

**THE MENTAL HEALTH FACTOR
IN DOMESTIC VIOLENCE CUSTODY CASES:
RESULTS FROM A BRIEF SURVEY OF LAWYERS
WHO REPRESENT DV SURVIVORS**

**A REPORT FROM THE NATIONAL CENTER ON DOMESTIC
VIOLENCE, TRAUMA & MENTAL HEALTH**

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PART I. INTRODUCTION

In June 2015, the National Center on Domestic Violence, Trauma & Mental Health (NCDVTMH) administered a brief survey to a pool of lawyers who represent domestic violence (DV) survivors in custody cases. The survey asked lawyers about their experiences with the opposing party (the abusive partner) raising the survivor's mental health as an issue in their cases. The survey invitation was distributed via the list serve for the ABA's Commission on Domestic & Sexual Violence.

The results of this survey are presented in this report, accompanied by brief analysis. Due to the small number of questions included in the survey and small sample size, the findings of this survey are limited. However, this initial survey may help to clarify questions for future research.

WHY STUDY THE ROLE OF THE MENTAL HEALTH FACTOR IN DV CASES?

Decades of work by the DV field have resulted in improvements in the family court system's capacity to handle cases involving DV.¹ However, survivors still sometimes lose custody to abusive partners, and in other cases, survivors may have primary custody but an abusive partner is awarded substantial visitation or parenting time.² In these cases, children are placed in the full- or part-time care of someone who has used violence in their presence, despite the documented long-term traumatic effects on children of witnessing violence in the home.³

Even though the relationship between the parents has ended, placement with a parent who has used violence against the other parent can be detrimental to children's development and their ability to heal from trauma. These children are at

¹ Daniel G. Saunders, *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Risk Factors & Safety Concerns*, VAWNET.ORG: NAT'L. ONLINE RES. CENT. ON VIOLENCE AGAINST WOMEN (2007), http://www.vawnet.org/Assoc_Files_VAWnet/AR_CustodyRevised.pdf.

² AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, 10 MYTHS ABOUT CUSTODY AND DOMESTIC VIOLENCE AND HOW TO COUNTER THEM 2 (2006), available at http://leadershipcouncil.org/docs/ABA_custody_myths.pdf ("Abusive parents are more likely to seek custody than non-abusive ones...and they are successful about 70% of the time."); Mary A. Kernic, et al., *Children In The Crossfire: Child Custody Determinations Among Couples With A History Of Intimate Partner Violence*, 11 VIOLENCE AGAINST WOMEN 991 (2005).

³ Jeffrey L. Edleson, *Problems Associated with Children's Witnessing of Domestic Violence*, VAWNET.ORG: THE NATIONAL ONLINE RESOURCE CENTER ON VIOLENCE AGAINST WOMEN (1997), http://vawnet.org/print-document.php?doc_id=392&find_type=web_desc_AR.

risk of being exposed to future episodes of violence against new partners of the abusive individual.⁴ Additionally, research on DV has documented that people who engage in abuse are often poor role models and manipulative, unreliable, and authoritarian parents.⁵ Furthermore, abusers often intentionally undermine the non-abusive parent's parenting efforts and parenting authority, not only during the relationship but also after separation.⁶ Attachment to a non-abusive caregiver is the most important resiliency factor for children exposed to violence, and abusive tactics are often designed to directly sabotage parent-child attachment, with direct implications for children's healing and healthy development.⁷ Finally, statistically speaking, many of these children will be abused directly: research indicates that half of individuals who abuse their partners also abuse their children.⁸

Like all system-level policies and practices, the policies and practices of family courts have an impact beyond those survivors and children who become directly involved in court cases. While many survivors do not engage in extended custody battles with their abusers, fear of losing custody to an abuser may cause survivors to delay or forgo leaving their abusive partner. Furthermore, survivors who do go to court may be more likely to agree to settle their case under terms that give abusive partners more access to children than they ultimately believe is safe, due to fears that pursuing the case further will result in worse outcomes.

DV researchers have extensively studied the multiple and complex reasons why abusive partners are still sometimes awarded custody. Contributing problems that have been documented include gender bias in the courts; a lack of DV knowledge among custody evaluators and Guardians Ad Litem, whose opinions often carry substantial weight with courts; and the misuse of the "friendly parent" factor, which is intended to weigh in favor of the parent more willing to facilitate a healthy

⁴ Saunders, *supra* note 1 ("Over half of men who batter go on to abuse a second woman..." (citing Sharon Woffordt, Delbert Elliot Mihalic, & Scott Menard, *Continuities in Marital Violence*, 9 J. FAM. VIOLENCE 195 (1994))).

⁵ See LUNDY BANCROFT, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* (2011); Peter G. Jaffe, Claire V. Crooks & Frances Q.F. Wong, *Parenting Arrangements After Domestic Violence: Safety as a Priority in Judging Children's Best Interest*, J. CENTER CHILD., FAM. & CTS. 81 (2005).

⁶ Patricia Van Horn & Betsy McAlister Groves, *Children Exposed to Domestic Violence: Making Trauma-Informed Custody and Visitation Decisions*, JUV. & FAM. CT. J. 51 (2006).

⁷ *Id.*

⁸ BANCROFT, *supra* note 5 (citing Murray A. Straus, *Ordinary Violence, Child Abuse, and Wife-Beating: What Do They Have in Common?*, in *THE DARK SIDE OF FAMILIES: CURRENT FAMILY VIOLENCE RESEARCH* 213 (D. Finkelhor, et al. eds., 1983)).

relationship with the other parent but is often used against survivors who legitimately resist co-parenting because of well-founded fears and concerns.⁹

In addition to these documented issues, DV attorneys, advocates, and survivors have reported that abusive partners frequently—and *disingenuously*—allege that survivors are “crazy” or have “mental health issues” in an attempt to discredit them in custody cases.¹⁰ This includes a range of tactics such as making vague allegations about a survivor’s undocumented “mental health issues” as well as attempting to admit evidence of a survivor’s real mental health history into evidence or to obtain a court order for psychological testing.¹¹

The law in most states allows judges in custody cases to consider “the mental and physical health of the parties” as one factor in its “best interests of the child” analysis. However, deeply entrenched societal stigma associated with mental health concerns means that this factor is at risk of being misapplied.¹² Furthermore, this risk may be particularly high in DV cases.¹³

⁹ The Leadership Council on Child Abuse & Interpersonal Violence, *Are “Good Enough” Parents Losing Custody to Abusive Ex-Partners?* (2006) <http://www.leadershipcouncil.org/1/pas/dv.html>.

¹⁰ The first article to examine this issue is Denice Wolf Markham, *Mental Illness and Domestic Violence: Implications for Family Law Litigation*, J. POVERTY L. POL’Y 23 (2003).

¹¹ Psychological testing has been widely criticized by the DV field because the psychological tests generally used in custody cases are not designed to assess parenting capacity, and furthermore, fail to account for the impact of DV and trauma. See Saunders, *supra* note 1; Bancroft, *supra* note 5; Nancy S. Erickson, *Use of the MMPI-2 in Child Custody Evaluations Involving Battered Women: What Does Psychological Research Tell Us?*, 39 FAM. L. Q., 87 (2005), available at http://leadershipcouncil.org/docs/Erickson_05.pdf. Extensive research as well as capacity-building work has also been done on the role of custody evaluations in DV cases. See, e.g., Gabrielle Davis, *Custody Evaluators’ Beliefs About Domestic Abuse*, BATTERED WOMEN’S JUST. PROJECT (2011), http://www.bwjp.org/assets/documents/pdfs/custody_evaluators_beliefs_about_domestic_abuse.pdf; Clare Dalton et al., *Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judge’s Guide*, STATE JUSTICE INSTITUTE AND NAT’L. COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (2006) http://www.ncjfcj.org/sites/default/files/navigating_cust.pdf. However, psychological tests and custody evaluations are only used in a fraction of custody cases. There remains a need to understand how mental health allegations are wielded against survivors in the larger number of cases in which psychological testing and custody evaluations are not conducted.

¹² Rachel White-Domain, *The Movement to End Discrimination Against Parents with Disabilities & The End of the “Mental Health Factor”* (unpublished draft).

¹³ *Id.*

Although these issues have been documented anecdotally, no quantitative data exists apart from the results of the present survey.¹⁴ This survey was designed as an initial attempt to gather quantitative data on these issues.

The survey builds on the previous work of those in the DV field on the issue of how mental health is used against survivors in DV cases, including the work of Chicago-based attorney Denice Wolf Markham.¹⁵ Additionally, the survey was informed by the results of a pair of surveys that were conducted by the National Domestic Violence Hotline (NDVH), in consultation with NCDVTMH, in 2012: the *Mental Health Coercion Survey* and the subsequent *Substance Use Coercion Survey*.¹⁶

These surveys were administered to callers to NDVH's 24/7 hotline who were not in immediate crisis, after they received the assistance that they were seeking, and after giving informed consent to participate in the survey.¹⁷ Survivors were asked about their experiences with mental health and substance use coercion, i.e., ways that abusers use their partner's mental health condition or substance use and/or diagnoses or treatment history against them to further their abuse and control. Examples include manipulatively challenging a partner's memory or perception of events; "gas lighting" them, i.e., twisting situations around to make a partner look or feel "crazy;"¹⁸ forcing or coercing a partner to use alcohol or other drugs; sabotaging a partner's efforts to get treatment or interfering with recovery; and using a partner's diagnosis or treatment history to undermine their credibility with friends, family, helping professionals, and/or the courts.¹⁹

¹⁴ In fact, scarce research exists on the mental health factor in non-DV-specific cases. One exception is a set of interviews of family law judges in one county about their views of mental health in custody cases in general. See Anat Geva, *Judicial Determination of Child Custody When a Parent is Mentally Ill: A Little Bit of Law, a Little Bit of Pop Psychology, and a Little Bit of Common Sense*, 16 UC DAVIS J. JUV. L. & POL'Y 1, 26 (2012).

¹⁵ See Markham, *supra* note 10.

¹⁶ CAROLE WARSHAW, ELEANOR LYON, HEATHER PHILLIPS, PATRICIA J. BLAND, MIKISHA HOOPER, THE MENTAL HEALTH AND SUBSTANCE USE COERCION SURVEYS: REPORT FROM THE NATIONAL CENTER ON DOMESTIC VIOLENCE, TRAUMA & MENTAL HEALTH AND THE NATIONAL DOMESTIC VIOLENCE HOTLINE (2014), http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2014/10/NCDVTMH_NDVH_MHSUCoercionSurveyReport_2014-2.pdf.

¹⁷ *Id.* at 3–4 (explaining the full process for administering the survey).

¹⁸ *Id.* at 9 (Defining gas lighting as "twisting situations around to make [the survivor] look crazy"); brolings, *What is Gaslighting?* NAT'L DOMESTIC VIOLENCE HOTLINE BLOG (May 29, 2014), <http://www.thehotline.org/2014/05/what-is-gaslighting/>.

¹⁹ Markham, *supra* note 10; WARSHAW et al., *supra* note 16.

One of the questions asked as part of the Mental Health Coercion Survey follows: "Has your partner or ex-partner ever threatened to report to authorities that you are 'crazy' to keep you from getting something you want or need (e.g., custody of children, medication, protective order)?"²⁰ Slightly over half of the survivors who responded to this question (50.2% or 1,197 survivors) said, "Yes."²¹ This figure is particularly astonishing given that survey participants were not prescreened for a mental health history.

A parallel question was asked as part of the Substance Use Coercion Survey: "Has your partner or ex-partner ever threatened to report your alcohol or other drug use to anyone in authority to keep you from getting something you want or need (e.g., custody of children, a job, benefits, or a protective order)?"²² Of the survivors who answered this question, over one-third (37.5% or 964 survivors) said, "Yes."²³ Survey participants were not prescreened for substance use.

Further analysis of the results of both surveys revealed even more nefarious patterns: Many survivors who responded affirmatively to questions about whether their abusive partners had actively exacerbated their conditions (such as by forcing or coercing substance use or by discouraging or interfering with treatment or recovery) also reported that their partners leveraged their mental health condition or substance use to undermine their credibility with friends and family, helping professionals, and/or the courts.²⁴ These data were consistent with decades of anecdotal evidence from the DV field reported to NCDVTMH staff.

Informed by all of these previous efforts, NCDVTMH sought to gather additional data on the role of the mental health factor in DV custody cases.

HOW THE PRESENT SURVEY WAS DESIGNED & ADMINISTERED

The survey consisted of seven substantive questions and three follow-up questions. Question 1 is as follows:

- "How often do you represent clients in custody cases where the opposing party is a former abusive partner?"

Response options for Question 1 included "All the time, this is the focus of my full-time practice," "Frequently," "Sometimes," "Sometimes, as a pro bono lawyer," "Rarely," and "Never." Lawyers answering "Never" to Question 1 were routed to the end of the survey because Questions 2–6 would be inapplicable to this group.

²⁰ WARSHAW et al., *supra* note 16, at 5.

²¹ *Id.* at 4, 5.

²² *Id.* at 11.

²³ *Id.* at 10, 11.

²⁴ *Id.* at 8–9, 14–15.

The survey then instructed lawyers to answer Questions 2–7 with regard to “these cases,” meaning cases in which you represent clients in custody cases where the opposing party is a former abusive partner.”

Questions 2–7 are as follows:

- In these cases, how often does the opposing party raise your client’s mental health as an issue, including but not limited to by raising the issue via testimony (e.g., testifying that your client is “crazy”), through documentary evidence, or by any other means?
- In these cases, how often does the opposing party attempt to admit your client’s mental health records into evidence?
- When the opposing party attempts to admit your client’s mental health records into evidence in these cases, how often are the records successfully introduced?
- When your client’s mental health is raised as an issue in these cases, how often do judges award physical custody or more than half of parenting time to the opposing party?
- When judges award physical custody or more than half of parenting time to the opposing party in these cases, how often do they state (on or off the record) that your client’s mental health was a reason influencing their decision?
- When judges award physical custody or more than half of parenting time to the opposing party in these cases, how often do you believe that your client’s mental health was an unstated reason influencing that decision?

For each of these questions, lawyers were asked, “Please provide your best estimate.” Response options included “76–100% of the time,” “51–75% of the time,” “26–50% of the time,” “1–25% of time,” and “0% of the time.” For every question on the survey, a space was provided to enter optional comments.

After the seven substantive questions, lawyers were asked if they would be willing to receive an invitation to answer additional multiple-choice questions on this topic and/or an invitation to complete an interview. A final question invited lawyers to submit any additional comments on the survey.

The survey and protocol were approved by NCDVTMH’s Institutional Review Board on March 4, 2015. On June 8, 2015, the survey invitation was distributed via the ABA’s Commission on Domestic & Sexual Violence’s email list.²⁵ Reminder emails were sent on June 17 and June 30. The survey was closed on August 11, 2015.

²⁵ This email list was selected largely due to convenience, inasmuch as it already exists and is overwhelmingly composed of attorneys concerned with DV. Research conducted with larger groups of lawyers would provide more compelling data.

BRIEF SUMMARY OF RESULTS

A total of 109 lawyers completed all seven substantive questions in the survey. The majority of them reported that they had significant experience representing DV survivors, including 54.41% of lawyers who responded that they represented DV survivors in custody cases, "All the time; this is the focus of my full-time practice." Comments indicated that survey participants included both legal aid and private attorneys, but no separate question inquired about attorneys' employment type.

The lawyers who responded to the survey reported that opposing parties frequently raise their clients' mental health as an issue in their custody cases: a combined total of 61.11% reported that the survivor's mental health is raised as an issue in over half of their cases. Importantly, lawyers commented that this occurs both in cases in which the survivor has a history of mental health treatment and in cases in which the survivor does not.

Most lawyers reported that these allegations are usually not supported by attempts to admit mental health records: a combined total of 73.21% of lawyers reported that opposing parties attempt to admit records in their cases 25% of the time or less. Additionally, most lawyers reported that attempts to admit records are only successful in a small portion of cases: a combined total of 56.25% of lawyers reported that opposing parties are successful 25% of the time or less. Some lawyers, however, reported more frequent experiences with a client's mental health records being offered and admitted into evidence.

Lawyers were split over how often survivors they represent lose custody in cases in which the survivor's mental health is raised as an issue. A combined total of 40.36% of lawyers reported that abusers won custody in 26% or more of cases in which the survivor's mental health is raised as an issue. However, a combined total of 59.64% reported that survivors still won custody most of the time—and that abusers won in 25% or less of their cases.

A combined total of 24.85% of lawyers reported that, when the judge awards custody to the opposing party, they state (on or off the record) that mental health was a reason influencing their decision 51% of the time or more. Nearly twice as many lawyers (a combined total of 44.96% of lawyers) reported that they subjectively believed their client's mental health was an unstated factor impacting the decision 51% of the time or more.

Given the complexity of these issues, the small number of questions greatly oversimplifies the issues. For example, the questions group together cases in which the opposing party is pro se and cases in which the opposing party is represented by an attorney. Additionally, most of the questions asked in this survey were generally based on an assumption of cases proceeding to trial. However, the vast

majority of cases settle well before a trial date is set, making the questions difficult to answer accurately.

Both key stakeholders and research experts provided compelling input that a higher number of questions would substantially reduce the response rate (including total number of participants, and the rate of completion of the full survey), particularly given that the survey was voluntary; uncompensated; administered independently of any ongoing relationship or programming; and administered to attorneys, many of whom were expected to be engaged in the full-time practice of law.

Although limited, the results of this survey may provide some helpful data and insight. To the extent that abuser allegations pertaining to the survivor's mental health may be one of the reasons why abusive partners are sometimes still awarded custody or unsafe visitation, further clarifying and exploring the questions associated with this phenomenon is a critical task for future research on DV custody cases.

PART II. SURVEY RESULTS

1. WHO RESPONDED TO THE SURVEY?

The overwhelming majority of lawyers who participated in the survey have extensive experience working with DV survivors.

Approximately 450 attorneys were subscribed to the ABA’s Commission on Domestic & Sexual Violence’s email list at the time that the survey invitation was sent. A total of 136 lawyers answered at least one question on the survey, and 109 attorneys responded to all seven questions, meaning that the response rate was between 22% and 27%.

How often do you represent clients in custody cases where the opposing party is a former abusive partner? (N = 136)					
All the time, this is the focus of my full-time practice	Frequently	Sometimes	Sometimes, as a pro-bono lawyer	Rarely	Never
74 (54.41%)	37 (27.21%)	12 (8.82%)	0 (0%)	5 (3.68%)	8 (5.88%)

As the chart above indicates, a combined total of 81.62% of lawyers (111 lawyers) responded either that they represent survivors in custody cases “All the time,” or “Frequently,” with most of these lawyers (54.41% or 74 lawyers) reporting that they represented survivors “All the time.”

Lawyers were given the option to provide comments in response to this question. Many lawyers explained that, although most or all of their cases involved representation of DV survivors, not all of these cases were custody cases (e.g., they also represented survivors in seeking orders of protections). Several other participants submitted comments stating that they had previously represented survivors for all or most of their practice but now had a smaller caseload because they had taken on job responsibilities supervising other lawyers or spent time doing consultation related to domestic violence.

These additional comments may mean that survey participants who indicated that they represent survivors in custody cases less than frequently may nonetheless have significant expertise and experience in DV.

2. HOW OFTEN DOES THE OPPOSING PARTY RAISE THE SURVIVOR’S MENTAL HEALTH?

The majority of lawyers (61.11%) reported that the opposing party raises the survivor’s mental health as an issue in over half (51% or more) of their custody cases.

How often does the opposing party raise your client’s mental health as an issue, including but not limited to by raising the issue via testimony (e.g., testifying that your client is “crazy”), through documentary evidence, or by any other means? (N = 126)

76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time
32 (25.40%)	45 (35.71%)	38 (30.16%)	11 (8.73%)	0 (0%)

As the chart above indicates, a combined total of 91.27% of lawyers (115 lawyers) reported that the opposing party raises their client’s mental health as an issue in at least one-quarter of their custody cases (26%–100% of the time). Another way to consider these data is that a combined total of 61.11% of lawyers (77 lawyers) reported that the opposing party raises their client’s mental health as an issue in more than half of their cases (at least 51% of the time).

As described above, the law in most states allows judges in custody cases to consider “the mental and physical health of the parties” as one factor in its “best interests of the child” analysis. However, stigma associated with mental health concerns means that the mental health factor is at risk of being misapplied.²⁶ This risk may be especially high in DV cases, where abusive partners raise the issue disingenuously—i.e., as part of a tactic of abuse and control, not out of any genuine concern for the children’s well-being, and often as an attempt to undermine the credibility of the survivor in general.²⁷ Additionally, in many DV cases, biases associated with mental health concerns intersect with gender biases, fortifying allegations that women’s perceptions of reality are inaccurate and unreliable. In other cases, stereotypes may simultaneously be grounded in mental health biases and racism, and as a result, may be especially invisible and intractable. Future research could gather data about the frequency with which the mental health of the survivor is raised as an issue in DV cases compared with the frequency with which

²⁶ Rachel White-Domain, *The Movement to End Discrimination Against Parents with Disabilities & The End of the “Mental Health Factor”* (unpublished draft).

²⁷ *Id.*

the issue is raised in non-DV cases, as well as data on how other biases interact with stigma associated with mental health concerns in these cases.

An open comments box was provided under Question 2, and twenty-two lawyers elected to provide optional comments. Several themes emerged:

1. Abusers raise the survivor's mental health as an issue in cases in which the survivor has a history of mental health treatment and cases in which the survivor does not. Four lawyers commented that they observed a pattern in which mental health was raised as an issue both in cases in which their clients had a mental health treatment history and cases in which they did not. Two lawyers further clarified that, in some cases in which mental health is raised as an issue, the client had a history of receiving mental health treatment, but the mental health concerns were minor and would not have any impact on parenting.

- "Roughly 1/2 [of] my custody cases involve some claim of mental health issue[s], and in many of them there actually is a mental health issue but it either does not affect my client's ability to parent or only marginally affects it."
- "Most frequently, a true history of depression or bipolar disorder is used to claim my client is unable to parent, despite her clear ability to function well."
- "Sometimes the allegations against my clients have little basis in fact, like name-calling. Many other times, the allegations are based in fact such as the client having depression, suicidal ideation or past attempts, self-harm, or going to therapy."
- "Clients may have current or past diagnoses of mental illness, or the opposing party will just toss out the accusation to discredit the client."

Closely related to this, several additional lawyers commented that the opposing party's allegations were often vague, including allegations that the survivor is "crazy" or that the survivor has "a history of undiagnosed mental problems." Another lawyer stated that opposing parties used terms such as "dumb, irrational, too emotional, abusing drugs/alcohol."

One lawyer wrote that, in one case, the abuser became involved with the survivor's mental health treatment, resulting in inaccurate documentation that made a mental health condition appear considerably more severe than it was in reality. Notably, this tactic has also been reported by survivors who responded to the Mental Health Coercion Survey,²⁸ as well as anecdotally.

²⁸ Warshaw, *supra* note 16, at 8–9, 14–15.

2. Abusers frequently threaten to raise the survivor’s mental health as an issue, although the opportunity to actually do so may never arise.

Three lawyers commented that the abusive partner often threatens to raise mental health as an issue. This may happen more frequently than the issue is actually raised in court.

- “Often [opposing parties] threaten to raise it – in addition to or without ever needing to, raise it.”
- “Often batterers also tell their attorney that she is ‘crazy’ etc., so it is sometimes not raised in court but raised in conversation with opposing counsel.”
- “Client usually mentions that the abuser would say that the client is crazy.”

These comments indicate that the threat that mental health allegations will be raised in custody cases may impact a much larger number of cases than those that actually come close to or go to trial.

These comments also resonate with the finding from the Mental Health Coercion Survey that 50.2% of survivors reported that their partners had threatened to tell authorities they were “crazy” to keep them from getting something they wanted or needed, such as custody.²⁹

These threats may cause survivors to feel pressured to settle cases with custody and visitation arrangements that allow the abuser more contact with children than the survivor believes is safe, in order to avoid worse outcomes. These threats may also discourage survivors from leaving altogether, if they believe they may be at risk of losing custody. Although anecdotal evidence of these patterns exists, research is needed to document the extent of these issues.

3. Abusers sometimes raise the survivor’s mental health as an issue to deflect attention from or justify their own abuse.

Three lawyers commented that opposing parties sometimes claim that their partner has a mental health issue in an attempt to deflect attention from or justify their own abuse.

- “Abusers use my client’s mental health issues, whether existent or non-existent, as an excuse for their abuse.”
- “The usual defense is the survivor is crazy, is making this up, is on anti-depressants, and therefore a liar.”
- “This is a widely used explanation of the [opposing party’s] defense.”

²⁹ *Id.*

Again, this strategy was also reported by survivors who responded to the Mental Health Coercion Survey,³⁰ and has been documented anecdotally by lawyers and advocates.

Additionally, two lawyers mentioned the importance of whether the opposing party has representation. One lawyer reported that mental health was raised as an issue “both when the opposing party is represented by an attorney and when he is not.” Another lawyer stated that the allegations are more detailed when the opposing party is represented. Future research could further explore the differences in cases in which the opposing party is represented versus pro se, a distinction that was not made in the current survey.

No statistically significant relationship exists between the frequency with which lawyers reported representing survivors of DV (Question 1) and how often they reported that the opposing party raised the issue of the survivor’s mental health (Question 2).

3. HOW OFTEN DOES THE OPPOSING PARTY ATTEMPT TO ADMIT MENTAL HEALTH RECORDS INTO EVIDENCE?

Most lawyers (73.21%) reported that the opposing party attempts to admit the survivor’s mental health records in 0-25% of their cases. However, some lawyers said that this happens more frequently in their cases.

In these cases, how often does the opposing party attempt to admit your client’s mental health records into evidence? (N = 112)				
76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time
7 (6.25%)	8 (7.14%)	15 (13.39%)	68 (60.71%)	14 (12.50%)

A total of 73.21% of lawyers (82 lawyers) reported that the opposing party attempts to admit the survivor’s mental health records in 0%–25% of their cases. However, a total of 26.78% of lawyers (30 lawyers) said that the opposing party attempts to admit their client’s mental health records 26%–100% of the time.

Several possible explanations exist for why some lawyers reported that the opposing party attempts to admit client mental health records in a higher

³⁰ *Id.* at 8–9, 14–15.

proportion of their cases than other lawyers reported. Lawyers who reported more frequent attempts to admit mental health records may have caseloads that include more clients with a documented history of mental health treatment. This, in turn, may be the result of differences across agencies' intake policies or practices.

Another possible explanation is that lawyers who reported more frequent attempts to admit mental health records may have caseloads in which the opposing party is represented by an attorney more frequently, and therefore more capable of seeking to admit records and/or taking the case to trial.

Twenty-eight lawyers who responded to this question also submitted comments. Many of them explained why the opposing party only sought to admit records in a small portion of their cases. Several themes emerged.

1. In some cases, abusers do not attempt to admit records because no records exist to support the allegations. Two lawyers commented that records were often not introduced because they did not exist. Comments included the following:

- "The term crazy is often used but rarely supported."
- "[A] lot of the time the allegations have no merit."

The frequency with which mental health allegations are made against survivors without being substantiated may reflect the specifically gendered ways that women's mental health can be effectively called into question, even without evidence, particularly by male partners.

At the same time, it is important to note that a documented mental health history does not necessarily mean that an individual is not a capable parent. Survivors with some documented mental health treatment history may be most at risk of having their parenting disingenuously called into question.

2. Many cases settle before mental health records (if they do exist) can be offered into evidence. Three lawyers commented that the vast majority of cases do not go to trial, and thus, the opportunity to attempt to admit records simply does not arise. Two of these comments appear below:

- "[W]e reach settlements in the vast majority of cases. If we went to trial more often this number would likely be higher."
- "Almost no cases go to trial. [...] Often the custody evaluator knows nothing about DV and recommends custody to the abuser. Then the abused parent, usually the mother, is pressured by her attorney to settle, and she usually does. Often the settlement involves custody or

unsafe visitation to the abuser. There is rarely any truth behind the [sic]”³¹

In cases in which mental health records do exist, it is possible that their existence contributes to the pressure to settle the case. This is a question for future research.

3. In some cases, the opposing party is pro se and does not have the legal knowledge to attempt to introduce records into evidence. Three lawyers commented as follows:

- “Most often our opposing parties are pro se and don’t know how to obtain those records or try to admit them into evidence.”
- “Often parties are unrepresented and don’t necessarily know that they ‘could’ do that.”
- “In many of our cases the opposing party is unrepresented and generally does not attempt to admit evidence of our client’s mental health records.”

4. In some cases, mental health records are not offered into evidence by the opposing party but rather by Guardians Ad Litem (GALs). Two lawyers referred to GALs introducing records:

- “Opponents do this less often than guardians ad litem for the children.”
- “...the GAL is relied upon to obtain the records.”

Several lawyers also commented that the survivor’s mental health is often assessed by a custody evaluator or other professional appointed by the court.

4. HOW OFTEN ARE MENTAL HEALTH RECORDS ADMITTED INTO EVIDENCE?

Most lawyers (56.25%) said that records are successfully admitted in 0%-25% of cases. However, some lawyers (21.43%) said that this tactic is successful in more than half of cases.

A combined total of 56.25% of lawyers (63 lawyers) said that, when records were offered into evidence, they were successfully admitted in 0%-25% of their cases. However, a combined total of 21.43% of lawyers (24 lawyers) said that this tactic was successful in more than half of their cases (51%-100%).

³¹ This comment was unfinished.

When the opposing party attempts to admit your client's mental health records into evidence in these cases, how often are the records successfully introduced? (N = 112)					
76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time	Not applicable
15 (13.39%)	9 (8.04%)	8 (7.14%)	45 (40.18%)	18 (16.07%)	17 (15.18%)

Twenty-two lawyers who answered this question also submitted comments.

- 1. Lawyers were split on the question of how often records were admitted.** Comments submitted by lawyers reflected a strong split, with eight lawyers commenting that records were rarely admitted into evidence. Approximately six lawyers, however, commented that such records were relevant and admissible, for example, because the parent's mental health is a "relevant factor," "[g]oes to best interest," or is per se "at issue" in a custody case. This split may reflect jurisdictional differences, differences in how often the opposing party is represented, and/or differences in attorney competencies.
- 2. In some cases, survivors and their lawyers find it strategically preferable to agree to admission of records.** In responding to Question 3 and 4, five lawyers commented that it is sometimes strategically preferable to agree to the admission of a client's mental health records for a number of reasons:³²
 - "[I]n many cases we might not oppose them coming in; mental health is always an issue in custody cases and it's more successful to confront any issues than try to hide them."
 - "Sometimes, I get those records into evidence myself because they tend to prove the abuse occurred."
 - "We agreed to admit."
 - "We voluntarily agreed to do so on 1 or 2 occasions..."
 - "...we circumvent it, by agreeing to allow limited information in; i.e., a letter from the care provider or records of compliance with treatment."

As with many of the themes identified in comments by lawyers, the frequency with which lawyers find this tactic to be strategically beneficial—and under what circumstances—could be the subject of future research.

³² See Markham, *supra* note 10 (for litigation strategies using this approach).

3. In some cases, evidence of treatment is a positive factor for the court. Two lawyers commented that documentation that the survivor is receiving mental health treatment is sometimes a positive factor. This pattern has been noted by other litigators as well.³³

- "...For the most part, if my client is in treatment and able to care for the child, the court actually looks more favorably on my client..."
- "...I find that if a client is in treatment and working on their issues, they are in a much better position than someone who claims to have no issues and blames the other party."

5. HOW OFTEN DO SURVIVORS LOSE CUSTODY IN THESE CASES?

Approximately 40% of lawyers said that the opposing party is awarded custody in more than a quarter of cases in which the survivor's mental health is raised (26%-100% of the time).

Approximately 60% of lawyers said that the opposing party wins 25% of the time or less or *never* win custody (0%-25%).

When your client's mental health is raised as an issue in these cases, how often do judges award physical custody or more than half of parenting time to the opposing party? (N = 109)				
76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time
8 (7.34%)	10 (9.17%)	26 (23.85%)	52 (47.71%)	13 (11.93%)

A combined total of 40.36% of lawyers (44 lawyers) said that, in cases in which the survivor's mental health is raised as an issue, the opposing party is awarded custody or more than half of parenting time in more than a quarter of their cases (between 26% and 100% of the time). This number includes a total of 16.51% of lawyers (18 lawyers) who reported that judges award physical custody to the opposing party in more than half (51% or more) of these cases.

On the other hand, a combined total of 59.64% of lawyers (65 lawyers) reported that the opposing party is awarded custody or more than half of parenting time in 25% or less of these cases; this number includes attorneys who said the opposing party *never* wins custody.

³³ *Id.* at 30.

In response to Question 5, twenty-two lawyers submitted comments.

Some lawyers reported that judges in their jurisdictions understood domestic violence and mental health, while others reported that lack of understanding was a major problem in their jurisdiction.

Three lawyers stated that judges in their jurisdiction understood mental health, domestic violence, and/or other issues:

- “In the cases I have been involved in the judges have done a fair job of recognizing that this is just part of the pattern of manipulation and abuse.”
- “Judges usually understand that the [perpetrator] is the one who caused the mental health issues.”
- “Our judges are pretty good about focusing on the children and serving their best interests.”

On the other hand, two lawyers commented that judges in their jurisdictions were not skilled at handling these issues:

- “This is one of the worst problems battered women...face in the custody courts...[child abuse] is ignored, while the protective mother is viewed as hysterical, bi-polar, or something else that she is not.”
- Another lawyer commented that the survivor is often alleged to be the cause of “Parental Alienation Syndrome” in the children or of being overly enmeshed with the children and “the case is mostly over once she is saddled with those labels.”

What factors might explain differences in the frequency with which lawyers reported that judges award physical custody or more than half of parenting time to the opposing party?

Jurisdictional differences may help explain why lawyers reported different rates of losing custody to the abuser. These differences may include that some jurisdictions have a higher number of domestic relations judges who understand mental health and domestic violence than other jurisdictions.

Another possible explanation is that lawyers who reported infrequently or never losing custody in these cases may have caseloads that include survivors with less extensive mental health treatment histories, while lawyers who reported losing custody more frequently may have caseloads that include survivors with more extensive mental health treatment histories. These differences in caseload may reflect differences in firms’ or agencies’ policies or practices for accepting clients who report a mental health diagnosis or treatment history during intake.

Additionally, differences in losing custody to the abuser may also reflect differences in lawyer competencies, including working with culturally specific communities. Finally, as with any survey, participant perceptions may skew the data—lawyers may overestimate or underestimate how often the opposing party wins custody.

Lawyers who reported a higher frequency of the opposing party attempting to admit records were more likely to report a higher frequency of the opposing party winning custody.

We completed a cross-analysis (more specifically, a cross-tabulation with Pearson’s Chi-Square and a bivariate correlation) comparing results from Question 3 (“In these cases, how often does the opposing party attempt to admit your client’s mental health records into evidence?”) and Question 5 (“When your client’s mental health is raised as an issue in these cases, how often do judges award physical custody or more than half of parenting time to the opposing party?”).

To better discern differences between groups, we dichotomized responses to Question 5 into two variables: “Lawyers who reported that the opposing party wins custody 26% or more of the time” (N=44) and “Lawyers who reported that the opposing party wins custody 25% or less of the time” (N=65).

We then compared the answers these two groups gave in response to Question 3.

	How often the opposing party attempts to admit your client’s mental health records into evidence					Total
	76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time	
Custody awarded to the opposing party 26-100% of the time	5 (11.4%)	6 (13.6%)	6 (13.6%)	26 (59.1%)	1 (2.3%)	44 (100%)
Custody awarded to the opposing party 0-25% of the time	1 (1.5%)	2 (3.1%)	9 (13.8%)	42 (64.2%)	11 (16.9%)	65 (100%)

We found that there is a significant relationship between attempts to admit a survivor’s mental health records into evidence and the ultimate custody decision [$X^2(12, N=109) = 55.1, p < .000$]. A bivariate correlation revealed that reporting higher frequency of losing custody to the opposing party was significantly associated with reporting higher frequency of the opposing party attempting to introduce records [$r(107) = .28, p < .01$].

We also compared the results from Question 4 (admission of records) with the results from Question 5 (opposing parties winning custody). Results approached but fell short of statistical significance.

6. HOW OFTEN DO JUDGES STATE THAT THE “MENTAL HEALTH FACTOR” IMPACTED THEIR DECISION?

Almost 25% of lawyers said that judges state that mental health influenced their decision in more than half of cases.

Over 60% of lawyers reported that judges state that mental health influenced their decision in half of cases or less.

As the chart below indicates, a combined total of 61.47% of lawyers (67 lawyers) reported that, when the judge awards custody to the opposing party, the judge states, either on or off the record, that mental health influenced the decision 50% or less of the time. However, a combined total of 24.85% of lawyers reported that, when the judge awards custody to the opposing party, the judge states that mental health was a reason influencing the decision 51% of the time or more.

Notably, almost 15% of lawyers reported that this question was “Not Applicable.”

When judges award physical custody or more than half of parenting time to the opposing party in these cases, how often do they state (on or off the record) that your client’s mental health was a reason influencing their decision? (N = 109)

76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time	Not applicable
15 (13.76%)	11 (10.09%)	13 (11.93%)	37 (33.94%)	17 (15.60%)	16 (14.68%)

Differences in how often judges state that mental health impacts their decision may merely represent differences in individual or jurisdictional practice with regard to documentation of reasons impacting a decision in general. One lawyer commented that the mental health factor is a best interest factor and that “[a] finding of this fact will be written in a decree/custody order 100% of the time.” On the other hand, another lawyer stated, “Most of the time they don’t give a reason,” and another stated, “I am personally not aware of any of our cases in which the judge makes a statement pertaining to our client’s mental health.”

When a judge does not state that a survivor’s mental health was a factor impacting the decision, it does not follow that this factor did not influence the decision—it may or may not have. However, the percentage of cases in which the judge affirmatively states that mental health is a factor influencing their decision should represent the minimum percentage of cases in which this is true.

It is also worth noting that, if a judge does not document in the record that a party's mental health was a factor influencing the decision, it is more difficult to file an appeal on the basis that this factor was improperly considered because no evidence exists.³⁴ Of course, an appeal from a custody case is extremely rare. The vast majority of cases do not go to trial, much less to appeal. However, those cases that are appealed may result in case law that impacts a wide range of cases, including cases that are not appealed and those that do not even go to trial.

7. HOW OFTEN DO ATTORNEYS BELIEVE THAT THE "MENTAL HEALTH FACTOR" IMPACTS JUDGES' DECISION?

Almost 45% of lawyers said that they believed that mental health is an unstated reason influencing judges' decisions to award custody to the other party in 51% or more of their cases.

Almost 40% said that they believed it is an unstated reason in 50% or less of their cases.

A total of 44.96% of lawyers (49 lawyers) reported that they believed that, when custody is awarded to the opposing party, the survivor's mental health is an unstated reason influencing that decision in more than half (51% or more) of their cases. A total of 39.44% of lawyers (43 lawyers) said that they believed that, when custody is awarded to the opposing party, the survivor's mental health is an unstated reason influencing that decision 50% or less of the time.

³⁴ Thus, one strategy used in those jurisdictions that have modified their best interest statutes to discourage discrimination against parents with disabilities has been to require judges to provide their reasons for considering the mental and physical health of the parties on the record. NAT'L COUNCIL ON DISABILITY, *ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN*, 137-56 (2012)
http://www.ncd.gov/rawmedia_repository/89591c1f_384e_4003_a7ee_0a14ed3e11aa.pdf.

When judges award physical custody or more than half of parenting time to the opposing party in these cases, how often do you believe that your client's mental health was an <u>unstated</u> reason influencing that decision? (N = 109)					
76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time	Not applicable
25 (22.94%)	24 (22.02%)	14 (12.84%)	22 (20.18%)	7 (6.42%)	17 (15.60%)

Again, 15.60% of lawyers (17 lawyers) stated that this question was "Not applicable."

Differences in how often lawyers reported that they believe the mental health factor influences judges' decisions may reflect jurisdictional differences and/or differences in caseload characteristics. Additionally, this question is subjective. Attorneys may believe that the survivor's mental health is an unstated reason influencing a judge's decision more or less frequently than that is happening in reality.

The chart below compares answers from Questions 6 and 7.

How often do judges say that mental health impacts their decision (Question 6)?	How often do lawyers believe that mental health is an unstated reason impacting judges' decision (Question 7)?	
24% of lawyers said...	45% of lawyers said...	in 51%-100% of cases
46% of lawyers said...	33% of lawyers said...	in 1%-50% of cases
16% of lawyers said...	6% of lawyers said...	in 0% of cases
15% of lawyers	15% of lawyers	N/A

We completed a cross-analysis (more specifically, a cross-tabulation with Pearson’s Chi-Square and a bivariate correlation) comparing the results from Question 5 and Question 7. Question 5 asked, “When your client’s mental health is raised as an issue in these cases, how often do judges award physical custody or more than half of parenting time to the opposing party?” Question 7 asked, “When judges award physical custody or more than half of parenting time to the opposing party in these cases, how often do you believe that your client’s mental health was an unstated reason influencing that decision?”

To better discern differences between groups, we dichotomized responses to Question 5 into two variables: “Lawyers who reported that the opposing party wins custody 26% or more of the time” (N=44) and “Lawyers who reported that the opposing party wins custody 25% or less of the time” (N=65). This dichotomized version of Question 5 was used in this cross-tabulation.

	When judges award physical custody or more than half of parenting time to the opposing party, how often do you believe that your client’s mental health was an unstated reason influencing that decision?					
	76-100% of the time	51-75% of the time	26-50% of the time	1-25% of the time	0% of the time	Total
Custody awarded to the opposing party 26-100% of the time	18 (40.9%)	17 (38.6%)	2 (4.5%)	6 (13.6%)	1 (2.3%)	44 (100%)
Custody awarded to the opposing party 0-25% of the time	7 (14.9%)	7 (14.9%)	12 (25.5%)	16 (34.0%)	5 (10.6%)	47 (100%)

We then compared the answers these two groups gave in response to Question 7.

We found that there is a significant relationship between attorneys’ beliefs that their client’s mental health was an unstated reason influencing a custody decision and having custody awarded to the opposing party [$X^2(4, N=91) = 23.3, p < .000$]. A bivariate correlation found that the opposing party winning custody is significantly associated with lawyers reporting that they subjectively believed mental health impacted these decisions [$r(89) = .56, p < .000$].

The data show that 79.5% of lawyers who said that, when mental health is raised, the judge awards custody to the opposing party in more than a quarter (26%-100%) of their cases, also said that they believe that their client’s mental health is an unstated reason influencing that decision in more than half (51%-100%) of these cases.

In contrast, only 29.8% of lawyers who said that, when mental health is raised, the judge awards custody to the opposing party in 25% or less of their cases, also said that they believe that their client’s mental health is an unstated reason influencing that decision at least half (51%) of the time.

There are several possible explanations for this pattern. Most consistent with a hypothesis that stigma associated with mental health concerns impacts DV custody cases, it is possible that lawyers who lost custody more often did so because judges in their jurisdiction tended to find litigants' mental health histories to be more relevant to the ultimate custody decision than the judges in the jurisdictions of the lawyers who lost custody less often. In other words, in some jurisdictions, raising the mental health of the survivor may be a more effective tactic than in other jurisdictions.

On the other hand, it is possible that the perceptions of attorneys in these two groups may differ—with lawyers who reported losing custody more frequently being more likely than lawyers who reported losing custody less frequently to believe that they are losing due in part to the mental health factor.

PART III: LIMITATIONS OF THE DATA

One of the limitations of this survey is that the small number of questions asked greatly oversimplifies the complex issues involved. For example, the questions group together cases in which the opposing party is pro se and cases in which the opposing party is represented by an attorney, despite the fact that these cases may proceed very differently.

Additionally, this survey asked questions that assumed that cases are proceeding to trial. However, the vast majority of cases settle. Several lawyers' comments reflected this:

- One lawyer stated that they could not recall a case in which the judge had awarded the opposing party custody but stated, the "client's mental health issues often lead to a greater motivation to settle or to otherwise give [the] abuser more visitation than desired."
- Another lawyer stated that if the evidence of abuse was extensive, the opposing party would not win custody. However, "...if opposing party is claiming my client has mental health issues, and we are claiming domestic violence, we might reach settlement..."

This suggests a need for additional research on the impact of mental health allegations or the anticipation of mental health allegations on settlement in DV custody cases.

The decision to include a small number of questions was based on a strategic hope that limiting the number of questions would increase the number of responses. As explained in Part I, both key stakeholders and research experts provided compelling input that a higher number of questions would substantially reduce our response rate (including total number of participants, and the rate of completion of the full survey), particularly given that the survey was voluntary; uncompensated; administered independently of any ongoing relationship or programming; and administered to attorneys, many of whom were expected to be engaged in the full-time practice of law.

For these reasons, this survey may ultimately raise more questions than it answers. Hopefully, this survey can help to inform future research.

There are also some reasons why the data collected may represent a conservative estimate of how often the mental health factor is raised against survivors in DV cases, how often the outcome of the case is that the abuser has custody or substantial visiting or parenting time, and how often the mental health factor may have impacted that outcome.

First, the data collected in this survey are not representative of the cases of all survivors but survivors who are represented by a lawyer. In reality, most litigants in custody matters, including DV survivors, are not represented by an attorney. Unrepresented parties may be less able to defend themselves against negative allegations, particularly if the opposing party is represented, and in fact, abusive partners are more likely to be represented than survivors.³⁵

Furthermore, the survivors who have been represented by the lawyers who completed this survey were, at some point, accepted for representation, whether through a legal aid organization's intake process or by a private lawyer or firm. It is possible that intake procedures may screen out survivors whose documented history of a mental health condition may decrease the likelihood that they will be able to win custody.

For these reasons, this survey may reflect a subset of cases of survivors who are better positioned, as a group, than survivors involved in custody cases as a whole.

Finally, this survey asked about cases in which the judge awarded custody or more than half of parenting time to the other party—a major loss. However, as demonstrated in the comments submitted by lawyers, in many of these cases, the abuser is often denied custody but awarded visitation in a way that the survivor considers to be unsafe for the children. For example, one lawyer commented, "While the abusive parents don't often get primary custody, they increasingly get shared custody or at least much less protective parenting time than seems appropriate given the allegations of abuse."³⁶ Despite these realities, the current survey was not designed to capture the impact of mental health allegations on visitation arrangements. Additionally, as described above, many cases settle; however, the present survey did not inquire into the impact of mental health allegations on the likelihood of settlement—it is possible that mental health allegations increase the rate of settlement under terms that the survivor does not think is sufficiently safe for children. All of these issues are ripe for future research.

³⁵ Mary Przekop, *One More Battleground: Domestic Violence, Child Custody, and the Batterers' Relentless Pursuit of their Victims Through the Courts*, 3 SEATTLE J. SOC. JUST. 1053, 1062 (citing Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145, 169–170 (2003) (citing the ABA Network, ABA Commission on Domestic Violence, Statistics, <http://www.abanet.org/domviol/stats.html>)).

³⁶ This comment was submitted under the Additional Comments section.

PART IV: CONCLUSION

This research is motivated by the hypotheses that stigma and the accompanying widespread discrimination against people who have mental health concerns has far-reaching implications for the safety of DV survivors and their children, and that allegations of concerns pertaining to the survivor's mental health treatment and diagnosis history, although often disingenuous, may be one of the contributing reasons why abusive partners are sometimes still awarded custody or unsafe visitation.

Although limited, the findings from this survey suggest that it is extremely common for abusers to raise the survivor's mental health as an issue in a custody case. Importantly, lawyers commented that this occurs both in cases in which the survivor has a mental health history and cases in which the survivor does not.

Most lawyers reported that it is relatively uncommon for these claims to be supported by attempts to admit mental health records. However, a higher number of attempts to admit records was associated with a higher frequency of losing custody.

Most lawyers reported that survivors still won custody in most cases in which their mental health was raised as an issue. However, other lawyers reported that survivors lost custody in some of these cases. Furthermore, lawyers who reported losing custody more frequently were also more likely to report that they believed mental health impacted these decision.

Further research is needed to fully understand the intersection of mental health and DV in the context of custody cases. It is our hope that the present survey will inspire more research and analysis, and ultimately, that a better understanding of these issues will help inform policy recommendations that will increase the safety and well-being of survivors and their children.

The National Center on Domestic Violence, Trauma & Mental Health provides training, support, and consultation to advocates, mental health and substance abuse providers, legal professionals, and policymakers as they work to improve agency and systems-level responses to survivors and their children. Our work is survivor defined and rooted in principles of social justice. With questions or comments about this report, please contact Rachel White-Domain, JD, at rwhitedomain@ncdvtmh.org.