



# Seattle City Council

## Central Staff - Memorandum

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**Date:** May 27, 2016

**To:** Members of the Committee on Civil Rights, Utilities, Economic Development, and Arts

**From:** Asha Venkataraman, Central Staff

**Subject:** Resolution addressing the use of criminal records in tenant screening

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This resolution reinforces the Council's commitment to pursuing the Housing Affordability and Livability Agenda (HALA) recommendation to provide fair access to housing for persons with criminal records while work towards an ordinance on this recommendation is pending. Landlords often use criminal background checks to screen tenants and deny them rental units because of their criminal record, which makes accessing housing difficult for such potential tenants. Data shows that racial minorities have criminal records at a rate disproportionate to their representation in the general population. The [Fair Housing Act](#) and the City's [Open Housing Ordinance](#) prohibit housing practices that intentionally discriminate or have an unjustified discriminatory effect on protected classes. Thus, using criminal history to deny potential tenants housing may have unjustified discriminatory effects on racial minorities, rendering that practice in violation of the law.

### HUD Guidance

The U.S. Department of Housing and Urban Development (HUD) issued [guidance](#) addressing how housing providers using criminal records to screen tenants should avoid violating the Fair Housing Act. HUD's guidance uses a burden shifting test to determine whether such a practice creates unjustified discriminatory effects on a protected class. HUD's guidance also recognizes that this type of practice must actually help protect resident safety or property. HUD clarifies that a categorical ban on renting to anyone with a criminal record does not achieve this protection, as it does not distinguish between criminal conduct that poses a threat and conduct that does not.

### The Resolution

The resolution primarily focuses on four Council priorities. First, the Council restates its continuing intent to provide fair and equitable access to housing to persons with criminal history and to protect the rights and interests of landlords.

Second, the Council promotes use of HUD's guidance by recommending that landlords only use a practice denying persons with criminal records housing when that practice is:

- Based on reliable evidence that it protects resident safety and property.
- Specifically tailored to protect resident safety and property.
- Designed to include an individualized tenant assessment using specific factors to inform whether the criminal record is relevant to protecting resident safety and property.

Third, the Council endorses:

- The City's Office of Housing [guidelines](#) addressing how to select a tenant screening agency that provides accurate, timely, and consistent information and criminal records.
- The unlawful detainer provisions in Engrossed Senate Bill [6413](#), passed by the Washington State Legislature March 2016, effective June 2016. This law will allow courts to order that under specific circumstances, legal actions to evict a tenant (unlawful detainer actions) should be reported on a limited basis. This court order would limit tenant screening agencies from including unlawful detainer actions in a tenant screening report or using the action as part of a tenancy recommendation.
- Best practices on drafting and implementing a policy to use criminal records to screen tenants, which are part of a National Multifamily Housing Association [white paper](#) on avoiding disparate impact liability.

Fourth, the Council requests that the Office of Civil Rights determine the presence of disparate impact, intentional discrimination, or unjustified discriminatory effects during their investigations into allegations of housing discrimination based on the use of criminal history.