dunn & Marina Grabchuk, *Background Checks and Social Effects: Contemporary Residential Tenant-Screening Problems in Washington State*, 9 SEATTLE J. FOR SOC. JUST. 319, 320 (2010) ("In today's age of online public records and digital transmission, a rental applicant's complete residential history, credit report, criminal record, civil litigation background, and other information are available within hours or even minutes[.]"); Joy Radice, *The Reintegrative State*, 66 EMORY L.J. 1315, 1318 (2017) ("The U.S. criminal history database holds over 100 million records. And with today's technology, criminal records have become accessible to anyone willing to pay for them, through state public records searches or thousands of online private databases.").

Sample Tenant Screening Report

This graphic and corresponding chart walk through different elements of a sample tenant screening report from industry leader CoreLogic. This report type is called the "MyRental Premium Plus." This example is drawn from a CoreLogic model report; the underlying PDF can be found at [https://cdn2.hubspot.net/hubfs/335582/Premium report sample Feb 2020.pdf](https://cdn2.hubspot.net/hubfs/335582/Premium%20report%20sample%20Feb%2020.pdf). CoreLogic charges \$34.99 per report. Applicants must consent to a credit check to initiate an automatic screening process.



Tenant Screening Report Details

Letter	What Is This?	Sources for This data	Potential Biases	Potential Legal Issues
A	Names of applicant and future members of the household.	Applicant self-report.		It is unclear whether this premium report searches databases for just the applicant or all members of the household. If it searches for all members of the household, the report may incorporate past juvenile records, which are typically subject to a presumption of confidentiality.
B	An indicator of what percentage of CoreLogic customers have accepted or declined applicants with a similar score throughout the state of New York.	CoreLogic's customer database.	<p>First, as this report indicates, many practices used by property owners across the private rental industry are already discriminatory. By comparing an individual applicant to a massive aggregate of discriminatory decisions, the "accept or decline" recommendation erases individual context behind a given record.</p> <p>Second, New York and other states have diverse communities that are not equally targeted by mass incarceration and the criminal legal system. In some neighborhoods, almost half of the community members have a record, while in others, almost no one has a record. This indicator encourages the comparison of apples to oranges.</p>	The erasure of individual context in a record conflicts with the HUD Fair Housing Act (FHA) guidance discussed later in this report.
C	A CoreLogic trademarked tool, the SafeRent Score employs an undisclosed combination of factors to determine an applicant's overall "risk" according to a 200 to 800 point score, much like a credit score.	Unknown and various, but includes criminal-legal system information, credit score and other economic indicators related to debt, as well as eviction history.	This score simplifies and hides a wide variety of biased indicators behind a single score. Past outcomes linked, either directly or indirectly, to racist systems are used to predict future behavior.	

D	See above. This indicator compares the applicants' SafeRent score with average scores in the city and ZIP code where the rental property is located.	See above. Unknown and various.	As with B, broad geographic comparisons naturalize discrimination between and within segregated communities. The focus on ZIP code is especially problematic. Racial and economic changes associated with gentrification go hand in hand with increased policing of low-income residents of color. ⁶ Because residents of color are more likely to have a history of justice-involvement, their "scores" will likely be lower than those of white residents. These factors accelerate the pushout of communities of color and the ongoing segregation of our cities.	
E	An indicator of the applicant's past rental history related to eviction.	Eviction records are court records, and typically obtained by tenant screening companies in a manner like the one used to obtain criminal court records, as described above.	Many eviction proceedings are dismissed before a judgment is reached. This means that the underlying records rarely show proof that the tenant violated any lease terms or engaged in behavior that makes them less likely to be a good tenant.	
F	A search for criminal records related to the applicant and household members across all 50 states.	Unclear. This could include anything from arrests to convictions to diverted or deferred records. The FBI centralizes some of this information, but there is no reliable indicator of how often the central database is updated.		Underlying information is technically available to consumers through the Fair Credit Reporting Act (FCRA). However, this will be hard to enforce given the myriad of sources used to generate this information.

⁶ Abdallah Fayyad, The Criminalization of Gentrifying Neighborhoods, in *The Atlantic*, Dec. 20, 2017, <https://www.theatlantic.com/politics/archive/2017/12/the-criminalization-of-gentrifying-neighborhoods/548837/>.

G	Unclear. This is likely a state of state sex offender registries. Accordingly, this information reflects whether an individual is required by law to register, not whether they have been convicted of sex-related crimes.	Unclear. This information likely comes from two sources: (1) a search for the applicant and household members on registries for people convicted of sex crimes across all 50 states; (2) a match between specific pieces of arrest or conviction history and CoreLogic's list of crimes that qualify as "sex offenses." This often includes a wide variety of convictions from possession of pornographic material to acts of physical violence.		
H	Unclear	Unclear. This information appears to be drawn from various federal "most wanted" lists.		The tenant screening industry and other private vendors should not have access to federal "most wanted" lists.
I	Unclear.	Unclear.		Applicants will not have access to underlying records. This runs contrary to a core protection of FCRA: consumers should have 60 days to obtain underlying information used in consumer reports.

Criminal Histories

Arrest and conviction records have broad consequences. Many Americans have been involved in the criminal-legal system at some point in their lives; 1 in 3 Americans has an arrest or conviction record.⁷ For many, once they encounter the criminal legal system, the so-called “debt to society” is never fully repaid. A record can bar access to stable housing, a fair chance at employment, a professional license, and even public benefits.

The criminal legal system produces and reinforces racial disparities. Although Black, Latino/a/x, and white Americans do not engage in illegal activity at different rates, people of color are much more likely to be arrested or incarcerated. Only 13% of the Illinois population is Black, but over half the people in Illinois prisons on any given day are Black.⁸ Latinos are imprisoned 50% more than white Illinoisans.⁹ This inherently broken and racist system stigmatizes Black and Latino/a/x individuals by putting their criminal histories out into the public, and permanently depriving them of opportunities.

Criminal history records also project an incomplete, often deeply flawed, picture. Online records are often based on messy court files riddled with duplicate names. For example, there are hundreds of “John Smiths” in the Peoria County, Illinois, online database, but screening companies often do not do enough to ensure that they are offering the screening report of the specific “John Smith” applying for a unit. Some court documents do not show the final status of a conviction, so they may be showing a property owner what a person was charged with, rather than what they were convicted of. Some records also report arrests that do not result in a conviction but infer that those arrests did result in a conviction.

How a Tenant Screening Report Is Created

Before discussing the regulation of tenant screening reports and the tenant screening industry, it is necessary to understand how a tenant screening report is created.¹⁰ The exact process of how

⁷ NATIONAL CONFERENCE OF STATE LEGISLATURES, BARRIERS TO WORK: PEOPLE WITH CRIMINAL RECORDS (2018), <https://www.ncsl.org/research/labor-and-employment/barriers-to-work-individuals-with-criminal-records.aspx>.

⁸ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons*, THE SENTENCING PROJ. (June 14, 2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

⁹ *Blueprint for Smart Justice: Illinois*, ACLU (2018), <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-IL.pdf>.

¹⁰ Sharon M. Dietrich, *Ants Under the Refrigerator? Removing Expunged Cases from Commercial Background Checks*, CRIM. JUST., Winter 2016, at 27, <https://ccresourcecenter.org/wp-content/uploads/2017/03/Ants-under-the-Refrigerator-published.pdf>; see also Ariel Nelson, *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs & Housing*, NAT’L CONSUMER LAW CTR., Dec. 2019, at 10 [hereinafter Nelson, *Broken Records Redux*].

records are obtained and the reports are created is murky and varies by company; in general, the process involves the following steps:¹¹

- First, the applicant must give consent to the housing provider to run a background check.
- The housing provider then orders a background check from a tenant screening company.¹²
- The screening company typically promises results in “minutes.”¹³ To achieve this rapid response, screening companies access records stored in a database (which the company may not own), and then search that database using proprietary matching criteria to acquire information on a particular individual.¹⁴
- The database itself is often compiled by an outside information vendor, who does the actual work of compiling the information that goes into the database.¹⁵ Because there is no industry standard, practices vary among companies as to how often the database is updated and how information from thousands of court systems is merged into a uniform format.¹⁶
- Information vendors have two primary methods of collecting information to go into the database. Traditionally, vendors would send “runners” to courthouses and police departments¹⁷ in jurisdictions where the report subject lives or has lived.¹⁸ As technology

¹¹ Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES, May 28, 2020, <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html> (quoting representative of an industry trade group, who acknowledged that no industry standard exists).

¹² These companies often sell a range of products, with higher-priced products providing additional information, such as eviction records, or additional features, such as tenant risk scores or algorithmically generated decisions.

¹³ See, e.g., TransUnion SmartMove, *Criminal Report* (last visited June 9, 2020), <https://www.mysmartmove.com/SmartMove/tenant-background-report.page> (noting that 370+ million criminal records are searched within minutes).

¹⁴ Nelson, *Broken Records Redux*, at 11.

¹⁵ Dietrich, *Ants Under the Refrigerator*, *supra* note 3, at 27 (“Commercial background checkers almost never begin a report by directly checking public data, such as court records. Instead, virtually every commercial background screener begins by running a query of a database maintained by one of a handful of middlemen that obtain data in bulk directly from public sources, usually the courts.”).

¹⁶ The private credit reporting industry has adopted a standardized reporting format, known as Metro 2, but no equivalent exists for reporting of public record information. See Consumer Fin. Prot. Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System: A Review of How the Nation’s Largest Credit Bureaus Manage Consumer Data*, Dec. 2012, at 14, https://files.consumerfinance.gov/f/201212_cfpb_credit-reporting-white-paper.pdf [hereinafter, Consumer Fin. Prot. Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System*].

¹⁷ In Illinois, records can be obtained from the state police, local police reports, or the local circuit court. Ill. Legal Aid Online, *How to Get Copies of Your Criminal Records*, <https://www.illinoislegalaid.org/legal-information/how-get-copies-your-criminal-records> (last visited June 12, 2020).

¹⁸ SEARCH, The Nat’l Consortium for Justice Information & Statistics, *Report of the National Task Force on the Commercial Sale of Criminal Justice Record Information*, 2005, at 9-10 [hereinafter SEARCH, *Report of National Task Force*]. See also Consumer Fin. Prot. Bureau, *Key Dimensions and Processes in the U.S. Credit Reporting System*, at 13 (describing how consumer reporting agencies obtain public records).

has advanced, vendors have begun to obtain records electronically, through bulk purchases of criminal record information from local courts or law enforcement agencies.¹⁹

- Once the screening company obtains information on the applicant through the database, that information is compiled into a “report.” Companies do not adhere to an industry-standard process for verifying the accuracy of information pulled from the database. Thus, a report may be generated from a computer search without any review by a human being. And while the reports are designed to be compliant with federal law, no additional review is required to make sure the report complies with more stringent state and local laws that may limit reporting of certain types of records.
- Historically, a screening report would simply list the criminal record of the applicant. Today, many companies offer (for a fee) to provide a risk score (similar to a credit score) or simple yes/no recommendation to whether the landlord should lease to the applicant. These recommendations and scores are generated by proprietary algorithms, and companies—citing intellectual property protections—are not required to disclose the factors that go into generating the algorithmic score or decision.
- Finally, the landlord receives the report—or final score and recommendation in lieu of a full report—and decides whether to accept or reject the applicant.

The Role of the Fair Credit Reporting Act in Regulating Tenant Screening

When a housing provider relies on an inaccurate tenant screening report to deny admission, the applicant denied housing may have a remedy under the Fair Credit Reporting Act (FCRA).²⁰ FCRA is a federal law that regulates the activities of consumer reporting agencies, users of consumer reports, and the furnishers of information contained in a consumer report, which includes tenant screening reports.²¹ Although FCRA provides many important protections for renters with criminal histories who apply for housing, its protections are limited and often difficult to enforce.

FCRA governs the use of criminal records in tenant screening reports in two key ways. First, FCRA prohibits the reporting of certain records that are “obsolete.” As applied to criminal records, the prohibition against reporting obsolete records only prohibits the reporting of *arrest*

¹⁹ SEARCH, *Report of National Task Force*, at 10-12.

²⁰ 15 U.S.C. § 1681 *et seq.*,

²¹ See Nat’l Consumer Law Ctr., *Fair Credit Reporting* § 1.3.1 (9th ed. 2017). Under FCRA, a “consumer report” means “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness [creditworthiness], credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.” 15 U.S.C. § 1681a(d)(1). Although the Act does not expressly define tenant screening reports as “consumer reports,” there is little dispute that a tenant screening report is a “consumer report” under FCRA. See *Fair Credit Reporting* § 2.3.6.3.3 (collecting cases).

records more than seven years old; a *conviction* record is never considered obsolete under FCRA.²²

FCRA also requires tenant screening agencies to take reasonable steps to ensure “maximum possible accuracy” in tenant screening reports. The term “accuracy” is not defined in FCRA, but most courts will consider the record to be inaccurate if it is “materially misleading,” although a minority of courts only require “technical accuracy.” For example, if the reporting agency reported that a debt was turned over to a collections agency, but did not report that the debt had been paid off, such a report would be “technically accurate,” but still be “materially misleading” because it would suggest that the individual was still obligated to pay the debt.²³ A criminal background check might be considered “materially misleading” under this standard if, for example, the screening report disclosed (accurately) that an individual was charged with a crime, but the report did not provide information indicating the charge was later dismissed without a conviction.²⁴

Screening companies are not held strictly liable for any inaccuracy in a screening report. Instead, FCRA provides that a consumer reporting agency “shall follow *reasonable procedures* to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”²⁵ Thus, a screening company may be protected from liability even if it produces a report that is patently inaccurate, so long as it can show the procedures used to produce the report were reasonable.²⁶

An emerging issue under FCRA is whether screening companies should be held liable for reporting expunged and sealed criminal records.²⁷ In recent years, many states—including

²² 15 U.S.C. § 1681c(a)(5).

²³ See Fed. Trade Comm’n, *40 Years of Experience with the Fair Credit Reporting Act with Summary of Interpretations* § 607(b).

²⁴ *Id.*

²⁵ 15 U.S.C. § 1681e(b); see *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 1994) (“In order to state a claim under [§ 1681e(b)], a consumer must sufficiently allege that a credit reporting agency prepared a report containing inaccurate information”) (quotation marks omitted) (citations omitted). When conducting employee background checks, screening companies are held to a higher standard, required to adhere to “strict procedures” to ensure that potentially adverse public record information is complete and up to date. 15 U.S.C. § 1681k. Although the focus of this report is on state and local reforms, a straightforward legislative reform proposed at the federal level would apply this stricter requirement the use of public records in tenant background checks as well. See Nelson, *Broken Records Redux*, at 37 (recommending this amendment).

²⁶ *Henson*, 29 F.3d at 285-86 (holding that credit reporting agency was not liable for using unreasonable procedures under FCRA, even though underlying report was inaccurate; see Nat’l Consumer Law Ctr., *Fair Credit Reporting* § 4.4.5.1.1 n. 528 (collecting cases)).

²⁷ See Dietrich, *Ants Under the Refrigerator*. Although definitions vary by state, in Illinois, a “sealed” record is a record kept on file with the court, but with restricted access. An “expunged” record has been completely erased, so that no record should remain with the court or state records repository. Ill. Legal Aid Online, *Criminal Records: Expungement v. Sealing*, <https://www.illinoislegalaid.org/legal-information/criminal-records-expungement-vs-sealing> (last visited June 15, 2020).

Illinois²⁸—have expanded opportunities for individuals to have their records expunged or sealed. In theory, such relief offers another avenue for an individual to reduce the stigma of a criminal record, and to rein in the harmful practices of the tenant screening industry. However, because tenant screening companies typically pull records from poorly maintained and infrequently updated databases, expunged and sealed records continue to appear on tenant screening reports.²⁹ Courts have suggested, in passing, that a screening company may be held liable for reporting a sealed or expunged record.³⁰

The Rights and Obligations of Housing Providers and Applicants when Using Tenant Screening Reports

If an applicant is denied housing and the source of that denial is based on the inaccuracy of their tenant screening report, the applicant can take steps to dispute that report. In addition, housing providers that rely upon those reports to deny an applicant housing have their own affirmative steps that they must take. If the applicant believes the information reported is inaccurate or obsolete, they may dispute the report with the reporting agency or file a lawsuit. If a dispute is filed, FCRA then requires the reporting agency to conduct a “reinvestigation.”³¹

Reinvestigation provides several openings towards accountability:

²⁸ See Alexa Elejalde-Ruiz & Lisa Schencker, *Employers More Open to Hiring People with Criminal Backgrounds*, CHI. TRIB., Sept. 8, 2018, <https://www.chicagotribune.com/business/ct-biz-ex-con-employment-0909-story.html> (discussing changes in state law). Notably, the state now automatically expunges juvenile adjudications of delinquency (the equivalent of a conviction), as well as many low-level drug possession convictions, and allows for discretionary expungement of many criminal convictions. Megan Crepeau, *Thousands of Weed Convictions Will Be Automatically Expunged in Cook County: ‘We Are Righting the Wrongs of the Past’*, CHI. TRIB., Aug. 28, 2019, <https://www.chicagotribune.com/news/criminal-justice/ct-marijuana-conviction-expungement-kim-foxx-20190827-3zytvgvmdzf4jlx4crnz5dbfae-story.html>.

²⁹ See Dietrich, *Ants Under the Refrigerator*, at 28 (discussing case where expunged record appeared 20 months after it had been expunged and removed from publicly accessible state court website); Sharon Dietrich, *Reporting Expunged or Sealed Cases in Commercial Background Checks Violates the Fair Credit Reporting Act*, NAT’L RECORD CLEARING PROJ., (on file with author) (mentioning multiple cases where screening company settled with class of plaintiffs after expunged or sealed records were allegedly reported).

³⁰ See *McNamara v. HireRight Solutions, Inc.*, No. 13 C 5215, 2014 U.S. Dist. LEXIS 11056, at *16 (N.D. Ill. Jan. 29, 2014) (finding that screening company could continue reporting criminal dispositions “until, of course, they are sealed or expunged”); *but see Aldaco v. RentGrow, Inc.*, 921 F.3d 685 (7th Cir. 2019) (holding that the term “conviction,” as used in FCRA, should be defined in reference to federal, not state law). As other commenters have noted, the *Aldaco* holding could be used to argue that a state law expungement does not make the conviction “obsolete” for purposes of FCRA. See Sharon Dietrich, *Reporting Expunged or Sealed Cases in Commercial Background Checks Violates the Fair Credit Reporting Act*, NAT’L RECORD CLEARING PROJ., at 3 (on file with author). When understood in combination with FCRA’s preemption provisions, discussed below, this argument—if accepted by courts—would likely prevent states from enacting regulations to prohibit the reporting of expunged or sealed convictions on tenant screening reports.

³¹ See 15 U.S.C. § 1681i (FCRA reinvestigation procedures).

- **Provide information to the applicant upon the denial of housing.** If an applicant is denied housing due to a tenant screening report, the housing provider must (1) provide oral, written, or electronic notice of the denial or “adverse action” to the applicant; (2) disclose, in writing or electronically, information about any credit or “risk score” used to evaluate the applicant;³² (3) provide, orally, in writing, or electronically, the name, address, and telephone number of the consumer reporting agency that furnished the report; and (4) provide oral, written, or electronic notice of the applicant’s right to obtain a free copy of their report,³³ as well as to their right to dispute the accuracy or completeness of any information in that report. However, nothing requires the housing provider to provide a plain-English statement of the reasons for the denial and the applicant may not enforce the adverse action requirement through a private cause of action.
- **Identify the source of erroneous information.** Within 60 days of the denial of housing, the applicant has a right to request a free copy of their file—that is, all the information the consumer reporting agency has on the applicant—from the consumer reporting agency.³⁴ Along with the information in the file, the consumer reporting agency is required to disclose the source of the information, which in the case of public records is typically an information vendor.³⁵
- **Dispute the information.** Armed with this information, the applicant can draft a dispute letter, asking the consumer reporting agency to “reinvestigate” or simply delete the allegedly inaccurate information from the file.³⁶
- **Reinvestigation.** Upon receiving the dispute, the consumer reporting agency has 30 days to conduct the reinvestigation, and another 5 days in which to send results; if the agency that produced the report is reselling information compiled by another consumer reporting agency, the reseller has an additional 20 days to forward the dispute to its source.³⁷
- **Notify the furnisher.** Within five days of receiving the dispute, the consumer reporting agency must provide notice of the dispute to any person who furnished any item of information in dispute, along with “all relevant information regarding the dispute.”³⁸
- **Notification of results.** Once the reinvestigation is complete, the agency is required to provide written notice to the applicant, which includes a statement that the reinvestigation

³² This information includes the range of possible scores under the model used, “key factors” adversely affecting the score of the consumer, the date on which the score was created, and the name of the person or entity that provided the score. *See* 15 U.S.C. § 1681g(f)(1)(B)-(E); § 1681m.

³³ The report should include all information the consumer reporting agency has recorded and retained on that consumer. *See* 15 U.S.C. § 1681g(a); Nat’l Consumer Law Ctr., *Fair Credit Reporting* § 3.5.1.1.

³⁴ 15 U.S.C. § 1681j(b).

³⁵ 15 U.S.C. § 1681g(a)(2). *See* Nat’l Consumer Law Ctr., *Fair Credit Reporting* §§ 3.2.4 & 3.5.4.2.

³⁶ FCRA does not require the applicant to submit the dispute in any specific form, and requesting the file is not a prerequisite to filing a dispute. Nat’l Consumer Law Ctr., *Fair Credit Reporting* § 3.5.1.1.

However, courts have held that a dispute letter which does not provide a clear statement of the accuracy or completeness of specific information that is in dispute may not be construed as an exercise of FCRA rights. *Id.* By obtaining the file beforehand and pinpointing specific information that is inaccurate or incomplete, the applicant increases her chance of resolving the dispute successfully, and her chance of holding the consumer reporting agency liable if it fails to conduct an adequate reinvestigation. *See* Nat’l Consumer Law Ctr., *Fair Credit Reporting* § 4.5.2.4 (providing practical tips for making a dispute).

³⁷ 15 U.S.C. § 1681i(a), (f).

³⁸ *Id.* § 1681i(a)(2); Nat’l Consumer Law Ctr., *Fair Credit Reporting* § 4.5.4.2.1.

is complete, a new copy of the consumer's file (based upon the results of the reinvestigation), a description of the procedure used to reinvestigate, a notice that the consumer has the right to add a statement to the file disputing the accuracy or completeness of the information in the file, and, if any information was deleted as a result of the reinvestigation, a notification that the consumer has a right to request that the agency notify users who had received a copy of the consumer's report.³⁹ In cases where the dispute involves an expunged or sealed record, the source of the information will be unable to verify the record, and it should be deleted; the applicant would then have to ask the consumer reporting agency to notify the housing provider that the report has been updated.⁴⁰

The FCRA dispute process could provide a critical remedy for rental applicants to ensure their criminal background checks are accurate.⁴¹ Yet, given the time it takes to resolve a dispute, the dispute process is unlikely to secure housing for applicants who are denied because of an erroneous report. Moreover, the complexity of the law, along with the burden it places on the consumer to resolve disputes, makes it difficult for ordinary consumers to make use of its provisions.⁴² Further, even if successful in resolving the dispute, it only resolves the issue with respect to a single consumer reporting agency—the applicant will have to take additional steps to remove the inaccurate record from other tenant screening reports.⁴³

Preemption

In addition to its substantive provisions, FCRA also preempts many state laws that address subject matters regulated by FCRA.⁴⁴ A thorough discussion of preemption and its nuances is beyond the scope of this report,⁴⁵ but it is necessary to mention because preemption may prevent any state or local government entity from passing laws to regulate consumer reporting agencies

³⁹ 15 U.S.C. § 1681i(a)(6)(B)(i)-(v).

⁴⁰ 15 U.S.C. § 1681i(d).

⁴¹ See, e.g., Con. Fin. Prot. Bureau, *CFPB Takes Action Against Two of the Largest Employment Background Screening Report Providers for Serious Inaccuracies*, Oct. 29, 2015, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-two-of-the-largest-employment-background-screening-report-providers-for-serious-inaccuracies/> (reporting that nearly 70 percent of criminal history disputes filed with large consumer reporting agency resulted in some change or correction to the information in the consumer's background report).

⁴² See, e.g., *Burrell v. DFS Servs., LLC*, 753 F. Supp. 2d 438, 446 (D.N.J. 2010) (“FCRA places the burden of ensuring the efficient functioning of the credit reporting system on the consumers themselves—laypeople who are, in most cases, in no position to carry out that task by jumping over the technical hurdles created by the statute”); Con. Fin. Prot. Bureau, *Supervisory Highlights: Consumer Reporting Special Edition* (Issue 14, Winter 2017), at 9-12, https://files.consumerfinance.gov/f/documents/201703_cfpb_Supervisory-Highlights-Consumer-Reporting-Special-Edition.pdf (discussing issues with handling of disputes by consumer reporting agencies).

⁴³ Nat'l Consumer Law Ctr., *Fair Credit Reporting* § 4.6.4.

⁴⁴ 15 U.S.C. § 1681t. FCRA contains another preemption provision—sometimes referred to as the “qualified immunity” provision—that preempts certain state law claims in the “nature of defamation, invasion of privacy, or negligence.” 15 U.S.C. § 1681h(e); see also Nat'l Consumer Law Ctr., *Fair Credit Reporting* § 10.4.1.1. This provision does not raise an issue here.

⁴⁵ For a thorough discussion, see Nat'l Consumer Law Ctr., *Fair Credit Reporting* ch. 10.

in the disclosure of arrest or conviction records.⁴⁶ Thus, although many state and local governments have restricted the scope of what criminal history a landlord may consider, state and local governments generally cannot prohibit tenant screening companies from disclosing this information in their reports.

The Fair Housing Act

While FCRA is intended to ensure the contents of a tenant screening report are accurate, it does nothing to address the fact that the reports themselves reinforce historical patterns of housing discrimination and segregation. As the tenant screening industry takes advantage of highly sophisticated technology, the potential for discrimination grows.

The federal Fair Housing Act prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities based on race, color, religion, sex, disability, familial status, or national origin.⁴⁷ In addition to prohibiting intentional discrimination, the Supreme Court affirmed in 2015 that a housing provider or operator may be held liable under the Act if the provider or operator's policy has a disparate impact on a protected class.⁴⁸ Under this standard, a facially neutral policy that has a discriminatory effect on a protected class violates the Fair Housing Act if the policy is not supported by a substantial, legitimate, and nondiscriminatory interest.

In 2016, the Department of Housing and Urban Development (HUD) issued guidance indicating that a housing provider who refuses to rent to someone or renew a lease because of an individual's criminal history could violate the Fair Housing Act.⁴⁹ As noted above, across the United States, Black and Latino/a/x individuals are arrested, convicted, and incarcerated at rates disproportionate to their share of the general population, making the use of a criminal history by a housing provider a troubling block to housing opportunity.

Therefore, the guidance concludes that a policy of denying applicants because of arrests that do not result in a conviction could violate the Fair Housing Act. Because arrests merely show that a police officer suspects criminal activity, and not actual proof of misconduct, denying housing on the basis of an arrest has the effect of disproportionately denying housing to Black and

⁴⁶ 15 U.S.C. § 1681t(b)(1)(E); see *Simon v. DIRECTTV, Inc.*, No. 9-cv-852, 2010 U.S. Dist. LEXIS 35940, at *8-11 (D. Colo. Mar. 19, 2010) (finding state law that prohibited reporting of convictions more than seven years old was preempted). States with laws enacted prior to September 30, 1996—when this provision of FCRA took effect—are not subject to this provision. Illinois did not have such a law in place at that time, thus foreclosing any state regulation on this subject matter. FCRA preemption is limited to the regulation of consumer reporting agencies and does not prohibit states or local governments from passing laws—for example, record sealing and expungement laws—that restrict the use of criminal records but do not regulate the conduct of consumer reporting agencies.

⁴⁷ 42 U.S.C. § 3601.

⁴⁸ *Tex. Dep't of Housing & Cmty. Affairs v. Inclusive Cmty. Proj.*, 135 S.Ct. 2507 (2015).

⁴⁹ U.S. Dep't of Housing and Urban Dev., *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* (Apr. 4, 2016), https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF [hereinafter "2016 HUD Criminal Records Guidance"].

Latino/a/x applicants without serving any legitimate, nondiscriminatory interest. Further, the guidance cautions that housing providers who automatically reject applicants who have been convicted of a crime would be engaging in a “blanket” denial of applicants, in violation of the Fair Housing Act. To comply with the Fair Housing Act, the housing provider must conduct an “individualized assessment” to determine whether the applicant with a conviction record actually poses such a risk. The individualized assessment should consider a variety of factors that put the given piece of criminal history in its full context.

The 2016 HUD guidance does not address the role tenant screening reports play in making a person’s contact with the criminal legal system automatically and easily available to property owners, which influences the decision these owners make. The guidance is also silent on whether a tenant screening company could be liable for its reporting practices under the Fair Housing Act. But in a recent case, *Connecticut Fair Housing Center v. CoreLogic Rental Property Solutions, LLC*, the court allowed a disparate impact claim under the Fair Housing Act against a tenant screening company to proceed, where the housing provider denied an applicant, a disabled Latinx man, was denied housing because of a single arrest record.⁵⁰

The housing provider in that case had denied the application based on the recommendation of the “CrimSAFE” algorithm, a product developed by CoreLogic, a prominent tenant screening company. CoreLogic marketed CrimSAFE as an automated tool that could be customized to fit criteria, including what criminal history was not permitted, selected in advance by the housing provider. The tenant screening report did not share the applicant’s actual criminal history with the housing provider. Rather, the screening report recommended that the provider deny the applicant based on the pre-selected criteria.⁵¹ Relying in part on the 2016 HUD guidance, the court found that these facts, as alleged, made out a *prima facie* racial disparate impact claim.⁵²

In another recent case, *Fortune Society v. Sandcastle Towers et al.*,⁵³ a district court denied a defendant’s motion for summary judgment in a suit challenging the housing provider’s use of a ban on admission for individuals who had ever had a felony conviction, under a disparate impact framework. Although the nature of the ban was in dispute, the defendants conceded that a blanket ban would not be narrowly tailored to balance the safety of the building and other tenants with the rights of a potential applicant; the court—citing the 2016 HUD guidance—agreed.⁵⁴ The case has since settled.⁵⁵

⁵⁰ See 369 F. Supp. 3d 362 (D. Conn. 2019) (denying defendant’s motion to dismiss); No. 3:18-cv-705, 2020 U.S. Dist. LEXIS 141505 (D. Conn. Aug. 7, 2020) (finding genuine dispute of material fact and allowing case to proceed to trial on disparate impact claim).

⁵¹ *Id.* at 367.

⁵² *Id.* at 382.

⁵³ 388 F. Supp. 3d 145 (E.D.N.Y. 2019).

⁵⁴ *Id.* at 176-77.

⁵⁵ Stephen Rex Brown, *Queens Landlord Will Pay \$1 Million for Denying Apartments to Previously Incarcerated People*, N.Y. DAILY NEWS, Nov. 5, 2019, <https://www.nydailynews.com/new-york/ny-incarcerated-housing-suit-20191105-7nskiotbk5chpfxsqu5l2soxqu-story.html>.

Thus, two courts have positively cited the analysis in the 2016 HUD guidance to support a disparate impact claim, and in at least one case, directly applied the reasoning to a challenge brought against a tenant screening company.⁵⁶

Local Fair Chance Ordinances

Local and state jurisdictions can greatly contribute to efforts to provide individuals who have had contact with the criminal legal system with a fair chance to secure housing, often referred to as a “fair chance” ordinances.⁵⁷ Cook County, Illinois, is the largest jurisdiction in the country to have enacted a local fair chance ordinance. The Just Housing Amendment to the Cook County Human Rights Ordinance⁵⁸ went into effect at the end of January 2020 and protects over 5 million people across the City of Chicago and more than 100 suburban jurisdictions.

The ordinance combines elements of anti-discrimination laws and “ban the box” laws—which prevent landlords from asking someone about their criminal history—to protect tenants with a criminal history. Under the ordinance and regulations promulgated by the Cook County Human Rights Commission, a housing provider may only consider adult conviction records that are less than three years old and that are not sealed or expunged.⁵⁹

The Cook County regulations then divide the rental application process into two steps. Providers must “prequalify” an applicant by determining whether they first meet all other criteria for tenancy, apart from criminal history, before choosing to run a background check. The provider is also obligated to inform the applicant of its screening criteria up front. If the provider runs a criminal background check and the report shows the applicant has a criminal conviction less than three years old, the housing provider must give the applicant the chance to dispute both the accuracy of the report and whether it is “relevant,” that is, whether the applicant’s criminal history makes it more likely they will pose a demonstrable risk to persons or property. If the report is accurate and the information it contains is relevant, the provider must still conduct an “individualized assessment.” The individualized assessment should consider a number of factors,

⁵⁶ Recent rulemaking from HUD threatens to weaken these interpretations and imperils the viability of any such claims going forward. *See* 85 Fed. Reg. 60288. The rule rescinds prior HUD rulemaking from 2013 that outlined a three-step test for analyzing disparate impact claims. The new proposed test would make it more difficult for plaintiffs to bring disparate impact claims by heightening the initial burden on plaintiffs and provide categorical defenses at the pleading stage. However, a district court in Massachusetts has entered a preliminary injunction to keep the rule from going into effect. *Mass. Fair Hous. Ctr. v. HUD*, No. 20-11765, 2020 U.S. Dist. LEXIS 205633 (D. Mass. Oct. 25, 2020). As of publication, it is unclear whether the Biden administration will rescind this rule or continue to defend it in court.

⁵⁷ *See Fair Chance Ordinances: An Advocate’s Toolkit*, NAT’L HOUSING LAW PROJ. (2020), https://www.nhlp.org/wp-content/uploads/021320_NHLP_FairChance_Final.pdf.

⁵⁸ *See* Cook County, IL, *Just Housing Amendment to the Human Rights Ordinance*, <https://www.cookcountyil.gov/content/just-housing-amendment-human-rights-ordinance> (last visited July 17, 2020).

⁵⁹ The housing provider may consider whether the applicant is subject to a sex offender registration requirement or a child sex offender restriction, even if the conviction that serves as the basis for the registration requirement or restriction is more than three years old. Cook Co. Code of Ordinances § 42-38(c)(5). The ordinance also does not supersede any restrictions that may be imposed under federal or state law.

including the individual's history as a tenant before and after the conviction, the nature, severity, and recency of the conviction, the age at time of conviction, any evidence of rehabilitation, and other factors as the landlord sees fit. A conviction is the result of a long process with numerous actors, from the time of arrest to sentencing. The individualized assessment helps landlords and tenants understand a given conviction and consider its complex circumstances. Based upon that assessment, the housing provider should determine whether all the information, taken together, still makes it necessary to deny the applicant.⁶⁰

Illinois has also recently expanded protections at the state level. The Housing as a Human Right Act, which went into effect on January 1, 2020, amends the Illinois Human Rights Act, making it a civil rights violation to consider arrest, sealed, expunged, and juvenile records in the housing context.⁶¹

Crime-Free and Nuisance

Property Ordinances Undermine Local Efforts

Despite the promise of fair chance ordinances, local crime-free housing and nuisance property ordinances and related programs impede efforts to reduce the overuse of tenant screening reports. Through these laws and programs, units of local government can closely regulate rental housing and in turn, directly influence how property owners consider applicants who have had contact with the criminal legal system. In Illinois, localities that have home rule authority⁶² can require rental property owners to obtain a license to rent property in the jurisdiction. As a condition of receiving the license, the jurisdiction typically requires the landlord to attend a training class, have tenants sign a so-called “crime-free lease addendum” (under which the tenant can be evicted for any “unlawful activity” that allegedly occurs on the property by themselves, other household members, their guests, or others) and requires the landlord to conduct a criminal background check on all tenants over the age of 18.⁶³ At the same time, both home rule and non-home rule units of local government can enact nuisance property ordinances, which regulate renters and landlords by penalizing them for “nuisance” violations—which can be anything from overgrown grass to noise to felonies—and then direct landlords to evict tenants accused of committing nuisance violations. Generally, this threat of eviction comes in absence of even a criminal charge, let alone a conviction. As a part of the implementation of these laws and programs, local governments will also encourage broad criminal records screening of applicants and even in some cases suggest certain tenant screening companies.⁶⁴

⁶⁰ See Cook Cnty. Code of Ordinances § 42-38; Cook Cnty. Comm’n on Human Rts., *Procedural Rules and Substantive Regulations* pt. 700.

⁶¹ Housing as a Human Right Act, P.A. 101-0565 (2019).

⁶² Under the Illinois Constitution, jurisdictions with home rule authority may pass any regulation to protect the public safety, health, or welfare, unless specifically exempted from doing so by the state legislature. Jurisdictions without home rule authority may only exercise powers specifically granted by the constitution or state legislature. See Ill. Const. art. VII §6; *T&S Signs v. Vill. of Wadsworth*, 261 Ill. App. 3d 1080, 1085-86 (2d. Dist. Ct. App. 1994).

⁶³ Emily Werth, *The Cost of Being Crime-Free: Legal & Practical Consequences of Crime-Free Rental Housing & Nuisance Property Ordinances*, SHRIVER CTR. ON POVERTY LAW, Aug. 2013, at 15, <https://www.povertylaw.org/article/the-cost-of-being-crime-free/>.

⁶⁴ For example, the City of Aurora, Illinois, has the following webpage: <https://www.aurora-il.org/1285/Resident-Screening-Sites>.

Recommendations

As this report shows, while tenant screening companies are subject to some regulation under federal law, more needs to be done to ensure that these reports are accurate, unbiased, and compliant with state and local efforts to reduce the stigma associated with and barriers created by a criminal record. Although reforms at the federal level are critical,⁶⁵ these recommendations focus on reforms that can be made in the State of Illinois and in other states committed to helping its residents return home.

Expand Fair Chance Ordinances to

Directly Regulate Tenant Screening Companies

More can be done to deliver on the promise of local fair chance laws by directly influencing how tenant screening companies comply with those laws. Currently, Cook County, Urbana, and Champaign⁶⁶ are the only Illinois jurisdictions to pass and enforce comprehensive laws protecting against discrimination by restricting the use of conviction records. As mentioned, Illinois's Housing as a Human Right Act shields arrest, expunged and sealed, juvenile, and deferred or diverted records. These laws are important steps forward in the effort to secure housing for individuals involved in the criminal legal system, but they are only directed at regulating the practices of housing providers and do little to change the practices of the tenant screening industry.

Accordingly, even if a Cook County landlord is barred from using or seeing conviction history more than three years old, standard screening reports often report convictions from an applicant's entire life. Many reports, through the use of proprietary algorithms, simply provide "risk scores" or yes/no recommendations on whether the landlord should accept the applicant.

This means that landlords will view or be provided with information about records that they should not see, directly undercutting the intent of the laws to encourage a housing provider to evaluate an applicant for more than their criminal record. These reports thus continue to validate the reliance on criminal record histories for property owners and contribute to long standing bias and exclusion of justice involved individuals. Local and state governments could require screening companies to show applicants and providers the underlying records that inform the report. They could also block scores, checkboxes, and blanket recommendations that prevent the individualized process put in place by the federal and local governments.⁶⁷

⁶⁵ See Nelson, *Broken Records Redux*, at 37-39 (recommending changes at the federal level); see also Comment Submitted by Shriver Center on Poverty Law – Marie Claire Tran-Leung, *FTC & CFPB to Host December Workshop on Accuracy in Consumer Reporting*, Feb. 3, 2020, <https://www.regulations.gov/document?D=FTC-2019-0073-0039>.

⁶⁶ Cook Cnty., IL Code of Ordinances § 42-38; Urbana, IL Code of Ordinances, ch. 12 art. III, §§ 12-37, 12-64; Municipal Code of the City of Champaign, IL, ch. 17, art. I, §§ 17.3 – 17.45, Article V §§ 17.71, 17.75.

⁶⁷ See *Fair Chance Ordinances: An Advocate's Toolkit*, NAT'L HOUSING LAW PROJ. 20-24 (2020), https://www.nhlp.org/wp-content/uploads/021320_NHLP_FairChance_Final.pdf.

Local civil rights enforcement bodies can use their discretion and expertise to protect against the discriminatory use of criminal background history by investigating those property owners who rely upon screening reports that conflict with the purpose and intent of fair chance laws. These public bodies are often under-resourced. Effective, well-resourced human rights commissions could dramatically shift the practices of tenant screening companies by targeting enforcement actions on screening violations. Enforcement bodies could also provide guidance to landlords on what is a compliant screening report. For example, a report compliant with the Cook County Just Housing Amendment would not include convictions older than three years, except when required by federal law.

Ensure Court Files Are Regularly Updated

Because tenant screening companies often retrieve criminal records on-demand from electronic databases and there is no regulation requiring that these databases are regularly updated, tenant screening companies have little incentive to make sure they are not reporting expunged or sealed cases, or to update the status of a criminal charge. The FCRA also preempts direct state regulation of tenant screening companies. However, states may still provide incentives to encourage accurate reporting that complies with state and local fair chance laws.

For example, Pennsylvania and Minnesota have taken steps to address these issues through their court systems, by writing certain database management practices into their bulk data sharing agreements with information vendors. Under this approach, court systems regularly provide the vendor with a file with the most up-to-date information. If an information vendor does not update its database to reflect the information in these files, the vendor will lose its right to receive bulk data.⁶⁸

Enlist Attorney General and State’s Attorney Enforcement

State attorney generals and local state’s attorneys could play an important role in regulating the conduct of tenant screening companies operating at the local and state level. Legislation could be enacted that would give these agencies the authority to investigate tenant screening companies that are out of compliance with state and local fair chance ordinances, conduct audits to ensure compliance, and issue annual reports identifying tenant screening companies that have adopted best practices. Their engagement can serve to more proactively and broadly influence changes to industry practices than what is often achievable with individual civil rights cases.

Require Housing Providers to Adopt Best Practice Provisions

State or local governments could also encourage tenant screening companies to comply with fair chance laws by conditioning the receipt of funds or a business license for housing providers on

⁶⁸ This approach to regulating information vendors has limits. For example, it is difficult regulate resellers of information who are not a party to a contract and does not prohibit screening companies from obtaining info outside of bulk sharing agreements. There would also be practical steps to implementing this program in Illinois, which has a less unified court system and where Cook County, the largest county in the state, maintains a notoriously slow and inefficient recordkeeping system. See Mari Cohen, *The Race to Repair Dorothy Brown’s Office*, Chicago Mag., Jan. 22, 2020, <http://www.chicagomag.com/city-life/January-2020/Circuit-Court-Clerk-Race-Meet-the-Candidates/> (describing court clerk’s office as “inefficient and scandal-plagued”).

the use of tenant screening companies that adhere to fairness and accuracy standards set by the state or local government.

Repeal Crime-Free Housing and Nuisance Property Ordinances and Programs

Crime-free housing and nuisance property programs, especially when tied to a landlord's ability to lease property in a community, effectively encourage housing providers to broadly screen out housing applicants who have had any contact with the criminal legal system, even when there may be an anti-discrimination law prohibiting such conduct. This pressure in turn makes the use of tenant screening reports that recommend denying someone who has contact with the criminal legal system that much more attractive.

Crime-free housing and nuisance property ordinances also reinforce segregated housing patterns and racist policing practices.⁶⁹ By repealing crime-free and nuisance property ordinances outright, pressure on landlords to conduct expansive background checks will be reduced, thereby reducing the overreliance on faulty tenant screening reports. At minimum, if communities continue to require the use of background checks, they should also require property owners to use tenant screening companies that adhere to the best practices noted above, including compliance with civil rights laws as well as local and state laws that prohibit the consideration of certain criminal records.

Conclusion

By summarizing the legal and regulatory landscape governing tenant screening reports, this white paper provides a roadmap and a set of initial recommendations for advocates working at the state and local levels to ensure that everyone has equal access to safe, stable, and affordable housing. The largely unregulated and ubiquitous tenant screening industry frequently undermines laws passed by state and local legislative bodies to ensure equal access. The Shriver Center on Poverty Law serves as a willing partner in the fight to rein in these discriminatory and illegal practices. We look forward to working with others in Illinois and around the country to enforce laws already on the books and implement recommended policies to realize the goal of equal housing access.

⁶⁹ See Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019).



povertylaw.org