


You mean I can choose my own therapist, but I can't decide which parent with whom I want to live?

A Child's Wishes: At What Age Can a Child Decide?

HONORABLE ROBERT LUNG, 18TH JUDICIAL DISTRICT
REBECCA K. GOLDMANIS ESQ
ANDREW G. BIRKELAND, ESQ

SEPTEMBER 16, 2022





“14 year old teenager stands up for his right to live with dad in child custody dispute. This is an example of how government institutions, like the Family Court, continuously violate Human Rights, The Convention on the Rights of the Child, by refusing children and even teenagers (young adults) to be heard AND taken seriously. Selfish Child Abuse - if one parent relies upon court orders for sole custody, even though the child or teenager demonstrates that he/she doesn't want to stay with the custodial parent.

[#AbusedToo](#) | [#ChildrenHaveRightsToo](#) |
[#AbuseOfPower](#) [#ChildrenAreMoreImportantThanCourtOrders](#)”

COMMENTS POSTED ONLINE IN RESPONSE TO VIDEO

1) Why didn't they enforce the court order. They are supposed to uphold the law.

Reply: Because he is fourteen years old and has a voice.

Reply: No he doesn't, those days have gone by and feelings don't matter. "Children are resilient", not my word but a judge.

2) Typical child-abusing woman playing the victim at every turn

3) Karen is an actress and at the end the Dad said good job, something fishy

4) Why does the court even have to be involved parents should be able to sit down and talk about the children like adults and as for the step dad it's not his business

What do our clients see and hear on the internet?

“...So if you are looking for an age I would say around 15”

“...I was advised by my lawyer that 12 was when they could diside for themselves...”

“My daughter was 12 when she decided that her dad’s was too boring to go to for the whole weekend. They start to have their own lives and want to be with their friends not Mom and Dad. I explained this to ex and he wasn’t happy. He did very little with her when she was at his...just watched TV all day. She was adamant she wasn’t going to stay all weekend. Now she meets him for tea after school..not every week...Ex just had to suck it up.”

“My son is 9 and if he doesn’t want to go to his dads then I don’t make him..I always used to but in the last year or so I let him decide...”



At what age can a child...

At age 12, a child:

- ▶ **May consent to psychotherapy without parental consent;**
 - ▶ C.R.S. § 12-245-203.5(2) (July 1, 2022)
- ▶ **May consent to treatment for substance use without parental consent;**
 - ▶ C.R.S. § 13-22-102 (May 25, 2017)
- ▶ **May request birth control procedures and supplies without parental consent;**
 - ▶ C.R.S. § 13-22-105 (Oct. 1, 2019)
- ▶ **May request the Court waive notice to parents prior to having an abortion; and**
 - ▶ C.R.S. § 13-22-707 (Oct. 1, 2018)
- ▶ **May testify in open Court (at the discretion of the court).**
 - ▶ C.R.S. § 13-90-106(b)(1) (Apr. 29, 2003)

At what age can a child...

At age 17, a child:

- ▶ **May be charged criminally as an adult (under certain conditions);**
 - ▶ C.R.S. § 19-2.5-801(1) (Oct. 1, 2021)
- ▶ **May drop out of school;**
 - ▶ C.R.S. § 22-33-104 (Mar. 23, 2020)
- ▶ **May receive testing for STIs and health care provider may not involve parents;**
 - ▶ C.R.S. § 25-4-409(2) (July 6, 2021)
- ▶ **May obtain a driver's license; and**
 - ▶ C.R.S. § 42-2-106 (Aug. 2, 2019)
- ▶ **May get married with parental and judicial consent.**
 - ▶ C.R.S. § 14-2-108 (Oct. 1, 2021)

Other states' laws regarding a child's wishes

- ▶ All states *allow* courts to consider a child's wishes, if the child is sufficiently mature
- ▶ However, several states do not require a court to consider a child's wishes...
 - ▶ *E.g.*, NY, OH, SD, AR, FL...

Other states' laws regarding a child's wishes

- ▶ Children 12 and older...
 - ▶ Rebuttable presumption child “is of sufficient age to for an intelligent preference”
 - ▶ Oklahoma - 43 Okl.St.Ann. § 113 (2011)
 - ▶ Court shall consider “reasonable preference of child 12 or older – “preference of older children should normally be given greater weight than those of younger children”
 - ▶ Tennessee – T.S.N. § 36-3-106(a)(13) (2022)
 - ▶ Court shall interview child 12 or older upon motion of party of GAL
 - ▶ Texas – V.T.C.A., Family Code § 153.009 (2005)

Other states' laws regarding a child's wishes

- ▶ Children 14 and older...
 - ▶ Shall be permitted to address the court as to their wishes (unless Court determines it is not in the child's best interests)
 - ▶ California – CA FAM § 3042 (2022)
 - ▶ Court shall consider wishes of child 14 or older
 - ▶ New Mexico – N.M.S.A. 1978, § 40-4-9(B) (1978)
 - ▶ Desires “shall be given added weight, but is not the single controlling factor”
 - ▶ Utah – U.C.A. 1953 § 30-3-10 (2019)
 - ▶ “...the child shall have the right to select the parent with whom he or she desires to live...” (subject to finding that preference is not in the best interests of the child)
 - ▶ Child's preference is basis for motion to modify
 - ▶ Georgia - Ga. Code Ann. Sec. 19-9-3 (2022)

Other states' laws regarding a child's wishes

- ▶ Children 16 and older...
 - ▶ Have standing to petition Court for modification of parenting time
 - ▶ Maryland - MD Code, Family Law, § 9-103

A Child's Wishes in Colorado

§ 14-10-124(1.5)(a), C.R.S. – Best Interest Factors

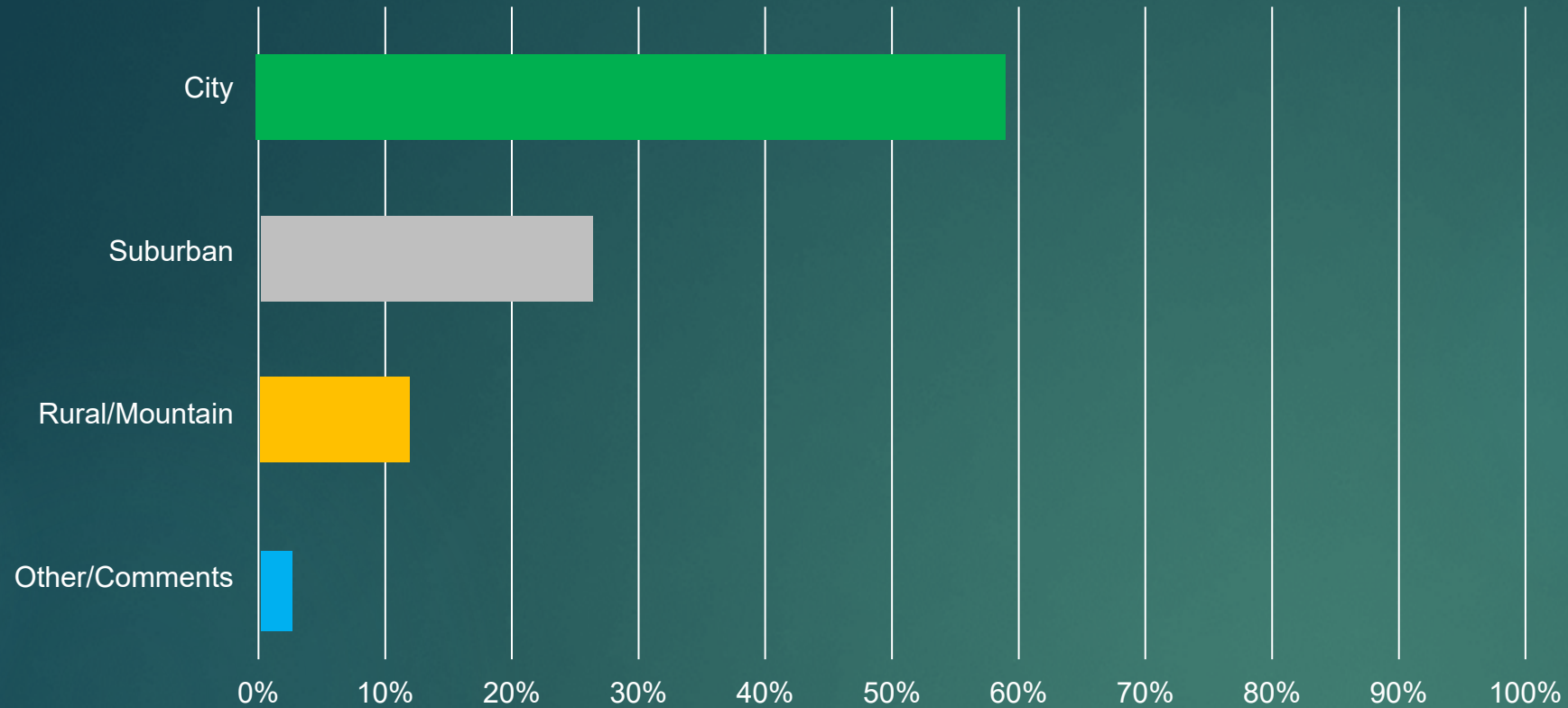
- ▶ In determining the best interests of the child for purposes of parenting time, the court *shall* consider *all* relevant factors, including:
 - ...
 - ▶ (II) The wishes of the child if he or she is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule



About the Survey...

- ▶ Survey of questions related to a child's wishes in APR cases.
- ▶ Requested responses from Colorado domestic relations attorneys.
- ▶ We received 52 responses.
- ▶ The results are as follows...

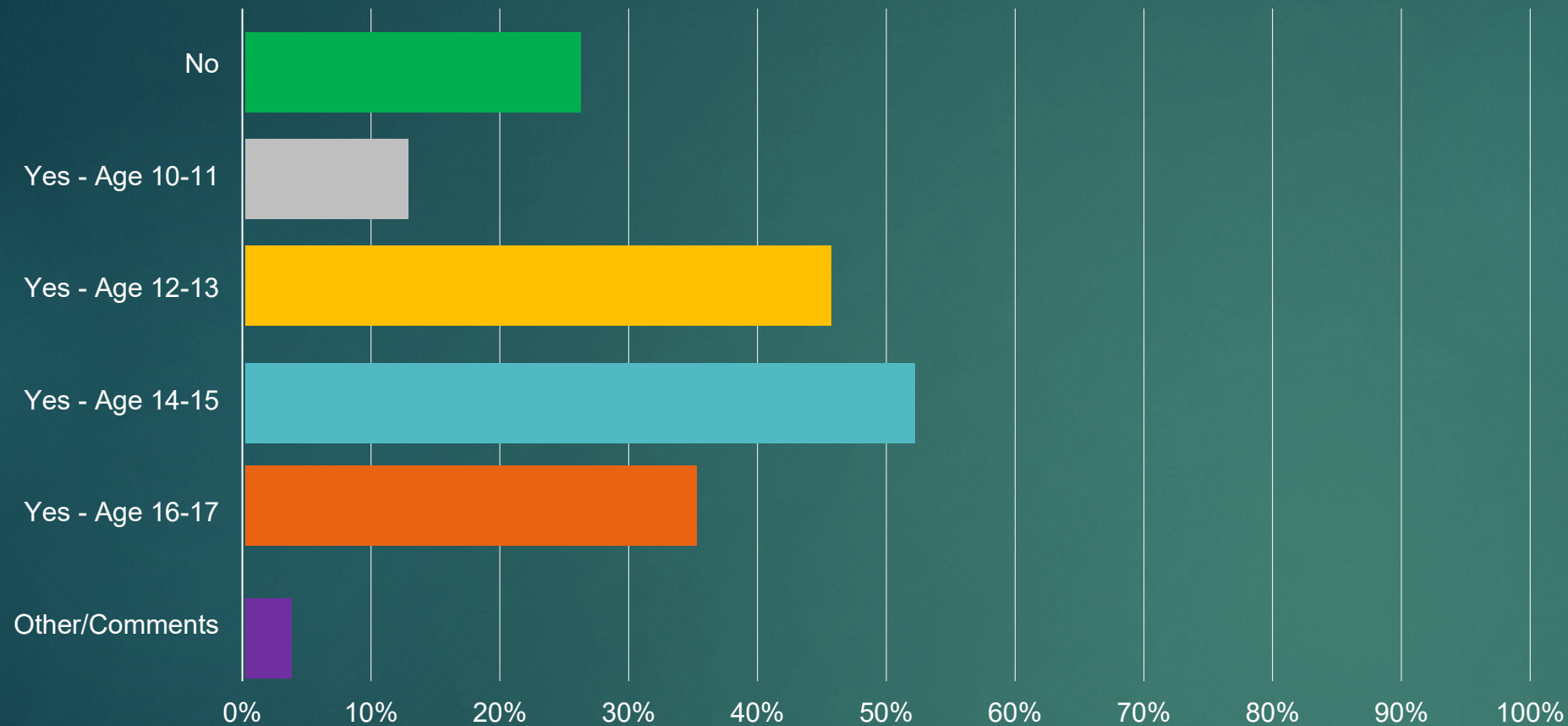
Where do you primarily practice?



Other/Comments

1. Front Range
2. Denver Metro

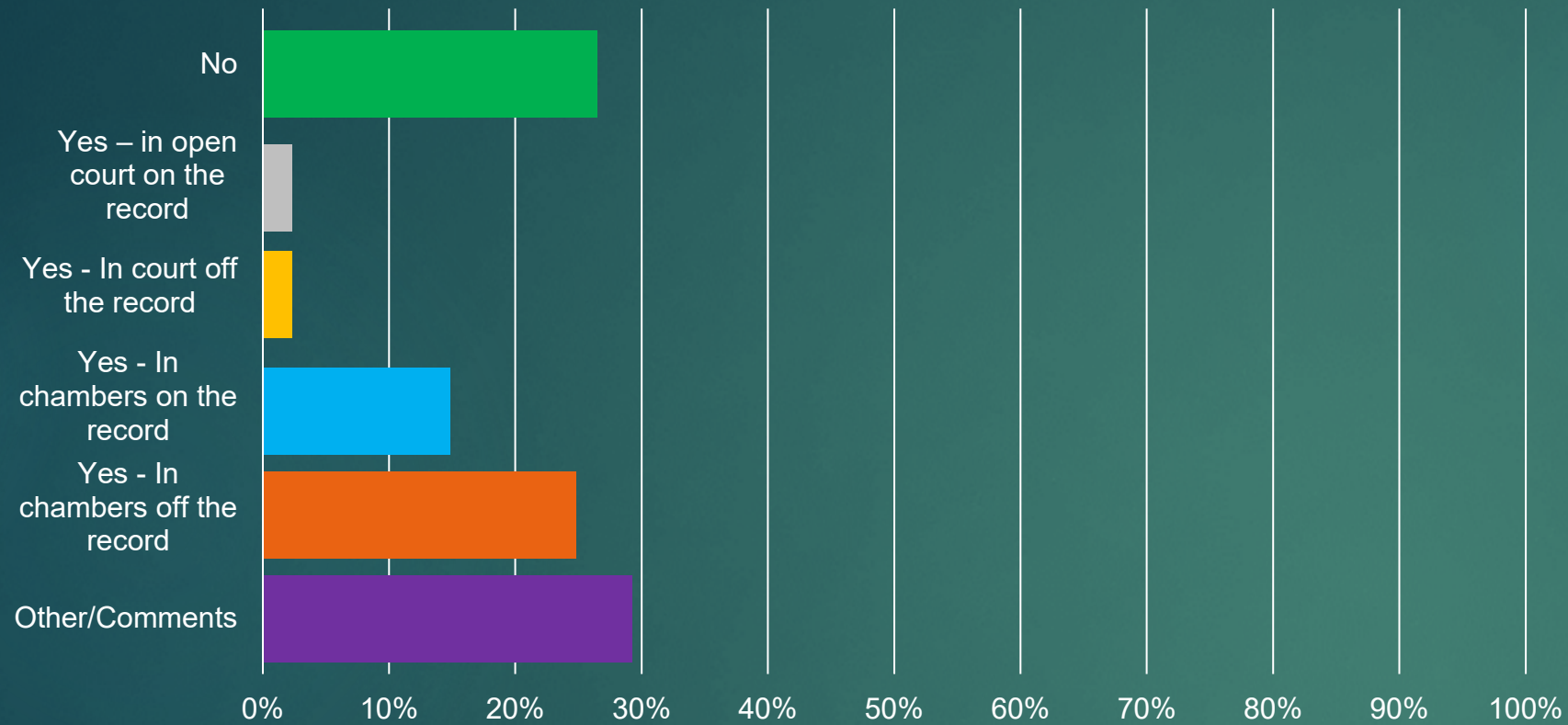
Have you ever requested that the Court interview a child? If so, what age was the child? Select all that apply.



Other/Comments

1. When I was a G.A.L for abused and neglected kids the judge wanted us to let her know if any of the children wanted to meet with her one on one. Any age if the child wanted to speak with Judge with their GAL present.
2. Have come close to requesting, but never had to actually do it.

If you have requested that the Court interview a child, did the Court grant the request? If so, how was the interview conducted? Please consider including comments about whether or not attorneys/parties were permitted to be present.



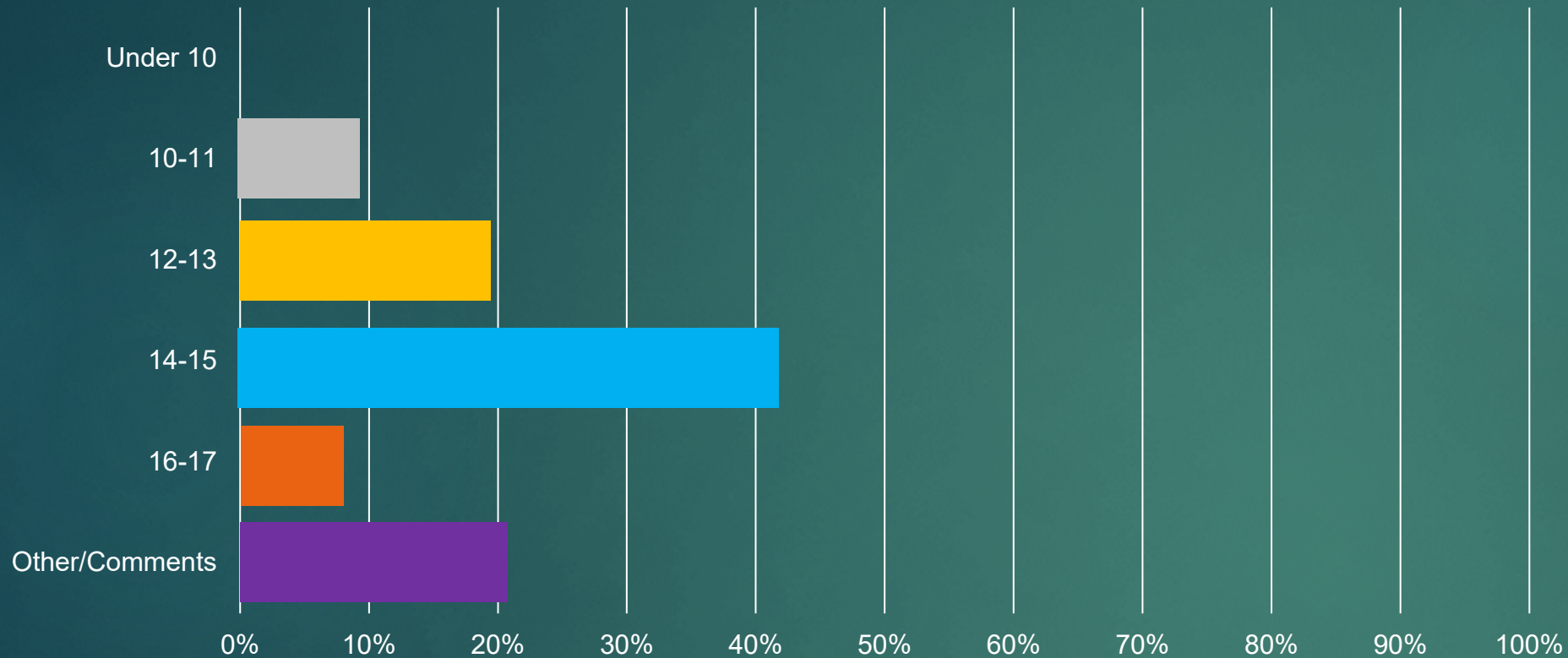
§ 14-10-126, C.R.S. - Interviews

- ▶ (1) The court *may* interview the child in chambers to ascertain the child's wishes as to the allocation of parental responsibilities. The court *may* permit counsel to be present at the interview. The court *shall* cause a record of the interview to be made, and it *shall* be made part of the record in the case.
- ▶ (2) The court may seek the advice of professional personnel ... The advice given shall be in writing and shall be made available ... upon request... Counsel may call for cross-examination any professional personnel consulted by the court.

Other/comments

1. Yes, in chambers on the record. The Court sealed the file and sealed the transcript from the parties (only attorneys could review)
2. Sometimes refused, sometimes in chambers, sometimes in Court off the record.
3. In Court, off record, no attorneys or parties.
4. Some judges are more than willing to do this to shortcut arguments. Others will not even consider it.
5. Most of them got denied, but 1 got granted in chambers.
6. In chambers on the record, sealed, no attorneys. (Denver and Arapahoe cases)

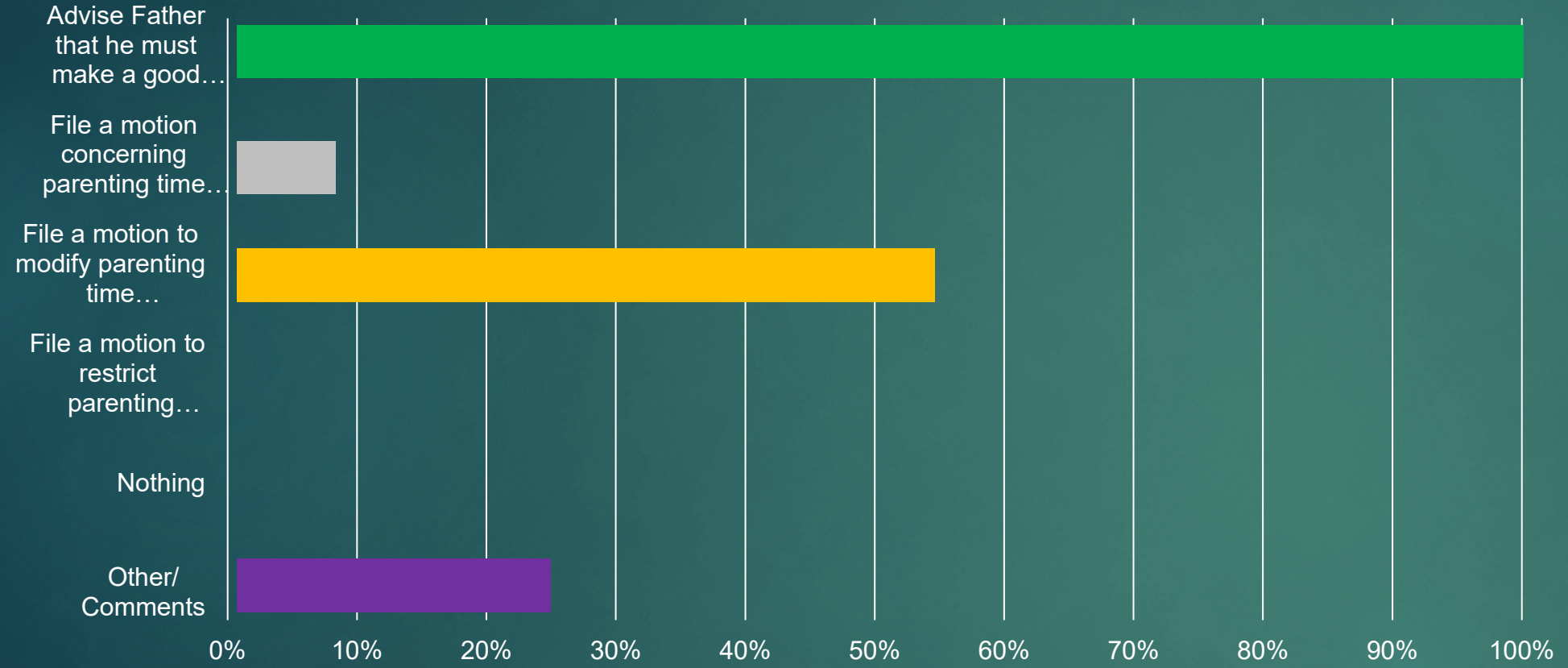
At what age do you believe a typical child is mature enough to have his or her preference considered by the Court?



Other/comments

1. This depends completely on the child and the facts of the case. Using age as a cutoff is arbitrary and myopic.
2. Maybe when they are 8-12, depending on their maturity.
3. 10 and up, depending on the individual child.
4. Depends on the child. Usually, 14 and up but it can be younger.
5. I don't think kids should be forced to choose to a court. Talking with a CFI or other neutral may glean the information.
6. Really 6 years or older. First grade on, they have real reasons, and most are articulate enough to voice them.
7. Depends on the child.
8. 13 – 8th grade.
9. I have known sufficiently mature 8-year old's and too immature 12-year-old's. It really depends on the child.
10. Depends entirely upon the unique facts of the case. However overall, I don't think it is the children's best interest to be responsible for 'choosing' between parents.
11. 16-17 generally, but if the 14–15-year-old is articulate and mature that should be considered.

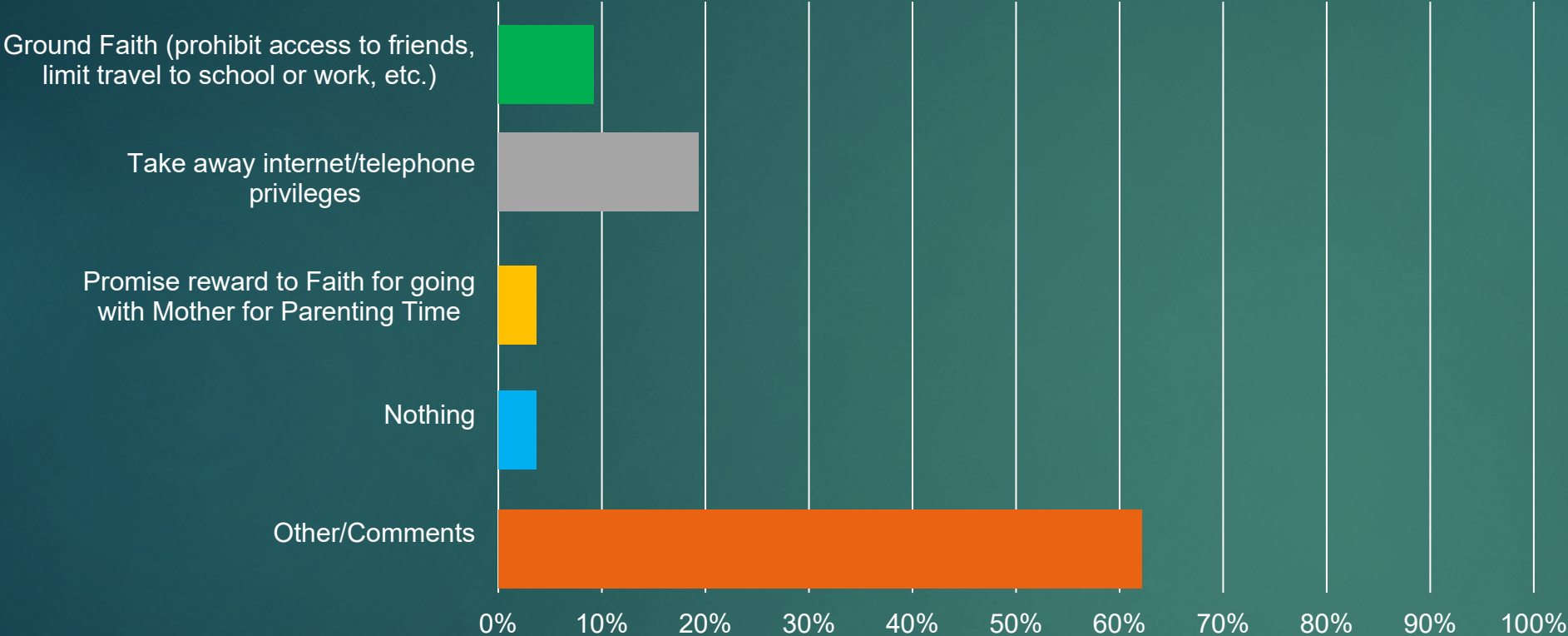
Scenario 1: Faith is the 15-year-old daughter of Father and Mother. Father walks into your office, requesting that you do something immediately because Faith no longer wants to go to Mother's house. Father tells you that Faith has decided, on her own, that she does not want to go to her Mother's house for parenting time, and Mother is being unreasonable and won't agree to let Faith live with Father. Father further tells you that because she is 15-years-old, there is nothing he can do to compel her. Faith is a 4.0 student, has many friends, and is otherwise every mature for her age. What do you do? Select all that apply.



Other/comments

1. Move for the appointment of a CLR or CFI
2. Ask for interview in chambers, CFI, or CLR
3. Contact Mother/Mother's attorney to attempt to stipulate to a change in parenting time.
4. Review parenting plan. If 50/50, file Motion to Modify PP 14-10-124(a). If Mother has majority of parenting time, file Motion to Modify PP asking for 50/50 under 14-10-124(a).
6. Need more information. Fact pattern doesn't support 129(4).
7. File Motion to modify parenting time and engage child legal representative for immediate input.
8. Suggest therapy including reunification therapy to determine what the basis is for the child's reluctance.
9. Tell father order is order until changed.

If you advise Father regarding IRM Dean, what good faith efforts to compel parenting time would you advise Father to do?



Other/comments

1. Tell her she just has to do it and take her to mom's house for court required time. Also, discuss this with mom.
2. Ground/take away privileges, try to get therapy started to see if there are other reasons for Faith's issues. File motion right away to avoid a Dean issue.
3. I don't think punishing a child into parenting time is the answer. Encouragement of the relationship and parenting time is the answer.
4. Father knows better than I do what will and won't be effective on his daughter. I would give ideas but leave it up to him to determine how exactly he should encourage/compel his daughter to follow the parenting time schedule.
5. Have mother pick her up at father's house.
6. Therapy for Mother and child.
7. I would just advise that he cannot do "nothing" and be a bystander as the court in IRM Dean used the term. He should take whatever disciplinary steps he feels would work to get compliance with going over to Mom's house.
8. To use his parental authority - whether that includes removing privileges, limiting activities, etc. I would not advise him to reward her. I would also advise him to get Mother involved. That way child understands it is not Father vs Mother. Child is needing something from Mother that she is not getting.
9. Talk to his daughter, try to assess the real reason child does not want to go to Mother's home, brainstorm solutions. Consider talking to Mother re: daughter's discomfort.
10. Inform 15-year-old when she is 18, she can do what she wants but until then she follows parenting plan unless endangered.
11. Both Grounding and taking away internet and cell phone.

Other/comments continued

12. Offer neutral counseling for all or a 4-way meeting with a professional or see what the child suggests.

13. Explain the importance of a good relationship with mother. Child should not lose privileges because they are voicing their opinion and/or refuse to go. That results in the child disliking the mom the most, but also now dislikes dad.

14. Beg, bribe, and threaten, but also listen to the reasons. It depends on the reasons why the kid doesn't want to go as to how much I would encourage the beg, bribe or threaten part.

15. Take minimum acts necessary to satisfy IRM Dean standard.

16. Counseling; not overwhelm Faith with activities so she has time for mom; schedule time even if it is just lunch.

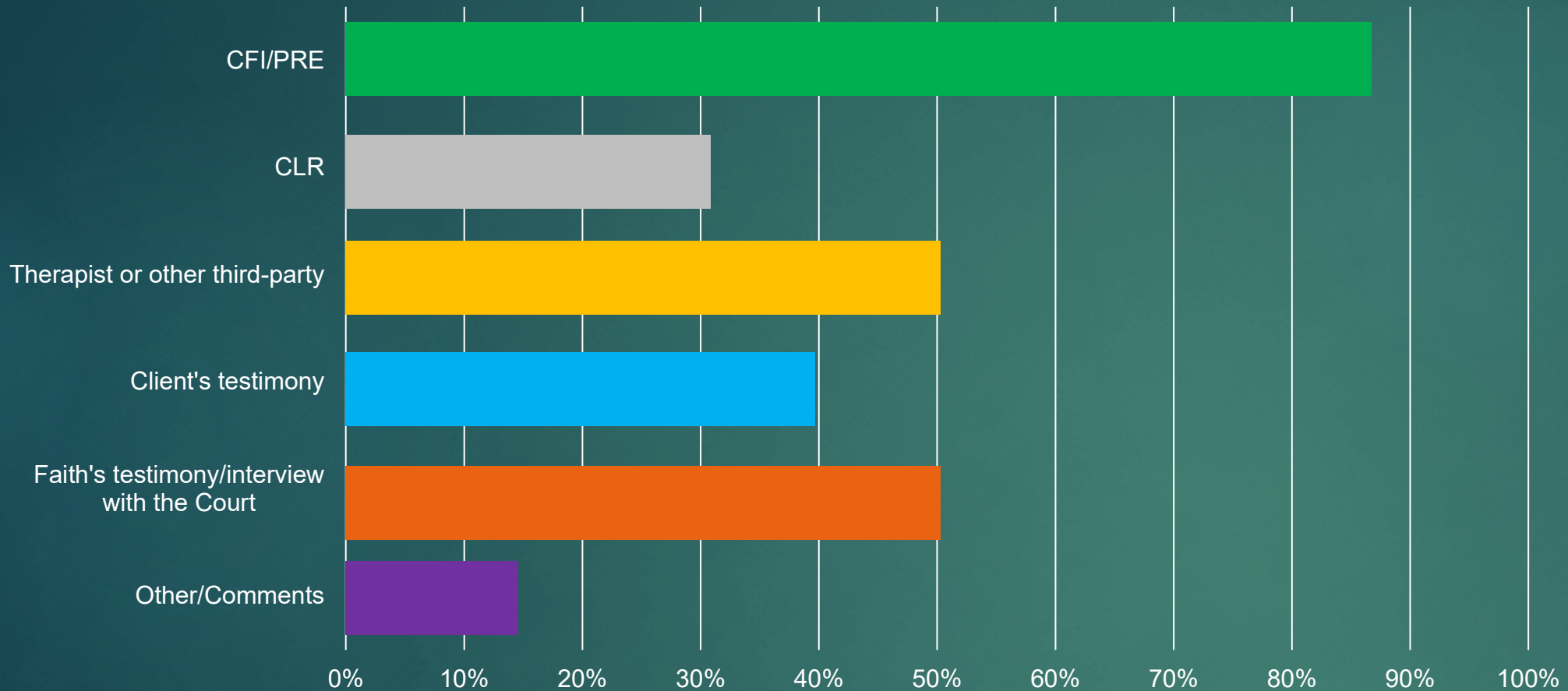
17. Try to help Faith understand Father's obligations are and why she has to follow the rules.

18. I would advise Father that what he needs to do is have Faith's bags packed and take her to Mom's residence for parenting time. It is up to Faith to get out of the car or Mom to convince her to do so.

19. Assertively encourage her.

20. Therapy. It is important to first determine why the child is resisting parenting time and then see if remedial measures are available.

In Scenario 1, you decide to file a motion and rely largely on Faith's wishes. How do you attempt to present Faith's wishes to the Court? (Check all that apply)

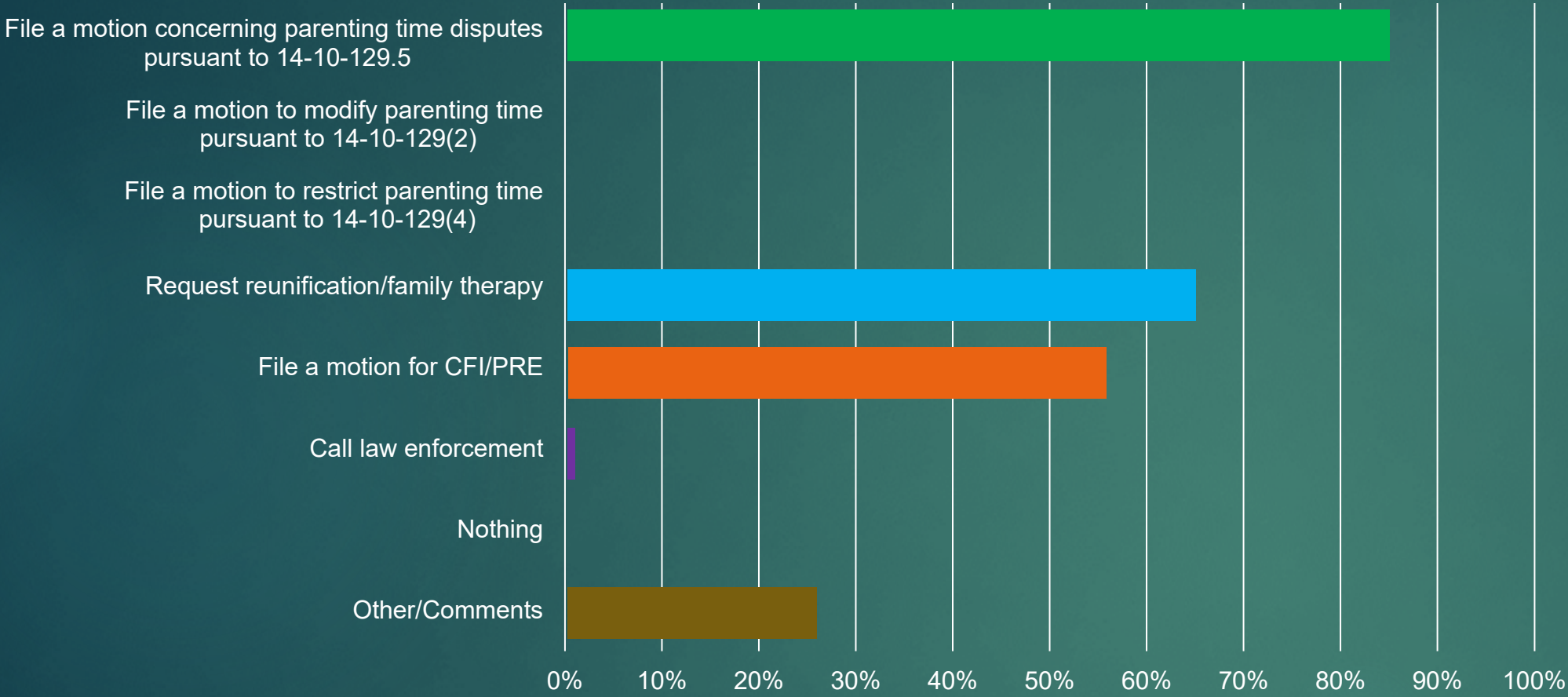


Other/comments

1. CFI if child's reasons are legitimate and Mother refuses to consider them. I would ask the Court to interview Faith if any of the judges would consider that. I haven't heard of a judge interview a child in El Paso County in 20 years.
2. She can tell judge, and judge can tell her.
3. Obviously Father's testimony as to what the kid wants is hearsay, unless under an exception.
4. Depends on financial ability of client to present experts.
5. Ask for her to testify or CFI in alternative.
6. I would never file a motion to modify based on unspecified 'wishes' of a 15-year-old, as reported by a parent.



Same facts, but you now represent Faith's Mother. Faith has started refusing to go to Mother's house during Mother's parenting time. Father refuses to discuss the issues and has told Mother it is between Mother and Faith. What do you advise Mother to do/what relief to do you request from the Court? (Check all that apply)



Other/comments

1. Request mediation. Maybe a CLR.
2. Either therapy or a motion concerning parenting time disputes seems most appropriate/effective depending on the specifics of the situation and Father's (or his attorney's) response to me raising the issue.
3. Contact Father/Father's attorney to attempt to stip to a change in parenting time.
4. I would NEVER involve the police. That is not their job, and it shows the child the wrong view of them.
5. Possibly call law enforcement. Depends on who is really behind the refusal.
6. Try for transparency to get the kid and dad moving in a productive way.
7. See if dad will mediate prior to filing; get into counseling with kid. If that is unsuccessful because of dad, then file motion to enforce.

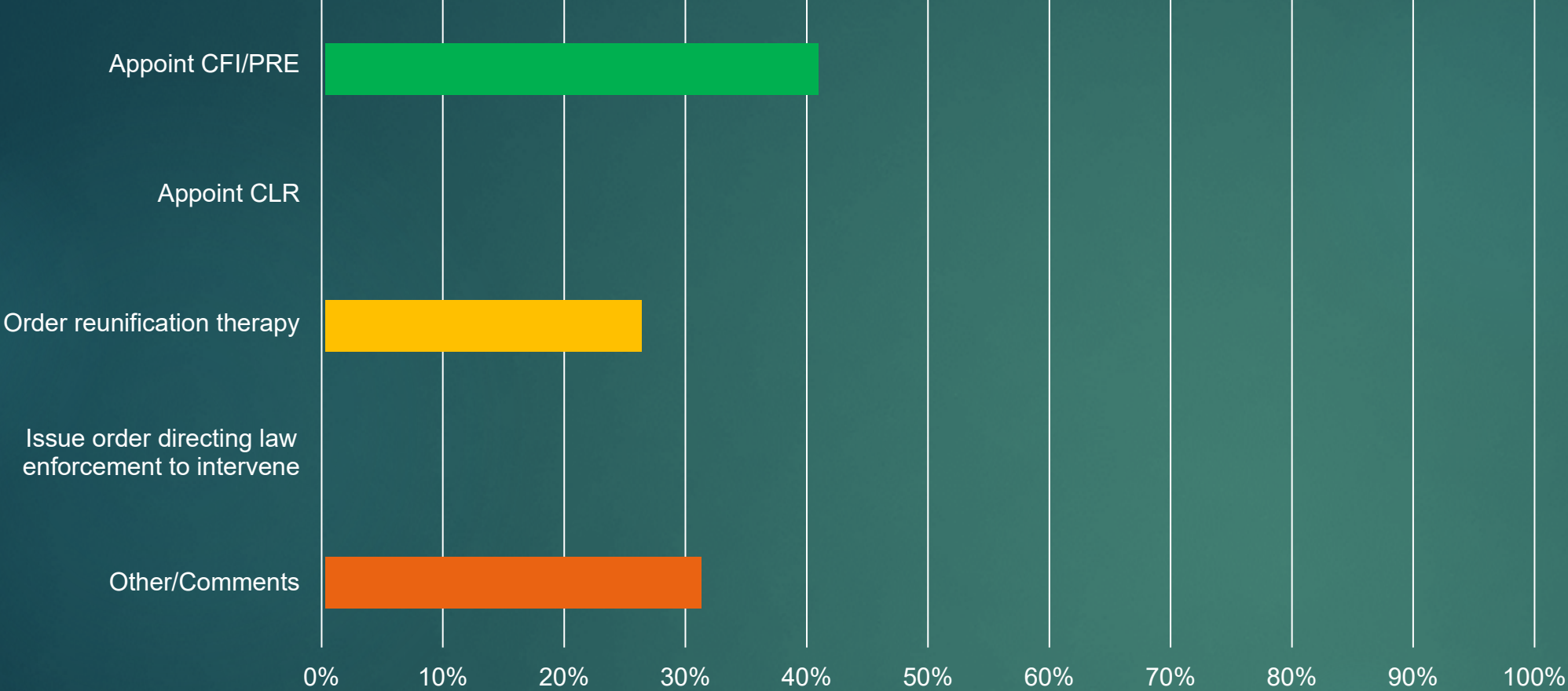
Law Enforcement and Parenting Time Orders

▶ § 18-3-304, C.R.S.

- (2) A parent “who violates an order” granting “parental responsibilities with respect to a child” with the intent to deprive the other parent parental responsibilities “commits a class 5 felony”.
- “(3) It shall be an affirmative defense either that the offender reasonably believed that his conduct was necessary to preserve the child from danger to his welfare, or that the child, being at the time more than fourteen years old, was taken away at his own instigation without enticement and without purpose to commit a criminal offense with or against the child.”



When you seek relief from the Court related to this issue, in your experience, what are the Courts most likely to order?

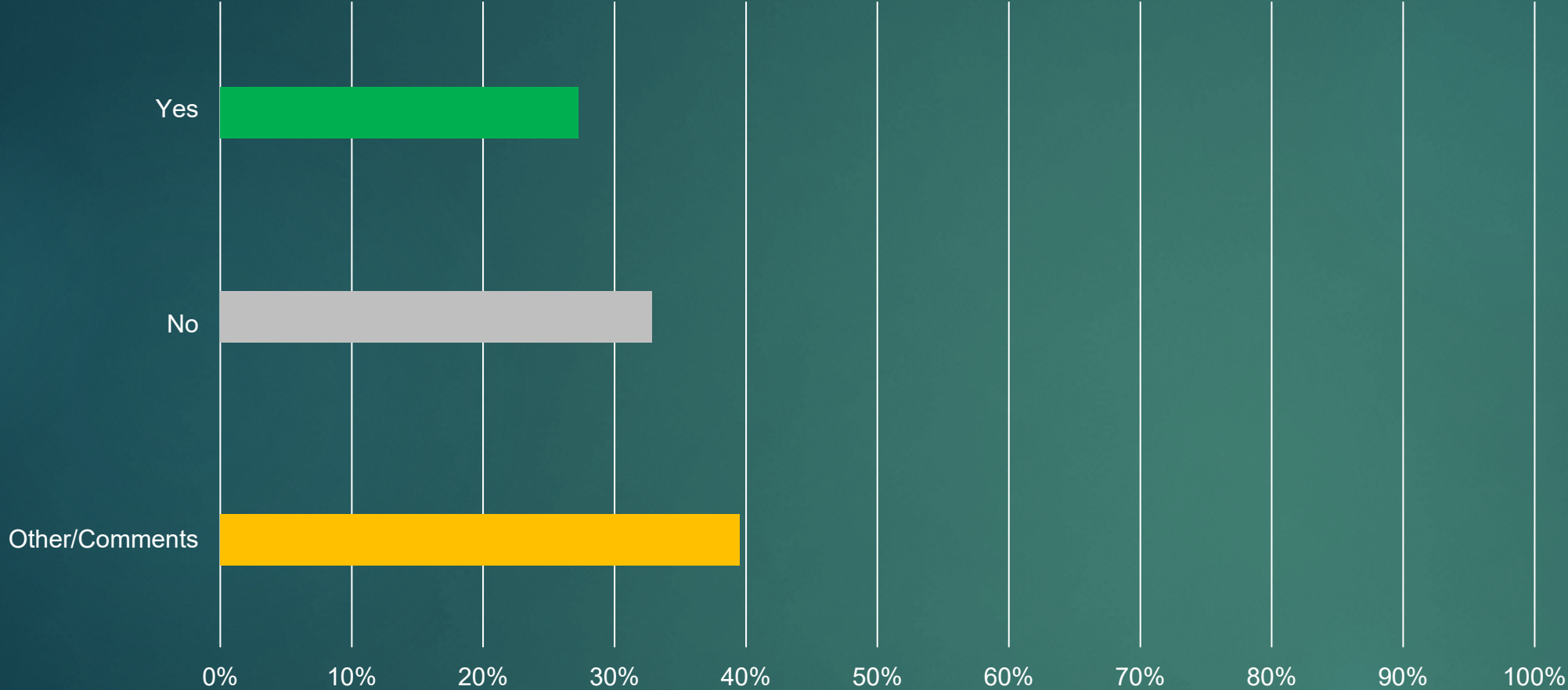


Other/comments

1. Order reunification and if unsuccessful, apply Dean.
2. Order mediation, even though that usually doesn't solve the issue quick enough. Otherwise, appoint CFI, though the new buzzword is CLR so that may start being used more.
3. Order parents to comply with existing orders.
4. The court will take the age of the child into consideration and want to know more about why the kid wants to live with Dad. A CLR can play this role. I don't see CLRs used very frequently. The default seems to be PRE.
5. Go to individual therapy, family therapy and reunification therapy and use a therapeutic supervisor for parenting time and why not use a CFI.
6. Court orders dad to force kid to go or will be sanctions for Dad.
7. Most times, nothing.
8. Appoint a CFI/PRE who may then recommend family or reunification therapy.
9. Ordering a 15/16-year-old to see mother is like spitting in the wind.
10. Appoint a CFI and then order reunification therapy (though finding anyone with available bandwidth is next to impossible right now. And getting a refusing teen to do this may be just as impossible.



Based on our judicial survey, reunification therapy is the remedy most often ordered by the Court, do you believe that is the most effective way to address the “recalcitrant teen?”



Other/comments

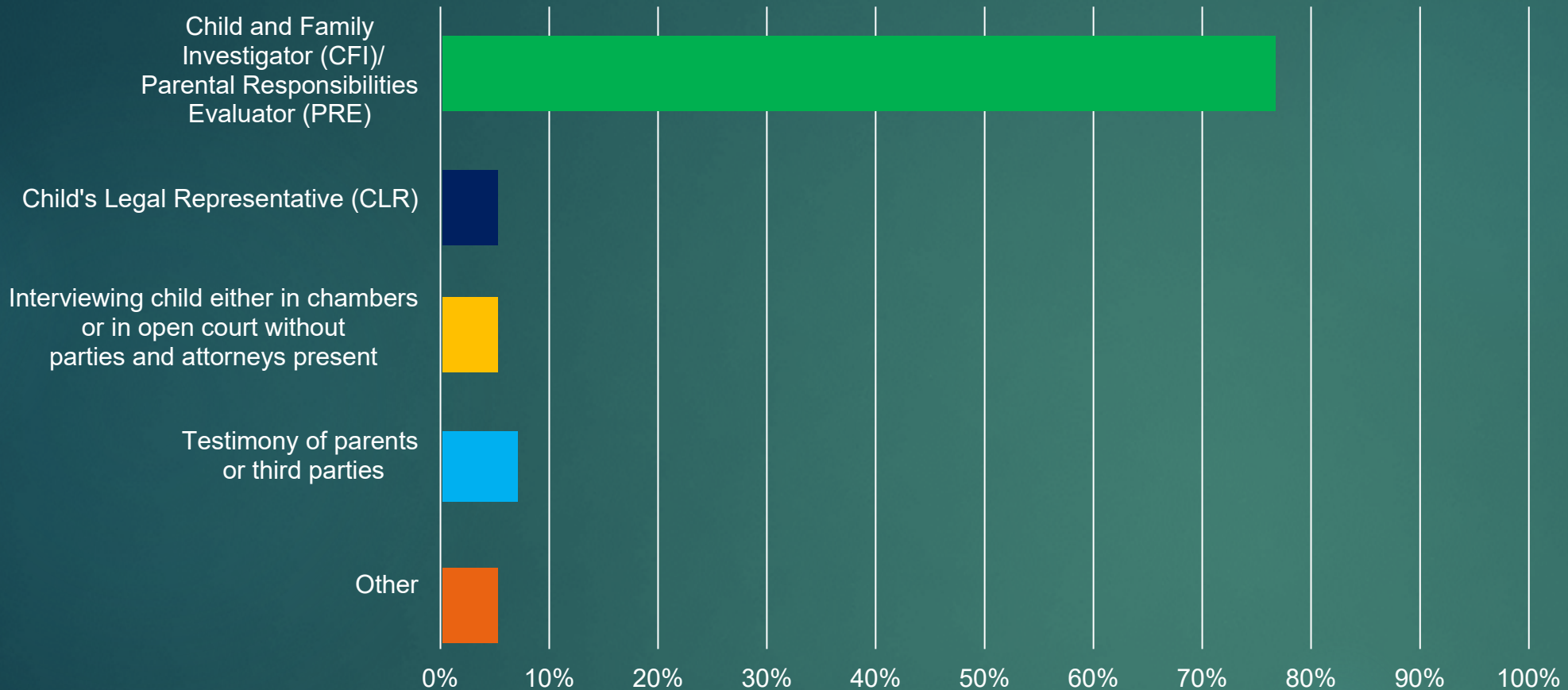
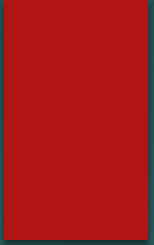
1. Depends on why the child does not want to see the parent.
2. I think giving the child a voice to be heard (whether they are agreed with or not) matters.
3. I think it depends on the case's specific facts.
4. If the therapist is good. Maybe don't need "reunification" therapy but need assistance with relationship.
5. There is no effective way to address this in my opinion.
6. Therapy would be warranted. I would not label it as reunification therapy.
7. Reunification therapy assumes there is something wrong with a parent or a child. Absent significant harms, if this is just teenage years, the parents need to work together. If the parent who has parenting time is not supporting the relationship, then some form of therapy would be appropriate for all involved.
8. If it's just a teen being difficult, then often therapy can help. If there are legitimate concerns from the teen's perspective (parent not allowing contact with friends, not allowing cell phone at their house, parents thrusting new religion on child, parent bad mouths other parent, etc.) then therapy is unlikely to work. If the parent is unwilling to look into their own plate to assess the underlying reasons, which is often the case in these cases where a teen refuses to continue contact with a parent, then therapy is unlikely to work.
9. Not if the problems reside with or are being instigated by the other parent.
10. Yes, but since there is such a dearth of therapists truly qualified to do that type of therapy, that really is sometimes an exercise in futility.



About the Survey...

- ▶ Survey of questions related to a child's wishes in APR cases.
- ▶ Requested responses from Colorado judicial officers who have handled domestic relations cases in last 2 years.
- ▶ We received 39 responses.
- ▶ The results are as follows...

What is your preferred method of ascertaining the child(ren)'s wishes, if you believe the child is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule?

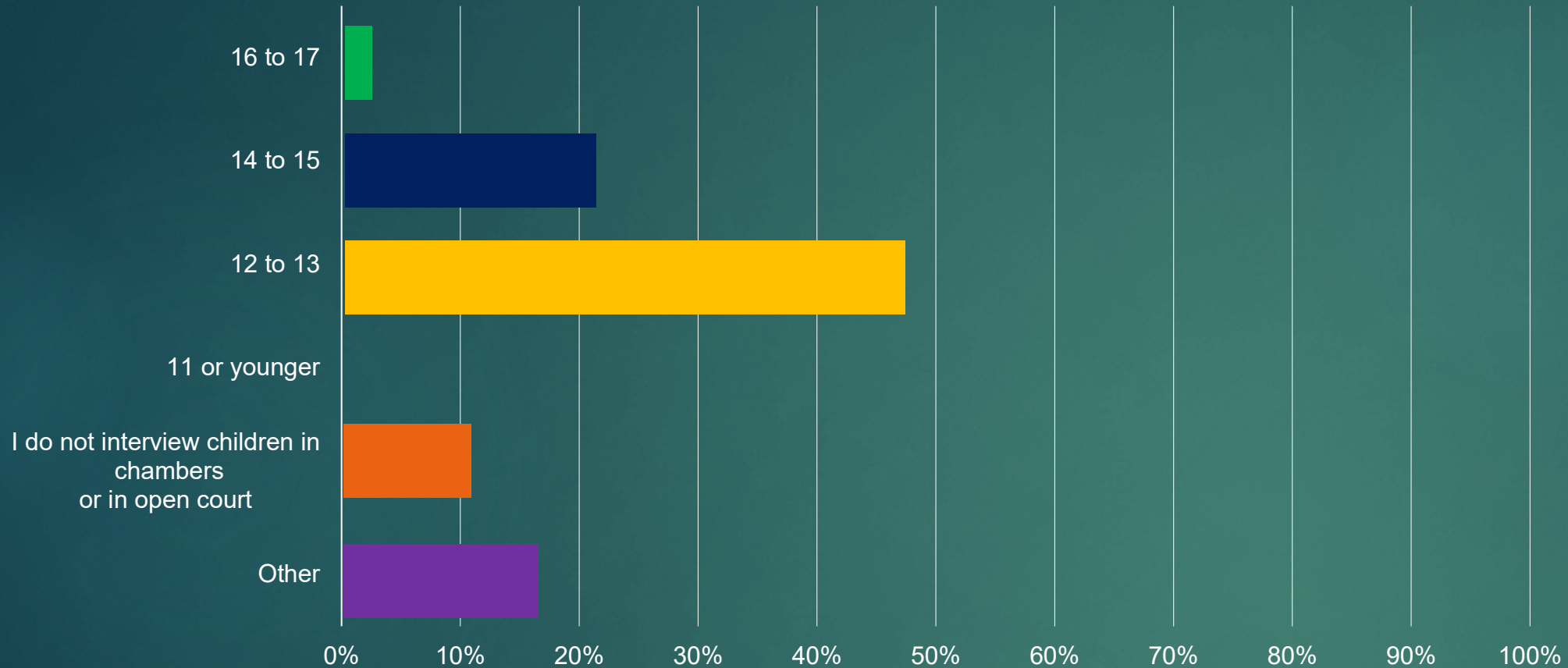


Here's what the Judges said:

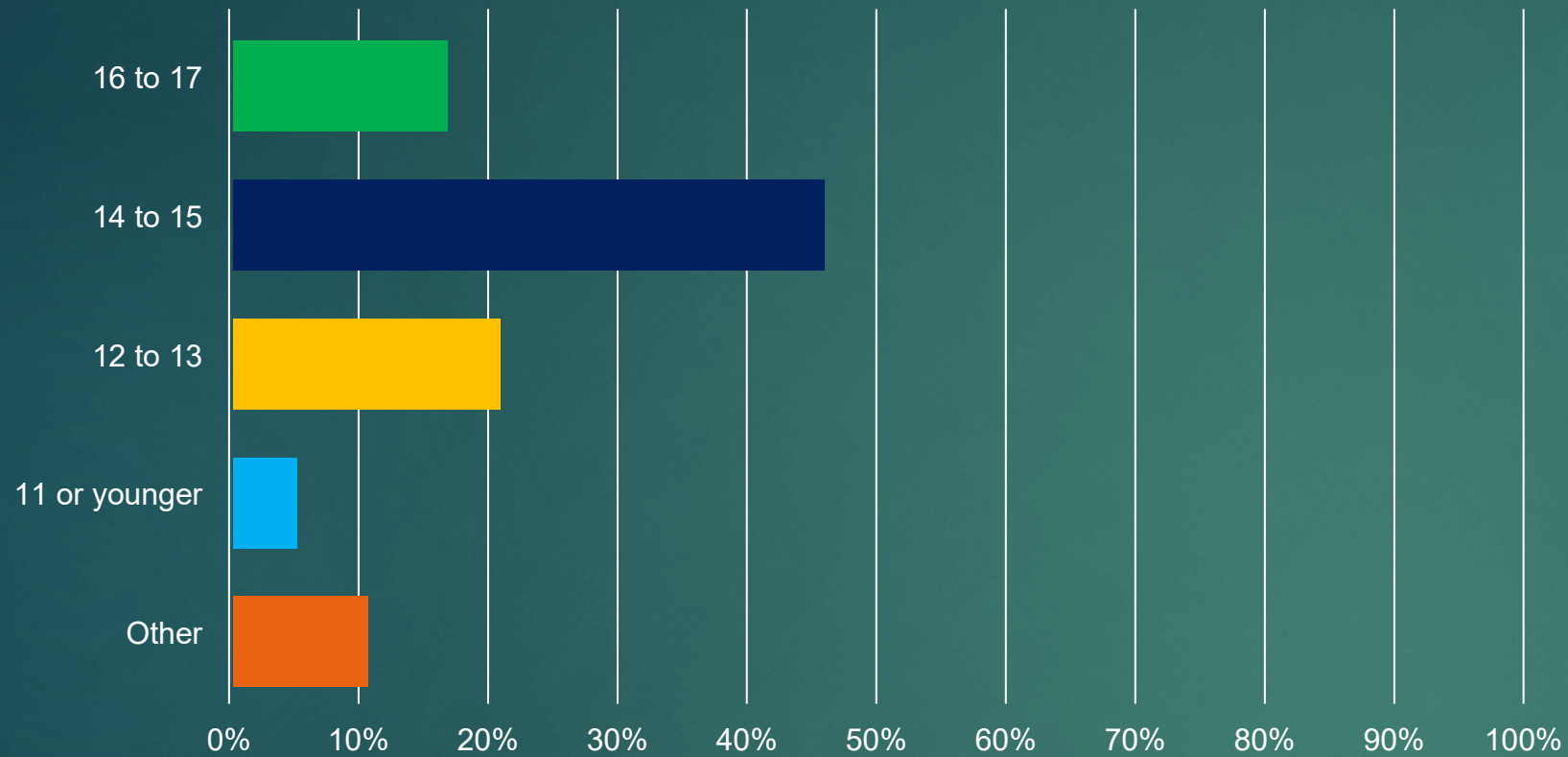
"I won't appoint a CFI solely for this purpose. If other reasons for a CFI prefer CFI interview children. If no reason for CFI my preferred method is to do so in chambers or open court without parties/attorneys"

"CFI if one is on the case; interview with child if no CFI"

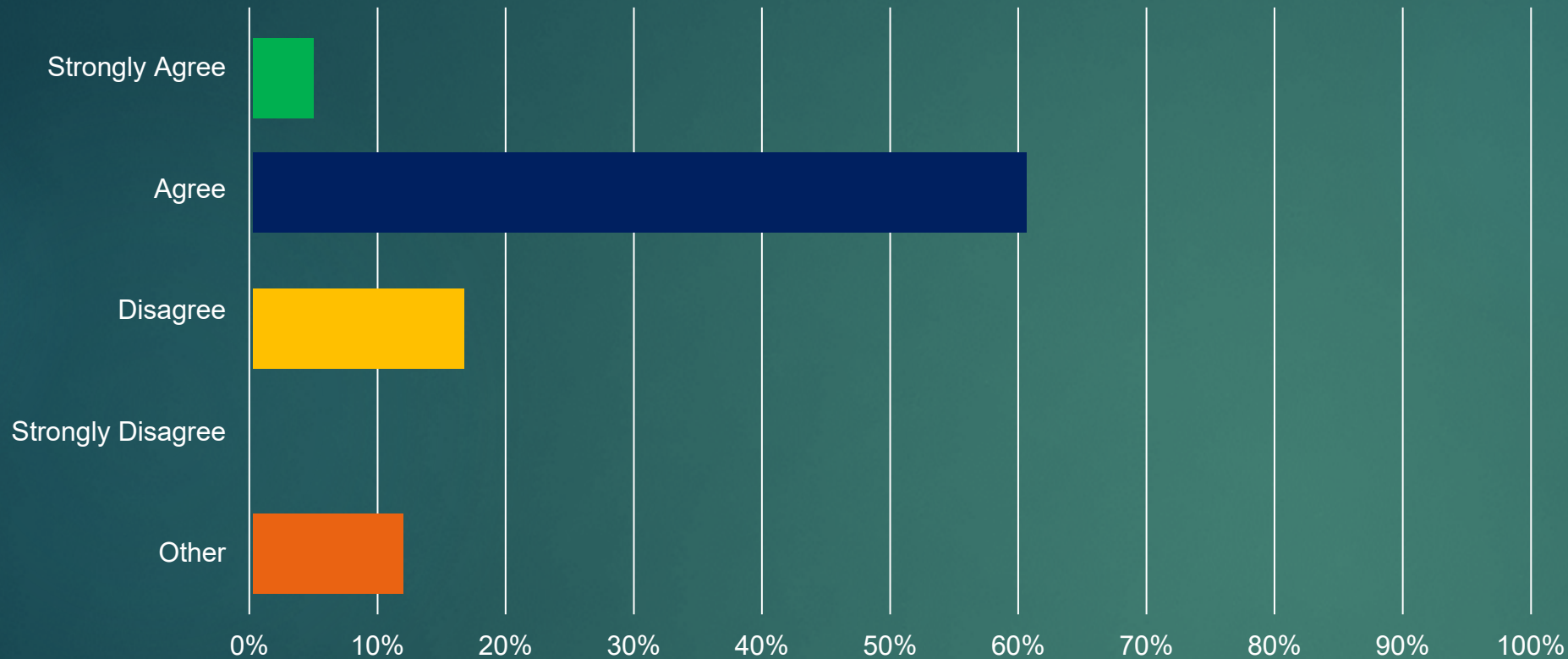
At what age would you consider interviewing a child in chambers or in open court?



At what age do you give a child's wishes significant weight, assuming the child is sufficiently mature to express reasoned and independent preferences as to the parenting time schedule?



Studies in Virginia and California show that judges give greater weight to older children, and in fact, polls suggest that the wishes of children 15-years-old and older was the most important factor used in making custody determinations for California judges. Do you agree?



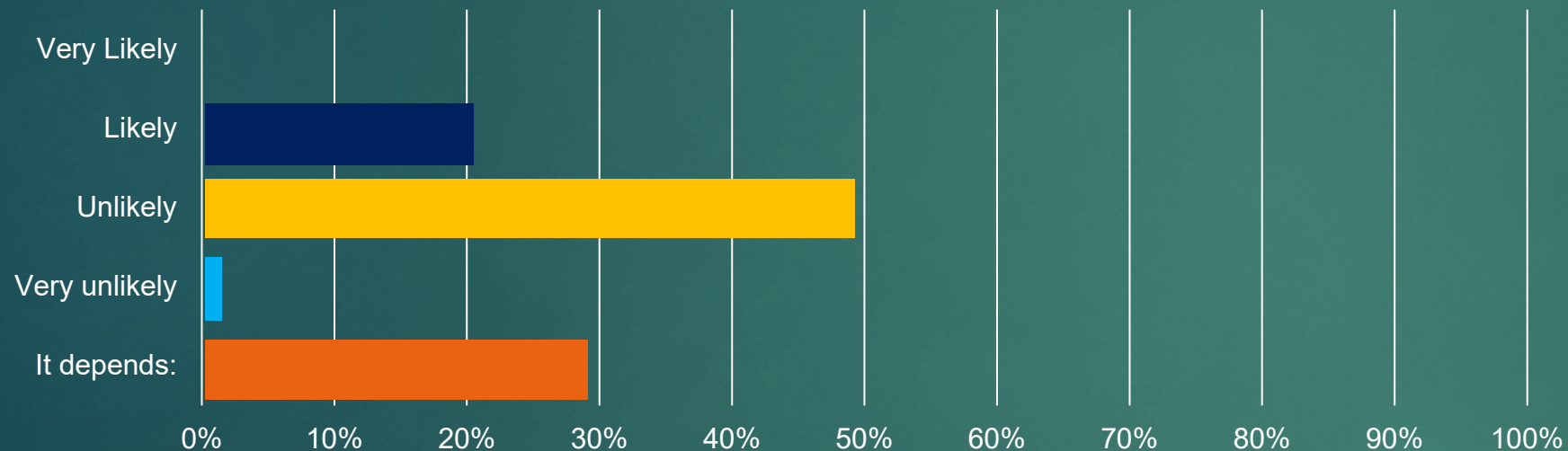
Here's what the Judges said:

"I tend to give weight to an older child's wishes as long as the child is making an independent judgment and is not being influenced by either parent."

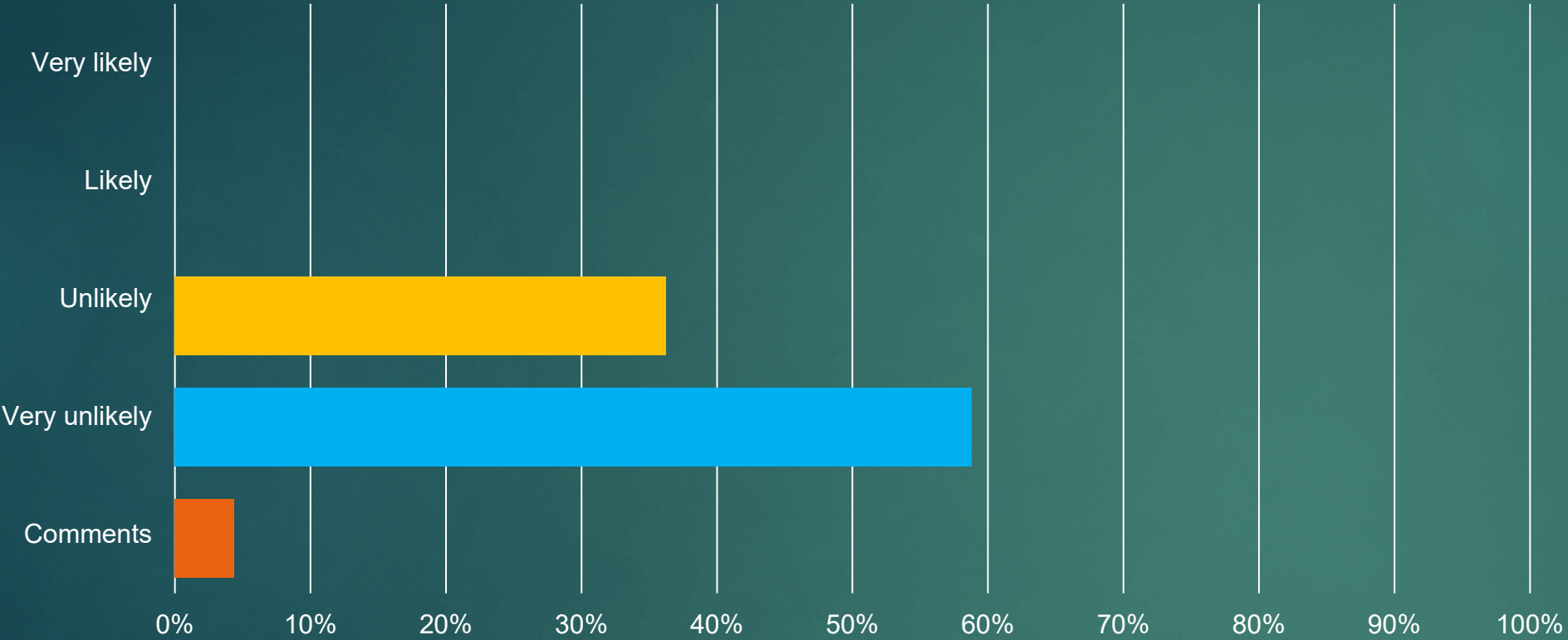
"I think it depends on the case. If the child expresses a mature and reasoned opinion regarding where they want to live, I probably would. But sometimes teens want to live with the parent who provides less supervision, and if that's the case, I would not give greater weight to that child's preference."

"Generally agree in the absence of a history of parental alienation or other abuse/neglect concerns. If these are present, they are more important than the age of the child."

Scenario 1: The parties were divorced in 2020 and have a 15-year-old daughter, Faith. Faith is a smart child with a 4.0 GPA and is actively involved in extracurricular activities. At the time of the divorce, there were some concerns that Father was sharing information with Faith about the divorce proceedings, but the parties resolved the case and agreed to equal parenting time and joint decision making. Father has significantly more financial resources than Mother and is likely still sharing too much information with Faith, but Faith's reasons for wanting to be with Father seem largely independent of Father's influence. Now, Father has filed a motion to modify parenting time based on Faith's representation that she would prefer to stay with Father a majority of the time. The evidence does not produce anything of particular significance, and Father's position relies almost entirely on the wishes of Faith. Based on these facts, how likely do you think it is that Father's motion will succeed?



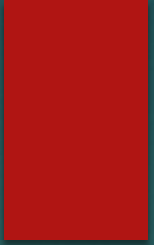
Scenario 2: Same facts as before, however, upon further review, it appears that Father has strongly influenced Faith's wishes. Not only does Father provide Faith with strong financial incentives to remain with him, but he has also interfered in her relationship with her mother. Faith has now become estranged from her Mother and has developed a very strong, and possibly unhealthy, alliance with Father. How likely do you think it is that Father's motion will succeed?



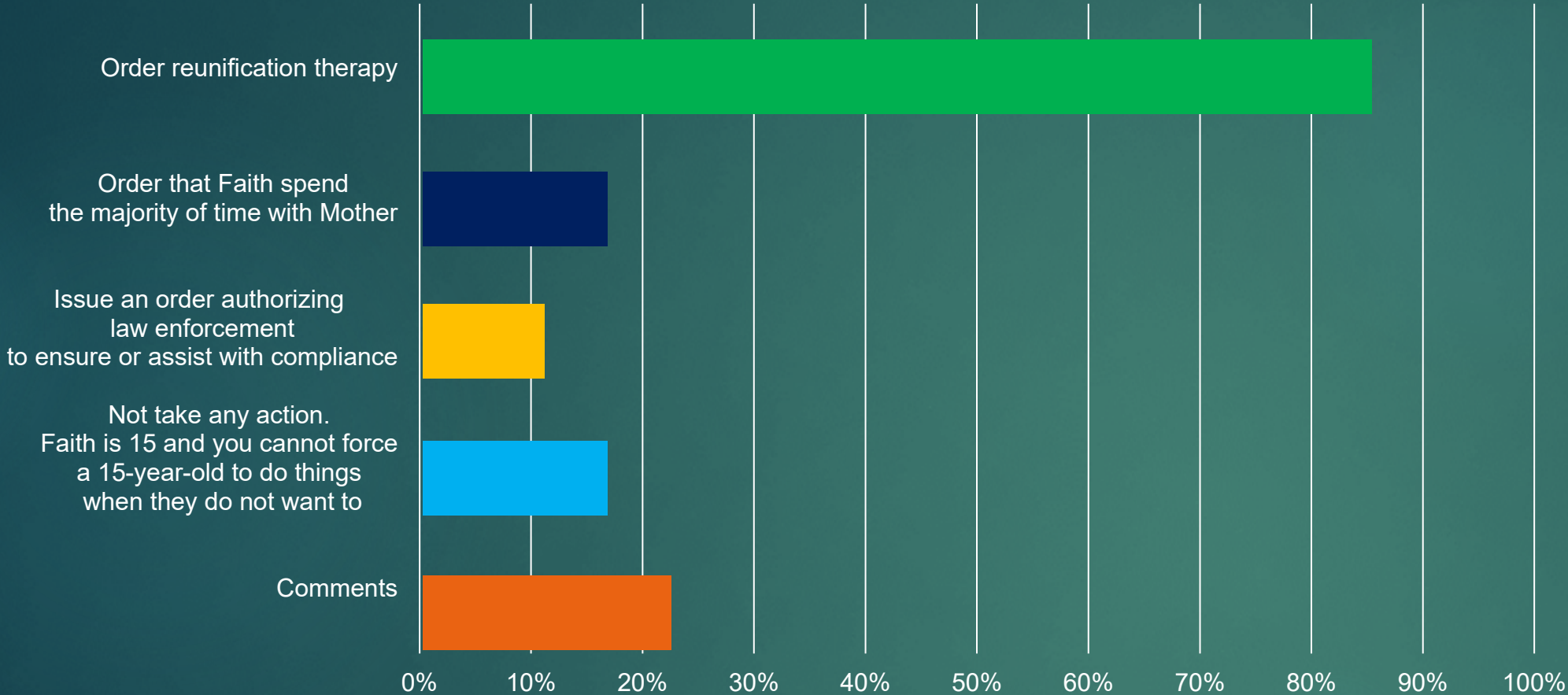
Here's what the Judges said:

"I am likely to order more parenting time with mother."

"It depends on whether the facts support a finding that Father has endangered Faith by committing parental alienation as proven by clear and convincing evidence."



In scenario 2, if you deny the motion to modify parenting time and Faith then refuses to return to her Mother's house, what action(s) are you willing to take to assist in compelling Faith to return to her Mother?



Here's what the Judges said:

"This is very tricky and the options above are limited. It depends on how severe the alienating behaviors have become and there must be an analysis if the child is rejecting mother for a good reason beyond dad's behavior. Some counseling is necessary, but I'm not sure I would order reunification therapy."

"I would only resort to the above actions if parental alienation were proven."
Referring to: reunification therapy, majority time with mom, authorizing use of law enforcement

"Financial penalty to Father per 14-10-129.5, majority parenting time with Mother is only last resort."

"Although it is hard to do and rare, I have had promising results when I designated an estranged parent as the majority time parent, even if temporarily."

"I would not begin with any of the above, but instead first focus on Father taking appropriate actions to ensure Faith goes to Mother" - This judicial officer indicated he/she might order Faith spend the majority of the time with mother

Here's
what
the law
says:

In re Marriage of Dean,

413 P.3d 246 (Colo. App. 2017)

“Although it might be difficult to compel a child, particularly a teenager, to comply with a court-ordered parenting plan, this does not excuse a parent from making reasonable good faith efforts to secure the child’s compliance. ... In other words, a parent is expected to more than refrain from discouraging visitation; a parent is expected to take affirmative action to encourage visitation.”

How a
child's
wishes may
be
considered
by the
Court...

- ▶ Child's testimony - C.R.S. §14-10-126
 - ❖ Open court; or
 - ❖ In chambers with court recorder
- ▶ Child and Family Investigation - C.R.S. §14-10-116.5
- ▶ Parental Responsibilities Evaluation - C.R.S. §14-10-127
- ▶ Child's Legal Representative (CLR) - C.R.S. §14-10-116
- ▶ Special Master - C.R.C.P. 53(a)(1)(C)
- ▶ Child hearsay exception – C.R.S. § 13-25-129

Thank you

▶ Contact information:

- The Honorable Robert Lung*

robert.lung@judicial.state.co.us

- Rebecca Goldmanis and Andrew Birkeland

Kokish & Goldmanis, P.C.

rgoldmanis@kgattys.com; abirkeland@kgattys.com

303-688-3535

*cannot give legal advice or engage in ex parte communications about cases in front of him