Winter 2013


Sarah Katherine Hess

Follow this and additional works at: http://repository.jmls.edu/lawreview

Part of the Housing Law Commons, and the Juvenile Law Commons

Recommended Citation

http://repository.jmls.edu/lawreview/vol47/iss2/11

This Comments is brought to you for free and open access by The John Marshall Institutional Repository. It has been accepted for inclusion in The John Marshall Law Review by an authorized administrator of The John Marshall Institutional Repository.
KEEPING HOMELESS KIDS HOMELESS:

HOW THE HOMELESS CHILDREN AND YOUTH ACT ADDRESSES CHILDREN WHO ARE EXCLUDED FROM RECEIVING HOUSING

BY: SARAH KATHERINE HESS*

I. INTRODUCTION: HOMELESSNESS TODAY

Destiny Raynor was a freshman in high school when her family lost their home.1 Destiny's parents had been owners of a beauty store and a thrift shop, but the effects of the economic downturn forced them to close the stores.2 Though her parents looked for work, the family of five's income devolved to inconsistent wages her father earned performing day labor.3 Reluctant to leave their home, the Raynors continued to live there without water or electricity for several months.4 They ate microwave meals at the corner store, showered at friends' houses, and filled buckets of water at a church to flush the toilet.5

When the Raynors could no longer afford to stay in their own home, they were forced to live for three weeks with Destiny's grandmother in a mobile home.6 Her brother slept on a reclining chair, her father on a loveseat, and she, her sister, and her mother shared one bed.7 After three weeks there, the Raynors moved into a single motel room.8 There, they alternated who slept on the floor and who shared the bed.9 When her father's wages did not cover

* Many thanks to Matt Martin, David Dale, Randy Hess, and Kevin Hull for their thoughtful feedback and support, and to Laurene Heybach, who introduced me to the topic.

2. Id.
3. Id.
4. Id.
5. Id. at 1-2.
6. Id. at 2.
7. Id.
8. Id.
9. Id.
the motel cost, the homeless coordinator for Destiny's school
district paid the motel bill with program donations.10 Wanting to
stay together, the Raynors refused to consider homeless shelters
because of policies that often split up families.11

Ironically, while Destiny's school identified her as homeless
based on a statutory definition,12 she and her family did not
qualify for housing assistance.13 Despite being without stable
housing for many months, Destiny was only considered homeless
and eligible for housing assistance on intermittent days.14

According to the U.S. Department of Housing and Urban
Development ("HUD") standards, Destiny did not qualify as
homeless while she and her family lived doubled-up with her

10. Id.
11. Id. Martha R. Burt, URB. INST., Characteristics of Transitional Housing
    for Homeless Families, 18 (Sept. 7, 2006), available at
12. See The McKinney-Vento Homeless Assistance Act § 725(2)(B)(i), 42
    "homeless" to include "youths who are sharing the housing of other persons
due to loss of housing, economic hardship, or a similar reason," also known as
living "doubled-up," and youths who "are living in motels, hotels, trailer parks,
or camping grounds due to the lack of alternative adequate accommodations").
    § 11302(a) (2012) [hereinafter General definition] (defining "homeless" to
    mean an individual or family who meets one of six categories but not including
    those sharing the housing of others, nor those living in and paying for motels).
The General definition categories are, in pertinent part, an individual or
family who:

    (1) lacks a fixed, regular, and adequate nighttime residence;
    (2) whose primary nighttime residence . . . is a public or private place
        not designed for or ordinarily used as a regular sleeping accommodation
        for human beings, including a car, park, abandoned building, bus or
        train station, airport, or camping ground;
    (3) shelter designated to provide temporary living arrangements
        (including hotels and motels paid for by Federal, State, or local
government programs . . . or by charitable organizations . . . );
    (4) an individual who resided in a shelter or place not meant for human
        habitation and who is exiting an institution where he or she temporarily
        resided;
    (5) an individual or family who—
        (A) will imminently lose their housing
        (B) has no subsequent residence identified; and
        (C) lacks the resources or support networks needed to obtain other
permanent housing; and
    (6) unaccompanied youth and homeless families with children and
youth defined as homeless under other Federal statutes
(b) . . . is fleeing, or attempting to flee, domestic violence. Id.
14. NAT'L ASS'N FOR THE EDUC. OF HOMELESS CHILDREN AND YOUTH, An
    Analysis of Testimony Offered by Children and Youth to The Subcommittee on
    Insurance, Housing and Community Opportunity Committee on Financial
Services United States House of Representatives 5–6 (Jan. 24, 2012), available at
    http://www.naehcy.org/sites/default/files/images/dl/NAEHCYAnalysisTestimon
y_dec2011.pdf [hereinafter NAEHCY Analysis of Testimony].
grandmother. Destiny was only thought of as homeless on the days that the school homeless coordinator paid the cost of the motel room, and not when her father was able to pay. Further, the Raynors were not eligible for public housing programs because Destiny’s father did not have a consistent job. Destiny is not a rare case – in 2011/2012 the number of students like Destiny identified as homeless in U.S. public schools exceeded 1.1 million.

A. A Million Students Without Housing

This Comment examines a solution for the unique circumstances that allow over one million children to be defined as “homeless” by some federal programs but precludes them from the actual housing programs that could end their homelessness. In Part I, this Comment lays out the General and Youth definitions of “homeless” found respectively in The McKinney-Vento Homeless Assistance Act of 1987 (McKinney-Vento Act), and its Subtitle VII-B, Education for Homeless Children and Youth (EHCY); and the U.S. Department of Housing and Urban Development’s (HUD) interpretation of those definitions. Part II illustrates homelessness in the United States and the high number of children who fall into the gap between the two definitions.

15. Id.
16. Id.
17. Id.
18. NAT’L CTR. FOR HOMELESS EDUC., Education for Homeless Children and Youths Program Data Collection Summary 4 (March 2014), available at http://center.serve.org/nche/downloads/data-comp-0910-1112.pdf [hereinafter NCHE Data]. See Andy Beres, NAT’L LAW CTR. ON HOMELESSNESS AND POVERTY, One Million U.S. Students Homeless, New Data Show 1 (June 2012), http://www.nlchnp.org/view_release.cfm?PRID=148 (last visited Feb. 6, 2013) (stating that students identified as homeless in the 2010-11 school year surpassed one million for the first time). NCHE Data, supra note 18, at 14 (reporting seventy-five percent of homeless students were living doubled-up (or sharing the housing of others due to economic hardship or loss of housing), and six percent of students were living in hotels and motels, for a total of eighty-one percent).
19. See Beres, supra note 18, at 1 (contending that children experiencing homelessness may be denied a secure place to sleep because of a discrepancy in the definition of "homeless").
22. See NAT’L ALLIANCE TO END HOMELESSNESS, Changes in the HUD Definition of “Homeless” 1-8 (Jan. 18, 2012), available at http://b.3cdn.net/naehl579e3b67bd7eeb3fc3_q0m6i6a28.pdf [hereinafter NAEH Changes in the HUD Definition] (explaining the U.S. Department of Housing and Urban Development’s (HUD) reading of The McKinney-Vento definition of “homeless”).
III analyzes how a child like Destiny can be housing insecure but have no recourse to obtain housing assistance and looks at the long-term negative health effects of the trauma of homelessness. Finally, Part IV looks at The Homeless Children and Youth Act of 2011, which proposed a remedy to HUD’s exclusion of Destiny and others living in similar circumstances of homelessness, but which failed to become law.

II. “HOMELESS” – A NARROW DEFINITION FOR “AN IMMEDIATE AND UNPRECEDENTED CRISIS”

The two distinct definitions for the term “homeless” are set out in section 103 (“General” definition) and section 725 (“Youth” definition) of The McKinney-Vento Homeless Assistance Act of 1987, as reauthorized by the HEARTH Act. The primary
distinction between the definitions pertinent to this Comment\textsuperscript{30} is that the Youth definition includes two provisions the General definition does not.\textsuperscript{31} The first is known as living "doubled-up" and includes children and youth who "are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason."\textsuperscript{32} The second provision includes youth who "are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations."\textsuperscript{33} Before discussing the practical implications of these conflicting definitions, it is helpful first to discuss the scale of homelessness in America.

\textbf{A, Who Is Homeless and How Many?}

The public's perception of homeless persons is limited primarily to those who are noticeable:\textsuperscript{34} a middle-aged man panhandling on a street corner; a woman pushing a shopping cart full of bags; a person suffering from mental illness, shouting angrily at no one. The reality of homelessness in America, however, is that homeless \textit{families} - not just the stereotypes above - make up a large portion of the homeless.\textsuperscript{35} Child homelessness in America is greater today than in the days immediately following the devastation of Hurricanes Katrina and Rita.\textsuperscript{36} The attention to the victims of those massive natural disasters still has not afforded a solution for the great numbers of homeless children.

Homeless families make up a large portion of the homeless

...
The most common family make-up is a mother with small children, usually two. The majority of heads of household in homeless families are women 30 years old and under. Homeless families are more often headed by a woman, are members of a minority, and are less likely to have a disability than homeless individuals. A 2011 study by the U.S. Conference of Mayors reported a sixteen percent increase in family homelessness in one year. The 2013 Annual Homeless Assessment Report (AHAR) announced that fifty-eight percent of the members of families experiencing homelessness were younger than 18 years old. Over forty percent of homeless children in shelters are very young and in the most important developmental stage – between infancy and five years old. In the 2011-12 school year, 1,168,354 homeless students were reported enrolled, an increase from 939,903 in the 2009-10 school year, an increase of almost 230,000 children in just two years.


39. Id. at 20.
40. Id. at 19.
41. Id.


45. E.g., NCHE Data, supra note 18, at 6 (reporting the oft-cited figure of 1,168,354 homeless students for the 2011-2012 school year).
46. See id. at 10 (reporting 1,168,354 homeless students for the 2011-2012 school year, and 939,903 homeless students for the 2009-2010 school year). The report declines to provide a percent change, explaining "[i]n SY 2009-10 and SY 2010-11, totals were aggregated from data manually reported by each SEA. In SY 2011-12, totals were aggregated from LEA-level data populated via EDFacts file specifications C118 and C170. Due to the change in data sources between SY 2010-11 and SY 2011-12, percent change cannot be calculated." Id.
The main causes of homelessness are an increase in poverty and a lack of affordable housing.47 Forty-six million Americans live in poverty.48 Between 2001 and 2010, people earning less than $15,000 per year increased by 2.2 million, while the affordable housing units for that bracket dwindled, leaving a 5.1 million-unit shortfall in 2010.49 These statistics are less surprising when one considers the fact that nowhere in the United States can a full-time worker earning minimum wage afford the fair market value of any size apartment.50

B. Living Doubled-Up or in Motels

Destiny represents just one of the 944,320 identified students who were living doubled-up or in motels during the 2011-2012 school year.51 That number comprises eighty-one percent of the entire school population identified as homeless.52 Despite hard numbers, statistics for the homeless youth population are frequently underestimates, where children and families are hesitant to be identified as homeless or, for instance, children younger than school age are frequently not accounted for.53 Those living in motels, hotels, trailer parks or camp grounds experience

47. America's Youngest Outcasts 2010, supra note 36, at 19.
48. Id. at 20.
50. See Elina Bravve et al., Out of Reach 2012, NAT'L LOW INCOME HOUS. COAL. 2 (Mar. 2012), available at http://nlihc.org/sites/default/files/oor/2012-OOR-Introduction.pdf (demonstrating the disconnect between the cost of living, possibilities for rental assistance, and typical wage levels across the country). The Housing Wage, a figure based on the fair market value of housing and the standard that a family's housing payment should not exceed thirty percent of its income, also does not match wages across the country. Rather, "the Housing Wage consistently exceeds the actual wages earned by renters, in both urban and rural communities nationwide." Id. Accord M. William Sermons & Peter Witte, NAT'L ALLIANCE TO END HOMELESSNESS, State of Homelessness in America 2 (Jan. 2011), available at http://big.assets.huffingtonpost.com/doubling.pdf (reporting that in 2009, the average real income of working poor people decreased by two percent, to $9,151). There is no county in the United States where an average annual income of $9,151 could afford a one-bedroom residence at fair market value. Id. at 16.
51. NCHE Data, supra note 18, at 14.
52. See id. (reporting six percent of students were living in hotels and motels, and seventy-five percent were living doubled-up, for a total of eighty-one percent).
53. See NAT'L COALITION FOR THE HOMELESS, Education of Homeless Children and Youth (Sept. 2009), available at http://www.nationalhomeless.org/factsheets/education.html (explaining that "not all school districts report data to the U.S. Department of Education, and because the data collected represents only those children identified and enrolled in school"). "Furthermore, the number does not include all preschool-age children, or any infants and toddlers." Id.
the same stress of uncertainty, over-crowding, and stigmatization.54

In 2009, the U.S. Census reported six million doubled-up households55 and some estimates are as high as 2.35 million doubled-up children.56 The number of families living doubled-up increased by twelve percent between 2008 and 200957 and the next year (2010) by thirteen percent.58 Between 2005 and 2010, the total doubled-up population increased by fifty percent.59 Like Destiny, children in these rapidly growing categories do not qualify for homeless housing assistance from HUD.60

C. The McKinney-Vento Homeless Assistance Act

In 1987, recognizing the “immediate and unprecedented crisis” of homelessness in America, Congress passed comprehensive reform in The McKinney-Vento Homeless Assistance Act.61 Congress explained that the complexities of homelessness and the circumstances that lead to it are so numerous that a single policy is insufficient.62 Instead, Congress created the provisions of the McKinney-Vento Act to be purposefully broad and in-depth in order to reach the numerous existing homeless subpopulations.63

D. Education for Homeless Children and Youth

Congress specifically targeted one of those subpopulations in the McKinney-Vento Act’s Subtitle VII-B Education for Homeless Children and Youth (EHCY).64 Through the EHCY, Congress

54. Judith Samuels, Marybeth Shinn & John C. Buckner, POLICY RES.
ASSOCIATES, INC., HOMELESS CHILDREN: UPDATE ON RESEARCH, POLICY, PROGRAMS,
AND OPPORTUNITIES, PREPARED FOR OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING
AND EVALUATION 20 (MAY 2010), AVAILABLE AT
55. AMERICA’S YOUNGEST OUTCASTS 2010, supra note 36, AT 106.
56. NAT'L ALLIANCE TO END HOMELESSNESS, ADVOCACY UPDATE: INCREASES
TO HOMELESS ASSISTANCE PROPOSED (FEB. 16, 2012),
http://www.endhomelessness.org/library/entry/advocacy-update-increases-to-
homeland-assistance-proposed (LAST VISITED MAR. 31, 2014).
57. SEE E.G., WITTE, supra note 50, AT 27 (SHOWING “THE NATION’S DOUBLED-UP
POPULATION INCREASED FROM 5,402,075 IN 2008 TO 6,037,256 IN 2009, AN INCREASE
OF 12 PERCENT”).
58. Id. AT 2.
59. Id.
60. NAT'L ASS'N FOR THE EDUC. OF HOMELESS CHILDREN AND YOUTH, THE
HOMELESS CHILDREN AND YOUTH ACT (OCT. 22, 2012),
http://www.naehcy.org/legislation-and-policy/legislative-updates/homeless-
INCREASING, THE CAUSES ARE DIVERSE, AND THAT NO SINGLE REMEDY CAN ALLEVIATE
THE PROBLEM).
63. Id.
declared homelessness an unacceptable reason for a child’s education to be disrupted. The EHCY was devised to remove a specific obstacle — the requirement that enrollment in a public school required a permanent address. Despite its passage, schools across the nation resisted complying with EHCY and continued to refuse admittance to homeless children. To address the Act’s ineffectiveness, the Illinois General Assembly passed its own legislation, which then-Congresswoman Judy Biggert used as the foundation of the reauthorized federal EHCY.

---

65. See 42 U.S.C. § 11431 (2012) (stating “[h]omelessness alone is not sufficient reason to separate students from the mainstream school environment.”).

66. 42 U.S.C. § 721(2), § 11431 (2012) (stating: In any State that has ... laws, regulations, practices, or policies that may act as a barrier to the enrollment, attendance, or success in school of homeless children and youths, the State will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children and youths are afforded the same free, appropriate public education as provided to other children and youths).

Accord Laurene M. Heybach, Advocacy and Obstacles in the Education of Homeless Children and Youth in Illinois, 14 PUB. INT. L. REP. 281, 291 (2009) (explaining that the Act’s main goal is to "engage homeless children in school").

67. See Heybach, supra note 66, at 282 (stating that school districts were disregarding the McKinney-Vento Act’s prohibitions against stigmatizing homeless students, denying those children access to education, and preventing children from staying in their original school district). A study by Northwestern professor Bernardine Dohrn led to a class action by the parents of homeless children against the Chicago Public Schools (CPS) and the Illinois State Board of Education. (Dohrn, A Long Way from Home: Chicago’s Homeless Children and the Schools, POVERTY AND RACE RES. ACTION COUNCIL (Oct. 1991)). In Salazar v. Edwards, after protracted litigation, and despite plentiful evidence of CPS’s failure to comply with the McKinney-Vento Act, CPS finally agreed to an extensive Settlement Agreement in 1995. Salazar v. Edwards, 92 CH 5703, Mem. of Op. at 12 (Aug. 3, 1999), available at http://www.clearinghouse.net/chDocs/public/CW-IL-0001-0003.pdf. The settlement not only marked the beginning of change in Chicago and Illinois, but became the basis for the McKinney-Vento Act. Heybach, supra note 66, at 285. It ordered defendants to "Embark on an immediate and massive informational campaign addressing the rights of the homeless throughout Chicago; a campaign which will include distribution efforts and appropriate media notices." Salazar v. Edwards, 92 CH 5703, Mem. of Op. at 12. The order went on to affirmatively order Chicago Public School staff to come into compliance with the McKinney Act, EHCA, the Salazar settlement, and that failure to comply would result in “severe disciplinary action.” Id.


69. 105 IL ST CH § 45/1-1. See Heybach, supra note 66, at 285 (noting that it was Illinois Congresswoman Judy Biggert who inserted primary EHCA provisions into the 2001 (effective 2002) reauthorization of EHCY under No Child Left Behind).
The EHCY was reauthorized in 2002 under the No Child Left Behind Act\textsuperscript{70} (based on the Illinois improvements) and it mandated that homeless children must be immediately enrolled and that acquiring school records cannot prevent or delay enrollment.\textsuperscript{71} The amendments give parents school choice including the most recent school in which the child was enrolled, as well as the school of origin.\textsuperscript{72} Transportation must be provided to students,\textsuperscript{73} and during any dispute, students must still be enrolled and have the right to dispute resolution,\textsuperscript{74} all to ensure homeless students have stable schooling.

\textbf{E. Housing and Urban Development (HUD)}

The McKinney-Vento Homeless Assistance Act was reauthorized in the Homeless Assistance and Rapid Transition to Housing Act of 2009 (HEARTH), which broadened the General definition of homeless.\textsuperscript{75} Once HEARTH was passed, HUD

\begin{footnotesize}
\begin{enumerate}
\item 71. 42 U.S.C. § 721(g)(2)(E)(II), § 11431 (2012). The Act mandates a structure in which State Educational Agencies (SEA), through federal grants, "shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths." \textit{Id.} at § 721(1). In turn, SEAs must "make subgrants to local educational agencies (LEA) for the purpose of facilitating the enrollment, attendance, and success in school of homeless children and youths." \textit{Id.} at § 721(e). Reporting on enrollment numbers is provided by Local Educational Agencies with and without subgrants. NCHE \textit{Data, supra} note 18, at 5. Despite the above strong language, identifying children experiencing homelessness is a persistent challenge because families often do not know they qualify for services or may harbor shame for having lost their housing. \textit{See} Duffield, \textit{supra} note 23, at 19 (stating that because of the stigma of homelessness, schools must affirmatively seek to identify students and non-students experiencing homelessness, and not wait for self-identification from those students). This suggests the number of reported homeless students is an underestimate. \textit{See generally America's Youngest Outcasts 2010, supra} note 36, at 19 (explaining that accounting for the many different types of homeless populations is a difficult task).
\item 72. 42 U.S.C. § 721(g)(2)(G), § 11431 (2012) (setting out the definition of "school of origin" as the "school that the child or youth attended when permanently housed or the school in which the child or youth was last enrolled").
\item 73. 42 U.S.C. § 722(g)(3)(G), § 11431 (2012). Accord Duffield et al., \textit{supra} note 23, at 24 (stating that the transportation provision is important because "homeless children who received transportation to stay in their schools of origin scored higher on state assessments").
\item 74. 42 U.S.C. § 722(g)(3)(E), § 11431 (2012). Accord Duffield et al., \textit{supra} note 23, at 29-30 (stating that the enrollment requirement during dispute resolution minimizes the disruption to a child's academic life).
\end{enumerate}
\end{footnotesize}
commenced rulemaking to reflect the new McKinney-Vento definitions of "homeless" and engaged in a notice and comment process. The final rule HUD adopted under the HEARTH amendments expands HUD's definition of "homeless" to recognize four categories: Literally Homeless, Imminent Risk of Homelessness, Homeless Under other Federal Statutes, and those Fleeing/Attempting to Flee Domestic Violence - and adds new documentation requirements. The definition of "homeless" is not significantly different, but HUD now requires documentation to demonstrate qualification.

The new definition adds new documentation requirements and relaxes the qualifications in the first category, Literally Homeless, for those exiting institutions, who were homeless prior to their stay in the institution. It also now includes people experiencing persistent housing instability who have chronic disabilities or conditions and likewise requires qualification.

---

76. Id. at 75995 (presenting background on the HEARTH Act, the proposed rule changes, definitions, record-keeping requirements, and also presenting the public comments received in connection to the proposed rule). The document also responds to the public comments, explaining HUD's final position on the issues raised by the commentators, and declaring the final rule. Id.

77. See NAEH Changes in the HUD Definition, supra note 22, at 1–8 (explaining the differences in the "traditional" HUD definition and the new definitions under HEARTH).

78. See generally U.S. DEP'T OF HOUS. & URB. DEV., Homeless Definition and Eligibility for SHP, SPC, and ESG 1–2, available at http://hudhre.info/documents/HomelessDefEligibility%20_SHP_SPC_ESG.pdf (demonstrating the correspondence between the categories of Literally Homeless, Imminent Risk of Homelessness, Homeless Under other Federal Statutes, and those Fleeing/Attempting to Flee Domestic Violence, and the housing assistance programs for which persons experiencing homelessness under each category are eligible).

79. U.S. DEP'T OF HOUS. AND URB. DEV., Criteria and Recordkeeping Requirements for Definition of Homeless 1–2 (Jan. 2012), available at https://www.onecpd.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf [hereinafter U.S. DEP'T OF HOUS. AND URB. DEV., Criteria and Recordkeeping]. See also Homeless Definition and Eligibility for SHP, SPC, and ESG, supra note 62, at 1–2 (matching the four categories of HUD's definition of "homeless" to corresponding services); HUD Final Rule, supra note 75, at 75995 (describing the four categories in more general language).

80. See NAEH Changes in the HUD Definition, supra note 22, at 3–6 (presenting the four categories of homelessness, showing the new documentation requirements). See generally NAT'L ALLIANCE TO END HOMELESSNESS, Homeless Assistance Reauthorization: National Policy Update June 2009, Summary of the HEARTH Act 1–9 (June 2009), available at http://b.3cdn.net/naeh/939ae4a9a77d7cb13d_xim6bxa7a.pdf (distilling the HEARTH Act updates).

81. See generally NAEH Changes in the HUD Definition, supra note 22 (diagramming the changes in definition and documentation requirements).

82. Id. at 3.
through documentation.\textsuperscript{83} As to a person in danger of imminent loss of her primary nighttime residence, previously, an applicant had a seven-day window to show need, and the new rule allows an extra seven days with documentary proof requirements.\textsuperscript{84}

III. THE PRACTICAL IMPLICATIONS OF CONFLICTING DEFINITIONS

At the very heart of this conflict lies the gap between the Section 725 Youth definition and the Section 103 General definition of homeless.\textsuperscript{85} While agencies like HUD follow the McKinney-Vento General definition,\textsuperscript{86} several federal programs use the Youth definition (with provisions for living doubled-up or in motels) as the basis for their operations, including Head Start, the Runaway and Homeless Youth Act, and the Individuals with Disabilities Education Act.\textsuperscript{87} This section discusses the practical application of HUD's four categories of "homeless," and their corresponding documentation requirements.\textsuperscript{88} This section then applies those categories to Destiny's circumstances in order to illustrate how her homelessness is not considered desperate enough for housing assistance. It also examines leading research on the trauma of homelessness and the effects of traumatic stress on children experiencing homelessness.\textsuperscript{89} As an important policy consideration, the findings on long-term stress should inform legislation addressing homelessness and its effects on children.

A. Deconstructing The Conflict

Despite the HEARTH recommendations, HUD narrowed the

\textsuperscript{83} Id. at 5.

\textsuperscript{84} See id. at 4 (illustrating the new allowance for eligibility if an individual or family is being evicted within fourteen days from their primary nighttime residence instead of the previous qualification that an individual or family was within just seven days of eviction from their primary nighttime residence). This also previously did not require the current documentation requirements of a court order, proof of a lack of financial ability to pay for motels or hotels, the oral or written testimony of a head of household and other certification. Id.

\textsuperscript{85} See generally HUD Final Rule, supra note 75, at 76001 (showing that HEARTH did not amend the McKinney-Vento section 725 Department of Education definition of homeless).

\textsuperscript{86} Id. at 75998.


\textsuperscript{88} U.S. DEP'T OF HOUS. & URB. DEV., Criteria and Recordkeeping, supra note 79, at 1–2.

HEARTH advisements at every turn. Specifically, the HEARTH definitions expand the General definition; however, they and the new HUD regulations still exclude children and families living in doubled-up situations, as well as those living in motels. The definition was narrowed from the six categories found in McKinney-Vento to four categories. One way HUD achieved this narrower definition was to place the first category, “one who lacks a fixed, regular and adequate nighttime residence,” as a preliminary category that must also then be met by at least one of the other categories. As such, under Congress’s McKinney-Vento Act language, a person is considered homeless by meeting the description of only one provision, while HUD requires meeting the description of two provisions. 

B. Applying HUD’s Interpretation to Destiny Raynor’s Circumstances

Turning to Destiny’s situation, the practical application of HUD’s definition of “homeless” shows that Destiny does not qualify for any of the descriptions under Category 1, Literally Homeless. First, she is not spending her nights in a public or private place not meant for human residence. Second, the Raynors could have qualified if they stayed in a shelter, but shelters frequently have rules restricting boys, the number of children, or children of a certain age so they did not consider it

93. HUD Final Rule, supra note 75, at 75998–99.
94. Id.
95. U.S. DEP’T OF HOUS. & URB. DEV., Criteria and Recordkeeping, supra note 79, at 1–2. The time that Destiny and her family were living at the family home without water and electricity would have qualified her for services under the Youth definition. Id. NAEHCY Analysis of Testimony, supra note 14, at 5.
96. NAEHCY Analysis of Testimony, supra note 14, at 5.
97. Burt supra note 11, at 18.
In addition, Destiny is not considered homeless under Category 2, Imminent Risk of Homelessness, even though it pertains to those living in motels or doubled-up.\(^9\) Under this category she would have to prove her current housing will be lost within 14 days of application for assistance, that there is no alternative housing, and that her family does not have the financial ability to acquire other permanent housing.\(^10\) They must be able to show a court order to leave the residence following an eviction action, evidence that they cannot afford to stay in a motel, or “a documented and verified oral statement.”\(^11\) In addition to meeting one of those documentary criteria, the Raynors must be able to show both that no subsequent residence exists and proof that the family has neither the financial ability, nor the “support” needed to find permanent housing.\(^12\) Because the grandmother’s mobile home is where Destiny’s family landed once they were forced out of the home,\(^13\) she would not have been able to prove she lacked “the resources or support networks needed to obtain other permanent housing,” particularly where her father had intermittent work, and therefore some resources.\(^14\) Further, since Destiny and her family moved out of her grandmother’s voluntarily because of the uncomfortable living conditions, documentation that the grandmother would not have let them stay more than fourteen days would not be a strong claim.\(^15\)

Next, Destiny does not meet the Category 3 definition Under Other Federal Statutes, before even reaching the four documentary requirements.\(^16\) Destiny would likely be able to

\(^{9}\) Raynor Testimony, supra note 1, at 1–6. Also, Destiny did not exit an institution into a shelter. Id. Therefore, she does not qualify for any of the descriptions in Category 1, Literally Homeless. U.S. DEP’T OF HOUS. & URB. DEV., Criteria and Recordkeeping, supra note 79, at 1–2.


\(^{100}\) U.S. DEP’T OF HOUS. & URB. DEV., Criteria and Recordkeeping, supra note 79, at 1–2.

\(^{101}\) Id.

\(^{102}\) Id.

\(^{103}\) Raynor Testimony, supra note 1, at 2.

\(^{104}\) U.S. DEP’T OF HOUS. & URB. DEV., Criteria and Recordkeeping, supra note 79, at 1–2. See NAEHCY Analysis of Testimony, supra note 14, at 6 (showing that because of her grandmother’s support, Destiny and her family would not qualify for Category 2 Imminent Risk of Homelessness, and that “Destiny’s father’s irregular work arrangements make it almost impossible to predict what the family’s financial situation will be fourteen days down the road”).

\(^{105}\) NAEHCY Analysis of Testimony, supra note 14, at 6.

\(^{106}\) U.S. DEP’T OF HOUS. AND URB. DEV., Criteria and Recordkeeping, supra
provide evidence from her school liaison that she meets the
definition of homelessness under another federal statute, and
that she had no housing agreement in the last sixty days, and
two or more moves in the sixty days prior to application. However, she and her family would not qualify for the fourth requirement: a family must offer documentation of special needs or that they have two or more barriers to obtaining employment. Destiny and her family do not have special needs like disability, addiction, or mental health issues, nor barriers to employment.

Finally, the Domestic Violence definition, Category 4, does not apply to her or her family's circumstances either. This means that despite being housing insecure, Destiny does not qualify for HUD homeless assistance, though she lives in a motel room her family can only occasionally pay for. The subpopulation of families experiencing homelessness is marginalized by the conflicting federal definitions such that they do not fit into any of HUD's four categories.

C. Service Providers Question HUD's New Regulations

Many of the comments offered during HUD's proposed rule period addressed the populations that are excluded by the new definition and also the new stringent documentation requirements. Several commentators requested that HUD's definition match the definition of homeless used by the U.S. Department of Education. Another commentator stated that someone who is living doubled-up with others due to economic or other safety conditions should be included in the definition of homelessness.
For individuals and families who do not meet the definition of "homeless" under any of the categories, HUD notes that the McKinney-Vento Act was amended to allow homeless assistance to be provided to persons who are "at risk of homelessness." However, "at risk of homelessness" would not include Destiny either. Her family may have income below 30% of the median family income for the area, but just as in Category 2 Imminent Risk of Homelessness, she cannot show that her grandmother is not a support network to prevent them from going to a shelter. Furthermore, the cost of her family's motel room is only intermittently paid for by assistance from her school. The practical implication is that Destiny's parents would have more assistance opportunities if they deliberately worsened their situation and moved their three children out on to the street.

D. The Long-Term, Negative Effects of Homelessness

Childhood homelessness is traumatic, can cause toxic stress, and can lead to severe long-term health and social consequences. While children may be secured a stable school life under the Youth definition, studies show that the mobility of homelessness is still detrimental to academic achievement. Homeless children are more likely to repeat a grade, need special education services, and have lower standardized test scores. Even worse, childhood homelessness can lead to adult homelessness.

117. Id. Another commentator pointed out that HUD's definition is facially different—it has fewer categories in order to qualify as homeless—and the suggested that if Congress had intended to reduce these categories from seven to four, that it would have done so. HUD responded that the "interpretation is consistent with HUD's longstanding interpretation of the statutory language 'lacks a fixed, regular and adequate nighttime residence,' which the HEARTH Act, in amending the McKinney-Vento Act, did not change." Id. at 75999.

118. Id. at 75997.

119. See NAEHCY Analysis of Testimony, supra note 14, at 6 (showing that because of her grandmother's support, Destiny and her family would not qualify for Category 2 Imminent Risk of Homelessness).

120. Id. HUD does not consider it "cumbersome" to provide documentation to demonstrate barriers to employment. HUD Final Rule, supra note 75, at 76010.

121. See generally America's Youngest Outcasts 2010, supra note 36, at 10-11 (stating that childhood homelessness can cause toxic stress); Ellen L. Bassuk et al., supra note 89 (examining causes, symptoms, and later effects of stress in children experiencing homelessness).

122. Adam Voight et al., The Longitudinal Effects of Residential Mobility on the Academic Achievement of Urban Elementary and Middle School Students, 41 EDUC. RES. 385, available at http://edr.sagepub.com/content/41/9/385. This study found that being homeless and highly mobile lowered reading and math achievement. Id. at 386.


124. See Heather Larkin, Mobilizing Resilience and Recovery in Response to
This underscores the importance of disrupting the cycle of homelessness as soon as a child is identified as homeless in order to mitigate the adverse experience and prevent any future negative effects. In an immediate sense, children experiencing homelessness suffer four times as many illnesses as their housed counterparts. They are four times more likely to have asthma, and five times more likely to experience gastrointestinal problems. They are two times more likely to go hungry, and two times more likely to be held back a grade in school. More grave still, over twenty percent of preschoolers experiencing homelessness have severe emotional problems that require professional treatment, but only about thirty percent of those children receive care.

I. Toxic Stress

Toxic stress results from intense adverse experiences, either acute or sustained over a long period of time. Studies point to the vulnerability of brain circuits during early childhood.

Adverse Childhood Experiences (ACE) Among Homeless People: A Restorative Integral Support (RIS) Case Study, (forthcoming J. OF PREVENTION & INTERVENTION IN THE CMTY.) 2 (on file with author Jan. 18, 2013) (examining the cycle of homelessness and noting that it is intergenerational). Citing Burt's work, Larkin builds on the notion that "[m]ultiple problems associated with earlier adversity can make people more vulnerable to social conditions contributing to homelessness." Id. at 2. The article contends that addressing previous trauma of people experiencing homelessness is essential to breaking the intergenerational cycle of homelessness. Id. at 14.

125. Id. See John W. Fantuzzo et al., The Unique and Combined Effects of Homelessness and School Mobility on the Educational Outcomes of Young Children, 41 EDUC. RES. 393, available at http://edr.sagepub.com/content/41/9/393 (reporting that "residential instability is a disruptive experience for children and families" that leads to lower academic achievement). When controlling for homelessness in children with a stable school enrollment, the study found that children experiencing homelessness suffered "more problems in social engagement ... and task engagement ... than students without a homelessness or school mobility experience." Id. at 397.


128. Id.

129. Id.

development, which can be disturbed by toxic stress.\textsuperscript{131} The hormone cortisol is released when a body is under stress.\textsuperscript{132} Cortisol suppresses the body's immune system, leading to myriad chronic health problems.\textsuperscript{133} High levels of cortisol over a prolonged period of time can damage the hippocampus, one area of the brain that enables learning and memory.\textsuperscript{134} These cognitive impairments can persist into adulthood.\textsuperscript{135}

2. \textit{Adverse Childhood Experiences (ACE)}

One study that demonstrates the later health effects of stress is the model of Adverse Childhood Experiences (ACE).\textsuperscript{136} A point is awarded for each of nine categories of adverse experiences a person endured as a child.\textsuperscript{137} The seminal ACE study found a direct correlation between a person’s ACE score and negative adult health outcomes – the higher the score, the more numerous a person’s illnesses, addictive behaviors, and chronic diseases.\textsuperscript{138} The study found that even those who did not develop destructive behaviors like smoking, or excessive drinking, suffered a higher risk of health problems.\textsuperscript{139} For example, “[t]he researchers looked at patients with ACE scores of 7 or higher who didn’t smoke, didn’t drink to excess, and weren’t overweight, and found that their risk of ischemic heart disease was three hundred and sixty percent higher than it was for patients with a score of 0.”\textsuperscript{140} Adverse childhood experiences are also linked to obesity, learning

\begin{itemize}
\item \textsuperscript{131} Id. at 30.
\item \textsuperscript{132} Id. at 31.
\item \textsuperscript{133} Id. Normally, the release of cortisol is a helpful response, but when released too regularly it builds up, causing the health problems discussed. Id.
\item \textsuperscript{135} Id.
\item \textsuperscript{137} E.g., COMM. ON THE SHELTERLESS, ACE RESPONSE, \textit{Adverse Childhood Experiences (ACE) and Breaking the Cycle of Homelessness} 2, available at http://aceresponse.org/img/uploads/file/revised_bl_12_07_exec_summarycots.pdf (listing categories that include physical, sexual and emotional abuse, neglect, substance abuse by caregivers, parental separation and divorce, domestic violence, depression of a family member, and incarceration of a family member).
\item \textsuperscript{138} Tough, \textit{supra} note 130, at 29.
\item \textsuperscript{139} Id.
\item \textsuperscript{140} Id.
problems, hepatitis, and liver and kidney disease.141

E. Policy Implications Show Immediate Action is Necessary

Immediate action on child homelessness is vital for many reasons, one being that only six states have begun to address the issue specifically.142 Living doubled-up or in motels is the last step before desperation: for families living doubled-up, one in ten will be completely without housing (including without any option to live doubled-up) at some point within a year of being doubled-up.143 The promising lesson though, is that assistance before a family comes to that level of desperation has very positive results for moving to stable, long-term housing.144 This means families like the Raynors, if they received assistance, are not likely to return to homelessness. Moreover, the cost to fund the Raynors in an emergency shelter, the next step for a family like theirs, is equal or greater than the cost to provide them with rental assistance, transitional housing, or permanent supportive housing.145

Acting on child homelessness now is also vital because homelessness is a lagging indicator, so the yearly increases in child and family homelessness will likely continue to grow as the country continues to struggle economically.146 The continuing foreclosure crisis will add to that growth,147 compounding the fact that there is already an inadequate supply of affordable housing.148 Surprisingly, busing homeless children to school, despite the stability that school provides and the necessity of the McKinney-Vento Act, is less cost-effective than housing those

---


143. Witte, supra note 50, at 26.
144. See America’s Youngest Outcasts 2010, supra note 36, at 114 (reporting that prevention and rapid re-housing programs resulted in eighty-eight percent of participants moving in to permanent housing).
146. Id. at 27.
147. Id.
148. See generally The State of the Nation’s Housing 2012, supra note 49, at 25 (reporting that the number of rental units, which also must be found to be adequate in addition to being affordable, shrunk by 470,000 units over the period of time that those earning $15,000 or less grew by 2.2 million, making public housing unavailable to more than five million applicants).
children and their families.\textsuperscript{149}

IV. A TARGETED REMEDY FOR A DEFINED POPULATION

There is a simple legislative solution to address the subpopulation of homeless children living doubled-up and in motels. The Homeless Children and Youth Act of 2011 ("the Bill" or "the Resolution") addressed the gap, but it never came to a vote despite support from thirty-two co-sponsors. The solution presented by the Homeless Children and Youth Act is still a viable one today. In this section, I address how this legislative solution would operate and why it would be successful if implemented. I address the sparse counterarguments to this solution, though the vast majority of homelessness organizations, advocates, and policy influencers support the legislation. Finally, were a representative to sponsor a new Bill that achieves the purposes of the Homeless Children and Youth Act, I suggest adding an effective date.

A. The Path Ahead

Legislation like the Homeless Children and Youth Act is the solution to address Destiny's circumstances and the similarly excluded population.\textsuperscript{150} A literature review shows that while the Resolution was broadly supported by service providers, it received no scholarly attention. Ideally (and realistically), the solution to child homelessness lies in major reform: adding seven million affordable housing units\textsuperscript{151} and increasing the minimum wage so

\textsuperscript{149} See generally NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, Beds Not Buses: How Affordable Housing Can Help Reduce School Transportation Costs (Sept. 2011), available at http://nichp.org/content/pubs/Beds%20and%20Buses%209-20-11%20FINAL1.pdf (explaining in depth the contention that allocating housing to children who receive services from McKinney-Vento funds is more cost-effective, and proposing the funds allocated to transport a child be used instead to fund affordable housing near the school); THE INST. FOR CHILD. AND POVERTY, Miles To Go: The Flip Side of the McKinney-Vento Homeless Assistance Act 1-2 (Jan. 2003) (stating that lengthy commutes to schools of origin are stressful and tiring for children and that housing is a more effective solution).

\textsuperscript{150} H.R. 32, 112th Cong. (2012). H.R. 32 has the support of many providers working with homeless populations. See Letter of the ABA, supra note 91, at 1 (supporting H.R. 32 for those living doubled-up and in motels); NAEHCY Red Tape, supra note 91, at 1 (supporting H.R. 32 for those living doubled-up and in motels); CHICAGO COAL. FOR THE HOMELESS, U.S. House Subcommittee Supports Bill to Broaden HUD Definition of 'Homeless' (Feb. 8, 2012), http://www.chicagohomeless.org/u-s-house-subcommittee-supports-bill-to-broaden-hud-definition-of-homeless/ (last visited Nov. 16, 2012) (urging people to contact their representatives and ask them to vote yes on H.R. 32); NAT'L CTR. ON FAM. HOMELESSNESS, What's New (Feb. 28, 2012), http://www.familyhomelessness.org/whatsnew.php?p=ss (last visited Nov. 16, 2012) (stating H.R. 32 is bi-partisan legislation that has the support of the National Center on Family Homelessness).

\textsuperscript{151} America's Youngest Outcasts 2010, supra note 36, at 107.
that workers can afford the fair market value of housing. In the absence of those types of reforms, this population of homeless children must at least have a chance to be considered for housing. That is the immediate and realistic opportunity the Homeless Children and Youth Act provided.

B. Closing the Loophole: The Legislative Solution

Introduced January 5th, 2011, the Bill set out an additional provision to the Section 103 General definition, to include as homeless those identified under the Section 725 Youth definition. In addition to identifications made by Local Education Agencies (LEAs), it included those covered by Runaway and Homeless Youth Act programs, the Individuals with Disabilities Education Act, and Head Start Act programs.

The Bill established that youth be identified by the liaison to the Local Education Agency or the director of a respective program funded by the above federal statutes. For those families with children already identified as homeless under other federal programs, the legislation eliminated the documentary restrictions HUD applied to the HEARTH expansion. Proponents lauded the Resolution for streamlining those documentation requirements. The direct certification of a child

---

152. Id. at 105.
153. H.R. 32, 112th Cong. (2012). See, e.g., Beres, supra note 18, at 1 (stating that H.R. 32 allows eligibility for those children and youth who are determined to be homeless by public school agents). Accord CHICAGO COAL. FOR THE HOMELESS, supra note 154 (stating that H.R. 32 specifically includes children sharing the housing of others because of financial need or a loss of housing and those living in motels or hotels not paid for by charitable or government organizations).
154. See H.R. 32, 112th Cong. (2012) (setting out that children who qualify as homeless under the Youth definition because they were identified by a local educational agency liaison are included, but also stating that children identified by the three other programs will be considered homeless even if they were not identified through school).
155. Id. (stating the director's designee may make the determination).
156. Id. A youth must also be verified as homeless by his family, with the exception of youth identified under the Runaway and Homeless Youth Act. Id.
157. NAEHCY Red Tape, supra note 91, at 1 (explaining that "H.R. 32 would eliminate the new HUD regulatory burdens by creating a streamlined referral process so that vulnerable children and youth who are identified by these four federal programs are eligible for HUD-funded emergency and transitional housing, as well as critical support services"). The practical application of the stream-lining and the regulatory burdens is in reference to the elimination of documentation requirements other than those specified in the bill. Rosen, supra note 90.
158. See NAEHCY Defending H.R. 32, supra note 87, at 4 (pointing out that the documentation regulations are an insurmountable requirement for those experiencing homelessness as doubled-up or "self-paid" motel living situations). The report goes on to note that even when youths may have been eligible for assistance, the documentation requirements would have been prohibitive. Id. at 5.
by an LEA liaison or program director, along with referral to HUD homeless assistance, served to fulfill the documentation requirements. The Bill allowed such children to be considered homeless as a last category to the Section 103 General definition, adding them to the pool of applicants for housing assistance. While it would include this subpopulation for consideration, it is important to note that it would not have guaranteed these children any housing services, it simply would have allowed HUD to triage their circumstances.

In June 2011, the Homeless Children and Youth Act’s sponsor, Congresswoman Judy Biggert (R-IL), introduced the Bill and gained the support of thirty-two co-sponsors. Biggert is a long-time champion of homeless children and was instrumental in the 2002 adoption of key improvements to EHCY. In November 2012, Ms. Biggert lost re-election and the Bill’s future became uncertain. Ten of the original thirty-two co-sponsors also lost reelection. Reactivating support is vital.

C. The Model for the Homeless Children and Youth Act

The Homeless Children and Youth Act was modeled on a process that has already been proven efficient – the Healthy, Hunger-Free Kids Act. That legislation reauthorized the Child Nutrition Act and streamlined the paperwork requirements for qualification. It did so through direct certification, a system that

---

159. Rosen, supra note 90; see NAEHCY Defending H.R. 32, supra note 87, at 3–4 (showing that despite the documentation requirements, the question of where a child is living is not as important as the question of safety). Safety may be of greater concern for children living doubled-up or in motels precisely because they are more difficult to identify and reach. Id.

160. See NAEHCY Defending H.R. 32, supra note 87, at 3–4 (stating that H.R. 32 allows service providers to take into account elements of safety and vulnerability, and places that accounting in the hands of agents who know the community).

161. Rosen, supra note 90.


163. See Rosen, supra note 90 (stating that without Congresswoman Judy Biggert, hope of passing the bill may be uncertain).


165. See Letter of the ABA, supra note 91, at 2 (referencing the Child Nutrition Act as a model).

uses already available data to eliminate individual applications.\textsuperscript{167} In that case, Supplemental Nutrition Assistance Program (SNAP) data about a community’s low-income families was used to automatically consider them eligible without going through the application process.\textsuperscript{168} Not only does this remove the burden for families seeking assistance, it liberates funds formerly needed to process the applications and documentation on the provider side.\textsuperscript{169} HUD already allows a similar system of HMIS documentation\textsuperscript{170} of prior homelessness to fulfill proof requirements for housing assistance. It would be efficient to extend that system to prior identification of homeless students by LEA liaisons and program directors.\textsuperscript{171}

1. This Bill Puts Responsibility in the Hands of Qualified Professionals

One reason this model will work is that the local officials who make the initial identifications are the most capable of doing so.\textsuperscript{172} The liaisons and program directors tasked with identifying homeless students under the Youth definition are sensitized to the unique approach required for working with stigmatized children.\textsuperscript{173} Further, the Resolution is sustainable because typical household size for homeless families is smaller than the typical family living in poverty making them easier to serve.\textsuperscript{174} While affordable housing is frequently difficult to match with families who exceed the occupancy limit of many units, more than fifty

\begin{itemize}
\item \textsuperscript{168} Id.
\item \textsuperscript{169} Id.
\item \textsuperscript{170} Homeless Management Information Systems (HMIS), About HMIS, http://portal.hud.gov/hudportal/HUD?src=program_offices/comm_planning/homeless/hmis (last visited Apr. 7, 2014) (explaining that HMIS is a system to keep records on characteristics and service needs of homeless persons).
\item \textsuperscript{171} NAEH Changes in the HUD Definition, supra note 22, at 2.
\item \textsuperscript{172} See NAEHCY Defending H.R. 32, supra note 87, at 2 (stating vulnerability should be determined by local operators who have the relevant facts on individual cases). Congress does not have the information or the familiarity with individuals in a community to weigh the relative needs of one applicant against another. Id. H.R. 32 enables communities addressing homelessness to evaluate all the circumstances of its applicants, including the presence of children and youth considered homeless. Id. See also Letter of the ABA, supra note 91, at 2 (asserting that H.R. 32 would provide the flexibility to assess a community’s most vulnerable applicants and that local providers are the most qualified to determine the need for housing because it is their daily occupation).
\item \textsuperscript{173} Heybach, supra note 66, at 282 (noting that the McKinney-Vento Act requires school officials to be sensitive to the stigma of homelessness for children).
\item \textsuperscript{174} AHAR, supra note 37, at 20–21.
\end{itemize}
percent of homeless families could be housed in two-bedroom units.175

D. Criticism and Opposition

Opponents of the Homeless Children and Youth Act raise a number of issues.176 One fear is that it will provide more services without allocating more funding.177 The Bill does not provide housing assistance for children living doubled-up or in motels instead of other children - it simply includes more people in the pool for eligibility.178 Another argument is that including children and youth living in motels or doubled-up will displace other applicants who are more needy.179 The sweeping statement that children who meet the General definition are more in need than those who meet the Youth definition does not reflect the numerous studies that show "a variety of risk factors are more important in predicting children's outcomes than residential status per se."180

While it is true that there is a general dearth of affordable housing in this country, this definitional expansion would allow homeless assistance providers to consider children as candidates for housing, but it would not prioritize less needy children.181 The allocation of housing assistance would continue in the same manner it does currently, but HUD would also consider the circumstances of children living doubled-up and in motels.182 Moreover, this solution is targeted at children who are uncertain they will have somewhere to sleep each night. To include them may reveal a number of children that exceeds the available assistance. This would prove that the current number of children being considered is extremely under-representative of the need; greater clarity around the numbers of homeless children would not

175. See id. (reporting that 53.4% of families are two to three people, and interpreting the data to show that many homeless families could be assisted by a two-bedroom residence).
177. Id.
180. Id.
181. Id.
182. Id.
be a negative result of this legislation.

Opponents also argue that this Resolution is unnecessary because youth like Destiny would be addressed with HUD's regulations and the "at risk of homelessness" category. Those arguments address only the abstract issue, but when applied to a real-life scenario like Destiny's, it is clear that the regulations do not include her, as addressed in Part III.

E. Targeting Children Suffering from the Housing Instability of Motel and Doubled-Up Living Situations

The Homeless Children and Youth Act should be passed as it was crafted, but if it is amended for re-introduction, an effective date should be added. If the bill is effective upon becoming law, it will have immediate impact on HUD's regulations, and an explicit date would make litigation more decisive were HUD to unduly delay adoption of the bill as it has in the past. HUD was given six months to issue regulations pursuant to the HEARTH amendments to guide any agencies or organizations receiving federal funds under the McKinney-Vento Act. Congress specifically directed HUD to implement guidance concerning section 103 of the McKinney-Vento Act, the provision that defines homelessness. HUD did not comply with Congress's six-month directive, and in fact exceeded it by almost a full year.

---

183. Id. at 3.
184. Id. See also U.S. DEP'T OF HOUS. & URB. DEV., Homelessness Prevention and Rapid Re-housing Program (HPRP) Fact Sheet (2012), http://www.hudhre.info/index.cfm?do=viewHprpProgramOver (stating that 80 percent of HPRP adults were in a housed situation the night before program entry). Two-thirds (66.4 percent) were living in their own housing unit. Id.

185. Rosen, supra note 90.
187. See id. § 1003 (stating in strong language:
Not later than the expiration of the 6-month period beginning upon the date of the enactment of this division, the Secretary of Housing and Urban Development shall issue regulations that provide sufficient guidance to recipients of funds under title IV of the McKinney-Vento Homeless Assistance Act to allow uniform and consistent implementation of the requirements of section 103 of such Act, as amended by subsection (a) of this section. This subsection shall take effect on the date of the enactment of this division).
188. Id.
189. HEARTH Act, 42 U.S.C. § 11301 (2012). See HUD Final Rule, supra note 75, at 75995 (stating the proposed rule provided clarification on and explanation for terms within the HEARTH statute's definitions of "homeless," "homeless individual," "homeless person," and "homeless individual with a
similar deadline for adopting this seventh category may not achieve swifter action by HUD, but at least it would offer a stronger case for families and service providers trying to work toward compliance.\textsuperscript{191}

The Homeless Children and Youth Act provides a small correction to today's system that makes a great deal of difference for children who live in insecure housing arrangements due to financial need or a lack of adequate housing options. It offers a ready-to-go solution to a systemic problem that affects children and youth who are vulnerable to long-term health problems and it interrupts the cyclical trauma of homelessness.

V. CONCLUSION

Children and youth living doubled-up and in motels make up the vast majority of those identified as homeless under the Youth definition, but they exist in a twilight zone where they do not receive the kind of meaningful help that makes a real difference. There are numerous government services for preventing homelessness, emergency services for those already homeless, and re-housing services to move the homeless toward permanent housing. However, the system as it stands misses an opportunity to disrupt what frequently becomes generational homelessness. Children living doubled-up and in motels persist in a limbo that research shows can be just as traumatic as other types of housing instability. The Homeless Children and Youth Act provided a solution by narrowly opening the channels of opportunity to children already identified as homeless. A tailored legislative solution exists for hundreds of thousands of homeless children; despite the opportunity, the solution has yet to be executed.

\textsuperscript{190} HUD Final Rule, \textit{supra} note 75, at 75995.

\textsuperscript{191} See also Rosen, \textit{supra} note 90 (on file with the author) (contending that an effective date would provide litigants with important evidence).