



## Challenging a Client's Criminal Record-Based Housing Denial: Advocacy and Mitigation Tips

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# Tenant Screening Reports

- A type of “consumer report” governed by Fair Credit Reporting Act. 15 USC 1681
- Prepared by a “consumer reporting agency” - 15 USC 1681a(f)
- Typical contents:
  - “Credit” report
  - Criminal background check
  - Civil court records search
  - Summaries of interviews (past LLs, employers, etc.)
  - Analysis (score, recommendation, etc.)

# Understanding the Criminal Record

CATEGORY	SENTENCE/DISPOSITION	
Not Guilty: Released Without Charging	<ul style="list-style-type: none"> <li>• A person is arrested but not charged.</li> </ul>	
Not Guilty: Acquittals & Dismissals	<ul style="list-style-type: none"> <li>• Non-Suit</li> <li>• Finding of No Probable Cause</li> <li>• Stricken Off with Leave to Reinstate</li> </ul>	<ul style="list-style-type: none"> <li>• Nolle Prosequi</li> <li>• Finding of Not Guilty</li> </ul>
Guilty: Non-Conviction Sentences	<ul style="list-style-type: none"> <li>• Certain Probations</li> <li>• In some states, certain first offenses</li> <li>• Supervision</li> </ul>	
Guilty: Conviction Sentences	<ul style="list-style-type: none"> <li>• Jail or Prison Time</li> <li>• Conditional Discharge</li> <li>• Supervision or Special Probation Unsatisfactorily Terminated</li> </ul>	<ul style="list-style-type: none"> <li>• Probation</li> <li>• Fines</li> <li>• Time Served</li> </ul>

# Check the screening report for errors

Q:

What percentage of criminal history disputes filed with the Consumer Financial Protection Bureau result in a correction to the complainant's report?



Business

## \$13M penalty for background check errors that cost jobs, hurt reputations +



The Consumer Financial Protection Bureau's office building in Washington. (Jim Puzanghera / Los Angeles Times)

By **Alexia Elejalde-Ruiz** · Contact Reporter  
Chicago Tribune

Nearly 70 percent of criminal history disputes that consumers filed with General Information Services resulted in some change or correction to the information in their background report, the bureau found.

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Consumer complaints against

# Common Problems of Background Checks

Inaccurate  
or  
Incomplete

Common  
Names

Expunged  
and Sealed  
Records Still  
Released

Duplicative

Amendments  
or Reducers  
Not  
Reflected

# Correcting the errors

File a complaint with the U.S. Consumer Financial Protection Bureau challenging any incorrect information.

Present evidence at the informal review establishing the correct information

- Law enforcement records
  - ❑ Police reports
  - ❑ Citations or tickets
- Court records
  - ❑ Court orders from the criminal case
  - ❑ Certified Dispositions or court records
- Fingerprint-based background check

# Is the PHA relying on arrests alone?

HUD Notice PIH 2015-19, *issued Nov. 2, 2015*

**4. An Arrest is Not Evidence of Criminal Activity that Can Support an Adverse Admission, Termination, or Eviction Decision**

An arrest shows nothing more than that someone probably suspected the person apprehended of an offense. In many cases, arrests do not result in criminal charges, and even where they do, such charges can be and often are dismissed or the person is not convicted of the crime alleged. In fact, in the 75 largest counties in the country, approximately one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.<sup>8</sup>



# Helping Prepare Mitigation



# Preventing the Problem: Criminal Records Relief

Your client may be eligible for relief from their criminal record under applicable law.

- Examples:

- Expungement
- Sealing
- Clemency/Pardons

- See if the state has other forms of relief

- In Illinois, a person can apply to the court to issue a Certificate of Rehabilitation