



# Fair Housing Advocates of Northern California

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## **FOR IMMEDIATE RELEASE**

### **Report Reveals Widespread Discrimination in Housing Against Black Tenants with Criminal Records in Marin, Sonoma, and Solano Counties**

**San Rafael, CA** – A recent **investigation** by Fair Housing Advocates of Northern California (FHANC) has uncovered high rates of housing discrimination against Black renters – particularly those with criminal conviction histories – in Marin, Sonoma, and Solano counties. Despite long-standing federal and state fair housing laws, the report reveals significant evidence of continued housing discrimination based on race. “This report highlights how barriers to housing for people with criminal records – particularly Black Americans who face over-policing and higher incarceration rates – have profound impacts, leaving many unhoused and at higher risk of recidivism,” said Julia Howard-Gibbon, FHANC’s Supervising Attorney.

While HUD discourages the use of criminal records in determining tenant eligibility, this report shows that most landlords fail to follow that recommendation. Instead, the explosive increase in algorithmic tenant screening products, commonly used by landlords to screen for criminal records, has become a major barrier to housing access for people with criminal histories, which in this country is one third of the population.<sup>1</sup> And due to the over policing of communities of color, Black individuals are stopped by police, arrested, prosecuted, convicted, and incarcerated at rates disproportionate to their share of the general population. As such, Black people, who already experience discrimination at higher rates, are disproportionately affected by these screening policies.

FHANC conducted 120 investigations at 30 large rental properties in Marin, Sonoma, and Solano counties and analyzed the experiences of Black and white “testers” posing as prospective renters with criminal conviction histories to determine whether Black applicants with criminal histories are discriminated against on the basis of race and/or disproportionately excluded from housing because of their conviction records. Each investigation consisted of four testers – two Black and two white – who contacted landlords to ask whether they screen for criminal histories, what the landlord’s screening policy is, and whether the tester’s application would likely get denied based on the conviction history in the tester’s assigned profile (some had felonies and some had misdemeanors).

After analyzing the tenant screening policies that were described to testers (and/or provided to them in writing), FHANC found that of the 25 landlords that screen for criminal records, not one follows all of HUD’s guidelines to avoid disproportionately excluding Black applicants in violation of the Fair Housing Act. And most importantly, all but two fail to allow applicants to appeal denials or provide mitigating information regarding the circumstances of their conviction. “This is a significant finding because these are large properties, representing a total of 5,211 units,” said Ms. Howard-Gibbon. “That’s 5,211 units that people with criminal records, who are disproportionately people of color, would likely not be able to access based on these policies. If that percentage is expanded to the broader area, that’s more than 92,000 units in Marin, Sonoma, and Solano counties alone.”

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<sup>1</sup> <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

Additionally, FHANC found that 14 of the 30 landlords investigated treated the Black testers less favorably than the white testers. For example, at one property, a white tester was told that a felony conviction on her boyfriend's record would be overlooked if she applied with a co-signer while the Black tester whose boyfriend had the exact same record was told the conviction would result in an automatic denial and she was advised not to apply.

### **Key Findings from the Report:**

- **Differential Treatment Based on Race:** 47% of investigations revealed evidence of differential treatment, where Black testers were treated less favorably and/or received less information, follow-up, or encouragement compared to white testers with similar criminal records.
- **Use of Criminal Background Screening Policies:** 83% of the properties investigated screen for criminal records, despite HUD recommendations discouraging this practice because criminal history is not a reliable predictor of tenant success.
- **Disparate Impact:** None of the landlords investigated that screen for criminal records follow all of HUD's guidelines on how to avoid fair housing violations, and the vast majority fail to conduct individualized assessments or consider mitigating factors like the age of the individual at the time of the alleged conduct, how long ago the conviction occurred, evidence of good tenant history since the conviction, and/or rehabilitation efforts. All landlords investigated that screen for criminal records use third-party tenant screening services, which utilize algorithms that may contain racial or other prohibited bias in their design and have not been shown to reliably predict risk. FHANC's investigation found that most of the landlords that use third-party screeners rely on them to make eligibility decisions, with no opportunity for the applicant to appeal that decision or provide mitigating information.
- **Deterrent Effect of Vague Policies:** While most criminal record screening policies would likely deter anyone with a more serious criminal record from applying, 18 of the 25 policies described to testers were so vague that even people with less serious records, like someone with a very old conviction or a recent misdemeanor, would likely be deterred from applying because the only way to know whether the conviction would not result in denial is to pay a non-refundable application fee (\$20 to \$60 per adult household member).
- **Widespread Implications:** Based on the rate of discrimination found in this report, there are more than 92,000 apartments at large properties (more than 30 units) in Marin, Sonoma, and Solano counties that screen for criminal records and disproportionately exclude Black renters based on their criminal history.
- **Similar Rates of Discrimination in Each County:** While housing providers in Solano County were revealed to be the most discriminatory, with 50% treating Black testers less favorably than white testers and 90% having criminal background screening policies that disproportionately exclude Black applicants, the rate of discrimination was similarly and alarmingly high in all three counties.

"The implications of this report touch on broader social justice issues that affect underserved communities," said Audrey Perrott, FHANC's Acting Executive Director. "The findings are troubling and underscore the continued systemic barriers Black individuals with criminal histories face when trying to secure stable housing." FHANC urges the housing industry to re-evaluate its screening policies to align with fair housing laws and to focus on equitable access for all renters. "We hope this report serves as a catalyst for change and brings greater attention to the need for fair housing reforms across our communities," said Savannah Wheeler, FHANC's Housing and Policy Attorney. The organization has put forward several key recommendations and next steps, based on the findings in this report.

## Recommendations and Next Steps:

- **Adopting Local Fair Chance Housing Ordinances:** Marin, Sonoma, and Solano counties should pass local ordinances prohibiting housing providers from considering criminal records in tenant screening. HUD recommends this approach because criminal background checks disproportionately impact Black applicants, and research shows that criminal history is not a good predictor of housing success. Other jurisdictions have passed similar ordinances that have significantly reduced barriers for people with criminal legal system involvement in those areas.
- **Increasing Education and Training:** Increased fair housing education and training for housing providers is necessary to prevent future violations. The fact that so many housing providers were willing to state their discriminatory criminal record policies in writing or to testers, suggests that some (if not many) are unaware of HUD’s guidelines and how criminal record screening policies may violate fair housing laws. While it is less surprising to find evidence of discrimination by “mom and pop” landlords who have less access to training and legal advice, the fact that this investigation – which was only conducted at larger properties – revealed extremely high rates of discrimination underscores the need for continuous training for owners and managers of rental property, with an emphasis on criminal record screening policies.
- **Bringing Enforcement Actions to Prevent Future Discrimination:** FHANC plans to notify landlords with discriminatory policies, conduct additional testing, and then pursue enforcement actions, including lawsuits or administrative complaints, against housing providers that continue to engage in discriminatory practices, in order to prevent future discrimination, to deter other landlords from engaging in similar behavior, and to publicize this issue more broadly.

To download a copy of the report, click [here](#).

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*Founded as a non-profit in 1986, Fair Housing Advocates of Northern California (FHANC) serves several Bay Area counties, providing fair housing counseling, investigation, intervention, and legal referrals to persons experiencing housing discrimination. FHANC conducts outreach and offers programs that educate the community about fair housing and the value of diversity, conducts trainings for housing providers, and offers pre-purchase and foreclosure prevention counseling and education. FHANC is a HUD-Certified Housing Counseling Agency. For more information or for fair housing assistance visit [www.fairhousingnorcal.org](http://www.fairhousingnorcal.org) or call 415-457-5025 or TDD: 800-735-2922. Se habla español.*