

# The Default Project:

## A Survey of the Reasons for Tenant Defaults in Housing Court Eviction Cases

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### Findings and Policy Recommendations



Prepared by the Massachusetts Law Reform Institute and the Justice Center for Southeast Massachusetts upon request of the Massachusetts Access to Justice Commission Housing Working Group, based on research conducted by AmeriCorps Legal Advocates of Massachusetts

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## Executive Summary

In 2018 the Executive Office of the Trial Court provided a report summarizing the number of Housing Court Summary Process (eviction) cases where a Default Judgment entered against the tenant. An analysis of the Trial Court's report revealed that from 2015 to 2017 the **court entered a default judgment in nearly 25% of Housing Court eviction cases statewide – a troublingly high rate since losing an eviction case puts a household at imminent risk of homelessness.** In response to this finding, the Access to Justice Commission collaborated with the AmeriCorps Legal Advocates of Massachusetts (ALAMA) to improve understandings of the reasons for tenant defaults.

Throughout March 2019, AmeriCorps volunteers attended every Housing Court session across all six court divisions, ultimately identifying 621 defaults against tenants. The volunteers then tracked these cases in two ways: (1) they engaged in a door-knocking campaign, completing 123 in-person interviews to understand the reasons why tenants were defaulted; and (2) they used the Trial Court's online case access system, MassCourts, to look up the final outcome of all 621 cases where tenants were defaulted. This report will outline the findings of the interviews and case outcome analysis, and suggest policy recommendations to help improve court access for tenants.

### *Interview Findings:*

Most tenants who were interviewed never made it to court. Tenants who did not get to court reported most frequently that:

- They did not receive the summons and complaint.
- They had paid their arrears and believed they did not need to go to court.
- They had been told by a landlord or property manager that they did not need to go to court.

Tenants who made it to court, or tried to, reported most frequently that:

- They faced challenges with transportation, lack of childcare, medical conditions, and disability.
- They made it to court but were still defaulted because they were late or were unable to locate the correct courtroom.

### *Case Outcome Findings:*

A review of the outcomes of the 621 cases reveals that **over 80% of the tenants who were defaulted likely lost possession of their home.** A forced move-out was the likely result even including cases where tenants were able to file a motion to remove the default or reached an agreement with their landlords following the default.

### *Policy Recommendations:*

Courts should place a high priority on the explicit goal of reducing defaults. Like many aspects of summary process, reducing defaults should be reimagined with active participation from all court users, and centered upon the needs of those who are accessing the system without representation. In light of the complexity of the process, the rapid pace of court events, and the overwhelmingly high rate of

tenants who do not have legal assistance, courts should emphasize greater simplicity, flexibility, and accessibility in court processes, court access, and physical courtroom spaces.

- Tenants should not be defaulted on their first court date
- Court forms should provide key information in plain language
- Court correspondences should include multilingual notices indicating that the document should be translated
- Courts should provide flexibility in proceedings, such as alternative court hours and locations, as well a “grace period” for tenants to appear on the day of court
- Courts must meaningfully follow existing requirements under the Americans with Disabilities Act, both in communication and in physical courtroom access.

## Project History and Methodology

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In 2018 the Executive Office of the Trial Court provided a report summarizing the number of Housing Court Summary Process (eviction) cases where a default judgment entered. An analysis of the Trial Court's report revealed that from 2015 to 2017 the **court entered a default judgment in nearly 25% of Housing Court eviction cases statewide.**<sup>1</sup>

Under the Uniform Summary Process Rules, a tenant's first court date is ordinarily their trial date.<sup>2</sup> If the tenant fails to appear in court on that date, or fails to respond when their case is called, the court enters a "default." Entry of a default means that a judgment automatically enters against the tenant. When a default judgment is entered against a tenant they can lose possession of the unit, and even be moved out, despite never being heard by a judge. Once a default judgment is entered it cannot be appealed, and within 11 days a tenant can be physically removed from the property.<sup>3</sup> The only way a default judgment can be removed is by order of the court.

Reducing defaults has long been a key access to justice priority. The 2017 Massachusetts Justice for All Strategic Action Plan<sup>4</sup>, the result of a collaborative process including representatives of the Access to Justice Commission, courts, legal aid providers, social services organizations, law schools, bar associations, litigants, community groups, and other stakeholders, identified defaults as an access to justice concern and made high level recommendations about minimizing them. However, without a better understanding of the *reasons* tenants were not appearing in court, or appearing too late to be heard, it was difficult to craft effective solutions. The Massachusetts Access to Justice Commission's Housing Committee approached ALA-MA about conducting research on the reasons that the default rate was so high – nearly 25% between 2015 and 2017. With the assistance of the Massachusetts Law Reform Institute (MLRI) and the Justice Center of Southeast Massachusetts (JCSEM), ALA-MA designed

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<sup>1</sup> The Executive Office of the Trial Court reviewed available data for FY2015 to FY2017 and compiled a summary report on the number of disposed summary process cases, by Housing Court division and year of disposition, where there was a Judgment by Default. The request for data was made by MLRI. See Appendix for the Trial Court's summary report and MLRI's analysis.

<sup>2</sup> In response to the COVID-19 pandemic, the Housing Court issued standing orders implementing a two-tier system for hearing summary process cases. The Tier 1 event is a mediation and status conference with the Housing Specialist Department, while the Tier 2 event now serves as the trial date. During the COVID-19 State of Emergency, Standing Order 6-20 provided that a tenant would not be defaulted for failure to appear at the Tier 1 event but would be sent a notice scheduling their case for a Tier 2 hearing (trial), at which point a default could enter if they again failed to appear. This policy was amended by the Third Amended Housing Court Standing Order 6-20 and now allows for defaults to enter at the Tier 1 event for any case filed on or after July 1, 2021.

<sup>3</sup> Rule 12 of the Uniform Rules of Summary Process (2004).

<sup>4</sup> In 2017 the Massachusetts Justice for All Project was awarded a grant to develop a Strategic Action Plan to improve access to justice in Massachusetts. The Strategic Action Plan adapted recommendations prepared by the Justice for All Housing Working Group, entitled *Access to Justice in Housing: A Housing Stabilization Vision*. Information about the Massachusetts Justice for All Project, including a link to the Strategic Action Plan, can be accessed at [http://www.massaj.org/a2j/?page\\_id=811](http://www.massaj.org/a2j/?page_id=811).

and undertook the research component of this Default Project to better understand the reasons tenants default in eviction cases.<sup>5</sup>

The project involved a statewide research and canvassing effort conducted by AmeriCorps members, legal services advocates, and other volunteers. The project was guided by the recognition that tenants are experts in their experience, so in order to better understand the reasons for the high rate of defaults it was necessary to speak directly to tenants. The primary purpose and focus of the Default Project was to gather qualitative information, in the form of tenant narratives, and was not intended to present a strict quantitative analysis. The researchers then supplemented their canvassing and interview findings with quantitative analysis of case outcomes using publicly available court data.

In March 2020, a year after this research was conducted, the COVID-19 pandemic forced courts to adjust their procedures in response to emergency public health measures, a process that is still evolving as conditions change. While some adjustments to court processes have seemed to help address the default problem, new challenges to court access have arisen. Studying pandemic-era data will be important as we seek to understand the interventions that are most effective at reducing defaults. As courts continue to develop their summary process practices, both the information gathered during this project and its recommendations – including a set of recommendations specific to the Court’s pandemic-era operations – should serve as a useful resource.

## *Methodology*

Throughout March 2019, approximately 30 advocates and volunteers attended each session of the Housing Court. This totaled 115 sessions across the six Housing Court divisions. The volunteers identified 621 cases in which a tenant was defaulted in the court session. They then followed up with these tenants through a door-knocking campaign to ask questions about why they were defaulted by the court, and to provide information about how to remove a default. They followed up with each tenant who defaulted and successfully interviewed 123 of the tenants.

Volunteers used an open-ended questionnaire to collect information about tenants’ experiences with the eviction process. Project coordinators entered the results into a database, standardized the responses, and analyzed the results. Although some respondents described multiple, overlapping barriers to accessing the court in their narrative responses, the analysis that follows focuses on the primary reason for default identified by each tenant.

Although the summary report provided by the Trial Court provided the number of “judgments by default” for the specified period, it is unclear exactly what the numbers represent. For example, these numbers do not indicate at what point in a case the default occurred; whether it represents defaults at the initial trial date or if it also includes defaults later in a case; or whether it includes defaults that were subsequently removed. The complexities and nuances of this type of data demonstrate the importance of this Default Report.

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<sup>5</sup> AmeriCorps members from ALA-Massachusetts participated in the data collection portion of this project. ALA-Massachusetts and its members do not endorse or support any policy platform or legislation.

In the year that followed the initial court-watching and door-knocking campaign, volunteers examined the outcomes of the 621 cases identified as resulting in a tenant default using MassCourts. The available records were reviewed to collect the following data points:

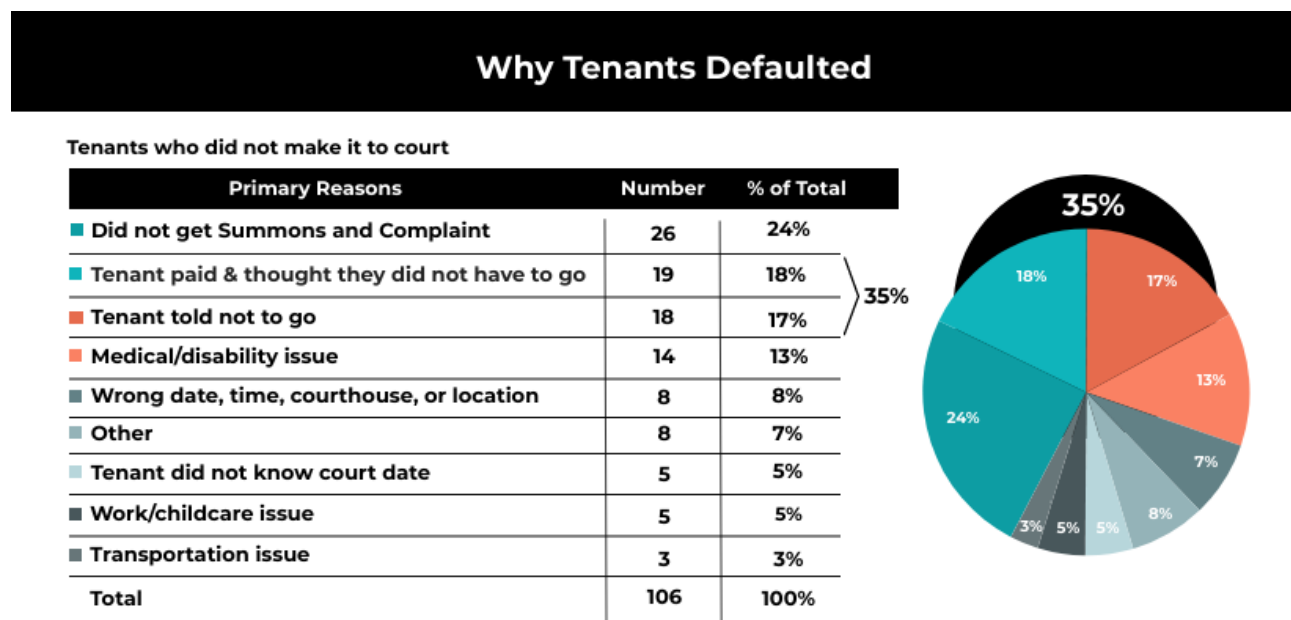
1. How many tenants filed a Motion to Remove Default and their rate of success;
2. How many defaults were removed, irrespective of whether a Motion was filed;
3. How many tenants agreed to vacate or had executions issued against them, even when a default had been removed; and
4. How many tenants retained possession by order of the court or by entering into an agreement that granted them possession after the default was removed.

## Interview Findings

Volunteers successfully interviewed tenants in 123 out of the 621 cases identified where a tenant was defaulted. Tenants who were interviewed were divided into two broad categories: those who made it to the courthouse and those who did not. The following section describes the reasons for default reported by tenants.

### Tenants who did not make it to court and were defaulted

Most of the tenants we interviewed – 106 of the 123 tenants interviewed – never made it to court. Analysis of these interviews reveals a number of significant and recurring themes. The chart below shows each reason for default identified by tenants and the number of tenants who cited each as the primary reason they were defaulted. Even where not identified as a primary reason, challenges posed by transportation, lack of childcare, medical conditions, and disabilities were cited by many respondents as barriers to accessing the court.



The most-cited primary reason tenants did not make it to court was that they had not received a Summons and Complaint. Although the reasons tenants may not have received the Summons and Complaint varied, it was consistently identified as a barrier. While some of these tenants had previously received a bill for rent due or a notice to quit, many had no idea that a case had been filed in court.

Prior to pandemic-related changes, the Summons and Complaint form was the only official court communication notifying tenants about their court hearing, including critical information such as the date, time, and location of the trial. During the COVID-19 emergency, housing courts began sending tenants a notice of first virtual court event (“first tier event”) that includes the date, time, and Zoom login information. While this additional notice to tenants was welcome, it has unfortunately not been effective for many tenants because notices are not always sent timely. Many tenants and attorneys reported receiving this notice very shortly before or even after the court event, when it was too late.

The second most cited primary reason for default was that tenants had paid what they owed and believed they did not need to appear in court. This reason is closely related to the third most common reason, which was that tenants were affirmatively told that they did not need to attend court. This information was often relayed to the tenant by a landlord or property manager, sometimes even in writing, typically because the tenant had paid what was owed. Because the majority of eviction cases are filed for non-payment of rent, it is significant that nearly 30% of tenants surveyed reported that they had paid what they owed but were still saddled with a default judgment. These tenants may have defaulted precisely because they paid and were led to believe that their presence in court was not necessary. It is noteworthy that for certain tenants, their presence may not in fact have been required, as a legal cure would require the landlord to dismiss the case.

The fourth most cited primary reason for default was a disability or medical issue. One tenant had undergone a series of unexpected surgeries resulting from a recent cancer diagnosis. She knew that her household had fallen behind on rent but was not aware that an eviction case had been filed and did not recall receiving a letter from court due to her sudden illness and extensive treatment. Barriers cited by other tenants included chronic illness, mobility difficulties, mental health challenges, and family deaths. Some tenants experienced medical emergencies, including a tenant who fell and hit her head, requiring stitches on the morning of her hearing, and another whose elderly mother fell down the stairs before court. Both of these tenants called the court in the morning but were not given realistic options and were defaulted.

One tenant who called the court prior to the hearing was told there was nothing the court could do and that the tenant could file a motion to remove the default later. This cavalier response diminishes the real harm that is inflicted on tenants who default, implying that simply “filing a motion” will put tenants back into the position they had been in if they had appeared in court. Tenants must be informed of the many steps required to remove a default. The court must explain tenants are on a short deadline, what motion to file and how to file it, and what that motion must include. The standard for successfully overcoming a default is quite high, and the court’s own standardized form does not clearly articulate what a tenant must demonstrate to prevail in such a motion.

The SJC recently recognized the difficulties litigants with disabilities face, explicitly confirming that Massachusetts Trial Courts must provide reasonable accommodations to litigants with disabilities. In *Adjarney v. Housing Court Central Division*, the Supreme Judicial Court (SJC) highlighted the “complex and fast-moving” nature of summary process cases, which pose particular difficulties for unrepresented litigants, noting that the overwhelming majority of tenants appear in summary process cases without attorneys.<sup>6</sup> Citing the Massachusetts Court System ADA Accessibility Policy, the SJC noted the duty “where reasonable to ‘provide appropriate aids and services to qualified persons with disabilities so they can participate equally in the services, programs, or activities of the Judiciary.’”<sup>7</sup> Unfortunately, there is a lack of transparency about how litigants can request reasonable accommodations, and some courts do not fully honor these requests.

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<sup>6</sup> *Adjarney v. Central Division of the Housing Court Department*, 481 Mass. 830 (2019), available at <http://masscases.com/cases/sjc/481/481mass830.html>

<sup>7</sup> *Id.* at 849



Recent pandemic-era changes have also exacerbated access issues for litigants with disabilities. One of the emergency Housing Court provisions implemented in 2020 was the near-exclusive use of the Zoom platform for hearings. This has posed different and additional challenges for disability access to the court system, ranging from technology, literacy, and physical challenges.

The fifth most cited reason for default was that respondents had inaccurate information about the date, time, or location of court. Some of these tenants had received the court papers but were still unclear about this information. Several tenants who did not know their court date reported that, although they were aware a court case had been filed, they had been communicating with their landlords (or property managers) and were getting confusing, conflicting or misleading information about the case.

Difficulties with work or childcare were the sixth and seventh most cited reason for default. Several respondents were unable to take time off work, and one could not find a babysitter for an autistic child who had a school vacation the day of court.

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***“I went to the office and the manager told me since I had paid, I did not need to go to court.”***

*— Tenant response as recorded by Default Project volunteers*

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## Tenants who made it to court but were defaulted

There were 17 additional respondents who actually made it to court but were nonetheless defaulted. Some of these respondents arrived within an hour of the start of the court session – some within 15 minutes – but were still defaulted. One of those tenants arrived early, was directed by a court staff person to wait at a certain hallway in the courthouse, where he waited for one hour for his name to be called. After speaking to another tenant in the hallway he went into a courtroom (which was on a different floor) and was told he had been defaulted and that the landlord’s attorney had left. Other tenants arrived and did not find the courtroom but met their landlord’s attorneys or accessed other resources (such as RAFT, or Residential Assistance for Families in Transition). While the availability of resources is important for litigants, once a default judgment has been entered it generally remains there unless the court orders it removed or removal is specified in an agreement. This means the landlord could still get an execution and move the tenant out, and the judgment could remain on the tenant’s record, potentially affecting future access to credit or rental housing.

Some of the tenants who made it to court were delayed because of transportation problems. Two tenants had car trouble or no car available and walked to court (one with her daughter). One tenant was late because her train stopped running. Two tenants went first to the wrong courthouse; one of these tenants stated that he went to the courthouse listed on the Summons and Complaint (which lists the primary courthouse for the division) when in fact his case was being heard in a “satellite” session. One tenant was sick with food poisoning and went to court later in the afternoon, as soon as she was able, but had been defaulted. Another tenant’s children were sick the day of court, so she had to find childcare, then spent half an hour looking for parking.

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***“The court officer told me to go to the 3rd floor. I waited for almost an hour for my name to be called. I spoke to another tenant in the hallway who told me to check in inside the court room. When I went in, I was told I had defaulted and the attorney already left.”***

*— Tenant response as recorded by Default Project volunteers*

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## Case Outcome Findings

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### Case outcomes following a default

Beginning in 2020, the Default Project reviewed all the March 2019 cases where tenants were defaulted to find out what, if anything happened in the case following the initial default. Specifically, the Default Project wanted to learn how many of these cases concluded with default judgments and how many of those defaults were successfully removed, if any. This research revealed that **the vast majority of cases concluded with the entry of a default judgment against a tenant, revealing that most tenants who were defaulted lost possession and likely had to move out.**

The court's own data confirm that default judgments are rarely removed: a 2021 report by the Trial Court Department of Research and Planning indicates that between 2017 and 2019, **93% of initial default judgments were never removed, meaning that the final legal outcome of the case was a default against the tenant.**<sup>8</sup>

### *Default process overview*

Removing a default is time consuming and requires in-depth knowledge of Summary Process rules and procedures – yet must happen quickly. Following the entry of a default a tenant has just 24 hours to try to remove the default before a default judgment enters in the case. This means that only tenants who were aware of their hearing date and can get to the court the same day or the following morning will have any chance of removing the default before the court enters judgment against them. Once the court has entered a default judgment the tenant may still seek to remove the default judgment, but they will be subject to a higher standard of relief as set out in the Mass. R. Civ. Pr. 60(b), which is more difficult than the “good cause” standard for motions to remove defaults before judgment has entered. If the tenant fails to file a Motion to Remove Default within ten (10) days from entry of judgment, an execution for possession and damages will be issued to the landlord, granting them authority to physically remove the tenant. Although the court is required to mail notice of the entry of judgment to the parties “forthwith,” the exact timing is not specified and same-day mailing is not required. Weekends are not excluded from the 10-day window. Assuming three days for mailing, even a slight delay in the tenant's receipt of notice could result in the tenant having no idea they need to file a motion until an execution has issued to the landlord and the sheriff or constable is serving a notice that the tenant must move out in 48 hours. Many tenants do not receive this in time to take action, if they receive it at all.

If a tenant is fortunate enough to know they missed a hearing date, they still face a series of barriers to successfully removing a default. They must first be aware that they need to file a motion within a limited time period. They must then find the correct motion to file and figure out how to file it with the court and serve it on the landlord within the deadline. The motion must make specific legal arguments which the tenant must be able to articulate at the hearing. A Motion to Remove Default will only be allowed where the tenant successfully argues both good cause for failing to appear and that they have a

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<sup>8</sup> Report available at <https://www.mass.gov/info-details/trial-court-statistical-reports-and-dashboards#statistical-reports->

meritorious defense to the eviction. This means that a tenant with meritorious eviction defenses may be denied the opportunity to advance them if, in a judge's discretion, they did not have "good cause" for failing to appear. Conversely, if a judge finds that a tenant has "good cause" for failing to appear but the tenant is unaware of, or unable to articulate, their defenses, as is common for litigants unfamiliar with summary process laws, they may still be denied the removal of default.

If a tenant fails to file a motion within the 10-day period allowed for filing a Motion to Remove Default and is still in the unit, they will also need to seek a stay of levy of the execution to prevent the landlord from moving them out before the Court can hear the motion.

Although the parties may choose to enter into an agreement following the entry of a default – either before or after the judgment enters – landlords often have very little incentive to do so, since the tenant has the sole burden for removing the default and the landlord has, or will soon have, the ability to regain possession of the unit without incurring the time or expense of litigating the case.

### *Default Project case outcome findings*

The Default Project review consisted of analyzing MassCourts case records for each of the 621 cases recorded in March 2019 and noting the activity following the entry of the initial default.

Agreements between the landlord and tenant were reached in about 152 of the 621 cases, or 24%, most of which required the tenant to move out. A small number of the case records, 30 of the 621, indicate that the case was either dismissed, proceeded to further litigation, or were inconclusive. We further analyzed two separate categories of cases: 1) outcomes of cases where tenants filed a motion to remove the default and the outcomes, and 2) outcomes of cases where tenants reached an agreement with their landlords. Our analysis found that tenants still lost possession in both circumstances.

#### **1. Tenants who filed a Motion to Remove Default**

**Less than 20% of tenants who defaulted filed a Motion to Remove Default. Only 1/3 of those tenants who filed a Motion to Remove Default were successful.**

Tenants filed a Motion to Remove Default in only 118 of the 621, or 19%, of cases identified. Of those, only about 34% of the 118 cases where a motion was filed resulted in a removal of the default, either by the Court allowing the Motion or by the parties reaching an agreement in which the default was removed.

#### **2. Tenants who reached Agreements following the default.**

**About 1/4 of the cases where tenants were defaulted resulted in Agreements. Over half of those cases resulted in the tenant losing possession.**

Regardless of whether a Motion to Remove Default was filed, 152 of the 621 cases, or 24%, resulted in some form of agreement following the initial default. These agreements were reviewed to determine whether the terms addressed the tenant's possession of the unit.

Tenants agreed to vacate their units in 60 of the 152 agreements (40%). Of the remaining 92 agreements, the overwhelming majority included terms allowing the landlord to regain

possession if the tenant failed to comply with certain conditions. Although such provisional agreements theoretically provide tenants an opportunity to regain possession, tenants can be quickly evicted if, upon the filing of a motion by the landlord, the court determines that the tenant has violated a material term of the agreement. The court could immediately issue an execution that the landlord can use to physically evict the tenant.

Landlords filed motions to issue execution in 22 of the 92 cases (24%) where agreements were reached. Most of these motions for execution, 17 of 22 (77%), were allowed.

Taken together, the cases in which tenants agreed to vacate and those in which the court issued an execution totaled 77 of 152 (51%), meaning that in over half of the cases where an agreement was made following a tenant default, the tenant lost possession.

**This review of available court records reveals a troubling outcome: out of the 621 cases in which a tenant defaulted, only 103 tenant households, or 16%, appear to have retained possession; the remaining 518 cases, about 84%, likely resulted in the tenant losing possession and moving out.<sup>9</sup>**

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<sup>9</sup> Although landlords are required to return an execution satisfied as to possession once a tenant vacates or is removed by a constable or sheriff, this rarely happens in practice. Therefore, we cannot definitively state that these households vacated or were removed, but what is certain is that at the conclusion of their case, they no longer had a legal right to retain possession.

## Policy Recommendations

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Taken together, the interview and the case outcome findings reveal many significant barriers tenants face in accessing the courts. Defendants in Housing Court eviction cases tend to be lower income, exacerbating the challenges presented in getting to court, such as childcare, transportation, employment, and disability related issues. In addition, the court process is confusing and fast-moving, making it difficult for anyone unfamiliar with the process to navigate. In particular, the notices tenants receive related to their eviction case include complex legal language, are written primarily in English, and often are not received by tenants. Once a default has entered it is extremely difficult to remove it without legal expertise. The result is that significant numbers of people lose their homes without the opportunity to present their case or even to be heard.

In response to these devastating findings, Massachusetts Law Reform Institute and the Justice Center of Southeast Massachusetts, with input from the Access to Justice Commission Housing Working Group, crafted a series of recommendations aimed at reducing the default rate.

### *A note about COVID-19 policies:*

While we were encouraged to see the courts adopt some of these recommendations during the COVID-19 state of emergency, some of that progress has already been reversed as the pandemic wears on. Recognizing that other policies may change, we present the original recommendations in full, and have also included specific recommendation to address the recent standing orders, which we encourage the court to either keep in place or reinstitute regardless of whether court operations are remote or in person. Recommendations specific to the standing orders are indicated in italics.

#### **1. Amend summary process procedures so that the initial court date is not a trial date.**

- If the initial court date is a mediation or status date (not trial), amend rules so that defendants cannot be defaulted on that date.
- *During the COVID-19 State of Emergency, the Housing and District Courts took this approach, instituting a “Tier 1” event as the first event where parties were sent to virtual mediation on Zoom. Tenants could not be defaulted for missing a Tier 1 event; therefore, even if a tenant did not receive notice of the Tier 1 event, or receive it timely, they had a second opportunity to participate in their cases at the Tier 2 event before a judge. Following the end of the State of Emergency, the Housing Court allowed defaults to be entered at Tier 1, while the District Court continued with the pandemic-era policy of declining to enter defaults at the mediation/case management stage. We recommend that the Tier 1 event be made permanent, timely notice of the Tier 1 event be provided to tenants, and that no default be permitted to issue at Tier 1. The Trial Court should also examine the effect of holding virtual check-ins prior to court events and how it affects the default rate, as well as potential disparate effects on certain tenants.*

2. **Amend Summons and Complaint form to include key information in plain language, including:**
  - That tenants must appear in court regardless of what the landlord tells them or whether they have paid any monies alleged to be owed
  - The consequences of not appearing in court
  - Disability access rights and information, including information about the court's Americans with Disabilities Act (ADA) coordinator
  - Space for litigants' telephone numbers to appear on the form so the court can send automated messages to remind parties about court dates
  - Instructions about how to look up case information on masscourts.org
3. **Send tenants a separate communication about the trial date, including exact time and specific location, well in advance of the hearing date.**
  - This notice should be combined with notice about available resources, including potential access to counsel, and how to look up case information on masscourts.org
  - The court should use text message reminders to notify parties of hearing dates. The Housing Court has piloted an opt-in text message system, and other states have successfully implemented text message reminders.
  - *Since the COVID emergency the court has been sending Summons & Complaint forms with no date indicated, followed by a second notice of Tier 1 (first court) event with the date, time, and Zoom information. However, these notices are sometimes sent too late for tenants to attend the hearings.*
4. **Include a multilingual notice on all court correspondence. This should be in large font and placed in a prominent location, stating that it is an important document and should be translated.**
5. **Amend service of process to be more certain of receipt by requiring proof of mailing and photographic proof of service.**
6. **Require landlords to show that tenants were properly served, for example, by instituting a colloquy between landlord and court before default may enter; the Court could inquire about whether or not tenants were properly served and may have cured.**
7. **Require landlords to provide rent receipts to tenants that include notice that they still need to appear in court unless the court has indicated otherwise.**
8. **Ensure courts honor requests for reasonable accommodation, and establish clear protocols to address parties who contact the court with medical emergencies or disability-related barriers.**
  - Ensure all courthouses and courtrooms are fully ADA accessible
  - Ensure all courthouses and courtrooms have posted notices regarding disability access rights, including contact information for the ADA coordinator

**9. Establish easier navigation in all courthouses to ensure parties are in the correct location.**

- Provide clear signage, such as court information posted on a screen in multiple languages
- Provide in-court navigators to assist parties in finding the correct courtrooms

**10. Establish greater flexibility for parties to appear in court.**

- Provide alternative days and times for court hearings; for example, evening hearings
- Make childcare available in courthouses where necessary, and ensure parties know they may bring children to court
- Ensure that attorneys may appear for represented parties

**11. Institute a “second call” of the case/docket list on court days.**

- Some courts were using a second call prior to moving to all-remote hearings, which helped reduce defaults

**12. Provide support to community organizations and/or advocates to do outreach via telephone, text, or canvassing to notify people about court dates**

- Allow for more time between the entry of case and answer due date to enable outreach

**13. Assist with transportation to court.**

- Coordinate with local MBTA, RTA, The RIDE, Councils on Aging, or court-provided options, to ensure transportation to court is available to those who require it

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**The following recommendations build upon recommendations made in the Massachusetts Access to Justice Strategic Action Plan.<sup>10</sup>**

1. Establish procedures ensuring a default does not enter where parties arrive late if the opposing party or their counsel is still in the building and that if counsel or party is no longer in the building, they should be called to see if the case can proceed that day or be rescheduled to another date.
2. Establish a court check-in system where a party’s presence is noted (possibly electronically) so that even if a tenant is not in the courtroom when their case is called, they are not defaulted; for example, if a tenant is getting help from the Lawyer for the Day Program, Tenancy Preservation Program, or other day-of-court assistance.
3. Do not enter a default where one person in a household appears in court but the others do not, and instead offer a one-week continuance for all defendants to appear
4. Make simple forms for removing defaults available, in multiple languages, in the clerk’s offices and on the court’s website.

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<sup>10</sup> Massachusetts Access to Justice Strategic Action Plan (2017), pp 52 - 53, available at [www.mass2j.org/a2j/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf](http://www.mass2j.org/a2j/wp-content/uploads/2018/01/Massachusetts-JFA-Strategic-Action-Plan.pdf)



5. Call parties to ensure they have notice and opportunity to be heard where extraordinary relief is being sought, such as a preliminary injunction or issuance of execution that would result in speedy eviction.

## Temporary Modifications to Court Operations Due to COVID-19

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The following recommendations highlight some of the recommendations above and include additional protections needed to prevent defaults as the court relies on virtual technologies during the COVID-19 crisis and beyond.

1. Translate all prompts to Zoom/telephonic hearings into multiple languages so that tenants are not defaulted because they did not understand how to get into the virtual hearing room.
2. Establish a system where court staff checks in with parties before a hearing to prevent confusion about hearing dates, deadlines, and next steps. A call from the court prior to mediation or a court hearing would provide a party with a meaningful opportunity to request an interpreter, access needed disability accommodations, and receive information about how to contact legal services and housing assistance to help them access rental assistance funds.
3. Develop an effective first communication for tenants that includes information about where to access other resources. While we appreciate the Court's efforts in developing a resource sheet, it should be simplified to provide basic information on how to access legal services, the Tenancy Preservation Program, and housing stabilization resources and assistance. This information must reach tenants well before their court date.
4. Enable tenants to file court forms from the online Massachusetts Defense for Eviction (MADE) site directly to the Tyler system. MADE is a mobile-friendly website that helps tenants complete their court Answer forms online; it is available in multiple languages and has been a critical tool during COVID-19 allowing tenants to complete and file answers without going to a courthouse.
5. Extend the cure date for tenants to pay rental arrears to the date of the trial to enable tenants more time to access rental assistance and stabilize housing.
6. If a tenant has not appeared for their first Zoom/telephonic hearing, include language in the notice of the Tier 2 or next event that they can physically come to the courthouse if they do not have Zoom or telephone access and the court will provide a way to access their hearing.
7. Ensure that attorneys may appear for litigants without the parties present; for example, when a party does not have access to a computer, is unable to access Zoom, or does not have enough minutes on their phone.

## Appendix: Defaults in Summary Process Cases FY 2015-2017

**Disposed Summary Process Cases by Year of Disposition, “Judgment by default” FY2015 to FY2017,**  
Data compiled by the Executive Office of the Trial Court, July 10, 2018

Division/FY2017	2015	2016	2017	Total Defaults
Boston	1,157	1,168	1,253	3,578
Northeast	1,483	1,385	1,538	4,406
Southeast	1,483	1,469	1,509	4,461
Western	1,232	1,273	1,369	3,874
Worcester	1,409	1,403	1,408	4,220
Total	6,764	6,698	7,077	20,539

### Percentage of Defaults FY2015 to FY2017

Analysis prepared by Massachusetts Law Reform Institute

Division/FY2015	Defaults	Total SP Cases Disposed*	% Defaults
Boston	1,157	6,054	19%
Northeast	1,483	5,642	26%
Southeast	1,483	5,988	25%
Western	1,232	5,469	23%
Worcester	1,409	5,404	26%
Total	6,764	28,557	24%

Division/FY2016	Defaults	Total SP Cases Disposed*	% Defaults
Boston	1,168	5,328	22%
Northeast	1,385	5,378	26%
Southeast	1,469	6,128	24%
Western	1,273	5,359	24%
Worcester	1,403	5,377	26%
Total	6,698	27,570	24%

Division/FY2017	Defaults	Total SP Cases Disposed*	% Defaults
Boston	1,253	5,445	23%
Northeast	1,538	5,732	27%
Southeast	1,509	6,067	25%
Western	1,369	5,669	24%
Worcester	1,408	5,181	27%
Total	7,077	28,094	25%

\* *Housing Court Department Filings and Dispositions by Court Location, [Fiscal Year 2017 Statistics](#), [Fiscal Year 2016 Statistics](#), [Fiscal Year 2015 Statistics](#).*