

Community Mediation Research

The following are summaries of research findings that community mediation centers can use in grant writing or advocacy. These were selected because these studies include comparison with control groups and statistical processes to control for a range of factors that may also be affecting the outcomes. Only statistically significant results were reported. You are welcome to copy and paste the text, as long as you include the citation at the end of each section. This research has been compiled by Community Mediation Maryland. www.mdmediation.org

Cost Savings to Law Enforcement and Courts

In an analysis conducted for the Maryland Judiciary on criminal misdemeanor cases referred to mediation, Charkoudian (2016) found a statistically significant difference in the impact of mediated cases on public resources compared to cases that were not mediated. Using a control group and propensity score matching to minimize any impact of potential selection bias, and using logistical regression analysis to isolate the impact of mediation from other potential factors, the research finds both short and long term impacts. In the short term, cases that were mediated were five times less likely to result in judicial action of any kind and 10 times less likely to result in supervised probation or jail time. In the long term, mediated cases were almost five times less likely to return to criminal court in the subsequent 12 months than those that were not mediated.

Charkoudian (2010) finds that participants in cases which were mediated through community mediation and state's attorney mediation programs are likely to decrease their use of court and law enforcement after mediation compared to participants in cases which were not mediated. Many of these cases were referred directly from criminal court, although the study was not restricted to criminal court referrals. Another study, with significant referrals from criminal court, measured the change in calls to the police department before and after mediation and compared this to a control group that did not mediate. Charkoudian (2005) reports an average decrease of 8.53 calls to the Baltimore City Police Department in the six months after mediation for each case that was mediated compared to cases that were not mediated. In both Charkoudian studies, the findings hold true even after accounting for possible selection bias.

Charkoudian, Lorig. "A Quantitative Analysis of the Effectiveness of Community Mediation in Decreasing Repeat Police Calls for Service," *Conflict Resolution Quarterly*, 2005, 23 (1), 87-98

Charkoudian, Lorig. "Giving Police and Courts a Break: The Effect of Community Mediation on Decreasing the Use of Police and Court Resources." *Conflict Resolution Quarterly*, 2010, 28(2), 142-155

Charkoudian, Lorig. Impact of Mediation in Criminal Misdemeanor Cases. Report for the Maryland Administrative Office of the Court, October 2015.
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Re-entry Mediation Decreases Recidivism

Participation in re-entry mediation has a significant impact on all recidivism outcomes measured, after controlling for key factors that may otherwise explain this finding (e.g., days since release, age, number of times previously incarcerated). Specifically:

- ❖ The probability of arrest is reduced by 13% for those who mediated compared to those who did not. The number of sessions is also a significant factor – with each additional mediation session, the probability of arrest is reduced by 8%;
- ❖ The probability of conviction is reduced by 15%, for those who mediated compared to those who did not. With each additional mediation session, the probability of conviction is reduced by 9%;
- ❖ The probability of being sentenced to incarceration is reduced by 10%, for those who mediated compared to those who have not. With each additional mediation session, the probability of conviction is reduced by 7%; and
- ❖ Among those returned to prison by DPSCS Department of Corrections (DOC), the probability of being returned for those who mediate is 12% less than those who do not mediate. The number of sessions is not a significant factor on this measure.

Flower, Shawn. “Community Mediation Maryland Re-entry Mediation In Depth Recidivism Analysis.” 2014, Report available at:

http://www.choiceresearchassoc.com/documents/cmm_recidivism_2014.pdf?patientinform-links=yes&legid=spcjp;0887403412466671v1

Long Term Impact of Custody Visitation Mediation on Co-Parenting

Emery, Laumann-Billings, Waldron, Sbarra, and Dillon (2001) conducted an analysis of the effect of mediation on the families who were randomly assigned to mediation or litigation in Charlottesville, Virginia both 18 months and then 12 years later. At the 18 month point, men in the mediation group reported less conflict than those in the litigation group, while women’s reports did not differ between groups. There was no difference in the psychological adjustment of the children. However, the authors highlight the need to consider the impacts of family mediation several years out because “some benefits of mediation may not be evident in the first few years after a marital separation because family disruptions during this crisis phase of divorce obscure the positive effects of mediation” (p. 324). Twelve years after mediation or adjudication, the authors found that among those who used mediation, non-residential parents had more contact with their children and were significantly more likely to discuss problems with the residential parent and have input into decision-making than those who had not used mediation. Despite the higher level of involvement and contact between the parents, there were no more conflicts reported in this group than the non-mediated group (who had much less contact). Emery, et al. (2001) also report that those who used mediation were also much more likely to

make changes to the living arrangements in the twelve years after the mediation than those who had not used mediation. Many of these changes were made informally between the parents and the authors conclude that this tended to reflect parents' flexibility and ability to work together.

Emery, R., Laumann-Billings, L., Waldron, M., Sbarra, D., and Dillon, P. "Child Custody Mediation and Litigation: Custody, Contact, and Co-parenting 12 Years after Initial Dispute Resolution." *Journal of Consulting and Clinical Psychology*, 2001, 69 (2), 323-332.

Mediator Reflective and Elicitive Strategies Support Effective Co-Parenting

In a comprehensive study involving observations of mediation, behavior coding, and interviews with mediation participants before mediation, immediately after mediation, and six months after mediation, mediator strategies involving reflecting what participants had said and eliciting solutions from participants were found to be effective in supporting co-parenting. Directive strategies and strategies involving sharing the mediators' opinions did not have the same positive effects. These findings hold true even while holding constant for the participants' attitudes and behaviors, as well as several case and demographic characteristics.

Specifically, the more reflecting strategies are used, the more likely that participants will (a) say the other parent listened and understood them; (b) increase their ability to work with the other parent; (c) develop more personalized agreements; and (d) decrease their dismissal of the other's perspective. The more elicitive strategies are used, the more likely participants will (a) say the other parent listened and understood them; (b) become clearer about their goals; and (c) say the underlying issues came out. Reflecting strategies alone are negatively associated with reaching an agreement and elicitive strategies are positively associated with reaching an agreement. When reflecting strategies and elicitive strategies are combined, they are positively associated with reaching an agreement.

The impact of caucusing is interesting in that it leads to positive reports about the mediator but negative outcomes for parents' ability to work together. More time in caucus led to participants reporting that the mediator respected them and did not take sides. More time in caucus also resulted in the following changes in participants attitudes from before to after the mediation. Participants were (a) more hopeless about the situation; (b) less likely to believe they could work with the other parent; and (c) less likely to believe there are a range of options for resolution.

In the long term, reflecting strategies were the only set of mediator strategies that had a significant impact on long term participant reported outcomes. Specifically, mediator reflecting strategies were positively associated with an increase from before the mediation to 6 months after the mediation in the participants' report that they can talk about concerns with the other parent and work as a team in raising their child. Mediator reflecting strategies were also positively associated with an increase from before the mediation to 6 months after in the participants' prioritization of their children's needs, a desire to have a positive relationship with the other parent, and a willingness to consider the other parent's perspective.

Finally, directing strategies were associated with a higher likelihood of participants returning to court with additional adversarial motions in the 12 months after the mediation. Cases in which the mediator used a greater percentage of directing strategies were both more likely to return to court with additional adversarial motions and had more adversarial motions.

Charkoudian, Lorig. What Works in Child Access Mediation: Effectiveness of Various Mediation Strategies in the Short and Long Term. Report for the Maryland Administrative Office of the Court, April 2014.

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District Court Small Claims Civil Mediation Supports Resolution, Responsibility, and Relationships

In a study which compared the experience of participants in district court civil mediation cases to an equivalent control group that went through the standard adjudication process, there were several statistically significant positive findings associated with going through the process of mediation, even after controlling for whether or not participants reached an agreement. Participants that went through mediation were more likely to report that all of the underlying issues came out and the issues were resolved. Furthermore, participants demonstrated an increase in a sense of responsibility for the situation, when they went through mediation as opposed to the standard judicial process (again, regardless of whether or not they got an agreement). Participants also experienced a positive change in how they saw the other participants' perspective if they went through mediation instead of the standard judicial process.

These same participants were surveyed 3-6 months after their court date. Those who went through mediation showed an improved relationship and attitude toward the other participant compared to those who went through the standard court process. They were also more likely to report that the issues were resolved, the outcome was working, and that they are satisfied with the Judiciary.

All of these findings were significant even after holding constant for other factors that might have affected these outcomes.

Charkoudian, Lorig. Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Self-Reported Outcomes on District Court Civil Cases. Report for the Maryland Administrative Office of the Court, April 2014.
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Mediated Cases have higher Compliance Rates and Lower Return to Court Rates than Adjudicated Cases in Small Claims Court

Reviewing eight studies of small claims court-connected mediation programs, Wissler (2004) found that the rate of compliance with mediated agreements was between 62 and 90 percent, and the studies with a comparison to trial outcomes “found a higher rate of full or partial compliance [with mediation] than with trial decisions” (p.60). McEwen and Maiman (1981) found a compliance rate of 70.6% for mediated cases compared to a compliance rate of 33.4% for adjudicated cases in a small claims court in Maine. Even more interesting is that those cases that were mediated, did not reach agreement, and were ultimately adjudicated had a compliance rate of 52.8%, indicating a longer term impact of mediation even in cases which did not settle in mediation. The authors concluded that this finding highlights that the process itself seems to create a sense of responsibility about payment, through humanizing the opponent and creating a personal connection.

A study in Maryland’s small claims day of trial mediation program (Charkoudian, 2015) found that cases that reached agreement in mediation were less than half as likely to return to court for an enforcement action in the 12 months after the mediation than comparable cases that received a verdict. This finding holds true even after accounting for other factors that may affect the outcome.

McEwan, A.C., and Maiman, J. R. “Small Claims Mediation in Maine: An Empirical Assessment.” *Maine Law Review*, 1981, 33, 237-268.

Wissler, L. R. “The Effectiveness of Court-Connected Dispute Resolution in Civil Cases.” *Conflict Resolution Quarterly*, 2004, 22 (1-2), 55-87.

Charkoudian, Lorig. “Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Outcomes in District Court Civil Cases.” Report for the Maryland Administrative Office of the Court, October, 2015.
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Mediator Reflective and Eliciting Strategies Support Positive Outcomes, Caucusing results in Problematic Outcomes in Small Claims Day of Trial Cases

In a comprehensive study involving observations of mediation, behavior coding, and interviews with mediation participants before mediation, immediately after mediation, three months after mediation, and a 12 month review of enforcement actions, mediator strategies involving reflecting and eliciting had several positive outcomes and caucusing had several negative outcomes.

A greater percentage of time spent in caucus was found to be associated with a decreased likelihood of participants reporting(a) that they were satisfied with the process and outcome and(b) that the issues were resolved with a fair and implementable outcome. It was positively associated with(a) an increase in a sense of powerlessness, (b) an increase in the belief that conflict is negative and (c) an increase in the desire to better understand the other participant.

The long-term analysis finds that the greater the percentage of time participants spent in caucus was associated with a decrease in participants' consideration of the other person, self-efficacy (belief in one's ability to talk and make a difference), and sense that the court cares about resolving conflict from before the ADR session to several months later. Long-term analysis also finds that greater percentage of time in caucus is positively associated with the likelihood of returning to court in the 12 months after mediation for an enforcement action.

ADR Practitioner Reflecting strategies are characterized by the ADR practitioner reflecting back to the participant what the participants themselves expressed, with a focus on the emotions and underlying interests. ADR Practitioner Reflecting strategies are positively associated with an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares for participants both before and after the ADR process.

ADR Practitioner Eliciting Participant Solutions is characterized by ADR practitioner strategies that involve asking participants what solutions they would suggest, summarizing the solutions being considered, and checking in with participants to see how they think those ideas might work for them. In the short-term, Eliciting Participant Solutions was positively associated with participants reporting that they listened and understood each other and jointly controlled the outcome. Eliciting Participant Solution was the only ADR practitioner strategy that had an impact on reaching an agreement, and the impact is a positive one. Eliciting Participant Solutions is negatively associated with participants returning to court for an enforcement action in the subsequent 12 months. This means that participants are less likely to return to court for enforcement action if the mediator used more of the eliciting solution strategy.

ADR Practitioner Offering Solutions is characterized by the ADR practitioner offering their opinion, advocating for their ideas for solutions, and offering legal analysis. Offering Opinions and Solutions did not have any statistically significant impacts in the short-term. In the long-term, it was negatively associated with participants' report that the outcome was working, that they were satisfied with the outcome, that they would recommend ADR, and with participants' reporting that they changed their approach to conflict.

These findings hold true even while holding constant for the participants' attitudes and behaviors, as well as several case and demographic characteristics.

Charkoudian, Lorig. What Works in Day of Trial District Court Mediation: Effectiveness of Various Mediation Strategies on Immediate and Long Term Outcomes. Report for the Maryland Administrative Office of the Court, October, 2015.

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Research Highlighting the importance of a Diverse Pool of Mediators

This empirical study explores the effects of matching mediators and mediation participants by gender and by racial or ethnic identity group in a number of different types of mediation. It considers both the effect on a participant of being present in a mediation session where there is

no mediator of the same gender or racial/ethnic group and the effect of being present when there is also a mediator who matches the gender or race/ethnicity of the other participant. The results show that failing to match participants and mediators by gender has negative effects on mediation satisfaction measures and that those effects increase when the mediator's gender also matches the other participant. In contrast, failure to match by racial or ethnic group has little effect, but when an unmatched participant faces both an opposing participant and a mediator who share a racial or ethnic identification, mediation satisfaction decreases in several respects.

Charkoudian, Lorig, and Wayne, Ellen. "Fairness, Understanding, and Satisfaction: Impact of Mediator and Participant Race and Gender on Participants' Perception of Mediation." *Conflict Resolution Quarterly*, 2010, 28 (1), 23-52.

Research in a small claims day of trial program found that the racial match between the ADR practitioner and participant had a significant impact on the participant's experience of the ADR process. Having at least one ADR practitioner at the table match the race of the responding participant was positively associated with participants reporting that they listened and understood each other in the ADR session and jointly controlled the outcome, an increase in a sense of self-efficacy (ability to talk and make a difference) and an increase in the sense that the court cares for participants from before to after the ADR session. It is important to note that participants were never asked about their opinion on the role of race or the ADR practitioner's race. Participants were asked their race, ADR practitioners were asked their race, and based on these answers, a variable was created identifying if there was a match. This was included in the analysis and was found to be significant in these the areas identified above, even after holding constant for other factors in the case, including ADR practitioner strategies.

Charkoudian, Lorig. What Works in Day of Trial District Court Mediation: Effectiveness of Various Mediation Strategies on Immediate and Long Term Outcomes. Report for the Maryland Administrative Office of the Court, October, 2015.
www.mdmediation.org/resources