

## Family Law Section

### Memorandum Urging Approval

FLS #2-GOV

September 21, 2016

A. 7253

By: M. of A. Weinstein

S. 5189

By: Senator Bonacic

Assembly Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: Immediately

**AN ACT** to amend the Domestic Relations Law (“DRL”) in relation to providing additional enforcement mechanisms for collection of spousal or child support.

**SECTION OF LAW REFERRED TO:** DRL § 245

**THE FAMILY LAW SECTION STRONGLY SUPPORTS THIS BILL  
AND URGES ITS APPROVAL**

Introduction

The Matrimonial Practice Advisory and Rules Committee to the Chief Administrative Judge has proposed a bill (the “Bill”) amending DRL §245 “to eliminate the requirement that other enforcement remedies be exhausted before contempt can be sought against a person who fails to pay child support, spousal support or combined child and spousal support pursuant to a court order in a matrimonial proceeding.”

Discussion & Analysis

While support-enforcement applications generally may be brought in either the Supreme or Family Court, inexplicably, there is a different standard in the two courts necessary for a finding of contempt of court for nonpayment of spousal support and/or child support. In Supreme Court, DRL §245 mandates that the moving party demonstrate that all other remedies (e.g., money judgment, income execution, sequestration) have been exhausted before the defaulting party can be adjudicated in contempt of court, or that such remedies would be

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ineffectual. In contrast, no such requirement exists in Family Court. See e.g. Powers v. Powers, 86 N.Y.2d 63 (1995).

This discrepancy has been criticized repeatedly over the years. As stated by Honorable Alan D. Scheinkman in his Practice Commentaries to DRL §245:

There is no logical reason why incarceration should be more difficult to obtain in Supreme Court, when incarceration based on the same default under the same order may more readily be obtained in Family Court . . . . It would be appropriate for the Legislature to amend DRL §245 to bring it into line with Family Court Act §454. In this way, the Supreme Court would have the same array of enforcement tools as the Family Court.

Scheinkman, Alan D., Practice Commentaries, McKinneys Consolidated Laws of New York Annotated, DRL §245.

Due to the current language of DRL §245, it may take months, if not longer, to exhaust all remedies, which “could mean delay after delay for the families who need the support for their immediate needs.” The Sponsor’s Memorandum in Support also notes that, unlike Supreme Court, contempt proceedings in Family Court do not require a demonstration to the court that such remedies would be “ineffectual.” The Bill would properly remove all such distinctions between contempt proceedings in Family Court and Supreme Court.

Based on the foregoing, the Family Law Section strongly supports this bill and urges its **APPROVAL** by Governor Cuomo.

Memorandum prepared by:                      Prepared by Family Law Section Committee on Legislation

Chair of the Section:                              Mitchell Y. Cohen, Esq.