SPONSOR: Rep. J. Johnson & Sen. Townsend
Reps. Baumbach, Bennett, Heffernan, Kowalko, Lynn, Paradee, Potter, K. Williams; Sens. Lopez, Peterson

HOUSE OF REPRESENTATIVES

148th GENERAL ASSEMBLY

HOUSE BILL NO. 211
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY PROCEEDINGS AND THE USE OF RESTRAINTS ON A CHILD.

WHEREAS, juvenile delinquency proceedings in Delaware's Family Court are rehabilitative in nature and in the interest of rather than against the child; and

WHEREAS, Delaware law prohibits a child alleged to be delinquent from being placed in secure detention unless no means less restrictive of the child's liberty will assure the child's appearance for court and detention is necessary based on the nature of the offense or for the protection of the public; and

WHEREAS, the mandatory or indiscriminate shackling of juveniles in custody during their court appearances is contrary to the rehabilitative purpose of the juvenile justice system; and

WHEREAS, the United States Supreme Court has held the mandatory shackling of adult defendants unconstitutional because visible shackling undermines the presumption of innocence and can interfere with an accused's ability to communicate with their attorney; and

WHEREAS, the American Bar Association has adopted a resolution urging all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and permitting the use of restraints only when necessary to prevent flight or harm to the juvenile or others; and

WHEREAS, the American Academy of Child & Adolescent Psychiatry has issued a policy statement opposing mandatory or routine shackling of juveniles as "demeaning, humiliating and stigmatizing" of juveniles and a practice that adds to the trauma many justice-involved youth have already experienced; and

WHEREAS, many other child advocacy organizations – including the Child Welfare League of America, the American Orthopsychiatric Association, the National Center for Mental Health and Juvenile Justice, the National

HD : KL : TEH:1031480216
LC : BCG : RAY:5351480100

Association of Counsel for Children and the National Juvenile Defender Center – all oppose the indiscriminate use of physical restraints on youth appearing in court; and

WHEREAS, the General Assembly believes the use of physical restraints on youth appearing in court should occur only in those rare cases where no less restrictive alternatives will prevent flight or physical harm to the child or other courtroom participants;

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter III, Chapter 9, Title 10 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1007B. Use of restraints on a child.

(a) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a child during a court proceeding and must be removed either prior to or after the child has entered the courtroom for an appearance before the court unless the court finds both of the following conditions are met:

(1) The use of restraints is necessary due to one of the following factors:

a. The juvenile is presently uncontrollable and constitutes a serious and evident danger to himself or herself or others;

b. There are safety risks for the youth or staff in the court room, including but not limited to the presence of known gang associates, or other individuals including relatives, who could pose a risk to youth and staff;

c. The juvenile has a history of non-compliance with law enforcement, court security, and DYRS staff, including evidence of prior attempts to escape custody, disruptive behavior at a detention facility, and other relevant factors.

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(b) In making a determination that restraints are necessary, the court may receive and consider such information and evidence it believes relevant to the findings required by subsection (a) of this section. The court shall provide the child or child's attorney an opportunity to be heard as part of any hearing to determine whether the use of restraints is necessary. If restraints are ordered, the court shall make written findings of fact in support of the order.

(c) Any use of restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing.

Section 2. This Act shall become effective 180 days after the publication in the Register of Regulations of a notice that an appropriation was made. The Controller General shall provide notice to the Registrar of Regulations that the appropriation was made.

HD : KL : TEH:1031480216
LC : BCG : RAY:5351480100