Focus

Court responses to batterer program noncompliance: A national survey

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Over the past 25 years, the criminal justice system has sought to transform its historically inadequate response to domestic violence. The resulting pro-arrest and prosecution policies precipitated a massive influx of domestic violence cases into criminal courts nationwide. Increasingly, courts have turned to batterer programs as the preferred sentence in these cases, especially when the legal issues precluded a jail sentence.

For many years, the most widely understood purpose of court orders to batterer programs was to induce participants to stop their abusive behavior. Recently, however, the proposition that these programs can prevent further violence has emerged as a matter of contention. Although more than 65 batterer program studies have been completed since the 1980s, only five have employed experimental designs, providing the most robust test of effectiveness through random assignment to a batterer program or a control condition. The results of these experiments suggest that batterer programs may not be effective in reducing re-abuse.

Only the first experimental test found a clear positive effect on rates of re-abuse.[1] Of the four more recent experiments, three showed no beneficial effect of a court order to a batterer program[2] and one showed a small suppressive effect on re-abuse

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A complete discussion of the study methodology and findings is available in the full research report published by the Center for Court Innovation and VCS Inc. at www.courtinnovation.org_uploads/documents/Court_Responses_March2007.pdf.

1. S. Palmer, R. Brown, and M. Barerra, *Group Treatment Program for Abusive Husbands* 62 AM. J. OF ORTHOPSYCHIATRY 167 (1992).

2. F.W. Dunford, *The San Diego Navy Experiment: An Assessment of Interventions for Men who Assault Their Wives* 68 J. OF CONSULTING AND CLINICAL PSYCHOLOGY 468 (2000); L. Feder and L. Dugan, *A Test of the Efficacy of Court-Mandated Counseling for Domestic Violence Offenders: The Broward County Experiment* 19 JUST. Q. 343-375 (2002); M. Labriola, M. Rempel, and R. Davis, *Testing the Effectiveness of Batterer Programs and Judicial Monitoring: Results from a Randomized Trial at the Bronx Misdemeanor Domestic Violence Court* 25 JUST. Q. (2008).

only while the offenders were actively enrolled in the program.[3] A meta-analytic review of the experiments as well as several quasi-experiments with matched control groups found, on average, that batterer programs do not reduce re-offending, especially when measured by victim report, or at best show only marginal advantages over alternative sanctions such as probation, community service, or court monitoring.[4] Although even the strongest of the experimental studies have serious design limitations[5] the preponderance of the strongest available evidence is not encouraging.

Given the questionable capacity of batterer programs to reduce re-offending, another potential function, promoted for years by some advocates and gaining broader attention in the wake of the aforementioned research, is *accountability*. This function is consistent with the original description of batterer programs in the late 1970s as one component of a broader criminal justice response. The Domestic Abuse Intervention Project in Duluth, Minnesota, creators of the popular "Duluth Model" for batterer programs, describe the model as a "coordinated community response" guided by the aim of "changing the climate of tolerance for [domestic] violence."[6]

Yet, although "accountability" is linked rhetorically with batterer programs and the court response to domestic violence, the term has rarely been defined nor have the implications for court policies and practice been analyzed. In the study reported here, the underlying assumption was that to hold domestic violence offenders accountable, criminal courts must not merely order them to batterer programs but must enforce those orders by imposing meaningful consequences for noncompliance. When courts consistently impose penalties in response to noncompliance, up to and including jail, they send a clear message to the offender and to the greater community that the criminal justice system takes the offense (and its own orders) seriously. Our study investigated the extent to which criminal courts currently implement this principle of accountability in their everyday practice.

Questions and methodology

Our primary research question was simple: To what extent do criminal courts across the country impose further penalties on domestic violence offenders who fail to comply with a court order to a batterer program? A corollary question was: What goals *do* courts, batterer programs, and battered women's agencies ascribe to court orders to batterer programs? Additional questions were: When and how do courts order offenders to these programs and what other types of programs do courts order for domestic violence offenders? Finally, we sought to assess concurrence among courts, batterer programs, and battered women's agencies in their answers to these questions.

In the absence of prior research, we believed that a national study incorporating a large number of sites would be the ideal methodology. Therefore, we conducted our investigation in 260 communities across the U.S., with the goal of separately surveying a criminal court, batterer program, and battered women's agency in each community.

Our sampling plan was to select a range of communities to meet several criteria:

(1) representation of all 50 states through selection of three to five communities in each state;

(3) orders must originate with a criminal court rather than another criminal justice agency (e.g., probation or parole);

(4) the court must have a high volume of orders to batterer programs, taking into account population size;

(5) a large percentage of the sample must mandate defendants to a batterer program before disposition as well as after; and

(6) contact information must be available for a local batterer program, criminal court, and battered women's agency in the same community.

We identified 2,265 batterer programs nationwide and sent each a one-page questionnaire requesting information needed to select our sample. A total of 543 programs (24 percent) returned the questionnaire. From these responses, we selected 260 communities that met our criteria, with one exception. Slightly deviating from our original plan, we selected more than five communities in 18 states that have particularly large numbers of batterer programs and fewer than three communities in eight small states that appear to have only one or two batterer programs.

Use of batterer programs

Pre-disposition vs. post-conviction mandates. Even though we attempted to over-sample courts that order defendants to batterer programs pre-disposition, only 34 percent of the courts in our sample reported such use. Hence, we conclude that batterer program orders are typically part of a sentence imposed on a convicted offender. Of those courts that do send defendants to batterer programs prior to case disposition, 64 percent reported offering a legal benefit to defendants who complete the program, such as dismissal of charges, reduction of charges, or reduction of sentence upon conviction.

Program requirements. Most batterer programs reported requiring that the offenders attend one meeting per week (98 percent), for one and a half (50 percent) to two hours (33

3. C. Maxwell, R. Davis, and B. Taylor, *The Impact of Length of Domestic Violence Treatment on the Patterns of Subsequent Intimate Partner Violence.* In press J. OF EXPERIMENTAL CRIMINOLOGY (2010).

4. L. Feder and D. Wilson, *A Meta-Analytic Review of Court-Mandated Batterer Intervention Programs: Can Courts Affect Abusers' Behavior?* 1 J. OF EXPERIMENTAL CRIMINOLOGY 239-262 (2005).

5. R. Davis and B. Auchter, *National Institute of Justice Funding of Experimental Studies of Violence Against Women: A Critical Look at Implementation Issues and Policy Implications.* In press J. OF EXPERIMENTAL CRIMINOLOGY (2010); E. Gondolf, *Evaluating Batterer Counseling Programs: A Difficult Task Showing Some Effects and Implications.* 9 AGRESSION AND VIOLENT BEHAV. 605-631 (2004); M. Rempel, *Batterer Programs and Beyond* in E. Stark and E. Buzawa, eds., VIOLENCE AGAINST WOMEN IN FAMILIES AND RELATIONSHIPS, VOLUME THREE: CRIMINAL JUSTICE AND THE LAW (Santa Barbara, CA: Praeger, 2009).

6. E. Pence and C. McDonnell, *Developing Policies and Protocols*, in E. L. Pence and M. Shepard, eds., COORDINATED COMMUNITY RESPONSES TO DOMESTICE VIOLENCE: LESSONS FROM DULUTH AND BEYOND (Thousand Oaks, CA: Sage, 1999).

percent) per session, most often for 26 weeks.

Supervision and compliance monitoring. Although all batterer program orders in our sample originate with the court, probation typically plays a critical role in supervising those orders: 94 percent of the courts surveyed reported involving probation in supervising all or some of their batterer program orders. Besides supervision by probation, more than half of the courts (62 percent) also reported requiring offenders to return to court periodically for compliance monitoring. Additional evidence suggests, however, that in most courts such monitoring is infrequent. The first compliance hearing is held within four weeks of the initial court order by only 58 percent of those courts that use compliance monitoring at all (or only 36 percent of all responding courts in our sample). Furthermore, only about a quarter (26 percent) reported that they bring an offender back to court within two weeks of receiving a report that the offender was noncompliant with the order to attend a batterer program, with 63 percent reporting that they require the offender to return to court within a month of receiving a report of noncompliance.

Use of other programs. The overwhelming majority of the courts surveyed (83 percent) reported sometimes ordering domestic violence offenders to other types of programs *instead* of a batterer program. Alcohol, substance abuse, and mental health treatment, and anger management, are ordered at least sometimes by more than three-fifths of responding courts.

Rationale

All survey respondents were asked to "check as many as apply" of five possible functions of court orders to batterer programs:
(1) treatment/rehabilitation, (2) accountability, (3) monitoring, (4) legally appropriate punishment, and (5) alternative to incarceration. There was a remarkable degree of convergence among the responses from courts, batterer programs, and battered women's agencies. In particular, most respondents checked *both* "treatment/rehabilitation" and "accountability."

Rehabilitation/treatment was endorsed somewhat more frequently by the courts (90 percent) and batterer programs (85 percent) than by the battered women's agencies (70 percent). Conversely, accountability was endorsed somewhat more frequently by the batterer programs (85 percent) than by battered women's agencies (74 percent) or courts (73 percent). Nearly half of the courts (47 percent) selected "alternative to incarceration" as a function of court orders to batterer programs, whereas less than a third of batterer programs and battered women's agencies endorsed this particular function.

When courts consistently impose penalties in response to noncompliance, they send a clear message that the criminal justice system takes the offense seriously.

Enforcement

Courts' awareness of noncompliance. According to both the batterer program and court survey respondents, at least 94 percent of batterer programs submit compliance reports to the court at least under certain circumstances, with 70 percent submitting their reports directly to the court and the rest submitting reports to probation or another monitoring agency.

Sanctions for noncompliance. Most important in this study was the extent to which courts do or do not impose sanctions for noncompliance with an order to a batterer program. Batterer programs and battered women's agencies gave identical figures regarding the *frequency* with which they perceived the local criminal court to impose sanctions for violating the court order, with only 40 percent of both types of respondents observing that their local court "always" or "often" imposes a sanction. In stark contrast, 74 percent of courts answered that they "always" or "often" impose a sanction. This divergence of views was replicated in answers to a question about *consistency*: 95 percent of courts surveyed rated their response to reports of noncompliance as "consistent" across cases but only 66 percent of batterer programs and 51 percent of battered women's agencies rated the court's response as consistent.

To provide deeper insight into the use of sanctions for noncompliance, it is also important to analyze their *severity*. In theory, the more costly to the offender the court's response to the offenders's violating the court order to the program, the more the offender is held accountable. Conversely, a response that does not penalize the offender might be interpreted as conveying the message that the court does not view violating its order as particularly serious.

We first asked whether the court had a written protocol defining the precise sanctions to be imposed when an offender does not attend the program or engages in other proscribed behavior according to the order or program regulations. Only 12 percent of the courts reported having a written protocol. Second, in regard to sanctions typically imposed, most batterer programs and courts rated the courts' use of milder sanctions, such as returning to court immediately and verbal admonishment, as more common (imposed "often" or "always")

than more severe sanctions, such as probation revocation. Sentencing an offender to jail appears to be a particularly infrequent response: Only 27 percent of courts and 16 percent of batterer programs reported that jail time was imposed "often" or "always" in response to noncompliance.

Summary of results

Surveying criminal courts, batterer programs, and victim assistance agencies in 260 communities in 50 states, we found that courts frequently order domestic violence offenders to batterer programs but that they often order other types of programs, such as substance abuse, parenting skills, and anger management instead. Probation typically supervises compliance with the court order and most courts require defendants to return to the court for compliance monitoring, albeit infrequently. The most common purposes in ordering a domestic violence offender to a batterer program were treatment/rehabilitation and accountability.

Although virtually all courts receive compliance reports from the batterer program or other agency supervising the offender, extremely few have explicit protocols for responding to noncompliance. Most court respondents (75 percent) believed they often or always imposed sanctions for noncompliance, but the batterer programs did not share this perception, with only 40 percent reporting that the criminal court their program worked with often or always imposed sanctions. On the other hand, both types of survey respondents agreed that when sanctions were imposed, they were typically mild, such as verbal admonishment. Only about a quarter of courts reported that they often sentenced defendants to jail for violating the court order to a program.

Conclusions

This study suggests that a critical foundation exists in many communities around the country for courts to use batterer programs to hold domestic violence offenders accountable. The majority of survey respondents expressed support for accountability as a valid function of court orders to batterer programs. The mechanism also exists for the courts to use batterer programs to achieve this function, in that the great majority of surveyed batterer programs (94 percent) send compliance reports to the court at least under some circumstances.

Belief persists that batterer programs have a therapeutic benefit, even though the existing body of research calls this outcome into question.

At the same time, there are barriers to holding offenders accountable when they do not comply with a court order to a batterer program. First, although most survey respondents listed "accountability" as a function of court mandates to batterer programs, most—including 90 percent of court survey respondents—also listed "treatment/rehabilitation." Clearly, belief persists that batterer programs have a therapeutic benefit, even though the existing body of research calls this outcome into question. In itself, a belief in the ability of batterer programs to reduce re-offending through effective intervention need not necessarily compromise their use as a mechanism of holding offenders accountable. The expectation of treatment efficacy can, however, lead courts and programs to tolerate violation of the court order, for example by offering noncompliant offenders multiple chances to complete the program without facing any penalty—and thereby undermine the goal of accountability.

The second barrier to implementing practices that would support the goal of accountability is a lack of formal protocols for enforcement of court orders to batterer programs. Very few courts (12 percent) have written protocols to impose consistency on their response to noncompliance. Also, many courts reported a substantial delay between a report that an offender was out of compliance and bringing the offender back to court, a necessary step before any sanction can be imposed. As past research has shown, for a sanction to be an effective deterrent, it must be swift and certain. Both of these conditions appear to be lacking in most courts.

In summary, at least three-quarters of the survey respondents endorsed "accountability" as a function of court orders to batterer programs, but the results suggest that a sharply lower percentage of courts promote accountability in practice through the actions they take when an offender has violated the court order. We hope that these findings stimulate courts and batterer programs to develop clearer, more consistent, and informed policies and practices in their use of batterer programs to hold offenders accountable.

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