



NEW YORK
CITY BAR

**REPORT ON LEGISLATION BY THE
MATRIMONIAL LAW COMMITTEE**

**A.7802
S.7077**

**M. of A. Lavine
Sen. Hoylman**

AN ACT to amend the family court act and the domestic relations law, in relation to agreements and stipulations of child support (Office of Court Administration (Internal #51-2021))

THIS BILL IS APPROVED

The Matrimonial Law Committee of the New York City Bar Association supports the proposed bill, which would amend F.C.A. §413(1)(h) and D.R.L. §240(1-b)(h) to revise the procedures to be followed where the required Child Support and Standards Act (“CSSA”) language has been omitted from an agreement regarding the payment of child support.

The Family Court Advisory and Rules Committee to the Chief Administrative Judge of the Courts of the State of New York has been expressing concern since 2016 about the lack of specificity in those procedures, particularly regarding whether courts should invalidate child support provisions retroactively if they are part of a stipulation or agreement that does not include the required recitations. As we noted in a June 23, 2016 letter to the Office of Court Administration, the Matrimonial Committee shares those concerns.¹ In one case, problems with child support recitations forced the state courts to annul three agreements and consider *de novo* a petition more than eight years old.² The bill addresses those issues by making clear the effective date of any invalidation. We do not understand this bill to change existing law regarding when a CSSA violation is sufficiently severe to invalidate the child support provisions of a stipulation or agreement.

The language in the bill also resolves some drafting concerns that had been raised by other proposed legislation on this topic. Some proposals would have invalidated an entire agreement, including all provisions relating to other issues which may be entirely unrelated to the concerns

¹ See http://onenorth-nyc-bar.s3.amazonaws.com/files/Stips_Agreements.pdf.

² See *Gannon v. Usenza*, 23 Misc.3d 1126(A), No. F-2808-00, 2009 WL 1363045, at *2 (Fam. Ct. Albany County May 15, 2009).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has approximately 24,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

underlying the requirement to include CSSA recitations. The bill provides that the “sections relating to child support in any agreement, stipulation or court order . . . shall be deemed void” if the necessary recitations are omitted, as will sections “so directly connected or intertwined with the basic child support obligation that they necessarily must be recalculated therewith.”³ That language preserves existing law. *See Cimons v. Cimons*, 53 A.D.3d 125, 129-30, 861 N.Y.S.2d 88 (2008).

New §413(1)(h)(8) and D.R.L. §240(1-b)(h)(8) clarify how the statute will apply in Family Court, which is a court of limited jurisdiction. Those paragraphs direct the Family Court to dismiss, without prejudice, certain actions that must be re-filed in Supreme Court in order to make the necessary changes to an agreement, stipulation, or order. Simultaneously with such a dismissal, the Family Court can grant a money judgment for arrears that had accrued before the date when the CSSA recitation problem was pointed out, because the problem will only invalidate the agreement, stipulation, or order as of that date. The Supreme Court can then grant a money judgment or other relief for arrears accrued after that date. In the small category of cases that must be dealt with in Supreme Court, the Family Court should help pro se litigants to understand that they should re-file in Supreme Court. Some additional training or publicity materials may help in that regard.

For these reasons, the Committee supports this bill.

Matrimonial Law Committee
Michael Stutman, Chair

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³ These new provisions would appear in sub-paragraph (6) of both Family Court Act § 413 subd. 1(h) and Domestic Relations Law § 240 subd. 1-b(h).

* This report was first issued in May 2017, during the chair term of Jenifer Foley; it was subsequently reissued in June 2019 during the chair term of Dylan S. Mitchell, with Matthew A. Feigin serving as Legislation Subcommittee Chair.