

RESOLUTION 01-08-2016

DIGEST

Domestic Violence: Incident Reports

Amends Family Code section 6228 to provide that domestic violence incident reports are equally available to the victim and any person identified as a suspect.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code section 6228 to read as follows:

§6228

1 (a) State and local law enforcement agencies shall provide, without charging a fee, one
2 copy of all domestic violence incident report face sheets, one copy of all domestic violence
3 incident reports, or both, to an involved party as defined below ~~a victim of domestic violence~~, or
4 to his or her representative as defined in subdivision (g), upon request. For purposes of this
5 section, “domestic violence” has the definition given in Section 6211.

6 (b) A copy of a domestic violence incident report face sheet shall be made available
7 during regular business hours to an involved party ~~a victim of domestic violence~~ or his or her
8 representative no later than 48 hours after being requested by the involved party ~~victim~~ or his or
9 her representative, unless the state or local law enforcement agency informs the involved party
10 ~~victim~~ or his or her representative of the reasons why, for good cause, the domestic violence
11 incident report face sheet is not available, in which case the domestic violence incident report
12 face sheet shall be made available to the involved party ~~victim~~ or his or her representative no
13 later than five working days after the request is made.

14 (c) A copy of the domestic violence incident report shall be made available during
15 regular business hours to an involved party ~~a victim of domestic violence~~ or his or her
16 representative no later than five working days after being requested by an involved party ~~a victim~~
17 or his or her representative, unless the state or local law enforcement agency informs the
18 involved party ~~victim~~ or his or her representative of the reasons why, for good cause, the
19 domestic violence incident report is not available, in which case the domestic violence incident
20 report shall be made available to the involved party ~~victim~~ or his or her representative no later
21 than 10 working days after the request is made.

22 (d) Any person requesting copies under this section shall present state or local law
23 enforcement with his or her identification, such as a current, valid driver's license, a state-issued
24 identification card, or a passport and, if the person is a representative of the involved party ~~victim~~
25 and the involved party ~~victim~~ is deceased, a certified copy of the death certificate or other
26 satisfactory evidence of the death of an involved party ~~the victim~~ at the time a request is made.

27 (e) This section shall apply to requests for face sheets or reports made within five years
28 from the date of completion of the domestic violence incident report.

29 (f) This section shall be known and may be cited as the Access to Domestic Violence
30 Reports Act of 1999.

31 (g) For purposes of this section, an “involved party” means either an alleged victim of
32 domestic violence or any person identified in the incident report face sheet as a suspect.

33 (hg) (1) For purposes of this section, if the involved party victim is deceased, a
34 “representative of the involved party victim” means any of the following:
35 (A) The surviving spouse.
36 (B) A surviving child of the decedent who has attained 18 years of age.
37 (C) A domestic partner, as defined in subdivision (a) of Section 297.
38 (D) A surviving parent of the decedent.
39 (E) A surviving adult relative.
40 (F) The personal representative of the involved party victim, as defined in Section 58 of
41 the Probate Code, if one is appointed.
42 (G) The public administrator if one has been appointed.

43 (2) For purposes of this section, if the involved party victim is not deceased, a
44 “representative of the involved party victim” means any of the following:
45 (A) A parent, guardian, or adult child of the involved party victim, or an adult sibling of
46 an involved party a-victim 12 years of age or older, who shall present to law enforcement
47 identification pursuant to subparagraph (A) of paragraph (4), and if the involved party victim is
48 12 years of age or older, a signed authorization by the involved party victim allowing that family
49 member or guardian to act on the involved party victim's behalf. A guardian shall also present to
50 law enforcement a copy of his or her letters of guardianship demonstrating that he or she is the
51 appointed guardian of the involved party victim.

52 (B) An attorney for the involved party victim, who shall present to law enforcement
53 identification pursuant to subparagraph (A) of paragraph (4) and written proof that he or she is
54 the attorney for the involved party victim.

55 (C) A conservator of the involved party victim who shall present to law enforcement
56 identification pursuant to subparagraph (A) of paragraph (4) and a copy of his or her letters of
57 conservatorship demonstrating that he or she is the appointed conservator of the involved party
58 victim.

59 (3) A representative of the involved party victim does not include any person who has
60 been convicted of murder in the first degree, as defined in Section 189 of the Penal Code, of the
61 involved party victim, or any person identified in the incident report face sheet as a suspect.

62 (4) Domestic violence incident report face sheets may not be provided to a representative
63 of the involved party victim unless both of the following conditions are met:

64 (A) The representative presents his or her identification, such as a current, valid driver's
65 license, a state-issued identification card, or a passport.

66 (B) The representative presents one of the following:

67 (i) If the involved party victim is deceased, a certified copy of the death certificate or
68 other satisfactory evidence of the death of the involved party victim at the time of the request.

69 (ii) If the involved party victim is alive, 12 years of age or older, and not the subject of a
70 conservatorship, a written authorization signed by the involved party victim making him or her
71 the involved party's victim's personal representative.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: When a domestic incident or claim occurs, both the alleged victim and the alleged abuser may urgently need a copy of the related police report, one to use to seek a restraining order and the other to defend such a request. All involved parties should have equal access to police reports.

The Solution: Amending Section 6228 ensures equal access to police reports for all parties involved.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

CURRENT OR PRIOR RELATED LEGISLATION: Family Code section 6228 was added by Stats.1999, c. 1022 (A.B.403), § 1, and amended by Stats.2002, c. 377 (S.B.1265), § 1; Stats.2010, c. 363 (A.B.1738), § 1; Stats.2011, c. 296 (A.B.1023), § 93.)

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RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code section 6228 to provide that domestic violence incident reports are equally available to the victim and any person identified as a suspect. This resolution should be approved in principle because a person accused of domestic violence should have the same ability as the victim to obtain the information given the police.

The law currently requires law enforcement to provide, free of charge, one copy of domestic violence incident report face sheets, incident reports, or both, to the victim of the incident. (Fam. Code, § 6228.) This resolution would change the word “victim,” wherever it appears in the statute, to “involved party,” and define the latter term to include “any person identified in the incident report face sheet as a suspect.” As the proponent notes, an alleged suspect may have just as much need to see the report to defend against a restraining order request as the victim does when filing for the order.

The resolution as written does not provide for redaction of information that may endanger the victim, a witness or other persons, such as contact information for a woman who is in a shelter. An amendment to include such protection would improve the resolution.