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MEMORANDUM

TO: Honorable Lester Langer

FROM: Marie Osborne, Chief, Juvenile Division, Public Defender's Office

DATE: May 17, 2006

SUBJECT: Shackling Children in Court

The practice of shackling our detained children for their court appearances, including for their trials, is a draconian procedure unwarranted by any real security rationale. For over twenty years, I have practiced in juvenile and adult courts, and during that time, children and adults were not shackled absent evident danger. During that same time, we have been without the many, modern security measures we currently have.

Now, we have weapons detectors and security guards stationed at the only two entrances/exits to the Juvenile Justice Center. We have Miami Dade police officers permanently stationed within yards of the courtrooms. We have courtroom bailiffs, walkie talkies, judicial buzzer alarms and electronic gates capable of closing on a moment's notice.

Our four courtrooms are small and cramped with staff, and furniture. Each courtroom is adjacent to the detention center, connected by a secure hallway with doors that are locked at all times. The door to the detention center, from where the child enters and exits, is the farthest point from the only other courtroom door leading to the waiting room.

To leave the waiting room one has to pass the mini police station adjacent to the only waiting room exit. This singular exit is itself on the second floor of the complex. Any leaving still requires navigating two flights of stairs, by-passing security guards and getting under the remote controlled security gates. And, this being a courthouse, there is no shortage of police officers throughout the compound.

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Despite all this increased hardware and personnel security, and with no increased danger or need, DJJ's policy of shackling children *while in transport* has been extended to shackling children period.

Shackling children is an affront to our principles of justice. It makes a mockery of the presumption of innocence doctrine, interferes with the right to freely think and express yourself in your own defense, demeans the dignity of an American courtroom and runs counter to the rehabilitative nature inherent in juvenile court. Adult clients accused of the most serious crimes are not shackled absent evident danger.

American courts have traditionally followed the common law rule that an accused must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape. The right to a fair trial is a fundamental liberty secured by the Fourteenth Amendment. In the absence of exceptional circumstances, the right not to be physically restrained during trial is an essential component of a fair and impartial trial.

There are severe consequences of shackling an accused. The three most-cited detrimental effects of shackling are the following:

(1) the use of physical restraints on the accused will prejudice the decision-making against the accused;

(2) the use of physical restraints on an accused during trial will interfere with his thought processes, the use of his faculties, and his ability to communicate with counsel; and,

(3) the use of physical restraints on an accused during trial is an affront to the dignity of judicial proceedings.

An additional consequence of shackling is specific to youth: (4) the use of physical restraints on an accused during trial is inconsistent with the rehabilitative purpose of the juvenile justice system.

These four concerns, together with the knowledge that shackling is likely to be more traumatic for children than for adults, compel a finding that physically restraining a child in shackles during a court proceeding constitutes a per se violation of the child's legal rights and risks great emotional and psychological harm to the child. Because juvenile courtrooms are open to the public, any citizen who sees a shackled child, while observing a court hearing, will likely walk away with the impression that the child is dangerous and a menace to society. I doubt that's the false impression judges want to give.

The courtroom is the judge's domain. It is up to the judiciary to uphold constitutional standards and to insure the dignity of the court process. I urge you to stop this practice in your courtroom.