

# NATIONAL JUVENILE JUSTICE NETWORK

## Unchain the Children: Policy Opportunities to End the Shackling of Youth in Court

POLICY UPDATE | SEPTEMBER 2014

In many juvenile courts across the country, all youth appearing in juvenile court — some as young as seven years old — are shackled.<sup>1</sup> Whether wearing handcuffs, leg irons, and/or belly chains that connect ankle and hand restraints, placing children in shackles is humiliating to the youth and their parents, and can hamper the court process.<sup>2</sup>

Through the support of the John D. and Catherine T. MacArthur Foundation’s [Models for Change Initiative](#), the Juvenile Indigent Defense Action Network (JIDAN) has developed a number of strategic innovations to end the indiscriminate shackling of youth in the courtroom.<sup>3</sup> This policy update explores the reasons why states should end the indiscriminate shackling of youth and highlights the strategies states and localities have successfully used to end this damaging practice.

### What’s the Problem?

---

Trussing a child up in chains is degrading and humiliating to children and their families, interferes with their right to effective assistance of counsel and due process protections, and is unnecessary for the protection of the court without an individualized showing that such restraints

---

<sup>1</sup> We are using the term “shackled” to refer to all mechanical restraints used on youth in the courtroom – which can include handcuffs, leg irons, or both, and often also involves a belly chain around the waist with a chain that connects to handcuffed hands and/or leg cuffs. In addition, some shackled youth are then further chained to furniture or other fixed structures in the courtroom. Kim H. McLaurin, “Children in Chains: Indiscriminate Shackling of Juveniles,” *Washington University Journal of Law & Policy* 38 (2012): 215; South Carolina Bar Resolution with Commentary (2014), 8, <http://bit.ly/1qrNHL4>.

<sup>2</sup> Models for Change Innovation Brief, “Eliminating the Practice of Indiscriminate Shackling of Youth” (John D. and Catherine T. MacArthur Foundation, December 2013), available at <http://bit.ly/Z8W97G>.

<sup>3</sup> The information in this document is drawn from the Models for Change Innovation Brief, “Eliminating the Practice of Indiscriminate Shackling of Youth.” For more information about Models for Change, visit [www.modelsforchange.net](http://www.modelsforchange.net).

are needed for a particular youth. Below, we discuss in more detail the reasons routine shackling of youth should be ended.

### **Shackling Can Cause Physical and Psychological Harm to Children**

“Handcuffs pin the teenage girl’s wrists together. The cuffs connect to a heavy chain around her waist so she can’t raise her arms. Another chain connects her ankles, shortening her step as she shuffles into the courtroom. When she shifts in her chair, the shackles clink.”

--Martha T. Moore, in *USA Today*<sup>4</sup>

Reading this description of shackling, it’s not hard to understand how it can physically hurt and humiliate youth. Whether restrained with handcuffs alone or fully chained as described above, shackling can cause more than just temporary embarrassment for youth; the shame induced by shackling can be quite profound, because youth are more vulnerable than adults to lasting harm from feeling humiliation and shame.<sup>5</sup> Additionally, many youth in the justice system have experienced physical and sexual abuse, making them even more susceptible to the negative trauma of shackling.<sup>6</sup>

Below are some statements kids have made about how shackling makes them feel:

“I felt like a dog on a leash. Like an animal.”<sup>7</sup>

“[C]uffs and shackles make me feel like a criminal, not a ‘juvenile delinquent.’ Shackles hurt and embarrass me most of the time.”<sup>8</sup>

“Shackling makes me feel like a dog, like I’m nothing. It hurts like crazy. It makes me feel like a bad person.”<sup>9</sup>

### **Shackling Disproportionately Affects Children of Color**

Given the legacy of discrimination in America, the trauma from shackling is especially damaging to youth of color. Being publicly degraded may be experienced by them as racism and can be

---

<sup>4</sup> Martha T. Moore, *USA Today*, “Should Kids Go To Court in Chains?” June 17, 2007, <http://usat.ly/1vTVfJO>.

<sup>5</sup> Models for Change Innovation Brief, “Eliminating the Practice of Indiscriminate Shackling of Youth,” 1.

<sup>6</sup> Shoshana Elon, Jasmine Gibbs, Jamie Schickler, and Sammy Warman, “Children in Chains: The Shackling of Georgia’s Youth” (Barton Child Law and Policy Center, Emory University School of Law, Fall 2011), 7, at <http://bit.ly/1qrRGay>.

<sup>7</sup> Sixteen-year-old teen in D.C. Superior Court, quoted in Keith L. Alexander, “D.C. Defense Attorneys Want Juveniles Released from Shackles in Court,” *The Washington Post* (Aug. 24, 2014), <http://wapo.st/1AbIOXD>.

<sup>8</sup> Nate P., quoted in The Center for Juvenile Justice, “Prohibition of Indiscriminate Shackling in Colorado Juvenile Courts” (undated), 4, at <http://bit.ly/1oJyKib>.

<sup>9</sup> Anonymous, quoted in “Prohibition of Indiscriminate Shackling in Colorado Juvenile Courts,” 4.

very harmful to their development of a positive identity.<sup>10</sup> The image of African-American youth being shackled in court has been likened to the “images of slaves on the auction block, not of children presumed to be innocent in a court of law.”<sup>11</sup> Since youth of color are overrepresented at all stages of the juvenile justice system, these youth bear the brunt of indiscriminate shackling policies.<sup>12</sup>

### ***Shackling is Inconsistent with the Rehabilitative Goals of the Juvenile Justice System***

Indiscriminate shackling is likely to create a feeling of injustice in children because they have done nothing to warrant this treatment. Children who feel that they have been treated unfairly by the court are less amenable to treatment and rehabilitation. Rather, shackling creates “an adversarial and hostile environment,” reinforces the youth’s feeling of “badness,” and “fosters a lack of respect for the law and the legal system.”<sup>13</sup>

### ***Shackling Interferes with a Youth’s Constitutional Rights***

Indiscriminate shackling harms a youth’s constitutional rights to due process by weakening their presumption of innocence and their ability to communicate effectively with counsel.

- The United States Supreme Court has long forbidden the routine use of visible shackles for adult defendants during the guilt phase of a jury trial, holding that it violates due process protections guaranteed under the Fifth and Fourteenth Amendments.<sup>14</sup> As the Court stated in *Deck v. Missouri*, “Visible shackling undermines the presumption of innocence and the related fairness of the fact-finding process.”<sup>15</sup> While the *Deck* decision concerned the prejudicial effect of shackles on a jury, judges are not immune to “subconscious associations of guilt based upon the presence of shackles.”<sup>16</sup>
- The indiscriminate use of shackles may also impinge on a youth’s right to the effective assistance of counsel. As the Supreme Court stated in *Deck v. Missouri* regarding adult defendants, “Shackles can interfere with the accused’s ‘ability to communicate’ with his lawyer.”<sup>17</sup> The Court went on to cite to a case that states that shackles can “confuse and

<sup>10</sup> Elon, et. al., “Children in Chains,” 7, at <http://bit.ly/1qrRGay>, citing Affidavit of Dr. Marty Beyer, ¶ 14, <http://bit.ly/1wb4tP3> (last visited September 4, 2014).

<sup>11</sup> Kim Taylor-Thompson, “Gideon at Fifty – Golden Anniversary or Mid Life Crisis,” *Seattle Journal for Social Justice*, Vol. 11: Iss. 3, Article 3 (2013) 880-81, <http://bit.ly/1IKrjN6>.

<sup>12</sup> Juvenile Justice Resource Hub, “Racial-Ethnic Fairness,” accessed August 20, 2014, <http://bit.ly/1dEBvwD>.

<sup>13</sup> Elon, et. al., “Children in Chains,” 3.

<sup>14</sup> Shackles are forbidden during the guilt phase of a trial unless “justified by an essential state interest” which is specific to the particular defendant before the court, such as an interest in courtroom security. *Deck v. Missouri*, 544 U.S. 622, 626 (2005); Kim H. McLaurin, “Children in Chains: Indiscriminate Shackling of Juveniles.” *Washington University Journal of Law & Policy* 38 (2012): 217-29.

<sup>15</sup> *Deck v. Missouri*, 544 U.S. 622, 630 (2005).

<sup>16</sup> Elon, et. al., “Children in Chains,” 4.

<sup>17</sup> *Deck v. Missouri*, 544 U.S. 622, 631 (2005), citing *Illinois v. Allen*, 397 U.S. 337, 344 (1970).

embarrass' defendants' 'mental faculties,' and thereby tend 'materially to abridge and prejudicially affect his constitutional rights.'"<sup>18</sup> These barriers to effective communication with counsel are magnified with youth since they are more easily embarrassed and shamed than adults.

### ***Routinely Shackling all Youth Appearing in Court is Unnecessary for Public Safety***

Since ending the indiscriminate shackling of youth in Florida in 2009, over 20,000 children have appeared in court, unshackled, with only two minor incidents; there have been no reports of unshackled youth escaping from court or causing serious harm to themselves or others.<sup>19</sup> Other safeguards are generally in place in juvenile courts to protect the public, such as sheriffs and deputies stationed in the courtroom, obviating the need to shackle all children.<sup>20</sup>

## **Shifting Policy to Unshackle Our Youth**

---

A 2012 study found that most states continue to allow the indiscriminate shackling of youth in juvenile court.<sup>21</sup> Progress is being made, though, as juvenile defenders involved in JIDAN, as well as other juvenile defenders and advocacy organizations, have been successfully advocating for reforms to end the practice in a number of states and localities.<sup>22</sup> JIDAN's work is led by the National Juvenile Defender Center, which has buttressed support for shackling reform in its [National Juvenile Defense Standards](#), stating in Standard 2.8 that shackles should only be used when there is "proof that physical restraints are necessary to prevent escape or harm to the youth or others."<sup>23</sup>

The work to unshackle youth generally requires a multi-pronged approach involving juvenile defenders and/or advocacy organizations bringing the practice to light in the media, working with bar associations to address the problem through court rules changes, challenging the practice in court, and introducing bills in the legislature. Below, we provide examples of some of the strategies defenders and advocates have used to unshackle youth:

---

<sup>18</sup> *Deck v. Missouri*, 544 U.S. 622, 631 (2005), quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

<sup>19</sup> In the two reported incidents, one child started for the exit of the courtroom and a public defender employee stopped him; in the other, a child struck his father, a registered sex offender. Carlos J. Martinez, "Policy Report – Unchain the Children: Five Years Later in Florida" (Law Offices of the Public Defender, 11<sup>th</sup> Judicial Circuit of Florida, December 2011), 6, <http://bit.ly/1uGwsVN>.

<sup>20</sup> Elon, et. al., "Children in Chains," 11.

<sup>21</sup> Kim H. McLaurin, "Children in Chains: Indiscriminate Shackling of Juveniles," 232.

<sup>22</sup> States where progress has been made at the state or local levels include: California, Colorado, Florida, Maine, Massachusetts, Nevada, New York, North Carolina, North Dakota, New Mexico, Pennsylvania, South Carolina, and Washington. Models for Change Innovation Brief, "Eliminating the Practice of Indiscriminate Shackling of Youth," 2. Other organizations working on this issue include the ACLU. See Lauren Pack, "ACLU Wants Supreme Court to Review Shackling of Juveniles," (Juvenile Justice Information, Exchange, March 25, 2014), <http://bit.ly/1u4HLc9>.

<sup>23</sup> National Juvenile Defense Center, "*National Juvenile Defense Standards*" (Chicago: The John D. and Catherine T. MacArthur Foundation Models for Change initiative, 2012), 47-49, accessed May 6, 2014 at <http://bit.ly/XYgDqU>.

### Restricting Shackling by Statute

- In 2010, the National Juvenile Defender Center (NJDC) published *South Carolina Juvenile Indigent Defense: A Report on Access to Counsel and Quality of Representation in Delinquency Proceedings*, based on its investigation of the South Carolina juvenile indigent defense system. In the report, NJDC stated that it was a “common practice in South Carolina for children to enter the courtroom shackled, many with belly chains and cuffs on the wrists and ankles,” regardless of the charge and without any individualized determination of necessity.<sup>24</sup>
- The NJDC findings on shackling were referenced by the South Carolina Bar Association in a resolution supporting a rule of law to restrict the shackling of youth in court proceedings.<sup>25</sup>
- South Carolina recently joined New Hampshire, North Carolina, and Pennsylvania in restricting the practice of indiscriminate shackling of youth in court by statute (New York has some restrictions on shackling by regulation).<sup>26</sup>
- The South Carolina statute prohibits shackling youth in court unless the court finds that the child is a flight risk, poses a threat of harm to themselves or others, or has a history of disruptive courtroom behavior. The court must also find that there are no less restrictive options available, such as a bailiff or other law enforcement presence, to prevent these behaviors.<sup>27</sup>

### Restricting Shackling through Court Rule-Making Authority

- In Florida, Carlos Martinez, then an Assistant Public Defender in the Dade County Public Defender’s Office,<sup>28</sup> championed ending routine shackling of youth. His strategies included the following:
  - Establishing and leading the “Unchain the Children” team of attorneys to file motions battling the practice in court.<sup>29</sup>
  - Cultivating additional allies in this fight, including:
    - the Florida Bar Association, which ultimately passed a resolution condemning the indiscriminate shackling of youth in juvenile court;<sup>30</sup>

<sup>24</sup> National Juvenile Defender Center, *South Carolina Juvenile Indigent Defense: A Report on Access to Counsel and Quality of Representation in Delinquency Proceedings* (Washington, D.C.: Winter 2010), 40, <http://bit.ly/1uCrOIr>.

<sup>25</sup> South Carolina Bar Resolution with Commentary (2014), 2, <http://bit.ly/1wb5kPZ>

<sup>26</sup> N.H. Rev. Stat. § 126-U:13; N.C. Gen. Stat. § 7B-2402.1 (2014); Pa. C.S.A. 6336.2 (2014); New York regulations place restrictions on shackling youth when being transported and in state schools and centers, and the regulations have been interpreted by one lower court in New York to apply to court proceedings. N.Y. Comp. Codes R. & Regs. tit. 9, § 168.3 (2014), 9 NY ADC 168.3; 42; Vermont restricts shackling of youth being transported. Vt. Stat. Ann. tit. 33, § 5123 (2014).

<sup>27</sup> S.C. § 63-19-1435 (2014).

<sup>28</sup> Mr. Martinez is now the Public Defender for Miami-Dade County. Miami Dade Public Defender, Homepage, accessed August 25, 2014, <http://www.pdmiami.com/>.

<sup>29</sup> Law Offices of the Public Defender, 11<sup>th</sup> Judicial Circuit of Florida, “Policy Report – Unchain the Children: Five Years Later in Florida” (December 2011), 1-4, <http://bit.ly/1uGwsVN>; Juvenile Justice CPR, “Ending Indiscriminate Shackling,” <http://bit.ly/1IKu1SA>, accessed August 25, 2014; Miami Dade Public Defender, “Unchain the Children,” accessed Sept. 9, 2014, <http://www.pdmiami.com/unchainthechildren.htm>.

<sup>30</sup> Kim Taylor-Thompson, “Gideon at Fifty,” 882.

- the media, which resulted in almost universal condemnation of the practice in the press;<sup>31</sup> and
  - the faith community, elected officials, legal experts, and juvenile justice advocates, including the NJDC.<sup>32</sup>
- In 2010, the Florida Supreme Court amended the state’s court rules to prohibit the indiscriminate shackling of youth in juvenile court after the Florida Juvenile Court Rules Committee—responding to NJDC’s 2006 *Assessment* of Florida’s juvenile indigent defense system—recommended it do so, finding that the practice was “repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice.”<sup>33</sup>
  - Now restraints can only be used on youth in Florida if the court finds it is necessary—using criteria specified by the Florida Supreme Court in the court rules—and finds that there are no less restrictive alternatives.<sup>34</sup>
  - Other states that have restricted shackling through court rules include New Mexico, Pennsylvania, and Washington;<sup>35</sup> Massachusetts restricted shackling through a 2010 amendment to the Trial Court of the Commonwealth Court Officer Policy and Procedures Manual.<sup>36</sup>

### Using Litigation to End Shackling

In a number of states, attorneys have used litigation to end indiscriminate shackling of youth. The Supreme Court of Illinois was the first court to address this issue, in the case of *In re Staley* in 1977,<sup>37</sup> which indicated that some type of individualized determination of need was required in order to shackle youth in court.<sup>38</sup> Several other state courts have followed suit and restricted the practice of shackling youth, including California, North Dakota, Oregon, and Washington.<sup>39</sup>

<sup>31</sup> Kim Taylor-Thompson, “Gideon at Fifty,” 882.

<sup>32</sup> Juvenile Justice CPR, “Ending Indiscriminate Shackling,” accessed August 25, 2014, [http://www.pdmiami.com/cpr/Ending\\_Indiscriminate\\_Shackling.htm](http://www.pdmiami.com/cpr/Ending_Indiscriminate_Shackling.htm).

<sup>33</sup> Patricia Puritz and Cathryn Crawford, *Florida: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* (National Juvenile Defender Center, Washington, D.C.: Fall 2006), <http://bit.ly/1pPqvHs>; Supreme Court of Florida, “In RE: Amendments to the Florida Rules of Juvenile Procedure,” No. SC09-141 (December 17, 2009), 7-9; Kim Taylor-Thompson, “Gideon at Fifty,” 882-83; Fla.R.Juv.P. Rule 8.100 (2014).

<sup>34</sup> Fla.R.Juv.P. Rule 8.100 (2014).

<sup>35</sup> Travis Stearns, “End Automatic Shackling for Juveniles” (National Association for Public Defense, 2014), accessed August 25, 2014; Pa. Rule of Juvenile Court Procedure No. 139 (2014).

<sup>36</sup> The Commonwealth of Massachusetts Administrative Office of the Juvenile Court, Amendment to Trial Court of the Commonwealth Court Officers Policy and Procedures Manual, Chapter 4, Courtroom Procedures, Section VI, Juvenile Court Sessions, <http://www.njjn.org/uploads/digital-library/Massachusetts-Use-of-Restraints-on-Juveniles-Memo-2.25.10.pdf>.

<sup>37</sup> The Center for Juvenile Justice, “Prohibition of Indiscriminate Shackling in Colorado Juvenile Courts” (undated), <http://bit.ly/1oJyKib>; *In re Staley*, 40 Ill. App. 3d 528, 364 N.E.2d 72 (1977).

<sup>38</sup> The Center for Juvenile Justice, “Prohibition of Indiscriminate Shackling in Colorado Juvenile Courts.”

<sup>39</sup> South Carolina Bar Resolution with Commentary (2014), 2; Washington state courts varied widely in the use of shackles even after the opinion in *State v. E.J.Y.* (WA 2002), necessitating the adoption of a court rule in 2014. 2014 WA REG TEXT 353875 (March 5, 2014); JuCR Rule 1.6 (2014).

## Conclusion

---

Shackling is humiliating, impacts youth of color disproportionately, impedes youth rehabilitation, and is unnecessary, as Florida’s experience has shown. As Florida’s court rules recognize, less restrictive alternatives to restraints include, “the presence of court personnel, law enforcement officers, or bailiffs.”<sup>40</sup> The time is ripe to end the degrading practice of indiscriminately shackling all youth who appear in juvenile court.

Several states have already restricted or eliminated universal shackling, but much more progress can be made. Local advocates can tackle the problem through legislative advocacy, by working to change court rules, and through litigation.

We encourage advocates to get in touch with their state and national policymakers and juvenile justice partners to reform these harmful policies that impede justice for youth in juvenile court. For additional assistance, advocates are encouraged to turn to:

- [National Juvenile Defender Center’s](#) newly-launched Campaign Against Indiscriminate Juvenile Shackling;
- [Center for Juvenile Justice](#), which provides support and resources for jurisdictions in Colorado; and
- [ACLU of Ohio](#), which is pursuing litigation and advocating to end shackling in Ohio.

The following resources may also be helpful:

- “[Affidavit of Dr. Marty Beyer](#),” nationally recognized child psychologist with expertise in juvenile justice and child welfare, detailing the negative impact shackling can have on youth;
- [Children in Chains: Indiscriminate Shackling of Juveniles](#), by Kim M. McLaurin, an Associate Clinical Professor of Law at Suffolk University Law School, which examines shackling practices, reforms, and argues that indiscriminate shackling of youth is unconstitutional; and
- [Unchain the Children: Five Years Later in Florida](#), a detailed account of Florida’s strategies to change the shackling policy and their successful and safe court management following the change.

---

<sup>40</sup> Fla.R.Juv.P. Rule 8.100 (2014).