



PROTECTING KIDS. PROVIDING HOPE.

June 16, 2019

The Honorable [REDACTED]  
The Honorable [REDACTED]  
Supreme Court of Georgia  
244 Washington Street, Room 572  
Atlanta, Georgia 30334

**Re: Proposed Rule on Juvenile Shackling**

Dear [REDACTED] and [REDACTED]

Children's Rights is a national advocate for youth in child welfare and juvenile justice systems with offices in New York City and Atlanta. Since 1995, Children's Rights has served as a national watchdog organization, fighting to protect and defend the rights of young people, because we believe that children have the right to the best possible futures. In addition to our direct advocacy on behalf of criminal justice involved youth, our wide-ranging work involving the child welfare system frequently brings us into contact with the juvenile justice system, as foster children are disproportionately represented in that population.

We applaud the Georgia Council of Juvenile Court Judges (CJCJ) for taking up the critical issue of courtroom shackling of justice-involved youth. The CJCJ's proposal that the use of physical restraints in juvenile courtrooms be governed by individual Court order or formalized local protocol is an important step in the right direction. Still, we believe that the proposed rule, as written, lacks certain essential requirements. Consistent with the resolution passed by the House of Delegates of the American Bar Association (ABA) in 2015, we write to strongly urge the CJCJ to revise the proposed rule, at minimum, "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 in-person 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.”<sup>1</sup> Further, in opposing the use of restraints, the juvenile must have the right to be represented by counsel.<sup>2</sup>

In *Deck v. Missouri*, the U.S. Supreme Court reaffirmed that defendants have a right to be free from physical restraints, except in limited circumstances.<sup>3</sup> In doing so, the Court explained that this principle has “deep roots in the common law,” dating back at least as far as Blackstone’s Commentaries on the Laws of England.<sup>4</sup> Absent a rigorous showing of a need in a particular case, the Court recognized that shackling: (1) “undermines the presumption of innocence and the related fairness of the factfinding process”; (2) “diminishes th[e] right” to counsel by “interfer[ing] with” a defendant’s “‘ability to communicate’ with his lawyer”; (3) “interfere[s] with a defendant’s ability to participate in his own defense”; and (4) “‘affront[s]’ the ‘dignity and decorum of judicial proceedings that the judge is seeking to uphold.’”<sup>5</sup>

Although *Deck* itself involved an adult appearing before a jury, “its underlying principles are fundamental across all proceedings, including those with judicial factfinders.”<sup>6</sup> As the Supreme Court has long recognized, “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”<sup>7</sup> Indeed, “[t]hese considerations are even more important in the state’s juvenile courts” given the juvenile justice system’s overarching rehabilitative goal.<sup>8</sup> Nor is the concern of prejudice eliminated by the absence of a jury. In condemning the practice, courts have recognized that “judges are human, and that the sight of a defendant in restraints may unconsciously influence even a judicial factfinder.”<sup>9</sup>

In addition to these constitutional considerations, the indiscriminate shackling of juveniles has long-lasting and detrimental psychological consequences for the youth. Courts around the country, and professional bodies alike, have condemned this practice as “repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice.”<sup>10</sup> Social science and medical research increasingly shows not

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<sup>1</sup> Am. Bar Ass’n (ABA), Report & Resolution No. 107A, at 1 (adopted 2015), available at <https://njdc.info/wp-content/uploads/2014/09/ABA-Report-Resolution-2015-107A-Revised-Approved.pdf> [hereinafter ABA Resolution].

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Deck v. Missouri*, 544 U.S. 622 (2005).

<sup>4</sup> See also *id.* at 626 (quoting 4 W. Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 317 (1769)).

<sup>5</sup> *Id.* at 630-31 (final alteration in original) (quoting *Illinois v. Allen*, 397 U.S. 337, 344 (1970)).

<sup>6</sup> ABA Resolution, *supra* note 1, at 4.

<sup>7</sup> *In re Gault*, 387 U.S. 1, 13 (1967).

<sup>8</sup> ABA Resolution, *supra* note 1, at 6.

<sup>9</sup> *People v. Best*, 979 N.E.2d 1187, 1189 (Ill. 2012).

<sup>10</sup> *In re Amendments to the Fla. Rules of Juvenile Procedure*, 26 So. 3d 552, 556 (Fla. 2009); see also Am. Acad of Child & Adolescent Psychiatry (AACAP), Policy Statement on Mandatory Shackling in Juvenile Court Settings (approved Feb. 17, 2015), available at [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) [hereinafter AACAP Policy Statement]; Child Welfare League of America (CWLA), Policy Statement: Juvenile Shackling (Jan. 2015), available at <https://www.cwla.org/cwla-policy-statement-juvenile-shackling/> [hereinafter CWLA Policy Statement].

only that “[p]ublic shackling is an inherently humiliating experience for children to endure,”<sup>11</sup> but also that “children and adolescents are more vulnerable to lasting harm from feeling humiliation and shame than adults.”<sup>12</sup> Further, shackling is particularly damaging for the high percentage of juvenile justice-involved youth who have suffered previous trauma, often serving to re-traumatize these youth and exacerbate post-traumatic symptoms.<sup>13</sup>

Indeed, the best way for us to understand the impact of shackling on children is to hear directly from them and their lawyers. One child explained the humiliating practice of being shackled as “mak[ing] me feel like a chained dog that you are trying to make into something less than I am. [I] hated seeing the tears in my dad’s eyes when he saw me in cuffs.”<sup>14</sup> Others have reported that shackling made them feel “like I was a monster,”<sup>15</sup> “like a dog on a leash,”<sup>16</sup> or “like I’m nothing.”<sup>17</sup> And an Ohio Juvenile Defense Attorney noted: “As an attorney who represents children in court, there are times when a child must hear difficult news. This becomes heartbreaking when they are shackled because they cannot wipe their own tears.”<sup>18</sup>

Finally, numerous jurisdictions around the country have successfully limited juvenile shackling without compromising safety.<sup>19</sup> Indeed, many judges report that the curtailment of the practice has instead improved the functioning and decorum of courtrooms.<sup>20</sup> This is consistent with mounting evidence that shackling children in court both “negatively impacts their future behavior,” and “fosters a negative perception of the criminal justice system, including decreasing

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<sup>11</sup> ABA Resolution, *supra* note 1, at 7.

<sup>12</sup> Kim M. McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, 38 WASH. U. J.L. & POL’Y 213, 239 n.105 (2012) (quoting Aff. Of Dr. Marty Beyer (Aug. 23, 2006)); *see also, e.g.*, National Council of Juvenile and Family Court Judges, Resolution Regarding Shackling of Children in Juvenile Court (adopted July 25, 2015), *available at* [https://www.ncjfcj.org/sites/default/files/ShacklingOfChildrenInJuvenileCt\\_Resolution\\_July2015.pdf](https://www.ncjfcj.org/sites/default/files/ShacklingOfChildrenInJuvenileCt_Resolution_July2015.pdf)

<sup>13</sup> AACAP Policy Statement, *supra* note 10.

<sup>14</sup> CWLA Policy Statement, *supra* note 10.

<sup>15</sup> ABA Resolution, *supra* note 1, at 5 (internal quotations omitted).

<sup>16</sup> Keith L. Alexander, “D.C. Defense Attorney’s Want Juveniles Released from Shackles in Court,” *The Washington Post* (Aug. 24, 2014) *available at* [https://www.washingtonpost.com/local/crime/dc-defense-attorneys-want-juveniles-released-from-shackles-in-court/2014/08/24/18547cec-28b2-11e4-86ca-6f03cbd15c1a\\_story.html?utm\\_term=.9a698fcd7e79](https://www.washingtonpost.com/local/crime/dc-defense-attorneys-want-juveniles-released-from-shackles-in-court/2014/08/24/18547cec-28b2-11e4-86ca-6f03cbd15c1a_story.html?utm_term=.9a698fcd7e79)

<sup>17</sup> Center for Juvenile Justice, “HB 1279: Prohibition of Indiscriminate Shackling in Colorado Juvenile Courts” (last visited May 30, 2019), [http://www.colorado.gov/clics/clics2013a/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/95cfd4fabbc18dec87257b4f006dae57/\\$FILE/13HseJud0416AttachB.pdf](http://www.colorado.gov/clics/clics2013a/commsumm.nsf/b4a3962433b52fa787256e5f00670a71/95cfd4fabbc18dec87257b4f006dae57/$FILE/13HseJud0416AttachB.pdf)

<sup>18</sup> Campaign Against Indiscriminate Juvenile Shackling, “Juvenile Shackling in Ohio” (last visited May 19, 2019), <https://opd.ohio.gov/Portals/0/PDF/Juvenile/27%20Shackling%20in%20Ohio.pdf>

<sup>19</sup> Campaign Against Indiscriminate Juvenile Shackling, “Fact Sheet: Shackling and Courtroom Safety” (last visited May 19, 2019), [https://njdc.info/wp-content/uploads/2016/03/CAIJS\\_Shackling-and-Courtroom-Safety-3.4.16.pdf](https://njdc.info/wp-content/uploads/2016/03/CAIJS_Shackling-and-Courtroom-Safety-3.4.16.pdf)

<sup>20</sup> *Id.*

their level of cooperation and engagement with courtroom stakeholders.”<sup>21</sup> In short, mounting evidence shows that the indiscriminate shackling of children without regard to individual risk or less-restrictive alternatives undermines—rather than promotes—safety and order.

As those who share your commitment to improving the lives of children involved in the juvenile justice system, we thank you for your attention to this matter.

Sincerely,

Christina Wilson Remlin  
Lead Counsel

Aaron H. Finch  
Senior Staff Attorney

Danielle B. Rosenthal  
Staff Attorney

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<sup>21</sup> Association of Prosecuting Attorney, Statement of Principles (2015), *available at* [https://njdc.info/wp-content/uploads/2015/12/Association-of-Prosecuting-Attorneys\\_Policy-Statement-on-Juvenile-Shackling.pdf](https://njdc.info/wp-content/uploads/2015/12/Association-of-Prosecuting-Attorneys_Policy-Statement-on-Juvenile-Shackling.pdf)