

SOUTHWESTERN PA LEGAL SERVICES

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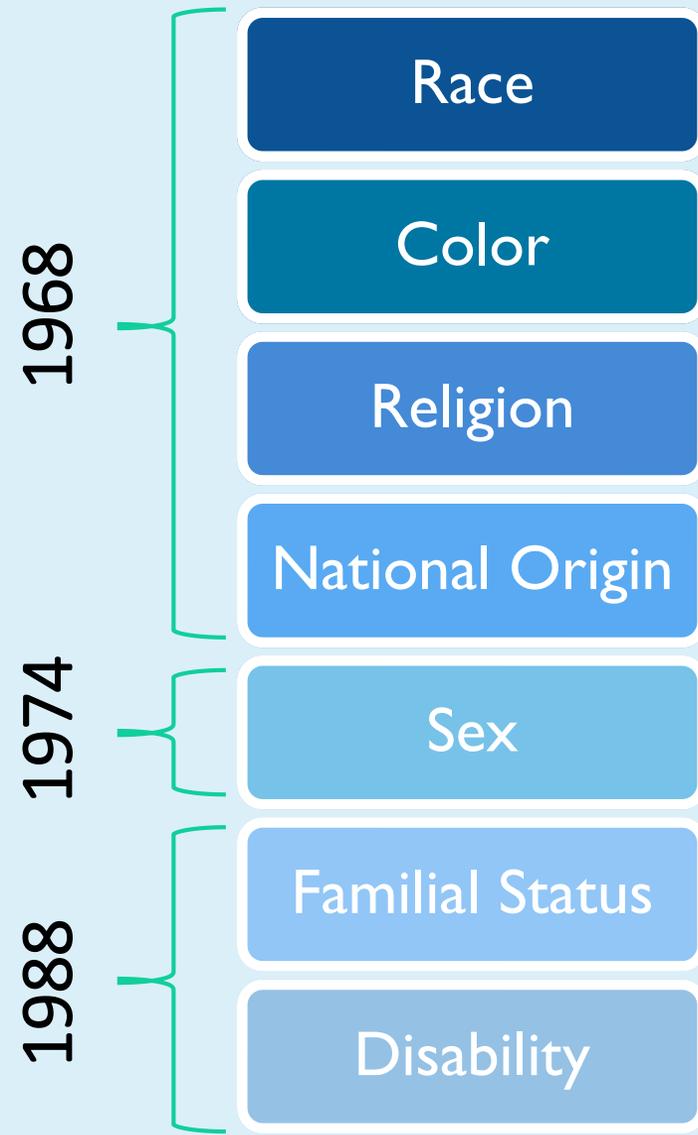




THE FAIR HOUSING ACT

WHAT IS FAIR HOUSING?

PROTECTED CLASSES



FAMILIAL STATUS

A family in which one or more children under age 18 live with:

- A parent
- A person who has legal custody of the child or children
- The designee of the parent or legal custodian with the parent or legal custodian's permission

Also applies to pregnant women and anyone securing legal custody of a child under the age of 18

DISABILITY

A person is considered disabled under the act if:

He or she has a physical or mental impairment that substantially limits one or more major life activity

He or she has a record of having such a disability; OR

He or she is regarded as having such a disability.



“Physical or Mental Impairment:” Mobility, visual, speech or hearing impairments; cerebral palsy; autism, epilepsy, muscular dystrophy, multiple sclerosis; cancer; heart disease; HIV/AIDS; intellectual disabilities; drug addiction (other than addiction cause by current, illegal use of a controlled substance) and alcoholism.

SEXUAL HARASSMENT

Quid Pro Quo—Housing or housing-related services or transactions are conditioned on sexual conduct

Hostile Environment—When a housing provider or their employee engages in sexual behavior of such severity or pervasiveness that it alters the terms or conditions of tenancy and results in an environment that is intimidating, hostile, offensive, or otherwise significantly less desirable.

A housing provider cannot intimidate, threaten or interfere with the exercise or enjoyment of your rights under the Fair Housing Act.

SEXUAL HARASSMENT:

WHAT DOES HARASSMENT LOOK LIKE?

"I know a way you could make up for the rent you owe."

Threatening to report you to the Section 8 office if you don't comply with sexual demands.

"If you take some nude photos, I could lower the rent."

Sexual assault; rape; forced entry to your home; entering without notice to catch you without clothes

"You really need a place to live? How badly do you need it, honey?"

Unwanted physical conduct; questions about whether there's a man in your life or referring to intimacy with a man in your life.



ACTIONS COVERED UNDER THE ACT

Renting

Selling

Lending

Insuring

All areas connected with residential housing

LIABILITY

01

Who is liable?

02

What properties are covered under the Fair Housing Act?

EXEMPTIONS

1

Mrs. Murphy

2

Religious Exemption

3

Private Organization/Club
Exemption

4

Single family housing sold
or rented without the use
of a broker if the private
individual owner does not
own more than three such
single family homes at one
time

5

Certain Senior Housing

PROHIBITED PRACTICES

Refuse to rent or sell housing



Refuse to negotiate for housing



Make housing unavailable



Deny a dwelling



Set different terms, conditions or privileges for sale or rental of a dwelling



Provide different housing services or facilities



Falsely deny that housing is available for inspection, sale, or rental

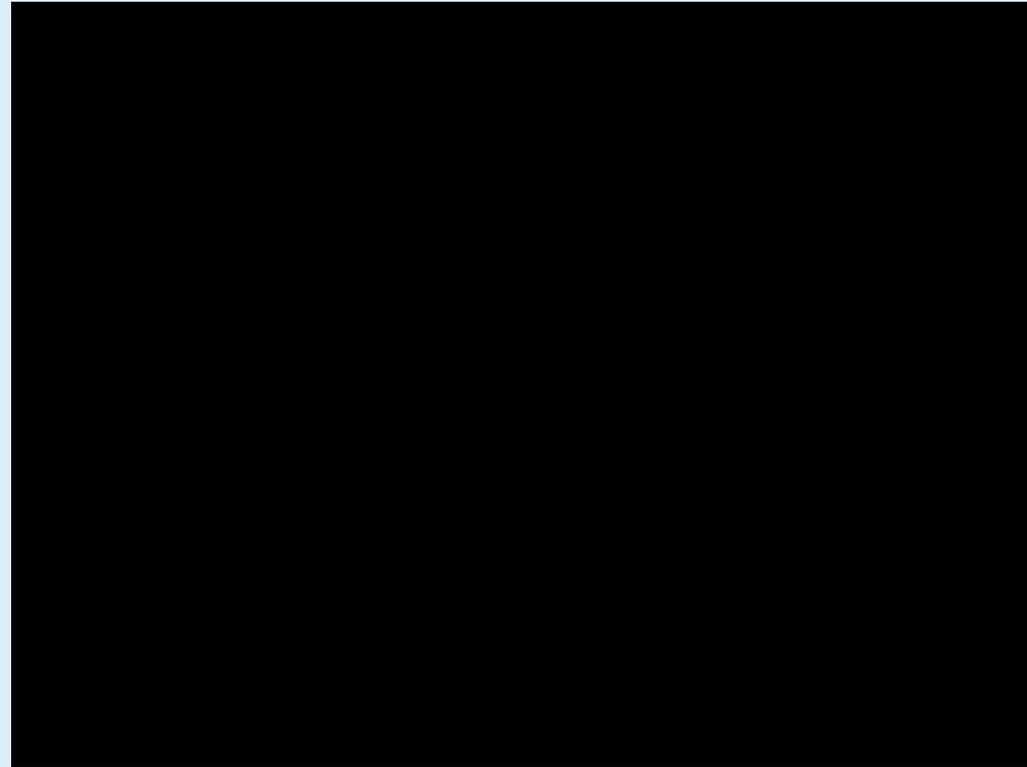


For profit, persuade owners to sell or rent (blockbusting) or



Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

FALSE DENIAL OF AVAILABILITY





DENIALS

MANDATORY AND DISCRETIONARY

MANDATORY BANS

PHAs and project owners **MUST** deny admission to:

- Anyone who has been convicted of manufacturing methamphetamine on federally assisted property;
- Anyone subject to lifetime registration for a sex offense;
- *Current users* of illegal drugs, abusers of alcohol, or pattern interfering with health, safety, peaceful enjoyment; or



Anyone who, within the last 3 years, has been evicted from federal housing for drug-related criminal activity unless:

- (1) drug rehabilitation or
- (2) circumstances leading to eviction no longer exist.

DISCRETIONARY BANS

PHAs and project owners **MAY** consider denying admission, evicting or terminating for:

- Drug-related criminal activity – manufacture, sale, distribution, use, or possession;
- Violent criminal activity – use of or threatened use of physical force that will cause serious bodily injury or property damage;
- Other criminal activity that would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing employees.

LIMITS ON DISCRETION

PHAs and project owners' discretion subject to two additional, important limits:

Civil Rights Laws, including federal Fair Housing Act

Time – Criminal activity must have occurred during a “reasonable time” before the screening takes place. 42 U.S.C. §13661(c)(2012).



HUD GUIDANCE

PIH/HOUSING ARREST RECORD GUIDANCE
AND FAIR HOUSING GUIDANCE

ARREST RECORD GUIDANCE-PUBLIC HOUSING

- HUD Notices PIH 2015-19/H 2015-10 applies to public housing, vouchers, and multifamily housing.
- <https://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>
- <https://portal.hud.gov/hudportal/documents/huddoc?id=1510hsgn.pdf>
- HUD also released a subsequent FAQ.
- <http://portal.hud.gov/hudportal/documents/huddoc?id=faqexclud earrestrec33116.pdf>

ARREST RECORD GUIDANCE-PUBLIC HOUSING

Why is an arrest not enough?

One Strike Policy

Other evidence

Preponderance of the evidence (more likely than not)

BEST PRACTICES

01

Adopt admission policies that limit their criminal record screening to assessments of conviction records

02

Adopt a reasonable lookback period

03

Outline specific factors that will be considered when evaluating criminal records

04

Hire an offender reentry housing specialist

FAIR HOUSING GUIDANCE

- This legal opinion from HUD OGC applies to all housing covered by the Fair Housing Act.
- https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASandCR.pdf



LEGAL THEORY

BLANKET BANS

CRIMINAL RECORDS AND FAIR HOUSING

Criminal Records status is NOT a protected class.

Adverse housing decisions based on a person's criminal record screening may violate the Fair Housing Act, which prohibits discrimination on the basis of race.

1. Discriminatory treatment – criminal record as pretext for race

2. Disparate impact – facially neutral policies that have an unjustified disparate impact on racial minorities

DISPARATE IMPACT: STEP 1

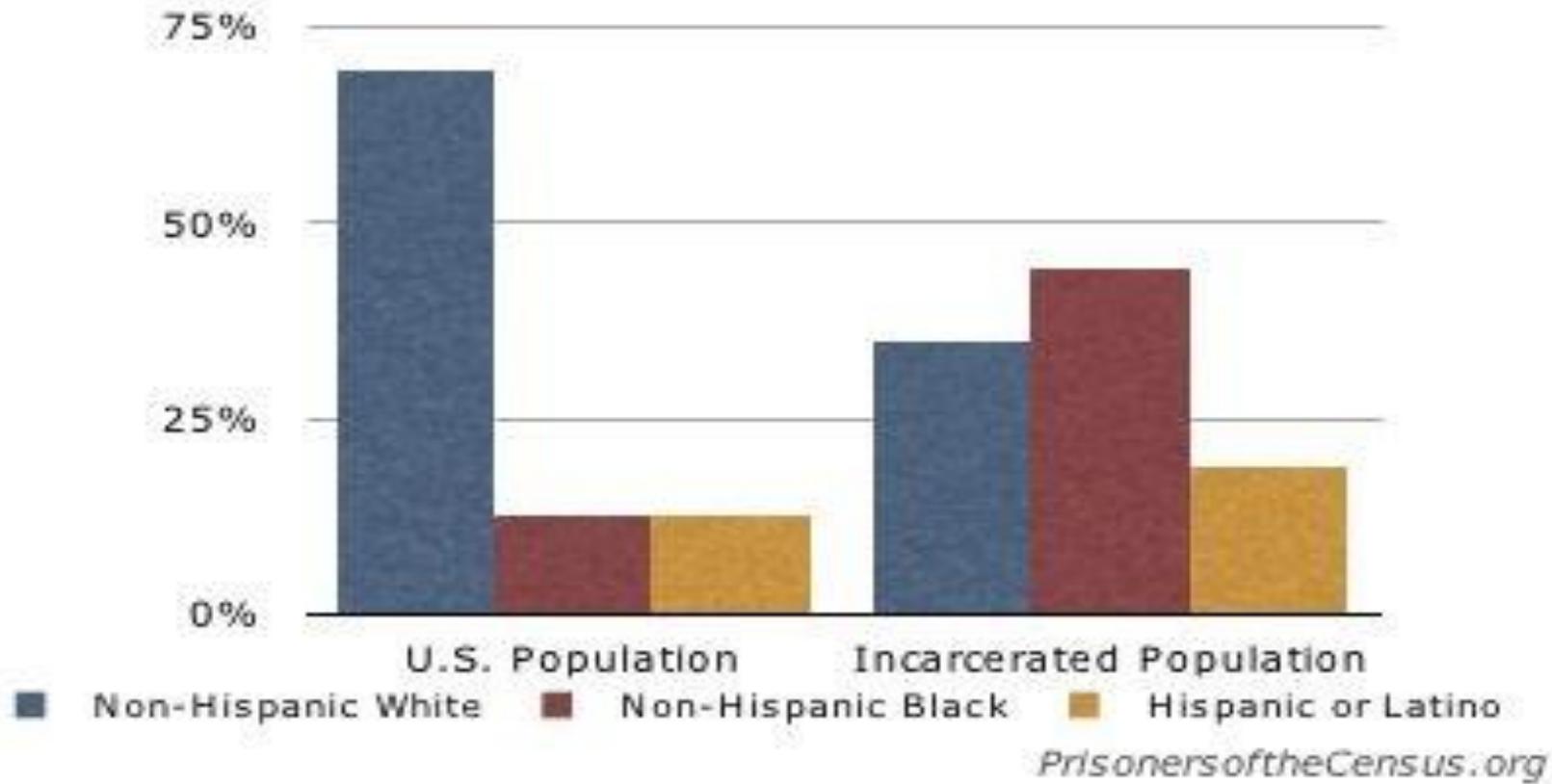
Look at statistics

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graph LR; A[Look at statistics] --> B[Local and state statistics preferred, but national statistics may work]; A --> C[Plaintiff's burden];
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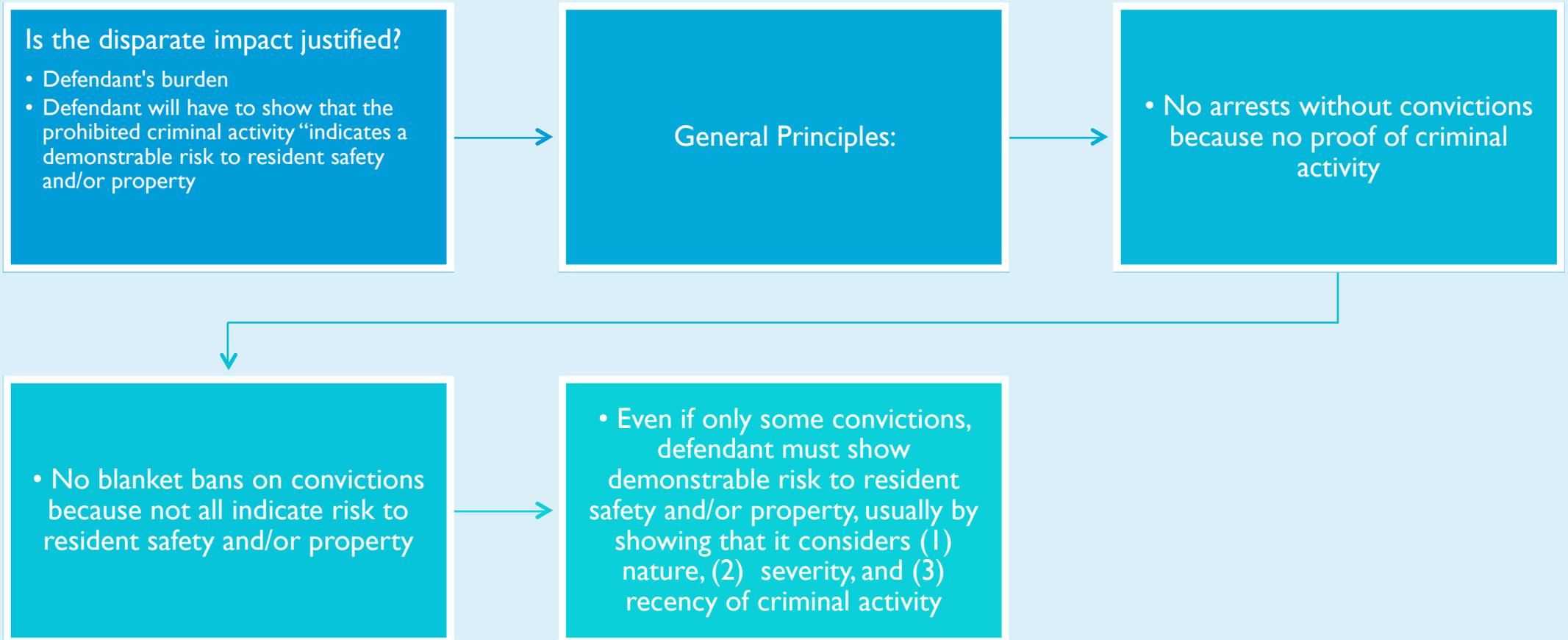
Local and state statistics preferred, but national statistics may work

Plaintiff's burden

Racial disparity between U.S. and incarcerated populations



DISPARATE IMPACT: STEP 2



DISPARATE IMPACT: STEP 3

Is there a less discriminatory alternative?

- Burden shifts back to the Plaintiff
- Individualized assessment of relevant mitigating factors will usually be a less discriminatory alternative to a blanket ban.
 - Seriousness of the offending action
 - Effect eviction would have on the rest of the household
 - Rehabilitation

EXCEPTION

- No disparate impact claims for convictions for manufacturing and distribution of drugs. 42 U.S.C. 3607(b)(4).



DUE PROCESS

ADMISSIONS

Right to Notice +
Opportunity to dispute
accuracy and relevancy
of criminal record
before denial.



- Right to request
information review
after denial



Reasonable
Accommodation?

TERMINATION/EVICTION

Right to notice +
opportunity to dispute
accuracy and relevancy
of criminal record
before denial



- Right to
administrative
grievance hearing
before impartial
hearing officer



Reasonable
Accommodation?

EVIDENCE

01

Housing provider's decision must be based on a preponderance of the evidence.

02

- Judicial rules of evidence don't apply in hearings.

03

- Advocates should still consider whether housing provider's evidence should be used to support the decision.

04

- Beware of hearsay issues- consider reliability and probative value of police reports, witness statements, and other evidence.

LOOKBACK PERIODS

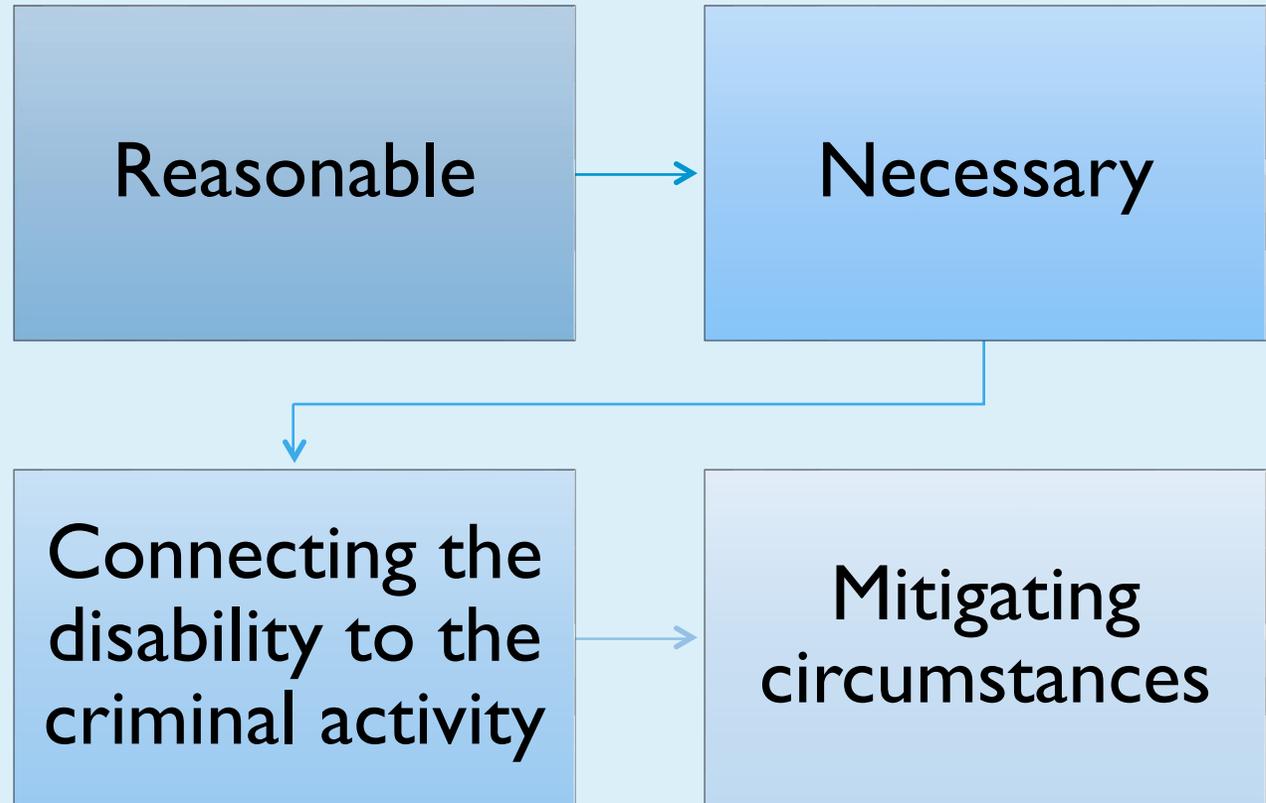
According to a Shriver Center Report: Most PHAs fall within 3-5 year range

BEST PRACTICE: 12 months for drug-related criminal activity and 24 months for violent criminal activity



REASONABLE ACCOMMODATIONS

**USING REASONABLE
ACCOMMODATIONS
TO OVERCOME
DENIALS AND
TERMINATIONS**



HOW TO CONTACT HUD

- Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
Room 5204
451 Seventh Street SW
Washington, D.C. 20410-2000
1 (800) 669-9777





fair housing
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