

# The Center for Juvenile Justice

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## HB 1279

### Prohibition of Indiscriminate Shackling in Colorado Juvenile Courts

#### PRACTICE HAS BEEN PROHIBITED IN ILLINOIS SINCE 1977

The Supreme Court of Illinois was the first to address blanket shackling of juveniles in 1977. In *In re Staley*, the minor remained handcuffed throughout his bench trial despite oral objections made by his attorney. The trial court cited poor security in the courtroom as the basis for rejecting the motion to remove the restraints. On appeal, the State argued that the long-held prohibition against indiscriminate shackling of adults in the presence of a jury did not apply to proceedings involving a juvenile that were heard outside the presence of a jury. The *Staley* court rejected both arguments. The court dismissed the argument regarding a lack of courtroom security by indicating that the record did not sufficiently support a finding that the minor was a threat to escape or that courtroom security was lacking. Implicit in this ruling is the notion that some individualized determination of need must be made before restraints are utilized.

#### RECENT NATIONAL REFORMS

The trend among state courts is to ban shackling without an individualized analysis of risk. Washington (2002), California (2007), Connecticut (2007), Florida (2009), Massachusetts (2010), New Mexico (2007), New York (2010), North Dakota (2007), North Carolina (2007), Oregon (2011) and Pennsylvania (2011) no longer routinely shackle juveniles as a result of State Appellate Court decisions that have ruled against blanket shackling for juveniles, rule changes, or statutes that prohibit unnecessary restraints. [South Carolina and Alaska have pending legislation.]

#### CAUSE FOR REFORM

There are sound constitutional and policy reasons to reform our shackling practice in Colorado. Shackling of juveniles in courtroom proceedings is antithetical to the juvenile court goal of rehabilitation and treatment. Psychological and medical experts have rendered opinions in pleadings and evidentiary hearings in jurisdictions where this issue has been litigated. They opine that children suffer (emotionally, psychologically, and medically) when held in restraints. One such expert is Dr. Marty Beyer, a national consultant on juvenile justice issues. She opines that "being shackled in public is humiliating for young people, whose sense of identity is vulnerable. The young person who feels he/she is being treated like a dangerous animal will think less of him/herself. Children and adolescents are more vulnerable to lasting harm from feeling humiliation and shame than adults." She argues that indiscriminate and routine shackling of children in court, before family and strangers, is damaging to the juvenile's fragile sense of identity. She notes that the practice could undermine a juvenile's willingness to trust adults in positions of authority, could damage the juvenile's moral identity and development, and could undermine the rehabilitative goals of court intervention. As an expert in the interplay between adolescent development, trauma, and disability, she expresses particular concern about the traumatic impact of shackling juveniles who have been previously traumatized by physical and

sexual abuse, loss, neglect, and abandonment; she further notes that shackling exacerbates trauma, reviving feelings of powerlessness, betrayal, self-blame, and could trigger flashbacks and reinforce early feelings of powerlessness.

Another expert, Dr. Gwen Wurm, a board certified developmental-behavioral and general pediatrician, University of Miami Miller School of Medicine, opined that the policy of subjecting all children and adolescents in the juvenile system to shackling without regard to their age, gender, mental health history, history of violence, or risk of running, “goes against the basic tenets of developmental pediatric practice.” She notes that being shackled conveys that others see the child as “a contained beast,” an image that “becomes integrated in his own identity formation, possibly influencing his behavior and responses in the future.” Like Dr. Beyer, Dr. Wurm warns that shackling can cause emotional, mental, and physical harm and could exacerbate symptoms associated with post-traumatic stress disorder, depression, anxiety disorder, attention deficit disorder, conduct disorder, and interfere with the child’s receptivity to rehabilitation.

### **PROVEN SUCCESS OF REFORM IN FLORIDA FROM 2006**

In 2006, the Miami-Dade Public Defender’s Office (PD-11) successfully challenged the practice and policy requiring that all detained children be brought before the court in chains. As of 2011, more than 20,000 detained children have appeared before the court unbound, in proceedings that respected their dignity and fostered the goal of rehabilitation. In that time, no child has harmed anyone or escaped from court.

When PD-11 asked the juvenile court judges to end the shackling policy, they initially refused. On September 11, 2006, the Public Defender filed motions on behalf of each detained child who would be brought to court that day. The motions asked the judge to order that the child should appear before the court unbound unless it made an individualized determination that safety and security required that that particular child be shackled.

The motions argued that the blanket use of mechanical restraints violated the constitution, international law, and the very purposes that justified the existence of the juvenile court system. The motions included affidavits from experts showing that the blanket shackling policy did just the opposite. Chaining children in court humiliates them, impairs the development of their identity and morality, and ruptures their trust in authority. The young people who appear in juvenile court are still forming their identities, and treating them as dangerous criminals teaches them that that is who they really are. In 2009, the Supreme Court adopted a rule setting a presumption of unshackling and requiring an individualized showing for a youth to be shackled.

### **PRACTICE IN COLORADO**

Almost without exception (Pueblo), a blanket shackling policy exists in each of our juvenile courts. All detained children are shackled to and from court and inside the courtroom. The restraints include handcuffs; fastened to the waist or belly belt and the child will have to wear leg irons, chaining the child’s feet together, usually just far enough apart to allow them to shuffle around when walking. These are the same types of restraints used on adults when they are used.

In Colorado, as the juvenile court is not a closed courtroom; everyone is there as the youth are paraded in and out in chains; their parents, their sisters and brothers, peers, and their co-defendants not detained. In practice, the reality of shackling kids is grim and unnecessary.

The Pueblo Public Defender's Office successfully challenged this practice in 2012 and their materials are available for review. The Defenders submitted numerous Exhibits to include Affidavits of experts; including Dr. Marty Beyer and Dr. Gwen Wurm, among others. These are also available for review. After an extensive hearing, the Judge ruled that an individualized determination must be made on a case by case basis, but the presumption is that youth would not be shackled in his courtroom without a showing by the prosecution that the youth should be shackled. Judge Dennis Maes is now retired but willing to speak on this issue. During the time period Judge Maes was on the bench there were no incidents reported concerning unbound kids.



**Excerpts from Voices of Youth**  
“Shackling & Handcuffs”

To Whom It May Concern:

Shackling & handcuffing is something that will always happen to an adjudicated youth. The mere sight of shackles & handcuffs is devastating. My heart quickly turns into an icebox as these ancient torturing tools are around me. Some might say, “Why do you hate them so much?” Because of all the pain, suffering and embarrassment they have caused me. My own personal experience includes me being handcuffed & shackled inside my high school, in front of my classmates, during lunch-the busiest time of day. It was humiliating and I walked out of the building with my head down and my head in the clouds. I was apprehended in school because of a pathetic curfew violation and I am 100% sure that from that day forward I will be remembered as the kid who got locked up in school... Handcuffs & shackles truly leave scares on the flesh and trauma. They are cold and at times make you feel very lonely in this world not to mention they hurt and irritate because of the unnecessary tightness applied.

From: Just another Spanish kid

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Hi,

This is Nate P. and I'm writing you this letter to let you know that cuffs and shackles make me feel like a criminal, not a “juvenile delinquent”. Shackles hurt and embarrass me most of the time. My opinion is that they are not necessary. When I wear cuffs and shackles I am judged immediately. I am writing this letter to you so that we can come up with a solution. What if one of your sons or daughters was shackled for a minor, non violent crime? Think about it, we are kids.

Thank you for your time,  
Nate P.

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Josh

I am 16 years old. I was put in DYS because I did not go home for a week. The cops stopped me and put handcuffs on me. They put me in a cell for 13 hours. I was really upset, scared, and I felt like an animal. I went to court the next morning and they put shackles on me, wicked tight, it cut my skin they did not take them off until I got to my treatment program. It is not right, we have to drive in a van with adult convicts that say shit to us kids. I think the government can help us a little bit...Help the youth!

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Shackling makes me feel like a dog, like I'm nothing.  
It hurts like crazy  
It makes me feel like a bad person.

Anonymous