



March 21, 2014

The Honorable Justice Charles W. Johnson
Rules Committee Chair
Washington Supreme Court
Temple of Justice
P.O. Box 929
Olympia, WA 98504

Re: Comments on Proposed Rule JuCR 1.6, Physical Restraints in the Courtroom, as Published January 2014

Dear Justice Johnson:

The National Juvenile Defender Center (NJDC) strongly supports proposed Juvenile Court Rule 1.6. The Rule protects the constitutionally guaranteed due process rights of youth and follows the growing national consensus against and trend of states that are ending the practice of the indiscriminate shackling of children. The Washington Supreme Court should eliminate indiscriminate shackling because it unnecessarily humiliates, stigmatizes, and traumatizes young people, impedes the attorney-client relationship, chills due process protections afforded by the Washington and United States Constitutions, runs counter to the presumption of innocence, and decries the dignity of the court.

The National Juvenile Defender Center strives to promote justice for all children by ensuring excellence in juvenile defense. NJDC believes that all youth have the right to ardent, well-resourced representation. NJDC acknowledges the unique and special status of childhood and the impact that immaturity, disabilities, or trauma may have on that representation. NJDC works to improve access to and quality of counsel for all young people in delinquency court, provides technical assistance, training, and support to juvenile defenders across the country, and supports the reform of court systems that negatively impact our nation's youth. As an organization dedicated to promoting justice for all children, NJDC opposes the indiscriminate shackling of youth.

Proposed Juvenile Court Rule 1.6 is appropriately narrow in its scope: it is not a question of whether a child should ever be shackled, but rather, whether the court should shackle a child who is neither a threat to his or her own safety or to the safety of others, does not present a substantial risk of flight, nor presents other security risks. With these parameters in mind, we urge the Rule's adoption by the Washington Supreme Court.

Psychological Harms of Shackling Children

The Supreme Court of the United States has recognized that a juvenile court should avoid humiliation of children whenever possible in order to rehabilitate adjudicated delinquents, deter future criminality, and maintain dignity. In *In re Gault*, the Court highlighted the importance of "the appearance as well as the actuality of fairness, impartiality and orderliness -- in short, the essentials of due process" of the juvenile

court procedure.¹ The underlying logic of the Court's statement in *Gault* reflects current theories of therapeutic justice, which seek to secure positive outcomes for court-involved youth and decrease the harmful psychological effects of prolonged involvement with the juvenile justice system. According to Dr. Marty Beyer, a clinical psychologist and national expert on adolescent development and juvenile justice issues, "being shackled in public is humiliating for young people, whose sense of identity is vulnerable. The young person who feels he/she is being treated like a dangerous animal will think less of him/herself. Children and adolescents are more vulnerable to lasting harm from feeling humiliation and shame than adults."² The nature of shackling necessarily labels the child as dangerous, thereby increasing the likelihood that the child will be treated as dangerous by others and will perceive him or herself in that way. Labeling juveniles as dangerous and parading them in front of a judge, prosecutor, their family, and others in shackles neither contributes to rehabilitation nor deters future offending. Children are likely to react negatively to the stigma associated with being labeled as dangerous.

Indiscriminate Shackling Violates Every Child's Right to Due Process

Not only does indiscriminate shackling traumatize youth, but it also violates their right to due process. Both the United States and Washington Supreme Courts have ruled against blanket shackling of adults, grounding their reasoning in the due process protections afforded by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Such protections should also extend to youth, who have the same rights as adults to be free of physical constraints because "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."³

The prohibition against indiscriminate shackling of adults has been adopted by the Washington Supreme Court, which has held that criminal defendants are "entitled to appear at trial free from all bonds or shackles except in extraordinary circumstances."⁴ In *Finch*, the Washington Supreme Court stated that "[c]ourts have recognized that the accused is ... entitled to the physical indicia of innocence which includes the right of the defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man."⁵

The Supreme Court of the United States has recognized that the law has long forbidden the indiscriminate shackling of adults during the guilt phase of a criminal trial.⁶ In *Deck*, the Court made clear that the Constitution forbids the use of visible shackles during the penalty phase of a criminal proceeding, as with the guilt phase, unless the use is justified by an essential state interest specific to the defendant on trial.⁷ The Court based its holding on its own decisions and on the longstanding, nearly unanimous consensus among American and English courts regarding shackling.⁸

¹ 387 U.S. 1, 26 (1967).

² (Affidavit of Dr. Marty Beyer, October 27, 2009, on file at the National Juvenile Defender Center).

³ 387 U.S. at 13.

⁴ *State v. Turner*, 143 Wash.2d 715, 725, (2001) (quoting *State v. Finch*, 137 Wash.2d 792, 842 (en banc) (1999)).

⁵ 137 Wash.2d at 844. See also *State v. Hartzog*, 96 Wash.2d 383, 398, 400 (1981) (where the Court noted that restraints are disfavored as they may abridge constitutional rights, and held the "trial judge must exercise discretion in determining the extent to which courtroom security measures are necessary to maintain order and prevent injury. That discretion must be founded upon a factual basis set forth in the record.")

⁶ *Deck v. Missouri*, 544 U.S. 622, 626-627 (2005) (citing adherence by American courts to common law dating back to 18th century, prohibiting routine shackling of defendants). See also *State v. Williams*, 18 Wash. 47, 50 (1897) (holding that this common law right against shackling was expressly incorporated into the Washington Constitution).

⁷ 544 U.S. at 624 (relying on *Holbrook v. Flynn*, 475 U.S. 560, 568-569 (1986)).

⁸ *Id.* at 629. See also *Illinois v. Allen*, 397 U.S. 337, 344 (1970); *Holbrook*, 475 U.S. 560.

In *Deck*, the Court went on to delineate the three fundamental concerns that underlie its disapproval of physical restraints: interference with the presumption of innocence; maintenance of communication between accused and counsel; and preservation of the dignity of the court.⁹ All such concerns are equally relevant and applicable in the juvenile arena.

(a) Presumption of Innocence

American courts long have recognized that a defendant is presumed innocent until proven guilty.¹⁰ Forcing a defendant to appear in physical restraints undermines both this presumption and the fairness of the fact-finding process.¹¹

The use of physical restraints on an accused youth may prejudice the judge's decisions against the child, during both adjudication and disposition. This potential for prejudice is not limited by the absence of a jury. A number of state courts, including the Washington Court of Appeals, have required freedom from routine restraint in juvenile bench trials, recognizing the logical extension of *Gault*. In *State v. E.J.Y.*, the Washington Court of Appeals affirmed that the rule against indeterminate physical restraints applies to juvenile bench trials.¹² In *E.J.Y.*, the juvenile who was convicted after a bench trial appealed on the ground that the court erred by requiring him to appear in shackles without first making an individualized determination that supported the use of shackles. The court found the error harmless, noting that there is less prejudice possible without a jury present and that there was no showing that the error substantially affected the fact-finding in the case. However, the court emphasized that indiscriminate shackling is unconstitutional.¹³

In Illinois, the State Supreme Court found shackling so prejudicial that it reversed a juvenile conviction because the child had been handcuffed in court without any showing of need, rejecting the prosecution's claim that shackling could be permitted if there were no jury.¹⁴ That court emphasized the importance of the presumption of innocence in the juvenile context.

The possibility of prejudicing a jury, however, is not the only reason why courts should not allow the shackling of an accused in the absence of a strong necessity for doing so. The presumption of innocence is central to our administration of criminal justice. In the absence of exceptional circumstances, an accused has the right to stand trial 'with the appearance, dignity, and self-respect of a free and innocent man.' (It jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged.)¹⁵

A California appeals court rejected arguments made by a county that shackling was permissible in a juvenile court proceeding held before a judge, outside the presence of a jury.¹⁶ The court concluded that the indiscriminate use of restraints on juveniles is similar to that of adults and unconstitutional.¹⁷ It

⁹ *Deck*, 544 U.S. at 630-632.

¹⁰ *Id.* at 626 (citing *Coffin v. United States*, 156 U.S. 432, 453, (1895)).

¹¹ *Id.* at 630.

¹² 113 Wash. Ct. App. 940, 951 (2002).

¹³ *Id.*

¹⁴ *In re Staley*, 67 Ill. 2d 33, 37 (1977).

¹⁵ *Id.* (quoting *Eaddy v. People*, 115 Colo. 488, 492 (1946)).

¹⁶ *Tiffany A. v. Superior Court*, 59 Cal. Rptr. 3d 363, 373 (Ct. App. 2007).

¹⁷ *Id.* at 370-73.

further held that an individualized determination with some showing of need must be demonstrated before a juvenile may be restrained in court.¹⁸

(b) Attorney-Client Relationship

The discomfort and mental anguish suffered by shackled children interferes with their right to effective assistance of counsel under the Fourteenth Amendment to the United States Constitution, as interpreted by *In re Gault*. Shackling restricts and inhibits communication with attorneys during or before hearings, and prevents youth from participating actively in their own defense. The United States Supreme Court confirms that "one of the defendant's primary advantages of being present at trial, his ability to communicate with his counsel, is greatly reduced when the defendant is in a condition of total physical restraint."¹⁹ The right to counsel is rendered meaningless when the attorney-client relationship is ineffectual.

State courts have also found that shackling of juveniles inhibits the attorney-client relationship. The North Dakota Supreme Court ruled that shackling of juveniles is an unconstitutional deprivation of due process without an individualized determination that restraints are necessary, relying in part on the fact that physical restraints inhibit the attorney-client relationship.²⁰ Specifically, the court found that upon the juvenile's request that his handcuffs be removed, the trial court violated the juvenile's due process rights to a fair trial by deferring the decision to law enforcement personnel.²¹

Further, the Illinois Supreme Court, when barring the indiscriminate shackling of children in juvenile court, cited commentary to the ABA Standards on Trial by Jury stating:

[T]he matter of custody and restraint of defendants and witnesses at trial is not of concern solely in those cases in which there is a jury. Obviously, a defendant should be able to consult effectively with counsel in all cases. Prison attire and unnecessary physical restraint are offensive even when there is no jury... (c)... Because the rule rests only in part upon the possibility of jury prejudice, it should not be limited to jury trials.²²

(c) Preserving the Dignity of the Court

The practice of indiscriminately shackling of defendants also runs counter to preserving the dignity of court proceedings. According to the United States Supreme Court:

Judges must seek to maintain a judicial process that is a dignified process. The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve... As this Court has said, the use of

¹⁸ *Id.* at 373.

¹⁹ *Illinois v. Allen*, 397 U.S. 337, 344 (1970).

²⁰ *In re R.W.S.*, 2007 ND 37, ¶15, 728 N.W.2d 326, 330.

²¹ *Id.* at ¶17, 331. See also *State Juv. Dep't of Multnomah County v. Millican*, 138 Or. App. 142, 147 (1995) (citing *In re Gault*, and noting that shackling juveniles inhibits the right to freely consult with counsel).

²² *In re Staley*, 67 Ill. 2d at 37 (quoting ABA STANDARDS, TRIAL BY JURY § 4.1, COMMENTARY 92-94 (1968)).

shackles at trial “affronts” the “dignity and decorum of judicial proceedings that the judge is seeking to uphold.”²³

Decades ago, the Supreme Court established that juvenile proceedings should emulate the formality of the adult court, stating that “the condition of being a boy does not justify a kangaroo court.”²⁴ Washington State has endeavored to create an environment antithetical to the “kangaroo court.” Limiting the shackling of children to only the most extreme and necessary cases will preserve the dignity of its courts.

National Trends Support Ending the Practice of Indiscriminate Shackling

Arguments in favor of indiscriminate shackling of children run counter to the purposes of the juvenile court, due process, and a growing national consensus in opposition to such practices. Since 2007, California, Connecticut, Florida, Massachusetts, New York, North Dakota, Pennsylvania, and Vermont have ended routine shackling of juveniles through State Supreme Court decisions, rules, and/or statutes prohibiting unnecessary restraints. Legislation to end the indiscriminate shackling of juveniles in South Carolina is likely to pass this year. Juvenile Court Rule 1.6 takes measures toward the elimination of indiscriminate shackling and brings Washington in step with current best practices striking down the indiscriminate shackling of children.

The National Juvenile Defender Center fully supports the proposed Rule. Ending the practice of indiscriminate shackling is necessary to ensure due process for all Washington youth.

Please do not hesitate to contact us if you require further information or have questions. Thank you.

Respectfully,



Patricia Puritz
Executive Director

²³ *Deck v. Missouri*, 544 U.S. at 632 (citation omitted).

²⁴ *In re Gault*, 387 U.S. 1, 28 (1967).