

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

For the
Los Angeles Domestic Violence
Council, May 2021

by
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National Family Violence Law Center
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**National
Family Violence
Law Center**

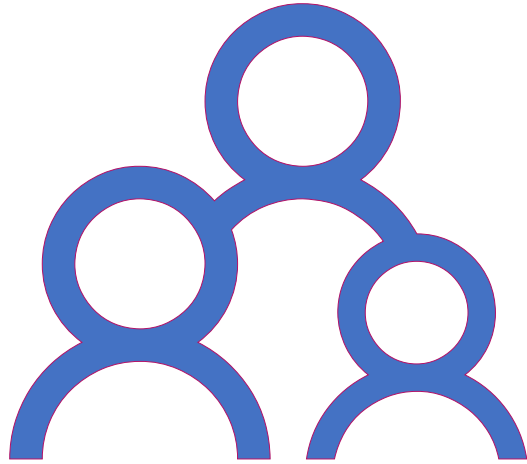
THE GEORGE WASHINGTON UNIVERSITY



BRIEF BIO

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

*Left DV LEAP in 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/abuse cases

Parental alienation label common and difficult to dislodge

Child abuse allegations particularly challenging

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*

WHAT IS PARENTAL ALIENATION?

- NO UNIVERSAL DEFINITION
- GENERAL IDEA IS THAT WHEN A CHILD RESISTS CONTACT WITH A PARENT IT IS BECAUSE THE PREFERRED PARENT HAS INFLUENCED THEM ILLEGITIMATELY (“ALIENATED” THEM)
- MORE SUBJECTIVE THAN OBJECTIVE (NOT SCIENTIFICALLY/OBJECTIVELY DIAGNOSABLE)

NIJ STUDY
AWARD TO
GWU, 2014

DATASET

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

All 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)

OVERVIEW OF FORTHCOMING HIGHLIGHTS

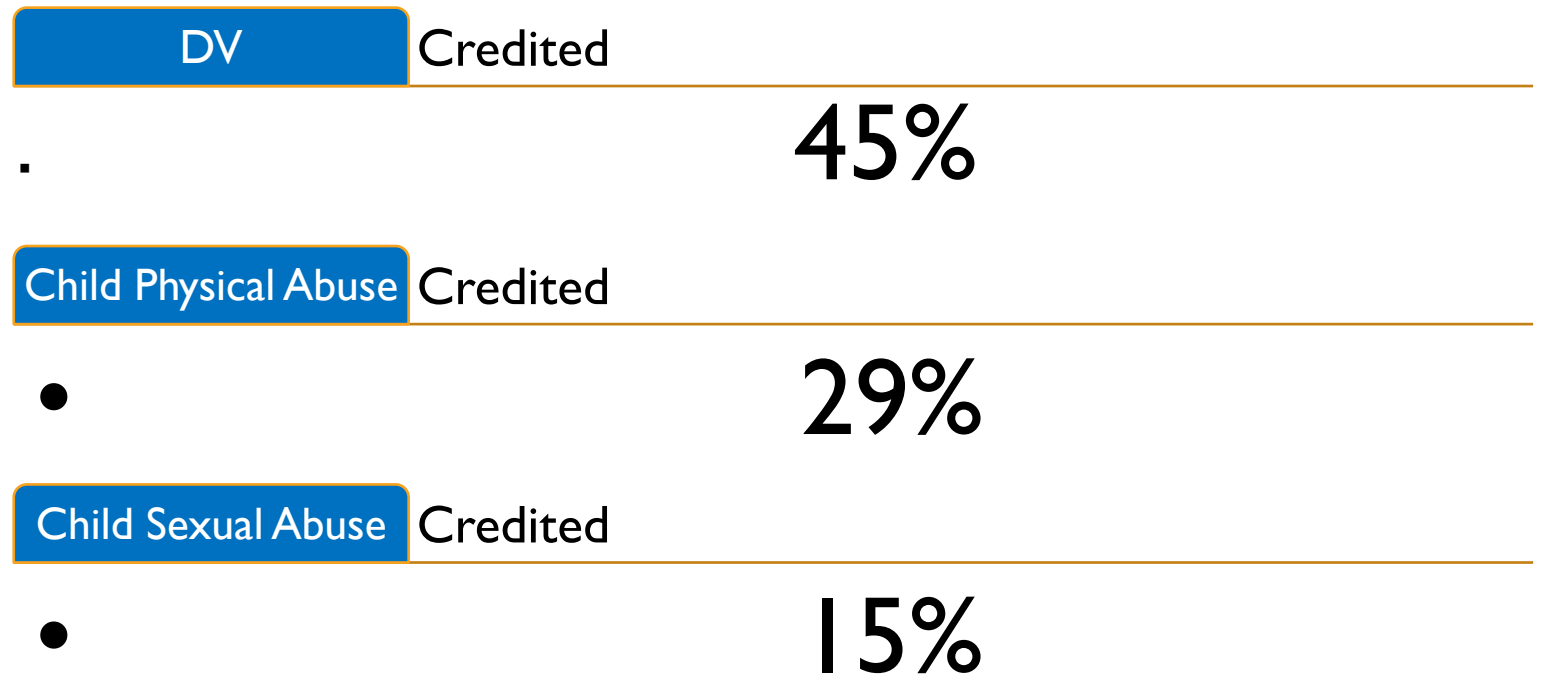
**“Paradigm” cases:
Mother accuses father
of abuse, father does
or does not cross-
claim alienation**

**Some gender
comparisons**

**Impact of GALs and
Evaluators**

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

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



IMPACT OF ALIENATION CROSS-CLAIMS

Alienation cross-claims dramatically reduce rate of acceptance of abuse - especially child abuse

DV

Credited

• 37%

Child Physical Abuse

Credited

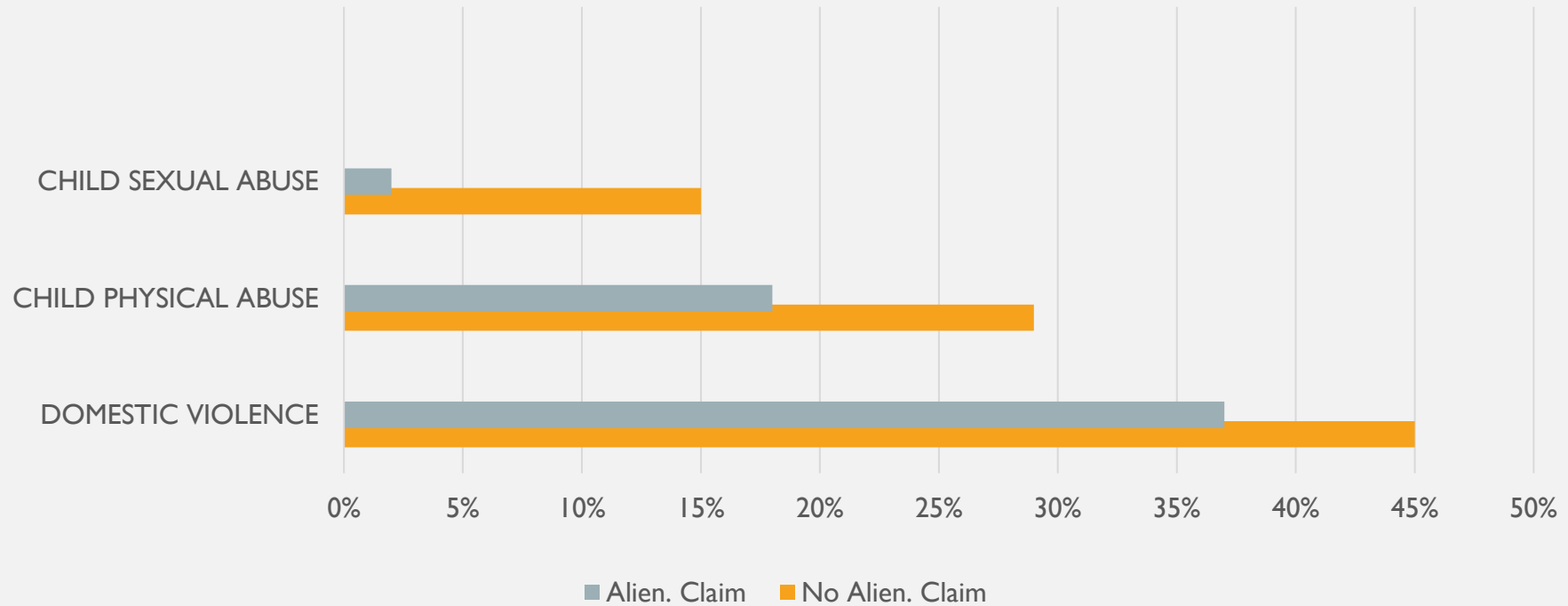
• 18%

Child Sexual Abuse

Credited

• 2% (1 case)

COMPARISON OF CASES WITH AND WITHOUT ALIENATION CROSS-CLAIMS





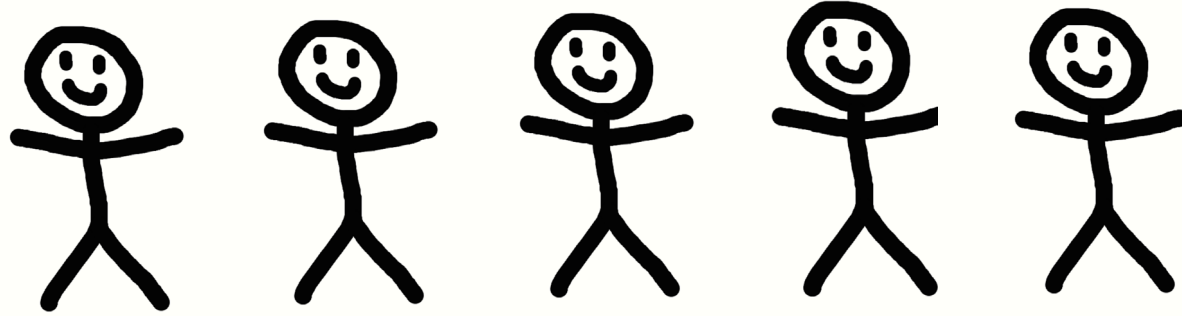
IMPACT OF
ALIENATION
CROSS-
CLAIM

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)

*This finding is driven primarily by CSA cases.

CHILD SEXUAL ABUSE CLAIMS



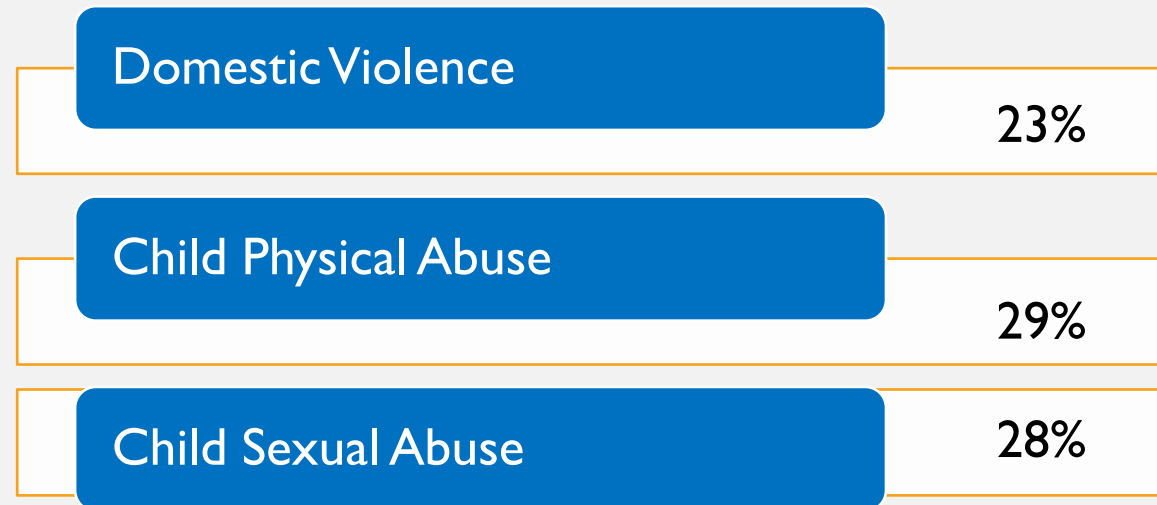
Only **ONE** claim out of
51 was believed, when
alienation was cross-claimed

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

MOTHERS' CUSTODY LOSSES

- Mother started with **primary physical care** of the children
- Father awarded primary physical custody

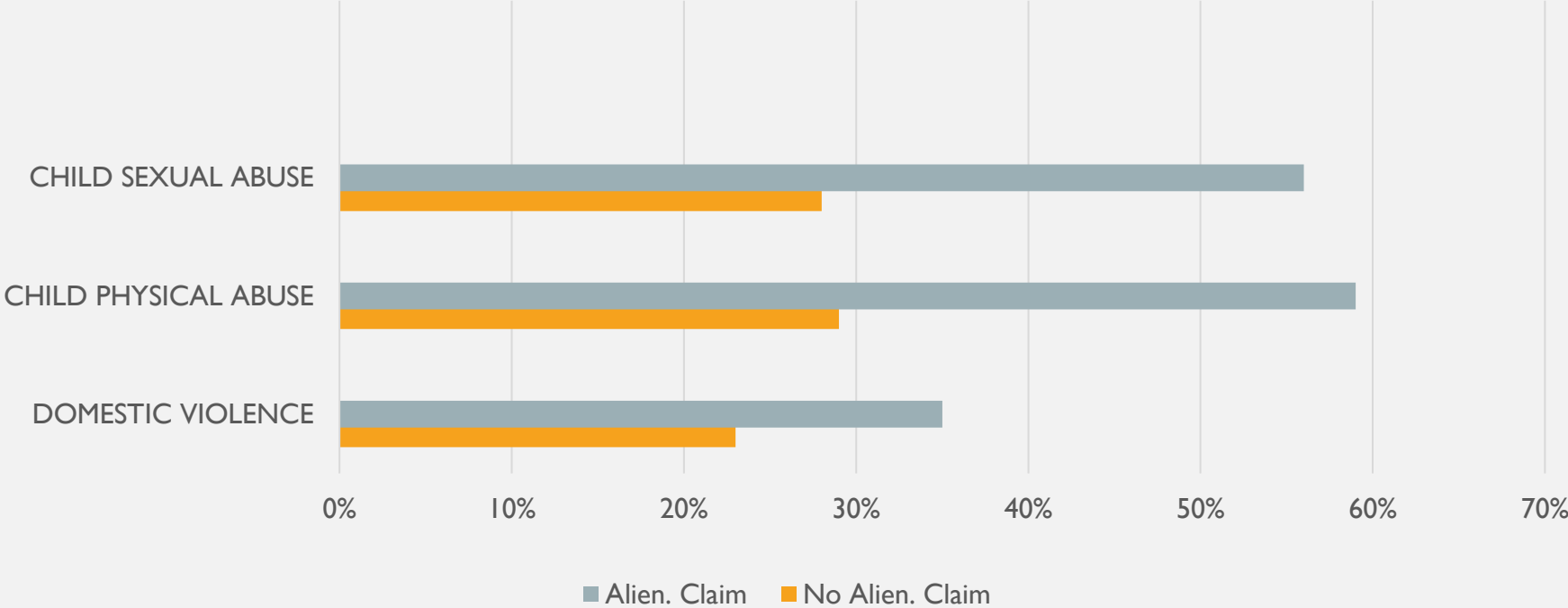
MOTHERS' CUSTODY LOSSES (NO ALIENATION CROSS-CLAIM)



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



COMPARISON OF CUSTODY LOSSES WITH AND WITHOUT ALIENATION CROSS-CLAIMS





IMPACT OF
ALIENATION
CROSS-
CLAIM

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 cross-claim alienation


**MOTHERS' CUSTODY LOSSES EVEN
FATHERS' ABUSE IS CONFIRMED**


13%

62 DV AND CPA CASES (NO CSA)

GENDER
KEY
FINDINGS

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

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 DIFFERENCE WHEN ABUSE + ALIENATION

- Mothers' custody losses are predicted to increase from 32% to 52% when they are alleging 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.

POSSIBLE GENDER PARITY WHEN:

1. **COURTS BELIEVE THE ALIENATION CLAIM:**

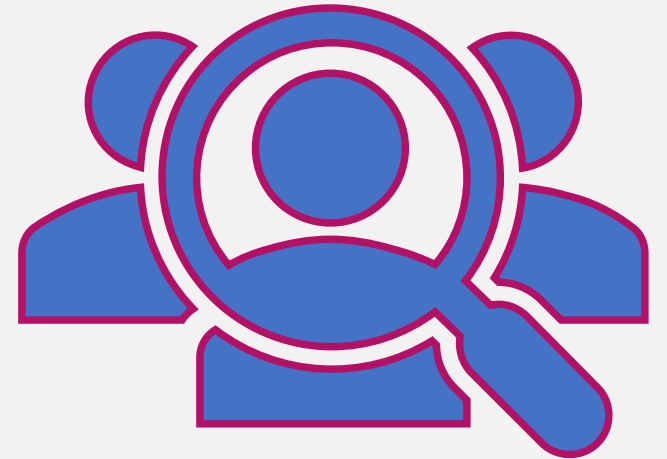
Fathers and mothers lost custody at identical rates (71%).

2. **NO (known) ABUSE CLAIM (n = 267) :**

Although fathers lost custody to mothers less (28%) often than mothers lost custody to fathers (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.
- DV LEAP has seen a few such cases.



GALS AND EVALUATORS





GUARDIANS AD
LITEM
(GALS/BIAS)

- With a GAL present, mothers 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.



NEUTRAL
CUSTODY
EVALUATORS

- With an evaluator present, mothers are 2.5 – 6.5 times more likely to lose custody, especially when alleging 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 they are the norm.**
- **The study 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 a function of 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; gender differences were consistent with the rest of the dataset

FOLLOW UP / QUESTIONS?

- Contact: jmeier@law.gwu.edu
(301)785-4740 (c) (202)994-2278 (w)
- ***To join the NFVLC e-list, please email me.***
- *Published study can be shared on request or go to*
<https://www.tandfonline.com/doi/abs/10.1080/096490692020.1701941> or
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448062