

**Testimony of Charlie Whitman-Barr
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**Before the on the Judiciary and Public Safety
Council of the District of Columbia**

Performance Oversight Hearing Regarding the Metropolitan Police Department

January 16, 2020

The Legal Aid Society of the District of Columbia¹ submits the following testimony regarding the performance of the Metropolitan Police Department (MPD).

The attorneys in Legal Aid’s Domestic Violence (DV)/Family Law Unit have significant experience working with survivors of domestic violence in Civil Protection Order (CPO) cases, as well as custody, child support and divorce cases in D.C. Superior Court. For more than a decade, we have staffed Domestic Violence Intake Centers at the Moultrie Courthouse and United Medical Center 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. Our clients often come to us after domestic violence incidents prompted them to call MPD. When criminal charges proceed against an abuser, our clients continue to work with law enforcement for extended periods of time. We also work with MPD to collect evidence, including 911 calls, body-worn camera footage, and photographs and other evidence collected by MPD at the scene of a crime. In light of this experience, we believe 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 four areas of concern our clients face regularly and recommends questions that the Committee should ask the Department as part of today’s oversight hearing.

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.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 88 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, and our blog, www.MakingJusticeReal.org.

Before addressing those concerns, we begin by commending MPD on its efforts to support domestic violence survivors. Over the years, MPD has dedicated several officers and detectives to the Domestic Violence Intake Centers. These officers regularly meet with survivors to take reports and help them follow up on active cases. On one occasion, an officer at a Domestic Violence Intake Center went above and beyond her duties to facilitate the peaceful exchange of a survivor's minor child, after the Court had awarded the survivor custody and other MPD officers refused to provide her assistance with retrieving the child from her abuser.

We also appreciate MPD's efforts to improve service of CPO petitions and Temporary Protection Orders. MPD has worked with court employees to ensure that officers are trained to complete Return of Service forms. We have observed a marked improvement in MPD's service attempts and Return of Service forms over the past several years. This provides invaluable assistance to our clients.

Despite many positive interactions, we remain deeply concerned about some of MPD's policies and practices. Our testimony addresses the following concerns:

- How MPD officers respond to domestic violence, with specific reference to how survivors are treated when MPD responds to a 911 call, and what impact a poor response has on a survivors' ability to receive services and be safe;
- MPD's practices around service of civil protection orders and the short and long term dangers survivors encounter when service or proof of service is incorrect;
- MPD's failure to consistently and accurately enforce child custody orders; and
- MPD's decision-making and practices with regard to reports of parental kidnapping.

MPD's response to domestic violence survivors is often a first response, an immediate call to the scene. However, there are long term impacts to the decisions that MPD officers make for the families of the District. The questions that we suggest the Committee asks today are aimed at getting a better understanding of officers' decision-making processes, while, more broadly, our testimony shares the barriers our clients face as they seek justice.

We Continue to See Poor and Disturbing Treatment of Domestic Violence Survivors During the Immediate Response of MPD Following a 911 Call

We have heard repeated stories from our clients, and have seen disturbing body-worn camera footage for ourselves, regarding troubling police responses to domestic violence situations. The following are several examples of incidents we observed on body-worn camera footage that we believe illustrate our concerns:

- We reviewed body-worn camera footage where officers questioned one of our clients within 10 feet of her abuser, forcing her to answer questions about a recent assault that she was resistant to share in her abuser's presence. This client clearly requested that the officers not arrest the abuser. Despite her protests, the officers proceeded to tell the abuser that they did not want to arrest him, but they had to do so because of our client's report. This situation was concerning because it put our client in immediate and future

harm. Though we encourage enforcement of mandatory arrest requirements, placing blame in this way can heighten an already dangerous situation for a survivor.

- We observed body-worn camera footage where officers questioned our client, a domestic violence survivor, on whether she planned to return to a romantic relationship with her abuser. Similarly, we observed body-worn camera footage of another incident in which officers noted they had previously responded to a call from the survivor, and questioned why she was still in a relationship with her abuser. Such inquiries do not comport with best practices for first responders handling matter involving allegations of domestic violence. These questions are irrelevant and inappropriate to ask someone who has just experienced trauma at the hands of an intimate partner, and the answers are not relevant to the immediate job of the officer at hand. Further, these questions demonstrate a fundamental lack of understanding of the dynamics of domestic violence and the communities these officers serve. Many circumstances contribute to a survivor choosing to stay; these circumstances include a lack of financial sources or stable housing. Feeling supported rather than judged is more likely to encourage a survivor to find pathways to safety.
- One client came to us after being assaulted outside of a convenience store. The entire incident was captured by a surveillance camera. Nonetheless, we observed on body-worn camera footage of officers repeatedly asking our client if she was a liar. The responding officers even went as far as calling our client's parents to confirm whether she had a history of lying. This is cruel and unnecessary treatment of a victim of crime, and it is especially insulting given the evidence supporting our client's story.
- We have observed other concerning behavior on body-worn camera footage, with respect to gathering evidence. On one occasion, an officer clearly took photographs of a survivor's injuries following an incident. However, when Legal Aid attorneys later sent a subpoena for those photographs for use in a CPO case, it became clear that they had not been stored as evidence. Even if a police report does not result in a prosecution, it is imperative that evidence is collected and properly stored. Evidence of domestic violence-related injuries and/or property damage can help a survivor obtain a CPO or custody of their children.

In addition to the responses to 911 calls captured by body-worn camera, we have also seen an alarming and confusing response to "second sighting" reports -- where a victim makes a positive identification of a suspect to MPD at some point after the original incident, because the suspect fled the scene following the original incident. In one instance we assisted a survivor in obtaining a CPO following a brutal assault. The abuser had fled the scene and had not been arrested for the assault, but he appeared at court for the CPO hearing. The client and her Legal Aid attorney contacted MPD to find out whether the abuser could be arrested on a second sighting. First, the client contacted the detective on the case, who instructed her to call 911 and told her that a second sighting arrest could be completed at the court building. When the officers arrived, they spoke to the abuser and informed him of our client's desire for him to be arrested. They then told our client that a second sighting could only be done within one hour of the original incident. They allowed the abuser to leave. The Legal Aid attorney asked to speak to a supervisor about

these inconsistent policies, given the detective's instruction that the arrest could be made. The original officer brought over her partner, who informed the client that a second sighting arrest can only be done in a misdemeanor case, but because this case was likely to be a felony, they could not do it. Not only are these policy inconsistencies frustrating, they are extremely dangerous. The abuser in this situation left the interaction emboldened with the knowledge that our client had wanted him to be arrested and that MPD had refused, escalating an already dangerous situation for our client.

These are just a few examples of experiences our clients have had with MPD when calling 911 for help and protection. More broadly, we have heard from our clients, as well as directly from officers, that officers object to coming back to the same residence for domestic violence calls. We hear that officers are skeptical, dismissive, and unwilling to make reports. We are also concerned that protocols, if they exist, for separating a complaining witness and a suspect in a domestic violence situation are not routinely followed.

We acknowledge that, for every bad example, there are examples of positive and appropriate interactions. However, MPD has a special responsibility as a government agency and first responder to constantly strive to close the gaps in making justice accessible and making freedom for survivors of domestic violence real across the District. We appreciate their efforts and understand it is an extremely difficult job, but there is room for improvement.

We encourage the committee to ask the following questions to better understand MPD training and policies around responding to domestic violence situations:

1. *What protocols are MPD officers expected to follow when responding to domestic violence scenes and questioning witnesses and suspects?*
2. *What is MPD's policy regarding second sightings?*
3. *What is MPD's policy regarding mandatory arrests?*
4. *What is MPD's policy regarding uploading evidence collected at the scene of a crime?*
5. *What training, if any, do MPD officers receive on conducting a primary aggressor analysis?*
6. *Who decides which party is a primary aggressor? Are those decisions reviewed?*
7. *Do officers receive performance reviews? What do officer reviews look like? Do officer reviews include a review of the officer's behavior captured on body-worn camera?*
8. *Are domestic violence reports reviewed by someone with specific training?*

Despite Increasing Efforts By MPD to Improve, Officers Routinely Fill Out Proof of Service Forms Incorrectly After Serving Civil Protection Order Petitions

A person filing for a CPO bears the burden of having the Petition, Notice of Hearing and Order to Appear, and any Temporary Protection Order served on the opposing party. This means that a domestic violence survivor often must turn to friends and family members to find someone to serve court documents on their abuser. This can be dangerous for the survivor, and for anyone who agrees to assist. For this reason, survivors often rely on MPD to serve these documents.

The person who serves documents in a CPO case is expected to complete a Return of Service form. If the Respondent fails to appear at the court hearing in a CPO case, a Petitioner can only obtain a CPO by default if there is proper proof of service. Proper proof of service necessitates a complete, correctly-filled out form. When that form is not completed or not completed correctly, judges may require survivors to re-serve their abusers – even though judges are often hesitant to ask MPD to re-serve. This consequence keeps our clients in danger and delays protection order cases. The delay can also cause petitioners to return to court every two weeks until the form is filled out correctly, causing them to miss work, incur travel expenses, and repeatedly find child care. It takes the typical survivor an average of seven times to leave a domestic violence situation. Adding to the existing barriers survivors already face by failing to support expeditious obtainment of CPOs only further compromises and delays that escape.

The completion of Return of Service forms has been the subject of ongoing communications between MPD and court employees. Both sides have made significant efforts in the past several years to train officers and ensure that these forms are filled out correctly and filed with the court expeditiously. We believe that MPD understands the great importance of providing assistance serving respondents in CPO cases. We also recognize that our clients have benefited greatly from MPDs improvement in this area in recent years. However, given the serious ramifications that failure to properly serve a respondent has on domestic violence survivors, we feel compelled to articulate the specific concerns of our clients and common errors we encounter.

When MPD officers complete Return of Service forms, we find that these forms are often incorrect. Common errors include failing to initial next to the title of each document that was served, failing to indicate who was served and to check the corresponding box on the form, failure to write a complete address where the individual was served, failure to print their own name, and failure to indicate a time or time of day (am/pm) for service. These forms are often filed just days before the scheduled hearing, leaving little time to reach out to an officer about the error. With assistance from attorneys, advocates, or MPD officers who staff the Domestic Violence Intake Centers, some Petitioners are able to contact officers and get their forms corrected. This solution, however, is only possible when several circumstances line-up in a Petitioner's favor. Though officers are receptive to feedback when we reach them, varied and busy schedules can make it difficult to reach them in time.

We urge the Committee to ask the following questions:

1. *What training to officers receive on the service of CPO documents?*
2. *How often do officers receive training on service of CPO documents?*
3. *Are officers required to be responsive to calls and emails? What are those requirements?*
4. *Clients often have a business card with a CCN and phone number; how can they use that in order to contact an officer for a form to be corrected?*
5. *What ongoing training or performance review is put in place to ensure training is effective and utilized in the field?*

Having an internal check for reviewing completed Return of Services forms filled out by patrol officers who respond to Petitioners in the field, in addition to the Returns of Service that the Domestic Violence Unit already completes proactively, would help ensure the forms are

correctly completed. We appreciate that there are efforts for ongoing and repeated training for patrol on how to correctly complete a Return of Service form and review of completed forms. However, ensuring that officers receive that training before responding to domestic violence calls is crucial. Additionally, creating a better mechanism for petitioners to contact officers to correct these forms when necessary would help reduce the number of times a petitioner has to request continuances for court hearings.

MPD Does Not Consistently Enforce Child Custody Orders

Legal Aid clients face significant barriers when asking MPD to enforce existing child custody orders. This has included enforcement of custody orders issued by the Domestic Violence Division of the court through Civil Protection Orders, as well as the enforcement of temporary and permanent custody orders issued by the Domestic Relations Branch.

The consistent enforcement of child custody orders is critical in domestic violence cases where such orders are specifically intended to ensure the safety of children and/or custodial parents. Failure to properly enforce an order can put children and their parents at risk. In spite of the importance of these orders, we and our clients have seen MPD officers fail to enforce them, even when there is a clear request for MPD to assist.

In one recent case, a custody order allowed our client's abuser to visit with the parties' minor child for three hours on a Saturday afternoon. The parties exchanged the minor child at the D.C. Superior Court Supervised Visitation Center at noon, but the abuser did not return at 3:00 p.m. as the Order required. Instead, our client's abuser absconded with the child to another jurisdiction, hours away. Despite our client's pleas for help, and despite the Court Order's specific parameters, MPD refused to take a report for parental kidnapping, insisting that they would have to wait 24 hours. Twenty-four hours with an unstable, abusive person – one who has no regard for a court order – is enough time for serious harm to befall a child.

Relatedly, we have also heard several accounts of officers refusing to take parental kidnapping reports. Parental kidnapping is a crime in the District of Columbia, and it can manifest in several different ways. In the absence of a custody order, one parent may cut off communication with the other, and essentially disappear with the child. Though parties legally have joint custody in the absence of an order, this type of concealment is illegal. D.C. Code § 16-1022(a) states that no parent, relative or other person acting on behalf of the parent, may *intentionally conceal* a child from the other parent. Further, pursuant to D.C. Code § 16-1022(b), it is illegal for a parent to take a child with the intent to prevent a lawful custodian from exercising their custody rights.

Although parental kidnapping is a crime, we have had reports from clients of officers refusing to take a police report if there was no existing custody order. On one occasion, our client went to an MPD station after her child was taken to Michigan. Our client was turned away because there was no existing custody order. Eventually, our client had to seek assistance from the FBI in order to retrieve her child because MPD would not assist.

It is also illegal, pursuant to D.C. Code § 16-1022(b)(8), to “take or entice a child from the other joint custodian in violation of the custody order” after a temporary or final order has been issued.

Thus, when there is a custody order in place and a parent violates it, they are both in contempt of a Court Order **and** they are committing the crime of parental kidnapping.

The consequence of MPD failing or refusing to respond to citizens 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. It should not be that a domestic violence survivor must take extreme measures like contacting the FBI to retrieve her child.

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

1. *How are MPD officers trained on the enforcement of custody orders? Are the trainers taught by or training materials reviewed by attorneys with domestic violence or a family law background?*
2. *What ongoing training or performance review is put in place to ensure training on enforcement of custody orders is effective and utilized in the field?*
3. *What training do MPD officers receive on parental kidnapping? What is the source of the information for that training? What ongoing training or performance review is put in place to ensure training is effective and utilized in the field?*
4. *What role does Youth and Family Services Division play in reports of parental kidnapping? How can citizens access this service?*

In this area, our recommendation is that patrol and supervising officers receive scenario-based (online or live) training on the different court orders and custody authorities, as well as parental kidnapping. MPD should also engage in ongoing reviews of police reports and decision-making procedures to identify any quickly address failures to enforce these orders. Additionally, implementing or sharing the department's current, ongoing decision-making procedures regarding the review and follow-through of parental kidnapping complaints and police reports with stakeholders is helpful to us when advising our clients.

Conclusion

As attorneys representing survivors and clients in family court, we understand we are one piece of the puzzle that is our client's lives. We strive to appreciate the role we play and to be thoughtful about the short and long term implications of our role. MPD is another piece of our clients' lives, and sometimes plays a large role at a very dangerous time. Legal Aid highly values the relationships cultivated through our work at the Domestic Violence Centers and appreciates the existing efforts of MPD to respond to domestic violence in the district. We believe it is critical to keep an open dialogue with stakeholders, service providers and survivors of domestic violence in order to continuously improve the services we provide to the community. We appreciate that this is an ongoing conversation and are looking forward to following-up on the expressed concerns and MPD's response.