

IRP focus

Vol. 36, No. 4

December 2020

ISSN: 0195-5705

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The three articles in this issue address systemic racism and its intersection with the civil and criminal justice systems. Systemic racism refers to racism that has become normal practice within a society. It can lead to discrimination in many areas; these articles examine the interaction of systemic racism with civil justice in a family court setting, civil and criminal justice in regard to housing, and criminal justice and health.

The first article, by Tonya L. Brito, David J. Pate Jr., and Jia-Hui Stefanie Wong, examines how court officials and low-income noncustodial fathers who are African American negotiate race and racial inequality in family court. These noncustodial fathers are behind on paying child support and are at risk of incarceration for nonpayment. However, many of them face

substantial barriers to finding jobs that would give them the means to pay, including racial disparities in the labor market. For example, the penalty for having a criminal record in the job application process is so much larger for people who are Black than for people who are White that Black people without criminal records are actually treated less favorably by employers than White people with criminal records. The authors argue that court officials fail to acknowledge both explicit and implicit racial discrimination faced by the low-income Black fathers who appear in court, and instead take a race-neutral approach. The failure of these officials to recognize the consequences of racial inequality in the lives of the Black fathers in their courtrooms serves to perpetuate the unequal racial structures that exist throughout U.S. society.

The second article, by Kathryn Ramsey Mason, details the effects of crime-free housing ordinances enacted by local governments for private-market rental properties. People of color have less access to desirable housing—both historically and currently—than their White counterparts. This inequality stems in large part from policies that created explicitly segregated public housing and New-Deal-era programs that enabled White families to purchase single-family homes in all-White suburban neighborhoods while excluding Black families from becoming homeowners themselves. More recent policies, including the crime-free ordinances discussed in this article, reflect methods of discrimination that are more subtle than those employed in the past, and that may also exacerbate racial inequities in housing. These ordinances put renters—many of them people of color—at an increased risk of eviction. As the consequences of eviction can include homelessness, increased poverty, and neighborhood destabilization, the author maintains that these ordinances can have far-reaching consequences for racial inequality in the United States.

The third article, by Hedwig Lee, Christopher Wildeman, Emily A. Wang, Niki Matusko, and James S. Jackson, examines the effects of family member incarceration on women's cardiovascular health. Individuals who are Black are at higher risk of obesity, diabetes, hypertension, and cardiovascular disease, and are more likely than those who are White to experience these adverse health outcomes at younger ages. Past research has examined the effects of incarceration on health for men and their children, but has not looked at the effects of male incarceration on the physical health of female family members; the study described in this article seeks to help fill in this gap. The authors find that having an incarcerated family member is associated with an increased likelihood of poor cardiovascular health for women. They do not find this association among men. The authors suggest that this difference is likely due in part to the fact that women tend to be responsible for the majority of childcare and household management, and to gender differences in mechanisms for coping with stress that may increase women's risk of adverse cardiovascular outcomes. While the effects of family member incarceration do not vary by race or ethnicity, because such a high proportion of women experiencing family incarceration are Black, the authors contend that it should be considered a unique risk factor that contributes to racial disparities in women's health.

This issue also includes two “Research to watch” features. The first introduces a new study by Zawadi Rucks-Ahidiana, suggesting that gentrification—the process of economic change in a low-income neighborhood through the arrival of more affluent residents and businesses—affects different neighborhoods in different ways. The second describes an ongoing project by Tawandra Rowell-Cunsolo, Rahwa Haile, and Anthonine Pierre that will provide an in-depth understanding of both the sources of disadvantage and resilience experienced by Black fathers with criminal justice system involvement, and by their children between the ages of 18 and 24.

Negotiating race and racial inequality in family court

Tonya L. Brito, David J. Pate Jr., and Jia-Hui Stefanie Wong

TAKEAWAYS

Low-income Black fathers face explicit and implicit racial discrimination in the labor market, making it challenging for them to earn enough to provide for their children.

Child support professionals hold fathers to unrealistic standards for finding and maintaining consistent full-time employment by failing to acknowledge how racial inequality shapes the job opportunities of Black men.

Ignoring race when it matters serves to perpetuate discrimination and can even increase racial bias.



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In 2019, millions of noncustodial parents across the United States owed over \$115 billion in child support debt.¹ The majority of child support debt is owed by low-income fathers, many of whom are Black.² While the rules around what happens to these fathers vary from state to state, their fate is adjudicated in family court where they could face incarceration for their unpaid child support.

Most low-income fathers of color navigate the civil court system without legal representation. In fact, 80 percent of the civil legal needs of low-income communities go unmet and the vast majority of unrepresented litigants are low income.³ Even more troubling is that these trends are going in the wrong direction. State courts that deal with high-stakes issues particularly relevant to low-income residents, such as family courts and housing courts, are seeing an increasing number of litigants, the majority of whom are unrepresented.⁴ This phenomenon is referred to by some as a “justice gap,” meaning that low-income litigants do not have access to the same level of representation as Americans with more financial means.⁵ The population of low-income Americans most affected by the civil justice gap is disproportionately composed of people of color.⁶ Still, race and racial inequality are understudied areas in the literature examining access to justice.

In this article, we examine how legal actors and low-income litigants negotiate race and racial inequality in family court. Specifically, we examine cases where the state is pursuing child support from low- and no-income noncustodial fathers, many of whom lack the financial resources to pay the support they owe and are unrepresented in the proceedings.⁷ We address the following research question:

- How does race and racial inequality affect child support judicial proceedings for low-income litigants?

Many fathers who are legally obligated to pay support are poor and have difficulty finding and maintaining jobs that would allow them to reliably pay support.

Low-income fathers, child support enforcement, and civil contempt proceedings

Child support is intended to provide financial resources for children residing in single-parent households. However, many fathers who are legally obligated to pay support are poor and have difficulty finding and maintaining jobs that would allow them to reliably pay support. According to a 1997 Urban Institute study, about 88 percent of poor noncustodial fathers—including fathers who were institutionalized and those without a child

support order—pay no child support.⁸ Fathers without the means to pay can incur significant debt in the form of child support arrears. Low- and no- income noncustodial parents account for the majority of child support arrears; of noncustodial parents with more than \$100,000 in arrears in 2017, 60 percent had no reported income, and an additional 25 percent had reported income of less than \$20,000, meaning their debt was at least five times their annual income.⁹

Child support collection and enforcement services are governed by each state’s child support program (see text box). In order to collect child support debts, these agencies use a number of enforcement methods including wage garnishments, tax intercepts, and property liens. While these measures work well to enforce orders for employed noncustodial parents, they tend to be unsuccessful in collecting money from obligors who are very poor. As a result, the child support enforcement system relies on other strategies, including pursuing an order of civil contempt for noncompliance with the child support order.

For a noncustodial parent to be found in civil contempt, a judge must determine that the obligor had the ability to pay the child support order but failed to do so. In the state in which we conducted our study, the process for pursuing an order of civil contempt generally has two parts. First, the case is brought before a family court commissioner. Following one or more hearings, the family court commissioner determines whether grounds exist to find the noncustodial parent in contempt. If so, the case then goes to a circuit court judge for an additional one or more hearings. In order for a judge to arrive at a finding of civil contempt, they must generally determine that an obligor was under an order of support, was able to comply with the order, and failed to do so. If the obligor is unable to comply with the order, the judge should not apply an order of civil contempt. Thus, the judge’s assessment of the noncustodial parent’s ability to pay the underlying child support order is an essential finding in a child support contempt action.

Most noncustodial fathers who do not pay their child support are poor and face substantial obstacles to finding jobs that would give them the means to pay.¹⁰ One study found that 75 of noncustodial fathers with incomes below 130 percent of the federal poverty line did not work full-time.¹¹ Other studies have found that 60 percent of poor fathers who do not pay child support belong to racial and ethnic minorities, 29 percent are incarcerated, 43 percent have not completed high school, 39 percent have health problems, and 32 percent have been unemployed for at least three years.¹² Given these challenges, it is not surprising that so many of these men struggle to find employment.

Child support enforcement

All U.S. states operate a child support program to provide child support collection and enforcement services. The state agencies are overseen by the federal Office of Child Support Enforcement (OCSE).

At a minimum, all child support enforcement programs offer the following services:

- Locating noncustodial parents;
- Establishing paternity;
- Establishing and modifying child support orders;
- Collecting payments and enforcing child support orders; and
- Referring noncustodial parents to employment services.

Not all child support payments are managed by state child support programs; some are handled through courts or private attorneys. Individuals who receive public assistance from the state are required to participate in the state child support program. In addition, any parent who needs help to establish a child support order or to collect support payments can apply for those services.

Virtually all noncustodial parents who are employed in the formal labor market have child support payments automatically deducted from their wages. The child support system has a number of other methods intended to enforce order payment. If an order is still not paid in full, the child support enforcement agency or the custodial parent can request a hearing in family court for an order of civil contempt, or non-compliance with the child support order.

In the state in which we conducted our study, an initial hearing is conducted under a family court commissioner (who is appointed by the circuit court judge). The commissioner can: (1) determine that there are no grounds to find the noncustodial parent in contempt; (2) order the noncustodial parent to appear before the commissioner again at a later date; or (3) conclude that there are grounds to find the noncustodial parent in contempt, and thus refer to case to the circuit court judge. The circuit court judge (an elected position) will then hold an additional one or more hearings, and then make a decision on the civil contempt order. If the court determines that the noncustodial parent is able to comply with the order but has failed to do so, the noncustodial parent can be ordered to pay a lump sum, scheduled payments, or face civil incarceration.

Methods

The findings discussed here are drawn from a larger qualitative study that investigates how attorney representation and other more limited forms of legal assistance affect civil court proceedings for low-income litigants.¹³ Though we did not initially set out to explicitly examine questions of race within the context of studying access to civil justice, the importance of race and racial inequality to our research became apparent early in our data collection efforts.

The state in which we conducted the research for this article is one of several states that provides appointed counsel to low-income child support obligors facing incarceration as a result of a finding of civil contempt. We concentrated our data collection in courts in three counties: (1) a large, urban court that operates in a racially and ethnically diverse and economically depressed city; (2) a suburban court that operates in a less ethnically diverse and fairly economically advantaged environment, though one that also has large racial disparities; and (3) a smaller urban court that operates in a less ethnically diverse and relatively more economically advantaged city than does the large urban court.

Data collection included exploratory fieldwork, observation of child support enforcement hearings, and group and individual interviews with legal professionals who handle child support cases; we did not interview the custodial or noncustodial parents who we observed in hearings. We also conducted multiple site visits during which a team of researchers observed court proceedings.

Data collection spanned thirty-four months during which we conducted about sixty-four hours of observations in county courthouses. While we do not have self-identified demographic data on parties in these cases, our data from researcher observations indicates that child support obligors were predominately men of color. In the sixty-nine child support enforcement cases we observed where parties were present in court and researchers made note of their perceived race, we noted that 65 percent of obligors appeared to be Black, 20 percent appeared to be White, 12 percent appeared to be Latino, and 1 percent appeared to be of Asian descent. In these same cases, 97 percent of the obligors appeared to be male and 3 percent appeared to be female.

We conducted twenty-eight total interviews—eight group interviews and twenty individual interviews. Interview participants included ten judges, eighteen family court commissioners, nineteen child support attorneys, thirteen defense attorneys, and three other individuals with professional experience in child support enforcement proceedings. The majority (78 percent) of these participants were White, 56 percent were male, and 44 percent were female.

Questions of race and racial inequality repeatedly surfaced as the fathers spoke during their court hearings.

Colorblind decision making in child support enforcement

During our court observations, race was highly visible, but rarely acknowledged in child support enforcement actions. As noted above, 80 percent of the fathers in court for nonpayment of child support were men of color, predominantly Black men. In contrast, the judges, family court commissioners, and lawyers in those court rooms were nearly all White. During the court hearings we observed and in our interviews with legal actors, race

was rarely mentioned explicitly. Still, questions of race and racial inequality repeatedly surfaced as the fathers spoke during their court hearings.

Many fathers spoke of long periods of unemployment and underemployment. Some spoke of barriers to obtaining a job, such as having a criminal record or liens. The trouble that these men experience in finding and maintaining unemployment is not surprising given the characteristics of the largest city in the county in which our study was located. The unemployment rate for Black men in this city exceeded 50 percent during our observation period, higher than most other cities in the United States.

This pattern of labor market racial disparities, while particularly apparent in the geographical area of our study, is evident nationwide, and is reflected in other research. Black job applicants are less frequently called back or offered employment compared to White applicants.¹⁴ When Black Americans do obtain employment, their starting wages are lower compared to similarly-qualified White employees.¹⁵ The penalty for having a criminal record in the job application process is so much larger for people who are Black than for people who are White, that Black people without criminal records are actually treated less favorably by employers than White people with criminal records.¹⁶ As shown in Figure 1, Black men in the United States are incarcerated at a much higher rate than White men. Given how difficult it is for a convicted felon who is Black to find steady employment, this high rate of incarceration means that large numbers of Black fathers face an extreme challenge in earning enough to support their children.

Figure 1. In the United States, men who are Black are incarcerated at a much higher rate than men who are White.



Note: Each figure represents rate of 1,000 in 100,000 residents incarcerated, includes male prisoners of all ages.

Source: Bureau of Justice Statistics, Federal Justice Statistics Program, 2019 (preliminary), National Corrections Reporting Program, 2018, National Prisoner Statistics, 2019, and Survey of Prison Inmates, 2016; U.S. Census Bureau, “Postcensal Resident Population Estimates for January 1, 2020,” December 31, 2019, Table 10.

Rather than immediately certifying child support cases for civil contempt, family court commissioners often direct unemployed fathers to participate in the JOBS Program. Through this state-funded program, local nonprofit organizations receive government contracts to help clients gain job skills, apply for jobs, find employment, and ultimately, pay their child support order. The organizations providing job assistance services often also have additional services—such as fatherhood programs—that are available to their court-mandated clients. One person we interviewed, the director of an organization offering services through the JOBS Program, noted that his predominantly Black clients tend to

cycle through temporary low-wage jobs, and at times are completely shut out of the labor market. Some Black fathers face explicit racial discrimination—such as a company that preferred to hire White non-English speakers from other countries rather than Black men from the community. Others faced implicit discrimination—practices that appeared to be race-neutral but in fact resulted in racial employment disparities, such as local economic policies that place jobs in areas that are geographically distant for Black individuals living in a highly segregated area. The organization director explained that most JOBS Program clients who locate employment find it through temp agencies that are willing to hire low-skilled Black men from the central city. However, these agencies reportedly often undermine job stability for their workers, by claiming that a temporary position will become permanent after ninety days, but then laying them off after eighty-nine days. They then rehire them again a few days later, with the permanent employment clock again set to zero. Other research has confirmed that temp agencies often place minority workers in low-wage, insecure jobs, using practices like the “ninety-day rule” that contribute to intermittent employment, deprive workers of rights and protections, and exacerbate inequalities.¹⁷

Even though minority men in the area of our study faced high levels of unemployment and race-based exclusion from the labor market is documented, the court officials in our focus groups did not suggest race-based employment discrimination as a factor relevant to obtaining work, nor did they propose that courts or lawyers should consider it when determining minority fathers’ ability to pay child support. Instead, judges, family court commissioners, and lawyers, reflecting a “colorblind” attitude, stated that these fathers could not find jobs because they lacked adequate and marketable job skills, had limited education and work histories, and had been previously incarcerated. They did not acknowledge that these barriers to employment are not race-neutral barriers, but rather are linked to systems—such as the criminal justice system—that inherently disadvantage people who are Black.¹⁸

A colorblind approach to assessing civil contempt cases ignores racially discriminatory employment conditions. While undoubtedly desirable to some, race-neutral approaches such as these fail to challenge inaccurate assumptions about how race is related to employment prospects. Jobless Black fathers are evaluated in child support proceedings according to a normative White standard. Effectively, expectations on the part of court officials about job availability reflect the experiences of White people in the labor market, and do not take account of the very different experiences of people who are Black. The shortcomings of the colorblind approach can be seen in one of the hearings we observed. This was an “order to show cause” hearing, the first part of the two-stage civil contempt process, where a family court commissioner determines whether there is reason to find the noncustodial parent in contempt.

Mitchell v. Robinson, Order to Show Cause Hearing, April 29, 2014

Dante Robinson was called to an order to show cause hearing by Marie Mitchell, the mother of Janae, her thirteen-year-old daughter with Robinson.¹⁹ Robinson is named in four additional cases on the calendar for the same time period, representing his other open child support orders. He has a total of eleven children, eight of whom are minors. He has child support orders for these eight children with five different women. While multiple partner fertility—having biological children with more than one partner—is more common among unmarried couples than married couples, Robinson is an unusual case.²⁰ Although only Mitchell has filed an order to show cause petition for nonpayment of child support, the policy of the child support office when there are multiple cases with the same obligor is to file a similar petition for all outstanding orders.

At 2:41 p.m., the case of *Mitchell v. Robinson* is called in. Both parties in the case appear, but the other four mothers do not show up for the consolidated hearings. Marie Mitchell is a Black woman in her late thirties or early forties; Dante Robinson is a Black man in his early forties with a shaved, bald head. Both are neatly dressed and well-groomed, and both are unrepresented by legal counsel.

The hearing lasts for a total of fourteen minutes. It starts with the lawyer representing the child support enforcement office, Ballard, reviewing the history of child support payments that have been made (or not made), followed by Commissioner Hendren questioning Robinson about his work history and current efforts to find a job. For each of Robinson's five child support orders, he has a monthly amount due for current support, a monthly amount due for arrears, a total amount due to the mother, and a total amount due to the state. The monthly amounts vary, from a low of \$5.00 per month to over \$100 per month. Robinson's total child support debt is in the tens of thousands.

The subject of this child support hearing is Janae, his thirteen-year-old daughter with Marie Mitchell. The child support order is \$152 per month and Mitchell wants the order enforced. According to Attorney Ballard, Robinson made his last child support payment in April 2013, thirteen months prior to the hearing date. Upon receiving Robinson's child support payment, the child support agency spread it out proportionately across all five of his open cases, which are all in arrears. Marie Mitchell received only \$4 in child support from that payment.

After reporting on the status of the case and Robinson's payment history, Attorney Ballard requests that the court refer Robinson to the JOBS Program, saying that he needs help finding a job. Commissioner Hendren begins to question Robinson:

Q: Who is paying your bills?

A: I live with my mom.

Q: When did you last work?

A: My last job was a year ago.

Q: What have you been doing to find work?

A: I fill out applications all the time. I have seven felonies and I shot someone. When I put the truth about that on applications then no one will hire me.

Commissioner Hendren suggests that the JOBS Program can help with finding a job. His tone is encouraging. Robinson responds that he has been looking for a job. Commissioner Hendren tells him that it cannot hurt to give it a try. Robinson responds in a calm and deliberate manner: "I try. I try. I try." Again, as if he has not heard Robinson's repeated comments about his efforts to find work, Commissioner Hendren talks about how important it is to keep looking for a job. Robinson asserts: "I can bring in video showing how hard I'm trying."

Commissioner Hendren then shifts to Marie Mitchell. There is a visible look of frustration on Mitchell's face. She reveals that she is on disability and needs the child support payments to raise her daughter Janae. "The \$4 that I get every six months or a year isn't enough." Commissioner Hendren tells her that she will get about 60 percent of whatever Robinson pays because her child support order is the largest of the group.

Robinson speaks out of turn. He interjects and says firmly: "I do for my kids." He then tells the court that he panhandled \$200 to give Janae a gift for her thirteenth birthday. "I go out two or three times a week to look for a job. I don't want to be poor. I don't want to panhandle."

At the hearing, Marie Mitchell confirms that Dante Robinson gave their daughter Janae the money for a birthday present as he claimed. There is no record of the payment in the financial accounting maintained by the child support agency, however. Because the funds did not go through the formal channels of the child support system—which track payments—the money does not count against Robinson’s accrued child support debt. Commissioner Hendren recommends that Robinson make payments on a monthly basis, even partial payments, and that he make all future payments through the system.

As Robinson’s hearing draws to a close, Attorney Ballard asks the commissioner to find that cause for contempt exists, so that in the second part of the contempt process, a judge can enter a contempt finding if Robinson has not fulfilled his work search requirements. Commissioner Hendren denies Ballard’s request and instead states that he will have Robinson return to his court for a second hearing so that Robinson receives the same message again. Turning to Robinson, his tone softens and he tells Robinson that he is getting credit for trying to find a job and encourages him to continue those efforts. Yet the commissioner still requires Robinson to attend the JOBS Program, which implies that he has not tried hard enough. Commissioner Hendren then dismisses the orders to show cause in the other four cases because the mothers did not appear at the hearing.

Poor men may strive to do their best to provide for their nonresident children, but often have very little financial support to give. Kathryn Edin and Timothy Nelson, in their ethnographic study of 110 Black and White low-income, unmarried fathers in Philadelphia, Pennsylvania, and Camden, New Jersey, suggest that men like Dante Robinson believe that they should provide for their children but reject the view that they should play the role of a traditional breadwinner. These men have “radically redefined fatherhood to sharply elevate the softer side of fathering: offering love, preserving an open line of communication, and spending quality time.”²¹

While the \$200 that Robinson gave to his daughter as a birthday gift does not “count” towards his formal child support obligation, it does show him trying to be a good father to Janae. Many fathers in Robinson’s position prefer to support their children through informal cash and in-kind exchanges rather than complying with their child support order and paying through the formal state process.

As appealing as the colorblind ideal may appear to some, ignoring race when it matters can have disastrous consequences, perpetuating discrimination and even increasing racial bias.

Job search efforts, compliance, and social control

The end result of Dante Robinson’s first contempt hearing is that he is directed to work with the JOBS Program. At the next hearing before Commissioner Hendren, he will be asked about his efforts to find work and, if he does not demonstrate sufficient compliance, will go before a judge and face potential civil incarceration. At his hearing, the legal system fails to comprehend or take seriously Robinson’s story. Although the order to show cause petition was filed by only one of the mothers with whom Robinson has children, the child support agency has placed all five of his open cases on the court’s calendar. Rather than focusing on his failure to pay child support on behalf of his daughter Janae, the hearing underlines the fact that he is not supporting any of his children. Robinson notes that his criminal history—seven felonies and a shooting—makes it very difficult to find a job.

Hendren refers Robinson to the JOBS Program, reflecting the expectation that with this assistance, he should be able to find a job. Robinson, however, challenges the normative expectation that there is a job out there for him—if only he would try harder to find it—through his repeated “I try. I try. I try.”

The court commissioner applies a colorblind approach, assuming that success is based only on individual skill and effort, regardless of one’s race. However, this approach makes the child support system simply blind to the race-based injustice that Dante Robinson and other Black men experience in the labor market. As appealing as the colorblind ideal may appear to some, ignoring race when it matters can have disastrous consequences, perpetuating discrimination and even increasing racial bias.²²

The colorblind approach can result in unrealistically high orders that go unpaid, burdening poor men with uncollectible arrearages that may reach tens of thousands of dollars. When a father has no or very low income, their child support order may be set based not on actual earnings, but on the expectation of a full-time minimum wage job. In many cases, however, the racial context makes this expectation entirely unrealistic for poor Black men, who are called to court again and again to account for their persistent failure to find work, always facing the possibility of imminent incarceration.

There is a tension between a race-neutral expectation that work is available to all fathers who seek it, and the reality of the racialized hierarchy that these fathers encounter in the labor market. A colorblind mindset positions poor Black fathers as men who need to be encouraged, prodded, and even threatened with imprisonment in order to get them to find a job. Fathers are ordered to search for work and may return to court multiple times so that their compliance can be assessed. Court officials view themselves as giving noncustodial parents multiple opportunities to fulfill their legal obligations, thus revealing their belief that with enough time and opportunity, any father should be able to be employed. When Black fathers fail to find employment, they are viewed by the court system as failures who are simply not trying hard enough.

Conclusion

Our examination of access to justice for low-income civil litigants highlights the challenges of navigating race and racial inequality within the context of child support enforcement proceedings. Court officials struggle to understand or even perceive the challenges encountered by the low-income Black fathers who appear in court. They fail to acknowledge both explicit and implicit racial discrimination in the labor market and instead take a race-neutral approach. Black fathers are thus held to impractical standards for finding and maintaining consistent full-time employment, and cast as “deadbeats” who would not seek work without judicial supervision and the threat of incarceration. A race-neutral approach disguises the unequal racial structures

Type of analysis: Qualitative

Data source: Observations of child support enforcement hearings, and group and individual interviews with legal professionals who handle child support cases.

Type of data: Ethnographic

Sample definition: (1) a large, urban court that operates in a racially and ethnically diverse and economically depressed city; (2) a suburban court that operates in a less ethnically diverse and fairly economically advantaged environment, though one that also has large racial disparities; and (3) a smaller urban court that operates in a less ethnically diverse and relatively more economically advantaged city than does the large urban court.

Time frame: A 34-month period during 2013 to 2015.

Limitations: Qualitative methodology produces in-depth and illustrative information in order to understand the various dimensions of the problem under analysis. It is not focused on quantification or numerical representativeness.

that exist throughout U.S. society. Although the legal professionals we spoke to do not recognize it, these racial structures play a significant role in child support enforcement proceedings. The failure of these officials to recognize the consequences of racial inequality in the lives of the Black fathers in their courtrooms serves to perpetuate these discriminatory systems. ■

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¹²Sorensen and Zibman, “Getting to Know Poor Fathers.”

¹³The full five-year study includes an extensive court-based ethnography, in-depth interviews of over 145 lawyers, judges, commissioners and plaintiffs, and longitudinal interviews with a sample of 40 child support defendants including case tracking for at least one year; see Brito, Pate, and Wong, “I Do for My Kids.”

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¹⁹All names used in this article are pseudonyms.

²⁰Fragile Families and Child Wellbeing Study Fact Sheet, n.d., accessed December 2, 2020 at https://fragilefamilies.princeton.edu/sites/fragilefamilies/files/ff_fact_sheet.pdf.

²¹K. Edin and T. Nelson, *Doing the Best I Can: Fathering in the Inner City* (Los Angeles: University of California Press, 2013).

²²D. Peery, “The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations,” *Northwestern Journal of Law & Social Policy* 6, No. 2 (2011): 12; V. C. Plaut, “Diversity Science: Why and How Difference Makes a Difference,” *Psychological Inquiry* 21, No. 2 (2010): 77–99.

Crime-free housing ordinances and eviction

Kathryn Ramsey Mason

TAKEAWAYS

The eviction risk of vulnerable tenants is increased by crime-free housing ordinances.

Local police departments, not landlords, decide when eviction is appropriate where crime-free housing ordinances are in effect.

Eviction can lead to many social ills including homelessness, increased poverty, and neighborhood destabilization.

Racial inequality is exacerbated by crime-free ordinances because people of color are both more likely to rent their homes and more likely to face arrest, and are thus at a higher risk of eviction.



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Homeownership and access to high-quality affordable rental housing are important facets of financial well-being in the United States, but people of color have less access to desirable housing—both historically and currently—than their White counterparts. This inequality stems in large part from policies that created explicitly segregated public housing and New-Deal-era programs that enabled White families to purchase single-family homes in all-White suburban neighborhoods while excluding African American families from becoming homeowners themselves.¹ While the Fair Housing Act of 1968 ostensibly prohibited explicit discrimination, one continuing legacy of past policies is racial residential segregation. More recent policies, reflecting methods of discrimination that are more subtle than those employed in the past, may also exacerbate racial inequities in housing. In this article, I detail the effects of one such set of policies enacted by local governments—crime-free housing ordinances for private-market rental properties.² These ordinances put renters—many of them people of color—at an increased risk of eviction. As the consequences of eviction can include homelessness, increased poverty, and neighborhood destabilization, these ordinances can have far-reaching consequences for racial inequality in the United States.

Conduct that triggers either a one-strike eviction or a crime-free housing ordinance eviction does not need to be proven in court, and even if the person is never convicted of a crime, they can still lose their home.

The one-strike policy and crime-free housing ordinances

Across the country, municipalities are passing and enforcing nuisance eviction and crime-free housing laws that are ostensibly aimed at preventing and reducing crime, but often result in vulnerable residents being put at risk of losing their housing. These crime-free housing ordinances for rental properties are modeled after a federal statute known as the “one-strike policy” that has been in place for federally subsidized public housing tenants since the late 1980s (see text box). Both the federal one-strike policy and crime-free housing ordinances authorize, encourage, or require landlords to evict tenants for a single instance of actual or alleged criminal conduct. In federal public housing, the criminal activity may be committed by the tenant, any household member, or a guest, on or off housing authority property. The federal law imposes strict liability on the tenant even if they had no knowledge of the activity and could not have prevented it. This is also true for many crime-free housing

Public housing and the one-strike policy

The one-strike policy evolved from problems that have plagued the administration of public housing since its beginnings as part of President Franklin D. Roosevelt's New Deal agenda. The 1937 Housing Act provided the legal structure and federal funding for the construction of housing intended for working-class families who suffered from high housing prices and slum conditions during the 1930s. Federal and local officials worked together to implement the Housing Act, with deference to local officials on important decisions such as site and tenant selection. However, the leeway given to local governments often resulted in the furtherance of racially segregated neighborhoods.

Although public housing developments in many cities were racially concentrated, the program was initially considered to be a great success by many policymakers. However, within twenty years, many White families and more prosperous African American families had left public housing. White residents were encouraged by racially discriminatory mortgage incentives from the Federal Housing Administration to move to single-family homes in the suburbs. African American families that were more economically prosperous either chose to leave public housing when they could afford other residences, or were made to leave once they exceeded the income threshold required for public housing residents. As a result, remaining public housing residents were largely African American and poor.

The one-strike policy in federal law, the precursor to crime-free housing ordinances at the local level, was developed in response to the proliferation of drugs and crime in public housing. In the early 1980s, the Reagan administration significantly ramped up its efforts to combat illicit drug use in the United States through a number of measures that became known as the War on Drugs. The laws and policies that constituted the War on Drugs included harsh criminal penalties for drug crimes, including lengthy mandatory minimum sentences, along with civil penalties—such as those instituted by the one-strike policy—aimed at deterring and punishing drug users and traffickers beyond the reach of the criminal justice system.

The core mission of public housing is to provide safe and affordable housing to low-income Americans. In order to carry out this mission, housing authorities must be able to carry out evictions against tenants when necessary. However, eviction is a drastic remedy, and housing authorities also have an obligation to take steps to avoid it whenever possible. This suggests a thoughtful and deliberative process in most situations, with eviction being the last resort option for any problem with a tenant. However, the advent of the one-strike policy made it more difficult to avoid eviction, even for housing authorities that wanted to save it for only the worst situations.

ordinances. In public housing, the consequence of violating this policy is the termination of the public housing tenancy, which often leads to eviction.³ In private-market apartments governed by crime-free housing ordinances, the result of a violation is usually either an eviction action against the tenant or fines levied against the landlord.⁴ Significantly, conduct that triggers either a one-strike eviction or a crime-free housing ordinance eviction does not need to be proven in court, and even if the person is never convicted of a crime, they can still lose their home.

I argue that local crime-free housing ordinances are more harmful to residential tenants than the federal one-strike policy on which they are based. Unlike the one-strike policy, which applies only to federal public housing tenants, crime-free housing ordinances put an unprecedented number of private-market tenants across the country at significant risk of eviction. People of color are both more likely to rent their homes and more likely to face arrest than are people who are White.⁵ Crime-free housing ordinances thus likely put people of color at a higher risk of eviction than their White counterparts.

Eviction as a crime-control tool

Policymakers and law enforcement officials have long used eviction as a crime-control tool. In the 1980s and 1990s, violence and crime in urban public housing were extremely high. In an effort to ameliorate these social problems, public officials chose a strategy of removing the so-called criminals from public housing, and letting law-abiding citizens remain. In the civil justice system, eviction has continued to be viewed largely as a civil remedy in response to the breach of a lease contract. However, in practice it has come to be employed as a first-resort method for dealing with the problems of drugs, crime and violence.⁶

While tenant advocates and some policymakers criticized the one-strike policy for public housing tenants, it was ultimately upheld by the Supreme Court in *Department of Housing and Urban Development v. Rucker* (see text box). Following the *Rucker* decision, use of eviction as a crime-control tool expanded to other types of rental housing, as many local governments across the country enacted

Department of Housing and Urban Development v. Rucker

During the 1990s, courts reached different decisions about how the one-strike policy should be applied. Much of the confusion lay in whether Congress had intended for housing authorities to be able to use their discretion to evict “innocent tenants,” who had no knowledge of, or participation in, criminal activity.

This confusion was laid to rest in 2002, when the Supreme Court decided *Department of Housing and Urban Development v. Rucker*. This case concerned four elderly public housing tenants in Oakland, California, who had their tenancies terminated in 1998 by the Oakland Housing Authority because of criminal drug activity committed by their family members or guests. For 63-year-old Pearlie Rucker, the criminal activity was an arrest three blocks away for cocaine possession by her mentally disabled adult daughter who lived with her. Another tenant, 75-year-old Herman Walker, was being evicted because his home health aide who did not reside with him possessed cocaine in his apartment. Finally, 71-year-old Willie Lee and 63-year-old Barbara Hill had their tenancies terminated because their teenage grandsons were caught smoking marijuana in the parking lot of the housing development. It was undisputed that the tenants were all unaware of the criminal activity by their family members and guests, could not have prevented it, and even warned their families not to engage in drug activity because it could result in eviction. Still, the Oakland Housing Authority sought to evict them all under the one-strike policy.

The Supreme Court concluded that the U.S. Congress had in fact intended to allow housing authorities to evict tenants for alleged criminal conduct that they have no actual knowledge of, and thus upheld the constitutionality of the one-strike statute. The Court did not address any issues beyond congressional intent, such as the wisdom or effectiveness of the underlying policy, and it did not indicate that its holding would apply to any situation beyond the federal one-strike policy for public housing residents.

crime-free housing ordinances. These ordinances are modeled on the federal one-strike policy, and are intended to deter and control crime in private-market rental housing. There are currently nearly two thousand municipalities across the country with some version of crime-free housing ordinances, with a large cluster located in the Chicago suburbs (see Figure 1).⁷

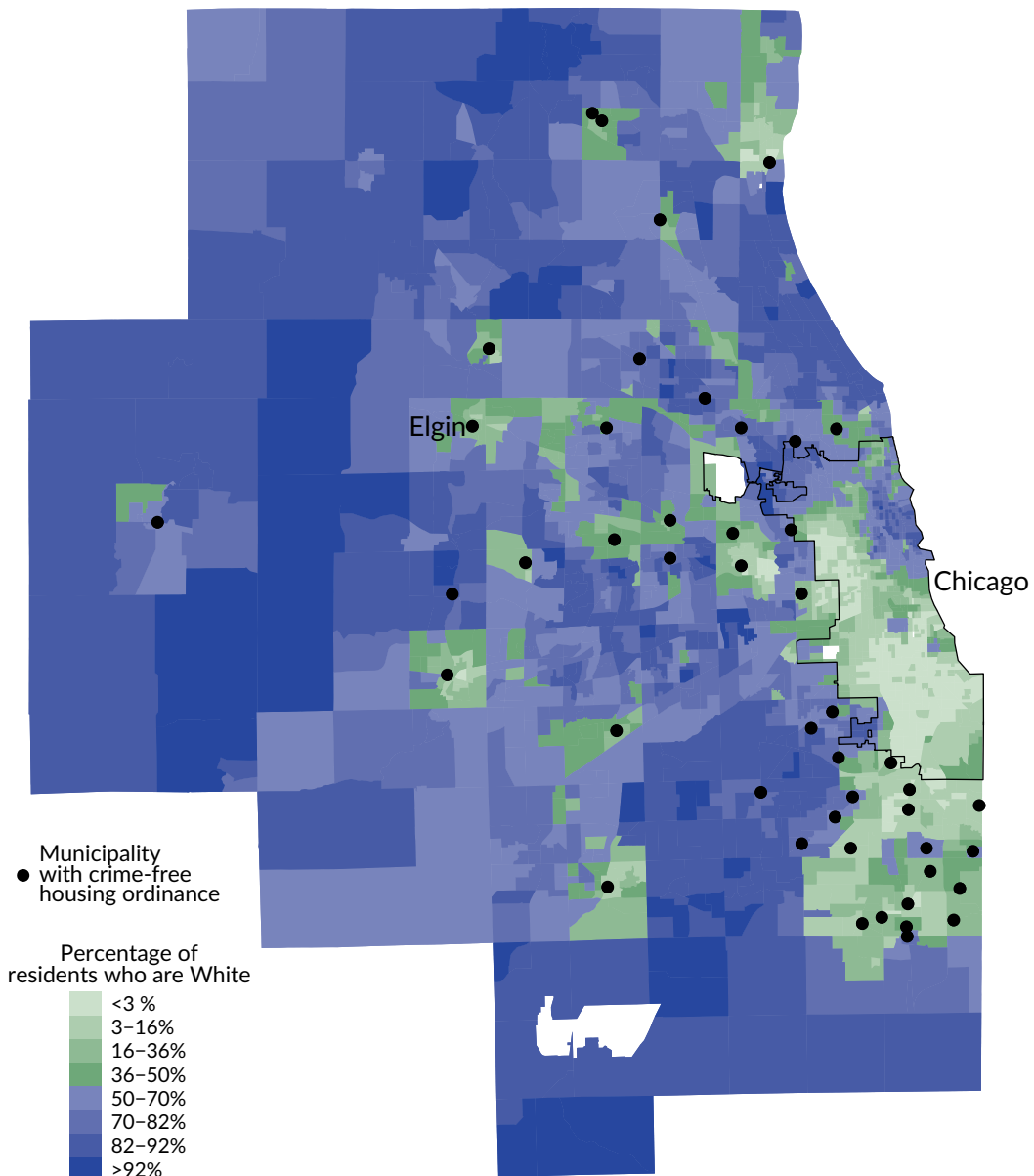
While the specifics of crime-free housing ordinances vary by location, two common features are (1) the requirement that landlords make tenants sign a crime-free lease addendum as a condition of the tenancy, which contains language similar to federal public housing leases; and (2) the use of nuisance property ordinances that make it easier for the municipalities to remove residential tenants even without the participation of the landlord. See text box on the Elgin, Illinois ordinance for an example. Crime-free housing ordinances always associate eviction with an accusation of criminal conduct, either by explicitly requiring landlords to evict such tenants, or by permitting the municipality to coerce the landlord into such action. The ordinances contain few legal protections for tenants, putting many at risk of losing their homes without the opportunity to obtain legal counsel or defend against the accusations.

Today, racial justice and civil rights concerns about housing segregation are often less about overt restrictions on people of color, and more about subtler methods of discrimination.

Local government authority and racial justice concerns

The desire for cities to have independent self-governance arose from urban reformers wanting to tackle local problems such as rapid population increases and corruption of local officials.⁸ Subsequent changes enabled cities to establish greater autonomy in relation to the states. It is notable that many crime-free housing ordinances exist in suburbs and small cities with high rates of homeownership and relatively low supplies of rental housing, while many large urban areas, with higher proportions of residential renters, have not passed such ordinances.⁹ After the end of World War II, an increase in urban crime rates and corresponding fear of crime coincided with efforts by the federal government to promote suburban homeownership among White middle-class Americans while disincentivizing people of color from moving out of cities and into suburbs.¹⁰ Individual municipalities also enacted laws to exclude people of color.¹¹

Figure 1. There is a large cluster of municipalities with crime-free housing ordinances in the Chicago suburbs.



Notes: Shading indicates percentage of non-Hispanic White residents in each census tract. Unshaded census tracts are those with no permanent residents, such as airports. Illinois counties included on map are Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, and Will.

Source: Shriver Center on Poverty Law, "The Cost of Being 'Crime Free,'" 2013, available at <https://www.povertylaw.org/wp-content/uploads/2019/09/cost-of-being-crime-free.pdf>; U.S. Census Bureau, 2014–2018 American Community Survey 5-Year Estimates, Table DP05.

Today, racial justice and civil rights concerns about housing segregation are often less about overt restrictions on people of color, and more about subtler methods of discrimination.¹² Recently, there has been a huge change in public understanding about the connection between race and involvement with the criminal justice system. This is due to the work of scholars such as Michelle Alexander, growing concerns about the social and economic effects of incarcerating millions of people of color, media attention on police shootings of people who are Black, and the rise of social resistance movements

The Elgin ordinance

The crime-free ordinance from Elgin, Illinois, is representative of such ordinances across the United States. Elgin, which calls itself “the City in the Suburbs,” is a community of approximately 108,000 residents located about 35 miles northwest of Chicago. Nearly 44 percent of Elgin’s population identifies as Hispanic or Latino, while only 7 percent identifies as Black or African American. According to the 2010 census, 70 percent of Elgin residents live in owner-occupied housing.

Elgin’s ordinance, like many others, has four main components: a landlord licensing requirement; a strong encouragement that landlords perform criminal background checks on prospective tenants; a crime-free lease addendum requirement; and nuisance property provisions.

Landlord licensing requirement: All landlords who want to rent out residential property in Elgin must apply for a business license, which requires a city inspection, and must renew their rental licenses each year. If the landlord fails to renew the license or has the license revoked for failing the city inspection, the tenants living in the property must vacate within 60 days. The licensing provision increases the risk of eviction for tenants; while the punishment of vacating the property may be aimed at increasing landlord compliance, tenants suffer the drastic consequence of losing their personal residences.

Criminal Background Check Requirement and Tenant Record Sharing: While it is not explicitly required in the city code, Elgin also strongly encourages landlords to conduct a thorough background check on all prospective tenants, a process that includes a credit check and a criminal history check. Landlords are encouraged to immediately reject any tenants with certain types of criminal records without giving the tenant the opportunity to explain the circumstances, thus reducing the number of available rental units for a population that already struggles to find safe and affordable housing.

Crime-Free Lease Addendum: Landlords in Elgin are required to have tenants sign a crime-free lease addendum. Example text for Elgin’s crime-free lease addendum, which is similar to those in many other communities, is laid out in its city code. Like the federal one-strike policy, the lease addendum applies to the “resident, any member of the resident’s household or a guest or other person under the resident’s control.” Behaviors that can constitute a lease violation include engaging in criminal activity or any act intended to facilitate criminal activity, and permitting the dwelling unit to be used for, or to facilitate criminal activity. The Elgin crime-free lease addendum specifically lists “drug-related criminal activity,” along with a few other illegal acts such as prostitution, criminal street gang activity, assault, and the unlawful discharge of firearms. The behavior that can lead to eviction does not necessarily need to happen in the dwelling unit, but can also occur nearby. Finally, the crime-free lease addendum indicates that a single violation shall be good cause for immediate termination of the lease. The lease addendum creates the possibility that a private-market tenant could be evicted for the behavior of another person that she did not know about and had no control over.

Nuisance Property Ordinance: Nuisance property ordinances give the municipal government the right to address allegedly illegal behavior by tenants and the power to punish landlords who do not deal with problem tenants. In Elgin, a chronic nuisance property is defined as a property where there have been three or more instances of documented criminal behavior within a twelve-month period. Activities that can constitute a nuisance include violent felony offenses, drug and gang activity, and a number of local ordinance violations which include loitering, noise, and overcrowding in an apartment. As is common with nuisance property ordinances, the police department is the branch of the municipal government responsible for enforcing Elgin’s ordinance. After two qualifying incidents, the police department can send a written letter to the landlord notifying her that her property is at risk of becoming a nuisance, and giving her the opportunity to abate the nuisance activities giving rise to the violation. This frequently means evicting the tenants.

such as Black Lives Matter.¹³ There have even been efforts to change some of the collateral consequences that have resulted from mass incarceration, such as barriers to employment, by enacting “ban the box” laws that prohibit employers from asking about a person’s criminal history on a job application.¹⁴ Some cities have even passed similar laws for initial housing applications, restricting the questions landlords can ask about criminal history and the length of time that they can utilize a criminal conviction to deny housing.¹⁵

Despite these advances, more and more municipalities pass crime-free housing ordinances every year. In Illinois, where crime-free housing ordinances have been the most systematically catalogued, many towns with crime-free housing ordinances also have documented histories of racial housing segregation, or have drawn attention to low crime rates that do not appear to justify such drastic crime prevention measures.¹⁶ In California, a recent analysis showed that cities with the largest increases in population of Black and Latino residents in the past 30 years were overwhelmingly likely to have approved crime-free ordinances—75 to 85 percent of those cities have such ordinances in place.¹⁷ At the same time, people of color are often twice as likely to face eviction as their White counterparts.¹⁸

When the one-strike policy was incorporated into federal law for public housing tenants, the effect was immediate and harmful, resulting in the eviction of many tenants based on the behavior of others about which they had no knowledge or control over.¹⁹ Although the federal one-strike policy can be devastating for the public housing tenants who are subject to it, it applies to only a relatively small percentage of the American public. There are only enough public housing units to accommodate 30 percent of those who are eligible for it, and the vast majority of residential

tenants in the United States rent their homes on the private market.²⁰ Because of this, the expansion of one-strike provisions into private rental housing by means of crime-free housing ordinances puts an unprecedented number of people, many of whom are low-income people of color, at risk of eviction and homelessness.

Crime-free housing ordinances also raise concerns about racial justice, especially when eviction decisions by the police department can be based only on an arrest.

Transfer of discretion to evict from landlords to police under crime-free housing ordinances

Municipalities that have implemented crime-free housing ordinances justify them on the grounds that they are aimed at preventing and reducing crime in communities.²¹ This follows a trend in recent years of local governments taking on more responsibility for crime control, including new policing tactics, especially “broken windows” policing—which maintains that “visible signs of disorder” like broken windows create an urban environment that encourages more serious crimes.²² Many of the activities targeted by broken windows policing and similar tactics aimed at maintaining order are regulated by state or federal criminal law, but also often by municipal law. Most notably, many enforcement techniques involve property regulation, such as demolishing property that is considered blighted, inspecting properties for building code violations, and instituting crime-free housing ordinances.²³

When crime-free housing ordinances require or encourage landlords to evict tenants on the basis of their interactions with the criminal justice system without differentiating between arrests, criminal charges, and convictions, they insert the local police department directly into the relationships between private landlords and their tenants, to the detriment of both. Throughout history, the landlord-tenant relationship has often been contentious, particularly when the tenants are poor. There are many examples of landlords seeking to evict tenants on flimsy and even unlawful grounds.²⁴ However, our legal system does allow for landlords to exercise their discretion to evict tenants who violate their lease obligations and to do so within the format of a legal process that includes giving tenants notice of a pending eviction and the right to a hearing. Private-market landlords have always been allowed to evict tenants for criminal behavior, even before the rise of crime-free housing ordinances, as long as they could prove a violation of the lease. However, crime-free housing ordinances tie landlords’ hands and interfere with the landlord-tenant relationship by requiring or coercing landlords, at the discretion of the local police department, to use eviction as a *first step* to address an allegation of criminal behavior. This transfer of discretion from the landlord to the police to decide when it is appropriate to evict a tenant is problematic for both tenants and landlords, and some landlords have objected to crime-free housing ordinances for this reason.²⁵

Crime-free housing ordinances also raise concerns about racial justice, especially when eviction decisions by the police department can be based only on an arrest. It is well-documented that the police are more likely to arrest people of color than White people.²⁶ People of color are also more likely to rent their homes.²⁷ Thus, using arrests as a basis for a police decision about eviction puts people of color at a higher risk of eviction than their White counterparts. In addition, the police may be less likely than the landlord to take any mitigating factors into account—such as the circumstances surrounding the arrest

or the effect of eviction on other household members—when deciding whether eviction is appropriate. The potential for police to abuse their discretion should be a serious concern for municipalities with crime-free housing ordinances.

Crime-free housing ordinances arguably tip the scale too far away from ensuring citizen rights, especially when there is sparse evidence that these ordinances do in fact reduce crime.

Balancing crime reduction with the rights of citizens

While one of the basic functions of government is to prevent and reduce crime, this function must be balanced with protecting the rights of citizens. Crime-free housing ordinances arguably tip the scale too far away from ensuring citizen rights, especially when there is sparse evidence that these ordinances do in fact reduce crime. Since their peak in the 1980s and 1990s, crime rates have fallen across the country—including in public housing—and the tough-on-crime policies have also given rise to other serious social challenges, including mass incarceration and the continuing need to advance racial and economic justice. The expansion through crime-free housing ordinances of the one-strike policy into the lives of residential tenants across the country, many of whom are low-income people of color, needs to be recognized as an equally serious issue.

Municipalities considering crime-free housing ordinances, as well as those with them already in place, should consider several questions in order to prioritize not only crime prevention, but also the value of the rights of their citizens: first, how serious the problem of crime in rental housing actually is; second, if facilitating eviction from rental housing is the best way to deal with this problem; and third, whether the ordinance diminishes the legal rights of landlords and tenants.

When the federal one-strike policy was put into place for public housing tenants in the 1980s, it was undisputed that crime was an extremely serious problem. While the one-strike policy was an imperfect solution to this problem, it was designed to address what many public housing tenants, public housing authorities, and policymakers considered to be a crisis. However, in many of the towns that have implemented crime-free housing ordinances, the situation is much less severe, and private-market rental housing is not facing the same challenges of public safety that public housing did thirty years ago. In fact, there is evidence to suggest that many municipalities are implementing crime-free housing ordinance as preventive measures, even in the absence of high crime rates.²⁸

A reduction in 911 calls could reflect a reduction in crime reporting by tenants who fear eviction—a dangerous situation for victims of domestic violence and other crimes.

Municipalities should also consider whether making it easier to evict residential tenants actually reduces crime. While crime rates have fallen in public housing since the federal one-strike policy went into effect, this reduction in crime cannot necessarily be attributed to evictions of alleged criminals. There is also no conclusive evidence to show that

crime-free housing ordinances reduce crime in private-market housing in the places where they exist. Many municipalities cite a reduction in 911 calls as evidence that these ordinances are reducing crime, but this is not necessarily the case.²⁹ The reduction could also reflect a reduction in crime reporting by tenants who fear eviction—a dangerous situation for victims of domestic violence and other crimes. Crime-free housing policies may also create new problems by reducing community and neighborhood stability. For example, under the federal one-strike policy, many housing authorities encourage public housing tenants to avoid eviction by signing agreements excluding particular family members—often a partner or a child—from the apartment. This can contribute to the breakdown of the very family ties that could strengthen low-income neighborhoods.³⁰ Eviction from private housing can have the similar negative consequences on both individuals and communities. People who are evicted do not just disappear—they still need a place to live—but eviction can make it even harder for people, especially those without many financial resources, to find decent and affordable housing.

Finally, crime-free housing ordinances may create legal problems for municipalities. The federal government and public housing authorities have already taken some steps to modify how the federal one-strike policy is applied in order to address some of these issues, including limiting the use of arrests to deny access to or evict someone from public housing. There have been some efforts to modify ordinances at the local and state levels to mitigate some of these concerns as well. For example, some states and cities make exceptions for 911 calls made by victims or others to report crimes. It is unclear, however, whether these measures provide meaningful protections for tenants; many domestic violence victims are arrested along with their abusers, and it is possible that such an incident could still lead to eviction.³¹

Given the many serious problems that crime-free housing ordinances present for tenants, landlords, and communities, municipalities that do not yet have crime-free housing ordinances in place should seriously consider whether they are worthwhile, and those that already have them should consider either repealing them or significantly modifying them to address legal and social concerns. The best way to prevent and reduce crime may be investing in social programs that strengthen neighborhoods rather than penalizing and expelling residents whose behavior is deemed undesirable.

Conclusion

Eviction, for any reason, is mostly likely to affect people of color. The COVID-19 pandemic has put a spotlight on the rise of nonpayment evictions of low-income tenants who were more likely to contract COVID and who were also most likely to have

Research to watch

Racial composition and trajectories of upward neighborhood transition in the United States

A new study by Zawadi Rucks-Ahidiana suggests that gentrification—the process of economic change in a low-income neighborhood through the arrival of more affluent residents and businesses—affects different neighborhoods in different ways. Earlier research suggests that middle-income Americans are more likely to move to predominately White, low-income neighborhoods than predominately Black or Latino neighborhoods. Given that Black and Latino neighborhoods are, on average, lower-income and higher in poverty than low-income, White neighborhoods, it may be that gentrification in these neighborhoods represents a different kind of change than that occurring in predominately White neighborhoods.

Using Census data from 1970 to 2010 for 275 Metropolitan Statistical Areas, Rucks-Ahidiana finds that racial composition influences not only *whether* gentrification occurs, but also *how* it occurs and whether it influences racial demographics. When gentrification occurs, majority White areas see an influx of higher-income residents. Majority Black areas, however, are more likely to experience an increase in higher-educated, but not higher-income residents. Across all gentrifying neighborhoods, these class changes are accompanied by more White residents, thus reinforcing White neighborhoods as White and decreasing the racial majorities of Black and Latino residents in Black and Brown communities.

Racial composition thus contributes to the kind of gentrification a tract experiences and the extent to which gentrification produces racial change. These findings suggest that race not only affects where gentrification occurs as previously suggested, but also the kind of class and racial changes that a neighborhood experiences. Rucks-Ahidiana's study is detailed in an *Urban Studies* article.

experienced the economic effects of the pandemic.³² Even before the pandemic began, Black women with children were more likely than any other group to face eviction.³³ In fact, Matthew Desmond has compared the impact of eviction among Black women to the mass incarceration crisis for Black men, writing, “These twinned processes, eviction and incarceration, work together—black men are *locked up* while black women are *locked out*—to propagate economic disadvantage and social suffering in America’s urban centers.”³⁴ There are nearly seventy million Americans who have a criminal record, and a disproportionate number of these are people of color.³⁵ These individuals face many challenges to living and maintaining a stable and productive life, including finding a job, accessing education, and exercising political rights such as voting. The federal one-strike policy added the risk of eviction from public housing to the challenges these Americans face. Many local governments have since passed laws that impose the same risk of eviction on millions of private-market tenants. Because people of color are more likely to be affected by these laws and thus face eviction and its attendant consequences of homelessness, poverty, and neighborhood instability, crime-free housing ordinances can exacerbate racial inequality in the United States. ■

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⁷Crime Free Multi-Housing: Keep Illegal Activity Off Rental Property, International Crime Free Association, available at <http://www.crime-free-association.org/multi-housing.htm>; Werth, *The Cost of Being “Crime Free.”*

⁸D. J. Barron, “Reclaiming Home Rule,” *Harvard Law Review* 116, No. 8 (2003): 2255–2386.

⁹While most major cities do not require private-market landlords to obtain licenses and pass inspections before renting property or require tenants to sign crime-free lease addenda, they have implemented the one-strike concepts for private-market tenants in other ways. For example, New York City has revived nineteenth-century nuisance laws in order to allow the District Attorney to evict tenants suspected of drug or other criminal activity, often with little or no notice to the tenant. See S. Ryley, “The NYPD Is Kicking People Out of Their Homes, Even If They Haven’t Committed a Crime: And It’s Happening Almost Exclusively in Minority Neighborhoods,” *ProPublica*, February 4, 2016, available at <https://www.propublica.org/article/nypd-nuisance-abatement-evictions>.

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¹⁸Dillon, Poston, and Barajas, “Black and Latino Renters Face Eviction.”

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²¹See, for example, the Belleville, Illinois, Code of Ordinance § 154.40, 2016, stating that the purpose of the ordinance is “to decrease the incidents of public safety violations and criminal activity in rental properties.”

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The effects of having an incarcerated family member on Black women's health

Hedwig Lee, Christopher Wildeman, Emily A. Wang, Niki Matusko, and James S. Jackson

TAKEAWAYS

Among women, having an incarcerated family member is associated with an increased risk of poor cardiovascular health.

Black women are disproportionately likely to have an incarcerated family member compared to White women.

Family member incarceration likely contributes to racial disparities in women's health given the disproportionate experience of Black women.



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Disparities in health outcomes between Black and White

Americans are well-documented.¹ Individuals who are Black are at higher risk of obesity, diabetes, hypertension, and cardiovascular disease, and are more likely than those who are White to experience these adverse health outcomes at younger ages.² The social determinants of health—the conditions in the places where people live, learn, work, and play—are important in explaining health inequities.³ One such determinant that may affect health is the incarceration of a family member. Research on the consequences of incarceration for men, their children, and their communities has focused on both mental and physical health. However, studies of the effects of male incarceration on female family members have been restricted to examining mental health rather than physical health outcomes. The study described in this article seeks to help fill in this gap by examining the effects of family member incarceration on women's cardiovascular health.⁴ We address the following research questions:

- What is the association of family member incarceration to cardiovascular disease and related risk factors?
- Is this association only found among women with incarcerated family members, or also among men?

An estimated three million women annually have an incarcerated partner; an unknown number have another incarcerated male family member, such as a son, brother, or father.

Black male incarceration and women's health

Black men are disproportionately likely to be incarcerated compared to White men, particularly if they have low levels of education or reside in poor neighborhoods.⁵ Around one in five Black men is expected to be imprisoned at some point in his lifetime, and an estimated 60 to 70 percent of Black men with less than a high school education will experience incarceration by their early 30s. Many of these incarcerated men leave female family members behind. An estimated three million women annually have an incarcerated partner; an unknown number have another incarcerated male family member, such as a son, brother, or father.⁶ These women are disproportionately likely to be poor and Black themselves.

Having an incarcerated family member could result in decreased economic resources, compromised family functioning, reduced social support, and higher levels of chronic stress. All of these factors are associated with adverse health effects, particularly with regard to cardiovascular health.⁷ While these associations

are not specific to race or gender, Black women are more likely than those in other groups to experience the incarceration of a family member, and people who are Black are more likely than people who are White to experience chronic stress through other avenues.⁸ Indeed, research suggests that because of the accumulation of experience with economic and social adversity, the incarceration of a family member may contribute to early health deterioration among disadvantaged Black women.⁹

Our study examines the association of family member incarceration with cardiovascular disease and related risk factors. We hypothesize that such an association will exist for women but not for men, because of the disproportionate level of responsibility that women bear for childcare and household management, the degree to which women tend to maintain connections to their imprisoned male family members or romantic partners, and the coping mechanisms that women are likely to choose in response to stress.¹⁰ We also suggest some ways that future research could further explore the links between family incarceration and other types of criminal justice contact on women's health, and how these associations might contribute to racial health disparities.

Methods

Our analysis uses data from the National Survey of American Life (NSAL) conducted throughout the United States between February 2001 and June 2003.¹¹ The survey was intended to gather information about the physical, emotional, mental, structural, and economic conditions of Black Americans. The sample included African Americans and Blacks of Caribbean descent in representative proportions, and Non-Hispanic Whites who resided in areas where Black individuals made up at least 10 percent of the population. The NSAL is the only broadly-representative data set that includes questions about health and incarceration and has a sample size sufficient for this analysis.

All measures used in this analysis were self-reported by respondents. We examined five health outcomes based on reports of cardiovascular risk factors and disease:

- Obesity (body mass index, or BMI, of 30 or higher);
- Diabetes (ever diagnosed);
- Hypertension or high blood pressure (ever diagnosed);
- Heart attack, cardiovascular disease, or stroke (ever diagnosed); and
- Fair or poor health (self-reported).

About 8 percent of the women in the sample and 5 percent of the men reported currently having a family member missing from the household because of jail or prison incarceration. About 1 in 20 of the women had ever spent time in jail or prison, compared with about 1 in 5 of the men.

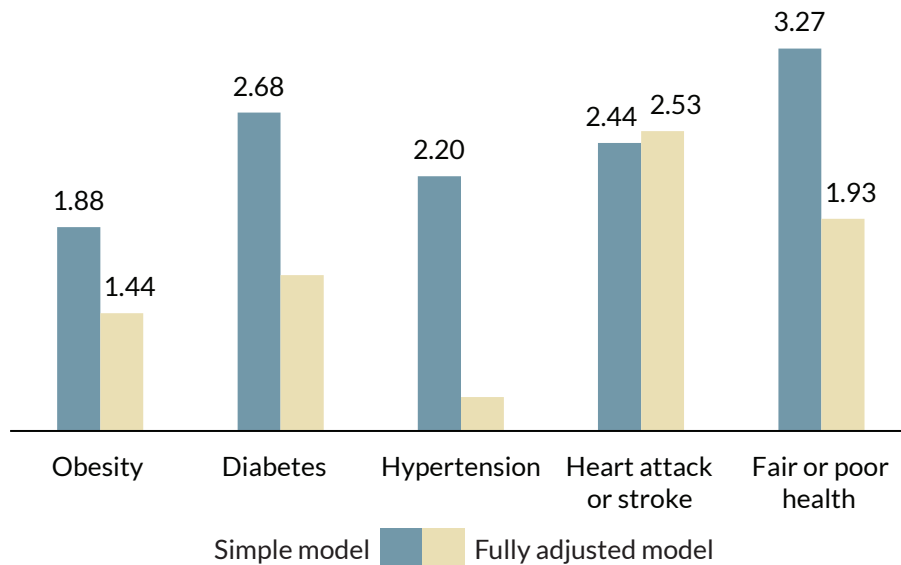
We used logistic regression to examine the association of family member incarceration with each health outcome, by gender, and controlling for demographic, socioeconomic, and health characteristics. Our results are weighted to be nationally representative of the given population and subpopulations.

Family member incarceration is associated with an increased likelihood of poor health among women.

Association of family member incarceration with likelihood of poor health

Our analysis shows that family member incarceration is associated with an increased likelihood of poor health among women. Figure 1 shows the odds that a woman with an incarcerated family member would report a poor health outcome, compared to the odds of a poor health outcome for women without an incarcerated family member. Taller columns indicate higher odds of reporting an adverse outcome.

Figure 1. Family member incarceration is associated with an increased likelihood of poor health among women.



Notes: Figure shows odds ratios, indicating the likelihood of a woman with an incarcerated family member reporting an adverse health outcome, compared to the likelihood of a women without an incarcerated family member reporting that outcome. Odds ratios are shown only when the ratio is statistically significant at $p < .05$. See text box for lists of control variables in each model.

Source: H. Lee, C. Wildeman, E. A. Wang, N. Matusko, and J. S. Jackson, "A Heavy Burden: The Cardiovascular Health Consequences of Having a Family Member Incarcerated," *American Journal of Public Health* 104, No. 3 (2014): 421–427, Table 3, models 1 and 5.

Odds ratios are only shown for statistically significant results; columns without a number indicate that the association between having an incarcerated family member and reporting a poor health outcome is not statistically significant. The figure shows odds ratios calculated with two different models; the lighter-colored columns show results controlling only for age and for having a family member missing for reasons other than incarceration, while the darker-colored columns show results with all control variables included (see text box). While both models show that family member incarceration is associated with an increased likelihood of poor health, the fully adjusted model (darker-colored columns) shows smaller odds ratios and fewer statistically significant outcomes. Note that neither of these models allow us to make causal claims about the association between family member incarceration and health.

Looking first at the results controlling for age and for family member missing for reasons other than incarceration (lighter-colored columns), we find that family member incarceration is strongly associated with an increased likelihood of poor health across all five outcomes. For women with an incarcerated family member, the odds of reporting an adverse health outcome are between 1.9 and 3.3 times higher than those for women without an incarcerated family member. Because this model includes few controls, it is possible that some of this association is

Control variables

Simple Model:

- Age
- Family member missing for reasons other than incarceration

Fully Adjusted Model:

- Age
- Family member missing for reasons other than incarceration
- Race and ethnicity
- Ratio of income to needs
- Education
- Self-rated health as a child
- Hardship during childhood
- Marital status
- Health insurance status
- Born outside the United States
- Physical activity (for obesity outcome only)
- BMI (for diabetes, hypertension, and heart attack/stroke outcomes)
- Diabetes and hypertension (for heart attack/stroke outcome)
- Own incarceration history

explained by differences between the two groups on other characteristics that are associated with health outcomes.

Indeed, the darker-colored columns showing results with all control variables included indicate a somewhat less strong association between family member incarceration and health. These results are particularly rigorous because they control for women's own history of incarceration. Here we still find significant associations of family member incarceration with three out of the five health outcomes—obesity, heart attack or stroke, and fair or poor health—with the odds of reporting those health outcomes 1.4 to 2.5 times the odds for women without an incarcerated family member. However, the inclusion of these additional control variables makes the association of family member incarceration with hypertension and diabetes not statistically significant.

Note that our results may underestimate the effects of family member incarceration on women's health, as there is likely a significant proportion of men who will experience imprisonment at some point, but were not incarcerated at the time our data were collected.

Mechanisms through which family member incarceration could affect women's health

Previous research has identified a number of mechanisms through which the incarceration of a family member could have a negative effect on women's health, particularly their cardiovascular health. The first of these mechanisms is reduced economic resources.¹² Any income that had been provided by the incarcerated family member is likely lost; prisoners earn almost nothing, and are often prohibited from providing any money to their friends and family.¹³ Communicating with the incarcerated family member—calling, visiting, or sending packages—costs money; these costs may be borne not only by romantic partners, but also by other relatives including mothers, sisters, and aunts.¹⁴ Finally, women's future economic resources may also be reduced, both because incarceration greatly increases the risk of a romantic relationship ending (and thus loss of a partner's future income), and because incarceration greatly diminishes men's future earnings.¹⁵

Another way that family member incarceration can negatively affect women's health is through compromised family functioning.¹⁶ For women with children at home, the loss of a partner to help with childcare and other household responsibilities could be consequential. If the relationship ends during incarceration—as is likely—there could be significant tension between the parents, particularly after the father is released from prison and new relationships form.¹⁷ Family functioning could also be negatively affected by older children having to take on additional responsibilities, while simultaneously having one less adult to turn to for support.¹⁸ Even for women whose children are grown, the incarceration of an adult son could have a significant effect on an older woman's life if they take on a larger role in caring for grandchildren.¹⁹

Having an incarcerated family member can also affect women's health through the mechanism of increased chronic stress. Ethnographic research suggests that romantic partners, mothers, and other relatives may all experience dramatically increased stress and social isolation when they have an incarcerated family member.²⁰ Stress can also directly increase the risk of obesity, diabetes, hypertension, and other risk factors for cardiovascular disease through biological pathways.²¹ Although these effects may be the most difficult to quantify, they may be particularly severe since they could be exacerbated by the difficulty of dealing with both reduced economic resources and changes in family arrangements.

Research suggests that women are more likely than men to cope with chronic stress by overeating and by being sedentary, possibly increasing their risk of adverse cardiovascular outcomes.

Disproportionate effects of family member incarceration on women

Among men, we found no statistically significant associations of family member incarceration with any of the five health measures. This gender difference is likely due in part to the fact that women tend to be responsible for the majority of childcare and household management; as noted above, the incarceration of a family member often increases this burden.²² Women are more likely than men to maintain connections to their imprisoned male family members or romantic partners.²³ Research also suggests that women, particularly those who are disadvantaged and Black, are more likely than men to cope with chronic stress by overeating.²⁴ In addition, while men are more likely to respond to stress by increasing levels of physical activity, women are more likely to be sedentary.²⁵ These coping mechanisms may increase women's risk of adverse cardiovascular outcomes, while higher demands on their time as a result of family member incarceration could make it more challenging for them to undertake preventative care that could help protect them from these health risks.²⁶

Through a supplemental analysis, we determined that the effects of family member incarceration did not vary by race or ethnicity. However, because such a high proportion of women experiencing family incarceration are Black, it should be considered a unique risk factor that contributes to racial disparities in women's health.

Note that many families experiencing family member incarceration are also disadvantaged and have experienced multiple stressors such as poverty and community violence, which can themselves lead to poor health. Our study is not able to distinguish the health effects of family member incarceration from these other factors. Still, research on incarceration and family dynamics suggests that the loss of a family member is an additional burden that can exacerbate the effects of other stress factors.²⁷

Although incarceration is not a traditional risk factor for cardiovascular disease, our results suggest that current family member incarceration should be understood as part of a woman's risk profile for poor health outcomes.

Research and policy implications

Millions of women, many of them Black, experience the incarceration of a family member each year. When this annual risk of incarceration is accumulated over a lifetime, it becomes clear that the effects we identify could significantly contribute to racial disparities in women's health. As a result, there is a need for further research to explore the pathways that connect family member incarceration to adverse health effects. Including family incarceration questions in large, nationally representative longitudinal data sets would greatly facilitate such research. Longitudinal data would provide the opportunity to separate the effect on health of family member incarceration from other factors to provide more confidence in causal associations, and to better assess the mechanisms through which family member incarceration harms health.

Future research should also examine how having family members subject to other types of correctional supervision, and the long-term presence of the criminal justice system in some families' lives, affect women's health. Men's experience with the criminal justice system goes well beyond their time incarcerated, as they may be under community supervision (probation and parole) in lieu of or following time in prison or jail.²⁸

Although incarceration is not a traditional risk factor for cardiovascular disease, our results suggest that current family member incarceration should be understood as part of a woman's risk profile for poor health outcomes.²⁹ Physicians who work in communities where incarceration is prevalent should consider screening for family history of incarceration. Waiting rooms in prisons and jails present a notable opportunity to screen female partners of inmates for cardiovascular risk factors and provide them with prevention resources. Such an approach has been used in prevention interventions for HIV and other sexually transmitted diseases.³⁰

Conclusions

This study is the first to use nationally representative data to examine the association of family incarceration with cardiovascular health. It represents an important first step in assessing how racial disparities in incarceration could be a mechanism through which the social determinants of health influence the health and well-being of poor women and exacerbate already large racial health disparities. Moreover, extreme racial disparities in mass incarceration (also described as discriminatory incarceration) represent an important form of structural racism in the United States and amplify inequities across a variety of domains in addition to population health.³¹ To be sure, mass incarceration is the outgrowth of a long history of state-sanctioned racial control and violence affecting the health, well-being, and autonomy of Black Americans since the inception of slavery. However, there are some policy changes that could begin to reverse this history. For example, policies that reduce discriminatory criminal sanctions, allow for alternative sentencing practices that keep families together, and directly reduce jail and prison populations, could improve health outcomes for individuals, families, and communities and, ultimately, reduce health disparities.³² ■

Research to watch

Black men are over-represented in the criminal justice system; approximately 1 in 3 report some contact. Paternal incarceration is also associated with negative effects on children's health. Prior research suggests that Black populations in the United States are at risk of "weathering", which is accelerated aging in response to chronic stress. This could result in health inequities across the life-course, though less is known about the effects specifically on Black youth. In addition, few studies have explored how Black parents and communities understand and resist the ways that exposure to the criminal justice system directly and indirectly constrain their ability to build healthy futures for their children. To address these gaps, Tawandra Rowell-Cunsolo, Rahwa Haile, and Anthonine Pierre are conducting a study that will provide an in-depth understanding of the sources of both disadvantage and resilience experienced by Black fathers with criminal justice system involvement, and that of their children between the ages of 18 and 24 and examine the relationship between weathering in Black youth and paternal exposure to disadvantage.

The study, which is scheduled to run from 2020 through 2023, will focus on central Brooklyn, NY. The first phase of the study will involve in-depth semi-structured interviews with 20 father-child pairs, with each individual being interviewed separately. The second phase will involve conducting a cross-sectional survey of 100 Black late adolescents to examine the correlation between weathering, paternal exposure to incarceration, and other key paternal social exposures identified during phase one. Empirically demonstrating that these exposures harm child and community health could powerfully compel a responsive policy approach. This would help to create conditions to better foster health equity and create a "culture of health" in central Brooklyn communities, and New York City more broadly.

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Type of analysis: Logistic regression

Data source: The National Survey of American Life

Type of data: Survey

Unit of analysis: Individuals

Sample definition: National household probability sample of African Americans (n = 3,570), Blacks of Caribbean descent (n = 1,621), and non-Hispanic Whites (n = 891) residing in areas where Blacks accounted for at least 10 percent of the population.

Time frame: February 2001 through June 2003

Limitations: Because the data are cross-sectional, it is not possible to establish causality. The measure of family member incarceration does not differentiate family members who are in prison or jail, the length of time they have been institutionalized, when they were institutionalized, or the characteristics of the family member (for example, whether the person was a man or a woman) that was incarcerated. The measure also excludes family members who were incarcerated but never lived in the household, which might occur for some romantic partners. Health measures were self-reported, and thus may be inaccurate. The results cannot be generalized to populations living in communities where Blacks account for less than 10 percent of the population. Estimates may be conservative, as there is likely a significant proportion of men who will experience imprisonment at some point, but had not yet experienced it during data collection.

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Edited by Emma Caspar.

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This publication was supported by Cooperative Agreement number AE000103 from the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation to the Institute for Research on Poverty at the University of Wisconsin–Madison. The opinions and conclusions expressed herein are solely those of the author(s) and should not be construed as representing the opinions or policy of any agency of the Federal government.



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