

Testimony of The Legal Aid Society of the District of Columbia¹

Before the Council of the District of Columbia Committee on the Judiciary

Public Oversight Roundtable on Safe Homes Initiative/Consent Police Search Program

April 7, 2008

The proposal by the Metropolitan Police Department (MPD) to establish the Safe Homes Initiative -- a program in which parents are encouraged to consent to the search of their homes to remove drugs or guns in the possession of their children -- raises very troubling concerns. There has been much discussion of the Constitutional and criminal justice implications of the plan. While the Fourth Amendment issues require attention, we wish to highlight additional potential problems that should be considered. In particular, we are concerned that anything found during a search might be used against the family in a civil proceeding and that the family is not being meaningfully advised of the risks.

When a parent consents to a search of their home, they are told that simple possession of a gun or a small quantity of drugs will not result in criminal prosecution. What the parent is not told, and for which no adequate provision has been made, is that there are a plethora of civil consequences that can flow if guns or drugs are found.

First, contraband places the family's housing at risk. This is especially a concern for families who live in subsidized housing, such as public housing tenants or voucher recipients, although families in private housing may be evicted as well. Families in public housing or who have a portion of their rent paid by a voucher, may not only be evicted, but may also lose an important public benefit. A public housing unit or voucher may be all that stands between this family and homelessness. Moreover, adverse action taken as a result of the seizure will remain in the tenants' District of Columbia Housing Authority (DCHA) records, implicating their ability to obtain a subsidy in the future. MPD has indicated that it will not proactively disclose this information to DCHA. While the precise commitment is ambiguous, the Department has not indicated that it will refuse to disclose if asked nor has it created a mechanism to protect this information from use in a civil proceeding.

Second, the seizure of guns or drugs could be used against a parent in a custody dispute or in an abuse and neglect proceeding. If the family is engaged in a proceeding, the presence of contraband could be used to support efforts to remove the child from the home. Moreover, there is uncertainty about what the police will do with information inadvertently discovered. Will they report a family to Child and Protective Services if the home is dirty or without food? Will police reports be kept that can be subpoenaed and introduced in a custody proceeding?

¹ Legal Aid was formed in 1932 to provide legal assistance to families and individuals living in poverty. Legal Aid staff handles cases involving domestic violence, custody, child support, housing, and public benefits.

Third, immigrants are especially vulnerable and may experience language and cultural barriers that limit their ability to resist pressure to consent to a search. In addition to all other adverse consequences, should contraband be found, an immigrant may also be subject to deportation.

Fourth, there appears to be no bounds on whether information obtained by the police could be used in other proceedings. Could an abuser secure the police report and use it to harass a survivor of domestic violence? Is the information available for use in a school discipline proceeding or to deny a child special education services? Will it be turned over to juvenile, probation or parole officials and be used to establish a violation of a condition of release?

We strongly support meaningful efforts to reduce violence and crime in communities of concentrated poverty. Low-income individuals and families are victims of crime at rates much higher than any other members of our community. We believe, however, that there are much better ways to improve public safety throughout the District of Columbia. For decades, the District has relied on punitive law enforcement strategies resulting in incarceration rates that are the highest in the nation while at the same time devastating poor and African American communities. While certain categories of crime have dropped in the District (most significantly murders), there is little evidence that this is a result of law enforcement or harsh sentencing laws, but is instead the bi-product of a decade of economic growth, is consistent with national trends and is evidence of changes in the drug markets.²

The Safe Homes Initiative will have little impact on public safety, possibly removing a small number of guns and drugs from the street, but will leave intact the basic social conditions that have caused young people to engage in behaviors that bring them into contact with the criminal justice system. It will be palliative for those who cry for visible action at a time that crime is rising in the wake of displacement and a the beginning of a recession. Alternatively, we call on the District to undertake real measures that will improve the lives of low-income communities. These include:

- Continue the newly found commitment to improve the schools. Meaningful opportunities for a stake in the District's economy will provide a strong incentive for young people to avoid behavior that brings them into contact with the police.
- Ensure quality and freely available drug treatment programs. We support a change in the paradigm so that addiction is treated as a health rather than criminal problem. This approach is not only more humane, but more likely to improve public safety.
- Ensure that District young people have meaningful access to jobs. As the District develops, thousands of good construction and other jobs are created. It is not enough to have a jobs set-aside program without strategies to ensure that District residents can be ready for those jobs. With the coming development of the St. Elizabeth's campus and the

² See, eg, the following for a more in depth view on the failures of the drug war. Marc Mauer, "A 25-Year Quagmire: The 'War On Drugs' and Its Impact on American Society," http://www.sentencingproject.org/Admin%5CDocuments%5Cpublications%5Cdp_25yearquagmire.pdf

proposals for Poplar Point, the District should begin immediately to create a pipeline of programs that funnel District residents from the poorest communities into those position.³

- Increase access to recreation, libraries, cultural events and other productive opportunities for all District youth.
- Deconcentrate poverty. Poverty has become more concentrated in the District over the last decade.⁴ The concentration of poverty magnifies its impact on families and children. While being poor has many negative consequences, living in a poor neighborhood increases the chances that children will have poor educational outcomes, individuals will be victims of crime or involved in the criminal justice system, be a teen mother or have limited access to health services.⁵

While these are long term solutions that may require significant investment, they will have a long term pay-off by improving public safety for all District residents.

³ In some District communities, where functional illiteracy rates exceed 70%, the intake end of the pipeline might well be intensive literacy classes coupled with job readiness and trade skills.

⁴ Fannie Mae Foundation, "The Poor Become Poorer: A Report on Patterns of Concentrated Neighborhood Poverty in Washington, D.C."

⁵ Disparities in the District of Columbia: Poverty Is Major Cause, <http://www.dcfpi.org/11-2-06pov.pdf>; WHERE WE ARE, WHERE WE NEED TO GO: The Primary Care Safety Net in DC (DCPCA, January 2005 Update) <http://www.dcpca.org/images/documents/executivesummarydcpca2005report.pdf>.