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Testimony Before the District of Columbia Council
Committee on Judiciary and Public Safety
June 21, 2018

Public Hearing:
B22-780: Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018

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Introduction

Good afternoon Chairman Allen and members of the Committee. My name is Aubrey Edwards-Luce. I am a Senior Policy Attorney at Children’s Law Center.¹ I am testifying today on behalf of Children’s Law Center, which fights so every DC child can grow up with a loving family, good health and a quality education. With more than 100 staff and hundreds of pro bono lawyers, Children’s Law Center reaches 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. Nearly all the children we represent in custody and neglect cases are survivors of intrafamily offenses.

I appreciate this opportunity to testify about the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 (“the Act”). The Act proposes changes to DC law that will grant greater access to the Domestic Violence (DV) Court and benefit DV and stalking victims in a number of ways. We understand other witnesses will be testifying about volume of filings in the DV court and how the Act will assist adult survivors,² but we are here to support the bill because children are survivors whose safety and wellbeing are significant impacted by the efficiency and effectiveness of DC’s civil protection order process.

Children are Survivors Too

Unfortunately, like adults, children are survivors of intrafamily violence too. Children are witnesses to domestic violence. They are unintentionally harmed during

domestic violence incidents. And sometimes children are survivors of intentional intrafamily offenses, sexual abuse, or sexual assault. As survivors, children have significant stake in the effectiveness of DC's Civil Protection Order (CPO) process.

Children Witness Domestic Violence

Witnessing domestic violence can damage the wellbeing of children. In homes where domestic violence is happening, between 80-90% of the children can give painful details about the violence taking place in their homes.³ This is very distressing given that between 3.3 and 10 million children witness or are exposed to DV every year.⁴

While not all children experience negative effects, those who have been exposed to domestic violence are more likely than other children to exhibit behavioral, social, emotional, cognitive, attitudinal, or long-term problems.⁵ These problems can include depression, anxiety, low self-esteem, difficulty with concentration and task completion in school, lack of conflict resolution skills, pro-violence attitudes, delinquency, and substance use.⁶ Domestic violence exposure during childhood may lead to another generation of domestic violence. A study showed that men who were exposed to domestic violence during their childhood were nearly four times more likely than their peers to be adult domestic violence perpetrators.⁷

Children are Often Abused in Homes Where Domestic Violence is Occurring

Child abuse and domestic violence often occur together. Researcher have found that amongst all the homes where either domestic violence between adults or child

abuse were occurring, 30-60% of these homes had both forms of intrafamily violence occurring inside their walls. ⁸ Children's Law Center attorneys frequently become aware of the DV occurring in the District when children are injured during a domestic violence incident. For example, CLC has a client who was one-year-old when the child sustained bruises on their torso while one parent was intentionally assaulting the other. We can't know how many incidents of domestic violence the child witnessed before this one that left a mark, but we do know there are many children who are caught in the intersection of domestic violence and child abuse. In 2017, DC's Child and Family Services Agency received 992 hotline reports where domestic violence was the alleged form of child abuse and neglect. In fact, the number of hotline calls regarding domestic violence has risen every year since 2015.⁹ Some of these children become subjects of child neglect court cases where judges can issue protection orders when necessary.

Children Survive Intentional Acts of Violence

Another segment of child survivors do not require child welfare system involvement, but they do need access to civil protection. This group includes children and youth who are the direct targets of DV, intimate partner violence, and sexual assault and abuse by adults who are not their parents, guardians, or custodians. They are children who are abused by their parent's partners, teens who are assaulted by their own romantic partners, and youth who are being commercially and sexually exploited by adults in exchange for housing or safety. Whether it is a 16 year-old who was

assaulted by her girlfriend, or a 13 year-old who was being sexually exploited by his pimp, these children are also survivors. When DC's children need civil protection from their assailants, it is essential that this relief be readily available.

Protective Orders Can Help Children Too

The DC Code allows judicial officers to issue Civil Protection Orders (CPOs) that can provide a variety of relief to the petitioner, including (but not limited to): directing respondents to stay away from the petitioner, awarding temporary custody of any children of the parties, awarding visitation rights, or directing the respondent to relinquish any firearms.¹⁰ Going through the process of obtaining a CPO can be very risky for the survivor.¹¹ Studies suggests that the taking on the risk of obtaining a CPO often provides survivors with number of benefits such as improved senses of well-being, self-esteem, and safety after receiving civil protection orders.¹² . Through our experiences in child neglect and child custody cases, we have seen some specific ways that protective orders can help the three types of child survivors identified above.

How CPOs Can Help Children who Witness DV

One way that CPOs help children who witness DV is by preventing repeated exposure to domestic violence. Repeated exposure to DV can have cumulative negative effects. For example, children who have been exposed to domestic violence two or more times are at a greater risk for dissociation, i.e., a detachment from reality, than their peers who were exposed to DV only once.¹³ When specifically crafted to address the

unique ways that perpetrators attempt to control survivors who are seeking protection, such as threatening the survivor parent in front of the child or at the child's school at the end of the school day, CPOs can narrow the risks that child is repeatedly exposed to DV.

CPOs can support the testimony of children who witness domestic violence. When prosecutors ask these children to testify in criminal proceedings against the perpetrator, child advocates often have to evaluate the necessity of the child's testimony and the potential distress the child will experience by facing the alleged perpetrator and oppositional attorneys while testifying. Typically, child advocates will urge for important facts to be presented through other evidence or witnesses wherever possible. However, sometimes the child's testimony is essential to the case. In those situations, CPOs can provide information that supports the credibility of the child's testimony and ultimately helps to obtain a guilty verdict.

In our experience, children who witness DV also gain intangible benefits from seeing their survivor parents acquire CPOs. The CPO helps quell the anxiety of some children who are in foster care and are worried about their survivor parents' safety. For some youth, just knowing that the police know what to do if their parent calls for help makes them less likely to leave their foster home to make an unauthorized visit to check on their parent. Additionally, knowing that their survivor parent has taken some steps

to protect themselves allows a child who witnessed DV to see a nonviolent way to overcome serious problems.

How CPOs Can Help Children who are Abused in Homes where DV Occurs

The information contained in CPOs can help children in neglect and custody cases. As independent investigators, our guardian *ad litem* attorneys often consult reports made during protection order proceedings to get a holistic picture of our clients' family dynamics, risks to their wellbeing, and the efforts their parents have taken to keep them safe. The history we gain from protection orders informs our best interest recommendations about whether the child needs to have a neglect and abuse court case, what services the child and parents need, where the child should live, and what visitation should look like.

The timely acquisition of CPOs can prevent children from being separated from their parent. When the survivor parent has obtained a CPO and taken other reasonable steps to protect the child from being harmed by or exposed to domestic violence, it forces people in the child welfare system to closely examine whether the child can safely remain with the surviving parent. Because research shows that separation from a parent can be very traumatic for children, CPOs typically are a factor that supports a recommendation that the child should remain with the petitioner parent. Even when concerns for the child's safety do not allow the child to remain with the surviving

parent, the existence of a CPO can be a protective factor that weighs in favor of allowing the child to safely visit with the surviving parent and any siblings in their home.

When the survivor parent accesses a CPO, the CPO often helps a child in custody cases. CPOs also help the child achieve custody with the survivor parent. CPOs frequently contain judicial findings of an intrafamily offense. This finding has significant impact in subsequent child custody cases. After a judge finds that an intrafamily offense occurred, the burden of proof in the custody case shifts to the offending parent to show why he should share physical and legal custody of the child with the survivor parent.¹⁴ This burden shift aligns with the best practice of maintaining the relationship between the non-offending parent and the child.¹⁵

How CPOs Can Help Children Who Survive Intentional Acts of Violence

Children and youth who survive violence from adults and peers can benefit from the empowerment that CPOs can bring, as well as specific orders from the court. Approximately 10% of high school students report experiencing physical dating violence in the last year.¹⁶ Under the current DC Code, survivors of teen dating violence can obtain CPOs that stop the perpetrator from harming or threatening the survivor in person or online.

CPOs can be very important for children who are being commercially and sexually exploited. Such children and youth typically have a difficult time obtaining criminal protection orders because the burden of proof is so high and the risks of

confronting the trafficker can be great. CPOs offer an alternative means to obtain some protection from their assailants. When a criminal case is initiated, prosecutors can use CPOs as evidence of the exploitative nature of the relationship between the youth and the adult defendant. This can help obtain a guilty verdict.

Children’s Law Center Supports B22-0780

The Children’s Law Center supports B22-0780, The Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 (“the Act”). We are pleased to have been part of a community of advocates for survivors who worked together on goals of making DV court about intimate violence that needs a specialized court and ensuring access of special populations. The amendments contained in the Act have been drafted in such a way that a wider group of vulnerable children and youth can also request protection through the DV unit. The remaining sections of my testimony review the aspects of bill that Children’s Law Center views as strengths, the areas in which the bill could be improved, and general recommendations to enhance the CPO process for children and youth.

Strengths of B22-0780

One of the primary strengths of the Act is that it will free up DV court resources to better serve petitioners who experience crimes of a familial or intimate nature. By excluding “persons related solely by a landlord and tenant relationship,” from the new definition of household member the DV Court will be able to more expediently address

the petitions of survivors of dating violence, domestic violence, intimate partner violence, and sex trafficking.¹⁷

Another strength of the bill is that it creates definitions of household member and intimate partner that clearly apply to the relationship between a child and their parent's cohabitating partner and to victims of non-familial sex trafficking.

Additionally, Children's Law Center supports the Act's inclusion of amendments that allow youth (or their parent, guardian, custodian, or other appropriate adult) to petition for civil protection if a person with whom they do not have a significant relationship sexually abuses or assaults them. Sexual assault and abuse are intimate crimes by nature, regardless of the relationship between the child and the perpetrator. Therefore, we support the DV Court as the proper place for child survivors to seek civil protection.

Lastly, we are excited to see that the Act proposes to add staff to the DV unit of Metropolitan Police Department (MPD). We understand that effectuating service for temporary orders of protection can be a challenging and time consuming task. By adding more staff and also allowing the court to extend a temporary order in increments up to 28 days, we believe the Act will promote more efficient and effective service.

Improvements for B22-0780

While the Act has a number of strengths, there are a few points of clarity needed. First, the definition of "sexual abuse" is not defined in the Act or by any section of the

DC Code that the Act refers to. Proposed § 16-1003 (b)(2) and (3) of the Act allows minors between the ages of 12 and 16 (or their parent, guardian, custodian, or other appropriate adult) to petition for a protection order for the youth if they have been sexually abused or assaulted. While we support this expanded access to CPOs for youth, we are concerned that the DC law that the Act references, DC Code § 22-3001 (10), contains a definition for significant relationship, sexual contact and sex act, but does not contain a definition of sexual abuse. CLC recommends that the Act reference the definition of sexual abuse found in DC Code § 4-1301.02 (1)(A)(ii). To be most comprehensive, we recommend that the Council amend the definitions of sex trafficking referenced in DC Code § 4-1301.02 (1)(A)(ii) and (15A) to include a reference to the local definition of sex trafficking of children found in DC Code § 22-1834(a).¹⁸

While Children’s Law Center supports the addition of allegations of coerced commercial sex acts into the list of offenses found in proposed § 16-1003 (a)(3), we are also concerned that this addition does not reflect the federal definition of severe forms of trafficking, which states that coercion, force, and fraud are not necessary elements for the sex trafficking of children.¹⁹ Therefore, we recommend that proposed § 16-1003(a)(3) be edited to reflect that coercion isn’t necessary when the petition alleges that the victim is a minor.

Additionally, we recommend that the committee closely examine the effect that the adult filing requirement in Proposed § 16-1003 (b)(3) will have on the rate youth will

disclose sexual abuse and engage in the CPO process. Proposed § 16-1003 (b)(3) requires for an adult to file on behalf of a youth who is sexually abused by someone they have a significant relationship with. Research indicates that some youth view adult involvement as a barrier to pursuing CPOs.²⁰ As currently written the Act may unintentionally dissuade a teen from disclosing sexual abuse by a coach or a religious leader and deny the youth the potential empowerment that often accompanies obtaining a CPO. Advocates have also indicated that youth are deterred from pursuing a CPO for intimate partner violence from the fear of having to disclose to their parents. We understand that parents of youth under the age of 17 want to know if their child is being assaulted or abused.²¹ Therefore, we recommend that the Committee consider substituting an adult notice requirement in lieu of the adult filing involvement requirement.²²

Next, we are concerned that statements made by petitioners who are minors or survivors of coerced commercial sex acts or sex trafficking might be used against the survivors in a subsequent criminal or juvenile matters. The potential for their statements to be used against victims of sex trafficking may be deterred from accessing CPOs. We advise the committee to add the following paragraphs to Proposed Section 16-1002:

(b) Statement, testimony, or discovery responses of the petitioner in any civil proceeding under this subchapter

(i) shall be inadmissible in any criminal proceeding against the petitioner or in any proceeding under Subchapter 1, Chapter 23, Title 16 of the DC Code; and

(ii) shall not constitute a waiver of the petitioner's right against self-incrimination in any future criminal proceeding or in any proceeding under Subchapter 1, Chapter 23, Title 16 of the DC Code.

(c) Paragraph (b) applies when the petitioner is:

(i) a minor;

(ii) a victim of coercion to commit a commercial sex act as defined by section 101(4) of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1831(4));

(iii) a victim of sex trafficking of children as defined by section 101(4) of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1834(a)); or

(iv) a victim of sex trafficking or severe forms of trafficking in person as defined by section 103(10) and (9)(A) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(10) and (9)(A))

General Enhancements to the CPO Process for Children and Youth

Children's Law Center makes three final general recommendations to the committee about how to improve the effectiveness of CPOs for children and youth. First, research indicates that teens and parents are ill-informed about the availability of CPOs.²³ The committee should investigate whether additional funds are needed to ensure that education can be offered in DC schools and other places that youth frequent like Out of School Time programming for students, parents, and staff about the CPO process. These funds could empower youth survivors to obtain CPOs and decrease the rates of teen dating violence. This education could also encourage youth to disclose violence to their parent or trusted adult. Additional resources may be needed to effectuate this education.²⁴

Finally, DC youth need the committee to identify ways to improve the stakeholders' responses to CPO violations. When CPO violations are ignored, youth do not feel safer in their schools, homes, or communities.²⁵ Through our research, experience, and discussions with fellow advocates, we have learned that consistent and trauma-informed responses to CPO violations are likely to improve youths' perceptions of CPOs effectiveness, thus making them more likely to pursue a CPO when needed. Young people have called for improved responses to CPO violations and they have provided recommendations for strengthening the impact of CPOs.²⁶ We look forward to working with the committee and the community to continue to improve the safety of the District's child survivors.

Conclusion

Thank you for the opportunity to testify. I am happy to answer any questions.

¹ Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone. With more than 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year. And, we multiply this impact by advocating for city-wide solutions that benefit all children.

² The National Center for State Courts reports that in 2016, 46% of DC's 12,715 Domestic Relations Court filings are Civil Protection Order filings. That means that approximately 5,849 CPOs were filed in DC in 2016. National Center for State Courts. *State Court Caseload Digest: 2016 Data*, at 8. (2016). Retrieved from http://www.courtstatistics.org/~media/Microsites/Files/CSP/National-Overview-2016/SCCD_2016.ashx

³ H. Lien Bragg, U.S. Department of Health and Human Services, Administration on Children, Youth and Families, Children's Bureau. *Child Protection in Families Experiencing Domestic Violence* at 9. (2003) Retrieved from <https://www.childwelfare.gov/pubPDFs/domesticviolence2003.pdf>.

⁴ See *Child Protection in Families Experiencing Domestic Violence*, at 9.

⁵ Child Welfare Information Gateway. *Domestic Violence and the Child Welfare System*, at 3-4. (October 2014) Retrieved from <https://www.childwelfare.gov/pubPDFs/domestic-violence.pdf>.

⁶ See *Domestic Violence and the Child Welfare System*, at 3-4 .

⁷ Charles Whitfield et al., *Violent Childhood Experiences and the Risk of Intimate Partner Violence as Adults* at 166-185. *Journal of Interpersonal Violence*. (February 2003) Retrieved from <http://journals.sagepub.com/doi/abs/10.1177/0886260502238733>.

⁸ See *Child Protection in Families Experiencing Domestic Violence* at 7. .

⁹ CFSA received 582 calls, 743, and 992 in 2015, 2016, and 2017. Those cases involved 268, 630, and 760 children respectively. . See, CFSA FY15 Performance Oversight Pre-Hearing Responses, Q22. CFSA FY16 Performance Oversight Pre-Hearing Responses, Q8 & 9. CFSA FY17 Performance Oversight Pre-Hearing Responses, Q8.

¹⁰ DC Code § 16-1005 (c).

¹¹ Victims reported an increase in abuse in some cases: those reporting incidents of stalking rose from 4% to 7%; repeated physical abuse 3% to 8%; repeated psychological abuse 4% to 13%. Susan L. Keilitz et al., U.S. Department of Justice, Office of Justice Programs, National Institute of Justice Research Preview, *Civil Protection Orders: Victims' Views on Effectiveness* at 2. (January 1998) Retrieved from <https://www.ncjrs.gov/pdffiles/fs000191.pdf>

¹²During the initial interviews conducted one month after receiving a CPO, 72% reported that their lives had improved; in interviews 6 months later, 85% reported improvement. More than 90% reported feeling better about themselves and 80% felt safer. See *Civil Protection Orders: Victims' Views on Effectiveness*, at 2. Civil Protection Orders (CPOs) empower women survivors and increase their agency. See Robin L. Baron, *Do Orders of Protection Actually Shield Domestic Violence Victims?*, *The Crime Report* (January 23, 2018). Retrieved from <https://thecrimereport.org/2018/01/23/do-orders-of-protection-actually-shield-victims/>. Researchers found that 30 to 70% of survivors report that the domestic violence stopped after the received CPOs.. TK Logan & Robert Walker, *Civil Protective Orders Effectiveness in Stopping or Reducing Partner Violence: Challenges Remain in Rural Areas with Access and Enforcement* at 3. Carsey Institute, Policy Brief No. 18 (Spring 2011) Retrieved from <https://carsey.unh.edu/publication/civil-protective-orders-effective-stopping-or-reducing-partner-violence-challenges> (citing TK Logan & Robert Walker, *Civil Protective Order Outcomes Violations and Perceptions of Effectiveness*, 24 *J. Interpersonal Violence* 675, 677 (2009)). Additionally, in a study conducted in Kentucky, over 85% of women thought that their protective order was effective. They reported fewer days of distress and less sleep loss due to abuse. *Id.*

¹³Ericka Kimball. *Edleson Revisited: Reviewing Children's Witnessing of Domestic Violence 15 Years Later* at 4. *Journal of Family Violence* · (November 2015) Retrieved from https://www.researchgate.net/profile/Ericka_Kimball/publication/284803972_Edleson_Revisited_Reviewing_Children%27s_Witnessing_of_Domestic_Violence_15_Years_Later/links/57f1330608ae280dd0b27bf8/Edleson-Revisited-Reviewing-Childrens-Witnessing-of-Domestic-Violence-15-Years-Later.pdf?origin=publication_detail.

¹⁴ DC Code § 16-914.

¹⁵ "...the best interests of children are inextricably linked to the best interests of their mothers." National Council of Juvenile and Family Court Judges, Family Violence Department, *Civil Protection Orders: A Guide for Improving Practice* at fn 8. (2010) Retrieved from <https://www.justice.gov/file/852781/download> (quoting Pamela Whitney & Lonna Davis, *Child Abuse and Domestic Violence in Massachusetts: Can Practice Be Integrated in a Public Child Welfare Setting?*, 4 *Child Maltreatment* 158, 165 (1999)).

¹⁶ National Conference of State Legislatures. *Teen Dating Violence*. (May 2017) Retrieved from <http://www.ncsl.org/research/health/teen-dating-violence.aspx>.

¹⁷ Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018, at §16-1001 (5B).

¹⁸ CLC recommended that complete definition in a memo to the Deputy Committee Director for the Committee on the Judiciary and Public Safety on August 18, 2017. See full explanation at page 1 and a proposed language at pages 3-4.

¹⁹ 22 U.S.C.A. § 7102 (9)(A).

²⁰ S. Layne. *A Quantitative Examination of the Impact of Protective Orders on Teen Dating*, at 40. Walden Dissertations and Doctoral Studies Collection Violence. (2017). Retrieved from <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=5331&context=dissertations>. See also, Break the Cycle. *Youth Access to Protection Orders* at 2. (2014) Retrieved from https://www.breakthecycle.org/sites/default/files/Youth%20Access%20to%20Protection%20Orders%20-%20A%20National%20Overview_0_0.pdf.

²¹ We also understand that some community members are concerned about youth forcing their school coaches or Principals to miss work by abusing the CPO process. This reasoning is very problematic. It is indicative of a culture that fears and doubts the intentions of youth (especially youth of color) and inappropriately protects institutions and adults that abuse youth. Instead of removing the adult involvement requirement – which has proven to be a barrier to youth survivors pursuing CPOs- the act will unnecessarily protect against a hypothetical misuse of a CPO process. This protection is unnecessary because the judge who presides over the temporary order hearing should be able to assess the evidence and only “cause the respondent to miss work if they find that the child is immediately endangered by the principal.

²² The current stalking section of the DC Code permits, but does not require an adult to file on behalf of a minor seeking an anti-stalking order. See DC Code § 16-1062 (a). Proposed §16-1003 (b)(3) should mirror this DC law.

²³ Andrew Klein et al., *An Exploration Study of Juvenile Orders of Protection as a Remedy for Dating Violence* at 90, 92. (May 2013) Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/grants/242131.pdf>.

²⁴ Victim Services funding may be one area to explore. Additionally, Title IV-E funds may be a source of funding pursuant to the Family First Prevention Services Act.

²⁵ See *An Exploration Study of Juvenile Orders of Protection*, at 109.

²⁶ See *An Exploration Study of Juvenile Orders of Protection*, at 110.