

Family Court Outcomes in Custody Cases involving Abuse and Alienation

PRESENTED BY JOAN MEIER

National
Council on
Family
Relations

Annual
Conference
November
2018

BACKGROUND

- ▶ PRO-FATHER BIAS in CUSTODY COURTS
- ▶ EXTREME EMPHASIS ON JOINT PARENTING
- ▶ HOSTILITY/PATHOLOGIZING OF MOTHERS ALLEGING ABUSE BY FATHERS

PATHOLOGY

- ▶ “Mother testified credibly that [son] has been having bad dreams and [daughter] has been increasingly touching herself inappropriately. “
- ▶ “Mother’s position that the children are not as happy and playful as they used to be [now that they are required to spend substantial time with their separated father] is *not grounded in reality...*” [emphasis added]
 - Mass. 2016 Judicial Opinion

HOSTILITY

“Consistent with prior studies . . . Fifty-nine percent of the mothers in our sample lost complete custody . . . Courts were highly suspicious of mother's motives for being concerned with abuse.. . Custody evaluators and GALs frequently accused mothers of attempting to alienate their children from the father. . . .”

– Silberg et al, Award #2011-TA-AX-K006, Report for the U.S. Department of Justice, “Turned-Around Cases”

Example: Arkansas 2006

Despite a known history of domestic violence, and some complaints that the children had been man-handled by their father:

Custody Evaluator: *“What is your biggest worry?”*

Child: *“My biggest worry is my father killing me and saying my mother did it”*

Custody Evaluator: Boy's negativity toward his father is *“unnatural ... abnormal”* – indicative of parental alienation

CHALLENGES OF COMBATING ALIENATION LABEL IN COURT

- ▶ Appeals are difficult – custody is intensely fact-based and discretionary
- ▶ Culture of family court supports belief that women often lie and brainwash children against fathers; “alienation” theory cements this view
- ▶ Alienation is seen as a common sense notion
- ▶ Don’t know what they don’t know – about abuse

After years of challenging the concept in litigation, trainings, and scholarship, it became clear we need national, objective data to show (or refute) that

(i) courts are excessively reluctant to believe mothers' abuse claims, resulting in widespread losses of custody to likely abusers, and

(ii) alienation theory is used in a gender-biased manner to facilitate the denial or minimization of abuse.*

*This phenomenon is global, and generating growing concern in Canada and the UK.

NIJ Award to GWU, 2014

- ▶ 10 year period (2005-2015)
- ▶ Comprehensive search string netted over 15,000 cases (all electronic opinions)- narrowed to 4338
- ▶ All custody cases involving abuse or alienation claims
- ▶ 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)

MANY THANKS TO THE STUDY TEAM,
and especially

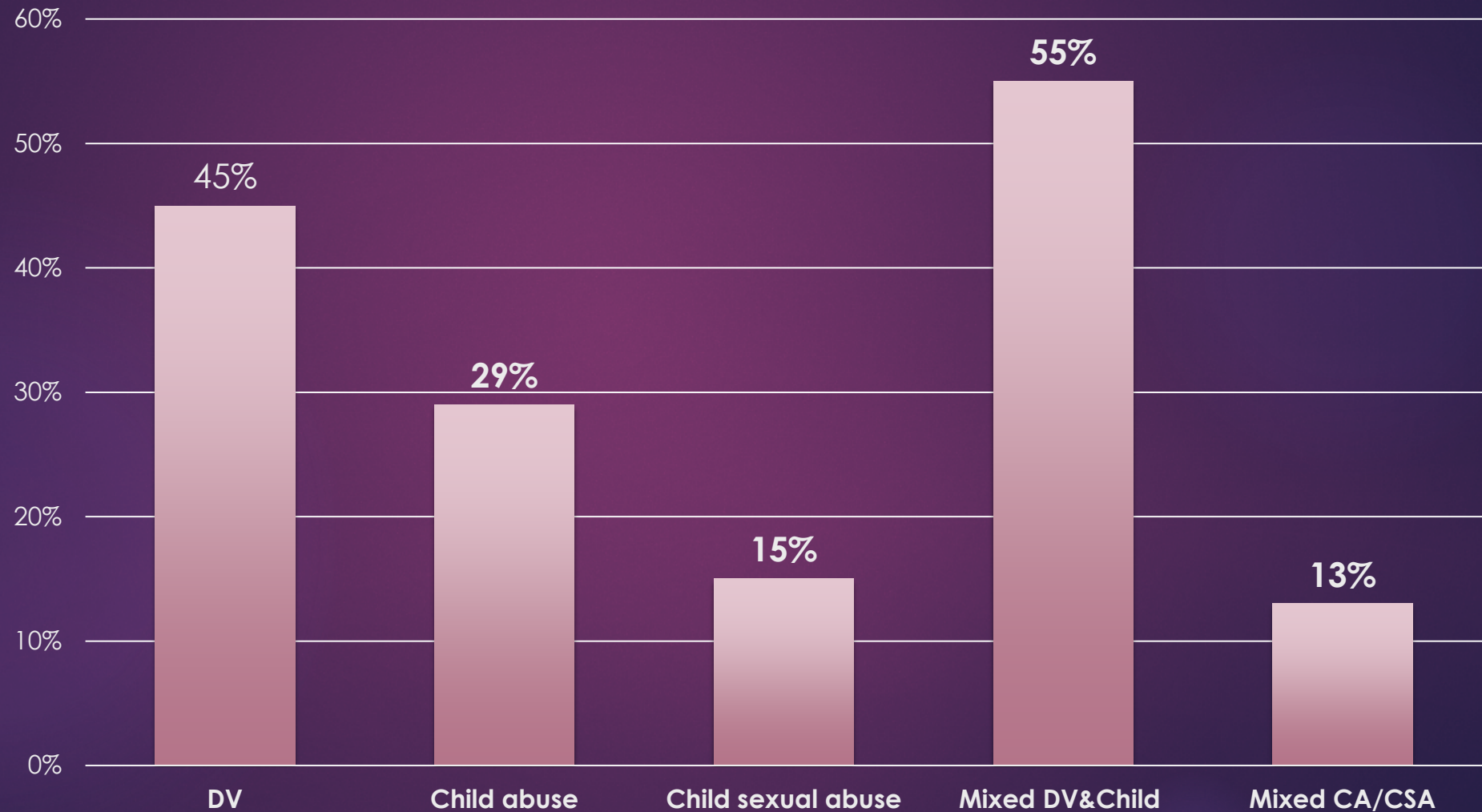
Sean Dickson, Consultant, who possesses
the statistical expertise I lack and the
legal and translational expertise to teach
me

KEY FINDINGS

- Mothers' reports of Fathers' abuse in custody litigation are credited less than half the time
- Courts are far less likely to credit **child abuse** claims than partner violence (DV)
- When Fathers use the **alienation defense**, courts credit abuse - especially child abuse - far less
- Child abuse allegations and alienation defenses put Mothers at highest risk of losing custody

CREDITING OF ABUSE alleged by Mother

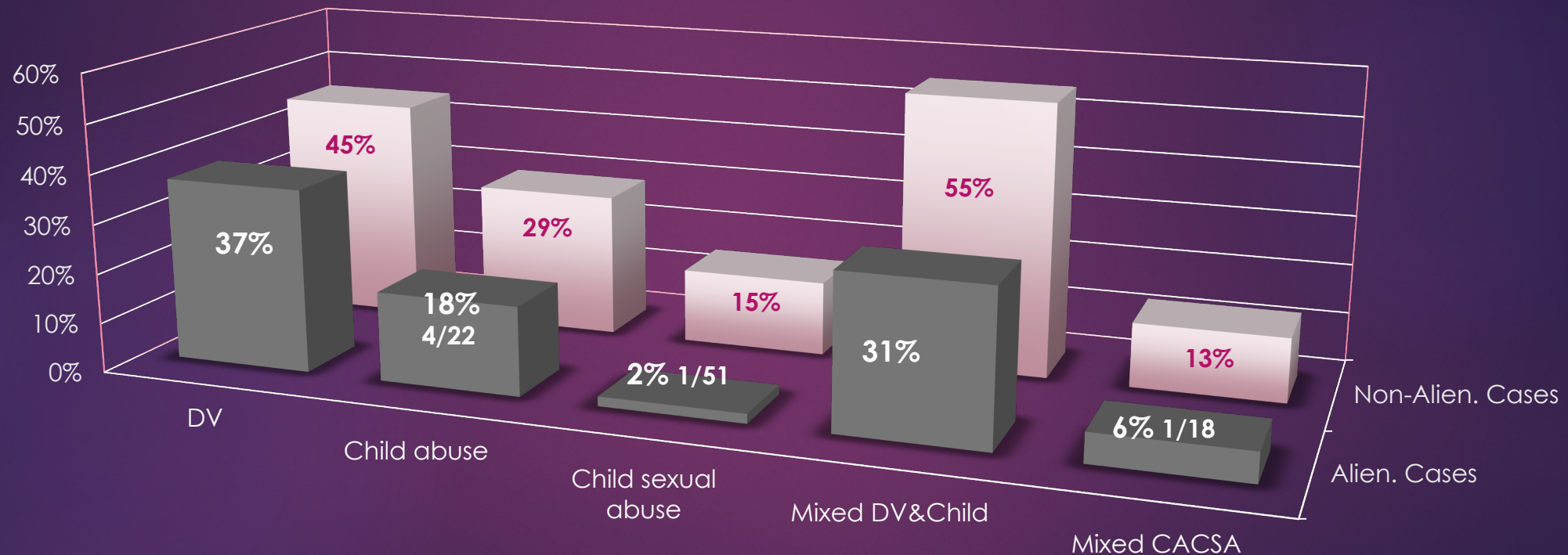
NON-ALIENATION (ABUSE) CASES



Overall, courts credited 41% of abuse claims

CREDITING OF ABUSE

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



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

Impact of Alienation Defense

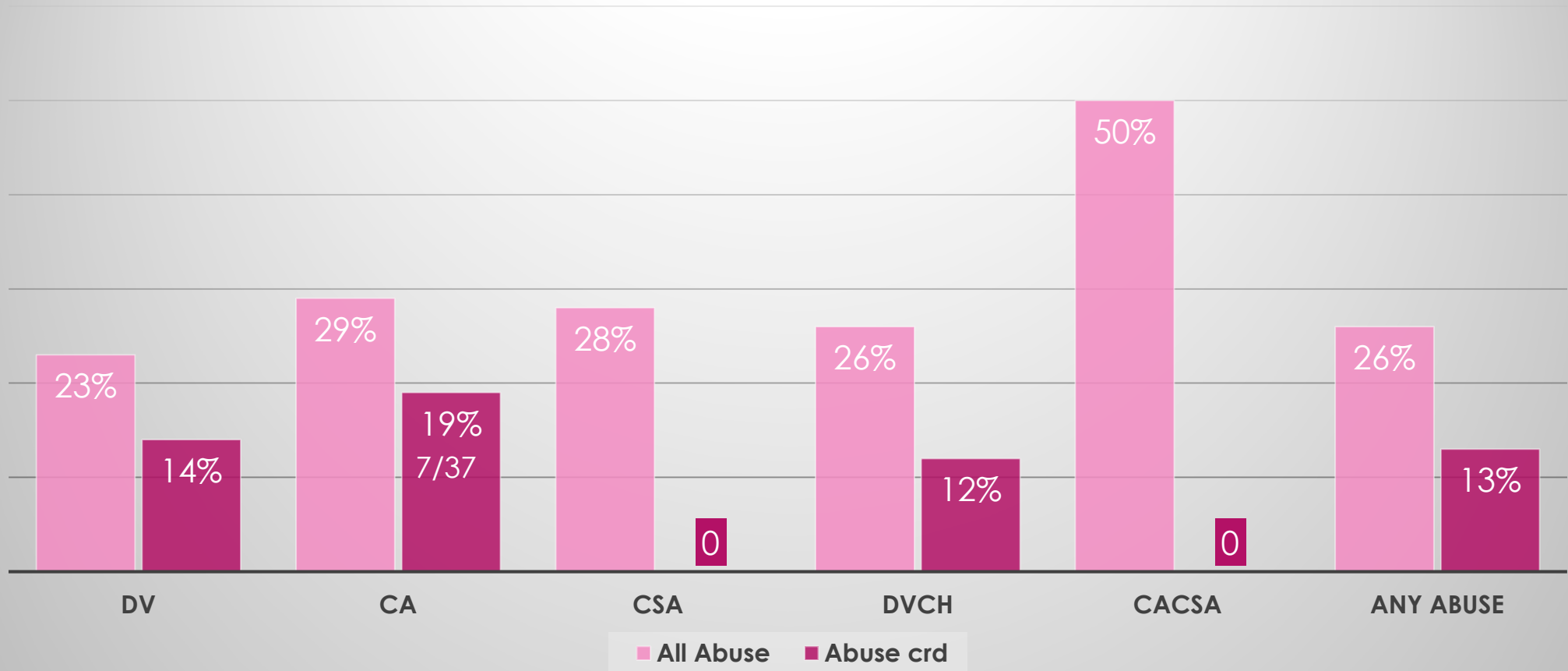
Reduces likelihood of abuse being believed
by a factor of 2

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

MOTHERS' CUSTODY LOSSES*

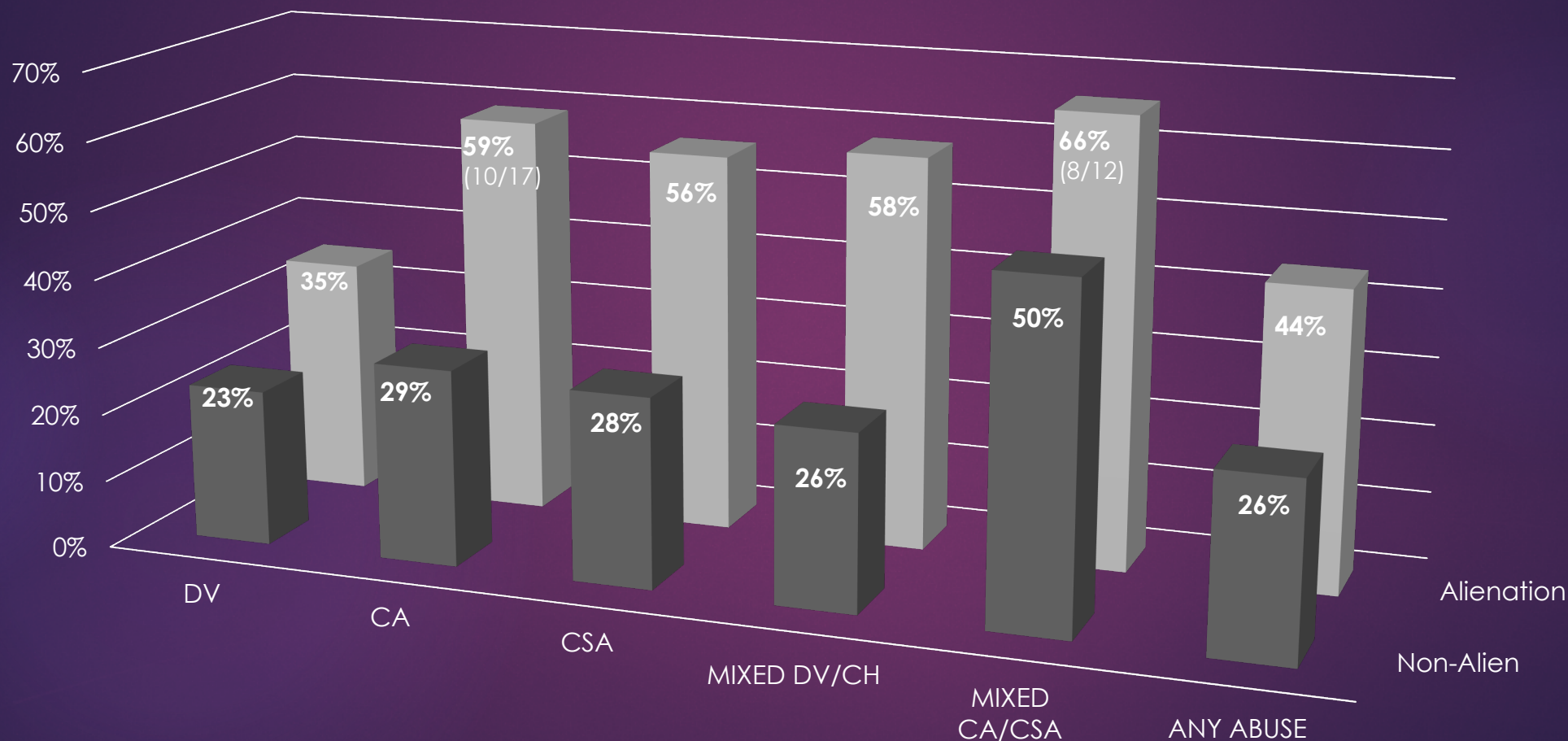
*switch of primary custody from M to F
where abuse claimed

NO ALIENATION DEFENSE



MOTHERS' CUSTODY LOSSES (2)

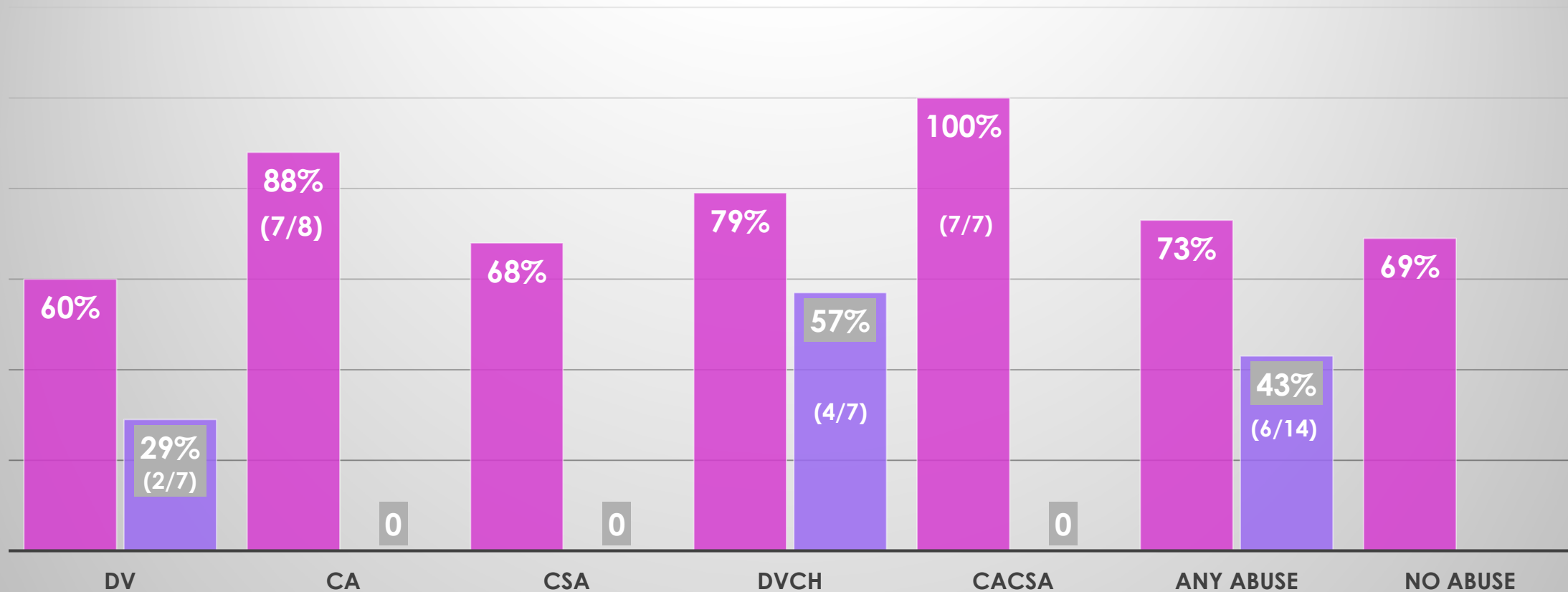
Non-alienation vs. Alienation Cases



MOTHERS' CUSTODY LOSSES (3)

ALIENATION CREDITED

■ All Abuse ■ Abuse crd

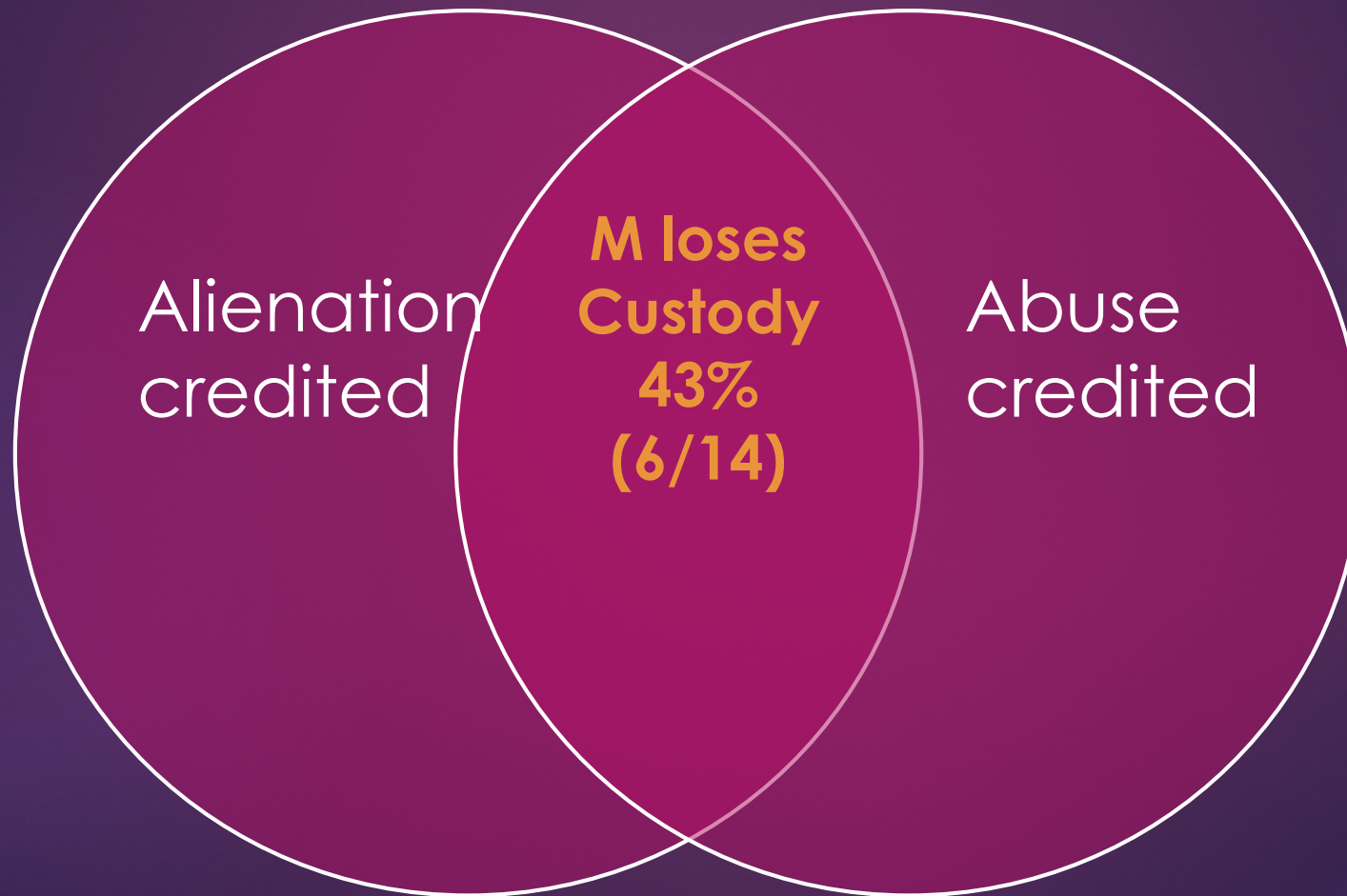


Note: No CA or CSA credited when alienation credited

Power of alienation defense to effect custody switch

When Fathers cross-claimed alienation, they were almost 3 (2.9) times more likely to take custody from mothers alleging any kind of abuse

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



SUMMARY

These data confirm the widespread complaints about family courts' rejections of abuse concerns, potentially putting children at risk

They also confirm that alienation claims are effective in negating abuse concerns

Future analyses of the dataset can explore additional issues, like "AKA" cases

KEY LIMITATIONS

- ▶ The study does not demonstrate that courts' rejections of abuse claims are wrong, but only that they are widespread
- ▶ The study is also tilted toward appeals, which may have some systematic differences from trials that are not appealed

FOLLOW UP / QUESTIONS?

Please contact me at GWU Law School:

Jmeier@law.gwu.edu

or

(202)994-2278