U.S. CUSTODY
OUTCOMES
IN CASES
INVOLVING
ABUSE AND
ALIENATION
CLAIMS

Empirical Findings

Highlights

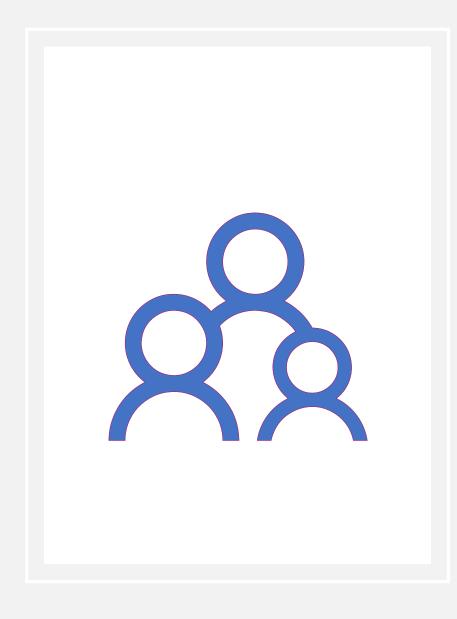
Joan Meier NFVLC Professor of Clinical Law and Director, National Family Violence Law Center George Washington University Law School OREGON FAMILY LAW 9<sup>th</sup> Annual Conference Overcoming Barriers to Justice June 1, 2023





- National Family Violence Law Center Professor of Clinical Law, George Washington University Law School
- Founder/Director, National Family Violence Law Center at GW Law
- Founder, Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)\*

\*Executive Director and/or Legal Director at DV LEAP 2004-2019



### WHY THIS STUDY?

Founded DV LEAP in 2003 to focus on appellate advocacy for abuse survivors and the DV field

Within two years, inundated with custody cases involving abuse

Child abuse allegations particularly challenging

Parental alienation label common and difficult to dislodge

Very troubling outcomes / children suffering

#### CASE EXAMPLE I

Custody Evaluator, (Ark. 2006):

Q to child: What is your biggest worry?

A: "My biggest worry is my father killing me and saying my mother did it"

Opinion: Boy's negativity toward his father is "unnatural ... abnormal;" manifestation of parental alienation syndrome

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#### CASE EXAMPLE 2

#### California (2013)

- Father harsh with children, manhandles and humiliates them, they have witnessed his attacks on their mother
- Father convicted of felony sexual assault v mother; sentenced to 6 years in prison
- Child: "I don't want to be around my daddy when he's mad."
- Evaluator: "Frankly, this child is afraid of Mr. H."
- Judge spoke to an alienation expert at a luncheon, and concluded:

Mother has created a "revisionist history" about father's treatment of children. Boys' fear = "collateral damage" from the wife-abuse, and the product of her "conscious" or "unconscious" statements to the children.

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#### **RESEARCH TEAM**

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

\* Deep thanks to Sean Dickson for his interdisciplinary and statistical expertise and translation skills NIJ STUDY AWARD TO GWU, 2014

**DATASET** 

All electronically published court opinions 2005-2014 (10-year period)

Private custody cases involving abuse or alienation claims

Comprehensive search string netted over 15,000 cases - narrowed to 4338

Over 100 codes (including sub-codes)

### **HIGHLIGHTS**

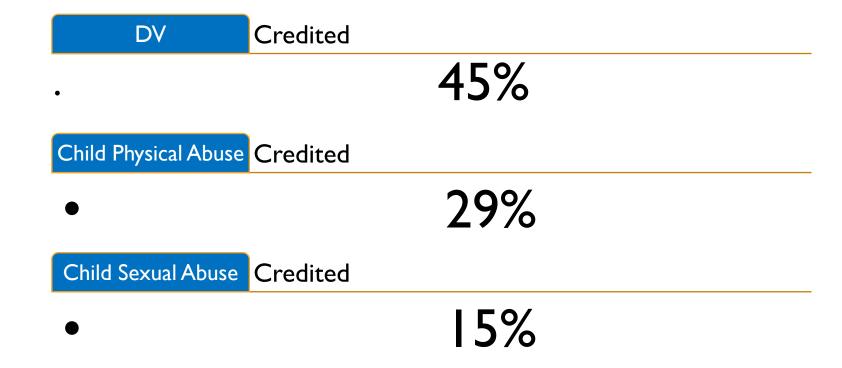
Crediting of Mothers' Abuse Claims & Custody Reversals

Some gender comparisons

Impact of GALs and Evaluators

# COURTS' RESPONSES TO MOTHERS' ABUSE CLAIMS (NO ALIENATION CROSS-CLAIM)

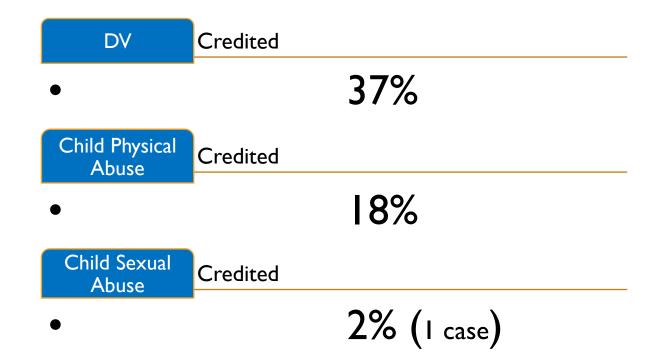
- Courts accept
   Mothers' reports
   of Fathers' abuse
   less than half the
   time (41%)
- Courts are far less likely to accept child abuse claims than partner violence (DV)



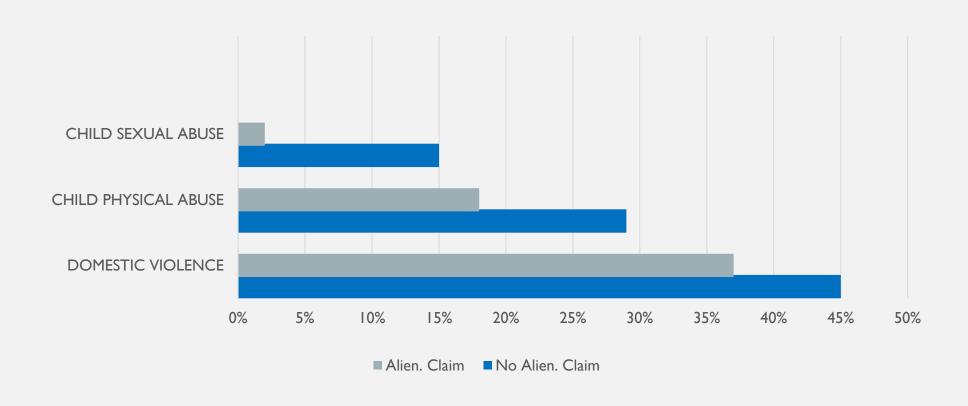
### IMPACT OF ALIENATION CROSS-CLAIMS

Alienation crossclaims dramatically reduce rate of acceptance of abuse especially child abuse

(average: 23%)



# COMPARISON OF CREDITING OF ABUSE CLAIMS WITH AND WITHOUT ALIENATION CROSS-CLAIMS

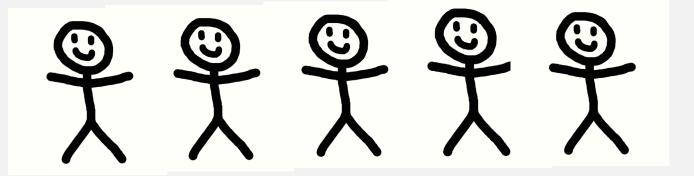




Reduces likelihood of **any abuse** being believed by a factor of 2

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

# CHILD SEXUAL ABUSE CLAIMS



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

Past studies have found 50-73% of CSA claims in custody litigation likely valid

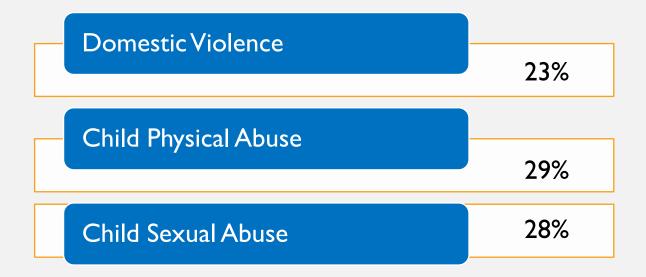
### MOTHERS' CUSTODY LOSSES

### Definition:

 Mother started with primary physical care of the children

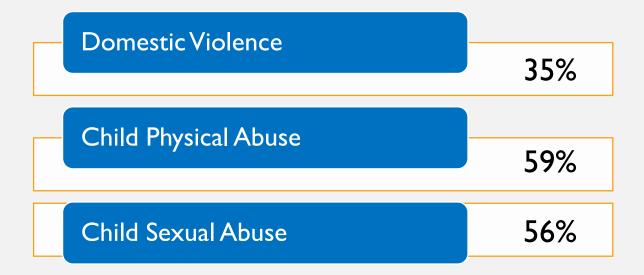
Father awarded primary physical custody

# MOTHERS' CUSTODY LOSSES (NO ALIENATION CROSS-CLAIM)



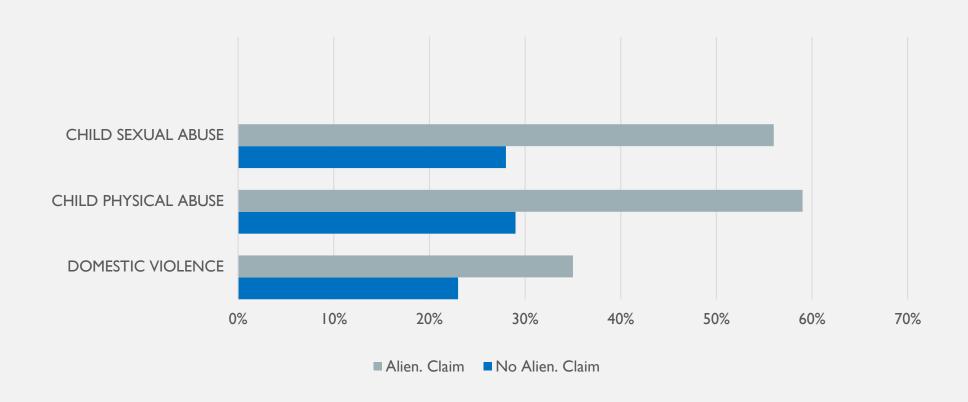
Average: 26%

# MOTHERS' CUSTODY LOSSES (WITH ALIENATION CROSS-CLAIM)



Average: 50%

# COMPARISON OF CUSTODY LOSSES WITH AND WITHOUT ALIENATION CROSS-CLAIMS





When Fathers cross-claim alienation, they have almost

3 (2.9) times the odds of taking custody from mothers alleging (any kind of) abuse,

than when they do not crossclaim alienation

# MOTHERS' CUSTODY LOSSES EVEN WHEN FATHERS' ABUSE IS CONFIRMED

13%

63/468 DV AND CPA CASES (NO CSA)

# GENDER FINDINGS

# **GENDER**

# KEY FINDINGS

Alienation's power as a claim is gendered overall.

It is an effective defense for fathers accused of abuse but not for mothers accused of abuse.

Alienation's power is **not** as clearly gendered when used in non-abuse cases; impact of proven alienation is gender-equal

# 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.

# GENDER DIFFERENCE WHEN ABUSE + ALIENATION

## Preliminary regression analyses:

- When mothers allege child abuse, mothers' custody losses are predicted to increase from 32% (with no alienation crossclaim) to 52% (with alienation crossclaim).
- However, when fathers accuse mothers of any type of abuse and the mothers crossclaim alienation, it has no effect on frequency of fathers' custody loss.

### POSSIBLE GENDER PARITIES

#### WHEN ALIENATION IS ALLEGED, AND:

#### 1. COURTS BELIEVE A PARENT IS AN ALIENATOR:

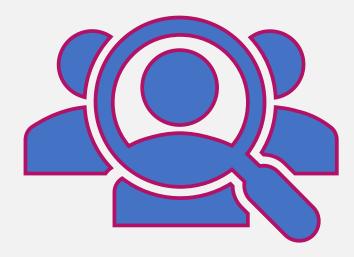
Fathers and mothers lost custody at identical rates (71%).

### 2. THERE IS NO (known) ABUSE CLAIM:

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

## 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
- 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 worked with a handful of fathers wrongly accused of alienation



# NEUTRAL COURT APPOINTEES – GALS AND EVALUATORS





 With a GAL in the case, mothers alleging abuse are 3-5 times more likely to lose custody, especially when alleging physical child abuse or mixed physical and sexual child abuse

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



• With an evaluator present, mothers alleging abuse are 2.5 – 6.5 times more likely to lose custody; the higher frequencies occur when mothers allege physical child abuse or mixed physical and sexual child abuse

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

# STUDY LIMITATIONS

- The study does not demonstrate that courts' rejections of abuse claims are necessarily wrong; only that rejection is the norm.
- The dataset contains primarily cases that were appealed, which may not be fully representative of trial court decisions that are not appealed.\*
- Our categorization of cases as "abuse" and "non-abuse" cases was based on the judicial opinions. It is possible there were abuse or alienation claims that were not mentioned in some opinions.

\*Among the several hundred trial court opinions we netted, mothers' custody losses were fewer, compared to the cases which went to appeal; rates of rejection of abuse claims were consistent with the rest of the dataset



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# FOLLOW UP / QUESTIONS?



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To join the NFVLC e-list, please email me.



Data from study available on SSRN, in J. Social Welfare & Family Law, and Georgetown Law Journal Happy to share upon request