He stood there in his oversized clothes, physically shaking. Swinging his arms back and forth his nerves getting the better of him. The podium overshadowed him and if he wasn’t forced to stand next to his attorney he would have been clinging to his mother’s jeans. He was six years old and his charges should never have made it to court. He was playing golf at his friend’s house and the golf club, which was adult sized, and accidentally hit the new puppy.  

The victim really wanted the six year old, or in fact his mother, to pay for the vet’s bills. However, this is not what the criminal system is about, especially the juvenile court system. The criminal system is not about punitive or restorative punishments, rather about restitution and rehabilitation of the juvenile. The primary focus of the juvenile system is rehabilitation. The six year old was provisionally found guilty, meaning his charges would be dropped in two years if he would not come through the court system again.

The next year however, the same little boy was standing in the same spot. He was the same scared boy but this time his brother was also standing next to him. This time he was getting picked on and his brother came to his rescue and hit the other kid. Now both this scared little boy and his brother were both labeled as criminals for something

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1 In Re L.B, JJ055482-07-00 (J.D.R. Va. June 2008).
2 Id.
3 In Re L.B, JJ055482-08-00 (J.D.R. Va. June 2009).
that twenty years ago would never have made it into the court system. Cases like these shouldn’t make it to the court system; instead cases like these are bogging the court system down.\(^4\) Juvenile crime peaked in the 1980’s and continues to be a problem in the caseload of the courts.\(^5\)

Mediation could solve not only the overloading of the court system but the cost of the cases as well. In many cases of delinquent juveniles the children are just acting as kids, not realizing the repercussions of their actions. A conflict arises in their life and the juveniles don’t know how to handle it so they lash out in the “improper” way. This is not to excuse their actions, but twenty years ago most of these cases wouldn’t have even have made it into the courtroom. These children don’t need to be labeled delinquents; rather they need to gain the skills of working through their problems without violence.

Children are by definition more immature than adults and therefore they should get more leniency and help than an adult.\(^6\) Juveniles require skills that will continue through their entire life rather than labeling the juveniles as delinquents and having them have self-fulfilling prophecies of delinquency. To save children from being dragged through the court system and being labeled as “delinquent” children who have been accused of minor misdemeanors (mainly assault and battery or status offense\(^7\)), children should go through mediation rather than through adjudication. This paper will walk through the definition and purpose of mediation, how mediation is used in divorce

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\(^7\) Barker, *supra* note 2, at 900.
settlements and the shortcomings of mediation when domestic violence is involved, how mediation is used with children, how Lucas County Ohio has tried to solve the problem, and what the courts should start mandating for children when they come through the court system.

I. The purpose of Mediation

Mediation has been emerging as an efficient and cost effective solution to the large caseload that courts must face within the last twenty years.\(^8\) Mediation is defined as: “A method of non-biding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution: Conciliation.”\(^9\) The generally accepted structure is that the mediator has either limited or no power in making decisions but rather is there to assist in finding a mutually accepted solution.\(^10\) The mediators are there to facilitate discussion rather than make a decision.\(^11\) Mediation allows for a flexible, informal and low cost way to resolve disputes between parties compared to the formal setting of the courtroom.\(^12\) The cost of court also can be exponential, not only paying for the court costs if the defendant loses but the attorney’s fees can be overwhelming and some people may not be able to afford attorneys.\(^13\) Mediation’s goal is to solve the problems between people instead of attacking the

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\(^8\) Barker, supra note 2, at 897.
\(^11\) Id.
\(^12\) Barker, supra note 2, at 897.
individuals involved.\textsuperscript{14} Where the court can be a battle between the individuals enticing them to create each other into monsters to win. Mediation takes the case out of the coldness and combativeness of litigation and puts it in a more comfortable setting where all the parties can talk freely without accusing each other of things.\textsuperscript{15} The court system tends to build hostilities, where mediation can boost self-esteem.\textsuperscript{16}

The focus of conflict resolution is on the future of the parties involved not their past actions.\textsuperscript{17} Mediation leads the individuals involved to find an alternative, which empowers both parties not just tearing them down.\textsuperscript{18} Unlike mediation, litigation tends to look backwards at the actions of the parties.\textsuperscript{19} Litigation can also lead to blame and finger pointing, which can destroy any relationship the parties had with each other. Mediation does not throw out past history but rather looks to the future relationship of the parties.\textsuperscript{20}

There are many theories and approaches to mediation, as well as conceptions on how it affects people. Some argue that there are three basic conceptions.\textsuperscript{21} The first conception is the agreement.\textsuperscript{22} This approach’s whole goal is to reach an agreement no matter what.\textsuperscript{23} However it also does realize that mediation is to protect the rights of the

\begin{itemize}
\item \textsuperscript{14} Glenda L. Cottam, \textit{Mediation and Young People: A Look at How Far We’ve Come}, 29 Creighton L. Rev. 1517.
\item \textsuperscript{15} Davis, \textit{supra} note 10, at 265.
\item \textsuperscript{16} Cottam, \textit{supra} note 4, at 1518.
\item \textsuperscript{17} Kerry Loomis, \textit{Domestic Violence and Mediation: A Tragic Combination for Victims in California Family Court}, 35 Cal. W. L. 355, 357 (1999).
\item \textsuperscript{18} \textit{Id}.
\item \textsuperscript{19} Rubinson, \textit{supra} note 7, at 852.
\item \textsuperscript{20} \textit{Id}.
\item \textsuperscript{22} \textit{Id}.
\item \textsuperscript{23} \textit{Id} at 280.
\end{itemize}
parties involved and tries to come to a fair agreement.24 Some researchers argue that this approach provides the best protection against oppression and prejudice when reaching an agreement.25 The second approach is the “individual personal grown conception.”26 This approach tries to focus on managing conflicts more effectively and to solve problems by their own individual strength and skills.27 This approach is best for children. It helps build them up as individuals creating healthy ways to solve their problems.28 This approach also focuses on transforming the parties framework individually rather than trying to mend the relationship between the parties.29 It pushes individual freedom but also stresses how this works within the compounds of society.30 The third and final approach is the “relationship conception.”31 This approach focuses mainly on creating restitution and harmonious endings.32 This focuses on the interdependence between the parties helping them focus on their future relationship together.33 In many cases to make mediation effective both parties must make some concessions to form an agreement.34 This process can give participants a sense of empowerment, which can give them the strength to solve their future problems.35

24 Id.
25 Id. at 281.
26 Id.
27 Id.
28 Id.
29 Id.
30 Id. at 282.
31 Id. at 281.
32 Id. at 282.
33 Id. at 283.
34 Loomis, supra note 14, at 357.
35 Savage, supra note 18, at 281.
Mediation does not just focus on the problem, but the responsibilities of both the parties not just that of the defendants.\textsuperscript{36} Which is why it does not focus on the parties blaming each other for past actions.\textsuperscript{37} Litigation in essence, through all the motions that are required, tends to narrow in on the wrong doing of the parties and the legal issues, where mediation is there to create a pathway for open communication and tends to broaden things not just focusing on the wrong doings of the parties.\textsuperscript{38} This allows the parties to focus on core issues that may be outside the scope of the narrow legal issues the court is allowed to discuss.\textsuperscript{39} Mediation also lets the individuals focus on their own needs and issues to reach an agreement instead of fostering hostility.\textsuperscript{40} Whether the problem is between spouses or children the process of mediation focuses on the specific needs of both parties, not just that of the victims.\textsuperscript{41} Conflict resolution has also been used to help solve child custody, divorce, and neighborhood problems.\textsuperscript{42}

II. Mediation and Juvenile and Domestic Court

Mediation is typically used in family court with divorce and custody battles. Many states and jurisdictions use mediation during divorce settlements.\textsuperscript{43} Mediation can also be used for juveniles in status offense cases and to mend the family relationship between parents and their delinquent children.

A. Mediation and Divorce

\textsuperscript{36} Cottam, \textit{supra} note 4, at 1519.
\textsuperscript{37} Loomis, \textit{supra} note 14, at 357.
\textsuperscript{38} Rubinson, \textit{supra} note 7, at 853.
\textsuperscript{39} Barker, \textit{supra} note 2, at 899.
\textsuperscript{40} Loomis, \textit{supra} note 14, at 357.
\textsuperscript{41} Davis, \textit{supra} note 10, at 268.
\textsuperscript{42} Barker, \textit{supra} note 2, at 897.
\textsuperscript{43} Loomis, \textit{supra} note 14, at 360.
Generally speaking mediation is a great solution to divorce proceedings because it is less adversarial and more cost-efficient than fighting it out through court proceedings.\textsuperscript{44} In divorce settings conflict resolution can be very productive because it lets the couple to settle the divorce on their own terms rather than that of the courts.\textsuperscript{45} In fact there are jurisdictions that require mediation for every divorce proceeding.\textsuperscript{46} Mediation became mandatory in some jurisdictions because the courts were being flooded with divorce cases and, in general, people were not embracing mediation as a solution.\textsuperscript{47} Because of the lack of couples going through mediation some court decided to make mediation mandatory for couples that were disputing the custody of their children.\textsuperscript{48} In this context, mediation was to create a mutually agreeable solution between the parents, without isolating them and causing hostility, so that both parents would have a continuing and healthy relationship with their children.\textsuperscript{49}

However some argue that mediation can isolate the parties.\textsuperscript{50} The argument suggests that the parties are already in an upheaval of their lives.\textsuperscript{51} They see the life they have built up coming to pieces, the stability that they had in their life is no longer there.\textsuperscript{52} The home they have, finances, the person they loved is now against them, and if they have children the questioning of if they were a good parent.\textsuperscript{53} When the couple is

\textsuperscript{44} Loomis, \textit{supra} note 14, at 357.
\textsuperscript{45} Davis, \textit{supra} note 10, at 265.
\textsuperscript{46} Loomis, \textit{supra} note 14, at 360.
\textsuperscript{48} \textit{Id}.
\textsuperscript{49} \textit{Id}.
\textsuperscript{50} \textit{Id} at 1556.
\textsuperscript{51} \textit{Id}.
\textsuperscript{52} \textit{Id}.
\textsuperscript{53} \textit{Id}.
dragged into conflict resolution proceedings they may not feel as if it is as low risk as the legal authorities argue it is.\textsuperscript{54} The parties involved may see mediation as a high-risk process especially because most people have never been through mediation sessions before and don't have a good understanding of how it works.\textsuperscript{55} They may be uncomfortable with the setting and not understand how it works.\textsuperscript{56} However, with a good and trained mediator the conflict resolution sessions can be directed into a helpful and successful process.\textsuperscript{57}

Mediation between couples is appealing because it focuses on considering the relationship and the responsibility between both parties.\textsuperscript{58} Another benefit to mediation during divorce hearings is that it is generally voluntary and therefore there is need to be coercive and combative.\textsuperscript{59} When children are involved the less adversarial the process the more beneficial it is for all parties involved.\textsuperscript{60}

B. Mediation and Domestic Violence

Even though mediation tends to be a good solution for divorce cases, it is usually ineffective and unproductive when there is a history of domestic violence.\textsuperscript{61} Domestic violence is characterized by the desire to control the spouse.\textsuperscript{62} When one spouse is clearly controlled or dominated by the other conflict resolution is generally ineffective,

\textsuperscript{54} Id.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id. at 1556-57.
\textsuperscript{58} Id. at 1548.
\textsuperscript{59} Id.
\textsuperscript{60} Davis, supra note 10, at 268.
\textsuperscript{61} Loomis, supra note 14, at 357-358.
\textsuperscript{62} Id. at 358.
especially without an advocate for the victim of the abuse.\textsuperscript{63} However, there tends to be a great debate between authorities whether mediation or litigation gives the victim more bargaining power.

Many people argue that when there is an imbalance of power mediation tends not to be appropriate.\textsuperscript{64} Not only is domestic violence a physical domination of the spouse but it is also a control psychologically.\textsuperscript{65} The argument against mediation and domestic violence cases is that since the victimized spouse never had bargaining power or control over their relationship that they won’t be able to get it through mediation.\textsuperscript{66} Because mediators are required to stay neutral and just assist with the discussions they cannot address the feeling of inequality that the victims usually feel.\textsuperscript{67}

The need for control and the feeling of inadequacy of the victim may cause the victim to agree under duress to a situation that may create a threatening situation for the victim.\textsuperscript{68} Sometimes even a talk about divorce could cause the victim of abuse to believe they are in serious danger of physical harm.\textsuperscript{69} Those who argue mediation is ineffective in these cases either want exceptions for the required mediation in divorce cases\textsuperscript{70} or they advocate council to be present for the victim during the mediation process.\textsuperscript{71}

\textsuperscript{63} Davis, \textit{supra} note 10, at 268.
\textsuperscript{64} Barker, \textit{supra} note 2, at 897.
\textsuperscript{65} Loomis, \textit{supra} note 14, at 364.
\textsuperscript{66} \textit{Id.}
\textsuperscript{67} \textit{Id.}
\textsuperscript{68} \textit{Id.} at 365.
\textsuperscript{69} Davis, \textit{supra} note 10, at 270.
\textsuperscript{70} Loomis, \textit{supra} note 14, at 361. Some states, such as Alabama and Alaska provide exceptions for their mandatory mediation laws for cases of domestic violence. Also Colorado has an overriding exception to mediation if there was a case of domestic violence. However, states such as California do not have an exception for domestic violence.
\textsuperscript{71} Davis, \textit{supra} note 10, at 268.
Mediators tend to face a couple of problems when dealing with domestic violence cases. Mediators should be better aware of the psychological abuse and domination that happens in domestic violence cases. This way the mediators could pick up better on the psychological indicators of abuse. Another problem is that the mediator has to remain neutral and impartial. This is usually not a problem; however in a situation with domestic violence the mediator cannot voice their opinion or make sure that the agreement is beneficial for both parties. The mediator can feel useless and powerless because they have no power to offset the control and domination that is involved in domestic violence. Mediators are caught in between wanting to help the victim and their job description of being neutral to come to a fair solution during the mediation sessions.

However, some advocate that mediation may finally give the victim of abuse the equal footing they need to get out of the situation they find themselves in. Even though conflict resolution may not seem like the best solution for women who are battered, the reality is that most of them cannot afford attorneys for their divorce hearings which creates a larger problem then going through mediation alone. Also contrary to popular belief judges do not always come to the correct and best solution. A solution to this

72 Loomis, supra note 14, at 362.
73 Id.
74 Id.
75 Id.
76 Id.
77 Id. at 362-363.
78 Id. at 363.
79 Davis, supra note 10, at 268.
80 Id.
81 Id.
problem can be to allow the mediator to meet individually with each party instead of them both together, to separate out the intimidation factor.\textsuperscript{82}

C. Mediation and Juveniles

Juvenile crime spiked in the 1980’s to 1990’s at which point courts started looking for ways to relieve the courts from their increasing and demanding caseload.\textsuperscript{83} Estimates in 1991 state that nationally there were around 90,100 juvenile status offense cases.\textsuperscript{84} Some experts argue that courts should use alternate methods of conflict resolution between the children and their families rather than court proceedings.\textsuperscript{85} The influx of status offense cases has bogged down the court system not letting it focus on the more violent and serious juvenile delinquents.\textsuperscript{86} Mediation has been used with children in many different aspects. A couple of developing areas of conflict resolution with juveniles is dealing with custody disputes, parent-child conflicts, status offenses and conflicts with students.\textsuperscript{87}

Mediation with children also can address some of the family problems that may be causing the problems at school or with other children.\textsuperscript{88} If parents go up against their children in court it tends to escalate the problems between them, making both the parents and children feel as if they were against each other.\textsuperscript{89} However, the fact that the parents need the court to help them out in solving their problems means that their power and

\textsuperscript{82} Loomis, \textit{supra} note 14, at 361.
\textsuperscript{83} Barker, \textit{supra} note 2, at 900.
\textsuperscript{84} \textit{Id}.
\textsuperscript{85} Cottam, \textit{supra} note 4, at 1525.
\textsuperscript{86} \textit{Id} at 1525-26.
\textsuperscript{87} \textit{Id} at 1517.
\textsuperscript{88} Barker, \textit{supra} note 2, at 903.
\textsuperscript{89} Cottam, \textit{supra} note 4, at 1526.
authority has been diminished.\textsuperscript{90} Experts argue that mediation is most affective when the parents and children want to continue a relationship with each other but the parents are unable to find solutions on their own.\textsuperscript{91} Mediation tries to increase and improve communication between family members to enhance the function of family in the juvenile’s lives.\textsuperscript{92} However, mediation should not be used as deep in-depth family counseling, but it can be the stepping-stones in that direction.\textsuperscript{93} Conflict resolution between family members tends to be affective because of the desire to continue a relationship the family members are more motivated to find a mutually agreeable solution to their problems.\textsuperscript{94}

Typically juveniles are sent to mediation before formal charges are filed.\textsuperscript{95} If the mediation is unsuccessful the victim has up to a year to eventually file the charges.\textsuperscript{96} Juveniles who are selected and go through conflict resolution are made aware of what they could face if the mediation proceedings fail.\textsuperscript{97} Not only does mediation reduce the amount of juveniles dragged through the court system, but it also brings in the community as a solution rather than having children go through the court system and be isolated from the community.\textsuperscript{98}

When focusing on the underlying problems for the reason the children are coming through court system mediation may also be able to solve the family problems that go

\begin{footnotes}
\footnotetext{90}{Id. at 1527.}
\footnotetext{91}{Id. at 1526.}
\footnotetext{92}{Id. at 1526.}
\footnotetext{93}{Id.}
\footnotetext{94}{Id. at 1527}
\footnotetext{95}{Barker, supra note 2, at 902.}
\footnotetext{96}{Id.}
\footnotetext{97}{Id. at 902-03.}
\footnotetext{98}{Id. at 903.}
\end{footnotes}
along with delinquency in juveniles.\textsuperscript{99} However, conflict resolution between parents and their children is a perfect example of a regime of unequal bargaining power.\textsuperscript{100} The lack of experience, age, and education are examples of key problems in the equality in mediation between children and their parents.\textsuperscript{101} Parents do not tend to teach their children the skills of negotiation with other children to solve their problems.\textsuperscript{102} The ideal moment to learn these skills is not when the children are in the midst of their conflicts, but rather a calm environment where they can learn more easily.\textsuperscript{103} When working with parents and their children the problem arises because the parents are usually surprised at their child’s actions and do not see how to fix the family structure.\textsuperscript{104}

D. Example of a Solution that Works

In Lucas County Ohio, there is a juvenile mediation program that has been recognized nationally for its innovativeness in addressing juvenile issues.\textsuperscript{105} Most of the juveniles chosen to participate in the program are children who have committed status offenses.\textsuperscript{106} The Lucas county program chooses parents and juveniles to participate in mediation to come to some sort of agreement between the parents and the juvenile.\textsuperscript{107} Most of these children that participate in the program are offered mediation before the charges are formally filed.\textsuperscript{108} However, there is also the option of the judge to order mediation to try to come to an agreeable solution instead of finding the child a

\begin{flushleft}
\textsuperscript{99} Id.
\textsuperscript{100} Id. at 898
\textsuperscript{101} Id.
\textsuperscript{102} Cottam, supra note 4, at 1522.
\textsuperscript{103} Id.
\textsuperscript{104} Id. at 1525.
\textsuperscript{105} Barker, supra note 2, at 898.
\textsuperscript{106} Id. at 901.
\textsuperscript{107} Id.
\textsuperscript{108} Id. at 901-02.
\end{flushleft}
No matter what way the children are chosen, if they are chosen they are required to participate in the mediation program. Even if the program is mandatory for the juveniles who are chosen, the juveniles are not required to reach an agreement. The parents of the juveniles are required to be present, however, they are told that they should not act as an advocate but rather as an advisor to reach an agreement.

The juveniles who are ordered by the court to go to mediation are informed that the agreement reached, if reached at all, in the mediation is enforceable under court order. However, if the children are selected to go into mediation before the formal filing, they are told that the agreement is not enforceable, but if one is not reached the charges will be filed against them. In one year of this program being active they reduce the amount of cases that went to court from 1000 to 235. Not only has this program helped reduce the number of juveniles in the court but has also helped to benefit the juveniles as well. It was a win win for both the court and the children themselves.

The program in Lucas County should be an example for what we should be doing in ever city. Every city should be trying to reduce the amount of minor offenses that come through the courtroom every day. When the victims come in to file a complaint they should be offered to be taken to mediation first to help resolve their problems rather

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109 Id. at 902.
110 Id.
111 Id.
112 Id.
113 Id. at 903.
114 Id.
115 Id.
116 Id.
117 Id.
than going through the time and frustration of court. Also again upon intake the juveniles should be offered to go through mediation rather than going to court and having charges filed. Just as in the Lucas County court system the judges should suggest or order mediation as an alternative to sending the child to the juvenile detention centers.

IV. Proposed Solution

A proposed legislation for courts to use for juveniles should read that:

Every child under the age of twelve and who have committed nothing more serious than a misdemeanor offense should be given the opportunity to go through mediation before they file formal charges. If both the victims and the defendant agree to mediation they and their parents will be informed an agreement is not enforceable by the court. However, if the defendant failed to complete the agreed upon solution of the mediation or the parties failed to make an agreement is not met the victim has a year to file formal charges against the defendant and bring the case to court.

If the victim or defendant fails to take up mediation upon filing charges then upon the provisional finding of guilt the judge should order mediation. The parties and their parents will be informed that if they do come to a mutually agreeable solution this solution will be enforceable by court order. If an agreement is reached, then after the completion of the settlement the charges will be dismissed. If an agreement is reached but the juvenile fails to accomplish the agreed upon solution the victims will inform the court and the defendant will be brought back into court and be found guilty of the charges against him.

However, if an agreement is not reached the judge will have two options. First the judge may keep the provisional finding of guilt and have the defendant complete an
agreeable solution at which point the charges will be dropped. However, the judge also has the right to find the defendant guilty and then order the juvenile to a reasonable restitution and rehabilitation. Upon the finding of guilt the judge should note that he or she had ordered mediation and it failed. This way in the future if the child comes back through the court system they will have a note on the prior dealings in the case.

For children twelve and under who have committed felonies the court should assess their age, prior offenses, and the circumstances of the charge against them. Taking an individual approach to see if conflict resolution would be an appropriate resolution to the case. A juvenile and domestic relations judge should make these evaluations rather than a mediation team upon intake because the charges are more serious than misdemeanors. If the judge chooses mediation the parties will be encouraged to find an agreeable solution, which will be enforceable by court order. If the defendant fails to make an agreement or fails to comply with an agreement the juvenile will be brought back into court and the judge will then sentence the defendant with an appropriate sentence for the crime they were charged with.

For juveniles over the age of twelve who are charged with misdemeanors, the court should go through an evaluation of the juvenile’s circumstances. The Court or a mediation team should judge whether the juvenile would be a good fit by evaluating the age of the juvenile, prior court history, the mental state of the child, the family situation, the nature and circumstances of the charge against them, and any relevant circumstances that would show that mediation would be a worthwhile solution to these juvenile’s problems. This could be evaluated upon the charges being filed by a mediation team or a judge in court rather than finding the juvenile guilty could do the evaluation. If the
mediation team is the one who evaluates the juvenile to see if they are a good fit a
juvenile and domestic relations court judge should approve of their decision.

If mediation occurs before formal charges are filed the mediation team will
inform both the parents and the juveniles that an agreement is not mandatory, nor is it
enforceable by the court. However, if there is no agreement met, or if the agreement is
not followed through the victims have a year in which they can bring formal charges
against the juvenile in court. When formal charges are filed the judge will go through the
adjudication of the juvenile just as if no mediation had happened at all. However, the
failed mediation will be taken into account when and if the judge finds the defendant
guilty and sentences the juvenile to an appropriate sentence.

If the juvenile is ordered to mediation by a judge as a provisional finding of guilt
the juvenile and their parents will be informed that an agreement is not mandatory. If
both parties come to a mutually agreeable solution that agreement is enforceable by court
order. However, if the defendant fails to follow through the conditions of the agreement,
or an agreement is not met in these circumstances the case will go back to the court.
Then the judge will decide whether to mandate another solution for a provisional finding
of guilt, or find the juvenile guilty and dictate an appropriate solution to the case.

For juveniles over the age of twelve who have been charged with felonies the
court should assess the juvenile to see whether mediation would be appropriate. The
court should go through the same evaluation as if the juvenile had been charged with a
misdemeanor. However, a judge in juvenile and domestic relations court should be the
one to assess it, not a mediation team. The judge should weigh whether the juvenile
would profit from mediation, meaning that the formal charges will be filed against the
juvenile. Due to the nature of a felony charge the juvenile should go through the court proceedings and the judge should be the one to assess whether he or she would be a good candidate for mediation. The judge will have sole discretion in finding whether mediation will be profitable weighing deeply the prior criminal history of the juvenile and the nature of the crime. The judge may either use mediation as a deferred finding of guilt or the judge may use mediation as part of the sentencing depending on what the judge feels would profit the juvenile the most. The judge should have the best interest of the child in mind when making these judgment calls.

If the juvenile fails to comply with mediation depending on what the judge ordered originally, the juvenile may be found guilty of the crime and given an appropriate sentence for that crime. If the juvenile was ordered to mediation for sentencing then the judge may sentence juvenile to an appropriate sentence just as if they failed to comply with any other court order.

IV. Conclusion

Children have a hard enough time adjusting to school and all of the social responsibilities that they must pick up all at once. Children sometimes act out and possibly get in fights, which shouldn’t be excused, however, they also shouldn’t be labeled as criminals. Many children don’t have the family structure to be good examples of how to handle themselves in complicated situations. Mediation may not solve every problem, but there are many benefits to having a system that teaches children that they can handle their problems in different ways other than violence, and not label them as criminals. Labeling children, especially young children, can be devastating. Sometimes this labeling even leads the children to have to go to a special school for children who
have committed crimes. Separating them out already as troublemakers for one or two minor infractions.

Children who have been accused of assault and battery charges should have the option to go into mediation with the other children. This would clear up the court system from a lot of cases that probably could be mediated not to mention these children can learn how to handle a lot of their problems without the use of physical force. If the infractions happened at school, principles and teachers should be included to help mediate the children’s problems and see how to better handle that during school hours. Conflict resolution would alleviate the tension of “no contact” orders when the children ride on the same bus and have go to the same school, sometimes even the same classroom. Children usually get into fights at school over minor things that could easily be mediated through without having to involve the court system. This process would help the children in their self-esteem and their ability to solve problems throughout the rest of their lives. Conflict resolution also would not drag the children through the court system, and train them that bringing people to court was the best solution to solving their problems.

Also conflict resolution may relieve tensions between families. Occasionally the children get swept up in family conflicts. Sometimes the children react to the tension between their parents. This would help solve some of these conflicts that courts face every day. States should adopt a system that allows children to voluntarily choose to work through their issues in a friendlier environment rather than the court.

Mediation is never a complete solution but it will help the children in sometimes unstable family environments to get stability back in their life. Children rarely see
themselves as having any sort of power in their own lives. Many times they watch their families break down without having the power to solve the problems and then they feel as if they are powerless in their life. Children often resort to violence to solve their problems because they feel as if it is the only way they can gather control in their lives. Other times children are just being children and not realizing there can be exceedingly severe consequences for their actions.

Mediation can relieve both of these problems. Mediation may provide the children with a feeling of empowerment that they have the strength to solve their own problems without resorting to violence.\textsuperscript{118} This will be more meaningful and uplifting than dragging the child through court. The court system was not created to teach children how to handle their problems; rather it was to find guilt or innocence of the defendant. This is one of the essential differences between the court system and mediation. This is also one of the reasons mediation would be a useful tool for the court to suggest rather than adjudication. Upon the victims filing a warrant or upon arraignment of the child, the court should suggest mediation as an option, explaining the advantages and disadvantages of both, giving the children the option to choose. This solution would empower the children, teaching them useful skills for life, and it would alleviate the traffic through the court system clearing it up for more serious cases.

Mediation serves as the best interest of the child standard. The court reduces the amount of children that come through the court system, also freeing up the probation officers load. The juveniles learn helpful and useful skills to help them adjust to society and hard situations in their own lives. They are not labeled as criminals and it can deeply

\textsuperscript{118} Savage, \textit{supra} note 18, at 280.
affect their lives. Mediation benefits not only the court system but also the juveniles and their families. This is why mediation is the best solution to the problem of overcrowding in the court system and yields to the best interest of the child.

Mediation should be used both as a way to relieve the court from the ever increasing caseload of minor juvenile offenses. The court should also use mediation as a valid solution to the rehabilitation of juvenile delinquents. Placing a juvenile in the juvenile detention centers will not help the child to adjust back to society. However, mediation may be able to dig deeper into family problems that might be at the root of why the juvenile is getting in trouble with the law. It also may help the regime of the parental structure of the house. Mediation is not only beneficial to the courts so they can focus on more serious cases but also it is beneficial to the juveniles involved and sometimes even the families involved.