

# JFAC Summary Proceedings Work Group Report & Recommendations

July 26, 2023 - DRAFT

## Overview

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## Work Group Members

The Michigan Justice for All Commission Executive Team selected a diverse, knowledgeable, and passionate group of individuals to join the Summary Proceedings Work Group. It was important to ensure a wide range of important stakeholders were represented. Participants range from court staff, representatives from social services agencies, and practitioners. The Commission greatly appreciates their dedication and contributions to this essential work.

- **Honorable Cynthia M. Ward**, Co-Chair  
JFA Commissioner  
54-A District Court
- **Karen Tjapkes**, Co-Chair  
Director of Litigation, Legal Aid of Western Michigan
- **James Gibbs**  
Court Administrator, 18<sup>th</sup> District Court
- **Mary Kavanaugh-Gahn**  
Deputy Director, Legal Services of Northern Michigan
- **Jarrett Levine**  
Attorney, Swistak Levine, PC
- **Kellie Maki Foster**  
Detroit Eviction Prevention Director, Lakeshore Legal Aid
- **Sara Orris**  
Social Worker, Oakland Schools
- **Liza Rios**  
Deputy State Court Administrator, State Court Administrative Office
- **Kelly Rose**  
Chief Housing Solutions Officer, Michigan State Department Housing Authority

- **Jim Schaafsma**  
Housing Law Attorney, Michigan Poverty Law Program
- **Clarence Stone**  
JFA Commissioner  
Director of Legal Affairs, Michigan State Department Housing Authority
- **Todd Stuart**  
Attorney, Stuart Law, PLC
- **Angela Tripp**  
JFA Commissioner  
Director, Michigan Legal Help
- **Michelle Williams**  
JFA Commissioner  
Special Populations Unit Manager, Michigan Department of Education
- **Lynda Zeller**  
JFA Commissioner  
Senior Fellow of Behavioral Health, Michigan Endowment Fund

## Introduction

The Justice for All Commission (JFAC) was created to address the civil justice gap with the goal of achieving 100% access to civil justice for all Michiganders. As then-Chief Justice McCormack and Justice Brian Zahra noted in the Justice for All Task Force Strategic Plan:

*Courts [have been] falling short in meeting their mission to provide access to justice for all, and particularly so when it comes to addressing the needs of low-income and minority communities. This failure is glaringly clear when it comes to our civil justice system and critical concerns that burden families, including the risk of eviction, access to public benefits, barriers to employment, family law issues like parenting time or custody disputes, elder abuse, among many others.<sup>1</sup>*

The right to counsel that applies in criminal cases does not extend to civil cases. Despite the efforts from legal aid, the bar, and online legal resources, including Michigan Legal Help, “nearly nine in ten low-income individuals with a legal problem receive little or no legal help”<sup>2</sup> and in 75% of civil cases, at least one side cannot afford to be represented by a lawyer, forcing them to navigate the court system and advocate for themselves.<sup>3</sup>

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<sup>1</sup> Justice for All Task Force Report and Strategic Plan, at 2 (Dec. 2020), available at <https://www.courts.michigan.gov/4af54d/siteassets/committees,-boards-special-initiatives/justiceforall/final-jfa-report-121420.pdf> (last accessed June 16, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 4.

Summary proceedings cases – more commonly known as eviction cases – are one type of case in which at least one side is commonly not represented by counsel, despite the high stakes at issue for both the landlord and the tenant. Typically, eviction cases are brought by the landlord alleging that a tenant has fallen behind on rent. Without that steady rental income, many landlords, particularly individual or small-scale landlords, risk missing mortgage and tax payments or struggle to pay other bills. As one Michigan landlord explained:

*Every day that rent is not paid, it costs us money, and it's not altogether different than having a hotel with an empty room. Because if they don't pay . . . you're not getting any return on your investment, plus every day that passes, the taxes go on, the utilities to the extent that we're paying, go on, and insurance continues.<sup>4</sup>*

Many landlords file eviction proceedings as a last resort, after giving tenants weeks or months to catch up on past-due rental payments.<sup>5</sup> Michigan landlords interviewed for this report stated that they tried working with a tenant to pay past-due rent before filing an eviction case:

*When we file a[n eviction] case, there is already usually a significant delinquency . . . I mean, most people probably don't file the next day after rent was due. I mean, nobody does. . . . so by the time that we're able to get a judgment, you can have maybe three or four months or so, or more in some cases. . . it is in our interest to avoid an eviction . . . most landlords, I think, have already gone the extra mile to try to avoid evicting the tenant before they even file.<sup>6</sup>*

On the other side, with the lack of availability of affordable housing, tenants often struggle to balance paying rent along with their other expenses. Affordable housing is typically defined as a renters spending no more than 30% of their income on rent. In 2018, however, most low-income renters spent at least half of their household income on rent, and a quarter of low-income renters spent over 70% of their household income on rent.<sup>7</sup> Too often, tenants are one unexpected expense or change in employment away from falling behind on rent.<sup>8</sup> As one tenant explained:

*When I first started getting behind on rent, my hours got cut after the holidays . . . I wasn't making even enough to pay my rent, so the commute, I was trying to keep my commute to work as cheap as possible. I was usually catching rides with people. If I'm being honest, I wasn't able to buy groceries for quite some time. A lot of days, I would go eating a bag of popcorn from work. I wasn't eating because I didn't have the finances*

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<sup>4</sup> Landlord Interview 2.

<sup>5</sup> Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA Law Rev. 759, 767 (1994).

<sup>6</sup> Landlord Interview 2.

<sup>7</sup> Emily Benfer, *et al.*, *The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk*, The Aspen Institute, at 2 (August 7, 2020), available at [https://nlihc.org/sites/default/files/The\\_Eviction\\_Crisis\\_080720.pdf](https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf), (last accessed June 16, 2023).

<sup>8</sup> In 2019, in a Federal Reserve Study, 37% of Americans reported being unable to completely cover an unexpected expense of \$400 without putting the expense on a credit card, obtaining a payday loan, or borrowing from a friend or family member. Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of US Households in 2019," May 2020, available at <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf> (last accessed June 16, 2023).

*to buy food. We never ended up furnishing our apartment because we had nowhere near the finances to buy furniture. I've slept on an air mattress for the past six or seven months because all of my money was either going to my commute to work or attempting to pay my rent.*<sup>9</sup>

While federal programs, including subsidized housing and Section 8 vouchers, were designed to assist low-income families to be able to afford housing, “only one in four eligible renters received [this] federal financial assistance.”<sup>10</sup>

Eviction has profound impacts on households and is a leading cause of poverty.<sup>11</sup> Families facing eviction risk not only losing their home, but a cascade of consequences that follow housing displacement and instability, including parents struggling to maintain employment, children struggling in school, and people of all ages more likely to suffer from poor mental and physical health outcomes.<sup>12</sup> As one Michigan tenant described the impact of an eviction case filed against her household:

*It's been very stressful . . . I feel really anxious. . . . if we both leave home, I'm scared that we're going to come home and they're going to put all of our stuff outside . . . I don't think that's legal, but that's always the fear in my mind.*<sup>13</sup>

Another tenant experienced similar anxiety, explaining:

*It's affected my professional and personal life in the sense of being stressed out and having high anxiety. It's been a bit on my mental health which affects the rest of my life negatively.*<sup>14</sup>

A single eviction is not a short-term problem but can lead families into a cycle of housing instability. Involvement in an eviction case -- even if the case is ultimately dismissed -- can greatly diminish someone's ability to secure housing in a decent neighborhood and secure housing assistance, which can lead to homelessness and prolonged housing instability.<sup>15</sup>

The COVID-19 pandemic caused a dramatic halt to businesses and corresponding paychecks for their employees, placing many tenants at risk of not being able to afford their monthly rent and being evicted from their homes in the midst of a public health crisis.

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<sup>9</sup> Tenant Interview 8.

<sup>10</sup> Benfer, The COVID-19 Eviction Crisis, *supra* note 7, at 2.

<sup>11</sup> Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. of Sociology 88, at 120-121 (July 2012), available at <https://scholar.harvard.edu/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf> (last accessed June 16, 2023).

<sup>12</sup> Paula Franzeses and Cecil Thomas, *Disrupting Dispossession: How the Right to Counsel in Landlord-Tenant Proceedings Is Reshaping Outcomes*, 52 Seton Hall L. Rev. 1255, 1257 (2022).

<sup>13</sup> Tenant interview 2.

<sup>14</sup> Tenant Interview 9.

<sup>15</sup> Franzeses, *Disrupting Dispossession*, *supra* note 12, at 1257; Desmond, *Eviction and the Reproduction of Urban Poverty*, *supra* note 11, at 120.

Without the steady flow of rent, many landlords were put at risk of not being able to make monthly mortgage payments and other expenses. Nationally, “mom-and-pop” (small-scale) landlords own almost half of the rental units in the housing market; however, 58% of these small-scale landlords do not have access to any lines of credit, putting them in financially tenuous situations if tenants are unable to pay rent.<sup>16</sup> Indeed, “[a] month or two of nonpayment of rent on a single unit may represent only a minor decrease in profits to an owner of a high number of rental units, the small loss of income to an owner of only two or three units may mean the difference between solvency and foreclosure.”<sup>17</sup>

The economic impact of the pandemic not only threatened tenants’ and landlords’ individual financial stability, but threatened to further exacerbate the affordable housing crisis the country was already facing.<sup>18</sup> The economic impact of the pandemic also put renters – particularly the 20.8 million rent-burdened households paying more than 30% of their income on rent – at risk for eviction, as they struggled to pay rent.<sup>19</sup>

To avert inflaming the housing crisis amid a global pandemic, state and federal governments implemented innovative temporary policies, including eviction moratoria, rental assistance that reached a broad range of renters, eviction diversion programs, and judicial procedures designed to allow renters to apply for rental assistance before determining whether an eviction is warranted.

This report analyzes Michigan summary proceedings court data from 2010 to September 2021 to identify barriers to access to courts and the impact that temporary pandemic policies had on the accessibility of the courts.<sup>20</sup> In addition, it contains excerpts from interviews with self-represented tenants and landlords who were parties to eviction cases. The report then makes recommendations to broaden justice for all Michiganders in the summary proceedings process.

## Summary Proceedings 101: Michigan Eviction Process

Summary proceedings cases arise when a landlord seeks to evict a tenant from the premises alleging the tenant has failed to pay rent or committed some other alleged lease violation. If the parties are unable to work out these differences informally on their own, the landlord may notify the tenant that they need to meet certain demands or vacate the premises by serving the tenant with a [Notice to Quit](#) (Notice) or [Demand for Possession](#) (Demand). The Demand is most commonly used when a tenant who is subject to a lease has failed to pay rent, but it is also used when the tenant holds over after termination of the lease, is responsible for a health hazard, or engages in certain activities involving controlled substances.<sup>21</sup> The Notice is used when the tenancy has already ended and tenant

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<sup>16</sup> Benfer, *The COVID-19 Eviction Crisis*, *supra* note 7, at 2.

<sup>17</sup> Gerchick, *No Easy Way Out*, *supra* note 5, at 768.

<sup>18</sup> Nicole Bateman and Martha Ross, *The Pandemic Hurt Low-Wage Workers the Most – and So Far, the Recovery Has Helped Them the Least*, Brookings, available at <https://www.brookings.edu/research/the-pandemic-hurt-low-wage-workers-the-most-and-so-far-the-recovery-has-helped-them-the-least/> (last accessed June 16, 2023).

<sup>19</sup> Benfer, *The COVID-19 Eviction Crisis*, *supra* note 7, at 2.

<sup>20</sup> The work group hopes to supplement this report with data from October 2021 to December to better supplement this report and better understand the impact of lifting certain pandemic-related policy changes.

<sup>21</sup> MCL 600.5714.

fails to vacate or to terminate the tenancy when there has been a lease violation.<sup>22</sup> While a case has not been formally filed at this point, the Notice and Demand are official state court forms and provide the tenant with information on how to seek legal help.

After service of a Demand based on non-payment of rent, the tenant has seven days to pay back-rent and accompanying late fees before the landlord can file a summary proceedings action against them in district court.<sup>23</sup> After service of a Notice based on failure to pay rent for a tenancy at will, the tenant has seven days to vacate the premises before the landlord can file a summary proceedings case against them in district court. In other circumstances, such as the tenant continuing to live on the premises and pay rent after the lease has expired, the tenant has one rental period – typically 30 days – to move out or resolve the issue.<sup>24</sup>

Once the time-period has elapsed, if the tenant has not vacated the premises or otherwise resolved the issues set forth in the Notice or Demand, the landlord may file a summary proceedings complaint against the tenant in district court. The landlord is required to serve the tenant with the complaint and summons, which contains information about the proceedings. Most courts assign a hearing date when the landlord files the complaint; however, a small subset of courts require tenants to file a written answer to the complaint within five days of service of the complaint before the court will issue a court date (Five-Day Courts).

If the tenant does not appear for the court date – or, for Five-Day Courts, does not file a written answer within 5 days – then the court may issue a default against the tenant and, if requested by the landlord and if the court is satisfied that the allegations in the complaint are correct, issue a default judgment awarding the landlord possession of the premises.<sup>25</sup> If the tenant does appear in court, the parties will usually be asked to attempt to resolve their issues prior to the court hearing the case. If the parties reach an agreement, then the case may be dismissed, conditionally dismissed, or a consent judgment may be entered. If the parties fail to reach an agreement, then the court will hold a hearing and enter a judgment. If the court enters a judgment granting the landlord possession of the premises, then the tenant typically has 10 days to vacate or otherwise resolve the issue before the landlord can obtain a writ of eviction to remove the tenant from the premises.

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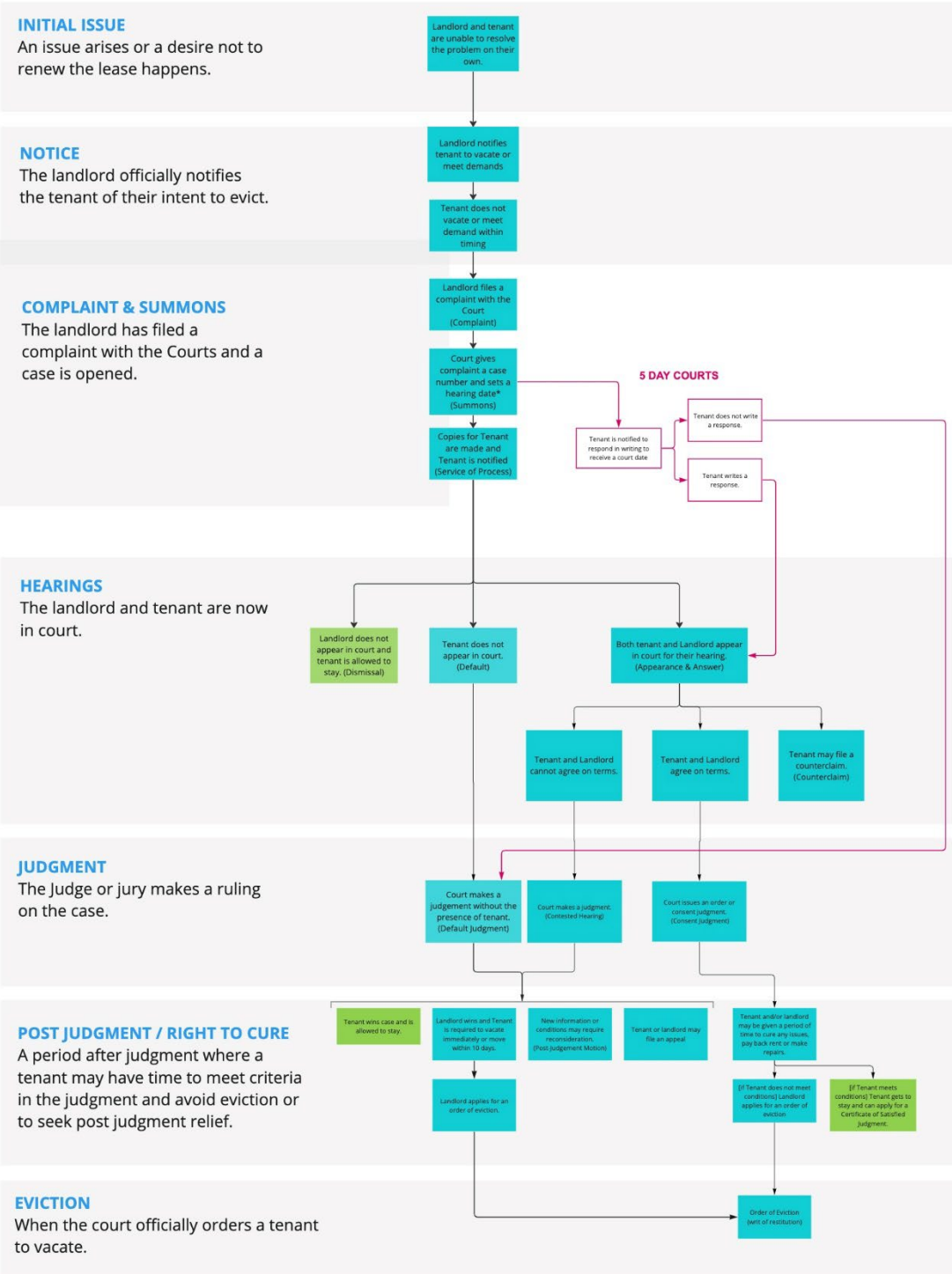
<sup>22</sup> MCL 600.5715(1)(c)(iii); MCL 600.5715(e); MCL 554.134(1).

<sup>23</sup> MCL 600.5714(1)(a).

<sup>24</sup> MCL 600.7714(1)

<sup>25</sup> MCR 4.201(F)(5).

# Michigan Eviction Process



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The COVID-19 pandemic brought unprecedented changes to evictions in Michigan. Not only were eviction moratoria put in place, but the federal government provided millions of dollars in COVID-19 Emergency Rental Assistance (CERA) to renters who were financially struggling due to the impact of COVID-19.<sup>26</sup> In addition, Michigan created and expanded Eviction Diversion Programs (EDPs) in courts across the state.

The instability caused by the COVID-19 pandemic also led the Michigan Supreme Court to issue an [administrative order](#) (which was amended several times) temporarily modifying summary proceedings processes, including requiring courts to hold an initial hearing informing the parties of their rights and potential resources that may be available to them, and requiring that cases be stayed or postponed while tenants' CERA applications were pending.<sup>27</sup>

This Report analyzes court data to understand the nature of summary proceedings cases in Michigan and identify common barriers to parties addressing their issues through the court system, along with the impact of policy changes implemented during the COVID-19 pandemic. The goal of this Report is to identify policy changes and recommend best practices moving forward.

## Findings

### 1. Summary Proceedings Cases Are Historically the Highest Volume of Civil Cases Filed in Michigan's District Courts

Over the past decade, summary proceedings cases have been the highest volume of civil cases filed in Michigan's district courts, with 2.02 million cases filed between January 2010 and September

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<sup>26</sup> In 2021, the federal government appropriated unprecedented funds for emergency rent and housing stability assistance, through the Consolidated Appropriations Act 2021 (appropriating \$25 billion, available through September 30, 2022). These funds helped Michigan create a \$1.1 billion-dollar Covid Emergency Rental Assistance Fund<sup>26</sup> to provide monetary assistance to renters with household incomes below 80% of the area median income (AMI) for up to 18 months. As of August 25, 2022, the program had spent \$875 million and helped almost a quarter million of families with rental and utility assistance. *See COVID Emergency Rental Assistance (CERA) FAQ*, Michigan State Housing Development Authority, available at [https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/rental/cera/CERA\\_FAQ\\_32521.pdf?rev=9f33d42dc0aa451795711f39222e9a0b&hash=A49A000ED0C3BE1A8176B2221FCE0631](https://www.michigan.gov/mshda/-/media/Project/Websites/mshda/rental/cera/CERA_FAQ_32521.pdf?rev=9f33d42dc0aa451795711f39222e9a0b&hash=A49A000ED0C3BE1A8176B2221FCE0631) (last accessed June 16, 2023); *Michigan's \$1 Billion of Pandemic Rent Fund is Drying Up. What's Next?*, MLive (July 6, 2022), available at <https://www.mlive.com/public-interest/2022/07/michigans-1-billion-pandemic-rent-fund-is-drying-up-whats-next.html> (last accessed June 16, 2023); *Michigan Using \$63M in Federal Dollars to Aid Homeless and At-Risk Renters*, MLive (Aug. 25, 2022), available at [https://www.mlive.com/public-interest/2022/08/michigan-using-63m-in-federal-dollars-to-aid-homeless-and-at-risk-renters.html?utm\\_source=Sailthru&utm\\_medium=email&utm\\_campaign=Newsletter\\_morning\\_briefing%202022-08-26&utm\\_term=Newsletter\\_morning\\_briefing](https://www.mlive.com/public-interest/2022/08/michigan-using-63m-in-federal-dollars-to-aid-homeless-and-at-risk-renters.html?utm_source=Sailthru&utm_medium=email&utm_campaign=Newsletter_morning_briefing%202022-08-26&utm_term=Newsletter_morning_briefing) (last accessed June 16, 2023).

<sup>27</sup> Administrative Order 2020-17, Michigan Supreme Court, original administrative order and subsequent amendments available at, [https://www.courts.michigan.gov/4a71a8/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08\\_2020-06-09\\_formattedorder\\_ao2020-17withamendments.pdf](https://www.courts.michigan.gov/4a71a8/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2020-06-09_formattedorder_ao2020-17withamendments.pdf) (last accessed June 16, 2023).



2021. Prior to March 2020, a steady stream of 170,000-190,000 eviction cases were filed each year in Michigan.

The case filing rate is the number of eviction cases filed for every 100 renting households. In 2018, the overall case filing rate in Michigan was 16.1 eviction cases filed for every 100 renting households, meaning that nearly 1 eviction case was filed for every 6 renting households.<sup>28</sup> This is almost triple the national average case filing rate of 6%.<sup>29</sup> Michigan’s eviction case filing rate is markedly higher than other Great Lake states.

State	Case Filing Rate (2018) <sup>30</sup>
Michigan	16.1%
Indiana	8.9%
Ohio	6.2%
Wisconsin	3.6%
Illinois	2.9%

## 2. Most Tenants and a Significant Number of Landlords Are Not Represented by Counsel in Summary Proceedings Cases

Summary proceedings cases are high-volume cases that many litigants attempt to navigate without the assistance of counsel. Despite the resources that legal aid and the bar invest in providing representation to tenants, they still only have capacity to help a small fraction of tenants, and overall 98% of tenants are not represented by counsel in eviction proceedings.

While incorporated landlords are required to be represented by counsel in Michigan,<sup>31</sup> individual landlords may choose to represent themselves. In 20% of the cases, landlords bring summary proceedings actions without being represented by counsel.

The high rates of self-represented litigants for both landlords and tenants highlight the need to simplify court processes and provide resources to make the court system accessible to both parties.

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<sup>28</sup> See National Eviction Map, The Eviction Lab, available at <https://evictionlab.org/map/?m=modeled&c=p&b=efr&s=all&r=states&y=2018&z=3.73&lat=37.90&lon=-98.08&lang=en> (last visited June 16, 2023).

<sup>29</sup> Juan Pablo Garnham, Carl Gershenson, and Matthew Desmond, *New Data Release Shows that 3.6 Million Eviction Cases Were Filed in the United States in 2018*, The Eviction Lab (July 11, 2022), available at <https://evictionlab.org/new-eviction-data-2022/> (last accessed June 16, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> MCL 450.681; *Detroit Bar Ass’n v. Union Guardian Trust Co.*, 282 Mich. 707 (1938) (“Corporations are not only not licensed to practice law but are specifically prohibited from doing so”).

### 3. Corporate Landlords File Significantly More Eviction Actions than Small-Scale Landlords

Nationally, approximately 42% of the rental units are owned by individual landlords.<sup>32</sup> Individual landlords in Michigan, however, file only 17% of the eviction proceedings.<sup>33</sup> In contrast, rental units owned by legal entities (including corporations, non-profits, and trusts) own 58% of the rental units nationally yet file approximately 83% of the eviction cases in Michigan.<sup>34</sup> The filing rate for individual landlords has declined by half over the last decade. In 2010, individual landlords accounted for 26% of the case filing, and, in 2021, individual landlords accounted for only 13% of case filings.

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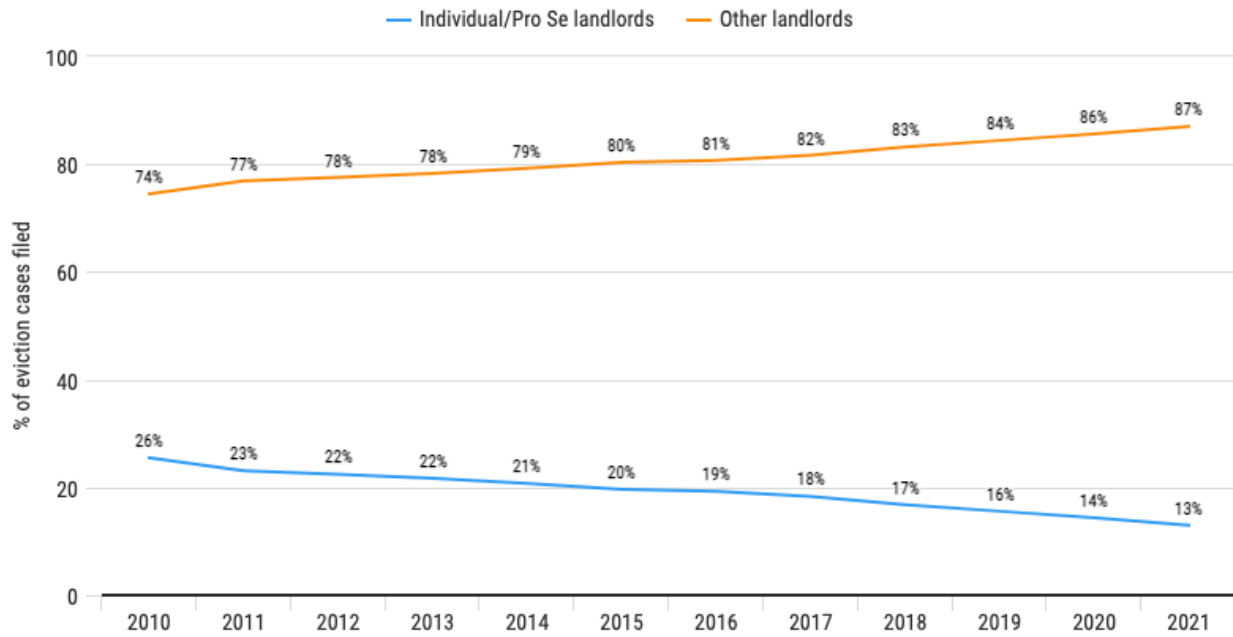
<sup>32</sup> A recent study of ownership of Detroit rental properties found that small-scale landlords owning 1-2 properties owned almost 55% of the rental units in the city. A number of these entities, however, were incorporated and would be classified as such based on the data analysis in this report. Large scale landlords, owning five or more properties, owned 33% of residential rental units in Detroit. *Understanding the Rental Landscape: A Profile Analysis of Detroit Landlord to Inform Lead-Safe Housing Policy*, Detroit Future City (August 2022), at 16-17, available at <https://detroitfuturecity.com/wp-content/uploads/2022/08/FINAL-Understanding-the-Rental-Landscape.pdf> (last accessed June 16, 2023).

<sup>33</sup> In Michigan court data, plaintiffs who either had their listed name as an individual (e.g. “Smith, John”) or those who lacked an attorney and were not able to be classified as another landlord type (apartment management company, public housing, bank/mortgage company, mobile home park) were identified as individual landlords.

<sup>34</sup> The US Census Rental Housing Finance Survey provides the following breakdown of ownership of rental units: 38% individual/small-scale (individual investor and tenant in common); 48% corporate (LLP, LP, LLC, general partnership, real estate investment trust (REIT), real estate corporation); 3% housing cooperative or non-profit; 2% trust; and 9% other/not reported. To compare the national data with Michigan data, the 9% other/not reported was removed. This resulted in individual/small-scale landlords accounting for 42% and entity landlords accounting for 58% ownership of rental units. Rental Housing Finance Survey, United States Census Bureau (2021), available at

[https://www.census.gov/data-tools/demo/rhfs/#/?s\\_type=2&s\\_tableName=TABLE2](https://www.census.gov/data-tools/demo/rhfs/#/?s_type=2&s_tableName=TABLE2) (last accessed June 16, 2023).

Share of eviction cases filed by Individual/Pro Se Landlords and others, 2010-2021.



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021.

The reduction in individual landlord filings coincides with a general reduction nationally in individual landlord ownership of rental units. For example, from 2015 to 2021, the number of cases filed by individual landlords dropped from 20% to 13%. At this same time, nationally, the number of units individual landlords owned declined from 51% in 2015 to 42% in 2021.<sup>35</sup>

The majority of eviction cases are filed by apartment management companies, mobile home companies, public housing authorities, and banks, with apartment management companies alone filing just under half of all summary proceeding cases in 2017-2019 (48%). These entities typically manage several – if not dozens or even hundreds – of rental units. In contrast to debt collection cases, which are dominated by a handful of plaintiffs,<sup>36</sup> eviction cases in Michigan are filed by a diverse array of plaintiffs large and small. The top ten landlords filing the most eviction in 2017-2019 filed just 2.6% of cases.

<sup>35</sup> Rental Housing Finance Survey, United States Census Bureau (2015), available at [https://www.census.gov/data-tools/demo/rhfs/#/?s\\_type=2&s\\_tableName=TABLE2&s\\_year=2015](https://www.census.gov/data-tools/demo/rhfs/#/?s_type=2&s_tableName=TABLE2&s_year=2015) (last accessed June 16, 2023).

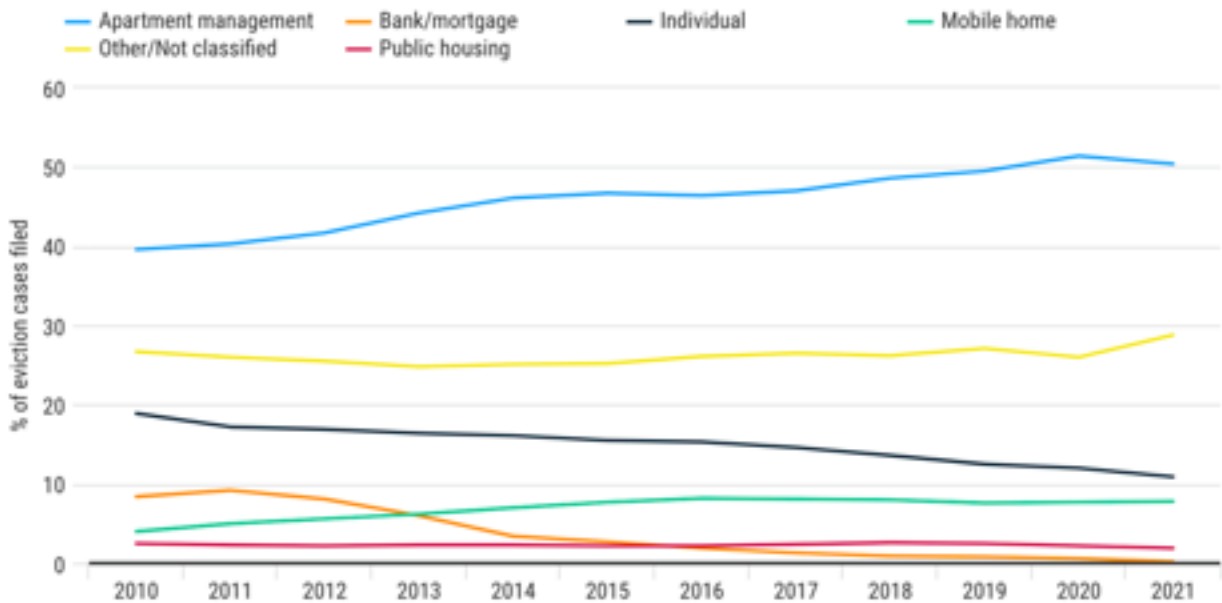
<sup>36</sup> CITE DEBT COLLECTION REPORT – High Volume Filers.

plaintiff_type	n	pct
Apartment management	259520	48.4
Other/Not classified	142730	26.6
Individual	72722	13.6
Mobile home	42421	7.9
Public housing	13571	2.5
Bank/mortgage	5506	1

The filing rate for apartment management companies has increased over time. In 2010, apartment management companies filed 40% of all eviction cases, while banks, in the wake of the foreclosure crisis, made up a much larger share of case filed (9%). By 2019, however, the share of evictions filed by apartment management companies grew from 40% to 49%. Apartment management companies filed more than half of all eviction cases during the pandemic.

### Apartment management companies make up growing share of eviction cases filed 2010-2021.

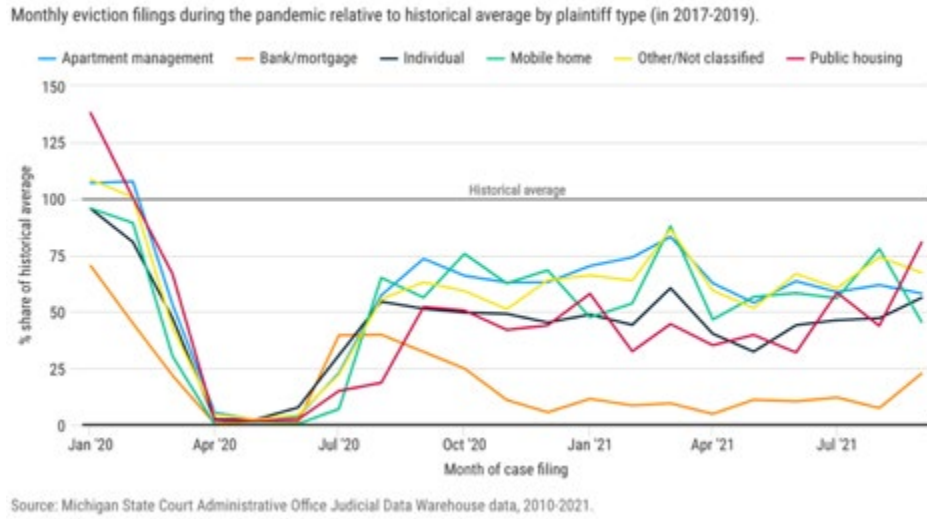
Share of eviction cases filed by plaintiff type, 2010-2021.



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021.

All types of landlords reduced their eviction filings during the pandemic. Apartment management companies and mobile home landlords, however, remained higher than other types of landlords relative to historical averages. Between March 2020 and September 2021, apartment management

companies and mobile home landlords filed 55%-58% of the number of cases they had filed in recent years. By contrast, public housing authorities and individual landlords filed 44%-45% of their historical averages. Banks and mortgage companies reduced their eviction filings the most (19% of historical averages).



Further study is needed to understand the impact of high-volume filers in evictions. Research has indicated that a small number of repeat filers can greatly impact the overall eviction rate in cities. In Cleveland, Ohio, landlords controlling 116 rental buildings were responsible for 20% of the evictions year after year. Similarly, in Fayetteville, North Carolina, landlords owning 100 buildings were responsible for 40% of the evictions. In Tucson, Arizona, repeat filers were responsible for almost 70% of the evictions.<sup>37</sup> Understanding the impact of high-volume filers could allow for Michigan to concentrate outreach and resources in these areas.<sup>38</sup>

#### 4. Case Filing Rates Are Disproportionately High for Renters in Urban Metro Areas

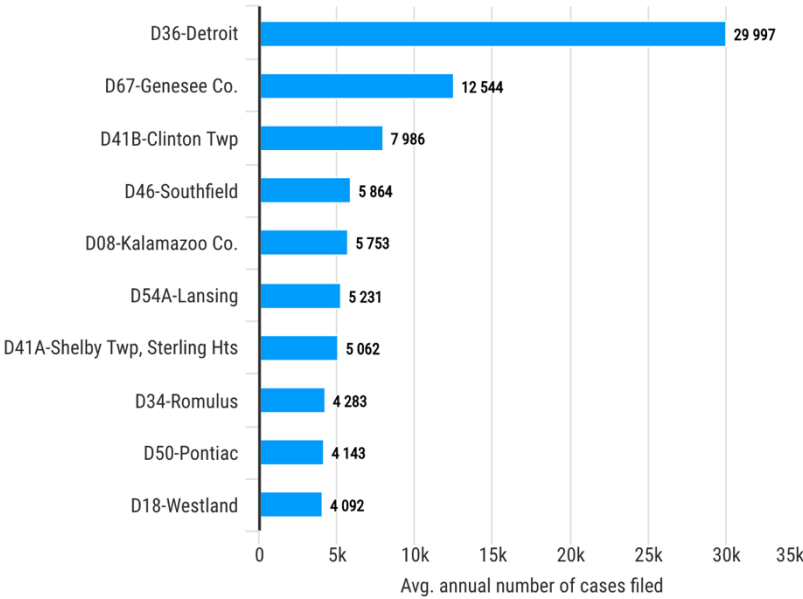
The vast majority of eviction cases are filed in district courts that cover the population-dense urban and suburban areas like Detroit, Grand Rapids, Kalamazoo, and Lansing. Indeed, Detroit’s 36th District Court alone averaged almost 30,000 summary proceedings cases annually between 2017-2019, which represents 17% of all eviction cases filed in Michigan during those years.

<sup>37</sup> Devin Rutan and Matthew Desmond, *Top Evicting Landlords Drive U.S. Eviction Crisis*, Eviction Lab (April 5, 2021), available at <https://evictionlab.org/top-evicting-landlords-drive-us-eviction-crisis/> (last accessed June 16, 2023).

<sup>38</sup> *Id.*

### Filing count

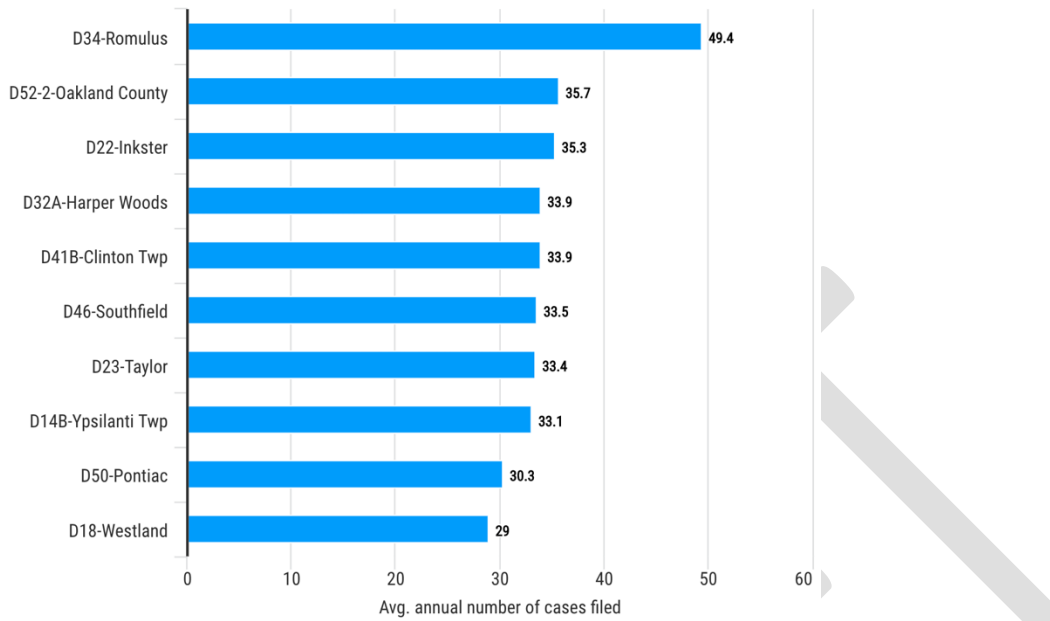
Annual average number of eviction cases filed, 2017-2019.



The number of filings, however, is impacted by the resident population in each district court. To control for differences in populations, summary proceedings cases can be measured by the case filing rate, which is number of summary proceedings filings per renter household in a particular area. The overall case filing rate per renter household in Michigan was 16% from 2017 to 2019. The 36<sup>th</sup> District Court, the most populous jurisdiction in Michigan, had a filing rate of 21.6%, which is the 17<sup>th</sup> highest filing rate in jurisdictions across Michigan. Several jurisdictions just outside of Detroit had significantly higher filing rates. Romulus had the highest filing rate of 49.4%, and several other jurisdictions near Detroit have case filing rates above 33%, including Oakland County Division 2 (35.7%), Inskter (35.3%), Harper Woods (33.9%), Clinton Township (33.9%), Southfield (33.5%), and Taylor (33.4%).

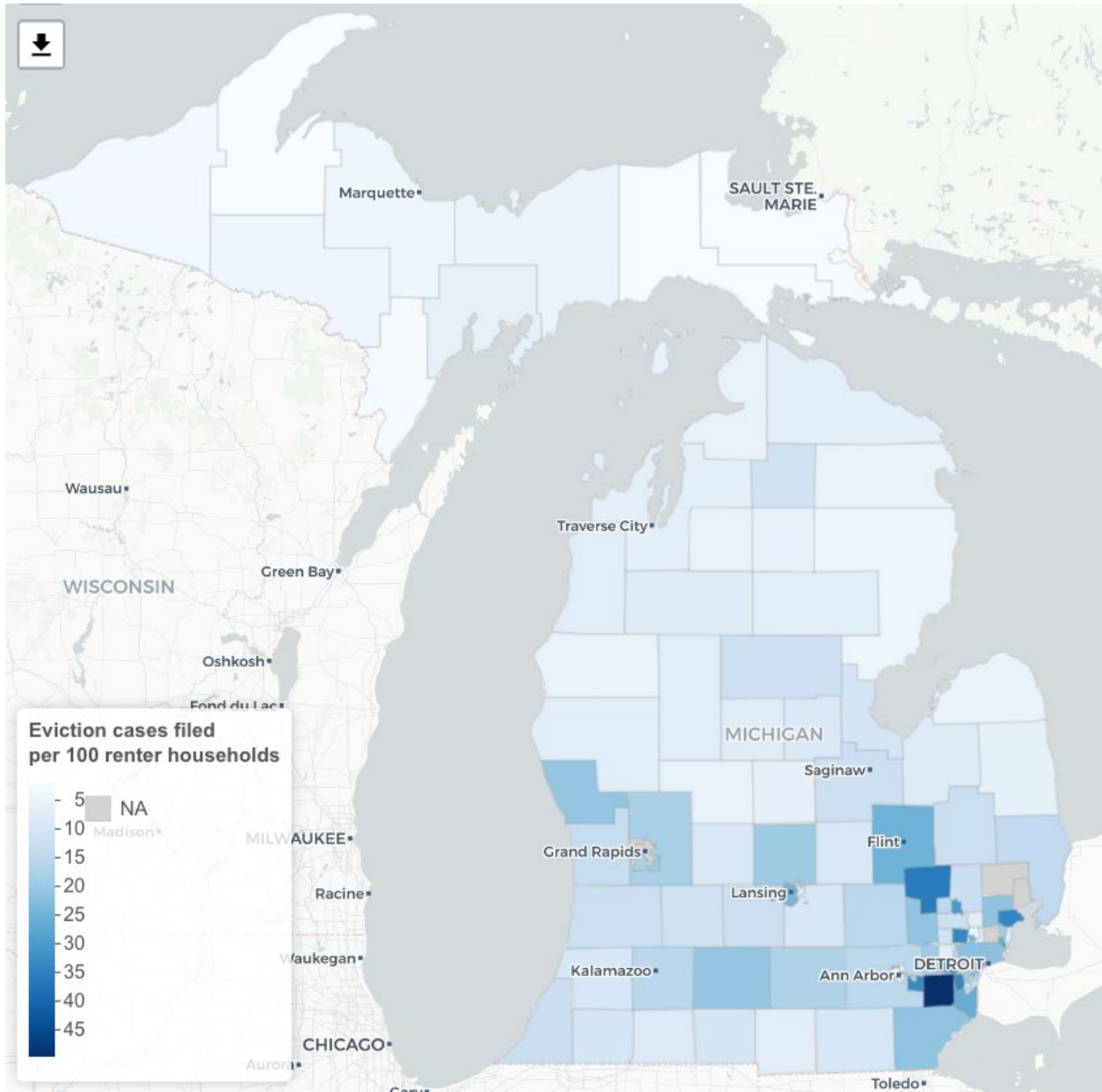
### Filing rate

Annual average number of eviction cases filed per 100 renter households, 2017-2019.

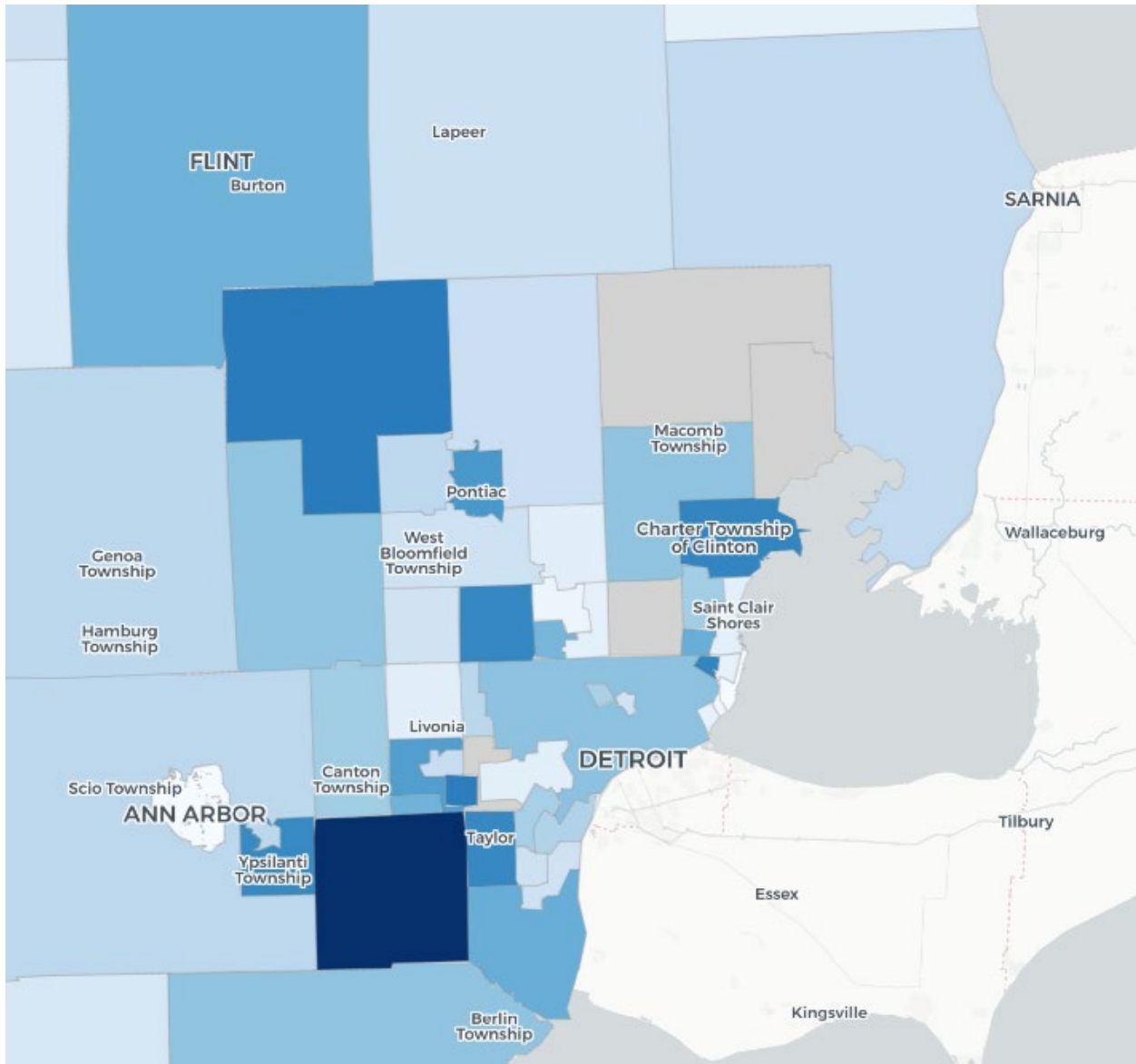


Except for Ypsilanti Township (which is adjacent to the Detroit metro area), the highest filing rates are found in jurisdictions located in the Detroit metro area. Indeed, nearly three-quarters (72%) of all summary proceedings cases filed in Michigan from 2017-2019 were filed in Detroit and its surrounding suburbs.

Other urban centers are also home to district courts with above average filing rates of eviction cases. For instance, district courts that cover Lansing (D54-A), Flint (District 67-5), and Muskegon County (D-60) have filing rates above the statewide average.







Detroit in detail. Same legend as map above.

### 5. Case Filing Rates Dropped as Eviction Moratoria Were in Place

The COVID-19 pandemic brought sweeping policy changes to the housing market, including eviction moratoria and funding for financial assistance to renters facing housing instability and negative financial consequences due to COVID-19.

In February 2020, prior to any pandemic-related policies, nearly 14,000 eviction cases were filed in Michigan district courts, which was typical of that time of year. In March 2020, however, the number of cases filed fell by half (6,100). During that month, on March 20, 2020, Governor Whitmer signed an Executive Order temporarily suspending evictions for non-payment of rent, only allowing evictions to commence when a tenant posed “a substantial risk to another person or an

imminent and severe risk to property.”<sup>39</sup> On March 27, 2020, the federal government passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which included a 120-day moratorium on evictions for qualifying rental properties with federal assistance or federally related financing, such as properties that participate in federal assistance programs or have federally backed mortgage loans.<sup>40</sup>

The rate of eviction filings greatly declined while the eviction moratoria were in place. In April, May, and June of 2020, 300-700 cases were filed each month, roughly 2-4% of the historical case filings in those months.

On September 4, 2020, the Center for Disease Control (CDC) issued a separate nation-wide eviction moratorium based on non-payment of rent, which applied to all tenants who meet certain income and eligibility requirements. This moratorium was initially set to expire on December 31, 2020 but was subsequently extended through July 2021.<sup>41</sup> The CDC then imposed a similar moratorium three days later, applying to counties in the United States experiencing substantial or high COVID-19 transmission levels;<sup>42</sup> however, on August 26, 2021, the United States Supreme Court vacated the lower court’s stay of its order vacating the moratorium because it was found to be unlawful. Michigan Administrative Order 2020-17 provided for an additional ten days from the moratorium being vacated for tenants to pay rent owed or move before landlords could initiate eviction actions.<sup>43</sup>

In 2020, nearly 100,000 fewer eviction cases were filed in Michigan compared to the year before, constituting over a 50% decrease in the filing rate. This is a sharper decrease in eviction filings compared to national data, which estimates that eviction filings fell 42% in 2020, falling from 3.7 million to 2.15 million.<sup>44</sup>

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<sup>39</sup> Executive Order 2020-19, Office of the Governor, State of Michigan, available at <https://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-19.pdf> (last accessed June 16, 2023).

<sup>40</sup> CARES Act Section 4024(b), CARES Act Eviction Moratorium, Congressional Research Service, (April 7, 2020), available at <https://crsreports.congress.gov/product/pdf/IN/IN11320> (last accessed June 16, 2023).

Researchers estimate the CARES Act eviction moratorium applied to between 28% and 46% of occupied rental units nationally. Federal Eviction Moratoriums in Response to the COVID-19 Pandemic, Congressional Research Service (updated March 30, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11516> (last accessed June 16, 2023).

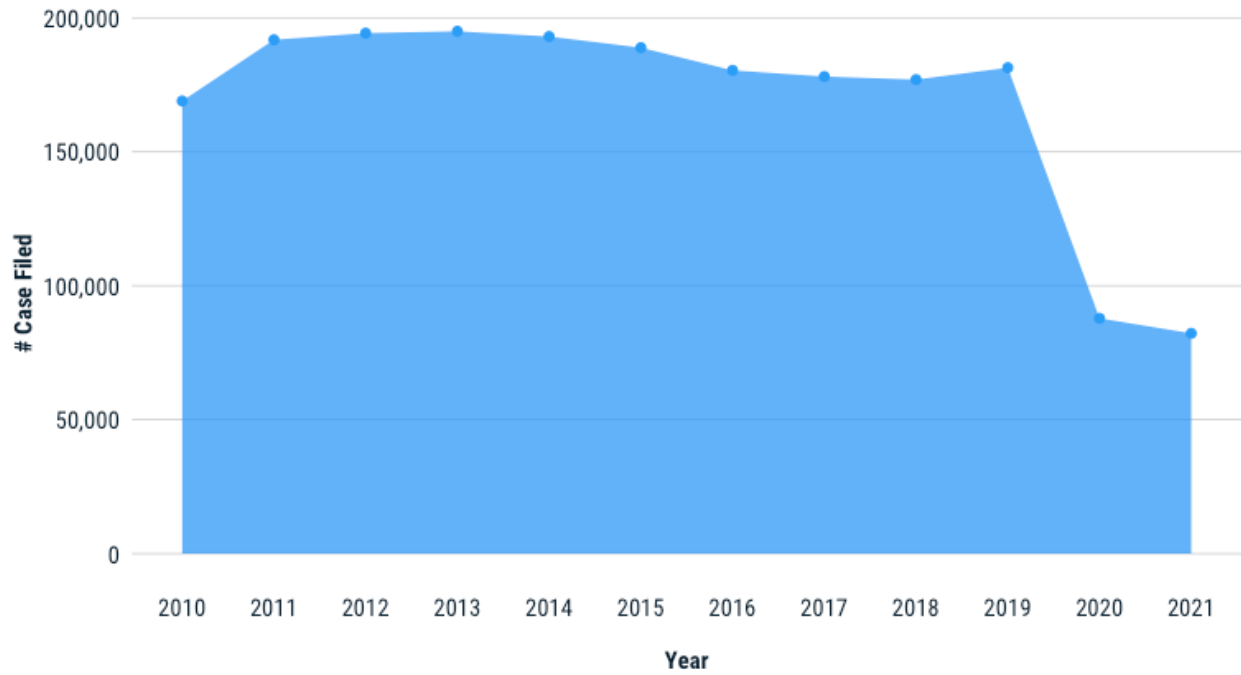
<sup>41</sup> *Id.*; *Alabama Ass’n of Realtor v Dep’t of Health and Human Servs.*, 594 U.S. \_\_\_\_, slip op. at 2 (2021) available at [https://www.supremecourt.gov/opinions/20pdf/21a23\\_ap6c.pdf](https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf) (last accessed June 16, 2023).

<sup>42</sup> Federal Register, Vol. 86, No. 149 (August 6, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-08-06/pdf/2021-16945.pdf> (last accessed June 16, 2023).

<sup>43</sup> AO 2020-17(I), *supra* note 26.

<sup>44</sup> Peter Hepburn, *et al.*, *U.S. Eviction Filing Patterns in 2020*, Eviction Lab (Apr. 27, 2021), <https://evictionlab.org/us-eviction-filing-patterns-2020/> (last accessed June 16, 2023); Jacob Haas, *et al.*, *Preliminary Analysis: Eviction Filing Trends After the CDC Moratorium Expiration*, Eviction Lab (Dec. 9, 2021), available at <https://evictionlab.org/updates/research/eviction-filing-trends-after-cdc-moratorium/> (last accessed June 16, 2023).

Number of eviction cases by year.

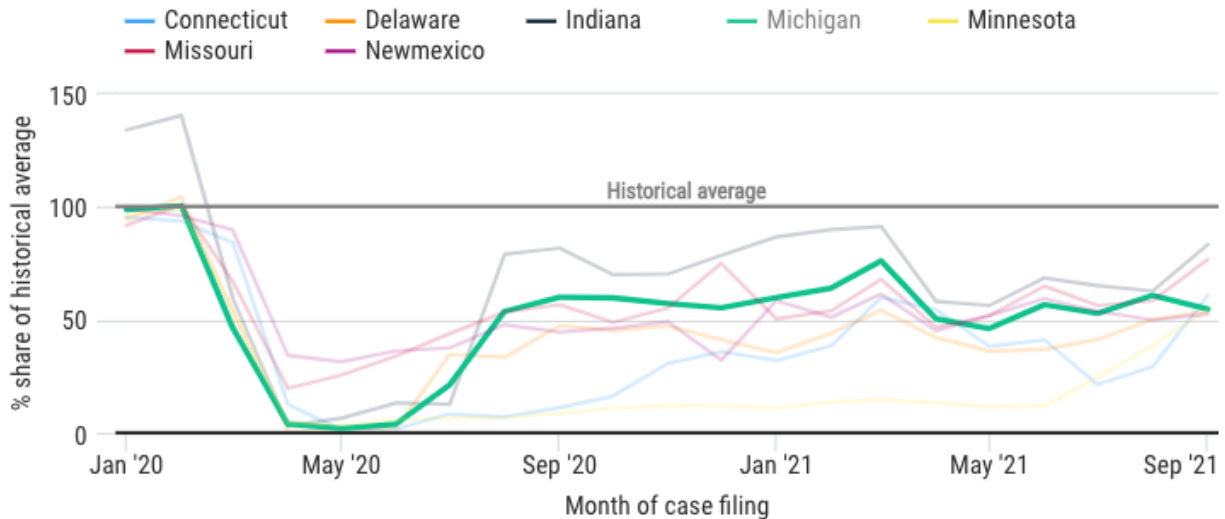


Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021.

Other states experienced similar reductions in eviction filings during this time. State-level data from the Eviction Lab during this period shows that Michigan was in line with many other states in terms of the timing and size of the decrease in monthly eviction filings during the pandemic.

## Michigan eviction filings remain below historical average.

Monthly eviction filings relative to average by state.



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021. Other state data comes from the Eviction Lab.

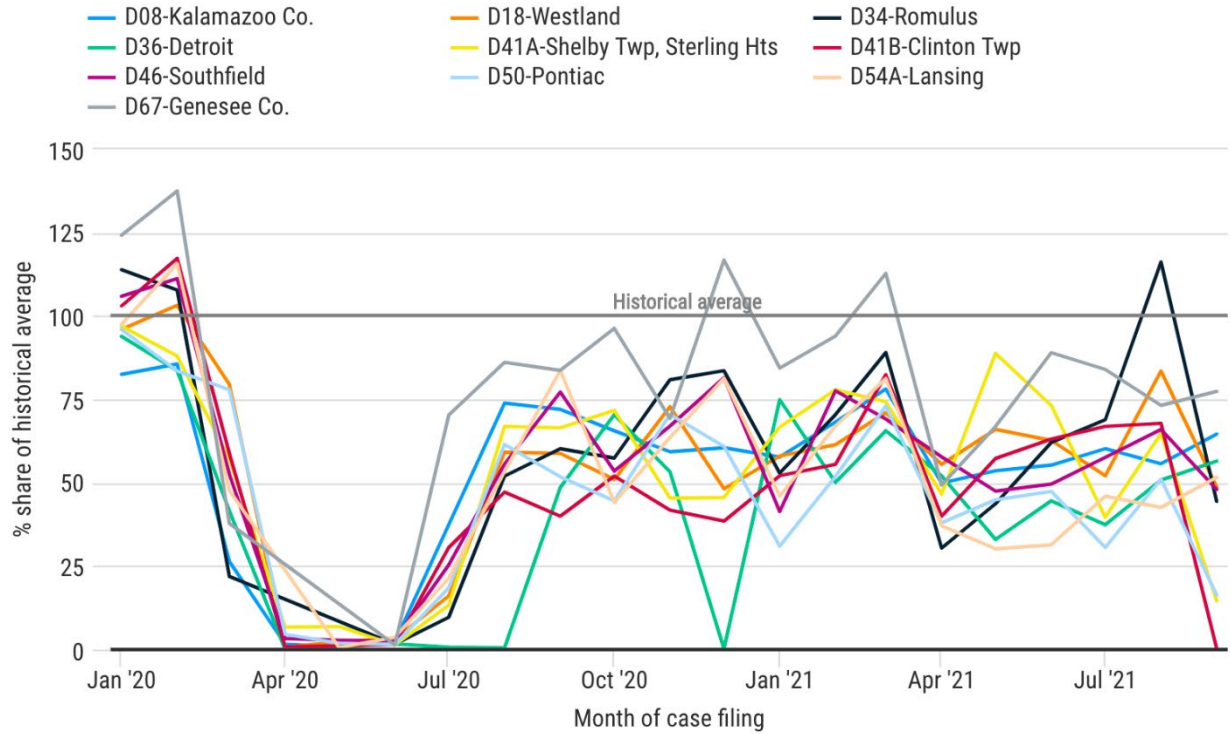
In Minnesota, the drop in filings lasted much longer than in Michigan due to Minnesota’s more comprehensive eviction moratorium that lasted longer than the CDC’s moratorium.<sup>45</sup>

### 6. Filings Rates for High-Volume Courts Rebounded at Different Rates During Pandemic.

Michigan courts, as a whole, experienced a significant reduction in summary proceedings filings in 2020 and 2021, with filing rates averaging 54% of the historic filing rate prior to the pandemic. Not all courts, however, experienced as sharp of a decrease. For example, while Genesee County initially experienced a precipitous drop in eviction filings in the Spring of 2020 in line with other Michigan courts, it was the fastest to approach a normal level of eviction filings in Fall 2020 and Winter 2021 with a filing rate at 82% of its historic averages. Similarly, Romulus rebounded more quickly, with case filing rates returning to 62% of their historic average.

<sup>45</sup> The Minnesota moratorium began a gradual phase out starting in July 2021. In July, landlords were allowed to evict tenants for lease violations other than non-payment of rent. In August 2021, landlords could seek to terminate leases for tenants not paying rent if they were not eligible for CERA, and, in September, landlords could evict tenants ineligible for CERA. These protections did not expire until June 1, 2022. Edward G. Goetz, et al., *The Impact of the COVID-19 Eviction Moratorium on Landlord-Initiated Displacement Actions in Minnesota*, Center for Urban & Regional Affairs, University of Minnesota (Dec. 14, 2022), available at <https://www.cura.umn.edu/research/impact-COVID-19-eviction-moratorium-landlord-initiated-displacement-actions-minnesota#:~:text=The%20Minnesota%20eviction%20moratorium%20was,for%20non%2Dpayment%20of%20rent> (last accessed June 16, 2023).

Monthly eviction filings during the pandemic relative to historical average for district courts with most eviction filings (in 2017-2019).



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021.

District Court	% of historical average
D67-Genesee Co.	82
D34-Romulus	62
D18-Westland	55
D46-Southfield	55
D41A-Shelby Twp, Sterling Hts	54
D08-Kalamazoo Co.	53
Michigan	53
D54A-Lansing	51
D41B-Clinton Twp	50
D50-Pontiac	45
D36-Detroit	44

Source: Eviction filings between 2020-9/2021 as a percentage of 2017-2019 historical averages.

These findings align with the overall rise in suburban evictions experienced in metropolitan areas across the nation. Since 2000, as low-income renters were pushed to the suburbs, the gap between

eviction rates in cities compared to suburbs has closed, with the number of evictions in suburbs steadily rising, while the number of evictions in cities remaining relatively stable.<sup>46</sup>

### 7. Renters in Low-Income Communities and Black-Majority Communities Bear the Brunt of Eviction Filings.

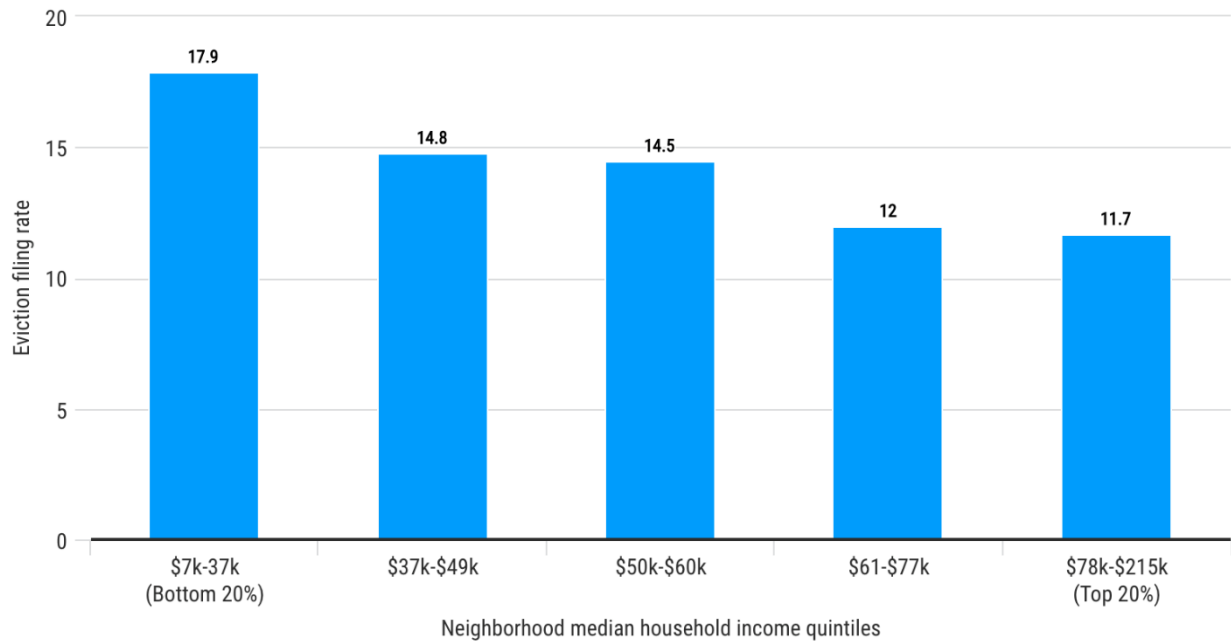
All types of Michigan renters face eviction. Still, some communities experience disproportionately higher filing rates than others.

For instance, urban areas are not only home to more renters but also have higher eviction filing rates than non-urban areas. In Michigan, neighborhoods (census tracts) in urban areas have an average eviction filing rate of 18 filings per 100 renters in 2017-2019. That's more than double the rate for neighborhoods outside urban areas (18 vs. 7.2 per 100 renters).

Income is also important. Renters in low-income neighborhoods are at much greater risk of eviction than those living in middle- and high-income neighborhoods.

#### Eviction cases are filed against renters in low-income neighborhoods at higher rates than middle- and high-income neighborhoods.

Number of eviction cases filed per 100 renters by neighborhood median household income decile, 2017-2019.

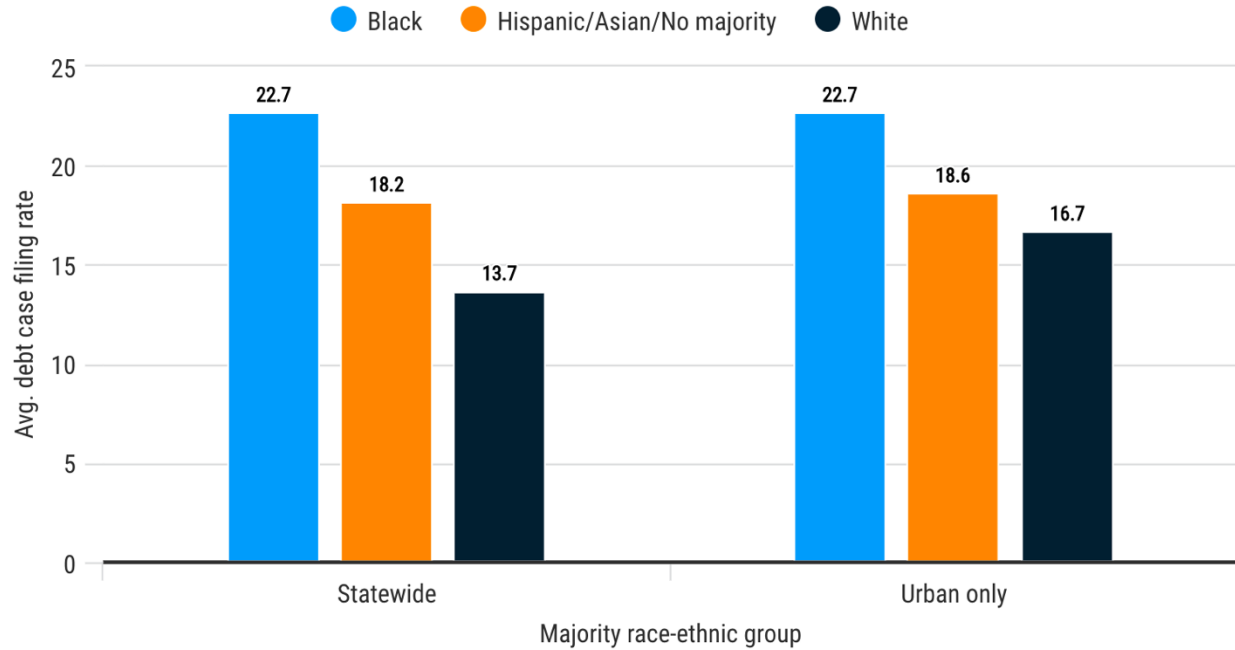


Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019. American Community Survey 2015-2019

<sup>46</sup> Devin Q. Rutan, Peter Hepburn, and Matthew Desmond, *The Suburbanization of Eviction: Increasing Displacement and Inequality Within American Suburbs*, *The Russell Sage Foundation Journal of the Social Sciences*, at 113-14, available at <https://www.rsjournal.org/content/rsfjss/9/1/104.full.pdf> (last accessed June 16, 2023).

These urban-rural and income differences, however, largely reflect higher eviction filing rates in Black-majority neighborhoods. Consistent with previous studies on racial disparities in evictions,<sup>47</sup> evictions are disproportionately concentrated in Black-majority neighborhoods in Michigan. These neighborhoods are almost exclusively in urban areas and are home to lower income households.

Number of eviction cases filed per 100 renters by neighborhood race-ethnic majority of neighborhood, 2017-2019.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019. American Community Survey, 2015-2019.

Statewide, the eviction filing rate in Black-majority neighborhoods is 66% percent higher than in White-majority neighborhoods. In urban areas, the racial gap still exists but is narrowed with the Black-majority neighborhood filing rate 36% percent higher than the White-majority neighborhood rate. This disparity remains even when controlling for neighborhood median household income.<sup>48</sup>

These disparities align with research conducted by The Eviction Lab, which reviewed court data from 39 states from 2012 to 2016. The Eviction Lab found that Black renters made up 19.9% of the adult renter population yet had 32.7% of eviction cases filed against them, whereas White renters

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<sup>48</sup> In linear regression models, the racial gap in urban areas in Michigan remains even after controlling for differences in median household incomes between neighborhoods, meaning that the neighborhood racial gap in eviction filings is not only about income.

comprised 51.5% of the adult renter population yet had only 42.7% of evictions cases filed against them.<sup>49</sup>

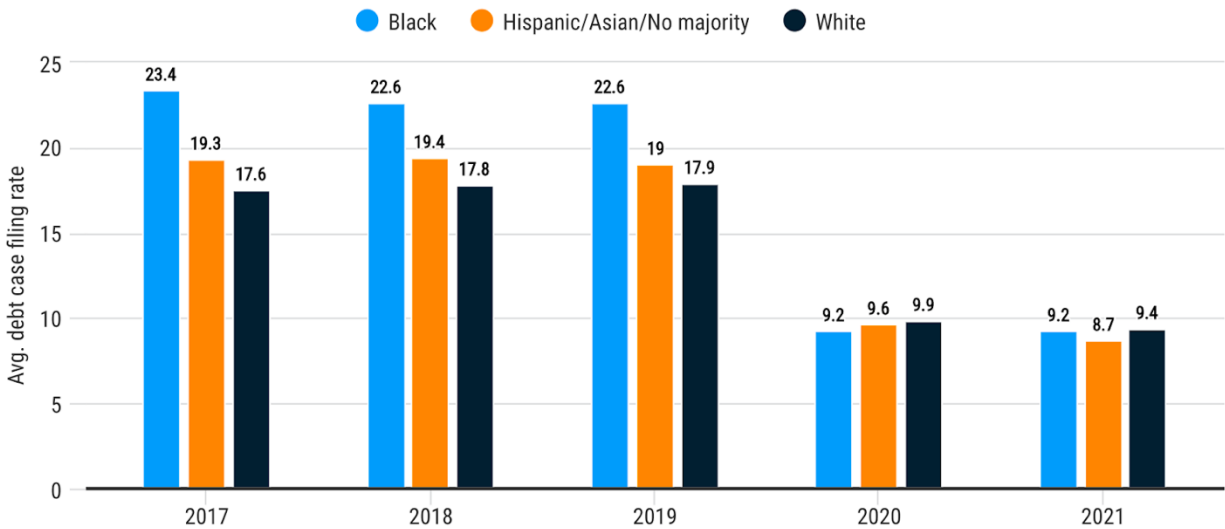
Economic factors may explain some of these disparities, including that “Black households are more rent burdened and higher levels of income volatility, compared with white households” and are “less likely to have access to resources that would help them weather unexpected events.”<sup>50</sup>

### 8. Racial Disparities in Case Filing Rates Closed During the Pandemic.

As the number of cases filed declined during the pandemic, the racial disparities in filing rates closed, resulting in case filing rates for Black-majority communities to be roughly the same as filings for White-majority communities.

#### **Racial disparity in eviction filings closed during the pandemic as number of cases filed across all urban neighborhoods declined.**

Eviction filing rate by year and neighborhood majority race-ethnicity in urban areas only, 2017-2021.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2015-2019. American Community Survey, 2015-2019.

The decrease in racial disparities in eviction filing rates can be attributed to an overall drop in filing rates in urban courts. For example, the 36<sup>th</sup> District Court in Detroit has one of the largest African American populations in the state. This court experienced one of the most significant reductions in the overall number of eviction filings during the pandemic, with eviction case filings at only 44% of their historic average, compared to the average statewide reduction of 53%. The overall filing reduction in the 36<sup>th</sup> District Court had a significant impact when calculating the overall filing rates for Black-majority urban neighborhoods throughout the state.



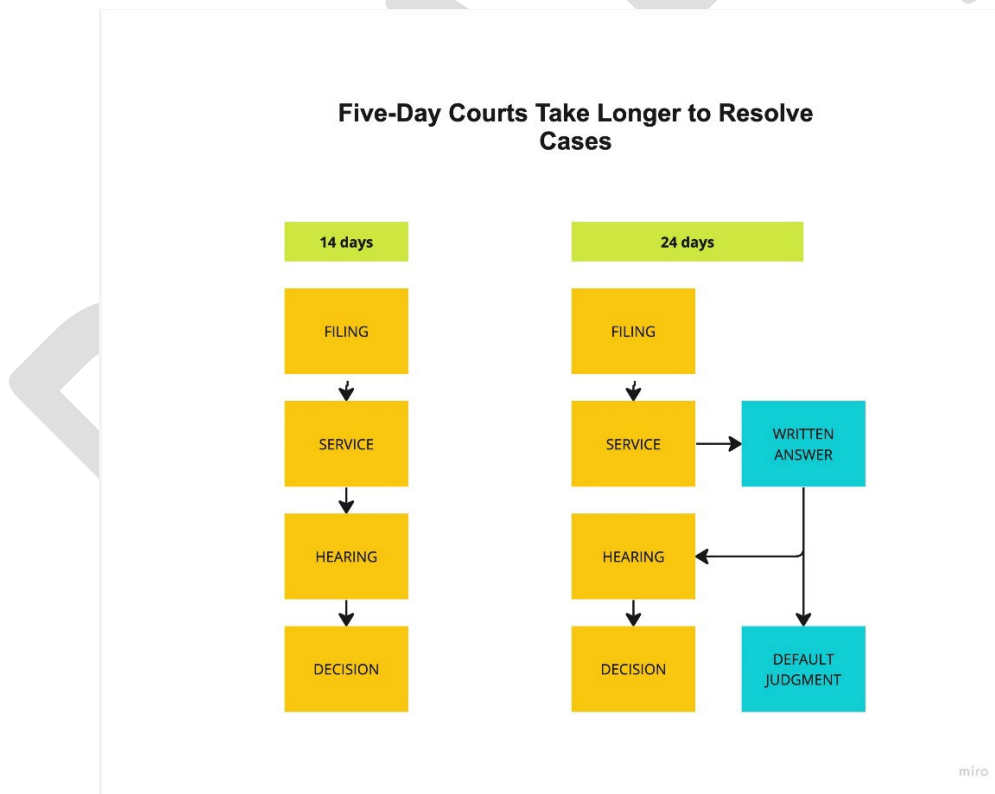
Data at the individual court level, however, indicates that racial disparities continued to persist throughout the pandemic. Within the 36<sup>th</sup> District Court, Black-majority neighborhoods continued to experience a higher eviction filing rate compared to White-majority neighborhoods. Although the overall filing rates between racial groups may have converged to some extent, disparities persist at a more local level within individual district courts.

## 9. Time to Disposition

### a. Summary Proceedings Cases Moved Rapidly Through Courts Prior to the Pandemic

Summary proceedings cases are designed to move much more swiftly through the courts than general civil cases. Prior to the pandemic, it took an average of about two weeks to reach a resolution in a summary proceedings case, compared to a median of 107 days for a consumer debt collection case, another high volume case type heard by Michigan district courts.<sup>51</sup>

Five-Day Courts are designed to be resolved even quicker, by allowing courts to enter default judgments if a tenant fails to file a written response within five days.



Five-Day Courts, however, actually took longer to reach a disposition; in 2017 and 2018, the median case length for a summary proceeding action filed in a Five-Day Courts was 24 days compared to 14 days in other courts.

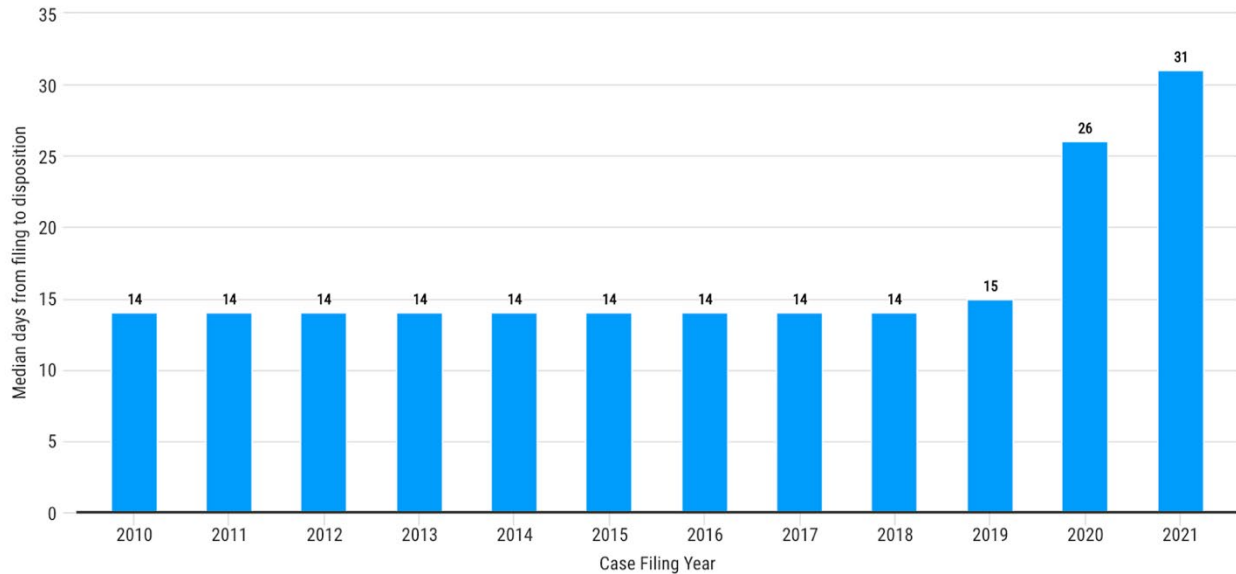
<sup>51</sup> January Advisors Debt Collection Data Analysis (on file with the JFAC).

b. The Time to Disposition Increased During the Pandemic Likely Due to Procedural Changes.

The time to disposition increased during the COVID-19 pandemic. The median case length nearly doubled to 26 days in 2020 and to 31 days in 2021.

**Length of eviction cases doubled during pandemic.**

Median days from filing to disposition for cases filed between 2010-Sept 2021 and disposition by Sept 2021.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2015-2019. American Community Survey, 2015-2019.

This increase was likely due to the procedural changes the Michigan Supreme Court implemented to summary proceedings cases provided parties with time to access financial and legal resources during the pandemic, including applying for CERA funds which could cover rent owed.

On June 9, 2020, the Michigan Supreme Court issued an administrative order temporarily modifying summary proceedings processes in Michigan in the following ways:

1. Suspend local rules in Five-Day Courts requiring a written answer within five days of service of complaint.
2. Require a two-step hearing process. The initial hearing is used as a pretrial hearing to inform the parties about their rights and the availability of resources to them. The second hearing, which must be scheduled at least 7 days after the first hearing, is when the court would hear the substantive case. However, if the tenant was personally served and failed to appear at the first hearing, the court could issue a default judgment at the first hearing and did not need to hold the second hearing.
3. Require that non-payment of rent cases be stayed or postponed while the tenant’s application is pending for CERA.

## Modifications to Summary Proceedings Cases Implemented During the Pandemic

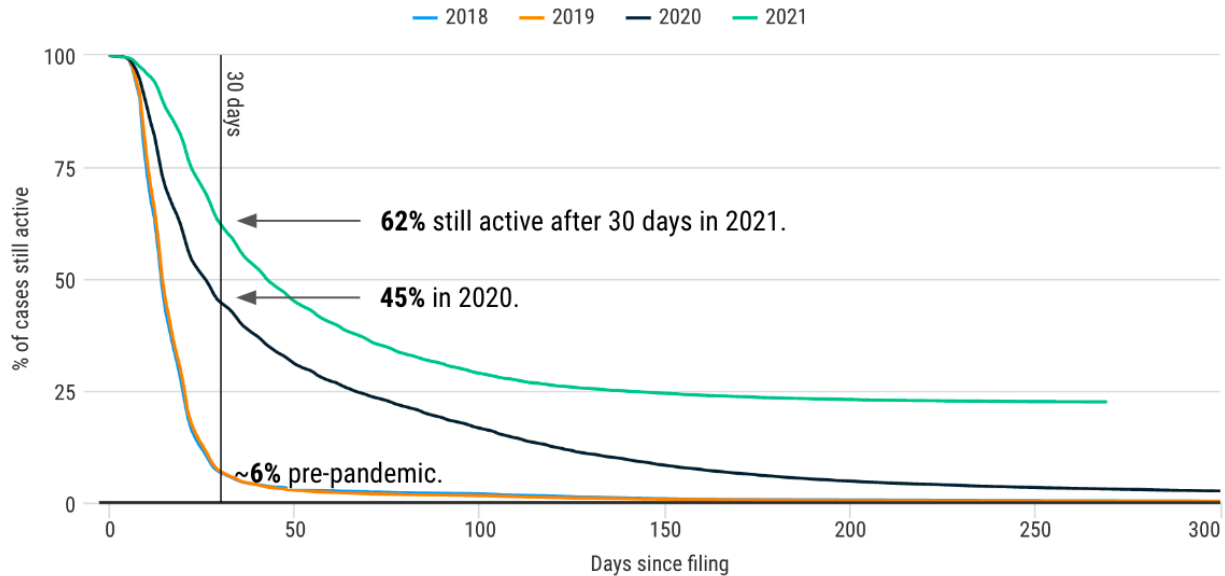


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The time for summary proceedings cases to reach an eviction increased during the pandemic. Prior to the pandemic, from 2018-2019, nearly all eviction cases (~94%, on average) were closed within 30 days. In 2020, 45% of cases were still active after 30 days. In 2021, 62% were still active after 30 days. This increase was likely due in part to the new procedures put in place by the Supreme Court but were also likely caused by a number of other pandemic-related factors. For example, Michigan courts, like other courts across the country, faced unprecedented backlogs and delays, due to court closures, staff shortages, delays due to the shift to virtual court. These factors impacted the largest and busiest courts the most.

## Share of eviction cases still active after 30 days increased during pandemic.

% of eviction cases still active since case filing date, 2018-2021



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021.

The data align with landlords’ experiences on the ground with cases taking much longer to reach a disposition during the pandemic, with one landlord reporting that it took him six months to remove tenants who were involved in weapon discharges in the rental building:

*[The court] simply took too long. These were evictions that, prior to Covid, would have been a 24-hour eviction type of case . . . [It took] six months to execute what used to be a 24-hour turnaround. That to me was incredible and terrifying. Because I had other people in the building that just could not believe that the same person who was involved with this was still living next to them. I couldn’t soothe any of my existing tenants and I could do nothing to get ahead in line.<sup>52</sup>*

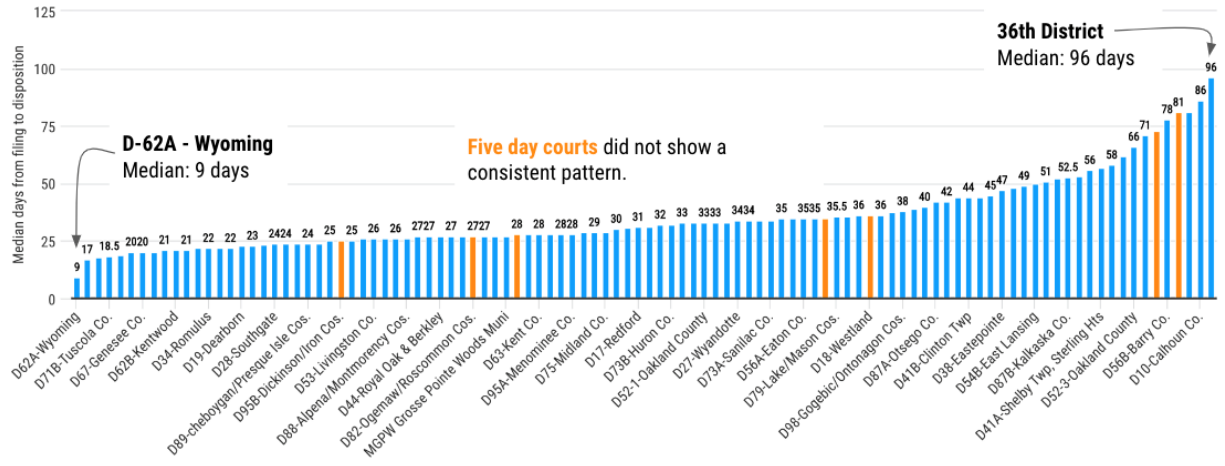
While the implementation of pandemic-related safeguards increased the time to disposition for almost all courts, many courts had a median case disposition time of under a month, meaning that 50% of their summary proceedings cases reached a disposition within a month. Indeed, several courts had median case dispositions of under three weeks, including Wyoming, Tuscola County, Genesee County, and Kentwood.

<sup>52</sup> Landlord Interview 3.

## Not all courts took their time; others slowed cases dramatically.

**Detroit's 36th District had the longest time to disposition during pandemic.**

Median days from filing to disposition for cases filed between March 2020-Sept 2021 and disposed by Sept 2021. Five-day courts are highlighted in orange.



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021. American Community Survey, 2015-2019.

Other courts saw case lengths reach new heights during the pandemic. In Detroit's 36<sup>th</sup> District, the median case length went from 10 days for cases filed between 2018-February 2020 to 96 days for cases filed March 2020-September 2021.

Prior to the pandemic, Five-Day Courts took longer than average to dispose of cases (24 days on average for Five-Day Courts, compared to 14 days for other courts). During the pandemic however, when the five-day procedure was removed, there was no consistent pattern among Five-Day Courts in time to disposition, with three courts disposing of cases on the low end (25-28 days on average) compared to two other Five-Day Courts disposing of cases on the high end (71 and 81 days on average).

**Median days to disposition for five-day courts before and during pandemic.**

Court	2018-Feb 2020	Mar 2020-Sept 2021	Change in median days to disposition
D01-Monroe Co.	27	81	+54
D02A-Lenawee Co.	22	28	+6
D12-Jackson Co.	29	73	+44
D18-Westland	24	36	+12
D81-Alcona/Arenac/Iosco/Oscoda Cos.	30	35	+5
D82-Ogemaw/Roscommon Cos.	19	27	+8
D95B-Dickinson/Iron Cos.	12	25	+13
Median of other MI courts	14	35	+21

c. **Inconsistent Processes Among Courts Led to Racial Disparities in Time to Disposition**  
 Inconsistent processes among courts impact the time it takes for cases to reach dispositions. This raises significant access to justice concerns, with some cases moving slowly through the system and others moving more rapidly. This means that landlords in some jurisdictions can more quickly resolve their summary proceedings matters, while landlords in other jurisdictions have their case linger through the system, while unpaid rent and expenses continue to add up. On the other side, tenants are also harmed by these disparities; in one jurisdiction, tenants may have time to gather money and resources to catch up on rent, while, in another jurisdiction, a similarly-situated tenant may have already been evicted before being able to access resources that could have kept them housed.

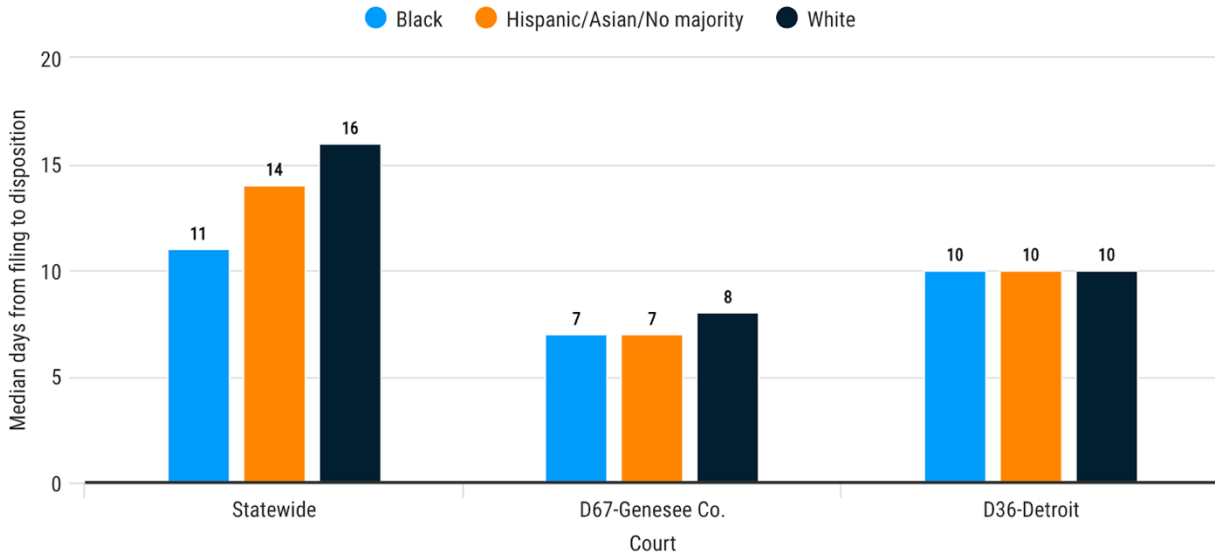
These inconsistent court processes do not only lead to inconsistent access to justice on an individual level, but also lead to racial disparities on higher levels. Differences in urban and rural court procedures result in racial disparities in how quickly summary proceedings cases proceed through the courts, exposing renters living in Black-majority neighborhoods to eviction more quickly than renters living in White-majority neighborhoods.

Statewide, eviction cases filed in Black-majority neighborhoods tend to close more quickly than those filed in White-majority neighborhoods. In 2017-2019, eviction cases filed in Black-majority neighborhoods reached a disposition in 11 days compared with 16 days for cases filed in White-majority neighborhoods. This gap, however, is largely explained by differences between rural and urban courts. Prior to the pandemic, large urban courts, such as the 36th District Court in Detroit and the 67th District Court in Genesee County/Flint, where Black renters tend to be concentrated in Michigan, reached dispositions in eviction cases much faster than the state average (10 days in

Detroit and 7-8 days in Flint). But the faster pace in these courts was the same across all neighborhoods, regardless of racial makeup.

### Cases filed in Black-majority neighborhoods close more quickly, but race-ethnic differences explained by speed of urban courts.

Median days from filing to disposition for cases filed between 2017-2019 and disposed by Sept 2021, by race-ethnic majority of tenants' census tract.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2015-2019. American Community Survey, 2015-2019.

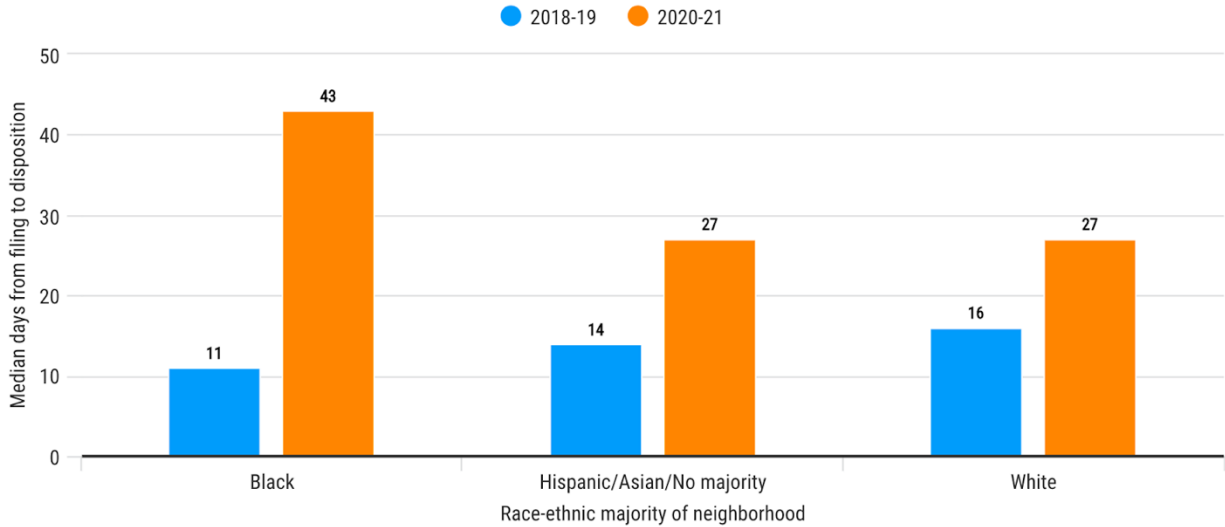
#### d. Racial Disparities in Time to Disposition Were Reversed During the Pandemic.

The pandemic and additional procedural safeguards put in place by the Michigan Supreme Court reversed the racial disparity in the time to dispose of cases. Prior to the pandemic, renters in Black-majority neighborhoods had their cases disposed on average in 11 days, whereas renters in White-majority neighborhoods had their cases disposed on average in 16 days.

During the pandemic, tenants facing eviction in Black-majority neighborhoods saw the largest increase in time to disposition during the pandemic, from 11 days to 43 days. This was due to differences in case management, with large urban courts with high concentrations of Black residents slowing their cases down much more than other Michigan courts. As a result, the racial gap in time to disposition was effectively reversed during the pandemic.

**Black-majority neighborhoods saw largest increase in time to disposition during pandemic, reversing pre-pandemic racial disparities.**

Median days from filing to disposition for cases filed between 2018-2019 and 2020-2021 and disposed by Sept 2021, by race-ethnic majority of tenants' census tract.



Source: Michigan State Court Administrative Office Judicial Data Warehouse data, 2010-2021. American Community Survey, 2015-2019.

**10. Case Outcomes**

Summary proceedings cases can be disposed of in several different ways. Landlords may voluntarily dismiss a case if a tenant moves out prior to trial, pays the unpaid rent, or the parties reach some other agreement. A default judgment is entered if the tenant fails to appear in court or, for Five-Day Courts, does not file a timely written answer. Parties can also settle cases prior to trial, which can be entered as a dismissal or consent judgment. Finally, the court can decide the cases after a hearing, referred to here as “non-default judgments”.

In Michigan, from 2017-2019, the case outcomes were as follows:

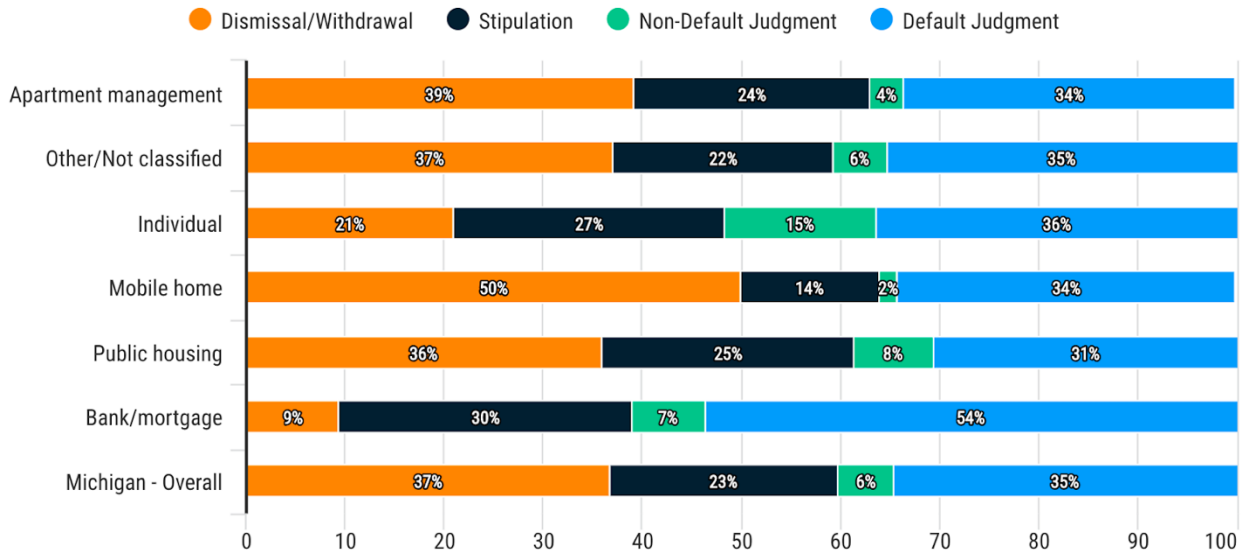
Percentage of Cases	Outcome	When this typically occurs
37%	Dismiss or Withdrawn	A case may be dismissed or withdrawn because the tenant has voluntarily left the premises, paid the unpaid rent, or reached an out-of-court settlement with the landlord.
35%	Default Judgment	
23%	Settlement	The parties negotiate a settlement, which can occur when the parties appear in court.
6%	Judgment (Non-Default Judgment)	The judge decides the case in favor of one party after hearing evidence from both parties.



a. Case Outcomes Based on Type of Landlord

Case outcomes vary somewhat based on the type of landlord. Eviction cases filed by individual landlords are less likely to result in a dismissal (21%) and more likely to result in a non-default judgment (15%) than average. Cases filed by mobile home landlords are much more likely to be dismissed (50%) and less likely to reach a settlement (14%) or non-default judgment (2%) than average. Evictions filed by banks and mortgage companies also have much higher default judgment rates (54%) as compared to the average default judgment rate of summary proceedings cases in Michigan (35%); many of these cases are likely mortgage foreclosure cases where the redemption period has elapsed and the former homeowner has likely moved on.

Share of disposed cases by disposition type & plaintiff type, 2017-2019. Does not include 0.1% of cases dismissed for non-service.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

b. The Default Judgment and Stipulation Rates Fell During the Pandemic and Dismissal Rate Soared.

Default judgments are entered when a tenant fails to appear in court or, in Five-Day Courts, fails to file a written answer. High default judgment rates raise access to justice concerns because they may indicate that tenants face barriers to participating in court proceedings.

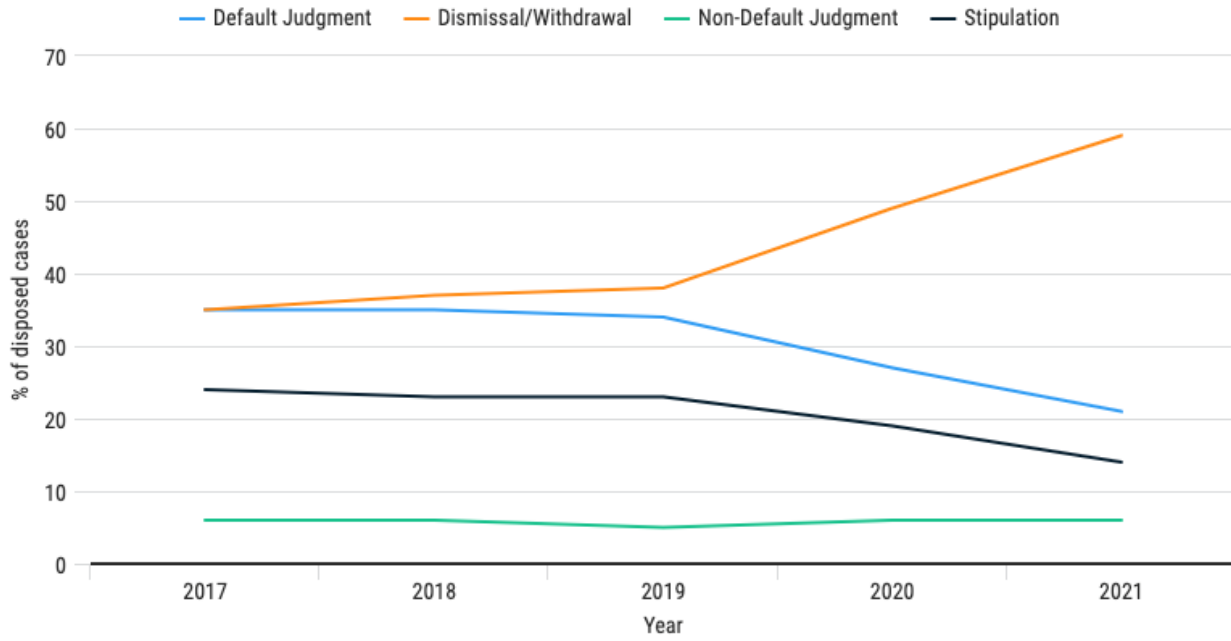
Prior to the pandemic, the overall default judgment fate for summary proceedings cases in Michigan is 35%, meaning that over a third of tenants against whom cases are filed fail to appear in court.<sup>53</sup>

<sup>53</sup> While still significant, the default judgment rate for summary proceedings cases (35%) is markedly lower than debt collection cases (68%), the other high-volume civil case type heard in Michigan district courts. *Advancing Justice for All in Debt Collection Lawsuits: Report and Recommendations*, Michigan JFAC Debt Collection Work Group (Nov. 2022), at 24, available at [https://misc01mstrtu25qprod.dxccloud.episerver.net/4ac33d/siteassets/reports/special-initiatives/justice-for-all/jfa\\_advancing\\_justice\\_for\\_all\\_in\\_debt\\_collection\\_lawsuits.pdf](https://misc01mstrtu25qprod.dxccloud.episerver.net/4ac33d/siteassets/reports/special-initiatives/justice-for-all/jfa_advancing_justice_for_all_in_debt_collection_lawsuits.pdf) (last accessed June 16, 2023).

During the pandemic, the default judgment rate decreased by 38% (from 34% in 2019 to 21% in 2021) and the stipulation rate decreased by 35% (from 23% in 2019 to 15% in 2021), while the dismissal rate soared 55% (from 38% in 2019 to 59% in 2021).

**Pandemic period saw drop in default judgments in eviction cases.**

Share of disposed cases filed 2018-Sept 2021 by disposition type annually.

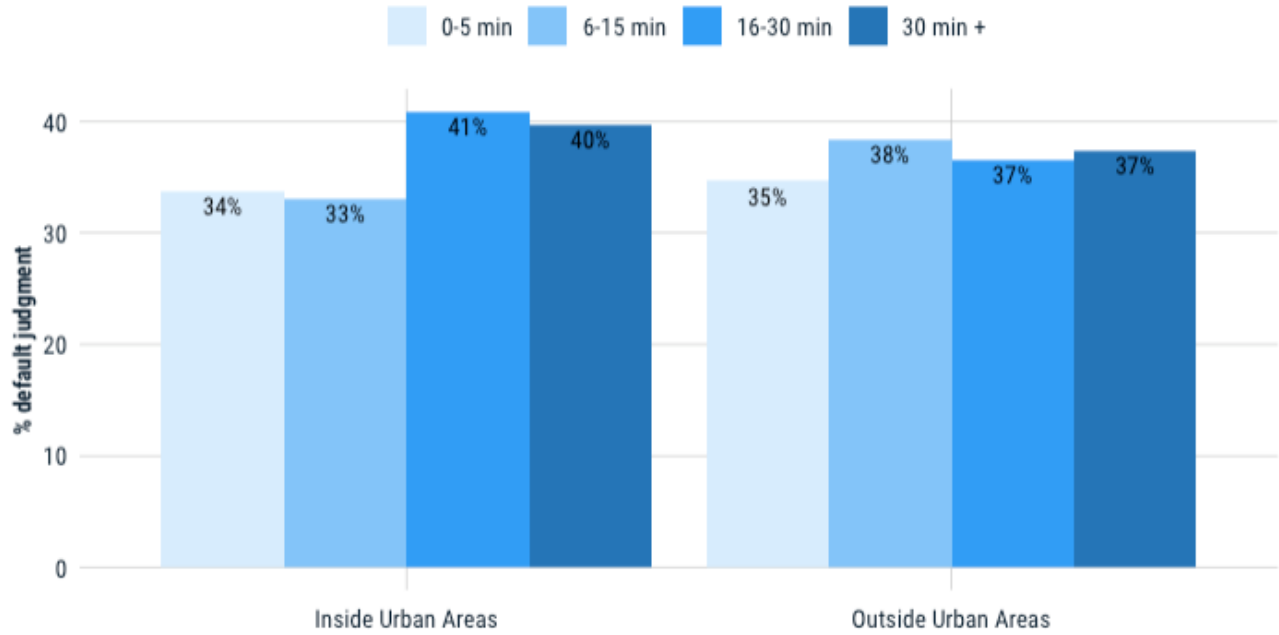


This change was likely due to a combination of factors, including the widespread use of remote hearings and the availability of resources, information, and court procedures that provided the parties with a new avenue to resolve unpaid rent issues.

*i. The Widespread Use of Remote Hearings Impacted Default Judgment Rates in Urban Areas.*

The distance that a tenant needs to travel in urban areas impacts how likely it is that they will show up for in-person court. The default judgment rate increases the farther the tenant lives from the courthouse. In 2017-2019, the default judgment rate for tenants in urban areas who lived more than a 15-minute drive away from the courthouse was 7-8 percentage points higher than tenants who lived closer to their assigned courthouse (40%-41% vs. 33-34%).

Default judgment rate by urbanicity and driving distance to courthouse from tenant's address, 2017-2019.



This finding is consistent with research conducted outside of Michigan, which found that distance to the courthouse is an important factor in how likely it is that tenants will show up for court.<sup>54</sup>

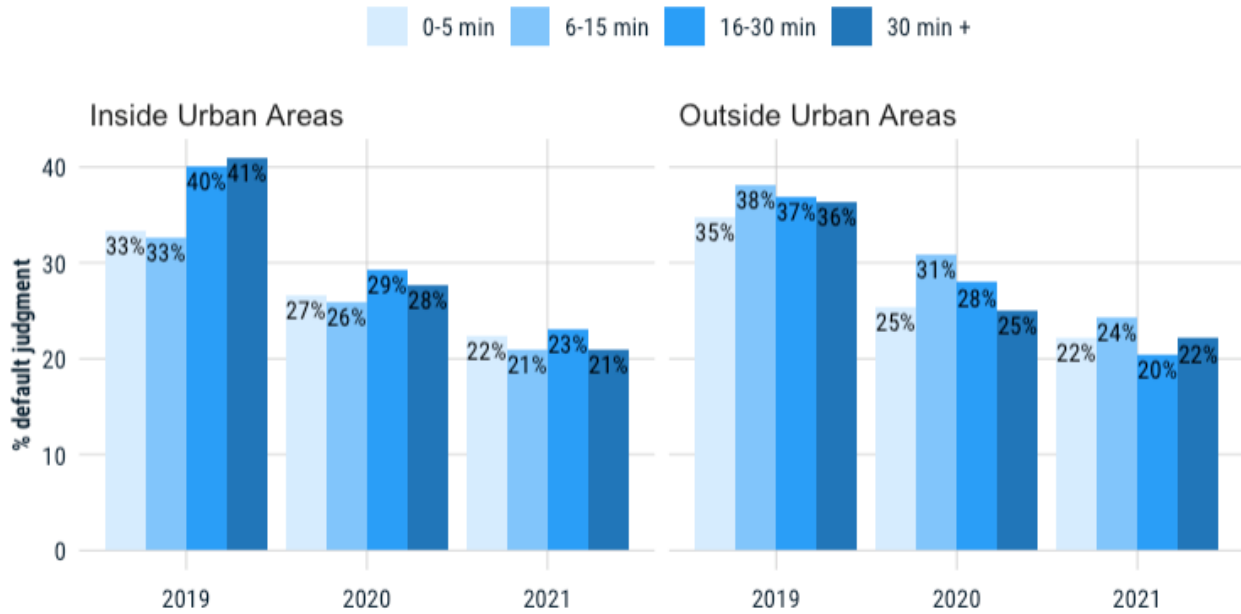
During the pandemic, however, the gap in default rates between tenants living near and far from the courthouse in urban areas disappeared. In 2020 and 2021, the default rates among tenants living 15 minutes from the courthouse and those living farther away were nearly identical in urban areas. This is likely due in large part to Michigan’s increased use of remote hearing for landlord-tenant proceedings based on the Michigan Supreme Court’s instructions and encouragement of courts to use remote technology to the “greatest extent possible.”<sup>55</sup>

For non-urban areas, however, the distance a tenant needed to travel to a courthouse did not meaningfully impact the default judgment rate both before and during the pandemic.

<sup>54</sup> CITE – This was referenced in JA’s report.

<sup>55</sup> AO 2020-17, *supra* note 26.

Default judgment rate by case filing year, urbanicity, and driving distance to courthouse from tenant's address.



For tenants living outside of urban areas, the default judgment rate decrease aligns with the overall decrease in default judgment rates. This may be due to tenants living in suburban and rural areas having more access to cars and parking, reducing the barriers to suburban and rural tenants appearing in court.

*ii. Coordinated Resources and Court Processes Opened New Avenues for Parties to Resolve Disputes During Pandemic*

During the pandemic, the government provided unprecedented emergency rental assistance. Tenants making up to 80% of Area Median Income (AMI) could qualify for rental assistance for up to 18 months to provide relief during a global pandemic. The availability of rental assistance provided a new avenue for tenants to pay past-due rent, likely contributing to the increase in the number of cases dismissed during the pandemic.

Recognizing that rental assistance could resolve many landlord-tenant disputes, in Administrative Order 2020-17, the Court temporarily stayed proceedings while a tenant's CERA application was pending for up to 30 days after the pretrial hearing.<sup>56</sup> By having processes in place in which court process complemented emergency rental assistance application process, tenants were incentivized to participate in court proceedings to obtain assistance and past-due rent issues, and the guarantee of rent dollars incentivized landlords to work with the courts, tenants, and rental assistance agencies to reach a favorable resolution.

<sup>56</sup> *Id.* at Section (G).

Beyond emergency rental assistance, during this time, Michigan expanded its Eviction Diversion Programs (EDPs). EDPs are partnerships between courts, legal aid programs, and community service organizations to provide tenants and landlords with information about resources that may be available to help resolve the dispute and to assist the parties in accessing these resources as quickly as possible.<sup>57</sup> This helps both parties identify common ground and make informed decisions about whether and how to resolve the case before an eviction judgment is rendered. In many EDPs, legal aid attorneys and community service organization staff are present at court, resulting in many people receiving immediate assistance.

While Michigan has been a leader in developing EDPs well before the onset of the pandemic,<sup>58</sup> the pandemic brought a greater understanding of the negative impact of unstable housing on tenants, landlords, and their communities and led to the creation of more EDPs. EDP partners were able to help tenants address their legal problems, such as negotiating a settlement agreement, but also their social problems of stable housing by assisting tenants in applying for rental and other financial assistance.<sup>59</sup> These readily available forms of assistance reduced the default rates by helping tenants and landlords reach agreements.

To help inform tenants of new resources – both financial and legal – that may be available, in Administrative Order 2020-17, the Court required landlords to include with the summons “written information about the availability of counsel and housing assistance information as provided by legal aid or local funding agencies.”<sup>60</sup> This provided vital advice to tenants, letting them know that resources were available, making it more likely for them to attempt to resolve the dispute by applying for rental assistance and seeking assistance from legal aid.

The widespread use of remote proceedings and the coordinated resources and processes that were provided during the pandemic removed common barriers to tenants accessing courts and provided the parties a new avenue to resolve unpaid rent issues, which likely greatly contributed to the marked rise in dismissal rates and decrease in default and stipulation rates during the pandemic. In addition, AO 2020-17 provided clear guidance on the use of conditional dismissals, which likely contributed to the increase in dismissals which may have previously been coded as stipulations by courts. Conditional dismissals are beneficial for tenants, so they avoid the long-term impact of having an eviction judgment on their record, while not negatively impacting landlords.<sup>61</sup>

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<sup>57</sup> In Michigan, EDPs have generally been created through partnerships between local courts, legal aid organizations, and local Department of Health and Human Services (DHHS) offices and Coordinated Entry Agencies (CEAs) (formerly known as Housing Assessment and Resource Agencies).

<sup>58</sup> Michigan began developing EDPs in 2010 with the launch of the Kalamazoo EDP, followed by the development of EDPs in Lansing, Jackson County, and Calhoun County. Karen Merrill Tjapkes and Ashley Lowe, *COVID-19 Eviction Crisis: Large-Scale Development of Eviction Diversion Programs in Michigan*, Michigan Bar Journal (Nov. 2021), available at <https://www.michbar.org/journal/Details/COVID-19-eviction-crisis-Large-scale-development-of-eviction-diversion-programs-in-Michigan?ArticleID=4268> (last visited June 16, 2023).

<sup>59</sup> Eviction Diversion Initiative Grant Program, National Center for State Courts, <https://www.ncsc.org/consulting-and-research/areas-of-expertise/access-to-justice/eviction-diversion-diagnostic-tool/eviction-diversion-initiative-grant-program> (last accessed June 16, 2023).

<sup>60</sup> AO 2020-17, *supra* note 26, Section D.

<sup>61</sup> AO 2020-17, *supra* note 26, Section E.

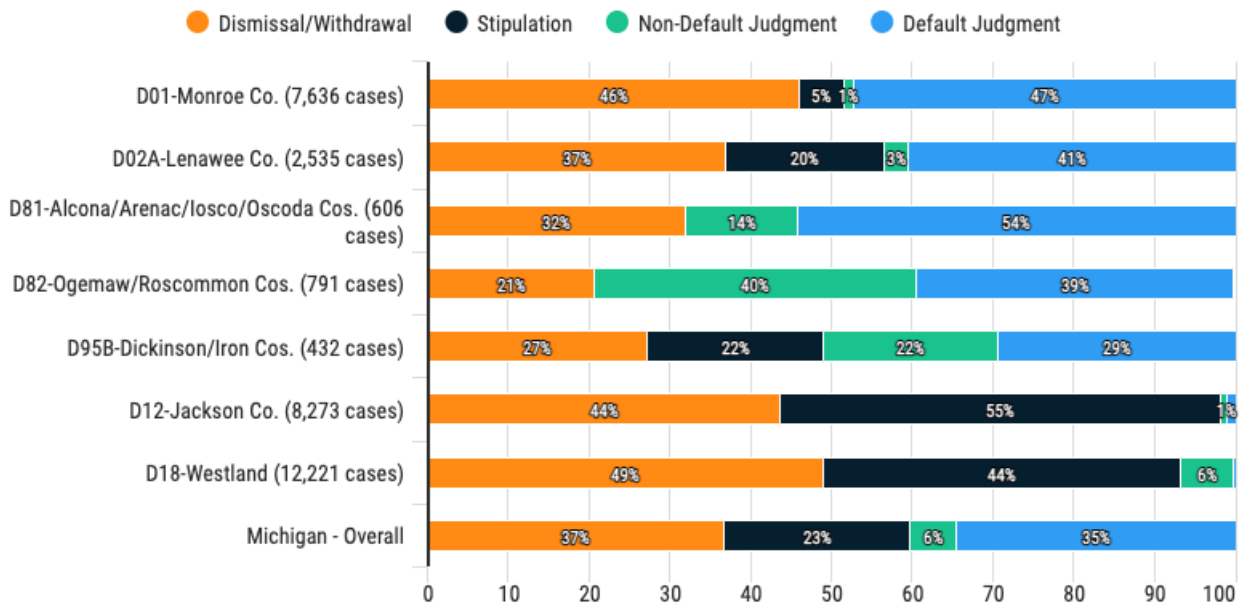
c. Most Five-Day Courts Had Higher Default Judgment Rates, and Suspension of the Five-Day Procedure During the Pandemic Had an Inconsistent Impact on Default Judgment Rates

Prior to the pandemic, several courts in Michigan had local rules that require the tenant to file a written answer to the complaint within five days of service. If the tenant failed to timely file the written answer, then the court could issue a default judgment. With this additional procedural hurdle to obtain a court hearing, many tenant advocates hypothesized that this would lead to a higher default judgment rates, since tenants would need to both file a written response within 5 five days and attend a hearing to avoid a default judgment being entered against them.

The data shows that most Five-Day Courts experienced higher than average default judgment rates, ranging from 39% to 54% compared to Michigan’s average 35% default judgment rate from 2017-2019. During this same time period, however, Dickinson and Iron Counties (D-95B) had a 29% default judgment rate, which is below the Michigan average.

The data for two Five-Day Courts -- Jackson County (D-12) and Westland (D-18) – does not appear to be accurate. Data from these courts show abnormally low default judgment rates. This is likely due to the way these individual courts tracked or labeled case outcomes, rather than any accurate indication of the actual default judgment rates. Indeed, attorneys practicing in these courts did not believe that this data reflected their experience with the courts. Further research into the practices of D-12 and D-18 is needed to understand the default judgment rate and the impact of the Five-Day procedure on the default judgment rate.

Share of disposed cases by disposition type & court, 2017-2019. Does not include cases dismissed for non-service.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

During the pandemic, the Michigan Supreme Court, in Administrative Order 2020-17, temporarily suspended local rules requiring a written answer filed within five-days of service written answer, and the Court is currently considering whether to permanently prohibit this practice.

There was no consistent pattern on the impact of suspending this procedure among Five-Day Courts. Some courts experienced a higher-than-average decrease in the default judgment rate. For example, Monroe County's default judgment rate decreased by 60% (from 45% to 18.1%) while the Five-Day procedure was suspended. Likewise, the default judgment rates for Lenawee County (D-2A) and Dickinson and Iron Counties (D-95B) decreased by 48% and 47%, respectively. Other Five-Day Courts, however, experienced a lower-than-expected decrease in their default judgment rates compared to the Michigan average. For example, Alcona, Arenac, Iosco, and Oscoda Counties (D-81) and Ogemaw and Roscommon Counties (D-82) only experienced a decrease of 21%, while on average, Michigan courts experienced a 38% decrease in default judgment rates during this time.

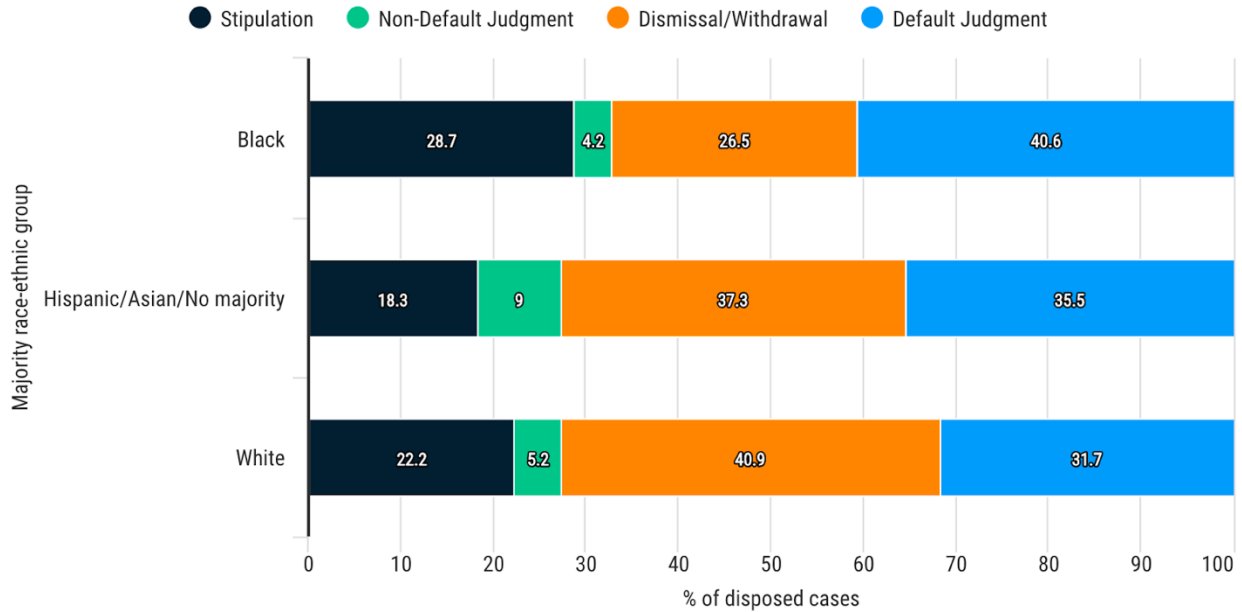
It is not clear why the data shows such stark differences in default judgment rates across Five-Day Courts. For example, these differences could be the result of differences in how case outcomes are being reported in the case management systems for these courts. More information from these courts is needed to draw any conclusions.

d. Racial disparities in case dispositions.

Racial disparities exist not only in the default judgment rates, but also in the stipulation and dismissal rates. Tenants living in Black-majority neighborhoods have higher rates of default judgment than Non-Hispanic White-majority neighborhoods (41% vs. 32%), and higher rates of settlement (29% vs. 22%). Tenants living in Black-majority neighborhoods are less likely to have their case dismissed or withdrawn compared to tenants living in Non-Hispanic White-majority neighborhoods (26.5% vs. 40.9%). In 2019, tenants living in Black-Majority neighborhoods were 30% more likely to receive a default judgment than tenants living in Non-Hispanic White-majority neighborhoods. This racial pattern across neighborhoods doesn't just reflect urban and rural differences but is also present within Detroit's 36th District Court.

## More defaults and fewer dismissals in Black-majority neighborhoods.

% of eviction cases by disposition type and race-ethnic majority of neighborhood, 2017-2019.



Source: Michigan State Court Administrative Office Judicial Data Warehouse, 2017-2019.

Race continued to be a factor in default judgment rates throughout the pandemic. During the pandemic, Black-majority neighborhoods experienced an increase in dismissals and a decline in default judgments; however, in 2021, renters living in Black-majority neighborhoods were still 25% more likely to receive a default judgment compared to renters living in Non-Hispanic White-majority neighborhoods (compared to 30% more likely in 2019).

### 11. Time to Writ of Eviction Increased During Pandemic

If the court grants the landlord possession of the premises, then the landlord needs to wait a certain amount of time before requesting the court to issue a writ of eviction to force the tenant out of the premises. The judgment will state how long the landlord must wait and under what conditions to request a writ of eviction.<sup>62</sup> Typically, the court is statutorily required to wait at least 10 days from entry of the judgment to issue a writ of eviction.<sup>63</sup>

Based on a review of available Judicial Information Systems (JIS) data,<sup>64</sup> in 2018-2019, it took a median of 21 days from the time the judgment was entered for the court to issue a writ of eviction is issued by the courts in Michigan. This is similar across most Michigan courts in the JIS system.

<sup>62</sup> MCR 4.102(K)(1).

<sup>63</sup> MCL 600.5744(5).

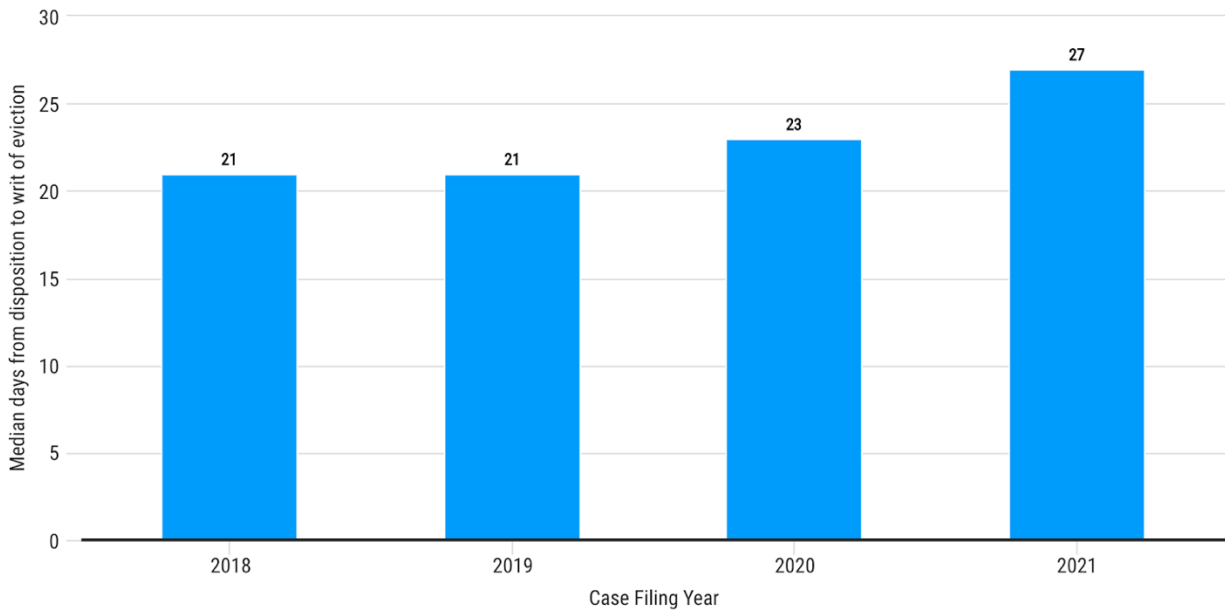
<sup>64</sup> Currently, not all courts are required to report information related to the register of actions. These data, however, are available for roughly 75% of district courts that use the Judicial Information System (JIS) court



There was some increase in the time between court entering a judgment for possession and the court issuing a writ of eviction during the pandemic. Among cases filed in 2021, it took approximately a week longer to get a writ of eviction issued.

### Time between disposition and eviction cases increased during pandemic, but by a smaller amount that time between filing and disposition.

Median days from disposition to writ of eviction for cases filed between 2018-Sept 2021 and disposed by Sept 2021.



Source: Judicial Information Services (JIS) register of actions, 2018-2021.

Notably, this increase in time between the order of possession and writ of eviction may not necessarily be attributable to a slow down with the courts but also could be the result of landlords waiting longer to request the court to issue the writ of eviction.

## 12. Eviction Court Displacement Rates

As discussed above, summary proceedings cases can be resolved in several ways, many of which do not lead to the court issuing a writ of eviction and tenants being forcibly removed from their homes. The eviction court displacement rate, which calculates the likelihood that an eviction filing will lead to a writ of eviction, where a tenant is involuntarily removed from the home, provides a better understanding of the court system’s role in evicting tenants.<sup>65</sup>

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management software. The State Court Administrator’s Office (SCAO) provided data on these register of actions for cases filed between 2018-2021.

<sup>65</sup> Nicole Summers, *Eviction Court Displacement Rates*, 117 Northwestern Univ. L. Rev. 287 (2022).

a. Eviction Court Displacement Rates Deceased During the Pandemic

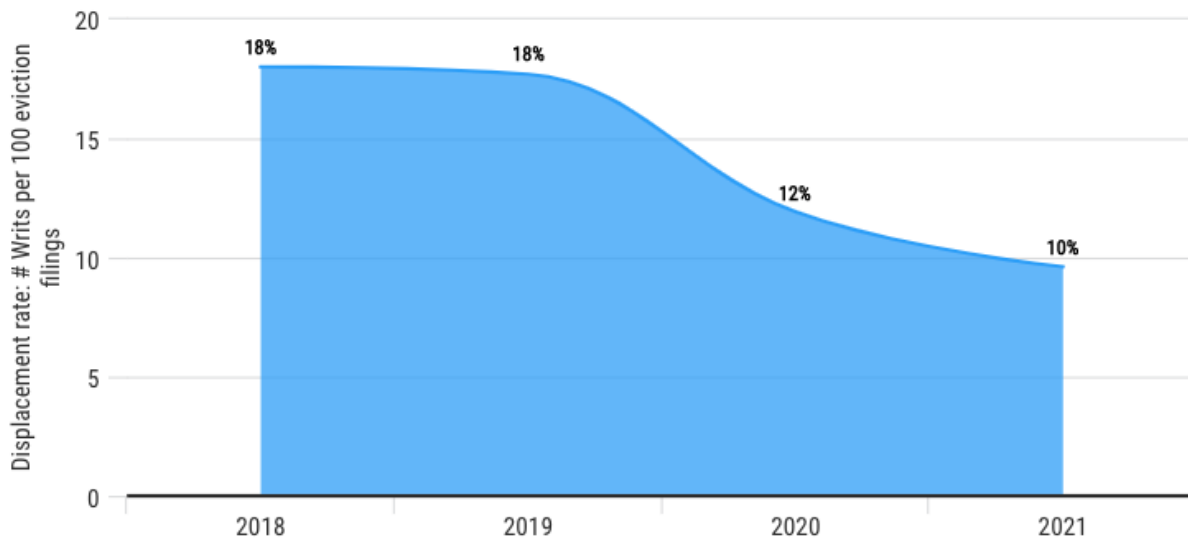
Based on the JIS data available,<sup>66</sup> prior to the COVID-19 pandemic, approximately 18% of eviction filings in Michigan concluded with a court issuing a writ of eviction. This percentage reflects the portion of cases that led to tenants being involuntarily removed from their homes; many other tenants may have left voluntarily before a writ of eviction was issued.

The eviction court displacement rate varies depending on the disposition of the eviction cases. Based on data from 2018 and 2019, a writ of eviction was issued in 30% of cases in which a judgment (default or non-default) was entered, and a writ of eviction was issued in 26% of cases in which a stipulation was entered.

The pandemic brought changes to case disposition rates, with additional resources and procedural safeguards to allow parties to resolve their dispute without an eviction. The dismissal rate increased, the default judgment and stipulation rates decreased, and the non-default judgment rate held relatively steady. This translated into lower eviction court displacement rates during the pandemic. In 2020 and 2021, approximately 10-12% of eviction filings resulted in the issuance of a writ of eviction, showcasing the evolving dynamics within the eviction process during the pandemic period.

### Eviction displacement rate dipped 6 points during pandemic

Eviction displacement rate (writs issued divided by eviction filings) by year for JIS district courts with at least one writ issued in JIS events datasets, 2018-Sept 2021.



Source: Judicial Information Services (JIS) register of actions, 2018-2021.

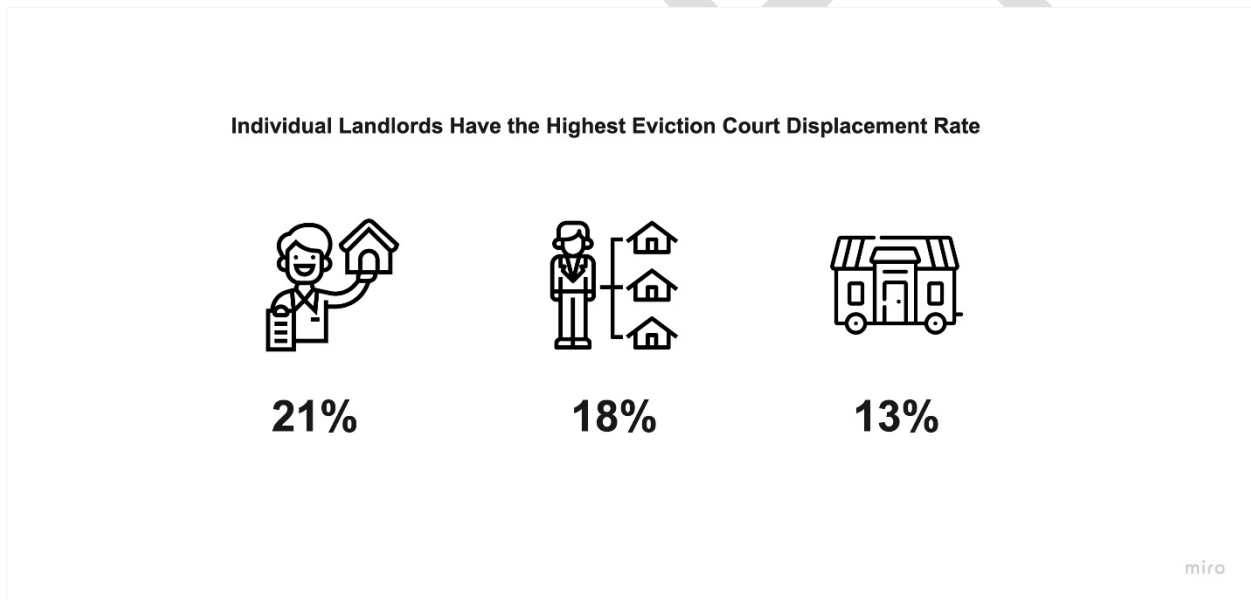
<sup>66</sup> Data specifically pertaining to writs of eviction in Michigan is limited to courts utilizing the JIS court management system between 2018 and 2021. Moreover, data recording practices may vary across these courts, potentially impacting the consistency and reliability of the recorded information.

b. Banks and Mortgage Lenders Have Significantly Higher Eviction Court Displacement Rates than Other Landlords

Different types of landlords have significantly different Eviction Court Displacement Rates. This report is focused on landlord tenant evictions. Because of this, we exclude eviction proceedings brought by banks and mortgage lenders because these cases most likely represent mortgage lenders foreclosing on homeowners' properties.<sup>67</sup>

Individual landlords have the highest tenant Eviction Court Displacement Rate at 21%. Apartment management companies follow closely with an 18% Eviction Court Displacement Rate, while public housing entities have a slightly lower rate of 16%.

In contrast, mobile home companies display the lowest percentage of eviction cases ending in a writ of eviction, standing at 13%. This lower rate can be attributed, at least in part, to their relatively higher rate of dismissals in comparison to other landlord types.



c. Racial Disparities in Eviction Court Displacement Rates Are Significant

Tenants living in Black-majority neighborhoods are 42% more likely to have their eviction case end with a writ of eviction being issued compared to tenants living in Non-Hispanic White-majority neighborhoods. Statewide data reveals that 26% of eviction cases filed in Black-majority neighborhoods end with a writ of eviction, while only 15% of cases filed in Non-Hispanic White-majority neighborhoods have the same outcome.

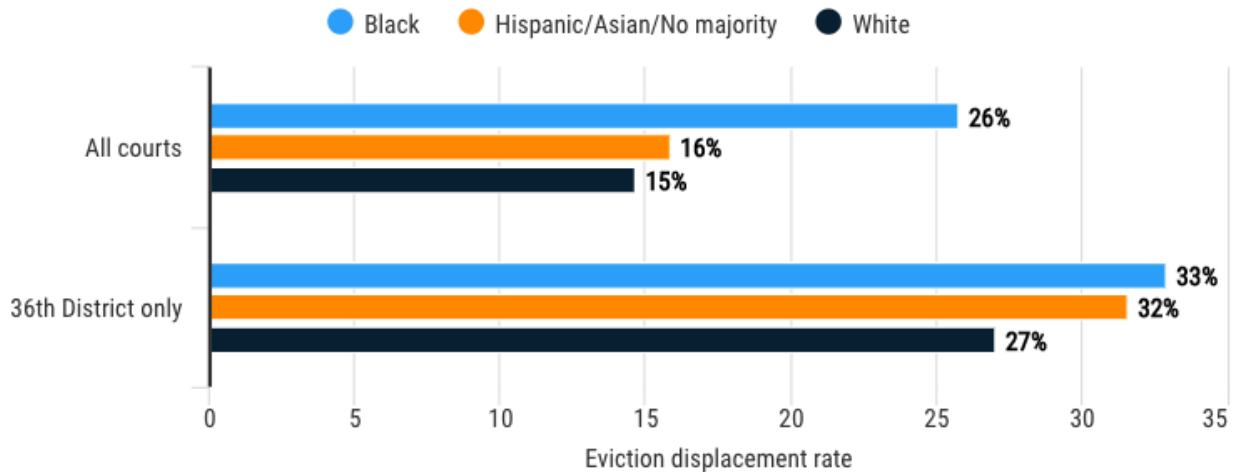
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<sup>67</sup> In Michigan, an eviction proceeding is the last step in a foreclosure case. Mortgage lenders file a summary proceeding action, the same as a landlord would file to evict a tenant. The Michigan court data does not distinguish between rental evictions and foreclosure evictions. In foreclosure cases, by the time the lender files the eviction action, it is highly likely that the homeowner has already left the premises. The eviction order is much less likely to lead to an actual eviction but is much more likely to just be the last step in foreclosing on a property that has already been vacated.

This disparity partly stems from the urban versus rural divide within the Black and White populations. However, even within the same urban court, racial disparities persist. For example, in Detroit's 36th District, one-third of eviction cases filed in Black-majority neighborhoods result in a writ of eviction, whereas just over one-quarter (27%) of cases filed against tenants in Non-Hispanic White-majority neighborhoods result in a writ of eviction.

## Higher eviction displacement rate in Black-majority neighborhoods.

Eviction displacement rate (writs issued divided by eviction filings) by race-ethnic majority of defendant neighborhood, in JIS district courts with at least one writ issued, 2018-2019.



Source: Judicial Information Services (JIS) register of actions, 2018-2019.

Cases filed in Black-majority neighborhoods face a higher likelihood of ending with a writ of eviction compared to cases filed in Non-Hispanic White-majority neighborhoods, meaning that, once an eviction case is filed, a renter in a Black-majority neighborhood is more likely to be involuntarily removed from the premises through an eviction.

## Summary Proceedings Work Group Recommendations

For over two years, the JFAC Summary Proceedings Work Group (Work Group) has been reviewing court data, seeking court user feedback, mapping and analyzing court processes, conducting research, and engaging in intense policy discussions. The Work Group examined the problems courts, tenants, and landlords face in the summary proceedings process, with the goal of identifying the most effective solutions to address these problems.

These discussions took place while the Michigan Supreme Court was actively considering permanently implementing procedural changes to the summary proceedings process enacted during the COVID-19 pandemic. On August 10, 2022, the Court published for comment [proposed rule amendments](#) and received over 800 comments from judges, landlords, tenants, policymakers, and community members. As of the release of this Report, the proposal is still pending before the Court.

Because the Supreme Court is actively considering making procedural changes, the Work Group focused its efforts on addressing other issues within the summary proceedings process. The Work Group focused on improvements that can be made to case management to provide for more consistent practices across courts to help eliminate the confusion that both landlords and tenants face when trying to navigate summary proceedings cases. In addition, the Work Group focused on developing strategies to provide relevant and accessible information and resources for tenants and landlords so they may make more informed decisions on how to proceed with their cases, develop effective and collaborative community partnerships, and improve court data and access to information.<sup>68</sup>

## Improve Summary Proceedings Processes

Michigan has a broad array of courts, each with differing resources and community needs. This makes a one-size-fits-all case management model difficult. While Michigan's non-unified court system benefits court users, by allowing individual courts to tailor services to local community needs, this benefit is outweighed by the need for consistency, particularly in summary proceedings matters. Summary proceedings cases are unique in their need for uniformity for two main reasons. First, landlords may have properties across the state, in different jurisdictions. It makes business difficult when they must conform to different processes and procedures when they cross the county line. Second, the vast majority of tenants and a sizeable number of landlords attempt to navigate these cases without the assistance of legal representation. The large number of self-represented litigants means that entities like courts and legal services providers must make information available to help guide litigants through court processes. If there is a different process in each court, it is challenging to create and maintain accurate self-help resources for litigants.

### 1. Lesson Learned: Inconsistent Adherence to Administrative Orders Leads to Inconsistent Access to Justice Across Courts

Administrative orders are one tool that the Michigan Supreme Court uses to encourage uniform court processes across Michigan courts. Throughout the pandemic, the Court issued administrative orders pertaining to case management for summary proceedings cases, which included rules on prioritizing cases, utilizing remote proceedings, suspending local rules that required tenants to submit written answers, and requiring courts to hold pretrial hearings to inform parties of their rights.<sup>69</sup>

Courts, however, did not implement these administrative orders uniformly. These inconsistencies led to confusion among court users, particularly self-represented litigants who often rely on guidance from self-help centers and Michigan Legal Help, which created resources based on the guidance provided by the administrative orders. These inconsistencies also led to different requirements for litigants to preserve their procedural rights throughout the proceedings. For example, although Administrative Order 2020-17 set forth a two-step hearing process for summary proceedings cases

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<sup>68</sup> As part of the recommendations, the Work Group advocates for the implementation of best practices across courts. The best practice recommendations are meant to identify strategies or processes that will effectively address a problem; however, these best practices are not intended to be requirements for all courts to follow, particularly given the varying resources and challenges that courts face throughout the state.

<sup>69</sup> See AO 2020-17, *supra* note 26.

when the defendant appeared at the initial hearing, some courts entered judgments at the initial hearing, rather than holding a pretrial hearing informing the parties of their rights.<sup>70</sup> This was not only contrary to the two-step process required by the administrative order but also contrary to the information available on Michigan Legal Help, creating confusion and procedural disparities for litigants.

Similarly, Administrative Order 2020-17 required that courts utilize remote hearings to “the greatest extent possible,” however, courts interpreted this provision differently, resulting in some courts requiring a larger percentage of landlords and tenants to appear in person. This inconsistency, in turn, created additional barriers to some parties exercising their rights to a hearing and, as discussed in Finding 10b, increased the likelihood that a default judgment would be entered against a tenant residing in an urban area.

These examples demonstrate that the inconsistent implementation of administrative orders – particularly administrative orders impacting court processes – leads to more systemic inconsistencies in access to justice downstream. While courts across the state struggle with varying resources and challenges, court processes should not change for litigants based on what side of the county line they live on.

## 2. Best Practice: Create Dockets Dedicated to Summary Proceedings Cases

Summary proceedings cases require unique court and community resources. These cases are one of the highest volume cases filed in Michigan’s district court, and 98% of tenants are not represented by counsel.<sup>71</sup> These cases significantly impact Michigan’s rental community, with an estimated 16.1 cases filed per 100 renters.<sup>72</sup>

Summary proceedings cases are also high stakes cases. On the surface, important property interests are at stake – a rental property meant to provide income to the landlord and a family’s home. Research, however, indicates that evictions can have severe collateral consequences for families beyond access to stable housing, including negatively impacting their ability to obtain basic necessities (*e.g.*, food, clothing, and medicine), mental health, education for children (*e.g.*, higher rates of absenteeism and lower test scores), and can even lead to child abuse and neglect.

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<sup>70</sup> This failure to adhere to the two-step process set forth by the Court is evidenced by the data. During the pandemic, one court took as few as a median of nine days to dispose of summary proceedings cases. This is a dramatically shorter time period than the median 26 days across courts to dispose of cases during the pandemic, and even shorter than the pre-pandemic time to disposition of 14-15 days.

<sup>71</sup> While the tenant representation rate tripled in 2020, only 1.5% of tenants were represented in their landlord-tenant cases. Based on Judicial Warehouse data from the State Court Administrative Office, from 2010 to 2021, the average rate of tenant representation was 0.6%.

<sup>72</sup> Mark K. Cunningham, *Reduce Poverty by Improving Housing Stability*, The Urban Wire (June 26, 2016), available at <https://www.urban.org/urban-wire/reduce-poverty-improving-housing-stability> (last accessed June 16, 2023). In addition, the Michigan Poverty Task Force Report notes, housing instability can lead to serious health risks, including higher rates of mortality and worse health outcomes. Poverty Task Force Report, Michigan Department of Labor and Economic Opportunity, at 20 (2022), available at [https://www.michigan.gov/leo/-/media/Project/Websites/leo/Folder16/22-LEO-0478-PTF-PrePress.pdf?hash=5F422576BB6C143F65BB5A50ED5A1E70&rev=db428253b1154b5e8621b799370c123d&utm\\_medium=email&utm\\_source=govdelivery](https://www.michigan.gov/leo/-/media/Project/Websites/leo/Folder16/22-LEO-0478-PTF-PrePress.pdf?hash=5F422576BB6C143F65BB5A50ED5A1E70&rev=db428253b1154b5e8621b799370c123d&utm_medium=email&utm_source=govdelivery) (last accessed June 16, 2023).

**To effectively address the unique needs of summary proceedings cases, the Court should adopt a best practice for courts to schedule summary proceedings matters on a dedicated docket.**

This best practice would permit the court to focus resources on the unique needs of these cases. Dedicated dockets create efficiencies for landlords, tenants, and courts. A dedicated docket would allow legal aid lawyers to attend and provide limited services to self-represented litigants and allow community resource organizations to identify individuals in need and connect them with resources in an efficient way. For example, a human services agency could send staff to the dedicated docket hearing summary proceedings cases to conduct outreach and provide information to landlords and tenants. Dedicated dockets would also be more efficient for landlords, who would be able to have multiple cases simultaneously.

Lower volume courts may not have enough cases to create an entire docket, but these courts should cluster summary proceedings cases together to achieve similar objectives.

### 3. Best Practice: Schedule Summary Proceeding Cases for Appropriate, Reasonable, and Specific Times

Simply having dedicated dockets for summary proceedings actions is not enough to eliminate barriers to litigants effectively participating in the process. Throughout Michigan and across the country, landlord-tenant dockets are held in a bulk fashion, in which all landlords and tenants are expected to arrive at court at the same time, packing the courtroom, forcing many litigants into crowded hallways straining to hear if their case is being called.<sup>73</sup>

During the COVID-19 pandemic, many courts experimented with different docket management strategies to reduce the number of people in a room at one time, such as staggering the scheduling of cases every half hour or hour. This reduced the number of people filling court hallways and made attending court more convenient for many litigants.<sup>74</sup>

**To help ensure that litigants have meaningful access to the courts, the Work Group recommends that the Court adopt as a best practice that courts eliminate bulk dockets and**

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<sup>73</sup> See, e.g., Nino C. Monea, *Eviction Moratorium Litigation: What Courts Said, and What Courts Missed*, 51 UBALR 185, 228 (2022) (“Traditionally, eviction courts operate in ‘cattle call’ fashion, where huge numbers of tenants facing eviction are packed into a courtroom.”); Breezy A. Schmidt, *North Dakota Case Study: The Eviction Mill’s Fast Track to Homelessness*, 92 NDLR 595, at 599 (2017) (noting that “[e]viction court has often become a cattle call with an assembly line stamping eviction orders in favor of the landlords”); Steven H. Schulman, *Race and Civil Justice: A Reflection from a Corporate Law Firm Pro Bono Attorney*, 28 GEOJLE 317, at 318 (2015) (noting the racial disparities in DC’s landlord-tenant branch court, describing the tenants as “sitting and waiting through the cattle call – are almost all unrepresented”).

<sup>74</sup> Pandemic Era Procedural Improvements Courts Should Adopt Permanently, National Center for State Courts, at 29 (Sept. 2022), available at [https://www.ncsc.org/data/assets/pdf\\_file/0030/84873/Pandemic-Improvements-10.31.2022.pdf](https://www.ncsc.org/data/assets/pdf_file/0030/84873/Pandemic-Improvements-10.31.2022.pdf) (last accessed June 16, 2023).

**schedule hearings at times certain.** When scheduling hearings, the court should accommodate both parties, whenever possible.

This need has also been recognized by the JFAC Reimagining Courthouses Workgroup, which has developed a similar recommendation.

#### 4. Adopt Statewide Rules for Remote Proceedings Specifically for Summary Proceedings Cases

Without a doubt, the use of videoconferencing technology has increased access to justice in landlord-tenant proceedings for many Michiganders. During the pandemic when courts were required to utilize remote proceedings to the greatest extent possible, the default rate decreased statewide by 38% while the dismissal rate increased by 55%.

Litigants no longer needed to take significant time off work, find childcare, travel to the courthouse, or navigate their way through the courthouse corridors, and sit in a courtroom for hours waiting for their case to be called. Instead, litigants could attend court more conveniently by following a Zoom link. In interviews, many tenants expressed a preference for remote hearings, one describing in-person proceedings as “more intense.”<sup>75</sup>

*Online hearing is much more convenient . . . for me, especially, because I don't have a license so getting up to the court is very hard. Calling is much easier. It's also easier anxiety-wise to do it over the phone than showing up in person.*<sup>76</sup>

Landlords also benefitted from the use of remote proceedings:

*I love the remote [hearings] . . . To me, it makes sense. When you go to court in [location], for instance . . . I have to drive around thirty minutes to get [there] and then . . . find a place to park. You have to get from where you park, unless it's right next to the building, you're walking through the city to get to court. You have to go through all of the metal detectors . . . It's just logistically a 30-minute court session but it can take up to five hours.*<sup>77</sup>

For some, including those without reliable access to an electronic device or the internet, however, the use of remote proceedings presents an insurmountable barrier to access to justice. In Michigan,

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<sup>75</sup> Tenant Interview 10.

<sup>76</sup> Tenant Interview 9.

<sup>77</sup> Landlord Interview 3.



an estimated 1.13 million people do not have access to the internet.<sup>78</sup> Indeed, in interviews, some tenants discussed the barriers they faced in participating in a remote hearing.

*“Our internet keeps going in and out. And we don’t really have cell services, so we couldn’t use data. So, if our internet had not come back on, I think an hour before it would have started, we wouldn’t have been able to actually appear in court.”<sup>79</sup>*

On August 10, 2022, the Court adopted a new court rule to address remote hearing in civil cases.<sup>80</sup> Rule 2.408 provides that a court may hold remote proceedings for civil proceedings, with a presumption that video conferencing is appropriate for certain types of proceedings, including civil pretrials, scheduling conferences, and discovery motions; however, videoconferencing is not available "in bench or jury trials, or any civil proceeding wherein the testimony of witnesses or presentation of evidence may occur, except in the discretion of the court after all parties have had notice and opportunity to be heard on the use of videoconferencing technology."<sup>81</sup> Under this rule, summary proceedings actions in which evidence is to be presented would be presumed to be in person, imposing the same barriers pre-pandemic to self-represented litigants accessing courts.

**Given the unique needs of summary proceedings actions, the Work Group recommends the development of proposed rules that specifically govern remote proceedings in summary proceedings actions to address the unique characteristics of these cases.**

The proposed rule should focus on ways in which technology can be streamlined, made more user-friendly for litigants, and effectively utilize breakout rooms to facilitate negotiations between parties. As provided in MCR 2.407(B)(4), the proposed rule should explicitly provide that a party has the right to request to appear physically for any proceeding, and if a party makes such a request or is otherwise found not to be able to effectively participate in a remote proceeding that the party may appear in person before the judge.

## 5. Create a Uniform Adjournment Request Form

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<sup>78</sup> SLRN Digital Divide Dashboard- Michigan, available at <https://srln.maps.arcgis.com/apps/dashboards/6c1631a808e241c8b4a0711c2291ce52> (last accessed June 16, 2023)).

<sup>79</sup> Tenant interview 11.

<sup>80</sup> Order, Adm. File 2020-08, Michigan Supreme Court (August 10, 2022), [https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08\\_2022-08-10\\_formor\\_pandemicamdts.pdf](https://www.courts.michigan.gov/4a42b2/siteassets/rules-instructions-administrative-orders/proposed-and-recently-adopted-orders-on-admin-matters/adopted-orders/2020-08_2022-08-10_formor_pandemicamdts.pdf) (last accessed June 16, 2023).

<sup>81</sup> MCR 2.408.

To promote consistent processes across courts, the Work Group recommends creating a Summary Proceedings (Landlord/Tenant) adjournment request form. The form should be available, but not mandatory.

Currently, the process to request an adjournment is inconsistent among Michigan courts. Some courts require a telephone call, others prefer e-mail. When a party is represented by counsel, the attorney knows how to navigate the various court systems to request an adjournment and notify the other side; however, self-represented litigants struggle with requesting an adjournment, articulating their need for an adjournment, and properly notifying the other side because there are no clear and consistent processes. Self-represented litigants face barriers simply getting answers on how to request an adjournment, struggling to locate the correct contact information for the court and having court staff answer their calls.

**For these reasons, the Work Group recommends that the JFAC Forms Committee or the SCAO create a specific form for requesting adjournments in summary proceedings cases.** This will promote consistency in the process and remove barriers to self-represented litigants requesting an adjournment when necessary.

#### 6. Amend the Court Rules to Provide Tenants with the Right to Request the Ledger

Discovery is typically not available in summary proceedings cases;<sup>82</sup> however, the rent ledger often contains vital information, including an itemized list of charges that the landlord is seeking to recover from the tenant. This information is so important that some Work Group members advocated that the ledger be required to be attached to the complaint to allow the tenants to better understand the claims that landlords are raising against them. Those against requiring the ledger to be attached to the complaint noted that it was unnecessary because the information in the ledger is typically already incorporated in the complaint and that the ledger changes over the life of the case.

**As a compromise position, the Work Group recommends that appropriate statutes or court rules be amended to provide tenants with the right to request the ledger and impose on the landlord an obligation to provide the ledger if the tenant requests it.**

The right to request a ledger should be incorporated into any Landlord-Tenant Advice of Rights that is provided to tenants with the Summons and Complaint, informing tenants of their rights and responsibilities as well as resources to help them.

#### 7. Provide Plain Language Information on Resources Early in the Process

Resources and help, such as legal aid and emergency rental assistance, are available to tenants facing evictions; however, tenants and landlords often are not aware of the resources available to them or how to access them. As one tenant facing eviction explained:

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<sup>82</sup> MCR 2.301(A).

*“I applied for a different CERA program that I didn’t even know existed at first . . . it’s kind of an odd drawn out process. . . I actually had someone from [Organization] that I used to live at help me . . . I think I got approved. They wanted me to accept like terms and conditions. I don’t I don’t know.”<sup>83</sup>*

Consequently, litigants do not access assistance at all or do so too late in the process to resolve the issue, unnecessarily costing the litigants and court time, money, and resources. To enable litigants to efficiently resolve their disputes, they must understand what resources are available and how to access those resource as early in the process as possible.

During the COVID-19 pandemic, the Court required landlords to include with the summons “written information about the availability of counsel and housing assistance information as provided by legal aid or local funding agencies.”<sup>84</sup> This information allowed tenants to understand the help available and make informed decisions with how to proceed with their case. During this same time, the default judgment rate fell statewide by 38% and the dismissal rate soared by 55%.

**For these reasons, the Work Group recommends that the Michigan State Court Administrative Office (SCAO) work with local courts to develop a resource form for their jurisdiction outlining both legal and non-legal resources available to tenants and landlords related to their summary proceedings cases.<sup>85</sup>**

The resource form should be required to be distributed with the Notice or Demand, so that litigants have it as early as possible in the process to work on resolutions prior to court involvement. Alternatively, or in addition, the SCAO could develop an Advice of Rights form to be distributed by courts that provides information regarding resources and court process. Information that should be included on the resource form includes:

- a. Rental assistance resources, such as the contact information for the local Housing Assessment and Resource Agency (HARA);
- b. The local Department of Health and Human Services;
- c. Mental health resources, such as the local community mental health agency and crisis lines;
- e. Legal services contact information and the Michigan Legal Help website.; and
- f. Right to Counsel contact information, where available.

Providing this information is a low burden for courts but potentially a highly impactful strategy to help litigants utilize available resources early in the process.

## 8. Create Plain Language Forms and Materials

Resources and information are helpful, but they must be in a format that people can understand. It is essential for forms and materials to be in plain language to allow self-represented litigants to

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<sup>83</sup> Tenant interview 3.

<sup>84</sup> AO 2020-17, *supra* note 26, Section D.

<sup>85</sup> While many local courts already do this, the process, availability, and type of information varies from court to court. SCAO is best positioned to identify and educate local jurisdictions about best practices and innovative ideas developed by other jurisdictions.

meaningfully access courts and understand their rights, obligations, and potential legal consequences.

Data from the United States Department of Education indicates that more than half of adult Americans read below the equivalent of a sixth-grade reading level. Indeed, in Michigan, 18% of adults read at or below a Level 1 literacy level,<sup>86</sup> meaning that they lack the skills to compare and contrast, paraphrase, or make low-level inferences.<sup>87</sup>

**The Work Group recommends that the language on the forms be amended so that they are understandable at least to individuals who read at a sixth-grade reading level and should be translatable to other languages spoken throughout the state.<sup>88</sup>**

The Work Group recommends that it collaborate with the JFAC Forms Committee to develop plain language court forms for summary proceedings.

### 9. Evaluate Language Access Needs in Summary Proceedings Cases

Many English speakers struggle with the summary proceedings process. The level of complexity is compounded for individuals with limited English proficiency.

**The Work Group recommends that the summary proceedings process should be reviewed from the perspective of a non-English speaking litigant to identify the barriers they currently face in the process, including any barriers to requesting interpretation services and access to information and court forms.**

The JFAC's Reimagining Courthouses Work Group is charged with examining language access issues and their impact on access to justice. Therefore, the Work Group recommends that the Reimagining Courthouses Work Group evaluate language access needs specific to summary proceedings cases and make appropriate recommendations.

### 10. Develop Enhanced Education for All Involved in the Summary Proceedings Process

Education is vital for all participants in summary proceedings, and the Work Group recommends improving the already-available educational materials and opportunities.

Tenants often have a number of misconceptions about the summary proceedings process and the substantive rights they may be able to assert during that process. To address these issues, the Work Group recommends partnering with appropriate stakeholders – potentially including the JFAC

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<sup>86</sup> U.S. Skills Map: State and County Indicators of Adult Literacy and Numeracy, United States Department of Education National Center for Education Statistics, <https://nces.ed.gov/surveys/piaac/skillsmap/> (last accessed June 16, 2023).

<sup>87</sup> Data Point: Adult Literacy in the United States, United States Department of Education National Center for Education Statistics, <https://nces.ed.gov/pubs2019/2019179/index.asp> (last accessed June 16, 2023).

Those below a Level 1 literacy level may only understand basic vocabulary or be functionally illiterate.

<sup>88</sup> In Michigan, the most common non-English languages spoken as the primary language in households are Spanish, Arabic, and Chinese (including Mandarin and Cantonese). Michigan, Data USA, <https://datausa.io/profile/geo/michigan/> (last visited June 16, 2023).

Training and Outreach Committee and Michigan Legal Help – to create culturally competent education materials that are sensitive to the fact that tenants may be scared and stressed when they access these materials and they may have varying levels of trust of public institutions, including our courts. In addition, since most tenants are self-represented litigants with limited or no experience with courts, basic concepts – such as the differences between summary proceedings and criminal cases – need to be explained. Because tenants may face any number of barriers to engaging with the court, these resources should be developed in partnership with trusted community partners, including local libraries. Stakeholders could work with the Michigan Library Association to produce materials and distribute to local libraries in print form and in other media, such as videos.

The Work Group recognizes that beyond legal information on MLH and the SCAO court forms, little resources or support currently exists for self-represented landlords. Self-represented landlords may benefit from do-it-yourself (DIY) document assembly form tools for landlords; more detailed legal information on the eviction process and rental assistance options and processes; mediation options; legal clinics; and/or legal assistance. To address this issue, the Work Group recommends putting together a separate stakeholder group to engage in research on the types of resources that self-represented landlords may need and how to provide those resources most effectively to them, learning from similar efforts in other jurisdictions. Potential partners in these efforts may include local bar associations, landlord associations, trained navigators, community dispute resolution centers, Michigan Legal Help, and court staff.

In addition, there are also opportunities to improve the existing education for judges, including creating a resource guide for the bench that helps judges direct litigants to resources and agencies that may help the litigants resolve their dispute or allow litigants to see assistance that may help them avoid court involvement in the future. Educational materials could be developed, potentially in partnership with Michigan State Housing & Development Authority (MSHDA), focusing on the unique legal issues posed by subsidized and public housing, such as “good cause” eviction standards and how Housing Choice Vouchers interact with the private landlord/tenant lease contract.

**For these reasons, the Work Group recommends partnering with the JFAC Training and Outreach Committee to collaborate with stakeholders to develop more effective educational materials for tenants, landlords, and judges.**

## 11. Support and Acknowledge the Benefits of Counsel for Both Landlords and Tenants

Summary proceedings represent important property interests for both landlords and tenants. Almost 20% of landlords and 98% of tenants are not represented by counsel in their summary proceedings case. While legal aid provides essential assistance to tenants, legal aid is unable to represent landlords and lacks the resources to meet the demand of all tenants facing eviction. Significantly more help is needed.

Eviction cases impact the local community in part because they can drive families away. According to a recent study by Stout, “at least 12 percent of Detroit renter households that experienced an

eviction filing likely migrated out of the city for reasons related to an eviction filing.”<sup>89</sup> Detroit, however, is not the only community facing the deleterious impact of eviction proceedings; Romulus has a staggering case filing rate of 49.4% of its rental community, followed by Oakland County, Inkster, Harper Woods, Clinton Township, Southfield, Taylor and Ypsilanti which experience case filing rates of over 33% for its rental community. By investing in the right to counsel programs, these communities would experience significant economic returns. According to the Stout study, by investing \$16.7 million in a right to counsel program, “Detroit may recognize economic benefits of at least an estimated \$58.8 million.”<sup>90</sup>

In May 2022, Detroit became one of 16 cities and 4 states<sup>91</sup> to adopt a law providing the right to counsel in summary proceedings cases.<sup>92</sup> Oakland County recently commissioned a cost analysis report on a Right to Counsel program. In December 2022, the Michigan Interagency Council on Homelessness sent a letter to Governor Whitmer advocating for a statewide right to counsel in civil evictions.<sup>93</sup>

**The JFAC should support and acknowledge the benefits of representation for both landlords and tenants.** This Work Group believes that the courts should ultimately be accessible for all who interact with it, including those who do not have representation. Right to Counsel efforts may be able to help mitigate the challenges that self-represented litigants currently face when involved in high-stakes proceedings such as evictions. To further explore this concept and its potential impact, the Work Group recommends the JFAC create a steering committee with representation from tenant and landlord groups dedicated to exploring various Right to Counsel models that could benefit both self-represented landlords and tenants.

## 12. Explore How Regulatory Reform Can Increase Legal Assistance to Landlords and Tenants

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<sup>89</sup> *The Estimated Economic Impact of an Eviction Right to Counsel in Detroit*, Rocket Community Fund (Feb. 9, 2022), <https://www.rocketcommunityfund.org/wp-content/uploads/2022/05/The-Estimated-Economic-Impact-of-an-Eviction-Right-to-Counsel-in-Detroit.pdf> (last accessed June 16, 2023).

<sup>90</sup> *Id.*

<sup>91</sup> Washington State, Maryland, and Connecticut adopted right counsel legislation for eviction cases. Cities across the nation have also adopted laws to provide the right to counsel in eviction cases, including New York City (2017), San Francisco, Newark, Cleveland, Philadelphia, Boulder, Baltimore, Seattle, Louisville, Denver, Toledo, Minneapolis, Kansas City, New Orleans, and Detroit. *The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, National Coalition for a Civil Right to Counsel, [http://civilrighttocounsel.org/uploaded\\_files/283/RTC\\_Enacted\\_Legislation\\_in\\_Eviction\\_Proceedings\\_FINAL.pdf](http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf) (data updated June 2023) (last accessed June 16, 2023).

<sup>92</sup> *Detroit City Council Approves Right to Counsel Ordinance*, WDET (May 10, 2022), available at <https://wdet.org/2022/05/10/detroit-city-council-approves-right-to-counsel-ordinance/> (last accessed June 16, 2023).

<sup>93</sup> Letter to Governor Whitmer, Michigan Interagency Council on Homelessness (Dec. 20, 2022), <https://www.mihomeless.org/wp-content/uploads/2023/01/2023-2024-MICH-MHPC-Whitmer-Letter-Final-1.pdf> (last accessed June 16, 2023).

The Work Group recognizes that implementing a widespread right to counsel in landlord-tenant proceedings will take significant time and resources. While these efforts are being developed, it is important to address the current needs of self-represented litigants by determining the most effective way to utilize lawyers and other professionals who can competently provide legal assistance.

A number of states have amended their court rules or created pilot projects to allow paraprofessionals who have received focused training to offer limited legal services in specific areas of law, including landlord-tenant proceedings. In 2022, the Delaware Supreme Court [enacted Rule 57.1](#) to allow Qualified Tenant Advocates to provide legal advice in landlord-tenant cases under the supervision of a Delaware legal aid lawyer.<sup>94</sup> Prior to enacting this rule, landlords were already allowed to be represented by an agent who was not a lawyer in eviction proceedings but tenants were not. Minnesota recently implemented [two pilot projects](#), allowing trained legal paraprofessionals to provide legal advice in landlord-tenant cases under the supervision of an attorney.<sup>95</sup> New Hampshire passed a [bill](#) enacting a Legal Paraprofessional Pilot Project, which began in January 2023, that allows legal paraprofessionals, under the supervision of an attorney, to represent clients in domestic violence, divorce, custody, and landlord-tenant cases.<sup>96</sup> Alaska has developed a broader [Community Justice Worker Program](#) in which individuals who have completed approved training can provide legal assistance to low-income Alaskans under the supervision of the Alaska Legal Services Corporation.<sup>97</sup>

At its June 2023 meeting, the JFAC's Regulatory and Practice Reform Committee presented draft recommendations for the Commission's initial consideration. These recommendations call for the development of a pilot program to allow for the provision of limited legal services—including in summary proceedings cases—by individuals who are not attorneys.

**Based on the unmet need for legal assistance in summary proceedings cases and the successful programs developed in other states, the Work Group supports the inclusion of summary proceedings cases in a pilot program to allow trained paraprofessionals under the appropriate supervision should be allowed to provide limited legal services.**

## Community Partnerships

As part of its [strategic vision](#), the JFAC seeks to improve Michigan's justice system to provide a safe, trusted, and inclusive experience for addressing problems and strengthening communities.<sup>98</sup> To achieve this strategic vision, courts should be community partners that collaboratively work with a

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<sup>94</sup> *Delaware Supreme Court Announces Adoption of New Supreme Court Rule 57.1 to Allow Non-Lawyer Representation of Residential Tenants in Eviction Cases*, Delaware Court Press Release (Jan. 28, 2022), <https://courts.delaware.gov/forms/download.aspx?id=133348> (last accessed June 16, 2023).

<sup>95</sup> *Legal Paraprofessional Pilot Project*, MN Judicial Branch, <https://www.mncourts.gov/Help-Topics/Legal-Paraprofessional-Pilot-Project.aspx> (last accessed June 16, 2023).

<sup>96</sup> HB 1343 (2022 Session, New Hampshire Legislature), <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/inline-documents/sonh/supreme-court-rule-35-appearances-in-court-by-eligible-paraprofessionals-chapter-194-sc-rule-35.pdf> (last accessed June 16, 2023).

<sup>97</sup> *Community Justice Worker Program*, Alaska Legal Services Corp., <https://www.alsc-law.org/community-justice-worker-program/> (last accessed June 16, 2023).

<sup>98</sup> JFAC Strategic Plan, *supra* note 1, at 5.

wide variety of partners to achieve better outcomes for people’s civil legal and related problems. The Summary Proceedings Work Group has several recommendations to further this goal in the area of evictions.

### 13. Support Michigan’s Eviction Diversion Programs by Identifying and Supporting Effective EDP Strategies

EDPs are a strategic partnership between courts and community partners to help tenants and landlords resolve eviction filings by providing legal assistance to self-represented tenants and landlords in court.

EDPs help make court processes more navigable and understandable for self-represented tenants and landlords by providing access to legal and non-legal resources and information necessary to make informed legal decisions and find common ground for settlement agreements. By providing legal assistance and resources to self-represented litigants, the summary proceeding process flows more smoothly through the courts, creating efficiencies in the system and improving the administration of justice. For example, if a tenant qualifies for rental assistance, this can present a win-win situation in which the landlord will be able to recover unpaid rent and the tenant can remain in housing. Additionally, tenants may feel stigmatized throughout the summary proceedings process and hesitant to ask for help. As one tenant described when asked what advice the tenant would provide others facing eviction:

*It can feel like a very demoralizing and stigmatized process. And I know how it can feel going through it and trying to reach out to difference services and feeling like things are kind of stacked against you. And I would just advise that help and assistance are not weaknesses. You are not sacrificing any part of yourself by asking for it. And you’re sacrificing everything about yourself if you don’t . . . But just assistance in coaxing people into help just because this is such a stigmatized process that having someone right from the stark kind of helping those who might be reluctant to ask for help or might feel like they can’t ask for help.<sup>99</sup>*

An EDP facilitator or partners can help unrepresented parties feel more empowered engaging in court process and walk litigants through resources that may be available to them, normalizing the process for applying for and receiving rental assistance.

EDPs can provide powerful support to landlords and tenants; however, some work group members noted that EDPs can also cause unnecessary delays and questioned whether the benefits outweighed the costs.

There is currently no systematic understanding of what programs exist across Michigan, what outcomes these programs are achieving, or how to replicate effective programs across courts. **The Work Group recommends that the SCAO complete an inventory of current Eviction Diversion Programs around Michigan and evaluate each program based upon successful evidenced based practices. Upon review, the SCAO should, identify program impacts, synthesize the most successful components of each program, and create a toolkit for replication for courts who are considering implementing an EDP.**

Some successful components of an EDP could include:

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<sup>99</sup> Tenant Interview 14 & 15.



- i. Engaging in effective outreach to self-represented landlords and tenants to let them know about the resources available;
- ii. Inviting social services agencies in the courtroom (in-person or virtual) to directly connect self-represented litigants with resources, assess their eligibility for resources including rental assistance, and assist with the application process for any available resources;
- iii. Allowing legal services in the courtroom (virtual or physical) to provide screening, advice, and potentially representation to tenants and landlords who qualify for their services;
- iv. Having the cooperation and support from the Court through its procedures and resources to enable the partner organizations to provide the services outlined above;
- v. Providing mechanisms to share information between agencies (without violating applicable ethical rules) to facilitate collaboration (*e.g.*, sharing the status of rental assistance applications, the number of cases on the docket for a given day; whether a particular hearing has been postponed, etc.).

**In addition, to further develop best practices and the courts' role in supporting and helping their communities, the Work Group recommends that the JFAC support the development of pilot projects in partnership with other community service providers, such as the Michigan Department of Health and Human Services (MDHHS) where MDHHS navigators could help people apply for benefits such as food assistance and health insurance right in the courtroom.**

#### 14. Create Mechanisms to Allow Courts to Learn from Housing Partners and Stakeholders

EDPs are one specific example of how courts can bring in community parties to help tenants and landlords receive resources and help. All courts, however, should strengthen their community partnerships to help support court-users and their community.

Courts play an essential role in the community as problem-solvers, but too often courts operate in isolation without an understanding of how they impact the community at large. Courts and community partners should actively and regularly share information and data with each other to help each other better understand how to effectively address the needs of their community. Information and data from community partners provide courts with a better understanding of the rental needs in their community, such as the availability and cost of housing, availability of subsidized housing, the number of unplaced subsidized housing vouchers, estimated waiting time on homeless preference waiting lists, and staffing and funding capacity of local financial assistance agencies. Eviction court data, in turn, would provide community partners with a better understanding of the volume and trends in case filings to help those community partners respond to the ever-changing needs of the community.

To encourage this information sharing, the Work Group recommends that the SCAO assist district courts in developing a regular summary proceedings stakeholder convening focused on information, resource, and data sharing and designed to facilitate cross disciplinary collaboration between the courts and stakeholders, including local and statewide service providers, and professional associations.

#### 15. Work Collaboratively with Community Partners to Overcome Barriers to Effectively Serve Landlords and Tenants

To improve access to justice across the state, the Work Group recommends convening a stakeholder group, including Judicial Branch stakeholders, such as the JFAC, and Executive Branch stakeholders, such as MDHHS, to collaboratively address systemic issues with resources like rental assistance and to address barriers landlords and tenants face and their impact on court processes and housing stability, including:

- a. Substantial differences in resources that exist in different parts of the state, especially between urban and rural locations.
- b. The eligibility requirements to qualify for certain resources often exclude subsets of renters. For example, mainstream resources, such as State Emergency Relief (SER), often prioritize workers with an emphasis on earned income and increasing earned income and fail to recognize that some tenants are unable to work due to age and/or disability or other significant barriers.
- c. Delays in determining a tenant's eligibility for rental assistance prevents landlords and tenants from understanding whether there is any common ground for them to reach a settlement. The stakeholder group could help provide support to identify strategies to expedite the process, such as using proxies or data sharing in lieu of a lengthy and complicated eligibility determination process.
- b. Lack of consistency in processing rental assistance applications makes it difficult for landlords to work with tenants because they do not know when they will receive the rental assistance payments. The stakeholder group should work with its community partners to more efficiently process rental assistance payments and make the process more uniform across the state to remove these barriers to landlord participation.
- c. The timing for applying for rental assistance also needs to be reviewed. Currently, tenants can only apply for SER after an eviction case has been filed against them. This costs the court resources, takes time and money from the landlord, and hurts tenants by having an eviction case on their record. If tenants could apply for SER after receiving a Demand for Possession or Notice to Quit from the landlord, then the court would save resources because fewer cases would be filed, the tenants would receive emergency assistance without an eviction case on their record, and landlords would receive rent sooner and not have to incur court costs and attorney fees.
- d. Courts should work collaboratively with their community partners to identify problems with the SER rules to effectively provide support to families at risk of eviction, such as the maximum assistance amount, affordability condition, prohibition

on assistance to doubled-up families, documentation requirements, ability to provide help to pay future rent.

e. The application process for Emergency Rental Assistance also needs to be reviewed. Currently, the program requires burdensome documentation to qualify for assistance, which are difficult for landlords and tenants to follow while they are also in the midst of a summary proceeding process. In addition, the guidelines for SER are long and difficult to understand for both tenants and landlords. Stakeholders should collaborate to help ensure the SER and other forms of rental assistance have plain language materials and user-friendly frequently asked question to make their rules and regulations more understandable.

f. The amount of Emergency Rental Assistance provided also needs to be reviewed. Currently, the affordability requirements are rigid and fail to account for the significant lack of affordable housing throughout the state. Accordingly, stakeholders need to come together to address these issues and develop solutions.

d. The stakeholder group should work with community partners to identify new and alternative sources for rental assistance beyond SER.

Courts cannot address these barriers alone.

**To effectively address these barriers, the Work Group recommends that the JFAC support the creation of a separate group composed of a diverse range of community and legal stakeholders to collaborate to identify solutions to help meet the needs of landlords, tenants, and communities at large.**

This group should be comprised of higher-level representatives from state government, including MSHDA and MDHHS, as well as private philanthropy, local social services agencies, and those with lived experience to evaluate revisions to program requirements to address these concerns, with a special emphasis on the unique resource needs and challenges of rural communities. To assist this stakeholder group in making the most informed and effective recommendation, they should consider research on the value of stable housing and avoiding displacement when possible, including the benefits to workforce development and the health system (especially in regard to seniors and those with disabilities).

## 16. Support and Participate in Pilot Programs Aimed at Holistically Addressing the Needs of Tenants Facing Chronic Housing Instability

Some tenants experience complex problems that result in chronic housing instability. Having these problems go unaddressed hurts tenants, their landlords, and their communities. Courts also play an important role with tenants experiencing chronic housing instability – these tenants are often in and out of district court with repeated summary proceedings actions filed against them. Organizations that specifically address chronic housing instability would greatly benefit from access to court data about these individuals, including case level data.

For these reasons, the Work Group recommends that, to the extent that other stakeholders, such as MDHHS or MSDHA, develop a pilot project or work group aimed at addressing the needs of those facing chronic housing instability, the SCAO should fully support and participate in the pilot program by providing data and information to assist in these efforts. In addition, the SCAO should encourage courts to refer individuals to existing programs that assist people facing chronic housing instability.

## Improve Court Data and Access to Court Records

Court data is vital to identifying barriers to justice for all and understanding whether policy reforms are moving the needle toward 100% civil justice for all Michiganders. The court data used in this study was essential to understanding the summary proceedings process in Michigan. The data contained in court records, however, could be improved to increase access to the public, track trends, and the effects of policy reform in Michigan.

### 17. Statewide Court Records Search

Work Group members agreed that consistent access to accurate court data was essential for all parties during summary proceedings. The Work Group acknowledges and supports the Michigan Judicial Council's effort to advance the Court Funding and Technology Infrastructure strategic goal, specifically its implementation of a statewide case management system. This initiative is vital to the consistent access to court records through the [MiCOURT Case Search](#) platform.<sup>100</sup>

The Work Group has engaged in detailed discussions about the appropriate level of access to court records in summary proceedings actions. Work Group members have different perspectives about which specific data points should be publicly and privately accessible through the case management system and would like the opportunity to share their diverse perspectives as summary proceedings experts to help inform the Michigan Judicial Council when it is considering future infrastructure affecting this practice area.

### 18. Improve Data Collection and Reporting Across Courts

The Work Group recommends that the SCAO work with January Advisors and/or other data analysis experts to improve the data currently being collected and to make data collection consistent across courts. This includes structured data that some jurisdictions already report to the SCAO, as well as other "event" data that may be unclassifiable or free-form text. Courts using the JIS case management system report some additional information like whether and when a writ of eviction is issued in a case. Even among these courts, however, there appears to be a lack of standardization and consistency in reporting practices.

The court should collect data on the type of party (*e.g.*, if the landlord is an individual or corporation) and the reason the landlord seeks an eviction (*e.g.*, non-payment of rent, damage to property, etc.). Ultimately, this extended data collection should go beyond clearance rates to help court stakeholders understand trends and key points in the summary proceedings process.

In addition, court case management systems should be modified to accurately track EDP assistance, allowing EDPs to collect and share data to better understand their impact on summary proceedings

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<sup>100</sup> MiCOURT Case Search, <https://micourt.courts.michigan.gov/case-search/> (last accessed June 16, 2023).

cases.<sup>101</sup> To the extent that it is not feasible to modify the case management system, in the alternative, the JFAC should encourage courts to work with EPDs to allow EPDs to incorporate and track case data.

**For these reasons, the Work Group recommends that the JFAC encourage the SCAO to develop best practices for data collection and reporting and incentivize courts to comply through a statewide report and/or performance awards and continue supporting the JFAC Data Committee’s work in this area.**

#### 19. Standardize Plaintiff Names and Writ of Eviction Orders

Research focused on cities outside of Michigan has indicated that a small number of landlords can significantly impact the eviction filing and eviction rates. To understand the impact of repeat filers in Michigan, it is important that researchers can identify these filers in the court data.

When reviewing the summary proceedings court data, January Advisors faced the same difficulties with the use of multiple names and spellings for the same repeat filers as it did when analyzing debt collection cases. Inconsistent names in the summary proceedings data made it more difficult to identify repeat filers, thus creating an unnecessary barrier to identify trends related to filers.

**The Work Group recommends that the JFAC support the continued efforts of the SCAO’s MiFILE initiative in the spirit of standardizing data entry of plaintiff names and offer the assistance of Work Group members in this initiative to provide their specific perspective as experts in this practice area.**

#### 20. Standardize Event Data in Summary Proceedings Cases

When reviewing the data, courts differed in the way they inputted certain events in the system and in many instances not all case events were even recorded. For example, the writ of eviction and the execution of the writ are two separate events; however, they are not consistently recorded in case management systems. The writ of eviction returns were not consistently recorded (perhaps due to inconsistent practices of filing the return with the court) and did not consistently indicate whether the writ was fully executed (lock out), cancelled, or posted and no execution (because tenant already moved out).

**To increase consistency in summary proceedings data, the Work Group recommends that the JFAC support efforts to standardize data entry of case events in a summary proceedings cases and, to the extent helpful, offer the assistance of Work Group members as experts in this practice area.**

#### 21. Improve Data Collection and Data Sharing

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<sup>101</sup> In many cases in which legal aid is representing a client through an EDP, the representation is not noted on the record, so it is difficult to understand how many tenants and landlords are being represented through these programs. This recommendation aligns with the JFAC Technology and Data Sharing Committee’s work, which is developing a pilot project using data sharing and anonymizing the results to study the impacts of legal advice (and not representation) on eviction cases.

Currently, there is no agreement on what data should be captured or measured over the course of eviction cases, which makes it difficult to evaluate the fairness and effectiveness of these proceedings. For example, court records do not accurately report legal aid representation, particularly when legal aid steps in to assist in a limited fashion through an EDP. An analysis of all active cases filed Jan 2021 through Sept 2021 found that only 8% of the eviction cases Legal Aid served had representation in the SCAO data. This lack of data makes it difficult to understand how many tenants are being assisted through legal aid through either full or limited representation.

**To improve this data, the Work Group recommends that the SCAO map the life of a summary proceedings case to identify points in the process in which data would be beneficial, inventory the current data points collected explore missing data points not currently captured, and identify uniform procedures for courts to increase consistency in data collected in the future.** This will help promote data sharing with legal service providers and housing stakeholders and assess the impact of various program and practice efforts.

## Conclusion

The Work Group would like to thank the Michigan Supreme Court and the Justice for All Commission for its continued support for this work. This report would not have been possible without the invaluable assistance and support of The Pew Charitable Trusts and January Advisors, along with the expertise, commitment, insightful contributions, collegiality, and humility of each Work Group member.

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