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Legislative Study: A Framework to Strengthen Massachusetts Community Mediation as a Cost-Effective Public Service

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Legislative Study:

**A Framework to Strengthen
Massachusetts Community Mediation
as a Cost-Effective Public Service**

**Massachusetts Office of Public Collaboration
University of Massachusetts Boston**

November 2011



**Legislative Study: A Framework to Strengthen
Massachusetts Community Mediation as a Cost-Effective Public Service**

Authored by

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University of Massachusetts Boston**

Published November 2011

This report presents a study of community mediation commissioned by the Massachusetts Legislature in July 2011. The study was conducted by the state office of dispute resolution now known as the Massachusetts Office of Public Collaboration at the University of Massachusetts Boston. The office has been serving as a neutral forum and state-level resource for over 20 years. Its mission is to establish programs and build capacity within public entities for enhanced conflict resolution and intergovernmental and cross-sector collaboration in order to save costs and enable effective problem-solving and civic engagement on major public initiatives.

The report is based on a literature review of research publications on community mediation from nationally recognized scholars and on new research conducted through surveys administered by the National Association for Community Mediation and the University of Massachusetts Boston. In addition to describing community mediation and highlighting evidence of its effectiveness, the report outlines the history and current state of community mediation in Massachusetts and offers recommendations for a university-based state funding framework for sustainable community mediation programming in the Commonwealth.

The Massachusetts Office of Public Collaboration would like to acknowledge the efforts of the Community Mediation Coalition of Massachusetts in seeking the study and contributing data to the findings and input on the recommendations. The office would also like to thank the members of the Study Review Committee for their time and valuable feedback on this report.

Study Review Committee

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Community Mediation – a cost-effective public service delivered to citizens in need by community members themselves

An Example of Community Mediation in Action

“Nearly two years ago, my public administration job was threatened when a program participant accused me of a breach of confidentiality. Fortunately, one of the administrative board members suggested mediation.

“It took three intensive meetings before we crafted an agreement which held both our concerns. The process demanded patience and considerable thought, along with an evolving necessity to really listen to fears and concerns of the other.

“Through a series of deliberative communication steps, we became able to see past our own feelings of being threatened – (her confidentiality, my reputation as a worker) and move on to seeing each other as individuals with real issues at stake. The process did not diminish our differences as much as it highlighted our commonalities. What other venue could so skillfully develop such a transition?

“The Commonwealth must ensure the mediation resolution process stays available to all who need it.”

The above letter was written by a mediation participant served by one of the Massachusetts community mediation centers; drawn from Cratsley, J.C. (2000). *Funding court-connected ADR: Helping people resolve conflicts*. Supreme Judicial Court-Trial Court Standing Committee on Dispute Resolution, p. 12.

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Introduction

This report presents a vision and framework for strengthening community mediation throughout Massachusetts. It was commissioned by the State Legislature in Outside Section 180 of the FY 2012 State Budget. The Outside Section defines community mediation as “mediation service programs of a private non-profit or public agency that: (i) use trained community volunteers and serve the public regardless of ability to pay; (ii) promote collaborative community relationships and public awareness; and (iii) provide a dispute resolution forum and alternative to the judicial system at any stage of a conflict.” **The purpose of the study is to assess “the effectiveness of community mediation to broaden public access to dispute resolution.” The report will be used to “inform state-level planning and decision-making to support and build upon existing infrastructure and enable investment in sustainable community mediation programming within the Commonwealth in the coming years” (Outside Section 180; see Attachment I).**

To conduct the study, the Legislature designated the statutory state office of dispute resolution now known as the “Massachusetts Office of Public Collaboration” (MOPC) at the University of Massachusetts Boston.¹ The office’s public mandate is to assist state and local government with the design, development, and operation of dispute resolution programs and to provide effective forums for collaborative problem-solving and community involvement on contentious public issues. MOPC works with public agencies, courts, businesses, non-profits and citizen groups to address complex issues related to economic development, land use, natural resources, housing, transportation, education, public health and other important community objectives. As a university-based entity, MOPC partners with public policy and dispute resolution programs within the University of Massachusetts system and engages faculty and students in research on public initiatives. Although the office has no official oversight of community mediation, for many years MOPC has served as a technical advisor to centers and has deployed community mediation on a number of public projects in order to increase access to mediation resources state-wide and facilitate the provision of services at the local level.

In recent years, the economic downturn has increased demand for community mediation services but instability of funding streams and lack of dedicated operational funding have threatened the continued survival of community mediation centers. In February 2011, 14 community mediation centers in an informal alliance known as the Community Mediation Coalition of Massachusetts (CMCM) reached out to MOPC to explore the possibility of obtaining a state appropriation for operational funding through the University of Massachusetts Boston in order to implement the mission of community mediation. With the support of the University, MOPC and CMCM centers vetted this vision with legislative leaders, and it was determined that an objective system for distributing appropriated funds and evaluating the effectiveness and impact of publicly-sponsored mediation services was needed as criteria for increasing state investment. As a result, this study and the design of a state-of-

¹ MOPC was formerly a state agency within the Executive Office for Administration & Finance charged under G.L. Ch. 7, Section 51. In 2005, the office’s functions and personnel were transferred to the University of Massachusetts Boston through enactment of G. L. Ch. 75, Section 46. From 1999 to 2003, the office led the implementation of [Executive Order #416: Integrating Dispute Resolution into State Government](#). The office was formerly known as the Massachusetts Office of Dispute Resolution. (See Attachment II for current statute.)

the-art performance-based funding framework by MOPC were commissioned in FY 2012 Outside Section 180.

MOPC assigned Associate Director Madhawa Palihapitiya as the study lead and engaged research assistant Kaila Eisenkraft, a graduate student from the University's Conflict Resolution Program. Under the oversight of Executive Director Susan Jeghelian, the study team developed a methodology and work plan and, engaged in the following activities from May through November 2011 to develop the study report:

- a) Conducted an extensive literature review of research studies, academic articles and publications on community mediation from the United States, Canada and the United Kingdom; interviewed select researchers to delve deeper into recent studies.
- b) Researched community mediation models from 16 other states and created criteria for benchmarking effective state-funded systems; selected three successful models and interviewed staff and researchers (Maryland, Oregon and New York).
- c) Reached out to the National Association for Community Mediation (NAFCM) to obtain Massachusetts and national data and coordinate additional data collection using NAFCM indicators; administered two on-line surveys to Massachusetts community mediation centers to assess current status, funding and programming; analyzed NAFCM survey data from 12 Massachusetts centers and MOPC survey data from 14 Massachusetts centers; reviewed survey results with centers.
- d) Collected reports on Massachusetts community mediation activities and funding over the last 30 years; researched potential future community mediation programming, partnerships and funding opportunities, including federal, state and private foundation grant programs.
- e) Prepared summaries of research in detailed appendices; drafted findings and recommendations tracked to illustrative attachments and detailed appendices with full citations and a bibliography.
- f) Established a committee comprised of renowned academics, practitioners, program administrators and policy-makers working locally and nationally to review the robustness of the study; vetted the draft study report with the committee, key university officials and community mediation centers; and finalized the report.

The report is organized into the following sections: *Executive Summary* that can serve as a stand-alone document; *Findings* based on investigation of research on the value of community mediation and the landscape in Massachusetts; *Recommendations* for a Massachusetts state-wide grant program and funding framework grounded in best practices and successful models; *Attachments* illustrating components of the framework; *Appendices* presenting fully-sourced summaries of the research material; and a *Bibliography* containing a complete list of references.

Executive Summary

Mediation is a process in which a trained impartial person helps people in conflict communicate, understand each other, and reach resolution if possible. Mediation is voluntary, confidential, and lets the people in the dispute decide what works best for them. **Community mediation centers** are community-based service programs of a private nonprofit or public agency that provide direct access to free or low-cost mediation services to community members through trained volunteers at any stage of a conflict. Community mediation presents both an alternative to the judicial system as well as an enhancement to an integrated comprehensively-designed justice system.

Community mediation was added to the roster of conflict resolution strategies during the 1970s in response to increasing mobility and urbanization accompanied by a rise in urban conflict, and increasing costs and overloading of the court system. Massachusetts became a pioneer in the community mediation movement with the establishment of the Dorchester Urban Court Program in 1975. Over the last 30 years, community mediation centers in Massachusetts have received referrals from schools, businesses, local governments, courts and private citizens for all types of disputes, including neighbor to neighbor, landlord-tenant, consumer, small claims, criminal and juvenile, divorce and family conflicts. Funding for programs to provide community mediation services to targeted populations has come from a variety of sponsors, including courts, public agencies and private foundations. For example, in the past, centers received regular state contracts for parent-teen mediation programs from the Department of Social Services, for court-connected programs from the Trial Court, and for school peer mediation programs from the Attorney General's Office. These state contracts have been canceled in recent years due to the economic climate and competing priorities. While a few public agencies still provide some programmatic funding for community mediation, the Commonwealth currently provides no operational funding for administrative costs of community mediation centers, and the continued survival of these centers is at risk.

As a result of advocacy by the Community Mediation Coalition of Massachusetts, the Legislature commissioned the Massachusetts Office of Public Collaboration (MOPC) to conduct a study on the effectiveness of community mediation as a public service and to develop a state-of-the-art framework for the administration of state operational funding to community mediation centers (Outside Section 180 of the FY 2012 State Budget). With support from the University, MOPC – the statutory state office of dispute resolution (G. L. Ch. 75, Section 46) – conducted the study and developed the framework for a state-funded community mediation center grant program. The study methodology consisted of extensive review of national and local research studies, academic publications and Massachusetts-based reports; research on other state-funded community mediation models; interviews and consultations with researchers and program administrators; new data collection on the current state of community mediation in Massachusetts coordinated with the National Association for Community Mediation; and meetings with Massachusetts community mediation directors.

Key Themes

The following five key themes emerged from the study research.

Value: Community mediation is a proven conflict resolution and conflict prevention mechanism that increases access to justice for low-income and marginalized populations and builds community capacity, relationships and social capital. Community mediation centers have been the primary training ground for mediators in both private and community sectors and the prime innovators in conflict resolution programs for communities.

Cost-Effectiveness: Community mediation is a cost-effective public service delivered by community volunteers representing a diverse range of backgrounds and professions. State-funded community mediation systems are leveraged investments, generating cost-savings to state agencies, courts, police, schools, and citizens, and leveraging significant resources, cash matches, private contributions and funding from outside sources.

Sustainability: An alignment of community mediation centers, state offices of dispute resolution and state universities, effectively deploys public resources; promotes service learning; enables access to academic researchers; and provides a stable institutional platform for outreach, education, training, research and fundraising to ensure the on-going viability and independence of community mediation and public accountability.

Re-Investment: A state-funded community mediation system for Massachusetts could be built upon existing conflict resolution infrastructure that the state has been investing in for years. Re-investment would save start-up time and start-up costs, leverage existing expertise, resources and pre-established relationships, and support current programming in courts, schools and communities. There is a favorable climate for community mediation in Massachusetts as a result of its 30 year history.

Collaboration: A state-funded university-based framework would institutionalize collaboration among community mediation centers, public agencies and other stakeholders, and through centralization would leverage the benefits of scale to more effectively address operational challenges, increase utilization of community mediation by public agencies and communities, ensure quality, and enhance access to justice for low income citizens.

Summary Findings

The following is a summary of the detailed findings on community mediation effectiveness and Massachusetts needs contained in the body of the report.

- I. **Community mediation increases access to justice, particularly for low-income citizens who are challenged in obtaining legal services and the benefits of judicial process.** Community mediation also promotes social justice and is the largest provider of mediation services to the working poor and economically disadvantaged. Of the total number of persons served in FY 2011 by a representative four Massachusetts community mediation centers, up to 60% were low-income earners. (Finding 1)
- II. **Community mediation is a powerful conflict prevention and cost-saving mechanism available to the state, the courts and local communities.** Community mediation reduces conflict, increases capacity for conflict prevention and civil discourse, and contributes to

social capital formation. Community mediation provides an early, pre-court forum for problem-solving and conflict resolution to prevent conflict escalation and other forms of societal dysfunction, such as bullying and violence. The economic, social and public benefits of community mediation are realized in all sectors of society. Community mediation saves costs to police departments from averted emergency calls on neighborhood and family violence, to school systems from averted truancies and student expulsions, to employers from averted workplace disputes, to courts from averted trials, and to litigants from averted attorney fees. In the 1990s, the cost savings in Massachusetts from free mediation services was calculated at over \$3 million for juvenile cases alone. Also, parties in Massachusetts saved \$4-\$6 million in attorney fees. (Findings 3-5, 10)

- III. Community mediation is a cost-effective dispute resolution service.** Community mediation centers are the backbone of all kinds of mediation services throughout the nation. They have been the primary training ground for mediators in both private and community sectors and have been the prime innovators in conflict resolution programs for communities. Community mediation services are delivered primarily by community volunteers from a wide-range of backgrounds, fields and professions including social workers, educators, college professors, paralegals, business executives, financial advisors, chemists, accountants, non-profit employees, clergy, contractors and therapists. The value of private contributions from volunteer mediators is substantial. These in-kind volunteer contributions have been valued by Massachusetts centers at \$100/hour. (Findings 2, 5 and 6)
- IV. For over 30 years, community mediation centers in Massachusetts have been serving a broad range of stakeholders and resolving thousands of disputes annually.** In Massachusetts, between FY 2009 and FY 2011 a total of 12,866 mediations were conducted by 14 centers at an average resolution rate of 72.3% or 9,302 disputes resolved for that period. This figure breaks down to an average of 930 disputes referred by the court, 837 referred by government agencies, 744 referred by schools, 651 referred by housing authorities, 651 referred by local businesses, and 558 referred by the police that were resolved by these centers. The distribution of referral sources indicates that Massachusetts community mediation is sought-after by numerous stakeholders as a vital public service. (Findings 5, and 8-10)
- V. The need for conflict resolution programming in courts and local communities is higher than ever but there are fewer resources to support these services.** Ten out of 14 Massachusetts centers surveyed (71%) indicated a recession-induced increase in demand for community mediation services in their service areas. Centers have also witnessed increased demands on the courts due to loan and debt defaults, and foreclosure cases, causing delays in the delivery of justice. Alongside increased demand, community mediation center budgets and staffs have been shrinking, impairing their ability to operate and resulting in reduced services, geographic coverage and access to justice. Fewer staff results in fewer volunteers recruited, trained and deployed as mediators by the centers. There are no stable sources of operational funds to cover core administrative functions and costs for these centers. Commitment to providing services on a sliding fee scale based on ability to pay makes reliance on fees-for-services for operational funding

unrealistic. Although centers may appropriate a portion of their funding that supports direct programmatic activities tied to specific sponsored projects in order to temporarily cover basic operating costs, that strategy has failed as a sustainable solution. Project funding is not a reliable source of operating funding and restrictions are typically placed on the use of those funds. Lack of operational funding for core staff and expenses creates instability and disincentive for donor support. (Findings 5, and 11-17)

- VI. The most effective and resilient community mediation systems are supported by state operational funding and administered through centralized state offices.** State funding can support core institutional functions of community mediation centers and encourage diverse investment from non-state funders, including community-level sponsors. State funding and support mechanisms are the predominant source of operating funding for community mediation programs in 16 states across the country. The majority of these states have established dedicated funds to support community mediation with requirements that centers diversify their funding and fulfill eligibility criteria to ensure that funding allocations are made objectively and that grant-funded centers are bound to community mediation values. In addition, successful state models are supported by legislation to increase stability, access to justice and overall quality of the mediation services. In most states where a centralized administrative structure has been established, operational funding for community mediation is administered through state offices of dispute resolution. These offices are reservoirs of best practices, providing centralized grant administration, advocacy, technical assistance, training for staff and volunteers, establishment of metrics, coordination of fundraising, sound fiscal management, responsiveness to communities, standards of practice and community mediation independence. When grant-making is not centralized, regional disparities can emerge, causing instability in the system. Centralizing services in state offices provides more capacity for resolving conflict due to economies of scale and creates a critical mass of experience that improves the resolution of disputes. (Findings 19-27)
- VII. Community mediation is a model public service program within higher education and a unique problem-solving partner for public universities.** Universities are deploying community mediation for experiential and service learning for students. Those housing collaborative governance programs are also drawing on community mediation as a resource for problem-solving on complex public and community-based issues (e.g., University of Oregon and Portland State University). Universities provide vehicles for enhancing public awareness of community mediation. They are well-suited to undertake the systematic collection of evidence to demonstrate successful implementation and impact that is vital for community mediation to reach institutional, professional and community goals. (Findings 18, 25, 28-31)

Summary Recommendations

The following presents a summary of the detailed recommendations for a Massachusetts community mediation framework contained in the body of the report.

- I. The Commonwealth of Massachusetts should promote community mediation as a public service through legislation instituting a state-wide community mediation center grant program.** Enacting legislation would demonstrate commitment to the public service

mission of community mediation, provide a vehicle for implementing that mission in all regions of the state, and establish a framework for state funding and other types of funding to leverage the state's investment. The statute should contain guidelines for the state-wide grant program, including a directive for the broad use of community mediation by public agencies, a commitment to increasing citizen access in each county, and grant guidelines for funding center operations, diversifying funding, and promoting community objectives. (Recommendations 1 and 6; and Attachment III – Proposed Grant Program Statute)

- II. The state-wide grant program should be administered by the Massachusetts Office of Public Collaboration (MOPC) at the University of Massachusetts Boston.** MOPC's statutory mandate as the state office of dispute resolution would safeguard the community mediation mission by ensuring independence and acting as a counterweight against funder pressures that could divert centers from their community service goals. Managing the grant program through MOPC, as opposed to another state agency, would augment MOPC's public functions and avoid creating an additional bureaucracy, as well as capitalize on the office's expertise, collaborative competencies and relationships gained from over 20 years of experience as a leader in the dispute resolution field. It would also provide access to students, researchers, administrative and academic departments within the University of Massachusetts system. MOPC should be provided with sufficient resources to administer and evaluate performance-based grants to centers, ensure quality and responsiveness to community needs, establish a program advisory committee of stakeholders that includes community mediation centers, launch applied and longitudinal research, coordinate fundraising, manage state and non-state funding, and report regularly to the governor, the legislature, the court and other stakeholders. Centralized administration through MOPC would capture economies of scale that the individual centers would not be able to capture on their own. (Recommendations 3, 4 and 6; Attachment II – MOPC Statute; and Attachment III– Proposed Grant Program Statute)
- III. In collaboration with community mediation centers, MOPC should establish performance standards and grant procedures for the program.** MOPC and centers should work together to establish eligibility requirements for funding tied to objective criteria, including requirements for matching operating funds of at least 10%. State-funded grants should have two components: *baseline funding* awarded on compliance with eligibility criteria and demonstration of a proven track-record, and *performance-based funding* awarded for workload and factors such as serving underserved areas. Working with centers, MOPC should institute a monitoring and evaluation system to demonstrate accountability and a system for mediator excellence for continuing

education, reflective practice and recognition of achievements. (Recommendations 7-9; Attachment III – Proposed Program Statute)

- IV. The University of Massachusetts should engage its academic resources to conduct research on the impact of community mediation.** Learning from such research should be used to inform policies and practices locally and nationally. In addition, the University should actively promote community mediation centers as experiential and service learning placements for students and partner with centers to enhance community partnerships and problem-solving on state-wide and community issues, pursuant to its mission as a land grant institution. (Recommendation 10)
- V. State funding for the community mediation center grant program should be appropriated annually through the state budget.** The state-wide grant program should be funded by an annual state appropriation in a separate line item of at least \$1.25 million to ensure successful implementation and impact. Of the state funding, 80% should be for direct operational funding to existing and new centers and 20% for the state-wide grant program administration. Funding should be drawn from areas most benefited by community mediation (e.g., public safety, public health, housing, education, human services, consumer affairs and administration of justice). The return on the state's investment would be five times the amount of the appropriation – \$6 million from cost-savings and resources leveraged. Substantial cost savings would be generated through avoided costs of conflict within courts, public agencies, schools, business and communities, and also from re-investing in existing dispute resolution infrastructure (as opposed to creating a new system from the ground up) and deploying a system of community volunteers (as opposed to paid mediators). Substantial resources would be leveraged through cash matches, private contributions and programmatic funding currently in place that could be scaled up through this recommended framework. (Recommendations 2 and 5; Attachment IV – Proposed Program Budget; and Attachment V – Return on Investment Chart)

Proposed Implementation Steps and Timeline

Step 1: FY 2013 State Budget: The state-wide community mediation center grant program is established through the FY 2013 budget. The enabling legislation is adopted through an outside section tied to a separate line item in the budget.

Step 2: FY 2013 Quarters 1 & 2: The University of Massachusetts Boston and MOPC appoint a program advisory committee, develop program procedures with centers, launch grant making, screen grant applications, select grant recipients and set up contracts with centers for operational funding.

Step 3: FY 2013 Quarters 3 & 4: MOPC and state-funded centers install case management software, institute performance-based evaluation, and launch the design of a system for

mediator excellence. MOPC engages stakeholders and researchers in outreach, education, program development and fundraising, reports on program performance to the governor, the legislature and the court, and submits a funding request for the community mediation grant program for FY 2014.

Findings on Community Mediation Effectiveness and Massachusetts Needs

The findings below are based on a thorough investigation of community mediation research and practice in the United States. These findings cover designated areas for the study commissioned by the Legislature in FY 2012 State Budget Outside Section 180. Detailed, fully-sourced summaries of academic publications and historical reports studied, state models researched, and Massachusetts survey data analyses, are available in the appendices. Citations to relevant appendices accompany each finding. The bibliography section contains the complete list of references.

Findings on Value and Effectiveness

1. **Community mediation increases access to justice, particularly for low-income citizens who are challenged in obtaining legal services and the benefits of judicial process.** Community mediation also promotes social justice (Weinstein, 2001). Community mediation is the largest provider of mediation services to the working poor and economically disadvantaged (Weinstein, 2001). Of the total number of persons served in FY 2011 by a representative four Massachusetts community mediation centers,² between 20% and 60% were low-income³ earners. One center providing services under a housing assistance program indicated that approximately 85% of the tenant households participating in summary process mediation were at or below the federal poverty level. A recent survey of mediation participants in a state-sponsored child access and visitation program⁴ indicated that they chose mediation for the following reasons: better option than going to court (41%); a free service (25%); locally accessible (15%); and easily accessible (11%). (See Appendices A, C, E and J)
2. **Community mediation centers are the backbone of a broad range of mediation services** throughout the nation (Wilkinson, 2001). “They have been the primary training ground for mediators in both private and community sectors and have been the prime innovators in conflict resolution programs for communities” (Wilkinson, 2001, p. 3). (See Appendices B and D)
3. **Community mediation is a powerful conflict prevention mechanism** available to the state, courts and local communities. Community mediation provides an early, pre-court forum for problem-solving and conflict resolution so that conflicts are less likely to escalate and cause other forms of societal dysfunction, such as bullying and violence

² Data provided to the Massachusetts Bar Foundation.

³ Poverty calculated using 2010 HHS Poverty Guidelines.

⁴ The program in question is the Parent Mediation Program administered by the Massachusetts Office of Public Collaboration through five community mediation centers since 2008 with funding from the Department of Revenue.

(Bradley & Smith, Summer 2000). Community mediation can help maximize efforts at problem-solving, early intervention and non-court related conflict resolution to help reduce the number of cases reaching a formal judicial process and also address the many conflicts that do not involve the judicial system (Wilkinson, 2001). Non-court related mediation programs present the best way to provide early intervention and conflict prevention services through community-based referral sources. Non-court related ADR services have been found to be cost-effective and can help ‘avoid end-of-the-pipeline solutions like the courts’ (Wilkinson, 2001). Twenty percent of the parents receiving access and visitation mediation services from five community mediation centers in Massachusetts indicated in a recent survey that community mediation had reduced their involvement with the court. (See Appendices C, D and E)

- 4. Community mediation is an effective cost-saving mechanism that reduces community conflicts, increases community capacity for conflict resolution and contributes to social capital formation.**⁵ A 2005 Maryland study found that mediation saved significant time and costs from police calls responding to neighborhood conflicts. The savings to the Baltimore police department was between \$24.38 and \$193.35 per response at a total financial saving between \$1,649.27 and \$208.00 per mediated case during a six-month period (Charkoudian, 2005). An evaluation in Ohio found that truancy-prevention mediation program increased pupil attendance and decreased tardiness, resulting in an average cost savings of \$1,889 per participating school (Hart, Shelestak & Horwood, 2003). Schools also managed to save between \$231 and \$431 for each student suspension or expulsion through the successful use of student peer mediations (Hart et al., 2003). Findings also indicate that state agencies save at least \$1,250 in agency time and resources per workplace conflict resolved using mediation (Ohio Mediation Association). A 2004 evaluation in five California counties estimated savings from cases that settled in mediation in 2000 and 2001 to be \$49,409,385 in litigant costs and \$250,229 in attorney hours. The total potential cost savings from reduced numbers of court events and/or hours was approximately \$1.4 million in San Diego, \$400,000 in Los Angeles and \$9,700 in Sonoma County (Anderson & Pi, 2004). In a 2001 study of the impact of mediation on litigant costs, court costs, and satisfaction with the judicial process in the Appellate Court of California, an estimated savings of \$76,298 in attorney costs for cases settled in mediation and overall savings from all mediated cases estimated at \$6,231,358 were found. A 2001 study by the Oregon Department of Justice (ODOJ) found that “the cost of resolving a case by taking it through a trial to a verdict was \$60,557 and that mediation costs-savings amounted to \$51,020 per case (State of Oregon Department of Justice, 2001). In another study on mandated mediation for non-family civil disputes in two courts in Ottawa and Toronto, cost savings to parties from mediation was estimated by their lawyers to be more than \$10,000 in 38% of cases, and less than \$5,000 in 34% of cases and between \$5,000 and \$10,000 in 28% of cases (Hann & Baar, 2001). Based on available published data, the cost savings in Massachusetts from free mediation services were calculated at over \$3 million in 1991 for juvenile cases alone.

⁵ “Social capital” refers to the value of social networks, that is, to the benefits that accrue from social contacts among individuals and groups (Putnam, 2000). Appendix C presents the research regarding community mediation’s role in the formation of social capital.

Parties saved \$4 million in attorney fees in fiscal year 1997 and in fiscal year 1996, \$6 million of attorney time was saved. (See Appendix C)

- 5. The impacts of community mediation services are realized in all sectors of society.** Research shows that, nationally, community mediation centers intervene in 37 different kinds of disputes, including conflicts between merchants and consumers, as well as disputes within families, in schools and in workplaces. Others areas of mediated interventions include court-connected small claims cases, parent-child conflicts, victim-offender restorative justice efforts, minor criminal behavior, citizen police complaints, gang interactions, domestic violence, custody and divorce issues, cross-cultural disputes, discrimination problems, policy debates, environmental controversies, multi-party disputes, special education issues, truancy, inter-business conflict, agricultural issues, and so on. In Massachusetts, a total of 12,866 mediations in these areas were conducted by 14 centers between FY 2009 and FY 2011 at an average resolution rate of 72.3% or 9,302 disputes resolved. These resolutions, apportioned across referral sources, break down to an average of 930 disputes referred by the court, 837 disputes referred by government agencies, 744 disputes referred by schools, 651 disputes referred by housing authorities, 651 disputes referred by local businesses, and 558 disputes referred by the police that were resolved by these centers. (See Appendices C, D, E and J)
- 6. Community mediation is a cost-effective community service delivered by volunteer mediators broadly representative of a wide variety of fields and professions.** There is no shortage of capable volunteers prepared to do this work (Bruer, P., August 17, 2011, personal communication). They are amply rewarded by the opportunity and experience it provides them (Bruer, P., August 17, 2011, personal communication). In the complex and rapidly evolving field of alternative dispute resolution (ADR), volunteers appreciate the opportunity to develop their capacities over the long term (Bruer, P., August 17, 2011, personal communication). And, as a consequence, community mediation can claim to have the services of some of the country's most diverse group of community members with experience in different fields and professions serving as mediators at no cost to the state. The community mediation centers surveyed in this study indicated that their volunteer mediators were from a wide variety of professional backgrounds, such as lawyers, social workers, educators – including college professors, paralegals, business executives, financial advisors, chemists, accountants, non-profit employees, clergy, contractors and therapists. The value of the contribution made by volunteer mediators varies by region, time period, and type of dispute. For example, Michigan determined that volunteer mediator time was worth more than \$50/hour in 2004 (Office of Dispute Resolution). In Ohio, volunteer mediator hours were valued at \$60/hour in 2011 (Dayton Mediation Center, October 5, 2011). Two Massachusetts centers that estimate the value of volunteer mediator services for annual financial reviews by external accountants, both use the value of \$100 per hour. (See Appendices C, E and G)
- 7. Ensuring quality control is a key goal for community mediation,** mainly because of typical concern surrounding the use of volunteers. Identifying necessary qualifications for mediators is a priority (McGillis, 1997). Standards exist for court-connected ADR, such as Rule 8 of the Massachusetts Supreme Judicial Court Uniform Rules on Dispute Resolution.

The training requirements and qualifications for community mediation may vary widely from state to state and/or center to center. Controversy remains over performance-based qualifications versus credentials-based qualifications (McGillis, 1997). Performance-based qualifications were recommended by the Association for Conflict Resolution (formerly SPIDR), established in San Diego, and in Maryland (MACRO). (See Appendix F)

- 8. Massachusetts has a rich history of community mediation.** During the 1980s, Massachusetts provided a favorable climate for mediation services in general. By the late 1980s, G. L. Ch. 233, Section 23C was enacted to define the role and the necessary qualifications of mediators and to provide for the confidentiality of the mediation process (Hoffman & Matz, 1994). Mediation services were offered by certain government entities: e.g., Massachusetts Mediation Service – piloted in 1985 and given agency status in 1990 as the state office of dispute resolution – offered services and training in negotiation, mediation, and facilitation to the three branches of government and to private organizations involved in public policy disputes; the Office of the Attorney General established the Face-to-Face mediation program in 1984 to deal with consumer conflicts; the Department of Social Services provided funding for parent-teen mediation programs; and in-court mediation was offered by the Probate and Family Court and the Housing Court (Dukakis, 1986). University-connected mediation programs were set up at the University of Massachusetts Amherst and at Harvard by 1981, and proved instrumental in extending mediation services to the Commonwealth’s western regions and mediating small claims cases, respectively (Davis, 1986). With the help of the University of Massachusetts Amherst, a third mediation program was instituted at the University of Massachusetts Boston in 1983. In 1988, community mediation was officially recognized in G. L. Ch. 218, Section 43E with the creation of a District Court Community Mediation Advisory Committee as well as a position for a director of mediation (Supreme Judicial Court, February 2, 1998). At present, the Community Mediation Coalition of Massachusetts has 14 member centers, many of whom have been in continuous operation for over two decades. (See Appendix B)
- 9. Massachusetts community mediation centers serve a multitude of stakeholders.** The wide distribution of referral sources is an indicator that Massachusetts community mediation is an actively sought-after community-based public service. The survey data collected for this study indicates that the two largest referral sources to community mediation in Massachusetts are citizen self-referrals (10%) and court referrals (10%). The next highest percentage of cases (9%) is referred by government agencies. Another 9% of referrals are from legal representatives, followed by schools or educational institutions (8%). Among the other significant sources of referral are local businesses (7%) and housing authorities (7%). The police also refer disputes to community mediation (6%). ADR networks, local non-profits and legal service organizations (6% each) refer disputes to community mediation centers. Massachusetts community mediation centers surveyed receive referrals from business bureaus or chambers of commerce (5%), the probation department (5%), religious organizations (3%), and legal or bar associations (2%) and the prosecutor’s office (2%). (See Appendices D, E and J)
- 10. Massachusetts community mediation is an efficient, cost-effective dispute resolution system.** Survey data indicate that Massachusetts community mediation centers received

28,050 requests for services in Fiscal Years 2009 to 2011 at an average of 1,905 per center. In the same period, those 14 centers mediated 12,866 disputes at an average of 990 mediations per center and a range of 930 to 2,051. Out of all the cases that are referred for mediation, the number mediated is determined by screening for appropriateness of the issues and the capacity and willingness of the parties to participate in the process. Mediation rates fluctuate accordingly. About 46% of referred cases were mediated in Massachusetts during FY 2009-2011 while the mediation rates in New York in FY 2006-2007 (19,674 cases mediated out of 35,509 cases referred) and in Maryland in FY 2008 (8,482 cases mediated out of 16,585 referred) were approximately 55% and 51%, respectively. The average resolution rate of 72.3% means that an average of 9,302 disputes was resolved in this period. Judging by the stakeholders referring disputes to community mediation as a percentage of the workload of the 14 centers, an average of 930 disputes referred by the court was resolved by them in FY 2009, FY 2010 and FY 2011. It also means that an average of 837 disputes referred by government agencies, 744 disputes referred by schools, 651 disputes referred by housing authorities, 651 disputes referred by local businesses, and 558 disputes referred by the police were also resolved by these centers. (See Appendices E and F)

Findings on Needs in Massachusetts

- 11. The need for conflict resolution programming in local communities is higher than ever but there are fewer resources to support critically important community mediation services.** Many communities are affected by the recession. People are unemployed, homeless and in debt. There is much anger, frustration, and therefore conflict. Many have never been unemployed before, and they are frustrated and angry. Ten out of 14 centers surveyed (71%) experienced a recession-induced increase in demand for community mediation services in their local communities. Centers have also witnessed increased demands on the courts due to loan and debt defaults, and foreclosure cases, causing delays in the delivery of justice. Significant increases in demands were observed in divorce and parenting plan mediation in particular. Centers report that they are too understaffed to handle these increased requests. (See Appendix E)
- 12. Providing mediation to low-income citizens on a sliding fee scale makes it unrealistic to expect centers to raise sufficient revenue from fees to sustain their operations.** It is not a practical reality that community members will pay for community mediation services the way they pay for other services (Bruer, P., August 17, 2011, personal communication). Community mediation's commitment to public service without regard to payment ability means that clients will be a poor source of revenue (Baron, 2004). Providing mediation either free or on a sliding fee scale makes it impossible for community mediation centers to raise required amounts of funding to sustain their operations on a fee for service basis. (See Appendices E and H)
- 13. During the last three years of the state's economic crisis, Massachusetts community mediation center budgets have been shrinking.** Nine out of 11 Massachusetts community mediation centers providing data about their budgets to the National Association for Community Mediation (NAFCM) indicated a 1% to 74% reduction in biennial budget size. This includes five centers that experienced a 25% to 49% reduction in biennial budget size, two centers that experienced a 50% to 74% reduction in biennial

budget size and two centers that experienced a 1% to 24% reduction in biennial budget size. (See Appendix E)

- 14. Massachusetts' community mediation budget size shrinkage has a direct impact on center operating capacities.** Although centers may appropriate a portion of the programmatic funding to temporarily cover basic operating costs, that strategy is not sustainable. Project funding is not a reliable source of operating funding and often comes with restrictions. Many funders, particularly private foundations, prefer to fund programmatic activities as opposed to operating costs of community mediation centers. Programmatic funding can help maintain direct services but in order to pay for operating costs, centers have to look for more projects. This is a vicious cycle. A key symptom of this vicious cycle is a high percentage of time dedicated to fundraising. (See Appendix E)
- 15. Massachusetts community mediation center staff size is shrinking.** Eight out of 14 centers indicated a decrease in staff size that is between 1% and 99% within the past three years. This includes four centers whose staff was reduced between 1% and 24%, two centers whose staff was reduced between 25% and 49%, one center whose staff was reduced between 50 and 74% and one center whose staff was reduced between 75% and 99%. Others have reported a 50-75% reduction in case management time and a 50-99% decrease in outreach activities since state funding was discontinued in 2008. Community mediation centers find it difficult to retain existing staff due to the lack of operational funding. Without long-term operational funding, centers are experiencing significant staff turnover. Centers cannot attract new qualified, talented, committed staff to fill vacancies because of the low pay scale and benefits they currently offer. Decreasing staff size places an additional burden on existing staff and/or volunteers. Maintaining mediator excellence and quality of mediation services has become a challenge (Bradley & Smith, 2000). Understaffing has resulted in fewer direct services delivered by volunteer mediators who are recruited, trained and overseen by staff. This, in turn, has diminished geographic coverage and reduced citizen access to justice. Without long-term operating funding, centers are relying on short-term project funding to deliver long-term community services. Without a full-time staff, community mediation centers are unable to coordinate the volunteer services necessary to deliver much-needed conflict resolution assistance to the court and local communities. Revenue traditionally generated from training has also been affected due to the lack of staffing and because few community members can pay for such training. (See Appendix E)
- 16. The majority of Massachusetts community mediation centers spend between 11% and 35% of their time engaged in fundraising activities.** Some centers may spend up to 50% or more of their time on fundraising merely to continue operations without increasing actual revenue to deliver more services. Considering the fact that the 14 centers handled an average of 9,350 disputes and mediated an average of 4,288 disputes annually, spending 35% of their time on fundraising would constitute an opportunity cost of 3,275 missed case intakes and 1,500 missed mediations annually. (See Appendix E)
- 17. Massachusetts community mediation centers need core operating funds for operating/administrative expenses** despite the savings achieved through the use of trained volunteers. These include paying core staff for training, managing cases,

supervising volunteers, negotiating contracts and raising funds. Community mediation centers also have overhead costs such as office space, furniture, utilities, computers, telephones and supplies. (Baron, 2004). Without operating funding, community mediation centers are unable to maintain a presence in the local community, serve the court or pay for basic amenities and core staff costs. Lack of operational funding can create instability and a strong disincentive for a variety of donors to support community mediation due to uncertainty over center viability. (See Appendix E)

- 18. Heightened public and institutional awareness is needed to increase utilization of community mediation in resolving disputes.** At the same time, due to funding limitations, community mediation centers in Massachusetts are unable to perform the required amounts of community education and outreach to the judiciary, local governments and others. Centralized coordination of community mediation through state universities provides a state-wide platform for increased visibility and deployment of community mediation. (See Appendices E and I)

Findings on Lessons from Other States

- 19. There is no reliable substitute for state funding for community mediation.** State funding can support core institutional functions of community mediation centers and encourage diverse investment in community mediation from non-state funders, including community-level sponsors. State funding can sustain existing centers, help seed new centers in currently unserved or underserved communities, provide operating funds that will enable mediation centers to spend less time on fundraising and more time delivering services on important community issues, support core staff to manage volunteer pools, serve the local courts better and leverage additional diverse funding streams (Bellard & Galindo, 2006). With state funding, community mediation can expand its services to more complex cases that often require extensive case management as well as party interviews and preparation. State funding or support mechanisms are the predominant source of operating funding for community mediation programs in 16 states: California, Florida, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, Nebraska, New York, North Carolina, Oklahoma, Oregon, Tennessee, Texas, and Washington (Bellard & Galindo, 2006). During the current fiscal year, New York provided approximately \$5.2 million to 23 community mediation centers; Maryland appropriated close to \$1 million to support 14 centers and for grant administration; and Oregon provided about \$1.4 million to 17 centers and a public policy dispute resolution program in its biennial budget. (See Appendices D and F)

- 20. States have appropriated funds for community mediation center grants and have established dispute resolution funds.** At present, Oregon funds the operations of 17 community mediation centers and a public policy dispute resolution office with an appropriation of \$1.4 million in a separate line item of the state budget. Maryland funds the operation of 14 community mediation centers and a central public dispute resolution office with an annual appropriation of close to \$1 million. New York currently funds 23 centers and three community-based programs with an annual appropriation of approximately \$5.2 million. States like California, Illinois, Michigan, Nebraska and Florida have raised funds from civil filing fees for court-connected community mediation centers. Prior to 2003 and a state funding earmark, 50% of the dispute resolution filing fee

surcharges from each county in Oregon went to supporting community mediation in that county. However, Oregon's rural counties had lower filing fees, and as a result there were significant regional disparities in funding for community mediation programs. From 2003 to the present, Oregon has been funding community mediation from the state general fund through the higher education budget. The state of Nebraska uses a unique formula for funding, combining state appropriations with revenue from a designated cash fund that is funded by court filing fees. In Nebraska, funds from the civil filing fees are distributed equally among all community mediation centers by way of the cash fund. Oklahoma's Dispute Resolution System Revolving Fund is another example of a combined funding mechanism. The state fund is financed through a \$2 surcharge for every civil filing fee and a \$5 fee from each party seeking mediation directly without filing a court action, and supplemented by a legislative appropriation. The Virginia General Assembly and the Department of Motor Vehicles created a "Peace" license plate for Virginia's citizens interested in promoting peace and community peace-building. The initiative was driven by the Virginia Association for Community Conflict Resolution. Each Peace plate generates \$15 for community mediation centers in Virginia. (See Appendix F)

21. Successful state models require community mediation centers to diversify their funding.

These models require community mediation centers to develop a wider array of funding partnerships. Community mediation centers in these states raise matching funds for 10% to 100% of the state funding. Research demonstrates that diversified funding "result[s] in a healthy independence or healthy interdependence of various organizations, including the courts" (Kent, 2005). Thirteen of the 14 centers (93%) surveyed for this study indicated that long-term state operating funding could be used to leverage other forms of funding. This augurs well for long-term sustainability of Massachusetts community mediation. (See Appendices E and G)

22. Successful state models have eligibility criteria for community mediation centers to qualify for state funding.

These models typically require state-funded community mediation centers to be non-profits with volunteer mediators and a board of directors who are from the local community and who represent community diversity. Centers are required to provide free or low-cost mediation services as well as community education and public awareness to promote mediation. Eligibility criteria for funding community mediation are based on the core values and characteristics of community mediation. These eligibility criteria ensure that funding allocations are made to the appropriate centers and help bind those centers to the core values of community mediation. (See Appendices G and H)

23. Successful state models are supported by legislation prescribing the use, guidelines, standardization and resourcing of community mediation.

Appropriate legislation can increase stability, access to justice and overall quality of the mediation services delivered by community mediation centers. In their legislation, other states have focused on increasing citizen access to community mediation, establishing operating funding to community dispute resolution, establishing and/or funding a mandated state-wide dispute resolution office to administer the funds, employing eligibility criteria for funding, setting up guidelines for program administration and evaluation of performance, creating new centers in unserved areas, encouraging diversification of funding including a cash

match for state funds, promoting standards of practice criteria and guidelines for all three branches of government on the utilization of community mediation at the local, regional and state levels. A few examples include Oregon's [ORS Chapter 36 Mediation and Arbitration \(2009 Edition\)](#) and [OAR Chapter 571, Division 100-Rules Governing the Community Dispute Resolution Program](#), [Michigan Community Dispute Resolution Act 260 of 1988](#), [Minnesota Statute 494: the Community Dispute Resolution Act](#), New York's [Community Dispute Resolution Centers Program](#) established in 1981, [California's Dispute Resolution Programs Act](#) (DRPA) of 1986 and the [Nebraska Dispute Resolution Act](#) of 1991. Research indicates that without a statewide mandate, community mediation centers may only serve areas with high population density or where there is institutional support and that the amount and quality of services that centers provide may vary (Bellard & Galindo, 2006). (See Appendix F)

- 24. Undue reliance upon a single referral source and/or funder may divert community mediation's attention away from community needs.** Concepts of neutrality, autonomy and self-determination are critical concepts in mediation. However, the source of funding and the nature of the funding distribution system may create dependency on single funders for struggling community mediation centers. The majority of the states that provide funding for community mediation use the judicial system in some form to deliver that funding. Over the past 20 years, community mediation centers throughout the nation have become increasingly associated with the courts. Courts have provided funding and steady streams of case referrals for community mediation for decades. Courts have also been the training ground for trainee mediators. Community ADR mechanisms have in turn helped the courts alleviate court congestion, reduce costs, and increase resolutions (Hedeen & Coy, 2000). However, the dependence on the favor and support of the court for funding and the loss of community focus are significant pitfalls for court-community alternative dispute resolution partnerships (Hedeen & Coy, 2000). Even when the court provides funding to community mediation, court-referred mediation does not cover the full cost to community mediation centers of providing such services (Wilkinson, 2001). The association with the courts can also limit the ability of community mediation centers to provide early intervention and prevention programs (Wilkinson, 2001). Court administrative requirements and regulations may limit the capacity of centers to develop their non-court related mediation services (Wilkinson, 2001). Successful community mediation models in Maryland, Oregon and New York, for example, use an intermediary to administer the funding. (See Appendices F, G and H)
- 25. Systematic collection of evidence of successful implementation and impact of community mediation is vital** for community mediation to reach institutional, professional and community goals. Systematic collection of data, evaluation and reporting are undertaken by successful community mediation models in other states for accountability and learning purposes. Some programs have invested in integrated case management software and established collaborations to collect and analyze data in terms of success indicators. Maryland has instituted a Mediation and Dispute Tracking software platform for tracking mediation case management activity, recording information about clients and staff and tracking case progress, to sending letters and invoices, charging fees, tracking payments, and producing an abundance of case, mediation statistics, and staff

time reports. Maryland has also implemented a Performance-Based Evaluation (PBE) system for community mediator excellence. (See Appendices C, D and G)

26. State offices for dispute resolution operate successful models of community dispute resolution in a number of states. State dispute resolution offices serve as “catalysts for change” by allowing court ADR programs to venture outside the courthouse and into the community (Wohl, 2001). State offices for dispute resolution can work as centralized funding organizations where community mediation centers can work together to increase visibility (Wilkinson, 2001). In several examples, state offices have functioned as a community of practice mechanism promoting research and learning. These offices can perform centralized grant administration, coordinate advocacy for community dispute resolution in the state, provide technical assistance to centers, and ensure sound fiscal management, community responsiveness and standards of practice (Bellard & Galindo, 2006). By performing these functions, state offices of dispute resolution have helped diversify community mediation funding and increased financial independence of community mediation. “Centralizing dispute resolution services in the form of a state program provides more capacity for resolving conflict due to economies of scale and creates a critical mass of experience that improves the resolution of disputes” (Purdy, 1998). Successful examples include the Maryland Mediation and Conflict Resolution Office (MACRO), Oregon Office for Community Dispute Resolution at the University of Oregon, New York’s Office of Alternative Dispute Resolution and the Nebraska Office of Dispute Resolution (ODR). When grant-making is not centralized, regional disparities can emerge, causing instability to the system. State office of dispute resolution are reservoirs of best practices and incubators for innovation and “should be viewed by all branches of government as important partners in collaborative problem-solving and democratic governance” (Purdy, 1998). (See Appendices F and G)

27. Collaboration around funding, manpower, initiative, and creativity has led to successful models of community mediation, enabling the community mediation centers, the courts and the state to maintain their separate identities and goals while working collaboratively (Kent, 2005). State offices of dispute resolution have acted as the catalyst for these collaborations. The Maryland Mediation and Conflict Resolution Office (MACRO), the Oregon Office for Community Dispute Resolution (OOCDR) at the University of Oregon and New York’s Community Dispute Resolution Centers Program (CDRCP) are examples of state offices/programs that promote stakeholder collaborations around community mediation. These offices and programs collaborate with a wide variety of stakeholders at the federal, state and community level to promote, sustain and develop community mediation as a state-wide resource. (See Appendices F and G)

Community Mediation and Higher Education

28. Public universities and community mediation centers are ideal problem-solving partners. A Kellogg Commission Report states: “[t]he obstinate problems of today and tomorrow in our nation and world—poverty, family and community breakdown, restricted access to health care, hunger, overpopulation, global warming and other assaults on the natural environment—must be addressed by our universities if society is to have any chance at all of solving them” (Kellogg Commission, 2000, p. 20). Universities

and community mediation address human/social problems at intersecting societal levels. An example is the foreclosure crisis, which universities, including the University of Massachusetts, help address through policy and research while some community mediation centers use mediation for foreclosure prevention through loan modification, etc. In times of economic hardship, partnerships between problem-solvers are vital for greater social impact and optimization of limited resources. Higher education scholars have long contended that research and scholarship alone will not secure the future of higher education—that it must also be complemented by direct engagement with community issues. Community problem-solving, civic engagement and community justice are but a few of the opportunities available through these partnerships. (See Appendix I).

29. Community mediation can be a model public service program within higher education.

The beginnings of the University of Massachusetts system lie in the land grant acts or Morrill Acts of 1862 and 1890, which stress the importance of public service in higher education. As noted above, the first university-connected mediation programs in Massachusetts were set up at the University of Massachusetts Amherst and at Harvard in 1981 and at the University of Massachusetts Boston in 1983 (Davis, 1986). The Johns Hopkins University and the University of Oregon are recent examples of university-based mediation services in other states. The Oregon Office for Community Dispute Resolution (OOCDR), housed at the University of Oregon’s School of Law, and Oregon Consensus – a public policy dispute resolution program – are funded by the State of Oregon’s general appropriations at around \$1.4 million as a separate line item under the University of Oregon. OOCDR administers 76% of the funds to 17 community mediation centers in 25 counties in Oregon and invests 4% of the funds on capacity building such as continuing education for mediators, and the rest of the funds on administrative costs, e.g., providing program administration, training, technical assistance and collaborative services to community mediation centers in Oregon. It also supports University of Oregon’s academic and public service mission by providing experiential learning opportunities for graduate students in research and in internships with community mediation centers to address community issues, help new centers and provide a variety of services at the centers. At Brown University, the [Brown University Mediation Project](#) provides free mediation to the campus community in partnership with the Community Mediation Center of Rhode Island. Universities like Creighton University ([ADR Hub](#)) and the University of Virginia Institute for Environmental Negotiation engage in community mediation networking and research. (See Appendices B, F, G and I)

30. Teaching and research are core university functions that can contribute to, as well as greatly benefit from, a partnership with community mediation.

Gaps in knowledge about the effectiveness and impact of community mediation in a number of contexts along a variety of measures are waiting to be bridged. The challenges posed by crises like foreclosure demonstrate a need for research-based approaches to the deployment of dispute resolution. State dispute resolution offices, with support from public universities, have undertaken research into the dispute resolution field in the past. Maryland’s Mediation and Conflict Resolution Office (MACRO) conducted a study to develop benchmarks that businesses could use to evaluate their dispute resolution procedures (MACRO, 2004) and conducted a study on the effect of mediation on workers’ compensation cases (Mandell & Marshall, 2002). The University of Massachusetts Boston

is a public research university with graduate degree programs in conflict resolution and related centers. (See Appendix I)

- 31. Universities offer a platform for promoting broader utilization of community mediation** through awareness-raising and advocacy on appropriate use and potential benefits of community mediation. Using their neutral position, universities can help organize community mediation into a unified dispute resolution system that is strategically deployed to address a wide range of issues like inter-personal conflict, public policy conflict and civic engagement. Community mediation infrastructure administered through the university can be more accessible for a wide range of users who may have narrowly perceived community mediation services as being aligned with one branch of government, for example, the judiciary. The university can also become the venue for organizing events to promote community mediation. For example, the university can organize an annual student awards ceremony to increase community mediation visibility to key decision-makers (Portland State University). (See Appendix I)

Recommendations for a Massachusetts Community Mediation Framework

The following are recommendations based on the study findings for the framework of a state-wide community mediation center grant program in Massachusetts. The recommended framework is grounded in best practices from successful state-funded models across the country (particularly Oregon, Maryland and New York), builds on the rich history of community mediation in Massachusetts, and is responsive to specific legislative requests contained in Outside Section 180 in the FY 2012 State Budget.

Recommendations for State-wide Policy, Program, Funding and Oversight

- 1. The Commonwealth of Massachusetts should promote community mediation as a public service through enacting legislation that institutes a state-wide community mediation center grant program.** Establishing a statutory state-wide community mediation program would create the necessary public policy to demonstrate the state's commitment to the mission and values of community mediation. It would also provide a vehicle for implementing that mission in all regions of the state and a framework for a state appropriation, as well as for other types of funding to leverage the state's investment. (See Findings 6, 12, 19, 20, and 23; and Attachment III – Proposed Grant Program Statute)
- 2. The Commonwealth should become the main funder of community mediation to ensure its sustainability in Massachusetts.** The Governor and the Legislature should annually appropriate funding to the state-wide community mediation center program to be distributed through a grant application process. Funding should be redirected from areas most benefited by community mediation (such as public safety, housing, education, human services, public health, consumer affairs and administration of justice). Funding should be at a sufficient level to ensure that each county has access to at least one community mediation center that provides free or low cost dispute resolution services as

a forum for justice and an alternative to litigation. (See Findings 19, 20 and 24; and Attachment III – Proposed Grant Program Statute)

- 3. The state-wide community mediation center grant program should be managed by the state office of dispute resolution, now known as the Massachusetts Office of Public Collaboration (MOPC).** The state dispute resolution office at the University of Massachusetts Boston should serve as the administrative entity for the state-wide program. MOPC's statutory mandate (G. L. Ch. 75, Section 46) would help safeguard the community mediation mission by ensuring community mediation independence and by acting as a counterweight against major funder pressures that could divert community mediation from its community service goals. Administering the grant program through MOPC, as opposed to another public agency, would avoid creating additional bureaucracy. Overseeing community mediation would augment MOPC's public dispute resolution functions in addition to leveraging the office's dispute resolution program expertise, collaborative competencies, and experience gained from over 20 years of working with public, private and non-profit institutions in Massachusetts. Managing the grant program through MOPC would also provide community mediation centers access to students, researchers, administrative and academic departments within the University of Massachusetts system, including conflict resolution and public policy programs. (See Findings 24, 25, 26 and 27; Attachment II – State Office of Dispute Resolution Statute; and Attachment III – Proposed Grant Program Statute)
- 4. The state dispute resolution office should be provided with the necessary resources to accomplish the state-wide community mediation center grant program goals.** The Commonwealth should provide sufficient resources to enable the state office of dispute resolution to advocate for community mediation, establish the state-funding framework as a performance-based grant program, provide technical assistance to centers, ensure sound stewardship of public funding, assess responsiveness to community needs, and set standards of practice of community mediation in Massachusetts. Through partnerships with University of Massachusetts academic and administrative units, the state office would be responsible for research, fundraising and overall fiscal management of funds. An inter-governmental and cross-sector grant program advisory committee, including community mediation center representatives, would be established by MOPC in consultation with university officials. (See Findings 24, 25 and 26; Attachment III – Proposed State-wide Program Statute; and Attachment IV – Proposed Grant Program Budget)
- 5. The state-wide community mediation center grant program should be funded by the Commonwealth at \$1.25 million to ensure successful program implementation and impact.** This funding level is in line with the annual budgets for other benchmarked state-funded community mediation systems (e.g. Oregon funded 17 community mediation centers while Maryland funded 14 community mediation centers with annual appropriations of approximately \$1 million). The majority of the state-wide program funds (80%) would be direct operational funding awarded as grants and technical resources (mediator training and case management software) to existing community mediation centers and new start-up centers. Up to 20% of the funds would support costs

associated with program administration, financial management, monitoring and evaluation, research and fundraising by the state office of dispute resolution (MOPC) and the University of Massachusetts Boston. The return on the state's investment would be five times the amount of the appropriation – \$6 million from cost-savings and resources leveraged. Substantial cost savings would be generated through avoided costs of conflict within courts, public agencies, schools, business and communities, and also from re-investing in existing dispute resolution infrastructure (as opposed to creating a new system from the ground up) and deploying a system of community volunteers (as opposed to paid mediators). Substantial resources would be leveraged through cash matches, private contributions and programmatic funding currently in place that could be scaled up through this recommended framework (See Findings 19, 20, 23 and 26; and Attachment IV – Proposed Grant Program Budget for FY 2013; Attachment V – Return on Investment Chart)

Recommendations for State-wide Program Administration and Center Grants

6. **The state-wide community mediation center grant program legislation should contain guidelines for the administration of the program and distribution of the funding through the state office of dispute resolution.** The statute should be supportive of existing state laws, regulations and rules governing mediation and should contain a directive for the broad use of community mediation by public agencies, a commitment to increasing citizen access to community mediation in each county; guidelines for eligibility criteria for funding community mediation center operations; guidelines for program administration, evaluation and reporting; and requirements for diversification of funding sources and the promotion of community objectives. In addition, the legislation should direct the state office to establish an intergovernmental, cross-sector program advisory committee of stakeholders that includes the community mediation centers, to assist with coordination of community mediation programming, funding, outreach and advocacy. Centralized grant administration would capture the advantages of scale that the individual centers would not be able to accomplish on their own. (See Findings 22, 23 and 26; Attachment III – Proposed Grant Program Statute)

7. **The state dispute resolution office, in collaboration with community mediation centers, should establish performance standards, guidelines and procedures for grant awards.** The eligibility criteria to qualify for state operational funding should be based on best practices from other state models, including operational criteria (preserving diversity, using trained volunteer mediators, providing free or sliding scale services, and acquiring matching funds) and structural criteria (non-profit status and the presence of an active governing board). There should be two components to the operational funding: a baseline award and a performance-based award. The baseline funding would be awarded to eligible centers based on the above criteria and a proven track-record, in equal amounts for administrative staff and/or administrative expenses in support of services provided by volunteer mediators. Performance-based funding would be awarded in varying levels to centers based on workload and other factors such as serving underserved areas, hardship conditions, the community's ability to support centers, and serving targeted community objectives. New centers should be given start-up funding for

the first year, and continued funding should be determined based on performance thereafter. The state office director would select members for a grant review committee on an annual basis. (See Findings 21, 22, 24, 25, and 27; Attachment III – Proposed Grant Program Statute; and Attachment IV – Proposed Grant Program Budget)

Recommendations for Accountability and Learning

- 8. The state dispute resolution office should collaboratively develop an integrated approach for community mediator excellence.** MOPC should assist Massachusetts community mediation centers and their mediators to continue providing high quality mediation services to their clients through providing new opportunities for continuing education, building on a community of reflective practice, and instituting mechanisms for the recognition of achievements. The emphasis should be on the collaborative, consensus-based development of an integrated approach to quality assurance, building on efforts that have already been undertaken by the centers, the court and court-connected ADR programs in Massachusetts and models from community mediation systems in other states. (See Findings 26 and 27)
- 9. The state office of dispute resolution should develop and administer a program monitoring and evaluation system to demonstrate accountability and learning.** There should be systematic data collection and analysis of community mediation implementation and impact in order to promote a thriving, state-wide community mediation system that is responsive to Massachusetts' interests and needs. MOPC should report its program evaluation findings and recommendations annually to the program advisory committee, the state administration, the state legislature and the state court. State-funded community mediation centers would be responsible for participating and contributing to data collection and working with the state office in its monitoring and evaluation activities. (See Findings 25, 26, and 27; and Attachment III – Proposed Grant Program Statute)
- 10. The University of Massachusetts Boston should leverage its research, fundraising and administrative resources to promote community mediation as a public service program within higher education.** The University should encourage students to participate in the experiential learning and research concerning community mediation. University departments, academic researchers and graduate student interns could be deployed in developing a research plan on community mediation and in obtaining funding for the research. The results of the research would be used to inform community dispute resolution policies and practices in Massachusetts and other states and on restorative justice, access to justice, civic engagement and conflict resolution processes nationally and internationally. The University should actively partner with community mediation centers to enhance community partnerships and engage in problem-solving on state-wide and community issues, pursuant to its public mission as a land grant institution. (See Findings 25, 27, 28, 29, 30 and 31)

Proposed Implementation Steps and Timelines

Step 1: The Governor and the State Legislature establish the state-wide Community Mediation Center Grant Program through the FY 2013 State Budget. State funding for the program is appropriated through the state office of dispute resolution (Massachusetts Office of Public Collaboration-MOPC) at the University of Massachusetts Boston in a separate line item or another place in the budget, and the state-wide community mediation center grant program legislation is passed as an outside section. This enables the program to be launched in July 2012 (FY 2013).

Step 2: Within the first quarter of FY 2013, MOPC and the University of Massachusetts Boston appoint members to the community mediation center grant program advisory committee. An effort is made to recruit a balanced representation of intergovernmental and cross-sector interests including the court, attorney general, educational institutions, government, housing authorities, community non-profits, philanthropic foundations, and community mediation centers.

Step 3: Within the first two quarters of FY 2013, the state office of dispute resolution at the University of Massachusetts Boston operationalizes the program and launches grant-making. MOPC issues a request for applications for community mediation center operating-fund grants, forms a grant review committee, reviews applications, selects grant recipients and enters into contracts with funded centers.

Step 4: Within the first program year, the state office of dispute resolution institutionalizes performance-based evaluation and launches development of a system for mediator excellence. As part of the implementation of administrative and grant-making policies and procedures, MOPC purchases, installs and trains community mediation center staff to use case management software to track community mediation activity for oversight, monitoring and evaluation purposes. MOPC works in collaboration with state-funded community mediation centers and draws on technical support and advice from experts in the field such as Community Mediation Maryland and the National Association for Community Mediation.

Step 5: The state office of dispute resolution mobilizes its consensus-building resources to advance community mediation efforts. MOPC works collaboratively with stakeholder groups throughout Massachusetts to help ensure: a) increased utilization of community mediation state-wide; b) technical information for policy makers and program planners; c) state-wide and regional initiatives consistent with local needs and integrated with federal programs; d) state funding priorities coordinated with fundraising from outside sources; e) quality assurance protective of the public and supportive of a skilled volunteer mediator base; f) outreach to bar associations and private sector ADR service providers; g) faculty research and student internship opportunities to enable experiential learning; and h) integration with state and community-sponsored consensus-building, public dispute resolution and public engagement initiatives.

Attachments

Attachment I: Outside Section 180

(a) The University of Massachusetts at Boston, through its office of dispute resolution, shall conduct a study of the effectiveness of community mediation to broaden public access to dispute resolution. The study shall inform state-level planning and decision-making to support and build upon existing infrastructure and enable investment in sustainable community mediation programming within the commonwealth in the coming years. For purposes of this study, "community mediation" shall mean mediation service programs of a private non-profit or public agency that: (i) use trained community volunteers and serve the public regardless of ability to pay; (ii) promote collaborative community relationships and public awareness; and (iii) provide a dispute resolution forum and alternative to the judicial system at any stage of a conflict.

(b) The study shall include, but not be limited to:

(i) a review of community mediation research, studies and data within the commonwealth and other states and countries in order to identify cost savings and economic, social, health and environmental benefits from community mediation, in some or all of the following areas: civil small claims and consumer disputes; family, divorce, child custody and visitation disputes; permanency and open adoption cases; landlord-tenant disputes and housing foreclosure cases; neighborhood conflicts around noise and property boundaries; school-related disputes; minor criminal and victim-offender restorative justice cases; interpersonal workplace disputes; and large-group disputes around public policy, environmental and community issues;

(ii) a review and assessment of the historic and current legislative and public funding structures for community mediation within the commonwealth;

(iii) a review of successful models for public funding of community mediation in other states and recommendations for potential applicability to the commonwealth;

(iv) preliminary design of a state-of-the-art performance-based community mediation funding framework within the commonwealth for state appropriations, government grants and private foundation awards that support programming where there is an identifiable public nexus;

(v) recommendations for the infrastructure and resources needed to oversee and administer such a funding framework and recommendations for implementation steps and timeframes; and

(vi) recommendations for the establishment of an inter-governmental and cross-sector advisory committee to oversee implementation and administration of community mediation funding and programming.

(c) The study shall be completed and submitted to the chairs of the house and senate committees on ways and means and the secretary of administration and finance on or before January 1, 2012.

Attachment II: State Office of Dispute Resolution Enabling Statute

PART I. ADMINISTRATION OF THE GOVERNMENT.

TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH.

CHAPTER 75. UNIVERSITY OF MASSACHUSETTS.

SECTION 46. OFFICE OF DISPUTE RESOLUTION⁶

There shall be at the University of Massachusetts at Boston an office of dispute resolution under the supervision and control of a director who shall be appointed by the provost with the approval of the chancellor and concurrence of the board of trustees. The director shall be a person with substantial training and professional experience in dispute resolution, shall maintain complete impartiality with respect to the matters coming before the office of dispute resolution, and shall devote full time to the duties of the office.

The office of dispute resolution shall be available to assist agencies and offices of the executive, legislative, and judicial branches of the commonwealth, as well as any political subdivision or public instrumentality created by the commonwealth or any county, city, or town, hereafter referred to as public agencies, to improve the resolution of disputes that arise within their respective jurisdictions. The office may: (a) facilitate the resolution of disputes through provision of impartial mediation and other dispute resolution services; (b) establish standards for the selection, assignment, and conduct of persons acting on behalf of the office in the resolution of disputes; (c) conduct educational programs and provide other services designed to reduce the occurrence, scope, complexity, or cost of disputes; (d) design, develop, or operate dispute resolution programs or to assist public agencies to improve or extend their existing dispute resolution programs; and (e) take other action to promote and facilitate dispute resolution by public agencies in the commonwealth.

The director may establish reasonable fees to be charged to parties, litigants, or public agencies for the provision of the educational, consultation, dispute resolution, or other services authorized herein and may apply for and accept on behalf of the commonwealth any federal, local, or private grants, bequests, gifts, or contributions to aid in the financing of any of the programs or activities of the office. Fees, grants, bequests, gifts, or contributions shall be received by the University of Massachusetts at Boston and deposited in a separate account and shall be expended, without further appropriation, at the direction of the director, with the approval of the provost, for the cost of operation of the office, including personnel.

The office may make agreements with public agencies and officers and may contract with other persons, including private agencies, corporations, or associations, to carry out any of the functions and purposes of this section. The office shall annually prepare a report on the activities of the office, including all income and expenditures, and file the report with the house and senate committees on ways and means on or before December 31.

⁶ The state office of dispute resolution at the University of Massachusetts Boston was formerly a state agency within the Executive Office for Administration and Finance. The office is now known as the "Massachusetts Office of Public Collaboration" (MOPC) – a name that encompasses the office's expanded mission which includes public policy dispute resolution, conflict prevention, consensus-building, public deliberation and public engagement.

Attachment III: Proposed Statute for Community Mediation Grant Program

PART I. ADMINISTRATION OF THE GOVERNMENT.

TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH.

CHAPTER 75. UNIVERSITY OF MASSACHUSETTS.

SECTION ____ . COMMUNITY MEDIATION CENTER GRANT PROGRAM

A. Definitions

For the purposes of this section:

1. "Community mediation center" means a community-based program, of a private non-profit or public agency organized for the resolution of disputes or for a public service or charitable or educational purpose, that provides direct access to free or low-cost mediation services at any stage of a conflict through trained community volunteers and involves community members in the governance of the center.
2. "Mediator" means an impartial person who assists in the resolution of a conflict or dispute and meets the requirement of G. L. Ch. 233, Section 23C.
3. "State office" means the statutory state office of dispute resolution at the University of Massachusetts Boston authorized by G. L. Ch. 75, Section 46.

B. Program Mission and Administration

There is hereby established a state-wide community mediation center grant program to be funded by the Commonwealth of Massachusetts. The mission of the program shall be to promote the broad use of community mediation in all regions of the state. Public agencies are directed to deploy community mediation in support of state-wide and community objectives. The program shall be administered by the state office of dispute resolution. The state office shall be authorized to expend appropriated funds on program administration and operational grants to Massachusetts community mediation centers on the basis of need for dispute resolution in neighborhoods and local communities. The state office shall be authorized to advocate for funding and resources for the state-wide program and for community mediation programming. The state office shall be authorized to establish rules and guidelines to effectuate the purposes of this section, including provisions for grant-making, monitoring and evaluation of the state-wide program and state-funded community mediation centers, and establishment of a quality assurance system for mediator excellence. The state office shall establish a program advisory committee with balanced representation of interests, including representation of state-funded community mediation centers.

C. Grants to Centers

Funds appropriated or available for the purposes of this section shall be allocated for eligible community mediation centers through operating grants from the state office. The grants administered under this section are intended solely to provide operational funding for centers to assist them in meeting the needs of local communities. Eligible centers shall be selected for operational grants based on grant applications. Grant applications shall be screened by a grant review committee established by the state office to make recommendations. The state office shall determine the final grant recipients and awards. The state share of the operating cost of any center funded under this section shall include a baseline grant award based on eligibility criteria and a proven track record, and may also include an additional award based on performance levels set by the state office that may include but are not limited to the volume of intakes, sessions and mediations during the immediate past performance cycle, the extent services are being provided to underserved or unserved areas of the state, and the center's contribution to identified community objectives within the geographical regions served.

D. Eligibility for Grants and Grant Application Procedures

Community mediation centers applying for state-funded operating grants must demonstrate compliance with eligibility criteria established by the state office, including operational and structural criteria and requirements for matching funds. To qualify for funding, community mediation centers must also comply with grant application procedures set by the state office. The office shall consult with centers in establishing grant criteria and procedures.

E. New Centers

Applications to start a new community mediation center may be submitted at any time in the fiscal year but the decision to provide grants is entirely dependent on available funds. The grant review committee will determine how closely the startup center's operating philosophy, organization, by-laws, and other supporting documents reflect the state office's eligibility criteria for community mediation. Priority will be given to eligible start-up centers serving areas that have no existing community mediation center(s).

F. Payment Procedures

Payments to centers awarded grants under this section shall be made pursuant to contracts with the University of Massachusetts Boston. The methods of payment or reimbursement for community mediation center operating costs shall be specified by the state office. All such arrangements shall conform to the provisions of this section and the rules and procedures of the state office and the University of Massachusetts Boston.

G. Funding

The state office may accept and disburse from any public or private agency or person, any money for the purposes of this section and perform services and acts as may be necessary for the receipt and disbursement of such funds. A community mediation center funded under this section may accept funds from any public or private agency or person for the purposes of this section. The state comptroller, university controller, the state office director and their authorized representatives shall have the power to inspect, examine and audit the fiscal affairs of state-funded community mediation centers.

H. Reporting

Each state-funded community mediation center shall provide the state office with data on operating budgets, mediation and related services, and such other information the state office may require periodically for monitoring, evaluation and reporting purposes. The state office shall provide periodic progress reports to the program advisory committee and shall report annually to the governor, the trial court chief justice, the senate president, the house speaker, and the chairs of the committees on higher education, judiciary, and ways and means, on the operations, activities and accomplishments of the state-wide program and the centers funded pursuant to this section.

Attachment IV: Proposed Budget for Community Mediation Grant Program

Name	FY 2013 State Appropriation for Community Mediation				
Subject	Budget Analysis for Fiscal Year 2013				
Activity					
Budget line	Community Mediation Center Operating Grants & Technical Resources	UOM	No. of Units	Rate	Budgeted Amt:
1	Baseline Grant Awards, estimated 20 centers [1]*	per center	20	35,000	700,000.00
2	Performance-Based Grant Awards [2]*	lump sum	1	200,000	200,000.00
3	Case Management Software for Centers (one-time)	lump sum	1	50,000	50,000.00
4	Continuing Education Seminars for Center Mediators	per unit	5	10,000	50,000.00
	Subtotal (80% of Total State Funding)				1,000,000.00
Budget line	MOPC/University Program Administration & Oversight Expenses	UOM	No. of Units	Rate	Budgeted Amt:
5	Program Director (New position)	per person	1	75,000	75,000.00
6	Program Admin Assistant (New position)	per person	1	45,000	45,000.00
7	Program Evaluator	per person	0.5	80,000	40,000.00
8	Contract Manager	per person	0.25	60,000	15,000.00
9	Operating and Logistical Expenses	per month	12	1,250.00	15,000.00
	Subtotal				190,000.00
10	Total Direct Costs				1,190,000.00
11	Indirect Cost on University Funds* [3]				59,500.00
12	Total State Funding [4]				1,249,500.00

[1] Baseline grant awards would cover administrative costs (or at least one FTE per center) to support intake and screening of referrals, scheduling of mediation, supervision of volunteer mediators and other administrative tasks. In Year One baseline grants would include a one-time \$10,000 stipend to compensate centers for work with MOPC in launching the grant program. For future years baseline awards may be set at \$25,000 per center with more funding allocated for performance based awards.

[2] Projected performance-based award levels, based on the current workload of 14 centers, would range between Level 1 at \$2,500 and Level VI at \$35,000; if more centers qualify for performance-based awards, funding amounts for the levels could change.

[3] Indirect cost recovery charge covers facilities and administrative expenses incurred by the University of Massachusetts Boston in support of sponsored projects. *Indirect cost calculation excludes grant funds passing through to centers.

[4] This budget request is in line with the annual budgets for other state-funded community mediation systems. At present, Oregon funds 17 community mediation centers and a public policy dispute resolution office with an appropriation of \$1.4 million. Maryland funds 14 community mediation centers and a central public dispute resolution office with an annual appropriation of close to \$1 million. New York funds 23 centers and 3 community-based programs with an annual budget appropriation of \$5.2 million.

Attachment V: Return on Investment from Proposed Grant Program

Recommended State Appropriation: **\$1,249,500**
 Estimated Return on State Investment: **\$5,594,322 in resources leveraged and cost-savings annually**

I. <u>Operating Grants to Centers</u>			
Annual Investment	Pays for	Resources Leveraged	Cost-Savings and Other Benefits
<ul style="list-style-type: none"> • \$700,000 for baseline operating grants to 20 centers • \$200,000 for performance-based operating grants to 20 centers <p>[\$45,000 average combined grant per center]</p>	<ul style="list-style-type: none"> • 20 FTEs or the equivalent in operating expenses to support intake, screening, scheduling, supervision of volunteer mediators, follow up with parties, reporting, and other administrative functions. • 6,126 mediated disputes delivered to primarily low income citizens [\$900,000 over 6126 mediations = \$147 per mediated case] • 4,430 resolved disputes (72.3% agreement rate) 	<ul style="list-style-type: none"> • <i>In-kind services of 630 volunteer mediators</i> across 20 centers [average 31.5 volunteers per center] • <i>24,504 in-kind hours</i> of mediation services from volunteers [4 hours per case] • \$2,450,400 in-kind contribution from volunteer mediators at \$100/hour • \$348,214 in matching operational funds raised from other sources for center operations 	<ul style="list-style-type: none"> • \$700,000 in cost-savings from re-investing in existing community mediation centers with established networks of volunteers, referral sources and programmatic funders, instead of creating new centers⁷ [\$35,000 admin expenses + 1FTE at \$45,000 per center X 20] • \$1,550,400 in cost-savings from using volunteer mediators [24,504 hours cost \$900,000 at \$37/hour vs. \$2,450,400 using paid mediators at \$100/hour] • <i>\$896 cost-savings</i> to District Court per each successfully mediated juvenile case⁸ • <i>\$211-\$1,675 cost-savings</i> to police departments per each avoided emergency call from mediated domestic or neighborhood dispute⁹ • <i>\$1,889 cost-savings</i> to schools from mediated truancy prevention cases¹⁰ • <i>\$231-431 cost-savings</i> to schools per each avoided student suspension/expulsion from mediated school conflicts¹¹ • <i>\$1,250 cost-savings</i> to employers per successfully mediated workplace dispute¹²

⁷ Based on a survey of court-connected programs that shows the average annual administrative cost to provide ADR services is \$34,500 per program. (Cratsley, 2000).

⁸ Savings per mediated case estimated at \$896 based on figures from Cratsley (2000).

⁹ Based on figures from a study on cost savings in reduced police calls from Baltimore City police records found in Charkoudian (2005).

¹⁰ Hart, Shelestak, & Horwood (February 2003).

¹¹ Based on data from the Ohio Commission on Dispute Resolution reported by the Ohio Mediation Association available at <http://www.mediateohio.org/pg53.cfm>.

¹² *Ibid.*

II. Grant Program Administration			
Annual Investment	Pays for	Resources Leveraged	Cost-Savings and Other Benefits
<ul style="list-style-type: none"> • \$175,000 for program staff • \$15,000 for operating expenses 	<ul style="list-style-type: none"> • 1 FTE Program Director (new position) – program design, planning, oversight, technical advice, budgeting, reporting, outreach, standards • 1 FTE Administrative Assistant (new position) – coordination of grant-making, information sharing and communication across centers • 0.25 FTE Business Manager (existing MOPC position) – contract preparation and execution; payment processing; financial accounting • 0.5 FTE Associate Director (existing MOPC position) data collection/analysis; evaluation; fundraising, grant writing, research with faculty, students and institutes • Administrative Expenses: Telecommunications, printing, equipment, supplies, meeting logistics, travel, etc. 	<ul style="list-style-type: none"> • \$180,000 for 0.20 FTE in-kind contribution from 20 center directors on program design and development of standards • \$25,000 for 0.25 FTE in-kind contribution of expertise, oversight, budget advocacy from MOPC Executive Director • \$45,000 for 0.75 FTE in-kind contribution of financial expertise from MOPC Business Manager • \$40,000 for 0.5 FTE in-kind contribution of evaluation, fundraising, research expertise from MOPC Associate Director • \$6,000 for 120 in-kind hours from grant review committee (3-5 members) • \$20,000 for 160 in-kind hours from program advisory committee (15-20 members) • \$100,000 from new fundraising for additional direct services • \$50,000 in research project funding with academic partners • \$24,000 for 160 in-kind hours of research development from faculty and student 	<ul style="list-style-type: none"> • \$170,000 in cost-savings from administering program through existing state office of dispute resolution (MOPC) with relevant in-house expertise and statutory mandate instead of creating new entity or ramping up another state entity with no mediation mandate or expertise • \$2,000 cost-savings in not needing to purchase research and fundraising database subscriptions available through UMass Boston • New, multi-purpose state ADR infrastructure from 20 centers with 630 mediators deployable through MOPC • Broader use of ADR at state and local levels in MA • New ADR knowledge and better policies in MA
III. Continuing Education			
Annual Investment	Pays for	Resources Leveraged	Cost-Savings and Other Benefits
<ul style="list-style-type: none"> • \$50,000 continuing education seminars for mediators 	<ul style="list-style-type: none"> • 5 mediator trainings or advanced educational events • Increased knowledge and skills of community mediators 	<ul style="list-style-type: none"> • \$24,000 In-kind services of MOPC/university trainers [\$150/hour] • \$1,500 for training space • \$50,000 in cost-savings from centralized curriculum design and training delivery 	<ul style="list-style-type: none"> • High quality pool of trained community mediators available across the state for pressing social issues, e.g., foreclosure disputes • Continuous development of publicly-funded ADR process excellence

<p><u>IV. Case Management Software</u></p> <p>Investment (first year only)</p> <ul style="list-style-type: none"> • \$50,000 for case management software for centers [one-time cost for program year one] 	<p>Pays for</p> <ul style="list-style-type: none"> • State-of-the-art mediation case management software installed in 20 centers • Training and technical support • Trained staff in 20 centers trained to use the software • Caseload data for 20 centers 	<p>Resources Leveraged</p> <ul style="list-style-type: none"> • \$5,000 of in-kind technical consultation on purchasing, customizing and integrating software into community mediation center practices from other state program directors using the same software (e.g., Maryland 	<p>Cost-Savings and Other Benefits</p> <ul style="list-style-type: none"> • \$44,308 in cost-savings for 1920 hours of time saved across 20 centers in tracking and reporting on data [averages 1 day per month per center] • \$12,000 in cost-savings for 480 hours of MOPC staff time-saved collecting caseload and financial data from centers • <i>Public accountability</i> through demonstration of return on investment to the state • <i>Time and cost efficiencies</i> associated with performance-based evaluation and research • <i>Basis for comparison</i> with other state models (MD, OR, NY)
<p><u>V. University Indirect Costs</u></p> <p>Annual Investment</p> <ul style="list-style-type: none"> • \$59,500 facilities and administrative cost of housing program at UMass Boston 	<p>Pays for</p> <ul style="list-style-type: none"> • Program office space and meeting space for activities • Services/expertise of units of university: HR, IT, financial, grant management, fundraising 	<p>Resources Leveraged</p> <ul style="list-style-type: none"> • \$10,000 in-kind for graduate student researchers • <i>Policy and budget advocacy guidance</i> from the university 	<p>Cost-Savings and Other Benefits</p> <ul style="list-style-type: none"> • <i>Cost-savings</i> from using existing universities facilities and administrative systems

Appendices

Appendix A: Community Mediation Characteristics

The core values that define community mediation distinguish it from other forms of alternative dispute resolution services. A single definition of community mediation is unavailable due to variations in models for service delivery across the nation. However, a national definition of community mediation can still be gleaned from the nine-point characteristics of community mediation developed by the National Association for Community Mediation (NAFCM), which are as follows:

1. A private non-profit or public agency or program with mediators, staff and governing/advisory board who are representative of the diversity of the community served;
2. The use of trained community volunteers as providers of mediation services;
3. The practice of mediation, which is open to all persons;
4. Providing direct access to the public through self-referral and striving to reduce barriers to service;
5. Providing service to clients regardless of their ability to pay; providing service and hiring without discrimination;
6. Providing a forum for dispute resolution at the earliest stage of conflict;
7. Providing an alternative to the judicial system at any stage of a conflict;
8. Initiating, facilitating and educating for collaborative community relationships to effect positive systemic change; and
9. Engaging in public awareness and educational activities about the values and practices of mediation.

Community dispute resolution programs in Maryland and Oregon¹³ have broadened and customized the NAFCM definition of community mediation. Massachusetts community mediation centers were asked in a survey administered as part of this study to identify community mediation with the [10-point model of community mediation](#) developed by Community Mediation Maryland (CMM). CMM's 10-point model of community mediation was selected over the 13-point model developed by Oregon because the latter was more customized to suit Oregon's particular needs. The 10-point CMM model is as follows:

1. Train community members who reflect the community's diversity with regard to age, race, gender, ethnicity, income and education to serve as volunteer mediators
2. Provide mediation services at no cost or on a sliding scale
3. Hold mediations in neighborhoods where disputes occur
4. Schedule mediations at a time and place convenient to the participants
5. Encourage early use of mediation to prevent violence or to reduce the need for court intervention, as well as provide mediation at any stage in a dispute

¹³ For the most complete list of NAFCM community mediation characteristics and an alternative definition of community mediation in Oregon, please see NAFCM at <http://www.nafcm.org/about/purpose> and Oregon Consensus at www.orconsensus.pdx.edu/documents/DefinitionofCommunityMediation_003.doc

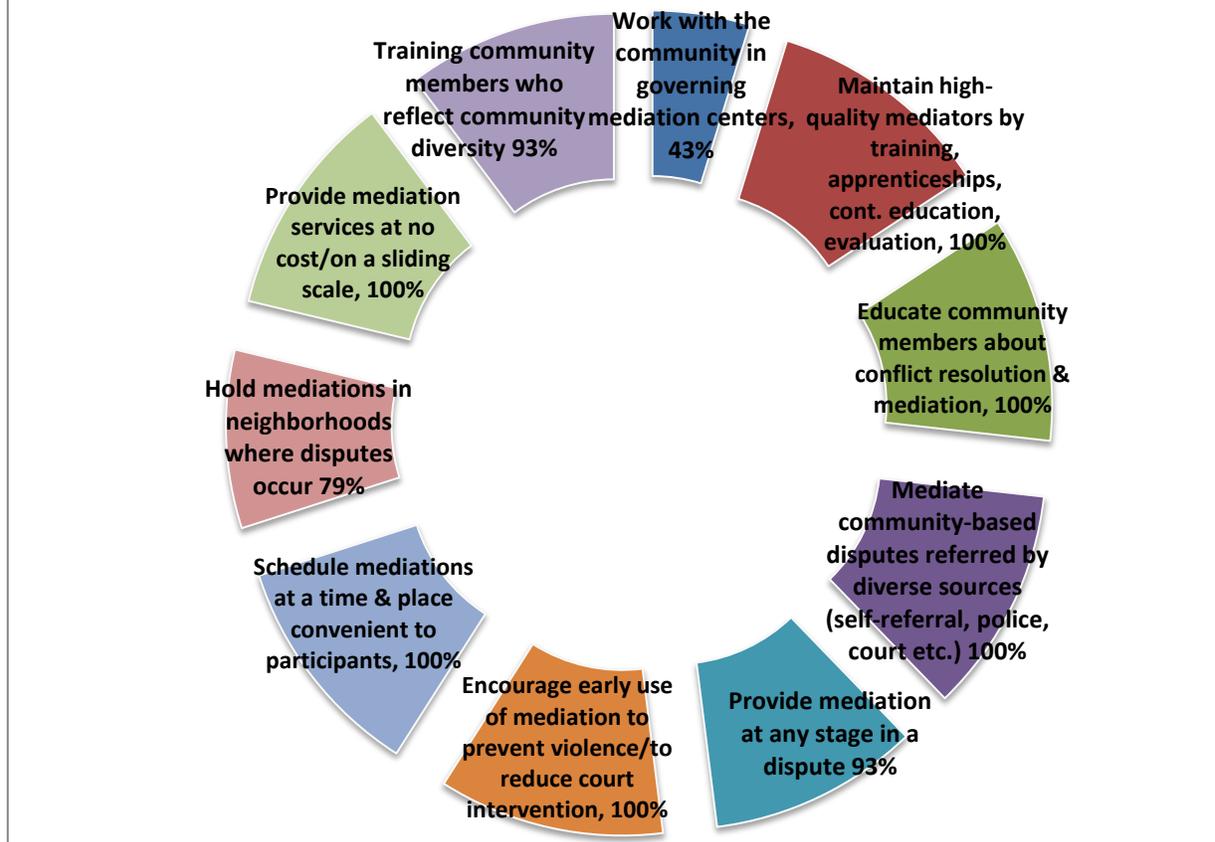
6. Mediate community-based disputes that come from referral sources including self-referrals, police, courts, community organizations, civic groups, religious institutions, government agencies and others
7. Educate community members about conflict resolution and mediation
8. Maintain high quality mediators by providing intensive, skills-based training, apprenticeships, continuing education and ongoing evaluation of volunteer mediators
9. Work with the community in governing community mediation programs in a manner that is based on collaborative problem solving among staff, volunteers and community members
10. Provide mediation, education and potentially other conflict resolution processes to community members who reflect the community's diversity with regard to age, race, gender, ethnicity, income, education and geographic location

Survey data indicates that Massachusetts community mediation centers consider almost all characteristics identified by CMM as core values of their work. The 14 centers responding to the survey were unanimous in their support for values like mediating community-based disputes referred by diverse sources (self-referral, police, court, etc.); providing mediation services at no cost or on a sliding scale; scheduling mediations at a time and place convenient to the participants; encouraging early use of mediation to prevent violence or to reduce court intervention; and educating community members about conflict resolution and mediation.

The majority of the 14 centers agreed with the values of maintaining high-quality mediators by offering intensive skills-based training, apprenticeships, continuing education and ongoing evaluation; training community members who reflect community diversity; holding mediations in neighborhoods where disputes occur; and providing mediation at any stage in a dispute. Although only 43% reported that they worked with the community in governing their centers, subsequent conversations with CMCM members revealed that this question had been misunderstood by survey participants, and in fact, most, if not all, centers are currently governed by boards with members drawn from the community.

The following graph indicates the percentage of agreement with core values of community mediation drawn from survey responses of 14 Massachusetts community mediation centers.

Community Mediation Values Embraced by Centers in Massachusetts



The above values are contained in a definition of community mediation developed by the Community Mediation Coalition of Massachusetts (CMCM).¹⁴ CMCM defines community mediation as programs that “primarily use trained volunteer mediators to provide high-quality, free, or low-cost dispute resolution services to residents in the communities where they live and work.”¹⁵ The following working definition of community mediation was developed for the purposes of this study:

Community Mediation is defined as: community-based services, organized as private non-profits or public agencies, with mediators, staff and a governing board representative of community diversity, providing direct access to free or low-cost mediation services, at any stage of a conflict, using trained community volunteers, which would be both an alternative to the judicial system as well as an enhancement to an integrated comprehensively-designed justice system.

¹⁴ The Community Mediation Coalition of Massachusetts is an alliance of nonprofit community mediation programs that are located in Massachusetts and are dedicated to providing and promoting free or affordable mediation and related dispute resolution services and training to the people of the Commonwealth.

¹⁵ From the “Mission statement and operating guidelines” of the Community Mediation Coalition of Massachusetts (CMCM).

Appendix B: History of Massachusetts Community Mediation

The origins of community mediation

The history of humankind is, in no small part, a story of conflicts and the attempts to resolve those conflicts (Pruitt & Kim, 2004). Community mediation was added to the roster of conflict resolution strategies during the 1970s. Mediation is a voluntary consensual process in which an impartial third party assists disputants in discussing their issues and exploring options for a possible agreement (Dukakis, 1986, p. 5, fn 2; Wilkinson, 2001, citing NAFCM). Mediation becomes community mediation when it involves the use of trained community volunteers as mediators and provides mediation services to the public irrespective of ability to pay under the auspices of non-profit organizations or public agencies (Wilkinson, 2001, citing NAFCM). Community mediation centers also engage in efforts to encourage collaborative community relationships and public awareness (House budget bill 03401; Wilkinson, 2001, citing NAFCM).

The trends that characterized the '60s – the overloading of the court system and increased mobility and urbanization with an accompanying rise in urban conflict – exposed deficiencies in the available conflict resolution processes (Bradley & Smith, 2000). Access to traditional dispute arbiters like family, clergy and neighbors became problematic as the population shifted to the cities while the costs and delays of litigation led to frustration with the justice system (Hedeen, 2004). Community mediation developed in response to both urban disorder and the need for court reform (Bradley & Smith, 2000). By embedding mediation into a community context and involving community members as mediators and as mediation users, community mediation furnishes individuals and their community with opportunities for communication and conflict management that address the dual concerns of prevention and early intervention in a way that fosters participatory democracy (Shonholtz, 2000; Bradley & Smith, 2000).

Early days of community mediation in Massachusetts

Massachusetts became a pioneer in the community mediation movement. Using seed money from the federal government by way of the Law Enforcement Assistance Agency, the Dorchester Urban Court Program was established in 1975 (Davis, 1986). This court-connected program operated in an Irish-American neighborhood that was experiencing racial tensions along with fears about crime in reaction to integration (Bradley & Smith, 2000). During its first five years, the Dorchester program handled 1,200 cases with an 89% settlement rate (Law: Cutting courts, March 24, 1980). By 1986, 30 community mediation centers were operating in the commonwealth (Dukakis, 1986).

Community mediation in Massachusetts during the 1980s

The growth of state-sponsored mediation during the 1980s

During the 1980s, Massachusetts provided a favorable climate for mediation services in general. By the late '80s, MGL c. 233, s. 23C was enacted to define the role and the necessary qualifications of mediators and to provide for the confidentiality of the mediation process (Hoffman & Matz, 1994). Mediation services were offered by certain government entities:

e.g., Massachusetts Mediation Service – piloted in 1985 and given agency status in 1990 as the state office of dispute resolution – offered services and training in negotiation, mediation and facilitation to the three branches of government and to private organizations involved in public policy disputes; the Office of the Attorney General established the Face-to-Face mediation program in 1984 to deal with consumer conflicts; the Department of Social Services provided funding for parent-teen mediation programs; and in-court mediation was offered by the Probate and Family Court and the Housing Court (Dukakis, 1986). University-connected mediation programs were set up at the University of Massachusetts Amherst and at Harvard by 1981, and proved instrumental in extending mediation services to the commonwealth's western regions and mediating small claims cases, respectively (Davis, 1986). With the help of the University of Massachusetts Amherst, a third mediation program was instituted at the University of Massachusetts Boston in 1983 (Davis, 1986). The year 1983 also saw the formation of the Massachusetts Association of Mediation Programs (MAMP, later known as the Massachusetts Association of Mediation Programs and Practitioners or MAMPP), which was a state-wide non-profit organization of mediators, mediation centers and other interested parties dedicated to the promotion and support of mediation in the state. MAMP launched state-wide programming and leveraged grants and other funding for these programs, among other activities. Community mediation was officially recognized in G.L.c. 218, s. 43E (1988) with the creation of a District Court Community Mediation Advisory Committee as well as a position for a director of mediation (Supreme Judicial Court Trial Court Standing Committee, February 2, 1998).

Massachusetts community mediation during the 1980s

During this period, state support of community mediation was expressed through a patchwork of funding. State financial support for community mediation was indirect in that it was largely funneled through the Trial Court. Funding was also provided by the Department of Social Services, the Office of the Attorney General, educational institutions – the several universities – local governments and government agencies, as well as grants from private foundations, trusts, corporations and the United Way (Davis, 1986; District Court Department Mediation Program). The state of funding for community mediation in 1986 is illustrative. The budgets of 28 community mediation centers totaled \$1,226,340, with 73% of the funding from local and state governments (e.g., 38% from the Department of Social Services, 6.5% from the Attorney General), 8.5% from the Trial Court system and the remaining 19% from private sources (Davis, 1986).

Community mediation centers received referrals from numerous sources. The Massachusetts courts referred all types of cases, including criminal and juvenile cases, along with civil cases such as landlord-tenant disputes, small claims, family abuse restraining orders, etc. Judicial referrals came mostly from the District Court and concerned criminal, civil and juvenile cases. Clearinghouse services and technical assistance were provided by the District Court Mediation Program (set up in 1984) to community mediation centers that provided services for District Court cases (McGillis, 1997). Other referrals to the community mediation centers came “from public and community agencies, police, district attorneys, private attorneys, court personnel, schools and interested individuals” (Dukakis, 1986). As a result, state funding for court-connected community mediation services was leveraged by community mediation centers to tackle other disputes in the community.

Massachusetts was able to take advantage of six types of dispute resolution services supplied by 28 different community mediation centers by 1985: general mediation services for all manner of disputes, CHINS mediation, family mediation between parents and children, consumer mediation involving consumer-merchant or landlord-tenant disputes external to litigation processes, housing development mediation services, in-court small claims mediation, divorce mediation involving children; and offender-victim restitution. Court mediation services were available to 37 out of 62 district courts (Davis, 1986). The value of community mediation to the Massachusetts community in the '80s has been attested to by research. For example, in fiscal year 1985, out of 3,894 cases referred, 2,364 were mediated with an estimated agreement rate of 85% (Davis, 1986). Moreover, a study of the community mediation center known as The Children's Hearing Project indicated that individuals handled family conflicts more constructively after their mediation experience (Merry & Rocheleau, 1985). Based on the experiences of the Children's Hearing Project, the Massachusetts Department of Social Services sponsored publication of a training manual for parent-child mediation in 1984 (Zetzel, 1984).

By 1986, as an annual average, each community mediation center had a budget of \$42,500 with a 1.4-person staff and 25 mediators who fielded 147 referrals and mediated 73 cases (Dukakis, 1986). Overall, 700 mediators, trained for an average of 30 hours, worked in these centers. Greater Boston had the majority of community mediation centers (15) followed by a much smaller number (four) located in the Springfield area, with the rest distributed throughout the state (Dukakis, 1986). However, there were no centers in Berkshire and Nantucket Counties and only a court-connected restitution program in Norfolk County (Davis, 1986).

Massachusetts community mediation during the 1990s

The effects of the fiscal crisis on community mediation

A scant two years later, the economic fortunes of community mediation centers were reversed during the fiscal crisis of the late '80s. In 1988, operational and planning funds designated for community mediation were eliminated from the Trial Court's budget (Supreme Judicial Court Trial Court Standing Committee, February 2, 1998). The Department of Social Services also cut its contribution to these centers (District Court Department Mediation Program). By 1991, community mediation funding had decreased by 30%. Centers responded to this shortfall by obtaining increased support from the IOLTA programs of the Massachusetts Bar Foundation and the Boston Bar Foundation and by instituting fees for mediation services and training. Nevertheless, community mediation centers were forced to reduce staff by 40%, and the volunteer pool decreased by 20%. Three centers closed, leaving 35 centers to service 14 counties, while others temporarily suspended their services (District Court Department Mediation Program).

The functioning of community mediation in the 1990s

Yet, encouraging developments in community mediation also occurred during the '90s. "The staff, boards and volunteers of community mediation centers [struggled] valiantly to keep centers open," displaying an "extraordinary commitment to community mediation at the local level ... [with a] high involvement of volunteers in program operations" (District Court

Department Mediation Program, p. 5). Thus, community mediation centers continued to contribute value to Massachusetts communities and courts. The school community, for one, was a beneficiary of community mediation since centers participated in the Student Conflict Resolution Experts (SCORE) program created and funded by the Attorney General's Office in collaboration with community mediation programs and school communities between 1989 and 2009. The community mediation centers received grants to establish school peer mediation programs that handled student conflicts by training students in non-violent and respectful ways to work through disputes (Attorney General of Massachusetts, 2011).

The Massachusetts community as a whole benefited from ongoing services from community mediation centers. Through their umbrella organization MAMPP, the centers were involved with disability mediation pursuant to the Americans with Disabilities Act, interventions for schools in crisis as part of the Conflict Intervention Team, the challenge of diversity in community mediation through the Mediation Diversity Project, to name but a few of their efforts. Moreover, community mediation centers strove to ensure the quality of their services under the auspices of MAMPP, which provided professional development through workshops, conferences and training opportunities in community mediation. Although MAMPP did not survive this millennium's first decade, it left its mark on the legal landscape of community mediation in Massachusetts with the training standards and ethical guidelines it developed, viz., *Standards of Practice* (1989) and *Training Standards* (1994). MAMPP standards were a source for the guidelines adopted in 2004 for implementing court-connected dispute resolution rules (Standing Committee on Dispute Resolution, June 2005).

Evidence collected during the 90s showed that participants reacted positively to their mediation experience. Over 70% of the users of mediation services offered by community mediation centers in District and Superior Courts were satisfied with both the mediation outcome and process (Maiman, 1997). When compared to adjudication participants, mediation users were more satisfied with their dispute resolution process, were more willing to use the process again, experienced a more positive effect on their inter-party relationships, and obtained more intermediate than binary outcomes (Wissler, 1995). In 1993, the Supreme Judicial Court adopted a policy of providing dispute resolution alternatives (ADR) to adjudication which included mediation (Trial Court Standing Committee on Dispute Resolution, 2005). And, in 1998, the Supreme Judicial Court adopted Rule 1:18 which provided statewide standards for alternate dispute resolution centers and a code of conduct and competency criteria for ADR neutrals (Trial Court Standing Committee on Dispute Resolution, 2005). By 1995, Massachusetts was ranked fifth among states with the greatest number of community mediation centers (McGillis, 1997).

Community mediation in Massachusetts during the 2000s

Eventually, the economic picture of community mediation improved in 1997-1998 as state funding was restored through earmarks in the Trial Court's ADR line item 0330-0410 to those community mediation centers that provided free services in court. During these first two years, funding was limited to \$35,000 for Framingham mediation services (Supreme Judicial Court Trial Court Standing Committee, February 2, 1998). In 2000, the Trial Court compiled data on the needs of approved ADR programs to increase state funding for court-connect

ADR, which demonstrated that, for each program, services provided to indigent parties cost \$36,000; administrative costs were \$34,500; screening expenses equaled \$33,000 and expansion of ADR services to a new court cost \$36,000 (Cratsley, 2000). As a result, state support for community mediation surged in fiscal year 2001 as \$546,861 was appropriated for 12 community mediation centers (Chapter 159 of the Acts of 2000) and continued until fiscal year 2009. A high of \$967,326 was appropriated for 17 centers in fiscal year 2007 (Chapter 139 of the Acts of 2006).

Community mediation center activities proceeded apace. In collaboration with the state office of dispute resolution, community mediation centers engaged in such diverse projects as establishing a mediation program for complaints about electrical service (1998), training lawyers and mediators on coastal access disputes (1998) and training for disputes over agricultural issues (2001). MAMPP and the state dispute resolution office joined forces to provide cultural competency training to community mediators serving on Conflict Interventions Teams in schools under the oversight of the Attorney General's Office (2003) and to set up a housing mediation program for disputes between tenants and management at Massachusetts Housing Finance Authority sites (1998-2000). Beginning in 2008, the state office of dispute resolution accessed federal Health & Human Services funding through the Massachusetts Department of Revenue (DOR) for a state-wide mediation program to resolve child access and visitation disputes referred by the courts and the community, in partnership with nine community mediation centers. In the mid-2000s, community mediation centers also undertook to expand access to their services by participating in workshops and initiatives with the state office of dispute resolution on funding advocacy (2005), collaborative planning (2006 and 2007) and data collection for program evaluation (2010).

To a certain extent, state agency support for mediation continued as well. The Attorney General's Office, for example, maintained its Face-to-Face mediation program and the Department of Social Services (DSS) worked on new mediation initiatives. One such venture, the 2005 Breakthrough Series Collaborative in child welfare involved, among other things, referring families who had inquired about DSS services to mediation and found that these families did not return to the department's attention (Agosti & Morrill, March 2007).

Community mediation funding from 2009 to the present

The state budget for fiscal year 2009 foreshadowed the current dismal state of economic affairs of Massachusetts' community mediation centers. The ADR line was reduced by approximately \$386,000 to \$577,219 for 16 community mediation centers (Trial Court, June 22, 2009). In a 2006 report, the Trial Court Working Group noted that ADR, including mediation, reduced the courts' burden and contributed to healthy communities but "the Trial Court is missing the opportunity to use available, no-cost resources" (Massachusetts Trial Court Working Group's Recommendations to the Standing Committee on Dispute Resolution, 2006, p. 28).

Despite the Trial Court's acknowledgment of the value of mediation and ADR processes for the judicial system and the community, the Trial Court canceled all mediation contracts in October 2008 and effectively diverted the FY 2009 ADR funding elsewhere in the court system in order to meet other fiscal needs (Magnell, November 24, 2008). The Trial Court mediation contracts were not restored in FY 2010 and FY 2011, although state budgets for

those years appropriated funding for ADR in the court. In early 2011, the Joint Chiefs of the Trial Court Fiscal Task Force further informed community mediation center representatives that ADR funds would not be distributed to community mediation centers even if appropriated in the FY 2012 budget (Ostberg, S., February 10, 2011, personal communication). At least one community mediation project – the Worcester Community Action Council’s Community Mediation Center (WCAC’s) – closed its doors in 2009 due to budget cuts: a prime example that “[a] program that successfully meets or exceeds a wide variety of program goals can nonetheless fail, due to lack of financial resources” (Michigan Supreme Court State Court Administrative Office, March 1997, p. 21).

In 2009, the Attorney General canceled all of its contracts for its Student Conflict Resolution Experts (SCORE) Program affecting 15 community-based organizations, including community mediation centers that had been receiving funding to engage in peer mediation partnerships with 26 local schools. Some of the community mediation centers, like Middlesex Mediation, have been able to continue their school peer mediation programs with funding from the City of Lowell but, without a state-level program, many others have not.

At present, survey results from 14 community mediation centers in Massachusetts indicate that demand for their services is increasing but budgets and staffing are decreasing. Several of the centers still receive programmatic funding from the Attorney General’s Office for face-to-face consumer mediation services, from the Department of Revenue for child access and visitation disputes and from the Massachusetts Bar Foundation’s Interest on Lawyers Trust Accounts (IOLTA) Grants Program for mediating court-referred or pre-court disputes to improve the administration of justice. This funding is not sufficient to sustain these centers and their future survival is at risk. (See Appendix E for more details.)

In February 2011, the Coalition of Community Mediation Centers of Massachusetts (CMCM) asked for the assistance of the state office of dispute resolution, now known as the Massachusetts Office of Public Collaboration (MOPC), to investigate whether systematic state-wide operational funding for community mediation can be established and administered by the University of Massachusetts Boston (Ostberg, S., February 10, 2011, personal communication). Its purpose would be to implement the mission of community mediation and address the wide assortment of community and individual needs for conflict resolution services throughout the state. The commissioning of this legislative study in Outside Section 180 of the FY 2012 State Budget was the result of advocacy efforts by CMCM and MOPC to engage legislative leaders about this proposed solution for strengthening community mediation in the Commonwealth.

Appendix C: Community Mediation Effectiveness

The research summarized below covers both community mediation and other types of mediation in order to present the most comprehensive evidence-based data available.

Community mediation provides an approach to handling interpersonal conflict that purportedly has the potential to strengthen civil society and promote social cohesion (Shonholtz, 2000). Insofar as community mediation involves the use of trained community volunteers to help disputants discuss their conflict and explore their options for agreement, it operates as a social mechanism through which responsibility for conflict intervention is placed upon the community and its members (Shonholtz, 2000; Wilkinson, 2001). Ultimately, communities and individuals are empowered “to develop their own solutions” (Hedeen & Coy, 2000, p. 355).). The social benefits expected from community mediation consist of the reduction – even prevention – of conflict, a strengthened capacity for conflict resolution in the community and the formation of social capital. Research has produced evidence of the extent to which community mediation lives up to its promise.

Community Mediation and Conflict Reduction

Much of the evidence connecting mediation and conflict reduction has emerged from studies of agreement rates and user evaluations of the mediation process and outcome. Due to the large amount of data generated by the judicial system, the majority of research findings about these measures reflect the effectiveness of mediation efforts that occur in the court context. However, research on agreement rates and user reactions in non-court contexts confirm community mediation’s success at reducing conflicts in a range of situations.

To a large degree, research into court-connected mediation concerns disputes at the threshold of the judicial system, which are referred to mediation before formal court procedures are initiated. Community mediation is involved when mediators are trained volunteers. From the perspective of the judicial system, conflict reduction through mediation is translated into increased efficiency in resolving cases, reductions in court congestion, in delays and in costs to court and litigant, as well as improvements to the court’s image (Hedeen, 2000). Studies show that the court’s case burden is lightened through the use of mediation, including community mediation, with consequent savings in time and costs (McGillis, 1997; Maiman, 1997; Cratsley, 2000). Research further shows that parties tend to be satisfied with both the outcome and process of mediation (McGillis, 1997; Maiman, 1997; Wilkinson, 2000) and their satisfaction exceeds that of parties who are involved with the adjudication process (Wissler, 1995). Moreover, compliance seems to improve with mediation (Wilkinson, 2001; Charkoudian, 2010, citing McEwen & Maiman, 1981).

These general trends in agreement rates, user reaction and efficiencies in time and costs that have been observed for mediated court-connected disputes characterize mediated non-court disputes as well. Community mediation centers across the nation deal with a vast assortment of disputes. Thirty-seven different kinds of disputes are reported with the vast majority of centers occupied with neighborhood disputes, interpersonal conflicts, landlord-tenant issues, merchants-consumers problems, and disputes within families, in schools and in the workplace, court-connected small claims cases and parent-child conflicts (Hardin, 2004).

Overall, community mediation centers handle an estimated 100,000 disputes every year and achieve settlement rates that surpass 66% (Gazley, Chang, & Bingham, 2006).

Resolution rates for community mediation

Mediation's success in resolving disputes has been measured in terms of outcomes and user perceptions and attitudes. Mediation use and resolution rates are commonly tracked by states to assess the value obtained from their investment in dispute resolution services, including community mediation. Maryland, Michigan, New York, Oregon, Michigan and North Carolina, all state funders of mediation services, report that thousands of disputes are mediated annually, with resolution rates typically exceeding 60%. For instance, in New York, 2003-2004 data generated by a sub-set of disputes – those arising from school-related youthful misbehavior including truancy, habitual disobedience and illegality – showed that 93% of 1,980 mediated cases resulted in agreements (Office of Children and Family Services). Michigan's assessment of a permanency mediation project that incorporated mediation services from volunteer mediators revealed that agreement rates varied from 76% to 82% between 1999 and 2001 (Anderson & Whalen, June 2004). North Carolina's data show that in fiscal year 2010, 91% of 8,418 court-referred cases and 99% of 3,871 non-court disputes reached agreement (Mediation Network Annual Report, 2009-2010). Across the country, the agreement rate for mediated disputes is 85% (Wilkinson, 2001, citing NAFCM statistics).

Massachusetts' experience with the resolution rate for mediated disputes is consistent with the above statistics. A research review of 12 studies from all over the country that included data from Massachusetts found that the settlement rate for mediation hearings exceeded 88% (McGillis, 1997, citing studies in Dorchester, MA; Brooklyn, NY, Atlanta, Kansas City, Venice/Mar Vista, and Florida's Tallahassee and Broward, Dade, Duval, Orange and Pinellas Counties). More particularly, between 1995 and 2000 in the Boston Municipal Court, over 1,000 cases were referred to mediation, and 78% selected mediation with a resultant 92% resolution rate (Cratsley, 2000).

Mediation's effect on time and cost savings

A 2005 Maryland study found that mediation saved significant time and cost from police calls responding to neighborhood conflicts. The savings to the Baltimore police department was between \$24.38 and \$193.35 per response at a total financial saving between \$1,649.27 and \$208.00 per mediated case in a six-month period (Charkoudian, 2005).

An evaluation in Ohio found that truancy prevention mediation program increased pupil attendance and decreased tardiness, resulting in an average cost savings of \$1,889 per participating school.¹⁶ Schools also managed to save between \$231 and \$431 from each averted student suspension or expulsion through the successful use of student peer mediations.¹⁷ Findings also indicate that state agencies save at least \$1,250 in agency time and resources per workplace conflict resolved by mediation¹⁸.

¹⁶ The Student Peace Alliance citing Hart et al. (February 2003).

¹⁷ The Student Peace Alliance citing research from the Ohio Commission on Dispute Resolution. Retrieved October 30, 2011, from <http://www.studentpeacealliance.org/learn/ohio-conflict>

¹⁸ *Ibid.*

Significant cost savings from mediation were identified in a 2004 evaluation of five early mediation pilot programs concerning civil litigation in Fresno, Los Angeles, San Diego, Contra Costa and Sonoma Counties of California. The total estimated cost savings from cases that settled in mediation in 2000 and 2001 in all five counties was estimated at \$49,409,385 in litigant costs and \$250,229 in attorney hours. The total potential cost savings from reduced numbers of court events and/or hours was approximately \$1.4 million in San Diego, \$400,000 in Los Angeles and \$9,700 in Sonoma County (Anderson & Pi, 2004).

In a 2001 study of the impact of mediation on litigant costs, court costs and satisfaction with the judicial process in the Appellate Court of California, it was discovered that family law and probate cases were more likely to settle in mediation than in litigation. An estimated \$76,298 in attorney costs was saved by cases settled in mediation with the overall savings for all mediated cases estimated at \$6,231,358.

A 2001 study by the Oregon Department of Justice (ODOJ) found that “the cost of resolving a case by taking it through a trial to a verdict (\$60,557) is, on average, the most expensive process. At the other end of the spectrum, mediation costs about \$9,537” (State of Oregon Department of Justice, 2001).

In a study conducted in 2001 on mandated mediation for non-family civil disputes in two courts in Ottawa and Toronto, cost savings to parties from mediation was estimated by their lawyers to be more than \$10,000 in 38% of cases, less than \$5,000 in 34% of cases and between \$5,000 and \$10,000 in 28% of cases (Hann & Baar, 2001).

The positive effect of mediation upon timeliness was shown in a 2002 study of workers’ compensation cases in Baltimore and also by an evaluation of a permanency mediation project in Michigan. The Baltimore study showed that when parties participated in mediation, workers’ compensation cases tended to get resolved earlier, that is, before certain litigation deadlines, compared to non-mediated cases. In view of the expense of preparing for the stage of litigation represented by each deadline, mediation that short-circuited litigation’s progression probably produced significant cost savings for the court and for litigants (Mandell & Marshall, 2002). Michigan’s permanency mediation project revealed that mediated child protection cases reached permanency in 17 months instead of the 29 ½ months typical of non-mediated cases (Anderson & Whalen, June 2004).

Protracted decision-making processes have costs. Permanency mediation reduces costs to the Massachusetts taxpayer inasmuch as “attorney’s fees paid through the Committee for Public Counsel Services are reduced when a trial is avoided. Savings accrue to the Department of Children and Families when children are legally placed permanently in their ‘forever home’ sooner and foster care and other ancillary costs are reduced” (Pearson, J. A. B., February 18, 2011, personal communication).

The cost savings to the Massachusetts court system from the use of mediation services provided by free or non-fee based ADR programs were calculated by the Trial Court Standing Committee on Alternative Dispute Resolution at over \$3 million in 1991 for juvenile cases alone (Cratsley, 2000). As for costs to parties in Massachusetts, in fiscal year 1997, the 431 trial days that were saved by 88 successful mediations of Superior Court cases saved \$4

million in attorney time. During the previous fiscal year, \$6 million dollars of attorney time were probably saved due to the 450 trial days that were eliminated by 92 mediations (Cratsley, 2000).

User reaction to community mediation

User responses to mediation, generally. Surveys of mediation participants indicate that users tend to be satisfied with their mediation experience. Maryland reported 86% user satisfaction and 90% user willingness to recommend the process in fiscal year 2008 (Bell & Wohl, 2008). According to Oregon, user satisfaction was 90% during 2007-2009 (Oregon Office for Dispute Resolution, 2007-2009). In Virginia, user satisfaction, willingness to use process again and to recommend mediation's use surpassed 90% (Virginia: Court-connected ADR). In the city of Portland, Oregon, mediation of citizen complaints about police misconduct led to levels of satisfaction among complainants and officers of 88% and 87%, respectively, as opposed to a 52% rate of dissatisfaction among participants in the usual internal affairs investigation of complaints (Police Assessment Resource Center & Vera Institute of Justice, August 2006). Recommendations regarding mediation were forthcoming from 97% of complainants and 86% of officers. Studies from around the US indicate that 95% of participants would use community mediation again (Wilkinson, 2001).

Massachusetts' mediation participants have expressed comparable levels of satisfaction with community mediation. Over 70% of disputants in community-mediated (i.e. mediation conducted by volunteer mediators) small claims cases reported complete or mostly complete satisfaction with the outcome and more than 90% felt completely or mostly satisfied that the mediation process was fair (Maiman, 1997). At the Superior Court level, over 90% of parties were mostly or completely satisfied with the process with plaintiffs significantly more satisfied than defendants and over 90% would recommend mediation (Maiman, 1997). The picture of user attitudes towards mediation, however, becomes more complicated as studies differentiate among outcome satisfaction, compliance and process satisfaction in measuring user reaction.

User reaction to outcome re satisfaction. Research findings on the relationship between user attitudes and the outcome of dispute resolution suggest outcome satisfaction with caveats about possible intervening factors. A Brooklyn study found greater outcome satisfaction among mediation participants than among adjudication participants (73% complainant and 79% defendant satisfaction with mediation outcomes versus 54% complainant and 67% respondent satisfaction with adjudication outcome) (McGillis, 1997, for review). On the other hand, a study of small claims cases in New Mexico showed that, while minority parties received less and paid out more money in both adjudicated and mediated cases than did non-minority parties, more minority claimants reported satisfaction with the mediation process than did non-minority parties (Hermann, LaFree, Rack, & West, 1993). Consistent with the New Mexico research, the non-alignment between mediation process satisfaction and outcome was borne out by a Massachusetts study which found no significant difference in satisfaction with the outcome between mediation and adjudication participants. This last study, however, reported that mediation agreements comprised more intermediate than binary conditions compared to adjudication outcomes (Wissler, 1995), which raises questions about the influence of outcome type on outcome satisfaction.

User reaction to outcome re compliance. Mediation seems to improve compliance with agreements. NAFCM numbers indicate that disputants upheld mediation agreements 90% of the time (Wilkinson, 2001). When comparisons were drawn between mediated and non-mediated disputes, mediated small claims cases in Maine had a higher rate of payment (70.6% full payment of 109 mediated cases) by defendants than did non-mediated adjudicated claims (33.8% full payment of 139 adjudicated cases) (McEwen & Maiman, 1981, cited by Charkoudian, 2010). Similarly, greater compliance with mediated divorce agreements occurred when the mediation process consisted of single sessions conducted by mediators selected from a diverse group of volunteers even though parties were allowed to change their mind (Wagner, 1990). There, more mediated divorce agreements made it to trial intact than did non-mediated divorce agreements. However, no significant difference in compliance was demonstrated in a study of three groups of Massachusetts small claims cases – those who participated in mediation which led to agreement, those participating in unsuccessful mediation that resulted in litigation, and those engaged in adjudication without prior mediation (Wissler, 1995). The above mixed results suggest that the influence of other possible compliance factors such as dispute type, voluntariness of compliance and time lapse since agreement might be operating.

User reaction re satisfaction with process. User satisfaction with the community mediation process has also been supported by research. For instance, over 80% of professionals (attorneys and human services staff) and 75% of family members involved with permanency mediation in Michigan expressed satisfaction with the mediation process (Anderson & Whalen, June 2004). Mediation of citizen complaints about Oregon police left all the officers and 99% of complainants with the impression that mediators were fair to both sides. (Police Assessment Resource Center & Vera Institute of Justice, August 2006). One hundred percent of the officers and 88% of complainants felt the process allowed them to have a voice and tell their story. User process satisfaction for mediation was further confirmed by a study comparing the reaction of mediation participants to adjudication participants in Massachusetts small claims cases (Wissler, 1995). Mediation participants thought that mediation (conducted by volunteer mediators) was more fair and reported greater satisfaction with the process than did adjudication participants. This finding held even for participants whose mediation failed to yield an agreement. Moreover, greater willingness to repeat the process in future small claims disputes was expressed by community mediation participants about mediation than was expressed by adjudication participants towards adjudication.

Process factors and user satisfaction. The source of participant satisfaction with community mediation was identified, not with participant characteristics, but with process factors relating to control and dignitary features (Wissler, 1995). The influence exerted by these process factors turns out to be relevant to assessing community mediation's impact on the social capacity for conflict resolution in the community.

Community Mediation and the Effect on Social Capital Formation and Conflict Resolution Skills

Community mediation's claim to promote the growth of social capital and to increase the social capacity for conflict resolution in the community awaits direct, rigorous testing.

Nonetheless, research has so far yielded results which are consistent with the theory that community mediation enhances both these developments in Massachusetts and other venues. Studies showing the breadth of mediated outcomes (Wissler, 1995), the beneficial effect of community mediation on relationships (Merry & Rocheleau, 1985; Wissler, 1995; Maiman, 1997) and the factors involved in process evaluations (Wissler, 1995) prove useful for explaining the nature of community mediation's contribution to the formation of social capital. The documented appeal of community mediation to the public at large (Wissler, 1995; McGillis, 1997; Maiman, 1997; Wilkinson, 2000) and to vulnerable populations in particular (Hermann, et al., 1993; Depner, Cannata, & Ricci, 1994) may signal the empowering effect of community mediation upon participants. An increased capacity to handle disputes was reported by participants in community-mediated family disputes (Merry & Rocheleau, 1985) and may underlie an observed reduction in post-mediation appeals to police and the courts (Charkoudian, 2005; Charkoudian, 2010). Nonetheless, one failure to discover a significant educational effect of community mediation on participants in Toronto (Pincock, 2011) calls attention to the tentative nature of the research findings concerning community mediation's social impact.

Effect of community mediation on relationships

Improved human relations facilitate the development of social capital. Community mediation has been shown to have a positive effect on the relationship between disputants, which may prove valuable to the formation of social capital.

Relationships and mediated court-connected disputes. With respect to court-connected disputes, a comparison study of mediated and adjudicated small claims disputes in Massachusetts demonstrated that, unlike unsuccessful mediation (no agreement achieved) and adjudication, successful mediation (ending with agreement) had a positive effect on inter-party relationships (Wissler, 1995). Negative ratings of the opponents were significantly lower for participants in successful mediations, remained the same for adjudication participants and increased in the case of participants in unsuccessful mediations. Perceptions of the negative effect of the dispute on the parties' relationship also varied with the resolution process: a less negative effect was noted by successful mediation participants than by either the adjudication or unsuccessful mediation groups. No significant differences in understanding of the opponent were observed for the mediation and adjudication groups (Wissler, 1995).

A subsequent study of Massachusetts community-mediated small claims cases revealed changes in party perceptions of their relationship to their opponent (Maiman, 1997). Parties who were satisfied with the mediation outcome (over 70% of participants) perceived that the mediation improved their relationship with the other party. The perception of improved relationship was not limited to small claims cases. Between 23.1% and 43% of participants in mediated cases in various Massachusetts Superior Courts agreed that mediation helped improve their relationship with the other party (Maiman, 1997). Other studies confirm that mediation may reduce hostility, anger and increase understanding between the conflicting parties (Wissler, 1995, citing McEwen & Maiman, 1981 and Sarat, 1976).

Relationships and mediated non-court disputes. Perceptions of an improved relationship are not limited to court-connected mediation. Outside the judicial context, a study of parent-

child mediation conducted under the auspices of the Children's Hearing Project, a Massachusetts community mediation center, found that, after mediation, 59% of disputants felt they understood the other side's position better (Merry & Rocheleau, 1985). Overall, the results of studying the relationship effects of community mediation in different contexts tend to support a favorable effect on inter-party relationships from community mediation.

Outcome and the development of social capital

Mediation outcomes may prove to be a mediating factor in bringing about the relationship improvements associated with community mediation, which, in turn contribute to the growth of social capital. Binary outcomes, which are the norm for adjudication, focus on determining right and wrong, winners and losers, and usually result in full or no payment of party claims (Wissler, 1995). Intermediary outcomes are characterized by variety in agreements that may encompass nonmonetary conditions, payment time schedules and immediate payment of some portion of claims. The multiplicity of intermediate outcomes is more likely than binary ones to address relational issues that lie behind a dispute and are less likely to exacerbate a win-lose dynamic. When (community) mediation outcomes were contrasted with adjudicated outcomes for Massachusetts small claims cases, mediation produced significantly more intermediary outcomes than binary ones (Wissell, 1995). This result is consistent with the posited ameliorative effects of community mediation on the relationship between adversaries.

Community mediation and empowerment

Community mediation presumably induces individual and community empowerment by providing a mechanism as well as a forum in which individual members of the community and associated community institutions exercise their control and responsibility for disputes that arise in the community.

User satisfaction and empowerment. User satisfaction with the community mediation process, their willingness to use community mediation to address future disputes and to recommend the process to others (Wissler, 1995; Maiman, 1997) may be regarded as symptoms of participants' heightened sense of empowerment with handling disputes (a view that calls for additional testing). Research results that indicate a greater satisfaction with mediation among vulnerable participants is consistent with this proposed connection between user satisfaction and empowerment. When outcomes and process satisfaction were measured in both mediated and adjudicated small claims cases according to race and gender, it was found that minority participants tended to pay out more and receive less money than majority parties in both mediated and adjudicated cases with results more pronounced for mediated cases (Hermann et al., 1993). However, more minority claimants expressed satisfaction with mediation, and minority women, who were the least successful in terms of outcome, expressed the greatest satisfaction with the mediation process (Hermann et al., 1993). Similarly, a survey of families participating in custody and visitation mediation in California courts found that ethnic minorities and participants with less education and income were more likely to rate mediation as helpful (Depner et al., 1994). Even so, a study of Toronto participants in community-mediated disputes, which found no association between increased awareness of community mediation and greater frequency of mediation

use (Pincock, 2011), raises questions about the connection between the sense of empowerment and the acquisition and application of conflict resolution skills.

Process features as factors in empowerment. Dignitary process features and control over the process are significant factors in accounting for the differences in user reactions to community mediation (Wissler, 1995). The procedural evaluations of disputants vary depending upon their participation in community mediation or adjudication. Whether the mediation proved successful or not, Massachusetts community mediation participants thought that the process was fairer, were more satisfied and were more willing to use the process again than adjudication participants. Disputant characteristics such as goals, relationship, admitted liability, previous court experience, age, education, income, or gender were not significant factors in this discrepancy. Rather, “[t]he features of the [mediation] process that contributed to evaluations of the process as fair and satisfying included the session being thorough, open, providing disputants with an opportunity to tell their side of the story and with control over the presentation, and marginally, providing disputants with control over the outcome....In addition, evaluating the third party as neutral and as understanding the dispute accounted for 48% of the variance in procedural evaluations...” (Wissler, 1995, p. 345). To the extent that process control and dignitary process features – including thoroughness, openness, and the services of a neutral and understanding third party – are associated with user process satisfaction, there may also be a connection to increased empowerment, possibly as an underlying dynamic. Again, more research is needed to assess these possibilities.

Community mediation and increased conflict resolution skills

Indications that community mediation can enlarge social capacity for conflict resolution come from reported post-mediation changes in family conflicts (Merry & Rocheleau, 1985) and diminished use of the courts and police (Charkoudian, 2005; Charkoudian, 2010). Community mediation’s effectiveness in reducing conflict is demonstrated by a significant fall in calls to the police during a six-month period for mediated compared to non-mediated cases (Charkoudian, 2005). These results were confirmed in a controlled study, where police and court involvement in interpersonal disputes decreased following community mediation efforts (Charkoudian, 2010). The possibility that improved conflict resolution skills were the reason that demands on police and courts diminished is bolstered by research which demonstrated that the reduction in inter-family conflict following community mediation was attributable to changes in the way disputes were handled (Merry & Rocheleau, 1985). After their community mediation experience, 54% of family members reported feeling that the way they handled conflict had changed and over 70% of family members reported decreased fighting and arguing (Merry & Rocheleau, 1985). The effectiveness of community mediation in improving conflict resolution skills has, however, been called into question by the failure to discover a significant educational effect in approach to conflict for community mediation participants (Pincock, 2011). For half the participants in this Toronto study, there was little evidence of transformation, with avoidance as the most characteristic change in handling conflict and only a minority of cases reporting changes in self-efficacy, communication skills, or understanding of own interests (23% reported an educative effect, 61% reported none).

Appendix D: Community Mediation Impact

Community mediation's mission is to serve the community by, among other things, increasing access to justice. It does so through conflict resolution services and education, which are offered by community mediation centers to community members (Hardin, 2004). Across the nation, the array of disputes that are tackled, the variety of services provided and the extensive network of referral sources speak to the breadth of actual benefits that accrue to the community from the activities of these centers. A shift in perspective – from the national to the local – turns this universe of actual benefits into a universe of possibilities due, in part, to the vagaries of funding.

Broad spectrum of users

The limited access to the justice system for the resolution of disputes, attributable to a certain extent to the expense of litigation, was an important force that propelled the development of community mediation (Bradley & Smith, 2000). Community mediation therefore aims to broaden access to justice by providing dispute resolution services to a wide spectrum of individuals in the community. In order to reach this goal, community mediation centers operate on the principle of providing direct access to their services to all persons, regardless of ability to pay (Hardin, 2004). Centers offer their services for free or on a sliding scale so as to accommodate lower income parties without excluding the more affluent. Community mediation users consequently span a wide range of economic circumstances. For example, the average income of community mediation users in New York was \$9,000 in 2002. In Texas, average user income was \$40,000 and more (Hardin, 2004).

Wide range of disputes

The number and variety of disputes addressed through community mediation demonstrate the extent of center engagement with the range of needs and interests existing in the community. A sampling of community mediation centers from around the country reveals that in Portland, Oregon, citizen complaints about police misconduct are mediated to the satisfaction of the vast majority of the participants (Police Assessment Resource Center & Vera Institute of Justice, August 2006); that volunteer community mediators in New York, who received training in agricultural issues, handle disputes that arise in the farming community (Collins, M., August 18, 2011, personal communication); that the problem of youth shoplifting is getting addressed by a Michigan community mediation center through restitution and prevention efforts (Northern Community Mediation); and that permanency mediation is provided by a community mediation center in Roxbury, Massachusetts (Pearson, J. A. B., February 18, 2011, personal communication).

The variety of disputes handled by community mediation centers is considerable: 37 different kinds of disputes were reported by centers (Hardin, 2004). At least 75% of the centers dealt with neighborhood disputes, interpersonal disputes and landlord-tenant conflicts over such issues as property access, parking, noise, miscommunication and disrespect, rent and maintenance problems. Conflicts between merchants and consumers, disputes within families, in schools and in the workplace were handled by 64-65% of the centers. Sixty-two and 61% of the centers were involved with court-connected small claims cases and parent-child conflict, respectively. Forty-eight percent or fewer of community mediation centers

provided services for disputes concerning victim-offender restorative justice efforts, minor criminal behavior, citizen police complaints, gang interactions, domestic violence, custody and divorce issues, cross-cultural disputes, discrimination problems, policy debates, environmental controversies, multi-party disputes, special education issues, truancy, inter-business conflict, agricultural issues and so on (Hardin, 2004). By addressing such a vast array of disputes irrespective of the phase of the dispute and parties' ability to pay, community mediation centers provide disputants with an avenue to justice. As this long list of dispute categories indicates, there are few facial limitations on the kinds of disputes that can be mediated. Since community mediation may be introduced during any phase of a dispute, community mediation provides an avenue to justice for disputes that are typically outside the purview of the judicial system.

Variety of services

The assortment of services offered by community mediation centers further demonstrates their responsiveness to community needs. Community mediation centers typically offer an average of seven types of services to communities, neighborhoods, families and schools (Gazley et al., 2006). Out of 15 possible service categories, over 80% of community mediation centers offer dispute resolution services and training to other organizations; family mediation services are provided by over 75% of centers; more than 60% of centers are involved with peer mediation in schools, conflict resolution education, training in schools or conflict coaching; about 43% engage in victim-offender mediation or restorative justice programs; 37% furnish child and family support services; and fewer than 20% of centers provide services connected to racial/ethnic reconciliation processes, victim support services, gang reconciliation processes, court-referred small claims mediation programs, housing mediation programs and employee-employer mediation programs (Gazley et al., 2006).

Recently, efforts by a number of community mediation centers are underway to broaden their impact on the community: they seek to empower individuals, not only to resolve conflict, but also to participate in local governance. Between 44% and 60% of community mediation centers engage somewhat in activities that promote civic engagement, such as facilitating large group community meetings or forums, mediating complex multiparty community problems and organizing public dialogues among members of the public or between the public and local officials (Gazley et al., 2006). California's Pasadena Police Department is engaged in one such enterprise with the establishment of a police-community mediation and dialogue program that "simultaneously works to resolve an individual complainant's concerns through mediation while working to resolve concerns in the communities through ongoing public dialogue" (Police Assessment Resource Center & Vera Institute of Justice, August 2006, p. 14).

Community mediation stakeholders

The variety of disputes that community mediation centers handle through their array of services demonstrates that disputants come from all walks of life to create an extensive circle of community mediation stakeholders. Whether the disputes involve issues generated by divorce, custody disagreements, parent-child battles, domestic violence, or neighborhood quarrels; families and neighbors get involved with community mediation. Schools enter into the mix over issues related to truancy, bullying, special education needs, peer mediation

efforts, student-on-student or student-teacher problems. The business world's stake in community mediation derives from commercial disputes between businesses; from consumer-merchant complaints about payments and quality of products or services; from disagreements within the real estate sector over property and between landlords and tenants over rent payments and maintenance; and from workplace clashes between co-workers or employees and supervisors. The farming community joins this stakeholder group as agricultural problems are broached. Debates over policy issues, like the environment or the promulgation of regulations, draw in government officials and agencies. Minorities and other groups become stakeholders as problems relating to status – e.g. disability, ethnic or racial affiliation, or sexual orientation – as well as to human rights issues and discrimination are confronted. And the network of community mediation stakeholders grows ever larger with the inclusion of the various institutions and individuals who refer disputes to community mediation.

Numerous referral sources

The panoply of stakeholders to which community mediation centers are responsive embraces referral sources as well as disputants. According to NAFCM data, referrals are generated by the public, professional, court and private sectors (Hardin, 2004). The public sector encompasses housing authorities, animal control units, the Department of Agriculture, child-adult protection services, mental health agencies, police, local government, social service agencies and schools. The professional realm is comprised of realtor associations, therapists, businesses, attorneys, chambers of commerce, public defenders and legal supervisors. The court system includes judges, county clerks and probation and parole prosecutors. Private referrals stem from individuals and their social circle (family, relatives, and friends), churches, non-profits, etc. The distribution of referrals over community mediation centers shows that 44% of centers report referrals that originate from individuals' social circle (their family, friends and relatives) and from the center itself, 41% from the courts, followed by 36% from police; 24% from social service agencies, with 14% and fewer centers receiving referrals from community agencies, municipal agencies, local government, attorneys and legal services (Hardin, 2004).

Challenges to access to justice

The increased access to justice achieved through community mediation, which is evident at the national level – and accomplished when community mediation centers offer a large menu of services to address any number of disputes – may not exist in all regions. For any locality, access may be constricted by the development of expertise and funding constraints. A community mediation center may find itself specializing as it becomes proficient with certain complex or technical issues. Likewise, community mediation centers may tailor their programs to accommodate the funding requirements of sponsors eager to promote their particular interests and those of their constituents (Davis, 1986). When these forces for specialization are not balanced by financial support for general community mediation services, inequities develop. The heyday of community mediation in Massachusetts is a case in point.

During the eighties, Massachusetts as a whole had access to six types of services from 28 community mediation centers. However, there was no state support in Massachusetts for

general community mediation services and specialized community mediation centers predominated. About one-third of the centers (10) provided general mediation services with few if any limitations on types of disputes addressed. Approximately two-thirds (18) customized their services to focus on family mediation between parents and children, on consumer mediation involving consumer-merchant or landlord-tenant disputes outside litigation processes, on in-court small claims mediation, on divorce mediation involving children, or on court-based offender-victim restitution efforts (Davis, 1986). However a fine-grain analysis of the community mediation situation reveals that some regions were excluded from this wealth of mediation services in the 1980s. No community mediation centers were to be found in two counties (Berkshire and Nantucket Counties) and only family mediation services or a restitution program were available in another four counties (Bristol, Plymouth, Barnstable and Norfolk Counties) (Davis, 1986). As a result of the trend towards specialization and the absence of funding for general services, Massachusetts was denied state-wide access to a full array of mediation services, and dispute resolution needs of communities were not met. In contrast, New York funding at the time and up to the present underwrites general mediation services in every county in the state (Davis, 1986). Whatever model is adopted to accommodate the several needs for general mediation services and for expertise, the urgency for removing impediments to access increases as the evidence for the benefits of community mediation mounts.

Demonstrable effectiveness of community mediation

Research tends to support the claim that community mediation benefits the community. The effectiveness of community mediation in reducing conflict has largely been demonstrated through the measurement of agreement rates and user evaluations of the mediation process and outcome. Because of the prevalence of data concerning court-connected mediation, the majority of research findings reflect the effectiveness of mediation efforts that occur in the court context. Evidence that community mediation's success extends beyond the judicial system, however, is accumulating. For example, the impact of community mediation on reducing placement time, producing participant satisfaction and generating agreements was shown for permanency mediation (Anderson & Whalen, June 2004); agreements were achieved in 93% of mediated school-referred family disputes (Office of Children and Family Services); and at least 87% of participants expressed satisfaction with mediated citizen complaints about police misconduct (Police Assessment Resource Center & Vera Institute of Justice, August 2006). Taken as a whole – that is, the entire spectrum of disputes, mediation participants and referral sources – community mediation centers prove their worth inasmuch as they deal with an estimated 100,000 disputes annually and achieve settlement rates that exceed 66% (Gazley et al., 2006).

Community mediation's success in developing social capital and strengthening conflict resolution capacity, which involves such intangibles as relationship-building and changed awareness, is only beginning to be assessed. As one community mediation center director noted, the improvement in children's lives as a result of permanency mediation "when the adults can engage in a non-adversarial process and focus on the needs of their children" has eluded quantification (Pearson, J. A. B., February 18, 2011, personal communication). So far, research has demonstrated community mediation's effect on reducing post-mediation appeals to police and the courts (Charkoudian, 2005; Charkoudian, 2010), on increasing

positive perceptions of the opponent (Merry & Rocheleau, 1985; Wissler, 1995; Maiman, 1997), on heightening the attractiveness of the dispute resolution process to vulnerable populations (Hermann et al., 1993; Depner et al., 1994); and on improving a family's ability to handle disputes (Merry & Rocheleau, 1985). These results are promising but more research needs to be pursued to determine community mediation's progress towards achieving its goals regarding conflict reduction, social capital and conflict resolution capacity.

Appendix E: The Current Status of Community Mediation in Massachusetts

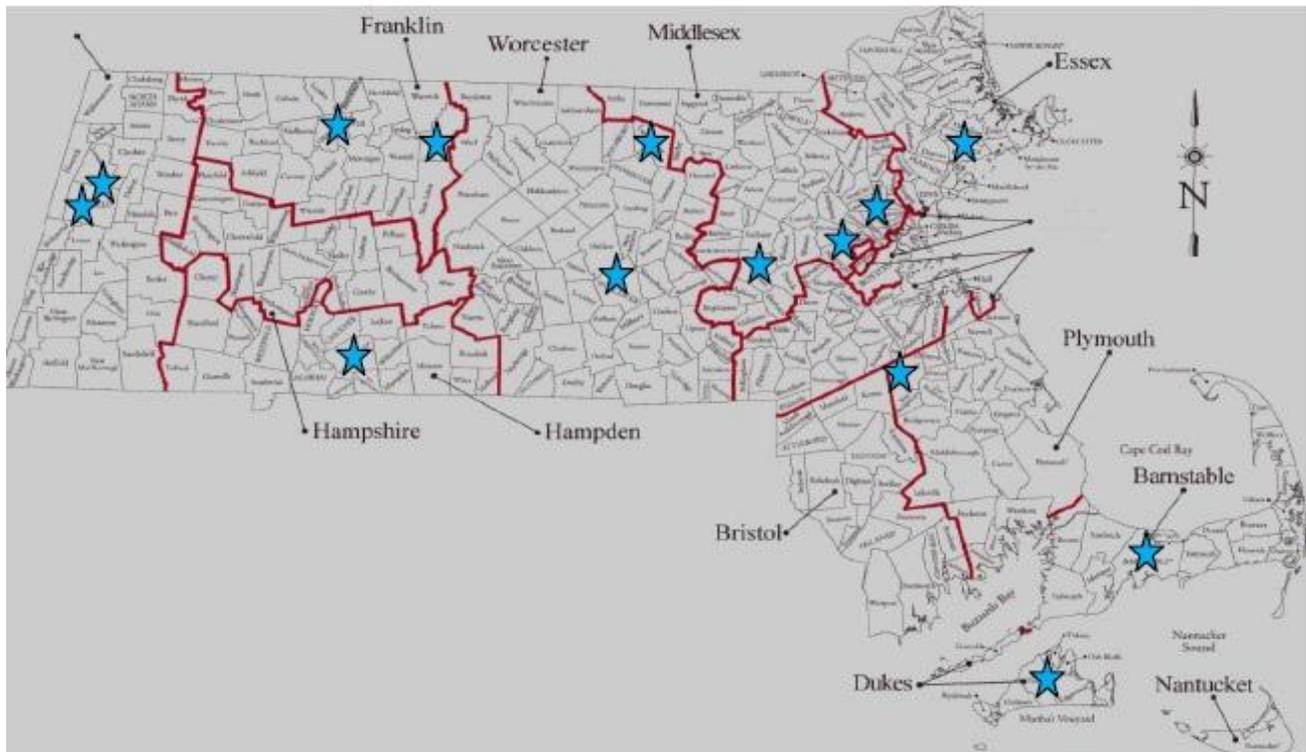
For purposes of this legislative study, the Massachusetts Office of Public Collaboration (MOPC) collected up-to-date information about the state of community mediation in Massachusetts. Two methods were used to collect this information. The first was to coordinate part of the data collection with that of the National Association for Community Mediation (NAFCM) using NAFCM indicators administered online as the State of Community Mediation Survey in July-August 2011 and followed by the MOPC Community Mediation online surveys launched in September 2011. The NAFCM survey was completed by 12 community mediation centers while the MOPC survey was completed by 14 centers. The centers were identified by 1) the list of centers registered with NAFCM; 2) reaching-out to the Community Mediation Coalition of Massachusetts; and 3) searching ADR program lists, including a current list of court-connected ADR Programs from the Trial Court. Both the NAFCM survey and the MOPC survey were sent via emails to 21 centers identified as community mediation centers. The following data and findings are compiled from these two surveys. The following is the list of the 14 Community Mediation Centers, mostly from the Community Mediation Coalition of Massachusetts (CMCM), who took part in the survey(s):

1. Berkshire County Regional Housing Authority Mediation Program, Berkshire County
2. Cape Mediation, Barnstable County
3. Community Dispute Settlement Center, Middlesex County
4. Community Mediation Services, Center for Nonviolent Solutions, Worcester County
5. Dispute Resolution Services, Inc., Hampden County
6. Family Services of Central Massachusetts, Worcester County
7. Greater Brockton Center for Dispute Resolution, Plymouth County
8. Mediation Services Of North Central Massachusetts, Inc., Worcester County
9. Metropolitan Mediation Services, Suffolk, Middlesex & Norfolk Counties
10. MetroWest Mediation Services, Inc, Middlesex County
11. Middlesex Mediation, Middlesex County
12. North Shore Community Mediation Center, Essex County
13. Quabbin Mediation, Inc., Franklin County
14. The Mediation & Training Collaborative, Franklin County

Additional data on serving low-income groups was collected by MOPC through five of these centers in connection with the MA Department of Revenue Parent Mediation Program. This data is also presented in this appendix.

Massachusetts community mediation serves a broad range of stakeholders

MOPC survey data indicate that Massachusetts community mediation is a vital free and/or affordable public service that increases access to justice by providing services where disputants live. Below is a map showing the locations of most of the community mediation centers across the state.



Community Mediation Coalition of Massachusetts Member Programs statewide shown by star ★

Data from a recent survey of 15 mediation participants from Massachusetts¹⁹ indicated that they chose mediation because it was a better option than going to court (41%); free (25%); locally accessible (15%) and easily accessible (11%)

Of the total number of persons served by Massachusetts community mediation centers²⁰ in FY 2011, between 20% and 60% were low-income²¹ earners. One center providing services under a housing assistance program indicated that approximately 85% of the tenant households participating in Summary Process Mediation were at or below the federal poverty level.

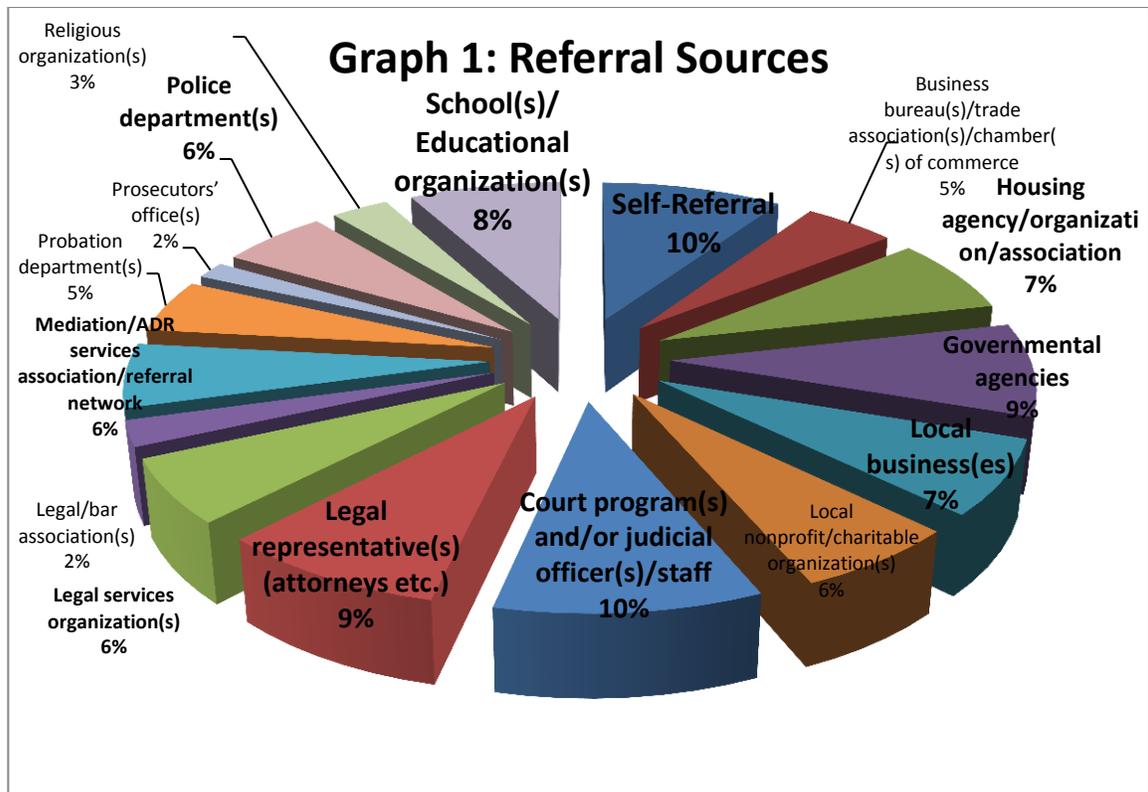
Massachusetts community mediation centers serve diverse community stakeholders and provide a wide array of services to the local community. Despite the reliance on the court, many centers still strive to serve the local communities. Massachusetts community mediation centers are also increasing the role of community members in resolving community conflicts.

Community mediation centers in Massachusetts serve a multitude of stakeholders. This is evidenced by the diverse array of stakeholders seeking their services. Graph 1 below illustrates the diverse stakeholder groups seeking services from 14 community mediation centers in Massachusetts and the percentages of work their referrals constitute.

¹⁹The program referred to is the Parent Mediation Program, administered by MOPC through five community mediation centers since 2008, with funding from the Massachusetts Department of Revenue.

²⁰Data provided by four Massachusetts community mediation centers to the Massachusetts Bar Foundation.

²¹Poverty calculated using 2010 HHS Poverty Guidelines.



The greatest number of disputes referred to community mediation is self-referred (10%) or is referred by the court or a court program or judicial officer/staff member (10%). The next highest percentage of cases (9%) is referred by government agencies. Another 9% of referrals are from legal representatives followed by schools or educational institutions (8%). Among the other significant sources of referral are local businesses (7%) and housing authorities (7%). The police also refer disputes to community mediation (6%). ADR networks, local nonprofits and legal service organizations (6% each) refer disputes to community mediation centers. The Massachusetts community mediation centers surveyed receive referrals from business bureaus or chambers of commerce (5%), the probation department (5%), religious organizations (3%), legal or bar associations (2%) and the prosecutor's office (2%).

The distribution of referral sources is an excellent indicator of Massachusetts community mediation as community-based alternative dispute resolution infrastructure. It indicates that Massachusetts community mediation is sought after by numerous stakeholders as a vital public service. The following is a list of some of the organizations arranged by categories that were the main source of dispute resolution referrals for six community mediation centers in Massachusetts.

Business bureaus/trade associations/chambers of commerce and local businesses

Cape Cod Cooperative Bank, Berkshire County Board of Realtors

Courts/court programs and officers

Barnstable Small Claims and Summary Process Court; Orleans Small Claims and Summary Process Court; Falmouth Small Claims and Summary Process Court; Nantucket District Court; Central, Northern and Southern Berkshire District Courts; District Courts in Salem, Peabody and Gloucester; Essex County Probate and Juvenile Courts; Brockton District Court;

Greenfield, Northampton and Holyoke District Courts; Franklin, Hampshire and Hampden Probate Courts; Franklin/Hampshire Juvenile Courts; ADR Coordinators

Housing agencies/organizations/associations

Barnstable Housing Authority, Berkshire County Rental Housing Association, Housing Assistance Program of Essex, Amherst Housing Authority, Franklin Regional Housing Authority, Easthampton Housing Authority, Hilltown Community Development Corporation

Legal services organizations and legal/bar associations

Western Massachusetts Legal Services, Berkshire Bar Association

Police departments

Pittsfield Police Department, Salem and Peabody Police Departments

Probation departments/officers and prosecutors' offices

Essex County Juvenile Court Probation Department, Norfolk County DA's Office

Schools/educational organizations

Salem State University, Cape Cod Community College, Great Falls Middle School Turners Falls High School

Social service organizations and local nonprofit/charitable organizations

The Berkshire Community Action Council, Berkshire Housing Development Corporation, *Massachusetts* Department of Transitional Assistance, Beverly Bootstraps, Fall River Local Consumer Protection, Hospice and Palliative Care

The following are some of the comments made by Massachusetts community mediation centers that further illustrate this point:

"Our mission is to provide affordable and accessible services to the community. Thru the use of pro bono mediators we have been able to provide a broad range of services: housing and landlord/tenant disputes, family matters including divorce; workplace and neighborhood. We are also committed to addressing emerging community needs. For example, growing elder population and the development of specialized outreach and mediation services; also at-risk youth and the development of specialized training curriculum."

"We have continued to a multitude of area courts serving our neighborhoods and communities, we continue to assist youths through service to schools and juvenile courts, we continue to partner with area human services agencies. We strengthen community conflict resolution capacity train community members (adults and youths) and providing opportunities for people to contribute to their communities as volunteer mediators. Our focus is on service to families, youth, consumers, and neighbors."

"We continue to run school-based mediation programs and participate in Community partnerships. Also have outreached to the programs in our agency that serve low-income families throughout Franklin and Hampshire Counties, Bar Associations and legal services,

District, Probate & Juvenile courts and DCF to try to make sure people are aware of our services and the financial accessibility of our services."

"We have just completed a strategic plan and struggled with the need to keep the focus on community mediation while looking for income producing mediation/training. The community mediation focus won for now but all new initiatives need to meet certain criteria so we are certain we can support the work financially."

"We have increased outreach activities within our local community. We offer community mediation, small claims mediation and civil court mediation."

"We offer neighborhood, elder care, relationship mediations, parent-teen mediations and out of court housing and consumer mediations."

"Maintain community program model. Community volunteers, voluntary, free services, mutually satisfactory agreements and do not take away clients rights."

"We primarily focus on court-connected disputes. However, the agency still handles a large number of out of court landlord/tenant, neighbor, and consumer (merchant) related disputes."

"We are totally community focused. It is our intention to serve communities and neighborhoods in the city. That is one of the goals of CNVS. If/When we offer Basic Mediation Training, we plan to do so in a way that enhances the community focus."

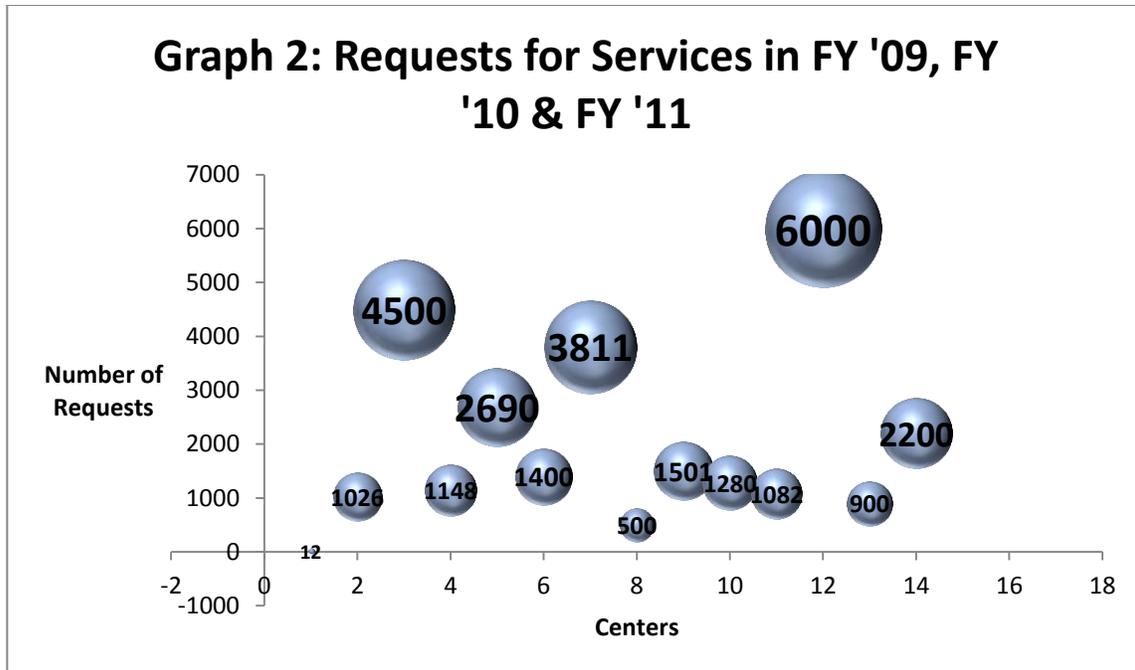
"Our sliding scale for mediations starts very low, and we sometimes do local mediations for free."

"The Greater Brockton Center for Dispute Resolution participates in two major events annually. We participate in the "Night out against Crime" and the "Safety Day" sponsored by the Good Samaritan Hospital and provides information to attendees on conflict resolution and consumer protection information provided by the Attorney General's Office. In addition, brochures outlining our program are available at the public library, the police station and city hall. We have recently begun to offer divorce mediation to the community. (There is no charge for any of our services at this time)."

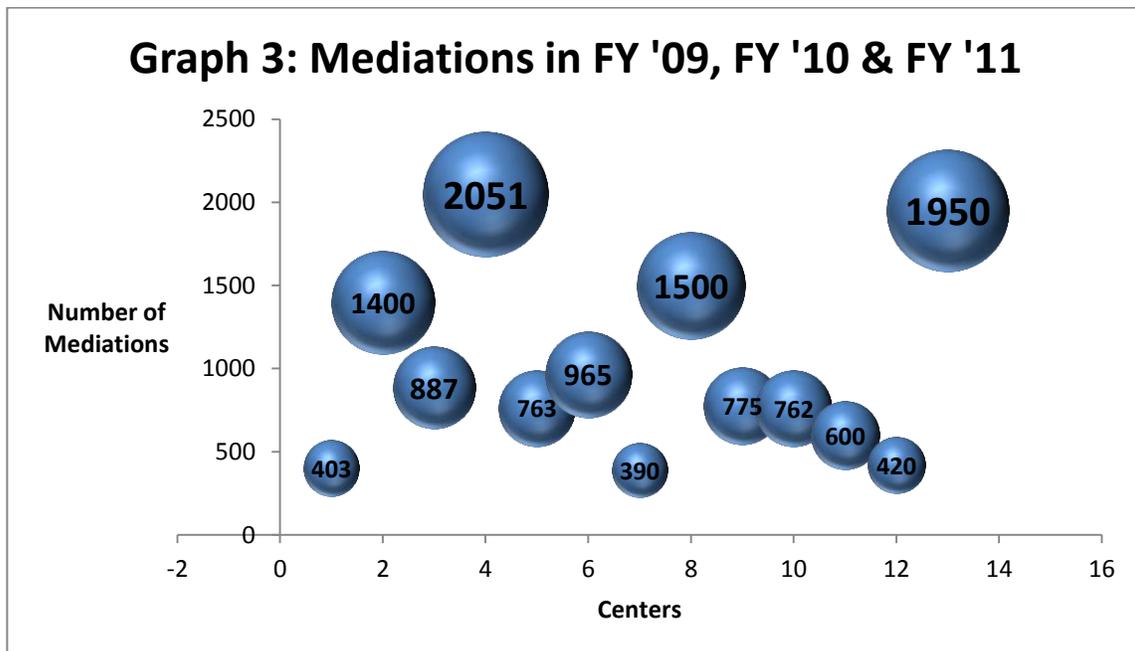
"Yes we have maintained our community-focus by still doing presentations and community mediations."

MA community mediation: An efficient dispute resolution service

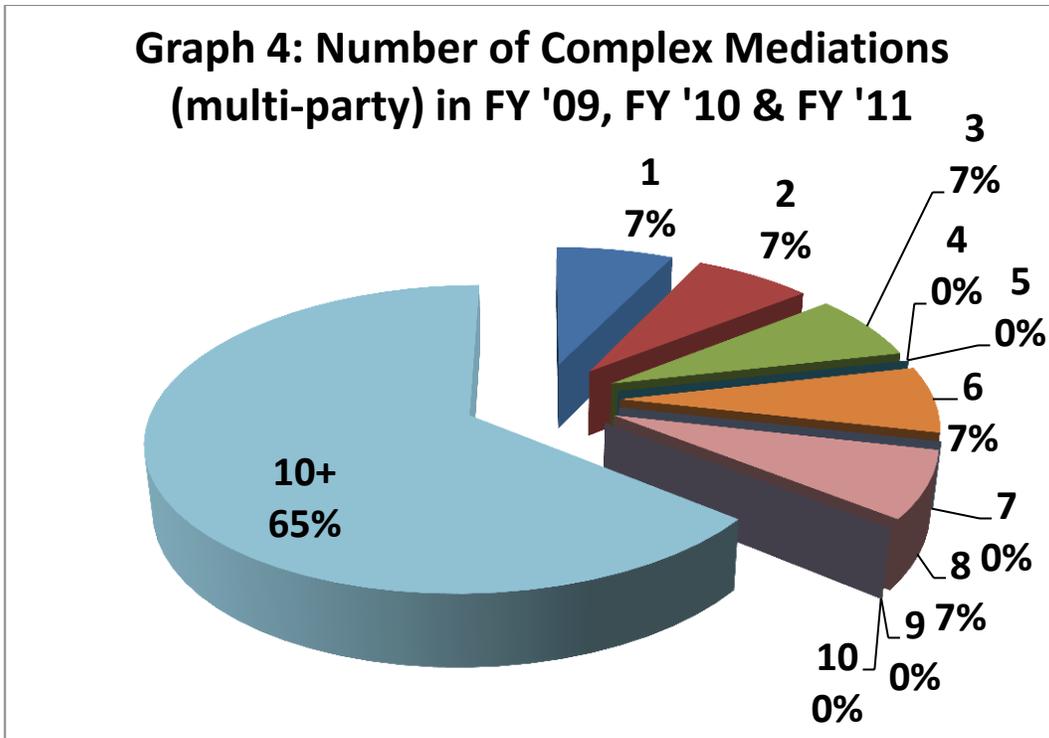
Fourteen Massachusetts Community Mediation Centers received 28,050 requests for services in Fiscal Years 2009 to 2011 with an average of 1,905 per center. This was despite the fact that one of the centers was merely a few months old with only 12 requests for services in FY11. Graph 2 below indicates the distribution of service requests across the 14 centers.



In the same period, the 14 centers mediated 12, 866 disputes at an average of 990 mediations per center. Mediation numbers across the 14 centers ranged between 930 and 2,051. Please see Graph 3 below for total mediations per center during the same period.

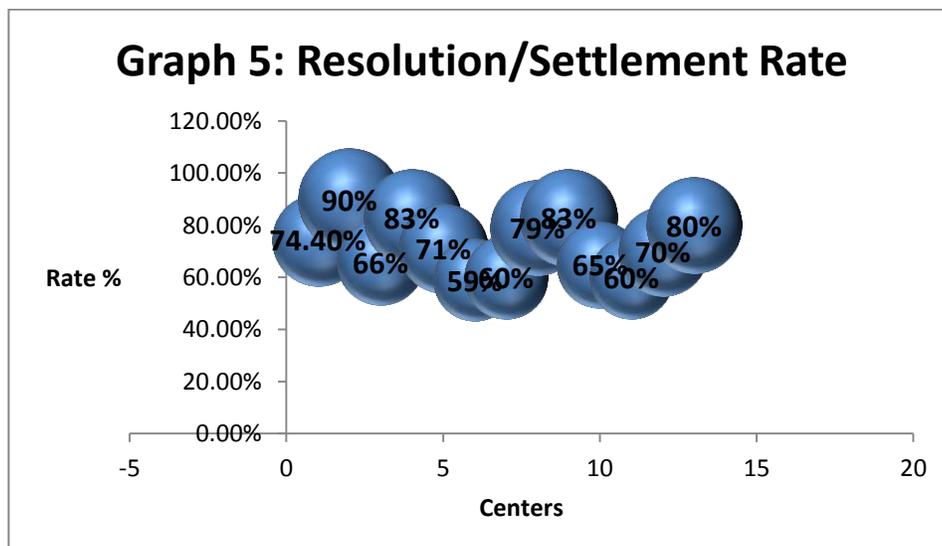


Nine of the 14 community mediation centers (65%) indicated that they had mediated over 10 complex multi-party disputes within the same period.



Complex multi-party disputes range from neighborhood disputes to public policy conflicts involving multiple stakeholders/stakeholder groups. The capacity of community mediation centers to mediate complex multi-party disputes is of significant value to the state. Mediating multi-party public disputes can produce “fairer, more efficient, more stable, and wiser outcomes” by overcoming “diametrically opposed interests” of diverse stakeholder groups (Susskind, Fall 1997).

A benchmark of an effective mediation process is the resolution or settlement rate. The resolution rate is the number of disputes resolved as a percentage of the total number of mediations conducted. Thirteen of the 14 centers had an average resolution rate of 72.3% (Please see Graph 5 below). One center did not furnish its resolution rate. Resolution rates ranged from 59% to 90%.



These rates are fairly high considering the fact that the centers conducted a total of 12,866 mediations in FY09, FY10 and FY11. The average resolution rate of 72.3% means that an average number of 9,302 disputes resolved or settled in this period. Judging by the stakeholders referring disputes to community mediation as a percentage of the workload of the 14 centers (see Graph 1); an average of 930 disputes referred by the court was resolved by the centers in FY09, FY10 and FY11. It also means that an average of 837 disputes referred by government agencies, 744 disputes referred by schools, 651 disputes referred by housing authorities, 651 disputes referred by local businesses, and 558 disputes referred by the police were also resolved by these centers. If a systematic impact assessment was conducted based on these figures, it could indicate a significant reduction in court congestion as well as other community gains like public dispute resolution, foreclosure prevention, school bullying prevention, neighborhood conflict prevention, youth violence prevention and commercial dispute resolution. More research is needed to systematically gather data to document these impacts.

Massachusetts community mediation: a cost-effective dispute resolution service

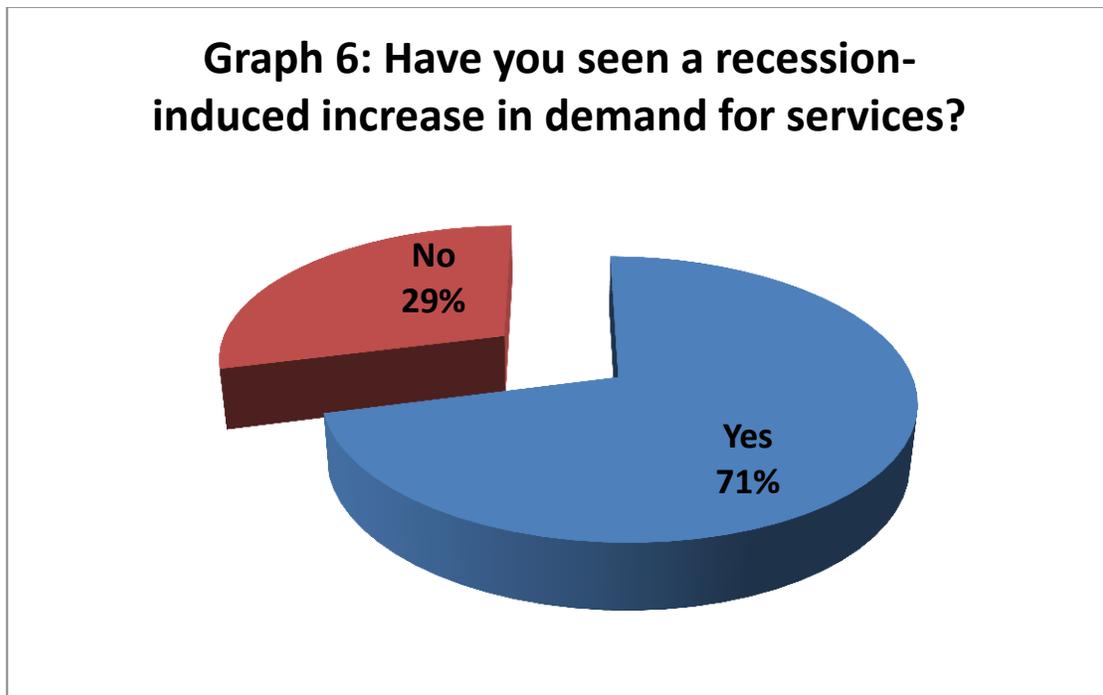
Massachusetts community mediation centers provide services through trained community volunteers representing a range of backgrounds and professions. These mediators are overseen by staff who also co-mediate with volunteers as part of their supervision and training. Data collected from 12 centers responding to a 2011 survey by the National Association for Community Mediation indicates an average roster size across these centers of 31.5 volunteer mediators. Not every Massachusetts center puts a dollar value on the private contribution of volunteer time donated by their mediators, but the two centers that have done this for their annual financial reviews by external accountants, both use the value of \$100 per hour. In comparison to the fees charged by private mediation practitioners in Massachusetts, this valuation of donated mediator services is at the low end of the spectrum.²²

Increasing demand for community mediation in tough economic times

National level issues induced by the recession are being felt in Massachusetts communities. Recession-induced community problems have increased community conflicts (inter-personal, public disputes). Those hardest hit by these conflicts are the poor, marginalized segments of society. As a result, the demand for free or low-cost conflict resolution services has increased in the local community. Traditional mechanisms of delivering justice and dispute resolution such as the courts are understaffed and challenged in handling increasing demands on their own. Community mediation centers can assist citizens and courts in preventing and/or resolving community conflicts. Unfortunately, community mediation centers in Massachusetts are currently unable to provide the full scope of dispute resolution services due to understaffing.

²² Private practitioners in Massachusetts currently offer divorce mediations services between \$100-\$300/hour (Lawyers.com). For small claims disputes concerning amounts less than \$7500, \$250-\$300/hour prices are quoted (Massachusetts Dispute Resolution Services).

Ten out of 14 centers surveyed (71%) indicated a recession-induced increase in demand for community mediation services in their local communities. Four centers (29%) said they have not experienced such an increase in demand for their services (See Graph 6 below).



The following are some of the comments made by the centers:

“There is a higher need for conflict resolution programming, especially among lower income households, and at the same time there are fewer resources to support these critically important services.”

“Increase in people looking for low-cost affordable mediation services, especially for couple in divorce process. Our 3 part-time staff positions are stretched to capacity to provide the infrastructure to delivery mediation services.”

“We have inquiries from the public schools, nursing homes, families and social service agencies. Family Services uses interns to screen cases and assign mediators. There is not enough time or money for the Mediation staff to take on this task.”

“We have struggled to meet demand for service in landlord/tenant and consumer conflicts.”

“Our local community is hurting. The people we see have lost jobs, homes and are in debt. Many have never been unemployed before and they are frustrated and angry, especially when they have to come to court. We have had to cut back on volunteer appreciation and on buying new computers which might make our work easier. Some of our volunteers are unemployed and have to take short term jobs to make ends meet. This makes scheduling more difficult. Our for-fee training classes have not filled due to economy. People are unwilling to spend money on training unless they can be guaranteed a job. We are seeing more and more defaults in court--people are so overwhelmed with debt and financial difficulties that they

aren't coming to court on their trial date. This cuts down on the number of possible mediations and means volunteers sometimes don't get cases."

"Less money, more potential cases but limited staff for intakes."

"There appears to be an increase in debt collection from both businesses and individuals. Foreclosures have resulted in a negative economic impact as well as an impact to landlord/tenant issues as many times tenants are forced from their homes as a result of the foreclosure."

"The volume of face-to-face mediations has increased over the past two years. The increase is in debt recovery cases by both businesses and individuals. There has been no limitation in providing mediation services. "

"Primarily divorce mediation as the result of couples looking for less expensive means to complete the divorce process."

"More Summary Process cases. We have decreased services by 10% in that court to save money."

"Primarily in people wanting to use the Parent Mediation Program to save money on custody mediations. We have met the demand but some of our divorce mediation volunteers are not available because they can't take time off from work for fear of losing their jobs."

"Main source of cases - small claims and juvenile issues. Continue to provide services but scheduling times are longer."

"More divorce, family and custody disputes with limited financial resources. We have less staffing to handle these cases."

"As part of a Community Action agency we and all the CA programs have faced funding cuts on the federal level. Many more people in our community are seeking services and our capacity to serve them has been reduced."

"People in difficult financial situations often face serious challenges and are less willing to settle. Also anecdotally it seems that we are seeing more cases where people have one or more disabilities and/or are unemployed."

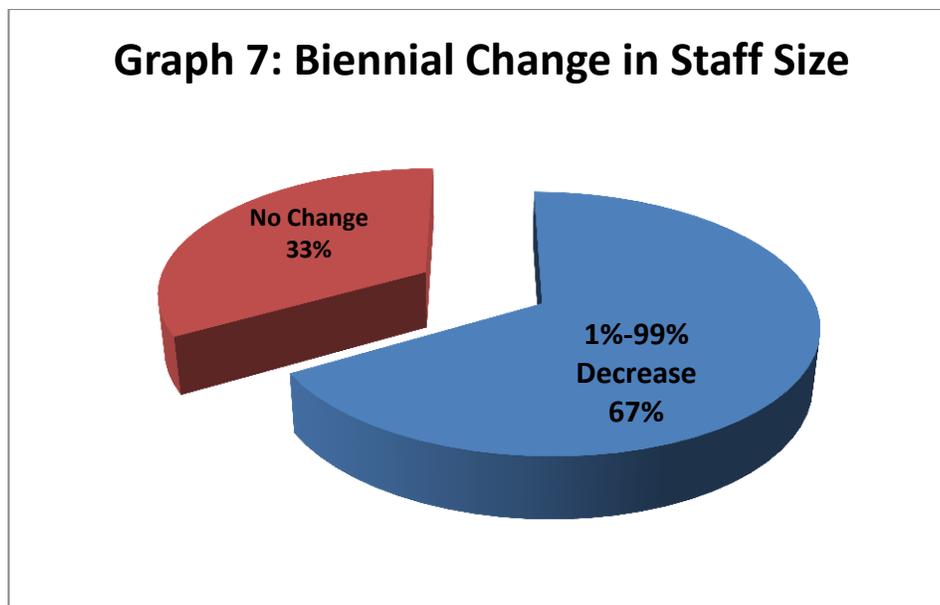
"Increased demand for assistance in some kinds of conflicts, especially landlord/tenant - eviction and consumer matters. Reduced court staffing has lead court divisions to rely more heavily on our assistance."

Massachusetts community mediation centers are understaffed

Community mediation centers find it difficult to retain existing staff due to lack of operating funding. Without long-term operating funding, centers are experiencing significant staff turnover. Centers cannot attract new qualified, talented, committed staff to fill vacancies because of the low pay scale and benefits they currently offer. Decreasing staff size places additional burden on existing staff and/or volunteers. This makes it difficult for centers to invest more in developing mediator excellence. More significantly, understaffing has resulted

in fewer direct services delivered; diminished geographic coverage; and reduced citizen access to justice. Without long-term operating funding, centers are relying on short-term project funding to deliver long-term community services. This is making community mediation centers in Massachusetts increasingly unsustainable.

The most significant issue confronting Massachusetts community mediation is the decrease in staff size (see Graph 7 below). Eight out of 14 centers indicated a decrease in staff size that is between 1% and 99%. This includes four centers whose staff was reduced between 1% and 24%, two centers whose staff was reduced between 25% and 49%, one center whose staff was reduced between 50 and 74% and one center whose staff was reduced between 75% and 99%. Six centers neither decreased nor increased their staff size. Others have reported a 50-75% reduction in case management time and a 50-99% decrease in outreach activities since state funding was discontinued in 2008.



The following are some of the comments made by Massachusetts community mediation centers in the MOPC survey:

“Other than the Program Coordinator, the mediators are volunteers. We have put off conducting a training session due to budget constraints. (Training sessions do not result in any dollar benefit to our organization as the volunteers generally are eligible for tuition waivers based on their income).”

“Due to the uncertain nature of a consistent funding base the retention of staff has been challenging.”

“Some difficulty recently hiring staff who are very committed but have difficulty with the current pay scale and no benefits.”

“Salaries had to be reduced and some hours were cut because of lack of money.”

“Reduction/loss of funding has decreased the already small staff we have. We have one full time director and three part time staff that is equivalent to one full timer.”

"We have had to cut salaries & benefits by 20% in the last year. This could be a problem in retaining staff if further cuts are necessary."

"Limited funding limits the number of staff and consultants we can employ. It also has priced us out of the possibility of hiring the most qualified and talented potential employee that has come to us in this time period."

"The only problem retaining staff is securing the funding to pay their salary."

"Some staff have found it difficult to live on the level of salary. We have also had to reduce staff hours due to funding cuts."

"CNVS now has permanent part time staff. There is no staff dedicated to supporting CMS."

"Due to funding cuts CDSC was not able to fill a staff vacancy for the part-time position of Coordinator of Court and Divorce Mediation Services. Except for the Executive Director, our 3 staff positions are all part-time."

"The original Coordinator left the agency in September of 2010. All of his mediators followed. The ones that stayed had very poor mediation skills. We have held two trainings and are up to over thirty mediators. In order to complete work for the grants all personnel contribute huge amounts of volunteer time."

"Lack of adequate funding has meant that staff has minimal number of hours which limits services we can provide."

"Reduced staffing, reduced morale, staff time shifted from case management to fund-raising activities."

"Progressive funding reductions have required that we reduce salaries and position hours, making retention more difficult."

"Loss of funding has meant that volunteer mediators are not able to take advantage of mediation training opportunities. Training ensures continued growth of mediator skills, contributes to morale and ultimately results in better delivery of services."

"We have been able to creatively boot strap the court-connected mediation program to some short-term funding resources, but even with these resources we have cut staffing for mediation by over 50% and instead of meeting the increasing demand for our services we have been serving less households."

"Every aspect of the Center has been impacted. Volunteer morale, staff morale and change in priorities, Board responsibilities and current struggle with the change to a fundraising focus. Less time spent in outreach for community education and more to build community partners who can donate to the Center."

"Morale lower, less service delivery, staff strength lower, salaries cut, hours cut, increased stress on staff"

"Less staff, more work for others left... cut back on services...caused limitations to services provided."

“Staff morale has been affected due to the difficulty of obtaining grants and the cutbacks in salaries & benefits. We have continued to deliver full services but the additional fund-raising demands have put stress on staff. Cut-backs in case coordinator time means more work for the ED and less time with outreach & grant writing.”

“We have less money to pay people with.”

“Staff reduction, morale - feeling of 28 years of providing services for very little funding with no appreciation from trial courts.”

“Reduced staff hours. Reduced presence in courts serviced. Lower morale. Cuts to overall supports such as staff training and overhead costs being covered.”

“We are funded with enough money to mediate in three courts, write reports, write grants, attend meetings and offer trainings. This is a lot of time.”

“Staff strength has diminished. Haven't been able to offer some needed services.”

Long-term sustainability of Massachusetts community mediation

Survey data demonstrates that community mediation centers in Massachusetts require urgent long-term state operating funding. Centers are unable to rely on philanthropy for operating funding. Long-term state operating funding could be used to leverage project funding from other funding sources. Project funding leveraged by long-term state operating funding would increase the number and scope of services offered by Massachusetts community mediation centers. It will also increase access to justice. Long-term state operating funding will spur community mediation growth and sustainability in Massachusetts.

Although there is evidence of significant increase in demand, wide use, broad scope of service delivery and high efficiency; sustaining community mediation ultimately comes down to funding. Community mediation funding can be divided into two segments. The first is programmatic funding or funding that supports direct programmatic activities that are tied to specific projects funded by sponsors like the Attorney General’s Office or private foundations. The second funding segment comprises operational funding or funding that pay salaries of core staff, rent and utilities. MOPC survey data indicates that both funding segments have diminished so that the very existence of the centers is threatened.

The following comments are from the MOPC survey:

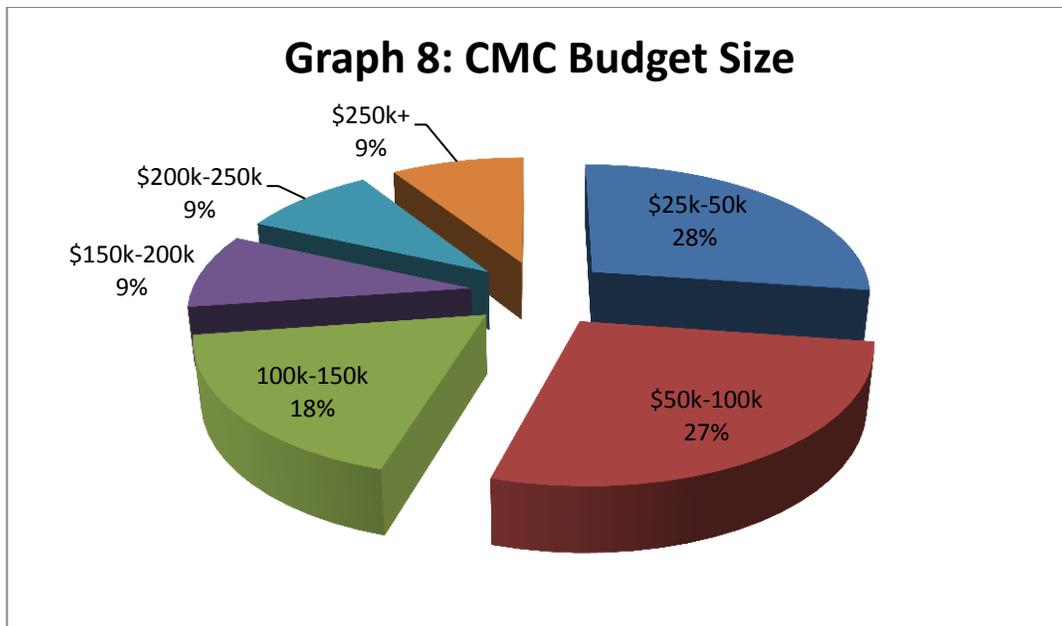
“Overall 25% decrease in operating budget. We have had to increase reliance on volunteer mediators and interns to preserve our level of service delivery.”

“Funding has been a problem. This program operated on \$64K last year and 42K this year.”

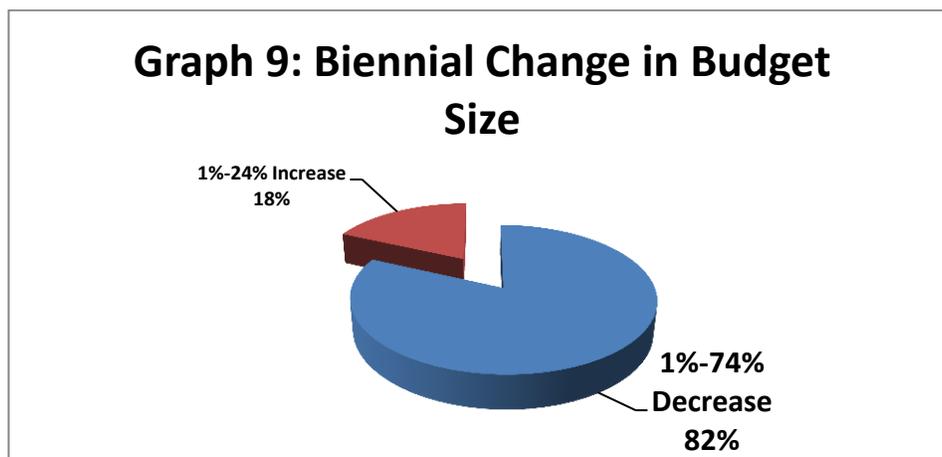
“Loss of the state funding and now the loss of other resources that helped buffer that loss.”

“Stiffer competition for private foundation support.”

Of the 11 Massachusetts community mediation centers whose data was analyzed, the majority (55%) had an annual budget of \$100,000 or less (see Graph 8 below).



The majority of this budget comprises programmatic funding. If 25% of a center's funding is dedicated to operating costs, a \$100,000 annual budget constitutes only \$25,000 for staff salaries, rent and utilities. The NAFCM survey indicates an average of 2.4 FTEs (0-5 range) and 31.5 volunteers (12-60 range) per center. This level of funding will be grossly insufficient to sustain a center with a permanent staff to coordinate volunteers and meet increasing community demands. There is a considerable reduction in overall budget size of almost all community mediation centers surveyed since FY09 (see Graph 9 below).



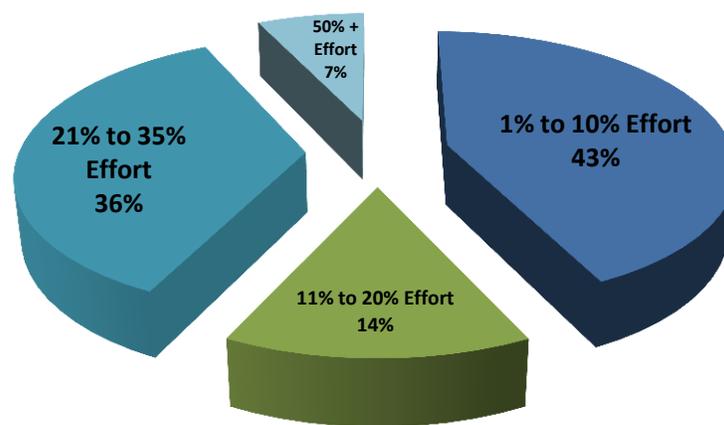
Nine out of 11 community mediation centers providing data about their budgets indicated a 1% to 74% reduction in biennial budget size. This includes five centers that experienced a 25% to 49% reduction in their biennial budget, two centers that experienced a 50% to 74% reduction in biennial budget and two centers that had experienced a 1% to 24% reduction in biennial budget. These high reductions in budget sizes have a significant impact on operational funding. A reduction in operational funding has a direct impact on staffing and organizational sustainability as highlighted elsewhere in this report.

An overall reduction in Massachusetts community mediation budget size constitutes a reduction in both programmatic and operational funding. Although centers may appropriate

a portion of the programmatic funding to temporarily cover basic operating costs, that strategy has already failed or will soon fail. This is because project funding is not a reliable source of operational funding. Unfortunately, the predominant form of funding currently available to centers is limited programmatic funding rather than long-term operating funding. Programmatic funding can help maintain direct services but in order to pay for operating costs, centers may have to look for more projects. This is a vicious cycle. A key symptom of this vicious cycle is the high percentage of time dedicated to fundraising.

The MOPC survey indicates that Massachusetts community mediation centers may spend up to 50% or more time on fundraising. The majority of the centers spend between 11% and 35% of their time engaged in fundraising activities (see Graph 10 below). Considering the fact that the centers took in 9,350 disputes and mediated 4,288 disputes annually, spending 35% of their time on fundraising for example would constitute an opportunity cost of 3,275 missed case intakes and 1,500 missed mediations annually.

Graph 10: Fundraising Effort in FY '09, FY '10 & FY'11 as a percentage of centers' total activity.



The only way out of this vicious cycle is to secure long-term state operational funding. The following comments by the centers surveyed by MOPC clearly indicate this to be the only viable alternative available to these centers:

“Grants always seem tied to programs and we need money for salaries, rent, phones, papers, etc. We could plan more outreach activities if we knew we had more secure funding. Right now, we are trying to maintain FY 09 levels of services with \$48,000 less money. We could also work with our diverse community to brainstorm new ways of serving the immigrant community if we had more secure funding.”

“Having long-term state funding would afford us the stability to cover our core, infrastructure costs, allowing us to leverage many other funding resources to support the diverse programming we would like to have and the staff required to implement that programming.”

“Long-term funding would help facilitate program stability, which would allow the program to both remain viable and meet the increased demand for mediation assistance. Public funding would also allow the agency to more easily leverage additional resources.”

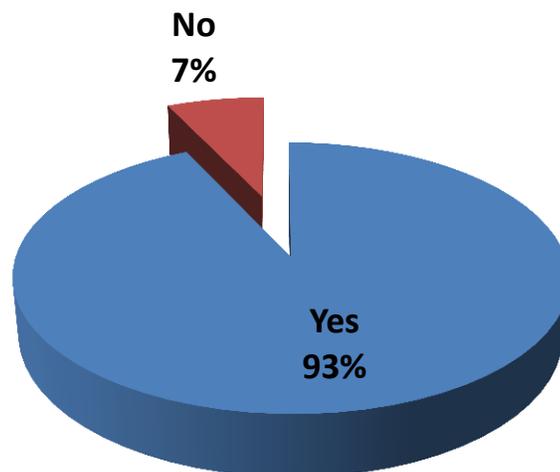
“Long term state funding would allow the center to focus on more conflict resolution outreach to the community and allow for ongoing conflict resolution training for volunteer mediators.”

“Long-term committed State funding would provide a foundation of support from which we could then seek other sources of funding for specific mediation and/or training - i.e. youth programs. This funding would also allow NSCMC to consider expanding, where possible, the services we now offer the courts.”

“Long-term state funding would provide fiscal stability to enable us to sustain (and grow) our mediation services. We have continued to provide services as the courts and the litigants remain a program priority for this community mediation center by depleting our limited reserves and patching together other funding sources (which have no guarantee of renewal year to year).”

Thirteen of the 14 centers surveyed were of the opinion that long-term state operating funding could be used to leverage other forms of funding (see Graph 11 below). This augurs well for a sustained effort on the part of Massachusetts centers to raise matching funds for the state’s investment in community mediation.

Graph 11: Can long-term state operating funding leverage other forms of funding?



Potential funding sources for increased programmatic funding

MOPC's research has identified a number of opportunities for community mediation programmatic funding that could be leveraged by state operating funding to community mediation centers through the proposed Massachusetts state-wide framework.

Philanthropic foundations (local, state, national and corporate) have been providing programmatic funding to community mediation in this state and others. These include, but are not limited to the Massachusetts Bar Foundation, the Gardiner Howland Shaw Foundation, and Community Foundations throughout the state, the Community Foundation of North Central Massachusetts and the Foundation for MetroWest, George H. & Jane A. Mifflin Memorial Fund, Frances R. Dewing Foundation, the United Way, AmeriCorps, American Bar Association, JAMS Foundation and Unifil Corporation.

Federal programs have also funded community mediation programs locally and elsewhere in the country. The list includes, but is not limited to, the United States Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Justice, the Department of Agriculture, the Veterans Administration and the Administration for Children and Families.

As noted in Appendix B, state-level funders like the Trial Court, the Attorney General's Office, the Department of Social Services, the Department of Housing and Community Development, the Department of Education and the Department of Revenue and municipal government agencies such as schools, police departments and housing authorities have funded and/or are still funding some of the programs at community mediation centers in Massachusetts. A new service area for community mediation is foreclosure prevention. Recent foreclosure mediation bills filed in the Massachusetts legislature have included community mediation centers as infrastructure for foreclosure mediation (Senate Bill No. 8605, filed in January 2011; Senate Bill No. 1805 filed in January 2009). A report by the New England Public Policy Center released in September 2011, underscores the urgency of the need for deploying mediation as a foreclosure prevention strategy in Massachusetts, as has been done in 21 other states.

Appendix F: State Support for Community Mediation: Lessons from other States

The crisis in state funding for community mediation provides Massachusetts with an opportunity to create a framework for state support that will maximize the value of community mediation to the Massachusetts community. In pursuit of this goal, it will be useful to consider the experiences of a broad sample of state funding models, consisting of Maryland and Ohio plus nine of the states where community mediation centers are most prevalent, namely, California, Michigan, Minnesota, Nebraska, New York, North Carolina, Oregon, Texas and Virginia (Wilkinson, 2001). The respective mediation support structures in these states will be examined with respect to the source of state support for mediation, the amount and distribution of mediation funds, the existence of an intervening umbrella organization and finally, the impact of mediation services.

Source and administration of funding

Most of the states under consideration offer funding pursuant to state statute. Despite the variation in the authorized sources of this funding, the majority of these states provide state-level support. California and Texas are exceptions in the sense that their relevant statutes effectively determine that the support source and the recipient dispute resolution programs are locally-based. These two states use county filing fees to fund county-based dispute resolution programs that serve the courts. For the remaining nine states, financing arrangements are established at the state level.

The increase in the efficiency of state-supported dispute resolution when administered by state offices of dispute resolution is attested to by program administrators. MACRO directors Alecia Parker (Budget and Grants Director) and Lou Gieszl (Deputy Executive Director) noted that the work of their office to support ADR allows the courts in Maryland to use their resources more effectively (August 4, 2011, personal communication). As evidence of the efficiencies created by New York's Office of ADR and Court Improvement Program, Mark Collins, Assistant Coordinator, pointed out that not only were dispute resolution services cost-effective at approximately \$200/case category, but the courts, when faced with budget cuts, were also concerned about the looming problem of handling the 34,000 additional cases that would otherwise have been dealt with through mediation (August 18, 2011, personal communication).

Court offices administer ADR funding in seven states. In the case of Nebraska, revenue for ADR support is generated by court filing fees. Oregon's pre-2003 model for state-funded DR services was also based upon filing-fee surcharges from civil cases, where 50% of the surcharges for each county supported community mediation in that county. Oregon changed its funding model to rectify the significant regional disparities in mediation support that developed because Oregon's rural counties had lower filing fees (Heltzel, C. August 23, 2011, personal communication). Michigan was advised that simple reliance on locally-based court filing fees could lead to funding inequities, e.g., because large rural areas generate fewer fees, and could create instability as the amount of fees collected varied by region and by year: "[a] program that successfully meets or exceeds a wide variety of program goals can nonetheless fail, due to lack of financial resources" (Michigan Supreme Court State Court

Administrative Office, March 1997, p. 21). It is noteworthy that Michigan's ADR support combines general appropriations with filing fees. In both Nebraska and Michigan, monies get disbursed by way of grants administered by offices of dispute resolution in the court's administrative office. When passage of Nebraska's 2007/2008 Parenting Act increased the need for court mediation, the state established a court-fee-based Parenting Fund to provide resources to approved mediation centers in order to ensure access to mediation of parenting disputes for indigent and low-income parents.

New York's funding for grants to community mediation centers is provided through the state's general appropriations fund, and is administered by the ADR office of the state court system. North Carolina's legislature provides discretionary funding for the mediation of referrals from the courts, law enforcement and other public entities in a biennial budget line for justice and public safety. However, the North Carolina court office turns the funding over to the Mediation Network of North Carolina, an organization of ADR providers, which then awards grants to individual community mediation centers and reports on the operation of member community mediation centers. Legislative appropriations for the judicial system form the basis of court-administered ADR support in Minnesota, Virginia and Maryland. Thus, Maryland's funding for grants to community mediation centers is supplied in a sub-line item of the state budget for the judiciary. Unlike Minnesota and Virginia, the central state entity administering Maryland's funding, MACRO (the Mediation and Conflict Resolution Office), while housed in the court, answers to Maryland's Chief Judge instead of to the court's administrative arm. About \$2 million are appropriated for MACRO, an amount which includes over \$200,000 for MACRO's operating expenses, excluding salaries, and approximately \$1.8 million for dispute resolution grants with nearly $\frac{3}{4}$ million dollars distributed directly to community mediation centers (Parker, A., November 9, 2011, personal communication).

Oregon and Ohio provide state support independently of their judicial systems. In Oregon, legislative appropriations in the Dispute Resolution Account of the State Treasury – which is generated from filing fee surcharges and restricted to support for non-court dispute resolution – fund the activities of the two agencies responsible for supporting non-court dispute resolution. From 2003 to the present, the activities of these agencies are funded out of the state general fund through the higher education budget. The government's Oregon Office for Community Dispute Resolution (OOCDR), housed in the University of Oregon's School of Law, is charged with supporting community dispute resolution centers while dispute resolution services for public policy disputes are under the purview of Oregon Consensus, a public service program at Portland State Hatfield School of Government. Court dispute resolution services, on the other hand, are administered by the judicial arm and funded out of the General Fund. Until June 30, 2011, Ohio's legislature provided 60% of the budget of its Commission on Dispute Resolution and Conflict Management, a government agency established in 1989 to provide dispute resolution resources, training and direct services to the three branches of government as well as to schools and communities. The Ohio commission's work with the state Supreme Court to promote court mediation services led to the creation of the Office of Dispute Resolution Programs (now the Dispute Resolution Section), which is a judicially-funded court program that provides consultation, training and limited grants to court-connected mediation programs.

Amount of funding

The amount of state money expended to support mediation ranges widely, from \$101,000 during FY 2010-2011 in Minnesota to \$9,070,299 during FY 2009-2010 in New York. North Carolina allocates \$1.4 million every two years. Oregon disburses \$1.4 million biannually to 17 centers and the program for dispute resolution of public policy disputes. In FY 2009-2010, Michigan provided \$1.88 million to 20 centers with grants ranging from about \$19,000 to over \$320,000. During fiscal year 2002-2003, the monies generated from county filing fees in California and disbursed for dispute resolution services totaled \$8 million.

Moreover, based on the available historical information, funding support for mediation tended to increase over the past decade. Although the total support raised by filing fees in Texas could not be determined, Texas raised its cap on filing fees from \$10 to \$15 partially in response to an increased demand for dispute resolution services. Virginia's allocation of \$55,715 for court referred mediation in FY 1994-95 more than tripled to \$1,923,552 by FY 2009-2010. After an initial appropriation of approximately \$500,000 in 1999, Maryland subsequently made about \$1,000,000 available for annual grant-making to community mediation centers until this year. At present, Maryland has allocated nearly \$750,000 for 14 community mediation centers due to overall budget cuts. Similarly, New York's allotment of \$3,601,880 in grants in FY 1998-1999 increased to \$9,070,299 in FY 2009-2010, followed by a recent near-50% cut in available grants to New York's community mediation centers. North Carolina reduced its fiscal year 2011 appropriation for community mediation by 5% from \$1,199,487 to \$1,139,513. Contemporary support for community mediation in these states may have diminished in response to the present budget crisis, but has not disappeared, thereby preserving them from Ohio's fate. Ohio's withdrawal of state funding for its dispute resolution agency in 2011 has dislocated state-wide dispute resolution services to schools, communities and state and local government entities.

Distribution of funding

The funding distribution systems differ by state according to the number of dispute resolution providers supported, the method by which funds get delivered – whether through grants or contracts for court mediation services – the demand for matching funds and the criteria used. For example, Michigan grants a pro rata share of county filing fees to government entities or to 20 non-profits that provide ADR services based upon 35% matching funds (including in-kind contributions),²³ the presence of an active board with members drawn from the community, a diversified referral base, local support, trained volunteer mediators, and provisions for community participation and needs without cost to the indigent.

Minnesota awards grants, capped at \$25,000, that cover up to one-half of the estimated budget for the operating costs of an approved non-profit program that can demonstrate community support, need for community dispute resolution services, performance success and a 50% funding match. New York provides initial grants of \$40,000 per county to 23 non-profit mediation centers and three other state-wide community-based programs in 62

²³ In 2004, Michigan determined that the value of the contributions from volunteer mediators amounted to \$1,187,346 for 23,415 hours or over \$50/hour (Office of Dispute Resolution),

counties with supplementary funding for a maximum 50% of the center's remaining costs. New York's awards depend on a center's five-year plan to serve the community with a range of dispute resolution services, diverse referral sources and volunteer mediators and strength of leadership, support system and governing board.

The Oregon Office for Community Dispute Resolution disburses funds to non-court government entities or to non-profits according to their ability to meet community needs. Matching funds are required and criteria for a grant award involve the ability to meet community needs, scope of services, dispute resolution experience and qualifications, financial stability and size of request.

In North Carolina, the courts funnel dispute resolution funds to an association of community mediation centers for distribution among its members. General oversight of California's system of county-based support for dispute resolution is provided by the state's Department of Consumer Affairs, and each participating county court or executive branch agency like Health and Human Services provides local oversight. Decisions about award amounts (not to exceed 50% of applicant's budget) are made by the county's Board of Supervisors or Dispute Resolution Programs Act administrator in a competitive grant process. About 46 community mediation centers in California received grants in fiscal year 2002-2003. In Texas, each county commissioner's court manages the grant process and evaluates performance and need.

The courts tend to exercise significant influence on community mediation centers in most of the states in question. Besides their funding and administration roles, the courts are a major source of referrals for mediation services. In Michigan, court referrals increased from 49% in the 1990s to 80% in 2006. Nearly 2/3 of disputes mediated in North Carolina in FY 2009-2010 were court-related. Since FY 2003-2004, about 50% of mediated cases in New York come from the courts. In contrast, Maryland's dispute resolution agency, MACRO, uses grant-making to keep the focus of the state's community mediation centers on the community despite ties to the judiciary. MACRO, with the cooperation of state organization of community mediation centers, Community Mediation Maryland (CMM), operates a performance-based funding model that ties grant awards to mediation caseloads (amount of intake services and mediations), to cash matches, and to progress with respect to a 10-point, grassroots mediation service delivery model that rewards centers for increasing their outreach efforts.

The impact of mediation services provided by these models

Statistics regarding the productivity of mediation providers and mediation user satisfaction serve to measure the impact of mediation services. For most of the states here, the annual quantity of disputes that are mediated number in the thousands with resolution rates typically exceeding 60%. For instance, 62% of 8,432 mediated court-referred disputes reached agreement during FY 2008 in Maryland. Michigan, as of 2010, had a 66% resolution rate for 7,070 cases mediated. Seventy-five percent of 21,307 cases mediated in New York during FY 2009-2010 were resolved. In Oregon, 10,998 cases were mediated with an 86% settlement rate during 2007-2009. North Carolina's data distinguish court and non-court cases: by June 30, 2010, 7,619 out of 8,418 (91%) court cases and 3,846 out of 3,871 (99%) non-court cases were resolved.

User reaction to mediation has been measured in terms of satisfaction, willingness to use mediation again and readiness to recommend mediation to others. Maryland reported 86% user satisfaction and 90% user willingness to recommend the process in FY 2008. According to Oregon, user satisfaction was 90% during 2007-2009. In Virginia, user responses to mediation on all three scales (satisfaction, repeat use and recommendation) surpassed 90%. These measures of mediation impact indicate that the above states have obtained value for their mediation dollar. In contrast, the benefits of community mediation are either scarce or unavailable in states that lack a state-wide funding program for community mediation. States without such a funding program tend to have few or no community mediation centers. Thus, in 1997, six such states had no community mediation centers while 15 states had just one (Wilkinson, 1997).

Appendix G: Community Mediation Independence: Lessons from other States

Undue reliance upon a single referral source or funder, such as the court system, may divert a community mediation center's attention away from the community's needs to the needs and preferences of its major funder or referral source (Hedeen, 2004). New York²⁴ and Maryland²⁵ involve the courts in the delivery of state support to community mediation. Oregon,²⁶ on the other hand, relies on its state university to accomplish this function. Yet these three states all recognize that their goal of providing state-wide access to free or affordable community mediation and other dispute resolution services is significantly

²⁴ This examination of the measures taken by New York, Maryland, and Oregon to promote CMC independence is based upon information gathered from documents including annual reports and web-sites, as well as personal communications with individuals involved in providing oversight over dispute resolution funding in the state. The analysis of New York's support for community mediation derives from personal communication with Mark Collins, Assistant Coordinator of the Office of ADR & Court Improvement Programs of the NYS Unified Court System on August 18, 2011 and from the following sources: New York State Unified Court System Division of Court Operations, Office of Alternative Dispute Resolution (n.d.). *Community Dispute Resolution Centers Program annual report for fiscal year 2008-2009*. Retrieved June 14, 2011, from http://www.courts.state.ny.us/ip/adr/Publications/Annual_Reports/AR08-09.pdf; New York State Unified Court System Division of Court Operations, Office of Alternative Dispute Resolution (n.d.). *Community Dispute Resolution Centers Program 2000-2001 annual report*. Retrieved June 17, 2011, from http://www.nycourts.gov/ip/adr/Publications/Annual_Reports/AR00-01.pdf; New York State Unified Court System Division of Court Operations, Office of Alternative Dispute Resolution (n.d.). *Community Dispute Resolution Centers Program annual report for fiscal year 1998-1999*. Retrieved June 16, 2011, from http://www.courts.state.ny.us/ip/adr/Publications/Annual_Reports/AR98-99.pdf; New York Judiciary Law, Article 21-A. s. 874d-2. (n.d.). Retrieved August 15, 2011, from <http://www.courts.state.ny.us/ip/adr/Publications%5CArticle21A.pdf>.

²⁵ The Maryland information was collected from personal communications with Lou Gieszl, Deputy Executive Director (MACRO), Alecia Parker, Budget and Grants Director (MACRO) on August 4, 2011 and with Lorig Charkoudian, Executive Director, Community Mediation Maryland, on August 16, 2011. Other sources of information were: Community Mediation Maryland. (n.d.). *Community Mediation Maryland annual report 2008*. Retrieved August 24, 2011, from http://www.marylandmediation.org/system/files/CMM_Annual_Report-2008.pdf; Maryland Mediation and Conflict Resolution Office. (n.d.). *MACRO progress report – Ten years of achievement, 2009*. Retrieved September 22, 2011, from <http://www.courts.state.md.us/macro/pdfs/reports/macroprogressreport2009.pdf>; Community Mediation Maryland. (n.d.). Partnership with Community Mediation Maryland. Retrieved September 22, 2011, from <http://www.marylandmediation.org/>; Bell, R.M. & Wohl, R. (2008). *Report to the Joint Chairmen: The impact of the Mediation and Conflict Resolution Office's work to advance the appropriate use of ADR in the courts*. Retrieved June 18, 2011, from <http://www.courts.state.md.us/macro/pdfs/2008macroadrlslativereport.pdf>; The Mediation and Conflict Resolution Office (MACRO). (n.d.). Community Mediation Performance Grants: Fiscal Year 2012 grant guidelines. Retrieved August 24, 2011, from <http://www.courts.state.md.us/macro/grants/2012/communitymediationgrantguidelinesfy2012.pdf>

²⁶ Information about Oregon's approach to state support for community mediation came from Carrie Heltzel, Administrator (OOCDR) in a personal communication on August 23, 2011 and from the following sources: Carmichael, J. & Hallmark, E. (November 2004). What happened to community and public policy dispute resolution programs previously administered by the Oregon Dispute Resolution Commission? *Alternative Dispute Resolution Section Newsletter, November, 2004 edition, Oregon State Bar*. Retrieved August 25, 2011, from <http://www.orconsensus.pdx.edu/documents/WhatHappenedtoODRC.pdf>; Community Dispute Resolution Programs (n.d.). *2009-2011 grant agreement*. Retrieved June 14, 2011, from <http://oocdr.uoregon.edu/docs/0911grant.pdf>; Heltzel, C. (May 2006); An historical overview of the grant funding mechanisms and allocation models for community mediation programs in the state of Oregon. Oregon Office for Community Dispute Resolution. Retrieved August 25, 2011, from <http://www.orconsensus.pdx.edu/documents/OOCDRHistoricalOverview.doc>; Oregon Administrative Rules (OAR) Chapter 571, Division 100, "Rules Governing the Community Dispute Resolution Program"; Oregon Office for Community Dispute Resolution. (n.d.). Request for application (RFA) packet for Oregon Office for Community Dispute Resolution (OOCDR) grant cycle 2011-2103. Retrieved September 6, 2011, from <http://oocdr.uoregon.edu/docs/1113RFAPacket.pdf>; University of Oregon School of Law. (n.d.). *Oregon Office for Community Dispute Resolution: 2007-2009 biennial report*. Retrieved June 14, 2011, from <http://oocdr.uoregon.edu/docs/biennialreport.pdf>; Oregon Consensus. Retrieved August 25, 2011, from <http://oocdr.uoregon.edu/docs/storiesbrochurefinal.pdf>

furthered by community mediation center independence. The models for community mediation support that have been adopted by these states demonstrate their embrace of such independence through their various efforts to promote community focus while expanding community mediation's constituency. To that end, New York, Maryland and Oregon have made community mediation support contingent upon operational features – such as preserving diversity, using trained volunteer mediators and obtaining cash matches and/or in-kind contributions from volunteers and other sources to generate matching funds²⁷ – and upon structural features like non-profit status and the presence of an active governing board. The additional steps taken by these states to uphold community mediation independence reflect their particular circumstances and interests.

New York

In New York, efforts to expand community mediation's network of stakeholders and to reinforce its community focus go hand-in-hand with its endeavors to strengthen judicial support for and use of community mediation. This duality in New York's approach to community mediation is embodied by the state's ADR office which functions as a unit of the court system that has as its mission the promotion of community-based dispute resolution centers through its Community Dispute Resolution Centers Program (CDRCP). The ADR office's location in the judicial arm raises the profile of dispute resolution processes like community mediation and heightens awareness of mediation's benefits among judges, thereby augmenting community mediation's constituency.

At the same time, the ADR office program's commitment to ensuring dispute resolution services from at least one community-based dispute resolution center for each county has entrenched the priority assigned to community needs. The mandate is funded through CDRCP grants to centers of \$40,000 per county served with additional funding available for up to 50% of a center's operating budget. Besides assuring fairness of access, the mandate effectively produces a local constituency for community mediation and other dispute resolution services. The percentage cap on grants encourages centers to strive for financial independence by cultivating alternative sources of funding, including federal and local government sources, and such non-state funders as the United Way, foundations, corporate donations, fund-raisers, training fees and fees for service. Diverse funding has the collateral effect of increasing the number of community mediation's stakeholders. For example, community mediation of agricultural disputes pursuant to a federal grant – the USDA Agricultural Mediation Program – has turned New York's farming community into community mediation stakeholders. This growth in non-court stakeholders also provides a counterweight to judicial influence and effectively curbs court dominance over state-supported community dispute resolution processes.

The focus on community by dispute resolution centers is further strengthened by the criteria used for awarding CDRCP grants. A committee composed of local court personnel and the court system's ADR staff reviews proposals from non-profits describing their plans to serve

²⁷ The value of the contribution made by volunteer mediators varies by region, time period, and type of dispute. For example, Michigan determined that volunteer mediator time was worth more than \$50/hour in 2004 (Office of Dispute Resolution). In Ohio, volunteer mediator hours were valued at \$60/hour in 2011 (Dayton Mediation Center, October 5, 2011).

the community over a five-year period and selects recipients of funding according to criteria that require the following: a wide range of mediation and other dispute resolution services to be offered to the courts and community, diversity in local agencies that regularly refer cases to mediation, the highest quality of mediation and case management services, a diverse panel of volunteer mediators, education of the public about mediation and other ADR processes, excellent organization leadership at the board and senior staff levels, strong fiscal, technological, facilities and human resources support and compliance with reporting requirements and the CDRCP Program Manual. Besides addressing community and judicial needs for dispute resolution interventions, the criteria imposing diversity requirements for sources and volunteer mediators reinforce the emphasis on community. The insistence on training for mediators and other neutrals and compliance with the CDRCP Program Manual and reporting requirements provide quality assurance of dispute resolution services and consequently increase their use. As a result, in fiscal year 2003-2004, for example, court referrals constituted about 50% of community dispute resolution center cases, about 16% of CDRCP cases derived from school and law enforcement referrals and 13% from public and private agencies. Last, but not least, this multi-pronged approach to state support for dispute resolution – attending to both community and judicial needs, reinforcing the community focus of community mediation, and expanding the circle of dispute resolution stakeholders – demonstrated its effectiveness in that it was instrumental in protecting \$5.2 million of dispute resolution funding for fiscal year 2011-2012 from even more severe budget cuts.

Maryland

The animating principle underlying Maryland's support for community mediation is the achievement of widespread access to mediation and other dispute resolution processes across the state – its courts, neighborhoods, schools, government agencies, criminal and juvenile justice programs and businesses. Propelled by a vision of the court as society's problem-solver and mindful of the benefits of ADR processes, the Chief Judge of the Maryland Court of Appeals, the Honorable Robert M. Bell, spearheaded a collaborative planning process involving legislators, judges, public officials, ADR practitioners, community leaders and business representatives among others, which led to the development of a plan to unite stable funding for community mediation from the judiciary with a model of community mediation that maintained its grassroots focus while rewarding community mediation center performance. Eager to legitimize community mediation and liberate it from the confines of its stereotype as a small bore, gratis dispute resolution practice in thrall to the court system, ADR practitioners strongly advocated for this grassroots, performance-based model.

In 1999, two developments signaled the beginning of a new era for state support of community mediation and other dispute resolution services in Maryland. The Mediation and Conflict Resolution Office (MACRO), a court-related agency, was established and tasked with implementing the plan and promoting the appropriate use of ADR throughout Maryland. For their part, the participating ADR practitioners formed a non-profit association of community mediation centers – now, Community Mediation Maryland (CMM), formerly Maryland Association of Community Mediation Centers or MACMC – to act as a separate, non-court advocacy force for advancing ADR in Maryland. Independence for community mediation centers – their community (or grassroots) focus conjoined with constituency expansion by

advancing ADR across the state – has proved fundamental to achieving Maryland’s goal of growing access to mediation and other dispute resolution services.

MACRO fulfills its mission in part by awarding grants to community mediation centers that fulfill ten eligibility criteria along with other requirements. Eligible applicants include non-profits or government entities that can demonstrate their commitment to training community members who reflect diversity of community as volunteer mediators, to providing free or sliding-scale mediation and other conflict resolution services, to conducting mediations in the neighborhood where disputes occur, to scheduling mediations at a time and place convenient to participants, to mediating any stage of a dispute, to mediating disputes from diverse referral sources, to educating the community about mediation and conflict resolution, to maintaining high quality mediation via mediator training, to engaging in collaborative problem-solving with community regarding community mediation center governance; and to providing services to a population of users who reflect the community’s diversity. Community mediation center performance, as measured by the amount of intakes and mediations, determines both the amount of the grant awarded by MACRO and the cash match to be raised by the grantee. Hence, besides start-up grants, the \$23,000 grant and 10% match requirement that accompany the first performance level is gradually increased to \$125,000 and a 40% match by the sixth level.

In order to encourage center commitment to this grassroots model, MACRO works in tandem with Community Mediation Maryland to provide mediation training, networking, public education, promotion of community mediation and community mediation center development. Thus, if MACRO determines that a grant applicant falls short in demonstrating progress in meeting some criterion, CMM is available to help the center address its deficiencies. CMM also nurtures new community mediation centers, raises awareness and publicizes community mediation and encourages the pursuit of non-court funding through partnerships with other governmental and non-government institutions. The success of this model is shown by the community mediation centers’ commitment to fulfilling the criteria. As indicated by fiscal year 2008 data, the availability of mediation in over 682 sites demonstrated compliance with neighborhood venues for mediation; mediations that were held evenings, weekends, daytimes, early mornings and late nights provided evidence of mediation scheduling according to participant convenience; referral source diversity was shown by the referrals to community mediation centers from 434 organizations, agencies and groups; and educational outreach was accomplished with over 27,591 hours of community education about mediation and conflict resolution.

The eligibility criteria concerning the locale and timing of mediations, the community’s involvement in center governance, educational outreach as well as diversity of referrals, users and mediators prioritize service to the community. The cash match requirement and the educational outreach and diversity criteria serve to enlarge the number of community mediation stakeholders. Likewise, the performance guidelines encourage the expansion of mediation services and, consequently, of community mediation’s constituency.²⁸ CMM

²⁸ In furtherance of community mediation center independence and accountability, MACRO has instituted a Mediation and Dispute Tracking software platform for tracking mediation case management activity, recording information about clients and staff and tracking case progress, to sending letters and invoices, charging fees, tracking payments, and producing an

supplements these efforts to increase the use of mediation services in new venues through partnerships with state agencies and organizations. For example, funding from AmeriCorps and AmeriCorps Vista, normally unavailable to court entities, has been channeled through CMM to place individuals in community mediation centers for work on outreach, partnership development and community education. Indeed, the very existence of CMM empowers community mediation centers to achieve greater independence.

Oregon

Oregon nurtures the independence of community mediation centers by sequestering court from non-court dispute resolution and by conditioning community dispute resolution grants on factors that concern community needs and financial independence. Oregon's original tradition of state support for dispute resolution services, instituted in 1989, experienced a sea change with the state's dire economic circumstances during the early years of the 21st century. The central state agency assigned to promote and assist dispute resolution programs (the Oregon Dispute Resolution Commission) was disbanded in 2003 and its responsibilities subjected to a tri-partite split where community mediation, public policy dispute resolution and court-connected dispute resolution services came under the purview of three separate government entities. Court dispute resolution services are administered by the judicial arm and funded from the General Fund. Dispute resolution services for public policy disputes and facilitation of public policy dialogues are relegated to a public service program at Portland State Hatfield School of Government, the Oregon Consensus. The government's Oregon Office for Community Dispute Resolution (OOCDR), housed in the University of Oregon's School of Law, retains responsibility for the support of 17 community dispute resolution centers in 25 Oregon counties through grant-making, training, technical assistance, etc. Financial difficulties led the courts to dip into the general dispute resolution fund to cover court-connected dispute resolution activities from 2003 to 2005. Then in 2006, legislation restored the Oregon Dispute Resolution Account to its original purpose of supporting non-court dispute resolution (Carmichael & Hallmark, November 2004). Thus state financing fortifies the separation of court and non-court dispute resolution services. Activities and programs of OOCDR and Oregon Consensus are supported by appropriations in the Dispute Resolution Account of the State Treasury, which is separate from the General Fund and is restricted to support for non-court dispute resolution.

Oregon provides grants to centers for the purpose of supporting community dispute resolution services pursuant to statute (OAR 571-100 and ORS 36.155) on a biennial basis. It provides financial support to non-court government entities and to non-profits that provide community dispute resolution services based on their ability to meet community needs. At a minimum, services to be provided include the use of volunteer mediators, and provision of education and publicity about conflict resolution. Other requirements involve private and confidential mediation services, program evaluation, collaboration with other community service providers, reporting requirements, five-member (or more) boards, a waivable or sliding fee schedule and the ability to match grants with revenue and in-kind contributions. A graduated schedule of matching funds – which may include in-kind contributions – begins with 10% requirement for the first year and culminates at 100% for year five. The minimum

factors to be considered for grant selection according to OAR 571-100-0100 consist of the ability of the applicant to address unmet community needs in the proposed geographical area of service; the structure and scope of the services to be provided by the applicant; the applicant's experience and qualifications in dispute resolution services; the amount of the requested grant and the reliability of the applicant's other funding sources; and the adequacy and cost of personnel, services and supplies, and capital outlay.

The grant application factors which involve the presence of a governing board that represents the community, the center's ability to meet community needs and collaboration with other community mediation centers in the region direct attention to the community focus feature of community mediation. The OOCDR encourages a greater breadth of stakeholders as well as the financial independence of community dispute resolution centers by conditioning grant awards upon the reliability of the center's funding sources and upon matching grants in amounts that vary according to the center's longevity over a five-year period.

The means may differ, but the above states' embrace of independence for community mediation centers by reinforcing community focus and enlarging the constituency for community mediation helps to preserve the integrity of community mediation and maximize its benefits.

Appendix H: Community Mediation Criteria-based Funding

Awarding funds to community mediation centers on the basis of criteria serves two important functions. For one, it anchors the selection process in merit, and thereby helps to dispel suspicions of bias or arbitrariness in such grants. For another, the judicious use of evaluative criteria can promote a thriving, state-wide community mediation endeavor that is responsive to Massachusetts interests and needs. This ability to shape community mediation through selection criteria is made possible by the symbiotic relationship among values, goals and evaluative criteria. Values determine the choice of goals which, in turn, are achieved in part through the application of evaluative criteria – only consider how evaluation criteria get used to improve performance (d’Estree, Fast, Weiss & Jakobsen, 2001).

When it comes to selecting which community mediation centers are eligible for funding, the criteria that are chosen to evaluate a center’s suitability reflect the goals and values to be promoted (Baron, 2004). For instance, equal access to justice for all is a hallmark of community mediation (Hedeen, 2004). Thus, the demand for equality identifies diversity as an important value since diversity may well discourage unequal treatment. Diversity would be furthered by criteria which require that a community mediation center’s volunteer mediators and board members reflect the diversity of the community and that referral sources be diverse. Accessibility would be promoted by assessing the center against such standards as the availability of services that are either free or on a sliding scale, the delivery of mediation services at times and places convenient to disputants, working with low-income populations and engaging in public education and outreach. The breadth of access – its universality – is addressed when centers are required to mediate any phase of any dispute deemed appropriate for mediation and to achieve diversity of referral sources, mediators, board members and users.

Community empowerment in handling disputes is another distinguishing feature of community mediation (Hedeen, 2004). Community focus is a value that may be encouraged by considering whether mediators are community volunteers; whether mediation users and board or advisory committee members are drawn from the community; whether the center’s focus is on serving the community’s needs; whether the community supports the center with revenue or in-kind contributions; whether dispute resolution services are provided within the community or at times and places convenient to disputants; and whether the center collaborates with other service providers in the area. Criteria regarding a center’s collaborative problem-solving activities in the community, its willingness to provide its constituents with referrals to other services as well as its collaborative efforts with other service providers, foster the value of collaboration.

Sustainability and accountability are critical to assessing center eligibility since, without them, community mediation services become unavailable (Baron, 2004). Hence, a center’s sustainability may be judged according to the stability of its funding, the diversity of its funding and referral sources, its success in meeting community needs, the degree of community support, the existence of matching funds and its education and outreach efforts. The accountability of a center can be measured by its provision of training to volunteer mediators, the community’s need for dispute resolution services, the center’s responsiveness

to community needs and its compliance with financial, evaluation and progress reporting requirements.

Undue reliance upon a single referral source or funder, such as the court system, may not only threaten a center's sustainability but also undermine its community focus and the integrity of its mediation services. Thus, attention may shift to the funder's needs and away from the community, and the integrity of mediation services may be undermined by funder preferences, e.g. the judicial penchant for written agreements (Hedeen, 2004). As a result, center independence becomes vital, and its achievement may be advanced by appraising, e.g., the diversity of the center's referral and funding sources; the protection afforded to the voluntary nature of mediation; the center's use of processes for rejecting inappropriate referrals (e.g. the use of screening); its success at distancing itself from referral sources or funders (for example, conducting mediation apart from the funding/referral site or distinguishing the mediation process from processes associated with the funding/referral sources); its ongoing evaluation of its success in providing services; and its education and outreach efforts (Hedeen, 2004).

The criteria discussed above are compiled from the different criteria used by state agencies in Maryland, Oregon, New York, Michigan and Minnesota to award grants to community mediation centers. The particular combination of criteria used by each state agency affects which of the above values – diversity, access, universality, sustainability, community focus, collaboration, accountability and independence – are encouraged. In the case of Massachusetts, consideration of the commonwealth's needs and interests will influence the choice of values to uphold, which will then determine the criteria to be used in selecting those community mediation centers worthy of funding.

Appendix I: Community Mediation as a Public Service within Higher Education

Higher Education's Public Service Mission

The beginnings of the University of Massachusetts system lie in the land grant acts or Morrill Acts of 1862 and 1890. The acts stress the importance of public service in higher education. Addressing the occasion of the President's Public Service Awards in 2010, University of Massachusetts President Jack Wilson stated, "So, this is a day to make it known that we take our public service mission very seriously and that we have distinguished faculty members who are working hard and are making a difference in the lives of so many people."

The University of Massachusetts Boston Statement of Mission and Values includes a commitment to Engagement: "As a campus community, we address critical social issues and contribute to the public good, both local and global. We participate in teaching and public service, as well as in basic, applied, and engaged research, to support the intellectual, scientific, cultural, artistic, social, political, and economic development of the communities we serve. We forge partnerships with communities, the private sector, government, health care organizations, other colleges and universities, and K-12 public education, and bring the intellectual, technical, and human resources of our faculty, staff, and students to bear on pressing economic and social needs."(September 2011, Appendix p.2)

Ernest Boyer (1996), in his vision of the "New American College" highlighted the fact that if universities are to continue advancing forward, a new vision of scholarship is required. Research alone will not secure the future of higher education. The scholarship of application (of academic knowledge to the real world) demands that the university assist with societal problems. Boyer's "New American College" argued for the university to connect to the world beyond the classroom and to create a campus community.

The Kellogg Commission on the Future of State and Land-Grant Universities (2000), in a report titled: *The engaged institution: Returning to our roots*, urged universities to reconfigure teaching, research, extension and service activities and become "more sympathetically and productively involved with their communities, however community may be defined."

The report goes on to say that "[t]he obstinate problems of today and tomorrow in our nation and world—poverty, family and community breakdown, restricted access to health care, hunger, overpopulation, global warming and other assaults on the natural environment—must be addressed by our universities if society is to have any chance at all of solving them" (Kellogg Commission, 2000, p. 20).

According to the New England Resource Center for Higher Education in its *Democratic engagement white paper*, the dominant form of civic engagement that has emerged in higher education is the "interactions between those in colleges and universities with external entities in the community that are defined by partnerships (formal and informal relationships) and mutuality (each party in the relationship benefits from its involvement). Partnerships and mutuality allow the university to better meet its academic mission by improving teaching and learning and through community service and applied research

opportunities. Communities benefit from the involvement of the university as students and faculty help in meeting unmet community needs” (Saltmarsh, Hartley, & Clayton, 2009). Universities can go beyond the traditional definition of engagement and play a community problem-solving role. In this role “academics share knowledge ... with the public and involve community partners as participants in public problem-solving ... from defining problems, choosing approaches [to] addressing issues” (Saltmarsh et al., 2009, p. 10).

Universities as Neutral Forums for Collaborative Problem-solving

Universities have unique resources that can assist public leaders, institutions and citizens in these endeavors. Universities host programs and centers that support collaborative policymaking through mediation, dispute resolution and consensus-building. These centers serve the university’s academic and service mission, and conduct significant outreach to promote the use of collaborative processes at the local, state, and national levels. The University Network for Collaborative Governance, for example, is made up of over 30 college and university centers, institutes, and programs that engage in service and scholarship in order to build the capacity for collaborative governance in their communities and states. They offer a spectrum of services ranging from public deliberation to collaborative problem-solving and multi-party conflict resolution. The Network’s purpose is to promote and champion the role that university centers play as neutral forums and resource centers for collaborative governance.²⁹ The University of Massachusetts houses one of these collaborative resource centers – the Massachusetts Office of Public Collaboration (MOPC) at University of Massachusetts Boston, which is also the statutory office of dispute resolution for the state.

Community Mediation and University Partnerships

Universities are partnering with community mediation to address problems at intersecting societal levels on complex human/social problems. Oregon’s Office for Community Dispute Resolution (OOCDR), housed at the University of Oregon, exemplifies the value to be derived from embedding a state-wide community mediation grant program within a university. The community mediation internships and projects available to students from OOCDR provide field experience in community service and, at the same time, fulfill prerequisites for mediator training and internships required by university graduate programs in dispute resolution and in public policy (Heltzel, C., September 2, 2011, personal communication).

Universities are platforms for promoting broader utilization of community mediation through awareness-raising and advocacy on appropriate use and potential benefits of community mediation. Using the university’s independence from government, universities can help organize community mediation into a unified dispute resolution system that is strategically deployed to address a wide range of issues like inter-personal conflict, public policy conflict and civic engagement. Community mediation infrastructure administered through the university can be more accessible for a wide range of users who may have narrowly perceived community mediation services as aligned with a single branch of government, for instance, the judiciary. The university can also become the venue for organizing events to promote community mediation. For example, the university can organize an annual student awards

²⁹ <http://www.policyconsensus.org/uncg/index.html>

ceremony to increase community mediation visibility to key decision-makers (Portland State University).

Teaching and research are core university activities, critical to the goal of expanding knowledge, which readily mesh with the education and outreach functions essential to the propagation of community mediation and other modes of dispute resolution. Access to resources available from dispute resolution infrastructure enhances the university's educational agenda.

Community Mediation at the University of Massachusetts

The first Massachusetts state university-connected mediation program was set up at the University of Massachusetts Amherst, and proved instrumental in extending mediation services to the Commonwealth's western regions (Davis, 1986). With the help of the University of Massachusetts Amherst, a mediation program was instituted at the University of Massachusetts Boston in 1983 (Davis, 1986).

At the University of Massachusetts Boston, graduate students in the Conflict Resolution Masters and Certificate Programs of the Department of Conflict Resolution, Human Security and Global Governance are able to practice what they study via a mediation internship. The course combines academic rigor with field experience in mediating small claims disputes in the courts. Students gain familiarity with the mediation literature and receive supervised training and practice in small claims mediation from instructors who work out of nearby community mediation centers.

The Massachusetts Office of Public Collaboration (MOPC) at the University of Massachusetts Boston has teamed up with community mediation centers on a number of public projects and programs over the years (see Appendix B). MOPC currently administers a Parent Mediation Program for child access and visitation disputes with funding through the MA Department of Revenue in partnership with five of these centers. MOPC staff has lent mediation expertise to the University's Conflict Resolution programs through seminar lectures, guest presentations in academic courses, supervision of master's projects and assistance with trainings to introduce students to mediation. Over the years, many students from the conflict resolution department have served as interns and employees of MOPC. One of these students chose to do her master's project on court-connected alternative dispute resolution (ADR) programs in Massachusetts, including the seminal role played by MOPC in establishing mediation in the Superior Court. Recently, two University of Massachusetts Boston conflict resolution students assisted MOPC with research for this community mediation study.

Expanding university connections to community mediation centers across the state through MOPC allows students to apply different conflict resolution and collaborative problem-solving techniques to various types of conflicts. Apprenticeships, internships and other projects that provide opportunities for students to connect with and achieve mastery in conflict resolution and public policy debates have a multi-disciplinary appeal. Through community mediation centers, student mediators can apply dispute resolution strategies to quarrels over personal, monetary, or institutional issues in a wide range of contexts, including the courts. Through MOPC, they can participate in collaborative problem-solving, facilitation and other

approaches to address civic engagement and public policy issues and complex, multi-party public disputes. The appeal of these ventures goes beyond conflict resolution to span fields as diverse as sociology, political science, social psychology and international relations. A recent dissertation on the impact of community mediation upon deliberative democracy is a case in point: it emerged from the political science department at Syracuse University (Pincock, 2011). In addition to its experiential learning contribution and multi-disciplinary appeal, community mediation is rich in research opportunities.

Community Mediation Research

Gaps in knowledge about the effectiveness of community mediation in a number of contexts along a variety of measures are waiting to be bridged. The challenges posed by crises like the current housing foreclosure crisis demonstrate a crying need for research-based approaches to the deployment of dispute resolution techniques.

Furthermore, research into the connection between community mediation and such visionary goals as the formation of social capital, the advancement of participatory democracy and the growth of conflict resolution capacity is in its infancy. Some of the questions that further research could answer include the following: *What is the impact of Massachusetts community mediation on social capital formation? How many mediation experiences per individual over how many individuals will accomplish these goals? What is the socio-economic, public policy impact of Massachusetts community mediation on the communities they serve? How can Massachusetts community mediation broaden access to justice? What is the impact of Massachusetts community mediation on restorative justice? Can lessons learned in Massachusetts community mediation be applied elsewhere in other states? And what lessons can we share with countries emerging from violence and transitioning to peace where failure of democratic institutions has created structural conditions that community justice can help address?* So far, these questions, among many others, are either inadequately answered or are unanswered.

The existence of connections between community mediation and any of these comprehensive social goals has been under-scrutinized. For instance, while one study found that mediated parent-child conflicts seemed to increase conflict management skills (Merry & Rocheleau, 1985), no connection between increased conflict resolution capacity and participation in community mediation was revealed by the research in the aforementioned dissertation (Pincock, 2011). Dispute resolution, including community mediation, is ripe for advances in knowledge through inquiry.

State dispute resolution offices have been known to undertake research into the dispute resolution field. Maryland's Mediation and Conflict Resolution Office (MACRO) took the initiative and performed a study to develop benchmarks that businesses could use to evaluate their dispute resolution procedures (MACRO, 2004). MACRO sponsored a study of the effect of mediation on workers' compensation cases, which was conducted by the Maryland Institute for Policy Analysis and Research at the University of Maryland at Baltimore City (Mandell & Marshall, 2002).

An alliance between the university and a community-based dispute resolution program enables members of the university community to gain access to mediation and other dispute

resolution services. At Brown University in Rhode Island, for example, students run a project, the Brown University Mediation Project (BUMP), which offers mediation for student disputes and education about mediation throughout the university. A student-maintained volunteer roster of mediators provides free mediation services on campus and reduces the strain on the administration. Student mediators are mentored by the Community Mediation Center of Rhode Island. BUMP, in many ways, is similar to the University of Massachusetts mediation program established at Amherst in the early 80s. Although the Amherst program is no longer in operation, it has left an enduring legacy in the form of a highly regarded manual for setting up college dispute resolution programs (Girard, Townley, & Rifkin, 1985). By 2000, 218 separate and 175 ombuds-connected mediation programs had been established in colleges and universities (Makhdad, 2002).

The proposed framework for coordinating community dispute resolution grants through the University of Massachusetts Boston could significantly advance current knowledge at a number of levels and help inform future policies on community dispute resolution, access to justice, civic engagement, community justice, etc. An example is the foreclosure crisis, which the University of Massachusetts is helping to address through policy and research.³⁰ Community mediation centers have been identified by MOPC and state policy makers as a potential resource for foreclosure prevention³¹ through loan modification mediations and other collaborative dispute resolution processes. In times of economic hardship, partnerships between problem-solvers are vital for greater social impact and optimization of limited resources.

³⁰ An example would be the University of Massachusetts policy document titled Decision models for foreclosed housing acquisition and redevelopment: A University of Massachusetts multi-campus collaborative project (Johnson, Keisler, Solak, Turcotte, Drew, Bayram, & Vidrine, 2010).

³¹ Recent foreclosure mediation bills filed in the Massachusetts legislature have included community mediation centers as infrastructure for foreclosure mediation (Senate Bill No. 8605, filed in January 2011; Senate Bill No. 1805 filed in January 2009).

Appendix J: Community Mediation Stories

Mediation “is a process in which a trained impartial person, called a mediator, helps people in a dispute communicate, understand each other, and reach agreement if possible. Mediation is voluntary, confidential, and lets the people in the dispute decide what works best for them” (MACRO, October 2011, p. 8). The following anecdotes illustrate community mediation at work in Massachusetts. Trained community volunteers are shown dealing with actual disputes over such matters as consumer issues, landlord-tenant conflict, custody issues, and inter-personal relationships. In one case, mediation was used for a conflict that had escalated to physical violence. In all, these are the stories of real people and the impact that community mediation had on their lives. These stories were submitted to MOPC by various Massachusetts community mediation centers for purposes of this study, drawing on case studies submitted in recent reports to their sponsors.

CASE # 1 – Violent Attack: Working in Show Cause, the plaintiff was charging assault and battery against a man who had confronted him at a fair and punched him in the face. He was injured sufficiently to go to the emergency room. He refused to meet in the same room at the beginning of the mediation, so the mediators met with each party in private. When the mediators heard the defendant’s story, mediators asked the plaintiff to join the mediators to hear it in person. The mediators promised that he would be safe. The defendant was a veteran in his 60s who had suffered head injury, had a plate in his head, and PTSD. He had observed the plaintiff at the fair, and recalled an incident 30 years prior, when he had been involved in an altercation that the plaintiff had witnessed. It had triggered an unreasonable response in the disabled vet. He explained that he had been “a bad boy.” He apologized profusely, and offered the man some money for his medical expenses. The plaintiff said that he had not known that the defendant was a veteran, and he dismissed the charges. In a follow-up conversation, the mediators ascertained that the vet had access to services and was on meds to help him control his behavior when triggered. He promised that he would see his doctor in regards to this incident.

CASE # 2 – Landlord-tenant Dispute: A tenant was brought to court by a national bank in a case for possession. The bank had foreclosed on the landlord of the renter six months before. The landlord who also lived in the house had been evicted and the bank now wanted full possession of the property. Unfortunately at the same time that the bank began proceedings against the renter, she was informed by her doctor that she has a degenerative disease which had progressed to the point that she would no longer be able to drive. The tenant’s employer, upon learning that she could no longer drive, fired her. The tenant, an immigrant with few resources and no family to rely on, ran out of money and could not pay the rent or heat the house. She broke down in the joint session and cried. The bank representative was sympathetic but was under orders to get the tenant out as soon as possible. The mediators had several private sessions with both parties. With the defendant’s permission, the mediators told the bank representative that she had a friend from her country who was due back in the country in the first week of February. The mediators also got the tenant’s permission to share details of her illness with the bank’s lawyer. In light of this information and after checking with the bank, the lawyer was able to waive all back rent for the tenant. In addition, he was able to agree that the tenant could stay rent-free until February. However,

the lawyer insisted that the tenant not only empty her apartment but that of the former tenants up-stairs.

When the mediators transmitted that information to the tenant, she said she could not physically move the belongings of the other tenants nor could she move by herself because she couldn't drive. She said she was seeking work and hopeful of getting some help from a social service agency but she did not see how she could manage moving the other tenants' belongings. The bank representative, after becoming aware of just how difficult life was at this moment for the tenant, was able to express empathy for her plight. He agreed to drop the demand that she move the other tenants' belongings. In the final session, the parties agreed to a fixed date for possession, the bank waived all back rent and the rent due before she left the premises. After the agreement was signed, the bank's lawyer urged the tenant to seek legal advice concerning her firing from her job due to her disability. Both parties were very pleased with the mediation and agreed that it had been a respectful and safe place to discuss their very difficult situations.

CASE # 3 – Business Dispute: Parties came to Small Claims concerning repayment of personal expenses allegedly paid for by a business credit card. The defendant denied using the card for personal purchases. In private, the mediators were told that over the course of several years, the business partners had had a personal relationship that ended abruptly and badly. Both the defendant and the plaintiff were given time in private sessions to vent their disappointment over the end of their romance. Prior to ending their business together, they had made an oral agreement that the defendant would pay half of the business debt. The plaintiff admitted that he was suing, in part, to be able to ask her face to face why she had terminated the relationship. He also wanted the ring he had given her back. The mediators went back and forth privately with the parties until both were calm enough to agree to split the remaining debt on the card even though the defendant felt she had already paid her share. She agreed to send the plaintiff's attorney a check within a week. As the mediators were writing up the agreement, the defendant's attorney handed the plaintiff the engagement ring and after both parties had signed the agreement, the defendant handed the plaintiff a bundle of letters from his deceased mother that she had in her possession. The plaintiff left the mediation in tears at recovering the letters. The intensely personal nature of this dispute would not have come out in court and neither party would have left court feeling satisfied. The mediators' calm, respectful manner and willingness to listen to and acknowledge the parties' feelings were crucial as was the mediators' willingness to mediate matters that weren't part of the original complaint.

CASE # 4 – Child Access & Visitation Dispute: Gail and Jean (names have been changed), a married [same sex] couple, contacted the community mediation center about mediating their divorce. As the couple owned no real estate and the only debts were car loans, the main issues to be worked out centered around custody and parenting for Karen, their 5-year-old daughter, whose disabilities require considerable time, attention and care. Jean is Karen's biological mother and Gail her adoptive mother. The issue of physical custody was especially difficult. For while Gail found the daily care necessitated by Karen's disabilities difficult to provide, believed that Jean did a better job of caring for Karen, and expressed relief that Jean was willing to take care of Karen a large proportion of the time, she was nonetheless strongly attached to having joint custody as she felt that anything else meant she was "giving up being

Karen's mother." The issue of child support was also problematic for Gail and Jean, both having low incomes, with Gail not seeing how she could afford child support and Jean believing she couldn't survive without a significant sum. Though the work of the mediator in both joint and individual sessions (including pre-mediation conflict coaching), the original high level of conflict between Gail and Jean diminished significantly as they each recognized the caring and fears of the other. Gail, after an exploration of her thinking and with some relief, realized that she could remain important in Karen's life even if Jean had primary physical custody. Jean and Gail also came to agreement on a child support amount that met the Massachusetts Child Support Guidelines and that they felt they could both live with. This low-income couple was able to meet five times in mediation through the support from the Mass Bar Foundation Grant with supplemental financial help from the Massachusetts Office of Dispute Resolution DOR program.

CASE # 5 – Consumer Dispute: The parties were a home-owning couple and the contractor they had engaged to do extensive home renovation. The project had gone so far over budget that the homeowners had had to take out a second mortgage. They claimed that costly changes resulted from the contractor ignoring their instructions, that contrary to agreement he had intermittently worked on other jobs which prolonged the chaos of the renovation, and that the work hadn't been completed. The contractor demanded an apology, blaming cost escalation on poor communication between the couple and insisting that he had checked with one of them at every stage of the work. He was particularly distressed about feeling that he had to stop going to his church (where the homeowners went also) because he believed they were "badmouthing" him to their fellow congregants.

After heated review of some problem points in the renovation, the homeowners agreed that they may not have been as clear as they thought. Their accepting some responsibility led to enough softening on the part of the contractor that the mediator was able to focus the parties' attention on resolution. In private sessions the mediator elicited the "bottom line" for the parties and engaged them in reality-testing. After three meetings and two rounds of private sessions, they finally reached an agreement. The contractor was fierce in defending his personal and professional reputation and bitterly claimed to have lost money on the contract. The homeowners repeatedly threatened to sue and were clearly suffering enormous financial stress. Communication from the attorneys who had been consulted by both parties had escalated the threat level. The parties each wanted to justify their claims and counterclaims with extensive documentation they had brought to the mediation. The agreement involved the contractor undertaking to complete an unfinished part of the project at no cost. The threat of legal action was withdrawn. The mediator led the parties to detail the work (materials, time frame, hours of work, etc.) so that future misunderstandings could not sabotage the agreement. The homeowners got further work done at no further cost and with timing that suited them. The challenges to the contractor's reputation were withdrawn to a point where he felt comfortable at the prospect of encountering the couple at church.

CASE # 6 – Interpersonal Dispute: The mediation was between two brothers who got into a fight on school property. One of the brothers had had previous issues and so a CHINS was filed on one of the brothers. Both brothers consented to try mediation as part of resolving the CHINS case, and more importantly to try and repair their relationship and talk about what happened and what they want to do going forward. In the safe and supportive environment

that is the hallmark of mediation, the brothers spoke quite eloquently about the stressors that affected their lives on a daily basis; the separation of their parents and infrequent contact with their non-custodial parent; the often debilitating medical issues that rendered their custodial parent unavailable; the responsibilities that they had to take on; and their own medical and health issues. More importantly, they were empowered to talk directly to each other about what each wanted and needed from the other (to listen; to take me seriously; treat me with respect; to take your medication). And to incorporate those areas of concern into a plan of action which they felt they could implement and maintain. In the end, this opportunity for the brothers to talk things out provided them a safe place to discuss troubling family dynamics that were spilling over into their school life, and figure out a way to negotiate their difference without result to fisticuffs in the future.

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