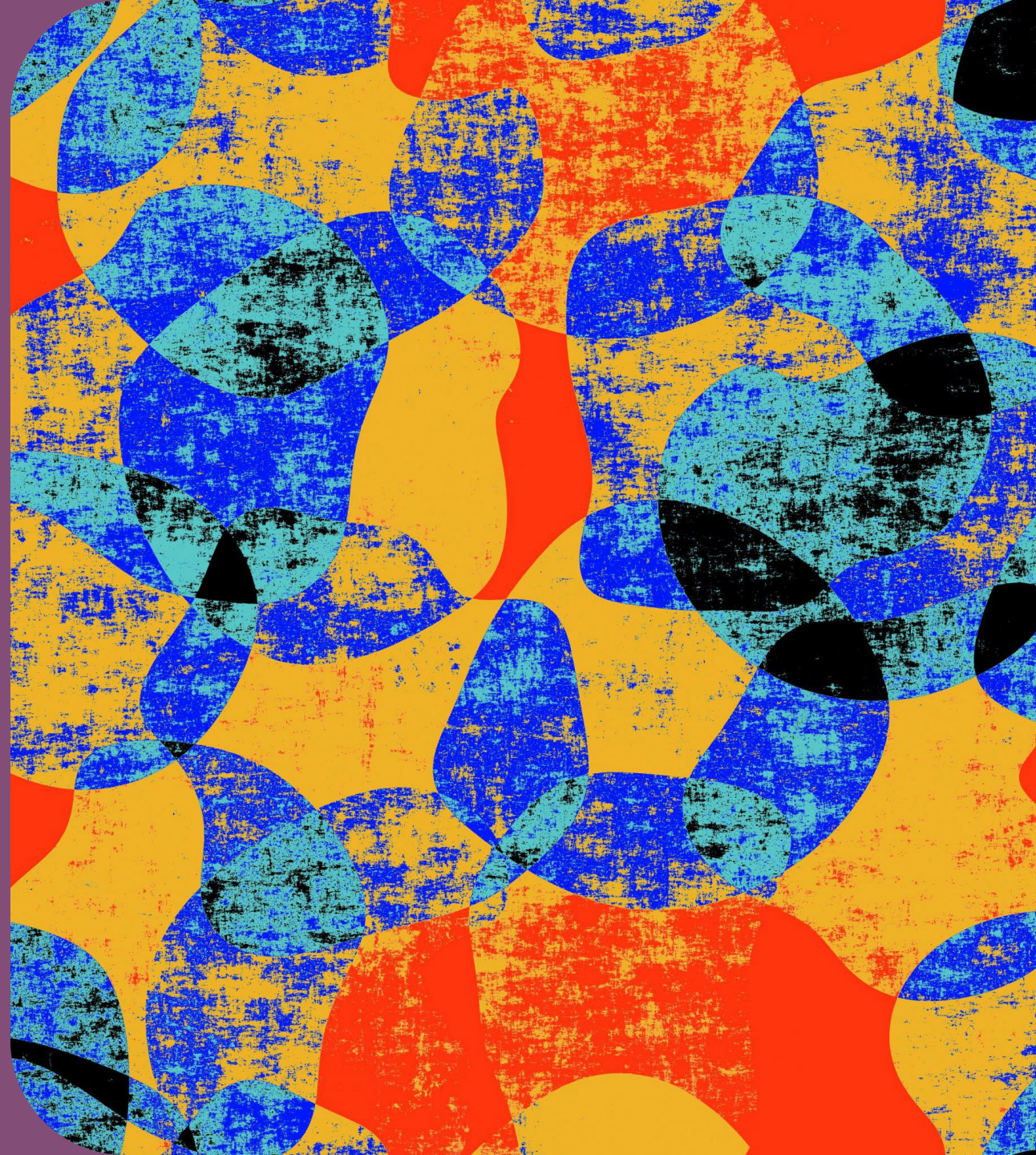


Discrimination in Tenant Screening

Fair Housing Celebration in memory of

Dr. Martin Luther King Jr.

Eric Sirota
Associate Professor of Law
Director of Tenant Advocacy Clinic
Northwestern Pritzker College of Law



What is Tenant Screening?

The process and criteria by which housing providers select tenants to live in their properties

We have 2 beds 1 bath

\$833 with water and trash included
\$250 deposit
\$50 Application

Requirements

3 times the rent
No felons
No Evictions
Proof of income
Photo Id



Private Market

LANDLORDING BASICS

How to Do a Background Check on Tenants



USEFUL T

ZILLOW RE

ONLINE LE

RENTAL AI

Zillow

Transunion

TENANT SCREENING / RESIDENTSCORE

A score built specifically for tenant screening

ResidentScore® is TransUnion's proprietary renter credit score that predicts evictions 15% better*.

Screen Today



Screening outputs

SafeRent Score

Credit Score

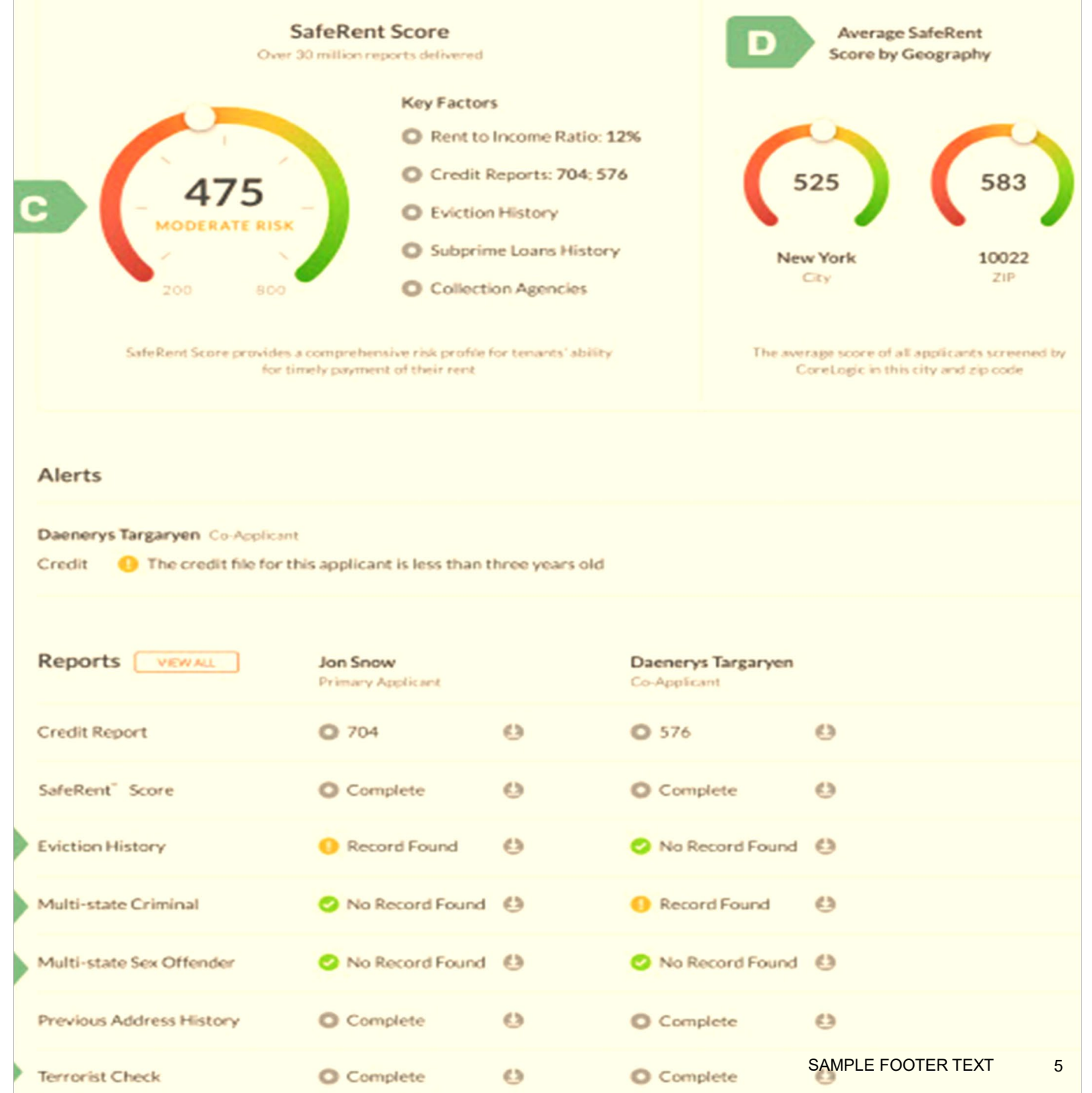
Eviction History

Criminal Record


Sex Offense Registry

Previous Address History

Terrorist watchlist



Tenant Screening is Ubiquitous



90%: landlords
screen for
criminal records



40%: one of the
most important
factors

Tenant Screening in the Public Sector

Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

-24 C.F.R. § 960.203 (HUD regulation of Public Housing Authorities)

Legal Protections

- Fair Credit Reporting Act
- Fair Housing Act
- HUD subsidized housing regulations
- State law

Fair Credit Reporting Act

- Adverse action notice
- Correct inaccuracies
- Receives copy of credit report

FCRA: Adverse Action Notice




- Adverse action based on credit report
- Name, address, phone # of CRA
- Right to obtain free report within 60 days
- Right to dispute accuracy or completeness of report
- Credit score, if used

FCRA: Accuracy and Completeness

“Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates . . .”

- -Fair Credit Report Act, 15 U.S. Code § 1681e(b)

FCRA: Right to Correct Errors

- Find Inaccuracy  Written dispute with tenant screening company 
30 days to correct (can ask for additional 15)  Response to dispute
- Can also ask for:
 - All information in credit file
 - Sources of information in credit report
 - List of inquiries

What is considered inaccurate?

- Literal inaccuracy
- Publication of sealed or expunged record
- Publication of partial record

US , NATIONWIDE CRIMINAL SUPERSEARCH (MULTI STATE) SAMPLE, JANE A		MN, FEDERAL (COMPREHENSIVE) SAMPLE, JANE A	
MN , STATE COURT (ALL 87 COUNTIES) SAMPLE, JANE A		MN , BCA (COMPREHENSIVE) SAMPLE, JANE A	
1. Docket: CF987654321			
Name:	JANE A SAMPLE	County:	MN, RAMSEY
Offense:	RECEIVING STOLEN PROPERTY	Disposition:	CONVICTED
Category:	OFFENSES AGAINST PROPERTY	DOB:	05/29/1978
Date:	12/25/2013	Docket:	CF987654321
Level:	FCI ONLY	DispDate:	04/12/2014
Report  Export to PDF  Applicant Copy  613 Notice  Inhouse  Client Co			
2. Docket: CR123456789			
Name:	JANE A SAMPLE	County:	MN, HENNEPIN
Offense:	3RD DEGREE ASSAULT	Disposition:	CONVICTED
Category:	OFFENSES AGAINST PERSONS	DOB:	05/29/1978
Date:	08/09/2016	Docket:	CR123456789
Level:	MISD	DispDate:	09/08/2016

Fair Housing Act

- Protected Classes: race, color, national origin, religion, sex, familial status (presence of children), and disability
- HUD 2016 & 2022 Guidance
- Tester Rule



Disparate Impact

Disparate Treatment

Protections in subsidized housing

- PIH 2015-19 / H 2015-10: Use of Arrest Records
- “Reasonable” lookback periods, 42 USCA § 13661.
- “...Engaged in any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents,” 42 USCA § 13661.
- Opportunity to dispute

Impacts

BAD

- Discrimination
- Expense
- Housing Instability

GOOD?

- Reduced bias?
- Safety?

Mandatory Screening and Exclusions

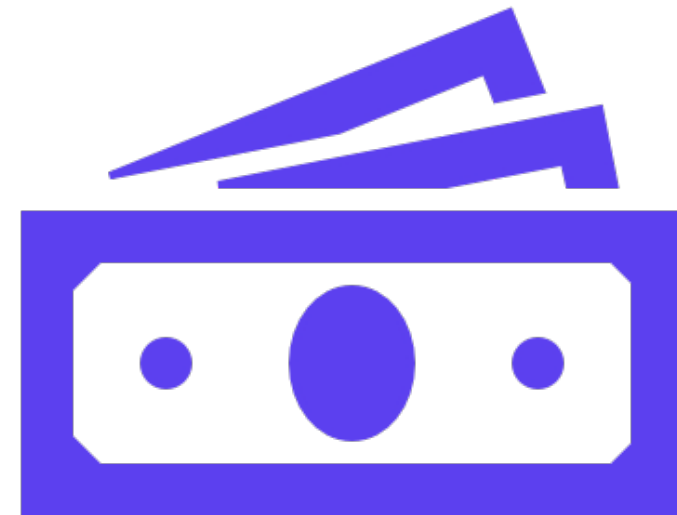
Federally
subsidized
housing

Crime
Free/Nuisance
Ordinances

Sex offense
registries

Expense

- Between \$30 - \$75 per app (per person)
- 10% of application fees more than \$100
- More discrimination = More fees



Housing Insecurity and Displacement

10x more likely to be homeless: people with a history of incarceration

Majority or large minority of landlords refuse to rent

70-100 million Americans have records

Nearly half of Americans have a relative who faced incarceration

40% of children have a parent who faced charges

Arrest and conviction records block access to housing



Source: Ella Baker Center

Housing Instability

People with history of incarceration 10x more likely to be homeless

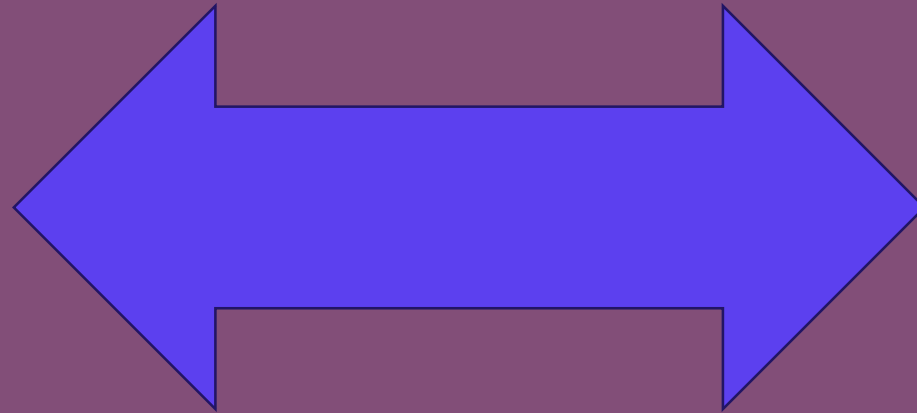
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Incarceration



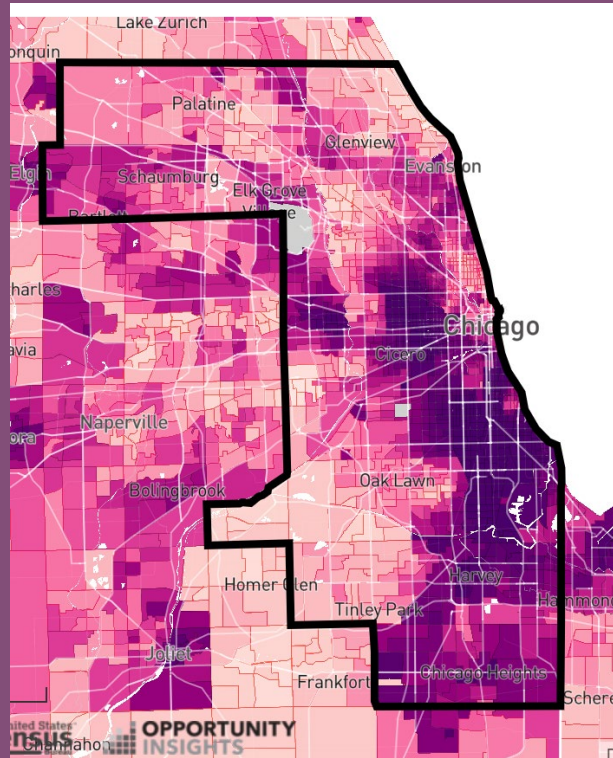
Homelessness

Does screening technology reduce bias?

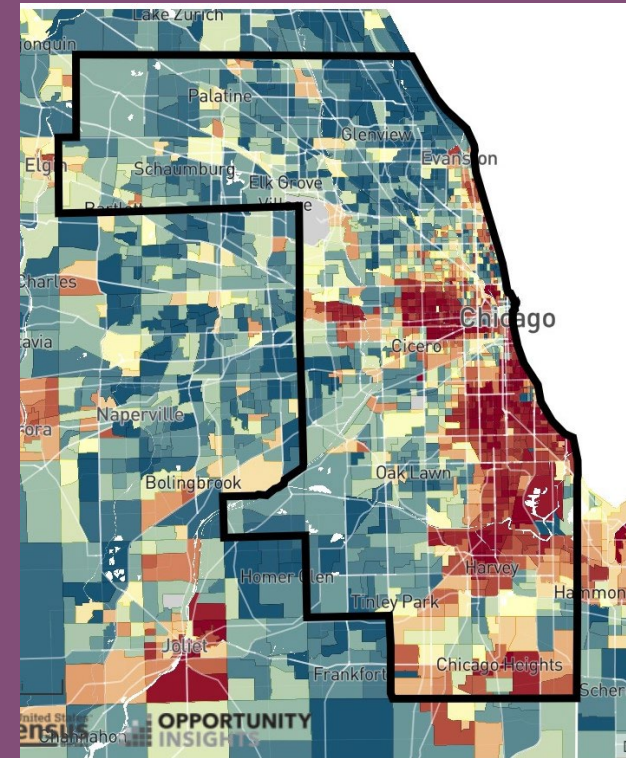
- “[T]he New Jim Code’: the employment of new technologies that reflect and reproduce existing inequities but that are promoted and perceived as more objective or progressive than the discriminatory systems of a previous era.”

-**Ruha Benjamin**, [Race After Technology: Abolitionist Tools for the New Jim Code](#)

Use of criminal records replicates the inequities of the criminal justice system



% RESIDENTS OF COLOR



% RESIDENTS CURRENTLY INCARCERATED

Discrimination

Black, Latinx, people with disabilities, GLBTQ+, abuse survivors, veterans, more likely to have records

POC with records more likely to be excluded

Does criminal records screening enhance safety?

(Source: Wilder Foundation, 2019)

Key Findings



11 of 15 criminal offense categories have **no significant effect on housing outcomes** after controlling for other observable factors.

- These categories include:**
- marijuana possession
 - other minor drug offenses
 - prostitution
 - alcohol-related offenses (e.g., public consumption/open bottle)
 - minor public order offenses (e.g., loitering)

Major drug offenses, fraud, assault, and property offenses may increase the likelihood of a negative housing outcome.

↳ The effects of these backgrounds may be overstated due to the study's data limitations (described in the Caveats and Limitations section), but they increase the risk of negative housing outcomes **by 3 to 9 percentage points at most.**



The effect of a prior criminal offense on a resident's housing outcome **declines over time and becomes insignificant.**



Criminal offenses that occurred more than 5 years prior to move-in **have no significant effect** on housing outcomes.



The likelihood of a negative housing outcome is **significantly reduced** in households with:

- 2+ adults
- 1+ children
- Higher incomes
- Larger subsidies
- Greater average age of adults

Race and gender were **not** found to significantly affect housing outcomes.



Characteristics of Households in the Study

The study includes de-identified data from more than **10,500 HOUSEHOLDS**, including **15,000 INDIVIDUALS**, who resided in one of the properties owned by the partner organizations sometime between March 2010 and June 2017.

HOUSEHOLD TYPE



AVERAGE HOUSEHOLD INCOME:
\$15,958

AVERAGE LENGTH OF STAY:
3 years

3 in 10 HOUSEHOLDS contain at least one adult with a prior criminal conviction. These households tend to be younger and have lower incomes.



Among households with criminal backgrounds, **1 in 3** have convictions in minor public order offenses (e.g., loitering), commonly referred to as crimes of homelessness

Sex Offense Registry Restrictions

- “Research has found that residency restrictions lead neither to reductions in sexual crime nor recidivism. However, registration and restrictions can prevent people convicted of sex offending from engaging in pro-social activities, such as work, that guard against reoffending.”

-Illinois state-commissioned Sex Offenses and Sex Offender Registration Task Force (2018)

Progress and next steps

- HUD 2016 Guidance
- CFPB advisory opinions
- Fair Chance Laws (e.g., Chicago, Seattle)
- Funding Strings
- Housing Authority policies (e.g., New Orleans, Champaign, IL)

FICPFM

**FORMERLY INCARCERATED
CONVICTED PEOPLE
& FAMILIES MOVEMENT**

#Housing4All