



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES



Unshackling Youth in Court: Increasing Judicial Discretion for Individualized Determination

Maryland C.A.N.D.O. Conference - October 21, 2016

Hon. Darlene Byrne, Immediate Past President, NCJFCJ
District Judge, 126th Judicial District Court of Travis County, Texas

Hon. Michael Stamm, Associate Judge, St. Mary's County Circuit
Court, 7th Judicial Circuit, Maryland

Shackling Basics

- Leg Irons; Handcuffs; Belly chains
- Focus on: in-court shackling



Indiscriminate Shackling

- In many jurisdictions, young people are automatically shackled for court appearances, even if accused only of misdemeanor, non-violent, or status offenses.

13-year old in court in shackles



Maryland Policy

- September 23, 2015:
- Resolution Regarding Shackling of Children in Juvenile Court.

RESOLUTION REGARDING SHACKLING OF CHILDREN IN JUVENILE COURT

- Defines shackles to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior;
- Adopts policy against the presumption of shackling of children during Juvenile Court proceedings.

RESOLUTION (Cont'd)

- Once in the court or hearing room, a child is to be UNSHACKLED and remain so absent a particularized security concern.
- The judge or juvenile magistrate conducting the proceeding shall determine whether the child needs to be shackled in the court or hearing room pursuant to this policy.

In re D.M. case

- June 29, 2016
- 228 Md. App. 451 (2016)
- Ruling against indiscriminate shackling of children in juvenile court.

In re D.M. case

- *“we hold that juveniles should not be shackled while appearing at juvenile court hearing, unless and until there has been a finding on the record that...”*

In re D.M. case

- *“...the juvenile poses a security concern or threat that would disrupt those particular proceedings or involve danger to the juvenile or others.”*

Paul B. DeWolfe

MD Public Defender

“Shackling humiliates young people, recalls past trauma and limits their access to justice. All of this is antithetical to the rehabilitative mission of the juvenile court. This reform will make it easier for the court to do what it’s designed to do: Help kids get on the right track.”



Proponents

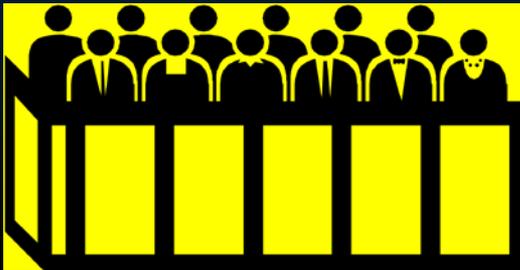
- Proponents of shackling argue it is a necessary to protect the court or that the “shaming effect” of shackles may be helpful to scare juveniles into improving their behavior.



Constitutional Issues

“Visible shackles give the impression to *any* trier of fact that a person is violent, a miscreant, and cannot be trusted.”

As the Supreme Court explained in *Deck v. Missouri* :
“[S]hackles impose physical burdens, pains, and restraints, tend to confuse and embarrass defendants’ mental faculties, and thereby tend materially to abridge and prejudicially affect his constitutional rights.”



Constitutional Issues

- 1) Shackles as Punishment?
- 2) Attorney-Client Relationship & Participation in Proceedings
 - It just made my attorney not like me.
 - I felt like he wasn't even trying to work with me or reduce my time.
 - I was so worried about how everyone was seeing me in shackles that I couldn't concentrate ...
 - I felt unfairly treated.
 - I was unable to focus.



The Developing Child

- A child is more likely to be shackled in court than an adult, even though we can recognize that children are fundamentally different from adults and are not yet “fully formed” in their identities or decision making.
- Shackling robs a developing child of the opportunity to develop and exhibit self-determination and self-control.
- They are more vulnerable to harm done.



Why Shackling is Especially Bad During Adolescence



"I felt like everybody was looking at me like I was a monster."

Physical Harm

- **Physical pain** (up to 25 lbs of metal)
- **Physical injury**
- **Youths sense that “the system” chose to inflict physical harm**



Retraumatization

- Many court-involved youth have multiple experiences of trauma.
- Shackling can mirror past trauma--- especially emotional and physical abuse.



Retraumatization (cont'd)

- **Shackling increases the risk that the effects of past trauma will be magnified and endure long-term.**

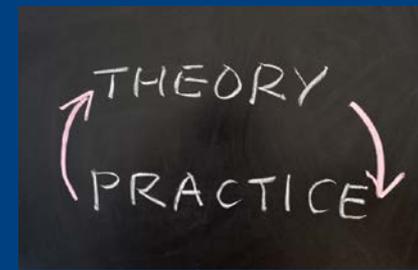


Extreme Stress Impairs Cognition

- Difficulty in focusing
- Impaired memory
- Impaired self-expression
(words, gestures)
- Youth may have a decreased ability to assist in her/his own defense and to remember and comply with court orders.



Role Theory



- Behavior is consistent with treatment.
- When assigned a role (prisoner versus guard), we act in alignment with those roles.
- Shackling sends a symbolic message to a child that their role is “prisoner” or “deviant.”
- So, behaviors that are consistent with the role of deviant will be elevated and could trigger fight or flight responses.

Shackling: A Profoundly Shaming Experience

- Adolescents are uncertain of their identity.
- They are exceptionally vulnerable to the effects of humiliation and shame.
- Shackling may impair a youth's ability to develop a healthy sense of self and self-esteem.



(cont'd) Shackling: A Profoundly Shaming Experience

- If treated by courts as dangerous or untrustworthy, a youth may come to believe this is inherently who she or he is.
- Self-understanding and self-respect are critical to the development of prosocial behavior.

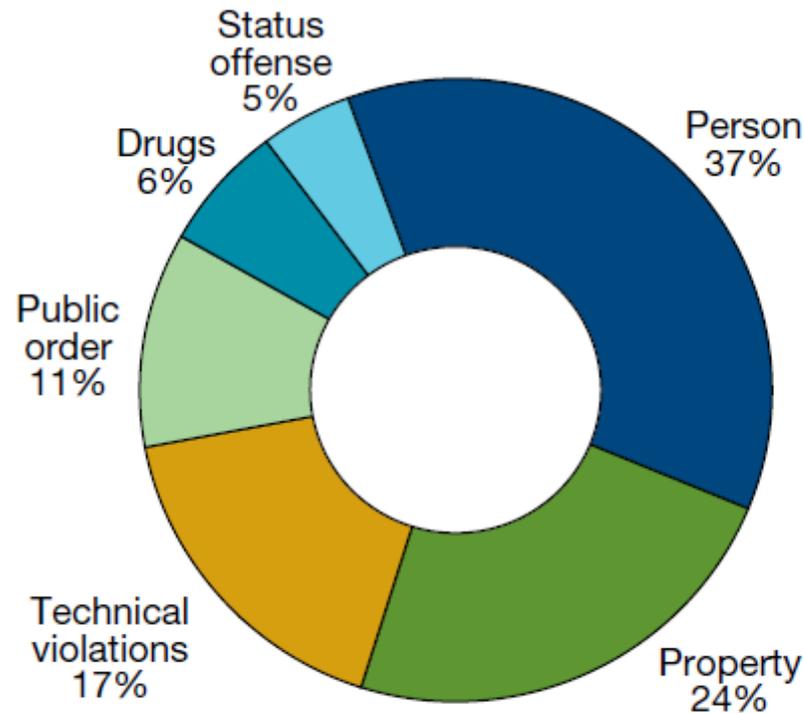


Court-Involved Youth Often View Shackling as Unfair

- **Fact:**
 - ✓ Adults are rarely shackled
 - ✓ Most youth are status offenders or relatively minor, non-violent offenders. *
 - ✓ Often found innocent of charges *
- * **Indiscriminate shackling often occurs in these situations.**

Shackling Viewed as Unfair (2)

Less than 40% of juveniles in placement in 2013 were held for a person offense



Data source: Office of Juvenile Justice and Delinquency Prevention. 2013 Infographic - Census of Juveniles in Residential Placement - Washington, DC: U.S. Census Bureau (producer).

Shackling Viewed as Unfair (3)

- This does not make sense to youth— it is seen as unfair -- and makes them distrust the fairness of courts
- This compromises the rehabilitative goals of the juvenile justice system.
- If treated fairly and respectfully, youth are more likely to engage in the judicial process and less likely to offend.

Shackling and Self-Regulation

- Important developmental task: learning self-regulation
- Shackling takes away the opportunity to develop this ability.
- Shackling tells a child that she/he lacks the ability to self-regulate and must be tightly controlled.
- Shackling denies a youth the opportunity to learn and put into practice more acceptable ways of behavior.

Alternatives to Shackling

- If youths are not routinely shackled, responsible adults find other ways to manage behavior by:
 - ✓ Clearly communicating expectations
 - ✓ Modeling appropriate behavior
 - ✓ Providing positive reinforcement when youth follow the rules
- Therefore, adults become more motivated to engage with, teach and mentor young people in ways that do not involve chains.

Not necessary to maintain safety

- Miami-Dade County did away with the practice in 2006. Since then more than 25,000 children have appeared in the county's juvenile court without injury or escape.
- Travis County, Texas: they use shackles in juvenile court only under extraordinary circumstances. > 3,000 detention hearings / year. In Judge Byrne's courtroom, less than five youth were shackled 2013 to present.
- Boulder, CO: In 2014 there were a total of 9 restraint recommendations out of 534 children who appeared in custody. Ultimately, only 3 were shackled. No incidents.
- Adults are not routinely shackled at trial.



**Defending Liberty
Pursuing Justice**

RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments 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 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.

--107A, February, 2015



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

BE IT THEREFORE RESOLVED AS FOLLOWS:

- The NCJFCJ supports the advancement of a trauma-informed and developmentally appropriate approach to juvenile justice that limits the use of shackles in court.
- The NCJFCJ calls for judges to utilize their leadership position to convene security personnel and other justice system stakeholders to address shackling and to work together to identify ways to ensure the safety of children and other parties.

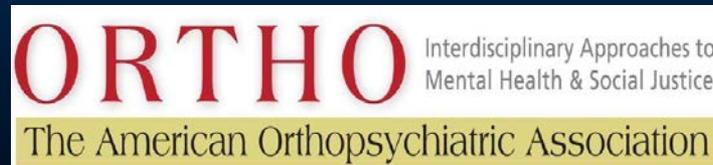
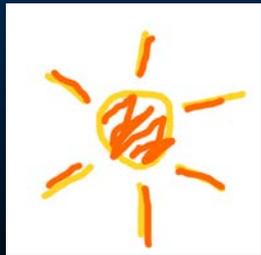
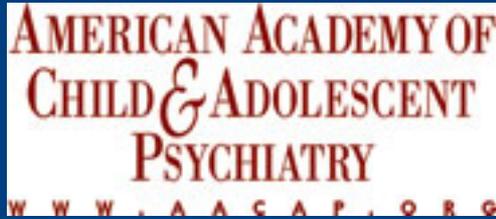


NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

BE IT THEREFORE RESOLVED AS FOLLOWS:

- The NCJFCJ encourages judges and court systems to continually review policies and practices related to shackling children.
- The NCJFCJ supports a presumptive rule or policy against shackling children; requests for exceptions should be made to the court on an individualized basis and must include a cogent rationale, including the demonstrated safety risk the child poses to him or herself or others.
- The NCJFCJ believes judges should have the ultimate authority to determine whether or not a child needs to be shackled in the courtroom.

National Policy Statements



theguardian

Media

KENNEBEC  **JOURNAL**

NATIONAL CATHOLIC **REPORTER**

The Courier-Journal
A GANNETT COMPANY

THE DENVER POST

Yale Daily News

AP Associated Press

THE ARIZONA REPUBLIC

The Washington Post


THE BALTIMORE SUN

PACIFIC STANDARD

Hartford Courant.

JJIE.org

CORTEZ **JOURNAL**

Omaha World-Herald

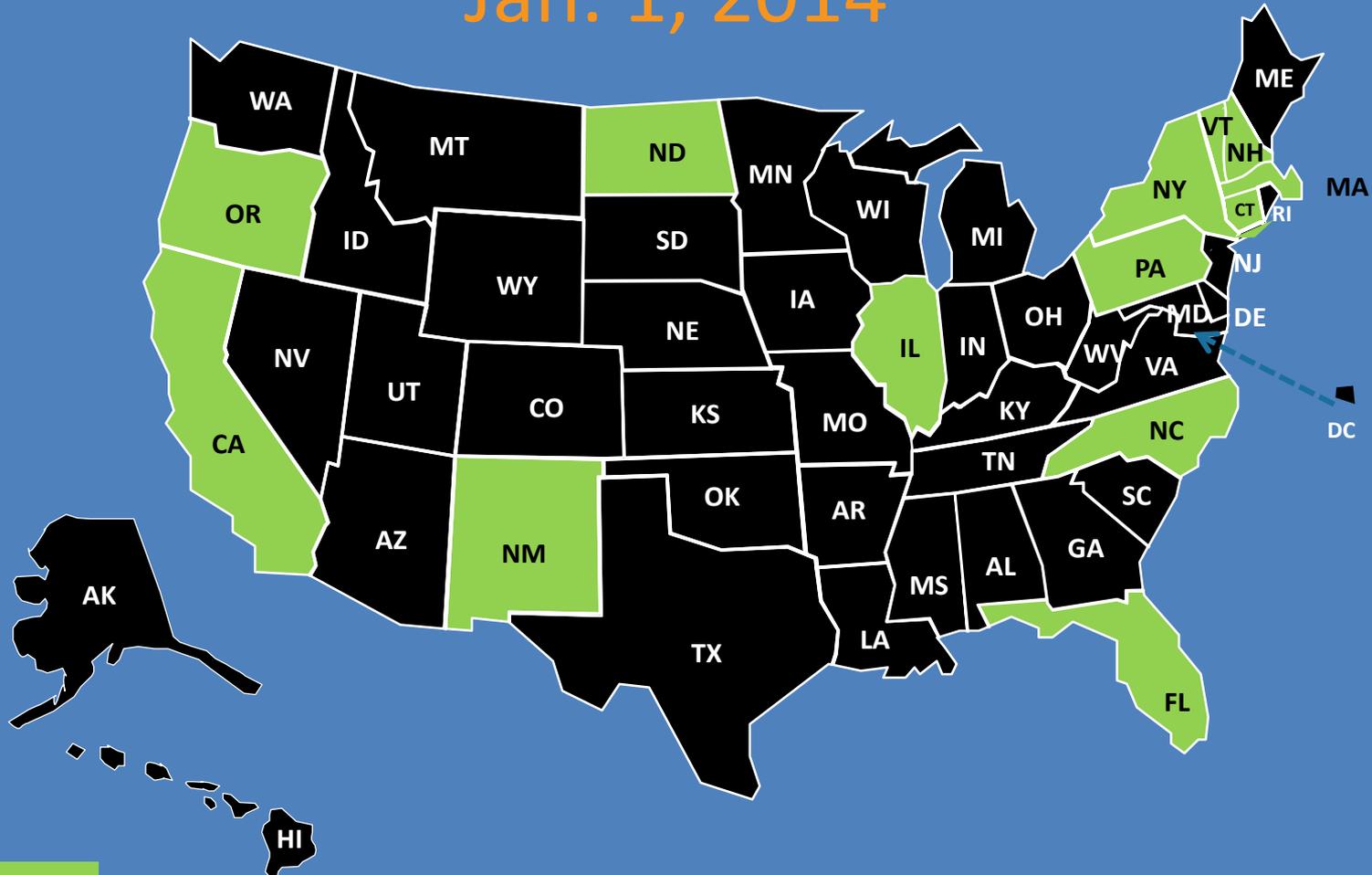
The Salt Lake Tribune

The Anniston Star

Mother Jones

Juvenile Shackling on Paper Across the U.S.

Jan. 1, 2014



Has Statewide Case Law, Policies, Court Rules,
Administrative Orders and/or Statutes
Limiting In-Court Juvenile Shackling

No statewide, written limits on
juvenile shackling in court

How to Shake the Shackles

- Who is responsible for the shackling of juveniles in the courtroom?
- What changes can you make in your courtroom to end the routine practice?

How You Can End Shackling – Everybody

- Collect quotes/insight/anecdotes from children and families
- Try on Shackles
- Stop Operating in a Silo!
 - Team up w/ Doctors & Policy Organizations



Questions?

Special Thanks for this PowerPoint to:

Christina Gilbert

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202-452-0010 Ext. 103

@EndShackling



njdc.info/campaign-against-indiscriminate-juvenile-shackling

**RESOLUTION REGARDING
SHACKLING OF CHILDREN IN JUVENILE COURT**

Whereas, the Maryland Judiciary endorses the principles of the National Council of Juvenile and Family Court Judges (NCJFCJ) Resolution on Shackling of Children in Juvenile Court; and

Whereas, the Maryland Judiciary concurs in the NCJFCJ Resolution's definition of shackles to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior; and

Whereas, the shackling of children during proceedings before judges and juvenile magistrates may infringe upon the presumption of innocence, undermine confidence in the fairness of our justice system, interfere with the right to a fair trial, impede communication with judges, magistrates, attorneys, and other parties, and limit the child's ability to engage in the court process; and

Whereas, research in social and developmental psychology suggests that shackling children interferes with healthy identity development; and

Whereas, placing children in shackles can be traumatizing and contrary to the developmentally appropriate approach to juvenile justice; and

Whereas, placing children in shackles can negatively influence how a child behaves as well as how a child is perceived by others; and

Whereas, shackling promotes punishment and retribution over the rehabilitation and development of children who are under the court's jurisdiction; and

Whereas, shackling is contrary to the goals of juvenile justice, as defined in the *NCJFCJ Juvenile Delinquency Guidelines* to implement a continuum of effective and least intrusive responses to reduce recidivism and develop competent and productive citizens; and

Whereas, continued attention and consistent judicial leadership are necessary to ensure that policies regarding shackling are maintained regardless of changes in leadership or administration; and

Whereas, the Maryland Judiciary has the ability to advance and maintain policies and practices that limit the use of restraints or shackles.

BE IT THEREFORE RESOLVED AS FOLLOWS:

The Maryland Judiciary supports the NCJFCJ Resolution urging the advancement of a trauma-informed and developmentally appropriate approach to juvenile justice that limits the use of shackles in the courtroom.

The Maryland Judiciary hereby responds to the NCJFCJ's call to utilize the leadership in its courts to convene security personnel and other justice system stakeholders to address shackling and to work together to identify ways to ensure the safety of children and other parties.

The Maryland Judiciary commits to the ongoing review of policies and practices related to shackling children.

The Maryland Judiciary hereby adopts as policy the presumption against the shackling of children during proceedings in the Juvenile Court. The Maryland Department of Juvenile Services and the law enforcement agencies that are responsible for the transport or transfer of children to, from, and within courthouses shall retain the discretion to employ practices that will ensure the security of the child and others. Once in the court or hearing room, however, a child is to be unshackled and remain so absent a particularized security concern. The judge or juvenile magistrate conducting the proceeding shall determine whether the child needs to be shackled in the court or hearing room pursuant to this policy. Security personnel have the ongoing responsibility for maintaining security and order throughout the proceeding.

Recommended by the Maryland Judicial Council for adoption by the Maryland Judiciary on September 16, 2015 and accepted by the Chief Judge of the Court of Appeals, September 21, 2015, Annapolis, MD.