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COMMENTS: AM I MY MOTHER'S KEEPER? THE CASE AGAINST THE USE OF JUVENILE ARREST RECORDS IN ONE-STRIKE PUBLIC HOUSING EVICTIONS

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SUMMARY:

... By analogy, a public housing authority's reliance on a minor's arrest record to commence an eviction against his family in effect makes the child responsible for his family, which begs the question "Am I my mother's keeper?" Advocates of a one-strike eviction policy, which encourages evictions of entire families on the basis of one household member's or guest's criminal activity, would answer "yes." ... Since 1996, the CHA lease has provided for an "innocent tenant" affirmative defense for public housing tenants faced with eviction for the criminal activity of a third party. The relevant lease provision reads: "the Resident may raise as a defense that the Resident did not know, nor should have known, of said criminal activity. ... Although HUD guidelines authorize PHAs to evict a tenant "regardless of whether the covered person has been arrested or convicted for such activity," the CHA should not rely on juvenile arrest records to initiate evictions. ...

TEXT:

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I. Introduction

In the Old Testament, Genesis, chapter 4, verse 9 reads: "the Lord said to Cain, "Where is your brother Abel?" "I don't know," he replied. "Am I my brother's keeper?"ⁿ¹ Cain's response implies that to know his brother's whereabouts indicates some responsibility for him. By analogy, a public housing authority's reliance on a minor's arrest record to commence an eviction against his family in effect makes the child responsible for his family, which begs the question "Am I my mother's keeper?" Advocates of a one-strike eviction policy, which encourages evictions of entire families on the basis of one household member's or guest's criminal activity,ⁿ² would answer "yes." When a housing authority initiates an eviction on the basis of the alleged criminal acts of the child, the parent is often put in the difficult position of either having to force her child out of the home or lose housing for the entire family.ⁿ³

In 1996, when President Clinton unveiled his "One-Strike and You're Out" strategy to reduce crime in public housing through evictions, he remarked,

There is no reason in the world to put the rights of a criminal before those of a child who wants to grow up safe or a parent who wants to raise that child in an environment where the child is safe, in no danger of being shot down in a gang war, and can't be stolen away by drug addiction. n4

[*740] While many would agree with this statement, it ignores the effect that the one-strike policy has on families when the alleged "criminal" is a child. Furthermore, it overlooks the difficulty of separating the problem of crime in public housing from the innocent tenants who live there. Instead, the policy represents a catchall solution premised on the idea that those who cannot control the behavior of other household members, namely their children, or guests in their homes, are themselves a threat to the well-being of their neighbors.

Scholar Susan Popkin explains that past crime-prevention initiatives by the Chicago Housing Authority n5 ("CHA") have failed by unrealistically assuming that public housing residents can work together to challenge a common, outside enemy. n6 The transformation that the CHA has undergone since its inception is instructive.

Pursuant to the United States Housing Act of 1937, n7 the Chicago Housing Authority was established to provide temporary housing for low-income people unable to afford "'decent, safe and sanitary dwellings' in the private market." n8 During the CHA's early years, its directors envisioned "replacing slum housing, for both poor whites and poor blacks, with better apartments in good neighborhoods." n9 However, the developments that exist today can fairly be categorized as slum housing for poor blacks in crime-ridden neighborhoods. The majority of the housing was built in poor, black neighborhoods, and residents were separated from other parts of the city by expressways or subway lines, resulting in "unimaginable geographic concentrations of poverty." n10 With the alarming increase in violent crime that began in the late 1970s and the physical deterioration of the housing stock, n11 public housing in Chicago came to be regarded as "the housing of last resort." n12

[*741] Today, the CHA is the country's third largest public housing agency ("PHA") consisting of seventeen family developments totaling close to forty thousand units. n13 Near the end of the year 2000, approximately sixty percent of these units were occupied. n14 Ninety-seven percent of Chicago's public housing is inhabited by African-Americans. n15 Ninety percent of public housing households are "on welfare and made up of African-American, single women." n16 Only six percent of the families are headed by married couples. n17 In the CHA Rockwell development on Chicago's West Side, more than sixty percent of the residents are nineteen and younger. n18

The design of most of these "artificially created communities," high-rises surrounded by large open spaces, n19 invited occupation by gangs and drug dealers. n20 Popkin aptly explains the role of gangs in CHA housing: "Gangs often filled the void [left by a non-existent social structure], n21 and the lack of other economic activity allowed the drug trade to flourish." n22 The relationship between gangs and residents is even more striking. The drug dealers who dominate public housing are not outsiders; rather they are people whose presence law-abiding residents have grown to tolerate. n23 [*742] Similarly, the youth arrested for alleged criminal activity are not invaders of the public housing community; rather, they are the children of residents who are unwilling to report the behavior to the police due to the risk of eviction from the housing authority n24 and their fear of reprisal from other gang members and drug dealers in the development. n25 Federal law authorizes law enforcement agencies to provide PHAs with tenants' conviction records for eviction purposes. n26 Furthermore, if a PHA learns that a tenant has engaged in illegal activity, regardless of whether such activity resulted in an arrest or conviction, the activity can also serve as a basis for his or her eviction. n27

As recently as June 2002, the Chicago Police Department, in disregard of the Illinois Juvenile Court Act, disclosed juvenile arrest records to the CHA. n28 The Juvenile Court Act protects the confidentiality of juvenile arrest records and restricts access to these records to specific parties, of which housing authorities are not included. n29 In addition, the Juvenile Court Act prohibits law enforcement officers from "disclosing the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor." n30 Upon receipt of the juvenile arrest records, the CHA relied on information contained therein to initiate evictions against the child's family under the one-strike policy. n31 Currently, the CHA is seeking to add itself to the list of parties that have access to juvenile arrest records by amending the Juvenile Court Act in order to aid in its enforcement of the one-strike policy. n32

[*743] This Comment argues against permitting PHAs to access and exploit information in minors' arrest records to evict their families or force the minors to be removed from their homes. Part II of this Comment reviews the origins and public perception of the one-strike policy and the Supreme Court's recent interpretation of the federal law and regulations that support the policy in *Department of Housing and Urban Development v. Rucker*. n33 Part III details the

CHA's past use of juvenile arrest records to enforce one-strike evictions in Chicago and its proposed efforts to regain access to that information. Part IV analyzes the rehabilitative function confidentiality is meant to serve for youths who have come into contact with the juvenile justice system and the specific provisions found in the Illinois Juvenile Court Act that pertain to a juvenile's law enforcement and court records. In addition, this section cites the prevalence of bias found in the juvenile justice system, which disproportionately targets minorities, as further evidence of why PHAs should not rely on these records. Part IV also explores how the defects in the CHA's policy of punishing a juvenile's parents through eviction because of the child's behavior does little to prevent crime in public housing, but succeeds in excluding the family from the CHA's current housing redevelopment plans. Part V concludes with recommendations for the CHA to implement in order to prevent delinquent behavior by juveniles and avoid resorting to evictions or removing the youth from the premises.

II.

"One-Strike and You're Out" n34

Federal law requires PHAs to

utilize leases which ... provide that any criminal activity ... or any 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, shall be a cause for termination of tenancy n35

Despite the Department of Housing and Urban Development's ("HUD") guidelines, n36 PHAs have been uncertain as to how to implement this section of the Housing Act. This provision was added to the Housing Act in response to Congress's findings that "public and other federally assisted low-income housing in many areas suffers from rampant drug-related or violent [*744] crime." n37 Although PHAs have had the authority to evict tenants on this basis since the passage of the Anti-Drug Abuse Act of 1988, n38 up until the mid-1990s PHAs had not fully enforced this provision. n39

In the Clinton Administration's efforts to revamp this provision, the President issued a "challenge" to housing authorities to implement a "rule for residents who commit crime and peddle drugs ... [of] one strike and you're out." n40 President Clinton directed HUD to develop guidelines for PHAs on the use of "applicant screening and tenant eviction procedures to keep out drug dealers and other criminals who threaten the safety and the well-being of residents." n41

President Clinton concurrently signed the Housing Opportunity Program Extensions Act of 1996 n42 that, inter alia, n43 amended portions of the Housing Act. n44 For example, law enforcement agencies were directed to provide, upon the request of PHAs, "information ... regarding the criminal conviction records of adult applicants for, or tenants of, public housing for purposes of applicant screening, lease enforcement and eviction." n45 PHAs were also charged with

establishing standards ... that prohibit occupancy in any public housing dwelling unit by ... any person [whose] illegal use ... of a controlled substance, or abuse ... of alcohol, may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents of the project; and that allow the public housing agency to terminate the tenancy in any public housing unit [for such behavior] n46

[*745] As interpreted by HUD, Clinton's one-strike policy "reiterated the existing screening and eviction authority of public housing agencies" n47 and added two major elements: the authorization of PHAs "to deny occupancy on the basis of illegal drug-related activities and alcohol abuse [that] leads to behavior that threatens the health, safety or peaceful enjoyment of the premises by other residents;" n48 and a revision to the Public Housing Management Assessment Program that would begin to evaluate PHAs' "performance in implementing effective screening and eviction policies and other anti-crime strategies." n49 Therefore, Clinton's policy served as a reminder to PHAs of their authority to prevent illegal activity by screening out tenants who posed such a threat. Significantly, it provided an incentive to PHAs to implement the one-strike policy by grading their implementation of the HUD guidelines and tying that grade to the amount of federal funding the PHA would receive and the level of federal oversight to which it would be subjected. n50

A. The Public's Perception of the One-Strike Policy

The one-strike policy has drawn criticism, including the policy's purported denial of due process and basic fairness to public housing tenants and its function as "an election-year publicity stunt" executed at poor people's expense, from public housing advocates and politicians alike. n51 Scholar Nelson H. Mock observed that the one-strike policy may actually defeat the purpose of reducing crime in public housing by "encouraging [*746] public housing tenants to hide criminal activity and confront criminal problems themselves." n52 Moreover, punishing innocent tenants "fosters disenchantment with the justice system and enhances cynicism about its fairness." n53

Despite such criticism, HUD has maintained its support for the statutory provision by commenting that holding a tenant contractually responsible for the acts of other household members is common under landlord-tenant law and is a "valuable" asset for the PHAs' management of housing. n54 From HUD's perspective, the provision motivates tenants to control or prevent illegal behavior by their household members to ensure their continued occupancy of the unit. n55 Furthermore, if proof of prior knowledge or the ability to prevent the illegal activity were required, it would be difficult for PHAs to discern actual fault of the leaseholder. n56 Ultimately, according to HUD, families who are unable or unwilling to control household members who engage in criminal activities threaten the health and safety of other residents in the development. n57

B. Pre-Rucker Interpretation of the One-Strike Policy by the Courts

Courts reviewing one-strike eviction cases have varied in their application of federal law and the HUD guidelines by either broadly construing the language of the Act or strictly interpreting the lease guidelines. In *Delaware County Housing Authority v. Bishop*, n58 a Pennsylvania appellate court reviewed a PHA's decision to initiate eviction proceedings against a tenant for the criminal activity of her sons. n59 The court recognized that HUD regulations "permit[] the Authority discretion whether to consider mitigating factors," n60 but disagreed that the Authority "had complete discretion to evict a tenant ... where the tenant had no knowledge of the criminal activity and had no control over those who committed the offenses." n61 The court was alluding to the PHA's use of discretion, as authorized by HUD, to consider [*747] factors other than the illegal activity when determining whether to evict an "innocent" leaseholder. The relevant federal regulations state:

The PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action. n62

Nevertheless, the court concluded that "neither the lease nor the federal law on which it is premised imbues the Authority with such wide-ranging power." n63 Accordingly, the court affirmed the trial court's ruling for the tenant. n64

Central to the court's holding was the tenant's lack of knowledge or control over her sons' criminal acts. The court's reliance on this lack of knowledge stemmed from its reading of the Housing Act's legislative history. n65 The court quotes the Senate Committee Report, which expressed that "eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity." n66 The court resorted to the Act's legislative history upon determining that the lease's legally required phrase "under the Tenant's control" was ambiguous. n67 However, since 1991, and almost ten years before this case was heard, HUD maintained the position that "the tenant should not be excused from contractual responsibility by arguing that the tenant did not know, could not foresee, or could not control behavior by other occupants of the unit." n68 HUD made this statement in response to the proposal of legal aid and tenant organizations that

the tenant should not be responsible if the criminal activity is beyond the tenant's control, if the tenant did not know or have reason to foresee the criminal conduct, if the tenant did not participate, give consent or approve the criminal activity, or if the tenant has done everything "reasonable" to control the criminal activity. n69

In another case with similar facts, but an opposite result, the Minnesota Supreme Court in *Minneapolis Public Housing Authority v. Lor* n70 found that [*748] the illegal activity of a tenant's son constituted a breach of the lease, thereby making the eviction lawful and the trial court's ruling in favor of the tenant erroneous. n71 In the intermediate appellate court's affirmation of the lower court's finding that the housing authority did not have "'sufficient cause' to terminate the lease," n72 it recognized that "the trial court [had] considerable latitude to review equitable circumstances surrounding the eviction." n73 However, the Minnesota Supreme Court's review of federal law, HUD regulations, and the lease at issue led to its conclusion that housing authorities, and not the courts, were given "discretion to consider all the

circumstances of a case." n74 Furthermore, "in light of HUD's careful crafting of the PHA role in eviction decisions, HUD would likely have spelled out any additional supervisory responsibilities it wished courts to take." n75 Therefore, the Minnesota Supreme Court determined the trial court's role to be restricted to determining whether the alleged criminal activity occurred and whether such activity constituted a breach based on the lease terms. n76

In contrast to Bishop, the Lor court found that federal law gives housing authorities "the discretion either to evict tenants whose household members engage in criminal activities or to permit continued occupancy by remaining family members." n77 Interestingly, Lor relied upon HUD's regulations in reaching its conclusion because it found the same Senate Committee Report relied upon by the Bishop court to be "vague." n78 The Lor and Bishop cases are illustrative of the divergent interpretations by lower courts of the one-strike policy.

C. The Supreme Court's Rucker Ruling

Questions about what federal law PHAs must enforce and consider in eviction cases reached the Supreme Court during the 2001 term in *Department of Housing and Urban Development v. Rucker*, n79 which considered the constitutionality of the one-strike policy. The case arose out of eviction proceedings initiated by the Oakland Housing Authority against four public housing residents. The tenants purportedly failed to adhere to the portion of [*749] their lease that required ""the tenant, any member of the household, a guest, or another person under the tenant's control, not [to] engage in ... any drug-related criminal activity on or near the premises." n80 All of the tenant respondents in Rucker were subject to eviction for illegal acts by third parties. Specifically, the grandsons of respondents Lee and Hill "were caught in the apartment complex parking lot smoking marijuana;" respondent Rucker's daughter "was found with cocaine and a crack cocaine pipe three blocks from Rucker's apartment;" and the caregiver of respondent Walker and two other people were "found with cocaine in Walker's apartment" on three separate occasions. n81

Respondents argued that section 1437d(1)(6) of the Housing Act does not require PHAs to use lease terms that authorize the eviction of tenants based on the drug-related criminal activity by their household member or guest "regardless of whether the tenant knew, or had reason to know, of that activity." n82 The Supreme Court, however, unanimously n83 found that the plain language of the statute "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants of the drug-related activity of household members and guests," regardless of the tenant's knowledge of the activity. n84 Furthermore, Congress's decision to qualify the phrase "drug-related criminal activity" in the statute with the word ""any' ... precluded any knowledge requirement" on the part of the leaseholder. n85 In addition, to provide a ""decent, safe [environment] free from illegal drugs," Congress was "reasonable ... to permit no-fault evictions" in public housing. n86 Such evictions were "a common "incident of tenant responsibility under normal landlord-tenant law and practice." n87

Although the implications of imposing a strict liability standard on cases where the third-party illegal activity is committed by the child of the leaseholder were addressed in the briefs of respondents' amici curiae n88 and [*750] applied directly to three of the respondents, the Court did not explore this concern. n89 The Court only stated that, "regardless of knowledge, a tenant who "cannot control drug crime, or other criminal activities by a household member which threaten health or safety of other residents, is a threat to other residents and the project." n90 The Court concluded that the housing authority, as landlord, was justified in "invoking a clause in a lease to which respondents have agreed and which Congress has expressly required." n91

Furthermore, the Court found "no need to consult legislative history" because the statute's text n92 with respect to the types of leases PHAs were required to use was "unambiguous." n93 However, the Court pointed out that the amendment proposed in the Senate Report, "which would have imposed a different standard of cause for eviction for drug-related crimes than the unqualified language of 1437d(1)(6)," "was never enacted." n94 The Court [*751] found that HUD had previously "made clear that local public housing authorities' discretion to evict for drug-related activity" applies even when the tenant has no knowledge or control over the conduct of other persons inside the unit. n95

Prior to this ruling, the lack of uniformity demonstrated by lower courts in interpreting section 1437d(1)(6) questions the Supreme Court's finding of clarity in the statute's language. Alternatively, it indicates judicial activism by some lower courts that have chosen to read more into the statute than required due to their unwillingness to sanction the eviction of tenants for the acts of others over which they had no control. n96

D. The Lower Courts' Response to Rucker

To accord with the Ruckerruling, appellate courts began to reverse trial court rulings that found in favor of the tenant in eviction proceedings stemming from the illegal activities of a third party. In Illinois, an appellate court found

erroneous the trial court's determination that a lease for a subsidized housing unit was not violated because the tenant's son who committed the drug-related criminal activity "acted without her knowledge, consent or participation." n97 In a special concurrence, Judge McDade stated that she "reluctantly" joined the court's decision, which was compelled by Rucker, because of the difficulty in "reconciling fundamental principles of fairness and due process with a finding that wholly innocent persons can be punished for the criminal activity of others of which they had no knowledge and over which they had no control." n98

In *Oakwood Plaza Apartments v. Smith*, n99 a New Jersey appellate court noted the "difficulties" in the case because "it was decided by the court in the innocent family members' favor on the basis of state law before Rucker was decided." n100 This court's hesitancy to automatically sanction one-strike evictions for third-party criminal lease violations without consideration of mitigating factors exemplifies the doubt by the other lower courts regarding one-strike evictions as an effective remedy for the problem of drugs and crime in federally subsidized housing.

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E. HUD's Interpretation of Rucker

Shortly after Rucker was handed down, HUD Secretary Mel Martinez issued a letter to all public housing directors summarizing the Court's holding. n101 The letter advised public housing directors "to be guided by compassion and common sense in responding to cases involving the use of illegal drugs" and to "consider the seriousness of the offense and how it might impact other family members." n102 PHAs were also warned that "applying [discretion] rigidly could generate more harm than good." n103 On June 6, 2002, the Assistant Secretary of HUD Michael Liu issued a second letter to public housing directors in response to "several inquiries" about HUD's view of the Rucker decision. n104 Liu stated that HUD agreed with Congress and the Supreme Court that "PHAs are in the best position to determine what lease enforcement policy will most appropriately serve the statutory interest of protecting the welfare of the entire tenant population." n105 Liu expressed confidence that the PHAs, when appropriate, would also "give consideration ... to the interests of individuals who share a household with the wrongdoer, but were otherwise unconnected with the wrongdoing." n106 The opinions expressed in both letters placed great emphasis on the use of discretion by the PHAs in considering external factors besides the lease violation when deciding whether to initiate a one-strike eviction to avoid unjust outcomes. n107

Two months later, in response to an inquiry from the Yonkers Housing Authority, HUD's General Counsel issued a letter n108 addressing whether a PHA's adoption of a policy of "maximum deterrence" n109 was consistent with the Housing Act. The opinion confirmed that "there is no legal bar" to such a policy and stated that PHAs are not required to "justify their decision [*753] to evict an entire household ... upon some policy rationale ... other than violation of the lease alone." n110 The opinion also verified that PHAs have "the authority not to evict anyone in a household" upon a lease violation and acknowledged that HUD has "sometimes informally encouraged or exhorted PHAs to consider options short of household-wide eviction." n111 Despite PHAs' authority not to act upon a tenant's lease violation, HUD's opinion emphasized that PHAs are neither required by statute or HUD regulation to "consider, prior to initiating an eviction action, anything other than whether the relevant lease provision has, in fact, been violated." n112 Therefore, while "compassionate" enforcement of the one-strike policy has been advocated by top HUD officials and public housing directors, the Supreme Court and HUD General Counsel make clear that use of such discretion is by no means legally required. n113

III. The Chicago Housing Authority and One-Strike Evictions

The Chicago Housing Authority ("CHA") chooses to exercise some level of discretion in the enforcement of one-strike evictions by not exercising a policy of maximum deterrence. n114 Since 1996, the CHA lease has provided for an "innocent tenant" affirmative defense for public housing tenants faced with eviction for the criminal activity of a third party. n115 The relevant lease provision reads: "the Resident may raise as a defense that the Resident did not know, nor should have known, of said criminal activity. Such a defense must be proven by the Resident by the preponderance of the evidence." n116 The Chief Executive Officer of the CHA, Terry Peterson, echoed the sentiments of HUD Secretary Martinez in his support of the Rucker ruling by stating that application of the one-strike policy "must be [*754] compassionate." n117 In continuing the current CHA policy, Peterson maintained that public housing residents would be treated "fairly;" n118 however, he warned that "if you're involved in drugs and illegal activity, then public housing is not the place for you." n119

The CHA's One-Strike Department receives information regarding illegal activity that has occurred on or off the CHA premises from the Chicago Police Department ("CPD"). n120 This information is then passed along to the property manager of the affected development who commences the eviction action. n121 The PHAs are authorized by HUD to "evict the tenant by judicial action for criminal activity ... 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." n122 On average, One-Strike Coordinators review 1,400 CPD reports monthly. n123 Of this number, approximately ninety-five or 7 percent of the reports are considered "One-Strike eligible" and submitted to the courts for review. n124

Until June 2002, the CHA had been receiving reports from the CPD regarding the arrest of juveniles suspected of criminal activity. The CHA relied upon the information contained in these reports to initiate one-strike evictions. n125 In a letter to the CPD, the Legal Assistance Foundation of Metropolitan Chicago ("LAF") expressed its objection to this practice as a violation of the Illinois Juvenile Court Act and demanded that the CPD immediately stop the disclosure of juvenile arrest records. n126 LAF's letter identified the section of the Illinois Juvenile Court Act that requires such [*755] records "be maintained separate from the records of arrests and may not be open to public inspection or their contents disclosed to the public except by order of the court." n127 Additionally, LAF informed the CPD that "law enforcement officers may not disclose the identity of any minor in releasing information to the general public as to the arrest, investigation or disposition of any case involving a minor." n128 Finally, LAF pointed out that none of the exceptions to the statute "allow law enforcement agencies to disclose such information to any public housing authority." n129 The CPD's Office of Legal Affairs responded to LAF's letter with the assurance that "any and all information contained in case and supplementary reports identifying juvenile offenders and/or arrestees [would] be deleted before dissemination to the Chicago Housing Authority." n130 Presently, the CHA no longer receives juvenile arrest records from the Chicago Police Department. n131

With up to twenty-five percent of the CHA's one-strike evictions having stemmed from juvenile arrests, n132 the recent bar on the disclosure of such information from the CPD has impeded the CHA's ability to enforce the one-strike policy. n133 To overcome this obstacle, the CHA seeks to "'petition Juvenile Court or potentially [lobby for] a statutory amendment' to gain legal access to the reports." n134 Regarding one-strike evictions in general, the CHA settles approximately half of these cases where the offender is not the leaseholder, but is some other household member or guest, by requiring that the leaseholder bar the offender from the premises. n135 Similarly, eviction proceedings that stem from the illegal activity of a juvenile "tend to result in settlements," in which the leaseholder agrees to remove [*756] the accused child from the lease, n136 send him to live with another family member, and provide the CHA with the child's new address. n137 If no viable options exist for the tenant due to the unwillingness of friends or family to take the child or because the only alternative is within a public housing development, the parent may settle with the CHA by removing the child from the lease. n138 Due to the child's minor status, the CHA may require that the new caretaker provide proof of guardianship. n139 Without such documentation, the CHA will not enter into a settlement. n140 Ironically, the youth's minor status is not taken into account when the CHA contemplates filing an eviction action against the parent.

Although the CHA does not exercise a policy of maximum deterrence, n141 its discretionary enforcement of the one-strike policy and practice of settling eviction cases by requiring the offender be removed from the home or barred from the CHA premises has been criticized for its treatment of minors and its impact on CHA families. Kate Walz of the National Center on Poverty Law comments that "the whole purpose of the Juvenile Court is to give kids a second chance, and to pull the housing mat out from underneath them and their families, when they're already one step away from homelessness, doesn't seem to work toward that goal." n142 Dr. Reginald Richardson, a mental health service provider at the CHA's Stateway Gardens, describes the CHA's policy as "anti-family" in that it forces families "to choose between losing their CHA lease and relocation rights, n143 including access to Section 8 vouchers, or banishing a child from the home." n144 Furthermore, as public housing advocate Jamie Kalven observed, the defense that a parent had no knowledge of his or her child's criminal activity "is not available to the concerned, engaged parent who knows her [*757] child is on a problematic trajectory and is trying to address the problem." n145 In short, critics of the CHA's use of juvenile arrest records for one-strike evictions argue that it inflicts an additional punishment on the child outside any measures taken by the juvenile justice system n146 and imposes unconscionable choices on his parents.

IV. Juvenile Justice

The CHA's plan to petition the juvenile court for access to information contained in juvenile arrest records for the purposes of initiating evictions against leaseholders has severe consequences for children's rights. The theory behind the

establishment of a juvenile court as a rehabilitative instrument n147 and the provisions of the current Illinois Juvenile Court Act ("JCA") n148 would be contravened by the CHA's proposed use of juvenile arrest records. The one-strike policy, as indicated by its moniker, is already strict in its application. In turn, any court order or statutory amendment permitting the CHA to circumvent the JCA's structured confidentiality provisions to enforce the eviction policy is indifferent to the interests of the children that the JCA aims to serve. Generally, delinquency adjudications n149 [*758] are considered "unequal to, and significantly less onerous than, [adult] criminal court convictions." n150 Therefore, it is counterintuitive that a juvenile's arrest record, which in many cases can later be expunged, n151 may be accessed by a housing authority in order to impose a penalty as harsh and final as eviction of the juvenile's family.

A. The Illinois Juvenile Court Act

The Illinois Juvenile Court, established in 1899, was a product of the Child Savers movement of the mid-nineteenth century. n152 The leaders of this movement sought to establish a separate juvenile justice system that aimed to rehabilitate juvenile offenders instead of punishing them. n153 Effective rehabilitation was dependent on shielding the juvenile from the stigma of criminal behavior; n154 therefore, "reformers adamantly opposed disclosing and disseminating any information regarding a juvenile's misconduct." n155

This theory is reflected in the provisions of the Illinois JCA. One of the four objectives the JCA seeks to further is ensuring the "confidentiality of proceedings and records." n156 The JCA provides for the confidentiality of both juvenile law enforcement records n157 ("arrest records") and court records. n158 Juvenile arrest records are records "maintained by law enforcement agencies that relate to a minor who has been arrested or taken into custody before his or her 17th birthday." n159 Juvenile court records contain "information regarding matters which have been brought before a judge." n160

[*759] The JCA restricts access to the information contained in juvenile arrest records to the following parties: law enforcement officers, prosecutors, probation officers, social workers, the Adult and Juvenile Prisoner Review Board, authorized military personnel, persons conducting "bona fide research," the Department of Children and Family Services, an "appropriate" school official, and mental health professionals. n161 Additionally, as discussed in the Legal Assistance Foundation's letter to the Chicago Police Department, n162 juvenile arrest records must be kept separate from other arrest records and closed to public inspection. n163 The juvenile's identity may not be revealed when law enforcement officers are releasing information regarding the "arrest, investigation or disposition of any case involving a minor." n164

In addition to the enumerated parties that may access juvenile arrest records or court records, this information may be shared with other parties under narrowly defined circumstances. Specifically, the fingerprints or photograph of a juvenile may be sent to "the Department of Corrections, Adult Division or the Department of State Police or to the Federal Bureau of Investigation" if the minor was arrested for an offense that prompts the transfer of his case to adult criminal court. n165 A juvenile's picture may be disclosed to a victim or witness "in the presence of a law enforcement officer for the purpose of the identification or apprehension of any person subject to the provision of [the] Act or for the investigation or prosecution of any crime." n166 Law enforcement officers may share with each other information [*760] from the juvenile's record "if there are reasonable grounds to believe that the person poses a real and present danger to the safety of the public or law enforcement officers." n167 Authorities responsible for the review of applications for employment with "a law enforcement agency, correctional institution, or fire department" are permitted to "obtain and examine" a juvenile's arrest record. n168

Article V of the JCA, which pertains to delinquent minors, n169 contains the above provisions n170 and allows access to limited information in a juvenile's arrest record by the victim or the victim's parent or legal guardian upon a court petition for the disclosure of the minor's name and address. n171 The JCA gives the court the authority to

order the disclosure of the information to the victim or to the parent or legal guardian of the victim only for the purpose of the victim pursuing a civil remedy against the minor or the minor's parents or legal guardian, or both, or to protect the victim's person or property from the minor. n172

By contrast, a juvenile's court records "may be inspected by representatives of agencies, associations and news media or other properly interested persons by general or special order of the court." n173 The general public is also allowed "access to the name, address, and offense of a minor who is adjudicated a delinquent minor under [the] Act" n174 upon the "commission of first degree murder, attempt to commit first degree murder, aggravated criminal sexual assault, or criminal sexual assault." n175

The distinction between the availability of information from a juvenile's arrest records and court records may lend itself to the number of options the arresting officer can exercise other than filing a formal juvenile petition for a court appearance. In delinquency cases, a petition must be filed by the State's Attorney that contains facts "sufficient ... to state a criminal charge" and "the names and residences of the minor's parents[,] legal guardian[,] or the nearest relative." n176 As an alternative to filing a [*761] formal juvenile petition, the police may resolve the case by a "station adjustment" where the juvenile will, for example, have to provide restitution to the victim, perform community service, or attend school. n177

In drafting the JCA, the Illinois Legislature may have recognized the stigma relating to arrest records despite the fact that the youth may have never appeared before the court or received an adjudication of delinquency. Therefore, the JCA's restrictions on the amount of information in a juvenile's arrest records that specific parties can access may reflect an interest in preventing a minor from being negatively judged by a potentially inaccurate and biased record of a juvenile's alleged behavior. As one commentator points out, police records "tend to be incomplete and misleading... . The file may not reflect the final outcome of the incident, such as dismissal for lack of evidence, and may include anecdotes and unsophisticated appraisals of the juvenile's condition." n178

In addition to the JCA's mandate that juvenile records be kept confidential, once the juvenile "has attained the age of 17 or whenever all juvenile court proceedings relating to that person have been terminated ... the person may petition the court to expunge law enforcement records." n179 Petitions for expungement may be sought in circumstances where the juvenile's arrest did not result in a petition for delinquency n180 or an adjudication of delinquency; n181 where the juvenile was placed under supervision; n182 or the juvenile "was adjudicated for an offense which would be a Class B misdemeanor if committed by an adult." n183 Once an order has been entered for the expungement of a juvenile's record, "the offense ... shall be treated as if it never occurred." n184 The language of this provision clearly reveals the legislature's goal of protecting the minor from any future stigma of criminality. n185 However, by seeking access to these records, the CHA in effect seeks to override the statute's protections by using information that can potentially [*762] be erased from the youth's past to consider initiating an action as final as eviction.

B. The Perception of Today's Youth as "Super-Predator"

In 1996, the Legal Assistance Foundation ("LAF") filed a lawsuit against the CHA for its use of a group of juveniles' arrest records to evict their families. n186 In its reply brief to LAF's complaint, the CHA justified its use of the records by referring to two cases where a sixteen-year-old and an eighteen-year-old were both charged with first-degree murder. n187 However, under Illinois law, juveniles charged with a serious offense are automatically transferred from the juvenile court to the jurisdiction of adult criminal court. n188 Essentially, the CHA justified its right to access confidential arrest records on the basis of illustrations that are beyond the scope of the Juvenile Court's protections. The flaw in the CHA's reasoning is apparent.

The CHA's argument evokes images of the juvenile as a "super-predator," terminology put forth by proponents of "get-tough" crime policies toward juveniles. n189 From this perspective, the juvenile as a super-predator "lacks the normal human desires for affection, companionship, and respect and unlike other humans, [is] impervious to punishment." n190 By dehumanizing juveniles and exploiting the public's fears of a perceived increase in youth violence, n191 the CHA can more easily portray the development's property manager as a victim and in turn justify the use of confidential juvenile arrest records to enforce one-strike evictions under the pretext of maintaining a safe environment in public housing. Today, the stakes are much higher for juveniles if their records are released than during the inception of the juvenile court a century ago. No longer is the stigma of a known arrest the only consequence for juveniles. Being barred from one's home or causing the entire family to be rendered homeless is the dramatic result.

[*763]

C. Police Bias Against Minorities in the Juvenile Justice System

Although HUD guidelines authorize PHAs to evict a tenant "regardless of whether the covered person has been arrested or convicted for such activity," n192 the CHA should not rely on juvenile arrest records to initiate evictions. Section 1437d(q) already stipulates that law enforcement authorities may only send PHAs information regarding the criminal conviction of juveniles "to the extent that the release of such information is authorized under the law of the applicable State." n193 As discussed in Part The Illinois Juvenile Court Act, Illinois authorizes the release of juvenile arrest records to specific parties in limited circumstances. These limitations should therefore be viewed as a shield against the unlawful use of juvenile arrest records. n194

The tendency of arrests to be an unreliable indicator of the suspect's actual guilt is another reason the CHA should not be allowed to use the arrest of juveniles to initiate one-strike evictions. Such records not only result from alleged criminal activity, but also from the use of broad and at times discriminatory discretion by law enforcement officials. n195 The CHA's reliance on arrest records to justify imposing a penalty as severe as eviction from "housing of last resort" is a flawed approach to reducing crime in public housing. n196 Arrest records in general are one-sided in that "extralegal factors and racial prejudices" are not reflected; n197 rather such information "only shows the police's viewpoint of the alleged crime and not the actual proven activity." n198

Furthermore, black youths are arrested at a disproportionately higher rate than whites. n199 In 1999, black youths in the U.S. made up fifteen percent of the population under the age of eighteen, yet they accounted for [*764] twenty-six percent of all juvenile arrests n200 and forty-one percent of arrests for violent crimes. n201 Scholar John C. Coffee, Jr. notes that "the status and demeanor of the subject are the critical variables" that affect a policeman's "highly discriminatory" decision to arrest. n202 Thus, the effect that race has on the police's perception of a particular community (in this case, a housing project) increases the likelihood that black youths will be arrested, resulting in what scholar Arthur H. Garrison terms as "disproportionate minority arrest." n203 This bias is facilitated by the high level of discretion that police are required to use in their contact with suspects. n204 Such discretion is found to be exercised "more routinely when poor people or members of minority groups are involved," leading to an unjust arrest. n205

Racial disparities are also present in Illinois. African-Americans under the age of eighteen make up five percent of the population statewide. n206 Statistics indicate that African-American juveniles accounted for approximately fifty percent of index crime n207 and drug arrests in 1999, with the exception of property index crimes. n208 The differences between the treatment of wealthier whites and poor minorities in each group's passage [*765] through the juvenile justice system are also mirrored in the government-sanctioned consequences experienced by public housing families as a result of their child's behavior. n209 One commentator summed up the differences this way: "When the children of affluent people are caught using drugs, they're apt to end up in treatment programs; the children of poor people are more likely to end up in jail, while their parents may end up on the streets." n210

D. Punishing the Parents for the Child's Actions

As the outcome of the Rucker ruling demonstrated, holding the tenant responsible for the illegal acts of "other persons under [her] control" n211 when that person is an adult is a severe penalty, especially when the leaseholder could not foresee or was not aware of the person's actions. On the other hand, it might be reasonable and even expected for parents to be held accountable for the acts of their children; after all, parents are charged with a duty of taking care of and raising them. n212 The expression that is frequently used when a child does something wrong is, "Where were the parents?" This reaction comes from the assumption that juvenile delinquency is a consequence of improper supervision and poor parenting. n213

As Professor James H. Difonzo points out, adolescents are semiautonomous because they have not fully achieved emotional maturity and their actions are not totally within parental control. n214 The CHA's policy of using a juvenile's arrest records against his or her family for eviction purposes effectively holds parents civilly liable for the acts of their children regardless of their ability to control them. To hold a parent responsible for juvenile delinquency "effectively converts poor, or simply unlucky, parenting into a public welfare offense." n215

[*766] Professor Difonzo also explains that parental responsibility laws "have become popular mechanisms designed to induce increased parental control of their children by holding parents criminally responsible when their children commit delinquent acts." n216 While the main goal of CHA and HUD through use of the one-strike policy is to reduce crime in public housing and in turn enhance the welfare of its residents, this policy, like the public responsibility laws, relies on the premise that parents will be more likely to control their children under the threat of eviction or criminal sanction. Yet, consider the following example:

When the facts reveal a child has been in trouble with the police more than once but the parent or grandparent has always cooperated with the police or the juvenile justice system, a local housing authority will be hard pressed to show that a child who could not be controlled by the police could, however, be controlled by a burdened parent or elderly and infirm grandparent - a person with no resources to draw upon other than those provided by the juvenile justice system, which resources have already proven ineffective. n217

One alternative to evicting the family in this scenario is to remove the child from the premises. However, separating the child from his or her home does little to actually prevent the child from engaging in such behavior again and cannot truly be considered an alternative to eviction because it sanctions the break-up of families.

Although section 1437d(1)(6) of the Housing Act applies to "any criminal activity" without distinguishing between adult or juvenile offenders, n218 the CHA should exercise its discretion against the use of one-strike evictions where the illegal activity involves a minor offense. Juveniles arrested upon suspicion of more serious offenses are detained by the law enforcement authorities n219 and thereby removed as a threat to the rest of the public housing community.

Similar to the parental responsibility laws where "parents may be convicted of contributing to the delinquency of their child even though the child has not been formally adjudicated a delinquent," n220 a finding of juvenile delinquency is not required to evict an entire family from public housing [*767] under the one-strike policy. n221 Furthermore, the policy is flawed because it does not take into account the unique circumstances of the parents which, as scholar Susan Popkin alluded to, n222 can be exacerbated in a public housing setting. Difonzo also points to the influence of a youth's peer groups on his or her behavior. n223 This holds especially true for Chicago's public housing youth because of the wide-spread presence of gangs that are able to recruit young males n224 by intimidation or because these youth lack other, positive alternatives.

These reasons, in conjunction with Popkin's findings of the relationships between the gangs and the residents that live in Chicago public housing n225 strongly suggest that this element of "control" is outside the scope of what section 1437d(1)(6) contemplated for parents of children in public housing.

V. Alternatives to One-Strike Evictions

A. The CHA Plan for Transformation

Through the receipt of federal grants and under the guidance of HUD, the CHA has undertaken the task of redeveloping and rehabilitating Chicago's public housing in efforts to "redefine the character of public housing in Chicago ... [and] leave a new legacy of promise and opportunity for the city's low-income residents." n226 The CHA is currently in the fifth year of its ten-year "Plan for Transformation," a redevelopment scheme that aims to demolish twenty-two thousand units and rehabilitate or newly construct twenty-five thousand units of housing for lease-compliant public housing residents, with most to be located in mixed-income communities. n227 [*768] This period of "transformation" gives the CHA an ideal opportunity to implement measures that will prevent the onset of crime that contributed to the failure of past housing initiatives. n228

The recommendations made by the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") in a report entitled Comprehensive Strategy for Serious Violent and Chronic Juvenile Offenders ("the Report") provide a framework. n229 The preventive strategy detailed by the OJJDP focuses on "minimizing risk factors (e.g., child abuse) that push youth toward delinquency and maximizing protective factors (e.g., family preservation programs) that encourage[] youth to lead law-abiding lives." n230

Through the Plan for Transformation, the CHA can go beyond the "bricks and mortar" approach of public housing redevelopment n231 by intervening when delinquent behavior would ordinarily invite contact with the police. n232 When dealing with first-time nonviolent offenders, the OJJDP recommends intervention programs that are "small, located near home, and maintain community participation in planning and operation." n233 Intervention can be in the form of mediation or substance abuse treatment programs. n234 In addition, the wrongdoer can provide restitution directly to the victim or perform community service. n235 These alternatives to interfacing with the police provide restorative justice, n236 which "involves the community most affected by the crime [along with] a facilitator to determine the best resolution following a delinquent act." n237 The CHA development's management should require the involvement of the parents of the problem child in these mediation sessions as a condition of the family's residency. [*769] The community as a whole has a vested interest in maintaining its quality of life and should consider these as desirable preferences to constant police intervention.

Implementation of these initiatives by the CHA as alternatives to one-strike evictions against innocent parents, in turn, maximizes the number of public housing residents who can benefit from the redevelopment plan. The resources currently reserved for reviewing and adjudicating one-strike cases can be reallocated to apply these preventive measures to the developments. n238 Otherwise, one-strike evictions eliminate the chances of families to move into new communities, because relocation to redeveloped housing is not available to tenants who have been evicted from public housing. n239 These measures not only maximize opportunities for residents, but minimize the risk of homelessness,

which is in accordance with Chicago Mayor Daley's initiative to "prevent homelessness and, ultimately, to end it" over the next eight years. n240

B. Meaningful Use of Discretion

As discussed in Part III, the CHA does not automatically evict the leaseholder and her family upon allegations of criminal activity by a household [*770] member or guest. As the process currently stands, leaseholders may assert the innocent tenant defense in court and prove by the preponderance of the evidence that they did not know nor should have known of the offender's alleged criminal activity to avoid eviction. n241 As part of the CHA's aim to reform its administration, n242 the One-Strike Department can fundamentally change the way it exercises its discretion to evict families under the one-strike eviction policy. Instead of waiting until the end of the eviction process to allow residents to refute their role in the alleged criminal activity, the CHA can conduct further investigation into the reported incident before issuing a notice of eviction. Although the One-Strike Coordinator reviews police reports to decide which cases are one-strike eligible, n243 she does not require further investigation into the incident or require the property manager to follow-up with the involved tenants. n244 Upon receiving a notice of eviction, many public housing families who are unaware of the grievance process will move from the development without going to court. n245 Leaseholders who do appear in court are usually not represented by an attorney and may not know whether or how to challenge the CHA's evidence against them. n246 By allocating more time and resources toward the decision of whether to evict a leaseholder under the one-strike policy, the CHA lessens the chances that truly innocent residents will be unfairly evicted for the unlawful actions of another.

C. Community Policing

In 2001, the Chicago Police Department ("CPD") reported a decrease in index crime by eighteen percent in public housing, surpassing the citywide decrease of ten percent, since it took over patrol of the developments in November 1999. n247 The CPD attributed "the growing momentum of community policing" as one of the most significant factors that led to this reduction in crime. n248 Interestingly, evicting problem youths under the one-strike policy was not cited as a factor which contributed to the decreased [*771] crime rate. n249 Rather, the collaborative efforts of the residents were recognized as the means by which communities became safer. n250 This effort was facilitated through the Chicago Alternative Policing Strategy (CAPS), a community policing program implemented by the CPD in 1992. n251 The CAPS program "brings the police, the community, and other City agencies together to identify and solve neighborhood crime problems, rather than simply react to their symptoms after the fact." n252 Although this process may inevitably involve the police when a minor engages in delinquent behavior, the response of the CHA does not have to be the commencement of an eviction action. With increased community collaboration, there is a reduced likelihood that crime will occur out of indifference or fear on the part of the residents. n253

VI. Conclusion

In consideration of the protections afforded children by Illinois law, the question posed in the title of this article should be answered with a resounding "No!" This response recognizes the multitude of factors that contribute to juvenile delinquency and can lead to a child's arrest in the unique context of inner-city public housing. Furthermore, to allow the CHA access to juvenile arrest records via court order or statutory amendment would go against the essence of the Illinois Juvenile Court Act as well as the original goal of rehabilitation that led to the establishment of juvenile courts throughout the United States. Additionally, any reliance by the CHA on such records, which may stem from a biased and discriminatory application of police discretion, victimizes minority youths and their families in public housing under the pretext of fighting crime. Alternatively, the CHA should utilize its authorized discretion by not resorting to use of juvenile arrest records when considering whether to effect a one-strike eviction.

"Compassionate" application of the one-strike policy, as advocated by HUD and the CHA executive Terry Peterson, requires a common sense approach to public housing management. Strict eviction policies for the act of one child bypass other community policing initiatives that benefit everyone [*772] in the end. The result of one-strike evictions excludes families from the benefits offered by the CHA's Plan for Transformation and leaves them with few choices besides homelessness. The problem of the delinquent youth is not reconciled, but rather transferred to another venue. The CHA cannot be allowed to "reinvent public housing" n254 at the expense of children's rights. Moreover, if the CHA goes forward under its plan without giving due consideration to the children that have had to mature in the housing of last resort, it will succeed in only repeating the mistakes of the past.

FOOTNOTES:

n1. Genesis 4:9 (New International Version).

n2. See discussion *infra* Part II.

n3. See discussion *infra* Part III.

n4. Remarks Announcing the "One-Strike and You're Out" Initiative in Public Housing, 1996 Pub. Papers 520 (Mar. 28, 1996). The current Bush Administration continues to endorse public housing authorities' use of the one-strike eviction policy. See Letter from Mel Martinez, Secretary of U.S. Department of Housing & Urban Development, to Public Housing Directors (Apr. 16, 2002), available at <http://www.nhlp.org/html/pubhsg/Martinez%204-16-02%20ltr.pdf>. Secretary Martinez has advised public housing directors to be "guided by compassion and common sense" in its enforcement of the policy and to consider eviction "as the last option ... after all others have been exhausted." *Id.*; see also *infra* Part HUD's Interpretation of Rucker for further discussion of HUD's interpretation of the one-strike policy.

n5. The CHA is the housing agency that oversees over twenty housing units for families and fifty-eight buildings for senior citizens in the city of Chicago. Chi. Hous. Auth., Housing Developments: Family Developments: Overview, at <http://www.thecha.org/housingdev/family<uscore>sites.html> (last visited Oct. 12, 2003).

n6. Susan J. Popkin et al., *The Hidden War: Crime and the Tragedy of Public Housing in Chicago* 4 (2000).

n7. 50 Stat. 888 (codified at 42 U.S.C. 1437 (2000)).

n8. U.S. R.R. Ret. Bd., Housing and Homelessness Information, at <http://www.chicagoinfo.gov/2001pages/housing.htm> (last updated Aug. 27, 2002).

n9. Popkin et al., *supra* note 6, at 12 (emphasis added).

n10. *Id.*

n11. See generally *id.* at 13-15.

n12. See Brian Rogal, *For African-Americans, Struggle and Some Gains*, Cmty. News Project (2001), at <http://www.newstips.org/commnews/blackchi.html> (noting that post-World War I changes to Chicago's infrastructure caused "hundreds of thousands of middle -and working-class blacks [to] move out of the ghetto [as] public housing became the housing of last resort for the poor, and fell into disrepair"); Alex Kotlowitz, *Where Is Everyone Going?*, *Chi. Trib. Mag.*, Mar. 10, 2002 (describing CHA housing as "what has long been considered the housing of last resort"), available at <https://www.metroplanning.org/press/mpcnews.asp?objectID=948>.

n13. Popkin et al., *supra* note 6, at 10. Puerto Rico and New York housing authorities exceed the CHA in the number of housing units. *Id.*

n14. See Chi. Hous. Auth., *Plan for Transformation, Year 2*, at 31 (Dec. 1, 2000), at <http://www.thecha.org/transformplan/files/plan%3Cuscore%3Efor%3Cuscore%3Etransformation%3Cuscore%3Eyear%3Cuscore%3E2%3Cuscore%3Eenglish%3Cuscore%3Efinal.pdf> (last visited Oct. 12, 2003). In October of 2000, the CHA reported that 22,401 of 38,320 public housing units were occupied. *Id.* This number decreases each month as the CHA closes public housing buildings for demolition or rehabilitation. Interview with Richard Wheelock, Housing Unit Supervisory Attorney, Legal Assistance Foundation of Metropolitan Chicago, in Chicago, Ill. (Nov. 21, 2003).

n15. Vincent Lane, *Best Management Practices in U.S. Public Housing*, in 6 *Housing Policy Debate* 867, 872 (1995), available at <http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd%3Cuscore%3E0604%3Cuscore%3Elane.pdf>.

n16. *Id.*

n17. Popkin et al., *supra* note 6, at 10.

n18. *Id.* at 46.

n19. *Id.* at 26, 28. Popkin describes eleven of CHA's high-rise developments as "enormous [and] prisonlike." *Id.* at 10.

n20. *Id.* at 28. Because the developments lacked "secured lobbies or guarded entryways ... outsiders [were not prevented] from entering." *Id.* Furthermore, because the design of the developments left residents with no "defensible space," they had no motivation "to keep public areas free of crime and disorder." *Id.* at 27-28. Popkin characterizes defensible space as "public areas clearly associated with a specific apartment." *Id.* at 27 (citing Oscar Newman, *Defensible space* (1972); Oscar Newman, *Creating Defensible Space* (1996)).

n21. *Id.* at 26. According to Popkin, the presence of a social structure within the developments "might have reinforced social norms of acceptable behavior." *Id.* This assumption suggests that the absence of such norms increased the likelihood that residents would tolerate the occurrence of criminal activity.

n22. *Id.*

n23. *Id.* at 30-31.

n24. See Nelson H. Mock, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 *Tex. L. Rev.* 1495, 1517 (1999) (noting that a resident's report of criminal activity to the police may subsequently be shared with the housing authority, causing eviction).

n25. See Popkin et al., *supra* note 6, at 4 (stating that criminals in public housing are "a powerful part of the community" and "confronting them brings great dangers"); *id.* at 30-31 (observing that due to the familial and

social relationship residents have with the drug dealers and gang members, they "may be [more] willing to tolerate [them] ... in exchange for protection from rival gangs whose members they may not know" and therefore are unable or unwilling to organize against crime in the development). It is important to recognize that gang activity in Chicago is not unique to public housing. See Chi. Police Dep't, Gang Awareness, at <http://www.ci.chi.il.us/CommunityPolicing/Alerts/SafetyTips/Gangs/GangAwareness.html> (last visited Apr. 4, 2003) (pointing out the "mistaken belief that gangs only operate in less affluent neighborhoods, [when in fact they] exist in virtually every community in Chicago"). However, due to the subject matter of this Comment, the role of gangs in public housing is emphasized.

n26. *42 U.S.C. 1437d(q)(1)(A)* (2000).

n27. *24 C.F.R. 966.4(l)(5)(iii)(A)* (2002).

n28. See *infra* Part III. Throughout the Comment, the term "juveniles" will be used interchangeably with the terms "youth," "child," and "minor." In Illinois, a minor is defined as "a person under the age of 21 years." *705 Ill. Comp. Stat. Ann. 405/1-3(10)* (West 1999 & Supp. 2003).

n29. See *705 Ill. Comp. Stat. Ann. 405/1-7(A)(1)-(8)*; *infra* Part IV.A.

n30. See *705 Ill. Comp. Stat. Ann. 405/1-7(E)*.

n31. Telephone Interview with Sarah Mervine, Staff Attorney, Legal Assistance Foundation of Metropolitan Chicago (Sept. 20, 2002).

n32. *Id.*; Telephone Interview with Stephanie Horton, One-Strike Coordinator, Chicago Housing Authority One-Strike Department (Oct. 10, 2002); Telephone Interview with Kate Walz, Attorney, National Center on Poverty Law (Sept. 10, 2003).

n33. *535 U.S. 125* (2002).

n34. For the first use of this phrase to reference public housing evictions that result from the occurrence of illegal activity, see President Clinton's Address Before a Joint Session of the Congress on the State of the Union, 1996 Pub. Papers 83 (Jan. 23, 1996) [hereinafter President Clinton's Address].

n35. *42 U.S.C. 1437d(1)(6)* (2000). The phrase "on or off such premises" resulted from an amendment made by the Housing Opportunity Program Extensions Act of 1996. See *infra* note 43. Section 1437d(1)(6) originally accounted for criminal activity that took place "on or near such premises." Pub. L. No. 104-120, 110 Stat. 834 (1996) (emphasis added). The change in language clearly broadens the reach of the housing authority's control over the conduct of its tenants.

n36. Public Housing Lease and Grievance Procedure, *24 C.F.R. 966.4* (2002).

n37. *42 U.S.C. 11901(2)* (2000); see also *Rucker*, *535 U.S. at 127* (referring to congressional findings that "drug dealers "increasingly impose a reign of terror on public and other federally assisted low-income housing tenants" as a precursor to the Anti-Drug Abuse Act of 1988).

n38. Pub. L. No. 100-690, 102 Stat. 4181, 4300 (1988).

n39. See Angie Cannon, *Eviction Rules Eased for Public Housing*, *Denver Post*, Mar. 29, 1996, at A2 (quoting President Clinton's statement that "many public housing authorities have not understood the scope of their legal authority"); Sabrina Eaton, *"One Strike and You're Out" Goes for All Public Housing; Clinton Signs Order Based on Ohio Policy of Evicting Criminals*, *Plain Dealer*, Mar. 29, 1996, at 1A (citing HUD's acknowledgement that "local authorities haven't taken full advantage of [this eviction policy]").

n40. President Clinton's Address, *supra* note 34, at 83; see also President Clinton's Memorandum on the "One-Strike and You're Out" Guidelines, 1996 Pub. Papers 521 (Mar. 28, 1996) [hereinafter President Clinton's Memorandum] (recognizing HUD's efforts to assist cities in providing "safer developments" but stating that "there remains too much public housing in this country that is ravaged by drugs, crime, and violence").

n41. President Clinton's Memorandum, *supra* note 40, at 522.

n42. Pub. L. No. 104-120, 110 Stat. 834 (1996).

n43. As indicated by its name, the Act also sought "to provide an extension for fiscal year 1996 for certain programs administered by the Secretary of Housing and Urban Development and the Secretary of Agriculture." *Id.*

n44. See *id.* at 836.

n45. *Id.* at 837 (adding to *42 U.S.C. 1437d* subsection (q)(1)(A) "Provision of Information").

n46. *Id.* at 837-38 (emphasis added) (adding to *42 U.S.C. 1437n* subsection (e)(1)(A)-(B) "Ineligibility of Illegal Drug Users and Alcohol Abusers").

n47. U.S. Dep't of Hous. & Urban Dev., Notice PIH 96-16 (HA), "One Strike and You're Out" Screening and Eviction Policies for Public Housing Authorities (HAs) 1 (1996), available at <http://www.hud.gov/utilities/intercept.cfm?/offices/pih/publications/notices/96/pih9616.pdf>. Prior to President Clinton's announcement of "One-Strike," PHAs had the authority to require a tenant, with the lease, to

assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in: (A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or (B) Any drug-related criminal activity on or near such premises.

Tenant's Obligations, *56 Fed. Reg. 51,560, 51,577* (Oct. 11, 1991). Furthermore, "any criminal activity in violation of the preceding [requirements] shall be cause for termination of tenancy, and ... eviction from the unit." *Id.*

n48. See U.S. Dep't of Hous. & Urban Dev., *supra* note 47, at 1 (referencing Section 9, Safety and Security in Public and Assisted Housing of the Housing Opportunity Program Extensions Act of 1996).

n49. *Id.*; see President Clinton's Memorandum, *supra* note 40, at 522 (acknowledging HUD's intent "to amend its public housing performance evaluation regulations so that the overall "grade" HUD gives annually to each local housing authority will be based, in part, on how effectively it has implemented the type of applicant screening and tenant eviction policies set forth in the new Guidelines").

n50. President Clinton's Memorandum, *supra* note 40, at 522; see also John F. Harris, Clinton Links Housing Aid to Eviction of Crime Suspects; Civil Libertarians Attack "One-Strike" Policy that Affects Defendants Not Yet Convicted, *Wash. Post*, Mar. 29, 1996, at A14 (reporting that Clinton's policy "links aid from the Housing and Urban Development Department to the willingness of local housing authorities to show the door to suspected troublemakers").

n51. Harris, *supra* note 50, at A14.

n52. Mock, *supra* note 24, at 1517.

n53. *Id.*

n54. Crime by Household Member, *56 Fed. Reg. 51,560, 51,567* (Oct. 11, 1991).

n55. *Id.*

n56. *Id.*

n57. *Id.* Shortly after President Clinton announced the one-strike policy, former HUD Secretary Henry Cisneros stated that PHAs' intolerance of problem tenants was reasonable in light of the demand for public housing and the lack of money to provide for all persons eligible to live in some form of assisted housing. Harris, *supra* note 50, at A14.

n58. *749 A.2d 997 (Pa. Commw. Ct. 2000)*.

n59. *Id. at 998*. Bishop's son Nathaniel was charged and convicted of burglary and rape of a woman who lived in the public housing development. *Id.* Her other son Ralph was found in possession of cocaine and marijuana. *Id. at 999*.

n60. *Id. at 1000*.

n61. *Id.* (emphasis added).

n62. *24 C.F.R. 966.4(1)(5)(vii)(B)* (2002).

n63. *Bishop*, 749 A.2d at 1000.

n64. *Id.* at 1002.

n65. See *id.* ("Because of the significance of the legislative history ... we set it out here.").

n66. *Id.* (quoting S. Rep. No. 101-316, at 179 (1990), reprinted in 1990 U.S.C.C.A.N. 5763, 5941).

n67. *Id.* at 1001.

n68. Crime by Household Member, 56 *Fed. Reg.* 51,560, 51,567 (Oct. 11, 1991).

n69. *Id.* at 51,566. HUD subsequently defended its position with the reasons detailed supra Part The Public's Perception of the One-Strike Policy.

n70. 591 N.W.2d 700 (Minn. 1999).

n71. *Id.* at 704.

n72. *Id.* at 702 (quoting *Minneapolis Pub. Hous. Auth. v. Lor*, No. UD 197071625, slip op. at 3 (Hennepin Co. 1997)).

n73. *Id.* (construing *Minneapolis Pub. Hous. Auth. v. Lor*, 578 N.W.2d 10 (Minn. App. 1998)).

n74. *Id.* at 703. In addition, such "external circumstances" were listed by HUD for PHAs to consider during eviction proceedings, not courts. *Id.*; see also supra text accompanying note 62.

n75. *Lor*, 591 N.W.2d at 704.

n76. *Id.*

n77. *Id.* at 703; see also *Evicting Other Criminals*, 66 *Fed. Reg.* 28,776, 28,782 (May 24, 2001) (where HUD later affirms that "the statute does not authorize courts to exercise this same type of discretion").

n78. See *Lor*, 591 N.W.2d at 703 n.15 ("When legislative history is ambiguous as to Congress's intent, courts will defer to agency regulations." (citing *Rust v. Sullivan*, 400 U.S. 173, 186 (1991))).

n79. 535 U.S. 125 (2002).

n80. *Id.* at 128 (quoting paragraph 9(m) of the tenants' lease).

n81. *Id.* A week after Rucker was handed down, the executive director of the Oakland Housing Authority ("OHA") dropped the eviction actions against tenants Hill, Lee, and Rucker because the issues that prompted their eviction proceedings had been resolved during the four-year legal challenge. Jim Herron Zamora, "One Strike' Tenants Keep Apartments in Oakland; 3 of 4 Evictions Dropped Although Law Upheld, S.F. Chron., Apr. 5, 2002, at A21. The OHA maintained plans to evict Walker, age seventy-five, citing "several incidents involving a number of different guests" since the initial eviction notice. *Id.* (quoting Jon Gresley, executive director of the OHA).

n82. *Rucker*, 535 U.S. at 128.

n83. Justice Breyer recused himself from the case because his brother Charles, a federal district court judge in San Francisco, was involved in an earlier stage of the case. Lyle Denniston, High Court Allows Eviction of Tenants for Kin's Drug Use, *Boston Globe*, Mar. 27, 2002, at A3.

n84. *Rucker*, 535 U.S. at 130 (emphasis added).

n85. *Id.* at 130-31.

n86. *Id.* at 134 (quoting 42 U.S.C. 11901(4) (2000)).

n87. *Id.* (quoting *Crime by Household Member*, 56 *Fed. Reg.* 51,560, 51,567 (1991)).

n88. See *Brief of Amici Curiae The Coalition to Protect Public Housing et al. at 22-26, Dep't of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125 (2002) (No. 00-1770), available at <http://supreme.lp.findlaw.com/supreme/court/briefs/00-1770/00-1770.mer.ami.cpph.pdf> (last visited Apr. 4, 2003). The brief cited three examples of one-strike evictions that stemmed from the actions of a minor. Ms. Karen Jones, who resided in New York City Housing Authority's ("NYCHA") Douglas Houses for forty-four years, was evicted when her grandson, who later went on to college, was charged with armed robbery on the public housing premises. *Id.* at 22-23. He was never convicted of this crime. *Id.* at 23.

In Broward County, Florida, Mr. and Mrs. Springer and their five children were evicted after two separate incidents occurred involving their seventeen- and fourteen-year old sons. *Id.* at 24. The elder son Jeremy was arrested and sentenced to probation after a search of his car revealed cocaine; the younger son Jermaine was caught with others vandalizing school property, which resulted in a punishment of community service. *Id.* Both of these acts occurred off public housing property. *Id.* at 23.

The third example involved Ms. Wilkins, a NYCHA resident of twenty-eight years, and her adopted seventeen-year old daughter Chavonda, who was mentally retarded. *Id.* at 25-26. Chavonda pled guilty to first degree manslaughter for killing her newborn baby in a privately-owned building five miles away from Ms.

Wilkins's residence. *Id.* at 26. The NYCHA commenced eviction proceedings against Ms. Wilkins partly because the incident took place two blocks away from other NYCHA-owned property. *Id.*

n89. See Wendy Kaminer, *Drugs, Terror, and Evictions*, *Am. Prospect*, June 3, 2002, at 9 ("All the justices ... apparently agreed with Congress that the scourge of illicit drug use poses a greater threat to poor people living in subsidized housing than a no-fault eviction policy that may render them homeless if one of their grandchildren is caught with a joint on a nearby street corner."). Scholar Nelson H. Mock contrasts the presumption found in no-fault evictions to the strict liability standard used in tort law. See Mock, *supra* note 24, at 1516 ("Unlike the person creating abnormally dangerous conditions or those affected by workers' compensation laws, the public housing tenants are not those best situated to bear the loss.").

n90. *Rucker*, 535 U.S. at 134 (quoting *Crime by Household Member*, 56 *Fed. Reg.* 51,560, 51,567 (1991)).

n91. *Id.* at 135.

n92. The portion of the Act in question provides that a

public housing agency shall utilize leases which ... provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any 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, shall be cause for termination of tenancy.

Id. at 127 (quoting 42 U.S.C. 1437d(1)(6) (1994)).

n93. *Id.* at 132-33.

n94. *Id.* at 133 n.4; see Senate report cited and discussed *supra* note 66 and accompanying text. This Senate Report was referenced in *Bishop and Lor*, see *supra* Part II.B, and was relied upon by the lower court in *Rucker*.

Section 1437d(1)(6) is not a picture of clarity and may be subject to varying interpretations... . If the intent of Congress is not clear from the language of the statute and the broader context of the statute as a whole, we consult the legislative history. In doing so, we place particular emphasis on the committee reports accompanying the statute.

Rucker v. Davis, 237 F.3d 1113, 1123 (9th Cir. 2001) (citations omitted).

n95. *Rucker*, 535 U.S. at 129 (citing *Crime by Household Member*, 56 *Fed. Reg.* at 51,567).

n96. See *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) ("The application of the federal law and regulations will, at times, impose hardship on tenants due to the illegal activities of a family member.").

n97. *Hous. Auth. of Joliet v. Chapman*, 780 N.E.2d 1106, 1107 (Ill. App. Ct. 2002).

n98. *Id.* at 1108.

n99. 800 A.2d 265 (N.J. Super. Ct. App. Div. 2002).

n100. *Id.* at 270.

n101. See Letter from Mel Martinez, Secretary of U.S. Department of Housing and Urban Development, to Public Housing Directors, *supra* note 4.

n102. *Id.*

n103. *Id.*

n104. See Letter from Michael M. Liu, Assistant Secretary of U.S. Department of Housing and Urban Development, to Public Housing Directors (June 6, 2002), available at <http://www.hud.gov/offices/pih/regs/rucker6jun2002.pdf>.

n105. *Id.*

n106. *Id.*

n107. As spelled out by Assistant Secretary Liu, such factors include: "the seriousness of the violation, the effect that eviction of the entire household would have on household members not involved in the criminal activity, and the willingness of the head of household to remove the wrongdoing household member from the lease as a condition of continued occupancy." *Id.*

n108. Letter from Carole W. Wilson, HUD's Office of General Counsel, to Charles J. Macellaro, attorney acting on behalf of the Yonkers PHA 1 (Aug. 15, 2002), available at <http://www.hud.gov/offices/pih/regs/rucker15aug2002.pdf>.

n109. HUD's Counsel describes "maximum deterrence" as "a lease enforcement policy pursuant to which the PHA routinely terminates the lease and evicts all of the occupants of a public housing unit whenever the lease provision mandated by Section 6(1)(6) [of the Housing Act] is violated." *Id.* at 3 (emphasis added).

n110. *Id.* at 1.

n111. *Id.*

n112. *Id.* at 4.

n113. The opinion letter stresses this point by stating that "to the extent that the Office of Public and Indian Housing acts to impose legally binding restrictions on PHAs, it does so by regulation, not by letter," alluding to the earlier letters issued by the HUD Secretary and Assistant Secretary. See *id.* at 4; *supra* notes 101, 104.

n114. See Curtis Lawrence, *CHA Tenants May Get Boot*, *Chi. Sun-Times*, Mar. 27, 2002, at 8 ("Chicago is one of a few cities that require the public housing authority to prove a tenant had prior knowledge of illegal activity before they can be evicted.").

n115. Interview with Sarah Mervine, Staff Attorney, Legal Assistance Foundation of Metropolitan Chicago, in Chicago, Ill. (Oct. 7, 2002); Nat'l Ctr. on Poverty Law, *U.S. Supreme Court Upholds Public Housing Authorities' One-Strike Eviction Policy: Impact on Victims of Domestic Violence* (May 10, 2002), at <http://www.povertylaw.org/advocacy/womanview/getissues.cfm?id=908>. However, recent negotiations between the CHA and public housing residents at redeveloped sites such as the Henry Horner Homes have left residents with a new lease that does not contain this innocent tenant defense. Telephone Interview with Kate Walz, *supra* note 32.

n116. *Chi. Hous. Auth. Residential Lease Agreement 15(c)*, at 11 (on file with author). Despite the defense, 119 public housing families were evicted under the one-strike policy in 2001. Kate N. Grossman, *Housing Agency May Fine-Tune Aid Program*, *Chi. Sun-Times*, Apr. 17, 2002, at 24.

n117. Lawrence, *supra* note 114, at 8.

n118. *Id.*; see also *Chi. Hous. Auth. Plan for Transformation, Year 3*, at 46 (2001), at <http://www.thecha.org/transformplan/files/plan%20for%20transformation%20year%203%20english%20final.pdf> (last visited Oct. 12, 2003) ("In order to maximize the likelihood of favorable judgments, CPD works to ensure that arrest information is accurate and Chicago Police Officers are available to appear and testify in eviction court proceedings.").

n119. Lawrence, *supra* note 114, at 8.

n120. *Id.* Between January and June of 2001, 10,626 arrests were made on CHA property. *Chi. Hous. Auth.*, *supra* note 118, at 47. Citywide, for the entire year, 233,455 arrests were made. *Chi. Police Dep't, Ann. Rep. 26* (2001), available at <http://www.ci.chi.il.us/cp/Statistics/Reports/01AnnRprt/01AnnualReport.html>.

n121. Telephone Interview with Stephanie Horton, *supra* note 32.

n122. *24 C.F.R. 966.4(5)(iii)(A)* (2000) (emphasis added). To prevail in a one-strike eviction action, a housing authority must show by a preponderance of the evidence that the criminal activity took place. Interview with Sarah Mervine, *supra* note 115.

n123. *Chi. Hous. Auth.*, *supra* note 118, at 46.

n124. Id. "One-strike eligible" cases involve offenses that are listed in the lease as covered by the one-strike policy. Telephone Interview with Stephanie Horton, Chicago Housing Authority One-Strike Department (Feb. 6, 2003).

n125. Telephone Interview with Stephanie Horton, *supra* note 124.

n126. See Letter from the Legal Assistance Foundation, to the Chicago Police Department (May 6, 2002) (on file with author).

n127. Id. at 1 (citing *705 Ill. Comp. Stat. Ann. 405/1-7(C)* (2002)).

n128. Id. (citing *705 Ill. Comp. Stat. Ann. 405/1-7(E)*).

n129. Id. at 1-2 (citing *705 Ill. Comp. Stat. Ann. 405/107(A)(1)-(9)*).

n130. Letter from Chicago Police Department's Office of Legal Affairs, to the Legal Assistance Foundation (June 21, 2002) (on file with author).

n131. Telephone Interview with Stephanie Horton, *supra* note 124.

n132. CHA Evictions for Juvenile Arrests Questioned, *Newstips* (July 30, 2002), at <http://www.newstips.org/7-30-02.htm>.

n133. Telephone Interview with Stephanie Horton, *supra* note 124.

n134. CHA Evictions for Juvenile Arrests Questioned, *supra* note 132 (quoting Stephanie Horton of the CHA One-Strike Department); Telephone Interview with Stephanie Horton, *supra* note 124. The likelihood of the CHA's success in gaining access to these records through a court petition can be gauged by similar efforts in Virginia. There, the Richmond Housing Authority drafted a petition seeking access to all juvenile arrest records in order to discern whether the minor resided in public housing. Interview with Sarah Mervine, *supra* note 31; Telephone Interview with Andy Block, Director, Just Children Program of Charlottesville's Legal Aid Justice Center (Nov. 12, 2002). Children's rights advocates opposed this petition in a letter stating that public housing families must be provided notice of the petition and the opportunity to be heard through grievance proceedings. Id. As a result, the Richmond Housing Authority ceased their efforts to file the petition. Id.

n135. Telephone Interview with Stephanie Horton, *supra* note 32. This practice coincides with *24 C.F.R. 966.4(5)(vii)(C)* (2000), which states that "the PHA may require a tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination."

n136. CHA Evictions for Juvenile Arrests Questioned, *supra* note 132.

n137. Telephone Interview with Stephanie Horton, *supra* note 32.

n138. Telephone Interview with Sarah Mervine, *supra* note 31.

n139. Interview with Richard Wheelock, Housing Unit Supervisory Attorney, & Sarah Mervine, Staff Attorney, Legal Assistance Foundation of Metropolitan Chicago, in Chicago, Ill. (July 30, 2003).

n140. *Id.*

n141. For a discussion of maximum deterrence, see *supra* text accompanying note 109.

n142. CHA Evictions for Juvenile Arrests Questioned, *supra* note 132.

n143. See Chi. Hous. Auth., Chicago Housing Authority: Admission & Occupancy Policy 179 (2001), available at <http://www.thecha.org/transformplan/files/a&o<uscore>policy<uscore>with<uscore>attached<uscore>procedures<uscore>english.pdf> ("If a hearing officer upholds a termination of [Section 8] assistance or if the Court enters judgment for eviction, the Leaseholder will lose assistance or be evicted with no return preference."). Under "the Relocation Rights Contract between the CHA and public housing residents," lease compliant residents who are forced to relocate during the redevelopment of their building are guaranteed the right to return to the development upon completion of the CHA's restoration. See Susan J. Popkin & Mary K. Cunningham, CHA Relocation Counseling Assessment: Final Report 6 (July 2001), available at <http://www.urban.org/UploadedPDF/CHArelocation.pdf>.

n144. CHA Evictions for Juvenile Arrests Questioned, *supra* note 132.

n145. Jamie Kalven, The View from the Ground, One Strike: Introduction (June 17, 2002), at <http://www.viewfromtheground.com/view.cfm/stories/onestrikeintro.html>. Kalven gives the following account of a mother whose one-strike eviction stemmed from the arrest of her sixteen-year old son on a "minor drug charge":

His mother, aware that he was being drawn into the orbit of the drug dealers operating in the lobby of her building, fought to hold on to him. She closely monitored his activities and regularly confronted him. She challenged gang leaders to leave her son alone and often stayed up all night to see that he didn't leave the apartment. She participated in anti-violence demonstrations, including a march conducted by a group of mothers in the middle of a gang war. The conditions in which she struggled to raise her children were not the product of her household but rather were consequences of her community having been abandoned by various public institutions.

Id.

n146. Cf. Adrienne Volenick, Juvenile Court and Arrest Records, 9 *Clearinghouse Rev.* 169, 173 (1975) ("Where a person has suffered because of the existence of a record dealing with charges for which he has not been found delinquent, he arguably has been subject to cruel and unusual punishment since punishment must be reasonably related to the crime for which it is imposed and must be meted out equitably.").

n147. Although the modern role of the juvenile court is outside the scope of this Comment, scholar Barry Feld suggests that "substantive and procedural reforms have converted the historical ideal of the juvenile court as a welfare agency into a quasi-penal system that provides young offenders with neither therapy nor justice." Barry Feld, *Bad Kids: Race and the Transformation of the Juvenile Court* 3 (1999). In turn, these changes have resulted in "punitive policies [that] reduce the state's duty to intervene affirmatively and make youths more responsible and accountable for their own conduct regardless of their social circumstances." *Id.* at 7; see also Frank J. Kopecky, Introduction to Juvenile Justice, in *Illinois Juvenile Law and Practice* 1-1, II(C)(6)[1.9] (2001) (noting that "rehabilitation is still clearly the goal of Juvenile Court [in Illinois], but punishment is being viewed as a means to achieve that end").

n148. Juvenile Court Act of 1987, *705 Ill. Comp. Stat. Ann.* 405 (West 2002).

n149. Not all arrests of minors are resolved by an adjudication hearing; rather, the "less serious cases are diverted from the formal juvenile justice process" at the discretion of the initial investigating organization. See Kopecky, *supra* note 147, IV(C)[1.44].

n150. Joseph C. Sanborn, Jr., *Second-Class Justice, First-Class Punishment: The Use of Juvenile Records in Sentencing Adults*, 81 *Judicature* 206, 206 (1997).

n151. A juvenile may petition the court for an expungement of his or her arrest record at the age of 17. *705 Ill. Comp. Stat. Ann.* 405/5-915(1); see also *infra* text accompanying note 183.

n152. Janice Joseph, *Black Youths, Delinquency, and Juvenile Justice* 1-2 (1995).

n153. *Id.* at 2; see also Ira M. Schwartz et al., *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 *Wake Forest L. Rev.* 533, 536 (1998) (noting that the juvenile court "was envisioned as a welfare institution with a broad mandate that stressed rehabilitation and not punishment").

n154. See Kara E. Nelson, Comment, *The Release of Juvenile Records Under Wisconsin's Juvenile Justice Code: A New System of False Promises*, 81 *Marq. L. Rev.* 1101, 1119 (1998) (citing Julian W. Mack, *The Juvenile Court*, 23 *Harv. L. Rev.* 104, 109 (1909)).

n155. *Id.*

n156. According to the Illinois Institute for Continuing Legal Education, the other three objectives are providing "separate juvenile facilities and procedures; ... [placing] an emphasis on community corrections; and ... reviewing the total circumstance of the youth, thereby promoting individualized justice." Kopecky, *supra* note 147, III[1.10].

n157. See *705 Ill. Comp. Stat. Ann.* 405/1-7 (West 2002).

n158. See *id.* 405/1-8.

n159. *Id.* 405/1-7(A). See also Allyson Dunn, Note, Juvenile Court Records: Confidentiality and the Public's Right to Know, 23 *Am. Crim. L. Rev.* 379, 380 (1998) (defining juvenile arrest records as "a police record of arrests or interactions with the police department which may or may not result in a juvenile court proceeding").

n160. Dunn, *supra* note 159, at 381 (citing Volenick, *supra* note 146, at 170).

n161. 705 *Ill. Comp. Stat. Ann.* 405/1-7(A)(1)-(9); see *In re W.L.*, 689 *N.E.2d* 275, 278 (*Ill. App. Ct.* 1997) (declaring that "law enforcement and court records relating to juveniles are presumed confidential" and any party seeking access to such records must demonstrate that "the proposed release of information was permitted by the Juvenile Court Act").

n162. See *supra* note 126.

n163. 705 *Ill. Comp. Stat. Ann.* 405/1-7(C).

n164. *Id.* 405/1-7(E). As an exception to this rule, a juvenile's records may be released to the general public if the minor was found guilty of first degree murder or if the minor, at least 13 years of age, committed an act "in furtherance of the commission of a felony as a member of or on behalf of a criminal street gang." *Id.* 405/5-901(5)(a)(i)-(ii). According to Sarah Mervine of the Legal Assistance Foundation, this is a limited exception because the juvenile suspect must be adjudicated a gang member before his records can be turned over to the public. Telephone Interview with Sarah Mervine, *supra* note 31; see also *infra* note 165.

n165. 705 *Ill. Comp. Stat. Ann.* 405/1-7(B)(1). Under 5-805 of the Act, a judge may permit the case of a minor over the age of 15 to be tried in adult criminal court if he is charged with the commission of a forcible felony or felony, has been adjudicated delinquent or found guilty for such a crime before, and the act "was committed in furtherance of criminal activity by an organized gang." *Id.* 405/5-805(1)(a)-(b). Other offenses that prompt transfer to adult criminal court are the unlawful use of a firearm on or near school property, "a Class X felony other than armed violence," "aggravated discharge of a firearm," "armed violence with a firearm ... committed ... in furtherance of the criminal activities of an organized gang," "armed violence with a firearm" while violating the Illinois Controlled Substances Act or the Cannabis Control Act, or "armed violence when the weapon involved was a machine gun." *Id.* 405/5-805(1)(d)-(2)(a) (West Supp. 2001).

n166. *Id.* 405/1-7(D).

n167. *Id.* 405/1-7(F).

n168. *Id.* 405/1-7(G).

n169. A delinquent minor is "any minor who prior to his or her 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or State law, county or municipal ordinance." *Id.* 405/5-105(3).

n170. See *id.* 405/5-905(4), (5), and (7).

n171. See *id.* 405/5-905(6).

n172. *Id.*

n173. *Id.* 405/1-8(C).

n174. *Id.* 405/1-8(C)(1).

n175. *Id.* 405/1-8(C)(1)(A). Because information in a juvenile's arrest records may not be accessed to the same degree or in the same manner as the information in a juvenile's court records, the CHA as a public housing authority would be left to pursue the strategy of affecting a statutory amendment (as referenced *supra* in Part III) in order to lawfully have access to information in a juvenile's arrest records.

n176. Kopecky, *supra* note 147, IV(C)(2)(a)[1.50] (construing 705 Ill. Comp. Stat. Ann. 405/5-520(1)-(2)).

n177. See 705 Ill. Comp. Stat. Ann. 405/5-301(1)(e)(i)-(viii) (2002).

n178. Dunn, *supra* note 159, at 383 (citing Lister, Privacy, Recordkeeping, and Juvenile Justice, in *Pursuing Justice For The Child 208-09* (M. Rosenheim ed., 1976)).

n179. 705 Ill. Comp. Stat. Ann. 405/5-915(1).

n180. *Id.* 5-915(1)(a).

n181. *Id.* 5-915(1)(b).

n182. *Id.* 5-915(1)(c).

n183. *Id.* 5-915(1)(d). Except in adjudications of first degree murder and felony sex offenses, "any person may petition the court to expunge all law enforcement records relating to any incidents occurring before his or her 17th birthday ... if the person ... has had no convictions for any crime since his or her 17th birthday," has reached the age of twenty-one, or five years have passed since the termination of all the person's juvenile court proceedings or commitment to the Juvenile Division of the Department of Corrections. *Id.* 5-915(2)(a)-(b).

n184. *Id.* 5-915(4).

n185. See generally Volenick, *supra* note 146, at 169 (recognizing that "many legislators have attempted instead to combat the harmful effects of a delinquency adjudication by providing for concealment of juvenile records, on the grounds that such concealment will aid the child's reintegration into society").

n186. Interview with Sarah Mervine, *supra* note 115. Due to the denial of class status, the eventual settlement applied only to the named plaintiffs. *Id.*

n187. *Id.*

n188. See 705 Ill. Comp. Stat. Ann. 405/5-805.

n189. See Linda S. Beres & Thomas D. Griffith, *Demonizing Youth*, 34 *Loy. L.A. L. Rev.* 747, 753 & n.26 (2001) (pointing to John J. Dilulio, Jr.'s coining of the phrase in *The Coming of the Super-Predators*, *Wkly. Standard*, Nov. 27, 1995, at 23).

n190. *Id.*

n191. See James H. Difonzo, *Parental Responsibility for Juvenile Crime*, 80 *Or. L. Rev.* 1, 23-24 (2001) (noting that "media reporting techniques and other factors influence the public perception about crime more than the actual level of victimization" and that "within the overall national crime rate, juveniles did not stand out as a particularly predatory cohort").

n192. 24 *C.F.R.* 966.4(l)(5)(iii)(A) (2003).

n193. 42 *U.S.C.* 1437d(q)(1)(C) (2000).

n194. But see *Cincinnati Metro. Hous. Auth. v. Browning*, No. C-010055, 2002 WL 63491, at 3 (Ohio Ct. App. Jan. 18, 2002) (noting that, although the state's laws may distinguish between the acts of a juvenile and those of an adult, the wording of the public housing lease that designates "any drug-related activity" as grounds for eviction "does not exclude juvenile acts").

n195. See John C. Coffee, Jr., *The Future of Sentencing Reform - Emerging Legal Issues in the Individualization of Justice*, 73 *Mich. L. Rev.* 1361, 1381 (1975).

n196. Furthermore, under the Plan for Transformation, "structural incentives to evict" exist as the newly built mixed-income developments are available only to lease to compliant tenants and those that have not been evicted from public housing. Kalven, *supra* note 145. As public housing advocate Jamie Kalven states, "each eviction represents one less household to which [the CHA] is obligated to provide the benefits of the Plan." *Id.*

n197. Arthur H. Garrison, *Disproportionate Minority Arrest: A Note on What Has Been Said and How It Fits Together*, 23 *New Eng. J. on Crim. & Civ. Confinement* 29, 34 (1997).

n198. *Id.* at 41.

n199. Joseph, *supra* note 152, at 77; see also Nat'l Council on Crime and Delinquency, *And Justice for Some 1* (2000) (reporting that racial disparities are "most pronounced at the beginning stages of involvement with the juvenile justice system" and "accumulate as youth are processed through the system").

n200. Nat'l Council on Crime and Delinquency, *supra* note 199, at 28.

n201. Juvenile Arrests Disproportionately Involved Minorities, *Juvenile Justice Bull.* (Dec. 2000), at <http://www.ncjrs.org/html/ojjdp/jjbul2000<uscore>12<uscore>3/page4.html> (last visited Oct. 27, 2003).

n202. Coffee, *supra* note 195, at 1381.

n203. See Garrison, *supra* note 197, at 31 (citing this reason as a plausible explanation for disproportionate minority arrests); see also Coffee, *supra* note 195, at 1379 (arguing that arrest records do not measure "culpability but differences in the level of police activity and style of record-keeping").

n204. Garrison, *supra* note 197, at 54.

n205. Leonard N. Sosnov, *Due Process Limits on Sentencing Power: A Critique of Pennsylvania's Imposition of a Recidivist Mandatory Sentence Without a Prior Conviction*, 32 *Duq. L. Rev.* 461, 494 n.225 (1994); see also David Cole, *Discretion and Discrimination Reconsidered: A Response to the New Criminal Justice Scholarship*, 87 *Geo. L.J.* 1059, 1063 (1999) (suggesting that unguided "discretion invites stereotyped judgments, and stereotyped judgments undermine the fairness and legitimacy of law enforcement").

n206. The author computed this percentage by dividing the number of African-Americans under eighteen (601,826) by the total number of people in Illinois (12,419,293). The population for Illinois can be found next to the heading "Population, 2000" at <http://quickfacts.census.gov/qfd/states/17000.html>. The figure for the number of African-Americans under eighteen was derived by adding the number of African-American males age zero through seventeen to the number of African-American females age zero through seventeen.

n207. The Chicago Police Department defines index crimes as "representative of the most serious crimes." See Chi. Police Dep't, *Index Crime Definitions*, at <http://www.ci.chi.il.us/cp/Statistics/IndexCrimeDefs.html> (last visited Oct. 27, 2003). Index crimes are split into two categories, violent and property. *Id.* Violent index crimes are "committed directly against a person" and include "Homicide, Criminal Sexual Assault, Robbery, and Aggravated Assault/Battery." *Id.* Property index crimes present "no direct threat or harm to a person" and consist of "Burglary, Theft, Motor Vehicle Theft, and Arson." *Id.*

n208. See Research & Analysis Unit, Ill. Crim. Justice Info. Auth., *Juvenile Crime and Justice System Activities in Illinois: An Overview of Trends 12* (2000), available at <http://www.icjia.state.il.us/public/pdf/jjreportfinal99.PDF> (last visited Oct. 27, 2003). White juveniles made up almost half of property index arrests. *Id.*

n209. See Catherine Bowman, *Housing Authority's 'One-Strike' Policy; New S.F. Leases To Make Evictions Easier*, *S.F. Chron.*, Apr. 2, 1996, at A11 (quoting a housing advocate's suspicion that the one-strike policy "will be very indiscriminately applied: whoever is young, black and male will be suspected and charged").

n210. Kaminer, *supra* note 89, at 9. Kaminer goes on to quote Dan Abrahamson of the Drug Policy Alliance who stated, "[Florida Governor] Jeb Bush was not kicked out of his public housing due to his daughter's drug use." *Id.*

n211. See 42 U.S.C. 1437d(1)(6) (2000).

n212. See Difonzo, *supra* note 191, at 41-42 (noting the impression held by some that "since parents were primarily responsible for the households in which delinquents were raised, those parents needed to be held accountable for their failures").

n213. *Id.* at 6.

n214. *Id.* at 4.

n215. *Id.* at 7. Professor Difonzo's analysis of parental responsibility for juvenile delinquency refers generally to criminal sanctions; however, he does recognize that "the enlargement of parental responsibility parallels an expansion in the civil liability parents face as a consequence of their children's acts." *Id.* at 50.

n216. *Id.* at 38.

n217. Robert Hornstein, Mean Things Happening in This Land: Defending Third Party Criminal Activity Public Housing Evictions, 23 *S.U. L. Rev.* 257, 268 (1996) (emphasis added).

n218. See *Cincinnati Metro. Hous. Auth. v. Browning*, No. C-010055, 2002 WL 63491, at 3 (Ohio Ct. App Jan. 18, 2002) ("The statute and regulations ... do[] not exclude juvenile acts.").

n219. See 705 *Ill. Comp. Stat. Ann.* 405/5-410(2)(a) (2002).

Any minor 10 years of age or older arrested pursuant to this Act where there is probable cause to believe that the minor is a delinquent minor and that (i) secured custody is a matter of immediate and urgent necessity for the protection of the minor or of the person or property of another, (ii) the minor is likely to flee the jurisdiction of the court, or (iii) the minor was taken into custody under a warrant, may be kept or detained in an authorized detention facility.

Id.

n220. Difonzo, *supra* note 191, at 40.

n221. See 24 *C.F.R.* 966.4(l)(5)(iii) (2003).

n222. See *supra* note 25 and accompanying text.

n223. Difonzo, *supra* note 191, at 47.

n224. See Chi. Police Dep't, For the Record, The Juvenile Intervention Partnership Pilot Program 2 (2001), available at <http://www.ci.chi.il.us/cp/Statistics/Reports/OtherReports/Q101FTR.pdf> (last visited Oct. 27, 2003) (citing research "that gang membership substantially raises the risks of serious criminal involvement among juveniles").

n225. See *supra* Part I.

n226. Chi. Hous. Auth., Statement of CEO Terry A. Peterson, at <http://www.thecha.org/aboutus/ceo<uscore>statement.html> (last visited Oct. 12, 2003).

n227. Kate N. Grossman, Can the City Scrape up Money for the CHA's Plan?, Chi. Sun-Times, Mar. 28, 2001, at 6; Interview with Richard Wheelock & Sarah Mervine, *supra* note 139. Two housing analysts describe mixed-income housing as "a deliberate effort to construct and/or own a multifamily development that has the mixing of income groups as a fundamental part of its financial and operating plans." Paul C. Brophy & Rhonda N. Smith, Mixed-Income Housing: Factors for Success, in 3 *Cityscape: A Journal of Policy Dev. & Research* 3, 5 (1997), available at <http://www.huduser.org/Periodicals/CITYSCPE/VOL3NUM2/success.pdf>. According to their study, the shift to mixed-income housing "is based on the widely held belief that mixed-income, multifamily housing is preferable to housing in which large numbers of low-income residents are clustered together." *Id.* at 4. Furthermore, the mix of income levels reduces the "culture of poverty" caused by the concentration of poor households. *Id.* at 5-6.

n228. See *supra* Part I for a discussion of how the increase in violent crime, coupled with the location of public housing in segregated and isolated communities, led to the deterioration of public housing in Chicago.

n229. The information from the OJJDP is obtained from *The Real War on Crime: The Report of the National Criminal Justice Commission* 141-44 (Steven R. Donziger ed., 1996).

n230. *Id.* at 141-42.

n231. See Metropolitan Planning Council, Public Housing in the Public Interest MPC Fact Sheet No. 2, at <http://www.metroplanning.org/resources/633section8.asp?objectID=633> ("What's most important is not the bricks and mortar aspect of the Plan for Transformation. Quality buildings will not blend in if residents do not become a part of the larger community, both socially and economically.").

n232. A youth's arrest record is not the only source of information the CHA can rely upon to initiate eviction proceedings against his family. A youth's delinquent behavior can be reported by neighbors or witnessed by the property managers themselves. Interview with Richard Wheelock & Sarah Mervine, *supra* note 139.

n233. *The Real War on Crime*, *supra* note 229, at 143.

n234. *Id.* at 143-44.

n235. *Id.*

n236. According to former National Institute of Justice Fellow, Thomas Quinn, "Restorative justice condemns the criminal act, holds offenders accountable, involves the participants, and encourages repentant offenders to earn their way back into the good graces of society." Restorative Justice: An Interview with Visiting Fellow Thomas Quinn, *Nat'l Inst. Just. J.*, Mar. 1998, at 10, available at <http://ncjrs.org/pdffiles/jr000235.pdf>.

n237. Difonzo, *supra* note 191, at 83.

n238. Chicago's Community Panels for Youth ("CPY") can serve as a concrete model for the CHA to follow. CPY was first implemented in Chicago's Austin neighborhood as a "community-based alternative to juvenile court." See generally Marcia Festen & Cheryl Graves, *Community Panels for Youth: A Guide to Local Action* (2001). CPY is made up of a panel of trained community members who hear cases referred by the State's Attorney's Office. *Id.* at 8. Eligible participants in the program are first time, non-violent offenders under the age of seventeen who admit to their involvement in the charged offense. *Id.* The panel facilitates and mediates discussion between the victim, the youth, and the youth's parents about the offense. *Id.* The information gathered during the hearing is used to develop a contract, for which the youth is accountable, that provides for repayment to the victim and community through restitution or community service. *Id.* at 9. As an alternative to one-strike evictions and its severe impacts, the CHA can rely on panels similar to the CPY model for less serious offenses where the leaseholder's child would be required to provide restitution and/or engage in community service. Oakland utilized a process similar to the CPY model, which has led to a reduction of one-strike evictions by sixty percent. Interview with Kate Walz, *supra* note 115.

n239. See *supra* note 143 and accompanying text. Former residents have dealt with the reality of being excluded from the housing of last resort by moving in with relatives or putting their lease in someone else's name. Mark Brown, *Not All Departing Tenants Will Land on Feet*, *Chi. Sun-Times*, Oct. 1, 2002, at 2. Families who lack these "alternatives" find themselves turning to homeless shelters. See Kate N. Grossman, *Rockwell Gardens Plan Called Unfair and Unsafe*, *Chi. Sun-Times*, Oct. 16, 2002, at 28 (reporting that between July and September of 2002, when the CHA relocated some 550 families, "25 families in a dozen emergency shelters reported living in a CHA building sometime [that year]"); *Activists Target Demolitions*, *Chi. Sun-Times*, Nov. 21, 2001, at 22 (citing sociologist Sudhir Vekatesh's findings that in "a group of 1,500 residents who began leaving the Robert Taylor Homes in 1998 ... about one in 10 is homeless" and reporting the Department of Human Services' estimate that, at the end of 2001, one percent of Chicago's 5,600 shelter beds were occupied by families from CHA developments).

n240. See Fran Spielman, *Daley Backs Plan: No More Homeless by 2012*, *Chi. Sun-Times*, Jan. 22, 2003, at 20 (detailing Mayor Daley's goal to "shift the focus away from shelters and toward permanent housing with a bottomless network of social services").

n241. See *supra* Part III.

n242. See *Chi. Hous. Auth., The CHA's Plan for Transformation*, at <http://www.thecha.org/transformplan/plan<uscore>summary.html> (last visited Oct. 13, 2003) (stating that "under the Plan, the CHA seeks to: Renew the physical structure of CHA properties[, p]romote self-sufficiency for public housing residents[, and r]eform administration of the CHA").

n243. See *supra* Part III.

n244. Interview with Richard Wheelock & Sarah Mervine, *supra* note 139.

n245. *Id.*

n246. *Id.*

n247. Press Release, City of Chicago, Crime Drop in Public Housing Outpaces City (June 18, 2001), at <http://www.cityofchicago.org/cp/AboutCPD/PressReleases/PressReleases01/NR010618.html>. Between 1990 and 1999, the CHA provided its own security for the developments to supplement the Chicago Police Department's patrol. Popkin et al., *supra* note 6, at 34.

n248. Press Release, *supra* note 247.

n249. See *id.*

n250. *Id.*

n251. Chi. Police Dep't, What is CAPS?, at <http://www.ci.chi.il.us/cp/AboutCAPS/HowCAPSWorks/WhatIsCAPS.html> (last visited Oct. 27, 2003).

n252. *Id.*; see also Susan M. Hartnett & Wesley G. Skogan, Community Policing: Chicago's Experience, Nat'l Inst. Just. J., Apr. 1999, at 3, available at <http://ncjrs.org/pdffiles1/jr000239.pdf>. The community has come together "primarily through monthly beat meetings and advisory committees formed in each police district." Hartnett & Skogan, *supra*, at 5. Although the discussions at these meetings "often involve issues that transcend the traditional police mission, [they were found to] help police understand residents' agendas, develop priorities, and devise solutions to problems." *Id.*

n253. See *supra* Part I.

n254. See *Chi. Hous. Auth.*, *supra* note 242.