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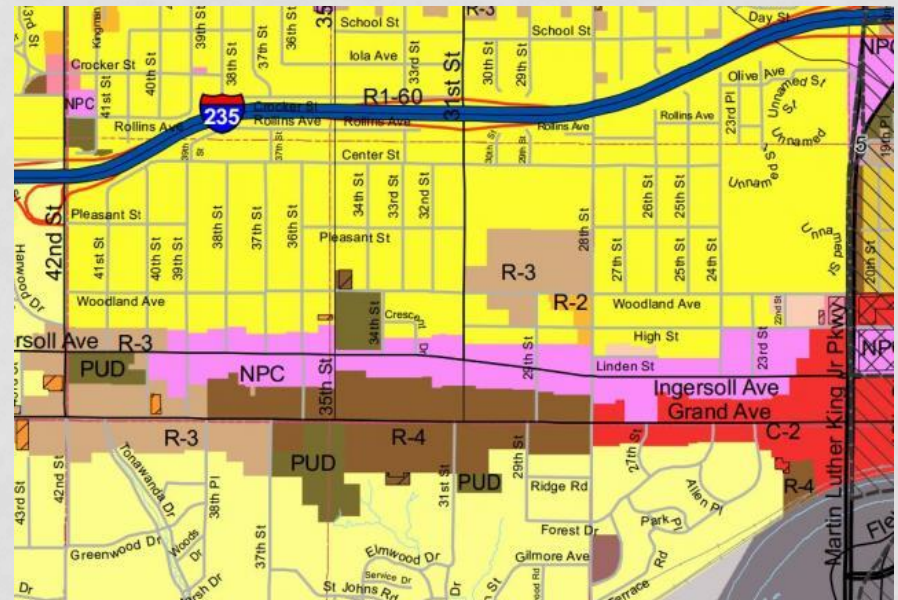


**IOWA CIVIL RIGHTS
COMMISSION**



ZONES COVERED TODAY

- Dangerous animal ordinances
- Criminal records – Race Disparity
- Nuisance Property / Crime Free Ordinances
- Disparate Impact
- Ban the Box ordinances



DANGEROUS BREEDS ORDINANCES

- What is a dangerous breed ordinance?
 - Bans particular breeds from living within the city limits such as Rottweilers, Pit Bulls Terriers, Dobermans, Bull Terriers, etc.



INTERACTION WITH TITLE VIII

Title VIII and the Iowa Civil Rights Act require housing providers and municipalities allow tenants / citizens with a disability to have emotional support / assistance animals.

This requires tenants to request a variance from ordinances with breed restrictions when the tenant can show the animal is an emotional support animal / assistance animal.

DIRECT THREAT

- However, municipalities can ban animals who constitute a direct threat to the tenant or other residents / citizens, or substantial damage to property.
- Requires individualized assessment of the animal based on objective evidence.

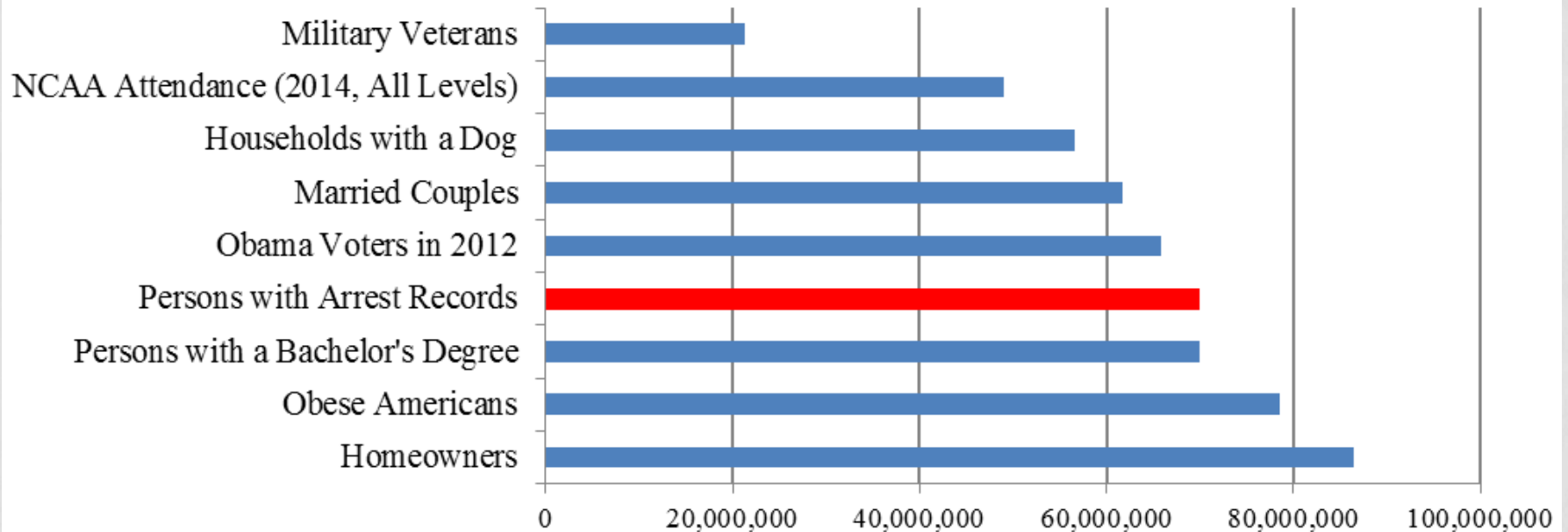


BEST PRACTICE

- Draft a means for requesting a variance from dangerous breeds statute if resident has emotional support animal.
 - If need for animal is apparent, cannot ask for documentation.
 - If need is not apparent, then can ask for medical professional supporting need.

CRIMINAL RECORDS IN THE U.S.

- 1 in 3 American adults has an arrest record in the FBI's criminal database.



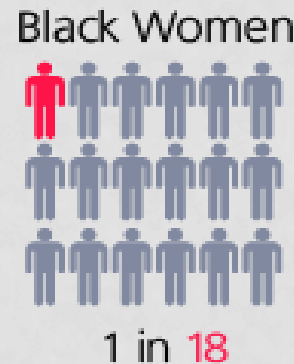
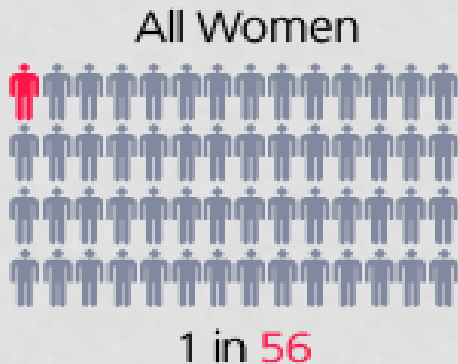
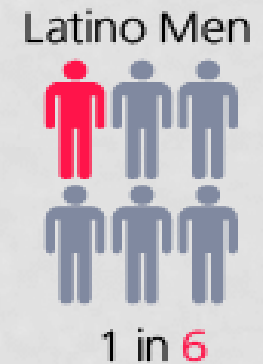
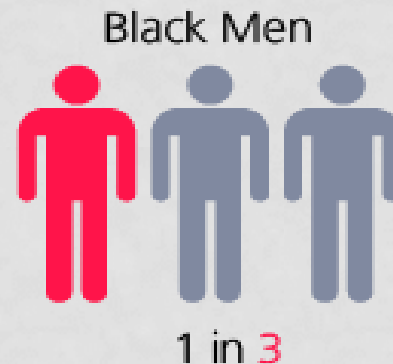
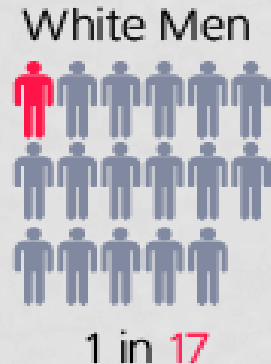
INCARCERATED / ON PAROLE

- Over 2,220,000 adults were incarcerated in United States federal and state prisons, and county jails in 2013.
- Additionally, 4,751,400 were on probation or parole in 2013.



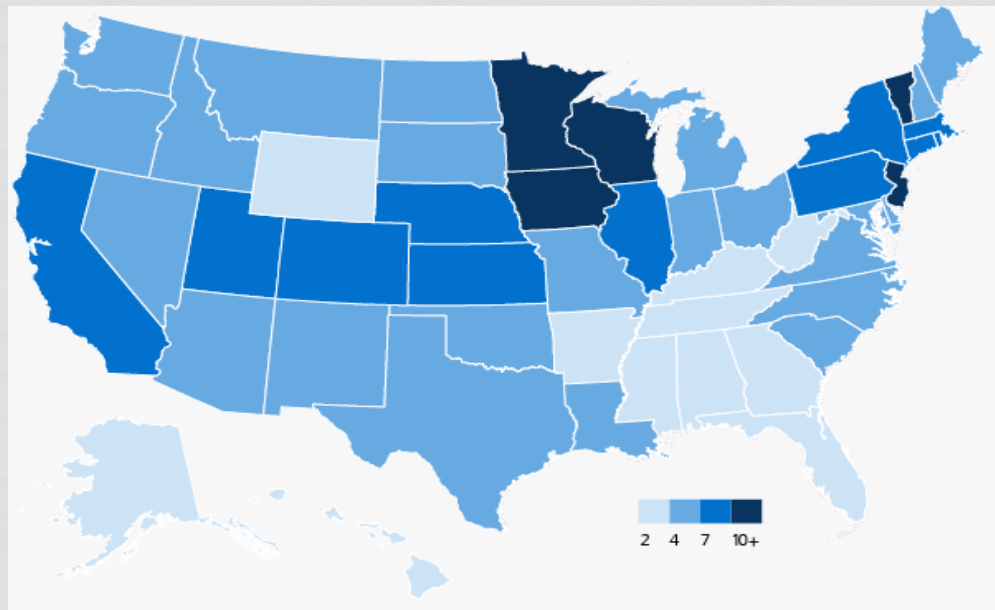
RACIAL DISPARITY

- African Americans are incarcerated 5.1 times the rate of whites.



RACIAL DISPARITY IN IOWA

- In Iowa, African Americans are incarcerated 11.1 times the rate of whites.
 - 3.1% of Iowa's population is African American
 - 25.8% of Iowa's prison inmates are African American



NUISANCE ORDINANCES

- What is a nuisance ordinance?
 - Label various types of conduct related to a property a “nuisance.”
 - Littering
 - Failure to mow the lawn
 - Calling 911 a certain number of times
 - Require landlord or property owner to abate the nuisance or pay a penalty.



CRIME FREE ORDINANCES

- What are crime free ordinances? There are two different varieties.
 - Some operate similarly to nuisance ordinances under a different name.
 - Others require eviction of a resident after a single incident of criminal activity, regardless of whether it occurred onsite.

BACKGROUND CHECKS

- Legitimate reasons for the practice:
 - Reduce liability, theft, and threats to public safety.
 - State and federal compliance concerns.



BACKGROUND CHECKS

- Background checks show:
 - Convictions:
 - Felonies
 - Misdemeanors
 - Traffic
 - Non-convictions (acquittals, dismissals, deferred)
 - Expunged or sealed offenses



Results depend on the type of background check

ANTI-DISCRIMINATION LAWS

- Title VII and Title VIII prohibit discrimination on the bases of race, color, religion, sex, or national origin, familial status,* and disability.* 42 U.S.C. §§ 2000e-2(a)(1); (k)(1)(A)(i); 42 U.S.C. §§ 3604 – 3607.
- Iowa Civil Rights Act of 1965 prohibits discrimination in employment and housing based on age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, disability, familial status. Iowa Code § 216.6(1)(a).

DISPARATE IMPACT PRIMA FACIE

A housing provider / municipality is liable for violating Title VII and the ICRA when its neutral policy or practice has the effect of disproportionately screening out a protected group. *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2522 (2015).



LIMITATIONS

The disparate impact theory in housing has the following limitations in the following ways:

- Statistical proof of disparate impact prior to summary judgment.
- Plaintiffs need to show a causal link between policy and disparity. *Id.* at 2523. See also *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1303 (2017).
- Governmental entities must be able to ensure compliance with health and safety codes. *Id.* at 2524.

APPLIES TO ZONING

- Arbitrary zoning is the “heartland of disparate impact liability.” *Tex. Dep’t of Hous. and Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2522 (2015).

Examples:

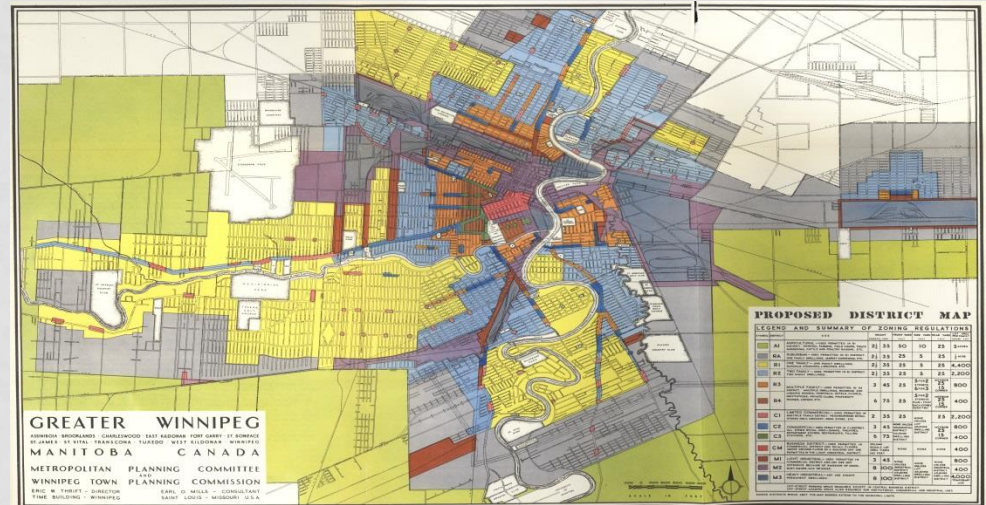
- Restricting rental to blood relatives.
- Preventing any multifamily construction.
- Placing industrial zoning next to protected class residential.

POINT TO A PRACTICE

- A plaintiff must show a particular practice screens out a disproportionate amount of their protected class.
- The Iowa Supreme Court declined to decide if the ICRA will have this requirement. *Pippen v. State*, 854 N.W.2d 1, 32 (Iowa 2014).

WHAT IS A PRACTICE?

- These are steps in a hiring or rental process that screen out or disqualify potential applicants.
 - Background checks
 - Nuisance ordinances
 - Crime Free Lease ordinances
 - Zoning policies



NARROW EXCEPTION

- Narrow exception if the plaintiff can show the process is incapable of separation in the following three ways:
 - It relies on subjective and ambiguous decision-making processes;
 - It is so intertwined as not capable of separate analysis; or
 - The defendant failed to keep adequate records.

WHAT DOES DISPARATE IMPACT MEAN?

- The disparity between the failure rate of the privileged class and the protected class has to be “sufficiently large that is unlikely to have occurred by chance.” *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307 (1977).
 - 4/5^{ths} Rule
 - Z-test / Binomial

$$Z = \frac{(\hat{p}_1 - \hat{p}_2) - 0}{\sqrt{\hat{p}(1 - \hat{p}) \left(\frac{1}{n_1} + \frac{1}{n_2} \right)}}$$

DISPARATE IMPACT - NUISANCE / CRIME FREE ORDINANCES

- Tend to have a disproportionate impact on victims of domestic violence. Women comprise approximately 80 % of all domestic violence victims.
- Crime Free ordinances tend to have a disproportionate impact on African American / Latino applicants.

NECESSARY TO ACHIEVE A SUBSTANTIAL, LEGITIMATE INTEREST?

- If a plaintiff can form a prima facie case, then the defendant can shift the burden back by showing the practice necessary to achieve a substantial, legitimate, nondiscriminatory interest. *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507, 2522 (2015).

HUD GUIDANCE

- HUD's 2013 Discriminatory Effects Final Rule explains this is a "core interest of the organization that has a direct relationship to the function of that organization." 78 Fed. Reg. At 11470.
- Application to Nuisance / Crime-Free Ordinances:
 - High burden for municipalities to show that these policies are supported because potentially endanger its citizens.

HUD GUIDANCE: ARRESTS

- Arrests are not proof of criminal conduct.
- In that context, a practice of excluding tenants with a mere arrest record can never be necessary to achieve a substantial, legitimate, non-discriminatory interest.



HUD GUIDANCE: CONVICTIONS

- Convictions indicate a person engaged in the conduct.
- Housing providers should not have a blanket exclusion for any tenant having a conviction will not be necessary to achieve a substantial, legitimate, non-discriminatory interest.

LESS DISCRIMINATORY ALTERNATIVE

- Then the burden switches back to the plaintiff to show there is a less discriminatory alternative for achieving the substantial, legitimate, non-discriminatory interest.



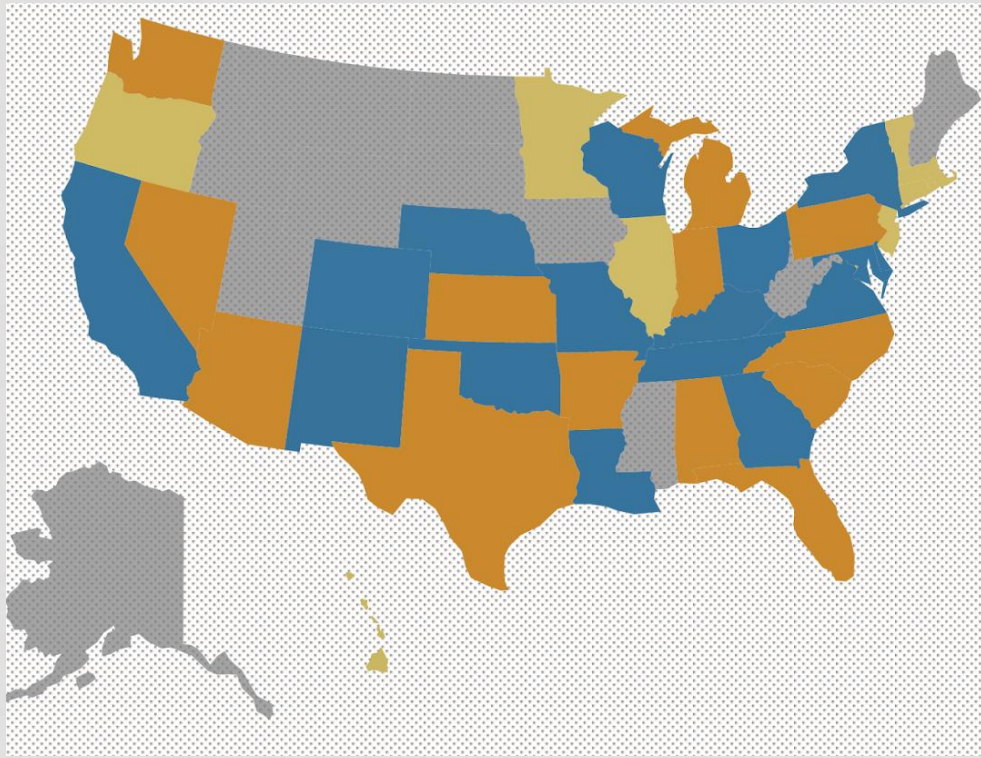
OTHER DEFENSES

- Compliance with state or federal law such as:
 - Iowa prohibits adults convicted with sex crimes from residing within 2000 feet of a school or child care facility. Iowa Code § 692A.113.
 - Exceptions – does not apply to offenders who lived prior to construction, who have guardians, or residing in treatment centers.

DISPARATE TREATMENT

- An municipality is liable for violating federal discrimination laws and the ICRA when it treats citizens differently because of their protected characteristics.
- Examples:
 - Applying zoning restrictions in an intentionally discriminatory manner
 - Applying Nuisance / Crime Free Ordinances selectively.
 - Statements indicating bias in decision-making.

BAN-THE-BOX LEGISLATION



- Currently 24 states and over 150 cities and counties have such laws.
- Latest: Los Angeles in December 2016
- California: pending law would extend to private employers

BAN-THE-BOX LEGISLATION

- Iowa: H.F. 502 (2017)
- Landlords / realtors prohibited from inquiring about criminal history prior to offer of tenancy.
- Penalty: Fine of \$500 for a first violation, \$1,000 for a second violation, and \$2,000 for a third or subsequent violation.



QUESTIONS?

