

Criminal Background Checks and “Lookback” Periods

SALISBURY AREA HOUSING WORKING GROUP • MARCH 30, 2021

■ STAKEHOLDER REPORT, OBLIGATIONS, AND ACTION ITEMS

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The REACH initiative at Salisbury University seeks to increase the observation and feedback from University faculty on issues identified by members of the Eastern Shore communities as being of priority ethical concern. This paper was written in response to a request by a client in the REACH Community Ethics Network to attend the March 30, 2021, meeting on the role of criminal background checks (CBCs) in rental housing applications and associated “lookback” periods. It is intended to identify stakeholder groups and report back major points of agreement and disagreement between these groups. It is not intended as an endorsement of any specific housing policy, but it does articulate why certain policies may align with broader ethical goals in supporting the right to non-discriminatory access to housing. It is intended to foster collaboration and focus public understanding of complex ethical issues. The information in this paper was constructed in good faith, was written and reviewed from multiple perspectives, and is constructed with reasonable care and attention. It is possible that information contained herein is incomplete or inapplicable to particular circumstances. We reserve the right to update or modify this paper at any time, and do not accept liability as a consequence of its use.

Definitions

- **Criminal Background Check (CBC):** Any use of public documents or paid services that identify the criminal history of an individual, in this case an applicant for tenancy in a rental unit.
- **Lookback Period:** The length of an individual’s history consulted in establishing a CBC.
- **Returning Citizen:** An individual re-entering regular civilian life after incarceration for a crime.
- **Fair Housing:** Policies intended to create open and equitable access to housing, and proactively address issues of access to housing stability.
- **Equity:** Just treatment, in particular considering action that offsets bias and focuses on equality of outcome.

Meeting Details

- The working group engaged in discussion for 90 minutes and identified a wide range of practices for CBCs in Salisbury rental housing.
- A total of 25 representatives from stakeholder groups attended the meeting. There were three major stakeholder groups represented in the discussion: City of Salisbury, Salisbury area rental enterprises, and housing-focused non-profit groups.
- City of Salisbury tenants were not directly represented.
- Police and public safety were not directly represented.
- A recording of the meeting was made by the City of Salisbury without objection.

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■ SECTION ONE: PROPOSALS AND RESPONSES

1) City of Salisbury Proposal

The city has engaged in a year-long study of Fair Housing Practices, and it is bringing these results to stakeholders for feedback.

- The City of Salisbury proposed an open-ended framework to discuss areas of possible regulation of the use of CBCs. Key elements of this proposal are:
 - Mandating disclosure for the use of CBCs on rental applications, including the number of years consulted. This was articulated as a “non-negotiable” goal of legislation.
 - Defining an appropriate range of years of “lookback” duration, in particular two years for misdemeanors and five years for felonies. The specific nature of these periods is negotiable.
 - Ensuring that CBCs are used only for legitimate criminal convictions and not arrests or other judicial processes (e.g., family court).
 - Application fees should be decoupled from criminal background checks; to be compliant, all fees above \$25 should be refunded if a prospective tenant is denied.
 - Certain crimes would be protected as disqualifications for tenancy, in particular sex offenses and drug manufacturing. Other protected criminal categories can be contemplated, but they should be specified and aligned with best practices, (i.e., not leading to arbitrary rejections).
- These proposals are aligned with broader goals of increasing housing security for City of Salisbury residents, increasing equity in housing access, and reducing negative community effects.
 - In particular, the City identified two areas of negative impact of lack of housing access by returning citizens: homelessness and crime.
 - The City emphasized that it is held accountable for ameliorating the negative community effects of homelessness and crime, but to do so effectively, they must also be able to set regulatory standards for housing access.

- The City also articulated a strong desire for collaborative effort, stating it has no “silver bullets” and cannot tackle these challenges alone.
- Regardless of direct impact on homelessness and crime, a secondary rationale for the city’s proposal is one of housing equity, in that there is interest in playing a greater role in ensuring fair housing practices.
- The use of CBCs could either mask or unintentionally create inequalities of access that are unethical or even illegal, for example as a mask for other forms of discrimination, or by way of the unintentional disparity of access by race, nationality, or family structure.
- The City wishes to hear from landlords what policies or programs would be most welcome to offset any additional risk.

2) Housing-Focused Non-Profit Context

Community non-profits work directly with returning citizens, with homeless individuals, and with individuals transitioning from a history of crime and poverty to economic stability.

- Housing stability requires a measure of personal accountability and assurance of intentional effort.
 - Employment, participation in programming, and engagement with family were all identified as examples of this intentional effort and should be considered as mitigating factors for client risk.
 - Tenants should be truthful and accurate in disclosing their information on rental applications and should have clear accountability frameworks, preferably by way of third party (e.g., caseworker, parole officer, mentor).
- The question of inequity was raised for returning citizens, specifically that it is unjust for criminal history to produce (without limit) add-on or unintended effects of incarceration.
- Housing plays a crucial role in breaking the cycle of poverty, homelessness, and criminality.
 - Roughly 4,000 households in Salisbury are at risk of homelessness.
 - Homelessness prevents access to services, jobs, and other social goods.
 - Children of homeless people are particularly likely to become involved in the criminal justice system, as children from homeless families are particularly likely to commit future crimes.
- In the current climate, prospective tenants currently in programs report excessive difficulty accessing housing, with CBCs being an identified barrier that makes it all but impossible to find housing in the area.

3) Salisbury Area Property Owners Association (SAPOA) Response

SAPOA members and other landlords present encompass a wide range of property owners, from small local businesses with a long history of renting properties in the area to large regional companies with thousands of units under management. Views expressed during the meeting are from individual members and not necessarily statements endorsed by the association.

- Members noted that evicting bad tenants is difficult and expensive; therefore, property owners have to be very careful about who they rent their units to.
- CBCs provide information that allow property owners to limit their risk of renting to tenants who may negatively affect safety and stability.
- CBCs should not be "one size fits all." Lookback periods should take into account the age of the applicant, the type and seriousness of the offense, and the amount of time that has passed.
- While property owners do have obligations to the community at large, they also have a responsibility to the safety of their own neighborhoods and other tenants. Renting indiscriminately could promote neighborhood instability.
- The number of available rental properties in the area is currently very low, and there are many more applicants than units available. It is logical that property owners will choose the more "stable" applicants, and prior convictions indicate a risk of instability, which in the current market, property owners do not need to take. Incentive programs by the city or other government agency that reduce this perceived risk with financial assistance (e.g., rent guarantees) would be welcome.
- Property owners are not the cause of homelessness and should not be looked to for the solution. It is doubtful that changing the ability to use CBCs would have anything more than a negligible effect on the problem. Other policy changes, such as relaxing the limits on the number of unrelated tenants allowed to share a property (changing the "4 to 2" rule) and permitting accessory dwelling units (ADUs) would have a much greater impact.
- The concern was raised that, if the city adopts regulations to limit the use of CBCs, it is likely that non-local tenants with prior criminal convictions would come to the area seeking housing and thus exacerbate the housing shortage problem.



■ SECTION TWO: ACTION ITEMS, DISCUSSION ITEMS, AND FINDINGS

1) Areas of Current Consensus

These areas can form the basis for immediate consideration by the City Council.

- Increased transparency in the use of CBCs.
 - Use of CBCs should be declared on applications, promotional materials, and websites.
 - This should include the duration of the lookback period and the way in which the information is used to determine fitness for tenancy.
- Ten- or seven-year lookback periods were broadly identified as being too long and of limited use. A two-year window for misdemeanors and a five-year window for felonies were suggested by representatives of each stakeholder group as reasonable limits.
- Patterns of crimes are more significant than individual crimes. Additionally, several specific categories of crime provide useful information to landlords. Criminal history that sets up a pattern of community disruption (such as drug manufacture and distribution), property damage (e.g., arson), community safety impact (e.g., violent offenses), or establish a pattern of domestic violence are particular areas of concern.
- Setting standards for application fees and returns of fees for non-successful applicants can affect tenants' ability to continue to seek housing with minimal burden.
- Incentive programs by the City of Salisbury could positively impact housing stability, including:
 - Tax credits and reduction/elimination of fees
 - Public insurance programs for damages to rental property
 - Rental guarantees (e.g., covering first and last rent)
- Case management and services provided by non-profit groups can have a positive effect on housing stability, including:
 - Mentorship programming
 - Access to health programming, including addiction treatment
 - Mechanisms for broader accountability and success, such as job placement and courses.

2) Areas for Further Discussion/Collaboration

These issues would require continued dialogue and broader public/private partnership, and they cannot be addressed solely by regulation or by any one stakeholder group. In particular, these issues will continue to be a challenge to sustainable housing policy regardless of the regulation of CBCs.

• Acute shortage of rental housing in the City of Salisbury:

- All partners should consider actions that will increase supply, reduce the cost of creating new supply, and expand existing supply.
- In particular, re-evaluating the allowed non-relative occupancy regulations could increase the number of available beds per current units.

• Current use of CBCs:

- As standards are developed for the use of CBCs, all parties can continue to contribute to identify ways that these uses are more transparent, more sharply defined, and with specific outcomes identified in advance.
- Arbitrary or discriminatory use of CBCs should be eliminated wherever possible, but it is difficult to determine what would count as fair or unfair use in anything but a case-by-case evaluation. Greater transparency around the actions and intentions of good-faith actors will help to identify unfair use.
- Best-practices and data can be assembled by all stakeholders, including data as to the number of tenants rejected due to criminal history, especially developing means of assessing the actual risk to property and safety.

• Re-entry and criminal justice reform:

- This discussion is happening in the context of broader criminal justice reform, which will present unique challenges and opportunities.
- No individual stakeholder is responsible for these reforms, and successful reforms will require actions from all stakeholders.
- Changing features of the criminal justice landscape will afford new opportunities for housing solutions, for example tenancies that have greater integration with services and more direct communication between property owners and caseworkers or parole officers.

• Community safety standards:

- Criminal justice reform should not come at the expense of increased crime rates or decreased community safety.
- Best practices indicate that housing stability is a major contributing factor to overall community safety, employment, and well-being.
- Housing policies should balance the need to set standards and identify best practices without

sacrificing flexibility or adding undue risk to the community or to stakeholders.

• Homelessness:

- Stakeholders should continue to meet to develop programs, practices, and policy tools to address rising homelessness in the area.
- With increasing property values, it is likely that greater numbers of current residents will continue to be displaced or made homeless because of a lack of affordability.
- There are many options to be discussed in future meetings, including the use of tiny homes for more stable transitional housing, increased integration of services and housing programs, greater ease in accessing and distributing housing-directed funds, and methods for allowing for small equity accrual for residents to increase their investment in the community and area properties.

3) Summary Findings

Our observations can be condensed to six major ethical guidelines that should orient future action from all stakeholders. Our summary focuses on the narrow issue of best practices in use of CBC and does not make summary recommendations on the wider areas of housing policy discussion.

- Fair housing reasonably includes protections for those with a criminal record after punishment has been adjudicated and completed.
- CBCs should not be used for screening or in advance of a tenant receiving a conditional offer.
- Any use of background checks, including lookback periods and problem offense areas, should be clearly stated as a determining factor before prospective tenants pay non-refundable application fees.
- What constitutes a reasonable lookback period for CBCs should be stated explicitly in the rental application.
- Use of CBCs should be accompanied with other assessments, taking into consideration rehabilitation and mitigating circumstances. Doing so should allow for comment from the applicant and for the discovery pathways for communication (e.g., with parole officers, mentors, or caseworkers) and individual accountability.
- It is appropriate to mitigate increased risk to property owners by instituting incentive programs for responsible provision of housing to individuals with criminal histories.



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