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JUDGE OF THE SUPERIOR COURT
MALENG REGIONAL JUSTICE CENTER
401 4th AVENUE NORTH
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February 13, 2014

Hon. Charles W. Johnson, Justice
Washington State Supreme Court
Attention: Rules Committee
C/O Clerk of the Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Re: Proposed JuCR 1.6 – Physical Restraints in the Courtroom (Juveniles)

Dear Justice Johnson and Members, Rules Committee:

I began my judicial career as a King County Superior Court Judge in 1989. I have since enjoyed the privilege of serving as Chief Judge, Maleng Regional Justice Center; Juvenile Drug Court Presiding Judge; and as a judge in a variety of adult civil, adult criminal, and Unified Family Court cases. My experience has deepened my familiarity with and concerns regarding the interrelated and recurring issues of childhood trauma, adolescent brain development, therapeutic jurisprudence and fundamental fairness for youth and families in particular.

With this in mind, I write in my individual capacity to urge your adoption of proposed Rule JuCR 1.6. The Rule "would provide a standard procedure for the court to determine whether a juvenile should be shackled in the courtroom." Stated differently, the Rule would prohibit having a shackled youth in juvenile court proceedings unless the judicial officer has made an individualized determination that no less restrictive means would ensure the safe and orderly business of the court.

The current restraint or shackling practice can involve a mix of handcuffs, a connected waist chain or belt and leg irons. While we await the construction of a new facility in King County, the sad practice is to escort, some say "parade," young people through the lobby in these chains if the young person is transported from certain other facilities.

Thus the proposed Rule should be adopted for several reasons. First, any court policy of shackling all detained children without an individualized determination is antithetical to the presumption of innocence. Most of the detained youth are detained because of pre-trial, probation violation or other issues. Few are detained because they have been tried and found guilty.

The rush to shackle accused youth based on threats of violence is not supported by crime data. One study referenced below found that only 4.5% of 2006 juvenile offenses included a violent crime. Concomitantly, they urge, the threat of courtroom violence or escape attempts is low.

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Further, I am in absolute agreement with the concerns raised by the University of Florida Levin College of Law Center on Children and Families study, "*The Shackling of Juvenile Offenders: The Debate in Juvenile Justice Policy.*" Based on input from adolescent development and other experts the study concludes that

...the practice of children appearing in court in chains is irrational, inhumane, degrading and an affront to the dignity of both children and juvenile court proceedings; it may cause the child significant physical, mental or emotional impairment; it is anti-therapeutic for the...children who have suffered physical or sexual abuse, have mental illness or retardation, or have other disabilities; it may further traumatize children who have been previously victimized, especially when restraint was a part of the abuse;...and it may contribute to the perception of the defendant as a criminal.

As suggested, the practice of general shackling both frustrates and violates our long-honored goal of juvenile rehabilitation.

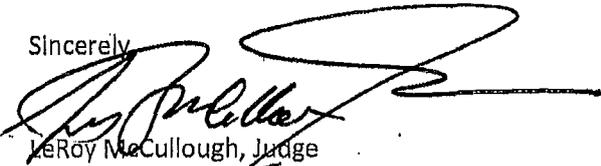
And, while we continue to work to eliminate disproportionate minority contact and confinement, it remains a seemingly intractable phenomenon that we must acknowledge. Thus, according to then-Assistant Chief Public Defender Carlos Martinez, Miami-Dade County, Florida, "chaining black or Hispanic juvenile defendants carries racial overtones that makes the experience worse for the kids involved...[it]is a shameful practice that is rooted in the horrible past of this country." USA Today, August 17, 2007.

In her seminal work entitled The New Jim Crow, author Michelle Alexander recites a poignant inquiry from a Washington, DC juvenile offender: "how can you tell us we can be anything when you treat us like we're nothing?"

In closing, I believe that the Washington State Supreme and our lower courts rank as some of the most progressive in the nation. Adopting the proposed Rule, to limit the shackling of juveniles, would affirm and solidify the same.

Thank you for your consideration.

Sincerely,


Leroy McCullough, Judge