MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities

Alternative Dispute Resolution in Maryland's Criminal Justice System:

Background and Recommendations from a Focus Group

In order to inform the deliberations of the Justice Reinvestment Coordinating Council (JRCC), the Maryland Alliance for Justice Reform (MAJR) convened a focus group to provide input and recommendations on the critical topic of Alternative Dispute Resolution (ADR). We believe increased use of ADR will contribute positively to the accomplishment of the JRCC's mission to "develop a statewide policy framework of sentencing and corrections policies to further reduce the state's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism."

Participants included **Nancy Hirshman,** founder of the Mediation Center in Office of the State's Attorney for Anne Arundel County; **Jennifer Will-Thapa,** outreach coordinator for the Community Conferencing Center, located in Baltimore; **Lorig Charkoudian, Ph.D.,** Executive Director and co-founder of Community Mediation Maryland; and **Bob Rhudy,** an attorney with extensive experience in mediation, including serving as the Director of the Office of Mediation in the Maryland Court of Special Appeals. The group was facilitated by Phil Caroom, who was acting as a MAJR council member and not in his capacity as a Maryland judge. Our recommendations also benefitted from input provided by Johns Hopkins Medical School professor **Lauren Abramson**, founder and director of the Community Conferencing Center.

Recommendations to Increase the Benefits of ADR Statewide

MAJR believes that community mediation, community conferencing, and mediation programs connected with the State's Attorneys Offices are promising evidence-based practices for criminal diversion. These programs save resources for the state and local agencies and provide more holistic solutions to the community and individuals involved in conflicts.

MAJR's Alternative Dispute Resolution focus group recommends that the Maryland Justice Reinvestment Coordinating Council propose criminal justice diversion policies that:

- *Study and document ADR practices in use in several established programs in order to facilitate replication statewide. This includes analysis of screening and referral protocols, which are critical to program success, and identification of best practices the state should support.*
- *Increase the state's investment in ADR, both through expansion of existing programs and through establishment of new programs.*

Alternative Dispute Resolution in Maryland

As defined by the Maryland Mediation and Conflict Resolution Office (MACRO), [i] ADR refers to "any process or collection of processes established to resolve disputes without trial or violence." The term ADR is often used to refer to a broad category of processes such as negotiation, conciliation, mediation, settlement conferences, arbitration, consensus building, and community conferencing." MACRO's online glossary defines "community conferencing" as "a multi-party process in which all of the people affected by a behavior or a conflict that has caused them harm are convened for a meeting to have a conversion about that situation" with the goal of creating an agreement to repair that harm. In contrast, "community mediation" encompasses a wide range of services provided through a network of community mediation centers throughout Maryland. For an overview of the ADR landscape within the state prepared by MACRO, see: https://sites.google.com/a/marylandadrresearch.org/new/landscape/executive-summary

Maryland offers some form of ADR program in every jurisdiction and in four of the five levels of courts (District Court, Circuit Court, Court of Special Appeals, and Orphans' Court). The programs vary widely in referral mechanisms and timing, identification of appropriate cases, type of ADR employed to resolve disputes, and other respects. Prominent examples of successful ADR strategies include community mediation, which is available in every jurisdiction in Maryland and includes mediation as a diversion for criminal misdemeanors in several counties. The Community Conferencing Center, which provides services in criminal justice, education, neighborhoods, prisons, and organizations, is also expanding conferencing available in juvenile facilities through an agreement with the Department of Juvenile Services. Some jurisdictions also offer government-sponsored mediation, such as the program operated effectively by the Anne Arundel County State's Attorney's Office since 1983. "

ADR programs are funded through grants provided by the Administrative Office of Courts, by MACRO, and by counties in which a mediation component exists in its State's Attorney's Office. However, in recent years funding has been curtailed and Maryland taxpayers are far from reaping the full benefits of case closings through ADR programs statewide. With the assistance of reinvested funds that become available as a result of ending unnecessary incarceration, these and other ADR programs could expand their community-based capacities at a small fraction of the cost of incarceration with savings in recidivism rates, law enforcement, court, community and businesses.

ADR Works! And It Could Do So Much More for Maryland...

It is not known how many cases are closed as a result of ADR annually, but we do know that each successful dispute resolution reduces the heavy work load of all those involved in the judicial process, returns financial savings to Maryland, and more importantly, positively influences the future of those involved. For example:

- Cases that reached agreement in District Court Civil ADR are half as likely to return to court in the subsequent twelve months for enforcement action as compared to those that received a verdict. Participants are also more likely to experience an increased sense of responsibility for the situation and increased understanding of other participants' perspectives.[ii]

- Participants whose cases were **mediated through community mediation and state's attorney mediation** programs use court and law enforcement less in the future than those whose cases were not mediated.[iii]

- **Community conferencing** has provided a highly effective diversion for juveniles, both from social and cost perspectives. Studies from 1998-2015 found that over 96 percent of community conferences for juvenile court diversion result in the participants reaching a written agreement, with over 94 percent compliance with the written agreements. An impressive 98 percent of victim participants reported satisfaction with the outcomes, and recidivism rates were 60 percent lower for young offenders who participated in a community conference as compared with those who enter the juvenile justice system. [iv]

- Participation in **reentry mediation** has a significant impact on recidivism outcomes, reducing the probability of arrest by 13 percent, the probability of conviction by 15 percent, and the probability of being sentenced to incarceration by 10 percent.[v] These results follow from just one two-hour session; additional reductions occur for each subsequent session.

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[i] *MACRO Consumers Guide to ADR Services in Maryland* (June, 2012). See: http://www.courts.state.md.us/macro/pdfs/consumersguide/consumersguidetoadrservices.pdf

[ii] Charkoudian, Lorig. Impact of Alternative Dispute Resolution on Responsibility, Empowerment, Resolution, and Satisfaction with the Judiciary: Comparison of Self-Reported Outcomes on District Court Civil Cases. Report for the Maryland Administrative Office of the Court, April 2014. Retrieve from: http://www.marylandadrresearch.org/publications. Additional updated data provided separately to the writer by Dr. Charkoudian.

[iii] Charkoudian, Lorig. Giving Police and the Courts a Break: The Effect of Community Mediation on Decreasing the Use of Police and Court Resources. *Conflict Resolution Quarterly*, 2010, 28 (2), 142-155.

[iv] Abramson, Lauren. E-mail communication based on program data.

[v] Flower, Shawn. Community Mediation Maryland Re-Entry Mediation, In-Depth Recidivism Analysis (2014). Report available from: http://www.choiceresearchassoc.com/documents/cmm_recidivism_2014.pdf?patientinform-links=yes&legid=spcjp;0887403412466671v1