

AMENDED IN ASSEMBLY JULY 11, 2001

AMENDED IN ASSEMBLY JUNE 21, 2001

AMENDED IN SENATE MAY 1, 2001

AMENDED IN SENATE APRIL 19, 2001

SENATE BILL

No. 1221

Introduced by Senator Romero

**(Coauthors: Senators Johannessen, Karnette, Margett, Scott,
and Speier)**

(Coauthors: Assembly Members Aroner, Cohn, Liu, Richman,
Strom-Martin, and Washington)

March 19, 2001

An act to amend Sections 3600 and 4320 of, *and to add Section 4325 to*, the Family Code, relating to spousal support.

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, as amended, Romero. Spousal support: domestic violence.

Existing law governs the award of spousal support. Existing law sets forth criteria to be considered in determining spousal support.

This bill would revise those criteria, as specified, and provide that in any proceeding for dissolution of marriage ~~brought within 2 years before or after~~ *where there is* a criminal conviction for an act of domestic violence perpetrated by one spouse against the other spouse *entered by the court within 5 years prior to the filing of the dissolution proceeding, or at any time thereafter*, there shall be a rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse otherwise

awardable pursuant to the standards of the provisions governing the award of spousal support should not be made. The bill would authorize the court to consider a convicted spouse’s history as a victim of domestic violence as a condition for rebutting this presumption.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3600 of the Family Code is amended to
2 read:

3 3600. During the pendency of any proceeding for dissolution
4 of marriage or for legal separation of the parties or under Division
5 8 (commencing with Section 3000) (custody of children) or in any
6 proceeding where there is at issue the support of a minor child or
7 a child for whom support is authorized under Section 3901 or
8 3910, the court may order (a) the husband or wife to pay any
9 amount that is necessary for the support of the wife or husband,
10 consistent with the requirements of ~~Section 4320~~ Sections 4320
11 and 4325, or (b) either or both parents to pay any amount necessary
12 for the support of the child, as the case may be.

13 SEC. 2. Section 4320 of the Family Code is amended to read:
14 4320. In ordering spousal support under this part, the court
15 shall consider all of the following circumstances:

16 (a) The extent to which the earning capacity of each party is
17 sufficient to maintain the standard of living established during the
18 marriage, taking into account all of the following:

19 (1) The marketable skills of the supported party; the job market
20 for those skills; the time and expenses required for the supported
21 party to acquire the appropriate education or training to develop
22 those skills; and the possible need for retraining or education to
23 acquire other, more marketable skills or employment.

24 (2) The extent to which the supported party’s present or future
25 earning capacity is impaired by periods of unemployment that
26 were incurred during the marriage to permit the supported party to
27 devote time to domestic duties.

28 (b) The extent to which the supported party contributed to the
29 attainment of an education, training, a career position, or a license
30 by the supporting party.



1 (c) The ability of the supporting party to pay spousal support,
2 taking into account the supporting party’s earning capacity, earned
3 and unearned income, assets, and standard of living.

4 (d) The needs of each party based on the standard of living
5 established during the marriage.

6 (e) The obligations and assets, including the separate property,
7 of each party.

8 (f) The duration of the marriage.

9 (g) The ability of the supported party to engage in gainful
10 employment without unduly interfering with the interests of
11 dependent children in the custody of the party.

12 (h) The age and health of the parties .

13 (i) Documented evidence of any history of domestic violence,
14 *as defined in Section 6211*, between the parties, including, but not
15 limited to, consideration of emotional distress resulting from
16 domestic violence perpetrated against the supported party by the
17 supporting party, and consideration of any history of violence
18 against the supporting party by the supported party.

19 ~~(j) A criminal conviction for an act of domestic violence~~
20 ~~perpetrated by one spouse against the other spouse within two~~
21 ~~years before or after a proceeding for dissolution of marriage is~~
22 ~~brought, in which case there shall be a rebuttable presumption~~
23 ~~affecting the burden of proof that any award of temporary or~~
24 ~~permanent spousal support to the abusive spouse, otherwise~~
25 ~~awardable pursuant to the standards of this part, should not be~~
26 ~~made. The court may consider documented evidence of a~~
27 ~~convicted spouse’s history as a victim of domestic violence~~
28 ~~perpetrated by the other spouse or any other factors the court~~
29 ~~deems just and equitable as conditions for rebutting this~~
30 ~~presumption.~~

31 ~~(k)–~~

32 (j) The immediate and specific tax consequences to each party.

33 ~~(l)–~~

34 (k) The balance of the hardships to each party.

35 ~~(m)–~~

36 (l) The goal that the supported party shall be self-supporting
37 within a reasonable period of time. Except in the case of a marriage
38 of long duration as described in Section 4336, a “reasonable
39 period of time” for purposes of this section generally shall be
40 one-half the length of the marriage. However, nothing in this



1 section is intended to limit the court’s discretion to order support
2 for a greater or lesser length of time, based on any of the other
3 factors listed in this section, Section 4336, and the circumstances
4 of the parties.

5 ~~(n)~~

6 (m) The criminal conviction of an abusive spouse and a
7 ~~reduction~~ *the elimination* of the award in accordance with Section
8 4325.

9 ~~(o)~~

10 (n) Any other factors the court determines are just and
11 equitable.

12 SEC. 3. Section 4325 is added to the Family Code, to read:

13 4325. (a) *In any proceeding for dissolution of marriage*
14 *where there is a criminal conviction for an act of domestic violence*
15 *perpetrated by one spouse against the other spouse entered by the*
16 *court within five years prior to the filing of the dissolution*
17 *proceeding, or at any time thereafter, there shall be a rebuttable*
18 *presumption affecting the burden of proof that any award of*
19 *temporary or permanent spousal support to the abusive spouse*
20 *otherwise awardable pursuant to the standards of this part should*
21 *not be made.*

22 (b) *The court may consider documented evidence of a*
23 *convicted spouse’s history as a victim of domestic violence, as*
24 *defined in Section 6211, perpetrated by the other spouse, or any*
25 *other factors the court deems just and equitable, as conditions for*
26 *rebutting this presumption.*

27 (c) *The rebuttable presumption created in this section may be*
28 *rebutted by a preponderance of the evidence.*

