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April 29, 2014

Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

RE: Comment on Proposed Rule JuCr 1.6

The Washington Defender Association supports the proposed amendment to JuCR 1.6. Whenever a youth is shackled, the court should be required to make an individualized determination of whether restraint is necessary to maintain order and prevent injury in the courtroom. Automatic shackling of youth is unnecessary, is counter to juvenile court's rehabilitative goals and should not be allowed.

Most juveniles who appear in court shackled are not a danger or risk of flight. The great majority of the youth who appear in juvenile court are accused of misdemeanor or non-violent felony offenses. Youth who are in custody for non-criminal matters, including truancy, at risk youth proceedings and dependencies also appear in shackles in many jurisdictions. Despite the fact that these youth pose little danger or risk of flight, many counties routinely shackle them without regard to their age, height, weight, gender, health, offense, risk of flight or threat to self or public safety.

Shackling youth who appear in court adds to the suffering that they have already experienced in their lives. Many of the juveniles who appear in court courts face serious issues and have been victims of physical, sexual, or emotional abuse; drug and alcohol dependency; mental health and developmental issues; and many special education needs. Adding the humiliation of appearing in court bound in handcuffs, a waist restraint and leg shackles increases to what these youth have already suffered because of their arrest and processing into detention. It is an unnecessary process that adds to the trauma that so many youth who appear in juvenile court have already experienced.

There is clearly a national understanding that automatic shackling does not promote safety or respect for the court. Many states, including New York, Pennsylvania, Florida and Massachusetts

have recently updated their practices to restrict shackling; joining the growing number of states that require an individualized finding that shackling is necessary.

State	Rule	How Enacted	Year
California	State must non-conforming behavior and must be made on a case by case basis	Case Law	2007
Connecticut	Would require court to find that it is necessary for public safety	Pending Bill	2012
Florida	State must establish no less restrictive alternative and that youth restraints are necessary to prevent harm or risk of flight	Statute	2009
Illinois	State must show public safety risk, likelihood of escape or to maintain order	Case Law	1977
Massachusetts	Court must find that restraints are necessary because of risk of flight, safety or to maintain order	Court Rule	2010
New Mexico	Not allowed except where court makes an individualized determination	Court Rule	2012
New York	May be used only where child is uncontrollable and constitutes a serious and evident danger	Court Rule	2010
North Carolina	Court must find restraints reasonably necessary to maintain order, prevent escape or provide safety	Statute	2007
North Dakota	Requires court to exercise discretion on when shackles are necessary	Case Law	2007
Oregon	Burden on state to establish necessity	Case Law	1995
Pennsylvania	Court must find danger or likelihood of escape	Statute	2012
South Carolina	Would create law requiring individualized determination	Pending Bill	2012

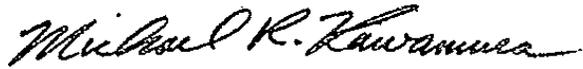
Likewise, a number of jurisdictions in Washington already restrict the use to those who are a safety risk or a risk of flight. These jurisdictions have not experienced increased concerns for safety or seen escape attempts by juveniles.

In fact, studies have shown that shackling may be counterproductive to safety as it agitates youth, making them more difficult to manage and needlessly traumatizes them as they appear in court.¹ Teaching a youth who obeys court rules and courtroom procedure that they will be respected by the courts encourages public safety. By requiring courts to make an individualized determination that a youth should be shackled, courts teach juveniles respect and that their actions, both positive and negative have consequences.

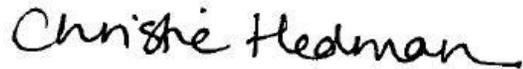
¹ Brian D. Gallagher & John C. Lore III, Shackling Children in Juvenile Court: The Growing Debate, Recent Trends and the Way to Protect Everyone's Interest, 12 U.C. Davis J. Juv. L. & Pol'y 453 (2008)

WDA asks you to adopt proposed rule JuCR 1.6. Individualized determinations should be required whenever a youth is shackled in court.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Kawamura". The signature is written in a cursive style with a long horizontal stroke at the end.

Michael Kawamura
President

A handwritten signature in black ink that reads "Christie Hedman". The signature is written in a cursive style with a long horizontal stroke at the end.

Christie Hedman
Executive Director

A handwritten signature in black ink that reads "Travis Stearns". The signature is written in a cursive style with a long horizontal stroke at the end.

Travis Stearns
Deputy Director