

Insurers' Use of Criminal History Information
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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 to capture a significantly larger volume of arrest records – independent of conviction - and to incorporate this information into increasingly sophisticated models used in underwriting and fraud evaluations.

Insurers' Use of Criminal History Information

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

- LexisNexis Risk Solutions
- TransUnion Criminal History Score
- 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 announces [agreement](#) to make Sherlock records available to its 400 life insurance members – April 10, 2019

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.

Are Modelers Removing “Inaccurate” Arrest and Conviction History?

Search Bot 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 Suspended?

- 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

- 10,085,207 arrests in 2019 – [FBI UCR Data](#)
- 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 \(ojjdp.gov\)](#)

Prisoner Population Total

(World Prison Brief, Institute for Crime & Justice Research)

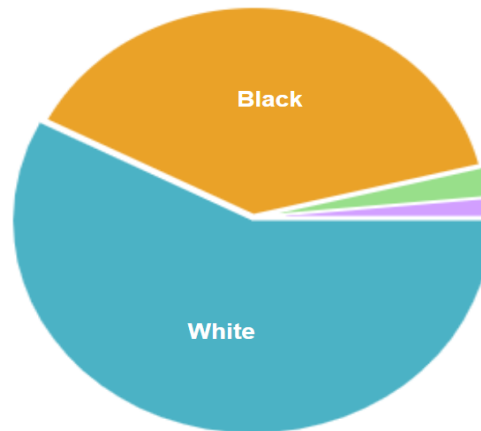
1	United States of America	2 094 000
2	China	1 710 000
3	Brazil	755 274
4	Russian Federation	491 650
5	India	478 600
6	Thailand	358 369
7	Turkey	281 094
8	Iran	240 000
9	Indonesia	236 567
10	Philippines	215 000
11	Mexico	213 493
12	South Africa	154 437
13	Vietnam	123 697
14	Ethiopia	113 727
15	Egypt	c. 106 000

Federal Prisons, Inmates by Race

BOP Statistics: Inmate Race

Inmate Race

Statistics based on prior month's data -- -- Last Updated: Saturday, 10 April 2021



	Race	# of Inmates	% of Inmates
■	Asian	2,266	1.5%
■	Black	58,541	38.5%
■	Native American	3,602	2.4%
■	White	87,466	57.6%

Should use of Criminal Record History be Suspended?

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 Suspended?

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-festering racial wounds were re-opened, exposing scars and new raw injuries to the social fabric of America.” NAIC CEO Mike Consedine (September 25, 2020)

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 take care of our own patch by

- First, understanding precisely how criminal history data is used in core insurance functions, and
- Second, by 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.

Should use of Criminal Record History be Suspended?

Transparency and Accountability

- Regulators should have access to detailed information on how criminal history data is collected, modeled and used in underwriting, fraud evaluation and claim handling.
- Insurance consumers should have the right to know how their information is utilized and clear procedures to evaluate and contest its accuracy.
- 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 . . .

Should use of Criminal Record History be Suspended?

And can include:

- State legislatures and insurance regulators evaluate industry use of criminal history records and determine what specific uses should be prohibited, restricted, or left to market forces.
- Independently, the industry should consider suspending the use of criminal history data in insurance underwriting in personal line (including life insurance) for 1-2 years, with limited exceptions such as for policies insuring against employee dishonesty, or for auto, serious motor-vehicle offenses. An industry-wide voluntary cessation would be a powerful message of its commitment and would benefit policyholders, consumers, regulators, producers and insurers. It would also be a challenge to other financial services providers to consider the same action.

Insurers' Use of Criminal History Information

- This is an ongoing research project and I welcome your comments, questions and information.
- Especially data or comments that provide a different perspective or take a contradictory position.

And, finally,

- **Thank You**