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***Testimony of Melissa McClure
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***Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia***

Performance Oversight Hearing Regarding the Metropolitan Police Department

February 23, 2023

Legal Aid of the District of Columbia¹ submits the following testimony regarding the performance of the Metropolitan Police Department (MPD), with a focus on its response to domestic violence-related matters. Our testimony this year addresses three main areas of concern that create barriers to domestic violence survivors seeking and maintaining their safety in the District of Columbia:

1. MPD's delayed and incomplete service of required documents in Civil Protection Order (CPO) cases.
2. MPD's refusal to make any type of report when a survivor reports domestic violence, kidnapping, or parental kidnapping.

¹ Legal Aid of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. We also work on immigration law matters and help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org.

3. MPD's denying domestic violence survivors' access to photographic and video evidence that survivors need to pursue CPO cases to keep themselves and their families safe.

Despite challenges throughout the COVID-19 pandemic, Legal Aid's Domestic Violence/Family Law Unit attorneys continue to work with domestic violence survivors, helping survivors file Petitions for CPOs and providing ongoing representation. Our attorneys also continue to provide legal advice and representation to survivors seeking support in Family Court matters. Through our work, we witness the persistent challenges that await survivors who are fleeing violence, seeking protection, and who choose or are forced to confront their abusers in judicial proceedings. Helping clients seek safety through a CPO requires coordination with MPD. We work with MPD to make sure that the relevant CPO documents are properly served on a Respondent. We also work with MPD to collect evidence, including recordings of 911 calls, body-worn camera (BWC) footage, photographs, and other evidence collected by MPD at the scene of a crime. In light of this experience, we can provide useful insight into the impact MPD's response to domestic violence and family issues has on survivors of domestic violence. Our testimony addresses the three areas of concern outlined above that our clients face regularly and recommends questions that the Committee should ask the Department as part of today's oversight hearing.

We urge the Committee to use today's hearing to explore these issues with MPD representatives and to identify next steps that should be taken to improve how MPD works with survivors.

Issue 1: MPD's Delayed and Inaccurate Service of Required Documents in a CPO Case

When a survivor files a petition for a CPO, MPD is often requested to perform the vital task of serving the required documents in the case. The vast majority of survivors request that MPD serve the documents because they fear further violent interactions with the Respondent. The paperwork that must be served on every Respondent includes the Temporary Protection Order (TPO), copy of the Petition, and the Notice of Hearing and Order to Appear (NOHOTA). CPO hearings are scheduled for two weeks from the day the petition is filed, so MPD has two weeks to complete service. Legal Aid appreciates all the work that MPD does to take on this large task.

Correct and quick service of all three documents is incredibly important for two reasons. First, the TPO, which the Court grants to the survivor during a same-day hearing on the day they file, provides a survivor with immediate relief and protection. The TPO typically instructs the Respondent not to contact and to stay away from the Petitioner and may also order that the Respondent vacate the shared residence or award the survivor temporary custody of their children. Second, the Court requires all three documents to be served on a Respondent before it can proceed with a CPO hearing. MPD must serve all three documents and submit a correctly filled out Return of Service form attesting to service of all three documents. If the Respondent fails to appear at the court hearing in a CPO case, a survivor can only obtain a CPO by default if MPD served the documents and uploaded proper proof of service.

However, time-and-again survivors face problems when it comes to MPD's service. In many cases, Legal Aid attorneys found that MPD only served *some* of the documents on the Respondent. Additionally, MPD often did not attempt service before the survivor's first hearing or only attempted service one or two days before the hearing. These late service attempts create three significant problems: 1) The TPO is not effective until it is served, so survivors must endure abuse, harassment, and issues with custody and sharing a residence for another 12 to 13 days until MPD makes their first attempt to serve the Respondent 24-48 hours before the hearing; 2) serving so close to the hearing date means that MPD can only make one attempt before the hearing date; so, if the Respondent does not answer the door or is not home, there is no time to attempt serving them again; 3) if MPD makes any mistakes, such as not serving all the documents or making a mistake on the Return of Service form, there is little or no time to correct the mistakes before the hearing. All these scenarios put survivors in danger and create unnecessary delays in CPO cases.

The following examples demonstrate some of the issues that survivors continue to face when MPD is serving their CPO documents:

1. For one Legal Aid client, MPD did not attempt to serve the Respondent until about 36 hours before the CPO hearing. For the 12 days between filing the petition and service of the TPO, the Respondent continued to stalk the survivor. He posted her personal information on Facebook and called her dozens of times.
2. For another client, MPD similarly did not attempt to serve the Respondent until about 48 hours before the CPO hearing. In the week and a half between the survivor filing and MPD serving the Respondent, the Respondent broke into the survivor's home and vandalized her apartment.
3. In at least two cases Legal Aid handled, MPD did not serve the TPO when they served the Petition and the NOHOTA on the Respondent. This is extremely problematic because the Respondent then knew about the survivor's allegations and case, but there were no protections in place. Failing to serve the TPO with the other documents put the survivor's safety and life in danger.
4. In one case, Legal Aid's client was present when MPD served the Respondent. While the officer handed the Respondent the documents, the officer incorrectly told the client that he did not need to complete a Return of Service form. The client had no way to prove that the Respondent was served and could not receive a default if he did not appear.
5. In another case, the MPD officer did not serve the Petition with the other documents. He told the Legal Aid attorney that he saw the Petition but did

not think it had to be served. The Respondent did not appear, but the client could not go forward on a default because she could not show that the Respondent received notice about the allegations.

6. In another case, MPD did not attempt service until the night before the hearing and sent in the completed Return of Service the morning of the hearing. Because it was sent in that morning, the clerk was not able to docket the service before the hearing began. Legal Aid and the client appeared for the hearing that morning, and both Legal Aid and the judge did not realize and were unable to verify if MPD had served the documents. The case was unnecessarily continued to another date, when the Respondent had in fact been served and they could have proceeded on a default.
7. In addition to these examples, Legal Aid attorneys have many cases where MPD never even attempted service before the hearing.

The time when a survivor tries to leave an abusive relationship is the most dangerous time in the relationship. By delaying service of the TPO or serving the protection order documents incorrectly, MPD makes this time for survivors even more unsafe. We encourage the Committee to continue to push MPD to train all its officers, beyond those in the CPO unit, how to safely and correctly serve CPO paperwork. We also ask that MPD attempt to serve documents closer to the date that survivors file for protection. The point of a same-day TPO is so that survivors can receive immediate protection from abuse. MPD's delayed service defeats the purpose of the TPO's same-day hearings by neglecting to serve them for many days.

Legal Aid encourages the Committee to ask the following questions to MPD:

1. What can MPD do to serve CPO documents closer to the date the survivor files the CPO case?
2. If there is a backlog in attempting service, what is MPD's plan to get rid of the backlog?
3. What training do officers (both officers in the CPO unit and not in the CPO unit) receive on the service of CPO documents?
4. Are officers required to be responsive to calls and emails about service efforts they have made? What are those requirements?
5. Clients often have a business card with a CCN report number and an email; how often are officers required to check and respond to their emails so that survivors can follow up about what documents were served or for a form to be corrected?

6. What ongoing training or performance review is put in place to ensure training on service is effective and utilized in the field?
7. What is the official policy on providing printed copies of CPO paperwork to Petitioners in CPO cases who are seeking MPD assistance with service?

Issue 2: MPD's Failure to Take a Report When a Survivor is Reporting Violence Puts the Survivor and Their Family's Safety at Risk

Survivors have also reported to Legal Aid that MPD has refused to take a report when they have tried to report violence, kidnapping, or parental kidnapping.

Refusing to take a report from a survivor has many lasting impacts. Not taking a report deprives a survivor of creating a record of abuse in their case. Domestic violence has a higher recidivism rate than other crimes, and survivors often endure multiple incidents of domestic violence before requesting the legal system's help. They often rely upon the record created by incident reports or domestic disturbance reports to map out the history of abuse before or shortly after requesting protection. Legal Aid attorneys have had many clients come to them with a stack of police reports that they retrieved directly from MPD, which helps them recreate a timeline of the abuse and relationship when preparing their case.

Reports also help survivors gather additional information about their case that they may not have had or cannot remember. Incident reports include information like the names of the responding officers, if officers activated BWC or took photographs, important locations, if there were any witnesses, and if the Respondent was present, fled, or arrested. Refusing to take a report deprives survivors of the ability to investigate additional sources of corroborating evidence or testimony to help prove their case.

Finally, refusing to take a police report deprives immigrant survivors of the opportunity to pursue immigration status that may help them leave an abuser. When an immigrant survivor applies for a U-Visa or Violence Against Women Act Petition, the United States requires or strongly recommends that they submit the police report that documents they reported the crime and cooperated with the police. If an immigrant survivor contacts MPD, but MPD refuses to take a report, MPD effectively cuts off that immigrant survivor's opportunity for legal status.

Considering the above, Legal Aid encourages the Committee to ask MPD the following questions:

1. What are the protocols MPD officers follow when deciding to take a report?

2. Why are there instances where MPD refuses to take a report?
3. What are the situations when MPD is not required to take a report?
4. What are the protocols MPD officers follow when filling out a report?

Issue 3: MPD Continues to Deny Survivors' Access to Critical Evidence Needed to Ensure Their Safety.

For years, Legal Aid has worked with MPD to exchange evidence so that we may support survivors seeking safety and justice in the District. In the past, Legal Aid sent subpoenas to MPD, through its Office of the General Counsel, for evidence such as BWC footage and photographs of injuries or property damage taken by MPD. The evidence MPD sent in response to these subpoenas was critical in our efforts to secure protection orders and other relief for our clients. At the start of the COVID-19 pandemic and years following, we stopped receiving responses altogether or began receiving an increasing number of denials. Survivors themselves have also directly tried to obtain copies of photographs taken of their own bodies and injuries and are met either with no response or a denial. Last week, Legal Aid received BWC footage for the first time in several years, and we hope this reflects a positive change in practices.

MPD's response to requests for evidence is problematic for many reasons. First, in a CPO hearing, the Court typically only has the testimony of each party to consider when deciding if it should grant a CPO. Therefore, photographs of injuries or damaged property can be extremely helpful, if not determinative, in a survivor's case. BWC footage can similarly be determinative, as it can show part of an incident, corroborate a survivor's testimony, or provide the identity of potential witnesses. Finally, and importantly, denying survivors photographs of their own bodies denies them their own bodily autonomy. After finally leaving abusive and often controlling situations, survivors may be retraumatized by MPD's refusal to release control of photographs of their own body and home.

We have included examples to illustrate this issue:

1. Legal Aid's client survived a vicious assault by her partner, where he threw a bottle at her, dragged her across the floor, and punched her repeatedly. She called the police. MPD responded and took photographs of her body to document the injuries. The client came to Legal Aid after her injuries had healed and the evidence disappeared. Legal Aid subpoenaed MPD for the photographs, but MPD denied the request, saying it could not release any documentation while a related criminal matter was open. Upon review, we cannot find any record that any charges were ever brought against this Respondent. This is not an uncommon occurrence, as criminal charges are not often brought in our clients' cases, further making these responses concerning and frustrating.

2. Another client called the police after her boyfriend beat her with a bottle and tried to kill her. She asked the police to take photographs of her injuries, which they did, explaining that the photographs would be 'part of her file.' She did not take any of her own photographs at the time, *relying* on the fact that the officers took multiple close-up photographs. The client came to Legal Aid for help after taking time to recover. She took her own photographs as soon as the Legal Aid attorney advised, but by then, the visual severity of the injuries had largely faded. The client went to the station in-person where the responding officers worked and asked for the photographs. She spoke with a few officers, who either told her they did not know how she could get copies of the photographs or told her they could not give her copies.

As demonstrated, if there is any response from MPD, they have often stated that records/documents could not be released due to an ongoing investigation. We are concerned about the response that evidence cannot be released due to an ongoing investigation by MPD for three reasons. First, our clients do not always want to pursue safety through the criminal justice process, but to secure a civil protection order they may need evidence collected by MPD, including pictures of their own bodies or their own damaged property. Also, decisions about the criminal case are not up to the client, so clients have no control over when the criminal matter concludes and when they can access needed evidence. Second, the timeline for criminal matters and protection order matters are incredibly disparate. The expectation is that a CPO case should be resolved two weeks from the date it is filed. MPD's decision to issue an arrest warrant can take days or weeks, and then it can take an additional weeks or months to track down a Respondent to serve them with the arrest warrant. After the arrest warrant is executed, it can take additional months or years for the criminal process to play out. Legal Aid has not received a clear answer as to which part of the criminal process must be concluded before evidence is shared. Regardless, almost all criminal processes take longer than a CPO case, and by the time a decision is made about whether to conduct an investigation or issue a warrant, the client's CPO is already finished and their immediate safety needs have gone unmet. At that point, the evidence is useless to survivors. Third, the majority of the time, MPD or the U.S. Attorney's office declines to pursue any criminal case. Legal Aid attorneys have been denied evidence numerous time due to an ongoing investigation, only for that investigation to be closed without any arrest or charges filed.

Since December 2021, Legal Aid attorneys have submitted numerous BWC and photo requests which have gone largely ignored or we received the response that no evidence can be released due to an ongoing investigation. Legal Aid then followed up directly with MPD three separate times to talk about its responsiveness to subpoenas. In the past few weeks, Legal Aid has started to see some responses. However, these results only came after almost two years of zealous advocacy, while numerous survivors suffered and continue to suffer in this lapse of responsiveness.

We encourage the Committee to ask the following questions about how domestic violence survivors and their attorneys can access the evidence critical to ensuring their own safety:

1. What is the process for crime victims to directly request copies of photographs of their own body and injuries?
2. What policies does MPD follow when responding to subpoena requests for domestic violence survivors?
3. What steps does MPD plan to take to make it clear to crime victims that any photos or footage taken by MPD may not later be accessible to them, such that they should not rely on MPD to collect this evidence?
4. What qualifies as an ongoing investigation? What impact does an ongoing investigation have on the decision to release evidence in response to a subpoena? What is the supporting law behind that policy?
5. What protocols do MPD officers follow on scene when deciding what photographs to take? What do the officers then do with the photographs that are taken?
6. What follow-up is done with officers to ensure all digital evidence has been uploaded and associated with a specific incident report?

MPD's Response to Previous Oversight Hearings

Each year that Legal Aid has testified, we have discussed MPD's refusal to assist in parental kidnapping cases and refusal to enforce custody provisions of CPO and Custody Orders. Following our testimony each year, MPD has reached out to discuss these issues. We appreciate their willingness to have open discussions. Unfortunately, however, we have seen no changes in their response to parental kidnapping or Custody Order violations. Specifically, Legal Aid attorneys continue to talk to clients with CPOs or Custody Orders granting them custody who are told by MPD Officers that there is nothing they can do to enforce a Court Order unless the other parent willingly opens the door and hands over the child. Officers have also told our clients that they cannot enforce any 'temporary' orders or that a Custody Order is simply not a court order that they will enforce, instructing survivors to go back to court. This leaves our clients with zero options for immediate help, having already received their court order. When MPD tells parents there is nothing they can do, and to go file 'something' with the court, parents are left to file more paperwork and wait for it to be processed and heard by a judge weeks or months later; all the meanwhile, not seeing their child and not knowing what the withholding parent may do. Therefore, we reiterate and ask the Committee to

reference our testimony on parental kidnapping and Custody Orders for fiscal years 2019, 2020, and 2021.²

Conclusion

MPD's response to domestic violence survivors remains a critical point in survivors' journeys to extricate themselves from abusive situations. MPD's policies and the decisions that individual officers make have long-term impacts on survivors. Today we highlighted some of the obstacles our clients face when interacting with MPD to serve CPO paperwork on Respondents, report incidents of domestic violence or parental kidnapping, and retrieve their evidence. The questions that we suggest the Committee ask today are aimed at getting a better understanding of how MPD interprets and applies the law of the District. We believe it is critical to keep an open dialogue with stakeholders, service providers, and domestic violence survivors and are open and eager to continue those conversations with this Committee and MPD to continue to improve service to domestic violence survivors.

² See Testimony of Charlie Whitman-Barr, Attorney, Family/Domestic Violence Law Unit, Legal Aid of DC on January 16, 2020, March 11, 2021, and February 16, 2022.