

**Testimony of Charlie Whitman-Barr
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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

March 11, 2021

The Legal Aid Society 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 four main areas of concern that have been exacerbated during the COVID-19 pandemic and the many police protests in the District over the past year:

- MPD’s handling of domestic violence matters during the COVID-19 pandemic, with specific reference to service and enforcement of Civil Protection Orders and Temporary Protection Orders;
- MPD officers’ assessment of who is the predominant aggressor in their first response to a domestic violence call;
- MPD’s interpretation of the legal considerations and practices with regard to reports of parental kidnapping; and
- MPD’s efforts to reduce community members’ fear and anxiety of contact with officers following its response to police protests and growing racial tensions in the District.

This has been a difficult year for the country and the District. A global pandemic and national protests have swept the nation from coast to coast. District of Columbia residents have felt a unique burden as the city has been centerstage. During this time, Legal Aid’s Domestic Violence (DV)/Family Law Unit attorneys have continued to work with domestic violence survivors. Supplementing our long-standing DV/family law practice, we now staff a new Petition

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 89 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.

Assistance Project, in partnership with DC SAFE, assisting survivors file for Civil Protection Orders online and providing ongoing representation. Our attorneys also staff the new Family Law Assistance Network, which provides legal advice and representation to survivors seeking support in family court matters. Through our work, we bear witness to the added challenges that await survivors who are fleeing abusers and seeking protection in these unprecedented times. 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 domestic violence survivors amidst the turmoil of this past year.

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 officers work with survivors.

MPD's Outreach to Legal Aid Following Last Year's Oversight Hearing

Legal Aid testified at last year's MPD Oversight Hearing where we shared the ongoing concerns and experiences of our clients.² Following last year's testimony, we were encouraged when MPD reached out to address those concerns. Legal Aid attorneys worked with MPD to develop a roll call training for officers on responding to domestic violence calls. We also had the opportunity to speak with representatives from MPD to get clarification about police policies that affect domestic violence survivors. MPD's willingness to incorporate the survivor perspective into their trainings and policies was refreshing. Unfortunately, shortly after these conversations were initiated, the COVID-19 pandemic struck and progress on these issues stalled. We hope we can continue to work together to support survivors, including resuming conversations that were cut short by the initial COVID shutdowns.

Despite Significant Efforts, We Continue to See Our Clients Facing Issues with the Service of and Enforcement of Civil Protection Orders and Have Felt Survivors' Needs Being Lost Over This Past Year

Over the past year, we have unfortunately seen the needs of domestic violence survivors getting lost as MPD has strained to address other priorities. Specifically, we have seen regression in areas where MPD had made great strides such as service of process and enforcement of protection orders. We understand there will be necessary adjustments to operations and sacrifices that need to be made in unprecedented times like these, but we believe it is still the duty of MPD to ensure the needs of the city's most vulnerable residents are met.

Some changes in operation have resulted from the fact that D.C. Superior Court has been largely closed since March of 2020 due to the COVID-19 pandemic. Most Court operations, at this time,

² Testimony of Charlie Whitman-Barr, Staff Attorney, Family/Domestic Violence Law Unit Legal Aid Society of the District of Columbia Before the Committee on the Judiciary and Public Safety Council of the District of Columbia Public Hearing Regarding: Performance Oversight for MPD (Jan. 16, 2020). Available at: <https://www.legalaiddc.org/wp-content/uploads/2020/01/Legal-Aid-MPD-Oversight-Testimony-FY19-20YTD-FINAL.pdf>

are being conducted remotely, including those of the Domestic Violence Division. While the Court has long provided for the option to file CPO petitions online, petitions are now exclusively being filed this way. Additionally, CPO cases that were previously set for a hearing two weeks after a survivor filed have been rescheduled numerous times and are now being set several months after the filing date.

One thing that has not changed is that the person filing for a CPO, known as the Petitioner, still bears the burden of having the Petition, Notice of Hearing and Order to Appear, and any Temporary Protection Order served on the opposing party, known as the Respondent. Domestic violence survivors often turn to friends and family members for help with service. This has always been dangerous for survivors and for anyone who agrees to assist, but the danger has increased with the risk of exposure to COVID-19. For these reasons, survivors are relying even more heavily on MPD to help serve these documents. The person who serves documents in a CPO case is expected to complete a Return of Service form which is filed with the Court as proof of service. MPD assists with service proactively by sending officers in the CPO Unit to known addresses for Respondents. With this type of service, the Petitioner is not present and MPD officers send the Return of Service directly to the Court. Petitioners can also call on MPD for help with service at any given time if they know a Respondent's location. MPD officers from the local District station will meet them at their location to assist with service, complete the Return of Service form at the scene, and give the paperwork to the Petitioner to file with the Court.

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 and 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. Considering the delays in court proceedings due to COVID-19, judges largely expect Petitioners to serve the Respondent before the first hearing given the amount of time available to serve. It takes the typical survivor an average of seven times to leave a domestic violence situation. Adding to the existing barriers and lengthy COVID-19 delays survivors are already facing by failing to support expeditious obtainment of CPOs only further compromises and delays that escape.

At our testimony last year, we remarked on the fact that the service of Civil Protections Orders had improved significantly as a result of the efforts and partnership between MPD and the Court. In the past year, unfortunately, numerous clients have seen their protection orders go unserved and unenforced. In an alarming number of cases, even after months of waiting for a hearing, our attorneys have checked case dockets and observed that MPD recorded no attempts to serve the Respondent.

Our clients have also had varied experiences with incomplete service and lack of enforcement. Two examples are included here:

1. In one case, our client was granted custody through her Temporary Protection Order and called MPD for assistance with service and enforcement of the Order since her children were with Respondent at the time. Instead of serving the Respondent with the required paperwork, the MPD officer read the Temporary Protection Order out loud to the

Respondent and then allowed him to go back into his home. The client did not have a printed copy of the paperwork at the time. Once the Respondent went back inside, he refused to come out. MPD told our client there was nothing they could do, even though the Respondent still had their daughter in the home and our client had a Court Order for the child to be returned. This client followed up with MPD repeatedly and was told there was nothing they could do to enforce the Order if the Respondent refused to open the door.

2. Another client filed for a Civil Protection Order, and MPD assisted with service but refused to enforce the provision of the Temporary Protection Order that vacated the Respondent from the residence. MPD officers served the Respondent with the necessary paperwork but told our client they would not vacate the Respondent because neither party was on the lease and they were both living with a third-party leaseholder. MPD refused to enforce the Court Order and left the client in the home with their abuser.

The time where a survivor is trying to leave an abusive relationship is the most dangerous time they will face. The Intrafamily Offenses Act, as a result, provides critical relief to Petitioners in Civil Protection Order cases, such as the ability to vacate an abuser from the home. Failure to enforce a vacate provision after having served a Respondent leaves a survivor dangerously vulnerable to further abuse or death.

One additional unique service issue that has arisen amidst virtual Court operations is that Petitioners do not receive physical copies of their paperwork. The responsibility of printing the paperwork for service now falls on survivors. It is difficult for individuals who do not have access to a home printer to print their paperwork to be able to call MPD and request help with service. Public libraries are closed or operating on limited hours, private printing services are costly, and going to print in any public place carries health and safety risks due to the pandemic. While we have been told that Petitioners can go to their local MPD district station for help with printing the paperwork and service, we have heard very mixed responses from our clients. Some clients have been assisted in this way but others have been told that is not something MPD does.

This Council passed new amendments to the Intrafamily Offenses Act this past year, which will go into effect in the near future. We encourage this Committee to follow-up with MPD about how it plans to ensure officers are trained on the changes to the law for proper enforcement. The recent amendments also mandate a six-person domestic violence unit within MPD. We also encourage this Committee to ask for specific information on what changes will be made to the Civil Protection Order Unit of MPD and how that will ensure more effective service of protection orders for Petitioners. We welcome the opportunity to work with MPD on the creation and maintenance of that unit and to help ensure they are best serving survivors.

We appreciate the public health emergency presents MPD with unique challenges to ensuring the safety of Washingtonians and hope to work productively with MPD to meet those challenges. We encourage the Committee to ask the following questions to advance that dialogue and ensure that the quality of service and protection is not diminished in difficult times:

1. What policies does MPD follow around enforcing Temporary Protection Orders during COVID-19?
2. What policies do officers follow on enforcing vacate provisions of Temporary Protection Orders?
3. What policies do officers follow on enforcing custody provisions of Temporary Protection Orders?
4. What is the official policy on providing printed copies of CPO paperwork to Petitioners in CPO cases who are seeking MPD assistance with service?

We Continue to be Concerned About How MPD Officers Are Assessing Who the Primary Aggressor is in Domestic Violence Situations

Over this past year, we have heard from survivors who have been arrested after they have called the police for help. We believe that there is more work to be done to train officers and supervisors on assessing the primary aggressor in domestic violence situations. We urge MPD to invest more resources to improve officers' understanding of the dynamics of domestic violence and how that impacts survivors during interviews and how officers can better respond to and support survivors. We share the following examples with this Committee to illustrate what we are hearing from our clients:

1. In one case, we heard from a survivor who was arrested after defending herself from the ongoing attack of an abuser who had hit and stomped her multiple times. MPD arrested the survivor but not the abuser despite being informed of his assault. MPD did not take any photographs of the survivor's injuries, and since she was arrested, she was unable to file a police report of her own for the violence she endured.
2. Another client shared that she and her children's father were arguing when he pushed her and she fell to the ground, scraping her knees. When she defended herself, her abuser called the police. She shouted in the background in hopes the dispatcher would hear that she had been assaulted first. Our client and her abuser were still arguing when the police arrived. She flagged the police down for help. Our client had two newborns waiting for her in the house and was afraid to tell MPD what happened. She told them she and her abuser had been arguing. Despite the fact that she had visibly bloody nails and knees, the police did not ask further questions. She was arrested and charged with simple assault. The police took photographs of the abuser but did not take any photographs of our client's injuries.

There are a number of significant and dangerous consequences to wrongfully determining the primary aggressor in a domestic violence situation. First and foremost, a wrongful arrest is traumatic for the survivor, further invalidates their experience, is likely to prevent the survivor from reaching out to the police for help in the future, and emboldens abusers going forward. Improper primary aggressor analyses are also concerning when, as in both client examples above, critical evidence that could explain self-defense or support a survivor's experience is not documented. It is our understanding of MPD policy that when one person in a domestic dispute or simple assault incident is arrested, the other is prohibited from filing their own report. When police incorrectly assess a survivor to be the primary aggressor and make an arrest based on that

error, under this policy, the survivor is forever prohibited from filing a police report based on that same incident. They may also be prevented from mounting an adequate defense, if necessary. This creates a barrier to justice for survivors that cannot be overcome.

We acknowledge that, for every bad example, there are examples of officers exercising good judgment in difficult situations in conducting primary aggressor assessments and subsequent arrests. 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 real for domestic violence survivors across the District. We encourage the Committee to ask the following questions to better understand MPD training and policies around responding to domestic violence situations, with specific regard to determining the primary aggressor:

1. Who decides which party is a primary aggressor? How are those decisions reviewed?
2. Do officers receive performance reviews of their responses to domestic violence-related calls? What do officer reviews look like? Do officer reviews include a review of the officer's decisions in the context of what is captured on body-worn camera?
3. Are domestic violence reports reviewed by someone with specialized training?
4. What is the reasoning behind MPD policy prohibiting someone from making a police report if they were arrested during the incident? Under what circumstances can someone file a report about an incident in which they were arrested but the charges were dropped?

We Continue to Hear from Our Clients About Experiences Where MPD Refuses to Take Reports for Parental Kidnapping

Following last year's testimony, we had the opportunity to briefly speak with MPD representatives about the Department's approach to parental kidnapping. 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.

Our written testimony from last year included a discussion on parental kidnapping laws, specifically that 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. This provision does not require a custody order to be in place. 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. 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; under this provision, when there is a custody order in place and a parent violates it, that parent is both in contempt of a Court Order **and** committing the crime of parental kidnapping.

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 had just been released from prison,

refused to tell her where he and the children were for days. This client attempted to get help from MPD but was told she had to have a custody order. The father was concealing the children from our client, which is prohibited under D.C. Code § 16-1022.

Another client reported to Legal Aid that her child's father's cousin had taken the children and the cousin refused to return her children. This client reached out to MPD for assistance with retrieving her children from the third party but MPD still refused to assist without a custody order. MPD refused to take a police report even though this third party had no legal rights to our client's children.

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. This is true now, more than ever, when access to D.C. Superior Court is somewhat limited, and emergency situations arise.

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

1. 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?
2. What ongoing training or performance review is put in place to ensure training is effective and utilized in the field?
3. What role does Youth and Family Services Division play in reports of parental kidnapping? How can District residents access this service?

Domestic Violence Survivors Are Reporting Reluctance to Call the Police for Help After Witnessing MPD's Response to Police Protests in the District

Over the past year, the District of Columbia has had numerous protests against police brutality, with subsequent and varied responses by MPD. Black and brown residents of this community have seen MPD's response in their streets and on the news. As a result, we have observed a growing reluctance among our clients to call the police due to concerns about how officers are likely to respond. In our work with domestic violence survivors, specifically, we have seen how MPD's response to protests have affected our clients' willingness to call MPD for help.

Clients have shared with us that they are reluctant to call the police for help over concerns for their own personal safety or the safety of their family. Domestic violence involves such close relations as intimate partners and blood relations, making the decision to call the police an already-difficult hurdle to overcome. We have heard from clients that they are terrified for their own lives as well as the lives of their abusers due to the expectation of police brutality. One client, for example, a mother filing for a protection order against her son who had assaulted her

on numerous occasions, refused assistance from MPD with service out of a fear for her son's life. The client was terrified that the police would kill her son while trying to serve him.

It is disheartening to hear that some survivors, feel the need to choose between their own safety and the safety of their family or even their abuser when it comes to calling the police for help. On behalf of our clients, we urge the Committee to gather further information about MPD training, policies, and practices in this area, including:

1. What training do officers receive on racial bias, including implicit bias, in the context of domestic violence?
2. What ongoing training or performance review is put in place to ensure training is effective and utilized in the field?
3. What efforts does MPD make in its hiring practices to strive to have a more representative police force for the District of Columbia?
4. What efforts does MPD make in all of the District's wards to improve community relations and trust with MPD?

Conclusion

District residents, including those who work within MPD, have certainly felt the strain of the past year as District agencies and communities have had to adapt and respond to a range of ongoing events. MPD's response to domestic violence survivors remains a critical point in survivors' journeys to extricate themselves from abusive situations. Even in these challenging times, the decisions that MPD officers make carry long-term impacts for survivors. The questions that we suggest the Committee asks today are aimed at getting a better understanding of how MPD is adapting to providing protection to the community during a global pandemic and protests, and ensuring appropriate decision-making when responding to situations involving domestic violence. More broadly, our testimony shares the barriers our clients continue to face as they seek justice in a time of Court shutdowns and limited resources. We believe it is critical to keep an open dialogue with stakeholders, service providers and domestic violence survivors in order to continuously improve the services we provide to the community. We appreciate that our previous progress was derailed by the unprecedented outbreak of COVID-19 but are open and eager to continue those conversations.