

Court-Based Eviction Diversion Programs

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E viction court has come to be defined by its notoriously quick speed, stubbornly low appearances rates, and consistently uneven levels of legal representation. By the time a landlord-tenant dispute ends up in court, eviction often seems like an inevitable outcome. Court-based eviction diversion programs are working to challenge that narrative, redesigning their eviction courts to function as opportunities for support and connection, rather than as places of last resort.

During the COVID-19 pandemic, the number of court-based eviction diversion programs grew rapidly as state and local courts sought out opportunities to leverage increased federal funding for legal aid, rental assistance, and other housing stability services. While state and local moratoria halted most eviction proceedings, courts engaged with service providers and government partners to collaboratively design and implement new programs to divert landlords and tenants away from the traditional eviction process and towards stabilizing resources.

Courts now have an opportunity to permanently institutionalize their pandemic-era programs, adapting them from temporary, crisis-response programs into long-term, sustainable ones. The next generation of eviction diversion programs can facilitate holistic connections to both legal and non-legal resources to better support litigants in resolving not just the immediate legal crisis, but also any underlying root issues. These eviction diversion programs will vary greatly in design and structure, but successful programs will share the same vision: a better court process that provides landlords and tenants with the time, information, and resources necessary to resolve a dispute in the least harmful way.

BUILDING AN EVICTION DIVERSION REFERRAL NETWORK

A court-based eviction diversion program requires a formal referral network of legal, financial, and social service providers who can offer support to landlords and tenants seeking alternatives to eviction. Even the most highly motivated landlords and tenants can benefit from outside help working through a housing dispute or accessing available resources in their community.

Courts should think expansively when building a referral network of program partners. Most programs will integrate at least two - if not all three - of the following: rental assistance, legal aid, and mediation. Rental assistance has been a key part of eviction diversion programs during the pandemic with unprecedented amounts of federal rental assistance funding become available. Mediation programs offer paid or volunteer mediators to support landlords and tenants in identifying common ground and crafting mutually agreeable settlement agreements. Legal services, ranging from same-day brief advice to representation at trial, ensure that meritorious defenses or procedural defects are properly identified and brought before the court. In making referrals to any of these program partners, courts should strive to build collaborative relationships and to remove barriers that may prevent litigants from accessing services. Many courts share data and space (both physical and virtual) with their program partners to expedite and simplify the referral process.

Beyond these common partners who can help litigants address and resolve the immediate legal problem, court-based diversion programs can also function as referral avenues to wraparound supportive services. Through their diversion programs, courts have forged relationships with school districts, healthcare providers, community banks, public benefits screeners, food pantries, and countless other partners. Some courts have

even secured funding to hire social workers who can offer case management services to landlords and tenants using the diversion program. Housing problems rarely begin or end in court, and a successful diversion program will create linkages to a broad range of legal, financial, and social service providers.

MAKING SPACE FOR EVICTION DIVERSION TO WORK

Eviction diversion is not an immediate process; landlords and tenants need time to go through a diversion program and to work with program partners. Court-based eviction diversion programs must design a court process that builds in formal opportunities for landlords and tenants to engage with the diversion program and enough time for them to do so in a meaningful way. In many jurisdictions, this will require some changes to the management and timing of an eviction case.

One defining characteristic of a court-based eviction diversion program is when and how landlords and tenants will access the program. Court programs may focus on resolving issues before a case has been filed (pre-filing) or after (post-filing). They may be designed as voluntary or mandatory programs. Some operate fully remotely, while others take place on-site at a courthouse. Any model will have advantages and disadvantages, and the range of diversion programs reflects the diversity of the courts and communities in which they operate.

The best programs will build in multiple points of entry, giving litigants several opportunities to

access program resources at different stages of litigation. The gold standard eviction diversion program will include opportunities for diversion both before and after a case is filed, as illustrated in Figure 1.

A court-based program that includes pre-filing access to diversion resources allows landlords and tenants to resolve a case without the cost and complexity of a formal court proceeding and without the negative consequences of an eviction filing on a tenant’s record. However, many litigants may not learn about or take advantage of a pre-filing program; offering a post-filing entry point to diversion will allow those litigants an additional opportunity to access program resources even as the case moves through the court process.

Once an eviction case is filed with the court, the clock begins ticking, even if the parties engage with a diversion program. Effective court-based programs will build in a mechanism for slowing down or temporarily pausing an eviction case to allow the litigants sufficient time to use the available resources. Courts may elect to add a case management date or pre-trial conference to the eviction process to build in additional time for the parties to access the diversion program before setting a trial date. Courts may also create a process for temporarily pausing a case for a defined period of time if the litigants opt to engage in diversion. Any procedural changes will need to work within the timing constraints set by the governing landlord-tenant law and may require changes to court rules or longstanding practices.

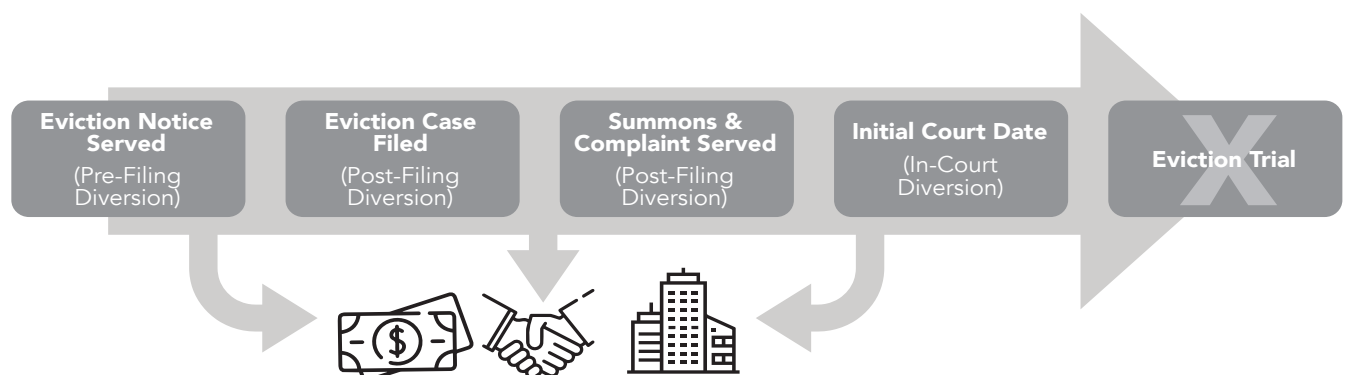


Figure 1: Eviction Diversion Program Process Map with Multiple Entry Points

ENGAGING LITIGANTS IN EVICTION DIVERSION

Outreach and engagement strategies are crucial to any eviction diversion program; the program resources can't work if litigants don't show up and take advantage of them. Eviction courts often struggle with low appearance rates for defendants, and court-based diversion programs must be proactive in addressing this challenge. Courts should think about how and when they communicate with litigants, as well as what they communicate. Supplementing traditional court communications can be crucial for engaging with tenants who might otherwise have not known about diversion or opted out of the court process altogether.

Courts should identify ways to supplement and improve their eviction Summons, the court papers that first inform tenants of a new case that has been filed against them. The Summons itself should be written in plain language, translated into commonly spoken languages besides English, and designed in a user-friendly way that allows the tenant to easily understand and act on the information presented. The Summons should also be supplemented by a program flyer advertising the eviction diversion program and available resources. Courts can proactively mail information about the program as soon as a new case is filed or mandate that program information be attached to the Summons.

Courts are increasingly looking for supplemental ways to communicate with litigants, rather than relying exclusively on court papers and mail. Electronic communications like text messaging reminders and email notifications are becoming more common, especially as courts embrace electronic filing. Grassroots outreach campaigns and partnerships with community organizations can also be effective, especially in reaching communities that may be at an elevated risk of eviction or that have had negative experiences with courts in the past. Working with trusted community partners who can run door-knocking campaigns, post on social media platforms, or share information through other community events can amplify the message that tenants

should engage with the court process and that eviction diversion resources are available to help them.

FOR MORE INFORMATION

The National Center for State Courts has developed a diagnostic tool and supplemental resources to support courts in designing and implementing eviction diversion programs. Visit ncsc.org/eviction to learn more.

