

# Insurers' Use of Criminal History Information in Underwriting

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Life Insurance Workstream  
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# Insurers' Use of Criminal History Information

## Major Issues

1. Criminal record information, including arrest records often not tied to outcome, are available online, and increasingly modeled and used in multiple areas, including insurance. In addition, minor traffic offenses, ordinance violations (e.g., jaywalking, excessive noise, building code violations) are both captured and can be used in predictive models.
2. Our country arrests and incarcerates more individuals than most countries.
3. Our criminal justice system is typically skewed against people of color in policing, arrest, sentencing, and incarceration rates.
4. Inadequate information on how criminal records are being used in insurance underwriting, claims and fraud detection

# Insurers' Use of Criminal History Information

Insurers have long used criminal history data in underwriting. Several trends have escalated their use, however:

- Local jurisdictions are putting more of this information online, allowing
- Data vendors and modelers can capture a significantly larger volume of arrest records – independent of conviction - and to incorporate this information into increasingly sophisticated models used in underwriting, claim, and fraud evaluations.

# Insurers' Use of Criminal History Information

Major risk modelers utilizing criminal records for their insurance-related products include:

- LexisNexis Risk Solutions, [Risk Classifier](#)
- Verisk (ISO) [ClaimDirector](#), providing a risk score for evaluating claims and fraud evaluation
- TransUnion Criminal History Score
- [Choice Screening](#) – “the primary portion of an insurance background check investigates the criminal history of an applicant,” including misdemeanors and open criminal cases.

# Insurers' Use of Criminal History Information

Major risk modelers utilizing criminal records for their insurance-related products include:

- Explore Information Services – Sherlock®  
“Sherlock provides the industry’s only cost effective real-time solution for underwriting, pricing and fraud investigation based on an applicant’s criminal conviction history.”  
<https://exploredata.com/insurance/>
- MIB and life insurers: “[streamline identification of applicants with criminal convictions](#)”

# Insurers' Use of Criminal History Information

This trend raises many issues, including:

- As one example, are data vendors and insurers using this information accurately after they first identify and utilize an arrest record? (next couple slides)
- On a fundamental level, should criminal history records be utilized at all, given our country's increasing awareness that arrest records, even when accurate, may reflect societal bias against protected classes, low-income populations and other already disadvantaged groups?
- Given the growing number of risk classifications used in underwriting models, will there be a measurable loss in risk prediction justifying continued use of criminal data?

# Are Modelers Removing “Inaccurate” Arrest and Conviction History?

Arrest and conviction records can be rendered obsolete or inaccurate in a variety of ways:

- State (or local jurisdiction) drops the charges
- Defendant is acquitted at trial
- Decriminalized drug offenses
- The defendant is placed in an accelerated rehabilitation program or similar option, which seals the criminal record and, in some states, (e.g., NY), explicitly forbid its use in credit or insurance underwriting. Many states are significantly expanded rehabilitation and [expungement programs](#).

# Are Modelers Removing “Inaccurate” Arrest and Conviction History?

Search engine finds criminal arrest record, which is utilized in insurance-related models

Will insurer/vendor public records search protocol (1) detect absence of a previous criminal record, (2) and modify individual’s profile accordingly?



Individual qualifies for “fresh start” – arrest record sealed or erased



# Are Modelers Removing “Inaccurate” Arrest and Conviction History?

How, if at all, do modelers seek out revised criminal history (e.g., arrest) records? Are individual risk profiles updated so frequently that revised criminal data will be quickly gathered and the lack of a criminal record incorporated into that individual’s profile?

*If not:*

- defeats a major purpose of accelerated rehabilitation laws, which provide an individual a fresh start.
- May violate state laws

*Transparency?*

- Do insurers or regulators know how modelers address this issue?
- How can insurance consumers access this data? Do the modelers or insurers have procedures allowing consumers to correct inaccurate information? If so, how is this option disclosed to consumers and how frequently has it been used?

# The Bigger Issue: Should use of Criminal Record History be Significantly Reduced ?

- At the same time that criminal history data is increasingly accessible and utilized in modeling risk in insurance, consumer lending, employment, law enforcement, and other areas,
- There is growing recognition that our criminal justice system is not neutral, reflects and contributes to systemic racism in our society, and that therefore the data it produces, ranging from records of major felonies to violations of municipal ordinances and motor vehicle infractions, disproportionately affect disadvantaged groups, including people of color and the poor.

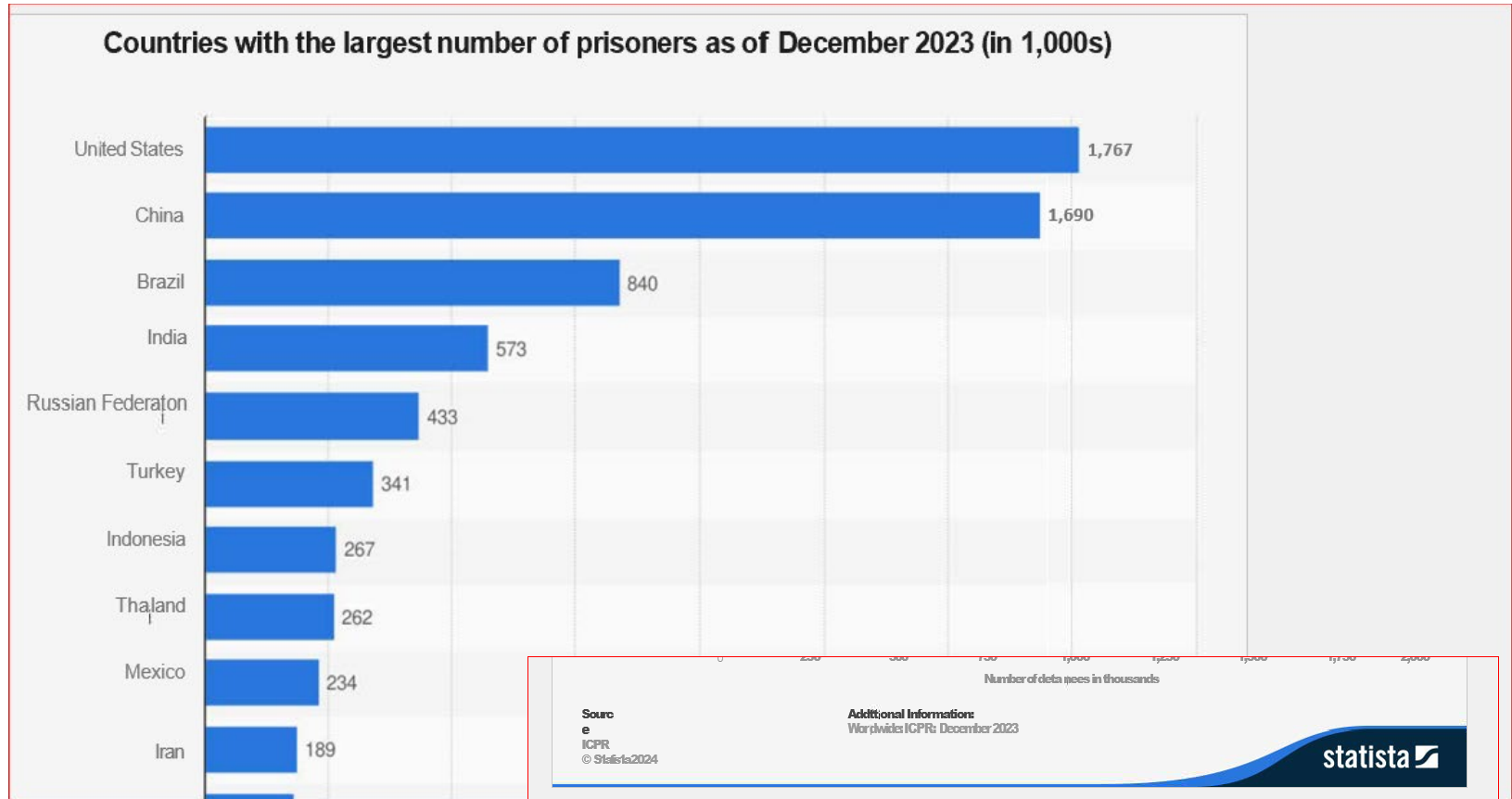
## Background Information to Consider

- 6,196,771 arrests in 2022 – [FBI Crime Data Explorer](#)
- [Estimated 1/3 of adult Americans have a “criminal record”](#) (arrests, and arrests and convictions). This does *not* include infractions, traffic offenses and other violations that may be included in underwriting models
- Significant disparities by race, including arrest rates: In 2019 Blacks 2X arrest rate of Whites - U.S. Dept. of Justice, [Arrests by offense, age, and race \(ojjdp.gov\)](#)

# Incarceration Rate – Top 10 Countries (Dec. 2023)

(does not include individuals on parole or probation)

<https://www.statista.com/statistics/262961/countries-with-the-most-prisoners/>

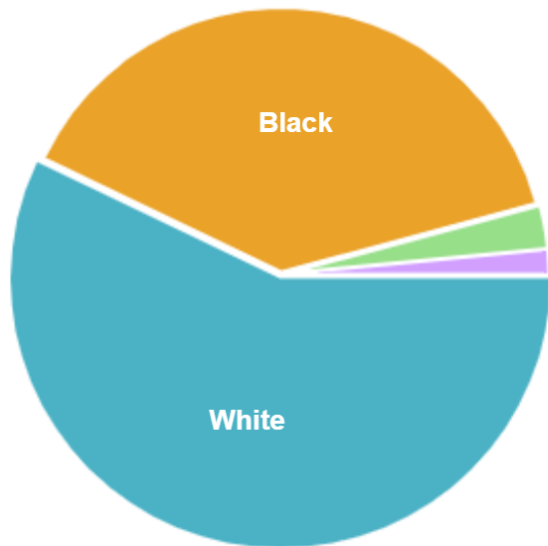


# Federal Prisons, Inmates by Race

## BOP Statistics: Inmate Race (March 2023)

### Inmate Race

Statistics are updated weekly. Last updated on Saturday, 23 March 2024



	Race	# of Inmates	% of Inmates
■	Asian	2,265	1.5%
■	Black	60,118	38.7%
■	Native American	4,231	2.7%
■	White	88,643	57.1%

# Should use of Criminal Record History be Significantly Reduced?

## **US DOJ Investigation of the Ferguson Police Department**

March 2015 Report, page 4

“Ferguson’s approach to law enforcement both reflects and reinforces racial bias, including stereotyping. The harms of Ferguson’s police and court practices are borne disproportionately by African Americans, and there is evidence that this is due in part to intentional discrimination on the basis of race . . . Ferguson’s law enforcement practices overwhelmingly impact African Americans. Data collected by the Ferguson Police Department from 2012 to 2014 shows that African Americans account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by FPD officers, despite comprising only 67% of Ferguson’s population.”

# Should use of Criminal Record History be Significantly Reduced?

*In 2020, Systemic Racism becomes Clear(er)*

- Death of George Floyd, May 25, 2020, and its aftermath
- “Unfortunately, discrimination exists in systems meant to protect well-being or health. Examples of such systems include health care, housing, education, criminal justice, and finance. Discrimination, which includes racism, can lead to chronic and toxic stress and shapes social and economic factors that put some people from racial and ethnic minority groups at increased risk for COVID-19.” CDC July 24, 2020
- “That discussion [NAIC and diversity] was then followed by a series of senseless, brutal and totally unnecessary killings in our country at the hands of the police. The events shook the moral compass of many within the industry, as the country dealt with a one-two punch in the form of a pandemic and overt racism. Long-festered racial wounds were re-opened, exposing scars and new raw injuries to the social fabric of America.” NAIC CEO Mike Consedine (September 25, 2020)

# Third-Party Vendors and the Fair Credit Reporting Act

- The FCRA applies to insurance and has specific limitations regarding the use of criminal history information, including not using arrest records that are more than 7 years old, with limited application to life insurance (15 USCA 1681c(a)(2), (b)(2). State laws may further restrict its use.
- The FCRA requires consumer reporting agencies and the insurers and creditors that utilize their information to provide detailed disclosures and information to consumers, along with rights to see and correct inaccurate data and information.

## Questions include

- When are third-party vendors subject to the FCRA or related state laws?
- Are they complying and how?
- Do insurance regulators or the CFPB know whether they are complying? Recalling third-party data vendors/modelers' enthusiasm over what they asserted they could do, and their lack of knowledge of insurance law and regulation they demonstrated when explaining their products.
- Are the rights under the FCRA and state laws provided to insurance consumers?



# Our Responsibility (?)

The Insurance Industry cannot solve the social, economic, and historical problems that have resulted in a criminal justice system that is often unforgiving and almost always disproportionate in effect. *But,*

We can fairly police on own industry, including

- Restricting its use to those areas where it is necessary to an essential feature of the underwriting or claim risk, and not where it is another risk proxy among many. For example, convictions for insurance fraud, or underwriting employee dishonesty coverage.
- Requiring data modelers and insurers that use criminal history data to demonstrate to regulators that there are not other risk classifications that have similar predictive value without the disproportionate effects, or that overall, the range of risk classifications used in underwriting model provide an essentially equal level of risk precision.

# Our Responsibility (?)

## Transparency and Accountability

- State legislatures and insurance regulators should have access to detailed information on how criminal history data is collected, modeled and used in underwriting, fraud evaluation and claim handling, and determine what specific uses should be prohibited, restricted, or left to market forces.
- Insurance consumers should have the right to know how their information is utilized and clear procedures to evaluate and contest its accuracy. Require modelers to certify/explain their compliance with the FCRA, or why they believe they are not subject to it.
- Consumer disclosures are necessary and an important regulatory tool, but alone they will not adequately police the use of consumer information, including criminal history data. Substantive prohibitions and restrictions are also appropriate.

# Insurers' Use of Criminal History Information NCOIL July 17, 2021 “Resolution Regarding the Use of Certain Rating Factors”

**BE IT FURTHER RESOLVED** that NCOIL views as contrary to public policy and unfairly discriminatory the use of all data in the underwriting of private, non-commercial insurance that is: related to non-pending arrests, charges and indictments that do not result in conviction; related to convictions that do not relate in any way to fraud; or are not related to the insurability of a prospective or existing policyholder, and urges state legislatures to prohibit its use; ....

Full resolution available at: <https://ncoil.org/special-committee-on-race-in-insurance-underwriting-2/>

# New York Law

- “It shall be an unlawful discriminatory practice [in connection with licensing, housing, employment, including volunteer positions, or providing of credit or insurance] ... to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed ... by a conviction for a violation sealed pursuant to section [CPL 160.58].” Executive Law § 296(16).
- “Criminal history only includes past convictions or pending criminal matters. It does not include prior arrests, pleas or imprisonment for which an individual was not convicted of any crime; or civil dispute history such as appearances in housing court, civil litigation, liens, bankruptcy, etc. See Executive Law § 296(16).” DFS Circular 1, Life (2019) N.Y. Crim. Proc. Law § 160.58 (McKinney)