



December 7, 2015

Stephanie Graubner-Nelson, Esq.
Manager Children and Families Section
Supreme Court of Ohio
65 S. Front St.
Columbus, OH 43215-3431

Re: Comments on Proposed Rule 5.01 Local Juvenile Restraint Rule, as Published on December 7, 2015

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Dear Mrs. Nelson,

We are writing to you on behalf of the American Civil Liberties Union of Ohio Foundation to express our support for Rule of Superintendence 5.01 of the Courts of Ohio. As an organization dedicated to advocating for justice, we oppose the indiscriminant and routine use of restraints in juvenile court. The ACLU believes strongly that Ohio's juvenile courts must end the practice of indiscriminant shackling of children. Shackling undermines due process protections, the dignity of the court, the rehabilitative mission of the juvenile justice system and has been found to be psychologically harmful.

Ohio is regarded as a national leader in juvenile justice reforms. In order to maintain that distinction, we must join the 23 states and the District of Columbia that have already ended the indiscriminant shackling of children.

Ohio's adult courts and state agencies that serve adults and children have rules that guide the limited use of restraints. Proposed Local Juvenile Restraint Rule 5.01 provides Ohio's juvenile courts with much needed guidance regarding the use of restraints.

The proposed rule does not prohibit the use of the restraints. Rather, it creates a presumption against the use of physical restraints unless the presiding judge issues a finding on the record that restraints are needed; either because an individual youth poses a current threat to themselves or others in the courtroom, or because the youth poses a significant imminent risk to flee the courtroom. Additionally, the proposed rule allows for any party to be heard on whether restraints are necessary.

The proposed rule calls for the least restrictive restraints needed to meet the risk, while not unnecessarily restricting the movement of the child's hands.

This proposed rule preserves judicial discretion while balancing court safety and the well-being of children. It comports with the National Council of Juvenile and Family Court Judges (NCJFCJ) recent resolution. The NCJFCJ Resolution Regarding the Shackling of Children in Juvenile Court indicates the following:

‘The NCJFCJ supports a presumptive rule or policy against the shackling of children: requests for exceptions should be made to the court on an individual basis and must include a cogent rationale, including the demonstrated safety risk the children 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 court.’

The proposed rule also aligns with the American Bar Associations resolution 107A which:

‘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 in person 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.’

Extend Due Process Protections to Children

In *Deck v. Missouri* the U.S. Supreme Court ruled that the Constitution prohibits the use of shackles during the penalty and guilt phase of criminal proceeding unless the use is justified, prohibiting the indiscriminate use of restraints during adult court proceedings.¹ In *re Gault* the U.S. Supreme Court held that young people are entitled to the same procedural rights as adults in court proceedings.² The right to appear in court without shackles should be extended to Ohio’s young people as this protection is extended to adults who appear in common pleas court.

Restore the Dignity of the Court

Deck v. Missouri not only affirmed due process rights, but it also highlighted that Deck deserved the right to participate in “dignified courtroom proceedings.” The presence of restraints or shackles in court absent a justifiable need undermines the dignity of court proceedings. Like adults, children deserve the right to participate in “dignified courtroom proceedings.”

¹ *Deck*, 544 U.S. at 630-632.

² *In re Gault*, 387 U.S. 1 (1967)

Align Ohio's Juvenile Courts with the Rehabilitative Mission of the Juvenile Justice System

The juvenile justice system was founded on the concept of rehabilitation of young people. During the 1980s and 90s the juvenile justice system strayed away from this mission. Today we are seeing courts return to their original rehabilitative purpose. In 2005, the U.S. Supreme Court ruled in *Roper v. Simmons*³ that a young person under the age of 18 cannot be sentenced to death. In 2010, the Court ruled in *Graham v. Florida*⁴ that young people who commit a non-homicidal offense must be offered a "meaningful" or "realistic" opportunity for release. In 2011, the Court ruled in *J.D.B. v. North Carolina*⁵ that the age of a child is relevant when determining police custody. In 2012, the Court ruled in *Miller v. Alabama*⁶ that it is unconstitutional to sentence a child to life without the possibility of parole.

Over and over, the U.S. Supreme Court has ruled that the severe sentences or interrogation techniques imposed on adults are not appropriate for children. Similarly, it is the ACLU of Ohio's position that treating children more severely than adults by routinely and indiscriminately shackling them during court proceedings is inappropriate and undermines the rehabilitative mission of the juvenile justice system. By calling for individualized determinations of need and limiting the use of restraint, the court could better provide individualized rehabilitation to each child.

Reduce the Harmful Effects of Shackles/Restraints on Children

In a report, "Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense," the Justice Policy Institute documents findings from numerous psychological journals that 75-93% of youth who enter the justice system have experienced some form of trauma. The report also found that the use of restraints can "exacerbate the symptoms of mental disorders, including PTSD" in justice-involved children. Several national organizations have noted the destructive effect that shackling has on children. In response to concerns over the harmful effects of shackling as well as due process concerns, 23 states and the District of Columbia now prohibit the automatic use of restraints in juvenile courts. Ohio should do the same. Adopting a presumption against automatic shackling would

³ *Roper v. Simmons* 543 U.S. 551 (2005)

⁴ *Graham v. Florida* 560 U.S. (2010)

⁵ *J. D. B. v. North Carolina* 564 U.S. (2011)

⁶ *Miller v. Alabama* 567 U.S. (2012)

allow Ohio's juvenile courts to function in a trauma-informed manner that reduces harm to the children it serves.

"Shackling is inherently shame-producing. Feelings of shame and humiliation may inhibit positive self-development and productive community participation."

—Child Welfare League America, January 2015

"...a policy of indiscriminate juvenile shackling is in essence a policy of retraumatization..."

—American Orthopsychiatric Association, January 2015

"The practice of indiscriminate shackling adds to the trauma that many of these youth have already experienced. It is also unnecessarily demeaning, humiliating and stigmatizing."

—American Academy of Child and Adolescent Psychiatry, January 2015

"Shackling of children in the courtroom without compelling justification is an inherently stigmatizing and traumatic practice that compromises the presumption of innocence. Wholesale reliance on shackles in the juvenile court without an individualized determination that they are actually necessary is contrary to law, undermines the purpose of the juvenile court, and is inimical to the interests of children and youth in conflict with the law."

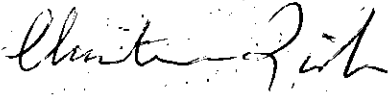
— American Bar Association, February 2014

Affirms Judicial Discretion

In the juvenile justice system, the juvenile court judge is the person most directly responsible for the functions of the court and administration of justice. As noted by the NCJFC, the authority to determine who should and should not wear restraints during juvenile court proceedings should fall on the judge. Currently no such guidance exists in Ohio, resulting in varying practices. Adopting Rule 5.01 would affirm judicial discretion in decisions of restraint and the role of the judge as the ultimate decision-maker in the administration of juvenile justice.

Given the parameters of the rule as it currently stands, we strongly urge the rule's adoption by the Supreme Court of Ohio and fully support Ohio joining the growing number of states that have adopted presumptions against the indiscriminate shackling of youth in court. Ohio's indiscriminate and routine shackling of children must end in order to extend due process protections to children, restore the dignity of the court, align Ohio's courts with the mission of the juvenile justice system, reduce psychologically harm, and affirm judicial discretion.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christine Link".

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ACLU of Ohio

A handwritten signature in cursive script, appearing to read "Shakyra Diaz".

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