

Ending Drug-Related Evictions in Public Housing

THE PROBLEM

Municipalities spend precious resources throwing families out of public housing and onto the streets. Public housing authorities (PHAs) initiate drug-related evictions (DREs) against unrepresented tenants in forums where the standard of proof is so low that families are evicted even after the underlying criminal charge is dismissed. Despite criminal drug policy reforms, there has been little effort to dismantle the web of devastating civil consequences associated with drug addiction—such as DREs. DREs disproportionately punish and destabilize already vulnerable low-income communities of color and cost the government millions.²

While local PHAs exercise significant discretion in determining eviction and eligibility policies, Federal pressure to increase DREs began with the 1988 Anti-Drug Abuse Act.³ DREs proliferated under President Clinton’s “one-strike” policy, which incentivized the adoption of harsh eviction and eligibility regulations.⁴ The volume of DREs increased after the 2002 Supreme Court decision, *Department of Housing and Urban Development v. Rucker*, under which PHAs have the discretion to evict entire households, even when the leaseholder does not know about or participate in the illegal activity. In **Chicago**, 87 percent of DREs between 2005–2012 did not involve allegations against the leaseholder.⁵ Many families are evicted because of the mistakes and misdeeds of children—one study suggests that more than 25 percent all DREs stem from juvenile arrests.⁶

Although The Department of Housing and Urban Development (HUD) now advocates for “second chances,”⁷ most jurisdictions enforce draconian eviction and eligibility policies.⁸ Many jurisdictions apply strict liability DREs to Federal Section 8 voucher programs. Others have incorrectly interpreted Federal law as mandating a three-year ban on public housing eligibility once a family is evicted.⁹ Still others, such as **Massachusetts** and **Washington, DC**, bar families from emergency shelter if they are evicted from public housing due to alleged criminal activity.¹⁰ Together these policies deny the most vulnerable families the basic necessity of a home.



“[Drug-related evictions] target the poor for a punishment that rarely befalls more affluent persons with drug-involved family members and acquaintances”

— Emma D. Sapong¹

Some jurisdictions, like **New York City**, have adopted procedures for first time offenses that require the leaseholder to permanently exclude the “offending family member.”¹¹ These “stipulations” often force mothers and grandmothers to choose between barring their loved ones from the family home or being evicted themselves. Eviction proceedings have been initiated after “excluded” household members who returned to care for an elderly grandmother, to mourn the death of a beloved sibling, and to visit an immobile parent.

Drug related evictions, meant to target “dangerous drug predators,”¹² have resulted in the eviction of tens of thousands of innocent families for offenses as minor as a teenager possessing marijuana.¹³ While there is no evidence that these draconian policies have reduced crime in public housing,¹⁴ they cost federal, state, and local governments millions of dollars. Annually, it costs approximately \$35,000 more to keep one person homeless than to provide subsidized housing for that same individual. Additionally, housing stability results in lower hospitalization and arrest rates.¹⁵ Similar to mass incarceration for low-level drug offenses, DREs are inhumane, ineffective, expensive, and discriminatory.

THE SOLUTION

Because of the extensive discretion allowed to local PHAs, municipalities can stop the expensive and inhumane practice of evicting entire families for minor non-violent drug offenses.

Under current Federal law the only offenses that mandate eviction or limit eligibility for public housing are:

1) the manufacturing of methamphetamines on federal property and 2) crimes that result in the accused being put on the Sex Offender Registry for life.¹⁶ Although Federal law mandates a three year ban in the case of a prior eviction from public housing for a drug-related offense, the ban may be overcome if the household member completes a drug rehabilitation program.

POLICY ISSUES

PHAs should mandate the consideration of mitigating circumstances. PHAs may take into account all relevant circumstances prior to eviction. Advocates and city officials can work with local PHAs to develop policies that allow for individualized decisions. The **Legal Action Center** has created model legislation suggesting that PHAs take the following factors into consideration before eviction: 1) whether the offense bears a relationship to the safety and security of other residents; 2) whether an eviction is likely to result in homelessness; 3) whether the individual has undertaken efforts at rehabilitation; and 4) the effect on the entire household.

PHAs should reevaluate evidentiary standards. Most jurisdictions rely extensively on unproven allegations, sealed court records, and arrests not resulting in convictions to evict families from public housing. Additionally, PHAs need only prove allegations by a “preponderance of the evidence”—simply requiring that it is more probable than not the act occurred. Particularly in the absence of counsel, families facing eviction should be protected against capricious state action by carefully crafted rules with enforced evidentiary standards. Towards these ends, in **Chicago**, a court held that an arrest alone does not constitute “criminal activity” for the purposes of PHA exclusion or eviction.

Local officials should demand transparency about rules governing eviction and eligibility. The lack of transparency about standards for eviction and eligibility, along with the lack of data documenting enforcement, makes it impossible for those affected by DREs to advocate on their own behalf or for policy change. Local PHAs should make rules governing evictions and eligibility easily available. Furthermore, PHAs should report data

pertaining to enforcement of DREs.

PHAs should offer time-limited stipulations rather than demanding permanent exclusion as the only alternative to eviction.

PHAs should take HUD’s advice and only evict as a last resort. The current use of strict liability standards and vicarious liability should be replaced with regulations that prioritize safety and support struggling families instead of banishing them.

LANDSCAPE AND RESOURCES

In **New Orleans**, **Stand with Dignity**, the **New Orleans Workers’ Center for Racial Justice**, and **Voice of the Ex-Offender** are working to enact less punitive public housing policy.

In **New York City**, the **Center for Popular Democracy** is working with public defender’s offices and grassroots tenant and housing organizations to change laws governing drug-related evictions.

NOTES

1. *Public Housing Tenants Evicted on ‘One-Strike’ Rule Cry Foul*, Buffalo News (Apr. 8 2002).
2. Marnie Smith, *Collateral Consequences of Criminal Convictions in American Courts: The View from the State Bench*, 29 JUST. SYS. J. 145, 146 (2008).
3. 42 U.S. §1437(1)(6).
4. State of the Union, President Clinton (1996); Pub. L. No. 104-120, 110 Stat. 834 (1996).
5. Angela Caputo, *One and Done*, The Chicago Reporter (Sept. 4, 2011).
6. Wendy Kaplin & David Rossman, *Called out at Home: The One Strike Eviction Policy and Juvenile Court*, Duke Forum for Law & Social Change, Vol. 3, No. 109 (2011).
7. Secretary Donovan, *Open Letter to PHA Executive Directors* (2011).
8. Bruce Reilly, *Formerly Incarcerated & Convicted People’s Movement, Communities, Evictions and Criminal Convictions* (2013).
9. Pub. L. No. 104-120, 110 Stat. 834 (1996).
10. 106 Mass. Code Regs. 309.040 (B)(4)(2010); D.C. Mun. Regs. 29-2502.1(e) (2010).
11. *Open Letter to Chairman Rhea of the New York Housing Authority*, The New York City Bar (2011).
12. State of the Union, President Clinton (1996).
13. Angela Caputo, *One and Done*, The Chicago Reporter (2011).
14. Edgar Sandoval, *Violence Rises in NYC Housing Developments* (2011).
15. Los Angeles Homes Service Authority and Economic Roundtable, *Where We Sleep* (2013).
16. Pub. L. No. 105-276, 112 Stat. 1643 (1998).

Local Progress is a national municipal policy network of local elected officials and partners who want to create more just and equitable cities. Our purpose is to build a broad network to support and learn from each other, share best practices and policies, and develop strategies for advancing shared goals.

The **Center for Popular Democracy** promotes equity, opportunity, and a dynamic democracy in partnership with innovative community-based organizations, elected officials, local and state networks, and progressive unions across the country. We work with our allies to design, pass, and implement cutting-edge state and local policies that deliver tangible benefits for working families.