

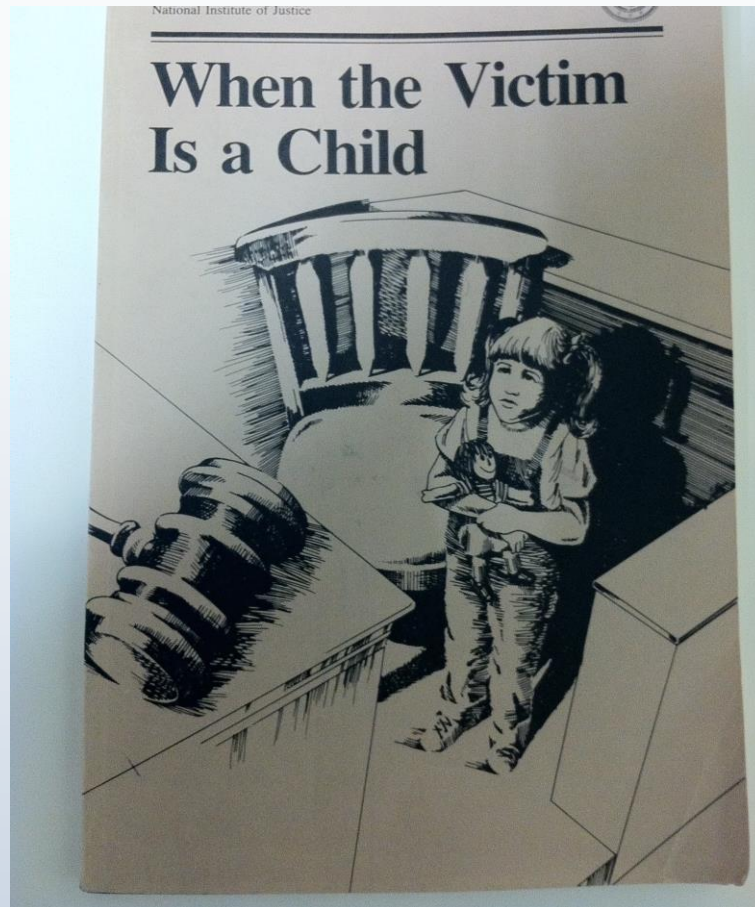
When the Victim Is a Child

**30 Years of Progress for Child Victims in
the Criminal Justice System**

Debra Whitcomb & Theodore Cross

Recommended citation

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- Originally published by Deb Whitcomb in 1985
- We are updating in 2015

Our research methodology: 1985 v. 2015

1985

- Literature review
- Statutory analysis
- Telephone survey of prosecutors
- Site visits

2015

- Literature review
- Key informant interviews
- Online surveys
 - Children's Advocacy Center Directors (N=222)
 - State/local prosecutors (N=201)
- Follow-up telephone surveys

30 Years Ago . . .

- Concern about child sexual abuse victims
- Sensational cases and media coverage
- Calls for courtroom reform
 - Allowing children to testify via CCTV
 - Permitting screens or other techniques to shield the child's view of the defendant
 - Limiting the courtroom audience
 - Creating special hearsay exceptions for children's out-of-court statements

What We Found in 1985

- Courtroom reforms were measures of last resort.
 - Live witnesses were thought to be more effective than CCTV or videotape
 - Concerns about constitutionality; convictions could be overturned
- Recommended more attention to less controversial interventions:
 - Victim assistance
 - Streamlining the investigation—nod to the first CAC in Huntsville, AL

**What have we learned since
1985?**

Lessons Learned from Research and Practice

- It is difficult to avoid children having to testify
- Yet children are not small adults
- Focusing attention on the investigation is important and may reduce the need for trials
- A multidisciplinary response is essential to support the criminal justice response
- Quality child interviews are essential
- It is important to pay attention to caregivers' needs

Lesson 1:

**It is difficult to avoid children
having to testify in front of their
abusers**

Sixth Amendment of the Constitution

- Right of confrontation:

In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him

- Makes it difficult to avoid children needing to testify in court
- Several attempts to use other child statements instead of or in addition to child testimony

Maryland v. Craig (1990)

Before the Court will allow a child to testify via CCTV, the prosecutor must show:

- The child will be traumatized by defendant's presence (not general courtroom environment), and
- The child's distress will be "more than *de minimus*"

Hearsay exceptions

- What children say outside of court may not be admissible in court, even if they do testify
- So-called *hearsay* is not allowed because it is impossible to determine if it is trustworthy
 - Can't be observed by jury
 - Can't be tested by defense in cross-examination
- Hearsay exceptions allow those out-of-court statements that are considered reliable

Crawford v. Washington (2004)

“Testimonial” out-of-court statements are not admissible at trial unless

- The witness testifies, or
- If unavailable for trial, the witness had been subject to cross-examination at a prior time

Toth, P. (2007)

Crawford v. Washington (2004)

- “Testimonial” out-of-court statements are:

Statements that were made under circumstances which would lead an objective witness to reasonably believe that the statement would be available for later use at a trial.

- Courts struggle to define testimonial
 - Statements to child protective services?!
 - Statements to forensic interviewer?!
 - Statements to teacher?!

Crawford v. Washington (2004)

If the child testifies, then standard hearsay exceptions may apply to out-of-court statements (e.g., excited utterances)

If the child does not testify, then must determine whether the statement is testimonial

Toth, P. (2007)

Lesson 2:

Children are not small adults

Memory

Suggestibility

Truth vs. Lies

Credibility

Impact of testifying



**Kids Are Not
Little Adults**

Child victims have unique needs.
See it through their eyes.

Find special resources for kids at
www.ovc.gov/throughoureyes.

[#ThroughOurEyes](https://twitter.com/ThroughOurEyes)



**DEFENDING
CHILDHOOD**
PROTECT HEALTHRIVE

What We've Learned: Memory and Suggestibility

How children are questioned is key to their ability to recall and relate events accurately and completely.

- Most of this research focuses on pre-school children; school-age children generally perform on a par with adults
- As cognitive development increases, children are better able to
 - Provide detail on free recall
 - Place events along a specific timeline
 - Understand concepts of relativity (e.g., before/after, earlier/later)
 - Understand legal terminology
- Younger children are more susceptible to an interviewer's style, body language, bias, or pressure

Malloy & Quas (2009); Goodman, et al. (2013).

What We've Learned: Credibility

“The child’s credibility is the centerpiece of the prosecution’s case and the bulls-eye for the defense.”

- Jurors evaluate credibility based on what they think they know about child victim/witnesses
- What they really “know” is quite variable
- Need to educate → expert witnesses, other ways.

Myers (2010); Quas, Thompson & Clarke-Stewart (2005); McAuliff & Kovera (2007)

What We've Learned: Truth v. Lies

Simply asking a child to promise to tell the truth may be the most effective approach.

- “Understanding of truth and lies and the ability to lie are related to children’s cognitive development.”
- Adults are able to define truth and lies, and yet “adults are probably the best liars.”

Lyon (2011).

What We've Learned: Impact of Testifying

Both testifying and *not* testifying can have adverse consequences for child victim/witnesses

Factors associated with poor outcomes of testifying:

- testifying repeatedly (i.e., in several court hearings or retrials)
- lack of caregiver support
- a greater number of interviews
- long delays, repeated continuances

Quas & Goodman (2012)

Lesson 3:

Focus on the investigation

Good investigations make a difference

- Better investigations leads to better evidence
- Better evidence lead to better criminal justice outcomes
 - Confessions
 - Guilty pleas
 - Convictions
- Better investigations reduce stress on child
 - Reduce the need for child testimony
 - Shift burden from child to perpetrator

Disposition of cases referred to prosecutors across 24 studies

Outcome	%
Guilty plea	43%
Not charged	34%
Dismissed or transferred	12%
Convicted at trial	6%
Acquitted at trial	3%
Diversion	2%

More than 4 guilty pleas for every case resolved by trial

Characteristics of a good child abuse criminal investigation

- Effective suspect interrogation
- Crime scene investigation
- Seeking evidence to corroborate child's statements in interviews

Methods for obtaining corroborative evidence

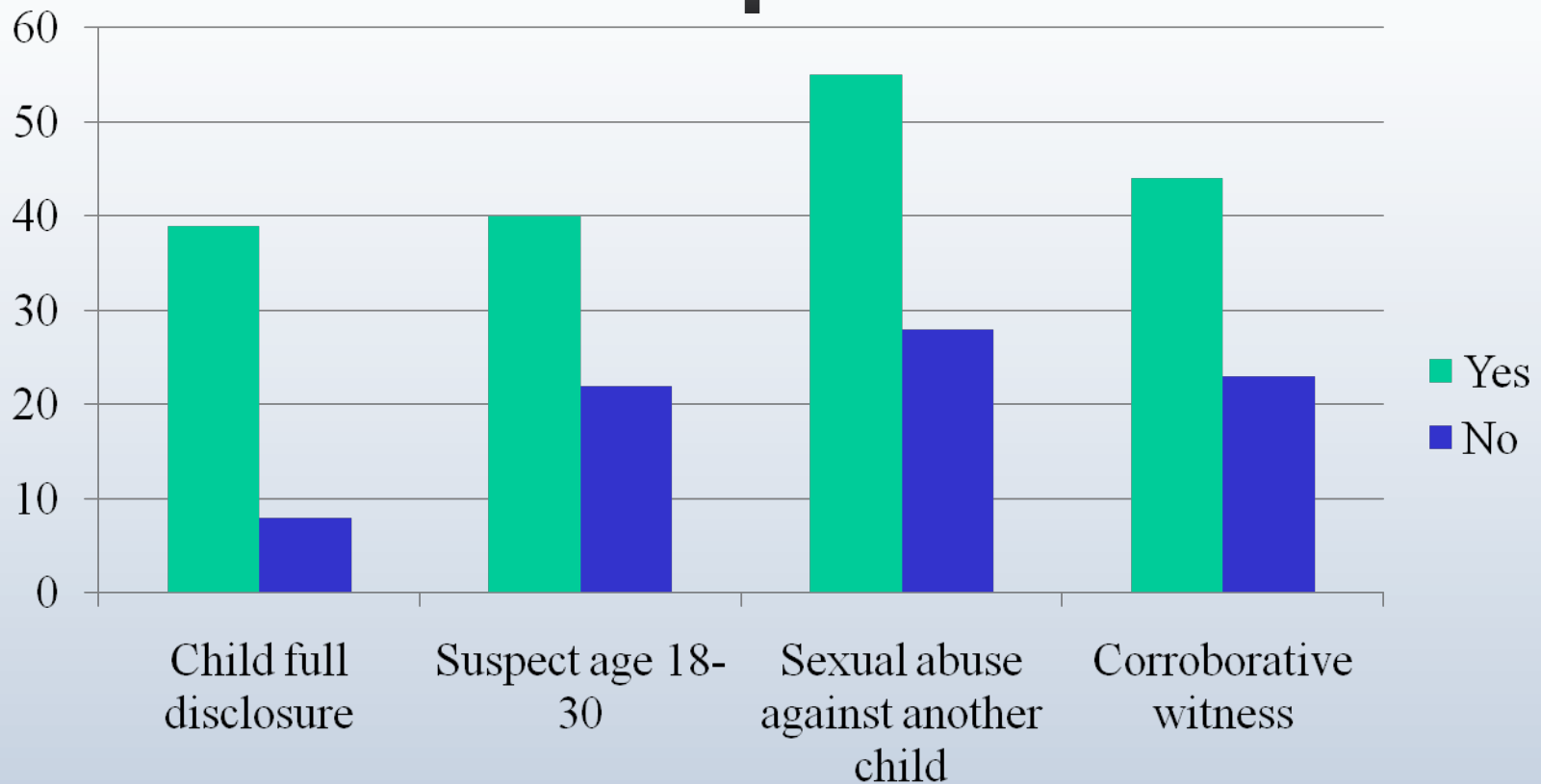
- Enhanced crime scene evaluation, esp. photos
- Seek corroboration for every detail provided by child
- Seek to corroborate child's credibility as well as abuse
- Training in interviewing suspects and obtaining self-incriminating statements

Corroboration Examples

Child Statement	Investigative Action
Father read <i>Goodnight Moon</i> to me before he touched me.	Search suspect's house and seize the book
Uncle George always took me to the blue house	Take photograph of the house
Grandpa pulled my pants down on our fishing trip	Look for campground registration , photographs of the trip, fishing equipment at Grandpa's
<i>All About the Bass</i> was playing on the radio on Jersey's finest 99 FM	Obtain radio playlist

Source: Vieth, 1999

Research suggests ways to increase suspect confession



Lippert, T., Cross, T.P., Jones, L.M., & Walsh, W. (2010). Suspect confession of child sexual abuse to investigators. *Child Maltreatment, 15*, 161-170.

Implications of data on evidence and confession

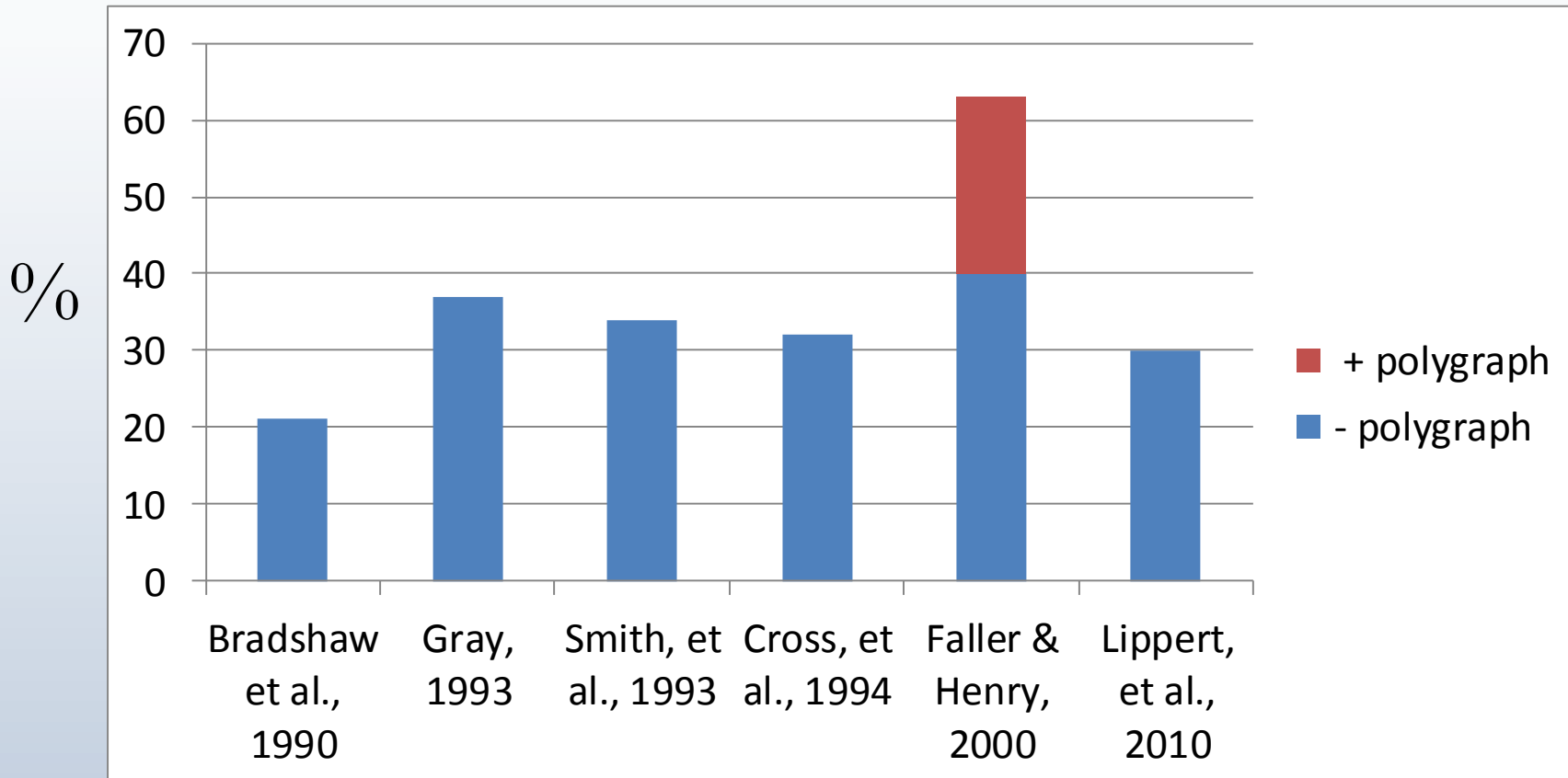
- Helping children disclose is even more important because of its link to suspect confession
- Seeking corroborative evidence is promising in terms of number of cases affected and impact on confession as well as filing charges
- Evidence from a report on a 2nd victim increased confessions but occurred rarely

Faller and colleagues case study of effective Michigan county

- Close-knit multidisciplinary team *and*
- Child interviewed quickly
- Suspect interrogated quickly
- Suspects showed videotape of child interview
- Suspects still denying abuse were offered a polygraph test
- 64% of suspects confessed in cases in which children disclosed sexual abuse

Faller, et al., 2001; Faller & Henry, 2000; Staller & Faller, 2010

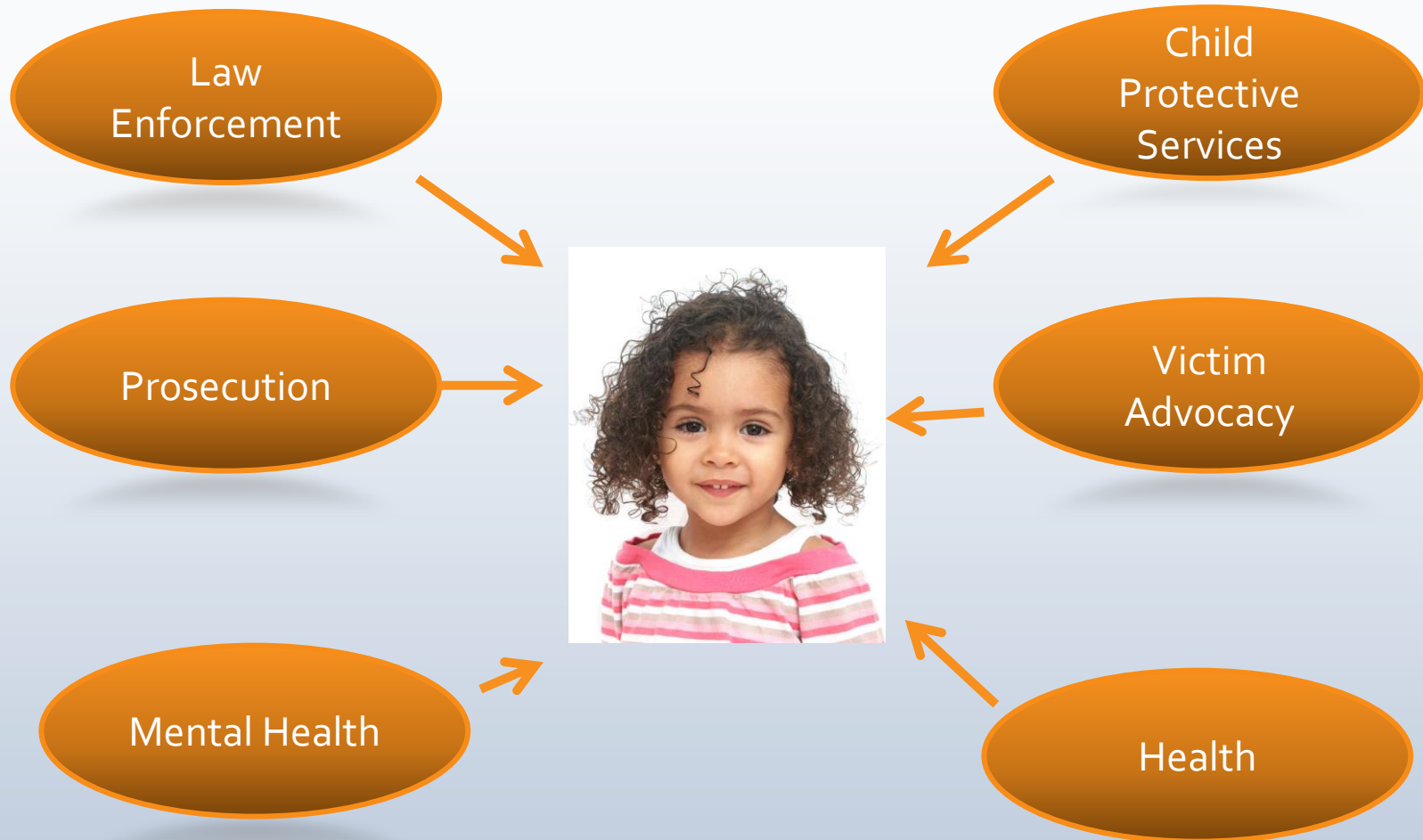
Confession rates across studies



Lesson 4:

**Multidisciplinary response is
important**

Multiple professions respond to child victims



Need for coordination across disciplines

- Reduce stress on child
 - Single forensic interviewer
 - Coordinate decisions affecting child and family
- Improve service delivery
 - Increase access to services
 - “One stop shopping”
- Improve investigation
 - Sharing of information
 - Coordinating interactions with child, family, perpetrator

Disciplines represented on MDT (pt. 1)- from CAC survey

Law enforcement	98.2
Child protection	97.7
Prosecutor	96.4
CAC staff	95.0
Forensic interviewer	88.3
Victim/witness advocate/assistant	86.5
Health professional	83.8
Mental health professional	91.0

Disciplines represented on MDT (pt. 2)

Juvenile court	38.3
Rape crisis counselor/advocate	27.9
DV counselor/advocate	22.5
Schools	17.6
Probation/parole	16.2
GAL/CASA	15.8
Sex offender treatment provider	6.3
Child's attorney	3.6

Children's Advocacy Centers (CACs)

- Multidisciplinary centers that provide a comprehensive and coordinated response in child abuse investigations
- Serve victims of sexual abuse, serious physical abuse, exploitation etc.
- Child forensic interviews in child-friendly facility – single interviewer
- Multidisciplinary team involved throughout, including witnessing forensic interview

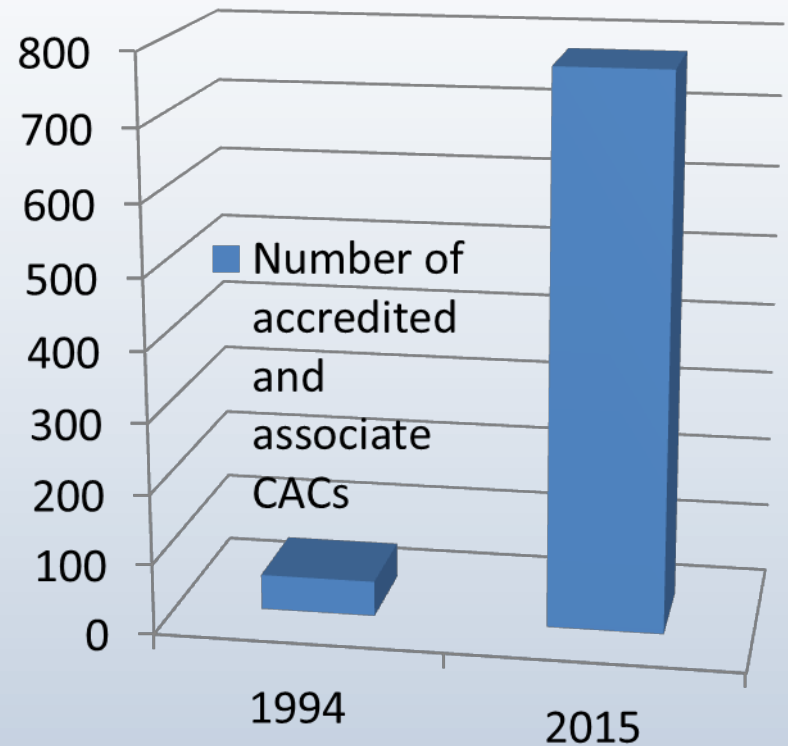
CAC standards

- Multidisciplinary team (MDT)/joint investigation
- Forensic interviews
 - Child-focused setting
 - Trained interviewer
 - Legally sound and neutral
 - Coordinated to avoid duplicative interviews
- Provides or facilitates:
 - Medical exams
 - Mental health services
 - Victim support and advocacy
 - Case review
- Cultural competence and diversity

National Children's Alliance

- Membership organization of CACs
- Accredits member CACs
- Includes associate CACs not yet accredited
- Conduit for limited Federal funding of CACs

Growth of CACs



Benefits of CACs: Findings from

the Multi-site CAC Evaluation (from Cross et al., 2007, 2008)

	CAC communities	Comparison communities
More child-focused interview location	CAC facility 83%	CPS agency 22% Police agency 18% Home 16% School 10%
More coordinated investigations	81%	52%
More team interviews	28%	6%
More case reviews	56%	7%
More children received forensic medical examinations	48%	21%
More referrals for mental health services	60%	22%
Increased parent satisfaction	>70%	53%

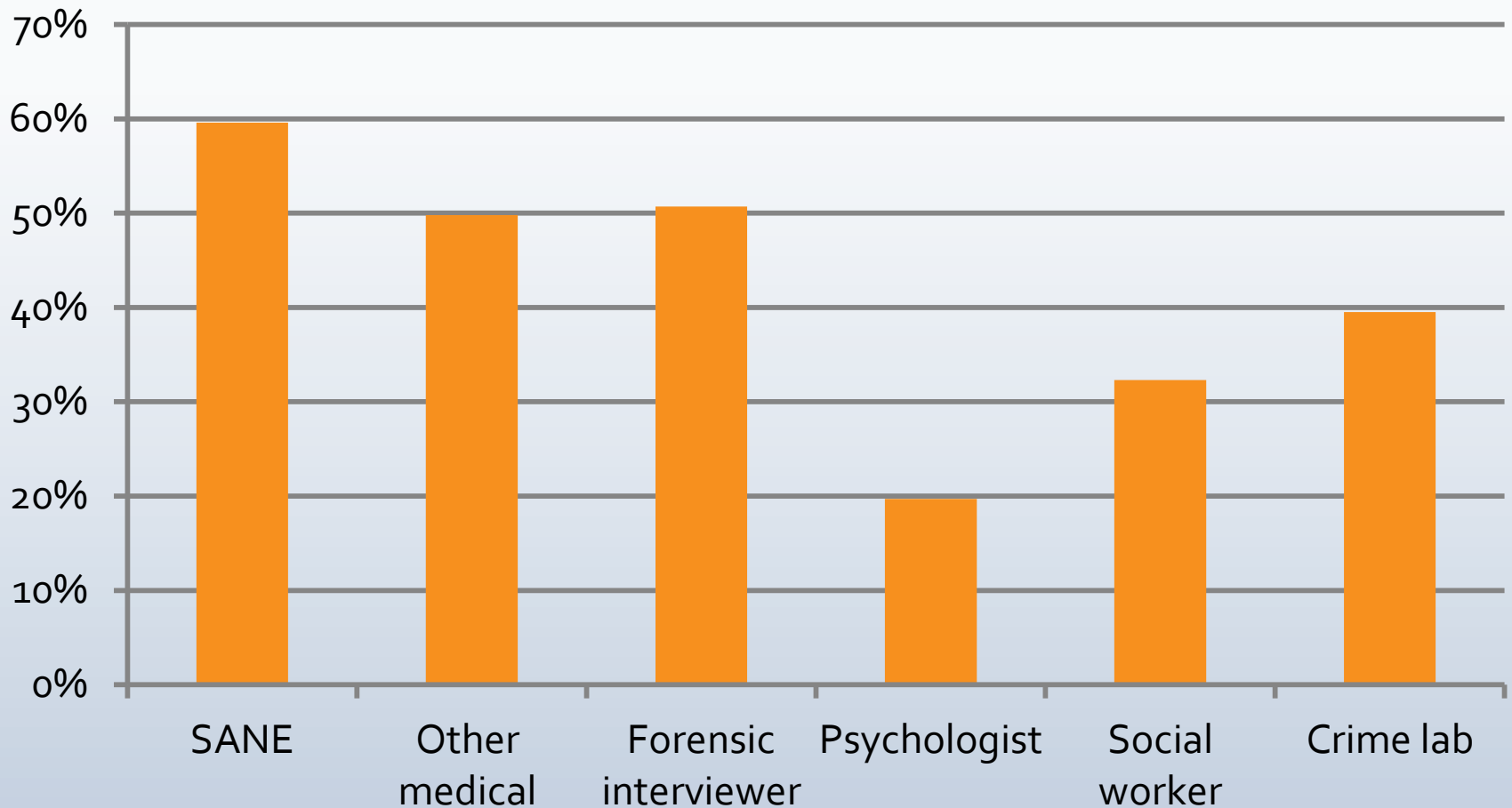
Mixed results on criminal justice impact of CACs

Study	Finding
Joa & Edelson, 2005	<ul style="list-style-type: none">• Criminal charges filed more often with more counts in CAC than comparison• Convictions more likely in CAC cases
Wolfteich & Loggins, 2007	<ul style="list-style-type: none">• CAC did not differ from joint CPS-police team• Time to disposition less in CAC
Edinburgh, et al., 2008	No difference between CAC and comparison
Cross et al., 2008	<ul style="list-style-type: none">• 3 CACs did not differ from comparison on cj outcomes• 1 CAC was more likely to file criminal charges but also more likely to dismiss cases
Walsh, et al., 2008	Time to disposition less in CAC than comparison
Miller & Rubin, 2009	Rate of felony prosecutions was 69% greater in district with expanded use of CACs than in comparison

Multiple disciplines involved at every stage

Stage	Multiple Disciplines	Coordination
Investigation	CPS, law enforcement, medical	Joint or coordinated CPS-LE investigation; forensic medical exam
Forensic Interviewing	CAC forensic interviewer, CPS, law enforcement	Team interviews: single interview with multiple disciplines observing
Service Response	CPS, victim advocate, medical, mental health	MDT coordinates multiple services
Pre-Trial	LE, victim advocate, prosecutor	LE & prosecutor coordinate on evidence collection; LE, advocate and CAC on supporting child & family
Trial	Medical, forensic interviewer, mental health, crime lab	Multiple experts assist prosecutors and testify

Multiple disciplines provide testimony at trial – prosecutor survey



Lesson 4:

**Quality interviews are
essential**

Forensic Interviews

- Several structured protocols have been developed to incorporate research findings on memory and suggestibility
- Trained forensic interviewers are available in many jurisdictions
- Videos of quality interviews can be helpful in court to rebut defense challenges

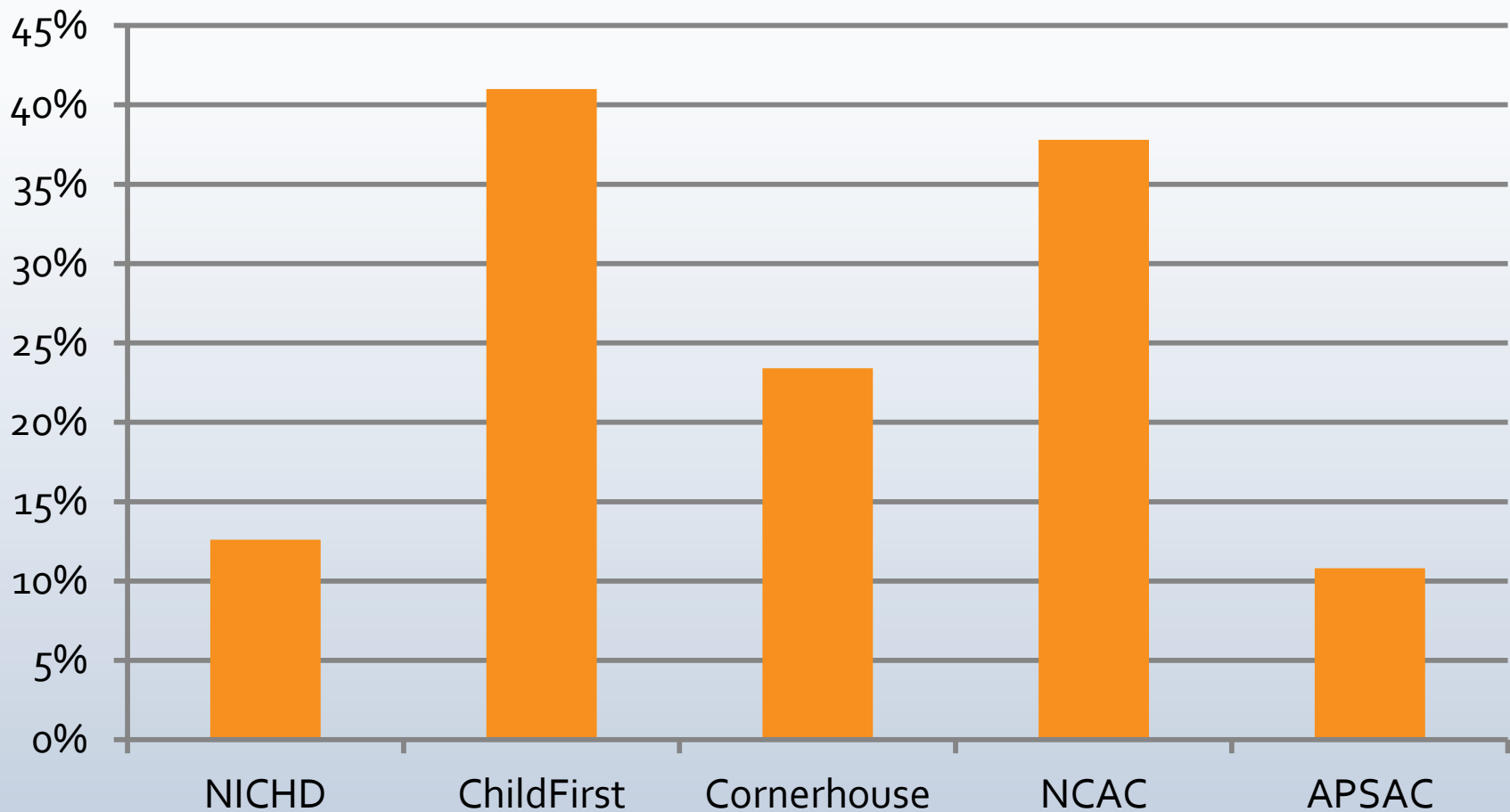
Evaluation of One Interview Protocol

Compared outcomes of child abuse cases before and after implementing the NICHD protocol

	Pre-protocol	Post-protocol
Cases declined	28%	17.6%
Arrests/charges	42%	52.9%
Guilty pleas	52%	56%
Convictions at trial	50%	91%

Pipe et al. (2012)

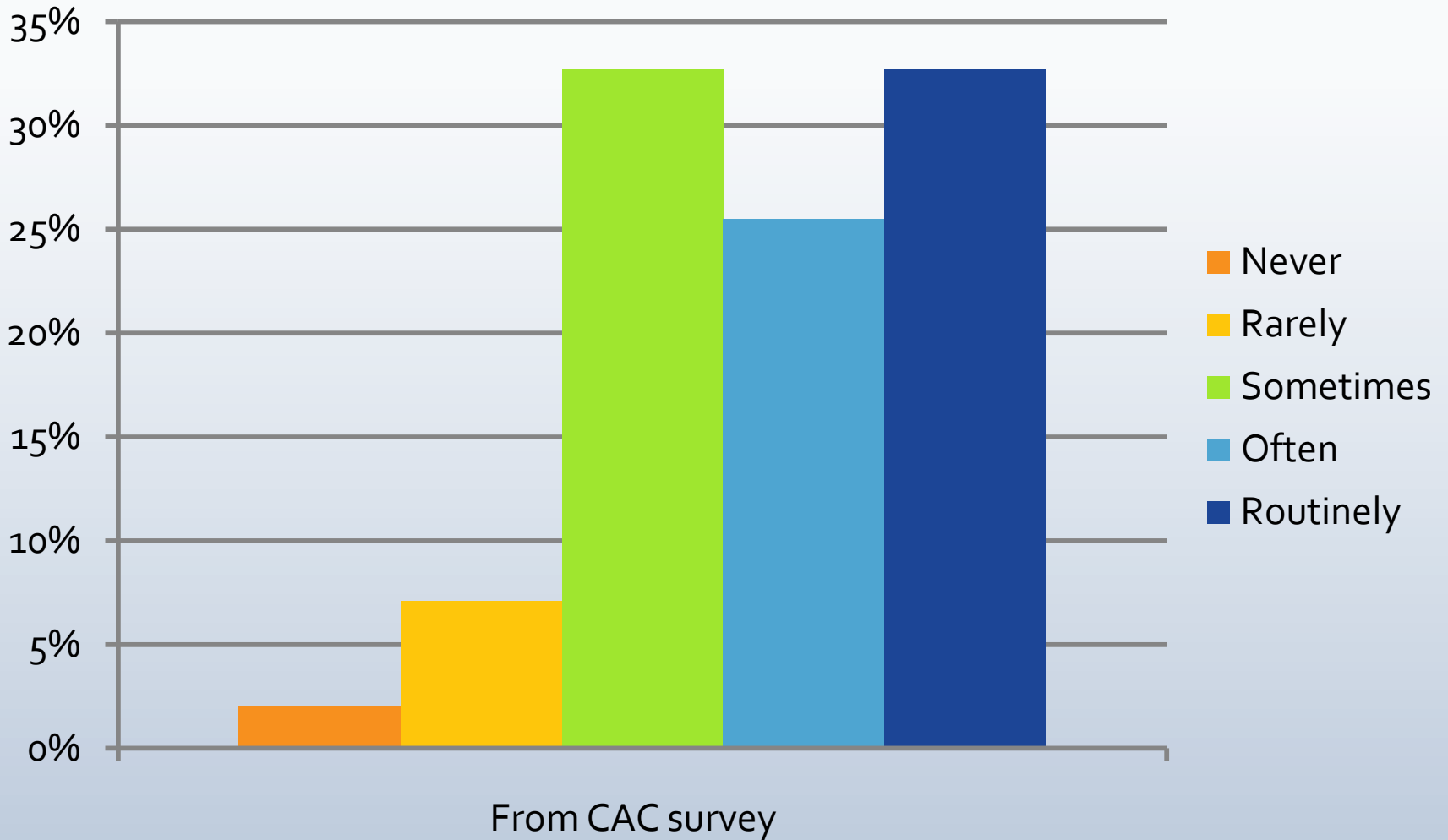
Forensic interview protocols used by CACs



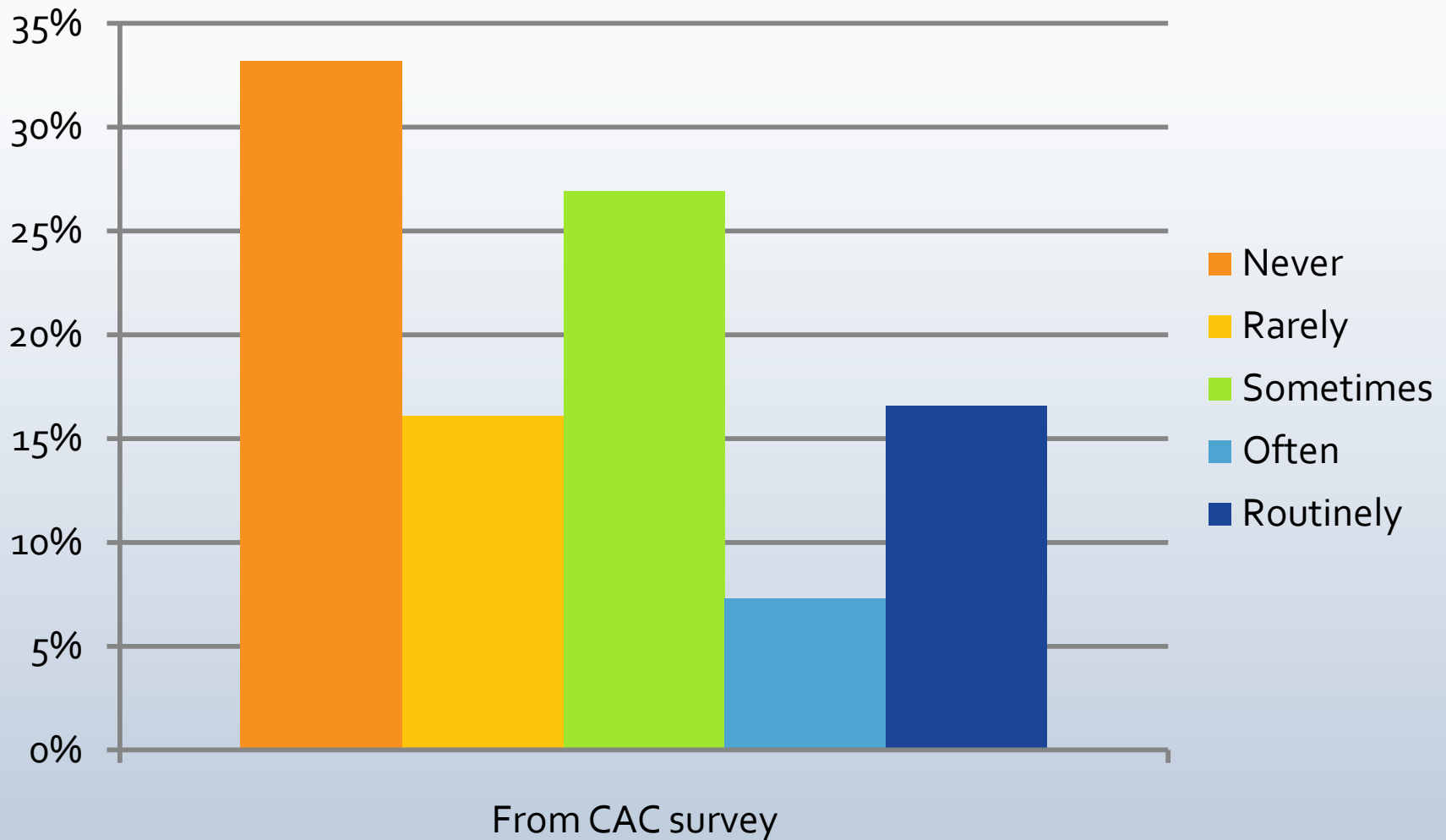
Lesson 5:

**Pay attention to caregivers'
needs**

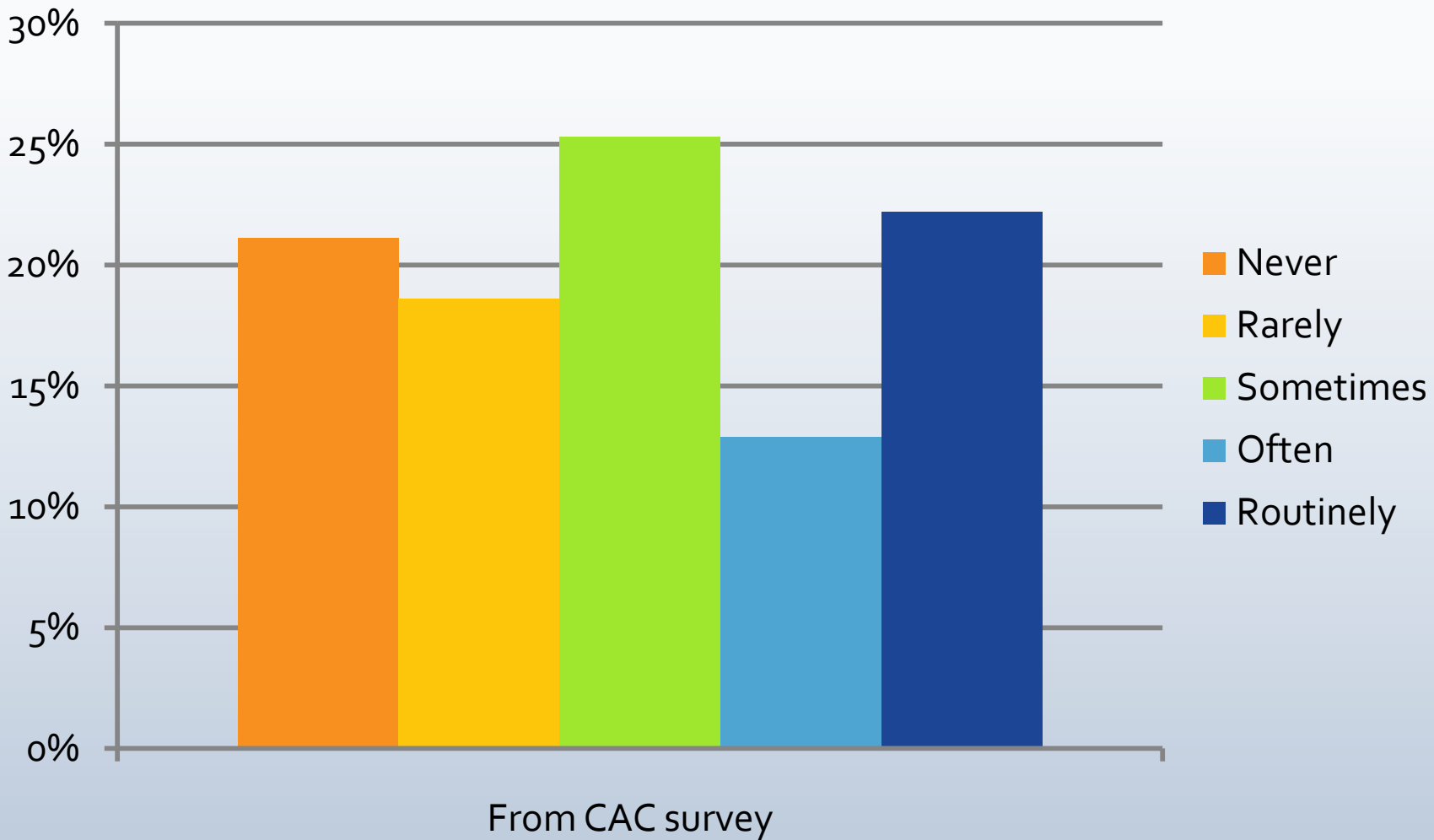
How often do CACs provide referrals for DV services?



How often do CACs obtain protective orders for non-offending parents?

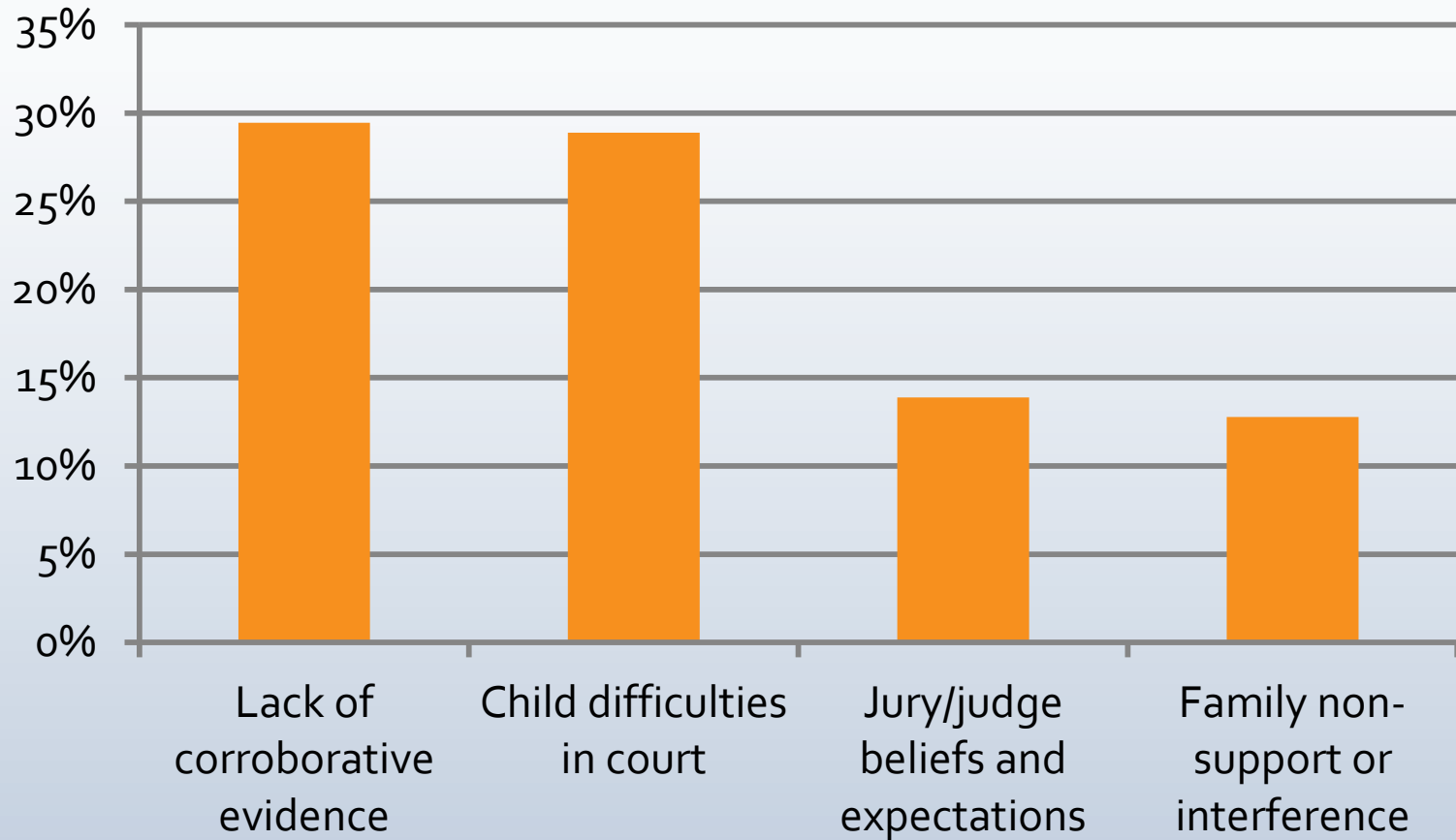


How often do CACs provide DV risk assessment or safety planning?



**What is the state of
prosecution of child abuse in
2015?**

Prosecutor responses in 2015: What is the biggest challenge?



Examples of challenges

“Can't win and it is a waste of resource and emotional strength to try when there are not corroborators.”

“Overcoming jury expectations and need for corroboration of children's testimony when there is often little or none.”

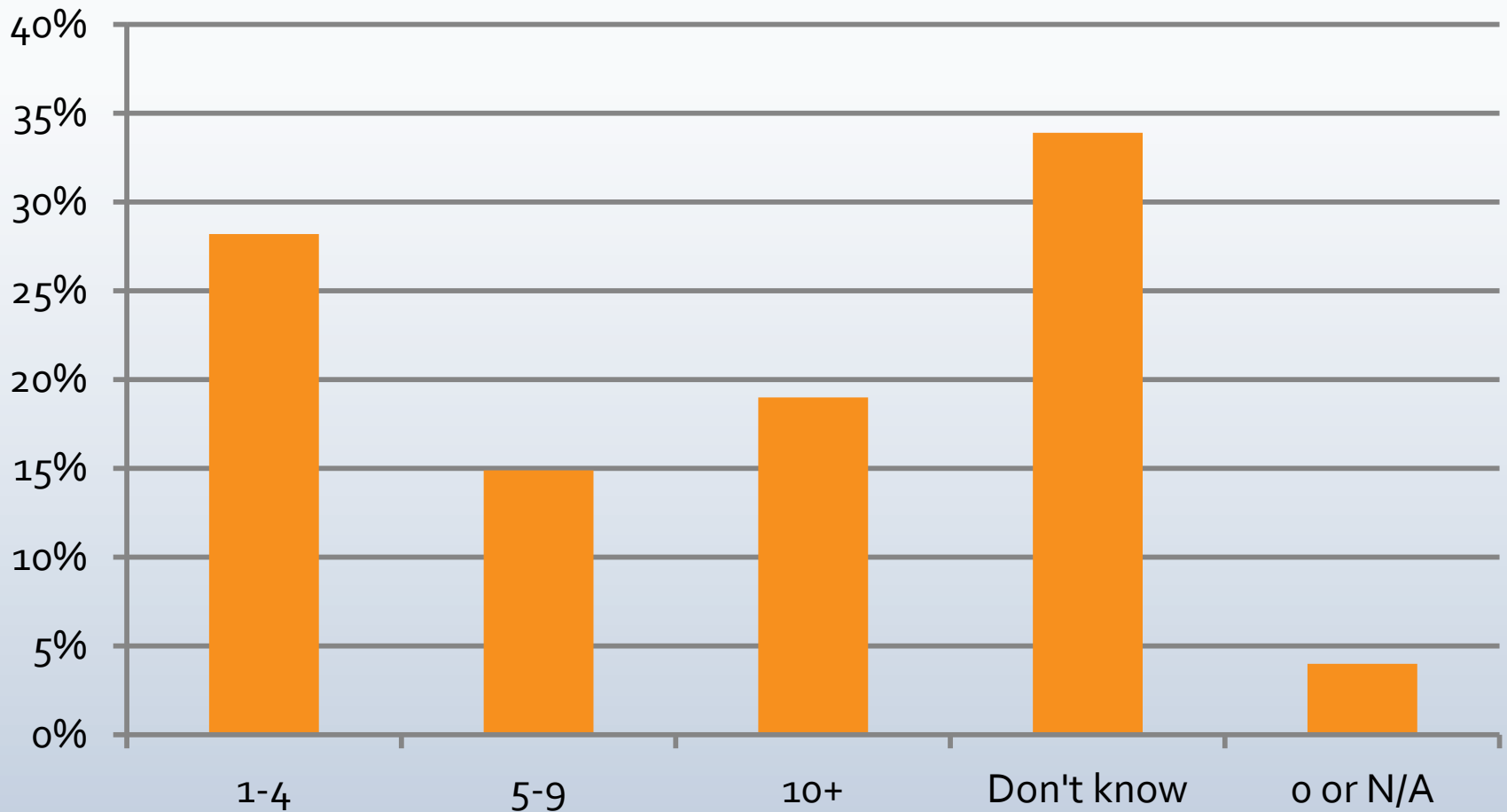
“The fact that a child is required to testify in most cases to proceed with a case. The court system as a whole is not structured for children, particularly those who have been victimized and are forced to face the perpetrator of the abuse in an open courtroom setting. We do our best to lessen the anxiety of testifying by doing courtroom tours prior to trial, having a support person or multiple support persons present for the child, etc. but testifying is often still difficult for children.”

More examples of challenges

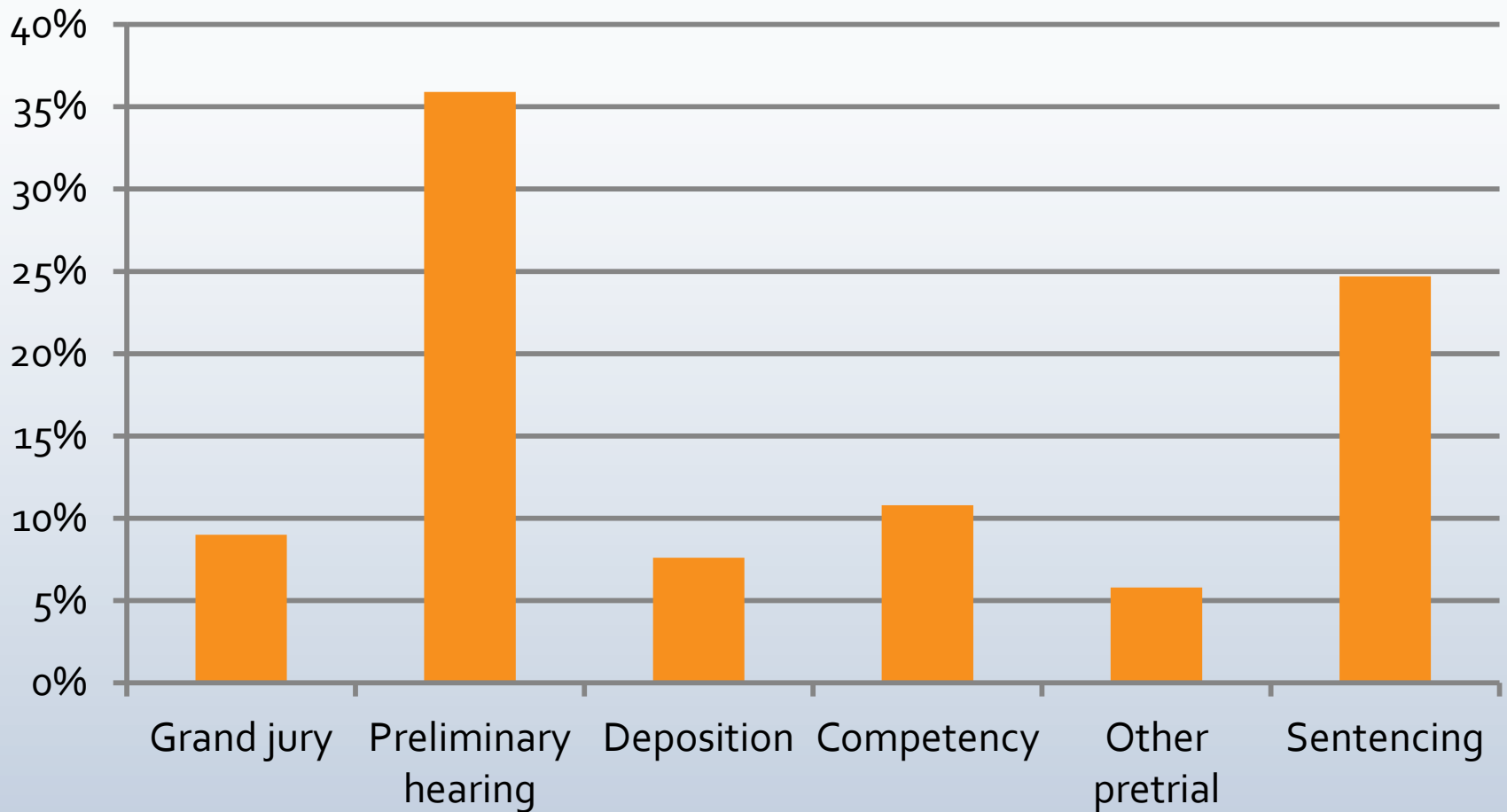
“Overcoming a typical juror mindset regarding ‘child molesters’ and what that term means “

“The fear and family pressure involved in prosecuting a family member. It seems to be either one extreme or the other-the family does not believe the child and is not supportive of the child's disclosure, or a child makes an ambiguous disclosure, we do an interview and there is no disclosure, and the family wants to prosecute anyway because the child clearly tells them what happened and we are asking too much of the child in a forensic interview.”

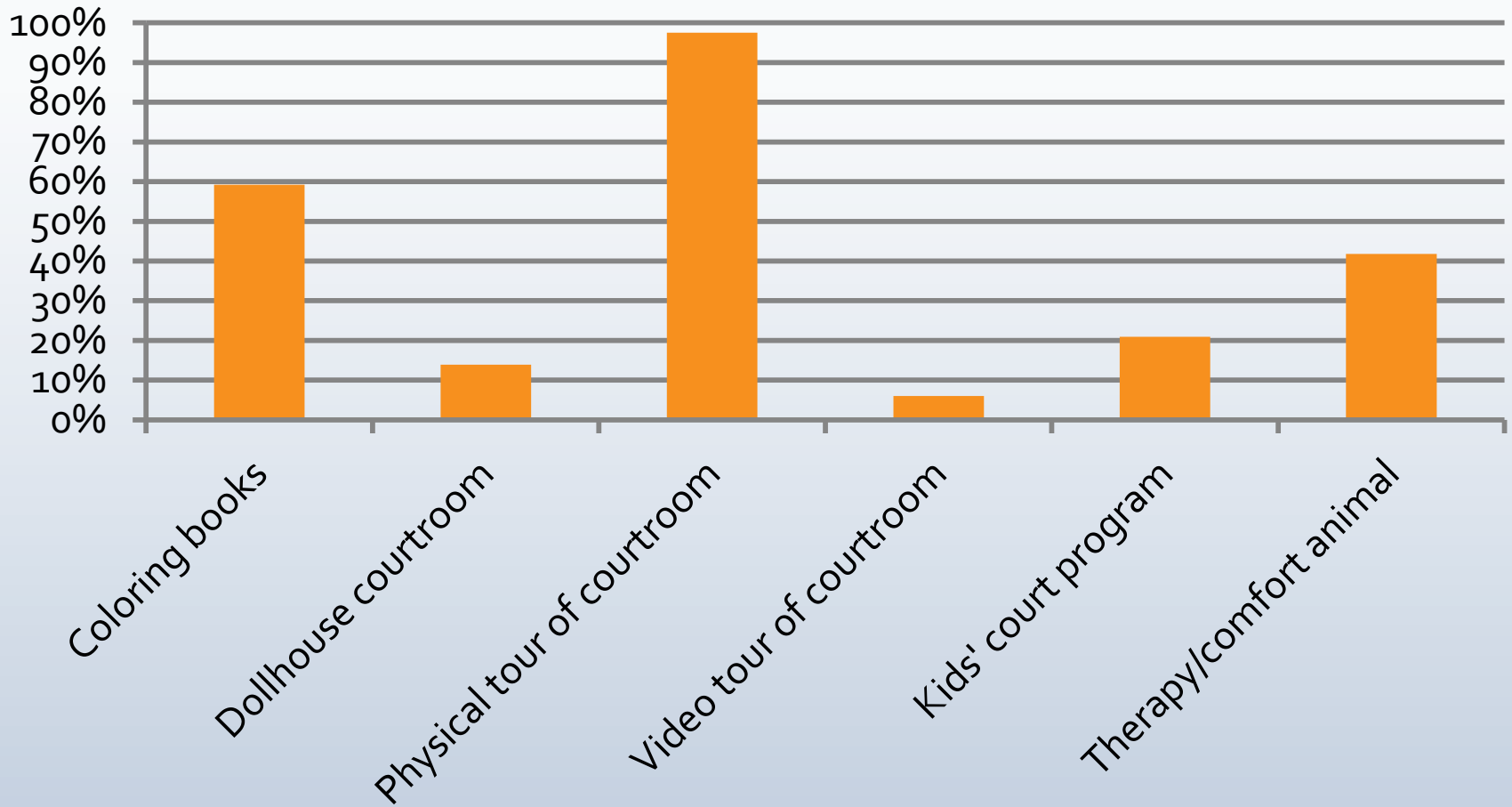
How many children testify at trial? – CAC survey



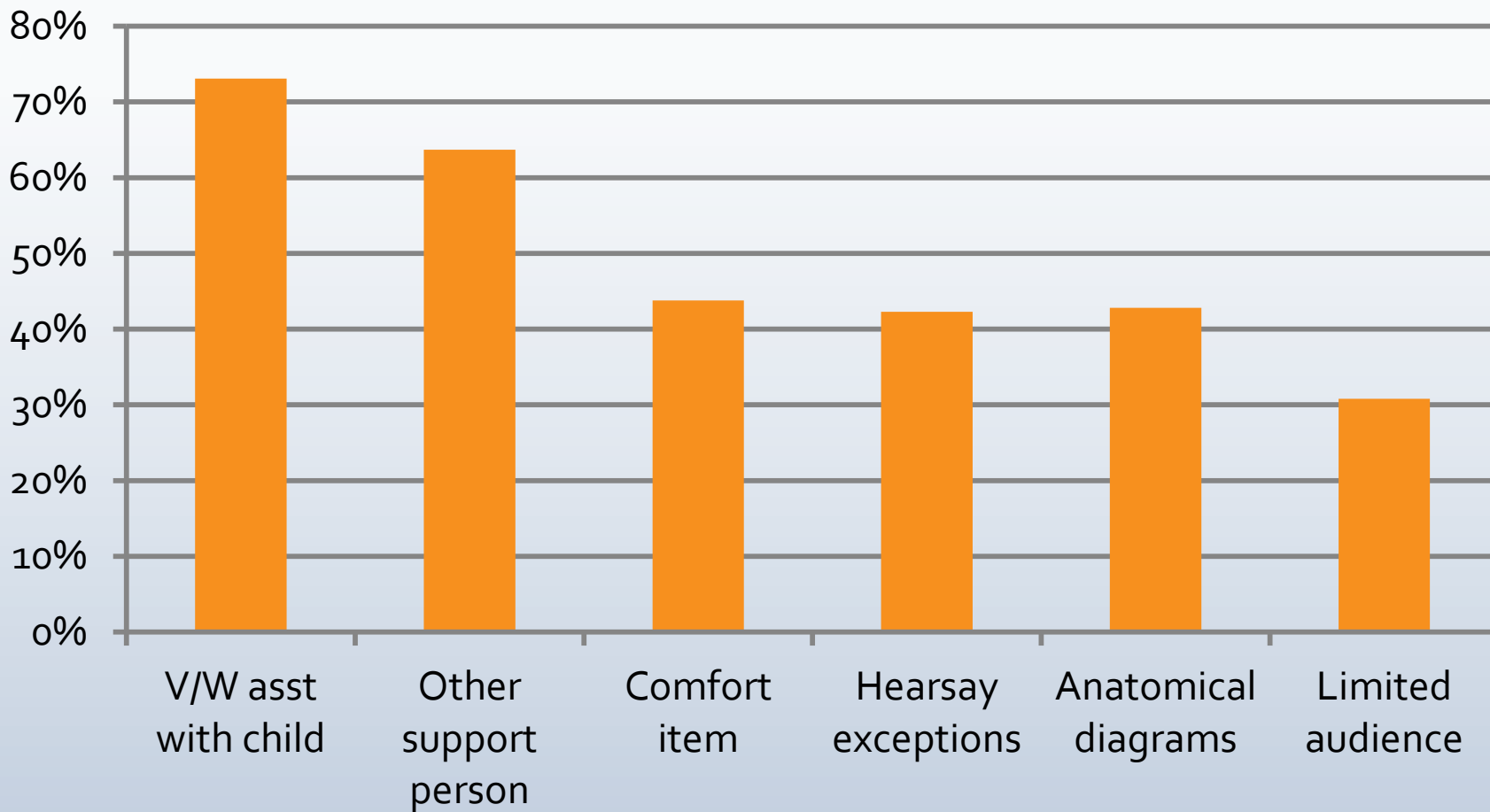
How Many Children Testify in Other Proceedings?



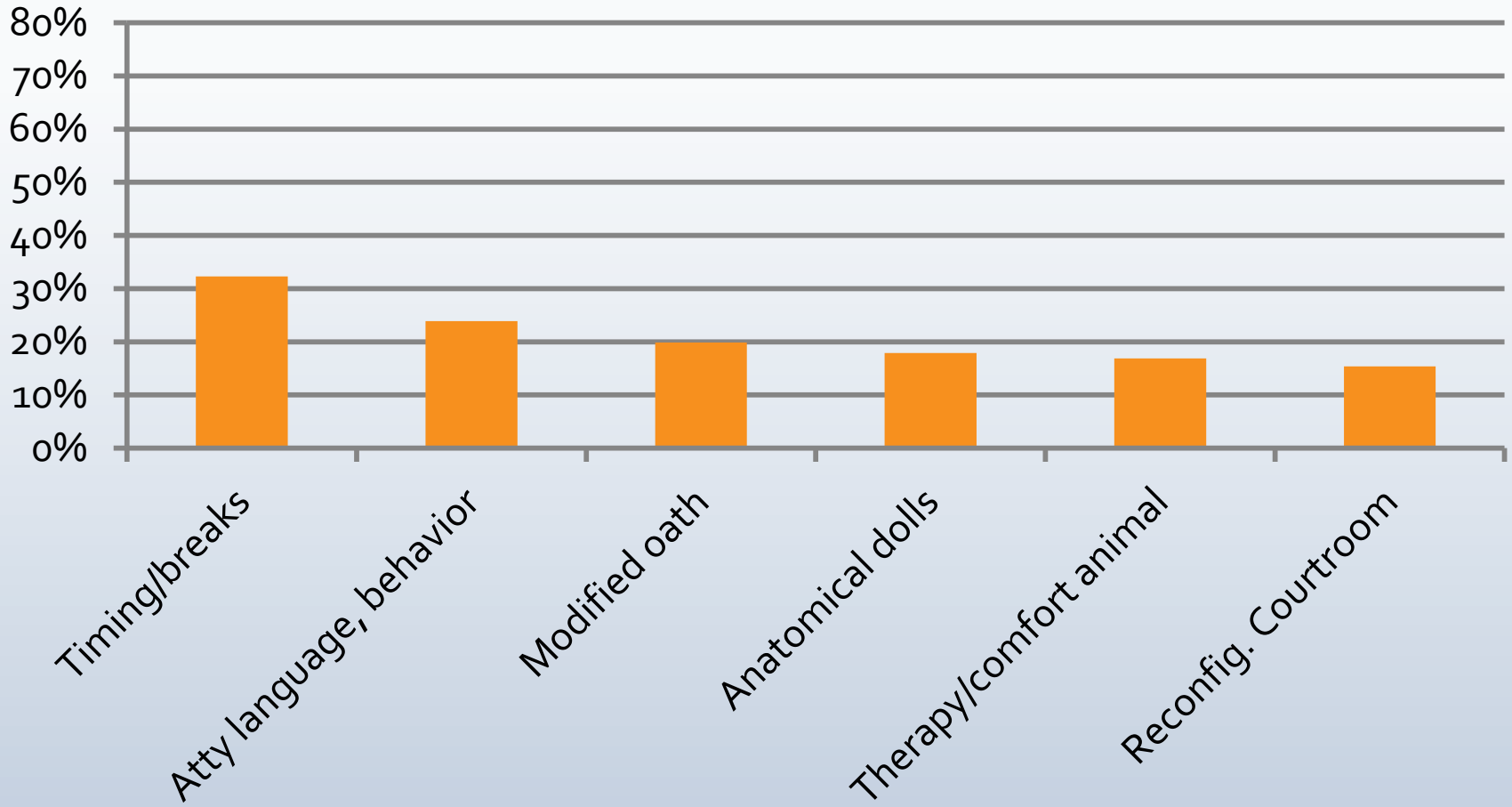
Techniques DA offices use to prepare children for court appearances



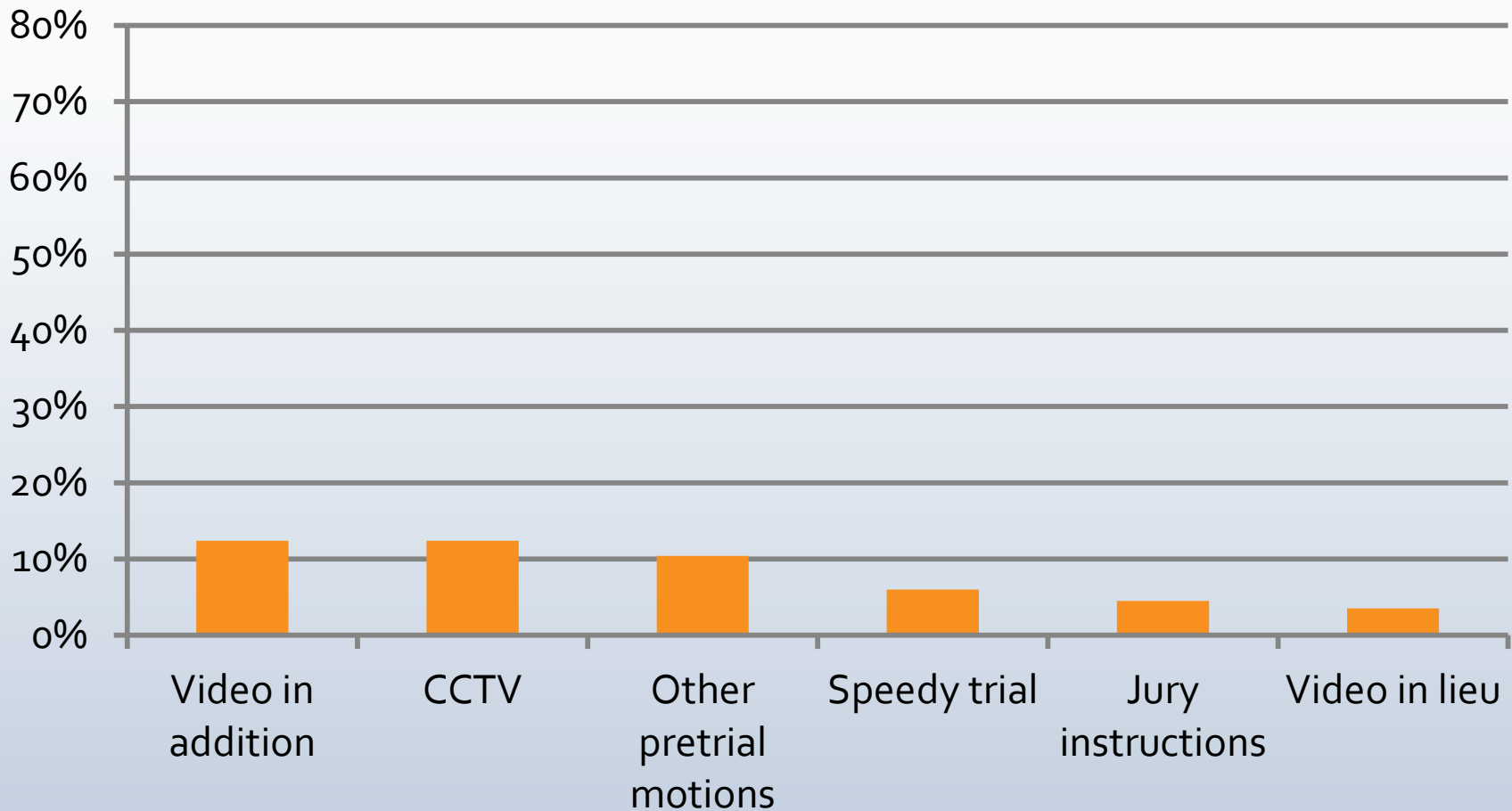
Techniques used to assist children in court (Pt. 1)



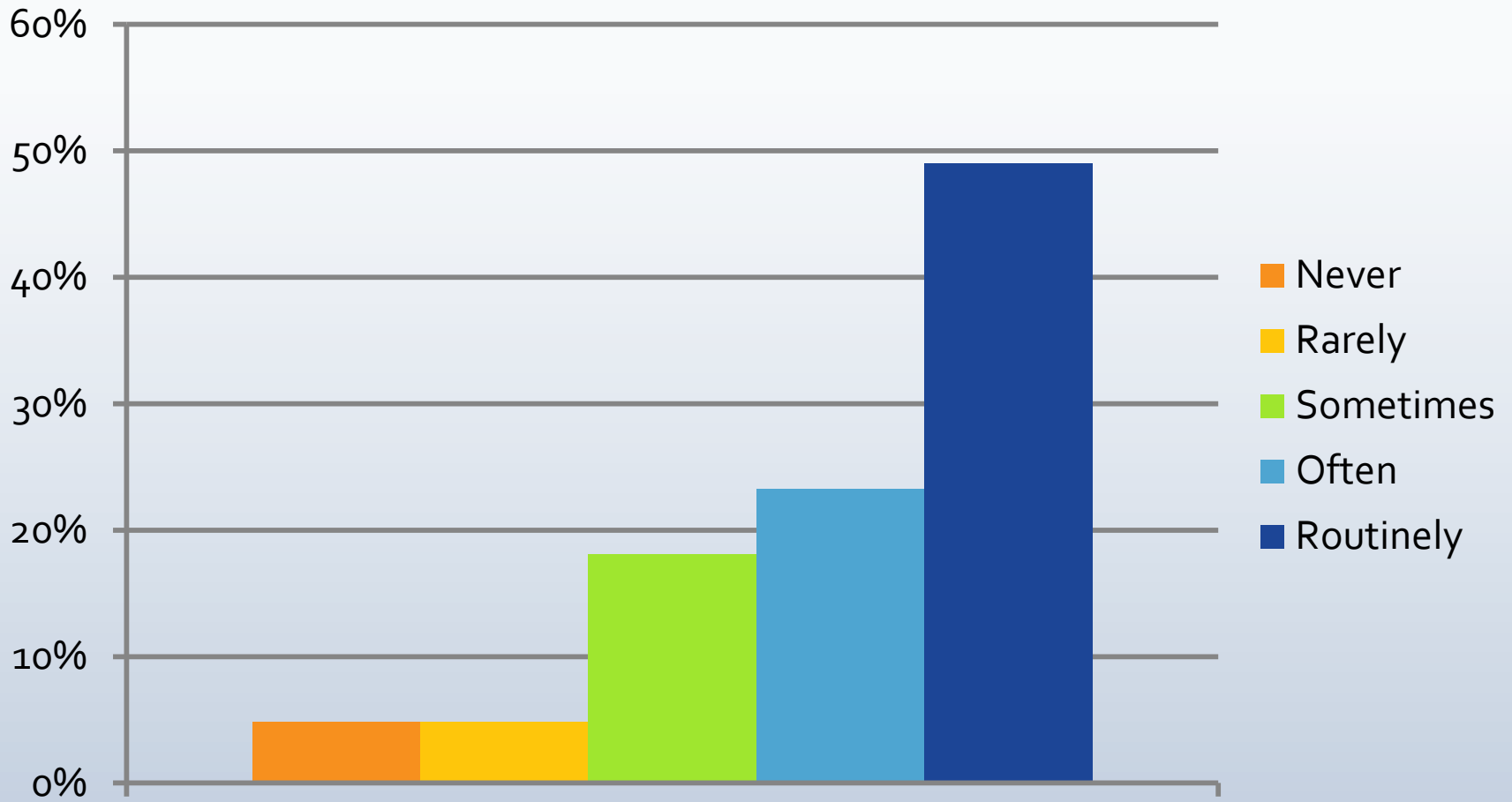
Techniques used to assist children in court (Pt. 2)



Techniques used to assist children in court (Pt. 3)



Frequency of court accompaniment by MDT member (CAC survey)



Crawford v. Washington (2004)

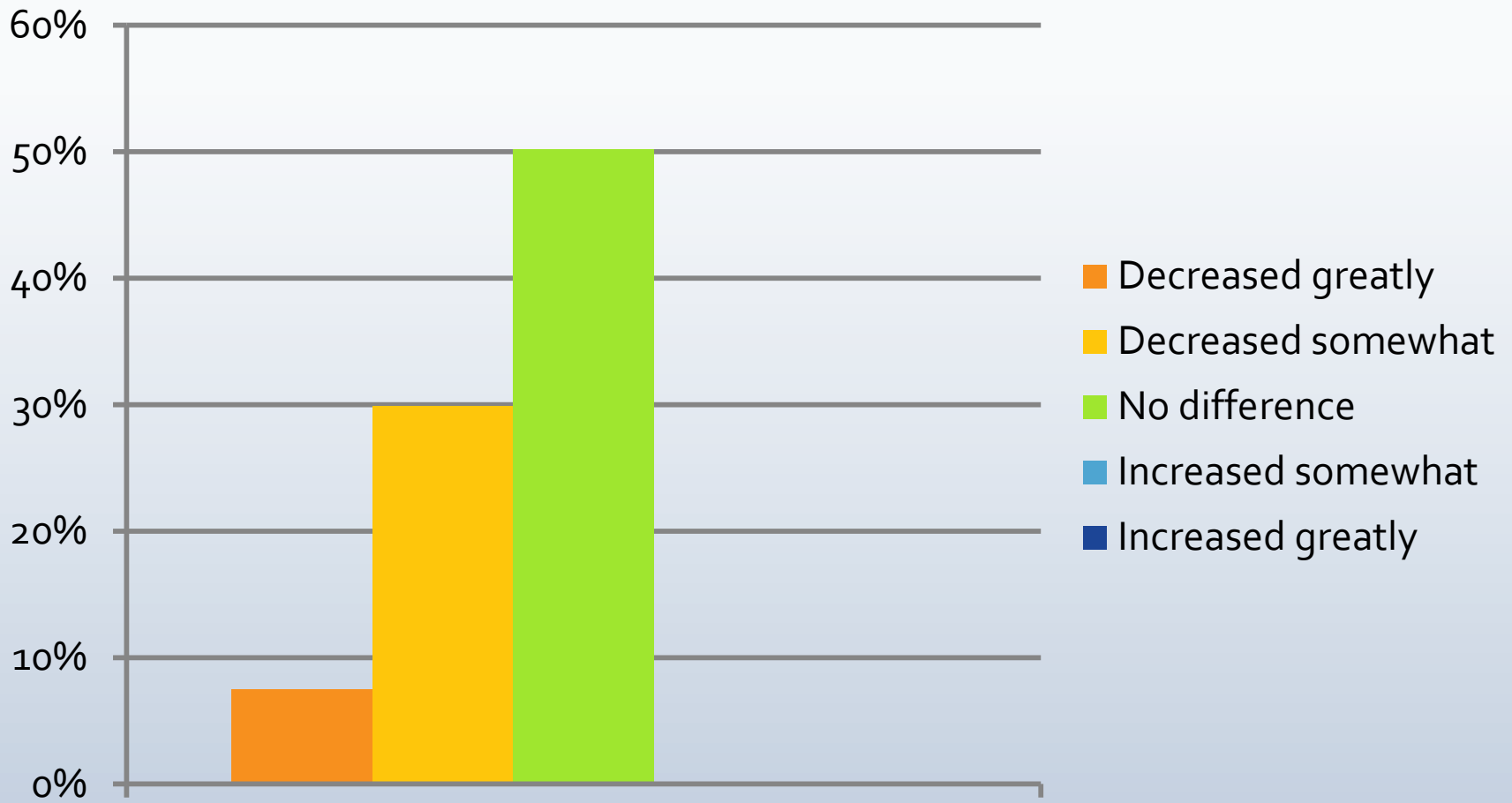
“Testimonial” out-of-court statements are not admissible at trial unless

- The witness testifies, or
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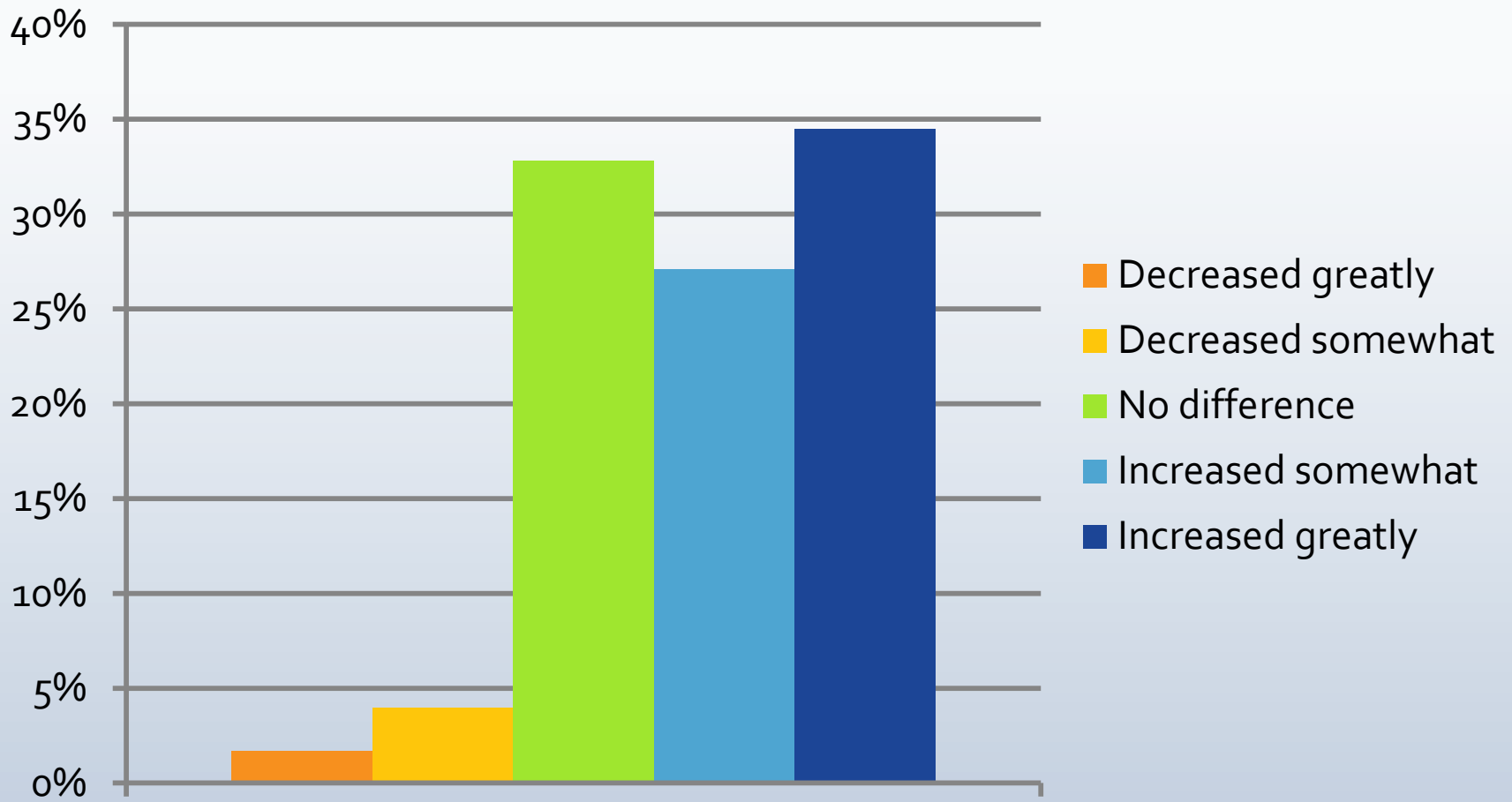
Toth, P. (2007)

How has this affected prosecution?

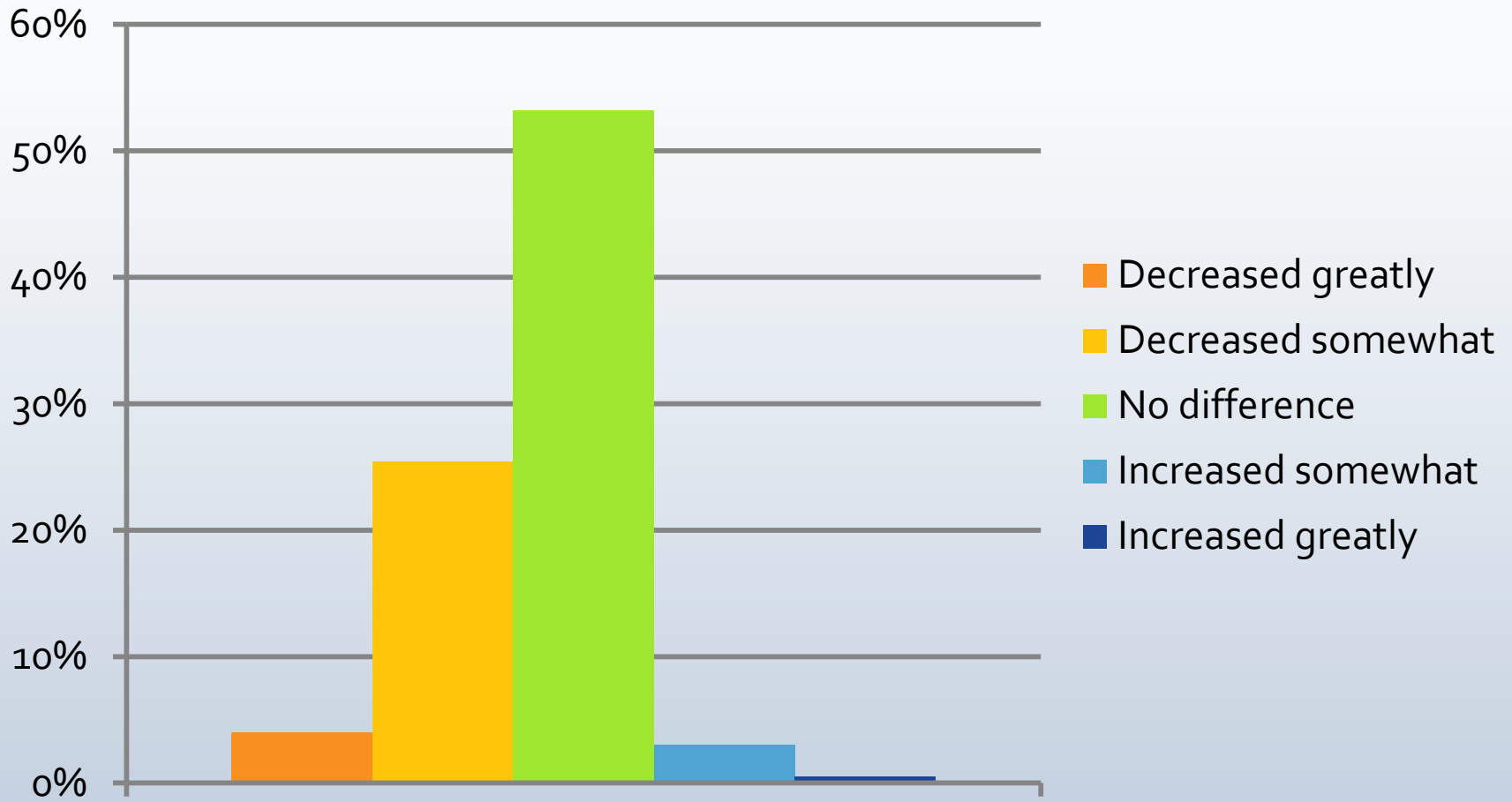
Impact of *Crawford* on likelihood of prosecution



Impact of *Crawford* on need for child testimony



Impact of *Crawford* on likelihood of conviction at trial



Ohio v. Clark (2015)

A 3-year-old child's statement to a mandated reporter was not testimonial and did not violate the Confrontation Clause.

The child's purpose in making a statement was *not* to support prosecution, but rather to end the abuse

The teacher's purpose in questioning the child was *not* to support prosecution, but rather to help the child

Concluding Thoughts

- Though prosecution remains difficult, knowledge has increased dramatically
 - Many methods have been developed for improving practice and supporting children
- Training and implementation remain challenging

Concluding Thoughts

**The net is wide: children are
victimized in multiple ways**

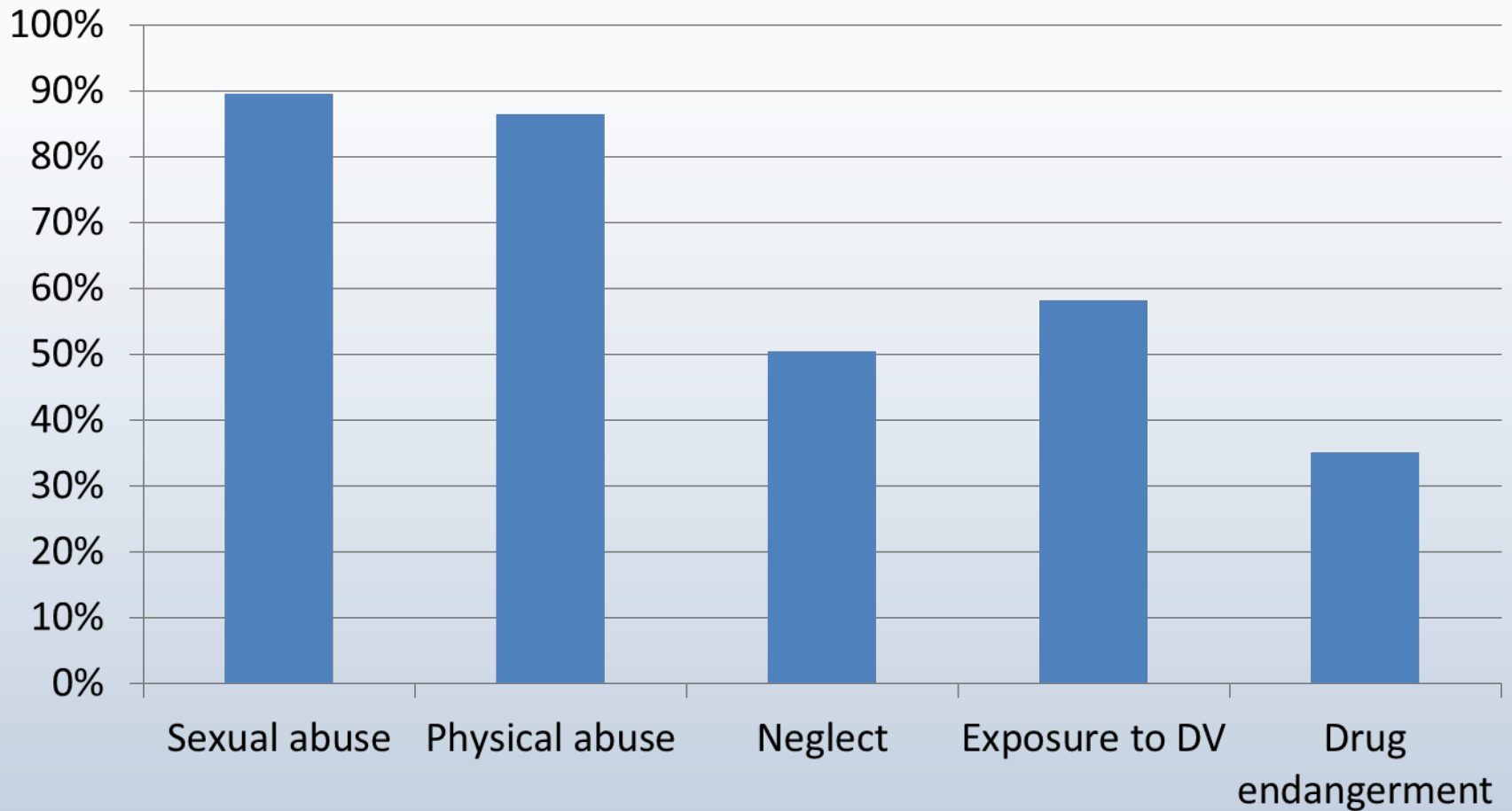
Polyvictimization

- Many child victims suffer multiple forms of victimization
- Children suffering sexual victimization averaged 6.4 types of victimization
- Polyvictims experience significantly more trauma symptoms

National Survey of Children's Exposure to Violence

Finkelhor, Ormrod & Turner, 2007; Turner, Finkelhor & Ormrod, 2010

% children interviewed by type of abuse – CAC survey



- Majorities of children experience physical abuse, exposure to DV, neglect
- Many children experience polyvictimization

Concluding Thoughts

Evidence-based treatments are available

National Child Traumatic Stress
Network

www.nctsn.org

Concluding Thoughts

Research plays an important role:

- Improving practice
 - Benefits of MDTs and CACs
 - Use of forensic interview protocols
 - Treatments for children and families
- Informing decision-makers
 - Prosecutors
 - Judges
 - U.S. Supreme Court
- More research need on effectiveness of prosecution

Contact us!

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References

Cross, T.P., Jones, L., Walsh, W., Simone, M. & Kolko, D. (2007). Child forensic interviewing in children's advocacy centers: Empirical data on a practice model. *Child Abuse & Neglect, 31* 1031–1052.

Cross, T. P., Jones, L.J., Walsh, W., Simone, M., Kolko, D.J., Szczepanski, J. Lippert-Luikart, T., Davison, K., Cryns, A., Magnuson, S., Sosnowski, P. & Shadoin, A. (2008). The Multi-Site Evaluation of Children's Advocacy Centers: Overview of the results and implications for practice. *OJJDP Crimes Against Children Series*. Bulletin.

Cross, T.P., Walsh, W., Simone, M. & Jones, L.M. (2003) Prosecution of child abuse: A meta-analysis of rates of criminal justice decisions. *Trauma, Violence and Abuse, 4*, 323–340.

Faller, K. C., Birdsall, W. C., Henry, J., Vandervort, F., & Silverschanz, P. (2001). What makes sex suspects confess? An exploratory study. *Journal of Child Sexual Abuse, 10*(4), 31-49.

Faller, K. C., & Henry, J. (2000). Child sexual abuse: A case study in community collaboration. *Child Abuse & Neglect, 24*(9), 1215-1225.

Finkelhor, D., Ormrod, R.K., & Turner, H.A. (2007) Poly-victimization: A neglected component in child victimization trauma. *Child Abuse & Neglect, 31*, 7-26.

References (cont.)

Goodman, G.S., Ogle, C.M., McWilliams, M.M., Narr, R.K., & Paz-Alonso, P.M. (2013). "Memory Development in the Forensic Context," in , in P.J. Bauer & R. Fivush (eds.), *The Wiley Handbook on the Development of Children's Memory, Vols. I/II*. Chichester, UK: John Wiley & Sons, Ltd., Chapter 39.

Lippert, T., Cross, T.P., Jones, L.M., & Walsh, W. (2010). Suspect confession of child sexual abuse to investigators. *Child Maltreatment, 15*, 161-170.

Lyon, T.D. (2011). Assessing the competency of child witnesses: Best practice informed by psychology and law. In M.E. Lamb, D. La Rooy, L.C. Malloy, & C. Katz (Eds.), *Children's Testimony: A Handbook of Psychological Research and Forensic Practice*. Sussex, UK: Wiley-Blackwell, at p. 77.

Malloy, L.C., and Quas, J.A. (2009). "Children's Suggestibility: Areas of Consensus and Controversy," in K. Kuehnle & M. Connell (eds.), *The Evaluation of Child Sexual Abuse Allegations*. Hoboken, NJ: John Wiley & Sons, Inc., pp. 267-297.

McAuliff, B.D., and Kovera, M.B. (2007). Estimating the effects of misleading information on witness accuracy: Can experts tell jurors something they don't already know? *Applied Cognitive Psychology, 21*, 849-870.

Myers, J.E.B. (2010). Expert testimony in child sexual abuse litigation: Consensus and confusion. *UC Davis Journal of Juvenile Law & Policy, 14*(1), 1-57.

References (cont.)

Pipe, M.E., Orbach, Y., Lamb, M. E., Abbott, C. B., & Stewart, H. (2012). Do case outcomes change when investigative interviewing practices change? *Psychology, Public Policy, and Law*, 19(2), 179-190.

Quas, J.A., & Goodman, G.S. (2012). Consequences of criminal court involvement for child victims. *Psychology, Public Policy & Law*, Vol. 18, pp. 392-409.

Quas, J.A., Thompson, W.C., and Clarke-Stewart, K.A. (2005). Do jurors "know" what isn't so about child witnesses? *Law and Human Behavior*, 29(4), 425-452.

Staller, K. M., & Faller, K. C. (Eds.). (2010). Seeking justice in child sexual abuse: Shifting burdens and sharing responsibilities. New York, NY: Columbia University Press.

Toth, P. (2007). Impact of Crawford in child abuse cases: Much ado about nothing . . . or something? Workshop presentation, 15th Annual APSAC Colloquium, Boston, MA.

Turner, H.A., Finkelhor, D. & Ormrod, R.K. (2010) Poly-victimization in a national sample of children & youth *American Journal of Preventive Medicine*, 38, 323-330.

Veith, V. I. (1999). When a child stands alone: The search for corroborating evidence. Update 12(6), 1-4. American Prosecutors Research Institute, Retrieved from <http://www.ndaa-apri.org/apri/>.