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**Testimony of Melanie Sandler
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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 13, 2024

Legal Aid DC¹ 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 four main areas of concern that that have affected our client community over the past year:²

- MPD’s process for providing body worn camera footage to survivors of domestic violence and their attorneys;
- MPD’s handling of service and enforcement of Civil Protection Orders (“CPO”) and Temporary Protection Orders (“TPO”);
- MPD’s process for taking reports; and

¹ Legal Aid DC 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 92 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. 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.

² In this testimony, we ask questions that we previously submitted to the committee, but we include them in order to provide additional context for why we ask them.

- MPD’s interpretation of the legal considerations and practices with regard to reports of parental kidnapping.

Legal Aid’s Domestic Violence/Family Law Unit attorneys have continued to work with domestic violence survivors this year, helping applicants file Petitions for CPOs and providing ongoing representation. We are currently staffing the Domestic Violence Intake Centers at D.C. Superior Court and at the Big Chair in Southeast, D.C. We additionally staff the Family Law Assistance Network (“FLAN”) and the Child Support Resource Center (“CSRC”). At these projects, we meet community members who are seeking advice, assistance, and representation.

Through our work, we witness and provide support to survivors who are fleeing violence, seeking protection, and who choose or are forced to confront their abusers in judicial proceedings. One such way to assist survivors is through the issuance of a CPO. Helping clients seek safety through a CPO requires coordination with local law enforcement officers. We work with MPD to make sure that the relevant CPO documents are properly served on a Respondent and that all provisions of an order are enforced. We also work with MPD to collect evidence in their possession, including recordings of 911 calls, body-worn camera (“BWC”) footage, and photographs taken by MPD at the scene of a crime.

As a direct legal services provider for people living at or below 200% of the federal poverty level, we regularly bear witness to the impact that MPD’s response to domestic violence and family issues has on survivors of domestic violence. Our testimony will address the biggest issues that we see amongst our client communities.

We urge the Committee to use today’s hearing to explore the issues we raise with MPD representatives and to identify next steps that should be taken to improve how MPD officers work with survivors.

Issue 1: The Process for Obtaining Body Worn Camera Footage is Arduous, not Survivor Friendly, and Disincentivizes People From Seeking Needed Evidence

Over the past year, MPD has created a new process for obtaining body worn camera footage (“BWC”) in civil cases. Prior to serving the subpoena for BWC on MPD, the requestor must file a Motion for Protective Order in their currently pending case in D.C. Superior Court. MPD requires that the requestor ask the Court to order the requestor to do the following:

1. Not disclose or disseminate the BWC for any purpose other than discovery and trial in the action for which the Motion was filed and any appeal;

2. Only use the BWC in connection with the case in which the Motion was filed, though there may be related cases that include the same parties and subject matter; and
3. Destroy all copies of the BWC upon conclusion of the case in which the Motion was filed.

Oftentimes our clients are not just participating in one case. Parties may be involved in one or more CPO cases and custody cases, meaning that the Protective Order must proactively be filed in multiple cases, or the party must file the Motion multiple times. If they do not do this, they risk not being able to have potentially useful and dispositive evidence in their cases. These Motions are filled with legal terms, require knowledge in motions practice, and must be filed and served correctly. Expecting *pro se* parties to complete this process is essentially issuing a blanket denial to all requests for BWC, as it is almost impossible to expect a survivor leaving a domestic violence situation to have the time and resources to complete this filing themselves.

CPO cases are summary proceedings. Once a CPO case is initiated, the initial hearing must be held fourteen days after the filing. It is contrary to summary proceedings to require a party to prepare a legal Motion, file the Motion, serve the Motion, obtain an Order on such Motion, serve the subpoena and Motion on a government agency, and receive the BWC in just two weeks. If a *pro se* litigant is able to construct the arduous and legalese-heavy motion, they are likely to have to seek at least one, possibly multiple, continuances in order to receive the BWC to have ready for trial. The Court does not have to grant any request for a continuance, and thus a party might completely lose the opportunity to have this evidence for Court. If the Motion is granted and later a party files a custody case, the party must file and receive yet another Order so that they can use the very same evidence. There are already innumerable barriers to safety for survivors of domestic violence and this overly burdensome process creates yet another one, keeping survivors from being able to permanently leave their abusers.

We have seen this BWC issue arise in some of our cases this past year. In cases where we believe there will be probative evidence on BWC footage, we historically have submitted subpoenas to MPD. Over the past year, however, we have been informed that in order to obtain the BWC, we had to file a Motion for a Protective Order and receive the Court's Order before the subpoena would be answered. After completing that process, there are only a few days left before the CPO hearing. In some of our cases, we have served the subpoena and the Order five days before the hearing, and we were told by MPD representatives that "all subpoenas normally take **five to ten business days** for processing." Therefore, it was nearly impossible to receive the requested BWC in time for Court. Through zealous advocacy and litigation we have been able to request the necessary continuances and to obtain the BWC evidence in support of our client's case.

There are far more survivors who file for CPOs in the District and go through the court process without an attorney than those who have counsel. Those survivors must go forward without the option of obtaining possibly critical evidence for their case.

If the client did not have an attorney who was familiar with this new MPD procedure, they would not have had the BWC for Court. Additionally, Legal Aid is concerned that MPD's current policy requiring a protective order to obtain BWC footage is not in line with District law. Specifically, we believe it is MPD's responsibility to file motions requesting protections on the evidence for which the Department is subpoenaed, not the requestor. Legal Aid has attempted to contact MPD to further discuss their position without success. We urge the Committee to pose the following questions to MPD about these issues:

1. What protocols are MPD expected to follow when body-worn camera footage is requested by subpoena? Are there circumstances under which MPD would refuse to release footage? What are those circumstances? How many times has MPD refused to release footage in FY23 and in FY24 to date?
2. Why does MPD require civil attorneys to submit Motions for Protection Orders along with subpoenas for body-worn camera footage? Is there a statute, court rule, regulation, or written guidance or policy underlying this requirement? Please provide a copy of any written guidance, protocols, policies, or procedures.
3. Is there any exception to the Protective Order to allow *pro se* litigants to obtain BWC without filing a Motion first?
4. Is MPD willing to amend their policies such that parties can use the BWC in any proceeding involving the same parties and subject matter?

Issue 2: Our Clients Continue to Face Issues With the Service of and Enforcement of Civil Protection Orders

Civil Protection Orders can provide extraordinary relief to survivors who need immediate assistance and protection from abusers. When a petitioner files a CPO, and the respondent is located in Washington, D.C., MPD is frequently asked to assist with serving the documents on the respondent. This is an important first step in obtaining relief. If the CPO is not served, the survivor cannot obtain their order, potentially leaving them in a vulnerable position.

CPOs can be served by a person over the age of 18 who is not involved in the case. Having police officers serve the documents is the safest option for many survivors. Though petitioners can ask family or friends to serve the documents, that often puts the server in a dangerous position.

Unfortunately, we often notice that the Return of Service form is improperly filled out, or that the officer did not serve all the required documents. In order to move forward on a CPO court date, the respondent must receive a copy of the petition for civil protection, the notice of hearing and order to appear, and the temporary protection order (“TPO”), if any. After the officer serves the respondent with those documents, the officer must complete the court-generated Return of Service form by writing their initials next to each document that was served on the return of service form, identifying who was served and where service was accomplished, and by signing the form. The officer must then return the form to the petitioner or file it directly with the court.

Though service of all these forms is extremely important, serving the TPO is especially vital. It is imperative that there is proof that a TPO has been served for purposes of enforcing the terms therein. After any temporary protection order is served, the order is immediately able to be enforced. If the respondent violates the TPO, the petitioner can file a Motion for Contempt or can call the police to obtain assistance. TPOs may contain provisions such as requiring the respondent to stay away from the petitioner, not contact the petitioner, vacate a shared home, and can even grant temporary custody. If service of the TPO is not properly documented, the petitioner may not be able to obtain the relief necessary for their or their children’s safety and the respondent may not be held accountable if they violate the terms.

Further, the Court needs to receive properly filed Return of Service forms to proceed on a default judgment at the hearing date if the respondent fails to appear. If a respondent has been properly served, the form is correctly filed, and the respondent fails to appear at their hearing, the Court can enter an Order in their absence. However, the Court must first determine that the Respondent was properly served and had the opportunity to appear at the hearing. The Court cannot make that determination if the Return of Service was incomplete, incorrectly filled out, or if no attempts at service were made on the Respondent. This causes additional delays in obtaining critical relief for survivors and could embolden abusers as they may believe they cannot be held accountable.

In addition to serving protection order cases, MPD officers are often asked to carry out certain provisions in an order. One such provision that a survivor can request is to obtain assistance from MPD in either vacating the abuser from a home, or to assist with the survivor retrieving their belongings from a shared home or other location. Unfortunately, we have assisted clients who were unable to obtain MPD’s help. While we understand that officers may be busy at the exact time that the CPO prescribes the exchange of

items, we hope that officers and petitioners can be in communication to pick a mutually agreeable time.

We have additionally seen clients confused about who they are supposed to call to enforce or serve a CPO case. In the past, clients have told us that they have been told to call 911, which directs them to call their local MPD precinct. When they then call the precinct, the precinct tells the client to call 911, making them call around in circles. It would be helpful if there was one centralized line or number for people to call regarding service or enforcement of CPOs.

We encourage the Committee to ask MPD representatives the following questions:

1. Who should clients call to seek assistance in serving a CPO case?
2. Are there officers specifically designated to serve CPO documents? Who are those officers? What are their specific responsibilities? Do officers receive specialized training? Please provide copies of training materials and any written guidance.
3. What protocols do officers follow when serving CPO documents? Please provide a copy of any written protocols, policies, or procedures.
4. Are officers required to be responsive to calls and emails? What are those requirements? Please provide a copy of any written protocols, policies, or procedures.
5. What protocols exist to allow Petitioners to contact the officer who served a CPO to correct a Return of Service form that was incorrectly filled out? Does MPD work directly with the Court on this issue as well? Please provide a copy of any written protocols, policies, or procedures.
6. How many attempts at service will MPD make before completing the Return of Service form saying MPD was unable to serve? Are there protocols on when those attempts must be made between the date the Petition was filed and the court hearing? Are there policies on when those Returns of Service must be filed with the Court? Please provide a copy of any written protocols, policies, or procedures.

Issue 3: MPD has Refused to Take Reports of Criminal Activity When it Involves Domestic Violence

Though obtaining CPOs can be a useful tool, there is no requirement that a survivor file a civil protection order case before they can report criminal activity. Unfortunately, our clients have told us that when they have tried to make a report of criminal activity, officers have refused to write a report, and have instructed them to instead file for a CPO.

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. Having a documented report helps map out the history of abuse which survivors may need as they navigate their court cases. Creating a record is also important as survivors move through the judicial system where law enforcement and the courts regularly inquire about when and how often they have reported alleged domestic violence.

Additionally, if the activity the survivor is reporting is criminal activity, officers should create a report for sufficient documentation. We have also seen MPD officers improperly counseling someone on filing for a CPO and their likelihood of success at a hearing. This creates an unnecessary delay in obtaining the relief the applicant needs.

Some examples our clients have told us include the following:

1. Legal Aid represented a client who called MPD because their abuser had a gun in her apartment. MPD officers came to the apartment multiple times and refused to remove the abuser from the apartment. The client presented officers with video evidence of the abuser with the weapon, but the officers stated that they did not personally see the gun, and would not remove him, even though he was not on the lease. He was only removed from the apartment once a Temporary Protection Order was granted.
2. Legal Aid worked with another client who called MPD when the abuser stole her vehicle. Officers told the client that she could not report her vehicle as stolen because in the past, the abuser borrowed the vehicle from her. Officers further told the client that the most they could do was attempt to locate the vehicle but would not take a report.

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

1. What is MPD's policy regarding reports of family disturbances? What is MPD's policy regarding reports for other intrafamily offenses?
2. Under what circumstances is a report taken? Who decides whether a report is made?
3. Under what circumstances would MPD refuse to take a report?
4. Are officers' decisions to file a report reviewed by any others?

Issue 4: MPD Continues to Refuse to Take Reports for Parental Kidnapping

Unfortunately, despite some conversations with MPD representatives about the Department's approach to parental kidnapping, we have not seen many improvements on this issue. We remain concerned that there is a disconnect between the law in the District of Columbia on parental kidnapping and the enforcement of this crime by MPD.

Parental kidnapping is a crime in the District of Columbia. D.C. Code § 16-1022 states that no parent, or person acting pursuant to the direction from the parent, may intentionally conceal a child from the other parent. The law is clear: one parent cannot hide their children from the other parent. The law, additionally, does not require that a custody order is in place for a parent to exercise their custody over the child.

Though the law clearly prevents parents from concealing children from their other parent, we have found that MPD is not willing to assist parents who attempt to get their children back. We have had multiple clients who have reported kidnapping to MPD, only to be told that they must first obtain a court order to get any help. We have had cases where MPD has even refused to take reports of the kidnapping, instead telling the client to figure this out in custody court.

Not only have we seen kidnapping perpetrated by parents listed on the child's birth certificate, we have also seen children abducted by someone who has no legal rights over the child. For example, a person who believes they are the child's father has removed the child from their legal custodian, the mother, and concealed the child from the mother. Though it may be helpful over the life of a case for the custodial parent to obtain a court order, filing for a CPO or a custody case is merely initiating a civil case. These civil cases, absent extraordinary circumstances and court orders, do not permit officers from doing anything but knocking on the door and asking for the child back. Upon the respondent not answering their door or refusing to turn the child over, MPD's ability to assist ceases if they are only acting pursuant to a civil order rather than treating this as a criminal complaint.

Although parental kidnapping is a crime, we continue to hear reports from clients regularly of officers refusing to take a police report where there is no existing custody order. One of our clients reported this year that the father of her children, who is not on the children's birth certificates, took the children without the client's consent. MPD told the client that she needed to obtain a Temporary Protection Order or a Custody Order before they will be able to assist her.

The consequence of MPD failing or refusing to respond to individuals with complaints of parental kidnapping, especially in cases involving domestic violence, has dangerous consequences. We believe the proper response is for the responding officer to take a police report and investigate the reporting witness's claims. These investigations can assist with locating a kidnapped minor child, which would allow the parent in need of assistance to check on the child's welfare, serve an emergency custody order, or make other plans for the child's safety. When parental kidnapping occurs, MPD must take it seriously.

We urge the Committee to continue to gather further information about MPD training, policies, and practices in this area, including:

1. How are officers trained to respond when asked to retrieve a minor child where the child is in the care of someone who is not a legally established parent? What procedures does MPD follow to determine whether someone is a legally established parent? Under what circumstances will MPD retrieve a child when there is no proof of parentage and no court order? Please provide copies of training materials and any written guidance.
2. What training do MPD officers receive on parental kidnapping? What is the source of the information for that training and is it reviewed by attorneys with experience in domestic violence or family law? What ongoing training or performance review is put in place to ensure training is effective and utilized in the field? Please provide copies of training materials and any written guidance.
3. What training or guidance do MPD personnel receive regarding how to respond to parents who are reporting parental kidnapping? Please provide copies of training materials and any written guidance.
4. What ongoing training or performance review is put in place to ensure training is effective and utilized in the field?
5. Under what circumstances do MPD officers take reports for parental kidnapping and/or pursue criminal charges for parental kidnapping? Under

what circumstances do MPD officers refuse to take a report for parental kidnapping? Does the Department address parental kidnapping immediately, or is there a required waiting period?

6. Which office within MPD receives reports on parental kidnapping? How does an individual file a parental kidnapping report with that office?
7. What role does Youth and Family Services Division play in reports of parental kidnapping? How can citizens access this service?

Conclusion

It is important that survivors, attorneys, and other stakeholders have a clear understanding of the policies and procedures that MPD has in place in order to continue to assist them in an effective manner. When policies and procedures fail survivors, it is important that we have an open dialogue to amend them, to continue to serve survivors as they need.

Our testimony intends to bridge the gap and ensure that MPD is aware of the issues that District residents are having, and can come up with solutions that benefit them, create trust in the community, and continue to serve the community. We appreciate the opportunity to testify on this important subject and look forward to our continuing working relationship.