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**REPORT ON LEGISLATION BY
THE FAMILY COURT AND FAMILY LAW COMMITTEE
AND THE JUVENILE JUSTICE COMMITTEE**

A.7528

S.6534

M. of A. Gantt

Sen. Montgomery

AN ACT to amend the family court act, in relation to use of restraints on children appearing before the family court (Office of Court Administration (Internal # 45 - 2019))

THIS BILL IS APPROVED

The State Courts and Federal Courts in New York have both recognized that indiscriminate shackling of participants in court proceedings violates basic constitutional rights and cannot be permitted. According to the New York Court of Appeals, “[t]he routine and unexplained use of visible restraints does violence to [certain fundamental legal] principles, essential pillars of a fair and civilized” judicial system that include preserving the court’s objectivity, ensuring the subject’s meaningful participation in proceedings, and “maintaining the dignity of the judicial process.”¹ Similarly, the United States Court of Appeals for the Second Circuit has held “[i]t is beyond dispute that a defendant may not be tried in shackles unless the trial judge finds on the record that it is necessary to use such a restraint as a last resort to satisfy a compelling interest such as preserving the safety of persons in the courtroom.”²

Despite these clear pronouncements, indiscriminate shackling of youth continues in family court. As such, this legislation is necessary to ensure that the due process rights of young people are respected. This legislation has been introduced at the request of the Chief Administrative Judge upon the recommendation of the Office of Court Administration’s Family Court and Family Rules Advisory Committee.

The need to protect young people from being indiscriminately restrained in court is so urgent that the American Bar Association passed a resolution which “urges all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with

¹ *People v. Best*, 979 N.E.2d 1187, 1189 (2012) (citing *Deck v. Missouri*, 544 U.S. 622, 630-31 (2005)).

² *U.S. v. Haynes*, 729 F.3d 178 (2d Cir. 2013).

an in-person opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.”³ This bill fulfills that mandate.

This bill is particularly important in light of the enacted legislation raising the age of criminal responsibility.⁴ As a result of that legislation, many more young people will be appearing in family court, the vast majority of whom will have been charged with misdemeanors and non-violent offenses. It would be particularly egregious to allow them to be handcuffed before the court without justification.

Family Court & Family Law Committee
Glenn Metsch-Ampel, Chair
Betsy Kramer, Legislative Subcommittee Chair

Juvenile Justice Committee
Fredda Monn, Chair

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³ American Bar Association, *Resolution and Report to the House of Delegates* (Adopted by the House of Delegates, February 2015); 145-159, available at http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/2015_hod_midyear_meeting_electronic_report_book.authcheckdam.pdf.

⁴ A.3009-C/S.2009-C, Part WWW (NYS 2017).