

1 Note that other protected classes, especially national origin or disability, can also be adversely treated or impacted by these screening rules.

2 Bureau of Justice Statistics, *U.S. Dep't of Justice, Survey of State Criminal History Information Systems*, 2012, 3 (Jan. 2014).

3 Nat'l Acad. Sci., Nat'l Res. Couns., *The Growth of Incarceration in the United States: Exploring Causes and Consequences 2* (Jeremy Travis, et al. eds., 2014).

4 E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at 29, appendix tbls. 1 and 2.

5 Bureau of Justice Statistics, U.S. Dep't of Justice, *Reentry Trends in the United States*.

6 See FBI Criminal Justice Information Services Division, *Crime in the United States, 2013*, tbl.43A, (Fall 2014); U.S. Census Bureau, *Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2013 to December 1, 2013*.

7 See E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* (Sept. 2015) at tbl. 10; and U.S. Census Bureau, *Monthly Postcensal Resident Population by Single Year of Age, Sex, Race and Hispanic Origin: July 1, 2014 to December 1, 2014*.

8 US Department of Housing and Urban Development, *Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, April 4, 2016.



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Virginia Fair Housing Office



Fair Housing for People with Criminal Histories

Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology and Pub. Pol'y* 483 (2006).

Race Discrimination

The Virginia Fair Housing Law prohibits housing discrimination against someone because of their membership in a protected class, including race, color, religion, national origin, sex, elderliness (age 55+), family status, disability, **source of funds, sexual orientation, gender identity and/or military status**.

For example, it is illegal discrimination to refuse to rent to someone because of their race.

Sometimes, housing providers maintain and apply criminal record screening criteria to applicants that can result in discrimination against African Americans.¹

100 million U.S. adults – or nearly one-third of the population – have a criminal record.²
The U.S. is 5% of the world's population, yet 25% of the world's prisoners.³
650,000 people are released annually from federal and state prisons.⁴
95% of current inmates will be released.⁵

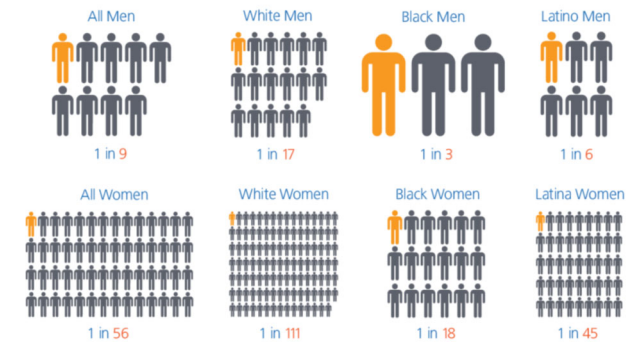
UNEQUAL JUSTICE

Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration.

For example, in 2013, African Americans were arrested at a rate more than double their proportion of the general population.⁶

Moreover, in 2014, African Americans comprised approximately 36 percent of the total prison population in the United States, but only about 12 percent of the country's total population.⁷ In other words, African Americans were incarcerated at a rate nearly three times their proportion of the general population.

Lifetime Likelihood of Imprisonment



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics.



Types of Discrimination

DIFFERENT TREATMENT

One way housing providers may violate fair housing laws is if they apply more stringent criminal history rules to Black applicants than non-Black applicants.

This type of discrimination is motivated by an intent to treat people different because of their race.

EXAMPLES OF VIOLATIONS

1. Telling a white applicant that their misdemeanor conviction won't be a problem but indicating to a Black applicant that the same misdemeanor will result in their application being denied is differential treatment based on race.
2. A housing provider has a policy of not renting to persons with certain convictions, but makes exceptions to it for Whites but not African Americans.
3. A leasing agent assisted a white applicant seeking to secure approval of his rental application despite his potentially disqualifying criminal record under the housing provider's screening policy, but did not provide such assistance to an African American applicant.

DISPARATE IMPACT

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“Where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on individuals of a particular race [...], such policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.”⁸



CASES

In August of 2019, Housing Opportunities Made Equal of Virginia (“HOME”) settled a federal lawsuit with the owner and manager of Sterling Glen Apartments in Chesterfield, Virginia. HOME argued that Sterling Glen's criminal screening policy – which automatically excluded any person with a record of a felony conviction – resulted in race-based housing discrimination.

Defendants agreed to pay damages, attorney's fees, and make a \$15,000 donation to HOME to resolve the suit. Most importantly, Sterling Glen instituted a new screening policy that only considers safety-related criminal convictions within the five years prior to application and assures individualized consideration of applicants who have the right to show they will be a good tenant and neighbor.

In November of 2019, the Fortune Society settled a federal lawsuit with the owner and operator of a 900+ unit apartment complex in Queens, New York that maintained a blanket ban on applicants with criminal histories.

The Fortune Society alleged that the policy unlawfully discriminated because it disproportionately bars African Americans and Latinos from housing without considering each potential tenant's individual history and circumstances.

BEST PRACTICES FOR HOUSING PROVIDERS

A FAIR AND BALANCED CRIMINAL HISTORY SCREENING POLICY WILL HAVE THESE FEATURES:

1. Screen for income qualifications and creditworthiness first.
2. If an applicant is otherwise qualified, conduct a limited criminal background screening that will provide enough information to determine whether the applicant's tenancy may present a current direct threat or harm to others or the risk of substantial damage to the property of others. Not all criminal offenses suggest that someone will be unsafe.
3. Finally, even if an applicant's history uncovers some concerns about current safety risks, allow the applicant to provide evidence to the contrary. This individualized assessment is key in determining whether this particular applicant can live.
4. Make your policy clear and available for all that apply.