

DPA's 1st Quarter 2018 Recommendations to Provide Victims of Domestic Violence, Sexual Assault, Stalking, Human Trafficking and Elder Abuse Their Incident Reports In Compliance With Family Code §6228.

A. Background

During DPA's monthly Language Access Working Group meetings in 2017 and 2018, several community stakeholders raised continuing concerns that despite their written requests to SFPD, domestic violence survivors could not obtain their incident reports in a timely manner. During 2017 and 2018, Bay Area Legal Aid also discussed with SFPD their inability to obtain on behalf of more than 20 domestic violence survivors they represented incident reports in a timely manner. Incident reports are critical to domestic violence survivors' family law cases. Without the incident report, domestic violence survivors and their legal representatives are unable to prepare for court hearings, conduct investigation and subpoena officers and comply with trial deadlines.

In 2017, the DPA received a complaint that included an allegation that the named officer refused to provide her with a copy of the supplemental incident report that she requested pursuant to Family Code §6228. The named officer stated she denied the complainant's request because it involved an ongoing, open investigation. The DPA found that the failure to provide the complainant the incident report was a result of a policy failure.

California Family Code § 6228 states that victims of domestic violence, sexual assault, stalking, human trafficking or elder abuse shall receive a copy of the incident report no later than 5 working days after request, unless the law enforcement agency informs the victim of the reasons why, for good cause, the incident report is not available, in which case the incident report shall be made available to the victim no later than 10 working days after the request is made. The Family Code does not exempt open investigations from law enforcement's mandatory duty to provide the victim an incident report within 10 working days.

The Legislature enacted California Family Code §6228 in 1999 for domestic violence victims "to provide an expedited and affordable method for obtaining these important reports" so that victims can pursue other legal avenues such as a restraining order to increase their safety. This law was expanded to include victims of sexual assault, stalking, human trafficking and elder abuse in 2016.

When the Family Code §6228 was expanded to include victims of sexual assault, stalking, human trafficking, and elder/dependent adult abuse, SFPD issued Bulletin 17-101. This Department Bulletin stated that “Law enforcement must provide, without charge, copy of incident report to victims of sexual assault, stalking, human trafficking, elder/dependent adult abuse, or to victims’ representatives.” The Department Bulletin did not notify officers of their duty to provide an incident report to enumerated victims, including domestic violence victims, within 5 days unless with notice and good cause, no later than 10 days.

The DPA, Bay Legal, and other community stakeholders have had numerous and ongoing discussions with SFPD to address compliance with Family Code §6228.

B. DPA’s Recommendations

The DPA recommends that the Police Department

1. Implement immediately a system that provides the enumerated victims their incident report within the statutory deadline;
2. Provide information on SFPD’s website about how victims of domestic violence, sexual assault, stalking, human trafficking, elder/dependent adult abuse can obtain their incident report pursuant to Family Code § 6228;
3. Monitor compliance with the statutory deadline and report to the Police Commission its compliance with the Family Code §6228 on a quarterly basis.