

# Chains Hurt Children

## A Civil Liberties Briefing



### Local Juvenile Restraint Rule 5.01

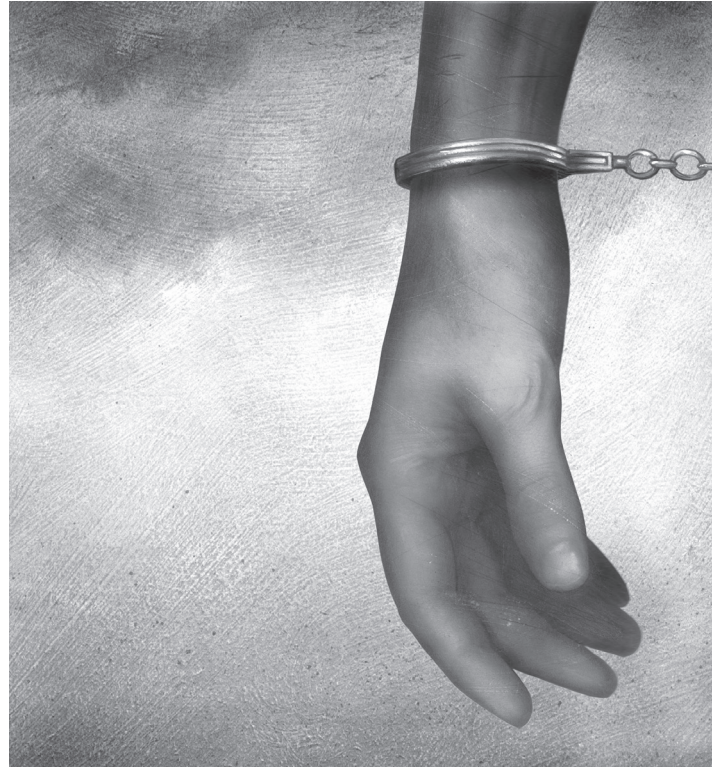
For years, children have been brought into Ohio's juvenile courts wearing shackles, leg irons, and/or handcuffs. This practice is commonly referred to as shackling. Throughout the state, children as young as nine years old are routinely and automatically shackled during court proceedings without any justification that restraints are needed. Though shackling is common in Ohio's juvenile courts, restraint practices vary throughout Ohio because no uniform rules exist to guide juvenile courts or require individualized determination of need.

This could soon change.

The Supreme Court of Ohio has announced that it is considering a rule that would put due process safeguards in place and offer much needed guidance regarding the use of restraints in juvenile courts. The proposed rule is Local Juvenile Restraint Rule 5.01, and the Supreme Court is accepting public comment from December 7, 2015 to January 7, 2016.

#### What is Local Juvenile Restraint Rule 5.01?

In 2015 the Supreme Court of Ohio's juvenile delinquency sub-committee was tasked with examining policies and making recommendations concerning use of restraint during juvenile court proceedings. After extensive review the sub-committee made up of juvenile court judges, court administrators, probation and detention professionals, representatives of the Office of the Ohio Public Defender, the Ohio Juvenile Justice Coalition, and the ACLU of Ohio proposed a rule for consideration to the Court's advisory committee on children & families. After receiving overwhelming support, the proposed rule was presented to the justices of the Supreme Court of Ohio who released Rule 5.01 for public comment.



#### Under Rule 5.01 juvenile courts must adopt a local rule that:

Creates a presumption against physical restraint unless the judge before whom the juvenile is appearing issues a finding on the record of both of the following:

- » The use of physical restraint is necessary due to either of the following factors:
- » The physical restraint is necessary because the juvenile's behavior represents a current threat to the safety of the juvenile or other persons in the courtroom;
- » There is a significant and imminent risk the juvenile will flee the courtroom.
- » There are no less restrictive alternatives to the use of physical restraints.

#### Why is Rule 5.01 necessary?

While restraints may be necessary in limited circumstances, restraining all children without making individualized determinations that are

supported by findings undermine the purpose of the juvenile justice system. As adult criminal courts must make restraint decisions on a case by case basis and follow rules, it is only fair to extend this practice and accompanying due process rights to youth who come before juvenile courts.

### **How does shackling harm children?**

Numerous psychological journals have reported that 75-93 percent of youth entering the justice system have experienced some degree of trauma. Juvenile shackling has been found to demean, stigmatize, and worsen symptoms of mental illness, including Post Traumatic Stress Disorder.

### **Are adults automatically and routinely restrained in court?**

No. Due to a U.S. Supreme Court ruling adults cannot to be restrained in court unless there is an individual and compelling need.

### **How does shackling undermine the due process rights of children?**

Children who are shackled in court cannot effectively communicate with their attorney or the court. They are not able to focus on the proceedings and often feel that that are being treated unfairly. Additionally, the juvenile justice system was founded on the concept of rehabilitation through individualized justice. Shackling all youth automatically and routinely is contrary to that purpose.

### **How many states prohibit the automatic use of restraints in juvenile court and offer guidance on use?**

As a result of court rulings, legislation, or regulation, children in 23 states and the District of Columbia do not routinely appear in court wearing restraints. These states and the District of Columbia limit restraints to youth who pose a risk of harm or flight in the courtroom. Thousands of courts around the country have successfully eliminated the automatic and routine use of restraints without sacrificing court safety.

### **Does the rule eliminate judicial discretion?**

No. The rule retains judicial discretion. Under the rule, restraints can only be used when the judge before whom the juvenile is appearing makes a finding on the record that the restraints are needed.

### **Who is opposed to shackling of children in juvenile court?**

In addition to the ACLU of Ohio, mental health professionals, child welfare, and juvenile rights organizations oppose juvenile shackling. Most recently the American Bar Association and the National Council of Juvenile and Family Court Judges have adopted resolutions that call on juvenile courts to adopt presumptions against the use of restraints of juveniles in court.

### **How will Local Juvenile Restraint Rule 5.01 go into effect?**

The Supreme Court of Ohio is accepting written public comments on the rule from December 7, 2015 until January 7, 2016. Following a review of comments and a possible rule edit, the rule will go to the advisory committee on children and families and then to the justices of the Supreme Court of Ohio for final approval in April 2016. If approved, the justices will identify when the rule will go into effect.

### **Can I submit a public comment?**

Yes. Any member of the public or organization may submit public comment.

Written comments may be sent to:

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65 S. Front St.  
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[www.acluohio.org/shackling](http://www.acluohio.org/shackling)