

GR 9 COVER SHEET
Suggested Amendment
JUVENILE COURT RULES
JuCR 1.6 – Physical Restraints in the Courtroom

Submitted by the Washington State Bar Association Juvenile Law Section

Suggested Juvenile Court Rule 1.6 addresses the significant problem of indiscriminant shackling of juveniles in courtrooms in Washington. Although the suggested rule does not go so far as prohibiting the use of shackles and other physical restraints in juvenile court proceedings, it establishes a presumption that protects juveniles from arbitrary or unnecessary shackling in court. The rule creates a procedure that sets forth minimum protections to ensure that all children brought before juvenile courts in Washington will not appear in shackles unless the court finds that there are no less restrictive means to ensure the safety of the court and allow for orderly proceedings

There is a growing body of research that documents the harm inflicted upon youth by appearing in court in shackles. The research shows that shackling not only has a harmful psychological effect on juvenile and status offenders but also the use of shackles is unnecessary to prevent courtroom assaults and escapes.¹ Although shackling might appear harmless to some detention staff and even to some judicial officers, such expediency comes at a tremendous cost to the juvenile’s confidence in the fairness of the justice system. As the Florida Supreme Court stated in the order supporting the adoption of a Court Rule barring the indiscriminate shackling of juveniles

*Routine shackling is gratuitously punitive, counter-therapeutic,
and psychologically harmful.²*

Forty five years ago, the U.S. Supreme Court’s landmark ruling in *In re Gault*, 387 U.S. 1 (1967), held that juveniles are entitled to the same procedural rights as adults in court proceedings. Shackling remains one of the last vestiges of the pre Gault practice of treating youth as chattel who are not entitled to the freedoms and presumptions afforded adult defendants. In a speech to State Supreme Court Justices in 2010, Harvard Professor Laurence Tribe, then Counsel to the US

¹ Affidavit of Dr. Marty Beyer, Ph.D The affidavit can be found at <http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf>.

² Florida Rules of Juvenile Procedure, Rule 8.100. General Provisions for Hearings. Majority Report. The rule can be found at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/E2AD7DEF01F6F90685256B29004BFA7E/\\$FILE/Juvenile.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/E2AD7DEF01F6F90685256B29004BFA7E/$FILE/Juvenile.pdf?OpenElement)

Department of Justice, urged all state court justices to end shackling by adopting Washington's (non-existent) shackling ban.

*"You can follow the lead of such states as Florida, Massachusetts, New York, and Washington, which have eliminated the indiscriminate shackling of youth in delinquency proceedings."*³

It is embarrassing to note that in the years since that speech not only has indiscriminate shackling of youth continued in Washington but there has been no other organized effort to bar this shameful practice from our juvenile courts.

There is currently no court rule that establishes a standard procedure for removing shackles from a respondent prior to entering a juvenile courtroom. Consequently there is a lack of uniform procedure. Courts around Washington State vary widely in the use of shackles. A survey conducted by University of Washington Law Students found that both juvenile offenders and status offenders are routinely shackled in juvenile courtrooms in a majority of the counties in the state. (See map attached) Only one county, Chelan, has adopted a court order prohibiting the indiscriminate shackling of respondents. Shackling is permitted only when deemed necessary by the juvenile court judge or commissioner.⁴ Several larger counties including King, Clark, Yakima and Spokane do not shackle respondents. Like the newly adopted Court rule in Chelan, the suggested rule presumes that respondents appear unshackled and would not require a respondent to request removal of restraints.

Suggested JuCR 1.6 provides a standard procedure for the court to determine whether a juvenile should be shackled in the courtroom. A judge, not a court worker or jailer, must make a finding on the record that shackles are the least restrictive means to ensure that the courtroom will be secure and orderly. The suggested rule requires that any physical restraint must be removed before a youth enters the courtroom unless the judge deems the use of restraints necessary. This suggested procedure is not unduly cumbersome and it provides a meaningful safeguard to ensure that every youth in Washington State has equal access to justice in the juvenile court system.

³ Laurence H. Tribe, Keynote Remarks at the Annual Conference of Chief Justices July 26, 2010. Available at <http://ccj.ncsc.dni.us/speeches/Keynote%20Remarks%20at%20the%20Annual%20Conference%20of%20Chief%20Justices%20to%20deliver.pdf>

⁴ Chelan county Juvenile Court GENERAL ORDER Number 2010-01 In re: SHACKLING OF JUVENIL DETAINEES APPEARING INCOURT

JuCR 1.6 PHYSICAL RESTRAINTS IN THE COURTROOM.

(a) Use of Restraints on Juvenile Respondents. Juvenile respondents shall not be brought before the court wearing any physical restraint devices except when ordered by the court during or prior to the hearing. Instruments of restraint, such as handcuffs, ankle chains, waist chains, strait jackets, electric-shock producing devices, gags, spit masks and all other devices which restrain an individual's freedom of movement shall not be used on a respondent during a court proceeding and must be removed prior to the respondent'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) Present behavior of the respondent represents a current threat to his or her own safety, or the safety of other people in the courtroom;

(B) Recent disruptive courtroom behavior of the respondent has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm to himself or herself or others; or

(C) Present behavior of the respondent 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 respondent or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(b) Challenge to the use of restraints. Before or after any juvenile is ordered restrained, the court shall permit a party to be heard on the issue of whether the use of physical restraints is necessary in a particular situation or as to a particular child.