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AB-2780 Family law: support orders. (2017-2018)

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Assembly Bill No. 2780

CHAPTER 178

An act to amend Sections 4058 and 4331 of the Family Code, relating to family law.

[Approved by Governor August 20, 2018. Filed with Secretary of State August 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2780, Bloom. Family law: support orders.

(1) Existing law authorizes the court, in a proceeding for dissolution of marriage or for legal separation of the parties, to order a party to submit to an examination by a vocational training counselor to assess the party's ability to obtain certain employment, as specified. Existing law requires a vocational training counselor performing these examinations to possess specific educational and professional experiences, including, among other qualifications, a master's degree in the behavioral sciences.

This bill would modify the required qualification to serve as a vocational training counselor by allowing, in the alternative to the master's degree, a vocational training counselor to possess another postgraduate degree that the court finds provides sufficient training to perform a vocational evaluation.

(2) Existing law requires a court, in a proceeding for court-ordered child support, to follow the statewide uniform guideline to determine the amount of child support to order, unless special circumstances exist. Existing law also requires a court to adhere to certain principles in these proceedings, including, among others, that each parent should pay for the support of the children according to his or her ability. Existing law defines the annual gross income of the parent for purposes of the statewide uniform guideline, and authorizes the court, in its discretion, to consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children.

This bill would specify that a court may, in exercising its discretion to consider the earning capacity of the parent as described above, take into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4058 of the Family Code is amended to read:

4058. (a) The annual gross income of each parent means income from whatever source derived, except as specified in subdivision (c) and includes, but is not limited to, the following:

(1) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to the proceeding to establish a child support order under this article.

(2) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(3) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(b) The court may, in its discretion, consider the earning capacity of a parent in lieu of the parent's income, consistent with the best interests of the children, taking into consideration the overall welfare and developmental needs of the children, and the time that parent spends with the children.

(c) Annual gross income does not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

SEC. 2. Section 4331 of the Family Code is amended to read:

4331. (a) In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

(c) A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(d) "Vocational training counselor" for the purpose of this section means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify as an expert in vocational training under Section 720 of the Evidence Code.

(e) A vocational training counselor shall have at least the following qualifications:

(1) A master's degree in the behavioral sciences, or other postgraduate degree that the court finds provides sufficient training to perform a vocational evaluation.

(2) Qualification to administer and interpret inventories for assessing career potential.

(3) Demonstrated ability in interviewing clients and assessing marketable skills with an understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

(4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.

(5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(f) The court may order the supporting spouse to pay, in addition to spousal support, the necessary expenses and costs of the counseling, retraining, or education.