

Family Court Outcomes in Custody Cases involving Abuse and Alienation

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the

Maryland Child
Custody Court
Proceedings
Workgroup

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Background - Bio

- ▶ Professor of Clinical Law, George Washington University Law School
- ▶ Founder/Legal Director of DV LEAP
 - Extensive research/writing on custody/abuse issues, including alienation
 - Litigate appeals around the country and in Md involving custody/abuse
 - Train judges, lawyers, experts

Why This Study?

- ▶ Founded DV LEAP in 2003, *not* to focus on custody
- ▶ Within two years, inundated with requests for help in custody/abuse cases – approx. 80% of our caseload
- ▶ Parental alienation key factor in most cases
- ▶ Appellate advocacy, trainings, scholarship not bridging gap between family courts and abuse specialists

Sought **national**, objective data to shed light on how alienation is affecting abuse adjudications in family courts

Hypotheses:

- (i) Courts are skeptical of mothers' abuse claims, resulting in losses of custody
- (ii) Alienation cross-claims power the rejection of abuse claims and mothers' custody losses
- (iii) Alienation theory in these cases is highly gendered

Pilot study

*Mapping Gender:
Shedding Empirical
Light on Family
Courts' Treatment
of Cases Involving
Abuse and
Alienation, 35 Law
& Inequality 311
(2017)*

Studied 240 electronically published cases – all with parental alienation claims

Findings included:

- Child sexual abuse claims => high rates of custody loss
- Parental alienation claims help fathers more than mothers
- Abuse claims (of any kind, but especially child abuse) are infrequently credited

NIJ Award to GWU, 2014

- ▶ 10 year period (2005-2015) – all electronically published court opinions
- ▶ All custody cases involving abuse or alienation claims
- ▶ Comprehensive search string netted over 15,000 cases - narrowed to 4338
- ▶ Over 100 codes (including sub-codes)

RESEARCH TEAM

- ▶ Joan Meier, Principal Investigator
- ▶ *Sean Dickson, Consultant (MPh, JD)*
- ▶ Jeff Hayes, Statistician (IWPR)
- ▶ Leora Rosen, Consultant (PhD)
- ▶ Chris O'Sullivan, Consultant (PhD)

** Deep thanks to Sean Dickson for his inter-disciplinary expertise and translation skills*

OVERVIEW of forthcoming highlights

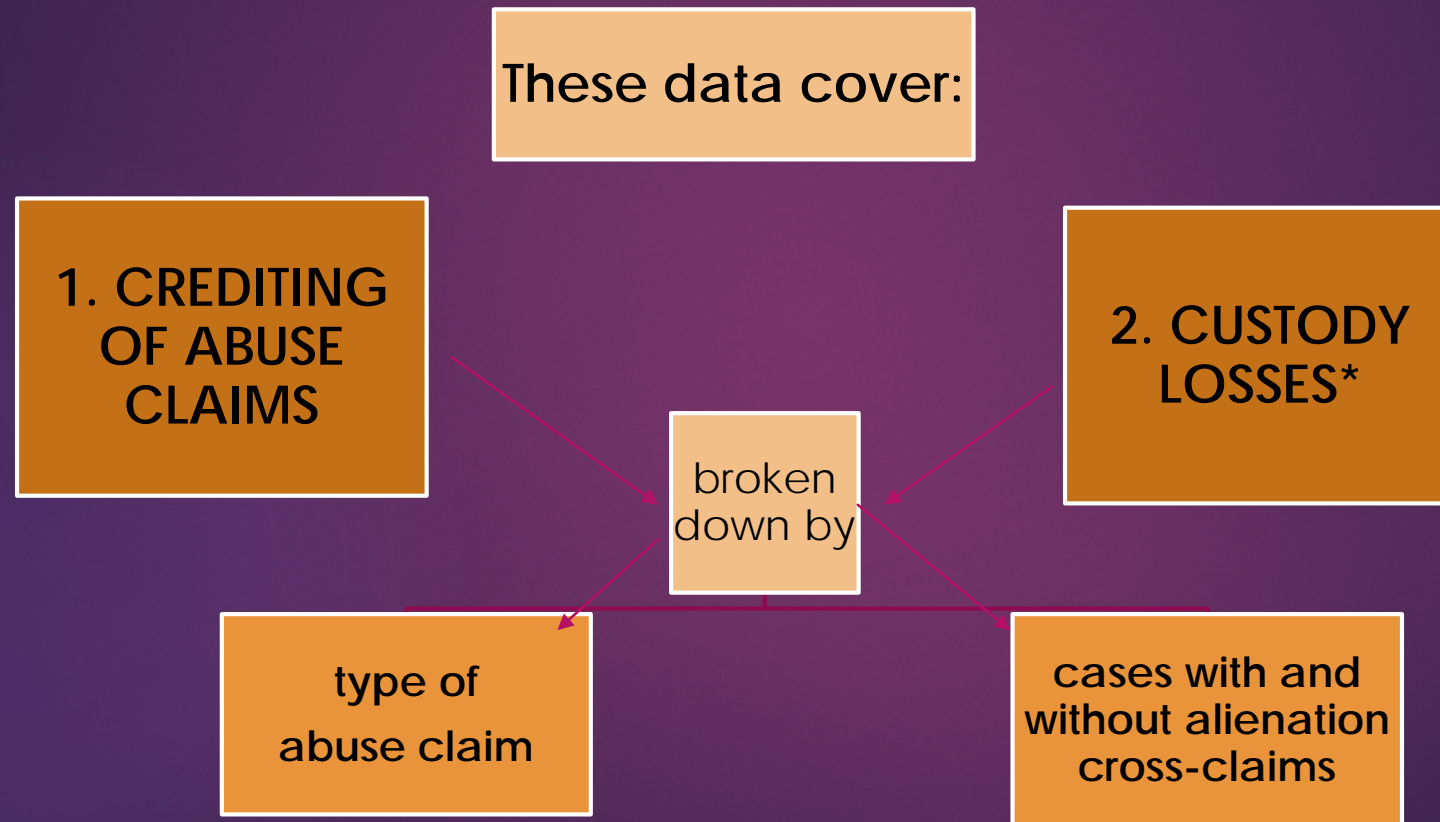
1. “Paradigm” cases: Mother accuses father of abuse, father does or does not cross-claim alienation
2. Some gender comparisons
3. Impact of GALs and Evaluators



1.

PARADIGM CASES

1. PARADIGM CASES – mother alleges abuse; father claims alienation



*Switch of primary custody from mother to father

KEY FINDINGS

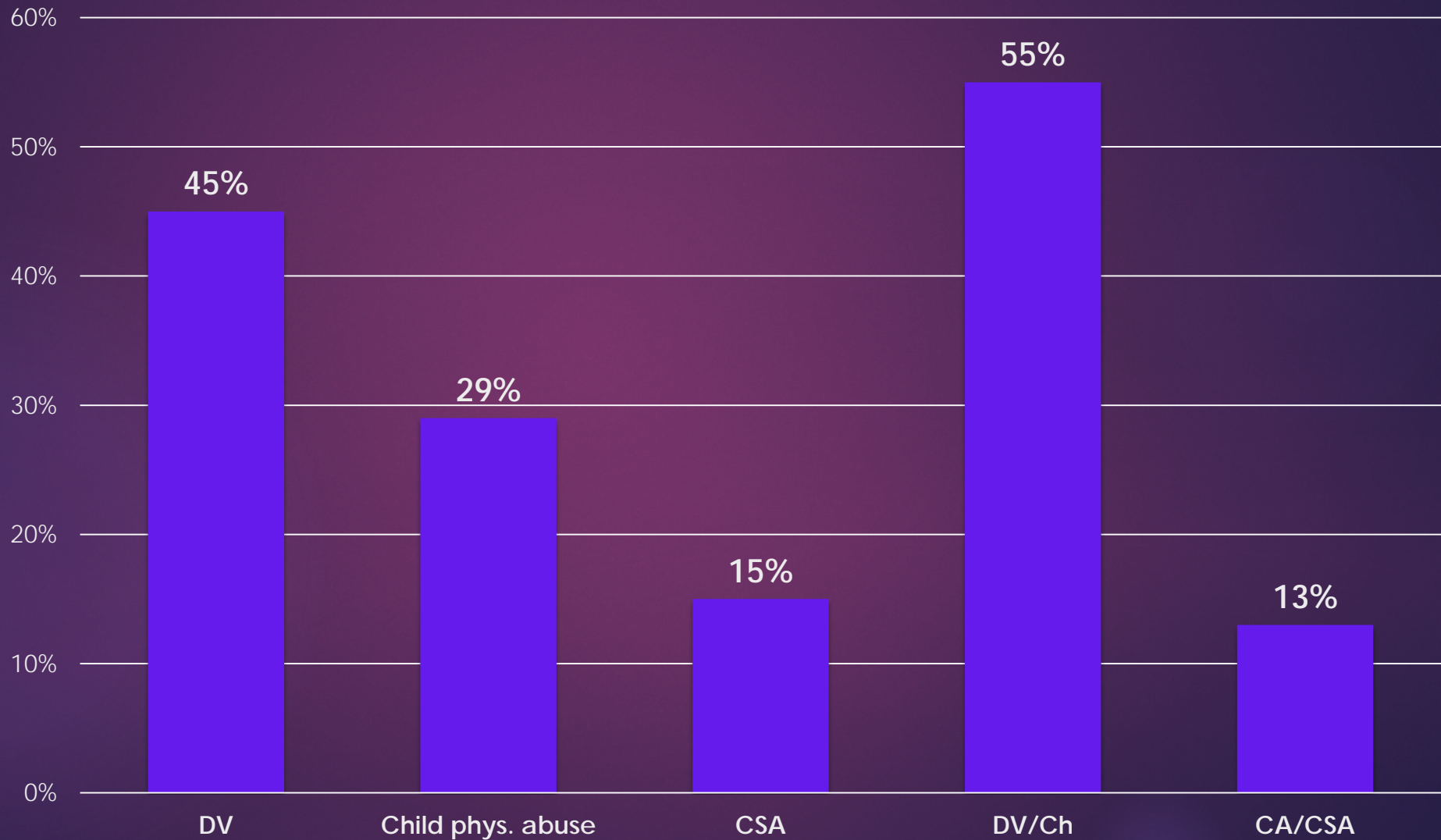
- Courts credit Mothers' reports of Fathers' abuse less than half the time
- Courts are far less likely to credit **child abuse** claims than partner violence (DV)
- **Alienation cross-claims** dramatically reduce rate of crediting of abuse - especially child abuse
- Child abuse allegations and alienation defenses put Mothers at highest risk of losing custody

1. PARADIGM CASES

CREDITING OF ABUSE CLAIMS

CREDITING OF ABUSE alleged by M

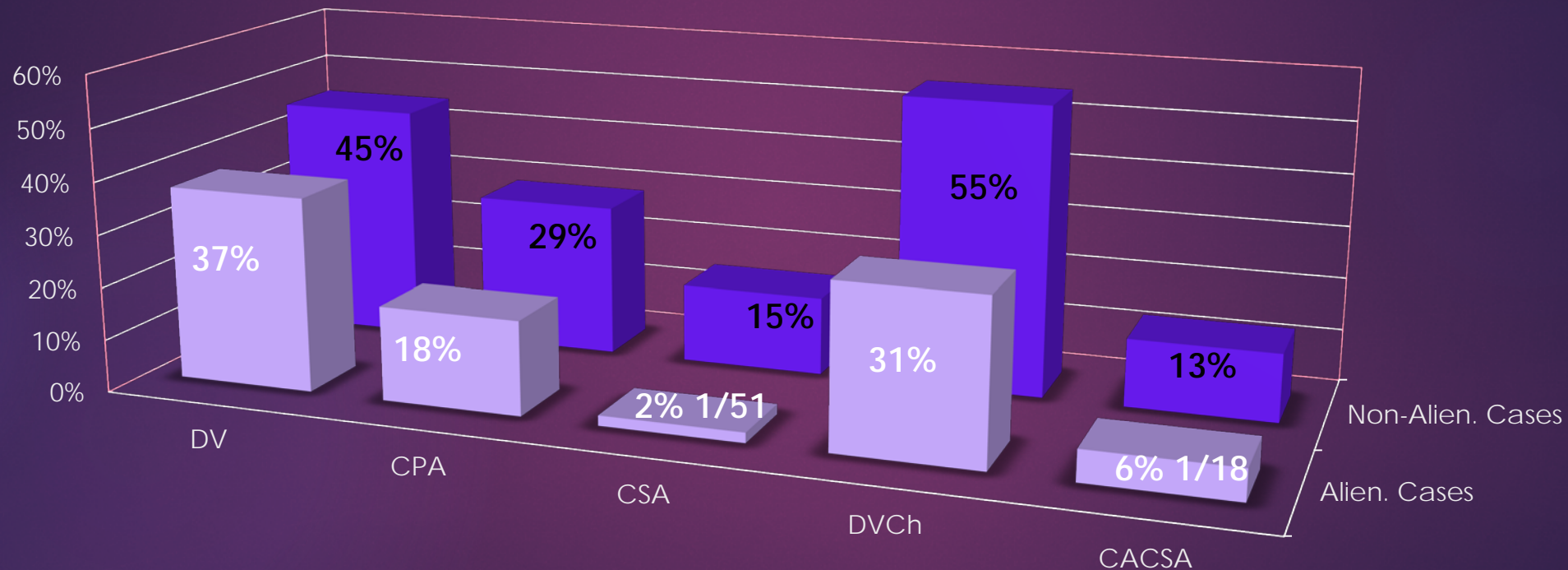
NON-ALIENATION CASES



Overall, courts credited 41% of abuse claims

CREDITING OF ABUSE

Non-alienation vs Alienation cases (F cross-claim)



Overall, courts credited only 23% of abuse claims in
ALIENATION cases



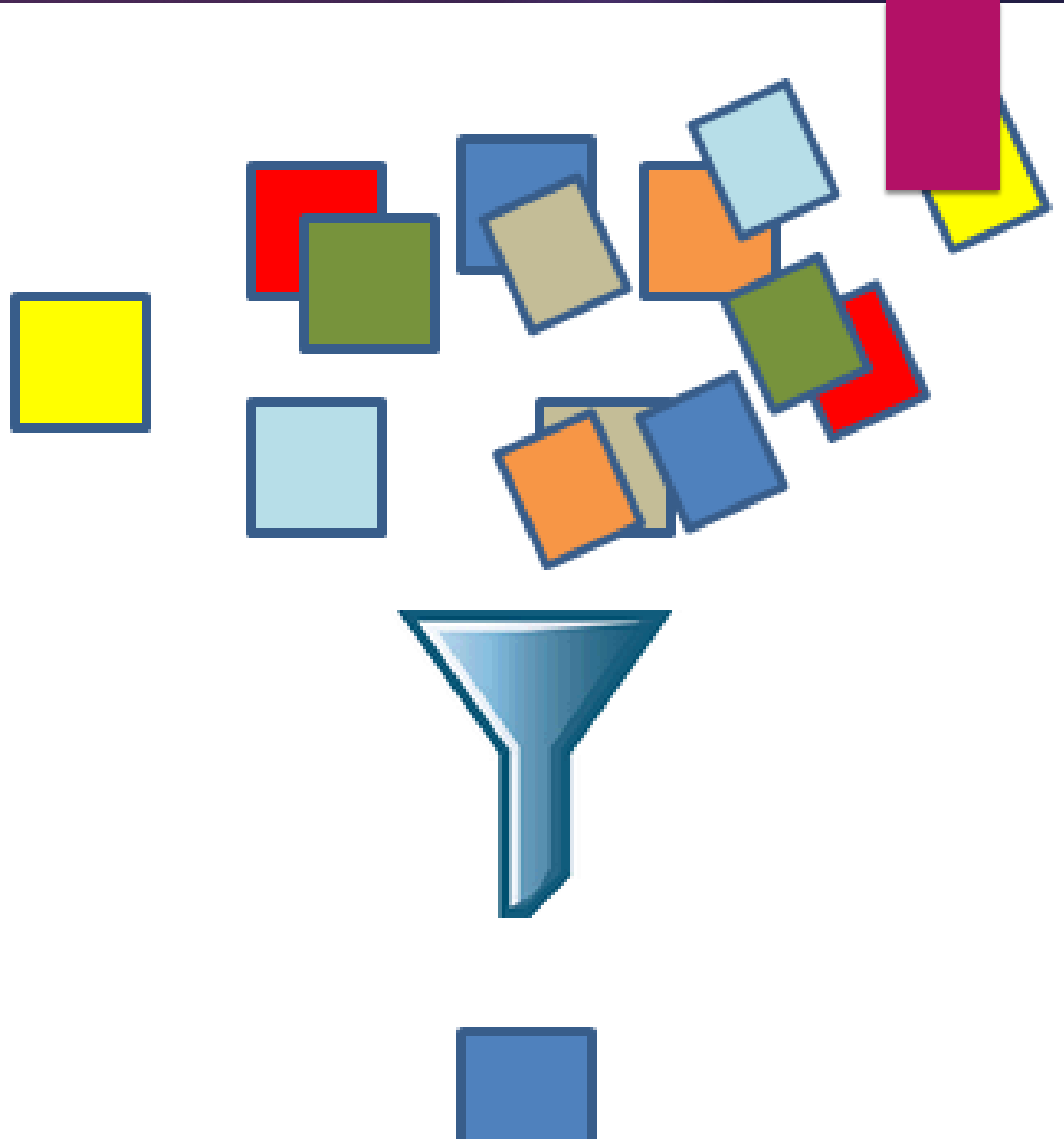
Impact of Alienation Cross-Claim



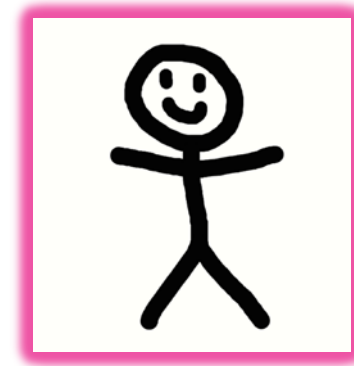
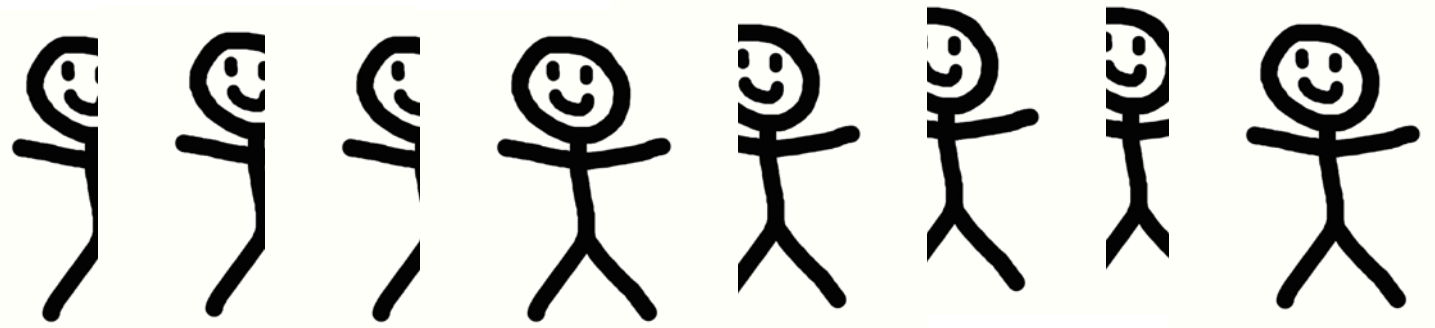
Reduces likelihood of **any abuse** being believed by
a factor of 2

Reduces likelihood of **child abuse** being believed
by a factor of almost 4 (3.9)

Child Sexual Abuse Claims



Child Sexual Abuse Claims



Only ONE child out of
51 was believed, when
alienation was cross-
claimed

What does objective research say?

"results from the literature suggest that between one half and three fourths of sexual abuse allegations in divorce are true (Faller 2003)"

Only 12% of Canadian child maltreatment reports during custody litigation were intentionally false; most false claims were by **noncustodial** parents; only 6% of CSA reports to CPS were considered intentionally false (Trocme & Bala 2005)

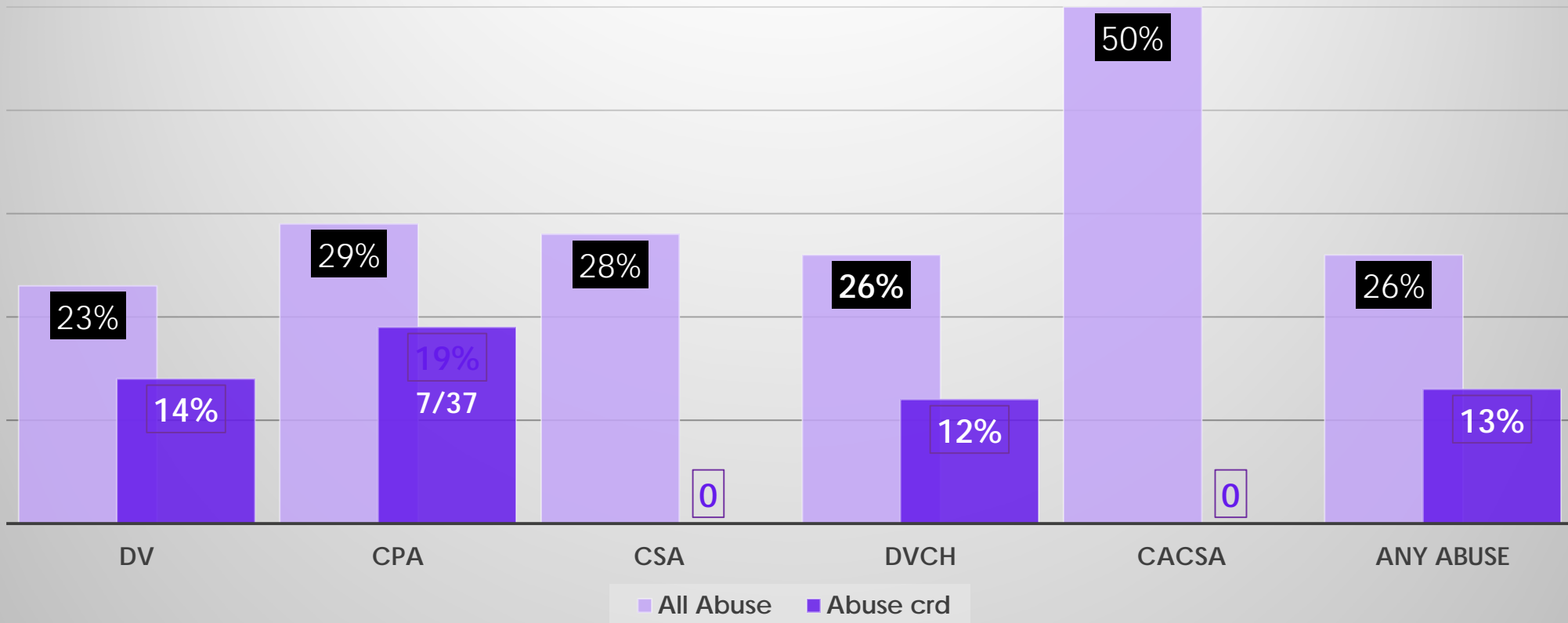
In study of 9000 U.S. cases, 50% of CSA reports in custody cases considered valid; 33% false; 17% undetermined. (Thoennes & Tjaden 1990)

1. Paradigm Cases

MOTHERS' CUSTODY LOSSES

MOTHERS' CUSTODY LOSSES*

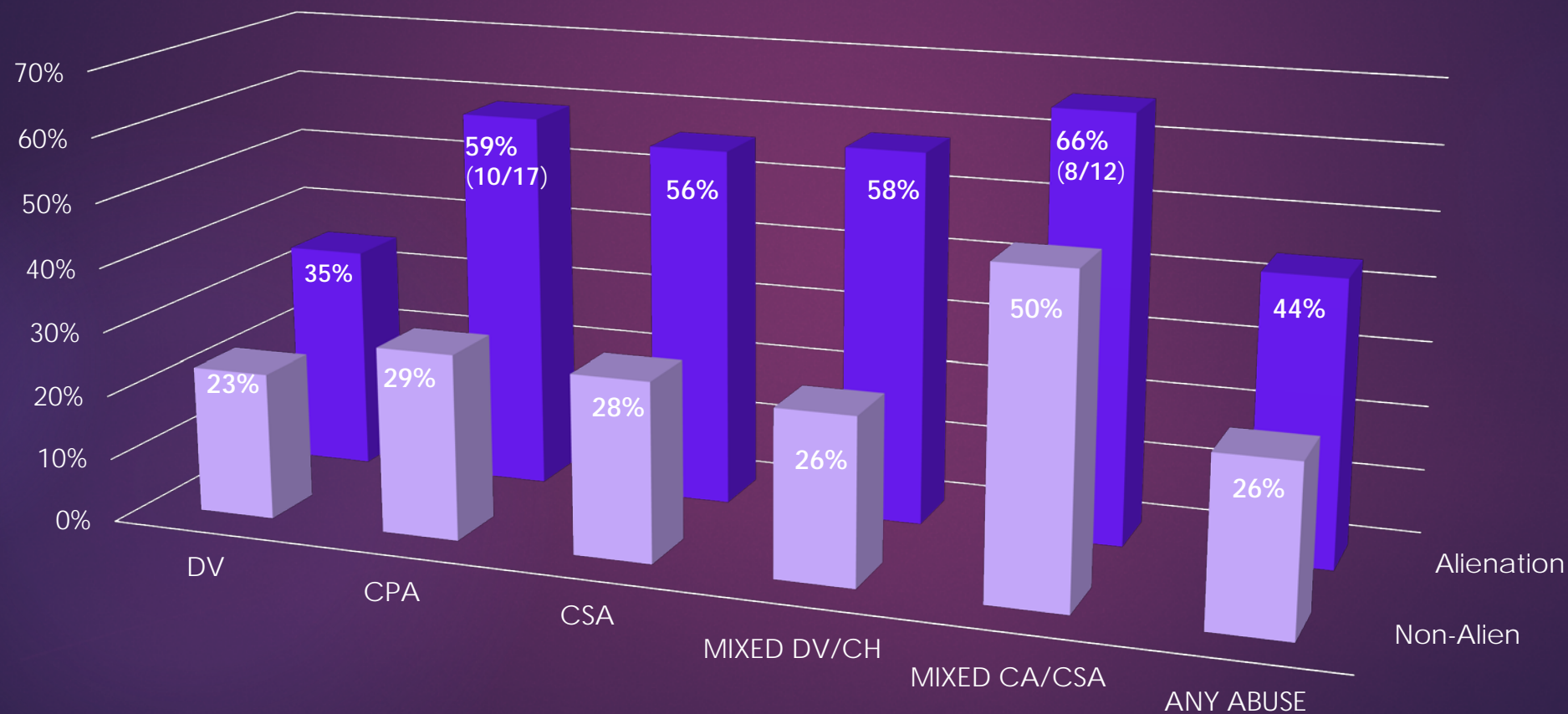
NO ALIENATION DEFENSE



*switch of primary custody from Mother to Father

MOTHERS' CUSTODY LOSSES (2)

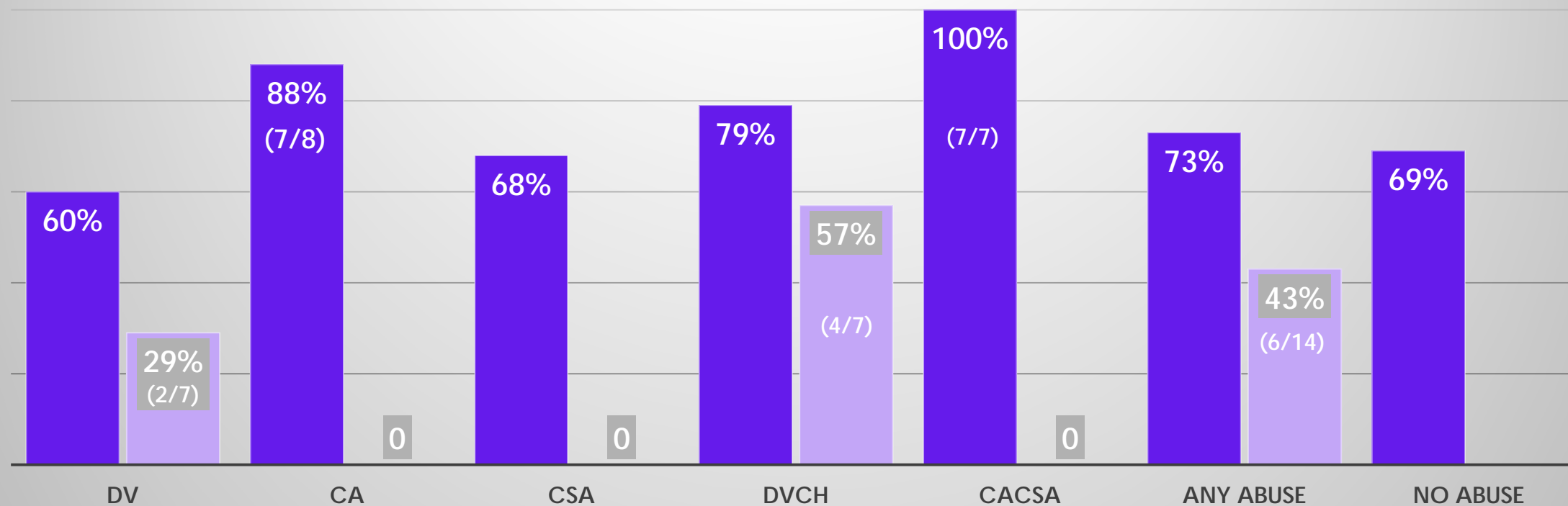
Non-alienation vs. Alienation Cases



MOTHERS' CUSTODY LOSSES (3)

ALIENATION CREDITED

■ All Abuse ■ Abuse crd

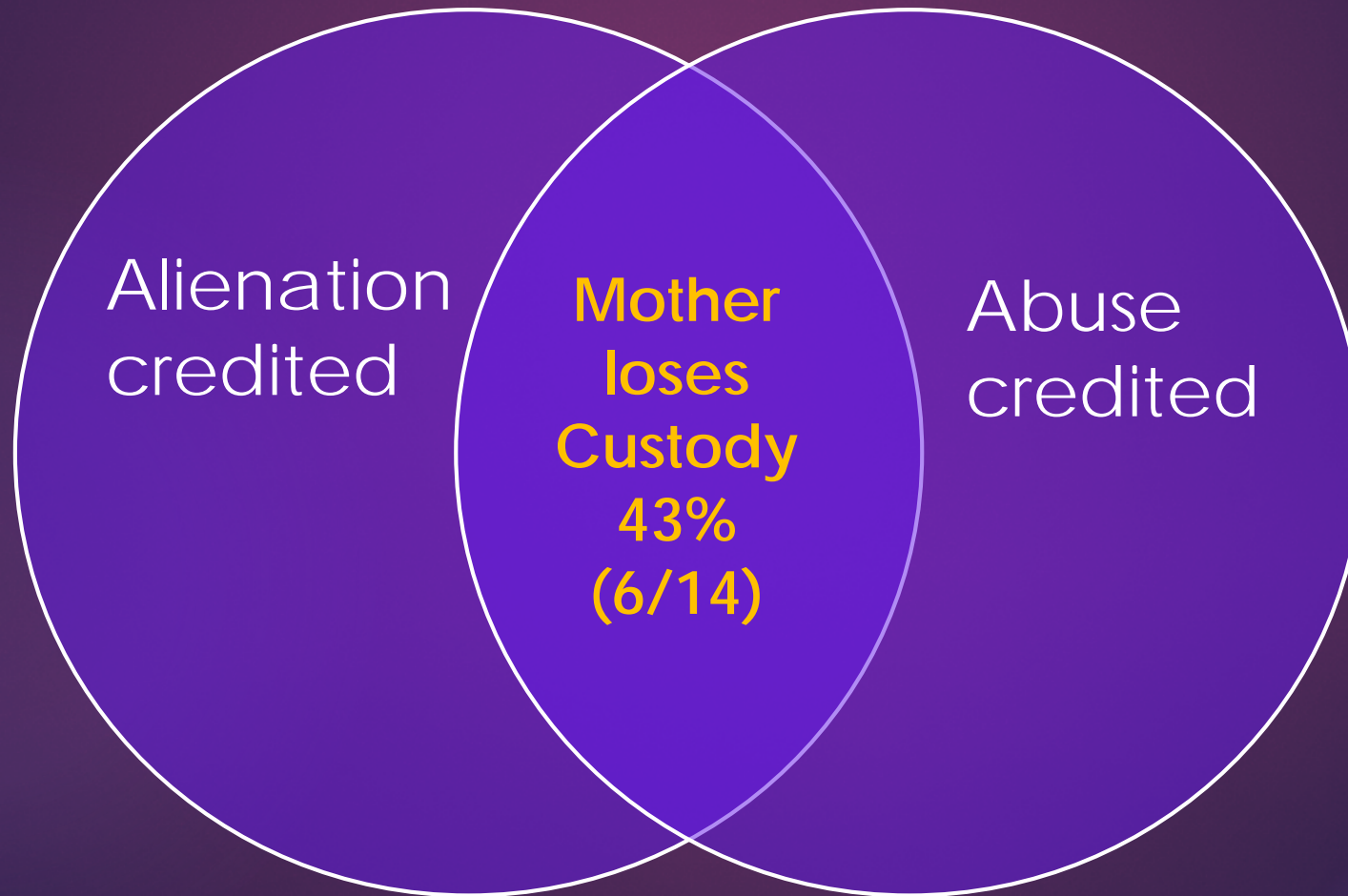


Note: No CA or CSA credited when alienation credited

Power of alienation defense to effect custody switch to fathers

When Fathers cross-claimed alienation, they were almost 3 (2.9) times more likely to take custody from mothers alleging any kind of abuse, than when they did not cross-claim alienation

Power of alienation to effect a custody switch even when *abuse proven*





2.

SELECTED GENDER COMPARISONS (beyond paradigm cases)

2. Gender Comparisons

1. Alienation's power as a claim is gendered overall
2. It is an effective defense for fathers accused of abuse but not for mothers accused of abuse.
3. Alienation's power is *not as clearly gendered* when used in non-abuse cases; impact of *proven alienation* is *gender-equal*

In general, alienation claims are more powerful for fathers than mothers

Across all alienation cases (with and without abuse claims):

- ▶ When fathers accused mothers of alienation, they took custody away in 44% of cases.
- ▶ When mothers accused fathers of alienation, they took custody in only 28% of cases.

That is, mothers have twice the odds of losing custody compared to fathers, when accused of alienation.

Regression analyses show gender disparity when abuse vs alienation

- ▶ Regression analysis shows that when mothers accuse fathers of any kind of **child abuse** and fathers cross-claim alienation, mothers are 2.3-2.8 times more likely to lose custody.
- ▶ In other words, mothers' custody losses are predicted to increase from 32% to 52% when they are alleging any kind of **child abuse** and the father responds with an alienation claim.
- ▶ However, when fathers accuse mothers of any type of abuse and the mothers cross-claim alienation, this does not affect fathers' rates of custody loss.

Relative gender parity in two contexts:

1. WHEN NO ABUSE CLAIM (267 cases where parent's starting custody identified):

- ▶ Although fathers lost custody to mothers less (28%) often than mothers lost custody to fathers (39%), the numbers are too small for statistical significance.

2. WHEN COURTS BELIEVED THE ALIENATION CLAIM:

- ▶ Fathers and mothers lost custody at identical rates (71%).

Alienation findings: Something for everyone?

- ▶ The gender differences in abuse/alienation cases *are consistent* with the abuse field's critique – alienation *in abuse* cases appears to be gendered and effectively denies mothers' (and children's) claims of paternal abuse (but not the reverse).
- ▶ The relative gender parity in the non-abuse cases, as well as in abuse cases where alienation is validated, support the argument that alienation is not **necessarily** a gendered claim, and that women as well as men claim it.
- ▶ I have seen a few such cases.

3. GALs & EVALUATORS (1)

- ▶ With a GAL present, mothers are more likely to lose custody:
 - ▶ 3.4 times more likely when alleging physical child abuse
 - ▶ 5.3 times more likely when alleging mixed physical and sexual child abuse

GALs have no statistically significant impact on protective fathers' likelihood of losing custody.

GALs & GENDER

GALs intensify gender disparity:

- ▶ Without a GAL, a mother alleging any kind of abuse is **2.2** times more likely to lose custody than a father; *with* a GAL, that same mother is **5.4** times more likely than a father to lose custody.
- ▶ When alleging any type of **child abuse**: without a GAL, mothers are **3.2** times as likely to lose custody as fathers; *with* a GAL those odds increase to **6.6.**

GALs & EVALUATORS (2)

When an evaluator is present, mothers are more likely to lose custody:

- When alleging any abuse, 2.5 times more likely when an evaluator is present than not;
- When alleging child physical abuse, 3 times more likely
- When alleging mixed CA/CSA, 6.5 times more likely

Evaluators have no statistically significant impact on protective fathers' loss of custody.

EVALUATORS & GENDER

When an evaluator is present:

- ▶ Without an evaluator, mothers alleging any abuse are 2.6 times as likely to lose custody as fathers; with an evaluator, they are 3.7 times as likely to lose custody as fathers.
- ▶ Without an evaluator, mothers alleging child physical abuse are 3.4 times as likely to lose custody as fathers; with an evaluator, their odds of losing custody are 6.5 times higher than fathers.'

STUDY LIMITATIONS

- ▶ The study does not demonstrate that courts' rejections of abuse claims are wrong; only that they are very common
- ▶ The study contains primarily cases that were appealed, which may not be fully representative of trial court decisions that are not appealed*

*among the small group of trial court opinions we netted, mothers' custody losses were fewer

FOLLOW UP / QUESTIONS?

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