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Masking the Scarlet "E"

A Study on California's Attempt to Mask Eviction Records through AB 2819

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The impact of eviction is stark; individuals, families, and communities face economic, health, and housing stability impacts that can extend well beyond the date of eviction. In particular, an eviction filing on a tenant's background report can act like a scarlet "E," following them for years. Most landlords view any eviction filing record as a disqualifying event.[1] Yet the eviction filing data themselves and the tenant screening reports they are used in are often inaccurate or incomplete. Low-quality data combined with high individual impact have led some states and localities to question how eviction records should be handled and made available, especially in cases where the filing is dismissed, the filing is dropped, or the defendant is found not at fault. This brief focuses on how California is aiming to reduce the impact of eviction filing records. We analyze the passage and impact of Assembly Bill 2819 to change how eviction filings are masked. We conclude with emerging best practices and considerations for the possible passage of similar policies.

The Collection and Use of Eviction Records

What Is "Eviction Data"?

The data used to monitor evictions tracks eviction filings, rather than records of completed evictions. Filing information generally includes the specifics of the unlawful detainer[2] (i.e., a record of a landlord filing an eviction), including the case filing number, date of filing, address of the rental property related to the case, and names of plaintiffs and defendants. If a case reaches a decision, the file can include a disposition and date of disposition.

Eviction filing procedures are not well regulated, and in most jurisdictions, landlords can file an eviction without cause,[3] and an eviction filing is not necessarily evidence of a renter's payment history

or violation of lease terms. Eviction fillings can stem from issues such as domestic violence calls, habitability claims, and landlord foreclosure (Bezdek 1992; Desmond and Valdez 2012).[4] But because renters are much more likely than landlords not to have legal representation in eviction cases—90 percent of landlords in eviction proceedings have legal counsel, while 90 percent of tenants do not[5]—tenants are more likely to lose any case, regardless of actual offense, or to settle a case in a way that is unfavorable to them (Seron et al. 2001).

Why Do Eviction Filings Matter for Renter Stability?

Almost 90 percent of landlords use third-party tenant screening in their tenant selection process.[6] This information is obtained as part of the rental application and often costs the tenant around $40 per report.[7] Landlords use these reports in different ways but typically consider multiple criteria—including eviction filing history,[8] income details, rental history,[9] credit history, and criminal history—to select tenants (Purser 2016). Landlords often argue that these indicators provide some insight into the likelihood of a tenant paying rent on time and adhering to lease terms. But there is no evidence suggesting that any specific criteria are a clear indicator of adhering to a lease.

Emerging evidence suggests that tenant screening reports have a large impact on landlord decisionmaking, and although some landlords are willing to accept a candidate with a past eviction filing, for many, any eviction filing is a disqualifying factor (FHF and HJC 2021). A study of screening agencies and landlords in the Twin Cities conducted by HousingLink found that nearly two-thirds of the surveyed property owners cited prior eviction history as one of the most important elements of a screening report (HousingLink 2004). Additionally, according to findings from a 2021 survey, 39 percent of landlords who own one to four units said they were using more stringent screening criteria, and landlords most frequently cited prior eviction or eviction filings as the most important factor when screening tenants.[10]

Given this, a single filing, regardless of accuracy or outcome, can bar tenants from accessing safe and quality rental housing, especially in tight rental markets (FHF and HJC 2021). Qualitative evidence suggests prospective tenants find themselves repeatedly denied housing and often end up in insecure housing conditions that could jeopardize employment opportunities and stability.[11] A study in Minneapolis found that 94 percent of interviewees with eviction filings stated that their residence was not their first housing choice or that they had no other choice besides homelessness (Lewis et al. 2019; Reosti 2021). Many are also affected by the economic costs of repeated application fees (Reosti 2021).

Challenges with Tenant Screening Reports and Eviction Records

Although records have a large impact on housing access for renters, the data pose substantial problems. New data and record-scraping technologies have produced a rapid increase in the number of companies that collect and disseminate eviction filing data, in part because of the rapid growth of tenant screening companies.[12]

This growth produced challenges, as the source data themselves are nonstandard within and across US courts. There are no national requirements for courts to clean, maintain, or share data in a specific way. As a result, there is tremendous variability and, at times, inaccuracies in court records. When requesting and reviewing information, landlords and tenant screening companies must adhere to both federal and state guidelines (box 1), yet this oversight and guidance does not necessarily address the full extent of issues related to both the source data and tenant screening practices.

Specific issues include the following:

- **Inaccurate source data.** Housing court records contain data-entry mistakes, including incorrectly spelled names (Caramello and Mahlberg 2017). Incorrect or incomplete names may make matching data and correctly identifying specific individuals with eviction filings difficult.
- **Incomplete outcome data.** Outcomes are either unclear or, more often, excluded. Court records may include vague case outcomes and the misleading inclusions of unadjudicated cases (Kleysteuber 2007). A study focused on 3.6 million administrative eviction court records from 12 states found, on average, that 22 percent of eviction records contained ambiguous information on how the case was resolved; cases with more complex disputes (i.e., multiple tenants and lawyers) were more likely to contain inaccuracies (Porton, Gromis, and Desmond 2021).[13] Given inconsistent record keeping, even in cases where tenants win or settle or in cases without any formal disposition, the eviction filing record is still associated with the defendant's personal data in recorded databases.
- **Overrepresentation of households based on race and gender.** Black households and other households of color are more likely to have an eviction filed against them.[14] In a 2020 study, Black individuals made up 19.9 percent of all adult renters in sampled counties but made up 32.7 percent of all eviction filing defendants. Women are also more likely to have evictions filed against them, particularly Black and Latina women (Lake and Tupper 2021).[15] The overrepresentation of certain categories within datasets suggests that any decisions based on these data points may have disparate impacts.

Beyond challenges in the source data, the process of collecting and disseminating eviction filing data as part of tenant screening reports is also largely unregulated. Tenant screening companies may engage in data management and matching practices that create additional inaccuracies and challenges. This creates issues with accuracy and reliability; preliminary reports indicate that the data landlords receive about tenants may be incomplete, inaccurate, or misleading (Desmond and Shollenberger 2015; Greiner, Pattanayak, and Hennessy 2012). These issues include the following:

- **Inaccurate name matching.** Applicant identification is often unclear or misleading, partly because of inaccurate and imprecise source data. Eviction records and criminal data may often rely upon first and last names only, in lieu of unique identifiers such as Social Security numbers. This makes accurately matching records difficult, and people with common names are often indistinguishable from other people. Data suggest that name-only matching is more problematic for Hispanic, Asian, and Black individuals because of lower last name diversity than

among white individuals. Companies are not required to disclose how they match data, despite a Consumer Financial Protection Bureau advisory opinion reaffirming that name-only matching practices do not meet the standard of reasonable procedures to assure maximum possible accuracy as required by the Fair Credit Reporting Act.

- **Place-based differences.** Presenting the data in an isolated way ignores local context that may shape the likelihood of having an eviction filing on one's report. For example, certain landlords and neighborhoods may experience serial filing behavior, which puts certain individuals at higher risk of receiving an eviction notice (Garboden and Rosen 2019; Immergluck et al. 2020). Similarly, areas themselves may be more landlord-friendly, with policies that may benefit a landlord (e.g., a short period from eviction notice to eviction filing and lower eviction filing fees)[16] or may be less landlord-friendly with tenant protections (e.g., eviction diversion or just cause eviction rulings). Without details that provide context, it is unclear whether certain tenants may be at higher risk for an eviction filing simply because of where they live and can essentially encourage an apples-to-oranges comparison.
- **Algorithmic biases.** Tenant screening companies vary in how they treat and display data. Some provide basic information on public records filings, while others provide algorithm-based recommendations or risk scores. In an analysis by *Consumer Reports*, the eight most prominent tenant screening companies reviewed all offered reports that included an algorithmically generated score or a recommendation to accept or reject an applicant, such as a score from 1 to 10 or a green thumbs-up or a red thumbs-down.[17] Risk factors, however, are a black-box calculation that provides little insight into why one individual receives a specific score, which obscures underlying data (Caramello and Mahlberg 2017).
- **Obsolete or inaccurate information that is difficult to correct.** Databases are generally updated with new information, but there is little oversight regarding how data are updated or maintained, so it is possible that tenant screening companies do not remove or review records that have been sealed, expunged, or updated.[18] But there are few pathways for courts or affected individuals to correct information in tenant reporting databases, given the large number of unique companies. Renters have reported challenges addressing tenant errors and ensuring that once an error is corrected that it would be updated across different tenant screening companies.[19] For example, AppFolio settled with the Federal Trade Commission for allegedly failing to check whether court records purchased from a third party and used in tenant screening reports had been sealed.[20]

BOX 1

Current Guidance on the Use of Eviction Filing Data for Screening

Fair Housing Compliance

Fair Housing Act (FHA) guidance attempts to limit intentional or unintentional discrimination, requiring landlords to design and implement a tenant screening and selection process that has the smallest possible discriminatory effect. Overly broad search criteria, such as processes that screen out applicants based on old or irrelevant records, can violate the FHA if it has a disparate impact on a specific group. Given the overrepresentation of Black households and other households of color, tenant screening will disproportionately affect these groups. A recent court case found that CoreLogic could be liable under the FHA on a disparate impact claim because it produced a background report disqualifying a tenant applicant based on a prior arrest that did not result in a conviction. Although this is a case based on criminal history, it has implications for tenant screening companies and their practices.

But FHA enforcement can be difficult, given the decentralized nature of landlord decisionmaking and limited resources for oversight.[a] Additionally, in many areas, different properties—including small landlords (who own buildings with one to four units), owner-occupied properties, religious organizations, private clubs, and senior housing—are exempt from some FHA guidance. There are few requirements for landlord training, and most part-time or small-scale landlords operate without training or guidance; many may change and shift their standards and processes over time and in response to both the applicant pool and the housing market.[b]

Fair Credit Reporting Compliance

Tenant screening background reports are considered credit reports under the Fair Credit Reporting Act (FCRA), requiring that companies adopt procedures to ensure reasonable accuracy of their reports. But tenant reporting companies are often able to skirt requirements by adding disclaimer language. There is no effective oversight of tenant screening companies, and there is no mechanism to ensure their reports are accurate.[c]

Renter applicants must also be advised that they can obtain a copy of the report for free and can correct or supplement any incomplete or incorrect information in the report. But these reports are often difficult to obtain, and even when tenants can receive a background report and try to dispute incorrect information, landlords have likely already rented to the next applicant, limiting the impact of the tenant's challenge.

Local Housing Law Compliance

Some states or cities have implemented local laws that guide the behavior of landlords and screening activity, which may limit the look-back period or consideration of eviction records. These vary by locality, and many local regulations do not necessarily include eviction filings under tenant screening guidance. For example, cities such as Seattle[d] have passed fair chance housing policies that reduce the degree to which landlords and tenant screening services can require, disclose, or take adverse action against tenants based on criminal history. There are fewer local housing requirements focused on eviction filing data, but Philadelphia's Renters' Access Act aims to reduce landlords' ability to use specific eviction records when screening tenants.[e]

[a] Shivangi Bhatia, "To 'Otherwise Make Unavailable': Tenant Screening Companies' Liability under the Fair Housing Act's Disparate Impact Theory," *Fordham Law Review* 88, no. 6 (2020): 2551; and Matthew Desmond and Monica Bell, "Housing, Poverty, and the Law," *Annual Review of Law and Social Science* 11 (2015): 15.

[b] FHF and HJC (Family Housing Fund and Housing Justice Center), *Opening the Door: Tenant Screening and Selection* (Minneapolis: FHF; St. Paul, MN: HJC, 2021).

[c] "What Tenant Background Screening Companies Need to Know about the Fair Credit Reporting Act," Federal Trade Commission, accessed July 20, 2023, https://www.ftc.gov/business-guidance/resources/what-tenant-background-screening-companies-need-know-about-fair-credit-reporting-act.

[d] See Seattle's Fair Chance housing ordinance at "Fair Chance Housing," Seattle Office for Civil Rights, accessed July 20, 2023, https://www.seattle.gov/civilrights/civil-rights/fair-housing/fair-chance-housing.

[e] The act limits the reliance on records that did not end in judgment for the landlord; have been sealed; have been withdrawn or marked satisfied or settled, discontinued, and ended; were filed during the COVID-19 emergency period; have a judgement by agreement in place or have been resolved; or were incurred because of failure to pay rent or utility bills during the COVID-19 emergency period. See Fair Housing Commission, "Renters' Access Act: Tenant Screening Guidelines" (Philadelphia: Philadelphia Commission on Human Relations, Fair Housing Commission, 2021).

Record Masking, Expunging, and Sealing: Interventions to Encourage Stability?

Given the inaccuracy of many eviction files and their outsize impact on rental stability and housing access, many localities have recently attempted to limit the degree to which eviction records are made public, particularly when the defendant is found not at fault or when there has been a data error. There are multiple ways to reduce the presence and impact of eviction records, which vary in process and impact. Eviction record sealing and expungement can be effective at any stage of the eviction process—from filing to decision—and can be triggered automatically or through a petition process (Hussein, Bourret, and Gallagher 2023). See box 2 for details on expungement and sealing.

Yet it is not clear how expungement or sealing may affect tenant data and what tenant screening companies have access to. Lack of clarity in the sealing process may hinder implementation,[21] particularly in cases of selective sealing, where court staffing and capacity may create inconsistency in how records are sealed or expunged (Hussein, Bourret, and Gallagher 2023). Similarly, sealing and expunging should limit future sale to a third party, but given that many cases are sealed after a judgment is reached,[22] it may limit the impact on tenant screening. Companies can scrape records as soon as the information is public. Indeed, attorneys have indicated that tenant screening companies have even used handwritten pieces of paper with the tenant information at the courthouse to collect information.

By contrast, point-of-filing sealing masks or seals the record when a landlord files for eviction, so the eviction record does not enter the public record unless the court unseals or unmasks it. Sealing at the point of filing is likely to be the most effective at influencing tenant screening reports. Gold (2016), Caramello and Mahlberg (2017), and Dana (2017) argue that masking a record until a decision is reached is the most effective approach, as it reduces tenant screening companies' ability to collect information about eviction proceedings unless and until a landlord prevails and an order of possession is entered. Policymakers likewise have called for this type of sealing. The American Bar Association and the DC Council Office of Racial Equity, for example, have both indicated that automatic sealing can have the largest impact on inequities.

Yet there has been little analysis of how these laws affect renters, landlords, and the court system overall. The following section charts the passage and early impact of California's record masking law: AB 2819. Information was gathered through 13 interviews with lawyers representing both renters and landlords, legal experts, and policy advocates engaged in the bill's passage. Interviewees were identified through housing and renter advocacy organizations in various counties in California, landlord associations, and other housing-related nonprofits.

BOX 2

Overview of Eviction Record Expungement and Sealing

Eviction record expungement provides a pathway for individuals to have eviction filings removed from their records if certain expectations are met after a case is closed and recorded.[a] Depending on local law and process, the pathway to expungement can be onerous. In Cleveland, for example, a tenant has a single opportunity to determine eligibility, submit multiple documents, pay a $25 filing fee, and provide the plaintiff landlord with the action and an opportunity to object.[b]

Eviction record sealing does not remove a file completely from a court database; it limits public access of specific records. Specific requirements for sealing or masking vary substantially by region. In some states, such as California, Illinois, and Minnesota, the records of certain postforeclosure evictions are automatically sealed.[c] Localities vary in when they seal records. For example, California and Colorado courts seal eviction case records at filing if the action is denied, the case dismissed, or parties stipulate to sealing[d]; Colorado House Bill 20-1009 requires courts to suppress records of eviction cases while they are moving through the court process and to keep them hidden if the tenant wins.

[a] Several cities and states have passed eviction-relevant expungement laws, including New York, which allows tenants to expunge evictions that happened during the pandemic. Utah House Bill 359 allows any party to expunge records of an eviction if the eviction was for remaining after the end of the lease or nonpayment of rent and if any judgment for the eviction has been satisfied. Minnesota allows for expungement for specific cases, such as when the tenant vacated the property before the eviction was carried out. Cleveland allows motions to seal eviction records when the interest of justice in sealing the record outweighs the interest of the government and the public in maintaining a public record of the case. Oregon Senate Bill 873 allows individuals with past eviction judgements to have their records cleared.

[b] Danielle DalPorto and Makela Hayford, "Eviction Sealing," *Case Western Reserve Social Justice Law Center: Reporter* 2022.

[c] Emily A. Benfer, Solomon J. Greene, and Margaret Hagan, "Approaches to Eviction Prevention" (New York: SSRN, 2020); and Esme Caramello and Nora Mahlberg, "Combatting Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches," *Clearinghouse Review Journal of Poverty Law and Policy* (2017).

[d] See California Code of Civil Procedure § 1161.2 (2017).

California's AB 2819: An Approach to Protecting Renters

In 2016, California passed AB 2819, which limits access to court case records for 60 days. At the 60-day mark, the filing remains sealed unless the landlord prevails in trial within 60 days of filing. This action creates a pathway for tenants to seal records that resulted in a settlement.[23] Before the passage of AB 2819, renters subject to an eviction in California had 60 days from filing to win in court or face their

eviction records becoming publicly available, even if the tenant ultimately won the case after the 60-day mark.[24]

The eviction process in California moves quickly[25] in ways that often disadvantage the renter. Tenants have only five days to respond to a complaint in an eviction case, including weekends and holidays.[26] On the sixth day, a landlord can file paperwork to have the tenant evicted. If a tenant responds to the complaint within the five allotted days, a landlord can then request a trial that will be set within the following 20 days.

This accelerated timeline makes it likely that tenants will lose their cases by default, as many cannot respond within the initial five days, and the accelerated trial process makes it nearly impossible to collect evidence in support of the tenant through the discovery system. The tight timeline is also challenging for many people to take off work on short notice, find transportation and child care, and to take care of other logistics, which would be required for them to engage on such a tight timeline.

Before AB 2819, tenants faced an additional challenge. Under this system, eviction court records would remain "masked" for the first 60 days of the trial but remained so only if the tenant prevailed during that 60-day period. All other cases, including those that eventually were settled in the tenant's favor or cases dropped by the landlord after 60 days, were made public simply because the case file extended beyond the 60-day period. Interviewees who represented tenants indicated that this limited period put tenants at a negotiating disadvantage, as many clients agreed to any terms set out by a landlord simply to have the case closed within the 60-day period, even if the filing was inaccurate. One interviewee noted their clients were often willing to settle out of court regardless of the accuracy of the unlawful detainer, simply because court is unpredictable and economically uncertain. Another renter-focused attorney said, "Court can be a scary place where government institutions have not always been on [the defendant's] side.... We have tenants who don't want to sit through a trial, and when we settle, we try to settle to prioritize housing, and it preserves housing more [often] than not."

Other systemic factors, such as judicial budget cuts, court delays, and overloaded dockets that slowed down the processing time for unlawful detainers, often pushed the court date past the 60-day mark. Because of these limitations, mere involvement in eviction lawsuits puts tenants at risk of having a new eviction filed against them. The passage of AB 2819 drew attention to clerical components, such as when and how records are masked, highlighting how the data systems and court structures in place can have a significant impact on case outcomes and largely disadvantage tenants. For example, some counties use commissioners for unlawful detainers rather than a clerk, and commissioners generally have less time available than clerks. When eviction proceedings are rushed, tenants are less likely to prevail, creating inconsistencies in outcomes that have little to do with the specifics of a case.

Since the passage of AB 2819, the landlord-plaintiff must prevail within 60 days before a third party, such as a tenant screening company, can access eviction case records (AB 2819, 2015–16 Leg., Reg. Sess. [Cal. 2016]). After the 60-day period, if the court rules in favor of the landlord, the tenant's eviction file may be unmasked, but it is not automatic. Either the landlord or a third party, such as a tenant screening agency, may request that the file be unmasked, and then the decision is left in the

hands of the court and the clerks. AB 2819 mirrors similar laws that were already in place for homeowners. During the foreclosure crisis, masking was allowed for the narrow designation for those facing foreclosure (1161.A). AB 2819 brought a degree of symmetry by extending this protection to renters. Similarly, a 1991 Consumer Credit Reporting Agencies Act provided the state's ability to regulate the initial release of court records, paving the way for AB 2819.[27]

Because the focus on AB 2819 extended to issues regarding consumer data, court processes, and housing instability, proponents of AB 2819 included a broad group of legal services, housing advocates, consumer protection organizations, and groups focused on economic mobility, which extended outside the standard coalition lines for bills focused on tenant stability.

But landlord groups and apartment associations are often the primary opponents of sealing and masking. Interviews with landlord-focused attorneys suggest that landlords generally want records of evictions to be robust and feel that removing full transparency into unlawful detainer filings is unfair for landlords and bad for the housing system generally. AB 2819 accounts, in part, for this perspective. If the landlord wins, unmasking provides landlords accurate information.

The Impact of AB 2819 on California's Renters

Given that California's eviction records are not public, it is difficult to quantitatively determine how many individuals have been affected by AB 2819 and how its passage has reduced the total number of public eviction filings. But among our sample, the passage of AB 2819 has had a positive impact on renter stability. One attorney said that AB 2819 was the most impactful state law for tenants in the past 10 years.

First, interviewees noted that AB 2819 has changed some of the dynamics in eviction proceedings. Multiple interviewees noted that most unlawful detainer cases end up in a settlement with a default ruling. Advocates for tenants felt the 60-day timeline gave the landlord additional leverage to make requests of the tenant to allow the filing to be sealed, even beyond payment of any back rent. One attorney noted that in settlement cases, AB 2819 made the tenant more confident paying the amount they owe without needing to worry about masking the unlawful detainer. Tenant advocates reported that the lengthened timeline and default masking provided through AB 2819 allowed for a more balanced negotiation where both parties had an incentive to negotiate in good faith.

Second, the lengthened timeline did appear to reduce the number of eviction filings that can be collected by tenant screening companies. One attorney who works with tenants indicated "[AB 2819] has helped a lot. A lot of landlords would draw out the case, and at 60 days, it would be unmasked and would be searchable by name whether there is judgment entered. Credit companies and tenant screening companies would have an algorithm running checks every single day, so even if it was unmasked for a day, it gets pulled from the court website and stored in some list." Another interviewee indicated that even when AB 2819 passed, screening companies and data collection agencies, at times, would go to courts and take pictures of available case information from the day. As a result, California

courts aimed to limit public information with personally identifying information during the implementation period of AB 2819.

Interviewees noted multiple instances of tenants who would have been supported under this law before it had been passed. One individual who played a role as a key witness to the passage of AB 2819 had approached a legal aid office about being continually denied housing because she had an eviction on her record, but she had no knowledge of ever being served an eviction notice. Her lawyer discovered that her previous landlords had a house in foreclosure, which put an eviction filing on her record despite having no grounds for eviction.

Interviewees added that removing the record entirely appears to be helpful for multiple reasons. Not only does it remove the stigma of an eviction filing, but landlords also view accepting a tenant who has won a case against a landlord to be an unnecessary risk and are less likely to accept their tenancy, compounding the negative effects of an eviction filing. As such, keeping the records entirely out of the public domain has multiple benefits for future housing access and stability. Several interviewees noted that these outcomes appear to have shifted especially for tenants of color, who, lawyers indicated, were most likely to be affected by tenant screening reports. Although this is difficult to substantiate without state-level eviction filing data, their reporting matches national data showing that Black and Hispanic renters—and Black women in particular—are most likely to have evictions filed against them.[28]

Third, AB 2819 has alleviated the burden on both tenant lawyers and the courts. Before AB 2819, tenant lawyers needed to divert significant resources from substantive defense activities to try to keep an eviction record masked. Before AB 2819, lawyers operated under a 60-day time crunch with each case and needed to negotiate the sealing component of each unlawful detainer case that settled or was dismissed. Now that records are automatically sealed, the quantity of unmasked records has dramatically decreased, and tenant lawyers spend less time trying to remask records. Attorneys also noted that their caseloads were slightly more manageable without the 60-day time limit.

Furthermore, AB 2819 appears to have alleviated administrative burdens on courts. Interviewees noted that landlords sometimes filed evictions with no intention of going to court or paying for tenants' removal. These cases would pile up in court dockets and never get dismissed but now are dismissed after the 60-day period and tenants' records remain sealed, which reduces the burden for the courts and their staffers. Interviewees indicated that the automatic nature of the sealing process was important for ensuring the maximum impact while reducing the burden to the court system overall and the clerks involved in records. But landlord advocates have indicated that AB 2819 could make their work slightly more onerous by masking past unlawful detainer filings against a tenant, which lawyers often used when arguing a case.[29]

Key Successes Following the Passage of AB 2819

- **Reduces the number of eviction records that can be collected by tenant screening companies.** AB 2819 reduces the number of people relegated to tenant blacklists for mere involvement in eviction proceedings, even if the case is later informally dismissed or the tenant wins the case

after the 60-day mark. In tight housing markets, such as California, landlords rely on tenant screening company records to decide between housing applicants; presence on these lists can diminish credit scores and be a significant barrier to finding housing.

- **Alters the power dynamic between renters and landlords.** The lengthened timeline for litigation affords tenants more options. Before AB 2819's passage, tenants faced the choice of accepting settlements often not in their favor or going to court and risk having their records unmasked even if they prevailed after 60 days. AB 2819's lengthened timeline and default masking allows tenants greater ability to negotiate and creates a dynamic where the tenant and landlord can have a more balanced exchange.
- **Alleviates administrative burdens on courts and lawyers.** Under AB 2819, eviction records automatically remain sealed after the 60-day period, which is less burdensome than courts and clerks having to manually seal records if a case was ruled in a tenant's favor. Interviews also noted that the backlog of cases in a court's docket is smaller now that landlords must plan to go to court after filing for an eviction. Additionally, lawyers noted that they spend less time trying to remask records and that their caseloads were more manageable without the pressure of their client's eviction file becoming public, regardless of the court's ruling, after the 60-day time limit.

Key Challenges Following the Passage of AB 2819

There are also several key challenges for implementation and areas where future sealing laws or policies could be enhanced or improved.

- **Data availability outside of tenant screening.** Masked data are kept out of the public eye. Although this is good for individual renters, it poses challenges for journalists, researchers, and policymakers who want to understand general trends in eviction filings. Additionally, there is no racial or ethnic breakdown of evictions in California, and it would be helpful to know who would have been affected by AB 2819 from an equity perspective.
- **Decentralized court systems.** Although AB 2819 is a statewide law, each county court has its own system for dealing with court cases and unlawful detainers. One attorney referred to these as "individual fiefdoms," with different databases and different processes for entering and storing data. Implementation across county courts can look different. Interviewees noted that even though sealing has become automatic since its passage, the initial years of implementation varied substantially by court system. While some counties were able to implement AB 2819 with limited issues, others may not have had similar training or leadership. This may be particularly true in jurisdictions with fewer resources. In states with multiple court jurisdictions, the ability to quickly and consistently implement laws may require additional resources and trainings, as clerks and court staff members have limited time and resources.
- **Internal record keeping.** Landlords still maintain internal private records of eviction filings. This does not affect many individuals seeking to provide housing, given the fractured nature of

landlords, but it may have a larger impact for some—in particular, in markets with highly concentrated landlord structures, such as a growth of institutional owners, or with very few landlords. This may also affect people who are renting from specific types of affordable properties, as there is often a limited set of affordable property owners and managers within a jurisdiction who can still refer to their own internal records.

- **Needed systems-level changes.** More broadly, many interviewees indicated that more can be done beyond AB 2819. There is a need for more policy and programmatic support around housing stability outside the courts, such as hiring more case managers, resource providers, and other support staff members who can help support tenants as they struggle with housing stability and potential eviction filings.

Legal interventions may also help support housing stability. Interviewees noted that right to counsel laws have a significant positive effect on eviction proceedings. San Francisco passed Prop F, Tenant Right to Counsel, in 2018, and interviews indicated that this has significantly increased the number of cases that are decided in tenants' favor (MOHCD, n.d.). Similarly, some courts have added procedures, such as a standard process of working with legal aid services, to support tenants as they face housing instability.

Conclusions

The COVID-19 crisis brought attention to the millions of Americans who are at risk of eviction and the long-term implications that an eviction may have on that household. In the wake of the crisis, many localities and states have considered ways to reduce the incidence or impact of eviction filings, including just cause legislation and right to counsel.

Yet most jurisdictions have few protections that limit eviction filings from affecting households for decades, regardless of the filing's accuracy or its outcomes. As emerging evidence suggests that eviction filings can act like a scarlet "E," it is critical for all federal, state, and local policymakers to consider how individuals can be protected from the long-term impact of data that are often incomplete, inaccurate, or misleading.

California's AB 2819, which focuses on sealing upon filing, appears to have a large positive impact on renter stability, without adding a large burden to court systems or lawyers. The findings in this brief suggest record sealing upon filing may provide a clear technical avenue for reducing the impact of eviction filing, giving tenants an opportunity to address inaccurate unlawful detainers, and improve future outcomes. Given that much of the implementation can happen at the level of the courts, this is a centralized way to effect large-scale change. Depending on data systems in place, this change appears to be a low-barrier and low-cost solution that adds few burdens to lawyers, courts, and other legal actors. Because record sealing imposes fewer burdens on landlords, it may provide a more expedient route to protection and potentially have fewer unintended consequences than other requirements might have. But future research should focus on the way landlords may interpret laws such as AB 2819 and change their screening or leasing practices in response.

Progress on tenants' rights has been made in some cities and localities since the start of the pandemic, but many places may face an uphill battle as they attempt to make changes in the space of eviction record sealing. During interviews, many indicated that legislative headwinds may have changed since the pandemic, but landlords are putting up more resistance to tenants' rights bills, given that they needed to allow the moratoriums. This resistance may pose real challenges for localities aiming to mask filings.

Beyond eviction record masking, there are other data and education components that could reduce the impact of evictions and mitigate those impacts. Local advocates and fair housing organizations may also consider increasing education about eviction filings when working with landlords. More education on what eviction filings are and the quality of those records may reduce reliance on eviction filings or encourage landlords to change their screening criteria. Similarly, at the federal level, additional guidance or requirements on data quality, transparency, and accuracy would be needed to encourage tenant screening companies to minimize the use of poor-quality data.

Notes

1 TransUnion, "Low Turnover and Higher Rental Prices in 2017 Driving Profitable and Attractive Market for Landlords," news release, April 19, 2017, https://www.globenewswire.com/news-release/2017/04/19/963170/0/en/Low-Turnover-and-Higher-Rental-Prices-in-2017-Driving-Profitable-and-Attractive-Market-for-Landlords.html.

2 "Unlawful Detainer," Cornell Law School Legal Information Institute, accessed July 20, 2023, https://www.law.cornell.edu/wex/unlawful_detainer.

3 With the exception of regions with just cause laws; see "Just Cause Eviction Policies," Local Housing Solutions, accessed July 20, 2023, https://localhousingsolutions.org/housing-policy-library/just-cause-eviction-policies/.

4 Ann O'Connell, "State Laws on Rent Withholding and Repair and Deduct Remedies," Nolo, accessed July 20, 2023, https://www.nolo.com/legal-encyclopedia/state-laws-on-rent-withholding-and-repair-and-deduct-remedies.html.

5 Sandra Park and John Pollock, "Tenants' Right to Counsel Is Critical to Fight Mass Evictions and Advance Race Equity during the Pandemic and Beyond," American Civil Liberties Union, January 12, 2021, https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond.

6 TransUnion, "Low Turnover and Higher Rental Prices."

7 Manny Garcia and Edward Berchick, "Renters: Results from the Zillow Consumer Housing Trends Report 2022," Zillow blog, July 27, 2022, https://www.zillow.com/research/renters-consumer-housing-trends-report-2022-31265/.

8 Often, landlords will look at the years since the prior eviction and the number of years of positive rental history (FHF and HJC 2021). The look-back period varies and could be as long as 10 years. In an analysis by the Housing Justice Center, respondents to interviews indicate that they look back usually 2 to 3 years, with some looking back 5 years. Some landlords reject those who ever had an eviction.

9 Although rental history can be self-provided, it is often received through a company background report, which includes a history of eviction and relevant debts (FHF and HJC 2021).

10 See Jung Hyun Choi, Laurie Goodman, and Daniel Pang, "The Real Rental Housing Crisis Is on the Horizon," *Urban Wire* (blog), Urban Institute, March 11, 2022, https://www.urban.org/urban-wire/real-rental-housing-crisis-horizon.

[11] Lauren Kirchner and Matthew Goldstein, "How Automated Background Checks Freeze Out Renters," *New York Times*, May 28, 2020, https://www.nytimes.com/2020/05/28/business/renters-background-checks.html.

[12] Consumer Financial Protection Bureau, "CFPB Reports Highlight Problems with Tenant Background Checks," news release, November 15, 2022, https://www.consumerfinance.gov/about-us/newsroom/cfpb-reports-highlight-problems-with-tenant-background-checks/.

[13] In the Milwaukee Eviction Court Study, 48 percent of tenants who appeared on the court date got their cases dismissed or settled, while 29 percent were ordered evicted, and many more defaulted (Desmond 2012). Data collected by *Chicago Reader* showed that 37 percent of cases were resolved, including by stipulated dismissal, in favor of tenants. Another study showed that about 32 percent of 2014 cases in the Boston Housing Court ended in a final judgment execution for the landlord (Dixon et al. 2016).

[14] Peter Hepburn, Renee Louis, and Matthew Desmond, "Racial and Gender Disparities among Evicted Americans," Eviction Lab blog, December 16, 2020, https://evictionlab.org/demographics-of-eviction/.

[15] Hepburn, Louis, and Desmond, "Racial and Gender Disparities."

[16] Henry Gomory, Douglas S. Massey, James R. Hendrickson, and Matthew Desmond, "When It's Cheap to File an Eviction Case, Tenants Pay the Price," Eviction Lab blog, June 6, 2023, https://evictionlab.org/tenants-pay-for-cheap-evictions/.

[17] Kaveh Waddell, "How Tenant Screening Reports Make It Hard for People to Bounce Back from Tough Times," *Consumer Reports*, March 11, 2021, https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times-a2331058426/.

[18] Consumer Financial Protection Bureau, "CFPB Reports Highlight Problems."

[19] Consumer Financial Protection Bureau, "CFPB Reports Highlight Problems."

[20] Complaint, United States v. AppFolio, 1:20-cv-03563, Dec. 8, 2020,

[21] See California Code of Civil Procedure q 11612(a)(1)(G); 735 ILL. COMP. STAT. 5/9-121(c); and Minnesota Statutes 4 484.014 subdivision 3.

[22] For example, Oregon will grant a motion to seal the eviction case record if the tenant complies with a stipulation agreement or if judgment was given in the tenant's favor, among other reasons. Nevada seals eviction case records if the action is denied or the case is dismissed (Nevada Revised Statutes § 40.2545 [2019]).

[23] See California Code of Civil Procedure § 1161.2 (2017). Details on the law before AB 2819 are as follows: "court records in an eviction action may be made available only to the following: a party to the action, including the party's attorney; any person who provides the clerk with the names of at least one plaintiff and one defendant and the address of the premises; a resident of the premises who provides the clerk with the name of one of the parties or the case number and who shows proof of residency; any person by order of the court on a showing of good cause; or any other person 60 days after the filing of a complaint unless the defendant tenant prevails in the action within 60 days after the filing. If the defendant prevails, the court records may not be made available except to a person specified above (Code Civ. Proc. Sec. 1161.2(a).)." This part of the law, enacted by SB 345 (Kuehl, Ch. 787, Stats. 2003), was "designed to protect a tenant's identity from being released both while an action is pending and afterward, if the tenant prevails, so as not to harm the tenant's ability to secure alternate rental accommodation."

[24] See "Bill Analysis," California State Senate Judiciary Committee, accessed July 21, 2023, http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2801-2850/ab_2819_cfa_20160620_154723_sen_comm.html. Committee records described the prior law: "court records in an eviction action may be made available only to the following: a party to the action, including the party's attorney; any person who provides the clerk with the names of at least one plaintiff and one defendant and the address of the premises; a resident of the premises who provides the clerk with the name of one of the parties or the case number and who shows proof of residency; any person by order of the court on a showing of good cause; or any other person 60 days after the filing of a complaint unless the defendant tenant prevails in the action within 60 days after the filing. If the defendant prevails, the court records may not be made available except to a person specified above (Code Civ. Proc. Sec. 1161.2(a).)." This part of the law, enacted by SB 345 (Kuehl, Ch. 787, Stats. 2003), was "designed to protect a tenant's identity from being released both while an

action is pending and afterward, if the tenant prevails, so as not to harm the tenant's ability to secure alternate rental accommodation."

[25] Under California's Trial Court Delay Reduction Act (Government Code § 68600 et seq.), 75 percent of the cases filed must be disposed of within 12 months of the initial complaint, 85 percent must be disposed of within 18 months, and 100 percent must be disposed of within two years after the filing of the complaint.

[26] Under AB 2819, the provision changed from five days to five business days.

[27] In 1991, the California Consumer Credit Reporting Agencies Act (California Civil Code § 1785.1 et seq.) was amended to prevent consumer credit report agencies from reporting information on the outcome of unlawful detainer actions unless the landlord prevailed (see U.D. Registry, Inc. v. State of California, 34 Cal. App. 4th 107, 109–10 [1995]). This amendment was struck down by the California Court of Appeals on First Amendment grounds (see U.D. Registry, Inc. v. State of California, 34 Cal. App. 4th 107, 115 [1995]). But, the court wrote, "concern about the availability of rental housing for those needing housing, and particularly those facing eviction, is a valid and significant state interest. But it does not justify a ban on publication by credit reporting agencies of lawfully obtained truthful information contained in court records open to the perusal of everyone. The information is in the custody of the state. If the state is concerned about dissemination of this information, it has the power to control its initial release. As explained in Florida Star [v. B.J.F., 491 U.S. 524, 533 (1989)], the government may classify the information, establish procedures for its redacted release, and extend a damages remedy against the government if the government's mishandling of sensitive information leads to its dissemination."

[28] Hepburn, Louis, and Desmond, "Racial and Gender Disparities."

[29] The research team spoke with a property manager and lawyer about how AB 2819 affected their work. Other attempts at interviewing landlords and property managers went unanswered or were declined.

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The Urban Institute is collaborating with JPMorgan Chase to inform and catalyze a data-driven and inclusive economic recovery. The goals of the collaboration include generating cross -sector, place-based insights to guide local decisionmakers, using data and evidence to help advise JPMorgan Chase on the firm's philanthropic strategy, and conducting new research to advance the broader fields of policy, philanthropy, and practice. This brief analyzes a policy that aims to reduce the negative effects of inaccurate or dismissed eviction filings and highlights lessons that can be applied in other localities looking to achieve similar goals. The research questions that informed this study were raised by grantees of the Housing Innovation Program, an initiative working to identify, test, and scale housing innovations to address the ongoing housing crisis and to advance stability and affordability for Black, Latinx, Hispanic, and other households of color. Further information on the Housing Innovation Program is available at http://www.urban.org/housing-innovation-program.

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