

## Learning Network & Knowledge Hub Webinar

*The misuse of alienation in domestic violence cases in family court: Helping court-related professionals to sort through conflicting allegations*

Western  Centre for Research & Education on Violence Against Women & Children



Financial contribution from  
Public Health Agency of Canada / Agence de la santé publique du Canada

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### Webinar starts at 1:00 PM EST

- All participants are muted during the webinar.
- Cameras are turned off for all participants except for presenters, webinar hosts, and ASL interpreters.
- The chat function is also turned off for this webinar.
- Presentation slides were emailed to you earlier this morning.
- There will be an evaluation link emailed to you at the end of the webinar, please fill out the form as your feedback will guide our future webinars.
- The webinar recording will be posted on our website within the next few days:  
<http://www.vawlearningnetwork.ca/ln-kh-webinars>

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Please think about the traditional lands you are currently situated on and join us in acknowledging and thanking the generations of Indigenous peoples who have cared for these Lands and in celebrating the continued strength and spirit of Indigenous Peoples. The ongoing work to make the promise of truth and reconciliation real in our communities and to bring justice for murdered and missing Indigenous women and girls across the country should inform our discussions in this webinar and beyond.

## Presenters



Loretta Frederick, Senior Legal Policy Advisor, Battered Women's Justice Project, Minneapolis, MN



Peter Jaffe, Professor, Centre for Research & Education on Violence Against Women & Children, Western University, London ON



Joan Meier, Professor of Clinical Law and Director of the National Family Violence Law Center at the George Washington University Law School, Washington DC



Simon Lapierre, Professor, Faculty of Social Work, Faculty of Social Sciences, University of Ottawa, Ottawa ON



Linda C Neilson, Professor Emerita & Research Associate of the Muriel McQueen Fergusson Centre for Family Violence Research, University of New Brunswick, Fredericton NB

**Peter Jaffe**



Peter Jaffe is a Professor in the Faculty of Education at Western University and the Academic Director of the Centre for Research and Education on Violence Against Women & Children. He is also the Director Emeritus of the London Family Court Clinic, which is a children's mental health centre specializing in issues which bring children and families into the justice system in London, Ontario. In that centre, he has been involved in over 2,000 custody assessments either directly or in a supervisory capacity over the past 40 years. He has co-authored eleven books, 40 chapters and over 90 articles related to violence and abuse involving children, adults, families and the justice system. Since 1999, he has been on faculty for the US National Council of Juvenile & Family Court Judges for judicial education programs entitled "Enhancing Judicial Skills in Domestic Violence Cases." He was a founding member of Ontario's Chief Coroner's Domestic Violence Death Review Committee and has published extensively on risk assessment and domestic and child homicide prevention.

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**Centre for Research & Education on Violence Against Women & Children**



**Western Education**

*Learning to End Abuse*



Peter Jaffe  
Professor, Faculty of Education

**The Misuse of Alienation in Domestic Violence Cases in Family Court: Helping Court-Related Professionals to Sort Through Conflicting Allegations**

A Learning Network Webinar  
March 23, 2021

[learningtoendabuse.ca](http://learningtoendabuse.ca)

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## Setting the Stage for this Webinar

### Misuse of Alienation in Domestic Violence Cases

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## alienation can be a real problem

- Everyone agrees that after separation healthy, loving parents should try to work together as co-parents
- Children are harmed by exposure to parental conflict
- Children benefit from a relationship with both parents and extended families for healthy and safe relationships
- Turning children against the other parent is harmful in their development and may backfire against that parent
- A willful campaign to undermine the other parent is not in children's best interests

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alienation is in the dictionary.

**but it is not:**

- Alienation
- Parental Alienation
- Parental Alienation Syndrome
- A medical or psychiatric disorder
- No consensus on definition how to identify or reliably assessed and no agreed upon and valid intervention – especially court-ordered custody changes and residential treatment
- A simple problem - usually masking multiple factors and system impacts/litigation that need to be understood

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**BUT**

- When there is abuse or credible allegations of domestic violence and/or child abuse, a parent has a reasonable basis in fact to be protective and concerned about contact with the other parent

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## Different Sources of Harm to Children

- Ongoing conflict
- Prolonged litigation
- Child abuse and domestic violence/coercive control
- Trauma symptoms for children and parents affected by abuse
- Misuse of alienation to undermine protective parent and disinformation to confuse the court

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## Amendments to Canadian Divorce Act

- Effective March 1, 2021 – Best Interests of Children Includes:

**family violence** means any conduct, whether or not the conduct constitutes a criminal offence, by a family member towards another family member, that is violent or threatening or that **constitutes a pattern of coercive and controlling behaviour** or that causes that other family member to fear for their own safety or for that of another person — and in the case of a child, the direct or indirect exposure to such conduct — and includes

- (a) physical abuse, including forced confinement but excluding the use of reasonable force to protect themselves or another person;
- (b) sexual abuse;
- (c) threats to kill or cause bodily harm to any person;
- (d) harassment, including stalking;
- (e) the failure to provide the necessaries of life;
- (f) psychological abuse;
- (g) financial abuse;
- (h) threats to kill or harm an animal or damage property; and
- (i) the killing or harming of an animal or the damaging of property;

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## It's Complicated: The System's dilemmas

### Who to believe?

- Conflicting expert testimony about DV & Alienation?
- Unrepresented parties in court give "he said/ did–she said/did" evidence
- Crowded court dockets – COVID-19
- Shortage of legal, social services and mental health professionals in community
- Access to Justice?

### What to do?

- Educate Public and Professionals
- Proper fact-finding, screening and assessment
- Protect children & victim parents
- Prevent tragic outcomes
  - Ongoing trauma/abuse
  - Homicide of victim
  - Death of child by abusive parent

## Learning Objectives

1. Understand the how the term alienation is misused in domestic violence and child abuse cases.
2. Understand the empirical evidence of the impact of alienation claims in abuse cases
3. Learn a structured approach and tool for screening and assessing the impact of domestic violence/child abuse in parenting/custody disputes

## Parental Alienation & Canadian Family Courts

Linda Neilson



Dr. Linda Neilson is a Professor Emerita at the University of New Brunswick. Linda is a recognized academic authority on legal systems and domestic violence, as well as the impact of exposure to family violence on children. She serves regularly as academic advisor on domestic violence and court-related, cross-sector government committees. She is the author of the e-book, *Responding to Domestic Violence in Family Law, Civil Protection and Child Protection Cases*, published by the Canadian Legal Information Institute. Linda is also the co-author of *Interpreting the New Divorce Act: Rules of Statutory Interpretation and Senate Observations*.

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## *Parental Alienation & Canadian Family Courts*

### *Parental Alienation, Canadian Context*

*Dr. Linda CNeilson*

*BA(hons), LL.B. (UNB), Ph.D. (Law, U London, L.S.E.)*

*Professor Emerita, UNB, Research Associate, Muriel McQueen Fergusson Centre for Family Violence Research (MMFCFVR)*

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Everyone in the family law system should understand:  
 Verified & accepted child development / resilience principles  
 Child harm and trauma responses to domestic & family violence

## The PA Problem

**BUT** social science can be **harmful in legal systems** when it does not have research verified reliability is controversial and not broadly scientifically accepted.

This is why judges ought to engage in judicial gatekeeping & cost benefit analyses set out in *R. v. Mohan*, [1994] 2 SCR 9 and *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23 in Canada and *Frye* and *Daubert* in the US.

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## The Legal System transformation Problem

**But** resources do not always enable strenuous judicial gatekeeping to ensure validity and reliability

**Result: Controversial theories** → **legal principle**

Judges cite other court rulings without assessing research methods, limitations in research, scientific nuances & qualifications that are the foundations of social science concepts

Eg: *A.M. v. C.H.*, 2019 ONCA 764 at paragraph 35

*It is noteworthy that in circumstances similar to these, this court upheld a trial judge's decision transferring custody because of parental alienation, without expert evidence on that issue: Fiorito v. Wiggins, 2015 ONCA 729.*

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***Alienation Concepts are highly controversial among FV  
and Child protection experts***

***So we decided to test Empirically Concerns about  
Parental Alienation claims in Family Law Cases***

- . My own national case law study in Canada
- . Continuing SSHRC research in Canada - Simon Lapierre, Elizabeth Sheehy & Susan Boyd
- . Major, nation-wide study of PA cases in the USA: Joan Meier et al
- . Case Law in the UK, Australia, Wales, Italy, France, Spain, New Zealand: Adrienne Barnet (UK), Zoe Rathus (Aus), Julie Doughty (Wales), Gloria Casas Vila (Spain), Vivienne Elizabeth (NZ), Mariahaiara Feresin (Italy), Deborah Mackenzie et al. (NZ)

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*Canadian Empirical Analysis of  
Concerns of Critics*



<https://fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>

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## Parental Alienation Claims

### Definition

- Only applies when “unwarranted” rejection of parent by the child (theoretically)
- Occurs in high conflict cases, particularly during litigation
- Children resist contact with a parent because of:
  - Parental manipulation
  - Preferred parent failure to support & insist on relationship with other parent
- Either parent – purports to be gender neutral

### Tools, Checklists, Assumptions

- Assumption: Children seldom totally reject a parent unless the other parent is responsible
- Assumption: Checklists of child and adult behavior can be used to determine parental alienation

### Prescribed responses

- Dismiss child views and preferences (because they reflect parent manipulation)
- Use police power to force children to comply with court ordered parenting
- Remove children from preferred ‘alienating’ (primary) parent & force children to live with rejected parent until a positive relationship can be established

## Findings

### Method

357 Canadian cases (2007 – 2017)  
 FV & non FV cases  
 Same family → multiple cases → counted once

Claims v Fathers  
 31.1%  
 Including 9.3 %  
 Claim by Victim  
 Of DV

Claims v-Mothers  
 68.9 %



41.5 % Domestic Violence  
 or Child Abuse

76.8 %  
 Alleged Perpetrator

23.2 %  
 DV Victim Claimant

## Gender Bias

- ♦ Non application of PA theory by court:
  - ♦ 50.9 % cases claim v fathers
  - ♦ 50.8 % cases claim v mothers
  - ♦ Reasoning similar (except DV)
- ♦ Court accepts & applies PA theory (53 cases v fathers; 95 cases v mothers)



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## Best Interests & Child Rights?

**50 % of cases no alienation finding**

**In cases that did accept PA:**

- ♦ **Absence of thorough statutory BI analysis in:**
  - ♦ **2/3 (66.7 %) PA claim cases** (abuse and no abuse claim)
- ♦ **Failure to consider Child Views**
  - ♦ More than 1/2 were 13 + but views given weight in only 20.8 %; **Child views discounted in 79 % of cases**

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- **Judges making findings of PA without experts**
- **Relying on behavior checklists used in other cases**

**When PA “experts” did testify, they told courts to ignore evidence of** (eg *S.G.B. v. S.J.L.*, 2010 ONSC 3717; *C.J.J. v. A.J.*, 2016 BCSC 676; *A.L. v. L.W.*, 2017 BCSC 964; *Bradford v Bradford*, 2017 BCSC 661 ):

- Views and preferences of children (assumed to reflect views of the preferred parent)
- Negative parenting of the parent children resist (short of clearly established evidence of child abuse)
- Evidence of children doing well in the care of the preferred parent

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***The problem with assumptions about behavior & checklists: Comparison PA & DV Parenting Assertions***

*Will address in a few moments in connection with cross claim cases*

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### Gendered Discourse in Cases accepting PA

Children's wish to reside with primary care mothers,  
characterized as

- “unusual” parent-child closeness
- mother's over protection
- evidence of parental manipulation

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*PA Findings*



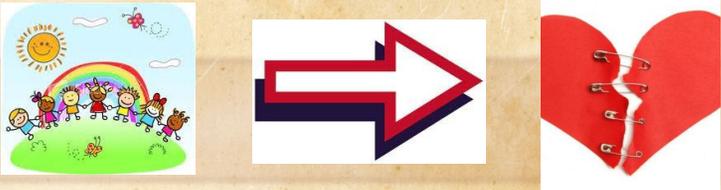
*Draconian Orders*



- High & repeated use of police force against children
- Children forcibly removed from preferred, primary care parents
- Children denied any and all contact with preferred parents & extended family
- Imposition of mandatory “reunification” programs – case law examples of bankruptcy for families

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### Bigger Picture: Changing Priorities, Family Law



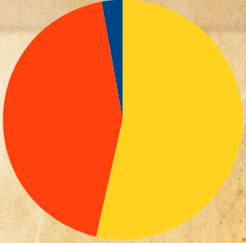
Child Best Interests

Repairing broken parent-child relationships

(Source of Image: Televista, September 26, 2016)

### 142 DV & PA Claim cases: Analysis by Domestic Violence Experts?

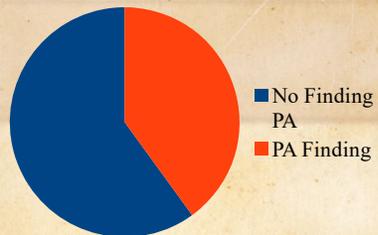
- Only 4 cases (2.8%) did courts request analysis by a DV expert
- Contrast with 62/142 (43.7%) cross claim cases, which specifically ordered a parental alienation evaluation



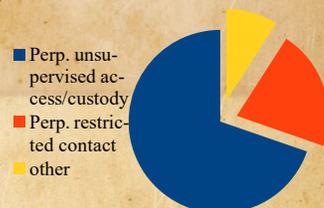
Category	Percentage
DV Expert	2.8%
Parental Alienation Analysis	43.7%
Not specified	53.5%

## Family Violence & PA claim cases

Alleged Perpetrator  
Claimed PA (76.8% of  
the cases)



Victim claims DV + PA



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## Cross Claim DV & PA, 142 Cases?

- 40 / 109 (36.7 %) when PA claimed by alleged FV perpetrator courts made PA finding against DV or child abuse claimant
- 39 cases children removed from targeted parent and placed with allegedly abusive parent
- 24 cases children denied contact or all but limited supervised contact with preferred protective parent

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### Other features - Cross Claim Cases

- ▶ Evidence of DV or child abuse - dismissed as PA tactic
- ▶ Judicial scepticism DV evidence (*S.P. v. P.B.D.*, 2007 CanLII 31787 ONSC; *J.C.W. v. J.K.R.W.* 2014 BCSC 488 ; *P.D. W. v. H.A. H.*, 2017 NBQB 110 )
- ▶ Negative erroneous judicial assumptions, examples:
  - ▶ False assumptions about disclosure patterns
  - ▶ Disbelief sex abuse claims
  - ▶ Assumptions based on demeanor, no trauma analysis
  - ▶ Dismissing evidence because no criminal conviction

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### Reliance on behavior checklists The problem with assumptions & checklists: Comparison PA & DV Parenting Assertions

Parenting Patterns alienated parent: Fidler & Bala, 2020,  
Family Court Review, Schedule A

- ▶ Harsh, rigid, punitive
- ▶ Strong objection to child challenge to authority
- ▶ Passivity in conflict
- ▶ Self centred relationship w child
- ▶ Loss of temper, angry, demanding
- ▶ Intimidating
- ▶ Counter rejection
- ▶ Lack of empathy
- ▶ Challenges child beliefs
- ▶ Unannounced, embarrassing visits
- ▶ Dismissive of child feelings
- ▶ May use force to reassert parental position
- ▶ Vents rage, blames alienating parent, assumes no responsibility

DV research - parenting mirrors DV behavior - See  
Neilson [CanLII e-book](#) at 11.1.10

- ▶ Harsh, rigid, physical punitive (child abuse)
- ▶ Highly controlling, expectation of servitude
- ▶ Role reversal, expects child to satisfy perpetrator's needs
- ▶ Intimidates mother and child and all who support
- ▶ Attempt to align with child v targeted parent
- ▶ Retaliates by rejecting child
- ▶ Challenges child beliefs, non acceptance of independence of child, views as entitlement/possession
- ▶ Embarrasses child - shows up at school, uninvited, misuses police power
- ▶ Dismissive of child feelings
- ▶ Use of force or threats to reassert control
- ▶ Rage, blames other parent, assumes no responsibility

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## Possible Interpretations

How can decades of DV parenting research & Alienation identify the SAME negative parenting behaviors? Possible interpretations:

- Significant numbers of PA claimants are perpetrators of DV (consistent with case law studies) and OR
  - The same parenting behaviors can have many causes
  - Negative behavior proves only negative behavior – does not prove the cause of behavior - PA or DV
- No matter the cause, children require protection

### Reminder from Canadian Case Law:

Courts should avoid making assumptions about the causes of human behavior. Such assumptions are commonly wrong: *R. v. Friesen*, 2020 SCC 9; *R. v. Lavallee* 1990 CanLII 95 (SCC); *R. v. Thompson*, 2019 BCCA 1 at para 55-57; *R. v. Brame*, 2004 YKCO 13; *R. v. CAM*, 2017 MBCA 70.

Why DV researchers do not assert that the presence of documented parenting patterns indicates DV:

- We know that parenting patterns in DV cases tend to mirror negative behaviours against IP
- We know that when negative parenting is present, children require protection

BUT the fact that negative parenting documented regularly in DV research is present is not proof that DV occurred

**Caution:** checklists of behaviors should Never be used to generate assumptions about causes of behavior

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## PA & FV Claims Create Double Bind

### Parents protecting children from FV (mostly mothers)

#### Express concerns → evidence of attempted PA

- ⚠ risk

#### Fail to present concerns → no protection

- ⚠ risk

### Children

#### Ask to live with mothers or reduce time with allegedly abusive parent → evidence of PA

- ⚠ Risk dismissal of views & forced removal



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## Net Effect? Silence. Do not Claim

(Image sources: Woman: Mark Meynell/Quarentia; Boy: Lacosa center, abuse victims)



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## Canada Legislation to watch

Bill C-78, *Divorce Act*

**Positive:** Judges must consider family violence, coercive control

**Negative:** Incorporates double bind and reverse onus into statute law:

Blame the preferred parent when the child does not have a positive relationship with other spouse.

**Legal wording:**

16(3)(c) *each spouses willingness to support the **development and maintenance** of the child's relationship with the other spouse.*

Instead of a direct onus on each parent to create a positive relationship with each child - where the onus belongs.

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### **Additional Information:**

#### **Review L.C. Neilson et al. (2019)**

##### **Collective Memo of Concern to World Health Organization.**

Endorsed by 352 experts and 764 individuals from 37 countries seeking removal of all references to parental alienation from ICD-11. References to parental alienation have been removed.

#### **Read the On Line Canadian PA cases Report:**

<http://www.fredacentre.com/wp-content/uploads/2018/02/Parental-Alienation-Linda-Neilson.pdf>

#### **Consider, in connection with Canadian Divorce Act:**

L. C. Neilson & Susan B. Boyd (2020) with review comments by Hon. Donna Martinson  
Interpreting the New Divorce Act, Rules of Statutory Interpretation & Senate Observations  
<https://fredacentre.com/wp-content/uploads/Parental-Alienation-Linda-Neilson.pdf>  
 (Vancouver: FREDA Center for Research on Violence Against Women)

### **Parental Alienation and Domestic Violence in Quebec**

Simon Lapierre



Simon Lapierre is a Full Professor in the School of Social Work at the University of Ottawa, and a founding member of the Feminist Anti-Violence (FemAnVi) Research Collective. His work has focused on women's and children's experiences in the context of domestic violence, and on practices in domestic violence shelters, child protection services, family courts and the criminal justice system. He is currently conducting two SSHRC-funded research projects on domestic violence and parental alienation. He is also providing domestic violence training to child protection workers in the Province of Quebec.

# Parental Alienation and Domestic Violence in Quebec

Simon Lapierre, PhD  
School of Social Work  
University of Ottawa



uOttawa

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## Parental Alienation and Domestic Violence in Child Custody and Child Protection Proceedings

Policy documents	Court decisions
Key informants	Case studies

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## Legitimization and Institutionalization of Parental Alienation Discourses

- Institutionalization of parental alienation discourses in child custody and child protection proceedings over the last decade.
  - Academic research conducted in partnership with child protection agencies.
  - Changes to the Youth Protection Act - Psychological ill-treatment.
  - Media.
- Growing number of women in domestic violence shelters being accused of parental alienation.

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## Accusations of Parental Alienation in child custody and child protection proceedings

- Father
- Father's lawyer
- Child protection worker
- Expert
- Judge

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## The Power of Experts

Expert

Child  
Mother  
Child protection workers  
Shelter workers  
Therapist  
Police officers

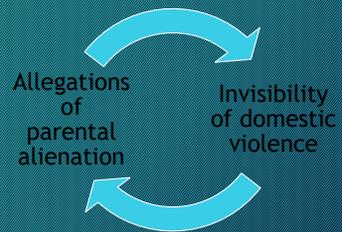
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## Court Decision

- The child protection worker pretends that she has tried to rebuild trust between the child and the father. She has clearly failed in this task. Despite the fact that she is struggling with this case, she refuses to accept the expert's recommendations, and she is still recommending to limit father-child contact.
- The shelter worker's views are not compatible with the expert's conclusions. The fact that she maintains these views despite the expert's evaluation shows that she lacks nuance and objectivity. (...) The fact that she lacked judgement in her work is one thing, but the fact that she is not open to the expert's views is worrying.

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## Parental Alienation and the Invisibility of Domestic Violence



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## False Allegations of Domestic Violence

- False allegations of domestic violence is a widespread problem.
- False allegations made by malicious mothers.
- False allegations made by mothers who have mental health problems.
- False allegations made by children who have been negatively influenced by their mothers.

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## Children's Voices Raise Suspicion

- When children clearly articulate their views regarding father-child relationships.
- When children's views are consistent throughout child custody and child protection proceedings.
- When children's views are consistent with other family members.
- When children insist to have their voices heard in child custody and child protection proceedings.

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## Court Decision

- The fact that these children really want to speak with the judge is worrying, given their age and the fact that this is a stressful situation. Therefore the court concludes that these children have been programmed to believe that their mother is the only one who can respond to their needs.

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## U.S. custody Outcomes in cases involving abuse and alienation claims

**Joan Meier**



Joan Meier is a Professor of Clinical Law and Director of the National Family Violence Law Center at the George Washington University Law School. Professor Meier has been a clinical law professor for 29 years at GW Law, where she founded three pioneering and nationally recognized interdisciplinary domestic violence clinical programs. She has published widely on domestic violence, custody, clinical teaching, criminal procedure, and various Supreme Court decisions. Her major study, "Child Custody Outcomes in Cases Involving Parental Alienation and Abuse Allegations," funded by the National Institute of Justice, was completed in 2019. Its findings have been written about in scholarship and multiple media outlets including *The Washington Post* and *The New Yorker*.

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

for Learning Network & Knowledge Hub  
Centre for Research and Education on  
Violence against Women and Children  
March 23, 2021

by  
Joan Meier, Professor of Law and Director, NFVLC  
at GW





### WHY THE FCO 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 problematic

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### 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*

<https://drive.google.com/file/d/1kkENjxL78w0xDNj28eeipcNMhmTduryv/view>

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## CASE EXAMPLE 2

California (2013)

- Father convicted of felony sexual assault mother caught on tape; 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.

<https://drive.google.com/file/d/1FimTeVAPKHgdpmdbH3gt4EfiUWqqjZRx/view>

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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

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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

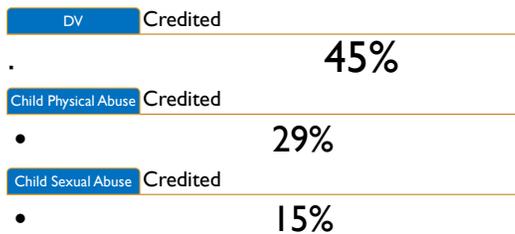
**Courts' crediting of abuse; custody reversals**

**Some gender comparisons**

**Impact of GALs and Evaluators**

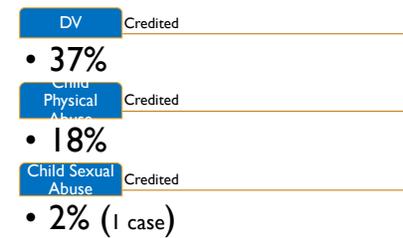
**RATES OF CREDITING OF ABUSE CLAIMS  
(NO ALIENATION CROSS-CLAIM)**

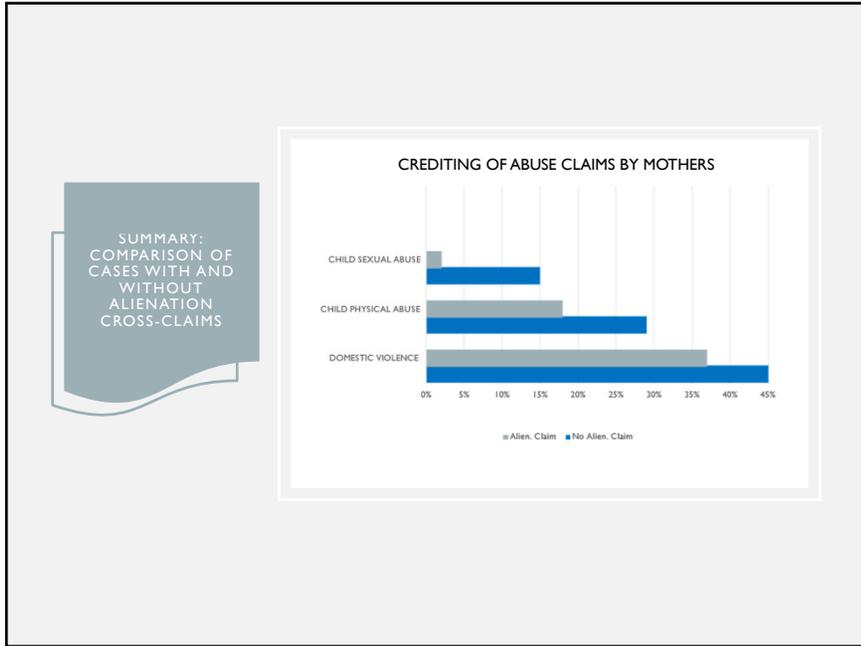
- Courts accept Mothers' reports of Fathers' abuse less than half the time (41%)
- Courts are far less likely to accept child abuse claims than partner violence (DV)



**RATES OF CREDITING WITH  
ALIENATION CROSS-CLAIMS**

Alienation cross-claims dramatically reduce rate of acceptance of abuse - especially child abuse (23%)





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)

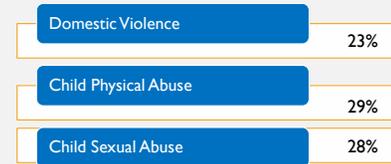
\*This finding is driven primarily by CSA cases.

### MOTHERS' CUSTODY LOSSES

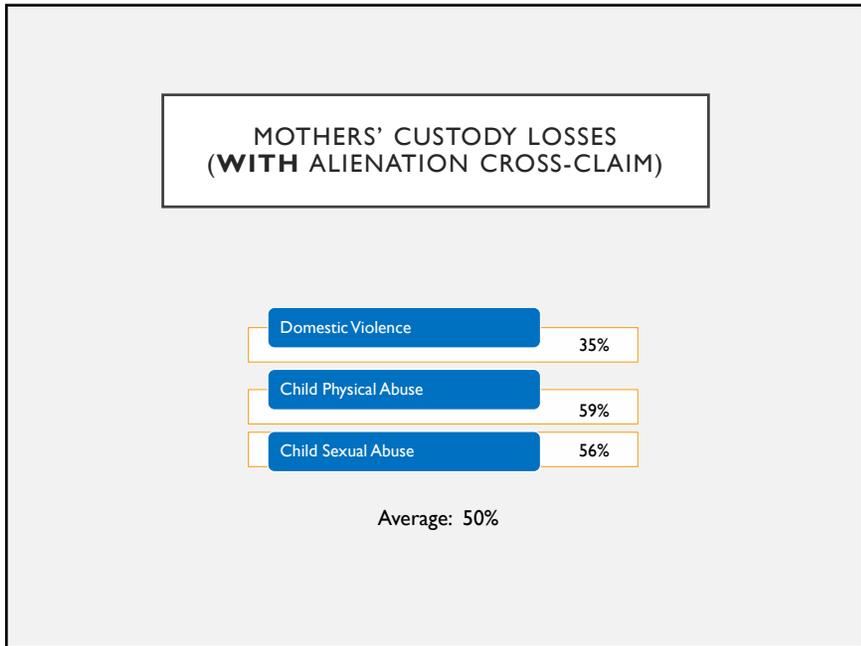
DEFINITION:

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

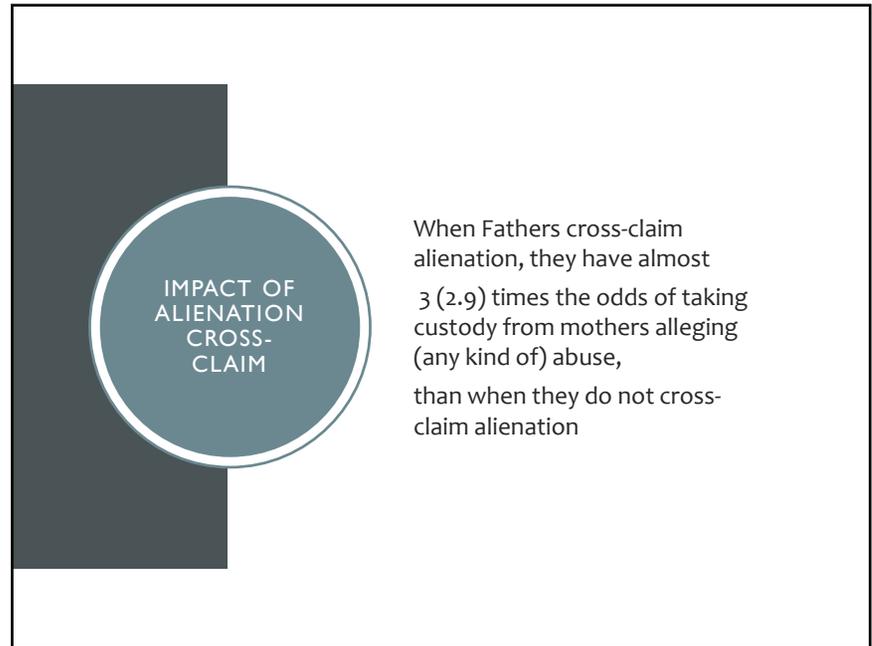
### MOTHERS' CUSTODY LOSSES (NO ALIENATION CROSS-CLAIM)



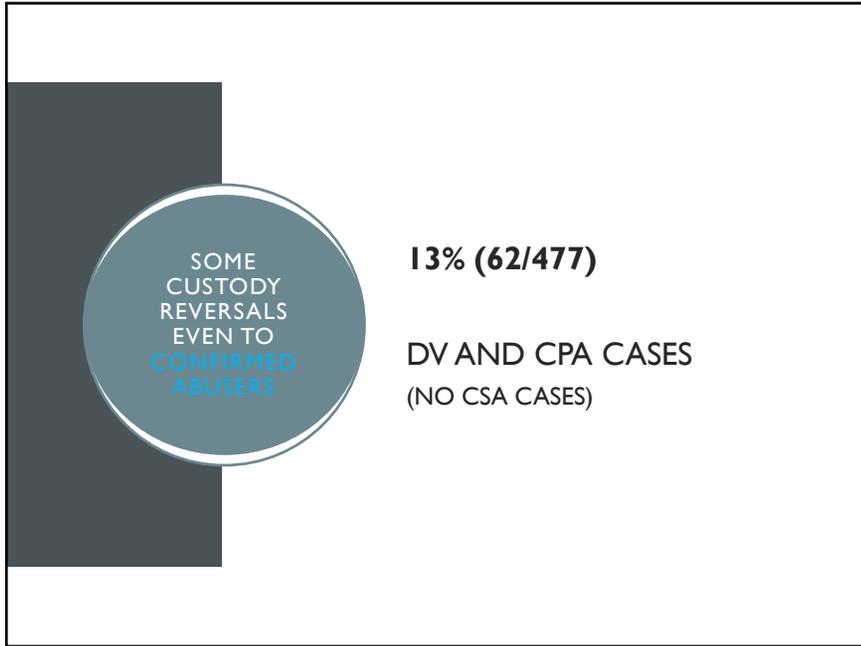
Average: 26%



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### 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.

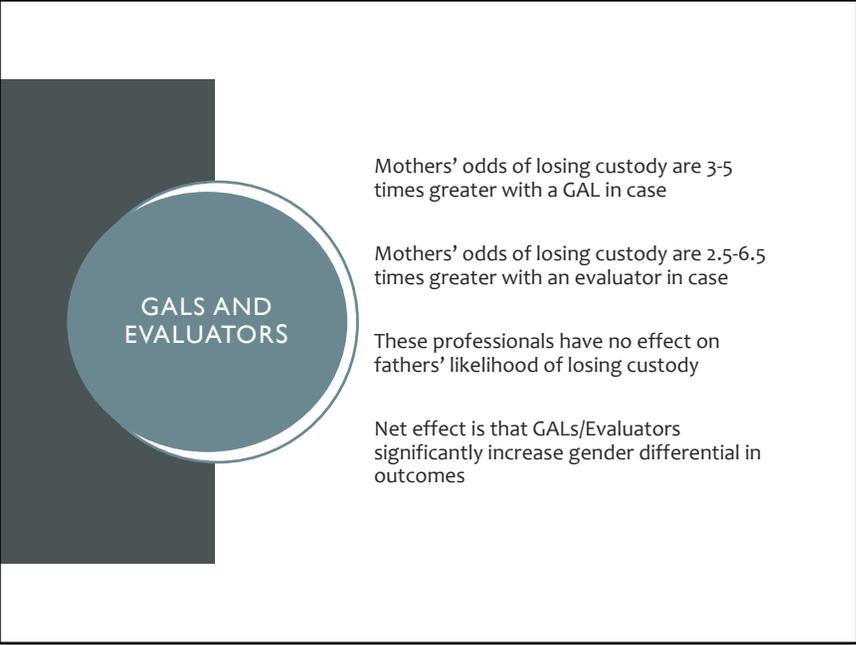
**That is, mothers have twice the odds of losing custody compared to fathers, when accused of alienation.**

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### 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%), these differences are not statistically significant

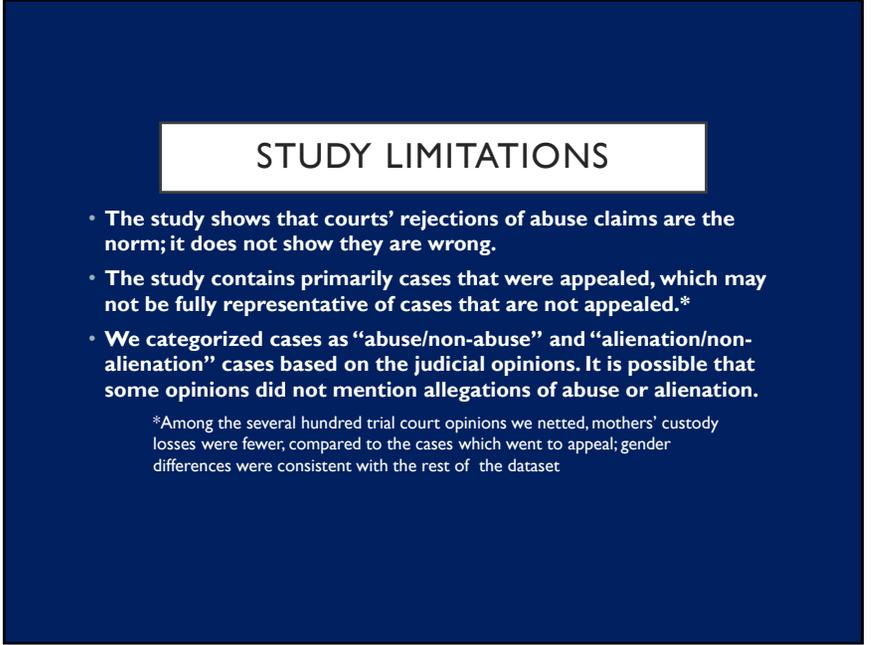
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**GALS AND EVALUATORS**

- Mothers' odds of losing custody are 3-5 times greater with a GAL in case
- Mothers' odds of losing custody are 2.5-6.5 times greater with an evaluator in case
- These professionals have no effect on fathers' likelihood of losing custody
- Net effect is that GALs/Evaluators significantly increase gender differential in outcomes

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## STUDY LIMITATIONS

- **The study shows that courts' rejections of abuse claims are the norm; it does not show they are wrong.**
- **The study contains primarily cases that were appealed, which may not be fully representative of cases that are not appealed.\***
- **We categorized cases as "abuse/non-abuse" and "alienation/non-alienation" cases based on the judicial opinions. It is possible that some opinions did not mention allegations of abuse or alienation.**

\*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

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FOLLOW UP /  
QUESTIONS?

 Contact: [jmeier@law.gwu.edu](mailto: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

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**Loretta Frederick**



Loretta Frederick is the Senior Legal and Policy Advisor for the Battered Women's Justice Project, a national resource center on the legal system's response to domestic violence. She is co-developer of the SAFeR approach to child custody cases involving abuse. For the 17 years before she joined BWJP in 1995, her family law practice focused on domestic violence cases and she was involved in founding several advocacy organizations. She has served as Chair of the Family Law Section of the Minnesota State Bar Association as well as its Domestic Abuse Committee, has done training and consulting on the legal system's response to domestic violence in the US and internationally for decades and serves on the faculty for the National Judicial Institutes on Domestic Violence. She can be reached at [lfrederick@bwjp.org](mailto:lfrederick@bwjp.org).

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# A **SAFeR** APPROACH TO CHILD CUSTODY CASES

## FOR FAMILY COURT PRACTITIONERS

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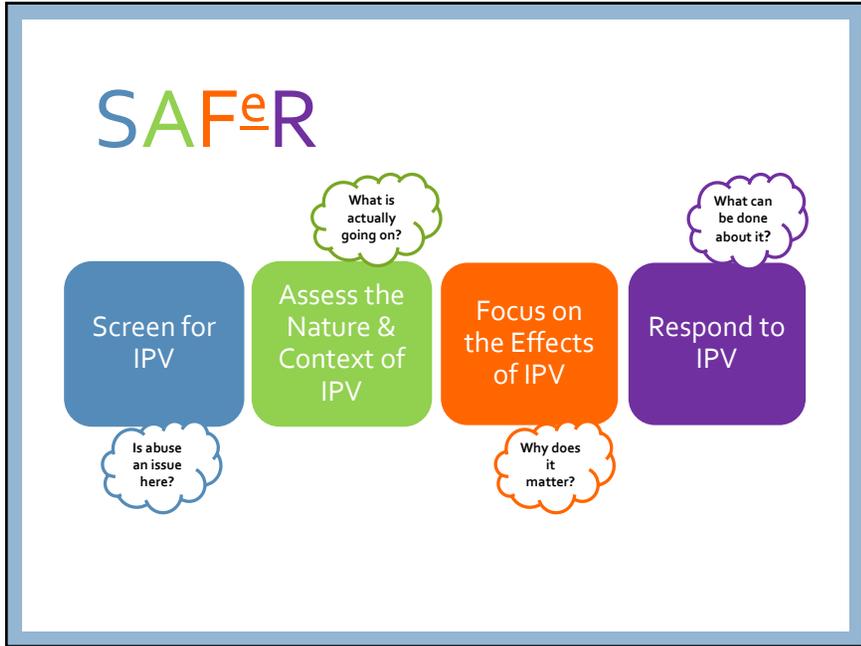
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## Learning Objectives

At the conclusion of this segment, participants will be better able to...

- Assess the utility of a **SAFeR** framework for identifying, assessing and responding to DV in child custody cases
- Consider using the **SAFeR** worksheets and guides to improve their ability to screen for and assess any IPV and its relationship to a child's resistance to contact with a parent

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# What is screening?

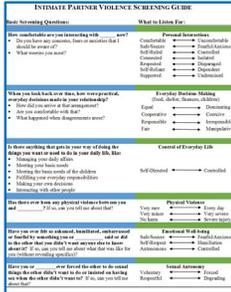
Screen for Domestic Abuse

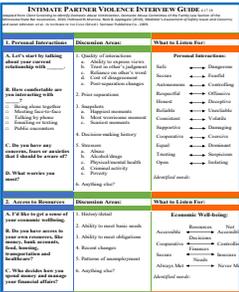
**A routine process for identifying a potential problem**

- It's tentative (*not* a judgment, ruling or diagnosis)
- A way to find out if there is reason to take a closer look
- Distinct from an assessment



# Screening Resources





**SCREENING FOR INTIMATE PARTNER VIOLENCE**

D
I
A
I

**Daily Interactions**

- Interpersonal relations
- Everyday decision-making
- Control of daily life
- Sense of safety
- Parental decision-making

**Forms of IPV**

- Physical abuse
- Sexual coercion
- Emotional abuse
- Economic abuse
- Spiritual/ethical abuse
- Coercive control

# BWJP Screening Guide

## INITIAL DOMESTIC ABUSE SCREENING GUIDE

**Basic Screening Questions: What to Listen For:**

**How comfortable are you interacting with \_\_\_\_\_ now?**

- Do you have any concerns, fears or anxieties that I should be aware of?
- What worries you most?

**Personal Interactions**

Comfortable	↔	Uncomfortable
Safe/Secure	↔	Fearful/Anxious
Self-Reliant	↔	Controlled
Connected	↔	Isolated
Respected	↔	Depenged
Self-Reliant	↔	Dependent
Supported	↔	Undersuportd

**When you look back over time, how were practical, everyday decisions made in your relationship?**

- How did you arrive at that arrangement?
- Are you comfortable with that?
- What happened when disagreements arose?

**Everyday Decision-Making (food, shelter, finances, children)**

Equal	↔	Dominating
Cooperative	↔	Coercive
Responsible	↔	Irresponsible
Fair	↔	Manipulative

**Is there anything that gets in your way of doing the things you want or need to do in your daily life, like:**

- Managing your daily affairs
- Meeting your basic needs
- Meeting the basic needs of the children
- Fulfilling your everyday responsibilities
- Making your own decisions
- Interacting with other people

**Control of Everyday Life**

Self-Directed	↔	Controlled
---------------	---	------------

**Has there ever been any physical violence between you and \_\_\_\_\_? If so, can you tell me about that?**

**Physical Violence**

Very rare	↔	Every day
Very minor	↔	Very severe
No harm	↔	Severe injury

**Have you ever felt so ashamed, humiliated, embarrassed or fearful by something you or \_\_\_\_\_ said or did to the other that you didn't want anyone else to know about it? If so, can you tell me about what that was like for you (without revealing specifics)?**

**Emotional Well-being**

Safe/Secure	↔	Fearful/Anxious
Self-Respect	↔	Humiliation
Autonomous	↔	Controlled

**Have you or \_\_\_\_\_ ever forced the other to do sexual things the other didn't want to do or insisted on having sex when the other didn't want to? If so, can you tell me about that?**

**Sexual Autonomy**

Voluntary	↔	Forced
Respectful	↔	Degrading

**Have you or \_\_\_\_\_ ever been concerned that the other was going to physically or psychologically harm the other, the children, or pets? If so, please explain.**

**Fear of Physical or Psychological Harm (self, children, pets, others)**

Not fearful	↔	Very fearful
-------------	---	--------------

**How are parenting time arrangements currently being worked out?**

- How did you arrive at that arrangement?
- Are you comfortable with that?
- Any concerns about children or fears for their safety?

**Parental Decision-Making**

Equal	↔	Dominant
Cooperative	↔	Coercive
Responsible	↔	Irrespon
Child-Focus	↔	Self-Foc
Fair	↔	Manipul

Physical/Sexual Abuse	Emotional Abuse	Control of Daily Life	Economic Abuse
<input type="checkbox"/> Hold you, restrain <input type="checkbox"/> Kneel on or sit upon <input type="checkbox"/> Tie up, bind, gag <input type="checkbox"/> Push, shove, shake <input type="checkbox"/> Grab <input type="checkbox"/> Scratch, pull hair <input type="checkbox"/> Shave <input type="checkbox"/> Twist arm <input type="checkbox"/> Bite <input type="checkbox"/> Spit on <input type="checkbox"/> Urinate upon <input type="checkbox"/> Slip <input type="checkbox"/> Hit or punch <input type="checkbox"/> Kick or stomp <input type="checkbox"/> Strike or throw object <input type="checkbox"/> Choke or strangle <input type="checkbox"/> Burn <input type="checkbox"/> Poke, stab, cut <input type="checkbox"/> Withhold food <input type="checkbox"/> Withhold medicine <input type="checkbox"/> Disable medical equip. <input type="checkbox"/> Forced sex	<input type="checkbox"/> Insult/tease put you down <input type="checkbox"/> Bully or stalk you <input type="checkbox"/> Ridicule you in public <input type="checkbox"/> Properly humiliate you <input type="checkbox"/> Play mind games <input type="checkbox"/> Intimidate you <input type="checkbox"/> Yell or scream at you <input type="checkbox"/> Act aggressively to you <input type="checkbox"/> Get jealous/possessive <input type="checkbox"/> Accuse you of infidelity <input type="checkbox"/> Spit on <input type="checkbox"/> Interfere with: - work/school life - social life - healthcare/medication <input type="checkbox"/> Threaten to: - kill you or the children - kill him/herself - harm you or the children - harm person you care for - harm or kill pet <input type="checkbox"/> Destroy things you care for <input type="checkbox"/> Threaten you w/ weapon <input type="checkbox"/> Put you life in danger <input type="checkbox"/> Disable your car <input type="checkbox"/> Drive recklessly to scare you	<input type="checkbox"/> Follow or stalk you <input type="checkbox"/> Often check up on <input type="checkbox"/> Examine email/social <input type="checkbox"/> Check phone calls <input type="checkbox"/> Hack into email <input type="checkbox"/> Gossip you <input type="checkbox"/> Time activities <input type="checkbox"/> Use others as spies <input type="checkbox"/> Invasiv privacy <input type="checkbox"/> Monitor social media <input type="checkbox"/> Physically restrain <input type="checkbox"/> Forbid you to leave <input type="checkbox"/> Paraly you for disobeing <input type="checkbox"/> Arrive unannounced <input type="checkbox"/> Make unwanted contact <input type="checkbox"/> Leave things to scare you <input type="checkbox"/> Make you do things you don't want to do	<input type="checkbox"/> Deny money <input type="checkbox"/> Refuse to pay bill <input type="checkbox"/> Empty bank <input type="checkbox"/> Hide assets <input type="checkbox"/> Destroy your credit <input type="checkbox"/> Deny credit access <input type="checkbox"/> Run up debt <input type="checkbox"/> Force money <input type="checkbox"/> Refuse to pass titl <input type="checkbox"/> Destroy property <input type="checkbox"/> Steal your property <input type="checkbox"/> Sell your property <input type="checkbox"/> Shut off utilities <input type="checkbox"/> Fail to pay insuranc <input type="checkbox"/> Cancel insurance <input type="checkbox"/> Cancel credit card <input type="checkbox"/> Refuse to work <input type="checkbox"/> Refuse to let you try to get you fin <input type="checkbox"/> Hide bills <input type="checkbox"/> Hide financial inf <input type="checkbox"/> Constantly return court

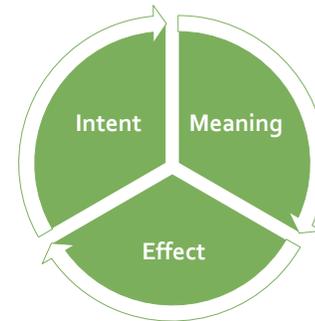
# Nature & Context of IPV

## Boy on the Stairs



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## Context means....



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## Three Contexts of IPV



- Patterned
- Intimidation
- Dominance
- Entitlement

Coercive  
Controlling  
Abuse



- No power and control tactics at work

Abuse Unrelated  
to Coercive  
Control



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## Coercive Control



- A knowing and harmful course of conduct that...
- Makes a person subordinate and/or dependent by....
  - Isolating them from sources of support
  - Exploiting their resources and capacities for personal gain
  - Regulating their daily lives
  - Depriving them of the means needed for independence, resistance, and escape

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## Coercive Control Redux

- It is qualitatively different, not just different in degree or severity
- Distinguishing features
  - it places the victim in an objective state of **entrapment**
  - It is rooted in **entitlement**
- It is not psychological, but structural

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## Confounding factors

- There is no reliable test for coercive control
- The tactics of coercive control can be hard to see
- The tactics of coercive control may seem innocuous
- On its face, coercive control can look exactly like low level physical abuse

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# Assessment Resources

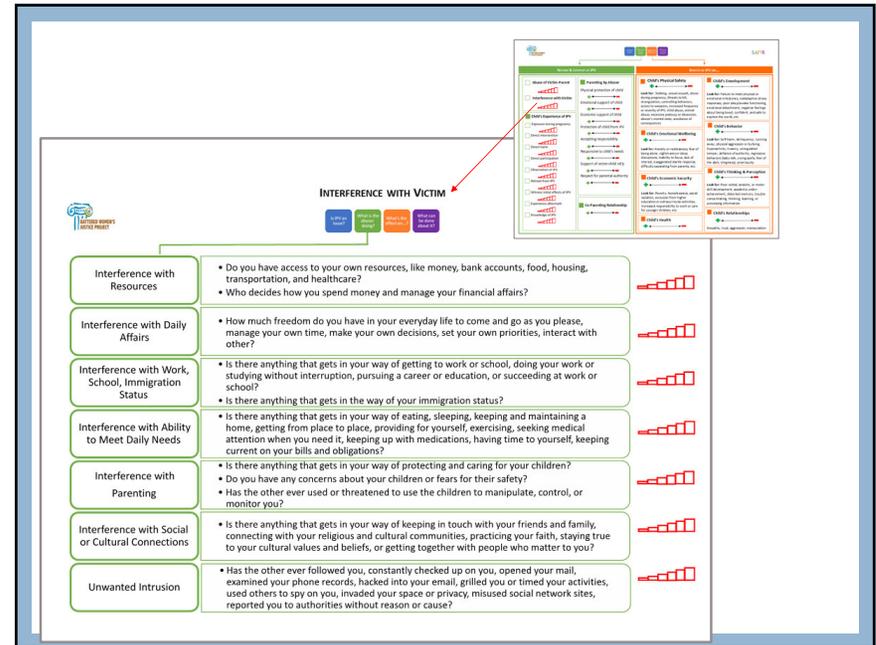
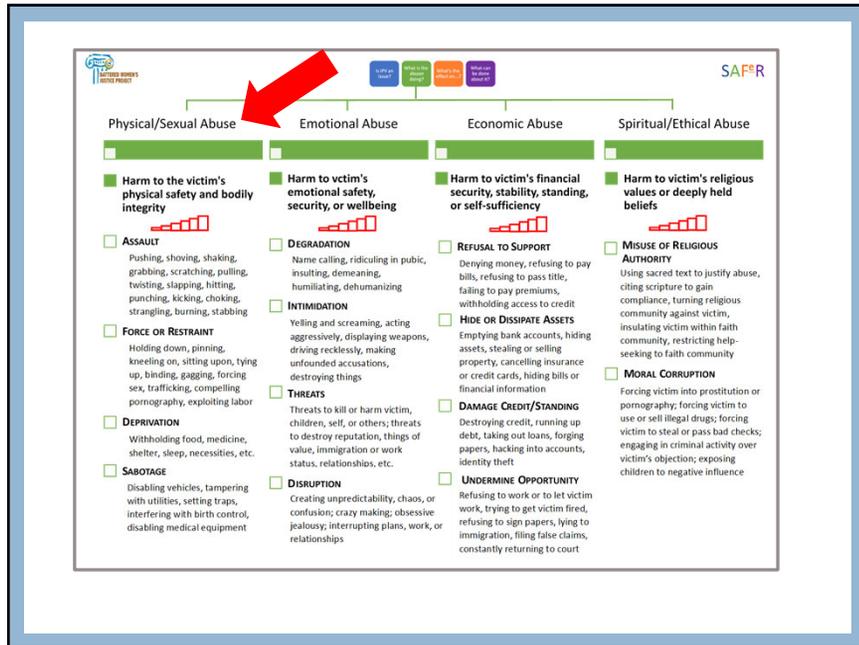
Assess Nature & Context

**NATURE & CONTEXT OF IPV**

- Abuse of Victim-Parent
- Interference with Victim
- Child's Experience of IPV
  - Exposure during pregnancy
  - Direct intervention
  - Direct harm
  - Direct participation
  - Observation of IPV
  - Retreat from IPV
  - Witness initial effects of IPV
  - Experience aftermath
  - Knowledge of IPV
- Parenting by Abuser
  - Physical protection of child
  - Emotional support of child
  - Economic support of child
  - Protection of child from IPV
  - Accepting responsibility
  - Responsive to child's needs
  - Support of victim-child rel'p
  - Respect for parental authority
- Co-Parenting Relationship

**EFFECTS OF IPV ON...**

- Child's Physical Safety**
  - Look for: Stalking, sexual assault, abuse during pregnancy, threats to kill, strangulation, controlling behaviors, access to weapons, increased frequency or severity of IPV, child abuse, animal abuse, excessive jealousy or obsession, abuser's mental state, avoidance of consequences
- Child's Development**
  - Look for: Failure to meet physical or emotional milestones, maladaptive stress responses, poor sleep/awake functioning, emotional detachment, negative feelings about being loved, confident, and safe to explore the world, etc.
- Child's Emotional Wellbeing**
  - Look for: Anxiety or restlessness, fear of being alone, nightmares or sleep disruptions, inability to focus, lack of interest, exaggerated startle response, difficulty separating from parents, etc.
- Child's Behavior**
  - Look for: Self-harm, delinquency, running away, physical aggression or bullying, hyperactivity, truancy, unregulated temper, defiance of authority, regressive behaviors (baby talk, crying spells, fear of the dark, clinginess), promiscuity
- Child's Thinking & Perception**
  - Look for: Poor verbal, analytic, or motor skill development, academic underachievement, distorted memory, trouble concentrating, thinking, learning, or processing information
- Child's Economic Security**
  - Look for: Poverty, homelessness, social isolation, exclusion from higher education or extracurricular activities, increased responsibility to work or care for younger children, etc.
- Child's Health**
- Child's Relationships**
  - Empathy, trust, aggression, manipulation



## Direct intervention in IPV

- Includes things like:
  - Pleading with the abuser to stop
  - Calling for help
  - Blocking the abuser's access to the victim
  - Pulling the abuser off the victim

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## Direct harm from IPV

- Includes things like:
  - Getting caught in the crossfire
  - Being blamed for the IPV
  - Being ridiculed for crying in the face of IPV
  - Being told "you're next"
  - Getting punished for intervening

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## Experiencing Initial Effects of IPV

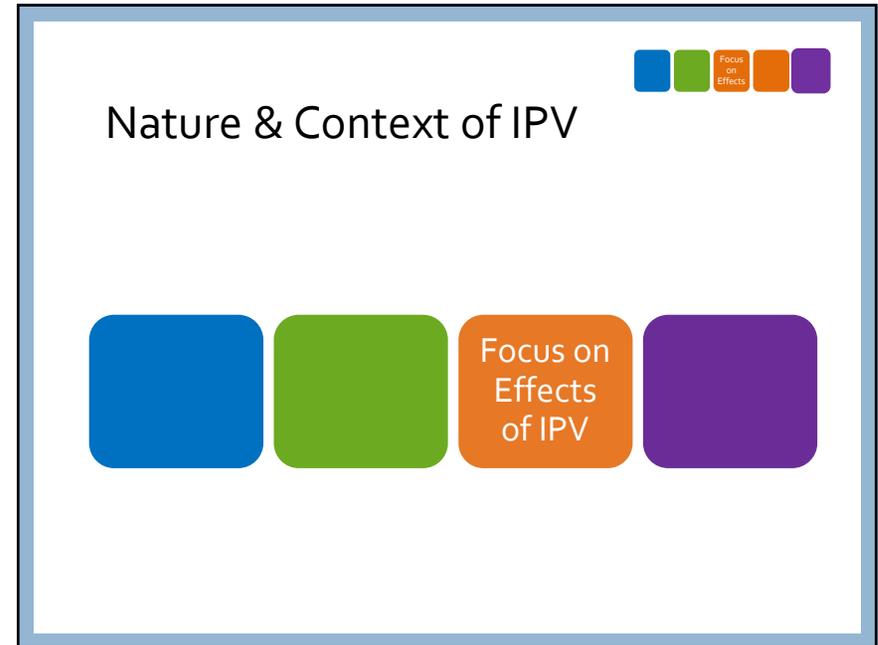
- Includes things like:
  - Seeing blood, bruises, and other injuries
  - Watching a parent taken away by ambulance
  - Seeing a parent being arrested
  - Having all the furniture broken up
  - Dealing with intense emotions and traumatic effects

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## Living with the Aftermath of IPV

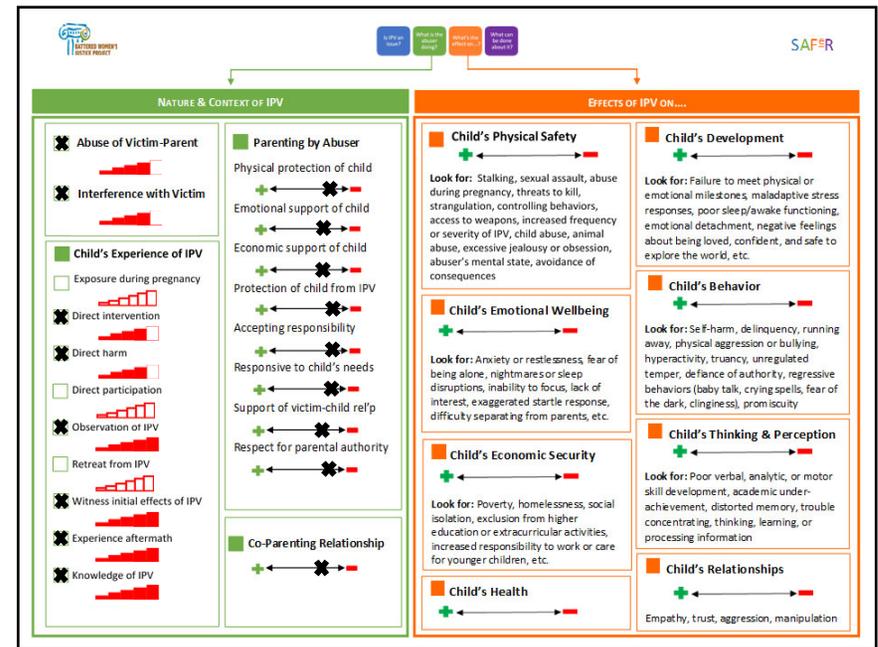
- Includes things like:
  - Parental anxiety
  - Separation or relocation
  - Severed social ties
  - Breakdown in trust
  - Chaos, uncertainty, disruption to routine

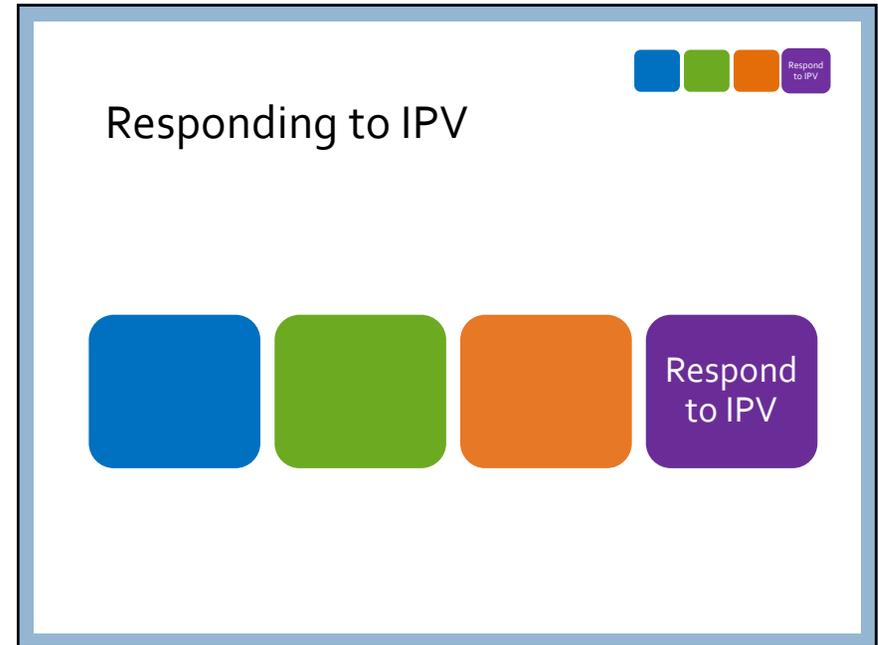
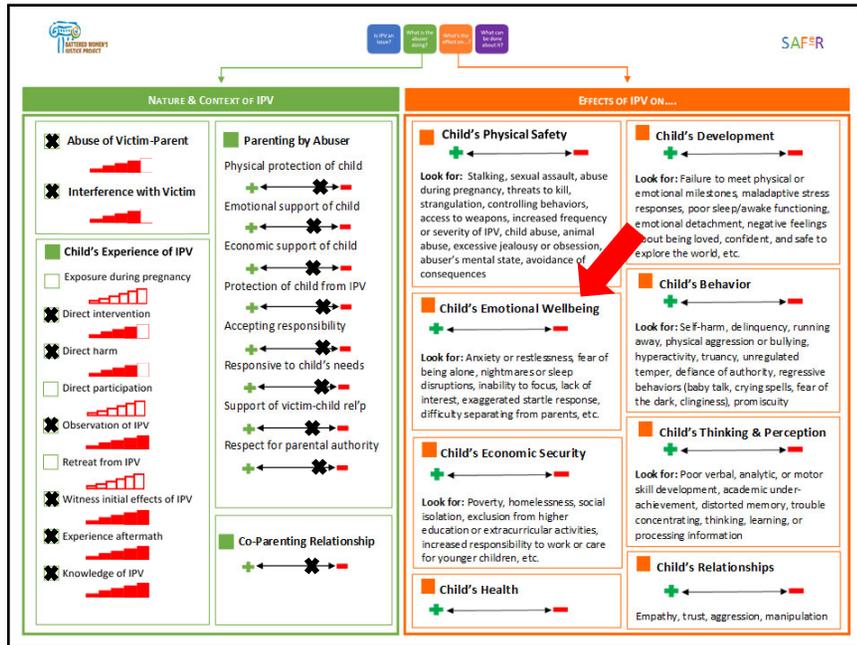
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# Resources on Effects

The slide displays a central graphic titled "Resources on Effects" with a "Focus on Effects" callout. Below the title are several overlapping charts and graphs, including bar charts, line graphs, and flowcharts, representing data related to the effects of IPV. The charts are color-coded and include various data points and trends.





## Resources on Responding

**Nature/Context of IPV**

- History of IPV?
- Intentional or Unintentional?
- Children's Exposure to Abuse?
- Abuse-Related Injuries?
- Abuse Co-Occurring Problems?

**Effects of IPV**

- Risk of Retaliation?
- Victim's Functional Well-being
- Children's Safety/Well-being
- Child's Emotional/Behavioral
- School Attendance of the Child
- Sexual Functioning

**Del. Laws §722**

- Parental Rights
- Rights of the Child
- Child's Interests/Relationships
- Adjustment to home, school, etc.
- Mental & physical health
- Child's Interests/Relationships
- Safety of domestic violence
- Criminal Justice

**Responses to IPV**

- Investigative services center
- Law Enforcement
- Legal advocacy/representation
- Support victim's efforts to protect
- Strengthen child's support system
- Restore abused confidence
- Set benchmarks for resolution
- Other \_\_\_\_\_

*Therapy considerations only apply to IPV, other trauma, and consider needs for significant legal or emotional development (DL §716)*

*See chapter 10 for more specific information.*

# SAFeR

**Screen for IPV**  
Is abuse an issue here?

**Assess the Nature & Context of IPV**  
What is actually going on?

**Focus on the Effects of IPV**  
Why does it matter?

**Respond to IPV**  
What can be done about it?

BATTERED WOMEN'S JUSTICE PROJECT

Is a parent being protective or interfering with child's relationship with other parent ?  
Is a child understandably concerned?  
Is it something else entirely?  
Is it a combination of things?

- Judges and court-relational professionals don't know without proper screening and assessment of IPV and its impact
- **SAFeR** provides a framework and tools to help practitioners choose the right intervention and parenting arrangement for each family

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For More Information

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SAFeR