

2022

## An Early Intervention Approach to Reducing Evictions and Improving Child Welfare

David A. Dana  
*Northwestern University*

Follow this and additional works at: <https://lawcommons.luc.edu/clrj>



Part of the [Family Law Commons](#), and the [Juvenile Law Commons](#)

---

### Recommended Citation

David A. Dana, *An Early Intervention Approach to Reducing Evictions and Improving Child Welfare*, 42 CHILD. LEGAL RTS. J. 79 (2023).

Available at: <https://lawcommons.luc.edu/clrj/vol42/iss2/2>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Children's Legal Rights Journal by an authorized editor of LAW eCommons. For more information, please contact [law-library@luc.edu](mailto:law-library@luc.edu).

## An Early Intervention Approach to Reducing Evictions and Improving Child Welfare

David A. Dana<sup>1</sup>

### INTRODUCTION

Housing instability impacts the welfare of individuals and families by disrupting public education, increasing food insecurity, and making the lives of low-income people more stressful, more perilous, and less fulfilling in general. Eviction law reform can play a part in reducing housing instability and subsequent harms that we see in the United States.<sup>2</sup> Although eviction law reform alone cannot solve the shortage of affordable housing in many U.S. housing markets, it may reduce the rate of eviction and thus allow more low-income households to stay in their homes.<sup>3</sup> Spurred on by academic scholarship regarding an eviction crisis, a very visible homelessness crisis in high-housing-cost areas, and perhaps most of all the COVID pandemic, a number of states and localities have enacted eviction legal reforms.<sup>4</sup> This article reviews some of these reforms and argues that the most promising reform involves early intervention by counselors and mediators before an eviction action is even filed. Philadelphia provides a model of this approach for other jurisdictions.

This early intervention approach has several advantages, including that it can avoid eviction complaints on tenants' credit history and also can avoid forcing tenants to into court, where "discussion can become more heated and it is less likely to end in favorable terms for both parties."<sup>5</sup> It also could provide the government with a timely opportunity to

---

<sup>1</sup> Professor Dana is the Kirkland & Ellis Professor of Law at Northwestern University Pritzker School of Law. He graduated from Harvard College and Harvard Law School and was a litigator at the U.S. Department of Justice before entering teaching. His scholarly writing has focused on land use, housing, and environmental policy.

<sup>2</sup> See Vicki Been & Leila Bozorg, *Spiraling: Evictions and Other Causes and Consequences of Housing Instability*, 130 HARV. L. REV. 1408, 1432-34 (2017) (reviewing MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016)) (discussing eviction reform as a way to reduce housing instability).

<sup>3</sup> See, e.g., Julieta Cuellar, *Effect of "Just Cause" Eviction Ordinances on Eviction in Four California Cities*, J. PUB. & INT'L AFFS. (2019) (explaining that eviction rates decreased after the adoption of eviction law reforms).

<sup>4</sup> See generally Olivia Choi, *Access, Asymmetries, and Eviction Diversion: The Eviction Crisis COVID-19 Forced America to Confront*, AM. BAR ASS'N (Aug. 30, 2021), <https://www.americanbar.org/groups/crsj/publications/crsj-featured-articles/covid-eviction-crisis/> (reviewing the range of proposed reforms relating to the eviction crisis).

<sup>5</sup> See Juan Pablo Garnham, *Eviction Diversion: Preventing Eviction Before Going to Court*, EVICTION LAB (Sept. 2, 2021), <https://evictionlab.org/eviction-diversion/> (explaining eviction diversion is advantageous for tenants because regardless of the resolution of the landlord-tenant dispute, "an eviction case filing can damage a tenant's credit and rental history"). Of course, these benefits accrue only if eviction filings are avoided. The Philadelphia early diversion program, so far, has done just that: the program has allowed 93% of the participating tenants to avoid eviction without having to go to court. See Maggie Mancini, *Philly's Eviction Diversion Program Will Now be Extended Through the End of 2022*, PHILLY VOICE (Dec. 16, 2021), <https://www.phillyvoice.com/eviction-diversion-program-philadelphia-extended-council/>.

provide holistic counseling regarding the full range of stressors on the household and the resources that may be available to lessen those stressors.<sup>6</sup> This approach is especially important for families with children because those families face the greatest risk of eviction and eviction can disrupt childhood development.<sup>7</sup>

Part I of the article begins with a brief review of the literature regarding how housing insecurity, including homelessness, interacts with food insecurity and other problems facing low-income households. Although the empirical literature is quite limited, it supports what one intuitively would believe – that housing and food insecurity, indeed all sorts of financially-linked insecurities, are connected.<sup>8</sup>

Part II of the article turns to the root causes of housing insecurity in the United States. In the last five decades in the United States, the real cost of housing relative to wages has increased,<sup>9</sup> just as government subsidies for housing have declined.<sup>10</sup> Until those facts change, housing insecurity for low-income people will remain a problem in the United States. However, there is also evidence that the legal and informal system of eviction in this country makes it easy for landlords to evict even when a resolution to the conflict between the landlord and tenants might be possible.<sup>11</sup> Empirical work suggests that this heavy reliance on eviction by landlords in the low-income market has created a class of tenants who find it almost impossible to find and keep decent housing and who thus are close to powerless with respect to landlords when they act unreasonably and/or unlawfully.<sup>12</sup> This section will also explore how, and perhaps why, families with children (especially single mothers with children) are especially vulnerable to eviction and its negative effects.

Part III of the article reviews eviction reforms that have been proposed and adopted in recent years, with special attention paid to the Philadelphia approach and its advantages. These reforms and proposed reforms range from the bureaucratic (for example, courts

---

<sup>6</sup> See Letter from Vanita Gupta, Assoc. Att’y Gen., U.S. Dep’t of Just., to Chief Just./State Ct. Adm’r (June 24, 2021) (suggesting eviction diversion programs take a holistic approach).

<sup>7</sup> See *infra* Part II (discussing the empirical scholarship regarding how often children are evicted and its effects on them).

<sup>8</sup> See *infra* Part I (discussing the empirical scholarship regarding the connections among household insecurities).

<sup>9</sup> See Been & Bozorg, *supra* note 2, at 1408 (“Changes in income have lagged behind increases in rent . . .”).

<sup>10</sup> See WILL FISCHER ET AL., CTR. ON BUDGET & POL’Y PRIORITIES, MORE HOUSING VOUCHERS: MOST IMPORTANT STEP TO HELP MORE PEOPLE AFFORD STABLE HOMES 1 (2021), <https://www.cbpp.org/sites/default/files/4-14-21/hous.pdf> (explaining that “due to inadequate funding, just 1 in 4 voucher-eligible families received any type of federal rental assistance even before the pandemic struck, and there are long waiting lists for vouchers in much of the country”).

<sup>11</sup> See Noah Smith, *Mass Evictions Are a Crisis the U.S. Knows How to Avoid*, BLOOMBERG (July 29, 2021), <https://www.bloomberg.com/opinion/articles/2021-07-29/mass-evictions-are-avoidable-as-the-u-s-has-already-proven> (explaining that “[e]viction was a growing national problem before the pandemic, exacerbated by rising rents and by laws making it easier to kick people out on the street”).

<sup>12</sup> See, e.g., NAT’L CONSUMER L. CTR., SALT IN THE WOUND: HOW EVICTION RECORDS AND BACK RENT HAUNT TENANT SCREENING REPORTS AND CREDIT SCORES 1 (2020), [https://www.nclc.org/images/pdf/special\\_projects/covid-19/IB\\_Salt\\_in\\_the\\_Wound.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/IB_Salt_in_the_Wound.pdf) (explaining that “landlords often automatically reject tenants with an eviction record, regardless of context”).

using simpler forms) to the legally substantive (for example, legal redefinition of grounds to evict).<sup>13</sup> Several jurisdictions have sought to empower tenants through mandatory eviction mediation and/or the provision of legal representation to tenants facing eviction.<sup>14</sup> These reforms vary as to how early in the conflict between landlords and tenants they call for some kind of intervention, with the Philadelphia approach being distinctive in its timing of the intervention even before the landlord is allowed to file an action to evict.<sup>15</sup>

Finally, part IV of the article considers the practical and political difficulties advocates and policymakers may have in seeking to establish and scale the Philadelphia approach elsewhere, and explores how empirical academic research might assist in making that approach more politically feasible and effective. Such research might help counter opposition to this approach in jurisdictions where there is resistance to what are perceived as “handout” programs to low-income households.<sup>16</sup>

## I. THE PROBLEM WITH THE SILO APPROACH TO HOUSING INSECURITY

It seems intuitive that households under financial stress will consider all the basic financial demands on them to be interrelated. After all, money is fungible (especially where, as often is the case, use-specified government benefits do not cover or fully cover an individual or family’s needs). If a family does not have enough money in total to cover its monthly rent, food, heating, and health care needs, then it faces potential insecurity in all these domains of life. If this is true, housing insecurity and homelessness should not be regarded as problems in distinct legal and regulatory silos. Because the problem of housing insecurity is enmeshed with food insecurity, as well as other problems, and does not occupy a walled-off domain in people’s lives, housing reforms should be holistic and avoid a silo approach.<sup>17</sup>

In a landmark 2014 study, based on a survey of over 60,000 individuals who have accessed food banks or similar food assistance services, Feed America confirmed that for households under financial stress, paying for housing, food, medical care, and other

---

<sup>13</sup> See Erika Rickard & Natasha Khwaja, *State Policymakers Are Working to Change How Courts Handle Eviction Cases*, PEW CHARITABLE TRS. (Aug. 26, 2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases> (surveying recent reforms).

<sup>14</sup> See *id.* (referencing Maine’s passage of an eviction mediation law and Connecticut, Maryland, New Jersey, and Washington’s passage of laws providing for counsel for tenants facing eviction).

<sup>15</sup> See Brittany Valentine, *Eviction Without Mediation? Not in Philly, as Municipal Court Backs Diversion Program*, AL DIA (Apr. 2, 2021), <https://aldianews.com/articles/politics/eviction-without-mediation-not-philly-municipal-court-backs-diversion-program> (noting that “Philadelphia stands out because it’s the only city so far that requires landlords to apply for assistance on behalf of their tenants before they are able to file an eviction”).

<sup>16</sup> For example, one survey found that 40% of Americans believe that those who receive government aid do not deserve it. Kristina Cooke et al., *The Undeserving Poor*, REUTERS (Dec. 20, 2012), <https://www.reuters.com/subjects/income-inequality/indiana>.

<sup>17</sup> See Che Young Lee et al., *Bidirectional Relationship Between Food Insecurity and Housing Instability*, 121 J. ACAD. NUTRITION & DIETETICS 84, 89-90 (2021) (arguing that the bidirectionality of housing and food insecurity suggests that programs should be consolidated to allow for a holistic approach).

essentials are not regarded as distinct issues but rather part of the larger problem of inadequate financial resources. The study reported that:

Client households report making spending tradeoffs between paying for food and paying for other necessities, such as medical care, housing, and utilities. Sixty-six percent of households report choosing between paying for food and medicine or medical care each year, and 31 percent do so every month. Fifty-seven percent of households choose between paying for food and housing annually, with 27 percent doing so on a monthly basis.<sup>18</sup>

A more recent study sought to explore the causal connections between housing insecurity and food insecurity.<sup>19</sup> In the study, the authors recruited primarily unmarried mothers who gave birth in seventy-five different hospitals in twenty cities across the United States. Participants were surveyed when their child was three years old (2001-2003) and again at five years old (2003-2005). Participants who experienced housing insecurity but not food insecurity in the first time period often experienced housing insecurity in the second, and participants who experienced food insecurity but not housing insecurity in the first time period often experienced housing insecurity in the second time period:

Families who experienced food insecurity at time 1 were 62% higher odds of experiencing housing instability at time 2 (odds ratio: 1.624, B = 0.485, 95% confidence interval: 0.199, 0.778), controlling for time 1 housing instability, concurrent food insecurity, and covariates. Families who experienced housing instability at time 1 were 40% increased odds of experiencing food insecurity at time 2 (odds ratio: 1.404, B = 0.339, 95% confidence interval: 0.071, 0.619), controlling for food insecurity at time 1, concurrent housing instability, and covariates.<sup>20</sup>

The researchers concluded that “the relationship between food insecurity and housing instability among families with young children is bidirectional,”<sup>21</sup> and offered this possible (and very plausible) explanation for this bidirectional causality: “The financial constraints and depletion of household resources associated with both food insecurity and housing instability may explain why families who experience food insecurity are at increased risk of experiencing housing instability (or vice versa).”<sup>22</sup> This explanation is further supported by an earlier study (2018), which found that, in vulnerable families, material hardship explained about half of the causal connection between food security and

---

<sup>18</sup> NANCY S. WEINFELD ET AL., HUNGER IN AMERICA 2014: NATIONAL REPORT PREPARED FOR FEEDING AMERICA 131 (2014), <https://www.feedingamerica.org/sites/default/files/2020-02/hunger-in-america-2014-full-report.pdf>.

<sup>19</sup> Lee et al., *supra* note 17, at 84. As far as I can discern, Lee et al. is the first study published in a peer-reviewed academic journal to explore the relationship between food and housing insecurity.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 89.

<sup>22</sup> *Id.*

housing security, with maternal depression and levels of social support accounting for the other relevant factors.<sup>23</sup>

Lee et al.'s policy recommendation was that food security and housing security should not be treated as distinct problems in separate silos: "Currently, programs designed to reduce food insecurity and housing instability function in isolation. Consolidating antipoverty programs or increasing referrals to various programs may help to reduce these 2 types of economic hardships."<sup>24</sup> While the available research to date only considers the link between housing insecurity and food insecurity, it seems reasonable to believe that bidirectionality would characterize a range of household insecurities.<sup>25</sup>

## II. HOUSING INSECURITY IN THE UNITED STATES

This part explores the dimensions and causes of housing insecurity in the United States, with particular attention to the role of eviction. The part then addresses why eviction is particularly problematic for children.

### A. Causes Of Housing Insecurity

Housing insecurity, – a term that encompasses “affordability, safety, quality, insecurity, and loss of housing”,<sup>26</sup> – is a problem throughout the United States. “[A]chieving and maintaining housing stability becomes challenging for many low-income households in the United States, where approximately one in every four renters is severely cost burdened, spending more than half of their household income on housing costs.”<sup>27</sup> Homelessness – a consequence of housing insecurity – is at crisis levels in some parts of the country: “There are an estimated 553,742 people in the United States experiencing homelessness on a given night . . . . This represents a rate of approximately 17 people experiencing homelessness per every 10,000 people in the general population.”<sup>28</sup>

The lack of affordable housing for low-income Americans is at the heart of housing insecurity in the United States. For low-income Americans, the housing affordability crisis

<sup>23</sup> Christian King, *Food Insecurity and Housing Instability in Vulnerable Families*, 71 REV. ECON. HOUSEHOLD 1, 1 (2016) (exploring the causes of the bidirectionality between food and housing insecurity).

<sup>24</sup> Lee et al., *supra* note 17, at 84.

<sup>25</sup> See e.g., Katie Moran-McCabe & Scott Burris, *Eviction and the Necessary Conditions for Health*, 385 NEW ENG. J. MED. 1443, 1443 (2021) (“Eviction has direct effects on health, including increased hospitalization rates among children and increased depression and anxiety among adults.”).

<sup>26</sup> Shawn Bucholtz, *Measuring Housing Insecurity in the American Housing Survey*, PD&R EDGE (Nov. 19, 2018), <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-111918.html> (discussing various possible components of “housing insecurity”).

<sup>27</sup> Seungbeom Kang, *Severe and Persistent Housing Instability: Examining Low-Income Households' Residential Mobility Trajectories in the United States*, HOUS. STUD. (2021).

<sup>28</sup> See *The State of Homelessness in America*, NAT'L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report-legacy/> (last visited Apr. 23, 2022) (using 2017 estimates of the homeless population).

has two dimensions. First, housing has become much more expensive relative to income levels, as the Princeton sociologist Matthew Desmond explained to Congress:

First, incomes for many American families have been stagnant over the last several decades, with those lacking a college education among the hardest hit. American productivity has more than doubled since 1980. Yet during this time the bottom 90 percent of workers saw annual earnings gains of only 15 percent. Nearly a third of the American workforce—41.7 million laborers—earn less than \$12 an hour, according to a 2016 study. . . . the second main cause of the crisis [is] the alarming rise in housing costs. Over the last several years, as many American families watched their incomes flatline or even fall in real terms, their rents and utility costs were rising. Nationwide, median asking rent *more than doubled* over the last two decades, rising from \$483 in 2000 to \$1,002 in 2019. All regions of the country have experienced a surge in rents. Since 2000, median asking rent has increased by 72 percent in the Midwest, 108 percent in the South, 119 percent in the Northeast, and 146 percent in the West. Rents have risen much faster than wages.<sup>29</sup>

Second, just as housing for low-income households has become more and more unaffordable, the federal government has withdrawn support for low-income housing. The federal government long ago turned away from a commitment to build, maintain, and operate public housing.<sup>30</sup> Vouchers have not met the needs of low-income households: “Only one in six eligible families (16.8%) receive housing assistance from the U.S. Department of Housing and Urban Development.”<sup>31</sup> When individuals do seek out vouchers, they find that they often are not available: supply has not been increased to meet demand. The waiting lists for housing assistance are very long:

Due to limited program funding, families struggling to afford housing that manage to get off the waiting list for a Housing Choice Voucher must typically wait for years before receiving a voucher . . . . Among the 50 largest housing agencies, only two have average wait times of under a year for families that have made it off of the waiting list; the longest have average wait times of up to *eight* years. On average nationally, families that received vouchers had spent close to

---

<sup>29</sup> See *On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America is Leaving Families Vulnerable: Hearing Before the H. Comm. on Fin. Servs.*, 116<sup>th</sup> Cong. 80-82 (2020) [hereinafter *Hearing*] (statement of Matthew Desmond, Maurice P. During Professor of Sociology and Principal Investigator, Eviction Lab, Princeton).

<sup>30</sup> See, e.g., Nena Perry-Brown, *How Public Housing Was Destined to Fail*, GREATER GREATER WASH. (June 23, 2020), <https://ggwash.org/view/78164/how-public-housing-was-destined-to-fail> (describing federal disinvestment in federal housing, beginning in the 1930s).

<sup>31</sup> See *Hearing*, *supra* note 29 (citing “U.S. Census Bureau, American Housing Survey, 2017, HUD-Assisted Status”).

two and a half years on waitlists first, exposing many to homelessness, overcrowding, eviction, and other hardship while they wait.<sup>32</sup>

However, as Desmond illustrated in *Evicted*, the lack of affordable housing by itself is not the only reason for housing insecurity.<sup>33</sup> Some landlords routinely evict their tenants, giving them no real opportunity to make the tenancy work and taking advantage of their fear of an eviction on their record (which can make it next to impossible for an individual or household to lease a decent apartment).<sup>34</sup> The result is a cycle of repeat evictions, with high social costs for individuals, families, and the community.<sup>35</sup>

The frequency of evictions of low-income tenants may be due in large part to what researchers have described as “exploitative” landlords,<sup>36</sup> but also to landlords who resort to eviction readily because under current institutional arrangements, they view it as the easiest way to deal with a tenant who is unable to pay rent. This may especially be true of larger landlords who operate on a highly impersonal model and who may decide it is simply not worth the effort of determining whether the particular tenant has a good reason not to have paid and/or will be able to pay in time.<sup>37</sup> In other words, for a range of landlords, the ease of evicting may make it rational for them to go ahead with automatic

---

<sup>32</sup> See SONYA ACOSTA & ERIK GARTLAND, FAMILIES WAIT YEARS FOR HOUSING VOUCHERS DUE TO INADEQUATE FUNDING, CTR. ON BUDGET & POL'Y PRIORITIES (2021), <https://www.cbpp.org/research/housing/families-wait-years-for-housing-vouchers-due-to-inadequate-funding>.

<sup>33</sup> MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 305-06 (Crown Publ'g Group ed., 1st ed. 2016) (addressing landlord exploitation of vulnerable tenants as a cause of housing insecurity).

<sup>34</sup> See Ashley Balcerzak, *Should NJ Eviction Records Be Kept Private If a Tenant Wasn't Evicted? Housing Experts Say Yes*, VOLUNTEER LAWS. FOR JUST. (Dec. 2, 2020), <https://www.vljinj.org/news/2020/12/2/should-nj-eviction-records-be-kept-private-if-a-tenant-wasnt-evicted-housing-experts-say-yes> (“Many tenant screening agencies buy court records in bulk that include any sort of landlord-tenant dispute, and landlords who use these services often reject any applicant on the list. The reports often don't provide any background or context, such as whether a tenant was successful in the case, or whether the complaint was filed by accident . . .”).

<sup>35</sup> See David A. Dana, *An Invisible Crisis in Plain Sight: The Emergence of the "Eviction Economy," Its Causes, and the Possibilities for Reform in Legal Regulation and Education*, 115 MICH. L. REV. 935, 936-37 (2017)

(“These [low-income] tenants face a private rental market in which even low-quality housing rents can consume as much as 80 to 90 percent of their monthly income, and that is in months in which they do not face some unusual interruption in their flow of income . . . Landlords . . . know that they can often compel tenants in arrears to leave the premises simply by threatening to bring a formal eviction for nonpayment of rent. Landlords build informal and formal eviction into their business model, into the rents they charge, and into the way they maintain (or do not maintain) their properties. In the Eviction Economy, informal and formal eviction is not unusual; it is not the result of some extraordinary happening. Eviction is entirely the norm.”).

<sup>36</sup> See Matthew Desmond & Nathan Wilmers, *Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets*, 124 AM. J. SOCIO. 1090, 1090 (2019) (arguing that some landlords charge exploitative rents).

<sup>37</sup> See Kriston Capps, *Where Will the Eviction Wave Hit? Follow the Big Landlords*, BLOOMBERG (Aug. 28, 2021), <https://www.bloomberg.com/news/articles/2021-08-28/the-biggest-landlords-are-driving-pandemic-evictions> (explaining that large corporate landlords account for a disproportionate share of evictions).



eviction. If it were more difficult for landlords to evict and not as disastrous for a tenant to have an eviction complaint on their record, then there might be fewer evictions and less housing insecurity. Of course, reducing evictions will not solve the lack of affordable housing, which is the main, if not sole, driver of housing insecurity. As discussed below, the political discourse in some states is now focused on the idea that a new approach to the conflict between landlords and tenants in arrears could reduce housing insecurity, including homelessness.

### ***B. The Vulnerability of Children in Low-Income Households***

The goal of decreasing evictions is important for all low-income people but it is especially so for children who are part of low-income households. There are two main reasons for this, which are discussed below. First, all else being equal, households with children are at higher risk of eviction than childless households. Eviction is a common experience for children with a low-income parent or guardian. Second, while the empirical evidence is somewhat limited, it does appear that eviction can be an especially harmful experience for children. For children's rights and welfare advocates, grappling with eviction therefore should be a priority.

#### ***i. Low-Income Children Often Experience Eviction***

Commentators have suggested that low-income mothers are especially susceptible to being evicted. Consider, for example, this recent discussion in *The New Republic*:

Having children is the single greatest predictor of whether someone will face eviction. It can be difficult to make rent and support a family, especially for women of color, who on average are paid less than white women, and single mothers living on one paycheck. Landlords—eager for an excuse to rid themselves of tenants whose children might cause noise complaints or property damage, or for whom lead hazards have to be abated or child services called—are often all too happy to begin eviction proceedings.<sup>38</sup>

Desmond, An, Winker and Ferriss attempt to quantify the risk of eviction faced by low-income families with children.<sup>39</sup> Through a study they conducted, the researchers found that (all else being equal) evictions were more common in neighborhoods with more children and that tenants with children were more likely to receive an eviction judgment in court than similarly-situated tenants without children:

---

<sup>38</sup> See Bryce Covert, *Why Landlords Target Mothers for Eviction*, *NEW REPUBLIC* (Mar. 16, 2021), <https://newrepublic.com/article/161578/landlords-target-mothers-eviction-crisis-covid>.

<sup>39</sup> Matthew Desmond et al., *Evicting Children*, 92 *SOC. FORCES* 303 (2013).

Drawing on two unique data sources, this study advances a pair of complementary findings. First, we analyze court-ordered eviction records to demonstrate that neighborhoods with larger percentages of children experience higher evictions. All else equal, a 1 percent increase in the percentage of children is predicted to increase a neighborhood's evictions by 6.5 percent. We then turn to a survey of tenants in eviction court, finding that the presence of children in a household significantly increases the odds of receiving an eviction judgment. On average, the probability of a household with children to receive an eviction judgment is about .17 higher than that of a household without children. The effect of children on the likelihood of receiving an eviction judgment remains after controlling for the amount of rent tenants owed, race and single-mother households as well as after accounting for selection bias with respect to the likelihood of having children.<sup>40</sup>

The researchers did not try to test why landlords target tenants with children for eviction or why tenants with children do less well than tenants without children in housing court. But the researchers did suggest that the higher incidence of eviction and eviction judgments with respect to tenants with children is part of a larger societal phenomenon of discrimination against, and penalization of, low-income mothers:

Low-income single mothers confront certain obstacles and hardships with respect to employment, housing, policy, and intimate life, not only because they belong to one of the poorest demographics in the United States but also because they are mothers. This is why research that investigates the existence of “motherhood penalties”—with respect to wages, hiring, housing choice, and residential stability—faced by low-income single mothers could do much to deepen our understanding of the feminization of poverty.<sup>41</sup>

Others in the field, Lundberg and Donnelly, have used the Fragile Families and Child Wellbeing Study (hereinafter “the Fragile Families Study”), a population-based birth cohort study of 4,898 children born in twenty large U.S. cities between 1998 and 2000, to try to estimate the incidence of eviction for children from birth to adolescence.<sup>42</sup> Using a sample weighted to low-income households, the researchers concluded that the experience of eviction was very common among children in low-income households: one in seven children born in large American cities in 1998–2000 experienced at least one eviction for nonpayment of rent or mortgage between birth and age fifteen.<sup>43</sup> “Children

---

<sup>40</sup> *Id.* at 304.

<sup>41</sup> *Id.* at 321.

<sup>42</sup> Ian Lundberg & Louis Donnelly, *A Research Note on the Prevalence of Housing Eviction Among Children Born in U.S. Cities*, 56 *DEMOGRAPHY* 391, 394 (2019).

<sup>43</sup> *Id.* at 391.

from disadvantaged backgrounds were most likely to experience eviction: Among those born into deep poverty, we estimate that about one in four were evicted by age 15.”<sup>44</sup>

## *ii. The Effects of Evictions on Children*

Eviction has negative consequences for adults and children alike: “[p]eople who are threatened with eviction, even before they lose their home, are more likely to report poor health, high blood pressure, depression, anxiety, and psychological distress.”<sup>45</sup> Adults and children often struggle to find stable housing after an eviction; indeed, “[e]viction often leads to residential instability, moving into poor quality housing, overcrowding, and homelessness, all of which is associated with negative health among adults and children.”<sup>46</sup>

One of the ways that eviction can impact children is by disrupting their education, which, in the United States, is often based on the location of the parental residence. As a result of eviction, children can “be forced to change schools altogether.”<sup>47</sup> “Children who change schools once or more during a school year are four times more likely to be chronically absent.”<sup>48</sup> Children who are chronically absent are more likely to need to repeat grades and to drop out altogether.<sup>49</sup>

But the harms of eviction go far beyond a child’s educational disruption.<sup>50</sup> As the American Academy of Pediatrics and other organizations recently explained to the United States Supreme Court:

Eviction is particularly traumatizing to children and affects emotional and physical well-being and development for years, if not a lifetime. Eviction increases the likelihood of emotional trauma, lead poisoning, food insecurity, and academic decline for children. Eviction is also strongly associated with adverse childhood experiences, which have long-term negative health impacts, including increased risk of cardiovascular disease and pulmonary disease in adulthood and decreased life expectancy. . . . The evidence is clear: Child health and housing security are closely intertwined.<sup>51</sup>

<sup>44</sup> *Id.*

<sup>45</sup> Allison Bovell-Amman, *The Hidden Health Crisis of Eviction*, B.U. SCH. PUB. HEALTH (Oct. 5, 2018), <https://www.bu.edu/sph/news/articles/2018/the-hidden-health-crisis-of-eviction/>.

<sup>46</sup> *Id.*

<sup>47</sup> See Jonathan Todres & Lauren Meeler, *Confronting Housing Insecurity – A Key to Getting Kids Back to School*, 175 JAMA PEDIATRICS 889, 889 (2021).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> See Brit McCandless Farmer, *A Wave of Evictions is on the Horizon. What Impact Could They Have on Kids’ Education?*, CBS NEWS (Nov. 22, 2020), <https://www.cbsnews.com/news/eviction-moratorium-covid-19-schools-60-minutes-2020-11-22/> (discussing the lasting effects of eviction on children).

<sup>51</sup> Brief for American Academy of Pediatrics et al. as Amici Curiae Supporting Defendants-Appellants, *Alabama Ass’n of Realtors v. U.S. Dep’t of Health and Hum. Servs.*, 141 S. Ct. 2485 (2021) (No. 21-5093).

Desmond and Kimbro's 2015 study suggests that by materially and emotionally harming mothers of young children, eviction can substantially interfere with childhood development.<sup>52</sup> Desmond and Kimbro examined interviews of 2,676 mothers and children who were renting when their child was born and followed them until the children reached age five.<sup>53</sup> Based on their analysis, the authors concluded that "eviction results in multiple and multidimensional negative consequences for mothers."<sup>54</sup> One year or less after eviction, "[m]others who were evicted [report] higher levels of material hardship and parenting stress and were more likely to suffer from depression and to report their health and that of their children as being poor."<sup>55</sup> Desmond and Kimbro reasoned that since the evictions during very early infancy "occurred at a crucial developmental phase in children's lives, we expect them to have a durable impact on children's well-being."<sup>56</sup>

According to Desmond and Kimbro, the negative effects of eviction on mothers (and by extension, their children) do not quickly fade, but rather can last at least two years after eviction.<sup>57</sup> Desmond and Kimbro elaborate:

If evicted mothers experience higher rates of depression several years after their forced removal, as our findings indicate, that suggests that eviction has lasting effects on mothers' happiness and quality of life. This in turn could affect their relationships with their romantic partners and children, kin and neighbors; could cause them to withdraw from social institutions, dampening their civic engagement and level of community embeddedness; and could sap their energy, preventing them from seeking or keeping gainful employment or participating fully in their children's development.<sup>58</sup>

While the full extent of evictions' negative effects on children continues to be studied by empiricists, the evidence already accumulated strongly supports the view that childhood eviction can substantially interfere with childhood development. Eviction is thus properly understood as a child welfare crisis.

### III. EVICTION REFORMS AND THE EARLY INTERVENTION MODEL

Several factors have contributed to recent state and local legislative and pilot-project efforts to reduce evictions. For one thing, recent ethnographic work on eviction has garnered national press attention.<sup>59</sup> Second, homelessness, which is a form of housing

<sup>52</sup> See Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295 (2015).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 22.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 23

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See, e.g., Jennifer Senior, *Review: In 'Evicted' Home is an Elusive Goal for America's Poor*, N.Y. TIMES (Feb. 21, 2016) (reviewing MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016)), <https://www.nytimes.com/2016/02/22/books/evicted-book-review-matthew-desmond.html>.

insecurity that can be very visible to those who are entirely housing secure, has become a focal point of debate in a number of major American cities.<sup>60</sup> Finally, the COVID-19 pandemic highlighted the vulnerability of millions to eviction in periods of economic disruption.<sup>61</sup>

One way to conceptualize the recent reform efforts is through categorization.<sup>62</sup> A Pew study divides recent legislation into various categories, including: Alternative Dispute Resolutions (as in required or facilitated mediation), court data and technology (as in simplifying court forms and making them more accessible to tenants), court process reforms, including substantive changes in grounds and requirements for evictions (such as adding more defenses to eviction and limiting grounds for lawful eviction),<sup>63</sup> and right to counsel (providing tenants lawyers at eviction hearings).<sup>64</sup> A wide range of legislative reforms have been proposed, and some have been enacted.<sup>65</sup>

Another way to characterize the reform efforts is to divide them up based upon the point at which the reform intervenes in the conflict between landlord and tenant. Possible points of legal intervention range from pre-filing-for-eviction failure to pay rent, to the filing of the eviction notice, to the service of the notice of eviction, to the eviction hearing, to the entry of judgment, along with disposition of the eviction record.<sup>66</sup>

One of the most successful reforms addresses whether the eviction complaint will become part of the public record. Because filed eviction complaints are so readily searchable by landlords and used by them to deny apartments, low-income tenants rightly fear any eviction filing on their record and thus are subject to intimidation from landlords

<sup>60</sup> See, e.g., Michael R. Blood, *Homeless Crisis Spurs Recall Effort Against Los Angeles Mayor Eric Garcetti*, PRESS DEMOCRAT (June 20, 2019), <https://www.pressdemocrat.com/article/news/homeless-crisis-spurs-recall-effort-against-los-angeles-mayor-eric-garcetti/> (explaining how the homelessness crisis in Los Angeles led to an effort to recall the mayor).

<sup>61</sup> See The Daily, *Evicted During the Pandemic*, N.Y. TIMES (Dec. 18, 2020), <https://www.nytimes.com/2020/12/18/podcasts/the-daily/pandemic-evictions-federal-assistance.html>.

<sup>62</sup> See Rickard & Khwaja, *supra* note 13.

<sup>63</sup> *Id.* (“This has been the most popular and wide-ranging category of recent eviction-related policy changes. Key reforms focus on ensuring a level playing field between landlords and tenants: Arkansas updated its landlord-tenant law to include habitability standards that rental units must meet; Washington limited the reasons that landlords can use to evict a tenant; and Montana, Virginia, and New Hampshire specified damages that landlords may be entitled to. On the procedural side, Maryland outlined the information that must be provided to tenants in eviction cases and how they must be served notice. New York, meanwhile, established that judges must review all housing court agreements in which people represent themselves to ensure that all parties understand the terms and their rights.”).

<sup>64</sup> The legislatively provided right to counsel legislation, however, is subject to legislative appropriations. See e.g., WASH. REV. CODE § 59.18.640 (2021) (“Subject to the availability of amounts appropriated for this specific purpose, the court must appoint an attorney for an indigent tenant in an unlawful detainer proceeding under this chapter and chapters 59.12 and 59.20 RCW. The office of civil legal aid is responsible for implementation of this subsection as provided in section 9 of this act, and the state shall pay the costs of legal services provided by an attorney appointed pursuant to this subsection.”).

<sup>65</sup> See Rickard & Khwaja, *supra* note 13 (reporting that in the first half of 2021, 100 bills were introduced in state legislatures, of which thirty-eight have been enacted).

<sup>66</sup> See DEANNA PANTIN PARRISH, DESIGNING FOR HOUSING STABILITY: BEST PRACTICES FOR COURT-BASED AND COURT-ADJACENT EVICTION PREVENTION AND/OR DIVERSION PROGRAMS 36 (2021), <https://hnmcp.law.harvard.edu/wp-content/uploads/2021/06/Deasigning-for-Housing-Stability.pdf>.

who simply threaten to file for eviction.<sup>67</sup> The reform statutes at the state level have temporarily during COVID or permanently allowed or required courts not to include eviction filings on the public record where the eviction complaint was dismissed.<sup>68</sup> These statutes represent a useful reform, but, again, they generally only apply to eviction complaint dismissals, and the overwhelming majority of tenants threatened with eviction may find that the complaint will be dismissed even if they do have a meritorious defense.

Another much-discussed reform is the mandatory provision of lawyers to low-income tenants at eviction hearings. Traditionally, an overwhelming percentage of tenants in evictions proceedings are unrepresented; landlord's lawyers in effect call the shots in housing courts and the halls outside the courtrooms are where most business is transacted.<sup>69</sup> There is some evidence that legal representation during eviction proceedings does assist tenants, but also evidence that the extent of that assistance, in practical terms, may be quite limited.<sup>70</sup>

But the biggest problem with legal representation at hearings and record sealing reforms is that they come too late. These reforms come into play only *after* an eviction filing, *after* rent arrears have continued to accumulate, *after* the tenants may have begun to consider where to go and the household may already have been disrupted, and *after* the landlord may have begun to seek to find a new tenant. These reforms are ultimately not well-suited to keep tenants who are in arrears and have no immediate means of paying them off from being displaced from their homes.

Across the country, several jurisdictions have engaged in efforts to divert the eviction process to mediation.<sup>71</sup> The Philadelphia approach is notable – and especially promising – in several respects. First, the Philadelphia diversion approach is not a voluntary pilot project, but (unlike other eviction diversion programs) is mandatory for all landlords and is enshrined in local law and State Supreme Court order.<sup>72</sup> Second, in the Philadelphia approach, the required mediation must take place even before an eviction complaint can be

---

<sup>67</sup> DESMOND, *supra* note 33, at 306.

<sup>68</sup> A recently enacted Illinois bill seals all eviction records from during the pandemic, allows for sealing of records of eviction complaint dismissals prior to March 2020, and restricts the ability of companies from selling eviction filing information to landlords. *See Statewide Bill Seals COVID-Related Evictions*, LAWS. COMM. FOR BETTER HOUS. (June 23, 2021), <https://www.lcbh.org/news/statewide-bill-seals-covid-related-evictions> (describing the law's provisions). However, the bill's provisions sunset in July 2022, after which it is unclear what protections tenants will enjoy. *Id.*

<sup>69</sup> *See* Elizabeth Weill-Greenberg, *Most Tenants Facing Eviction Don't Have a Right to an Attorney. Lawmakers Want to Change That*, APPEAL (Feb. 18, 2021), <https://theappeal.org/most-tenants-facing-eviction-dont-have-a-right-to-an-attorney-lawmakers-want-to-change-that/> (quoting an advocate as explaining that “[i]t’s not just that tenants don’t have counsel, it’s that the landlords always have counsel in these cases . . . . The courts essentially are really just there for the landlords. They’re like rent collection devices for the landlords.”).

<sup>70</sup> *See, e.g.,* Nicole Summers, *The Limits of Good Law: An Analysis of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 146-48, 168 (2020) (reviewing the argument that providing low-income tenants with counsel would vindicate tenants’ rights but finding, in the Bronx, that represented tenants only fared somewhat better than unrepresented ones).

<sup>71</sup> *See* PARRISH, *supra* note 66, at 31.

<sup>72</sup> *See* Valentine, *supra* note 15 (explaining that only Philadelphia has required landlords to apply for assistance on behalf of their tenants before they are able to file an eviction).

filed, so tenants do not have a filing (in effect) hanging over their heads.<sup>73</sup> Third, this approach entails the availability of rental assistance which the government can make available to the landlord as part of mediation, providing a powerful incentive for landlords to make a good faith effort to reach a resolution.<sup>74</sup> Indeed, a Harvard survey found that rental assistance motivates landlords to want to participate in landlord-tenant mediation.<sup>75</sup> Although there are no academic long-term studies yet, the available evidence suggests that the Philadelphia approach has reduced the local eviction rate.<sup>76</sup> Notably, the Biden Administration has hailed the Philadelphia approach as a model for the nation as a whole:

Over the longer term, jurisdictions could consider building more robust eviction diversion programs. As HUD has stated, recent studies have shown that “eviction diversion programs succeed when they provide comprehensive, supportive services to tenants and are designed to avoid evictions.” Such comprehensive programs could include a combination of rental assistance, mediation, social services, and legal assistance . . . . Eviction diversion strategies like these encourage landlords and tenants to resolve disputes without formal adjudication and increase the chance that tenants can stay in their homes. A 2017 study of a diversion program in Michigan found that the program resulted in a 12% decrease in the rate of evictions. Diversion also removes added stress on court dockets already facing challenges caused by the pandemic. Early indications from Philadelphia showed that its program had helped

<sup>73</sup> See *id.* The ABA/Harvard study found this pre-filing diversion approach superior to post-filing diversion, although the latter also may have advantages over no diversion program. See PARRISH, *supra* note 66, at 35 (“Upstream interventions, especially those that occur pre-filing, most efficiently divert cases away from court and connect parties to resources.”).

<sup>74</sup> See Valentine, *supra* note 15 (“The [court-ordered program] requires landlords to use the city’s rent assistance program, which has already distributed over \$60 million in rent payments, and just reopened applications after receiving federal relief of nearly \$100 million. The rent assistance program has paid the rent of over 14,000 households and is expected to reach beyond that number in its latest round, which can also be used to pay for utilities.”); U.S. Rep. Mary Gay Scanlon, *Philadelphia’s Eviction Diversion Program is a National Model – Let it Continue*, BILLY PENN (Oct. 26, 2021), <https://billypenn.com/2021/10/26/philadelphia-eviction-diversion-program-rental-assistance-pa-supreme-court-scanlon/> (explaining that the rental assistance funding has been continued, but is at risk of being eliminated).

<sup>75</sup> See PARRISH, *supra* note 66, at 27 (explaining that without available rental assistance, tenants have little leverage in negotiations with landlords and that “[o]f most statistical significance is the presence of cash or rental assistance in encouraging landlord participation in prevention strategies, with over 81% of property owners surveyed saying they would be less likely to pursue eviction if their tenant had access to cash or rental assistance.”).

<sup>76</sup> See Mancini, *supra* note 5 (“The program has a 93% success rate . . . .”); Valentine, *supra* note 15 (“[B]efore the pandemic hit Philadelphia, the city had the fourth-highest rate of evictions in the U.S., evicting about 20,000 households each year . . . . Philadelphia has been able to reduce eviction filings to only 4,700 over the past year, and successfully averted nearly all lockouts.”); Michaëlle Bond, *Philly’s Program That Prevents Evictions Will Continue Through 2022*, PHILA. INQUIRER (Dec. 16, 2021), <https://www.inquirer.com/real-estate/housing/rental-assistance-philadelphia-eviction-diversion-20211216.html> (noting that in more than 90% of the cases, mediation has resolved the dispute between landlord and tenant).

reduce caseloads as significant numbers of litigants have chosen to resolve their disputes through mediation.<sup>77</sup>

As the Biden Administration letter suggests, pre-filing mediation with rental assistance could also include social services counseling generally; it is not clear from available surveys of programs, however, that the Philadelphia and other programs have included such services. As Part I suggested, it may well be that comprehensive social services offered in conjunction with mediation and rental assistance would be necessary for the long-term achievement of the goal of housing security for low-income households. As noted, families fall into rental arrears in part because they cannot fund their other needs – health care, food, utilities, transportation.<sup>78</sup> Without access to some other government benefits, counseling on how to manage financial resources better, aid in gaining employment, and/or help handling a range of stresses and problems that may be entwined with financial problems, the households who receive rental assistance in pre-filing mediation may just find themselves in arrears in some months' time. Pre-filing landlord-tenant mediation provides an excellent opportunity for jurisdictions to set aside the silo approach to low-income household needs and instead offer holistic counseling, services, and support.

#### IV. AN AGENDA FOR SOCIAL SCIENCE RESEARCH

The Philadelphia approach, especially if it were coupled with holistic provision of professional counseling and facilitated access to other services – will need political support from more than just tenant groups and anti-poverty advocates in order to succeed. For one thing, after the pandemic, there is bound to be opposition from some landlord/realty interests who will object to being forced into pre-filing mediation in all cases. Moreover, these programs require funding -- potentially quite a lot of it (although how much is one of the many empirical questions that needs to be answered). And the competition for funding at the state and local level will be intense, especially once federal COVID aid ends, as it will at some point.<sup>79</sup> Finally, the political climate in some states may be unfriendly to any program aimed at low-income households that can be characterized or mischaracterized as not paying their own way, as can be seen in some states' refusal to expand Medicaid even though doing so entailed turning down additional federal funding.<sup>80</sup>

Academics can contribute to the political debate over programs like the Philadelphia program by generating high-quality empirical research. If these programs continue in enough jurisdictions for enough time, academics might be able to generate

---

<sup>77</sup> Letter from Vanita Gupta, *supra* note 6.

<sup>78</sup> See e.g., Karen Brooks Harper, *Medicaid Expansion for Uninsured Texans had Bipartisan Support, but Lawmakers Won't Pass it this Session*, TEX. TRIB. (May 7, 2021), <https://www.texastribune.org/2021/05/07/texas-medicaid-expansion-legislature/> (explaining opposition to expand Medicaid based on a desire not to create “government dependence”).



empirical research that would support the case for continued funding for these programs and that might also help inform how these programs could be structured to achieve the greatest social benefit per dollar investment. If the programs can be demonstrated to generate great social benefits – and especially with relatively modest investments – it will be more difficult for them to be defunded or not funded in the first place, although I recognize political funding decisions are influenced by a lot more than factual evidence.

One initial question in undertaking such research would be: what would be the measure of success for such programs? Possible measures include: the overall eviction rate in the relevant locality/housing market; the rate or incidence of temporary or long-term homelessness in the relevant locality/housing market; the length of time households who participate in such programs remain in their leased residence, or more broadly, the mean length of low-income household occupancy of a rented unit before moving; and the objective and subjectively-reported welfare (as reflected in income, household stability, satisfaction with housing conditions, food security, health care, educational attainment for children, and so on) of low-income tenants in jurisdictions with such programs as compared to comparable tenants in jurisdictions without them.

In conducting such research, academics will need to discern the difference between correlation and causation. For example, many factors can affect local eviction and homelessness rates, so researchers will need to design studies that control for these factors as much as possible in order to identify the contribution actually made by a pre-filing diversion program per se.

Researchers might also try to determine how much rental assistance is needed to make a difference in terms of a tenant being able to avoid an eviction (and for how long) after having gone through mediation in a diversion program, what other types of counseling and assistance as part of the diversion programs seem to be most important to tenants succeeding in staying in their homes after the mediation, and what kinds/categories of tenants benefit from the diversion programs most, holding the level of rental assistance constant.

To undertake such research, researchers will need to conduct interviews over time with participants in eviction diversion mediation, including landlords but especially tenants. This kind of qualitative, interview-focused, longitudinal research is time-consuming, expensive, and will require sensitivity to the experiences and desire for privacy of low-income individuals and families. But it is something that well-trained academic researchers will be more than equipped to undertake.

Of course, none of this research can happen unless the pre-filing and other eviction diversion programs like the one in Philadelphia continue and others are established and supported in various jurisdictions across the United States. In the meantime, researchers can glean what data they can and set the groundwork for more extensive empirical work.

## CONCLUSION

Housing insecurity is connected to a range of other socioeconomic strains faced by low-income individuals and families. Although the lack of housing affordability drives housing insecurity to a very large degree, our eviction system also contributes to it by making eviction too easy for landlords and by branding tenants with an eviction complaint on their records as perpetually undesirable tenants. Evictions harm adults and children alike, but low-income families with children are especially vulnerable to eviction and children can bear lifelong scars from eviction. As suggested by the apparent success of the Philadelphia program in avoiding eviction filings, pre-eviction-filing diversion programs, coupled with rental assistance, hold promise for aiding low-income tenants to live with less housing insecurity. These programs also could provide an excellent intervention point for holistic counseling and the provision of a range of services. Many empirical questions about eviction and pre-filing diversion programs remain unanswered, and academics could and should provide guidance and support for such programs by undertaking careful, long-term empirical research.