



Achieving Housing Stability with Eviction Diversion Programs: A Guide to Best Practices during COVID and Beyond

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Introduction

Evictions are at crisis point in Pennsylvania. Even prior to COVID-19, too many households faced eviction. In 2016, 87,898 eviction cases were filed in the commonwealth.¹ With the COVID-induced economic downturn in 2020, an extraordinary number of households are unable to pay their rent, including tenants who previously were financially secure. The US Census Bureau reports that in October 2020, 300,434 Pennsylvania renters were not current on their rent. 288,020 had no confidence that they could pay the next month's rent, with another 254,626 households only slightly confident that they could meet their obligations.²

However, it is not just the number of evictions that is creating the crisis. An eviction is much more than a move across town; it is a life altering event that negatively affects many aspects of the tenant's life. Once a tenant has an eviction on their record, their ability to find a new home is severely limited.³ They will often end up in poorer quality housing at a higher rent.⁴ Too often evicted tenants become homeless.⁵

Going to court and looking for a new place to live take time – time away from the job. At best that means the tenant has probably lost wages; at worst they have lost their job.

Evictions affect the whole family. Children who move three or more times during a school year have average reading scores that are 50% lower than those of students who do not move.⁶ Housing instability and living in poor quality housing also negatively impact peoples' health.⁷

¹Eviction Lab; <https://evictionlab.org/map/#/2016?geography=states&bounds=-190.672,10.237,-44.648,62.054&type=er&locations=42,-77.801,40.876>

² U.S. Census Bureau, "Week 16 Household Pulse Survey: September 30–October 12 [2020]"; <https://www.census.gov/data/tables/2020/demo/hhp/hhp16.html>

³ When a landlord files a complaint for eviction in any Magisterial District Court in Pennsylvania, a docket (record) is created in the Unified Judicial System (UJS). The UJS is accessible by the public and is utilized by landlords and tenant screening businesses. Once a docket is created the UJS, this record follows the tenant regardless of the outcome of the case, in the same way a criminal record follows an individual even if the arrest does not lead to a conviction. Any such record in the UJS can affect a tenant's application with a prospective landlord.

⁴ Desmond, Matthew, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016).

⁵ Desmond, *Evicted*.

⁶ "The Kids Mobility Project," 1998; <https://files.eric.ed.gov/fulltext/ED453326.pdf>.

⁷ See, e.g., Robert Wood Johnson Foundation Commission to Build a Healthier America, "Where We Live Matters for Our Health: The Links Between Housing and Health," Issue Brief 2: Housing and Health (September 2008); <http://www.commissiononhealth.org/PDF/e6244e9e-f630-4285-9ad7-16016dd7e493/Issue%20Brief%20%20Sept%2008%20-%20Housing%20and%20Health.pdf>. Krieger, James, et al., "Housing and Health: Time Again for Public Health Action," *American Journal of Public Health*, vol. 92, no. 5 (May 2002); <https://ajph.aphapublications.org/doi/pdfplus/10.2105/AJPH.92.5.758>

Because the ramifications of evictions are so extensive, they impact the overall economy as well as taxpayer funded services. Lost time at work affects employers as well as employees. Lost educational opportunities can lead to a lifetime of lower wages. The added school supports, job placement, healthcare, and homelessness services all draw on government resources. Evictions are also costly for landlords. In addition to court costs, finding a new tenant takes time and may result in lost rent during the vacancy. The court system is also negatively impacted by a high volume of evictions.

Evictions have created a crisis.

As bad as the eviction numbers are, the problem is not distributed evenly across all segments of tenants. In a recent policy brief, Evictions in Philadelphia: A Data & Policy Update, the Reinvestment Fund looked at data for 2010 through 2019 (projected) and found that the eviction filing rate in census tracts where more than 80% of the population was Black was on average three times the rate as in tracts where less than 10% of the population was Black. Even in more diverse census tracts, the larger the Black population the higher the filing rate.⁸ The Philadelphia data is consistent with eviction patterns around the country.⁹

Adding fuel to the fire is the impact of COVID-19. Minimizing the spread of the disease requires that people have homes and stay in them. Moving from place to place or worse – becoming homeless – only increases the likelihood that the disease will spread. Following an eviction, many tenants avoid homelessness by doubling up with another household. A recent study, *The effect of eviction moratoriums on the transmission of SARS-CoV-2*, concludes that the practice of doubling up will significantly raise the number of COVID cases once all eviction cases are allowed to proceed, not only within the households involved but through community spread as well.¹⁰

Moreover, just as evictions are not evenly spread across communities, neither is COVID-19. Both COVID and the economic fallout that followed have hit minority communities especially

⁸ Reinvestment Fund, “Evictions in Philadelphia: A Data and Policy Update,” October 2019; p. 7; https://www.reinvestment.com/wp-content/uploads/2019/10/ReinvestmentFund_PHL-Evictions-Brief-Oct-2019.pdf

⁹ See, e.g., Greenberg, D., et al., “Discrimination in Evictions: Empirical Evidence and Legal Challenges,” *Harvard Civil Rights–Civil Liberties Law Review*, vol. 51, no. 1 (Winter 2016); <https://heinonline.org/HOL/LandingPage?handle=hein.journals/hcrcl51&div=6&id=&page=>. Desmond, M., “Eviction and the Reproduction of Urban Poverty,” *American Journal of Sociology*, vol. 118, no. 1; <https://www.journals.uchicago.edu/doi/abs/10.1086/666082#fn1>. Thomas, T., “Forced Out: Race, Market, and Neighborhood Dynamics of Evictions,” Ph.D. diss, Univ. of Washington; <https://digital.lib.washington.edu/researchworks/handle/1773/40705>

¹⁰ Sheen, J., et al, *The effect of eviction moratoriums on the transmission of SARS-CoV-2*, <https://www.medrxiv.org/content/10.1101/2020.10.27.20220897v1>. See also, Leifheit, K., et al, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 30 November 2020, <https://ssrn.com/abstract=3739576>

hard. Black residents account for only 17.8% of Pennsylvania’s renter households, but make up 49.7% of households that are delinquent in rent.¹¹

Recognizing the broad and inequitable impacts of evictions, some communities have taken steps to reduce the number of evictions by creating eviction diversion programs. This paper examines eviction diversion programs in the commonwealth and around the country, and draws on lessons learned to recommend best practices for successfully helping tenants and landlords avoid evictions in Pennsylvania.

Eviction Diversion Program Definitions

Words like “eviction” and “diversion” are commonly understood. Unfortunately, they are often understood differently by different people. For the purpose of this report, we give the following meanings:

Eviction – The legal process whereby a landlord goes to court to remove a tenant and regain possession of the property.

Diversion – Avoiding an eviction filing or avoiding a judgment for possession. Some programs divert cases prior to the filing of an action in court while other divert cases after they are on the court’s docket.

Eviction Diversion Program – A program to help resolve landlord-tenant issues without a judgment for possession being entered against the tenant, usually with multiple components and partners.

The term “eviction diversion program” is also used in some communities to mean any one aspect of a comprehensive program (see below), such as mediation, emergency rental assistance, or legal representation. For our purposes we will refer to those programs by their specific approach. This report recommends eviction diversion programs that offer wholistic support to tenants.

Components of Eviction Diversion Programs

The best eviction diversion programs offer comprehensive services to resolve the issues that led or are leading to eviction and to keep the tenant stably housed. Services include: rental assistance, mediation, social services, and legal assistance. Also important are landlord participation and support from the Court system. Few programs that we have found offer all of

¹¹ US Census Bureau Week 16 Household Pulse Survey: September 30 – October 12; <https://www.census.gov/data/tables/2020/demo/hhp/hhp16.html>. Out of 1,723,851 renter households, 306,855 or 17.8% are Black. However, of the 300,434 households that are delinquent in rent, 149,325 or 49.7% are Black.

these components, but all are built on partnerships between the legal and social services worlds.

Key components:

Emergency Rental Assistance

Most evictions result from nonpayment of rent. It is no wonder. In Pennsylvania, 46.9% of renters pay more than 30% of their income for gross rent.¹² In fact, for extremely low income Pennsylvanian renters – those at or below 30% of Family Median Income or \$24,322 on average for the state – more than 70% pay more than half of their income for housing.¹³ A sudden illness, a car repair, or the loss of work hours can lead to missed rent payments and send the family into eviction court.

It is difficult to resolve these cases without financial assistance. For most eviction diversion programs, financial assistance means paying most or all of the rent due. However, it may also be necessary to refer tenants to longer term rental assistance or to subsidized rental homes.

For the immediate future, CARES Act money can be used for emergency rental assistance. In response to the economic fallout from the COVID-19 pandemic, Congress appropriated a substantial amount of money to the Community Development Block Grant (CDBG) and Emergency Solutions Grant (ESG) programs. Both the CDBG-COVID and ESG-COVID funds may be used for emergency rental assistance as long as the assistance is to “prevent, prepare for, and respond to coronavirus”.¹⁴ Keeping people housed is important for both individual and public health. HUD guidance specifies that the funds can be used for emergency rental assistance.¹⁵ Down the road other funds will need to be identified, but for now it is worth looking at CDBG-CV and ESG-CV.

Well before COVID-19, **HomeStart** in **Boston** began preventing the eviction of public housing residents by providing financial support. The program started in 2010, and by 2013 it had helped 554 tenants. A year later, 97% of program participants were still in their homes.

¹²U.S. Census Bureau, 2019 American Community Survey, Selected Housing Characteristics, Table DP04; <https://data.census.gov/cedsci/table?t=Housing&g=0400000US42&tid=ACSDP1Y2019.DP04&hidePreview=false>; The US Dept. of Housing Urban Development considers housing to be affordable when the household pays no more than 30% of income for rent and utilities, or “gross rent”.

¹³ Divringi, E., “Affordability and Availability of Rental Housing in the Third Federal Reserve District: 2015,” Federal Reserve Bank of Philadelphia, February 2015; <https://www.philadelphiafed.org/-/media/frbp/assets/community-development/reports/affordability-and-availability-of-rental-housing-in-the-third-federal-reserve-district-2015/0215-cascade-focus-affordability-and-availability-2015.pdf>

¹⁴ U.S. Congress, Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 27 March 2020, P. L. 116-136, p. 134 STAT. 606 and 134 STAT. 608; <https://www.congress.gov/116/plaws/publ136/PLAW-116publ136.pdf>

¹⁵ U.S. Dept. of Housing and Urban Development, CDBG-CV COVID-19 Fact Sheet, Updated 10 July 2020, Q. 13; <https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-CV-FAQs-071020-final.pdf>

HomeStart worked closely with the Boston Housing Authority (BHA) to quantify the costs of eviction (\$10,021/tenant, including preparing the unit for the next tenant) and compared that with HomeStart's own costs (\$1,570/tenant) to show an 84% savings. That convinced BHA to invest in the program to keep it running when HomeStart's initial grant ran out.¹⁶

HomeStart has expanded the program to include other major landlords. The program offers case management, advocacy, and enough financial support to allow tenants to enter into payment agreements.¹⁷

Chicago began a pilot **Eviction Diversion Program** in 2018. It utilizes Homeless Prevention funds from the state of Illinois. The financial assistance is only for tenants with a temporary crisis; they must have a stable source of income to qualify. Nevertheless, tenants may receive up to \$2,500 to cover back rent or a security deposit and first month's rent on a new home. Along with the financial assistance, tenants receive intensive case management to help address underlying issues. The case managers also help tenants negotiate with their landlord.¹⁸

Legal Assistance

More and more communities are recognizing the importance of legal representation for tenants. Our legal system is an adversarial one and it works best when both parties are represented by legal counsel. Multiple studies verify the imbalance that results when only one party, usually the landlord, has a lawyer.¹⁹

In **Minneapolis**, Mid-Minnesota Legal Aid and the Volunteer Lawyers Network have been offering a **legal clinic** at the Fourth Judicial Housing Court since 2000. Tenants can consult with lawyers on the day of their hearing (limited representation) or come to the clinic ahead of time

¹⁶ Wood-Boyle, Linda, Federal Reserve Bank of Boston, "Facing Eviction: Homelessness Prevention for Low-Income Tenant Households," 2014; <https://www.bostonfed.org/publications/communities-and-banking/2015/winter/facing-eviction-homelessness-prevention-for-low-income-tenant-households.aspx>

¹⁷ Social Innovation Forum, "The Renew Collaborative: A Program of HomeStart," Social Impact Investment Guide, p. 42; <https://www.socialinnovationforum.org/sites/default/files/The%20Renew%20Collaborative%20Prospectus.pdf>. HomeStart Renew Collaborative; <https://unitedwaymassbay.org/our-impact/ending-homelessness/homestart-renew-collaborative/>

¹⁸ Lawyers' Committee for Better Housing, Opening the Door on Chicago Evictions, 2019; <https://eviction.lcbh.org/>. Lawyers' Committee for Better Housing, "Eviction Diversion Program Featured at Daley Center Open House," blog post 12 November 2018; <https://www.lcbh.org/news/eviction-diversion-program-featured-daley-center-open-house>

¹⁹ See, e. g., Wiltz, Teresa, Pew Charitable Trusts, "How Free Legal Help Can Prevent Evictions"; <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/10/27/how-free-legal-help-can-prevent-evictions>; Boston Bar Association Task Force on Civil Right to Counsel, "The Importance of Representation in Eviction Cases and Homelessness Prevention"; <https://bostonbar.org/docs/default-document-library/bba-crtc-final-3-1-12.pdf>; Stout Risius Ross, LLC, "Economic Return on Investment of Providing Counsel in Philadelphia Eviction Cases for Low-Income Tenants," 18 November 2018; <https://www.philadelphiabar.org/WebObjects/PBA.woa/Contents/WebServerResources/CMSResources/PhiladelphiaEvictionsReport.pdf>

and receive a referral for full representation. A snapshot report²⁰ examined cases between January 1 and June 30, 2018 and found that:

- 96% of tenants with full representation won or settled their cases.
- 83% of tenants with limited representation won or settled their cases.
- Only 62% of tenants with no representation won or settled their cases.
- Tenants with full representation entered into more favorable agreements and were more likely to keep their housing.

In 2017, **New York City** began the nation's first **Universal Access to Legal Services**, phased in over five years. When fully implemented, all tenants will at least have access legal advice prior to their eviction hearing, and tenants at or below 200% of the federal poverty limit will have access to full representation. The city had increased its funding for legal aid even before passing Universal Access, which caused the percent of tenants represented in housing court increased from 1% in 2010 to 27% in 2016.²¹ With Universal Access that figure rose to 30% in 2018²² and 32% in 2019²³. In the zip codes where Universal Access was piloted, tenant were represented 62% of the time by 2019.

Eviction rates were already falling in New York City at the time Universal Access was instituted due to legislative reforms granting greater rights to tenants. Still, tenants with lawyers fared significantly better than those without representation. For represented tenants whose cases were resolved in FYE 2019, 84% maintained their housing.²⁴ In a pilot program providing representation at administrative hearings for NYC public housing tenants age 62 or older, 97.4% were allowed to remain in their homes.²⁵

A few years later, **Philadelphia** undertook a project to prevent homelessness by providing free legal assistance²⁶ and financial counseling to tenants facing eviction. Before instituting the **Philadelphia Eviction Prevention Program (PEPP)**, the Philadelphia Bar Association commissioned a cost-benefit analysis of legal representation for tenants. The report documented both the need and the savings the City would reap.

²⁰ Grundman, Luke, et al., "Legal Representation in Evictions: Comparative Study"; <https://www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf>

²¹ NYC Office of Civil Justice, 2018 Annual Report, New York City Human Resources Administration, Department of Social Services; https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_Annual_Report_2018.pdf, pp. 15–16.

²² NYC Office of Civil Justice, Annual Report.

²³ NYC Office of Civil Justice, "Universal Access to Legal Services: A Report on Year Two of Implementation in New York City," New York City Human Resources Administration, Department of Social Services, Fall 2019; https://www1.nyc.gov/assets/hra/downloads/pdf/services/civiljustice/OCJ_UA_Annual_Report_2019.pdf

²⁴ NYC Office of Civil Justice, "Universal Access," p. 6.

²⁵ Ibid, p. 32.

²⁶ The Philadelphia Code, Legal Representation in Landlord Tenant Court, 2020, 9-808; https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-195404

The researchers reviewed court records from 2007 to 2016 and found that, while 80% of landlords had legal counsel, only 7% of tenants were represented. The representation had a dramatic effect on the outcome: 78% of unrepresented tenants concluded their legal battle facing “disruptive displacement” – a forced move without the benefit of a negotiated timeframe and lowered costs – but only 5% of tenants with lawyers found themselves in the same situation. The report also found that for every dollar the City spent on funding legal services for low income tenants, it would save \$12.74 on services for people who are displaced.²⁷

Following the report, Philadelphia committed \$500,000 to the PEPP in early 2018²⁸ and \$950,000 for 2019.²⁹ PEPP’s services include access to free legal advice and representation, both prior to the hearing and at the courtroom the day of the hearing. Community Legal Services, SeniorLAW Center, Legal Clinic for the Disabled, and Philadelphia VIP (pro bono attorneys) all participate in PEPP. Clarifi provides financial counseling and the Tenant Union Representative Network (TURN) offers educational workshops.³⁰

In its first 2½ years, 95% of the tenants helped by PEPP had successful outcomes. A successful outcome might mean the ability to pay back rent and remain in the home, or a payment agreement instead of a lump sum payment requirement. If a move was necessary, tenants were more likely to have an agreement for possession only with no judgment for back rent, allowing them to use whatever funds they had for moving, and having more time to find a new place to live. PEPP tenants also were more likely to get agreements for landlords to make needed repairs and to get judgements removed from their records after the amount due was paid.³¹

Denver began its **Eviction Legal Defense Pilot** in 2018 with private donations from all 13 city councilmembers.³² They estimated that the \$131,500 raised would allow Colorado Legal Services to provide representation to 200 households at or below 200% of poverty. The program was successful and the following year the state of Colorado appropriated \$750,000 and made the program statewide.³³

²⁷ Stout Risius Ross, LLC, “Economic Return”

²⁸ City of Philadelphia, “Mayor Kenney Announces Philadelphia Eviction Prevention Project,” 30 January 2018; <https://www.phila.gov/2018-01-30-mayor-kenney-announces-philadelphia-eviction-prevention-project/>

²⁹ Reinvestment Fund, “Evictions in Philadelphia,” 2019.

³⁰ Philadelphia Eviction Prevention Project; <http://www.phillytenant.org/pepp/>

³¹ Philadelphia Eviction Prevention Project: Impact Summary. For data on tenants represented by attorneys, also see Reinvestment Fund, “Resolving Landlord-Tenant Disputes: An Analysis of Judgments by Agreement in Philadelphia’s Eviction Process,” April 2020; https://www.reinvestment.com/wp-content/uploads/2020/05/ReinvestmentFund_Report-2020_PHL-Evictions-Judgments-by-Agreement-Landlord-Court.pdf

³² Denver Eviction Legal Defense Pilot; https://www.denvergov.org/content/dam/denvergov/Portals/767/Documents/Updated_2018_06_11_Denver_Eviction_Legal_Defense_Pilot_Program.pdf

³³ General Assembly of the State of Colorado, 2019 Senate Bill 19-180; https://leg.colorado.gov/sites/default/files/2019a_180_signed.pdf

Mediation

Mediation provides a trained, neutral third party to help the landlord and tenant reach a resolution. Community mediation programs that are independent of the court system have existed for many years. These programs attempt to resolve problems before an eviction is filed, which has several advantages over a court proceeding. The mediator facilitates opportunities for both sides to express themselves and be heard. There is more time to reach an agreement, without the shadow of a hearing hanging over the parties. The landlord has not yet incurred court costs, which means payment agreements are likely to be more manageable for the tenants.

In some communities, courts partner with mediation programs to offer pre-hearing mediations. These programs generally provide mediators at the courthouse who meet with the litigants before their scheduled hearing. A variation on court affiliated mediation involves the court sending out information about mediation programs with the hearing summons. In those programs the parties can meet with the mediator days or weeks before the scheduled hearing.

However, as mediation programs have grown in number and reach, some experts raise concerns about whether mediation simply perpetuates the power imbalance between landlord and tenant, albeit in a less stressful environment. Tenants who are not aware of their rights are in a very weak negotiating position. Unless mediation is connected with legal and financial resources for the tenant, it may do little more than allow tenants to avoid an eviction on their record (not an insignificant advantage) while still losing their homes.

There are quite a few mediation programs in the country. Some are community based, some are established by ordinance, and still others are court affiliated.

The **Good Shepherd Mediation Program**³⁴ in **Philadelphia** is a community based nonprofit organization that was founded in 1985 to provide neighborhood dispute resolution services. In addition to landlord tenant disputes, Good Shepherd mediates a wide range of issues, including employment, petty crimes, school attendance, and neighbor disputes. Good Shepherd also provides conflict resolution training for youth and restorative justice services for the community.

Palo Alto, CA, passed an ordinance enacting a **landlord tenant mediation program**.³⁵ The city's Human Relations Commission administers the program. Mediation services are provided by the nonprofit Project Sentinel³⁶ which has been offering community mediation, fair housing, and other housing services since 1976.

³⁴ <https://www.phillymediators.org/>

³⁵ <https://www.cityofpaloalto.org/gov/depts/csd/hs/mediation.asp>

³⁶ <https://www.housing.org/>; <http://www.paloaltomediation.com/home.html>

Palo Alto's ordinance applies where a property owner owns at least two rental properties and also to every rental property with two or more units, unless one of those units is owner-occupied. Either party may voluntarily request mediation, but once the request is made the other party must appear, at least until the mediator makes their opening statement. Information about the program must be contained in the lease.

Florida's statutes require **court-ordered mediation** for most civil suits prior to a hearing.³⁷ Unfortunately, most evictions are excluded from the program for a variety of reasons, including the statutory requirement that tenants pay to the court the amount of rent due before their hearing.³⁸ Still, the interplay between the courts and mediation can serve as a model.³⁹

In response to the COVID crisis and only during the health emergency, **Philadelphia** enacted **mandatory pre-filing mediation** for cases where the tenant has a COVID-related hardship. The program is described below under New Pennsylvania Programs.

Social services

Many social service providers do eviction prevention work even if they do not call it by that name. By helping clients find the resources they need to stabilize their housing, they avoid evictions. Then there are programs that intentionally focus on tenants facing evictions.

One such program is **EPIC – Eviction Prevention and Intervention Coalition** – in **Montgomery County, PA**. EPIC was created by Your Way Home, a coalition of service providers and government agencies that came together in 2014 as a coordinated approach for addressing homelessness.⁴⁰ The lead agency is the Pottstown Cluster of Religious Communities, which provides supportive services through its Housing Resource Center.⁴¹ After three years of helping families out of homelessness with financial and case management services, Your Way Home added EPIC, an upstream program to prevent homelessness by preventing evictions.

EPIC brings supportive services and financial assistance together with legal representation for people facing eviction.⁴² The coalition includes the Pottstown Cluster, the Montgomery County Office of Housing and Community Development, the Montgomery County Courts, Legal Aid of Southeastern Pennsylvania, the Montgomery Bar Association, the Montgomery Bar Foundation, and the Montgomery County Foundation.

³⁷ 2012 Florida Statute 44.102, Court-ordered mediation; <https://www.flsenate.gov/Laws/Statutes/2012/0044.102>

³⁸ http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0000-0099/0083/Sections/0083.232.html

³⁹ Quek, Dorcas, "Mandatory Mediation: An Oxymoron? Examining the Feasibility of Implementing a Court-Mandated Mediation Program," *Cardozo Journal of Conflict Resolution* 11, no. 2 (2010): 479–509; <https://cardozoicr.com/vol11no2/479-510.pdf>

⁴⁰ <https://yourwayhome.org/what-we-do>

⁴¹ <https://www.pottstowncluster.org/housingstability/>

⁴² EPIC; <https://yourwayhome.org/eviction-prevention-intervention-coalition>

The program begins with a notice to the tenant about EPIC sent by the court along with the hearing notice. Tenants who choose to participate meet with a social worker and a lawyer at the courthouse on the day of their hearing. If the case is appropriate for EPIC, the lawyer then meets with the landlord to negotiate an agreement. The negotiation is helped by the availability of emergency rental assistance (up to \$1,500 pre-COVID; up to six months' rent with CARES Act funds) and case management.⁴³ EPIC was piloted for three years in one magisterial district court in Norristown, the county seat. In late 2020, the program expanded to six additional courts around the county.

Courts

Mediation and other eviction diversion programs can operate outside the purview of the courts. Some see their independence as an advantage, noting a greater willingness by the parties to negotiate when they come to mediation voluntarily and are not under the time constraints of the court.⁴⁴

On the other hand, without the involvement of the courts, few people use or even know of mediation. In most of the programs described in this paper, courts send out notices about the mediation or eviction diversion program along with the notice of the hearing. These informational notices bring many more people to the table than would otherwise take advantage of the programs. In addition, courts often provide space on-site for program lawyers and service providers. Court affiliated programs can be designed to encourage mediation by offering generous continuances until an agreement is reached.

While having the involvement of the court means higher utilization of the program, it generally means the program comes into play *after* the eviction complaint has been filed. This causes two problems. First, landlords may be less interested in negotiating once they have gone to the trouble and expense of filing in court.⁴⁵ Second, the tenant will still have an eviction filing on their record even if the case does not result in a judgment. To prevent these problems, it is important to engage landlords earlier in the process, before they file.

Landlords

It may seem counter-intuitive to include landlords in an eviction diversion program since they are the ones initiating the eviction process. Landlords are often seen as the adversary when talking about preventing evictions. In reality, most landlords would rather not go through an eviction, especially if the tenant has a good history but has fallen on hard times. Evictions are

⁴³ YWH Montgomery County, "EPIC 2018 Performance Analysis Report"; <https://static1.squarespace.com/static/59e4bd08d7bdce1e8a5b15bb/t/5c61bf3f8165f56031dd66e5/1549909824864/Your+Way+Home+EPIC+Performance+Analysis+Report.pdf>

⁴⁴ Bieretz, Brian, et al., "Getting Landlords and Tenants to Talk: The Use of Mediation in Eviction," Urban Institute, April 2020; https://www.urban.org/sites/default/files/publication/101991/getting-landlords-and-tenants-to-talk_3.pdf

⁴⁵ Bieretz, "Getting Landlords and Tenants to Talk."

expensive, involving court fees, lost rent (before and after the tenant moves out), cleaning and repairing the home, advertising the rental, and in some cases attorney's fees. Most landlords will gladly participate in a program that not only provides them with a few months' rent but also helps stabilize their tenant going forward.

Having buy-in from landlord associations and individual landlords makes it more likely that tenants will learn about the eviction diversion program and more likely that the landlord and tenant will resolve their problems outside of the courtroom.⁴⁶ In **Kalamazoo, MI**, (see Comprehensive Programs, below), program designers included landlord organizations from the beginning. **Boston's Home Start** program (cited above) is exclusively a partnership with the housing authority and other large landlords. **Just Meditation Pittsburgh** (New Pennsylvania Programs, below) is another good example of landlord involvement.

Similarly, two pilot programs in **Syracuse, NY**, are partnerships with large landlords.⁴⁷ One is designed for residents of the Syracuse Housing Authority (SHA). SHA hired two new caseworkers who coordinate with property management staff to help tenants who fall behind on rent. When appropriate, tenants are also connected with the Volunteer Lawyers Project. A similar program is a collaboration between a privately owned subsidized property, Clinton Place, and Catholic Charities. Referrals for legal assistance are made to Legal Services of Central NY. Both programs are funded with CDBG and ESG (pre-COVID) funds.

Comprehensive Eviction Diversion Programs

Many of the programs discussed so far are multi-faceted in that they bring together most if not all of the key components described above. Some rely more on legal representation to resolve problems, while others focus on mediation. Michigan offers several more good examples, although Michigan's programs do not include mediation. They do, however, offer full legal representation.

In **Kalamazoo, MI**, Housing Resources, Inc., (HRI) is the lead agency in the city's **Eviction Diversion Program** (EDP) that started in 2010 as a collaboration of social service providers, the county Department of Human Services, legal aid, and the local district court. HRI holds a weekly Community Housing Hour where tenants facing evictions can walk in and receive help applying for rental assistance, case management, and referrals to other organizations like Legal Aid of Western Michigan. The case manager or legal aid attorney will help negotiate an agreement with the landlord that may prevent an eviction from being filed or a judgment from being entered. In addition to the Community Housing Hour, tenants can apply to the EDP through the

⁴⁶ Bieretz, "Getting Landlords."

⁴⁷ Syracuse Dept. of Neighborhood and Business Development, Summary of Eviction Prevention Pilot Programs, <https://docs.google.com/document/d/1pA2KFVpWQOztn5fxENcBAD06JLy76hcZ/edit#heading=h.gjdgxs>; Innovate Syracuse, "Bringing Stability to Renters in Syracuse: Reducing Evictions", <https://www.innovatesyracuse.com/blog/housingstability2>

211 phone service, by responding to an informational brochure included with the summons to an eviction hearing, or at the courthouse on the day of the hearing.

A major factor in the program's success is the court's active role in engaging landlords and their attorneys, including frequent bench-bar meetings to discuss the EDP. Outreach to the broader community is also important. Fifteen service organizations and agencies have signed referral agreements with HRI.

There are, however, limitations on who can participate in the program. To qualify for Kalamazoo's EDP, tenants must have received a summons to an eviction hearing and be no more than three months behind on rent. Other restrictions may be imposed by specific funding sources, like the CARES Act or the Homelessness Prevention and Rapid Re-Housing Program (HPRP) funds during the Great Recession. Tenants must also be able to pay the coming month's rent and have some money to pay toward the arrearage. Those who do not qualify for the EDP can still receive help from HRI and referrals to other programs.⁴⁸

Two years after Kalamazoo began its EDP, **Ingham County, MI**, followed suit. Ingham County includes Lansing, but the first eviction diversion program was in a more rural part of the county, in District 55. **Lansing's** District 54-A began a pilot program in 2017. With COVID and the CARES Act funds provided by the state, programs now exist in all Michigan counties.

The Ingham County programs are based in the courthouse. Participants include Legal Services of South Central Michigan (LSSCM), Michigan State University College of Law Housing Clinic, county human services for emergency rental assistance, and social service agencies. Tenants can enter the program at any point through any of the participants, including on the day of the hearing.

LSSCM provides full representation for any tenant. This allows the attorneys to identify defenses to the eviction, like habitability problems or the failure of the landlord to register the rental unit. When a settlement is reached, the court enters a conditional dismissal rather than a judgment. The conditional dismissal means the case is dismissed on the condition that the parties adhere to the agreement. If the tenant defaults, the landlord may proceed with the eviction.⁴⁹

A review of the 2017 pilot program in Lansing⁵⁰ found that: (1) tenants appeared at court more often, thereby avoiding a default judgment, (2) the eviction rate dropped, and (3) the final

⁴⁸ HUD User, "Kalamazoo, MI, HUD-Funded HPRP Program"; <https://www.huduser.gov/portal/sites/default/files/pdf/HPRP-Case-Study-Kalamazoo-MI.pdf>. SAMHSA, Eviction Diversion Program Defers Trauma of Homelessness; <https://www.samhsa.gov/homelessness-programs-resources/hpr-resources/eviction-diversion-program>. 8th District Court Eviction Diversion Program; <https://www.kalcounty.com/courts/district/civildivision/Eviction%20Form%20in%20Publisher6.pdf>

⁴⁹ Conversation with Elizabeth Rios, Managing Attorney, LSSCM, 10 November 2020.

⁵⁰ Gamber, Nick, et al., "An Analysis of the Eviction Diversion Program at the 54-A District Court"; <https://www.lansingmi.gov/DocumentCenter/View/5528/2017-Eviction-Diversion-Pilot-Program-Final-Report>

amount owed by the tenant was 41% lower for tenants represented by counsel than for non-represented tenants.

The **Ramsey County (St. Paul), MN**, effort is a truly comprehensive eviction diversion program. At the **Ramsey County Housing Clinic**, tenants can find legal help, mediators, financial assistance, and case management all in one room at the courthouse.⁵¹ The clinic began in 2018 after the Chief Judge convened a working group of those agencies that would eventually make up the clinic. In addition, the working group included a landlord attorney, a tenant screening company, city representatives, court staff, and other judges. Mediation had been a part of the court setting for years; what was new was the coordination of services.⁵²

Each day there are at least two lawyers at the clinic who provide no-cost legal advice to any tenant and to income eligible landlords who are not otherwise represented. Two financial assistance agencies are present as well. Before the clinic existed, tenants would have to approach each rental assistance agency sequentially, but at the clinic they can do one combined application. Mediators are also available. Having all the services together at the courthouse not only provides a convenient one-stop-shop for tenants but has also enhanced coordination between the agencies.

Besides hosting the clinic, the court agreed to change some of its documents. The summons now contains information about the clinic and a list of phone numbers for various types of assistance. The settlement agreement and court order forms were amended to facilitate requests for the expungement of eviction records.

After a year and a half, the clinic was showing positive results. The number of judgments for evictions were falling and settlements were increasing. There were twice as many eviction expungements in 2019 as in 2018. Strong relationships were being built, not only among the clinic agencies, but between service providers and the courts and landlords, as well.

The St. Paul community was impressed with the Housing Clinic's results, but also recognized what it was not accomplishing – reaching people before their problems got to the crisis point that landed them at the steps of the courthouse. The clinic needed to intervene earlier in the process. One of the clinic partners, Neighborhood House, was already holding neighborhood clinics twice a week where area residents could access the array of services offered by the

⁵¹ See Cohen, Mychal, "Preventing Eviction Filings: Piloting a Pre-filing Eviction-Prevention Clinic," Urban Institute, May 2020; <https://www.urban.org/sites/default/files/publication/102297/preventing-eviction-filings-piloting-a-pre-filing-eviction-prevention-clinic.pdf>. Burrowes, Kimberly, et al., "Crisis Coordination and Eviction Prevention: Lessons from the Housing Court Clinic in Ramsey County, Minnesota," Urban Institute, April 2020; https://www.urban.org/sites/default/files/publication/101993/crisis-coordination-and-eviction-prevention_1.pdf. See also Ebinger, Colleen, and Clysdale, Elizabeth, "Justice Served, Housing Preserved: The Ramsey County Housing Court Model Court Mode," *Mitchell Hamline Law Journal of Public Policy and Practice*, vol. 41, issue 3, 2020; <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1043&context=policypractice>

⁵² Hare, Rebecca, "Mitigating Power Imbalance in Eviction Mediation: A Model for Minnesota," *Law and Inequality: A Journal of Theory and Practice*, vol. 38, issue 1, 2020; <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1620&context=lawineq>.

nonprofit. These clinics provided the perfect setting for a pre-filing eviction diversion program. Now the courthouse-based Housing Clinic's partners participate in the Neighborhood House clinics also.

Southern Minnesota Regional Legal Services (SMRLS) and the Dispute Resolution Center (DRC) both found that their roles changed slightly when they met with tenants earlier in the process. Since landlords were not present and the court was not in a position to encourage their participation, DRC found themselves explaining what mediation is rather than providing mediation services.

On the other hand, SMRLS was able to provide more assistance by meeting tenants before they got to the courthouse. At the courthouse, lawyers provided information on tenants' rights and on the hearing process. At the Neighborhood House clinic, they were able to focus more on the individual needs of each tenant, including bringing in other legal aid staff to help with issues such as qualifying for benefits to increase household income.

Many courts in Minnesota utilize mediators and legal assistance.⁵³ Now they are looking to expand tenant supports along the lines of the Ramsey County Housing Clinic. Hennepin County (which includes Minneapolis) added financial assistance agencies to its housing clinic and copied some of the administrative changes the Ramsey County court instituted. Smaller counties are following suit as well.

New Pennsylvania Programs

The economic impact of COVID-19 led to many tenants being unable to pay their rent. Landlords began filing eviction actions as soon as Governor Wolf's eviction moratorium⁵⁴ ended, at least against those tenants not covered by the Center for Disease Control (CDC) order⁵⁵. The CDC moratorium will end December 31, 2020, if it is not extended, and more evictions are likely to follow.

Anticipating a flood of eviction filings, many communities are looking for alternatives, including mediation. The **Housing Alliance of Pennsylvania** recently published a guide to mediation programs and provided small grants to six communities to start mediation programs.⁵⁶ The six

⁵³ See, e.g., Grundman, Luke, and Kruger, Muria, "Legal Representation in Evictions: Comparative Study," Mid-Minnesota Legal Aid and Volunteer Lawyers Network; <https://www.minnpost.com/wp-content/uploads/2018/11/2018-Eviction-Representation-Results-Study-with-logos.pdf>

⁵⁴ Commonwealth of Pennsylvania Office of the Governor, Staying Notice Requirements for Specified Actions Related to the Disposition of Property, 6 March 2020; <https://www.governor.pa.gov/wp-content/uploads/2020/07/20200709-TWW-eviction-order.pdf>

⁵⁵ CDC, "Federal Register Notice: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19," 9 October 2020; <https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>

⁵⁶ Housing Alliance of Pennsylvania, "Housing Alliance Supports Six Communities to Develop Landlord-Tenant Mediation Programs," 2 November 2020; <https://housingalliancepa.org/housing-alliance-supports-six-communities-to-develop-landlord-tenant-mediation-programs/>

communities are **Dauphin County, Fayette County, Monroe County, Lackawanna County, Lancaster County, and Union and Snyder Counties.**

Pittsburgh already had an Evictions Working Group in place before the pandemic hit, convened by the Pittsburgh Foundation. When COVID-19 led to stay-at-home orders and job losses, the working group quickly focused on setting up an eviction mediation program. The Pittsburgh Foundation and the Pittsburgh Commission on Human Relations reached out to the Mediation Council of Western Pennsylvania (MCWP), which created **Just Mediation Pittsburgh**⁵⁷ (JMP) to recruit and train mediators and operate a local eviction mediation program. ACTION Housing, a large non-profit landlord, was brought into the conversation and ACTION Housing, in turn, recruited other large landlords to participate. Tenant advocates, judges, social service providers, and funding agencies were added to the group. The city and county governments pledged funding (CDBG, ESG, CARES Act funds).

JMP now includes five landlord partners (covering 7,000 rental units) who agree to go to mediation before filing an eviction with the court, except in cases where the tenant is accused of violent behavior. Other landlords are welcome to participate in JMP. Pittsburgh United, a coalition of organizations, spreads the word to tenants. JMP's program manager handles intake and refers tenants to legal aid, rentals assistance, and social services as needed. The program manager then assigns cases to a mediator.

JMP began operating in August 2020 and early results are promising. In its first three months, 89 cases were referred to mediation. Only 49 tenants agreed to participate, but of those, 97% had a favorable outcome. Thirty-six cases were resolved by applying for rental assistance without mediation. JMP referred nine cases to mediation, eight of whom kept their homes. Six cases were still pending as of this writing. It is important to note, however, that the rental assistance that allowed most of the tenants to avoid eviction was from Coronavirus Relief Fund grants, and that program has ended.⁵⁸

It should also be noted that JMP does not have a built-in legal component. As noted above, many tenants' advocates worry about uninformed tenants negotiating away their rights. Adding a legal assistance component could help tenants as they negotiate with their landlords.

Philadelphia took a multi-faceted approach to helping tenants with COVID related hardships. In July 2020, City Council passed the Emergency Housing Protection Act (EHPA), a set of ordinances that require landlords whose tenants certify to a COVID-related hardship to enter into payment agreements, waive late fees and fines, and participate in a **pre-filing eviction diversion program** (EDP).⁵⁹

⁵⁷ <https://www.justmediationpgh.org/what-we-do>

⁵⁸ Email from Robert Damewood, Regional Housing Legal Services, 10 November 2020.

⁵⁹ The Philadelphia Code, COVID-19 Emergency Housing Protections, 2020, 9-809; https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-219319. Fair Housing Commission, COVID-19 Emergency Tenant Protections; <https://www.phila.gov/FairHousingCommission/Pages/COVID-19EmergencyTenantProtections.aspx>

The City is doing extensive outreach, including a mass mailing to landlords and tenants in the zip codes with the highest eviction rates. The City is also utilizing traditional and social media, and contacts with community organizations and the citywide landlord association.

Landlords who wish to evict their tenants during the pandemic must send the tenant a Notice of Rights under EHPA and are prohibited from filing an eviction case in court for 30 days to give the tenant time to return a completed COVID Hardship Certification form. Landlords can either wait to receive the tenant's certification, or immediately chose to apply for the diversion program through a website⁶⁰ run by the City's Department of Housing and Community Development.

When the landlord's application is approved, a mediation date is scheduled within 30 days. The tenant is assigned a housing counselor who works with the tenant to do a financial assessment and budget, screen for various financial assistance programs, and help them through the mediation process, including going with the tenant to mediation. The housing counselor will follow up with the tenant 45 days after the mediation session to see if the agreement is being adhered to. Housing counselors are trained by Community Legal Services (CLS) to spot legal issues and make referrals to CLS and other PEPP partners as needed. (See Legal Assistance, above.)

The COVID EDP is a comprehensive approach to preventing evictions, bringing together financial assistance, housing counseling, mediation, and legal assistance when needed. Language interpretation services are available throughout the process. Early results are promising, and landlords are seeing the benefit of having their tenants supported by housing counselors. From September 1 through November 23 there were 220 mediation cases with another 200 scheduled. Of those that already went to mediation, 86% either settled or were continued for a second session.⁶¹

Prior to the pandemic, the City and Good Shepherd Mediation ran a pre-filing mediation pilot program, but it was voluntary and underutilized. With the COVID EDP, Good Shepherd now recruits, trains, and oversees over 80 volunteer mediators. A new bill has been introduced in City Council to extend the requirement for mandatory participation by landlords, which currently ends December 31, 2020.

⁶⁰ <https://phlevictiondiversion.org/>

⁶¹ *'It's a conversation': Philly's alternative to landlord-tenant court is preventing eviction*, WHYY News, November 24, 2020, <https://whyy.org/articles/its-a-conversation-phillys-alternative-to-landlord-tenant-court-is-preventing-eviction/>

Recommendations

1. Build broad partnerships.

By the time a tenant's problems have gotten to the point of eviction, a singular approach will have limited impact. A mediation program without legal assistance may mean the tenant agrees to give up rights they do not know they have. Legal representation without financial assistance too often results in a negotiated agreement to give up possession of the home. Financial assistance without case management can address the current crisis but not the one that is just around the corner. A comprehensive eviction diversion program takes a wholistic approach to putting the tenant on a more stable path.

The broad view also looks beyond the tenant. Stabilizing the tenant in their home often requires the participation of the landlord as well. Programs can increase landlord involvement by bringing them into early conversations about the program's design. Collaborating with the courts is another way to ensure landlord participation, although involving landlords early on may mean more problems are resolved before getting to court.

2. Make the program easy to access at multiple stages in the eviction journey.

Courtroom clinics offer an excellent opportunity for tenants to access legal advice, emergency rent assistance, and case management or referrals to appropriate service providers. With landlords present at the same time, on site mediation can resolve many of the cases before the hearing begins, especially when the court encourages landlords to participate.

What "day of" clinics can not offer is an in-depth assessment of the tenant's issues nor a roadmap for solving their problems. For that the tenant needs to be able to access services before the day of the hearing, and preferably before the landlord sends a notice of intent to evict.

The key to an effective eviction diversion program is the coordination of services and good case management. Once there is a collaborative team in place, there can be systematic referrals at any point in the process. A neighborhood clinic providing a one-stop-shop outlet for tenants makes it easy for them to access multiple services in one visit. But a tenant should also be able to enter the eviction diversion program by contacting any of the participating agencies.

3. Provide tenants with a one-stop-shop experience.

A broad-based coalition of service providers that each provide easy access to the eviction diversion program is important. Equally important is a process that minimizes the amount of time and energy tenants need to expend in order to utilize the services. A tenant who has to make separate appointments for financial assistance, legal aid, and case management may simply give up rather than take time off from work or load their children onto the bus for a

cross-town trip to an agency's office. Bringing all the agencies to one convenient location – at convenient hours – can increase tenant utilization of the program.

4. Spread the word.

An eviction diversion program can only be effective if tenants as well as landlords know about it. The best way to reach both parties to an eviction action is for the court to send out information along with the hearing summons. To reach tenants before an eviction is filed it is important to publicize the program widely in traditional and social media and through the legal and social service networks. It is also important to reach out to landlords. This can be done through local and state landlord associations and by contacting large landlords, including housing authorities, directly.

5. Recognize that evictions have many causes.

Some programs limit eligibility to nonpayment of rent cases. Others go even farther and require that the tenant agree to the amount of rent claimed in the complaint, that it can be no more than three month's rent owed, or even that the tenant must have the ability to pay the coming month's rent. These limitations are understandable if financial resources are constrained and there is a need to limit participation. However, if the goal is to prevent evictions and keep people housed, the program should be open to any tenant who is struggling.

Some tenants will only need a few month's rent to help them over a rough patch. Others need some ongoing financial assistance and housing counseling, job coaching, or case management to strengthen their financial position. There are other situations where the money is secondary to the ill will between the landlord and tenant, something that mediation can address. Still other tenants face eviction when they withhold rent for repairs or dispute the amount of rent owed. When the tenant has access to legal assistance, these issues can often be resolved.

Other Considerations

1. Should the program be voluntary or mandatory?

The obvious advantage of a mandatory program is that people participate. However, there is some concern about forcing people into mediation, particularly on the day of the hearing.⁶² The tenant is under a great deal of pressure and the landlord is already invested in the court process.

Philadelphia's new COVID mediation program is mandatory but occurs prior to a court filing. This may address the concerns about "day-of" mediation at the courthouse by providing more

⁶² Bieretz, "Getting Landlords."

time to resolve problems and by bringing the parties together before the landlord has paid court and legal fees.

2. How will the program be established?

Most eviction diversion programs grow from collaborative efforts to reduce the number of evictions. Sometimes the impetus comes from social service providers, other times from the legal community. In Montgomery County, PA, it was members of the homelessness system who saw the need to prevent evictions and brought in legal aid, the bar association, and funders. In St. Paul, the court convened a work group. In Pittsburgh, it was the Pittsburgh Foundation that brought stakeholders together.

In a few places, mediation or eviction diversion programs were established by statute or ordinance. Philadelphia, Palo Alto, and Florida are good examples.

3. How will the program be funded?

This is really several questions in one, because there are different aspects of the program that each might require funding. Will the eviction diversion program have its own staff or will participating agencies donate staff time? Will the mediators be paid or volunteer? Can the local bar association provide pro bono attorneys or is it necessary to fund one or more attorneys in the local legal aid office? How will emergency rental assistance be funded?

There are many potential sources of funding. Local foundations and government programs are strong possibilities. The report commissioned by the City of Philadelphia before beginning the PEPP program showed that the City would save millions of dollars in homelessness assistance costs by providing lawyers to tenants facing eviction.⁶³ Pennsylvania's Housing Trust fund, PHARE, could potentially fund both the diversion program and rental assistance. Corporate donations are another possibility, especially when coupled with a program like Pennsylvania's Neighborhood Assistance Program tax credits. Community Development Block Grant funds and Emergency Solutions Grants could be used for emergency rental assistance. Include government agencies and local foundations in the planning process in order to access their knowledge of resources.

4. What type of legal assistance will be provided?

Some programs only offer limited legal advice and a quick explanation of tenants' right. Others provide full representation, which allows the lawyer to explore issues beyond the immediate eviction. The difference comes down to urgency and funding. Legal clinics offered just prior to the eviction hearing may not be able to represent the tenant, offering education instead. On the other hand, right to counsel or "attorney for a day" programs do provide representation, although it is limited to the hearing scheduled for that day. "Upstream" programs that refer

⁶³ Stout Risius Ross, LLC, "Economic Return".

tenants to legal aid well in advance of the hearing or even before an eviction is filed allow the attorneys the opportunity to delve into the problems that led to the landlord-tenant matter, such as an employment related issue or challenges accessing public benefits.

5. Who qualifies for eviction diversion?

The answer to this question will depend on what services are being offered and how they are being funded. Mandatory mediation could apply to every eviction filing. Legal assistance may be limited by the number of attorneys available and whether they are from the private bar or legal aid. In the latter case, there will be income limits. Emergency rental assistance will almost certainly be limited to lower income tenants, both because the amount of funding available may not be enough to address all cases and because the funding itself might impose income restrictions.

6. What appears on the tenant's public record?

Ideally, the eviction diversion will happen before a legal proceeding is initiated and there will be no record. Where a case has already been filed, there are several options, although not all of them are available in every state or county. (See Conditional Dismissals, Sealing of Records, and Expungements, below.)

Improving Outcomes in Pennsylvania

Many eviction diversion programs around the country serve as good models for Pennsylvania communities. However, they also highlight procedures and resources that are not currently available in the Commonwealth. Pennsylvania programs would be more effective if they could include the following components:

1. Mandatory pre-filing notice to tenants about available resources.

Many tenants could avoid eviction if they knew how to access the appropriate resources. Requiring landlords to include information about rental assistance, social services, and legal aid in a notice to quit – and requiring that a pre-filing notice to quit be sent in all cases – would help resolve many issues. Pennsylvania has a good model for such a process in the mortgage foreclosure realm. Prior to filing a complaint in foreclosure, lenders are required to send homeowners information about the Homeowners Emergency Mortgage Assistance Program and then wait 30 days for the homeowner to apply. A similar requirement prior to evictions is just as important.

2. Rental Assistance

Providing tenants information about rental assistance only works to avoid eviction if such programs are fully funded. The CARES Act provided a good deal of money that may be used for

COVID related emergency rental assistance, but those funds are temporary. Without a sizable investment in rental assistance, many tenants will have little ability to avoid eviction.

Ultimately, most evictions are the result of unaffordability, whether because the tenant's income is low or rental prices are high. Even a good emergency rental assistance program goes only so far. It may win the battle but not the war. Renters need more affordable rents, either by publicly subsidizing the development of more affordable rentals or by providing ongoing rental assistance to tenants.

3. Mandatory pre-filing mediation

Philadelphia is now requiring landlords to engage in mediation prior to filing an eviction action in court, at least in cases where tenants have suffered the effects of the pandemic. Preliminary results from Philadelphia are consistent with years of experience from various mediation programs around the country that show the number of evictions filed do decrease when mediation is offered. This is beneficial for the court system as well as for tenants and landlords. Landlords and tenants, along with the judicial system and Pennsylvanian taxpayers, would benefit from allowing every commonwealth county and municipality to require mediation before a landlord can file an eviction action.

4. Conditional Dismissals, Sealing of Records, and Expungements

One very problematic aspect of the current eviction system is that when a tenant has a judgment in eviction on their record it is extremely difficult to rent another place to live. In fact, just having an eviction filed is a black mark against the tenant regardless of the outcome of the case.

Under current law and practice in Pennsylvania, once an eviction is filed it usually ends in a judgment against the tenant. This is true even when the landlord and tenant reach an agreement that allows the tenant to pay the arrears and remain in the home. Such negotiations result in a side agreement that is not entered into the record. The only option other than a judgment would be for the landlord to withdraw the case, but that would mean the landlord would have to start the process over again should the tenant default on the agreement. The landlord avoids those extra steps if the court enters a judgment in their favor. Even in Philadelphia which allows judgments by agreement - that is, a judgment that includes terms negotiated by the landlord and tenant outside of a hearing - a judgment for the landlord still appears on the tenant's record.⁶⁴

Communities around the country have found several different ways to overcome the hurdles faced by tenants with evictions on their records. In Michigan, for example, when an eviction case is resolved the court enters a **conditional dismissal**, which potentially less damaging to the

⁶⁴ Email from Daniel Vitek, Community Justice Project, 10 November 2020.

tenant's record than a judgment. The "conditional" entry allows the landlord to proceed with the eviction if the tenant breaches the agreement.

While a conditional dismissal is better than a judgment, it nevertheless indicates to other landlords that the tenant was taken to court. Without reading the terms of the dismissal, prospective landlords will not know the circumstances of the case and may still deny the tenant's application to rent. A better approach is the **sealing of court records** until and unless a judgment is entered in favor of the landlord and **expungement of eviction judgment** when the tenant's subsequent actions show it to be appropriate. Minnesota allows expungements upon petition by the tenant when "that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record".⁶⁵ Attorneys at the Ramsey County (St. Paul) Housing Clinic help tenants file for expungement and the court amended its forms to inform tenants of their ability to have their eviction expunged.

Expungement and sealing of evictions is clearly parallel to the expungement and sealing of criminal records. As Matthew Desmond wrote in *Evicted*, "If incarceration had come to define the lives of men from impoverished black neighborhoods, eviction was shaping the lives of women. Poor black men were locked up. Poor black women were locked out."⁶⁶ Pennsylvania is now helping people with criminal histories qualify for employment and housing by expunging and sealing their records. Similar steps need to be taken to help tenants with eviction records regain housing stability and the improved access to jobs, education, and health that follow.

Conclusion

The economic fallout from the pandemic has brought Pennsylvania to a crossroads. Unemployed tenants can not pay rent and landlords can not carry on their businesses without rental income. Evictions will leave many tenants homeless. Communities may lose rental properties.

Pennsylvania communities can, however, choose a different road. Comprehensive eviction diversion programs can provide the support tenants need to hold on to their homes and that landlords need to keep operating. Emergency rental assistance provides the necessary rental income. Case management moves tenants to a more secure future. Mediation offers a neutral setting for tenants and landlords to negotiate. Legal assistance ensures that the negotiations are fair. Court support brings the parties to the table. Providing services early on may eliminate the need for an eviction filing altogether. Finally, state level policy changes can smooth the way forward for the thousands of Pennsylvanians whose lives have been upended by the economic impact of COVID-19.

⁶⁵ 2020 Minnesota Statute, Housing Records; Expungement of Eviction Information, 484.014; <https://www.revisor.mn.gov/statutes/cite/484.014>

⁶⁶ Desmond, *Evicted*.