

**Testimony of Stephanie Westman
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**Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia**

Public Hearing Regarding:

Bill 23-0044

“Alimony Justice for Injured Spouses Amendment Act of 2019”

October 30, 2019

The Legal Aid Society of the District of Columbia¹ submits the following testimony in opposition to Bill 23-0044. While we understand that the intent of the bill is to help individuals fleeing domestic violence, if passed in its current form, the bill could have harmful unintended consequences for survivors. We urge the Committee not to move forward with the legislation in its current form, and have included suggestions in this testimony as to how the Council might better achieve the goals of this legislation.

Legal Aid family law attorneys have significant experience working with survivors of domestic violence in Civil Protection Order (CPO) cases, custody, child support and divorce cases in D.C. Superior Court. This year alone, we have already fully represented domestic violence survivors in 294 cases and are advising or representing in an additional 142 cases. For more than a decade, we have staffed Domestic Violence Intake Centers at the Moultrie Courthouse and United Medical Center in Southeast four days per week. Our attorneys are in court representing survivors of domestic violence almost every day. Through our work, we bear witness to the challenges that await survivors who choose or are forced to confront their abusers in judicial proceedings. Many of our clients do not have assets and depend on financial assistance from their abusers. Any legal bar to that assistance would be a barrier for them when trying to leave an abusive relationship. In light of this experience, we believe we can provide useful insight into

¹ The Legal Aid Society 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.” Over the last 87 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, immigration, and consumer protection. 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, and our blog, www.MakingJusticeReal.org.

how this well-intended bill could negatively impact survivors of violence in family law cases in D.C. Superior Court.

The Bill's Protections May Deprive Survivors of Alimony Rather Than Protecting Them

The bill amends the alimony statute to prohibit alimony or a claim to retirement and pension benefits for the “injuring spouse.” The bill defines “injured spouse” as someone “who has been the subject of intrafamily violence or who is protected by a civil protection order.” While this definition may seem straightforward, the application of this language to family law proceedings could produce deeply unjust results.

To be sure, the civil protection order process is vital to protecting survivors of domestic violence. But it is an unfortunate reality that for survivors, the process is all too often weaponized against them by abusers. We frequently serve clients who are targeted with retaliatory CPO petitions or spurious counter-allegations of abuse when they leave abusive partners and file for protection. As a result, survivors may have court cases with cross-findings of domestic violence, meaning the survivor is granted a CPO and has one entered against her.

In these scenarios, the bill would ultimately bar both an abuser *and* a survivor from seeking alimony. A bar on even *requesting* alimony, based on a simplified definition of “injured spouse,” would cause upheaval for survivors, especially those in tenuous financial circumstances. Contrary to the intent of the bill, this bar could be the reason some survivors feel forced to remain in an abusive relationship—the exact opposite what this bill seeks to accomplish.

The Bill Does Not Reflect Common Realities of the Civil Protection Order and Divorce Processes

In addition to the problems raised by a bright-line definition of “injured spouse,” there are some important aspects of both CPO proceedings and divorce proceedings that would limit its effectiveness for protecting domestic abuse survivors.

Many Survivors Who Obtain Civil Protection Orders Would Be Excluded From the Bill's Protections

The bill's acceleration of divorce proceedings and alimony bar both require a judicial finding of an intrafamily offense (IFO). This means that, in order for DV survivors to avail themselves of these benefits, they would have to obtain an IFO finding by testifying at a hearing about the abuse shortly after it occurred. In practice, however, this sort of testimony rarely occurs.

In many, if not most, CPO cases, survivors are willing to forego testifying and enter into a “Consent Without Admissions” CPO, where the abuser agrees to stay away and not contact the survivor but does not admit to the allegations in her petition. With this resolution, there is no IFO finding, however the survivor receives the immediate protection needed. Survivors are often willing and may even prefer to accept a “Consent Without Admissions” CPO because it eliminates the need for them to testify in open court about recent abusive incidents and/or a

history of abusive, violent behavior with the abuser staring at the survivor and cross-examining her about his abuse. Such testimony can be re-traumatizing and even reinforce and exacerbate the power and control dynamics between the abuser and survivor.

By requiring a finding of an IFO in order to qualify for the bill's protections, this bill would eliminate some of the advantages of a "Consent Without Admissions" CPO and instead pressure survivors to undergo the trauma of a trial they might otherwise have avoided. Any survivors unwilling to accept this trade-off and face their abuser in an emotionally-charged, expedited proceeding would simply be excluded from the bill's protections.

An Accelerated Divorce May Prevent Many Survivors From Obtaining the Support They Need and Deserve

While providing a way for survivors to quickly exit abusive relationships is important, it is unrealistic to presume that most divorce proceedings, particularly where there are issues of custody, child support, alimony, and property division can be addressed within three months. Mandating an expedited divorce process could ultimately be a detriment to survivors in cases where there are complex legal issues because survivors may not have the time to participate in a thorough discovery process, which is especially critical in marriages in which the abusive spouse controlled the finances and marital assets. By shortening the time frame in which a divorce must be completed, this legislation creates a framework in which survivors will not have an opportunity to fully and fairly litigate their various requests for relief. This is not the best way to ensure a survivor's ability to gain financial security and long-term independence from abuse. And contrary to the goals of the bill, the mandatory expedited time frame for completing a divorce could provide abusers another means by which to deprive financially-vulnerable survivors of the relief they deserve.

The Council Can Take Other Steps to Protect Domestic Violence Survivors in Divorce Proceedings

Instead of passing this legislation in its current form, we believe that there are steps the Council can take to better protect survivors as they navigate the divorce process.

Remove the Waiting Period for All Divorces

The most important thing that the Council could do to ensure the financial security of survivors throughout the divorce process (and after) would be to eliminate the paternalistic waiting period so that no one has to wait months or up to a year before being able to file for divorce or separation, and thereby obtain *pendente lite*, or temporary, support. When a separation is not voluntary, D.C. law requires an entire year-long waiting period before an action for separation or divorce can be initiated. D.C. Code § 16-904. Without the hindrance of a waiting period, survivors could start the process of divorce as soon as they make the decision to leave their abusive spouses and immediately seek and obtain *pendente lite* relief. Under current law, unless survivors obtain a CPO granting them interim support, or the separation was mutual, survivors *cannot even ask* for interim support until *after* the waiting period for filing for divorce or separation. This leaves survivors in a precarious financial position during the waiting period, and

could be a reason survivors are unable to leave an abusive marriage as early as they otherwise might.

Clarify Existing Law Regarding Alimony

D.C. law already provides some protection in the law for domestic violence survivors regarding alimony. Currently, a court must already consider “circumstances which led to the estrangement of the parties” when determining whether to award alimony and property distribution.² Domestic violence – with or without the benefit of a prior finding of an IFO – can already be raised and considered under this factor.

In order to clarify current law and ensure that domestic violence is considered in every request for alimony, the Council should consider making domestic violence an explicit factor in determining alimony, similar to domestic violence presumptions in custody cases.³ This would make it clearer to all parties and the judiciary that domestic violence is material to alimony determinations, while avoiding some of the problems that the proposed absolute bar on alimony would create. Legal Aid would be amenable to including language in the bill to create a rebuttable presumption against an award of alimony to a spouse who committed domestic violence when supported by written findings.

Clarify and Explain the “Affidavit of Support” Language

If the Committee moves forward with a version of this bill, we are concerned that the “affidavit of support” language is vague and unclear. We would like to learn more about the intent behind this language so we can understand the implications it might have on our client population.

Conclusion

We appreciate the opportunity to testify about this bill and would be happy to have further discussions with the Committee about steps that it can take to protect survivors involved in divorce proceedings.

² D.C. Code § 16–913(d)(5).

³ *See* D.C. Code § 16–914(a)(3)(F).