Research Update

Judicial Council of California, Administrative Office of the Courts March 2003

Court-Based Juvenile Dependency Mediation in California

This research update provides a description of the juvenile dependency mediation (JDM) programs in California as they existed between July 2001 and December 2001. The information about the programs comes from a survey (the 2002 JDM Survey) that the Administrative Office of the Courts (AOC), Center for Families, Children & the Courts administered to the directors and coordinators of the juvenile dependency mediation programs in California that were operating as of January 1, 2002.

In many court jurisdictions in California, juvenile dependency mediation is a service available to families and children in the dependency system. Juvenile dependency cases, which involve allegations of child abuse and/or neglect, are frequently complex because they encompass various issues, multiple parties, and numerous hearings. Juvenile dependency mediation is used to help settle a wide range of issues and disputes that occur in these cases. Juvenile dependency mediation is a confidential process in which a specially trained, impartial person (mediator) helps the family, social worker, attorneys, and other interested parties in a case talk about and resolve the problems and concerns relevant to the case. The mediator assists the parties in reaching a fully informed and mutually acceptable resolution that focuses on issues related to the best interest and safety of the child(ren) and families.[1] The mediator cannot make decisions for the people in mediation and does not make any recommendations to the court.

Table 1. California JDM Programs in Operation as of January 2002

County	Year Program Began
Los Angeles*	1983
Orange	1987
Nevada	1992
Santa Clara*	1993
Tulare*	1994
Contra Costa*	1995
Sacramento*	1995
San Francisco	1995
Sonoma*	1995
Riverside	1997
Alameda	1998
Fresno	1998
Humboldt	1998
San Mateo	1998
Ventura	1998
Siskiyou	1999
Napa	1999
San Bernardino	1999
Marin	2000
Lassen	2001
Yolo	2001

Source: 2002 JDM Survey
**Counties included in the 1995 Pilot Program and Evaluation*

Unlike child custody mediation in the family court, referral to juvenile dependency mediation is not mandatory prior to a hearing or judgment. However, the court can order cases to mediation at or between any of the hearings or proceedings throughout the life of a dependency case.[2]

[1] Cal. Stds. Jud. Admin., § 24.6 and Santa Clara County juvenile dependency mediation description, contained in pamphlet for parents.

[2] A detailed flow chart of the juvenile dependency proceedings appears in Appendix A.

Background

California is one of the national leaders in juvenile dependency mediation.[3] The first juvenile dependency mediation program in the United States was started in Los Angeles in May 1983. Most of the juvenile dependency mediation programs in California started in the 1990s (see Table 1). New legislation contributed to the development of these programs. In 1992, the State Legislature passed California Senate Bill 1420 which established the use of a birth certificate surcharge to fund juvenile dependency mediation pilot programs in five counties (see Table 1). In 1996, California Senate Bill 1675 extended the date the legislation was set to expire from December 31, 1996, to December 31, 1998, and authorized all other counties interested in starting a juvenile dependency mediation program to utilize the birth certificate funding source.[4] In 1998, Assembly Bill 2229 extended the expiration date an additional six months from December 31, 1998, to June 30, 1999.

SB 1420 also funded an evaluation of the five pilot programs in order to test the efficacy of mediation in cases of child abuse and neglect. Findings of the evaluation completed by the Center for Policy Research in November 1995 include the following:

- Over 70 percent of the cases mediated at each site resulted in either full or partial settlement.
- Parents and most professional participants preferred mediation to a judicial hearing.
- In many court systems, mediation appeared to reduce the immediate need for contested review hearings.
- To be accepted, mediation needs to be conducted with confidentiality.
- Courts may find it useful to mandate mediation if it is requested by any party in a case.
- The pilot counties found it necessary to retain skilled, trained mediators in order to provide quality services.
- Mediation is effective with all types of maltreatment and at all stages of case processing.
- A variety of mediation models are effective.

The evaluation also produced preliminary evidence that

- Mediated agreements are more detailed, are more likely to provide specifically tailored services to children and other family members, and make greater use of relative foster care.
- Mediated settlements enjoy greater compliance by parents, at least in the short run.
- Mediation reduces the amount of time in out-of-home care.[5]

A 1997 amendment to the California Welfare and Institution Code contributed to further growth of juvenile dependency mediation programs. The amendment states, "Each juvenile court is encouraged to develop a dependency mediation program to provide a problem solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening."[6]

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[3] John Lande, "Child Protection Mediation" (Arlington, Va.: National Center for State Courts, 2000).

[4] Megan G. Orlando, "Funding Juvenile Dependency Mediation Through Legislation" (April 1997) 35 (2) *Family and Conciliation Court Review* 196–p201.

[5] Nancy Thoennes, Ph.D. and Jessica Pearson, Ph.D., *Mediation in Five California Dependency Courts: A Cross-Site Comparison* (Denver: Center for Policy Research, 1995) pp. 1, 11–12.

[6] Cal. Welf. & Inst. Code, § 350(a)(2).

As a result of the expiration of the legislation, courts would no longer receive funding from the birth certificate surcharge. Therefore, they needed to secure funding for juvenile dependency mediation programs by including them in their baseline trial court funding budgets. Court systems that had established juvenile dependency mediation programs and had reported expenditures for a juvenile dependency program prior to the enactment of AB 233 (Lockyer-Isenberg Trial Court Funding Act of 1997, effective January 1, 1998) had this amount incorporated into their baseline budgets. Courts that wanted to start a new juvenile dependency mediation program or receive funding augmentations for existing programs submitted requests to the Judicial Council, AOC, Finance Division through the budget change request (BCR) process. As a result of this process, numerous court systems were allocated funding for fiscal year 2000–2001 or fiscal year 2001–2002 to implement a juvenile dependency mediation program, to expand services for an existing juvenile dependency mediation program, or to replace revenue lost as a result of the sunset of the birth certificate legislation.

The Judicial Council, the policy making body of the California courts, modifies and approves court funding priorities for each budget year. This effort continues to tie the budget process to the strategic planning process. Due to the uncertain economic situation of the state, the availability of new funding for programs such as juvenile dependency mediation may be very limited in upcoming budget cycles.

In 1994, Megan G. Orlando, Director of Juvenile Dependency Mediation Services in Los Angeles, founded the California Juvenile Dependency Court Mediation Association (JDCMA). JDCMA coordinates statewide efforts to develop, support, and influence public policies that promote effective and accessible juvenile dependency mediation programs statewide.[7] To help provide guidance to the growing number of programs, Steve Baron, Elizabeth Dunn, Kim Harmon, and Megan G. Orlando, program directors and representatives of JDCMA, developed minimum uniform standards of practice for court-connected juvenile dependency mediation. The Judicial Council adopted these standards in 2001.[8] The standards, which include specific protocols for addressing domestic violence, ensure that all programs maintain strict confidentiality and focus all participants on the safety and best interest of the children and safety of all family members. In addition, the standards promote a mediation environment in which all participants actively work together to develop the most effective plan for the family. JDCMA currently participates in providing ongoing statewide training to juvenile dependency mediators in order to ensure professionalism and compliance with the standards.

The standards of practice, though setting parameters for best practices, allow each court jurisdiction to set up its own procedures and protocol on the issues mediated, on individuals participating, on the duration of the process, and on whether or not the court may order the parties to participate in mediation. Consequently, there are various mediation models in California. The results of this survey highlight some of the different programmatic approaches.

The 2002 JDM Survey Collected Descriptive Program Information From 19 Juvenile Dependency Mediation Programs

As of January 1, 2002, there were 21 juvenile dependency mediation programs in California. The counties with programs are shown in Figure 1. Although all 21 of the program directors or coordinators completed surveys, one program (Lassen) was excluded from the analysis because it had been in

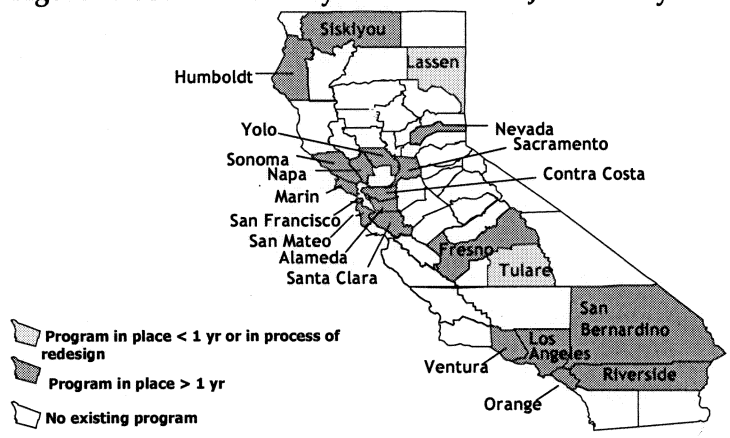
[7] JDCMA Bylaws, § 2.1(a), (April 2000).
[8] Cal. Stds. Jud. Admin., § 24.6.

existence for less than one year. An additional program (Tulare) was dropped because it was in the process of redesign and was not mediating dependency cases at the time of the survey.[9] Accordingly, there are 19 programs for which data are presented in this research update.

Juvenile dependency mediation programs throughout California showed both similarities and differences on the characteristics measured, including:

- Program age
- Program size
- How cases are referred to mediation
- When in the dependency process cases come to mediation
- Who participates in the mediation session
- Mediator tasks
- Format of the mediation session
- Program effectiveness and future challenges

Figure 1. Counties Surveyed for the 2002 JDM Study

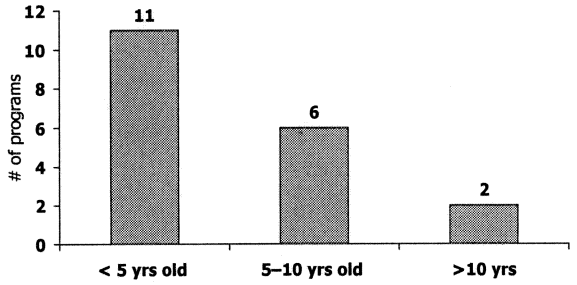


Source: 2002 JDM Survey

Juvenile dependency directors and coordinators were asked to base their answers to questions about mediation practices on their program's "usual"[10] practice within the six months immediately preceding the survey.

More Than Half the Juvenile Dependency Mediation Programs Surveyed Were Less Than Five Years Old

Figure 2. Age of JDM Programs



Source: 2002 JDM Survey

[9] Since January 1, 2002, Kern and Santa Cruz Counties have noted that they are in the process of developing juvenile dependency mediation programs.

[10] "Usual" was defined for respondents in the survey as occurring more than 75 percent of the time.

Caseloads Vary Across Juvenile Dependency Mediation Programs

The number of children served by a juvenile dependency mediation program is not necessarily related to the population size of the county or the number of children who are dependents of the court. The number of children served by dependency mediation services varies from county to county due to factors such as the level of court funding, varying service models, and the support of judicial officers; therefore these numbers are not reflective of the number of families that could be served by juvenile dependency mediation. The 2002 JDM study found that in a usual month

- Ten programs conducted fewer than 10 mediation sessions while six programs conduct between 10 and 30 sessions and three programs conducted more than 40 sessions. The largest program conducted approximately 220 mediation sessions.

- Eight programs held 20 or more mediation sessions.

- Combined, all of the programs served an estimated 900 children.

Juvenile Dependency Mediation Can Be Used to Resolve a Wide Range of Issues

The survey did not ask respondents to identify the specific case issues that caused the court to refer cases to mediation. Experts endorse the following conditions as adequate justification for conducting mediation at any stage of a case: cases in which it is important to enhance, improve, or re-establish relations in order for the case to progress and to prevent the child from experiencing fractured relationships among the various parties (e.g., relationships within the family, parent relationship with caseworker, parent relationship with attorney, or caseworker relationship with attorney); cases in which permanency for the child is on hold because of a conflict; and cases in which the parties indicate that the alternative would be a contested hearing.[11]

Evaluations conducted of juvenile dependency mediation programs have concurred that all dependency-related issues are appropriate for mediation and are capable of being resolved through this process.[12] Some programs, however, have limited the issues that can be discussed in mediation. Issues mediated may include but are not limited to: jurisdiction and petition language, disposition, the child's temporary and permanent placement, visitation arrangements, family conflicts, services for the child (e.g., counseling, medical services, mentoring), services for the family (e.g., counseling, drug or alcohol assessment and treatment, parenting classes), exit orders at dismissal (custody and visitation agreements), and post-adoption contact agreements.

Cases Are Referred to Juvenile Dependency Mediation in a Variety of Ways

- Among programs, cases are most commonly referred to mediation on the court's own motion and at the request of parties or attorneys with a court order (see Table 2).

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[11] Erin Ruff, "Dependency Mediation: Considerations When Referring Cases" (November, 2002) 21 (1) *Child Law Practice* 140–141.

[12] Nancy Thoennes, Ph.D. and Jessica Pearson, Ph.D., *Mediation in Five California Dependency Courts: A Cross-Site Comparison* (Denver: Center for Policy Research, 1995) and Nancy Thoennes, Ph.D., "Dependency Mediation: Help for Families and Courts" (Spring 2000) *Juvenile and Family Court Journal* 13–22.

- Judicial officers, attorneys, and social workers are allowed to request mediation in all jurisdictions. In most jurisdictions, parents (15 programs), caregivers (14 programs), Court Appointed Special Advocates (CASAs) (14 programs), and children (12 programs) may also request mediation (see Figure 3).

- In 15 counties, the court will order mediation over the objection of a party or party's attorney.

Table 2. How Cases Are Referred to JDM

	# of Programs
On the court's own motion	18
At request of parties or atty's with court order	18
At request of parties or atty's without court order	12
By court order—automatically at certain stage	5
At request of nonparties	4

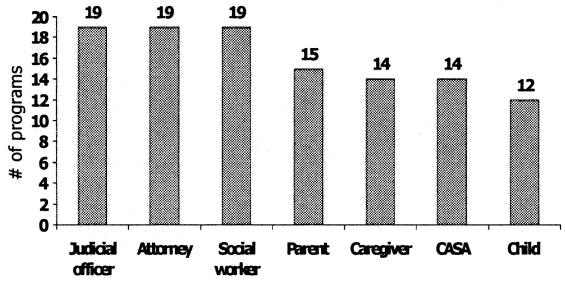
Source: 2002 JDM Survey

Cases Are Referred to Juvenile Dependency Mediation at All Stages of the Dependency Proceedings

Not all courts refer cases at all procedural stages. Table 3 lists the number of programs that reported referrals to mediation at each stage of a dependency case.

All jurisdictions refer cases at the 6-month and 12-month review hearings. Eighteen of the 19 programs mediate cases at jurisdiction, disposition, the 18-month review hearing, and the point of dismissal/exit orders.

Figure 3. Persons Allowed to Request JDM



Source: 2002 JDM Survey

Various People Participate in Juvenile Dependency Mediation Sessions

As Figure 4 illustrates, most programs allow anyone related to the case to participate in the mediation session. All programs allow the parents and social workers to participate, and in 15 counties they are required to participate (latter data not shown in Figure 4).

- In all 19 programs surveyed, parents usually participate in the mediation session. Eighteen programs stated that the social workers usually participate. The child's attorney, parent's attorney, and county counsel usually participate in 14, 12, and 11 programs, respectively. CASAs usually participate in 9 programs.

Table 3. When Programs Refer Cases to JDM

Procedural Stage	# of Programs
Pre-filing	4
Detention hearing	11
Jurisdiction hearing	18
Disposition hearing	18
6-month review hearing	19
12-month review hearing	19
18-month review hearing	18
366.26 hearing (selection and implementation hearing)	15
Post-permanency review hearing	13
Dismissal/exit orders	18
Post-adoption contact agreement	10

Source: 2002 JDM Survey

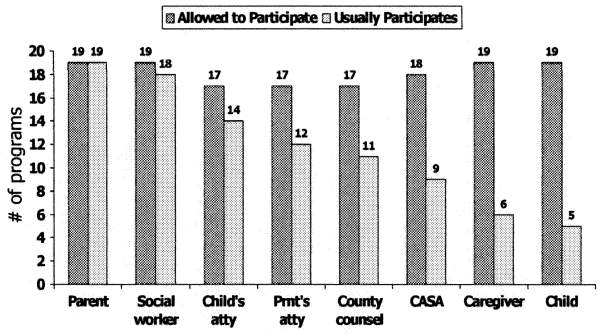
- Children are permitted to be a part of the mediation. However, the protocols listed in the dependency mediation standards affect a minor's inclusion based on factors such as the child's age, the issues to be discussed, and the emotional stability of the child. Only 5 of the 19 programs reported that the children usually participate. Six counties have a minimum age requirement for children to participate. These age requirements range from 5 to 12 years of age.

- Two programs do not allow attorneys to participate in the mediation session.

- Only 3 programs reported that extended family members and parent's significant others usually attend the mediation session (data not shown in Figure 4).

- A few programs noted that the individuals required to participate depend on the case as well as issues being mediated.

Figure 4. Variety of Mediation Participants



Source: 2002 JDM Survey

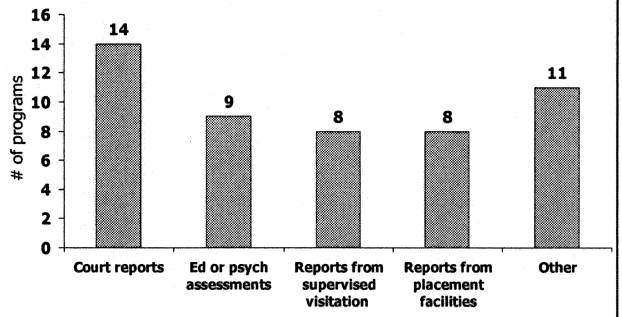
Case Preparation Varies Among Juvenile Dependency Mediation Programs

- Sixteen jurisdictions provide case documents to the mediator before the mediation session.

- Of the 16 programs that receive documents to review, nearly all (15 programs) stated that not all parties must agree on which documents are reviewed.

- Figure 5 illustrates the variety of documents the mediator reviews in different jurisdictions. The most common document the mediator receives from the court is the court report (14 programs).

Figure 5. Documents the Mediator Reviews Before the Mediation Session



N=16 programs
Source: 2002 JDM Survey

Mediating Exit Orders Can Help Families Develop Effective Agreements

Almost all programs (18) reported that the juvenile dependency mediators do mediate exit orders. However, the frequency with which exit orders are mediated differs by program. One respondent, for example, reported that their program always mediates exit orders when there are two actively participating parents who are separated.

Providers suggest that many cases exiting from the dependency system with custody and visitation orders have a high probability of returning for modification through family court. Dependency mediation programs can help families craft agreements to ensure that they are realistic, specific, age appropriate, and enforceable and therefore less problematic for the families to follow.[13]

Juvenile Dependency Mediation Programs Use Different Effective Session Formats

- Six programs use a co-mediator model (in which mediators work in pairs) and 11 programs have one mediator per case. Two programs indicated that they do both, depending on the number of participants/issues.

[13] JDCMA in-service workshop on mediating exit orders, January 2002.

- All but one county indicated that all participants usually meet together for at least part of the mediation.

- Depending on the issues being mediated and the participants in the session, 8 programs reported that they meet with individuals alone (e.g., if they are interviewing a child). Eight programs responded that during a case, mediators sometimes meet with smaller groups (e.g., the professionals may meet with the mediator before the mediator meets with the other parties).

- Nine programs use a combination of formats, choosing the format that will be most effective for each particular case.

- One program has a unique partnership between the court and a nonprofit community mediation center. Cases are co-mediated by trained and experienced volunteers. The program offers a continuum of mediation and conflict resolution services to juveniles and families.

- Another program employs a paraprofessional dependency mediator. This individual is the parent of children who were once dependents of the court. She assists the professional mediators in conducting mediations. She is also a community liaison, making presentations at substance abuse and parenting programs, as well as at group homes for teen mothers.

Juvenile Dependency Mediation Programs Have a Strong Relationship With Family Court Services

- Thirteen juvenile dependency mediation programs are part of the court's Family Court Services (FCS) department, which is typically responsible for providing mediation services in contested custody and visitation (family law) cases.

- Of the 6 programs not part of FCS, 3 of these are independent of FCS but under the same agency umbrella, 2 programs are under the juvenile dependency court, and 1 program is part of the alternative dispute resolution (ADR) unit.

- In 14 programs some mediators mediate both family law and juvenile dependency cases.

Juvenile Dependency Mediation Program Challenges

Anecdotal information suggests that most juvenile dependency mediation programs are successful in helping families resolve a multitude of issues. However, 13 programs reported challenges that might keep their programs from achieving their objectives.

- Among these 13 programs the majority emphasized that lack of funding is a major challenge, including the need for more mediators, additional training and education for staff, improved facilities, competitive salaries for qualified job candidates, and fear of potential budget cuts.

- Four of the 13 programs reported under-use of the mediation service (lack of referrals) as a challenge. Therefore, the support of key players (judicial officers, attorneys, Child Protective Services, etc.) is critical to the growth and success of these programs.

Juvenile Dependency Mediation Programs Have Common Perceptions of Success

Juvenile dependency directors and coordinators interviewed agree that despite differences in their program operations, cases that go through the mediation process in any jurisdiction seem to have similar results, including high rates of agreement on case issues, high rates of relative placement, fewer contested review hearings, and a high rate of parent satisfaction with the court process. An evaluation conducted by the Center for Policy Research in a Colorado jurisdiction in 1999 indicates that, based on conservative estimates of avoided trials, expert witnesses and evaluations, and trial preparation time for social services' attorneys and caseworkers, their juvenile dependency mediation program allowed the judicial district studied to reduce its costs by 13 percent.[14]

The survey contained an open-ended question that asked program directors and coordinators how program effectiveness should be measured and defined. There were many similarities among the performance indicators they proposed including agreement rate (8 programs), client satisfaction (7 programs), increased communication and collaboration among participants (6 programs), outcomes for children (3 programs), and timely case resolution (3 programs).

Future Directions

In California, there has been rapid growth in adopting juvenile dependency mediation, with more than half the programs starting in the last five years. Minimum standards of practice, including minimum training and qualification requirements for mediators, have been developed that serve as a platform for programs to build on. Furthermore, practitioners are committed to the development and expansion of juvenile dependency mediation services. Looking forward to the next five years, experts believe the following points would aid program growth as well as help address some of the challenges programs face.

Promising Practices

Juvenile dependency mediation programs have designed and implemented different and effective mediation models in order to address the needs of the court and parties in specific jurisdictions. The differences in program practice, such as who administers the program, who should attend a mediation session, and staff training needs, are often discussed at JDCMA meetings and statewide trainings. The AOC, in collaboration with JDCMA, should continue to provide information on the range of procedures and protocols, support professional development and training, as well as examine promising practices for juvenile dependency mediation. This information should be centralized and made available to courts that are planning to launch, review, or expand a juvenile dependency mediation program.

Uniform Data Collection

Although some programs may already be collecting data on their cases, this research strongly supports the need for programs to collect consistent quantitative data that can be aggregated to the statewide level. The AOC is working in collaboration with a representative group of juvenile dependency mediation program directors, coordinators, and mediators to develop such a standardized instrument. This data collection effort will provide common baseline demographic and case information on the

[14]Thoennes, p. 21.

clients served, outcomes of mediation, and client satisfaction. Standard definitions of service and service outcomes are necessary for accuracy. A uniform approach will facilitate communication among service providers, court administrators, and decision makers by providing standard definitions of service and measures of service outcomes. Uniform data collection provides programs with a common metric to analyze their mediators' caseloads, and to discuss why those may differ from other courts in the state. Lastly, collecting data will help gauge the extent to which the directors and coordinators are meeting their program goals.

Program Evaluation

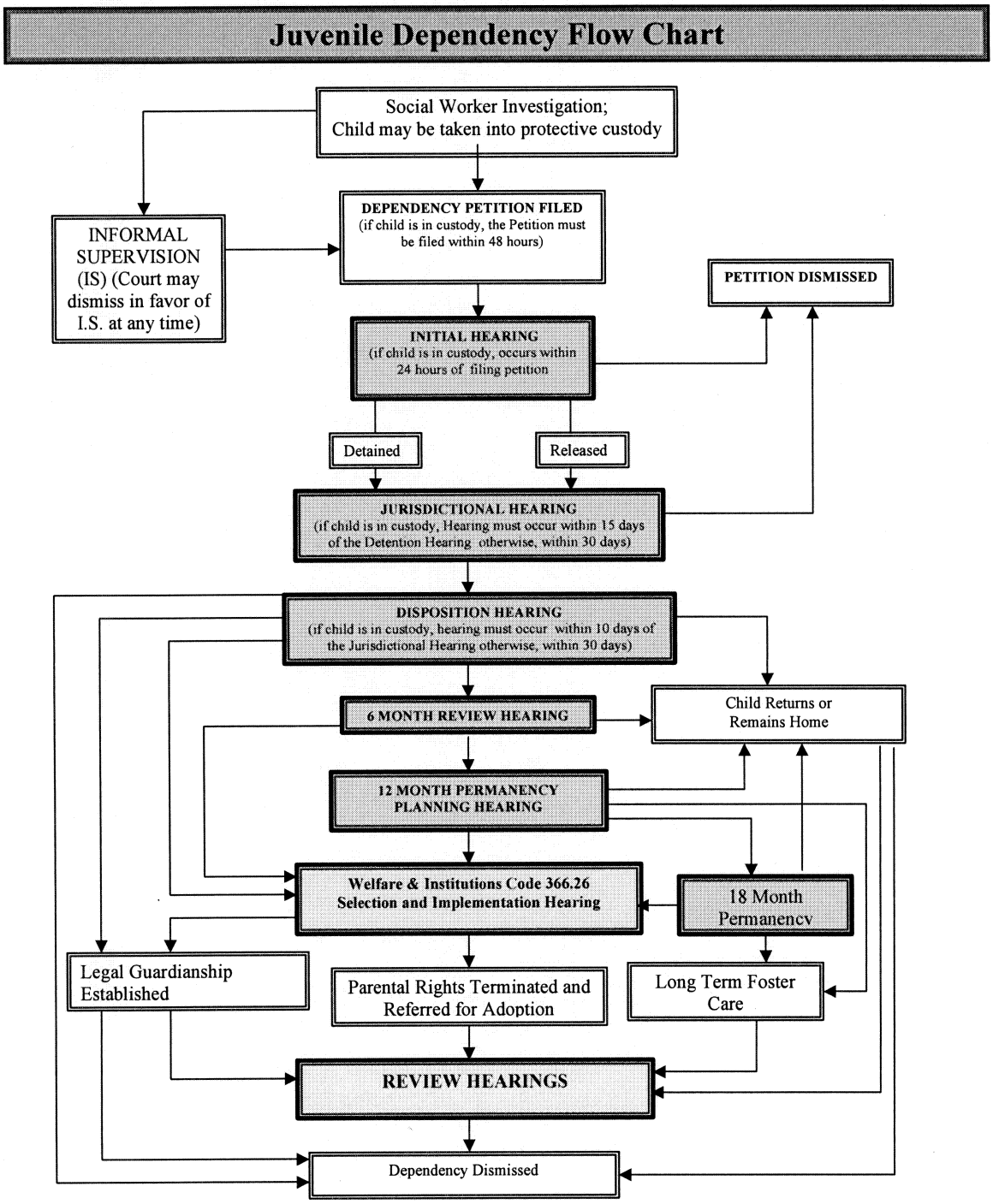
There has been no quantitative statewide evaluation of the service since the Center for Policy Research's evaluation of the pilot programs in 1995. The 2002 JDM survey results yielded information on the array of juvenile dependency service models in California. Given that statewide standards of practice have been developed and the number of programs and service delivery models more than doubled since 1995, a re-evaluation of the programs should be considered. The uniform data collection project will provide baseline data and common measurements for program comparisons. An evaluation would continue to provide evidence of the efficiency and effectiveness of the programs by answering questions such as

- What types of cases are best suited for mediation?
- Do mediated cases come back to court less often for modified court orders than non-mediated cases?
- What are the cost savings for the court?
- What are the timesavings for the court?

However, program evaluations are an extremely costly and resource-intensive undertaking.

These initiatives and the success of these programs require commitment and participation from the AOC, court administrators, court staff, judicial officers, and other agencies involved in the juvenile dependency process. There also needs to be ongoing communication, involving all stakeholders regarding the use of this service in order for the programs to expand, improve, and ensure that they continue to be a valuable service to children, families, and the juvenile dependency community.

Appendix A.


Juvenile Dependency Flow Chart
Social Worker Investigation; Child may be taken into protective custody
INFORMAL SUPERVISION (IS) (Court may dismiss in favor of I.S. at any time)
DEPENDENCY PETITION FILED (if child is in custody, the Petition must be filed within 48 hours)
PETITION DISMISSED
INITIAL HEARING (if child is in custody, occurs within 24 hours of filing petition
Detained
Released
JURISDICTIONAL HEARING (if child is in custody, Hearing must occur within 15 days of the Detention Hearing otherwise, within 30 days)
DISPOSITION HEARING (if child is in custody, hearing must occur within 10 days of the Jurisdictional Hearing otherwise, within 30 days)
6 MONTH REVIEW HEARING
Child Returns or Remains Home
12 MONTH PERMANENCY PLANNING HEARING
Welfare & Institutions Code 366.26 Selection and Implementation Hearing
18 Month Permanency
Legal Guardianship Established
Parental Rights Terminated and Referred for Adoption
Long Term Foster Care
REVIEW HEARINGS
Dependency Dismissed

Acknowledgments

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Thanks are extended to the following people for reviewing drafts of this research update and providing helpful feedback:

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