



## UNLOCKING DISCRIMINATION

A DC Area Testing Investigation About Racial Discrimination  
and Criminal Records Screening Policies in Housing

# TABLE OF CONTENTS

Executive Summary .....	<b>6</b>
Background .....	<b>8</b>
State of the Law .....	<b>14</b>
Methodology .....	<b>16</b>
Results .....	<b>20</b>
Recommendations .....	<b>31</b>



## ABOUT THE EQUAL RIGHTS CENTER

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 DC 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 DC region and may be able to assist individuals who believe they have experienced housing discrimination in greater Washington DC region by:

- Conducting civil rights testing
- Submitting reasonable accommodation and modification requests
- Assisting with filing a housing discrimination complaint
- Providing referrals to other local resources

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## FOREWORD

I first heard about the Netflix series *Orange is the New Black* while watching Melissa Harris-Perry interview actress Laverne Cox. Cox made a compelling case for the series, and I was soon hooked on the show. As it did for many others, the show humanized for me the hundreds of thousands of women incarcerated in prisons and jails around the country. It also drove home the point that racial disparities in the criminal legal system burden women (not just men) of color. Finally, through its artful storytelling and intricate backstories, it helped me to understand the experiences of many women prior to incarceration. Since then, I've encountered research that supports narratives I first encountered through the show.<sup>1</sup>

The Bureau of Justice Statistics estimates that as many as 100 million U.S. adults have some sort of criminal record. The increase in women in prison far outpaces the rate of increase of men in prison over the last four decades, and African American women are imprisoned at more than twice the rate of white women. In the recent years, there has been an increased focus on the ongoing collateral consequences of interaction with the criminal legal system, whether through arrest, conviction, and/or incarceration. One oft cited collateral consequence is housing stability.

In undertaking the investigation that yielded this report, we sought to better understand the experiences of African American women with criminal records attempting to find housing. In order to get a full picture of these experiences in an era of usually subtle yet still pernicious discrimination, we started from the premise that it would be informative to compare the experiences of such women with their white counterparts.

Through this investigation, we measured discrimination against both white and Black female home seekers posing as having criminal records. In total, 47% of tests conducted revealed differential treatment on the part of a housing provider that favored the white female 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.

Releasing a report like this one less than a month before a presidential election is a daunting task. As a small nonprofit, attracting media coverage that reflects the significance of our results is challenging any time; doing so in the context of unpredictable campaign antics is even more difficult. However, our task is aided by the relevance of this report's subject matter to topics that have already arisen on the campaign trail.<sup>2</sup> The investigation that yielded this report provides evidence that none of these are topics that we can put to rest on November 8—no matter who wins.

In November 2015, the White House announced a new series of actions it was taking to “make our criminal justice system fairer and more effective and to address the vicious cycle of poverty, criminality, and incarceration that traps too many Americans and weakens too many communities.”<sup>3</sup> The White

<sup>1</sup> See Hagler, Jamal. “6 Things You Should Know About Women of Color and the Criminal Justice System.” *Center for American Progress*, 16 Mar. 2016. Web. <[www.americanprogress.org/issues/criminal-justice/news/2016/03/16/133438/6-things-you-should-know-about-women-of-color-and-the-criminal-justice-system/](http://www.americanprogress.org/issues/criminal-justice/news/2016/03/16/133438/6-things-you-should-know-about-women-of-color-and-the-criminal-justice-system/)>.

<sup>2</sup> In 1973, the U.S. Department of Justice (DOJ) accused Republican nominee Donald Trump's real estate company of discriminating against Black home seekers, in violation of the Fair Housing Act. Specifically, the DOJ alleged that company agents lied to Black prospective tenants about the availability of apartments, steered applicants of color to specific buildings, and marked the applications of Black applicants with a “C” for “colored.” The case was settled in 1975. Further, both candidates have addressed the criminal legal system in an attempt to appeal to voters. Trump describes himself as the “law and order” candidate. Democratic nominee Hillary Clinton has called for criminal justice related reforms to promote equality and opportunity during this election cycle, but her track record is marred in the eyes of many because she has previously used terms like “super predators” while referring to young African American men.

<sup>3</sup> The White House. Office of the Press Secretary. *FACT SHEET: President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly-Incarcerated*. 2 Nov. 2015. Web. <[www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation](http://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation)>.



House indicated in its announcement of these actions that many of them stemmed from President Obama's My Brother's Keeper Task Force, an initiative launched to address the opportunity gaps faced by boys and young men of color. It is clear, ranging from storytelling through venues like *Orange is the New Black* to the investigation that this report is based on, that the policy changes and progress proposed through the announcement are equally important to African American women and girls.

By publishing this report, we are wholeheartedly embracing the work of ensuring equal opportunity for women and girls of color. The ERC's core strategy of civil rights testing has allowed us through this report to shine a light on the housing discrimination that African American women face, and there are ample opportunities to use testing further in service of this goal. African American women deserve protection from discrimination, and we hope this report will help shine a light on our experiences so that efforts to provide such protection are as effective as possible.

Melvina Ford, *Executive Director, Equal Rights Center*  
October 2016



## EXECUTIVE SUMMARY

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 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. Demographic information about those involved in the criminal legal system in the greater Washington D.C. region also reflects an extreme degree of racial disproportionality.

Conversations about the racially disproportionate impact of mass criminalization and collateral consequences often focus on men of color, but it is critical to include the experiences of women of color in any analysis as well. While men outnumber women in prison, the number of women in prison has grown at a significantly quicker rate than the overall number of incarcerated men in the last three decades. African American women are imprisoned at more than twice the rate of white women. Prior to their involvement with the criminal legal system, women experience an extremely high rate of trauma due to interpersonal violence, childhood physical and sexual abuse, mental illness, and poverty, among other factors.

The investigation that served as the basis for this report utilized civil rights testing to evaluate whether white and African American female testers posing as having similar criminal backgrounds were treated differently on the basis of race. Through testing, the ERC was also able to gather information about certain criminal records screening policies and procedures local housing providers have in place. All tests conducted through the investigation used female testers, along with assigned criminal history profiles that reflected many women’s actual experiences with the criminal legal system.

**47%**  
**DIFFERENTIAL  
TREATMENT**  
Favors White Tester

In total, 47% of tests conducted revealed differential treatment on the part of a housing provider that favored the white female 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.

There were three categories of differential treatment displayed through the testing conducted for this project:

- 1** Agents provided matched pair testers with different information or quality of service;
- 2** Agents reacted differently to the tester’s disclosure of their criminal record; and
- 3** Agents provided speculation about the impact that testers’ criminal records would have on their chances of a successful application

Through the testing conducted for this project, the ERC also uncovered evidence of policies it believes may violate the Fair Housing Act based on a disparate impact method of proof in 14 separate tests, 28% of the tests conducted. Due to policies like blanket bans on any applicant with a felony conviction on their record, testing alone documented 4,646 housing units in the greater Washington region that are unavailable to individuals with any felony conviction from any point in time, and to many individuals with a misdemeanor conviction. Because of racial disparities in the criminal legal system, such bans by extension disproportionately limit housing opportunities for African American applicants as compared to white applicants, in violation of the Fair Housing Act.



As a result of the findings of our investigation, the ERC makes the following recommendations:

- Housing providers large and small must evaluate and revise the role that criminal records screening policies and practices play in their application decisions to ensure that they are serving a substantial, legitimate, non-discriminatory interest and are not a proxy for racial discrimination.
- Housing providers need to communicate transparently with applicants about what their screening criteria are.
- The District should enact legislation locally that would compel local housing providers to adopt the recommendations above and beyond to ensure that individuals with criminal records are able to secure safe housing.
- A neutral third party, such as a private foundation, should convene various stakeholders and experts to develop more detailed guidance for private housing providers about how to ensure that criminal records screening policies and practices comply with the Fair Housing Act.
- Congress should increase appropriations to programs like the Fair Housing Initiatives Program, in addition to ensuring that HUD has adequate resources and staff to respond forcefully to acts of housing discrimination around the country.
- Housing providers must invest in high quality fair housing training at all levels of their organizations, along with checking to ensure that employees are abiding by their fair housing obligations.
- Researchers, policymakers, advocates, and service providers should use an explicitly intersectional approach in the collection and analysis of data, development and implementation of law and policy, and delivery of services.
- HUD should issue a final rule regarding the implementation of the Violence Against Women Reauthorization Act of 2013 as soon as possible.
- Local jurisdictions should seize the opportunity to lead the way nationally when it comes to ensuring that domestic violence survivors with criminal histories have access to safe housing.
- Residents of the greater Washington DC area that are concerned by the findings of this investigation should consider serving as a tester for the ERC.



## BACKGROUND

### *Racial Disproportionality in 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.<sup>4</sup> Nearly one-third of the U.S. population has a criminal record of some sort.<sup>5</sup> Across the board, the burden of involvement with the criminal legal system has fallen much more heavily on people of color than whites. Namely, “Across the United States, African Americans and Hispanics are arrested, convicted and incarcerated at rates disproportionate to their share of the general population.”<sup>6</sup>

Demographic information about those involved in the criminal legal system in the greater Washington D.C. region also reflects an extreme degree of racial disproportionality, and “a disproportionate number of persons arrested, convicted, and incarcerated are African American.”<sup>7</sup> For example, African Americans currently make up 90% of the inmate population in the District of Columbia, despite making up just 49% of DC’s total population.<sup>8</sup> A 2013 report from the Washington Lawyer’s Committee report found that 8 out of 10 total arrests and 9 out of 10 drug-related arrests in Washington, D.C. were of African Americans (even though African Americans used illegal drugs at rates similar to whites).<sup>9</sup> Further, between 2009-2012, over 90% of persons convicted of crimes in the District were African-American, while only about 50% of the District’s total population was African American in 2010.<sup>10</sup> The same disproportionality exists in both Maryland and Virginia. African Americans make up less than 20% of Virginia’s overall population, but 61% of its prison population.<sup>11</sup> In Maryland, African Americans make up approximately 30% of the overall population, and about 72% of its prison inmates.<sup>12</sup>

*African American women are imprisoned at more than twice the rate of white women.*

### *Women Involved in the Criminal Legal System*

Conversations about the racially disproportionate impact of mass incarceration and collateral consequences often focus on men of color, but it is critical to include the experiences of women of color in any analysis as well. Further, overall, the rate of growth for female imprisonment in the last thirty-five years far exceeds the rate of growth for male imprisonment. Even though data in the section above is not disaggregated by gender, national level data suggests that similar racial disproportionalities exist for criminal legal system

<sup>4</sup> Travis, Jeremy, Bruce Western, and Steve Redburn, eds. *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Washington: National Academies, 2014. National Research Council, Apr. 2014. Web. <[www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes](http://www.nap.edu/catalog/18613/the-growth-of-incarceration-in-the-united-states-exploring-causes)>.

<sup>5</sup> Department of Justice. Office of Justice Programs. *Survey of State Criminal History Information Systems, 2012: A Criminal Justice Information Policy Report*. Bureau of Justice Statistics, Jan. 2014. Web. <[www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf](http://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf)>.

<sup>6</sup> Department of Housing and Urban Development. 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. 4 Apr. 2016. Web. <[portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf)>.

<sup>7</sup> *Alexander v. Edgewood Management Corporation, et. al.* 14. United States District Court for the District of Columbia. 1 Sept. 2015. 14. Web. <[www.washlaw.org/pdf/alexander\\_amended\\_complaint.pdf](http://www.washlaw.org/pdf/alexander_amended_complaint.pdf)>.

<sup>8</sup> District of Columbia Department of Corrections. “DC Department of Corrections Facts and Figures.” Jan. 2016. Web. <[doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20January%202016.pdf](http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20January%202016.pdf)>.

<sup>9</sup> Washington Lawyers’ Committee for Civil Rights & Urban Affairs. *Racial Disparities in Arrests in the District of Columbia, 2009-2011: Implications for Civil Rights and Criminal Justice in the Nation’s Capital*. Rep., July 2013. 2. Web. <[www.washlaw.org/pdf/wlc\\_report\\_racial\\_disparities.pdf](http://www.washlaw.org/pdf/wlc_report_racial_disparities.pdf)>.

<sup>10</sup> *Alexander v. Edgewood Management Corporation, Et. Al.* 14. United States District Court for the District of Columbia. 1 Sept. 2015. 15. Web. <[www.washlaw.org/pdf/alexander\\_amended\\_complaint.pdf](http://www.washlaw.org/pdf/alexander_amended_complaint.pdf)>.

<sup>11</sup> Washington Lawyers’ Committee for Civil Rights & Urban Affairs. *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law*. Rep., 22 Oct. 2014. 4. Web. <[www.washlaw.org/pdf/wlc\\_collateral\\_consequences\\_report.pdf](http://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf)>.

<sup>12</sup> *Ibid.*







**UP TO 98%**  
of incarcerated women  
have experienced trauma  
prior to incarceration.

involved women. Nationally, while more men are in prison than women, “ the rate of growth for female imprisonment has outpaced the rate of growth for male imprisonment by more than 50% between 1980 and 2014,” and African American women are imprisoned at more than twice the rate of white women.<sup>13, 14</sup> From 1980-2014, the number of incarcerated women increased from 26,378 to 215,332.<sup>15</sup> While men still outnumber women in prison, the number of women in prison has grown at a significantly quicker speed than the overall number of incarcerated men during this time period.<sup>16</sup>

The majority of women involved with the criminal legal system were arrested for non-violent crimes.<sup>17</sup> The significant increase in female incarceration since 1980 is primarily due to the increased penalties for drug-related crime during this period.<sup>18</sup> Approximately 25% of incarcerated women are serving time for drug-related offenses (compared to approximately 16% for males). Only 3% of incarcerated women are serving time for violent crimes.<sup>19</sup>

*Only 3% of incarcerated women are serving time for violent crimes.*

Any discussion of women’s involvement in the criminal legal system must include a gendered lens. First, it is critical to understand that women involved in the criminal legal system have, on the whole, experienced circumstances that differ drastically from their male counterparts:

- Up to 98% of incarcerated women have experienced trauma such as interpersonal violence and/or physical/sexual abuse prior to incarceration.<sup>20</sup>
- Reports estimate that half of incarcerated women were homeless in the month prior to their incarceration.<sup>21</sup>

<sup>13</sup> The ERC was not able to obtain local or state level data disaggregated by race AND gender for the purposes of this section of the report. However, it should be noted that the April 4<sup>th</sup> guidance from HUD suggests that while making a discriminatory effects claim on this basis, “national statistics on racial and ethnic disparities in the criminal justice system may be used where, for example, state or local statistics are not readily available and there is no reason to believe they would differ markedly from the national statistics.” In conducting research for this report, the ERC determined that there was no reason to believe that the racial disproportionality that characterizes the criminal legal system in the region would vary based on gender. However, the difficulty in obtaining the data underscores the point made in recommendation 7 of this report.

<sup>14</sup> The Sentencing Project. “Incarcerated Women and Girls.” Nov. 2015. Web. <[www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf](http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf)>.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> National Resource Center on Justice Involved Women. “Working with Justice Involved Women.” Web. <[cjinvolvedwomen.org/wp-content/uploads/2016/01/Infographic-Final-2-pager.pdf](http://cjinvolvedwomen.org/wp-content/uploads/2016/01/Infographic-Final-2-pager.pdf)>.

<sup>18</sup> American Civil Liberties Union. “Facts about the Over-Incarceration of Women in the United States.” Web. <[www.aclu.org/other/facts-about-over-incarceration-women-united-states](http://www.aclu.org/other/facts-about-over-incarceration-women-united-states)>.

<sup>19</sup> Ibid.

<sup>20</sup> National Resource Center on Justice Involved Women. “Working with Justice Involved Women.” Web. <[cjinvolvedwomen.org/wp-content/uploads/2016/01/Infographic-Final-2-pager.pdf](http://cjinvolvedwomen.org/wp-content/uploads/2016/01/Infographic-Final-2-pager.pdf)>.

<sup>21</sup> Ibid.



- Approximately 73% of women in prison reported a mental health problem, compared to 12% of women in the U.S. population overall.<sup>22</sup>
- Nearly two thirds of women in prison are mothers, and 77% of incarcerated mothers reported daily care for their child/children prior to incarceration.<sup>23</sup>



Nearly two thirds of women in prison are mothers

A *Best Practice Toolkit for Working with Domestic Violence Survivors with Criminal Histories* reports that the common profile of women involved in the criminal justice system is

- Disproportionately women of color; Thirty years of age with low socioeconomic status; Unemployed and have not obtained a high school degree; Unmarried/un-partnered and often parenting in isolation; Most likely convicted of a drug offense; Survivor of childhood physical and/or sexual abuse; Likely to have mental health and substance abuse issues; and Survivor of domestic and/or sexual violence.<sup>24</sup>

Many women's interactions with the criminal legal system are a result of their experiences of domestic violence. Often, survivors of domestic violence have criminal records.<sup>25</sup> Since the 1970s, many jurisdictions around the country enacted dual arrest policies that encouraged police to arrest both perpetrator and victim in incidences of intimate partner violence; it is only relatively recently that such policies have been amended in response to critiques about their damaging impacts on victims.<sup>26</sup> It is also not uncommon for survivors of domestic violence to be arrested and prosecuted for defending themselves against their abusers. Finally, survivors frequently have criminal histories that may initially appear unrelated to domestic violence—i.e. prostitution, theft, or drug related charges—when in reality such acts were committed as a result of coercion or threats from their abusers. For example, the ERC recently worked with a client who had an item on her criminal record related to her failure to return rental furniture. The woman could not return the rental furniture because once she fled her abusive husband, she was unable to return to the home they shared to retrieve the furniture. However, as a result of the information on her criminal record, her application for an apartment was denied.

Finally, in order to understand the complex nature of women's involvement in the criminal legal system, it is necessary to take into account that many of the above factors are interrelated when it comes to how they play out in any one woman's life. Further, their impacts are often compounding. For example, domestic violence is a leading cause of homelessness for women, and many incarcerated women have experienced both domestic violence and homelessness.<sup>27</sup> Domestic violence and other types of abuse lead to mental health issues, another experience that is extremely common for women

<sup>22</sup> Hagler, Jamal. "6 Things You Should Know About Women of Color and the Criminal Justice System." *Center for American Progress*, 16 Mar. 2016. <[www.americanprogress.org/issues/criminal-justice/news/2016/03/16/133438/6-things-you-should-know-about-women-of-color-and-the-criminal-justice-system/](http://www.americanprogress.org/issues/criminal-justice/news/2016/03/16/133438/6-things-you-should-know-about-women-of-color-and-the-criminal-justice-system/)>.

<sup>23</sup> Women's Prison Association. "Quick Facts: Women & Criminal Justice - 2009." Sept. 2009. Web. <[www.wpaonline.org/wpaassets/Quick\\_Facts\\_Women\\_and\\_CJ\\_2009\\_rebrand.pdf](http://www.wpaonline.org/wpaassets/Quick_Facts_Women_and_CJ_2009_rebrand.pdf)>.

<sup>24</sup> Kubiak, Sheryl, Cris Sullivan, Lauren Fries, Nkiru Nnawulezi, and Gina Fedock. *Best Practice Toolkit for Working with DV Victims with Criminal Histories*. Michigan Coalition Against Domestic and Sexual Violence, Dec. 2011.14. Web. <[ocadvsa.org/wp-content/uploads/2014/04/Best-Practice-Toolkit-for-Working-with-DV-Victims-with-Criminal-Histories.pdf](http://ocadvsa.org/wp-content/uploads/2014/04/Best-Practice-Toolkit-for-Working-with-DV-Victims-with-Criminal-Histories.pdf)>.

<sup>25</sup> Bishop, Catherine, Navneet Grewal, and Meliah Schultzman. "Housing Access for Domestic Violence Survivors with Criminal Records." *National Housing Law Project*, 7 Sept. 2011. Web. <[nhlp.org/files/DV%20and%20Criminal%20Records%20Materials.pdf](http://nhlp.org/files/DV%20and%20Criminal%20Records%20Materials.pdf)>.

<sup>26</sup> Sussman, Erika. *Criminal Records and Employment Rights: A Tool for Survivors of Domestic Violence*. Center for Survivor Agency and Justice and National Network to End Domestic Violence, 2013. Web. <[nnedv.org/downloads/Thousing/EmptRightsForSurvivorsWithCriminalRecords.pdf](http://nnedv.org/downloads/Thousing/EmptRightsForSurvivorsWithCriminalRecords.pdf)>.

<sup>27</sup> National Network to End Domestic Violence. "Domestic Violence, Housing, and Homelessness." Web. <[nnedv.org/downloads/Policy/NNEDV\\_DVHousing\\_factsheet.pdf](http://nnedv.org/downloads/Policy/NNEDV_DVHousing_factsheet.pdf)>.

involved in the criminal legal system. In turn, “incarcerated women with a history of trauma and accompanying mental health concerns are more likely to have difficulties with prison adjustment and misconduct.”<sup>28</sup> The interplay and accumulation of all of the above factors, in addition to discrimination, make re-entry for many women an insurmountable challenge.

### ***Finding Housing with a Criminal Record***

According to the American Bar Association, collateral consequences “are the penalties, disabilities, or disadvantages imposed upon a person as a result of a criminal conviction, either automatically by operation of law or by authorized action of an administrative agency or court on a case by case basis.”<sup>29</sup> In broader uses of the term, it may also include less formal penalties or disadvantages that are related to having any sort of criminal record, including an arrest. Difficulty in securing and maintaining housing is widely recognized as a collateral consequence that reverberates profoundly throughout people’s lives.

In its 2014 report on collateral consequences of arrests and convictions in DC, Maryland, and Virginia, the Washington Lawyers’ Committee found that “arrest and conviction history have serious effects on the ability to find public or private housing” and that none of the jurisdictions studied for the report restrict private landlords from denying housing based on an individual’s criminal history (Maryland and Virginia specifically authorize it).<sup>30</sup>

Limiting the impact of collateral consequences is important for a number of reasons; chief among them is the issue of basic fairness. Another of the most commonly cited reasons to limit the impact of collateral consequences is reducing recidivism. While 60% of women released from incarceration are re-arrested and nearly a third are returned to prison, “these new criminal justice contacts are largely for technical violations” that often stem from “unmet “survival needs”” like difficulty in securing a job or safe housing.<sup>31</sup> Further, similar to how women’s life circumstances prior to incarceration are interconnected and in many instances have a cumulative impact, collateral consequences often “exacerbate each other.”<sup>32</sup>

*In addition to understanding that collateral consequences exist for people with criminal records across the board, it is important to understand for the purposes of this report that racial or other types of discrimination may increase their burden on some people with criminal records more than others.*

Finally, in addition to understanding that collateral consequences exist for people with criminal records across the board, it is important to understand for the purposes of this report that racial or other types of discrimination may increase their burden on some people with criminal records more than others. This is due both to the disproportionate effect of the criminal legal system on racial minorities, but also to the kinds of discriminatory practices that this report discusses in the results section.

<sup>28</sup> Ney, Becki, Rachelle Ramirez, and Marilyn Van Dieten, eds. *Ten Truths That Matter When Working With Justice Involved Women: Executive Summary*. National Resource Center on Justice Involved Women, Apr. 2012. Web. <[cjinvolvedwomen.org/wp-content/uploads/2015/09/Ten\\_Truths\\_Brief.pdf](http://cjinvolvedwomen.org/wp-content/uploads/2015/09/Ten_Truths_Brief.pdf)>.

<sup>29</sup> “User Guide Frequently Asked Questions.” ABA National Inventory of Collateral Consequences of Conviction. American Bar Association, 2013. Web. <[www.abacollateralconsequences.org/user\\_guide/](http://www.abacollateralconsequences.org/user_guide/)>.

<sup>30</sup> Washington Lawyers’ Committee for Civil Rights & Urban Affairs. *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law*. Rep., 22 Oct. 2014. Web. <[www.washlaw.org/pdf/wlc\\_collateral\\_consequences\\_report.pdf](http://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf)>.

<sup>31</sup> Ney, Becki, Rachelle Ramirez, and Marilyn Van Dieten, eds. *Ten Truths That Matter When Working With Justice Involved Women: Executive Summary*. National Resource Center on Justice Involved Women, Apr. 2012. Web. <[cjinvolvedwomen.org/wp-content/uploads/2015/09/Ten\\_Truths\\_Brief.pdf](http://cjinvolvedwomen.org/wp-content/uploads/2015/09/Ten_Truths_Brief.pdf)>.

<sup>32</sup> Washington Lawyers’ Committee for Civil Rights & Urban Affairs. *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law*. Rep., 22 Oct. 2014. 2. Web. <[www.washlaw.org/pdf/wlc\\_collateral\\_consequences\\_report.pdf](http://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf)>.



## Focusing on Women

The investigation that formed the basis of this report used civil rights testing to probe the existence of differential treatment on the basis of race between African American and white female homeseekers posing as having comparable criminal histories. All tests conducted through the investigation used female testers, along with assigned criminal history profiles that reflected women's experiences with the criminal legal system. The choices to structure the investigation to take gendered experiences of the criminal legal system into account and to collect information about racial discrimination in housing as women experience it were deliberate.

*The choices to structure the investigation to take gendered experiences of the criminal legal system into account and to collect information about racial discrimination in housing as women experience it were deliberate.*

Despite the fact that reform of the criminal legal system is gaining in popularity, women remain largely overlooked in such efforts. A recent, rare report on women and jails from the Vera Institute for Justice notes that “as interest in rolling back the misuse and overuse of jail increases, women frequently remain an afterthought in discussions about reform.”<sup>33</sup> This oversight makes it even more difficult for women to move on with their lives after incurring a criminal record, as the resources for them to do so are even more scant than they are for men.

Similarly, women of color are often overlooked in efforts devoted to racial equity. A recent trend in philanthropy,

for example, has been funding initiatives focused on racial disparities that boys and men of color experience. Various women of color have raised concerns about the lack of attention paid or investments made in addressing the disparities that women and girls of color face.<sup>34</sup> Such critiques have been impactful, and last year the White House announced a new funding initiative focused on women and girls of color.<sup>35</sup> However, questions remain about the differences in levels of investment between initiatives dedicated to men and boys vs. women and girls of color.<sup>36</sup>

Research, social policy, and even philanthropic efforts have invisibilized and/or criminalized African American women for decades. In 1965, *The Negro Family: The Case for National Action*, better known as the *Moynihan Report*, pathologized African American women headed households, positing that this matriarchal family structure would stand as an insurmountable obstacle to Black progress in the United States. The report has been the subject of Black feminist critique for decades. Recently, prominent public intellectual Melissa Harris Perry wrote, “Moynihan’s conclusions granted permission to generations of policymakers to imagine poor black women as domineering household managers whose unfeminine insistence on control both emasculated their potential male partners and destroyed their children’s futures. Instead of engaging black women as creative citizens doing the best they could in tough circumstances, the report labeled them as unrelenting cheats unfairly demanding assistance from the system.”<sup>37</sup>

<sup>33</sup> Vera Institute for Justice. *Overlooked: Women and Jails in an Era of Reform*. Aug. 2016. Web. <[storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy\\_downloads/overlooked-women-and-jails-fact-sheet.pdf](http://storage.googleapis.com/vera-web-assets/downloads/Publications/overlooked-women-and-jails-report/legacy_downloads/overlooked-women-and-jails-fact-sheet.pdf)>.

<sup>34</sup> For example, see *200 Black Men about My Brother’s Keeper*. “Why We Can’t Wait: Women of Color Urge Inclusion in ‘My Brother’s Keeper’” Letter to President Barack Obama. 17 June 2014. African American Policy Forum, 18 May 2016. Web. <[www.aapf.org/2014/06/woc-letter-mbk](http://www.aapf.org/2014/06/woc-letter-mbk)>.

<sup>35</sup> “Prosperity Together.” Women’s Funding Network, Web. <[www.womensfundingnetwork.org/initiatives/prosperity-together/](http://www.womensfundingnetwork.org/initiatives/prosperity-together/)>.

<sup>36</sup> Marek, Kierstan. “As Women of Color Get Attention from the White House, We’ve Got Some Questions.” *Inside Philanthropy*. 3 Dec. 2015. Web. <<http://www.insidephilanthropy.com/home/2015/12/3/as-women-of-color-get-attention-from-the-white-house-weve-go.html>>.

<sup>37</sup> Harris-Perry, Melissa. “The Rest of the Story: Black Women and the War on Drugs.” *The Undeclared*. 15 Sept. 2016. Web. <<http://theundeclared.com/features/the-rest-of-story-black-women-and-the-her-story-of-the-war-on-drugs-jay-z-melissa-harris-perry-nyt/>>.



Indeed, more than 60 years after the release of the *Moynihan* Report and four decades after the promulgation of policies that intensified the criminalization of African American women, the report's impacts still reverberate. African American women are incarcerated and experience other types of harmful criminalization at rates that are dramatically disproportionate to their share of the population. Meanwhile, the reality remains that African American households are disproportionately headed by women.<sup>38</sup>

This report focuses on the experiences of women with criminal records in finding housing, but uses civil rights testing to disaggregate the information by race. Doing so contributes intersectional information to ongoing conversations about reforming the criminal legal system, providing relief from collateral consequences, and ending discriminatory policies and practices. When it comes to fairness and equity, the stakes are already high. However, the head of household status that many African American women hold mean that the implications of any discrimination uncovered through the investigation impact minor children and other family members as well.

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<sup>38</sup> *Occupied housing units with a White head of household are 2.29 times more likely to be owned than rented, while occupied housing units with a Black head of household are 1.32 times more likely to be rented. This racial disparity continues along gender lines as well. White women as head of household are 1.29 times more likely to own their property, while African American women are 1.76 times more likely to rent. American Community Survey Data 5 Year Summary 2014.*



## STATE OF THE LAW

The Fair Housing Act prohibits discrimination in housing related transactions on the basis of race, color, national origin, religion, sex, familial status, and disability. In April 2016, HUD's Office of General Counsel issued guidance on the application of Fair Housing Act standards to the use of criminal records by housing providers. The guidance addresses both the discriminatory effects and disparate treatment methods of proof in Fair Housing Act cases. It states that 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). The guidance also documents the disproportionate rates at which African Americans and Hispanics face arrest, conviction, and incarceration in relation to their share of the general population. Consequently, it clarifies that "while having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another."<sup>39</sup>

The guidance goes on to stipulate that criminal background 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. Specifically, according to Supreme Court decisions cited by the guidance, "an arrest shows nothing more than that someone probably suspected the person apprehended of an offense."<sup>40</sup> Finally, the document states that "a housing provider that imposes a blanket prohibition on any person with any conviction record—no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then" will unlikely be able to prove that such a policy meets a substantial, legitimate, nondiscriminatory interest. There is, however, a statutory exemption from discriminatory effects liability in the Fair Housing Act based on the denial of housing due to a person's conviction for drug manufacturing and distribution.<sup>41</sup>

There are numerous additional, in-depth criminal history related restrictions and provisions in relation to public and other types of federally subsidized housing. Such housing was not tested as part of the investigation that forms the basis for this report, so these restrictions and provisions are not covered in detail here.<sup>42</sup>

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, and 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.

Since many survivors of domestic violence may have a criminal record related to the violence perpetrated against them, further discussion of domestic violence related protections in housing is

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<sup>39</sup> Department of Housing and Urban Development. 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. 4 Apr. 2016. Web. <[portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHASstandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASstandCR.pdf)>.

<sup>40</sup> *Ibid.*

<sup>41</sup> The guidance reminds readers that the exemption does not apply to arrests for those crimes, nor to convictions for drug possession.

<sup>42</sup> For a summary of criminal history related provisions in relation to federally subsidized housing, see: Washington Lawyers' Committee for Civil Rights & Urban Affairs. *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law. Rep.*, 22 Oct. 2014. 4. Web. <[www.washlaw.org/pdf/wlc\\_collateral\\_consequences\\_report.pdf](http://www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf)>.



warranted. 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.

Congress initially enacted the Violence Against Women Act (VAWA) in 1994 to provide protections to survivors of domestic violence in federal housing programs. Specifically, survivors of domestic violence applying to federally subsidized housing can not be denied admission because of the violence committed against them, and covered providers are not allowed to pursue adverse housing actions such as eviction due to domestic violence. The Violence Against Women Reauthorization Act of 2013 extended these protections. It also covers additional housing programs beyond previous iterations of the law, including the Low Income Housing Tax Credit (LIHTC) program, and extends new protections to survivors of sexual assault and LGBT (lesbian, gay, bisexual, and transgender) survivors. In relation to the application process, VAWA provides that a person's status as "a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance."<sup>43</sup> VAWA offers extremely important protections, but those protections do not extend to private housing. It also lacks a private right of action, which poses challenges for enforcement. In April 2015, HUD published a proposed rule on implementation of the 2013 VAWA Reauthorization, but it has yet to issue a final rule.

Additionally, DC has some of the strongest protections for survivors of domestic violence in the country, as status as a victim of an intra-family offense is a protected class in the DC Human Rights Act (DCHRA).<sup>44</sup> These protections extend to the private housing market. However, even though the protection was added to the DCHRA effective March 2007, there have not been regulations promulgated to implement it.

Finally, HUD's 2011 memo *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)* states "discrimination against victims of domestic violence is almost always discrimination against women."<sup>45</sup> Accordingly, the prohibition against discrimination on the basis of sex in the Fair Housing Act allows for female survivors of domestic violence who have been discriminated against in housing to bring claims under the Act. The memo provides guidance on assessing claims of housing discrimination by domestic violence survivors under the Fair Housing Act.

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<sup>43</sup> *Violence Against Women Act of 1994. Pub.L. 103-322.*

<sup>44</sup> *Office of Human Rights. "Protected Traits in DC." Government of the District of Columbia. Web. <ohr.dc.gov/protectedtraits>.*

<sup>45</sup> *Department of Housing and Urban Development. Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA). By Sara K. Pratt. 9 Feb. 2011. Web. <portal.hud.gov/hudportal/documents/huddoc?id=FHEODomesticViolGuidEng.pdf>.*

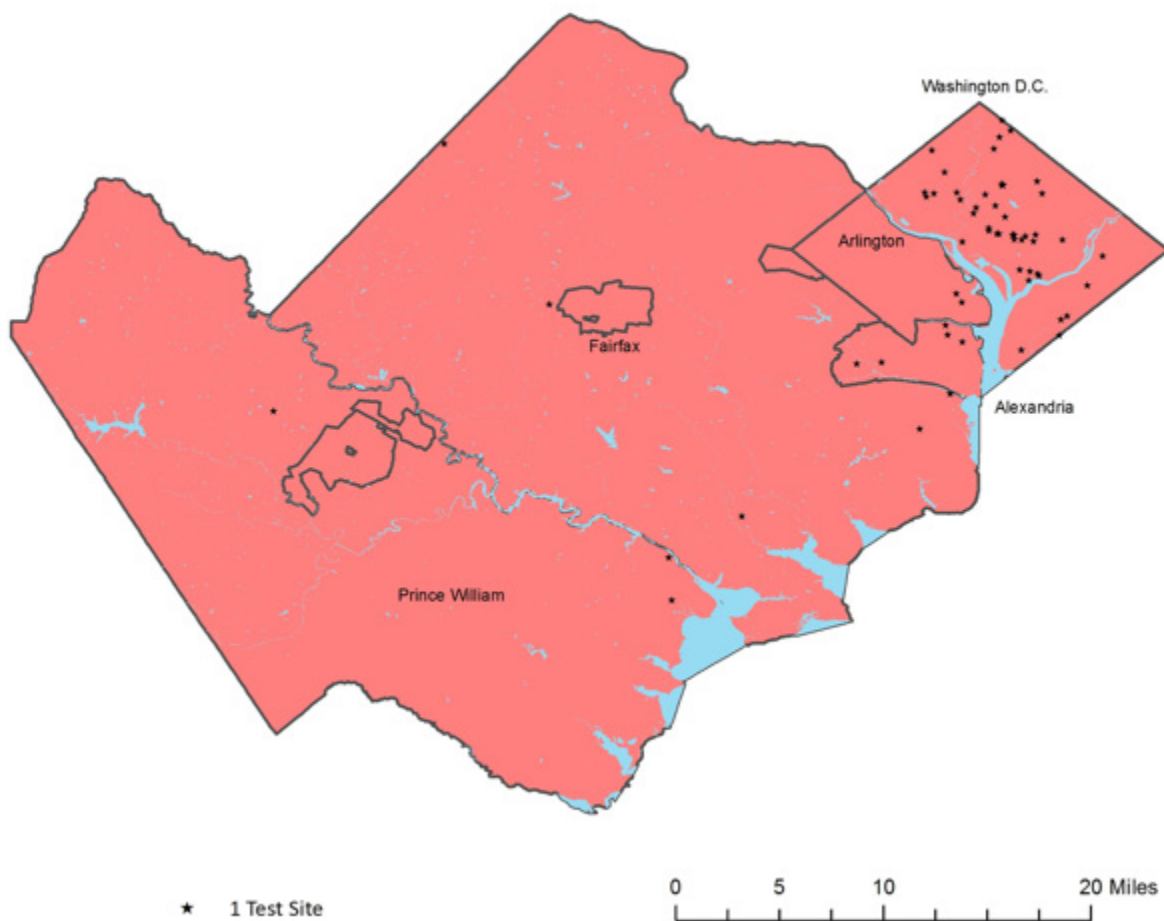
## METHODOLOGY

The investigation that served as the basis for this report utilized civil rights testing to evaluate whether white and African American female testers posing as having similar criminal backgrounds were treated differently on the basis of race. Through testing, the ERC was also able to gather information about certain criminal records screening policies and procedures local housing providers have in place, some of which likely violate various fair housing protections based on a disparate effects theory of liability.

Over the course of the summer, the ERC conducted 60 matched pair tests using a specialized methodology developed specifically for this project. In total, 20 matched pair phone tests and 40 in person tests were conducted at sites in the District of Columbia (45 tests) and Northern Virginia (15 tests).

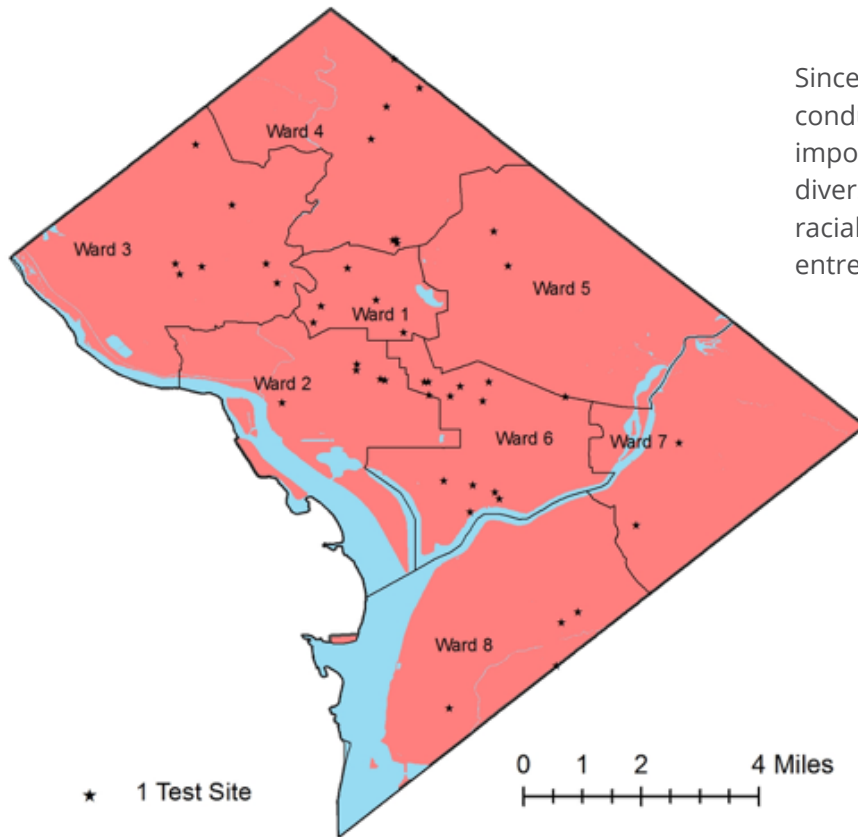
Test sites were selected from a variety of online sources based on their location, price range, and size. Though the number of tests conducted was not statistically significant in light of the quantity of housing stock in the region, the project test coordinator did attempt to select sites throughout Washington DC (the District) and Northern Virginia.

### All Test Sites



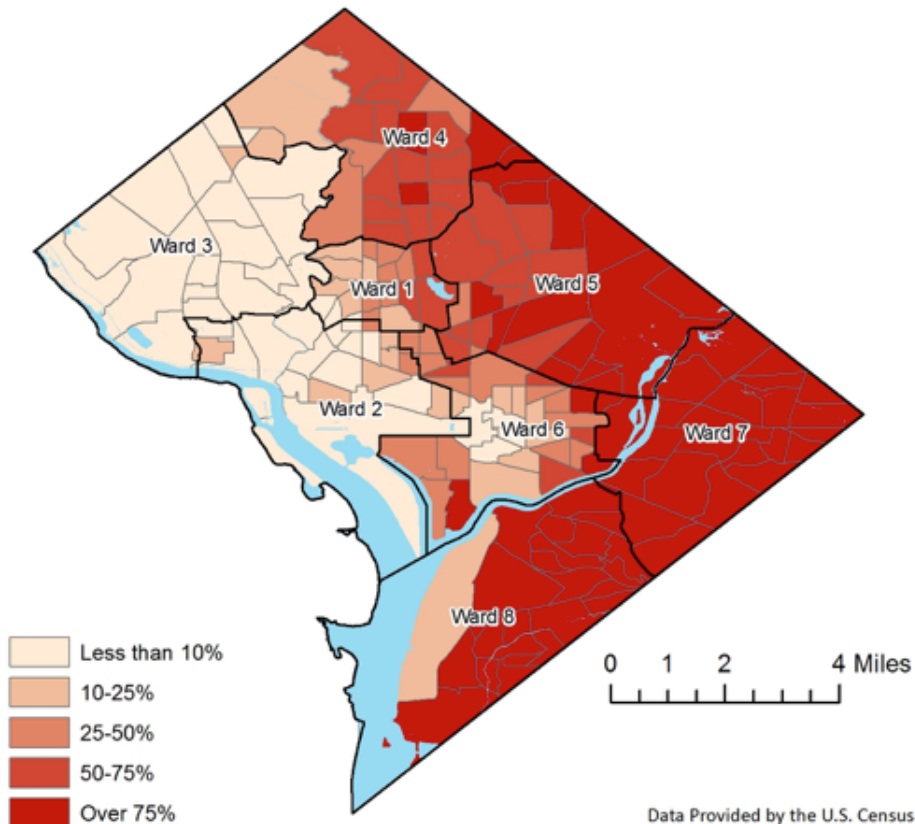


## Washington, D.C. Test Sites



Since the basis of the tests conducted was race, it was important to ensure geographic diversity in test sites, as racial segregation is deeply entrenched in the District.

## African American Population Washington, D.C.



Two profiles, discussed below, were used in this project. Each required a different price range. Finally, staff selected large multifamily properties for testing.

Each matched pair consisted of one white woman and one African American woman. The race of each tester was visually and linguistically discernable to a reasonable person. Pairs of testers were matched by age and other external characteristics to ensure that those additional factors did not affect the outcome of the tests.

All testers that participated in the project received extensive classroom training and practice in the field. All testers for the project participated in the ERC's standard rental tester training, along with an additional, specialized training to familiarize them with the specific requirements of this methodology.

Each tester was assigned a profile at the beginning of each test, which provided her with information about items that would normally come up in conversation while inquiring about renting an apartment. For example, testers were assigned an annual income and provided with information about their employment. They were also provided information about the type of unit they were to express interest in and their price range.

There were two types of criminal backgrounds utilized in profiles for this investigation (each matched pair utilized the same type of profile). Both were crafted based on extensive research about women's interactions with the criminal legal system and in consultation with both local and national issue area experts.

1. An arrest attributed to "youthful indiscretion": This profile utilized a college era felony arrest for drug possession from at least seven years ago. Testers were instructed to clarify that the matter was an arrest and that the charges were ultimately dismissed. Testers using this profile were instructed to attribute the charge to a mistake they made when they were younger. This profile featured high income, professional level employment information and was utilized when inquiring about units with a mid-high price point.
2. A conviction related to domestic violence: This profile utilized a larceny conviction from at least eleven years ago that was related to a long-term abusive relationship the tester ended years ago. It featured employment information that would be realistic for a woman that recently received some sort of professional certification and allowed her to obtain an entry-level professional position. It was used at test sites with a low-moderate rent range.<sup>46</sup>

Neither criminal history profile was directly related to a tester's ability to be a good tenant, meaning that neither profile utilized information about criminal history that would have reasonably implicated the safety of other tenants or of the property itself. Profiles presented testers as attractive prospective applicants that would qualify for the housing they inquired about, aside from the potential issue of their criminal record.

*The information about criminal background that each tester was instructed to provide during a matched pair test was the same, such that the race of the testers, and not their criminal backgrounds, could be the only explanation for any difference in treatment.*

Each test had dual purposes:

1. Evaluate whether white and African American testers posing as having similar criminal backgrounds were treated differently on the basis of race, and

<sup>46</sup> Including Low Income Housing Tax Credit Units, which are covered by the Violence Against Women Reauthorization Act of 2013.



2. Obtain information about each test site's criminal records screening policies to evaluate whether local housing providers have screening policies in place that may have a disparate impact on African American housing applicants.

Each tester was instructed to pose as a single woman looking for a one bedroom or studio apartment for herself and to disclose that she has a conviction or arrest in her criminal background. Testers were instructed to disclose on every test at least that they either had a felony level arrest or conviction on their record, and to ask the agent they were interacting with how it may affect their application. They were instructed to provide additional information about their criminal record in order to obtain as much information as possible about a housing provider's criminal records screening policy, as the conversation allowed for it.<sup>47</sup>

Before each test began, an advanced call was made to gather information about the general availability of units, leasing office hours and appointment policies, and pricing information. In each test conducted, the African American tester called or visited first. Approximately two weeks later, the white tester conducted her test part.

Prior to conducting each test, a tester received an assignment form and verbal instructions from the project test coordinator. Testers were instructed to provide objective, observational information about their experiences as homeseekers.

Immediately after the conclusion of each test part, the tester made contact with the test coordinator to provide initial information about what happened during the test. Finally, testers completed a detailed test report form and narrative after each test and submitted it to the project test coordinator.

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<sup>47</sup> *There were some instances where it was not possible for the tester to convincingly play the role assigned to them and provide additional details about their criminal record, like the length of time since an arrest/conviction or the circumstances surrounding the arrest/conviction. For example, an agent in one test forcefully cut a tester off in the middle of the initial disclosure of her criminal record; in that instance, it was not appropriate for her to follow up with additional details about it. Testers received extensive guidance through training and in the test assignment phase about how to interact with agents being tested in this regard.*



## RESULTS

ERC staff conducted analysis of test report forms, narratives, and materials provided to testers during the test or as follow-up via email or phone call. Analysis was conducted on the basis of both differential treatment and disparate impact. At least two ERC staff members trained extensively in test coordination and with long-term experience in test coordination and analysis conducted analysis of each test. There were separate numbers of inconclusive tests for each form of analysis for a variety of reasons.

There were 13 inconclusive tests for differential treatment for reasons including the inability on multiple occasions of one tester in a matched pair to make contact with a housing provider despite multiple attempts. The unavoidable complexity of the test methodology and the sensitive, socially ostracized nature of the criminal background related information testers were trained to disclose to rental agents occasionally yielded tester disclosures that were significantly<sup>48</sup> unmatched within matched pairs; such tests were also deemed inconclusive when it came time to analyze for differential treatment. Ultimately, the base number of tests used for analyzing differential treatment was 47.

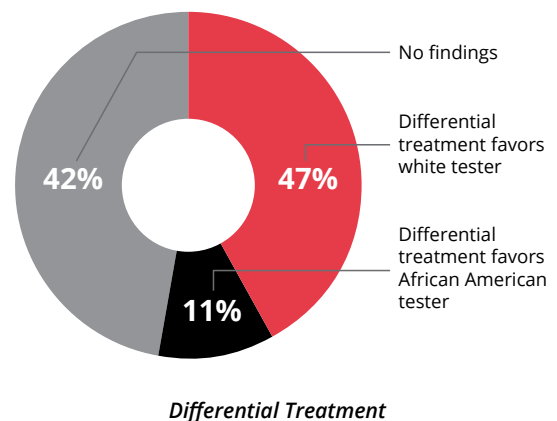
Staff deemed 10 tests inconclusive for the purposes of analyzing for disparate impact, most often due to vast differences in treatment within a matched pair test that made it impossible to gain any objective information about a policy. The base number of tests used for analyzing disparate impact was 50.

### RESULTS - DIFFERENTIAL TREATMENT

Twenty of the forty-seven tests, approximately 42% of tests, displayed no findings in regard to differential treatment. No finding means that there was no significant difference detected between how each tester in the pair was treated.

In total, twenty-seven of the forty-seven tests displayed some sort of differential treatment. In five tests, or approximately 11% of tests, an agent engaged in differential treatment that favored the African American tester.

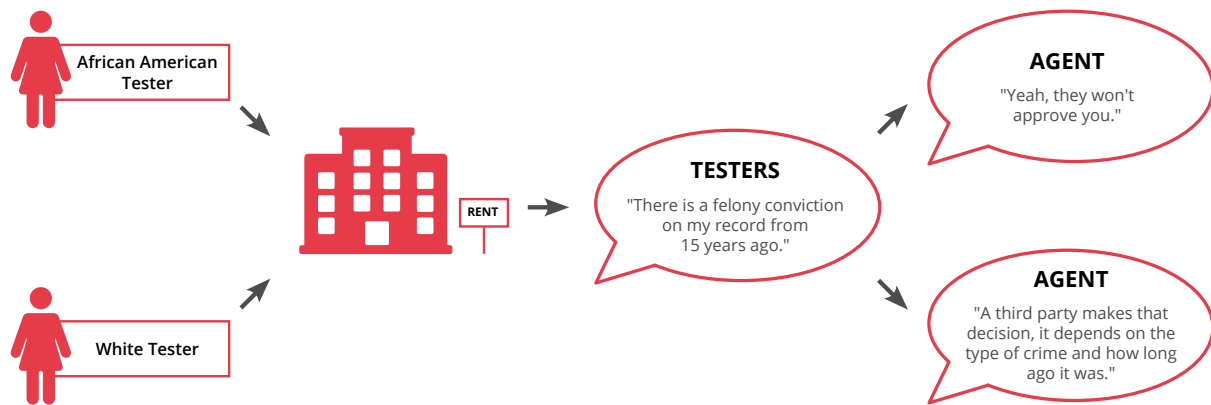
In twenty-two tests, approximately 47% of tests, an agent engaged in differential treatment that favored the white tester.



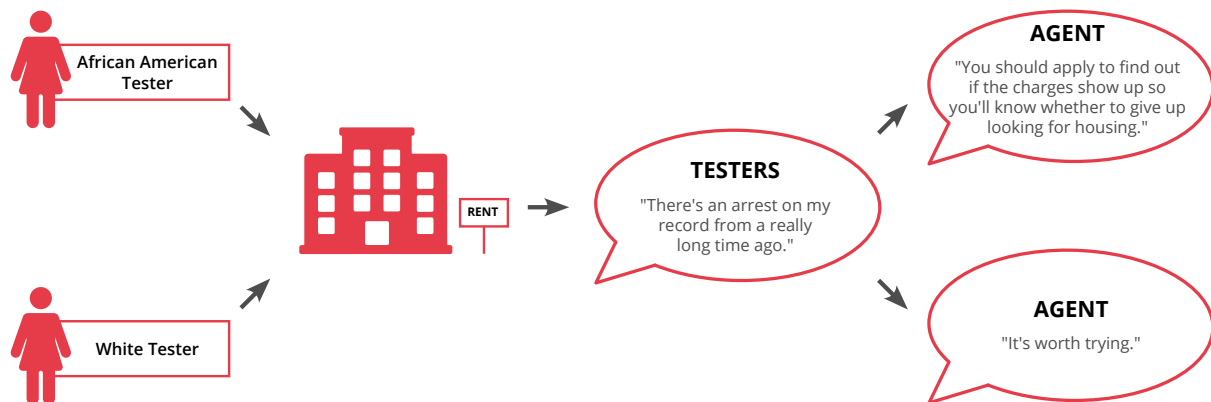
<sup>48</sup> "Significantly" means that staff believed it may have impacted the treatment of the tester.

There were three categories of differential treatment displayed through the testing conducted for this project:<sup>49</sup>

- Agents provided matched pair testers with different information or quality of service: This category captures instances of testers being provided different terms and conditions in order to apply for or rent a housing unit, like different fees.<sup>50</sup> It also includes tests where matched pair testers were provided different information about criminal records screening policies and practices. Finally, this category includes instances of inequitable professional service.



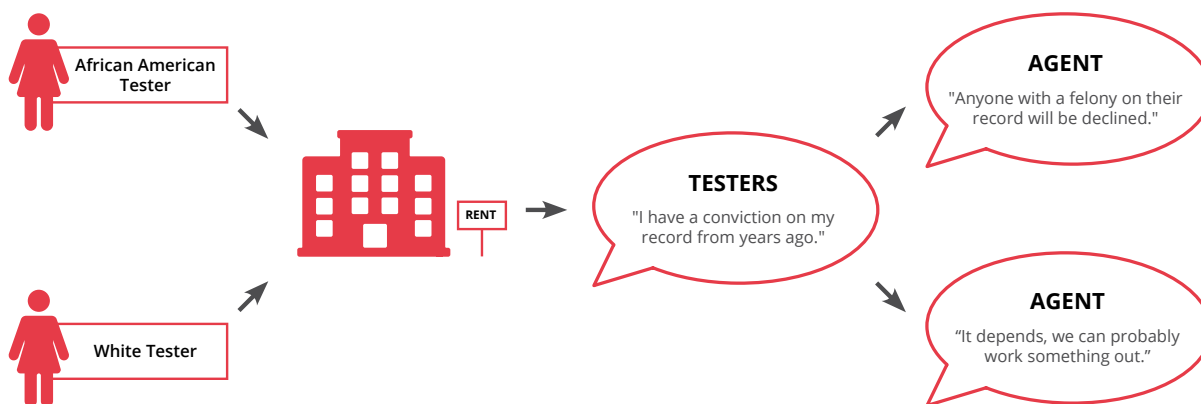
- Agents reacted differently to the tester's disclosure of their criminal record: This category includes instances of agents providing a more sympathetic reaction to one tester's disclosure of their criminal record than to their matched tester's disclosure, agents that made discouraging comments about the impact of a tester's criminal record on their overall life chances, and instances when agents provided completely different information in reaction to testers' disclosures of their criminal records.



<sup>49</sup> Note that in many instances, a test displaying differential treatment fell in multiple categories.

<sup>50</sup> The methodology for this project required a substantial temporal gap between test parts to avoid detection. Because of this, staff conducting analysis avoided coding tests in this category when there was a discussion of a special or incentive that could account for the difference.

- Agents provided speculation about the impact that testers' criminal records would have on their chances of a successful application: This category includes instances of agents speculating an application outcome in favor of the white tester while not providing the same speculation to the African American tester; speculating an application outcome against the African American tester while not providing the same speculation to the white tester; speculating an application outcome in favor of an African American tester while not providing the same speculation to the white tester; and speculating an application outcome against a white tester while not providing the same speculation to the African American tester. It also includes instances of agents downplaying the significance of the disclosed offense and/or details surrounding it in relation to meeting the housing provider's screening guidelines in favor of one tester and not the other.



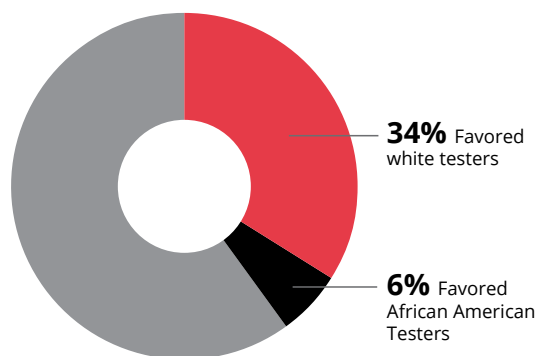
### 1. AGENTS PROVIDED MATCHED PAIR TESTERS WITH DIFFERENT INFORMATION OR QUALITY OF SERVICE:

Sixteen out of forty-seven tests, approximately 34% of tests, displayed differential treatment in this category that favored the white tester.

Three out of forty-seven tests, approximately 6% of tests, displayed this type of differential treatment that favored the African American tester.

#### **Example 1: Different information about criminal records screening policy**

The most frequent type of differential treatment uncovered through testing occurred when matched pair testers were provided different information about criminal records screening policies and practices. In one DC test, both testers disclosed to the same agent that she had a conviction on her record from approximately 15 years ago related to being in an abusive relationship. After the African American tester disclosed this information to the agent, he “shook his head no, and stated ‘Yeah. They won’t approve you. Anyone with a felony on their record will be declined.’” After the white tester disclosed the same information about her criminal record during her test part, the same agent responded that a “third party conducted the background check and made a decision, and that it really depended on the type of crime and how long ago it had occurred.”



Agents Provided Matched Pair Testers With Different Information Or Quality Of Service

During this test, the testers received starkly different information about the property's criminal records screening policy. The agent told the African American tester that there was a felony ban in place. He told the white tester that a third party made a decision about how to treat an applicant's criminal record based on the type of crime and how long ago it had occurred.

**Example 2: Different terms and conditions to apply**

During one test in Alexandria, VA, the white tester was told that in order to apply for an apartment, she would have to pay a \$50 application fee for each household member over the age of 18, along with a \$500 holding fee that would be credited to her security deposit should her application be approved. The African American tester was told that in order to apply, she would have to pay a \$300 administrative fee to cover the background check, the \$50 application fee, and a \$500 deposit. If her application were denied, she was told only the \$500 deposit would be refundable.

The testers received different information about the terms and conditions necessary to apply. In this example, the African American tester was told that she would have to pay \$300 more than the white tester just to apply for an apartment at the property.

*The agent told the African American tester that there was a felony ban in place. He told the white tester that a third party made a decision about how to treat an applicant's criminal record based on the type of crime and how long ago it had occurred.*

**Example 3: Inequitable professional service**

Both testers encountered the same agent during a test in Southeast DC. Despite having scheduled an appointment to visit the property in advance of the test, the African American tester waited for over twenty minutes to meet with the agent once she arrived, on time, for the appointment. When the white tester arrived for her site visit with the same agent, the agent immediately excused herself from the conversation she was having with an African American couple (also potential applicants from what the tester could tell) to assist the tester. At the end of the site visit, the agent attempted to make an appointment with the white tester to fill out an application, which she did not do with the African American tester. After the test concluded, the white tester received an additional phone call from the agent attempting to schedule a time for her to apply for an apartment, while the African American tester received no such follow up.

The testers experienced inequitable professional service. During this test, the African American tester waited for twenty minutes when she arrived on site, while the same agent immediately excused herself from a conversation with other applicants as soon as the white tester walked in the door. The white tester also received two rounds of follow up from the agent encouraging her to apply, while the African American tester received no such follow up.

*The African American tester was told that she would have to pay \$300 more than the white tester just to apply for an apartment at the property.*



## 2. AGENTS REACTED DIFFERENTLY TO THE TESTER'S DISCLOSURE OF HER CRIMINAL RECORD:

Nine out of forty-seven tests, approximately 19% of tests, featured differential treatment in this category that favored the white tester.

Two out of forty-seven tests, approximately 4% of tests, featured differential treatment in this category that favored the African American tester.

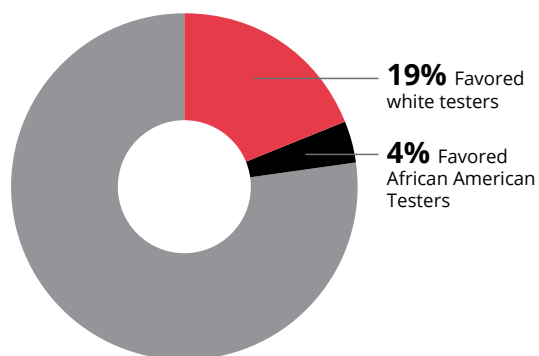
### *Example 4: More sympathetic reaction to a disclosure*

During one test in Virginia, both testers disclosed that she had a conviction on her record related to an abusive relationship. An agent told the African American tester that “usually felony convictions are a denial” and that she did not have further information. When the white tester disclosed information about her criminal background, an agent responded by apologizing to the tester because she wouldn't be approved due to the property's ban on applicants with felony convictions. The agent then searched for housing that may have been available to the tester at other sites and then suggested “private owners are usually more liberal with the background check, and then I hate to say it but Craigslist, but I know that can be a little scary sometimes, but that might be an option for you.”

The white tester received a much more sympathetic reaction to the disclosure of her criminal record than did the African American tester. The agent that the white tester interacted with apologized for the impact the property's felony ban would have on the tester and even attempted to assist her with locating a home. She also provided advice about how to proceed with her housing search.

### *Example 5: Discouraging comments about the impact of a record*

Both testers encountered the same agent at a property in DC and posed as having an arrest on her record from some years ago, clarifying that the charges were dismissed. The African American tester specified that the arrest was from 15 years ago. The agent told the African American tester that if the charges showed up on her record, she would be automatically denied because that was the company policy. She went on to suggest that the tester should apply, if only to find out if charges that old would show up, and so she wouldn't “waste time applying for apartments” if her “record would be a problem.” When the African American tester asked later in the conversation if there was any way the housing provider would be able to work with her in regards to the issue of the arrest record, the agent replied no, that “in the past she recalled an applicant who had 20 year old charges that were dismissed, but they showed up on the application, so the applicant was denied.” When the white tester interacted with the same agent and asked if her arrest record would lead to her application being denied, the agent explained that if it were a felony conviction, her application would be denied. She went on to suggest that it was “worth trying” to apply because if she were denied, only her application fee, and not the \$500 deposit/holding fee, would be nonrefundable.



*Agents Reacted Differently To The Tester's Disclosure Of Their Criminal Record*

*The agent in this test went so far as to suggest to the African American tester that she should apply—if only to find out if she should give up her housing search altogether due to the complication that her 15 year old arrest would provide.*



In addition to providing different information to the testers about the how the company's criminal records screening policies would treat their arrest records, the agent in this test went so far as to suggest to the African American tester that she should apply—if only to find out if she should give up her housing search altogether due to the complication that her 15 year old arrest would provide. The agent went beyond making discouraging comments to the tester about the impact of her criminal record on her application at the specific property tested, suggesting it may prevent her from being able to find any housing at all.

**Example 6: Different information in reaction to criminal record disclosures**

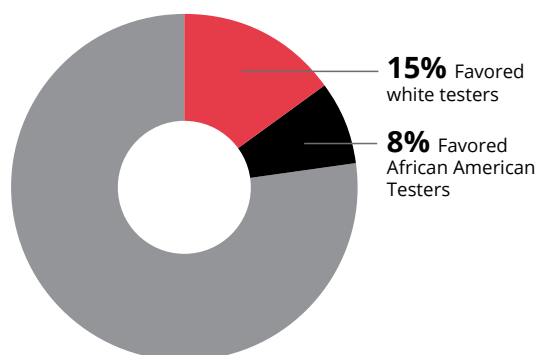
During one test in DC, an agent aggressively cut the African American tester off while she attempted to disclose her criminal record and said that a third party processes all of the applications. He then immediately explained that “there would also be a qualification for the apartment that would go along with the application process”, which is that each applicant would have to make \$59,800 annually to qualify to rent at the property. The same agent did not cut the white tester off when she disclosed that she had a felony conviction related to an abusive relationship from several years ago on her record. He responded that he wasn't sure how the third party application screener would treat the information and that to know, the tester would just have to apply. He followed this up with information about lease specials available at the property. The agent told the white tester that the property had an income requirement earlier on in their conversation, but the amount of the income requirement, \$55,000, was lower than what he told the African American tester.

In this instance, the agent provided very different information to testers in response to the information each tester provided<sup>51</sup> (or asked about) regarding the property's criminal records screening policies: the agent told the African American tester about an income requirement that was almost \$5,000 higher than what he told the white tester it was at a different point in their conversation and he told the white tester about lease specials available at the property.

**3. AGENTS PROVIDED SPECULATION ABOUT THE IMPACT THAT TESTERS' CRIMINAL RECORDS WOULD HAVE ON THEIR CHANCES OF A SUCCESSFUL APPLICATION:**

Seven out of forty-seven tests, approximately 15% of tests, displayed differential treatment that fell in this category and was favorable to the white tester.

Four out of forty-seven tests, approximately 8% of tests, displayed differential treatment that fell in this category and was favorable to the African American tester.<sup>52</sup>



**Agents provided speculation about the impact that tester's criminal records would have on their chances of a successful application**

<sup>51</sup> In addition to providing different terms and conditions to rent.

<sup>52</sup> This was the most common category of differential treatment that favored an African American tester, so a description of instances in which it occurred is as follows: On two occasions, an agent speculated to the African American tester that he or she didn't believe the tester's criminal record as disclosed would yield an application denial and the white tester in both tests received no such favorable speculation from an agent. In one instance, an agent told the white tester after consulting with her manager that if the tester's disclosed felony conviction showed up on the background check she would likely be denied. The African American tester in that test did not receive negative speculation from the agent she spoke with. Finally, in one test, an agent interacted with the African American tester by speculating that the criminal records screening policy probably addressed “more serious crimes, like murder or rape” but the agent the white tester interacted with did not engage in the same level of interpretation.

**Example 7: Speculation in favor of the white tester**

During a test in Alexandria, VA, an agent told the African American tester that she could not provide her with any information about the property's criminal records screening policy beyond the fact that "each case is looked at individually." An agent told the white tester, "I really don't think you will have an issue with that because it was so long ago." The agent went on to state to the white tester "my recommendation is that you probably won't have a problem and go ahead and pay the application fee and run it."

During this test, the housing provider's agent provided reassuring information to the white tester by speculating that she didn't think the tester's criminal record would pose a problem after initially stating that the housing provider has no involvement in that part of the application process. The African American tester was provided with no such reassuring speculation.

**Example 8: Speculation in favor of white tester and against African American tester**

During a test in DC, an agent advised the African American tester that "anyone with a felony on their record will declined," indicating that her application would not be successful based on the information she provided about her criminal record. The same agent, while interacting with the white tester, said that a third party made application decisions related to criminal backgrounds, and "that it really depended on the type of crime and how ago it had occurred." He then went on to tell the white tester that "they could probably work with" her, and that "they might be able to work something out."

*He then went on to tell the white tester that "they could probably work with" her, and that "they might be able to work something out."*

The differential treatment in this test is so stark that it was actually impossible to tell what the housing provider's criminal records screening policy was. The agent both speculated the application outcome in favor of the white tester and against the African American tester.

**Example 9: Downplaying the significance of a criminal record**

During a test in DC, an agent told the African American tester that he had "no idea" if her arrest record would be a reason to deny her application because a third party provider conducts the background check. The same agent told the white tester "anything that wasn't very serious should not be an issue" in response to a question about the impact her arrest record could have on her application's success.

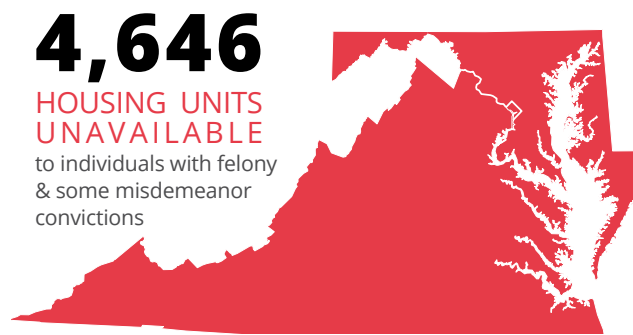
The agent downplayed the significance of the housing provider's criminal records screening policy to the white tester, but not to the African American tester.



## RESULTS - DISPARATE IMPACT AND THE SUBSTANTIAL ADDED BURDEN OF HAVING A CRIMINAL RECORD

### *Criminal Records Screening Policies that Have a Disparate Impact on African American Applicants*

The term “disparate impact” as it relates to the Fair Housing Act has a precise meaning. In its 2015 decision *Texas Department of Housing and Community Affairs et al. v. Inclusive Communities Project, Inc., et al.* upholding a disparate impact theory of liability as cognizable under the Fair Housing Act, the Supreme Court emphasized the necessity of identifying a specific policy or practice responsible for a disparate impact on a protected class in order to successfully formulate such arguments. The April 4, 2016 guidance from HUD’s Office of General Counsel clarifies that “while having a criminal record is not a protected characteristic under the Fair Housing Act, criminal history-based restrictions on housing opportunities violate the Act if, without justification, their burden falls more often on renters or other housing market participants of one race or national origin over another.”<sup>53</sup> Demographic information about the criminal legal system in the greater Washington region mirrors national trends cited in the HUD guidance. Specifically, as discussed previously in this report, African Americans in DC, Maryland, and Virginia experience arrest, conviction, and incarceration at rates vastly disproportionate to their share of the overall population. In such circumstances, the HUD guidance suggests that “a housing provider that imposes a blanket prohibition on any person with any conviction record—no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then” will be unable to prove that such a policy meets the substantial, legitimate, nondiscriminatory interest required by the burden shifting framework provided in HUD’s final rule on implementation of the Fair Housing Act’s Discriminatory Effects Standard.<sup>54</sup>



*Through the testing conducted for this project, the ERC uncovered evidence of policies it believes may violate the Fair Housing Act based on a disparate impact method of proof in fourteen separate tests, 28% of the tests conducted.*

Through the testing conducted for this project, the ERC uncovered evidence of policies it believes may violate the Fair Housing Act based on a disparate impact method of proof in fourteen separate tests, 28% of the tests conducted. Due to policies like blanket bans on any applicants with a felony conviction on their record, testing alone documented 4,646 housing units in the greater Washington region unavailable to individuals with any felony conviction from any point in time, and to many individuals with a misdemeanor conviction. Since this investigation only included 60 test sites, it is highly probable that there are tens of thousands of

additional units made unavailable for similar reasons in the region. Because of racial disparities in the criminal legal system, such bans by extension disproportionately limit housing opportunities for African American applicants as compared to white applicants, in violation of the Fair Housing Act.

<sup>53</sup> Department of Housing and Urban Development. 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. 4 Apr. 2016. Web. <portal.hud.gov/hudportal/documents/huddoc?id=HUD\_OGCGuidAppFHASandCR.pdf>.

<sup>54</sup> Department of Housing and Urban Development. Office of the Assistant Secretary for Fair Housing and Equal Opportunity. Implementation of the Fair Housing Act’s Discriminatory Effects Standard. Federal Register, 15 Feb. 2013. Web. <portal.hud.gov/hudportal/documents/huddoc?id=discriminatoryeffectrule.pdf>.



### *Examples of criminal records screening policies that may have an illegal, disparate impact*

One housing provider states in writing on its website, “We do not allow renters with felony convictions to live at our community.” Another provider specifies in the application materials it seems to provide all prospective applicants that in addition to rejecting an application because an applicant has a felony conviction on his or her record, it will also reject applicants with any illegal drug related conviction (this presumably includes misdemeanor possession), a misdemeanor conviction involving crime against person or property, and any prostitution related conviction. Neither policy example cited above includes any look back period—more evidence of the lifetime of collateral consequences that even relatively minor interactions with the criminal legal system can yield. It is impossible to understand how such broad bans could possibly achieve a substantial, legitimate, nondiscriminatory interest, and relatively easy to formulate less discriminatory alternatives.

*“We do not allow renters with felony convictions to live at our community.”*

## **THE SUBSTANTIAL ADDED BURDENS OF HAVING ANY CRIMINAL RECORD WHILE SEARCHING FOR HOUSING**

*Many Housing Providers are Not Prepared to Provide Information About Their Criminal Records Screening Policies:*

**\$ 206**  
Average Cash  
Required To  
**APPLY**

The most prevalent response testers received to their inquiries concerning criminal background policies was near total ignorance of the background policy itself. In twenty-six tests, or 52% of the time, testers were told that they would have to apply to find out how their criminal history would affect their application. In many instances, agents claimed that the housing provider itself had no say in criminal records based application decisions, claiming that the company outsourced such decisions to a third party provider.

Housing providers’ inability (or refusal) to provide objective information about their criminal records screening policies likely yields a substantial financial burden on individuals with criminal records. The cost to apply varied widely at the test sites that fell into this category.

Fees to apply, including application fees, administrative fees, and holding fees for sites tested that fell in this category ranged from \$0-850.<sup>55</sup> The average amount of cash required up front to apply was \$206.

Also, all test sites in this category conduct a credit check, though it was generally not possible to tell whether housing providers ran a hard or soft inquiry.<sup>56</sup> According to myFICO, the consumer division of FICO, only hard inquiries have an effect on an individual’s credit score.<sup>57</sup> Hard inquiries remain on a credit report for two years, and FICO® scores consider inquiries from the last 12 months.<sup>58</sup> It is difficult to tell how many points a person’s FICO® score is reduced by because of a hard inquiry,

<sup>55</sup> *Some housing providers only required a non-refundable application fee, but many required other types of fees to apply that would be refunded should an application be denied. However the fact that the money would be refunded after a denial does not mitigate the amount of money required upfront to apply.*

<sup>56</sup> *In a handful of tests, an agent specified to a tester that there would be a “hard pull” of their credit as part of the application process.*

<sup>57</sup> *“Credit Report Q&A.” MyFICO. Fair Isaac Corporation, 2016. Web. <[www.myfico.com/crediteducation/questions/inquiry-credit-score.aspx](http://www.myfico.com/crediteducation/questions/inquiry-credit-score.aspx)>.*

<sup>58</sup> *“Inquiries.” MyFICO. Fair Isaac Corporation, 15 Mar. 2012. Web. <[myfico.custhelp.com/app/answers/detail/a\\_id/200](http://myfico.custhelp.com/app/answers/detail/a_id/200)>.*



but it could be as many as five points.<sup>59</sup> On its website, myFICO claims that it can recognize when people are “rate shopping” and will treat all hard inquiries within a 45 day period as a single inquiry. It claims that inquiries from apartment complexes would be treated in the same way, and advises “you can avoid lowering your FICO Score by doing your apartment hunting within a short period.”<sup>60</sup> Such advice may ring hollow to individuals with criminal records who cannot obtain information about housing providers’ criminal records screening policies in advance of submitting an application. Multiple denials due to a criminal history could extend the application period for people in this situation. Further, the hard costs of submitting multiple applications may require individuals with criminal records to extend the length of their housing searches longer.

*The overall lack of transparency from housing providers in the greater Washington region about their criminal records screening policies does have a disproportionate effect on people with criminal records and by extension, African American housing applicants.*

It is not accurate to classify the concerns that this finding raises as “disparate impact” in the legal sense of the term because the disproportionate effect that the cumulative inability (or refusal) of housing providers to communicate objective standards for how they use criminal records to screen applicants cannot be traced back to a specific policy or practice implemented by any entity in particular. However, the overall lack of transparency from housing providers in the greater Washington region about their criminal records screening policies does have a disproportionate effect on people with criminal records and by extension, African American housing applicants. Such a disproportionate effect represents an injustice that should be addressed.

Finally, the lack of transparent standards fosters the introduction of bias, even implicit bias, into the application process, which may yield fair housing violations.<sup>61</sup> The high rate of differential treatment that this investigation uncovered underscores this point.

#### *Different Requirements for Individuals with Arrest Records Present an Additional Burden*

Finally, in three tests during which testers posed as having an arrest record where the charge was dismissed years ago, agents told testers that they would have to provide proof that the charge was actually dismissed in order to apply successfully. Such a requirement would provide an additional unfair burden on individuals with arrest records as it is often difficult to obtain such proof in the instance of a dropped charge.

*The lack of transparent standards fosters the introduction of bias, even implicit bias, into the application process, which may yield fair housing violations.*

<sup>59</sup> “Credit Report Q&A.” MyFICO. Fair Isaac Corporation, 2016. Web. <[www.myfico.com/crediteducation/questions/inquiry-credit-score.aspx](http://www.myfico.com/crediteducation/questions/inquiry-credit-score.aspx)>.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Not only in relation to criminal records screening, but also when it comes to items like credit and rental history.*



## NO FINDINGS

Seven tests indicated no findings in regards to disparate impact or the disproportionate effects that criminal records screening policies have on African American applicants. No findings in this instance means that a housing provider either didn't conduct a criminal background check as part of its application process, or described a policy that clearly allowed for an individualized assessment of an applicant's criminal record as it related to their ability to be a good tenant. It bears noting that there are large housing providers in the greater Washington region who do not use criminal records screening policies when making application decisions.

*It bears noting that there are large housing providers in the greater Washington region who do not use criminal records screening policies when making application decisions.*

## A NOTE ABOUT HOUSING PROTECTIONS FOR SURVIVORS OF DOMESTIC VIOLENCE

The basis of tests conducted through this investigation was race; therefore, the test methodology did not allow staff to comprehensively collect data and analyze it regarding housing providers' compliance with various local and federal housing protections for survivors of domestic violence. However, the investigation did include test sites that would be covered by VAWA as reauthorized in 2013 and/or the status as a victim of an intra-family offense protection included in the DC Human Rights Act. In housing covered by either law, it would be illegal to deny housing to a survivor because she has experienced domestic violence. Some tests at these sites featured a disclosure of a criminal background that resulted from domestic violence.

Testing did uncover bans in place that would yield an automatic application denial for a survivor with a criminal record related to domestic violence. Such a denial may violate VAWA, and in DC, the DCHRA. Further, testing results in combination with anecdotal evidence gathered from ERC intakes and other local service providers indicate a strong need for housing providers covered by both laws to better educate their agents about their requirements.



## RECOMMENDATIONS

- 1. In light of the disproportionate effect that the criminal legal system has on African Americans, housing providers large and small must evaluate and revise the role that criminal records screening policies and practices play in their application decisions to ensure that they are serving a substantial, legitimate, non-discriminatory interest and not as a proxy for racial discrimination.** The April 2016 guidance from HUD's Office of General Counsel on the subject should have prompted this action. The results of this investigation underscore the need for it. Taking this step is necessary to ensure compliance with the Fair Housing Act, but also makes good business sense, since as many as 100 million U.S. adults have some sort of criminal record.<sup>62</sup> Many of the criminal records screening policies that this investigation uncovered appear to be based on the type of "bald assertions based on generalizations or stereotypes that any individual with

*Housing providers may consider removing criminal records screening requirements from their application criteria altogether, especially those that do not have the resources or infrastructure to meet this burden.*

an arrest or conviction record poses a greater risk than any individual without such a record," which the HUD guidance clearly states do not assist in protecting resident safety and/or property. Such stereotypes are themselves rooted in the racism and sexism (and confluence of the two) that yielded mass criminalization. The nuance<sup>63</sup> required to meet the burden of a substantial, legitimate, non-discriminatory interest in this context is challenging to define and achieve on a practical basis. In addition to the need to consider various mitigating factors laid out in the HUD guidance, such as the nature, severity, and time passed since a conviction, criminal law is also state specific. It is beyond the scope of this report to provide detailed advice about how housing providers

can meet this requirement; however, the responsibility to do so remains. Housing providers may consider removing criminal records screening requirements from their application criteria altogether, especially those that do not have the resources or infrastructure to meet this burden.<sup>64</sup> This investigation did reveal two housing providers in Northwest DC that do not consider criminal records information in their application decisions at all.

- 2. To avoid using seemingly neutral screening requirements based on items like criminal background and credit as proxies for race and other types of illegal discrimination, housing providers need to communicate transparently with applicants about what their screening criteria are.** When an application is rejected, a housing provider should communicate, with specificity and in relation to the objective screening requirements, why the rejection occurred. During many of the tests conducted as part of this investigation, agents communicated to testers that they simply send an applicant's information to a third party, without any individualized review. The third party then performs a credit and criminal background check on each applicant,

<sup>62</sup> Department of Justice. Office of Justice Programs. Survey of State Criminal History Information Systems, 2012: A Criminal Justice Information Policy Report. Bureau of Justice Statistics, Jan. 2014. Web. <[www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf](http://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf)>.

<sup>63</sup> However, nuance is not required for all policies. For example, housing providers should not use arrest records alone to take adverse housing actions.

<sup>64</sup> However, this would not be permissible for many federally subsidized housing providers to do. For example, public housing authorities must establish a lifetime ban from public housing or the Housing Choice Voucher program on applicants that are subject to a lifetime sex offender registration requirement (24 CFR 960.204, 24 CFR 982.553), or who have been convicted of manufacturing methamphetamines on public housing property (24 CFR 960.204, 24 CFR 982.553). The vast majority of rental housing in the country is, however, not federally subsidized.



and informs the housing provider whether to grant or deny tenancy to the applicant. If this is indeed the practice, it is problematic on a number of levels, and should be addressed by any housing providers that engage in this practice. By simply outsourcing the decision of whether to accept a housing applicant to a third party, there is no guarantee that all applicants are considered equally or that decisions are made in a fair and consistent manner. In following such a practice or policy, a housing provider may face a serious issue of liability as to who is responsible for any discrimination. Housing providers may use third parties to perform credit and background checks, but should have their own uniform, tailored policies and procedures in place for accepting housing applicants. These uniform, tailored policies and procedures should not only be communicated to the third parties that will be aiding the housing providers in connection with running credit and background checks, but to agents of the housing provider that are responsible for interacting with prospective tenants.

- 3. The District in particular is in an excellent position to enact legislation locally that would compel local housing providers to adopt the recommendations above and beyond to ensure that individuals with criminal records are able to secure safe housing.** Currently, the Fair Criminal Record Screening for Housing Act of 2016 is pending before the DC Council, co-sponsored by Councilmembers McDuffie and Bonds. The District has led the way for decades in adopting progressive legislation at the local level to protect civil and human rights. Doing so in relation to the

*The ultimate goal of any such legislation should be to ensure that individuals with criminal records are able to secure safe, quality housing that meets their needs; inserting a private right of action or provisions for limited injunctive relief such as holding a unit open for the duration of an investigation may be necessary to meet this goal.*

area of housing protections for individuals with criminal histories would demonstrate the District's commitment to ensuring that its civil and human rights protections are as timely and effective as possible. In addition to passing legislation, District leaders should ensure that others items necessary for implementation of the legislation, such as adequate budgetary resources, are secured. For example, should the Office of Human Rights be tasked with enforcement responsibilities, Councilmembers must ensure that it has adequate resources available to do so in a meaningful manner.<sup>65</sup> The bill as currently drafted contains no private right of action for complainants who allege that a housing provider is not in compliance. The ultimate goal of any such legislation should be to ensure that individuals with criminal records are able to secure safe, quality housing that meets their needs; inserting a private right of action or provisions for limited injunctive relief such as holding a unit open for the duration of an investigation may be necessary to meet this goal.

- 4. A neutral third party, such as a private foundation, should convene various stakeholders and experts to develop more detailed guidance for private housing providers about how to ensure that criminal records screening policies and practices comply with the Fair Housing Act.** Any such effort must include housing providers, individuals with criminal records, various advocates, and experts in the areas of housing, re-entry and the criminal legal system. Earlier this year, the Housing Authority of New Orleans adopted a new criminal records screening policy

<sup>65</sup> A June 2016 study from Office of the District of Columbia Auditor states that the District's recently implemented employment "Ban the Box" law increased OHR's caseload by 114%, and suggests that the increase has slowed the agency's ability to investigate and address complaints.

Office of the District of Columbia Auditor. *The Impact of "Ban the Box" in the District of Columbia*. 10 June 2016. Web. <[www.dcauditor.org/sites/default/files/FCRSA%20-%20Ban%20the%20Box%20Report\\_0.pdf](http://www.dcauditor.org/sites/default/files/FCRSA%20-%20Ban%20the%20Box%20Report_0.pdf)>.





based on a similar model of utilizing public input and expert advice from the Vera Institute of Justice. This is a successful example on a small scale that should be replicated on a much larger level for the private housing industry.

5. **Congress should increase appropriations to programs like the Fair Housing Initiatives Program, in addition to ensuring that HUD has adequate resources and staff to respond forcefully to acts of housing discrimination around the country.** Just last month, HUD awarded \$38 million to private fair housing groups around the country to “confront discriminatory housing practices” through education and outreach, testing and other types of investigations, enforcement, and other types of activities.<sup>66</sup> This investigation itself was made possible through such funding. However, the quantity and type of discrimination uncovered through this investigation indicate the need for additional resources to be devoted to such activities. In addition, housing segregation plays out at the local level, and multiple stakeholders including local governments, foundations, professional organizations and even the private bar must invest in dismantling discriminatory practices in their own communities.
6. **Housing providers must invest in high quality fair housing training at all levels of their organizations, along with checking to ensure that employees are abiding by their fair housing obligations.**<sup>67</sup> The obligation to abide by fair housing laws must permeate the culture of any organization dedicated to providing housing—whether for profit or non-profit. Should a housing provider choose to use a criminal records screening policy in order to make application decisions, this investigation revealed extensive evidence that agents need further education about how the criminal legal system works, what information various records are able to convey, and how both comport with housing provider policies on the matter. Providing this training will bring housing providers into compliance with fair housing laws, but it also makes a good deal of business sense, since estimates are that nearly one-third of the U.S. population has a criminal record of some sort.<sup>68</sup> Finally, housing providers need to educate themselves and their agents about how various protections available at the federal and local levels may apply to applicants who have criminal histories related to their status as a victim of domestic violence. Such protections are complex and will require consultation with experts, but compliance with VAWA, the Fair Housing Act, and the DCHRA (for providers operating in DC) is critical.  
*Future research, policies, and interventions to end discrimination must consider the impact of multiple identities throughout their development to ensure they are meaningful and effective.*
7. **Researchers, policymakers, advocates, and service providers should use an explicitly intersectional approach in the collection and analysis of data, development and implementation of law and policy, and delivery of services.** The term intersectionality, first coined by Kimberlé Williams Crenshaw in 1989,<sup>69</sup> refers to the unique reality a person experiences based upon the interplay of one’s identities. This investigation examined the prevalence of racial

<sup>66</sup> Department of Housing and Urban Development. HUD Awards \$38 Million To Fight Discrimination. 30 Sept. 2016. Web. <portal.hud.gov/hudportal/HUD?src=/press/press\_releases\_media\_advisories/2016/HUDNo\_16-150>.

<sup>67</sup> Through compliance testing, for example.

<sup>68</sup> Department of Justice. Office of Justice Programs. Survey of State Criminal History Information Systems, 2012: A Criminal Justice Information Policy Report. Bureau of Justice Statistics, Jan. 2014. Web. <www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>.

<sup>69</sup> Crenshaw, Kimberlé. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics.” University of Chicago Legal Forum 8th ser. 1 (1989): 139-67. Web. <chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf>.



discrimination in housing against Black and white women posing as having criminal records. A similar investigation that utilized only male testers, or testers of different races, would likely yield different results. It would also need to be conducted differently, as project staff began by acknowledging then studying women's experiences with the criminal legal system in order to create the tester profiles that were used. It is difficult to locate publicly available data disaggregated by both race and gender, which made this task especially challenging. Future research, policies, and interventions to end discrimination must consider the impact of multiple identities throughout their development to ensure they are meaningful and effective.<sup>70</sup>

- 8. HUD should issue a final rule regarding the implementation of the Violence Against Women Reauthorization Act of 2013 as soon as possible.** A coalition of advocates submitted comments to the proposed rule after it was released in April 2015, encouraging HUD to clarify how VAWA protections extend to survivors of domestic violence with criminal histories related to the violence they experienced.<sup>71</sup> Issuing a final rule should spur covered housing providers that have been awaiting guidance from HUD to take more meaningful steps to implement current VAWA protections.
- 9. Local jurisdictions should seize the opportunity to lead the way nationally when it comes to ensuring that domestic violence survivors with criminal histories have access to safe housing.** The District deserves applause for including status as a victim of an intra-family offense in its local human rights ordinance years ago; other local jurisdictions should follow suit. Since it has not already issued regulations implementing the protection, DC's Office of Human Rights should do so now, and include guidance in such regulations about how private landlords should protect the rights of survivors with domestic violence related criminal histories. Based on the results of tests conducted through this investigation, the ERC recommends that DCHRA regulations include language specific to protecting a domestic violence survivor from housing discrimination, if the survivor chooses to disclose that her/his criminal background resulted from domestic violence.
- 10. Residents of the greater Washington DC area that are concerned by the findings of this investigation should consider serving as a tester for the ERC.** Testing (similar to "secret shopping") is an investigative tool designed to gather objective information in order to assess an entity's business practices or compliance with civil rights laws. Testers are individuals who pose as persons seeking certain services, accommodations, or opportunities (e.g. housing, employment, accessibility, goods or services, etc.) for the purpose of collecting information. The information testers collect is subsequently analyzed and may be used to determine an entity's compliance with applicable standards for equal treatment. ERC has a robust testing program, and is always in need of diverse, detail oriented people willing to participate as testers and help further ERC's mission. Interested parties can visit ERC's "Become a Tester" page in order to get more information about the application process.

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<sup>70</sup> Including levels of funding from both public and private sources.

<sup>71</sup> McLaughlin, Monica. "Re: Docket No.FR-5720-P-02 Violence Against Women Reauthorization Act of 2013: Implementation in HUD Housing Programs; Proposed Rule." Letter to Department of Housing and Urban Development. 1 June 2015. 2 June 2015. Web. <[www.regulations.gov/document?D=HUD-2015-0028-0061](http://www.regulations.gov/document?D=HUD-2015-0028-0061)>.

