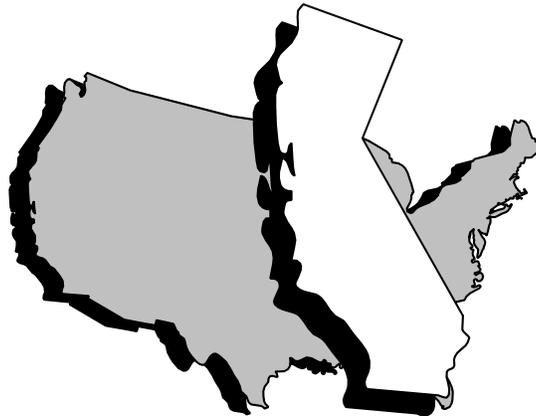


Mediation

in Five California Dependency Courts: A Cross-Site Comparison



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1420

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Introduction

California Senate Bill 1420 amended the Health and Safety Code and the Welfare and Institutions Code to encourage juvenile courts in Contra Costa, Los Angeles, Sacramento, Santa Clara and Tulare Counties to provide dependency court mediation¹. The Bill authorized, on a pilot basis, a three-dollar increase in the cost of certified copies of birth certificates to fund the mediation services and an independent evaluation of the services provided in each county.

Goals The evaluation outlined in the legislation was to consider the following:

- The effectiveness of mediation;**
- The cost-avoidance realized;**
- The model of juvenile court mediation that should be promoted statewide;**
- The point at which mediation is most effective.**

Objectives Among the specific objectives of the mediation pilot projects were the following:

- Resolve at least 70 percent of the matters coming before the court in less time by using dependency mediation rather than litigation;**
- Increase creative solutions of the families' problems within the court ordered plan by at least 10 percent;**
- Reduce foster care placements by 25 percent;**
- Ensure that at least 75 percent of all participants are satisfied with the dependency mediation process.**

To address these issues the independent evaluation agency, the Center for Policy Research², designed a multi-faceted data collection approach to gather both quantitative and qualitative data. Data for the evaluation were generated from the following primary sources:

1. Two of the five counties, Los Angeles and Santa Clara, began providing dependency mediation on either a full or trial basis prior to the start of the pilot project authorized by SB 1420. The other three counties planned and implemented mediation services following their selection as sites.

2. The Center is a non-profit Colorado firm established in 1981 to work with public and private agencies to improve the operation of judicial and human service agencies.

Data Sources

Mediators completed forms following each session.

These forms provided information about the goal of the session, the issues discussed, the degree to which each issue was resolved and the parties attending the session.

Court files were reviewed for cases in the experimental and control group¹.

Information was extracted related to: the nature and extent of the maltreatment; the nature of all court hearings; the nature and duration of out-of-home placements; and evidence of compliance with the treatment plan.

Parents were given a brief self-administered questionnaire.

The instrument was available in both Spanish and English.

Interviews were conducted with representatives of the primary professional groups participating in or affected by mediation.

Those interviewed included: the juvenile court judiciary, attorneys representing parents and children in dependency actions, representatives of the child protective services agency and legal counsel for the agency.

Sample Sizes

The following chart summarizes the data available for this evaluation.

	Los Angeles	Santa Clara	Tulare	Contra Costa	Sacramento	Total
Forms from mediators	591	160	77	61	79	968
Court reviews: mediated	313	123	73	46	51	606
Court reviews: control	NA	45	58	67	53	223
Parent surveys	138	131	107	62	61	499

1. Non-mediated, or control group, cases were drawn in a number of ways. In Tulare and Santa Clara we used cases comparable to those sent to mediation which were scheduled for hearings on days when mediation was not available. In Contra Costa and Sacramento Counties we used cases comparable to those sent for mediation, which were actually seen by the court in the year prior to the start of mediation. Only in Los Angeles County was it impossible to generate a useful control group. Mediation in this county has been widely used since the mid-1980's. This made it impossible to generate a truly equivalent control group in Los Angeles.

Is Mediation Effective?

In Producing Settlements?

Mediation is effective in producing settlements.

Data from forms completed by the mediators indicate that most cases do result in agreements. The distinction between full and partial agreements is a difficult one to make. Partial agreements would include those in which some, but not all, of the issues are settled. Taken together, well over 70 percent of the cases mediated at each site resulted in either a full or partial settlement.

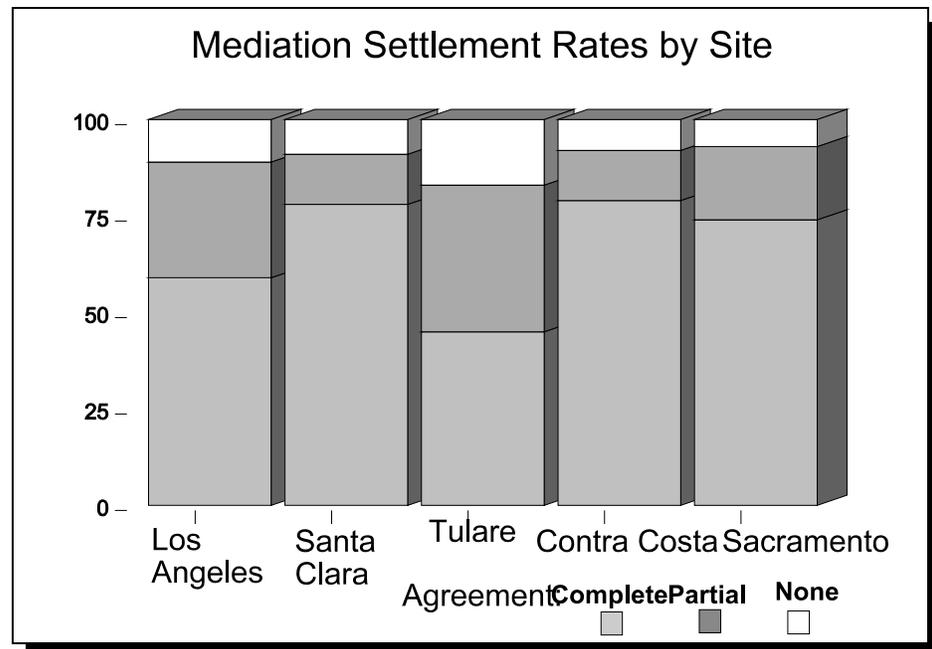


Figure 1

In Producing Creative Settlements?

Mediated plans are more creative than litigated plans.

At several research sites we find that mediated and litigated plans vary according to their level of specificity, who receives services and the issues addressed in the agreement.

Mediated visitation arrangements for children residing out of the home are more detailed, and often more generous, than comparable adjudicated plans. Detailed visitation plans can help to ensure that parents see their children as often as possible. This is especially critical since prior research suggests that an important predictor of a successful reunification is whether the parent visited the child frequently while the child was in placement and because failure to visit children in care may form the basis of a motion to terminate parental rights in California. A detailed plan may also reduce the risk of future conflicts between the parent and caseworker that might be expected if visitation times are left entirely to the discretion of the caseworker.

Mediated treatment plans are more likely to specify services that will be provided to the child victim compared to adjudicated agreements. A variety of services may be specified for children. For example, the plan may address how the family and CPS agency will meet the special needs of the child related to school, health care or counseling.

Mediation, and the resulting agreement, often address communication problems. These problems are typically between parents and caseworkers, but occasionally between parents and others such as relatives providing care for children, therapists or other service providers;

Mediation and the resulting agreement often address underlying issues that were not formally, that is legally, in dispute. Such issues would include conflicts between the parents, including domestic violence, the parents' drug or alcohol problems, or parent-child conflicts;

Mediation is likely to result in the parent acknowledging that s/he needs to cooperate with the service plan and needs help in changing his/her behaviors. By contrast, parents who receive court orders are never asked to acknowledge that they need services.

Cost Avoidance

Mediation, especially when routinely used to divert all contested cases from litigation, will produce cost savings.

Sources of Savings

Mediation reduces the need for full trials on the majority of cases referred to mediation;

Mediation helps the court to avoid repeated hearings on the same case;

Mediated agreements enjoy better compliance than do litigated plans;

Mediated agreements are more likely than litigated plans to result in less restrictive, less costly, types of placement;

Mediated, versus adjudicated, cases may spend less time in out-of-home care.

Perceived Savings

The judges and hearing officers inter-viewed in the course of the evaluation perceived the programs to represent a savings to the court.

The following comments are illustrative of how judges and referees generally view mediation:

Mediation is one of the best things going on around here. It saves time, money and emotional energy...From my point of view, mediation solves cases. We need that. We have 17 courts operating full-time. Each one sees 30 cases per day. We have 60,000 kids in care. We had 18,900 new petitions last year and we're projected to be at 20,000 this year. All of these are going to have to be resolved one way or another. Many will get resolved on their own, lots will be tried unless you mediate (Judge, Los Angeles County)

Foster Care Savings

The pattern is for children in the mediation group to spend less time in out-of-home placements relative to control group children.

Combining data from the four counties with control groups, we find that children in mediated cases spent 58.2 days in placement, compared to 84.0 in the control group¹.

1. To compare the amount of time that children in the experimental and control groups spend in out-of-home placements, we must restrict the analysis to those cases where reunification has occurred. We do not know how long placement will last for those out of the home at the time of the study. Therefore, we restricted the analysis of both control and mediation cases to those in which children were placed longer than a week, but less than six months.

However, it is also important to note that most children have been removed from their homes prior to mediation. In other words, the basic decision to utilize foster care has been made *prior* to mediation. Further, at most of the sites, small but equal numbers of children return home following mediation and contested judicial hearing. The similarity of the figures suggests that only a small percentage of the children are ready to be returned home this quickly regardless of the disputes resolution forum that is used.

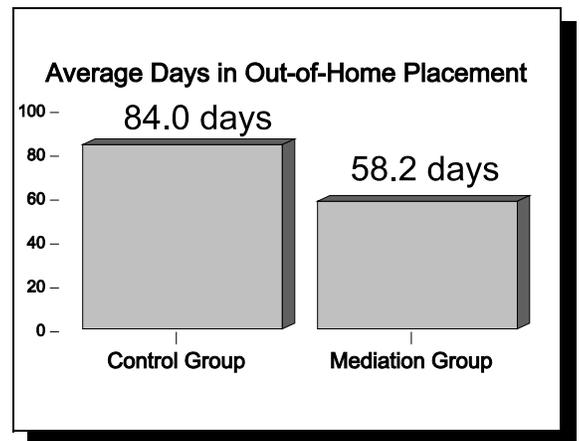


Figure 2

At several of the pilot sites we see differences between cases that settle in mediation and those that proceed to court hearings with respect to the type of placement in effect.

At each of these sites children in mediated cases are more likely to be placed in relative foster care compared to children in adjudicated cases.

Reductions in Future Litigation

In the long run, mediation may help courts to avoid repeated hearings on the same case.

A comparison of mediated and non-mediated cases that had court file reviews conducted at least six months after disposition, reveals that mediated cases are generally less likely than non-mediated cases to have had a contested six-month review hearing. Combining data from the four sites we find that 88 percent of the mediated did not require a contested review, compared to only 53 percent of the control cases. If this patterns persists over time, it would result in a major reduction in the number of contested hearings.

In addition, at several sites the court file data suggest that among cases reviewed at least six months post-disposition, the mediated cases show better compliance with the treatment plan than do the control group cases. For example, based on data from all four sites with control and mediation data we find complete compliance for 42 percent of the mediation cases compared to 25 percent of the control cases. While the samples are small, and

patterns might change after the cases have been in the court system a longer period of time, these patterns are certainly encouraging.

Mediation Model

Who Should Conduct Mediations?

Individuals with a variety of backgrounds are able to serve effectively as dependency court mediators.

The participants to the mediation process generally agree that the mediator must have an indepth knowledge of the child protection system, community resources, and the legal process in the dependency court. In addition, participants value mediators who have strong communication skills and an ability to work well with parents and a variety of professionals.

What Types of Maltreatment should be Mediated?

Settlement rates do not vary according to the nature or severity of the maltreatment.

All types of maltreatment cases reach agreements in mediation. Therefore, it seems safe to conclude that all types of cases are suited to the process and there is no need to pre-screen prior to referral.

At What Legal Point Should Mediation be Used?

Mediation is effective in resolving disputes at the jurisdictional, dispositional and post-dispositional stages.

Most of the pilot programs concentrated their efforts in mediating the jurisdiction and disposition of cases¹. Supporters of jurisdictional mediation make the following types of points:

Doing mediation at the very start of a case is helpful. Everyone can start off by working out an agreement about why you are in court. If you do this at the beginning you get off on the right foot.

1. Only Sacramento chose to eliminate cases at jurisdiction and disposition. In Sacramento County attorneys for children, as well as CPS, and hearing officers, resisted jurisdictional mediation, fearing it would allow for "bargaining down" that would endanger children.

Mediation at the time of jurisdiction can help because words have a lot of power. In the courtroom people get upset and inarticulate. In mediation you will realize that their only complaint with the petition is one little word.

Some programs also elected to mediate post-disposition.¹ At this stage the case will be subject to periodic reviews by the juvenile court. Indeed, if the child is out of the home federal law requires reviews every six months. At these reviews mediation may be scheduled to deal with disputes over the treatment plan and problems with visitation.

Who Should Participate?

There are a variety of formats of professional participation that appear to work fairly well.

Some programs officially excluded attorneys from mediation. This approach works if the legal community has trust in the mediator and mediation process, and if the attorneys have other means of providing input and reviewing outcomes. Other programs chose to include attorneys in the mediation session. The attorneys in the case, whether for parents, children, or the child protective services agency, need not be present during the entire session. No matter which approach a mediation program elects, it is critical to ensure that the legal community is committed to the process and has an opportunity to provide input, and to advise and discuss proposals with their clients.

Mediation is most useful when it maximizes parental involvement.

At each of the participating sites, we heard strong support for the fact that each program stresses parental participation. Mediation provides a valuable opportunity to inform parents, clarify questions and issues, and elicit parental “buy in” to the treatment plan. The evaluations suggest when parents are involved, mediation has the ability to improve parental compliance with the treatment plan, and reduce later disputes over the plan.

2. Sacramento has chosen to routinely schedule mediation 90 days post-disposition, to allow for an early review of problems that might be appearing with the treatment plan. The other counties also mediate post-dispositional disputes, although they do not routinely schedule *all* cases for post-disposition mediation.

Should it be Mandatory?

Courts may find it useful to mandated mediation if it is requested by any party in the case.

There are advantages to making mediation more universally mandatory. Mandating mediation prior to a contested hearing will certainly maximize the cost-effectiveness of the program. It would also eliminate confusion about what types of cases should be sent to mediation, and will reduce the likelihood that cases which could benefit from mediation by-pass the process simply because the parties fail to consider mediation.

Should it be Confidential?

To be accepted mediation needs to be confidential.

Parents need to understand that new disclosures of maltreatment will *not* be confidential, but no other information will be shared except by agreement of all parties. Even with a guarantee of confidentiality judges and hearing officers can capitalize on the savings in time and costs provided by a narrowing of the dispute or issues. Such a narrowing of issues often occurs in “unsuccessful” mediations.

User Satisfaction

The majority of the professionals who take part in, or are affected by mediation, are satisfied with the process.

Initial resistance to the idea of mediating in the dependency court is common among caseworkers, attorneys and even some judges and hearing officers, but the resistance is typically short lived. Educating the professionals about mediation, exposure to the mediation process, and a carefully selected mediator, usually serves to overcome this resistance quite readily.

Parents are very satisfied with their mediation experiences.

The surveys completed by parents at the close of the mediation session demonstrate that parents feel ‘heard’ in mediation. Over 90 percent of the parents at each site reported they had a chance to talk about the issues important to them, felt others listened to and understood what they had to say, and felt mediation clarified what they need to do in order to have the CPS agency close their case (See Figure 2). Somewhat fewer parents indicated that

mediation helped to clarify what the case worker will do to meet the goals of the treatment plan.

Parents were also asked to compare their experience in mediation with prior experiences they may have had in court. Although a few of the parents simply were unsure of how mediation and court compare, those parents who were able to provide an assessment clearly felt that mediation was “better than a court hearing before a judge.”

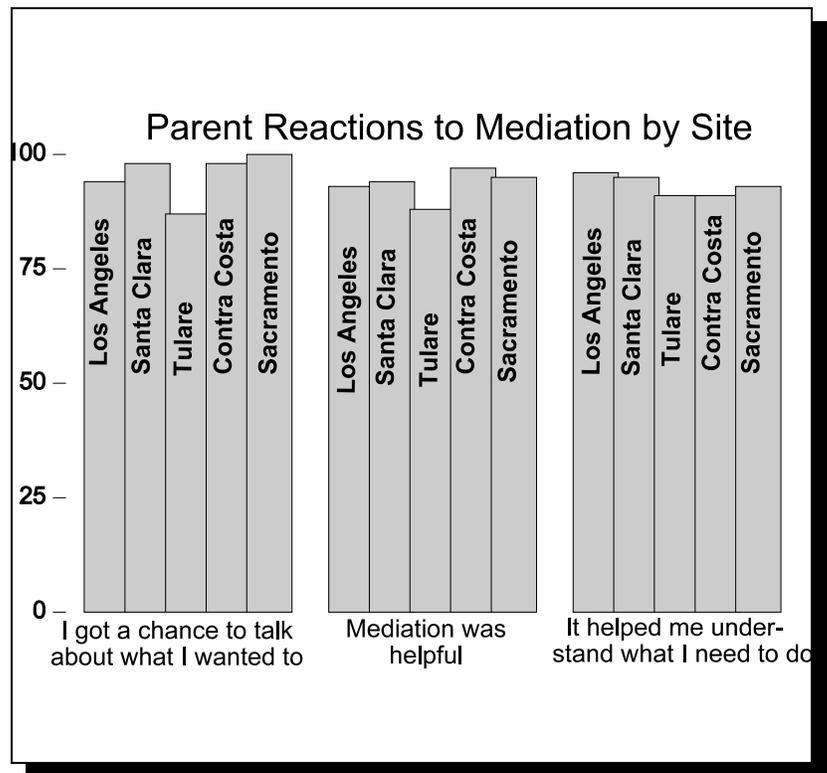


Figure 2

Conclusions

The evaluation of the pilot projects had several limitations. It was based on relatively small samples of experimental and control group cases. The timeline did not allow us to follow mediation cases over a lengthy period of time to discover what ultimately transpired with respect to savings in court time, length of out-of-home placement, or compliance patterns. At several sites the program was evolving even while the evaluation took place.

Despite its limitations, the evaluation allows us to make the following conclusions:

Mediation is preferred by parents and most professional participants.

There are a variety mediation models that are effective.

Mediation is effective with all types of maltreatment and at all stages in case processing.

We see preliminary evidence that mediated versus non-mediated agreements are more detailed, are more likely to provide services to children and other family members, and make greater use of relative foster care.

In many systems mediation appears to reduce the immediate need for contested review hearings.

There is preliminary evidence that mediated settlements enjoy greater compliance by parents, at least in the short run.

There is very preliminary evidence that mediation reduces the amount of time in out-of-home care. Naturally, the study could not address the long-term need for foster care among mediated and adjudicated cases

To be accepted mediation needs to enjoy confidentiality.

Counties may find it useful to mandate mediation if it is requested by any party in the case.

The pilot counties found it necessary to retain skilled, trained mediators, in order to provide quality services. Naturally, hiring skilled mediators requires a stable funding base .