

AMENDED IN SENATE MAY 13, 2015

SENATE BILL

No. 28

Introduced by Senator Wieckowski

December 1, 2014

An act to amend Section ~~4325~~ 4320 of the Family Code, relating to spousal support.

LEGISLATIVE COUNSEL'S DIGEST

SB 28, as amended, Wieckowski. Spousal support factors: domestic ~~violence conviction~~. *violence*.

Existing law requires a court to order spousal support in an amount, and for a period of time, that the court determines is just and reasonable based on the standard of living established during the marriage. In making spousal support awards, the court is required to consider, among other factors, documented evidence of any history of domestic violence between the parties or against the child of either party.

This bill would specify that a plea of nolo contendere is included within the documented evidence of domestic violence to be considered by the court.

~~Existing law requires 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 is a rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse otherwise awardable should not be made.~~

~~This bill would provide that a plea of nolo contendere would constitute a criminal conviction for the above purposes.~~

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.

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

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

32 (i) Documented~~evidence~~ *evidence, including a plea of nolo*
33 *contendere*, of any history of domestic violence, as defined in
34 Section 6211, between the parties or perpetrated by either party
35 against either party’s child, including, but not limited to,

1 consideration of emotional distress resulting from domestic
2 violence perpetrated against the supported party by the supporting
3 party, and consideration of any history of violence against the
4 supporting party by the supported party.

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

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

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

15 (m) The criminal conviction of an abusive spouse shall be
16 considered in making a reduction or elimination of a spousal
17 support award in accordance with Section 4324.5 or 4325.

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

19 ~~SECTION 1. Section 4325 of the Family Code is amended to~~
20 ~~read:~~

21 ~~4325. (a) In any proceeding for dissolution of marriage where~~
22 ~~there is a criminal conviction for an act of domestic violence~~
23 ~~perpetrated by one spouse against the other spouse entered by the~~
24 ~~court within five years prior to the filing of the dissolution~~
25 ~~proceeding, or at any time thereafter, there shall be a rebuttable~~
26 ~~presumption affecting the burden of proof that any award of~~
27 ~~temporary or permanent spousal support to the abusive spouse~~
28 ~~otherwise awardable pursuant to the standards of this part should~~
29 ~~not be made.~~

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

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

1 ~~(d) Notwithstanding Section 1016 of the Penal Code, a plea of~~
2 ~~nolo contendere constitutes a criminal conviction for the purposes~~
3 ~~of this section.~~

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