



FAMILY LAW SECTION
THE STATE BAR OF CALIFORNIA

ATTENDANCE RECORDS FROM COURT-ORDERED BATTERER'S INTERVENTION PROGRAMS

LEGISLATIVE PROPOSAL (FL-2015-06)

TO: Office of Governmental Affairs

FROM: Minouche Kandel, Chair of Affirmative Legislation
Alexandra O'Neill, Vice-Chair of Affirmative Legislation

DATE: August 4, 2014

RE: Proposal to Amend Family Code Section 6343 (Batterer's Intervention Programs)

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: August 4, 2014
Approval vote: 14-0-2

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SUMMARY OF PROPOSAL

This proposal would ensure that attendance records from court-ordered batterer's intervention programs are made available to the court and the protected party.

ISSUES AND PURPOSE

Under existing law, the court may order a restrained party in a Domestic Violence Prevention Act (DVPA) matter to attend a probation-certified 52 week batterer's intervention program. However, confidentiality provisions of batterer's intervention programs impede the ability of the court and the protected party to obtain attendance information. Batterer's intervention programs have no explicit authority to share information with the courts in DVPA matters the way they do in criminal cases under Penal Code sections 1203.097(c)(1)(O) and (c)(3)(O). In criminal cases,

batterer's intervention programs are also required to have procedures for informing domestic violence victims about the defendant's participation requirements, pursuant to Penal Code section 1203.097(c)(1)(D).

Information about the participant's attendance in the batterer's intervention program that is readily available when a defendant is ordered into the program in a criminal matter is not available in a DVPA matter. This difference creates barriers to court staff, judges and protected parties from obtaining important information about participation in a batterer's intervention program, including termination, which is highly relevant to issues of custody, visitation, parenting capacity and safety of victims and children. Currently, when a restrained party is ordered into batterer's counseling, the protected party and the court must rely on the restrained party to provide information about his or her progress (or lack of it) in the batterer's intervention program. Sometimes the restrained party will bring falsified participation records to court. Permitting the batterer's intervention program to provide this information directly to the court and the protected party would be a far better practice.

This proposal will place the following requirements on restrained parties when they are ordered to a 52 week batterer intervention program in a DVPA matter: the restrained party shall consent to the batterer's intervention program making all attendance records, termination and completion information available to the court and to the protected party.

This proposal will provide courts with important information relevant to the parenting capacity of restrained parties and enable batterer's intervention program providers to share otherwise confidential information pertaining to the restrained party. This sharing of information will increase accountability for restrained parties, increase safety of protected parties, and improve the court's ability to make orders in the best interests of children.

Because this proposal would require the Judicial Council to amend the existing restraining order forms or develop a new form, it includes a delayed effective date of July 1, 2016 in order to give the Judicial Council sufficient time to update the forms.

HISTORY

We are unaware of any similar prior proposals.

IMPACT ON PENDING LITIGATION

None that is currently pending, although the proposed statutory amendments may have an impact on cases that are pending at the time of the effective date of any such amendments.

LIKELY SUPPORT & OPPOSITION

It is likely that the California Partnership to End Domestic Violence and other anti-domestic violence organizations will support this proposal.

Although we are not aware of anything specific, it is possible that some individuals or groups will oppose this legislation, given the additional obligations and consent to release information that would be imposed.

FISCAL IMPACT

There does not appear to be any direct fiscal impact, although there may be some costs associated with the proposed statutory requirement that the Judicial Council amend the existing restraining order forms or develop a new form.

GERMANENESS

This proposal is germane to family law, as it would improve the feedback loop in family law domestic violence cases when a restrained party is ordered to batterer's counseling.

DISCLAIMER:

This position is only that of the Family Law Section of the State Bar of California. This position has not been adopted by either the State Bar's Board of Trustees or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the Family Law Section is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

TEXT OF PROPOSAL

SECTION 1. Section 6343 of the Family Code is amended to read:

(a) After notice and a hearing, the court may issue an order requiring the restrained party to participate in a batterer's program approved by the probation department as provided in Section 1203.097 of the Penal Code.

(b) If the court orders a restrained party to participate in a batterer's program:

(1) The restrained party shall register for the program by the deadline ordered by the Court. If no deadline is ordered by the Court, the restrained party shall register no later than 30 days from the date the order was issued.

(2) Upon enrollment, the restrained party shall sign all necessary program consent forms for the program to release proof of enrollment, attendance records, and completion or termination reports to the court and the protected party or the attorney for the protected party. A fax number or mailing address shall be provided for this purpose.

~~(b)~~ (c) The courts shall, in consultation with local domestic violence shelters and programs, develop a resource list of referrals to appropriate community domestic violence programs and services to be provided to each applicant for an order under this section.

(d) The Judicial Council shall amend the existing restraining order forms or develop a new form for use by courts when a party is ordered to batterer's intervention counseling that includes the requirements of this section.

(e) This section shall become operative on July 1, 2016.