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## Mediation in Criminal Misdemeanor Cases

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### ABSTRACT AND ARTICLE INFORMATION

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Diversion of criminal misdemeanors to mediation by district attorneys has been practiced since the 1970s, but research on its impact on critical outcomes like recidivism is scant and outdated. This quasi-experimental study compares 78 mediated cases from a county that diverts cases to mediation with 128 cases in a similar neighboring county that does not, using phone surveys and case review to ask whether recidivism in mediated cases differs from cases prosecuted or treated as usual over the subsequent year. Controlling for case factors and attitudes toward conflict, a case that is not mediated was five times more likely to result in judicial action, five times more likely to result in jury trial demand, and ten times more likely to result in supervised probation or jail time, and mediated cases were almost five times less likely to return to criminal court in the subsequent year than those that were not mediated.

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Courts across the country are overloaded with criminal cases, particularly with cases related to minor violence. An analysis of 11 state courts revealed that misdemeanors comprised 79% of their total caseload (LaFountain et al., 2008). There is a growing acknowledgement that misdemeanors matter, as the volume of misdemeanor cases nationwide has risen from five to more than ten million between 1972 and 2006 (Roberts, 2011). Prosecutors and defenders are overloaded. For example, in Detroit, they have over 2,500 cases per year, which averages 32 minutes of attention per case (see Roberts, 2011). This is likely to have eased somewhat in jurisdictions like Baltimore (see Prudente, 2021) where prosecutors' offices have espoused a policy of non-prosecution for some drug- and sex-related offenses (such as prostitution).

Increasingly, misdemeanor criminalization, with 13 million misdemeanor cases per year at 80% of the criminal caseload, is seen as a key tool of American mass incarceration (Kohler-Housmann, 2018; Natapoff, 2018). Misdemeanor arrest rates over the decades have held or climbed while crime rates have plummeted, indicating that more and more minor acts have been criminalized (Alexander, 2010; Kohler-Housmann, 2018; Natapoff, 2018). Even opening a misdemeanor case can have far-reaching collateral consequences for defendants, affecting employment, housing, and parenting, in many cases for a lifetime, and disproportionate negative impacts are felt in communities of color (Kohler-Housmann, 2018; Natapoff, 2018).

Prosecutorial discretion can have a significant impact in misdemeanor cases. When criminal offenses are between non-strangers, they are more likely to be dismissed by a prosecutor, acquitted by a jury, and have a shorter sentence than in cases of stranger violence (Hessick, 2007). This difference is even more pronounced among simple assaults, where police and prosecutors have more discretion (Hessick, 2007). Racial bias in decisions and sentencing is just as likely in misdemeanor cases as in more serious offenses, according to a study of non-traffic district court criminal misdemeanors (Leiber & Blowers, 2003). The prosecutors' roles as gatekeepers for community mediation, other forms of alternative dispute resolution, and other forms of court diversion have crucial implications for racial and social justice.

Despite a growing understanding of the pivotal role of misdemeanor charges in the broader system of mass incarceration and the crucial role of prosecutorial discretion within this system, little research has been conducted on the impact of mediation as diversion in misdemeanor criminal cases. The present study sought to examine the impact of two prosecutorial approaches to misdemeanor cases: a mediation diversion program and standard court

processes in two neighboring counties. With the longstanding positive benefits of mediation in civil cases, and the advantages of diversionary practices more generally, we hypothesize that mediated cases where parties have a likelihood of continued interactions would have more positive short- and long-term case outcomes than cases proceeding through standard court processes.

## Literature Review

### Criminal Court Diversion

A wide array of criminal court diversion programs have been introduced in the US and internationally in recent decades (Center for Health and Justice, 2013; Shdaimah, 2010) in response to the high workloads of courts, police, prosecutors, and defenders, as well as high rates of recidivism and incarceration for these minor crimes (Kohler-Housmann, 2018; Natapoff, 2018). In general, diversion programs are offered pretrial or at sentencing, and are an alternative to trial or to incarceration (Center for Health and Justice, 2013). Many of these programs espouse therapeutic goals, and are informed by principles of problem-solving justice and therapeutic jurisprudence, with diverse structures, methods, and philosophies (Wexler & Winick, 1990; Wolf, 2007). Drug courts (Nolan, 2003), courts centered on defendants coping with mental illness (Hiday & Ray, 2010), and prostitution diversion programs (Shdaimah, 2020) are three prominent examples of widespread criminal court diversion efforts. Former Florida Supreme Court Chief Justice Gerald Kogan highlighted the need for finding resolution to lower level crimes outside of the courts, declaring "it is time to end the wasteful and harmful practices that have turned our misdemeanor courts into mindless conviction mills" (as cited in Roberts, 2011, p. 279).

Many types of criminal misdemeanor cases are diverted to restorative justice programs, such as victim-offender mediation, community conferencing, family group conferencing, and restorative justice circles, most often in youth cases (Sherman et al., 2015; Strang et al., 2013), as well as conflict resolution programs, such as arbitration, community boards, settlement conferences, and mediation (Eisenberg, 2015). However, little is known about the impact of dispute resolution in criminal matters, especially when offered to adults.

### Conflict Resolution and Restorative Justice Interventions

Since the 1970s, conflict resolution programs in the US have grown, offering a range of interventions

to bring those in conflict together to talk things out face to face. These have included nonprofit community mediation centers, street conflict “interrupters,” and restorative justice circles to name a few. Community mediation programs number over 400 in the United States (Charkoudian & Billick, 2015; Corbett & Corbett, 2011), and restorative justice programs have been estimated at over 700 domestically (Umbreit & Greenwood, 2000). A scant but growing literature shows that conflict resolution services are associated with disputant satisfaction (Alberts et al., 2005), increasing empowerment and voice for participants (Charkoudian et al., 2018; Maryland Judiciary Court Operations, 2015b), building community and understanding (Kaufer et al., 2015; Ohmer et al., 2010), reducing hostility (Shual et al., 2010), improving co-parenting (Charkoudian et al., 2018; Emery et al., 2001; Maryland Judiciary Court Operations, 2015b), increasing neighborhood collective efficacy (Ohmer, 2016), capacity- and skill-building for participants and mediators (Pincok, 2013), reducing likelihood of civil court enforcement actions (Charkoudian et al., 2018; Maryland Judiciary Court Operations, 2015b), reducing individual criminal recidivism (Harmon-Darrow, 2020; Jonas-van Dijk et al., 2020), reducing neighborhood gun violence (Harmon-Darrow, 2020), and resolving conflict (Abramson & Moore, 2001).

### **What is Mediation?**

Mediation is a face-to-face conflict resolution process, which is voluntary and confidential, facilitated by neutral mediators. Mediation is defined nationally by a collaborative effort of the national professional groups American Arbitration Association, American Bar Association, and Association for Conflict Resolution (2005) as “a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute” (p. 2; Weidner, 2006). Through mediation, participants in conflict talk things out, define the issues, brainstorm a plan together, and have the opportunity to write solutions in a written agreement.

### **What is Community-based Mediation?**

Within the broader umbrella of conflict resolution services, community mediation centers are organizations that use volunteer mediators who reflect the community’s diversity, provide services for free or using a sliding scale, receive referrals from diverse sources at any stage of conflict, and provide mediation in the neighborhood where the dispute occurs (Baron, 2004; Hedeon, 2004; Jeghelian et al., 2014). In a recent survey of 117 of the estimated 450 community mediation centers in the United States, 74% were

independent non-profits, 13% were part of multi-purpose agencies, 5% were in public non-court agencies, less than 1% were court-affiliated, 5% were university-based, and 3% had another structure (Charkoudian & Billick, 2015).

An estimated 30,000 volunteer community mediators in the United States are resolving family, neighborhood, and organizational conflicts, which strengthens communities while saving communities, courts, and government up to \$17,800,000 annually (Corbett & Corbett, 2013). Community mediators are volunteers from a variety of backgrounds who receive professional training to work at a mediation center to resolve family, neighborhood, workplace, or other disputes (Charkoudian & Billick, 2015; Hedeon, 2004; Shonholtz, 1987). A study of Massachusetts community mediation centers showed that in one year, 14 centers achieved an estimated savings of \$909,400 from 9,094 hours of pro bono mediation services from 505 volunteer mediators, with all centers using volunteers (Jeghelian et al., 2011).

### **Mediation Practice Approach: Inclusive Mediation**

The Maryland community mediation center in this study uses inclusive mediation as their practice approach. According to the classic definitions of mediator approaches (Kressel et al., 2012; Riskin, 1994), inclusive mediation is more facilitative than evaluative, with mediators listening, reflecting back what they have heard, and prohibited from giving advice or suggestions or from analyzing the legal merits or weaknesses of either participants’ case. The inclusive approach to mediation was created in Maryland in the 1990s and brings the inclusive values of the community mediation structure to the mediation table as a practice ethos. In inclusive mediation, this inclusivity extends to welcoming all ideas without filtering or changing them and working with all types of expression without communication guidelines or rules (Harmon-Darrow et al., 2020). Inclusive mediation differs from the victim-offender mediation models often offered for diversion in criminal justice settings in that neither participant is pre-identified by mediators as victim or offender, nor are pre-mediation meetings held individually with participants (Umbreit et al., 2006).

### **Studies of Criminal Court Mediation Outcomes**

In reviewing criminal court mediation outcome research, it is critical to separate victim-offender mediation from standard mediation practice, in which mediation participants are not identified, prepared, or treated differently from each other. Early studies of victim-offender mediation (VOM) show high rates of satisfaction for both victims and

offenders, high participant agreement that the process was fair, and higher rates of restitution than in court processes (Evje & Cushman, 2000; Latimer et al., 2001; Umbreit & Coates, 1992; Umbreit et al., 2001). In a more recent study, defendants in VOM cases were equally likely to feel victimized, and participants ranked repairing the relationship and speaking their mind as more important goals than getting the charges dropped (Hoerres, 2014). In general, research on both victim-offender mediation and standard mediation interventions is scant and outdated. A brief review of standard mediation outcomes in criminal court follows.

Mediation has been associated with a reduction in the number of filings, trials, and convictions in criminal court and leads to positive short-term outcomes such as higher satisfaction, compliance, perceptions of fairness, resolution of underlying conflicts, and reduced fear and anger. In New York State, 83% of the 1,327 criminal cases mediated state-wide in Fiscal Year 2009 ended in agreement (New York State Unified Court System, 2009). Clarke and colleagues (1992) researched multiple North Carolina county criminal courts, comparing mediation outcomes in three counties to adjudication outcomes in two counties without mediation services. They found that mediation resulted in a decrease in trials, convictions, and non-convictions with conditions in one county, and no changes in the other two. They found high rates of compliance (84-98%) in the mediation groups in all three counties. The rate of filing new charges 120 days after disposition was lower in the mediation group than the trial group; however, the difference in rates between the two groups was not statistically significant (Clarke et al., 1992). Overall satisfaction rates with standard mediation of criminal cases over time have been high (Clarke et al., 1992; McGillis, 1997), and studies find high satisfaction rates and high perceptions of fairness among mediated cases in comparison with adjudicated cases (McGillis, 1997). A study of the Brooklyn Mediation Program found that mediation participants feared each other less, felt less anger, and understood each other more in the period following mediation, but that differences in recidivism were non-significant (Davis, 2009; McGillis, 1997). One of the earliest studies of criminal court mediation showed that 83% of disputants felt that the problem underlying the court case had improved and that the agreements were reported to have been fulfilled in two thirds of cases (Felstiner & Williams, 1982).

### **Studies of Community Mediation in the Inclusive Model and Criminal Justice**

Inclusive mediation has been applied to conflicts referred by the criminal justice system since the late 1990s (Harmon-Darrow et al., 2020). Research has indicated that inclusive mediation services are associated with a reduction in participants' future use of the police, courts, and correctional services. Police involved in inclusive mediation cases were associated with a reduction of 8.5 calls for police service in the 6 months following intervention, which was estimated to save police approximately four and a half hours of patrol time per successfully mediated case (Charkoudian, 2005). In a quasi-experimental study with a large percentage of inclusive mediators, mediation was associated with a statistically significant reduction in further reliance on police and courts, even when accounting statistically for selection bias and holding constant for income, race, and attitudes toward conflict (Charkoudian, 2010). In a study of prisoner re-entry mediation conducted by inclusive mediators, the inmates' predicted probability of re-incarceration was reduced by 10% for the first mediation session and another 7% for each subsequent session (Flower, 2014). Prosecutors perceived a partnership with Baltimore city community mediation center operating in the inclusive model as an "effective alternative to prosecution" (87.1%), with the potential to reduce cases sent to trial (92.7%; Polkinghorn et al., 2009, p. 31)

### **Theoretical Framework for Inclusive Mediation**

Inclusive mediation is rooted in community justice principles, as is the broader community mediation movement through which it evolved. In his seminal "Conflicts as Property," Nils Christie (1977) reframed conflict as belonging to the people and communities involved, not to an impersonal state. In this model, community members should identify and bring conflicts to light, not bury them in government bureaucracy, taking the view that police, courts, and corrections were being overburdened and misused to handle many issues that were between neighbors, coworkers, and family members. Out of this critique were built the community justice and restorative justice frameworks. In both, victims are no longer erased but can become vocal actors and recipients of restitution, as in ancient systems of justice. Restorative justice theory, broadly stated, considers crime to be an offense against the victim and community, not the state, and seeks to bring victim and offender into dialogue about repairing harm (see Bazemore, 2001;



Braithwaite, 1989; Latimer et al., 2005; Umbreit, 1994; Zehr, 1990, and many others).

Community justice and neighborhood justice theories from Christie (1977) and Auerbach (1983) assert that many conflicts are better resolved at the neighborhood level, rather than giving them over to the state (see also Clear & Karp, 1999). Tomasic and Feeley (1982) and Shonholtz (1987) developed these ideas into the community mediation movement, empowering communities to resolve their own disputes, with conflict resolution sessions led by neighborhood residents from diverse backgrounds (see, e.g., Schwerin, 1995; Wahrhaftig, 2004).

From the social disorganization theory tradition (Shaw & McKay, 1942), sociologists (Sampson, 2006) have linked crime reduction to the unity and collective power of neighborhoods and crime desistance to pro-social relationships (Sampson & Laub, 1995). Community mediation and the inclusive mediation model are closely aligned with theories of collective efficacy and neighborhood cohesion as protective factors against crime and blight. These theories hold that neighborhoods with strong ties between neighbors and to outside resources are powerful enough to prevent violence and work things out directly (Bellair, 1997; Bursik & Grasmick, 1999; Sabol et al., 2004; Sampson, 2006; Warner & Rountree, 1997). Some community-based conflict resolution interventions are drawn from these theoretical roots and from the idea that closer relationships with peers, family, and neighbors will promote desistance from crime and decrease recidivism (see, e.g., Charkoudian et al., 2012; Charkoudian & Flower, 2009; Ohmer, 2016).

### Study Objectives

Given that few criminal courts have attempted mediation as a diversionary practice, particularly with adults, this study fills a research gap by examining the short- and long-term impact of community mediation in criminal misdemeanor cases within the context of potentially ongoing relationships. First, we expect to find that short-term case outcomes, such as criminal disposition, sentencing, and incarceration, will be more positive for those who attended mediation compared to the control group experiencing the standard court process, after controlling for case characteristics and pre-intervention attitudes toward conflict and court. Second, if mediation in cases where parties have existing or ongoing relationships addresses underlying relationship factors (e.g., the prosocial bonds and strengthened relationships discussed above), we expect that mediation will result in lower odds of those parties returning to court in either civil or criminal actions in the long-term, after controlling for case

characteristics and pre-intervention attitudes toward conflict and court.

### Method

A quasi-experimental comparison group design was selected because it is recommended for use with vulnerable groups (Thyer, 2012) and because randomized control trials were considered to be inappropriate for a study where groups may have different rates of incarceration, a not uncommon viewpoint (Shadish et al., 2002). Further, randomized control trials can be resource heavy, something difficult to overcome for criminal justice program research (Chapman et al., 2017, p. 7). Data were collected through telephone surveys and court data review. Surveys were conducted with victims and defendants involved in misdemeanor criminal cases in neighboring medium-sized suburban/exurban counties (Frederick and Washington Counties) in Maryland. These jurisdictions were selected because they are similar in their size (150,000-250,000 people), economics (middle income, low poverty), and demographics (over 70% white), each with one comparable central small city (fewer than 75,000), which provided for a strong quasi-experimental comparison (US Census Bureau, 2021).

### Sample

Researchers enrolled participants from 78 mediated cases and from 128 non-mediated (comparison) cases. Participants with mediated cases were recruited from cases referred by the Washington County State's Attorney's Office to the local community mediation center. Cases eligible for mediation included those in which defendants had no prior criminal record, the charges were a minor misdemeanor (e.g., second degree assault, telephone misuse, harassment, malicious destruction under \$500, theft under \$1000, disorderly conduct), and the parties had a previous or ongoing relationship. Prosecutors referred cases to mediation where the incident occurred between individuals who know each other and will continue to have a relationship after the court case concludes. This includes, but is not limited to, family members, neighbors, friends, and especially parties who live together, or in close proximity to one another. Cases involving domestic violence were generally not referred to mediation, and cases in which participants were involved in a current custody case at the time that charges were filed were excluded.

Participants in comparison cases were recruited from the Frederick County State's Attorney's Office, which does not have a mediation program, including only cases with the same eligibility characteristics that would have been offered mediation

in the treatment county. In order to ensure comparison cases were essentially similar to mediated cases, a screening form was used to select comparable cases for the comparison group.

## Procedure

### *Surveys*

**Mediation.** Community mediation staff notified researchers when a case referred by the State's Attorney Office was scheduled for mediation. If parties agreed to participate in the mediation, at the beginning of the session, one researcher explained the project and obtained written consent. The researcher then separated participants into different rooms and put each on the phone with a researcher in another location who conducted the survey. This method was used both for efficiency, so that both interviews could take place simultaneously, and for comparative purposes, because in the control cases, interviews were conducted by phone. Participants were mailed a \$10 check for their participation in the initial survey.

**Comparison Group.** Researchers visited the Frederick court clerk's office at least once a week and systematically screened recently filed criminal cases for potential inclusion in the study. Screening consisted of reviewing criminal filings using criteria that would have led to a referral to mediation had the case been filed in Washington County. Surveys were administered via telephone within two weeks of the criminal filing. Given that the prosecution can elect not to move forward with a case (i.e., *nolle prosequi*), participants were first asked if they were aware of any decision that the State's Attorney had made related to their case. Cases where the parties were aware the case had a *nolle prosequi* were excluded.

Researchers monitored the cases via the public website *Maryland Judiciary Case Search* (<http://casesearch.courts.state.md.us/casesearch>) to check if the defendant had been served with the criminal summons in the case. Once the defendant was served, the researcher then attempted to contact them via telephone.

One researcher and six interns were trained to administer the questionnaires. The interviewer obtained consent before proceeding with the survey, and as an incentive for participation, participants were mailed a check for \$10 for every survey completed. All procedures were approved through a human subjects review conducted by the Internal Review Board of research partner Salisbury University.

### *Case Profile*

Participants were asked about the length of the relationship with the other party, whether they had conversation with the other person/people involved in

this case to try to resolve these issues, how long the issues that lead to the charges have been going on, and whether the police had been called. For mediated cases, researchers also recorded the number of mediation sessions.

### *Court Document Review*

Researchers reviewed case data and noted the number of each of the following charges: second degree assault, malicious destruction, theft, telephone misuse, trespassing, harassment, disturbing the peace, and violation of ex parte orders (i.e., peace order/stay away). Court data used in the analyses were the number of charges for each charge type, the number of charges of violations of ex parte (ex parte orders/peace orders/stay away orders), whether the defendant was arrested, case outcome, if the party was represented by a lawyer (attorney involved), and if there was a related case (i.e., have other cases been filed related to these issues) or cross-charges (i.e., if there were charges against both parties, such that both are victims and both defendants), any sentencing in the case, and if the same participants returned to court for any subsequent criminal or civil cases in the next 12 months. Researchers recorded the following short-term court outcomes: judicial action (guilty, not guilty, probation before judgement, or non-judicial action including *nolle prosequi*), jury trial demand, supervised probation or incarceration, and if the action resulted in a criminal record (incarceration or probation other than probation before judgement). The following long-term outcomes were also recorded: criminal return (same participants had a new criminal charge with each other, a re-opening of the case from the inactive docket, or a violation of probation from the original charge) at 6 months and at 12 months, and if the same participants had a case in civil court with each other in the 12 months from the original criminal court date.

## Variables

### *Relationship*

Participants were asked what their relationship to the other party in this court case is/was, and were categorized as spouses (i.e., domestic partner or spouse), lovers or ex-lovers (i.e., boy/girlfriend, ex-boy/girlfriend, separated/divorced, co-parents), other family (i.e., other family, parent-child), personal (i.e., friend, roommate, neighbor), and non-personal (i.e., work relationships, business and customers, landlord/tenant, and strangers).

### *Attitudes Toward Conflict*

In an author-designed measure of attitudes toward conflict prior to mediation/court, participants

were asked to rate on a Likert-type scale (1 = strongly disagree to 5 = strongly agree) their agreement the following statements (variable name follows in parentheses): 1. "I think there are a number of different ways to resolve the issues that led to these charges" (number of ways), 2. "It's important that the other person/people get their needs met in the issues that led to these charges" (importance of their needs), 3. "It's important that I understand what the other person/people want in the issues that led to these charges" (understanding other), 4. "The other person/people need to learn that they are wrong in the issues that led to these charges" (learn they're wrong), 5. "It's important that the other person/people get their needs met in the issues that led to these charges" (needs met), 6. "It's important for me to have a positive relationship with the other person/people involved in the issues that led to these charges" (importance of positive relationships), 7. "I feel like I have no control over what happens in the issues that led to these charges" (no control), 8. "The other person/people involved in the issues that led to these charges want the exact opposite of what I want" (opposite wants), 9. "I can talk about my concerns to the person/people involved in the issues which led to these charges" (can talk), 10. "It doesn't seem to make any difference what I do in regard to the issues that led to these charges, it'll just remain the same" (no impact), 11. "In general, conflict is a negative thing" (conflict is negative), and 12. "I feel prepared to go to trial" (prepared). For each item, case-level attitude toward conflict scores were calculated as the average response across all participants in the case. The scale has shown good internal reliability with a Cronbach's alpha of 0.723.

## Analysis

Preliminary frequencies and bivariate analyses, including chi square and t-tests, were conducted to evaluate selection bias threats and to choose appropriate covariates. Principal components analysis with varimax rotation was conducted in Stata 8.0 (Statacorp, 2003) to empirically define clusters of grouped variables to serve as appropriate predictors in the outcome analyses. A principal components analysis with varimax rotation was used to create index variables of the participants' attitudes, with the minimum Eigenvalue set at 1. The principal component analysis of all of the twelve attitudinal questions revealing three principal components. The new variables were as follows, with a "P" prefix to indicate that they are a participant-level analysis (scale item and factor loadings are listed in parentheses): P Understand (understand other, +0.52), P Me First

(needs met, +0.43 and learn they're wrong, +0.48), and P Conflict (conflict is negative, +0.83).

Propensity score matching (Apel & Sweeten, 2010; Rosenbaum & Rubin, 1983) was used to create matched groups and reduce the possible effects of selection bias, as has been applied in similar quasi-experimental comparison group studies of conflict resolution interventions (see, e.g., Flower, 2014; Wilson & Chermak, 2010). Finally, logistic regression in Stata 8.0 (Statacorp, 2003) produced odds ratios for both the short- and long-term outcome analyses.

## Results

### Preliminary Analyses

Preliminary analysis of case characteristics revealed that cases in the mediation and comparison group had the following characteristics: defendants had no prior felony convictions, did not have multiple misdemeanor charges, and had no outstanding warrants. Charges involving any type of weapon, drugs, or violence more serious than second degree assault had been excluded from the comparison group since they are usually excluded from diversion to mediation. See Table 1 for case characteristics, relationships between parties, and participant attitudes toward conflict.

Although cases were screened on selection criteria used by the State's Attorney, other differences between mediated and non-mediated cases could exist, particularly since mediation is voluntary. Mediated cases were more likely to have cross-charges (the defendant claims a counter criminal charge based on the same incident),  $\chi^2(1, 206) = 22.11, p = 0.000$ , more likely to have prior conversations with the other party to try to resolve these issues,  $\chi^2(1, 192) = 12.61, p = 0.000$ , and they were less likely to have an attorney involved,  $\chi^2(1, 203) = 3.82, p = 0.04$  than were cases in the comparison group. They did not differ on whether the police had been called, there was a related case (i.e., other than these charges, if participants noted that other cases had been filed related to these issues), the participants were spouses (i.e., domestic partners or spouses), lovers or ex-lovers (i.e., boy/girlfriend, ex-boy/girlfriend, separated/divorced, co-parents), other family (i.e., other family, parent-child), were in a personal relationship (i.e., friend, roommate, neighbors), or were not in a personal relationship (i.e., strangers, customer/business, landlord/tenant, employer/employee). Cases also did not differ in whether the defendant was arrested for the present case.

Table 1: Summary Statistics

Variable Name	N	Frequency	Percent	Range	Mean (SD)
Treatment Group: Case Mediated	206	78	38%		
Comparison Group: Case treated as usual	206	128	62%		
<b>Case Characteristics</b>					
Number of Sessions	206			0 to 10	0.64 (1.16)
Cross-Charged	206	58	28%		
Attorney Present	203	119	59%		
Relationship Length	196			0 to 792	123.97 (148.18)
Prior Conversations	192	84	44%		
Issue Timeframe	196			0 to 480	21.09 (51.49)
Police Called	174	139	80%		
Defendant Arrested	201	44	22%		
Related Case	202	79	39%		
<b>Attitudes Toward Conflict Before Mediation or Court</b>					
Number of Ways	204			1 to 5	3.93 (1.14)
Importance of my Needs	203			1 to 5	4.42 (.63)
Understanding Other	203			1 to 5	3.70 (1.14)
Learn they're Wrong	203			1 to 5	4.28 (.88)
Importance of their Needs	203			1 to 5	3.50 (1.15)
Importance of Positive Relationship	203			1 to 5	3.29 (1.39)
No Control	202			1 to 5	3.61 (1.05)
Opposite wants	202			1 to 5	3.22 (1.11)
Can talk	202			1 to 5	2.66 (1.34)
No impact	202			1 to 5	3.36 (1.09)
Conflict is negative	202			1 to 5	4.09 (.75)
Prepared	202			1 to 5	3.74 (.97)
<b>Participants' Relationship to Each Other</b>					
Spouses	203	32	16%		
Lovers/Ex-lovers	206	74	36%		
Other Family	206	39	19%		
Personal	206	39	19%		
Not Personal	206	16	8%		
<b>Charges</b>					
2nd Degree Assault	206			0 to 6	0.98 (.82)
Malicious Destruction	206			0 to 1	0.10 (.30)
Theft	206			0 to 6	0.09 (.50)
Telephone Misuse	206			0 to 2	0.04 (.23)
Trespassing	206			0 to 3	0.05 (.29)
Harassment	206			0 to 1	0.07 (.25)
Disturb the Peace	206			0 to 1	0.02 (.14)
Violate ex Parte	206			0 to 4	0.21 (.63)
<b>Short- &amp; Long-Term Case Outcomes</b>					
Nolle Prose	207	159	77%		
Judicial Action	206	43	21%		
Jury Trial Prayed	206	19	9%		
Supervised Probation or Jail	206	16	8%		
Resulted in Record	205	16	8%		
Criminal Return 12 Months	202	15	7%		



An examination of differences of means on pre-test measures, including present charges, was conducted. Mediated cases ( $M = 1.2$ ,  $SD = 0.79$ ) compared to non-mediated cases ( $M = 0.83$ ,  $SD = 0.81$ ) had significantly more second-degree assault charges  $t(204) = 3.2$ ,  $p < .01$ . Cases did not differ significantly in other charge types (i.e., malicious destruction, theft, telephone misuse, trespassing, harassment, disturbing the peace, violating ex parte order) or in relationship length or issue timeframe.

An examination of differences of means on attitudes prior to mediation revealed differences for each new PCA-created variable. Mediated cases ( $M = 0.89$ ,  $SD = 1.13$ ) compared to non-mediated cases ( $M = -0.59$ ,  $SD = 1.59$ ) scored higher in the factor P-Understand  $t(197) = 7.16$ ,  $p < .001$ . Mediated cases ( $M = -0.83$ ,  $SD = 1.47$ ) compared to non-mediated cases ( $M = 0.55$ ,  $SD = 1.32$ ) scored lower in the factor P-Me First  $t(197) = 6.89$ ,  $p < .001$ . For the third factor, mediated cases ( $M = -0.22$ ,  $SD = 0.8$ ) compared to non-mediated cases ( $M = 0.15$ ,  $SD = 1.19$ ) scored lower,  $t(197) = 2.43$ ,  $p < .05$ .

Given the differences outlined above, we used propensity score matching (PSM) to align cases in the mediation and comparison groups. These matched cases were used for the logistic regression. Variables included in the PSM were those that had a significant difference of means between the treatment and control group as well as others for which there were theoretical reasons to believe there may be differences. The following variables were included: Cross-Charged; Attorney Involved; Lovers/Ex-Lovers; Spouses; Prior Conversation; Second Degree Assault; Malicious Destruction of Property; Violate Ex Parte Order; P-Me First; P-Understand; and P-Conflict Negative. Propensity scores were determined based on two nearest neighbors, and with six blocks, the balancing property was satisfied.

### Short-Term Outcomes

There were significant negative average treatment effects for mediation on the short-term outcome variables Judicial Action (coefficient =  $-.27$ ,  $z = -3.58$ ,  $p < .05$ ), Jury Trial Demand (coefficient =  $-.15$ ,  $z = -2.78$ ,  $p < .05$ ), and Supervised Probation/Jail (coefficient =  $-.10$ ,  $z = -3.38$ ,  $p < .05$ ). Average treatment effects that are significant can then be accounted for when determining which observations will be included in the analysis, based on their propensity scores. Seventeen comparison group observations were excluded from further analysis based on PSM results.

In determining the variables for inclusion in the logistic regression analysis, variables were included if they had a statistically significant difference of means between treatment and control

group, if they were significant in predicting if a case was in the mediation group in the propensity score matching process, or if they were significant in predicting judicial action in the propensity score matching process. A check for correlation among all of these proposed variables revealed that none had correlations greater than 0.5, indicating that multicollinearity was not a concern.

**Table 2: Logistic Regression Analysis Results: Mediation on Short-Term Court Outcomes**

	Judicial Action	Jury Trial Demand	Supervised Probation or Jail
Mediated	-1.99** (-3.08)	-1.81* (-2.00)	-2.33* (-1.98)
Cross-Charged	-1.30* (-2.07)	-0.28 (-0.36)	-1.15 (-1.02)
Attorney Involved	0.19 (0.44)	-0.95 (-1.68)	0.14 (0.23)
Prior Conversations	-0.37 (-0.73)	-0.27 (-0.41)	-0.74 (-1.00)
Spouses	0.71 (1.20)	0.61 (0.85)	0.89 (1.13)
2 <sup>nd</sup> Degree Assault	0.46 (1.66)	0.13 (0.37)	-0.24 (-0.44)
Malicious Destruction	1.59* (2.07)	1.21 (1.38)	0.49 (0.39)
Violate Ex Parte	0.79** (2.59)	0.18 (0.46)	-0.81 (-0.85)
Defendant Arrested	1.04* (2.01)	0.42 (0.67)	1.07 (1.56)
P Understand	-0.09 (-0.56)	0.16 (0.74)	-0.26 (-1.08)
P Me First	0.08 (0.44)	0.09 (0.38)	-0.40 (-1.56)
Constant	-1.53** (-2.92)	-1.62** (-2.63)	-1.81* (-2.41)
Number of Observations	181	181	181
Pseudo R-squared	.2375	.1487	.2202

\* Significant at  $p < .05$  \*\* Significant at  $p < .01$

As seen in Table 2, mediation was negatively related to judicial action, jury trial demand, and supervised probation or jail. Additionally, cross-charges in the case were negatively related to judicial action. Malicious destruction of property charges, violation of a stay away order, and the defendant having been arrested all had positive relationships with judicial action. The same logistic regressions were conducted using the number of mediation sessions instead of mediation as the variable, with a similar pattern of results.

### Long-Term Outcomes

The first step of the process was to conduct propensity score matching. Variables included in this process were those that had a significant difference of means between the treatment and control group as well as others for which there were theoretical reasons to

believe there may be differences. The following variables were included: Cross-Charged, Attorney Involved, Second Degree Assault, Malicious Destruction of Property, Telephone Misuse, Nolle Prosequi, P Me First, P Understand, Prior Conversation, and Spouses.

Propensity scores were determined based on two nearest neighbors, and with five blocks, the balancing property was satisfied. The average treatment effect for mediation is significant and negative on Criminal Return to Court at 12 Months (coefficient =  $-.90$ ,  $z = -2.54$ ,  $p < .05$ ).

In determining the variables for inclusion in the logistic regression analysis, variables were included if the  $z$  value was greater than 1.00 in the equation predicting judicial action in the propensity score matching process. In this case, 33 control group observations are not included. These were then dropped out of the data set so that the subsequent logistic regression could be accomplished with a data set in which the treatment and control group “match” based on the propensity score matching. Additionally, no variables had a correlation of 0.5 or higher, indicating that multicollinearity was not a concern.

**Table 3: Logistic Regression Analysis Results: Mediation on Long-Term Return to Court**

	Criminal return 12 months	Criminal return 6 months	Civil Return 12 months
Mediated	-1.66* (-2.06)	-1.2 (-1.57)	-0.49 (-0.82)
Cross-Charged	1.90* (2.43)	1.86* (2.44)	0.84 (1.53)
Malicious Destruction	1.50 (1.76)	1.01 (1.09)	0.49 (0.57)
Telephone Misuse	2.15* (2.33)	2.12* (2.35)	0.77 (0.99)
P understand	0.98 (0.38)	0.05 (0.18)	0.39 (1.65)
Prior Conversations	1.60 (1.74)	1.37 (1.51)	-0.55 (-0.80)
Spouses	0.74 (0.92)	0.68 (0.85)	1.10 (-0.30)
P Negative	-0.21 (-0.71)	-0.15 (-0.48)	-0.07 (0.78)
Constant	-4.14 (-4.78)	-4.22 (-4.98)	-2.92 (-3.54)
Number of Observations	166	180	167
Pseudo R- Squared	0.1826	0.1521	0.0779

\* Significant at  $p < .05$  \*\* Significant at  $p < .01$

As shown in Table 3, for the dependent variables, Criminal Return 12 Months and Criminal Court Return 6 Months, the existence of cross charges and the charge of telephone misuse have a statistically significant and positive impact. Mediation has a negative impact on Criminal Return at 12 Months and

the impact is not significant for Criminal Return 6 Months. For the outcome Civil Return 12 Months, none of the variables examined were statistically significant. The predicted probability of returning to criminal court in the subsequent 12 months for cases that went to mediation is 1.7%, and the predicted probability of returning to criminal court in the subsequent 12 months for cases that went through the regular court process was 8.2%. Mediated cases were 75% less likely to return to court in the subsequent 12 months.

## Discussion

This study demonstrates that mediation of criminal cases has a significant impact on several crucial areas of interest, including short- and long-term outcomes and participants' case resolution. Participation in mediation had a statistically significant and negative impact on the likelihood of judicial action, the likelihood of a jury trial demand, or the likelihood of supervised probation or jail-time. The predicted probability of a case resulting in judicial action was 5.3% for mediated cases and 29% for non-mediated cases. The predicted probability of a case resulting in a jury trial demand was 2.4% for mediated cases and 13% for non-mediated cases. The predicted probability of a case resulting in supervised probation or jail-time is just under one percent (0.9%) for a mediated case and 8.3% for a non-mediated case. These findings are particularly relevant given that we controlled for numerous case characteristics and pre-intervention attitudes toward conflict.

In the analysis of longer-term outcomes, mediation had a statistically significant and negative impact on the likelihood of the probability of those same participants returning to criminal court with new charges in the subsequent 12 months. Mediation did not have a statistically significant impact on returning to criminal court in the subsequent 6 months. This may be because it takes longer for the situation to escalate again to the point that people are finding themselves in the criminal system again. Mediation did not have a statistically significant impact on those individuals finding themselves in civil court in the subsequent 12 months.

The predicted probability of returning to criminal court in the subsequent 12 months for cases that went to mediation is 1.7%; the predicted probability of returning to criminal court in the subsequent 12 months for cases that went through the regular court process was 8.2%. This means that cases that were not mediated were almost five times more likely to return to criminal court in the subsequent 12 months. Mediation results in the use of fewer court

and law enforcement resources in the short- and long-term.

These findings show associations with lower recidivism, which are divergent from early studies of individual criminal recidivism following criminal court-referred community mediation (see Davis, 2009, using 1970s data), which showed no association. Stronger effect sizes are reported here than in previous literature on individual criminal recidivism following community mediation as offered in the context of prisoner re-entry (Flower, 2014). In general, the findings are in alignment with the scant literature on the association between criminal recidivism and other similar forms of face-to-face conflict resolution or restorative justice interventions for adults (Armour et al., 2005; Gilligan & Lee, 2005; Harmon-Darrow, 2020; Jonas-van Dijk et al., 2020; Koss, 2014).

Misdemeanor diversion also has critical social justice ramifications as defendants of color and lower income defendants are disproportionately punished for misdemeanor crimes (Kohler-Hausman, 2018; Natapoff, 2018). When applied skillfully and preventing recidivism, diversion to a free mediation service to work through the conflicts underlying a misdemeanor assault is a tool for decarceration (Epperson & Pettus-Davis, 2017) and social and racial justice, giving alternatives to criminal justice involvement to groups overrepresented in the justice system. This is an area that could benefit from further exploration in the literature on community mediation.

### Limitations and Future Research

The primary limitation of this study was the small sample size, thereby lowering the power to detect statistically significant relationships between variables through logistic regression. Furthermore, a larger data set would also allow for some more nuanced analysis, examining interactions between variables or impacts on certain sub-groups. Contacting participants via telephone presented a substantial challenge, for various reasons, including missing or illegible information in charging documents, and an inability to reach participants even after 5-6 attempts. Ideally, this research will be replicated and with a data set that is both larger and more diverse with respect to distribution across urban, rural, and suburban jurisdictions. In addition, the mediation cases under study were all mediated through one community-based mediation program and using the inclusive mediation practice approach. While this strengthens the internal reliability of the study findings, it compromises the external validity, since other counties may not see similar results.

### Implications

These results are important in terms of their implications for trial courts, local law enforcement, and for the people involved in these conflicts. Practice and policy implications may include support for continued and expanded criminal court diversion of misdemeanor cases to mediation, particularly when there has been some ongoing contact between participants. More broadly, these outcomes are important in discussions about increasing non-law enforcement strategies to address community issues and in decreasing recidivism and ongoing interactions with the criminal court system.

Future research could examine criminal court mediation in programs with a larger sample size, with wider eligibility criteria, and in larger, more urban jurisdictions. Mediation session attributes including individual mediator behaviors could be compared with criminal court outcomes to explore what mediator actions are associated with lower recidivism or other positive case or participant outcomes. The present study focuses on cases with past and ongoing relationships; future research could also examine long-term criminal recidivism in cases where relationships are not maintained to determine if there are individual (non-relationship) benefits from mediation. In addition, with many referred cases involving second degree assault, impacts on further violence between case participants could be evaluated.

### Conclusion

In this quasi-experimental study of prosecutor referrals of misdemeanor cases to mediation, community-based mediation in the inclusive model is compared with similar cases in a similar county that are prosecuted or treated as usual. Use of mediation is associated with a significantly lower predicted probability of not only short-term outcomes such as judicial action, jury trial demand, and supervised probation or jail, but also a significantly lower predicted probability of returning to criminal court within the following year. Mediation can save court and law enforcement resources in the short- and long-term, and it holds promise as a tool in the pursuit of social and racial justice through diversion and reduced incarceration.

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