



May 13, 2015

### Policy Statement

The National Association of Counsel for Children's mission is to improve the lives of children and families by ensuring that legal proceedings produce justice. The NACC also seeks systemic improvement in child and family serving agencies, institutions, and court systems.

In most states, no limits are placed on the shackling of children in juvenile courts. Children who pose no demonstrated risk appear in devices such as leg irons, handcuffs, belly chains, or some combination thereof. This violates due process, puts children at risk of psychological harm, and undermines the rehabilitative mission of the juvenile court.

In the 1700s, as we were adopting our Bill of Rights, the great English legal theorist William Blackstone wrote that even if an individual were under indictment for the highest offense, the individual should not be subject to any manner of shackles or bonds without evidence that there was a danger of escape. To do so would offend the presumption of innocence and the dignity of human beings. Furthermore, the United States Supreme Court has held that unless the shackling pertains to a specific defendant for specific state interests, the Constitution forbids the shackling of a defendant in the sentencing phase (as well as the guilt phase) of a trial.<sup>1</sup>

Specifically addressing children's rights, the U.S. Supreme Court explained in *In re Gault*, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."<sup>2</sup> Nevertheless, children are indiscriminately and routinely shackled in courtrooms across the country every day. Children should be entitled to more protections than adults, not fewer. Shackled children's inability to effectively communicate with counsel, and effectively assist in their defense, is a problem of constitutional significance.<sup>3</sup> Furthermore, the pain, stress and humiliation inherent in shackling can interfere with memory, focus, and even language.

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<sup>1</sup> *Deck v. Missouri*, 544 U.S. 622, 625 (2005).

<sup>2</sup> 387 U.S. 1, 13 (1967).

<sup>3</sup> *In re Derwin Staley*, 352 N.E.2d 3 (Ill. App. Ct. 1976).

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Children who appear in juvenile court are vulnerable. Up to 90% report exposure to at least one traumatic event in their young lives<sup>4</sup>. Many have been involved with the child welfare system as a result of abuse or neglect.<sup>5</sup> Children involved in the juvenile justice system have high rates of mental illness and trauma. One study found that 70 percent of these children meet the criteria for at least one mental health disorder.<sup>6</sup> Leading child and adolescent psychiatrists have testified about the potential of shackling to re-traumatize children and about the particularly damaging effects the practice can have on adolescents, who are at a critical stage of identity development.<sup>7</sup>

The dual mission of the juvenile court is to rehabilitate and to protect public safety. Thus, indiscriminate shackling makes the court less successful.

Restraint of children in legal proceedings should be the rarest of occurrences, only employed when there is credible and documented evidence that failure to physically restrain the child would present an immediate, substantial risk of harm to another individual. Additionally, a child should be entitled to a hearing on the restraint, and the child should not be restrained without specific written findings of fact to justify the restraint as a legitimate security measure after all other less intrusive security measures have been exhausted.

For all of these reasons, the National Association of Counsel for Children strongly opposes the indiscriminate shackling of children in juvenile court.

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<sup>4</sup> Dierkhising, C. et al., Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology*. Vol. 4 (2013) Available <http://www.ejpt.net/index.php/ejpt/article/view/20274>.

<sup>5</sup> Though rates of crossover are universally seen as high, estimates vary widely. Research has put their numbers at 17 to 67 percent of the juvenile justice system. See The Center for Juvenile Justice Reform (CJJR), Georgetown University: Crossover Youth Practice Model.

<sup>6</sup> Dierkhising, C. et al., Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology*. Vol. 4 (2013) Available <http://www.ejpt.net/index.php/ejpt/article/view/20274>.

<sup>7</sup> See affidavits Rosenblitt/Griffin/Ford/Wurm/Bidwell/Beyer/Chapman/Kraus. Available <http://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>

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