

# Race and the COVID-19 Eviction and Housing Crisis

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## I. INTRODUCTION

Historical and present discriminatory housing, land use, property, and criminal policies and laws have contributed to an inaccessibility of homeownership and wealth accumulation for people of color in the United States.<sup>1</sup> “People of color rent at higher rates than white people,” and thus, face a higher risk of eviction.<sup>2</sup> People of color are also overrepresented in jobs most affected by the COVID-19 pandemic, like the restaurant and hotel industries.<sup>3</sup> As compared to white workers, Black and Latinx Americans are less likely to have access to paid sick leave and family leave, forcing them to choose to go to work when they are sick or jeopardize their ability to provide for themselves and their families.<sup>4</sup>

Many states are choosing not to enforce the moratorium on evictions issued by the CDC, and a majority of evictions, identified by Public Integrity using a Westlaw court tracking service, are occurring in minority and low-income

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1. *Racism, Homelessness, and COVID-19*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY, [<https://perma.cc/3PYE-XDAG>] (last visited Oct. 28, 2021).

2. *Id.*

3. *Id.*

4. *Id.*

neighborhoods.<sup>5</sup> Approximately “two-thirds of . . . eviction cases were against tenants living in census tracts with minority populations above that of the national average.”<sup>6</sup> Further, the COVID-19 pandemic has disproportionately affected non-white Americans.<sup>7</sup> Indeed, “African American deaths from COVID-19 are nearly two times greater than . . . expected based on their share of the population.”<sup>8</sup>

Evictions increase contacts between households because they require evicted persons to find new living arrangements, often with family or friends, and if evicted persons enter a homeless shelter, they are entering an indoor space that is often crowded.<sup>9</sup> Researchers found that the lifting of state eviction moratoriums and allowance of evictions to continue “caused as many as 433,700 . . . cases of Covid-19 and 10,700 additional deaths.”<sup>10</sup>

The COVID-19 pandemic created a housing and eviction crisis, which—as a result of decades of racial discrimination in housing policies and laws—has led, in part, to disproportionate health outcomes by race during the pandemic. This article will assess structural racism in housing law and its impact on disproportionate outcomes by race during the COVID-19 pandemic, particularly regarding housing stability and evictions. While the COVID-19 eviction and housing crisis stretched throughout the entire United States, this article will focus primarily on evictions and racial disparities regarding the same within Arkansas.

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5. Sarah Kleiner, Joe Yeradi, & Pratheek Rebala, *Communities of Color Poised to Lose Their Homes as Eviction Moratoriums Lift*, CTR. FOR PUB. INTEGRITY (July 22, 2020), [<https://perma.cc/8RYK-CES9>].

6. *Id.*

7. *See Health Equity Considerations and Racial and Ethnic Minority Groups*, CTRS. FOR DISEASE CONTROL & PREVENTION, [<https://perma.cc/6VPF-L79V>], (Jan. 25, 2022).

8. Maria Godoy & Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State By State?*, NAT’L PUB. RADIO (May 30, 2020, 6:00 AM), [<https://perma.cc/5ZGX-UMWF>].

9. Annie Nova, *Evictions have led to hundreds of thousands of additional Covid-19 cases, research finds*, CNBC [<https://perma.cc/9V2U-SB7Z>] (Dec. 15, 2020, 10:19 AM).

10. *Id.*

## II. COVID-19: DISPARITIES IN RISK, TRANSMISSION, HOSPITALIZATIONS, DEATH, AND OTHER PANDEMIC-RELATED LOSSES

Racial minorities in the United States have experienced “substantially higher rates of infection, hospitalization, and death” as compared to white persons within the United States.<sup>11</sup> For example, one study showed “the hospitalization rates and death rates per 10,000 [patients], respectively, were 24.6 and 5.6 for Black patients,” as compared to “7.4 and 2.3 for White patients.”<sup>12</sup>

The highest rate of COVID-19 infection in the United States has been among non-Hispanic white people, but racial minority groups have experienced disproportionately high COVID-19 infection rates given their share of the United States population.<sup>13</sup> “The percent[age] of cases for racial . . . minority groups [is] higher than the percent[age] of these populations within the total [United States] population.”<sup>14</sup> White persons make up approximately 60% of the United States population, but the percentage of COVID-19 cases attributable to white individuals is only 52.4%.<sup>15</sup> Whereas, Black persons make up approximately 12% of the United States population, and represent 11.8% of the COVID-19 cases analyzed by the CDC.<sup>16</sup> Particularly, Latinx people make up approximately 18% of the United States population, but represent 26.1% of COVID-19 cases.<sup>17</sup>

“Racial . . . minority groups have [experienced] disproportionately higher hospitalization rates” during the COVID-19 pandemic as compared to white persons.<sup>18</sup> Whites have experienced the second lowest COVID-19

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11. Leo Lopez III, Louis H. Hart III, & Mitchell H. Katz, *Racial and Ethnic Health Disparities Related to COVID-19*, 325 J. AM. MED. ASS’N 719, 719 (2021).

12. *Id.*

13. *Disparities in COVID-19 Illness*, CTRS. FOR DISEASE CONTROL & PREVENTION, [<https://perma.cc/SJ7H-9TBR>] (Dec. 10, 2020).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Disparities in COVID-19 Associated Hospitalizations*, CTRS. FOR DISEASE CONTROL & PREVENTION, [<https://perma.cc/8XDC-YYY2>] (Jan. 27, 2022).

hospitalization rate across all racial and ethnic groups, and Native American, Hispanic, and Black persons have experienced hospitalization rates 2.4 to 3.1 times higher than the White hospitalization rate.<sup>19</sup>

Furthermore, racial minorities are overrepresented in COVID-19 deaths as well.<sup>20</sup> One study found that despite only representing 12% of the United States population, Black persons represent 34% of COVID-19 related deaths.<sup>21</sup> In a nationwide analysis, counties with high Black populations experienced higher rates of confirmed COVID-19 cases and deaths than counties with higher percentages of white people.<sup>22</sup>

The data is similar in Arkansas as well.<sup>23</sup> While representing 15% of the Arkansas population, Black persons represented 17% of COVID-19 cases in Arkansas and 15% of deaths.<sup>24</sup> Latinx persons represent 9% of COVID-19 cases in the state, but only represent 7% of the population.<sup>25</sup> Arkansas has not reported race or ethnicity data in testing or hospitalizations, so racial disparities cannot be evaluated in those areas.<sup>26</sup>

COVID-19 has exacerbated the racial disparities already existent and rampant in this country. The CDC has identified four different areas in which racial and ethnic minorities groups are disproportionately affected and are, therefore, at an increased risk of exposure to COVID-19: (1) neighborhood and physical environment; (2) housing; (3) occupation; and (4) education, income, and wealth gaps.<sup>27</sup> “[G]eographic areas with higher social and economic inequities,” as well as higher populations of Latinx and non-white individuals, “had

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19. *Id.*

20. *Disparities in Deaths from COVID-19*, CTRS. FOR DISEASE CONTROL & PREVENTION, [https://perma.cc/A237-5TQZ] (Dec. 10, 2020).

21. *Id.*

22. *Id.*

23. *Arkansas*, JOHNS HOPKINS CORONAVIRUS RES. CTR., [https://perma.cc/TRF9-LDXR] (last accessed Jan. 29, 2022).

24. *Id.*

25. *Id.*

26. *Racial Data Dashboard*, THE COVID TRACKING PROJECT, [https://perma.cc/7V94-DGV8] (Mar. 7, 2021).

27. *Risk of Exposure to COVID-19*, CTRS. FOR DISEASE CONTROL & PREVENTION, [https://perma.cc/T29K-F8YG] (Dec. 10, 2020).

higher rates of [COVID-19] infection [than] areas with lower social and economic inequities.”<sup>28</sup> These areas also had higher percentages of persons working essential jobs or jobs that require more interaction with the public while at work, living in more crowded housing, and experiencing insecurities relating to food and health care.<sup>29</sup> Crowded housing leads to higher rates of infection and makes isolation and other COVID-19 prevention strategies more difficult or completely unattainable.<sup>30</sup>

As compared to white persons, racial minorities have a higher percentage of persons living in crowded housing, thus increasing their risk of contracting COVID-19 as described above.<sup>31</sup> Furthermore, racial minority groups experience higher representation in correctional facilities, homeless shelters, and long-term care facilities, all of which have seen significant COVID-19 outbreaks throughout the country.<sup>32</sup> Crowded housing proves a challenge for controlling the spread of COVID-19 because of issues adhering to distancing and hygiene measures.<sup>33</sup>

Racial minorities also have a higher representation in essential worker jobs like health care, farms, factories, grocery stores, etc.<sup>34</sup> These jobs have much more interaction and close contact with the public at large, and many of these jobs do not provide paid sick or vacation leave, making it difficult for these workers to take off when they are sick or to visit a health care provider.<sup>35</sup>

### III. RENTER POPULATION DEMOGRAPHICS

Even prior to the pandemic, “Black, Native American, and Hispanic households [were] more likely . . . to be extremely low-income renters” as compared to white renters; “[t]wenty percent of [B]lack households, 18% of [Native American] . . .

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28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Risk of Exposure to COVID-19, supra* note 27.

33. *Id.*

34. *Id.*

35. *Id.*

households, and 16% of Hispanic households [were] extremely low-income renters” in 2019, compared to 6% of white renters.<sup>36</sup> “[E]xtremely low-income renter[]” is defined as having an “income[] at or below the poverty level or 30% of their area median income.”<sup>37</sup> In 2019, there were only “37 rental [housing units available] for every 100 extremely low-income renter households.”<sup>38</sup>

In Arkansas, approximately 45.8% of the renters in the state are rent burdened.<sup>39</sup> Comparatively, “only 22.8% of homeowners [in Arkansas,] with mortgages” are burdened by the “costs associated with [home] ownership.”<sup>40</sup> While Arkansas has a 13.5% lower cost of living than the national average, “incomes [in Arkansas] are 21% below the national average.”<sup>41</sup> In large metropolitan areas of Arkansas, approximately 52% of a typical person’s income is attributed to housing and transportation costs.<sup>42</sup> Furthermore, because Arkansas is a more rural state, people who live in more rural areas may have lower housing costs but will typically have higher transportation costs due to the proximity of their work and home.<sup>43</sup>

The racial disparity exists because of disparities in home ownership and the racial wealth gap between non-white and white Americans.<sup>44</sup> “Decades of racial discrimination in real estate, lending practices, and federal housing policy have made homeownership difficult to obtain for minorities.”<sup>45</sup> Furthermore, discrimination and inequalities “in educational attainment, wages, and employment” are factors driving racial disparities in income.<sup>46</sup> For example, “[i]n 2016, the median black and Hispanic worker [only] earned 65% and

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36. *Racial Disparities Among Extremely Low-Income Renters*, NAT’L LOW INCOME HOUS. COAL. (Apr. 15, 2019), [<https://perma.cc/7DTJ-TPS7>].

37. *Id.*

38. *Id.*

39. Emily Walkenhorst, *Census: 45.8% of state rents burdensome*, ARK. DEMOCR. GAZ. (Sept. 26, 2019, 7:11 AM), [<https://perma.cc/8XHC-YUBT>].

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. NAT’L LOW INCOME HOUS. COAL., *supra* note 36.

45. *Id.*

46. *Id.*

63% of [what] the median white worker” earned, and “[t]he lowest-income black and Hispanic workers [only] earned 54% and 66% of the [earnings of the] lowest-income white workers.”<sup>47</sup>

In 2017, Arkansas ranked 44th in the nation in poverty with a poverty rate of 16.4%.<sup>48</sup> 27.6% of Black Arkansans and 23.2% of Latinx Arkansans were impoverished in 2017, compared to 13.6% of white Arkansans.<sup>49</sup> Arkansas had approximately 69 affordable housing units for every 100 “very low income[]” renter households in 2016.<sup>50</sup> These “[r]acial disparities also exist” within the renter class itself.<sup>51</sup> Of renter households, only 22% of white renter households have extremely low income as compared to “35% of black renter households,” 38% of Native American renter households, “and 28% of Hispanic renter households” with extremely low incomes.<sup>52</sup>

#### IV. IMPACT OF COVID-19 ON THE RENTER POPULATION

It was estimated that by the end of September 2020, “19 to 23 million individuals” within the United States were “at high risk of being evicted.”<sup>53</sup> In October 2020, it was estimated that approximately 139,000 Arkansas households were unable to pay rent.<sup>54</sup> Approximately 50 million people in the United States live in renter households that

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47. *Id.*

48. *Arkansas*, TALK POVERTY, [https://perma.cc/Q8DS-DGA3] (last visited Jan. 29, 2022).

49. *Id.*

50. *Id.*

51. NAT’L LOW INCOME HOUS. COAL., *supra* note 36.

52. *Id.*

53. Craig Evan Pollack et al., *When Storms Collide: Evictions, COVID-19, And Health Equity*, HEALTH AFFS. (Aug. 4, 2020), [https://perma.cc/LGS3-RDC7]; Katherine Lucas McKay et al., *20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship*, ASPEN INST. (June 19, 2020), [https://perma.cc/WF35-SMTK].

54. Max Brantley, *At last, some rental assistance proposed by state*, ARK. TIMES (Oct. 7, 2020, 3:17 PM), [https://perma.cc/5AXA-RX4Q].

experienced job or income loss due to the pandemic, with communities of color impacted the most.<sup>55</sup>

People of color “are disproportionately represented in the food, arts and service industries[,]” which have been most prominently affected by the pandemic.<sup>56</sup> Evidence shows that as a result of the racial wealth gap and general socioeconomic divide, more than 70% “of Black and Latinx adults entered the pandemic lacking the emergency funds to cover three months of expenses, compared to under half of white adults.”<sup>57</sup>

The Joint Center for Housing Studies of Harvard University “revealed that Black households were the most likely to be behind on rent payments, followed by Hispanic or Latino, Asian, multiracial and finally white households.”<sup>58</sup> In September 2020, 23% of Black renters were likely to be behind on rental payments compared to 20% of Latinx renters, 19% of Asian renters, and 10% of white renters.<sup>59</sup>

“*The percentage of Black people in a community is a greater predictor of eviction filings than poverty level in some communities.*”<sup>60</sup> When controlling for education levels, on average, “[b]lack renters face eviction at nearly twice the rate of white renters.”<sup>61</sup> Outside the context of the pandemic, “people of color [face] extreme risk of [eviction and] housing

55. Emily A. Benfer, “*The system is failing all the families that really need it*”: How the threat of eviction has perpetuated health inequity and racial injustice during the pandemic, INT’L NETWORK ST. PAPERS (Dec. 10, 2020), [https://perma.cc/QKT6-26XY]; Elizabeth Kneebone & Cecile Murray, *Estimating COVID-19’s Near-Term Impact on Renters*, TURNER CTR. FOR HOUS. INNOVATION U. CAL., BERKELEY (Apr. 24, 2020), [https://perma.cc/SXW5-J229]; see also Rakesh Kochhar, *Unemployment rate is higher than officially recorded, more so for women and certain other groups*, PEW RSCH. CTR. (June 30, 2020), [https://perma.cc/6ARG-U2F5].

56. Alexandra Lee, *Coronavirus Layoffs Have Bigger Impacts on Housing Security for Black, Latinx and Asian Households*, ZILLOW (Apr. 26, 2020), [https://perma.cc/5WNL-SZJJ].

57. Benfer, *supra* note 55 (citing Mark Hugo Lopez et al., *Financial and health impacts of COVID-19 vary widely by race and ethnicity*, PEW RSCH. CTR. (May 5, 2020), [https://perma.cc/QP25-6GBS]).

58. Michael Kolomatsky, *People of Color Face the Most Pandemic Housing Insecurity*, N.Y. TIMES (Jan. 28, 2021), [https://perma.cc/P6Q5-SFUQ] (citing *The State of the Nation’s Housing 2020*, JOINT CTR. FOR HOUS. STUD. HARV. U. 1, 2 (2020), [https://perma.cc/7Q24-7EH2]).

59. *Id.* (citing JOINT CTR. FOR HOUS. STUD. HARV. U., *supra* note 58).

60. Benfer, *supra* note 55 (emphasis added).

61. *Id.* (citing Deena Greenberg et al., *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 115, 134 (2016)).

loss” due in part to widespread discrimination across the rental market.<sup>62</sup>

A UCLA Luskin Institute on Inequality and Democracy study conducted in 2020 evidenced that “Black[] and Latinx[] [individuals] are two- to two-and-a-half times more likely to experience” housing-related hardships or issues when compared to white individuals.<sup>63</sup> The COVID-19 pandemic has amplified and reinforced “pre-existing income and educational inequalities” produced by systemic inequality.<sup>64</sup>

The pandemic has affected low-income and minority renters the most because they have suffered a disproportionate amount of job loss and have increased barriers to financial assistance associated with the economic difficulties of the pandemic.<sup>65</sup> Low-income and minority renters are also “likely to be . . . the last [population that is] rehired” after the economy recovers.<sup>66</sup> Therefore, by carrying a disproportionate burden of the effects of the pandemic, these renters will also be less likely to have the ability to stay current on rent.<sup>67</sup>

The study explained that the racial and ethnic disparities of the pandemic are a product of a complexity of factors, in which there are “two main clusters.”<sup>68</sup> The first cluster of factors includes “pre-existing vulnerabilities . . . by race, class, and human capital.”<sup>69</sup> “People of color, low-income individuals[,] and those with less education and skills are most at risk[] from [external] shocks.”<sup>70</sup> “The second cluster [of factors] is composed of . . . inequalities” inherent in the

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62. *Id.* (citing Jamie Langowski et al., *Qualified Renters Need Not Apply: Race and Voucher Discrimination in the Metro Boston Rental Housing Market*, UNDERSTANDING BOS. 1, 6 (2020), [<https://perma.cc/6ED4-Q47W>]; Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOCIO. 88, 122 (2012)).

63. Paul M. Ong, *Systemic Racial Inequality and the COVID-19 Renter Crisis*, UCLA LUSKIN INST. ON INEQ. & DEMOCRACY (Aug. 7, 2020), <https://ucla.app.box.com/s/t8x503d781kfmocclgdeibiolo0q234>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. Ong, *supra* note 63 (citing Paul M. Ong & Silvia R. González, UNEVEN URBANSCAPE: SPATIAL STRUCTURES AND ETHNORACIAL INEQUALITY 199 (William A. Darity, Jr. ed., 2019)).

69. *Id.*

70. *Id.*

pandemic itself, as described above.<sup>71</sup> The combination of these two clusters produces systemic inequalities in job and earning losses.<sup>72</sup>

“[T]he employment impacts [of the pandemic] make it difficult or [even] impossible for ... renters to” make their rental payments, which could be addressed through policies providing financial assistance for renters who have experienced the shock and impact of the pandemic.<sup>73</sup> However, “[t]hese policies ... have inherent biases [that] divid[e] the population” into who is and who is not eligible for the benefits.<sup>74</sup> “[T]he interaction of the[] endemic and embedded processes” have caused and continue to “exacerbate [the] systemic inequalit[ies] during the COVID-19” pandemic.<sup>75</sup>

Persons of color “entered the [pandemic] with less financial and human capital resources” because they are more disproportionately represented in lower education and income brackets.<sup>76</sup> Furthermore, persons of color were more likely to lose jobs and income during the pandemic.<sup>77</sup> For example, “Latinx[] [individuals] were the most likely to suffer ... earning loss[es].”<sup>78</sup>

The UCLA study revealed significant “racial differences in the ability to pay rent.”<sup>79</sup> Black and Latinx people were most adversely affected.<sup>80</sup> The study shows that the inequalities existing pre-pandemic and the impacts of the pandemic’s job loss and economic consequences have fed and amplified systemic racial inequalities.<sup>81</sup> Furthermore, “the results highlight the [intense] complexit[ies]” that tie in past racial discrimination, employment issues, and the “COVID-19 rental crisis.”<sup>82</sup> In essence, the study is evidence of

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71. *Id.*

72. *Id.*

73. Ong, *supra* note 63.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. Ong, *supra* note 63.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

institutionalized and systemic racism ablaze during the pandemic.<sup>83</sup>

## V. EVICTIONS

Evictions are an inherently legal process. Eviction is defined as “[t]he act or process of legally dispossessing a person of land or rental property.”<sup>84</sup> In Arkansas, there are three ways in which a landlord can evict a tenant: (1) unlawful detainer, (2) civil eviction, and (3) criminal failure to vacate.<sup>85</sup> A tenant is “guilty of an unlawful detainer . . . if the [tenant], willfully and without right:” (1) holds over on the property leased to her, (2) holds the property after demand has been made by the landlord in writing, (3) “Fail[s] or refuse[s] to pay the rent for the [property] when due, and after three (3) days’ notice” fails to vacate the property, (4) “Fail[s] to maintain the premises in a safe . . . or habitable condition; or” (5) violates any of the provisions enumerated in subsection (5).<sup>86</sup>

Under the unlawful detainer statute, a tenant who seeks a hearing must respond to the landlord’s complaint within five days but must also pay the amount of rent alleged due to the court.<sup>87</sup> Arkansas’s current unlawful detainer statute is arguably unconstitutional by requiring tenants to pay the amount in controversy with the court prior to receiving a hearing, therefore depriving tenants of due process rights accorded to them by the Constitution.<sup>88</sup>

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83. Ong, *supra* note 63.

84. *Eviction*, BLACK’S LAW DICTIONARY (11<sup>th</sup> ed. 2019).

85. ARK. CODE ANN. § 18-60-304 (2005); ARK. CODE ANN. § 18-17-901 (2009); ARK. CODE ANN. § 18-16-101 (2017).

86. ARK. CODE ANN. § 18-60-304.

87. ARK. CODE ANN. § 18-60-307(a)-(c), (e) (2021); Lynn Foster, *Arkansas Eviction Report November 2020 Report*, ARKANSANS FOR STRONGER COMMUNITIES 6 (Dec. 5, 2020), [<https://perma.cc/P2RL-UQXV>] [hereinafter *November 2020 Eviction Report*].

88. Lynn Foster, *Arkansas Eviction Report September 2020 Report*, ARKANSANS FOR STRONGER COMMUNITIES 3-4 (Oct. 2020), [[https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A65f6932e-acae-4415-9f40-6408f3962cd2&fbclid=IwAR2cftCuXBEHDS\\_OU0A\\_eIqsIE8-mXJ0fyKI8-flnBVlzlIQbbrWCw6NaNSE#pageNum=1](https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A65f6932e-acae-4415-9f40-6408f3962cd2&fbclid=IwAR2cftCuXBEHDS_OU0A_eIqsIE8-mXJ0fyKI8-flnBVlzlIQbbrWCw6NaNSE#pageNum=1)] [hereinafter *September 2020 Eviction Report*].

Landlords may evict tenants under the civil eviction statute when the tenant has failed to or refuses to pay rent when due, when the terms of the tenancy have ended, or when the tenant has violated the terms of the rental agreement.<sup>89</sup> “For residential rental agreements, nonpayment of rent within five (5) days of the date due constitutes legal notice to the tenant that the landlord has the right to begin eviction proceedings . . . .”<sup>90</sup>

Arkansas maintains a criminal failure to vacate statute, which essentially makes nonpayment of rent a crime.<sup>91</sup> Under the statute, any person who fails or refuses to pay the rent when due forfeits all continued occupancy rights, and if after ten days’ written notice by the landlord the tenant fails to vacate and surrender the premises, the tenant is guilty of a misdemeanor.<sup>92</sup> Furthermore, each day the tenant refuses or fails to vacate the premises constitutes a separate offense.<sup>93</sup> A person who is convicted of failure to vacate maintains a criminal record for nonpayment of rent, which can and does follow the tenant and can make it difficult to find new housing or even obtain employment.<sup>94</sup>

Self-help evictions are generally illegal in Arkansas.<sup>95</sup> Self-help evictions occur when landlords attempt to forcibly remove the holdover or non-paying tenant from the property by use of force, changing of the locks, turning off the utilities, or otherwise without a court order.<sup>96</sup>

Finally, landlords can simply rely on the threat of evictions to force tenants to leave.<sup>97</sup> Renters who know that they are about to miss a payment or become delinquent will

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89. ARK. CODE ANN. § 18-17-901(a) (2009).

90. ARK. CODE ANN. § 18-17-901(b).

91. ARK. CODE ANN. § 18-16-101(b)(1) (2017); *see also September 2020 Eviction Report*, *supra* note 88, at 4 (stating Arkansas is the only state that criminalizes nonpayment of rent).

92. ARK. CODE ANN. § 18-16-101(a)-(b)(1).

93. ARK. CODE ANN. § 18-16-101(b)(2)(B).

94. Maya Miller & Ellis Simani, *When Falling Behind on Rent Leads to Jail Time*, PROPUBLICA (Oct. 26, 2020, 11:30 AM) [<https://perma.cc/FT8T-GYXS>].

95. *Gorman v. Ratliff*, 289 Ark. 332, 337, 712 S.W.2d 888, 890 (1986).

96. *See November 2020 Eviction Report*, *supra* note 87.

97. Clark Merrefield, *Eviction: The physical, financial and mental health consequences of losing your home*, JOURNALIST’S RESOURCE (Oct. 15, 2021), [<https://perma.cc/TJ3Z-G2R8>].

instead move out prematurely in an attempt to avoid the deficiency and will move into housing with family or friends or crowd the rental property with additional subtenants to offset the cost of rent.<sup>98</sup>

Arkansas maintains an online case filing information system through the Administrative Office of the Courts' "CourtConnect" website.<sup>99</sup> Unlawful detainers are all reported through CourtConnect; however, not all Arkansas counties use CourtConnect.<sup>100</sup> The criminal failure to vacate charges could be tracked on CourtConnect, but CourtConnect will not maintain any of the records for those filings in courts that do not use the service.<sup>101</sup> Therefore, it is extremely difficult to determine the frequency of this statute's use. Civil evictions are *not* tracked on CourtConnect, because most district courts do not use the service.<sup>102</sup>

### A. CDC Moratorium on Evictions

Initially, the Centers for Disease Control and Prevention ("CDC") issued a Moratorium Order preventing evictions of covered persons through March 31, 2021.<sup>103</sup> CDC Director Dr. Rochelle Walensky signed an extension of the Eviction Moratorium Order on March 29, 2021, which extended the eviction moratorium through June 30, 2021.<sup>104</sup>

Under the order, a "covered person" is described as one that has given the CDC declaration to their landlord attesting that they meet the criteria outlined in the declaration.<sup>105</sup> In Arkansas, some tenants have filed the declaration with the court or given it to their landlord causing the eviction

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98. Conor Dougherty, *Pandemic's Toll on Housing: Falling Behind, Doubling Up*, N.Y. TIMES, [https://perma.cc/8VGW-83FC] (Sept. 10, 2021).

99. *AOC Public CourtConnect*, ADMIN. OFF. OF THE CTS., [https://perma.cc/LNP3-QVZ8] (last visited Jan. 29, 2022).

100. *See November 2020 Eviction Report*, *supra* note 87.

101. *Id.*

102. *Id.*

103. *Media Statement from CDC Director Rochelle P. Walensky, MD, MPH, on Extending the Eviction Moratorium*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 29, 2021), [https://perma.cc/9DB3-4Y8P].

104. *Id.*

105. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 173, 55292, 55297 (Sept. 4, 2020).

proceedings to halt.<sup>106</sup> However, the eviction moratorium does not extend to evictions for:

- (1) [e]ngaging in criminal activity while on the premises;
- (2) threatening the health or safety of other residents;
- (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).<sup>107</sup>

A landlord can seek a hearing challenging the truthfulness of the tenant's declaration.<sup>108</sup> In Arkansas, the Arkansas Supreme Court issued a per curiam order in April 2020, which required landlords filing eviction complaints to affirmatively plead the property at the subject of the complaint was not a covered dwelling under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law No. 116-136.<sup>109</sup>

## VI. EFFECTS OF EVICTION

When a person becomes homeless, either due to an eviction or otherwise, they can experience health risks including psychosocial stress and material scarcity.<sup>110</sup> In general, evictions have also been associated with other conditions including, but not limited to: all-cause mortality, HIV-related treatment outcomes, drug use, emergency room utilization, exposure to violence, mental health hospitalization, and depression.<sup>111</sup> "Health conditions and

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106. Lynn Foster, *Arkansas Eviction Report December 2020 Report*, ARKANSAS FOR STRONGER COMMUNITIES (Dec. 7, 2020), [<https://perma.cc/Z3J5-M853>] [hereinafter *December 2020 Eviction Report*].

107. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, *supra* note 105, at 55294.

108. *Id.* at 55297.

109. *In re Response to the COVID-19 Pandemic – Eviction Filings*, 2020 Ark. 166, 2020 WL 2048580 (per curiam).

110. Pollack et al., *supra* note 53.

111. *Id.*

high levels of health care costs also increase vulnerability to evictions in a manner that can perpetuate a longstanding cyclical pattern of economic and housing instability and poor health.”<sup>112</sup>

Evictions can impact every level of a person’s life and can have deleterious effects at all age ranges. People above the age of fifty who experience eviction are more likely to have depression, and renters who live under the threat of eviction are more likely to have poorer self-reported health outcomes.<sup>113</sup> Persons who are evicted are more likely to accept future housing that is unsafe or unsanitary due to the eviction’s impact on their credit and rental history and the immediate need for new housing.<sup>114</sup> Unsafe and unsanitary living conditions can lead to both long- and short-term risk of worsened health outcomes.<sup>115</sup>

“Children whose mothers experience [an] eviction[] during pregnancy are more likely to be born with low birthweight or preterm” compared to children whose mothers are not evicted.<sup>116</sup> Evictions in early childhood are associated with food insecurity and lead poisoning, which can have long-term impacts on child development, including poor or low development.<sup>117</sup>

There is also an association between lower eviction rates and expanded healthcare coverage.<sup>118</sup> When renters have the ability to cover medical expenses, they are less likely to be burdened with large medical bills and have more ability to cover other costs, like rent.<sup>119</sup> Access to health care can also lead to better employment opportunities because persons who have better health outcomes overall are going to be less likely to miss work for health-related issues and therefore, are more likely to maintain employment giving them the financial stability to also maintain their housing.<sup>120</sup>

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112. *Id.*

113. Merrefield, *supra* note 97.

114. *Id.*

115. *Id.*

116. Pollack et al., *supra* note 53.

117. *Id.*

118. Merrefield, *supra* note 97.

119. *Id.*

120. *Id.*

Evictions among women are linked to assault, drug use, mental illness, and frequent housing instability.<sup>121</sup> The highest eviction rates among women occur in the Black and Latina populations.<sup>122</sup> Therefore, Black and Latina women have a higher risk of experiencing these health and other outcomes.<sup>123</sup> The implications of eviction for Black women, in particular, has been characterized as similar to the impact of incarceration on Black men.<sup>124</sup>

Evictions can follow renters for years on end, as discussed previously regarding Arkansas' Failure to Vacate criminal statute, charging renters unable to pay with a criminal misdemeanor.<sup>125</sup> Furthermore, an eviction can remain on a renter's credit history for up to seven years, making it difficult for the renter to find new affordable housing or even get approved for other lending generally.<sup>126</sup>

Eviction filings with the court, even if the tenant was never actually evicted, can follow the tenant into her search for new housing and can be seen by future potential landlords who are evaluating a tenant's application.<sup>127</sup> Therefore, tenants who have had eviction filings made against them, despite not being evicted, or tenants who were previously evicted are seeking new housing, can be effectively screened from "good" neighborhoods with access to transportation and other resources by landlords in lieu of other tenants who have never been evicted.<sup>128</sup> This forces tenants to live in lower-income areas and in poorer housing conditions, which in turn can impact the tenant's health and economic future by creating more obstacles for the tenant to find employment, access health care, or otherwise.<sup>129</sup> While the CDC Moratorium is effective in preventing homelessness and removal of tenants from their homes during the pandemic,

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121. Pollack et al., *supra* note 53.

122. *Id.*

123. *Id.*

124. *Id.*

125. *See supra* Section V.

126. James Bell, *Beyond displacement: How the ripple effects of an eviction can last for years*, PUB. SOURCE (Nov. 11, 2020), [<https://perma.cc/HSL9-QH4V>].

127. *Id.*

128. *Id.*

129. *Id.*

under the Order, a landlord can still file the eviction proceeding in court, which, in turn, could still follow the tenant for years to come.<sup>130</sup>

Particularly during the pandemic, an eviction prevents a displaced tenant from complying with any shelter-in-place orders or other similar public health recommendations and places the displaced tenant at a higher risk of contracting COVID-19.<sup>131</sup> Furthermore, those who move in with family members, after being evicted or in lieu of becoming delinquent, or take in additional subtenants to offset the cost of rent can have poorer-long term health and decline in educational attainment due to overcrowding and disrupted households.<sup>132</sup>

Evictions during the COVID-19 pandemic are likely to have a racial impact as well at both the individual and community levels.<sup>133</sup> “Structural racism drives inequities in labor and housing markets, resulting in increased risk of both COVID-19 and eviction for Black and Latinx individuals. Black and Latinx individuals are also more likely to live in communities characterized by high levels of eviction with important spillover effects on health” as discussed above.<sup>134</sup>

## VII. ARKANSAS EVICTION DATA

Arkansas never instituted its own moratorium on eviction nor enforced the CDC Moratorium, other than the Arkansas Supreme Court per curiam order requiring that landlords affirmatively plead that their property was not subject to the moratorium.<sup>135</sup> Particularly, Governor Hutchinson originally stated the courts were closed, implying

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130. *Id.*

131. Emily A. Benfer et al., *COVID-19 Housing Policy Scorecard*, PRINCETON UNIV. (Apr. 20, 2020), [<https://perma.cc/9SEL-ELJA>].

132. Dougherty, *supra* note 98.

133. Pollack et al., *supra* note 53.

134. *Id.*

135. Lynn Foster, *Arkansas Evictions July 2020 Report*, ARKANSAS FOR STRONGER COMMUNITIES (Aug. 7, 2020), [https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A99b61ef1-d38d-44cf-af3d-bbed69c3985e&fbclid=IwAR001OgkY6dpqnmOucHW8U\\_yF1uyEPuorpkHKYS3O6CpK2bRDY501oxdnrSg](https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3A99b61ef1-d38d-44cf-af3d-bbed69c3985e&fbclid=IwAR001OgkY6dpqnmOucHW8U_yF1uyEPuorpkHKYS3O6CpK2bRDY501oxdnrSg).

that evictions could not take place, but later stated that he thought landlords would “work in a humanitarian fashion” and that he was relying “on that trust relationship.”<sup>136</sup> However, given that Arkansas is one of, and is arguably the worst state in which to rent, it should come as no surprise that Arkansas landlords continued with evictions throughout the entirety of the pandemic regardless.<sup>137</sup> For example, Arkansas is currently the only state in the country that does not have an implied warranty of habitability for renters, requiring that landlords ensure the rental unit is maintained in a livable condition; the state legislature passed Act 1052 in 2021, providing for a “light” version of an implied warrant of habitability, but still falling short of the standard adhered to in other states.<sup>138</sup>

In November 2019, the number of trackable eviction cases was 433 compared to 413 trackable eviction cases in November 2020.<sup>139</sup> These numbers appear to show that evictions in 2020 track similar numbers in 2019, indicating that evictions are still occurring despite the ongoing COVID-19 pandemic.<sup>140</sup>

Arkansas is a difficult state in which to track evictions due to the various methods by which a landlord can file an eviction and the fact that many counties do not use the online tracking system, nor are they required to by the state.<sup>141</sup> Furthermore, eviction filings on CourtConnect do not include race specific data, making it extremely difficult to determine

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136. Lynn Foster, *Arkansas Evictions June 2020 Report*, ARKANSAS FOR STRONGER COMMUNITIES (July 2020), [https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Aeeb4fa-be-dcdc-4e2e-a942-d5c863bd0906&fbclid=IwAR0kWkcsJijXp8V7GuZl4p\\_ije0OA-q9sh2INcMuKjZr2nTUOi9SXOJJ6w#pageNum=1](https://documentcloud.adobe.com/link/track?uri=urn%3Aaaid%3Aascds%3AUS%3Aeeb4fa-be-dcdc-4e2e-a942-d5c863bd0906&fbclid=IwAR0kWkcsJijXp8V7GuZl4p_ije0OA-q9sh2INcMuKjZr2nTUOi9SXOJJ6w#pageNum=1).

137. See Ron Wood, *Renters Have Few Rights Under Arkansas Law*, ARK. DEMOCR. GAZ. (May 7, 2017, 1:10 AM), [<https://perma.cc/6UEB-43NW>]; but see Ginny Monk, *Renter protections set to start in Arkansas this fall*, ARK. DEMOCR. GAZ. (June 1, 2021, 7:10 AM), [<https://perma.cc/3L2V-P7FB>]; Noah Tucker, *New Arkansas Law sets rental property requirements*, KAIT8 (Aug. 31, 2021, 5:07 PM), [<https://perma.cc/FY2S-2JRH>] (explaining new changes to Arkansas rental requirements that took effect November 1, 2021).

138. Lynn Foster, *Landlord-Tenant Laws*, ENCYCLOPEDIA OF ARK. (Apr. 28, 2021), [<https://perma.cc/227T-YR5Z>]; ARK. CODE ANN. § 18-17-502 (2021).

139. *November 2020 Eviction Report*, *supra* note 87.

140. *Id.*

141. *Supra* Part IV.

racial impacts of evictions in Arkansas.<sup>142</sup> Indeed, the problem is intensified if we consider the number of individuals who have prematurely moved out or relocated prior to an eviction filing occurring at all. Therefore, there is an extreme lack of data for Arkansas that could give researchers a clearer idea of the state of evictions and the pandemic, but the numbers provided by Professor Lynn Foster in her monthly COVID-19 Eviction Reports, compared with statistical data provided by the Arkansas Department of Health and the US Census Bureau, provide a somewhat detailed picture of the eviction crisis in the state.

From April to December 2020, the three Arkansas counties with the highest number of evictions were Benton, Pulaski, and Washington Counties with 234, 1,189, and 365 trackable evictions respectively.<sup>143</sup> Pulaski County had the highest number of evictions during that time, which was nearly 3.5 times higher than Washington County, the second highest.<sup>144</sup> In fact, Pulaski County has the highest Black population of any county in the state of Arkansas.<sup>145</sup> In 2019, Pulaski County had 105,637 more Black residents than the next highest county, which is approximately 3.5 times more Black residents than the next highest county.<sup>146</sup> Little Rock District Court, located in Pulaski County, handles more criminal failure to vacate cases than any other court in the state, and in fact, more than any other court in the United States.<sup>147</sup> Furthermore, Pulaski and Benton Counties have the first and second highest Latinx populations in Arkansas.<sup>148</sup>

While Pulaski County does not have the highest percentage Black population of any county in Arkansas, 36%

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142. See generally ADMIN. OFF. OF THE CTS., [https://caseinfo.arcourts.gov/cconnect/PROD/public/ck\\_public\\_qry\\_main.cp\\_main\\_idx](https://caseinfo.arcourts.gov/cconnect/PROD/public/ck_public_qry_main.cp_main_idx) (follow “Search by . . . case type” hyperlink; then search case type field for EV-CV-Eviction and search last name field for desired last name) (showing a lack of demographic data).

143. *December 2020 Eviction Report*, *supra* note 106.

144. *Id.*

145. *Arkansas Population by Sex and Race*, ARK. DIV. OF WORKFORCE SERVS. (2019), <https://www.discover.arkansas.gov/Demographic-Data/Population-by-Race-and-Sex>.

146. *Id.*

147. Order, *State v. Smith*, No. CR-2014-2707, at 2 (Ark. Cir. Ct. Jan. 20, 2015) (citing Lynn Foster, *The Hands of the State: The Failure to Vacate Statute and Residential Tenants’ Rights in Arkansas*, 36 U. ARK. LITTLE ROCK L. REV. 1, 50-55 (2013)).

148. *Arkansas Population by Sex and Race*, *supra* note 145.

of Pulaski County residents are Black, and across Arkansas counties, the average percentage of Black residents is 16%.<sup>149</sup> Between the counties that have a 25% or higher Black population, the average is 39%.<sup>150</sup> Therefore, Pulaski County can be representative of an average county with a higher number and percentage of Black residents. Furthermore, Pulaski County has online court filings,<sup>151</sup> which provides a clearer picture of the status of evictions in that county.

As discussed above, Black and Latinx persons have been impacted most by the pandemic and were more likely to lose their source of income or be otherwise financially or physically impacted by the COVID-19 pandemic.<sup>152</sup> Therefore, Arkansas also seems to reflect the nationwide trend.

In Arkansas, counties with the highest population of Black or Latinx people evicted the most renters in 2020.<sup>153</sup> Indeed, as discussed above, Pulaski County had 3.5 times more trackable eviction filings from April to December 2020 than the next highest county, *and* Pulaski County has 3.5 times more Black residents than the next highest county.<sup>154</sup> Furthermore, Pulaski County tracks along the average for counties with higher percentages of Black residents. These figures suggest a racial disparity in evictions with Black renters and other persons of color experiencing evictions at a significantly higher rate as compared to white people, and in 2020, they have borne the brunt of the COVID-19 eviction crisis, which has only exacerbated the issue.

## VIII. SOLUTIONS

In general, and as a result of the COVID-19 pandemic, Arkansas must act to first assist renters from the risk and the potential of eviction and further spread of COVID-19. It must

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149. *Id.*

150. *Id.*

151. *See generally Court Filings, PULASKI CIR./CNTY. CLERK*, [<https://perma.cc/H6JQ-MWQD>].

152. *See supra* Part II.

153. *Arkansas Population by Sex and Race, supra* note 145; *December 2020 Eviction Report, supra* note 106.

154. *See supra* notes 143-46 and accompanying text.

act to prevent and correct the racial disparities that evictions exacerbate throughout the state by: (1) repealing the criminal failure to vacate statute, (2) amending the unlawful detainer statute, and (3) tracking all eviction filings within the state, including evictions by race and ethnicity.

### A. Direct Assistance to Renters

Arkansas and the federal government must act to provide aid to tenants at risk of being evicted and allow them to pay rent. The best solution to this issue is direct payment to tenants, which would work upstream and allow tenants to pay their rent but would also allow local landlords to pay their mortgage and make their ends meet as well.

In October 2020, the state proposed some rental assistance through the Arkansas Economic Development Commission, which would provide rent payments for up to 2.5 months for approximately 8,300 households.<sup>155</sup> However, this rental assistance program barely addressed the need.<sup>156</sup> At the time it was proposed, it was estimated that “139,000 Arkansas households [could not] pay rent or [were] at risk of being evicted.”<sup>157</sup> Therefore, the program would only cover about 6% of at-risk Arkansas households.<sup>158</sup>

Furthermore, during the height of the pandemic, a majority of funding sources for Arkansans seeking rental assistance were local community agencies.<sup>159</sup> Many tenants struggled to find the applications for the assistance or did not meet the income level requirements, and if a tenant was successful in acquiring local community rental assistance, the amount of rental assistance provided was often too low to cover the cost of even one month of rent.<sup>160</sup>

According to Professor Lynn Foster, a simple step the state could have taken would be to centralize the applications and options for rental assistance onto one webpage, which

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155. Brantley, *supra* note 54.

156. *Id.*

157. *Id.*

158. *See id.*

159. *September 2020 Eviction Report*, *supra* note 88.

160. *Id.*; *December 2020 Eviction Report*, *supra* note 106.

would ensure that struggling Arkansans had access to all options.<sup>161</sup> However, it is evident that direct assistance to tenants is the only way to ensure that needs are met throughout all levels of the landlord-tenant relationship, as described above.

Arkansas received \$1.25 billion from the CARES Act, and it is estimated that the amount needed for rental assistance is only about 14% of what the state received.<sup>162</sup> Therefore, Arkansas alone can provide at least somewhat adequate rental assistance and should do so to protect its vulnerable residents.<sup>163</sup>

## B. Repeal the Criminal Failure to Vacate Statute

The Arkansas Legislature should repeal the criminal failure to vacate statute, which makes a tenant's inability to pay rent a crime under ARK. CODE ANN. § 18-16-101. The health and economic impacts of the criminal failure to vacate statute are too high to constitute keeping it. Furthermore, Arkansas is the only state to have such a statute.<sup>164</sup> Without the criminal failure to vacate statute, landlords would still have *two other* legal processes by which they could evict a tenant for nonpayment of rent.

Indeed, as described above, Pulaski County processes more criminal failure to vacate cases than does any other county in the United States, and Pulaski County has the highest Black population of any county in Arkansas.<sup>165</sup> Therefore, the combination of the amount of criminal failure to vacate cases, the higher Black population of Pulaski County, and the higher rate of evictions among Black Arkansans illustrates the racially-significant impact of Arkansas's failure

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161. *September 2020 Eviction Report*, *supra* note 88.

162. See Jay Bir, *Arkansas Receives Allotment from CARES Act*, KARK (Dec. 9, 2020, 9:20 PM), [https://perma.cc/3ZEC-5U3R]; Ninette Sosa, *A CLOSER LOOK: evictions increase even with COVID-19 moratorium; tenant stories*, OZARKS FIRST (Aug. 11, 2020, 3:19 AM), [https://perma.cc/K4HC-KWNY] (percentage reached by dividing the \$170 million needed for rental assistance by the \$1.25 billion received by the state of Arkansas).

163. See *supra* note 162 and accompanying text.

164. Talk & Bus. Pols., *Failure to vacate to remain a crime in Arkansas*, KATV (Apr. 5, 2021), [https://perma.cc/59M6-ZQEV].

165. See *supra* notes 143-45 and accompanying text.

to vacate criminal statute on the Black and nonwhite population of Arkansas.

In the 2021 Arkansas Legislative Session, a bill was proposed that would repeal the criminal failure to vacate statute, but it failed in committee in April 2021.<sup>166</sup> Repealing the criminal failure to vacate statute would provide a step forward in addressing systemic inequalities within Arkansas and would prevent renters, particularly renters of color, from being followed by a criminal conviction due to nonpayment of rent, enabling them to secure future housing and employment.

### **C. Amend the Unconstitutional Unlawful Detainer Statute**

The Arkansas Legislature should amend the unconstitutional unlawful detainer statute, ARK. CODE ANN. §§ 18-60-301 to 312, to comport with due process by removing the requirement that the tenant pay the amount in controversy to the court.

In *McCrorry v. Johnson*, the Arkansas Supreme Court held the prejudgment attachment provision violated due process due to lack of availability of a prompt hearing.<sup>167</sup> Under the unlawful detainer statute, the tenant only receives a hearing when that tenant pays the amount in controversy to the court and replies within five days, similar to the previous criminal failure to vacate statute.<sup>168</sup>

Extending *McCrorry*, the availability of a hearing under the unlawful detainer statute is anything but prompt and prevents the tenant from acquiring a hearing if they do not have the funds available to pay the back rent to the court. Furthermore, in *State v. Smith*, the Pulaski County Circuit Court found the criminal failure to vacate statute unconstitutional for similar reasons: the defendant had to pay

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166. Foster, *supra* note 138; Daniel Breen, *Bill Repealing Arkansas Criminal Eviction Statute Fails In Committee*, UALR PUB. RADIO (Apr. 5, 2021, 12:24 PM), [<https://perma.cc/M9SY-Q78W>].

167. 296 Ark. 231, 241, 755 S.W.2d 566, 572 (1988).

168. ARK. CODE ANN. §18-60-307 (2021).

the rent alleged due to the court to receive a hearing.<sup>169</sup> As a result, the Arkansas Legislature amended the criminal failure to vacate statute to comport with the ruling and therefore, due process.<sup>170</sup> The legislature should do the same with the unlawful detainer statute and remove the requirement that the tenant pay the amount in controversy to the court, which would increase the number of tenants receiving hearings and comport with due process.

In the 2021 legislative session, Arkansas State Senator Jonathan Dismang filed Senate Bill 594, which would amend the Arkansas Residential Landlord-Tenant Act of 2007 by providing a minimal implied warranty of habitability to renters within Arkansas and amending unlawful detainer and forcible entry and detainer statutes by removing the requirement that tenants pay the amount in controversy with the court.<sup>171</sup> The bill, in its original form, sought to remove the requirement that the tenant deposit the amount of rent due with the court and continue paying rent to the court for the pendency of the proceedings and remove that the failure to do the same is justification for the court to grant the writ.<sup>172</sup>

The bill also sought to add that the court may allow the tenant to retain the premises only if, within five days of the issuance of the writ of possession, the tenant provides adequate security, as determined by the court, not less than the amount of delinquent rent and rent to accrue while the tenant retains possession of the premises.<sup>173</sup> While these sections of the bill were struck, a finalized version of the bill passed both chambers of the Arkansas Legislature and was signed by Governor Hutchinson on April 29, 2021.<sup>174</sup>

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169. No. CR 2014-2707, 2015 WL 991180 at 4, 7 (Ark. Cir. Jan. 20, 2015).

170. ARK. CODE ANN. § 18-16-101 (2017).

171. *SB594 – An Act to Amend the Arkansas Residential Landlord-Tenant Act of 2007; to Amend the Law Concerning a Cause of Action for Unlawful Detainer and Forcible Entry and Detainer; and for other purposes*, ARK. STATE LEGISLATURE, [<https://perma.cc/8852-LTZ4>] (last accessed Oct. 29, 2021).

172. ARK. STATE LEGISLATURE, *supra* note 171.

173. *Id.*

174. *Id.*

### **D. Track all Eviction Filings**

Finally, Arkansas should track all eviction filings, including data by race and ethnicity. Data in this area is extremely scarce given that many counties do not use the online court filing service. Furthermore, of the twenty-six counties that have a Black population of more than 25%, eleven do not utilize the online court filing service and are not required to by the state. Any researcher lacks a significant amount of data when attempting to analyze evictions in Arkansas because of the extreme lack of information. In fact, the Princeton Eviction Study maintains no data on Arkansas, which could be attributed, at least in part, to this problem.

The evidence presented in this article shows that evictions impact persons of color at a higher rate as compared to whites. Arkansas could make significant strides in health and housing equity if researchers could analyze disparities in evictions across racial groups in Arkansas. Furthermore, the government cannot make informed decisions without more data and information regarding evictions.

If the state government intends to make any progress in health and housing equity, it is imperative these numbers are tracked, and researchers have access to sufficient and accurate data.

## **IX. CONCLUSION**

The COVID-19 pandemic has created a housing and eviction crisis, driven by decades of racial discrimination in racist housing policies and laws, which has led, in part, to disproportionate health outcomes by race during the pandemic. To both address the COVID-19 housing and eviction crisis in Arkansas and provide health and housing equity for renters and particularly for renters of color in the state, the Arkansas legislature should (1) repeal the criminal failure to vacate statute, (2) amend the unlawful detainer statute, and (3) track all eviction filings within the state, including evictions by race and ethnicity.