

**CAMPAIGN AGAINST
INDISCRIMINATE
JUVENILE SHACKLING**

TOOLKIT

Updated August 2015

Where to find it

About the campaign	3
Shackling fact sheet <i>A quick primer on why shackling must stop</i>	4
Organizations that oppose juvenile shackling <i>Legal, medical and social welfare leaders are all on board.</i>	5
National Center for Mental Health & Juvenile Justice policy statement	6-8
Youth voices <i>The humiliation and harm done by shackling</i>	9
Getting started	10
Model statute/court rule <i>Adapt this for your own state to get your campaign started.</i>	11
Will hearings take up too much time? <i>A common argument to keep shackling kids is that hearings to decide on whether to shackle in individual cases will be burdensome. Every jurisdiction that ended indiscriminate shackling found that these hearings are rare and brief.</i>	12
Policy change fails to protect youth <i>In some states, courts have asserted that they can limit shackling without laws or court rules. But these attempts have failed to produce real change.</i>	13
Read more <i>Law review and popular press articles and affidavits</i>	14

About the campaign

Indiscriminate shackling is an enormous problem in juvenile courts. The practice unnecessarily humiliates, stigmatizes and traumatizes young people, impedes the attorney-client relationship, chills due process protections, runs counter to the presumption of innocence and draws into question the rehabilitative ideals of the juvenile court.

The Campaign Against Indiscriminate Juvenile Shackling (CAIJS), created in August 2014, works across the country to support advocates in their efforts to amend laws, court rules, policies and practices in their own states to end the automatic shackling of children in juvenile court. CAIJS is a project of the National Campaign to Reform State Juvenile Justice Systems and the National Juvenile Defender Center. As states around the country reform shackling, important lessons have emerged about the best arguments against the practice and the most common objections that advocates must overcome. This updated toolkit reflects those lessons.

CAIJS supports state-based advocates (defenders, medical professionals, judges and others) by developing strategies; integrating national messaging momentum and local concerns; providing technical assistance; crafting legislative and administrative language for reforms; and monitoring and assisting reform efforts. Many resources can be found at: <http://njdc.info/campaign-against-indiscriminate-juvenile-shackling>.

For more information, contact:

Christina I. Gilbert, Esq.
Campaign Manager
Campaign Against Indiscriminate Juvenile Shackling

(202) 452-0010, ext. 103
cgilbert@njdc.info
@EndShackling
njdc.info/campaign-against-indiscriminate-juvenile-shackling

August 2015

Shackling fact sheet

Shackling is common in juvenile court: In most states, detained juveniles are shackled in court without any proof of a flight or safety risk. Courts recognize the right of adults not to be shackled at trial except where there are compelling security reasons. A child is more likely to be shackled in court than an adult.

What is shackling? Shackles are instruments of restraint, made of metal, cloth, leather or plastic. The shackles normally used in court are leg irons, belly chains and handcuffs. Metal restraints can weigh as much as 25 pounds. In places that allow indiscriminate shackling, elementary school students are shackled. Girls, who make up one third of arrested juveniles, as well as children facing minor charges, are also automatically shackled.

Shackling is not necessary for safety: Once Miami-Dade County, Florida ended indiscriminate juvenile shackling, more than 25,000 youth appeared in court without shackles between 2006 and 2015. None have escaped. No one has been harmed. Numerous other jurisdictions, including California, Massachusetts and Pennsylvania, that have implemented anti-shackling reform report similar successes.

Shackling harms kids:

It puts them at a disadvantage in court. The United States Supreme Court has ruled that shackling adults violates the presumption of innocence. The shackling of defendants leads to biases in judges and juries. Furthermore, shackles prevent young people from effectively communicating with their attorneys, in violation of the United States Constitution.

It humiliates them. Young people describe being shackled as being treated “like an animal,” “like a criminal,” or “like a murderer.” Parents report the experience of seeing their children in shackles as “heartbreaking.”

Shackling children derails their development into responsible adults. Clinical psychologists, pediatricians and other adolescent development experts note that shackling is humiliating for young people, that it harms identity development, and that young people are more vulnerable to lasting harm from feeling humiliation and shame than adults.

Children are less likely to reoffend when the juvenile justice system treats them fairly. Studies show that those who view the court proceedings as fair and respectful are less likely to be rearrested. They are also more likely to comply with court directives, regardless of the final outcome.

What’s the solution? Juveniles should be shackled in court only where it is absolutely necessary in the rare instances where they pose an actual flight or safety risk. There should be a presumption that all youth should appear in court without shackles. Juvenile defenders should have an opportunity to be heard when the use of shackles is requested. Judges should make the decision whether a particular youth must be shackled.

Organizations that oppose juvenile shackling

The following organizations have issued policy statements opposing indiscriminate juvenile shackling. Please check the website for additional policy statements and affidavits by leading professionals: <http://njdc.info/campaign-against-indiscriminate-juvenile-shackling>.

American Bar Association

American Academy of Child and Adolescent Psychiatry

American Orthopsychiatric Association

Association of Prosecuting Attorneys (statement forthcoming)

Child Welfare League of America

Mental Health America (statement forthcoming)

National Association of Counsel for Children

National Association of Counties

National Center for Mental Health & Juvenile Justice

National Prevention Science Coalition to Improve Lives



National Center for Mental Health and Juvenile Justice

Policy Statement on Indiscriminate Shackling of Juveniles in Court

If there is a valid rationale for shackling juveniles, I have never heard it. If the goal of juvenile justice is rehabilitation, shackling a young person is not the way to achieve it. So why do we continue this practice? I do not know and few others claim to know either.

Chief Justice Martha P. Grace (ret.), Massachusetts Juvenile Courts

The National Center of Mental Health and Juvenile Justice (NCMHJJ) strongly opposes the automatic or widespread shackling of youth appearing in court. The NCMHJJ holds that no youth should be shackled for a court appearance unless the court, following a formal hearing, has found that the specific child: (1) poses a credible and substantial risk to himself or others; and/or (2) poses a credible and substantial risk of attempted flight; *and* (3) there is no other less restrictive means reasonably available to manage risks of harm or flight.

Many jurisdictions continue to automatically or frequently shackle youth appearing in court.

The prevalence of shackling court-involved youth began to rise in the late 1980's when public policy embraced a more punitive approach to juvenile crime. Automatic shackling of youth became a common practice across the United States. Since that time, several states¹ have relied upon statutes or court rule-making and policy authority to curtail automatic or widespread use of shackles (commonly handcuffs, leg irons, belly chains) with youth appearing in court. These states have embraced a presumption that shackles may be used only when it is the least restrictive means available to prevent harm to self or others and/or to prevent flight by the juvenile. Nonetheless, the automatic or routine widespread shackling of youth remains commonplace in America's juvenile courts—including for the majority of court-involved youth who are appearing for non-violent offenses, and even for non-criminal "status offenses" such as being truant or stubborn. Data is not reliably kept but it is estimated that at least 100,000 youth are shackled each year.² It is especially appalling that children and adolescents are so commonly shackled for court appearances because the United States Supreme Court has held that fundamental due process rights require that adult defendants can be shackled only upon a showing of a "special need" to do so in an individual case related to safety or flight risk.³

¹ States which have halted automatic or widespread use of shackles for juveniles appearing in court include California, Florida, Illinois, Massachusetts, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, South Carolina, and Washington State.

² David Shapiro, Campaign Against Indiscriminate Shackling, as reported in *Mother Jones* article on shackling, February 24, 2015.

³ *Deck v. Missouri*, 544 U.S. 622 (2005)

Many compelling reasons have been cited to bar automatic or widespread shackling of youth.

A variety of compelling reasons have been offered for barring automatic or widespread shackling of youth appearing in court. Reasons cited by a variety of professional organizations⁴ include:

- Shackling is both unnecessary and contrary to law and a violation of fundamental fairness and due process.
- Shackling results in an erosion of the presumption of innocence of juvenile defendants
- Shackling compromises a juvenile’s ability to participate in their own defense and is contrary to the goals of the juvenile justice system.
- Shackling undermines and compromises normal development and may be traumatizing.
- Shackling disproportionately impacts upon youth who are impoverished and of color due to their over-representation among youth involved with juvenile courts and in the juvenile justice system.

Youth with significant behavioral health needs are disproportionately found among youth involved with the juvenile justice system and are particularly vulnerable to negative impacts from shackling in court.

Research has consistently demonstrated that the prevalence of youth with behavioral health needs is significantly higher among youth involved with the juvenile justice system than among youth in the general population. It has been known for almost a decade that some 70 percent of youth involved with juvenile justice have diagnosable psychiatric conditions with many of them having more than one.⁵ Research also indicates that some 70 – 90 percent of youth coming into contact with the juvenile justice system have had exposures to significantly adverse or traumatic experiences.⁶ Shackling of youth in juvenile court with behavioral health needs:

- Exacerbates distress and can directly contribute to the worsening of symptoms of mental disorders, compromising daily functioning
- May precipitate reactive behaviors arising from emotional dysregulation due to fear and/or anger which then prompt “disciplinary” responses such as further physical or mechanical restraints, seclusion or administrative segregation, or “chemical restraints” with medication
- Can undermine trust in adults in positions of caretaking or responsibility who might otherwise be able to work effectively with a youth with behavioral health needs
- May trigger memories of past maltreatment and specifically exacerbate post-traumatic symptoms such as anger, anxiety, dissociation, mistrust and non-compliance

⁴ See, for example, statements on shackling juvenile defendants promulgated by the American Bar Association, National Juvenile Defender Center, American Orthopsychiatric Association,

⁵ Skowrya, Kathleen and Joseph Coccozza. “Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Justice Department.” *National Center for Mental Health and Juvenile Justice*. 2007.

⁶ DG. 2003; Sprague, C. 2008; Maschi T. Unraveling the link between trauma and male delinquency: the cumulative versus differential risk perspectives. *Social Work*. 2006; 51(1): 59; Abram KM, Teplin LA, Charles DR, Longworth SL, McClelland GM, Dulcan MK. Posttraumatic stress disorder and trauma in youth in juvenile detention. *Archives of General Psychiatry*. 2004; 61: 403-410;

- May deepen depression due to the shame and humiliation associated with public shackling, and in some cases may contribute to self-harming behavior or suicidality
- May contribute to intensification of negative thoughts and feelings and so inadvertently increase risks of self-medication with substance abuse or through high-risk, high-intensity behavior intended to block these thoughts and feelings

The National Center for Mental Health and Juvenile Justice calls for the elimination of automatic or widespread shackling of youth in court. In the vast majority of cases, shackling of youth is not necessary to assure safety or prevent flight by the youth. It substantially undermines the positive development of youth, compromises the basic fundamental fairness and due process guaranteed by the Constitution, and imposes significant additional burdens and risks upon youth with behavioral health needs who are disproportionately represented among youth in the juvenile justice system.

Youth voices: What is it like to be shackled?

“What I still think about today, nearly five years later, is the humiliation and shame I felt being in public view, weighed down by loud, metal shackles. I felt as if everyone looked at me as if I were some crazed criminal or an animal, not what I really was, a 12-year-old child. The dehumanizing experience shaped not only how others saw me, but how I saw myself for many years.” *Skye Gosselin, op-ed in the Kennebec Journal*

Being shackled “made me feel so bad about myself that when I walked into the court room, I felt like an animal being prepared to be put down.

“I also started to feel like I was some type of killer or a monster the way I was shackled, other people, including family, called me a criminal. Still until this day I don’t think it was necessary to shackle me the way I was, due to the fact that I am no animal: I am just as human as the man with the robe in front of me.” *Curtis R. testifying before the Connecticut General Assembly.*

The following are statements that young people submitted to the Supreme Court Rules Committee in Washington in support of limits on juvenile shackling.

“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 felt like everybody was looking at me like a monster. I was also so worried about how everyone was seeing me in shackles that I couldn’t concentrate because it made me feel like a monster. I felt unfairly treated. I was unable to focus.” *C.O.*

“Being shackled wasn’t necessary because I got escorted by 2 armed officers from the holding [cell] to the court room. I felt they put shackles on me to make myself look less presentable and extremely dangerous.” *S.L.*

“Talking to my attorney shackled was a hassle, because it was hard for me to sign papers with waist chains and cuffs. It was a distraction because I was nervous and was tapping my foot the whole time. When speaking with my attorney, I didn’t feel trusted. I felt I was already convicted as guilty in my case because of appearing in shackles in court. I also thought the judge thought of me as a troubled teenager because I was in shackles.” *C.C.*

“From my view shackles put a lot of pressure and stress on people in ways that can affect their behavior locked up.” *K.F.*

“...shackling has had a bad impact in my life, in my relationships with my family, and in my future. Shackling has made me feel like an animal and it makes me feel like I can’t express myself ... It affected how my family sees me because they are afraid of me and I am unable to feel like a normal person when shackled.” *D.L.*

“It doesn’t make you feel like anybody really cares for you and you’re being treated like an animal.” *T.W.*

Getting Started

Here are some steps that you can take to end indiscriminate juvenile shackling.

Gather information:

1. Find the legislation or court rule that establishes practice in your state.
2. Reach out to colleagues. Find out about their experiences of shackling and involve them with reform efforts. CAIJS can provide you with surveys for this purpose.
3. For attorneys: Talk with your clients about their shackling experiences. Document what they have to say. Ask your colleagues to do the same.
4. Connect to allies, including people you may not normally work with. A coalition could include defenders, parent groups, pediatricians, activists and others.
5. Connect to potential opponents – but don't assume they will be opponents. It's possible that prosecutors or court personnel will agree with you. And even if they don't, it's helpful to understand their objections so that you can provide effective, fact-based rebuttals.

If you are trying to make legislative change:

1. See if there is a lobbyist who represents public defenders in your state, or someone employed by the public defenders who regularly interacts with legislators. That person can offer advice on next steps.
2. If there is no such person, seek out a friendly legislator to sponsor a bill. That legislator will have access to resources to help you draft a bill (or you can use CAIJS' model) and can provide guidance on the legislative process.
3. Know the legislative calendar to better understand your opportunities.

If you are trying to change a court rule:

The process varies from state to state. But a general good start is to talk with rules committee members, usually judges, who formulate and vote on rules that later move on to the overall governing body. Educate them about what other jurisdictions have done. The ABA resolution and report is helpful here.

1. Propose a rule. In some states, anyone can do this. In others, there is a great advantage to asking a committee member to carry the ball. CAIJS' model language can help get you started.
2. Testify before the committee, if the process allows, and ask allies to do the same.
3. Once the rule gets out of committee, there may be a note and comment process. Again, organize your allies to offer their expertise and written advocacy.

Circle back:

1. CAIJS has materials you can use once your campaign goes public, including testimony, affidavits, policy statements, media toolkits, etc.
2. CAIJS can provide help with strategy and information on what's working in other places. You don't have to reinvent the wheel!

Model Statute / Court Rule

Use of Restraints on the Child.

1. Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints and other similar items, may not be used on a child during a court proceeding and must be removed prior to the child being brought into the courtroom and appearing before the court unless the court finds that:

(A) The use of restraints is necessary due to one of the following factors:

(i) Instruments of restraint are necessary to prevent physical harm to the child or another person;

(ii) 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

(iii) There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

(B) 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.

2. The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

3. Any restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a child be restrained using fixed restraints to a wall, floor or furniture.

Do Hearings On Whether to Shackle Take Up Too Much Time?

No. Every jurisdiction that has done away with indiscriminate shackling reports that the hearings on whether specific youth should be shackled are not burdensome.

It is also important to remember the reasons to do away with automatic juvenile shackling: It harms young people and chills due process. These reasons are far more compelling than logistical concerns.

Hearings are rare.

In jurisdictions that have ended indiscriminate juvenile shackling, the vast majority of children and youth who come into the courtroom do not have a hearing, because there is no evidence that they require restraints. It is an exceptionally rare youth who arguably poses a safety or flight risk in court.

In 2014 in Boulder, Colorado, for example, there were a total of nine restraint recommendations out of 534 children who appeared in custody. Ultimately, following hearings, judges felt restraints were necessary for only three of them.

Washington's Pierce and Snohomish Counties, the 2nd and 3rd largest counties in the state, initially held shackling hearings, but soon requests for youth to be shackled simply stopped. Judges had consistently ruled against restraints, and youth appeared in court without incident. While the court rule still provides for shackling in some circumstances, it has become clear that restraints are not necessary.

Hearings typically take five minutes or less.

This has been the experience in such diverse settings as Colorado, Massachusetts, and Georgia. Evidence that supports shackling tends to be quite clear-cut and based on the youth's behavior or statements. Hearings do not require a complete case review or the calling of witnesses. Judge Steven Teske in Clayton County, Georgia, formally ended indiscriminate shackling in his court in February 2015. He reports that hearings "actually [take] less than five minutes and oftentimes [are done] as a sidebar."

Limiting shackling can make the court *more* efficient and effective.

Mental health experts have testified that shackling harms cognition, memory and even use of language. Add that to the profound humiliation that young people describe, and it is clear that youth will be less cooperative and less responsive when they are in restraints. Judges who have ended automatic shackling in their courtrooms report that they are able to form better relationships with young people and their families. To quote Judge Darlene Byrne, the incoming president of the National Council of Juvenile and Family Court Judges: "In fact, I have found that youth probably behave better, are better listeners, and are more engaged in the court process when they are unshackled."

Policy Change Fails to Protect Youth

Permanency

Laws and statewide court rules have far more staying power than **policies, which can be changed quickly and unilaterally**. Children and youth deserve lasting protection against shackling that only legislation or a court rule can provide.

Real change

The experience of many states proves that **policies can be disregarded**. The limits that a state chooses to place on shackling should be observed in every courtroom, every day.

Accountability

Where shackling limits are a matter of law, there is a clear reference point for attorneys and judges. Attorneys may **appeal if the law is violated** or seek other legal recourse. There is little or no recourse when shackling is determined by policy.

The Failure of Policies

In 2007, the **North Dakota** Supreme Court ruled the practice of indiscriminate juvenile shackling unconstitutional. The juvenile judges' rulebook was subsequently amended to incorporate the ruling, but no statute or court rule was put in place. **Eight years later**, juveniles continue to be indiscriminately shackled across the state.

Connecticut had already revised its shackling policy three times in five years with a goal of limiting juvenile shackling. Nevertheless, an investigation found that 75 percent of detained youth were still being shackled in court. In some regions, 100 percent were shackled.

In Pueblo, **Colorado**, a judge instituted a non-shackling policy that resulted in most youth appearing in court without restraints. The juvenile court remained safe and orderly. When the judge retired, his replacement immediately reversed that policy. The new judge did not have to offer any justification for this change.

In **Oregon**, some counties have policies that limit shackling. The policies vary by county, and this causes confusion. Even within specific locations, adherence to policies is spotty. Shackling practices change when the presiding judges change. For example, practice even varied day-to-day in Yamhill County during a period when judges rotated through the juvenile court. There is no opportunity for defense attorneys to appeal. In some jurisdictions, it has been difficult to locate a written version of the county policy. This makes standardization nearly impossible and impedes compliance.

Policies are treated with less respect than laws or formal, statewide court rules. A **Maine** judge, for example, unilaterally stopped indiscriminate shackling in his court. Nevertheless, a security officer insisted on shackling a youth. By the time the attorney spoke with the judge to resolve the issue, her client had been led into court in shackles. The client was released that day to his family.

Read more

General media*

Washington Post

Shackling juvenile offenders can do permanent damage to our kids

District juveniles will no longer be routinely shackled in court

Washington Examiner

Unchain the Children

Mother Jones

A Court Put a 9-Year-Old in Shackles for Stealing Chewing Gum—an Outrage That Happens Every Single Day

Arizona Republic

Shackling kids doesn't protect anyone

Kennebec Journal

Handcuffs, shackles on juveniles rob them of their self-esteem

Law Review Articles

Shackling Children in Juvenile Court: The Growing Debate Recent Trends and the Way to Protect Everyone's Interest. Brian D. Gallagher and John C. Lore III. *UC Davis Journal of Juvenile Law & Policy*

Children in Chains: Indiscriminate Shackling of Juveniles. Kim M. McLaurin. *Journal of Law & Policy.*

A Solution to Michigan's Child Shackling Problem. Gabe Newland. *Michigan Law Review First Impressions.*

Unchain the Children: Gault, Therapeutic Jurisprudence, and Shackling. Bernard P. Perlmutter. *Barry Law Review.*

Affidavits

Dr. Marty Beyer

Dr. Louis J. Kraus

Professor Gwyneth Rost

**The campaign can provide you with media assistance. If you would like help generating press, please contact Colleen Shaddox, colleen@qsilver.com or 860-873-9940.*