

**Testimony of Charlene 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**

**February 17, 2022**

The Legal Aid Society of the District of Columbia<sup>1</sup> 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 are creating barriers to domestic violence survivors seeking and maintaining their safety in the District of Columbia:

- MPD’s failure to consistently enforce custody orders, specifically those involving parents who are domestic violence survivors;
- MPD’s alarmingly insufficient response to attempted reports of parental kidnapping; and
- MPD’s denying domestic violence survivors access to photographic and video evidence that survivors need to pursue civil protection orders to keep themselves and their families safe.

Over the past two years, in the wake of the COVID-19 pandemic, the Court and other District agencies have been working to adapt to meet the needs of the community, including continuing to hear custody matters and civil protection order cases. During this time, Legal Aid’s Domestic Violence (DV)/Family Law Unit attorneys have continued to work with domestic violence

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<sup>1</sup> 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 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](http://www.LegalAidDC.org), and our blog, [www.MakingJusticeReal.org](http://www.MakingJusticeReal.org).

survivors, helping survivors file for Civil Protection Orders and providing ongoing representation. Our attorneys also continue to staff the 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 persistent challenges that await survivors who are fleeing violence and seeking protection. 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 in these continually difficult and unprecedented times.

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.

### **MPD's Outreach to Legal Aid Following Previous Oversight Hearings**

Legal Aid testified before this Committee in 2020 and 2021 about our clients' experiences with MPD and our ongoing concerns over MPD's response to domestic violence survivors. Following each of our previous testimonies, MPD reached out to talk about their response to domestic violence and create an open line of communication. We have been encouraged by MPD's willingness to hear feedback and provide solutions. Nonetheless, we have repeatedly brought up concerns in testimony about failures in enforcement of custody orders and parental kidnapping laws, and we have seen no change. We continue to work with clients who have gone to MPD to report a parental kidnapping and have been turned away from even making a report. To date, we have not been able to get satisfactory clarification about police policies on these two issues that affect our clients' ability to stay safe as survivors of domestic violence navigating custody issues with their abusers.

### **Our Clients are Unable to Get Help from MPD to Enforce Custody Orders**

The COVID-19 pandemic created many barriers for the residents of the District as well as the agencies operating to serve those residents. The city has had to adapt priorities, policies, and protocols over these past few years as a result. Through these unprecedented times, domestic violence survivors continue to face challenges to ensuring their safety, and the pandemic has led to specific challenges for survivors who share children with their abusers. In an ongoing global pandemic, there are few safe alternatives for domestic violence survivors who need help with enforcing custody orders. Survivors often cannot safely reach out to the other parent to resolve issues with following a custody order, and they may not have family members or friends they can rely on to assist either. The Court-operated Supervised Visitation Center remains closed to the public, leaving the Court and families with limited safe options for exchanges and oversight.

As a result, the Court will often issue very specific and detailed custody orders that police should enforce when one party fails to comply.

Year after year, however, Legal Aid attorneys speak to numerous clients who have gone to MPD to enforce a custody order without success. We have included four examples from the past year here:

1. In one case, our client reached out to Legal Aid after the father of her children refused to return the minor children, pursuant to a court order, after a weekend visit. The client went to MPD for help getting the children back. MPD went to the father's home, but he did not answer. She asked to file a missing person's report but was told they could not help her since it was a custody issue. More than two months later, that client has still been unable to find her children.
2. In another case, the father of our client's child snuck into her home through a window and took the child without her permission or knowledge. At the time, the client had a permanent custody order from Maryland granting her custody. When her child was taken, our client registered her custody order in the District and obtained an order from D.C. Superior Court granting her sole legal and physical custody and ordering MPD to assist in retrieving the minor child. The client brought that order to MPD and went with officers to the father's home to pick up her child. The officers knocked on the door, but when the father refused to open the door, the police told her there was nothing more they could do.
3. In another case, our client was out of town, but arranged with family members to pick up and drop off the child for the father's parenting time that weekend. The father refused to return the child to the client's family. The father proceeded to keep the child home from school for three days. The client called the police from out of town, but they told her there was nothing they could do. When she returned to D.C., the client went to MPD, and they told her they could not even take a report (for parental kidnapping, family disturbance, or anything else). At that point, the father had withheld the child over 72 hours beyond the scheduled exchange. A Legal Aid attorney and the client worked together to discover where the father was keeping the child, which turned out to be Prince George's County, MD. The client asked for help from Prince George's County police to get her child back and they helped her get her child that same night.
4. Finally, one of Legal Aid's clients went to MPD for assistance enforcing a very clear custody order that the parties were to exchange the minor child at a particular time, on a particular date, and at a particular location. When the father did not show up to the exchange, our client went to MPD for assistance. MPD went to the father's home and spoke with him, but told our client there was nothing they could do because it was a custody matter. Our client went again to MPD the next day for help and was told the same thing. Once again, the police did not enforce the existing order.

A court order with clearly defined parenting time must be sufficient for MPD to enforce custody orders. However, we know that even when judges include language specifically ordering the police to assist with enforcement of custody orders, our clients are still denied help. In the past, we have advised our clients to contact Youth and Family Services Division for help, but even that rarely bears results. MPD's lack of enforcement of custody orders is dismissive of the Department's duty to protect and serve the District's residents and could prove to be lethally dangerous as we continue to see an increase in homicides, with many involving domestic violence.<sup>2</sup>

We encourage the Committee to ask the following questions about how domestic violence survivors can get help from MPD with enforcing custody orders to ensure that the quality of service and protection is not diminished in difficult times:

1. What protocols should parents in the District follow to receive help with enforcing custody orders?
2. What policies does MPD follow around enforcing custody orders issued by a court?
3. What legal support is there for those policies?

### **We Continue to Hear from Our Clients that MPD Refuses to Take Reports for Parental Kidnapping**

Following Legal Aid's prior testimony at oversight hearings, we had the opportunity to briefly speak with MPD representatives about the Department's approach to parental kidnapping. We were also provided with contact information for MPD and told to reach out when our clients experienced specific challenges. While we appreciate MPD's follow-up to our testimony to address issues, we remain concerned that there is a disconnect between the law in the District of Columbia on parental kidnapping and the enforcement of this law by MPD. We disagree with the Department's limited reading of the law on parental kidnapping and are discouraged by their unwillingness to meaningfully discuss taking a different approach.

Our prior written testimony included a discussion on parental kidnapping laws.<sup>3</sup> In the absence of a custody order, a parent may not impermissibly cut off communication with the other parent and essentially disappear with the child. This type of concealment is illegal under the law. 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

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<sup>2</sup> *Crime Cards*, Metropolitan Police Department, <https://dcatlas.dcgis.dc.gov/crimecards/>.

<sup>3</sup> See Written 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 (Mar. 11, 2021).

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 about officers who refuse to take a police report where there is no existing custody order as well as in situations where a custody order is in place. In all of the situations we mention above, where one parent withheld a child in violation of a Court Order, the police still refused to take a parental kidnapping report. MPD thus leaves our client community with no mechanism to retrieve their children when the other parent conceals them.

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 and act swiftly to ensure that a parent is not deprived of their custody rights for months. This is true now, more than ever, when access to D.C. Superior Court is somewhat limited due to the COVID-19 pandemic.

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

1. What policies do MPD officers follow when determining whether to take a report for parental kidnapping? What is the legal support for that policy?
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?
3. What ongoing training or performance review is put in place to ensure training is effective and utilized in the field?
4. What do parents in the District of Columbia need to do to make parental kidnapping reports?

### **Our Clients are Being Denied Access to Evidence that is Critical to Ensuring their Safety**

For years, Legal Aid has worked with MPD to exchange evidence in order to support survivors seeking safety and justice in the District. In the past, Legal Aid has been able to send subpoenas to MPD, through its Office of the General Counsel, for evidence such as body-worn camera

footage and photographs of injuries or property damage taken by MPD. The evidence we received in response was critical in our efforts to secure protection orders and other relief for our clients. However, over the past two years, we have seen fewer responses and an increasing number of denied requests. At the start of the COVID-19 pandemic, we stopped receiving regular responses from MPD on our subpoenas. When the responses started to come back in, our requests were often denied.

The responses that come along with our regularly denied subpoenas often state that records/documents could not be released due to an ongoing investigation or that there were no photographs taken on the scene. We are concerned about the response that evidence cannot be released due to an ongoing investigation by MPD for two 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. Second, even where a client does want to move forward with a criminal case, that decision is not up to them. By the time the decision has been made regarding criminal charges, it is often too late for a client to be able to use evidence in their case for a protection order. In our experience, the civil protection order process moves much quicker than a criminal case. In a civil protection order case, there is typically a two-week turnaround time between filing for and obtaining a final protection order. We have also had reason to be concerned, in some cases, when we were told there were no photographs associated with a particular incident. This response is understandable where there was no evidence to photograph, but we have received this response for cases where our clients reported being actively injured and bleeding or where they actually observed MPD taking photographs. We are concerned there are discrepancies between what our clients are telling us and the responses we are receiving from MPD regarding critical evidence that would help victims pursue options to make them safe.

We have reached out to MPD, and in December of 2021 were given an alternative process to request evidence through the Freedom of Information Act (FOIA). This process included obtaining copies of our clients' photo ID and presenting proof of our representation. However, even when we provided all this information to MPD, we were still denied access to evidence. Our FOIA requests received denial letters citing the D.C. Code § 2-534 (a)(2A) exemption to disclosure in cases involving domestic violence, sexual assault, and stalking, as well as where footage was taken inside a person's residence. We were also denied evidence on the basis that investigations were ongoing. These exceptions are meant to protect the personal privacy interests of crime victims, and to prevent an unwarranted invasion of personal privacy under D.C. Code § 2-534(a)(2). The purpose of FOIA is to promote disclosure, not inhibit it, and where doubt exists, it should be resolved in favor of disclosure. We believe that where a victim of a crime requests the evidence taken by MPD of that crime, they should be permitted access to photographs and video footage of their own bodies and homes. This application of the law is found in MPD's own policy. In the General Order for the Body-Worn Camera Program, SPT-302-13, there is a process described for subjects of body-worn camera videos to view and obtain access to these

videos. We are unsure why our clients, who are subjects in these videos, are being denied access to critical evidence when it is their own personal privacy that is meant to be protected. Further, the Department's approach is especially concerning given that our clients are attempting to access these materials in order to keep themselves safe.

Our clients, who are domestic violence survivors, are being denied access to critical evidence in their own cases, including photographs of their own body, property, and homes. We urge the Committee to continue to gather further information about MPD policies, including:

1. What policies does MPD follow on responding to subpoena requests for domestic violence survivors?
2. What qualifies as an ongoing investigation? What impact does an ongoing investigation have on the decision to release evidence in response to a subpoena?
3. 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?
4. What follow-up is done with officers to ensure all digital evidence has been associated with a specific incident report?

### **Conclusion**

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 policies of MPD and the decisions that individual officers make carry long-term impacts for survivors. 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. More broadly, our testimony shares the barriers our clients continue to face as they seek safety and justice in a time of limited resources. 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.