Recommendation and Report of the Supreme Court Advisory Committee on Rules of Juvenile Procedure

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April 12, 2017

February 24, 2016

The Honorable Mark S. Cady
Iowa Supreme Court
1111 East Court Avenue
Des Moines, IA 50319

Dear Chief Justice Cady:

Enclosed for your review and consideration is a proposed rule that would establish criteria for judges to use when deciding whether restraints[1] should be used on children in juvenile court proceedings.[2] Also enclosed is an explanation of reasons for the proposed rule.
There is a growing consensus that shackling of youth in court -- without an individualized judicial determination that these restraints are necessary for the safety of the youth or other people in the courtroom -- is antithetical to the rehabilitative mission of the juvenile court system. Mental health experts have stated that shackling children unnecessarily humiliates, stigmatizes and traumatizes them. For young people at a critical stage of identity development, shackling can discourage the very growth in responsible behavior that the court is meant to encourage. Restraints also make effective communication more difficult and thereby impair a youth from assisting in his or her defense. Additionally, because children of color are detained at a disproportionate rate[3], they are also disproportionately impacted by the use of restraints in court. Adoption of this rule would enable juvenile courts to remain true to their mission by ensuring that proceedings are free from the inherently prejudicial and damaging practice of unnecessary shackling. It would also harmonize court procedures with state law limits on law enforcement use of restraints on children.[4]

The harm of indiscriminate shackling of juveniles in court is broadly recognized. In July 2015, the National Council of Juvenile and Family Court Judges (NCJFCJ) adopted a resolution calling for the end of indiscriminate juvenile shackling. (Addendum A). In February 2015, the American

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[1] "Restraints" and "shackling" are used interchangeably and refer to the physical restraint of children appearing in juvenile court, through the use of leg irons, manacles, chains, handcuffs, as well as restraints bonds made of leather, cloth, or other materials.

[2] While research supports that shackling is generally harmful to children, this proposed rule relates to whether children are shackled in court, and does not regulate the use of restraints during transport from detention.

[3] Black youths in Iowa are nearly five times as likely as their white counterparts to be suspended from school or arrested, according to a state committee that has proposed a five-year strategy for reducing the disparities. Community and Strategic Planning Project Advisory Committee, *Recommendations and Action Plan for Reducing Disproportionate Minority Contacts in Iowa's Juvenile Justice System* 2 (Nov. 2014), *available at* http://www.iowacourts.gov/wfdata/frame6362-1382/File65.pdf.

[4] *See* Iowa Code Chapter 232.19 (limiting use of restraints to cases where the child is being taken into custody for an alleged delinquent act of violence against a person, or when the child resists or threatens physical violence.).

Bar Association (ABA) passed a similar resolution. (Addendum B.) The criteria governing shackling found in both resolutions are similar to those proposed in this rule, which would adopt the standards that have been successfully implemented in other states, where juvenile courts continue to function safely and efficiently. Currently, 23 states and the District of Columbia have limited the use of restraints on children in the courtroom, and reform efforts are active in most of the remaining states. (A list of jurisdictions regulating the use of restraints on juveniles in court is attached as Addendum C.)

In response to the ABA and NCJFCJ resolutions, as well as the growing number of states which limit the use of restraints in court, the Middleton Center for Children's Rights reached out to juvenile defenders around the state to learn more about the prevalence of shackling in Iowa. Through informal interviews and surveys, we learned that whether children are shackled during court appearances varies widely. In some counties, like Polk and Pottawattamie,[5] children are routinely and indiscriminately shackled when they appear in court from detention. If a child's attorney asks to have the shackles removed, the Juvenile Court Officer or Judge may agree to remove their handcuffs, but the leg and belly chains remain in place during the hearing. In other counties, like Cerro Gordo County, children usually have their handcuffs removed when they come into court, but leg and belly chains remain in place there as well. In some counties, like Linn and Story, children may be shackled on the way to court, but it is rare that they are shackled during court proceedings.

In light of the growing understanding of how the use of restraints in court proceedings harms children, and the prevalence of this practice in Iowa, we urge the Iowa Supreme Court to adopt a new rule limiting the use of restraints on children in juvenile court. We appreciate your consideration of this important reform. Should you have any questions or desire any additional information, please do not hesitate to contact me.

Sincerely,

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[5] Polk and Pottawattamie counties accounted for almost one quarter of the delinquency petitions filed in Iowa in the last year according to statistics gathered by the Office of Criminal and Juvenile Justice Planning.

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Explanation of Reasons for Proposed Rule Restricting Shackling of Juveniles in Iowa

We request that the Iowa Supreme Court adopt a new rule that would explicitly prohibit the indiscriminate shackling of children in juvenile delinquency court proceedings unless there is a finding by the court that shackling is necessary for the safety and security of the child and/or others and that there are no less restrictive alternatives available.

Shackling Impairs a Child's Ability to Pay Attention, Communicate and Behave Respectfully

Mental health experts agree that shackling harms children – from revisiting trauma to decreasing capacity to participate in proceedings.[1] Shackles make it difficult for children to participate in their own defense. Leading mental health professionals tell us that shackled children have a harder time following judges' instructions, taking notes, recollecting narratives, and even appearing truthful. Children wearing restraints are less likely to communicate effectively and more likely to come across poorly to judges -- not simply because of what the child looks like in shackles, but because the stress associated with restraints diminishes their cognitive and language skills. Restraints also make a child more likely to act out. [2]

Shackling is Traumatic for Children

Experts see a link between trauma and shackles.[3] Shackling often involves a sense of powerlessness, betrayal, fear, humiliation, and pain. The experience of indiscriminate shackling brings up earlier childhood traumas and increases the likelihood that the effects of these traumas will reverberate for years to come. In addition, shackles inhibit a child's motivation and ability to develop the capacity for self-regulation. [4] This proposed rule addresses the emotional and

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[1] *See, e.g.*, AM. ORTHOPSYCHIATRIC ASS'N., SHACKLING CHILDREN IN COURT: IMPLICATIONS FOR ADOLESCENT DEVELOPMENT (2015), http://njdc.info/wp-content/uploads/2014/09/Shackling_Reform_Position_Statement.pdf; AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY, POLICY STATEMENT ON MANDATORY SHACKLING IN JUVENILE COURT SETTINGS (2015), http://njdc.info/wp-content/uploads/2014/09/Mandatory-Shackling-2015-Final-Statement.pdf; NAT'L CTR. FOR MENTAL HEALTH AND JUVENILE JUST., POLICY STATEMENT ON INDISCRIMINATE SHACKLING OF JUVENILES IN COURT (2015), http://njdc.info/wp-content/uploads/2014/09/NCMHJJ-Position-Statement-on-Shackling-of-Juveniles-032615-with-logos.pdf.)

[2] Affidavit of Dr. Gene Griffin, Director of Research, ChildTrauma Academy ¶17 (Dec. 12, 2014), *available at* http://njdc.info/wp-content/uploads/2014/09/Griffin-Affidavit-II.pdf; *see* Affidavit of Dr. Julian Ford, Professor of Psychiatry, University of Connecticut ¶¶9, 11 (Dec. 11, 2014), available at http://njdc.info/wp-content/uploads/2014/09/Ford-Affidavit-Final-Dec-2014.pdf; Affidavit of Dr. Robert Bidwell, Associate Clinical Professor of Pediatrics, University of Hawaìi ¶12 (Feb. 12, 2015), available at http://njdc.info/wp-content/uploads/2014/09/Bidwell-Shackling-Affidavit-General-April-2015.pdf; *see also* AM. ORTHOPSYCHIATRIC ASS'N., SHACKLING CHILDREN IN COURT: IMPLICATIONS FOR ADOLESCENT DEVELOPMENT (2015), http://njdc.info/wp-content/uploads/2014/09/Shackling_Reform_Position_Statement.pdf ("The literature on the use of mechanical restraints on young people in other settings links the practice with an increase in problematic or even violent behavior."))

[3] *See, e.g.*, AM. ORTHOPSYCHIATRIC ASS'N., SHACKLING CHILDREN IN COURT: IMPLICATIONS FOR ADOLESCENT DEVELOPMENT (2015), http://njdc.info/wp-content/uploads/2014/09/Shackling_Reform_Position_Statement.pdf; AM. ACAD. OF CHILD AND ADOLESCENT PSYCHIATRY, POLICY STATEMENT ON MANDATORY SHACKLING IN JUVENILE COURT SETTINGS (2015), http://njdc.info/wp-content/uploads/2014/09/Mandatory-Shackling-2015-Final-Statement.pdf; NAT'L CTR. FOR MENTAL HEALTH AND JUVENILE JUST., POLICY STATEMENT ON INDISCRIMINATE SHACKLING OF JUVENILES IN COURT (2015), http://njdc.info/wp-content/uploads/2014/09/NCMHJJ-Position-Statement-on-Shackling-of-Juveniles-032615-with-logos.pdf.)

[4] Affidavit of Dr. Donald Rosenblitt, Executive and Clinical Director, The Lucy Daniels Center ¶10 (Jan. 6, 2015), *available at* http://njdc.info/wp-content/uploads/2014/09/Rosenblitt-Affidavit-Notarized-CV-Final-1-6-15.pdf; Affidavit of Dr.

psychological harm shackling causes to youth, in addition to its possible impact on the outcome of the legal proceeding.

National Organizations Are Calling for the End of Shackling

The harm of indiscriminate shackling is broadly recognized. The National Council of Juvenile and Family Court Judges and the American Bar Association each adopted a resolutions calling for the end of indiscriminate juvenile shackling.

Many other professional organizations support shackling reform. They include the Association of Prosecuting Attorneys, National Child Traumatic Stress Network, American Academy of Child and Adolescent Psychiatry, American Orthopsychiatric Association, Child Welfare League of America, and National Center for Mental Health and Juvenile Justice. [5]

Many States Have Stopped Indiscriminately Shackling Children

Twenty three states and the District of Columbia have ended the practice of automatically shackling children in court proceedings altogether, and many others are in the process of reform.

In States That Have Eliminated Shackling, There Have Been No Breaches in Security

For example, Miami-Dade County ended indiscriminate shackling in 2006. As of 2014 (the last formal evaluation data available), when more than 25,000 children had gone through the same court unshackled, there had been no escapes or injuries. The story is virtually identical in courthouses throughout the country, including in New York City; Los Angeles: Maricopa County, Arizona; and Albuquerque, New Mexico, to name a few.

In States That Have Limited Shackling, Judges Say Their Courtrooms Function Better

Courtroom management is easier where indiscriminate shackling has ended, judges report, because they have better rapport with children and families. As National Council of Juvenile and Family Court Judges President Judge Darlene Byrne says: "A child who comes into my court in shackles immediately knows that he or she is different from other kids. There is a sense of embarrassment, humiliation, and shame … Shackles place a barrier between the judge and the child. It is simply not in the interest of justice, or in the child's best interest, to have children shackled."

Julian Ford, Professor of Psychiatry, University of Connecticut ¶¶9, 10 (Dec. 11, 2014), available at http://njdc.info/wp-content/uploads/2014/09/Ford-Affidavit-Final-Dec-2014.pdf .)

[5] If desired, we will provide the statements of each of these organizations to the Rules Committee.

PROPOSED JUVENILE COURT RULE

Use of Restraints on the Child.

1. Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a child during a court proceeding and must be removed prior to the child being brought into the courtroom and appearing before the court unless the court finds that:

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

(i) Instruments of restraint are necessary to prevent physical harm to the child or another person;

(ii) 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

(iii) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

(B) 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.

2. The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

3. Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a child be restrained using fixed restraints to a wall, floor or furniture.

ADDENDUM A

NCJFCJ
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RESOLUTION REGARDING

SHACKLING OF CHILDREN IN JUVENILE COURT

Whereas, the NCJFCJ defines shackles to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior; and

Whereas, shackling of children in court may infringe upon the presumption of innocence, undermine confidence in the fairness of our justice system, interfere with the right to a fair trial, impede communication with judges, attorneys, and other parties, and can limit the child's ability to engage in the court process; and

Whereas, research in social and developmental psychology suggests that shackling children interferes with healthy identity development; and

Whereas, placing children in shackles can be traumatizing and contrary to the developmentally appropriate approach to juvenile justice; and

Whereas, placing children in shackles can negatively influence how a child behaves as well as how a child is perceived by others; and

Whereas, shackling promotes punishment and retribution over the rehabilitation and development of children under the court's jurisdiction; and

Whereas, shackling is contrary to the goals of juvenile justice, as defined in the *Juvenile Delinquency Guidelines* to implement a continuum of effective and least intrusive responses to reduce recidivism and develop competent and productive citizens; and

Whereas, continued attention and consistent judicial leadership is necessary to ensure that policies regarding shackling continue to be upheld regardless of changes in leadership or administration; and

Whereas, judges have the ability to advance and maintain policies and practices that limit the use of restraints or shackles.

BE IT THEREFORE RESOLVED AS FOLLOWS:

The NCJFCJ supports the advancement of a trauma-informed and developmentally appropriate approach to juvenile justice that limits the use of shackles in court.

The NCJFCJ calls for judges to utilize their leadership position to convene security personnel and other justice system stakeholders to address shackling and to work together to identify ways to ensure the safety of children and other parties.

The NCJFCJ encourages judges and court systems to continually review policies and practices related to shackling children.

The NCJFCJ supports a presumptive rule or policy against shackling children; requests for exceptions should be made to the court on an individualized basis and must include a cogent rationale, including the demonstrated safety risk the child poses to him or herself or others.

The NCJFCJ believes judges should have the ultimate authority to determine whether or not a child needs to be shackled in the courtroom.

Adopted by the NCJFCJ Board of Directors during their meeting July 25, 2015 in Austin, Texas.

AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.

REPORT

Children in juvenile court should be restrained in only the rarest of circumstances. Yet youth who are in custody, whether for an initial appearance, adjudication of guilt, or post-conviction hearing, are routinely brought before the court in leg irons, handcuffs, and belly chains. Indeed, the indiscriminate shackling of youth in the nation's juvenile courts has become widespread in recent years. Shackling interferes with the attorney-client relationship, chills notions of fairness and due process, undermines the presumption of innocence, and is contrary to the rehabilitative ideals of the juvenile court.[1]

The overwhelming majority of juveniles are in court for non-violent offenses.[2] In 2011, the juvenile violent crime arrest index rate was the lowest in three decades.[3] Yet in many courts across the country, all youth, regardless of their alleged offense, are shackled in juvenile proceedings. Some jurisdictions extend this to children charged with status offenses – non-criminal misbehavior.[4]

In response to the phenomenon of blanket policies shackling children and youth in court, a number of jurisdictions have sharply limited the practice, whether by judicial decision, legislation, or court rule-making.

North Carolina, Pennsylvania, and South Carolina have restricted the practice by statute.[5] Florida, New Mexico, and Washington State have curtailed the practice through the rule-making authority of those states' highest courts, and Massachusetts has done so through a statewide official court policy.[6] In terms of court decisions, Illinois ended the

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[1] The practice has been roundly criticized. *See,* Perlmutter, *Unchain the Children: Gault, Therapeutic Jurisprudence and Shackling*, 9 Barry Law Rev. 1 (2007) (arguing that blanket shackling policies stigmatize and harm children, violate due process norms and vitiate the aims of the juvenile justice system); Zeno, *Shackling Children During Court Appearances: Fairness and Security in Juvenile Courtrooms,* 12 J. Gender Race & Just. 257 (2009) (asserting that shackling juveniles is antithetical to the twin goals of rehabilitation and treatment in the juvenile court and harmful to children); Kim McLaurin, *Children in Chains: Indiscriminate Shacking of Juveniles,* 38 WASH. U. J. L. & POL'Y 213 (2012) (noting that U.S. Supreme Court jurisprudence distinguishes youthful offenders from their adult counterparts, intensifying the need for scrutiny of the practice and arguing the absence of individualized determinations of necessity is unconstitutional).

[2] OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK, JUVENILE COURT CASES, 2011, http://ojjdp.gov/ojstatbb/court/qa06201.asp?qaDate=2011 (last visited Sept. 19, 2014).

[3] CHARLES PUZZANCHERA, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE ARRESTS 2011 6 (Dec. 2013), *available at* http://www.ncjj.org/Publication/Juvenile-Arrests-2011.aspx.

[4] For example, in considering its rule prohibiting a blanket policy of shackling youth in the state's juvenile courts, the administrative office of the courts there noted that juvenile offenders and status offenders were "routinely shackled" in juvenile court in a majority of the counties. Cover sheet, Proposed Rule JuCR 1.6, available at www.courts.wa.gov/ under "Rules."

[5] N.C. Gen. Stat. § 7B-2402.1 (2010); 42 Pa. Cons. Stat. § 6336.2 (Pennsylvania has also restricted the practice via court rule, codified as Pa.R.J.C.P 139); S.B. 440, 120th Gen. Assemb., Reg. Sess. (S.C. 2014).

[6] Fla. R. Juv. P. 8.100(b) (2011); *In re* Use of Physical Restraints on Respondent Children, No. CS-2007-01, (N.M. Sept. 19, 2007); Wash. Juv. Ct. R. 1.6; Mass. Trial Court of the Commonwealth Court Officer Policy & Procedures Manual ch. 4, § 6 (2010).

practice in 1977.[7] Courts in Oregon, North Dakota and California have followed suit.[8] Many localities are beginning to institute their own rules to curtail the practice.[9]

These measures all employ a presumption against the use of restraints on young people in their courts. Generally, they provide that restraints should be employed as the least restrictive alternative means available to the court, and imposed only to prevent harm to the juvenile or others, or to prevent flight.[10] The juvenile, through counsel, must be given an opportunity to challenge the imposition of restraints.

There are compelling reasons to end the automatic shackling of juveniles, and the American Bar Association should exercise leadership in bringing about needed reforms to halt this practice.

The automatic shackling of children and adolescents is contrary to law.

The automatic shackling of youth violates notions of fairness and due process. Under the United States Constitution, the use of visible restraints imposed on adult criminal defendants at trial and sentencing may only be employed "in the presence of a special need."[11] This requires the state to demonstrate a safety interest specific to a particular trial, such as potential security problems or a risk of flight from the courtroom.[12] This principle dates at least as far back as British common law. The United States Supreme Court in *Deck v. Missouri* concluded that the common law history on shackling reflected "a basic element of 'due process of law' protected by the Federal Constitution."[13] Blackstone's 1769 *Commentaries on the Laws of England* noted that "it is laid down in our ancient books" that a defendant "must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape."[14] Indeed, the main rationale against shackling at common law holds constant today: "If felons come in judgment to answer,...they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will."[15]

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[7] *In re Staley*, 364 N.E.2d 72 (Ill. 1977).

[8] *In re Millican*, 906 P.2d 857 (Or. Ct. App. 1995); *In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007); *Tiffany A. v. Superior Court*, 150 Cal.App.4th 1334 (2007).

[9] Localities include Boulder, Colorado; Maricopa and Pima Counties in Arizona; and Anchorage, Alaska.

[10] For example, Florida requires that restraints be removed in the courtroom, unless they are necessary to prevent physical harm to the child or another person; the child has a recent history of disruptive behavior which is potentially harmful; or there is a founded belief of a substantial risk of flight. Fl. R. Proc. 8.100. Pennsylvania and South Carolina statutes are to the same effect. 42 Pa. Cons. Stat. § 6336.2; S.C. Code Ann. § 63-19-1435 (2014 Supp.).

[11] *Deck v. Missouri*, 544 U.S. 622, 625 (2005).

[12] *Id.* at 629. *See also Holbrook v. Flynn*, 475 U.S. 560, 568-569 (1986).

[13] *Deck*, 544 U.S. at 626.

[14] *Id.* Another contemporaneous source held similarly that "a defendant 'ought not be brought to the Bar in a contumelious Manner; as with his Hands tied together, or any other Mark of Ignominy and Reproach ... unless there be some Danger of a Rescous [rescue] or Escape.'" *Id.* at 630-31, quoting 2 W. Hawkins, Pleas of the Crown, ch. 28, § 1, p. 308 (1716–1721) (section on arraignments)).

[15] *Id.* at 626, quoting 3 E. Coke, Institutes of the Laws of England *34.

It is clear that adults at trial should be shackled only "as a last resort."[16] The same can be said for children in delinquency court. As the Supreme Court observed in *In re Gault*, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[17] The *Gault* Court highlighted the importance of "the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process" of juvenile court procedure.[18] The anti-shackling principles espoused in *Deck* apply with equal—if not greater—force for juveniles.

Fairness at trial starts with the most fundamental tenet of American criminal jurisprudence—the presumption of innocence.[19] Shackling undermines the presumption of innocence and denigrates the factfinding process.[20] As the Supreme Court held in *Deck*, "[it] jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged."[21] An accused juvenile also has "the right to stand trial 'with the appearance, dignity and self-respect of a free and innocent man.'"[22] While *Deck* applies to jury trials, its underlying principles are fundamental across all proceedings, including those with judicial factfinders. "[J]udges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder."[23] Judges themselves have rejected the argument that they are insulated from prejudice: "To make this assumption is to degrade a defendant's right to be presumed innocent. Visible shackles give the impression to *any* trier of fact that a person is violent, a miscreant, and cannot be trusted," wrote New York's highest jurist.[24] Moreover, other parties in court and members of the public are prejudiced by the sight of a defendant in shackles. Although the public does not determine a person's guilt or innocence, courts cannot "ignore the way the image of a handcuffed or shackled defendant affects the public perception of that person."[25]

A youth who must defend himself in court should not also have to struggle with "a disheartening suspicion that he is presumed guilty."[26] One clinical law professor recounts the experience of a youth client whose request to be unchained was denied—"Our client has a difficult time believing that the presumption of innocence still cloaks him when all he can feel are chains."[27] Simply put, youth in juvenile court are entitled to a presumption of innocence, and indiscriminate shackling undermines this presumption.

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[16] *Illinois v. Allen*, 397 U.S. 337, 344 (1970).
[17] 387 U.S. 1, 13 (1967).
[18] *Id.* at 26.
[19] *Deck*, 544 U.S. at 626, citing *Coffin v. United States*, 156 U.S. 432, 453 (1895).
[20] *Id.* at 630.
[21] *Id.*
[22] *In re Staley*, 364 N.E.2d 72, 73 (Ill. 1977), citing *Eaddy v. People*, 174 P.2d 717, 719 (Colo. 1946).
[23] *People v. Best*, 979 N.E.2d 1187, 1189 (2012).
[24] *Id.* at 1190 (Lippman, J., dissenting) (agreeing with the majority's rule but rejecting the majority's finding of harmless error).
[25] *Id.* at 1189 (majority opinion).
[26] *In re C.B.*, 898 N.E.2d 252, 271 (Ill. 2008) (Appleton, J., dissenting).
[27] Mary Berkheiser, *Unchain the Children*, NEV. LAW. MAG. 30 (June 2012), *available at* http://nvbar.org/articles/content/deans-column-unchain-children.

The clear implication of the practice is that the child is being punished through the use of shackles and other restraints prior to an adjudication of guilt. Almost universally, the decision to employ shackles or other restraints is made by court security staff – a law enforcement function. Using shackles as punishment prior to trial is a deprivation of due process of law.[28] "Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action."[29]

Shackling interferes with juveniles' ability to participate in their own defense.

Shackling greatly impedes one's ability to consult or confer with counsel, take notes, or even take the stand in one's own defense. Deck recognizes this.[30] Shackled children find it physically difficult—and oftentimes impossible—to hold papers they are asked to review in court, or provide counsel with notes. The inability to effectively communicate with counsel is a problem of constitutional significance. *Gault* guarantees juveniles the right to counsel. The Supreme Court recently acknowledged that communication between juveniles and counsel is often strained, even where shackles are not an issue.[31]

Difficulty interacting with counsel puts juveniles at a considerable disadvantage in adjudicatory proceedings. These relations are particularly strained because "[j]uveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it."[32] Furthermore, "[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel…all can lead to poor decisions by one charged with a juvenile offense."[33] Restraints can only exacerbate this already fragile relationship. As one shackled youngster has said:

> It just made my attorney not like me. I felt like he wasn't even trying to work with me or reduce my time. I felt like everybody was looking at me like I was a monster. I was so worried about how everyone was seeing me in shackles that I couldn't concentrate because it made me feel like a monster. I felt unfairly treated. I was unable to focus.[34]

Discussing the impact of the psychological weight of the shackles, an Illinois appellate judge observed, "[a]nyone who can sit in chains with no diminution of courage and

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[28] *Bell v. Wolfish*, 441 U.S. 520 (1979).
[29] *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982), citing *Greenholtz* v. *Nebraska Penal Inmates*, 442 U.S. 1, 18 (1979).
[30] *Deck v. Missouri*, 544 U.S. 622, 631 (2005).
[31] *See Graham v. Florida*, 560 U.S. 48, 78 (2010).
[32] *Graham v. Florida*, 560 U.S. 48, 78 (2010).
[33] *Id.*
[34] Letter from C.O. to Washington State Supreme Court, Re: Proposed JuCR 1.6 – Physical Restraints in the Courtroom (on file with the Campaign Against Indiscriminate Juvenile Shackling (hereinafter CAIJS)).

confidence has a thicker hide than the common run of humanity."[35] This is a lot to expect of a child in trouble with the law.

The practice of automatically shackling children and adolescents is contrary to the purpose of the juvenile justice system.

Our nation's courts must communicate deliberation, decorum and dignity. Discussing the practice of shackling the accused, and limiting its use, at least as applied to adult offenders, the United States Supreme Court observed:

> The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve.[36]

These considerations are even more important in the state's juvenile courts. Their purpose includes the goal of rehabilitation, recognized in *Gault*.[37] Limiting the imposition of restraints on children only to those who truly present a risk of harm or flight will further ensure the dignity of the juvenile courts. Indeed, as one court recognized, "allowing a young person who poses no security hazard to appear before the court unshackled, with the dignity of a free and innocent person, may foster respect for the judicial process."[38]

In contrast, indiscriminate shackling disserves this purpose. After extensive hearings before the Florida Supreme Court conducting an inquiry into the practice as a part of its rule-making authority, the court said:

> [W]e find the indiscriminate shackling of children in Florida courtrooms... repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice, a concept which this Court has previously acknowledged.[39]

In the wake of the Kids for Cash scandal revealing the abhorrent treatment of court-involved children in Luzerne County, Pennsylvania, the Pennsylvania Supreme Court acted on recommendations for reform to enact a rule limiting the use of shackles.[40] The court found shackling practices to be contrary to the philosophy of balanced and

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[35] *In re C.B.*, 898 N.E.2d 252, 271 (Ill. 2008) (Appleton, J., dissenting).
[36] *Deck v. Missouri*, 544 U.S. 622, 631 (2005).
[37] *In re Gault*, 387 U.S. 1, 14 (1967).
[38] *In re Millican*, 906 P.2d 857 (Or. Ct. App. 1995).
[39] *In re Amendments to Fla. Rules of Juvenile Procedure*, 26 So.2d 552, 556 (Fl. 2009).
[40] The rule was reinforced by statute. *See supra* note 3.

restorative justice.[41] The practices further undermined "the goals of providing treatment, supervision, and rehabilitation to juveniles."[42] The Chief Justice of the Massachusetts Juvenile Court similarly found juvenile shackling to be antithetical to these goals.[43] The routine use of restraints in juvenile proceedings undermines the goals and objectives of family courts across the country.

The automatic shackling of children and adolescents is contrary to their interests.

Indiscriminate and routine shackling of youth in the juvenile court contradicts the central tenets of *Gault*, which reflect a modern understanding of therapeutic justice. It should be clear to even a casual observer in a courtroom that the use of shackles on children as young as nine or ten, or even those age fourteen to sixteen, is degrading. A psychologist with substantial experience working with children involved in the juvenile justice system warns that treating children in this way leads to shame and humiliation.[44] Indeed, experts and medical professionals agree that "[p]ublic shackling is an inherently humiliating experience for children to endure."[45] Compounding this is the fact that "children and adolescents are more vulnerable to lasting harm from feeling humiliation and shame than adults."[46] The nature of shackling necessarily signals that child is dangerous, thereby increasing the likelihood that the child will be treated as dangerous by others.

A decade ago, the Supreme Court recognized in *Roper v. Simmons* that childhood is a thing apart from adulthood, informed not only by common sense but science.[47] As well, science should inform the decision whether to shackle children in court.

The latest research indicates that the teenage years are crucial to identity development and self-esteem.[48] A stable sense of self is critical to the development of moral and ethical values and the achievement of long-term goals.[49] "Shackling is inherently shame producing."[50] Feelings of shame and humiliation may inhibit positive

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[41] *Adoption of New Rule 139 of the Rules of Juvenile Court Procedure*, Pennsylvania Supreme Court, No. 527, April 26, 2011.
[42] *Id.*
[43] *Id.* at 3.
[44] Affidavit of Dr. Marty Beyer, (Aug. 2006) (on file with CAIJS).
[45] Affidavit of Dr. Donald L. Rosenblitt, *In the Matter of Rebecca C.*, No. 04-JB-000370, Motion to Prohibit Shackling of Minor Child, Ex. 1 (2007).
[46] Affidavit of Dr. Marty Beyer, (Aug. 2006) (on file with CAIJS).
[47] 543 U.S. 551, 569 (2005).
[48] *See, e.g.*, Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, *in* YOUTH ON TRIAL 9, 27 (Thomas Grisso & Robert G. Schwartz eds., 2000); ELISABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 52 (2008); Affidavit of Dr. Laura Vanderbeck, Jan. 8, 2007 (on file with CAIJS).
[49] *See Adolescent Development, Module 1* of TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM 11-17 (National Juvenile Defender Center & Juvenile Law Center eds., 2009).
[50] Email from Dr. Rosenblitt to David A. Shapiro, (Sept. 12, 2014, 13:06 EDT) (on file with CAIJS).

self-development and productive community participation.[51] Shackling doesn't protect communities. It harms them.

At Midyear 2014, in resolution 109B, the American Bar Association passed a resolution calling for "the development and adoption of trauma-informed, evidence-based approaches and practices on behalf of justice system-involved children." Ending the indiscriminate imposition of restraints on children alleviates the impact of trauma and its legal ramifications on children and their families.

The automatic shackling of children and adolescents is unnecessary.

The most common argument in favor of indiscriminate shackling focuses on courtroom safety and order.[52] Shackles are not necessary, however, to maintain either safety or order—both of which can be achieved with less restrictive means. These include, for instance, the presence of court personnel, law enforcement officers, and bailiffs, or locking the courtroom door to deter flight.[53]

Florida courts have successfully relied on shackling alternatives to ensure courtroom safety and order. In the two years after Florida's rule took effect, only one instance of disorderly behavior was reported in the entire state: a boy struck his stepfather, a registered sex offender who had been convicted three times for lewd and lascivious acts on the boy.[54] Before the Florida Supreme Court eliminated indiscriminate shackling statewide in 2009, Miami-Dade County halted the practice in 2006.[55] Five years later, a study revealed that "[s]ince then, more than 20,000 detained children have appeared before the court unbound....In that time, no child has harmed anyone or escaped from court."[56] This success has been replicated in many other jurisdictions across the country.[57]

Nor is the requirement of an opportunity of the juvenile to be heard on the decision to impose restraints burdensome or impractical. To begin with, the opportunity for the juvenile to be heard is satisfied in practice by giving counsel for the youngster to object whether or not the child is present in court. In Massachusetts, where the imposition of restraints is regulated by administrative rule, court security staff is required to notify the presiding judge of any "security concerns," and counsel for the juvenile is given an

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[51] Affidavit of Dr. Laura Vanderbeck, Jan. 8, 2007 (on file with CAIJS).
[52] *See, e.g.*, Comm. on Crim. Justice, *A Policy Analysis of Shackling Youth in Florida's Juvenile Courts*, S. 2010-110, at 7–9 (2009), *available at* http://archive.flsenate.gov//////_//.pdf (reporting the views of prosecutors, public defenders, sheriffs, juvenile judges, and Florida's juvenile justice agency on whether to prohibit indiscriminate shackling throughout the state).
[53] *See* Fla. R. Juv. P. 8100(b) (2013) (effective Jan. 1, 2010) (providing examples of less restrictive means).
[54] Carlos J. Martinez, *Unchain the Children: Five Years Later in Florida* 6 (2011), http://www.pdmiami.com//___.pdf.
[55] Bernard P. Perlmutter, *"Unchain the Children":* Gault, *Therapeutic Jurisprudence, and Shackling*, 9 BARRY L. REV. 1, 23 (2007).
[56] Martinez, *supra* note 54, at 1.
[57] Advocates in Arizona, Colorado, Massachusetts, Nevada, Utah, and numerous other locales report a lack of escape attempts and physical violence perpetuated by unshackled youth in courtrooms.

opportunity to challenge the decision at a sidebar prior to the call of the case.[58] In Florida, if the trial court is considering the imposition of restraints, counsel for the juvenile may be heard before the youngster is brought to the courtroom, or the juvenile may enter the courtroom in restraints when the motion to remove them is taken up.[59]

Nothing in this resolution is meant to prohibit the reasonable use of restraints or other security measures in the transport of children to and from the courtroom by security personnel. Moreover, the resolution does not mean that a juvenile may never be restrained with the use of hardware. Instead, the resolution intends that such instances in the nation's courts be rare. The trend in courts around the country facing this question insists on the exercise of fact-specific discretion in determining when to require restraints on juveniles, taking into account:

> [T]he accused's record, temperament, and the desperateness of his situation; the security situation at the courtroom and the courthouse; the accused's physical condition; and whether there was an adequate means of providing security that was less prejudicial.[60]

Thus, this resolution adequately and accurately reflects this trend, and leaves intact effective measures to ensure the security of our nation's courts. Shackling of youth need and should not play a major role in this pursuit.

CONCLUSION

This resolution promotes fairness and the rule of law in juvenile proceedings, provides for the imposition of restraints when needed for safety, protects the due process rights and well-being of youth, and upholds the rehabilitative principles of juvenile courts. Shackling of children in the courtroom without compelling justification is an inherently stigmatizing and traumatic practice that compromises the presumption of innocence. Wholesale reliance on shackles in the juvenile court without an individualized determination that they are actually necessary is contrary to law, undermines the purpose of the juvenile court, and is inimical to the interests of children and youth in conflict with the law.

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[58] *See note 5, supra.*

[59] Report of Robert W. Mason, Director, Florida Fourth Judicial Circuit Public Defender, Juvenile Division, September 19, 2014 (phone interview).

[60] *In re R.W.S.*, 728 N.W.2d 326, 331 (N.D. 2007).

Responsible for improving the administration of justice in across the country, the American Bar Association is uniquely positioned to advocate the reform of this egregious practice, in favor of a rule which promotes the integrity of the courts and the dignity of citizens before them—including the youngest.

Respectfully submitted,

Jim Felman and Cynthia Orr, Chairs
Criminal Justice Section
February 2015

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GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Jim Felman and Cynthia Orr, Chairs

1. Summary of Resolution

The resolution urges federal, state and local governments and agencies to restrict the use of restraints on juveniles in court to those juveniles who present a risk of harm or flight, to employ a presumption against the use of restraints in court, and to give the juvenile an opportunity to be heard on whether restraints are the least restrictive alternative. The resolution does not seek to impose limitations on security measures for transporting juveniles to and from the courtroom.

2. Approval by Submitting Entity.

This resolution was approved by the Criminal Justice Section Council at its Fall Meeting on October 25, 2014.

3. Has this or a similar resolution been presented to the House or Board previously?

No similar resolution has been submitted previously to the House of Delegates or Board of Governors.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

ABA Criminal Justice Standard 6-3.2 relating to Special Functions of the Trial Judge requires the court maintain security in the courtroom with due deference to dignity and decorum, accomplished in the least obtrusive and disruptive manner, minimizing any adverse impact. ABA Criminal Justice Section Standard 23-5.9 relating to Treatment of Prisoners allows for the use of restraints as a security precaution during transfer or transport, using the least restrictive form of restraint appropriate and only as long as the need exists. These standards would be unaffected. There is no relevant ABA Juvenile Justice Standard. One principle of those standards, however, is that the least restrictive alternative should be the choice of decision makers for intervention in the lives of juveniles. Flicker, *IJA/ABA Juvenile Justice Standards: A Summary and Analysis*, (Ballinger Publishing Co. 1982) p. 23.

5. What urgency exists which requires action at this meeting of the House?

Many jurisdictions are now considering limitations on the use of restraints in court proceedings involving juveniles, and the ABA is uniquely positioned to provide guidance to federal, state and local jurisdictions on the use of such restraints.

6. Status of Legislation

This resolution does not support a specific piece of legislation.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Adoption of the policy will allow the ABA to support legislation or rule making at the federal, state and local levels to impose restrictions on the use of restraints on juveniles in court, and members will work with national and local groups seeking to reform the practice of the indiscriminate use of restraints on juveniles in the courts.

8. Cost to the Association (Both direct and indirect costs)

Adoption of the resolution will not result in expenditures by the Association.

9. Disclosure of Interest

We are not aware of potential conflicts of interest related to this resolution.

10. Referrals.

At the same time this policy resolution is submitted to the ABA Policy Office for inclusion in the 2015 Midyear Agenda Book for the House of Delegates, it is being circulated to the chairs and staff directors of the following ABA entities:

Standing Committees
American Judicial System Standing Committee
Ethics and Professional Responsibility
Federal Judiciary
Legal Aid and Indigent Defendants
Professionalism

Special Committees and Commissions
Children and the Law
Coalition on Racial and Ethnic Justice
Commission on Domestic and Sexual Violence
Commission on Youth at Risk
Death Penalty Representation Project
Hispanic Legal Rights and Responsibilities
Sexual Orientation and Gender Identity

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Sections, Divisions
Government and Public Sector Lawyers Division
Individual Rights and Responsibilities
Family Law
Judicial Division
Litigation
State and Local Government Law
Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Kevin Scruggs
Director, Criminal Justice Standards Project
American Bar Association
1050 Connecticut Ave. NW, Suite 400
Washington, DC 20036
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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Stephen A. Saltzburg, Section Delegate
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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state and local governments and agencies to restrict the use of restraints on juveniles in court to those juveniles who present a risk of harm or flight, employing a presumption against the use of restraints in court, and giving the juvenile an opportunity to be heard on whether restraints are the least restrictive alternative. The resolution does not seek to impose limitations on security measures for transporting juveniles to and from the courtroom.

2. Summary of the Issue that the Resolution Addresses

The overwhelming majority of juveniles are in court for non-violent offenses. In 2011, the juvenile violent crime arrest index rate was the lowest in three decades. Yet in many courts across the country, all youth, regardless of their alleged offense, are shackled in juvenile proceedings. Some jurisdictions extend this to children charged with status offenses – non-criminal misbehavior.

3. Please Explain How the Proposed Policy Position will address the issue

This resolution promotes fairness and the rule of law in juvenile proceedings, provides for the imposition of restraints when needed for safety, protects the due process rights and well-being of youth, and upholds the rehabilitative principles of juvenile courts. Shackling of children in the courtroom without compelling justification is an inherently stigmatizing and traumatic practice that compromises the presumption of innocence. Wholesale reliance on shackles in the juvenile court without an individualized determination that they are actually necessary is contrary to law, undermines the purpose of the juvenile court, and is inimical to the interests of children and youth in conflict with the law.

4. Summary of Minority Views

None are known.

ADDENDUM C

CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SHACKLING

WHERE ARE THERE STATEWIDE BANS ON AUTOMATIC JUVENILE SHACKLING?

The following laws/court rules/administrative orders/opinions "prohibit" automatic juvenile shackling, but none of them eliminates all juvenile shackling. These rules simply state they cannot be applied to every single in-custody child who comes into the courtroom. In other words, if there is a need for it, judges still can turn to mechanical restraints in the courtroom.

Legislatively, ten states have ended the practice of automatically shackling children in court proceedings. Those states are: Indiana, Nebraska, Nevada, New Hampshire, North Carolina, Pennsylvania, Utah, and South Carolina. Vermont has codified a ban on automatically shackling children in transportation, which has the effect of limiting the number of children that are shackled in court. New York has a similar regulation on the books.

These states do not have laws ending the practice of indiscriminate juvenile shackling—rather, these states have court rules (which carry the same authority as laws, but only govern courts/court procedure), policies (which do not have the same authority as statute, but in practice should operate the same), and court opinions (which also, in theory, have the same effect as a codified statute.)

Alaska, Florida, Maine, New Mexico, and Washington State have curtailed the practice through the rule-making authority of those states' highest courts, and Connecticut, Maryland, Massachusetts, and Washington, D.C. have done so through statewide official court policy or administrative order. Courts in Illinois, Idaho, Oregon, North Dakota, and California have issued opinions against indiscriminate juvenile shackling. The opinions of the courts in Illinois, Idaho, and arguably North Dakota cover only shackling of juveniles at adjudication, and do not cover any other hearing.

The following states (and D.C.) do limit the automatic shackling of youth in court:

Alaska
California
Connecticut
Florida
Idaho
Illinois
Indiana
Maine
Maryland
Massachusetts
Nebraska
Nevada
New Hampshire
New Mexico
New York
North Carolina
North Dakota
Oregon
Pennsylvania
South Carolina
Utah
Vermont

Washington State

AK ALASKA DELINQ. CT. R. 21.5
CA *Tiffany A. v. Super. Ct.*, 150 Cal. App. 4th 1334 (2007)
CT Judicial Branch Policy: Use of Mechanical Restraints in the Juvenile Courtroom (Conn. 2015), *available at* http://www.cga.ct.gov/2015/JUDdata/Tmy/2015HB-07050-R000330-Conway,%20Bernadette%20-%20State%20of%20Connecticut%20Judicial%20Branch,%20External%20Affairs%20Division-TMY.pdf;
H.B. 7050 § 3, Gen. Assemb., Jan. Sess. (Conn. 2015) (effective Oct. 1, 2015);
DC D.C. Super. Ct. Admin. Order 15-07
FL FLA. R. JUV. P. 8.100(b)
ID *State v. Doe*, 333 P.3d 858 (Idaho Ct. App. 2014)
IL *In re Staley*, 364 N.E.2d 72 (Ill. 1977)
IN H.B. 1304, 119th Gen. Assemb., Reg. Sess. (Ind. 2015)/ IND. CODE § 31-30.5 (effective July 1, 2015)
MA Trial Ct. of the Commonwealth, CT. OFFICER POL'Y AND PROCEDURES MANUAL, Ch. 4, § VI (2010)
MD Maryland Judiciary Resolution Regarding Shackling of Children In Juvenile Court (September 2015)
ME 2015 ME Rules 20, Maine Rules of Criminal Procedure, Amended Rule 43A (effective November 1, 2015)
NE L.B. 482, 104th Leg., 1st Sess. (Neb. 2015) (effective three months after May 29, 2015)
NV Nev. Assemb. B. 8 (2015) (effective Oct. 1, 2015)
NH N.H. REV. STAT. § 126-U:13 (2010)
NM N.M. CHILD.'S CT. R. 10-223A
NY N.Y. COMP. CODES R. & REGS. tit. 9, § 168.3(a)
NC N.C. GEN. STAT. § 7B-2402.1 (2007)
ND *In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007)
OR *In re Millican*, 906 P.2d 857 (Or. Ct. App. 1995)
PA 237 PA. CODE § 139 (2011), 42 PA. CONS. STAT. § 6336 (2012)
SC S.C. CODE ANN. § 63-19-1435 (2014)
UT UTAH CODE ANN. § 78A-6-122 (2015) (effective Oct. 1, 2015); S.B. 167, 2015 Leg., Gen. Sess. (Utah 2015)
VT 33 VT. STAT. ANN. tit. 33, § 5123 (2013)
WA WASH. JUV. CT. R. 1.6

11 statutes

CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SHACKLING

Shackling and Courtroom Safety

In jurisdictions that limit juvenile shackling, order and safety are maintained.

- Miami-Dade County limited juvenile shackling in 2006. Since then more than 25,000 children have appeared in the county's juvenile court without injury or escape. (Source: Miami-Dade Public Defender)

- The Children's Court Division of Albuquerque, NM has limited shackling for 12 years and seen no escapes and only three incidents of children "acting out in court." (Source: *Juvenile and Family Court Journal*, Spring 2015)

- Clayton County Georgia has had no escapes or violence in more than a year of limiting shackling. At times an additional deputy has been stationed outside the court since the change. However, that deputy has never been called upon to act, as there have been no incidents. (Source: Sheriff Victor Hill & deputies.)

- In New Orleans Parish, Louisiana, security staffing was *reduced* after shackling reform due to budget cuts. The parish conducts roughly 4,000 juvenile hearings a year and has had no incidents. (Source: Louisiana Center for Children's Rights)

- In Maricopa County, Arizona, nearly 2,500 detained youth have appeared in court since the county began limiting shackling. The court remains safe, and there have been no escapes. (Source: Maricopa County Public Defender)

- Connecticut limited shackling in 2015. After 1,500 youth had come through the court, 94 percent of them unshackled, there was only one escape attempt. The youth walked out of court and later that day turned himself in. (Source: State of Connecticut Judicial Branch.)

Judges report courts function better when shackling is limited.

- Judge Susan Ashley, New Hampshire: "Automatically restraining a juvenile in the courtroom deprives that young person of the opportunity to show the court they are capable of self-control ... A juvenile coming into the courtroom free from physical restraint can experience confidence in his or her ability to maintain good behavior in the community."
- Judge Darlene Byrne, Texas: "I see my courtroom as a place of safety. Youth probably behave better, are better listeners and are more engaged in the court process when they remain unshackled. Indiscriminate shackling of juveniles is inconsistent with the rehabilitative purpose of the juvenile justice system."
- Judge Jay Blitzman, Massachusetts: "(Limiting shackling) has not adversely affected the flow of business one iota. But it has improved the atmosphere and the culture of the courtroom. When a child can turn and actually say 'hello,' and you see somebody smile back, that changes things for the child and the family member. It also makes it easier for the management of the courtroom."

Contact Christina J. Gilbert, Esq. manager, Campaign Against Indiscriminate Juvenile Shackling **202.452.0010 ext 103** **cgilbert@njdc.info**

CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SHACKLING

This report was written by Colleen Shaddox, a consultant for the Campaign Against Indiscriminate Juvenile Shackling, in January, 2016. She conducted phone or email interviews with the sources noted in the text. The exception is the Albuquerque outcome report, which originally came from *Juvenile and Family Court Journal*, Spring 2015, and was confirmed later by email. The quotes from judges who discuss better court function after shackling reform come from the same article.

Ms. Shaddox may be reached at colleen@qsilver.com or 860-873-9940.

IN THE JUVENILE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

ADMINISTRATIVE ORDER ESTABLISHING LOCAL RULE	)	USE OF RESTRAINTS ON JUVENILES IN COURT PROCEEDINGS

This order applies to the handling of juveniles in the courtroom and the use of shackles and restraints during court appearances and is entered in accordance with Rule 1.2 of the Uniform Rules of the Juvenile Court (URJC) governing the adoption of local operating procedures for the purpose of establishing procedures for the handling of children in the courtroom who are accused of committing a delinquent act.

PURPOSE, FINDINGS, AND CONCLUSIONS OF LAW

The purpose of this administrative order is to avoid the unnecessary trauma associated with the use of restraints (or what has become known as the "shackling" of juveniles) on juveniles in court proceedings. There is a growing trend among States and local courts by legislation and/or administrative rule to prohibit the use of restraints on juveniles during court proceedings unless a determination has been made on a case by case basis that the juvenile has demonstrated an actual flight or safety risk. The courts have established that the shackling of adults in cases involving jury trials is presumptively prejudicial and an offense to the defendant's right a fair and impartial hearing as guaranteed by the Sixth Amendment. Although juveniles alleged to have committed a delinquent act do not possess a constitutional right to a jury trial in Georgia, there is a growing body of research that shows the harmful impact on children that is "repugnant, degrading, humiliating, and contrary to the stated 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).[1] In amending the rules to abolish the use of restraints on juveniles in the courtroom with exceptions, the Florida Supreme Court also recognized 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."[2]

In concluding that the use of shackles and restraints on children in the courtroom is a violation of a child's right to due process, this court will provide the constitutional case law regarding the inappropriate use of restraints beginning chronologically with decisions affecting adults and concluding with research and findings on the effects of restraints on children and a sampling of decisions by various jurisdictions to minimize the harm to children.

A. USE OF RESTRAINTS ON ADULTS: DUE PROCESS ANALYSIS

In both this country[3] and in England,[4] the use of restraints during the guilt phase of a trial is an "inherently prejudicial practice." This rule is not absolute because in "some circumstances, shackling 'is necessary for the safe, reasonable and orderly progress of trial."[5]

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[1] The Florida Supreme has approved guiding principles for family court, including that "therapeutic justice" should be a key part of the family court process.

[2] IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE, (December 17, 2009)

[3] *See* People v. Harrington, 42 Cal. 165, 168-69 (1871) ("[T]o require a prisoner during the progress of his trial before the Court and jury to appear and remain with chains and shackles upon his limbs, without evident necessity for such restraint, for the purpose of securing his presence for judgment, is a direct violation of the common law rule, and of the thirteenth section of our Criminal Practice Act."); Eaddy v. People, 174 P.2d 717, 718 (Colo. 1946) (en bane) ("The right of a prisoner under- going trial to be free from shackles, unless shown to be a desperate character whose restraint is necessary to the safety and quiet of the trial, is Hornbook law.").

[4] *See* 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 322 (1769) (footnote omitted) ("[I]t is laid down in our ancient books, that, though under an indictment of the highest nature, [a defendant] must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape."); 3 E. COKE, INSTITUTE OF THE LAWS OF ENGLAND 34 ("If felons come in judgment to answer . . . they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will.").

[5] United States v. Mayes, 158 F.3d 1215, 1225 (11th Cir. 1998) (quoting United States v. Theriault, 531 F.2d 281, 284 (5th Cir. 1976))

Although the general rule prohibits the use of restraints as "inherently prejudicial," States have differed in their approach to what is "safe, reasonable, and orderly progress of trial."

Beginning with *Illinois v.* Allen, 397 U.S. 337, the U.S. Supreme Court began to acknowledge the inherent prejudicial effects of restraints, including the wearing of jail clothing. Although acknowledging the use of restraints as an inherently prejudicial practice, the Court reversed an appellate court's decision upholding a trial court's decision that the right to be free of restraints is absolute involving a belligerent and hostile defendant holding that the defendant possesses an absolute Sixth Amendment right to be present at trial. The Supreme Court reversed holding that "trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case."[6]

In 1976, in the case of *Estelle v. Williams*, 425 U.S. 501 (1976), the U.S. Supreme Court acknowledged that compelling a defendant to wear jail clothes to court was inherently prejudicial, but the defendant's failure to object to the clothes at the time of trial was "sufficient to negate the presence of compulsion necessary to establish a constitutional violation".

In 1986, the U.S. Supreme Court in the case of *Holbrook v. Flynn*, 475 U.S. 560, 562 (1986), held that the presence of four state troopers during the trial of the defendant was not indicative of displaying the defendant as a "dangerous or culpable" as wearing jail clothes or shackles stating that "[w)bile shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large,

[6] *Illinois v. Allen*, 397 U.S. 337, 343 (1970).

the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable."

In *Deck v. Missouri,* 125 S. Ct. 2007 (2005), the United States Supreme Court held that the Due Process Clauses of the Fifth and Fourteenth Amendments prohibited the use of visible restraints during the penalty phase of a capital criminal trial unless such use was justified by an essential state interest specific to the defendant being sentenced. In its analysis, the Court pointed out that its recent opinions regarding the traditional prohibition of visible shackling of criminal defendants have not focused on the need to prevent physical discomfort but have emphasized the importance of recognizing three fundamental legal principles.

The first principle is that "the criminal process presumes that the defendant is innocent until proved guilty." The second fundamental legal principle is that "the Constitution, help the accused secure a meaningful defense." Finally, the third principle is that judges must seek to maintain a judicial process that is a dignified process."

B. USE OF RESTRAINTS ON JUVENILES: DUE PROCESS ANALYSIS

A standard for approaching the constitutional rights of children has evolved over time since the issuance of the U.S. Supreme Court's decision in *In re Gault*. In that case, the Court definitively held that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." 387 U.S. at 13. The Court did not sweepingly apply all rights of adults to children. However, with respect to a child at the adjudicatory stage of proceedings, the Court found violations of a child's constitutional rights where he is denied notice of charges, the right to counsel, the privilege against self-incrimination, and the right to confrontation and

cross-examination. *Id.* at 31-59. Following *In re Gault*, other due process rights have been explicitly recognized as belonging to children in a delinquency context, including proof of delinquency beyond a reasonable doubt (*In re Winship*, 397 U.S. 358, 367 (1970)) and protection against double jeopardy (*Breed v. Jones*, 421 U.S. 519, 541 (1975)).

These constitutional rights guaranteed to children are circumscribed by the rehabilitative ends of the system as a whole. For example, the right to a jury trial was not extended to juvenile proceedings on the premise that "if required as a matter of constitutional precept, [the right to a jury trial] will remake the juvenile proceedings into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding." *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1970) (Blackmun, J., plurality opinion). Accordingly, the approach to due process in the context of juvenile justice is to extend rights so far as possible to accommodate the specific rehabilitative tenor of the juvenile system.

Underlying the analysis in *In re Gault*, *McKeiver* and other cases addressing the due process rights of juveniles is the rule previously articulated in *Kent v. U.S.*, 383 U.S. 541 (1966) that, while due process in a delinquency setting need not meet the standards of an adult criminal trial or administrative hearing due to the unique ends of juvenile justice, it must "measure up to the essentials of due process and fair treatment." *Id.* at 562. From this requirement of due process and fair treatment, a two-part inquiry for determining the fundamental fairness of a juvenile proceeding emerged: 1) does the action serve a legitimate state objective?; and 2) are there adequate procedural safeguards to authorize the action? *Schall v. Martin*, 467 U.S. 253, 263-264 (1984). The effect is a balancing test in which the due process interests of the child are weighed against the distinctive state interests involved in

the administration of juvenile justice.

The inquiry is not wholly distinct from the analysis undertaken when considering shackling in the adult context. Similarly, when restraints are imposed on adults in a criminal court setting, courts look for a legitimate state interest in the use of restraints and for a judicial process by which the use of such restraints is justified. Our common law tradition has long maintained that an individual "be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape." 4 W. Blackstone, Commentaries on the Laws of England 317 (1769). In modern parlance, the use of shackles has been limited to instances where restraints are justified by "an essential state interest specific to each trial." *Holbrook v. Flynn*, 475 U.S. 560, 568-569 (1986). The Court illustrated this standard explicitly in *Deck v. Missouri*, 544 U.S. 622 (2005), when it wrote that the right to be free from restraints

> permits a judge, in the exercise of his or her discretion, to take account of special circumstances, including security concerns, that may call for shackling [....] But any such determination must be case specific; that is to say, it should reflect particular concerns, say special security needs or escape risks, related to the defendant on trial. *Id.* at 633.

While the *Deck* and *Holbrook* cases addressed shackling at different stages of a criminal trial, the common approach behind the imposition of restraints is a finding of need for such restraints, in light of a legitimate state interest and specific to the defendant at that particular juncture of adjudication.

The current practice of indiscriminately shackling detained children is indefensible under either the analysis of prior juvenile due process cases, such as *Kent* and *Schall*, or the approach utilized with respect to the shackling of adult defendants, as in *Holbrook* or *Deck*. A blanket policy by its nature does not even begin to address the state interest, if any, in shackling children or the specific need for shackling a particular child. While the legitimate state

interest of courtroom safety and decorum may be asserted (*Deck*, 544 U.S. at 632; *infra*, Part IVB), a blanket policy that does not even inquire into that interest, never mind require any substantiation of such an assertion, cannot be countenanced. The standardless, indiscriminate policy utterly disregards the due process concerns of the child and, consequently, the central issue of fundamental fairness. Where no inquiry occurs at all, judges are exercising discretion in direct conflict with these previously established due process principles.

Of these fundamental due process rights owed to a child in the juvenile system, the presumption of innocence is one such right that is significantly compromised by an indiscriminate shackling practice. When judges impose restraints without regard to the actual needs or risks of a child, they necessarily pass judgment on the child's character in the absence of proof and negatively influence the attitudes of other parties with respect to the child. As stated below, blanket shackling policies create self-fulfilling prophecies—as they are treated, so they shall become.

The right to a presumption of innocence is identified as foundational in *In re Winship*, and is termed an "axiomatic and elementary" principle, even in the juvenile delinquency context. *In re Winship*, 397 U.S. at 363. Arising out of this central precept is the uniform rule that appearing before a jury in shackles is inherently prejudicial to a defendant. *Holbrook*, 475 U.S. at 568; *Bello v. State*, 547 So. 2d 914, 918 (Fla. 1989). The prejudice is apparent in the negative impression that chains and restraints may make upon the fact finder, be it a jury or a judge. *Holbrook*, 475 U.S. at 568.

The prejudicial effect of shackling on the judge as fact finder has not been thoroughly addressed in prior case law. However, the centrality of the presumption of innocence should force any court to proceed with extreme caution when imposing restraints. Judges in juvenile

court serve the same role as the jury in the sense that they are the triers of fact, and the child should be protected from any impermissible inferences drawn from the child's appearance in restraints, whether those inferences are consciously drawn or inadvertent. When the shackling is done indiscriminately, without regard to the actual threat the child poses, the danger of a prejudicial inference is increased for those children for whom the shackling is unwarranted. A child with no prior delinquent history and no history of violence will garner an image as a much more dangerous individual in the eyes of the judge when he appears shackled, especially where the judge has taken no efforts to consider factors in the child's life and context that could mitigate that impression.

A potentially more dangerous impairment on the presumption of innocence occurs in the mind of the child himself when restraints are imposed upon him without a showing of cause. The adolescent's peculiar stage of development makes him particularly susceptible to outside perceptions in his formation of identity.[7] The stigmatizing and humiliating effect of being shackled, especially where unwarranted, can result in the child himself adopting the attitude that he is a bad or dangerous person.[8] The perception of a presumption of innocence all but vanishes if the child is led to believe by his being treated like a dangerous person that he is in fact thought to be so by the court and society.

The prejudicial effects of shackling on both the fact finder and the child's psyche

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[7] Dr. Beyer, a clinical psychologist with expertise in adolescent development, and a national independent consultant on juvenile justice policy, submitted an expert affidavit to eradicate blanket shackling of children in the courtroom. The affidavit was filed in support of a Motion for Child to Appear Free from Degrading and Unlawful Restraints filed by the Miami-Dade Office of Public Defender in the Eleventh Judicial Circuit, *available at* http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf.

[8] Dr. Wurm, a board-certified developmental, behavioral and general pediatrician who teaches at the University of Miami Miller School of Medicine and serves as director of Jackson Memorial Hospital's Medical Foster Care Program, submitted an expert affidavit in support of the same Motion, calling for individual needs assessments before shackling children inside the courtroom, available at http://www.pdmiami.com/unchainthechildren/AppendixFDrGwen%20Wurm.pdfW urm.

are exacerbated because restraints are imposed at all stages of delinquency proceedings, not just the adjudicatory or penalty phases.[9] A child in the juvenile justice system can appear in shackles at a sounding, pre-trial conference, a simple motion hearing, or any other pre-adjudication court date. Consequently, there is an unnecessary risk the child is branded as criminal or guilty, regardless of whether he has in fact been found to be so.

Protecting the presumption of innocence should be of the highest concern for judges in the juvenile justice system, although the current approach treats such a right dismissively when it presumes the child to be worthy of shackling without just cause for doing so. The local rule providing guidelines on the use of restraints can return meaning to the presumption of innocence by requiring factual findings before the shackling can be imposed. The risk, even if small, of a judge or other observers being impermissibly prejudiced by the image of a shackled youth can effectively be avoided when the judge is invited to rebut an unwarranted inference of dangerousness through an individualized finding in which countervailing factual considerations are examined.

The Supreme Court of Illinois was the first to address blanket shackling of juveniles in 1977. In *In re Staley*, 364 N.E.2d 72, the minor remained handcuffed throughout his bench trial despite oral objections made by his attorney. The trial court cited poor security in the courtroom as the basis for rejecting the motion to remove the restraints. On appeal, the State argued that the long-held prohibition against indiscriminate shackling of adults in the presence of a jury did not apply to proceedings involving a juvenile that were heard outside the presence of a jury. The Court pointed out that the possibility of prejudicing a jury is not the only reason why courts should not allow the shackling of an accused in the absence of

[9] See Bernard P. Perlmutter, "Unchain the Children:" Gault, Therapeutic Jurisprudence, and Shackling, 9 Barry L. Rev. 1, 3 (2007).

a strong necessity for doing so. The Court recognized that the presumption of innocence is central to our administration of criminal justice and that 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." Citing *Eaddy v. People* (1946), 115 Colo. 488, 492, 174 P. 2d 717, 719.) The Court went on to describe how shackling jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged and pointed to a prior decision stating "as we observed in *Boose*, shackling restricts the ability of an accused to cooperate with his attorney and to assist in his defense. (66 Ill. 2d 261, 265.)"

The court in *Staley* turned to Section 4.1(c) of the ABA Standards relating to jury trials as further showing of why the forbidding shackling is not limited to trials by jury. The commentary to section 4.1 provides:

> [T]he matter of custody and restraint of defendants and witnesses at trial is not of concern solely in those cases in which there is a jury. Obviously, a defendant should be able to consult effectively with counsel in all cases. **Prison attire and unnecessary physical restraint are offensive even when there is no jury.** * * * * * * (c) * * * Because the rule rests only in part upon the possibility of jury prejudice, it should not be limited to jury trials." ABA Standards, Trial by Jury sec. 4.1, Commentary 92-94 (1968). (Emphasis Mine).

The court also acknowledged that the rule against restraints is not absolute and that trial judges retain the "the responsibility of insuring a proper trial and that there may be circumstances which will justify the restraint of an accused stating that "A defendant may be shackled when there is reason to believe that he may try to escape or that he may pose a threat to the safety of people in the courtroom or if it is necessary to maintain order during the trial . . . In the absence of such a showing, however, which must be established clearly on the record (*People v. Boose*, 66 Ill. 2d 261, 267), an accused cannot be tried in shackles whether there is to be a bench trial or a trial by jury."

Finally, the State pointed to the "poor security" that existed in the courtroom and argued that this was a sufficient justification for requiring the defendant to remain handcuffed during the adjudicatory hearing. The court stated that this "argument does not impress . . ." and stated that "There is nothing in the record to show that the defendant posed a threat of escape. While the record is not absolutely clear as to the status of the security in the courtroom, we consider that if guards or deputies were not present, they should have been summoned in order to resolve the security problem. Physical restraints should not be permitted unless there is a clear necessity for them."

O.C.G.A. §15-11-1 expressly states that it is the intent of the General Assembly that every child is provided "due process of law, as required by the Constitutions of the United States and the State of Georgia, through which every child and his or her parent and all other interested parties are assured fair hearings at which legal rights are recognized and enforced." Based on the aforementioned analysis, the court concludes that a blanket policy of requiring all children in court appearances to be shackled, regardless of their age, size, gender, pending charges, history of violence, or risk of escape, is unconstitutional. The matter of blanket concerns the fundamental liberty to be free from external restraint, due process requires an individualized determination by the court of dangerousness and a finding that there are no less restrictive alternatives before permitting the juvenile to be restrained in court.

The court is also concerned with impact of restraints on the child's right to counsel. Since the creation of the juvenile courts, children have been extended some, but not all, of the constitutional rights accorded to their adult counterparts. In the seminal case of In re Gault, Justice Fortas pronounced that children were equally deserving of due process rights. 387 U.S. at 33. One of the most important of those due process rights recognized by the Court was the

child's right to be represented by counsel when faced with a charge of delinquency. Id. at 39, n.65 (referring to National Crime Commission Report, pp. 86-87, "The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires.").

Indiscriminately shackling youths inside the courtroom makes it very difficult, if not impossible, for youths to communicate with their attorneys. Physically, if children are shackled, they are prevented from writing notes to their attorney. See Perlmutter, "Unchain the Children," 9 Barry L. Rev. at 37. Thus, shackling limits the type of communication children can have with their attorneys and therefore, frustrates their right to counsel.

It is also important to understand that while an adolescent might only be a couple of years away from being defined as an "adult," the mind of an adolescent is very different than the mind of an adult.[10] Children experience shackling personally. They do not have the ability to understand that all youths are shackled. The youth sees shackling as a personal injustice perpetrated by the court, and therefore, distrusts those associated with the court. This distrust can affect the relationship the youth has with his attorney. If the child attributes the attorney as being part of the system that has shackled him, then a real risk exists the child will not be able to speak openly with his attorney. The fact that a youth has a right to counsel becomes moot when the youth distrusts his attorney.

C. USE OF RESTRAINTS ON JUVENILES: BEST INTEREST ANALYSIS

Shackling of juveniles in courtroom proceedings is antithetical to the juvenile court

[10] Marty Beyer, Ph.D., Developmentally- Sound Practice in Family and Juvenile Court, 6 Nev. L. J. 1215, 1226-7 (2006).

goal of rehabilitation and treatment as set forth in O.C.G.A. 15-11-1 and the general goal of the juvenile court and the reasons for which it is separated from the adult criminal justice system.. Experts in psychology and medicine 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. Dr. Marty Beyer, a nationally recognized expert in matters of juvenile justice, 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 concludes, in her expert opinion, 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 expressly mandated by the juvenile code. 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, and 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 Wurm, 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.

D. BLANKET USE OF RESTRAINTS UNWARRANTED

There is no evidence of security risks posed by unshackled children.[11] On the contrary, evidence shows that unshackled children pose no greater risks to the safety of the courtroom than do shackled children.[12]

Nationally, there has been a movement to unshackle children in the courtroom. Currently, 24 states do not have a regular practice of shackling their youth. Prior to Florida adopting a uniform rule prohibiting the shackling of children without a showing to support the use of restraints, Miami-Dade County juvenile courts elected to only shackle children based on individual findings of a security threat. The movement to unshackle children in the courtroom seems to beg the question as to why courts decided to implement blanket policies of shackling children in the first place. Carlos Martinez, Miami-Dade County Public Defender, has written that,

> In Miami-Dade, since the first child was unshackled, more than 3,000 (detained children have appeared in court, few have been determined to be a flight or safety risk to justify

[11] See Perlmutter, "Unchain the Children," 9 Barry L. Rev. at 14 ("…data on the incidence of courtroom violence, and particularly violence perpetrated by juveniles, is sparse and not supportive of a blanket shackling policy.") (citing Hon. Fred A. Geiger, Courtroom Violence: The View from the Bench, 576 Annals Am. Acad. Pol. & Soc. Sci. 102, 103 (July 2001)).

[12] Emily Banks, et al., The Shackling of Juvenile Offenders: The Debate in Juvenile Justice Policy, Center for Children and Families ("CCF"), University of Florida Levin School of Law 1, 9 (2008), available at http://www.law.ufl.edu/centers/childlaw/pdf/shackling.pdf .

> shackling. We have not had courtroom escapes or injuries caused by the detained but unshackled children. Despite seeing a high number of detained children in court each day, our judges dispense justice one-child-at-a-time, without additional courtroom personnel. We do not have armed officers in court.[13]

This statistic was provided in 2007 and as of today, the number of children appearing in court is seven times greater and the outcomes remain the same. In our efforts to study this issue, the Sheriff of Clayton County, Victor Hill, and this court traveled to Miami-Dade Juvenile Court to conduct a site visit and learn the operational details in the application of a no-shackling policy. We met with the Chief Judge, staff, and the personnel responsible for the security of the juvenile inmates and the courtroom. We also observed the escorting of the juvenile inmates from the adjacent detention center following them to the courthouse and into the secure hallway just outside the courtroom. We proceeded to take a seat inside the courtroom and observed the handling of the juveniles during the proceedings without the use of restraints and without any incident. It became quite apparent the importance of addressing the children and families in a respectful manner to avoid inciting their emotion. In those cases the child had to return to detention, the judge made a point to speak with a kind and calming tone and to explain why he/she was being returned to detention (i.e. risk to the community and pending evaluations) and that the decision was not personal or grounded in anger.

The findings in another Florida county, Alachua County, were similar. Based on observation research conducted by the Center for Children and Families (CCF), 95% of unshackled children were "compliant."[14]

There can be no dispute that judges have discretionary authority within the courtroom to manage security and decorum. Deck, 544 U.S. at 632 ("We do not underestimate the need to

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[13] Carlos Martinez, Challenging the Shackling of Juveniles in Court, 2 COD Network Newsletter 5 (July 2007), available at http://www.lajusticecoalition.org/doc/COD%20Newsletter%202007.pdf.
[14] Banks, et al., The Shackling of Juvenile Offenders, at 9.

restrain dangerous defendants to prevent courtroom attacks, or the need to give trial courts latitude in making individualized security determinations"). However, this discretion has never been utterly unbridled, nor has its exercise been authorized to the detriment of a defendant's constitutionally protected rights. The Court in Deck was careful to note that the exercise of a judge's discretion with respect to shackling must be a case-specific determination couched in concerns relevant to the defendant at that point in trial. Deck, 544 U.S. at 633. These attitudes toward judicial discretion, particularly with respect to restraining defendants, reflect the overarching concern of In re Gault, that "[u]nbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and practice." 387 U.S. at 18.

E. CONCLUSION

Whereas, juvenile courts of this State are primarily responsible for the moral, emotional, mental, and physical welfare of children and youth, and that it is the responsibility of the Court pursuant to O.C.G.A. §15-11-1 to preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability. The General Assembly further intended that "Above all, (juvenile courts shall liberally construe the juvenile code) to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of its children." The overall function of the juvenile court is to identify such children and youth whose well-being is threatened and to assist, protect, and restore said children and youth as law abiding members of society. Gardner v. Lenon, 154 6A. App.748, 270 S.E. 2d 36 (1980), In re B. H., 190 Ga. App.131, 378 S. E. 2d 175 (1989).

Based on the aforementioned constitutional, statutory, rehabilitative and therapeutic jurisprudence reasons, the practice of indiscriminately shackling detained children in court,

irrespective of the child's age, height, weight, gender, offense, or threat to public safety outside of the courtroom, is contrary to the principles of due process and harmful to children and shall be prohibited and replaced with a local rule as set forth below that provides reasonable guidelines for determining on a case by case basis when the use of restraints are permissible.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the practice of the indiscriminate use of restraints on children in the courtroom shall be prohibited and replaced with a local rule that establishes guidelines for the use of said restraints on a case-by-case basis.

IT IS FURTHER ORDERED that instruments of restraint shall not be used on a child during a court proceeding and must be removed prior to the court's appearance before the court unless the court finds both that:

1. The use of restraints is necessary to prevent physical harm to the child or another person;
2. 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 him or herself or others as evidenced by recent behavior; or
3. There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

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, other non-visible restraints made available through technology, the presence of court personnel, law enforcement officers, or bailiff.

IT IS FURTHER ORDERED that the Sheriff's Office personnel responsible for the security of the courtroom shall inform the judge if he or she believes any of the risk factors exist upon which the judge shall make an individual assessment which shall include an opportunity to be heard from the child's attorney.

IT IS FURTHER ORDERED that this order shall become effective within a reasonable time from the date of this order with consideration of the time required to establish operating procedures and provide for training.

SO ORDERED this 25th day of February, 2015.

Steven C. Teske

Honorable Steven C. Teske
Chief Judge, Juvenile Court
Clayton Judicial Circuit

Policy Title: Use of Restraints in the Courtroom	
Document ID:	Revision:

Prepared By: Judge Steven C Teske	Reviewed By: Policy Review Committee, Sheriff's Office, Georgia, Department of Juvenile Justice
Date Approved: Feb. 4, 2015	Effective Date: **2/25/2015**
Approved By: **Steven C. Teske, Chief Judge**	Applicable Standards & Laws: Administrative Order

POLICY:

Instruments of restraint shall not be used on a child during a court proceeding and must be removed prior to the court's appearance before the court unless the court finds both that:

1. The use of restraints is necessary to prevent physical harm to the child or another person;

2. 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 him or herself or others as evidenced by recent behavior; or

3. There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

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, other non-visible restraints made available through technology, the presence of court personnel, law enforcement officers, or bailiff.

PURPOSE:

To provide direction on the handling of detained juveniles during court proceedings in a manner that maintains safety while simultaneously protecting the juvenile's right to due process to be free from the arbitrary use of restraints and to promote the rehabilitative and therapeutic objectives of the juvenile court.

SCOPE:

This policy applies to all employees of the court, Department of Juvenile Justice staff, and deputies of the Sheriff's Office who prepare, process, and manage detained juveniles appearing in court proceedings.

RESPONSIBILITIES:

1. Department of Juvenile Justice staff responsible for preparing juveniles to be transported to Court hearings by deputies are responsible for explaining the rules of courtroom conduct in the Courtroom Behavior Agreement attached hereto.

2. The deputies transporting juveniles to court proceedings shall review the Rules of Conduct with each juvenile before entering the courroom using the "Pre-Hearing Restraint Questionaire" attached hereto.

3. Court officers may be requested by the judge or a deputy to assist in administering the Questionaire.

4. All persons, including judges, are responsible for displaying a calm and restrained disposition before, during, and after the proceedings to avoid aggitating the juvenile so as to minimize the risk of disruptive behavior.

PROCEDURES:

1. The staff of the Regional Youth Detention Center shall explain the rules for courtroom behavior using the Courtroom Behavior Agreement. Each juvenile shall be given an opportunity to ask questions to assist in their understanding of the rules. After the juvenile has acknowledged their understanding of the rules, the staff shall have them sign the Agreement and copy provided to them.

2. Signage with the rules thereon shall be posted in plain view of the holding area of the courtroom as a reminder of the juvenile's agreement to behave accordingly in the courtroom.

3. The deputies shall verbally refresh the juvenile's recollection of the rules before entering the courtroom.

4. The deputies shall be responsible for the security of the courtroom, including the discretion to utilize multiple deputies if needed.

5. The judge shall be mindful of the juvenile's state of mind under the circumstances of detention and refrain from using words or expressions that would unnecessarily aggravate his or her state of mind that could cause disruptive behavior.

6. Should circumstances come to the attention of the sheriff's office, judge, or other court personnel that creates an exception to the prohibition on restraints, it shall be brought to the attention of the judge whereupon he or she shall conduct a pre-hearing conference with the juvenile's defender to allow an opportunity for the defender to consent or show cause why the motion should be denied.

7. The judge shall enter an order granting or denying the motion.

PRE-HEARING RESTRAINT QUESTIONAIRE

(For use by deputies and administered to juveniles before entering the courtroom)

1. Do you agree to keep your hands behind your back at all times while standing and/or walking in the courtroom?

2. Do you agree to keep your hands on the table at all times, except when required to sign any documents?

3. Do you agree to stand at all times when asked by your attorney or the judge to speak?

4. Do you agree not to make physical contact with any person, including family, (attorney not included) without permission of the deputy sheriff?

5. Do you agree to follow all instructions of the deputy sheriff and remain respectful at all times?

6. If the judge determines that you must return to detention pending your next hearing, do agree to remain respectful and not misbehave?

7. Do you understand that if you misbehave, the deputy will remove you from the courtroom and your hearing may be continued causing a delay to another day that would result in a longer stay in detention?

8. Do you understand that if you act out in court, your misbehavior could be used against you at your sentencing if convicted?

NO SCHOOL LEFT BEHIND: PROVIDING EQUAL EDUCATIONAL OPPORTUNITIES: STUDENT NOTE: Shackling Children During Court Appearances: Fairness and Security In Juvenile Courtrooms

Fall, 2008

Reporter
12 J. Gender Race & Just. 257

Length: 14951 words

Author: daniel ***zeno****

* J.D. candidate, The University of Iowa College of Law, 2009. I dedicate this Note to the millions of children who are forced to suffer the shame and indignity of being ***shackled*** during their court appearance. Your suffering is not unnoticed. My heartfelt thanks to the staff and Editorial Board of The Journal of Gender, Race and Justice for their hard work editing this Note. All mistakes are my own.

Text

[*257]

I. Introduction

It is common practice in a majority of states for all juveniles to be ***shackled*** when they appear in court. [1] This practice is unnecessary, does not increase safety in juvenile courtrooms, and is an affront to the dignity of juvenile court proceedings. [2] ***Shackling*** juveniles is antithetical to the juvenile justice system's twin goals of rehabilitation and treatment. [3] The practice is also detrimental to the child and at times, traumatic. [4] For example, in Tallahassee, Florida, an eleven-year-old girl was ***shackled*** during her court appearance. [5] The girl was not only handcuffed, but her legs **[*258]** were ***shackled*** with irons and a belly chain connected the handcuffs to the leg irons. [6] In Florida, these types of ***shackles*** are typically reserved for adults who

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[1] Martha T. Moore, Should Kids Go to Court in Chains?, USA Today, June 17, 2007, at 1A, available at http://www.usatoday.com/news/nation/2007-06-17-***shackles*** N.htm. The author found that in twenty-eight states, some juvenile courts routinely keep defendants in restraints during court appearances. Id.

[2] See *Holbrook v. Flynn, 475 U.S. 560, 569 (1986)* (holding that the defendant was not denied his constitutional right to a fair trial when the customary courtroom security force was supplemented by four uniformed state troopers sitting in first row of spectator section because security is not "inherently prejudicial").

[3] Sacha M. Coupet, What to Do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality about Youth Offenders in the Constructive Dismantling of the Juvenile Justice System, *148 U. Pa. L. Rev. 1303, 1313 (2000)* (explaining the purpose and functioning of the juvenile court embodied the broad societal "interest in rehabilitating all juvenile delinquents, irrespective of the nature of their delinquent acts.").

[4] Ihekwoaba D. Onwudiwe, Theoretical Perspectives on Juvenile Delinquency: Root Causes and Control, 66 Corrs. Today 153 (2004), available at *http://www.thefreelibrary.com/Theoretical+perspectives+on+juvenile+delinquency:+root+causes+and...-a0123670342* ("Since youths are relatively powerless in society, they are predisposed to different forms of labels and tags placed on them by adults and other authority figures that exert immense levels of control. In numerous instances, when children are labeled delinquents, they take on like characteristics.").

[5] ***Shackled*** Juveniles Will be Debated at General Meeting, 33 Fla. B. News § 17, at 10 (2006) (explaining that a committee of the Florida Bar Association will discuss the issue of ***shackling*** juveniles).

[6] Id.

are either a flight risk or charged with first-degree murder. [7] ***Shackling*** this young child not only made her look like a criminal, but also may have made her think of herself as a criminal. [8]

In another instance, in Greensboro, North Carolina, a fourteen-year-old girl was ***shackled*** for her court appearance. [9] The young girl was restrained in handcuffs, leg irons, and a waist chain. [10] As a younger child, the girl was sexually abused while handcuffed. [11] ***Shackling*** this already traumatized young girl not only re-victimized her, but did not increase security in the courtroom. [12]

The Florida Bar Association and the National Juvenile Defender Center, among others, have urged the courts and legislatures to end the practice. [13] Despite these efforts, the practice continues. [14] Some state courts have addressed the issue; [15] however, federal courts, including the Supreme Court, have not. State legislatures have been unsuccessful in passing legislation to outlaw the practice. [16]

[*259] Until recently, few have written on this very important subject. [17] Indeed, the first piece to address this issue under domestic law was published this year. [18] This Note will add to the existing research by discussing and evaluating different justifications and harms not analyzed in previous research. This Note will also discuss the important topic of the attorney's role in addressing the issue of ***shackling*** juveniles.

This Note will argue that the practice of ***shackling*** all juveniles during court appearances should be banned, and a standard similar to the one applied to adult defendants should be adopted - where ***shackles*** are used only to maintain courtroom decorum, when the accused is a flight risk, or when the accused is deemed to be dangerous to herself or others in the courtroom. [19] Part III will discuss juveniles' rights under federal and state law. Part III will also briefly discuss children's rights under international law. Part IV will survey the extent to which juveniles are ***shackled*** and the justifications offered for

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[7] Id.

[8] Moore, supra note 1, at 1A.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Liz Daube, State Examines Juvenile ***Shackling*** Practice, Fin. News & Daily Rec., Oct. 18, 2007, at 1 (explaining that in September, the Florida Bar's Legal Needs of Children Committee passed a motion encouraging a ban on the indiscriminate use of chains and ***shackles*** in juvenile courtrooms throughout Florida); see also Moore, supra note 1, at 1A (discussing efforts by attorneys who represent children to have the chains removed).

[14] Moore, supra note 1, at 1A.

[15] See, e.g., *Cal. Penal Code § 688* (1965); *N.C. Gen. Stat. Ann. § 15A-1031* (West 1977); *Okla. Stat. Ann. tit. 22, § 15* (West 2003).

[16] Mary Schmid, 2005 State Juvenile Justice Legislation, Nat'l Juv. Defender Ctr., Aug. 2005, at 6 (explaining that Vermont House Bill 306, which discouraged the use of restraints when transporting a child in the custody of the state and required that the state use the least restrictive method possible, died in the House Committee on Judiciary).

[17] See, e.g., Anita Nabha, Shuffling to Justice: Why Children Should Not Be ***Shackled*** In Court, *73 Brook. L. Rev. 1549, 1550-51 (2008)* (arguing that "routine and indiscriminate use of ***shackles*** on juveniles is contrary to the objectives of the juvenile justice system"); John William Tobin, Time to Remove the ***Shackles***: The Legality of Restraints on Children Deprived of Their Liberty Under International Law, 9 Int'l J. Child Rts. 213 (2001) (arguing against a blanket ***shackling*** rule).

[18] Nabha, supra note 17, at 1552.

[19] *Illinois v. Allen, 397 U.S. 337, 347 (1970)* (holding that a defendant may lose his constitutional right to be present throughout his trial, where prior to removal from courtroom, the defendant is warned by trial judge that he will be removed if he persists in unruly conduct, but may return when he will conduct himself in an orderly manner).

shackling juveniles when they appear in court. Part IV will also discuss the impact of the ***shackling*** on juveniles. Finally, Part V discusses the role of the juvenile's attorney in addressing the issue.

II. The Juvenile Justice System: To Treat and Rehabilitate

In April 1899, Illinois passed the Juvenile Court Act, which allowed counties to establish juvenile courts. [20] Cook County opened its juvenile court in July 1899, making it the first juvenile court in the country. [21] By 1910, thirty-two states had established juvenile courts and/or probation services. [22] By 1925, all but two states had followed suit. [23]

Historically, juvenile courts have dealt with three categories of **[*260]** children: delinquents, status offenders, and dependents. [24] A delinquent is a "juvenile who has been adjudicated by a judicial officer of a juvenile court as having committed a delinquent act," which is an act for which an adult could be prosecuted for in a criminal court. [25] A status offender is a juvenile who has been adjudicated by a judicial officer of a juvenile court as having committed a status offense, which is an act or conduct that is an offense only when committed or engaged in by a juvenile. [26] Lastly, a dependent is a juvenile who a juvenile court has assumed jurisdiction over because the care of her or his parents, guardians, or custodians fell short of the legal standard of proper care. [27]

A foundation of the early juvenile courts was not to merely punish delinquents for their crimes, but rather to turn delinquents into productive citizens through treatment. [28] According to one commentator,

[A] commonsense approach to juvenile justice continues to be the kick in the pants. While that is a metaphor for punishment, meaning incarceration, it includes an expectation that once the kick is administered, it will result in an awakening within the offender. It will be a lesson well learned, and the recalcitrant youth, having learned the error of her or his ways, will now emerge repentant and prepared to lead a productive, law abiding life. [29]

The goals of treatment and rehabilitation continue to this day, as evidenced by the 2002 Juvenile Justice and Delinquency Prevention Act. [30] The purpose of the Act was to "remove juveniles from the ordinary criminal process in order to avoid the

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[20] Howard N. Snyder & Melissa Sickmund, Nat'l Ctr. Juv. Just., U.S. Dep't. of Just., Juvenile Offenders and Victims: 2006 Nat'l Report 94-95 (2006).

[21] Id. at 95.

[22] Id.

[23] Id.

[24] Ira M. Schwartz et al., Myopic Justice? The Juvenile Court and Child Welfare Systems, 564 Annals Am. Acad. of Pol. & Soc. Sci. 126, 128 (1999).

[25] Nat'l Crim. Just. Inf. & Stat. Serv., U.S. Dep't of Just., Dictionary of Criminal Justice Data Terminology: Terms and Definitions Proposed for Interstate and National Data Collection and Exchange at 40 (1st ed. 1976).

[26] Id. at 88.

[27] Id. at 41.

[28] Id.

[29] Russell K. Van Vleet, The Attack on Juvenile Justice, 564 Annals Am. Acad. Pol. & Soc. Sci. 203, 210 (1999) (discussing the unprecedented scrutiny and criticism of the juvenile justice system over the last two decades for its perceived inability to respond to the increase in juvenile crime and to provide interventions that might thwart such crime).

[30] *42 U.S.C. § 5601* (2002).

stigma of a prior criminal conviction and to encourage treatment and rehabilitation." [31] Courts have also recognized the **[*261]** rehabilitative goals of the juvenile justice system. [32]

In line with these goals, juvenile courts across the country run many treatment and rehabilitation programs. For example, a study "found that at least nineteen states had legislation promoting a more balanced and restorative juvenile justice system." [33] "The rehabilitative purpose of the juvenile justice system is [further] reinforced by the idea that juvenile offenders who commit truly "adult' crimes should be transferred to the criminal justice system rather than remain in the non-adversarial environment of the juvenile justice system." [34] Despite its goals and programs, juvenile courts in over half of the states require the ***shackling*** of all juveniles during court appearances. [35] This practice is inconsistent with and an affront to the goals of the juvenile justice system.

III. Federal, State, and International Law Provide Support For Ending the Practice of ***Shackling*** Juveniles During Court Appearances

While the United States Supreme Court has not addressed the issue of whether juveniles have the right to appear in court without ***shackles***, [36] a few state courts have ruled against blanket ***shackling*** orders, [37] and a small number of states have enacted statutes that prohibit unnecessary restraints. [38] This section first examines juveniles' legal rights under federal law and **[*262]** discusses the Supreme Court's holdings on the ***shackling*** of adults; then it discusses juveniles' legal rights under state law, including state case law on the ***shackling*** of juveniles during court appearances. Finally, this section analyzes the ***shackling*** of juveniles under international law.

A. Juveniles Enjoy Similar Rights as Adults Under Federal Law

Although the Supreme Court has not addressed the issue of ***shackling*** with respect to juveniles, the Court has held that many of the rights enjoyed by adults in the criminal justice system extend to juveniles in the juvenile justice system. [39] One of the

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[31] *United States v. Brian N., 900 F.2d 218, 220 (10th Cir. 1991); United States v. One Juv. Male, 40 F.3d 841, 844 (6th Cir. 1994)* (affirming district court's transfer motion of juvenile to adult prosecution under Federal Juvenile Delinquency Act based on its conclusion that heinous nature of juvenile's alleged crimes outweighed any factors that supported trying him as a juvenile).

[32] See, e.g., *State ex rel. H.K. v. Taylor, 289 S.E.2d 673, 677 (W. Va. 1982)* ("We have held on numerous occasions that the purpose of our juvenile justice system is to provide the rehabilitation of delinquent children."); *In re Gault, 387 U.S. 1, 16 (1967)* ("[The juvenile justice system was designed so that the child can] be "treated' and "rehabilitated'...").

[33] Lucy Clark Sanders, Restorative Justice: The Attempt to Rehabilitate Criminal Offenders and Victims, 2 Charleston L. Rev. 923, 929 (2008); see also Mark S. Umbreit et al., Legislative Statutes on Victim Offender Mediation: A National Review, 15 Voma Connections 5 (2003), available at *http://www.voma.org/docs/connect15.pdf*.

[34] Molly Gulland Gaston, Never Efficient, But Always Free: How The Juvenile Adjudication Question Is The Latest Sign That Almendarez-Torres v. United States Should Be Overturned, *45 Am. Crim. L. Rev. 1167, 1175 (2008).*

[35] Moore, supra note 1, at A1.

[36] See *In re R.W.S., 728 N.W.2d 326 (N.D. 2007); State ex rel. Juv. Dep't of Multnomah County v. Millican, 906 P.2d 857 (Or. Ct. App. 1995); In re Staley, 364 N.E.2d 72 (Ill. 1977); In re Staley, 352 N.E.2d 3 (Ill. App. 1976);* Tiffany A. v. Superior Court, *59 Cal. Rptr. 3d 363 (Cal. Ct. App. 2007);* In re Deshaun M., *56 Cal. Rptr. 3d 627 (Cal. Ct. App. 2007).*

[37] See, e.g., *In re R.W.S., 728 N.W.2d at 326; Millican, 906 P.2d at 857; In re Staley, 364 N.E.2d at 73; In re Staley, 352 N.E.2d at 3;* Tiffany A., *59 Cal. Rptr. 3d at 363;* In re Deshaun M., 56 Cal. Rtpr. 2d at 627.

[38] See, e.g., *Cal. Penal Code § 688* (1965); *N.C. Gen. Stat. Ann. § 15A-1031* (West 1977); *Okla. Stat. Ann. tit. 22, § 15* (West 2003).

[39] *Schall v. Martin, 467 U.S. 253, 263 (1984); In re Gault, 387 U.S. 1, 49 (1967); In re Winship, 397 U.S. 358, 368 (1970); Breed v. Jones, 421 U.S. 519, 541 (1975).*

many rights adult criminal defendants enjoy is the right to appear before a jury free of ***shackles***. [40] Although the Supreme Court has not addressed the issue of ***shackling*** juveniles during court appearances, it is likely that if the Supreme Court addressed the issue, it will find that a blanket ***shackling*** rule is unconstitutional.

The prohibition on ***shackling*** adult defendants is applicable only when a defendant appears before a jury. [41] However, juveniles do not appear before a jury; they appear before a judge. [42] The legal system assumes that, unlike juries, judges are able to overlook the sight of ***shackles***, uphold the presumption of innocence, and issue a fair ruling. [43] Although, in my view, that assumption is questionable, this Note will not analyze the issue of whether judges are more able than juries to overlook the sight of ***shackled*** defendants.

In a series of cases, the Supreme Court has held that many of the rights enjoyed by adults in the criminal justice system extend to juveniles in the juvenile justice system. [44] In the seminal case In re Gault, [45] the Supreme **[*263]** Court held that the Due Process Clause of the Fourteenth Amendment requires that juvenile adjudicatory "hearings must measure up to the essentials of due process and fair treatment." [46] The Court held that the "essentials of due process and fair treatment" [47] include the right to counsel, right to notice of charges, right to confrontation and cross examination, right to transcript, right to appellate review, and the privilege against self-incrimination. [48] In Gault, Gerald Francis Gault, a fifteen-year-old boy, was taken into custody for making lewd and indecent remarks in a telephone call to Mrs. Cook. [49] At that time, Gault was on probation "as a result of his having been in the company of another boy who had stolen a wallet from a lady's purse." [50] When he was taken into custody both of his parents were at work. [51] The police did not notify his parents that he was in custody. [52]

Upon learning that her son was in custody, Mrs. Gault went to the detention center and was told by Officer Flagg that a hearing would be held the next day. [53] On the day of the alleged hearing, Officer Flagg actually filed the petition with the court asking

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[40] *Illinois v. Allen, 397 U.S. 337, 342 (1970);* see also *Zygadlo v. Wainwright, 720 F.2d 1221, 1223 (11th Cir. 1983)* (confirming that use of ***shackles*** should rarely be employed for security).

[41] See, e.g., *Deck v. Missouri, 544 U.S. 622, 633 (2005).*

[42] See, e.g., *S.Y. v. McMillian, 563 So. 2d 807, 808 (Fla. Dist. Ct. App. 1990)* (explaining by their very nature, juvenile proceedings are conducted before the circuit court judge without a jury).

[43] See *U.S. v. Howard, 463 F.3d 999, 1005 (9th Cir. 2006)* ("Fear of prejudice is not at issue [in a pretrial hearing], as a judge in a pretrial hearing presumably will not be prejudiced by seeing defendants in ***shackles***.").

[44] *Schall, 467 U.S. at 263; In re Gault, 387 U.S. at 49; In re Winship, 397 U.S. at 368; Breed, 421 U.S. at 541.*

[45] *In re Gault, 387 U.S. at 49* (holding that juveniles have right to notice of charges, to counsel, to confrontation and cross-examination of witnesses, and to privilege against self-incrimination).

[46] *Id. at 30.*

[47] *Kent v. United States, 383 U.S. 541, 562 (1966).*

[48] *In re Gault, 387 U.S. at 12-13* ("Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.").

[49] *Id. at 4.*

[50] Id.

[51] *Id. at 5.*

[52] Id.

[53] Id.

for a hearing. [54] Again, Gault's parents were not notified. [55] Gault, his mother, his older brother, and Probation Officers Flagg and Henderson attended the hearing before the juvenile judge in chambers. [56] The complainant, Mrs. Henderson, was not at the hearing. [57] No one was sworn in at the hearing; no transcript or recording of the hearing was made; no record was prepared. [58] At the conclusion of the hearing, the judge said he would "think about it." [59]

Gault was taken back to the detention home and was not released until **[*264]** two or three days later. [60] The record contained no explanation about Gault's detention or his later release. [61] On the day of his release, Mrs. Gault received a note on plain paper, not on customary letterhead, signed by Officer Flagg that stated the time and place of the next hearing. [62] Mrs. Cook did not attend the second hearing. [63] Mrs. Gault requested Mrs. Henderson's presence so that the judge could determine whether her son made the alleged lewd comments during the telephone call. [64] The judge denied her request and stated that Mrs. Henderson did not need to be at the hearing. [65] The judge never communicated with Mrs. Cook and Officer Flagg spoke with her only once over the telephone the day after the incident. [66]

At the second hearing, the probation officers filed a referral report listing the charge as "Lewd Phone Calls," but did not notify the Gaults of the report. [67] The judge committed Gault as a juvenile delinquent to the State Industrial School until he turned twenty-one. [68] Since Arizona juvenile law does not permit appeals, the Gaults filed a writ of habeas corpus in the Supreme Court of Arizona, which referred it to the Superior Court for hearing. [69] The Superior Court dismissed the writ and the Supreme Court of Arizona affirmed the dismissal. [70] The Gaults appealed to the United States Supreme Court, which ruled in their favor. [71]

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[54] *In re Gault, 387 U.S. at 5.*

[55] Id.

[56] Id.

[57] Id.

[58] Id.

[59] *Id. at 6.*

[60] *In re Gault, 387 U.S. at 6.*

[61] Id.

[62] Id. (stating in its entirety: "Mrs. Gault: Judge McGhee has set Monday June 15, 1964 at 11:00 A. M. as the date and time for further Hearings on Gerald's delinquency "/s/Flagg.").

[63] *Id. at 7.*

[64] Id.

[65] Id.

[66] *In re Gault, 387 U.S. at 7.*

[67] Id.

[68] Id.

[69] *Id. at 8.*

[70] *Id. at 10.*

[71] *Id. at 3.*

In In re Winship, [72] a New York family court judge found Samuel Winship, then a twelve-year-old boy, entered a locker and stolen $ 112 from a woman's pocketbook. [73] The judge further noted that Winship's acts, "if done by an adult, would [have] constituted the crime or crimes of **[*265]** Larceny." [74] The judge relied on a preponderance of the evidence standard to adjudge Winship a juvenile delinquent. [75] The judge ordered Winship to attend a training school until his eighteenth birthday. [76] However, the United States Supreme Court held that proof beyond a reasonable doubt must be the standard in juvenile proceedings in which a juvenile has been charged with an act that would constitute a crime if committed by an adult. [77]

Lastly, in Breed v. Jones, [78] the Court held that freedom from double jeopardy applied to juveniles as well as adults. [79] In this case, seventeen-year-old Gary Jones was adjudged a juvenile delinquent for acts which, if committed by an adult, would constitute armed robbery. [80] At the dispositional hearing, the juvenile court held that, based on his criminal record, Jones was "not … amenable to the care, treatment and training program available through the facilities of the juvenile court." [81] The court ordered that Jones be prosecuted as an adult. [82] The Juvenile Court, the California Court of Appeals, and the Supreme Court of California denied Jones' petition for writ of habeas corpus. [83] The Superior Court tried Jones and found him guilty of first-degree robbery. [84] Jones filed a writ of habeas corpus in the United States District Court for the Central District of California, claiming that "his transfer to adult court … and subsequent trial there placed him in double jeopardy." [85] The District Court denied his petition and the Ninth Circuit reversed. [86]

While the Supreme Court has extended many of the rights adults enjoy in the criminal justice system to juveniles in the juvenile justice system, children are still subject to blanket ***shackling*** while adults are not. The Court has held that an adult criminal defendant has the right to appear before a **[*266]** jury free of ***shackles***. [87] This general right is predicated on the constitutional guarantee of a presumption of innocence, which includes the physical indication of innocence. [88] Since "visible ***shackling***

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[72] *In re Winship, 397 U.S. 358 (1970).*

[73] *Id. at 360.*

[74] Id.

[75] Id.

[76] Id.

[77] *Id. at 368.*

[78] *Breed v. Jones, 421 U.S. 519, 519 (1975).*

[79] Id.

[80] *Id. at 521.*

[81] *Id. at 523* (citing *Cal. Welf. & Inst. Code § 707* (West 1967)).

[82] *Id. at 524.*

[83] Id.

[84] *Breed, 421 U.S. at 525.*

[85] Id.

[86] *Id. at 526.*

[87] *Illinois v. Allen, 397 U.S. 337, 342 (1970);* see also *Zygadlo v. Wainwright, 720 F.2d 1221, 1223 (11th Cir. 1983).*

[88] See *United States v. Samuel, 431 F.2d 610, 614 (4th Cir. 1970)* (explaining "basic to American jurisprudence is the principle that an accused, despite his previous record or the nature of the pending charges, is presumed innocent until his guilt is established … it follows that

undermines the presumption of innocence," ***shackles*** are not allowed when an adult appears in court before a jury. [89] However, a judge has discretionary authority to require a defendant to appear in court with ***shackles*** (1) to maintain dignity, order, and decorum in the courtroom; (2) if the defendant is a flight risk; or (3) if the defendant poses a danger to herself or others in the courtroom. [90]

Although the Supreme Court has held that juvenile offenders enjoy many of the same rights as adult criminal defendants, [91] the Court continues to treat juvenile offenders differently. The Court's differential treatment of juveniles is primarily due to its adherence to the doctrine of parens patriae. [92] Parens patriae is "the power of the state to act in loco parentis for the purpose of protecting the … interests and the person of the child." [93]

The Supreme Court has extended many of the rights adults enjoy in criminal proceedings to juveniles in juvenile proceedings. However, one important issue the Supreme Court has not addressed is the issue of ***shackling*** juveniles during court appearances. In light of the Court's willingness to extend many of the rights adult criminal defendants enjoy to juveniles in juvenile proceedings, it is likely that the Court, if confronted with the issue, would extend the right to be free from ***shackles*** to juveniles.

B. Juveniles Enjoy Similar Rights as Adults Under State Law

State courts have also held that under state law many of the rights enjoyed by adults in the criminal justice system extend to juveniles in the juvenile justice system. [94] Some state courts have prohibited the ***shackling*** of **[*267]** juveniles when they appear before a jury. [95] In State ex rel. Juvenile Department of Multnomah County v. Millican, the Oregon Court of Appeals held that "extending the right to remain unshackled during juvenile proceedings is consonant with the rehabilitative purposes of Oregon's juvenile justice system." [96] The Court further held that "allowing a young person who poses no security hazard to appear before the court unshackled, with the dignity of a free and innocent person, may foster respect for the judicial process." [97] Robert Shawn, a sixteen-year-old resident of a boys group home, was adjudged a juvenile delinquent for acts, which if

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he is also entitled to the indicia of innocence"); *Kennedy v. Cardwell, 487 F.2d 101, 111 (6th Cir.1973)* (holding only on a clear showing of necessity should ***shackles*** ever be employed).

[89] *Deck v. Missouri, 544 U.S. 662, 630 (2007).*

[90] *Allen, 397 U.S. at 344; Deck, 544 U.S. at 629-31.*

[91] *Schall v. Martin, 467 U.S. 253, 263 (1984); In re Gault, 387 U.S. 1, 5 (1967); In re Winship, 397 U.S. 358, 368 (1970); Breed v. Jones, 421 U.S. 519, 541 (1975).*

[92] See *In re Gault, 387 U.S. at 17* (describing how the founders of the juvenile justice system rationalize the exclusion of juveniles from the constitutional scheme).

[93] *Id. at 16.*

[94] See, e.g., *State ex rel. Juv. Dep't of Mulnomah County v. Millican, 906 P.2d 857, 860-61 (Or. App. 1995)* (holding that while the right against physical restraint extends to juveniles proceedings as well, the juvenile court's refusal to order juvenile's leg chains removed in this case removed was harmless error); *In re Steven G., 556 A.2d 131, 134 (Conn. 1989)* (holding that although Due Process is applicable to juvenile proceedings, state was properly permitted to amend petition after commencement of trial, where state claimed correspondent's "surprise" testimony prompted additional charges); In re Kevin S., *6 Cal. Rptr. 3d 178, 197 (Cal. Ct. App. 2003)* (holding that the Fourteenth Amendment mandates that an indigent minor be appointed counsel on appeal); In re Matter of *C.A.D., 711 P.2d 1336, 1343 (Kan. Ct. App. 1985)* (holding that juveniles have the right to examine evidence, cross-examine witnesses, and confront accusers).

[95] *Millican, 906 P.2d at 860.*

[96] Id.

[97] Id.

committed by an adult, would constitute sexual abuse in the third degree. [98] During the delinquency hearing, Shawn was ***shackled*** and the juvenile court refused his request to be unshackled. [99]

In In re Steven G., the Connecticut Supreme Court held that "certain basic constitutional protections enjoyed by adults accused of crimes also apply to juveniles. But the Constitution does not mandate elimination of all differences in treatment of juveniles." [100] In this case, Connecticut filed a petition to have Steven G. adjudged a juvenile delinquent for acts, which if committed by an adult, would constitute second-degree robbery. [101] After the trial had started, the court allowed the state to amend its petition to "add four additional charges arising out of the same incident." [102] Steven G. was adjudged a juvenile delinquent. [103] The Court of Appeals affirmed the trial court's ruling "on the ground that, in juvenile proceedings, a standard of "fundamental fairness' governs midtrial amendments rather than the stricter **[*268]** provisions applicable to adult proceedings." [104] The Supreme Court of Connecticut affirmed. [105]

The California Court of Appeals also followed Gault. [106] In In re Kevin S., the court held that "it is well-established that "the essentials of due process and fair treatment' apply to a juvenile delinquency adjudication," [107] which include the right to appointed counsel on appeal. [108] In this case, Kevin S., a minor, appealed from the juvenile court's orders that he remain a ward of the court and be placed in a camp program. [109] His appointed counsel filed a brief that raised no issues. [110]

Lastly, the Kansas Court of Appeals followed Gault, holding that "due process of the law in post-adjudicative dispositional stages of juvenile offender cases necessarily includes the right to a hearing with counsel, confrontation of witnesses, and the right to examine evidence and present evidence in the offender's own behalf." [111] In this case, C.A.D., a minor, was adjudged a juvenile delinquent for acts, which if committed by an adult, would constitute aggravated kidnapping. [112] C.A.D. was placed on probation and ordered to pay restitution in the amount of $ 133.69. [113] After the court's ruling, the restitution officer filed a motion for review to amend the amount of the restitution based on a claim made by the victim and her parents that additional

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98 *Id. at 858.*

99 *Id. at 859.*

100 *In re Steven G., 556 A.2d 131, 134 (Conn. 1989).*

101 *Id. at 132.*

102 Id.

103 Id.

104 Id.

105 Id.

106 *In re Kevin S., 113 Cal. App. 4th 97, 119 (Cal. Ct. App. 2003).*

107 *Id. at 107.*

108 *Id. at 99.*

109 Id.

110 Id.

111 In re Matter of *C.A.D., 11* Kan. App. 2d 13, 21 (Kan. Ct. App. 1985).

112 *Id. at 13-14.*

113 Id.

expenses had been incurred since the dispositional hearing. [114] At a hearing on a different complaint, the judge took up the motion for amending the amount of the restitution. [115] C.A.D. objected on three grounds: (1) that the judge did not have authority to amend the restitution order after judgment had been entered in the matter, (2) that C.A.D. was not afforded an opportunity to examine the evidence submitted to the restitution officer for the amendment of the restitution amount, and **[*269]** (3) the revised restitution amount would be unduly burdensome. [116] The court "read into the record the amount of each of the bills submitted, as well as the name of the establishment to which each bill was payable" and revised the restitution order. [117] Observing that the many rights juveniles now enjoy in juvenile hearings are similar to the rights adults enjoy in criminal trials, it is logical to extend the right to appear in court unshackled to juveniles, absent an individualized assessment of dangerousness or flight risk.

While the United States Supreme Court has not addressed the issue of ***shackling*** of juveniles during court appearances, several state courts, including the Supreme Court of North Dakota, the Court of Appeals of Oregon, the Supreme Court of Illinois, the Third District of the Appellate Court of Illinois, and the First and Second Divisions of the California Courts of Appeal have. [118] These courts have held that absent an individualized showing of the need for ***shackles***, juveniles may not be ***shackled*** during court appearances, even when they are not appearing before a jury. [119] Additionally, a few states, such as California, North Carolina, and Oklahoma, have enacted statutes that prohibit unnecessary restraints. [120]

Several state courts have followed the Supreme Court's lead and have extended many of the rights adults enjoy in criminal proceedings to juveniles in juvenile proceedings. While the Supreme Court has not addressed the issue of ***shackling*** juveniles during court appearances, state courts have held that blanket ***shackling*** rules are unconstitutional. These state court rulings are only persuasive; however, they add support to the belief that if confronted with the issue, the Supreme Court would extend the right to be free from ***shackles*** to juveniles.

C. Children Are Entitled to Basic Human Rights Under International Law

Similar to state courts, international law has addressed the issue of ***shackling*** juveniles, mainly through the United Nations Convention on the **[*270]** Rights of the Child (CRC). [121] Several sections of the CRC are applicable to an analysis of the ***shackling*** of juveniles during court appearances; however, before analyzing the practice under international law, it is important to address the United States' stance on international law, and specifically the CRC and the Universal Declaration of Human Rights ("UDHR").

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[114] *Id. at 14.*

[115] Id.

[116] Id.

[117] Matter of *C.A.D., 711 P.2d at 1338.*

[118] See, e.g., *In re R.W.S., 728 N.W.2d 326 (N.D. 2007); State ex rel. Juvenile Dep't of Multnomah County v. Millican, 906 P.2d 857 (Or. Ct. App. 1995); In re Staley, 364 N.E.2d 72 (Ill. 1977); In re Staley, 352 N.E.2d 3 (Ill. App. Ct. 1976);* Tiffany A. v. Superior Court, *59 Cal. Rptr. 3d 363 (Cal. Ct. App. 2007);* In re Deshaun M., *56 Cal. Rptr. 3d 627 (Cal. Ct. App. 2007).*

[119] *In re R.W.S., 728 N.W.2d at 326; Millican, 906 P.2d at 857; In re Staley, 364 N.E.2d at 72;* Tiffany A., *59 Cal. Rptr. 3d at 363;* In re DeShaun M., *56 Cal. Rptr. 3d at 627.*

[120] See, e.g., *Cal. Penal Code § 688* (1965); *N.C. Gen. Stat. Ann. § 15A-1031* (West 1977); *Okla. Stat. Ann. tit. 22 § 15* (West 2003).

[121] See generally Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC] (entered into force Sept. 2, 1990), available at *http://www2.ohchr.org/english/law/crc.htm*. For a more thorough analysis of this issue under international law, see John William Tobin, Time to Remove the ***Shackles***: The Legality of Restraints on Children Deprived of Their Liberty Under International Law, 9 Int'l J. Child Rts. 213, 214 (2001) (arguing that "there is a presumption under international law against the use of restraints on children [and] any general policy for their use will be in breach of international law.").

The United States does consider itself to be bound by international law and has therefore refused to ratify or even sign several international conventions or declarations. [122] For example, the United States has signed, but not ratified, the CRC and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. [123] The United States, along with only one other country in the world, Somalia, has signed but not ratified the CRC. [124]

The United States' lack of ratification of the CRC and other international instruments is, in part, due to conflicts between CRC provisions and United States law. [125] One of the main issues is "the relative responsibilities and powers of the federal versus state governments for implementation of the [CRC]." [126] This issue is especially important in the juvenile context because most children's issues in the U.S. are handled at the state level. [127] "Adoption of [the CRC] by the [federal] government … [would be] binding on [the states] for international law purposes." [128] However, "adoption [of the CRC] may or may not automatically cause the treaty to supersede conflicting provisions of [state law]." [129] As a result, **[*271]** states may have conflicting legal obligations under the CRC and state law. In addition, the federal government would have an obligation to ensure that states uphold the CRC, which would likely raise issues of federalism. Other potential sources of conflict include the following: "present and intended meanings of best interests of the child, the child's opportunities to be heard and to have standing in court, and juvenile and criminal justice standards relative to the kinds of court, confinement, and punishment applied to children." [130]

However, despite the non-binding nature of the CRC and, more broadly, international law on practices in the United States, it is important to appeal to international law for two reasons. First, it provides another source of justification for ending the practice of ***shackling*** juveniles when they appear in court. Second, this issue may provide us with another opportunity to discuss U.S. ratification of the CRC, juvenile justice, and child welfare in the United States.

Appealing to international law is not unprecedented in the juvenile justice arena. In Roper v. Simmons, the Supreme Court held that the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on offenders who were under the age of eighteen when their crimes were committed. [131] In reaching its decision, the Court looked to several sources of international law, including Article 37 of the CRC, the International Covenant on Civil and Political Rights; the American Convention on Human Rights, Pact of San Jose, Costa Rica, and the African Charter on the Rights and Welfare of the Child. [132] The Court

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[122] CRC, supra note 121.

[123] Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, As of June 14, 2006.

[124] Id.

[125] United States: A World Leader in Executing Juveniles; Summary and Recommendations, Hum. Rts. Watch Child Rts. Update (Hum. Rts. Watch, New York, N.Y.), Mar. 1, 1995, at 4, available at *http://www.hrw.org/reports/1995/Us.htm* [hereinafter Hum. Rts. Watch]. According to George Bush, "[the convention] is contrary to some state laws, because it prohibits certain criminal punishment, including the death penalty, for children under age eighteen." Id. at 14.

[126] Stuart N. Hart, Non-Governmental Efforts Supporting U.S. Ratification of the Convention on the Rights of the Child, 4 Loy. Poverty L.J. 141, 164 (1998).

[127] Id.

[128] Id.

[129] Id.

[130] Id. at 165.

[131] *Roper v. Simmons, 543 U.S. 551, 578 (2005).*

[132] *Id. at 576;* International Covenant on Civil and Political Rights, art. 6(5), 999 U.N.T.S., 175 (prohibiting capital punishment for anyone under 18 at the time of offense); American Convention on Human Rights: Pact of San Jose, Costa Rica, art. 4(5), Nov. 22, 1969, 1144 U.N.T.S. 146 (entered into force July 19, 1978) (prohibiting capital punishment for anyone under 18 at the time of offense); African Charter on the Rights and Welfare of the Child, art. 5(3), OAU Doc. CAB/LEG/ 24.9/49 (entered into force Nov. 29, 1999) (prohibiting capital punishment for anyone under 18 at the time of offense).

noted that while international law is not binding on the Supreme Court, "it is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty … ." [133] Similar to the death penalty, the international community has spoken on the issue of the ***shackling*** of juveniles during court appearances. The United States should once again take notice of, and align with, international law when considering the ***shackling*** of juveniles during court appearances.

Roper was not the first time U.S. courts have appealed to international law. In The Paquete Habana case in 1900, the Supreme Court stated that:
[*272]

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. [134]

More recently, in Filartiga v. Pena-Irala, the Second Circuit Court of Appeals looked to several international law sources, including The Statute of the International Court of Justice, the United Nations Charter, and the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture to hold that deliberate torture perpetrated under the color of official authority violates universally accepted norms of international human rights law regardless of the nationality of the parties. [135]

Not only does an analysis of this issue under international law provide further justification for ending the practice, it also provides another opportunity to discuss ratification of the CRC, as well as juvenile justice and child welfare in the United States. When the United States was considering ratification, one of the main obstacles was the treaty's conflict with U.S. law regarding the imposition of the death penalty for juveniles. [136] Now that the United States prohibits the execution of juveniles, [137] it may be an opportune time to discuss ratification of the CRC. This discussion could include a plethora of issues, including prohibiting the ***shackling*** of all juveniles during court appearances, prohibiting the sentencing of juveniles to life imprisonment without the possibility of parole, and a right to education. In light of the detrimental impact ***shackling*** has on juveniles, especially young juveniles and juveniles who have committed their first offense, and the ongoing legal and legislative efforts, this may be our second chance to ratify the CRC.

1. United Nations Declaration of Human Rights

The UDHR "sets forth the human rights and fundamental freedoms to which all [people], everywhere in the world, are entitled, without any **[*273]** discrimination." [138] The rights delineated under the UDHR include: the right to liberty and equality; the right to life, liberty and security of person; economic, social and cultural rights; and the right "to a social and international order in which the human rights and fundamental freedoms … may be fully realized." [139] This declaration, while not binding, is a source of justification for ending the practice of ***shackling*** juveniles during court appearances. For example, Article 5 provides

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[133] *Roper, 543 U.S. at 578.*

[134] *The Paqueta Habana, 175 U.S. 677, 700 (1900).*

[135] *Filartiga v. Pena-Irala, 630 F.2d 876, 881-82, n. 8 (2d Cir. 1980).*

[136] Hum. Rts. Watch, supra note 125, at 14.

[137] *Roper, 543 U.S. at 551.*

[138] Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 2 (Rev.1), The International Bill of Human Rights (2006), available at *http://www.unhchr.ch/html/menu6/2/fs2.htm*.

[139] Id.

that, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." [140] ***Shackling*** all juveniles during court appearances, absent an individual assessment of danger and flight risk, is degrading to juveniles because it labels them as criminal. Degrading treatment is antithetical to the treatment and rehabilitation of juveniles. Therefore, juvenile courts should end the practice of requiring all juveniles to be ***shackled*** during court appearances. Based on the broad declarations in the UDHR, the CRC delineates the rights of children.

2. United Nations Convention on the Rights of the Child

The CRC spells out the basic human rights to which all children are entitled and protects these rights by setting standards in legal, civil, and social services as well as in health care, and education. [141] Articles 3, 37, and 40 are the CRC sections most applicable to an analysis of the ***shackling*** of juveniles during court appearances. These sections provide that the "best interest of the child" [142] should be paramount in all actions concerning children, prohibit degrading treatment of children, and require state parties to respect the dignity of children. The practice of ***shackling*** during court appearances does not consider the best interest of each individual child. In addition, the practice is degrading and disrespectful to children, not to mention antithetical to the treatment and rehabilitation of juveniles.

Ending the practice of ***shackling*** all juveniles during court appearances and conducting individualized determinations of dangerousness or flight would be consistent with the goals of the juvenile justice system. In addition, ending the practice and conducting individualized determinations will show juveniles that the juvenile justice system does indeed assume they are innocent until proven guilty and will thereby foster respect for the **[*274]** system. Finally, ending the practice will signal to juveniles that they are not simply criminals - even though they may have committed a status offense or criminal act - but are human beings worthy of dignity and respect who can and should have a constructive role in society.

IV. Blanket ***Shackling*** Rules Disproportionately Impact Some Children and Do Not Substantially Increase Courtroom Security

A majority of states require juveniles to be ***shackled*** during court appearances. [143] Some state legislatures, bar associations, juvenile justice organizations, and individual attorneys have made efforts to end the practice; however, they have generally been unsuccessful. [144] In some instances, attorneys representing juveniles have raised the issue, and have been successful in getting the court to allow their client to appear in the courtroom without ***shackles***. [145] However, the practice is still prevalent. [146] As discussed above, the practice of ***shackling*** juveniles during court appearances is inconsistent with current law applicable to adults in criminal trials. Finally, the practice is incompatible with the CRC. [147] Although the United States has not ratified the CRC, its provisions provide justification for banning the practice in the United States. In light of the Supreme Court's willingness to extend rights adults enjoy to juveniles, and the supportive state court rulings and state legislation enacted, it is likely that the Supreme Court, if confronted with the issue, would hold that blanket rules that require the ***shackling*** of juveniles during court appearances are unconstitutional.

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[140] Id.

[141] CRC, supra note 121.

[142] Id.

[143] Moore, supra note 1, at 1A.

[144] See *State v. Tommy Y., Jr., 637 S.E.2d 628, 638 (W. Va. 2006)* (holding that the possibility that a juror may have seen the juvenile in ***shackles*** and prison garb in courthouse prior to trial did not warrant new trial); *State ex rel. Juv. Dep't of Multnomah County v. Millican, 906 P.2d 857 (Or. Ct. App. 1995)* (holding that while the right against physical restraint extends to juveniles proceedings as well, the juvenile court's refusal to order juvenile's leg chains removed in this case was harmless error); In re DeShaun M., *56 Cal. Rptr. 3d 627 (Cal. Ct. App. 2007)* (holding that any error in leaving the minor in physical restraints was harmless).

[145] See Tiffany A. v. Superior Court, *59 Cal. Rptr. 3d 363 (Cal. Ct. App. 2007); In re Staley, 352 N.E.2d 72 (Ill. 1976).*

[146] Moore, supra note 1 (explaining that in twenty-eight states juveniles are ***shackled*** during their court appearances).

[147] *Illinois v. Allen, 397 U.S. 337 (1970);* see also *Zygadlo v. Wainwright, 720 F.2d 1221 (11th Cir. 1983); State v. Hartzog, 635 P.2d 694 (Wash. 1981);* CRC, supra note 121.

A. The Impact of ***Shackling*** on Juveniles

Shackling children during court appearances degrades children in a **[*275]** system designed specifically to treat and rehabilitate children and disproportionally impacts some juveniles, specifically African American children, mentally ill children, and status offenders. One of the ways ***shackling*** degrades children is by indicating to the juvenile and others that the juvenile is a criminal who must be restrained. [148] This physical indication of criminality neither serves the goals of the juvenile justice system, nor benefits the ***shackled*** juvenile. ***Shackling*** is also a physical indication that the juvenile is beyond treatment or rehabilitation. Furthermore, "the use of this technique [***shackling***] is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold." [149] The impact of ***shackling*** on all juveniles and the disproportionate impact the practice has on some juveniles is too great to justify the ***shackling*** of all juveniles.

1. Labeling as "Criminal," Beyond Treatment or Rehabilitation

Shackling juveniles, especially first-time or young offenders, has a deep impact on these young people. [150] ***Shackling*** physically labels the juvenile as a current and future "criminal". [151] The sight of a juvenile ***shackled*** in chains in a courtroom is a physical indication to the juvenile and the community that the juvenile is a criminal. Because all juveniles are ***shackled*** during court appearances, this labeling occurs whether the juvenile is indeed a criminal, that is the child has committed a criminal act, or is not a criminal, but is a status offender or a juvenile delinquent. This "criminal labeling" is especially detrimental to first-time or young offenders who are more vulnerable and are more likely to internalize the criminal label. [152]

Additionally, ***shackling*** is a physical indication that the juvenile is beyond treatment and rehabilitation, and therefore must be treated like a criminal. Indeed, the Supreme Court noted that "***shackling*** … [is an] unmistakable indication of the need to separate a defendant from the community at large." [153] This physical and public labeling of the juvenile as **[*276]** criminal is unwarranted because it not only creates a presumption of guilt and criminality, it is also antithetical to the goals of the juvenile justice system.

2. Disproportionate Impact: African American Juveniles, Mentally Ill Juveniles, and Status Offenders

It is likely that ***shackling*** disproportionally impacts African American youths. [154] From 1985 until 2002, a disproportionate number of delinquency cases involved African American youths. [155] In 2002, African American youths constituted sixteen percent of the juvenile population, but accounted for twenty-nine percent of the delinquency caseload. [156] The labeling of these young people as criminal by ***shackling*** them during court appearances is reminiscent of a time when the law explicitly used race to strip people of color of their dignity. In the past, many criminal laws were explicitly racist. [157] Many of these laws

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[148] Anne Rankin Mahoney, The Effect of Labeling Upon Youths In The Juvenile Justice System: A Review of the Evidence, 8 Law & Soc'y Rev. 583, 604 (1974).

[149] *Allen, 397 U.S. at 344.*

[150] Mike S. Adams et al., Labeling and Delinquency, 38 Adolescence 171, 171 (2003) ("One of the possible responses to being stigmatized or negatively labeled is involvement in delinquent behavior. The results of numerous studies show that juveniles who are formally processed through the juvenile justice system and have formal contact with other social control agencies report greater subsequent delinquency.").

[151] Onwudiwe, supra note 4, at 153.

[152] Id.

[153] *Holbrook v. Flynn, 475 U.S. 560, 569 (1986).*

[154] Snyder & Sickmund, supra note 20, at 163.

[155] Id.

[156] Id.

[157] See James T. Currie, From Slavery to Freedom in Mississippi's Legal System, 65 J. Negro Hist., 112, 113 (1980).

were based on stereotypes, a main stereotype being that people of color - especially African Americans - are criminals. [158] This presumption of criminality is no longer officially recognized. [159] However, real and perceived instances of racism in the legal system are added to the collective memory of people of color almost daily. [160] This history of racism increases the impact of ***shackling*** and criminal labeling on juveniles of color.

The practice may also disproportionately impact juveniles who suffer from mental illness or other psychological issues. [161] Carlos Martinez, chief assistant public defender in Miami, highlights this issue: "These children [who are being ***shackled***] are presumed innocent, yet the message we are sending is they are dangerous animals, herded in chains… . A lot of kids in juvenile courts have issues involving mental illness, retardation and **[*277]** disabilities. This is just heaping it on." [162] The impact the practice has on these juveniles is likely to be high because of their additional needs. [163]

Furthermore, ***shackling*** may disproportionally impact many status offenders - juveniles who commit an act that is an offense only when committed by a juvenile. Status offenders often commit offenses as a result of victimization at home or in the surrounding environment, such as the girl who runs away from home because of ongoing sexual assault. [164] Researchers have found that "whether a youngster has run away from home, school, or a foster home, one often observes a common underlying motivational element: a physically harmful or otherwise hurtful environment." [165] Therefore, "criminalizing the [juvenile's] self-protective attempt at withdrawal" and then ***shackling*** the juvenile during court appearances doubles the trauma the juvenile is experiencing. [166] Instead of addressing the initial harm through treatment, "the … juvenile justice [system], with the best of intentions, penalizes the victim for having been victimized." [167]

Recognizing the impact ***shackling*** has on juveniles, public defenders offices, legal aid agencies, and bar associations have challenged the practice in both the judicial and legislative branches. For example, in 2007, the Palm Beach County Florida Public Defender filed a lawsuit challenging "the county court's blanket policy of restraining all juveniles with leg irons and handcuffs that are chained to their waists." [168] During the 2007 legislative session, the Connecticut Division of Public Defender Services recommended that the Connecticut legislature prohibit the ***shackling*** of juveniles prior to adjudication of the juvenile as a delinquent. [169] Also in 2007, Legal Aid of North Carolina challenged the Guilford County juvenile court's practice of ***shackling*** all juveniles in court. [170] In 2006, the Florida Bar Association passed a resolution encouraging the

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[158] Id.

[159] See *U.S. Const. amend. XIII, § 1*; *U.S. Const. amend. XIV, § 1*; *U.S. Const. amend. XV, § 1*.

[160] See, e.g., Samantha Miller, Bigotry Hits Students' Door, Daily Iowan, Mar. 3, 2008, at 4 (explaining two African American students at The University of Iowa found racist writings on their door).

[161] Daniel P. Mears, Urb. Inst., Commentary, Treat Mental Illness of Juvenile Offenders, (2002) (arguing that few states take mental illness seriously, and most do not assess the mental health needs of juvenile offenders).

[162] Daube, supra note 13.

[163] Mears, supra note 161.

[164] Ira M. Schwartz et al., Myopic Justice? The Juvenile Court and Child Welfare Systems, 564 Annals Am. Acad. Pol. & Soc. Sci. 126, 138 (1999).

[165] Id.

[166] Id.

[167] Id.

[168] Jane Musgrave, ***Shackling*** of Juveniles in Court Criticized, Palm Beach Post, Aug. 25, 2007, at 3B.

[169] State of Connecticut, Division of Public Defender Services, Recommendations for Statutory Changes (2007), available at *http://www.ocpd.state.ct.us/Content/Annual2006/2006Chap5.htm*.

[170] Jonathan D. Jones, Cuffing Children, Greensboro News & Rec., Feb. 16, 2007, at A1.

legislature to "ban … **[*278]** the indiscriminate use of chains and ***shackles*** in juvenile courtrooms throughout Florida." [171] To date, these legal challenges have been largely unsuccessful in extending the prohibition of ***shackling*** during court appearances without individualized justification afforded adults to juveniles. [172]

B. Justifications for ***Shackling*** Juveniles During Court Appearances

Juvenile courts in over half of the States require the ***shackling*** of all juveniles during court appearances. [173] Oftentimes, the practice is the result of court rules or court order. [174] The most prevalent justifications for the practice are courtroom security and that juveniles pose a flight risk. [175] The proponents of ***shackling*** juveniles during court appearances argue that because of understaffing, juvenile courts are unable to determine which juveniles pose a threat and which do not. [176] Proponents also argue that juveniles are more impulsive than adults, which may make them more of a flight risk than adults. [177] Therefore, the proponents argue that it is more efficient to have a blanket requirement that all juveniles be ***shackled*** when they appear in court. [178]

These arguments are made in a climate of increasing juvenile courts' caseloads. Over the past twenty years, juvenile courts' caseloads have increased substantially. In 2002, juvenile courts handled 1.6 million delinquency cases, an increase of forty-one percent from the 1.1 million cases it handled in 1985. [179] The vast majority of the increased case volume has come in the form of person offenses (113 percent increase from 1985), **[*279]** drug law violation (159 percent increase from 1985), and public order offense cases (113 percent increase from 1985). [180] Declines in caseloads in recent years have tempered this long-term upward trend. For example, from 1997 to 2002, the total number of delinquency cases fell by eleven percent. [181]

Although it is true that juvenile courts are understaffed, [182] the Constitution demands that courts perform their duties, even when staff and resources are limited. [183] Limited resources should not excuse juvenile courts from providing fair, impartial,

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[171] Daube, supra note 13.

[172] Kathleen Chapman , Judges Unlock Some Handcuffs for Teenagers In Court, Palm Beach Post, June 11, 2008, at 1B, available at http://www.palmbeachpost.com/localnews/content/local news/epaper/2008/06/11/0611juvenileshackling.html (explaining juvenile judges in Palm Beach County agreed to allow children to attend some hearings with leg chains, but without handcuffs); Press Release, Legal Aid of North Carolina Responds to Court's Decision to Continue Routine ***Shackling*** Children in Court, Mar. 6, 2007, available at https://legalaidnc.org/Public/Learn/Media Releases/2007 MediaReleases/2007 MediaRelease LANCrespondstoCourtdecisiontoContinueShacklingofChildren Mar 06 07.aspx (explaining the Chief District Court Judge issued an order maintaining the policy of ***shackling*** children while in court).

[173] Moore, supra note 1, at 1A.

[174] Id.

[175] Id.

[176] Id.

[177] Id.

[178] Id.

[179] Snyder & Sickmund, supra note 20, at 157.

[180] Id.

[181] Id.

[182] See Congressional Findings in 42 U.S.C. § 5601.

[183] Farmer v. Brennan, 511 U.S. 825, 853 (1994) (Blackmun, J., concurring) ("The fact that our prisons are badly overcrowded and understaffed may well explain many of the shortcomings of our penal systems. But our Constitution sets minimal standards governing the administration of punishment in this country.").

and just procedures, [184] especially considering the population it serves and the purposes of the juvenile justice system: treatment and rehabilitation. Furthermore, given the goals of the juvenile justice system, it is a poor excuse for not engaging in individual evaluations of whether a specific juvenile should be ***shackled*** or not during a court appearance.

V. The Attorney's Role in Addressing The Issue

As advocates for their clients, attorneys who represent juveniles in juvenile court have an obligation to object to the ***shackling*** of their client during court appearances. [185] This obligation arises from the advocate's responsibility under the American Bar Association's ("ABA") Model Rules of Professional Conduct, adopted by almost all fifty states, to zealously advocate for their clients. [186] To zealously represent her or his client, an **[*280]** attorney must address all of the client's important issues. [187] The issue of whether a juvenile should be ***shackled*** during a court appearance is an important issue for a juvenile. Therefore, attorneys must address this issue to adequately represent their clients.

Juveniles appearing in juvenile court need legal representation not only for the obvious reason - they are in court and need assistant from an attorney to protect their legal rights - but also because they are juveniles. Juveniles are more vulnerable and impressionable than adults. [188] The juvenile justice system was, in fact, developed based on this core idea, namely that:

Children are dependent upon adults; children are in the midst of developing emotionally, morally, and cognitively and, therefore, are psychologically impressionable and behaviorally malleable; children have different, less competent levels of understanding and collateral mental functioning than adults; and, accordingly, unlike adults, children should not be held fully accountable for their behavior. [189]

In addition to being more vulnerable and impressionable than adults, juveniles are less likely to know their legal rights [190] and need effective advocates. Given their vulnerability and need for effective legal counsel, it is imperative that attorneys representing juveniles vigorously advocate for and protect their juvenile client's rights, including being free from ***shackles*** during court appearances.

Attorneys representing juveniles must object to the ***shackling*** of their client during court appearances not only for the reasons stated above, but also because often the ***shackling*** requirement is a local court rule and can be changed by an order from the court. [191] In some instances, state courts have allowed juveniles to appear in court without ***shackles*** after the juvenile's

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[184] Tiffany A. v. Superior Court, *59 Cal. Rptr. 3d 363, 373-75 (Cal. Ct. App. 2007)* ("The juvenile delinquency court may not … justify the use of ***shackles*** solely on the inadequacy of the courtroom facilities or the lack of available security personnel to monitor them… While we are sympathetic to the obligations and responsibility our conclusion may impose upon the juvenile delinquency court, the sheriff's department and the People, those pale in comparison to the values we uphold.") (citations omitted).

[185] Model Rules of Prof'l. Conduct Preamble, R. 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer), R. 1.3. (Diligence) (2008) (requiring attorneys to act with reasonable diligence and promptness in representing a client). Only California, Maine, and New York have not adopted professional conduct rules that follow the format of the ABA Model Rules of Professional Conduct. Id.

[186] Id. Forty-seven states have adopted the Rules in whole or in part.

[187] Id.

[188] Onwudiwe, supra note 4 ("Since youths are relatively powerless in society, they are predisposed to different forms of labels and tags placed on them by adults and other authority figures that exert immense levels of control. In numerous instances, when children are labeled delinquents, they take on like characteristics.") (citation omitted).

[189] Schwartz et al., supra note 164, at 128.

[190] See National Juvenile Defender Center's Campaign for Children's Rights, Gault at 40 Campaign, *http://www.gaultat40.info/* (raising awareness and "drawing attention to the problems children face in the juvenile indigent defense system and [ensuring] that all children will be treated with respect, dignity, and fairness.").

[191] Moore, supra note 1.

attorney properly raised the issue. [192] For example, in Tiffany A. v. Superior **[*281]** Court of Los Angeles County, Tiffany A.'s attorney objected to Tiffany A. appearing at a pre-disposition hearing ***shackled*** with leg irons and requested that she be unshackled. [193] The trial court denied the request. [194] On appeal, the California Court of Appeals ordered the Superior Court of Los Angeles to cease ***shackling*** all juveniles absent an individualized consideration of each child's case. [195] The court specifically noted that "no California state court case has endorsed the use of physical restraints based solely on the defendants' status in custody, the lack of courtroom security personnel, or the inadequacy of the court facilities." [196]

While raising this issue may seem trivial and seem to add an additional undue burden on already over-worked public defenders, it can lead to a positive result, as is evidenced by the state cases that have previously addressed the issue. [197] This positive result includes not only the immediate benefits that juveniles may appear in court without ***shackles***, but also includes long-term benefits such as that the juvenile will not feel that she is being labeled a criminal. [198] Moreover, the additional time and effort needed to request that her client not be ***shackled*** during court appearances is only a slight burden on the juvenile's attorney, as it is clearly within the definition of zealously representing one's client. [199]

Attorneys have the duty to zealously represent their clients. [200] Those attorneys representing juveniles should have a heightened duty, as they are representing not only clients who need legal assistance, but clients who are more vulnerable and impressionable than adults. The attorney's diligence in representing her client's interest, including raising the issue of ***shackling***, in many cases will stop "the [juvenile justice] system [from] criminalizing and, in practice if not in intent, punish[ing their clients], many of whom are **[*282]** victims of familial and other hardships." [201]

VI. Conclusion

Juvenile courts should end the practice of ***shackling*** all juveniles during court appearances. The practice is unnecessary, detrimental to juveniles, and in conflict with international law. Under the current scheme, a previously convicted adult felon may not be ***shackled*** when she appears in court if she is not a flight risk or does not pose a danger to herself or others in the courtroom while a young or first-time status offender may be ***shackled***. This counterintuitive outcome should not be allowed. Instead, juvenile courts should conduct individualized determinations of the dangerousness of a particular juvenile and the flight risk the juvenile poses.

To achieve its goals of rehabilitation and treatment, the juvenile justice system must balance many concerns, including the best interests of the child, courtroom security, and the juvenile's liberty and dignitary interest. However, in balancing these multiple

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[192] See Tiffany A. v. Superior Court, *59 Cal. Rptr. 3d 363 (Cal. Ct. App. 2007); In re Staley, 352 N.E.2d 3, 5-6 (Ill. App. Ct. 1976)* (holding that alleged act of juvenile in aiding and abetting another in beating a teacher at a detention home was not a sufficient basis for requiring juvenile to be ***shackled*** during delinquency proceeding in absence of some specific application of the act to the situation in the courtroom or evidence indicating the likelihood that juvenile would try to escape or attack others in the court or that he would disrupt the proceeding, that evidence respecting fact that juvenile had run away from his home several times before being placed in detention home was not in itself sufficient to support retention of ***shackles***, and that ***shackling*** of defendant, even though proceeding was before the bench, was not harmless error); see also Moore, supra note 1.

[193] Tiffany A., *59 Cal. Rptr. 3d at 366.*

[194] Id.

[195] *Id. at 376.*

[196] *Id. at 372.*

[197] Moore, supra note 1.

[198] Onwudiwe, supra note 4.

[199] Model Rules of Prof'l. Conduct, supra note 185.

[200] Id.

[201] Schwartz et al., supra note 164, at 127.

factors, juvenile courts should not force innocent or even guilty juveniles to bear the entire burden through blanket ***shackling*** rules and practices. Instead, courts should conduct individualized determinations of dangerousness and flight risk to determine whether the court or the juvenile should bear the costs. To be sure, the process of conducting individualized determinations is likely to be costly in terms of both time and resources, especially in understaffed juvenile courts. However, process costs should not excuse juvenile courts from conducting these individual assessments. Because of the highly negative impact this practice has on juveniles, an individual assessment scheme is a more sensible approach to determine whether a particular juvenile should or should not be ***shackled*** during a court appearance.

One relatively easy step juvenile courts could take to move toward individualized assessments of dangerousness and flight risk is to consider factors such as length and seriousness of a juvenile's record. This information is readily available to the court and will allow the court to consider whether or not the particular juvenile is dangerous or a flight risk. Again, this should only be a first step in moving toward individualized assessments of dangerousness and flight risk. However, the result of this initial step would be dramatic. Most first time offenders would not be ***shackled*** during court appearances and some repeat offenders would also not be ***shackled***. This result would be an important part of equalizing the burden that is now borne entirely by juveniles.

Besides maintaining courtroom security by ***shackling*** juveniles deemed dangerous or a flight risk, this more sensible approach will not only **[*283]** maintain courtroom security, as juveniles deemed dangerous or a flight risk would be ***shackled***, it would also maintain the dignity and decorum of the proceedings. More importantly, utilizing this more sensible approach would result in less re-victimization and labeling of juveniles, and would move the juvenile justice system closer to its original mission of treating and rehabilitating juveniles. We can, and we must do better for our children. They deserve our respect and they deserve a chance to learn and grow from their mistakes.

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[Alternative] PROPOSED RULE OF JUVENILE PROCEDURE

Rule 8.18 Routine Use of Restraints prohibited.

8.18(1) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, shall not be used on a detained Child during a court proceeding unless a Juvenile Court Officer determines the use of restraints is necessary due to any of the following exceptional circumstances:

a. The child has a known history of physical violence to others, or behaviors that place others at risk of substantial physical harm.

b. Documented grounds to believe the Child presents as a substantial risk of flight.

c. Documented grounds to show restraints are necessary to prevent physical harm to the Child or another person during the court proceeding.

8.18(2) Once the Juvenile Court Officer has determined that exceptional circumstances are present to justify the use of restraints during court proceedings, the Juvenile Court Officer shall provide notice outlining the circumstances leading to that decision to the Court, the County Attorney, the child's attorney, and person or agency transporting the detained child to the court proceeding in the Child's delinquency case(s), prior to the Child's appearance for court or as soon as practicable.

8.18(3) The Child's attorney and the County Attorney shall have the right to request the Court to review, prior to the child's court proceeding, any decision of the Juvenile Court Officer regarding the use of restraints during the proceeding.

8.18(4) A decision to find an exception to this rule and use restraints shall be made anew by the Juvenile Court Officer prior to every appearance of a detained child in the courtroom, and attendant rationale and documentation shall be made and filed with the court.

8.18(5) Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a child be restrained using fixed restraints to a wall, floor or furniture.

8.18(6) As used in this rule, "detained child" means a child who has been taken into custody pursuant to Iowa Code Section 232.19, or detained in a detention facility pursuant to Iowa Code Sections 232.22 or 232.44.

Dissent

The dissenting vote came from an Assistant Polk County Attorney who represented to the Committee that the comments reflected concerns of the County Attorney Association. Some of the initial concerns that were addressed to the model rule are not applicable to the proposed rule supported by the other members of the Committee.

What works well and might be practical in an urban county like Polk where I work, might be completely impossible to implement in rural county where resources are sometimes more scarce and manpower at a minimum. While we absolutely understand the unique role that the Juvenile Court plays in the rehabilitation of Iowa's delinquent youth, we also play an equally important role in ensuring community safety and must strive to strike a balance in that regard. In addition, there are multiple entities that will be impacted by this proposal who appear to not have a voice on this committee and therefore, I am requesting an opportunity for public comment so that additional information can be considered from those entities that will be impacted. Specifically some of the concerns raised by county attorneys include the following:

- We have concerns about what is meant by "recent" behavior.

- Practically speaking we question how a juvenile's attorney will be allowed the required opportunity to be heard before the court orders the use of restraints. Is this done without the client present who can't enter the courtroom in the restraints? Is this a motion to the Court? Is there a hearing on this matter where the State or JCO get to present information to the Court about why he or she might believe restraints are necessary? Procedurally we believe this process needs additional work to set out the mechanics for obtaining an order authorizing the use of the restraints. *[The Committee believed these concerns were addressed by amendments to the proposed rule.]*

- It appears that a great deal of this proposed rule mirrors some of the requirements for detention and if that is the case, then don't these kids, who meet criteria for detention and have been screened for risk through a detention screening tool, already qualify for restraints? What about a requirement that restraints be used but that the child has the burden of proving that they are not necessary? Once a child is detained and orders are sought for detention, the attorney for the child can file a motion seeking an order that the restraints be removed for Court hearings? There would still be questions under this proposal for the next steps regarding hearing on the issue and what additional time constraints will this rule place on the courts in regards to additional hearing time? *[The Committee did not agree that any child who had been detained should automatically be restrained in court, nor that the burden should be put on the child to seek removal of restraints. The Committee believed the other concerns were addressed by amendments to the proposed rule.]*

- Clearly there appears to be overwhelming support for this proposal among this committee and I absolutely understand the concept and motivation for the proposal, however, I think there is work that can be done to craft a solution that better satisfies all entities that will be impacted by this proposal and I absolutely believe that the input of all impacted

entities must be sought so that we don't end up with a rule and unforeseen consequences that make its implementation nearly impossible. In a perfect world, we would have the manpower and Juvenile Court resources to easily implement this proposal while constantly maintaining child and community safety. Unfortunately, we don't live in that perfect world and we all know too well the limited resources issues we face. For those reasons, I am not in support of the current proposal as it reads but I am open to, and hopeful, that we can find a solution that satisfies, as best possible, all involved in the provision of Juvenile Justice in the state of Iowa.

- Paragraph (1) talks about Juvenile Court Officer determining the use of restraints when paragraph (2) talks about the CA and/or the JCO making that determination. I continue to believe that the decision should be made by the JCO and that the CA and the child's attorney should equally be able to seek review of that decision with the Court. *[The dissenting member submitted changes to the proposed rule, which were not supported by the rest of the Committee.*

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