

Assessing Efficiency and Workload Implications of the King County Mediation Pilot

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Abstract

Child protection mediation has been used for more than 25 years to improve case processing and outcomes in juvenile dependency cases. Prior research has been primarily descriptive, and has focused on the effect of mediation on efficiency measures and on parents' perceptions of the process. The current assessment of a mediation pilot program implemented in King County, Washington examines early case mediation as a tool for improving case efficiency to reduce judicial workload. Twenty-two mediated cases are compared to 28 randomly selected non-mediated cases in order to ascertain differences in case timeliness, continuance use, number of hearings, and agreement rates. Results indicate that mediation is effective in increasing the efficiency of case processing. Directions for future research on efficiency and judicial workload are discussed.

Assessing Efficiency and Workload Implications of the King County Mediation Pilot

Mediation is a practice of alternative dispute resolution involving a neutral third party who facilitates discussion and resolution of contested case issues among parties. Mediators meet with all interested parties involved in a case to facilitate resolution of disputes and help expedite case processing (Stack, 2003). The job of mediators is not to make decisions; rather, the job is to help the involved parties work together to reach an amicable resolution of contested issues in their case (Coleman & Ruppel, 2007). Mediators typically employ either a facilitative or evaluative style. The facilitative style is the traditional form of mediation, in which the neutral third party guides the parties to come to an agreement by facilitating communication and allowing parties to make their own decisions. The evaluative approach offers a less neutral style, as the

mediator gives advice, expresses opinions and urges the parties to accept specific outcomes (Hughes, 1998). It is important to note, however, that there is some overlap between the two styles, and that the dynamic nature of the mediation process may require a change in typical style if it is better suited for the case at hand (Roberts, 2007). Mediation is used in many facets of the law, but may be particularly well suited to juvenile and family law cases in which there is a need to come to an agreement while still preserving ongoing relationships, such as that between the parent and child (McConnell, 1996).

Publication of the *Resource Guidelines: Improving Court Practice in Child Abuse and Neglect Cases* (National Council of Juvenile and Family Court Judges [NCJFCJ], 1995) drew national attention to the use of mediation in child protection proceedings, identifying alternative dispute resolution as a “best practice” in child abuse and neglect case processing. The use of mediation has also been encouraged by the Department of Health and Human Services as an accepted alternative to adversarial court hearings (Duquette, Hardin, & Dean, 1999). Mediation provides an effective and efficient way to address core child protection case issues, and positively influences the timeliness of case processing (Dobbin, Gatowski, & Litchfield, 2001; Thoennes, 1997). Further, mediation can be an effective way to alleviate the congestion of the juvenile court system (Airey, 1999). With high caseloads and budget concerns, any improved efficiency could result in reallocations of resources or reductions in workload for judges and other key stakeholders.

Mediation Use in Child Protection

The use of mediation in child protection cases began more than 25 years ago at pilot sites in California, Colorado, and Connecticut (Giovannucci & Largent, 2009). The process of utilizing mediation in child welfare cases was developed to meet goals such as reducing the length of time to permanency; reducing court time in handling the case; reducing the number

of contested trials; engaging parents in the process; empowering parents as decision-makers; facilitating the development of more detailed service agreements; facilitating parental compliance with the case plan; promoting communication, including culturally relevant services; engaging extended family; and removing barriers to permanency (Dobbin et al., 2001; Giovannucci & Largent, 2009). Mediation has been used to resolve contested issues that arise during the dependency case. In a study of mediation in New York State, researchers conducted a multi-method assessment incorporating a multi-site process study, satisfaction surveys, and permanency outcomes. Findings from the process study of 403 cases referred for mediation indicated that mediation initiated discussion of issues such as placement, visitation, service plans, compliance, behavior problems, communication problems, and reunification (Coleman & Ruppel, 2007).

Mediation can be used at any point in the case. In fact, the *Resource Guidelines* (NCJFCJ, 1995) recommends that mediation (or other forms of alternative dispute resolution) be available throughout the life of the case, from prior to petition filing to termination of parents’ rights. Despite these recommendations, mediation is often used post-disposition as a means of addressing issues at the permanency planning phase of a case.

Benefits of Mediation

Since its initial implementation, mediation has become an evidence-based practice with a great deal of literature on its effectiveness in helping children and families involved in the child abuse and neglect system (Thoennes, 2009). The majority of research on child protection mediation has been based on qualitative and descriptive work, bringing awareness to the use and importance of mediation in child protection proceedings. These studies have focused primarily on mediation as a means of engaging parents, examining parental satisfaction, and compliance. A few studies (Gatowski, Dobbin, Litchfield, & Oetjen,

2005; Thoennes, 2001, 2002; Thoennes & Pearson, 1999) have employed empirical research designs to examine outcomes related to timeliness, safety and permanency. Overall, these studies have varied a great deal in their methodology and outcome measures, ranging from true experimental to quasi-experimental designs with a multitude of process and outcome measures related to timeliness, permanency, and safety. Other more descriptive studies have focused on the mediation process and outcomes, without comparison groups. Across all studies, there has been a consistent trend to focus on factors related to mediation as it pertains to parents and case processing.

Mediation as a Means of Engaging Parents

The use of mediation as an alternative dispute resolution technique provides a means of resolving case issues in a respectful and open forum as opposed to the adversarial atmosphere often found in contested hearings. As such, mediation offers many advantages to the families involved in the court process. One advantage in using mediation is that it can increase the level of satisfaction of the involved parties. Satisfaction survey results show that a majority of parents engaged in mediation find it to be helpful, feel that they are treated with respect, believe that mediation is better than going to court, and believe it helps them to better understand the roles and expectations of everyone involved in the case (Coleman & Ruppel, 2007; Thoennes, 2001).

A second advantage of using mediation is that it may increase parental engagement in the juvenile dependency process. In surveys, parents have indicated that they had more time to talk about important issues and said that they felt that others listened and understood what they said (Coleman & Ruppel, 2007; Thoennes, 2001). Further, a large majority of parents felt that they were part of the decision-making process (Coleman & Ruppel, 2007).

Parents who feel more engaged in the process may be more likely to comply with court-ordered

services because they believe they have a voice in treatment decisions (Airey, 1999). Therefore, mediation may also improve parent compliance with such services. In a Santa Clara County mediation study, 45% of mediated cases had full parental compliance and 44% had partial compliance (Thoennes, 2001). In comparison, non-mediated cases had full compliance in only 16% of the cases and partial compliance in only 28% (Thoennes, 2001). In a Colorado study comparing 146 mediated cases with 48 comparable cases, 62% of parents who participated in mediation were found to be in compliance with the case plan compared with 41% of parents who did not participate (Center for Policy Research, 1999).

Ultimately, one of the most important advantages of mediation is that it may improve permanency outcomes for children. Coleman and Ruppel (2007) found that families in Washington, D.C. receiving mediation obtained permanency more quickly (1 ½ months sooner for the mediation group as opposed to the non-mediation group) and more often (72% in mediation cases versus 61% in non-mediation cases). A more rigorous study of mediation, which employed a true experimental design, comparing 200 cases randomly referred to mediation with 200 cases not referred to mediation, also found positive results. Families who were involved in mediation showed significantly fewer repeated instances of maltreatment than families not involved in mediation —7% compared with 21% (Gatowski et al., 2005). The decrease in repeated maltreatment not only signifies better outcomes for the family, but also may inadvertently unburden the court system. Fewer re-entries into care mean fewer cases for judges, attorneys, and social workers, effectively reducing workload. Thus, mediation may serve as a means of improving case processing efficiency in the courts.

Mediation as a Means of Improved Efficiency

Mediation can improve case processing efficiency by decreasing the time between key court events, such as hearings and reviews. Research findings

on mediation and timeliness have been mixed. In one study, Gatowski et al. (2005) found that mediated cases reached adjudication and disposition more quickly than non-mediated cases but did not reach permanency more quickly. In a similar study, mediated cases took longer to reach disposition but took less time to reach permanency than non-mediated cases (Center for Policy Research, 1999). Another study of timeliness found that mediated cases resolve earlier than non-mediated cases, with children spending less time in state custody (Institute for Families in Society, 2003; Office of the Executive Secretary of the Supreme Court of Virginia, 2002). As the literature on child protection mediation is still developing, these differences are to be expected. The differences may be explained by a difference in analytic methodology, sampling, timing, reasons for mediation, and the location of specific practices.

Mediation might also improve case process efficiency by reducing the number of hearings or the number of contested hearings in a case, thereby reducing workload for attorneys, agency workers, and judges. Mediation can help resolve contested case issues that would ultimately result in contested hearings or trials. Statistics indicate that, on average, between 60% and 80% of mediated cases reach full agreement on contested issues, and 90% or more reach some form of agreement (Kathol, 2009; Kelly, 2004; Office of the Executive Secretary of the Supreme Court of Virginia, 2002; Resolution Systems Institute, 2010; Thoennes, 2001; Trosch, Sanders, & Kugelmass, 2002). Some settlements occur within one or two mediation sessions, further reducing the need for protracted legal proceedings (Kathol, 2009; Office of the Executive Secretary of the Supreme Court of Virginia, 2002; Thoennes, 2000). For example, one study found that mediated cases were less likely than non-mediated cases to require a contested six-month review hearing (Thoennes, 1997). If mediation resolves the issues, there is no need for lengthy or multiple hearings to achieve resolution.

Mediated cases may also reduce the number of hearings by reducing the number of continuances. Often, when workload is high and dockets are full, it is difficult to estimate appropriate times for contested hearings. If a hearing is taking a long time to reach resolution, it may be continued to another day or another week. The practice of continuing contested cases may delay the hearing and prevent statutory timeliness. Further, continuing one hearing may delay setting future hearings and delay the entire case process, increasing time to reviews and permanency hearings. Mediation provides a means of resolving contested issues without delaying the hearing process. This means that judges will spend less time on contested matters in court and can move cases through the system more quickly, potentially achieving permanency at a faster rate. If cases are resolved in mediation, there is no need for contested hearings, which could be continued due to time constraints. However, research on continuances in mediated cases is limited.

Finally, mediation may improve cost efficiency for the court. Few studies have actually assessed the financial benefits of mediation. Across the State of California, cases are referred to mediation through the Consortium for Children's Permanency Planning Mediation program. Estimates of the financial benefit of mediation compared with normal case processing have indicated that mediation could save California millions of dollars (Stack, 2003). Furthermore, a mediation study conducted in San Francisco by Thoennes (1998) found that sending one case to mediation every day would create an annual savings of \$545,225 when considering the added cost of subsequent contested review hearings. Improved cost efficiency also increases stakeholders' perceptions of the court process. Qualitative reports suggest stakeholders perceive increased savings result from the reduced time and money spent preparing for contested hearings (Thoennes, 2001). In sum, research indicates that mediation is a valuable tool for engaging parents and can improve court efficiency.

Study Overview

Prior studies on mediation have focused on mediation as a tool for improved party engagement in the system, parental outcomes, and measures of timeliness and cost effectiveness. The majority of these studies are descriptive, with only a handful of empirical studies that employ experimental or quasi-experimental designs, making generalization of findings problematic. Although the majority of these studies point to the potential benefits of mediation, it is difficult to paint a clear picture of the true advantages of a mediation program. This problem is complicated by the diversity of mediation programs and evaluation techniques. Prior research has studied mediation at all points in the case process, making it difficult to determine where mediation is most effective. Furthermore, the methodologies employed have been diverse, depending greatly on the goals of the study. Some have used surveys to better understand parent perceptions, while others have employed experimental designs with case file review to determine differences in timeliness. This makes it difficult to determine the true overall effectiveness of child protection mediation. Since most mediation occurs later in the case (e.g., permanency), the majority of studies focus on outcomes that occur later in the case. The few studies that have examined early mediations have looked at parental engagement, timeliness, and permanency outcomes, but few have focused on the use of mediation to frontload services and increase efficiency in the court process. With courts and social work agencies continually facing tight budgets, it is important to identify means of improving the efficiency of case processing. The current study offers an empirical assessment of the King County pilot mediation program, focusing on the short-term benefits of mediation as a means of improving efficiency in case processing. Short-term effects related to timeliness, continuance practice, and the number of hearings are examined.

King County Child Welfare Mediation Pilot Program

In King County, Washington, the juvenile dependency court process consists of multiple hearings prior to case adjudication. Adjudication (or fact-finding as it is called in Washington) occurs when the court makes a legal ruling on the dependency allegation. The court will either substantiate allegations of abuse or neglect, making a legal ruling that the child is dependent, or dismiss the petition, returning the child to the legal custody of his parents. The case begins when child protection services (CPS) files a petition for removal of a child. If the child is removed from the home, a shelter care hearing must be held within 72 hours to decide key issues related to placement and visitation (Washington Rev. Code § 13.34.060). Because these hearings are held so quickly after the child's removal, the court may not have all the information needed to make an informed decision. In King County, the court addresses this issue by scheduling a second shelter care hearing 30 days later to address any contested issues relating to placement, visitation, or other case issues. Following the 30-day shelter care hearing, a pre-trial conference is scheduled. At the pre-trial conference, parties have the ability to waive their right to a fact-finding (i.e., adjudication) hearing if they stipulate to the allegations in the petition and all parties come to an agreement (Washington Rev. Code § 13.34.110). If no agreement is reached, a fact-finding hearing is held to resolve all issues and make a formal finding regarding case allegations. The fact-finding hearing is statutorily required (Washington Rev. Code § 13.34.070) to occur within 75 days from the petition filing, indicating that judicial officers must oversee up to four hearings within 75 days from the petition date. With an adequately resourced court, this might not be problematic. However, a recent evaluation of workload in King County indicated that judicial officers have a higher caseload than is typically manageable (National Council of Juvenile and Family Court Judges, 2010). This assessment recommended

the addition of at least one more full time judicial officer to meet the minimum needs of the court and parties. Since funding for additional judicial officers is limited, other avenues of improving court efficiency have been explored, including the mediation pilot program.

The pilot mediation program began in the King County Juvenile Court in Seattle with case referrals from one of the CPS offices. All incoming cases to this office were referred to mediation but were not ordered by the court to attend, ensuring the process was voluntary. All parties involved in the case were invited and encouraged to participate in the mediation. This included parents, children, parents' attorneys, social workers, agency attorneys, children's guardian *ad litem*, and extended family. One mediator, trained in the facilitative mediation style, conducted all the mediations. The mediator employed a facilitative approach in all mediations. In order to reduce possible bias, the mediator was unaware that the program was going to be evaluated.

Because the number of cases was relatively low, all cases were chosen rather than a sample of cases. After four months, mediation expanded to the Kent court in King County. The mediation pilot program offered mediation to families coming in to the system to help resolve issues prior to a contested fact-finding hearing so that agreement over contested matters, including visitation and services, could be reached in a non-confrontational and supportive environment. One of the goals of the mediation program was to help improve court efficiency by increasing timeliness from petition filing to fact-finding, decreasing case continuances, decreasing the number of hearings that judicial officers oversee, and increasing the agreement or stipulation rate in order to decrease the number of contested, lengthy hearings. As of March 2010, 25 cases had been mediated in the pilot program.

Method

Cases

Fifty King County child abuse and neglect cases were reviewed for this study. All of these cases had a new petition filed between February, 2009 and February, 2010. Of these cases, 22 went to mediation and 28 did not. Three additional cases were mediated but had not yet reached adjudication, and were therefore not included in the study.

Research Design

The assessment of the King County mediation pilot program examines case processing and efficiency outcomes for the first 22 mediated cases compared with a group of randomly selected child abuse and neglect cases that did not receive mediation. The 22 mediated cases all came from one CPS office in Seattle and all 28 non-mediated cases came from similar CPS offices across the city. The research design compares the efficiency of mediated cases to non-mediated cases through the adjudication hearing stage of juvenile dependency case processing. The cases are compared for outcome measures related to efficiency of case processing, including timeliness of case processing, number of continuances, number of hearings, and case agreement or stipulation.

Measures

To assess the effectiveness of the mediation pilot program, a standardized case file review instrument was constructed and used to code cases. The case file review instrument captured petition information (i.e., type and number of allegations), the scheduled and held dates of key court events, the parties present at the early hearings, the number of continuances for early case hearings, and whether or not agreement was reached prior to adjudication.

Results

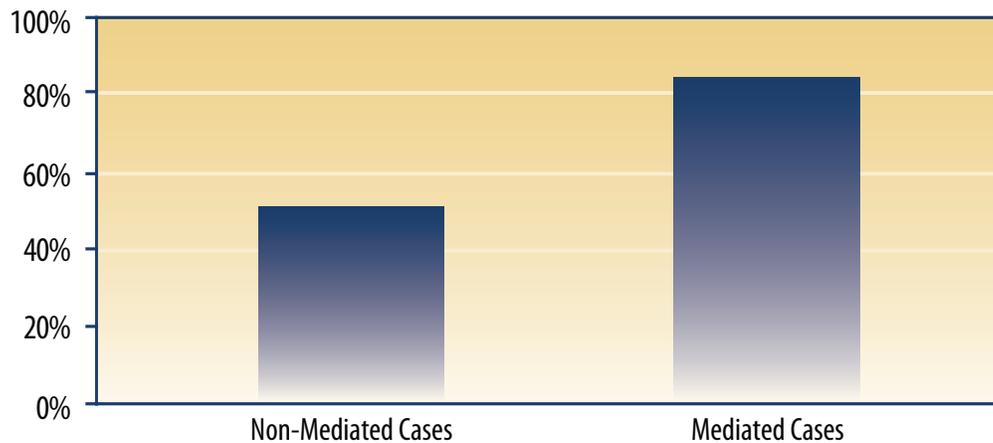
Preliminary Analysis

Prior to examining differences in mediated and non-mediated cases, researchers conducted a preliminary analysis to determine whether cases in the two groups were comparable. The mediated and non-mediated groups did not show any notable differences in case types. The number of allegations, initial placements, and presence of parties were relatively similar between the two groups, indicating that comparisons in outcomes between the two groups are likely to be valid. The number of allegations was close to being significantly different between the two groups ($p = .07$), with members of the mediation group having slightly more allegations, on average, and was thus controlled for in further analyses.

Timeliness

In Washington, it is a statutory requirement that cases reach adjudication within 75 days of the petition filing. Eighty-four percent of mediated cases reached adjudication within this timeframe, compared with 50% of non-mediated cases. The average time from petition filing to adjudication for the mediated group was 51 days ($SD = 20.3$) compared with an average time of 85 days ($SD = 32.9$) from petition filing to adjudication for the non-mediated cases. This indicates that mediated cases reach adjudication an average of 34 days sooner than non-mediated cases. A linear regression, controlling for number of allegations, found that this difference was statistically significant, $\beta = 32.05$, $t(38) = -3.51$, $p < .01$. The use of mediation accounted for a significant proportion of variance, $R^2 = .29$, $F(1, 38) = 14.79$, $p < .001$.

Figure 1. Percentage of Cases Reaching Adjudication within 75 Days of Petition Filing



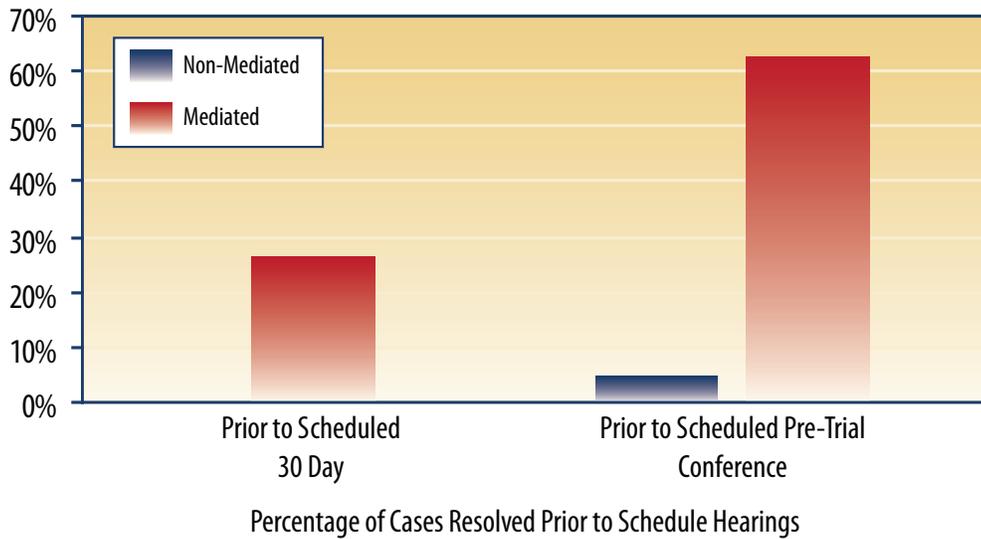
Continuances

In juvenile dependency cases, continuances are often ordered when more time is needed to discuss contested case issues. Linear regression analysis revealed that mediated cases experienced fewer continuances at adjudication ($M = .45$) when compared with non-mediated cases ($M = 1.58$), $\beta = -1.04$, $t(22) = -3.03$, $p < .01$. Again, the use of mediation accounted for a significant proportion of variance, $R^2 = .39$, $F(2, 22) = 6.40$, $p < .01$.

Number of Hearings

In King County, new cases are automatically scheduled for a 72-hour shelter care hearing, a 30-day shelter care hearing to address contested issues, a pre-trial conference to resolve contested adjudication issues, and an adjudication trial date to facilitate timely case processing. If parties come to an agreement (i.e., stipulated adjudication) prior to any of these hearings, the remaining scheduled hearings are canceled and the case is scheduled for a review hearing to examine case

Figure 2. Percentage of Cases That Reached Case Resolution (i.e., Adjudication) Prior to Scheduled Hearings



progress. A chi square analysis was used to assess whether cases achieved agreement prior to or on the date of their next scheduled hearing. The analysis showed that mediated cases achieved agreement prior to or on the scheduled date of the 30-day shelter care hearing in 26% of cases, whereas none of the non-mediated cases reached agreement by this point, $\chi^2(1) = 6.32, p < .05$. That indicates that for 26% of mediated cases, judicial officers had two fewer hearings to oversee. Chi square analysis also revealed a significant difference in the percentage of cases reaching agreement by the scheduled pre-trial conference date, $\chi^2(1) = 15.51, p < .001$. Sixty-three percent of mediated cases achieved case agreement prior to or on the date of their scheduled pre-trial conference compared with only 5% of the non-mediated cases. This indicates that 63% of mediated cases had one less hearing for judicial officers to oversee.

Agreement/Stipulation

A final measure of efficiency was assessed by examining the agreement/stipulation rate between mediated and non-mediated cases. When parties stipulate or come to an agreement on allegations and cases plans, the hearings are often shorter and require less judicial time to

oversee. Of the cases in the sample, 90% of the mediated cases had agreed upon orders; only 75% of non-mediated cases had agreed upon orders. These differences were small and did not reach the level of statistical significance ($p = .26$).

Discussion

Pilot findings suggest that court processing of mediated cases is timelier and more efficient than non-mediated cases. Mediated cases reached adjudication more quickly than non-mediated cases. This finding is consistent with prior research indicating that mediation can improve timeliness (Gatowski et al., 2005). The timeliness finding in King County not only means that cases are more likely to be in compliance with statutory requirements, but also increases the likelihood that there will be fewer hearings for the judicial officers. The mediated cases were much more likely than non-mediated cases to reach adjudication prior to their scheduled hearing dates. When this occurred, the scheduled hearings were canceled, resulting in fewer hearings that the judicial officers had to conduct. As with the earlier findings of fewer contested hearings (Thoennes, 1997), this suggests the creation of a direct reduction in judicial workload. If the scheduled hearings do not need to take place, the judge's

workload is reduced, freeing up time for judges to spend more time preparing for and conducting other hearings.

Improved efficiency is also noted in the findings regarding continuances. Fewer continuances also mean fewer hearings. Many cases are scheduled for a hearing, only to be continued in court. The parties must reconvene to finish the hearing, taking up valuable judicial time and stakeholder resources. As mediation reduces the number of continuances, it is lessening judicial workload and freeing up much-needed resources.

Limitations

The current research project did have some limitations. Random assignment of cases to the mediation and control group would have been ideal. However, the limited number of cases made this impractical. The participating CPS office referred every incoming case to mediation, and it still took almost a year to amass enough cases for comparison. The limited resources (i.e., only one trained mediator) also precluded expansion. Therefore, random assignment would not have been feasible or meaningful. Despite the small number, researchers found significant results, indicating that mediation appears to have positive effects. Researchers also employed random selection of comparison cases to further enhance the methodological design.

A second limitation was that the analysis did not take into account the skills, experience, and style of the mediator. Because only one mediator was used, there was no way to compare the mediator to other mediators or the mediation style to other styles. The results are likely influenced by the abilities of the mediator and the mediation style used. This could be an area for future research to expand upon.

One final limitation was that the majority of cases had yet to reach permanency or case closure. Because most of the cases were still in an early phase in the dependency process, it was impossible to examine the long-term effects of mediation

on case efficiency. Although the study demonstrated that mediation can improve efficiency of the process, it does not demonstrate that mediation can change permanency outcomes for children and families. Having later data to inform this piece would have allowed researchers a more in-depth look at both the efficiency and effectiveness of mediation in changing the process and outcomes of child abuse cases.

Future Research

Evaluation of the King County mediation pilot has identified some of the potential short-term benefits of using a mediation program to resolve early case issues prior to adjudication. Mediation appears to be helpful in increasing efficiency early in the case. While this adds new dimensions to previous research regarding efficiency, it still does not answer all of the questions regarding the benefits of mediation. In particular, future research should seek to determine whether mediation used early in the case has continued effects on efficiency. That is, research should examine whether early case mediation reduces the overall number of hearings, the overall time spent in hearings, and the overall time spent for children in foster care.

This research clearly has shown that mediation improves efficiency in case processing. This is an important finding because many courts need additional resources to ensure appropriate levels of judicial staffing. Judges with excessive workloads may not be able to carefully prepare for hearings or schedule and complete hearings within appropriate timeframes. As budgeting may not allow for additional judicial officers, it is important to identify means of improving efficiency in order to reduce overall workload. Mediation clearly is one tool for doing this. However, it is not the only tool. Other methods of improving case efficiency, such as implementing time certain calendaring, might also improve court efficiency. Future studies should build on the research reported herein and examine other potential methods of improving efficiency.

In-depth analysis of multiple methods of improving efficiency can identify the best possible means of improving the court system. For courts with limited resources, understanding the cost and benefits of varying methods may help in making difficult decisions about which improvements can and should be implemented. Future research should also be conducted to determine the effect of improved court timeliness on outcomes for children in the foster care system.

Conclusion

This report confirms what some have already suggested, that mediation provides an ideal system for reducing the workload of an overburdened juvenile court system (Airey, 1999). As noted above, King County workload assessments indicated a need for at least one more full-time judicial officer. With budget concerns, this may not be an option. However, a cost-saving alternative is the implementation of a mediation project. Mediation has been demonstrated to increase agreement, increase case processing timeliness, and reduce the workload of judges by reducing the number of hearings they have to oversee. This not only reduces the judges' workload, it

also reduces workload of all system stakeholders who must be present at the hearings, giving them more time to work with other families. While this project only examined the initial stages of a juvenile dependency case, the results were quite promising. With future research, the role of mediation can be explored further, identifying the effects on case outcomes and permanency. If mediation continues to be effective throughout the life of the case, it can mean better outcomes for families and children and a more efficient court system, saving money and time for all system stakeholders.

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