Justice Charles Johnson
Supreme Court Rules Committee
c/o Clerk, Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

By email to denise.foster@courts.wa.gov supreme@courts.wa.gov

Re: Proposed JuCR 1.6 Limiting Routine In-Court Shackling of Juvenile Offenders and Status Offenders

Dear Justice Johnson:

I urge the Court to adopt JuCR 1.6 to preclude blanket shackling of all detained children when they go to court.

Shackling of children without an individualized determination of the necessity for it reverses the presumption of innocence, impairs the child's mental ability, impedes communication between the child and counsel, detracts from the decorum and integrity of the court, and causes pain and humiliation to the child. Shackling should not be permitted unless the court finds that there is a real safety or flight risk.

Blanket and indiscriminate shackling is a psychological and physically damaging practice. The Florida Supreme Court wrote in adopting a presumptive no shackling rule:

> We find the indiscriminate shackling of children in Florida courtrooms …repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice, a concept which this Court has previously acknowledged…. We agree with the proponents of this amendment that the presumption should be that children are not restrained when appearing in court and that restraints may be used only upon an individualized determination that such restraint is necessary. Accordingly, we amend rule 8.100 as proposed by the Committee. [1]

[1] No. SC09-141 IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE RULES OF JUVENILE PROCEDURE. [December 17, 2009]

Dr. Marty Beyer, a clinical psychologist with an expertise in adolescent development, has written: "Being shackled in public is humiliating for young people, whose sense of identity is vulnerable." [2] She adds: "When the judge who is an important authority figure, condones unfair, demeaning treatment in the form of handcuffs or shackles, how could the young person believe the judge is concerned about or wants to help him/her?"

As Dr. Beyer points out, many youth involved with the court have already experienced some form of trauma, including death, physical and sexual abuse, street violence, or school failure. Shackling re-victimizes the youth, she notes, and can provoke a combination of self-blame and sense of betrayal that can lead to self-destructiveness or aggression.

Shackling juveniles in court undermines the goals of juvenile court by confirming a troubled child's belief he or she is a bad person and alienates him or her from adults in the courtroom who are trying to help. Shackling ultimately ends up shaming the juvenile, which undercuts a youth's participation during the proceedings. As Dr. Beyer emphasizes, children's "reaction to the unfairness of being shackled may preoccupy them, interfering with their paying attention to what the judge says in the courtroom." [3]

A California juvenile court wrote:

> [W]e conclude that any decision to shackle a minor who appears in the juvenile delinquency court for a court proceeding must be based on the nonconforming conduct and behavior of that individual minor. Moreover, the decision to shackle a minor must be made on a case-by-case basis. …However, the juvenile delinquency court may not, as it did here, justify the use of shackles solely on the inadequacy of the courtroom facilities or the lack of available security personnel to monitor them.

Tiffany A. v. Superior Court, 150 Cal. App. 4th 1344, 1359, 59 Cal. Rptr. 3d 363 (Cal. App. 2d Dist. 2007).

Detained children in many counties are disproportionately of color. When the child being shackled is of color, the practice is reminiscent of slavery. A recent law review article noted that some shackles used in court

> are of the same type used to restrain slaves and have significant negative connotations for black children. … When any adolescent is indiscriminately

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[2] Dr. Beyer's Affidavit of August 23, 2006 is available at http://www.pjdc.org/wp/wp-content/uploads/Affidavit%20of%20Marty%20Beyer%20-%20Florida%20Shackling%20Challenge.pdf. This affidavit has been filed in a number of courts and is cited in an article by Kim M. McLaurin, "Children in Chains: Indiscriminate Shackling of Juveniles", 38 Journal of Law and Policy 213, 228 et.seq. (2012).

[3] Id.

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> shackled and forced to appear in court before friends, family, court personnel, and the public, feelings of confusion, humiliation, vulnerability, and embarrassment are likely to negatively affect that individual's search for an identity. If that adolescent is of color, then this process of defining one's identity includes development of an ethnic identity. When the court system restrains adolescents of color without reason in a manner similar to restraints used on slaves, and when this is done in full view of family, friends, court personnel, and the public, their ethnic and social identities will be impacted.[4]

Not only is shackling especially humiliating for children of color, but also it significantly impedes the ability of these children to communicate effectively with counsel. Research indicates that African American children, who accurately perceive the racial inequalities of the delinquency system, are consistently less likely than their white counterparts to trust their defense attorneys.[5]

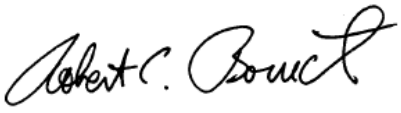
In 2006, courts in Miami stopped blanket shackling of children in court. As reported by the Miami Public Defender, "Since then, more than 20,000 detained children have appeared before the court unbound, in proceedings that respected their dignity and fostered the goal of rehabilitation. In that time, no child has harmed anyone or escaped from court." [6]

A blanket policy of shackling children in court undermines the integrity and dignity of the court. As the Oregon Court of Appeals wrote: "Allowing a young person who poses no security hazard to appear before the court unshackled, with the dignity of a free and innocent person, may foster respect for the judicial process." *State Juv. Dep't of Multnomah County v. Millican,* 138 Or. App. 142, 147, 906 P.2d 857 (1995).

The proposed rule would allow courts to shackle a child in court only when an individual determination of need is made. I urge the Court to pass this rule.

Thank you for your consideration.

Sincerely,



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[4] McLaurin, "Children in Chains", supra fn. 2.
[5] Id. at 472.
[6] Carlos J. Martinez, "Unchain the Children: Five Years Later in Florida" (2011) at http://www.pdmiami.com/unchainthechildren/Shackling_Update_December_2011.pdf