



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

**A.7796
S.6498**

**M. of A. Meeks
Sen. Bailey**

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 # 10 - 2021))

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 an in-person

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).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 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.

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.

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³ American Bar Association, *Resolution 107A* (Adopted by the House of Delegates, February 2015); 145-159, available at https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/standards-and-policies/policies-and-guidelines/ (last visited May 24, 2021).

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

* This report was first issued by the Family Court and Family Law Committee and Juvenile Justice Committee in May 2017, during the terms of the following committee chairs: Glenn Metsch-Ampel, Chair; Betsy Kramer, Legislative Subcommittee Chair (Family Court & Family Law Committee) and Fredda Monn, (Juvenile Justice Committee).