



REPORT AND RECOMMENDATION TO THE KANSAS SUPREME COURT
REGARDING THE INDISCRIMINATE SHACKLING OF YOUTH IN KANSAS COURTS

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In 2014, Kansas Appleseed learned that several district courts in Kansas regularly restrain every youth brought to the court from local juvenile detention facilities. This practice of indiscriminate shackling of youth during court proceedings – which usually involves use of leg irons, belly chains, and handcuffs – raises serious concerns related to the youths’ due process rights and psychological health and offers only de minimis security benefits. This report outlines the findings of Kansas Appleseed’s research into indiscriminate shackling of juvenile defendants in Kansas and offers a recommended Court Rule to create a rebuttable presumption against shackling of juvenile defendants in court.

Findings:

1. Indiscriminate shackling of youth is common in Kansas courts.

In order to determine the prevalence of indiscriminate shackling of juvenile defendants in Kansas courts, Kansas Appleseed distributed surveys to juvenile defense attorneys at a CLE in Topeka on December 12, 2014. Survey respondents, who practiced in Sedgwick, Shawnee, Lyon, Douglas, Johnson, and Wyandotte Counties, all reported observing indiscriminate shackling practices in their district court. Indiscriminate shackling practices ranged from routine use of full shackling gear (including leg irons, belly chains, and handcuffs) to use of only leg irons or handcuffs. In May of 2015, Judge Foster in Johnson County amended policies in his courtroom to require that handcuffs and belly chains be removed from juvenile defendants before they are brought into the courtroom, unless the defendant has been charged with a high-level felony person offense.

Benet Magnuson, Executive Director for Kansas Appleseed, observed two juvenile detention hearings in Sedgwick County on December 9, 2014. The first juvenile defendant on the docket, who appeared to be a young teenage boy under 120 pounds, was brought into the courtroom restrained in leg irons, belly chains, and handcuffs and remained shackled throughout the hearing. The defendant had been securely detained because he had failed to submit his community service paperwork and failed to appear at the previous hearing to discuss the missing paperwork (the defendant’s father took responsibility for the failure to appear, saying he had written down the wrong date). The second defendant on the docket, who appeared to be a teenage girl of average build, was also shackled throughout her hearing in leg irons, belly chains, and handcuffs. She had been securely detained because she had run away from an out-of-home placement; during the hearing, her mother acknowledged an unsafe home environment and asked the court not to send the girl home. The defendant kept her head down throughout the hearing, staring at her hands, which were handcuffed to the chain around her stomach.

2. The American Bar Association, the National Council of Juvenile and Family Court Judges, the American Academy of Child and Adolescent Psychiatry, and other professional associations have adopted resolutions against the indiscriminate shackling of youth in court.

At its February 9, 2015, meeting, the American Bar Association adopted a resolution urging all states to create a presumption against the use of restraints on juveniles in court. (Attachment A to this report) The detailed report accompanying the resolution concludes:

“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.”

Citing similar concerns about the harm of shackling on children’s rights, psychological development, and rehabilitation, as well as the impact on the public’s confidence in the justice system, the National Council of Juvenile and Family Court Judges, the American Academy of Child and Adolescent Psychiatry, the American Orthopsychiatric Association, the Child Welfare League of America, the National Center for Mental Health & Juvenile Justice, and the National Association of

Counsel for Children have issued position papers calling for court rules or legislation against automatic shackling of children. (Attachments B - G)

3. Increasingly, state supreme courts and legislatures are banning indiscriminate shackling of juvenile defendants in court.

Supreme courts in seven states and the District of Columbia¹ have adopted court rules that ban indiscriminate shackling of juvenile defendants, including three new court rules banning the practice – in Alaska, Connecticut, and the District of Columbia – within the past year. (Attachments H - O) Legislatures in seven additional states² have enacted statutes that ban indiscriminate shackling of juvenile defendants in court, including four new statutes – in Utah, Nebraska, Indiana, and Nevada – within the past year. (Attachments P - V) On August 25, 2015, Maine’s Supreme Judicial Court issued a proposed court rule banning indiscriminate shackling of youth in court. (Attachment W)

Courts and legislatures are increasingly turning to court rules and statutes to ban indiscriminate shackling because district-by-district policies have proven confusing and inconsistent. In Oregon, for example, despite a 1995 ruling by the state’s appellate court against indiscriminate shackling of juvenile defendants,³ shackling practices and policies vary widely among district courts and sometimes even among judges within a district. (Attachment X)

4. Indiscriminate shackling is very damaging to youth, families, and the judicial system.

Adolescence is a critically important time of cognitive and emotional development, and shackling of a youth is likely to cause serious psychological harm with repercussions for the safety and health of the youth and the youth’s family, as well as the effectiveness and the public image of the judicial system. The American Academy of Child and Adolescent Psychiatry policy statement mentioned in section two above calls indiscriminate shackling of youth “unnecessarily demeaning, humiliating and stigmatizing.” (Attachment C) Several experts on youth development have spoken out against shackling of juvenile defendants because it is psychologically damaging, interferes with a youth’s ability to participate in his or her defense, and increases the likelihood that the child will act disruptively in the future. (Attachments Y - DD) As Dr. Gwen Wurm notes in her affidavit:

“A picture of someone shackled is meant to convey a sense of danger, of a contained beast. This image is frequently utilized in movies and television. It is a picture of someone feared. An adolescent with a forming identity cannot easily shrug off this image of himself. Rather, it becomes integrated in his own identity formation, possibly influencing his behavior and responses in the future.

Being shackled is a humiliating experience. Adolescents are already intently focused on how others perceive them. The shame of appearing in front of strangers and family alike in shackles can have a damaging and even permanent effect on a young person’s concept of self.” (Attachment Y)

5. A court rule creating a presumption against shackling of youth will not harm court security.

No jurisdiction that has eliminated indiscriminate juvenile shackling has reported a decrease in courtroom security. Miami-Dade County, Florida, for example, eliminated indiscriminate juvenile shackling in 2006; a 2011 report on that county’s juvenile court found that more than 20,000 children appeared in the court without restraints between 2006 and 2011, and no child harmed anyone or escaped from court during those years. (Attachment EE) Judge Foster in Johnson County, Kansas, similarly reports that there has been no decrease in security in his courtroom since May, when he ordered that children not be restrained by belly chains or handcuffs in his courtroom. Judge Foster told Kansas Applesseed he has found the policy change in his courtroom has made for a better courtroom process and he sees no reason for the shackles.

¹ Alaska, Connecticut, Florida, Massachusetts, New Mexico, Pennsylvania, Washington, and Washington, D.C.

² Indiana, Nebraska, Nevada, New Hampshire, North Carolina, South Carolina, and Utah

³ *State ex rel. Juvenile Dep’t of Multnomah Cnty. v. Millican*, 906 P.2d 857, 859 (Or. Ct. App. 1995)

Recommendation:

Based on the findings above, Kansas Applesseed recommends the Kansas Supreme Court adopt a rule that creates a presumption against the use of restraints on juveniles in court and that permits a court to allow the use of restraints on a juvenile only after providing the juvenile's attorney 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.

Recommended Language for Court Rule:

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.