USA TODAY

Should kids go to court in chains?

Posted 6/17/2007 11:08 PM

By Martha T. Moore, USA TODAY

By Steve Mitchell for USA TODAY

A handcuffed and shackled juvenile is led from court after a hearing May 16 in West Palm Beach, Fla. Critics are seeking to end shackling of defendants.

Juvenile court judges in Palm Beach County, Fla., have refused to end shackling, saying that lawyers challenging the practice had not proved that it harmed children. The case is now before an appeals court.

By Steve Mitchell for USA TODAY

WEST PALM BEACH, Fla. — Handcuffs pin the teenage girl's wrists together. The cuffs connect to a heavy c hain around her waist so she can't raise her arms. Another chain connects her ankles, shortening her step as she shuffles into the courtroom. When she shifts in her chair, the shackles clink.

Malyra Perez is 14, and yes, her mother says, she is troublesome. Malyra runs away and goes to school high, her mother tells the judge. She is in court on a charge of grand theft auto.

But she shouldn't be in shackles, Myra Perez says. "I didn't like that, not at all. She's not a criminal."

Such sentiments are being heard in courts across the nation, where there are increasingly vigorous debates over rules that require metal shackles to be used on youths who appear at juvenile court hearings.

At issue is whether kids as young as 10 need to be shackled for court security, and whether putting chains on young defendants not only makes them look like criminals but also makes them more likely to think of themselves in that way.

The U.S. Supreme Court has said repeatedly that the sight of shackles on a defendant in a courtroom can unfairly influence a jury. Adult defendants may appear in court in shackles, but not in front of a jury that decides their fate.

In almost all juvenile proceedings, though, a defendant's fate is in the hands of a judge, not a jury. Juvenile court procedures vary among the states and even within counties, so it's unclear precisely how many juvenile courts routinely shackle young defendants. But USA TODAY has found that in 28 states, some juvenile courts routinely keep defendants in restraints during court appearances.

Routine shackling is a better-safe-than-sorry approach, many juvenile justice officials say. Teenage impulsiveness can lead to an escape attempt or an attack on a lawyer, judge or spectator, they say, and outdated security in some courtrooms and inadequate manpower heighten the risk.

Twice a day here in Palm Beach County, groups of teenagers who have been arrested shuffle into the courtroom, their ankles and wrists shackled, for their initial appearance before a judge. When their cases are called, they sit shackled at the defense table with their court-appointed attorneys.

Whether the judge sends them back to detention or releases them, they leave the courtroom the same way, even those small enough to walk under the arm of the sheriff's deputy holding the door.

Judges differ on practice

In state after state, such scenes have inspired attorneys who represent children to launch efforts to have the chains removed. A series of court decisions has shown that judges increasingly believe shackling children is wrong:

•In Florida, judges in Miami-Dade County ruled in December against routine shackling after a motion by the public defender's office pointed out that juveniles were shackled and adult defendants in similar situations were not.

"You go to a juvenile courtroom and you see a child shackled like a wild animal, and you go over to the adult courtroom and the adult is not shackled," says Carlos Martinez, assistant chief public defender.

Chaining black or Hispanic juvenile defendants carries racial overtones that make the experience worse for the kids involved, he says. Shackling is "a shameful practice that is rooted in the horrible racist past of this country."

A similar motion in nearby Broward County also succeeded. But in Palm Beach County, juvenile judges refused to end shackling, saying in their ruling that the lawyers challenging the practice had not proved that it harmed children and had not evaluated how lifting the rule would affect security. The case is now before an appeals court.

"The whole experience of juvenile court can have a meaningful impact on children, on their respect for the law and their respect for the court system, that can translate into how they behave when they grow up," Palm Beach public defender Carey Haughwout says. "They give respect when they're given respect, and shackling is treating them very disrespectfully."

•In North Carolina, Legal Aid lawyers for a 14-year-old girl in Greensboro asked a judge in February to remove shackles for court appearances. The lawyers said shackling traumatized the girl, who as a younger child had been sexually abused while handcuffed. In court, the girl was in leg irons and

handcuffs attached to a waist chain.

"She was crying," says Ann-Marie Dooley, one of the lawyers who filed the motion. "She could barely lift her hands to wipe her tears." The girl's case is pending.

In March, Guilford County Chief District Court Judge Joseph Turner decided not to end routine shackling there after another teenager in chains, a 16-year-old boy, tried to escape custody while being driven to the courthouse.

•In Connecticut, juvenile courts stopped shackling youths in March, except when judges decide that certain children require restraints. Now, about 30% of kids in court are in some kind of cuffs, based on assessments made by juvenile detention staff and a pproved by a judge, says Judge Barbara Quinn, deputy chief court administrator. "It's being implemented in the way we intended, because we figured a fair number of young people have a history of violence," Quinn says.

•In California, an appeals court ruled in May that shackles could be used on minors in a Los Angeles County juvenile court only on a case-by-case basis.

•In North Dakota, the state Supreme Court ruled in March that a court violated the rights of a 17-year-old boy by not determining whether his request to have his handcuffs removed during trial could be granted. At least two other state supreme courts have ruled against shackling juveniles in court: Illinois in 1977 and Oregon in 1995.

Advocates for juveniles say policies that require all young defendants to be shackled are unnecessary because most kids who appear in juvenile courts are there for non-violent offenses. Instead, the advocates say, children should be shackled only if a judge agrees they are likely to be violent or to try to escape.

In 2002, the latest year for which figures are available, less than one-quarter of juvenile delinquency cases that reached court involved assault or more violent crimes, according to the Justice Department. Almost 40% of the 1.6 million cases were for property crimes. There are no national figures for violent incidents in juvenile courtrooms.

Shackling "is so egregious, so offensive, so unnecessary," says Patricia Puritz, executive director of the National Juvenile Defender Center, a group for lawyers who represent children in juvenile courts. "There is harm to the child and there is also harm to the integrity of the process. These children haven't even been found guilty of anything."

Martinez says that "in most of the cases in juvenile court, most of the kids plead guilty. They're pleading guilty while they're in shackles. If that's not a coerced plea, I don't know what is."

No one has studied whether young defendants who are chained in court fare worse than those who are not. Juvenile advocates fear that the sight of a youth in handcuffs and leg irons could influence the judge's assessment of a child and the case at hand.

"It has the same effect that a judge wearing a robe has," says Bill Briggs, a court-appointed lawyer in rural Modoc County, Calif., where juveniles are shackled during court appearances. "It creates ... a negative perception."

"You look guilty," says Abby Anderson of the Connecticut Juvenile Justice Alliance. "You look violent and dangerous, and most kids who come into juvenile court are scared out of their minds and just did something stupid."

Shackling done for security

In jurisdictions where shackles are used on adults and children in courts, the practice is contrary to the rationale of having a separate court for young

people, some critics say.

"The purpose of children's court is to rehabilitate, protect and take care of children," says Rory Rank, a public defender in Las Cruces, N.M., who is petitioning the county juvenile court to end shackling. "If they're treated with dignity in that courtroom, I think it has a lasting effect on them."

Those who believe shackling is necessary to ensure safety say young defendants have less self-control than adults. "They're more inclined to run than adults. They act completely on impulse. They're not getting, sometimes, the gravity of the situation," says Greg Conrad, president of the Court Officers' and Deputies' Association. Although handcuffing teenagers "appears tough, people with experience in the field would actually say it saves everybody a lot of trouble."

In Jacksonville, where adult and juvenile defendants are shackled — except in front of a jury for adults — small courtrooms with inadequate separation between spectators and defendants make restraints necessary, state's attorney Harry Shorstein says. He gained a national reputation for reducing juvenile crime in the 1990s by prosecuting more juveniles as adults.

Taking handcuffs and leg irons off defendants would require more security personnel, Shorstein says. When as many as a dozen youths are brought into a courtroom together and must wait their turn to go before the judge, he says, shackles keep them from ganging up on court officers. "It's not really a philosophical or criminal justice issue; it's really a lack-of-facilities issue," he says.

In West Palm Beach, Vickie Cramer's son Alan was the first of nine juveniles who went before Judge Moses Baker Jr. on the same afternoon as Malyra Perez. The 16-year-old was charged with criminal mischief, grand theft auto and aggravated battery with a deadly weapon after he smashed his mother's door and windows with a baseball bat and drove away in his father's car.

"It's shocking to see him like that. It's sad to see him like that," Cramer says of the handcuffs and leg irons her son wore. Then she adds, "Actually, I think it's a good thing. He needs to know the severity of what's going on."

The outcome of juvenile cases is confidential, but Cramer says Alan later pleaded guilty to lesser charges of criminal mischief and possession of a firearm. Her account could not be verified independently because the court records are sealed. A lan will be under house arrest with an electronic ankle bracelet until he is assigned by the judge in July to a juvenile facility, she says.

In West Virginia, juvenile courtrooms are closed to the public. Even so, Denny Dodson, deputy director of the Division of Juvenile Services, believes that young defendants find appearing in shackles so embarrassing that it may motivate them to stay out of trouble in the future.

"In some ways, it's embarrassing to the point of they don't want it to happen again," he says. "To have to wear shackles in front of your mom or your grandmother may well be more positive than negative. They just don't want that to happen. They hate that."

A matter of respect

Judge Dale Koch has seen children in his court with shackles and without. For years, juvenile defendants in his Portland, Ore., courtroom wore them. He says that didn't affect his impression of the defendants, whose backgrounds he already knew.

But being shackled meant youths had trouble handling paperwork and writing with their hands in cuffs, says Koch, president of the National Council of Juvenile and Family Court Judges. And it could have motivated them to agree to plea bargains

simply to get out of shackles, he says. "Unfortunately, that is how their reasoning process works," Koch says.

In 1995, an Oregon appeals court sent back a case he had presided over, ruling he should have determined whether there was a reason to shackle the defendant before allowing it. Since then, youths appearing in Multnomah County juvenile courts have been unchained. Koch has come to believe it's better that way.

"My experience has been that it can be done safely, as long as you have an exception built in where you can decide that under circumstances of that youth, they need to be shackled," Koch says. "It is just more respectful to not have the kids shackled while they're ... in front of the judge."

Handcuffs and leg irons are not intended to punish young defendants but are used to protect others in the courtroom from potential violence, says Hunter Hurst, director of the National Center for Juvenile Justice, a Justice Department-funded research organization.

Wearing chains does, however, change a person's appearance, Hurst says. "Of course, you and I both look like someone else in shackles. We don't look better, we look worse. Therein lies, I guess, one of the conundrums that often face justice: What do you do? Do you risk the audience or do you vilify the person on trial?"

Contributing: Tali Yahalom

Why are Children in Florida ...

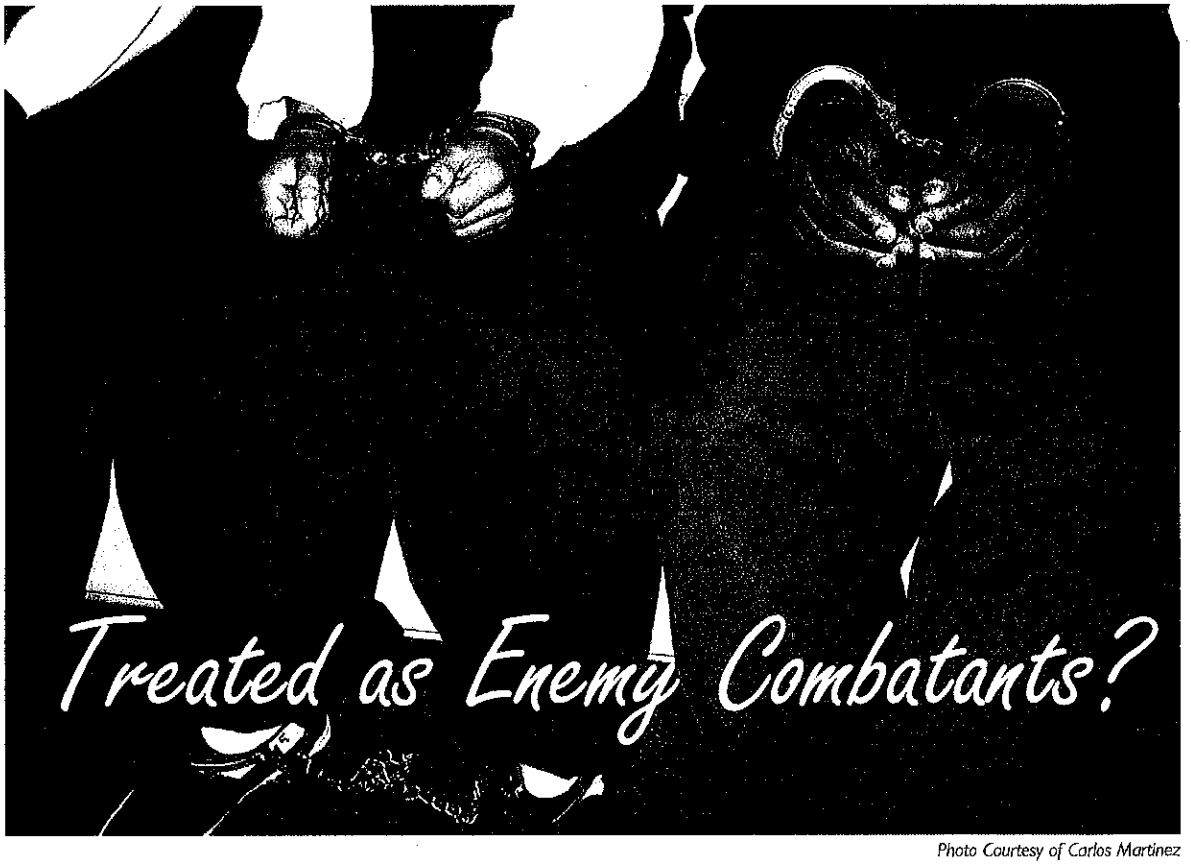


Photo Courtesy of Carlos Martinez

By Carlos Martinez

Last year, after a couple of months of fruitless discussions with court administration to end the routine shackling of detained children in Miami Dade juvenile courtrooms without litigation, we filed more than 100 individualized motions to unchain the detained children. On September 11, 2006, courageous Miami juvenile court judge William Johnson was the first to conduct individualized hearings and grant the public defender motions. Today, more than 95 percent of our child clients appear without chains and shackles before all four juvenile judges. With more than 3,000 detained children having appeared in court since our first motion, we have had no incidents of a child injuring or attempting to injure anyone in court, and no detained child has escaped from the courtroom.


Carlos Martinez

Surprisingly, even after Florida Gov. Charlie Crist declared that routine shackling is wrong and that shackling should be judged on a case-by-case basis, in almost all juvenile courtrooms in Florida children appear in court wearing a bright orange or brown jumpsuit, metal handcuffs, belly chain connected to the handcuffs and metal leg shackles, regardless of age, size, gender or alleged offense. There is no individualized factual finding of dangerousness or risk of flight. Pregnant girls and children with epilepsy have been shackled, all in the name of courtroom security.

In chains, shackles and jumpsuits, the children look just like the Guantanamo enemy combatant detainees that we have seen on television. The children are typically herded into court in large groups, each doing a short-step leg shuffle while trying not to fall. The child that is detained and shackled on day one, and is released from secure detention, appears in court without shackles at the next court hearing. Shackling is not limited to delinquency cases. Even the detained "cross-over" children (those with a delinquency offense who also have a dependency case because a parent abused, neglected or abandoned the child) are brought to dependency court hearings in chains and shackles to face the parent who is accused of abusing, neglecting or abandoning the child.

In a recent survey of defender offices in the state, we found that in some counties children have been shackled for more than 20 years, in many others less than 5

years. Jailed adult defendants are not routinely shackled in court in many Florida counties. In Miami Dade, wholesale shackling of children began in 2004. We had a situation where a child was shackled in juvenile court, but if that child were transferred (direct filed) to adult court, he would not be shackled in adult court if he did not pose a physical danger to himself or others or was not an escape risk.

Reasons for Ending Indiscriminate Shackling

For our litigation, we obtained affidavits from experts in adolescent development, childhood trauma, therapeutic jurisprudence and international law. In their opinion, the indiscriminate practice of all detained children appearing in court in chains:

- Is irrational.
- Is inhumane and degrading.
- Causes or is likely to cause the child's physical, mental or emotional health to be significantly impaired.
- Is anti-therapeutic and is troublesome because a large number of children in delinquency proceedings have suffered physical and sexual abuse, have mental illness or retardation, or have disabilities.
- May further traumatize children who have been previously victimized by physical and sexual abuse, loss, neglect and abandonment, and can trigger a flashback where restraint was a part of the abuse.
- Is an affront to the dignity of the children and juvenile court proceedings.
- Undermines the rehabilitation focus of juvenile court.

The routine shackling practice is punishment before a finding of guilt. In Florida, the practice is contrary to the legislative intent of "fair hearings by a respectful and respected court," ensuring the "dignity of the courts" and the preservation of "a sense of personal dignity and integrity." The wholesale policy is too generalized and uses one level of extreme restraints for all children alike, irrespective of their potential to cause bodily harm in the courtroom. A more reasonable approach would be for the judge to have guidelines, as to when mechanical restraints, if any, should be used, to what extent and for what length of time.

Typical Excuses for Continuing Indiscriminate Shackling of Children

This section outlines the four top reasons I have heard and responses to those arguments.

Deterrent effect. Detained children will see each other chained and shackled and will therefore not commit other crimes, because they will no longer want to be treated like they were in court. There is no data or evidence to support this deterrence argument. It is clear that proponents of this rationale see shame and humiliation as being a deterrent. It is appalling to find judges and others who practice in juvenile court who do not know about, or refuse to acknowledge, the opinion of the medical and psychological professions that deterrence does not work the same way for teens and adults. In its recent decision ruling that the death penalty is unconstitutional when applied to juveniles, the United States Supreme Court stated, "the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable suggest as well that juveniles will be less susceptible to deterrence." It's worthwhile to note that when proponents for the status quo welcome chaining presumed-innocent children for "deterrent effect," they are advocating pre-trial punishment. No one who respects the American idea of justice could.

For the safety of the children. It is impossible to control juveniles in the courtroom because children are impulsive and may hurt each other or escape from the courtroom if they are not chained and shackled. In most of the juvenile courtrooms, sheriff's officers carry guns and tasers, accessible, to any adult who is present in the courtroom. However, the proponents of this rationale typically fail to explore reasonable inexpensive alternatives to maintaining security and decorum. They justify bringing eight or more juveniles into the courtroom at a time by saying it is more efficient. Such assembly line justice and bureaucratic expediency over individualized attention (one child at a time) does not belong in juvenile court. There are other less restrictive alternatives to protecting public safety in the courtroom while maintaining the dignity of the children and the court proceedings. For example, bringing one child into court at a time and not having guns in the courtrooms. Due process, fairness and proportionality demand that we treat children in a more humane and dignified manner in the courtroom.

Children today are more dangerous than children in the past. The detained juveniles are dangerous and have already been determined to meet secure detention criteria, which means that they pose a public safety risk. This is the argument that if made about a racial or ethnic group would be appropriately described as prejudiced and solely based on stereotyping. However, proponents of this have couched it as scientifically based by saying that routine shackling is justified on the fact that the child meets secure detention criteria. Florida uses a detention risk assessment instrument that has never been scientifically validated to measure dangerousness or anything else. Defenders should not be shy about calling it like it is – it is prejudice. A judge who has not heard any facts or valid legal argument to justify shackling a child has already prejudged that child as being dangerous. That judge should not be presiding over juvenile court cases.

It is the sheriff's and not the judge's responsibility to maintain a secure courtroom. It's up to the sheriff to maintain order in the courtroom; sheriffs don't tell us how to judge, we don't tell them how to secure the courtroom. In Florida, judges have authority over what happens in the courtroom and the juvenile courtrooms are open to the general public. Deputy sheriffs and bailiffs are there to assist the judge in maintaining order. The irony here is that allowing

See SHACKLING on page 15

SHACKLING - Continued from page 11

anyone to have guns in the courtroom increases the likelihood that the judge, courtroom personnel, the children and the general public will be killed or seriously injured. Yet, most juvenile court judges have abdicated their authority over courtroom decorum and safety. In Miami Dade, the general public is checked for weapons prior to entering the courthouse, and officers are not allowed to carry guns inside the courtrooms.

Advocacy to End Indiscriminate Shackling Practices

Our efforts did not begin or end in the courtroom. We spoke to the media, reached out to the faith community, academics, social justice groups, other defenders and child advocates of all stripes. We also drafted a bill that was filed in the Florida Senate and House. The bill establishes a presumption that securely detained children will not be chained or shackled in the courtroom, except in extraordinary circumstances, and for the shortest period of time possible necessary to protect the people in the courtroom; and that the use of exceptional restraints must be reserved for the rare case where the court makes an individualized determination that unusual facts warrant such an extreme measure. While the bill has not been heard in committee, a key legislator promised to attempt to resolve the issue administratively with the courts, the Florida Department of Juvenile Justice and the child advocates trying to end the routine shackling practice.

Audrey Edmonson, a Miami Dade County Commissioner, introduced a resolution calling for the legislature to end the practice and for the county lobbying team to lobby in favor of the bills. The resolution was unanimously approved in December 2006. We have worked with faith community leaders who have signed a resolution in support of our efforts. We succeeded in persuading The Florida Bar Board of Governors to take a position supporting a ban on the indiscriminate shackling of children through legislation, court rule or administrative procedures.

Florida's Children First, a non profit child advocacy group, also lobbied on behalf on the bill and has been instrumental in keeping the legislation and the issue alive. Another key partner has been the National Juvenile Defender Center (NJDC) because it has provided technical assistance and training to defenders who want to challenge the shackling practice. In its recent assessment of the quality of representation and access to counsel in delinquency cases, NJDC recommended that Florida end the routine shackling practice.

Conclusion

Children in Florida are treated as enemy combatants because we have not done a good job of educating the general public and demanding that our elected officials correct this unjustified mistreatment of children in our courtrooms. There has been a tremendous amount of fear mongering and knee jerk responses without facts or data to support the policies and practices that end up hurting children and making us less secure.

Miami Dade has the second highest number of securely detained juveniles in the state, about 5,000 a year. We do not have guns in the courtroom, our judges see one child at a time, few of our children are determined to be a flight risk or safety risk to justify shackling and we have had no incidents since our judges stopped the routine shackling. We hope that defenders will continue to take on this fight. Tackling this issue will not be easy and will require the effort of many of your defenders who are already overworked. It's the moral thing to do. Our appellate attorneys Andy Stanton, Shannon McKenna and Valerie Jonas were instrumental in our effort, as were Marie Osborne, administrative, appellate and juvenile division support staff. Please visit our Web site, www.pdmiami.com/unchainthechildren.htm, to view the motions, appendices, photographs, news articles and editorials.

My boss, Public Defender Bennett Brummer, said it best. "If defenders are not going to fight so that every child is treated as an individual with dignity and respect, who will?" ★

Carlos Martinez is the chief assistant public defender, Law Offices of the Public Defender, 11th Judicial Circuit Court of Florida (Miami-Dade).

NLADA Movers & Shakers

Transistion

Southern Minnesota Regional Legal Services (SMRLS) announces that Bruce Beneke, who has served with great distinction as its executive director for the past 30 years, has decided to step down from that role effective August 1, 2007. He will continue working at SMRLS in a new senior role.

Promotion

The board of Southern Minnesota Regional Legal Services (SMRLS) is also pleased to announce its selection of Jessie R. Nicholson to become the new executive director of SMRLS. Nicholson has been an outstanding leader at SMRLS for nearly 22 years, including 10 years as its deputy executive director. She is the first African American woman to lead a civil legal aid program in the Upper Midwest.

Appointment

Anthony Young, a protégé in LSC's recently-completed Leadership Mentoring Pilot Project, has been named the new executive director of Southern Arizona Legal Aid. Young is currently the managing attorney of the Yuma office of Arizona's Community Legal Services.

Appointment

The Board of Directors of the Legal Assistance Foundation of Metropolitan Chicago (LAF) is pleased to announce that Diana White has been selected as LAF's new executive director effective July 13, 2007. White has been LAF's deputy director of Special Projects since 1997.

JuCR 1.6 - Physical Restraints in the Courtroom
Comments for JuCR 1.6 must be received no later than April 30, 2014.

- Proposed New Rule JuCR 1.6 - Physical Restraints in the Courtroom (in Word Format)
- Comments Received for JuCR 1.6 - Physical Restraints in the Courtroom

GR 9 COVER SHEET
JUVENILE COURT RULES JuCR 1.6 – Physical Restraints in the Courtroom

Suggested Juvenile Court Rule 1.6 addresses the routine shackling of juveniles in courtrooms in Washington absent an individualized determination that restraints are necessary to maintain order and prevent injury. The suggested rule would create a procedure to ensure that juveniles brought before juvenile courts in Washington would not appear in shackles unless the court found that there were no less restrictive means to ensure the safety of the court and to allow for orderly proceedings; it would not prohibit the use of shackles in every case.

Washington courts recognize that juveniles' due process rights are implicated when they are restrained during court proceedings.[1] Forty-five years ago, the Supreme Court's landmark ruling in *In re Gault,* 387 U.S. 1 (1967) held that juveniles are entitled to the same procedural rights as adults in court proceedings. Adoption of this rule would ensure those procedural rights in all juvenile courts in Washington.

There is currently no court rule establishing a standard procedure for removing shackles from a youth prior to his or her appearance in juvenile court. Washington State courts vary widely in the use of shackles. A survey conducted by University of Washington Law Students found that both juvenile offenders and status offenders are routinely shackled in juvenile courtrooms in a majority of the counties in the state, including Thurston, Pierce and Snohomish counties. Only one county, Chelan, has adopted a court order prohibiting the routine shackling of youth. In this rural county, shackling is permitted only when deemed necessary by the juvenile court judge or commissioner.[2] Several larger counties, including King, Clark, Yakima and Spokane, do not shackle juveniles. Like the newly adopted Court rule in Chelan, suggested JuCR 1.6 would presume that juveniles appear unshackled and would not require a juvenile to request removal of restraints.

Suggested JuCR 1.6 would provide a standard procedure for the court to determine whether a juvenile should be shackled in the courtroom. A judge would be required to make a finding on the record that shackles are the least restrictive means to ensure that the courtroom will be secure and orderly. The suggested rule would require that any physical restraint be removed prior to the youth's appearance before the court unless the judge deemed the use of restraints necessary. This suggested procedure would provide a meaningful safeguard to ensure that every youth in Washington State has equal access to justice in the juvenile court system.

[1] *State v. E.J.Y.* 113 Wn. App. 940, 951-952, P.3d 673 (2002).

[2] Chelan county Juvenile Court GENERAL ORDER Number 2010-01 In re: SHACKLING OF JUVENIL DETAINEES APPEARING IN COURT

JuCR 1.6 PHYSICAL RESTRAINTS IN THE COURTROOM.

(a) Use of Restraints on Juvenile Respondents. Juveniles shall not be brought before the court wearing any physical restraint devices except when ordered by the court during or prior to the hearing. Instruments of restraint, such as handcuffs, ankle chains, waist chains, strait jackets, electric-shock producing devices, gags, spit masks and all other devices which restrain an individual's freedom of movement shall not be used on a respondent during a court proceeding and must be removed prior to the respondent's appearance before the court unless the court finds both that:

(1) The use of restraints is necessary due to one of the following factors:

(A) Present behavior of the respondent represents a current threat to his or her own safety, or the safety of other people in the courtroom;

(B) Recent disruptive courtroom behavior of the respondent has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm to himself or herself or others; or

(C) Present behavior of the respondent presents a substantial risk of flight from the courtroom; and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the respondent or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(b) Challenge to the use of restraints. Before or after any juvenile is ordered restrained, the court shall permit any party to be heard on the issue of whether the use of physical restraints is necessary in a particular situation or as to a particular child.

AFFIDAVIT OF DR. MARTY BEYER

Dr. Marty Beyer, being first duly sworn, hereby deposes and says:

1. My name is Marty Beyer. I am a clinical psychologist licensed in the District of Columbia, Virginia, Washington and Alaska.

2. I have a Ph.D. in clinical/community psychology from Yale University. I am an independent child welfare and juvenile justice consultant. My expertise is adolescent development: how a young person's cognitive, moral and identity development, trauma and disabilities affected the offense and should be the basis for designing rehabilitative services. I have assessed more than 100 juveniles accused of serious offenses. I have been involved in improving services for delinquents in Florida and several other states and assisted in federal Department of Justice investigations of juvenile facilities. I have also been involved in reform in foster care practices in several states and serve as a clinical consultant to child welfare workers and supervisors making decisions about children who have been physically and sexually abused. I

frequently provide training on child and adolescent development for judges, lawyers, and staff in child welfare and juvenile justice.

3. I have testified numerous times as an expert witness assessing the factors articulated by the United States Supreme Court in juvenile transfer / waiver cases, including maturity and prospects for protecting the public and rehabilitating the young person (*Kent v. United States*, 383 U.S. 541 (1966); *Stanford v. Kentucky*, 492 U.S. 361 (1989)). I have provided expert testimony concerning adolescent development research cited by the United States Supreme Court in striking down the death penalty for juveniles (*Roper v. Simmons*, 543 U.S. 551 (2005)).

4. My publications include "Immaturity, Culpability and Competency in Juveniles" (2000), "What's Behind Behavior Matters: The Effects of Disabilities, Trauma and Immaturity on Juvenile Intent and Ability to Assist Counsel" (2001), Best Practices in Juvenile Accountability (U.S. Department of Justice, 2003), "Health Services for Youth in Juvenile Justice Programs" (co-authored with Michael Cohen, M.D. and Larry Burd, Ph.D., in Clinical Practice in Correctional Medicine, 2006), and "Fifty Delinquents in Juvenile and Adult Court" (2006).

5. This affidavit is based on articles and books and my clinical experience in working with delinquents and families.

6. I have appeared in juvenile and family courts around the country. Detained juveniles are seldom handcuffed or shackled in juvenile or family courts. I have often sat in court when a juvenile was holding hands with a parent or taking notes on the court proceedings or drawing pictures to cope with his/her anxiety and attention difficulties.

7. It is generally accepted by professionals that the use of physical restraints with children and adolescents should be limited to rare situations when a young person poses an imminent threat to others' safety. Physical restraints should not be a routine practice with children and adolescents.

8. Juvenile and family courts are based on the recognition that adolescents are different from adults and are more susceptible to harm because they are in the process of developing. This malleability is the foundation of the juvenile and family court's goal of rehabilitation.

9. Adolescents gradually develop a strong positive identity. Approval of others is a powerful influence on adolescents' self-esteem. The experience of being shackled in the courthouse, in front of family and strangers, makes a young person feel disapproved of and ashamed.

10. 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.

11. On television, both on live court programs and dramas, young people see adults charged with murder wearing elegant clothing, being treated with respect, and not shackled in court. The young person who asks, "Why were they allowed to hold their heads up high and I am humiliated with handcuffs and chains?" is likely to conclude it is something especially bad about them that accounts for this demeaning treatment.

12. For youth of color, being degraded in public may be experienced as racism (even if the practice is universal) which is extremely harmful to the development of a positive identity.

13. The negative effects of humiliation on developing teenagers is one of the reasons that restraints are only allowed under unusual circumstances in juvenile facilities. In most juvenile programs if a youth must be placed in restraints because of a demonstrated immediate threat to others' safety, the policies require that he/she be checked frequently by medical staff and provided counseling in order to calm down and return to group activities in a short time. These required services are not provided to the young person who may be shackled all day before, during and after

court. In the unusual situation where a young person is in restraints in the facility, he understands his behavior was out of control and as soon as he can calm down, the restraints will not be necessary. This sends a sensible message, in contrast to the shackling of all youth going to court from detention, most of whom are not exhibiting dangerous behavior at the time. Knowing they are capable of remaining calm in the courtroom without handcuffs or shackles, young people conclude it must be something bad about them that justifies the chains.

14. During adolescence, young people gradually define their moral values, integrating the simple rights and wrongs of childhood and teachings about morality at home and in their religion. During this process, adolescents tend to be moralistic, insisting on what should be and intolerant of anything that seems unfair. For most young people who believe that, even though they were arrested, they will not harm others and will not misbehave in the courtroom, it seems unfair to be shackled. Adolescents do not have the adult cognitive abilities to say, "This is not unfairness directed at me personally, all juveniles who go into court are shackled." Because of where they are developmentally, their reaction to the unfairness of being shackled may preoccupy them, interfering with their paying attention to what the judge says in the courtroom.

15. Children learn that a fundamental principle of our democracy is that a person is innocent until proven guilty. Being shackled gives them the opposite message. This conflict between what adults say and do is harmful to young people's moral development.

16. Teenagers often talk with shock about how they were treated in the police station. They express disappointment in police officers, who they trusted to be fair and kind. Their trust in adults is also violated when they are shackled in the courtroom. They may feel betrayed by their parents who cannot protect them from the humiliation of being shackled. 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?

17. In the midst of their identity and moral development, demeaning treatment by adults may solidify adolescents' alienation, send mixed messages about the purpose of the justice system, and confirm their belief that they are bad, all of which undermine the rehabilitative goal of court intervention.

18. Many court-involved young people have experienced severe trauma, including the death of family members, physical and sexual abuse, exposure to domestic and street violence, and school failure due to learning

disabilities. Some have been additionally traumatized by multiple placements in the foster care system. Their depression, difficulties trusting others, fearfulness, aggression, substance abuse and school concentration problems are often caused by untreated trauma. For those who have been physically or sexually abused, handcuffs and shackles are likely to flood the young person with painful memories and may be experienced by him/her as re-victimization. For any traumatized youth, being handcuffed or shackled could make them feel once again that they cannot control hurtful things that happen to them. Such powerlessness is damaging and could undermine progress the youth has made in recovering from earlier trauma. Any abuse of power by an adult can provoke in a traumatized young person a combination of self-blame and sense of betrayal that can lead to self-destructiveness or aggression.

19. Detention staff frequently comment about the difficulty in managing youth who are upset after court. Shackling youth could add to the symptoms of untreated trauma--sadness, hurt, anger, and being untrusting—which juvenile facilities lack sufficient mental health staff to respond to.

20. Shackles and handcuffs are also physically painful, not just for younger and smaller youth, but for any typical teenager who wiggles restlessly when seated or who is being moved around the courthouse.

21. Parents are not allowed to physically or emotionally abuse their children. Emotional abuse includes restriction of movement, such as tying a child's arms or legs together. Excessive physical discipline is prohibited even when parents believe their children must be punished. The child welfare system removes children from parents who do not use other methods to discipline their children or who are emotionally abusive because the longlasting harm of abuse is well-known. Physical and emotional abuse makes young people feel helpless and powerless. Research has connected physical abuse to adolescent depression and suicide as well as becoming aggressive and over-reacting to perceived hostility in others. The use of corporal punishment by parents of adolescents is a known risk factor for depression, suicide, alcohol abuse, physical abuse of children, and domestic violence. While children shackled in court are not being abused by their parents, being shackled by adults in authority whom they trust to care for them could have similar harms.

Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 23, 2006.

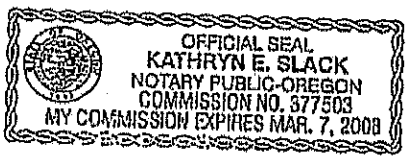
Margaret Beyer

Sworn to me and subscribed in my presence on August 23, 2006.

Kathryn E Slack
NOTARY PUBLIC

My commission expires: 3-7-2008

Seal:



Marty Beyer, Ph.D.
2495 Bennett Creek Road
Cottage Grove, Oregon 97424
703-966-8336
martbeyer@aol.com

EDUCATION

Ph.D. in Clinical/Community Psychology. Yale University. 1974.
B.A. with Honors in Psychology. Vassar College. 1970.

CURRENT ACTIVITIES

New York City child welfare reform-Consultant on visit coaching, ACS.

Los Angeles County, California child welfare reform-Katie A Panel.

Jerry M., Washington, D.C. Consultant to the Department of Youth Rehabilitation Services on community-based delinquency services.

R.G., LGBT consultant to the Hawaii Office of Youth Services.

Developmental assessments for waiver/transfer hearings, sentencing for juveniles in adult court, and dispositional planning in juvenile court.

Visitation coaching and assessments of parenting with children and families in child welfare.

Training and consultation on juvenile justice, child welfare, and mental health services for children and families.

Licensed clinical psychologist, District of Columbia, Virginia, Washington, and Alaska.

Member, American Psychological Association.

Board member, National Coalition for Child Protection Reform.

OTHER EXPERIENCE

Connecticut Department of Children and Families. Prepared a report proposing a system of services for girls in Connecticut. 2005.
Rosie D-Expert in Massachusetts class action on behalf of Medicaid-eligible children, Center for Public Representation. 2004-2005.
Alabama child welfare reform-Consultant, Department of Human Resources in developing a system of care for families and children after the R.C. lawsuit by the Bazelon Center for Mental Health Law. 1990-94, 1998-2003.
U.S. Justice Department, Special Litigations. Investigation of Georgia juvenile facilities, 1997 and Mississippi juvenile facilities, 2002.
Oregon child welfare reform-Consultant to the Office of Services to Children and Families on statewide strengths/needs-based service planning (an agreement with the Juvenile Rights Project and Legal Aid), 1995-2002.
Dupuy-Expert in litigation regarding safety planning in Illinois, 2002.
Office of the Child Advocate, State of Connecticut-Consultant on mental health services for children in foster care and juvenile justice, 2000-2001.
M.E., Expert in class action litigation regarding EPSDT and mental health services in child welfare and juvenile justice in Florida, 1999-2001.
Taylor- Expert in class action litigation re: managed care services for Medicaid- eligible children with disabilities in New Mexico, 1999-2001.
Shoemaker-Expert in litigation on behalf of students with disabilities prosecuted for school behavior problems, Legal Aid of Palm Beach, Florida. 1999.
Evaluator, Teen Mothers and Children First programs, Living Stage, Washington, D.C. 1994-9.
Consultant, EPSDT-managed care consent decree, Tennessee Departments of Childrens Services and Health and the Tennessee Justice Center, 1998.
K.L.- Expert in class action litigation on behalf of children with disabilities in child welfare and juvenile justice in New Mexico, 1997.

J.K.- Expert, Arizona Center for Disability Law in litigation re: medicaid-eligible children in need of mental health services in managed care. 1997.
Eric L.- Expert with the Disabilities Rights Center on litigation on behalf of children in the New Hampshire child welfare system. 1996-7.
Alexander S. - Expert assisting the court in class action litigation on delinquency services in South Carolina. 1993-4.
Bobby M. Monitoring Team - Assessing Florida's compliance with a court order to develop community-based youth services. 1989-94.
Evaluator, CINA Mediation Project, Baltimore, Maryland. 1992-3.
John A. - Expert in ACLU class action litigation on behalf of delinquents in Delaware. 1992-3.
Terry D. Implementation - Assisting in developing a continuum of services for delinquents, dependents, and emotionally disturbed children in Oklahoma following a class action lawsuit. 1989-93.
Development of a Law-Related Literacy Program for delinquents. D.C. Exchange, Washington, D.C. 1992.
Evaluation of the Hickey School in Maryland. Public Justice Center, 1991.
Evaluation of the Juvenile Forensic Unit of Eastern State Hospital in Pennsylvania. Juvenile Law Center, 1990.
Lisa L. litigation regarding psychiatric hospitalization of children in Maryland. Maryland Disability Law Center. 1989-1991.
Evaluation of the West Virginia Industrial Home. Juvenile Justice Committee
Innovative Training for Family Courts Project, funded by State Justice Institute; trainer/curriculum co-author. Youth Law Center. 1988-1991.
Jerry M. - Appointed by D.C. Superior Court to develop a plan for community based alternatives for delinquents and to monitor a court order in a District of Columbia. 1986-1991.
I Have a Dream Foundation-Clinical consultation; Washington,D.C. 1988-1991.
Latin American Youth Center - Training and staff support. 1985-89. Study of
Council for Court Excellence - Judicial and interagency training and research on neglect and delinquency, 1984-1989.
D.C.Permanency Task Force - School-based family services and parenting handbook, National Council of Juvenile and Family Court Judges,1986-8.
D.C. Youth Services Administration-Designing delinquency programs. 1983-6.
Adjunct Faculty, Antioch New England (psychology doctoral program).
Maryland Department of Health and Mental Hygiene - Studies of juvenile institution overcrowding and alternatives for delinquents. 1985.
Environments for Human Services - Staff training & support, therapeutic foster care program, Virginia & Washington, D.C. 1982-1985.
Director, D.C. Coalition for Youth. Advocacy to improve youth services, including youth employment, special education, and mental health programs. Training for hundreds of public and private agency staff. Compiled a monthly newsletter for 900 youth workers. 1978-82.
Assistant Director for Research, National Youth Work Alliance. Published reports on follow-up care by runaway programs; teenage prostitution; runaway programs as mental health centers; abused adolescents. 1977-8.
Director, Peer Counseling Program, Washington Streetwork Project, 1977-79.
Consultant, D.C. Office of Criminal Justice Plans and Analysis. 1976.
Psychologist, Receiving Home for Children, Washington, D.C. 1974-76.
Consultant, Carnegie Council on Children. 1974
Consultant on national programs for runaway youth, HHS. 1974.
Consultant, group relations conferences, Yale Psychiatry Department. 1972-3.
Clinical Internships,Lee High School, New Haven, Conn. (1971-3); Ansonia, Conn. junior high school (1971-2); Number Nine (teen crisis center), New Haven, Conn. (1970-2); School for Boys, Meriden, Conn. (1972).
Supervised individual and family treatment at the Connecticut Mental Health Center, Yale University Psycho-Educational Clinic, and Yale-New Haven Hospital Emergency Room. 1971-73.
Center for Community Planning, HHS. Summers, 1969 and 1970.
Youth Employment Counselor, Urban League, Rochester, N.Y. 1967-8.

PUBLICATIONS

Doctoral dissertation: Psychosocial Problems of Adolescent Runaways. 1974.

It's Me Again: An Aftercare Manual for Youth Workers. 1978.

"Runaways and Homeless Youth," Journal of Current Adolescent Medicine. Co-authored with Richard Jones, M.D. and Robert Shearin, M.D. 1979.

"What's Got You Running?" Teen Times (National FHA). 1979.

"Community and School Partnership: Youth Rights and the Role of Advocates," Disruptive Youth in School, Council for Exceptional Children. 1980.

"Continuing Care for Runaways," Journal of Family Issues. 1980.

Reaching Troubled Youth. Co-authored with James Gordon, M.D. 1981.

"Not Getting Away with Murder: Serious Juvenile Offenders in D.C.," Juvenile Justice Myths and Realities, Institute for Educational Leadership. 1983.

"Put My Future on Hold," Teen Times (National FHA). 1983.

"The Wages of Aquarius," Vassar Quarterly. 1983.

"Futures in Jeopardy: High-Risk Children in D.C.," Council for Court Excellence. 1984.

"Helping Troubled Families," Interagency Youth Project. 1985.

"Permanent Families for Children and Youth," Council for Court Excellence. 1985.

"Emotional Problems of Neglected Children," Adoption Resources for Mental Health Professionals, Mental Health Adoption Therapy Project. 1986.

An Emerging Judicial Role in Family Court. Co-authored with Honorable Ricardo Urbina. American Bar Association, 1986.

"Helping Children in Care Overcome Emotional Obstacles to Independence." American Foster Care Resources, Inc. 1986.

"Lifelines to Biological Parents: Their Effect on Termination of Parental Rights and Permanence," co-authored with Wallace Mlyniec, Esq. Family Law Quarterly, XX, 2, Summer 1986.

"Delay in the Processing of Juvenile Delinquency Cases in the District of Columbia," Council for Court Excellence, September, 1986.

"Overcoming Emotional Obstacles to Independence," Children Today, Fall 1986.

"Benefits of Field Experience for Students," Co-authored with Rosi Dagit and Bruce Rinker. National Association of Environmental Educators, October, 1987.

Baby Blues: Preparation for Parenthood. Unpublished manuscript, 1987.

"The Use of Evaluations in Family Court," ABA Juvenile & Child Welfare Law Reporter, February, 1987.

"Born Dead, " Children and the Law. ABA. September, 1988.

"Treating the Educational Problems of Delinquent and Neglected Children," Co-authored with Nancy Opalack and Patricia Puritz, Esq. Children's Legal Rights Journal, Spring, 1988.

"Juvenile Drug Offenders in the District of Columbia," Council for Court Excellence, September, 1988.

Basic Parenting: A Workbook for Teaching Single Parents. Co-authored with Earl T. Braxton, Ph.D. National Council of Juvenile and Family Court Judges, 1988.

"First You Find a Wizard," Future Choices, Youth Policy Institute, Spring, 1990. Also published in Corrections Today, April, 1991.

Preparing for Independence. Co-authored with Barbara Jaklitsch. National Resource Center for Youth Services, 1990.

"Families Under Intolerable Stress," Putting Children First: A Progressive Family Policy for the 1990s. Progressive Policy Institute, September, 1990.

"Using Evaluations in Assessing the Needs of Children and Families," Child Welfare Institute, 1991.

"What Do Children & Families Need?" Children and the Law. ABA. April, 1992.

A Guide to Creating Your System of Care. Alabama Dept. of Human Resources, 1993.

Keeping Families Together: The Role of Mental Health & Substance Abuse Treatment. Co-authored with Leslie Acoca and Alice Shotton. Youth Law Center, 1993.

"Juvenile Detention to 'Protect' Children from Neglect," D.C. Law Review, Vol. 3, 1995.

"Juvenile Boot Camps Don't Make Sense," Criminal Justice, Vol. 10, 4, 1996.

"Too Little, Too Late: Designing Family Support to Succeed," Review of Law and Social Change, XXII, 2, 1996.

"One Child and Family at a Time: Strengths/Needs-Based Service Crafting," Caring, 1996.

"Experts for Juveniles at Risk of Adult Sentences," More Than Meets the Eye, American Bar Association, 1997.

"Strengths/Needs-Based Child Welfare Practice," The Prevention Report, Fall, 1997.

"Mental Health Care for Children in Corrections," Children's Legal Rights Journal, 1998.

Strengths/Needs-Based Service Manual. National Resource Center for Family Centered Practice, 1999. www.uiowa.edu/~nrcfcp/new/beyertrainingmanual.html

"Expert Evaluations of Juveniles," Child Law Practice, American Bar Association, 1999.

"Recognizing the Child in the Delinquent," Kentucky Children's Rights Journal, Summer, 1999.

"Visitation as a Powerful Child Welfare Service," The Prevention Report, Spring, 1999.

Developmental Assessment. A structured interview format for evaluators designed with a group of psychologists, January, 2000.

System Change Through State Challenge Activities. Co-authored with Heidi Hsia. OJJDP Bulletin, U.S. Department of Justice, March, 2000.

"Immaturity, Culpability and Competency in Juveniles," Criminal Justice, Vol. 15, 2, Summer, 2000.

"Accountability and Adolescent Development," District Attorney, Kings County, Brooklyn, N.Y., November, 2000.

"Delinquent Girls: A Developmental Perspective," Kentucky Children's Rights Journal, Spring, 2001.

"What's Behind Behavior Matters: The Effects of Disabilities, Trauma and Immaturity on Juvenile Intent and Ability to Assist Counsel," Guild Practitioner, 58:2, Spring, 2001.

"Punishing Children for their Disabilities," Children's Legal Rights Journal, Fall, 2001.

"Juvenile Competence in Adult Prosecutions: More than a Matter of IQ and Mental Illness." Co-authored with Joel Greenberg. ABA Juvenile Defender Summit, 2002.

Best Practices in Juvenile Accountability. OJJDP Bulletin, U.S. Department of Justice, April, 2003.

"A Better Way to Spend $500,000: How the Juvenile Justice System Fails Girls." Co-authored with Gillian Blair, Sarah Katz, Sandra Simkins and Annie Steinberg. Wisconsin Women's Law Journal, XVIII, 1, Spring, 2003.

Visit Coaching. A manual published by ACS, New York City, 2004.

"Health Services for Youth in Juvenile Justice Programs," co-authored with Michael Cohen, M.D. and Larry Burd, Ph.D. in Clinical Practice in Correctional Medicine, Michael Puisis, ed. Mosby: Philadelphia, 2006.

"Fifty Delinquents in Juvenile and Adult Court." American Journal of Orthopsychiatry, 76(2), Apr 2006, 206-214.

Juvenile Defenders,

Some Very Good News to start the New Year!

Robert Gower, PD in Chelan County (Wenatchee, Washington) convinced his Juvenile Court Commissioner to end the practice of indiscriminately shackling all juvenile respondents in Chelan Juvenile Court. A copy of the Commissioner's Order is attached along with the Court's Shackling Risk Worksheet that must be completed before a hearing can be held to shackle a youth.

I have attached the materials Robbie presented to his Commissioner, along with the Commissioner's Order, to help you develop an argument against shackling in your court. After the order, the first two attachments are court rules established in Florida and Massachusetts prohibiting indiscriminate shackling. The next two are well researched memos on the illegality and inefficiency of shackling. Next are two articles on shackling from USA today and Cornerstone, and finally I have included a sample motion and supporting affidavit on the harmful effects of shackling by Dr. Marty Beyer.

If Chelan County can end shackling, there is no reason your county can't.
Please resolve to argue against shackling in your county this year.

George

George Yeannakis
Special Counsel
TeamChild
1225 South Weller St., Suite 420
Seattle, WA 98144
Phone: (206) 322-2444x107
Cell: (206) 694-3728
Fax: (206) 381-1742
george.yeannakis@teamchild.org

SUPERIOR COURT OF WASHINGTON
FOR CHELAN COUNTY
JUVENILE DIVISION

In re:	)	
	)	GENERAL ORDER
SHACKLING OF JUVENILE	)	Number 2010-01
DETAINEES APPEARING IN	)	
COURT	)	

To provide for courtroom security to ensure the safety of court personnel, detained juveniles and the public, while at the same time requiring the least restrictive methods needed to address the risks posed by each individual juvenile detainee appearing in court,

IT IS ORDERED:

1. Indiscriminate shackling of juvenile detainees appearing in court is prohibited.
2. "Shackling" includes hand cuffs, ankle chains, waist chains, strait jackets, electric-shock producing devices, gags, spit masks and all other devices which restrain an individual's freedom of movement.
3. The county juvenile detention manager shall establish and promulgate appropriate policies and procedures to assess each detainee's level of risk to escape or engage in assaultive or self-harming behavior during court appearances.
4. Unless a detainee is assessed as posing a significant risk to escape or engage in assaultive or self-harming behavior during court appearances, he or she shall not be shackled during court appearances.
5. If a detainee is assessed as posing a significant risk to escape or engage in assaultive or self-harming behavior during court appearances, he or she shall be shackled before entering the courtroom. If time permits, detention staff shall give reasonable prior notice to the prosecutor, defense counsel and intake probation officer of their intent to shackle the juvenile. Once the juvenile enters the courtroom, juvenile staff shall call the shackling to the judicial officer's attention and, unless waived by the juvenile after consultation with his or her attorney, a preliminary hearing shall be held to determine whether the judicial officer will require the shackling to continue.

6. At the preliminary hearing, the Rules of Evidence will not apply and testimony will only be allowed with the permission of the judicial officer. The judicial officer will consider the detention staff's risk assessment; the juvenile's criminal history; the nature of the pending charges; the issues to be decided in the hearing; the juvenile's history, if any, of assaultive and self-harming behavior; the juvenile's current demeanor; whether the juvenile has been ordered shackled at any prior hearings; the impairment, if any, on the juvenile's ability to communicate with his or her attorney; the availability of guards; and any other relevant evidence.

7. If the judicial officer decides to require continued shackling, he or she shall make oral findings in support of that decision and shall sign an Order to that effect.

8. An Order requiring continued shackling during court appearances shall remain in effect for 14 days unless modified for good cause shown.

DATED this _____ day of November, 2010.

_____

BART VANDEGRIFT,
Commissioner

Court Shackling Risk Worksheet

All youth with 10 or more points will be placed in leg restraints and handcuffs with belly chain.

I. Conduct During Court Hearings or Court Transport

A. Assaultive behavior or destructive outburst (no time limit)	10 points
B. Escape or attempt to escape (no time limit)	10 points
C. Serious self-harm or attempt (no time limit)	10 points
D. Recent aggressive or defiant language or conduct (within 90 days)	5 points
E. Aggressive or defiant language or conduct (more than 90 days ago)	3 points

II. Behavior in Detention

A. Assault on staff, current or past stay	10 points
B. Assaultive behavior or destructive outburst	
1. This detention stay	10 points
2. Prior stays	4 points
C. Escaped or attempted to escape	
1. This stay	10 points
2. Prior stays	5 points
D. Threat of violence or escape	
1. Specific to court hearing, this stay	10 points
2. Prior stays or general threats	4 points

III. Current charge

Any A felony, Man. 1, Assault 2, Cust. Assault, Escape/Attempt	10 points

_____

Total Points

IV. Staff Override

Other factors that make shackling necessary, notwithstanding score of 9 or less. (state reasons, attach report)

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed: _____

Juvenile Custody Officer/Supervisor/Manager Date

Place: Chelan County Juvenile Detention
316 Washington, Suite 202
Wenatchee, WA 98801

Notes:

General- Points are given for each instance of behavior noted in incident reports in the youth's file, daily log, or observed first-hand by the staff signing the form. A single incident that involves several different behaviors, such as an assault accompanied by threats and a destructive outburst would result in points only for the highest single element of misconduct.

Section I- This section relates only to conduct that occurred *during court or in transport to or from court.*

"Assaultive behavior" means assaults or attempted assaults only. "Destructive outburst" means overt acts, not secretive property destruction.

"Serious self-harm" means harm that resulted in emergency medical treatment, or likely would have so resulted had the youth not been interrupted or prevented from carrying out the act.

"Aggressive language" is language intended or reasonably perceived to be threatening, and "defiant" means confrontational or challenging to the authority of staff or the court. Both are to be distinguished from comments that are merely inappropriate for court because they are insulting, disrespectful, or spoken out of turn.

Section II- Points are given for specified conduct that resulted (or will result) in an incident report, and need not have resulted in a referral for charges.

"Specific to court..." means a threat to run during the hearing or transport, or a threat to commit an act of violence at that time, or is directed toward someone who will be, or the youth believes will be, present at the hearing.

"General threats" are threats of violence or escape that do not relate to court nor name a particular victim who may be present in court.

Section III- Applies only to the current charge for which the youth is being held.

Section IV- Staff will state reasons to support their conclusion that there is a considerable risk the youth, if not shackled, will commit violence, serious self-harm, escape, or property destruction. Cite specific facts to support this conclusion. A list of reasons that may be considered is set forth below. The list is not intended to be exclusive or exhaustive, nor will the presence of one or more of these circumstances necessarily result in a decision to shackle a given youth. Rather, they are factors to be considered in context and weighted according to the likelihood that the youth in question will commit an act of violence or will attempt to escape in court or in transit.

Examples:

1. Mental health issues
2. Serious consequences of the hearing, such as MI, decline, or long-term commitment
3. Gang membership
4. Presence of persons in court who may trigger violent behavior
5. Symptoms of withdrawal from drugs or alcohol
6. Long-standing pattern of impulsivity and acting out

THE COMMONWEALTH OF MASSACHUSETTS
ADMINISTRATIVE OFFICE OF THE JUVENILE COURT
Three Center Plaza
Seventh Floor
Boston, Massachusetts 02108

Tel: 617-788-6550
Fax: 617-788-8965

MICHAEL F. EDGERTON
Chief Justice

JANE STRICKLAND
Court Administrator

MEMORANDUM

To: First Justices
Associate Justices
Clerk-Magistrates
Chief Probation Officers

From: Michael F. Edgerton, Chief Justice

Date: February 25, 2010

Re: Restraints in Juvenile Court

Please be advised that effective Monday, March 1, 2010, the Court Officers Policy and Procedure Manual of the Trial Court of the Commonwealth will be amended to implement a new procedure relative to the use of restraints on juveniles in the courtroom. The policy and procedure creates a presumption that restraints will be removed from juveniles while appearing in a courtroom before a justice of the Juvenile Court, unless there is an order and specific finding by a Juvenile Court justice that restraints are necessary because there is reason to believe that the juvenile may try to escape, or that the juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or if it is reasonably necessary to maintain order in the courtroom.

The amendment is attached with commentary on the new policy. Paragraph 5 of the new policy sets forth several factors that a Juvenile Court justice must consider prior to issuance of any order and finding. Court officers have been informed today that it is their responsibility to report any security concerns with any juvenile to the justice presiding in the courtroom, however, the decision to use restraints in each individual case is the sole determination of the Juvenile Court justice presiding in the courtroom at the time that the juvenile appears before the court.

cc: Hon. Robert A. Mulligan
Chief Justice for Administration and Management
Thomas J. Connolly, Director of Security
Administrative Office of the Trial Court

AMENDMENT TO
TRIAL COURT OF THE COMMONWEALTH
COURT OFFICER POLICY AND PROCEDURES MANUAL

The Trial Court of the Commonwealth Court Officer Policy and Procedures Manual, Chapter 4, Courtroom Procedures, Section VI, Juvenile Court Sessions is hereby amended by inserting the following:

Use of Restraints in the Juvenile Court Department

1. **Purpose.** The purpose of this subsection is to provide procedures and guidelines and promote uniformity in practice when using restraints on juveniles that appear before the Juvenile Court.

2. **Applicability.** This subsection is applicable to all Divisions of the Juvenile Court and to all proceedings within the jurisdiction of the Juvenile Court, and to any and all stages of those proceedings.

3. **Definitions.** *Juveniles* - Persons appearing before the Juvenile Court under the age of seventeen in delinquency and children in need of services cases, under the age of eighteen in care and protection cases and under the age of twenty-one in youthful offender cases; *Restraints* - Devices that limit voluntary physical movement of an individual. The only instruments of restraint approved by the Security Department are handcuffs and leg irons, also known as shackles (See chapter 11).

4. **Presumption Against Use of Restraints.** There is a presumption that restraints shall be removed from juveniles while appearing in a courtroom before a justice of the Juvenile Court.

5. **Use of Restraints on Juveniles Appearing Before the Juvenile Court.** Restraints may not be used on juveniles during court proceedings and must be removed prior to the appearance of juveniles before the court at any stage of any proceeding, unless the justice presiding in the courtroom issues an order and makes specific findings on the record that restraints are necessary because there is reason to believe that a juvenile may try to escape, or that a juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or restraints are reasonably necessary to maintain order in the courtroom. The justice presiding in the courtroom shall consider one or more of the following factors prior to issuance of any order and findings: (a) the seriousness of the present charge (supporting a concern that the juvenile had an incentive to attempt to escape); (b) the criminal history of the juvenile; (c) any past disruptive courtroom behavior by the juvenile; (d) any past behavior that the juvenile presented a threat to his or her own safety, or the safety of other people; (e) any present behavior that the juvenile represents a current threat to his or her own safety, or the safety of other people in the courtroom; (f) any past escapes, or attempted escapes; (g) risk of flight from the

courtroom; (h) any threats of harm to others, or threats to cause a disturbance, and (i) the security situation in the courtroom and courthouse, including risk of gang violence, or attempted revenge by others.

It shall be the responsibility of the court officer charged with custody of a juvenile to report any security concerns with said juvenile to the justice presiding in the courtroom. The justice presiding in the courtroom may attach significance to the report and recommendation of the court officer charged with custody of the juvenile, but shall not cede responsibility for determining the use of restraints in the courtroom to the court officer. The justice presiding in the courtroom may receive information from the court officer charged with custody of the juvenile, a probation officer, or any source which the court determines in its discretion to be credible on the issue of courtroom or courthouse security.

The decision to use restraints shall be the sole determination of the Juvenile Court justice who is presiding in the courtroom at the time that a juvenile appears before the court. No Juvenile Court justice shall impose a blanket policy to maintain restraints on all juveniles, or a specific category of juveniles, who appear before the court.

COMMENTARY

This amendment to the Trial Court of the Commonwealth Court Officer Policy and Procedures Manual prohibits the use of restraints on juveniles in the courtroom without an order and specific finding by a Juvenile Court justice that restraints are necessary because there is reason to believe that the juvenile may try to escape, or that the juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or if it is reasonably necessary to maintain order in the courtroom. In some cases, the Juvenile Court justice, with information from the court officer charged with custody of the juvenile and defense counsel, will be able to decide in advance whether restraints are necessary during the appearance of a juvenile. In those cases, the justice is still be required to issue an order and make specific findings on the record that restraints are necessary.

The Supreme Court of Illinois stated over thirty years ago that "shackling . . . of the accused should be avoided if possible because: (1) it tends to prejudice the jury against the accused; (2) it restricts his ability to assist his counsel during trial; and (3) it offends the dignity of the judicial process." *People v. Boose*, 66 Ill. 2d 261, 265-266 (1977). "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.'"*In re Derwin Stanley*, 67 Ill. 2d 33, 37 (1977). Massachusetts cases are in accord as it relates to trial of an adult defendant in a criminal case before a jury. See *Commonwealth v. Brown*, 364 Mass. 471, 475 (1973).

Shackling of juveniles in courtroom proceedings is antithetical to the Juvenile Court goals of rehabilitation and treatment. California, Connecticut, Florida, New Mexico, New York, North Dakota, North Carolina and Vermont do not shackle juveniles as a result of State Supreme Court decisions that have ruled against blanket shackling orders for juveniles, or statutes that prohibit unnecessary restraints. See *Tiffany A. v. The Superior Court of Los Angeles County*, 150 Cal. App. 4th 1344, 1362 (2007)(juvenile court could not use shackles on minors "absent an individualized determination of need").

The United States Supreme Court has not addressed the issue of whether juveniles have the right to appear in court without shackles. The Florida Supreme Court in approving an amendment to the Florida Rules of Juvenile Procedure on December 17, 2009, found that the blanket practice of shackling young defendants was "repugnant, degrading, humiliating, and contrary to the stated primary purpose of the juvenile justice system . . . ." The court further stated that "[w]e recognize, without deciding, that indiscriminate use of restraints on children in the courtroom in juvenile delinquency proceedings may violate the children's due process rights and infringe on their right to counsel. We agree . . . 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 restraints are necessary."

Supreme Court of Florida

No. SC09-141

IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE.

[December 17, 2009]

PER CURIAM.

We have for consideration the regular cycle report of proposed rule amendments filed by The Florida Bar's Juvenile Court Rules Committee. We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(b).

BACKGROUND

The Juvenile Court Rules Committee (Committee) has filed its regular cycle report proposing amendments to the following rules: 8.010 (Detention Hearing); 8.070 (Arraignments); 8.080 (Acceptance of Guilty or Nolo Contendere Plea); 8.100 (General Provisions for Hearings); 8.115 (Disposition Hearing); 8.130 (Motion for Rehearing); 8.225 (Process, Diligent Searches, and Service of Pleadings and Papers); 8.235 (Motions); 8.257 (General Magistrates); 8.265 (Motion for Rehearing); 8.310 (Dependency Petitions); 8.400 (Case Plan

Development); 8.410 (Approval of Case Plans); and 8.505 (Process and Service). The Committee also proposes new forms 8.982 (Notice of Action for Advisory Hearing) and 8.978(a) (Order Concerning Youth's Eligibility for Florida's Tuition and Fee Exemption).[1] A number of the Committee's proposals are in response to the recommendations of the National Juvenile Defender Center (NJDC) in its 2006 report entitled Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings.[2] This assessment contained ten "Core Recommendations" addressing various areas targeted by the NJDC for improvement.[3] The Court requested the Committee's input on all aspects of the

---

1. The Committee's report also responds to the Court's request that it consider the issue of the appropriate procedure to raise an ineffective assistance of counsel claim in termination of parental rights cases. The Committee does not present any proposal on this issue and states that after consideration and discussion, it feels that the issue is outside the scope of its purview. This "no action" response has been severed from this case and is being addressed separately.

2. Patricia Puritz & Cathryn Crawford, Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings (2006) (on file with National Juvenile Defender Center), available at http://www.njdc.info/pdf/Florida%20Assessment.pdf.

3. The Core Recommendations were as follows:

> 1. State legislators and local policymakers should increase the resources that are available to improve delinquency representation in juvenile court. Those resources should include support for attorneys and non-lawyers with special expertise in case planning and representation and other necessary support staff.

2. The elected Public Defenders should ensure that youth are competently represented by defense counsel at all court hearings and throughout the entire delinquency process.

3. Further restrictions on waiver of counsel must be established consistent with national standards. Youth should not be permitted to waive counsel without prior consultation with such counsel. Counsel should assist the client in making an informed, knowing and voluntary choice and stand-by counsel should be available in the event of waiver. It is imperative that youth understand the long term consequences of a juvenile adjudication.

4. Judicial colloquies and admonitions administered to youth must be thorough, comprehensive and easily understood. Judges should take the time to fully test a youth's understanding.

5. A comprehensive review of indigence determinations and other fees assessed in juvenile court should be undertaken. The lack of consistency and uniformity is glaring. These costs and fees are punitive in nature and place an undue burden on youth.

6. State legislators, local policymakers, and juvenile court judges should end the practice of shackling youth by hand, foot and belly chain for court appearances unless an extenuating individual situation warrants such restraint. Under any circumstance, the practice of shackling youth to each other in a group or to fixed objects in the courtroom should be strictly prohibited.

7. The quality of representation in juvenile court should be improved through early appointment of counsel, reduced defender caseloads, additional lawyer training and adequate supervision and monitoring of cases in juvenile court. The Florida Public Defender Association should develop the capacity to monitor and improve the delivery of juvenile defense services to comply with these recommendations.

8. Florida should establish a minimum age for juvenile court jurisdiction and children under twelve should be diverted from juvenile court. Young children under twelve should never be handcuffed or booked in the same manner as older youth.

report and specifically sought the Committee's advice as to whether rule amendments were warranted in response to several of the NJDC's recommendations. In its report, the Committee proposes various amendments to rules 8.010, 8.070, 8.080, 8.100, and 8.115 in response to the NJDC's recommendations. Several other amendments addressing other matters are also proposed. The proposed amendments were published for comment by the Committee and were reviewed and approved by the Board of Governors of The Florida Bar.

After submission to the Court, the Committee's proposals were again published for comment. Several comments and requests for oral argument were filed by various parties. Most of the comments concerned the proposed amendment to rule 8.100 (General Provisions for Hearings), which would restrict the use of restraints on juveniles during court hearings. This amendment drew substantial comment, both for and against the proposal. The University of Miami

---

> 9. Local courts, law schools or bar associations should routinely collect data on defense representation in juvenile court to identify and address systemic weaknesses.
>
> 10. Plea agreements should never be taken at arraignment in juvenile court. Defense counsel must have a meaningful opportunity to consult with the youth, explain potential short- and long-term consequences of a conviction, and review the sufficiency of the case prior to the court accepting a plea agreement.

Id. at 66-67.

School of Law Center for the Study of Human Rights, the University of Miami School of Law Children and Youth Law Clinic, the Florida Public Defender Association, Florida Children's First, and the Florida Association of Criminal Defense Lawyers filed comments in favor of the proposed amendment. The Office of the State Attorney for the Second Judicial Circuit, the Sheriff of Pinellas County, and the Chief Judge of the Sixth Judicial Circuit filed comments in opposition to the proposed amendment. Substantive comments also were filed by the Department of Children and Families with regard to the proposed amendments to rules 8.225, 8.235, 8.257, 8.265, and 8.310. Oral argument was heard in this case on June 4, 2009.

AMENDMENTS

Upon consideration of the Committee's report, the comments and responses thereto, and the presentations of the interested parties at oral argument, we amend the Florida Rules of Juvenile Procedure as further explained below.[4]

As discussed, several rule amendments were proposed by the Committee in response to the recommendations of the NJDC. Provisions are added to rules

---

4. We reject only one of the Committee's proposals, the amendments to rule 8.225 (Process, Diligent Searches, and Service of Pleadings), that would eliminate the use of mail to serve summonses and other process on persons residing out of state. We agree with the comments of the Department of Children and Families that the proposal would not achieve its stated objective of achieving consistency in the manner of service and ignores the practical considerations of serving out of state residents.

8.010 (Detention Hearing) and 8.070 (Arraignment) requiring appointment of counsel at the detention hearing and at arraignment, respectively. This is in response to the NJDC's recommendation that "the quality of representation in juvenile court should be improved through early appointment of counsel."[5] Rule 8.080 (Acceptance of Guilty or Nolo Contendere Plea) is amended in response to the NJDC's recommendation that "[j]udicial colloquies and admonitions administered to youth must be thorough, comprehensive, and easily understood" and that "[j]udges should take time to fully test a youth's understanding," and its recommendations regarding waiver of counsel and early appointment of counsel.[6] The amended rule expressly requires a judge to determine that a child understands an enumerated list of rights and consequences of entering a guilty or nolo contendere plea and understands that he or she has a "right to be represented by an attorney at every stage of the proceedings, and if necessary, one will be appointed."[7]

---

5. Puritz & Crawford, supra note 4, at 66.

6. Id.

7. Other minor amendments are also made to rules 8.010, 8.070, and 8.080. Rule 8.010 is amended to conform to the statutory requirement that a detained child be given a hearing within twenty-four hours of being detained; rules 8.070 and 8.080 are amended conform them to their counterpart adult criminal rule 3.172.

As noted above, most of the comments filed in this case addressed the Committee's proposed amendment to rule 8.100 (General Provisions for Hearings) restricting the use of restraints on juveniles during court appearances. The proposed amendment adds a new subdivision (b) to this rule providing that restraints, such as handcuffs, chains, irons, or straightjackets may not be used during juvenile court appearances unless the court finds that the use of restraints is necessary, based on enumerated factors, and there are no less restrictive alternatives to restraint. This proposal is in response to a specific recommendation by the NJDC that restraints should not be used on children during juvenile court appearances unless extenuating circumstances warrant it.[8] As to the use of restraints in Florida's courtrooms, the NJDC's assessment stated that during its assessment observations,

> The frequent and liberal use of restraints on youth in Florida courtrooms was disconcerting. Observers found that wrist and leg shackles with belly chains appear to be the norm in many juvenile courtrooms across the state. Without exception, every courtroom visited had youth, including very young children, fully shackled when they were brought from detention into the courthouse. These shackles remained on when the youth were brought into the courtroom itself.[9]

---

8. Puritz & Crawford, supra note 4, at 66.

9. Id. at 57.

Additionally, the assessment noted that "[y]outh in Florida's courts were also typically shackled together in a group," and that "[i]n several courtrooms, observers saw youth who were brought into courtrooms in wrist and leg shackles and then were further chained to furniture, doors or other fixed structures in the courtroom to keep them in place."[10] The assessment identified these practices as one of the barriers to just and balanced outcomes that exist in Florida's juvenile courts. The NJDC's recommendation 6 stated as follows:

> State legislators, local policymakers, and juvenile court judges should end the practice of shackling youth by hand, foot and belly chain for court appearances unless an extenuating individual situation warrants such restraint. Under any circumstance, the practice of shackling youth to each other in a group or to fixed objects in the courtroom should be strictly prohibited.[11]

Further, in its more specific implementation strategies, the NJDC recommended that the judiciary should "[p]rohibit the generalized policy of allowing youth to appear in juvenile court in shackles or handcuffs unless extenuating circumstances warrant such restraint in individual cases" and "[e]nd, without exception, the practice of shackling youth to fixed objects or structures during transportation and in court."[12]

---

10. Id. at 57-58.

11. Id. at 66.

12. Id. at 69.

We find the indiscriminate shackling of children in Florida courtrooms as described in the NJDC's Assessment 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. See In re Report of Family Court Steering Committee, 794 So. 2d 518, 523 (Fla. 2001) (approving guiding principles for family court, including that "therapeutic justice" should be a key part of the family court process). We also recognize, without deciding, that indiscriminate use of restraints on children in the courtroom in juvenile delinquency proceedings may violate the children's due process rights and infringe on their right to counsel. 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.

Next, rule 8.115 (Disposition Hearing) is amended to specifically provide, in new subdivision (b), that counsel be appointed at disposition hearings. This is in response to the NJDC's recommendation that youth should be represented at all court hearings and throughout the entire delinquency process. It also conforms to section 985.033(1), Florida Statutes (2008), which requires that a child be represented at all stages of the delinquency proceeding unless counsel is waived.

The Committee also recommended that rule 8.115 be amended to require that a disposition order "give[] credit for time served in secure detention before disposition." This is in response to the Court's referral of an issue regarding such credit in J.I.S. v. State, 930 So. 2d 587 (Fla. 2006). In that case, the Court held that juveniles whose dispositions are to determinate commitment programs must be granted credit for time served in secure detention, but those whose dispositions are to indeterminate commitment programs are not entitled to such credit. Id. at 596. The Court also addressed the question of whether a commitment order should specify the amount of predisposition time served, even on an indeterminate commitment on which there is no right to credit for the time served. Id. at 596-97. The Court noted that such a notation may be beneficial if the original commitment is later reduced and may be helpful to the Department of Juvenile Justice in structuring a commitment or postrelease program or determining when the juvenile offender has completed a program. Id. Thus, the Court referred the matter to the Committee "to determine whether we should adopt a rule requiring the notation [of predisposition time served in secure detention] on all residential commitment orders." Id. at 597. Because, as explained in J.I.S., entitlement to credit for time served in secure detention prior to commitment is dependent upon whether the commitment is determinate or indeterminate and, thus, not all disposition orders must necessarily grant credit for such time, we modify the language of the

proposed amendment to require that a disposition order "specify" the amount of time served in secure detention before disposition.

Rule 8.130 (Motion for Rehearing), applicable in delinquency cases, and rule 8.265 (Motion for Rehearing), applicable in dependency and termination of parental rights cases, are each amended, although in different ways, to remedy the fact that under the current rules, a motion for rehearing does not toll the time for taking an appeal in juvenile proceedings and, thus, litigants may be forced to abandon such motions if they are not ruled upon before the thirty-day time period to seek an appeal expires. In order to address this problem, rule 8.130(b)(3) is amended to provide that a motion for rehearing shall toll the time for taking an appeal. Rule 8.265 is amended to state that the court must rule on a motion for rehearing within ten days or it is deemed denied. We agree with the Committee that these changes strike the appropriate balance in each situation.

Rules 8.235 (Motions) and 8.310 (Dependency Petitions) are amended to clarify and account for the possibility of the dismissal of only certain allegations in a dependency petition, as opposed to the entire petition.[13] The current rules

---

13. In response to comments made by the Department of Children and Families (DCF), the Committee suggested and we adopt a modified version of these amendments. The language originally proposed by the Committee spoke in terms of "allegations in the petition against a particular party." DCF objected to this language on the basis that allegations in a dependency petition are not "against" any particular party, but rather are allegations that a child is dependent. The Committee agrees and recognizes that a parent is always a party to a

address only the dismissal of the entire petition, and the Committee advises that under current practice, fewer than all of the allegations in a petition may be dismissed. This amendment is intended simply to reflect the current practice that is not specifically provided for in the rules.

Next, rule 8.257 currently requires a party to provide a transcript when moving for exceptions to the general magistrate's report. Subdivisions (b)(3)(A), (e)(2), and (g) of this rule are amended to allow a party to provide a either a transcript, an "electronic recording of proceedings," or a "stipulation by the parties of the evidence considered" by the magistrate. This is intended to save costs and reduce delay in the resolution of the exceptions and entry of the final order. In adopting this amendment, however, we wish to emphasize that allowing use of an electronic recording or stipulation in lieu of a written transcript for this limited purpose is not intended in any way to alter the definition of the "official record" of a proceeding, which is the written transcript prepared in accordance with Florida Rule of Judicial Administration 2.535(f). See Fla. R. Jud. Admin. 2.535(a)(6) (defining "official record").

---

dependency action even if there are no allegations which pertain to that parent. See C.L.R. v. Dep't of Children & Families, 913 So. 2d 764 (Fla. 5th DCA 2005) (demonstrating need for clarification that parent remains a party to dependency action even where no allegations pertain to that parent, where father as to whom DCF dismissed allegations was not given notice of subsequent hearings or allowed discovery). Thus, the Committee suggested deleting reference to allegations "against a particular party," and we adopt the amendments with that modification.

Next, section 39.6011, Florida Statutes (2008), requires the Department of Children and Families to develop and file with the court a case plan for each child receiving services. In accordance with this requirement, rule 8.400 (Case Plan Development) is amended to require that a case plan be filed and served on the parties three business days before a disposition or case plan review hearing. Additionally, rule 8.410 (Approval of Case Plans) is amended to require the court to review the contents of the case plan at the disposition or case plan review hearing.

Rule 8.505 governs process and service of process in termination of parental rights proceedings, including constructive service. Subdivision 8.505(c) is amended to provide that a notice of action for service by publication shall contain only the initials of the child, the child's date of birth, and the full name and last known address of the person subject to the notice. This amendment further clarifies that the notice shall not contain any other identifying information about the child and shall not contain the name or any other identifying information of the other parent or prospective parents who are not the subject of the notice. This is intended to prevent the publication of confidential information. Additionally, new form 8.982 (Notice of Action for Advisory Hearing) is adopted in accord with the requirements of amended rule 8.505.

Finally, section 1009.25(2)(c), Florida Statutes (2008), provides a tuition and fees exemption, under certain circumstances, for students in DCF's or a relative's custody when they turn eighteen or who were adopted from DCF or placed in a guardianship after spending at least six months in DCF custody after turning sixteen. New form 8.978(a) (Order Concerning Youth's Eligibility for Florida's Tuition and Fee Exemption) is adopted to provide a form order to be entered by a court certifying a youth's eligibility for this tuition and fee exemption.

CONCLUSION

Accordingly, the Florida Rules of Juvenile Procedure are hereby amended as set forth in the appendix to this opinion. New language is underscored; deleted language is struck through. The amendments shall become effective on January 1, 2010, at 12:01 a.m.

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, POLSTON, LABARGA, and PERRY, JJ., concur.
CANADY, J., concurs in part and dissents in part with an opinion.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

CANADY, J., concurring in part and dissenting in part.

I concur with the majority's decision to adopt amendments to Florida Rules of Juvenile Procedure 8.010, 8.070, 8.080, 8.115, 8.130, 8.235, 8.257, 8.265, 8.310, 8.400, 8.410, and 8.505. I dissent, however, from the majority's decision to

amend rule 8.100. Although I agree that juveniles should not be chained to one another in the courtroom or restrained in any other way that would interfere with their ability to have meaningful access to counsel, I dissent from the majority's adoption of a rule establishing a blanket presumption against the use of any kind of restraints on juveniles appearing before a trial judge. In my view, the rule unduly restricts the ability of juvenile court judges to ensure that security is maintained in the courtroom.

It is true that the use of physical restraints during court proceedings may violate the defendant's due process rights. See Deck v. Missouri, 544 U.S. 622 (2005); Hernandez v. State, 4 So. 3d 642 (Fla.), cert. denied, 130 S. Ct. 160 (2009). Aside from the use of restraints that impede a defendant's ability freely to consult with counsel, however, the due process concerns come into play only when a restrained defendant appears before a jury. The common law rule underlying the due process right "did not apply at 'the time of arraignment,' or like proceedings before the judge." Deck, 544 U.S. at 626 (quoting 4 W. Blackstone, Commentaries on the Laws of England 317 (1769)). The common law rule "was meant to protect defendants appearing at trial before a jury." Id. The core due process concern that "[v]isible shackling undermines the presumption of innocence and the related fairness of the factfinding process" has no application to nonjury proceedings. Id.

at 630. Accordingly, due process considerations do not justify the broad rule adopted by the majority.

The minority report from the Juvenile Court Rules Committee states:

> Control of courtroom security and the safety of those present in the courtroom are matters that should remain within the sound discretion of the trial judge. Given the wide variations in courtroom facilities across the state and differing availability of security staff, it is a matter of necessity that the trial judge retains full authority over the security of his or her courtroom, to protect the safety of all persons present.
>
> . . . .
>
> . . . It is the juvenile judge who can best take into consideration the safety of all present, and who should continue to do so, without the imposition of rules more appropriate to adult defendants in the presence of a jury.

I am persuaded by the view articulated in the minority's report.

In his written comments filed on behalf of the Sixth Judicial Circuit in opposition to the proposed amendment to rule 8.100, Judge Raymond Gross points out that the "juveniles held in detention have already been determined to be high risk" by Department of Juvenile Justice personnel. I also find this point to be significant. In light of this point, it seems unwarranted to impose a presumption against the use of any restraints. I am concerned that by imposing such a presumption against the use of restraints on juveniles who have been placed in detention, the new rule will unduly hamper the trial court's ability to maintain the safety of court personnel, the juveniles themselves, and any bystanders in the courtroom.

The reality is that being subjected to physical restraints is an inherent part of being in custody. Juveniles who are in custody will routinely be subjected to restraints when they are transported to and from court. Nothing in the proposed rule alters that fact. Accordingly, any "therapeutic" impact of the rule will be insubstantial compared with the significant security risks that may arise from the implementation of the rule.

Because I conclude that revised rule 8.100 may interfere with the State's interest in conducting safe, orderly court proceedings, I dissent from the majority's revision of rule 8.100.

Original Proceeding – Florida Rules of Juvenile Procedure Committee

Charles Hugh Davis, Chair, Juvenile Court Rules Committee, Fourth Judicial Circuit, Jacksonville, Florida, and David N. Silverstein, Past Chair, and Robert W. Mason, Tampa, Florida; and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioners

Carlos J. Martinez, Public Defender, Andrew Stanton, and Shannon Patricia McKenna, Assistant Public Defenders, Eleventh Judicial Circuit, Miami, Florida, on behalf of Florida Public Defender Association; Robin L. Rosenberg, Florida Children's First, Coral Springs, Florida; Michael Ufferman, The Florida Association of Criminal Defense Lawyers, Tallahassee, Florida; Bernard P. Perlmutter and Mia F. Goldhagen, University of Miami School of Law Children and Youth Law Clinic, Miami, Florida; Stephen J. Schnably and Irwin P. Stotzky, Coral Gables, Florida, on behalf of University of Miami School of Law Center for the Study of Human Rights; Anthony C. Musto, Special Counsel, Hallandale Beach, Florida and Jeffrey Dana Gillen, Statewide Appeals Director, West Palm Beach, Florida, on behalf of Florida Department of Children and Families; Judge Raymond O. Gross, Sixth Judicial Circuit, Clearwater, Florida and B. Elaine New,

Court Counsel, Sixth Judicial Circuit, St. Petersburg, Florida; Helen Beth Lastinger, and Robert A. Gualtieri, Largo, Florida, on behalf of Jim Coats, Sheriff, Pinellas County, Florida; Eric Trombley, Assistant State Attorney, Second Judicial Circuit, Tallahassee, Florida; Jack A. Moring, Chair, Family Law Rules Committee, Fort Lauderdale, Florida;

Responding with Comments

STATE OF ALASKA

Sean Parnell, Governor

DEPARTMENT OF ADMINISTRATION
OFFICE OF PUBLIC ADVOCACY

900 W. Fifth Ave., Suite 702
Anchorage, Alaska 99501
(907) 274-3937 Telephone
(907) 274-0857 Facsimile

Adult & Juvenile Representation Section

October 5, 2010

To: Adam Keller

From: Chris Provost, Assistant Public Advocate

Subject: Proposed Delinquency Rule addition regarding Use of Restraints on the Juvenile in the courtroom

INTRODUCTION

The issue of shackling surfaced in a meeting on September 22, 2010 at Judge Gleason's chambers in the context of exploring greater efficiencies for in-custody hearings at MYC. In attendance were the Masters, DJJ Supervising Probation Officer Linda Moffit, juvenile defenders from the Office of Public Advocacy and the Public Defender Agency, and Assistant District Attorney Joan Wilson. The practice of indiscriminate shackling in court raises larger questions that this memorandum and proposed delinquency rule addition seek to address.

RECENT NATIONAL REFORMS

The recent trend among state courts is to ban shackling without an individualized analysis of risk. Since 2007 California, Connecticut, Florida, New Mexico, New York, North Dakota, North Carolina and Vermont no longer routinely shackle juveniles as a result of State Supreme Court decisions that have ruled against blanket shackling for juveniles, rule changes, or statutes that prohibit unnecessary restraints. Some of these states have created a presumption against shackling absent an individualized determination of need.

Aside from judicial efficiency, there are sound constitutional and policy reasons to reform our shackling practice in Alaska. Shackling of juveniles in courtroom

proceedings is antithetical to the juvenile court goal of rehabilitation and treatment. Psychological and medical experts have rendered opinions in pleadings and evidentiary hearings in jurisdictions where this issue has been litigated. They opine that children suffer (emotionally, psychologically, and medically) when held in restraints.

One such expert is Dr. Marty Beyer, a national consultant on juvenile justice issues. She opines that "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." She argues that indiscriminate and routine shackling of children in court, before family and strangers, is damaging to the juvenile's fragile sense of identity. She notes that the practice could undermine a juvenile's willingness to trust adults in positions of authority, could damage the juvenile's moral identity and development, and could undermine the rehabilitative goals of court intervention. As an expert in the interplay between adolescent development, trauma, and disability, she expresses particular concern about the traumatic impact of shackling juveniles who have been previously traumatized by physical and sexual abuse, loss, neglect, and abandonment; she further notes that shackling exacerbates trauma, reviving feelings of powerlessness, betrayal, self-blame, and could trigger flashbacks and reinforce early feelings of powerlessness.

Another expert, Dr. Gwen Wurn, a board certified developmental-behavioral and general pediatrician, University of Miami Miller School of Medicine, opined that the policy of subjecting all children and adolescents in the juvenile system to shackling without regard to their age, gender, mental health history, history of violence, or risk of running, "goes against the basic tenets of developmental pediatric practice." She notes that being shackled conveys that others see the child as "a contained beast," an image that "becomes integrated in his own identity formation, possibly influencing his behavior and responses in the future." Like Dr. Beyer, Dr. Wurm warns that shackling can cause emotional, mental, and physical harm and could exacerbate symptoms associated with post-traumatic stress disorder, depression, anxiety disorder, attention deficit disorder, conduct disorder, and interfere with the child's receptivity to rehabilitation.

Following are examples of recent shackling reform in other states:

Florida Established a Presumption Against Shackling:

The Supreme Court of Florida adopted its Juvenile Court Rules Committee's proposed rule change regarding the indiscriminate use of shackling on December 17, 2009. The Committee's proposals were in response to the National Juvenile Justice

Center's report in 2006 entitled Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings.

The Court made this finding: "We find the indiscriminate shackling of children in Florida courtrooms as described in the NJDC's Assessment repugnant, degrading, humiliating, and contrary to the stated purposes of the juvenile justice system and to the principals of therapeutic justice..." It went on to rule: "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."[1]

Florida's Delinquency Rule 8.100(b) now reads as follows:
Use of Restraints on the Child. Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, may not be used on a child during a court proceeding and must be removed prior to the child's appearance before the court unless the court finds both that:
(1) The use of restraints is necessary due to one of the following factors:
(A) Instruments of restraint are necessary to prevent physical harm to the child or another person;
(B) The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or
(C) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and
(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

New York Enjoins the Government From Shackling a Child Without an Individualized Determination of Dangerousness:

The Supreme Court of the State of New York granted summary judgment and certified a class action lawsuit on January 19, 2010 to enjoin the government from joining the hand and foot of a child that is in restraints.[2] The Court enjoined the government from restraining the particular plaintiff juvenile in the lawsuit for future court appearances unless the government determines that the juvenile constitutes a serious and evident danger to himself and others while in the courthouse.

[1] See attachment A: In Re: Amendments to the Florida Rules of Juvenile Procedure, No. SC09-41 [December 17, 2009],
[2] See attachment B: Order of the Supreme Court of the State of New York dated January 19, 2010

Justice Tingling found that the agency's policy violated the state's own law on shackling youth in custody. [3] Title 9, New York Code, Rules and Regulations Sec 168.3: Use of Physical and Medical Restraints, subsection (a) and (a)(2) states:

(a) Physical Restraints: Permissible physical restraints, consisting solely of handcuffs and footcuffs, shall be used only in cases where a child is uncontrollable and constitutes serious and evident danger to himself and to others. They shall be removed as soon as the child is controllable....

(a)(2) Physical restraints may be utilized beyond one-half hour only in the case of vehicular transportation where such utilization of physical restraints is necessary for public safety.

Massachusetts:

Effective March 1, 2010 the practice of routinely shackling juveniles was eliminated. This change in policy was accomplished without litigation because of the leadership of the Court's Chief Justice Edgerton.[4] This state's new policy directly references the reasoning and wording of the Florida shackling decision referenced above. The Amendment to Trial Court of the Commonwealth Court Officer Policy and Procedures Manual, under Use of Restraints in the Juvenile Court Department, creates a presumption that restraints will be removed from juveniles while appearing in a courtroom unless there is a specific finding by a Juvenile Court justice that restraints are necessary because there is reason to believe that the juvenile may try to escape, or that the juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or if it is reasonably necessary to maintain order in the courtroom. Point 5 in the amendment states in relevant part: The justice presiding in the courtroom shall consider one or more of the following factors prior to issuance of any order or findings: (a) the seriousness of the present charge (supporting a concern that the juvenile had an incentive to attempt to escape); (b) the criminal history of the juvenile; (d) any past behavior that the juvenile presented a threat to his or her own safety, or the safety of other people; (e) any present behavior that the juvenile represents a current threat to his or her own safety, or the safety of other people in the courtroom; (f) any past escapes, or attempted escapes; (g) risk of flight from the courtroom; (h) any threats of harm to others, or threats to cause a disturbance, and (i) the security situation in the courtroom and courthouse, including risk of gang violence, or attempted revenge by others. The last provision of the amendment states: "...No Juvenile Court justice shall impose a blanket policy to maintain restraints on all juveniles, or a specific category of juveniles, who appear before the court."

[3] There is an argument to be made the same is true in Alaska based on the Alaska Administrative Code on restraints.

[4] See attachment C: Memorandum of Massachusetts Chief Justice Edgerton dated February 25, 2010.

California Bans the Shackling of Children Without an Individualized Determination/Practice of Shackling Cannot be Justified Solely on Basis of a Lack of Sufficient Security Personnel:

California has adopted the "individualized shackling determinations" approach to shackling juveniles. A California appellate court found blanket juvenile shackling policies unconstitutional in *In re* Tiffany A.[5] The court ruled 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...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." (Emphasis in the original.)

North Dakota Finds Violation of Child's Constitutional Rights by not Holding Evidentiary Hearing on Necessity of Restraints:

The North Dakota Supreme court issued a constitutionally grounded decision barring the use of shackles to adjudicatory hearings in juvenile delinquency court in In the Interest of R.W.S..[6] The court held that the juvenile court violated the offender's constitutional rights by refusing to remove his handcuffs at an evidentiary hearing, deferring to the sheriff's office's policies on courtroom security, without first independently deciding the necessity of restraints.

North Carolina Legislation Limit's the Judge's Authority to Use Juvenile Restraints in the Courtroom:

In 2007 the North Carolina Assembly unanimously voted to ratify a bill that provides a standard procedure for deciding when to use restraints on detained juveniles in the courtroom. Under their new law, a judge can only allow a juvenile to be restrained in the courtroom to maintain order in the court, prevent the juvenile's escape, or provide for the safety of the courtroom.

Pennsylvania:

As a result of the recent judicial corruption scandal in Luzerne County the Juvenile Law Center conducted a study and made recommendations to the Interbranch Commission on Juvenile Justice in May 2010. Recommendation 5.1 recommends prohibiting the handcuffing and shackling of youth in juvenile court. The investigators found that: "The policy of indiscriminate shackling led children and parents to lose

[5] See 150 Cal. App. 4th 1344 (Cal. Ct. App.2007)
[6] See 728 N.W. 2d 326 (N.D. 2007)

their faith in the rule of law. In Luzerne County, children and parents came to expect degrading behavior and injustice." The study makes two specific recommendations: 1) The General Assembly should amend the Juvenile Act to prohibit the use of mechanical restraints on juveniles absent a clear public safety concern; and 2) The Pennsylvania Supreme Court should amend the Rules of Juvenile Court Procedure to prohibit the use of mechanical restraints on children during juvenile court proceedings, set forth criteria to guide judges in determining whether such restraints are necessary in the interests of public safety, and guarantee the juvenile's opportunity to contest the use of restraints at a hearing. The report further recommends that judges should not defer to sheriffs or law enforcement – that restraints in the courtroom should be used only as a last resort and be deemed a drastic measure that can only be ordered by a court.

This memo provides suggested language for a rule addition. Because the use of restraints is not addressed in the DL Rules, I am proposing a new rule. Perhaps the most logical place in the sequence of the DL Rules to add such a Rule would be around Rule 12-14: Rule 12 Temporary Detention Hearing, Rule 13 Judge's Responsibility Concerning Conditions of Detention, and Rule 14 Arraignment on Petition, which would be the first court appearance.

ALASKA STATUTE 47.14.020, DUTIES OF DEPARTMENT, ALASKA ADMINISTRATIVE CODE 7 AAC 52.365, RESTRAINTS, AND ALASKA DELINQUENCY RULE 13, JUDGE'S RESPONSIBILITY CONCERNING CONDITIONS OF CONFINEMENT PROVIDES THE COURT AND THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES THE AUTHORITY AND THE DUTY TO LIMIT USE OF RESTRAINTS

Relevant Alaska Statutes, Administrative Code, and Delinquency Rule arguably appear consistent with recent reforms in other states, but have not been put to use for this purpose. AS 47.14.020 sets out the duties of the department to provide for the welfare, control, care, custody, and placement of juveniles. 7 AAC 52.365 Restraints, states that "handcuffs and other physical restraints may be used only when necessary to protect the juvenile, an employee of the facility, or the public, when there is immediate danger of violence, escape, or damage to government or facility property." Delinquency Rule 13 states: "A court exercising jurisdiction under these rules has a continuing duty to ascertain that appropriate conditions of detention of juveniles are observed concerning visitation, clothing, exercise, private visitation of counsel and confinement. A juvenile may not be confined in solitary confinement for punitive purposes." [7]

[7] As noted above, New York Chief Justice Tingling found that the agency's policy violated the state's own law on shackling youth in custody. Title 9, New York Code, Rules and Regulations Sec 168.3: Use of Physical and Medical Restraints, subsection (a) and (a)(2).

Yet our Masters and trial judges see juveniles as young as 12 years of age shackled every day for offenses like shoplifting, or for probation violations such as violating curfew, failing to attend school, failing to contact the probation officer, minor consuming alcohol, or testing positive for marijuana use. Any juvenile defender can cite instances where the parent broke down at the sight of the son or daughter shuffling shackled into the courtroom for the first time and whispering that he or she would not have cooperated in the process had they known their child would be treated in this manner.

THE UNITED STATES SUPREME COURT FORBIDS SHACKLING OF ADULTS – THIS RATIONALE EQUALLY APLLIES TO JUVENILES

The Supreme Court has acknowledged that the decision to use shackles in the courtroom requires an evaluation of the circumstances presented in each individual case. In *Deck v. Missouri*[i] the Supreme Court provides a comprehensive, historical analysis of shackling in the courtroom. The case involved a capital murder penalty phase re-trial where the defendant was restrained in shackles and sentenced to death. The Supreme Court reversed, noting that the rule "forbid[ding] routine use of visible shackles during the phase…permit[ting] a State to shackle a criminal defendant only in the presence of a special need" has "deep roots in the common law." The Supreme Court also struck down the practice of parading defendants before the criminal court in prison garb, on both fairness and dignitary grounds in *Estelle v. Williams*[8]: "When an accused is tried in identifiable prison garb, the dangers of denial of a fair trial and the possibility of a verdict not based on the evidence are obvious. Identifiable prison garb robs an accused of the respect and dignity accorded other participants in a trial and constitutionally due the accused as an element of the presumption of innocence, and surely tends to brand him…with an unmistakable mark of guilt." A year later, a federal district court ruled in *Pena v. New York State Division for Youth*[9] found that shackling of juveniles to be "punitive and anti-therapeutic and therefore unconstitutional." It held that use of restraints "should be tolerated only in cases where a child is a serious and evident danger to himself or others and incapable of being controlled by any less restrictive means."

The practice of shackling juveniles during pre-trial hearings is inherently prejudicial as well. If intake at DJJ declines to accept an arrested juvenile when the police call in for a directive, the juvenile appears at the arraignment and all other subsequent hearings in his/her civilian clothing. But if the juvenile was detained, he/she will appear at all hearings in restraints. Though jury trials for juveniles are infrequent, masters and judges are not immune from the inherent, subconscious bias from *always* seeing detained juveniles appear before them in shackles. The blanket use of shackles

[8] 425 U.S. 501, 96 S.Ct. 1691 (1976)
[9] 419 F. Supp. 203 (S.D.N.Y. 1976)

communicates to the court that the juvenile has not only been alleged to have committed a crime, but that he/she is violent and dangerous. Thus, even if shackles may not be used at the trial itself, the judge functioning as trier of fact and sentence will be unable to avoid the taint conveyed by the image of a shackled and dangerous juvenile prisoner.

PROPOSED DELINQUENCY RULE ADDITION REGARDING THE USE OF RESTRAINTS ON JUVENILES

Rule __. Use of Restraints on the Juvenile.

Instruments of restraint, such as handcuffs, waist belts, and footcuffs, may not be used on a juvenile during a court proceeding and must be removed prior to the juvenile's appearance before the court unless the court finds that: (1) The use of restraints is necessary where a juvenile is uncontrollable and constitutes a serious and evident danger to himself/herself and to others; or (2) there is reason to believe that the juvenile may try to escape.

The decision to shackle a juvenile must be made on a case by case basis based on an individualized assessment of the particular juvenile. The judge presiding in the courtroom shall consider one or more of the following factors prior to the issuance of any order or findings: (a) any present behavior that the juvenile represents a current threat to his or her own safety, or the safety of other people in the courtroom; (b) the seriousness of the present charge (supporting a concern that the juvenile had an incentive to attempt to escape, risk of gang violence, or attempted revenge by others); any threats of harm to others, or threats to cause a disturbance; (c) past behavior that the juvenile represents a current threat to his or her own safety; and (d) any past escapes or attempted escapes.

CONCLUSION

In conclusion, the logistical problems of holding in-custody hearings at MYC has provided this opportunity to initiate reform of Alaska's blanket shackling policy through this proposed rule addition. Most in-custody hearings that take place at MYC could take place in the Anchorage state courthouses if the shackling policy is reformed. States that have reformed blanket shackling policies for juveniles have not completely banned courtroom shackling – appellate courts have determined that juvenile courts must consider various factors when making a finding whether an individual juvenile is to be shackled in court. Blanket and indiscriminate shackling is a physically and psychologically damaging practice that contravenes the ultimate goal in juvenile justice of rehabilitating juveniles. We should end this practice in Alaska.

[1] 544 U.S. 622 (2005)

OUTLINE FOR JUVENILE SHACKLNG PRESENTATION

1. **BACKGROUND .**

   a) The "congenial county" of Jackson
   b) Small 8 yo comes into court shackled
   c) Tried to persuade juvy dept to stop
   d) Encouraged to file a motion
   e) Juvy Dept. sought representation from DA's office: decline
   f) County Counsel got involved
   g) Litigation ensued

2. **OBSTACLES FOR CHANGE:**

   a) **Politics**: people will agree until it means they need to act
      * Head of detention agreed, Head of Juvy Dept. disagreed
      * DA: "Whatever I can do to help", = discouraged me later
      * ACLU: Wouldn't become directly involved
      * OSB: Too many other bar members that "can't take a position"

   b) **Reaching out**: ACLU: Chin See Ming
      National Juvenile Defender Center (NJDC: Wash. DC)
      Juvenile Rights Project (Or).
      Professor Leslie Harris, U.of O.
      OCDLA Pond

   d) **The press**: a strategic move
      * Radio interview while the case is pending: Why not?

   e) **Get community support:**
      (1) DHS (surprise, they did nothing)
      (2) CASA (fully supportive)
      (3) ACLU local chapter (wrote a letter)
      (4) CRB: (obtained some criticism for this from JCIP). Why?

   f) **Back to politics.** No one wants the dirt on them.

3. **STATUS OF SHACKLING IN OUR STATE:**

   Counties that don't routinely shackle:
   (1) Multnomah
   (2) Linn
   (3) Jackson
   (4) Crook
   (5) Grant
   (6) Harney
   (7) Polk
   (8) Wheeler

   Pending litigation:
   (1) Douglas
   (2) Josephine