

NOTES

The Collateral Consequences of Substandard Public Housing on Tenant-Families

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Low-income tenants who live in public housing developments rely on the government’s assurances that their housing will, at the very least, meet the minimum quality standards for safety and cleanliness. It’s thus an unfortunate reality that NYCHA, the largest housing provider in New York City, has struggled to meet those assurances because of decades-old funding constraints and organizational inefficiencies. This Note contributes to the wealth of literature on how substandard public housing may negatively impact other areas of a tenant’s life by focusing on the collateral legal challenges. In particular, it explores the all too common predicament where a tenant-parent is investigated by the Administration for Children’s Services and hauled into court for an alleged failure to provide the children with adequate shelter. This Note argues that child protective investigators and family court judges do not adequately consider the tenant-parent’s financial ability to remedy the substandard conditions, which may lead to unjust outcomes. It then proposes that this harm can be mitigated by implementing processes whereby child protective investigators and family court judges can more accurately evaluate a tenant-parent’s culpability in failing to provide children with adequate shelter. In evaluating the ostensible shortcomings of these systems and proposing alternative processes, this Note seeks to alleviate the burden that public housing tenants may carry because of their limited financial resources.

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I. INTRODUCTION

The New York City Housing Authority (NYCHA) strives to provide its tenants with “decent, affordable housing.”¹ Without NYCHA subsidies, many low-income individuals and families could not afford the steep cost of rent. However, where building and apartment conditions have not been maintained, and deficiencies not repaired, significant substandard housing conditions may arise that place the welfare of the family in jeopardy. Such was the case for Sally and Sammy,² who live in the Bronx in a public housing apartment owned and operated by NYCHA. Sally is a single mother who works as a waitress and is studying to obtain her GED. She is thankful that she is able to receive a rent subsidy, because she only earns about \$20,000 a year as a waitress. Without the subsidy Sally fears that she would not be able to support her six-year-old son Sammy, who enrolled in kindergarten this fall and was just identified as a student with special learning needs. Recently, Sally received a home visit from a social services caseworker with the New York Administration for Children’s Services (ACS), who shared that someone left an anonymous tip that Sammy’s home was not clean and safe. Apparently Sammy told his teachers that “his best friends are the rats that live at home” and “he was sad that one was crushed by the refrigerator door.” Sally told ACS that she had filed two complaints with NYCHA over the past three months to fix the hole in the wall, which she believed to be the source of the rats, but that no one contacted her to investigate the unit. Sally shared that she is trying her best to keep the apartment clean and that she loves her son. Sally and Sammy temporarily relocated to a shelter, per ACS’s recommendation, but returned to their apartment two weeks later because Sally could not afford the transportation costs from the shelter to her

1. NYCHA, FACT SHEET 1 (2019), https://www1.nyc.gov/assets/nycha/downloads/pdf/NYCHA-Fact-Sheet_2019_08-01.pdf.

2. This anecdote is based on a child neglect proceeding litigated in the Bronx Family Court. Information that could identify the litigants has been changed to preserve confidentiality.

work and Sammy's school. One month later, ACS filed a neglect petition in the Bronx Family Court, alleging that Sally failed to provide Sammy with adequate shelter.

Surely NYCHA does not intend such a result, yet this is the reality for many low-income families. This Note contextualizes this issue by proceeding in three additional parts. Part II discusses the current landscape of affordable housing in New York City, particularly as it relates to NYCHA, and highlights how substandard public housing remains an ongoing concern for many low-income residents. It then briefly discusses who has duties to maintain and correct deficiencies in NYCHA's public housing units, as well as what those duties entail. Part III discusses how a tenant's alleged failure to maintain proper housing conditions may lead to adverse collateral legal consequences, particularly in the context of investigations by child protective services and charges of child neglect in family court. This Note argues, however, that child protective agencies and family court judges do not conduct sufficient factual inquiries into how a tenant-parent's substandard public housing impacts a child neglect investigation or charge, and as a result, may lead to unjust outcomes for the family involved. Lastly, Part IV explores proposals for how child protective agencies and family court attorneys can mitigate such harm by facilitating the use of tailored preventative services and alternative civil process mechanisms that more adequately evaluate a tenant-parent's culpability in failing to provide children with adequate shelter.

II. THE LANDSCAPE OF AFFORDABLE HOUSING IN NEW YORK

A. NYCHA's Substandard Public Housing

NYCHA is the largest landlord in New York City and the primary provider of affordable housing.³ It was once hailed as "among the country's highest-performing public housing authorities"⁴ for its "strong financial position, decent physical conditions, and high occupancy rate[s]."⁵ In fact, NYCHA was so efficient that it was generally barred from participating in federal affordable housing programs like HOPE VI that supplied public housing authorities with additional funding to demolish or repair "severely distressed" buildings.⁶

3. N.Y. PUB. HOUS. LAW § 401 (McKinney 2016); CITIZENS BUDGET COMM'N, STABILIZING THE FOUNDATION: TRANSFORMING NYCHA TO ADDRESS ITS CAPITAL NEEDS (2018), <https://bcnny.org/research/stabilizing-foundationx> [hereinafter CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA]; CITIZENS BUDGET COMM'N, STABILIZING THE FOUNDATION: TRANSFORMING NYCHA TO ADDRESS ITS CAPITAL NEEDS: EXECUTIVE SUMMARY 1-2 (2018), https://bcnny.org/sites/default/files/media/files/EXECUTIVESUMMARY_NYHAPNA_07022018.pdf [hereinafter CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA: EXECUTIVE SUMMARY]; NYCHA, *supra* note 1, at 1.

4. CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA, *supra* note, 3; Luis Ferré-Sadurní, *The Rise and Fall of New York Public Housing: An Oral History*, N.Y. TIMES (July 9, 2018), <https://www.nytimes.com/interactive/2018/06/25/nyregion/new-york-city-public-housing-history.html> (describing NYCHA's managerial and financial stability from its founding in 1934 through the 1970s).

5. CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA, *supra* note 3.

6. *Id.*; see generally Michael Diamond, *Affordable Housing: Of Inefficiency, Market Distortion, and Government Failure*, 53 U. RICH. L. REV. 979, 985 nn.24–25 (2019) (describing the impact of HOPE VI on the quality of public housing).

However, since the early 2000s, significant decreases in funding from the federal government, New York State, and New York City have contributed to NYCHA's decline.⁷ Federal funding preferences have shifted away from public housing toward other affordable housing programs such as Section 8 Housing Choice Vouchers and Low-Income Housing Tax Credits.⁸ The State contributed no funding between 2002 and 2014.⁹ In 2015, the State committed to providing NYCHA with \$550 million, but only a small fraction has been distributed.¹⁰ The City contributed \$232 million between 2002 and 2014, and \$354 million between 2015 and 2017, but this funding constituted only a minor percentage of the City's overall budget for affordable housing in the respective periods.¹¹ Over ninety-three percent of NYCHA buildings were constructed at least thirty years ago,¹² and adequate maintenance and repair has been limited due to these funding decreases.¹³ NYCHA's 2018 Physical Needs Assessment revealed that it requires \$32 billion to repair its substandard building conditions.¹⁴ The apartment units themselves require \$12.6 billion in repairs.¹⁵ The building exteriors, such as roofs and windows, require an additional \$10.9 billion.¹⁶ The last \$9.5 billion is needed to repair various mechanical systems, including heating plants and electric wiring.¹⁷ On average, each NYCHA unit will require \$181,000 in repairs.¹⁸

The severity of the problem is perhaps most aptly demonstrated by its adverse impact on the quality of life of its tenants. The deteriorating conditions of NYCHA's public housing have manifested in the forms of toxic lead paint, vermin infestations, asthma-inducing allergens such as mold, and the lack of heat or hot water. A 2016 survey of 230 NYCHA tenants revealed that over fifty-one percent felt that the physical conditions of the buildings were unsafe, and forty-eight percent felt their own apartments units were unsafe.¹⁹ A 2018 inspection of NYCHA units by the New York State Department of Public Health revealed that eighty-three percent contained a deficiency that could be

7. CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA, *supra* note 3; *see also* Justin R. La Mort, *Public Housing and Public Health: The Separate and Unequal Protection of Private and Public Housing Tenants' Health in New York City*, 27 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 385, 392 (2018).

8. CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA, *supra* note 3.

9. *Id.*

10. *Id.*

11. *Id.* (stating that New York City's total affordable housing budget was \$4.7 billion from 2002 to 2014 and \$2.3 billion from 2015 to 2017).

12. NYCHA, *supra* note 1, at 2.

13. *Next Generation NYCHA: Frequently Asked Questions*, NYCHA, <https://www1.nyc.gov/assets/nycha/downloads/pdf/nextgen-nycha-faq-en.pdf> (last visited Nov. 17, 2019) ("Chronic underfunding has hindered NYCHA's ability to do a good job. From 2001 through 2013, Congress underfunded NYCHA by nearly a billion dollars in operating funds and another billion dollars for repairs and maintenance over a billion dollars in capital funds and nearly a billion dollars in operating funds.")

14. CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA, *supra*, note 3.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. SENATOR JEFFREY D. KLEIN & COUNCILMAN RITCHIE TORRES, NYCHA 2020: REVITALIZING NEW YORK CITY'S CRUMBLING PUBLIC HOUSING 2 (2016), https://www.nysenate.gov/sites/default/files/idc_nycha_2020_full_report.pdf.

hazardous to tenants' health.²⁰ Governor Andrew Cuomo commented on these dilapidated conditions, stating that "the conditions of habitability at NYCHA-managed residential properties constitute a public nuisance affecting the security of life and health in the City of New York."²¹ The United States government filed a lawsuit against NYCHA on June 11, 2018, condemning its failure to meet its obligations to inspect housing units for violations of federal quality standards, as well as its failure to make truthful statements to regulators about the extent of its lack of compliance.²² The case was voluntarily dismissed without prejudice on March 15, 2019,²³ upon the entrance of a settlement agreement in which NYCHA agreed to remedy its deficient properties, reform its operations, and comply with federal health safety regulations.²⁴ The agreement requires the assignment of a third-party federal monitor to oversee NYCHA's reform efforts and overall compliance with the settlement agreement,²⁵ but includes no additional funding from the U.S. Department of Housing and Urban Development (HUD).²⁶ The City also agreed to assist NYCHA by committing an additional \$1 billion over the next four years, \$200 million each subsequent year for the duration of the agreement, and \$4 billion from the City's budget through 2027.²⁷ This resolution has been generally favorably received for its concrete action steps and heightened focus on the issues that have been plaguing NYCHA residents for years.²⁸ However, it is dubious whether these pledged commitments, in the aggregate, will be sufficient to repair NYCHA's substandard building conditions.²⁹

20. See *United States v. New York City Hous. Auth.*, 347 F. Supp. 3d 182, 189 (S.D.N.Y. 2018) (referencing the New York State Department of Public Health 2018 inspection of NYCHA units).

21. La Mort, *supra* note 7, at 391.

22. See *generally* Complaint, *United States v. New York City Hous. Auth.*, 347 F. Supp. 3d 182 (S.D.N.Y. 2018) (No. 18 Civ. 5213), 2018 WL 2929134.

23. *United States v. New York City Hous. Auth.*, 347 F. Supp. 3d 182 (S.D.N.Y. 2018), *dismissed without prejudice*, No. 1-18-CV-05213 (S.D.N.Y. Mar. 15, 2019), ECF No. 76.

24. See *generally* Memorandum of Agreement Between the U.S. Dep't of Hous. and Urban Dev., the N.Y.C. Hous. Auth., and New York City (Jan. 31, 2019), <https://www.justice.gov/usao-sdny/press-release/file/1125736/download> [hereinafter Memorandum of Agreement].

25. Press Release, U.S. Att'y's Office of the S. Dist. of N.Y., Manhattan U.S. Attorney Announces New Agreement for Fundamental Reform at NYCHA (Jan. 31, 2019), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-new-agreement-fundamental-reform-nycha>; Memorandum of Agreement, *supra* note 24, at 3.

26. Memorandum of Agreement, *supra* note 24, at 20; Noah Manskar, *NYCHA To Get Tough Oversight Under Deal With Feds*, PATCH (Jan. 31, 2019), <https://patch.com/new-york/new-york-city/nycha-get-tough-federal-oversight-under-deal-feds>; Courtney Gross, *NYCHA to Get Federal Monitor with Sweeping Oversight as Part of Agreement with Trump Administration*, SPECTRUM NEWS NY1 (Jan. 31, 2019), <https://www.nyl.com/nyc/all-boroughs/politics/2019/01/31/nycha-to-get-federal-monitor-as-part-of-agreement-with-trump-administration> (stating HUD will continue to provide \$1.5 billion to NYCHA's budget).

27. Press Release, U.S. Att'y's Office of the S. Dist. of N.Y., *supra* note 25 (providing an overview of the terms of the settlement agreement); see *New York City Hous. Auth.*, 347 F. Supp. 3d at 196 (describing New York City's proffered funding allocation in the Proposed Consent Decree that was adopted in the settlement); see also Memorandum of Agreement, *supra* note 24, at 3, 16.

28. Manskar, *supra* note 26.

29. CITIZENS BUDGET COMMISSION, TRANSFORMING NYCHA, *supra* note 3 (reporting that, according to NYCHA's 2018 Physical Needs Assessment, \$32 billion is needed to repair its substandard building conditions).

B. Duties to Maintain Public Housing Units

Federal and local laws impose duties on both landlords and tenants in maintaining and repairing affordable housing units. Understanding the relative duties of landlords and tenants is necessary, particularly when representing tenants in collateral legal actions that hinge on the extent of their alleged culpability in maintaining adequate housing conditions.

HUD's Housing Quality Standards (HQS) define the minimum criteria landlords and tenants must abide by for their units to be considered "decent, safe, and sanitary housing."³⁰ This criteria is described in relation to thirteen broad categories: (1) sanitary facilities; (2) food preparation and refuse disposal; (3) space and security; (4) thermal environment; (5) illumination and electricity; (6) structure and materials; (7) interior air quality; (8) water supply; (9) lead-based paint; (10) access; (11) site and neighborhood; (12) sanitary condition; and (13) smoke detectors.³¹ Local public housing authorities may impose additional criteria, or variations thereof, with HUD's approval.³² In New York City, landlords and tenants must additionally comply with requirements under the New York City Housing Maintenance Code (HMC)³³ and the New York State Multiple Dwelling Law (MDL).³⁴

1. Duties of Landlords

HUD regulations require public housing authorities, like NYCHA, to conduct inspections for compliance with the above HQS criteria prior to the start of a lease, and regularly thereafter.³⁵ The HMC further requires that landlords maintain the premises; clean exterior and interior spaces;³⁶ maintain painting;³⁷ investigate³⁸ and control "indoor allergen hazards"³⁹ like mice,

30. Housing Quality Standards, 24 C.F.R. § 886.302 (2019).

31. *Id.*

32. 24 C.F.R. § 982.401(a)(4) (2019).

33. The Housing Maintenance Code is located under Title 27, Chapter 2, of the New York City Administrative Code. See N.Y.C. ADMIN. CODE § 27-2001 (2019) ("This chapter shall be known and may be cited as the "housing maintenance code.""). While Section 27-2005 states that landlords and tenants have a common duty to maintain and service the unit, NYCHA is exempt from compliance with several section provisions. See *id.* §§ 27-2009.1 (pets), -2017.12 (waiver of benefit void), -2033 (access to boiler room), -2056 (janitorial services), -2108 (building registration).

34. See, e.g., *Aponte v. NYCHA*, 39 N.Y.S.3d 369, 371 (Sup. Ct. 2016) (holding that "[c]ity housing authority, as owner of building, had nondelegable duty under Multiple Dwelling Law to eradicate vermin in apartment, and thus was liable to tenants for failure to eradicate bedbug infestation").

35. 24 C.F.R. § 982.401(a)(3) (2019).

36. N.Y.C. HOUS. MAINT. CODE §§ 27-2010 (stating property owners must "keep the roof, yard, courts and other open spaces clean and free from dirt, filth, garbage or other offensive material"), -2011 (stating the property owner must keep interior shared spaces "in a clean and sanitary condition"), -2012 (stating the property owner must clean the unit "before any change in occupancy").

37. *Id.* §§ 27-2013 to -2015.

38. *Id.* § 27-2017.2(a)–(b) (stating owners must investigate all "occupied dwelling units and in common areas" at least annually, but "more often if necessary, such as when, in the exercise of reasonable care, an owner knows or should have known of a condition that is reasonably foreseeable to cause an indoor allergen hazard, or an occupant makes a complaint . . . or the department issues a notice of violation or orders the correction of a violation").

39. *Id.* § 27-2017 (defining "indoor allergen hazard").

cockroaches, rats,⁴⁰ bedbugs,⁴¹ and mold;⁴² collect wastes;⁴³ maintain functional utilities such as the water supply generally,⁴⁴ hot water,⁴⁵ and heat;⁴⁶ maintain individual units and fixtures;⁴⁷ maintain sewers⁴⁸ and drainage;⁴⁹ repair gas appliances;⁵⁰ ensure the functioning of protective devices such as locks and window guards in units;⁵¹ install smoke and carbon monoxide detectors;⁵² install and maintain protective caps and safety devices over electrical outlets⁵³ and gas stove knobs;⁵⁴ and investigate and remediate incidents of lead.⁵⁵

Landlords found not in compliance must correct any deficiencies within specified time periods, which vary according to the severity of the violation.⁵⁶ The HMC classifies violations as either “immediately hazardous,” “hazardous,” or “nonhazardous.”⁵⁷ Generally, landlords must correct “immediately hazardous” violations within twenty-four hours, “hazardous” violations within thirty days, and “nonhazardous” violations within ninety days.⁵⁸ For example, visible mold is considered hazardous if it measures “between ten square feet and thirty square feet in a room.”⁵⁹ If the visible mold measures greater, it is classified as immediately hazardous,⁶⁰ and if less it is classified as nonhazardous.⁶¹ In some circumstances, landlords may be permitted an extension to correct violations. For example, landlords may be

40. *Id.* §§ 27-2017.4(b)–(c) (stating property owners must correct violations for mice, cockroaches, and rats within twenty-one days after receiving notice); *see, e.g.*, *Mite v. Pipedreams Realty*, 740 N.Y.S.2d 564, 566–67 (Civ. Ct. 2002).

41. N.Y.C. HOUS. MAINT. CODE §§ 27-2017(a), (b), -2018.

42. *See generally id.* § 27-2017.3 (describing violations for visible mold).

43. *Id.* §§ 27-2020 to -2023.

44. *Id.* § 27-2024.

45. *Id.* § 2031 (stating each unit must have access to hot water “between the hours of six a.m. and midnight” at a “minimum temperature of one hundred twenty degrees Fahrenheit”).

46. *See id.* § 27-2028 (stating requirements to provide either central heat, electric, or a gas heating system); *id.* § 27-2029a(1)–(2) (describing that property owners must maintain the following minimum temperatures between October 1st through May 31st: “between the hours of six a.m. and ten p.m., a temperature of at least sixty-eight degrees Fahrenheit whenever the outside temperature falls below fifty-five degrees and between the hours of ten p.m. and six a.m., a temperature of at least sixty-two degrees Fahrenheit”); *see also* Judith Goldiner & Lucy Newman, *NYCHA Tenants Deserve Rent Abatements for Missing Heat*, CITY & STATE NY (Mar. 15, 2018), <https://www.cityandstateny.com/articles/opinion/opinion/nycha-tenants-deserve-rent-abatements-missing-heat.html>.

47. N.Y.C. HOUS. MAINT. CODE § 27-2025.

48. *Id.* § 27-2026.

49. *Id.* § 27-2027.

50. *Id.* §§ 27-2034 to -2036 (stating the owner must inspect gas appliances for compliance at least once a year).

51. *Id.* § 27-2043.1(a), (stating property owners must install window guards in public spaces and units inhabited by children ten years of age or younger if the building contains three or more units).

52. *Id.* § 27-2045 to -2046.

53. *Id.* § 27-2046.3.

54. *Id.* § 27-2046.4.

55. *Id.* §§ 27-2056.3 to -2056.4.

56. 24 C.F.R. § 982.404(a)(2)–(3) (2019).

57. N.Y.C. HOUS. MAINT. CODE § 27-2115(d).

58. *Id.* § 27-2115(c)(1)–(3).

59. *Id.* § 27-2017.3(a)(2).

60. *Id.* § 27-2017.3(a)(4).

61. *Id.* § 27-2017.3(a)(1).

granted an extension of fourteen days if they take “prompt action to correct” violations for cockroaches, mice, rats, or visible mold, but they nevertheless cannot make a “full correction” within the designated time due to “serious technical difficulties, inability to obtain necessary materials, funds or labor, inability to gain access to the dwelling unit . . . or such other portion of the building as may be necessary to make the required repair.”⁶²

Property owners that contract with NYCHA as part of the Section 8 Housing Choice Voucher Program must correct deficiencies within the required time period or risk termination of their housing assistance payments.⁶³ However, NYCHA will not fine itself for failure to timely correct deficiencies within NYCHA-operated public housing developments.⁶⁴ In such circumstances, tenants may initiate a judicial proceeding against NYCHA.⁶⁵ Furthermore, where violations constitute “a fire hazard or a serious threat to the life, health, or safety of the occupants,” the MDL requires that property owners provide tenants with rent abatements.⁶⁶ If NYCHA does not provide such rent abatements voluntarily, tenants likewise have the right to initiate a judicial proceeding for recovery.⁶⁷

2. Duties of Tenants

Tenants must notify NYCHA about HMC violations by calling the Customer Contact Center or using the MyNYCHA App to make a complaint and obtain a work ticket number.⁶⁸ A NYCHA employee will then be dispatched to the unit to investigate.⁶⁹ While NYCHA must maintain and repair the unit according to the above HQS regulations, it is not responsible for repairing, or paying to repair, violations it did not cause.⁷⁰ Rather, HUD regulations state that occupants are responsible for the HQS violations if the damage was caused by the occupant, any members of their household, or their guests.⁷¹ The HMC clarifies however, that the occupant will only be held responsible if “he or she has the power to prevent the occurrence of the

62. *Id.* §§ 27-2017.3(c)(3) (postponement for visible mold), -2017.4(d) (postponement for pests).

63. *Section 8: Tenants Frequently Asked Questions*, NYCHA, <https://www1.nyc.gov/assets/nycha/downloads/pdf/SECTION8.TENANTS.FAQ.pdf> (last visited Nov. 17, 2019).

64. Abigail Savitch-Lew, *Should NYCHA Be Treated Like a Private Landlord?*, CITYLIMITS.ORG (Jan. 12, 2018), <https://citylimits.org/2018/01/12/should-nycha-be-treated-like-a-private-landlord>.

65. N.Y.C. HOUS. MAINT. CODE § 27-2125 (describing imposition of civil penalty); *see* MOBILIZATION FOR JUSTICE, HOW CAN I GET REPAIRS IF I LIVE IN A NYCHA APARTMENT? 3 (2016), <http://mobilizationforjustice.org/wp-content/uploads/How-Can-I-Get-Repairs-in-NYCHA-April-2016.pdf>; *see also* N.Y. REAL PROP. LAW § 235-b(1) (McKinney 2019) (describing statutory warranty of habitability for failure to maintain the premises in a manner “reasonably intended by the parties”).

66. N.Y. MULT. DWELL. § 302-a.2.a. (McKinney 2019); N.Y. MULT. RESID. § 305-a.2.a. (McKinney 2019) (categorizing life-threatening violations are “rent-impairing”).

67. *See* Goldiner & Newman, *supra* note 46.

68. NYCHA, A HOME TO BE PROUD OF 2 (2017), <https://www1.nyc.gov/assets/nycha/downloads/pdf/nycha-tenant-handbook-2017.pdf>; *MyNYCHA*, NYCHA, <https://www1.nyc.gov/site/nycha/mynycha/mynycha-landing.page> (last visited Nov. 17, 2019).

69. *Id.*

70. 24 C.F.R. § 982.404(a)(4) (2019).

71. *Id.* § 982.404(b)(1)(iii).

violation.”⁷² It is considered within the occupant’s power to prevent the violation if it was caused by the tenant, a household member, or guest, and was the result of a willful act or “gross negligence, neglect, or abuse.”⁷³ For example, tenants have a duty to make their unit accessible to the property owner to correct violations.⁷⁴ Tenants also have a duty to maintain their units in a “clean and sanitary condition.”⁷⁵ The tenant must repaint or recover the walls or ceilings if they become unsanitary within three years from the date the property owner last refinished it.⁷⁶ If the occupant causes a life threatening violation, the occupant must correct it within twenty-four hours.⁷⁷ All other violations must be corrected within thirty days, or the time designated by the public housing authority.⁷⁸ Failure to correct an HQS violation within the required time period may lead to termination of the tenant’s affordable housing assistance.⁷⁹

III. COLLATERAL LEGAL CONSEQUENCES OF SUBSTANDARD PUBLIC HOUSING

It is well documented that legal proceedings, such as criminal actions, can cause collateral consequences in the housing context. Examples of the collateral consequences of criminal proceedings include the loss of Section 8 vouchers or the public housing units themselves.⁸⁰ There is also a significant amount of scholarly research that discusses the collateral sociological consequences of poor public housing, such as adverse impacts on tenants’ physical, emotional, and behavioral health.⁸¹ This Part considers the often overlooked collateral legal consequences that families with minor children may experience because of the substandard conditions of their public housing units. It does so by focusing on child protective investigations and child neglect proceedings that are premised on a parent’s failure to provide safe and sanitary housing.

ACS may become involved if someone reports potentially abusive or neglectful conditions.⁸² ACS will then investigate to determine if the child’s

72. N.Y.C. HOUS. MAINT. CODE § 27-2006.a.

73. *See id.* § 27-2006.a.(1)–(2); *see also id.* § 27-2007.

74. *See, e.g., id.* §§ 27-2017.3(c)(3), -2017.4(d); *see also* NYCHA, A HOME TO BE PROUD OF, *supra* note 68 (“Failing to provide staff with access can result in administrative action to terminate tenancy for breach of rules and regulations.”).

75. N.Y.C. HOUS. MAINT. CODE § 27-2012(a).

76. *Id.* § 27-2013(c).

77. 24 C.F.R. § 982.404(b)(2) (2019).

78. *Id.*

79. *Id.* § 982.404(b)(3).

80. *See, e.g.,* PETER EDELMAN, NOT A CRIME TO BE POOR (2017); Wendy J. Kaplan & David Rossman, *Called “Out” at Home: The One Strike Eviction Policy and Juvenile Court*, 3 DUKE F. FOR L. & SOC. CHANGE 109, 137 (2011).

81. *See, e.g.,* Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POL’Y 59 (2016).

82. *See Keeping Children Safe*, N.Y.C. ADMIN. FOR CHILDREN’S SERVS., <https://www1.nyc.gov/site/acs/child-welfare/child-safety.page> (last visited Nov. 17, 2019).

life or health is in “immediate or impending danger of serious harm.”⁸³ ACS’s investigation is generally a four-step “Safety Assessment Process.”⁸⁴ The first step is of particular relevance, as it involves identifying any safety factors indicating that the child is in actual or potential danger.⁸⁵ Safety factors are evaluated in the context of parents’ behaviors, conditions of the home, and family dynamics.⁸⁶ One safety factor is that the “physical condition of the home is hazardous to the safety of [the] children.”⁸⁷ A home may be flagged as hazardous if the ACS caseworker observes that the child is exposed to “serious hazards,” such as “leaking gas from [a] stove or heating unit, peeling lead base [*sic*] paint accessible to young children, hot water/steam leaks from radiator or exposed electrical wiring, no guards or open windows/broken/missing windows, health hazards such as exposed rotting garbage, food, human or animal waste throughout the living quarters, home hazards [that] are easily accessible to children and would pose a danger to them if they are in contact with the hazard(s),”⁸⁸ or “inadequate heat, plumbing, electricity, or water.”⁸⁹ ACS also considers whether the family’s financial resources, including public assistance, are facially sufficient to meet the family’s needs, but do not because of a parent’s mismanagement of funds.⁹⁰

ACS’s investigations generally lead to one of three outcomes. One outcome is that the ACS caseworker deems the report of child neglect “unfounded” and ceases investigation into the family’s life.⁹¹ Another outcome is that the ACS caseworker determines that the presence of a safety factor places the child in immediate or potential harm. In this case, ACS will then work in collaboration with the parents to develop a safety plan of preventative services or interventions to address the concerns.⁹² If the preventative services or interventions alleviate ACS’s concerns about the safety of the children, the investigation is then terminated. Such interventions may include home care services, arrangements for emergency shelter, assistance in correcting or removing the unsafe living conditions, or judicial intervention through the filing of a family court petition for abuse or neglect.⁹³ If concerns remain, the final outcome is that ACS may file a child neglect proceeding against the tenant-parent in family court.

83. JAMES SATTERWHITE, ACAD. FOR CHILD WELFARE TRAINING, SAFETY AND RISK ASSESSMENT RESOURCE GUIDE 8 (2013), https://www1.nyc.gov/assets/acs/pdf/child_welfare/2018/riskandsafetyguide.pdf [hereinafter SAFETY AND RISK ASSESSMENT RESOURCE GUIDE].

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 11.

88. *Id.* at 11–12.

89. *Id.* at 30.

90. *Id.* at 31.

91. Kathleen A. Bailie, *The Other “Neglected” Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 FORDHAM L. REV. 2285, 2299 (1998) (citing N.Y. SOC. SERV. LAW § 424(7) (McKinney 1992)).

92. N.Y. SOC. SERVS. LAW §§ 409, 409-e (McKinney 2019); Bailie, *supra* note 91, at 2299; SAFETY AND RISK ASSESSMENT RESOURCE GUIDE, *supra* note 83, at 17–18.

93. SAFETY AND RISK ASSESSMENT RESOURCE GUIDE, *supra* note 83, at 19–20.

A. Preventative Services and Interventions

The preventative services and interventions offered are highly generalized⁹⁴ and facially ill-suited to remedying substandard housing conditions. ACS's main website lists seven general categories of services, none of which directly focus on housing: mental health, substance abuse, domestic violence, exploited youth, special medical needs, aftercare programs, and home care services.⁹⁵ The description of ACS's home care services reveals its narrow focus on "[c]hild care instruction and home management skills training for parents and guardians" and "[p]ersonal care services to parents and children, including bathing, dressing, grooming, and other activities of daily living."⁹⁶ ACS also participates in "Community Partnership Programs," through which it distributes funding to local communities in the Bronx, Manhattan, Staten Island, Brooklyn, and Queens, which then organize and provide services to support families' needs.⁹⁷ However, they are likewise described as providing "general preventative," "family treatment and rehabilitation," and "medically fragile" services.⁹⁸ As a whole, ACS's preventative services have a reputation among community members as being "preventive in name only."⁹⁹ They are not viewed by most families as "services," as they may achieve little in meaningfully addressing the families' underlying long-term needs.¹⁰⁰ As one attorney wrote in reflecting on a tenant-parent's experience with ACS's preventative services, "Eline did not need parenting classes; she already loved and cared for her children. She needed a home that wasn't infested with rats."¹⁰¹

Other services and interventions are slightly more targeted, but similarly fail to adequately redress substandard housing conditions. For example, Section 409-a(7) of the New York Social Services Law requires that ACS provide direct assistance to families who lack adequate housing.¹⁰² However,

94. Bailie, *supra* note 91, at 2319–20 (stating "families often receive 'boilerplate' service plans which can add to, rather than alleviate the families' problems") (quoting Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 120 (1997)).

95 . *Preventative Services*, N.Y.C. ADMIN. FOR CHILDREN'S SERVS., <https://www1.nyc.gov/site/acs/child-welfare/preventive-services.page> (last visited Nov. 16, 2019) (listing only the following preventative services: mental health, substance abuse, domestic violence, exploited youth, special medical needs, aftercare programs, and home care services).

96 . *Home Care Services*, N.Y.C. ADMIN. FOR CHILDREN'S SERVS., <https://www1.nyc.gov/site/acs/child-welfare/home-care-services.page> (last visited Nov.17, 2019).

97 . *ACS & The Community*, N.Y.C. ADMIN. FOR CHILDREN'S SERVS., <https://www1.nyc.gov/site/acs/about/acs-community.page#1> (last visited Nov.17, 2019).

98 . *ACS Community Partners*, N.Y.C. OPEN DATA, <https://data.cityofnewyork.us/Social-Services/ACS-Community-Partners/9hyh-zkx9> (last visited Nov. 17, 2019).

99 . Kathryn Joyce, *The Crime of Parenting While Poor*, NEW REPUBLIC (Feb. 25, 2019), <https://newrepublic.com/article/153062/crime-parenting-poor-new-york-city-child-welfare-agency-reform> (describing how the "court-mandated parenting classes" were unrelated to the rodents in her apartment); Bailie, *supra* note 91, at 2319–20.

100. Joyce, *supra* note 99; Bailie, *supra* note 91, at 2319–20.

101. Emma S. Ketteringham, *Live in a Poor Neighborhood? Better Be a Perfect Parent*, N.Y. TIMES (Aug. 22, 2017), <https://www.nytimes.com/2017/08/22/opinion/poor-neighborhoods-black-parents-child-services.html>.

102. *ACS Housing Subsidy*, BILL DE BLASIO, <http://archive.advocate.nyc.gov/housing-guide/a/3> (last visited Nov. 17, 2019) (referencing N.Y. SOC. SERV. LAW § 409-a(7), which states that families must receive housing assistance where "a social services official determines that a lack of adequate housing is a

this law is limited in several respects. First, this law requires that families demonstrate “at least one service need other than lack of adequate housing” before they can receive the assistance.¹⁰³ Additionally, the assistance is only available *after* judicial intervention has occurred. The subsidies are intended to remedy poor housing conditions and promote reunification after a child has been removed from the home,¹⁰⁴ or to assist children between the ages of sixteen and twenty-one to secure independent housing after leaving foster care.¹⁰⁵

Furthermore, although ACS’s preventative services and interventions are “technically voluntary,” ACS may still initiate a child protective proceeding in family court if (1) a parent refuses to participate, and thus fails to remedy the conditions; or (2) ACS determines that the services are not sufficient to address the child safety concerns.¹⁰⁶ ACS has been criticized for acting “in overdrive” by rushing the intervention process, hurriedly filing a child protective proceeding in family court, and indiscriminately advocating to remove the child from the home and place the child in foster care to guarantee his or her safety.¹⁰⁷

B. Family Court Child Protective Proceedings

Article 10 of the New York Family Court Act permits the State to “intervene against the wishes of a parent on behalf of a child” “when a child’s life or health is seriously jeopardized.”¹⁰⁸ The family court may order that the child be temporarily removed from the parent’s home during the pendency of the proceeding if the court determines that the child is in immediate harm from the poor housing conditions.¹⁰⁹ This can be done with or without the parent’s consent.¹¹⁰ If this occurs, the child may be placed with relatives or in foster

factor that may cause the entry of a child or children into foster care and the family has at least one service need other than lack of adequate housing”).

103. N.Y. SOC. SERV. LAW § 409-a(7) (McKinney 2019).

104. *See, e.g.*, BILL DE BLASIO, *supra* note 102.

105. *Housing*, N.Y.C. ADMIN. FOR CHILDREN’S SERVS., <https://www1.nyc.gov/site/acs/youth/housing.page> (last visited Nov. 17, 2019).

106. *Id.*; N.Y. FAM. CT. ACT § 1031(d) (McKinney 2019) (stating a child protective agency can initiate a family court proceeding); Bailie, *supra* note 91, at 2299; *see* Ketteringham, *supra* note 101.

107. ABIGAIL KRAMER, THE NEW SCHOOL: CENTER FOR NEW YORK CITY AFFAIRS, ACS IN OVERDRIVE (2017), <http://www.centernyc.org/acs-in-overdrive> (last visited Nov. 17, 2019); N.Y. FAM. CT. ACT § 1032 (McKinney 2019) (stating a child protective agency may “originate a proceeding” under Article 10 of the Family Court Act). This rushed process has resulted largely from government fear of continued public scrutiny following several child deaths in 2016 related to abusive conditions other than substandard public housing. *See* Shannon DeRouselle, *Welfare Reform and the Administration for Children’s Services: Subjecting Children and Families to Poverty and Then Punishing Them for It*, 25 N.Y.U. REV. L. & SOC. CHANGE 403, 420 (1999). ACS has attempted to repair its negative image by featuring ads that portray it in a positive light. For example, in June of 2018, ACS sponsored ads on the subways that portrayed jovial parents and children with quotes such as, “ACS fought for my family.” Ketteringham, *supra* note 101.

108. Professor Merrill Sobie’s Supplementary Practice Commentary to the N.Y. FAM. CT. ACT § 1011 (describing purpose of the family court in child protective proceedings for abuse and neglect).

109. N.Y. FAM. CT. ACT § 1017 (McKinney 2017).

110. *Id.* §§ 1021 (describing practices regarding temporary removal with parent’s consent), 1023 (describing procedures for motioning for an order for temporary removal).

care. Regardless of whether the child is removed, the family court will then engage in a fact-finding hearing to determine whether the child was neglected.¹¹¹ The burden is on the petitioner, ACS, to prove that the child was neglected by a preponderance of the evidence.¹¹² The Family Court Act defines a neglected child as “a child less than eighteen years of age whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care”¹¹³ A parent must exercise a minimum degree of care in providing the child with “adequate shelter.”¹¹⁴ The family court will find that a parent failed to exercise a minimum degree of care if the evidence demonstrates that he or she was unable, or unwilling, despite being “financially able to do so or offered financial or other reasonable means to do so.”¹¹⁵ The Family Court Act commentary to this provision clarifies, more explicitly, that a parent’s poverty cannot, in and of itself, serve as the basis for a finding of child neglect.¹¹⁶ The provision was enacted in response to the significant number of neglect actions being brought against families because of their poverty-related circumstances.¹¹⁷ One primary reason for this is that what we typically consider to be hallmarks of neglect are also common byproducts of poverty.¹¹⁸ For example, we commonly associate inadequate housing conditions with poverty.¹¹⁹ Another reason is that families who live in poverty are more likely to depend on public agencies for social services, and as a result, are more likely to gain the attention of a child protective agency than families who have the means to obtain private services.¹²⁰ The disproportionate number of neglect cases brought against impoverished families contributes to “the pervasive but false narrative that parents charged with abuse or neglect do not care about their children and that children are ‘better off’ away from the parents.”¹²¹ Such provisions are commonly referred to as statutory “poverty defenses,” because they are designed to counter these false narratives and protect poor defendants from charges based on actions that directly relate to their financial circumstances.¹²²

111. *Id.* § 1044.

112. *See In re Zachariah W.*, 149 A.D.3d 853, 854 (N.Y. App. Div. 2017) (stating burden of proof for petitioner).

113. N.Y. FAM. CT. ACT § 1012(f)(i) (McKinney 2019) (defining “neglected child”).

114. *Id.* § 1012(f)(i)(A).

115. *Id.*

116. *See* Professor Merrill Sobie’s Supplementary Practice Commentary to the N.Y. FAM. CT. ACT § 1012(f)(i)(A).

117. DeRouselle, *supra* note 107, at 418.

118. Kay P. Kindred, *God Bless the Child: Poor Children, Parens Patriae, and A State Obligation to Provide Assistance*, 57 OHIO ST. L.J. 519, 532 (1996).

119. *Id.* at 532; Testimony of Lisa Schreibersdorf, Executive Director, Brooklyn Defender Services, & Lauren Shapiro, Director, Family Defense Practice, Brooklyn Defender Services, N.Y. COMM’N ON PARENTAL LEGAL REPRESENTATION (Sept. 28, 2018), <http://bds.org/bds-testifies-before-the-new-york-state-commission-on-parental-legal-representation> [hereinafter BDS Testimony].

120. Kindred, *supra* note 118, at 532–33.

121. BDS Testimony, *supra* note 119.

122. *See* Michele Estrin Gilman, *The Poverty Defense*, 47 U. RICH. L. REV. 495, 520–23 (2013).

Scholars have proposed variations of the poverty defense.¹²³ One variation resembles the criminal law defenses of necessity or duress.¹²⁴ Another variation is reminiscent of social forfeit theory, which is the concept that society is unable to blame individuals for their conduct because it has tolerated or furthered the severe economic inequality that led to the conduct.¹²⁵ The poverty defense in the Family Court Act, as used in the context of a parent who is charged with neglect for failure to provide the child with adequate shelter, is closely analogous to these variations of the poverty defense. The necessity-duress variation encapsulates the idea that a parent who is unable to correct poor housing conditions because of a lack of financial means, and who has no other alternative adequate shelter, has no other recourse than to house her family in the substandard conditions. The social-forfeit theory variation is particularly apt in a scenario where the parent receives affordable housing assistance from a public housing authority. In such scenarios, it would conceivably be unreasonable to find a parent culpable for subjecting her children to poor housing conditions where the deficiencies are the result of NYCHA's failure to uphold its maintenance and repair obligations.

One major criticism of the poverty defense is that its effectiveness may be limited, as judges may not have an adequate understanding of how the individual's poverty relates to the charge.¹²⁶ This may very well be true in family court cases involving a parent's alleged failure to provide a child with adequate shelter. First, the language of the Family Court Act's poverty defense provision is vague and not particularly instructive. The Family Court Act does not define the degree to which a parent will be found "financially able" to exercise a minimum degree of care in providing their child adequate shelter.¹²⁷ Ostensibly this would be a fact determination, evaluating a parent's financial ability to remedy whatever poor housing conditions upon which the neglect petition is premised. Presumably, a parent whose income reveals that she does not have the money to remedy the poor housing condition would be excused, because her finances are directly related to her inability to exercise the minimum degree of care necessary. However, the fact determination can become murky, since "the statutory amount of public assistance is presumed to be adequate."¹²⁸ Yet, the receipt of some modicum of government assistance does not necessarily mean that a parent is in a financially stable position to remedy substandard public housing conditions. The average income of a family receiving NYCHA public housing assistance is \$25,007.¹²⁹ Public housing tenants are responsible for paying the lesser of thirty percent of the household's

123. *Id.* at 498 (describing three variations of the poverty defense, two of which this Note will focus on).

124. *Id.*

125. *Id.*

126. *Id.* at 540–41.

127. N.Y. FAM. CT. ACT § 1012(f)(i)(A) (McKinney 2019).

128. Professor Merrill Sobie's Supplementary Practice Commentary to the N.Y. FAM. CT. ACT § 1012(f)(i)(A) (discussing "failure to supply adequate food, clothing, or shelter").

129. NYCHA, FACT SHEET, *supra* note 1, at 2 (noting that the average income of public housing income is \$25,007 while average income for Section 8 households is \$17,150); *see also Eligibility*, NYCHA, <https://www1.nyc.gov/site/nycha/eligibility/eligibility.page> (last visited Nov. 17, 2019) (noting the income limit for a family of four is a seemingly high \$83,450).

adjusted gross income or the amount set out on NYCHA's Flat Rent Schedule.¹³⁰ After deducting essentials like healthcare, food, transportation,¹³¹ utilities,¹³² and possibly childcare,¹³³ it is unlikely that there will be much money left over for discretionary spending, let alone housing repairs.¹³⁴ Low-income families may also have limited access to other forms of capital to subsidize such repairs.

In order to overcome the presumption that public assistance is adequate, the parent "must present unequivocal proof" that it is not.¹³⁵ A parent can succeed in demonstrating that the public assistance is not adequate by offering proof that she has sought the assistance of social service officials, such as NYCHA staff, but the officials failed to provide the financial support needed to remedy the substandard living conditions.¹³⁶ When a parent is offered housing assistance but declines, a finding of neglect may be entered.¹³⁷ In practice, however, a tenant-parent's ability to "present unequivocal proof" may not be that simple.¹³⁸ First, obtaining information related to potential violations

130. NYCHA, FACT SHEET, *supra* note 1, at 2 (stating HUD subsidizes the remainder of the rent when the tenants pay thirty percent of the household's income); *NYCHA Housing*, NEW DESTINY HOUSING, <https://www.newdestinyhousing.org/housing-help/nycha-public-housing> (last visited Nov. 17, 2019); *New NYCHA Flat Rent Schedule*, NYCHA JOURNAL, <https://www.nychajournal.nyc/new-nycha-flat-rent-schedule> (last visited Nov. 17, 2019) (describing NYCHA's below-market rate Flat Rent Schedule, which determines the maximum rent by the number of bedrooms).

131. *Fair Fares*, COMMUNITY SERVICE SOCIETY, <https://www.cssny.org/campaigns/entry/transit4all> (last visited Nov. 17, 2019) (stating "for more than 3000,000 working poor New Yorkers, transit expenses often exceed 10 percent of their family budgets, limiting their ability to access jobs and forcing them to forgo other necessities").

132. *Id.* (stating "some tenants may have additional charges (such as fees for washing machines or air conditioners) or credits (for example, a utility allowance) added or subtracted from the rent calculation").

133. *Public Housing Rent Calculation Frequently Asked Questions*, NYCHA, <https://www1.nyc.gov/assets/nycha/downloads/pdf/Rent-Calculation-FAQ.pdf> (last visited Nov. 17, 2019) (stating that "reasonable, unreimbursed, child care expenses for children 12 years old or younger" may be deducted from the household's gross income).

134. Critics may contend that with public assistance, such discretionary spending should be available. For example, low-income individuals may obtain healthcare through Medicaid, food stamps through Supplemental Nutrition Assistance Program (SNAP), transportation subsidies through Fair Fares, and general cash-based assistance for families with children through the Temporary Assistance for Needy Families (TANF). See *Fair Fares – A New Commitment from Mayor De Blasio*, COMMUNITY SERVICE SOCIETY (Mar. 5, 2019) <https://www.cssny.org/news/entry/fair-fares-a-new-commitment-from-mayor-de-blasio> (stating "eligible residents" who are "living at or below poverty" will be able to sign up for the new Fair Fares program by January of 2020 to receive "half-priced MetroCards"); see also GENE FALK, CONG. RES. SERV., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): ELIGIBILITY AND BENEFIT AMOUNTS IN STATE TANF CASH ASSISTANCE PROGRAMS 1–2 (2014), <https://fas.org/spp/crs/misc/R43634.pdf>. However, eligibility requirements for each program vary widely, and not every public housing tenant may qualify for every form of assistance. See, e.g., DeRouselle, *supra* note 107, at 410–11 (arguing the eligibility restrictions and strict program requirements under New York's Welfare Reform Act (NYRA) excludes the neediest applicants, and perpetuates poverty for those who have it by compelling parents "to work in low-skill, low-wage, transitory jobs"); see also CHILD WELFARE LEAGUE OF AM. (CWLA), NEW YORK'S CHILDREN AT A GLANCE 2 (2017), <https://www.cwla.org/wp-content/uploads/2017/04/NEW-YORK-.pdf>.

135. Professor Merrill Sobie's Practice Commentary to the N.Y. FAM. CT. ACT § 1012(f)(i)(A) (citing *Matter of Amoretta V.*, 227 A.D.2d 879 (N.Y. App. Div. 1996)).

136. *Id.* (citing *Matter of Kevin J.*, 162 A.D.2d 1034 (N.Y. App. Div. 1990)).

137. *Id.* (citing *Matter of Christian Q.*, 32 A.D.3d 669 (N.Y. App. Div. 2006)).

138. Professor Merrill Sobie's Practice Commentary to the N.Y. FAM. CT. ACT § 1012(4)(b).

of NYCHA's duties to maintain HQS could in and of itself be a lengthy and demanding process. Since NYCHA is not a party to the family court action, the attorney for the respondent-parent and/or the attorney for the child may seek to obtain evidence of potential NYCHA violations through independent investigation. However, unlike private landlords, NYCHA is exempt from publicly reporting its violations.¹³⁹ Attorneys will therefore have to resort to expending time and money to engage NYCHA in third-party discovery¹⁴⁰ through the use of depositions¹⁴¹ and subpoenas.¹⁴² While the judge may waive the fees for subpoenas, or set them at the relatively minimal cost of \$15,¹⁴³ depositions are transcribed by private stenographers and charged per page, and thus can be costly.¹⁴⁴

Second, even if a tenant-parent who is charged with failure to provide adequate shelter is able to present information related to NYCHA's violations to maintain HQS standards in the unit, the case law reveals that the poverty defense may not be available if the parent receives public housing assistance. Family court judges determine a parent's culpability without considering the duties of the public housing authority or the tenant under applicable housing law. For example, in *Matter of Sahairah J.*, ACS filed a neglect petition against the parents alleging failure to provide their children with adequate shelter.¹⁴⁵ The parents' home was characterized as "dirty, malodorous, infested with roaches and bed bugs, and had [a] gaping hole in [the] wall."¹⁴⁶ The parents asserted that their public assistance was not adequate to remedy the conditions. They demonstrated that they received affordable housing assistance and that they had filed a complaint with the public housing authority to remedy the insect infestation and hole in the wall.¹⁴⁷ However, the family court nevertheless held the children to be neglected because the parents "failed to take steps to address [the] odor and dirt."¹⁴⁸ The family court's analysis in *Matter of Sahairah J.* suggests a misunderstanding of how the parents' poverty relates to the neglect charge. First, the family court placed all the substandard housing conditions on equal footing. The limited reasoning in the opinion failed to address how much of a hazard each condition presented, and whether the housing authority was itself neglectful in failing to respond to the parents' complaints within the time period designated by the HMC. Second, the court found the parents liable for failure to remedy the "odor and dirt" without addressing the causal relationship they may have had to the insect infestations

139. La Mort, *supra* note 7, at 388–91 (citing Abigail Savitch-Lew, *Should NYCHA Be Treated Like a Private Landlord?*, CITYLIMITS.ORG (Jan. 12, 2018), <https://citylimits.org/2018/01/12/should-nycha-be-treated-like-a-private-landlord/>).

140. N.Y. C.P.L.R. § 3101(4) (McKinney 2019).

141. N.Y. C.P.L.R. §§ 3106, 3113 (McKinney 2019).

142. N.Y. C.P.L.R. § 3111 (McKinney 2019).

143. *Subpoenas: Frequently Asked Questions*, NYCHA, <https://www1.nyc.gov/assets/nycha/downloads/pdf/subpoenas-faq.pdf> (last visited Nov. 17, 2019).

144. Michael R. Boutot, *Court Reporting/Deposition Services: What You Should Know*, IRMI (Jan. 2005), <https://www.irmi.com/articles/expert-commentary/court-reporting-deposition-services-what-you-should-know>.

145. *Matter of Sahairah J.*, 135 A.D.3d 452, 453 (N.Y. App. Div. 2016).

146. *Id.*

147. *Id.*

148. *Id.*

and hole in the wall. While tenants do have a duty to maintain the cleanliness of their units in accordance with the HQS, one wonders how the parents could realistically accomplish this with a constant stream of roaches and bed bugs scouring the unit. Cases such as this demonstrate that “unequivocal proof” is an extremely difficult burden to meet, and that, depending on the judge’s understanding of how a tenant-parent’s poverty relates to the charge, may be practicably unavailable to the tenant-parent who receives affordable housing assistance.

While appellate review of a family court finding of neglect is certainly available, it may be an uphill battle for tenant-parents. The standard of review for a fact determination is abuse of discretion, which is extremely deferential to the family court’s finding that neglect is supported by the evidence. A sustained finding of neglect has long-term repercussions for a parent. For example, ACS may petition for the termination of the parent’s rights. Simply an allegation of neglect, let alone an actual finding, may limit parents’ employment prospects and prevent them from keeping or obtaining jobs that involve working with children.¹⁴⁹ Additionally, there may be no resolution remedying the conditions of the family’s substandard public housing.

In contrast, the poverty defense may be considered successful if the parties to the family court action (i.e., ACS, the tenant-parent, and the attorney for the child) consent to an adjournment in contemplation of dismissal (ACD).¹⁵⁰ An ACD pauses the child protective proceeding for up to one year, with the expectation that the parent will continue to engage in services to improve the conditions of the home.¹⁵¹ If at the end of the designated period the court finds that the parent successfully completed ACS’s service plan, then the neglect petition will be dismissed.¹⁵² However, an ACD may not be granted even if all parties consent, as the decision is within the sole discretion of the family court judge.¹⁵³ The poverty defense is also successful where the family court issues a finding of no neglect, i.e., that the parent either did not fail to provide adequate shelter, or the parent did fail, but the child is not impaired, or at risk of impairment, as a result.¹⁵⁴ While both are relatively favorable results, they may still yield negative consequences for tenant-parents. The family court dockets are extremely crowded, which leads to “piecemeal trials or hearings” that must be continued after “lengthy adjournments” that could span from months to years.¹⁵⁵ The practical implication of delays may have detrimental

149. LANSNER & KUBITSCHKEK, *CLEARING YOUR NAME 2* (2019), https://www.lanskub.com/docs/clearing_your_name.pdf.

150. N.Y. FAM. CT. ACT §§ 1039, (McKinney 2019).

151. *Id.* § 1039(b).

152. *Id.* § 1039(d)–(f).

153. *Id.* § 1039(b) (stating the court “may” enter an ACD upon consent of all parties).

154. *Id.* § 1051 (dismissing the petition).

155. NYSBA, TASK FORCE ON FAMILY COURT 30, 32 (2013), <https://www.nysba.org/familycourtreport/>; see BDS Testimony, *supra* note 119 (“16 percent of our cases last longer than two years and almost 9 percent last longer than three years . . . Although Family Court Act Section 1089 (a) (3) requires that permanency hearings be completed within 30 days, permanency hearings often are adjourned for many months at a time and require multiple half-hour appearances to complete. If a Termination of Parental Rights (“TPR”) petition has been filed—and often it has been—that proceeding will involve extensive discovery and litigation, and can take more than a year to complete.”).

financial and emotional effects on both the tenant-parents and their children.¹⁵⁶ Low-income parents may not be paid for the days they are unable to work because they are in court.¹⁵⁷ Children who have been removed from the home may be unable to reunite with their parents until the conclusion of the hearings.¹⁵⁸ It is conceivable that a parent may consent to a finding of neglect or the child's removal, simply to end the financial and emotional agony.¹⁵⁹ It may also have unintended adverse effects on parents' perception of the government and the judicial system, by causing parents to "fear contacting child services when they need help caring for their children."¹⁶⁰ Lastly, if NYCHA is the actual culpable party and not the tenant-parent, an ACD or dismissal does not assign any accountability to NYCHA, and may still leave the underlying poor housing conditions largely unaddressed.

IV. PROPOSALS

It is certainly within the realm of the State's authority to intervene in a family's affairs when the child's well-being is at risk.¹⁶¹ However, as discussed in Part III, intervention by ACS and the family court in the lives of tenant-parents does not always achieve the intended results. Rather, the actual culpable party may not be identified, and the underlying poor housing conditions may remain largely unaddressed. This Part evaluates proposals that could alleviate these unintended collateral legal consequences but still serve the state's interests in protecting the safety and welfare of the children.

A. Utilize Targeted Preventative Services

As mentioned in Section III.A, ACS provides families with various "home care" services¹⁶² or connects them to generalized services by community partners,¹⁶³ but they are generally unhelpful to tenant-parents in remedying their substandard housing conditions.¹⁶⁴ Instead, it would be more beneficial to tenant-parents if they had access to preventative or remediation services that

156. NYSBA, *supra* note 155 at 31–32; *see* Bailie, *supra* note 91 at 2297.

157. NYSBA, *supra* note 155 at 31.

158. *Id.*

159. *See id.* (stating that "the threat of many court appearances over long periods of time can result in victims entering into settlements with their batterers that compromise their safety and the best interests of their children"); *see also* Kindred, *supra* note 118, at 533 ("And, for lack of any meaningful alternative, many impoverished parents, when faced with unemployment, sudden homelessness, or other economic emergency, voluntarily surrender their children for foster care placement.").

160. Ketteringham, *supra* note 101.

161. *See* Kindred, *supra* note 118, at 521, 527 ("This state power, known as the *parens patriae* doctrine, in essence, gives the state authority to serve as a substitute parent and ultimate protector of children's interests."); *see also* Bailie, *supra* note 91, at 2296 ("[C]hild welfare agencies may have no choice but to intervene in poor families' lives. In fact, state intervention in a family's life where the supposed "neglect" actually stems from the family's economic situation may be necessary to help the family.").

162. *Home Care Services*, N.Y.C. ADMIN. FOR CHILDREN'S SERVS., <https://www1.nyc.gov/site/acs/child-welfare/home-care-services.page> (last visited Nov. 17, 2019).

163. *ACS & The Community*, *supra* note 97.

164. Ketteringham, *supra* note 101.

were targeted at addressing the substandard conditions of their public housing units. While ACS's ability to increase its offerings of such specialized services may be limited without the allocation of additional funding,¹⁶⁵ there are existing systems in place that could potentially fill this void even without an increased budget.

For example, ACS caseworkers could counsel tenant-parents on how to initiate or follow-through with NYCHA's grievance procedures. Several step-by-step instructions already exist for their reference.¹⁶⁶ If NYCHA fails to respond to the grievances within the statutorily designated time period, ACS can refer them to a tenant services organization or pro bono legal provider who can more adequately assist the tenant-parents in filing a formal legal complaint against NYCHA.¹⁶⁷ Additionally, ACS caseworkers can assist tenant-parents in enrolling and accessing related programs and community center activities that NYCHA permits its residents to attend for free. NextGeneration NYCHA has included the NYCHA Office of Community Engagement and Partnerships (CEP) as part of its ten-year strategic plan to connect its residents to a variety of local programs and social services. CEP consists of five departments, one of which is "Health Initiatives," which works to "connect residents to preventative health resources" and "create healthier indoor environments."¹⁶⁸ ACS could also refer tenant-parents to local nonprofit Community Development Corporations (CDCs) that already provide housing-related services, including tenant counseling and assistance with home repairs.¹⁶⁹

165. See Bailie, *supra* note 91, at 2319 (stating "the child welfare agency in New York City has made 'painful cuts' in funding and referrals to preventative services"); see also DeRouselle, *supra* note 107, at 425 (stating that "ACS will have to amend its existing services" to effectively address families' poverty-related needs).

166. See, e.g., *How Can I Get Repairs if I Live in a NYCHA Apartment?* MOBILIZATION FOR JUSTICE, <http://mobilizationforjustice.org/wp-content/uploads/How-Can-I-Get-Repairs-in-NYCHA-April-2016.pdf> (last visited Nov. 17, 2019).

167. For example, the Brooklyn Defender Service (BDS) currently offers "pre-petition advocacy" services to provide parents with legal advice and social work assistance. They advocate for increased funding for pre-petition advocacy in order to "resolve ACS cases in ways that prevent unnecessary removals without court involvement." BDS Testimony, *supra* note 119.

168. NYCHA, COMMUNITY ENGAGEMENT & PARTNERSHIPS: CEP OVERVIEW 1 (2019), <https://www1.nyc.gov/assets/nycha/downloads/pdf/cep-factsheet.pdf>; NYCHA, *Community Engagement & Partnerships*, <https://www1.nyc.gov/site/nycha/about/departments/community-engagement-and-partnerships.page> (last visited Nov. 17, 2019).

169. See ALEX F. SCHWARTZ, HOUSING POLICY IN THE UNITED STATES 294–95 (3d ed. 2015); see, e.g., *Learn About Us*, ABYSSINIAN DEV. CORP, <http://www.adcorp.org/learn-about-us> (last visited Nov. 17, 2019) (stating one of its goals is to "enhance the delivery of social services, particularly to the homeless, elderly, families, and children); CLINTON HOUS. DEV. CO., <http://www.clintonhousing.org> (last visited Nov. 17, 2019) (stating it provides a variety of "comprehensive housing services," including social services); *Phipps Community Development Corporation – Family Support Services*, COALITION FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/resources/hipps-community-development-corporation-family-support-services/?query=community%20development%20corporation&filter=> (last visited Nov. 17, 2019) (stating it "provides on-site family support services through counseling and referrals for children, families, and individuals).

B. Utilize Other Civil Practice Mechanisms

There are civil practice mechanisms that, if implemented or streamlined, have the potential to alleviate the defensive burden on low-income tenants by facilitating the identification of, and litigation against, the actual culpable party. As noted in Part III, ACS, the tenant-parent, and the attorney for the child can engage in third-party discovery to determine whether the public housing authority may be in violation of its duties to maintain HQS. One problem, however, is that even after obtaining positive information to this effect, family court judge may still decline to dismiss the neglect action through an ACD, even though all parties consent. Another problem is that family court judges, in evaluating whether tenant-parents failed to provide adequate shelter, are not thoroughly considering what duties the parents actually have as tenants under the HQS, HMC, and MDL. The following recommendations to ACD motion practice and the fact-finding process could reduce litigation delay, ensure the protection of the children throughout the pendency of the proceeding, and assist the court in more adequately addressing these housing issues.

1. Appeal the Denial of an Adjournment in Contemplation of Dismissal

As noted in Section III.A, all parties may motion the court to enter an ACD, which pauses the child protective proceeding for up to one year while the parent completes ACS's service plan.¹⁷⁰ If the parent successfully completes the service plan, the neglect action is then dismissed.¹⁷¹ One court noted that an ACD serves as "an alternative to the disruption of adjudicatory hearings when a family at risk is simply in need of the assistance which a child protective agency can provide."¹⁷² This may very well be the situation where discovery reveals that the public housing authority has caused the poor housing conditions by not complying with its legal duties. An ACD would permit ACS to provide more direct services, such as the ones suggested in Section IV.A, to remedy the conditions without penalizing the tenant-parents for lacking the financial means to correct them. However, the grant of an ACD is within the sole discretion of the family court judge, and thus may be denied even if all parties consent.¹⁷³

Section 1112(a) of the Family Court Act provides that child protective proceedings for abuse and neglect under Article 10 are exempt from the general rule that non-final orders are not appealable.¹⁷⁴ This exemption supports a

170. N.Y. FAM. CT. ACT § 1039 (McKinney 2019).

171. *Id.*

172. Matter of Paul "X", 57 A.D.2d 216, 219 (N.Y. App. Div. 1977).

173. N.Y. FAM. CT. ACT § 1053(c) (McKinney 2019) (stating the court "may" enter an ACD upon consent of all parties); see also Emily Barry, *Babies Having Babies: Advocating for a Different Standard for Minor Parents in Abuse and Neglect Cases*, 39 CARDOZO L. REV. 2329, 2350 (2018) (emphasizing that the Family Court Act outlines no factors for the judge to consider when ruling on a motion for an ACD). Another proposal, although beyond the scope of this Note, may include amending the Family Court Act to include guidelines for courts to consider.

174. N.Y. FAM. CT. ACT § 1112(a) (McKinney 2019); *id.* § 1111 ("An appeal may be taken to the appellate division of the supreme court of the judicial department in which the family court whose order is appealed from is located.").

family court litigant's ability to appeal the denial of an ACD. A judge's denial of an ACD in effect prevents adjournment, and requires that the case proceed to fact-finding.¹⁷⁵ Since fact-finding has not yet occurred, and no final order has been entered, the denial of the ACD would be considered a non-final, intermediate order within the meaning of Section 1112(a) that is appealable as of right. However, an extensive review of the case law revealed no instances of litigants appealing intermediate orders denying ACDs, thus suggesting that this is an underutilized practice among family court litigants at this time.

Family court litigants should continue to motion for ACDs when appropriate and consider appealing the denials to the appellate division of the New York Supreme Court. While the matter is under appellate review the child would remain under the family court's jurisdiction and ACS's supervision, so safety concerns for the child in the interim are mitigated. It is important to note, however, that it is incumbent on the family court litigants to proactively develop a thorough record of the tenant-parent's and public housing authority's respective compliance with their legal duties to maintain HQS prior to motioning for an ACD so that the record is fully developed for review on appeal.¹⁷⁶

2. Litigate in the New York Supreme Court

The family court retains exclusive original jurisdiction over child protective proceedings,¹⁷⁷ but this grant is concurrent to the general jurisdictional authority of the New York Supreme Court (supreme court).¹⁷⁸ While Section 114 of the Family Court Act specifically provides that the Act "shall in no way limit or impair the jurisdiction of the Supreme Court,"¹⁷⁹ courts have reasoned that the legislative history of the Family Court Act jurisdictional provision reflects a strong preference that children's issues be litigated in family courts.¹⁸⁰ As a result, the supreme court rarely exercises jurisdiction over child protective proceedings.¹⁸¹ Such was the case in *Sombrotto v. Christiana W.*, in which a hospital filed a mental health action against the parents of a minor child in the supreme court to compel the involuntary administration of psychiatric drugs when the parents refused and ACS declined to initiate a neglect proceeding.¹⁸² The supreme court accepted

175. *Id.* § 1039.

176. Another proposal, which is also beyond the scope of this Note, may include heightening the standard of review on appeal beyond abuse of discretion.

177. N.Y. FAM. CT. ACT § 115(a) (McKinney 2019).

178. Professor Merrill Sobie's Practice Commentary to the N.Y. FAM. CT. ACT § 115 (describing the source of the family court's jurisdiction as the New York State Constitution). The New York Unified Court System's structure may vary from that of other states. The New York Supreme Court is a trial level court that "generally hears cases that are outside the jurisdiction of other trial courts of more limited jurisdiction." *Supreme Court, Civil & Criminal Terms*, NEW YORK STATE UNIFIED COURT SYSTEM, <http://www.nycourts.gov/courts/cts-NYC-SUPREME.shtml> (last visited Nov. 17, 2019). The Court of Appeals is New York's highest appellate court. *Court of Appeals*, NEW YORK STATE UNIFIED COURT SYSTEM, <https://www.nycourts.gov/ctapps> (last visited Nov. 17, 2019).

179. N.Y. FAM. CT. ACT § 114 (McKinney 2019).

180. Professor Merrill Sobie's Practice Commentary to the N.Y. FAM. CT. ACT § 114).

181. N.Y. FAM. CT. ACT §§ 114, 115 (McKinney 2019).

182. *Sombrotto v. Christiana W.*, 50 A.D.3d 63, 64–65 (N.Y. App. Div. 2008).

jurisdiction and granted the involuntary administration, which was reversed by the First Department, who criticized what appeared to be an intent to circumvent the family court.¹⁸³

However, the supreme court has exercised jurisdiction where similar actions have been filed in both the family court and the Supreme Court. In such situations, the supreme court has granted motions to consolidate the proceedings upon a showing of good cause. Good cause has been found to consolidate proceedings where the family court would be unable to “resolve all outstanding issues regarding [the] family.”¹⁸⁴ For example, the consolidation of a family court abuse and neglect proceeding and a supreme court matrimonial action was upheld in *George A. v. Ivett A.* There, the supreme court consolidated the cases where the parties in the neglect action were different than that in the matrimonial action, and consolidation permitted interested parties to participate without requiring further motion practice.¹⁸⁵ In arriving at the decision to consolidate, the court reiterated “a strong preference for having one judge decide all of the matters concerning the family before it.”¹⁸⁶

This same reasoning can support consolidation of a family court neglect action with a civil action against NYCHA filed by the tenant-parent in the supreme court. In order to adequately evaluate a tenant-parent’s poverty defense, family court judges must consider whether the tenant and the public housing authority complied with their respective duties to maintain HQS as required by the HMC and MDL. However, New York family courts are courts of limited jurisdiction,¹⁸⁷ and requiring such a legal analysis asks it to reach beyond its subject area expertise. In addition, evaluating whether the tenant and public housing authority complied with their respective duties may involve resolving questions of fact that are typically reserved for a jury, which is not afforded to litigants in family court.¹⁸⁸ Thus, while family courts have broad jurisdiction over the welfare of children’s issues,¹⁸⁹ they arguably are not the proper arbiters in cases where a successful analysis depends heavily on interpretation of housing law.

Rather than request that family court judges make housing law determinations and risk the skewed results described in Section III.B, litigants could consolidate family court neglect actions with civil actions against NYCHA in the supreme court. As a court of general jurisdiction, the supreme court is able to address “all of the matters concerning the family before it” and

183. *Id.* at 71–72.

184. *George A. v. Ivett A.*, 826 N.Y.S.2d 877, 880 (Sup. Ct. 2006).

185. *Id.* at 881.

186. *Id.* at 880.

187. N.Y. FAM. CT. ACT § 115 (McKinney 2019) (stating jurisdiction of family court).

188. *See id.* § 165 (stating the procedures in the N.Y. Civil Practice Law and Rules (CPLR) are to be applied unless otherwise prescribed in the Family Court Act). *But see* Professor Merrill Sobie’s Practice Commentary to the N.Y. FAM. CT. ACT § 165 (describing that juries are relatively unknown in Family Court, as “the last jury trial was presumably held in 1961” before “the legislature repealed the provision for a jury trial” in 1962).

189. N.Y. FAM. CT. ACT § 141 (McKinney 2019) (“[T]he court is given a wide range of powers for dealing with the complexities of family life so that its action may fit the particular needs of those before it. The judges of the court are thus given a wide discretion and grave responsibilities.”).

evaluate the child neglect issues,¹⁹⁰ as well as the extent of the tenant-parent's culpability in relation to housing law.¹⁹¹ For example, in *Aponte v. NYCHA*, tenants brought a neglect action against NYCHA in the supreme court alleging NYCHA's failure to remedy a bedbug infestation.¹⁹² In holding that NYCHA was negligent, the court highlighted "several statutes that are relevant to this proceeding," and evaluated the duties of both NYCHA and the tenants under Article 4 of the HMC to eliminate rodents, insects, and pests,¹⁹³ and Section 80 of the MDL to maintain the cleanliness of the units and premises.¹⁹⁴ The court also noted that there was a question of fact to be properly resolved by the jury: whether the tenants caused the condition, or prevented NYCHA from remedying the condition, in which case the tenants would be responsible for remedying the violation.¹⁹⁵

In addition, consolidating the family court neglect action with a supreme court civil action would permit the tenant-parent to recover damages, since NYCHA is a party to the civil action. For example, in *Aponte v. NYCHA*, the court also noted that the jury would need to resolve the question of whether, and to what extent, the tenants suffered damages as a result of NYCHA's violations.¹⁹⁶ Tenant-parents could also potentially seek recovery from NYCHA for damages for injuries sustained because of its negligence,¹⁹⁷ the reimbursement of repair costs personally expended, and lost wages for the periods the tenant-parents were unable to work because they were in court. Such recovery would not be possible in family court. While the New York Civil Practice Law and Rules governing third-party practice applies in family court proceedings,¹⁹⁸ the family court would not likely have jurisdiction over NYCHA. Child protective proceedings are brought against a "parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child."¹⁹⁹ NYCHA certainly does not fit this definition. Even if the family court permitted the tenant-parent to implead NYCHA, it would not serve any meaningful purpose. The family court, as a court of limited jurisdiction, would not be able to issue an order finding NYCHA in violation of housing laws. Rather, ordering such relief is unquestionably within the jurisdiction of the supreme court.

190. *See generally* George A. v. Ivett A., 826 N.Y.S.2d 877, 878 (Sup. Ct. 2006) (granting the parent's motion to consolidate the family court neglect action with the Supreme Court matrimonial action).

191. *See generally* *Aponte v. NYCHA*, 39 N.Y.S.3d 369 (Sup. Ct. 2016).

192. *Id.* at 370.

193. *Id.* at 371.

194. *Id.* at 370–71.

195. *Id.* at 373–74.

196. *Id.* at 374.

197. *See generally* *Bruno v. NYCHA*, 21 A.D.3d 760 (N.Y. Sup. Ct. 2005) (tenant-parent brought negligence action against NYCHA for damages child sustained because of uninsulated radiator pipes) and *Hilton v. NYCHA*, 969 N.Y.S.2d 803 (Sup. Ct. 2013).

198. N.Y. FAM. CT. ACT § 165 (McKinney 2019) (stating the provisions of the CPLR apply unless specifically provided for in the Family Court Act).

199. *Id.* § 1012 (stating definition of "respondent").

V. CONCLUSION

The current landscape of New York City public housing, as it relates to NYCHA, indicates that substandard housing conditions are an ongoing concern for tenants. This Note focused on how the failure to maintain HQS can lead to adverse collateral legal consequences. In particular, where tenants have children, tenants may be subject to investigations by child protective services and neglect actions in family court for failure to provide the children with adequate shelter. This Note argued that ACS should provide more targeted housing preventative services to assist families in remedying the issue prior to filing a family court action. Since funding is a concern, this Note suggested that ACS provide more targeted counseling services or refer tenants to already existing nonprofits that provide housing-related assistance. Where a family court action is filed, this Note argued that the family court must evaluate the tenants' culpability in relation to the applicable housing laws governing HQS in order for the statutory poverty defense to have any meaningful effect on the determination. Since family courts are courts of limited jurisdiction, this Note proposed other civil process mechanisms that may provide tenants with more redress. First, it recommended that ACDs should be utilized more frequently, and appealed when they are denied. Second, it argued that family court proceedings be consolidated with civil actions against NYCHA in the supreme court. While this Note illustrated the collateral legal consequence issue using examples from ACS and family court, it would be helpful to further explore other collateral legal consequences faced by public housing tenants because of their poor housing conditions.