
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1678 **Hearing Date:** May 10, 2016
Author: Santiago
Version: February 25, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Provision of Incident Reports to Victims*

HISTORY

Source: Author

Prior Legislation: AB 403 (Romero) – Ch. 1022, Stats. 1999

Support: California District Attorneys Association; California Partnership to End Domestic Violence; California Peace Officers Association; California State Sheriffs' Association; Crime Victims United of California

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to require that in crimes of sexual assault, stalking, human trafficking, and elder or dependent adult abuse, a copy of all incident reports and all incident report face sheets shall be provided at no cost upon request to victims or the victims' representative.

Existing law provides that a court may issue a temporary restraining order for domestic violence prevention, as specified. (Family Code §§ 6220, 6300)

Existing law provides that a court may issue a temporary restraining order for civil harassment, as specified, which may prevent an abuser from, among other things, stalking and sexually assaulting the victim. (Code of Civil Procedure § 527.6.)

Existing law provides that a court may issue a temporary restraining order for elder or dependent adult abuse, as specified. (Welfare and Institutions Code § 15657.03(c).)

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 requires law enforcement to provide, without charge, a copy of all domestic violence incident report face sheets and all domestic violence incident reports to the victim of domestic violence or his or her representative, as provided. Defines who may be a representative for a living or deceased victim and what that representative must provide to law enforcement in

order to be given a copy of the incident report. Requires that a copy of the report be provided within 48 hours of its request, except for good cause, as provided. (Family Code § 6228.)

Existing law allows a victim of domestic violence, sexual assault, stalking, human trafficking, or elder or dependent adult abuse to terminate a residential lease early if he or she is able to provide the landlord with specified documentation attesting that he or she is a survivor of abuse or violence. Permitted documentation includes a restraining order or a copy of a police report. (Civil Code § 1946.7.)

Existing law protects a victim of domestic violence, sexual assault, or stalking, as defined, from employment discrimination and retaliation if the victim provides notice to the employer of that status or the employer has actual knowledge of that status and allows the victim to take time off from work, as provided. Requires, in certain situations, for the employee to provide the employer with certification of his or her status as a victim and provides that such certification can include a police report indicating that the employee is a victim. (Labor Code §§ 230, 230.1.)

This bill would require state and local law enforcement agencies, upon request, to provide victims of sexual assault, stalking, human trafficking or elderly or dependent adult abuse with one copy of all incident report face sheets and all incident reports, or both, at no cost to the victim or their representative.

This bill defines who is considered a representative of the victim in cases where the victim is alive and not the subject of a conservatorship, that the representative shall also present a written authorization, signed by the victim, making him or her the victim's personal representative.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014

Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

State law currently allows domestic violence victims to request and receive one free copy of their police report from law enforcement agencies. For victims of non-domestic violence crimes, police reports are made available for up to a twenty four dollar fee. Currently, local and state agencies are able to decide how much, if anything, they will charge for a police report. For survivors with limited financial resources, this is an additional burden to accessing needed documentation of their victimization. A copy of the police report can be needed by survivors as documentation to take time off of work, to terminate their lease early and relocate for their safety, and to request a good cause waiver for certain CalWORKs requirements, among other uses. AB 1678 will allow victims of sexual assault, stalking, human trafficking or elder adult abuse, like victims of domestic violence, to obtain timely police reports free of charge.

2. Background; Effect of Legislation

California has established 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, take time off from work, without risk of losing their job, to obtain a restraining order or, for larger employers, to obtain specified services to increase their safety, such as participation in safety planning and psychological counseling. 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 prove, whether to the court, their landlord or their employer, that they are victims. A method to establish the necessary proof is with a police report. Police reports may be evidence for a court to consider when determining whether to issue a protective order for the victim. Additionally, both the employee and tenancy termination protections specifically allow the police report as proof of the underlying abuse.

Historically, victims have had to write and request copies of these reports, which were then provided by mail, a process that often took several weeks. In 1999, the Legislature required that domestic violence victims be provided with an expedited and affordable method for obtaining these reports. However, current law does not require that victims of sexual assault, stalking, human trafficking or elderly or dependent adult abuse, who are afforded and are often seeking similar protections as victims of domestic violence, also receive timely and free copies of their police reports.

While police reports are free to victims of domestic violence, local law enforcement can decide what to charge victims of similar crimes for copies of their police reports. Local agencies can currently charge up to \$30 for reports, with Los Angeles County charging \$24 and San Francisco providing the reports to these specified victims at no cost.

By increasing the availability of timely and no-cost police reports to victims of sexual assault, stalking, human trafficking and elder abuse, this bill seeks to improve the likelihood that these victims will have the required evidence to secure needed protective orders against their abusers. They may also be able to better protect themselves by terminating a lease early and moving to a safer location or taking time off from work to get needed services and, if necessary, to be provided reasonable safety accommodations, all without risk of losing their jobs.

This bill also restates who is considered a representative of a victim, for both living and deceased victims, for purposes of collecting the free police reports and what those representatives must present to law enforcement in order to collect the reports. The changes to the law proposed by this bill do not make any substantive changes but rather summarizes the provisions in a way that makes it more accessible by highlighting other important categories of victims.

3. Argument in Support

According to the California Peace Officers' Association (CPOA):

AB 1678 wisely addresses the extremely vulnerable circumstances that victims of domestic violence, human trafficking, sexual assault and stalking face by providing copies of incident reports to those victims.

CPOA is comprised of nearly 3,000 law enforcement officers across California. Our members are both supervisory and front line peace officers, with many members coming into contact with the above victims on a daily basis. Many of these victims are often young adults of even pre-teens, so by setting a youth of 12 years of age or older within the "victim" definition, AB 1678 also accounts for those innocent individuals.