

# Spotting and Addressing Barriers to Permanent Housing

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**BAY AREA LEGAL AID**

WORKING TOGETHER FOR JUSTICE

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# Objectives

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- ❑ **Increase knowledge of Fair Housing laws and common barriers to housing such as criminal history, poor credit, and disability.**
- ❑ **Build skills to assist households with barrier removal including reasonable accommodation and mitigating circumstances.**
- ❑ **Identify when a household should seek legal assistance for help with their housing barriers.**



# Housing First?

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- ❑ Individuals with Criminal Records
- ❑ Disabled Individuals & Reasonable Accommodations
- ❑ Domestic Violence Survivors
- ❑ Consumer Debtors – Limits on Background and Credit Checks



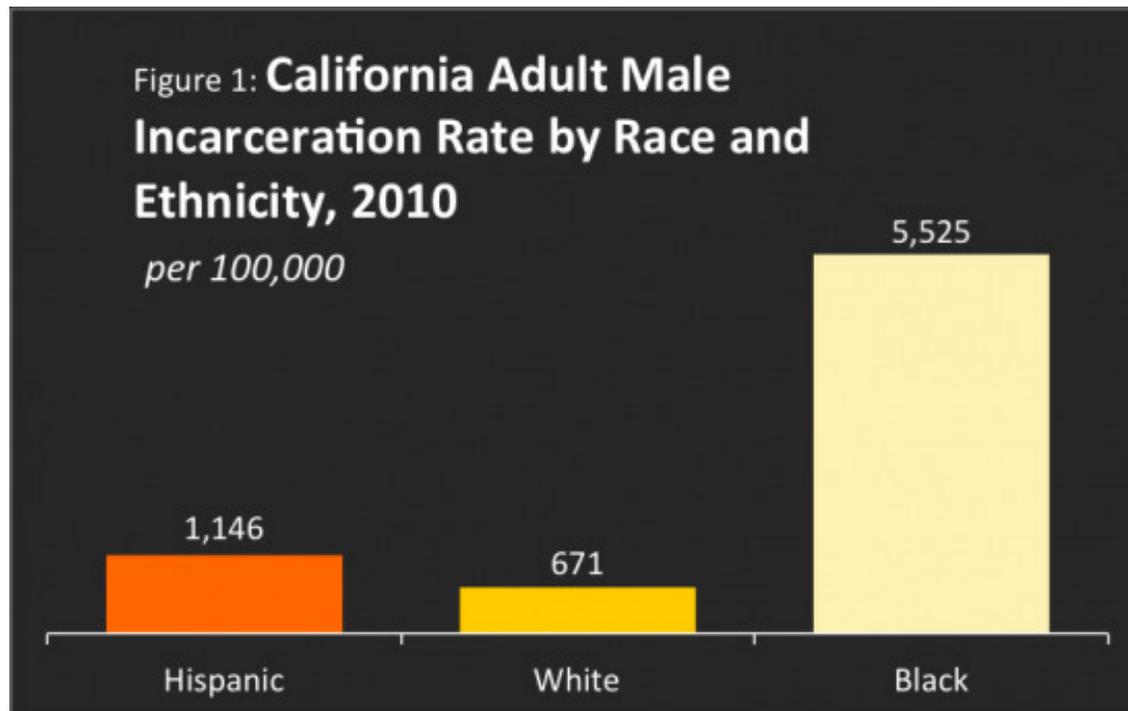
# Fair Housing and Criminal Records

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- Why is it a FAIR HOUSING issue to use criminal records as a proxy for housing eligibility?
  - Over-representation of Latinos and African Americans in the criminal justice system
  - April 4, 2016 guidance from HUD general counsel

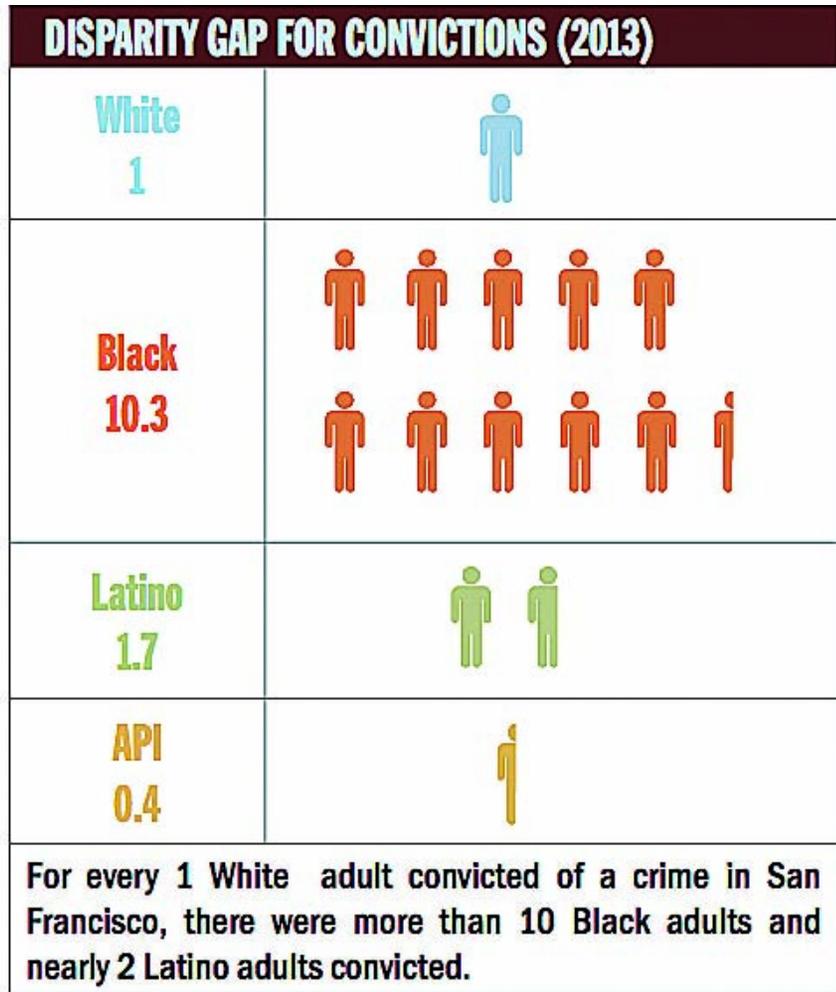
# Race and Incarceration

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SOURCE: GRATTET, R., & HAYES, J. (2013). CALIFORNIA'S CHANGING PRISON POPULATION. PUBLIC POLICY INSTITUTE OF CALIFORNIA.

# Race and Incarceration



SOURCE: SF EXAMINER

<http://www.sfexaminer.com/new-report-exposes-racial-disparities-in-sf-criminal-justice-system/>



## Fair Housing and Criminal Records

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- No “blanket” ban, i.e., “no felons” policy.  
(Fair Housing Act)
- How far back can they look?
- “Ban the Box” Ordinances – SF and  
Richmond



## Hypo:

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- Client mentions she and her partner and their 3 year old son are homeless and have been denied a BMR apartment based on a felony drug conviction from around 10 years ago.
- She recalls that she pled to several years of probation and thinks she discharged successfully. She's been clean for several years, and has completed an intensive substance abuse program.
- Someone from the apartment called her and told her that she was denied and that “no felons” are allowed. **What is relevant? What would you advise?**



# Individuals with Disabilities in the Criminal Justice System

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- ❑ People exiting the criminal justice system face significant barriers to obtaining and maintaining housing.
- ❑ People with disabilities face unique barriers to housing access and occupancy.
- ❑ People with mental illness are twice as likely to have been homeless in the months prior to incarceration.\*
- ❑ One-third of returning citizens expect to go to a homeless shelter upon release.

\*Center for American Progress, Disabled Behind Bars, July 2016



## Advocacy Strategy – Reasonable Accommodations

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- If a tenant has an obstacle to obtaining or maintaining housing because of a disability, the tenant can **request a reasonable accommodation**. 42 U.S.C.A. §3604(f) ; 29 U.S.C.A. §794 ; 42 U.S.C.A. §§ 12131.
- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. 42 U.S.C.A. §3604(f).



# Reasonable Accommodation Analysis

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**□ DISABILITY+ NECESSARY &  
REASONABLE (NEXUS) =  
MUST GRANT ACCOMMODATION**

**Unless:**

- **Undue financial or administrative burden**
- **Fundamental Alteration 24 C.F.R. §8.11**
- **“Direct Threat”**



## Reasonable Accommodation Analysis

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- A **current** illegal user of a controlled substance is not disabled for the purposes of reasonable accommodation. However, an individual with a disability can include someone who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use. 42 U.S.C. § 12210(b).



# Hypo

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- “Mr. H.” - Denied housing by a nonprofit MHSA provider for a handful of misdemeanor convictions – drug possession, evading an officer, concealed weapon (a 2" pocket knife)... Most of the activity occurred 2-3 years ago, but he only recently pled to the drug case.
- Reasonable accommodation for admission – Since criminal activity is a function of his mental health issues (schizo, bipolar) occurring when he was homeless and without any medical care. He is now in a shelter with case management, sober and has a lot of support for his application.



# A Dynamic System of Support

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- Case managers and Navigators
  - Housing Portfolio – application materials (see handout)
  - Letters of Support/Other Documentation
- Health Professionals
  - Support Requests for “Reasonable Accommodation” (see handout)
- Public Defenders
  - Explain circumstances of criminal cases
  - Clean Slate work (see handout)
- DV Advocates
- Civil Legal Aid
  - Representation at hearing
  - Credit and eviction remediation
  - Disability and Domestic Violence



## P.C. 290 Registration

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- Using registry status as standard for disqualification is problematic:
  - States operate Registries very differently; a “lifetime offense” in California may not be elsewhere;
  - Little nexus to risk of reoffending. For example, registrants might include:
    - indecent exposure or lewd displays related to substance abuse, mental health issue or homelessness
    - women who are convicted of conspiracy to commit sexual abuse for failing to protect a child from abuse
    - Consensual relationships where one partner is older than the other by a few years



## PC 290 Advocacy Tips

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- ❑ Is your client eligible for Certificate of Rehabilitation? (P.C. 290.5)
- ❑ Theoretical possibility for reasonable accommodation (Non HUD housing)
- ❑ SB 384 (Coming... 2021)
- ❑ Is your client definitely a “*lifetime* registrant”? (HUD)
- ❑ For admissions *before June 25, 2001*, no basis for eviction or termination solely based on a household member’s sex offender registration status (HUD)
- ❑ Your client is still entitled to a hearing and procedural protections (HUD)



## Fair Housing, Domestic Violence & VAWA

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- 38% of all victims of domestic violence become homeless at some point in their lives. National Network to End Domestic Violence.
- Difficulties finding permanent housing because of poor employment history, evictions, poor credit, etc.
- Average Shelter Stay is 60 days – takes 10-12 months to find permanent housing
  - *My Sister's Place* – [www.mspny.com](http://www.mspny.com)



## Protections for Domestic Violence Survivors: Violence Against Women Act (VAWA)

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- “That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking is not an appropriate basis for denial of program assistance.” 42 U.S.C. § 14043(e)-11(b)(1)
- “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence dating violence, or stalking ....” 75 Fed. Reg. 66,255; 24 CFR 982.553(e)
  - PH, Voucher; Sections 8, 202 and 811
- Applies to HUD-assisted and LIHTC



## Fair Housing & Domestic Violence: New HUD Guidance

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- A recent memo from HUD's Office of Fair Housing and Equal Opportunity sets forth the theories HUD will use to analyze discrimination against DV survivors when it receives administrative complaints.
- “HUD is committed to using the Fair Housing Act to protect victims of abuse from unlawful denial of access to decent, affordable housing.”  
– Asst. Secretary John Trasviña.



# Fair Housing & Domestic Violence: Theories

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- DV survivors aren't a protected class under the FHA or most state fair housing laws, so advocates have used sex discrimination theories.
  - Disparate impact: Has been used to challenge neutral policies that have the effect of treating DV survivors more harshly.
    - Ex: Failing to make an exception to a “zero tolerance for violence” policy for a DV survivor
  - Disparate treatment: Has been used to challenge actions that were taken against a tenant because of sex-based stereotypes regarding DV.
    - Ex: “I never rent to abused women because they always go back to the men who beat them.”
- It may strengthen the survivor's case to raise both theories in tandem.



# Hypo

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- A former Alameda County employee and youth advocate, Ms. C's life took a turn for the worst when her fiancé and daughter's father was killed in a car accident.
- Depressed and grief stricken, she was the victim of severe domestic violence in a subsequent relationship that resulted in her hospitalization with 3<sup>rd</sup> degree burns when her abuser pressed a hot iron to her face and back.
- After her release, she struggled with depression, PTSD and drug dependency which led to her arrest and eventual plea to misdemeanor possession of prescription painkillers.
- While incarcerated awaiting trial she was evicted by default.
- She is seeking permanent housing... what barriers can you spot? What strategies would you employ?



# Consumer Credit Protections

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- **Fair Credit Reporting Act (FCRA ) [Federal Law]**
  - Consumer report – “credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.”
- **Investigative Consumer Reporting Agencies Act (ICRAA) [State Law]**
  - Investigative consumer report – “character, general reputation, personal characteristics, or mode of living...obtained through any means.”



# Public vs. Private Housing

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- PHAs and HUD-assisted owners will perform a credit check on each adult member of the household when the household nears the top of the waitlist AND a “live scan” criminal record check.
- Private Housing will likely obtain “commercial” background check product (i.e., “Tenant Verify”, etc.)
- Both FCRA and ICRAA apply if outside screening company is used to conduct a criminal record background check



## What Shouldn't Be in My Background Check Report to a PHA?

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- **Private Companies (ICRAA/FCRA)**
  - Arrest only incidents (unless case is still pending)
  - Convictions older than 7 years
  - Dismissed Convictions
- **Public Agencies**
  - Information about incidents that didn't result in a conviction
  - Records directly from the DOJ



# Adverse Action

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- If housing provider...
  - Denies applicant
  - Increases rent/security deposit
- ...due to information in report...
- ...it must give **notice** to applicant:
  - Name, address, and phone of agency
  - Statement that agency did not make decision
  - Notice of right to dispute report



# Rights of Individuals seeking housing

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- Housing Provider may NOT:
  - Access criminal or civil records older than 7 years old (ICRAA)
  - Ask for/use information about arrests not leading to convictions (FHA/ICRAA)
  - Have a blanket “No felons” policy or otherwise exclude all individuals with criminal records
  - Ask for/use information about juvenile adjudications (W&I Sec. 827, *et seq.*)
  - Ask for/use information about convictions that have been “expunged”
  - Deny someone whose qualifications are a function of a disability (“Reasonable Accommodation”)
  - Deny someone whose qualifications are related to a history of domestic violence (“VAWA”)



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