

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

**<https://www.vera.org/blog/criminal-background-checks-a-pretext-for-housing-discrimination>**

### Public Facing Advocacy Writing

*Were very forgiving....a lot of things are explained by wrong place, wrong time.*

That's one of the many encouraging responses white tenants with criminal records heard from landlords, realtors, and other housing providers, according to a recent [report](#) by the Greater New Orleans Fair Housing Action Center ([GNOFHAC](#)). Unfortunately, African American renters were not afforded the same leniency; the report reveals that housing providers regularly use criminal background screening policies to keep out people of color.

GNOFHAC conducted a testing investigation of 50 area housing providers, in which equally qualified mystery shopperspeople posing as prospective renters inquired about rental availability and any relevant criminal background policy. Matched for income, background, and conviction type (felony vs. misdemeanor), the only thing difference between mystery shoppers was race. Of the 50 site tests conducted, African American testers experienced discrimination 50 percent of the time.

Criminal background policies that were discretionary, ambiguous, or evaluated tenants on a case by case basis favored white renters 55 percent of the time. In other cases, white renters were encouraged, coached, or provided outright exceptions to criminal background policies in ways that African Americans were not. Some of these policies, like those that take arrests into consideration and have unlimited look-backs (the time period for which an applicants history may be accessed), may run afoul of the Fair Housing Act. These seemingly neutral policies disproportionately impact African Americans; just this summer, the Supreme Court upheld this legal principal, affirming that discrimination is harmful even when it's not overt. However, GNOFHAC's report found that even criminal background policies that do not violate the Fair Housing Act are often applied in a racially discriminatory manner.

In one particularly egregious instance, an agent asked the African American testerbut not the white testerwhether he was a drug dealer. When the white tester informed the housing provider that he had a prior felony charge for cocaine possession, the agent advised that the charge was not an issue so long as it wasn't crack.

The collateral consequences of a conviction are long lasting and serious. A survey component of the study captured the story of a woman who rented a car just before the mandatory evacuation was ordered for Katrina. She kept the vehicle to evacuate her family and was later charged with felony auto theft, despite having no previous criminal history. When she finally moved back to New Orleans, she applied for housing and was denied because of her record. The experience and fear of future denials has since discouraged her from applying for other apartments and jobs. As a result, her only option has been to stay with family.

Criminal background policies have an outsized effect on African Americans because of the racial inequalities embedded in our criminal justice system, from the initial point of contact with police through sentencing. In Louisiana, African Americans make up 32 percent of the total population, yet they account for a full 66 percent of the prison population. An astounding [91 percent of people sentenced to life without parole](#) for nonviolent property crimes in Louisiana are African American.

To live up to our city's promise of equal opportunity, we need stricter enforcement of our fair housing laws, as well as swift and thoughtful policy interventions to ensure that criminal background checks no longer serve as tools of discrimination.

At the city level, the New Orleans City Council and Jefferson Parish Council can and should do more to ensure that applicants have a right to accurate data. If a housing provider chooses to deny a prospective tenant based on a criminal record, the tenant deserves a reason for the denial and a copy of the information used to make that decision. More transparency and better information would reduce the discretionary use of background checks and help prospective renters discover any mistakes in their background reports.

Any policy solution that seeks to address citywide patterns of discrimination must also include the one-quarter of the New Orleans tenant population that is served by the Housing Authority of New Orleans (HANO). HANO must implement the [criminal background policy it adopted in 2013](#) to aid in housing stability and family reunification for people with criminal records. Their current practice denies housing to people simply because of arrests and has a disproportionate impact on African Americans, while the reformed policy creates clear, objective screening guidelines.

These policy changes are the first steps toward a desperately needed level playing field for everyone seeking a place to call home.

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