

EVICTON DIVERSION IN NEW HAMPSHIRE

— An Evaluation of Program Use, Outcomes
and Time to Closure



ACKNOWLEDGMENTS

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INTRODUCTION

Since November 2021, the New Hampshire Supreme Court has run the statewide Eviction Diversion Program. This voluntary program provides landlords and residential tenants the opportunity to mediate before going to court. Parties are eligible to participate in the program if an eviction petition (known as a Landlord and Tenant Writ) or other landlord-tenant case has not yet been filed. Parties learn about mediation through court outreach efforts, from housing agencies and from the eviction notice landlords serve their tenants.¹ The program is administered by a contracted, part-time case manager/mediator, who contacts the landlords and tenants, conducts intakes, and schedules and conducts mediation. She also provides other assistance, such as a list of resources and referral to legal services.

This evaluation examines contacts, services offered, case outcomes and time in program for cases initiated between October 1, 2022, and August 31, 2023. At the beginning of the evaluation period, federally funded rental assistance was available to tenants and landlords. If landlords agreed to accept funds, qualified tenants could apply for assistance to pay past rent and other costs owed to the landlords, as well as up to three months of future rent. This funding was depleted at the end of 2022, with no applications accepted after October 21, and application processing ending on December 29.

Our findings indicate the program is successful at engaging parties, with 800 contacts in 11 months. The program's 23% mediation rate is similar to other programs, as is its 69% agreement rate, despite the loss of rental assistance. The program is efficient as well, with almost two-thirds of cases with mediations scheduled closing within two weeks.

PROGRAM PROCESS

During the evaluation period, the program process almost always began when a tenant called the court's central phone line, although sometimes the landlord initiated contact and sometimes parties emailed the program directly. If the party called the court's central phone line, a court staff member obtained a quick summary of the party's needs and emailed the information, along with the person's contact information, to the case manager/mediator. The

¹ An eviction notice informs the tenant that the landlord intends to file an eviction petition unless the tenant vacates the premises prior to a particular date. The date is dependent on the reason for the eviction. For example, a 7-day notice is required for non-payment of rent. A 30-day notice is required for failure to comply with a material term of the lease. In some instances, the tenant may be permitted to remedy the issue within that time period rather than vacate the premises.



case manager/mediator then contacted the initiating party and conducted intake over the phone.

The case manager/mediator made up to three attempts each to contact the initiating and responding parties. If she was able to make contact with the tenant, she explained the eviction process to them and provided them a list of resources via email. She also often referred them to legal services. In addition, she sometimes referred them to the Community Action Partnership (CAP) agency in their area. The CAPs provided rental assistance and other housing services, as well as help obtaining or paying for food, fuel and electricity.

If the initiating party was interested in and eligible for mediation, the case manager/mediator obtained the responding party's contact information and found out the initiator's mediation availability. She then contacted the responding party to see if they were interested in mediating and, if so, scheduled the mediation based on the mutual availability of landlord and tenant. Initially, the case manager/mediator also found out whether the tenant had applied for rental assistance. If they had not, she often helped them start their application.

If the parties mediated, the mediation was conducted by phone or video, depending on the tenant's preference. The tenant most often requested mediation by phone. If an agreement was reached, the case manager/mediator wrote up the agreement, emailed it to the parties to review and asked the parties' permission to sign it on their behalf. Mediations generally took 30 minutes to an hour. Most were completed in one session. However, some required either post-mediation communication or two sessions. In those instances, the initial mediation was used to determine how much the tenant might be able to pay and how long the landlord was willing to wait for the tenant to pay. In many of those instances, the case manager/mediator checked back with the parties to find out what progress was made and see if they wanted to sign an agreement. In other instances, mediation was continued to a second session, with the same objective.

FINDINGS

Program Use

During the evaluation period, 5,772 evictions were filed in New Hampshire. Most of the parties involved would have been eligible for the Eviction Diversion Program.² The data indicate that the program helps a large number of tenants and landlords who are dealing with a possible eviction.

² A search of about 70 cases included only one commercial case, indicating that the vast majority of evictions filed in New Hampshire are for residential tenants.



Almost 800 individuals initiated an inquiry about the Eviction Diversion Program

During the evaluation period, 775 tenants or landlords reached out to the court about the eviction mediation program. Some reached out more than once, leading to 800 individual inquiries. According to the case manager/mediator, most contacted the court in response to their eviction notice. Others were referred by Community Action Partnership agencies. Tenants made 722 (90%) of the initial inquiries about the program. Landlords made 78 of the inquiries (10%).

Those who made more than one inquiry often did so months apart. The case manager/mediator's comments indicated that of the 25 tenants that reached out more than once, ten were most likely returning after the eviction process was terminated and then restarted. This generally occurred when the tenant made a payment and then fell behind on their rent again. In three of these cases, the parties had reached an agreement in mediation that allowed the tenant to stay, but then later fell behind again. In most of the other cases, the tenant appeared to have re-initiated contact with the program after the case manager/mediator was unable to contact them, they had declined mediation or the landlord had declined to mediate. In one instance, the tenant had moved and was facing eviction again.

Almost all initiating parties and 3 in 4 responding parties were successfully contacted

Of the 800 inquiries, the case manager/mediator was able to make contact with the initiator in 746. In the other 54 (6.8%), the initiating party did not return the case manager/mediator's calls or emails.

If the initiator declined to mediate, or if the case was marked as not eligible for mediation after the initiator was contacted, the case manager/mediator did not attempt to contact the respondent. In the 800 cases initiated, the program attempted to contact 570 respondent parties. The program was able to make contact with 434 (76%) of these respondents.

At least 344 tenants received assistance

When the case manager/mediator contacted the tenants, she often gave them information and referred them to other resources. The data may not be complete regarding what assistance was provided, so the numbers assisted may be greater than presented here. The data provided indicated that at least 344 tenants (46% of tenants contacted) learned about the eviction process. At least 300 tenants (40% of tenants contacted) were referred to legal aid. And at least 288 (38% of tenants contacted) were provided a list of social services resources.

Almost a quarter of initiated contacts resulted in a scheduled mediation

Of the 800 cases in which an inquiry with the Eviction Diversion Program was made, 184 (23%) were scheduled for mediation. The remaining 77% (616) were not scheduled either because

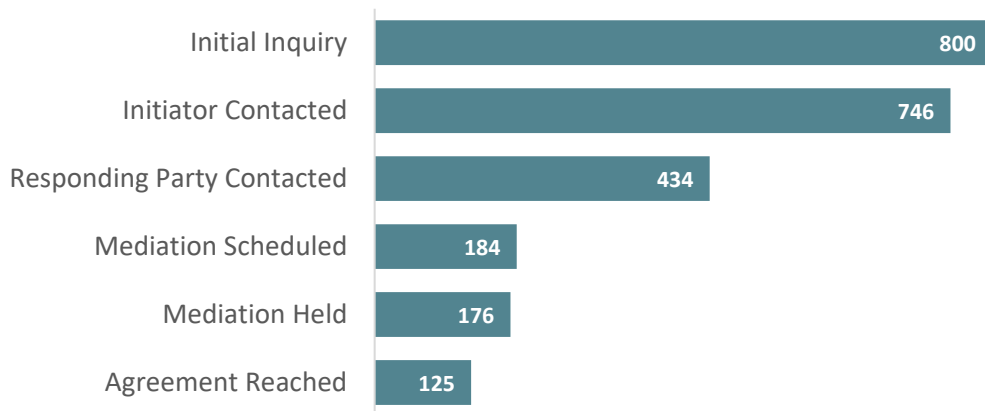


consent was not obtained from both parties (64%) or the case was not eligible (13%). Generally, cases were not eligible because the landlord had already filed for eviction.

Mediations were held for 96% of scheduled cases

Of the 184 mediations scheduled, 176 (96%) were held. Of the other eight, five were not held because the landlord did not show up. In two, the tenant did not appear. One was labeled as canceled.

Results of Program Inquiries



Tenants overwhelmingly wanted to mediate by phone

Data on how mediation was conducted was available for 162 mediations. In 157 of these, the tenant elected to participate by phone. Four of these phone mediations were conducted asynchronously at the request of the parties. Five tenants opted to mediate via video.

The program did not collect data on the reason tenants selected to mediate via phone or video. When we asked the case manager/mediator why she thought the tenants so often wanted to mediate via phone, she mentioned three reasons: tenants lacked access to a device or internet, they had a smartphone but not enough data for video mediation, or they were uncomfortable using technology.

Tenants in scheduled mediations were geographically dispersed

Mediations were scheduled for tenants living in all ten counties. Three counties accounted for 67% of scheduled mediations. The most common was Hillsborough, where 63 of 184 (34%) tenants with scheduled mediations resided. Mediations were scheduled for 31 tenants (17%) residing in Strafford County and 30 tenants (16%) residing in Rockingham County. The least represented counties were Carroll County, with five scheduled mediations (3% of the total), and Coos County, with three scheduled mediations (2%) of the total.



To determine whether mediations were being provided at rates reflecting counties' needs, we compared mediation rates with eviction filing rates in each county.³ We found that the three counties that accounted for 67% of scheduled mediations also accounted for 69% of evictions filed in the state during the evaluation period. Nevertheless, Hillsborough was the most underrepresented county in terms of scheduled mediations. Its share of scheduled mediation was 9% lower than its share of eviction filings.

Among the other counties, only Coos, Belknap and Sullivan counties were underrepresented in the number of mediations scheduled, at 3.7%, 0.3% and 0.9% below their respective shares of eviction filings.

	Mediations Scheduled		Evictions Filed		Difference
	Number	% of State Total	Number	% of State Total	
Belknap	9	4.9%	301	5.2%	-0.3%
Carroll	5	2.7%	80	1.4%	1.3%
Cheshire	7	3.8%	139	2.4%	1.4%
Coos	3	1.6%	305	5.3%	-3.7%
Grafton	12	6.5%	237	4.1%	2.4%
Hillsborough	63	34.2%	2513	43.5%	-9.3%
Merrimack	19	10.3%	536	9.3%	1.0%
Rockingham	30	16.3%	714	12.4%	3.9%
Strafford	31	16.8%	740	12.8%	4.0%
Sullivan	5	2.7%	207	3.6%	-0.9%
TOTAL	184		5772		

Outcomes

The data indicate that the Eviction Diversion Program successfully assists parties to reach agreement and avoid evictions. The termination of the rental assistance program did not lead to a drop in agreements. However, it did lead to a smaller proportion of agreements that allowed tenants to stay. The majority of mediations were held within two weeks of the initiating party's first call or email.

³ It should be noted that the number of eviction filings includes both commercial and residential tenants and therefore is not an exact match.

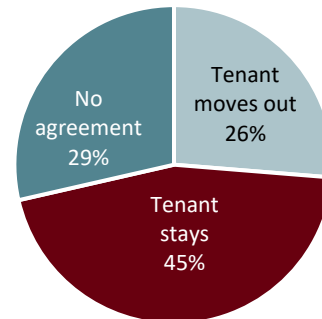


70% of mediations resulted in agreement

Of the 176 cases that were mediated, 175 cases reached a final outcome; one case is still pending as of the writing of this report. For the 175 cases that were mediated and closed, 71% (125) ended in an agreement and 29% (50) ended without an agreement.

When the parties reached agreement, they were much more likely to agree to the tenant remaining in the rental than they were to agree to the tenant moving out: 63% of agreements (79) were for the tenant to stay, while 37% (46) were for the tenant to move out. Overall, of the tenants who mediated, 45% were able to stay. Of the 746 cases in which the case manager/mediator was able to contact the inquiring party, 17% of tenants and landlords were able to avoid an eviction and 11% of the tenants were able to remain in their home.

Result of Mediation



Of interest, all 15 mediations for cases in which the landlord initiated contact with the program ended in an agreement, with 12 of those being for the tenant to stay. When the tenant initiated contact, 69% (110 of 160) resulted in an agreement, and 42% were agreements for the tenant to stay.

The percentage of mediations ending in agreement remained steady after the end of rental assistance; the proportion of agreements to stay decreased

Housing agencies stopped accepting rental assistance applications at the end of October 2022 and stopped processing applications at the end of 2022. This change allowed us to assess whether parties would continue to reach agreement in the absence of rental assistance. The answer appears to be yes. However, the content of the agreements changed, with a smaller percentage allowing the tenant to stay.

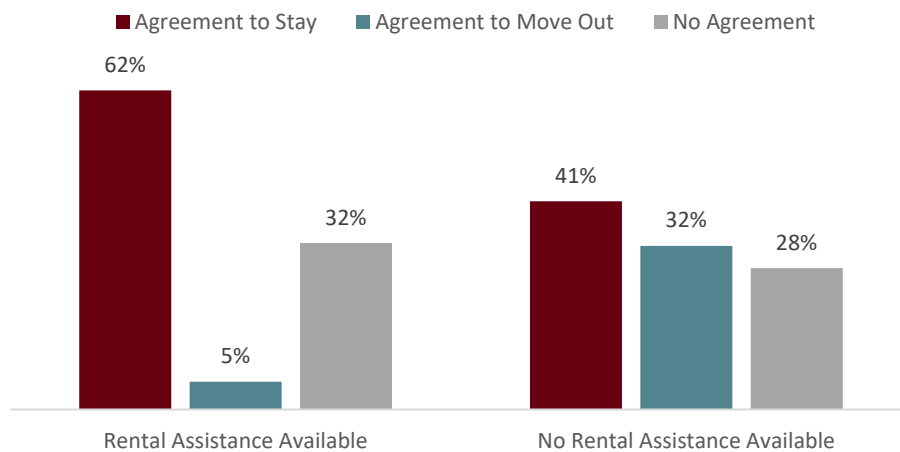
The effect of rental assistance appeared to end in December. In October and November, 21 of 23 (91%) agreements were for the tenant to stay. This dropped to 4 of 9 (44%) in December, and 52 of 91 (57%) for the first eight months of 2023. Overall, 56% of mediation agreements after the end of rental assistance allowed the tenant to stay.

The percentage of mediations ending in agreement did not appreciably change after rental assistance ended. It rose from 68% in October and November 2022 (25 of 37 mediations) to 72% (100 of 138 mediations). The number of mediations per month declined slightly. There



were 37 mediations in October and November 2022, with an average of 18.5. From December 2022 through August 2023, the monthly average of mediations held was 15.3.

Result of Mediation With and Without Rental Assistance



Time to Case Closure

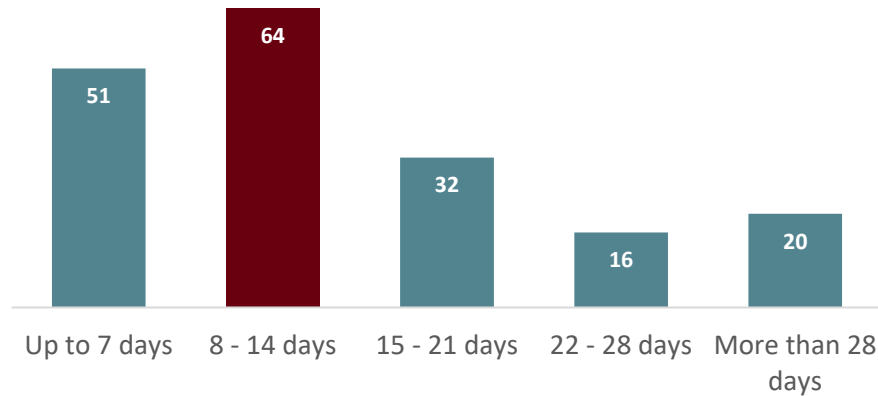
Most cases closed within 14 days of the landlord or tenant making an inquiry

Most cases opened in the program resolved within two weeks. Almost a quarter were open just one day. In those instances, either the case was ineligible or the initiating party declined to mediate. Almost two-thirds were closed within seven calendar days and 86% closed within 14 days. Only 3% took more than 30 days to close.

Scheduling a mediation did not appreciably lengthen time to closure. Almost two-thirds were closed within two weeks: 28% were closed within seven calendar days of being opened and 63% were resolved within 14 days. Only 11% took more than 28 days to close. The longest a case was open was 99 calendar days. In that instance, there was a delay in closing the case while waiting for the landlord's attorney to return the signed agreement.



Time to Closure for Cases in Which Mediation Was Scheduled



RECOMMENDATIONS

Continue the program

The program has converted almost a quarter of contacts into mediations. This percentage is similar to the rates of other programs. The program has also successfully assisted landlords and tenants who mediate to reach an agreement that avoids eviction. Although fewer tenants reach an agreement that allows them to stay, the mediation and agreement rates overall have not dropped despite the end of rental assistance. This means that mediating tenants that are likely to avoid eviction. It also runs contrary to arguments that eviction mediation can only be successful if rental assistance is available. In addition, the program handles the cases expeditiously.

Continue to offer both phone and video mediation options

Parties to mediation should have self-determination. This includes choosing the mode by which they mediate, since each method can have its advantages. Phone mediation, for example, reduces the risk of a power imbalance caused by one party having a better grasp of technology or access to better technology, while video mediation offers the opportunity to exchange and view documents.

Focus outreach in Hillsborough and Coos counties

Hillsborough County and, to a lesser extent, Coos County were underrepresented in the number of mediations scheduled relative to their needs. Outreach efforts may help to increase the number of tenants and landlords who contact the program.



Develop a process to collect geographic data at first inquiry

It would be helpful to have geographic data on all landlords and tenants who inquire about the program so that outreach efforts can be fully assessed. This may be as simple as asking court personnel to request this information when people call the court for more information.

CONCLUSION

During the 11-month evaluation period, the Eviction Diversion Program handled 800 inquiries, helped at least 344 tenants to navigate their possible eviction, and mediated 176 cases. Most of those cases ended with an agreement that avoided eviction, with almost two-thirds of agreements allowing the tenant to stay. The proportion of agreements to stay decreased after rental assistance ended, but remained in the majority.

The program was voluntary, which indicates that the landlords who participated and agreed to mediate were likely to be motivated to reach an agreement. Nevertheless, the results suggest that, at least in New Hampshire, mediation can successfully help landlords and tenants avoid the expense and (for tenants) the lasting impact of an eviction. This remains the case despite the lack of rental assistance. Given these findings, we recommend that the program remain in place.



APPENDIX A – LIMITATIONS OF THE EVALUATION

Our assessment of the areas served by the Eviction Diversion Program was limited by two factors: 1) We did not have sufficient county data to determine where all tenants who contacted the program resided, nor who was helped in ways other than mediation; and 2) The number of eviction filings included commercial filings, which may have induced a small bias in the findings.