Eviction Diversion: A Community-Based Approach to Addressing High Rates of Eviction in Durham County, North Carolina

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Abstract

With one eviction filing per 37.93 residents in 2017, Durham County had the highest per capita eviction rate of any metropolitan county in North Carolina. Landlords filed over 9,000 evictions, which resulted in 5,066 Durham renter households receiving eviction judgments on their housing records. Landlords cite eviction judgments as immediate grounds for disqualification for tenancy, so tenants with judgments on their records have significant difficulty securing new housing. In recent years, eviction has become a primary focus of the affordable housing discussion, but few programs have been implemented to mitigate the direct, negative impact of court ordered eviction judgments, namely homelessness. This Honors Senior Thesis examines the potential for a newly implemented Eviction Diversion Program (ED Program) in Durham County to streamline community resources to better serve the financial and legal needs of low-income renter households in an effort to prevent homelessness. This analysis synthesizes data from court records with information gathered from interviews with ED Program stakeholders in Durham and in five district courts in Michigan that have piloted ED Programs. It is concluded that ED Programs can both increase efficiency in landlord-tenant court proceedings and unite private and public entities committed to reducing homelessness. In Durham, the ED Program has the capacity to assist a small percentage of evicted households in avoiding homelessness. However, stakeholders and community leaders should continue to prioritize the preservation and construction of affordable housing, which more directly addresses the needs of low-income residents in the county.
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In 2017, Durham County had one eviction filing per 37.93 residents, the highest per capita eviction rate of any metropolitan county in North Carolina. Eviction is the process by which landlords force tenants to vacate their residences. In North Carolina, eviction is governed by General Statute Chapter 42, Article 3, which provides the basis for summary ejectment through the court system. In North Carolina, a landlord can legally evict a tenant for five reasons: 1) nonpayment of rent; 2) breach of lease terms or conditions; 3) tenant remaining on premises after lease expiration (“tenant holdover”); 4) criminal activity; and 5) when compliance with the housing code requires demolition or remodeling (NC General Statute 42, 2016). Since 1981, all other types of forced relocation have been illegal under North Carolina statutory law. This includes “self-help” evictions, whereby landlord force tenants to move by changing the locks, shutting off utilities, or removing tenants’ possessions. This study focuses specifically on a policy designed to reduce rates of legal eviction judgments and eviction filings.

Policymakers have vested interests in preventing homelessness and advancing housing stability, both of which can be addressed in part by reducing rates of eviction. The nearly 10,000 evictions filed in the Durham County court system in 2017 resulted in 5,066 renter households in Durham receiving eviction judgments on their housing records. Given that landlords often cite eviction judgments as grounds for immediate disqualification for tenancy, tenants with judgments on their records have difficulty securing new housing. These individuals are often forced to take up residence with family members or friends, or in homeless shelters (Desmond, 2016). Studies in New York City have found that between 19 and 47 percent of families entering the homeless shelter system had been evicted (formally or informally) in the five years prior becoming homeless (The Catastrophe of Homelessness, 2018).
Eviction also increases reliance on homeless providers and on social programs, including cash assistance (Work First, TANF), food assistance (Supplemental Nutritional Assistance Program, SNAP), and healthcare subsidies (Medicaid) (Desmond 2016). Increased dependence burdens local, state, and federal governments and community-based organizations that provide homeless services. Proactively investing in homelessness prevention is the most cost-effective strategy to mitigate the aforementioned consequences: homelessness providers spend over $700 more per household to rehouse families than to prevent those families from initially falling into homelessness (HUD, 2016).

There also exists an equity-driven rationale for pursuing policies that mitigate eviction rates. Similar to the majority of metropolitan areas across the United States, low-income communities of color in Durham County, North Carolina have significantly higher rates of eviction than do more affluent, white communities (Neighborhood Compass, 2014). As a result, low-income, minority households disproportionately face the aforementioned consequences associated with housing instability. Part of this trend is attributable to recent economic development in Durham, which has caused median rental prices in the county to increase by 16.3 percent between 2010 and 2016 (ACS, 2016). The fastest growth has occurred in historically low-income, minority neighborhoods in the City of Durham, which have seen median rental rate increases of over 19.5 percent between 2010 and 2016 (ACS, 2016). This is the third fastest growth of any of the 100 counties in North Carolina. The need for affordable housing in the county is evidenced by the fact that approximately 10,000 households in Durham are on the waitlist to receive Housing Choice Vouchers, the federal program that assists low-income, disabled, and elderly populations to secure affordable housing on the private market (Durham Housing Authority, 2018).
This study examines a community-based effort that has recently been implemented in Durham County to address the economic and equity-related consequences of high eviction rates. The approach, known as an Eviction Diversion Program (hereafter referred to as “ED Program”), was conceived in 2010 in Kalamazoo, Michigan. Community stakeholders in Kalamazoo designed the ED Program to improve and expedite tenant access to rental assistance in the face of summary ejectment (eviction). Several other district courts in Michigan have since adopted versions of Kalamazoo’s ED Program. While all of the programs are structured differently, they all aim to reduce legal evictions filed for nonpayment of rent. To do so, the ED Programs connect public and private entities, including Department of Health and Human Services (DHHS)/Department of Social Services (DSS), the court system, Legal Services, and community organizations, to provide financial and legal assistance low-income renter households facing eviction.

On August 1, 2017, Durham County took a significant step towards addressing its high rate of eviction filings by initiating North Carolina’s first ED Program. Durham’s program is a collaborative effort between the Durham County Department of Social Services (DSS), Duke Law School’s Civil Justice Clinic, the Durham County branch of Legal Aid of North Carolina (LANC), the Durham County court system, tenants, and landlords. A tenant becomes eligible for assistance through the ED Program upon reception of an eviction notice. Similar to ED Programs in Michigan, Durham’s ED Program seeks to reduce the number of tenants who receive summary ejectment (eviction) judgments on their housing records in order to promote housing stability and reduce homelessness.

This thesis examines the capacity of such a program to effectively reduce rates of eviction filings and judgments in Durham County. It also compares outcomes from Durham’s ED Program with those from various ED Programs in district courts across Michigan to provide feedback on
the most effective programmatic structures and funding sources. This study focuses on legal evictions that are processed through the court system but acknowledges that illegal evictions occur as well. Additionally, this study is primarily concerned with evictions that occur for nonpayment of rent because ED Programs aim to assist tenants facing financial setbacks, not those otherwise in breach of their leases or those facing criminal charges.

This study evaluates Durham’s ED Program using a mixed-methods approach. It analyzes quantitative data from county-level court records from North Carolina to determine the statistical impacts of the ED Program on rates of eviction filings and eviction judgments in Durham. This thesis also examines data on housing affordability, rates of rentership, demographic concentration, and economic transformation to identify patterns among eviction, income, and race in Durham County. Finally, it synthesizes information gleaned from semi-structured interviews with stakeholders in ED Programs in both Durham and Michigan to examine the nuances and challenges of implementing a program that seeks to mitigate eviction.

This analysis seeks to accomplish four primary objectives. First, it will provide insight into the potential for this specific ED Program to reduce rates of eviction filings and judgments in Durham County. Secondly, it will discuss ways in which to increase the effectiveness of Durham’s ED Program to ensure that tenants’ needs are appropriately met. Thirdly, it will discuss the ideal housing market and tenant characteristics for a successful ED Program. Finally, it will provide specific recommendations of three additional policy actions that would promote housing stability among low-income tenant populations in Durham County.
II. Literature Review

Policymakers and community-based development organizations widely recognize secure, affordable housing as a key ingredient for economic prosperity. Eviction and the ability to pay rent are two important components of the affordable housing discussion. Currently, there exist two primary strands of research on eviction: 1) causes of eviction and housing instability; and 2) consequences of eviction and housing instability. The focus on these two areas, while important, does not directly address what policy can do to prevent eviction and its detrimental effects. This study seeks to provide the first insight into the capacity of ED Programs to reduce eviction filings and judgments. This section will begin by examining the literature on discriminatory housing and economic policy in the United States, which impacts many aspects of eviction relevant to this analysis.

 Discriminatory Housing and Economic Policy

Eviction is more complicated than simple demand and supply inequalities. As Been and Bozorg (2017) explain, “Housing instability is not just about the lack of funds to make the rent. For most…, housing instability is the byproduct of multiple other misfortunes (1410).” Been & Bozorg (2017) describe these other “misfortunes” as the result of decades of discriminatory housing and economic policies (e.g., red-lining; preventing minorities from taking out low-interest loans; segregated public housing) that have rendered subsets of the American population, primarily people of color, vulnerable and susceptible to the slightest financial crisis.

Housing policy in the United States has resulted in significant residential segregation of white communities and communities of color. In The Color of Law, Richard Rothstein thoroughly examines the creation and continuation of de jure residential segregation:
Until the last quarter of the twentieth century, racially explicit policies of federal, state, and local governments defined where whites and African Americans should live. Today, residential segregation in the North, South, Midwest, and West is not the unintended consequence of individual choices and of otherwise well-meaning law or regulation but of unhidden public policy that explicitly segregated every metropolitan area in the United States. (VIII)

By reinforcing segregation nationwide, such housing policies resulted in the concentration of African Americans in areas that lacked access to quality healthcare, job training, and education (Anderson, 2011). By contrast, whites were afforded preferable locations, sturdier structures, and greater access to financing opportunities, all of which promoted economic prosperity (Rothstein, 2017). The so-called “slums” into which African Americans were forced had high rates of crime and illness, thus becoming targets for urban renewal projects (Anderson, 2011). In A History of Durham County, North Carolina, Joan Anderson describes the outcome of a large scale urban renewal project in Durham’s historically African American Hayti district:

The result [of urban renewal] did not match its promise, for a number of reasons related to leadership, local management, unforeseen side effects, and alleged racial bias…many knowledgeable blacks claimed that urban renewal everywhere became a means to remove black neighborhoods, disperse black power, and destroy black unity. Many felt that poor blacks were hoodwinked by their middle- and upper-class leaders. (Anderson, 2011: 343)

Segregation in housing construction persists today, driven by restrictions on the largest source of federal affordable housing funding, the Low-Income Housing Tax Credit (LIHTC). A 2017 analysis of new LIHTC developments found that 54 percent of new projects have been built in areas with majority nonwhite populations despite the fact that only about one-third of all census tracts in the United States’ largest metropolitan areas have majority nonwhite populations (Eligon et al., 2017). The results of this study indicate efforts to concentrate low-income minority populations in nonwhite communities, which perpetuates the cycle of negative consequences that arise when communities lack access to economic opportunity.
Housing policy at the federal and state levels also produces indirect consequences related to access to both housing and economic opportunities. Rothstein (2017) argues that such policy is responsible for the flourishing of other, “de facto” causes of segregation and discrimination such as private prejudice, white flight, real estate steering, bank redlining, income differences, and self-segregation. A 2002 audit study by the US Department of Housing and Urban Development (HUD) provides evidence of such discrimination in the search for shelter:

Blacks [experience] consistently adverse treatment in roughly one in five housing searches and Hispanics [experience] consistent adverse treatment in one out of four housing searches (both rental and sales). Measured discrimination [takes] the form of less information offered about units, fewer opportunities to view units, and, in the case of homebuyers, less assistance with financing and steering into less wealthy communities and neighborhoods with a higher proportion of minority residents. (Pager and Shepherd, 2008: 188)

Discrimination in housing continues beyond the rental agreement or point of purchase—minorities are more likely to suffer from inadequate housing conditions, harassment or physical threats by managers or neighbors, and unequal enforcement of a residential association’s rules (Roscigno et al., 2007). But the consequences of housing discrimination and segregation do not stop there:

[Residential segregation] systematically undermines the social and economic well-being of blacks in the United States. Because of [it], a significant share of black America is condemned to experience a social environment where poverty and joblessness are the norm, where a majority of children are born out of wedlock, where most families are on welfare, where educational failure prevails, and where social and physical deterioration abound. Through prolonged exposure to such an environment, black chances for social and economic success are drastically reduced. (Denton and Massey, 1993: 2)

Given the direct correlation between residential segregation and lack of access to economic opportunity, it is not surprising that low-income, primarily minority communities experience high rates of eviction due to nonpayment of rent. In Durham County, the highest rates of eviction occur
within the city limits, which have high concentrations of low-income, minority renters (see Figures 1, 2, 3) (Neighborhood Compass, 2014).

Durham’s ED Program could potentially provide these households with both financial relief in the face of economic setbacks as well as legal expertise in cases of inadequate housing conditions and/or discrimination by the landlord. This study will investigate the capacity of the program to achieve these outcomes, thereby helping to mitigate decades of unequal treatment that have contributed to the affordable housing crisis that exists today.

**Eviction, Housing Instability, and the Cycle of Poverty**

Although historically referred to as “America’s Hidden Housing Problem,” eviction has recently jumped to the forefront of the affordable housing conversation (Hartman and Robinson 2003). One reason for this newfound focus is the increasing proportion of American renter households: in 2017, over 36 percent of American households were renters, up from 31 percent in 2004 (Joint Center for Housing Studies, 2017). The increasing proportion of renter households is consistent across demographic groups that have historically had low rates of rentership, including whites, middle-aged adults, and multi-person households (Joint Center for Housing Studies, 2017). This section will provide insight into who faces eviction, the causes of involuntary relocation, and the consequences associated with housing instability.

**Who Faces Eviction?**

What are the characteristics of typical households facing eviction? Unfortunately, documentation of eviction is not collected on a national basis, nor is involuntary relocation systematically recorded (Hartman and Robinson, 2003). We can attribute this, in part, to both the
ambiguous and broad definition of “involuntary relocation” and to the numerous causes of eviction, which will be reviewed below. The lack of data on the demographic characteristics of tenants facing eviction presents a serious challenge for policymakers seeking to develop policy that promotes housing stability among renters.

Fortunately, despite the lack of adequate documentation, several studies have been conducted to examine eviction in specific, urban locations. Low-income minority households make up the majority of evicted tenants—in Milwaukee in 2013, the median monthly household income of renters in eviction court was approximately $935, significantly below the poverty threshold for a family of four in the U.S. ($2,092/month) (Desmond, 2016; U.S. DHHS, 2018). Similar conclusions from a 1993 study of Housing Court in New York City find that nearly 50 percent of the tenants facing eviction had annual incomes below $10,000, and 86 percent were African American or Latinx (Community Training Resource Center et al., 1993). Researchers have also found that the median amount of back rent owed is nearly double the tenant’s average median income, suggesting an accumulation of unpaid rent over time as well as a lack of amassed wealth to draw from in the face of a crisis situation (Desmond, 2016).

With respect to the composition of evicted households, those headed by women are disproportionately represented among evictees. In Chicago, 62 percent of those appearing in eviction court were women, and in Philadelphia, 70 percent of tenants facing eviction were nonwhite women (Chadha, 1996). Households with children are also overrepresented—they are more than three times as likely to receive an eviction judgment than those without kids (Desmond, 2016).

Tenants in eviction court are significantly less likely than their landlords to be represented by legal counsel. In fact, multiple studies conducted in metropolitan areas across the country found
that between four and 20 percent of tenants had lawyers while over 83 percent of landlords had legal representation. Given the complexities associated with the law and with court procedures, this puts tenants at a significant disadvantage. Seron et al. (2001) provide evidence of this the importance of legal assistance, concluding, “Only 22 percent of represented tenants had final judgments against them compared with 51% of tenants without legal representation” (p. 419).

Causes of Eviction

In North Carolina, there are five primary legal reasons for which a landlord can evict a tenant: 1) nonpayment of rent; 2) breach of lease terms or conditions; 3) tenant remaining on premises after lease expiration (“tenant holdover”); 4) criminal activity; and 5) when compliance with the housing code requires demolition or remodeling (NC General Statute 42, 2016). Until the early 1980s, landlords were allowed to perform “self-help evictions,” which include shutting off tenant’s utilities, changing locks on the rental unit, or otherwise forcing tenants to vacate the unit without going through the court system (NC General Statute 42, 2016). In 1981, an amendment to North Carolina General Statute §42-25.6 outlawed self-help evictions; now all landlords are required by law to pursue eviction through the court system. This thesis focuses on evictions due to nonpayment of rent and breach of lease due to failure to pay rent given that ED Programs are specifically designed to assist tenants in financial distress.

The most obvious instance that inhibits tenants from paying their rent occurs when rental rates themselves increase. Increasing rental rates can result from an influx of affluent populations as an economy matures and provides greater economic opportunity for those individuals (Hartman and Robinson, 2003). This scenario, known as gentrification, produces a hot housing market that puts low-income tenants at risk of eviction.
Scholars have documented significant evidence of gentrification as a cause of eviction. Leeland (2003) found that sprawl is enticing many Florida mobile home park owners to evict residents so as to redevelop the land for profit. Similarly, Zhao (2002) found that landlords in New York City’s Chinatown have been evicting residents to capitalize on the neighborhood’s close proximity to trendy, profitable areas like SoHo and TriBeCa. As a result of the evictions and redevelopment in Chinatown, rents have increased to four times the level of rent-controlled and rent-stabilized units (Zhao, 2002).

In the context of economic transformation, eviction can also result when landlords opt to sell units to speculators, either for residential or commercial development (Hartman and Robinson, 2003). These phenomena exist in downtown Durham as well, which has seen a major revitalization over the past few decades years. A mere one mile east of downtown, monthly rental rates have risen from $300 to over $800 over the past five years (ACS, 2016). This trend is forcing long-term, primarily lower-income minority residents to relocate further from the city center.

Consequences: Eviction and Economic Instability

Eviction results in a myriad of social and economic consequences including job loss, homelessness, mental health challenges, violence, and educational inequity (Desmond, 2016). All of these negative impacts are associated with significant costs to society, both ethical and economical. Policymakers have a vested interest in enacting policies to improve housing stability in order to prevent homelessness, reduce reliance on government programs, and ensure that all Americans have access to economic and social opportunity.

First, eviction reduces an individual’s ability to maintain and obtain employment. Although this seems like a predictable correlation, it was not until recently that research was conducted to
assess the connection between employment and housing insecurity among the working poor. Desmond and Gershenson (2016) found that the likelihood of being fired from a job increases by between 11 and 22 percentage points for workers who recently (within two years) faced a forced move. Nearly 20 percent of the sample had faced job loss within two years of being interviewed, and approximately 42 percent of those who had lost a job had also experienced a forced move (Desmond and Gershenson, 2016).

These results are important; they provide an empirical link between involuntary displacement and the myriad of consequences associated with job loss. The most obvious outcome of job loss is loss of income, even after work is reestablished. Workers who hop from job to job earn, on average, 17 percent less than their counterparts who experience consistent employment (Farber, 1995; Ruhm, 1991). In addition, low-skilled workers who experience long stretches of unemployment have difficulty reentering the job market, especially in the low-wage sector (Kletzer, 1998). Finally, job loss prevents low-income households from accumulating wealth (Desmond and Gershenson, 2016). All of these consequences implicate eviction as a significant contributor to the cycle of poverty, underscoring the need to investigate ED Programs that could reduce rates of eviction filings and eviction judgments.

Secondly, housing instability causes gaps in educational attainment, puts undue stress on children, and often results in overcrowded dwellings, unfit living conditions, or homelessness (Desmond, 2016). All of these outcomes contribute to the cycle of poverty by limiting the abilities of children from low-income families to achieve social mobility. Furthermore, eviction often forces families into areas with higher concentrations of poverty, further reducing a child’s prospect for future economic success (Desmond, 2016). Chetty and Hendren (2015) found that “low-income children are most likely to succeed in counties that have less concentrated poverty, less income
inequality, better schools, a larger share of two-parent families, and lower crime rates” (p. 1). One-fifth of the income gap between blacks and whites in the US can be attributed to the individual's childhood county (Chetty and Hendren, 2015). Moreover, in urban areas, counties with the best prospects for children are associated with higher housing prices and rents (Chetty and Hendren, 2015). Investment in our nation’s youth is essential for advancing economic prosperity and reducing income and wealth inequality. Failure to improve housing stability means a failure to break the cycle of poverty and to live up to our nation’s promise of the “American Dream.”

In addition to job loss and housing instability, forced relocation can directly result in homelessness. Drawing on a nationally representative survey of homeless Americans, Burt (2001) found that “couldn’t pay rent” was the primary cited reason why households left their previous residences. Both women and men also cited “landlord made us leave” and “job loss” or “job ended” as leading causes of displacement and thus homelessness. Combining these two reasons results in the conclusion that two in five homeless individuals found themselves homeless due to eviction (Burt, 2001). Other, more geographically confined studies support this conclusion. Data from Ohio show that 35.4 percent of families attribute their homelessness to eviction (Hartman and Robinson, 2013). Similarly, “about 17 percent of families using [New York City’s] resources for the homeless arrive straight from their eviction… Untold others end up in shelters when crowded post-eviction accommodations become unavailable (Hartman and Robinson, 2013, p. 469).”

Additional consequences of eviction include pressure on public resources, such as court and marshal/sheriff services and hospitals and jails (homeless individuals often seek out shelter in these locations) (Hartman and Robinson, 2003). Eviction can also lead to violence, particularly when sheriffs are called on to forcibly remove households from their place of residence (Hartman and Robinson, 2003; Desmond, 2016).
The existing literature on housing policy, eviction, and homelessness emphasizes the need to prioritize efforts to improve housing stability, especially among low-income renter populations. Policymakers can accomplish this goal by taking preventative measures to reduce eviction. Several Eviction Diversion Programs have been implemented at the court and county levels in Michigan and in North Carolina, but research has yet to examine the effectiveness of these programs. For a comprehensive analysis of the impact of ED Programs, I conducted a mixed-methods analysis of several, differently structured ED Programs with a focus on the newly implemented ED Program in Durham County, North Carolina.

III. Data and Methods

On August 1, 2017, Durham County implemented North Carolina’s first Eviction Diversion Program. The program is designed to connect tenants facing eviction with both rental assistance and legal counsel in an effort to avoid eviction, increase housing stability, and reduce homelessness. It targets renter households that are unable to pay rent due to unexpected financial setbacks. Durham’s program is modeled on ED Programs that were first implemented in Kalamazoo and Lansing, Michigan, in 2010 and 2012, respectively. Since these initial two pilot programs, several other counties in Michigan have adopted or piloted similar ED Programs. The programs exist in both rural and urban counties and share the goals of reducing court-ordered eviction judgments and increasing housing stability.

This analysis uses a mixed-methods comparative case study approach to evaluate the impact of the ED Program in Durham. First, I begin by examining the creation of the ED Program in Kalamazoo, Michigan. I discuss why the ED Program started, how different stakeholders contribute to its operation, and the variety of ED Program structures in different district courts in
Michigan. I then perform a detailed analysis of the operation and success of Durham County’s ED Program. I examine trends and changes in total eviction filings, court-ordered summary ejectment (eviction) judgments, voluntary dismissals or settlements of eviction cases, and appeals of eviction judgments.

To complement this data analysis, I synthesize feedback from ED Program stakeholders in Durham and in Michigan to provide insight into challenges, successes, and future improvements of the ED Program in Durham County. In Chapter 5, I analyze the differences and similarities between the various ED Programs in Michigan and in Durham County; discuss the ED Program in the larger contexts of homelessness prevention and affordable housing in Durham County; and provide two broader affordable housing-related policy recommendations for Durham County.

**Legal and Court-Based Eviction Data**

The primary goal of the Durham County ED Program is to reduce summary ejectment (eviction) judgments. In the long-run, program stakeholders aim to reduce eviction filings as well. Records of eviction judgments and filings are publicly available through the North Carolina Court System’s website under “summary ejectment,” which is the civil proceeding associated with eviction. I used the Civil Case Processing System (VCAP) activity reports to obtain information on eviction filings and judgments for Durham County from 2006-2017. VCAP reports contain information in Excel format on all civil court proceedings for each county in North Carolina and for the state as a whole. The data is available annually and monthly for each fiscal year, which begins on July 1 and ends on June 30. I also retrieved VCAP eviction filings and outcome data for Durham County for 1998-2016 through a public records request to the North Carolina Courts. Any
slight discrepancies between the figures from the online activity reports and those from the publicly requested reports can be attributed to a +/- 1 percent margin of error in the latter reports.

In North Carolina, eviction proceedings begin in Small Claims Court with the Court Magistrate (CVM) and can be appealed to District Court (CVD). For each month within the fiscal year, VCAP records contain data on summary ejectment filings and outcomes for both CVM and CVD. I summed across all CVM and CVD cases to get comprehensive data on summary ejectment filings and outcomes for each month and for the year.

A summary ejectment proceeding has 10 possible outcomes. In any given year, slightly over 50 percent of the filings are granted in whole or in part, which means that the tenant gets an eviction judgment on her record. About one-third of the cases result in a voluntary dismissal or a settlement, which means that the complainant (the landlord) chose to withdraw the case or negotiated a resolution with the defendant (the tenant). Such a resolution could be reached if the tenant pays her overdue rent plus the court fees associated with the eviction filing. The other two most common summary ejectment outcomes are a denial of the summary ejectment (~15 percent of all cases) or an involuntary dismissal of the case (~2 percent of all cases).

Of these outcomes, a tenant will receive an eviction judgment on her housing record if the judge grants the case in whole or in part. The ED Program engages with the tenant after the filing and before the judgment; stakeholders are striving to reduce the number of filings that are granted in whole or in part. As the number of granted filings decrease, the number of voluntary dismissals or settlements will increase. The ED Program would not necessarily have a direct impact on involuntary dismissals of cases or denials of summary ejectments.

I plotted annual eviction judgments from 1998-2017 to see the long-term trend in eviction filings over the last 20 years. To examine any possible changes in filing outcomes related to the
ED Program, I plotted monthly eviction filings, judgments, voluntary settlements, and appeals to District Court for August through December for 2015, 2016, and 2017. Finally, I plotted the trends in voluntary settlements and in judgments for 2011-12 through 2015-16 because these trends impact the extent to which changes in eviction filing outcomes can be attributed to the ED Program.

I also collected self-reported data from housing attorneys from Durham County Legal Aid of North Carolina and Duke Law School. These summary statistics provide detailed information on the traffic through the ED Program over the first eight months. Analyzing these figures in comparison to monthly eviction filing rates helps to illustrate the scale of the ED Program and its capacity for growth.

Although Durham County serves as the primary case study for my analysis, I also examined the impact of the ED Program in five district courts (DC) in Michigan: 8th DC (Kalamazoo County), 37th DC (Warren in Macomb County), 50th DC (Pontiac in Oakland County), 53rd DC (Howell and Brighton in Livingston County), 55th DC (Mason in Ingham County). I selected these programs for two primary reasons: 1) All of these programs except the Livingston program have been in operation for at least four years; and 2) Leaders in the development of Durham’s ED Program visited two of these ED Programs when structuring Durham’s version of the program.

I primarily gathered qualitative data on Michigan’s ED Programs because data on the outcomes of landlord tenant cases at the district court-level in Michigan is unavailable. While there exist data on total filings, the data do not distinguish between settlements/voluntary dismissals and granted judgments when cataloguing outcomes. If these data were available, I would have conducted an analysis similar to the one that I did for Durham County for each of the five district courts of interest. Despite the lack of publicly available court data, stakeholders from three of the
Michigan ED Programs were able to provide me with statistics from personal evaluations of their respective programs. I incorporate this data to illustrate the statistical impact of the ED Programs in those counties.

**Additional Eviction Data: Durham County**

In addition to analyzing data from the courts on evictions in Durham County and in the Michigan district courts, I wanted to understand eviction as a broader community economic challenge. Given that Durham County serves as my primary case study, I focused my research on eviction in Durham. Durham County operates a project called *The Durham Neighborhood Compass* (Neighborhood Compass, 2014). This resource is a product of the City of Durham with contributions from Durham County agencies. Its goal is to provide statistical information that allows residents to track quality of life and service availability throughout the county. Among other things, it uses data from the American Community Survey (ACS) from 2009-2014 to construct a GIS Map for eight categories at the block group level. The eight categories are: Demographics, Infrastructure & Amenities, Education, Economy, Housing, Engagement, Environment, and Safety. Each category has several sub-categories that provide detailed information on the distribution of various resources, economic situations, and other conditions across Durham County.

I used GIS maps with information on the following: percentage of renter-occupied housing, proportion of cost-burdened renter households, racial concentration, and median household income. I compared these maps with a map compiled by Data Works NC that shows the distribution of summary ejectments by block group from 2012-2016 and with a map of LANC
eviction cases from 2016. Examining these distributions side by side shapes a narrative regarding eviction and affordable housing in Durham County.

**Semi-Structured Interviews**

A successful Eviction Diversion Program requires significant collaboration between multiple entities in both the public and private sectors. Key stakeholders include:

- Legal Aid housing attorneys
- University Law School clinics
- City and County leaders
- Court Magistrates and Judges
- Local organizations that supply rental assistance
- Staff and directors at the Department of Social Services (DSS) or Department of Health and Human Services (DHHS)
- Landlords and their attorneys
- Tenants

In order to evaluate the success of Durham’s ED Program from multiple perspectives, I conducted interviews with nine stakeholders with different programmatic roles (See Appendix C, Table 3 for interview questionnaire). I began the interviews once the county’s pilot program had been underway for four months. After the first several months, stakeholders had developed an understanding of the program’s initial challenges and potential barriers. Furthermore, they could speak to the evolution of what would constitute “success” in the ED Program. I posed 15 open-ended questions to each stakeholder, which ranged from addressing their personal involvement with the ED Program to broader inquiries into community-based affordable housing challenges in
Durham County. The interviews resulted in rich discussions about gentrification and affordable housing in Durham and about each stakeholder’s opinions on the state and direction of the ED Program.

I began by interviewing individuals involved in the legal side of the program, specifically Legal Aid housing attorneys and representatives from Duke Law School’s Civil Justice Clinic. I chose to start with these individuals for two reasons. First, these were the individuals who led the development and coordination of Durham’s pilot program, so they had a vision for the program’s potential. Secondly, since they were responsible for negotiating on behalf of the tenants, they had the most in-depth information on the types of clients being referred to the program, the reasons for the eviction filings, and the outcomes of the eviction filings.

Following the first four interviews, I observed a meeting between the six primary legal stakeholders in the ED Program. The meeting took place four months after the program’s inception, and the conversation served as a sort of focus group that enabled me to ask questions and observe the interactions between stakeholders. The session was especially important because it highlighted the initial challenges in the pilot program and the ways in which stakeholders planned to mitigate said obstacles. It was also very valuable to my research because it provided insight into how the stakeholders communicate and work together.

Following the focus group, I conducted an interview with the ED Program’s liaison at the Durham County Department of Social Services (DSS). DSS is the primary resource for households in need of rental assistance in Durham County; when households receive a late rent notice or an eviction notice, DSS is often the first place they go to seek out rent coverage. DSS caseworkers process each household within 24 hours, and, in the context of Durham’s ED Program, they are
responsible for referring tenants with eviction notices to the Durham County office of Legal Aid of North Carolina (LANC) for further processing.

In addition, I interviewed a Durham County court magistrate involved in the ED Program, a representative from the Durham County Sheriff’s Office, and two representatives from the Durham County Neighborhood Improvement Services Department. I also spoke with an expert on landlord tenant law in North Carolina to better understand the ways in which statutory and case law govern eviction proceedings in the state.

For the in-person interviews, I recorded the interviews with a digital recorder and then transcribed the conversations. For the phone interviews, I took detailed notes throughout the interview. I extracted key themes from each of the interviews, which I incorporated into chapters four and five. Each stakeholder contributed a unique and valuable perspective on affordable housing, community challenges, and the ED Program. For example, housing attorneys and DSS representatives had substantial knowledge of the challenges faced by low-income renter households, while representatives from Duke Law School’s Civil Justice Clinic had more extensive knowledge of the ED Program’s origins and the statutory law regulating summary ejectment in North Carolina.

As with Durham County’s ED Program, the ED Programs in Michigan rely on a number of public and private organizations and individuals. In order to develop a complete picture of the process, challenges, and successes of Durham’s ED Program, I conducted interviews with several key stakeholders in five of Michigan’s ED Programs. I was unable to conduct as many interviews with Michigan stakeholders due to time constraints and scheduling conflicts. The format of these interviews followed that of the interviews with Durham stakeholders: the questions followed a similar open-ended template, and the interviews were primarily individual. As with the Durham
interviews, I recorded and transcribed each interview, extracting important information and identifying key themes as I did so.

My primary goals in interviewing the stakeholders in various Michigan ED Programs were the following:

1) To identify the ways in which various Michigan ED Program differed or were similar to Durham County’s ED Program

2) To obtain insight into any challenges faced by ED Program stakeholders in Michigan, and to learn how they overcame those barriers

3) To gather information on the funding sources for Michigan’s various ED Programs

4) To identify the most influential stakeholders for the development and continuance of ED Programs throughout Michigan

I began by interviewing a representative from Michigan’s Volunteers of America (VOA) who was in Durham, North Carolina, on business. VOA is a key funder in Ingham County’s 55th District Court ED Program. Three months after this interview, I flew to Michigan to conduct interviews with representatives from the five Michigan ED Programs. These interviews were primarily with legal and court system representatives as opposed to with funding partners, although I did speak with two DHHS representatives from Ingham County.

While in Michigan, I also observed Ingham County’s 55th District Court eviction diversion afternoon in court. Unlike Durham’s ED Program, Ingham County’s ED Program is structured so that every Thursday afternoon, two district court judges hear all of the eviction diversion cases. Witnessing Ingham County’s ED Program in action was very helpful for evaluating different ED Program structures and for comparing the effectiveness of various ED Programs.
The takeaways from my interviews with Durham and Michigan stakeholders contribute to the development of my policy recommendations for stakeholders in the Durham ED Program, for other courts considering the development of ED Programs, and for policymakers in North Carolina.

IV. Findings

Introduction to Eviction Diversion Programs: Michigan

The first Eviction Diversion Program (ED Program) was piloted in 2010 in the 8th District Court in Kalamazoo, Michigan. Subsequent ED Programs have been piloted or started in several other counties across Michigan, including the 37th District Court (Warren in Macomb County), the 50th District Court (Pontiac in Oakland County), the 53rd District Court (Howell and Brighton in Livingston County), and 55th District Court (Mason in Ingham County).

The ED Program in Kalamazoo was initiated because of an observed inefficiency in the way in which tenants sought rental assistance in the face of summary ejectment (eviction). Prior to the start of the ED Program, tenants waited until they had received an official eviction judgment before seeking rental assistance from either the Department of Health and Human Services (DHHS) or another community organization. Following the eviction judgment, tenants had at most 10 days to come up with their outstanding rent and court fees before they were forcibly removed from their residence.1 The ED Program was designed to connect tenants with financial assistance as soon as they received a notice of eviction (prior to receiving the judgment). By doing so, tenants would have additional time to find rental assistance, allowing them to negotiate a settlement with their landlords in lieu of receiving eviction judgments. The agreed-upon settlement increases the

1 In both MI and NC, there is a 10-day period between eviction judgment and required move-out
likelihood that households avoid housing instability and/or homelessness, and it prevents landlords from incurring costs associated with tenant turnover and vacant rental units.

In order for an ED Program to operate, several public and private local community entities must be involved in and supportive of the program. First is Legal Services (or Legal Aid). In each of the district courts with an ED Program, Legal Services took the lead in coordinating the other community partners and has been instrumental in advocating and developing the program. Legal Services provides the essential link between the ED Program’s other two key partners: 1) the court system, and 2) community and government organizations that supply funding for rental assistance.

In the various ED Programs across Michigan, Legal Services did not assist tenants through the ED Program if those tenants had habitability issues. When tenants in Michigan had such problems, Legal Services would represent them in court separately from the ED Program. This is one of the largest and most significant differences between the Durham ED Program and the Michigan ED Programs, and it will be discussed in detail in Chapter 5.

The courts are essential to the ED Program because all legal evictions are processed through the court system in the form of summary ejectment proceedings. In order for the ED Program to operate at full capacity, two things must hold true. First, at least one judge in the given district court must support and be an advocate for the ED Program. Specifically, this judge must be willing to facilitate landlord-tenant settlements by dismissing summary ejectment filings when landlords and tenants have reached an agreement over rental arrears or negotiated move outs. In addition, the Clerk of Courts must cooperate to schedule the eviction docket in a way that facilitates the operation of the ED Program. For example, some district courts in Michigan designate one day per week for eviction diversion cases. In the 55th District Court in Ingham County, two judges hear and rule on all landlord tenant cases on Thursday afternoons at 1:00pm.
In addition to Legal Services and the court system, the program requires the involvement of organizations that supply rental assistance funding. The Department of Health and Human Services (DHHS)/Department of Social Services (DSS) is the primary source of rental assistance. All municipalities have DHHS/DSS that supply rental assistance funding. However, eligibility restrictions for the funding differ by county. These government agencies operate at the county level and have the biggest budgets for assisting tenants. However, they also have the most restrictions on their funding, largely because a significant portion of their funding is federal. In instances where DHHS/DSS cannot provide a tenant with sufficient rental assistance, other community organizations can step in to assist tenants. Each county has different community organizations with funds for rental assistance, but United Way, the Salvation Army, and Volunteers of America have become partners in many of the ED Programs across Michigan. Additionally, local organizations that specialize in treatment for mental health or substance abuse, or that serve veterans, provide valuable assistance for specific, vulnerable populations.

Every ED Program is designed slightly differently, according to the needs of the county in which it operates (see Appendix * for a table on structures of different ED Programs by District Court). Some district courts choose to designate one day per week to eviction diversion cases while others designate up to five different time slots per week to these cases. In some District Courts, the role of Legal Services has lessened now that the courts and the funding partners are connected. In others, Legal Services remains the primary driver and facilitator of the ED Program. For instance, Legal Services plays a significant role in the operations of the ED Program in the 55th District Court in Mason, which occurs every Thursday afternoon. In this ED Program, a representative from Legal Services stands in the middle of the courtroom lobby on Thursday at 1pm and instructs every tenant facing eviction and seeking assistance through the ED Program to
form a line. The representative then matches tenants with either with a lawyer from Legal Services or with a law student from Michigan State University’s School of Law. Next, the tenants and their counsel meet with the landlords or landlords’ attorneys to negotiate a payment plan that would guarantee the landlord their rent and prevent the tenant from being evicted. Judges in this court credit the representative from Legal Aid with the continued success of the ED Program. The Livingston ED Program operates similarly in that Legal Services has a significant in-person presence.

In addition to different operational structures, the structure of the settlement agreements changes according to location. In some courts, the judge grants immediate dismissals of eviction filings. In others, the eviction judgment is dismissed after a period of ~60-90 days, provided the tenant upholds her end of the agreement. Despite these structural differences, each Michigan ED Program shares a focus on nonpayment evictions. The purpose of these ED Programs is to more effectively and efficiently connect cost-burdened tenants with the available financial resources in the community.

**ED Program Impacts: Michigan**

The impacts of the ED Program have been varied across district courts and counties. The ED Programs in the 8th and 55th District Courts (Kalamazoo and Ingham County, respectively) have experienced the most sustained success. In these District Courts (DC), the eviction diversion case dockets remain full, and legal services, landlords, tenants, and community funders continue to work to negotiate settlements. As a result of the success in the 55th DC, whose ED Program began in 2012, the neighboring 53rd DC in Livingston developed its own ED Program in 2017.
Similarly, nearby DC 54A in Lansing piloted an ED Program from October 2017 through December 2017 and is considering implementing a long-term program.

The Livingston ED Program has been quantitatively tracking its impact, and the reduction in eviction judgments issued by the court illustrates the program’s success. Between October 14, 2017 and mid-February 2018, 1,560 evictions were filed in the 53rd District Court. Of these, slightly over 60 percent (936 filings) were diverted from court through the ED Program. Of the 624 cases that went to court, attorneys through the Livingston ED Program provided legal assistance in approximately 100 of the cases (16 percent). 22 percent of tenants facing eviction in court did not receive legal assistance through the ED Program. Over this time frame, there was a 65-70 percent decrease in the share of tenants who received default judgments on their housing records (down to 5-7 percent from an estimated 75 percent prior to the ED Program). For the 5-7 percent of tenants who did receive judgments, ED Program-affiliated attorneys located at the courthouse were able to provide guidance on what tenants could expect in the ensuing days. In some instances, the successes of ED Programs like those in Lansing and Kalamazoo have sparked efforts to facilitate mediation between tenants and landlords, even if these district courts do not have extensively developed ED Programs. For example, Legal Services offices in Jackson, Battle Creek, and Ann Arbor have all adopted mediation tactics in an effort to reduce eviction judgments in their respective counties. These efforts signify widespread recognition of the need to prevent rather than react to homelessness. Furthermore, they illustrate an acknowledgement of the capacity and benefits of unified action by stakeholders from a variety of public and private entities.

In contrast to the overwhelmingly positive outcomes in Lansing, Livingston, and Kalamazoo, the results of the ED Programs in Macomb and Oakland counties have been mixed. At first, both the 37th District Court (Warren, Macomb County) and the 50th District Court (Pontiac,
Oakland County) successfully reduced rates of eviction judgments and homelessness. For example, in its first year of operation (2013), the ED Program in the 37th DC saved 66 families from homelessness at an average cost of $1,100 per family. Such success is partly attributable to educational efforts to both tenants and landlords. Stakeholders in both ED Programs effectively publicized the ED Program by running cable television commercials, hosting “Lunch and Learns” for landlords and their attorneys, and putting advertisements in the newspaper.

Many tenants participated in the 37th District Court’s ED Program in 2013 and 2014, but the DC judge reports minimal tenant participation over the past few years. Representatives from the Community Housing Network, a key funding partner, hypothesize that this reduction in traffic is due to increasing rental rates and property values in the counties. In hot housing markets, landlords have less incentive to retain low-income tenants because they could earn more by increasing the rent and bringing in higher-income tenants. Landlord compliance and support are vitally important for a successful ED Program, so the state of the housing market impacts the capacity for the program to reduce eviction judgments and improve housing stability. The remainder of Chapter 4 will examine the ED Program in Durham County, North Carolina, a county with a similarly hot housing market.

The Case for an Eviction Diversion Program in Durham County

Before conducting an evaluation of the ED Program, this section will provide background on Durham County’s economic transition from tobacco and manufacturing hub to technology and research-based center, with a specific focus on how these developments impacted housing in the county. This section provides insight into how Durham ended up with such a high per capita
eviction rate, and it highlights the equity-based rationale for investing in programs that assist low-income, often minority, renter populations.

Following the Civil War, Durham was a hub for tobacco and textile manufacturing; readily available factory work attracted an influx of workers coming from farms in surrounding rural areas, causing Durham’s population to grow rapidly (Anderson, 2011). Durham continued to develop as a manufacturing town in the early twentieth century, and soon had a network of neighborhoods, several financial institutions, and two post-secondary institutions (Trinity College, later Duke University, and North Carolina College for Negroes, later North Carolina Central University) (Anderson, 2011). The strength of Durham’s manufacturing economy promoted residential integration among the black and white working class. One stakeholder provided the example of Birch Avenue, a neighborhood that was comprised of black and white tobacco workers until the late 1970s.

For the majority of the twentieth century, Durham remained an industrial county, but this began to change in the 1980s. Anderson (2011) highlights two developments that created Durham’s new identity as “The City of Medicine”: 1) the opening of Duke University Hospital North, and 2) the decision of General Electric Motors to build its new micro-electric center in Research Triangle Park (RTP). Investment in innovation and technology spurred by new technological developments—namely the invention of the internet and the popularization of computers—made RTP a hub for science and technology. It also drew an influx of computer-related companies and accompanying technological jobs to the area (Anderson, 2011).

The last two decades of the twentieth century in Durham were “characterized by successful efforts to control growth, preserve the natural and built environment, and defend the civil rights of still marginalized segments of the population” (Anderson, 2011: 404). In the mid-1990s, Raleigh-
Durham was voted the third best place to live and the best place for business in the United States (Anderson, 2011). It was also at this time that renewal of downtown Durham became a serious priority. The creation of the nonprofit Downtown Durham Inc., the passage of a living wage ordinance ($7.55/hour instead of the $4.75/hour national minimum wage), and the passage of a gun-control ordinance created an environment with reduced crime and increased opportunity that attracted new residents to the downtown area (Anderson, 2011). Furthermore, Duke University Hospitals became the frontrunner in researching a cure for HIV/AIDS following the massive outbreak of the disease in the early 1980s (Anderson, 2011).

Despite the positive economic outcomes associated with Durham’s new identity as an innovative, technology-based county, social problems and homelessness in Durham worsened in the 1980s and 90s. The shift in the economy to biomedical and research-based jobs resulted in the displacement and unemployment of hundreds of blue-collar workers (Anderson, 2011). Furthermore, Hispanic immigration to the county increased competition for low-skill jobs—Durham’s Hispanic population increased from 0.84 percent of residents in 1980 to 11.5 percent in 2006 (Anderson, 2011).

Consequences of economic development were compounded by consequences associated with the Vietnam War, which had left many individuals struggling with mental illness, physical disability, and/or drug addiction (Anderson, 2011). To address the needs of indigent communities and individuals in Durham, numerous organizations were founded and funded throughout the last two decades of the twentieth century, including Urban Ministries, the Durham Rescue Mission, and TROSA. All of these organizations are still actively working to serve Durham communities today.
In 2018, downtown Durham is booming with the newly revitalized American Tobacco District, which includes the Durham Performing Arts Center, the Durham Bulls Athletic Park, numerous restaurants, and a lively music scene. While this transformation creates opportunity for many individuals, it also disadvantages a subset of Durham’s population, namely long-time, low-skill residents who previously relied on sustainable manufacturing employment to provide for their families. A native Durham resident and ED Program stakeholder described Durham’s economic transformation as it relates to displacement of long-time Durham residents:

“Our city has a vested interest in innovation and development. The problem is that this doesn’t capitalize on the skillsets of the people native to the county. Companies come in and bring people from other states or cities to build up. We have a wide base of people here who are willing to work and who can be trained, but because the immediate need of those companies is such that they can’t train, we have people who fall by the wayside. There are people who have experience in industrial type work; those jobs aren’t here anymore. It’s not part of the new Durham innovation. So those jobs that used to be able to sustain your family, they go away.”

Durham’s investment in innovation and technology that began in the late twentieth century continues to attract individuals and families to the county, perpetuating the displacement of long-time residents. 49.2 percent of Durham households moved into their residences after 2010, the highest percentage of any of the 100 counties in North Carolina (ACS, 2016). At the other end of the spectrum, 4.8 percent of Durham households moved into their residences before 1980 (ACS, 2016). Changes in household income (HHI) from 2010 to 2016 provide insight into the socioeconomic characteristics of incoming populations. The median HHI in Durham increased by 8.5 percent while the mean HHI increased by 14.8 percent, which is evidence that the highest growth in population occurred at the upper end of the income spectrum (ACS, 2016).

A housing attorney and ED Program stakeholder in Durham reflects on the displacement of low-income tenants in the wake of Durham’s economic transformation:
First people are getting pushed out of historic neighborhoods in downtown. [They are] getting pushed away from public transportation and into food deserts. I’ve had a number of clients who’ve been pushed into Granville County and Vance County. It’s hard to measure the cost of the destruction of those families and community bonds.

Displacement of low-income residents is accelerated as sustainable jobs with livable wages for low-skill workers disappear. The shortage of sustainable jobs has direct implications for low-income households’ capacity to pay rent, which is compounded by increasing rental prices in the county. From 2010 to 2016, the median rent in Durham County increased 16.3 percent to $921/month, which is the ninth highest median rent of the 100 counties in North Carolina. Rental rates in downtown Durham are significantly higher: median rent in the City of Durham in 2017 was nearly $1,400/month, a figure that has increased by nearly 20 percent since 2011 (ACS, 2016).

In part as a result of such rent increases, 48.8 percent of Durham renters in 2016 were considered cost-burdened, meaning that they allocated over 30 percent of their monthly household income (HHI) to rent (ACS, 2016). The increasing costs of rental housing and the high percentage of cost-burdened renters are of particular concern given the significant proportion of renters in the county. As of 2016, 46.3 percent of housing units in Durham were occupied by renters, giving Durham County the third highest proportion of renters of any county in the state (ACS, 2016).
TABLE 1. Durham County Housing and Population Characteristics Compared to Rest of North Carolina

<table>
<thead>
<tr>
<th>Statistic</th>
<th>Durham (Durham’s Rank)</th>
<th>North Carolina</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percent of Renter Occupied Units</td>
<td>46.9% (4th Highest)</td>
<td>35.2%</td>
</tr>
<tr>
<td>Median Rent</td>
<td>$921 (7th Highest)</td>
<td>$816</td>
</tr>
<tr>
<td>Percent Change in Median Rent 2010-2016</td>
<td>16.3% (28th Highest)</td>
<td>13.6%</td>
</tr>
<tr>
<td>Percent of Households Paying &gt;30% HHI on rent</td>
<td>48.8% (28th Lowest)</td>
<td>49.4%</td>
</tr>
<tr>
<td>Year householder moved into home; 1979 and earlier (%)</td>
<td>4.8% (Tied-5th Lowest)</td>
<td>8.5%</td>
</tr>
<tr>
<td>Year householder moved into home; 2010 and later (%)</td>
<td>49.2% (Highest)</td>
<td>37.4%</td>
</tr>
</tbody>
</table>

SOURCE: ACS, 2016

These patterns in the rental housing market have had disproportionate impacts on Durham County’s low-income population who do not have sufficient income or the accumulated wealth necessary to withstand increasing rental rates and other housing-related costs such as higher property taxes and utility fees. The following graphics further illustrate the correlation between income, renter status, and share of income devoted to rent.
Figure 1. Concentration of Renter-Occupied Housing in Durham County, North Carolina; SOURCE: Neighborhood Compass, 2014

Figure 2. Distribution of Median Household Income, Durham County; SOURCE: Neighborhood Compass, 2014
Figure 1 illustrates the concentrations of renter-occupied housing by block group. The highest concentration of renters is located in and around the City of Durham, where 60-100% of a given block group is composed of renters (darkest blue shading). Figure 2 shows median household income by block group across the county, with the darkest blue shading indicating the highest median income. The two maps are inverses of one another: the highest median household income block groups are located farther from the city center where the proportion of renters is lower. This is expected—individuals and families with higher income with greater financial stability are more able and likely to purchase homes. They also have more resources to commute longer distances to work and school, making it easier for them to purchase homes farther from downtown.

As discussed in Chapter 2, poverty and residential placement are directly linked with race and racial equity. Figure 3 shows the distribution of African American residents in Durham County by block group. The highest concentrations (55-94.5 percent) of African American residents are
located in and around the city center. This concentration overlaps roughly with the distribution of renter concentration in the county (Figure 1). Therefore, as with Figure 1, Figure 3 is the inverse of median household income distribution; the highest concentrations of African American residents are found in the lowest income areas (Figure 2).

Figure 4 illustrates the distribution of cost-burdened renters across Durham County. The darker blue the block group, the higher the concentration of households that allocate over 30 percent of their HHI to rent. The distribution of cost-burdened households relative to the city center is less defined as compared with Figures 1, 2, and 3. What is clear, however, is the high percentage of households spending upwards of 30 percent HHI on rent across the county. Households that are forced to spend over one-third of their income on rent are more susceptible to falling behind on rental payments, putting them at higher risk of eviction.
The following two graphics provide visual insight into the distribution of evictions across Durham County. Figure 5 shows the distribution of both summary ejectment (eviction) filings (blue) and Writs of Possession (green) from 2012-2016.² The densest concentration of evictions and Writs occur near and around the downtown area with a few on the outskirts of the county.

Figure 6 shows the distribution of evictions cases opened by the Durham County branch of Legal Aid of North Carolina (LANC) for 2016-17. Each red dot represents the address of an indigent client facing eviction. These cases are even more concentrated around downtown Durham than those in Figure 5. Given that LANC clients must have incomes at or below 187.5 percent of the Federal Poverty Level (FPL), it is expected that the majority of LANC clients live in block groups with lower median household income (see Figure 2).

² A Writ of Possession permits the Sheriff to forcibly remove a tenant from her residence following the issuance of a court-ordered eviction.
The correlation between income, race, renter status, and eviction in Durham is evident. Interviews with representatives from LANC confirm these patterns: at the end of October (month three of the Durham ED Program), of the 121 applicants for whom LANC collected racial data (of 140 total referrals), 115 were African American, 2 were Latinx, 2 were White, and 1 was Asian. As one stakeholder stated, “We’re looking at the nexus of race and poverty; that’s what’s staring us in the face in Durham. The line between the haves and the have-nots continues to have a significant racial component.”
The ED Program was implemented in part to address this correlation—specifically, the burden of eviction for low-income, often minority, renter households. The remainder of this chapter will introduce the stakeholders in the Durham ED Program; outline the specific goals of the ED Program; examine traffic and outcomes for the ED Program throughout the first five months of operation; and analyze ED Program challenges.

Findings and Evaluation: Durham County’s ED Program

On August 1, 2017, Durham County piloted its first Eviction Diversion Program. According to the program’s director, “The [ED] Program is designed to streamline community resources to reduce the rate of eviction across the county.” It specifically targets tenants who face unanticipated financial setbacks that prevent them from paying their rent. The idea for an ED Program in Durham County came from a national meeting of Legal Services organizations, at which attorneys from Michigan gave a presentation on their newly implemented ED Programs. Following this meeting, housing attorneys from Legal Aid of North Carolina (LANC) and Duke Law School’s Civil Justice Clinic decided to pilot a similar ED Program to address the high rate of eviction across Durham. They modified the structures of Michigan’s various ED Programs to fit the laws and needs of Durham County. Specifically, Durham’s program does not have an in-court presence; it does not have an official funding partner; and tenants become involved in the ED Program via a referral to Legal Aid from the Department of Social Services (DSS), not via direct contact with Legal Aid. These differences will be further examined below and in Chapter 5, which includes recommended improvements to Durham’s ED Program.
ED Program Stakeholders

As with ED Programs in Michigan, Durham’s ED Program is a collaborative effort that relies on the cooperation of numerous stakeholders, including the Duke Law School Civil Justice Clinic, the Durham County branch of Legal Aid of North Carolina (LANC), the Durham County Court Magistrates, and the Durham County Department of Social Services (DSS). Table 2 outlines the Durham stakeholders and their respective roles in the ED Program.

All of the stakeholders from both Durham and Michigan agreed that the ED Program would not function without full cooperation of Legal Services, DHHS/DSS, the court system., tenants, and landlords. It did not appear that one entity was more valuable than another. Rather, it was the collaborative effort of all of the stakeholders that allowed ED Programs to operate as successfully as possible.

One theme that stood out in interviews, however, was the notion of a “champion judge.” While each court structured its ED Program differently, every stakeholder emphasized the importance of the judge to the success of the ED Program. In order for the ED Program to work, the judge must believe in the program’s mission and must be flexible with courtroom procedures to implement the program. In Michigan, district court judges have substantial authority regarding how they run their courtrooms. In North Carolina, the chief judge is not allowed to make unilateral decisions, such as when to hear certain types of cases. As a result, implementing an ED Program in a state like North Carolina proves more challenging because it requires the cooperation of numerous individuals, including the Clerk of Superior Courts, the Chief District Judge, and the Civil Magistrate Judges. Stakeholders in Durham proved, however, that it is possible to obtain support from these important players, so other counties in the state should not be discouraged from starting their own ED Programs.
TABLE 2. Stakeholders in Durham’s ED Program

<table>
<thead>
<tr>
<th>Stakeholder</th>
<th>Role(s) in ED Program</th>
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| Duke Law School Civil Justice Clinic                                        | - Developed the ED Program based on observations of ED Programs in Michigan  
- Responsible for publicizing the ED Program  
- Clinic students represent tenants facing eviction who do not qualify financially for legal assistance through LANC*                                                                                     |
| Durham County Department of Social Services (DSS)                           | - Performs initial intake assessment of tenants facing eviction  
- Determines tenant eligibility for rental assistance and provides rental assistance when tenant qualifies for DSS funding  
- Refers tenants facing eviction to LANC for additional processing                                                                                       |
| Durham County Branch of Legal Aid of North Carolina (LANC)                  | - Responsible for performing the secondary intake assessment of tenants facing eviction (following the initial assessment by DSS)  
- ED Program housing attorneys represent tenants who qualify financially for LANC services*                                                                                                                   |
| Durham County Court                                                         | - Magistrates preside over Small Claims Court in which the majority of tenant/landlord cases are heard and issue rulings on summary ejectment filings  
- Clerk of Courts gives tenants a flyer on the ED Program along with summons for summary ejectment                                                                                                          |
| Durham County and the City of Durham                                         | - Finance homeless services, provide rental assistance funding to DSS, and determine DSS rental assistance eligibility requirements (See Appendix, Table 2)                                                                 |
| Durham County Sheriff and Local Law Enforcement                             | - Serve eviction papers to tenants  
- Force tenants to relocate if tenants do not move out of the unit from which they were evicted                                                                                                               |
| Landlord                                                                    | - Serve tenants with eviction notices  
- Screen tenants                                                                                                                                           |
| Landlords’ Attorneys                                                       | - Provide landlord with legal counsel  
- Represent the landlord in Small Claims Court                                                                                                               |
| Tenant                                                                      | - Receives legal counsel from LANC or Duke’s Civil Justice Law Clinic  
- Participates in negotiations with landlord or landlord’s attorney over the payment of rental arrears and/or any habitability issues with the property                                                                                                           |

*To qualify for LANC legal services, household income must be at or below 187.5% of the Federal Poverty Level (FPL)
ED Program Operation and Flow

A tenant first becomes aware of Durham’s ED Program upon receiving an eviction notice. Alongside the notice, the Clerk of Superior Courts attaches a flyer advertising the program and instructing the tenant to call DSS for a rental assistance consultation (See Appendix B, Figure 14 for a detailed flow chart of the ED Program). A tenant receives an eviction notice 1-2 days after the landlord files for eviction, which can occur as early as the fifth of the month. Following the filing, there is a 10-15-day window before the tenant’s Small Claims Court hearing. Therefore, tenants hear about the ED Program 8-14 days before their hearings, at which the Court Magistrate can issue the eviction judgments that appears on tenants’ housing records. Following their Small Claims Court hearings, tenants have 10 days to file for appeal to District Court, after which any granted judgments are irreversibly entered on the tenants’ housing records.

DSS caseworkers process all tenants who approach DSS with eviction notices in order to determine tenants’ eligibility for DSS rental assistance. DSS rental assistance funding is supplied primarily by the federal and state governments, so it is significantly restricted. The primary recipients are households with children below the age of 18, individuals with disabilities, and elderly individuals (See Appendix A, Table 3 for detailed rental assistance qualifications). DSS caseworkers transfer tenants with eviction notices to the ED Program by faxing their information to the housing attorneys at LANC. DSS is supposed to refer all tenants with eviction notices to the ED Program. However, as of April 1, 2018, DSS only refers tenants who do not qualify for DSS rental assistance. When tenants do qualify for DSS rental assistance, DSS pays all or a portion of their outstanding rent and fees to the landlord and does not refer the tenant to the ED Program. Therefore, the tenants only get referred to the ED Program if they do not qualify for DSS rental
assistance. This referral pattern reduces program traffic and prevents housing attorneys from negotiating rental abatement on tenants’ behalves.

Following tenants’ referral to LANC, LANC housing attorneys determine tenants’ financial eligibility for LANC legal services. In order to qualify, tenants’ household income must be at or below 187.5 percent of the Federal Poverty Level (FPL). If their income exceeds the FPL, LANC attorneys refer the tenants to Duke Law School’s Civil Justice Clinic for legal assistance. The clinic has attorneys and law students who are able to assist tenants whose incomes exceed eligibility for LANC. In total, there are three attorneys involved in ED Program cases (two from LANC and one from Duke Law School), one of whom works full-time processing ED Program cases. Once financial eligibility is determined, housing attorneys attempt to contact tenants via phone to assess their eviction situations. When the attorneys are able to make contact, they offer to negotiate on the tenants’ behalves to try to prevent eviction judgments from being entered on tenants’ housing records.

The ED Program has several primary outcomes, depending on the stage of the eviction process, whether the tenant has a legal basis for rent abatement, and the willingness of the landlord to negotiate a settlement (See Appendix B, Figure 14 for detailed list of each outcome). Ideally, attorneys successfully contact the tenants at least two days before the Small Claims court date, giving them time to discuss the tenants’ situations and identify legal defenses, if possible. When attorneys identify a legal defense, they can negotiate rent abatement, meaning that tenants will not have to pay all of their outstanding rent and/or court fees. Thus, tenants will be more likely to be able to pay the overdue rent and remain in the unit if they choose to do so. The decision of Durham stakeholders to process both cases involving habitability issues alongside pure non-payment of

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3 A legal defense typically consists of a habitability issue faced by the tenant, such as a leak, pest infestation, or other condition that renders the rental unit unfit.
rent cases through the ED Program could present a challenge for the program’s future. Chapter 5 expands upon the consequences of including both types of cases in the ED Program and compares Michigan stakeholders’ approach to habitability issues to that of Durham stakeholders.

Currently, the ED Program does not have an established source of funding besides DSS. As a result, if the attorney cannot identify a legal defense, the tenant will have to move out of their rental residence unless the landlord retracts the eviction for an unrelated reason. In some cases, tenants simply need additional time to come up with outstanding rent. Under this circumstance, attorneys can file for appeal to District Court, which could provide tenants with adequate time to secure the necessary funds, even if the ED Program cannot provide the tenant directly with the rent coverage. The 10-day appeal period also gives tenants extra time to search for new housing if they will be forced to vacate their residence.

In addition to identifying legal defenses, negotiating with landlords over rent abatement, and filing for appeal, attorneys can provide tenants with information about community resources (housing opportunities, rental assistance, etc.), and they prepare tenants for what to expect in court. Stakeholders believe that connecting tenants with attorneys will level the playing field in court between tenants and landlords, most of whom have attorneys.

**Durham’s ED Program: Goals and Definitions of Success**

The primary goal of Durham’s ED Program is to reduce the number of summary ejectment (eviction) judgments that go on tenants’ housing records. Eviction judgments are issued by judges and appear on tenants’ credit reports when they apply for housing. Many landlords cite judgments as an immediate disqualification for tenancy, so these judgments are often detrimental to tenants
in the search for new housing. In instances when tenants are unable to secure new housing, judgments result in homelessness.

The second goal of Durham’s ED Program is to increase the proportion of tenants facing eviction who have legal representation in court. The 6th Amendment requires that all defendants facing criminal charges be provided with an attorney, but this requirement does not apply to civil cases, including landlord-tenant cases. By providing tenants with legal counsel, ED Program stakeholders aim to protect tenants’ interests and rights in court, especially given that the majority of landlords are represented by legal counsel. Legal stakeholders also hope that connecting tenants with lawyers will provide tenants the opportunity to discuss any habitability issues with the rental unit, or any unjust treatment by the landlord. Finally, access to legal counsel could increase the number of tenants who appeal their eviction cases to District Court. Housing attorneys report that landlords are more likely to negotiate a settlement in District Court than in Small Claims Court.

Thirdly, in the long run, program stakeholders hope that the ED Program reduces the number of summary ejectment filings. As tenants and landlords increasingly become aware of the program, and as stakeholders build a strong network of community partners that supply rental assistance, the goal is for landlords to approach ED Program stakeholders to negotiate with their tenants before ever filing for eviction. This would reduce the burden on the court system, save landlords and tenants money in the form of court fees, and eliminate the short time frame for negotiation between an eviction filing and the Small Claims Court hearing.

The final goal of the ED Program is, as the founding stakeholder said, “to streamline community resources.” Across Durham, there is a network of different organizations that supply rental assistance and provide other housing related services. By establishing the ED Program,
stakeholders hope to facilitate communication between these organizations to maximize effective and efficient allocation of limited resources.

**Program Evaluation: Traffic and Outcomes**

For each month from August 1, 2017 – January 31, 2018, DSS referred an average of 45-50 tenants facing eviction to LANC for processing and legal services (See Figure 7). For comparison, DSS receives over 250 applications for rental assistance each month. LANC housing attorneys estimate that the ED Program’s limited financial and legal resources prevented them from assisting 10-15 of the 45-50 monthly applicants. Attorneys also estimate that approximately another 5 monthly applicants could not be reached for intake interviews and therefore did not receive legal assistance. Overall, this culminates in LANC processing and providing legal assistance through the ED Program to 25-35 Durham County tenants facing eviction per month, or approximately 3.4 percent of tenants facing eviction in Civil Magistrate Court.4 Not all of these 25-35 tenants received full legal representation in court; sometimes, attorneys were only able to provide tenants with legal advice, sometimes they were unable to make contact with the tenant, and other times tenants refused legal counsel. The following section provides detailed results of the cases handled in by LANC and Duke Law School housing attorneys through the ED Program.

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4 Landlords filed an average of 874 evictions per month in Civil Magistrate Court for the months of August through December for 2015 through 2017.
From August 1, 2017 to March 31, 2018, housing attorneys from LANC and from Duke Law School combined to provide full representation to 58 tenant households through the ED Program. Full representation consists of an attorney appearing with the tenant in court for the scheduled hearing. Attorneys successfully negotiated on behalf of tenants to avoid eviction judgments in 79.3 percent of these cases (46 of 58). In 66.5 percent of the cases, attorneys negotiated to avoid move-outs, meaning that tenants were permitted to remain in their rental units (38 of 58).

To compliment the directly reported data from LANC and Duke Law School, I analyzed data from the Durham County Court System to examine four outcomes related to summary
ejectment (evictions): 1) eviction filings; 2) eviction judgments granted whole or in part; 3) voluntary dismissals or settlements of summary ejectment (eviction) filings; and 4) appeals of summary ejectment (eviction) cases to District Court from Small Claims Court. If the ED Program functions as designed, the number and share of judgments granted whole or in part should decrease and the number of voluntary dismissals should increase. These outcomes would suggest that lawyers are successfully negotiating on behalf of tenants to prevent judgments from being entered on their housing records. While a tenant may still be required to move residences, avoiding the eviction judgment enables her to secure new housing more easily.

The first outcome that I examined was the number of monthly summary ejectment filings. In the long run, if the ED Program is successful, the number of summary ejectment filings should decrease; landlords, tenants, and their respective legal counsels would negotiate resolutions with community funding partners outside of court before landlords ever file for eviction in the court system. Arriving at such negotiations requires time, so given the novelty of the ED Program, it is unlikely that the current data will show a significant decrease in monthly summary ejectment filings.

As expected, while the number of monthly summary ejectment did decrease slightly from 2016 to 2017 in each of the five months of the ED Program’s existence (Figure 8), eviction filings have been trending downward since the mid-2000s (Figure 9), so the month-to-month decrease cannot be attributed solely to the efforts of the ED Program. This outcome should continue to be monitored given that it is a significant indicator of the ED Program’s capacity to increase housing stability among renter populations.
Figure 8: Monthly Summary Ejectment Filings in Civil Magistrate Court, Durham County

Figure 9: Annual Summary Ejectment Filings, Durham County, 1998-2017
The next two outcomes that I examined pertain to the outcomes of summary ejectment filings: 1) summary ejectment judgments granted whole or in part, and 2) voluntary dismissals of summary ejectment filings.

Over the first five months of the ED Program’s operation, the number of summary ejectment filings granted whole or in part decreased slightly from 2016 (Figure 10). However, similar to summary ejectment filings, the share of filings that result in judgments has been trending downward since 2011-12 (Figure 11). As a result of these trends, it is difficult to attribute any reductions in judgments granted whole or in part to the efforts of the ED Program.

Over this same time frame, the number of filings that were dismissed or voluntarily settled decreased slightly from 2016 levels in each of the five months (Figure 12). However, the share of filings that were dismissed or voluntarily settled has been increasing since 2012-13. There is not enough evidence to suggest that the ED Program is responsible for the increase in the share of summary ejectment filings that result in settlements or voluntary dismissals. Trends in summary ejectment filing outcomes should continue to be monitored in order to provide a conclusive answer on the capacity of the ED Program to reduce eviction judgments in Durham County.
Figure 10: Annual Summary Ejectment Filings, Durham County, August-December, 2015-2017

Figure 11: Trends in Summary Ejectment Filing Outcomes, Durham County
The final outcome that I evaluated was the number of summary ejectment appeals made to District Court from Small Claims Court. If Durham’s ED Program successfully connects tenants facing eviction with legal counsel, then the number of appeals would be expected to increase for several reasons. First, in the case of eviction for nonpayment of rent, the appeal process gives the tenant additional time to locate funds to cover outstanding rent and court fees. Secondly, the appeal period gives the tenant and her attorney additional opportunity to identify legal defenses related to habitability of the unit. If a rental unit is not up to code or if the landlord is not otherwise maintaining fit and habitable premises, the tenant may benefit from rent abatement. Lastly, if the tenant cannot find rental assistance to cover her outstanding rent and if she has no legal defense for rent abatement, the appeal period gives her additional time to make new housing arrangements and avoid homelessness.

The number of appeals did not change significantly after the implementation of the ED Program in August 2017 (Figure 13). In some months, the number of appeals increased from 2016
to 2017; in others, the number of appeals decreased. The monthly average number of appeals filed for 2016 and 2017 were nearly identical. As with the other outcomes, it will likely be several months before data show any significant changes in the number of appeals attributable to the ED Program. This metric should continue to be monitored to evaluate the success of the ED Program in connecting tenants with the necessary legal assistance.

![Number of Appeals of Summary Ejectment Filings to District Court, Durham County, NC](image)

*Figure 11: Number of Appeals of Summary Ejectment Filings to District Court, Durham County*

The final goal of the ED Program, to streamline community resources, cannot easily be measured with data. From one-on-one interviews and from observation of stakeholder meetings, it appears that the ED Program has yet to increase communication between community organizations in Durham that work to provide housing services. The ED Program has, however, exposed the necessity of communication between these providers to reduce overlap in the industry. Every few meetings between stakeholders generated knowledge of another, different committee.
or organization providing housing-related services to indigent Durham residents. For example, during the first meeting with the City Manager, legal stakeholders learned for the first time of a Homelessness Services Advisory Committee that meets on the fourth Wednesday of every month. Chapter 5 provides a recommendation for better connecting the organizations working to provide access to housing and housing-related resources in the Durham community.

While the ED Program has yet to increase communication between community organizations supplying housing needs, it has united public and private entities that often operate in isolation. For example, as a result of the ED Program Duke Law School’s Civil Justice Clinic, LANC, and DSS have interacted consistently and directly for the first time. Each entity contributes a unique and valuable perspective to conversations on eviction, and the combination of perspectives facilitates more innovative problem solving on challenges associated with homelessness, affordable housing, and community economic development in the county. Moreover, as a result of direct communication between housing attorneys for indigent tenants and city and county officials, the local government can better identify the needs of indigent renter populations. This enables local leaders to develop strategic policy plans to best serve the interests of low-income renters. As one stakeholder stated, “For the longest time, issues of affordable housing weren’t even discussed, so the fact that we’ve laid a framework for the city and community agencies to come together and discuss the issues, that’s success.”

Improved communication between public and private agencies through the ED Program has also attracted additional attention to the magnitude of the affordable housing and eviction crises in the county. Prior to the ED Program, most elected representatives were unaware that Durham has the highest per capita eviction rate of any metropolitan county in North Carolina. The ED Program has helped to reinforce a sense of urgency around developing policy and taking action
to develop and retain affordable housing in the county. Durham County elected officials have already shown a willingness to allocate additional resources for eviction and homelessness prevention, beginning by funding a second housing attorney at LANC to assist indigent tenants. As individuals and organizations committed to advancing affordable housing continue to collaborate, this ED Program and other efforts will benefit significantly.

A final success of the ED Program is that program evaluation statistics collected by legal stakeholders illustrate the importance of legal representation in civil court cases. Of Durham tenants who had full legal representation in court, nearly 80 percent avoided eviction judgments, and over 65 percent avoided move-outs. Although the sample of cases is small, these figures are noticeably different from the 50.3 percent of annual eviction filings that granted whole or in-part. District Courts in Michigan had similarly positive reductions in eviction judgments following the implementation of their ED programs, which provides robustness to the results in Durham. When attorneys were unable to fully represent tenants, they were often able to inform tenants of the forthcoming eviction process and give tenants advice on how to approach the hearing and/or interact with the judge. Given the complexities of the law and the legal process, access to an attorney in the face of eviction increases the probability that tenants receive favorable outcomes in court.

**Programmatic Barriers and Challenges**

In its initial stages, the ED Program encountered several challenges that stakeholders are working to resolve. In the early focus group between ED Program attorneys and public officials, stakeholders highlighted the four most significant barriers:
1. **Limited funding.** As of March 1, 2018, the ED Program relied exclusively on rental assistance funding through the Durham County Department of Social Services (DSS). DSS rental assistance funding has strict eligibility requirements, which means that only a select number of tenants facing eviction qualify for rental assistance (See Appendix A, Table 3 for a detailed chart of rental assistance qualifiers). Until the ED Program establishes community partners that can supply additional, less restrictive sources of funding, housing attorneys at LANC and the Clinic will continue to have minimal leverage when negotiating with landlords to resolve nonpayment of rent cases (when the tenant does not qualify for DSS funding). A secondary source of funding is also important because stakeholders report that DSS often runs out of rental assistance funding by March or April, and the Fiscal Year does not reset until July 1. This is one of the most significant differences between the Michigan ED Programs and the Durham program: all of the Michigan programs have stable sources of rental assistance outside of DHHS/DSS such as the Salvation Army, United Way, and Volunteers of America. Securing additional funding is particularly important because legal stakeholders report that 60 to 70 percent of their eviction cases deal with nonpayment of rent.

2. **Referrals from DSS to LANC.** As of March 1, 2018, DSS only referred tenants facing eviction to LANC if they did *not* qualify for rental assistance through DSS. By operating in this way, tenants who qualify for rental assistance are less likely to receive a legal consultation, thus preventing a key goal of the ED Program: providing tenants facing eviction with access to legal counsel to level the playing field between landlords and tenants. It also means that DSS may be paying outstanding rent to landlords who are not providing fit and habitable rental premises. If the tenant were referred to the ED Program,
housing attorneys could negotiate on their behalf for rent abatement, reducing the amount of outstanding rent that DSS would need to pay. Finally, this referral process reduces traffic into the program because individuals and households who know that they will not qualify for DSS funding do not go to DSS, so they will be less likely to be referred to the program.

3. **Tenant and landlord awareness of the ED Program.** One of the greatest challenges has been public education surrounding the program. When tenants are served with an eviction notice, they receive a flyer about the ED Program. However, many tenants report being confused about this flyer and about the ED Program overall, which deters them from seeking assistance through the program. In addition, more landlords must be informed of the ways in which they would benefit from engagement in negotiations with tenants through the ED Program. Without significant buy-in from landlords, the ED Program cannot work; their cooperation is required for settlement negotiation.

4. **The short time frame between notice of eviction and small claims court hearing.** A tenant’s small claims court hearing date is scheduled for 10 days after she receives notice of a summary ejectment. By the time she gets referred to the ED Program (assuming she is referred by DSS) typically several days have passed. As a result, housing attorneys have minimal time to contact and process the tenant and to prepare for court. There are nearly 1,000 eviction cases filed per month in Durham County, so this short window seriously inhibits a housing attorney’s ability to serve tenants.

Chapter 5 will discuss possible remedies for these programmatic challenges. It will also propose three policy actions to address preservation of affordable housing in Durham and to improve communication between stakeholders working to provide access to affordable housing.
V. Conclusion and Recommendations

ED Programs have been proven to be very effective under specific circumstances. In cities and counties with stable housing markets, ED Programs can provide all of the players involved in the eviction process with a positive end result: the court benefits from increased efficiency in the processing of summary ejectment cases; Legal Services benefits because the ED Program enables them to spread limited resources over a wider group of people; Department of Health and Human Services/Department of Social Services and community funders benefit because they are able to better target their limited funding; tenants benefit from a facilitated connection to rental assistance, from legal counsel, and from increased housing stability; and landlords benefit by avoiding costs associated with tenant turnover. However, ED Programs are less well-suited for counties or cities with hot housing markets. In these areas, landlords do not have sufficient incentive to retain tenants at low rents. Economic growth and the influx of affluent populations encourage landlords to capitalize on rising rental rates by replacing lower income tenants with higher income ones.

Durham County is an example of an area with a booming housing market. Median monthly rent in the City of Durham increased by nearly 20 percent between 2010 and 2016, and affluent populations continuously move to the county (ACS, 2016). As a result, landlords in Durham may not be as receptive to the county’s ED Program as those in areas with more stable housing markets. However, at least some landlords in Durham have expressed interest in maintaining affordable units for low-income renter households, including accepting Section 8 Housing Choice Vouchers. These landlords prefer minimal renter turnover and lower rental rates to high turnover and more expensive rental rates. In eviction cases that involve these landlords and tenants with proof of income, the ED Program could prove effective in negotiating settlements that avoid eviction judgments and benefit all parties.
A related consequence of Durham’s booming housing market is the county’s lack of available affordable housing units. The need for affordable housing is clear: the Housing Choice Voucher (HCV) program currently services approximately 2,500 Durham households, but has a waitlist of over 10,000 households (Durham Housing Authority, 2017). Durham homeless shelters are similarly burdened such that over 300 people experience literal homelessness on any given night in Durham (i.e. camping, sleeping on benches, in cars, or under doorways, etc.) (Durham Opening Doors, 2017). The availability of affordable units greatly impacts the success of an ED Program. The program is best-suited for tenants who fail to pay rent due to unexpected financial setbacks, not for those who chronically cannot afford their rent. In the latter circumstances, the best possible ED Program outcome for the tenant would be a negotiated move-out in which the tenant moves residences but does not receive an eviction judgment. While a negotiated move-out could protect tenants from the consequences associated with a judgment, they may still face homelessness or other consequences associated with housing instability if there is a shortage of affordable rental units.

In the first several months of Durham’s ED Program, legal stakeholders concluded that it is more common for tenants to chronically lack sustainable income than to face unexpected financial setbacks. This conclusion has implications for the ED Program because the program is designed for tenants who face one-time setbacks, not for those who consistently struggle to afford rent. One legal stakeholder described the positions of many indigent tenants:

It is often the case that there is a financial crisis, but not in the majority of cases. Our clients are often permanently in financial crisis. They’re paying more than half of their income to rent and they’re late every month. Often, clients will lose hours at work or get sick, and those short term financial crises are all it takes to set them back. It doesn’t take a huge medical bill, it can just be having to take off a couple of days to care for a sick child that blows the budget for the month.
Proof of income is a non-negotiable requirement for rental assistance funding through DSS and through most community organizations. Given the importance of stable housing to acquiring and maintaining employment, lack of income results in a vicious cycle of chronic homelessness and unemployment. This cycle directly reduces intergenerational socioeconomic mobility as children experience educational gaps and suffer from mental and emotional stress associated with constant instability.

Durham’s ED Program cannot address the needs or situations of all of the low-income tenants in the county, but it does have the capacity to assist a specific group of tenants. Namely, the ED Program can help low-income tenants who have sustainable sources of income but who face unforeseen one-time financial challenges, provided their landlords are willing to negotiate settlements in lieu of pursuing eviction. Stakeholders appropriately recognize the ED Program as a part of a network of efforts to address Durham’s affordability and eviction crises. The sentiment is reflected in how one stakeholder described the program’s immediate future, “We want to continue to expand the program so that everyone in Durham County knows what’s available to them. We’re still going to be advocating the city to encourage sustainability. But, for now, we’re just trying to stop the bleeding.”

Whether the program will result in statistically significant reductions in eviction judgments or filings remains to be seen; these statistics should continue to be monitored as awareness of the ED Program grows. That being said, it is easy when evaluating a program such as this one to forget that each statistic represents a living person or family. There is value in preventing even one additional household from falling into homelessness or experiencing other consequences associated with housing instability.
Although the ED Program’s statistical impact is uncertain, preliminary reports of ED Program cases from legal stakeholders have clearly shown the impact of legal representation on eviction cases in court. Over three-quarters of tenants who were fully represented in court avoided eviction judgments, and two-thirds were able to remain in their residences. Annually, slightly over 50 percent of all eviction filings result in judgments, so it is notable that only approximately 20 percent of represented tenants facing eviction received judgments. Seron et al. (2001) similarly concluded, “Only 22 percent of represented tenants had final judgments against them compared with 51% of tenants without legal representation.” (419) The positive correlation between legal representation and avoided eviction judgments is important as policymakers evaluate how to allocate limited funding; funding additional housing attorneys for indigent tenant populations could effectively protect the legal rights of these households while simultaneously increasing housing stability.

**Improvements for Durham’s ED Program**

In order to best serve low-income tenants facing eviction in Durham County, including increasing the number of diverted eviction judgments, ED Program stakeholders should consider a few structural improvements, some of which they are already working to implement. These improvements should also be incorporated from the onset into any new ED Programs in other courtrooms. The first improvement relates to a fundamental difference between the ways in which Michigan and Durham stakeholders process tenants facing eviction who have legal defenses. This difference is crucial because it impacts the capacity of Durham’s ED Program to get support from landlords, which determines whether the ED Program can effectively reduce the number of eviction judgments that go on tenants’ housing records.
In Michigan, stakeholders only assist tenants through their ED Programs when tenants are facing eviction for nonpayment of rent, need rental assistance, and do not have habitability issues with their rental units. In ED Program cases, Legal Services attorneys serve as mediators between landlords and tenants, ensuring that tenants’ best interests are protected. Legal Services attorneys do not represent tenants with habitability issues through the ED Program. Rather, in instances of habitability complaints, attorneys open new files for tenants outside of the ED Program. By distinguishing between simple nonpayment of rent eviction cases and eviction cases with legal defenses, stakeholders in Michigan are able to retain landlord support for the ED Program. In other words, landlords know that they will not be challenged in court by engaging with Michigan ED Programs, so they have the incentive to negotiate to get their outstanding rent.

The situation in Michigan’s 8th District Court in Kalamazoo exemplifies the initial ED Program creators’ vision of establishing a program that more efficiently connected tenants with rental assistance. Legal Services has successfully built a relationship between the courts, tenants, DHHS, United Way, and Housing Resources Inc., such that, eight years after the ED Program’s inception, attorneys are minimally involved in the program’s operation. The new relationship between DHHS, Housing Resources Inc., United Way, and the 8th District Court enables tenants to secure the necessary rental assistance prior to their court dates. The rental assistance allows them to negotiate with landlords to pay their overdue rent. If tenants have habitability concerns or other legal related questions, attorneys provide services separate from the ED Program.

Durham’s ED Program does not distinguish between purely nonpayment of rent eviction cases and eviction cases with legal defenses. On the contrary, attorneys through Durham’s ED Program try to identify legal defenses in an effort to get rent abatement for tenants in the ED Program. Approaching eviction cases in this way has the potential to alienate landlords; they may
suspect that tenant involvement in the ED Program will highlight habitability issues that they are responsible for addressing. In the early stages of the ED Program, it is crucial that stakeholders gain landlord approval and support because negotiations cannot occur without cooperation from landlords and their attorneys. Stakeholders will only build landlord trust around the ED Program if landlords cannot face consequences by becoming involved with the program. Any additional structural improvements made to Durham’s ED Program will have little impact if stakeholders do not change how they address eviction cases with habitability issues versus those without habitability issues. Implementing this change does not mean that tenants with habitability concerns will not receive legal assistance. Rather, those tenants will be processed separately from those in the ED Program.

Processing strictly nonpayment of rent cases separately from cases involving habitability issues will require a coordinated secondary source of rental assistance funding in addition to DSS. This leads to the second structural change related to Durham’s ED Program. DSS funding is both restrictive and limited in quantity, inhibiting housing attorneys from LANC and Duke’s Civil Justice Clinic from negotiating settlements between landlords and tenants for nonpayment of rent cases when the tenant does not qualify for DSS funding. Given that DSS currently only refers clients to the ED Program who do not qualify for rental assistance, attorneys never have financial leverage in negotiating settlements over nonpayment of rent cases through the ED Program. Once attorneys are better able to connect tenants with resources to supply rental assistance, they will not need to rely on legal defenses to assist tenants. Instead, they can process eviction cases with habitability concerns separate and apart from the ED Program.

This highlights the third necessary modification: direct entry into the ED Program. As of March 2018, tenants facing eviction only become involved in the ED Program only via referrals
from DSS to LANC. Stakeholders cite the need for a call or text line that tenants can use to connect directly to LANC without going through DSS. Direct entry into the program would have two major benefits. First, it would likely increase program traffic given that only a certain subset of tenants currently approach DSS for rental assistance. Despite the ED Program flyer that instructs tenants to call DSS, DSS representatives report that tenants who expect to be disqualified for DSS funding rarely set up appointments with DSS caseworkers. The second benefit to a direct hotline is that it would connect tenants with attorneys earlier in the eviction process, giving them additional time to find rental assistance funding.

Along with a hotline, stakeholders cite the need to increase outreach and public education efforts to ensure that landlords and tenants know about the ED Program. Stakeholders in Durham are working to implement these changes, which would likely make engagement with the ED Program easier and more attractive for tenants. Stakeholders in Michigan, specifically in Oakland and Macomb Counties, reported that the most effective outreach for landlords came in the form of “lunch and learns” with landlords and landlord attorneys. The event that had the best turnout was an evening information session at a local brewery. Durham stakeholders should host one or two local, informal events to discuss the ED Program with landlords and their attorneys, especially given the essential role that these latter stakeholders play in the capacity of the ED Program to help tenants avoid housing instability.

In addition to or instead of a hotline, Durham’s ED Program would benefit from designating two or three time slots per week in small claims court to eviction diversion cases. This is how the ED Programs in Michigan operate—each district court allocates one to four blocks of time each week in which judges hear only eviction diversion cases. The courts that have experienced the greatest and most sustained success with the ED Program (8th, 50th, and 53rd
District Courts) also station a representative from either Legal Services and/or DHHS/DSS at the
court house during specified ED Program times. Having a physical presence allows stakeholders
to “triage the eviction cases,” as one stakeholder put it. With program representatives physically
present in the court foyer, tenants are more likely to interact with the ED Program, which increases
the chances for negotiating settlements and avoiding eviction judgments. In Durham, an in-court
presence could take the form of an information table with an ED Program representative who is
knowledgeable about the program and about various sources of rental funding.

It must be noted, however, that triaging in-person becomes increasingly difficult as the
number of eviction cases increases. the ED Program could ease the burden on Durham County
Court Magistrates, who hear anywhere from 5 to 95 eviction cases per Magistrate per day,
depending on both time of year and time of month. In the 55th District Court (Mason, Ingham
County), participating judges report that the ED Program has eased the burden of their caseloads.
With the ED Program, all of the eviction cases are heard one afternoon per week, and they are
processed in a routine, quick manner. These judges also view the ED Program as a means of
protecting of tenants’ rights in court. Both of these positive outcomes are attributable to the in-
person presence of legal services and community representatives at the court house during
scheduled eviction proceedings.

Finally, along with additional, private funding sources and direct entry into the ED
Program, Durham stakeholders referenced the need for a community point person who knows what
governmental departments, nonprofits, faith-based organizations, and other groups offer in terms
of housing assistance, employment options, skills trainings, and other opportunities. Housing
attorneys with the ED Program could consult this individual to secure funding for tenants based
on their individual situations. For instance, if a tenant is elderly, she could receive rental assistance
from the Council for Senior Citizens. In addition, the community point person would ensure that different organizations are collaborating whenever possible to avoid any overlap or inefficiency that results from poor communication. This individual could also have an in-court presence by staffing an information table in the courthouse lobby.

All of the ED Programs in Michigan had community point people or groups of people with whom legal services could consult regarding rental assistance. In Kalamazoo, this was a designated representative from DHHS/DSS. In Macomb and Oakland counties, it was a group of representatives from different community funders who met with all tenants in need of rental assistance on the Monday prior to the tenants hearing (to take place on the Friday of that week). ED Program stakeholders in Durham are identifying possible people or organizations to fulfill this role. Securing a third-party person or group of individuals devoted to facilitating the ED Program would be instrumental both in connecting tenants facing eviction with the appropriate source of rental assistance and in reducing inefficiency due to overlap.

Limitations

This study has a few limitations that must be noted. First, for ethical reasons, I was unable to interview indigent tenants regarding their opinion of the efficacy of the ED Programs. I made the assumption that they view the programs favorably given the high percentage of tenants who, when approached by program stakeholders, self-select into assistance through the programs in Michigan and Durham. However, there are limits to stakeholders’ ability to speak for tenants, so it would have been preferable to speak directly with tenants about their experience with and opinions of the ED Program. As the Durham County ED Program continues to develop, and if other counties pilot ED Programs, it is essential that community funders and legal services
attorneys continually consult in with tenants to ensure that the ED Program is truly easing the burden of eviction.

Similarly, I was unable to speak with a representative sample of all landlords in the counties in Michigan or in Durham County. From the conversations that I did have with landlords and from focus groups with ED Program stakeholders who had interacted with numerous landlords, I gathered that opinions on various ED Programs vary significantly by landlord type (small landlord, corporate landlord, long-term resident of the county, etc.). Given that the success of an ED Program hinges on landlord participation, it would be worth further investigating different landlord perspectives.

Finally, I would liked to have performed statistical tests to see whether the ED Programs in Michigan or in Durham resulted in statistically significant reductions in eviction judgments. Unfortunately, data from the Michigan court system do not distinguish between eviction judgments and dismissals in landlord/tenant proceedings. Therefore, I was unable to analyze whether the district courts with ED Programs experienced such reductions. Similarly, there was not yet sufficient data from Durham to conduct a test with adequate power. Despite this shortcoming, I argue that any analysis of eviction and homelessness necessitates a qualitative as well as quantitative approach so as to capture all of the intangibles and nuances. Housing policy deals with real families and individuals, and statistical testing can sometimes minimize the accomplishment of assisting even one household.

**Policy Recommendations Beyond the ED Program**

In addition to identifying specific improvements for Durham’s ED Program, this evaluation has highlighted three broader potential policy changes to preserve the stock of available affordable
housing in Durham County and to increase efficiency and collaboration among organizations working to ensure that all residents have access to affordable housing.

1. Prioritizing the allocation of funding at the county level to smaller landlords who are committed to supplying affordable housing. As a condition for financing repairs, landlords could sign an agreement to retain their unit(s) at a specified affordable rate for a certain number of years. Such a negotiation would help to preserve the stock of affordable housing in the county and ensure that tenants are not forced to live in substandard housing conditions. Representatives from the City of Durham as well as legal stakeholders in the ED Program referenced a need for funding to ensure the maintenance of affordable properties. This is especially important in a booming housing market, like Durham’s, in which landlords who cannot afford to keep their properties up to code are incentivized to sell to speculators for development. Funding for smaller landlords could also be a priority for community organizations committed to sustainable housing development.

2. Investigation into the possibility of creating a ‘Housing Hub’ to physically unite different organizations that address various housing needs throughout the county. In April, 2018, Greensboro, North Carolina opened a Housing Hub, which was financed largely by a city-wide bond. A Housing Hub in Durham would: 1) improve communication between the myriad of non-profit, faith-based, and private organizations that supply housing-related services, and 2) provide tenants and homeowners with a one-stop shop for all of their housing-related needs. Durham should monitor the impacts of Greensboro’s new Housing Hub to determine whether to invest in a similar facility.

3. An amendment to North Carolina’s Fair Housing Code to include a ban on discrimination based on income source. Currently, the state fair housing code mirrors the federal fair
housing code: it bans discrimination in housing on the bases of race, color, religion, sex, national origin, physical or mental handicaps, or family status (families with children). Adding income source to this list would prevent landlords from denying tenancy to renters with Housing Choice Vouchers (HVCs). An alternative to this significant policy action would be passing legislation at the state level to permit municipalities to add such a ban to their individual fair housing codes. This action would protect the remaining stock of affordable units in Durham County and in other counties in North Carolina.
References


Opened LANC Eviction Cases by Client Location. (2017). [Graph illustrating eviction cases opened by Legal Aid of NC during 2016-2017].


### Appendix A

#### TABLE 3. Durham County Department of Social Services Rental Assistance Eligibility Requirements

<table>
<thead>
<tr>
<th>Service Name</th>
<th>Fund Description</th>
<th>Eligibility Requirements</th>
<th>Benefit Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Emergency Assistance (EA)</td>
<td>Used for many different client needs, such as utility bills, rent, mortgage, medicine, durable - medical equipment, and travel assistance.</td>
<td>Household member must be either receiving a disability payment from Social Security OR have a doctor’s statement that they are unable to work for at least 30 days OR be aged 60 or older. Household income may not exceed 150% FPL.</td>
<td>Maximum $300, once annually.</td>
</tr>
<tr>
<td>Family Preventative Emergency Assistance</td>
<td>Used for many different client needs, such as utility bills, rent, mortgage, medicine, durable-medical equipment.</td>
<td>Must have a child in the household under the age of 18. Household income may not exceed 150% FPL.</td>
<td>Maximum $300, once annually.</td>
</tr>
<tr>
<td>TANF Financial Assistance</td>
<td>Federally-funded program that assists households with children with rent, mortgage, or utilities (cooking gas, not heating).</td>
<td>Household income must not exceed 200% FPL. Must have a child under the age of 18. Must meet citizenship requirements of the Work First Program.</td>
<td>Maximum $400, once annually. Can be used with Section 8 Vouchers for deposit assistance once per lifetime</td>
</tr>
<tr>
<td>Homelessness Prevention Program (Opening Doors)</td>
<td>County program designed to reduce homelessness and assist with eviction prevention.</td>
<td>Household income may not exceed 150% FPL. Household must be facing eviction. Under certain circumstances, funding can be used to assist with security deposits.</td>
<td>For rental assistance to prevent eviction: 80% of base rent—no more than $1,000</td>
</tr>
</tbody>
</table>

**SOURCE:** Durham County Social Services, 2016
Appendix B

Figure 14: Flow Chart of Durham’s ED Program
Appendix C

TABLE 4. Interview Questionnaire for ED Program Stakeholders

1. When and why did you become interested in starting an Eviction Diversion (ED) Program in [name of other city]?
2. Please speak on the current, rapid gentrification in your area. How do you perceive the relationship between gentrification and eviction?
3. What is the state of affordable housing in [city]?
4. What is landlord tenant law in [county] like? What is the time period between eviction filing and court date? Automatic extension, correct? Do you find this automatic stay helpful in providing tenants with the legal assistance that they need?
5. Why are most tenants who come through your program facing eviction?
6. What are the demographics of tenants in your program? Have those shifted in the several years of program operation?
7. Do you see a lot of housing cases that have habitability issues?
8. In what ways do you think the program is or is not meeting the needs of local residents facing eviction?
9. What do you see as the goals of this eviction diversion program?
10. Have these goals changed over the course of the program?
11. What would make the eviction diversion program a success in your eyes?
12. What are the challenges (implementation or otherwise) that you’ve encountered with the program thus far?
13. What changes would you like to see made to improve the program?
14. Do you know anything about the other eviction diversion pilot programs in Michigan?
   a. If so, how do you think that this program is similar/different?
   b. How could those programs serve to influence the development of this program?
   c. How many total programs are up and running in MI (# of counties and # of district courts)? What results have you had that have made them keep popping up?
15. What are the largest community economic development challenges that you see in [city]?
   1. Are any of these challenges inhibiting the success of this program? Explain.
16. Please speak to the collaborative efforts between all of the stakeholders involved in program implementation.
   1. Who are the stakeholders?
   2. Who do you consider to be the most influential or key stakeholders (i.e. who, if absent, would render the program ineffective?)
   3. How have you communicated? Has it been effective?
   4. Would you change anything regarding communication?
17. How is this program funded? Public? Private? Combination?
   1. What are the eligibility requirements to receive funding?
   2. Have those requirements changed over the course of the program’s existence? If yes, how so?
   3. Has the city or county increased funding to this program throughout its existence?
18. What advice would you give to county’s or courts considering implementing an ED Program modeled off of this one? Challenges to expect? Stakeholder(s) to involve from the get-go?
19. Is there anything else that you would like me to know regarding this program, its efficacy, its drawbacks, or anything else?
Appendix D

Figure 15: ED Program flyer handed to tenants alongside eviction summons