

Senate Bill No. 1221

CHAPTER 293

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

[Approved by Governor September 10, 2001. Filed with Secretary of State September 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1221, 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 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. The bill would make related changes.

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

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

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

SEC. 2. Section 4320 of the Family Code is amended to read:

4320. In ordering spousal support under this part, the court shall consider all of the following circumstances:

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

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

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

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

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

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

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

(f) The duration of the marriage.

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

(h) The age and health of the parties.

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

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

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

(l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.



(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4325.

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

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

4325. (a) In any proceeding for dissolution of marriage 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 five 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 this part should not be made.

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

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

