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Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions

Katelyn Polk*

ABSTRACT

Having an eviction record “blacklists” tenants from finding future housing. Even renters with mere eviction filings—not eviction orders—on their records face the harsh collateral consequences of eviction. This Note argues that eviction records should be sealed at filing and only released into the public record if a landlord prevails in court. Juvenile record expungement mechanisms in Illinois serve as a model for one way to protect people with eviction records. Recent updates to the Illinois juvenile expungement process provided for the automatic expungement of certain records and strengthened the confidentiality protections of juvenile records. Illinois protects juvenile records because it recognizes that a young person’s behavior does not define how he or she will act as an adult. Similarly, evictions due to foreclosure, discrimination, or retaliation, for example, do not predict a tenant’s future behavior. Reliance on these records is misplaced. Sealing eviction records at the point of filing and holding private screening companies accountable for reporting sealed records would protect tenants who are currently haunted by the ghost of eviction without ever having been evicted.

INTRODUCTION

Pam Harrison faced eviction at the height of summer in 2018 after eighteen years of living in her unit.¹ In the new owner’s attempts to renovate the building, he cut the electricity, including air conditioning, to Ms. Harrison’s unit. She requested that the essential services be restored, as is her right,² but the owner did nothing to address her concerns. Ms. Harrison withheld a portion of her rent to account for the missing services, which prompted the landlord to retaliate by serving her a notice and filing an eviction

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¹ The introduction and the following paper reference anecdotes collected from interviews and case notes during the author’s internship with the Lawyers’ Committee for Better Housing during the summer of 2018 and were reproduced here with the organization’s permission. Please note: All first and last names have been changed to protect the privacy of the individuals and their families in each anecdote included in this note.

² 735 ILL. COMP. STAT., 5/12-070 (2019).

action. Retaliatory evictions are illegal.³ The court dismissed and sealed the landlord's eviction case against Ms. Harrison because of its retaliatory nature. However, the filing alone, without an eviction order, could still have harmed her if the record of it was not sealed or if private screening companies reported the sealed record.

Melissa Brown similarly faced a retaliatory eviction action in the summer of 2018. Mrs. Brown, her husband, and her four young children had rented a home in Chicago for four years. When Mrs. Brown took her youngest child to the pediatrician for an annual checkup in the spring of 2018, the doctor noticed symptoms of lead poisoning. Tests confirmed elevated levels of lead. By law, doctors are required to report such high levels of lead to the City of Chicago.⁴ Likely triggered by this reporting requirement, the City inspected Mrs. Brown's home and discovered lead paint. The landlord failed inspection, blamed Mrs. Brown for the City's involvement, and ultimately retaliated by filing an eviction action against Mrs. Brown. After much deliberation, Mrs. Brown, with help from her legal representation, reached an agreement with her landlord that resulted in the dismissal of the eviction action. The court subsequently sealed Mrs. Brown's case in order to prevent Mrs. Brown and her family from facing the harsh collateral consequences eviction normally forces on those it touches. If private tenant screening companies report this sealed eviction record, as they often do after recording filing data they retrieve from public records at court,⁵ Mrs. Brown and her young family stand to face difficulties in securing future housing.

In the spring of 2016, Kayla Swanson reported the substandard condition of her apartment unit to 311, the City of Chicago's non-emergency hotline for requesting information about city services and reporting poor and unsafe conditions.⁶ Her landlord, upset that the City inspected his unit and found code violations, filed an eviction action against Ms. Swanson. The evidence proving Ms. Swanson's landlord retaliated against her was undeniable. Because retaliatory evictions are against the law⁷ and Ms. Swanson had legal representation, the court dismissed and eventually sealed her case to protect Ms. Swanson from the collateral consequences that an eviction often has on tenants. Even though Ms. Swanson did nothing wrong and availed herself of the alleged protections of the law by getting her case sealed, and despite the fact that a review of Cook County public municipal records for the name 'Kayla Swanson' generates no record of eviction, the malicious and frivolous eviction filing against Ms. Swanson appeared on a tenant screening report issued by a private screening company and led a prospective landlord to deny her housing in 2018.

Because 39% of eviction cases in Chicago do not result in a judgment against defendant tenants, approximately 15,000 Chicago residents have an eviction filing on their records that may "blacklist" them from finding future housing despite having no legal judgment against them.⁸ Despite Chicago's reputation as a tenant-friendly city with tenant protections embodied in the Chicago Residential Landlord Tenant Ordinance, Chicago

³ 735 ILL. COMP. STAT., 5/12-150 (2019).

⁴ 410 ILL. COMP. STAT., 45/7 (2019).

⁵ See discussion *infra* Part IV.

⁶ *311 City Services*, CITY OF CHI., <https://www.cityofchicago.org/city/en/depts/311.html> (last visited Nov. 28, 2018).

⁷ 735 ILL. COMP. STAT., 5/12-150.

⁸ LAWYERS' COMMITTEE FOR BETTER HOUSING, PREJUDGED: THE STIGMA OF EVICTION RECORDS 3 (2018), <https://lcbh.org/sites/default/files/resources/Prejudged-Eviction-Report-2018.pdf>.

renters with eviction histories face barriers to finding safe and affordable housing. Even renters with mere eviction filings, and not eviction orders,⁹ on their records face the collateral consequences of eviction. The collateral consequences that result from sealed records being made discoverable by tenant screening companies and the failure of sealed records to remain hidden from tenant screening companies are a miscarriage of justice that society must rectify.

Part I describes the eviction process and discusses the scope of eviction and the numbers of eviction orders and eviction filings faced by Americans. Part I also provides data about Chicago, including the number of eviction filings, the number of eviction orders, and general information about the landscape of eviction in the city. Part II examines the collateral consequences of eviction for tenants. Tenants who receive eviction orders as well as tenants whose landlords file evictions against them but who never receive eviction orders face serious consequences. One of the most troubling results of having any type of eviction history, including merely a filing, is that it bars future housing. Part III addresses the racial and gender disparities in evictions and demonstrates that evictions disproportionately affect Black women and details some of the reasons why.

Part IV covers the current sealing process in eviction actions. While sealing aims to protect tenants from collateral consequences of eviction, all too often, tenants still suffer. Private companies specialize in providing tenant screening reports to prospective landlords that include eviction history, even sometimes sealed eviction history. This means that tenants who should have no visible record of their involvement in an eviction action for a reason specified by the laws of Illinois end up facing the same consequences as if they had actually been evicted. Once a tenant realizes that his or her tenant screening report incorrectly includes the eviction action at issue, a prospective landlord has likely already denied housing to due to the report. If justice requires the sealing of the action from public view, as is often required under various Illinois laws,¹⁰ tenant screening companies should not have access to or be able to report the information to landlords.

Part V discusses the parallel between expungement in the juvenile criminal context and sealing in the civil eviction context. I explore juvenile record expungement as a helpful model in improving the eviction sealing process. In particular, the recent expansion of automatic expungement of certain juvenile records in Illinois provides a process that the eviction space could parallel. Part VI suggests making the sealing process more accessible to tenants involved in evictions as a better way of handling eviction records. Tenants' rights groups and scholars have argued that eviction filings should be sealed immediately and only released to the public record upon eviction order. Although this proposal still faces challenges due to the severe lack of process and legal representation faced by tenants in eviction courts, more closely guarding eviction records is an important step forward in the fight for tenants' rights.

All eviction filings should be immediately and automatically sealed at the time of filing. Absent this reform, tenants in Chicago face the collateral consequences of eviction without ever having been evicted. The State of Illinois currently provides a mechanism for sealing that tenant advocates should work to expand. Expanding the sealing process in a

⁹ An eviction order is a judgment that forces the defendant tenant to vacate the premises. If a tenant does not vacate the premises in the prescribed time, they may face the Sheriff forcing them from the property without any of their belongings. *See infra* Part I.

¹⁰ *See, e.g.* 738 ILL. COMP. STAT., 5/9-121(b) (2018).

way that parallels parts of the juvenile record expungement process is one step that would protect tenants and help them move forward from a brush with eviction court. The court should seal all eviction filings as soon as a landlord plaintiff files. Upon disposition, if a landlord plaintiff prevails, the court can release the record to the public. But, if a case is resolved in favor of a tenant defendant, the court should then expunge the already sealed record for maximum protection of tenants.

I. WHAT IS EVICTION?

Eviction is the process by which a landlord removes a tenant from the landlord's property. Sociologist Matthew Desmond calculates that roughly 2.3 million evictions were filed in the United States in 2016.¹¹ This equates to four eviction filings per minute.¹² That same year, landlords filed 30,610 evictions in Cook County, Illinois.¹³ Chicago, the largest city in Cook County, accounted for nearly 20,000 of the eviction filings.¹⁴

Under current Chicago law, the grounds for eviction range from non-payment of rent, to material breach of lease, to simply wanting to rent the unit to someone else.¹⁵ An eviction requires that the landlord initiate and complete a formal, legal process.¹⁶

In Chicago, the eviction process ostensibly begins with a notice to a tenant.¹⁷ For non-payment of rent, landlords typically use a five-day notice, which requires a landlord to give a tenant five days to pay rent before eviction can be filed.¹⁸ For breaches of lease, landlords may give their tenants a ten-day notice, which also provides tenants with the ability to cure the breach before the landlord may file a case in eviction court.¹⁹ Examples of breaches of lease include violating subleasing provisions or conducting criminal activity on the premises.²⁰ These notices serve as a stopwatch of sorts, theoretically giving tenants time to correct any faults on their part before when a landlord can file an eviction action against them. Landlords also have the option of using a thirty-day notice to begin the process of terminating tenants in month-to-month tenancies.²¹ The landlord does not need

¹¹ Terry Gross, *First-Ever Evictions Database Shows: 'We're In the Middle Of A Housing Crisis'*, NPR (Apr. 12, 2018), <https://www.npr.org/2018/04/12/601783346/first-ever-evictions-database-shows-were-in-the-middle-of-a-housing-crisis.html>.

¹² *Id.*

¹³ *Cook County, Illinois*, EVICTION LAB, <https://evictionlab.org/map/#/2016?geography=counties&bounds=-102.402,32.005,-80.737,45.023&type=er&locations=17,-89.199,40.066%2B17031,-87.817,41.84> (last visited Nov. 28, 2018).

¹⁴ Maya Dukmasova, *New Data Reveals Impact of Being Lawyerless in Chicago Eviction Court*, CHI. READER (Sept. 14, 2017), <https://www.chicagoreader.com/Bleader/archives/2017/09/14/new-data-reveals-impact-of-being-lawyerless-in-chicago-eviction-court.html>.

¹⁵ CRLTO, Chi. Mun. Code § 5-12-130.

¹⁶ LAWYERS' COMMITTEE FOR BETTER HOUSING, NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT 6 (2003).

¹⁷ CRLTO, Chi. Mun. Code § 5-12-130.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ This depends on the provisions in a tenant's lease. See Illinois Legal Aid Online (ILAO), *Legal Process of Renting an Apartment* (Oct. 2017), <https://www.illinoislegalaid.org/legal-information/legal-process-renting-apartment> (last visited March 15, 2019).

²¹ CRLTO, Chi. Mun. Code § 5-12-130.

to have any cause to evict a month-to-month tenant with a thirty-day notice.²² Tenants may leave voluntarily before the landlord files an eviction, but if a tenant does not wish to move out pursuant to a private, out-of-court agreement, a landlord may choose to file a formal eviction action against a tenant.²³

Once a landlord has waited at least the requisite number of days (five, ten, or thirty), the landlord may file an eviction action against the tenant. A tenant must be served by the Sheriff with a summons to court.²⁴ The summons must include the complaint at issue as an attachment.²⁵ If the Sheriff cannot locate the defendant or someone legally qualified to accept service on the defendant's behalf, the Sheriff's attempts at service are not successful. Then, a landlord may then ask the court to appoint a special process server in order to serve the tenant.²⁶

Eviction cases in Chicago are assigned to judges at the Richard J. Daley Center.²⁷ The Daley Center houses a variety of municipal courts for the City of Chicago and Cook County, including eviction court, traffic court, and the Chancery division.²⁸ A favorable outcome for a tenant in eviction court usually results in the case's dismissal.²⁹ A dismissal of the eviction action indicates that a landlord failed to, or actively chose not to, provide sufficient evidence to prove the eviction case against the tenant.³⁰ A favorable outcome for a landlord in eviction court usually results in the court granting the landlord possession of the property.³¹ This judgment in the eviction action for a landlord and against a tenant directs the Sheriff to remove the tenant from the unit.³² In addition to this order, the court may also grant a landlord a money judgment of any money owed to the landlord by the tenant.³³

Eviction cases can also end in an agreed order, also known as a settlement.³⁴ If a tenant and landlord can agree on a solution to settle the case, and the judge accepts the agreement, the agreement can result in an "agreed order" that usually dismisses the case.³⁵ An eviction case may also end in a default judgment if a tenant defendant fails to appear in court for any reason.³⁶ If this is the case, an eviction order is automatically entered.³⁷

Eviction cases have a notoriously quick timeline—cases can go from notice to final disposition in a matter of weeks.³⁸ The process of legal eviction is often unclear to tenants

²² *Id.*

²³ *Id.*

²⁴ Lawyers' Committee for Better Housing, *supra* note 16, at 25.

²⁵ *Id.*

²⁶ 735 ILL. COMP. STAT., 5/2-202 (2018).

²⁷ Lawyers' Committee for Better Housing, *supra* note 8, at 6.

²⁸ *Directory*, THE DALEY CENTER (Feb. 6, 2019), <http://thedaleycenter.com/directory/>.

²⁹ Lawyers' Committee for Better Housing, *supra* note 8, at 6.

³⁰ *Id.*

³¹ Dukmasova, *supra* note 14.

³² Lawyers' Committee for Better Housing, *supra* note 8, at 5.

³³ Dukmasova, *supra* note 14.

³⁴ Lawyers' Committee for Better Housing, *supra* note 8, at 6.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Dukmasova, *supra* note 14.

and moves rapidly,³⁹ leading to eviction court in Chicago being called “a black box.”⁴⁰ If an eviction case makes it to trial, the average trial lasts only one minute and forty-four seconds.⁴¹ In the blink of an eye, entire families are evicted. A report authored by the Lawyers’ Committee for Better Housing (LCBH), a Chicago tenants’ rights legal aid organization, calls this an “unbelievably short time period in which matters of profound impact on individuals’ human dignity are decided.”⁴² In completed eviction cases between 2014 and 2017 where landlords alleged nonpayment of rent, two-thirds of tenants did not present defenses for themselves in court.⁴³ Legal defenses raised by defendants did not affect the outcome: tenants always lost, even when they raised defenses like poor conditions in their units or their landlord’s refusal to accept rent.⁴⁴

This data highlights another troubling feature of Chicago’s eviction court: a lack of legal representation for tenants. The court resolved cases in the favor of pro se tenants, who represented themselves, only 33% of the time.⁴⁵ To compare, the court resolved cases in the favor of tenants who had lawyers 58% of the time.⁴⁶ Only 12% of the almost 20,000 tenants that faced eviction in 2016 had attorneys at any point throughout their case.⁴⁷ Landlords, on the other hand, almost always have legal representation.⁴⁸ Eighty-three percent of landlords had lawyers in Chicago eviction court in 2016.⁴⁹

The lack of legal representation available for tenants, the notoriously quick timeline of eviction cases, and the fact that, even when tenants raise legal defenses, they are often ignored, together make eviction court a dangerous place for tenants.

³⁹ *Id.*

⁴⁰ Maya Dukmasova, *Attorneys: Cook County Eviction Court Proceedings Are “Black Box”*, CHI. READER (Dec. 21, 2016), <https://www.chicagoreader.com/chicago/cook-county-eviction-court-tenants-rights/Content?oid=24745039.html>.

⁴¹ *Id.*

⁴² Lawyers’ Committee for Better Housing, *supra* note 16, at 20.

⁴³ *See id.* at 13-14; *see also* Dukmasova, *supra* note 40.

⁴⁴ Lawyers’ Committee for Better Housing, *supra* note 16, at 16.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Dukmasova, *supra* note 14.

⁴⁸ *Id.*

⁴⁹ *Id.*

II. COLLATERAL CONSEQUENCES OF EVICTION

As soon as a landlord files an eviction action against a tenant, it becomes part of the public record.⁵⁰ LCBH estimates that more than 15,000 people each year end up with a public eviction record—even though they have no eviction order or other judgment against them.⁵¹ An eviction filing alone, which is a “publicly accessible history of having sued or been sued by a landlord,”⁵² can become an almost insurmountable obstacle for tenants as they search for housing in the future.⁵³

Landlords and property managers investigate prospective tenants in order to guard their financial investments and foster a positive environment for the other tenants in the building.⁵⁴ But landlords and the public at-large often do not understand the difference between an eviction filing and an eviction order.⁵⁵ Too many landlords refuse to rent to prospective tenants if they see an eviction *filing* on their record,⁵⁶ regardless of the context or outcome of the case.⁵⁷ Because filings alone do not provide the context or outcome of a case, a tenant can prevail on his or her eviction case for any number of reasons but still face the dangerous collateral consequences of eviction.⁵⁸ Thus, regardless of whether a tenant has an eviction filing on his or her record that the court ultimately dismissed or whether the court ordered a tenant to be evicted, the consequences are frequently the same.⁵⁹ The word “eviction” on a record functionally blacklists tenants from housing.⁶⁰ This consequence persists indefinitely.⁶¹ Incomplete or unclear court records that do not indicate the disposition or what happened at each stage of the case can also exacerbate the problem,⁶² “especially in a digital age where personal information is easily accessed and aggregated as soon as a court case is filed,”⁶³ causing near-immediate damage to an individual’s rental prospects.⁶⁴ An applicant for housing absorbs the impact of incomplete or unclear records when the landlord sees the word “eviction” on the prospective tenant’s public record and subsequently chooses not to rent to the applicant.⁶⁵

In addition to facing difficulties because of blacklists in the private housing market, eviction filings may also impede a tenant’s access to public housing.⁶⁶ An eviction often disqualifies a tenant from subsidies for public housing.⁶⁷ Matthew Desmond even goes so

⁵⁰ Kristin Ginger, *Eviction Filings Hurt Tenants, Even If They Win*, SHELTERFORCE (July 30, 2018), <https://shelterforce.org/2018/07/30/eviction-filings-hurt-tenants-even-if-they-win/>.

⁵¹ Lawyers’ Committee for Better Housing, *supra* note 8, at 3.

⁵² *Id.* at 7.

⁵³ Ginger, *supra* note 50.

⁵⁴ Lawyers’ Committee for Better Housing, *supra* note 8, at 5.

⁵⁵ Ginger, *supra* note 50.

⁵⁶ *Id.*

⁵⁷ Lawyers’ Committee for Better Housing, *supra* note 8, at 3.

⁵⁸ Ginger, *supra* note 50.

⁵⁹ Lawyers’ Committee for Better Housing, *supra* note 8, at 3.

⁶⁰ Robert R. Stauffer, *Tenant Blacklisting: Tenant Screening Services and The Right to Privacy*, 24 HARV. J. LEGIS. 239, 268 (1987).

⁶¹ *Id.*

⁶² Lawyers’ Committee for Better Housing, *supra* note 8, at 3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Ginger, *supra* note 50.

⁶⁶ Lawyers’ Committee for Better Housing, *supra* note 8, at 9.

⁶⁷ Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J. L. & GENDER 56, 67 (2018).

far as to conclude in his landmark book, *Evicted*, that evictions result from poverty, but also cause poverty.⁶⁸ Evictions adversely affect a tenant's credit score, making it difficult to find employment opportunities and pursue educational opportunities.⁶⁹ Evictions all too often lead to a dangerous cycle of homelessness, job loss, financial insecurity, and family instability.⁷⁰ For example, Tanya Bailey's eviction resulted in her losing her job because she could no longer walk to work, could not afford a car, and had to move in with a friend who lived too far from public transportation. With the eviction on her record and her loss of income, Ms. Bailey could not find a new apartment to rent, let alone afford to pay rent.⁷¹ The hit to her credit score only exacerbated Ms. Bailey's difficulties as she tried to plan her next steps.

Eviction has broad and severe consequences. Sheltering tenants from the harmful collateral consequences that accompany an eviction filing serves as a seminal first step to addressing the broader inequities of eviction.⁷²

III. WHO FACES EVICTION?

Eviction most affects low-income women, especially Black women.⁷³ In Chicago, Black women comprise roughly fifteen percent of the population,⁷⁴ yet make up nearly half of tenants in eviction court.⁷⁵ Desmond reported that, "in disadvantaged neighborhoods, eviction is to women what incarceration is to men: incarceration locks men up, while evictions lock women out."⁷⁶ Women's comparatively low wages constitute one reason that women disproportionately face eviction.⁷⁷ For example, in high-poverty Black neighborhoods, women are more likely to work than men, but their wages are often lower than the wages of men.⁷⁸ Single mothers face extra challenges, as they must not only pay for larger units but must also find landlords willing to rent to families with young children.⁷⁹ Landlords can be hesitant to rent to families with young children due to the

⁶⁸ Lawyers' Committee for Better Housing, *supra* note 8, at 5.

⁶⁹ See Sabbeth, *supra* note 67, at 67.

⁷⁰ *Id.*

⁷¹ *Supra* note 1.

⁷² Lawyers' Committee for Better Housing, *supra* note 8, at 14.

⁷³ *Why Eviction Matters*, EVICTION LAB, <https://evictionlab.org/why-eviction-matters/#who-is-at-risk> (last visited Nov. 28, 2018); see also MATTHEW DESMOND, MACARTHUR FOUNDATION, POOR BLACK WOMEN ARE EVICTED AT ALARMING RATES, SETTING OFF A CHAIN OF HARDSHIP (2014), https://www.macfound.org/media/files/HHM_Research_Brief_-_Poor_Black_Women_Are_Evicted_at_Alarming_Rates.pdf.

⁷⁴ *QuickFacts: Chicago City, Illinois*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/chicagocityillinois> (last visited Feb. 3, 2020).

⁷⁵ LAWYERS' COMMITTEE FOR BETTER HOUSING, OPENING THE DOOR ON CHICAGO EVICTIONS: CHICAGO'S ONGOING CRISIS 5 (2020), <https://eviction.lcbh.org/sites/default/files/reports/chicago-evictions-1-ongoing-crisis.pdf>.

⁷⁶ Desmond, *supra* note 73, at 1.

⁷⁷ *Id.* at 2.

⁷⁸ *Id.*; see also Mary Spector, *Tenant Stories: Obstacles and Challenges Facing Tenants Today*, 40 J. MARSHALL L. REV. 407, 408 (2007) (showing the average full-time wage for women is 81% that of men).

⁷⁹ Desmond, *supra* note 73, at 2; see also MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016).

perception that children often come with increased state oversight,⁸⁰ as Melissa Brown's lead poisoning experience demonstrates.

Housing comprises the second most common legal challenge for low-income households in Illinois, following only debt collection.⁸¹ Though women's earning power has increased over time, the average full-time wage-earning woman makes 81% of what a full-time wage-earning man makes.⁸² Black and Latinx women earn even less than white women and thus spend a higher percentage of their income on housing.⁸³ Overwhelmingly, tenants facing eviction are poor Black women.⁸⁴

Desmond, too, suggests that gender plays a role in the increased evictions women face at the hands of predominantly male landlords.⁸⁵ In his research, Desmond found that men often confronted landlords directly upon being served with an eviction notice, while women often "recoiled from conflict" after being served with an eviction notice.⁸⁶ Men also often offer to perform maintenance or other work around the unit or building in exchange for owed rent money.⁸⁷ Sexual harassment from landlords is yet another phenomenon that distinguishes a woman's experience as a tenant from that of a man.⁸⁸ Women might face suggestive remarks, threats, and sexual assault from landlords.⁸⁹ If a woman refuses the sexual advances of her landlord, she may be met with her landlord's anger and retaliation.⁹⁰ When a woman complains, the landlord often finds a reason to evict her.⁹¹ Take for example, Christina Brown's experience. Her landlord caressed her arm and back, and told her that if she could not pay her rent, she could take care of it in other ways, implying sex.⁹² Ms. Brown slammed the door in her landlord's face; her refusal of the landlord's advances led to her eviction.⁹³

Women also disproportionately face eviction because of children. Women are more likely than men to live with children, and women that live with children are more likely than women that do not live with children to face eviction.⁹⁴ Children increase the potential for eviction for myriad reasons: children make noise, children damage property, and children attract the attention of the state in the form of police interaction and agencies like the Department of Children and Family Services.⁹⁵ The police interact disproportionately with Black and Latinx children.⁹⁶ The disruptions caused by police activity in a neighborhood can lead to mothers' evictions.⁹⁷

⁸⁰ Desmond, *supra* note 73, at 2.

⁸¹ MARK MARQUARDT ET AL., CHICAGO BAR ASS'N, THE LEGAL AID SAFETY NET: A REPORT ON THE NEEDS OF LOW INCOME ILLINOISANS 20 (2005).

⁸² Spector, *supra* note 78, at 408. (2007).

⁸³ *Id.*

⁸⁴ *Id.* at 409.

⁸⁵ MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY, *supra* note 79, at 72–76.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Sabbeth, *supra* note 67, at 65.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² DiCenso v. Cisneros, 96 F.3d 1004, 1006 (7th Cir. 1996).

⁹³ *Id.*

⁹⁴ Sabbeth, *supra* note 67, at 90.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*; see also 735 ILL. COMP. STAT., 5/9-120 (2018).

Women's concern over their children can also lead to their eviction. Due to the fact that substandard housing conditions pose danger for children, women are more likely than men to report condition issues to relevant agencies because they disproportionately live with children.⁹⁸ Landlords often find it cheaper to evict tenants that complain about housing conditions rather than maintain the property in a habitable state.⁹⁹ Additionally, since single women with children are often financial responsible for the needs of their children, including school supplies, medical care, clothing, food, and shelter, rent competes with the family's other needs when it comes to their budgets.¹⁰⁰

Moreover, since women are more likely than men to work in the formal economy and to receive public assistance, and because they are less likely than men to have criminal records, they are more likely to qualify as a tenant in order to lease housing.¹⁰¹ Because landlords view women as more eligible tenants, landlords more often name women as tenants on leases even when they cohabit with men, and, therefore, landlords more often name women in evictions later on.¹⁰²

IV. SEALING AN EVICTION RECORD

Under Illinois law, the public court record immortalizes eviction cases.¹⁰³ Illinois law provides for the sealing of particular eviction records.¹⁰⁴ This section outlines the current state of sealing eviction record sealing in Illinois and explains what a tenant screening report is and how to dispute tenant screening reports that relay incorrect or misleading information. Increasing tenants' ability to seal their eviction records would serve to expand access to safe and affordable housing. The Illinois statute provides:

Sec. 9-121. Sealing of court file.

(a) Definition. As used in this Section, "court file" means the court file created when an eviction action is filed with the court.

(b) Discretionary sealing of court file. The court may order that a court file in an eviction action be placed under seal if the court finds that the plaintiff's action is sufficiently without a basis in fact or law, which may include a lack of jurisdiction, that placing the court file under seal is clearly in the interests of justice, and that those interests are not outweighed by the public's interest in knowing about the record.

(c) Mandatory sealing of court file. The court file relating to an eviction action brought against a tenant under Section 9-207.5 of this Code or as set forth in subdivision (h)(6) of Section 15-1701 of this Code shall be placed under seal.¹⁰⁵

⁹⁸ Sabbeth, *supra* note 67, at 91.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 92.

¹⁰¹ *Id.* at 94.

¹⁰² *Id.*

¹⁰³ Lawyers' Committee for Better Housing, *supra* note 8, at 6.

¹⁰⁴ 735 ILL. COMP. STAT., 5/9-121 (2018).

¹⁰⁵ *Id.*

The only way a court case does not appear in the public record is if the tenant files a motion to seal the record and the judge grants the motion.¹⁰⁶ LCBH defines sealing as “the practice of removing certain court records from public view.”¹⁰⁷ After a court seals a case, accessing information about the case requires the permission of the court.¹⁰⁸

Because of reforms after the 2008 foreclosure crisis, Illinois law provides for mandatory sealing of eviction court files if a landlord evicts a tenant due to the property owner being foreclosed upon.¹⁰⁹ Even though sealing is mandatory in foreclosure-related cases, LCBH reported that courts have inconsistently applied mandatory sealing.¹¹⁰ Because the law itself only requires that foreclosure-related cases be sealed eventually, as opposed to at the point of filing, all too many end up in the public record.¹¹¹ Housing advocates met with the Presiding Judge of the First Municipal District of the Circuit Court of Cook County and shared that the law did not adequately protect tenants with eviction histories due to foreclosure.¹¹² On November 14, 2014, the Presiding Judge issued an administrative order in Cook County that requires courts to seal foreclosure-related eviction records at filing, which has significantly benefited tenants by increasing the number of cases sealed.¹¹³

In all other cases unrelated to foreclosure, sealing is discretionary—not mandatory. In this majority of cases, to warrant sealing under the current legal regime, the case must be “sufficiently without a basis in fact or law,” “clearly in the interests of justice,” and those interests must outweigh “the public’s interest in knowing about the record.”¹¹⁴ This is a high bar. In one of the only published appellate decisions related to sealing in Chicago, the appellate court upheld the lower court’s refusal to seal an eviction case that ended with an agreed settlement order and total dismissal of the case.¹¹⁵ This high bar clearly prevents many cases from being sealed.¹¹⁶

Increasing the ability to seal eviction records can expand access to housing for low-income Chicago residents.¹¹⁷ Sealing an eviction record at the point of filing can protect a tenant from having an eviction record on tenant screening reports and can ensure that tenants avoid the collateral consequences that accompany eviction. Unfortunately, in current practice, even if courts granted motions to seal at the conclusion of each case in which a defendant tenant prevailed, tenants would still lack adequate protection. Sealing the record after the fact means that a tenant is likely already blacklisted because the filing

¹⁰⁶ *Id.*; 735 ILL. COMP. STAT., 5/9-121(b).

¹⁰⁷ Lawyers’ Committee for Better Housing, *supra* note 8, at 6.

¹⁰⁸ *Id.*

¹⁰⁹ Lawyers’ Committee for Better Housing, *supra* note 8, at 16; 735 ILL. COMP. STAT., 5/9-121(c). Section (c) refers to Section 9-207.5 and Section 15-1701 of the Illinois Compiled Statutes, which both govern foreclosure. 735 ILL. COMP. STAT., 5/9-207.5 (2013); 735 ILL. COMP. STAT., 5/15-1701 (2018).

¹¹⁰ Lawyers’ Committee for Better Housing, *supra* note 8, at 14.

¹¹¹ *Id.*; 735 ILL. COMP. STAT., 5/9-121(b).

¹¹² *Judge’s General Order Protects Renters’ Rights*, LAWYERS’ COMMITTEE FOR BETTER HOUSING (Feb. 18, 2015), <https://lcbh.org/news/judges-general-order-protects-renters-rights.html>.

¹¹³ Lawyers’ Committee for Better Housing, *supra* note 8, at 14.

¹¹⁴ 735 ILL. COMP. STAT., 5/9-121(b).

¹¹⁵ *Habitat Co., LLC v. Peeples*, 109 N.E.3d 800, 802 (Ill. App. Ct. 2018).

¹¹⁶ Lawyers’ Committee for Better Housing, *supra* note 8, at 14.

¹¹⁷ *Id.*

itself has been a matter of public record since the inception of the case.¹¹⁸ Automatically sealing eviction cases at the time of filing and then releasing records into the public record only upon a finding in favor of the landlord would protect tenants who either get their cases dismissed or prevail in their cases from the collateral consequences of eviction caused by the current sealing regime.

A. *Tenant Screening Reports*

Landlords typically screen prospective tenants before renting their properties.¹¹⁹ LCBH lists “checking an applicant’s credit history, criminal history, and . . . eviction court history” as common objectives of a screening report.¹²⁰ Tenant screening companies often maintain information that they pull from the public record of court filings.¹²¹ Court records are easy to access. In Chicago, any person—including a landlord or a representative from a tenant screening company—need only go to the Daley Center and access the public record through any number of computers provided for this very reason.¹²²

Tenant screening companies collect the names of tenants who have evictions filed against them and store the information for future use.¹²³ This screening practice exemplifies an irresponsible abuse of public records because, at the point of filing, the court has not established any fault. A tenant can prevail in court, the court can dismiss the case for any number of reasons, or the court could later seal the case—in any of these outcomes, a tenant’s information still appears on a private company’s database. Because 39% of eviction cases in Chicago do not result in a judgment against the tenant, over 15,000 Chicagoans may have an eviction filing on their records that blacklist them from finding future housing despite having no legal judgment against them.¹²⁴

Tenant screening companies function like credit bureaus.¹²⁵ The companies provide the landlords with information about prospective tenants, including whether any of the prospective tenants have eviction filings against them, even eviction filings that have subsequently been sealed by law.¹²⁶ In addition to eviction records and tenant history, these reports may also include information about where a prospective tenant lives, how a tenant pays bills, and whether a tenant has been sued or arrested, among other things.¹²⁷

The Fair Credit Reporting Act (FCRA) forbids consumer reporting agencies from reporting most information after it is seven years old.¹²⁸ Despite this protection, online

¹¹⁸ Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. POVERTY L. & POL’Y 59, 79 (2016); *see also, infra* Part III.

¹¹⁹ Lawyers’ Committee for Better Housing, *supra* note 8, at 7.

¹²⁰ *Id.* The Federal Trade Commission (FTC) explained that credit reporting companies sell the information in the reports they run to landlords that use it to evaluate applications. Fed. Trade Comm’n., *Disputing Errors on Credit Reports*, FED. TRADE COMMISSION CONSUMER INFO. (Feb. 2017) <https://www.consumer.ftc.gov/articles/0151-disputing-errors-credit-reports> (last visited Nov. 28, 2018).

¹²¹ Stauffer, *supra* note 60, at 242; *see also* Paula Franzese, *A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity*, 45 FORDHAM URB. L.J. 661, 667–68 (2018).

¹²² *See* Lawyers’ Committee for Better Housing, *supra* note 8, at 5.

¹²³ Stauffer, *supra* note 60, at 240–46.

¹²⁴ Lawyers’ Committee for Better Housing *supra* note 8, at 3.

¹²⁵ Stauffer, *supra* note 60, at 240.

¹²⁶ *Id.*

¹²⁷ Fed. Trade Comm’n, *supra* note 120; *see also* Stauffer, *supra* note 60, at 243.

¹²⁸ Lawyers’ Committee for Better Housing *supra* note 8, at 7.

court records and many private tenant screening services continue to report eviction records older than seven years.¹²⁹

The FCRA provides that companies may provide consumer reports to anyone with a “legitimate business need for the information” if the “business transaction is initiated by the consumer,”¹³⁰ thus providing landlords with access to the reports of tenant screening companies. Because tenant screening companies exist to serve landlords, however, they have little incentive to ensure that the information they provide about prospective tenants is accurate.¹³¹ A screening company’s incorrect report of an eviction filing or a sealed eviction case severely harms tenants but does not harm landlords.

If a landlord reviews a prospective tenant’s screening report and chooses not to rent the unit to a tenant based either entirely or partially on a piece of information that appears on the report, the landlord must provide the prospective tenants with an adverse action letter.¹³² A landlord “shall disclose to the consumer a summary containing the nature and substance of the communication upon which the adverse action is based . . .”¹³³ Because this provision requires that landlords explain their denial of prospective tenants based on information in their reports, tenants with eviction cases that the court either dismissed or sealed, or both, often only learn that their reports display misleading information upon being denied housing and only when landlords follow the law.

B. Disputing Incorrect Screening Reports

Once an individual realizes that a screening report shows an eviction filing, a sealed eviction case, or both, that individual must jump through complicated bureaucratic hoops to address the issue and attempt to remove any mistake from the report.

The FCRA requires reinvestigation if a consumer disputes the information provided on his or her credit score.¹³⁴ The FCRA holds both the credit reporting company and the entity that provides incorrect or misleading information about a person to the credit reporting company responsible for correcting inaccurate or misleading information on reports.¹³⁵ When a person’s credit report displays inaccurate or misleading information, that person must first report the inaccuracy in writing to the credit reporting company.¹³⁶ The FCRA provides that:

A consumer who seeks to dispute the accuracy of information shall provide a dispute notice directly to such person at the address specified by the person for such notices that--

- (i) identifies the specific information that is being disputed;
- (ii) explains the basis for the dispute; and

¹²⁹ *Id.*

¹³⁰ 15 U.S.C. § 1681b(a)(3)(F) (2012).

¹³¹ Stauffer, *supra* note 60, at 244.

¹³² 15 U.S.C. § 1681a(y)(2) (2012).

¹³³ *Id.*

¹³⁴ 15 U.S.C. § 1681i(a)(1)(A) (2019).

¹³⁵ Fed. Trade Comm’n, *supra* note 120.

¹³⁶ *Id.*

(iii) includes all supporting documentation required by the furnisher to substantiate the basis of the dispute.¹³⁷

The Federal Trade Commission (FTC) places additional onerous requirements on tenants by instructing individuals who wish to contest their reports that, “in addition to providing your complete name and address, your letter should clearly identify each item in your report you dispute, state the facts and explain why you dispute the information, and request that it be removed or corrected.”¹³⁸ Additionally, the FTC requires that a disputing individual send a dispute letter by certified mail with return receipt requested and that the individual should keep copies of each dispute letter and any additional documents sent.¹³⁹ The credit reporting company is supposed to investigate the items an individual disputes and provide the individual with a copy of the results of any investigation.¹⁴⁰

The FTC places an additional burden on tenants by also suggesting that individuals send a letter disputing incorrect information to the “information provider (that is, the person, company, or organization that provides information about you to a credit reporting company).”¹⁴¹ A disputer should again attach copies of relevant documents.¹⁴² After providing guidance on how to dispute inaccurate reports, the FTC makes a note about accurate “negative information.”¹⁴³ The FTC writes that “only the passage of time can assure its removal”¹⁴⁴ from a consumer report, though this is untrue in practice for tenants with an eviction history since eviction case information remains in the public record forever.¹⁴⁵ If the dispute letters do not resolve the issue, an individual is entitled to file a brief statement explaining the dispute.¹⁴⁶ The company must include this written statement in all future reports that it provides.¹⁴⁷

The FCRA itself explicitly states that “unfair credit reporting methods undermine the public confidence which is essential. . .”¹⁴⁸ The prevalence of incorrect or misleading information, like the report of a sealed eviction filed for retaliatory reasons presumably further undermines the public confidence. Unfortunately, the system for correcting reports only occasionally works for tenants, and only after the damage has already been done.

V. EXPUNGEMENT AS A HELPFUL MODEL TO IMPROVE THE EVICTION SEALING SYSTEM

In recent years, the public has voiced concern over the collateral consequences that people with criminal records face.¹⁴⁹ Everyone from Pope Francis to late-night talk show hosts have discussed the importance of rehabilitation and the problems that criminal

¹³⁷ 15 U.S.C. § 1681s-2(a)(8)(D) (2012).

¹³⁸ Fed. Trade Comm’n, *supra* note 120.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Lawyers’ Committee for Better Housing, *supra* note 8, at 9.

¹⁴⁶ 15 U.S.C. §§ 1681i(b)-1681i(c) (2012).

¹⁴⁷ *Id.*

¹⁴⁸ 15 U.S.C. § 1681(a)(1) (2012).

¹⁴⁹ Joy Radice, *The Reintegrative State*, 66 EMORY L.J. 1315, 1317 (2017).

records cause for people's lives and futures.¹⁵⁰ Because the public at large has been concerned with the effects that a criminal record has on a person who has been convicted, the process of expunging or sealing criminal records is more advanced or comprehensive than the process for sealing eviction records. As such, the mechanism for expungement and sealing of criminal records can provide guidance in evaluating the eviction sealing mechanism. This Part describes juvenile expungement process in Illinois and then argues that the juvenile record expungement can inform proposed changes in eviction record sealing.

A. *The Expungement Process*

Illinois defines the term expunge as “to physically destroy the records or return them to the petitioner and to obliterate the petitioner’s name from any official index or public record, or both.”¹⁵¹ The State Appellate Defender of Illinois distinguishes expunging records from sealing records in the criminal context by explaining that:

Expunged records are destroyed or returned to the petitioner. The agencies will destroy their records and remove all mention of your name from the public record. Sealed records are maintained by the agencies. Most of the general public will not have access to the contents of the record. However, law enforcement and the courts will still have access to the records, as will a few employers and other entities as allowed by law.¹⁵²

Illinois expanded its expungement and sealing of criminal records in August of 2017.¹⁵³ Governor Bruce Rauner signed two bills which increase access to expungement and sealing for people with criminal records.¹⁵⁴ Public Act 100-284 made sealing available to people with certain felony convictions in order to seal records from prospective private employers.¹⁵⁵ By automatically expunging certain arrest records, Public Act 100-285 (the Youth Opportunity and Fairness Act) created more protections for juveniles.¹⁵⁶

Before the legislature modified juvenile expungement procedures, they required lengthy waiting periods and age minimums that delayed expungement.¹⁵⁷ These obstacles forced former juvenile offenders to face collateral consequences for long periods.¹⁵⁸ The

¹⁵⁰ Mark Berman, *Pope Francis Tells Congress ‘Every Life Is Sacred,’ Says the Death Penalty Should Be Abolished*, WASH. POST (Sept. 24, 2015), https://www.washingtonpost.com/news/post-nation/wp/2015/09/24/pope-francis-tells-congress-the-death-penalty-should-be-abolished/?utm_term=.aea15f3e7457; see Last Week Tonight with John Oliver, *Prisoner Re-entry*, YOUTUBE (Nov. 8, 2015), <https://www.youtube.com/watch?v=gJtYRxH5G2k>.

¹⁵¹ 20 ILL. COMP. STAT. ANN., 2630/5.2(a)(1)(E).

¹⁵² THE OFFICE OF THE STATE APPELLATE DEFENDER, EXPUNGEMENT AND SEALING A RECORD: OVERVIEW (2017).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

modification of juvenile expungement to be more accessible helped people with juvenile records reduce the collateral consequences of actions that occurred in their youth.¹⁵⁹

Under the Youth Opportunity and Fairness Act (YOFA), some juvenile criminal histories are eligible for automatic expungement.¹⁶⁰ Courts automatically expunge arrests without court action, and courts expunge delinquency cases if they meet the requisite guidelines.¹⁶¹

The recent updates to the Illinois juvenile expungement process also strengthened the confidentiality protections of juvenile records.¹⁶² It is now a misdemeanor to share confidential juvenile records beyond the bounds permitted by law.¹⁶³ Additionally, a person who violates the juvenile confidentiality law may also be liable for \$1,000 or actual damages, whichever is greater.¹⁶⁴ The automatic expungement mechanism, combined with the strict confidentiality protections, is designed to protect people with juvenile criminal histories from many of the collateral consequences that such histories would otherwise cause. Illinois should treat eviction records similarly.

B. Addressing Unjust Consequences: Comparing Juvenile Criminal Expungement and Sealing to Eviction Sealing

Just as employers conduct criminal background checks to evaluate prospective employees, landlords use tenant screening reports to evaluate prospective tenants.¹⁶⁵ Automatically expunging certain juvenile records prevents that information from showing up on a criminal background check and therefore protects juveniles from some of the worst collateral consequences of a criminal record.¹⁶⁶ Expunging, versus sealing, offers better protection for the individual because the information is permanently deleted as opposed to simply being hidden, yet possibly still discoverable.

Unfortunately, expungement seems to parallel sealing in that, even when a person takes advantage of the mechanism, it does not always effectively prevent the public from seeing the information. Just as in the eviction sealing process, even robust expungement protocols do not guarantee perfect protection for individuals.¹⁶⁷ In this data-driven

¹⁵⁹ *Id.*; see also CHILDREN AND FAMILY JUSTICE CENTER: NORTHWESTERN PRITZKER SCHOOL OF LAW BLUHM LEGAL CLINIC, SUMMARY OF HOUSE BILL 3817 (2017).

¹⁶⁰ The act provides, in relevant part, “the State shall automatically expunge, on or before January 1 of each year, all juvenile law enforcement records relating to events occurring before an individual’s 18th birthday (1) one year or more has elapsed since the date of the arrest or law enforcement interaction documented in the records; (2) no petition for delinquency or criminal charges were filed with the clerk of the circuit court relating to the arrest or law enforcement interaction documented in the records; and (3) 6 months have elapsed since the date of the arrest without an additional subsequent arrest or filing of a petition for delinquency or criminal charges whether related or not to the arrest or law enforcement interaction documented in the records.” 705 ILL. COMP. STAT., 405/5-915 (0.1 - 0.3) (2017).

¹⁶¹ *Id.*

¹⁶² 705 ILL. COMP. STAT. 405/1-7 (2018).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Mindy Ruckman, *Rauner Signs Bills To Expand Criminal Record Sealing And Juvenile Record Expungement*, ILL. POLICY (Aug. 24, 2017), <https://www.illinoispolicy.org/rauner-signs-bills-to-expand-criminal-record-sealing-and-juvenile-record-expungement/>.

¹⁶⁶ *Id.*

¹⁶⁷ Doris Del Tosto Brogan, *Expungement, Defamation, and False Light: Is What Happened Before What Really Happened Or Is There a Chance For a Second Act in America?*, 49 LOY. U. CHI. L. J. 1, 5 (2017).

information age, it is impossible to completely erase the record of arrests, charges, or convictions from all of the places they might appear.¹⁶⁸ Once a record is on the internet, it is very difficult to completely erase it. The concept of automatic expungement in certain cases, however, might mitigate this issue. The earlier the record disappears, the better the outcome for the individual as private screening companies have less of a chance to discover the information. Additionally, the automatic feature of the expungement mechanism reduces the burden on tenants to file additional motions or other legal documents.

Although a certain level of public access to information about criminal records (and eviction records) may be warranted, the over-sharing of records that courts should seal harms the individual more than it benefits society.¹⁶⁹ Illinois provides for juvenile expungement because the state recognizes, at least partially, that a young person's behavior does not define how he or she will act as an adult.¹⁷⁰ Because juvenile records are not a clear predictor of adult behavior,¹⁷¹ it is neither accurate, nor helpful, to rely on these records. Similarly, evictions due to foreclosure, unlawful retaliation, or even missed payments do not predict a tenant's future behavior. Hence, reliance on these records is misplaced. Similar policy arguments encompass both the expungement of juvenile records and the sealing of certain eviction filings. The expansion of juvenile record expungement and the harsher punishments for those who choose to violate confidentiality are both aspects of the expungement process that may help to strengthen the eviction sealing process.

Innovative data-driven policy proposals, like banning salary history questions when an individual applies for a job or sealing evictions at filing, pose a variety of possible unintended consequences. Proposals that limit the information available to those searching for it might still harm people in poverty, people of color, and women in the same way that "ban the box" campaigns in the employment context have inadvertently harmed the people they aimed to protect.¹⁷² If landlords no longer have access to information about eviction history, they may be more likely to make assumptions based on race, gender, class, or all three about a tenant's eviction history and previous relationships with landlords.

This type of unintended consequence occurred in the push to "ban the box" in employment applications.¹⁷³ The "ban the box" policies prevent public and often private employers from asking about a prospective employee's criminal history until a later point in the hiring process, after the applicant submits his or her application.¹⁷⁴ This policy was meant to assist people with criminal records in finding employment once they were released from prison.¹⁷⁵ There is, however, some evidence that suggests that banning the box actually decreases employment for Black and Latinx men who do *not* have criminal

¹⁶⁸ *Id.*

¹⁶⁹ ILL. JUVENILE JUSTICE COMM'N., BURDENED FOR LIFE: THE MYTH OF JUVENILE RECORD CONFIDENTIALITY AND EXPUNGEMENT IN ILLINOIS: HOW TO FIX A BROKEN SYSTEM THAT FAILS YOUTH AND HARMS THE STATE 42 (2016).

¹⁷⁰ *Id.* at 57.

¹⁷¹ *Id.*

¹⁷² Ban the box campaigns advocated for legislation that forbids employers from asking about an applicant's criminal record. Jennifer L. Doleac, "*Ban the Box*" Does More Harm Than Good, BROOKINGS (May 31, 2016), <https://www.brookings.edu/opinions/ban-the-box-does-more-harm-than-good/>.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

records.¹⁷⁶ In order to avoid hiring people with criminal records, many employers “statistically discriminate” by correlating criminal record with race and then choosing not to hire Black and Latinx men.¹⁷⁷ Advocates for policies to address the eviction information a landlord may receive about a prospective tenant should be wary of the possibility that a landlord, in the absence of such information, may choose to discriminate against people of color, women, or both.¹⁷⁸

VI. MITIGATE COLLATERAL CONSEQUENCES OF EVICTION BY SEALING RECORDS AT FILING

Illinois should enact legislation that seals eviction records at the point of filing and keeps such records sealed unless and until a landlord prevails in court. Further, if a tenant prevails, the sealed record should be expunged. The system now in place in Illinois is insufficient to protect tenants from the undeserved collateral consequences of eviction filings. To remedy this, Illinois must simplify and expand eviction sealing.

Illinois should enact legislation that would seal eviction records upon filing of an eviction action. When courts seal eviction cases in the current Illinois scheme—which is rare—courts seal them at the *conclusion* of the case. By this point, private companies already have recorded filings based on the public record. Tenants with eviction filings on their records face serious collateral consequences because these records provide no context about the cases or their conclusions.¹⁷⁹ Eviction filings do not definitively predict an individual’s behavior as a tenant: nothing has been proven yet and a trial has yet to occur. Tenants whose cases courts have sealed should not be punished because the initial filings, which should be hidden from the public by law, appear on a private report.

Additionally, eviction filings should be hidden from the public until the final disposition of the case. Once the case has concluded, the cases may be either expunged or entered into the public record, depending on the disposition of each case. Cases concluded in favor of the landlord with an eviction order may be released to the public record. If either the tenant prevails or the court dismisses the case, however, the court should expunge the record. In addition to this proposed expansion of sealing and expungement for evictions, Illinois, and other states across the United States, should instill harsher punishments for violators, like tenant screening companies, that report incorrect, misleading, or unjust information.

This proposed procedure would protect tenants who are not legally evicted—either because their cases are dismissed or because they prevail at trial—from facing the barriers to finding future housing that eviction records create.¹⁸⁰ This proposal is by no means a perfect solution to the inequities of eviction court, and tenant advocates should not stop here. In eviction court, the stakes are high. The stark gap in legal representation between

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ More research on the discriminatory consequences of policies like ban the box, banning salary history, and sealing eviction records at filing should be conducted by advocates and scholars who wish to support and implement such policies. Such research is beyond the scope of this paper.

¹⁷⁹ See discussion of Kayla Swanson *infra* pp 1-2.

¹⁸⁰ *Eviction Filings Are Barrier to Finding Future Housing – Even for Tenants Who Are Not Evicted*, LAWYERS’ COMMITTEE FOR BETTER HOUSING (March 7, 2018), <https://www.lcbh.org/news/eviction-filings-are-barrier-to-finding-future-housing>.

landlords and tenants has led advocates in cities across the nation to push for a right to counsel in eviction court.¹⁸¹ Without adequate protection of a tenant's record, however, a tenant's right to counsel loses its effectiveness. Kayla Swanson's story illustrates the irrelevance of counsel in this context—she had excellent legal representation, yet her sealed record of a dismissed eviction filing still appeared on private reports that led landlords to deny her housing. The best way to mitigate the damage caused by eviction records is to prevent it from happening in the first place. Sealing all eviction records at the point of filing would protect tens of thousands of tenants from the harm of an eviction record.

CONCLUSION

Eviction actions disadvantage tenants. Quick summary proceedings and the lack of legal representation prevent tenants from mounting a strong defense and pit them against a powerful system that favors the landlords. Tenants facing eviction actions all too often end up with eviction orders without having been able to defend themselves or dispute their landlord's allegations. Evictions also come with collateral consequences that haunt tenants; particularly, a tenant with an eviction order faces the almost insurmountable challenge of finding future housing.

Not only do tenants with eviction records face harsh collateral consequences, but tenants with mere eviction *filings* on their record do as well. Tenant screening companies pull eviction actions upon their filings, as they are a matter of public record, and store the information until a landlord requests information on a prospective tenant. Filings appear on the report and earn tenants spots on the eviction blacklist. Even when the court has sealed the eviction action for any number of reasons, a tenant's eviction history often still appears on the report.

Sealing eviction filings would ameliorate this problem. If every action remained sealed until disposition, tenant screening companies would not have access to the filings that result in dismissals or tenant success. The court should expunge (i.e., fully erase) cases the court dismisses and cases in which tenants prevail. The court can then release into the open record only certain cases in which a landlord prevails in court. These principles echo those developed in the criminal conviction expungement space. Juvenile records, in particular, have recently become simpler and easier to expunge in Illinois. Those who violate confidentiality laws that prohibit the spread of sealed or expunged information face harsher punishments, including criminal and civil liability.

Tenants facing the cruel collateral consequences of an eviction history can benefit from the expansion of eviction sealing in a similar way. Greater protection of tenants' records from the start and then strictly punishing private companies who violate tenants' privacy would benefit tenants like Kayla Swanson and a host of others who are currently haunted by the ghost of eviction without ever having been evicted.

¹⁸¹ Kriston Capps, *New York City Guarantees a Lawyer to Every Resident Facing Eviction*, CITYLAB (Aug. 14, 2017), <https://www.citylab.com/equity/2017/08/nyc-ensures-eviction-lawyer-for-every-tenant/536508/>; see also *All About the Eviction Right To Counsel Efforts in Los Angeles*, NAT'L COAL. FOR A CIVIL RIGHT TO COUNSEL (Dec. 11, 2019), http://civilrighttocounsel.org/major_developments/1273 (detailing a push for eviction right to counsel in Los Angeles); *Cleveland Becomes First Midwest City With Eviction Right To Counsel*, NAT'L COAL. FOR A CIVIL RIGHT TO COUNSEL (Oct. 10, 2019), http://civilrighttocounsel.org/major_developments/1382 (reporting Cleveland as the first Midwestern city to adopt eviction right to counsel).