

# CALLED “OUT” AT HOME: THE ONE STRIKE EVICTION POLICY AND JUVENILE COURT

WENDY J. KAPLAN†

DAVID ROSSMAN††

*One of the harshest collateral consequences of a juvenile delinquency case is the prospect of eviction from public housing. Under the federal government’s One Strike policy, public housing authorities are encouraged to evict families for any criminal act by their children, no matter how trivial. This politically popular policy creates more social ills than it cures. There is no evidence that it reduces crime in public housing, but there is abundant evidence that it makes families homeless, puts children out on the street, leads police departments to breach laws concerning confidentiality of juvenile proceedings, and creates conflicts of interest between parents and their troubled offspring. This article explores the background and practical operation of the One Strike policy, how it affects the processing of children in juvenile delinquency cases, and suggests legislative, agency, and criminal justice reforms to ameliorate the problem.*

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† Clinical Associate Professor of Law, Boston University School of Law.

†† Professor of Law, Boston University School of Law. Invaluable assistance in completing this article came from Tabitha Bolden, Valerie Kua and Justin Polk.

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## INTRODUCTION

The nation's public housing program was established in 1937 to provide "decent and *safe* dwellings for low-income families."<sup>1</sup> Today there are over 3,300 public housing authorities (PHAs) with almost seven million people living in them as well as other federally subsidized housing.<sup>2</sup> But the assurance of a protected environment has not lived up to the promise. The issue of safe homes for low-income families commands public attention with reports of rising crime rates in public housing properties.<sup>3</sup> Concern about crime in public housing has spawned a strategy, known as the One Strike policy, that makes criminal behavior by public housing tenants—or their children—grounds for eviction. Over 2.6 million children currently live in homes that are subject to One Strike.<sup>4</sup> Research suggests that ten percent of them have been arrested, making eviction a potential consequence for them and their families.<sup>5</sup> These arrests have brought the children into contact with a juvenile justice system created over a century ago on the premise that young people did not belong in traditional criminal courts and deserved the opportunity for rehabilitation rather than punishment.<sup>6</sup>

Nowhere does the clash of ideologies between rehabilitation for delinquent children and safe housing for low-income families play out more dramatically than in the collateral consequences for public housing tenants with children in the juvenile justice system. These children and their families are threatened with eviction and subsequent homelessness.

This article examines public housing programs and their anti-crime measures as they apply to juveniles charged with delinquency. Part I presents the evolution of the One Strike policy, including its application and impact on youth. Part II describes the impact of juvenile court involvement on public housing families by discussing how conflicts of interest may arise between a child and a parent or legal guardian at key points in the juvenile justice process and by underscoring how the threat of eviction impacts the work of the juvenile

1. 42 U.S.C. § 1437 (2006) (emphasis added).

2. See U.S. DEP'T OF HOUS. & URBAN DEV., RESIDENT CHARACTERISTICS REPORT (2010).

3. See 42 U.S.C. § 11901 (2006) ("[P]ublic and other federally assisted low-income housing . . . suffers from rampant drug-related or violent crime; . . . the increase in drug-related and violent crime . . . leads to murders, muggings, and other forms of violence against tenants . . . and local law enforcement authorities often lack the resources to deal with the [problem].").

4. See U.S. DEP'T OF HOUS. & URBAN DEV., *supra* note 2.

5. See Jens Ludwig, Greg J. Duncan, & Paul Hirschfield, *Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-Mobility Experiment*, 116 Q. J. ECON. 655, 665 (2001) (explaining that, of 336 children between the ages of eleven and fifteen living in public housing in Baltimore, 12.3% had been arrested at least once for a violent crime, 8.3% for a property crime, and 9.5% for another crime).

6. The history of the juvenile court's beginnings is well-chronicled. See, e.g., DAVID S. TANENHAUS, *JUVENILE JUSTICE IN THE MAKING* (2004); ELIZABETH J. CLAPP, *MOTHERS OF ALL CHILDREN: WOMEN REFORMERS AND THE RISE OF JUVENILE COURTS IN PROGRESSIVE ERA AMERICA* (1998); VICTORIA GETIS, *THE JUVENILE COURT AND THE PROGRESSIVES* (2000); ELLEN RYERSON, *THE BEST-LAID PLANS: AMERICA'S JUVENILE COURT EXPERIMENT* (1978); ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* (1969).

justice system. Finally, Part III presents recommendations for striking a better balance between the public safety concerns of PHAs and the juvenile court’s goal of rehabilitation.

### I. THE ONE STRIKE LAW

In the mid-1990s, the United States was a country lacking in patience when dealing with domestic social problems. Discretion and lenience in government decision-making were out of favor. Mandatory sentencing was at its zenith in the criminal justice system.<sup>7</sup> Even dealing with children became such a matter of strict enforcement that states began to subject juveniles charged with serious crimes to mandatory waivers of jurisdiction by the juvenile court, subjecting children as young as thirteen to adult life sentences.<sup>8</sup> Outside the arena of criminal justice, society also adopted an inflexible approach to juvenile discipline. For example, education officials, taking their cue from federal legislation mandating expulsion of students bringing guns to school,<sup>9</sup> implemented zero tolerance policies that apply to a wide range of behaviors.<sup>10</sup>

Thus, when President Clinton gave his State of the Union address to Congress in January of 1996, he was expressing the spirit of the times when he

7. See Christopher Mascharka, *Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences*, 28 FLA. ST. U. L. REV. 935, 935 n.1 (2001) (explaining that between the mid-1980s and the mid-1990s, Congress passed a statute with a mandatory minimum sentence about every two years). In 1994, both California and the federal government enacted “Three Strikes and You’re Out” legislation that essentially provided for a mandatory life term on a defendant’s third felony conviction. See CAL. PENAL CODE § 667(e)(2)(A)(ii) (West 2010); *id.* at § 1170.12(c)(2)(A)(ii); Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, Title VII, § 70001 (codified as amended at 18 U.S.C. § 3559 (2006)) (providing a mandatory life sentence in prison if a defendant with two or more prior convictions for serious violent felonies is convicted of a violent felony). Other areas of law enforcement also adopted a regime of strict enforcement. For example, the 1990s saw judges and prosecutors stripped of their ability to keep aliens caught up in the criminal justice system from being deported. Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 5050 (codified as amended at 8 U.S.C.A. § 1227 (West 2011)) (eliminating a judge’s authority to make a binding judicial recommendation against deportation as part of the sentencing process); Pub. L. No. 104-208, 110 Stat. 3009-596 (codified as amended at 8 U.S.C.A. § 1229b (West 2011)) (eliminating the Attorney General’s authority to grant discretionary relief from deportation). See also *Padilla v. Kentucky*, 130 S. Ct. 1473, 1478 (2010). In the same decade, municipal police instituted policies requiring mandatory arrests for routine low-level law enforcement efforts. See Eric Blumenson & Eva S. Nilsen, *How to Construct an Underclass, or How the War on Drugs Became a War on Education*, 6 J. GENDER, RACE & JUST. 61, 78 n.62 (2002) (exploring how zero-tolerance policies were expanded to “open-air drug dealing and prostitution . . . environmental pollution, trespassing, skateboarding, racial intolerance, homelessness, sexual harassment, and boom boxes”).

8. See Margaret Talbot, *The Maximum Security Adolescent*, N.Y. TIMES MAGAZINE, Sept. 10, 2000 (stating that twenty-eight states have mandatory waiver statutes that automatically remove juveniles charged with certain crimes from juvenile to adult court).

9. See Gun-Free Schools Act of 1994, Pub. L. No. 103-382, 108 Stat. 3907 (codified as amended at 20 U.S.C. § 7151 (2006)) (requiring local educational agencies to expel students for a period of not less than one year).

10. See Blumenson & Nilsen, *supra* note 7, at 66 (noting that since the mid-1990s, the number of sanctions imposed as a result of zero-tolerance school infractions has skyrocketed, with much more severe sanctions); Henry A. Giroux, *Racial Injustice and Disposable Youth in the Age of Zero Tolerance*, 4 QUALITATIVE STUD. IN EDUC. 553, 561 (2003) (noting that in the mid-1990s school officials broadened zero tolerance policies to include “everything from possessing drugs to harboring a weapon to threatening other students—all broadly conceived”).

announced: “I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crime and peddle drugs should be, [O]ne [S]trike and you’re out.”<sup>11</sup>

Two months after he announced the One Strike policy in his State of the Union Speech, President Clinton signed the Housing Opportunity Program Extension Act of 1996,<sup>12</sup> which required PHA leases to include a provision that subjected a tenant to eviction for certain criminal activities:

[A]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control . . . .<sup>13</sup>

The Extension Act also made families evicted because of drug-related activities ineligible for public housing for at least three years without regard for their knowledge of or responsibility for the past drug crime that led to their eviction.<sup>14</sup> Similar provisions concerning grounds for eviction and ineligibility apply as well to the Section 8 rent subsidy program that gives income eligible tenants access to private housing.<sup>15</sup>

The language of the One Strike statute does not explicitly require the eviction of family members who were not responsible for any drug related activities. However, many state eviction schemes include protection for innocent family members, either by statute<sup>16</sup> or through the judicially created equity

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11. See President Bill Clinton, 1996 State of the Union Address (Jan. 23, 1996), *in* 142 CONG. REC. H768- 71 (1996). President Clinton gave the formal name “One Strike and You’re Out” to the policy in a memorandum he sent to the Department of Housing and Urban Development (HUD) Secretary two months later. See Memorandum from President Bill Clinton to Secretary of Housing and Urban Development, 1996 WL 139528 (Mar. 28, 1996) (directing HUD to adopt “a clear and straightforward rule for those who endanger public housing communities by dealing drugs or engaging in other criminal activity: One Strike and You’re Out of public housing”). Actually, the law that allowed a public housing authority (PHA) to evict a tenant for the type of criminal activity that President Clinton stressed was already on the books, it was just not enforced. See Michael Zmora, *Between Rucker and a Hard Place: The Due Process Void for Section 8 Voucher Holders in No-Fault Evictions*, 103 NW. U. L. REV. 1961, 1970 n.62 (2009) (citing John F. Harris, *Clinton Links Housing Aid to Eviction of Crime Suspects*, WASH. POST, Mar. 29, 1996, at A14 (“The one-strike policy has been permissible under federal law since 1988, but administration officials said many local housing project officials have not implemented the no-tolerance approach.”)); James P. Moran, Jr., *High Noon in Alexandria: How We Ran the Crack Dealers Out Of Public Housing*, 53 POL’Y REV. 78, 78–81 (1990) (describing difficulty evicting tenants involved in drug dealing from public housing in Alexandria, Virginia).

12. Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 836 (codified as amended at 12 U.S.C. § 1701 (2006)).

13. Cranston-Gonzalez National Affordable Housing Act, Pub. L. No. 101-625, § 504, 104 Stat. 4079 (codified as amended at 42 U.S.C. § 1437d(1)(6) (2006)).

14. See 42 U.S.C. § 1437d(r) (2006).

15. See 42 U.S.C. § 1437f(d)(1)(B)(iii) (2006). Section 8 tenants, however, are only subject to eviction for drug-related criminal activity “on or near” the premises. *Id.*

16. See VA. CODE ANN. § 55-248.31(C) (West 2011) (creating a rebuttable presumption that the family had knowledge of the illegal drug-related activity); see, e.g., ARIZ. REV. STAT. ANN. § 33-1368(g) (West 2011) (holding the tenant responsible only for acts of a tenant’s guests “if the tenant could reasonably be expected to be aware that such actions might occur and did not attempt to prevent those actions to the best of the tenant’s ability”); COLO. REV. STAT. § 13-40-107.5(5)(b)(II) (West 2011);

doctrine.<sup>17</sup> Some even protect tenants who cannot claim innocence because they did know about a juvenile family member’s drug activity.<sup>18</sup>

The Department of Housing and Urban Development (HUD), however, has consistently taken the position that the language of the various versions of the One Strike statute empower PHAs to evict an entire family no matter how trivial the drug offense of one of their children and without regard for the family’s lack of responsibility.

Until the issue reached the Supreme Court, whether the One Strike law could be interpreted in accord with HUD’s position was a matter of some dispute.<sup>19</sup> In 2002, however, *Department of Housing and Urban Development v. Rucker*<sup>20</sup> settled the issue.

The four plaintiffs in *Rucker* were all tenants in public housing in Oakland who had received eviction notices from the Oakland Housing Authority based on the drug-related activity of others. The plight of one of them, Pearlie Rucker, was typical; she faced eviction because her mentally disabled daughter was found smoking crack cocaine three blocks from the apartment they shared.<sup>21</sup> None of the four had any responsibility for the drug-related behavior that formed the basis for the eviction actions. They did not know of or condone the illicit behavior and the housing authority could not point to any action or omission on their part that led to the drug use. The evictions were based solely on the fact that someone else engaged in “drug-related criminal activity.”<sup>22</sup> Their lawsuit challenged HUD’s interpretation of the statute, which imposed strict liability on innocent tenants.

The Supreme Court ultimately upheld HUD’s position. Much of the opinion addresses statutory interpretation and the rules of grammar,<sup>23</sup> the role of legislative history,<sup>24</sup> and the canon of constitutional avoidance.<sup>25</sup> All of these were points on which the unanimous Court in *Rucker* disagreed with the *en banc* majority of the Ninth Circuit, which had ruled in favor of Pearlie Rucker and the others.<sup>26</sup> But reading the two opinions only at that level does not reveal what really formed the basis for the disagreement between the lower court and the Justices who eventually got the last word.

CONN. GEN. STAT. ANN. § 47a-15 (West 2011) (“[T]he burden shall be on the tenant to show that he had no knowledge of the creation of the serious nuisance.”); 310 ILL. COMP. STAT. ANN. 10/25(f)(3) (West 2011); MINN. STAT. ANN. § 504B.171(2) (West 2011); N.J. STAT. ANN. § 2A:18-61.1(p) (West 2011).

17. See, e.g., *Cuyahoga Metro. Hous. Auth. v. Harris*, 861 N.E.2d 179, 181 (Cleveland Mun. Ct. 2006); *Hous. Auth. of Pittsburgh v. Fields*, 772 A.2d 104, 108-09 (Pa. Commw. Ct. 2001) (refusing to allow eviction of tenant for criminal activity of child who was not under tenant’s control).

18. See N.J. STAT. ANN. § 2A:18-61.1(p) (West 2011).

19. See Adam P. Hellegers, *Reforming HUD’s “One-Strike” Public Housing Evictions Through Tenant Participation*, 90 J. CRIM. L. & CRIMINOLOGY 323, 330 n.41 (1999).

20. 535 U.S. 125 (2002).

21. See *id.* at 128. The Oakland Housing Authority ultimately abandoned its attempt to evict Ms. Rucker after her daughter was incarcerated. See *id.* at 129 n.1.

22. *Id.* at 128; see 42 U.S.C. § 1437d(l)(5) (2010).

23. See *Rucker*, 535 U.S. at 130-31.

24. See *id.* at 132-33.

25. See *id.* at 134-35.

26. *Rucker v. Davis*, 237 F.3d 1113, 1119-24 (9th Cir. 2001), *rev’d*, 535 U.S. 125 (2002).

The Ninth Circuit majority opinion conveys the strong message that HUD's position was basically irrational<sup>27</sup> and would have catastrophic consequences for people who had done nothing wrong.<sup>28</sup> Chief Justice Rehnquist's decision for the Court in *Rucker*, on the other hand, found it entirely reasonable to establish a policy that allowed the eviction of an innocent tenant.<sup>29</sup> Reduced to its essence, the unanimous Supreme Court believed "[s]trict liability maximizes deterrence and eases enforcement difficulties."<sup>30</sup> Once you accept that premise, statutory construction, legislative history, and constitutional avoidance become easy matters to resolve.

The aftermath of *Rucker* left individual state doctrines protecting innocent tenants largely in ruins. Almost all of the state courts that have considered the issue have concluded that the federal law has a preemptive effect.<sup>31</sup>

Although there is nothing in the One Strike law that prevents a PHA from tempering its application with a dose of concern over the effect of evicting an entire family for a misdeed by one of the children, HUD policy steers them away from such a course of action.

At the dawn of the One Strike policy, HUD sent out the message that PHAs would be better advised to apply it without exception. In the immediate aftermath of President Clinton's speech, HUD began an intensive effort to train PHAs in applying One Strike.<sup>32</sup> The report on its initial efforts cautioned that strict enforcement was the "key to success"<sup>33</sup> and noted that "under the required lease terms, an entire household can be evicted when one member violates those terms."<sup>34</sup> In addition, HUD raised the specter of lawsuits should a PHA apply a

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27. See *id.* at 1121 ("HUD's construction of subsection (6) would allow such irrational evictions, and thus would require PHAs to include an unreasonable term in their leases and permit eviction without good cause.") For example, evicting an innocent tenant who has taken steps to prevent third-party drug activity would not have a deterrent effect nor would evicting a tenant who has not used drugs reduce drug activity. *Id.*

28. See *id.* at 1124 ("The absurdity and unjustness of the potential results in this case confirms that HUD has missed the mark in discerning Congress's intent.").

29. See *Rucker*, 535 U.S. at 134.

30. *Id.*

31. See, e.g., Hous. Auth. of Joliet v. Chapman, 780 N.E.2d 1106, 1108 (Ill. App. Ct. 2002) (stating that *Rucker* requires overruling of precedent that interpreted PHA leases to require tenant to have knowledge of criminal activity of household member); Long Branch Hous. Auth. v. Villano, 933 A.2d 607, 610 (N.J. Super. Ct. App. Div. 2007) (stating that N.J. STAT. § 2A:18-61.1(p) (2010), which only allows the eviction of a tenant who "knowingly harbors" someone who commits a drug offense, is preempted by federal law); Hous. Auth. of Pittsburgh v. Fields, 816 A.2d 1099, 1099 (Pa. 2003) (per curiam) (holding that *Rucker* requires the reversal of a judgment refusing to evict a tenant on the grounds that she did not know of her son's drug offense); Antonia M. Konkoly, *Post-Rucker Decisions: Six Years Later*, 38 HOUSING L. BULL. 187, 187 (2008) ("In the last three years, few reported cases have upheld public housing tenancies against one-strike eviction actions."). Few cases holding that state law protecting innocent tenants survive *Rucker*. See, e.g., Hous. Auth. of Covington v. Turner, 295 S.W.3d 123, 127-28 (Ky. Ct. App. 2009) (holding that where PHA lease specifically references state law allowing a tenant to cure the breach, there is no preemption); Cuyahoga Metro. Hous. Auth. v. Harris, 861 N.E.2d 179, 181 (Cleveland Mun. Ct. 2006) (holding that *Rucker* "does not provide a basis for preempting or limiting this court's equity powers" to prevent the eviction of an innocent tenant).

32. U.S. DEP'T OF HOUS. & URBAN DEV., MEETING THE CHALLENGE: PUBLIC HOUSING AUTHORITIES RESPOND TO THE "ONE STRIKE AND YOU'RE OUT" INITIATIVE, xiv (1997).

33. *Id.* at vi-vii.

34. *Id.* at 10.

policy that treated tenants inconsistently.<sup>35</sup> Evicting everyone, or no one, is the only way to avoid this danger. HUD clearly promoted the former.<sup>36</sup>

HUD backed up its message about the need for strict enforcement of One Strike with concrete incentives.<sup>37</sup> PHAs that could demonstrate the vigor with which they had embraced the policy of One Strike evictions got bonus points in competitions for grant money and qualified for fewer HUD reviews and less monitoring of their operations.<sup>38</sup> It also helped them avoid being referred to the Troubled Agency Recovery Center, which might subject them to more intrusive oversight and monitoring or even being placed in receivership.<sup>39</sup>

These consequences flow from the Public Housing Assessment System (PHAS).<sup>40</sup> The PHAS uses a subcategory that evaluates the extent to which qualifying crime and drug use results in a One Strike eviction in its hundred-point metric by which it assesses a PHA.<sup>41</sup> This criterion looks to whether the “PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it *appropriately* evicts any public housing resident who” engages in qualifying criminal activity.<sup>42</sup> While HUD’s explicit policy is that the assessment program takes into account whether the PHA uses discretion in whether to bring a One Strike eviction,<sup>43</sup> a PHA official wanting to achieve the highest score cannot overlook the fact that the actual data that HUD examines to grade compliance with this requirement is the raw total of One Strike evictions.<sup>44</sup>

35. *Id.* at vii–viii.

36. See Letter from Carole W. Wilson, Assoc. Gen. Counsel for Litig. for U.S. Dep’t of Hous. & Urban Dev., to Charles J. Macellaro (Aug. 15, 2002), <http://www.hud.gov/offices/pih/regs/rucker15aug2002.pdf> (last visited Nov. 24, 2010) (encouraging PHAs to evict every family whenever any household member engages in qualifying criminal activity, and cautioning that “[a] uniform policy of household-wide eviction also would be less vulnerable to any allegation that a PHA has engaged in a pattern of uneven enforcement that violates antidiscrimination or other civil rights requirements”).

37. See 24 C.F.R. § 902.71 (2010).

38. *Id.* See also U.S. DEP’T OF HOUS. AND URBAN DEV., *supra* note 32, at 5 (“[I]mplementation of One Strike policy is closely tied to the evaluation process for grants.”).

39. 24 C.F.R. § 902.67(c), § 902.75(a) (2010). See generally U.S. DEP’T OF HOUS. AND URBAN DEV., NEW STANDARDS FOR A NEW CENTURY (2000), available at [http://www.huduser.org/publications/pdf/newstand\\_full.pdf](http://www.huduser.org/publications/pdf/newstand_full.pdf).

40. 24 C.F.R. §§ 902.1–85 (2010).

41. Lease enforcement, which looks to the implementation of the One Strike policy, counts for one point. See U.S. DEP’T OF HOUS. AND URBAN DEV., INSTRUCTION GUIDEBOOK FOR COMPLETING PUBLIC HOUSING ASSESSMENT SYSTEM MANAGEMENT OPERATIONS CERTIFICATION FORM HUD-50072 (2001), available at [http://www.hud.gov/offices/reac/pdf/guide\\_book/sub-indicator\\_5\\_security.pdf](http://www.hud.gov/offices/reac/pdf/guide_book/sub-indicator_5_security.pdf).

42. See 24 C.F.R. § 901.45 (2010) (emphasis added).

43. See 24 C.F.R. § 966.4(l)(5)(vii) (2010) (“[A] PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation . . . , the effects [of] eviction . . . [.] personal responsibility and . . . reasonable steps [taken] to prevent or mitigate the offending action.”). See also U.S. DEP’T OF HOUS. AND URBAN DEVELOPMENT, NOTICE PIH 96-52 (HA) (July 25, 1996) (defining “appropriately” to mean that the PHA exercised discretion and considered all of the factors).

44. See U.S. DEP’T OF HOUS. AND URBAN DEV., PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS) MANAGEMENT OPERATIONS CERTIFICATION, HUD-50072 (2005), available at <http://www.hud.gov/offices/adm/hudclips/forms/files/50072.pdf>.

It is hard to determine how many families are actually affected by One Strike or how many PHAs buck the tide of strict enforcement. HUD does not keep these kinds of statistics. It is clear, however, that One Strike has had a significant effect.

Prior to One Strike, PHAs were reluctant to use evictions because of tenant protections that made it difficult for them to win in court, the attitude of judges toward eviction from public housing, and political pressure that made it unpopular.<sup>45</sup> In the first six months after its implementation in 1996, drug-related evictions from PHAs went up forty percent.<sup>46</sup> In Chicago, one of the nation's largest PHAs, the number went from 49 to 157.<sup>47</sup>

How many of these One Strike evictions involved actions by children must be left to inference. An informal study in a New Orleans court revealed that twenty percent of the eviction actions filed by the local PHA were based on the actions of juveniles.<sup>48</sup> In Chicago, a 2002 study concluded that up to twenty-five percent of One Strike evictions stemmed from a juvenile arrest.<sup>49</sup> These figures are roughly in line with the proportion of public housing residents who are between the ages of six and seventeen.<sup>50</sup>

Of course, families in public housing do not find themselves out on the street every time one of their children gets arrested. Before the eviction process can even begin, the PHA must breach the wall of confidentiality that typically surrounds juvenile proceedings.

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45. See LANGLEY C. KEYES, STRATEGIES AND SAINTS: FIGHTING DRUGS IN SUBSIDIZED HOUSING 176, 186 (1992); Justin Ready et al., *Getting Evicted from Public Housing: An Analysis of the Factors Influencing Eviction Decisions in Six Public Housing Sites*, 9 CRIME PREVENTION STUD. 307, 310 (1998) (describing a study of evictions from six Jersey City housing developments in 1994-95 that revealed "local courts have been reluctant to fully embrace zero-tolerance eviction programs as a method of crime control. Judges acknowledge that public housing is a last resort"); *Spence v. Gormley*, 439 N.E.2d 741, 745 (Mass. 1982) ("[T]he BHA's housing developments provide housing of last resort."). Legal aid lawyers, however, were of the view that PHAs were all too aggressive in seeking to evict tenants for drug activity. See, e.g., David B. Bryson et al., *Crime, Drugs, and Subsidized Housing*, 24 CLEARINGHOUSE REV. 435, 444 (1990).

46. See U.S. DEP'T OF HOUS. AND URBAN DEV., MEETING THE CHALLENGE: PUBLIC HOUSING AUTHORITIES RESPOND TO THE "ONE STRIKE AND YOU'RE OUT" INITIATIVE, 14 (1997) (reporting that, of the 3,190 total PHAs, the 1,818 PHAs who responded showed drug related evictions increase from 2,698 in the six months prior to implementation of One Strike to 3,794 in the subsequent six months).

47. *Id.* at 11. At the time, the Chicago Housing Authority had a total of 40,151 units.

48. See Katy Reckdahl, *Thrown Out*, GAMBIT, March 9, 2004, <http://bestoffneworleans.com/grobase/Content?oid=oid%3A31844> (discussing a survey of eviction actions filed by the Housing Authority of New Orleans in the First City Court).

49. See Renai S. Rodney, *Am I My Mother's Keeper? The Case Against the Use of Juvenile Arrest Records in One-Strike Public Housing Evictions*, 98 NW. U. L. REV. 739, 755-56 (2004).

50. See U.S. DEP'T OF HOUS. & URBAN DEV., RESIDENT CHARACTERISTICS REPORT (2010) (noting that of 1,185,929 total units, there are 2,108,653 residents, of whom 518,064 are between the ages of six and seventeen). The proportion of children in units varies from city to city. In Boston, for example, thirty-five percent of the occupied units contain one or more child. See E-mail from Hollis Young, Chief Counsel, Boston Hous. Auth., to Tabitha Bolden, Research Assistant, Boston Univ. School of Law (July 20, 2010) (noting that of 10,383 units, 3812 were households with children, 2921 of which had one or two children living in them).



Most states prohibit the public release of juvenile delinquency records and information related to specific cases.<sup>51</sup> Confidentiality is an important feature of the rehabilitative cornerstone of juvenile justice because it performs a variety of important functions.<sup>52</sup> It protects children from notoriety and avoids branding them as criminals at a sensitive time in their development when they may internalize the label that others put on them. It also gives juveniles a better chance at obtaining opportunities like jobs and school admissions that might otherwise be unavailable if their involvement in a delinquency case were made public.

The federal law establishing the foundation of the One Strike policy recognizes the need to respect a state’s policy concerning the confidentiality of juvenile records. The statute that requires the National Crime Information Center, police departments, and other law enforcement agencies to give PHAs the criminal records of applicants and tenants specifically exempts juvenile records that are otherwise protected by state or local law.<sup>53</sup>

In many of the jurisdictions where juvenile records are presumptively confidential, there are exceptions that allow police and juvenile courts to share information with entities outside the realm of law enforcement, such as school officials.<sup>54</sup> In none of them, however, is there a provision that permits PHAs to gain access to juvenile arrests or delinquency records.<sup>55</sup> PHAs in jurisdictions that restrict their access to juvenile records often find an ally, however, in the police.<sup>56</sup>

The major way for PHAs to find out that families are subject to a One Strike eviction is to rely on the agency that made the initial arrest. PHAs that have their own security forces use them as a key component of their eviction process.<sup>57</sup>

51. See Linda A. Szymanski, *Confidentiality of Juvenile Delinquency Hearings*, NAT’L CTR. FOR JUVENILE JUST. SNAPSHOT, Sept. 2008, at 1 (stating that fifteen states generally keep all juvenile proceedings closed, twenty-one states make juvenile proceedings confidential subject to certain age or offense requirements, and in fourteen states’ juvenile records and proceedings are open to the public).

52. See Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 526–27 (2004).

53. See 42 U.S.C. § 1437d(q)(1)(C) (2006).

54. See Henning, *supra* note 52, at 563–64.

55. See *id.* In Texas, the juvenile confidentiality law does not specifically name PHAs as authorized recipients of otherwise confidential juvenile information, but includes them in a broad provision that allows access to an entity that is permitted to receive adult criminal records. See Open Records Decision, Texas Attorney General (No. 655) (1997), available at <https://www.oag.state.tx.us/opinions/openrecords/48morales/ord/1997/pdf/ORD19970655.pdf>.

56. In New York, for example, local precincts routinely forward reports to the PHA about crime committed on or near their projects. See Barbara Mulé & Michael Yavinsky, *Saving One’s Home: Collateral Consequences for Innocent Family Members*, 30 N.Y.U. REV. L. & SOC. CHANGE 689, 694 n.24 (2006).

57. See Keyes, *supra* note 45, at 184. Where the PHA has its own security department, juvenile confidentiality laws would typically treat it as a law enforcement agency for purposes of granting it access to information from the local police. For example, in the District of Columbia (D.C.), the juvenile confidentiality statute allows the dissemination of information to “law enforcement officers . . . when necessary for the discharge of their official duties.” D.C. CODE § 16-2333(b)(4) (2010). The D.C. housing police have an arrangement with the D.C. Metropolitan Police that routinely gives them access to all police reports concerning all “offenses and incidents” occurring within any PHA

Municipal law enforcement authorities often coordinate their activities and share knowledge about local crime with PHAs.<sup>58</sup> The police-PHA interface creates a real problem when the information relates to a juvenile.

Police departments frequently do not observe the requirement that juvenile records be kept confidential. In some cities, the police are even cavalier about sharing information with PHA officials, despite state confidentiality laws to the contrary.<sup>59</sup> Police information about juveniles can also come to the attention of PHAs as a result of their pre-established affiliations designed to meet other ends.<sup>60</sup> Where these collaborative efforts exist, they inevitably result in the PHA receiving information about juvenile arrests that the confidentiality statutes do not authorize.<sup>61</sup>

Even where it is clear that the police have violated a state prohibition against releasing information about juvenile arrests to a PHA, it will not necessarily prevent an eviction proceeding from going forward or even prohibit the use of the confidential information.<sup>62</sup>

PHAs also try to obtain information about juveniles living in public housing directly from the local juvenile court. Most jurisdictions with a statute mandating that juvenile proceedings remain confidential allow the court to release

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community. See Memorandum of Understanding between D. C. Housing Authority Police Department and the Metropolitan Police Department, 6.6 (Sept. 15, 1997) (on file with authors).

58. See Keith Graves, *An Officer's Guide for Investigations Involving Public Housing Authorities*, 71 F.B.I. L. ENFORCEMENT BULL. 8 (2002); Henning, *supra* note 52, at 571-73; SUPERIOR WISCONSIN POLICE DEP'T, 2009 ANNUAL REPORT 28 (2010), available at <http://www.ci.superior.wi.us/DocumentView.aspx?DID=1393> (describing responsibilities of the liaison officer with whom the PHA contracted including "[providing] the housing authority with information and documentation on each and every resident").

59. See Reckdahl, *supra* note 48; Katherine E. Walz, *HUD v. Rucker Opened Door to Kids' Juvenile Records*, 39 CLEARINGHOUSE REV. 144-45 (2005); *Tuggles v. City of Antioch*, No. C08-01914 JCS, 2009 U.S. Dist. LEXIS 92495, at \*10, 16, 26 (N.D. Cal. Oct. 2, 2009).

60. See Henning, *supra* note 52, at 543-45 (describing interagency meetings with police, prosecutors and juvenile court officials).

61. One of these collaborations is in Buffalo. See *School of Social Work Has Key Role in Effort to Turn Around One of City's Most Distressed Neighborhoods*, <http://www.buffalo.edu/news/5617> (last noting that the collaboration will include "[p]robation and parole officers working with the Buffalo Police Department, Buffalo Public Schools Security and the Buffalo Municipal Housing Authority to help identify, monitor and take fair action against high-profile youth offenders"). This is in conflict with New York state law, which requires that police records relating to juvenile arrests be kept from the public and separate from adult records. See N.Y. FAMILY COURT ACT § 381.3 (McKinney 2010).

62. See *Camco, Inc. v. Lowery*, 839 N.E.2d 655, 662 (Ill. App. Ct. 2005) (noting that the Illinois juvenile confidentiality statute has no exclusionary remedy); *People v. Manauri R.*, N.Y.L.J. 21, col. 1 (Sup. Ct. Bronx Co. Oct. 22, 2004), available at <http://www.reentry.net/ny/library/attachment.75949> (stating that youthful offender records may be unsealed for use in an eviction proceeding if there are "compelling facts to show the nexus between the acts underlying the [juvenile] proceeding and the basis for the eviction" and that there are no other investigatory avenues that will suffice to provide the same information). Outside of the eviction context, efforts to prevent unauthorized police dissemination of otherwise confidential juvenile arrest records have met with mixed success. In *Tuggles v. City of Antioch*, 2009 U.S. Dist. LEXIS 92495, at \*20-21 (N.D. Cal. Oct. 2, 2009), for example, a federal court in California dismissed a civil rights action brought by the parent of a juvenile whose confidential record was released to the PHA by the local police on the ground that the parent lacked standing to litigate the issue.

information in a specific case if there is a sufficient reason.<sup>63</sup> In some jurisdictions, there is a standing order allowing the local PHA access to any juvenile record to which it wants access.<sup>64</sup> Blanket orders obviously cannot weigh the factors relevant to any one specific case. They apply to juveniles who commit violent crimes against other residents of the public housing where they live, as well as those who engage in trivial misdeeds far away from the premises controlled by the PHA. Moreover, they fly in the face of the typical confidentiality statute that has a carefully crafted universe of authorized recipients of information about delinquency cases.

Once a PHA learns of criminal activity by one of the children living in its units, the eviction process is stacked in its favor. The biggest source of the imbalance of power is the fact that the tenants rarely have access to legal assistance.<sup>65</sup> Indigent tenants do not have the right to a court appointed attorney in eviction proceedings.<sup>66</sup> Moreover, finding a lawyer who will represent tenants in a One Strike case is often difficult. One reason for this is the limitation that the Legal Services Corporation puts on legal aid offices that receive federal funds. They are prohibited from representing anyone in a One Strike eviction proceeding based on his or her own criminal behavior.<sup>67</sup> While this restriction would allow legal aid attorneys to represent innocent family members facing eviction because of the behavior of one of their children, some federally funded lawyers will not even provide representation in these cases because of their interpretation of the funding restriction policy.<sup>68</sup>

In many One Strike cases, the tenant will simply give up without a fight when notified of a pending eviction by the PHA.<sup>69</sup> Where the basis for the eviction is the behavior of one of the children, the matter is most often settled

63. See, e.g., MICH. CT. R. 3.925(D)(2) (2010) ("[P]ersons who are found by the court to have a legitimate interest may be allowed access to the confidential files . . . . In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.").

64. See, e.g., Hous. Auth. of the Cnty. of Fresno, Cal. v. Valverde, C96300004-9 (Central Valley Mun. Ct. Firebaugh, Cal., filed Apr. 3, 1996), available at <http://www.povertylaw.org/poverty-law-library/case/51100/51156>; Rodney, *supra* note 49, at 755 n.134 (describing efforts by the PHA in Richmond, Virginia to petition the juvenile court for access to all juvenile records).

65. See Mulé & Yavinsky, *supra* note 56, at 689-90; Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE 461, 477 (2003); Lisa Weil, *Drug-Related Evictions in Public Housing: Congress' Addiction to a Quick Fix*, 9 YALE L. & POL'Y REV. 161, 167-68 (1991).

66. Hartman & Robinson, *supra* note 65, at 475 (2003).

67. See 45 C.F.R. § 1633.3 (2010).

68. See Caroline Castle, *You Call That a Strike? A Post-Rucker Examination of Eviction from Public Housing Due to Drug-Related Criminal Activity of a Third Party*, 37 GA. L. REV. 1435, 1446 n.72 (2003). The Legal Service Corporation restriction applies only to tenants in public housing, not to recipients of Section 8 rent subsidies. Nor does it apply where the person who is seeking representation has not yet been charged with a crime. See Lawrence R. McDonough & Mac McCreight, *Wait a Minute: Slowing Down Criminal-Activity Eviction Cases to Find the Truth*, 41 J. POVERTY L. & POL'Y 55, 56 (2007).

69. See, e.g., The Invisible Institute, *One Strike: Introduction*, THE VIEW FROM THE GROUND, June 17, 2002, <http://www.viewfromtheground.com/archive/2002/06/one-strike-introduction.html> (noting that thirty-seven percent of the One Strike cases in Chicago from August 2000 to April 2002 were settled by agreement).

with an agreement that the child will no longer live in the unit.<sup>70</sup> Some PHAs are committed to a policy that permits families to remain in public housing if they can establish that they have removed their culpable child to other premises,<sup>71</sup> and others will relent entirely if the child's delinquency case ends favorably.<sup>72</sup> However, many PHA officials are leery of how effective banning an undesirable household member can be and will simply force the entire family out,<sup>73</sup> and many others will act before the resolution of the delinquency case.<sup>74</sup> The typical resolution of these cases is a classic Catch 22. Either the family agrees to dispossess one of its children, or stays together and finds itself out on the street.

Even if a family threatened with the prospect of eviction tries to stay together in public housing by fighting the PHA with the help of a lawyer, it faces

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70. See *id.* (noting that forty-four percent of all One Strike cases that are not cancelled or dismissed end in an agreement that the offending member of the household, often a child or grandchild, will be banished from the family home); Rodney, *supra* note 49, at 755-56 (2004).

71. For example, the same Oakland Housing Authority (OHA) that was involved in the *Rucker* case has a formal policy that if it agrees to allow the culpable family member to leave the premises, "[a]s a condition of the family's continued occupancy, the head of household must certify that the culpable household member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former household member's current address upon OHA's request." OAKLAND HOUSING AUTHORITY, LEASE TERMINATIONS 13-14, Feb. 22, 2006, available at [http://www.oakha.org/public\\_announcement/IVDChapter13.pdf](http://www.oakha.org/public_announcement/IVDChapter13.pdf). The Oakland policy also takes into account in deciding whether to evict an entire family, "[t]he extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor," and "[t]he effects that the eviction will have on other family members who were not involved in the action." *Id.* at 13-16. The Chicago Housing Authority lease agreement provides that a family can escape conviction if the tenant proves by a preponderance of the evidence that he or she did not and could not know of the criminal behavior of another household member. See CHICAGO HOUSING AUTHORITY, PROPOSED 2010 LEASE AGREEMENT, § 16(f), available at [http://www.thecha.org/filebin/pdf/mapDocs/FY2010\\_Lease\\_redlined.pdf](http://www.thecha.org/filebin/pdf/mapDocs/FY2010_Lease_redlined.pdf). However, the price for allowing the family to remain will be to ensure that the offending household member, adult or child, no longer lives with them or ever visits. See *id.* This provision is not part of the leases applicable to newly proposed mixed income developments that the Chicago Housing Authority has in the works to replace its traditional low income housing. See PROPOSED LEASE FOR OGDEN-NORTH DEVELOPMENT, available at [http://www.thecha.org/filebin/pdf/mapDocs/Ogden\\_North\\_Lease\\_DRAFT.pdf](http://www.thecha.org/filebin/pdf/mapDocs/Ogden_North_Lease_DRAFT.pdf). In New York City, a consent decree prevents the Housing Authority from evicting a tenant if the offending household member has been removed by the time of the administrative hearing concerning the proposed eviction. See THE BRONX DEFENDERS, THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE: A GUIDE FOR CRIMINAL DEFENSE ATTORNEYS AND OTHER ADVOCATES FOR PERSONS WITH CRIMINAL RECORDS 15 (2004).

72. See BRONX DEFENDERS, *supra* note 71, at 14 (stating that an acquittal, dismissal and even an informal resolution of the case involving a continuance in contemplation of dismissal "usually causes the [New York City Housing Authority] to withdraw the termination proceeding").

73. See Letter from Carole W. Wilson to Charles J. Macellaro, *supra* note 36 ("[A]s many PHAs can attest, lease termination and eviction of an entire household also can be a more effective means of ridding public housing of wrongdoers than merely acquiring the leaseholder's agreement to bar the wrongdoer from the premises, because the latter poses the risk that household members allowed to remain in possession will eventually, either intentionally or unwittingly, give the wrongdoer access to the premises once again."). See also Keyes, *supra* note 45, at 181-82.

74. See, e.g., Keyes, *supra* note 45, at 180 ("You do not have to wait until there has been a result in the criminal court . . . . In most cases it is a big mistake to wait until the criminal proceeding has ended. Criminal cases take forever."). Tenants have no right to postpone eviction proceedings until a criminal or delinquency case runs its course. See McDonough and McCreight, *supra* note 68, at 74. However, in New York City the PHA will usually agree to wait. See BRONX DEFENDERS, *supra* note 71, at 14.

a daunting task. The underlying issue is whether there has been a violation of the lease, not whether the juvenile has been adjudicated a delinquent.<sup>75</sup> As a result, the PHA simply has to show by a preponderance of the evidence that the juvenile engaged in any of the criminal activities that HUD requires the lease to specify as grounds for eviction.<sup>76</sup> Even though other areas of federal law do not treat juvenile offenses as crimes,<sup>77</sup> courts interpreting the One Strike lease provisions have uniformly rejected the argument that when juveniles engage in otherwise unlawful behavior they do not subject their families to the risk of eviction.<sup>78</sup>

The range of issues on which a family might prevail in a One Strike eviction proceeding based on an otherwise criminal act by one of the children is narrow.<sup>79</sup> One would be to contest the underlying allegation, but this presents some peril to the delinquency case. If the juvenile testifies to help his or her family avoid eviction, then there is nothing to prevent the prosecutor in the delinquency matter from using the statement. If the PHA calls the juvenile as a witness and he or she asserts the privilege against self-incrimination, then the court may draw an adverse inference.<sup>80</sup>

## II. THE IMPACT OF JUVENILE COURT INVOLVEMENT ON FAMILIES IN PUBLICLY SUBSIDIZED HOUSING

In 2007, 1.7 million children were involved in a juvenile delinquency case.<sup>81</sup> For those who live in public housing, the results for their families would be disastrous in most cases. Public housing for many is the last stop between them

75. The One Strike provisions are not self-executing and must be incorporated into the lease in order for the PHA to be able to rely on them in an eviction proceeding. *See Pratt v. Dist. of Columbia Hous. Auth.*, 942 A.2d 656 (D.C. 2008).

76. *See* 24 C.F.R. § 966.4(1)(5)(iii)(A) (2010) ("[T]he PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.").

77. *See, e.g.,* In re Devison-Charles, 22 I&N Dec. 1362, 1366 (BIA 2000) (stating that findings of juvenile delinquency are not convictions for immigration purposes); U.S. SENTENCING GUIDELINES, § 4A1.1 cmt. n.1 ("[A] sentence imposed for an offense committed prior to the defendant's eighteenth birthday is counted under this item only if it resulted from an adult conviction.").

78. *See* *Cincinnati Metro. Hous. Auth. v. Browning*, 2002 WL 63491, at \*3 (Ohio Ct. App. 2002); *Hous. Auth. for Prince George's County v. Williams*, 784 A.2d 621, 626 (Md. Ct. Spec. App. 2001); *Stout v. Kokomo Manor Apartments*, 677 N.E.2d 1060, 1064-65 (Ind. Ct. App. 1997).

79. For example, if the PHA could not establish that the child actually lived in public housing when he or she committed the underlying behavior, or that the underlying behavior had not met the definition of qualifying One Strike prohibitions, then the family would prevail. *See, e.g., Boston Hous. Auth. v. Bruno*, 790 N.E.2d 1121 (Mass. App. Ct. 2003); *Costa v. Fall River Hous. Auth.*, 903 N.E.2d 1098, 1103 (Mass. 2009).

80. *See Lentz v. Metro. Prop. & Cas. Ins. Co.*, 768 N.E.2d 538, 541 (Mass. 2002) (citing cases holding that jury may draw an adverse inference from the refusal to answer questions based on the assertion of the privilege against self-incrimination by a witness aligned with a party).

81. SARAH LIVSEY, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE DELINQUENCY PROBATION CASELOAD, 2007 (2010), available at <http://www.ncjrs.gov/pdffiles1/ojdp/230170.pdf>.

and the street.<sup>82</sup> They will be unable to move to another public housing development or receive a Section 8 rent subsidy for at least three years.<sup>83</sup> If they do not have family or friends who will take them in, they will literally be without any place to live. Regulations governing housing at emergency shelters may well make them ineligible for even this type of stopgap measure.<sup>84</sup> Even if they can find shelter beds, it is difficult for homeless families with teenage children to stay together because of policies limiting the age of the children they will house.<sup>85</sup> Furthermore, if the children become homeless, being on their own puts them at significant risk.<sup>86</sup>

Being homeless is a major “life stressor” for everyone involved. It contributes significantly to family instability and disruption that negatively affects parenting and child behavior<sup>87</sup> and is among the most important variables contributing to delinquency.<sup>88</sup>

When parents come to juvenile court knowing that whether they will face eviction may turn on the way the case is resolved, it presents a significant issue for the lawyer whose job is to represent the juvenile. Both the parents and the child have a role to play in the juvenile court process that will unfold making it difficult for the court to balance their interests.

Parents certainly have a role to play in the delinquency cases their children face. Both the American Bar Association (ABA)<sup>89</sup> and the National Council of Juvenile and Family Court Judges<sup>90</sup> recognize that parents should be active

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82. See generally Hartman & Robinson, *supra* note 65, at 468 (stating that forced displacement frequently results in outright homelessness).

83. 42 U.S.C. § 13661(a) (2006) (noting that an exception exists if “the evicted tenant successfully completes a rehabilitation program approved by the public housing agency”).

84. See, e.g., 106 Code Mass. Reg. 309.040(B)(4) (2010) (“A household shall not be eligible for . . . temporary emergency shelter benefits if it became homeless . . . because it was evicted from private, public and/or subsidized housing because of criminal activity.”); Code of D. C. Reg. 29-2502.1(e) (2010) (noting that families are ineligible for emergency temporary housing if the family has been the subject of a drug-related eviction within the preceding year).

85. See Paul A. Toro, Amy Dworsky, & Patrick J. Fowler, *Homeless Youth in the United States: Recent Research Findings and Intervention Approaches*, in TOWARD UNDERSTANDING HOMELESSNESS: THE 2007 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH 6-1, 6-2 n.1 (2007) (noting many shelters exclude children twelve or older).

86. See Debra J. Rog & John C. Buckner, *Homeless Families and Children*, in TOWARD UNDERSTANDING HOMELESSNESS: THE 2007 NATIONAL SYMPOSIUM ON HOMELESSNESS RESEARCH 5, 5-11 (2007).

87. See Susan B. Stern & Carolyn A. Smith, *Delinquency and Antisocial Behavior: A Review of Family Processes and Intervention Research*, 71 THE SOC. SERVICE REV. 382, 388-89 (1997).

88. See Susan B. Stern & Carolyn A. Smith, *Family Processes and Delinquency in an Ecological Context*, 69 THE SOC. SERVICE REV. 703, 716 (1995) (describing the empirical relationship between the “disadvantaged neighborhood” variable and delinquency).

89. See IJA-ABA JOINT COMM. ON JUVENILE JUSTICE STANDARDS, STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS [hereinafter IJA-ABA] 6.5(A)(2) (Robert E. Shepherd, Jr. ed., 1980) (“[P]arents should be encouraged by counsel, the judge, and other officials to take an active interest in the juvenile’s case. Their proper functions include consultation with the juvenile and the juvenile’s counsel at all stages of the proceedings concerning decisions made by the juvenile or by counsel on the juvenile’s behalf, presence at all hearings, and participation in the planning of dispositional alternatives.”).

90. See NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 26 (2005).

participants. Defense counsel consultation with a juvenile's parents is not only legitimate, but it is an important part of representing the child.

However, in the end it is the child, not the parent, who is the client.<sup>91</sup> The ABA's Juvenile Justice Standards make it clear that the child is an equal partner in the attorney-client relationship.<sup>92</sup> Of course, this assumes that the child is capable of making sound decisions about his or her future.<sup>93</sup> Adolescent behavioral research, however, suggests that children as clients are not always able to make decisions that best accommodate their long term interests and rationally advance socially acceptable values.<sup>94</sup> In a case where it seems clear to the lawyer that the child's decision about how to proceed in the delinquency matter does not serve the child's best interests it is tempting to abandon a client-centered approach.

There is a way to give the lawyer control over decisions ordinarily within the client's domain. That is to treat the child as a client with diminished capacity. The ABA Model Rules of Professional Conduct allow a lawyer to deviate from the goals a client sets if the client lacks "capacity to . . . make adequately considered decisions."<sup>95</sup> The Rule specifically recognizes minority as an example of diminished capacity.<sup>96</sup> When a lawyer represents this type of client, the Rule encourages "consulting with individuals . . . [who] have the ability to take action to protect the client,"<sup>97</sup> and permits the lawyer to be guided by his or her own sense of "the client's best interest."<sup>98</sup>

Using this approach, a defense attorney in a juvenile matter might well look to the client's parents to determine what is in the juvenile's best interest. However, where eviction from public housing is a potential consequence of the way the case is resolved in juvenile court, the parents' interests and those of the

91. See IJA-ABA, *supra* note 89, at 5.1(B).

92. See *id.* at 3.1(B)(i) ("In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney."). See also Stanley Z. Fisher, *Parents' Right and Juvenile Court Jurisdiction: A Review of Before the Best Interests of the Child*, 1981 AM. B. FOUND. RES. J. 835 (1981); Janet R. Fink, *Who Decides: The Role of Parent or Guardian in Juvenile Delinquency Representation*, in ETHICAL PROBLEMS FACING THE CRIMINAL DEFENSE LAWYER 119, 119 (Rodney J. Uphoff ed., 1995) ("It is the child, not the parent, who is the client and decision maker.").

93. IJA-ABA, *supra* note 89, at 3.1(b)(ii)(b).

94. *E.g.*, Richard J. Bonnie & Thomas Grisso, *Adjudicative Competence*, in YOUTH ON TRIAL ch. 3 (Thomas Grisso & Robert Schwartz eds., 2000); Thomas Grisso, *Competency of Adolescents as Trial Defendants*, 3 PSYCHOL. PUB. POL'Y & L. 3 (1997); Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793 (2005); MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. AND JUVENILE JUSTICE, ISSUE BRIEF 3: LESS GUILTY BY REASON OF ADOLESCENCE (2006); MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. AND JUVENILE JUSTICE, ISSUE BRIEF 1: ADOLESCENT LEGAL COMPETENCE IN COURT (2006).

95. See MODEL RULES OF PROF'L CONDUCT R. 1.14(a) (2002).

96. See *id.*

97. See *id.* R. 1.14(b); see also Nancy J. Moore, *Conflicts of Interests in the Representation of Children*, 64 FORDHAM L. REV. 1819 (1996) (discussing conflicts of interest that arise in the representation of children).

98. See MODEL RULES OF PROF'L CONDUCT R. 1.14 cmt. n. 5 (2002).

child may not coincide. Moreover, it is not appropriate to treat a child as a client with diminished capacity simply because of his or her age.<sup>99</sup>

Whether the appropriate role for defense counsel in juvenile cases is to adopt a “best interest” approach to delinquency defense or one that advocates for client-centered representation has been the subject of much scholarly debate.<sup>100</sup> Part of the answer to the question that this debate poses depends on the background and experience that the lawyer brings to the attorney-client relationship, including:

an understanding of child development principles, cultural differences, mental health, trauma, mental retardation, and maturity issues that relate to juvenile competency to stand trial issues; treatment options that could serve as effective alternatives to detention; and special needs issues including prior victimization and educational needs.<sup>101</sup>

In addition, juvenile defense attorneys also must understand the collateral consequences of a delinquency adjudication.<sup>102</sup>

Attorneys with this type of background will be able to make the best decisions about the model of representation to pursue. In cases where the specter of eviction looms over the delinquency case, knowledgeable defense counsel should weigh the immaturity and competency issues of juveniles, the need to involve parents in the decision-making process, and the possibility that the parents’ interests may not coincide with those of the client.<sup>103</sup>

Where the interests of the juvenile and his or her parents are at odds, the attorney’s allegiance belongs to the former.<sup>104</sup> Despite conflicts of interest that confront juveniles and their families within the delinquency system, there appears to be little official sensitivity to the eviction issue.<sup>105</sup> Five key decision

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99. See *id.* R. 1.14 cmt. n.1 (noting that “a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being”).

100. For a discussion of child advocacy approaches, see Martin Guggenheim, *The Right to be Represented but not Heard: Reflections on Legal Representation for Children*, 59 N.Y.U. L. REV. 76 (1984); Wallace J. Mylniec, *Who Decides: Decision Making in Juvenile Delinquency Proceedings*, in *ETHICAL PROBLEMS FACING THE CRIMINAL DEFENSE LAWYER* (Rodney J. Uphoff ed., 1995); Ellen Marrus, *Best Interests Equals Zealous Advocacy: A Not so Radical View of Holistic Representation for Children Accused of Crime*, 62 MD. L. REV. 288 (2003); Kristin Henning, *It Takes a Lawyer to Raise a Child? Allocating Responsibility among Parents, Children, and Lawyers in Delinquency Cases* [hereinafter *It Takes a Lawyer*], 6 NEV. L.J. 836 (2006); Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child’s Counsel in Delinquency Cases* [hereinafter *Loyalty*], 81 NOTRE DAME L. REV. 245 (2005). The National Juvenile Defender Center, one of the most influential voices in the field, strongly repudiates the Model Rules’ “best interest” approach to delinquency defense and advocates for client-centered representation. See ROBIN WALKER STERLING ET AL., NAT’L JUVENILE DEFENDER CTR., *ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT* (2009).

101. NAT’L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES* 78 (2005).

102. See generally Michael Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications*, 6 NEV. L.J. 1111 (2006).

103. See *id.* at 1123 (noting that “guilty pleas to juvenile charges can render juveniles and, by implication, their families ineligible for public housing”).

104. See IJA-ABA, *supra* note 89, at 8.1.

105. Legal scholars have addressed the potential for conflict between parent and child in other contexts. See, e.g., Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations:*



points in the juvenile justice system demonstrate not only a lack of knowledge about eviction on the part of system stakeholders but also a lack of priority given to the threat of family eviction from a PHA.<sup>106</sup>

#### A. Intake/Diversion

Probation or intake officials review each case coming to the juvenile court to decide whether it should be “handled informally at the intake level or . . . petitioned and scheduled for an adjudicatory or waiver hearing.”<sup>107</sup> The intake decision benefits the PHA family since it is made very early in the juvenile justice process and a decision to divert the child from juvenile court may be persuasive in an informal hearing with the PHA manager in preventing eviction. A family can use the decision to demonstrate that no formal delinquency complaint was issued against the child. Considering that approximately forty-five percent of the nearly 1.7 million delinquency cases<sup>108</sup> handled nationally in juvenile courts in 2007 resulted in dismissal at intake<sup>109</sup> or an informal resolution of the case,<sup>110</sup> the importance of the intake decision cannot be underestimated. There is no data on the percentage of diverted or dismissed matters involving incidents on public housing property.

Defense attorneys are not usually present for the intake interview conducted with parent and child unless they are privately retained. This is unfortunate because a defense attorney can advise the child—and the child’s family—about diversion alternatives and may be more persuasive on the issue by proposing creative conditions or agreements for diversion. Parents or guardians may not even be aware at this point in the juvenile justice process that eviction looms as a possible consequence of the child’s interaction with the court. Their ignorance of this fact may prevent them from supporting a solution involving diversion, particularly if a monetary solution had been proposed.

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*Friend or Foe?*, 41 AM. CRIM. L. REV. 1277 (2004) (discussing conflicts of interest in the police interrogation context); Ellen Marrus, *Best Interests Equals Zealous Advocacy: A Not So Radical View of Holistic Representation for Children Accused of Crime*, 62 MD. L. REV. 288 (2003) (noting that, in documenting stages of juvenile delinquency proceedings and the right to counsel, there are conflicts between parents and children with respect to waiver of counsel); Pinard, *supra* note 102 (discussing the parental role in explaining to juveniles the collateral consequences of adjudication); Henning, *Loyalty*, *supra* note 100 (advocating a collaborative model of advocacy that allows for parental involvement to advance the juvenile court’s goal of rehabilitation); Henning, *It Takes a Lawyer*, *supra* note 100 (acknowledging the parental role in juveniles’ decision-making and arguing for a parent-child privilege).

106. Many children and families are involved not only in the delinquency system, but also in the child welfare system. Juveniles accused of delinquency may already be court-involved as subjects of care and protection matters. It is possible that in the civil juvenile context, issues of eviction and homelessness are addressed. If that is the case, then the two juvenile court systems, delinquency and child welfare, need to coordinate information about a particular child and family.

107. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, EASY ACCESS TO JUVENILE JUSTICE STATISTICS: 1985-2007 (2010), available at <http://ojjdp.gov/ojstatbb/ezajcs/asp/glossary.asp>.

108. CRYSTAL KNOLL & MELISSA SICKMUND, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, PROBATION FACT SHEET (2010).

109. *Id.* (stating that nineteen percent of referred cases were dismissed at intake by either juvenile probation or the prosecution).

110. *Id.* (taking note of six percent of families agreeing to an informal sanction, like restitution).

There are several reasons why it is unlikely that the intake interviewer will underscore a possible eviction consequence for the family. The interviewer may not recognize that the family's address is in public or Section 8 housing; the interviewer may not be familiar with the PHA's One Strike policy; or, despite knowing this information, the interviewer may not view it as his or her role to tell the family about the situation. Thus, failure to inform the child and the parent or guardian at the intake interview may prevent diversion or dismissal of the matter. In the unlikely event that the intake interviewer informs the family about the possibility of eviction, the parent, who may or may not have additional children to care for, could declare an intention not to take the juvenile home. That intention, along with any other concerns about the juvenile's activities, as well as any statements the juvenile made during intake, will be conveyed to the judge at the arraignment and detention hearing.<sup>111</sup>

On the other hand, if the intake interviewer is aware that the family lives in a PHA, that factor may mitigate *against* diversion or dismissal. The reason for this is related to eviction. Many courts have alternative, community-based diversion programs, often funded by federal grants.<sup>112</sup> If a family is susceptible to a One Strike eviction, the intake interviewer may reason that the community-based alternative diversion program may be a moot point, since the family may no longer be in the community. Inability to participate in such a program, based upon PHA tenant status, may invite discriminatory treatment at intake.

#### B. *Detention Decision*

For the juvenile court judge, the detention decision is whether to send the child home in the care and custody of his parent or legal guardian, or detain the child. No bail statute that pertains to children requires a permanent residence for the child to be released.<sup>113</sup>

Does the prospect of homelessness factor into the detention decision? Based on our experience of several decades in the juvenile court, it does not appear that judges consider possible eviction as an impediment to releasing the child in the care and custody of a parent or legal guardian.<sup>114</sup> Nor have we encountered any situation where either the prosecutor or the probation department has made a recommendation for detention based on the possibility of family homelessness. However, the parent or legal guardian may voice concerns about the child returning to the family home in public housing for the very reason that they have been put on notice that the PHA is seeking eviction.

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111. See IJA-ABA, *supra* note 89, at 5.3(B) ("At the earliest feasible stage of a delinquency proceeding, the intake department should determine whether a conflict of interest exists between the juvenile and the parent and should notify the court and the parties of any finding that a conflict exists.").

112. See, e.g., Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. No. 105-277, 112 Stat. 2681 (1998) (designating \$250,000,000 to Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Accountability Incentive Block Grants Program).

113. At least one statute directs the court to assess place and length of residence as a factor in determining a juvenile's release. See ARK. CODE ANN. tit. 9, § 9-27-326(3) (West 2010).

114. Juvenile court judges may not have information about the child's status as a PHA tenant and therefore would not factor that into a detention decision.

Defense attorneys, as well as juvenile court personnel, must acknowledge that this is an area where the parent and child may have conflicting interests. The child wants to return to a home that the parent is concerned about losing. The detention hearing marks the first formal courtroom opportunity that the parent has to voice fears about the housing issue. Defense counsel will need to address those concerns with the client prior to the court appearance and, with the client's permission, discuss the matter with the parent as well.

If the child is released in the care of the parent, the court may impose conditions of release that are predicated on a permanent residence. They can include the following: a curfew, requiring probation to make a curfew check either in person or by telephone, or wearing an electronic monitor anklet or bracelet requiring proximity to a landline telephone. Should the family eventually be evicted, a return to court is mandated to address the original conditions of release.

If the juvenile court makes a determination that the child should be released under any of these conditions, it may affect a PHA's decision about whether the juvenile can remain with the family. Juvenile courts rarely communicate to PHAs the facts regarding conditions of release that may make a juvenile less of a risk to the community. Defense counsel in the juvenile case is the only medium by which this information can realistically be conveyed.

### C. Trial or Plea Decision

Plea bargains have become more and more important for the resolution of delinquency cases.<sup>115</sup> The implications for a juvenile PHA tenant can mean the difference between going home and going to an alternative living situation, whether that is a juvenile correctional authority or a place to which the juvenile's family has relocated after eviction. Since the PHA is under no legal obligation to stay eviction proceedings pending the juvenile's case resolution, this decision must take into account some predictions about what the PHA will do.

A conflict of interest may arise between parent and child when it comes to making the trial or plea decision. The parent may already be resigned to the fact that eviction is inevitable if the child is adjudicated delinquent on the originally issued charge. If this is the case, then the parent may insist that the juvenile elect a trial, reasoning that the family has everything to lose (namely, housing) if the juvenile does not prevail at trial.<sup>116</sup> Of course, the opposite situation may present itself, namely that the juvenile wants to go to trial and the parent disagrees. Here, the parent may believe that a plea bargain is the best resolution to the case, even if it means the juvenile will be committed to a juvenile correctional authority. That resolution would remove the juvenile from the PHA and presumably allow the rest of the family to remain in public housing. Ideally, in either of these difficult situations, counsel and the juvenile will have established a positive attorney-client relationship that allows the two of them to discuss other elements of the trial versus plea decision.

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115. Robert Shepherd, *Plea Bargaining in Juvenile Court*, 23 CRIM. JUSTICE 61, 61 (2008).

116. A well-known example of parental involvement and decision-making, overriding counsel's recommendation to plea, is the *Lionel Tate* case. *Tate v. State (Lionel Tate)*, 864 So. 2d 44 (Fla. Dist. Ct. App. 2003).

If the juvenile's underlying activity is a misdemeanor, some PHAs will not pursue eviction, an action typically reserved for drug sales, firearms possession, and serious felonies.<sup>117</sup> Discussions between prosecution and defense could result in the original delinquency charge being reduced from a felony to a misdemeanor in exchange for an admission on the less serious matter.<sup>118</sup>

Sentencing recommendations are another focus of plea negotiations. Prosecutors are typically inclined to offer more lenient sentences if the juvenile admits to the charges. The difficulty for a juvenile facing eviction is that the prosecutor's proposed sentence may not be possible if the juvenile becomes homeless as a result of PHA action. For example, if the prosecution is concerned about the juvenile's curfew and whereabouts, the application of an electronic monitoring device may be made part of the plea agreement. The juvenile's ability to abide by such conditions in the sentencing agreement may well be stymied by eviction. The juvenile's family may also have concerns about a plea agreement that recommends the juvenile return home, especially where the underlying offense is a felony, since that makes the prospect of carrying a PHA eviction more likely.

A juvenile who elects to admit to delinquency charges must satisfy the court that the plea is made willingly, freely, and voluntarily.<sup>119</sup> Courts accomplish this requirement by way of a plea colloquy that may or may not be accompanied by a written form, signed by the juvenile.<sup>120</sup> The tender of plea forms vary among the states, although several forms contain a signatory line for the juvenile's parent or legal guardian to sign, acknowledging assent to the juvenile's plea.<sup>121</sup> The decision whether to enter a plea belongs to the juvenile, not to the parent or legal guardian. Information from practitioners and court personnel indicate a consensus that when parent and child differ about making the plea, or the plea recommendations, the court's response can take one of several courses: adopt the

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117. See Interview with Hon. Jeffrey Winik, Presiding Justice, Boston Hous. Court (August 4, 2010).

118. A charge reduction may be particularly important to a juvenile who faces a sex offender charge that not only would require registering as a sex offender but would make him a natural target for eviction by the PHA. See 42 U.S.C. § 13663 (2006) (making anyone, including a juvenile, who is subject to lifetime registration under a state sex offender statute ineligible for admission to public housing). However, § 13663 does not automatically subject a registrant to eviction. See *Miller v. McCormick*, 605 F. Supp 2d 296, 312 (D. Me. 2009) (“[A]lthough the language of § 13663(a) provides unequivocal authority for denying a lifetime registrant admission into a Section 8 housing program, neither it nor any other provision of the statute authorizes what it does not mention—the termination of assistance for a lifetime registrant.”). If a juvenile is able to admit to a reduced sexual offense, that may relieve him or her from the burden of sex offender registration and potential PHA action.

119. See *Boykin v. Alabama*, 395 U.S. 238, 240 (1969); *McCarthy v. United States*, 394 U.S. 459, 463–65 (1969); *In re Maricopa County Juvenile Action No. J-86715*, 594 P.2d 554, 556–57 (Ariz. Ct. App. 1979) (quoting *In re Beasley*, 362 N.E.2d 1024 (Ill. 1977)); *In re Ronald E.*, 562 P.2d 684 (Cal. 1977); *In re Michael M.*, 96 Cal. Repr. 887 (Cal. Ct. App. 1970).

120. At least twelve states use some form of written paperwork to support a plea of delinquency. Eight of those states appear to require parental signature on the form. Thirteen states report that plea colloquy is conducted orally “on the record.” (Arizona, Arkansas, California, Florida, Hawaii, Idaho, Montana, Nebraska, New Mexico, New York, Ohio, Pennsylvania, and Vermont).

121. Cf. *Fink*, *supra* note 100, at 124 (stating many jurisdictions “involve the parents in plea allocutions and dispositions” (quoting N.Y. Fam. Ct. Act § 305.2(7) (Consol. 2011), § 320.3, § 341.2; *In re Kim F.*, 487 N.Y.S.2d 31 (N.Y. App. Div. 1985))).

child’s wishes, as expressed by counsel; appoint counsel for the parent; or appoint a guardian *ad litem* for the child.<sup>122</sup>

The prospect of eviction and homelessness as a collateral consequence of adjudication is not addressed by the juvenile court in plea forms or colloquies. The state of Washington employs a comprehensive, six-page “Statement on Plea of Guilty” form that references a number of collateral consequences.<sup>123</sup> The paragraph regarding “Federal Benefits” notes that a plea of guilty to a felony drug offense will affect eligibility for state and federal food stamps and welfare but does not mention public housing benefits.<sup>124</sup> Evidently, housing is not recognized as a legal right to be protected in the same manner as food. It is, however, an important consideration that the juvenile should take into account and as such should be addressed by defense counsel.

There is wide spread recognition that a competent defense attorney in a juvenile case should inform his or her client that the resolution of the delinquency matter may have an effect on the possibility of eviction from public housing.<sup>125</sup> Despite this consensus, courts have treated the prospect of eviction as a collateral consequence, which means that a guilty plea need not include

122. E-mail correspondence from practitioners and juvenile court personnel nationwide (on file with authors). These practices conform with the client-centered advocacy recommended for juvenile defense attorneys. *See supra* text accompanying note 104.

123. The State of Washington Superior Court Juvenile Court Statement on Plea of Guilty form includes the following collateral consequences: suspension/revocation of driving privilege for firearms or drugs, suspension/revocation of driving privilege for driving offenses, offender registration for a sex or kidnapping offense, DNA testing, HIV testing, domestic violence assessment, crime lab fees, school notification, school attendance with victim prohibited, federal benefits, mandatory minimum sentence, right to possess firearms, and firearms possession or commission while armed (containing mandatory minimums for under age eighteen). WASHINGTON SUPERIOR COURT, STATEMENT OF JUVENILE ON PLEA OF GUILTY FORM, *available at* [www.courts.wa.gov/court\\_rules/word/supJuCR07.07.doc](http://www.courts.wa.gov/court_rules/word/supJuCR07.07.doc).

124. *Id.*

125. *See* ABA, COMMISSION OF EFFECTIVE CRIMINAL SANCTIONS, REPORT TO THE HOUSE OF DELEGATES 2-3 (2010), *available at* <http://meetings.abanet.org/webupload/commupload/CR209800/newsletterpubs/Report.V.PDF.121306.pdf> (“The ABA Criminal Justice Standards on Pleas of Guilty and the Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons both require that a defendant be advised of collateral consequences before plea and at sentencing [and that] collateral consequences of conviction may pose barriers to employment, housing, [and] education.”); N.Y. ST. BAR ASS’N, PROPOSED STANDARDS FOR PROVIDING MANDATED REPRESENTATION 16 (2005) (“[N]o attorney shall accept a criminal case unless that attorney . . . is confident that he or she can provide[] zealous, effective and high quality representation [which] means, at a minimum . . . avoiding, if at all possible, collateral consequences [such as] deportation or eviction.”); UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT § 5 (2010) (stating that individuals charged with an offense should receive notice of the possible effect of guilty plea or conviction on eligibility for public housing); ROBIN WALKER STERLING, NAT’L JUVENILE DEFENDER CTR., ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 23 (2009) (stating that discussions with clients should include all long-term collateral consequences including ineligibility for public housing); PA. JUVENILE INDIGENT DEF. ACTION NETWORK, PENNSYLVANIA JUVENILE COLLATERAL CONSEQUENCES CHECKLIST 6 (2010); LAW OFFICES OF THE PUB. DEFENDER, ELEVENTH JUDICIAL CIRCUIT OF FL, ADVISORY FOR JUVENILE CLIENTS (2009), *available at* <http://www.lsgmi.org/downloads/PlayItSmart.pdf>. *But see* NAT’L JUVENILE DEFENDER CTR., JUVENILE DEFENDER RES. GUIDE (2007) (failing to mention housing eligibility as a consequence of a delinquency finding).

information about the risk of losing ones home.<sup>126</sup> A recent Supreme Court case, however, has opened the door to an argument that the Constitution requires defense attorneys in juvenile cases to make sure that the children they represent know about the effect their case will have on whether they or their families can remain in public housing.

*Padilla v. Kentucky*<sup>127</sup> changed the landscape of how courts will apply the Sixth Amendment's ineffective assistance of counsel test and refused to follow the commonly accepted collateral consequence doctrine that removed from the scope of a lawyer's obligation any need to address consequences that did not flow directly from the conviction within the criminal justice system itself.<sup>128</sup>

*Padilla* dealt with an adult criminal defendant who pled guilty after his lawyer told him that he did not have to worry about the immigration consequences of his conviction.<sup>129</sup> Unfortunately, that advice turned out to be wrong. Deportation was a virtually mandatory consequence for conviction of the crime that the defendant faced.<sup>130</sup>

The five Justices who joined the majority opinion, including Justice Alito and Chief Justice Roberts, both of whom concurred in the decision, agreed that minimally competent attorneys cannot deliver what the Sixth Amendment requires unless they address the immigration issue one way or the other.<sup>131</sup>

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126. See Jenny Roberts, *Ignorance is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process*, 95 IOWA L. REV. 119, 124 (2009).

127. 130 S. Ct. 1473 (2010).

128. One important point about *Padilla* is that the Court chose to decide the case on Sixth Amendment grounds rather than on the basis of the Due Process Clause. A corollary of due process in guilty plea cases requires that the defendant receive information about the consequence of waiving a trial and admitting guilt. See *Brady v. United States*, 397 U.S. 742, 748 (1970). If the Court had based its holding in *Padilla* on that doctrine, it would have applied only where the defendant entered a guilty plea. By resting the opinion on the Sixth Amendment, however, *Padilla* applies to all of the arenas where the guarantee of effective assistance of counsel is evident. That means that defendants who go to trial are entitled to advice about the immigration consequences of their decision as well as those who plead guilty. Thus, someone who turns down a plea agreement that would have saved him or her from deportation only to go to trial and lose, putting them in a position where they face forcible removal from the country, has been denied a right under the Sixth Amendment just as in *Padilla*. Most federal courts have accepted the proposition that a defendant satisfies the prejudice test for ineffective assistance of counsel when defense counsel's deficient performance results in the defendant's rejecting a plea bargain, going to trial and receiving a harsher sentence. See *Williams v. Jones*, 571 F.3d 1086, 1090 n.3 (10th Cir. 2009). If defense counsel in juvenile court failed to advise his or her client that accepting a resolution short of trial might avoid eviction, *Williams* and the cases it cites would support an attack on the validity of any conviction that resulted from a trial. The question of remedy requires the court to put the defendant back in the position he would have been in had defense counsel met the appropriate constitutional standard. See *id.* at 1090. If *Padilla* is extended to the eviction context, then it would apply whether a juvenile waived the right to a trial or was convicted after one.

129. See *Padilla*, 130 S. Ct. at 1477-78.

130. See *id.* at 1478.

131. The majority required defense attorneys to advise their clients of the possible immigration consequences, at least in cases like *Padilla* where they are significant. See *id.* at 1486-87. The concurring opinion, on the other hand, would simply impose an obligation on defense counsel to advise the client in general terms that there may be an adverse immigration consequence and that the client should engage an immigration specialist for further advice. See *id.* at 1494 (Alito, J., concurring).

There were five factors that played a role in the Court’s conclusion. The most important was the unique harshness of deportation’s impact.<sup>132</sup> Another factor was the weight that defendants in a criminal case give to the possibility of deportation in making decisions about whether to plead guilty or go to trial.<sup>133</sup> A third was the unanimity of prevailing professional norms that mandate defense counsel to caution a client about the immigration consequences of a criminal conviction.<sup>134</sup> The fourth was the prevalence of state statutes and court rules that require judges to inform defendants of the possibility of immigration consequences.<sup>135</sup> The last was the virtual inevitability of being deported in a case like *Padilla*.<sup>136</sup>

The application of *Padilla* in a case where defense counsel in juvenile court never informed the child of the prospect of eviction from public housing has not yet worked its way through the courts. Eviction and deportation are similar on three of the dimensions that the Court found significant in *Padilla*. For many children, being evicted from the family’s home or having the entire family be evicted can be just as disruptive and traumatic as being deported.<sup>137</sup> It may even be more damaging to a child’s future, given that homelessness has such a negative effect on the future life prospects of a child. In choosing whether to accept a negotiated disposition or enter a diversion program rather than go to trial, there will be many juveniles for whom the prospect of eviction would weigh heavily in the balance. This is especially so in cases where the disposition in the juvenile court would leave the juvenile in the community rather than in custody. Moreover, professional standards for the adequate provision of defense services support the view that criminal attorneys must advise their clients about the potential for eviction from public housing.

The comparison between eviction and deportation, however, does not result in a perfect match. No court rules or statutes require judges to warn defendants as part of a guilty plea colloquy that the resolution of their criminal case may affect their eligibility for public housing. What is more, eviction is not dependent, at least in a formal sense, on the outcome of the criminal or delinquency case. HUD regulations specifically note that the issue in a One Strike eviction is the

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132. *Cf. id.* at 1481 (noting that “deportation is a particularly severe penalty,” and “[the court] find[s] it ‘most difficult’ to divorce the penalty from the conviction in the deportation context”).

133. *See id.* at 1483 (“[p]reserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence.” (quoting *INS v. St. Cyr*, 533 U.S. 289, 323 (2001))).

134. *See id.* at 1482 (“The weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation.”).

135. *See id.* at 1486 n.15.

136. *See id.* at 1478.

137. *Cf. McGregor Smyth, Holistic Is Not a Bad Word: A Criminal Defense Attorney's Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 U. TOL. L. REV. 479, 494–95 (2005) (“[P]rosecutors and judges respond best to consequences that offend their basic sense of fairness [and are] absurd or disproportionate, or that affect innocent family members [like] (1) housing (loss of public housing or Section 8 housing); (2) employment (loss of a job or employment license, particularly for the primary breadwinner); (3) student loans; and (4) immigration.”).

underlying behavior, not whether someone covered by the lease has been convicted or even arrested.<sup>138</sup>

Whether courts will apply *Padilla* to the eviction context depends on which practical consequences one believes will flow from the decision and the importance given to them. Extending *Padilla* will result in vacating convictions and findings of delinquency. It will not have much effect, if at all, in getting those whose convictions and findings of delinquency were vacated back into public housing. The PHA, not being a party to the delinquency or criminal case, would not be within the jurisdiction of the court and in any event would not be bound to undo the effect of the eviction. On a systemic level, however, extending *Padilla* will educate judges and lawyers to the importance of ensuring that those brought before a court for an offense that can affect their eligibility for public housing make a fully informed decision.

#### D. Dispositional Decision

The juvenile justice system prides itself on its commitment to rehabilitation, and this manifests itself in the individualized treatment of each child drawn into the delinquency court. Individualized consideration is a prominent value.<sup>139</sup>

What the juvenile court judge faces is the imposition of a delinquency disposition that will meet the needs of the child as well as the needs of the community. Juvenile courts have been guided by the principle of the least restrictive alternative,<sup>140</sup> and judges are advised to select dispositions from a list of graduated responses that they believe will accomplish the court's goals for the youth appearing before it.<sup>141</sup>

The enduring commitment to the least restrictive alternative is evident in the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) 2007 statistics, which indicate that fifty-six percent of all adjudicated delinquency dispositions placed the child on probation.<sup>142</sup> Probation is defined as "court-ordered supervision of juvenile offenders."<sup>143</sup> It is premised on the juvenile returning to his or her community, usually with conditions that incorporate utilization of community resources such as counseling and therapy, anger

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138. See 24 C.F.R. § 966.4(l)(5)(iii) (2010) ("The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.").

139. NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES 135 (2005) (noting the disposition hearing is "the heart of the juvenile justice system. It is the time at which individualized justice is dispensed.").

140. IJA-ABA, *supra* note 89, at 2.1 ("In choosing among statutorily permissible dispositions, the court should employ the least restrictive category and duration of disposition that is appropriate to the seriousness of the offense, as modified by the degree of culpability indicated by the circumstances of the particular case, and by the age and prior record of the juvenile.").

141. NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, *supra* note 139, at 136.

142. CRYSTAL KNOLL & MELISSA SICKMUND, OJJDP, DELINQUENCY CASES IN JUVENILE COURT, 2007 3 (2010).

143. PATRICIA MCFALL TORBET, OJJDP, JUVENILE PROBATION: THE WORKHORSE OF THE JUVENILE JUSTICE SYSTEM 2 (1996).



management, tutoring, and the monitoring of both physical and mental health issues. Probation conditions are tailored to meet the child's particular needs, and they contemplate that the child and his or her family will remain in the community to take advantage of the resources there. What probation does *not* anticipate is the child or the child's family being evicted from public housing.<sup>144</sup>

Probation conditions are premised on parental involvement in this rehabilitative effort. Some jurisdictions require both the child and the parent or legal guardian to sign the probation agreement or contract with the court at sentencing.<sup>145</sup> Family inclusion in the juvenile's rehabilitation plan is viewed as a benefit, and families are encouraged to participate in community programs along with the juvenile.<sup>146</sup>

How do PHA eviction policies affect juvenile dispositions? The type of community into which the juvenile will be released is one of the key determinants in the decision whether probation is appropriate or not.<sup>147</sup> If the juvenile court learns that the juvenile will be barred from the home, or the entire family evicted, it makes probation a much less attractive alternative for the court. A pending eviction may hamper the juvenile probation department's ability to provide additional services to the family as well as hamper coordination with other state agencies, particularly child welfare agencies, to provide support.

#### E. *Re-entry*

What happens if the juvenile, once committed to a juvenile correctional authority, completes his or her stay there and qualifies for conditional release? According to the recent Youth Reentry Task Force report, approximately 100,000 youth exit the formal custody of the juvenile justice system every year.<sup>148</sup> Where are these youth going to live if they have been evicted from public housing?

Homelessness is a real possibility for youth leaving correctional facilities. The Wilder Research Center in Minnesota conducted a homelessness study that found forty-six percent of homeless youth between ages ten and seventeen had

144. If the probation office learns that a child is homeless as a result of a PHA eviction, the office may file an action with the state child welfare agency to provide that child with a foster home placement or other appropriate placement, apart from the delinquency alternatives. See Interview with Steven A. Siciliano, Suffolk County Chief Prob. Officer, Juvenile Court Department (July 2010).

145. See, e.g., IDAHO PROBATION FORM, available at [http://www.bannockcounty.us/juvenile/documents/probation\\_order.pdf](http://www.bannockcounty.us/juvenile/documents/probation_order.pdf); MASSACHUSETTS PROBATION FORM, available at <http://www.mass.gov/courts/courtsandjudges/courts/juvenilecourt/forms/jv-5-tender-of-plea.pdf>; NEBRASKA PROBATION FORM, available at [http://www.supremecourt.ne.gov/forms/Juvenile\\_Court-Probation\\_Order.doc](http://www.supremecourt.ne.gov/forms/Juvenile_Court-Probation_Order.doc); VERMONT PROBATION FORM, available at <http://www.vermontjudiciary.org/efrms/Form%20106.pdf>; WASHINGTON PROBATION FORM, available at [http://www.courts.wa.gov/forms/documents/JU06\\_0120\\_Diversion%20Agreement.doc](http://www.courts.wa.gov/forms/documents/JU06_0120_Diversion%20Agreement.doc).

146. HEATHER J. DAVIES & HOWARD A. DAVIDSON, ABA CTR. ON CHILDREN AND THE LAW, PARENTAL INVOLVEMENT PRACTICES OF JUVENILE COURTS 101 (2001).

147. See NAT'L CTR. FOR JUVENILE JUSTICE, DESKTOP GUIDE TO GOOD JUVENILE PROBATION PRACTICE 65-66 (Patrick Griffin & Patricia Torbit eds., 2002).

148. ASHLEY NELLIS & RICHARD HOOKS WAYMAN, JUVENILE JUSTICE AND DELINQUENCY PREVENTION COALITION, BACK ON TRACK: SUPPORTING YOUTH REENTRY FROM OUT-OF-HOME PLACEMENT TO THE COMMUNITY (2009).

been in a correctional facility.<sup>149</sup> Many of these youth, because of their juvenile delinquency adjudications, are banned from their family homes, subject to “No Trespass” orders issued by PHAs, and thwarted from reunification with their families still residing in public housing. These “homeless youth are also likely to become involved in prostitution, to use and abuse drugs, and to engage in other dangerous and illegal behaviors.”<sup>150</sup>

Despite the fact that a juvenile has completed rehabilitation in a juvenile correctional institution, or is actively supervised and monitored by probation, PHAs have not sought to allow the juvenile to return to public housing. In one instance, a mother allowed her son, arrested for drug offenses, to return home to a PHA apartment after release from juvenile detention so that his probation officer could monitor him via telephone. In addition to probation monitoring, the mother took further rehabilitative steps. She testified that she accompanied her son to outpatient substance abuse counseling at a hospital and had sought counseling from his high school guidance counselor. The PHA was unmoved and sought eviction of the entire family. The *mother* was allowed to stay in her apartment with her four other children but ordered not to allow her son to enter the apartment.<sup>151</sup>

When PHA eviction orders prevent juveniles who have been in custody from returning to their families’ homes, it places the burden on the juvenile correctional authorities. Massachusetts is an example of one jurisdiction where the agency in charge of a juvenile’s scheduled release from custody, the Department of Youth Services (DYS), ensures that children are not released to the street. Ninety days prior to a juvenile’s conditional release date a regional review team meets to determine future placement and services. Legal guardians, defense counsel, and other individuals who have worked with the child are invited to attend. It is usually at this meeting that the homelessness issue is raised. According to Tina Saeti, Director of Operations for DYS’s Metropolitan Region, DYS will have notification of any existing “no trespass” order against the juvenile since that order is often issued by the court at sentencing at either the prosecution or probation’s request. Although DYS will not notify the PHA of the juvenile’s release from secured custody, DYS recognizes that the juvenile cannot go home again. Under these circumstances, DYS will work with the juvenile’s family to identify a possible family member to whom the child can be released. If no family member is identified, then plans can be made to release the juvenile to the Department of Children and Families, the state’s child welfare agency, to locate a foster placement. According to Ms. Saeti, the goal is to discharge the

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149. *Id.* at 10; see also ST. PAUL: WILDER RESEARCH CENTER, OVERVIEW OF HOMELESSNESS IN MINNESOTA 2006: KEY FACTS FROM THE STATEWIDE SURVEY (Nancy Hartzler ed., 2007), available at <http://www.wilder.org/download.0.html?report=1963>; ST. PAUL: WILDER RESEARCH CENTER, HOMELESS YOUTH IN MINNESOTA: 2003 STATEWIDE SURVEY OF PEOPLE WITHOUT PERMANENT SHELTER (2005), available at <http://www.wilder.org/download.0.html?report=410> (last visited Dec. 2, 2010).

150. NELLIS & HOOKS, *supra* note 148, at 18; see also National Alliance to End Homelessness (2007), [www.naeh.org](http://www.naeh.org) (last visited Dec. 2, 2010).

151. See *Allegheny Cnty. Hous. Auth. v. Hibbler*, 748 A.2d 786, 787-91 (Pa. Commw. Ct. 2000).

child to a stable living environment where he or she can re-enter the community safely, assured of a continuum of care.<sup>152</sup>

It is not clear how many children require these kinds of efforts to find homes upon release from juvenile correctional facilities. But the fact that almost half of all of homeless children have previously been in a correctional facility provides no assurance that we have as a nation found a solution to the problem of finding appropriate long term placements for juveniles upon their release from custody.

### III. CONCLUSION AND RECOMMENDATIONS

The One Strike policy has led to absurd results. One PHA evicted an entire family based on a petty fight between adolescent girls.<sup>153</sup> A fourteen-year-old whose act of vandalism warranted only community service caused his family to leave the PHA when they would not throw him out to save their lease.<sup>154</sup> A seriously ill sixteen-year-old whose arrest for possession of drugs, dismissed in juvenile court, was ultimately barred from public housing. When his mother permitted him to stay one night in her apartment in order to be able to go to a doctor's appointment at the hospital across the street, the PHA began eviction proceedings.<sup>155</sup>

The One Strike law may be good politics, but it is not sound social policy. There is no evidence at all that it has reduced the level of crime in PHAs.<sup>156</sup> At its best, it merely moves problems from one part of a community to another. Making people homeless will not stop them from committing crimes. At its worst, it either puts families out on the street for actions by someone whom they could not control or rips them apart by forcing mothers and fathers to bar their children from the door of the family home for behavior that the children may never repeat and that hurt no one in the first place.

There are a number of suggestions that can improve the One Strike policy. They can be achieved through legislative action, HUD agency guideline changes,

152. Interview with Tina Saeti, Dir. of Operations, Dep't of Youth Services Metropolitan Region (July 9, 2010).

153. See Reckdahl, *supra* note 48.

154. See Brief for Coalition to Protect Public Housing et al. as Amici Curiae Supporting Respondents, Dep't of Hous. & Urban Dev. v. Rucker, 535 U.S. 125 (2002) (Nos. 00-1770, 00-1781), 2001 WL 1684562, \*24.

155. See Robinson v. Martinez, 764 N.Y.S.2d 94, 95 (N.Y. App. Div. 2003).

156. See ROBERT A. HYATT & HAROLD R. HOLZMAN, DEP'T OF HOUS. & URBAN DEV., *GUIDEBOOK FOR MEASURING CRIME IN PUBLIC HOUSING WITH GEOGRAPHIC INFORMATION SYSTEMS* 5 (1999), available at <http://www.huduser.org/publications/pubasst/gis.html> ("The incidence of crime in public housing has yet to be routinely and systematically measured. In the vast majority of jurisdictions with public housing, official police statistics on crimes specific to those areas are just not available."); Harold R. Holzman, *Criminological Research on Public Housing: Toward a Better Understanding of People, Places, and Spaces*, 42 CRIME & DELINQ. 361, 369-71 (1996) ("[K]nowledge of the volume and type of crime in public housing and how crime in public housing compares to that found in other neighborhoods is fragmentary at best."); Adam P. Hellegers, *Reforming HUD's "One-Strike" Public Housing Evictions through Tenant Participation*, 90 J. CRIM. L. & CRIMINOLOGY 323, 333 (1999); Harold R. Holzman & Lanny Piper, *Measuring Crime in Public Housing: Methodological Issues and Research Strategies*, 14 J. QUANTITATIVE CRIMINOLOGY 331, 331 (1998) ("Valid statistics on the level of crime in public housing do not exist.").

and expansion of both juvenile and housing court considerations when dealing with delinquency-involved youth and their families.

A. *Legislative Changes*

As noted earlier, the Extension Act, combined with the *Rucker* decision, expanded PHA authority to evict family members based on juvenile delinquency. The harsh policies mandated by both Congressional and court action call for modification in the face of Draconian consequences. To that end, Congresswoman Jackson-Lee of Texas recently introduced legislation that would prohibit eviction based solely on familial relationship to a wrongdoer or of innocent tenants who “did not know and should not have known of the [underlying criminal] activity.”<sup>157</sup> Parents who do everything in their power to keep their children from breaking the law have done everything that one could ask of them. Deterrence in these circumstances fails as a rationale.<sup>158</sup> By removing the prospect of eviction for parents under these circumstances, many of the conflicts of interest that arise in the corresponding juvenile court cases will disappear.

Adoption of measures that allow innocent tenants to remain in much-needed housing is a humane step that the government can take in order to provide housing to a population already facing economic hardship. Considering that Congress has passed other laws to address the needs of homeless children<sup>159</sup> who comprise one-fifth of the nation’s homeless population,<sup>160</sup> modification of existing law is necessary to blunt the harsh effects of the *Rucker* decision and make for more consistent policy regarding homelessness.

B. *Administrative Agency Changes*

HUD guidelines with respect to evictions based on transgressions by juvenile family members should be modified in several ways. PHA eviction guidelines should require the PHA to take into account the effect of eviction on the family and on the juvenile when it is the juvenile’s behavior that forms the basis of the PHA’s action.

The PHAS scoring system should incorporate whether or not a PHA uses discretion appropriately in order to keep families together in public housing rather than “rewarding” PHAs for evictions based on juvenile court involvement. The PHAS should also include in its assessment scheme whether or not a PHA respects the relevant juvenile confidentiality provisions in the jurisdiction.

When eviction is based on a child’s arrest, unless there is an exigent need to act, the PHA should wait until the conclusion of the juvenile court proceedings

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157. See No One Strike Eviction Act of 2009, H.R. 69, 111th Cong. (2009).

158. In this regard, it is not unlike the good faith exception to the Fourth Amendment exclusionary rule. See *United States v. Leon*, 468 U.S. 897, 940–41 (1984).

159. E.g., The McKinney-Vento Homeless Assistance Act, 2 U.S.C. § 11431 (2006) (requiring public schools to provide accommodations to the homeless).

160. See U.S. DEP’T OF HOUS. & URBAN DEV., THE 2009 ANNOTATED HOMELESS ASSESSMENT REPORT TO CONGRESS 23 (2009) (noting that children under age eighteen represent 22.2% of all sheltered homeless people).

before moving for eviction. The PHA, in exercising discretion, should take into account the nature of the offense charged, the role the child allegedly played in the incident, and whether the juvenile court, at arraignment, imposed conditions of release that set out adequate supervision and assurance that no further lease violations will occur. Similarly, once the delinquency matter is resolved, the PHA should consider whether the juvenile court imposed conditions of probation that will monitor closely the juvenile's behavior in the community. Specific guidelines for probation supervision of children in PHAs should be established between the juvenile court and the PHA.

A juvenile released from custody after a period of detention should be eligible for reentry into public housing once juvenile authorities provide the PHA with substantiation of the juvenile's rehabilitative efforts.

### C. *Juvenile Justice System Changes*

There are steps that the juvenile justice system should take to address the problems that the One Strike law creates. The juvenile court's probation intake interview should elicit information about whether the juvenile's family lives in public housing or receives a Section 8 housing subsidy. All juvenile court officials, from probation officers doing intake screening to judges imposing sanctions after a finding of delinquency, should inform themselves about the possibility that the juvenile and his or her family will be evicted from public housing or lose Section 8 rent subsidies. Decisions about the status of the child in juvenile court should be made with full knowledge of how those decisions impact the possibility of eviction.

The juvenile court must be sensitive to the possibility of a conflict of interest between parent and child when the family lives in federally subsidized housing. Judges should explore decisions by parents or legal guardians not to accept the juvenile back into the home to determine if the threat of eviction is the underlying basis for such a decision.

Juvenile defense attorneys and juvenile prosecutors should be aware of the collateral consequences a delinquency matter poses on the family's continuing eligibility for public housing. Any charging decision or plea negotiation should explicitly consider resolutions that will enable the child and the family to remain in a secure housing environment. To that end, juvenile courts should form working relationships with the PHAs in their jurisdictions in order to educate PHA officials about the type of supervision that juvenile probation officers can provide within the community.

Any juvenile plea colloquy that precedes a juvenile's waiver of the right to trial should include warnings about the possibility of eviction from public housing as a collateral consequence.

Juvenile correctional authorities, when considering release of committed children, must be mindful of PHA restrictions on the return of the juvenile to public housing and should establish programs to help with the residential placement of children who have been excluded from a PHA.

The goals of assisting the family, reducing future acts of delinquency, avoiding homelessness, and protecting the neighborhood can be achieved only if

all juvenile stakeholders work to strengthen community-based services for children and families.

*D. Housing Court Changes*

Housing courts processing PHA-initiated One Strike eviction actions should carefully scrutinize settlements that allow adult tenants to remain in public housing on the condition that their children never enter the premises. Any eviction agreement that is reached without assistance of counsel should be evaluated to ensure that the PHA has considered all reasonable alternatives to an inflexible ban, such as permitting the juvenile to rejoin the family in public housing on proof of successful completion of a rehabilitation program.

Any court-approved agreement between the PHA and the tenant should include conditions that provide (1) assurance that the evicted juvenile has a stable and safe housing situation in place and (2) for review once the child's delinquency matter is resolved in juvenile court.

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The Universal Declaration of Human Rights recognizes housing as a fundamental necessity that government must provide.<sup>161</sup> Public housing in this country, however, is simply a matter of legislative grace.<sup>162</sup> Nevertheless, millions of people live in government-subsidized housing. Some of them, even Presidents and Governors, have children living with them who break the law. Our country can find a way to accommodate the need for safe housing with the basic need to keep families together under one roof. We can do better than the existing One Strike policy.

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161. UNIVERSAL DECLARATION OF HUMAN RIGHTS, Art. 25(1) (Dec. 10, 1948).

162. *See Lindsey v. Normet*, 405 U.S. 56, 74 (1972) (explaining that housing is not a fundamental right and that, "absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions").