



**TESTIMONY BY CHICAGO LAWYERS' COMMITTEE FOR CIVIL RIGHTS
BEFORE THE ILLINOIS STATE ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
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I. Introduction and Overview of Chicago Lawyers' Committee for Civil Rights

Thank you for the opportunity to speak today. My name is Barbara Barreno-Paschall and I am a Senior Staff Attorney with Chicago Lawyers' Committee for Civil Rights ("Chicago Lawyers' Committee"). Chicago Lawyers' Committee is a nonprofit, nonpartisan civil rights legal organization in operation since 1969, and is proud to celebrate its 50th anniversary this year. We work to secure racial equity and economic opportunity for all and provide legal representation through partnerships with the private bar, which includes dozens of member law firms. We also collaborate with grassroots and other advocacy organizations across the region to implement community-based solutions that advance civil rights, and we participate in coalitions such as the Just Housing Initiative.

Our Housing Opportunity Project focuses on systemic litigation and advocacy to combat housing discrimination and barriers to opportunity. We investigate complaints of discrimination throughout the Chicago metropolitan area, educate people about fair housing rights and obligations, and provide representation to individuals and groups to challenge discriminatory policies and practices based on race, national origin, and other protected classes. We also engage



in advocacy supporting equitable development and investment in historically disinvested communities of color supporting the stabilization and improvement of housing.

This testimony will address the significant barriers to housing that individuals with criminal records face in Chicago and Illinois that exist as a result of policies and practices that have perpetuated racial and ethnic segregation and given rise to mass incarceration. It will also highlight litigation and advocacy tools that Chicago Lawyers' Committee and other organizations have used to address such barriers and rectify the wrongs that Black and Latino communities in particular have suffered from for far too long.

II. Chicago's History of Racial and Ethnic Segregation

It is well established that Chicago's long history of segregation has resulted in significant disparities and inequity across racial and ethnic groups. Research has shown that segregation comes at a steep price. For example, Metropolitan Planning Council ("MPC"), a non-partisan, nonprofit organization focused on the growth of the greater Chicago region, released a report titled "The Cost of Segregation" that identified the costs that the Chicago region has incurred from decades of segregation and acknowledged that, "[r]ooted in racism, federal and local policies" established such segregation.¹ According to MPC's report, in 2010 the Chicago region ranked in the top 10 nationwide with respect to "highest combined racial and economic segregation," "highest Latino-white segregation," and "highest African American white segregation."² According to the report, if levels of economic and Black-White segregation were reduced to the national median, then Black residents in the Chicago region would see an average

¹ *The Cost of Segregation*, Met. Planning Council and Urban Inst. (2017), at 15.

² *Id.* at 10.



increase of \$2,892 in income and the region would see an increase of \$8 billion in gross domestic product, among other figures.³

Another report, released by the UIC Institute for Research on Race and Public Policy, titled “A Tale of Three Cities: The State of Racial Justice in Chicago,” found that “racial and ethnic inequities in Chicago remain *pervasive, persistent, and consequential*” and that “segregation is a key factor in the region’s persistent racial inequity.”⁴ The report states as an example that, based on an analysis of 2010 Census data, over 82 percent of all Black or White Chicago residents would need to move in order for there to be an even distribution of those residents across the city.⁵

Both the Cost of Segregation and Tale of Three Cities reports identified several housing policies and practices that contributed to and perpetuate Chicago’s segregated landscape, including: redlining and restrictive covenants; predatory lending and the foreclosure crisis; the siting of public housing and lack of other affordable housing; and discrimination.⁶ While housing discrimination may not be as overt as it was when the Fair Housing Act was passed in 1968, there are multiple policies that are neutral on their face but have a disparate impact,⁷ as will be discussed in the context of housing admissions policies for individuals with criminal records.

III. The Impact of Mass Incarceration on Communities of Color

In addition to policies and practices that have resulted in deep racial and ethnic segregation in the Chicago region, over the past 40 years law enforcement and criminal justice

³ *Id.* at 4.

⁴ Henricks, Kasey, et al., *A Tale of Three Cities: The State of Racial Justice in Chicago*, 112 (UIC Inst. Res. Race & Pub. Pol’y 2017) at 16, 22.

⁵ *Id.* at 25.

⁶ *The Cost of Segregation*, at 17; *A Tale of Three Cities*, at 21.

⁷ *A Tale of Three Cities*, at 28.



policies and practices have had profound effects on Black and Latino populations, who represent an overwhelmingly disproportionate percentage of those affected by mass incarceration.⁸

Since 1980, the U.S. prison population has exploded from about 300,000 incarcerated individuals to more than 2 million.⁹ In 2016, Black individuals constituted about 33 percent of the national prison population despite only making up 13 percent of the general population.¹⁰ Similarly, Latinos constituted about 23 percent of the national prison population despite only comprising 17 percent of the general population.¹¹

One in three Black men can expect to be incarcerated during his lifetime if current trends continue,¹² and Black people are more likely to be arrested, convicted, and incarcerated than White people.¹³ In addition, Black men have received prison sentences that are nearly 20 percent longer than similarly situated White men.¹⁴

In Illinois, while crime rates fell, incarceration rates increased, despite such rates decreasing for 30 states across the nation.¹⁵ Illinois' prison population has grown nearly 450

⁸ See generally Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2012).

⁹ This figure includes both state prisons and local jails, and federal prisons and jails. See U.S. Dep't of Justice, *Prisoners in 1980* (1981), <https://www.bjs.gov/content/pub/pdf/p80.pdf>; U.S. Dep't of Justice Bureau of Justice Statistics, *Correctional Populations in the United States, 2016*, tbl. 1 (2018),

<https://www.bjs.gov/content/pub/pdf/cpus16.pdf>; Sawyer, Wendy, and Peter Wagner, *Mass Incarceration: The Whole Pie 2019*, Prison Pol'y Initiative, Mar. 19, 2019, <https://www.prisonpolicy.org/reports/pie2019.html>.

¹⁰ U.S. Census Bureau, *Statistical Abstract of the United States: 2012* (2012), <https://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf>; U.S. Dep't of Justice, *Corrections Statistical Analysis Tool (CSAT) - Prisoners*, Prisoner Characteristics (Age, Sex, Race, Offense) (2016), <https://www.bjs.gov/index.cfm?ty=nps>.

¹¹ *Id.*; see also U.S. Census Bureau, *Facts for Features: Hispanic Heritage Month 2017* (2017), <https://www.census.gov/newsroom/facts-for-features/2017/hispanic-heritage.html>.

¹² See Report of The Sentencing Project to the United Nations Human Rights Cmte. Regarding Racial Disparities in the U.S. Crim. Justice Syst., The Sentencing Project (2013), at 1.

¹³ Gotsch, Kara, *Families and Mass Incarceration*, The Sentencing Project (Apr. 24, 2018), <https://www.sentencingproject.org/publications/6148/>; Matthew, Dayna Bowen, et al, *Time for justice: Talking race inequalities in health and housing*, Brookings Inst. (Oct. 19, 2016), <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/>.

¹⁴ *Time for Justice*.

¹⁵ *A Tale of Three Cities*, at 110-11.



percent since 1980 and, while incarceration rates only recently have begun to fall, as of 2017 Black people in Illinois constituted 56.2 percent of the state's prison population and 59.1 percent of its parole population.¹⁶ Latinos constituted 12.7 percent of Illinois' prison population and 10.2 percent of its parole population.

The impact of mass incarceration policies and practices on Black people is especially significant. An Black person in Illinois is nine times more likely to go to prison than a White person.¹⁷ Despite making up one-third of Chicago's population, Black people constitute nearly three-quarters of the city's arrests and more than two-thirds of the individuals held at Cook County Jail.¹⁸ Additionally, Black people are subjected to the vast majority of the police stops performed in the Chicago area.¹⁹

Nationwide, approximately 700,000 individuals are released from state prisons each year and another 9 million are released from local jails.²⁰ Black people and Latinos represent the majority of those released from incarceration, and once they return home, they experience major obstacles to finding housing, such as lookback periods ranging from three to as many as twenty-five years and blanket bans based on their convictions. Not surprisingly then, Black people and Latinos experience homelessness at higher rates than Whites. For example, formerly incarcerated Black men have higher rates of unsheltered homelessness, or living without a fixed residence,

¹⁶ Ill. Dep't of Corrections, *Fiscal Year 2017 Annual Report* (2017), at 79, 82.

¹⁷ *A Tale of Three Cities*, at 112.

¹⁸ *Id.* at 7-8; *Chicago Police Department Annual Report 2017* (2017), at 82, <https://home.chicagopolice.org/wp-content/uploads/2019/03/Chicago-Police-Department-Annual-Report-2017.pdf>.

¹⁹ Am. Civ. Liberties Union of Ill., *Stop and Frisk in Chicago* (2015), at 9.

²⁰ Patricia McKernan, *Homelessness and Prisoner Re-Entry: Examining Barriers to Housing, Barriers to Prisoner Re-Entry*, Volunteers of America, <https://www.vo.org/homelessness-and-prisoner-reentry> (last accessed May 2, 2019).



than White or Latino men.²¹ Formerly incarcerated Black women experience the highest rate of sheltered homelessness, or living in a homeless shelter, compared with other racial groups.²²

Obstacles to housing for people who are formerly incarcerated also have significant negative effects on their families. Nationwide, over 5.7 million children under the age of 18 have experienced parental incarceration, and as many as 70 percent of formerly incarcerated adults have children they must provide for upon their return.²³

In Illinois, 11,000 individuals return each year from the state's prisons and 48 percent of those who are released will recidivate within three years.²⁴ Having access to stable housing,²⁵ therefore, is critical for people who are formerly incarcerated and have paid their debt to society, allowing them to rebuild their lives rather than return to incarceration or continue to be defined by their past.

IV. The Fair Housing Act and 2016 HUD Guidance

The Fair Housing Act, which celebrated its 50th anniversary last year, prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, and disability.²⁶ A party seeking relief under the Act can bring claims under two theories of liability: disparate treatment and disparate impact. For disparate treatment, a party may allege differential

²¹ Couloute, Lucius, *Nowhere to Go: Homeless among formerly incarcerated people* (2018), <https://www.prisonpolicy.org/reports/housing.html>.

²² *Id.*

²³ Families and Mass Incarceration; Saneta deVuono-powell, et al., *Who Pays? The True Cost of Incarceration on Families*, *Ella Baker Center, Forward Together, Research Action Design* (2015), at 13.

²⁴ *No Place to Call Home: Navigating Reentry Housing in Chicago*, Roosevelt Univ. Pol'y Research Collaborative and BPI (2018), at 5.

²⁵ Stephen Metraux, PhD, Caterina Roman, PhD, and Richard Cho, PhD, *Incarceration and Homelessness*, 2007 Nat'l Symposium on Homelessness Research, at 9-19, <https://www.huduser.gov/publications/pdf/p9.pdf> (last accessed May 2, 2019).

²⁶ 42 U.S.C. § 3604. This testimony refers to the term "disability" instead of the term "handicap" as referenced in the statutory language.



treatment on account of membership in a protected class. For disparate impact, a party may allege that a policy is facially neutral but has a disproportionate impact on a protected class. In 2015, the U.S. Supreme Court affirmed the use of disparate impact in fair housing cases in its decision *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*²⁷

In 2016, the U.S. Department of Housing and Urban Development (“HUD”) Office of General Counsel issued Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Transactions (“HUD Guidance”).²⁸

Using the disparate impact theory of liability and after considering arrest and conviction data, incarceration rates, and the disproportionate representation of Black people and Latinos in the criminal justice system, HUD cautioned that “arbitrary and overbroad criminal-history-related bans are likely to lack a legally sufficient justification.”²⁹

The HUD Guidance also provides that admission policies should consider each application individually and consider such evidence as: “the facts or circumstances surrounding the criminal conduct; the age of the individual at the time of the conduct; evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct; and evidence of rehabilitation efforts.”³⁰

While the guidance itself is not law, it is a very helpful resource for housing providers and housing applicants alike to determine what housing admissions policies may violate the Fair

²⁷ 135 S. Ct. 2507 (2015).

²⁸ U.S. Dep’t of Hous. and Urb. Dev’t, Office of Gen. Counsel Guidance on Application of FHA Standards to the Use of Criminal Records by Providers of Hous. and Real Estate-Related Transactions (Apr. 4, 2016).

²⁹ HUD Guidance, at 10.

³⁰ HUD Guidance, at 7.



Housing Act on account of having a disparate impact on the basis of race, national origin, and other protected classes.

V. Disparate Impact Litigation Challenging Unlawful Housing Admissions Policies

Over the past five years, fair housing advocates have filed litigation in multiple jurisdictions challenging housing admissions policies that have a disparate impact on communities of color. Such litigation has referenced the HUD Guidance in support of disparate impact theories of liability.

For example, in 2014 The Fortune Society filed a lawsuit in the U.S. District Court for the Eastern District of New York against Sandcastle Towers and other defendants alleging that the defendants' blanket policy of denying housing to people with criminal records violated the Fair Housing Act as well as New York City and State human rights laws.³¹ The case is currently pending on a motion for summary judgment.

Another case, *Alexander v. Edgewood Management Corporation*, survived a motion to dismiss in 2016 and its local and federal law claims that the defendants' tenant selection policies, which excluded applicants based on irrelevant and dated criminal convictions, had a disparate impact on Black people were allowed to proceed in the U.S. District Court for the District of Columbia.³²

More recently, in 2018 a settlement was reached in the *Equal Rights Center v. Mid-America Apartment Communities, Inc. and Mid-America Apartments, L.P.* case filed in the U.S. District Court for the District of Columbia, where the Equal Rights Center alleged that the

³¹ Am. Compl., *The Fortune Society, Inc. v. Sandcastle Towers Hous. Dev't Fund Corp.*, No. 14-cv-6410 (E.D.N.Y. 2015).

³² *Alexander v. Edgewood Mgmt. Corp.*, 2016 WL 5957673, No. 15-cv-01140-RCL (D.D.C. July 22, 2016).



defendants violated the Fair Housing Act by excluding housing applicants with certain criminal records, including any felony convictions.³³

In the past year, Chicago Lawyers' Committee has filed multiple federal lawsuits in the U.S. District Court for the Northern District of Illinois challenging housing providers' admissions policies and processes that applied look back periods greater than 15 years and as long as 25 years.³⁴ As with the litigation referenced above, Chicago Lawyers' Committee has argued that these types of policies have a disparate impact on Black people and there are legitimate, nondiscriminatory alternatives to such policies that, for example, would take applicants' individualized circumstances into account when evaluating their application.

As long as housing providers continue to use policies with blanket bans, lengthy look back periods and other requirements to unlawfully deny qualified applicants with criminal records, Chicago Lawyers' Committee and other fair housing advocates will continue to challenge such policies under the Fair Housing Act and applicable local laws.

VI. Legislative Advocacy to Expand Protections to Families with Loved Ones who Have Criminal Records

In addition to federal litigation that has been filed challenging housing admissions policies that have a disparate impact on communities of color, several municipalities have passed legislation that expands fair housing protections under local law to individuals with criminal records.

³³ Press Release, Equal Rights Ctr., ERC Resolves Race Discrimination Lawsuit Against Nation's Largest Private Landlord, Oct. 5, 2018, <https://equalrightscenter.org/maa-consent-order-press-release/>.

³⁴ See Compl., *Adams v. ParkR, LLC*, No. 18-cv-7095 (N.D. Ill. Oct. 23, 2018); Compl., *Brooms v. Peak Properties, LLC*, No. 19-cv-2584 (N.D. Ill. Apr. 16, 2019).



For example, in 2017 the District of Columbia City Council passed the Fair Criminal Record Screening for Housing Act of 2016, which prevents unlawful screening by housing providers of an applicant’s criminal background.³⁵ Only after a conditional offer is made to an applicant can a housing provider inquire about pending criminal accusations or specific convictions identified in the Act that have occurred within the past seven years.³⁶

Also in 2017, the Seattle City Council passed the Fair Chance Housing Ordinance, which goes even further than the District of Columbia ordinance by prohibiting housing providers from “requiring disclosure, asking about, rejecting an applicant, or taking an adverse action based on any arrest record, conviction record, or criminal history,” with limited exceptions.³⁷

In Illinois, the cities of Champaign and Urbana’s Human Rights Ordinances include an individual’s prior arrest or conviction record as a protected class.³⁸

Chicago Lawyers’ Committee is a proud member of the Just Housing Initiative coalition, which was formed in 2016 and is comprised of over 100 organizations that have worked to address the barriers faced by housing applicants with arrest and criminal convictions by advocating for an amendment to the Cook County Human Rights Ordinance.

On April 25, 2019, the Cook County Board of Commissioners passed an amendment to the Cook County Human Rights Ordinance which delays a housing provider’s consideration of an individual’s criminal history until after the housing provider determines that the individual is

³⁵ See Fair Criminal Record Screening for Housing Act of 2016, D.C. Act. 21-677 (Feb. 15, 2017); D.C. Office of Human Rights, Criminal Background Screenings and Housing, Preview of Law for Housing Providers (2017) https://ohr.dc.gov/sites/default/files/dc/sites/ohr/publication/attachments/FCRSAHousing_GENERALPreview_092517.pdf.

³⁶ *Id.*

³⁷ See Fair Chance Housing Ordinance, Seattle Ord. 125393 (Aug. 14, 2017).

³⁸ See City of Champaign, Ill., Human Rights Ordinance, Ch. 17; City of Urbana, Ill., Human Rights Ordinance, Ch. 12.



qualified.³⁹ A housing provider's consideration of criminal history involves conducting an individualized assessment which must take into account the following factors: "the nature, severity, and recency of the conduct underlying the individual's specific conviction(s); the nature of the individual's sentencing; the number of the individual's convictions; the length of time that has passed following the individual's most recent conviction; the age of the individual at the time of the most recent conviction; and evidence of rehabilitation."⁴⁰ The amendment will become effective six months after the date of adoption, during which time the Cook County Commission on Human Rights will promulgate rules relating to the amendment.⁴¹

VII. Conclusion

There is a long way to go before the wrongs caused by segregation and mass incarceration are redressed. Far more needs to be done to reduce the significant barriers to housing that individuals with criminal records, who are disproportionately Black and Latino, face. The litigation and legislative advocacy that Chicago Lawyers' Committee and other civil rights and fair housing advocacy organizations are engaged with has led to considerable progress, and more dialogue is needed with community members, including impacted individuals, elected and other government officials, housing providers, and others to create a more just and equitable society for all.

³⁹ Cook County Bd. of Comm'rs, O19-2394 (Apr. 25, 2019).

⁴⁰ *Id.*

⁴¹ *Id.*