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SB-1129 Spousal support award: convictions. (2017-2018)

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Senate Bill No. 1129

CHAPTER 850

An act to amend Sections 4324.5 and 4325 of the Family Code, relating to support orders.

[Approved by Governor September 27, 2018. Filed with Secretary of State September 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1129, Monning. Spousal support award: convictions.

Existing law requires that in any proceeding for dissolution of marriage where one spouse has been convicted of an act of domestic violence against the other spouse within a specific time period, there is a rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse should not be made. In a similar spousal support proceeding where one spouse has been convicted of a violent sexual felony perpetrated against the other spouse within a specific time period, existing law prohibits an award of spousal support to the convicted spouse from the injured spouse, requires the court to order attorney's fees to be paid from community assets, authorizes the date of legal separation to be the date of the incident giving rise to the conviction or earlier, and entitles the injured spouse to 100% of the community interest in the injured spouse's retirement and pension.

This bill would modify the rebuttable presumption against making an award of temporary or permanent spousal support that is applicable to all criminal convictions for an act of domestic violence by distinguishing between a criminal conviction for a domestic violence felony and a domestic violence misdemeanor, and would define these 2 types of convictions. Under the bill, a criminal conviction for a domestic violence felony would prohibit awards relating to spousal support, attorney's fees, setting the date of separation, and retirement and pension benefits in a manner similar to a criminal conviction for a violent sexual felony. The bill would authorize the court to determine, based on the facts of the particular case, that one or more of these limitations on awards do not apply, if the convicted spouse presents documented evidence that he or she has been the victim of a violent sexual offense or domestic violence by the other spouse.

Under the bill, a criminal conviction for a domestic violence misdemeanor or a misdemeanor that results in a term of probation that is based on domestic violence, as specified, would require a rebuttable presumption against making the same awards that are prohibited in cases of a criminal conviction for a violent sexual felony or domestic violence felony, except that there would not be a rebuttable presumption that the injured spouse is entitled to 100% of the community property interest in his or her retirement or pension benefits. The bill would authorize the court to determine, based on the facts of a particular case, that the injured spouse is entitled to up to 100% of the community property interest in his or her retirement and pension benefits based on specified factors, including the duration of the marriage and when, based on documented evidence, incidents of domestic violence occurred.

This bill would establish different time periods for the effectiveness of the prohibition in cases of a criminal conviction for a violent sexual felony or domestic violence felony and the effectiveness of the rebuttable presumption in cases of a domestic violence misdemeanor or probationary term, as specified. The bill would make the above changes applicable to convictions that occurred

on or after January 1, 2019. The bill would also define terms for its purposes, and would make technical changes to these provisions.

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

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

SECTION 1. Section 4324.5 of the Family Code is amended to read:

4324.5. (a) In any proceeding for dissolution of marriage where there is a criminal conviction for a violent sexual felony or a domestic violence 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) If 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 separation, as defined in Section 70, 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, the following definitions apply:

- (1) "Domestic violence felony" means a felony offense for an act of abuse, as described in Section 6203, perpetrated by one spouse against the other spouse.
- (2) "Injured spouse" means the spouse who has been the subject of the violent sexual felony or domestic violence felony for which the other spouse was convicted.
- (3) "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) If a convicted spouse presents documented evidence of the convicted spouse's history as a victim of a violent sexual offense, as described in paragraphs (3), (4), (5), (11), and (18) of subdivision (c) of Section 667.5 of the Penal Code, or domestic violence, as defined in Section 6211, perpetrated by the other spouse, the court may determine, based on the facts of the particular case, that one or more of paragraphs (1) to (4), inclusive, of subdivision (a) do not apply.

(d) The changes made to this section by the bill that added this subdivision shall only apply to convictions that occur on or after January 1, 2019.

SEC. 2. Section 4325 of the Family Code is amended to read:

4325. (a) In any proceeding for dissolution of marriage where there is a criminal conviction for a domestic violence misdemeanor or a criminal conviction for a misdemeanor that results in a term of probation pursuant to Section 1203.097 of the Penal Code perpetrated by one spouse against the other spouse entered by the court within five years prior to the filing of the dissolution proceeding or during the course of the dissolution proceeding, there shall be a rebuttable presumption that the following shall apply:

- (1) An award of spousal support to the convicted spouse from the injured spouse is prohibited.
- (2) If 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 separation, as defined in Section 70, shall be the date of the incident giving rise to the conviction, or earlier, if the court finds circumstances that justify an earlier date.

(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.

(d) The court may determine, based on the facts of a particular case, that the injured spouse is entitled to up to 100 percent of the community property interest in his or her retirement and pension benefits. In determining whether and how to apportion the community property interest in the retirement and pension benefits of the injured spouse, the court shall consider all of the following factors:

(1) The misdemeanor domestic violence conviction, as well as documented evidence of other instances of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence. The court shall also 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.

(2) The duration of the marriage and when, based on documented evidence, incidents of domestic violence, as defined in Section 6211, occurred.

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

(4) The extent to which the convicted spouse contributed to the attainment of an education, training, a career position, or a license by the injured spouse.

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

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

(e) As used in this section, the following definitions apply:

(1) "Domestic violence misdemeanor" means a misdemeanor offense for an act of abuse, as described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 6203, perpetrated by one spouse against the other spouse.

(2) "Injured spouse" means the spouse who has been the subject of the domestic violence misdemeanor for which the other spouse was convicted.

(f) The changes made to this section by the bill that added this subdivision shall only apply to convictions that occur on or after January 1, 2019.