

Ending the Indiscriminate Shackling of Youth

The indiscriminate shackling of juveniles is “repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice.”

— Florida Supreme Court, 2009¹

ISSUE

In juvenile courts throughout the nation, children arrive, face full hearings, and depart weighed down by handcuffs, leg irons, and belly chains. They appear this way not because they pose a threat to others in the courtroom or are a flight risk but because most jurisdictions indiscriminately shackle² all youth in juvenile court, often without any probable cause finding that they have committed an offense. The practice of indiscriminately shackling youth in the courtroom is problematic for a number of reasons: (1) it impacts the attorney-client relationship by impeding communication between a child and his or her attorney;³ (2) it runs directly counter to the rehabilitative goals of the juvenile justice system;⁴ (3) it clouds the presumption of innocence and chills due process;⁵ (4) it erodes the dignity of the court;⁶ and (5) it is humiliating and has the potential to harm the normal and appropriate development of youth.⁷

Systematic use of handcuffs, leg irons, and belly chains is not necessary to maintain safety and order in juvenile courts—less restrictive means such as the presence of court personnel, law enforcement personnel, and bailiffs can achieve the same end. For these reasons, and because indiscriminate shackling of youth is inherently dehumanizing, no child should appear in court with shackles unless a judge expressly finds on the record, after full oral argument, that there is no less restrictive means of keeping the youth or the public out of harm’s way or of preventing the youth’s escape.⁸

NATIONAL SNAPSHOT

In recent years, there has been a trend towards eliminating the indiscriminate shackling of youth in juvenile court, with ten states ending the practice since 2007.⁹ Four states have banned indiscriminate shackling of youth by amending court rules,¹⁰ two through litigation,¹¹ three through legislation,¹² and one through formal judicial policy.¹³ However, even after these reforms have taken place, implementation of these new policies has required vigilance on the part of the juvenile defense bar to ensure that shackles are not used indiscriminately on youth clients in court.

States continue to make significant strides towards statewide bans. NJDC supports a national project to end the indiscriminate shackling of youth across the country. The project, the *Campaign Against Indiscriminate Juvenile Shackling*,¹⁴ connects court policy makers, judges, public defenders, advocates, and other stakeholders to effect significant change on this issue.

WORKING INNOVATIONS

Defenders and advocates have worked to end the indiscriminate shackling of youth at both the state and county levels. This work has been effectuated through a variety of means, including creating new laws and statutes and amending court rules and policy manuals. Examples of these reforms include:

- **Boulder, Colorado:** In the spring of 2014, Boulder became the first judicial district in Colorado to officially end the indiscriminate

shackling of children in delinquency court. The new court policy was developed by the Boulder County Juvenile Restraint Task Force, which included representatives from the court, the Boulder Public Defender's Office, the District Attorney's Office, County Commissioners, the Sheriff's Office, the Juvenile Assessment Center, the Center for Juvenile Justice, the private bar, and the County Attorney's Office.

- **Florida:** NJDC's assessment of access to and quality of juvenile defense counsel in Florida¹⁵ revealed that the indiscriminate shackling of youth was rampant across the state. Juvenile defenders mobilized to encourage the end of automatic shackling. They reached out to their local bar associations, focusing on bar committees that worked on child-related issues. At the same time, defenders wrote op-eds and editorials and obtained the support of law professors, pediatricians, and others. Ultimately, the Florida Bar Board of Governors unanimously voted to support a statewide court rule to end indiscriminate shackling. The Florida Supreme Court held oral argument on the proposed rule change and issued an order enacting Rule 8.100, which banned the indiscriminate shackling of youth.¹⁶
- **Massachusetts:** News of Florida's successful anti-shackling legislation took hold in the juvenile defender community. As a result, defenders in Massachusetts first worked to end shackling by filing motions in court on behalf of individual clients. With the help of NJDC and resources from colleagues in Florida, defenders and stakeholders in Massachusetts then initiated a targeted statewide campaign to end automatic shackling of youth. Leading juvenile defense attorneys approached the Chief Juvenile Court Justice with language from Florida's anti-shackling court rule, along with affidavits from child development experts that advocates in Florida had used. The Chief Juvenile Court Justice then revised the *Court Officers Policy & Procedure Manual of the Trial Court of the Commonwealth* to ban indiscriminate youth shackling.¹⁷ The revised *Manual* sets forth the new policy and the factors for judges to consider in deciding whether to shackle a child in court.
- **South Carolina:** NJDC's 2010 juvenile defense assessment¹⁸ found indiscriminate shackling to be a statewide problem in South Carolina. In 2013, legislation introduced by several well-regarded legislators languished in the South Carolina General Assembly. With the tireless leadership of an array of supportive stakeholders, a statewide charge to end the indiscriminate shackling of youth was rejuvenated. The Lawyers Committee for Children's Rights obtained endorsements from the South Carolina Bar, South Carolina Association for Justice, and South

Carolina Association of Criminal Defense Lawyers. Additionally, the Lawyers Committee worked with the State Bar to create and pass a resolution and report that was ultimately circulated among legislators in support of the measure. As a result of the coordinated and complementary efforts of advocates, the bill was successfully reintroduced and passed in 2014, without a single dissenting vote. The governor signed the bill into law, which went into effect the same day.¹⁹

- **Washington:** The fight to end the indiscriminate shackling of youth in Washington began at the county level and ultimately led to a statewide ban on the practice. Attorneys at TeamChild²⁰ and clinicians and students at the Defender Initiative and the Youth Advocacy Clinic at Seattle University School of Law were instrumental in raising awareness and coordinating a concerted effort to end youth shackling across the state. As a result of these efforts, county courts began issuing orders prohibiting the indiscriminate shackling of youth, juvenile defenders began regularly challenging shackling of their clients, and counties began adopting informal or unwritten policies against indiscriminate shackling. Advocates in the state seized this momentum and, with the support of NJDC and the Washington State Bar Association, urged the Washington State Supreme Court to issue a rule against the indiscriminate shackling of youth. Their efforts were successful, and the new rule went into effect in the fall of 2014.²¹

RECOMMENDATIONS FOR REFORM

Indiscriminate shackling of youth unnecessarily humiliates, stigmatizes, and traumatizes young people; impedes the attorney-client relationship; chills due process protections; runs counter to the presumption of innocence; and calls into question the rehabilitative ideals of the juvenile court. In order to stop this practice, NJDC recommends that:

- Bar associations and other professional organizations issue official statements and/or resolutions against the indiscriminate shackling of youth;
- Court administrators and chief judges pass policies, regulations, or court rules to reduce or eliminate this practice;
- Juvenile and family court judges end automatic shackling in their respective courtrooms;
- Juvenile defenders become aware of the effects of shackling on their clients and move to have their clients unshackled in every single case, consistent with best practices; and

- Legislators introduce bills with language similar or identical to that in Washington State and South Carolina, providing that youth will not appear in court wearing any sort of restraint unless a judge, after a full hearing with oral argument, finds on the record that (1) the child poses a threat of serious harm to himself or others or that the child is a real flight risk, and (2) there are no less restrictive means, including adjourning temporarily or having a bailiff present, that would prevent physical harm or flight.

CONCLUSION

The development and implementation of comprehensive court rules, policies, and statutes that end indiscriminate youth shackling are crucial to ensuring the fair treatment of youth in court, as well as their potential for rehabilitation. The automatic and unsupported application of handcuffs, leg irons, and belly chains to children is contrary to the fair administration of justice.

¹ In re Amendments to the Fla. Rules of Juvenile Procedure, 26 So. 3d 552, 556 (2009) (per curiam).

² Indiscriminately shackling youth refers to the blanket policy of shackling youth while they are in the courtroom without first considering whether the individual needs to be restrained. See Kim M. McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, 38 WASH. U. J.L. & POL'Y 213, 215 (2012).

³ The United States Supreme Court confirms that "one of the defendant's primary advantages of being present at the trial, his ability to communicate with his counsel, is greatly reduced when the defendant is in a condition of total physical restraint." *Illinois v. Allen*, 397 U.S. 337, 344 (1970). A youth who is unable to write notes freely or discreetly communicate with his or her attorney during a hearing due to shackled hands is at a disadvantage in the proceedings.

⁴ Rehabilitation has served as the main focus of the juvenile justice system since it was established in the nineteenth century, and the United States Supreme Court has stated that the purpose of the juvenile justice system is "not to fix criminal responsibility, guilt and punishment." *Kent v. United States*, 383 U.S. 541, 554 (1966). Indiscriminately shackling children does just this by making children feel like criminals deserving of guilt and punishment.

⁵ The presumption of innocence is "a basic component of a fair trial," and courts are charged with guarding against its dilution. *Estelle v. Williams*, 425 U.S. 501, 503 (1976). Under this presumption, official suspicion, indictment, custody, and other similar circumstances cannot factor into a guilt determination. *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978). Indiscriminately shackling youth does exactly this.

⁶ The United States Supreme Court has noted that the formal dignity of a courtroom reflects the importance of the case, the gravity of depriving an individual of his or her liberty, and a "seriousness of purpose" that helps to explain the court's ability to inspire confidence and affect behavior. *Deck v. Missouri*, 544 U.S. 622, 631 (2005). It is demeaning and undignified for youth to be required, without reason, to stand in a courtroom in shackles to be judged.

⁷ Affidavit of Dr. Marty Beyer ¶¶ 10-12 (August 2006), <http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf>.

⁸ The decision to shackle a youth in court should not be made by a bailiff or an employee of a detention center.

⁹ These ten states are California, Florida, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Pennsylvania, South Carolina, and Washington. In addition, the Illinois Supreme Court outlawed the practice in 1977, and the Oregon Court of Appeals outlawed the practice in 1995. See *In re Staley*, 364 N.E.2d 72 (Ill. 1977); *State ex rel. Juvenile Dep't of Multnomah Cnty. v. Millican*, 906 P.2d 857 (Or. Ct. App. 1995).

¹⁰ These four states are Florida, New Mexico, Pennsylvania (subsequently codified by statute in 42 PA. CONS. STAT. § 6336.2), and Washington.

¹¹ These two states are California and North Dakota.

¹² These three states are New Hampshire, North Carolina, and South Carolina.

¹³ This state is Massachusetts.

¹⁴ For more information about the Campaign Against Indiscriminate Juvenile Shackling, contact David Shapiro at dshapiro@njdc.info.

¹⁵ NAT'L JUVENILE DEFENDER CTR., FLORIDA: AN ASSESSMENT OF ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (2006).

¹⁶ In re Amendments to the Fla. Rules of Juvenile Procedure, 26 So. 3d 552, 556 (2009) (per curiam).

¹⁷ MICHAEL F. EDGERTON, MEMORANDUM RE: RESTRAINTS IN JUVENILE COURT 1 (February 25, 2010), http://www.njjn.org/uploads/digital-library/resource_1525.pdf.

¹⁸ NAT'L JUVENILE DEFENDER CTR., SOUTH CAROLINA: JUVENILE INDIGENT DEFENSE: A REPORT ON ACCESS TO COUNSEL AND QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS (2010).

¹⁹ Act 186, 2014 S.C. Acts --- (2014) (to be codified at S.C. CODE ANN. §§ 63-19-1435, 24-13-425).

²⁰ TeamChild is a multi-faceted legal organization that uses its expertise and community ties to alleviate and overcome the root causes of youth involvement in the juvenile justice system. It focuses on the collateral consequences of juvenile court involvement, as well as policy issues related to juvenile justice in Washington State.

²¹ WASH. JUV. CT. R. 1.6 (2014).



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The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.