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Committee on Criminal Justice

A POLICY ANALYSIS OF SHACKLING YOUTH IN FLORIDA'S JUVENILE COURTS

Issue Description

During the last several legislative sessions, there has been legislation filed to address the issue of shackling youth in juvenile courts throughout Florida.¹ The practice of “shackling” refers to restricting the movement of youth by handcuffs, leg restraints, and/or belly chains (otherwise known as mechanical restraints). Child advocates express dismay at the practice while proponents of the practice point to the importance of maintaining public safety. This interim project contains a policy analysis of shackling youth in juvenile courts, including a discussion of the ensuing debate surrounding the issue, a review of shackling practices in Florida, and options for addressing it.

Background

In July 2007, Governor Crist authorized the creation of the Blueprint Commission (commission) for the purpose of developing recommendations to reform Florida's juvenile justice system. The commission met throughout the second half of 2007 and in January 2008, it issued a report entitled “Getting Smart About Juvenile Justice in Florida.” The commission heard a significant amount of debate and controversial testimony regarding the practice of shackling juveniles. This practice became one of several “unresolved issues” for the commission.² The commission, in its report, encouraged the Department of Juvenile Justice (DJJ), along with prosecutors, public defenders, and juvenile judges to review their practices and procedures for shackling youth.³

Administrative Rules

Although there are no statutory provisions expressly addressing shackling procedures,⁴ there are several administrative rules that dictate procedures regarding the use of mechanical restraints by the DJJ. Mechanical restraints are authorized as security devices and are defined to include handcuffs, restraint belts, leg restraints, soft restraints, and waist chains. No more than two youth may be chained or handcuffed together.⁵ These restraints are to be used as a way to control youth who present a threat to safety and security inside the facility, as well as when transporting youth outside the secure area of the facility. Leg restraints and front handcuffs are used during transport. Mechanical restraints may not be used as a form of discipline.⁶ Leg restraints, waist chains, and restraint belts may not be used on pregnant youth.⁷

¹ SB 372 by Senator Wilson and HB 19 by Representative Meadows in 2007; SB 140 by Senator Wilson and SB 1336 by Senator Siplin in 2008; and SB 108 by Senator Wilson, SB 786 and SB 2206 by Senator Siplin, and SB 1176 by Senator Wise in 2009. (These bills were not heard by any committee.)

² Report of the Blueprint Commission, *Getting Smart About Juvenile Justice In Florida*, 49 (January 2008).

³ *Id.*

⁴ Section 985.03(44), F.S., does mention that mechanical restraints may be used when necessary in moderate-risk, high-risk, and maximum-risk residential commitment facilities.

⁵ Fla. Admin. Code R. 63H-1.005(2), (8) (2006) and 63G-2.002 (2006). Standard handcuffs that are used by law enforcement are authorized to be used by the DJJ. A restraint belt may be used with handcuffs when additional security is necessary. Leg restraints are similar to handcuffs, but typically have a 15 inch chain in between the leg restraints. Soft restraints are allowed to be used as an alternative to hard restraints. Waist chains are usually only used when transporting youth. These chains are meant to limit arm movements and to keep the hands visible by attaching them at the youth's waist (the chains are usually 60 inches long).

⁶ Fla. Admin. Code R. 63G-2.012(3)(b) (2006).

⁷ Fla. Admin. Code R. 63H-1.005(10) (2006).

When a mechanically restrained youth is transported from a secure detention facility, the DJJ detention officer keeps the youth restrained while in the courthouse. When it comes to the courtroom, however, the detention officer defers to the juvenile court judge as to whether the youth will be mechanically restrained. As expected, shackling practices within each courtroom, as well as in the courthouse facilities themselves, vary from circuit to circuit (and will be discussed in the “Findings and/or Recommendations” section of the report).

According to the DJJ, only youth who are transported from a secure detention facility are mechanically restrained when they come to the courthouse. (Examples of youth within the courthouse who are not mechanically restrained are youth placed in home detention or in other residential placements.) Mechanically restraining these youth is appropriate according to the DJJ since youth who are securely detained in a detention facility are there because they scored high enough on the risk assessment instrument to be considered a threat to themselves, a threat to public safety, or a flight risk.⁸ Thus, the reason youth are securely detained in the first place is consistent with why they should continue to be mechanically restrained throughout the transportation and court process.

Court Rules

Just as there is no express statute addressing shackling procedures, there is also no express court rule. However, this may change in the near future because on June 4, 2009, the Florida Supreme Court held oral argument on a proposed amendment to Rule of Juvenile Procedure 8.100 (this rule addresses general provisions for juvenile court hearings.) The Juvenile Court Rules Committee of the Florida Bar filed its three-year cycle report recommending amendments to various juvenile court rules with the Court on January 28, 2009.⁹

One of the proposed rule changes is an additional provision in Fla. R. Juv. P. 8.100 which will prohibit the indiscriminate shackling of youth in juvenile courtrooms. Basically, it provides that mechanical restraints may not be used in a juvenile court proceeding unless there is a finding by the court that a youth is either a danger to himself or others, or is a substantial flight risk. The amendment also requires that there be “no less restrictive alternatives to restraints” (including the presence of court personnel, law enforcement officers, or bailiffs) that will prevent such physical injury or flight.¹⁰

Because this proposed amendment was recommended by a very close vote of the Juvenile Court Rules Committee (12-11-1), both the majority report¹¹ and the minority report¹² were filed with the Court. Although the vote was close among committee members, the Florida Bar Board of Governors unanimously supported the proposed amendment (30-0-0).

The majority opinion maintains that the indiscriminate shackling of youth without any individualized finding of potential harm or flight risk goes against the rehabilitative purpose of the juvenile justice system. The majority opinion points to s. 985.02(1)(c), F.S., providing for a “safe and nurturing environment which will preserve a sense of personal dignity and integrity” in support of this proposition. The majority opinion also states that

⁸ See s. 985.245, F.S. (describes the risk assessment instrument) and s. 985.255, F.S. (outlines detention criteria qualifying a youth for secure detention, including: an escapee or absconder from a DJJ program; a youth wanted in another jurisdiction for a felony offense; a youth charged with domestic violence or charged with possessing or discharging a firearm on school property; a youth charged with a capital felony, life felony, first degree felony, a non-drug second degree felony, or a violent third degree felony; a youth charged with a drug related second or third degree felony or a non-violent third degree felony and the youth has a failure to appear, has a record of law violations, has been detained or released and is awaiting final disposition, has a record of law violations; has a record of violent conduct resulting in physical injury to others, or possesses a firearm; is alleged to have violated probation or conditional release supervision (may only be held in a consequence unit, [unless the violation is a new law violation that meets secure detention criteria] and if that’s unavailable, may be placed in home detention); or is detained on a judicial order for failure to appear if the youth has a prior history of not showing up).

⁹ *In Re: Amendments to the Florida Rules of Juvenile Procedure (Three-Year Cycle)*, Case No. SC09-141, Three-Year Cycle Amendments to the Florida Rules of Juvenile Procedure (Fla. argued June 4, 2009) (indicating that the impetus for this change came from the National Juvenile Defender Center’s recommendation that judges do not shackle youth in court unless there has been an individualized finding of compelling need for such restraint).

¹⁰ *Id.* at Appendix B-8, C-8, and C-9.

¹¹ *Id.* at 4-8.

¹² *Id.* at 8-17.

indiscriminate shackling injures both the youth and the integrity of the judicial system, in addition to violating the youth's constitutional right to the assistance of counsel and to due process.¹³

The minority opinion, on the other hand, argues that the use of mechanical restraints is not so much an issue of juvenile procedure but rather an issue of courtroom security. Accordingly, it is more appropriately left within the inherent discretionary authority of each judge to control his or her courtroom. It also contends that the majority went beyond the scope of its authority to regulate juvenile procedure by attempting to create substantive law which more appropriately falls within the Legislature's jurisdiction.¹⁴

Case Law

Substance vs. Procedure

As a general rule, substantive law prescribes rights and duties whereas procedural law is the method to enforce those rights and duties.¹⁵ The Court defines practice and procedure as “the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights....”¹⁶ Practice and procedure also includes “all the rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.”¹⁷

The Legislature is responsible for enacting substantive law, while the Supreme Court is responsible for promulgating rules of practice and procedure.¹⁸ Accordingly, the Court may ratify a proposed rule only if it is procedural in nature.¹⁹ The Legislature has the constitutional authority to repeal a rule by a two-thirds vote; it has no authority to enact a law relating to practice and procedure.²⁰ Determining whether a law or a court rule is substantive or procedural is a question that is sometimes difficult to answer.²¹

Trial Court's Inherent Authority

In a case the First District Court of Appeal heard in 1990 involving indiscriminate shackling of youth in juvenile court, it cited to an earlier Florida Supreme Court opinion.²² In the prior Supreme Court opinion, the Court stated: “[c]ourts have the inherent power ‘to preserve order and decorum in the court room, to protect the rights of the parties and witnesses and generally to further the administration of justice.’ This power exists apart from any statute or specific constitutional provision and springs from the creation of the very court itself; it is essential to the existence and meaningful functioning of the judicial tribunal.”²³

In the First District Court of Appeal decision, the court was called upon to determine whether relief was due a juvenile who filed a writ of habeas corpus challenging a blanket order authorizing shackles inside the courtroom for juveniles being held in secure detention.²⁴ Although the First DCA in the above case “question[ed] the propriety of the issuance of a blanket order ...” to shackle all youth from secure detention, it weighed this

¹³ *Id.* at 6-7.

¹⁴ *Id.* at 9, 13.

¹⁵ *Benyard v. Wainwright*, 322 So.2d 473, 475 (Fla. 1975).

¹⁶ *In re Florida Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1972) (per curiam) (Adkins, J., concurring).

¹⁷ *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008) (citing *In re Florida Rules of Criminal Procedure*, 272 So.2d at 66).

¹⁸ *In re Clarification of Florida Rules of Practice and Procedure*, 281 So.2d 204 (Fla. 1973) (per curiam).

¹⁹ *Hall v. State*, 823 So. 2d 757, 763 (Fla. 2002).

²⁰ Fla. Const. art. V, s. 2(a).

²¹ See, *In re Amendment to Florida Rule of Juvenile Procedure 8.165(a)*, 981 So.2d 463, 467 (Fla. 2008) (in which the dissent stated that the newly created right to confer with an attorney before waiving his or her right to an attorney was substantive, not procedural); *David*, 979 So.2d 931 (ruling that the law restricting the recovery of expert witness fees was unconstitutional because it usurped the Court's rule making authority); and *In re Amendment to Florida Rule of Juvenile Procedure 8.255*, 2009 WL 4851113 (Fla. 2009) (the majority did not adopt the proposed changes to the rule because they were “at variance” with the statute).

²² *S.Y. v. McMillan*, 563 So. 2d 807, 809 (Fla.1st DCA 1990) (per curiam) (quoting *Lewis* in note 21).

²³ *Miami Herald Publishing Co. v. Lewis*, 426 So.2d 1, 3-4 (Fla.1982) (quoting *State ex rel. Gore Newspapers Co. v. Tyson*, 313 So. 2d 777, 781-782 (Fla. 4th DCA 1975)) overruled *English v. McCrary*, 348 So. 2d 293 (Fla. 1977) (citing *People v. Hinton*, 31 N.Y. 2d 71, 286 N.E. 2d 265 (1972)), *cert. den.* 410 U.S. 911.

²⁴ *McMillan*, 563 So. 2d 807.

shackling policy against a juvenile judge's inherent discretion to control the courtroom, the judge's security concerns, and the lack of prejudice to a youth because the jury would not see him or her in shackles. The court opined that "[t]he criteria for secure detention [are] narrow and a juvenile who is detained has already been determined to meet [those] criteria."²⁵ After stating that: "[t]he mode of trial court practice and procedure is a matter largely within the discretion of trial judges, the First DCA failed to intervene on behalf of the juvenile requesting relief from the trial court's shackling order. By denying the requested relief, the court allowed the shackling order to stand."²⁶

Shackling

The United States Supreme Court has found that the routine practice of shackling criminal defendants in adult court during a criminal trial is impermissible, unless there is an "essential state interest" shown. The Supreme Court stated that the right to not be bound by restraints "permits a judge, in the exercise of his or her discretion, to take into account special circumstances, including security concerns, that may call for shackling [...] But any such determination must be case specific; that is to say, it should reflect particular concerns, say special security needs or escape risks, related to the defendant on trial."²⁷

The U.S. Supreme Court has not addressed whether this rule of law applies to the indiscriminate shackling of youth in juvenile court, resulting in a variety of shackling practices in the many different jurisdictions. Although many states allow indiscriminate shackling of youth in juvenile courts, at least seven do not. These states include the following: California, Connecticut, Illinois, New Mexico, North Dakota, North Carolina, and Oregon.²⁸

In Florida, statewide shackling practices vary from courtroom to courtroom. However, these varied practices may change when the Florida Supreme Court issues its opinion in *In Re: Amendments to the Florida Rules of Juvenile Procedure (Three-Year Cycle)*.²⁹ Ideally, the Court will offer some guidance as to the constitutionality of blanket shackling policies in Florida's juvenile courtrooms.

Findings and/or Conclusions

Senate professional staff conducted a review of relevant statutory laws, case law, rules, and current practices involving shackling youth in juvenile courts throughout Florida. As part of this review, staff sought input from the DJJ, as well as from other juvenile justice stakeholders, including prosecutors, public defenders, sheriffs, and juvenile judges.

Current Shackling Practices and Procedures

The general process for a shackled youth being transported from a secure detention facility is that the youth either enters the courthouse from a private sally port area or from an area accessible to the general public. The youth then waits for the court hearing in a secured holding cell or in the courtroom itself. The DJJ detention officer mechanically restrains all youth while transporting them from secure detention to and through the courthouse. Once inside the courtroom, the detention officer defers to the preference of each juvenile court judge as to whether to remove the mechanical restraints. For the most part, youths from secure detention who are brought into the courthouse remain mechanically restrained in a majority of the juvenile courtrooms statewide.³⁰

²⁵ *Id.* at 808-809.

²⁶ *Id.*

²⁷ *Deck v. Missouri*, 544 U.S. 622, 628, and 631-633 (2005) (shackling in the penalty phase of a capital trial violates due process).

²⁸ Emily Banks, Anna Cowan, and Lauren G. Fasig, Ph.D., JD, Center on Children and Families, University of Florida Levin College of Law, "The shackling of Juvenile Offenders: The Debate in Juvenile Justice Policy" 10, available at: <http://www.law.ufl.edu/centers/childlaw/pdf/shackling.pdf> Last visited September 22, 2009. *See generally* Perlmutter, B.P. (2007) "Unchain the Children": Gault, Therapeutic Jurisprudence, and Shackling, *Barry Law Review*, Appendix (providing a comprehensive listing of state shackling policies).

²⁹ Case No. SC09-141 (Fla. argued June 4, 2009).

³⁰ Response from the DJJ to inquiry by Senate Criminal Justice Committee professional staff about shackling practices, dated 8-17-09, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399.

The following information offers a “snapshot” into the courthouses/courtrooms used for juvenile hearings:³¹

- There are approximately 78 courthouses in Florida’s 67 counties with about 110 courtrooms being used for juvenile delinquency hearings.
- Of the 78 courthouses, 40 have a private sally port area that shackled youth coming from secure detention enter through to get into the courthouse.
- Of the 78 courthouses, 30 require shackled youth to enter or pass through areas accessible to the general public on their way to the courtroom.
- Of the 78 courthouses, 59 have holding cells in which to securely place youth until the hearing begins.
- Of the 78 courthouses, 58 use one courtroom for juvenile hearings; 12 use two courtrooms for juvenile hearings; and 7 use three or more courtrooms for juvenile hearings.
- Of the 78 courthouses, none have secure barriers inside the courtrooms that separate the detained youth from the other people in the courtroom.³²

There are about 110 circuit court judges who consistently preside over the juvenile courtrooms in Florida. Most of these juvenile judges mandate that youth be restrained in either handcuffs, leg restraints or both during their courtroom visits. The remaining several judges have youth mechanically restrained during the courtroom hearings on a case-by-case basis if they feel that safety and security will be compromised without restraints.³³

The circuit court juvenile judges who decide whether to remove restraints generally do so in the following manner:

- Broward County/Ft. Lauderdale: three of four judges have the leg restraints removed, but maintain the handcuffs; the other judge requires both leg restraints and hand cuffs.
- Palm Beach County/West Palm Beach: four of the judges have the leg restraints and handcuffs left on during the detention hearing, but for any hearings after that, the handcuffs are removed (leg restraints are left on).
- Miami-Dade County/Miami: the five judges have the mechanical restraints removed on a case-by-case basis as long as there is reason to believe that security and safety are not being compromised.³⁴
- Monroe County/Plantation Key: the juvenile judge has all mechanical restraints removed³⁵ at the initial hearing, and at subsequent hearings if the youth has not been placed in secure detention.³⁶

Relevant Detention Admissions Data

According to the DJJ, youth who are securely detained in a detention center are there because they scored high enough on the risk assessment instrument to be considered a threat to themselves, a threat to public safety, or a flight risk.³⁷ The presence of any of these factors is reason enough, according to the DJJ and other juvenile justice stakeholders (prosecutors, sheriffs, and most of the juvenile judges who responded to committee staff’s inquiry about shackling practices), to shackle these youth while transporting them to and through the courthouse, as well as in the courtroom. Public defenders, criminal defense lawyers, and child advocates, on the other hand, contend

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ According to the majority report in Case No. SC09-141, *supra* note 9, at 2 “[a]s of the time this report was filed, Miami Date County had eliminated the practice of indiscriminate shackling in court proceedings without further incident.” *Id.* at 8.

³⁵ *See supra* note 30, at 4.

³⁶ Judicial response from the Sixteenth Judicial Circuit to inquiry by Senate Criminal Justice Committee professional staff about shackling practices, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399 (providing a description of shackling practices in their respective judicial circuits). *See also* the other 15 judicial circuit responses to the same inquiry by Senate Criminal Justice Committee professional staff about shackling practices, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399; and *In Re: Amendments to the Florida Rules of Juvenile Procedure (Three-Year Cycle)*, Case No. SC09-141, Appendix 1 (Fla. argued June 4, 2009) (providing a survey of detention calendars and shackling practices by judicial circuits, completed February 2009 by Debra Leiman, Sixth Judicial Circuit Unified Family Court Staff Director).

³⁷ Section 985.255, F.S., *supra*, note 8 at 2.

that there are youth in secure detention that should not be shackled because they do not reach the threshold of being a threat to themselves, to public safety, or to being a flight risk.

In an effort to shed some light on this issue, Senate Criminal Justice Committee professional staff requested the DJJ to examine secure detention admissions data to see whether youth being held in secure detention meet the threshold of being a threat to themselves, to public safety, or to being a flight risk.

What follows is the department's response containing extracted data for secure detention admissions in fiscal year 2008-09.

Based on preliminary data for FY 2008-09, there were 50,888 admissions³⁸ to secure detention broken down by the following categories:

Classification	Total Number	Percentage of Admissions
Public Safety Risk	15,574	31%
Flight Risk	11,769	23%
Court Ordered Detention	12,920	25%
Violations of Probation	10,625	21%
Total	50,888	100%

- Each admission into secure detention is associated with a referral identification in the Juvenile Justice Information System (JJIS). For this analysis, the DJJ grouped each admission into one of the following four categories:
 - Public Safety Risk – Youth who have scored 12 points or more on the Detention Risk Assessment Instrument (DRAI).³⁹
 - Flight Risk – Youth who are being held as a “failure to appear” or because of an “abscond.”⁴⁰
 - Court Ordered Detention – Youth who are being held in secure detention because a judge has determined there is a reason to hold them.⁴¹
 - Violations of Probation – Youth who are being held in secure detention because of new-law or non-law violations of probation.⁴²

³⁸ The DJJ states that the data extraction for this analysis is preliminary and the number of admissions will be slightly different when the final numbers come out for FY 2008-09. It is important to note, the number of youth and admissions will not equal. An individual youth can be admitted to secure detention multiple times during the fiscal year.

³⁹ The DJJ points out that the classification of the risk assessment instrument is as follows: 0 - 6 points = release with a notice to appear in court; 7 - 11 points = non-secure or home detention; 12 or more points = secure detention. Section 985.245, F.S., outlines the requirements of the DRAI and provides a basic framework for what is included in the assessment.

⁴⁰ Section 985.255(1), F.S., provides that a youth can be held on a failure to appear if: there has been a previous willful failure to appear, after proper notice, for an adjudicatory hearing on the same case; or there has been a previous willful failure to appear, after proper notice, at two or more court hearings of any nature on the same case. According to the DJJ, the statutes do not explicitly define “abscond.” The DJJ identifies youth who abscond from department supervision, often times before they are placed into a residential facility. For example, if a youth who is committed to a non-residential commitment program (day treatment) does not show up to the program, he or she may be considered an absconder and can be held in secure detention.

⁴¹ According to the DJJ, there are several different types of court orders in JJIS. A youth can be held in secure detention on a detention court order, a transfer court order, a contempt of court order, a violation of home detention, or a pick up order. The DJJ does not have discretion in handling court orders. If a youth has a court order to be placed in secure detention, detention center staff holds the youth for the duration indicated on the order. As a part of this analysis, the DJJ tried to identify a corresponding charge with each detention admission. However, a court order can generate a new administrative referral identification, which will not always correspond with the primary referral identification. Therefore, some youth are held on the court order even though there could be multiple open delinquency referrals.

⁴² According to the DJJ, youth in this category are admitted to secure detention based on a court order for a violation of probation (VOP). The DJJ does not always distinguish a new-law VOP from a non-law VOP. This is relevant because unless the violation is a new law violation that meets secure detention criteria, it does not qualify for secure detention. It qualifies for a consequence unit (unavailable because no funding) or alternatively, home detention.

Looking at the data, it can be argued that 54 percent of the youth who fall into the categories of “public safety risk” and “flight risk” can be classified as being a threat to themselves, to public safety, or to being a flight risk. It is unclear, however, what percentage of the youth falling into the other categories of “court ordered detention” and “violations of probation” (46 percent total) can also be classified that way without a further breakdown of their underlying behavior or illegal action that necessitated the VOP or the court ordered detention.⁴³

Input from Juvenile Justice Stakeholders

Public Defenders, Criminal Defense Lawyers, and Florida Children’s First:

The Florida Public Defender Association, Inc., the Florida Children’s First,⁴⁴ and the Florida Association of Criminal Defense Lawyers filed comments with the Florida Supreme Court, supporting the proposed amendment to Fla. R. Juv. P. 8.100, prohibiting the indiscriminate shackling of youth in juvenile courtrooms.⁴⁵ Numerous arguments were put forward in favor of the proposed rule, include the following:

- Indiscriminate shackling harms the youth and the integrity of the whole judicial process.
- Indiscriminate shackling is inconsistent with the rehabilitative intent of ch. 985, F.S., and it violates a youth’s constitutional right to a fair trial, assistance of counsel, due process and the presumption of innocence.
- The proposed rule is procedural, not substantive because it provides a mechanism for enforcing an existing right; accordingly, it is within the Supreme Court’s jurisdiction to adopt it.
- The proposed rule does not encroach on the trial court’s inherent authority to control the courtroom; instead, it requires the court to make its own individualized finding of need, rather than deferring to the DJJ or to the sheriff.
- The proposed rule requires the juvenile judge to use his or her inherent discretionary authority over courtroom security while assisting the judge in balancing safety and security needs with the individualized needs and rights of youth.⁴⁶

Florida Sheriffs:

The President of the Florida Sheriffs Association, on behalf of the Sheriffs of Florida, filed a letter with the Florida Supreme Court on March 17, 2009, opposing the proposed amendment to Fla. R. Juv. P. 8.100.⁴⁷ The main reasons articulated in the letter include the following:

- The ability of the bailiffs to provide protection for court personnel and innocent bystanders depends upon being able to control the persons coming before the court and the proposal will “clearly jeopardize the bailiff’s control of the juvenile.”
- The lack of restraint will also “heighten the possibility of injury during attempted flight by the juvenile.”
- Having the juvenile “restrained and under control is beneficial to the entire judicial process in that it helps to provide a secure and timely docket.”⁴⁸

State Attorneys:

The Florida Prosecuting Attorneys Association shared the following concerns:⁴⁹

- Any proposal that “attempts to arbitrarily impose some prohibition on the ability of those charged with maintaining the safety of all involved would be shortsighted and ignore the reality that individual courts

⁴³ The DJJ was not able to provide a further breakdown of the underlying behavior or illegal activity.

⁴⁴ A statewide legal advocacy organization for children.

⁴⁵ *In Re: Amendments to the Florida Rules of Juvenile Procedure (Three-Year Cycle)*, Case No. SC09-141, Comments in Support of Amendment to Florida Rule of Juvenile Procedure 8.100 by the Florida Public Defender Association, Inc., Florida Children’s First, and the Florida Association of Criminal Defense Lawyers (Fla. argued June 4, 2009).

⁴⁶ *Id.* at 6-9, 15.

⁴⁷ *In Re: Amendments to the Florida Rules of Juvenile Procedure (Three-Year Cycle)*, Case No. SC09-141, Response of the Juvenile Court Rules Committee to Comments, Appendix A (Fla. argued June 4, 2009).

⁴⁸ *Id.*

⁴⁹ Response from the Florida Prosecuting Attorneys Association to inquiry by Senate Criminal Justice Committee professional staff about shackling practices, dated 8-14-09, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399.

and juvenile detention officers are best left with the discretion to determine when restraints are necessary for the protection of everyone.”

- Juvenile offenders are charged with serious felony offenses, including ones involving weapons and violence. “Many are capable of disruption in a courtroom setting and posing a risk to those who might be in the area, both court personnel and citizens who are present for other business.”
- Young people may pose a risk to themselves. “By virtue of their immaturity, many may see flight as the answer to their situation. May also function at a level of immaturity where acting out may be their only coping mechanism for unpleasant situations and where emotional and violent outbursts are not always predictable. Although the same could be said for some adult offenders, with juveniles the state has an absolute obligation to protect them from themselves.”
- “On balance, Florida’s prosecutors believe that leaving the use of restraints to the discretion of the local judges and juvenile security personnel involved offers a far more realistic way to protect both the juvenile offenders themselves and the public from coming to any harm.”
- Since the Florida Supreme Court is considering this matter in the form of a rule change, there are obvious issues as to whether “action regarding this might be considered within the Court’s rule making authority as opposed to being subject to legislative action, making it prudent that nothing be done until the Supreme Court has taken some action.”

Department of Juvenile Justice:

The DJJ states that mechanical restraints on securely detained youth are appropriate throughout the courthouse and during court proceedings, if mandated by the judge, because:⁵⁰

- “The youth’s ability to exercise reason and logic in a highly emotionally charged moment is not equal to that of an adult, due in part to the lack of development of the pre-frontal cortex of an adolescent brain.”⁵¹
- “The odds of poor reason and violent acts are compounded by the fact that many at-risk youth suffer from mental and emotional health issues.”⁵²
- The impulsivity of youth could create scenarios in which a youth may attempt to flee or attack an officer of the court, a citizen, or another youth, which can compound the legal issues the youth is already facing and poses a serious threat to the department’s mission to protect the public.⁵³

Additional comments by the DJJ include the following:

- The number of attempted/successful escapes by youth in the department’s custody will increase if mechanical restraints are prohibited.
- Since Detention Services does not have separately funded “transportation units” in its 25 regional juvenile detention centers, if mechanical restraints are prohibited, there will be fewer detention officers left to supervise youth at the detention centers because more of these officers will be needed to transport youth to and in the courthouse.

Circuit Court Juvenile Judges:

A majority of the circuit court juvenile judges who responded to Senate Criminal Justice Committee professional staff’s inquiry about shackling practices⁵⁴ shared the following comments:

- Decisions related to the security of a juvenile courtroom, including mechanical restraints, are best left to the presiding judge in each individual courtroom.⁵⁵

⁵⁰ Response from the DJJ to inquiry by Senate Criminal Justice Committee professional staff about shackling practices, dated 8-17-09, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399.

⁵¹ *Id.* (citing Bruce Bower, “Teen Brains on Trial: The Science of Neural Development Tangles with the Juvenile Death Penalty.” *Science News Online*, vol. 165, no. 19 (May 8, 2004)).

⁵² *Id.* (citing Federal Advisory Committee on Juvenile Justice (2006). *Federal Advisory Committee on Juvenile Justice Annual Report 2006*).

⁵³ These reasons are in addition to the previous discussion in the “Background” section of the report.

⁵⁴ Responses to the inquiry by Senate Criminal Justice Committee professional staff from juvenile judges in 16 of the 20 judicial circuits about shackling practices, on file with the Committee in Room 510 Knott Bldg., Tallahassee, FL 32399.

⁵⁵ *Id.* The judicial response from the Eleventh Circuit (Miami-Dade County) indicates that judicial practice in this district is to allow youth to appear without shackles. It is within each presiding judge’s discretion to determine which and how many

- Prohibiting the use of mechanical restraints in the courtroom will create serious safety and security concerns for all concerned, including the juveniles themselves, DJJ detention officers, courtroom personnel, parents, victims, witnesses, and other members of the general public.
- Juvenile hearings are often very emotional, with juveniles frequently acting out after adverse rulings, or becoming disruptive after “showing off” in front of family or friends, particularly fellow gang members.
- A considerable number of juveniles are volatile, dangerous, and unpredictable, making them particularly hard to control.
- Most juveniles who demonstrate aggressive tendencies in court act without thinking through the consequences of their actions, more so than adult defendants. Judges are usually not in a position to be able to accurately predict which juveniles are security risks before they actually act out in court.
- The only juveniles shackled in court are the ones who have been held in secure detention because they have been charged with serious crimes, have an extensive delinquency record, or have a pattern of failing to appear in court (which generally means they have committed at least a second degree felony, a violent third degree felony, or have absconded or escaped; shoplifters, car thieves, and drug possessors do not qualify without having other aggravating factors); all other juveniles are released and given a date to appear in court, unshackled.
- The purpose of shackling is to reduce or prevent the need for use of force.
- The use of mechanical restraints allows detention officers to do their job providing safety and security at court in the best way possible; without this ability, detention services does not have the resources to provide additional staffing at court.
- Even with the use of mechanical restraints, inadequate security measures currently exist in juvenile courtrooms.
- It is an unnecessary expenditure of time and energy to determine an issue that is already directly or indirectly addressed by the Detention Risk Assessment Instrument.
- Court dockets will be slowed down, delinquency cases will be delayed, and judicial workload will be greatly impacted because of the additional time it will take to conduct each “shackling review hearing,” including taking testimony on the record from relevant persons to determine whether shackling is appropriate.⁵⁶
- Detention hearings should once again be allowed to be conducted by electronic audio/visual technology⁵⁷ because this practice could go a long way toward addressing many of the issues raised by shackling.⁵⁸

Options and/or Recommendations

As evidenced by the report’s “Findings and/or Conclusions” section, there is a clear divide among the proponents and the opponents of indiscriminate shackling practices in Florida’s juvenile courtrooms.

Opponents of indiscriminate shackling practices (public defenders, criminal defense lawyers, Florida Children’s First, and other legal child advocate organizations⁵⁹) argue that this practice is unconstitutional and extremely

youth will be brought into the court room and whether they will be shackled or unshackled. This decision is based upon the youth’s flight risk, disruptive behavior, or the risk of harm or injury to himself or others.

⁵⁶ *Id.* On the other hand, judicial workload should not be negatively impacted in those circuits (like the Eleventh) that permit each presiding judge to make a case-by-case determination.

⁵⁷ In 2001, the Florida Supreme Court, voicing concerns about institutional convenience and economy, repealed an interim rule allowing a youth to appear at a detention hearing in person or by an electronic audiovisual device at the juvenile judge’s discretion. *Amendment to Florida Rule of Juvenile Procedure 8.100(A)*, 796 So.2d 470 (Fla. 2001).

⁵⁸ The Chief Judge of the Sixth Judicial Circuit, The Honorable Robert J. Morris, Jr., requested in his filings with the Florida Supreme Court that the Court reinstate the former rule allowing a youth to appear in person or by electronic audiovisual device for a detention hearing, or alternatively, direct the Rule of Juvenile Procedure Committee to reevaluate it. “The use of video hearings would eliminate many of the concerns about the use of restraints that the proponents seek to address.” *In Re: Amendments to the Florida Rules of Juvenile Procedure (Three-Year Cycle)*, Case No. SC09-141, Comments of the Sixth Judicial Circuit in Opposition to Proposed Amendments to Rule of Juvenile Procedure 8.100 and Rule of Juvenile Procedure 8.257 at 14 (Fla. argued June 4, 2009).

⁵⁹ The other legal child advocate organizations that filed comments to the Florida Supreme Court include University of Miami School of Law Children and Youth Clinic and the University of Miami School of Law Center for the Study of Human

harmful to youth and to the integrity of the judicial process itself. Proponents of the practice (prosecutors, sheriffs, the DJJ, and most of the juvenile judges who responded to committee professional staff's inquiry), on the other hand, contend that courtroom safety and security are paramount and best left to the inherent discretion of the presiding judge to control his or her individual courtroom. Opponents say that this practice is procedural in nature and thus within the Florida Supreme Court's jurisdiction to regulate. Proponents say that it is substantive law, falling within the Legislature's domain to control.

Nonetheless, because the Florida Supreme Court will be addressing these very compelling arguments in the near future, and its decision on the proposed amendment to Fla. R. Juv. P. 8.100 (prohibiting the indiscriminate shackling of youth in juvenile courtrooms) will directly impact any potential future legislation, staff suggests it is prudent for the Legislature to await the Court's opinion before considering legislative action. In fact, depending on the outcome of the case, the Legislature may or may not need to take legislative action.

For instance, if the Court adopts the proposed amendment to prohibit indiscriminate shackling in the courtroom and committee members agree that this practice should be prohibited; there will be no need for legislation. On the other hand, if committee members want current shackling practices to continue, they will need to file legislation repealing the amended rule and enacting substantive legislation instead.⁶⁰

If the Court does not adopt the proposed amendment which will result in allowing current shackling practices to continue, and committee members agree that these practices should continue, there again will be no need for legislation. However, if members do not want the current shackling practices to continue, they will need to file legislation similar to the bills filed in the past that basically put into statute the substance of the proposed amendment.⁶¹

In short, either way the Florida Supreme Court's decision comes down will affect the Legislature's ultimate course of action in this matter. Accordingly, it seems logical to allow the Court an opportunity to provide guidance to members, particularly in light of the constitutional issues that have been raised by opponents and proponents alike.

Rights.

⁶⁰ For example, legislation might be filed creating a substantive right allowing detention hearings to be conducted using audio/visual technology.

⁶¹ See *supra* note 1, at 1.