

AMENDED IN SENATE JULY 8, 2013
AMENDED IN SENATE MAY 24, 2013
AMENDED IN ASSEMBLY APRIL 9, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 681

Introduced by Assembly Members Melendez and Skinner

February 21, 2013

An act to amend Section 4320 of, and to add Section 4324.7 to, the Family Code, relating to spousal support.

LEGISLATIVE COUNSEL'S DIGEST

AB 681, as amended, Melendez. Spousal support.

Existing law requires a court to consider specified factors in awarding spousal support, including documented evidence of any history of domestic violence, as defined, between the parties.

This bill would require a court to also consider as a factor domestic violence perpetrated by either party against either party's child, as specified.

Existing law provides that when a spouse is convicted of a specified violent sexual felony against the other spouse, an award of spousal support to the convicted spouse from the injured spouse is prohibited, and the injured spouse is entitled to 100% of the community property interest in the retirement and pension benefits of the injured spouse. Existing law requires a family court to consider the criminal conviction of an abusive spouse in making a reduction or elimination of a spousal support award in accordance with these provisions:

This bill would prohibit the award of spousal support to a spouse convicted of a violent sexual felony against a child that was committed

~~on or after January 1, 2014, in any proceeding for dissolution of marriage filed on or after January 1, 2014. The bill would provide that the conviction of this felony constitutes a change in circumstances for purposes of a spousal support modification request. The bill would require a family court to consider the criminal conviction of an abusive spouse in making a reduction or elimination of a spousal support award in accordance with these provisions.~~

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 4320 of the Family Code is amended to
- 2 read:
- 3 4320. In ordering spousal support under this part, the court
- 4 shall consider all of the following circumstances:
- 5 (a) The extent to which the earning capacity of each party is
- 6 sufficient to maintain the standard of living established during the
- 7 marriage, taking into account all of the following:
- 8 (1) The marketable skills of the supported party; the job market
- 9 for those skills; the time and expenses required for the supported
- 10 party to acquire the appropriate education or training to develop
- 11 those skills; and the possible need for retraining or education to
- 12 acquire other, more marketable skills or employment.
- 13 (2) The extent to which the supported party’s present or future
- 14 earning capacity is impaired by periods of unemployment that
- 15 were incurred during the marriage to permit the supported party
- 16 to devote time to domestic duties.
- 17 (b) The extent to which the supported party contributed to the
- 18 attainment of an education, training, a career position, or a license
- 19 by the supporting party.
- 20 (c) The ability of the supporting party to pay spousal support,
- 21 taking into account the supporting party’s earning capacity, earned
- 22 and unearned income, assets, and standard of living.
- 23 (d) The needs of each party based on the standard of living
- 24 established during the marriage.
- 25 (e) The obligations and assets, including the separate property,
- 26 of each party.
- 27 (f) The duration of the marriage.

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

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

5 (i) Documented evidence of any history of domestic violence,
6 as defined in Section 6211, between the parties *or perpetrated by*
7 *either party against either party's child*, including, but not limited
8 to, consideration of emotional distress resulting from domestic
9 violence perpetrated against the supported party by the supporting
10 party, and consideration of any history of violence against the
11 supporting party by the supported party.

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

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

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

22 (m) The criminal conviction of an abusive spouse shall be
23 considered in making a reduction or elimination of a spousal
24 support award in accordance with Section 4324.5, 4324.7, or 4325.

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

26 ~~SEC. 2.— Section 4324.7 is added to the Family Code, to read:~~

27 ~~4324.7. (a) In any proceeding for dissolution of marriage filed~~
28 ~~on or after January 1, 2014, where there is a criminal conviction~~
29 ~~for a violent sexual felony that was committed by one spouse~~
30 ~~against a child on or after January 1, 2014, and the petition for~~
31 ~~dissolution is filed within five years following the conviction and~~
32 ~~any time served in custody, on probation, or on parole, an award~~
33 ~~of spousal support to the convicted spouse from the other spouse~~
34 ~~is prohibited.~~

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

38 ~~(c) As used in this section, “child” means a child as defined in~~
39 ~~subdivision (e) of Section 6211.~~

1 ~~(d) A criminal conviction for a violent sexual felony that was~~
2 ~~committed by one spouse against a child, as described in~~
3 ~~subdivision (a), shall constitute a change in circumstances for~~
4 ~~purposes of a spousal support modification request. If a change in~~
5 ~~circumstances occurs as a result of a conviction for a violent sexual~~
6 ~~felony as described in subdivision (a), any spousal support owed~~
7 ~~in arrears to the convicted spouse shall be vacated.~~
8 ~~(e) A court may order a convicted spouse to repay to the other~~
9 ~~spouse any spousal support received from the other spouse from~~
10 ~~the date of commission of the violent sexual felony against a child,~~
11 ~~as described in subdivision (a), to the date of conviction.~~