Fair Chance Housing Policies: Rehabilitation

and Restorative Justice in the Private Sector

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"Home is the place where, when you have to go there, / they have to take you in. / I should have called it / Something you somehow haven't to deserve."

-Robert Frost

Abstract

As tensions surrounding race and identity have risen to the forefront of American consciousness, incarceration and criminality have comprised a large part of that discourse. Those exiting the criminal justice system are left with a record, and people of color, specifically Black and Latinx people, bear the brunt of both incarceration and record-holding. Records are kept by background check agencies to guide landlords in their tenant decision-making process, but the criminal records are often incorrect and inadequate in their prediction of successful tenancy. Tenants who are formerly incarcerated people are therefore categorically excluded from housing. To remedy this, three ordinances have been passed in Seattle, Washington D.C. and San Francisco to delay or remove criminal histories from the tenant selection process. In the following research, an analysis of each law shows their commonalities and unique ways of tackling housing exclusion for formerly incarcerated people, and public commentary sent to Seattle's City Council illuminates public opinion on such ordinances and the challenges lawmakers face in attempting to pass them. The resulting analysis showed that Seattle landlords feared adverse effects of the legislation on neighborhood and personal safety, and also that they misunderstood the legislation and its purpose on a fundamental level. This points to a need for greater outreach. In addition, legislation that is most likely to function effectively will address multiple facets of housing justice and criminality.

Introduction

The consequences of a criminal record during the job application process are well

documented, however, less attention is paid to the consequences of an unfavorable background

check during the search for housing. Many cities, states, and municipalities across the U.S. have

implemented legislation that postpones a criminal background check until a job applicant has

met the employer and made a good impression (Stacy and Cohen 2017). The logic behind these

laws assumes that once a formerly incarcerated individual starts receiving paychecks, they can

afford rent and find a stable place to live. Until recently, no such provisions limiting background

checks applied to housing. Three major city ordinances in Seattle, D.C, and San Francisco

prohibit criminal background checks for housing so that formerly incarcerated people can obtain

a stable living situation in which they can feel safe and secure before taking other steps towards rehabilitation.

The research conducted within this study will contribute to literature regarding background checks and housing applications. An analysis of Fair Chance laws and public commentary about such laws will address the many angles of the criminal background check problem. A policy recommendation will follow, as well as a critique of existing legislation and analysis of stigma towards individuals living with criminal records. My research questions are: What barriers exist to passing comprehensive Fair Chance housing laws? How does existing legislation perpetuate discrimination against people with criminal records? Does reluctance to rent to people with criminal records have a racial component?

Literature Review

The following literature review will discuss the rise of the tenant screening industry and the shift in the private rental housing landscape that followed. There is a disparity in the racial demographics among those incarcerated, and therefore a disparity in the race of criminal record holders. This disparity prompted the U.S. Department of Housing and Urban Development to release a new guideline clarifying the Fair Housing Act as it pertains to race and criminal history. Existing literature explains that tenant screening checks lack the ability to predict criminal behavior in a potential tenant. Background checks have been sold as the solution to landlord liability by companies that package and sell public records; they claim that tenant screening is the key to preventing crimes on one's property (Crowell 2017). Analysis of this fully legal method of exclusion will illuminate the role background checks play in perpetuating homelessness, especially among Black, Latinx, and Native people.

Housing Discrimination and Background Checks

Around 700,000 inmates are released from prison each year (Pager et. al, 2009). One-third of adults in the United States are criminal record holders (Stacy and Cohen 2017). A staggering proportion of our population is affected by the criminal justice system. Before the internet age, convictions could not follow individuals in the same way; formerly incarcerated people could keep their criminal history information private from landlords (Ispa-Landa and Loeffler, 2016). The public records that detailed criminal convictions were not computerized and it was unlikely that a landlord would go to the trouble to check the physical public records of a potential tenant (Ispa-Landa and Loeffler 2016).

As their release date faded into the past, a formerly incarcerated person could become established in "non-deviant" (non-criminal) roles in their communities, eroding the stigma of incarceration (Ispa-Landa and Loeffler 2016). In the 1960's and 70's when this effect was initially examined by researchers and criminologists, stigma erosion referred to the disintegration of one's criminal past in favor of a future where someone lives without the stigma associated with being formerly incarcerated (Ispa-Landa and Loeffler 2016). The newfound social standing of the formerly incarcerated person was secure (Ispa-Landa and Loeffler, 2016). Studies show that there is a "diminishing risk of reoffense over time" (Malone 2009).

Today, stigma and barriers to "non-deviant" roles have increased, due to the virtually unlimited ability to utilize online background check services to glimpse into personal histories (Ispa-Landa and Loeffler 2016). Since public records became computerized in the 1990s, there is increased convenience of access to criminal records (Stacy and Cohen 2017). Private companies

can buy and compile criminal record databases and sell any applicant's record for around $30 to anyone with internet access (Ispa-Landa and Loeffler, 2016).

Options for removal of a criminal record exist, although the process of achieving a clean record can be challenging. Expungement is the removal of a conviction from the criminal records(Ispa-Landa and Loeffler 2016). Sealing is another option: if a case is sealed, the records of that case are not public, making the details unavailable to all parties or certain specific parties, although the case will still be listed on the record (Ispa-Landa and Loeffler 2016). These options vary in each state with some limiting record removal to first-time or juvenile offenders, people convicted of misdemeanors, and those convicted of non-violent crimes (Ispa-Landa and Loeffler 2016). The complexity and variability of these rules presents another barrier to stigma erosion for record holders. The expungement process is cumbersome to navigate without legal aid, especially for someone who may be less-educated or have a busy work schedule (Ispa-Landa and Loeffler 2016). Expungement can even cost significant amounts of money (Ewing 2016). Most states charge $150 to apply, but in some states it can run up to $550 (Ewing 2016). Some expungement restrictions come with a waiting period, which can be multiple years long, increasing the risk for homelessness in the meantime (Ispa-Landa and Loeffler 2016). A 2016 study found that interviewees with criminal backgrounds reported stigma and rejection from jobs and housing applications, resulting in financial hardship as they struggled to obtain employment (Ipsa-Landa and Loeffler 2016). formerly incarcerated people also tend to be relegated to jobs that pay poorly and do not compensate them adequately for their skills or meet their financial needs (Ipsa-Landa and Loeffler 2016).

Besides expungement or sealing, a tactic adopted by some record holders is face-to-face contact with a potential employer or landlord to explain their record and demonstrate that despite their record, they are not a criminal person (Ispa-Landa and Loeffler 2016). A 2016 study proved that this approach fails to improve on the ability to gain employment as the criminal record tends to outweigh the positive traits and qualifications of the individual in the eyes of potential employers or landlords (Ipsa-Landa and Loeffler 2016). The participants in the same study reported feeling sadness, frustration and anger (Ispa-Landa and Loeffler 2016). Many felt that the ongoing, extrajudicial punishment they were experiencing did not suit the magnitude of the crime for which they were convicted (Ispa-Landa and Loeffler 2016).

The Background Check Industry

Tenant screening companies are a subset of the consumer-reporting industry (Benson and Biering 1979). They compile records on individuals to sell to landlords (Benson and Biering 1979). They function as a for-profit middleman between landlords and the public records they seek. In some states, landlords can charge potential tenants an application fee that covers the cost of the background check, meaning record-holders pay for their own rejection (Dunn and Grabchuck 2010). Tenant

screening services are problematic for many reasons. The barrier to housing they present drives up homelessness, increases recidivism rates, deters tenants from speaking up against unfair housing practices, and can even keep domestic abuse victims from moving out of their abuser's living space due to fear of being excluded from other housing options due to their record (Dunn and Grabchuck 2010). Background check services can also provide analysis of an individual's report, and advise landlords on whether the applicant would potentially be a poor choice of tenant, although there is no proven link between a criminal record and successful tenancy (Dunn and Grabchuck 2010). Some vendors have "shadow databases" where expunged records are still available, defeating the purpose of the expungement process (Dunn and Grabchuck 2010). In such cases, the person seeking expungement must contact the screening company directly and request removal, which may prove challenging (Paul-Emile 2014).

Not only do these tenant screening companies create new barriers to housing, they are often inaccurate in their reports. A 2004 study found that 79% of reports contained erroneous information, and 25% of those errors were significant enough to result in rejection from housing or employment (Dunn and Grabchuck 2010). Sometimes people with the same names or birth dates get mixed up, resulting in over reporting of a record (Dunn and Grabchuck 2010). Identity theft can create criminal records for people who have never been convicted of a crime (Dunn and Grabchuck 2010). As previously stated, companies can still provide reports that contain expunged information, meaning that the arduous expungement process sought by the convicted person was in vain (Dunn and Grabchuck 2010). Reports can make several charges associated with one incident appear as if multiple incidents occurred, which would make a potential tenant look worse on paper (Dunn and Grabchuck 2010). There is a system for reporting errors, but

often the damage has already been done for tenant applicants. After rejection, an applicant might not want to spend their time or energy reporting the error, let alone be aware of the process for doing so (Benson and Biering 1979). In some cases, a rejected tenant can contact the screening company to find out what aspect of their record was likely responsible for the rejection. It's worth noting that this requires further effort on a housing seeker's part--and additional challenge for a dejected tenant that may lack the resources or emotional energy to pursue information rather than just moving on (Benson and Biering 1979).

Tenant screening has become so commonplace that some police departments even hold workshops on how to screen tenants (Crowell 2017). On occasion, landlords who don't participate in such training workshops have had their names published for public safety's sake, so that non-criminal tenants can be aware of their landlord's policy towards criminal record holders (Crowell 2017). Effectively, the tenant screening industry has created a new housing barrier. One leading company professed to have access to data on "over 200 million convictions, associated with more than 62 million unique individuals, to which it adds approximately 22,000 new records daily" (Oyama 2010). Some websites even allow landlords to add their "opinions" on a tenant to their reports, adding the individual biases of landlords to tenant screening (Kleysteuber 2007).

Legal liability for renting to a dangerous person is a concern for landlords but is not based in any real precedent. There is one primary case cited by the tenant screening industry as precedent for this type of landlord liability. In *Kline v. 1500 Massachusetts Ave.,* a woman was assaulted in a common hallway of her building and her landlord was held responsible (Oyama 2010). Tenant screening services have used this case to legitimize landlord fears about safety and

liability by taking the case out of context and ignoring important facts that formed the basis for

the landlord's liability in that case (Thacher 2008). The landlord at 1500 Massachusetts Avenue

had stopped employing a doorman, and assaults and robberies were being reported at an

increased rate. Even knowing about the increased crime, the landlord refused to guard the

entrances to common spaces. Kline was assaulted in the common area by an outsider, and sued

the landlord. Because of the landlord's knowledge of the increased risk, the court held that the

assault was foreseeable, and the landlord was held legally responsible (Thacher 2008). A housing

provider will only be held responsible for crimes committed in common spaces that they could

have foreseeably prevented with improved security-- for example, if they refuse to fix a broken

lock and a burglary occurs (Thacher 2008). *Kline* does not support the idea that a landlord,

knowingly renting to a person with a prior conviction, is responsible for any crime committed by

that person against another tenant. The fear of legal ramifications for a landlord who houses an

formerly incarcerated tenant is mostly unfounded (Ehman and Reosti 2015). Nonetheless, tenant

screening companies used *Kline* to create a new narrative to encourage landlords to pay for their

services, essentially capitalizing on the fear of being held liable for crimes (Crowell 2015).

Screening services make it seem like the only way to prevent crime on one's property is to

exclude all individuals who have ever been convicted of any crime from living there. They do

this because their business model relies on it.

Exclusion of the Formerly Incarcerated from Public Housing

According to federal law certain criminal convictions trigger a lifetime ban from public

housing. Public housing is intended to subsidize rent so that lower income individuals can afford

a place to live. Private housing is often outside of the financial ability of individuals returning

from prison (Oyama 2010). All public housing providers are instructed to bar anyone who has

been convicted of manufacturing methamphetamine or has been convicted of sex crimes (rape,

molestation, assault). These are mandatory permanent bans. Thus, people leaving prison find

themselves ineligible for public housing but unable to afford private housing (Oyama 2010). The

laws regarding public housing authorities' ability to restrict public housing are vague, leading

many PHAs to form their own restrictions often beyond federal designations of what criminal

behavior constitutes risk (Hirsch, Dietrich, Landau, Schneider, Acklesberg, Bernstein-Baker, and

Hohenstein 2002).

Furthermore, the "One Strike" Act of 1988, legislated as part of the war on drugs, states

that any tenant found guilty of a criminal act can be evicted from public housing (Hirsch et. al.

2002). The rule extends to guests and children of a tenant; innocent people can be removed from

their homes through no fault of their own, simply by association (Hirsch et.al. 2002). This law

deters people from housing their own relatives for fear of eviction (Crowell 2017). Furthermore,

around 3.5 million people in the United States have been convicted of a crime in the past five

years, excluding them from public housing automatically (Crowell 2017). Public housing

policies of this nature disadvantage the target groups for affordable housing (Hirsch 2002).

People entering a plea of guilty or no contest may not be made fully aware of the consequences

to their housing options.

Homelessness and Recidivism

Just as the criminal justice system contributes to homelessness, homeless individuals are

disproportionately affected by the criminal justice system. People who have experienced recent

bouts of homelessness are 7.5 times more represented in the prison population than in the general

population (Malone 2009). Up to 50% of homeless individuals in the U.S. have a history of incarceration (Burt et. al. 1999). Most of the crimes they are convicted of are nonviolent crimes of survival (Tsai and Rosenheck 2013). Public housing authorities screen for nonviolent crimes as well as violent crimes; petty crimes due to poverty and homelessness are also reasons to exclude a tenant, or even arrests that don't result in a conviction or sentence (Kropf 2012).

The link between low-barrier housing and improved ability to heal and recover from chronic homelessness or incarceration has been proven, and Fair Chance housing legislation is grounded in that connection. Behaviors that the homeless engage in (willingly or not), such as sleeping on the streets, are made illegal (McNamara et. al 2013). Panhandling, loitering, public urination and public intoxication are other examples of criminalized behaviors. Such "crimes of survival" result in a disproportionate representation of the homeless in prison, even though homeless people are far more often the victims of crimes rather than the perpetrators (McNamara et al 2013). Policies that incarcerate homeless people and increase the likelihood that they will reoffend perpetuate the cycle of homelessness. Once a homeless person has amassed a criminal history, it becomes even more difficult to house them once they are out of prison.

Housing First programs have emerged as a useful tool for remediating homelessness, drug use, and unemployment issues (Malone 2009). Housing First is based on the theory that speedy housing with no caveats or requirements aids rehabilitation faster than programs that ask clients to make lifestyle changes before they are housed (Malone 2009). Low-barrier supportive housing facilitates effective use of resources and ensures faster rehabilitation (Clifasefi et. al. 2015). The use of a Housing First model has been recognized as one of the most successful ways to get members of the homeless community stable. Housing First programs result in reduced

reliance on publicly-funded services, fewer county jail bookings, reduced alcohol use, and better retention in housing, as well as a greater sense of stability and community for the formerly homeless inhabitants (Clifasefi et. al. 2015). Homelessness, by contrast, is linked to increased recidivism rates. Transient living conditions after prison increases a person's likelihood of arrest by 25% (Oyama 2010). Housing people quickly with fewer barriers is thus the best way to decrease recidivism and homelessness simultaneously.

Discriminatory Policing and Mass Incarceration

People of color living in the United States, especially Black and Latino men, also experience disproportionate contact with the criminal justice system (Oyama 2010). Black men have 6.5 times the incarceration rate of white men, and 2.5 times that of Latino men (Oyama 2010). The root causes of this disparity in policing are many, but poverty due to generational oppression is one huge driver of incarceration (Oyama 2010). Racism permeates every facet of our criminal justice system from arrest to sentencing to time in prison (Oyama 2010).

Beyond the racism perpetrated by individual police officers, government policies have perpetuated institutionalized racist systems that uphold extant disparities between Blacks and Whites in the United States. The War on Drugs has long been held responsible for the boom in incarceration during the 1980's and 90's. A 2001 study by Harvard sociologist Devah Pager found a significant relationship between the number of Black community members, especially young Black men, and the neighborhood's perception of the severity of its crime problem. White community members were more likely to consider their neighborhood crime ridden if more young Black men were present (Quillian and Pager 2001). This kind of neighborhood racism is reflected in the disproportionate percentage of inmates who are Black. Studies have shown that

when similar acts are committed by Black and White individuals, Black people are regarded as more dangerous and threatening, and White people are more fearful of crimes committed by Black strangers than White strangers (Quillian and Pager 2001). All of this entrenched racism in our criminal justice system and our society has resulted in the prison population disparity and Black Americans holding criminal records at a disproportionate rate. Thus, in cases where housing providers exclude all criminal record holders, Black and Latinx Americans are more likely to be screened out, constituting a violation of the Fair Housing Act.

The U.S. Department of Housing and Urban Development recognized that Black and Latinx applicants are excluded from housing at higher rates due to criminal records in a 2016 guideline, "Office of the 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". The guideline stipulates that the Fair Housing Act should be upheld by housing providers who screen for criminal records. Although background checks are legal, screening out Black applicants and not white applicants with similar criminal histories is not legal under the Fair Housing Act of 1968. The guideline also addresses the disproportionate percentage of Black and Latinx people that are incarcerated, and states, "Criminal records based barriers to housing are likely to have a disproportionate impact on minority home seekers." Fair Chance policies aim to tackle this disparity by elimination of the exclusion mechanism altogether.

Ban the Box Policies

"Ban the Box" (the removal or delaying of background checks from job applications) has arisen as a popular solution to background check exclusion in the job market. Over 150 cities and counties and 34 states have implemented legislation that removes background checks from the

job application process (Stacy and Cohen 2017). Private employers such as Walmart, Target, Home Depot, Bed Bath and Beyond and Koch Industries also have eliminated background checks and criminal histories from their hiring process (Stacy and Cohen 2017). Studies have shown that such policies increase callback and hiring rates for people with records generally, but they actually tend to reduce hiring and callbacks for young Black and Latino men (Stacy and Cohen 2017). A 2009 study found that Black and Latino applicants with no criminal history had lower callback rates than white applicants just released from prison (Stacy and Cohen 2017). This indicates a need for racial equity in ban-the-box policies in general; rather than scrapping the entire framework, alterations should be made to the policies to ensure that discrimination against people of color is discouraged (Stacy and Cohen 2017).

My research constitutes early analysis of Fair Chance policies, as they have been so recently instituted that cities with such laws have not collected the data they require for evaluation yet. My research is projecting potential challenges and examining what attributes of Fair Chance Housing Laws will enable them to pass with the least resistance. There is much research about job applications and criminal record, and my work expands that analysis to the sphere of housing.

Methods

To answer my questions about both the efficacy of and public response to Fair Chance Housing Policies, I selected two main qualitative methods for collecting and analyzing data about Fair Chance Housing legislation. I compared and contrasted three pieces of legislation that have been passed in three major U.S. cities: Washington D.C., San Francisco, and Seattle. To complement the policy evaluation, I collected public comments regarding Seattle's Fair Chance

law and coded them for analysis. My purpose was to engage with public opinion regarding such proposed laws to discover what potential barriers emerge when local governments attempt to pass such legislation. The analysis of each law evaluates different approaches to Fair Chance housing; analysis of the public comments aids in understanding the public response.

Reading and analyzing the content of legislation showed what concessions were made between opposing parties; review of the proposed text is helpful for revealing what compromises were necessary to pass it. For the analysis, I closely read the legislation for its content, and compared and contrasted attributes of each. Evaluation of the legislation showed which laws are the most thorough, which address racism or the criminal justice system, what process is included for enforcement, how much subjectivity is afforded in the decision-making process, and more measures of potential efficacy. A chart showed which law has the potential to be the most effective at preventing discrimination against people with criminal records.

I analyzed the public comments regarding the Fair Chance Ordinance emailed to Seattle City Council members. All public comments are collected and stored as part of the administrative record on the proposed legislation. This allowed me to examine public discourse on the law passed in Seattle. I coded the comments to understand the concerns of individuals living in a Fair Chance city. For example, what stigmas are keeping people from recognizing the factual, studied benefits of housing formerly incarcerated people quickly? Is it government overreach? Is it the idea of being less safe or secure? Is it contempt for elected representatives? This analysis of the public discussion showed how real people expect their local government's actions to affect them and the ways in which stigma against the formerly incarcerated is a challenge to these housing initiatives.

I was sent public comments by an employee at the Seattle city clerk's office after I filed a formal request for the information on their website. I was emailed the comments as a large PDF file, and began entering each comment into Dedoose, my analysis tool. I was sent all comments from the period that the bill was introduced, June 20th, 2017, to the day it was passed, August 23rd, 2017. I entered as data the first 100 comments. To properly understand the ratio of positive comments to negative, I also tallied comments in both camp for all 248 comments I recieved.

Some filtering and editing for clarity and length was necessary, as well as elimination of duplicate comments, as some commenters sent the same comment to every city council member. If a bill included links, I eliminated those, because I wanted to capture only the opinion of the commenter. I corrected spelling and grammatical errors that I could easily fix, simply because it made data entry easier and helped the coding process while preserving the content and tone of the commentary. I also removed any identifying information, because it was unnecessary for this project. I removed sections where people used abusive language and made personal attacks against city council members, unless their words had some relevance or connection to the legislation. Lastly, some people wrote about multiple initiatives in one email, and I included only their comments dealing with the bill.

During data entry, I gained an understanding of the major topics I could use to code and how the comments answered my research questions. Finding major themes was helpful, because I was then able to create subcodes based on smaller categories.

Findings

Three examples of Fair Chance laws from major U.S. cities were selected for analysis and comparison for this research. First, the District of Columbia's Fair Criminal Record

Screening For Housing Act of 2016; second, the San Francisco's Procedures for Considering

Arrests and Convictions and Related Information in Employment and Housing Decisions

adopted in 2014; and third, Seattle's 2017 Fair Chance Housing Ordinance. My questions for

each bill fall into one of three categories; they address general language, tenant applications, or

landlords.

General Language:
- Does the language of the legislation address issues of racism and the criminal justice system?
- Does the legislation require evaluation of its own efficacy through data collection?
- What do all three pieces of legislation have in common? What is different about them?

Applicants
- What information must be given to applicants who are rejected?
- How do applicants learn of the avenues for filing complaints?

Landlords
- What time limits exist for lookback periods, within which housing providers can screen potential tenants?
- What are the recommendations for housing providers when considering criminal records?
- What factors are taken into consideration?
- How subjective does the legislation allow landlords to be in their decision making process?
- What is the enforcement mechanism? Do remedies for violations exist? Is the remediation adequate?

Below are the answers to the above for all three Fair Chance laws:

	Washington D.C.	San Francisco	Seattle
Addresses racism			x
Addresses justice system		x	x
Prevents retaliation	x	x	x
Requires self-evaluation	x	x	x
Limits subjectivity		x	

Provides remediation for victims	x	x	x
Requires multilingual postings		x	
Covers all private housing providers			
Requires guidance for complainants			
Provides for notification of record issues		x	x
Community outreach and education component		x	

Washington D.C.

The Washington D.C.'s Fair Criminal Record Screening For Housing Act of 2016 is the shortest of the three laws. It begins with definitions, defining applicant, arrest, conditional offer, and more terms. The text of the law states that a provider of a housing accommodation may not make an inquiry about or require an applicant to disclose or reveal an arrest, a criminal accusation that is not currently pending, or an accusation that did not result in a conviction. Thus, the law prohibits asking about a criminal record on a housing application until after a conditional offer of housing has been made.

This law does not apply to rental units occupied by fewer than three families if the owner is one of them, or to public housing. The ordinance requires that adverse action based on a criminal record must be justifiable based on the nature and severity of the criminal offense, how long ago it occurred, and the age of the applicant at the time of the offense. An applicant can also

attempt to prove that they have had good conduct and have undergone rehabilitation since the event. The applicant can request from the landlord within 30 days of any adverse action a copy of the criminal record relied on, and the landlord should provide in addition a notice advising them that they can file a complaint with the District's Office of Human Rights. If they file a complaint, they cannot pursue private legal action concurrently. If the provider is found in violation, they can be fined (based on the size of the housing complex) up to $1,000 for three to ten rental units, $2,500 for eleven to nineteen units, and up to $5,000 for twenty or more units. Half of each fine will go to the applicant.

The bill stipulates that the Office of Human Rights must maintain data on the number of complaints filed, demographic information, the number of investigations conducted, and the disposition of complaints and investigations. This data will be used in a report on the efficacy of the law, as well as being used to update and improve the law., The first report is due 18 months after its effective date.

This piece of legislation is short and to the point, and not as thorough as the others. It only postpones adverse action until later in the application process, as opposed to a blanket ban on criminal background checks. It also allows housing providers of single or two unit dwellings to continue barring applicants for whatever reason they see fit.. It puts the burden of proving rehabilitation on the applicant. Applicants do stand to gain money from reporting an unfair rejection, but an applicant receiving $500 in compensation will still have to search for housing accomodations.

The briefness of D.C.'s Fair Chance legislation means that it lacks the sensitivity to different marginalized groups that the San Francisco and Seattle laws contain. It makes no

mention of the racial components of incarceration and discriminatory housing, nor does it address multiculturalism in cities. It contains no protections against retaliation by landlords.

San Francisco

San Francisco's ordinance provides procedures for the consideration of criminal records for both employment and housing. The language used for both components is the same, with the same stipulations provided to potential employers as well as potential landlords.

The first section of the law, section 4901, describes the policies that will be furthered by its enactment.These include issues surrounding the widespread use of criminal history checks in the internet age and the prevalence of criminal records in the U.S. The San Francisco law also addresses an economic angle not seen in the other laws; it claims that Fair Chance legislation "maximizes the pool of talented, qualified workers" and enables employers to "fully utilize the productive capacity of people with prior arrests or conviction, for the improvement of the economy." This argument has been used to justify banning the box for criminal records, but the productivity aspect hasn't often been related to the importance of stable housing. To justify the housing portion of the guideline, recidivism and homelessness are addressed, with homelessness framed as a public health issue. The law also mentions that criminal record checks can be harmful to children whose parents have criminal records.

According to this law, if an employer or housing provider finds that an applicant has a criminal record and the employer intends to undertake "adverse action" because of it, they must notify the applicant. The applicant then has two weeks to convince the employer or housing provider that the report was erroneous, or provide evidence that they have been rehabilitated.

This places a burden on the applicant to disclose personal circumstances of their lives, or prove that they are worthy of housing or a job.

Section 4906 states that affordable housing providers may not exclude applicants or their family members based on an arrest not leading to a conviction, participation in a diversion or deferral of judgment program, a conviction that has been expunged or dismissed, any conviction in the juvenile justice system, any conviction that is more than seven years old, or an infraction (not a felony or misdemeanor). The housing provider cannot require disclosure of criminal records until after the housing provider has ascertained that the potential tenant is in fact eligible. Furthermore, the law requests that landlords assess applicants individually, and consider only directly-related convictions.

Because San Francisco is such a multicultural, ethnically diverse city, the law requires housing providers to post attached to their listings a statement that they do not discriminate based on criminal history in every language spoken by more than 5% of the San Francisco population. It is the only law surveyed that requires this multilingual advertising.

San Francisco's law prohibits retaliation on the part of any housing provider against an applicant or tenant who exercises the rights protected. If an eviction or adverse action occurs within 90 days following the exercise of fair chance rights, it creates a rebuttable presumption that the action occurred in retaliation.

The enforcement section of the San Francisco law states that violations will not be found based on a housing provider's decision that an applicant's criminal history is directly related. Thus the law empowers the housing provider, within the restrictions outlined above, to decide what is "directly related," making the phrase largely subjective, and undermining enforcement.

The law needs more specificity to actually enforce this piece of legislation. For first offenses, only warnings are given, with subsequent offenses increasing to $50 per applicant and up to $100 payable to the city. Such small fines are unlikely to deter discrimination in a high-rent city like San Francisco; these fines would be a minor cost of doing business compared to the profits reaped by landlords there. Moreover, multiple applicants impacted by the same instance of exclusion constitute a single violation, further limiting the impact of the fines.

Applicants have 60 days to report a violation to the Human Rights Commission, a body appointed by the mayor. Housing providers can appeal a ruling, launching a series of hearings. It may constitute too much bureaucracy and work for someone to wade through unaided, especially if they are also trying to support themselves and their families and find stable housing. It is unclear how much interest any rejected tenant would have in a lengthy appeals and hearings process. At the end of the process, the housing provider, if found in violation, must offer the housing accommodation on the same terms it was offered to the public, unless already leased to another tenant. In that case, the housing provider should offer a comparable unit if available. If no housing is available, the applicant receives nothing for their trouble.

Housing providers are required by this law to maintain records of tenant application forms for 3 years, during which time the forms should be available to the HRC. Thus compliance can be monitored.

This law also creates a community-based outreach program so that education and outreach occur satisfactorily. This law will only work if the rights it protects are well known. The Human Rights Commission in conjunction with the Mayor's Office of Housing and Community Development are in charge of the outreach program, and it may be targeted to individuals and

communities where the need for education and outreach is greatest. This is an excellent effort to bring people with criminal records into housing by teaching them their rights and options available if they feel they are unjustly rejected.

Like the other pieces of legislation analyzed, San Francisco's law addresses the fact that federal regulations on public or affordable housing may conflict. It also stipulates that the city will not be held liable for any damages or injury that may be claimed as a result of Article 49.

Seattle

The Seattle Fair Chance Ordinance addresses race, mentioning that Black applicants for housing are more likely to be told that criminal record screening is part of the application process. It also addresses the fact that Latinx and Native Americans suffer disproportionately from mass incarceration and therefore criminal record-based discrimination.

The ordinance starts by stating that consistent testing and evaluation will help to "ensure compliance, decrease racial bias, and evaluate impacts of Chapter 14.09". The stated goal of this law is to tackle racial bias as a protected class, especially because the Seattle housing market is becoming prohibitively expensive and racially homogenous as a result. Landlords in Seattle are required participate in "Fair Housing Home" training with regards to race and criminal records and receive a certificate upon completion.

This ordinance also addresses the adage in public health that one must look upstream to uncover the root issues at the center of any public health crisis--in this case, mass incarceration at the state level. The law recites the City's policy to work at the state level to mitigate mass incarceration and criminal conviction rates.

The Fair Chance Ordinance requires that landlords consider multiple factors before passing judgment on a tenant applicant. For example, landlords must consider the nature and severity of the crimes, the number and type of convictions, the time elapsed, the age of the individual at the time of conviction, and evidence of good tenant history pre-and-post conviction. Housing providers must also take into account any rehabilitation efforts and conduct records that the individual applying for housing chooses to disclose. This is a step forward, but the application of these factors is sure to be subjective. The ordinance continues to allow housing providers to make judgments based on the applicant's crime record, supporting the concept that some criminal record holders are more worthy of housing than others. Discrimination based on criminal convictions (and not race along with a conviction) will be hard to prove during the complaints process. How many years must pass before an individual is older and wiser than they were at the time of conviction? How many letters of recommendation does an applicant need for a landlord to consider the person rehabilitated? Will landlords encourage applicants to disclose personal information about rehabilitation or good conduct? Because the criminal record can still be used as the reason to reject an applicant, the law still masks underlying discrimination. These subjectivity issues present enforcement challenges.

The ordinance states that housing providers may not advertise that they screen record holders nor may they require disclosure of criminal histories. They may not exclude someone due to their juvenile offense record, and they must always provide written notice of their intention to utilize consumer reporting avenues prior to doing so. They also must provide the potential tenant with a free copy of the record obtained from the consumer reporting service used if they are going to deny housing. Thus, the applicant has the opportunity to review and dispute

the accuracy of the report. This is an important feature, as studies show that criminal records from consumer reporting agencies are often inaccurate and incorrect.

All of the bills surveyed prohibit any retaliation on the part of the housing provider when a complaint is filed, but the Seattle ordinance goes a step further by establishing that no housing provider shall threaten any person with deportation as a form of retaliation. This is a very important protection if it can be enforced. As mass deportation threatens immigrant families' security in the U.S, it is notable that this avenue of potential retaliation was considered in the drafting of this bill. Furthermore, if a landlord does evict or deny a tenant within 90 days following the discovery of their criminal record, the landlord must prove that they would have performed the action in absence of the record. In other words, the burden of proof is on housing providers rather than on the applicant. However, within the context of this bill it is hard to know whether or not the applicant or tenant would be aware of the complaint filing avenue available to them without being made aware before eviction or exclusion.

Former tenants or rejected applicants must file their complaint within one year of the alleged violation, and if they can't remember every date and detail of their eviction or rejection the investigation can still proceed if the charge satisfies the informational requirements for processing the complaint. The process is complicated, and would likely be difficult for anyone to navigate without comprehensive assistance. Complainants have the potential to slip through the bureaucratic cracks during the filing process. However, penalties to landlords can range from $11,000 for a first violation to $55,000 for at least two violations within the last seven years.

An evaluation mechanism is also provided, with the City Auditor evaluating the program to determine if it should be maintained, amended or repealed depending on its impact on race-based discrimination and the ability of criminal record holders to find housing.

As a law adopted by the City of Seattle, it does not apply to federally funded public housing or interfere with federal public housing tenant screening mandates due to Federal supremacy. The Seattle bill also doesn't apply to any dwelling that the housing provider also lives in, for example a house with an accessory dwelling. It does not apply to housing where the other person or people living on the lot are permanent inhabitants or own their house. Thus, a large amount of relatively affordable housing in the form of accessory dwelling units or private rooms will be reserved, and freedom of choice for landlords living alongside tenants will be preserved.

Seattle Public Comments Findings

The chart below shows the frequency of different codes. The "number of applications" refers to the total number of times each code was applied throughout analysis. "Percent of total code applications" refers to the number of times each code was applied compared to all other codes. "Number of comments bearing this code" refers to single comments which may or may not be bearing multiple excerpts to which the same code was applied. "Percentage of total comments with this code" shows how many commenters wrote something that could be attributed to the code.

Code	Number of applications	Percent of total code applications	Number of comments bearing this code	Percentage of total comments with this code
Neighbor Safety	29	8.4%	22	22%

Landlords will sell housing	20	5.7%	19	19%
Good intentions, poor policy remedy	16	4.6%	16	16%
This law will positively affect Seattle's homeless	12	3.5%	12	12%
Landlords have been demonized	10	2.9%	10	10%
Seattle City Council has a liberal bias	10	2.9%	8	8%
Personal Property rights	10	2.9%	9	9%
Over-legislation/regulation	8	2.3%	6	6%
formerly incarcerated people have served their time/debt to society	5	1.4%	4	4%
Loss of housing units	22	6.3%	20	20%
Commenter receives income through rental units	10	2.8%	10	10%
Seattle City Council doesn't understand landlord experiences	14	4%	13	13%
Insurance increases for landlords will occur	1	.02%	1	1%
Commenter uses racist rhetoric to argue their point	1	.02%	1	1%
Liability for crimes is a concern	3	.086%	3	.03%
Family safety	11	3.2%	9	9%
Meth labs	6	1.7%	6	6%

Commenter will move away from Seattle if this legislation passes	6	1.7%	4	4%
Gender-based violence is a concern	6	1.7%	6	6%

Personal interaction as a screening tool	4	1.2%	4	4%
Landlord doesn't want the responsibility of rehabilitating an formerly incarcerated	11	3.1%	7	7%
Commenter had personal negative experience with a criminal tenant	5	1.4%	5	5%
Commenter had personal experience that moves them to support Fair Chance Ordinance	5	1.4%	5	5%
Native people's rights	1	.02%	1	1%
Sex offenders	3	.08%	3	3%
Government overreach	6	1.7%	6	6%
General safety concerns	6	1.7%	6	6%
Arson	2	.58%	2	2%
Personal Safety	10	2.9%	10	10%
Landlord occupied units	11	3%	8	8%
Single Female Landlord	13	3.7%	12	12%
Landlords excluded from legislative process	15	4.3%	10	10%
Severity of crime	13	3.7%	11	11%

Credit checks will replace background checks	10	2.9%	8	8%
Murderers and/or rapists	10	2.9%	10	10%
Raising rental prices	8	2.3%	8	8%
Council will be liable for crimes	8	2.3%	6	6%
Property damage	6	1.7%	6	6%
Landlord liability	5	1.4%	5	5%
Criminals will come to Seattle seeking housing	4	1.2%	4	4%
Loss of rights	2	0.58%	2	2%

The code cloud below is a graphic tool for perceiving, at a glance, code frequencies. More commonly applied codes will be larger, proportional to their use. Smaller text represents codes that were applied more rarely.

Analysis

The major concern cited by commenters sending letters to their representatives was safety. Many complained that it was unfair to those living around them, and would be a disservice to their community to introduce to the neighborhood or building someone who may cause people harm. Many cited their personal safety and the safety of their families (especially their children) as a concern.

A surprisingly frequent issue that arose in the public comment analysis was the code "single female landlord." Multiple commenters expressed fear of gender-based violence, such as assault or rape, and felt that they would be helpless were their tenants to become angry or aggressive with them. Commenters were nervous because they lived alone, and felt that they lacked support when picking up rent. Some expressed fear because they themselves had experienced rape or assault in the past. No male landlord expressed the same fear, or began their comment with their gender identity.

Another common theme was the fear of unintended consequences were the proposed legislation to pass. Many commenters claimed that the proposed law would result in a decrease in affordable housing, because landlords would take their rentals off the market or sell them rather than comply with the new regulation. Some insisted that landlords would simply raise their rents or require more unobtainable credit scores, that any formerly incarcerated person would have difficulties obtaining. It is difficult to ascertain as whether these fears are logical. Would Seattle landlords really remove a source of income just to avoid a new law? Would they

really raise rents and credit scores higher than reasonable for their area? If these imagined

consequences come to pass, it could mean trouble for the Seattle housing market. However, the

amount of effort necessary to uproot one's life will likely deter landlords from selling their

properties and leaving Seattle.

Many commenters felt excluded from the legislative process. They claimed that town

halls were insufficient, that their representatives failed to listen to them, and that their needs were

not being met. Often, it was lamented that landlord input was left out of the legislation and that

landlords had been demonized throughout the drafting of this legislation by an overly-leftist

council. Many commenters accused the council of hypocrisy, and said that if they were landlords

they would understand the safety concerns listed.

Still, other commenters wrote in urging their council to pass the Fair Chance Housing

Ordinance. Some were happy to see that the council was tackling homelessness. Some wrote

about the racial discrimination aspect of excluding criminal record holders. Some just felt that

anyone who did their time should not undergo more punishment.

The most poignant comments came from those who had experienced exclusion from

housing, who now felt confident that they would finally find a home. One commenter said that

they had to return their long-awaited Section 8 voucher due to a seven-felony record that

excluded them from housing for six months (the time

at which Section 8 vouchers expire if unused). One

person had been couchsurfing while trying to stay

sober. Another was a security guard who, despite

functioning as a protector for others in his community, had been struggling to find a rental home.

Half of the comments were written to convince the council that the Fair Chance Housing Ordinance was a poor choice for the city of Seattle's housing market, but none of them addressed what should happen to individuals who have passed through the penal system. Commenters stated that they didn't want to be responsible for anyone's rehabilitation, or that the issue was better served with public housing, but no one offered a solution as to where formerly incarcerated people should live.

Conclusion

Despite the unpopularity of such regulations among landlords and private housing market stakeholders, Fair Chance Housing Ordinances have the potential to supply enough community benefits that they should continue to be enacted. It is important to remove housing barriers that result in de facto discrimination and disparate impact.

Public comment analysis shows that people fear living among formerly incarcerated people, for their own safety and the safety of others. Some even threatened to sell their properties or remove their affordable units from the market. These are drastic measures to take, simply to avoid following a new law. Commenters tended to agree that homelessness was a vital issue to address, but disagreed with this tactic for mitigation. Most did not provide an alternative option for addressing homelessness in Seattle. Most did not even consider Fair Chance to be an anti-discrimination measure.

My interpretation of the comments is that they are an expression of fear. Landlords who wrote in felt that they had lost something, from the ability to protect their families and neighbors to the right to select their own tenant. An argument could be made that their representatives

needed to represent them properly and make alterations to the ordinance to appease their constituents.

An alternate interpretation would be that community inclusion efforts were not made satisfactorily. Commenters had many misinterpretations about the nature of the proposed law, its actual effects, its intentions and goals, and more. Many of them felt that they had not been fully engaged by their representatives. Perhaps if Seattle City Council had "sold" the law to their constituents in a more appealing way, opposition would not have been so strong. If the discussion surrounding the law had been about racial discrimination, it may have been harder for constituents to argue against it. Only one person made a comment that could be construed as racialized, writing that they didn't want Seattle to "turn into Detroit."

All three pieces of legislation make important strides for housing justice, but the enforcement aspect presents challenges. In all three, remediations are too scant to incentivise reporting. Some of the laws don't require any outreach or community education about Fair Chance Housing rights. Fair Housing Councils are often funded by grants from HUD that require that they perform outreach, so perhaps the intent for outreach is simply not included in this legislation because it is already assumed. Discriminatory intent will be hard to prove, and vague language in each bill presents further challenges to enforcement. As the effects of each bill are studied in the coming years, perhaps alterations can be made to the language that better work to house formerly incarcerated.

Limitations

The public comments were limited by negativity bias. Angry Seattleites who did not approve of the Fair Chance Housing Ordinance were more likely to write comments to their

councilmembers than those who were pleased with the bill or neutral (Muddiman, Pond-Cobb and Matson 2017). People are more likely to engage with news they perceive as negative compared to positive news (Muddiman, Pond-Cobb and Matson 2017) In addition, it was clear many of them had a poor understanding of the actual text and requirements of the bill, or fair housing in general. Multiple commenters expressed that it was unacceptable that they would be "Forced to rent to felons regardless of conviction history," when the Seattle bill makes allowances for recent sex offenses or arson. The average person cannot be expected to read the entirety of every piece of legislation affecting them, and this is reflected in their incomplete knowledge of this policy's stipulations. Such misunderstandings illuminate the failure by the Seattle City Council to effectively convey the main points of the proposed law to the public.

In addition, because of the analysis and coding methods I chose to use, duplicate comments were removed from the coding process. Many commenters sent in the exact same affirmative message to their representatives about the Fair Chance Ordinance. It would appear that some pro-Fair Chance body produced an email format and their members all sent it out. Thus, negative perceptions were favored by the analysis process over these identical positive perceptions. It wouldn't serve my time to repeatedly code the same comment over and over, but the removal does result in an exaggeration of negative perceptions due to their uniqueness.

For the policy analysis, research was limited due to the low numbers of legislation dealing with housing and criminal background checks. This limited the breadth of my analysis. All the pieces of legislation I considered were also quite recent. All three laws have self-evaluation mechanisms built in, geared towards data collection and bill efficacy. When more time has passed, their ability to solve criminal background problems in the private rental housing

market will be easier to ascertain. If more time had passed between now and implementation of the laws, this research may have contained a case study rather than a policy analysis due to more ample data on the efficacy of legislation.

Recommendations

Any regulations aiming to mitigate housing discrimination on the basis of criminal records should aim to be as thorough as possible. Clearly the issue is complicated for the public, morally and in terms of safety and income, so legislation must take stock of this. I believe the outrage in the public commentary in Seattle would have happened regardless, but it is in the council's best interest to ensure that the public understands each part of the bill to mitigate anger and worry. More town halls could have been conducted, with more presentations and even flyers or pamphlets that detail the main points of the law and the potential impact.

Legislation should also address the racial disparity inherent in our criminal justice system that affects Black, Latinx and Native communities across America. As our nation grows more multicultural, it is imperative that people of all backgrounds understand the options available to them when searching for housing. San Francisco attempted this by requiring multilingual advertising, and it would improve further Fair Chance Legislation to encourage community outreach and multicultural, multilingual education and awareness. To ensure that communities understand that the Fair Chance ordinances are aimed at limiting racial discrimination, this point should be stressed throughout outreach. Few commenters in my study mentioned racial discrimination in housing, and the effect of a criminal record is not something people without one even think about. Framing Fair Chance as restorative justice rather than the removal of property rights may be a more positive approach. In a city like Seattle, homeowners and

landlords may be more likely to understand the legislation if they understand the link between

tenant screening and racial discrimination, rather than the criminal background framework most

people mentioned in their comments.

Some of the ordinances lacked stipulations for retaliation and remediation. In the case of

retaliation, deportation is a legitimate threat in the age of Trump and ICE raids. Eviction and rent

increases are other potential ways that landlords could get back at a tenant or applicant who

reported them for discrimination. A stronger Fair Chance law would create penalties for

landlords who attempt retaliation. Most of the laws also fail to include a way to award a

complainant in a way that would improve their housing situation. A fine may be levied, but

without any reward, a jilted tenant may just attempt to move on without seeking remediation.

Fair Chance laws in the future should account for this, and a possible way is to have a fine levied

that will cover the average first month's rent or deposit for when the applicant finds a different

apartment. Forcing a landlord to provide an applicant with a unit after rejecting them sets up a

poor relationship. An applicant should have the opportunity to start fresh without any ill will

hanging over them, and subsidizing their initial deposit or first month's rent is an adequate

assistance and reward for their trouble.

Landlords in Seattle commented that they were concerned about the safety of their

neighborhoods and other tenants. Female landlords in particular felt that their safety was

threatened by the Fair Chance Housing ordinance. City councils attempting to add Fair Chance

legislation need to commit to strong messaging around public safety. It must be emphasized that

housing people will always result in decreased crime, decreased homelessness, and less

recidivism. The American public subscribes to negative stereotypes about the formerly

incarcerated that are inconsistent with the true nature of the prison population. Housing all

people is positive for communities and families, and that must be the emphasis of Fair Chance

ordinances.

It is difficult to solve the issue of female landlords, some of whom have experienced

sexual assault, fearing exposure to people who have done time. It would be unkind to downplay

their experiences or tell them their concerns are invalid. So many women experience assault in

their lifetimes, and this is a symptom of a larger societal issue. Gender based violence is a valid

fear for any woman to have. Seattle's legislation does make exceptions for some sexual

assault-related crimes and for recent assaults, so these concerned individuals will be safer than

they believe they will be.

The reality is that the vast majority of sexual assailants will never see criminal

conviction. According to RAINN (Rape, Abuse and Incest National Network) only 7 out of

1,000 rapes will result in a felony conviction for the perpetrator. This is not comforting in any

way, but it means that you are as likely to experience rape or assault renting to any person as you

are to someone with a criminal record. According to the Department of Justice, in 2013 only

12% of inmates in state prisons were in for sexual crimes, 10% for assault in general, and 53.8%

for violent crimes (which includes robbery, sexual assault, murder, aggravated assault). Despite

the fact that statistically, Fair Chance legislation is unlikely to result in more rapes and assaults,

some reassurance should still be given to concerned women and survivors of sexual assault. It's a

complicated problem with no clear solution. Perhaps for people with sex crimes related criminal

records, exceptions could be made for a landlord-occupied unit, or criminal history screening

could continue so that those who truly feel unsafe have the option available to them. I believe

that housing is a human right, and it is challenging to both the goals of Fair Chance Housing and to my personal ethos to argue for their exclusion. Nevertheless, I believe in supporting women and survivors and I do believe they should be able to choose who they let into their homes.

An optimal solution would be to prepare incarcerated assailants before they re-enter the world, and try to cut the cycle of sexual violence by adding a consent and respect educational component to re-entry. There is a careful balance between community perceptions of safety and not undermining the goals of Fair Chance policy. To reduce the number of assaults, cities must commit to sexual violence prevention strategies that are far-reaching and aim to decrease the violence before it occurs. Unfortunately, education about consent is outside of the scope of this piece of housing legislation.

Legislators have two options to tackle the safety concerns of their constituents: they can make an exception for tenant screening based on violent crimes, they can impose lookback periods of a certain number of years without rearrest, or they can do neither and try to convince constituents that their safety will be unaffected by this law. If the first two are employed in the legislation, constituents will be pleased, but no real progress will be made towards rehabilitating the formerly incarcerated. The third is the most difficult, but rejecting the not-in-my-backyard-ism that arises with the introduction of comprehensive Fair Chance laws is essential for them to function as intended. They are aimed at radical societal change. Their focus is reform and restorative justice. Housing formerly incarcerated people regardless of their past gives them a new chance in life--although it may be uncomfortable, it is something that is necessary for our progress as a society. Housing is just a piece of the puzzle in the way we treat our criminals. The ideology behind Fair Chance laws is the belief that everyone deserves a home

no matter their past. Without this framework, what do we do with people after their institutionalization is over? How do we meet our rehabilitative needs with the resources our cities have? Ultimately, such legislation is a step forward and a bold move for cities to combat racism, homelessness and recidivism.

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Appendix

Attached find a selection of the public comments used for analysis as well as the text of the legislation analyzed. The complete set of public comments provided by the Seattle city clerk's office can be obtained through a request for public records on their website.