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April 24, 2014

Ms. Denise Foster
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Dear Ms. Foster and Members of the Rules Committee:

Proposed Juvenile Court Rule (JuCR) 1.6 addresses the use of physical restraints with juvenile offenders.

We have three observations for you to consider.

First, restraint of persons charged with crimes and their subsequent transport to and from a detention facility or jail and court is the work of juvenile court detention employees, jail employees, and law enforcement officers. The Supreme Court of Washington should consult with the individuals who do the work before setting out conditions of that work. We would suggest that you contact Mitch Barker at the Washington Association of Sheriffs and Police Chiefs, as well as Pete Peterson, the Juvenile Court Administrator for Clallam County.

Second, the use or prohibition of restraints within a courtroom will be a fact specific determination and is best left to the discretion of the judicial officer presiding over the court proceeding, and who is familiar with the physical surroundings and staffing available for transport to and from such court proceeding.

Third, in the 2012 Legislative Session, this issue was introduced as proposed changes to the statutory laws of Washington. Neither HB 2298 nor SB 6661 passed out of committee. Attached to this letter is the bill report on HB 2298, which includes a summary of the testimony in support and opposition for this measure when it received a public hearing. You may want to debate to what extent the court rule process should be utilized to address substantive law measures that fail to pass the Legislature.

Sincerely,

A handwritten signature in black ink, appearing to be "Ben Nichols", written over a large, stylized "B" that serves as a background for the signature.

Ben Nichols
WAPA President
Asotin County Prosecuting Attorney



HOUSE BILL REPORT

HB 2298

As Reported by House Committee On:
Early Learning & Human Services

Title: An act relating to the use of restraints on juveniles.

Brief Description: Limiting the use of restraints on juveniles.

Sponsors: Representatives Kagi, Goodman, Darneille, Orwall, Fitzgibbon, Appleton, Stanford, Dickerson, Jinkins, Ryu, Moscoso, Roberts and Santos.

Brief History:

Committee Activity:

Early Learning & Human Services: 1/23/12, 1/31/12 [DPS].

Brief Summary of Substitute Bill

- Prohibits the use of restraints on children and juveniles who appear in county superior courts, except in limited circumstances.
- Requires that any time restraints are used, they must be the least restrictive available and the most reasonable under the circumstances.
- Requires that when restraints are permitted for juvenile offenders, their use must be documented in writing.

HOUSE COMMITTEE ON EARLY LEARNING & HUMAN SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kagi, Chair; Roberts, Vice Chair; Dickerson, Goodman and Orwall.

Minority Report: Do not pass. Signed by 4 members: Representatives Walsh, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Johnson and Overstreet.

Staff: Linda Merelle (786-7092).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Detention.

A court may order a juvenile to be placed in detention as part of an offender disposition or a bench warrant, and law enforcement, in limited circumstances, may take a juvenile or child into custody upon notification by a court that the juvenile may be in contempt for failing to follow the terms of a court order. For a child who may be in contempt of a court order for a status offense, the court must promptly set the matter for a hearing. If a juvenile is being held in detention as an offender, the juvenile may be required to appear at hearings prior to and during a trial.

Use of Restraints.

Approximately half of the 39 county superior courts in Washington physically restrain juveniles who have court appearances while they are in custody. The juveniles are also restrained during transportation to and from court, irrespective of whether the juvenile is before the court as an offender or for a status offense, such as truancy. The nature of the restraint varies, but many courts use ankle restraints, as well as handcuffs.

Summary of Substitute Bill:

Status Offenders.

Restraints are permitted for a child or juvenile who is detained for a status offense only when he or she is a flight risk or has exhibited violent behavior. When restraints are used, they must be the least restrictive available and the most reasonable under the circumstances.

Juvenile Offenders.

Restraints may be placed on a juvenile while he or she is in the courtroom during a criminal proceeding only if the court makes an individualized determination that the restraints are necessary to prevent escape or injury to the juvenile or others.

The use of restraints is permitted during transportation if detention personnel determine that the circumstances present a risk of escape or of injury to the youth or to others. Any time restraints are used on a juvenile, they must be the least restrictive available and the most reasonable under the circumstances. When restraints are used on juvenile offenders, an employee of the court or the detention facility must document in writing the kind of restraints used and the reasons that those restraints were considered the least restrictive and the most reasonable.

Information Packets.

The director of any juvenile facility covered by this act must provide an informational packet, jointly developed by the Washington Association of Sheriffs and Police Chiefs, the Criminal Justice Training Commission, and the Administrative Office of the Courts. The

packet must describe the requirements of the act to all staff involved in transporting youth and to other staff as appropriate.

Civil Liability.

No civil liability may be imposed by any court upon the county or its employees for actions carried out pursuant to this act except where there is a showing of gross negligence on the part of the county or its employees.

Substitute Bill Compared to Original Bill:

The provisions of the substitute bill do not apply to the Juvenile Rehabilitation Administration. Under the substitute bill, restraints may not be used on status offenders in the courtroom or during transportation unless the child or youth is a flight risk or has previously exhibited violent behavior.

For juvenile offenders, no individualized determination is required to determine whether restraints should be used on a juvenile during transport. Under the substitute bill, restraints are permitted during transportation if detention staff determine that under the circumstances there is a risk of escape or a risk that the juvenile will cause harm to himself or herself or others.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Many counties routinely shackle youth even when they are not accused of a crime. It is unnecessary, and a more reasonable policy is needed. King County and Yakima juvenile detention facilities do not have a policy of routinely shackling youth. The informational packet described in the bill can be developed without much cost, and the bill preserves the discretion of detention facilities. This bill does a great job in finding a proper balance. The policy outlined in the bill takes into account that some juveniles have to be restrained and allows the courts to make an individualized determination.

(Opposed) Superior Court Judges of Washington do not want to shackle juveniles in the courtroom if it is not necessary. In Pierce County, there are only 35 youth in custody, and often they are the most dangerous and the most violent. Some counties have to transport juveniles over long distances. The juveniles who are in court for run-of-the mill probation violations are in alternatives to detention. There are four courtrooms and one deputy. A lot of deputy time is spent in dependency courts. Pierce County restrains juveniles in order to protect the child and the public. The counties are understaffed in the courtroom and unable

to prevent escape by juveniles who are a flight risk. Even some juveniles in leg restraints have escaped from the courthouse. Harm to staff and the youth is a concern. There are many cases where juveniles try to escape because they have nothing to lose. In a courtroom, victims and families may only be a few feet away. It is best to leave the decision of whether to restrain a juvenile up to judicial discretion. There are differences from county to county and from court to court. King County seems to have a higher standard that others cannot reach.

Persons Testifying: (In support) Representative Kagi, prime sponsor; Adam Sherman and Ellie Wilson, Child and Youth Legislation Advocacy Clinic, University of Washington School of Law; and Travis Stearns, Washington Defender Association and Washington Association of Criminal Defense Lawyers.

(Opposed) Tom Parker, Superior Court Judges Association; and Pete Peterson and Shelly Maluo, Washington Association of Juvenile Court Administrators.

Persons Signed In To Testify But Not Testifying: None.