
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 290 **Hearing Date:** April 11, 2023
Author: Min
Version: March 29, 2023
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Domestic violence documentation: victim access*

HISTORY

Source: Author

Prior Legislation: AB 1678 (Santiago, Ch. 875, Stats. of 2016)
AB 1738 (Tran, Ch. 363, Stats. of 2010)
SB 1265 (Alpert, Ch. 377, Stats. of 2002)
AB 403 (Romero, Ch. 1022, Stats of 1999)

Support: Calegistration; California Partnership to End Domestic Violence; Family Violence Appellate Project; Family Violence Law Center; University of California, Irvine School of Law Domestic Violence Clinic

PURPOSE

The purpose of this bill is to require state or local law enforcement agencies to make available to a victim or representative, upon request and within a specified time frame, any photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, and 911 recordings related to an incident report.

Existing law provides courts with the authority to issue several types of protective orders for domestic violence prevention, as specified. (Family Code §§ 6220 et. seq.)

Existing law provides courts with the authority to issue temporary restraining orders to prevent civil harassment and elder or dependent adult abuse, as specified. (Code of Civil Procedure § 527.6; Welfare and Institutions Code § 15657.03)

Existing law requires law enforcement to complete a domestic violence incident report for each domestic violence-related call, as specified. (Penal Code § 13730.)

Existing law require state and local law enforcement agencies to provide, upon request and without charging a fee, one copy of all incident report face sheets, one copy of all incident reports, or both, to a victim or the victim's representative related to the following crimes:

- Domestic violence, as defined.
- Sexual assault, as defined.

- Stalking, as defined.
- Human trafficking, as defined.
- Abuse of an elder or dependent adult, as defined. (Family Code §6228(a).)

Existing law provides that a copy of an incident report face sheet shall be made available during regular business hours to a victim or their representative no later than 48 hours after being requested, unless the state or local law enforcement agency informs the victim or the victim's representative of the reasons why, for good cause, the face sheet is not available, in which case it shall be made available no later than 5 working days after the request is made. (Family Code §6228(b)(1).)

Existing law provides that a copy of the incident report shall be made available during regular business hours to a victim or their representative no later than five working days after being requested, unless the state or local law enforcement agency informs the victim or the representative of the reasons why, for good cause, the incident report is not available, in which case it shall be made available no later than 10 working days after the request is made. (Family Code §6228(b)(2).)

Existing law requires a person requesting copies under the above provisions to present state or local law enforcement with the person's identification, including a current, valid driver's license, a state-issued ID card, or a passport, and establishes additional requirements if the person is the victim's representative. (Family Code §6228(c).)

Existing law provides that the above provisions apply to requests for domestic violence face sheets or incident reports made within five years from the date of completion of the incident report. (Family Code §6228(d)(1).)

Existing law provides that the above provisions shall apply to requests for sexual assault, stalking, human trafficking, or abuse of an elder or a dependent adult face sheets or incident reports made within two years of the date of completion of the incident report. (Family Code §6228(d)(2).)

This bill requires state and local law enforcement agencies to provide, in addition to a requested incident report and without charging a fee, a copy of any accompanying or related photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, as well as a copy of 911 recordings, for crimes enumerated in Family Code §6228(a).

This bill provides that a copy of any photographs specified above as well as a copy of 911 recordings shall be made available to a victim or their representative no later than 5 working days after being requested, unless the state or local law enforcement agency informs the victim or their representative why, for good cause, the items are unavailable, in which case they shall be made available no later than 10 working days after the request is made.

This bill specifies that its provisions shall apply to requests for photographs and 911 recordings made within five years from the date of completion of the related incident report.

This bill extends the time limit for victims of sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult, and their representatives, to request incident reports, specified photos and a copy of the 911 recording from 2 to 5 years.

COMMENTS

1. Need for This Bill

According to the Author:

Due to overwhelming financial burdens, abuse survivors often do not have the funds to spend on fees for evidence of the crimes they experienced. However, without access to this essential evidence, it is more difficult for abuse survivors to successfully build a case and obtain protection from abuse. Victims face disbelief and denial of their abuse, and any corroborating evidence significantly increases the likelihood of receiving needed legal protection and trauma care for themselves and their children. Since the Access to Domestic Violence Reports Act was enacted in 1999, digital evidence has become the universal technology for evidence recordkeeping. SB 290 updates this law with 21st Century technology and reduces barriers for abuse victims to hold perpetrators to account, seek judicial relief, or access court order protections to shield them from further abuse.

2. Victims of Certain Crimes Have a Right to Police Reports

California has a strong history of establishing various legal avenues to help protect victims of domestic violence and other similar crimes from further abuse. Victims can obtain restraining orders, terminate a lease early and move to a safer location, and may take time off from work without risk of losing their job in order to obtain a restraining order or, for larger employers, to obtain specified services to increase their safety. Employers are also required to provide reasonable accommodations to help ensure the safety of these victims while they are at work. To obtain these legal protections, victims must provide proof - to a court, a landlord, or an employer - that they are in fact victims. One method of establishing the necessary proof is through a police report, which courts may consider when determining whether to issue a protective order. Additionally, both the employee and tenancy termination protections specifically allow the police report as proof of the underlying abuse.

Historically, victims have had to submit written requests to law enforcement agencies for these reports, which were usually provided by mail, a process that often took weeks. In 1999, the Legislature enacted the Domestic Violence Reports Act of 1999 (DVRA) (AB 403, Romero, Ch. 1022, Stats. of 1999), which required that agencies provide these reports to victims in a timely manner and free of charge. Specifically, agencies must provide a victim or their representative with a copy of the relevant incident report and face sheets within 5 days of the request, unless the agency has good cause for a delay, in which case the report shall be provided no later than 10 business days after the request. In 2016, due to concerns that agencies were charging victims of similar crimes for police reports, the Legislature passed AB 1678 (Santiago, Ch. 875, Stats. of 2016), broadening the application of the DVRA to victims of sexual assault, stalking, human trafficking, and elder or dependent adult abuse.

Since the DVRA has gone into effect, some victims' advocacy groups have voiced concerns that certain law enforcement agencies are not complying with the letter of the law. Perhaps the most high profile case occurred in San Francisco, where, in 2018, victim advocates alleged that the police department withheld police reports for weeks or months if not altogether, preventing

survivors from obtaining restraining orders from the court.¹ Ultimately, a lawsuit was never filed and it appears the police department took active steps to ameliorate the issue. Research conducted by committee staff shows other sporadic reports of non-compliance, but given the context in which these reports are presented, current non-compliance is difficult to verify.²

3. This Bill Expands the Types of Records Certain Victims May Obtain

Existing law requires that law enforcement agencies provide victims of domestic violence, sexual assault, stalking, human trafficking or abuse of an elder or dependent adult with a copy of the relevant police report free of charge, and within 5 days of the request, unless good cause exists for a 5 day delay. This bill requires agencies to also provide, free of charge and within 5 days of the request, photographs of a victim's injuries, property damage, or any other photographs noted in the incident report, as well as a copy of the 911 recordings. Also, whereas existing law only permits requests for reports for sexual assault, stalking, human trafficking, and elder or dependent adult abuse incidents dating back 2 years, this bill extends that timeframe to 5 years, making it consistent with the timeframe for victims of domestic violence.

The bill's mandate that agencies provide "any other photographs noted in the incident report" may be overly broad, and lead to the disclosure of photographs unrelated to the victim's case which may, in the off chance, negatively impact an ongoing investigation or prosecution. The Author and Committee may wish to remove this specific requirement, narrow it to include only pictures that have a tighter nexus to the harm and damage caused by the defendant, or provide agencies some discretion to determine which photographs are relevant.

4. Argument in Support

According to the University of California, Irvine School of Law Domestic Violence Clinic:

SB 290 modernizes the Access to Domestic Violence Reports Act of 1999, which currently entitles abuse survivors to a free copy of a police incident report face sheet and the incident report, applicable to reports dating back five years for domestic violence and two years for sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult. If survivors wish to obtain additional essential evidence of these crimes that they experienced and reported, such as photographs of their bodily injuries and destroyed property or recordings of the 911 calls they made when seeking help, they are charged hundreds of dollars.

In representing abuse survivors in the civil and criminal justice systems and in immigration proceedings, our UCI Law Domestic Violence Clinic sees firsthand that abuse survivors often face disbelief and denial of the abuse when seeking help. Any corroborating evidence significantly increases the likelihood of receiving needed

¹ https://www.sfexaminer.com/news/advocates-say-sfpd-unlawfully-keeps-domestic-violence-survivors-waiting-for-police-reports/article_bc87dbbd-7d9a-558d-90b4-a10ac21530f0.html

² https://www.justicewomen.com/help_know_your_rights.html#2 – A "Know Your Rights" internet handbook published by the Women's Justice Center in Santa Rosa states: "When you go to the police department to get a copy of your domestic violence police report, take a copy of this law with you. Even though the law went into effect in the year 2000, many police departments are still not complying." http://www.purpleberets.org/violence_new_law.html - An undated article published by the Purple Berets asserts that "some officials in Sonoma County are failing to comply with [the DVRA] and are refusing to make the reports available to victims under any conditions."

legal protection and trauma care for survivors and their children. Rather than being charged hundreds of dollars for their evidence of abuse – which through technological advances is now digitally stored and easily transmissible – this evidence can be provided to crime survivors with their police incident reports.

Given the overwhelming financial burdens, abuse survivors often do not have the funds to spend on fees for evidence of the crimes they experienced. Without access to this essential evidence, it is more difficult for abuse survivors to successfully petition for safety in civil domestic violence restraining order cases, seek immigration relief, receive trauma care and other healthcare for themselves and their children, and otherwise obtain protection from abuse.

SB 290, introduced by Senator Min, recognizes these struggles and aims to remove this barrier to legal protection by entitling survivors or their representatives to receive the digitally stored evidence of photographs and 911 recordings from law enforcement, along with the free police incident report. Additionally, SB 290 recognizes the trauma and safety needs following sexual assault, stalking, human trafficking, and elder and dependent abuse, and equalizes the access period to five years for all forms of abuse under the Access to Domestic Violence Reports Act.

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