



Juvenile Justice Coalition

Stephanie Nelson
Manager of the Children & Families Section
Supreme Court of Ohio
65 South Front Street, 6th Floor
Columbus, Ohio 43215-3431

Re: Comments to Proposed Rule 5.01 – Local Juvenile Restraint Rule

Dear Ms. Nelson:

I am writing today to submit comments on behalf of the Juvenile Justice Coalition (JJC) to the proposed change to the Rules of Superintendence for the Courts of Ohio Rule 5.01: Local Juvenile Restraint Rule. JJC supports this proposed rule because it aligns with best practice, national trends, research, and the rehabilitative purpose of the juvenile court. If the proposed rule is not adopted, Ohio will be left behind as a growing number of jurisdictions adopt presumptions against shackling youth in courts.

Comments from Youth:

Before submitting this rule, JJC had the opportunity to discuss shackling with a group of Ohio youth ranging in age from 17 to their early 20s. When asked how they would feel about being shackled in a courtroom, the youth said being shackled would make them feel:

- Upset and probably make me cry
- Powerless and that everything that happened in court is out of my control – even my body
- Threatened and caged in, like I can't go anywhere
- Claustrophobic, which could make me freak out, cry, and throw up
- Like a criminal
- Like it was already decided that I was guilty
- Hopeless
- Defenseless and uncomfortable
- Like I may freak out, which might make people think I'm dangerous.

The youth said that shackling is excessive, uncalled for, unnecessary, and could increase existing perceptions that Black youth are more dangerous than White youth. One youth shared his experience about seeing his brother shackled in court, saying it hurt him to see his brother chained. Another youth said “if you're going to be mean [by shackling me], expect me to be upset. There should be no reason to put me in chains.”

Shackling Can Undermine the Rehabilitative Nature of Juvenile Court:

The youths' comments reflect how shackling can disrupt the rehabilitative nature of juvenile courts. Since its inception, the juvenile court's role has been to recognize the unique differences between youth and adults and to

turn away from punishment and toward helping youth get on a positive path. Experts across the country have recognized that shackling can undermine rehabilitation by causing youth to identify themselves as “criminal” at a developmentally vulnerable and impactful time, cause new or exacerbate existing psychological harm, and promoting distrust of the court system with both the youth themselves and their families. (See e.g. National Center for Mental Health and Juvenile Justice, *Policy Statement on Indiscriminate Shackling of Juveniles in Court*, April 2015) For example, the American Academy of Child and Adolescent Psychiatry (AACAP) states that “indiscriminate shackling adds to the trauma that many of these [court-involved] youth have already experienced. It is also unnecessarily demeaning, humiliating and stigmatizing.” (AACAP, *Policy Statement on Mandatory Shackling in Juvenile Court Settings*, February 17, 2015).

Research over the past 10 years has shown the dangers of negatively over-responding to youth, which can increase a youth’s likelihood of reoffending. A key point of this research is that subjecting youth to “punishment beyond that which is inherent in the level of control necessary for public safety is likely to be counter-productive to reducing recidivism.” (Mark W. Lipsey, et.al., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, Center for Juvenile Justice Reform (2010), p. 12.) While this research focuses on dispositional decision-making, it is reasonable to extend these principles to pre-disposition decisions such as shackling. Also, it is clear from the youths’ comments above that shackling is viewed negatively and punitively. Given the harm that can occur to youth, Ohio’s communities, and the relationship between youth and the courts by shackling youth, shackling should be used only when necessary to protect public safety as outlined in proposed Rule 5.01.

Ohio’s Proposed Rule Aligns with Nationally Recognized Best Practices:

Many well-respected national legal leadership organizations have recognized that shackling youth in juvenile court is detrimental and have called for jurisdictions to adopt a presumption against shackling, including:

- National Council of Juvenile and Family Court Judges (NCJFCJ): In July 2015, the NCJFCJ passed a resolution recognizing the harms of shackling and calling for states to adopt “a **presumptive rule or policy** against shackling children” and that gives “judges the ultimate authority to determine whether or not a child needs to be shackled.” (NCJFCJ, *Resolution Regarding Shackling of Children in Juvenile Court*, adopted July 25, 2015).
- American Bar Association (ABA): The ABA adopted a resolution similar to NCJFCJ, calling for jurisdictions to create a presumption against shackling as indiscriminately shackling youth “**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, *ABA Resolution 701A*, 2015, Conclusion)
- Association of Prosecuting Attorneys (APA): The APA also has encouraged the adoption of a presumption against shackling, stating that youth are “impressionable and the **indiscriminate use of restraints in court has been shown to influence juveniles such that it negatively impacts their future behavior** and also fosters a negative perception of the criminal justice system.” (Association of Prosecuting Attorneys, *Statement of Principles*, available at <http://njdc.info/wp-content/uploads/2015/12/Association-of-Prosecuting-Attorneys-Policy-Statement-on-Juvenile-Shackling.pdf>).

In addition to these clear statements supporting a presumption from a wide range of court stakeholders, over 20 jurisdictions across the country have adopted a presumption against shackling. Ohio’s proposed Rule 5.01 directly aligns with the parameters described in each of the organizations’ model policies described above as well as an ever-growing list of jurisdictions across the country. If proposed rule 5.01 is not adopted, Ohio will be out of line with jurisdictions and legal stakeholders.

Proposed Rule 5.01 Maintains Judicial Discretion:

It is important to note that proposed Rule 5.01 retains juvenile court judges' discretion to restrain youth in their courtrooms if a youth is posing a threat to public safety, which is in line with each of the policies discussed in the prior section. *Under the proposed rule, a juvenile court judge can restrain any youth – with the use of multiple restraints if necessary – if the judge believes the youth may flee the courtroom or represents a threat to the safety to himself or herself or any other person in the courtroom.* The rule changes procedure and requires that juvenile court judges make the decision to restrain a youth in the courtroom on an individualized basis, including using the minimum restraints necessary with that particular youth to ensure public safety. This individualized decision-making is what juvenile court judges specifically are trained to do and what research indicates is the best approach for youth in the juvenile court system.

Many judges have raised the issue of security and physical layout concerns, particularly of older courtrooms. While these issues can be problematic in some courtrooms, there may be minor changes that courts can make, including strategically scheduling hearings to ensure enough personnel is present for certain hearings, modifying the layout of furniture, and ensuring that youth are prepared for what to expect during the hearing either through detention staff or the youth's attorney.

The potential harms of using restraints in juvenile court and the broad and growing national consensus on creating a presumption against shackling youth in juvenile courtrooms led to a broad group of stakeholders to submit proposed Rule 5.01 to the Ohio Supreme Court for its consideration. JJC supports the adoption of proposed Rule 5.01. Thank you for the opportunity to comment on proposed Rule 5.01.

Sincerely,



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