

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

**A.7253
S.5189**

**M. of A. Weinstein
Sen. Bonacic**

AN ACT to amend the domestic relations law, in relation to providing additional enforcement mechanisms for collection of spousal or child support

THIS BILL IS APPROVED

The Matrimonial Law Committee of the New York City Bar Association shares the concerns that have led to A.7253/S.5189. The bill would amend Domestic Relations Law §245 to remove an unnecessary obstacle to holding in contempt a party who has defied a Supreme Court order. Such change will help enforce orders in matrimonial cases, including collecting support due to spouses, ex-spouses and children. Under current law, the Supreme Court can hold a party in contempt for failure to pay only if the court finds that other enforcement measures either have been tried and failed or would be ineffective. By removing that requirement, A.7253/S.5189 would make the standard for contempt in Supreme Court the same standard that already applies in Family Court. We have found the Family Court standard to be fair to all sides.

The current requirement in Supreme Court puts a large hurdle in the path of lower-income parties, who cannot afford to have their lawyers attempt every other tactic before asking to hold their non-paying spouses in contempt. Even among wealthier parties, spouses who could readily pay court-ordered support often refuse to do so and plead poverty until they face the prospect of being jailed for contempt. At that point the non-paying spouse will find the money that he or she is obliged to pay. Finally, the current requirement unnecessarily burdens the court system by forcing parties to make multiple motions to enforce a single order.

Our experience in Family Court confirms that even if this legislation is enacted, numerous procedural protections and judicial practice will make incarceration an unlikely disposition, only used for the most intractable offenders. The Family Court will not even hold a contempt hearing for one or two missed payments. Typically, there are thousands (more often tens of thousands) of dollars in support payments past due by the time a judge will entertain a contempt motion.

If the party entitled to support can make a prima facie case of contempt, then the payor has the right to an attorney to represent him or her at the contempt hearing and payors who

cannot retain a private attorney have the right to court-appointed counsel. If the payor, with the assistance of counsel, can show that he or she is incapable of paying the amount of support that was ordered, then the payor cannot be imprisoned (although a money judgment will be entered for the arrears). If the judge concludes that a party has violated the order and could pay, but a lesser penalty would bring him or her into compliance, then the judge will not threaten jail. And even when judges believe that incarceration may be necessary, they overwhelmingly do not impose it immediately but instead give payors a chance to purge their contempt by paying a specified amount toward their arrears by a specified deadline. If at any point it becomes clear that the arrears could be satisfied by a lump sum payment from the payor's assets or by a court order to withhold a portion of the violator's income (CPLR 5242), then the court will order the payment or issue the income execution order rather than send a contemnor to jail. Thus, while this legislation properly removes undue obstacles that hinder or prevent a finding of contempt in matrimonial cases, jailing as a sanction will appropriately remain a last resort.

For these reasons, the Committee supports this bill.

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