

“How they look at it is not how I lived it”: How Research, Policy, and Practice Regarding Family  
Court Child Custody Decision-making Erase Experiences of Intimate Partner Violence

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**Abstract**

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Approximately 10-15% of separating families have contested child custody arrangements that require dispute resolution (mediation and/or litigation) with 40-80% of those cases involving intimate partner violence (IPV) allegations. For families that require dispute resolution, courts have substantial intervention and decision-making power regarding child custody. Guided by an intersectional, critical framework, this three-paper dissertation examines the institution of contemporary family courts, which have positioned themselves as neutral arbiters in custody conflicts despite evidence to the contrary. This dissertation interrogates how the structural and ideological underpinnings of family court influence knowledge, processes, and outcomes – from determining what becomes codified in law, to formal and informal standards of practice, and

subsequently, the patterns of response to individuals who are court-involved. The overarching aim is to study the ways in which inequities may be perpetuated through institutional processes as courts respond to child custody cases involving IPV. Doing so sheds light on ways to redress inequities currently produced and reproduced via the courts and identify potential targets for reform at the institutional and policy level. Paper one is a critical review of literature, focused on identifying the evidence, policies and practices that guide custody decision-making in cases involving IPV, and influence how IPV is viewed by the courts. Paper two is a conceptual analysis of the prevailing custody standard applied by courts -- determining what is in the “best interest of the child” (BIC). This paper examines whether and how applying an intersectional lens to the BIC standard reveals previously unarticulated inequities in family court processes when IPV is alleged, across identities of motherhood, gender, race, and class. Paper three is a qualitative examination of how IPV survivors engaged in mothering within the constrained context of ongoing IPV and custody disputes, and how institutional responses to their mothering reflect structural biases and institutional norms in the application of the BIC standard. Together, findings across these studies underscore the critical need for empirical research on child custody determination processes, decisions, and outcomes for families experiencing IPV to guide policy and practice. Evident from this dissertation were the unacknowledged (racialized, classed, and gendered) assumptions about motherhood/fatherhood and IPV that underly custody determinations, and the disparate impact this can have on marginalized families. This points to the need for an intersectional approach to research, policy, and practice in this area. Specifically, for family courts and other interconnected institutions (e.g., child welfare) to be true to mandates of justice and representing children’s best interests, they will need to interrogate current structures, standards, and assumptions and develop responsive policies and practices that aim to

rectify inequities. As this dissertation illustrates, in their efforts to achieve what they believe to be equality, the courts erase IPV and its dynamics, with inequitable outcomes for marginalized families.

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## **DEDICATION**

Engaging in research and practice related to intimate partner violence and child maltreatment can be profoundly difficult, humbling, infuriating, and heartbreaking. What has always sustained me are the individuals whose stories and experiences I have been privileged to hear, and which have become part of my understanding of these issues. I dedicate this dissertation to survivors – to their strength, resilience, and resistance. In particular, I dedicate this dissertation to H.S.S., R.S., and E.S. May you experience some ease amongst the ache and know, you are loved and far stronger than you should ever have to be.

## INTRODUCTION

Separating and divorcing families are often required to engage family courts regarding post-separation parenting arrangements (Beeker & Holdorf, 2019). Approximately 10-15% of separating families have contested child custody arrangements that require dispute resolution (mediation and/or litigation) with 40-80% of those cases involving intimate partner violence (IPV) allegations (Beck et al., 2010; 2013; Logan et al., 2002; Saini & Polack, 2019). For families that require dispute resolution, courts have substantial intervention and decision-making power regarding child custody.

The prevailing standard for determining child custody, the “best interest of the child” (BIC) standard, lacks specificity and confers broad discretion to judges acting on behalf of the courts. In contentious cases, the courts often order parenting evaluations, assessments completed by professionals, which weigh heavily in custody decisions. These evaluations, and the experience and qualifications of the professionals who conduct them, differ widely across states and jurisdictions (Stahl & Martin, 2013). Complicating an already difficult process, many professionals involved in the evaluation and decision-making process lack accurate and sufficient knowledge of IPV and may be influenced by individual and institutional biases, and political advocacy aimed at shaping their perceptions of appropriate decisions in cases involving IPV (Saunders et al., 2016; Alschech & Saini, 2019). Adding to this complexity are differences among researchers and practitioners (e.g., psychologists, judges, attorneys) regarding their conception of IPV as gendered (or not), how prevalent it is in custody disputes, and what weight it should be given (e.g., Dutton et al., 2010; Johnson, 2006; Kelly & Johnson, 2008).

The courts, in their role deciding child custody, have the power to determine the structure of separating families. In cases of IPV, they also have the power to facilitate or impede

perpetrators' access to adult and child survivors, making physical and emotional safety a factor. Yet, research on child custody is limited, and even more limited is research specific to custody for families experiencing IPV. Despite increased attention to the topic of child custody determination in practice, policy, and research beginning in the 1980s, the only known review of the literature found one article specific to custody determination in cases of IPV (Bow, 2006). This review noted the lack of empirical evidence underlying the determination and decision-making process and outcomes for families following such decisions (Bow, 2006). Furthermore, despite evidence suggesting IPV is common within contested custody cases, courts do not systematically screen for IPV, and court decision-makers maintain the view that IPV is rare, and therefore not often relevant to custody determinations (Bow & Boxer, 2006; Bow et al., 2009; Meier, 2021; Saunders et al., 2013; 2016). This is troubling, as ongoing abuse and harassment, often via court processes and at child exchanges, continues to be reported by IPV survivors, suggesting the need for explicit attention to IPV and a response by the courts that takes matters of safety into account (e.g., Khaw et al., 2021; Miller & Manzer, 2018).

The challenges of addressing IPV in custody cases are compounded by the additional presence of gender bias in family courts (Dragiewicz, 2010). Gender bias is especially concerning in the context of broad discretion over custody outcomes, and high occurrence of IPV allegations, as IPV is itself a gendered phenomenon (see e.g., Anderson, 2005; Ferraro, 2012). Within the context of broad judicial discretion, unintended bias along dimensions of social identities such as race, class, and sexuality are likely also present. Furthermore, custody decisions and the processes that lead to them, are embedded within an institutional context that is itself imbued with structures, values, and assumptions that disadvantage those holding multiple marginalized identities. Yet very few scholars have used an explicitly intersectional approach to

address this topic, instead employing an exclusive gender focus (Durfee, 2021; MacDowell, 2013).

Guided by feminist-intersectional, critical frameworks – which I detail further in the next section - this three-paper dissertation examines the institution of contemporary family courts, which have positioned themselves as neutral arbiters in custody conflicts despite evidence to the contrary. This dissertation interrogates how the structural and ideological underpinnings of family court influence knowledge, processes, and outcomes – from determining what becomes codified in law, to formal and informal standards of practice, and subsequently, the patterns of response to individuals who are court-involved. The overarching aim was to study the ways in which inequities may be perpetuated through institutional processes as courts respond to child custody cases involving IPV. Doing so will shed light on ways to redress inequities currently produced and reproduced via the courts and identify potential targets for reform at the institutional and policy level.

To this end, the first paper is a critical scoping review of the literature focused on understanding and critically analyzing the evidence, policies, and practices that guide custody decision-making in cases involving IPV, and influence how IPV is viewed by the courts. Scoping reviews are particularly useful for mapping an area of literature and describing the concepts that underpin that research (Peters et al., 2021). They are also useful for identifying research gaps and areas for future research. One prior review (Bow, 2006) found an overall lack of empirical evidence regarding child custody determinations, and almost no attention to IPV. This scoping review focuses specifically on the issue of custody when IPV is present and examines the guidance evident in the extant literature as to what factors should be considered by decision-makers in such cases. In addition to the descriptive summary and qualitative synthesis

of the literature common to scoping reviews, is a critical approach that adds the important dimensions of relationships of power, and structural influences on our understanding of this guidance. Considering the explicit criteria evident in the literature within the institutional context of the courts, provides insight into what might be driving institutional level practices, or where practice and scholarship diverge.

Paper two is an intersectional analysis of the prevailing custody standard applied by courts -- determining what is in the “best interest of the child” (BIC). This paper examines whether and how applying an intersectional lens to the BIC standard reveals previously unarticulated inequities in family court processes when IPV is alleged, across identities of parenthood, gender, race, and class. The analysis builds on arguments of feminist legal scholars suggesting the gendered nature of custody decisions result in disadvantages for mothers, to include multiple intersecting marginalized identities, and consider courts’ evaluation of parents in relation to one another. Grounded in the findings of this intersectional analysis, paper two offers next steps to move us closer to envisioning solutions that meet the needs of diverse families and considers this in relation to what we know about what is in the best interest of children who have been exposed to IPV.

Although an exclusive focus on gender misses the ways that court structures are also, for example, racialized and classed, a gendered approach is needed. The majority of IPV survivors facing contested custody in family court are mothers, and in addition to the evidence of gender bias within courts (Drageiwicz, 2010), is consistent evidence of this bias from qualitative research with survivors. Across studies which take a gendered approach, findings suggest courts often fail to meaningfully consider IPV, are lenient towards fathers, and at times punishing towards mothers claiming abuse (Bemiller, 2008; Khaw et al., 2021; Kernic et al., 2005; Laing,

2017; Meier, 2021; Miller & Mazar, 2018). However, what we do not understand is *how* institutional biases show up in specific custody cases to reproduce inequities for mothers along several intersecting and marginalized identities (e.g., gender, race, and class).

Drawing on intersectional frameworks and maternal theory (Collins, 1990, O'Reilly, 2019), the third paper in this dissertation uses reflexive thematic analysis (Braun & Clarke, 2022) to examine secondary qualitative interview data from survivor-mothers who have reported a negative custody outcome via the courts. Analyses examined mothering among survivors facing custody determinations by the courts, and how court responses to mothers reflected institutional biases. This paper expands on existing literature demonstrating institutional biases against mothers experiencing IPV, to examine whether and illustrate *how* courts reflect and reproduce broader cultural values and expectations of mothers regarding gender, race, and class.

### **Theoretical underpinnings**

The three dissertation papers are broadly unified by critical-feminist intersectional frameworks, the social ecological model, and systems theories.

A critical-feminist intersectional lens highlights the existence of hierarchies of power related to identities such as gender, race, and class that intersect and operate, often invisibly, in every aspect of social interaction (Collins & Bilge, 2020). From an individual perspective, intersectionality suggests individuals' multiple intersecting identities shape their opportunities and experiences via relationships of those identities to broader systems of oppression (e.g., racism, heterosexism) (Collins, 1990).

Given the focus on families in child custody decision-making, we also draw on family systems theory, which recognizes the interdependent nature of familial relationships, particularly

the parent-dyad and parent-child relationships (Belsky, 1981). Also inherent in these relationships, is differential access to power and resulting experiences of privilege and oppression for individuals within the family unit, a fact important for considering the complex nature of IPV dynamics. Social ecological models suggest these power-related differences extend to relationships outside the family as well. In short, these dynamic and interdependent family systems exist within communities and societies, and hierarchical power is inherent within and across all these levels. In the case of child custody, families also interact within family courts, which represent a unique institutional context also subject to relational and hierarchical power dynamics and existing within broader structures.

Further, we are guided by the four aims of intersectional research articulated by Reed et al. (2021): “increasing justice, identifying forces that create and sustain injustice, [which are] complexly embedded in interacting systems of power that work across system levels, and vary across contexts” (151 - 152). Only by acknowledging the historical and structural inequities favoring cisgender heterosexual white elite men, and purposefully applying an intersectional lens can we illustrate that (and understand *how*) courts reproduce inequities along intersecting dimensions of parenthood, race, class, and gender in child custody cases. This is a necessary first step to addressing these inequities and designing more just reform efforts. Thus, we aim to identify how research, policy, and practice reflect and reproduce broader societal inequities through the institution of the family court in matters of child custody involving IPV.

### **Social work relevance**

Child custody decision-making in cases of IPV brings together several interconnected social issues and subsequent lines of inquiry in social work research, each with relevance for

social policy and social work practice. First, the topic centers on child and family wellbeing, and experiences of violence and abuse within the family context. Child welfare is a hallmark area of focus for social work scholars and social work practice. Arguably, determinations within family courts have significant bearing on child welfare matters and the presence of IPV and often-co-occurring child maltreatment affect the physical and emotional safety of children and the entire family unit (Holt et al., 2008; Mariscal, 2020; Wolfe et al., 2003). Furthermore, IPV is a widespread social problem with harmful effects that are experienced differentially across social identities (Leemis et al., 2020; Kelly et al., 2022). Those occupying multiply marginalized identities are at greater risk for IPV and often have inadequate access to social responses to and supports for IPV (Cho et al., 2017; Cheng et al., 2020; Leemis et al., 2020; Morgan et al., 2016; Walters et al., 2013). Experiences of IPV also have negative direct and indirect implications for individual, family, and societal wellbeing.

This dissertation has particular relevance to social work as it represents a critical study of equitable access to justice and just social policies. As such, evidence from the dissertation could be used to inform social work practice across all levels. Social work practitioners may be directly involved in child custody evaluations, court-based interventions, and supports for families facing contested child custody. Furthermore, they could be in positions that either directly or indirectly (e.g., through work in an intersecting system) make, implement, or reform policy and practice regarding child custody and/or IPV. Therefore, these practitioners need to better understand the policies and practices within the court as an institution and the implications they have for families, especially those who are marginalized and experiencing IPV.

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PAPER 1:  
FACTORS ASSOCIATED WITH CHILD CUSTODY DETERMINATIONS WHEN IPV IS  
ALLEGED: A CRITICAL SCOPING REVIEW

**Introduction**

Separating and divorcing families are often required to engage family courts regarding post-separation parenting arrangements (Beeker & Holdorf, 2019). Some families (10-20%) end up in contentious scenarios triggering more court oversight, including mediation and/or litigation (Polak & Saini, 2019). In contentious cases, the courts often order parenting evaluations, assessments completed by professionals, which weigh heavily in custody decisions. These evaluations, and the experience and qualifications of the professionals who conduct them, differ widely across states and individual jurisdictions (Stahl & Martin, 2013). Many families in contentious custody cases also report experiences of intimate partner violence (IPV) (40-80%), complicating an already difficult evaluation process (Beck et al., 2010; 2013; Logan et al., 2002). Adding to this complexity are differences among researchers and practitioners (e.g., psychologists, judges, attorneys) regarding their conception of IPV as gendered (or not), how prevalent it is in custody disputes, and what weight it should be given (e.g., Dutton et al., 2010; Johnson, 2006; Kelly & Johnson, 2008).

Despite the power of custody decisions to determine the structure of separating families, and the responsibility to ensure safety in cases of IPV and what is often co-occurring child maltreatment (CM), research in this area is limited. There is a dearth of empirical research on child custody decision-making, and even more so, research on child custody when IPV is present. In one of the only known reviews, Bow (2006) examined the empirical research on child

custody practice which laid out the current (for the time) state of research over a period of 20 years. As Bow (2006) notes, the period covered by the review (mid 1980s - 2006) represented a time of increased attention to issues of child custody determination in practice, policy, and research. While this review covered the topic of custody evaluation more broadly, the author found only one empirical study (Bow & Boxer, 2003) that focused specifically on IPV (Bow, 2006).

This is troubling, as ongoing abuse and harassment, often via court processes and at child exchanges, continues to be reported by IPV survivors, suggesting the need for explicit attention to IPV and a response by the courts that takes matters of safety into account (Khaw et al., 2021; Miller & Manzer, 2021; Rivera et al., 2012; Zeoli et al., 2013). To be sure, conducting research in the courts, with families experiencing IPV, and especially follow-up studies that track families' months or years after decisions are made, is extremely difficult (Beck et al., 2009). Another challenge may be that professionals from diverse fields such as law, social work, and psychology, and advocates for child and adult survivors are involved in custody evaluation and decision-making. Differences in values, norms, and approaches of these professions may be at odds in these cases. A critical approach to the literature adds the important dimensions of relationships of power, and structural influences to examining the explicit criteria for decision-making put forward in the literature. Identifying and examining the explicit guidance on decision-making within the context of the institution of the courts, may provide insight into what might be driving institutional level practices, or where practice and scholarship may diverge. This insight is important for envisioning upstream solutions that target systems rather than individual level change and prevent courts – even if inadvertently -- from perpetuating harms on already vulnerable families.

The aims of this scoping review were to: 1) understand the scope of the published literature across disciplines and source types related to child custody decision-making in cases involving IPV, 2) synthesize and critically examine the interdisciplinary guidance, and specific criteria for decision making in these cases, present in the literature, and 3) assess the degree of coherence of the guidance in published literature on decision-making across disciplines and sources, and how structures of power might influence what guidance takes precedence.

## **Literature Review**

### **Family courts and child custody**

Child custody refers to the legal decision-making authority and physical custody and access arrangements for a child, often between two biological and or legal parents whether ever married or not. Parents can share, equally or by some other partial means (joint or sole), legal and/or physical custody of a child. The “best interest of the child” standard urges courts to decide custody of children based on what is best for the child(ren) with little specification as to what factors should be considered, giving broad discretion to judges and little guidance for application (Scott & Emery, 2014). In the absence of more explicit and formal guidance, court decision-makers rely on informal norms that often reflect foundational values of the court and/or the influence of outside “expertise” (e.g., from research or advocacy). One example is the “friendly parent” doctrine, codified in at least 32 states, prioritize awarding custody to the parent who will be most likely to promote a relationship between the child(ren) and the other parent and facilitating contact to this end (Dore, 2004; Saunders & Oehme, 2007).

Conflict among researchers, practitioners, and advocates stemming from this doctrine include the expectation that victims of IPV facilitate contact in the face of serious concerns for

their children, and the highly contentious issue of parental alienation. Parental alienation refers to an aligned parent's culpability in promoting, or facilitating the rejection of the non-preferred parent, an issue that maintains contested status both in terms of its conceptual and empirical validity (Warshak, 2020). A complete accounting of this conflict and evidence on either side is beyond the scope of this article. However, its prominence and the veracity of claims<sup>1</sup> on both sides are important contextual factors for consideration of what drives decision-making in custody cases. Another concept foundational to family law that factors into determinations of child custody is the fundamental right of parents to parent their children without intrusion of the state (Hamilton, 2006). The high caseloads and lack of expertise among judges regarding child development and family functioning have resulted in courts relying on mental health practitioners (especially PhD psychologists) to evaluate and determine the best custody arrangement in contested cases (Bow & Boxer, 2003; Saunders et al., 2016).

### **Child custody and IPV**

Experiences of IPV are a common catalyst for separation, and those experiencing IPV often must turn to the courts to formalize postseparation parenting arrangements (Becker & Holdorf, 2019). In fact, IPV is common in separating families, especially those who are engaged in contested custody disputes in family court (Beck et al., 2010; 2013; Logan et al., 2002). Many, but not all children exposed to IPV, experience negative impacts to their social, emotional, behavioral, and cognitive development, and overall health across developmental stages (Fogarty et al., 2019; Howell et al., 2016). This can occur via witnessing, direct harm, and via the impact of IPV on parenting (Marshall et al., 2019; Sousa et al., 2022). Co-occurring IPV and child

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<sup>1</sup> Warshak (2020) summarizes some of the more sensational aspects of this conflict including threats of bodily harm, professional sanctions, and online harassment of professional for their stance on alienation and the prominence of first-hand accounts (on both sides) and associated distribution of information often via the press, social media, and self-published materials.

maltreatment are common, and in some cases amplify the negative outcomes for children, yet intervention (especially early) with children and non-violent caregivers can mitigate these effects (Carpenter & Stacks, 2009; Sousa et al., 2022; Wolfe et al., 2003). Further, parental separation and family reformation are themselves disruptive and often temporarily negatively impact child development, absent exposure to parental IPV (Hetherington, 1989; Hetherington & Stanley-Hagan, 1999). If, as limited information suggests, many custody disputing families are also experiencing IPV, the implications for children could be compounded (Jouriles et al., 2018).

Further, for some families where there is IPV, separation is a time of increased risk for escalated violence (Rezy, 2020) and many survivors experience ongoing harassment, stalking, and abuse, often via contact related to children (Zeoli et al., 2013). Children's own accounts evidence fear, anger, confusion, and experiences of ongoing abuse – both direct and via exposure to abuse of their mothers (Rogers et al., 2022; Shorey et al., 2023). As such, all states require IPV be considered in custody determinations, but do not specify what weight it should be given (Saunders & Oehme, 2007). Over time, professional organizations have provided specific guidance on handling IPV in the context of child custody (e.g., Association of Family and Conciliation Courts, 2005; 2022; National Council of Juvenile and Family Court Judges, 1994; 2022). This is important, as family courts, in their role determining private child custody cases, may be the primary site for responding to accusations of both IPV and child maltreatment (CM) (Meier & Sankaran, 2021). Yet, attention to systems-level coordination and solutions to issues of IPV and CM in the custody context are lacking despite actions toward coordination between IPV and child welfare services (e.g., The Greenbook, and the Safe and Together Institute) (Meier & Sankaran, 2021). Instead, many decision-makers maintain the belief that IPV is rare and therefore often unimportant to custody decisions (Bow et al., 2009; Saunders et al., 2016).

Furthermore, most court reforms aimed at increasing IPV competence and providing guidance to decision-makers are focused on individual actors. These solutions fail to address the prevalence and significance of IPV in the custody context, by maintaining it is the exception and therefore does not warrant systems-level changes (Elizabeth et al., 2012).

### **Guiding theory and frameworks**

This scoping review aims to synthesize across disparate literatures to identify explicit guidance provided to decision-makers in child custody cases involving IPV and to examine this within the institutional context of the courts, including the often-implicit influence of broader structures and unspoken assumptions. This goal is inextricably tied to our understanding of families, the courts, and IPV. Whether IPV is a gendered phenomenon is contested by scholars and practitioners, preventing clarity over the role of gender and IPV in custody decision-making. This fissure contributes to confusion and adversarial exchanges among those seeking to inform and reform the custody decision-making process. Taken together, these factors suggest the need for explicit recognition of the conceptual and theoretical underpinnings of our investigation and analysis, and lenses through which we interpret the data summarized in our qualitative thematic analysis (TA) of the literature (Braun & Clarke, 2022).

We draw on family systems theory, which recognizes the interdependent nature of familial relationships, particularly the parent-dyad and parent-child relationships (Belsky, 1981). Also inherent in these relationships, is differential access to power and resulting experiences of privilege and oppression for individuals within the family unit. These power-related differences extend to relationships outside the family as well, including in relationship to systems such as the family courts. Therefore, we bring a critical feminist-intersectional lens to this review,

highlighting the existence of hierarchies of power related to identities such as gender, race, and class that intersect and operate, often invisibly, in every aspect of social interaction (Collins & Bilge, 2020). Further, we are guided by the four aims of intersectional research articulated by Reed et al. (2021): “increasing justice, identifying forces that create and sustain injustice, [which are] complexly embedded in interacting systems of power that work across system levels, and vary across contexts.” (151 - 152). Thus, we aim to identify factors influencing custody decision-making operating across the nested ecological context, recognizing that individuals exist within families, within communities, within societies (Figure 1). Custody determinations consider familial relationships within the specific institutional context of the courts which is influenced by the broader social milieu. In this study we bring systems, ecological, and critical feminist-intersectional frameworks to bear on the issue of child custody and IPV. Specifically, we examine how authors contributing to the literature on custody decision-making are presenting which factors should be considered in cases involving IPV, and how these factors are or are not considered in relation to each other and within the interactional ecologies in which families are embedded.

**\*\*\*\*\* Figure 1 \*\*\*\*\***

### **The current study**

For all families, child custody and visitation decisions are enormously consequential and cases involving IPV also carry the risk of continued harm, which for children can include violence exposure and co-occurring CM, and in extreme cases death. Courts wield coercive power over families and current child custody processes exist in the context of historical,

cultural, and ideological structures and systems that disadvantage women, and sexual and gender minorities, especially those who are poor, and racialized/ethnic minorities. These broader influences on decision-making across levels (e.g., standards, court rules, practices) are not often acknowledged. There is a need to understand how IPV is addressed within the literature on child custody decision-making, including what specific criteria and guidance are given for determining custody in these cases. Scoping reviews are particularly useful for mapping an area of literature and describing the concepts that underpin that research (Peters et al., 2021). They are also useful for identifying research gaps and areas for future research. Furthermore, in mapping the literature on custody in cases involving IPV and synthesizing the guidance for decision-makers determining these cases, it is important to contextualize these findings within the institution of the courts and broader social influences.

To address the aims of this study, we reviewed the literature on child custody decision-making in cases involving IPV looking to summarize the extent of the literature, the professions contributing to the literature, and the type of sources making up the literature (Aim 1). We focused specifically on guidance for professionals regarding what factors should be considered when making custody determinations when there is IPV (Aim 2). This included identifying the implicit factors driving decisions and explicit criteria professionals should apply when making decisions, according to the literature. These factors included anything from statutory guidance to evaluative tools used by individual practitioners. Themes were organized within an ecological context to facilitate critical examination of the individual, relationship, and institutional (i.e., court) influences on decision-making and to reflect relationships between factors across different levels (Aim 3; see Figure 1).

We sought to answer the review question: *What factors should professionals in U.S. family courts consider in making child custody decisions in cases involving IPV?* Findings aim to inform new directions for research and practice and more specifically, illuminate barriers to successful efforts to reform the custody process to better address the safety needs and wellbeing of child and adult survivors of IPV.

## **Methods**

### **Search strategy**

A preliminary search of the Criminal Justice Abstracts, the journal Trauma, Violence, and Abuse, and Cochrane Database of Systematic Reviews and JBI Evidence Synthesis was conducted and no current or underway systematic reviews or scoping reviews on the topic were identified. The subsequent search strategy aimed to locate only studies published in peer-reviewed or law review journals. A three-step search strategy was utilized in this review (Peters et al., 2021). First an initial limited search of Criminal Justice Abstracts, APA PsychINFO, and Academic Search Complete (EBSCO) was undertaken to identify articles on the topic. The text words contained in the titles and abstracts of relevant articles, and the index terms used to describe the articles were used to develop, in consultation with a research librarian, a full search strategy. The search strategy, including all identified keywords and index terms, was adapted for each included database and/or information source. The reference list of all included sources of evidence was screened for additional studies. Only studies published in English were included due to the language abilities of the authors. Studies published since 2006 were included as the last review of research in this area concluded in 2005 (published in 2006). The databases

searched include Criminal Justice Abstracts, APA PsychINFO, and Academic Search Complete (EBSCO).

### **Study/source of evidence selection**

Following the search, all identified citations were collated and uploaded to Zotero citation management software and duplicates removed (Corporation for Digital Scholarship, 2023). Titles and abstracts were screened by the first author, in consultation with the second author, for assessment against the inclusion criteria for the review. Potentially relevant sources were retrieved in full, and their citation details imported into the JBI System for the Unified Management, Assessment, and Review of Information (JBI SUMARI) (Munn et al., 2019). The second author reviewed the titles and abstracts of the narrowed pool of sources and the first author reviewed the full text of selected citations and assessed in detail against the inclusion criteria. Discrepancies that remained between the first and second author after detailed full text review were resolved via discussion between the two authors. This included joint review of inclusion criteria and discussion of which specific inclusion or exclusion criterion justified the decision for each contested source, until there was consensus. Reasons for source exclusion were recorded and are reported below for sources that did not meet inclusion criteria at full text review. The results of the search and the study inclusion process are reported in full in the Preferred Reporting Items for Systematic Reviews and Meta-analyses extension for scoping review (PRISMA-ScR) flow diagram (Tricco et al., 2018) (Appendix I).

### **Inclusion criteria**

Sources published in English, in peer reviewed journals or law review journals, addressing guidance for decision-makers, in custody cases where IPV was alleged, and applicable to the U.S. context, were included. The timeframe included was 2006 to the present as

Bow's review covered up to 2005. Sources were excluded if they were not primarily about child custody (e.g., primarily concerned with the usefulness of mediation), did not address custody when there is IPV (e.g., general guidance on custody determinations), or applied to contexts outside of the U.S. (e.g., Canadian empirical studies). Non-English language papers were excluded, as were non-peer reviewed sources including books and book chapters, and commentaries. Below, we identify the participants, concept, and context of the review to assist in clarifying its scope and focus (Peters et al., 2021).

### *Participants*

Participants included any professionals working in the family court context and part of the decision-making process for child custody in cases involving IPV. Excluded participants were individuals who had gone through the family court custody process, unless their accounts were used as evidence to provide policy or practice recommendations to professionals.

### *Concept*

The concept studied was child custody decision-making in cases involving IPV, and specifically the published guidance specific to factors or criteria to consider in making custody decisions.

### *Context*

The context is the U.S. family court system and matters involving child custody and access when IPV is alleged.

### *Types of sources*

This scoping review considered all peer-reviewed and published material for inclusion. This included qualitative and quantitative social science studies, conceptual, and law review articles. Reviews and evidence syntheses that met the inclusion criteria were also considered and

included if they were not duplicative of original empirical research included in this review (no sources met this criteria).

### **Data extraction**

Data were extracted from papers included in the scoping review by the first author in consultation with the second author via applied and open coding in ATLAS.ti Windows (Version 22.0.6.0) (Atlas.ti, 2022) and guided by a data extraction tool developed by the reviewers (see Appendix II). The descriptive data extracted included year and location (journal) of publication, authors' professional affiliation, source type (e.g., empirical quantitative, conceptual). The bulk of data excerpted related to factors or criteria for decision-making. This involved examining sources for anything related to guidance for professionals such as, reference to things that professionals should do, consider, or evaluate. Then data were narrowed even further to specific factors/criteria (e.g., concrete applications such as screening for IPV, gathering parents' mental health history) that should influence their decision-making. Additionally, reference to policies, practices, or guidelines were coded as factors influencing decision-making. Segments of data from the text were coded with single meaning concepts (e.g., conducting risk assessment). There was a lot of overlap in concepts. For example, risk was discussed in terms of risk of future violence by perpetrator, risk of harm to child, risk of harm to adult parent, and what factors conferred risk (e.g., type of violence). Ultimately, these distinctions were grouped, and themes developed, according to ecological levels, rather than by the concept of assessing for risk, as initial coding suggested. Details of these analytic steps are reported below.

### **Qualitative thematic analysis**

Analysis, including the process of data extraction, was guided by theorizing on methodological developments of TA and associated analysis methods by Braun & Clarke (e.g.,

2022). These authors suggest three categories of TA often used by researchers. Understanding these as occurring across ontologies and epistemologies including for example, (post)positivist, constructionist, and postmodern paradigms, they outline three ways of conducting TA that range from ‘small q’ to ‘big Q’ qualitative approaches; emphasizing on one end reliability and the other reflexivity (Braun & Clarke, 2022). For the sake of space, we explain only the approach that best characterizes our efforts in this study. Codebook TA is characterized as somewhere between the reliability and reflexive ends of the spectrum, and includes some structured approaches to coding, and recognition of themes as ‘topic summaries’, while understanding researchers and their coding and interpretation as inherently subjective (Braun & Clarke, 2022, p. 7). Codebook TA, as Braun and Clarke (2022) outline, allowed for a methodology and set of analytic methods that were flexible to the aims of this review. The specific phases of reflexive TA include familiarization with the data, coding, generating initial themes, developing and reviewing themes, refining, defining, and naming themes, and writing up (Braun & Clarke, 2022).

### **Application of reflexive TA**

As this was a scoping review, the familiarization phase occurred through multiple passes through included sources, as well as the broader literature and consideration of inclusion/exclusion criteria. Initial coding, as described above, constituted both the data extraction task of a scoping review and further familiarization with the data. Developing initial themes included the coding process, and the examination and review of codes, and initial code grouping. Developing and reviewing themes occurred through examining data associated with each code, refining groupings, and descriptions of codes. Next, refining, defining, and naming themes involved an overall review of the data via the use of code reports. A code report is a document generated by ATLAS.ti, reflecting all pieces of data (coded excerpts/quotes from

sources) organized by assigned codes and code groups. Review in this format allowed for consideration of the whole, as well as the current organizing structure of the data, and whether this reflected the substance of the data, and answered the research question. At this stage, codes were reorganized and grouped based on ecological level (i.e., institutional, relationship, and individual level factors). The write up phase involved a summary description of the factors by ecological level, and in line with our aims and critical approach, a more interpretive analysis focused on consideration of social identities, implicit assumptions and ideological influences, and relationships between factors and levels, and issues of power inherent in the guidance and its importance in the custody decision-making process.

This version of TA fit with both the more universal and systematic methods of a scoping review that confer a level of rigor, and the inductive, iterative, and reflexive approach needed to apply a critical lens to the literature. A critical approach to the analysis and interpretation of data included coding for the presence or absence of race, class, and gender considerations, a focus on explicit and implicit assumptions underlying guidance and references to policy and standards and considering the different ways authors privileged certain ideologies such as a pathological framing of behavior and use of legal frameworks and standards in the development and description of themes. Lastly, organizing themes across ecological levels helped capture the influence of institutional level factors and the relationship between factors across levels.

## **Results**

### **Descriptive summary of sources**

Authors were primarily academics from social science disciplines such as sociology, family studies, social work, and psychology. Some were academic-practitioners (e.g., practicing

lawyers with an academic appointment), and/or practitioners such as attorneys and psychologists. Some sources were sole authored but many were collaborations between researchers and/or practitioners. Of the 19 sources that met inclusion criteria, more than twice as many were conceptual papers ( $n = 13$ ) as opposed to original empirical works ( $n = 6$ ; including 4 quantitative and 2 qualitative). Sources were published across several peer-reviewed journals, however 7 of the 19 sources were published in one of two journals: *Journal of Child Custody* and *Family Court Review*. It is also notable that none of the empirical papers were published in these two journals. Publication dates ranged from 2006 to 2019, and were mostly evenly distributed across time, with 1-2 publications in most years and a peak of 4 publications in 2009. Details of studies are reported in Table 1.

\*\*\*\*\* **Table 1** \*\*\*\*\*

Thematic results are presented using an ecological model of organization that recognizes the dynamic processes in the family, and the court context. These dynamic and interconnected processes are the context in which custody decision-making factors exist and must be understood. In the discussion, we expand on this standpoint with more explicit intersectional analysis to envision solutions that will address existing inequities in child custody determinations involving IPV.

**Ecologically based decision-making factors for custody cases involving IPV**

Using our dynamic and interdependent understanding of the family system and its embeddedness within the institution of the courts in custody determination cases, we identified factors associated with custody determinations in the context of IPV at the individual,

relationship, and institutional levels (see Table 2). Recognizing the power of the court and its formal and informal standards of evaluation, we begin with institutional factors, as they explicitly or implicitly inform the recommendations of factors specific to individuals and familial relationships. *Institutional level* factors included: statutory best interest standards, legal and professional standards, friendly parent standards, parents' constitutional rights, and determination of whether violence occurred. *Relationship level* factors included: characterization of the violence, impacts of the IPV on children, impacts of the IPV on parenting, and protective factors. *Individual level* factors included: parents' history and capacities, and child specific factors. The three levels of decision-making factors are detailed below.

\*\*\*\*\* **Table 2** \*\*\*\*\*

*Institutional Context Factors*

There were different approaches to determining the formal and informal standards courts should use to evaluate and make decisions regarding custody when IPV is alleged. Authors explicitly and implicitly invoked the prevailing legal doctrines underlying custody determinations such as *statutory best interest*, *friendly parent*, and *the constitutional right to parent*. They differed in the degree to which they attempted to provide solutions and recommendations within the constraints of these doctrines versus problematizing them and offering critiques and sometimes alternative solutions.

The most salient institutional factor was the statutory best interest of the child (BIC) standard. Though codified in statutes, these vary state to state in terms of the level of explication, and what specific factors are considered (Scott & Emery, 2014). Given this lack of specificity,

they vary even more so in how they are applied in practice. Davis et al. (2015) enumerate several factors (examples of which are in Table 2) that should be considered under best interest standards and Thronson et al., (2016) state clearly that IPV should be the primary factor considered in the BIC, while others refer more generally to children’s best interests (Austin & Drozd, 2012; Geffner et al., 2009; Hardesty & Chung, 2006; Jaffe et al., 2008; Kleinman & Kaplan, 2016; Pepiton et al., 2014; Saunders, 2015; Stark et al., 2019; Van Horn & Groves, 2009).

Across sources, authors referred to following *legal and professional standards*. This included, written guidelines developed by interdisciplinary professional bodies that incorporate relevant research (Kleinman & Kaplan, 2016; Saunders, 2015) and relying on evidence-based best practices such as supporting non-abusive parents and granting orders that align with these practices (Stark et al., 2019). Others spoke more broadly to the fact that evaluations and expert opinions regarding children’s best interest should be based in “science” (Kleinman & Kaplan, 2016) and that documents produced in service of helping the courts determine best interests constitute a “scientific work product” that should therefore be subject to some degree of standardization (Beeker & Holdorf, 2019; Pepiton et al., 2014).

Many authors discussed safety as the primary factor in determining best interests. However, the way safety was conceptualized and applied differed. For example, many authors referenced protecting children (Hardesty & Chung, 2006; Jaffe et al., 2008; Kleinman & Kaplan, 2016), while others included the safety of adult victims (Austin & Drozd, 2012; Hardesty & Chung, 2006; Jaffe et al., 2008; 2009). Still others discussed the child’s and non-offending parent’s safety and wellbeing as linked (Hardesty & Chung, 2006; Stark et al., 2019; Thronson et al., 2016; Van Horn & Groves, 2009).

“A child’s best interests are preserved when the child is placed in the custody of his

non-abusive parent in a non-abusive household.” (Thronson et al., 2016, p. 5).

Authors also connected safety as a best interest standard to establishing the credibility of violence accusations (Jaffe et al., 2008; 2009). For example, Jaffe et al. (2009; p. 15) state (emphasis added):

“We would argue that safety has to be an initial starting point *in the face of credible allegations*, and over time more information from collateral sources and community professionals will allow longer term planning and intervention to take place.”

Not everyone used the term credibility, but many authors discussed establishing *whether violence occurred* as part of the assessment and evaluation process (Austin & Drozd, 2012; Geffner et al., 2009; Jaffe et al., 2009; Van Horn & Groves, 2009). In discussing establishing credibility, the most common factor addressed was evidence. Objective verification (evidence) such as police or medical reports, admissions, and eyewitness accounts were some of the credible sources cited (Jaffe et al., 2008), as were multiple, corroborating sources of information (Austin & Drozd, 2012). One set of authors provided a particular form of observable evidence as indicating credible claims of abuse. In fact, they suggested when observed, using the immigration status of a parent (against that parent) in court should be recognized as an abuse tactic (Thronson et al., 2016).

Despite the ‘friendly parent’ expectation that has been increasingly institutionalized within custody legislation and decision-making, few authors made direct reference to it in the literature providing decision-making guidance (Haselschwerdt et al., 2011). Rather, it was alluded to in discussions of parental alienation. As a reminder, parental alienation refers to an intentional process of one parent turning the child against the other. Some authors discussed parental alienation only as a warning and provided clear statements about it lacking credibility as

a clinical construct or disorder and made specific warnings as to the ‘impossible bind’ it can create for survivors whose attempts to protect their children may be characterized as alienation (Haselschwerdt et al., 2011; Saunders, 2015; Stark et al., 2019; Van Horn & Groves, 2009).

Other authors took a less definitive approach to the topic of parental alienation, suggesting evaluators should beware misusing it but also acknowledging its sometimes legitimacy:

“[In certain contexts] refusal to communicate or reluctance to agree to the child’s liberal access should not be seen as unwillingness to cooperate or as manifestations of parental alienation.” (Jaffe et al., 2008, p. 4-5)

“Differentiating between estrangement for valid reasons and pathological alienation can be a formidable challenge and should be done by a mental health evaluator with expertise in both child alienation and domestic violence.” (Jaffe et al., 2008, p. 18)

Tension between courts’ charge to protect the best interest of the children and the precedent of parents’ *constitutional rights to parent* their children was directly acknowledged by Van Horn & Groves (2009). For Kleinman and Kaplan (2016), the overriding factor was clear:

“The family court judge is supposed to weigh in favor of child protection, even over the rights of the parents when managing disputes in families, where violence and abuse is occurring or at risk of occurring to a child.” (p. 1)

Other authors tried to balance parents’ constitutional rights and children’s best interest in their analysis and recommendations (Jaffe et al., 2008) using ideas like the “least restrictive arrangement” for custody and visitation. Others suggest the very nature of abuse may make a parent unable to meet the requirements to protect the health and safety of children that is required of their legal role as parent (Van Horn & Groves, 2009). Still others subtly problematize evaluators’ ability to assess and determine the BIC in cases of IPV given issues such as gender bias and the complexity of IPV dynamics and its impact on family functioning (Saunders, 2015; Stark et al., 2019).

“Gender bias has been a particular concern in custody evaluations, as it is frequently uncovered in custody-disputes resolutions (Rosen & Etlin, 1996). The bias is associated with mistrust of women and related in particular to the belief that they make false allegations of child abuse and domestic violence.” (Saunders, 2015, p.8)

In one of the few empirical studies, Beeker and Holdorf (2019) found that poor performing judges (i.e., those whose rulings were understood as unjust by outside observers using a standardized observation tool) tended to be male and that overall, custody rulings were biased against women, even when no observable gender bias was present in court proceedings. These few references to gender bias represented the only specific attention to differences in social identities and how they may influence or be attended to within court processes and in the application of institutional level decision-making criteria.

#### *Relationship context factors*

Relationship factors included dynamic factors in the relationship between parents and/or between parent and child. The most consistent factor addressed across studies regarding the relationship context was the *characterization of the violence*. Authors discussed this in terms of differentiating forms of violence based on factors such as severity, pattern, typology, context, and implications (Austin & Drozd, 2012; Davis, 2015; Ellis, 2008; Geffner et al., 2009; Hamel et al., 2009; Hans et al., 2014; Hardesty & Chung, 2006; Haselschwerdt et al., 2011; Jaffe et al., 2008; 2009; Saunders, 2015; Stark et al., 2019). Most often, this took the form of distilling a popular IPV typology (Kelly & Johnson, 2008) down to two forms: situational couple violence (SV) and coercive controlling violence (CCV). In its original conceptualization, the defining feature distinguishing between these two forms of violence was the presence of coercive control, a form of IPV associated with men’s violence against women. Only a few authors made explicit reference to other forms of violence (aside from SV/CCV) such as protective violence (Davis,

2015; Ellis, 2008) which is primarily associated with self-defense or resistance and applied to women survivors (Johnson, 2006). Despite this typology being developed to specifically address research conflicts over the gendered nature of IPV (e.g., see Johnson, 2006) only a few authors mentioned gender differences in the context of violence types (Geffner et al., 2009; Hans et al., 2014; Jaffe et al., 2009; Saunders, 2015; Stark, 2019).

Often, comments regarding gender tended to be more subtle. For example, it might be that an author used gendered terms at some point (e.g., survivor-mother; Saunders, 2015) or discussed CCV being primarily male perpetrated (Hans et al., 2014). Overall, authors tended to use gender neutral language and tried to distinguish based on behaviors and patterns with some recognition of gendered dynamics within relationships.

“Understanding the differences among these types of violence provides an important foundation for assessing the appropriateness of a particular post-separation parenting arrangement. Examination of the various patterns of family violence also highlights gender differences that need to be underscored.” (Jaffe et al., 2009, p.7)

As with Jaffe et al.’s (2009) description, Davis (2015) references gender but not specifically in terms of how it should be considered,

“The strength of the [evaluation] framework lies in the fact that it does not assume anything about abuse, but requires practitioners to delve into the specifics of abuse. It is gender neutral on its face, but invites rigorous gender analyses.” (p. 9).

Authors noted specific types of abuse as presenting more risk (e.g., CCV) (Jaffe et al., 2009; Saunders, 2015), often citing specific dangerousness and lethality factors such as the recency and severity of violence (Geffner et al., 2009; Jaffe et al., 2008). Overall, discussion of risk was a salient factor in the literature, however, much of the attention focused on assessing risk more broadly, and there was not a clear consensus as to what that entailed.

Many authors referred to research-based risk factors (both static and dynamic) that should be used to determine the level of danger (Austin & Drozd, 2012; Geffner et al., 2009; Hardesty & Chung, 2006; Thronson et al., 2016). For example, homicidality/suicidality (Austin & Drozd, 2012; Hardesty & Chung, 2006) substance use patterns, and acquisition of firearms (Hardesty & Chung, 2006). In addition to discussing overall risk based on known incidents or patterns of abuse, some authors noted the need to assess risk of future harm. In addressing this task, some pointed to research-based predictive factors and the use of predictive screening tools to increase rigor (Hardesty & Chung, 2006; Saunders, 2015; Van Horn et al., 2009). At the same time, authors note the limits of the assessment process (Saunders, 2015) and the fact that none of these tools are validated for this specific population and context (Hans et al., 2014). Some offer broader evaluation frameworks for assessing risk (Austin & Drozd, 2014; Jaffe et al., 2008) and call attention to the co-occurring relationship between IPV and child maltreatment (Geffner et al., 2009). Many suggested erring on the side of caution and prioritizing safety, even if unclear as to how to accomplish that (Hardesty & Chung, 2006; Saunders, 2015; Stark et al., 2019).

Tied to risk assessment in the relationship between parents and/or parent(s) and child(ren), another salient factor addressed across sources was whether the IPV had *impacts on children*. The majority of authors expressly mentioned the need to assess the degree to which children were put at direct risk from the IPV (Austin & Drozd, 2012; Davis et al., 2015; Hamel et al., 2009; Hardesty & Chung, 2006; Jaffe et al., 2009; Stark et al., 2019; Van Horn & Groves, 2009). This focus included assessing the current and future risk of harm to the child and sometimes the non-abusive parent (Hardesty & Chung, 2006; Jaffe et al., 2008; 2009; Stark et al., 2019; Van Horn & Groves, 2009).

*Impact of IPV on children and parenting* were factors authors deemed important for determining whether the violence was relevant to a particular case (Austin & Drozd, 2012; Geffner et al., 2009). Thronson et al. (2016) made the strongest claim regarding IPV, asserting it is always relevant and as noted, should be the primary factor in determining the child's best interest. The impact of the violence exposure on children's and parent's wellbeing was also commonly discussed as a more thorough way to assess in cases of IPV but what that looked like was not specified (Geffner et al., 2009; Hans et al., 2014; Jaffe et al., 2009). Authors suggested understanding implications of the abuse such as experiences of fear or injury could help distinguish between types (Davis, 2015; Ellis, 2008; Geffner et al., 2009; Saunders, 2015; Jaffe et al., 2008; 2009; Saunders, 2015; Stark, 2019) and/or determine the relevance of the violence to parent evaluations and decision making (Austin & Drozd, 2012; Davis, 2015; Geffner et al., 2009; Hans et al., 2014; Hardesty & Chung, 2006; Haselschwerdt et al., 2011; Jaffe et al., 2008; 2009; Saunders, 2015; Stark, 2019; Thronson et al., 2016; Van Horn & Groves, 2009). Reasons cited for relevance of IPV to parenting included that it is associated with risk for harsh parenting (Austin & Drozd, 2012), can indicate risk for future violence against children (Jaffe et al., 2008), and that IPV is itself direct evidence of poor parenting due to the impacts of child exposure to IPV (Geffner et al., 2009; Stark et al., 2019; Thronson et al., 2016; Van Horn & Groves, 2009). Davis (2015) connects IPV to the postseparation dynamics, and points out that for some, engaging in IPV against the other parent cannot be separated from the parenting role:

“...it is not the mere fact of violence that drives the dynamics of co-parenting after divorce, but the abuser's motive to control the victim, which, for the coercive controlling abuser, can be indistinguishable from his role as a parent.” (p. (7)53).

Davis' (2015) reference to the coercive controlling abuser and use of masculine pronouns in referring to the parent role, are consistent with and likely reflective of, theories of IPV suggesting CCV predominately represents men's violence against women (e.g., Johnson, 2006). Many authors explicitly referenced CCV as associated with the inability to separate parenting from engaging in IPV (suggesting other forms of IPV may not carry the same risk). In contrast to Davis (2015), they often referenced CCV in a gender neutral way. In some cases, attention to the impact of violence on children was followed with specific recommendations to limit contact with or formal access by the abusive parent (Hardesty & Chung, 2006; Stark et al., 2019; Van Horn & Groves, 2009). Some authors warned of the serious and lasting impacts of exposure to parental IPV (Thronson et al., 2016; Stark et al., 2019), with one group of authors placing these experiences within a broader context of trauma and its developmental impacts over time (Van Horn et al., 2009). A few authors called attention to *protective factors* that may mitigate the harm often associated with children's exposure to IPV such as connection and attachment to a non-abusive parent (Saunders, 2015; Stark et al., 2019).

### *Individual context factors*

In addition to evaluating factors in the relationship context, many authors addressed individual level factors such as each *parent's history and capacities* and *child specific factors*. One specific area of focus was in evaluating the parenting of one or both parents, which was focused on individual characteristics and skills of parents as well as their potential to work together as co-parents following separation (Austin & Drozd, 2012; Geffner et al., 2009; Hans et al., 2014; Jaffe et al., 2008; 2009; Pepiton et al., 2014; Stark et al., 2019; Van Horn & Groves, 2009). Factors cited that would indicate potential for co-parenting included abilities in joint decision-making, individual mental health factors including history and current functioning,

conflict resolution skills, parenting styles, parent expectations, parent empathy, and attachment/parent-child bond, with an emphasis on the need to observe parent-child interactions (Austin & Drozd, 2012; Pepiton et al., 2014; Geffner et al., 2009). For the most part, evaluation of parents and parenting was presented as a neutral endeavor, assessed at the individual level, including capacity to co-parent. However, a few authors emphasized the need to interpret individual-level factors within the context of the IPV, such as mental health symptoms being a result of enduring abuse (Saunders, 2015).

Many references to risk of harm and the effects of IPV exposure on children were general and did not offer specific definitions of harm or discuss what authors meant by effects. Exceptions to this included those who recommended assessing the child's functioning across several domains of development (Geffner et al., 2009) or focusing on the child's mental and physical health more generally (Hans et al., 2014). Some authors tied children's risk to the wellbeing of the non-abusive parent, including that parent's capacity to keep the child(ren) safe (Hardesty & Chung, 2006; Jaffe et al., 2008; 2009; Stark et al., 2019; Van Horn & Groves, 2009).

## **Discussion**

Studies providing guidance to decision-makers regarding factors important to determining child custody when IPV is present, consisted primarily of conceptual papers written by academics, and academic-practitioner teams from diverse social science (e.g., family studies, psychology, law) and practice fields (e.g., law, psychologist-evaluators). Overall, the literature was sparse, with authors calling time and again for empirical research that can help guide practice and decision-making in this area. These calls marked the literature prior to the timeframe

covered in this review (e.g., Bow, 2006; Jaffe et al., 2001) and was a common refrain amongst authors in sources covered by this review. While there has been increased attention to empirical studies of child custody determinations, especially among Canadian, Australian, and UK scholars, we found only 6 empirical articles published relevant to decision-making factors in IPV and child custody cases in the U.S. context over the course of 17 years. To our knowledge, this is the first effort to synthesize the literature on the U.S. context across diverse fields, contributors, and types of scholarship. Doing so highlights the dearth of research on this important topic, and the urgent need for empirical attention to the process of parenting evaluation, especially in cases of IPV, and for follow-up research to understand how decisions impact children and families over months and years. In the face of IPV and CM allegations in custody cases, this is all the more urgent given the potential for serious risks to the safety and wellbeing of child and adult survivors.

The guidance provided to decision-makers on factors to consider when determining child custody in cases involving IPV included implicit and explicit reference to institutional level doctrines and standards, dynamic factors in relationships between parents and in parent-child dyads, as well as individual level factors pertaining to each parent and to the child(ren). Placing identified factors into levels of the social ecology helps to organize them into meaningful contexts and allows for analysis across these levels including how they interact (or not), and what contextual and power related structures are implicated in their consideration. This organizational and interpretive structure aligns with our critical feminist-intersectional approach by recognizing the contextual, dynamic, and interrelated nature of familial relationships and families' interactions with formal systems.

Our findings suggest statutory standards such as BIC and friendly parent doctrines, as well as considerations of parents' rights underlie the entire process of custody decision-making. Yet, these standards are lacking in specificity and consistency across jurisdictions, calling attention to the broad discretion courts and judges have in this process (Scott & Emery, 2014). Reliant as they are on other professionals to provide expert advice, courts extend some of this discretion and influence on custody outcomes to outside mental health professionals. This is concerning given the variability in standards for these professionals (Stahl & Martin, 2013). Research also suggests bias plays a role in evaluators' decisions in cases involving IPV and they infrequently use standardized screening measures to detect IPV (Bow & Boxer, 2003; Sanders et al., 2015; Saunders et al., 2013; 2016).

Given that any factors across the relationship and individual levels exist within this institutional and social context, recommendations at these levels are constrained by this context even if scholars and practitioners do their utmost to infuse knowledge of IPV complexities into factors at the relationship and individual levels. At the same time, explicit attempts to tie recommendations to 'the best available evidence' and encouraging courts to adopt more standardized, rigorous, and 'scientific' bases for their recommendations assume everyone's understanding of these concepts and how to operationalize them, is the same. This language also invokes a level of empirical credibility to these standards that, based on extant literature, does not exist. This becomes doubly concerning when evaluative tools used to understand and explain behaviors of individuals, and within relationships, and how these behaviors reflect functioning, consist of validated measures (e.g., psychological tests of personality and psychopathology) that are neither specific to the custody evaluation context nor are answering the very question that is

the mandate of custody evaluation: *What parenting arrangement is in the child(ren)'s best interest?*

There is little attention to IPV specific factors at the institutional level, except to say that IPV should be considered, though some would say not always relevant. In order to determine relevance, many authors took up the need to evaluate the credibility of abuse claims. Within a court and legal context, this meant finding evidence that the abuse occurred. As other scholars point out, this is an incredibly difficult task and the failure to provide convincing evidence is often seen as proof that the abuse did not occur (Trocmé & Bala, 2005). Further, the little research we do have suggests the family court environment is one where actors are already skeptical of allegations of IPV and CM and many believe it common for abuse claims to be fabricated, and that any 'real' violence would be detected by criminal legal and child welfare systems (Meier & Sankaran, 2021). This is further problematic given that views on the credibility of violence claims are gendered, with many decision-makers believing that mothers fabricate abuse and use claims to gain strategic advantage despite research indicating that false claims are rare and when present are more likely to come from fathers (Haselschwerdt et al., 2011; Saunders et al., 2013; Trocmé & Bala, 2006). Gender bias in the courts also shows up in recommended custody outcomes that favor fathers despite evidence of abuse, especially when abuse allegations from mothers are countered by claims of parental alienation by fathers (Kernic et al., 2005, Meier, 2021).

Despite attention to gender in the introduction and literature review sections of the papers, most authors relied solely on typologies of violence to reconcile gender differences in the prevalence and relevance of IPV and its impacts for the custody evaluation process. While factors delineating more and less dangerous forms of violence and impacts on adult and child

survivors is important, in practice IPV has been reduced to a binary determination, the gendered nature of which is implied, but not explicitly stated. In these two scenarios, SV is ‘not serious’, equally involving men and women, and often not relevant to custody proceedings, and CCV is perceived as men’s violence against women, likely to continue after separation, and be potentially dangerous or even deadly. Not only does this understanding and application present a false dichotomy that reduces the complexity of IPV dynamics, but the assumption that *most* IPV is SV (i.e., not serious) lends credence to documented assumptions among decision-makers that false claims of abuse are common and used strategically. In fact, discussions of SV in the literature are sometimes included in general definitions of ‘high conflict’ divorce, rendering it not IPV at all but rather an intractable conflict between parents (e.g., Mahrer, 2018). Further, on an institutional level, a belief that ‘true’ IPV is rare and thus ‘the exception’ suggests no need for systematic changes to institutional processes regarding child custody (Elizabeth et al., 2012).

Being explicitly gender neutral but expecting these two categories (i.e., SV/CCV) to adequately account for the gendered nature of IPV leaves room for CCV used against survivors who are enduring a pattern of IPV. These two categories, in the gendered-dichotomous way they are most often utilized, also fail to account for the diversity of experience of those who are LGBTQIA+, male survivors, and those who otherwise do not look like typical survivors (such as women who have used force; see e.g., Larance et al., 2019). Further, experiences of IPV – and parenting for that matter -- *are* gendered (and raced and classed) and therefore should not be evaluated from a standpoint of neutrality when it comes to unequal dynamics of power (Elizabeth et al., 2012). For example, there is evidence that mothers are held responsible for the parenting of fathers, in ways that fathers are not in the reverse, including protecting children from child abuse, witnessing IPV, and in terms of their responsibility for facilitating the

relationship between children and fathers (Katz, 2015; Lapierre, 2008). Further, failure to protect, a concept that attributes responsibility to a parent for not preventing someone else from harming their child, is generally only applied to mothers in the context of IPV and/or CM. Further, claims of alienation are often used against mothers when they accuse fathers of IPV or CM, a tactic which serves, often successfully, to draw attention away from abuse claims and onto the mother's parenting (Kernic et al., 2005; Saunders et al., 2013; 2016). Similar claims regarding fathers' responsibility to create a safe environment and play an active role in fostering a safe and nurturing relationship with his child(ren), are not readily accessible to mothers within assumptions about parenting utilized in the custody context.

Many authors point out the dearth of empirical support for custody evaluations and determinations. In this absence, decision-makers may be drawn to the research on general child outcomes following divorce, including looking at the impact of levels of parental 'conflict' to inform custody evaluations (Nielsen, 2017; 2018; O'Hara et al., 2019). While seemingly relevant, this evidence does not distinguish families experiencing IPV and whether outcomes are similar or different and how. Therefore, we should be careful about relying on evidence from general divorced/separated families. Some of these families marred by 'conflict' may be experiencing IPV, but without specific attention to IPV we cannot know what outcomes look like for these families. In fact, some research includes instances of "verbal and physical fighting" in definitions of interparental conflict, while cautioning against including those experiencing "domestic violence" (Mahrer et al., 2018). This reflects the use of SV/CCV distinctions of IPV, and assumptions that SV is not relevant and "true" IPV is rare. Further, many of these families likely do not encounter the potentially dangerous experiences of ongoing abuse and harassment evidenced in qualitative accounts from adult survivors (e.g., Laing, 2017; Zeoli et al., 2013) and

children (Rogers et al., 2022), which given their potential harm, deserve increased scrutiny. Put another way, in addition to the relatively scant empirical knowledge on how custody decisions impact children and families, the evidence we do have is not relevant to the IPV context.

In the absence of empirical evidence, recommendations are also made on the basis of practice wisdom that, unchecked by evaluative or empirical evidence gets reiterated over and over with still no further clarification of whether this knowledge applies and to whom it applies. We do not mean to undercut the relevance and value of practice-wisdom and recognize the contributions of practitioners to this literature that overall has received little attention from researchers. However, the fact that there is limited empirical examination of the process, decisions, and particularly their impacts on children and families, is one that remains despite attempts by practitioners and a limited number of researchers to address the urgent need for guidance. At best, the knowledge gleaned from practice reflects the experiences and needs of some families. Without systematic pursuit of evidence with diverse families experiencing IPV, across a variety of jurisdictions, we simply cannot capture a full picture of how custody decision-making in cases of IPV happens, for whom, and to what effect.

Within sources covered by this review, thoughtful and nuanced analysis of IPV and its relevance to custody determinations, becomes divorced from the on-the-ground procedures used to evaluate parents and make decisions about custody arrangements. Gender-neutral approaches and frameworks that attempt to provide categories and steps for evaluators to follow, while well meaning, are reductionist and, in the hands of unskilled and ill-informed evaluators, attorneys, and judges, may result in minimizing, misconstruing, or missing the violence altogether. Indeed, the research shows assessment of IPV is inconsistent across evaluators, though may be increasing overall (Saunders et al., 2016; Valerio & Beck, 2017). Further, evaluators often do not

use measures specific to identifying IPV, but rather, for example, general personality measures (Sanders et al., 2015; Saunders et al., 2016; Valerio & Beck, 2017). Further, specific guidance on conducting assessments with parents and families focuses on individuals with little recognition of the interconnected nature of the family system. For example, despite calls to consider the characterization of the violence (in the relationship), many authors go on to suggest evaluating each parent individually regarding their mental health, without explicit calls to do so within the context of what was found at the relationship level (i.e., violence). In fact, a retrospective chart review of custody decision predictors found that individual factors such as parent emotional stability, antisocial behavior, and income were driving factors (Raub et al., 2013). Another salient factor in this review at the individual level, potential for co-parenting, is also considered outside of the context of IPV in the relationship and without recognition of how these factors are shaped by the institutional context and underlying legal doctrines. While “postdivorce cooperation” was not a determining factor in the case review study referenced, important factors such as IPV were not considered (Raub et al., 2013; Stover, 2013). It is crucially important to consider IPV to accurately understand the factors driving decision-making for several reasons including the prevalence of IPV in separating families, documented gender bias in the courts, skepticism of IPV claims, and negative consequences of counterclaims of alienation for victims (Dragiewicz, 2010; Kernic et al., 2005; Saunders et al., 2013; 2016; Stover, 2013). A more integrated analysis and description of custody determination factors across institutional, relationship, and individual levels and whether there is coherence across these factors, helps identify specific gaps in knowledge that can be addressed by researchers and clarified by expert practitioners.

It is important that this critique is read in context. Authors in this review providing guiding frameworks are often drawing on decades of practice experience and knowledge gained

through trial and error, as for many years they had little guidance of their own (Stahl & Martin, 2013), and as is evident in this review and others, without the aid of crucial empirical social science research. Many likely represent the most informed practitioners, able to provide the nuanced understanding and evaluation needed in cases involving IPV and want to provide guidance to others who are not so well equipped. We are not suggesting that there is a lack of concern or effort, rather that together researchers and practitioners need to take up the important task of evaluating current best practices used in the courts regarding custody and their handling of IPV. In fact, some have critiqued the whole practice of custody evaluation for its lack of empirical support (Emery et al., 2005; Lubit, 2021; Turkat, 2016).

### **Research, practice, and policy implications**

There is an urgent need for empirical research on custody arrangements that promote safe and supportive relationships post-separation specifically for families experiencing IPV. It is important this research accounts for the complexity of IPV dynamics and recognition that families' dynamic relationships occur in this context. Further, research should consider that any evaluation of families including the links between IPV and individual family relationships occurs within and is constrained by the mandates and context of the courts. This specific context, and the formal and informal policies, assumptions, and traditions are locally specific even if there are some common doctrines that are shared. There are also ethical limitations of research on violence, coupled with the logistical difficulties of, and limited access to, the courts (Beck et al., 2009). Explicit attention to the embeddedness of custody decisions in larger systems and institutions that perpetuate inequalities is also important and speaks to the need for critical-intersectional institutional analysis that examines the historical and ideological foundations of family courts. Such an analysis would point to sites for intervention and policy change at the

institutional level that aim to create more equitable processes for everyone coming into contact with family courts.

Given the differences across professional groups involved in custody decision-making, and between researchers and practitioners in general, studies attending to these questions would benefit from transdisciplinary research teams that include mental health and legal practitioners. In particular, studies need to account for the legal context, and be applicable to court processes and legal constraints while at the same time, challenging problematic assumptions and processes in the law and legal practice that cause harm. Social science researchers across fields such as social work, sociology, psychology, and family studies could add expertise on IPV, research ethics, hierarchical systems, family dynamics, and child development. Practitioners and scholars across all fields should utilize critical-intersectional perspectives aimed at increasing justice and mitigating harms.

Further, there is a substantial qualitative literature addressing experiences of custody and court processes from the perspective of child and adult survivors. These accounts represent an existing data source that could be synthesized to inform what changes are needed, and what measures we might need to track in court-based follow-up studies of families experiencing IPV who have gone through court mandated/facilitated mediation or litigation. Given the embeddedness of children in their families and the dynamic nature of familial relationships, outcomes should include all family members, especially because custody decisions restructure families. An inclusive approach would also value the perspectives of those who have engaged in IPV and CM and their perceptions of parenting, impact of the violence, motivations, and goals regarding family relationships. Such perspectives would not be seen as “Truth” but are an important element of understanding the complexity of IPV dynamics and finding effective

intervention and prevention measures, including in the courts (Mahan, 2013). Furthermore, studies about these topics should attend to differences in experiences across diverse social identities given differences in relationships to power, privilege, and oppression experienced by individuals across a range of identities including, race, gender, class, ability, national origin, language, and immigration status.

Directions for practice and policy are less clear considering these findings and the urgent need for further research. However, there are many opportunities, and it is critical, for practitioners and policy makers to play a role in this research. Using principles and strategies from implementation science may allow for research that attends to the particular context of the courts as they can be flexible to real-world conditions, center context, and are particular to practice or intervention (Peters et al., 2013). One example is Quality Improvement studies that engage in an iterative process of plan-do-study-act (Peters et al., 2013). Given their influential role and leadership responsibilities within the courts, judges and other allied personnel would be instrumental in identifying what practices and policies might be altered, implementing those changes, and participating in collecting data, while researchers would help with design, data collection, and analysis. Together, all stakeholders would discuss and interpret findings, and plan for the next iteration of changes. This approach draws on the value and contributions across stakeholders within the practice setting and guides researchers to design appropriate studies that are feasible within the court. It also allows for a continuous and incremental process of evaluation that may be more conducive to the pace of court processes than traditional social science research.

It is important that any studies within the court and including court-based stakeholders explicitly recognize the power differentials inherent in different roles and acknowledge the

assumptions that each person brings to the research, such that the team can articulate a foundation of shared understanding. On a broader level, the legal and institutional context represents a hospitable or hostile environment for different ideas, which may account for the staying power even questionable or discredited concepts sometimes maintain. For example, the absence of evidence-based approaches has resulted in some ideas and practices taking hold, such as applying the concept of parental alienation and the use of a dichotomous IPV typology which are filling a void despite lacking explicit evidence of their validity, and more importantly their usefulness in creating safe custody and access arrangements for families experiencing IPV. For example, parental alienation presents as scientific, and aligns with legal standards (e.g., friendly parent, parental rights), and the SV/CCV typology is also viewed as scientifically ‘settled’ and presents as a simple and useful explanation of IPV that is both gender-neutral and also attending to the gendered nature of IPV. A willingness to interrogate the structural and institutional factors that create the context for ideas and practices to take hold (or not) will increase the likelihood that well intentioned policy solutions will have the desired uptake.

One thing that is clear from applying an ecological perspective is, attending to the specific policy and practice context of the U.S., and more local jurisdictions, is needed to identify changes that will be relevant and successful. As others have suggested, training focused on recognizing and combating bias and accurate information regarding IPV-- specifically topics such as rates of false allegations and parental alienation -- among decision-makers are potentially promising for mitigating harmful custody decisions (Saunders, 2013; 2016). While it is important to focus on who is evaluating families and making custody decisions, including their qualifications and expertise on IPV, these actors are constrained by institutions and systems and thus solutions at those levels are essential. Also, we should be cautious about solutions that

further entangle survivors in the very systems that too often fail them, including expanding the number of individuals involved in assessing and making recommendations to the court. Those with specialized training including mental health and domestic violence advocates, judges, attorneys, and other court personnel are predominately white, middle- and upper-class individuals whose own biases and experiences influence their evaluations and service provision (American Bar Association, 2022; American Psychological Association, 2022; Salsburg et al., 2020). Thus, leaving poor, Black, women of color, and other minoritized communities further beholden to the recommendations and demands of those who may not understand what they want or need and hold power over them across multiple identities in addition to their formal role with the courts. Seeking solutions from those receiving services from the courts could help to illuminate areas for improvement. It may also be important for victims to be able to “opt out” of interventions via the court altogether, turning instead to alternative solutions (Goodmark, 2009). While decisions about child custody may seem hard to imagine as existing outside of the family courts, we must remember that the overriding preference of the court is that parents come to an agreement without their aid; and the overriding goal is child and family safety and wellbeing. This suggests the courts are not themselves uniquely situated to make these decisions. Rather, decision-makers within courts make decisions given the knowledge they have and within the constraints of the system they are part of. This system was not designed to evaluate complex IPV and family dynamics, but to settle disputes between individuals, and is not structured for nor has the capacity to do so with the level of nuance needed. For a summary of key implications for research, practice, and policy see Table 3.

\*\*\*\*\* **Table 3** \*\*\*\*\*

## **Conclusion**

Despite the critical importance of custody decisions for families' safety and wellbeing when there is IPV, guidance for decision-makers often de-contextualize evaluative factors from experiences of IPV. Further, guidance is given in the face of sparse empirical evidence. Of particular concern is the lack of outcome-based research connecting decisions to resulting impacts for adult and child survivors. Reliance on evidence from general divorced/separated families is potentially dangerous given the qualitative accounts from survivors detailing ongoing abuse. There is an urgent need for empirical research on custody arrangements that promote safe and supportive relationships post-separation specifically for families experiencing IPV. This research must account for the complexity of IPV dynamics, ethical limitations of research on violence, embeddedness of these decisions within larger systems and institutions that perpetuate inequalities, and differences across professional groups involved in decision-making. Essential to this research are contributions from researchers and practitioners within the courts, increasing the likelihood that research and resulting policy and practice solutions are applicable, feasible, and sustainable.

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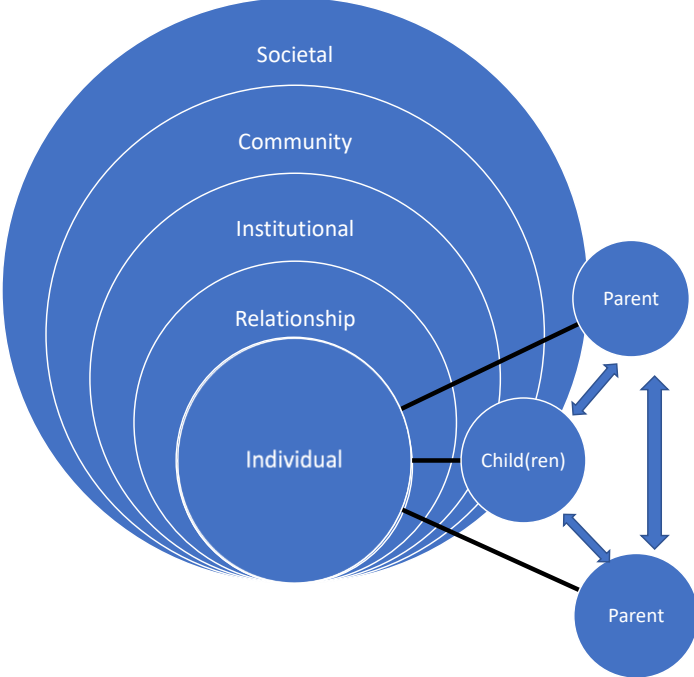
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\*Studies included in scoping review

**Figure 1.** Ecological model of family in context.



**Table 1.** Summary of included sources.

Authors	Title	Article Type*	Journal	Professional Affiliations**
Austin & Drozd (2012)	Intimate partner violence and child custody evaluation, part I: Theoretical framework, forensic model, and assessment issues	Conceptual	<i>Journal of Child Custody</i>	MH practitioners
Beeker & Holdorf (2019)	Eyes on the family court: Creating an effective data collection instrument	Qualitative empirical	<i>Family &amp; IPV Quarterly</i>	Advocate, legal practitioner
Davis (2015)	A systematic approach to domestic abuse–informed child custody decision making in family law cases	Conceptual	<i>Family Court Review</i>	Academic
Ellis (2008)	Divorce and the Family Court: What can be done about domestic violence?	Conceptual	<i>Family Court Review</i>	Academic
Geffner et al. (2009)	Conducting child custody evaluations in the context of family violence allegations: Practical techniques and suggestions for ethical practice	Conceptual	<i>Journal of Child Custody</i>	Academic, MH practitioners
Hamel et al. (2009)	Domestic violence and child custody: Are family court professionals' decisions based on erroneous beliefs?	Quantitative empirical	<i>Journal of Aggression, Conflict and Peace Research</i>	Academics, MH practitioners
Hans et al. (2014)	The effects of domestic violence allegations on custody evaluators' recommendations	Quantitative empirical	<i>Journal of Family Psychology</i>	Academics
Hardesty & Chung (2006)	Intimate partner violence, parental divorce, and child custody: Directions for intervention and future research	Conceptual	<i>Family Relations</i>	Academics
Haselschwerdt et al. (2011)	Custody evaluators' beliefs about domestic violence allegations during divorce: Feminist and family violence perspectives	Qualitative empirical	<i>Journal of Interpersonal Violence</i>	Academics
Jaffe, Crooks, & Bala (2009)	A framework for addressing allegations of domestic violence in child custody disputes	Conceptual	<i>Journal of Child Custody</i>	Academics
Jaffe et al. (2008)	Custody disputes involving allegations of domestic violence: Toward a differentiated approach to parenting plans	Conceptual	<i>Family Court Review</i>	Academics
Kleinman & Kaplan (2016)	Relaxation of rules for science detrimental to children	Conceptual	<i>Journal of Child Custody</i>	Legal and MH practitioners

Pepiton et al. (2014)	Ethical violations: What can and does go wrong in child custody evaluations?	Conceptual	<i>Journal of Child Custody</i>	Academic, MH practitioner
Saunders (2015)	Research based recommendations for child custody evaluation practices and policies in cases of intimate partner violence	Conceptual	<i>Journal of Child Custody</i>	Academic
Saunders, Faller, & Tolman (2016)	Beliefs and recommendations regarding child custody and visitation in cases involving domestic violence: A comparison of professionals in different roles	Quantitative empirical	<i>Violence Against Women</i>	Academics
Saunders, Tolman, & Faller (2013)	Factors associated with child custody evaluators' recommendations in cases of intimate partner violence	Quantitative empirical	<i>Journal of Family Psychology</i>	Academics
Stark, Choplin, & Wellard (2019)	Properly accounting for domestic violence in child custody cases: An evidence-based analysis and reform proposal	Conceptual	<i>Michigan Journal of Gender &amp; Law</i>	Academics, legal practitioners
Thronson et al. (2016)	Obtaining Custody of Children for Battered Immigrants	Conceptual	<i>Family &amp; IPV Quarterly</i>	Legal practitioners
Van Horn & Groves (2006)	Children exposed to domestic violence: Making trauma-informed custody and visitation decisions	Conceptual	<i>Juvenile and Family Court Journal</i>	Legal and MH Practitioners

Notes: MH = mental health; IPV = intimate partner violence; \*empirical refers to original empirical research; \*\*primary professional affiliations according to best available information.

**Table 2.** Decision-making factors for custody cases involving IPV.

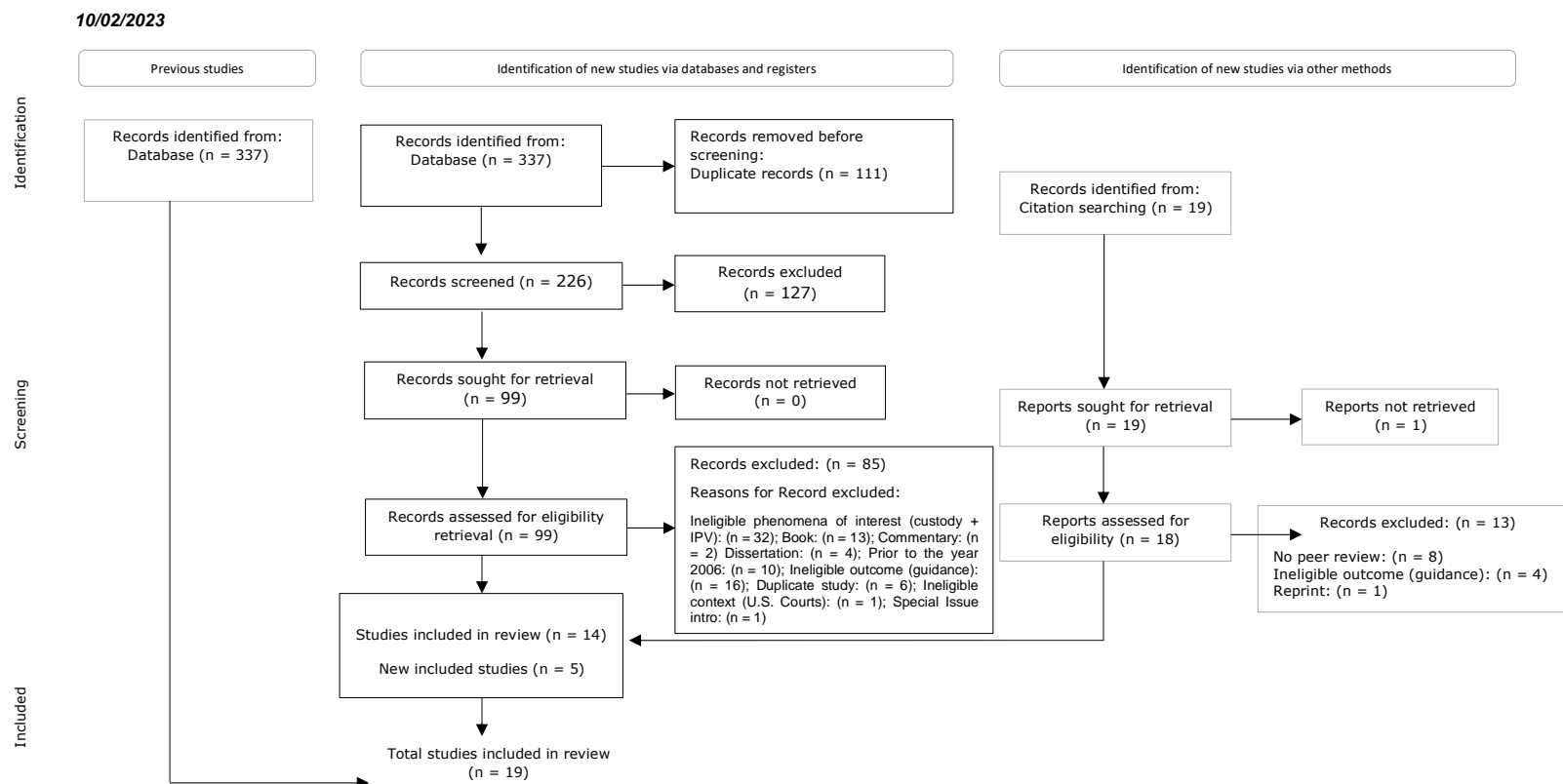
<b>Ecological Level</b>	<b>Factor</b>	<b>Examples</b>
Institutional	Statutory best interest standard	Safety; child’s wishes; child’s adjustment; physical and mental health of parents and child
	Legal and professional standards	Written guidelines from professional organizations (e.g., American Psychological Association); evidence-based recommendations; expert opinions
	Friendly parent standards	Acceptance of parental alienation (syndrome)
	Parents’ constitutional rights	Least restrictive arrangement
	Whether violence occurred	Credibility of claims; evidence
Relationship	Characterization of the violence	Types of abuse; SV; CCV; level of danger; risk of future harm to adult victim
	Impacts of IPV on child(ren)	Child(ren) were put at direct risk; child(ren)’s current and future risk of harm
	Impacts of IPV* on parenting	Associated with risk for harsh parenting; risk of future violence; IPV is direct evidence of poor parenting
	Protective factors	Connection/bond to non-abusive parent
Individual	Parents’ history & capacities	Parenting skills; potential for co-parenting; mental health history and current functioning
	Child specific factors	Child’s functioning; mental and physical health

Notes: SV = situational violence, CCV = coercive controlling violence; \*especially coercive control type.

**Table 3.** Research, practice, and policy implications.

<b>Research</b>	<b>Practice</b>	<b>Policy</b>
<p>Urgent need for empirical research on custody arrangements that promote safe &amp; supportive post-separation relationships that:</p> <ul style="list-style-type: none"> <li>● Explicitly focus on IPV context (e.g., need for safety)</li> <li>● Recognize familial, institutional, &amp; broader social contexts</li> <li>● Include diverse perspectives (e.g., re: social identities, survivors, practitioners)</li> <li>● Develop strategies to address ethical, logistical, &amp; interdisciplinary research challenges (e.g., gaining access to courts, working across professional differences)</li> <li>● Use critical-intersectional approach, target institution change</li> <li>● Draw on existing qualitative data (e.g., survivor accounts)</li> <li>● Use approaches suited to real world contexts (e.g., implementation, quality improvement)</li> </ul>	<p>Draw on strengths of specific professions and engage stakeholders across various fields &amp; within courts to:</p> <ul style="list-style-type: none"> <li>● Design &amp; implement reforms and evaluative research (e.g., IPV screening tools &amp; procedures)</li> <li>● Acknowledge &amp; address power differentials between fields &amp; positions (e.g., Judges as leaders and ultimate decision-makers in courts)</li> <li>● Engage professionals in examining structural &amp; institutional contexts of their practice/in which decisions are made (e.g., medical/mental health models, legal standards, practices, &amp; assumptions)</li> <li>● Develop intentional goals and approaches to decision-making and institutional reform aimed at increasing equity &amp; safety (e.g., universal screening for IPV, procedures for case handling when identified, structures for meeting language needs in family court)</li> </ul>	<p>Interrogate current and design future policies that:</p> <ul style="list-style-type: none"> <li>● Consider options for custody arrangements outside the courts &amp; avoid only adding to processes &amp; procedures (e.g., not simply increasing the number of experts involved)</li> <li>● Seek ideas &amp; solutions from &amp; assess needs of families engaged with courts (e.g., what are common barriers, what are families’ goals, what do they want from the courts)</li> <li>● Require &amp; implement training for professionals focused on combating bias (e.g., related to race &amp; gender) &amp; increasing accurate knowledge of IPV (e.g., regarding false allegations, &amp; parental alienation)</li> </ul>

# Appendix I: PRISMA-ScR flow diagram of study source identification, screening, and inclusion.



## Appendix II: Data extraction tool for critical scoping review.

Rousson et al. (2023)

Factors associated with child custody determinations when IPV is alleged: A critical scoping review

Data extraction list:

- 1) Journal [make codes for each journal title]
- 2) Date [make codes for each year]
- 3) Authors' professional affiliation(s) [make the following codes and add as necessary]
  - a) Psychologist: academic
  - b) Psychologist: practitioner
  - c) Social Worker: academic
  - d) Social Worker: practitioner
  - e) Other masters level practitioner
  - f) Attorney: academic
  - g) Attorney: practitioner
  - h) Judicial Officer
  - i) Other
- 4) Source Type [make the following codes and add as necessary]
  - a) Empirical: Quantitative
  - b) Empirical: Qualitative
  - c) Conceptual
  - d) Commentary
  - e) Other?
- 5) Who are the participants? [make the following codes and add as necessary]
  - a) Evaluator: psychologist
  - b) Evaluator: master's level
  - c) Evaluator: other
  - d) Judge
  - e) Attorney
  - f) IPV Advocate
  - g) Other
- 6) Formal & informal policies re: decision-making in child custody/IPV cases [open concept codes]
- 7) Focus of evaluative attention [make the following codes and add as necessary]
  - a) Parent: mother
  - b) Parent: father
  - c) Child(ren)
  - d) Family unit
  - e) Other family members
  - f) Collateral contacts
  - g) Documents/records
- 8) Factors/criteria to consider re: decision-making in child custody/IPV cases - (e.g., evidence and substantiation, parent-child relationship, mental health) [open concept codes]
- 9) Resources/supports suggested in order to facilitate addressing these factors (e.g., training) [open concept codes]
- 10) Any identity-based references (i.e., explicit reference to gender, age, race, etc. of participants or decision-makers)

PAPER 2:  
AN INTERSECTIONAL ANALYSIS OF THE BEST INTEREST OF THE CHILD  
STANDARD IN CUSTODY COURTS IN CASES OF IPV

**Introduction**

Approximately 10-15% of separating families have contested child custody arrangements that require dispute resolution in the form of mediation and/or litigation (Polak & Saini, 2019). This means, for a small proportion of families, courts have substantial intervention and decision-making power regarding what child custody and access looks like. Contemporary family courts have positioned themselves as neutral arbiters in conflicts over custody of children when parents separate or divorce. Yet, the prevailing standard for determining custody, what is in the best interest of the child (i.e., the BIC standard), is vaguely defined. It also lacks clear presumptive factors present in prior standards such as the “tender years” doctrine, which favored mothers when children were young (DiFonzo, 2014). The BIC standard, therefore, grants judges broad discretion over cases, leaving room for individual and institutional bias. Despite attempts to curb judicial discretion by, for example, providing specific factors for determining the BIC standard, evidence of bias in custody cases remains (Dragiewicz, 2010; Elrod & Dale, 2008; Levin & Mills, 2003).

Furthermore, among the 10-15% of families subject to this judicial discretion, researchers estimate that 40-80% also involve allegations of intimate partner violence (IPV) (Beck et al., 2010; 2013; Logan et al., 2002). Despite these figures suggesting IPV is common within contested custody cases, court decision-makers maintain the view that IPV is rare, and therefore not often relevant to custody determinations (Meier, 2021; Saunders et al., 2016). The challenges

of addressing IPV in custody cases are compounded by the additional presence of gender bias in family courts. Gender bias is especially concerning in the context of broad discretion over custody outcomes, and high occurrence of IPV allegations, as IPV is itself a gendered phenomenon (see e.g., Anderson, 2005; Ferraro, 2012). Feminist scholars, practitioners, and advocates have offered numerous critiques of family law and family court systems regarding their gender bias and offering evidence of poor outcomes for women and children, particularly when IPV is an issue (e.g., Dragiewicz, 2010; Boyd, 2001; Meier, 2021). Despite decades of attention from scholars and attempts to reform law and court processes, there is little evidence that family courts are improving their ability to navigate the complex landscape of custody determination in cases involving IPV.

Within the context of broad judicial discretion, unintended bias along dimensions of social identities such as race, class, and sexuality are likely also present. Yet, very few scholars have used an explicitly intersectional approach to address this topic, instead employing an exclusive gender focus (Durfee, 2021; MacDowell, 2013). I use intersectionality as a conceptual framework for understanding how institutional processes of family courts may reproduce inequities along multiple dimensions of social identity. From an individual perspective, intersectionality suggests individuals' multiple intersecting identities shape their opportunities and experiences via relationships of those identities to broader systems of oppression (e.g., racism, heterosexism) (Collins, 1990). Examining the BIC standard through the lens of the intersecting identities of parenthood, gender, race, and class helps bring previously unarticulated inequities in child custody decision-making into clearer focus. This paper outlines specific theoretical and practical considerations that illustrate the utility of applying intersectionality to reveal inequities in child custody decision-making, especially when there is IPV. Finally, I offer

next steps, grounded in this intersectional analysis, that may move us closer to envisioning solutions that meet the needs of diverse families and considers what we know about what is in the best interest of children who have been exposed to IPV.

### **Roadmap for this analysis**

To provide the necessary background, I begin with an introductory summary of prevailing standards for determining child custody in U.S. family courts, including underlying assumptions constituting some of the context in which these decisions are made. Next, I introduce and critique prior efforts to address systemic inequities related to gender within family court child custody processes. I examine the use of a biological and binary view of gender alongside a gender neutral court framework, demonstrating how gender becomes obscured and suggesting the need for an intersectional approach. The remaining sections of the paper focus on introducing and applying intersectional frameworks to the problem of child custody decision-making in cases of IPV. I provide a brief introduction to intersectionality as an applied conceptual framework, including the specific intersectional concept of controlling images (Collins, 2022). Briefly, controlling images refer to the culturally available ideas about marginalized groups, complexly constructed according to intersecting dimensions of social identity (e.g., relate to more than one's race, or gender). I apply the concept of controlling images with respect to the identities of parenthood, gender, race, and class, to the prevailing BIC standard used in custody determinations to illustrate how courts may reproduce inequities in cases involving IPV. Furthermore, I discuss binary gendered ideas of parenthood as the only available cultural images, and how these erase and further marginalize gender and sexual minority identities. Finally, placing this analysis in the context of what we know about what is in children's best interest following exposure to IPV, I suggest next steps in research and practice

aimed at increasing equity in court processes across diverse social identities and prioritizing safety and wellbeing for child and adult survivors.

## **Child custody and IPV**

### **Standards for determining child custody**

Child custody refers to the legal decision-making authority and physical custody and access arrangements for a child, often between two biological and/or legal guardians whether ever married or not. Parents can share, equally or by some other partial means (joint or sole), legal and/or physical custody of a child. Equal- or near equal-shared legal and physical custody would mean equal decision-making authority as well as equal time with children. The latter arrangement is rare given the practical limitations of splitting time equally. In either case, joint custody reflects arrangements falling along a continuum of shared authority and access (DiFonzo, 2014). In making decisions about custody arrangements, courts tend to favor parents determining on their own what that should look like. Once a decision is made, a parenting plan is developed which stipulates who has authority for parenting decisions, and what the living arrangements and visitation schedule will be.

Formal, and informal doctrines influencing custody decision-making have changed over time, often reflecting broader sociocultural ideologies and norms (DiFonzo, 2014; Mason, 1994; 2011). As noted, decisions regarding child custody are made with unclear presumptions, resulting in broad judicial discretion that is vulnerable to individual bias (Saunders et al., 2013; 2016; Scott & Emery, 2014). The BIC standard represents the prevailing formal standard for determining custody. In addition to individual bias, interpretation of the BIC standard across jurisdictions and at all levels of legal decision-making (e.g., statutes, case law, guidelines, case

facts) are vulnerable to the contemporary political climate and embedded in systems subject to their own values and assumptions (Mason, 1994; Reed et al., 2021). Some of these assumptions are explicitly stated and codified (e.g., preference for joint custody), and others are unacknowledged, yet powerful driving forces of BIC evaluations and custody determinations (e.g., concepts of racialized motherhood). Regardless of what is stated in law and guidelines, in practice courts almost universally accept the notions that child custody determinations should be gender neutral (i.e., not favoring mothers or fathers), and that children should have ongoing contact with both parents after separation, in all but the most extreme cases (Elizabeth et al., 2012).

However, these assumptions ignore the fact that courts are imbued with historical and structural biases that favor cisgender heterosexual white elite men, and others encountering the system face varying types of systemic disadvantage. Individual outcomes can and do run counter to what would be assumed according to broader systems of oppression like racism and heterosexism. Yet the historical, structural, and systemic nature of these inequities remains, and influences custody decisions in powerful and unacknowledged ways.

### **Addressing systemic issues in child custody determinations involving IPV**

Despite the powerful influence of systems of oppression such as racism, classism, and heterosexism in the development, articulation, and application of U.S. laws, there has been little attention to the importance of intersecting identities related to race, class, and sexuality in research and policy regarding child custody determinations. Even rarer, are explicitly intersectional analyses of how IPV and child maltreatment claims are considered in custody decisions (Durfee, 2021; MacDowell, 2013). There are, however, numerous critiques and attempts to adapt policy and practice based on gender bias against women; with gender

understood as binary (men and women), biological, and fixed (Davis, 2022). Most cases among the small proportion of separating families that require judicial custody determination involve cisgender heterosexual couples who are the biological parents. However, the racialized and classed dimensions of parents' identities, and the cases involving added layers, such as for queer and trans parents, should not be ignored. To provide a foundation for an intersectional approach to child custody determinations involving IPV, I provide an overview of the arguments for and against feminist critiques that center binary gender to the exclusion of other dimensions of identity and experience. In doing so, I recognize the need to expand on these gendered critiques, rather than supplant them.

#### *Gender bias, custody, and IPV*

Evidence of gender bias against women in family courts was found across several domains (e.g., questioning women's credibility; double standards for parenting) in U.S. state-by-state self-studies conducted by gender bias task forces (Dragiewicz, 2010). This evidence provides support for claims of gender bias in the custody context, as do continued feminist critiques (see e.g., Zaccour, 2018). These biases have been particularly detrimental to victims of IPV embroiled in family court custody disputes (usually mothers). Scholars, practitioners, and qualitative accounts from mothers suggest widespread disbelief of IPV and child maltreatment among court professionals (Saunders et al., 2013; 2016) and subsequent failure to consider abuse in decisions, putting adult and child survivors at risk (e.g., Miller & Manzer, 2012; Coy et al., 2015). Perhaps more troubling, is evidence of punitive determinations when victims allege abuse. Evidence includes a recent quantitative empirical study in the U.S. supporting mothers' qualitative claims of punitive court decisions for alleging abuse by their parenting partner (Bemiller, 2008; Khaw et al., 2021; Meier, 2021). Yet, this evidence fails to disrupt ongoing

debate over the existence, and even the direction, of gender bias in family court processes (Alschech & Saini, 2019; Boyd, 2001; Dragiewicz, 2010; Meier, 2021). This intractability demonstrates how custody decision-making is shaped by the gendered power dynamics of our broader culture.

Additionally, the arguments and solutions put forward by some feminist scholars, while well meaning, have contributed to the reinforcement of unhelpful paradigms that pit men against women and equate women and mothers with survivors and men and fathers with perpetrators (Elizabeth et al., 2012). These arguments are predicated on essentialist conceptions of gender as binary (i.e., man and woman), biological, and fixed (Davis, 2022). These false dichotomies keep us stuck in combative positions over who engages in IPV, and to what effect (Larance et al., 2022). The results of these debates have left us with two opposing arguments when IPV is considered in the context of custody disputes.

Both arguments rely on essentialist understandings of gender that erase experiences of queer, and trans survivors. The first, equates IPV with cisgender heterosexual men's violence against women, which fails to fully account for violence among sexual minority couples and ignores the possibility of cisgender male survivors. It also limits our capacity to acknowledge and interrogate survivors' own use of violence, which ultimately serves to marginalize them even more (Larance et al., 2018; 2022). The second, asserts that men and women in relatively equal measure, engage in IPV that is often "bidirectional" (Bates, 2016). This argument neutralizes gender, obscuring very real gendered hierarchies of power. As Elizabeth et al. (2012) point out, within a focus on IPV in the context of child custody is also the dichotomy of violent and "normal" couples, which implies "relationships free from violence are also free from gendered power dynamics", which existing evidence disputes (p. 460). These entrenched positions about

IPV have become increasingly political, and institutionalized within family courts determining custody when IPV is alleged. Therefore, we need both expanded notions of what IPV is, who is involved, and how it factors into evaluations of parenting.

### **Gender neutrality and the BIC standard**

Contrary to the need for inclusive conceptions of IPV and parenthood that capture the full range of experiences for families encountering child custody disputes, court guidelines now explicitly instruct jurists to apply the BIC standard in gender neutral ways. This allows the appearance of gender equality, via an explicit stance to not allow gender to influence decisions. However, gender neutrality obscures gendered power dynamics present within relationships and favors those who are privileged by their gender (cis men), all while failing to interrogate other dimensions of identity implicated in our understanding of IPV and parenting, such as race, class, and sexuality.

The gender-neutral assumptions of BIC gained traction in the 1980s for several reasons. First, initial research suggested joint custody was beneficial for children whose parents were committed to it, however, follow up research has challenged this notion (Mason, 2011; Oehme & Saunders, 2007). Second, it fits with the foundational family law concept recognizing the fundamental right of parents to parent their children without intrusion of the state (Hamilton, 2006). Formal presumptions for joint custody strengthen the implicit assumption within the courts that children have the right to ongoing contact with both parents and it is in their best interest for courts to facilitate this (DiFonzo, 2014). This creates what Elizabeth et al. (2012) call the philosophy of “contact at [almost] any cost” (p. 475), a philosophy that might be especially ill-advised in the context of IPV.

Reflective of these assumptions, is the institutionalizing of a common BIC factor through codification in statute in at least 32 states. This factor prioritizes awarding custody to the parent who will be most likely to promote a relationship between the child(ren) and the other parent and facilitating contact to this end (Dore, 2004; Oehme & Saunders, 2007). However, this “friendly parent” factor often involves an analysis of which parent is acting “unfriendly”, given the inherently adversarial nature of child custody disputes (Dore, 2004; Oehme & Saunders, 2007). The friendly parent factor is almost exclusively applied to mothers who are seen as impeding fathers’ access to children (Dore, 2004; Adams, 2006). Lastly, there was concerted effort by the Fathers’ Rights Movement (FRM) to reform family court laws and processes to be more favorable to fathers, against whom, they asserted, the courts were biased (Alschech & Saini, 2019).

Within this context, moves to be gender-neutral were an attempt by courts to maintain the appearance of impartiality and equal protection under the law. These efforts were largely in response to FRM claims that custody determinations unfairly favored mothers, despite evidence to the contrary (Dragiewicz, 2010; Kernic et al., 2005; Meier, 2021). “Rights”, “equality”, and “neutrality” rhetoric used by the FRM successfully invoked the very underlying ideologies of the law such as equality and impartiality courts were trying to preserve (Boyd, 2001; Alschech & Saini, 2019). At the same time, courts were urged by IPV advocates and those within courts allied with them to take seriously allegations of IPV in the child custody context. In response to the need to address IPV and within the context of institutional processes and demands for gender neutrality, courts adopted an over-simplified dichotomy of IPV types; one that is dangerous, and one that is not (Meier, 2015; 2017). However, the common belief that “real” (i.e., dangerous) IPV is rare, and therefore the exception, renders nearly all IPV inconsequential and suggests

there is no need for serious reform of the custody determination process (Elizabeth et al., 2012; Meier, 2017).

In addition to the explicit use of gender-neutral language in law, a simplified reading of social science research led to assumptions within courts that mothers and fathers were essentially interchangeable (Mason, 2011). This assumption serves to flatten meanings of parenting, while giving the illusion of, equality, and inclusivity. Taken together, this creates an environment where IPV, and gendered hierarchies of power are ignored, and parents are seen as being treated equally, and evaluated on a seemingly equal plane.

Whether stated or not, underlying assumptions about parenting are at work in custody determinations, and explicitly denying and neutralizing them results in erasure of gendered power dynamics. Moreover, because ideals of parenthood are not just gendered, but also raced, and classed, individuals falling outside of the assumed normal standards of what a mother or father is, are likely to face added disadvantage. For multiply marginalized individuals, those holding a number of intersecting marginalized identities, the disadvantage is likely compounded. The further a person is from assumptions about what makes a “good” parent, the harsher the potential penalty from the courts. In the following section, I provide an overview of intersectionality and how I use it to expand on the gendered, raced, and classed assumptions about parenting, and how these operate within the gender- and IPV-neutralizing context of the institution of the courts.

### **Intersectionality as theory and method**

An intersectional approach that understands (among others) “race, class, and gender as interlocking systems of oppression...opens up possibilities for a both/and conceptual stance, one

in which all groups possess varying amounts of penalty and privilege in one historically created system” (Collins, 1990, p. 225). In the simplest terms, intersectionality involves engaging with power (Cho et al., 2013, citing Tomlinson). Discussing intersectionality as a theoretical tool, Larance et al. (2022) describe how it, “destabilizes binary thinking by emphasizing that people must be seen and understood within the context of their lived experiences” (p. 470).

Relevant to the custody determination process, an exclusive focus on gender in scholarly critiques reinforces normative conceptions of parenting and binary conceptions of IPV.

Ultimately, this limits our understanding of how individuals at the intersections of multiple marginalized identities may fare in the family court system and how court processes may serve to (re)produce inequities along identity lines. Only by acknowledging the historical and structural inequities favoring cisgender heterosexual white elite men, and purposefully applying an intersectional lens can we illustrate that (and understand *how*) courts reproduce inequities along intersecting dimensions of parenthood, race, class, and gender in child custody cases. This is a necessary first step to addressing these inequities and designing more just reform efforts.

A particularly useful concept in illustrating how ideas about marginalized groups of people have tangible impacts on their lives, is Patricia Hill Collins’ concept of “controlling images” (2022). Collins asserts that “ideas about normality and deviancy are fundamental” to delineating hierarchical positions and upholding systems of power (2022, p. 356). Discussing controlling images of Black women, Collins argues that images of Black women as mummies, matriarchs, bad mothers, and jezebels serve to subordinate them in social hierarchies (2022). Yet, controlling images are universal, and are invoked and applied according to perceptible dimensions of our social identities. She describes four key aspects of controlling images: 1) images applied *to* marginalized groups are not constructed *by* marginalized groups, 2) the content

of these images is nuanced – she gives the example that images of Black women differ along class, sexuality, age, ethnicity, and religion, 3) they aim to manage social interaction – that is, they are applied in the social environment to confer positions within the social hierarchy, and 4) they are relational – “the meaning of one set of images is tied to that of others” (e.g., Black femininity and Black masculinity) (Collins, 2022, p. 362).

### **Applying intersectionality to the BIC standard**

#### **Controlling images in child custody determinations involving IPV**

In the following sections, I draw on broad understandings of intersectionality to critique prevailing standards and court processes for determining child custody when IPV is alleged. I pay specific attention to issues of power and social identity, and challenge binary thinking regarding parenting and IPV (Cho et al., 2013; Collins, 1990; Larance et al., 2022). To provide a particularly illustrative example of the utility of this approach, I apply the intersectional concept of controlling images to the problem of child custody in cases involving IPV, with attention to the intersecting identities of gender, parenthood, race, and class. This helps us see how the images and scripts about “normality and deviancy” applied to individuals in *relationship* to the other parent award privilege and penalty in custody determinations, influencing the overall judgement of court decision-makers.

Controlling images incorporate an examination of structural violence – which refers to the ‘natural’ embedded violence resulting in inequities in power and life outcomes - (Park, 2017, p. 270, citing Galtung, 1969). Therefore, allowing us to consider differences in social position across individuals and help identify and articulate what Reed et al. (2021) call the “forces that create and sustain injustice” within the institution of the courts (p. 151). Speaking directly to

issues of IPV, Sokoloff and Dupont (2005) recognize the need to acknowledge both the structural mechanisms and the individual variability across experiences of diverse survivors. This multilevel focus and understanding are needed to identify targets for reform to the structures, processes, and policies that sustain injustice within family courts, and solutions to custody matters that better reflect the realities of diverse families caught up in these systems.

### **Parenthood, IPV, and issues of child custody**

Chief among assumptions guiding child custody decisions are the deeply held and unacknowledged conceptions of women and men, mothers and fathers. Despite an ever-changing landscape of family structure and formation, our culturally dominant conception of parenthood is intimately tied to the assumptions of a gender binary (i.e., men and women) and the two-parent nuclear family, consisting of a mother and a father. When IPV is a consideration, the binary concept of victim/perpetrator is layered on. Inherent in all these binary identities are raced and classed normative images, and as Collins reminds us, these images are nuanced, differentiating individuals across a host of intersecting identities (2022).

### **Controlling images of motherhood and IPV**

The BIC standard is intimately tied to gendered, raced, and classed assumptions about what makes a “good” mother in particular. This is partly because mothers are seen as primary caregivers, ultimately responsible for children’s well-being, who continue to do the lion’s share of domestic and childrearing tasks regardless of their participation in paid work outside the home (DiFonzo, 2014; O’Reilly, 2019). When it comes to children, mothering is the default and therefore subject to intense scrutiny. When normative motherhood is conceived of as the mothering of cis-hetero white middle class women in nuclear families, being a “good” mother becomes largely inaccessible to queer, racialized, single, and poor mothers (Boyd, 1996; Park,

2019). An example of how images of the good mother intersect with IPV is the “failure to protect” framework that is applied to mothers in the child welfare system on the basis of their own IPV victimization (Henry et al., 2020). Furthermore, mothers who are ultimately substantiated on failure to protect claims are disproportionately Black (Henry et al., 2020). Drawing on the controlling image of Black women as bad mothers, it is possible that Black mothers facing IPV were judged more harshly than other mothers in similar circumstances (Collins, 2022).

For mothers contesting custody, research shows that mothers’ credibility is questioned when they claim abuse against themselves or their children (Dragiewicz, 2010). They are often assumed to exaggerate their claims, and the impact that IPV has on children (Zaccour, 2018). Furthermore, any considerations of the IPV are measured against a specific paradigmatic victim who is cisgender heterosexual and white, docile, and powerless (Goodmark, 2009). For Black, Latinx and other survivors of color, these “racialized hierarchies [of] who is a “worthy” IPV victim” potentially exacerbate their lack of believability before the court (Garza, 2021, p. 1232). Controlling images of Asian women as hypersexual and morally duplicitous may work against them in the complex context of custody and IPV victimization (Hwang & Parreñas, 2021). Invoking these images would conflict with images of ideal motherhood, and “real” victims of IPV. Furthermore, if an Asian mother happens to be contesting custody in opposition to a white father, not only do the intersecting privileges of his race and gender advantage him, but the historical and cultural view of Asian women as “intentionally duping unsuspecting American men” may strengthen this advantage (Hwang & Parreñas, 2021, p. 573). Combined with claims of abuse that are unlikely to be deemed credible, these scripts that operate relationally (Collins, 2022), not only disadvantage her but are likely to result in punitive determinations (Bemiller,

2008; Khaw et al., 2021; Meier, 2021). Lack of explicit recognition of a normative standard of motherhood makes women's intersectional social positions invisible and erases their experiences of oppression, while evaluating them against a standard that is indeed raced and classed. Within an adversarial system where women, especially women of Color, and those claiming abuse, are seen as lacking credibility, morally unfit, and intentionally and strategically "gaming the system", these complex images of mothers may have cumulative and compounding negative impacts on their ability to be seen as good enough mothers. As these controlling images operate relationally – it is important to understand the complex images applied to fathers.

### **Controlling images of fathers**

Normative masculinity assumes intelligence, competence, economic provision, and aggression for cisgender heterosexual white men (MacDowell, 2013). Normative expectations of fathers conform to this version of an idealized masculinity. Though fatherhood is changing, normative cultural conceptions of fatherhood largely relate to providing material support to women and children, which often carries a degree of rights to authority and "legitimate power" (Ferraro, 1996; Mason, 1994). Because for (cis-het, white) men, and by extension fathers, aggression is normative, violence is among the options available to express it (MacDowell, 2013).

However, for men of Color, especially Black men, expressions of masculinity can be perceived as threatening (MacDowell, 2013). Violence by these men is generally seen as criminal, and pathological (Dow, 2016; MacDowell, 2013; Mahan, 2013). Illustrative of controlling images of marginalized fathers, is for example, the absent Black father. Importantly, in the context of child custody, a Black father's desire for custody and access is likely viewed favorably. When the other parent is a Black mother, the controlling images of her may be

enough, in comparison, to overcome controlling images of him (Collins, 2022). For economically privileged white fathers, and Asian fathers who are perceived as representing the “model minority”, who are not expected to provide beyond materially, their stated desire to parent is likely seen in a very positive light.

### **Men, violence, and the victim/perpetrator binary**

Drawing on Collins’ concept of controlling images MacDowell (2013) describes the complex relational interplay between the perceived victim and perceived perpetrator of IPV that is subject not only to gendered, raced, and classed stereotypes but also evaluated with respect to an individual’s performance of raced and classed masculinity/femininity. The victim/perpetrator binary is predicated on the understanding of victims as passive, cisgender, heterosexual, white, and middle-class (Goodmark, 2008; MacDowell, 2013). Furthermore, perception of victims necessarily includes a perpetrator. That is, in order to have a victim, you must also have a “perceptible perpetrator” who is constructed against the standard of men as possessing the stereotypical attributes of masculinity (MacDowell, 2013, p. 547). If you deny a victim, there can be no perpetrator or wrongdoing.

Because violence is an accessible expression of aggression for (cis-het, white) men, the use of violence must rise to a level of criminal in order to be problematic (MacDowell, 2013). To the degree that controlling images of Black men make them perceptible as perpetrators, that perception is contingent on the perception of a victim. In the case of IPV in the context of child custody determination, these perceptions are based not only on normative expectations of victim and perpetrator, but on normative expectations of mothers and fathers. In a system that requires a credible victim, failure to meet that standard is construed as impeding access and therefore at odds with the standard of what makes a “good” mother. Additionally, these evaluations are

undertaken in relationship to notions of a father as having rights and authority within the family, and in the institutional context that assumes joint custody and access.

Evidence that mothers are punished for reporting IPV and child maltreatment in the context of custody disputes reflects how controlling images of women and mothers operate to disadvantage them (Bemiller, 2008; Khaw et al., 2021; Meier, 2021). However, an intersectional approach suggests punitive custody decisions are likely not experienced equally by diverse women. The added disadvantage that intersecting identities of marginalized race, and class garner, may increase perceptions they are lying, immoral, or “in it for the money”, and thus deserving of punishment.

### **Beyond binary parenthood**

The dominance of cisgender heterosexual couples in the courts, and in our cultural conceptions of parenting and IPV, complicate consideration of lesbian, gay, bisexual (LGB), and transgender and gender non-conforming (TGNC) parents – together sometimes referred to as sexual and gender minority (SGM) parents. The false binaries I have discussed are particularly problematic for SGM parents, in addition to lacking nuance (e.g., victim/perpetrator), the perceptible identities related to gender, and/or sexuality often do not apply to them at all. Intimately tied as it is to binary gender and heterosexual nuclear families, parenthood among gender and sexual minority individuals is often imperceptible to western society and the courts except through the existing lens of binary gendered parenthood. That is, we lack a cultural conception of gender-neutral or gender-expansive parenthood, and therefore individuals are forced into and evaluated according to the existing mother/father paradigm.

Issues of custody involving IPV are further complicated by societal assumptions, legal limitations, and experiences of discrimination based on gender identity and sexuality. When

courts are forced to examine the parenting and rights of SGM parents, issues of sex, gender, and sexual orientation are focused on, obscuring examination of even custody law and doctrinal standards such as the BIC (Holtzman, 2013). Additionally, when it comes to consideration of IPV in the context of child custody, “intersecting forces of race, class, [gender identity], and sexual orientation [...] are not accessible through legal definitions of perpetrator and victim” (Ferraro, 1996, p. 88).

This erasure of LGB and TGNC experiences of IPV through a binary-gendered analysis and societal and legal response to IPV, renders IPV within these relationships imperceptible in the custody context. For SGM survivors, not only is IPV likely deemed irrelevant, it is likely not to be seen at all. Furthermore, any societal conceptions we have of LGB and TGNC parenting and IPV, center the experiences of economically privileged, white individuals, who identify with a binary gender and have undergone a specific transitioning sequence (i.e., changes to clothing, hormones, and surgical procedures) (Davis, 2022). Therefore, prevailing BIC standards disadvantage SGM parents through gendered, raced, and classed notions of parenting that are challenging to meet. Bringing this into clearer focus, Park (2019) describes how transgressions of morality related to being poor, racially marginalized, and disabled increase sanctions on queer parents, especially those without access to “homonormative” scripts of cohabitating and married couples (p. 64).

### **The best interest of the child in cases involving exposure to IPV**

The express mandate of the BIC standard for determining child custody relates to evaluating what is going to serve the interests of the child(ren)’s development and wellbeing. As I have illustrated in this paper, the determination is often made via explicit evaluations of parents

as individuals, subject to unacknowledged influence of institutional and societal assumptions. For example, the formal and informal assumptions related to the BIC standard provide guiding assumptions for decision-makers. There are also powerful assumptions about what makes a good mother and father that likely confer cumulative disadvantages on parents possessing intersecting social identities that make meeting these normative assumptions incredibly difficult. Court processes have also virtually ignored the issue of IPV, despite its common presence in child custody disputes. In light of these realities and the court's mandate, it is important to consider what we do know about the best interest of children following exposure to IPV.

Current evidence suggests supporting the continued attachment of the child and non-abusive parent is the strongest resilience factor for children exposed to IPV (Bowman, 2017; Fogarty et al., 2019; Holmes et al., 2019; Mariscal, 2020). However, this research is not gender-neutral, assuming that mothers are the non-abusive parent, and focuses exclusively on mother-child relationships. In response to these findings, interventions aimed at keeping the child(ren) "safe and together" with the non-abusive parent were developed (Mandel & Wright, 2019). While speaking directly to being father-inclusive and considering the impacts of fathers' abuse on the family, this approach emphasizes the importance of carefully determining the non-abusive parent (Holt et al., 2008; Katz, 2016; Mandel & Wright, 2019; Stanley, 2011). Determining this requires a nuanced understanding of the complex dynamics of IPV, and therefore does leave room for determinations of the non-abusive parent to be more inclusive of differences across families. However, adoption and utilization of such an approach in child custody determinations is limited by the gender-neutral framework, and lack of attention to IPV within the courts.

Taking steps to remedy this requires recognition that western societal conceptions of motherhood and fatherhood are by definition gendered and therefore possess unequal power.

Furthermore, we must recognize that our conceptions of those identities fail to openly acknowledge that motherhood and fatherhood are also raced and classed. Recognizing and challenging the binary assumptions inherent in our assumptions of parenthood and IPV will help to envision gender expansive understandings of these phenomena. Integrating an intersectional approach with current evidence regarding children's best interests following exposure to IPV is a needed next step. This evidence suggests supporting custody decisions that allow children to maintain a relationship with the non-abusive parent, while being kept safe from further abuse from the parent causing harm. It also suggests decisions should prioritize supporting and promoting the well-being of the non-abusive parent, to strengthen their ability to parent their children. If understood in a more gender expansive way, these approaches could be applied to all families encountering the family courts.

## **Discussion**

### **Future directions for research, policy, and practice grounded in an intersectional approach for child custody cases involving IPV**

Building on this intersectional analysis, we need further research and theorizing that helps to articulate more inclusive and expanded understandings of the dynamics of IPV and conceptions and expressions of parenting. Essential to this work is an explicit acknowledgement of the assumed and unarticulated normative standards that underlie dominant conceptions of parenthood, and those who experience IPV. As Patricia Hill Collins reminds us, an intersectional approach “opens up possibilities for a both/and conceptual stance”, which may help us contend with the complexities of families' lived experiences across different social locations and identities related to gender, race, class, and sexuality (Collins, 1990, p. 225). Included in this is

the need for research specifically with those facing IPV in context of contested child custody in the family courts. Very little research on the topic of child custody determinations, including child outcomes, involves this population.

Building on empirical research on the best interest of the child following exposure to IPV, it is important that we include more diverse families and can understand differences in children's wellbeing among those occupying a variety of different intersecting identities. One example of this is a study by Mariscal (2020), that examined differences in resiliency factors of Latinx and non-Latinx children who had experienced IPV exposure and/or child maltreatment. This study not only included several racial groups, but examined gender, and age differences, and differences among Latinx children according to ethnicity (Mariscal, 2020). Studies that look across a variety of intersecting identities, and within groups according to various other intersecting identities is important to strengthening our understanding of what supports children following exposure to IPV.

Incorporating an intersectional approach at the institutional level of the courts starts with the willingness and initiative to interrogate standards and practices, and the assumptions they are built on. Involving the perspectives of those who have navigated child custody determinations in the courts, especially those holding multiple marginalized identities will help to uncover the complex ways these assumptions are born out in practice, and to what effect. Education and training for judges and other court professionals should aim to help them develop an acute awareness of the implications of power differentials, IPV, and marginalized identities specific to the context of the institution of the courts. Assessment and evaluation of parents and parenting abilities should also consider these implications and recognize how differences in access to

opportunity and resources, as well as cultural values and practices impact parenting and institutional perceptions of parenting.

### **Conclusion**

This paper illustrates the importance of an intersectional approach to child custody determinations involving IPV. Using intersectional frameworks and the concept of controlling images, I critique the courts' unacknowledged reliance on normative conceptions of motherhood and fatherhood, and how these intersect with assumptions underlying what IPV is and who it involves, disadvantaging those holding marginalized identities. I argue these assumptions and their impact on decision-making is especially problematic in the context of the gender-neutral BIC standard, used to determine child custody. I illustrate how a gender-neutral approach obscures gendered hierarchies which are also raced, and classed. Similarly, simplistic conceptions of IPV result in its erasure in custody decisions. Ultimately, the complex, and relational controlling images invoked relating to gender, race, class, and parenthood may compound the court's reproduction of inequities in the custody process across a host of identity dimensions.

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## PAPER 3:

# A QUALITATIVE INTERSECTIONAL ANALYSIS OF SURVIVORS' MOTHERING IN THE CONTEXT OF IPV AND INSTITUTIONAL BIAS IN FAMILY COURT

### **Introduction**

The research fields of motherhood studies, children's exposure to intimate partner violence (IPV), and parenting in the context of IPV have grown exponentially in recent decades (Carlson et al., 2019; Hallstein et al., 2019; Sousa et al., 2022). However, these tend to represent distinct areas of focus that are rarely taken up together. Motherhood studies have increasingly attended to the experiences of marginalized mothering including Black, Indigenous, and queer mothering, sometimes using an intersectional lens (e.g., Park, 2019). Much of the literature on children's exposure and parenting in the context of IPV focuses on the negative impacts of that exposure for children and negative impacts on (cisgender heterosexual) mothers' parenting (Sousa et al., 2022). Scholars have increasingly critiqued what has been a deficit-focused evaluation of mothers and mothering in the context of IPV (Broughton et al., 2022; Lapierre, 2008; Sousa et al., 2022). Within these critiques is a call to examine mothering by survivors, not just with regard to how it affects children's development and wellbeing, and to focus on survivor agency and acts of resistance and resilience within the abusive context.

For women with children, leaving an abusive relationship often involves lengthy child custody disputes involving ongoing contact with, and sometimes an acute escalation of violence from, their abusive ex-partners (e.g., Adhia et al., 2019). Yet, many mothers do leave their relationships, and often because of concerns over impacts on their children (Semaan et al., 2013). In many cases women experiencing IPV are encouraged by social service professionals to leave

their abusive partners, especially when they have children who have been exposed (Humphreys et al., 2011). However, determining whether and when to seek safety through engaging systems such as family court, often involves a series of complex “trade-offs” (Thomas et al., 2015). Furthermore, many mothers recognize that with shared children, there is often no true separation from their abusive partner (Holt, 2017; Larance et al., 2018; Toews & Burmea, 2017). Ultimately, decisions to leave and the processes for leaving are complex and vary across important intersecting social identities (Barrios et al., 2021).

Leaving is also made challenging by the realities of family court involvement in the United States. Mothers who share children in common with their abusers often face more contact with them postseparation due to communication and exchanges regarding the children and are often subjected to new and unique forms of violence by ex-partners through involvement with the courts (Spearman et al., 2023). Research on survivor perceptions of family courts consistently reveals negative experiences in which ex-partners successfully leverage court processes to continue their abuse (Gezinski & Gonzalez-Pons, 2021; Gutowski & Goodman, 2020; Hey et al., 2021; Kleiner & Romain-Glassey, 2023; Khaw et al., 2021; Laing, 2017; Miller & Manzer, 2018; Rivera et al., 2012; Tutty et al., 2023; Zeoli et al., 2013). This abuse often involves undermining mothers parenting in view of the court, which can result in the limiting or loss of mothers’ child custody and access (Dekel & Abrahams, 2023; Heward-Belle, 2017; Khaw et al., 2021; Laing, 2017; Miller & Manzer, 2018).

Despite evidence of heightened abuse at time of separation, we know very little about survivor-mothers’ own conceptions and reports of their mothering at this critical period which often includes family court involvement. Similar to mothers involved in the child welfare system, survivor-mothers contesting custody in family court are often subjected to “state-

orchestrated” removal of children or limitations on the care they provide (Elizabeth, 2019 citing Kenny et al., 2015). Furthermore, the family court as an institution reflects broader cultural biases resulting in questioning mothers’ credibility, holding them to a higher standard of parenting than fathers, and imposing ideas of what makes a good mother. These scripts and institutional standards also make courts a hospitable environment for ongoing abusive tactics by ex-partners. Within this constrained and often hostile context of the family courts and in the face of ongoing abuse by ex-partners, mothers may demonstrate resilience and resistance (Khaw et al., 2021; Miller & Manzer, 2018). In addition to an overall lack of research on mothering among IPV survivors, including those navigating the family courts, few studies explicitly examine the institutional context of the courts using an intersectional lens.

The current study contributes to and expands our knowledge of survivors’ mothering from their own perspective and focuses attention on the courts as an institution. Specifically, we expand on qualitative literature demonstrating how institutional biases against mothers experiencing IPV can reflect and reproduce broader cultural values and expectations of mothers which are gendered, racialized, and classed. To do so, we examine mothering among a sample of IPV survivors ( $n=12$ ) who reported negative custody outcomes in family court, focusing on actions women took, and the ways they enacted mothering within these constrained relational and institutional contexts. We use secondary analysis of qualitative data, drawing on intersectional frameworks and maternal theory to examine how courts responded to survivor mothering and whether responses reproduced inequities along gender, class, and racial lines.

### **Guiding theory and frameworks**

#### **Maternal theory and its relevance to understanding mothering experiences**

Examining both the patriarchal definitions of motherhood and what makes a “good mother”, and the lived experiences of mothering across a variety of contexts, allows for examination of the oppressive *and* empowering aspects of motherhood and mothering (O’Reilly, 2019). Scholars writing on Black and queer mothers note the creative and empowered mothering that occurs outside of “traditional” notions of motherhood by those who are, by definition, outside the ideal cultural standard held by many (Collins et al., 2005; Lewis & Craddock, 2019; Park, 2019). Some scholars argue that survivors of IPV are included among marginalized mothers due to the difficult and stigmatized context in which their mothering occurs (McDonald-Harker, 2019). Bemiller (2010) also makes this argument about non-residential mothers (those who do not have primary custody or caregiving responsibilities). Maternal theory applied within an intersectional framework, provides a model by which to examine mothering among survivor-mothers that allows for recognition of the real experiences of marginalization that shape options for mothering among this population. Thus, we focus on the *doing* of mothering – how mothers are mothering within constrained contexts and how survivors’ mothering can be constrained by the institution of the court and the biases reflected in and reproduced by it.

### **Intersectionality as a lens to analyze the diverse experiences of IPV survivors**

Intersectionality is a complementary framework, allowing consideration of diverse and interconnected social locations, identities, and experiences along a range of axes. In this case, we use it to explore individuals’ own experiences of mothering, and how mothers are perceived and received by professionals who are evaluating their mothering in the family court institutional context. Intersectionality encourages us to interrogate power differentials with respect to, for example, gender, race, class, and sexuality, as these differences are encountered in the context of relationships and systems (Collins, 1990). In this study, we examine mothers navigating negative

child custody outcomes, illustrating institutional conceptions of motherhood as applied to individual mothers via professionals' evaluations of them. We examine the active and identity-connected experience of mothering as described by mothers and constrained by the institutional context of the courts (O'Reilly, 2019). The focus on mothering aligns with best practices in intersectional research of focusing on resistance and agency of marginalized individuals/groups (Durfee, 2021), and places the focus for change on the institution rather than the individual.

## **Literature Review**

### **IPV among mothers & impacts on parenting**

Lifetime experiences of at least one type of IPV, including physical, and sexual IPV, and stalking, were reported by 47% of women in a large nationally representative survey (Leemis et al., 2022). Additionally, approximately 49% reported having experienced psychological aggression in their lifetime, including expressive aggression (29%) and coercive control (46%) (Leemis et al., 2022). For the purposes of this paper, IPV includes physical, emotional/psychological, and sexual violence, coercive control, and surveillance and stalking, by a past or present intimate partner.

Some U.S. population-based research across states suggests mothers are approximately twice as likely to experience IPV in the past year than women without children (Jones et al., 1999; Vest et al. 2002), and Bair-Merritt et al. (2008) found women with children living in the home were approximately 25% more likely to have experienced past-year IPV relative to women without. Household studies also indicate IPV is higher among couples with children than those without (McDonald et al., 2006). Being a mother has bearing on whether women stay in, or leave, a relationship (Kelly, 2009; Semaan et al., 2013) and may increase the risk for longer

duration of IPV, independent of the length of the relationship (Vatnar & Bjørkly, 2010). For some women, IPV may begin or escalate during pregnancy (Alhusen et al., 2015) and may be more prevalent when children are young (Atkins et al., 1997; Fantuzzo & Fusco, 2007). The risk for IPV is higher for women postseparation, and that violence is often severe (Brownridge, 2006; Rezey, 2020).

Pervasive experiences of IPV can impact mothers' overall wellbeing and parenting. While some research suggests IPV impedes mothers' ability to create warm and attentive relationships with their children, and may even increase harsh parenting, that is not true for all mothers (Rousson et al., 2021; Sousa et al., 2022). In fact, researchers have also found that mothers experiencing IPV are more attentive in order to compensate for exposure to violence and as a protective measure for children (Letourneau et al., 2007; Sousa et al., 2022). Overall, research on outcomes for children exposed to IPV tends to focus on evaluations of mothers' parenting (Broughton et al., 2022). Despite mothers being common victims of IPV, and the importance to survivors of their role as mothers, there is little attention to mothers' experiences of their mothering in the context of IPV (Francia et al., 2020; Laing, 2017; Semaan et al., 2013). Thus, we have limited information about how survivors conceptualize themselves as mothers and how they navigate mothering in the complex context of IPV.

### **Previous research on IPV survivors and mothering experiences**

The literature exploring mothers' experiences in the context of IPV has primarily focused on strategies of maternal protectiveness of children (Buchanan et al., 2013; Dekel & Abrahams, 2023; Lapierre, 2010; Mohr et al., 2001; Moulding et al., 2015; Wendt et al., 2015). Lapierre's (2010) study of women who had experienced IPV and their involvement with child welfare focused primarily on mothers' efforts to protect children, and described how mothers took care of

children unrelated to the abuse such as caring for their material and emotional needs. Others have examined mothering in the context of IPV from the perspective of their children (Buchanan et al., 2015; Lapierre, 2017). Few studies have explicitly explored mothering in the context of IPV, wherein researchers were interested in understanding the acts, identity, and meaning of mothering for women (Dekel & Abrahams, 2023; Francia et al., 2020; Semaan et al., 2013). One study found that women experienced mothering positively, went to great lengths to care for their children, and felt a sense of empowerment through their resistance and protective efforts (Semaan et al., 2013). Another study described mothering as ‘protecting rather than parenting’ and noted cumulative harm to mothers’ wellbeing and that of their children as they navigated IPV and the custody context, ultimately impacting the mother-child relationship (Francia et al., 2020). Dekel and Abrahams (2023) explored mothering in the context of IPV in South Africa and found women experienced constraint by both material circumstances and efforts to adhere to normative perceptions of motherhood.

### **Loss of custody or access as constraining survivors’ mothering**

It is often not recognized that the loss of custody, either completely or through shared parenting arrangements that limit survivors’ mothering, can represent a significant shift in identity (Elizabeth, 2019). This may be especially true for those who have endured abuse and, having been the primary or sole caregiver for children, are faced with attempts by previously uninterested ex-partners to gain custody following separation (Elizabeth, 2019; Miller & Manzer, 2018). Mothers who have negotiated safety for themselves and their children during the relationship, find they must continue to do so after separation and often with respect to court processes (Coy et al., 2015; Khaw et al., 2021; Miller & Manzer, 2018). Additionally, mothers must prove themselves “good enough” mothers within a system that holds mothers solely

accountable for their children, favors shared parenting, and in which they, as IPV survivors, “become undeserving parents once they are victimized in a justice context” (Miller & Manzer, 2018, p. 4546).

Reflecting family courts’ receptiveness to these broader assumptions about motherhood and IPV, research indicates courts make decisions favoring fathers in cases involving IPV, fail to acknowledge IPV, and hold mothers to a different standard of parenting (Gezinski & Gonzalez-Pons, 2021; Gutowski & Goodman, 2020; Hey et al., 2021; Kleiner & Romain-Glassey, 2023; Laing, 2017; Miller & Manzer, 2018; Tutty et al., 2023; Zeoli et al., 2013). As this qualitative evidence suggests, mothers are not often successful in maintaining safety and proving their worth as parents to the courts, but rather often end up with custody arrangements they consider unsafe, or with loss of custody altogether. Reports of survivor experiences are overwhelmingly negative across studies and are remarkably consistent across samples, geographic context, and time.

Reduced and sometimes little to no access to their children can have impacts for how survivors can mother. Postseparation custody determinations sometimes result in mothers becoming the non-custodial or non-residential parent, a status that is at odds with societal conceptions of motherhood. Though general research on gender differences in non-custodial parenting activities is mixed (Kielty, 2007; King, 2008; Stewart, 1999), it is clear that residential status and access to children plays a major role in whether and how parents are involved with children postseparation (Bastaitis et al., 2014; Koster et al., 2021). Research on non-custodial survivor-mothers is extremely limited but the one study on this topic suggests mothers continued their mothering, in part, through continued attunement (psychological and emotional) to their children from afar (Elizabeth, 2019). Elizabeth also makes the point that for non-residential mothers, meeting cultural expectations of motherhood is limited by the requirement of physical

proximity to children (2019). Paradoxically, some survivor-mothers contesting custody are judged as not “good enough”, then designated the non-custodial parent or removed from the role of primary caretaker; wherein this shift in role itself becomes evidence of their “bad mother” status (Wells, 2011).

Yet, despite navigating ongoing harm from ex-partners and secondary victimization by the courts (Bemiller, 2008), survivors demonstrate continued resilience and resistance, often at great personal cost (Elizabeth, 2019; Khaw et al., 2021; Miller & Manzer, 2018). Further, there is a growing body of literature on survivor-mothers’ negative encounters with family courts providing consistent evidence of institutional biases mothers may face in family courts. Yet, few studies focus on how mothers continue to enact mothering in this context. Also lacking is specific attention to how these structural and institutional biases within the courts reproduce inequities by race, class, and gender, disadvantaging survivors through perceptions of their mothering.

### **The current study**

We examine mothering by IPV survivors who have been through a contested court processes and who have received a custody decision with which they are unhappy and which they believe is an unsafe arrangement for them and their children. We examine mothers’ acts of mothering, as they describe them, within the hostile and constrained context of the institution of the family court and ongoing abuse by the fathers of their children. We use retrospective accounts of survivors covering the critical period of separation and disputed child custody when courts were evaluating parenting and determining child custody arrangements. We pay particular attention to how women discuss their mothering (e.g., the actions they take to care for their

children), and how they are perceived as mothers and responded to by the courts. We examine the following research question:

1) How do mothers describe and enact mothering in the context of unsafe custody arrangements arising from contested custody disputes and within the institutional context of the family court?

In doing so, we draw on maternal theory and intersectionality frameworks. Maternal theory distinguishes between motherhood as a patriarchal institution, and mothering as experience and identity (O'Reilly, 2019). This dual framework of mothering and motherhood provides a structure for identifying experiences of mothering by survivors, and institutional conceptions of motherhood as reflected in situational outcomes of court processes and courts' custody decisions. Therefore, these dual concepts helped define what aspects of survivor narratives we focused on and analyzed. For the concept of mothering, we sought actions women took to mother their children, and descriptions of themselves as mothers. In examining motherhood, we looked for evidence of how the court as an institution perceived mothers and what this reflected about their assumptions of what motherhood is or should be.

Intersectionality recognizes the unique and interconnected experiences of privilege and penalty that vary across contexts, including micro-level interactions such as intimate relationships, and interactions with institutions. Privilege and penalty are experienced according to individuals' social identities along a number of axes (e.g., gender, race, class), and the relationship of these identities to broader systems of oppression (e.g., racism, heterosexism) (Collins, 1990). Therefore, intersectionality was a lens we layered on to the concepts of mothering and motherhood. The goal of which, was to identify variability in mothering

experiences and institutional perceptions of mothers/motherhood across identities such as gender, race, and class.

## **Methodology**

### **Qualitative approach and rationale**

This study is a secondary analysis of qualitative interview transcripts produced as part of a larger study on custody evaluators' beliefs about allegations of IPV in contested custody cases in family court (Saunders et al., 2011). We examine qualitative in-depth interview transcripts with survivor-mothers who have faced negative custody outcomes, including those who have lost custody and/or had access to their children limited by the courts, and/or those who perceive their custody arrangement to be unsafe for them and their children. We use reflexive thematic analysis (TA), which can be especially relevant for examining constructions and meaning-making (Braun & Clarke, 2022). In general, qualitative approaches to questions about family relationships can be beneficial in their ability to examine meaning, understand relational processes in context, and give voice to marginalized experiences (Ganong & Coleman, 2014). Scholars also note the important contributions qualitative research can make to informing the policy context, which is often compelled by illustrative stories and personal narratives (Brady, 2015).

The original study included a survey of custody evaluators and court professionals, and semi-structured in-depth interviews with 24 survivors who had a negative custody outcome (i.e., lost custody or had an unsafe shared-parenting arrangement) to gain insight into their experiences with the courts and court-involved professionals. Other secondary research using these interviews examined the perceptions of the overall custody process for these mothers (Khaw et al., 2021). The current study draws on the rich data of these interviews to examine

women's conceptions of their own mothering in the context of IPV and adverse family court outcomes. We examine whether, and illustrate how, their experiences reflect institutional biases documented in the extant literature.

Through the application of intersectional and maternal theory frameworks, the present analysis informs our understanding of diverse mothers simultaneously navigating IPV and the family courts. We use the concept of mothering put forward by motherhood scholars, suggesting it is an active process of caring and an inhabited identity (O'Reilly, 2019). Furthermore, these scholars distinguish mothering, which has the potential to be empowering, from motherhood, an oppressive patriarchal ideology and structure (O'Reilly, 2019). Examining survivor' mothering as they experience it, and as it was evaluated within the courts will help to identify discrepancies between mothers' experiences and court perceptions. To the extent these court perceptions are rooted in cultural expectations of idealized motherhood, they may represent harmful system responses that potentially reproduce inequities, and which can be exploited by abusive ex-partners. In articulating the lived realities of survivor-mothers we aim to inform the courts and service providers interacting with families to develop responses that are reflective of the needs and circumstances of diverse survivor-mothers and their children.

### **Sample and data**

In the original study, participant recruitment occurred primarily at legal service and supervised visitation sites in four cities in the Midwest and on the west coast. Recruitment of mothers with IPV survivorship histories was conducted by site staff using a standardized recruitment script explaining the study, including risks and benefits, confidentiality, and informed consent procedures. In addition to having experienced IPV, mothers had to meet at least

one criterion related to loss of custody and/or unsafe arrangement. Eligible participants completed interviews that were, on average about 1 – 2 hours in length, with counselors or PhD students with experience working with IPV survivors. Interviews covered questions about custody arrangements, concerns over child safety, experiences with court professionals, and the history of the intimate relationship and experiences of IPV. Interviews occurred at secure locations such as supervised visitation sites and women’s shelters, and all participants received a US\$30 gift card for participation. Transcripts were received with all identifying information removed, and we assigned pseudonyms for the purposes of this study. Full descriptions of study procedures and a full list of semi-structured interview questions can be found in the report by Saunders et al. (2011). The study sample consists of ( $n = 12$ ) mothers, purposively sampled from the overall sample of interviews to reflect a diverse set of experiences related to the case including custody and visitation outcomes, type and severity of IPV experienced, type and severity of child maltreatment claims, and diversity across a number of social identity factors of survivors and perpetrators including race, ethnicity, country of origin, language abilities, economic resources, and class.

### **Data analysis**

Our methodology and data analysis plan were informed by reflexive TA as described by Braun & Clarke (2022). According to these methodologists, reflexive TA as a method is flexible, yet requires clarity on the part of researchers regarding their own position and approach to research (i.e., ontological and epistemological stance) (Braun & Clarke, 2022). Therefore, we briefly outline these aspects in relation to this study. This research is grounded in a critical realist approach, which according to Maxwell (2012) assumes ontological realism, and epistemological

relativism, such that all knowledge is partial and provisional. Put another way, there are truths to be known but they are many, incomplete, and subject to change. Our analysis reflects a critical qualitative approach using reflexive TA (Braun & Clarke, 2022). A critical approach to reflexive TA is “concerned with meaning-making, construction and negotiation, and with interrogating and unpacking patterns of meaning” (Braun & Clarke, 2022, p. 160). This methodological approach is particularly useful to this study because it allows us to recognize that survivors' own meaning-making represents a situated reality constrained by the context and structures in which it is occurring (Braun & Clarke, 2022). That is, they simultaneously navigate and make meaning of their mothering, while also negotiating and managing the realities of external material structures (i.e., abusive tactics, and the institution of family courts). Furthermore, we relied on mothers’ descriptions and narratives of encounters with court personnel, including verbal and written exchanges which often attributed specific language to these individuals. Therefore, specifying not only our theory of knowledge but how we understand language and its relationship to meaning is important. Our analytic approach assumes a constructionist theory of language, understanding meaning as constructed in and through language and is symbolic, powerful, and active (Braun & Clarke, 2022). This approach is critical to the way we examined mothers’ experiences within the hostile environment of ongoing abuse and a judgmental and at times harmful family court system (Holt, 2017; Laing, 2017; Wendt et al., 2015). We assumed the language chosen to discuss their acts of mothering, and remembered by mothers as coming from others, while not necessarily verbatim, reflects mothers’ experience of this language, what it meant, and the power it held.

Reflexive TA occurred in six stages according to methods and practices outlined by Braun and Clarke (2022). As is common and reflective of ‘good’ practice in reflexive TA, coding

was undertaken exclusively by the first author. First, was familiarization with the data via an engaged but not systematic reading of the data and memoing regarding initial impressions, concepts, and patterns. Next, we coded relevant data segments with singular meaning codes (engaged and systematic). We engaged in both deductive and inductive coding, understanding these as falling along a continuum rather than representing a dichotomy (Braun & Clarke, 2022). The analysis was approached deductively, in that we used a theory-driven approach, and inductively in that we remained open to other possibilities in the data (Braun & Clarke, 2022). Coding included an iterative process of revising, recoding, and reinterpreting, leading to code grouping. The first author coded 5 of the interview transcripts, then in consultation with the second author, reviewed and refined codes before coding the remaining 7 transcripts. In the third step, the first author searched for and formulated initial themes. After reviewing and revising initial themes (step 4), the first author defined and named themes (step 5). The final step was the production of findings according to the themes. Organization, initial coding, and development of initial themes occurred using ATLAS.ti Windows (Version 23) (Atlas.ti, 2023). Aided by ATLAS.ti reports that included all codes and data segments (quotes), the first author moved to analog methods such as handwritten and typed notes regarding summarization and organization of the data, and production of findings.

These analytic steps were shaped by our theoretical grounding. Maternal theory influenced our reading and coding of the data, in that we were attending to survivor narratives on two levels. First, we were interested in understanding and capturing the lived experience of mothering as reflected in mothers' accounts of the actions they took and their discussions of themselves. Second, we were interested in capturing institutional assumptions about mothers and how court actions and decisions reflected (or not) cultural expectations of motherhood.

The last step, write up, involved summarizing the themes and overall examples from the data regarding representations of that theme. Then we utilized specific quotes to further illustrate the themes. Finally, we engaged in comparative analysis between individual survivor experiences within illustrations of a theme, focusing on differences in social identity factors of survivors and court responses to mothers. In line with an intersectional approach, this allowed us to examine whether and illustrate how, biases within the court as an institution reproduced inequities for survivor-mothers along racial, gender, and class lines as well as dimensions such as language abilities and national origin. More detailed information on the study subsample is described below.

## **Findings**

### **Overview of participants' demographic characteristics**

Mothers ( $n = 12$ ) ranged in age from 23 to 48 with a mean age of 37-years. The fathers they were disputing custody with ( $n = 12$ ) were between 21 and 50 years old, with a mean age of 39 years. Mothers had between 1 and 6 children overall, who ranged in age from 15-months to 22 years. The number of children involved in mothers' custody disputes was between 1 and 4 children, who were aged 15 months to 17 years. Mothers reported their race as white ( $n = 4$ ), Biracial ( $n = 3$ ), Black ( $n = 2$ ), Asian ( $n = 2$ ), and Latina ( $n = 1$ ). In all cases legal representation between mother and father was uneven. One mother had the advantage, as she had an attorney, and her ex-husband did not. Another mother had no attorney, and her ex-partner did. All the other mothers ( $n = 10$ ) reported at least some period of legal representation during their cases, but this was unequal. In most cases, fathers had consistent representation by private attorneys while mothers often had intermittent representation and relied on legal aid

attorneys who had very high caseloads and sometimes were unable to represent them continuously for long periods of time. This meant some women cycled through several different attorneys over the length of their case.

All the women reported being the primary/sole caregiver of their child(ren) prior to the custody dispute, with many fathers uninterested and uninvolved for periods or the entirety of their child(ren)'s lives. All these men had been severely abusive to mothers over the course of the relationship, and often continued to be post-separation. All the women reported experiencing coercive control, emotional, and physical abuse, two of the mothers reported sexual abuse, and 5 reported at least one episode of strangulation, 4 women reported injury as a result of the abuse, including one woman who sought medical attention, and 9 out of 12 of the women had been stalked. Furthermore, all of the women reported that fathers had engaged in at least one form of abuse toward the child(ren), including emotional, physical, and sexual abuse, and neglect, including inadequate supervision, physical, and medical neglect. On average, mothers reported two forms of abuse of children by fathers, and four children had been taken to the hospital regarding the abuse.

For some mothers, abuse of children occurred during the relationship and for many it was a catalyst for ending the relationship. Others reported the abuse started or escalated in severity or included additional forms of abuse when fathers had unfettered access to the child(ren) via custody or visitation. For the mothers in this study, attacks on their mothering and limiting access to their children by their ex-partners represented the ultimate form of abuse toward them and their children. These abusive tactics came about when the women challenged their partners by leaving, filing for child support, or disclosing the men's abuse of their children.

In all cases, mothers were separated from the fathers of their children, and a custody dispute through the court had triggered a partial and sometimes nearly total loss of access to their child(ren). The most common custody arrangement ( $n = 5$ ) was fathers having sole physical and legal custody of the children. Among these cases, three mothers had supervised, and two mothers had unsupervised visitation with their children. In ( $n = 4$ ) cases, the arrangement involved some degree of shared physical and legal custody in which the father had primary physical custody (was the “resident” parent), and two mothers had unsupervised, one mother had supervised visitation, and one mother reported no visitation (despite the legal arrangement she was blocked from visitation by her ex). Only ( $n = 3$ ) mothers had sole physical and legal custody and were the primary/resident parent for their children. In two of these cases, fathers had unsupervised visitation with their children. One mother had sole physical and legal custody and the father had no current visitation with the children (though he did not seem to be legally barred from seeing them). For this mother, that arrangement had only occurred weeks before the interview after more than two years of disputes.

Despite limited access, numerous structural and institutional obstacles, and ongoing abuse and harassment, women found ways to continue their mothering and exhibited resistance in many forms in response to constraints on their mothering. To answer our research question, we examined how mothers in these interviews discussed their own mothering. We were interested in data within the interviews that described what actions they took to care for their children during an often long and ongoing legal process. The strategies mothers employed, and the degree to which they were successful in their aims, differed based on their unique intersecting identities and situations. The next section details the themes we identified in examining women’s

mothering through the lens of intersectionality and with attention to the varied institutional responses to mothers and the degree to which mothers' resistance and strategies were successful.

### **Qualitative themes**

Within the constrained context of navigating both ongoing abuse from their children's fathers, and court processes, survivors engaged in acts of mothering (active mothering), and through discussing or displaying their experience as a mother (embodied mothering). The following themes detail mothers' active mothering in the context of restrictive court processes and orders, limited access to their children, and continued threats to their own and their children's safety. Each theme is summarized and described, using examples from women's own reports. We use quotes at times to illustrate themes. Additionally, to illustrate the complexities in how women's intersecting identities shaped their experiences and reflected courts' reproduction of inequities according to these identities and via evaluations of them as mothers, we detail comparative examples across cases related to some of the themes.

### ***Strategizing for safety***

The constrained contexts of both relationships involving IPV, and the courts as institutions governed by factors such as formal custody standards and influence by unspoken assumptions about IPV and mothers shaped how mothers could enact their mothering and actions they had to take. Mothers engaged in various planning, evaluating, and strategizing tasks to protect themselves and their children directly from the father's abuse, or to shore up evidence for, or avoid actions that could be construed negatively by, the courts. Examples of this included making sure there was a "paper trail" via reports and obtaining documentation of the abuse. Women described months and sometimes years of planning to leave their partners, waiting for an

“opening”. Others planned ahead for specific visits, or conversations they knew would be challenging or potentially dangerous. Women discussed strategically navigating resources such as accessing domestic violence services that they knew were “safe” and finding ways to get help when they hit roadblocks. For example, women described attorneys who were not helpful or did not speak their native language. Court processes are conducted exclusively in English, rely on previously prepared written documentation, and are often navigated without legal representation or assistance, and translation services can be lacking and difficult to obtain (Lee & Backes, 2018; Lee & Hadeed, 2009). In this context, one mother who had limited English described reaching out to a community agency that was not directly affiliated with the courts or IPV but had someone who could verbally translate a document for her. Once she understood the document, she was able to file it in court herself.

Throughout custody evaluation and decision-making processes, mothers are being scrutinized by the courts and courts often regard mental health help-seeking as reflecting a maternal deficit. In fact, mental health issues can be linked to limitations or concerns over mothers’ parenting capacities which are often “confirmed” via psychological test results and can also be construed as evidence of false abuse claims (Zaccour, 2018). In this study, some women stopped taking medications for depression, or stopped seeing a mental health counselor so ex-partners could not use these things against her in court. One survivor described seeking out mental health resources through a student training program that allowed her to both afford therapy and access it via a place he would not think to look. Another example involved a mother arranging for a friend to pick up her daughter from the father’s house in order to avoid a confrontation that might cause her to “say something back”. This mother knew her ex-partner would report these actions to the court, potentially making her look antagonistic, unfit, or

unstable, a fact that her ex- was likely aware of and exploiting by refusing to negotiate other options for pick-up and having his family provoke her at the door.

Efforts to keep themselves and their child(ren) safe also involved indirect strategies via interactions with their ex-partners. For example, trying to appeal to him for a visitation schedule that was outside the court, so she could minimize his time with her children and allow him to maintain the upper hand with the court. One woman referred to her actions as “playing the game”, when she described allowing her husband to think they were getting back together until the divorce was finalized, while simultaneously hiding these actions from child protective services who urged her to divorce him. Another survivor described how she re-entered a sexual relationship with her ex for a period of time when she did not have representation in order to appease and prevent him from “taking over things” via court motions.

**Intersectional implications of strategizing for safety.** Examining the experiences of mothers in relation to their ex-partners and across identities such as race, age, financial status, helps to illustrate the balance of power within the relationship. Placing this relationship to power within the relationship, within the broader context of the courts’ response to them as compared to their partners *and* by comparing experiences across cases, helps to illustrate the importance of an intersectional perspective for understanding potential inequities at the institutional level. With recognition of these relational dynamics of power, mothers’ strategizing can be seen as navigating their own unique circumstances, and courts’ responses to these strategies as potentially reflecting assumptions about them related to broader systems of oppression.

One example from Michelle, illustrates the strategic ways mothers navigated their situations of ongoing contact with their children’s fathers. Michelle, a Black mother with a medically vulnerable child repeatedly requested help from police to enforce the custody

arrangement when her ex-partner would refuse to bring her child back after visits. Each time, they would indicate that they could not get involved in civil matters and urged her to wait for him to bring her son home. Her son's father was much older than her, and had an advantage financially, which he exploited by filing motions with the court particularly during times she was unrepresented. On one occasion, Michelle got her son back safely by showing up to one of his medical appointments. After physically holding him for a procedure, she did not put him down and was able to leave safely given the presence of the medical staff.

Michelle's financial disadvantage and lack of representation is reflected in her description of an exchange with the judge in her case. This exchange also illustrates how she, similar to many of the other low-income survivors who were Black or other women of color, had a ruling not only go against her, but was punitive towards her.

“And I was just like sitting there, and I felt like crying because they were making decisions, and she was like [ruling in his favor], ‘Because you didn't take a polygraph,’ and I explained I don't have any money, and it's unfair, and she was like, ‘Well, you're going to pay for his polygraph,’ and I'm like – she just didn't want to hear it. And I said, ‘I had filed a motion.’ She said, ‘I didn't get it.’”

In contrast, Heather, a White mother of 4 children, was the only survivor to have representation when her ex-partner did not, giving her that advantage. Her strategizing underscores the lengths women go to and the time it takes to plan every move when navigating interactions with their children's father and the courts and outside systems. Unlike many of the other mothers, a lot of Heather's strategizing paid off, allowing her to access resources, be supported by CPS, have the police respond to, and have the courts believe her about, the IPV. These “wins” did little to ease her fear that once her ex-husband was not under supervision (i.e., CPS, probation), he would come after them. She stated:

“You know, if there wasn’t that [probation], that’s when I’d be really afraid, and that’s kind of why I’m trying to get everything done before the probation ends [...] So, you know, I’m trying to put all of my –

I: Right, get your –

P: Dot all my Is and cross my Ts before all of that happens.”

### *Engaging intersecting systems*

Mothers strategically engaged systems outside of the family court to support their children directly, and/or to support their custody case to re-gain or maintain custody which they saw as protective for their children. Many of these systems very clearly intersected with family court processes, such as obtaining a civil protection order (CPO), sometimes by the same judge. Child protective services, domestic violence advocacy services, and involving police were the other intersecting systems survivors engaged.

As the primary institutional response to IPV and the enforcement mechanism for civil orders and agreements, law enforcement is involved across matters and scenarios encountered by IPV survivors. Reflective of this were the various ways survivors engaged or were engaged by police. Calling the police was a common occurrence throughout the custody process, and sometimes before. Several of the women reported not having called police prior to the custody dispute and did so when their ex-partner continued to follow and harass them or assault them at child exchanges. This was for the purposes of documenting his abusive actions, to try to enforce CPOs, or to report violations of the custody agreement. A few of the mothers contacted the police when the father refused to return the child at the designated time. Sometimes police were involved when their ex-partners called on them. For example, one mother detailed how police showed up to take the children in the middle of the night when the father suddenly decided he wanted to take them, after months of not picking them up for visitation. In contrast, two other

mothers reported police would not help them get their children from partners who refused to return them.

The pervasiveness of cultural and institutional assumptions about women, motherhood, and IPV were reflected in the various responses to survivors by police. In many cases, women reported that police were unhelpful by not filing a report after responding to an incident. Several women reported that police questioned them and did not believe them when they reported abuse. In one case, after calling police because she feared for her life and that of her unborn baby, a mother was herself arrested and jailed.

Another common system women engaged was the child welfare system. Though the child welfare system (i.e., child protective services or CPS) has long-been criticized for its handling of IPV, namely holding mothers accountable for abuse of their children including “failing to protect” them from exposure to their IPV victimization, mothers often appealed to CPS. Many women filed reports with CPS in an attempt to intervene in abuse their children reported after visitations with their father, or visible injuries they had when they returned to mothers’ care. Consistent with ongoing critiques of CPS treatment of IPV survivors, very rarely were women successful in initiating a CPS case against their ex-partners, even with evidence. Sexual abuse claims were particularly questioned, even with hospital reports and examinations. One mother stated that the CPS report claimed she had made the allegations up because the father had “left her for a younger woman”. Another mother reported that her ex-partner’s abuse resulted in a criminal child abuse case in which he was ultimately acquitted. In the end, he had supervised visitation with his children, and family therapy that she was required to participate in despite feeling unsafe.

Fathers also regularly threatened, and followed through with, making malicious CPS reports against mothers. Threats of and by CPS were also discussed. One mother who successfully engaged CPS regarding her ex-partner's abuse of the children, reported that he was ordered to engage in alcohol treatment and batterers intervention and had supervised visitation. She was also able to obtain supportive resources including housing through the CPS case. However, she reported that all of this was contingent on her following through with divorce, and she risked losing her children if she did not. The same survivor who had her children taken from her home in the middle of night, reported that police threatened to call CPS to take her other children, who were not involved in the custody dispute. Two mothers were caught up in systems from the start of their custody disputes, having been arrested, which was used against them in determining custody.

**Intersectional implications of engaging intersecting systems.** Two examples that illustrate the different responses women had in trying to engage outside systems to protect their children are Rebecca, and Destiny. Both women endured the agony of not being able to protect their children from sexual abuse by the father and had little success in bringing the issue to CPS or the courts. Both women went to great lengths to obtain "credible" evidence of the abuse in hopes it would prove what their children were telling them. In both cases, reporting the abuse ultimately worked against them in the custody process.

Rebecca, a white mother of two boys, was able to access consultation from an outside expert in child sexual abuse, as well as support services and counseling for her children. The expert warned her not to disclose the abuse to CPS and the court. Rebecca describes taking the claims to the custody evaluator anyway:

R: But I felt that he needed to know. So when he asked me, I thought, okay, I can either just say nothing –.

I: Right.

P: Or I can tell him the truth.

I: Right.

P: And I told him the truth.

I: Right. And do you think that worked against you?

P: I do.

Rebecca ended up with supervised visitation, and their father sole physical custody after the allegations, and the fact that they were untrue, were included in the custody evaluator's report to the court. The evaluator and CPS described her as having mental health issues, including "delusions" about the abuse.

For Destiny, a biracial (Black and White) single mother who heard repeated claims of sexual abuse from her two children who had unsupervised visitation with their father, the outcome was also devastating. Yet, her treatment by the court reached a punitive level. She describes her treatment across systems when trying to report the abuse, and her suspicions that her treatment stems from a deeper level of systemic injustice:

"It doesn't make any sense. This guy [the guardian ad litem] is telling me. 'Oh, I got my eye on him. Oh, I got my eye on him.' The way all this has played out, the way the police have been non respondent the way the judge has charged me and took away all my credibility...I feel like he knows these people."

Illustrating the punitive measures against Destiny, is a CPS report stating the agency was not to give her any assistance, and she could "deal with it on her own". Further, she describes one of the two times she was held in contempt by the court:

"And the judge said it out loud, had no problem saying it. 'You have no credibility with me. I'm looking in here to find the language to put you in jail, but because I can't, each time you'll pay his attorney's fees.' So he got to come and put on this whole show with this fancy attorney, and I am left with the fees."

Another example of the way intersecting systems shaped survivors' custody cases is when the criminal legal system was involved from the start, disadvantaging her in the eyes of the court. This happened to two women in very different ways. Veronica was a Latina mother of 4,

who was only 23 years old at the time of the interview, having had her first child at 14. The custody dispute involved the father (also Latino) of her youngest child. With support from his family, he refused to let her take her daughter after an informal visit where her daughter had stayed with his family for two weeks. They called the police on her when she tried to leave, and she went to jail for an unrelated warrant for outstanding parking tickets. The father was granted primary temporary custody. In this case, differences in material and family support disadvantaged her from the start.

Jessica, a biracial (Latina and white) mother had her child taken in an emergency removal order and a CPO that she did not even know her ex-partner (also biracial, Latino/white) was pursuing. Her experience is reflective of law enforcement's skepticism of survivors, unintended consequences of institutional constraints such as mandating an arrest, and societal and court perceptions of mental health concerns as a mothering deficit. For example, her prior arrest for domestic violence after she fought back during an assault from her child's father, and her treatment for postpartum depression worked against her with the courts. In fact, the extreme and punitive nature of the court's response is a testament to the strength of these assumptions that are reinforced across intersecting institutions to disadvantage mothers. To illustrate, her arrest occurred when she was pregnant, and her daughter was taken when she was only 4 months old, leaving Jessica with supervised visitation and requiring her to stop breastfeeding the baby.

Similar to Jessica, Naomi (an Asian immigrant with limited English), was served with an emergency removal and CPO by her ex-husband, that left her with supervised visitation of her son. Her son's father (white and economically privileged) was successful in convincing the court she was dangerous and unstable after collecting "evidence" (i.e., photographs of events that he staged or orchestrated) for months that he then construed as portraying her violent behavior and

problem drinking. In this case, the father had advantage over her along several dimensions of identity including, gender, race, country of origin, language fluency, and financial circumstances, including the ability to hire an attorney.

### ***Providing emotional support to children***

Survivors detailed numerous examples in which they provided direct emotional support to their children by listening while children disclosed abuse, and reassuring children when they voiced fear and dismay over visitation and court mandated services such as family counseling. Survivors who had very little or no visitation with children, discussed how they maintained a supportive role via regular phone communication with children. Mothers sometimes risked sanctions by the court if their support of children was in violation of the parenting plan. For example, Alicia's teenage son had run away from his father's house, and wanted to live with her but was not allowed because of the custody order. She relayed the following exchange with a judge:

Respondent: He [the judge] goes, "I want you to stay away from your son or I will arrest you. Contempt you to court."

Interviewer: Wow.

R: And I said, "Well, I guess you're going to arrest me. Because I'm a mother. I'm not going to do that."

Alicia's statements about her teenage son illustrate much of what was underneath her response to the judge. Her statements reflect the commitment and emotional support she provides despite being ordered not to see him and threatened to be held in contempt.

R: He's a good kid.

I: Oh, I bet.

R: And he keeps in touch with me a lot.

I: Um-hum.

R: You know, which is good. I'm glad.

I: Um-hum.

R: You know, because I didn't want the streets to get him.

I: Oh, yeah.

R: You know. Because he is a young boy.

I: Yeah.

R: You know. And he still needs care.

### ***Knowing about what is going on with the children***

Mothers actively pursued information about children in an effort to know what was going on for them and how they were doing. In many cases they had limited access via court order that was further limited by their children's fathers. Mothers maintained contact with teachers, and administrators at their children's schools, contacted their doctors, and sometimes heard from friends, family, or those in the community. They also inquired directly with their ex-partners despite his active attempts to block their access to information and hostility when asked.

**Intersectional implications for access to children and assessment of survivors' mothering.** Experiences of gaining access to information about their children varied widely for mothers inhabiting different intersecting social identities. The impact of these identities sometimes intersected with the relative identities of the fathers of their children. Katherine, a white mother of two teenage children, had virtually no contact with her children outside of phone calls, despite court orders granting her some degree of legal and physical custody. Her access was primarily limited by her ex-partner, who was wealthy, white, and seen as "charming" and exceedingly capable by the courts. Katherine was likely perceived, in terms of class, by the courts and her children's school in ways that privileged her. At the same time, her real lack of material resources compared to her ex-husband meant she was at a serious disadvantage, often not being able to afford an attorney. Despite her lack of overall access her daughter's school was not only receptive to her requests for information, but they also called her when they had concerns about her daughter's wellbeing and academic progress.

Similarly, Mei who was from China, was recognized by her children's school as being the primary caretaker. They sought her out when they had concerns about her child and allowed her to visit the child at school to help the situation. These teachers also offered to testify to the court on her behalf, attesting to her mothering capacities. This was true, even though Mei only saw her children 1-hour a week under supervision. While Mei's restricted access was court ordered, it was orchestrated by her ex-husband, also from China, who had economic advantage over her, spoke excellent English (she did not), and successfully drew on court assumptions to convince them she was mentally ill. Mei's husband's success in convincing the courts and other intersecting institutions such as law enforcement that she was "crazy" is a testament to the power of societal and court scripts about women and mothers. However, the response from her children's school is a testament to the potential for other systems to mitigate some of this framing and negative determinations by the courts.

In contrast, Destiny, a biracial (Black and white) single mother of 6 children, was barred from being involved in any way with her children's school, disbelieved by CPS, and denied supportive services from them. She had primary physical custody, with her ex-partner having unsupervised visits. However, despite his lengthy criminal record she was seen by the court and the school as an unfit mother. She describes the experience of having her identity stolen, and someone else's criminal record attached to her name:

"because of something that was attached to my name, which all they had to do was look it up and see...When people get arrested, they get a mug shot. You know, there's fingerprints. Nobody offered to finger print me. Nobody offered to look through. So maybe they thought I was this person as he was and judged me and...and didn't reach out to help me in any kind of way with this."

In Destiny's case, her ex-partner's (who was Black) criminal record carried little weight with the court, in part because, in light of what they thought was her record, the court saw them as

essentially the same in that regard. Adding to his advantage over her was his financial privilege compared to her, and ability to hire a “fancy” private lawyer, whereas she for a time had no representation.

### ***Intervening on children’s behalf***

Mothers advocated for their children in a variety of ways, including reporting abuse that children disclosed to them to court professionals and their attorney. They took children to doctors and hospitals for evaluations, they called police, and child protective services (CPS) in an effort to provide credible evidence to the courts to prevent future abuse and arrange appropriate supports for their children. They went to great lengths, including going into debt, to try to obtain legal representation to fight for custody in court. They spoke out, repeatedly asking for things that would benefit their children such as evaluators speaking directly to the children, and counselors changing strategies. They challenged custody evaluators to look into children’s claims of abuse, brought in outside witnesses to attest to their care of the children.

Often, in conjunction with these more formal interventions, mothers attempted to intervene directly with fathers, asking them to cease behaviors such as calling mother names in the child’s presence, and yelling at and interrogating children during visits. Many mothers attempted to intervene with the father first, warning him prior to more formal interventions. Katherine, described one of the many times she intervened directly with her ex-husband to protect and advocate for her children:

“I got really upset and I yelled at him, and I said, ‘You cannot treat these kids like this. You may not do this to my kids.’”

Within systems and with professionals, mothers also advocated for their children. One mother who had a medically vulnerable child advocated for the court to enforce proper care of

her son when he was with his father. Another mother refused to follow the counselor's instructions to give her children "consequences" for expressing their anger at their father during supervised visits. Many mothers described how their response to their child's behavior was understood and addressed with the understanding of what they had been through, and what they continued to endure with their fathers. One mother said of her toddler daughter's swearing and "talking back", "what can I really do?", noting that these are things her father has told her to do.

### **Discussion**

This study examined mothers' experiences of mothering in the context of ongoing IPV and contested custody negotiations in family courts. Countering a deficit-based approach (Lapierre, 2008), we focused attention on how mothers constructed their own mothering, and how they enacted mothering within their constrained circumstances. Further, we placed these experiences and actions by mothers within the institutional context of the family courts, and that of other interconnected systems whose responses have the potential to perpetuate or interrupt inequities. We grounded this analysis in maternal theory and intersectionality frameworks to highlight mothers varied and empowered actions in the context of their shared and unique experiences of oppression according to the circumstances and structures they encountered.

Findings suggest mothers engaged in a number of strategies to counter and resist institutional assumptions and resulting practices and to continue mothering their children under these very difficult circumstances (Semaan et al., 2013). Consistent with much of the prior literature on mothering in the context of child custody, the majority of actions mothers took were in some way protecting their children from current or future abuse, dealing with the aftermath of abuse, or supporting their children through ongoing contact with their fathers (Buchanan et al., 2013; Lapierre, 2010; Mohr et al., 2001; Moulding et al., 2015; Wendt et al., 2015). Additionally,

mothers in this study engaged in what Elizabeth (2019) described as emotional and psychological attunement despite physical separation and/or changes in the maternal role. Through the themes of *providing emotional support to children*, and *knowing what is going on with the child(ren)*, mothers continued to enact the mother role or engage in mothering from a distance (Bemiller, 2010).

Mothers' reports regarding the court's response to their claims of child abuse, align with experiences of mothers in a study of case reviews in which allegations were disbelieved, mothers were pathologized or accused of lying, and orders were in favor of father custody and access (Silberg & Dallam, 2019). In the case review study, mothers were ultimately able to prove the abuse to a standard acceptable to the courts and the custody decision was overturned. It is difficult to know precisely what these acceptable standards are as they likely vary according to jurisdiction, court, judge, and possibly even case, reflecting the problematic broad discretion in custody determinations. Furthermore, research suggests even widely regarded acceptable "proof" of abuse such as criminal legal convictions, photographic documentation, and medical records often fall short of convincing courts to consider IPV in child custody cases (Kernic et al., 2005). With the exception of one, the mothers in our sample, had not yet succeeded in convincing outside professionals or the court of the abuse despite multiple attempts to provide credible evidence. This is consistent with studies showing gender-bias within family courts, including the belief that survivors lack credibility (Dragiewicz, 2010). It also potentially reflects the negative and often punitive response to mothers alleging abuse, particularly child abuse and most especially child sexual abuse (Meier, 2021; Meier & Dickson, 2017)

For mothers in this study, their varying degrees of privilege and penalty according to intersecting identities of gender, race, and class can be seen by comparing their stories. At the

same time, their relative disadvantage in relationship to the fathers of their children was nearly universal and shaped their experiences and outcomes with the courts in different ways depending on their ability to demonstrate what the courts deemed “good” mothering. The court’s assumptions about what makes a “good” mother are reflected in their treatment of mothers possessing varying levels of access to the patriarchal standard of motherhood (Bemiller, 2010; O’Reilly, 2019; Samaan et al., 2013). All mothers faced disadvantages in the family courts as they, and their mothering, were evaluated against normative conceptions of motherhood and the relative perceptions of their children’s father. Those who were multiply-marginalized along lines of race, economic standing, and country of origin faced greater constraints and often hostile and punitive measures. That fathers were held to a different and less stringent standard was clear in their relative advantage over mothers, despite numerous claims and often compelling evidence of their abuse.

Aligned with what the extant literature shows, fathers’ abuse continued throughout the court process in our study cases. Mothers reported experiencing ongoing postseparation abuse and harassment, often in similar forms to what they experienced during the relationship (e.g., physical and emotional abuse, threats), that for some escalated to new extremes (Holt, 2017; Zeoli et al., 2013). However, they also detailed the myriad ways the legal system was used to continue to abuse and harass them, and the increased use of children to abuse mothers (e.g., keeping them from her, having them act as a go between). These experiences are consistent with the growing literature on the unique nature of postseparation violence, that is often distinguished by these forms of violence (Douglas, 2018; Elizabeth, 2017; Katz et al., 2020; Spearman et al., 2022; Toews & Burmea, 2017; Tutty et al., 2023). Fathers were consistently successful in drawing on societal and institutional assumptions about IPV and motherhood to weaponize court

processes and maintain contact with mothers, harass them, drain them of resources, and keep them from their children. This suggests rather than abuse ending when women leave, it merely evolves, requiring women to adapt to a changing landscape and new abuse tactics.

The only mother who had not endured such abuse was interviewed at the start of her custody dispute, at a time when her children's father had oversight from CPS and criminal probation. She discussed being worried about what would happen when he was not being supervised by the courts and was attempting to get permanent orders in place before this happened. While orders in their favor do often result in better overall outcomes for mothers, the threat of continued motions through the court, and ongoing abuse from ex-partners is looming for at least as long as they have minor children (Tutty et al., 2023).

At the same time, not all examples mothers shared about their parenting were solely fraught with contending with the abuse. Similar to LaPierre's (2010) reports of everyday caring for children, mothers in this study discussed attending football games, planning trips for their children, doing their children's hair, playing games, and making special treats for them. Yet, these glimpses of "normalcy" represented a rare luxury and the influence of fathers and their ongoing efforts to undermine survivors' mothering loomed over every one of these examples.

### **Implications for policy and practice**

Findings provide compelling evidence of the complexities of IPV and the challenges that poses to family court and other intersecting systems' responses. This suggests professionals interacting with survivor-mothers need to understand IPV and women's decision-making while parenting in the context of IPV in order to improve trust and support and be able to intervene in helpful ways (Kelly, 2009). When service providers do become involved with mothers

experiencing IPV and their children they should focus on identifying strengths and supporting the mother-child relationship (Ateah et al., 2016). This requires recognition of the double standard within the courts, CPS, and the broader society that hold mothers solely accountable for children, their wellbeing, and safety and fail to hold fathers accountable for harm or even engage them as fathers. Further, we must commit to finding ways to address these inequities in how IPV is viewed and parenting is evaluated across systems.

Within the family courts specifically, this requires changing attitudes about the degree to which IPV is important to parenting and decisions about child custody, as well as educating professionals on the complexities of IPV and its impacts for survivors and children. There is a need for an overall shift in focus from those surviving IPV to those perpetrating it in terms responsibility for stopping the abuse and creating a safe environment for children. There is also likely a need for court professionals to consider the fact that fathers engaging in IPV may be unwilling or unable to engage in parenting, especially co-parenting, that centers the needs of children (Hay et al., 2023). That is not to say no fathers who have acted abusively should be able to have access to their children postseparation. In fact, research suggests the fathering role may be a uniquely motivating factor encouraging behavior change among men who have perpetrated IPV (Stover, 2013).

Efforts to involve fathers and better address IPV within the child welfare system has garnered significant attention in recent decades (Carlson et al., 2019), including calls to support non-abusive parents and hold those causing harm accountable (Mandel & Wright, 2019). Similar efforts could be explored in the family court context. However, it is important to recognize the systemic nature of the assumptions and practices driving system responses. Even with concerted effort, the child welfare system continues to be influenced by ideas that exposure to IPV is child

maltreatment, and still primarily hold mothers responsible for that exposure (Henry et al., 2020; Victor et al., 2021). While individual workers can and do find ways to support mothers experiencing IPV, the focus cannot solely be on individuals (Lapierre & Côté, 2011).

### **Limitations of the study and suggestions for future research**

This study does have limitations. First, we examined mothering among a group of 12 women encountering very specific circumstances of experiencing IPV and having negative custody outcomes. Their experiences are likely not representative of all, or even a majority of survivors. Furthermore, our study used secondary data, and it is possible having not been asked directly about their mothering, we lack a clear conception of how these mothers perceive their mothering. At the same time, they did share numerous examples of continued mothering even from a distance (Bemiller, 2010), and identifying strengths of their mothering within descriptions of their struggles may be especially revealing. While our methodological approach maintains that there is no one version of reality and that these experiences are situated realities of these participants, the content is a retrospective account of their own and others' behaviors and comments.

Future research should continue to explore the lived realities of women who are mothering in the context of IPV, especially with attention to the variation in experiences across diverse social locations and circumstances. Furthermore, researchers should continue to expand exploration of mothering in the context of IPV from the perspective of maternal theory and distinguishing between experiences of mothering and ideological motherhood. As with intersectionality, maternal theory presents a unique opportunity to explore a both/and stance (Collins, 1990), allowing us to recognize both the empowering aspects of mothering and the constraints of normative conceptions of motherhood. Understanding how these two aspects of

mothers' lives operate with respect to each other is important for learning how to support mothers in inhabiting the type of mothering important to them, and for recognizing and dismantling the systemic ways that conceptions of motherhood create and sustain inequities.

This abuse through the courts is detrimental to custody outcomes for survivors (Retta et al., 2022) and has harmful consequences for survivor mental health (Gutowski & Goodman, 2023). Importantly, judicial response to this abuse plays an important role in the relationship between experiences of legal abuse and mental health outcomes for survivors (Gutowski & Goodman, 2023). Facing ongoing contact and abuse, and the terror of losing custody of their children to their abusive ex-partners, many mothers are caught in the complex system of the family courts, often with inadequate or no legal representation (Anderson & Saunders, 2007, Lee & Backes, 2018).

### **Conclusion**

Findings suggest mothers facing IPV and custody disputes before the courts employ a variety of strategies to continue mothering with limited access to children and against enormous odds. Not least of which are the institutional biases embedded within the courts and other intersecting systems that disadvantage survivor-mothers via questioning their credibility and mothering, failing to examine fathering of their abusive ex-partners, and worse, enabling abuse through court processes. What mothers did, the degree to which their strategies were successful, and the response they received from professionals across intersecting systems, depended on their individual intersecting identities and circumstances, reflecting these institutional biases. There is an urgent need to interrogate family court and other intersecting systems' responses to women and children experiencing IPV, recognizing that variations in social position confer different

access to power, credibility, resources, and options (Broughton et al., 2022). Across systems such as courts, law enforcement, and child protective services, professionals need to have a firm understanding of IPV and its impacts, and policies and practices need to reflect this knowledge so changes occur at a systemic level (Lapierre, 2010). This study builds on the growing area of maternal theory and extends the focus, offering a strengths-based examination of mothering in in the context of IPV (McDonald-Harker, 2019). Further, we found evidence of and illustrated how courts reproduced inequities for survivors across a number of their social identities. Yet, mothers resisted institutional assumptions and constraints, continuing to enact mothering within hostile contexts and with limited access to their children. Continued focus on IPV survivors' own experiences of mothering is necessary to inform interventions that support their varied needs navigating complex and contested environments. However, an essential aspect of our response to IPV and support of survivors and their children must come from institutional level changes through reforms that acknowledge and seek to remedy policies and practices that reproduce inequities.

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## CONCLUSION

This dissertation aimed to examine the contemporary family court in the U.S. as an institution, studying whether and how inequities may be perpetuated through institutional processes as courts respond to child custody cases involving IPV. The purpose of this was to illuminate potential targets for reform in the way child custody cases involving IPV are approached within research, policy, and practice on the issue, with a specific focus on institutional- rather than individual-level factors that may play a role in reproducing inequities within this system. This examination occurred through a series of three distinct yet related papers.

The first paper in this dissertation reviewed and critically examined criteria for decision-making in these cases as evidenced in the literature, finding that factors across the social ecology were discussed in isolated ways, with little recognition of the institutional influences (e.g., the statutory BIC standard) in which recommended criteria at the relationship (e.g., characterization of violence) and individual (e.g., parent capacities) levels exist. The second paper focused explicitly on the statutory BIC standard as the prevailing factor influencing decision-making. Examining this standard using an intersectional lens with attention to identities of parenthood, gender, race, and class helped to illustrate underlying assumptions within this standard and how it is applied, and how this serves to disadvantage those holding marginalized identities. Doing so, provides support for the utility of an intersectional approach across levels of decision-making (e.g., statutes, procedures, and practices) in child-custody cases involving IPV. The third paper examined how these institutional biases related to identities such as parenthood, gender, race, and class were enacted in individual cases to disadvantage those holding marginalized identities. This occurred through the examination of mothering among survivors facing custody

determinations by the courts, and how court responses to mothers reflected institutional biases. Further, comparison across cases revealed inequities in court assumptions related to gendered-parenthood, race, and class, suggesting intersectional nuance within courts' evaluation and decision-making. The following is a summary of findings for each of the three papers and related conclusions. Additionally, a discussion of key policy and practice implications and directions for future research are provided.

### **Summary of findings**

#### ***Paper 1: Factors associated with child custody determinations when IPV is alleged: A critical scoping review***

Despite the importance of custody decisions for families' safety and wellbeing when there is IPV, guidance for decision-makers often de-contextualizes evaluative factors from experiences of IPV and the broader institutional influences of the courts. Further, guidance is given in the face of sparse empirical evidence. Of particular concern is the lack of outcome-based research connecting decisions to resulting impacts for adult and child survivors. Yet, language relied on in the extant literature suggests a level of empirical grounding for recommendations that is, in fact, missing.

#### ***Paper 2: An intersectional analysis of the best interest of the child standard in custody courts in cases of intimate partner violence***

This paper illustrates the importance of an intersectional approach to child custody determinations involving IPV. Applying an intersectional framework and the concept of controlling images to the BIC standard for child custody determination demonstrates courts' unacknowledged reliance on normative conceptions of motherhood and fatherhood. Additionally, this analysis reveals how these conceptions intersect with assumptions underlying what IPV is

and who it involves, further disadvantaging those holding multiple marginalized identities. Furthermore, the BIC standard is explicitly gender-neutral, obscuring gendered hierarchies which are also raced, and classed. Similarly, simplistic conceptions of IPV result in its erasure in custody decisions. Ultimately, the complex, and relational controlling images invoked relating to gender, race, class, and parenthood may compound the court's reproduction of inequities in the custody process across a host of identity dimensions.

***Paper 3: A qualitative intersectional analysis of survivors' mothering in the context of IPV and institutional bias in family court***

Findings suggest mothers facing IPV and custody disputes before the courts employ a variety of strategies to continue mothering with limited access to children and against enormous odds. These barriers include institutional biases embedded within the courts and other intersecting systems (e.g., child welfare) that disadvantage survivor-mothers via questioning their credibility and mothering, failing to examine fathering of their abusive ex-partners, and worse, enabling (even if inadvertently) abuse through court processes. Institutional biases were reflected in the courts' lack of response to mothers' claims of abuse and attempts to protect themselves and their children, which for many, especially multiply-marginalized individuals, also included backlash from and punishing determinations by the courts.

**Broad conclusions for dissertation**

Together, findings across these studies underscore the critical need for empirical research on child custody determination processes, decisions, and outcomes for families experiencing IPV to guide policy and practice. Evident from this dissertation were the unacknowledged (racialized, classed, and gendered) assumptions about motherhood/fatherhood and IPV that underlie custody determinations and position courts to perpetuate broader inequities according to social identities

such as race, class, and gender, and the disparate negative impacts for marginalized individuals and families who encounter this institutional context. This points to the need for an intersectional approach to research, policy, and practice in this area. Specifically, for family courts and other interconnected institutions (e.g., child welfare) to uphold mandates of justice and representing children's best interests, they will need to interrogate current structures, standards, and assumptions and develop responsive policies and practices that aim to rectify inequities. As this dissertation illustrates, in their efforts to achieve what they believe to be equality, the courts erase IPV and its dynamics, and make inequitable decisions that are particularly detrimental along intersecting marginalized identities.

### **Implications and future directions**

The conclusions drawn from this dissertation have important social justice-related implications across areas of research, policy, and practice with families experiencing IPV, especially those facing court-determined child custody after separation or divorce.

#### ***Recognition and interrogation of systems' underlying assumptions, values, and structures***

As paper three demonstrates, there is a critical need to interrogate family court and other intersecting systems' responses to women and children experiencing IPV, recognizing that variations in social position confer different access to power, credibility, resources, and options (Broughton et al., 2022). Given the institutional-level drivers of custody decision-making revealed in the critical scoping review (paper 1), and the intersectional analysis of the BIC standard (paper 2), this focus should aim to identify factors at the institutional level, rather than exclusively targeting how individual judges, evaluators, or other professionals act within the constraints of this institutional context. Further, as paper 2 illustrates, there are likely added inequities for individuals and families less perceptible to the courts (e.g., queer, and trans

parents) based on intersecting social identities that fall outside expectations of normative motherhood/fatherhood that deserve further exploration. The need for this further examination relates to the next major takeaway from this dissertation.

***Explicitly intersectional approaches to research, policy, and practice***

There is an urgent need for empirical research on custody arrangements that promote safe and supportive relationships post-separation specifically for families experiencing IPV. This research must recognize the complexity of IPV dynamics, ethical limitations of research on violence, and that these decisions are embedded within larger systems and institutions that perpetuate inequities and must be relevant to the different professional groups involved in decision-making (Beck et al., 2009; Saunders et al., 2016). Much of the evidence we do have, from general divorced families, is not applicable to the context of IPV. Furthermore, it is potentially dangerous to apply evidence that is based on cases that do not involve IPV. As the literature shows, and paper 3 further illustrated, many survivors detail ongoing abuse, sometimes directly related to the custody arrangement and court processes (e.g., Khaw et al., 2021; Miller & Manzer, 2018).

***Need for increased institutional understanding of IPV, and IPV-informed responses***

Across systems such as courts, law enforcement, and child protective services, professionals need to have a firm understanding of IPV and its impacts. Furthermore, statutory and institutional policies should aim to reflect this knowledge so changes occur at a systemic level. In addition, education, training, and professional practices supporting individuals to make decisions in line with current knowledge about IPV is essential in the context of broad discretion.

### ***Engage diverse stakeholders to envision alternative solutions & enact reforms***

An essential aspect of our response to IPV and support of survivors and their children must come from institutional level changes through reforms that acknowledge and seek to remedy policies and practices that reproduce inequities. For example, challenging gender-neutral standards in policy and practice, in favor of recognizing how IPV and expectations of parenthood are gendered, raced, and classed. Papers 2 and 3 reveal the complex implications of institutional structures and assumptions for courts' response and decision-making across multiple marginalized identities. These findings suggest the need for engaging diverse families with lived experience navigating the courts to inform research and interventions aimed at increasing equity. Alternative interventions outside the courts to set custody arrangements should be considered, especially given the inequities experienced by survivors and the tendency for some survivors to avoid legal interventions, potentially putting them and their children at even greater risk (Cheng et al., 2020; Cho et al., 2017). Essential to the development of research, policy, and practice for court-based reforms are contributions from those within the courts, increasing the likelihood that research and resulting policy and practice solutions are applicable, feasible, and sustainable. Partnerships between researchers and practitioners, though challenging, is likely a necessary element of successful institutional reform (Beck et al., 2009).

### **Final remarks**

As a social welfare scholar, I aim to contribute research that helps intervene on and prevent violence within families, centering the experiences and evaluation of needs as reported by those who have lived it, to develop evidence and envision solutions that reflect these. As such, I approach research from a critical, intersectional perspective and see my work, in part, as

translating this evidence to inform policy and practice to prevent systems harm, and to build toward creating supports that will allow families to thrive. This dissertation is one contribution to these broader aims. While I bring expertise on IPV from my professional experiences and body of research, I have not myself experienced IPV. Through my practice experience, I have witnessed first-hand the impacts of IPV on those who experience it and who engage in violence against their families. Furthermore, while my children and I have been insulated from experiences of IPV and child maltreatment, we are connected to these experiences and other forms of trauma through generations past and those in our family who have not been spared these experiences, many of whom continue to struggle, endure, and resist. Therefore, I allow these personal connections to inform, and integrate them into, my practice and research expertise. By seeking to understand experiences of those with lived experience, the needs they identify, and the solutions they imagine we can develop social and institutional responses and supports that mitigate harms for marginalized groups and that are meaningful, sustainable, and effective.

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## CURRICULUM VITAE

**Ashley N. Rousson**

*Curriculum Vitae*

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Seattle, WA 98105-6299

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### EDUCATION

PhD	<b>University of Washington</b> Social Welfare Certificate in Advanced Social Statistics completed 2021	expected August 2023
MSW	<b>University of Michigan</b> Interpersonal Practice & Mental Health concentrations	May 2013
BS	<b>De Paul University</b> Secondary Education, History & English endorsements	June 2007

### AWARDS, HONORS, & FELLOWSHIPS

<b>Gottlieb Fellow Award</b> , University of Washington School of Social Work	2016
<b>Pre-doctoral Clinical Research Summer Program Fellow (NIH, TL1)</b> , Michigan Institute for Clinical & Health Research (MICHR), University of Michigan	2013
<b>Michigan Scholars Program</b> , University of Michigan	2011 - 2013
<b>SSW Merit Scholarship</b> , University of Michigan, School of Social Work	2011 - 2013
<b>Eleanor Cranefield Scholarship</b> , University of Michigan, School of Social Work	2011 - 2013

### PUBLICATIONS & PRESENTATIONS

#### PEER-REVIEWED PUBLICATIONS

Hong, S., Yu, C., **Rousson, A. N.**, Bender, A. E., Fedina, L., Herrenkohl, T. I. (in press).  
Examining the association between trauma characteristics and adult depression and  
anxiety: Analysis of types, variety, repetition, and timing of past trauma. *Journal of  
Interpersonal Violence*.

- Fedina, L., Hong, S., **Rousson, A. N.**, Graham, L., Lee, J. O., & Herrenkohl, T. I. (in press). Proximal and distal risk factors of intimate partner violence perpetration. *Journal of Family Violence*.
- Fedina, L., Moss, L., **Rousson, A. N.**, Smith, M. E., Bright, C., Herrenkohl, T. I., & DeVlyder, J. (in press). Effects of neighborhood disconnection on psychological distress and suicide risk associated with interpersonal violence within racial groups. *Journal of Child and Adolescent Trauma*.
- Bishop, A. S., Nurius, P. S., Fleming, C. M., Klein, R. T., **Rousson, A. N.** (in press). Youth gang membership, marginalized identities, and suicidality disparities: Intersectional implications for research and practice. *Child and Adolescent Social Work*.
- Rousson, A. N.**, Tajima, E. A., Herrenkohl, T. I., & Casey, E. A. (2022). Patterns of intimate partner violence and the harsh parenting of children. *Journal of Interpersonal Violence*. <https://doi.org/10.1177/08862605221087242>
- Victor, B. G., **Rousson, A. N.**, Henry, C., Dalvi, H. B., & Mariscal, E. S. (2021). Child protective services guidelines for substantiating exposure to domestic violence as maltreatment and assigning caregiver responsibility: Policy analysis and recommendations. *Child Maltreatment* 26(4), 452-463. <https://doi.org/10.1177/10775595211002639>
- Orlando, L., **Rousson, A. N.**, Barkan, S., Greenley, K., Everitt, A., & Tajima, E. A. (2021). Responding to Covid-19's impact on supervised family time: The Supportive Virtual Family Time Model. *Developmental Child Welfare*, 3(1), 3-19. <https://doi.org/10.1177/25161032211001078>
- Bishop, A. S., Nurius, P. S., Logan-Greene, P., & **Rousson, A. N.** (2021). Micro-system supports, therapeutic progress, and court re-involvement: Implications for juvenile probation. *Journal of the Society for Social Work and Research*. <https://doi.org/10.1086/713479>
- Herrenkohl, T. I., Fedina, L., Roberto, K. A., Raquet, K. L., Hu, R. X., **Rousson, A. N.**, & Mason, W. A. (2020). Child maltreatment, youth violence, intimate partner violence, and elder mistreatment: A review and theoretical analysis of research on violence across the life course. *Trauma, Violence, & Abuse*, 23(1), 314-328. <https://doi.org/10.1177/1524838020939119>
- Rousson, A. N.**, Fleming, C. B., Herrenkohl, T. I. (2020). Childhood maltreatment and later stressful life events as predictors of depression: A test of the stress sensitization hypothesis. *Psychology of Violence*, 10(5), 493-500. <https://doi.org/10.1037/vio0000303>
- Herrenkohl, T. I., & **Rousson, A. N.** (2018). IPV and the Intergenerational Transmission of Violence. *Family & Intimate Partner Violence Quarterly*, 10(4), 39-46.
- Jung, H., Herrenkohl, T. I., Skinner, M. L., Lee, J. O., Klika, J. B., & **Rousson, A. N.** (2018). Gender differences in intimate partner violence (IPV): A predictive analysis of IPV by child abuse and domestic violence exposure during early childhood. *Violence Against Women*, 25(8), 903-924. <https://doi.org/10.1177/1077801218796329>
- Jung, H., Herrenkohl, T. I., Skinner, M. L., & **Rousson, A. N.** (2018). Does educational success

mitigate the effect of child maltreatment on later offending patterns? *Journal of Interpersonal Violence*, 36(3-4), 1833-1855. <https://doi.org/10.1177/0886260518756113>

Larance, L. Y., & **Rousson, A. N.** (2016). Facilitating change: A process of renewal for women who have used force in their intimate heterosexual relationships. *Violence Against Women*, 22(7), 876-891. <https://doi.org/10.1177/1077801215610890>

## PEER-REVIEWED CONFERENCE PUBLICATIONS

**Rousson, A. N.**, Graham, L., Lee, J. O., Skarnes, C., Herrenkohl, T. I. (2023). Inequities in economic security: Possible enduring effects of adolescent dating violence. Oral presentation at the annual conference of the Society for Social Work and Research, Phoenix, AZ.

**Rousson, A. N.**, Tajima, E. A., Rodriguez-JenKins, J., Valdovinos, M., Holmes, M. (2023). Envisioning solutions and identifying a research agenda: Child-, Family-, and Community-Centered responses to prevent systems involvement when children are exposed to intimate partner violence. Roundtable discussion at the annual conference of the Society for Social Work and Research, Phoenix, AZ.

Bishop, A. S., Nurius, P. S., Fleming, C. M., Klein, R. T., **Rousson, A. N.**, (2023). Youth gang suicidality disparities: Intersectional implications for research and practice. Oral presentation at the annual conference of the Society for Social Work and Research, Phoenix, AZ.

Evans, K., Appline, C., Connor, A., **Rousson, A. N.**, & Sullivan, M. (2022). Building connections and breaking isolation: Contemporary challenges of doctoral student women who are parenting. Roundtable discussion at the annual conference of the Society for Social Work and Research (accepted and withdrawn due to COVID).

Victor, B. G., **Rousson, A. N.**, Henry, C., Dalvi, H. B., & Mariscal, E. S. (2022). Child welfare policies guiding the substantiation of childhood exposure to domestic violence as maltreatment: A national analysis and recommendations. Oral presentation for the annual conference of the Society for Social Work and Research, (accepted and withdrawn due to COVID).

Hong, S., Yu, C., **Rousson, A. N.**, Bender, A., Fedina, L., & Herrenkohl, T. I. (2022). Exploring the impact of adversity across the lifespan on depression and anxiety in adulthood: Analysis of types, repetition, variety, and timing of past adversity. E-poster presentation at the annual conference of the Society for Social Work and Research.

Graham, L., **Rousson, A. N.**, Treves-Kagan, S., Herrenkohl, T. I., & Fedina, L. (2021). Ending the cycle of violence: Advancing equity through public health social work interventions for effective policy responses. Roundtable discussion at the annual conference of the Society for Social Work and Research (virtual conference).

**Rousson, A. N.**, & Herrenkohl, T. I. (2020). Profiles of intimate partner violence and harsh discipline: Understanding risk and co-occurrence, presented as part of the symposium: Violence in development and relational contexts: Studying processes of risk

transmission to strengthen prevention and intervention efforts at the annual conference of the Society for Social Work and Research, Washington, DC.

Bishop, A. S., Fentress, T., **Rousson, A. N.**, Carey, C. & Musumeci, L. (2019). A comprehensive portrait of service needs and programming options for gang-involved youth: A review of the literature to identify directions for research and practice. Poster session presented at the annual conference of the Society for Social Work and Research, San Francisco, CA.

**Rousson, A. N.**, Fleming, C. B., & Herrenkohl, T. I. (2019). Childhood maltreatment and later stressful life events as predictors of depression: A test of the stress sensitization hypothesis. Poster session presented at the annual conference of the Society for Social Work and Research, San Francisco, CA.

## RESEARCH INTERESTS & EXPERIENCE

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### OVERALL INTERESTS & EXPERIENCE

Family violence, intimate partner violence, parenting, child maltreatment, social determinants of health, health equity, intergenerational patterns, cross-systems analysis, institutional policy analysis, longitudinal quantitative methods, mixed methods. Advanced statistical analyses including latent class analysis, maximum-likelihood methods, time-series, simulation, multiple imputation. Proficiency across statistical packages including R, SPSS, MPlus. Experience with data visualization, longitudinal design and methods, qualitative and mixed methods, survey design, qualitative data analysis software, community-based and government stakeholder research collaborations, grant writing.

### RESEARCH ROLES & PROJECTS

#### Investigator and Project Lead Roles

**PI, Dissertation: "How they look at it is not how I lived it": How Research, Policy, and Practice Regarding Family Court Child Custody Decision-making Erase Experiences of Intimate Partner Violence** 12/2021 – 2023

University of Washington School of Social Work, Seattle, WA  
Committee: Drs. Emiko Tajima, Erin Casey, Megan Moore  
NIJ-OJP 2007-WG-BX-0013: Child Custody Evaluators' Beliefs About Domestic Abuse Allegations (PI: Daniel G. Saunders)

**Research Consultant, Research & Information Sharing Workgroup on Protection Orders** 12/2021 – 07/2022

Washington State Supreme Court Gender & Justice Commission,  
Washington Administrative Office of the Courts, Seattle, WA

**Co-I and Project Director, Development of a Supervised Family Time Program for child welfare-involved families: A qualitative investigation of the founding principles of *Strive*** 04/2019 – present

Partners for Our Children, University of Washington School of Social Work, Seattle, WA

PI: Susan Barkan, PhD

**Role: Co-I, Policy Analysis of Child Protective Services Guidelines for Substantiating Exposure to Domestic Violence as Maltreatment** 6/2020 – 02/2021

University of Indiana School of Social Work, Indianapolis, IN

PI: Bryan G. Victor, PhD

**PI, Qualifying Exam: Patterns of Intimate Partner Violence and the Harsh Parenting of Children** 03/2019 – 04/2020

University of Washington School of Social Work, Seattle, WA

Committee: Drs. Emiko Tajima, Todd Herrenkohl, Erin Casey

NIDA R01DA032950/NICHD RO1HD049767 (PI: Todd I. Herrenkohl, PhD)

**PI, Child maltreatment and later stressful life events as predictors of depression** 05/2018 – 6/2020

University of Washington School of Social Work, Seattle, WA

Co-Is: Charles Fleming, Todd Herrenkohl, PhD

NIDA R01DA032950/NICHD RO1HD049767 (PI: Todd I. Herrenkohl, PhD)

**Co-I, Facilitating Change: A process of renewal for women who have used force** 05/2013 – 11/2015

University of Michigan School of Social Work, Ann Arbor, MI

PI: Lisa Y. Larance, PhD

## **Research Assistant Role**

**Responding to COVID-19's impact on supervised family time** 04/2020 – 05/2021

PI: Laura Orlando; Co-I's: Susan Barkan PhD, Emiko Tajima, PhD

Partners for Our Children, University of Washington School of Social Work, Seattle, WA

Project Connect and Antioch College's Winning Victories for Humanity Award

<p><b>Various projects with research team</b> including responsibilities such as data management, analysis, project coordination, writing, and peer-mentoring of PhD students</p> <p>University of Washington School of Social Work, Seattle, WA &amp; University of Michigan School of Social Work, Ann Arbor, MI</p> <p>PI: Todd I. Herrenkohl, PhD</p> <p>NIDA R01DA032950; NICHD R01HD049767; NICHD R21HD094961; NIA R01AG059823</p>	2018 – 2021
<p><b>Focusing on first-time fathers’ strengths: Applying a positive psychology intervention to improve parenting and partnering</b></p> <p>PI: Richard Tolman, PhD</p> <p>University of Michigan School of Social Work, Curtis Center for Research, Ann Arbor, MI</p> <p>NIH 2UL1TR000433</p>	05/2013 – 08/2013
<p><b>Reforming child custody statutes regarding IPV</b></p> <p>University of Michigan School of Social Work, Ann Arbor, MI</p> <p>PI: Daniel G. Saunders, PhD</p> <p>Off Ramp Project</p>	09/2012 – 05/2013
<p><b>Police and court staff IPV training projects</b></p> <p>University of Michigan School of Social Work, Ann Arbor, MI</p> <p>PI: Daniel G. Saunders, PhD</p>	09/2012 – 05/2013
<p><b>LGBTQ Access Project</b></p> <p>King County Coalition Against Domestic Violence</p> <p>University of Hawaii School of Social Work, Honolulu, HI</p> <p>PIs: Sid Peterson, Kalei Kanuha, PhD</p>	07/2012 – 08/2012
<p><b>National Clearinghouse on LGBTQ IPV</b></p> <p>Northwest Network of Bisexual, Trans, Lesbian, &amp; Gay Survivors of Abuse, Seattle, WA</p> <p>Supervisor: Kristin Tucker, MSW</p>	06/2012 – 08/2012
<p><b>Lifecourse Stress and Aggression Literature Review</b></p> <p>University of Washington School of Social Work</p> <p>PIs: Paula Nurius, PhD, Patricia Logan-Greene, PhD</p>	06/2012 – 08/2012

## TEACHING INTERESTS & EXPERIENCE

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### Interests

Social work practice: foundational courses, advanced practice with individuals, families, and groups; trauma, violence, and abuse; intimate partner violence; social welfare policy; policy analysis; research methods. Critical pedagogy and praxis.

### Experience

**Co-Instructor, Social Welfare Practice III**

Spring 2020

Focus on macro systems in a diverse society using the generalist perspective.

**Sole Instructor, Social Welfare Practice I**

Autumn 2019; 2020

Introduction to the roles, tasks, and functions of the social welfare practitioner and to theories and methods of intervention.

**Co-Instructor, Social Welfare Practice II**

Winter 2018

Part two of the social welfare practice sequence, with a continuation of the focus of SW Practice I.

**Teaching Assistant, Social Welfare Policy**

Spring 2017, 2018

Emphasizes policy and program development in social welfare with emphasis on the context, making, and unmaking of social policy.

**Teaching Assistant, Introduction to Social Welfare Practice**

Autumn 2016

Introduction to the field of social work, including the theoretical concepts and institutional framework that guide practice.

### Guest Lectures

**Quantitative Analysis and Interpretation of Findings** (1.5 hours). Class: Social Welfare Research and Evaluation with Asia Bishop, PhD.

**Child Welfare Policy and Domestic Violence** (3 hours, three times). Class: Child & Family Inequalities: Policy/Services with Peter Pecora, PhD.

### Student Mentorship

**MPH Practicum Site Supervisor, Julia Lund.** Project: Development of a Supervised Family Time program for child welfare-involved families: A qualitative investigation of the founding principles of *Strive*.

## **ADDITIONAL PROFESSIONAL EXPERIENCE**

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### **CLINICAL EXPERIENCE**

**Group Therapist and Co-facilitator, Wellspring Family Services Domestic Violence Intervention Program (DVIP)** 2015 - 2016

Intervention for primarily court-mandated clients to address domestic violence behaviors and fathering after violence.

**Triage Therapist, Wellspring Family Services Employee Assistance Program** 2015 – 2016

Triage intake and assessment, crisis intervention, resource referral.

**Therapist, Wellspring Family Services Counseling Program** 2013 – 2015

Provided individual and couples therapy with emphasis on issues related to trauma and abuse victimization and perpetration, and clients with traits associated with personality disorders.

**Clinical Intern, University of Michigan Health Systems, Child & Adolescent Inpatient Psychiatry** 09/2012 – 05/2013

Provided family systems assessment and intervention with children and caregivers in an inpatient setting, including team-based case conceptualization and consultation, family sessions, and discharge planning.

**Group Therapist & Co-facilitator, Catholic Social Services of Washtenaw County, Reflectively Embracing Nonviolence through Education for Women (RENEW)** 02/2012 – 08/2013

Trauma-informed group intervention for women who have used force referred via the court and child welfare systems.

**Clinical Intern, Catholic Social Services of Washtenaw County, Alternatives to Domestic Aggression (ADA)** 09/2011 – 05/2012

Group intervention for domestic violence for court referred men.

## **POLICY EXPERIENCE**

**Public Affairs Manager (Alaska), Planned Parenthood of the Great Northwest** 07/2009 – 11/2010

Supervision of organizing/outreach team, legislative bill tracking and advocacy, agency-based coordinator and liaison with stakeholder groups, and polling and consulting professionals for ballot initiative campaign.

**Legislative Aide, Representative Pete Petersen,** 01/2009 – 05/2009  
Alaska State House of Representatives, Juneau, AK

**Field Organizer, Barack Obama’s Campaign for Change, and Obama for America,** IA, OH, PA, IN, KY, AK 12/2007 – 11/2008

## **PROFESSIONAL AND COMMUNITY SERVICE**

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### **ACADEMIC SERVICE**

**Founding Member, PhD Student Advisory Council** 03/2021 - present  
University of Washington School of Social Work

**Presenter/Organizer, BASW Student Orientation** 09/2020  
University of Washington, School of Social Work

**Reviewer, BASW Admissions** 02/2021 – 05/2021  
University of Washington, School of Social Work

**Enrollment Analysis (Predictive Modeling), MSW Admissions** 2020, 2022  
University of Washington, School of Social Work

**Supplementary Reviewer, MSW Admissions** 2018, 2019, 2020  
University of Washington, School of Social Work

**Special project research assistant, Office of Field Instruction** 09/2017 – 12/2017  
University of Washington, School of Social Work

## PROFESSIONAL SERVICE

Ad-hoc reviewer for the following journals:

<i>Child and Family Social Work</i>	2017
<i>Journal of Interpersonal Violence</i>	2019 – present
<i>Violence Against Women</i>	2017-2019
<i>Trauma, Violence, &amp; Abuse</i>	2022
<i>Journal of Family Trauma, Child Custody &amp; Child Development</i>	2022
<i>Journal of Family Violence</i>	2023

## COMMUNITY SERVICE

<b>Research Consultant, Domestic Violence Intervention Project (DVIP)</b> Seattle Municipal Court, City of Seattle, WA	2017 – 2020
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## PROFESSIONAL AFFILIATIONS & LICENSE

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<b>The Society for Social Work and Research, Member</b>	2017 – present
<b>Licensed Independent Clinical Social Worker, (#LW60672918)</b> State of Washington	2017 – 2019
<b>Social Work Associate Licensure, (#SC60386912)</b> State of Washington	2013 – 2016

## REFERENCES

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*Additional references available upon request.*