



Domestic Violence Cases in Diversion Programs and the Statutory Purview of the DVOMB

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Introduction

Diversion programs in Colorado offer a voluntary alternative to traditional criminal proceedings, allowing a defendant to avoid entering the criminal legal system upon successful completion of program requirements. While domestic violence cases have not been historically considered for pre-trial diversionary programs, a number of jurisdictions are now expanding these programs to include domestic violence cases. Pursuant to C.R.S. § 16-11.8-103(4), the Domestic Violence Offender Management Board (DVOMB) does not have statutory purview over diversionary cases without a deferred sentence involving domestic violence. Despite this lack of statutory authority, however, diversion programs are frequently relying on DVOMB Approved Providers to provide evaluation and treatment services to clients on diversion. This overview offers background information about diversion and the DVOMB's purview in cases reviewed for diversion and offers information and considerations about how domestic violence cases may be impacted with deferred prosecution (pre-trial diversion).

Based on the information provided, the DVOMB offers the following recommendations and considerations related to Diversion:

1. **Limited Low-Risk Cases:** Who diversion is appropriate for – specifically, low- and low-moderate-risk clients who are stable in the community, but not moderate- or high-risk clients, who tend to present with greater instability, more safety concerns, and higher treatment needs.
2. **Risk is Complex and Requires Specialized Training:** That determining risk level is a specialized task requiring more than a simple review of the index offense or charge description. The index crime is typically not indicative of a person's risk to the victim and community alone.
3. **Lack of Purview:** That the DVOMB currently lacks purview over pre-trial diversion programs, resulting in limited regulation, oversight, and training in this area.

Background and Statutory Context

Diversion is a voluntary alternative to court proceedings, typically occurring at the county or district court level, with a primary goal of community safety. A successful completion results in the dismissal of all criminal charges with prejudice, an outcome explicitly not considered a conviction for any purpose. District Attorneys' (DAs) offices are authorized by C.R.S. § 18-1.3-101 to develop and implement these programs,



which aim to prevent future criminal acts, facilitate victim restoration and restitution payments, and reduce the volume of cases in the criminal legal system. Additionally, they allow defendants to avoid the collateral consequences associated with criminal charges and convictions. Subsection (5) of the statute specifically states:

“(5) In a jurisdiction that receives state moneys for the creation or operation of diversion programs pursuant to this section, an individual accused of an offense, the underlying factual basis of which involves domestic violence as defined in section 18-6-800.3(1), is not eligible for pretrial diversion unless charges have been filed, the individual has had an opportunity to consult with counsel, and the individual has completed a domestic violence treatment evaluation, which includes the use of a domestic violence risk assessment instrument, conducted by a domestic violence treatment provider approved by the domestic violence offender management board as required by section 16-11.8-103(4), C.R.S. The district attorney may agree to place the individual in the diversion program established by the district attorney pursuant to this section if he or she finds that, based on the results of that evaluation and the other factors in subsection (3) of this section, the individual is appropriate for the program.”

In jurisdictions that receive state funding for a diversion program, the statute specifies three requirements that must be met for an individual accused of a domestic violence offense to be eligible:

- Charges have been filed.
- The individual has consulted with counsel.
- A **domestic violence treatment evaluation**, including a domestic violence risk assessment instrument, must be completed by a DVOMB-approved provider as required by C.R.S. § 16-11.8-103 (4).

While the District Attorney (DA) retains sole discretion to determine an individual's appropriateness for the program based on the evaluation and other case factors, DVOMB Approved Providers retain the discretion regarding if and how they would like to deliver services to clients on diversion.

While the initial evaluation must be conducted by a DVOMB Approved Provider C.R.S. § 18-1.3-101(5), this requirement does not extend the purview of the DVOMB and the DVOMB cannot create Standards or instill requirements for DVOMB Approved Providers to follow. Pursuant to C.R.S. § 16-11.8-103 (4), the DVOMB's authority is designated to “offenders who have 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, and who are placed on probation, placed on parole, or placed in community corrections or who receive a deferred judgment and sentence.”

The Risk, Needs, Responsivity Model and the Low-Risk Population

The growing use of diversionary programs for domestic violence cases reflects prosecutors' efforts to expand options to address a range of community needs. For instance, some programs utilize diversion to ensure that defendants, who might otherwise have their cases dismissed without any intervention, receive some form of targeted services to address their behavior. Conversely, some jurisdictions prioritize domestic violence cases for defendants charged with low-level, non-violent offense, or those with no criminal history. While these approaches aim to balance accountability with public safety, they also raise important questions about how

to appropriately identify and assess which cases are suitable for diversionary programs.

The nature of domestic violence often occurs behind a veil of secrecy, with the onset of any known violence or abuse dynamics beginning with emotional, psychological, or financial forms of abuse. These non-violent forms of abuse are central to coercive control, such that the identification of cases based on the index offense only may overlook important contextual factors. The risk of re-offending is not reliably assessed solely by the criminal charge. A potential challenge with using diversionary programs for domestic violence cases is how to approximate the risk of the defendant that can screen for general, specific, and lethal factors to the victim and the broader community.

In 2010, the DVOMB modified its Standards and Guidelines to replace the former 36-week model of treatment with a **differentiated model based on the principles of Risk, Need, and Responsivity (RNR)**. This model removed time as the key function for determining progress and instead used **competencies** as the proximal measure toward the goal of reducing attitudes and behaviors under which coercive control persists. The model introduced three levels—Level A (low intensity), Level B (moderate intensity), and Level C (high intensity)—in an attempt to design a system that distinguishes and responds differently to populations based on their risk of reoffending.

Basis for the RNR Evaluation Process:

The RNR model is premised on a comprehensive evaluation conducted by a DVOMB Approved Provider. The purpose of this evaluation is to:

- Assess a client's need for treatment and determine what type of treatment is required.
- Identify the client's **risk level** and any additional needs.
- Ensure treatment recommendations are based on a comprehensive evaluation, in which the Provider reviews all assessment and screening results, collateral information, and clinical interview data to determine the initial treatment level (A, B, or C).
- Ensure all offenders are evaluated using the **Domestic Violence Risk and Needs Assessment (DVRNA)**, a research-informed instrument composed of 14 risk factors used to classify individuals so treatment intensity is matched to their risk profile.

The Profile and Characteristics of a Level A Offenders

The profile for a low-risk, Level A Offender is well-defined by the Standards and Guidelines and determined by the DVRNA. Level A offenders receive the lowest intensity level of treatment.

- **DVRNA Criteria:** The population identified as Level A at initial placement generally **does not have an identified pattern of ongoing abusive behaviors**. They typically have a pro-social support system, minimal criminal history, and no initial evidence of substance abuse or mental health instability.
- **Risk Factors:** Level A placement is typically assigned to individuals with **one or zero risk factors** identified on the DVRNA.
- **Exclusionary Factors:** If the DVRNA identifies a **Significant Risk Factor** (such as substance abuse/dependence within the past 12 months) or a **Critical Risk Factor** (such as a prior DV conviction or use/threatened use of weapons), the client must be placed at a minimum of Level B or C, making them ineligible for Level A.

Since the inception of the differentiated treatment model, programmatic data collected from DVOMB Approved Providers consistently demonstrates that **only a small percentage of individuals convicted of domestic violence offenses are categorized as Level A (Low Intensity)**, suggesting the overall population referred for domestic violence offender treatment is heavily weighted toward moderate- and high-risk levels. Findings from a process evaluation conducted by the DVOMB in 2016 found Level A clients accounted for approximately **12%** (count = 187) at the time placement in treatment. In contrast, more recent data reported in this Annual Report indicates Level A clients represented **2%** (count = 76) of the total population at the time of placement into treatment.

The number of Level A offenders who are identified by the criminal legal system suggests that diversionary programs may only service a limited number of people, unless those programs seek to expand criteria that would allow for higher-risk populations to be eligible for diversion such as Level B and Level C offenders. Broadening the scope of diversionary programs to allow for Level B and C offenders may aid in getting individuals into treatment. **However, it may also introduce structural and policy challenges involving the management of higher-risk cases referred to diversionary programs that are not equipped to address these populations adequately.** Supervision demands for higher-risk domestic violence cases can necessitate more frequent substance use testing, home visits, firearm restrictions, and location monitoring.

Effectively supervising and treating higher-risk individuals is more resource intensive, involving adjunct treatments for co-occurring issues, longer treatment lengths, and enhanced monitoring protocols. The absence of these important components can result in under treating or under supervising clients. Individuals may presume their offense was low-risk by virtue of being placed on diversion and may therefore infer that they are entitled to less restrictions, less monitoring, and less requirements from treatment. Some individuals placed on diversion may also minimize the impact of their offense asserting it as less consequential and may contest notions about their accountability or impact. These attitudes can be a significant barrier and delays to treatment. Any incongruences between expectations by the defendant and program requirements may negatively impact the defendant's motivation to participate. The results of these incongruences can range from consequential to catastrophic.

Risk assessment is an ongoing process, and the length of treatment is predicated on the defendant's ability to progress through the Treatment Core Competencies, reduce their risk factors, and demonstrate lasting change. Research from the DVRNA validation study indicates that the majority of defendants evaluated are classified as Level C and are at the greatest risk of recidivism within the first 24 months. Consequently, the risk associated with Level C defendants placed on diversion can be equal to or greater than those on probation, community corrections, or prison. Given the prevalence of moderate- and high-risk individuals in the convicted population, a significant number of individuals referred to diversion programs may also carry risk factors that require the intensive, specialized intervention of Level B or C treatment. Providers accepting referrals from diversion report that they are, in fact, seeing individuals who present with significant risk factors, including some that would warrant a Level B or C designation.

Key Discussion Points

Treatment Length Accountability, and Resistance

Assessing a defendant's risk for re-offending based solely on the criminal charges is often challenging in domestic violence cases. If diversion programs do not prioritize a thorough evaluation process, it could compromise victim safety and result in the placement of inappropriate cases. There is no assigned duration

for domestic violence offender treatment. Each client's progress is made according to their own gains with the core competencies and individualized treatment goals rather than the passage of a specific amount of time or sessions. The standard timeframe of **less than six months** often provided in diversion agreements may be insufficient to achieve lasting behavioral change, particularly for moderate- or high-risk individuals. On average, post-conviction clients needed about 8.4 months to **complete treatment**. Only Level A clients approached the 6-month range, whereas moderate and high risk clients generally needed 8 to 9 months.

Co-Occurring Issues (Second Contacts)

According to peer-reviewed research and studies by the DVOMB, domestic violence offenders often have co-occurring issues that require additional treatments beyond those related to coercive control. These are referred to as **Second Contacts** and enhance risk reduction and the overall effectiveness of treatment by providing a comprehensive response to a client's unique risk profile. Co-occurring issues such as substance abuse, pro-criminal attitudes, or severe mental health conditions, often termed 'Second Contacts,' significantly complicate the management of domestic violence cases. Addressing these co-occurring issues with higher-risk individuals (Level B and C) who are placed in diversion programs requires **resources and specialized treatment components that can exceed the scope and capacity of typical pre-trial diversion services**. This mismatch can be a significant barrier and delay to treatment.

The Multi-Disciplinary Treatment Team

The **Multi-Disciplinary Treatment Team (MTT)** model is a collaborative framework where team members (e.g., Approved Provider, criminal justice agency, victim advocate) staff cases, share information, and make informed decisions about risk assessment, treatment placement, and behavioral monitoring. DVOMB Approved Providers are accustomed to this model and may require case managers in diversion programs to participate in the MTT and receive specific training on domestic violence and victim safety.

Information Gaps

The primary information gap remains the **lack of empirical data on recidivism** for domestic violence offenders who participate in and complete Colorado's diversion programs.

- DVOMB Approved Providers are not required to enter and submit data for pre-trial diversion participants, creating a systemic gap in evaluating the long-term public safety effectiveness of these programs.
- The absence of DVOMB oversight for diversion cases creates uncertainty regarding the fidelity of the intervention and the management of high-risk cases.
- Furthermore, if diversion records are sealed, a client's complete history is obscured, which compromises the accuracy of future risk assessments should they re-offend.

Core Policy Recommendations

To ensure public safety, uphold the integrity of the DVOMB structure, and maximize the effectiveness of taxpayer resources, the following core policy changes are essential for all domestic violence cases considered for diversion:

1. **Standardized Assessment Process:** Promote the use of a standardized, validated risk assessment tool

(currently DVRNA, transitioning to CASCADE) for all domestic violence diversion participants.

2. **Formal Accountability Structure:** Develop a clear process where the prosecutor and the MTT is immediately notified if a client on diversion begins engaging in risk-related behavior, violates any treatment or supervision requirements, or drops out of the treatment program.
3. **Systemic Information Sharing:** Require sharing of important information about the diversion client regarding their evaluation results and progress in treatment.

To ensure consistent, high-quality practice when working with clients on diversion, Approved Providers should:

- Consider the DVOMB Standards and Guidelines as a best practice guideline and be applied based on their professional judgement and discretion for adults placed on diversion.
- Carefully review any contractual requirements from a diversion program before accepting clients. If any concerns arise, it is important to clearly outline expectations related to their role and treatment programming.
- Consider continuing the practice of submitting data to the DVOMB on diversionary cases to aid with future research regarding what populations are being referred to diversion programs and how well those populations perform while on diversion.

To ensure consistent, informed, and safety-focused decision-making in diversion cases, Prosecutors and District Attorneys should:

- Refer to a DVOMB Approved Provider to conduct an offender evaluation.
- Contemplate the appropriateness for diversion after the completion of the offender evaluation which includes the results of the **Domestic Violence Risk and Needs Assessment (DVRNA)**.
- Ensure case managers have training and understanding of their roles and responsibilities in the **Multi-Disciplinary Treatment Team**.
- Establish clear program requirements and accountability structures that allow for recourse that can bring forward charges if the diversion client begins engaging in risk-related behavior, violates any treatment or supervision requirements, or drops out of the treatment program.
- Consider diversion agreements for a period of 12 months.
- Contemplate the impact of sealed diversionary cases which may impact the accuracy of risk assessments if those prior records are not accessible to the Approved Provider conducting the evaluation. While there is a benefit to incentivizing systems that can divert individuals from continued involvement with the criminal legal system, a consequence of this practice of sealing records is that it obscures an individual's prior criminal history, compromising the evaluation of their risk should they commit an offense later in life.
- Notify victims of the rationale and basis for offering a diversionary program and the contact information of the Treatment Victim Advocate. Victim witness specialists should also receive training on the roles and responsibilities of Treatment Victim Advocate in the post-conviction context of victim services.

Transition to the Colorado Assessment Scale for Coercion and Abuse Desistance

The DVOMB is currently transitioning to a new assessment called the Colorado Assessment Scale for Coercion and Abuse Desistance (CASCADE), that is based upon revised improvements to the DVRNA. The CASCADE is divided into two main parts that assess for static and dynamic risk. The static portion of the CASCADE tool

can be used by case managers and supervising agents to determine the supervision level. Diversion programs may be able to use the static portion of the tool to perform an initial screen of individuals to help determine the appropriateness of someone for diversion prior to the domestic violence evaluation being conducted.

Conclusion

Desistance from reoffending in the context of domestic violence requires a coordinated approach that recognizes the multifaceted nature of the issue. The statutory framework limits the DVOMB's purview to **"domestic violence offenders"**. While C.R.S. § 18-1.3-101 (5) mandates the use of DVOMB-approved providers for initial evaluations in state-funded diversion programs, this provision does not extend the Board's regulatory authority to the processes or individuals who have not been convicted. Any attempt by the DVOMB to regulate diversion programs or create standards specifically for diversionary cases would exceed its defined statutory authority.

This report aims to provide information to aid those considering diversion programs for domestic violence cases. The information provided highlights the majority of domestic violence cases are classified as moderate- or high-risk (Level B or C). When these higher-risk individuals are diverted into programs lacking the mandated intensive treatment, monitoring, and accountability structures of the DVOMB Standards and Guidelines, there is the possibility that individuals are under-supervised and under-treated. The consequence of this could deteriorate the effectiveness of treatment.