

# A Sentence Before Trial: The Practice of Indiscriminate Use of Shackles on Kansas Children and its Harm

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## Executive Summary:

Kansas allows for the indiscriminate use of shackles on children appearing in courtrooms. Shackling is the practice of using restraints such as handcuffs, leg irons, or belly chains on children appearing in courtrooms.<sup>1</sup> The American Bar Association, the Child Welfare League of America, the National Council of Juvenile and Family Court Judges, the National Center for Mental Health and Juvenile Justice, the American Academy of Child and Adolescent Psychiatry, medical professionals, attorneys, youth advocates, and other states all agree that the indiscriminate use of shackles on children in courtrooms must end due to the legal, mental, and physical harm causes children.<sup>2</sup> Still Kansas children are routinely subjected to this practice.

In a recent study of the Kansas youth justice system, researchers asked adults involved in the justice system (e.g. judges, attorneys, and probation officers) about the practice of using shackles on youth appearing in courts. Their responses highlight the banality of this practice in Kansas courtrooms and the harm it is doing:

- “Do I think shackling is detrimental to them [youth]? I hadn’t thought about it. I’m numb to it.”
- “Communication is key and you cannot communicate when a kid is shackled. Shackling is a sentence. I am trying to build them up and not break them down.”

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<sup>1</sup> The Gault Center. “Issues: Shackling.” 2024. <https://www.defendyouthrights.org/issues/shackling>

<sup>2</sup> Grace, M. P. (2015). National Center for Mental Health and Juvenile Justice policy statement on indiscriminate shackling of juveniles in court. Delmar, NY: National Center for Mental Health and Juvenile Justice, Policy Research Associates. <https://www.prainc.com/resource-library/>; American Academy of Child and Adolescent Psychiatry. “Mandatory Shackling In Juvenile Court Settings.” 2024. [https://www.aacap.org/aacap/Policy\\_Statements/2015/Mandatory\\_Shackling\\_in\\_Juvenile\\_Court\\_Settings.aspx](https://www.aacap.org/aacap/Policy_Statements/2015/Mandatory_Shackling_in_Juvenile_Court_Settings.aspx); National Council of Juvenile and Family Court Judges. “Resolution Regarding Shackling of Children in Juvenile Court.” 2015. <https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-shackling-of-children-in-juvenile-court.pdf>; American Bar Association. “Report to the House of Delegates, Resolution: 107A.” 2015. <https://dam.assets.ohio.gov/image/upload/opd.ohio.gov/Law%20Library/Juvenile/For%20Attorneys/25%20ABA%20Report%20%20Resolution.pdf>; National Juvenile Defender Center. “Issue Brief: Campaign Against Indiscriminate Juvenile Shackling.” 2016. [https://www.defendyouthrights.org/wp-content/uploads/NJDC\\_CAIJS\\_Issue-Brief.pdf](https://www.defendyouthrights.org/wp-content/uploads/NJDC_CAIJS_Issue-Brief.pdf)

- “The biggest issue here is the impact on the child and their families. It’s traumatic and dehumanizing.”<sup>3</sup>

Despite the clear and recognized harm this practice does to Kansas children, the state has not made substantial progress in changing policies and practices around shackling children in courtrooms. This is despite the practice not improving safety and going against best practices:

- Children pose little to no threat to the adults they are coming into contact with when they are in court. The vast majority of children are appearing in court for lesser, non-violent crimes and pose little safety risk to themselves or others.<sup>4</sup>
- Kansas is one of only 11 states that doesn’t have some sort of law or rule to protect youth from the same practice.<sup>5</sup> Other states have looked at expert research and best practices that show the legal, mental, and physical harm the practice of indiscriminate shackling does to the children in custody.
- States that have ended indiscriminate shackling of children in courts have found it has a positive impact on the youth court appearance without negatively affecting safety.<sup>6</sup>

In 2016, Kansas committed to a rehabilitative youth justice system with long overdue, sweeping policy reforms to the youth justice system. The continued shackling of children in courts is counterproductive to the commitment and goals of that rehabilitative justice system. Rather than increasing public safety, it is doing real and lasting harm to Kansas children. Research shows indiscriminate shackling of youth leads to retraumatization and shame, and increases recidivism of youth involved in the justice system. Shackling leads to greater psychological harm to Black, Latino, and Indigenous youth and their families, who are overrepresented in the youth justice system.

Shackling also denies children their legal rights. Adults have legal protections against indiscriminate shackling, but youth in Kansas aren’t afforded these same protections. The US Supreme Court has established a clear presumption against adult shackling due to the legal harm it causes.<sup>7</sup> Still, children in Kansas face hearings shackled or restrained in some way, impeding their legal rights.

Kansas Legislators have had the opportunity to correct this demeaning practice and align youth justice practices with adult justice system practices and protections, but have yet to do so. It is

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<sup>3</sup> The Gault Center (National Juvenile Defender Center). “Limited Justice: An Assessment of Access to and Quality of Juvenile Defense Counsel in Kansas.” October 2020.

<https://www.defendyouthrights.org/wp-content/uploads/Kansas-Assessment-Web.pdf>

<sup>4</sup> This calculation excludes Child In Need of Care (CINC) intake cases. When those cases are included in the total, misdemeanors are still the majority of youth intakes at 58%. KDOC. Annual Reports Dashboard. Juvenile Report Home Page—Juvenile Intakes by Crime Type. <https://dashboards.doc.ks.gov/dashboards/view>

<sup>5</sup> The Gault Center. “Unshackle the Children: A National Overview of State Implementation Experiences.” 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf); Anne Teigen. National Conference of State Legislatures. “States that Limit or Prohibit Juvenile Shackling and Solitary Confinement.” 2022. <https://www.ncsl.org/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement>

<sup>6</sup> The Gault Center. “Unshackle the Children: A National Overview of State Implementation Experiences.” 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>7</sup> Deck v. Missouri. 544 U.S. 622, 631-35 (2005); Illinois v. Allen. 397 U.S. 337, 344 (1970).

our policy recommendation that Kansas pass a presumption against the use of restraints on youth in the courtroom. Further, this should be done through a statewide policy change with an oversight mechanism. This is the most effective way to end this harmful practice.

## Background

The practice of in-court youth shackling involves using chains, leg irons, handcuffs, and/or restraints on youth in the courtroom for hearings or other official matters. Those shackling devices can weigh up to 25 pounds.<sup>8</sup> That means boys and girls who are still mentally developing and physically growing are being weighed down as they face a legal system of which they likely have little understanding. Indiscriminate shackling is allowing shackling to occur without a specific safety or security reason or judgment.

### Children likely pose little threat to the adults they are coming into contact with when they are in courts.

- For a reference point, the average height of boys aged 12 to 14 in the United States is 5'4", and their average weight is 127 pounds. For American girls aged 12 to 14 years old, the average height is 5'2", with an average weight of 125 pounds.<sup>9</sup> In comparison, the average American male 20 and older is 5'9" and 200 pounds, and the average American female 20 and older is 5'4" and 171 pounds.<sup>10</sup>
  - In 2024, of the 7,600 youth intakes in Kansas, 2,600 were female and 5,000 were male.
  - Ages of those Kansas children in correctional facilities ranged from 13 through 22, with most being 15 to 18 years old.<sup>11</sup>
- Not only are the children not a threat based on their size, but they are also likely there for misdemeanor offenses. In 2024, 74% of all juvenile cases (8,750 out of 11,900 cases) in Kansas were for misdemeanors.<sup>12</sup> Misdemeanors are lesser crimes, such as shoplifting, disorderly conduct, possession of alcohol, curfew violations, truancy vandalism, and trespassing.<sup>13</sup> These are not violent, hardened criminals being weighed down and humiliated with shackling, but children whose brains and decision-making facilities are still developing.

<sup>8</sup> The Crime Report. "Why Do We Still Shackle Kids?" 2015.

<https://thecrimereport.org/2015/06/15/2015-06-why-do-we-still-shackle-kids/>

<sup>9</sup> Fryar, C. D., Kruszon-Moran, D., Qiuping, G., Carroll, M., & Ogden, C. L. "National Health Statistics Reports: Mean Body Weight, Height, Waist Circumference, and Body Mass Index Among Children and Adolescents: United States, 1999-2018." US Department of Health and Human Services, Center for Disease Control and Prevention. 2021.

<https://www.cdc.gov/nchs/data/nhsr/nhsr160-508.pdf>

<sup>10</sup> CDC. National Center for Health Statistics. Body Measurements.

<https://www.cdc.gov/nchs/fastats/body-measurements.htm>

<sup>11</sup> This calculation excludes Child In Need of Care (CINC) intake cases. KDOC. Annual Reports Dashboard. Juvenile Report Home Page—Juvenile Intakes by Crime Type. <https://idashboards.doc.ks.gov/idashboards/view>.

<sup>12</sup> This calculation excludes Child In Need of Care (CINC) intake cases. When those cases are included in the total, misdemeanors are still the majority of youth intakes at 58%. KDOC. Annual Reports Dashboard. Juvenile Report Home Page—Juvenile Intakes by Crime Type. <https://idashboards.doc.ks.gov/idashboards/view>.

<sup>13</sup> Kansas Court Records. Juvenile Court Records. <https://kansascourtrecords.us/family-court-records/find/juvenile/>; Kansas Judicial Branch. "2024 Juvenile Justice Code Book." 2024.

<https://kscourts.gov/KSCourts/media/KsCourts/Trial%20court%20programs/JO-Code-Book.pdf>

## The Problem

### Other states, experts, and best practices all agree that the indiscriminate shackling of children must end.

The American Bar Association, the National Council of Juvenile and Family Court Judges, the National Center for Mental Health and Juvenile Justice, the American Academy of Child and Adolescent Psychiatry, and other professional organizations and experts all support the end of indiscriminate shackling of children in courtrooms.<sup>14</sup> All these experts cite research that shows the legal, mental, and physical harm the practice of indiscriminate shackling does to the children in custody.

Many other states have taken the advice of these experts and implemented policies and laws to align with best practices and policy recommendations. Kansas is one of only 11 states that doesn't have some sort of law or rule to protect youth from this practice.<sup>15</sup> Other states that have ended indiscriminate shackling of children in courts have found it has had a positive impact on the youth court appearance without harming safety. A recent study was conducted of 29 states that have a statute, court rule, or administrative order limiting the indiscriminate shackling of youth in court. Those states reported that the presumption against shackling did not create or increase safety risk and that the demeanor of children in the court improved when they were not shackled.<sup>16</sup> For example:

- In 2006, the Miami-Dade Public Defender's Office successfully challenged the practice of requiring all children be shackled in court. Since that time, over 20,000 children have been brought to court without shackles. There have been no incidents of a child harming someone or escaping from court.<sup>17</sup>

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<sup>14</sup> Grace, M. P. (2015). National Center for Mental Health and Juvenile Justice policy statement on indiscriminate shackling of juveniles in court. Delmar, NY: National Center for Mental Health and Juvenile Justice, Policy Research Associates. <https://www.prainc.com/resource-library/>; American Academy of Child and Adolescent Psychiatry. "Mandatory Shackling In Juvenile Court Settings." 2024. [https://www.aacap.org/aacap/Policy\\_Statements/2015/Mandatory\\_Shackling\\_in\\_Juvenile\\_Court\\_Settings.aspx](https://www.aacap.org/aacap/Policy_Statements/2015/Mandatory_Shackling_in_Juvenile_Court_Settings.aspx); National Council of Juvenile and Family Court Judges. "Resolution Regarding Shackling of Children in Juvenile Court." 2015. <https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-shackling-of-children-in-juvenile-court.pdf>; American Bar Association. "Report to the House of Delegates, Resolution: 107A." 2015. <https://dam.assets.ohio.gov/image/upload/opd.ohio.gov/Law%20Library/Juvenile/For%20Attorneys/25%20ABA%20Report%20%20Resolution.pdf>

<sup>15</sup> The Gault Center. "Unshackle the Children: A National Overview of State Implementation Experiences." 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf); Anne Teigen. National Conference of State Legislatures. "States that Limit or Prohibit Juvenile Shackling and Solitary Confinement." 2022. <https://www.ncsl.org/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement>

<sup>16</sup> The Gault Center. "Unshackle the Children: A National Overview of State Implementation Experiences." 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>17</sup> Martinze, C. J. "Policy Report: Unchain the Children: Five Years Later in Florida." 2011. <https://www.defendyouthrights.org/wp-content/uploads/Martinez-Unchain-the-Children-Five-Years-Later-in-Florida-2011.pdf>

- In Connecticut, after the state ended indiscriminate youth shackling, 94% of youth appeared in court without shackles, and only one youth made an escape attempt.<sup>18</sup>
- Survey participants in a recent study noted that unshackled youth were less distracted and better able to participate in hearings, including being able to write questions for their attorney during court appearances.<sup>19</sup>

### **Still, shackling is happening to Kansas children with high frequency.**

Despite the repeated documentation of the harm shackling causes, Kansas remains one of the states that does not prohibit indiscriminate shackling of children appearing in court. The National Juvenile Defender Center observed numerous court hearings in Kansas and found in every instance the youth was shackled regardless of their accused crime. They found that Kansas children were often shackled with leg irons, handcuffs, and belly chains. The children remained fully shackled throughout the entirety of their hearings, with no one advocating on behalf of the children to be unshackled at any point during the hearing. Some specific examples include:

- One court observer mentioned that the child was shackled and barefoot during their hearing.
- Another noted that three children were chained together and had to sit fully shackled and chained together for three unrelated hearings.
- In another instance, the judge released a youth from detention, but the youth remained shackled to be transported back to the detention center for exit processing.

This practice is so commonplace in Kansas that defense attorneys for children don't even register it is happening to their clients. They have reported being numb to it or not even aware that it is happening.<sup>20</sup>

Shackling of kids in Kansas courts also disproportionately affects and harms Kansas children of color. Court observers noted that in 20 youth hearings they watched where a child was shackled, six were white, eight were Black, and six were Latino. Although that initially appears to be relatively similar numbers across the three races, it is alarming when contextualized in the state's overall population. Only about 6% of Kansas' population is Black and about 12% Latino, while 76% of the population is white.<sup>21</sup>

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<sup>18</sup> The Gault Center. "Unshackle the Children: A National Overview of State Implementation Experiences." 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>19</sup> The Gault Center. "Unshackle the Children: A National Overview of State Implementation Experiences." 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>20</sup> The Gault Center (National Juvenile Defender Center). "Limited Justice: An Assessment of Access to and Quality of Juvenile Defense Counsel in Kansas." October 2020. <https://www.defendyouthrights.org/wp-content/uploads/Kansas-Assessment-Web.pdf>

<sup>21</sup> The Gault Center (National Juvenile Defender Center). "Limited Justice: An Assessment of Access to and Quality of Juvenile Defense Counsel in Kansas." October 2020. <https://www.defendyouthrights.org/wp-content/uploads/Kansas-Assessment-Web.pdf>

## Impact on Kansas Children

### **A rehabilitative youth justice system should help children, not retraumatize them.**

Research shows that most children involved in detention have witnessed family or community violence. Youth in the justice system, overall, have experienced more trauma than their peers. A rehabilitative justice system should use trauma-informed practices. Among those is the need to avoid “trauma reminders.” Shackling is one of these trauma reminders as their use sends the message to youth that they are dangerous or damaged. It is taking bodily autonomy and control from children. This is especially harmful and re-traumatizing to youth who have experienced abuse.<sup>22</sup>

In 1967, the U.S. Supreme Court ruled in *Gault* that every state must have a juvenile or family court because children have different needs than those of adults in the criminal justice system. *Gault* made clear that the juvenile system was to treat and rehabilitate children rather than punish them. Therefore, the criminal implications that indiscriminate shackling implies undermine the *Gault* ruling.<sup>23</sup>

In 2016, the Kansas legislature further committed to *Gault*'s rehabilitative youth justice system vision with landmark youth justice reforms. Prior to 2015, Kansas had an alarming number of children held in correctional facilities. A work group discovered this was occurring due to a lack of evidence, community-based interventions for children involved in the justice system, and no standardized statewide practice for the youth justice system. As a result, bipartisan efforts passed reforms in Kansas. These reforms promised to reduce the number of children incarcerated and to invest in community-based interventions to focus on services and rehabilitation rather than punishment.<sup>24</sup> Allowing for indiscriminate shackling breaks this promise lawmakers made to Kansas children. From the start of their involvement with the justice system, children in Kansas are treated as dangerous criminals.

**Shackling is counterproductive. Rather than increasing safety, it is doing real and lasting harm to Kansas children.** Research shows indiscriminate shackling of youth leads to retraumatization and shame, and increases recidivism of youth involved in the justice system. Experts and medical professionals agree that public shackling is inherently shame-producing and humiliating. This is even more acute in children and adolescents who are vulnerable to

<sup>22</sup> Ibid.

<sup>23</sup> McLaurin, K. M. “Children in Chains: Indiscriminate Shackling of Juveniles.” *Washington University Journal of Law and Policy*. 2012.

[https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1018&context=law\\_journal\\_law\\_policy](https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1018&context=law_journal_law_policy); Rabinowitz, L. “Due Process Restrained: The Dual Dilemmas of Discriminate and Indiscriminate Shackling in Juvenile Delinquency Proceedings.” *Boston College Third World Law Journal*. 2009.

<https://lira.bc.edu/files/pdf?fileid=96ee0b70-b6ac-498f-ae75-04f7fa36a8a9>; American Bar Association. “Report to the House of Delegates, Resolution: 107A.” 2015.

<https://dam.assets.ohio.gov/image/upload/opd.ohio.gov/Law%20Library/Juvenile/For%20Attorneys/25%20ABA%20Report%20%20Resolution.pdf>; The Gault Center. “Unshackle the Children: A National Overview of State Implementation Experiences.” 2024.

[https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>24</sup> Pew Charitable Trusts. “Kansas’ 2016 Juvenile Justice Reform.” 2017.

[https://www.pewtrusts.org/~media/Assets/2017/06/PSPP\\_Kansas\\_2016\\_Juvenile\\_Justice\\_Reform\\_brief.pdf](https://www.pewtrusts.org/~media/Assets/2017/06/PSPP_Kansas_2016_Juvenile_Justice_Reform_brief.pdf)



lasting harm from humiliation and shame. Shackling labels children as dangerous, and they are likely to react negatively to being stigmatized. That has lasting adverse effects on self-identity formation, which are especially crucial during the teenage years of development.<sup>25</sup>

The lack of self and community identity that shackling produces in children could lead to more oppositional behavior. Researchers explain that these behaviors occur because children have noncompliant reactions in an attempt to regain control and counteract the humiliation and powerlessness that shackling produces. This body of research shows that children who view the justice system's treatment of them as fair have lower recidivism rates.<sup>26</sup> Fair treatment is treatment that does not involve shackling youth with no apparent justification. Shackling's negative impact on children's development is increasing recidivism. This does not help to achieve the goal of keeping communities safe and children out of the justice system.

**Shackling has greater psychological harm on Black, Latino, and Indigenous youth and their families.** The youth justice system is filled with racial disparities, including higher arrest rates, fewer opportunities for diversion, and higher likelihood of being incarcerated for Black, Latino, and Indigenous youth. These disparities persist despite research showing no differences in the behavior of children across racial and ethnic groups. The overrepresentation of children of color in the legal system means they are more likely to face shackling than their white peers when in a courtroom. Additionally, when they experience shackling, a growing amount of research shows that the effects of policing and restraining on Black, Latino, and Indigenous youth lead to heightened emotional distress and trauma for those youth. For example, Black youth who are shackled in court experience the painful reminder of slaves on an auction block, not a child who should be presumed innocent in a court of law.<sup>27</sup>

## Legal Implications

**Shackling denies children their legal rights.** Adults have legal protections against indiscriminate shackling, but youth in Kansas don't. The US Supreme Court has established a clear presumption against adult shackling, due to the legal harm it causes.<sup>28</sup> Still, children in Kansas face hearings shackled or restrained in some way. This impedes their ability to have a fair hearing in several ways:

<sup>25</sup> Gorman, D. Q. "Juvenile Shackling Reform: The Judicial Role in Ensuring Trauma-Informed Courts and Why States are Rethinking Restraints." *Juvenile and Family Court Journal*. 2015.

<sup>26</sup> Gorman, D. Q. "Juvenile Shackling Reform: The Judicial Role in Ensuring Trauma-Informed Courts and Why States are Rethinking Restraints." *Juvenile and Family Court Journal*. 2015; Fassler, D. "Mandatory Shackling in Juvenile Court Settings." *American Academy of Child and Adolescent Psychiatry*. 2015.

[https://www.aacap.org/aacap/Policy\\_Statements/2015/Mandatory\\_Shackling\\_in\\_Juvenile\\_Court\\_Settings.aspx](https://www.aacap.org/aacap/Policy_Statements/2015/Mandatory_Shackling_in_Juvenile_Court_Settings.aspx); Almonte, M. "What's Safety Got to Do With It? Why We Shouldn't Be Shackling Youths (or Anyone) in Michigan." *Michigan Journal of Race and Law*. 2020. <https://mjrl.org/2020/04/22/whats-safety-got-to-do-with-it-why-we-shouldnt-be-shackling-youths-or-anyone-in-michigan/>; Child Welfare League of America (CWLA). "CWLA Policy Statement: Juvenile Shackling." 2015.

<https://www.cwla.org/cwla-policy-statement-juvenile-shackling/>; McLaurin, K. M. "Access to Justice: Evolving Standards in Juvenile Justice: From *Gault* to *Graham* and Beyond: Children In Chains: Indiscriminate Shackling of Juveniles." *Washington University Journal of Law and Policy*. 2012.

<sup>27</sup> The Gault Center. "Unshackle the Children: A National Overview of State Implementation Experiences." 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>28</sup> *Deck v. Missouri*. 544 U.S. 622, 631-35 (2005); *Illinois v. Allen*. 397 U.S. 337, 344 (1970).

- Contradicting the presumption of innocence: Studies show that a child appearing in restraints may face a biased judge or jury.<sup>29</sup>
- Impeding the attorney-client relationship: Research shows that children and teens already have difficulty developing trust and open communication needed to establish a successful attorney-client relationship. A child in handcuffs has even less ability to navigate that relationship.<sup>30</sup>
- Limiting the ability of the child to participate in their own defense: The psychological effects of shackling undermine the child's mental state during a hearing. Studies have found children may be preoccupied by the shame they are feeling from restraints, which affects their ability to understand the courtroom proceedings fully. Shackling may also interfere with their ability to communicate with their attorney.<sup>31</sup>

These interferences with a fair justice system are the same basis that led to the Supreme Court ruling against the indiscriminate use of shackles for adults.<sup>32</sup>

**Kansas Legislators have had the opportunity to correct this demeaning practice and align youth justice practices with adult justice system practice and protections, but have yet to do so.**

During the 2022 and 2023 legislative sessions, Legislators had the opportunity to end the practice of youth shackling, yet they allowed multiple bills to die in committee. Justice-involved youth are children. The U.S. Supreme Court protects adults from the legal harm this practice imposes. Children need the same protections, and Kansas Legislators can take action to make it happen.

## **Call to Action: Policy Recommendation**

**It is our policy recommendation that Kansas pass a presumption against the use of restraints on youth in the courtroom.**

<sup>29</sup> Gorman, D. Q. "Juvenile Shackling Reform: The Judicial Role in Ensuring Trauma-Informed Courts and Why States are Rethinking Restraints." *Juvenile and Family Court Journal*. 2015; McLaurin, K. M. "Access to Justice: Evolving Standards in Juvenile Justice: From *Gault* to *Graham* and Beyond: Children In Chains: Indiscriminate Shackling of Juveniles." *Washington University Journal of Law and Policy*. 2012; Gilber, C. J. "Shackling Fact Sheet." n.d. <https://olis.oregonlegislature.gov/liz/2017R1/Downloads/CommitteeMeetingDocument/125087>

<sup>30</sup> Ibid.

<sup>31</sup> Gorman, D. Q. "Juvenile Shackling Reform: The Judicial Role in Ensuring Trauma-Informed Courts and Why States are Rethinking Restraints." *Juvenile and Family Court Journal*. 2015; Fassler, D. "Mandatory Shackling in Juvenile Court Settings." *American Academy of Child and Adolescent Psychiatry*. 2015. [https://www.aacap.org/aacap/Policy\\_Statements/2015/Mandatory\\_Shackling\\_in\\_Juvenile\\_Court\\_Settings.aspx](https://www.aacap.org/aacap/Policy_Statements/2015/Mandatory_Shackling_in_Juvenile_Court_Settings.aspx); Almonte, M. "What's Safety Got to Do With It? Why We Shouldn't Be Shackling Youths (or Anyone) in Michigan." *Michigan Journal of Race and Law*. 2020. <https://mjrl.org/2020/04/22/whats-safety-got-to-do-with-it-why-we-shouldnt-be-shackling-youths-or-anyone-in-michigan/>; Child Welfare League of America (CWLA). "CWLA Policy Statement: Juvenile Shackling." 2015. <https://www.cwla.org/cwla-policy-statement-juvenile-shackling/>; McLaurin, K. M. "Access to Justice: Evolving Standards in Juvenile Justice: From *Gault* to *Graham* and Beyond: Children In Chains: Indiscriminate Shackling of Juveniles." *Washington University Journal of Law and Policy*. 2012.

<sup>32</sup> *Deck v. Missouri*. 544 U.S. 622, 631-35 (2005); *Illinois v. Allen*. 397 U.S. 337, 344 (1970).



- This policy change would protect Kansas children from lasting harm, and bring the state into line with best practices and the majority of other states.
- The policy would allow a court to only use restraints in the courtroom after providing the youth with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the youth or others.
- If an official recommends the use of restraints on a youth, those officials must provide written notice to the court and the youth’s attorney of the specific circumstances that support such recommendation. This notice shall also be made part of the record.
- Youth restraint recommendations should only allow for the least restrictive restraints necessary. The recommendations cannot affect the youth’s ability to move their hands to read, handle documents, and write during their hearing. This restriction on restraints includes youths being restrained to a wall, floor, another youth, or furniture during court hearings.

**Statewide policy change is the most effective way to end this harmful practice.**

- This policy recommendation should be implemented at the state level, preferably through statute, to ensure oversight and enforcement of this protection of Kansas children and their rights. Without statewide reform and oversight, Kansas children will experience a different justice system based solely on geography. All Kansas children deserve the same opportunities to learn from their mistakes and become thriving adults.
- A recent study found that states that did not have clear statewide laws or rules allowed for children to be still shackled. Meaning when left up to individual jurisdictions to make rules about shackling practices, many still allowed it to occur.<sup>33</sup>
- Additionally, part of those state rules must include oversight and compliance. Without statewide rules that are enforceable, the study found individuals, courts, or jurisdictions would still allow indiscriminate shackling of children in courts.<sup>34</sup>

Until legislative action is taken, individual courts and judicial districts can and should adopt these policies and practices. Ultimately though, Kansas as a state must commit to ensuring the safety and rights of vulnerable children. Without these protections, Kansas courts may set children up against unnecessary challenges to untangling themselves from the consequences of poor decision making.




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<sup>33</sup> The Gault Center. “Unshackle the Children: A National Overview of State Implementation Experiences.” 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)

<sup>34</sup> The Gault Center. “Unshackle the Children: A National Overview of State Implementation Experiences.” 2024. [https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children\\_Final.pdf](https://www.defendyouthrights.org/wp-content/uploads/Unshackle-the-Children_Final.pdf)