

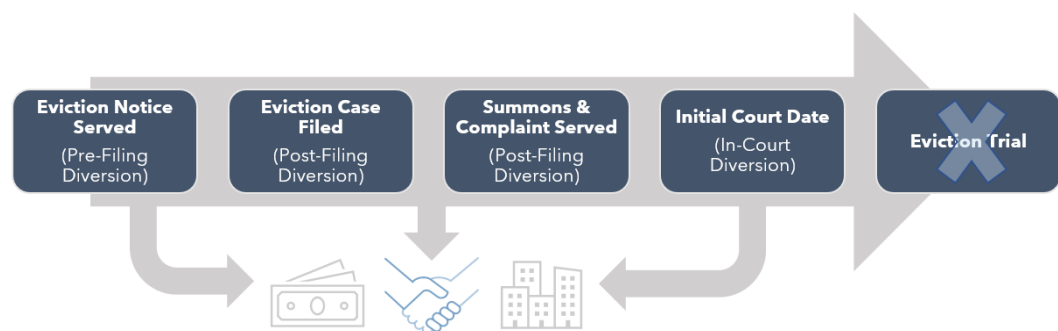
## Eviction Diversion Considerations - Timing and Entry Points

Eviction diversion programs use the court process to provide landlords and tenants with time, information, and resources to resolve their housing problems outside of the traditional litigation process. Eviction diversion programs may be integrated into different stages of the court process including before a court case is filed, between filing and the initial court appearance, and during the initial hearing date. Use this resource to consider which stage or stages of the eviction process will be the primary point(s) of entry into your court-based eviction diversion program.

### Eviction Diversion Entry Points

Identifying when and how litigants will access eviction diversion resources is one of the first decisions that must be made when designing a new program. Many of the programmatic decisions regarding case management, scheduling, referral partnerships, data collection, and outreach strategies will depend on the access point(s) established for using the diversion program.

The gold standard eviction diversion program will build in multiple entry points, both before and after filing, creating the maximum number of opportunities for landlords and tenants to engage with the program. There are many benefits to resolving a housing dispute before the case is filed; however, with a multi-phase program, even if a landlord and tenant are unable to resolve their dispute before filing, they still have opportunities to use program resources as their case moves forward. The flowchart below shows the different stages of the typical eviction process, and which type of diversion program is used at each stage.



Many jurisdictions will not have the resources necessary to support a multi-phase eviction diversion program and may choose to focus their efforts on one point of entry. Keep reading to determine which model may be best suited for your jurisdiction.

## Pre-Filing Diversion

Pre-filing eviction diversion programs offer landlords and tenants a pathway to resolve their legal dispute even before a case is filed in the court system. By moving services upstream, parties have the potential to resolve their issues quickly and affordably. The housing provider can avoid paying filing fees and attorney's fees, and the tenant does not risk the negative consequences associated with having an eviction filing attached to their name. Pre-filing resolution also reduces the burden on the court system, preserving court resources for the landlord-tenant disputes that most require their attention. Resolving problems as early as possible, before they have the potential to escalate and further damage the relationship between the parties, can be extremely beneficial to both parties and to the court.

Pre-filing eviction diversions programs can be mandatory or voluntary, and there are benefits and challenges to each type of program. In addition to weighing these differences, when designing a pre-filing eviction diversion program, it's critical to consider when and how landlords and tenants will learn about the program and what mechanisms will be used to encourage, incentivize, or even require their participation. Without addressing these two areas, a pre-filing diversion program may experience very low participation rates.

### **Mandatory Pre-Filing Diversion Programs**

Mandatory pre-filing diversion programs require a landlord to attempt using program resources to resolve a dispute before filing a court case against a tenant. Mandatory programs generally require landlords to provide tenants with a notice of their rights under the program and to wait a set period of time before filing suit for tenants to request mediation and/or apply for rental assistance. If the tenant does elect to use the diversion resources, the landlord must also participate. When used effectively, mandatory programs have proven to be very effective at encouraging early resolution and reducing the number of filed eviction cases.<sup>1</sup>

Mandatory pre-filing diversion can be an effective strategy for driving pre-court resolution of legal issues. However, mandatory participation generally requires legislative change to the statutory framework that governs the eviction process. A

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<sup>1</sup> See, for example, *Eviction Prevention Through Hawai'i's Tenant-Landlord Mediation Program* (Hawaii Appleseed Center for Law and Economic Justice, October 2022), available online at <https://perma.cc/XV8D-5WUQ> (Finding 87% of eviction cases covered by Act 57 resulted in a settlement agreement). See also, *Philadelphia's Nationally Acclaimed Eviction Diversion Program is Now Law!* (Philadelphia City Council, December 2021), available online at <https://perma.cc/4XMG-7C25> (Showing that the Philadelphia Eviction Prevention Project reduced eviction filings by 75%).

mandatory program also requires sufficient resources, including some combination of legal services attorneys, mediators, and rental assistance funds, to provide support to all landlords and tenants who will engage with the program. If a jurisdiction does not have adequate resources to support mandatory diversion in all cases, it can limit the scope of the mandate to a subset of cases where diversion may be more effective or impactful.

- **Hawaii Statewide:** [Act 57](#) established a mandatory pre-filing diversion program. The statute required landlords provide tenants a [15-day notice](#) informing them of their right to schedule mediation to avoid an eviction filing. If the tenant did not schedule the mediation within the 15 days, the landlord could then move forward with an eviction filing. The Act expired on August 6, 2022.
- **Washington Statewide:** [SB 5160](#) established the [Eviction Resolution Pilot Program](#). Under the program, landlords were required to provide tenants a [14-day notice](#) informing them of their right to schedule mediation to avoid an eviction filing and to also send a copy of the notice to their local dispute resolution center. If the tenant did not schedule the mediation within the 14 days, the landlord could then move forward with an eviction filing. The ERPP ended on June 30, 2023.
- **City of Philadelphia:** [City Ordinance 210920](#) established the [Eviction Diversion Program](#), a mandatory pre-filing diversion program. Landlords must enroll in the diversion program, provide [notice](#) to the tenants, and apply for rental assistance (if eligible) before they can file an eviction action. Landlords are required to act in good faith and to wait at least 45 days before they can pursue an eviction case in court. The program has been extended through June 2024.
- **Colorado Statewide:** [House Bill 23-1120](#) establishes a pre-filing mediation requirement for tenants who receive supplemental social security income, social security disability insurance, or state cash assistance. Tenants must notify their landlords in writing if they receive an eligible benefit. If a landlord does not comply with the requirement, the tenant can raise the non-compliance as an affirmative defense in an eviction proceeding.

### **Voluntary Pre-Filing Diversion Programs**

Mandatory programs may not be viable in jurisdictions where service providers have insufficient capacity to work with all landlords and tenants or where legislative changes are not practical. In such jurisdictions, a voluntary pre-filing diversion program can be a good alternative. In a voluntary program, landlords and tenants are encouraged or incentivized to engage in pre-filing efforts to resolve the dispute, but they are not required to do so before initiating a case.

Because these programs are optional, they should include a robust outreach and education campaign to ensure that landlords and tenants understand the benefits to participation and how to engage with the program. Courts may want to consider additional ways to incentivize participation, including waiving or reducing filings fees or offering expedited court dates for landlords who engage with a pre-filing diversion program, but are unsuccessful in resolving the dispute and ultimately choose to file a case. Some jurisdictions have had success piloting pre-filing diversion programs with larger housing providers or public housing authorities to cultivate support before expanding the program to the broader public.

- **Alaska Statewide:** [Administrative Bulletin 98](#) established a statewide, fully remote pre-filing diversion program within the Alaska Court System. Landlords must provide tenants with a [Pre-Filing Eviction Diversion Information Sheet](#) when serving an eviction notice, but they are not obligated to participate if the tenant requests mediation.
- **Chicago, IL:** [General Order 2020-09](#) requires that all landlords provide information about pre-filing resources including legal aid, mediation, and rental assistance ([Illinois flyer](#) | [Chicago flyer](#)). Landlords are not obligated to mediate or to accept rental assistance if the tenant applies. Tenants can still receive free legal advice even if the landlord declines to participate.
- **Indiana Statewide:** Indiana Supreme Court [Order 21S-MS-422](#) established the [Pre-Eviction Diversion Program](#) which offers free, voluntary mediation to landlords and tenants before and during an eviction case.

### **Additional Considerations for Pre-Filing Diversion Programs**

- **Legal Aid:** Check with your local legal aid providers to understand their eligibility criteria, priorities, and capacity to accept referrals from a pre-filing diversion program. Some legal aid agencies prioritize serving individuals with pending court cases and may not be able to take pre-court referrals.
- **Rental Assistance:** Some rental assistance programs will only accept applications from landlords and tenants with pending court cases. Check with your local rental assistance program about their eligibility requirements. If their programs do have such a limitation in place, consider establishing a pilot program that offers pre-filing rental assistance to a limited number of applicants who are pre-screened through the court's diversion program.
- **Enforcement Mechanisms:** If a landlord and tenant enter into an agreement outside of court, consider what enforcement mechanisms will be available if one or both of the parties violates the settlement terms.

Jurisdictions may wish to consider establishing a process for opening an eviction case under seal or under a different case type for the sole purpose of entering and enforcing the settlement agreement.

## Post-Filing Diversion

Post-filing eviction diversion programs are open to landlords and tenants from the point of filing and may be accessed at any time before or during the scheduled court date. Several courts have implemented post-filing diversion programs in which either the court or landlord provides tenants with information about the program and program staff then reach out to tenants to assist them in accessing resources the available resources including mediation, legal aid, and rental assistance.

These programs can be easier to operate in some ways. Post-filing programs are open to a known universe of prospective litigants making the outreach efforts easier and the volume more predictable. The court already has jurisdiction over the matter, so any settlement agreement can be entered and enforced by the court.

However, by offering program services only after a case has been filed, landlords and tenants may be at a disadvantage. First, if the jurisdiction has strict time constraints on landlord-tenant cases, the statutory clock is ticking. Second, the landlord-tenant relationship has had additional time to deteriorate, leading the landlord to invest resource into pursuing a court case against the tenant. Third, the tenant now has a court filing attached to their name which can negatively impact their credit score and their ability to secure new housing in the future or to maintain or quality for any type of subsidized housing.<sup>2</sup>

- **Grand Rapids, MI:** The 61<sup>st</sup> District Court mails information about its eviction diversion program to every tenant as soon as an eviction case is filed. Each tenant receives an [Eviction Diversion Notice](#) with the website and phone number for connecting with the eviction diversion program facilitators. The facilitators interview litigants and make warm handoffs to mediation services, legal aid, rental assistance, and housing programs.
- **Clark County, NV:** Court staff screen all [Tenant Answers](#) to determine eligibility for county rental assistance and other supportive service programs. Once a case is deemed eligible, the tenant receives a [Court Referral to Eviction Diversion](#) and is schedule for an eviction diversion intake prior to their court date to access resources.

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<sup>2</sup> See, for example, "The Stigma of the Scarlet E" (*The New York Times*, August 9, 2021), available online at <https://perma.cc/MW76-3TGA>.

## In-Court Diversion

In-court eviction diversion programs use preexisting court dates as the primary entry point into the program. These programs will leverage court hearings as opportunities to connect landlords and tenants with legal aid, mediation, rental assistance, and other stabilizing resources, often in real time during the first court appearance.

While using an already scheduled court date to connect with litigants is convenient and can considerably simplify outreach efforts, it also requires special care with the timing and coordination of referrals to ensure that service providers can work effectively within the timeframe permitted by state and local law and within the limitations of the court process. When possible, in-court programs benefit from having service providers available to take immediate referrals, either physically or virtually.

Some in-court diversion programs have added a case management date or pre-trial conference date to slow down the eviction process while the parties work with the diversion program resources. Other programs have added a mandatory stay to temporarily pause the case once the parties enter into diversion.

- **Cook County, IL:** Case managers are present during virtual court proceedings to screen self-represented litigants and facilitate real-time connections to legal aid, mediation, and rental assistance. [General Order 2020-09](#) establishes the initial court date as a case management date and requires that judges grant a continuance of at least 14 days to allow the case managers and service providers to work with litigants before a case can move forward.
- **Allen County, IN:** An [Administrative Order](#) established a mandatory initial hearing date with the eviction diversion facilitator for all new eviction cases. The case will be set for hearing before a judge only if the parties are unable to resolve the case with the assistance of the eviction diversion facilitator and resources from community partners.
- **Indiana Statewide:** Indiana Supreme Court [Order 22S -MS-308](#) requires eviction judges to advise litigants of the diversion program at the first court date. If the parties agree to participate in the program, the case must be stayed for 90 days, with status conferences at 30 days and 60 days, while the parties attempt to resolve the legal dispute.

## The Bottom Line

Each prospective point of entry for an eviction diversion program comes with different benefits and challenges for implementation, and not every jurisdiction will have the statutory framework, resources, or staff capacity to support all three stages.

In general, outreach becomes both more crucial and more challenging as the entry point to an eviction diversion program moves earlier in the eviction process. Without a scheduled time and place to meet litigants, or even a list of names and addresses to contact, a diversion program must be proactive in raising awareness and encouraging participation. See [Eviction Diversion Outreach Strategies](#) for outreach and engagement best practices and examples.

The farther along in the eviction process that litigants engage with a diversion program, the more critical the program timing becomes. In most jurisdictions, the clock starts running once a case is filed, and by the time the parties come to court the window of time to engage with the diversion program may be narrow. For in-court diversion programs, finding ways to make immediate and streamlined referrals and to expedite the intake and service delivery process will be crucial to the program operating within the time permitted by state and local law. See [Eviction Diversion Referral Partnerships](#) for best practices and additional resources.

Regardless of the stage or stages of the eviction process that serve as the entry point to a diversion program, the most important consideration is ensuring the program design and partnerships will provide sufficient time, information, and resources to be effective in resolving landlord-tenant issues.

**Visit [ncsc.org/eviction](https://ncsc.org/eviction) for more information and resources from the NCSC Eviction Diversion Initiative.**

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