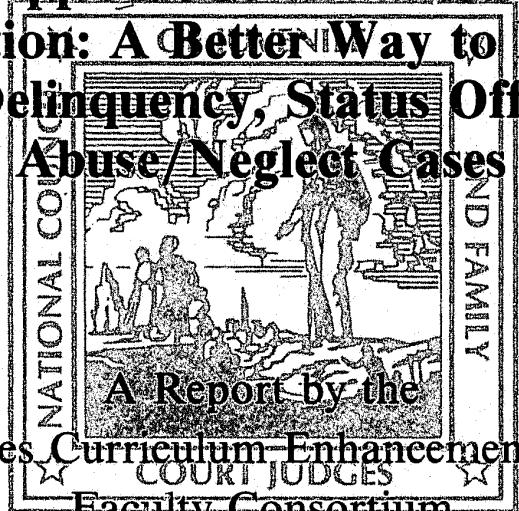


# Court-Approved Alternative Dispute Resolution: A Better Way to Resolve Minor Delinquency, Status Offense and Abuse/Neglect Cases



Key Issues Curriculum Enhancement Project

Faculty Consortium  
ORGANIZED MAY 22, 1937  
College of Juvenile and Family Law

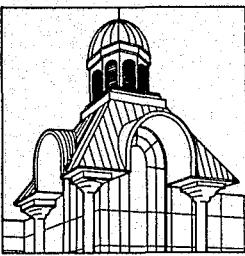
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## NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES

UNIVERSITY OF NEVADA P.O. BOX 8970 RENO NV 89507 (702) 784-6012

Judge Romae T. Powell • President • 445 Capitol Ave, S.W. • Atlanta, Ga. 30312 • (404) 572-2241

Dear Colleague,

The Key Issues Curriculum Enhancement Project was initiated last year as an ongoing effort to increase the capacity of the Council's training arm, the National College of Juvenile and Family Law, to respond to evolving "Key Issues." These issues are broad areas of common concern having a significant impact upon juvenile and family courts.

Although most relevant for our judges, such issues do not lend themselves easily to ongoing curriculum development efforts without intensive scrutiny on the part of a representative group we have termed the "Faculty Consortium."

This project reflects their efforts on two Key Issues:

**Report I: *Judicial Authority and Responsibility:*** 18 Recommendations on Issues in Delinquency and Abuse/Neglect Dispositions.

**Report II: *Court-Approved Alternative Dispute Resolution:*** A Better Way for Resolution of Minor Delinquency, Status Offense, and Abuse/ Neglect Cases.

The Consortium met 3 times to hammer out the elements and subissues within these reports. Another product will be a replicable curricula on both topics to be disseminated to national and state judicial educators. In addition, a monograph on the benefits and shortcomings of rotation practices and specialized assignment structures for juvenile and family courts was written by our National Center for State Courts.

Project continuation in 1989-90 will use the same Consortium process to analyze the issues and develop curriculum on the Ethical, Moral, and Social Mandates of the Juvenile and Family Court.

Also, the continuation will allow further dissemination on the initial issues through training or technical assistance efforts. Included will be modules at forthcoming Council-supported programs and colleges, as well as, hopefully, Council-supported efforts by other national and state training organizations.

The project emphasizes meaningful and practical change, and points the way to long-range planning and an examination of the needs and role of juvenile and family courts from the perspective of judges themselves.

Romae T. Powell  
President, NCJFCJ

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## The National Council of Juvenile and Family Court Judges

The National Council of Juvenile and Family Court Judges has been dedicated, since its founding in 1937, to improving the nation's diverse and complex juvenile justice system. The Council understands that effective systems must rely on highly skilled juvenile and family court judges; it directs extensive efforts toward improving the operation of juvenile and family courts through highly developed, practical and applicable programs and training. Since 1969 the Council, through its National College of Juvenile and Family Law, has reached more than 100,000 juvenile justice professionals — a record unparalleled by any judicial training organization in the United States.

The National College recognizes the significant effect that many "key" issues are having upon courts and has initiated a process to examine those issues. The focus is on meaningful and practical change. Juvenile and family court judges must lead the way in implementing new concepts and improvement within their court systems. Continuing quality judicial education through its programs and publications is key to producing this change.

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# Introduction

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## *The Key Issues Curriculum Enhancement Project*

The Key Issues Curriculum Enhancement Project is designed as an ongoing effort to increase the capacity of the Council's National College of Juvenile and Family Law to understand and respond to issues having a significant impact upon juvenile and family courts. Based on the efforts of a core group of faculty serving as a "Consortium," in addition to ex-officio participants, Council leadership and staff, the report reflects the intensive scrutiny to which issues have been subjected. Our recommendations are made to the Council membership and to other juvenile and family court judges, general trial and appellate judges and juvenile justice and judicial education practitioners throughout the nation. Funded in March, 1988, by the State Justice Institute as the first of a continuing annual Council effort, we hope others will view continuing project results as an outline for a long-range planning and action agenda. An examination of the needs and role of juvenile and family courts from the perspective of judges themselves will continue to be the focus of the project.

Juvenile and family court jurisdictions number over 3,000 and require more than 7,000 judges and referees, and 100,000 administrative service and support personnel. Each year they order 1.3 million delinquency dispositions, hear 390,000 child abuse or neglect cases, review an estimated 600,000 continuing protective service orders, preside over 1.3 million divorce and legal separations and determine the custody of 2.6 million children. In addition, they hear countless cases involving paternity, child support, adoption, family violence, civil commitment, and various child emancipation issues. Courts with juvenile and family jurisdictions have enormous responsibilities to those they serve. Their functions are varied, complex and understood differently by scholars, policy-makers, and practitioners. Their authority to carry out their functions often is not clear, often not statutorily explicit, and often interpreted in different ways by others. Many judges are rotated into juvenile or family court benches or divisions of general trial courts without either experience or expertise in a very specialized area of judicial practice. Such a position requires an involvement in social policy and executive branch responsibilities far beyond what most judges new to juvenile and family court practice ever anticipated.

Mark Harrison Moore, of the Harvard University John F. Kennedy School of Government, in a recently published text entitled *From Child to Citizen: The Mandate for Juvenile Justice*, aptly summarizes our approach:

*"The only institution that can reasonably exercise leadership on behalf of the society and the children is the juvenile court. The reason is simply that no other institution can claim to have an equally broad view of all the interests at stake, to have as wide a range of action, or to be able to make decisions that are designed to reflect the values of the society as expressed in its laws and constitution." (p. 176)*

Professor Moore calls the juvenile court "the best bet" as a decision-maker for social policy concerns and says why:

*"... because the decisions the court must make about children are generally decisions about the purpose society is trying to achieve. They are decisions about establishing a just and useful structure of responsibilities as well as achieving social purposes such as reduced crime and social dependence." (p. 177)*

In the rush of daily judicial and administrative burdens, the juvenile or family court judge often does not find the necessary time to reflect upon the impact such

issues may have upon the future and potential improvement of their own court process. Likewise, floating as they do a distance away from a traditional judicial education curriculum, these issues have not received a deserved integration into a continuing juvenile and family court training effort. Although we see our recommendations as desirable, time and expertise is not available to do more than provide a general framework of ideas. Further refinement and adaptation of the recommendations is dependent upon dedicated judges and other public officials within individual jurisdictions.

The Consortium met formally on three occasions to review the project scope and products and also conducted "Key Issues" seminars during the 51st NCJFCJ Annual Conference. The goal was to elicit information, opinion, and guidance from the Council membership. Our recommendations should serve as guideposts for the design and preparation of enhanced curricula to be provided by the Council's National College of Juvenile and Family Law. In addition, the Key Issues report and the curricula will be widely disseminated outside the Council for use by other national and state judicial leaders and educators.

We hope our work will be useful in encouraging judges, court administrators, system professionals, and judicial educators, to reflect further on these issues and to initiate the difficult process of debate and action desirable within individual jurisdictions.

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# **Alternative Dispute Resolution: A Juvenile and Family Court Perspective**

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## ***Special Concerns and Mandates***

Juvenile and family courts are special courts, with special concerns and mandates. Such courts exercise responsibility to provide individualized justice and protection for children within their jurisdiction and authority. Actions of juvenile and family courts should not be retributive. Such courts are committed to the rehabilitative ideal and the best interests of the child. Their goal is to make positive things happen, to assure, by appropriate intervention, the stabilization of a family or youth in trouble. This responsibility to ultimately determine what happens to the lives and liberties of children and families is most critical. Such judicial concern applies to the handling of all cases within the court's jurisdiction. The subject of this report is, however, limited to discussing better ways to resolve minor delinquency, status offense, and appropriate abuse/neglect cases without formal adjudication.

Juvenile and family courts are struggling to find better ways to handle immense responsibilities. As the numbers and complexities of their special caseloads increase, these courts must examine various applications of a process which has come to be known as "Alternative Dispute Resolution," or more simply, "ADR." As Consortium member Judge Robert W. Page states:

*"I have a dream of a (family) court where the smallest room, and least utilized, is the courtroom; where the parties have attempted to get through all the other rooms first, where the courtroom is not the preferred room to resolve disputes."*<sup>1</sup>

The ADR concept offers a better way to resolve disputes without formal court intervention. It is a means of achieving the goals of justice in the individual case. "Court-Approved" ADR is any one of a series of varying processes or programs approved by the court and designed to resolve specified minor delinquency, status offense and abuse/neglect cases without a formal judicial hearing. The report considers some new and innovative alternatives to traditional legal process and some ways by which more traditional diversion or adjustment programs can be improved. In the words of U.S. Supreme Court Justice Sandra Day O'Connor:

*"The courts of this country should not be the places where the resolution of disputes begins. They should be the places where disputes end — after alternative methods of resolving disputes have been considered and tried."*<sup>2</sup>

In examining alternative processing of minor delinquency, status offense and abuse/neglect cases, the caveat expressed in *Kent v. United States* should be noted:

*". . . there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded the adults nor the solicitous care and regenerative treatment postulated for children."*<sup>3</sup>

The goal is to find the best way, within individual jurisdictions, to deal with children and families who are the responsibility of our courts. The best way often involves developing and using a form of ADR. Implementation and documentation of many more programs and approaches can be the desired result of increased judicial awareness of ADR.

## ***Discretion for Alternative Process***

Our courts are not strangers to ADR. The role of the juvenile and family court has always included use of informal processes. Juvenile and family judges have been more interested in the goal of protecting the best interests of children than obtaining the added benefits of docket relief often cited by ADR proponents. Historically, our courts have had greater discretion to develop alternative processes such as adjustment, diversion and the use of mediation and other methods of settlement. These processes provide the appropriate treatment, services, or accountability required for the best interests of the child. Although perhaps not foreseen by its Illinois founders in 1899, ADR was essential to the foundation upon which the juvenile court movement was based. The concept of "adjustment," in the sense of diverting a case from a normal adjudicative process, was utilized within the first Juvenile Court Act.

Most of the less serious delinquency, status offense, and dependency cases referred to the courts are, in some way, resolved before formal adjudication and disposition. Such "resolution" often involves juvenile court diversion where court staff "divert" certain cases prior to adjudication and resolve them on an informal basis. Even in our post-*Gault* era,<sup>4</sup> with the emphasis on due process and adversarial techniques, the present juvenile and family court system stands as testimony to the value of alternative process.

Implementation of ADR can facilitate fair and just resolution of problems facing children and families involved with our system. ADR is often capable of resolving much more than the immediate conflict by teaching the participants how to resolve their own problems. By focusing on early intervention, and providing resources to preserve a child's ongoing relationships with family and society, ADR can facilitate a more effective and less disruptive solution than can be achieved through formal adversarial adjudication. Juvenile and family court judges have long espoused concepts of early intervention and family preservation and maintained that children, by virtue of their incapacity and vulnerability, should be treated differently for offenses. They understand that formal adjudication of many of the issues often hinders a more lasting resolution of the presenting problem or conflict.

As Judge William E. Gladstone notes:

*"We have gone astray with our notions of due process in an adversarial system for children . . . due process for kids should be something different from due process for adults . . . due process should come to mean fair and understandable procedures by which the adults who work in our juvenile justice system see to it that, when children, parents, and other governmental agencies can't do the job, the juvenile justice system will give kids a fair shot at healthy, productive, law abiding, fulfilling, and socialized adult lives."<sup>5</sup>*

## ***Scope of the Report***

At present there is no national effort attempting to link the various concepts and techniques of ADR to the concerns of our specialized courts. This report will examine and evaluate some promising and problematic aspects of ADR and offer suggestions to judges who may be considering or initiating better ways to handle minor delinquency, status offense or abuse/neglect cases. The report will concentrate on the potential for ADR which is "Court-Approved," i.e., those programs and processes either directly annexed to the operation of the court or within its responsibility or jurisdiction. It is limited to pre-adjudicatory delinquency and dependency functions. Although a court's responsibilities may also include proceedings for serious juvenile crime, divorce, visitation or child support, only alternatives prior to formal adjudication for minor delinquency, status and abuse/neglect matters are discussed. The post-adjudicatory process is beyond the scope of this report.

Because of the variety of ADR programs and the scarcity of unifying theory or definitions, the language of practitioners is often ambiguous and misunderstood. For example, the term "mediation" is used in a variety of ways. By definition, mediation is a voluntary process in which the parties to a dispute invite or accept a neutral facilitator who helps them discuss issues and develop mutually acceptable resolutions. Juvenile and family court personnel may identify themselves as "mediators" and their work as "mediation," when it is often simply a more personal and empathetic form of adjudication or informal decision-making. Some programs designate "mediation" as a process resulting in an agreement made by the parties, but later indicate that the "mediator" can impose decisions. Conversely, other programs identify "arbitration" as an "arbitrator-dispensed" process, but subsequently imply that their arbitrators "mediate" or do not make decisions. Practitioners should be alert to the semantic differences which attach to terms used in ADR.<sup>6</sup>

### *Adjudicatory v. Participatory*

To sort out such semantics, it is useful to distinguish between a process which is essentially "adjudicatory" in nature and one which is "participatory."<sup>7</sup> Stated broadly, in a pure adjudicatory process, the facilitator makes and imposes all decisions, while in a pure participatory process, the parties themselves define the issues, engage in the search for solutions, and arrive at a mutually acceptable agreement. Thus mediation processes fall nearer to the purely participatory end of the continuum.

The end of the continuum most resembling formal adjudication is termed "adjudicatory." While in an adjudicatory process the parties are engaged in an alternative to formal adjudication, the process in its pure form retains its essentially adversarial character. The role of the "facilitator," most often court service or probation staff, is to assess, based on the evidence presented, the relative merits of the case and relative culpability of the parties. Although legal guilt is not determined, depending on the factual assessment, the facilitator determines an appropriate remedy. In its pure form, the parties would be restricted to dealing with those issues raised in the complaint and the focus would be exclusively on the merits of the respective allegations and denials. Many court operated diversion programs for minor delinquency are structured, more or less, in this "adjudicatory" manner, i.e., the intake process involves a decision, based upon the complaint or additional facts elicited from an interview with the child, parents or victim, to prevent the case from proceeding to formal adjudication. Upon such informal alternative hearing, if the child accepts the informal decision, e.g., pay back the \$10 determined to be stolen and apologize to the victim, the case has been "resolved" by an adjudicatory process resembling adversarial, formal decision-making. An adjudicatory ADR process looks to the past by assessing responsibility and providing accountability. As with all good decision-making, it also should weigh productive outcomes.

In contrast — at the other end of the continuum — is a process termed "participatory." The goal of the facilitator in pure participatory ADR is to transform the parties from adversaries into joint problem-solvers, to help them identify and express their own needs, interests and mutual interdependence, and to empower them to devise their own solutions. Some recent ADR programs for status offenders (runaways, truants, incorrigibles) and for dependency matters (abuse/neglect issues of custody) stress this approach. Solutions in these cases may have less to do with the relative merits of each party's case or proposed remedies for past wrongs than with ways to alter their interactions and to learn problem solving in terms of their ongoing relationships. Parties in the most participatory ADR may be encouraged to stray from the issues raised in the case and seek to address other, broader interests and needs. Mediation in its purest form exemplifies this participatory process. A neutral facilitator is charged with assisting the parties to resolve their own differences.

Decisions on responsibility and accountability are not imposed by the facilitator, but rather are arrived at by the parties. By their participation and agreement, they look to future relationships.

### ***Need to Determine Best Process***

The determination of whether the process should lean more toward the participatory or the adjudicatory involves consideration of a myriad of factors. The court must decide which type of ADR will best meet its needs for the type of case presented. At the heart of a screening or intake decision is a determination of the need to preserve or enhance an ongoing relationship between or among the parties. The greater the need for a future relationship, within, for example, an intrafamilial dispute, the more important it may become to design a process to accommodate the underlying needs of the parties rather than to assign blame and impose a remedy. It is through a more participatory process that the parties are encouraged to avoid adversarial confrontation and to begin discussion and negotiation of their differences.

On the other hand, the greater the need for the state to assert its moral or legal message and impose a solution, the more important it may be to design an adjudicatory model for ADR. The more formal the process, the less framing and exploration of the underlying issues can be accommodated, and the more responsibility for the outcome is assumed by the facilitator alone. Depending on the degree of participation the parties are permitted, the task of the facilitator is to assist them in arriving at a mutually acceptable resolution. The more participatory the process, the less persuasive or aggressive the facilitator may be in suggesting a solution. The more adjudicatory the process, the more directive may be the facilitator in deciding the outcome. All Court-Approved ADR falls somewhere along this decision-making continuum.

### ***Benefits to Juvenile and Family Courts***

The implementation of new and better methods for ADR offers great potential. Our courts have an interest in using their limited resources effectively, with no loss of fairness, accountability or ability to protect the child. The benefits most cited for using ADR are:

- Improving the resolution of a case by exploring the underlying problems or causative factors.
- Involving the parties themselves in solutions to their problems.
- Encouraging the participation of those who would not otherwise involve themselves.
- Relieving the courts of minor cases and allowing more attention to serious cases.
- Providing cost-effective alternatives to speed up resolution without formal adversarial process.

In addition to cost-effectiveness, there exists another reason which might lead a court to choose ADR: *better results*. Most ADR is potentially less costly for all parties concerned, but cost must be measured in terms of what process is most capable of better and longer lasting results.

By using ADR, courts delegate a portion of their authority to others. The increasing dysfunction of the family, revealed by the number of delinquency and

status offenses and the perplexing increase in substance abuse and child abuse and neglect cases, require courts to re-evaluate the capacity of formal legal process.

Effective ADR can meet some additional concerns of juvenile and family courts by:

- Focusing on the entire family as related to the problems of the child.
- Teaching problem solving by involving the child and family in seeking solutions.
- Improving coordination among systems' agencies (police, prosecution, defender, welfare, health, etc.).
- Improving intake evaluation and assessment methods for individual cases.
- Speeding up provision of "front end" service delivery with less formal process.
- Increasing public understanding and satisfaction with more effective use of resources.

The best ADR is whatever works best for each particular case without diminishing the ultimate responsibility and authority of the court. Thorough judicial supervision is implicit within any Court-Approved ADR. The best resolution assures that children and dysfunctional families receive the services they need in an expeditious manner. Time is of the essence. Children condense time, and the developmental process is damaged by delay. A more efficient process makes appropriate services and treatment available earlier. Improved intake screening, assessment and service provision is essential to initiating ADR programs. The process should expose the underlying issues involved in the presenting problem. The most important criterion is that ADR offer the best opportunity to resolve the dispute.

### ***Essential Fairness Protections***

The judiciary must retain its inherent and statutory authority for deciding and protecting the best interests of the child. The successful use of ADR requires the judge and court personnel to identify, make available and apply the necessary screening, procedures and services to prevent a further intrusion into the formal system. Court-Approved ADR must reflect, at minimum, the following:

- Judically-approved eligibility criteria for parties to qualify for each specific alternative process (types of cases, offenses, etc.).
- Judicial approval of the specific procedures and guidelines for each alternative process used (notice, right to opt out, etc.).
- Requirements for the court to periodically review the ADR (monitoring, evaluating process, and results).

Through judicial supervision and guidelines, the court assures that each ADR process meets essential fairness standards. The best interests of the child must be at the heart of any ADR and must be protected by the court at all steps of the process. The key to providing essential fairness is the assurance that participation in the process itself and acceptance of the result is completely voluntary on the part of all parties. Each party must have the option not to proceed with the process, or not to agree to the result. Each party must have the option, at any time during and after the process, to seek formal adjudication. Likewise, the justice or social service systems and the court must retain this option and leverage.

### ***Voluntary Acceptance***

By a voluntary acceptance of ADR process and outcome as an alternative to adjudication, all parties agree not to exercise their rights to that constitutional due process inherent within formal legal process. Such due process concerns as double jeopardy and the right to counsel, confrontation and cross-examination are usually not a part of any ADR process. Replacing formal due process in Court-Approved ADR is the requirement of essential fairness.

The court must assure that any process it uses is implicitly fair to all parties. Procedural fairness and awareness, prior to and within the process, generates respect for the process itself and assists the parties in obtaining an agreement. A just result is encouraged if the process is structured to protect each party's rights and is relieved of any constraints which might cause an "imbalance." The court must set standards to assure that all parties are fully informed of their rights and operating on equal terms. Participants must thoroughly understand their voluntary acceptance of alternative process and the availability of formal adjudication with full due process protections. Whenever a resolution or agreement is not achieved and completed, this full, formal adjudication process should proceed as though the dispute had never been referred to ADR. In view of the savings in time and cost, the uncertainty of a legal outcome, the lack of formal record, and the probability of a better solution, ADR can provide a better way for all parties.

# A Juvenile and Family Court-Approved Approach to ADR

The voluntary aspects of ADR, coupled with an emphasis on encouraging participation of the parties themselves in the process and outcome can add a new and effective problem solving dimension to diversion and adjustment programs. Properly utilized for appropriate cases, ADR can enhance the rehabilitative and protective goals of the court. By a process which teaches problem solving techniques through a qualified facilitator, the disruption and divisiveness of an adversarial process often can be avoided.

Additionally, the court can influence the types and numbers of cases within its range of responsibility which can be successfully resolved prior to a formal referral or petition to the court. By approving ADR process and protocol for law enforcement and social service agencies, the court can encourage a focus on problem solving and informal resolution at an even earlier stage.

## ***Principles Essential to Court-Approved ADR***

Three principles are crucial to all Court-Approved ADR:

1. In order to *initiate* a Court-Approved ADR process, there must be a voluntary acknowledgement by the parties of facts sufficient to bring the matter within the jurisdiction of the court and for which the court is responsible.
2. In order to *continue* a Court-Approved ADR process, there must be a voluntary participation in the process at all times and by all parties, and a continuing voluntary acceptance of and compliance by those parties with the resolution or outcome.
3. In order to *complete* a Court-Approved ADR process, the court system, directly through the court, or indirectly through court guidelines and supervision, must hold itself and all parties accountable to the agreed to result.

Each of the above becomes essential to the integrity of the process. Without adhering to these principles, a particular ADR program, whether participatory or adjudicatory, cannot protect the interests of the parties and of society and assure a valid and effective outcome. Court-Approved ADR, whether directly conducted within the court system or adjunct to it through juvenile justice or social service systems under court-approved guidelines, must reflect an understanding of these principles.

### *1. Voluntary Acknowledgement of Facts Sufficient For Jurisdiction*

Each party must acknowledge facts sufficient to bring the matter within the jurisdiction of the court. The matter to be adjusted or diverted from formal process must be a matter for which the court is responsible. This is a threshold issue from which the court obtains a basis upon which to act.

Although use of ADR does not require that the juvenile or other party accept blame for the matter, there must be sufficient factual acknowledgement of responsibility. Guilt and liability are legal concepts and do not serve the purposes of ADR. Alternative process should not determine guilt. If any party cannot

acknowledge facts sufficient to proceed with ADR, formal fact finding by legal process may be necessary to protect due process rights. The process must never coerce an acknowledgement.

The standard for an acknowledgement of responsibility may be more strict the more serious the matter or offense being alternatively processed. A clear admission of having committed a certain act may be required if ADR is to be used in some circumstances. For example, guidelines for eligibility for an ADR program designed to resolve an offense involving violence might require a more specific admission.

### *2. Voluntary Participation of All Parties at All Times*

All parties must voluntarily agree to participate in alternative process and their voluntary participation must continue. Voluntary acceptance of the ADR result or agreement *and* voluntary compliance with the terms is fundamental to Court-Approved ADR. It must apply to all types of ADR and all types of cases — minor delinquency, status offenses, or abuse/neglect cases — for which an ADR program is designed.

If at any time before completion of the agreement or resolution, any party chooses to obtain formal adjudication, it should be available without reservation. That the leverage of, or potential for, legal adjudication must lie behind the parties' acceptance of the informal process and outcome in no way lessens the fact that their participation is voluntary. By appropriate notice and supervision, the alternative process used should make the parties aware that they may opt out at any time. The potential for legal process must be made known to all parties before participation begins.

### *3. Systemwide and Individual Accountability*

All parties must comply with the agreement or the matter must be referred to court. By providing the alternative process, the court obligates itself to assure that each outcome is supervised and, ultimately, reviewable. If, for example, restitution is agreed to, the court must develop a monitoring process to assure that it is paid. If not paid, court services should be able to substantiate noncompliance and refer the case to court. Statutes, court rules, or guidelines should articulate how and under what circumstances legal process will proceed if ADR does not succeed.

The process itself must be as accountable as the parties. By supervision, periodic review and evaluation, the court provides essential accountability. An ADR process should not lessen the responsibility of the parties and the system to adhere to the terms of the resolution. The treatment or services agreed to be provided must be provided. Likewise, the party who agrees to undergo treatment, pay restitution, or participate in community service must be held accountable to do so.

The ADR process results in a contract, arrived at in an informal but structured manner, and enforceable through formal legal process. Adherence to the contract's terms is necessary to avoid the possibility of legal process. Although compliance remains voluntary, the leverage of legal action remains. Without the ability to hold the parties and all parts of the system accountable, the court should not be involved in providing the opportunity for ADR.

### *Implications of Community ADR*

Within the community various types of ADR exist in addition to that ADR operating within the court's jurisdiction or range of responsibility. Some of these community or private programs may be very useful in accomplishing the court's goals while others may not be. The judge is often unaware of what is taking place within such programs. The movement of such cases should be studied. Are disputes being adjusted by other agencies which should be heard in court? Are the terms of

resolution acceptable to the court? Conversely, are cases coming to the court which might better have been resolved earlier? If cases are being resolved inappropriately, has the court a responsibility to intervene and establish more explicit rules or guidelines?

Some common non-Court-Approved ADR programs are operated in communities by private mediators or school systems outside the supervisory jurisdiction of the court. School operated "teen courts" or "mediation" programs, neighborhood "justice centers" and private programs for substance abuse or family dysfunction operate outside the justice system. Communities need and must continue to develop a wide variety of such resources. The purpose of any court involvement in or awareness of such programs should not be to "widen the net," but rather to assure that programs appropriately resolve conflicts and prevent the necessity of future court intervention. The following observations may be relevant to independent community or private programs:

- *Record Results:* To the extent possible, such programs should be formalized by written guidelines and required to keep accurate records of ADR agreements and compliance. Such nonlegal records of compliance or noncompliance may appropriately be made available to the court for dispositional purposes only if a juvenile, previously involved in such a program, is adjudicated delinquent for a serious offense. Records of the process itself must always remain confidential.
- *Refer to Court:* Without guidelines or records, the programs may be performing a disservice to the community and child. The number of school or community-based adjustments for alcohol or drug abuse, for example, must be considered in identifying a child who should be referred to court for a more thorough assessment. Every ADR system is only as good as its accountability in providing the means to achieve a lasting effect.
- *Court Cooperation:* Without violating the basic confidentiality provided by such programs, out-of-court community ADR programs should seek a cooperative relationship with the court. Conversely, the court should seek to become aware of those results and benefits. In some instances it may be possible for the court to refer children to such community programs.

#### ***"Diversion" Defined as ADR Within Court Process***

The ADR process which takes place within the formal jurisdiction of the court is "diversion." Diversion assumes an original referral to the juvenile or family court from a law enforcement, social service, or other agency or complainant. In each diversion case, whether formally petitioned or in other ways referred, the court, through its jurisdiction and authority, is able to delegate and guide the dispute to an appropriate alternative process. Depending on the circumstances and nature of the matter before it, ADR can be initiated in a number of ways: trained and qualified staff can authorize the case to be referred to a type of mediation process, facilitated by staff, or contracted out to mediation services. A qualified professional can be appointed in an abuse/neglect/case to facilitate a solution between the social services agency and the child and family.

If a participatory process which will work toward teaching the parties problem solving and assist in preserving or restoring an ongoing relationship is desired, the court must designate the manner of participation of the juvenile and other parties in determining a mutually satisfactory outcome. The court should insist that the parents be involved in the process. If a more adjudicatory process is desired, the facilitator's authority to decide the resolution must be explicit. If facts are sufficiently acknowledged to constitute a theft, a facilitator might determine, with the juvenile's

input, the amount of the theft, the acceptability and details of a monetary restitution to the victim and what other consequences should be imposed. While it remains the role of the facilitator to determine such consequences, the resolution process may also involve hearing what the child and other parties feel is an appropriate resolution. In this way, the principle of voluntary participation assists in shaping an individualized remedy, which is more effective, specific and immediate to the needs of all parties than that which would have resulted from a formal adjudication.

By court rule or other authority, the court can devise a variety of processes or mechanisms designed to meet the need to alternatively resolve the case, or to reduce the complexity and number of issues which must be adjudicated.

### ***"Adjustment" is Defined as ADR by System Outside Court***

An "adjustment," for the purposes of this report, is defined as any Court-Approved ADR process which takes place *within* the social services or juvenile justice system but *outside* the formal jurisdiction and authority of the court. Although a formal referral to the juvenile or family court has not taken place, the court has, by guideline or other procedure, "approved" of the adjustment process used. Thus law enforcement, social service, prosecutorial or other juvenile justice system agencies' ADR processes are a concern of the court because it has a responsibility to protect the best interests of the child by assuring essential fairness. It should also have an interest in assuring that only appropriate cases are adjusted without referral to court. The court, for example, may initiate or approve appropriate guidelines for a pre-petition alternative process within a social services agency to prevent further intrusion into more formal legal process. It may require "reasonable efforts" from the agency to prevent a formal petition for removal of a child from the home.

There are children and families who are better off not being involved with the courts at all. Sometimes adjustment by an out-of-court agency and process will better serve all parties. It may avoid lengthy formalities and court involvement which is often unnecessary and longer than can be justified — even if the case is eventually diverted from formal adjudication by the court.

How best to intervene effectively in that child's life is integral to the protective and rehabilitative goals of the court. In order to encourage early and effective intervention, the court, by proper guidelines and supervision, should approve such pre-referral adjustments. As with diversion guidelines issued for in-court referrals, the court must be specific as to what type of adjustment process is appropriate for the type of offense or problem encountered.

### ***Court-Approved Process***

The court controls or supervises its own Court-Approved ADR process by guidelines and periodic review of responsibilities it delegates to its staff. With respect to ADR conducted by other agencies charged with handling minor delinquencies, status offenses and abuse/neglect matters for which the court has ultimate jurisdiction and responsibility, the court should approve of the processes through the issuance of its own guidelines or approval of agency written guidelines or protocols. These should articulate specific conditions and circumstances under which an alternative process may be used in lieu of referral to the formal jurisdiction and authority of the court. The types of appropriate cases and reasons for diversion or adjustment should be set forth. Guidelines should reflect the court's expectations for the ADR process. If preserving the ongoing relationships of the parties is important, the court should approve a more participatory process, such as a form of mediation. Conversely, if such relationships are less important or nonexistent in the factual pattern acknowledged, a more adjudicatory process is warranted. The specific role of the

facilitator should be designed and set forth with an appreciation of how much of the problem solving or resolution should be the responsibility of the parties versus the decision of the facilitator.

It is important to stress the underlying reason for the court to be involved in issuing appropriate guidelines or approving the guidelines or protocols of other public agencies. The reason is accountability. By such approval, the court provides systemwide accountability. It underlines the need for consistency and uniformity. Without such court approval, system personnel cannot be held accountable by the court for inappropriate actions. With approved guidelines, all agencies and their personnel are responsible for assuring that appropriate cases are referred to court and that other cases do not intrude further into the legal system.

### ***Need for Consistency and Uniformity***

Judicially-issued or approved guidelines, protocols, or standards for court-approved diversions or adjustments must reflect a concern for consistency and uniformity. They need to be explicit enough to guard against abuse of discretion by court or agency staff to whom authority is delegated or approved, yet flexible enough to encourage use of the process. The following examples illustrate:

1. Johnny, age 13, has missed seven consecutive days of school. Repeated phone calls to his home from the school fail to find him at home or his parents concerned about where he is. How should the school go about reporting this, to whom, and how should the case be handled?
2. Samuel, age 16, deals small amounts of drugs throughout a long day. Three different police officers, working different shifts, have each warned him once not to be caught again. What and whose guidelines should assure that Samuel is referred to the court?
3. Joseph H. Hill III, age 15, son of the Mayor, is involved in maliciously damaging \$5000 worth of city property. How can the court impartially and appropriately assure the youth will be treated?
4. A social worker has substantiated a report that Shirley, age 6, has been physically abused by her mother (hard, frequent slapping). After another visit, and fresh evidence of abuse (red marks), the social worker elicits another promise from the mother not to ever again slap her child. Although the case has not been petitioned, what guidelines can the court initiate or approve to provide effective intervention by the agency?

In each of the above, the court may be in a position to influence how the case would be handled through the issuance or approval of sufficiently detailed guidelines or protocols for ADR:

1. In the case of truancy, all schools may have developed and had approved by the court guidelines as to how and when Johnny's problem of protracted absences should be referred to the court system or other agencies and the range of options to be used to resolve the problem.
2. In the case of street adjustments for drug dealing, police officers might be guided by court-approved protocols, including record keeping requirements, which would assure Samuel's apprehension and guide a resolution process, here most probably a referral to court.
3. Judicially-issued or court-approved guidelines can promote fair treatment for

the Mayor's son or anyone without inviting disparities and different treatment for those apprehended with or without influence at City Hall.

4. In Shirley's case, the courts must be concerned about the appropriate timeframe for a social worker to determine when and what kind of intervention is required for a child determined to be at-risk. The court's responsibilities to assure that "reasonable efforts" are being made to protect a child, without resort to foster care, may indicate the need for a court-approved process.

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# **Elements and Goals of a Recommended Court-Approved Approach to ADR**

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## *Elements:*

A series of elements should be considered for incorporation within a given ADR process. Each is determined best by the type of process (participatory v. adjudicatory) which offers the best resolution. Designing and applying the appropriate process is the key to successful informal resolution of cases.

### ***Primary Task: Involvement of the Parties***

Essential to developing promising ADR is the task of determining the extent and level of the parties' involvement in the process. Successful ADR requires a trained and competent facilitator who brings about such involvement (or limits it) in determining and agreeing to a resolution. Even if the process is essentially adjudicatory, the voluntary participation which leads up to a decision may involve not only the child, but other parties with an interest in the matter, e.g., the victim or the grandparents.

The participatory process is an attractive and workable concept. Parties to such process attempt to acknowledge areas of common interest and compromise to reach agreement. They learn a mechanism for conflict resolution which can be used in the future. The agreed to resolution also serves as a commitment to further rehabilitative efforts. As the parties fulfill their mutual commitments under the agreement, the areas of communication are expanded and the tension created by the original presenting issues lessened. This is most relevant in intrafamilial disputes, where the dynamics of conflict can sink more adjudicatory efforts to resolve issues. To the extent that it increases potential of the disputing parties for agreeing to negotiate and often resolve a problem by their own actions, participatory ADR process is particularly suited to rehabilitation and reunification efforts. However, an adjudicatory process can also involve the parties (to a more limited extent) in decision-making.

### ***Focus on the Family***

An element to be considered is how much the process should focus on the family as it relates to the problem at hand. Family dysfunction is at the heart of many matters referred to court, regardless of the offense committed by the juvenile or the abuse and neglect to which the child has been subjected. The process should reflect an appropriate holistic approach. It may stress improved family relations and treatment or prevention of future family problems as an important element.

Consortium member Salvatore A. D'Amico summarizes some reasons to consider focus on the family within an ADR process:

- "1. Status offenders and minor delinquency cases usually involve dysfunctional relationships within the family and rarely can the behavior of a child be completely isolated from the problems of the family unit. Effective resolution derives from restructuring and defining interpersonal relationships and mutual responsibilities rather than the imposition of sanctions;*
- 2. The court process in status offense cases too often focuses primarily on the child in addressing problems which are usually those of the family unit;*

3. *The adversarial nature of judicial proceedings pits parents and children against one another or against the school, resulting in escalation rather than resolution of the presenting problem;*
4. *The issues involved are emotional and personal rather than legal, requiring a method of conflict resolution which can deal more effectively with complex human relationships;*
5. *The authority of the court in status offense cases is limited and orders frequently attempt to restrict or modify the behavior of the child. Given the typical absence of mutual parent-child investment, these orders by their very nature lead to a high incidence of noncompliance;*
6. *Courts and supportive services have assumed responsibility for decision-making in these situations without any meaningful attempt to evaluate the ability of parents and children to retain responsibility. This has, in many cases, led to a long-term dependency on the court.”<sup>8</sup>*

The process must involve the parents or other family members once the necessity for their involvement in the case is established. The parents of an alleged status offender or delinquent may or may not acknowledge some culpability or responsibility for the child's behavior, but they should be as accountable as the child for carrying out agreements reached by ADR. Parents or guardians of an abused or neglected child whose relationship to the abuse is alleged should acknowledge responsibility before ADR can proceed. Such voluntary parental consent to participate in the alternative process for substantiated abuse/neglect and to abide by the terms of the resolution negotiated should be obtained in writing. It should be clear by proper notice that violation of the terms may subject the parents to formal legal process.

In minor delinquency and status offenses, parental participation in ADR should be required as a condition of the juvenile's eligibility. Through effective process, a clear relationship is often established and admitted between a parent's actions or omissions and a child's offense. Status offenses often involve disobedience or running away from what are often unreasonable or harmful demands or behavior by the parents. It is important to determine and attempt to resolve the home environment problems to which the juvenile will return. The key to completion and prevention of future disputes or misconduct often is the level of parental concern and involvement produced by the process.

#### ***Intervene Early with Sufficient Resources***

Court-Approved ADR programs must have the necessary treatment or service resources in place to assure the ability of the parties to abide by the mutually agreed upon resolution. A mediation agreement or other type of alternative result which commits one or more parties to participate in counseling or another therapeutic program is not effective unless such a resource is immediately available and provided.

Depending on the complexities of the case and degree to which the process chosen requires a longer period of time for the parties to participate in the resolution, the court should expect, if not an accelerated result, at least the initiation of ADR in an efficient and timely manner. The process can bring a quicker resolution of the dispute and application of the result, e.g., treatment, restitution or reunification. For this reason it is often superior to formal, legal process.

#### ***Participatory Process Limits Adversarial Approach***

The more ADR is designed as a fact finding process, the more it might use a type

of adversarial approach to resolution. The facilitator may be an officer of the court and the process one which approaches a hearing environment. In contrast, the more ongoing relationships are involved, the more participatory the process may become. An adversarial approach should be avoided in a participatory process such as mediation. Such an approach shifts the parties back to disruptive formalities which are anathema to a voluntary negotiating process. An attorney or guardian ad litem may be involved or appointed by the court to protect the best interests of a child in an ADR process, but within the process itself, should not assume an adversarial position. Representation of a client in an alternative process should occur through negotiating, a posture not often apparent in an adversarial proceeding. A case which requires adversarial representation may require formal adjudication.

### ***Informality and Structure of the Process***

The point at which the process falls on the continuum of participatory to adjudicatory may determine its informality or formality and the type of structure used by the facilitator. Some participatory processes, for example, may place more control over the ability of the parties to come up with their own resolution by enabling the facilitator to devise the outcome, or approve it. Some adjudicatory processes might limit the decision-making authority of the facilitator by requiring the victim and offender themselves to negotiate the amount of restitution.

The more participatory the process, the more usual it might be to encourage an informal atmosphere and structure. To the extent that a process is therapeutic, it should not be rigidly structured. Counseling or crisis intervention which uses mediation techniques usually requires less structure than classic mediation. There is usually more control over the parties by the facilitator as the process becomes less participatory and permits more persuasion. As the facilitator begins to be more responsible for the ultimate resolution, the more structured or formal might the process become. The greater the authority to impose a decision, the more closely the process will resemble formal adjudication.

### ***Informal Contracts and Signed Agreements***

Another element to be determined is the degree to which parties participating in the process must sign off on, or in other ways commit themselves to adhere to the agreement made. Generally, the more participatory the process, the more inclusive will be the approach to the number of parties to be involved. As the number of parties increases, the more informal may be the resulting agreement. Likewise, the more the process resembles formal adjudication, the more formal may be the contract or agreement which the parties are required to sign.

Although participation in the process and agreement to comply with the result does not produce a legally enforceable contract, the potential leverage of formal adjudication encourages compliance. Generally speaking, the more formal the process and serious the presenting problem, the more formal and inclusive should be the recorded result.

### ***Trained and Qualified Personnel***

Determining and conducting appropriate ADR must be done by sufficiently trained and qualified persons. Facilitators, whether working within the court system, or court-approved, or contracted outside the court, must have not only the necessary process skills required, but also an understanding of juvenile and family law and the concepts of child development. Their authority and discretion must be clearly delineated by the court.

The court must obtain information on skills required for the type of process desired. The more adjudicatory the process, the more legal or decision-making skills will be necessary for the facilitator. The more participatory the process, the more the facilitator must be trained in, for example, specific mediation techniques. Most probation officers do not easily function out of their normal authoritative role. They cannot be "mediators," without sufficient training. Outside professional or volunteer "mediation" services cannot be assumed to be qualified to mediate children's cases.

The court must assure appropriate training and qualifications for all court-operated or Court-Approved ADR personnel. Specific training standards should be maintained and apply to all to whom the court delegates responsibility to process cases.

### ***Fact Finding v. Facilitating***

Voluntary acknowledgement of facts sufficient to bring the matter within the jurisdiction of the court may not obviate the need to discover additional information upon which to base decisions. The more a result is dependent upon a fair and impartial decision by the facilitator, the more important will become fact finding and decision-making skills. In contrast, the less an outcome relies on the decision of the facilitator, (the more it is based on the agreement of the parties) the less fact finding may be required. The parties look toward the future, and determining culpability, or even exactly what happened, is not as crucial to the outcome. The more the parties' responsibility must be determined as the basis for an appropriate decision and resolution, the more formal fact finding process is required.

### ***Set Time Limits and Conditions***

The court must set time limits, conditions, and other perimeters for ADR. For example, a process to mediate child abuse removal cases might require the matter to be referred for formal court process if not sufficiently resolved within a reasonable period, e.g., 30 days. Rules may provide for court approval and oversight of the resulting agreement. Conditions and specifics on what constitutes a violation of any agreement by each and all parties should be clear.

As with a formal dispositional order, the staff or facilitator should assure, as a matter of record, that the agreed to expectations of all parties, including the court, are clearly expressed, in writing, and filed in a timely manner with the court and all appropriate parties, e.g., parents, guardian ad litem, et al.

### ***ADR Process can be Therapeutic***

The resolution process for some family issues may be therapeutic by itself, or serve as a catalyst for one or more of the parties to obtain formal treatment. The more participatory the process, the more a qualified facilitator may succeed in initiating behavioral change. The resemblance to therapy is strongest when the structure of the format is loose and priority is placed on enhancing communications, allowing the participants to vent their frustrations as a way to "cool down" the dispute. This can be done before emphasis is placed on the issues and on facilitating compromise for a workable future agreement.

ADR is a limited intervention by which the facilitator seeks to bring the parties to agreement. Facilitators do not build a relationship to the parties with the expectation of remaining involved over the long term. The focus is on the present. Though the facilitator needs to know what led up to the present situation, there is no attempt to delve into the past, as in more classic forms of therapy. Nevertheless, ADR can be most therapeutic and teach problem solving techniques to the parties.

### ***Power Imbalances Require Attention***

The goal of ADR is to find solutions which all parties find acceptable. However, within a participatory process, serious questions are raised when agreements are made between parties of widely divergent power, education and financial status. The danger is that the agreement "may represent capitulations by the powerless rather than objectively fair compromises."<sup>9</sup>

In the courtroom, formal procedures serve to protect the weaker or more disadvantaged party and to even out power imbalances. Such safeguards are not assured in an alternative process. Although most ADR participants express satisfaction with the terms of their agreement, there is evidence that, in the dynamics of the pressure to settle, some participants agree to terms which they later claim were unfair.<sup>10</sup> Since there is a built-in tendency for the juvenile to view all adults as the allies of parents, the more participatory the process, the more it should address this by giving the child and parent equal time to speak. The facilitator must demonstrate respect for each party's concerns and explain, at the onset, the procedure for all participants to have an equal voice. Weaker parties must be empowered by the process or it cannot be effective.

As the process becomes more adjudicatory, imbalance of power issues may become a lesser factor. As it resembles formal legal process, it may not hold out the same equal status as does, for example, mediation. Instead it may offer more formalized protection. The juvenile or family, in voluntarily pursuing the alternative to the extent the process guidelines allow, is participating in the solution to be obtained. However, the resolution, in the end, may be the sole decision of the facilitator, most usually a hearing, probation or intake officer.

### ***The Victim as a Party to the Dispute***

Obtaining the confidence and participation of the victim is a necessary element in designing an effective and responsive Court-Approved ADR process for minor offenses. A substantial role for the victim should be assured within any ADR process. Victims still may demand to have their day in court and decline to participate in informal attempts at resolution.

ADR guidelines or procedures should provide for and protect the viewpoint of the victim, but not at the expense of holding the juvenile justice system hostage to a demand for a formal adjudication when this is determined not to be appropriate. Whenever the victim objects to ADR process determined by, for example, an intake officer, the matter should be set for hearing on the issue. The in-court hearing would then determine whether to proceed with a formal adjudication on the charges.

### ***Special Delinquency Considerations***

#### ***Determining Eligibility***

In developing operational criteria, the court may first determine what offenses or offenders are not considered to be appropriate for alternative process. The seriousness and character of the presenting offense, the chronicity based on previous records and the level of sanction or treatment potentially required, are some of the determinative factors. The type of offense should also be considered in deciding appropriate alternative process, e.g., all first time misdemeanors.

All ADR should be formalized through publication of clear guidelines. It is essential that the court, from the intake or assessment personnel to the judge, retain sufficient discretion not to recommend or approve a diversion for an individual case. The more potential intrusion into a juvenile's life or liberties, the more court supervision, direct judicial involvement or formal legal process may be required.

Additionally, the more serious the offense, the more the role of the prosecutor may be influential in determining eligibility and an appropriate outcome.

### *Individualized Process*

Once eligibility is ascertained, selecting the type of ADR (participatory versus adjudicatory) available and most individually applicable to the individual juvenile becomes crucial. The exigencies of modern and overly-burdened court systems should not preclude provision of individualized justice. Court-Approved ADR should provide an individualized remedy which is not only responsive to the needs of the juvenile, but also to the specific injury, damage, etc., caused to other parties. Whether the particular response occurs as a result of participatory or adjudicatory process, it should best fit the offense acknowledged. An example is informal restitution: If a juvenile who admits a \$10 shoplifting voluntarily participates in a resolution process and complies with the agreed to consequence, i.e., \$10 restitution and a formal apology, an active solution is provided. It relates the offender and the offended-against, and once the consequence is completed, it resolves the issues. In short, ADR must retain and exemplify the individualized dispositions required of juvenile and family courts.

### *Special Abuse/Neglect Concerns*

#### *Focus On Ongoing Relationship*

Court-Approved ADR for abuse/neglect matters must be distinguished from that provided for offenses where the primary resolution focuses on the juvenile. In most abuse and neglect cases, the parents or guardians are the focus of potential solutions (and possible criminal prosecution or termination of parental rights) in order to protect the child. Persuading the parent that their energies would be better spent in modifying their behavior or offensive conduct rather than fighting the system should be the goal. Preventing their child's removal or hastening reunification is a powerful incentive for such cooperation. While ADR for delinquency matters involves an adult-to-child process, abuse/neglect matters often require an adult-to-adult process which lessens parental resistance. Appropriate ADR can often eliminate the parent's defensive posture and obtain a more effective commitment to the proper care and behavior required. Motivating positive, caring behavior and the steps to achieve what the court or agency sees as necessary to protect the child is crucial. Such problem-solving can often be done best in a setting which reduces conflict between the court or agency and the parent and attempts achieving the required cooperation without legal intervention.

#### *Narrow the Issues*

Dependency cases are generally complex, sometimes involving a history of administrative actions before referral to court. The seriousness of the case and its complexities should not preclude the use of ADR. The very complexities of such cases sometimes demand a process — prior to any legal process — which will, at minimum, narrow the issues for adjudication and bring about a nonlegal resolution of underlying conflicts.

Judge Herbert Barall provides additional reasons to consider ADR for abuse/neglect cases:

*"The mediation process alleviates some of the frightening experiences for the litigants and diffuses some of the emotional aspects. Sometimes we can get the parents to buy in, to admit there is a problem and that they have to address it. . . . Issues which parties have agreed are problems and are willing to work on themselves by mutual agreement usually*

*obtain a better solution than solutions imposed by the court. How can you unite families without dealing with the family structure and getting the parties to invest in their own solutions?"<sup>11</sup>*

A program for dealing with petitioned abuse/neglect cases should initially attempt to get at the basic issues through appropriate ADR. Staff should attempt to facilitate agreements in pending cases. The initial goal may not be complete resolution, but rather, with all participants involved, to frame the issues and resulting case plan in a coordinated way. Even if the issues and conflicts cannot be immediately resolved they can be narrowed and condensed. The case is more capable of receiving a lasting solution if the parties have participated in Court-Approved ADR. The agency and other parties, attorneys or the guardian ad litem, should be involved in a case earlier and assist in arriving at mutually agreeable alternatives to formal adjudication. To do this, they must be more aware of the potential for utilizing ADR.

### ***Family Violence Considerations***

Based on factors such as the seriousness of the case, history of violence, and the potential for cooperation, the court must realize the limitations of mediation or other ADR in family violence cases. Although the process, predicated upon an acknowledgement of responsibility, might be, of and in itself, therapeutic, it cannot suffice for the often extensive therapy or other services needed by one or more of the abusing parties or the abused child or spouse. It may not be capable of providing appropriate sanctions. Even if such sanctions or treatment cannot be provided except through a more formal court order, the possibility of using an alternative process to narrow the legal issues should be considered.

Family violence and cases of child abuse are not easily resolved by ADR. Sometimes however, a form of adjudicatory ADR can be effective for first or less serious offenses. Sometimes participatory ADR may work to resolve ongoing family conflict. The severity of the violence is critical to the issue of whether any ADR can be used. Nevertheless, through appropriate alternative process, more cases at least can be better prepared for legal process. Temporary interventions such as arrangements for support and visitation can be agreed to and proceed, pending formal process. The parties who have begun a re-unification based on such process can make the legal outcome more effective and longer-lasting. However, an abused child or spouse should not be placed in such a position that their past and present vulnerability to a more powerful abusing force again is prejudiced by the alternative process. This factor mitigates against the use of informal process for family violence cases.

### ***Empower the Victim***

Most "imbalance of power" objections to the use of ADR in such cases stress the economic advantage and stronger personality of the abusing spouse and the "profile" of the weakened, battered victim. Such "victim" characteristics include fear, alienation, excessive seeking of approval, loss of identity, guilt at standing up for personal rights, inability to express feelings, terror at abandoning a relationship and loss of self-esteem.<sup>12</sup> These, combined with the power of the abusing spouse, critics argue, preclude any use of mediation or other techniques to resolve the serious issues involved. Yet, the same characteristics cited as precluding an informal attempt at resolution also often prevent or hinder the victim from pursuing a criminal justice solution or abandoning the relationship.

If an ongoing relationship between the parties is deemed desirable, and if a facilitator can protect the process from the imbalance by attention to "empowering" the victim, ADR may well provide a better solution than, for example, the criminal

justice process alone, or abandonment of the relationship. Such a solution may include separation and treatment for the offender as well as help for the victim, with further legal action available upon any noncompliance.

### ***Role of the Prosecutor***

With respect to both family violence and child abuse or neglect cases, the interest of the prosecutor in pursuing criminal prosecution, as an individual and as a general deterrent, should be explicitly clear within any Court-Approved ADR guidelines. The role and involvement of the prosecutor must be a special consideration for such cases. The court should make every effort to resolve ADR protocol and procedure through mutually acceptable guidelines and by a case-by-case approach to coordinate related criminal proceedings.

#### ***Goals:***

#### ***Facilitate Best Solution***

The process used should be one which is designed to achieve the best solution. Based upon continuing experience and comparison with past results, the ADR chosen should hold forth promise for a better resolution of the problem than any other process. While some children, parents and families may require the formal intervention of the court, many will be better assessed, treated and or reach a more effective outcome through participation in some type of ADR. Each process should be clearly defined in terms of the goals and objectives applicable to the cases it is designed to handle. Screening and assessment procedures should guide staff in determining and allocating the most workable process and program for each individual case and circumstance. Appropriate ADR should be as accessible as possible to those eligible.

#### ***Satisfy Systems Elements***

Goal setting should reflect considerations necessary to bring about or maintain good relations with agencies outside of the court system. The Court-Approved ADR process must take into account not only the best interests of the child and the objectives of the court, but also the concerns of others in the community — law enforcement, prosecution, social services, schools, parents and most essentially, the public.

ADR programs need not be designed to please one or another element. However, it is important to obtain their understanding and support from the outset. A diversion program which does not provide accountability discourages the public, police, agencies, and interested parties from referring matters to the court. Conversely, a court which provides only formal process and harsh dispositions for minor offenses discourages referrals from the school system, parents, or others.

Alternative processes which build in predictable but individualized accountability will meet the concerns of most of the community. Such ADR should be designed with the maximum input and participation of all systems. It should be an effective forum for the enforcement of the law and for obtaining the goals of juvenile and family courts and adjunct social service and justice systems.

#### ***Obtain Community Involvement***

Obtaining the early support and involvement of the community is critical. ADR approaches should be designed to increase the understanding of the community's sources of court referrals. Law enforcement should understand that ADR provides an

effective consequence and an alternative to the courtroom. Schools should learn that the court can most effectively process truancy or other referrals. Prosecutors need to know the requirements and conditions under which noncompliance may lead to a request for a formal petition or prosecution for delinquency. Families must have confidence that the process is the means for obtaining help. The benefits to victims and concerns for "speedier justice," and "restitution," should be readily observable.

Important to the success of many ADR programs is the effective use of trained and qualified volunteers. Community involvement should include consideration of the role of volunteer citizens within the various processes being formulated.

The community and media should perceive the court as effectively utilizing its resources by responding to the needs of the community. ADR should not be misunderstood to be an easy method of disposition for an alleged juvenile delinquent. It should be perceived as an innovation which more effectively brings about a just result for all concerned. The more specifically ADR can be articulated and accepted by the community, the better its chances for success.

### ***Resolve Issues or Simplify for Hearing***

Systemwide goals and objectives also must be considered. Since one of the objectives of alternative process is to reduce necessary judicial docket time by eliminating certain types of cases, the process must be designed and implemented with that objective in mind. By alternative processing the court permits itself more time for the adjudication of serious matters. However, any alternative process chosen should deal with the possibility of further legal process and prepare for such eventuality. Not only should the goal be to resolve among the parties the issues before the court, but also to strive to simplify them for potential adjudication. If any of the social or legal issues can be narrowed by stipulation and agreement, the formal process will be simplified to that extent. Hearing time reduction, although perhaps not a primary focus of informal process, is an attainable goal.

### ***Teach Problem Resolution to Parties Involved***

Court-Approved ADR should not only encourage the parties to resolve their immediate problem by formulation of an agreement or voluntary acceptance of a consequence, but where appropriate, prepare them to continue to resolve their own problems. By placing as much emphasis as possible on problem solving within the type of process chosen, the parties will learn some aspects of their own responsibility to work out future problems. The techniques required to bring about agreement will be inculcated in the parties for future reference and use. The concepts of voluntary concession, compromise, sticking to what is agreed to, nonviolent solutions, etc., should be exemplified within the process itself.

### ***Produce Desired Positive Behavioral Change***

A crucial goal of any Court-Approved ADR should be to produce a desired behavioral change by virtue of the process itself and by adherence to and implementation of the agreement. The difficult mission of the court is to rehabilitate youth, protect children, and reunite families, and to prevent future occurrences which harm the child, the family and society. Any process must exemplify, as its first consideration, bringing the parties together — together, physically and emotionally. Process environment and techniques should be conducive to this goal. The facilitators will constantly focus on agreement, reunification, and effecting positive behavioral change. Bringing the parties together is, in the widest sense, the culmination of a successful process.

# Court-Approved ADR Issues

## *Assuring Essential Fairness*

Court-Approved ADR must guarantee essential fairness protections. At minimum:

1. Any agreement made between or among the parties must be subject to court-approved guidelines.
2. There must be a record of the resulting resolution or agreement to be filed with the court and entered as an informal resolution consistent with court guidelines.
3. The same confidentiality which applies to a legally processed adjudication and disposition must also apply to an ADR agreement and process.
4. Alleged noncompliance with the terms of an ADR agreement will subject a party, upon proper notice and hearing, to the discretion of the court on whether formal adjudicative process will proceed. A hearing on the noncompliance issue should initiate — and may end — the legal process.
5. Judicial or judicially-approved guidelines will require periodic evaluative reports from all Court-Approved ADR programs.
6. ADR guidelines and process should assure that all parties thoroughly understand that their participation and agreement are voluntary and are made aware of their continuing option for in-court adjudication.

Concern is often expressed that ADR process is apart from the public legal system and forum and without the procedural and substantive protections granted in a court of law. The above safeguards — court approval, a record, confidentiality, court evaluation and the continuing option for legal process — should sufficiently protect all parties participating in ADR.

Key to both understanding and implementing ADR is the concept of "Court-Approved." The court has continuing responsibility to assure that essential fairness protections exist within ADR process at all times.

## *Voluntary Waiver of Formal Due Process*

The question of voluntary waiver of rights to a more formal hearing remains throughout the process. Do the parties understand their alternatives? How can ADR assure that a child or family not be coerced into accepting a diversion or adjustment process as an alternative to formal legal process?

Before an ADR process begins all parties must receive clear notice and instructions on their options and right to obtain a full due process hearing. The process must provide a continuous opportunity for any of the parties to pull out and have the dispute addressed legally. If the juvenile is coerced into waiving rights to a more formal hearing, constitutional rights are infringed upon. Each facilitator should explain the concept of diversion or adjustment to the juvenile privately, away from any other participants, stressing the totally voluntary nature of the mechanism and the opportunity to withdraw any time.

When the court "approves" such an alternative process, either directly by annexing it to court operations or indirectly by approving out-of-court adjustment guidelines, it confers its considerable authority and responsibility upon that process and any agreement reached.

Diversion programs directly annexed to the court, with court services staff directly accountable to the court as an integral part of court process may be best able to protect the parties. Court ownership can directly guard procedural rights. However, out-of-court programs, such as private contract mediators to whom the court might refer appropriate cases, are a valuable resource in some communities. Wherever they are used, the court must closely monitor the process.

### ***Confidentiality Concerns***

The confidentiality of records emanating from Court-Approved ADR must be assured. Statutes, court rules, or guidelines which define adjustment or diversion process must be specific concerning the confidentiality of the process itself and the record of the agreement.

Confidentiality within a highly participatory process such as mediation is an important issue. Parties must be assured of confidentiality in such private negotiations in order to evoke candid discussion. Facilitators are obligated to hold information in confidence unless the party providing the information agrees that it may be revealed. There is some concern in the situations where the juvenile participant may fail to understand that one process (ADR) has ended and a new court process (legal) has begun when the actors (probation officers) remain the same. Though confidences may be well-protected, the appearance of a former "mediator," in court may evoke some feelings of betrayal and perceived injustice by the juvenile. This situation arises when the juvenile has not performed or adhered to an agreement or condition and the case subsequently has been petitioned and adjudicated. Some programs solve this problem by assigning a new probation officer to such a case.

Although the information discussed and revealed within an ADR process should have the same protections of confidentiality as apply to a formal adjudication and disposition process, the resulting agreement or informal resolution must be a matter of record and filed with the court approving the process. Statutes or rules should clearly provide for the sealing or expunging of such record upon satisfactory completion of the agreement negotiated. Any record of the process itself and of the resulting outcome should be inadmissible in future adjudication.

One reason for keeping records of ADR results is grounded upon the need of court to be able to evaluate and compare the results, e.g., recidivism. Records, although confidential as to the individual's name, can assist the courts to research better and more efficient resolution of cases.

The existence of court-accessible records holds the parties psychologically accountable to the terms of their resolution. The process itself must remain confidential. Any record of the participants' statements must remain inadmissible except for statutorily required reporting requirements of illegality such as child abuse. It is essential that the facilitator, and the parties be free to work out differences and reach agreement without fear of the record being used against them in a future adjudication.

### ***Netwidening Concerns***

Court-Approved ADR, through appropriate guidelines and monitoring, should guard against what is usually referred to as "netwidening," or bringing children or families into the system based on the availability of a new program or approach, rather than the needs of the child or family. Matching the needs of children and families to the goals of Court-Approved ADR is crucial. The system should move to accommodate those needs without over-involvement.

A problem also arises when juveniles will not agree to ADR because they see a good chance of the legal process dismissing or reducing the charges. A juvenile who

chooses to participate in ADR may well incur a greater obligation. One ADR program for minor juvenile offenses deals with this issue by making it available only for those cases where the initial charge is, by rule, not permitted to be bargained down or dropped but would be otherwise handled within the discretion of the probation officer.<sup>13</sup> The difference is in the input a juvenile will have in an informal resolution of the case.

Status offense cases commonly involve parent-child disputes. Most often a dysfunctional family is seen as a cause of the referred truancy, incorrigibility, etc. Although participation in ADR is voluntary for the parent or guardian, there is a coercive effect present for the juvenile. In realistic terms, such perceived coercion must be balanced against protecting the best interests of the juvenile. Unfortunately, many of the parents who appear at court to file a status offense petition want the juvenile out of the house. Such a family dispute might be much better approached by a participatory ADR process than by adjudication. Likewise, children are frequently removed from the home and placed under state custody for varied periods of time and for various reasons, under a process known as "voluntary placement." Usually the parents "voluntarily" place the child with the child protection agency. To protect against possible abuses of this process and to avoid unnecessary long separations, public and private agencies should give early notification to the court.

### ***System Accountability Issues***

Because services or treatment offered as the result of ADR are not always within the court, such resources are often perceived as difficult to utilize or mobilize without the force of a formal court order. Court-Approved ADR should appropriately involve not only a court representative, but also the social services agency or other parties or agencies which brought the case to the court's attention. By becoming part of a court-approved agreement, all parties should, with proper notice, subject themselves to its terms. Services pledged to be provided or accepted are part of an agreement made under the court's jurisdiction and authority. If parties to the agreement do not adhere to its terms, the court can initiate legal process based on such noncompliance.

However voluntary their participation, without the threat of future legal action on the original offense, the parties may not be as inclined to adhere to obligations incurred. ADR must provide notice that the court to which the matter has been referred retains continuing jurisdiction over the agreed upon results. The court should not only approve all such ADR process, but it should assure all parties of its availability to enforce compliance. To the extent circumstances demand, Court-Approved ADR guidelines should contain provisions for progress reports, or other monitoring by designated court staff.

Depending upon the seriousness of the case, the time required to complete the agreement by the parties and other variables, the agreement or imposed resolution might be, at the motion of the court or any party, reviewable at anytime.

### ***"Second Class Justice" Concerns***

Some see the present interest in ADR as creating a two-track system — "informal" or "second class" justice for minor disputes and juveniles and "legal" justice for those with financial ability to obtain legal representation. When applied in a court-approved setting, ADR assumes full capability of the court to approve, review and enforce by future legal process. Such ADR should not be perceived as "second class justice." Those who have participated in ADR see it as superior to formal in-court adjudication. This form of conflict resolution engenders a higher degree of satisfaction among the participants than those involved in formal adjudication.

Properly implemented, Court-Approved ADR can empower the parties to use their personal resources to work toward common ground. A mediated agreement is more effective because it is reached, not by the exclusive imposition of a higher authority, but by greater participation of the parties themselves. An informal adjudicatory ADR process also must offer a better resolution than might be obtained by formal process.

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# How to Start an ADR Program

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Courts considering expansion of diversion or adjustment processes should benefit from the experiences of the many different types of programs that have evolved (see Appendix C). As a first step, everyone involved in present court processes, whether directly as court staff or as part of an outside agency, should be invited to participate fully from the beginning to share their ideas and concerns. The Council and Consortium members are available as a resource in directing program planners and initiators to established Court-Approved ADR programs and to suggest or provide training for judges and staff. The following steps for starting an ADR program should be considered:

1. ***Responsibility for Program Development*** — A judge or court administrator should designate a particular person or appoint a screening committee to have the initial responsibility of studying, developing and implementing Court-Approved ADR. Some courts may employ a professional staff or an outside consultant, while others might prefer to invite persons and agencies interested in the work of the court to meet and form the working group. Definite meeting dates and a schedule for program study and development should be agreed to at the outset.
2. ***Exploring Available Resources*** — A good starting point for the responsible person or committee is to study the needs of the particular court and jurisdiction and the possible ways ADR can better serve the juveniles and families coming before the court. Initially, the focus should be general, dealing with all types of cases capable of being resolved by ADR. In addition to information in Appendix C, assistance may be obtained through the administrative office of the courts or judicial organizations in each state. Often very effective ADR programs exist in other jurisdictions within the home state which are not widely published. Inquiries also should be made to judges and appropriate administrative officers in other states.

Out-of-court agencies, such as law enforcement, prosecutor, schools and social services may welcome an approach by the court that relied more upon ADR than upon formal legal process. Outside agencies might be more amenable to permitting the court to process such cases, if they can be assured that the juvenile or family can obtain a resolution by voluntary participation in an effective nonlegal, nonadversarial process. Formal adjudication often inhibits the ability of the court to offer substantial rehabilitative services to youth. Referral sources outside the court should be made aware of newly initiated ADR within the court. With the possibility and the leverage of formal legal process and protection retained, such agencies might be inclined to offer their cooperation. Conversely, if the court were able to intervene effectively and earlier, the same agencies might be willing to offer their resources to the court.

3. ***Judicial Authority*** — In addition to a study of existing programs, a thorough review of statutes and court rules is necessary to determine the existence of specific authority for diversionary programs, or the absence of their prohibition. In the absence of prohibition some courts have embarked upon ADR as part of their inherent authority, but always subject to voluntary agreement of the parties and court approval. In addition to statutes and court rules, articles and significant reports should be reviewed. If statutorily

prohibited or not sanctioned by court rule or a judge's invocation of inherent powers, delegation of judicial authority issues may present an obstacle to initiating ADR.

The judge must have or obtain the necessary authority to appropriately delegate specified duties and responsibilities to qualified hearing or judicial officers, probation staff and other court personnel. If necessary, such authority may be obtained at the legislative level. However, traditionally, juvenile courts have properly assumed authority to defer legal processing to other pre-adjudicative process.

4. ***Deciding Appropriate ADR*** — The program developer or committee should meet periodically with the judge, court administrator and other interested persons to review the information obtained and receive further suggestions on other questions and issues to be resolved. In accord with the schedule originally set, a decision should then be made on what types of ADR would work best to meet the needs of the court. Operating procedures to start up a pilot or expanded program should be determined. At this point it is necessary to involve as many key persons as possible, i.e., local government, agencies, the bar and staff. Having the presiding juvenile or family court judge and the program development person at such a meeting will go a long way toward resolving the concerns of those to be involved and avoiding internal resistance to change. Good public relations can be achieved through news articles and announcements of the plan to start ADR as a part of the continuing effort of the courts to find the best ways possible to resolve disputes.

The date for new programs or procedures should be firmly set and proceed as close to schedule as possible. As with any new process, the anxieties created by the change from "how we have always done it" are greater than the actual change itself.

5. ***Training and Education*** — It is crucial that those given responsibility as "facilitators" receive appropriate training and opportunities to observe existing programs. Presenters can be brought in and local training programs developed expeditiously. Sites where appropriate ADR is working can be visited. Attendance at specialty training programs sponsored by the Council or others can provide quality training in the basics of ADR. Local training efforts must always include the case processing units and clerical personnel. No program can ever be fully effective without the full cooperation and participation of all persons involved in the processing of petitions, complaints and necessary material. Once trained, qualified and called upon to conduct ADR, court staff may find the process an attractive and stimulating experience. Stopping high turnover of court service staff might be an additional result of ADR. Likewise, with contract mediation resources becoming available in more communities, it may be possible to refer cases to these services.

6. ***Obtaining Resources*** — Resources to implement ADR can be obtained by other means than additional staff or funding. Sometimes it is possible to initiate a program by reallocating present resources. Most judges believe that ADR can increase the ability of court and court agency personnel to resolve issues.<sup>14</sup>

Resources allocated or reallocated to initiate or improve ADR can pay back a court by providing better process and resolution for all concerned. Some general suggestions are:

- Train probation officers to conduct ADR for selected cases.
- Create in-court ADR programs using trained volunteer facilitators.
- Encourage traditional service providers to set up ADR programs to which the court can refer, at reasonable or no cost, suitable cases.

**7. Review and Adjustment** — All new ADR programs should be carefully studied, reviewed and adjusted periodically. Although much can be learned from the experiences of others, it is unlikely that new programs can be perfect from the start. The responsible person or screening committee should schedule and meet with the court and all interested persons after a reasonable period of time. Do not hesitate to adjust or change procedures to meet unexpected issues and problems. All statements of goals and objectives should be constantly updated on a realistic basis and related to the progress of individual cases and to overall program results. A further benefit of continued study, review and evaluation is the identifying of additional needs and methods of better Court-Approved ADR.

#### Footnotes

<sup>1</sup> Statement by Judge Robert W. Page at First Key Issues Faculty Consortium Meeting, Teaneck, NJ, May 27, 1988.

<sup>2</sup> *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed 2d 8, (1966).

<sup>3</sup> Address of Justice Sandra Day O'Connor at "Consumer Dispute Resolution Conference, Exploring the Alternatives," Jan. 21, 1983.

<sup>4</sup> *In re Application of Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967).

<sup>5</sup> Judge William E. Gladstone, 11th Judicial Circuit Court, Miami, Florida, at 51st Annual NCJFCJ Conference, Ft. Lauderdale, FL, July 11, 1988.

<sup>6</sup> Keating, Nicholas and Margaret Shaw, *The Anatomy of Legal Innovation: The Use of ADR in New Jersey*, (1986), p. 10.

<sup>7</sup> *Ibid*, p. 13-14. The Consortium is most grateful to the authors for initially proposing the adjudicatory-participatory continuum concept as it is expressed in general terms within the cited publication.

<sup>8</sup> D'Amico, Salvatore, A. "The Development and Evaluation of a Court-Connected Juvenile Mediation Program," *Juvenile and Family Court Journal*, (1986) Vol. 37, No. 5, p. 7.

<sup>9</sup> "Hopes and Fears for Alternative Resolution," by H.T. Edwards, (Judge, U.S. Circuit Court of Appeals for the District of Columbia), 21(3): *Williamette L.Rev.* 427 (Summer, 1985).

<sup>10</sup> "Issues in Mediation: Rhetoric Reality Revisited," by Roehl & Cook, (412) *Journal of Social Issues*, 173, (1985).

<sup>11</sup> Statement by Judge Herbert Barall, First Key Issues Faculty Consortium Meeting, May 27, 1988.

<sup>12</sup> Excerpted from teaching materials of Judge Robert W. Page, presented at the *Issues in Family Law*, National College of Juvenile and Family Law, Reno, NV, October 26, 1988.

<sup>13</sup> Family Court of Connecticut's Juvenile Mediation Program.

<sup>14</sup> See Appendix C, "Key Issues Curriculum Enhancement Sample Survey," conducted by the Key Issues project staff.

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# Suggested Reading

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## General

- "The Processes and the Players," from *Beyond Adjudication*, Jonathan B. Marks, Eric D. Green, and Deborah O. Croom. To be published by the National Institute for Dispute Resolution, Washington, D.C.
- *Community Dispute Resolution Programs and Public Policy*, U.S. Department of Justice, National Institute of Justice, Washington, D.C. (December, 1986).
- "Criticisms and Characteristics of Dispute Resolution Methods," from *Paths to Justice: Major Public Policy Issues of Dispute Resolution*, U.S. Department of Justice Report of the Ad Hoc Panel on Dispute Resolution and Public Policy, National Institute for Dispute Resolution, (January, 1984).
- "State Adoption of Alternative Dispute Resolution: Where Is It Today?" Susan Keilitz, Geoff Gallas, and Roger Hanson, 12 *State Court Journal*, p. 4-11 (Spring, 1988).
- State by state survey, "Summary of Alternative Dispute Resolution Program Characteristics," Conference of State Court Administrators and the National Center for State Courts, Williamsburg, Virginia.

## Specific

- *Making Reasonable Efforts: Steps for Keeping Families Together*, National Council of Juvenile and Family Court Judges, et al., (1987), 120 pages.
- *Community Mediation in Massachusetts* (January, 1986). 197 pages by Albie M. Davis, Director, Mediation Project Administrative Office of the District Court, Salem, MA 01970.
- *Parent-Child Mediation: An Alternative That Works*. The Second Research Report on the Children's Aid Society's PINS Mediation Project (December, 1983), by Marlene Morris, New York, NY.
- *King County Superior Court Conference Committee Diversion Program Manual*, 1211 East Ogden St. M.S. 4L, Seattle, WA 98122.
- "The Development and Evaluation of a Court-Connected Juvenile Mediation Program," Salvatore D'Amico, *Juvenile & Family Court Journal*, Vol. 37, No. 5, (1986), p. 7.
- *Mediation in Families: A Study of the Children's Hearing Project*, 211 pages by Sally Engle Merry, Ph.D., (1985), Children's Hearing Project, 99 Bishop Allen Dr., Cambridge, MA 02139.

# **APPENDIX A**

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## **Definitions**

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**Court-Approved ADR** — That alternative process in which the court supervises its own court-operated diversion by guidelines and monitoring, or formally approves an adjustment process within the justice or social service system by issuing guidelines or approving the guidelines or protocol of that agency.

**Diversion** — Any Court-Approved ADR process which takes place before formal adjudication but after formal referral or petition to the jurisdiction of the court.

**Adjustment** — Any Court-Approved ADR process which takes place before formal referral or petition to the court and which is conducted, under court-issued or approved guidelines or protocol, by system agencies for whose actions the court is ultimately responsible.

**Community ADR** — That alternative dispute resolution process which is conducted outside the formal juvenile justice or social service system and for which the court has no immediate jurisdiction or responsibility.

**Participatory Process** — That ADR process — either diversion or adjustment — which, in its purest form, treats the parties in a dispute as joint problem solvers and in which a facilitator assists in identifying their needs and responsibilities and empowers them to devise their own solutions without deciding the matter for them or imposing a resolution.

**Adjudicatory Process** — That ADR process which in its purest form most closely resembles formal adjudication and in which the role of the facilitator is that of a finder of fact, assessor of responsibility and decision-maker and where the parties have limited or no participatory input into determining the resolution.

**Facilitator** — The person to whom has been delegated authority, under court-issued or approved guidelines or protocol, to conduct Court-Approved ADR process. A facilitator could thus be a law enforcement officer, a social service worker, a probation officer, a master/referee, etc.

**Party - Parties** — The person or persons who voluntarily involve themselves in an ADR process by voluntary participation in the process and the resulting agreement or outcome.

### **Additional Consortium Definitions and Comments**

**Arbitration** — A decision-making process in which a neutral third party, other than a judicial officer, is empowered to impose a binding or nonbinding solution upon disputing parties after a structured hearing, resembling the formal adversarial process, which determines responsibility, culpability and the resolution. Such authority to determine the facts and impose or facilitate solutions, of course, is properly delegated to other judicial officers, probation and court staff. However the process, be it an

informal diversion or a formalized disposition by hearing officer (master, referee, etc.) is a function of the court. Thus arbitration in the meaning of a final, binding decision on a child's guilt or innocence and deciding an appropriate outcome is properly and solely the role of the court. A juvenile or family court should not refer cases for arbitration.

**Conciliation** — That ADR process in which a third party, not necessarily neutral, attempts to assist in the resolution of a dispute by all means short of bringing the parties together face-to-face. Conciliation is more suitable for divorce, custody, or visitation proceedings. However, for the purpose of effectively resolving minor delinquencies, status offense and abuse/neglect cases, the conciliation alternative is not often appropriate. Any process which does not provide an opportunity for the skills of the facilitator to be directly involved with all relevant parties to the dispute physically present may not be the best process. Most juvenile and family cases must, by necessity, involve a resolution not only between the concerns of the state, i.e., or offense and the offender, but also between and among other parties involved in or related to the dispute, i.e., parents, guardians, family members, victims, etc. The complexities of juvenile offenses and certainly abuse and neglect offenses require more than a conciliation method.

**Mediation** — That ADR process by which the parties voluntarily accept or invite a neutral facilitator to assist them in discussing the issues and developing mutually acceptable solution. The process varies based upon its structure and formality, the decision-making or directive role of the mediator, and the degree of participation the parties are permitted in shaping their own solutions. The discussion of participatory process in the report implies some form of mediation process, but does not seek to define the term precisely.

# APPENDIX B

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## KEY ISSUES CURRICULUM ENHANCEMENT SAMPLE SURVEY

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### Issue 2 - Alternative Dispute Resolution (ADR) to Facilitate More Efficient/Effective Decision-Making for Minor Offense, Status and Abuse/Neglect Cases

**Instructions:** Below are broad definitions of general types of ADR which *may be applicable* to handling certain minor offender, status, or abuse/neglect cases. *Answers were based on these terms:*

- \* **Conciliation:** neutral third party tries to resolve a dispute *short of bringing* two or more parties together face-to-face.
- \* **Mediation:** neutral third party tries to resolve a dispute by conducting face-to-face meetings, but doesn't *impose* a solution.
- \* **Arbitration:** neutral third party imposes a *binding* solution upon disputing parties after hearing.
- \* **Adjustment:** court, probation officer, or executive agency imposes a *recorded* binding remedy on one who has admitted an offense or requested a service/treatment, e.g., community service or probation contract, police diversion, voluntary placement, alcohol treatment, etc.
- \* **Field Adjustment:** police or social worker resolves a dispute or offense in the field without referral to court *and without recorded resolution.*

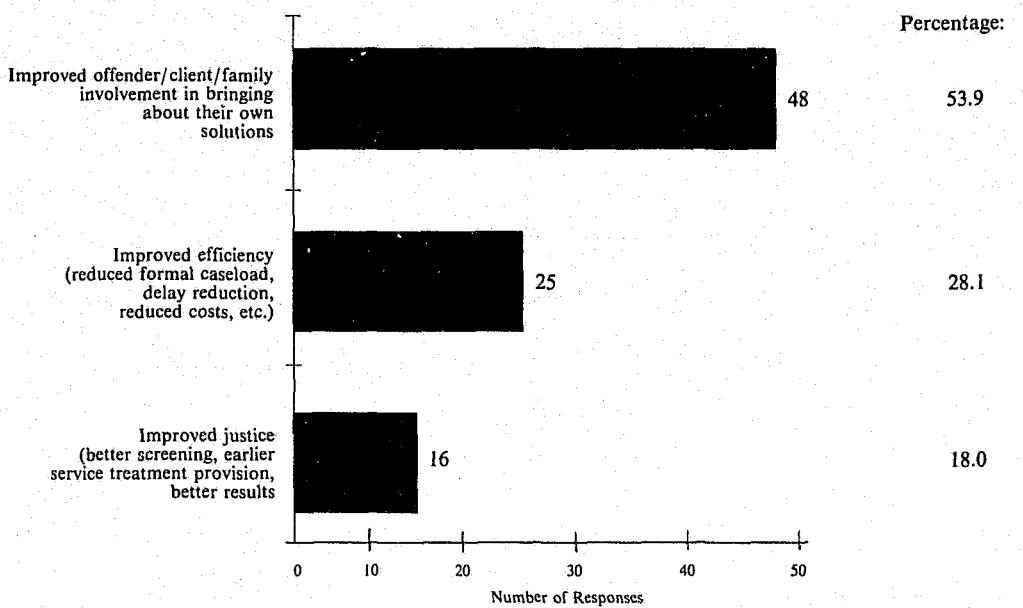
1. What do you see as the *most important* jurisdictional use of ADR for juvenile/family courts?

Of 89 Total Responses:  
(includes multiple responses)

Percentage:

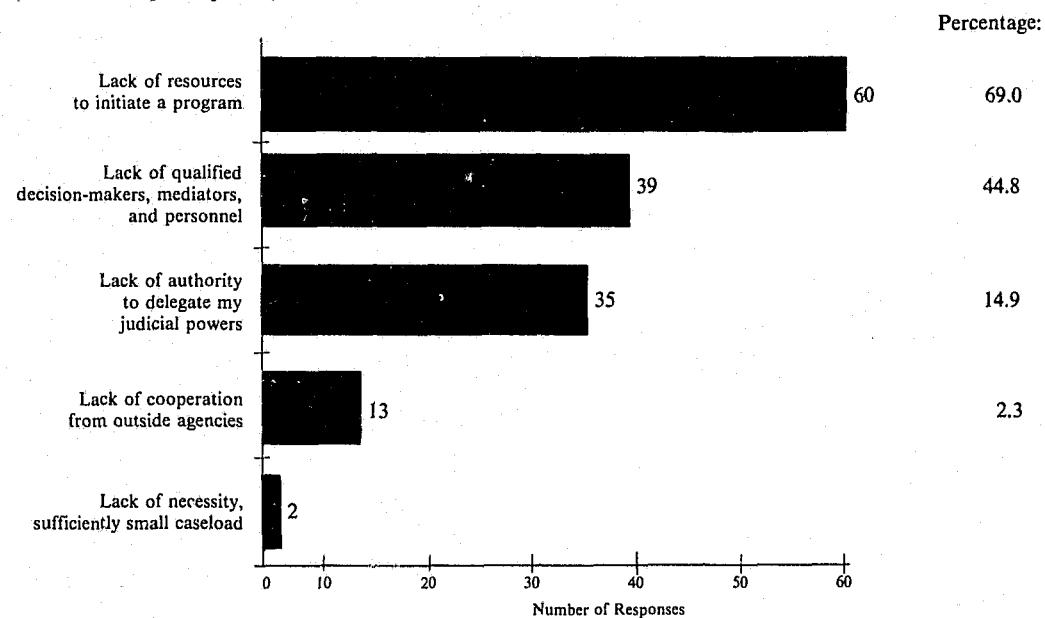
42 said minor offenses	47.2
44 said status offenses	49.4
13 said abuse and neglect	14.6

2. What would be the *most important value* to you in an ADR process?



### 3. What would you see as *obstacles* to initiating ADR in your court process?

Of 87 Total Responses:  
(includes multiple responses)



### 4. Court-directed or supervised ADR processes, in my opinion, can or cannot:

Number of responses to each issue varies)	# of Responses		
	Can	Cannot	% Can
• Improve coordination of system agencies (police, prosecutor, health, welfare)	69	13	84.1
• Increase focus on entire family of child	70	8	89.7

• Increase efficiency of court and court/agency personnel to resolve issues	72	10	87.8
• Decrease formal legal process	73	11	86.9
• Assure due process rights	40	43	48.2
• Assure better pre-formal <i>legal</i> representation	27	48	36.0
• Provide better intake, evaluation and assessment methods/tools	59	18	76.6
• Increase ability of those who have the problem, to resolve it	70	7	90.9
• Increase public understanding of alternatives to limited court resources	60	18	76.9

5. Our *court* already has under its jurisdiction or supervision a process or program which could be considered ADR.

Of 89 Responses: Percentage:

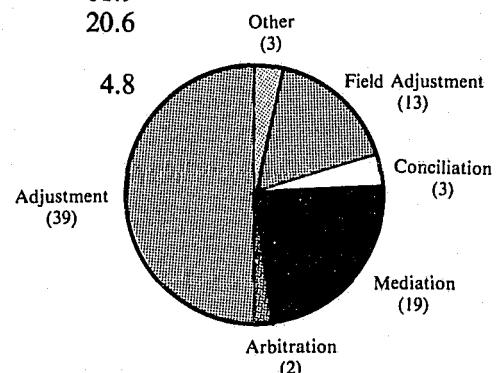
63 said Yes	70.8
26 said No	29.2

6. Our court program(s) is (are) in the following areas:

Of 63 Positive Responses:	Percentage of 63 Responses:
50 said delinquency	79.4
54 said minor offenses	85.7
51 said status offenses	81.0
24 said abuse/neglect	38.1
5 said other (divorce, custody, visitation most cited)	7.9

7. Our ADR program(s) most closely resembles:

Of 63 Positive Responses:	Percentage of 63 Responses:
3 said conciliation	4.8
19 said mediation	30.2
2 said arbitration	3.2
39 said adjustment	61.9
13 said field adjustment	20.6
3 said other (diversion, settlement, intake conference)	4.8



8. a) Is your ADR process program *formalized*?

Of 60 Responses: Percentage:

47 said Yes	78.3
13 said No	21.7

b) If yes, by: (includes multiple responses)

19 said statute	31.7
23 said court rule	38.3
2 said appellate decision	3.3
17 said probation guidelines	28.3
2 said court/child protection agency agreement	3.3
11 said court oversight provisions	18.3
5 said other	8.3

9. State, county, city or private agencies *outside my court or supervision* have authority for ADR programs.

Of 61 Total Responses:	Percentage:
34 said for minor offenders	55.7
27 said status offenders	44.3
22 said abused or neglected children	36.1

10. These *non-court supervised/connected ADR programs* (for minor and status offenders and abused/neglected children) include:

Of 60 Total Responses:	Percentage:
43 said police (diversions, adjustments, etc.)	71.7
22 said schools (teenage courts, school mediation, etc.)	36.7
14 said neighborhood (justice centers, etc.)	23.3
31 said substance abuse treatment/counseling	51.7
29 said reasonable efforts to prevent out-of-home placement	48.3
11 said other	18.3

11. I would prefer the court to have *clear supervision or review authority* for ADR programs for minor and status offenders and abused/neglected children.

Of 69 Responses:	Percentage:
54 said Yes	78.3
15 said No	21.7

# **APPENDIX C**

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## **Briefs of Some Participatory and Adjudicatory ADR Programs Presently in Operation**

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The program briefs described below are meant for the sole purpose of exemplifying some of the many and varied approaches to alternative processes being utilized within and without juvenile court systems. By categorizing the respective programs as "participatory" or "adjudicatory," or as applicable to status offenders, delinquents, etc., we have used the descriptions provided by others, including, in many cases, existent program literature and listings from other sources.

### **Participatory-Type Programs**

#### **For Minor Delinquencies**

##### *Juvenile Mediation Program*

Family Division, Connecticut Superior Court  
28 Grand Street  
Hartford, Connecticut 06106  
Contact: Salvatore A. D'Amico (203) 566-7972  
Sponsor: Family Division, Connecticut Superior Court  
Start-up: 1985

Trained family court probation officers attempt to mediate all first-time minor delinquency and FWSN (status offender) cases. Mediation involves parents and victims in appropriate cases such as restitution. Parties must voluntarily agree to participate in the process. If conflict is resolved by agreement, compliance is monitored for 6 weeks. Case is closed upon determination of no further need for court intervention. If no resolution or noncompliance with mediation agreement, case is referred to supervision for normal process.

##### *JUMP (Juvenile Mediation Program)*

Dispute Resolution Center  
Criminal Courts Building  
301 San Jacinto  
Houston, Texas 77002  
Contact: Melinda Ostermeyer (713) 221-8274  
Sponsor: Houston Bar Association  
Start-up: 1980

With an annual budget of \$450,000 and a staff of 139 (120 volunteers), JUMP mediates 1,000 cases annually; most referred by prosecution or probation staff. The private agency contracts with Harris County Juvenile Court in Houston, Texas, for

trained (volunteer) mediators to guide youth and adults in working out a solution. Process culminates in written agreement after mutual consensus. Can involve youth in providing community service and monetary compensation to victim.

*Mediation Program*

Lake County Superior Court  
Special Services-Juvenile Division  
400 North Broadway  
Gary, Indiana 46402  
Contact: Judge Darlene Wanda Mears (219) 886-3621  
Sponsor: Lake County Superior Court

Court-annexed process by which intake officer screens charges involving minor juvenile disputes between members of the community and determines if they are appropriate candidates for mediation. Respondent must admit the charge(s). Cases are referred to Special Services officer who interviews each party and may arrange other meetings involving all the parties. Parties sign a mediation contract and cases are monitored for three to six months. Mediation cases range from battery to criminal trespass and criminal mischief. Includes cases of minor physical injury and restitution under \$200.

*Mediation Procedures*

Court of Common Pleas Juvenile Court Division  
2163 East 22nd Street  
Cleveland, Ohio 44115  
Contact: Judge John J. Toner (216) 443-8400  
Sponsor: Cuyahoga County Juvenile Court

Court-referred juveniles are processed by the Intake Division of the court's Legal Services Department where an Intake Mediator screens unofficial complaints appropriate for mediation and conducts mediation hearings. Meets with parties involved in dispute and provides them an opportunity to meet and mutually arrive at an agreeable settlement in a controlled setting. Failure to reach an agreement in mediation proceeding is not grounds to accept a formal complaint and refer the matter for formal court action.

*Victim Offender Reconciliation Program (VORP)*

Juvenile Restitution Program  
Hennepin County Juvenile Justice Center  
626 South Sixth Street  
Minneapolis, Minnesota 55415  
Contact: David Steenson (612) 348-3706  
Sponsor: Hennepin County Juvenile Court

A court-annexed program implementing the VORP concept run by the probation department in which a trained mediator brings together a victim and offender and mediates feelings about the offense as well as restitution. Results in a signed contract and written summary to referring agency. Mediator may be a trained community volunteer or staff person. VORP follows up until contract is satisfied. Primary focus is on reconciliation, but may also focus on relationships, addressing emotional needs of both victim and offender.

*Victim Offender Reconciliation Program*  
Center for Community Justice  
220 West High Street  
Elkhart, Indiana 46516  
Contact: David Ball  
Sponsor: State and local governments, United Way  
Start-up: 1978

With a budget of \$75,000, mediates 140 adult and juvenile restitution cases a year. Defendants are not only from court and probation but from police, prosecutors, and community; uses trained volunteer mediators to meet with parties separately and then bring them together to facilitate reconciliation and restitution. Successful mediation results in monetary/work/behavioral contracts. Program addresses emotional and physical needs of victims in criminal cases following adjudication.

*Youth Aid Panel* Delaware County Juvenile Court  
Fronefield Building-Courthouse Plaza  
214 North Avenue  
Media, Pennsylvania 19063  
Contact: Paul E. Gesregan (215) 891-4721  
Sponsor: Community (local government)  
Start-up: 1976

Police, district justices, school districts, panels of trained volunteer citizens hear first-time offenses. Police decide whether youth should have this voluntary option. Juvenile must admit some participation in the offense. Panel hears cases, makes recommendations for written contract which, if not followed during 30 day to six month period, results in referral back to police and subsequent petition to juvenile court or district justice. Juvenile court has a role in training and support.

*Citizen Dispute Settlement Program*  
150 Fifth Street, N. Room 166  
St. Petersburg, Florida 33701  
Contact: Una C. McCreary (813) 825-1796  
Sponsor: Juvenile Welfare Board, Pineallas County  
Start-up: 1984

With a full-time staff of 13 and 25 "mediators" hired on an hourly basis, a budget of \$128,700 allows processing of about 1,780 first-time juvenile offenses on misdemeanor charges. Written and signed agreements are used to formalize mediation/arbitration settlements. Follow-up hearings are held for juvenile arbitration. Referrals are from law enforcement and prosecutor only.

*Community Juvenile Arbitration*  
1800 St. Mary's Avenue  
Pensacola, Florida 32501  
Contact: Jim Trent (904) 434-3461  
Sponsor: Juvenile Alternative Service Program

With project director and clerk typist, and referrals 100% from state attorney's office, program conducts arbitration for juvenile offenses against persons, property/merchant/business, alcohol and drug-related, or trespassing. Director arranges arbitration hearings. Cases are heard during weekday afternoons and early evenings. Juvenile and parents sign waiver of speedy trial prior to hearing. If they disregard arbitrator's disposition, case can be resumed in juvenile court.

*Community Arbitration Program*  
125 East Orange Avenue, Room 306  
Daytona Beach, Florida 32014  
Contact: Irene Haig (904) 257-6033  
Sponsor: State Attorney, Department of Health  
and Rehabilitative Services  
Start-up: 1980

With its prime source of clients the arresting officer, HRS counselor, or state attorney, program's trained volunteer arbitrators handle arbitration of first-time misdemeanor juvenile offenses. Complaint petition is necessary for juvenile to enter program. Arbitrator may dismiss case with or without warning, order restitution for property damage, continue case for further investigation, or impose any other restrictions designed to encourage noncriminal behavior which may be agreed upon by participants. If youth fails to complete the disposition successfully, or fails to appear at hearing, matter is referred to the state attorney's office for possible court action.

*Juvenile Alternative Services Program (JASP)*  
Brevard Community College  
1519 Clearlake Road  
Cocoa, Florida 32922  
Contact: Catherine L. Evans (305) 632-1111  
Sponsor: Florida State Health Rehabilitative Services  
Start-up: 1982

With its prime source of clients the state attorney, law enforcement, and HRS itself, the program uses trained volunteers for arbitration of juvenile cases (ages 12-17) arrested for certain minor criminal offenses, or mediation of neighborhood disputes involving children. Informal hearings in five county locations are held in the evenings. Arbitrators determine youth's guilt and apply sanctions or services. If conditions are satisfied, no petition or court record. Arbitrators also have authority to dismiss charges. JASP is a statewide alternative program funded by HRS through contracts with local service providers.

*Community Arbitration Program - Baltimore City*  
221-223 North Gay Street  
Baltimore, Maryland 21202  
Contact: John Godsby, Director (301) 333-4377  
Sponsor: State of Maryland Juvenile Services Agency

Designed to serve as an alternative to juvenile services' traditional intake for holding youth accountable for their actions without the need for juvenile court. This program is mainly targeted toward first- and second-time offenders charged with misdemeanors.

Modeled after the agency's nationally-recognized program in Anne Arundel County, the program works as follows: shortly after a youth is arrested by the police or school police, their arrest record is reviewed by the Community Arbitration staff. If the child is selected, based on offense and previous record, a citation is sent to the youth and the victim or complainant notifying them of arbitration hearing. The hearing takes place in a formal courtroom-like setting with an attorney presiding as arbitrator. The child, parents, and victim/complainant are present. Arbitrator hears facts of case and, within the constraints of Maryland's Juvenile Law and Juvenile Services Agency's policy, decides whether to close the case with a warning, refer to

state's attorney, or handle informally (without juvenile court). The youth must admit committing the offense. The arbitrator then proposes a resolution to the matter, which typically involves volunteer work service, weekly telephone contact, family and/or individual counseling, and payment of money to the victim for any damage or loss incurred. Supervision lasts for 90 days, and case is closed after fulfilling the conditions agreed upon.

***For Status Offender/PINS, CHINS-Type Cases***

*Children's Hearing Project*

99 Bishop Allen Drive  
Cambridge, Massachusetts 02139

Contact: Ms. Mimi Shaw (617) 661-4700

Sponsor: Cambridge Family and Children's Service

Start-up: 1981

With an annual budget of \$100,000 and 55 staff (50 volunteers) mediates court-referred juvenile status offense and CHINS (Children-in-Need-of-Supervision) cases. Court is primary source of clients where cases are mediated either before or after issuance of applications for petitions. Program trains volunteer mediators who work in pairs; paid staff does intake and staff are present in court to receive court-referred cases. Agreement and services are monitored for 90 days; mediated cases are referred to community service agencies. Goal is to have cases referred as early in the court process as possible, preferably at the application stage when a parent or school brings a case to the attention of the court. Court usually sets a six to eight week period to conduct mediation and report back.

*PINS Mediation Project*

Room 5114  
105 East 22nd Street

New York, New York 10010

Contact: Mr. Bill Weisburg (212) 949-4929

Sponsor: New York City Youth Board

Start-up: 1981

With an annual caseload of 1,000, a budget of \$300,000, and a staff of 48 (37 volunteers), the PINS program limits its process to mediating status offenses (Persons-in-Need-of-Supervision) referred by the court for child-parent disputes. Successful mediation results in written agreements signed by all parties. Follow-up monitoring is provided for each case. Referrals are to appropriate social service agencies.

*Family Mediation Service Center for Human Development*

155 Maple Street, 3rd Floor

Springfield, Massachusetts 01105

Contact: Doris K. Schuh (413) 733-6624

Sponsor: Department of Social Services

With two case coordinators and 30 volunteer mediators, accepts referrals from courts, DSS, schools, etc. Mediates situations with families and children in conflict; children involved in CHINS process; and children at-risk of abuse or neglect.

*Mediation, Conflict Resolution Training*  
Center for Dispute Resolution  
1900 Wazee Street, Suite 311  
Denver, Colorado 80202  
Contact: Mary Margaret Golten (303) 295-2244  
Sponsor: National Institute of Dispute Resolution  
Start-up: 1978

Juvenile disputes are mediated as one of many services; co-mediators are usually used; interpersonal disputes are mediated on a sliding-fee basis. Referrals are mostly from social service agencies.

*Community Board Program, Inc.*  
Community Board Center for Policy and Training  
149 Ninth Street  
San Francisco, California 94103  
Contact: Mr. Raymond Shonholtz (415) 552-1250  
Self-Sponsored: Nonprofit  
Start-up: 1976

Accepts both community and probation department referrals for juvenile misdemeanors and status offenses. Mediates cases and trains community organizations, including juvenile probation officers and rehabilitation facility staff in communications and conflict resolution. With a staff of 10, uses mostly volunteer mediators (350); also train youth in communication and conflict resolution skills to resolve conflicts with peers. Works with the San Francisco United School District and the San Francisco Juvenile Probation Department on truancy problems.

#### *For Abuse/Neglect Cases*

*Case Status Conference in Child Protective Proceedings*  
Connecticut Superior Court, Family Division  
28 Grand Street  
Hartford, Connecticut 06106  
Contact: Salvatore A. D'Amico (203) 566-7972  
Sponsor: Family Division, Superior Court  
Start-up: 1987

Case Status Conference involves Family Court Services Officers mediating/facilitating child neglect and abuse cases petitioned to the court before proceeding to any necessary formal adjudication. Brings together input from all involved parties in planning for child and family. Particular to parents, conference serves to clarify the nature and extent of any disagreements or conflicts about a child's placement or service plan, and ensures all interested parties have access to, and understand all of the information necessary to attain a thoughtful resolution. Settlement is not so much a primary goal as is narrowing the issues for formal adjudication. The process does not preclude the public policy that the judge makes the final decision to place a child in the state's custody; judge must also regularly review the service plan for child. Goals include: informed, timely, dignified settlement, consistent with problem policy, judicially accepted, ensuring safety and well-being of children, maximizing family's integrity and functioning, and protecting all parties' legal rights and obligations.

*Dependency Court Mediation*  
Superior Court of the State of California  
Criminal Courts Building  
210 West Temple Street  
Los Angeles, California 90012  
Contact: Julius Y. Libow (213) 974-5351  
Sponsor: Los Angeles County  
Start-up: Mediation court-wide since 1983;  
separate calendaring since May, 1987.

Mediates serious child removal or reunification cases which are referred for mediation by Dependency Division of Los Angeles County Superior Court at detention or petition hearings. Court-appointed non-lawyer mediator attempts to help parents develop their own plans to care responsibly for children at home (avoid placement) or to care for children so they may successfully return home from custodial protection as soon as possible. Los Angeles is the only county in California known to have a nonstatutory court-appointed mediator. If a case is not settled through the regular pretrial resolution process, any of the parties, including the court, may request mediation consultation.

*Family Mediation Program*  
Center for Individual and Family Services  
Box 340  
Orleans, Massachusetts 02653  
Contact: (617) 255-2981  
Sponsor: Department of Social Services, United Way Center  
Start-up: 1983

With sources for clients varied (DSS, courts, schools, etc.), a full-time director, part-time coordinator, and 28 paid mediators handled 58 cases on a \$40,000 annual budget. Trained mediators, working in pairs, mediate school issues, divorce, separation, family, and CHINS petitions. Three-hour mediation session may lead to second session. Multiple sessions occur for deeply ingrained family problems. Follow-up conducted for 90 days by phone, mail, or personal visits, depending on case.

*Dorchester Mediation Project*  
Dorchester Youth Collaborative  
514-A Dorchester Avenue  
Dorchester, Massachusetts 02122  
Contact: Harry Young (617) 288-1748  
Sponsor: DSS, Gardiner Howland Shaw Foundation  
Start-up: 1983

With two full-time staff and 38 paid mediators, program handles referrals from DSS, courts, and probation. Mediates Children-in-Need-of-Services cases; assault and battery; malicious destruction of property; break and entering. Family cases usually last four hours and many require two sessions. Family cases have follow-up sessions with 60 days to review status of agreement. Staff conducts extensive intake and follow-up.

### ***Families-in-Need-of-Supervision Resource Centers***

*Clark County Juvenile Court*  
3401 East Bonanza Road  
Las Vegas, Nevada 89101  
Contact: Judge John S. McGroarty (702) 455-5200  
Sponsor: Clark County Juvenile Court  
Start-up: 1988

### ***Crisis Intervention Center***

*Ocean County, New Jersey*  
New Jersey Superior Court  
Contact: Judge William J. Kearney (201) 929-2173  
Sponsor: Ocean County Juvenile Court

Both programs consist of a "crisis" or "resource" center open and available to families in trouble on a voluntary walk-in basis. Services such as assessment counseling and referral to other sources of assistance are provided without charge. The programs, in each case, are operated by trained court staff and contracted-for professional services. Although each also accepts court-opened cases, most of the clients served obtain assistance on a completely voluntary basis.

### ***Adjudicatory-Type Programs***

#### ***For Minor Delinquencies***

*Adjustment Policy for Delinquency Complaints*  
Maricopa County Juvenile Court Center  
3125 West Durango Street  
Phoenix, Arizona 85009-6292  
Contact: Ernesto Garcia (602) 269-4011  
Sponsor: Maricopa County Juvenile Court  
Start-up: 1983

Arizona statutes specifically authorize juvenile court-annexed intake procedures for informally adjusting first and second misdemeanor delinquency complaints. Youth aged 13 to 17 must admit to charge; admission is not required for ages eight to 12. Intake officer interviews juvenile and assigns one or more conditions for adjustment; advises parents (in delinquency cases) that fee will be assessed; case is then referred to Compliance/Accountability Unit where officer interviews juvenile and explains assigned program. There are five nonresidential Conditions of Adjustment Programs including community service, restitution, and counseling. Compliance/Accountability Unit officer determines whether or not juvenile is in compliance with conditions of adjustment. If so, case is adjusted; if not, petition may be requested.

*Various Diversion Programs*  
Lake County Superior Court  
Special Services-Juvenile Division  
400 North Broadway  
Gary, Indiana 46402  
Contact: Judge Darlene Wanda Mears (219) 886-3621  
Sponsor: Lake County Superior Court

The Lake County Juvenile Division has developed a series of "diversion" programs and guidelines, many of which reflect the principles of accountability and voluntary participation. By themselves, and by their rehabilitative aspects, the various programs are designed to stop a child's further penetration into the system. Programs involve formal apologies, adult sentencing or burn unit visits, supervised unofficial probation family services, truancy, volunteer monitoring, weekend detention, substance abuse in-house detention, and written reports.

*Intake Adjustment*

Winnebago County Court  
Rockford, Illinois 61101

Contact: Judge Bradner C. Riggs (815) 987-3062  
Sponsor: Winnebago County Court

Probation officers in the intake unit deal with minors involved through a pre-hearing procedure. Early involvement and appropriate screening results in nonjudicial adjustment, informal supervision, and in-home detention. The social history of each child is investigated and written up. A principal role of intake is to assess each case referred by law enforcement to determine when the situation can be resolved informally with no further penetration into the juvenile justice system.

*Juvenile Court Conference Committee*

37th District Court  
The Designated Juvenile Court of El Paso County  
214-A County Building  
El Paso, Texas 79901  
Contact: JoAnn Chapman (915) 546-2032  
Sponsor: Community-based Organizations  
Start-up: 1979

Juvenile court screens and refers all cases. Court appoints local Citizens' Committee and contracts with them to handle minor designated offenses. Court refers youth to Committee which confers privately with youth and parents in their neighborhood. The Committee then formulates a disposition and all (Committee member, parents, and child) sign a voluntary contract including terms suited to the individual. A Committee member monitors case for a maximum of six months and reports progress. Case is terminated or returned to court. Juvenile justice system volunteers train and orient Committee members, probation officers consult with Committee, observing hearings but not participating.

*Nonjudicial Supervision*

Family Division, Connecticut Superior Court  
28 Grand Street  
Hartford, Connecticut 06106  
Contact: Salvatore A. D'Amico (203) 566-7972  
Sponsor: Family Division, Superior Court  
Start-up: 1979

By statute, if juvenile acknowledges responsibility and a hearing is not for a specific offense, the probation officer may find some form of court accountability less exacting than formal court process and place the juvenile on "nonjudicial supervision" not to exceed three months. The juvenile and parents are informed of rights to a conference with PO's superior, or a court hearing.

The goal of nonjudicial handling is to process the case to completion in a timely and efficient manner, while adhering to each child's due process rights. It is based on the concept that, given the minor nature of the delinquent behavior, the best interests of the child and public protection are met by a lesser consequence. In Connecticut, 48% of the cases are handled nonjudicially.

***For Status Offenders (Runaways, Truants, Incorrigible, or Unmanageables)***

*Adjustment Policy for Incorrigible Complaints*

Maricopa County Juvenile Center  
3125 West Durango  
Phoenix, Arizona 85009-6292  
Contact: Ernesto Garcia (602) 269-4011  
Sponsor: Maricopa County Juvenile Court

Intake procedure for informally adjusting incorrigible (status offender) complaints such as runaway, truancy, curfew, alcohol, and disobedience. Juvenile must admit offense for adjustment with conditions; denials may be adjusted without conditions or referred to county attorney; alcohol complaints require fee assessment with conditions of adjustment. Intake officer interviews juvenile and parents and assigns one or more conditions. Case is then assigned to Compliance/Accountability Unit where determination is made on whether or not juvenile has complied with conditions; then it is either adjusted or a petition is requested.

***For Abuse and Neglect Cases***

*Reasonable Efforts Pilot Project*  
Superior Court of the State of California  
Santa Clara County  
191 North First Street  
San Jose, California 95113  
Contact: Judge Leonard P. Edwards (408) 299-3949  
Sponsor: Santa Clara County  
Start-up: 12/87 (pilot)

A 24-family model caseload of high-risk families with two or more children, identified at detention hearings. Upon presentation of sexual abuse, repeated drug and alcohol abuse referrals, general neglect, inappropriate physical punishment, ambivalent parents, or dysfunctional homes where parents might exhibit mild signs of mental illness, the family is referred immediately after detention hearing to a Reasonable Efforts team, led by a clinical consultant, and including an emergency-response child welfare worker, a family therapist, and a CASA volunteer for assessment.

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