

# Fair Housing for People with Criminal Records



100 million U.S. adults--or nearly 1/3 of the population--have a criminal record.<sup>Ⓢ</sup>  
 The U.S. is 5% of the world's population, yet 25% of the world's prisoners.<sup>Ⓢ</sup>  
 650,000 people are released annually from federal and state prisons.<sup>✳</sup>  
 95% of current inmates will be released.<sup>Ⓢ</sup>

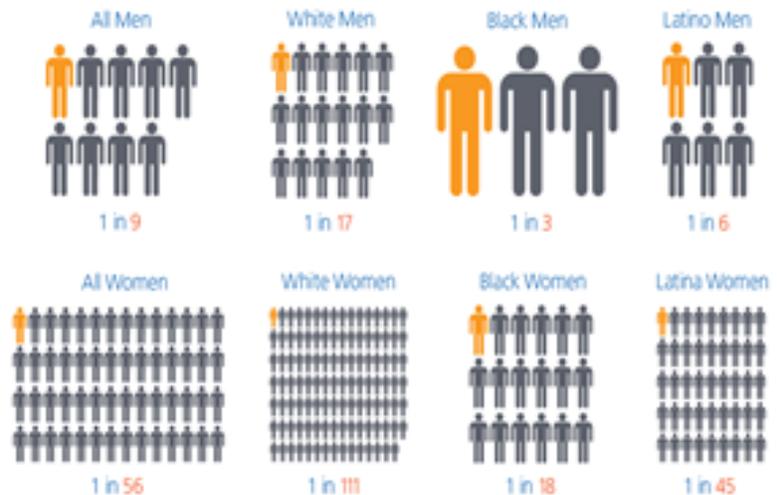
## Race Discrimination

The Virginia Fair Housing Law prohibits housing discrimination against someone because of their race, among other protected classes. For example, it is illegal to refuse to rent to someone because they are Black. Sometimes, housing providers maintain and apply criminal record screening criteria to applicants that can result in discrimination against Black and Latino people.

## Unequal Justice

Nationally, racial and ethnic minorities face disproportionately high rates of arrest and incarceration. For example, in 2013, Black people were arrested at a rate more than double their proportion of the general population.<sup>★</sup> Moreover, in 2014, Black people comprised approximately 36 percent of the total prison population in the United States, but only about 12 percent of the country's total population.<sup>♥</sup> In other words, Black people 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.



- ✳ Bureau of Justice Statistics, U.S. Dept of Justice, Survey of State Criminal History Information Systems, 2012, 3 (Jan. 2014).
- Ⓢ 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).
- ✳ E. Ann Carson, Bureau of Justice Statistics, U.S. Dept of Justice, Prisoners in 2014 (Sept. 2015) at 29, appendix tbls. 1 and 2.
- Ⓢ Bureau of Justice Statistics, U.S. Dept of Justice, Reentry Trends in the United States.
- ★ 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*.
- ♥ See E. Ann Carson, Bureau of Justice Statistics, U.S. Dept 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*.
- » 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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# 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



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.



A housing provider has a policy of not renting to persons with certain convictions, but makes exceptions to it for white people but not Black people.



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 a Black applicant.

## DISPARATE IMPACT

Another way criminal screening policies may amount to illegal housing discrimination is if they have an unjustified, negative disproportionate effect on Black people, even if the policy was not designed with the intent to discriminate.

For example, a housing provider that refuses to rent anyone with any type of criminal history (a "blanket ban" policy) is likely to exclude Black applicants at a higher rate than white applicants. This is even though many Black applicants would be otherwise qualified to rent from this housing provider, and even when their criminal record is not indicative of how good of a tenant they will be.

***"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."*** ➤

## Best Practices for Housing Providers

A fair and balanced tenant screening policy will have these features:



Screen for income qualifications and creditworthiness first.



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.



Finally, even if an applicant's records 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 somewhere safely.



Make your policy clear and available for all that apply.

Re-entry Resources:

[https://www.oag.state.va.us/files/OAG\\_ReEntry\\_card2015\\_Final.pdf](https://www.oag.state.va.us/files/OAG_ReEntry_card2015_Final.pdf)