



Public Safety Considerations and Policy Implications with Restorative Justice in Domestic Violence Cases

Approved by the Domestic Violence Offender
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Executive Summary

The Domestic Violence Offender Management Board (DVOMB) was asked for feedback by the Colorado Restorative Justice Council (CRJC) as it explores utilizing restorative justice (RJ) with domestic violence cases. The DVOMB searched for research on this topic and found that none has been published. The Board has also documented caution and guidance from professionals who work in the field of domestic violence, both with victims and offenders, that too many questions are still unanswered regarding safety to utilize RJ in domestic violence cases, both for the victim and the offender. The DVOMB appreciates the CRJC's willingness to seek feedback from experts in the field of domestic violence, and is willing to continue collaboration.

Introduction

The following white paper is a summary of the key considerations and issues related to allowing cases of adult domestic violence¹, as defined in § 18-6-803, C.R.S., to be referred

¹ § 18-6-803 (1), C.R.S. "Domestic violence" means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. "Domestic violence" also includes any other crime against a person, or against property, including an animal, or any municipal ordinance violation against a person, or against property, including an animal, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.



to Restorative Justice (RJ) programs. In 2020, a working group of the CRJC solicited input from stakeholders on the proposition of utilizing RJ programs with cases of domestic violence. The purpose of exploring this alternative was to assess the viability of using RJ with domestic violence cases. In the absence of details regarding how such RJ programming would be designed, regulated, and implemented, the Colorado DVOMB chose to respond to this request in the form of a white paper.

RJ originated in Native American communities and has been applied widely to juveniles who have caused harm, and has had positive outcomes in non-person centered crimes (Flesher, E., 2005).

Per C.R.S., 18-6-803, in the State of Colorado the term “Domestic Violence” refers to adult intimate partner violence, and does not refer to intrafamilial violence, (e.g., child towards parent abuse, sibling towards sibling abuse, etc.).

In the RJ field, the term “person who caused harm,” is preferred. The *DVOMB Standards* use a variety of terms referencing persons who are subject to these *Standards*, including domestic violence offender, offender, and client. These terms of reference are used in different sections of the *Standards* based on the focus of a given section (e.g., treatment, supervision, etc.), as well as the preferred language of professional stakeholders who frequently reference that section. The DVOMB notes that the use of the term ‘domestic violence offender’ is consistent with the statutory definition identifying a person who committed a crime, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence. However, the DVOMB recognizes that the use of the term domestic violence offender is in no way intended to label individuals by their behavior, or suggest that those who undergo treatment cannot live a violence and abuse free life-style.

§ 18-6-803 (2), “Intimate relationship” means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

Background and Literature Review

Like many other states, Colorado passed legislation (§16-11.8-103, C.R.S.) in 2001 that created the DVOMB. In an effort to create consistency for domestic violence cases, the DVOMB was formed so “that such offenders will be less likely to offend again and the protection of victims and potential victims will be enhanced” (C.R.S. 16-11.8-101). Of its many statutory functions, the DVOMB is primarily a policy board mandated to develop state Standards for the evaluation, treatment, and monitoring of domestic violence offenders. When someone is found to have an underlying factual basis of domestic violence in a criminal case, C.R.S. 18-6-801(1)(a) requires the offender to “be ordered to complete a treatment program and a treatment evaluation that conform with the standards adopted by the domestic violence offender management board as required by section 16-11.8-103(4), C.R.S. If an intake evaluation conducted by an approved treatment program provider discloses that sentencing to a treatment program would be inappropriate, the person shall be referred back to the court for alternative disposition.”

While there is no singular profile of someone who commits domestic violence, this crime represents a wide range of acts and behaviors that can have lasting physical, emotional, financial, and psychological harm to victims (Tjaden & Thoennes, 2000). A recent analysis of the Colorado court data by the Colorado Division of Criminal Justice’s Office of Research and Statistics found an annual average of approximately 17,000 cases filed and flagged as domestic violence between Fiscal Year 2009 and 2014 (Flick & English, 2016). This analysis did not include municipal data, which suggests that filings for domestic violence cases are even more pervasive in the criminal justice system. When compared to the general offending population, domestic violence offenders have been found to possess more criminogenic needs (Hilton & Radatz, 2018) and recidivate at a higher rate (Flick & English, 2016; Gondolf, 1997b, 2003). The risk for re-offense and for lethality vary based on a myriad of factors and, more often than not, the crime of conviction is not indicative of an offender's risk for future recidivism.

Research studies evaluating the effectiveness of domestic violence offender treatment, also referred to as batterer intervention programming, have posited mixed findings with minimal or null-effects on offender recidivism (Babcock, Green, & Robie, 2004; Coulter & VandeWeerd, 2009; Feder & Wilson, 2005; Stover, Meadows & Kaufman, 2009). For example, the Babcock et al.'s (2004) meta-analysis examined 22 studies and observed a minimal range of small effect sizes for treatment in general ($k = 36$ total effect sizes, ranging from 0.03 to 0.34), depending upon moderating variables such as study design, treatment type, and varying measures of recidivism.

However, researchers and practitioners have since responded to this research by evolving and embracing research to better inform policies. In 2010 the DVOMB revised the Standards to incorporate a differentiated and individualized treatment approach informed by the principles of Risk, Need, and Responsivity² (Gover, 2011). In the years to follow, the DVOMB Standards have been studied and cited by scholars as an evidence-based model for other states to consider (Babcock et al., 2016; Cannon, Hamel, Buttell, & Ferreira, 2016, Radatz & Wright, 2016).

This body of research summarizing and evaluating the literature to date on effective treatment and interventions for domestic violence has only come recently in an effort to promote greater reliance of research and evidence based practices by state standards nationally (Babcock et al., 2016; Cannon, Hamel, Buttell, & Ferreira, 2016, Radatz & Wright, 2016; Stewart, Flight, & Slavin-Stewart, 2013). This research in some ways can be seen as a blueprint for states using Colorado's Standards as an example. In review of this research, however, the concept, practice, and evaluation of RJ programs was not identified as an evidence-based practice or even as a promising practice for treating domestic violence behaviors.

The available research documenting RJ with domestic violence is minimal and the research that does exist mostly focuses on other areas of crime that do not have the same dynamics and concerns of domestic violence offenses. RJ has strong empirical support for property and

² Bonta, J., & Wormith, J. S. (2013). Applying the risk-need-responsivity principles to offender assessment. In L.A. Craig, L. Gannon, L., & T. A. Dixon (Eds.), *What works in offender rehabilitation: An evidence-based approach to assessment and treatment* (pp. 71-93).

non-violent persons crimes; however, its efficacy on domestic violence offenses has yet to be strongly supported in research. There are some studies that look at RJ in tandem with other domestic violence interventions, but there are concerns with the designs and the strength of these studies as it relates to the RJ portions of the research. The RJ field of research is still beginning to grow and take traction, which warrants monitoring new studies on the topic; however, at this time there is not enough strong research to support the use of RJ practices with domestic violence offenses.

Key Considerations

1. Statutory References Prohibiting Restorative Justice

Currently, there are three provisions in Colorado law that prohibit the use of RJ with sexual assault and domestic violence cases for both adults and juveniles: C.R.S. 18-1.3-104(1)(b.5)(I), 18-1.3-204(2)(a)(III.5), 19-2-907(1)(I), and 19-2-925(2)(I).

The Colorado Revised Statutes consistently, repeatedly, and clearly indicate prohibitions to the use of RJ in domestic violence cases³, stalking cases and with violations of a protection order⁴.

2. Restorative Justice Practitioners and Practice Lack Regulatory Oversight

Due to the nature and seriousness of domestic violence, professionals who work with domestic violence offenders require training, competencies, and expertise in domestic violence offender dynamics and victim safety. RJ Practitioners are not regulated by any government agency or non-profit organization. There are no requirements presently for training, background checks, or supervision prior to

³ C.R.S. 18-1.3-104(1)(b.5)(I): To be eligible for restorative justice practices, the defendant shall not have been convicted of unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1), stalking as defined in section 18-3-602, or violation of a protection order as defined in section 18-6-803.5.

⁴ 18-1.3-204.(2) (a)(III.5): To be eligible for restorative justice practices, the defendant shall not have been convicted of unlawful sexual behavior as defined in section 16-22-102 (9), C.R.S., a crime in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1), stalking as defined in section 18-3-602, or violation of a protection order as defined in section 18-6-803.5.

becoming an RJ Practitioner. This means that RJ Practitioners would be unaware of the full spectrum and dynamics involved with intimate partner violence, along with risks of harm and even death to the victim⁵. DVOMB Approved Providers are trained in assessing risk of re-offense and lethality with domestic violence offenders. The initial evaluation process is extensive and requires a Multidisciplinary Treatment Team (MTT) approach. The offender is then continuously assessed throughout treatment, and the MTT consistently monitors the offender's progress, or lack thereof, and prioritizes victim safety.

Furthermore, there are no parameters guiding who may or may not be eligible for becoming an RJ Practitioner, including criminal history. This means that current or former domestic violence offenders, who may or may not have undergone treatment, could act as an RJ Practitioner or Facilitator.

Allowing anyone to become an RJ Practitioner to work with offenders and victims of domestic violence circumvents many of the protections established by the DVOMB and represents undue risks to victims that would not be monitored if allowed, and at worst in a domestic violence setting, serious harm or loss of life.

The DVOMB mandates the following minimum requirements for individuals seeking placement on the Approved Provider List:

- a. DVOMB Approved Providers must be listed with a mental health and/or substance abuse registration, certification or license under the Department of Regulatory Agencies (DORA), and therefore are subject to grievances by consumers and other professionals. This level of accountability provides a level of oversight which is imperative when working with clients.
- b. Education: Minimum of a baccalaureate degree
- c. Domestic Violence Specific Experiential Hours: Minimum of 35 hours
- d. Domestic Violence Specific Training Hours: Minimum of 35 hours

⁵ According to the 2020 Annual Report by the Colorado Domestic Violence Fatality Review Board, "in 2019, Colorado had at least 60 incidents where domestic violence resulted in a fatality, and 70 people died in these incidents (pg 4).

- e. Criminal and Civil History: Must submit to a background check for criminal and civil history
- f. Professional References: Must submit a minimum of three professional references
- g. Clinical Supervision: Competency assessment and ongoing supervision
- h. Continuing Education: 14 hours per year
- i. DVOMB Approved Providers are also subject to monitoring by the DVOMB in order to demonstrate compliance with the Standards, which are based on emerging research in the field of intimate partner violence.

3. Policy Safeguards through the DVOMB Standards

a. Standard 5.10 Prohibition Against Couples Counseling

- i. Couples counseling is not a component of domestic violence offender treatment and Section 5.10 of the DVOMB Standards prohibits the offender from engaging in any form of couples counseling. The offender is the client while in offender treatment, not the couple, and not the relationship. The offender is prohibited from participating in any couples counseling while in offender treatment. This includes any joint counseling that involves the offender and the victim.
- ii. Because of the potential therapeutic challenges of concurrent treatment along with dangers and risk to victim safety, this Standard further clarifies that offenders will not participate in marriage or couple's counseling of any kind with anyone with the victim outside of offender treatment.

4. Ethical and Practice Related Concerns regarding Victim Safety

- a. Necessity of Offender Treatment - The DVOMB was created in 2000 for the purpose of standardizing the evaluation, treatment, and continued monitoring

of domestic violence offenders at each stage of the criminal justice system so that such offenders will be less likely to offend again and the protection of victims and potential victims will be enhanced. Over the past two decades, the DVOMB Standards have advanced with research and use a coordinated community response to domestic violence offenders that is inclusive of the criminal justice system, service providers, non-profit victim services, and the local community. RJ practices offered to domestic violence offenders and victims may reintroduce inconsistencies in the services for offenders and increase the violence and abuse toward victims and secondary victims unintentionally.

- b. Within the dynamics of domestic violence, the offender controls the victim through punishment, coercion and threats in order to force the victim into doing whatever it takes to lessen the consequences for themselves; both within the home, within family and friends, and in the legal system (Klein, 2009). This is attributable to the coercion by the offender to control the choices of the victim, which can include recanting as the victim witness, assuming blame for the offender's behaviors, and justifying the offender's behavior. The presumption that victims of domestic violence are able to willingly choose to agree to an RJ intervention is misleading and fails to account for the surreptitious manipulation and coercion by the offender. The offender may seek retribution in the form of violence and abuse that is not disclosed or known to an RJ professional or facilitator which can be dangerous to the victim.
- c. Psychopathy - Offender treatment employs cognitive behavioral treatment that is empathy-based and incorporates elements of RJ throughout the process of treatment. Domestic violence offenders exhibit a range of patterns of generalized violence and anti-sociality. Domestic violence offenders are evaluated and those who present as psychopathic or as having significant psychopathic tendencies may be unmanageable in the community and could

present greater risk to victim(s) and the community at large. Empathy based forms of treatment are contra-indicated for domestic violence offenders who exhibit psychopathy because “such interventions may actually increase the criminal behaviour of psychopaths (e.g., Rice et al. 1992), probably by enhancing their skills at manipulation and deception of others (including therapists)” (Juodis et al., 2014). As a result, these populations are treated differently as the approach to reduce recidivism is based on an educational approach which is supported by the Principles of Risk, Need, and Responsivity.

Opportunities for Collaboration

The following options are possible areas for collaboration in addressing issues of domestic violence in Colorado by incorporating aspects of the RJ Continuum.

1. Restorative Justice possibilities for Juveniles

The early intervention and prevention of intimate partner violence, domestic violence, or alternatively relationship abuse is critical at the early stages of adolescent development. Youth who engage in relationship abuse in their dating relationships during adolescence do not fall under the criminal definition of domestic violence because domestic violence is codified in Title 18 of Colorado Revised Statutes pertaining to adults. There are limited interventions and treatment options for youth in Colorado. Unlike adult domestic violence offenders, there is no mandate for someone to be approved through the Colorado Domestic Violence Offender Management Board (DVOMB) to work with youth who commit abusive, harmful, and/or illegal acts toward a romantic partner. As a result, the DVOMB is in the process of developing guidelines to providers offering evaluation and treatment services to youth who are engaging in relationship abuse.

Given that there is a significant body of research on RJ used with the juvenile population, opportunities may exist to develop RJ practices with juveniles who are engaging in relationship violence toward a romantic partner. RJ practices could be provided with the juveniles who are engaging in abusive, harmful, and/or illegal acts

toward a romantic partner with safeguards to limit possibilities for future harm and further victimization of the victim.

This option may be a viable part of the ongoing efforts to promote juvenile diversion in Colorado regarding Senate Bill 19-108.

2. Healing Circles for Victims

This option seems to be another possibility for victims to find opportunities for healing and connection with others who have also been harmed, and may provide an option for victims to develop a community of support.

3. Surrogate Victim and Offender Dialogue

This option may provide opportunities for victims to find some healing without the danger of exposing the victim to continued victimization, power and control, or opportunities for continued victimization.

4. Restorative Justice Principles in Adult Domestic Violence Offender Treatment

The DVOMB Standards currently use some forms of RJ practices in the provision of offender treatment. Please note that options pertaining to adults should be considered and used in conjunction with Domestic Violence Offender Treatment as defined by the DVOMB Standards.

- a. Accountability Letters and Empathy - This option is a therapeutic tool currently used as a way to measure the offender's accountability of the offense, to determine the offender's level of empathic regard, and present the letters in a group setting with their DVOMB Approved Provider and other group members. In order to prevent accountability letters or exercises from being used as a tool to further manipulate the victim, accountability letters are not given to the victim. Offenders may write multiple accountability letters throughout the

- duration of their offender treatment. Clinicians identify an offender's progress or lack thereof due to deficiencies in the levels of accountability and ability to empathize.
- b. Surrogate Victim and Offender Dialogue Exercises in Treatment - This option provides opportunities for offender to develop empathy and accountability without the danger of exposing the victim to continued victimization, power and control, or opportunities for continued victimization. Approved Providers utilize role playing exercises where offenders have opportunities to explore the impact of abusive behaviors through the lens of a victim.
5. Further Research Needed - Further research is needed of valid and reliable studies discussing for and against RJ with the domestic violence offender population. Efforts to use RJ with domestic violence cases should be studied first prior to any changes to legislation or implementation. The RJ field of research is still beginning to grow and take traction, which warrants monitoring new studies on the topic. However, at this time there is not enough strong research to support the use of RJ practices with domestic violence offenses.

Conclusion

In summary, RJ is an appropriate and effective intervention for many types of crimes. High-quality, quantitative research examining RJ with domestic violence is limited. In fact, the available research regarding domestic violence offender treatment has yet to identify RJ as an evidence-based practice or as a promising practice. Other scholars have called into question the degree to which RJ practices can provide the necessary safeguards to not compromise a victim's safety and right to self-determination. The research supporting the use of RJ with domestic violence cases relies on anecdotal and at best, cross-sectional studies; some of which have not been peer-reviewed. As a result, the methodological weaknesses of the literature to date do not allow for a strong positive conclusion.

From a practical and victim safety perspective, domestic violence does not stem from a failing relationship. Domestic violence is the result of a pattern of coercive control removing a victim's freedom, degrading their dignity, and creating conditions that place blame on the victim. By failing to build a response around these underlying dynamics of intimate partner violence, it gives a way for a RJ program to potentially cause further harm and re-traumatize victims. Victims being presented with the option of RJ may be unknowingly coerced, forced, or otherwise manipulated by an offender to agree. Additionally, victims may be blamed for causing the abuse that was perpetrated against them and may not be open and honest out of a fear the offender will retaliate. Present research supports that this dynamic leads to these unintended consequences regarding couples counseling. Even with trained mental health professionals who are supported by parole or probation officers, it can be difficult to hold domestic violence offenders accountable in treatment and to safely manage and monitor the offender through the treatment process when a victim is present in a clinical setting. In fact, this is the reason that throughout the United States where domestic violence treatment is regulated, "68% of states prohibit the use of couples treatment of any kind either before or concurrent with a primary domestic violence intervention" (Babcock et al., 2016, pg. 421).

Finally, RJ Practitioners are not regulated in the State of Colorado and there are no requirements presently for training. This means that RJ Practitioners would be unaware of the dynamics of domestic violence and risks such as lethality. Furthermore, there are no restrictions regarding who can become an RJ Practitioner. This means that current or former offenders, who may or may not have undergone treatment or who may even be abusing their partner could act as an RJ Practitioner or Facilitator.

In conclusion, it is recommended that no changes to RJ for domestic violence cases be made. The field needs further data and research that examines the effects and implications of RJ Programs is needed prior to implementation of broad-based policies or statutes regarding RJ Programs for domestic violence offenders. Should additional information become available, the DVOMB will do an additional review and modify this document as appropriate.

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