

# Fair Housing and Criminal Background Screening

## Fact Sheet #12



In Indiana, landlords may lawfully use a renter's information, such as criminal legal records, as part of their application screening process to decide whether the applicant would pose a risk to resident safety and property. However, arbitrary and overly broad restrictions or bans based on criminal legal records may have a discriminatory impact on renters. Here's what you need to know.

### How does the Fair Housing Act apply to criminal background screening?

The federal Fair Housing Act prohibits housing discrimination and practices that have an unjustified discriminatory effect on a protected class. Because of widespread racial and ethnic disparities in the U.S. criminal legal system, criminal history-related restrictions are likely to disproportionately burden African Americans and Hispanics/Latinos, as well as persons with disabilities and others. While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, the use of arbitrary and overbroad criminal history-related restrictions or bans are likely to lack a legally sufficient justification and therefore could be challenged as discriminatory. Additionally, criminal background screening must be applied equally, regardless of the applicant's race, disability, or other protected class. It would be unlawful to apply criminal history-related screening criteria more strictly or leniently based on a protected class.

### Screening Policy Guidelines

Housing providers' screening policies **SHOULD**:

- treat all applicants equally regardless of race, color, religion, sex, national origin, familial status, disability, or ancestry.
- be relevant to protecting resident safety and/or property (proven through reliable evidence).
- accurately distinguish between past criminal legal records that indicates a demonstrable risk to resident safety and/or property, and criminal records that do not.
- **evaluate applicants on a case-by-case basis** by considering:
  - the nature and severity of an individual's conviction,
  - the amount of time that has passed, and
  - an applicant's conduct since the conviction took place.

Screening policies **should NOT**:

- be based on generalizations or stereotypes.
- use prior arrests without convictions as a screening tool.
  - Arrests alone cannot establish proof of unlawful conduct. Such a policy cannot be proven to reliably protect resident safety and/or property.
- use blanket bans/prohibitions (i.e. no criminal record, no felonies)
  - Blanket bans do not consider individualized factors that mitigate the risk to property/resident safety, so they cannot be proven to serve a substantial, legitimate, nondiscriminatory interest.

### What is fair housing?

Fair housing is the right to choose housing free from unlawful discrimination. The federal Fair Housing Act and Indiana fair housing laws protect against discrimination in housing based on race, color, religion, national origin, sex, familial status, disability, or ancestry (Indiana only). Discrimination is unlawful in housing transactions or services, such as rentals, sales, lending, insurance, and zoning.

### What is justice involvement?

Justice involvement, commonly referred to as having a criminal background or criminal history, refers to any interaction with the criminal or juvenile legal systems.

### What is the Fair Credit Reporting Act (FCRA)?

The FCRA is a U.S. law that regulates the use of credit information, primarily on credit reports, including those used in screening for housing. FCRA requires housing providers to obtain consent before running background checks, provide accurate/updated information, provide an adverse action notice if a negative decision was made based on the report, and investigate any disputed information.

**For more information, check out the FHCCI's education page on this topic:**

<https://www.fhcci.org/program/s/education/criminal-history/>

**Or scan the QR code:**





## Housing providers should treat applicants equally.

A housing provider who treats individuals with comparable criminal records differently because of a protected class may be in violation of the Fair Housing Act. For example, a landlord cannot reject a qualified Latino applicant due to their criminal record but accept a similarly qualified white applicant with a comparable criminal record.

## You should not be denied for incorrect or out-of-date information.

Criminal background screening reports may contain inaccuracies that result in unfair housing denials. You have the right to request and receive a copy of the screening report that was used to deny your rental application. Review the report for errors, such as an arrest erroneously listed as a conviction, incorrect dates or labels on cases, the same record being listed multiple times, or cases of mistaken identity. If you find errors, contact the screening company to make corrections.

## What should I do if I believe I am a victim of housing discrimination?

Housing discrimination is unlawful, and you have the right to file a complaint. Please contact the FHCCI with any questions or to receive counseling about your rights or options.

## FHCCI Mission Statement

The mission of the Fair Housing Center of Central Indiana (FHCCI) is to facilitate open housing for all people by ensuring the availability of affordable and accessible housing; promoting housing choice and homeownership; advocating for an inclusive housing market; working toward stable and equitable communities; and eradicating discrimination within Central Indiana, the State of Indiana, and nationally.

## Criminal Background Screening Best Practices

- Include a statement of purpose for the screening policy on applications
- Do not use arrest records, any blanket bans or prohibitions, any overly broad categories of criminal activities, or vague statements
- Postpone accessing a criminal history report until after the identity check, credit, income, and/or rental requirements have been met
- Illustrate connection of resident selection criteria to demonstrable risk to resident safety and/or property
- Conduct individual assessments, considering only records that are relevant to assessing resident and property safety
- Allow an applicant an opportunity to present mitigating circumstances before an adverse action is taken
- Policies and procedures should be applied equally to all, regardless of race, color, religion, sex, national origin, familial status, or disability; all persons should consistently receive the same quality of treatment

## 3-Step Framework to Evaluate for Discriminatory Effect

For a criminal background screening policy *not* to have a discriminatory effect, the policy must be tailored to serve the housing provider's substantial, legitimate, nondiscriminatory interest. The housing provider will bear the burden of proving that any discriminatory effect caused by their policy or practice is justified.

We recommend using a three-step process to evaluate whether a housing provider's use of criminal history would result in a discriminatory effect in violation of the Fair Housing Act:

1. Evaluating Whether the Criminal History Policy or Practice Has a Discriminatory Effect: The complainant must prove that the criminal history policy has a discriminatory effect, or a disparate impact, on a group because of their race, national origin, or other protected class.
2. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest: The housing provider must prove that the challenged policy or practice is justified, i.e. to protect resident safety and/or property.
3. Evaluating Whether There Is a Less Discriminatory Alternative: The complainant must prove that there is a way to achieve the housing provider's interests, which is less discriminatory than the current policy or practice. This third step of the analysis is applicable only if the housing provider successfully proves the second step.

## Contact us!

If you are experiencing barriers to housing, including experiencing denials due to justice involvement, please contact the FHCCI:



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