

# 01

## Creating a Post-Pandemic Eviction Court

---

Samira Nazem  
Principal Court Management Consultant,  
National Center for State Courts



The COVID pandemic has forced permanent changes in how courts handle eviction cases. Courts can make a positive difference in tenants' lives through eviction diversion programs by partnering with communities, sharing information between stakeholders, and building more time into the eviction process.

In the early months of the COVID-19 pandemic, fears began to surface of an impending eviction tsunami that could displace tens of millions of Americans. Fortunately, that worst-case scenario was avoided, first by federal and state eviction moratoria, and then by a combination of unprecedented sums of rental assistance and forward-thinking state and local courts that launched new programs to divert litigants toward those resources (Panfil and Spievack, 2022). As courts adapted to a rapidly changing landscape, they found success collaborating with legal aid and community partners and rethinking how they scheduled and handled their eviction dockets. Through these efforts, eviction court emerged as a place where landlords and tenants could quickly and easily access community resources, rather than a last resort.

While many changes and reforms were initially spurred by public health guidance and aided by federal funding, their success demonstrates the potential for permanent changes to the eviction court landscape. Courts have learned a tremendous amount over the last two years and have an opportunity to institutionalize the best practices of the pandemic. Evictions were at crisis levels well before the pandemic, and state

## CREATING A POST-PANDEMIC EVICTION COURT

and local courts now have the tools and knowledge to design sustainable eviction court programs that incorporate stabilizing services and holistic referrals. Not every eviction can or should be avoided, and courts must maintain their neutrality. Diversion programs and court reform efforts, however, can prevent avoidable evictions, mitigate the harm of those that must proceed, and improve the court experience for all litigants.

# Eviction Diversion Programs

Eviction diversion programs, whether court based or court adjacent, offer alternatives to the traditional, adversarial litigation process by providing landlords and tenants with time, information, and referrals to help them resolve housing disputes in the least harmful way. Diversion programs vary widely in design, a reflection of the vast differences between state and local courts and their governing eviction laws. They may be optional, strongly encouraged, or even mandatory as a prerequisite to litigation. They may focus primarily on upstream interventions before a lawsuit is filed or serve as a backstop once a dispute has escalated and is already pending before the court. They may incorporate connections to a wide variety of legal, financial, and social services at different stages of the eviction process, sometimes even co-locating services directly in the courthouse.

Across the many different models of diversion programs, however, there are commonalities. State and local courts of different sizes and structures, and with different rulemaking and governing authority, have found that successful programs rely on the same strategies. The most successful eviction diversion programs emphasize: 1) establishing community partnerships, 2) sharing information effectively between stakeholders, and 3) building additional time and capacity into the eviction process.



## 1. Housing instability should be addressed collaboratively through established partnerships with a range of community partners

Landlords and tenants may not be able to resolve their housing problems without help, even if they are motivated to do so. Eviction diversion programs rely on a wide variety of legal, financial, and social services to help facilitate early and sustainable resolutions when possible.

Legal aid and pro bono organizations, often operating at the courthouse, can provide legal information and advice to both landlords and tenants to help them better understand the eviction process and assess their options. Mediators also play an important role in many diversion programs, helping landlords and tenants to find common ground and memorialize their agreements. Many diversion programs rely on limited-scope, or unbundled, legal services to increase their capacity to provide high-volume services quickly. Most states have adopted rules that allow lawyers to provide limited legal advice or representation for a defined time. By leveraging the local limited-scope rules, attorneys can screen cases for possible defenses and assist in negotiating or drafting settlement agreements without filing an appearance or committing to an extended engagement. For more information on limited-scope representation rules and practices in each state, visit the ABA's [Unbundling Resource Center](https://perma.cc/M74R-X4HB) (perma link: <https://perma.cc/M74R-X4HB>).

Financial assistance programs also play an important role in diversion programs. During the pandemic, rental assistance has been a key ingredient of many diversion programs as the federal government allocated tens of billions of dollars in Emergency Rental Assistance to help tenants impacted by COVID pay their rent in arrears. Even before the pandemic, some courts had forged partnerships with state or local rental programs or private foundations offering rental or cash assistance. While more limited in capacity, these programs still offered a critical lifeline for tenants who could pay their rent going forward and needed one-time assistance covering a temporary loss or managing their budget. As Emergency Rental Assistance programs wind down, courts should continue to explore other rental or cash assistance programs that may operate in their area. These programs have enormous potential to benefit both landlords and tenants equally.

Human services providers can offer wraparound support to help stabilize other aspects of a litigant's life that may be contributing to housing instability. Legal problems rarely occur in isolation, and they are often interconnected with other legal and nonlegal problems. Many tenants in eviction court also need help locating new housing, accessing financial counseling services, applying for public benefits or VA benefits, or accessing domestic violence or mental health services. To have the most effective referral partnerships with community organizations,

## CREATING A POST-PANDEMIC EVICTION COURT

courts should take steps to understand what services are offered, which intake or other eligibility criteria may apply, and how best to facilitate referrals. Strong referrals require courts to communicate regularly with their partners and to be responsive to their needs.

A strong diversion program will build relationships with and enhance connections to the service providers in the community so that housing issues can be addressed holistically when possible. Community members have generally shouldered the burden of finding and applying for the legal and supportive services that could help them in times of crisis. Courts can change this by serving as bridges to information, referrals, and services and by sharing data and information with service providers to assist them in their work. Courts can reduce barriers to accessing these vital services by offering space in the courthouse for service providers to meet with litigants, by using technology to facilitate easier referrals, and by establishing formal referral relationships with their outside partners to allow for warm handoffs. Strong partnerships with legal and social service providers can improve outcomes and experiences for both landlords and tenants.

### **2. Outreach and communications strategies are necessary to ensure litigants understand the benefits of participating in a diversion program and can access available resources**

Eviction diversion programs, even mandatory ones, cannot work if the litigants do not know about them or do not appear at their scheduled court dates. Eviction courts have historically seen high rates of default judgments, and courts must encourage participation in both the court process and diversion programs.

One way to encourage participation is to share information about diversion programs as early as possible and through many different channels. During the pandemic, many courts implemented requirements that eviction complaints include information about diversion programs, rental assistance, or other relevant services. By sharing that information as early as possible, litigants have a better chance of accessing services before they appear in court. Including information about services alongside the court papers can also help alleviate negative perceptions about the court process. Courts should strive to spread the message that diversion resources are available and to encourage and welcome all litigants to fully participate in the court process. Courts should also consider using technology to supplement paper notices by exploring text-messaging and email-notification systems.

Beyond pleading requirements, information about diversion programs and resources can also be shared through other methods, including websites, chatbots, and social media accounts for both the court system and governmental and community partners. A consistent message promoted by all stakeholders can help boost awareness and participation among community members. Judges can promote eviction diversion programs through opening statements and information shared directly with litigants when their cases are called. Targeted outreach to housing providers and landlord groups is also crucial to building trust and awareness of eviction diversion programs.

Courts can also look to trusted community partners to help promote eviction diversion programs. Litigants often turn to their local community for help with legal issues before they turn to the court or the legal community. Jurisdictions have had success partnering with public libraries, faith-based organizations, small businesses, and other community-based groups. Courts should have open channels of communication with these trusted intermediaries to share information about diversion programs and other resources and to hear concerns and challenges that may be impacting litigants and interfering with their access to diversion program resources. Outreach and communications strategies should be user tested and continuously refined to ensure the information is accurate and the messages are reaching the intended audience.

### **3. Courts should build in enough time for landlords and tenants to effectively use the resources offered by eviction diversion programs**

State and local eviction laws often require that housing cases move quickly as compared with other civil matters. They should not move so quickly that litigants cannot properly access the resources and referrals available through eviction diversion programs. Courts have taken many different approaches to temporarily pausing or slowing down eviction proceedings while litigants are participating in a diversion program. Some courts have implemented a mandatory waiting period before an eviction judgment can be entered if the parties are participating in a diversion program. Other courts have added case management dates or settlement conferences to steadily move cases forward in a way that also allows the parties time to reach a resolution before trial. Depending on the structure of a particular program, the pause or additional court date may apply to all eviction cases or may be limited to those where one or both parties have opted to use a diversion program.

Courts should communicate directly with the legal, financial, and human services providers they have partnered with to understand how much time is needed to screen cases and provide services or financial assistance. Courts should make sure that litigants have a reasonable

## CREATING A POST-PANDEMIC EVICTION COURT

amount of time to meet with the service providers or to access financial support when it may aid in reaching a resolution to the legal problem. Courts and partner agencies should also explore data-sharing arrangements that can allow for services to be delivered more quickly and for real-time updates between program partners. With careful planning and input from all stakeholders, courts can ensure that diversion programs incorporate the necessary time to work effectively, while also maintaining their neutrality and operating within any time constraints or other limitations that may be placed on them under state and local law.

# Eviction Court Reforms

Eviction diversion programs work most effectively when coupled with other court reforms designed to increase access to justice and remove barriers that may prevent or discourage full participation in the court process. Courts have undertaken a wide variety of efforts to simplify and streamline court procedures, to make courts more user-friendly and accessible, and to improve and expand self-help resources and services. NCSC has developed and compiled many [resources for courts](https://perma.cc/C629-FEAE) (perma link: <https://perma.cc/C629-FEAE>) seeking to improve their eviction and other high-volume dockets. Some of these changes that began as temporary pandemic response efforts are poised to change the design and process of eviction court permanently.

- 1. Staggered Schedules:** Many large jurisdictions have long relied on high-volume eviction “cattle calls” that can lead to crowded courtrooms, long wait times, and challenges for the judges and court staff, who must manage large numbers of cases at once. During the pandemic, initially as a public health safety measure, some courts began to implement staggered schedules allowing courts to hear cases in smaller batches. These changes can reduce wait times and crowding for both litigants and lawyers and have been positively received in many states. Staggered schedules have also proven beneficial to eviction diversion programs as they can prevent referral partners from being overwhelmed and allow for a more predictable flow of referrals.
- 2. Remote Hearings:** State and local eviction laws often allow for relatively short notice periods before a court date, which can be challenging for tenants who may need to coordinate childcare or work obligations. It can also pose scheduling problems for legal aid and pro bono lawyers who may need to appear on very short notice. Allowing for remote participation in eviction court dates can greatly expand access to the court for both lawyers and litigants, so long as accommodations are also made for those

who lack the technology to participate remotely. Remote technology can also be a valuable tool in connecting litigants with legal, financial, and human service providers. Community partners may not be able to provide on-site support in the courthouse, but they may be able to have a presence using remote technology. See “[Remote Hearings and Services](https://perma.cc/RBV7-9HLY),” NCSC website (perma link: <https://perma.cc/RBV7-9HLY>).

- 3. Self-Help Resources and Referrals.** Not every eviction case is well-suited for diversion, and not every eviction can or should be prevented. For litigants who will continue through the traditional eviction court process, courts should provide access to high-quality self-help resources and services. These may include print and electronic materials, court navigators, self-help desks, chatbots and hotlines, or some combination of these resources. Courts should also share information about legal aid and lawyer referral services.
- 4. Plain-Language Communications:** Information about eviction diversion programs and eviction court procedures are most effective when written in plain language and user tested by community members. Dense text or complicated legal information can be enhanced with infographics, process maps, and other visual depictions of information and instructions. Incorporating a plain-language assessment of court communications can help ensure that the intended audience is able to fully understand and act on the information being shared. Information should also be made available in commonly spoken languages in the community in addition to English (see National Association for Court Management, 2019).
- 5. Data Collection and Sharing:** Courts should assess their current data collection practices to ensure they are tracking important information about eviction filings, litigant demographics, referrals to diversion programs, and outcomes. When measuring outcomes, courts should think expansively as diversion programs are important tools in both preventing evictions and minimizing the harm of displacement. While some tenants may remain housed, especially if rental assistance can cover their arrearages or legal aid can identify a meritorious defense, other tenants may ultimately move out even after going through diversion. However, they may be able to do so without an eviction or money judgment on their record, and in a way that gives them both dignity and time. Robust data collection efforts coupled with a broad understanding of the many ways that diversion programs can reduce harm are important to fully evaluating their impact.



## Conclusion

Not every court and not every community is the same. Eviction diversion programs and court reform efforts should respond to the realities and needs of the community they seek to serve. Whether establishing a new program or revisiting an existing one, courts should consider these strategies for success.

Jurisdictions looking to establish new programs or revamp existing ones can start by using [NCSC's Eviction Diagnostic Tool](https://perma.cc/9RX4-DDXL) (perma link: <https://perma.cc/9RX4-DDXL>) to consider different models and determine which may be best for their needs. NCSC also hosts a number of helpful [resources for courts](#) on its website, including [best practices](#) (perma link: <https://perma.cc/NB63-JQB8>), [real world examples](#) (perma link: <https://perma.cc/2MAB-R8P4>), and [webinars](#) (perma link: <https://perma.cc/UJZ7-7GKN>) that can help courts move from planning to implementation.

Moving forward, NCSC will continue its work to identify best practices for eviction diversion programs through its new [Eviction Diversion Initiative \(EDI\)](#) grant program. NCSC has awarded grants to twelve courts seeking to make systemic, permanent changes to the eviction court process. The lessons learned through this grant program and the related evaluation process will offer more concrete recommendations and guidance to court systems looking to redesign their eviction courts and to continue the work started during the pandemic.

As two EDI Advisory Council members wrote for the *New York Times*, "eviction diversion and prevention programs can work. They can prevent unnecessary evictions, and they can mitigate the harm of those that must move forward. They can change the way community members perceive and interact with housing courts. They can turn housing courts into points of connection to a wide range of legal and supportive services rather than places of last resort" (see Blackburne-Rigsby and Hecht, 2022). NCSC's Eviction Diversion Initiative will serve as a resource to support courts in accomplishing this goal.





...eviction diversion and prevention programs can work. They can prevent unnecessary evictions, and they can mitigate the harm of those that must move forward.

## References

Blackburn-Rigsby, A., and N. Hecht (2022). "[It Should Take More than 10 Minutes to Evict Someone.](#)" Guest essay, *New York Times*, January 16.

National Association for Court Management (2019). [Plain Language Guide: How to Incorporate Plain Language into Court Forms, Websites, and Other Materials](#). Williamsburg, VA: National Association for Court Management. Perma link: <https://perma.cc/QYE8-YTRC>.

Panfil, Y., and D. Spievack (2022). "[What Happened to the Eviction Tsunami?](#)" *FiveThirtyEight*, January 11.