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April 30, 2014

Justice Charles Johnson
Supreme Court Rules Committee
c/o Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
Via email to: supreme@courts.wa.gov

RE: Comment on proposed rule JuCr 1.6 regarding physical restraints in the courtroom

Dear Justice Johnson and Members of the Rules Committee:

Columbia Legal Services supports the proposed amendment to JuCR 1.6. We agree with the proposed rule that, before shackling a youth in court, that court should be required to make an individualized determination of whether the restraint is necessary. Automatic shackling of youth is unnecessary, counter to juvenile court's rehabilitative goals, and serves no significant administrative or safety purpose. It is a practice that should be ended.

Over the past several decades, our office has represented thousands of youth who were in and out of the juvenile justice and status offense system. These youth often experienced trauma throughout their lives, experiencing abuse, foster care, and homelessness at high rates. Our clients, like the vast majority of children and youth in Washington's juvenile justice system were charged with property and other non-violent crimes. A significant number of youth in juvenile court are status offenders, who are charged with no offense, and who may have been brought to court due to missing school. Given this, it is stunning that so many of our courts and detention centers choose to bind in-custody youth in heavy, restrictive and demeaning chains prior to and even during court hearings. In most counties, the child's age, height, weight, gender, health, offense, risk of flight, or threat to self or public safety make no difference in whether a child is shackled or not. Such shackling may include handcuffs, leg irons, and belly chains.

Indiscriminately chaining up children is inconsistent with the rehabilitative purpose of our juvenile justice system. On the contrary, the practice is counter-therapeutic, psychologically and physically harmful, and contrary to appropriate developmental pediatric practice.[1] When shackled children have been the victim of abuse, the effect can be especially traumatic.[2] By unnecessarily shackling juveniles, our courts inflict pain on children, treat them as criminals and make them think that is exactly who and what they are.[3]

[1] Bernard P. Perlmutter, *Unchain the Children: Gault, Therapeutic Jurisprudence, and Shackling,* 9 Barry L. Rev. 1 (2007).

[2] *Id.*

[3] Carlos Martinez, *Why Are Children in Florida Treated as Enemy Combatants?*, Cornerstone, May-Aug., 2007

"[C]hildren learn that a fundamental principle of our democracy is that a person is innocent until proven guilty. Being shackled gives [juveniles] the opposite message. This conflict between what adults say and do is harmful to young people's moral development."[4]

As the Washington Defender Association notes in its letter, states are moving away from, not towards, indiscriminant shackling. States like California, Connecticut, Florida, New Mexico, New York, North Dakota, North Carolina, Vermont and others are getting rid of this widespread practice, creating a "presumption against shackling" absent an individualized determination of need.[5]

There is scant evidence that reducing shackling has any fiscal impact or administrative burden on counties. Counties that do not use shackling do not experience more public safety issues, nor do they have higher security staffing levels. See testimony on HB 2298 (2012) (counties that do not use shackling employ no more security staff than counties with presumptive shackling).[6] For example, when the North Carolina legislature banned indiscriminate shackling in 2007, House Bill 1243 explicitly stated that there was no fiscal impact.

In summary, it is time we join other states, as well as a number of counties in Washington, in doing away with the outdated practice that all children and youth require shackles for safety. The evidence simply does not support this notion, and, in fact, the evidence shows that this practice harms thousands of youth without any justification or rehabilitative purpose.

Thank you for considering these comments.

Sincerely,

Casey Trupin, Coordinating Attorney
Columbia Legal Services

[4] Affidavit of Dr. Marty Beyer, available at http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf.

[5] http://www.jrplaw.org/documents/detentionopinionanon.pdf

[6] http://www.tvw.org/index.php?option=com_tvwliveplayer&eventID=2012020060