

HOUSING INSECURITY AMONG PEOPLE WITH CRIMINAL RECORDS: A FOCUS ON LANDLORDS

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I. INTRODUCTION

Approximately 600,000 people are released from prisons each year and at least 79 million adults – over one third of the population – now hold some form of a criminal record.³ Upon formal criminalization, a combination of socioeconomic barriers compound to inhibit one’s chances at successfully (re)integrating into society. In particular, justice-involved individuals consistently identify stable housing as an important factor in shaping reentry success,⁴ yet various barriers to securing housing exist for this population. Building on insights from organizational sociology and recent literature on carceral citizenship, we take a sociological approach by examining the organizational production of housing inequalities for people with criminal records, focusing specifically on the policy-, practice-, and idea-based inequality-producing mechanisms existing within and among landlords.

Specifically, we provide context around the scale of mass incarceration in the U.S., illustrate patterns of criminalization, and explore housing insecurity as an important consequence of criminalization. We then discuss the multiple impacts of housing insecurity among justice-involved individuals, including outcomes for health, socioeconomic well-being, and community belonging. The second half of this paper focuses on private landlords and describes the mechanisms of exclusion that prevent criminalized people from accessing stable housing. In doing so, we argue that housing insecurity isn’t an issue of individual deficiency, rather, it is a structural problem shaped by distinctly relational processes. Our contribution demonstrates how importing insights from organizational sociology can help us better understand the specific and generic mechanisms structuring housing inequality in private markets.

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³ Wendy Sawyer & Pete Wagner, *Mass Incarceration: The Whole Pie 2022*, PRISON POL’Y INITIATIVE (Mar. 14, 2022), <https://www.prisonpolicy.org/reports/pie2022.html> [<http://perma.cc/Z22N-T8X4>].

⁴ Jocelyn Fontaine, U.S. DEP’T HOUS. AND URB. DEV., *The Role of Supportive Housing in Successful Reentry Outcomes for Disabled Prisoners*, 15 CITYSCAPE: J. POL’Y DEV. AND RSCH. 53, *passim* (2013).

Finally, we examine a number of policy solutions that can potentially address the housing-based inequality-making mechanisms operating today. This discussion includes an analysis of housing vouchers, fair housing ordinances, screening transparency, and automatic criminal record expungement processes. In the end, however, we argue for a multi-faceted framework built around housing as a guaranteed human right for everyone. Only when safe and decent housing is assured by the State, and supported with adequate and flexible resources, will we be able to fully address the problem of housing insecurity among criminalized populations.

II. THE ISSUE

A. *The Scale of Mass Incarceration and Criminalization in the U.S.*

The United States maintains a criminalizing social system. As decades of research demonstrates, changes in funding, policing practices, prosecutorial behavior, and sentencing structures since the early 1980s, along with neoliberal retrenchments of social welfare supports, have resulted in what commentators have termed mass incarceration:⁵ a geographically and historically unprecedented system of imprisonment whereby roughly 1.9 million people are incarcerated in local, state, and federal facilities across the country.⁶ In fact, although rates of incarceration have dipped more recently, the current rate of 573 per 100,000 has preserved the United States' dominance as a world leader in the incarceration of its own residents. With only four percent of the world's population, the United States now holds approximately 20 percent of the world's

⁵ Over the past 50 years, the scale of mass incarceration has grown exponentially, increasing by 430 percent since 1970. Researchers largely agree that this growth is primarily attributable to policy decisions rather than 1:1 increases in crime. Blumstein and Beck, (for example, found that 88 percent of the change in the prison populations between 1980-1996 could be explained by changes in punishment practices, and only 12 percent could be attributed to changes in crime rates. Today, a range of practices and policies maintain mass incarceration. The Vera Institute of Justice estimates that the police arrest someone every three seconds in the U.S. – more than 80 percent of arrests being for low-level, nonviolent offenses. Columbia University's Spatial Information Design Lab and the Justice Mapping Center have created maps of "million-dollar blocks" – places where the concentration of policing is so dense that it costs greater than one million dollars annually to lock up residents of a single city block. Their findings show that police presence is disproportionately high in a select few neighborhoods in major U.S. cities, resulting in disproportionate representation in the criminal legal system. Research by Pfaff demonstrates alarming trends in prosecutorial behavior and prison admission wherein prosecutors are more likely to file felonies now compared to in the past. The cost of maintaining these practices is staggering. Annually, the U.S. spends nearly \$115 billion in policing and billions more are spent on corrections. *What Policing Costs: A Look at Spending in America's Biggest Cities*, VERA INST. JUST. <https://www.vera.org/publications/what-policing-costs-in-americas-biggest-cities> [https://perma.cc/YGJ4-X8SJ]; Alfred Blumenstein & Allen J. Beck, *Population Growth in U. S. Prisons, 1980-1996*, 26 CRIME AND JUST. 17, 43 (1999); John F. Pfaff, *The Micro and Macro Causes of Prison Growth*, 28 GA STATE UNIV. L. REV. 1237, 1238 (April 2013) (internal citations omitted).

⁶ Sawyer, *supra* note 3.

incarcerated population.⁷ The economic price of maintaining this system is staggering – in the 45 States responding to their 2015 survey on prison expenditures, the Vera Institute of Justice found that well over \$42 billion is spent on imprisonment alone each year.⁸

While static incarceration rates receive the lion's share of attention, focusing on the number of people experiencing correctional control provides an even more complete picture. For example, 600,000 prison admissions⁹ and nearly 10.6 million jail admissions occur each year.¹⁰ Expanding our scope beyond incarceration further reveals that around 3.7 million people are on some form of community supervision.¹¹

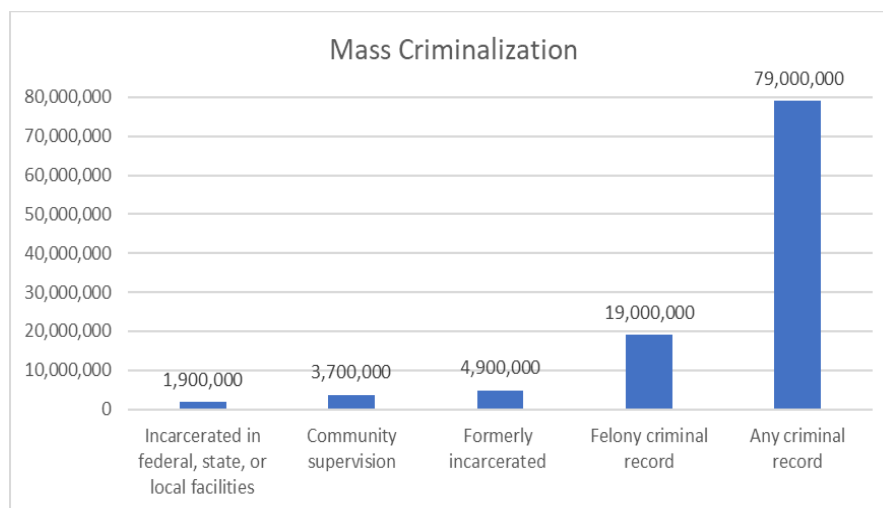


Figure 1. Source: Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2022*¹²

⁷ Peter Wagner & Wanda Bertram, “What percent of the U.S. is incarcerated?” (*And other ways to measure mass incarceration*), PRISON POL’Y INITIATIVE (Jan. 16, 2020) <https://www.prisonpolicy.org/blog/2020/01/16/percent-incarcerated/> [https://perma.cc/T79R-G3LQ].

⁸ See Chris Mai & Ram Subramanian, *The Price of Prisons: Examining State Spending Trends, 2010–2015*, VERA INST. JUST., 7 (May 2017) <https://www.vera.org/downloads/publications/the-price-of-prisons-2015-state-spending-trends.pdf> [https://perma.cc/X4PV-JLE5].

⁹ E. ANN CARSON, BUREAU JUST. STAT., U.S. DEP’T JUST., NCJ302776, PRISONERS IN 2020 – STATISTICAL TABLES, 17 (Dec. 2021).

¹⁰ Wendy Sawyer, *Artist Collaboration: Visualizing 10.6 Million Jail Admissions Each Year*, PRISON POL’Y INITIATIVE, (Mar. 22, 2018) <https://www.prisonpolicy.org/blog/2018/03/22/chalabi/> [https://perma.cc/YVJ9-XZPU].

¹¹ *Probation and Parole*, PRISON POL’Y INITIATIVE, https://www.prisonpolicy.org/probation_parole.html [https://perma.cc/9PE9-VEGS].

¹² Sawyer, *supra* note 3.

As Michelle Alexander (2010) aptly reminds us, though, it is the criminal label that plays a crucial role in structuring the lives of people who have experienced correctional control.¹³ The Brennan Center of Justice estimates that at least 70 million adults have some form of a criminal record,¹⁴ and Shannon and colleagues (2018) find that roughly 19 million people have been formally labeled with a felony record.¹⁵ These criminal labels trigger a range of “collateral”¹⁶ consequences that dictate what criminalized people can do, where they can live, and who they may interact with, among other restrictions. In fact, according to the Collateral Consequences Resources Center, there are nearly 45,000 legal consequences of a criminal record designed to limit the social and economic opportunities available to criminalized people around the country.¹⁷ Even when these legal consequences do not explicitly exclude criminalized people, a range of third-party actors utilize electronic criminal records to help screen and sort individuals into and away from opportunities.

B. Housing Insecurity among Criminalized People

Relative to the resources used to maintain such a large system of criminalization, reentry services are comparably deficient and often fail to support the 600,000 people released from state and federal prisons each year (and the other 9 million people released from local jails annually).¹⁸ The lack of pre-release planning, coordinated reentry services, and access to opportunity structures post-release, contributes to a national three-year recidivism (re-arrest) rate of roughly 62 percent.¹⁹ Many formerly incarcerated people leave prison with little more than a bus pass and \$200 in gate money.²⁰ A foremost concern

¹³ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS*, 118 (2010).

¹⁴ Matthew Friedman, *Just Facts: As Many Americans Have Criminal Records As College Diplomas*, BRENNAN CTR. FOR JUST. (Nov. 17, 2015) <https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas> [https://perma.cc/U3PH-T77M].

¹⁵ Sarah K. S. Shannon, Christopher Uggen, Jason Schnittker, Melissa Thompson, Sara Wakefield, & Michael Massoglia, *The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948–2010*, 54 *DEMOGRAPHY* 1795, 1806 (Sep. 11, 2017).

¹⁶ As Sered aptly notes, the phrase “collateral consequences” is a misnomer, since “it’s not clear that these [consequences] are ‘collateral’ rather than intentional.” Susan Starr Sered, *Diminished Citizenship in the Era of Mass Incarceration*, 23 *PUNISHMENT & SOC’Y* 218, 232 (2021).

¹⁷ Reuben Jonathan Miller & Forrest Stuart, *Carceral Citizenship: Race, Rights and Responsibility in the Age of Mass Supervision*, 21 *THEORETICAL CRIMINOLOGY* 532, 534 (2017).

¹⁸ OFF. ASSISTANT SEC’Y FOR PLAN. AND EVALUATION, U.S. DEP’T HEALTH AND HUM. SERVS., *Incarceration & Reentry*, (Last Accessed Mar. 31, 2023) <https://aspe.hhs.gov/topics/human-services/incarceration-reentry-0#:~:text=At%20any%20one%20time%2C%20nearly,from%20state%20and%20federal%20priso> [https://perma.cc/R92S-JR37].

¹⁹ MATTHEW R. DUROSE & LEONARDO ANTENANGELI, BUREAU JUST. STAT., U.S. DEP’T JUST., *NCJ255947, RECIDIVISM OF PRISONERS RELEASED IN 34 STATES IN 2012: A 5-YEAR FOLLOW-UP PERIOD (2012–2017)*, 1 (July 2021).

²⁰ JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* 81 (2009).

among those reentering society is the need to find decent and stable housing. In one survey of over 700 formerly incarcerated people, for example, 79 percent of respondents reported that they were ineligible or denied housing because of their conviction history²¹. In a focus group connected to this study, one participant noted:

All of the places that I wanted to live—that were nice and where I could raise kids told me ‘no.’ So I ended up where I am now, in a rundown four-plex that’s a slum with moldy walls.²²

Of the estimated 550,000 people in the U.S. who experience homelessness on any given night, research suggests that many have a history of criminal legal system involvement. One study from the Connecticut Coalition to End Homelessness (CCEH) found that among the 17,226 people who used a shelter in their local network between 2016 and 2019, half (8,187) had a history of incarceration and 1 in 5 had been released from prison in the previous three years.²³

Utilizing Bureau of Justice Statistics data on formerly incarcerated people on parole, Couloute (2018) found that formerly incarcerated people are roughly ten times more likely to be homeless than the general public.²⁴ Expressed as a rate, for every 10,000 formerly incarcerated people, about 203 are homeless.²⁵ Additionally, 367 per 10,000 live in marginal housing arrangements which includes rooming houses, hotels, or motels. Taken together, these numbers suggest that nearly six percent of all formerly incarcerated people are without permanent and private housing on any given day.

²¹ ELLA BAKER CTR. FOR HUM. RTS., WHO PAYS: THE TRUE COST OF INCARCERATION ON FAMILIES 27 (2015), <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-FINAL.pdf>, [https://perma.cc/F4MC-4LJ4].

²² *Id.*; see also Carol L. M. Caton, Boanerges Dominguez, Bella Schanzer, Deborah S. Hasin, Patrick E. Shrout, Alan Felix, Hunter McQuiston, Lewis A. Opler, & Eustace Hsu, *Risk Factors for Long-Term Homelessness: Findings From a Longitudinal Study of First-Time Homeless Single Adult*, 95 AM. J. OF PUB. HEALTH 1753, 1758 (Sept. 2005) (explaining that in another longitudinal study of 377 NYC shelter users, Caton et al. found that approximately 1 in 7 participants were in a jail or prison directly prior to shelter entry. Additionally, their analysis demonstrated that age and arrest history were the strongest predictors of longer durations of homelessness).

²³ Alexi Jones, *New Data: The Revolving Door Between Homeless Shelters and Prisons in Connecticut*, PRISON POL’Y INITIATIVE (Feb. 10, 2021), <https://www.prisonpolicy.org/blog/2021/02/10/homelessness/> [https://perma.cc/3H8K-WDSC].

²⁴ Lucius Couloute, *Nowhere to Go: Homelessness among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (AUG. 2018), <https://www.prisonpolicy.org/reports/housing.html> [https://perma.cc/8EXB-E7ST].

²⁵ *Id.*

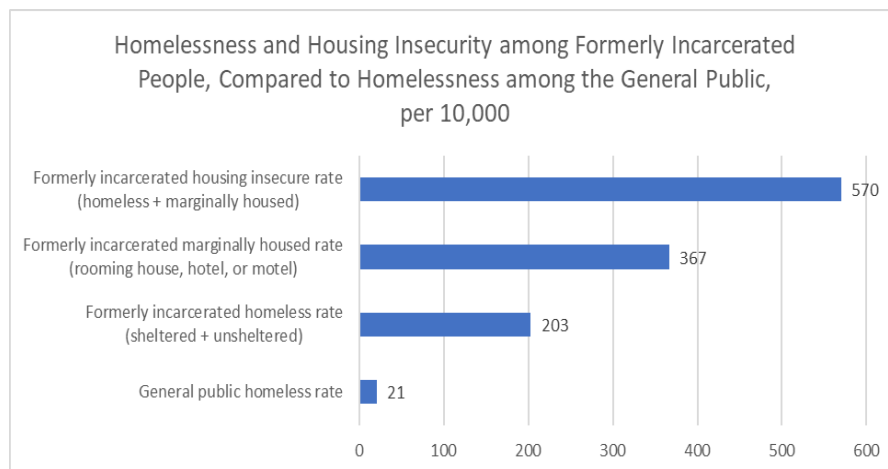


Figure 2. Source: Couloute 2018.

According to the U.S. Department of Housing and Urban Development, a direct pipeline exists where more than 50,000 people enter shelters directly from correctional facilities each year.²⁶ Research by Jacobs & Gottlieb (2020) demonstrates that housing insecurity and homelessness uniquely predict recidivism among participants on probation compared to other risk factors, noting:

We find that housing circumstances do predict risk of recidivism for this group [...] people who start their supervision term without a regular living situation or who experience homelessness during probation are at increased risk of recidivating. Specifically, we find lacking an address at probation start and homelessness during probation are associated with a 35% and 44% increase in recidivism risk, after adjusting for an extensive array of covariates.²⁷

Generally, the risk of homelessness (and housing insecurity, broadly defined) is highest immediately after release, decreasing in the weeks, months, and years thereafter. A New York-based study conducted by Metraux and Culhane (2004) demonstrates this pattern of post-imprisonment homelessness. In their analysis of 48,424 people released from New York state prisons between

²⁶ See also Mary E. Hombs Massachusetts Housing and Shelter Alliance's research on corrections and homelessness. Presented at the Annual Meeting of the National Alliance to End Homelessness, Washington, D.C., July 18; David Michaels, Stephen R. Zoloth, Phil Alcabes, Charles A. Braslow, & Steven Safyer, *Homelessness and Indicators of Mental Illness Among Inmates in New York City's Correctional System*, 43 HOSP. & CMTY. PSYCHIATRY, 150 (Feb. 1992).

²⁷ Leah A. Jacobs & Aaron Gottlieb, *The Effect of Housing Circumstances on Recidivism: Evidence From a Sample of People on Probation in San Francisco*, 47 CRIM. JUST. & BEHAV., 1097, 1111 (2020).

1995 and 1998, 11.4 percent entered a New York City homeless shelter within two years and over half of these shelter spells occurred within the first month after release.²⁸ In another study, Metraux & Culhane (2006) found that nearly one-quarter of those staying in the New York City Department of Homeless Services (DHS) single adult shelter system had been incarcerated at some point in the previous two years.²⁹

Examining shelter use patterns in a cohort of men released from prison between 1999 and 2002 (n=12,338), Remster (2017) also found that the risk of homelessness was highest in the first month after release, however, half of the individuals in her sample did not experience a shelter spell until two years *after* their release.³⁰ These results suggest that housing insecurity among criminalized people can persist until long after the immediate post-imprisonment period, placing additional burdens on already taxed shelter systems.³¹

Taking an alternative approach, Geller & Curtis (2011) leverage the longitudinal *Fragile Families* dataset to compare the experiences of disadvantaged fathers with and without histories of incarceration (n = 2,763).³² They found that the previously incarcerated men in their sample (n = 1,052) were significantly more likely to report housing insecurity and having spent time in a shelter compared to the never incarcerated men (n = 1584).³³ After controlling for a range of demographic, socioeconomic, cognitive, and geographic measures, Geller & Curtis found that previously incarcerated men face odds of housing insecurity and homelessness that are twice as high as their never incarcerated counterparts.³⁴ By matching disadvantaged men with prison histories to those without them, Geller & Curtis' work demonstrates that criminal justice contact in and of itself plays a significant role in shaping housing outcomes.

²⁸ Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use and Reincarceration Following Prison Release*, 3 CRIMINOLOGY & PUB. POL'Y 139, 139 (2004).

²⁹ Stephen Metraux & Dennis P. Culhane, *Recent Incarceration History Among a Sheltered Homeless Population*, 52 CRIME & DELINQUENCY 504, 509 (2006); see Caton, *supra* note 22.

³⁰ Brianna Remster, *A Life Course Analysis of Homeless Shelter Use Among the Formerly Incarcerated*, 36 JUST. QUARTERLY, 437 (Nov. 2017).

³¹ *See id.*; Claire W. Herbert, Jeffrey D. Morenoff, & David J. Harding, *Homelessness with Housing Insecurity Among Former Prisoners*, 1 THE RUSSEL SAGE FOUND. J. OF THE SOC. SCIS. 44, 47 (Nov. 2015) (focusing on the most severe housing outcomes ignores other forms of housing insecurity that may be more prevalent among criminalized groups. As numerous researchers have found, residential turnover, "doubling up" with others, and short stays at hotels, motels, or other impermanent places are far more likely than outright homelessness among this population); Couloute, *supra* note 24.

³² Amanda Geller & Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40 SOC. SCI. RES. 1199–1200 (2011).

³³ *Id.* at 1200.

³⁴ *Id.* at 1206.

Importantly, housing disadvantages associated with criminal justice contact do not appear to impact groups equally. To begin, since Black, Latino, and Indigenous groups are disproportionately policed and funneled through court systems, they are over-represented among criminalized populations.³⁵ Particular groups, such as trans women of color and individuals with disabilities – face some of the highest rates of disadvantage in this domain.³⁶ Thus, these groups are more likely to face the challenges of finding housing with a criminal record. Then, once formally labeled, researchers find that criminalized people of color – and Black women in particular – face the greatest rates of homelessness and housing insecurity,³⁷ creating an integrated and mutually reinforcing system of race discrimination.³⁸

C. *Impacts of Housing Instability Among Criminalized People*

The literature shows that exclusion from housing primarily impacts well-being in three ways: 1) by reinforcing navigational difficulties in the labor market and connected institutions, 2) by increasing the risk of recidivism, and 3) by decreasing health and healthcare access. Furthermore, arresting, fining, and jailing people experiencing housing insecurity only increases socioeconomic inequalities by burdening people with the “collateral” costs (including exorbitant fines and fees) of a criminal conviction. For a population that, on average, existed well below the poverty line prior to their arrest and incarceration,³⁹ these costs are particularly onerous and often contribute to cycles of criminal justice contact and deepened poverty.⁴⁰

Generally speaking, most institutions require proof of residency information such as a mortgage statement, mail, or utility bills before offering

³⁵ See Robin Smyton, *How Racial Segregation and Policing Intersect in America*, TUFTS NOW (June 17, 2020), <https://now.tufts.edu/2020/06/17/how-racial-segregation-and-policing-intersect-america> [<https://perma.cc/R8RG-WCLH>].

³⁶ Rebecca Vallas, *Disabled Behind Bars: The Mass Incarceration of People with Disabilities in America's Jails and Prisons*, CTR. FOR AM. PROGRESS (2016), <https://www.americanprogress.org/article/disabled-behind-bars/> (finding that incarcerated individuals in prisons are three times more likely to report having a disability compared to the general population, and those in local jails are four times more likely); see also Elliot Oberholtzer, *New Report: Disabled People Targeted by Violence at High Rates*, PRISON POL'Y INITIATIVE (July 18, 2017), <https://www.prisonpolicy.org/blog/2017/07/18/bjs-disabled/> [<https://perma.cc/9XV9-H9LF>].

³⁷ See Couloute, *supra* note 24; Metraux & Culhane, *supra* note 29.

³⁸ Barbara Reskin, *The Race Discrimination System*, 38 ANN. REV. SOCIO. 17, 19 (Aug. 2012); Jessica T. Simes, *Place After Prison: Neighborhood Attainment and Attachment During Reentry*, 41 J. URB. AFFS. 1, 4 (Aug. 8, 2018) (Simes' research at the community level further demonstrates that compared to their white peers, Black and Hispanic formerly incarcerated people tend to live in more disadvantaged communities post-release, contributing to what researchers have described as the intergenerational transmission of poverty).

³⁹ Bernadette Rabuy & Daniel Kopf, *Uncovering the Pre-Incarceration Incomes of the Imprisoned*, PRISON POL'Y INITIATIVE (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html> [<https://perma.cc/ZR9B-QGJ2>].

⁴⁰ *Fines and Fees in the Justice System: Ending a Practice that Traps People in Cycles of Debt and Despair*, VERA INST. OF JUST. (Last visited March 29, 2023), <https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities/fines-and-fees>.

access to opportunities or resources. Residency verification, for example, is often required when applying for welfare services. Employers typically require a permanent address on job applications as well. For those living under unstable housing conditions, the chances of obtaining a job are lower and can exacerbate barriers to employment related to a criminal background.⁴¹ Conversely, those who are unemployed as a consequence of their criminal record are usually locked out of the private housing market because landlords frequently require documented income and professional references.

Moreover, housing status appears to be intimately linked to the revolving door of recidivism.⁴² Existing studies find that roughly one-quarter of people without housing report having been arrested for activities related to their homelessness, such as sitting, lying down, or sleeping in public.⁴³ Additionally, unstable housing can disrupt regular contact with one's probation or parole officer. In an analysis of a sample of returning prisoners in New York State, Travis et al. (2001) find that individuals who return to a homeless shelter upon release are seven times more likely to break parole compared to those in stable living situations.⁴⁴ Similarly, in their New York State-based study of returning prisoners (n=50,000), Metraux and Culhane (2004) find that those who returned to a homeless shelter upon release are at a significantly higher risk of facing reincarceration.⁴⁵

Those exiting jails and prisons also face disproportionate rates of physical, mental, and substance use-related health problems,⁴⁶ and treatment for such issues are often more accessible for those who are stably housed.⁴⁷ Those who

⁴¹ Amanda Geller, Marah A. Curtis, *A Sort of Homecoming: Incarceration and the Housing Security of Urban Men*, 40(4) SOC. SCI. RSCH. 1196, 1199 (July 1, 2011). <https://pubmed.ncbi.nlm.nih.gov/21927519/>.

⁴² Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL'Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html>.

⁴³ THE NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, NO SAFE PLACE: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES 17 (July 16 2014). https://homelesslaw.org/wp-content/uploads/2019/02/No_Safe_Place.pdf

⁴⁴ JEREMY TRAVIS, AMY L. SOLOMON, & MICHELLE WAUL, THE URBAN INSTITUTE, FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY (June 2001). <https://www.urban.org/sites/default/files/publication/61571/410098-From-Prison-to-Home-The-Dimensions-and-Consequences-of-Prisoner-Reentry.PDF>

⁴⁵ Metraux & Culhane, *supra* note 28 at 151. <https://www.proquest.com/openview/3f18a28324a64f1046dd432827559096/1?pq-origsite=gscholar&cbl=26029>

⁴⁶ Caterina Roman, & Jeremy Travis, (2006, January) *Where Will I Sleep Tomorrow? Housing, Homelessness, and the Returning Prisoner*, 17 HOUSING POL'Y DEBATE 389, 393–94 (Jan. 2006). https://www.researchgate.net/publication/241900615_Where_will_I_sleep_tomorrow_Housing_homelessness_and_the_returning_prisoner

⁴⁷ Katharine H. Bradley, R.B. Michael Oliver, Noel C. Richardson, & Elspeth Maclean Slayter, *No Place Like Home: Housing and the Ex-Prisoner*, CMTY. RES. FOR JUST. 1 (Jan. 2001). https://www.researchgate.net/publication/239616156_No_Place_Like_Home_Housing_and_the_Ex-Prisoner

experience unsheltered homelessness often suffer from less access to healthcare services and increased rates of serious mental illness, substance use disorders, and chronic health conditions.⁴⁸ Furthermore, those who live in unsheltered situations are at increased risk of premature mortality compared to those in sheltered situations. One study finds that unhoused people are four times more likely to die from heart disease or murder and are eight times more likely to die from suicide.⁴⁹ The problem of homelessness and housing insecurity, then, is one of institutional integration, public safety, and public health.

As such, we contend that in order to address the many consequences of housing insecurity among those with criminal records, researchers and policymakers alike must take a mechanism-oriented approach that moves beyond acknowledging rates or blaming individuals for their supposed deficiencies. Such an approach would help to better identify the underlying causes of housing inequality and create space to develop solutions for a more fair and equitable society. In the following section we develop a theoretical foundation to support our thesis.

III. AN ORGANIZATIONAL LENS ON INEQUALITY

Having demonstrated that housing instability is both widespread and consequential for those with criminal records, we now shift our focus to the *production* of housing inequality. Although researchers have documented the existence of unequal housing outcomes between criminalized and non-criminalized people, further work is necessary to uncover why disparities exist and how we might eliminate them. Our analysis begins with the assumption that housing disadvantage among criminalized people is not simply an outcome of individual-level deficiencies, but rather the product of distinctly relational and organizational processes that reflect broader cultural schemas.

To further develop this perspective, we build from critical criminological works examining citizenship⁵⁰ and from the sociology of organizations, which focuses primarily on employment organizations but nonetheless offers analytic and theoretical tools to better understand how meso-level structures shape social stratification. In particular, we import insights from Relational Inequality

⁴⁸ Ann Elizabeth Montgomery, Dorota Szymkowiak, Jessica Marcus, Paul Howard, & Dennis P. Culhane, *Homelessness, Unsheltered Status, and Risk Factors for Mortality: Findings From the 100,000 Homes Campaign*, 131 PUB. HEALTH REPORTS 765, 765 (2016). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5230839/>

⁴⁹ Marcel T. Slockers, Wilma J. Nusselder, Judith Rietjens, & Ed F. van Beeck, *Homeless Adults' Most Frequent Cause of Death is Suicide or Murder*, 162 NEDERLANDS TIJDSCHRIFT VOOR GENEESKUNDE D2626 (2018). <https://pubmed.ncbi.nlm.nih.gov/29543143/>

⁵⁰ See Miller, & Stuart, *supra* note 17 at 532.; Sered, *supra* note 16 at 218. <https://doi.org/10.1177/1462474520952146>; Alexander, *supra* note 13.

Theory,⁵¹ Racialized Organizations,⁵² Inequality Regimes⁵³, and Carceral Citizenship⁵⁴ to better address the meso-level mechanisms that create and reproduce housing disadvantages among criminalized people. In the following sections, we highlight relevant theoretical tools before assessing the particular organizational practices, policies, and broader cultural schemas that structure housing inequalities between criminalized and non-criminalized people.

A. *Organizational Theory*

Although organizational scholarship is wide and varied, recent “mechanisms-oriented”⁵⁵ analyses of inter- and intra-organizational inequality-making processes are most relevant for the purposes of understanding housing barriers for people with criminal records. This line of research challenges older conceptualizations of organizations as neutral, passive bureaucratic structures and instead posits that organizations are inhabited entities that play an active role in shaping and reinforcing a range of inequalities.⁵⁶

For example, Acker (2006)⁵⁷ argues that all organizations contain practices, processes, actions, and meanings that promote inequalities, which together can be conceptualized as inequality regimes. Employment organizations, in particular, utilize a range of strategies for recruiting and hiring employees, often with implicitly gendered and racialized ideas about which people are most suitable for particular jobs⁵⁸. Scholarship on employment organizations also demonstrates how recruiting potential employees exclusively from elite universities or informal networks,⁵⁹ in addition to hiring based on

⁵¹ See DONALD TOMASKOVIC-DEVEY & DUSTIN AVENT-HOLT, *RELATIONAL INEQUALITIES: AN ORGANIZATIONAL APPROACH*. (2019). <https://academic.oup.com/book/5536>

⁵² See Victor Ray, *A Theory of Racialized Organizations*, 84 AM. SOCIO. REV. 26 (2019). <https://doi.org/10.1177/0003122418822335>

⁵³ See Joan Acker, *Inequality Regimes: Gender, Class, and Race in Organizations*, 20 GENDER & SOC., 441 (2006). <https://doi.org/10.1177/0891243206289499>

⁵⁴ See Miller, & Stuart, *supra* note 17 at 532.

⁵⁵ See Barbara F. Reskin, *Including Mechanisms in our Models of Ascriptive Inequality*, 68 AM. SOCIO. REV. 1, 2 (2003). https://doi.org/10.1007/1-4020-3455-5_4; Vincent J. Roscigno, Diana L. Karafin, & Griff Tester, *The Complexities and Processes of Racial Housing Discrimination*, 56 SOC. PROBS. 49, 50 (2009). <https://doi.org/10.1525/sp.2009.56.1.49>

⁵⁶ See Tomaskovic-Devey & Avent-Holt, *supra* note 51; Victor Ray, *A Theory of Racialized Organizations*, 84 AM. SOCIO. REV. 26, 28 (2019).

⁵⁷ Acker, *supra* note 53, at 443.

⁵⁸ *Id.* at 449; see also Melissa E. Wooten & Enobong H. Branch, *Defining Appropriate Labor: Race, Gender, and Idealization of Black Women in Domestic Service*, 19 RACE, GENDER & CLASS 292 (2012); Enobong H. Branch & Melissa E. Wooten, (2012) *Suited for Service: Racialized Rationalizations for the Ideal Domestic Servant from the Nineteenth to the Early Twentieth Century*. 36 SOC. SCI. HIST. 169 (2012).

⁵⁹ Lauren A. Rivera, *Diversity within Reach: Recruitment Versus Hiring in Elite Firms*, 639 THE ANNALS OF THE AM. ACAD. OF POL. AND SOCIO. SCI. 71, 74 (2012).

cultural similarities⁶⁰ can lead to racialized, gendered, and class-based homogeneity while appearing facially meritocratic and/or efficient. Furthermore, once employees enter work organizations, their ability to climb organizational ladders (e.g. get promoted) is often structured by unequal access to social capital⁶¹ and mentorship.⁶² These inequality regimes operate under different configurations across organizations but appear consistent in their tendency to support racial-gender hierarchies that privilege the white unencumbered male over all other demographic groups.

Ray (2019) argues that researchers should conceptualize contemporary organizations as racial structures in and of themselves (e.g. racialized organizations), with the power to connect cultural ideas around hierarchy (e.g. racial schemas around sub- and super-ordinate groups) to organizational resources such as income or status. In particular, Ray offers four principles undergirding this theory of racialized organizations: (1) racialized organizations shape agency, (2) racialized organizations legitimate the unequal distribution of resources, (3) racialized organizations treat Whiteness as a credential, and (4) racialized organizations often decouple commitments to fairness and equity from on-the-ground policies and practices, or differently apply policies and practices altogether.⁶³ These principles, backed by decades of scholarship, help us understand some of the specific ways racial inequality continues to exist (and remain legitimate) absent explicitly racialized organizational rules or state laws.

Unfortunately, much of the criminological work around recidivism, desistance, and reentry fails to take seriously such organizational processes in favor of individual-level analyses that reduce race, gender, or even criminal records solely to attributes of people (e.g. poorly contextualized dichotomous variables) rather than expressions of social relationships. From this perspective, the role of organizational forces – such as probation or parole – in structuring recidivism remains hidden amid a broader concern with changing the people accused and convicted of crimes.⁶⁴ As recent critical works have demonstrated, however, organizations such as police departments,⁶⁵ courtroom workgroups,⁶⁶

⁶⁰ Lauren A. Rivera, *Hiring as Cultural Matching: The Case of Elite Professional Service Firms*, 77 AM. SOCIO. REV., 999, 1002–09 (2012).

⁶¹ Erika H. James, *Race-Related Differences in Promotions and Support: Underlying Effects of Human and Social Capital*, 11 ORG. SCI. 493, 493 (2000).

⁶² R. E. Viator, *An Examination of African Americans' Access to Public Accounting Mentors: Perceived Barriers and Intentions to Leave*, 26 ACCOUNTING, ORG. AND SOC. 541, 543 (2001).

⁶³ Victor Ray, *A Theory of Racialized Organizations*, 84(1) AM. SOCIO. REV., 26, 26 (2019).

⁶⁴ See generally Rueben J. Miller, *Devolving the Carceral State: Race, Prisoner Reentry, and the Micro-Politics of Urban Poverty Management*, 16 PUNISHMENT & SOC'Y. 305–35 (2014).

⁶⁵ SARAH BRAYNE, *PREDICT AND SURVEIL: DATA, DISCRETION, AND THE FUTURE OF POLICING*, (Oxford Univ. Press 2021).

⁶⁶ NICOLE G. VAN CLEVE, *CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT* 27 (Stanford Univ. Press 2016).

parole and probation,⁶⁷ and reentry organizations⁶⁸ play important roles in shaping the trajectories of criminalized people.

For instance, researchers have documented: how conditions of probation steal time (agency) from people who must attend regular meetings with POs or anger management classes, often to the detriment of other commitments such as jobs or families;⁶⁹ how substandard prison medical care is linked to significant disparities in health and mortality rates;⁷⁰ and how work organizations use both race and criminal records as credentials (positive or negative), with criminal records being more harmful for Black job applicants compared to White ones.⁷¹ Taken together, these insights reflect the principles outlined in Ray's theory of racialized organizations, suggest that criminal justice organizations comprise inequality regimes, and demonstrate the inadequacies of analyses that are principally focused on the assumed deficiencies of individuals.⁷²

In perhaps the most promising framework for understanding structural inequality today, Tomaskovic-Devey and Avent-Holt (2019) advocate for an explicitly relational model.⁷³ In their Relational Inequality Theory (RIT), relationships between people, positions, and organizations are viewed as central to the reproduction of status-based hierarchies. That is, although individual attributes and intentions matter, they do not produce inequalities on their own; broader relational processes structure the ability of individuals to attain organizational resources (such as jobs, income, or respect). Tomaskovic-Devey and Avent-Holt outline three relational processes that operate to promote inequality: (1) exploitation – where powerful groups gain income at the expense

⁶⁷ See generally Michelle S. Phelps & Caitlin Curry, *Supervision in the Community: Probation and Parole*, OXFORD RSCH. ENCYCLOPEDIA OF CRIMINOLOGY AND CRIM. JUST. (2017).

⁶⁸ See generally Jonathan J. B. Mijs, *The Missing Organizational Dimension of Prisoner Reentry: An Ethnography of the Road to Reentry at a Nonprofit Service Provider*, 31 SOCIO. F. 291–309 (2016); Madeleine Hamlin & Gretchen Purser, “A Program, Not the Projects”: *Reentry in the Post-Public Housing Era*, 50 J. OF CONTEMPORARY ETHNOGRAPHY 806–34 (2021).

⁶⁹ See Robert Werth, *I Do What I'm Told, Sort of: Reformed Subjects, Unruly Citizens, and Parole*, 16 THEORETICAL CRIMINOLOGY 329, 339 (2011).

⁷⁰ See generally Kelly Bedard & H. E. Frech III, *Prison Health Care: Is Contracting out Healthy?* 18 HEALTH ECONOMICS 1248–60 (2009).

⁷¹ Devah Pager, Bruce Western, & Bart Bonikowski, *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. SOCIO. REV. 777, 780 (2009).

⁷² Recent criminological research examining the organizational production of inequality similarly suggests that macro-societal stratification research is insufficient for understanding group-level differences. Pointing to “race” or “racism” absent an analysis of the organizations structuring racial inequality fails to locate the quotidian mechanisms undergirding hierarchy reproduction.

⁷³ DONALD TOMASKOVIC-DEVEY & DUSTIN R. AVENT-HOLT, *RELATIONAL INEQUALITIES: AN ORGANIZATIONAL APPROACH* 14 (2019) (As Tomaskovic-Devey and Avent-Holt note, however, their model of inequality is still relatively new and has largely been applied to workplace activities largely because “in contemporary societies most inequalities are generated through the relationships in and around workplaces”).

of less powerful groups; (2) social closure/opportunity hoarding – where actors limit organizational resources to those similar to themselves, and (3) claims-making – whereby actors attempt to make culturally valid discursive “arguments” about why they deserve organizational resources.⁷⁴ For Tomaskovic-Devey and Avent-Holt, the process of claims-making is regarded as the most fundamental since it involves contested battles about why resources should flow to certain actors and not others in the first place. For a group to make successful claims on organizational resources, they must persuade other organizational actors that their claims are legitimate – a calculus that hinges on the “cultural-historical-institutional” context in which it is positioned. In the current neoliberal era and within large corporations, for example, the ability of top executives to realize large incomes appears to hinge upon claims of increasing marginal productivity and shareholder value.⁷⁵ For workers further down the organizational chart, collective bargaining as a claims-making process may involve the discursive argument that lower-status employees are central to the profitability of organizations and thus deserve better working conditions.

Importantly, Tomaskovic-Devey and Avent-Holt note that categorical distinctions shape the ability of organizational actors (or prospective actors) to make successful claims. Thus, among equally credentialed entry-level job applicants, audit studies show that employers are more likely to call back or hire white job applicants compared to their Black peers.⁷⁶ In their study of the hiring process, Pager et al. found that Black job applicants with criminal records were less often given the opportunity to make direct claims on jobs since employers are less likely to invite them in for interviews compared to their similarly credentialed White peers. Long-standing stereotypes around race and criminality appear to inform job queues such that claims from racialized and criminalized “others” are more often deemed illegitimate or stifled altogether.⁷⁷

Taken together, these insights from Acker (2006), Ray (2019), and Tomaskovic-Devey & Avent-Holt (2019) suggest that organizations and organizational fields are important locations from which a range of specific and generic processes (re)produce inequality. Unfortunately, the literature on reentry typically fails to include an explicitly organizational lens. Similarly, scholars of organizational inequality almost uniformly neglect disparities based on criminal records. We suspect that even among those who largely subscribe to structural perspectives around inequality, the failure to address the organizational production of criminal record-based disparities may be partially

⁷⁴ For a deeper discussion around the inadequacies of individual-level analyses absent a relational lens, see generally DONALD TOMASKOVIC-DEVEY & DUSTIN R. AVENT-HOLT, *RELATIONAL INEQUALITIES: AN ORGANIZATIONAL APPROACH* 14 (2019); Victor Ray, *A Theory of Racialized Organizations*, 84 AM. SOCIO. REV. 26–53 (2019).

⁷⁵ Ken-Hou Lin & Donald Tomaskovic-Devey, *Financialization and U.S. Income Inequality, 1970–2008*, 118 AM. J. OF SOCIO. 1284, 1295 (2013).

⁷⁶ Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 991 (2004).

⁷⁷ See generally Philip Moss & Chris Tilly, “Soft” Skills and Race: An Investigation of Black Men’s Employment Problems, 23 WORK AND OCCUPATIONS 252, 270–72 (1996).

attributable to longstanding cultural schemas around the assumed behavioral or moral deficiencies of criminalized people. To borrow from Relational Inequality Theory, organizational and criminological gatekeepers have yet to (make) legitimate claims of structural disadvantage as it pertains to criminalized populations and have historically favored individualistic ones instead.

Recent work on criminalization-as-citizenship-making, however, provides us with a productive framework capable of merging organizational studies with the reentry literature. In the last couple of decades, scholars of mass incarceration have begun to recognize the distinct forms of personhood created by criminal convictions. With the existence of nearly 45,000 legal “collateral” consequences of criminal convictions across the United States, commentators have suggested that the 19 million people with felony records across the country have been made to exist as reduced, altered, or altogether new kinds of citizens with specific sets of rights, responsibilities, and relationships.

Making the connection to older systems of racialized social control, for example, Alexander (2010) argues that mass incarceration has created a new, permanently stigmatized and excluded group: an undercaste defined by the prison label, resembling the hierarchical caste groupings of Jim Crow and chattel slavery. As Alexander notes:

People who have been convicted of felonies almost never truly reenter the society they inhabited prior to their conviction. Instead, they enter a separate society, a world hidden from public view, governed by a set of oppressive and discriminatory rules and laws that do not apply to everyone else. They become members of an undercaste—an enormous population of predominantly black and brown people who, because of the drug war, are denied basic rights and privileges of American citizenship and are permanently relegated to an inferior status.⁷⁸

For Alexander, this elaborate system of record-based social control, along with its permanency, signifies a separate form of citizenry she terms the “undercaste”. Others, recognizing the liminality of formally criminalized people, have described their citizenship status as “conditional,”⁷⁹ “custodial,”⁸⁰

⁷⁸ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 231–232 (2010).

⁷⁹ Barry Vaughan, *Punishment and Conditional Citizenship*, 2 *Punishment & Soc’y* 23, 26 (2000).

⁸⁰ AMY E. LERMAN & VESLA M. WEAVER, *ARRESTING CITIZENSHIP: THE DEMOCRATIC CONSEQUENCES OF AMERICAN CRIME CONTROL* 4 (2014).

or “second-class”⁸¹. Susan Sered argues that mass incarceration operates as a “crucial mechanism for constructing, diminishing, and enforcing citizenship in the United States”⁸². Sered’s concept of “diminished citizenship” relocates our focus from individual failings to a series of interdependent institutional processes that actively reduce the ability of subordinated groups to enjoy a range of rights and protections. Importantly, Sered conceptualizes “diminished” citizenship as an ongoing and dynamic process contingent upon a range of contextual and situational factors (e.g. intersectional identities, state policies, and institutional domains such as the housing or labor markets).

Miller and colleagues⁸³ argue that people with criminal records don’t simply suffer from weakened citizenship rights but are subject to an entirely distinct form of citizenship altogether: carceral citizenship. In their formulation:

Carceral citizens are subject to laws that conventional citizens are not, and they have responsibilities that conventional citizens do not have. These include ‘collateral consequences’ that constrain their geographic and social mobility and the expectation that they pay an ambiguously defined ‘debt to society.’ Like other forms of citizenship, carceral citizenship has benefits. These include access to goods and services reserved for formerly incarcerated people and the symbolic benefits of public regard for those who have ‘made good’ (see Maruna, 2001).⁸⁴ The combination of laws, duties, and entitlements associated with carceral citizenship provides evidence that people convicted of crimes live in an alternate legal reality.⁸⁵

Similar to Sered, Miller and colleagues conceptualize carceral citizenship through a processual lens. That is, when people are convicted of crimes, their criminal record activates carceral citizenship by transmitting information to third parties (such as employers, schools, or landlords). This process involves communicating a compressed message around the “‘essence’ of the ‘offender’” (Miller & Stuart 2017); “[marking] the carceral citizen as criminal, alerting the people they encounter to their availability for legal exclusion and inclusion into

⁸¹ Michelle Edgely, *Criminals and (Second-Class) Citizenship: Twenty-First Century Attainder?*, 19 GRIFFITH L. REV. 403, 403 (2010).

⁸² Susan Starr Sered, *Diminished Citizenship in the Era of Mass Incarceration*, 23 Punishment & Soc’y 218, 218 (2020).

⁸³ Reuben J. Miller & Forrest Stuart, *Carceral Citizenship: Race, Rights and Responsibility in the Age of Mass Supervision*, 21 THEORETICAL CRIMINOLOGY 532 (2017); Reuben J. Miller & Amanda Alexander, *The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion*, 21 MICH. J. RACE & L. 291, 294 (2016).

⁸⁴ See SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES (2001).

⁸⁵ Miller & Stuart, *supra* note 83, at 533.

alternate systems of governance” (Miller & Stuart 2017).⁸⁶ As Miller & Stuart (2017) note, this process involves the translation of compressed messages around criminality by third-party actors, who are then empowered to regulate the lives of carceral citizens by including them or excluding them from social and economic resources.

It is here – at the intersection of “translation” and empowered actors – where we argue that scholarship on reentry and organizations can be productively leveraged to help us better understand housing disadvantages among people with criminal records. As carceral citizens navigate housing markets, they bring with them the negative credential of a criminal record, which then gets translated by organizational or quasi-organizational actors (landlords) who may employ a range of interpretations (e.g. that the prospective tenant is dangerous or relatively safe, undeserving or deserving of a “second chance”) which are filtered through cultural schemas. Although carceral citizens attempt to make formal claims on housing opportunities by applying for apartments, demonstrating an ability to pay, or providing references, their implicit claims (or non-carceral social traits) may be flattened or invisibilized by the presence of hyper-visible criminal records (in addition to other identities).

In the contemporary “cultural-historical-institutional” context, where discrimination against people with records is both legally and culturally legitimate, landlords are likely to weigh heavily the stigma of a criminal record, particularly amid concerns about legal liability and reputation. This process is inherently relational in that carceral citizens are forced to compete with those who do not have criminal records, but also because empowered housing providers must decide whether or not applicants would make suitable tenants. Furthermore, landlords differ in their level of bureaucratization such that larger landlords, public housing authorities, or other non-profit housing providers may implement more sophisticated screening technologies compared to smaller, less formalized “mom-and-pop” landlords. In the next section, we detail some of the specific organizational mechanisms structuring housing disadvantages among people with criminal records, before concluding with a call to better understand and eliminate such disadvantages.

IV. MECHANISMS OF HOUSING EXCLUSION

As we have noted above, extant research demonstrates that people with criminal records suffer from significantly higher rates of housing insecurity compared to those without records. Yet while the recognition of such inequality is important, failing to identify causes implicitly suggests that criminalized people are the problems in and of themselves. In other words, the focus on stratification absent a critical analysis of social-structural *mechanisms* locates

⁸⁶ *Id.* at 534, 537.

the responsibility for negative housing outcomes within those who have the least amount of institutional (e.g. housing-market) power. It is this mis-location, if an implicit one, that we explicitly reject and address in this section. Building on insights from organizational sociology and recent work on carceral citizenship, we take an explicitly sociological approach by focusing on the *mechanisms* of housing inequality for people with criminal records, focusing specifically on the policies, practices, and ideas existing within and among housing providers.

It is important to note, however, that a range of organizational actors play a role in producing carceral citizens to begin with. For instance, legislative bodies convene, assess constituent requests, and leverage their authority to design and enact penal codes dictating which kinds of behaviors (or people) are acceptable or unacceptable. Police departments, in their public charge to enforce criminal law, employ surveillance tactics designed to locate and capture those deemed suspicious or responsible for criminalized behavior (which often means the over-surveillance of poor Black and Latinx Communities). The courts, then, process those accused of crimes and bestow formal labels on those convicted of crimes, typically through plea bargaining rather than through fact-finding proceedings. Prisons, probation, and parole offices are tasked with incapacitating, managing, surveilling, and rehabilitating those convicted of crimes, though the latter is rare and typically takes the form of responsabilization efforts designed to produce perfectly disciplined subjects.

Beyond these formal criminal justice actors, a range of nonprofit organizations also play a role in crafting carceral citizens in the community. For example, a wealth of recent research illustrates how job training, life skills, and other reentry-focused programs seek to transform “offenders” into productive members of society by focusing on individual-level behavioral modifications⁸⁷. These programs seek to create acceptable criminalized people who are expected to make better choices, work exceptionally hard, and put others at ease, often without concomitant material resources.

Likewise, on the for-profit side, the electronic criminal record industry plays a particularly important role in manufacturing (digitally verifiable) carceral citizens. Each year, almost 20 million criminal court records are available (either freely or for a fee) on the internet, which are easily accessible along with more than 12 million felony conviction records, 10 million digital arrests records, 6.5 million prison records, 4.6 million mugshots, 2.4 million probation and parole rosters, and 1.3 million prison “inmate” rosters.⁸⁸ For profit companies then purchase these records and compile them into easily searchable databases. Companies such as LexisNexis, Experian, and Backgroundchecks.com maintain that they hold hundreds of millions of criminal records - even more than in public sector repositories - providing the public with a wealth of criminal history information. Unfortunately, as Lageson (2020)

⁸⁷ Jonathan J. B. Mijs, *The Missing Organizational Dimension of Prisoner Reentry: An Ethnography of the Road to Reentry at a Nonprofit Service Provider*, 31 SOCIO. F. 291, 299 (2016).

⁸⁸ SARAH ESTHER LAGESON, DIGITAL PUNISHMENT: PRIVACY, STIGMA, AND THE HARMS OF DATA-DRIVEN CRIMINAL JUSTICE 29 (2020).

notes, “not only is this big data but it is often bad data. Frequently shared without due diligence for accuracy or updates, records inside such voluminous compendiums can distort the truth, giving millions of people a permanent digital scar”.⁸⁹

Evaluating all of the organizational processes contributing to the creation of carceral citizens would require additional analysis beyond the scope of this paper, yet we believe it is nonetheless important to note A) that such criminalizing processes exist, and B) that they actively contribute to the housing barriers facing people with criminal records. In the remainder, however, we focus on the inequality-making mechanisms specifically traceable to private housing providers. As relatively powerful actors with the ability to control the flow of housing opportunities, we ask: how do landlords disadvantage and exclude people with criminal records?

A. *Private Housing Providers as Inequality Producing Entities*

According to the U.S. Census Bureau, roughly 35 percent of all housing units are occupied by renters, with Black and Latinx groups being far more likely to rent than their White counterparts⁹⁰. One analysis of the National Longitudinal Survey of Youth 1997 survey further demonstrates that individuals with criminal justice contact – who are disproportionately Black and Latinx – are significantly less likely to own a home compared to those without system involvement. In fact, the odds of home ownership among those who have experienced arrest, conviction, and incarceration are 40 percent lower than never-incarcerated individuals.⁹¹ Criminal justice system involvement appears to independently funnel criminalized people of color away from homeownership and toward a greater reliance upon public or private housing providers.

Public housing – as one solution – holds the potential to provide justice-involved people with safe and dependable housing, however the current need for public housing far surpasses the supply. This leaves most low-income and/or criminalized housing seekers few alternatives other than privately owned apartments.⁹² Although we have only a limited understanding of these private

⁸⁹ *Id.*

⁹⁰ *Selected Housing Characteristics: 2021: ACS 1-Year Estimates Data Profiles*, U.S. CENSUS BUREAU, (Dec. 5, 2020) <https://data.census.gov/table?tid=ACSDP1Y2021.DP04> [<https://perma.cc/5LVY-V9XT>].

⁹¹ Brielle Bryan, *Homeownership Experiences Following Criminal Justice Contact*, 22 CITYSCAPE 103, 120 (2020).

⁹² Many formerly incarcerated people depend on friends or family to provide housing, but this can also pose a range of problems. For example, those living in public housing may be taking a significant risk in allowing those with felony records to live with them since many PHA's have rules against tenants with certain kinds of felony records. Additionally, as Miller (2021) points out, people with criminal records are at the mercy of the goodwill of others; what happens when that

housing providers, survey research suggests that landlords hold significant biases against criminalized apartment-seekers. In Helfgott's (1997) survey of 196 property owners and managers in Seattle, Washington, for example, 67 percent noted that they ask about criminal records on rental applications and 43 percent stated that they would reject an applicant based on criminal convictions.⁹³ In Clark's (2007) study of over 600 Akron, Ohio-based landlords, roughly 66 percent stated that they would not rent to an individual with a criminal record.⁹⁴

Why are landlords hesitant to rent to people with criminal records? Recent research provides some clues. In a series of experimental studies leveraging Amazon Mechanical Turk workers, Berry & Wiener (2020) investigated the relationship between criminal stigma and rental decisions among 445 survey respondents.⁹⁵ Their first study applied the Stereotype Content Model (SCM) developed by Fiske and colleagues⁹⁶ to the case of "released prisoners," which maintains that people hold stereotypes of others along two dimensions: competence (perceptions of capability and skill) and warmth (perceptions of kindness, friendliness, and morality). They found statistically significant evidence that respondents viewed "released prisoners"⁹⁷ as both low in competence and in warmth relative to other groups. In fact, compared to the other twelve social groups, which included "welfare recipients," "poor people," "rich people," and "homeless people," released prisoners were viewed as the least warm.⁹⁸

Using the same participants, Berry & Wiener's next study measured how likely participants were to rent to hypothetical applicants. When given the option to rent to an applicant with criminal convictions or some other unknown applicant without a record, participants were significantly more likely to choose the unknown applicant. Importantly, participants who held stereotypes of released prisoners as low in competence were particularly less likely to rent to such applicants, whereas those who rated released prisoners as highly competent demonstrated no preference for non-convicted applicants over convicted ones.⁹⁹ Differences according to warmth were not statistically significant. As Berry & Wiener explain, "We reasoned that the biasing effect of low competence

goodwill runs out? REUBEN MILLER, *HALFWAY HOME: RACE, PUNISHMENT, AND THE AFTERLIFE OF INCARCERATION* [pincite] (2021). See also Peter Leasure & Tara Martin, *Criminal Records and Housing: An Experimental Study*, 13 J. EXPERIMENTAL CRIMINOLOGY 527, 531–32 (2017).

⁹³ Jacqueline Helfgott, *Ex-offender Needs Versus Community Opportunity in Seattle, Washington*, 61 FED. PROBATION 12, 20 (1997).

⁹⁴ Lynn M. Clark, *Landlord Attitudes Toward Renting to Released Offenders*, 71 FED. PROBATION 20, 23 (2007).

⁹⁵ Megan C. Berry & Richard L. Wiener, *Exoffender Housing Stigma and Discrimination*, 26 PSYCH. PUB. POL'Y, & L. 213, 213 (2020).

⁹⁶ Susan T. Fiske, *Stereotype Content: Warmth and Competence Endure*, 27 CURRENT DIRECTIONS IN PSYCH. SCI. 67, 67 (2018).

⁹⁷ We recognize that the term "prisoner" is a stigmatizing term that devalues the totality of incarcerated peoples' humanity. We utilize this term only to reflect the categories used in the original study's survey device.

⁹⁸ Berry & Wiener, *supra* note 95, at 218.

⁹⁹ *Id.* at 226.

stereotypes likely comes from the participants' expectations that low competence ex-offenders make poor tenants, perhaps tenants who would both cause trouble in the rental unit and would have difficulty paying their rent on time."¹⁰⁰

In a final series of experiments, Berry & Weiner replicated their methods using a new sample, this time providing participants with specific evidence that hypothetical "released prisoner" applicants were either highly competent at their job or that they demonstrated average job competence.¹⁰¹ Unfortunately, regardless of whether the formerly incarcerated applicants were depicted as average or highly competent, participants who held low competence stereotypes still preferred the non-convicted applicants.¹⁰² The stigma around criminalized people as incompetent (i.e. unable to make regular payments or keep up with cleaning and light maintenance) – even in the presence of contradictory evidence – appeared to drive discriminatory decision-making.

In addition to judgments around competence, we might also surmise that conviction-type structures landlord decision-making. Although Berry & Weiner found no difference in respondent rental decisions by offense-type (violent vs drug), in Clarke (2007)¹⁰³ and Helfgott's (1997)¹⁰⁴ work landlords reported being most averse to people with violent, felonious, and multiple convictions compared to those with nonviolent, misdemeanor, or single convictions. Furthermore, in Helfgott's study the top reason respondents provided for rejecting applicants with records was the "protection and safety of community," followed by the belief that such applicants had "bad values."¹⁰⁵

In totality, these data suggest that landlord decision-making processes may be structured by broadly stigmatizing ideas around the incompetence or dangerousness of criminalized applicants, even when such stereotypes are unsubstantiated or disproven. But how do landlords behave in real-world situations? That is, beyond hypothetical scenarios or survey responses, how do landlords actually react to criminalized applicants? In a series of quasi-experimental audit studies – where "testers" pose as prospective tenants and apply for real housing opportunities – researchers have begun to answer these questions and isolate some of the mechanisms structuring discrimination against housing seekers with criminal records.

For instance, audit studies consistently show that although discrimination occurs across all offenses, people with certain offense-types face greater exclusion than others. Using a random sample of over 400 housing advertisements from Columbus, Ohio, for example, Leasure and Martin (2017) found that applicants who called about housing opportunities were least likely

¹⁰⁰ *Id.* at 223.

¹⁰¹ *Id.*

¹⁰² *Id.* at 225.

¹⁰³ Clark, *supra* note 94, at 23.

¹⁰⁴ Helfgott, *supra* note 93, at 20.

¹⁰⁵ *Id.*

to elicit positive responses from property managers if they had felonies, particularly recent felonies (Figure 2).¹⁰⁶

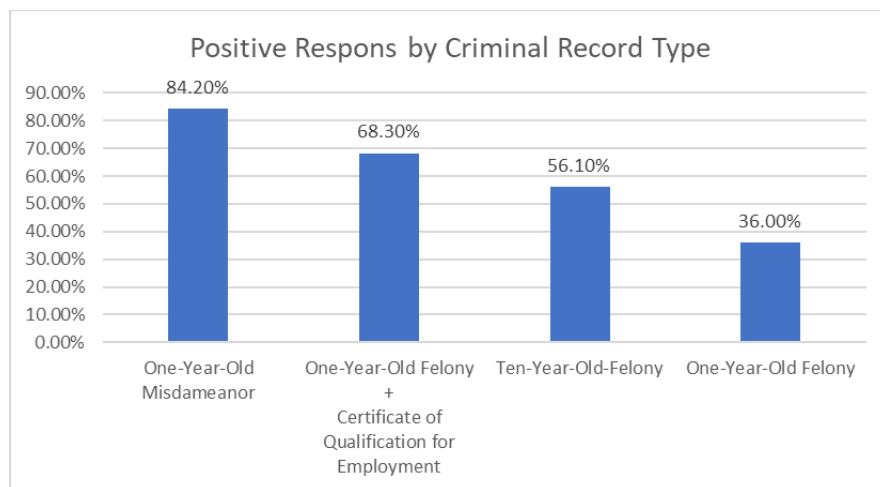


Figure 3: Leasure, et al., 2017, $\chi^2(3) = 52.35$, $p \leq 0.01$, Φ Cramer = 0.35

In another sample of New York State-based landlords, Evans & Porter (2015) found that out of their four conditions (no criminal record, drug trafficking conviction, statutory rape conviction, and child molestation conviction), those convicted of child molestation had the most difficulty in getting a landlord to agree to show them an apartment (followed by drug trafficking, statutory rape, and no criminal record, respectively).¹⁰⁷ In fact, those convicted of child molestation were 99 percent less likely to be offered an apartment for rent compared to those with no convictions. Reflecting on landlord feedback to testers, Evans & Porter note:

Landlord responses to testers in the two sex offense conditions suggest reasons why they would refuse or agree to consider a prospective tenant convicted of child molestation or statutory rape. Several landlords claimed that there were children living in the building or nearby. This could have reflected their awareness of laws that restrict where sex offenders can live, their concern for child safety, or their desire to keep other tenants from moving out because a convicted sex offender moved into the area. Of the landlords who were willing to

¹⁰⁶ Leasure & Martin, *supra* note 92, at 531.

¹⁰⁷ Douglas Evans & Jeremy Porter, *Criminal History and Landlord Rental Decisions: A New York Quasi-Experimental Study*, 11 J. EXPERIMENTAL CRIMINOLOGY 21, 30-31 (2015).

consider a convicted sex offender as a tenant, some appeared to be more worried about the prospective tenant's ability to pay rent than their criminal history. Several landlords in Queens (New York City) and Westchester County (Upstate) said that the sex offense conviction would not be a problem as long as the tenant could pay rent. Other landlords were willing to forgive ex-offenders and offer them a place to live to help with their rehabilitation. A few landlords spoke about giving a 'second chance' by offering them a place to rent. Surprisingly, few landlords inquired about the details of the offense. The name of the conviction was almost always enough to trigger a reaction.¹⁰⁸

This excerpt from Evans & Porter's study distills three important insights: 1) labels matter, 2) violent and sexual labels tend to garner the most discrimination, and 3) rather than warmth (friendliness, being good-natured), some landlords may be more concerned with competence (e.g. the ability to afford and take care of one's home). Indeed, as work from Leasure and colleagues (2017; 2022)¹⁰⁹ suggests, property managers and owners may be more willing to consider prospective tenants with criminal records who can demonstrate their competence through "Certificates of Qualification for Employment" provided by correctional authorities. Furthermore, Evans and colleagues (2015; 2019)¹¹⁰ have found that when landlords ask applicants about employment and income during phone calls, they are significantly more likely to consider renting to applicants with criminal records.

B. Structuring the Mechanisms of Exclusion: Landlord Size and Formalization

Organizational researchers have long recognized that social and economic outcomes are linked to intra-organizational characteristics such as size, complexity, diversity, and degrees of formalization¹¹¹. For example, as

¹⁰⁸ *Id.* at 37.

¹⁰⁹ Leasure & Martin, *supra* note 92, at 528; Peter Leasure, R. Caleb Doyle, Hunter M. Boehme & Gary Zhang, *Criminal History, Race, and Housing Type: An Experimental Audit of Housing Outcomes*, 49 CRIM. JUST. & BEHAV. 1536, 1538–39 (2022).

¹¹⁰ Evans & Porter, *supra* note 107, at 34; Douglas Evans, Kwan-Lamar Blount-Hill & Michelle A. Cubellis, *Examining Housing Discrimination across Race, Gender and Felony History*, 34 HOUS. STUD. 761, 773 (2019).

¹¹¹ See Richard H. Hall, J. Eugene Haas & Norman J. Johnson, *An Examination of the Blauscott and Etzioni Typologies*, 12 ADMIN. SCI. QUARTERLY 118 (1967); Barbara F. Reskin & Debra Branch McBrier, *Why Not Ascription? Organizations' Employment of Male and Female Managers*, 65 AM. SOCIO. REV. 210 (2000); Alexandra Kalev, Frank Dobbin & Erin Kelly, *Best Practices or*

organizations formalize their recruitment practices and systems of mentorship (instead of relying upon old-boys' networks that most often privilege white men), racial and gender inequality in hiring and leadership tends to decrease¹¹². In borrowing from this literature, we contend that landlords can be conceptualized much in the same way. That is, we might expect that the size, complexity, demographic makeup, and degree of formalization of housing providers play important roles in structuring the practices and policies employed by housing providers, and thus the mechanisms of exclusion facing criminalized housing seekers.

Research on housing providers as organizational entities is few and far between, but recent work provides clues to support our thesis. To begin, according to the U.S. Census Bureau's Rental Housing Finance Survey, roughly 45 percent of all rental housing units are held by Limited Liability Companies (LLC), 41 percent are held by "mom & pop" landlords (individual or joint owners), and almost 15 percent are held by some other entity such as a real estate investment trust, real estate corporation, or a nonprofit.¹¹³ The kind of ownership entity appears to be correlated with other internal characteristics such as management-type and operational costs. For instance, 80 percent of housing units owned by LLC's are managed by third parties, whereas only about 27 percent of mom & pop landlords rely upon others to manage their property¹¹⁴.

Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies, 71 AM. SOCIO. REV. 589 (2006); DONALD TOMASKOVIC-DEVEY & DUSTIN AVENT-HOLT, RELATIONAL INEQUALITIES: AN ORGANIZATIONAL APPROACH [need pincite] (2019); Victor Ray, *A Theory of Racialized Organizations*, 84 AM. SOCIO. REV. 26 (2019).

¹¹² See Kalev, Boddin & Kelly, *supra* note 111; TOMASKOVIC-DEVEY & AVENT-HOLT, *supra* note 111; Ray, *supra* note 111; Reskin & Branch McBrier, *supra* note 111.

¹¹³ See U.S. CENSUS BUREAU, RENTAL HOUSING FINANCE SURVEY (2021). [<https://perma.cc/B3EC-M25B>].

¹¹⁴ *Id.*

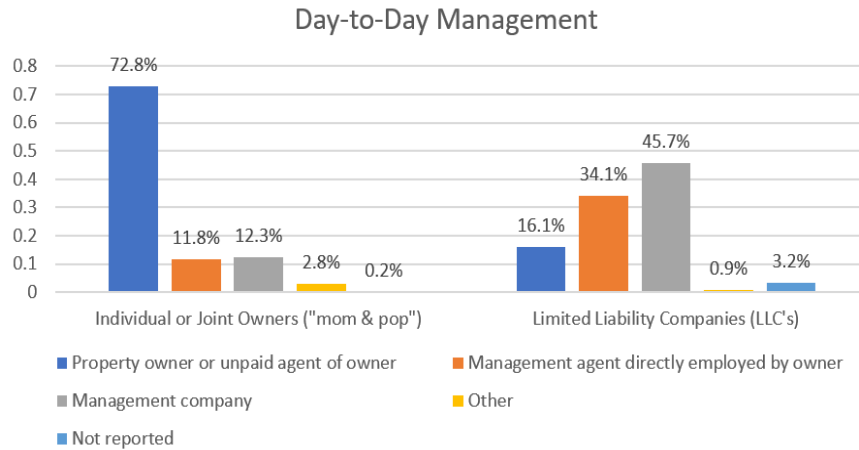


Figure 4: U.S. Census Bureau Rental Housing Finance Survey, 2021

The disparate use of outside property management companies or legal services, for example, might play an important role in structuring the screening practices of housing providers. The larger and more complex entities (LLCs) may look to implement rigid and streamlined application processes, and have the resources to do so, while the smaller housing providers may rely upon less formalized practices to secure tenants. In turn, these internal structures may have important consequences for the likeliness that a criminalized applicant moves beyond the initial application stage, is shown an apartment, is approved for one, or is denied outright.

In fact, research exploring the perspectives and behaviors of landlords, property managers, and renters suggest that a relationship does exist between organizational structures, screening practices, and the experiences of criminalized housing seekers. Landlords with extensive portfolios, for example, tend to rely on formalized screening processes that involve the algorithmic evaluation of applications. These “automated landlords”¹¹⁵ rely upon third-party software to uniformly evaluate and select applicants, using criteria deemed relatively objective or fair, such as income, credit scores, eviction histories, and criminal records. This automated process allows large landlords to efficiently process applicants, protect themselves against fair housing laws (which ban

¹¹⁵ See Desiree Fields, *Automated Landlord: Digital Technologies and Post-Crisis Financial Accumulation*, 54 ENV'T AND PLANNING A: ECON. & SPACE 160 (2019).

individual-level, explicit forms of discrimination), and signal that they are operating with a certain level of impartiality¹¹⁶. In reality, however, if the algorithmic screening criteria disqualifies applicants with criminal records, or assigns them higher risk scores, bias within other institutional domains (e.g. the criminal justice system) are encoded within the housing process¹¹⁷; supporting what Ruha Benjamin calls “The New Jim Code”¹¹⁸.

¹¹⁶ Eva Rosen, Phillip M. E. Garboden & Jennifer E. Cossyleon, *Racial Discrimination in Housing: How Landlords Use Algorithms and Home Visits to Screen Tenants*, 86 AM. SOCIO. REV. 787, 800 (2021); Anna Reosti, *'We Go Totally Subjective': Discretion, Discrimination, and Tenant Screening in a Landlord's Market*, 45 LAW & SOC. INQUIRY 618, 622 (2020).

¹¹⁷ Wonyoung So, *Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports*, HOUS. POL'Y DEBATE, Aug. 30, 2022, at 3.

¹¹⁸ Building on Michelle Alexander's work on mass incarceration, Benjamin pushes us to think critically about “purported [technological] solutions that nevertheless sediment existing hierarchies”. Benjamin describes the New Jim Crow as an “insidious combination of coded bias and imagined objectivity [...] that hides not only the nature of domination, but allows it to penetrate every facet of social life”. RUHA BENJAMIN, *CAPTIVATING TECHNOLOGY: RACE, CARCERAL TECHNOLOGY, AND LIBERATORY IMAGINATION IN EVERYDAY LIFE* 3 (2019).

Differences Between Large and Small Landlords

	Mom-and-Pop Landlords	Large Landlords
Degree of Formalization	· Low Formalization (lack of explicit selection criteria and policies)	· High Formalization (explicit selection criteria and policies)
Rigidity	· Low Rigidity (unwritten and/or flexible policies & practices that are loosely coupled)	· High Rigidity (explicit and tightly coupled policies & practices)
Specific Screening Practices & Technologies	· “Gut-feelings” · Individualized decisions · In-person meetings · Informal tests	· Third-party screening software · Algorithms · Routinization
Discriminatory Pathways	· Cultural matching for “fit” and “character”	· Blanket bans and quantitative scoring

Table 1. Adapted from: Reosti 2020; Rosen et al. 2021; Fields 2022; So 2022¹¹⁹

¹¹⁹ Rosen, Garboden & Cossyleon, *supra* note 116; Reosti, *supra* note 116; So, *supra* note 117, at 20; Fields, *supra* note 115, at 165.

Smaller, mom-and-pop landlords appear far less likely to employ rigid and formalized screening procedures. That is, instead of using explicit and written selection criteria across all applicants who are funneled through third-party algorithms, mom-and-pop landlords employ a range of informal, interpersonal, and elastic practices aimed at assessing “fit.” In Rosen et al.’s (2021) study of 157 housing providers, for instance, they found that smaller landlords stressed the importance of certain intangibles such as cleanliness, the presentation of children, personality, and whether or not applicants confirmed or challenged racialized stereotypes.¹²⁰ For this group of landlords (who typically do not share the financial resources of larger landlords or their concerns about fair housing discrimination), evaluating whether or not applicants would make for good or desirable tenants means making assessments based on in-person conversations and home visits. Importantly, these mom-and-pop landlords report a greater level of flexibility when deciding upon the factors that are most relevant for any given applicant. For example, Rosen et al. (2021) describe how one individual landlord in their study, Robert, discussed overlooking a Black woman’s burglary conviction:

Robert does do background checks and tries to avoid applicants with past felony convictions. But unlike professional management companies, almost everything is negotiable, and Robert places enormous emphasis on the conversations he has with his tenants, likening it to a job search; ‘It’s like almost a job interview. Who’s going to live in my house?’ Robert’s assessments of applicants’ character can outweigh some serious marks on their record, particularly if he can reinterpret past incidents in a way that meshes with his moral logic. Robert told us about a tenant who had been convicted of burglary, an automatic disqualification for most landlords. But in this case, Robert interpreted the charge not in terms of class, but in terms of gender, framing a narrative that allowed the applicant to avoid moral responsibility for her actions: ‘She was one of these ladies that—her boyfriend ruined her life.’ Robert, in other words, ‘believed’ her when she claimed her participation in the burglary was primarily because she was under her boyfriend’s influence. Moreover, he described several highly-gendered signs that she had turned her life around: “She explained what happened, how she actually got involved in it, I believed her. . . . We met her kids, had really nice kids. They’re clean . . . especially my wife, she does not like when a woman does not keep her kid clean, hair combed, and all that. Because that’s a good sign of whether or not that person’s going to be a good parent, for the person to

¹²⁰ Rosen, Garboden & Cossyleon, *supra* note 116, at 807–08.

be in your house . . . So just because you have something on your record, didn't disqualify you necessarily."¹²¹

Here, we see how small landlords may consider multiple (sometimes mitigating) factors when evaluating applicants . The presence of a burglary conviction did not dissuade Robert from selecting the applicant, rather the context surrounding the crime in addition to (from Robert's perspective) her believability, perceived cleanliness, and parenting were sufficient enough to demonstrate her suitability as a tenant. In this way, small landlords exhibit high levels of discretion when making rental decisions, which can both be helpful for stigmatized housing seekers but also open the door for discriminatory outcome patterns.

Small landlords may also employ informal tests of worthiness – e.g. did the applicant submit the application fee? Did they properly fill out paperwork for a background check? Is the person a “jerk”? Are they too eager to secure an apartment quickly (potentially signaling a recent eviction filing) – to determine if a potential tenant should be selected. Furthermore, small landlords appear more likely to decouple stated policies from practices; for example, noting that applicants must pass a background check on advertisements but not actually running a background check after meeting with (and positively evaluating) an applicant.¹²²

In sum, larger landlords tend to exhibit a greater reliance upon rigid and explicit algorithmic screening processes, whereas smaller mom-and-pop landlords are more likely to incorporate flexible, informal, and subjective tests of character and “fit” – along with more superficially objective measures such as income or criminal history – to determine if an applicant is suitable for tenancy. These differences suggest that criminalized people are subject to disparate social closure processes depending on the kinds of housing providers that undergird a local rental market. For example, when applying for apartments owned by larger landlords, criminalized applicants are likely to represent little more than the perceived risk they pose as determined by impersonal screening algorithms. If such algorithms are structured so that criminal convictions are weighted less than other factors or are weighted according to years-since-conviction, however, criminalized people may find wider pathways to housing. Conversely, criminalized housing seekers who apply to apartments provided by mom-and-pop landlords may benefit from a greater ability to secure face-to-face contact with decision-makers. On the other hand, lower levels of formalization among this group of small landlords may lead to greater levels of specific discrimination (against people with certain convictions or certain racial groups with criminal convictions).

¹²¹ *Id.* at 812–13.

¹²² Reosti, *supra* note 116, at 635.

Taken together, existing research suggests that by focusing our attention on the characteristics of landlords – their size, composition, policies, practices, cultural schemas, etc. – we are better able to explain the actual causes of housing exclusion among those with criminal records. In the remainder, we take up the implications of our perspective and outline a policy framework attuned to the mechanisms of housing exclusion exhibited by private landlords.

V. OUTLINING A FRAMEWORK FOR HOUSING EQUALITY

So far, this paper has described both the prevalence of housing insecurity among people with criminal records and the landlord-based mechanisms of exclusion undergirding such housing insecurity. The task now becomes one of elucidating the policy solutions that would reduce or eliminate the barriers to housing this population faces in private rental markets. Broadly, addressing this issue will require multiple solutions operating together, since the causes are varied and complex. We focus, however, on those solutions directly flowing from our analysis. That is, we consider a small number of relevant solutions that could potentially address the landlord-based mechanisms of exclusion outlined above. In the remainder of this section we consider: financial housing supports, algorithmic screening transparency, fair housing standards, and automatic expungement procedures. Lastly, we argue that a larger ideological shift toward housing as a guaranteed right (along with concomitant policies and resources) is likely the only means of ensuring housing for those who exist at the bottom of our social and economic hierarchies.

A. *Housing Vouchers*

Housing vouchers have long been offered as a solution for low-income housing seekers who cannot otherwise afford housing. In fact, the Housing Choice Voucher (formerly known as the Section 8 Existing Housing Certificate) program, created in 1974, is now the largest low-income federal housing subsidy program in operation and assists roughly 5 million people a year.¹²³ A large body of research demonstrates how housing vouchers can help to alleviate rent burdens, reduce homelessness, and impact other long-term outcomes such as children's educational success and future income.¹²⁴ Although there have been

¹²³ Ingrid Ellen, *What Do We Know about Housing Choice Vouchers?*, REG'L SCI. & URB. ECON., Jan. 2020, at 2.

¹²⁴ Amy Schwartz, Keren Horn, Ingrid Ellen & Sarah Cordes, *Do Housing Vouchers Improve Academic Performance? Evidence from New York City*, 39 J. POL'Y ANALYSIS & MGMT, 131, 131 (2020); GREGORY MILLS, DANIEL GUBITS, LARRY ORR, DAVID LONG, JUDIE FEINS, BULBUL KAUL, MICHELLE WOOD, AMY JONES & ASSOCIATES, CLOUDBURST CONSULTING ASSOCIATES, THE QED GROUP & U.S. DEP'T OF HOUSING & URB. DEV., OFFICE OF POL'Y DEV. & RES., THE EFFECTS OF HOUSING VOUCHERS ON WELFARE FAMILIES x (2006); RAJ CHETTY, NATHANIEL HENDREN & LAWRENCE KATZ, NAT'L BUREAU OF ECON. RSCH., THE EFFECTS OF EXPOSURE TO BETTER NEIGHBORHOODS ON CHILDREN: NEW EVIDENCE FROM THE MOVING TO OPPORTUNITY EXPERIMENT 39 (2015); BRIAN JACOB & JENS LUDWIG, NAT'L BUREAU OF ECON. RSCH., THE EFFECTS OF HOUSING ASSISTANCE ON LABOR SUPPLY: EVIDENCE FROM A VOUCHER LOTTERY 14 (2008).

few rigorous studies of housing subsidies aimed specifically at those with justice-system involvement, research that does exist suggests that vouchers may play a role in reducing recidivism rates and correctional costs compared to those who are not provided housing support.¹²⁵ Unfortunately, such subsidies are rarely provided absent compulsory programmatic components, making it difficult to isolate the causal mechanisms leading to improved outcomes. Furthermore, as an individual-level intervention, vouchers do little to change the structure of housing opportunities available to people with criminal records. While it is possible that a voucher can improve one's claim on a housing opportunity (e.g., by demonstrating an ability to pay), research suggests that landlord voucher discrimination is widespread;¹²⁶ implying that vouchers may sometimes communicate stigma rather than competence.

B. Fair Housing

Across the country at least 37 states and 150 localities have passed “ban-the-box” hiring policies, designed to limit criminal record-based employer discrimination.¹²⁷ These policies typically prevent public (and sometimes private) employers from inquiring about criminal records on initial applications, thus allowing job applicants to demonstrate merit, at least initially, without reference to their conviction history.¹²⁸ Some localities have extended these anti-discrimination policies to housing, adopting ordinances that effectively ban-the-box on rental applications and prevent landlords from denying an applicant solely on their criminal records.

In Oakland, CA, for example, the Oakland City Council recently approved an ordinance that prohibits landlords from asking about criminal records or rejecting applicants outright due to a criminal record.¹²⁹ Such local policies allow qualified applicants to ‘get their foot in the door’ and move further along

¹²⁵ Faith Lutze, Jeffrey Rosky & Zachary Hamilton, *Homelessness and Reentry: A Multisite Outcome Evaluation of Washington State's Reentry Housing Program for High Risk Offenders*, 4 CRIM. JUST. & BEHAV. 471, 471 (2014); Zachary Hamilton, Alex Kigerl & Zachary Hays, *Removing Release Impediments and Reducing Correctional Costs: Evaluation of Washington State's Housing Voucher Program*, 32 JUST. Q. 255, 275 (2015).

¹²⁶ David Phillips, *Landlords Avoid Tenants Who Pay with Vouchers*, 151 ECON. LETTERS 48, 48 (2017).

¹²⁷ AVERY BETH & HAN LU, NAT'L EMP. L. PROJECT, BAN THE BOX U.S. CITIES, COUNTIES, AND STATES ADOPT FAIR-CHANCE POLICIES TO ADVANCE EMPLOYMENT OPPORTUNITIES FOR PEOPLE WITH PAST CONVICTIONS 2 (2021).

¹²⁸ See generally Michael Hartman, *Ban the Box*, NAT'L CONF. OF STATE LEGISLATURES (June 29, 2021), <https://www.ncsl.org/civil-and-criminal-justice/ban-the-box> [<https://perma.cc/FVU6-3WS9>] (summarizing the existing empirical findings related to ban-the-box policies around the country).

¹²⁹ ASSOCIATED PRESS, *Oakland Bans Criminal Background Checks on Potential Tenants*, L.A. TIMES (Jan. 21, 2020, 10:53 PM), <https://www.latimes.com/california/story/2020-01-21/oakland-bans-criminal-background-checks-on-potential-tenants> [<https://perma.cc/F6MD-J7MG>].

in the screening process than would otherwise have been possible. Unfortunately, ban-the-box is not without limitations. First, labor market research demonstrates that when employers are restricted by ban-the-box policies, they begin using race as a proxy for criminality; Black job applicants end up facing increased statistical discrimination.¹³⁰ A similar process may occur in the housing market.¹³¹ A second issue is that because ban-the-box policies are typically enacted at the local level, they may unintentionally reinforce neighborhood segregation. For example, if an urban city implements a ban-the-box housing ordinance, but the surrounding suburban towns do not, those with criminal records would be largely relegated to those urban communities where ban-the-box exists. When fair housing ordinances are enacted in this piecemeal fashion, the surrounding towns – who may have better resourced schools and a superior housing stock – effectively become off-limits for those seeking private housing. Finally, in the current digital age, landlords can run simple web searches or utilize third-party software to circumvent ban-the-box policies and efforts to ensure that landlords abide by local ordinances can be a difficult task in and of itself.¹³²

C. *Automatic Criminal Record Expungement*

Although housing vouchers and ban-the-box policies would help to support the (re)integration of people with criminal records, their individual- and local-level limitations mean that on their own they are insufficient interventions if the goal is to eliminate landlord-based discrimination. Creating state-based mechanisms for automatically expunging criminal records, however, would ensure that everyone with previous convictions had a pathway to shedding their diminished or carceral citizenship. According to the Collateral Consequences Resource Center, at least 15 states have enacted laws authorizing the automatic expungement or sealing of certain adult criminal convictions.¹³³ In Colorado, for example, “All but the most serious felonies are eligible for sealing after graduated waiting periods: one year after completion of sentence for petty offenses, three years for misdemeanors and lower-level felonies, and five years for other eligible felonies.”¹³⁴ These “clean slate” laws help to address a range of issues plaguing those with criminal records. In particular, such policies csm: A) help criminalized people attain the jobs necessary to afford private residences, and B) prevent landlords from translating (often imprecise)

¹³⁰ Hartman, *supra* note 128.

¹³¹ This issue may present less of an issue in the housing market, however, since landlords are typically selecting tenants among relatively homogeneous applicant pools.

¹³² Some localities have taken certain steps to address this issue, such as fining violators, but it is likely that many people do not report for fear of reprisal or because it requires additional effort from housing-seekers themselves.

¹³³ Morgan Colgate Love, *50-State Comparison: Expungement, Sealing & Other Record Relief, RESTORATION RTS. PROJECT* (Jan. 2023), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2/> [https://perma.cc/H6UW-5N7T].

¹³⁴ *Id.*

electronic criminal records into assumptions about dangerousness and tenant (un)suitability.¹³⁵

D. Algorithmic Transparency

The algorithms that third-party screening companies use to come up with risk scores are almost always secret and considered proprietary. Although landlords utilize such services to promote efficiency and appear objective, if the information used by screening companies are derived from biased social processes, then the algorithms themselves will promote inequality while appearing neutral. For example, histories of racialized housing segregation, unequal bank lending, and disproportionate policing can all manifest in algorithmic inequality through their capacity to influence generational wealth, credit, employment, and criminal records. States should mandate transparency such that the factors and weights comprising screening technologies are readily available to prospective tenants and evaluators, who may then assess third-party algorithms for relevant biases.

VI. CONCLUSION: MAKE HOUSING A GUARANTEED RIGHT

“This size and arrangements of a people’s homes are no unfair index of their condition.” –W.E.B. Du Bois, 1903¹³⁶

As sociologist Mary Pattillo insightfully comments about Du Bois’ statement, and his work more broadly around “the relationship between black laborers and white landlords as arrangements of class and race,” housing outcomes involve much more than individual-level characteristics.¹³⁷ As far back as the turn of the 20th century, Du Bois recognized that housing patterns were not simply the product of individual-level deficiencies, but rather a mix of economic and social forces such as “color prejudice.”¹³⁸ As we have argued throughout, in order to fully appreciate the housing disadvantages facing racialized and criminalized people, special attention must be paid to the actors who exercise power in determining access to private housing opportunities: landlords. While documenting rates of homelessness among criminalized people, for example, is important, our ability to *explain* housing inequality hinges upon our understanding of the “relationships between people, positions,

¹³⁵ It is important to note that although automatic criminal record expungement is simple in theory, in practice states must: decide when individuals would qualify and implement complicated systems of tracking and expungement that include the scrubbing of digital criminal records from both public and private platforms.

¹³⁶ W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 139 (1903).

¹³⁷ Mary Pattillo, *Housing: Commodity Versus Right*, 39 ANN. REV. SOCIO. 509, 510 (2013).

¹³⁸ W.E.B. DU BOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* 324 (1899).

and organizations.”¹³⁹ This relational, mechanisms-based perspective, which we have begun to outline in this paper, recognizes that empowered actors utilize a constellation of cultural ideas, policies, and practices to screen and sort prospective tenants on the basis of criminal records.

Although more empirical work is necessary to better specify the intra-landlord-based factors that shape screening processes, it has long been clear that the intersecting forces of capitalism and mass criminalization, if left untouched, will continue to facilitate insufficient living conditions for society’s “surplus” people.¹⁴⁰ How then can we ever hope to address this problem of housing inequality? We contend that only through a broader framework of decent housing - as a formalized and guaranteed right - can we ensure that even the most stigmatized people (such as those with criminal records) have safe and secure places to live. As one of the world’s richest countries and the self-proclaimed leader of the free world, the United States certainly has the resources to ensure that all of its residents are housed. This is a problem of political will and power, not resources.

Yet, what would housing as a right look like? While we leave the implicit constitutional component of this question to legal scholars, we can certainly begin imagining a society where the right to housing is guaranteed. In such a society the State would necessarily need to ensure (either on its own or in conjunction with the private sector): a housing stock large enough to provide homes for anyone who needed it; the development of a legal infrastructure preventing private housing providers from discriminating on the basis of protected identities (including criminalized people); and very likely, we would need to end the contemporary system of mass criminalization altogether, so that people experience less housing disruption in the first place. Lofty goals that, for some, might appear impossible or unappealing; however, the long-term payoff would be realized in reductions in crime, hospitalizations, shelter use, and a range of other costs associated with the current way of doing things.

¹³⁹ DONALD TOMASKOVIC-DEVEY & DUSTIN R. AVENT-HOLT, RELATIONAL INEQUALITIES: AN ORGANIZATIONAL APPROACH 14 (2019) (noting, however, their model of inequality is still relatively new and has largely been applied to workplace activities largely because “in contemporary societies most inequalities are generated through the relationships in and around workplaces”).

¹⁴⁰ See James A. Tyner, *Population Geography I: Surplus Populations*, 37 PROGRESS IN HUM. GEOGRAPHY, 701, 704 (2013) (providing a useful definition of surplus population).