

Court-Based Eviction Diversion Programs

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Eviction courts across the country are often characterized by their notoriously quick speeds, stubbornly low rates of tenant participation, and systemic power imbalances. 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 by repositioning housing courts as opportunities for support and connection, rather than places without hope or opportunity.

During the Covid-19 pandemic, state courts quickly moved to leverage increased federal funding for legal aid, rental assistance, and other housing stability services in response to the crisis. Courts now have an opportunity to expand on that work and permanently institutionalize the court improvements and diversion programs that have proven to make a difference. The eviction crisis did not start or end with the pandemic, and the emergency-response efforts are just as needed today as they were during the initial Covid-19 emergency.

The NCSC Eviction Diversion Initiative (ncsc.org/eviction) is supporting the next generation of eviction diversion programs as they design, implement, and evaluate new programs intended to increase connections to the legal and non-legal resources that can support litigants in resolving both the immediate housing problem and the underlying root issues. These programs vary greatly in design and structure, a reflection of the diverse courts and communities in which they operate, but they are all built around the same goal: a better court process that provides landlords and tenants with the time, information, and resources necessary to resolve a housing dispute in the least harmful way.

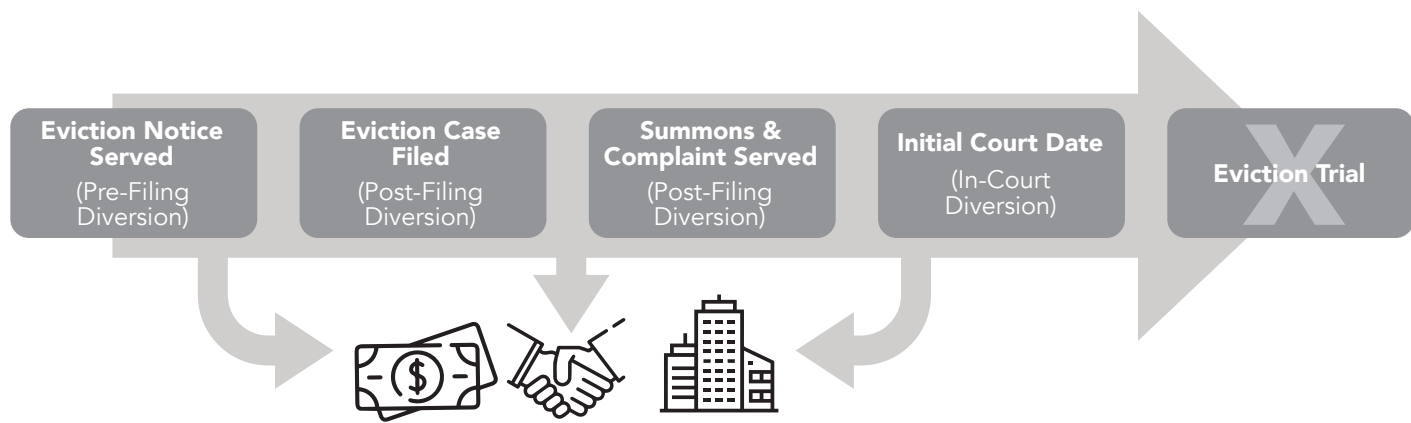
TIMING: MAKING SPACE FOR EVICTION DIVERSION TO WORK

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 intentionally creates opportunities for landlords and tenants to engage with the diversion program partners and provides them with enough time to do so in a meaningful way. In many jurisdictions, this will require 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 has advantages and disadvantages, and diversion programs should be designed in consultation with court and community stakeholders.

The strongest programs will offer multiple points of entry, giving litigants several opportunities to access program resources at different stages of the eviction case. The gold standard eviction diversion program will include access 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 allows those litigants an additional opportunity to access program resources even as the case moves through the court process.



Eviction Diversion Program Process Map with Multiple Entry Points

Once an eviction case is filed with the court, the clock begins ticking even if the parties engage with a diversion program. Some programs have 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 engage with the diversion program before setting a trial date. Courts may also create a process for temporarily pausing a case for a defined period 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.

RESOURCES: BUILDING AN EVICTION DIVERSION REFERRAL NETWORK

A court-based eviction diversion program requires a coordinated referral network that leverages the existing legal, financial, and social service providers in the community. Collectively, these service providers can offer support to landlords and tenants seeking alternatives to eviction with the court serving as the entry point for accessing services. Even the most highly motivated landlords and tenants can benefit from outside help when working through a housing dispute or accessing resources.

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: financial assistance, legal assistance, and mediation. Rental assistance and landlord mitigation funds can help tenants recover from temporary economic disruptions and provide financial security for landlords. Legal services, which may range from same-day brief advice to representation at trial depending on service provider capacity and litigant needs, ensure that meritorious defenses or procedural defects are properly identified and brought before the court. Mediation programs connect paid or volunteer mediators with landlords and tenants to help identify common ground and craft mutually agreeable settlement conditions.

Beyond these common partners who can help work through the immediate legal problem, successful diversion programs also provide connections to wraparound supportive services. Through diversion programs, courts have forged successful relationships with school districts, healthcare providers, community banks, financial counselors, public benefits screeners, food pantries, and countless other partners. Some courts have secured funding to hire social workers to offer case management services to landlords and tenants through their diversion programs. By addressing the holistic needs of litigants, diversion programs can lead to longer-term, sustainable resolutions.

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 and using services. Many courts share data and space (both physically and virtually) with their

program partners to expedite and simplify the referral process. Courts participating in the NCSC Eviction Diversion Initiative have received grant funding to hire eviction diversion facilitators who can build relationships between the court and community partners and develop the infrastructure to effectively screen and refer cases to different service providers. Housing problems rarely begin or end in court, and a successful diversion program should create linkages to a broad range of legal, financial, and social service providers that help landlords and tenants work toward long-term housing and financial stability.

INFORMATION: 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 to 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. 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. 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, compiled national best practices and examples, and created supplemental resources to support courts in designing and implementing eviction diversion programs. Visit ncsc.org/eviction or email EDI@ncsc.org to learn more.