

Assembly Bill No. 1522

CHAPTER 718

An act to amend Section 4320 of, and to add Section 4324.5 to, the Family Code, relating to family law.

[Approved by Governor September 28, 2012. Filed with
Secretary of State September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1522, Atkins. Family law: monetary awards.

Existing law provides that, in addition to any other remedy authorized by law, when a spouse is convicted of attempting to murder the other spouse or of soliciting the murder of the other spouse, the injured spouse shall be entitled to 100% of the community property interest in his or her retirement and pension benefits, and a prohibition of specified support or insurance benefits from the injured spouse to the convicted spouse. Existing law defines "injured spouse" for these purposes. Under existing law, a family court is required to consider specified factors in ordering spousal support, including the criminal conviction of an abusive spouse.

This bill would expand the above-described provisions to apply when a spouse is convicted of a specified violent sexual felony against the other spouse, and would require the court to consider the convicted spouse's criminal conviction for a violent sexual felony in ordering spousal support, as specified. The bill would also require the court to order the attorney's fees and costs to be paid from the community assets if warranted by economic circumstances. Under the bill, the injured spouse, as defined, would not be required to pay any of the convicted spouse's attorney's fees out of his or her separate property. The bill would further, at the request of the injured spouse, define the date of the parties' legal separation as the date of the incident giving rise to the conviction, or earlier if the court finds that the circumstances justify an earlier date, for community property purposes.

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

SECTION 1. 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 4324.5 or 4325.

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

SEC. 2. Section 4324.5 is added to the Family Code, to read:

4324.5. (a) In any proceeding for dissolution of marriage where there is a criminal conviction for a violent sexual felony perpetrated by one spouse against the other spouse and the petition for dissolution is filed before five years following the conviction and any time served in custody, on probation, or on parole, the following shall apply:

(1) An award of spousal support to the convicted spouse from the injured spouse is prohibited.

(2) Where economic circumstances warrant, the court shall order the attorney's fees and costs incurred by the parties to be paid from the community assets. The injured spouse shall not be required to pay any attorney's fees of the convicted spouse out of the injured spouse's separate property.

(3) At the request of the injured spouse, the date of legal separation shall be the date of the incident giving rise to the conviction, or earlier, if the court finds circumstances that justify an earlier date.

(4) The injured spouse shall be entitled to 100 percent of the community property interest in the retirement and pension benefits of the injured spouse.

(b) As used in this section, "violent sexual felony" means those offenses described in paragraphs (3), (4), (5), (11), and (18) of subdivision (c) of Section 667.5 of the Penal Code.

(c) As used in this section, "injured spouse" means the spouse who has been the subject of the violent sexual felony for which the other spouse was convicted.