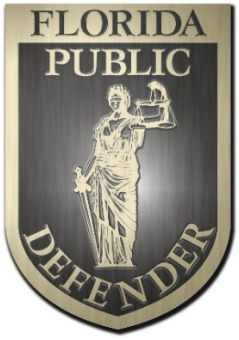

Policy Report

Unchain the Children: Ten Years Later in Florida

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Ten Years After Unchaining the Children.

In 2006, the Miami-Dade Public Defender's Office (PD-11) successfully challenged the practice and policy requiring that all detained children be brought before the court in chains. Since then, more than 30,000 detained children have appeared before the court unbound, in proceedings that respected their dignity and fostered the goal of rehabilitation. In that time, no child has harmed anyone or escaped from court.

The blanket shackling policy applied to all detained children without regard to their age, size, history or alleged offense. Detention workers handcuffed and shackled each child before bringing him or her into the courtroom. Fully 50% would be released that same day and enter the courtroom through the front door for their next appearance. Virtually all would be released within three weeks. Nevertheless, the children stood before the court and their families in chains.

In September of that year, PD-11 successfully challenged the policy of indiscriminately shackling all detained children. Since then Florida's courts have come to successfully administer justice in safe and chain-free courtrooms.

When PD-11 asked the juvenile court judges to end the shackling policy, they initially refused. On September 11, 2006, the Public Defender filed motions on behalf of each detained child who would be brought to court that day. The motions asked the judge to order that the child should appear before the court unbound unless

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it made an individualized determination that safety and security required that that particular child be shackled.

The motions argued that the blanket use of mechanical restraints violated the constitution, international law, and the very purposes that justified the existence of the juvenile court system. The juvenile system is directed primarily at rehabilitation, and contemplates an "intimate, informal protective proceeding," and "aspect[s] of fairness, of concern, of sympathy, and of paternal attention."[1] Florida's laws state that that the juvenile justice system is intended to determine the most appropriate control and treatment for each child and to provide, "A safe and nurturing environment which will preserve a sense of personal dignity and integrity."[2]. The motions included affidavits from experts showing that the blanket shackling policy did just the opposite. Chaining children in court humiliates them, impairs the development of their identity and morality, and ruptures their trust in authority. The young people who appear in juvenile court are still forming their identities, and treating them as dangerous criminals teaches them that that is who they really are.

The motions further argued that the shackling policy violates the right to counsel and both procedural and substantive due process. It is well established that

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[1] *McKeiver v. Pennsyvlania*, 403 U.S. 528, 545 (1971) (plurality opinion).

[2] *See* §§ 985.01-.02, Fla. Stat. (2011).

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shackling adult defendants at trial is an affront to due process and the dignity of the court. The use of mechanical restraints further interferes with a defendant's ability to consult with counsel and participate in his or her defense and has been barred by many courts in non-jury proceedings. Due process also confers a right to freedom from unreasonable restraint. The United States Supreme Court has held that where a person is not detained for punishment as a convicted criminal, due process forbids the use of restraints "except when and to the extent professional judgment deems this necessary."[3]

Finally, the motions, supported by the affidavit of a prominent professor of international law, also argued that that the indiscriminate shackling policy violated our nation's obligations under customary international law. The United Nations has approved rules for the protection of detained juveniles. These standards expressly limit the use of "instruments of restraint" to "exceptional circumstances."

The State Attorney did not oppose the Public Defender's motions, and the move to end indiscriminate shackling gained support outside the courtroom. The Florida Bar Board of Governor's unanimously supported the Legal Needs of Children Committee's effort to eliminate indiscriminate shackling. The Miami

[3] *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982).

Herald published an editorial condemning juvenile-court shackling.[4] The Miami-Dade County Commission passed a resolution calling for an end to the practice.[5] Later, Governor-elect Charlie Crist stated that shackles should be used only on a case-by-case basis.[6]

The first judge to hear the motions granted them, ruling that all detained children should be brought into the courtroom unchained unless there was a showing of particularized need. The Chief Judge of the Juvenile Division then instituted a separate calendar for considering motions to unshackle before the main calendar began. The judges eventually began to make unshackling the default position, unless someone pointed to a reason the child should be restrained.

Other Florida Public Defenders launched similar challenges, with varying degrees of success. Broward County judges agreed to end indiscriminate shackling, for example, while Palm Beach County judges resisted. Even where judges agreed to make individual determinations of the need for restraints, there was no consistent standard to be applied.

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[4] *Our Opinion: It's Inhumane To Put Children In Irons For Court*, The Miami Herald September 13, 2006.

[5] BAN USE OF CHAINS AND SHACKLES ON DETAINED CHILDREN, Miami-Dade Legislative Item File Number 063613 (December 19, 2006), <http://www.miamidade.gov/govaction/matter.asp?matter=063613&file=true&yearFolder=Y2006> (visited December 4, 2011).

[6] Curt Anderson, *Crist Calls Shackling All Youths Wrong*, Miami Herald, December 2, 2006.

Proposed legislation to end blanket shackling died in committee. But Florida's Juvenile Rules Committee proposed a rule that would strictly limit the use of restraints in juvenile court:

> Use of Restraints on the Child. --Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, may not be used on a child during a court proceeding and must be removed prior to the child's appearance before the court unless the court finds both that:
>
> (1) The use of restraints is necessary due to one of the following factors:
>
> (A) Instruments of restraint are necessary to prevent physical harm to the child or another person;
>
> (B) 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
>
> (C) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and
>
> (2) 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.

Those opposed to the rule argued that it was unsafe to let any juveniles come to court without handcuffs and shackles, and that it would be inconvenient to adopt the proposed rule. Some even argued that shackling was beneficial because it would teach the child a lesson – even though the majority of children who would be thus punished were presumed innocent.

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In December of 2009, the Florida Supreme Court adopted the proposed rule.[7] It declared:

> We find the indiscriminate shackling of children in Florida courtrooms as described in the NJDC's Assessment repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice, a concept which this Court has previously acknowledged … We also recognize, without deciding, that indiscriminate use of restraints on children in the courtroom in juvenile delinquency proceedings may violate the children's due process rights and infringe on their right to counsel. We agree with the proponents of this amendment that the presumption should be that children are not restrained when appearing in court and that restraints may be used only upon an individualized determination that such restraint is necessary.

Though more than 30,000 detained children have stood before a juvenile judge in Miami-Dade County since blanket shackling ended in 2006, there has been only one incident. A boy started for the exit of the courtroom, and a Public Defender employee stopped him. No unchained child has hurt anyone or escaped. Statewide, only one incident has been widely reported. A boy struck his stepfather – a registered sex offender with three convictions for lewd and lascivious acts on a child, and another for burglary. Before the anti-shackling rule was adopted, the University of Florida Law School's Center on Children and Families conducted an

[7] *In re Amendments to the Fla. Rules of Juvenile Procedure*, 26 So. 3d 552 (Fla. 2009).

observational study of practices in Alachua County.[8] It found no statistical difference between the behavior of children who were restrained and those who were not.

In 2006, only Illinois and Oregon barred indiscriminate shackling.[9] Since the Miami-Dade Public Defender's challenge to the shackling practice, another 25 states including: Alaska, Arizona, California, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Maine, Maryland, Massachusetts, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Washington and the District of Columbia have ended the practice by rule, court decision, or statute[10].

A decade later, the majority of states have taken measures to ban the practice of automatically shackling children in court. In the last five years, many prominent

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[8] Center on Children and Families, *The Shackling of Juvenile Offenders: The Debate in Juvenile Justice Policy*, < http://www.law.ufl.edu/centers/childlaw/pdf/shackling.pdf> (visited December 4, 2011).

[9] *See In re Staley*, 364 N.E.2d 72 (Ill. 1977); *State v. Millican*, 906 P.2d 857 (Or. Ct. App. 1995). Those decisions dealt with shackling during a delinquency trial or adjudicatory hearing. Today, juvenile judges indiscriminately shackle children in both states. *See* National Juvenile Defender Center, *Illinois: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings*, (visited December 5, 2011) < http://www.njdc.info/pdf/illinois_assessment.pdf>; Talia Stoessel, *Yamhill County Juvenile Court Sharply Limits Shackling*, Juvenile Law Reader, April/May 2011 (visited December 5, 2011) < http://www.jrplaw.org/Documents/jrpreaderv8i2.pdf>.

[10] National Juvenile Defender Center, *Where Are There Statewide Bans on Automatic Juvenile Shackling?* (2016), http://njdc.info/wp-content/uploads/2016/08/where-are-there-statewide-bans-8-8-16.pdf.

organizations including the American Bar Association and the National Council of Juvenile and Family Court Judges have taken a strong stance against this practice urging all states to end the indiscriminate shackling of children[11].

[11]American Bar Association, *Revised Resolution 107A* (2015), http://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/107a.html; National Council of Juvenile and Family Court Judges, *Resolution Regarding Shackling of Children in Juvenile Court* (July 25, 2015), http://www.ncjfcj.org/sites/default/files/ShacklingOfChildrenInJuvenileCt_Resolution_July2015.pdf.