IN THE JUVENILE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

ADMINISTRATIVE ORDER ESTABLISHING LOCAL RULE	)	USE OF RESTRAINTS ON JUVENILES IN COURT PROCEEDINGS

This order applies to the handling of juveniles in the courtroom and the use of shackles and restraints during court appearances and is entered in accordance with Rule 1.2 of the Uniform Rules of the Juvenile Court (URJC) governing the adoption of local operating procedures for the purpose of establishing procedures for the handling of children in the courtroom who are accused of committing a delinquent act.

PURPOSE, FINDINGS, AND CONCLUSIONS OF LAW

The purpose of this administrative order is to avoid the unnecessary trauma associated with the use of restraints (or what has become known as the "shackling" of juveniles) on juveniles in court proceedings. There is a growing trend among States and local courts by legislation and/or administrative rule to prohibit the use of restraints on juveniles during court proceedings unless a determination has been made on a case by case basis that the juvenile has demonstrated an actual flight or safety risk. The courts have established that the shackling of adults in cases involving jury trials is presumptively prejudicial and an offense to the defendant's right a fair and impartial hearing as guaranteed by the Sixth Amendment. Although juveniles alleged to have committed a delinquent act do not possess a constitutional right to a jury trial in Georgia, there is a growing body of research that shows the harmful impact on children that is "repugnant, degrading, humiliating, and contrary to the stated purposes of the juvenile justice system and to the principles of therapeutic justice, a concept which this Court has previously

acknowledged." See In re Report of Family Court Steering Committee, 794 So.2d 518, 523 (Fla. 2001).[1] In amending the rules to abolish the use of restraints on juveniles in the courtroom with exceptions, the Florida Supreme Court also recognized that "indiscriminate use of restraints on children in the courtroom in juvenile delinquency proceedings may violate the children's due process rights and infringe on their right to counsel."[2]

In concluding that the use of shackles and restraints on children in the courtroom is a violation of a child's right to due process, this court will provide the constitutional case law regarding the inappropriate use of restraints beginning chronologically with decisions affecting adults and concluding with research and findings on the effects of restraints on children and a sampling of decisions by various jurisdictions to minimize the harm to children.

A. USE OF RESTRAINTS ON ADULTS: DUE PROCESS ANALYSIS

In both this country[3] and in England,[4] the use of restraints during the guilt phase of a trial is an "inherently prejudicial practice." This rule is not absolute because in "some circumstances, shackling 'is necessary for the safe, reasonable and orderly progress of trial."[5]

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[1] The Florida Supreme has approved guiding principles for family court, including that "therapeutic justice" should be a key part of the family court process.

[2] IN RE: AMENDMENTS TO THE FLORIDA RULES OF JUVENILE PROCEDURE, (December 17, 2009)

[3] *See* People v. Harrington, 42 Cal. 165, 168-69 (1871) ("[T]o require a prisoner during the progress of his trial before the Court and jury to appear and remain with chains and shackles upon his limbs, without evident necessity for such restraint, for the purpose of securing his presence for judgment, is a direct violation of the common law rule, and of the thirteenth section of our Criminal Practice Act."); Eaddy v. People, 174 P.2d 717, 718 (Colo. 1946) (en bane) ("The right of a prisoner under- going trial to be free from shackles, unless shown to be a desperate character whose restraint is necessary to the safety and quiet of the trial, is Hornbook law.").

[4] *See* 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 322 (1769) (footnote omitted) ("[I]t is laid down in our ancient books, that, though under an indictment of the highest nature, [a defendant] must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape."); 3 E. COKE, INSTITUTE OF THE LAWS OF ENGLAND 34 ("If felons come in judgment to answer . . . they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will.").

[5] United States v. Mayes, 158 F.3d 1215, 1225 (11th Cir. 1998) (quoting United States v. Theriault, 531 F.2d 281, 284 (5th Cir. 1976))

Although the general rule prohibits the use of restraints as "inherently prejudicial," States have differed in their approach to what is "safe, reasonable, and orderly progress of trial."

Beginning with *Illinois v.* Allen, 397 U.S. 337, the U.S. Supreme Court began to acknowledge the inherent prejudicial effects of restraints, including the wearing of jail clothing. Although acknowledging the use of restraints as an inherently prejudicial practice, the Court reversed an appellate court's decision upholding a trial court's decision that the right to be free of restraints is absolute involving a belligerent and hostile defendant holding that the defendant possesses an absolute Sixth Amendment right to be present at trial. The Supreme Court reversed holding that "trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case."[6]

In 1976, in the case of *Estelle v. Williams*, 425 U.S. 501 (1976), the U.S. Supreme Court acknowledged that compelling a defendant to wear jail clothes to court was inherently prejudicial, but the defendant's failure to object to the clothes at the time of trial was "sufficient to negate the presence of compulsion necessary to establish a constitutional violation".

In 1986, the U.S. Supreme Court in the case of *Holbrook v. Flynn*, 475 U.S. 560, 562 (1986), held that the presence of four state troopers during the trial of the defendant was not indicative of displaying the defendant as a "dangerous or culpable" as wearing jail clothes or shackles stating that "[w)bile shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large.

[6] *Illinois v. Allen*, 397 U.S. 337, 343 (1970)

the presence of guards at a defendant's trial need not be interpreted as a sign that he is particularly dangerous or culpable."

In *Deck v. Missouri*, 125 S. Ct. 2007 (2005), the United States Supreme Court held that the Due Process Clauses of the Fifth and Fourteenth Amendments prohibited the use of visible restraints during the penalty phase of a capital criminal trial unless such use was justified by an essential state interest specific to the defendant being sentenced. In its analysis, the Court pointed out that its recent opinions regarding the traditional prohibition of visible shackling of criminal defendants have not focused on the need to prevent physical discomfort but have emphasized the importance of recognizing three fundamental legal principles.

The first principle is that "the criminal process presumes that the defendant is innocent until proved guilty." The second fundamental legal principle is that "the Constitution, help the accused secure a meaningful defense." Finally, the third principle is that judges must seek to maintain a judicial process that is a dignified process."

B. USE OF RESTRAINTS ON JUVENILES: DUE PROCESS ANALYSIS

A standard for approaching the constitutional rights of children has evolved over time since the issuance of the U.S. Supreme Court's decision in *In re Gault*. In that case, the Court definitively held that "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." 387 U.S. at 13. The Court did not sweepingly apply all rights of adults to children. However, with respect to a child at the adjudicatory stage of proceedings, the Court found violations of a child's constitutional rights where he is denied notice of charges, the right to counsel, the privilege against self-incrimination, and the right to confrontation and

cross-examination. *Id.* at 31-59. Following *In re Gault*, other due process rights have been explicitly recognized as belonging to children in a delinquency context, including proof of delinquency beyond a reasonable doubt (*In re Winship*, 397 U.S. 358, 367 (1970)) and protection against double jeopardy (*Breed v. Jones*, 421 U.S. 519, 541 (1975)).

These constitutional rights guaranteed to children are circumscribed by the rehabilitative ends of the system as a whole. For example, the right to a jury trial was not extended to juvenile proceedings on the premise that "if required as a matter of constitutional precept, [the right to a jury trial] will remake the juvenile proceedings into a fully adversary process and will put an effective end to what has been the idealistic prospect of an intimate, informal protective proceeding." *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1970) (Blackmun, J., plurality opinion). Accordingly, the approach to due process in the context of juvenile justice is to extend rights so far as possible to accommodate the specific rehabilitative tenor of the juvenile system.

Underlying the analysis in *In re Gault*, *McKeiver* and other cases addressing the due process rights of juveniles is the rule previously articulated in *Kent v. U.S.*, 383 U.S. 541 (1966) that, while due process in a delinquency setting need not meet the standards of an adult criminal trial or administrative hearing due to the unique ends of juvenile justice, it must "measure up to the essentials of due process and fair treatment." *Id.* at 562. From this requirement of due process and fair treatment, a two-part inquiry for determining the fundamental fairness of a juvenile proceeding emerged: 1) does the action serve a legitimate state objective?; and 2) are there adequate procedural safeguards to authorize the action? *Schall v. Martin*, 467 U.S. 253, 263-264 (1984). The effect is a balancing test in which the due process interests of the child are weighed against the distinctive state interests involved in

the administration of juvenile justice.

The inquiry is not wholly distinct from the analysis undertaken when considering shackling in the adult context. Similarly, when restraints are imposed on adults in a criminal court setting, courts look for a legitimate state interest in the use of restraints and for a judicial process by which the use of such restraints is justified. Our common law tradition has long maintained that an individual "be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape." 4 W. Blackstone, Commentaries on the Laws of England 317 (1769). In modern parlance, the use of shackles has been limited to instances where restraints are justified by "an essential state interest specific to each trial." *Holbrook v. Flynn*, 475 U.S. 560, 568-569 (1986). The Court illustrated this standard explicitly in *Deck v. Missouri*, 544 U.S. 622 (2005), when it wrote that the right to be free from restraints

> permits a judge, in the exercise of his or her discretion, to take account of 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. *Id.* at 633.

While the *Deck* and *Holbrook* cases addressed shackling at different stages of a criminal trial, the common approach behind the imposition of restraints is a finding of need for such restraints, in light of a legitimate state interest and specific to the defendant at that particular juncture of adjudication.

The current practice of indiscriminately shackling detained children is indefensible under either the analysis of prior juvenile due process cases, such as *Kent* and *Schall*, or the approach utilized with respect to the shackling of adult defendants, as in *Holbrook* or *Deck*. A blanket policy by its nature does not even begin to address the state interest, if any, in shackling children or the specific need for shackling a particular child. While the legitimate state

interest of courtroom safety and decorum may be asserted (*Deck*, 544 U.S. at 632; *infra*, Part IVB), a blanket policy that does not even inquire into that interest, never mind require any substantiation of such an assertion, cannot be countenanced. The standardless, indiscriminate policy utterly disregards the due process concerns of the child and, consequently, the central issue of fundamental fairness. Where no inquiry occurs at all, judges are exercising discretion in direct conflict with these previously established due process principles.

Of these fundamental due process rights owed to a child in the juvenile system, the presumption of innocence is one such right that is significantly compromised by an indiscriminate shackling practice. When judges impose restraints without regard to the actual needs or risks of a child, they necessarily pass judgment on the child's character in the absence of proof and negatively influence the attitudes of other parties with respect to the child. As stated below, blanket shackling policies create self-fulfilling prophecies—as they are treated, so they shall become.

The right to a presumption of innocence is identified as foundational in *In re Winship*, and is termed an "axiomatic and elementary" principle, even in the juvenile delinquency context. *In re Winship*, 397 U.S. at 363. Arising out of this central precept is the uniform rule that appearing before a jury in shackles is inherently prejudicial to a defendant. *Holbrook*, 475 U.S. at 568; *Bello v. State*, 547 So. 2d 914, 918 (Fla. 1989). The prejudice is apparent in the negative impression that chains and restraints may make upon the fact finder, be it a jury or a judge. *Holbrook*, 475 U.S. at 568.

The prejudicial effect of shackling on the judge as fact finder has not been thoroughly addressed in prior case law. However, the centrality of the presumption of innocence should force any court to proceed with extreme caution when imposing restraints. Judges in juvenile

court serve the same role as the jury in the sense that they are the triers of fact, and the child should be protected from any impermissible inferences drawn from the child's appearance in restraints, whether those inferences are consciously drawn or inadvertent. When the shackling is done indiscriminately, without regard to the actual threat the child poses, the danger of a prejudicial inference is increased for those children for whom the shackling is unwarranted. A child with no prior delinquent history and no history of violence will garner an image as a much more dangerous individual in the eyes of the judge when he appears shackled, especially where the judge has taken no efforts to consider factors in the child's life and context that could mitigate that impression.

A potentially more dangerous impairment on the presumption of innocence occurs in the mind of the child himself when restraints are imposed upon him without a showing of cause. The adolescent's peculiar stage of development makes him particularly susceptible to outside perceptions in his formation of identity.[7] The stigmatizing and humiliating effect of being shackled, especially where unwarranted, can result in the child himself adopting the attitude that he is a bad or dangerous person.[8] The perception of a presumption of innocence all but vanishes if the child is led to believe by his being treated like a dangerous person that he is in fact thought to be so by the court and society.

The prejudicial effects of shackling on both the fact finder and the child's psyche

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[7] Dr. Beyer, a clinical psychologist with expertise in adolescent development, and a national independent consultant on juvenile justice policy, submitted an expert affidavit to eradicate blanket shackling of children in the courtroom. The affidavit was filed in support of a Motion for Child to Appear Free from Degrading and Unlawful Restraints filed by the Miami-Dade Office of Public Defender in the Eleventh Judicial Circuit, *available at* http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf.

[8] Dr. Wurm, a board-certified developmental, behavioral and general pediatrician who teaches at the University of Miami Miller School of Medicine and serves as director of Jackson Memorial Hospital's Medical Foster Care Program, submitted an expert affidavit in support of the same Motion, calling for individual needs assessments before shackling children inside the courtroom, available at http://www.pdmiami.com/unchainthechildren/AppendixFDrGwen%20Wurm.pdfW urm.

are exacerbated because restraints are imposed at all stages of delinquency proceedings, not just the adjudicatory or penalty phases.[9] A child in the juvenile justice system can appear in shackles at a sounding, pre-trial conference, a simple motion hearing, or any other pre-adjudication court date. Consequently, there is an unnecessary risk the child is branded as criminal or guilty, regardless of whether he has in fact been found to be so.

Protecting the presumption of innocence should be of the highest concern for judges in the juvenile justice system, although the current approach treats such a right dismissively when it presumes the child to be worthy of shackling without just cause for doing so. The local rule providing guidelines on the use of restraints can return meaning to the presumption of innocence by requiring factual findings before the shackling can be imposed. The risk, even if small, of a judge or other observers being impermissibly prejudiced by the image of a shackled youth can effectively be avoided when the judge is invited to rebut an unwarranted inference of dangerousness through an individualized finding in which countervailing factual considerations are examined.

~~The Supreme Court of~~ Illinois was the first to address blanket shackling of juveniles in 1977. In *In re Staley*, 364 N.E.2d 72, 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 Court pointed out that the possibility of prejudicing a jury is not the only reason why courts should not allow the shackling of an accused in the absence of

[9] See Bernard P. Perlmutter, "Unchain the Children:" Gault, Therapeutic Jurisprudence, and Shackling, 9 Barry L. Rev. 1, 3 (2007).

a strong necessity for doing so. The Court recognized that the presumption of innocence is central to our administration of criminal justice and that in the absence of exceptional circumstances, an accused has the right to stand trial "with the appearance, dignity, and self-respect of a free and innocent man." Citing *Eaddy v. People* (1946), 115 Colo. 488, 492, 174 P. 2d 717, 719.) The Court went on to describe how shackling jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged and pointed to a prior decision stating "as we observed in *Boose*, shackling restricts the ability of an accused to cooperate with his attorney and to assist in his defense. (66 Ill. 2d 261, 265.)"

The court in *Staley* turned to Section 4.1(c) of the ABA Standards relating to jury trials as further showing of why the forbidding shackling is not limited to trials by jury. The commentary to section 4.1 provides:

> [T]he matter of custody and restraint of defendants and witnesses at trial is not of concern solely in those cases in which there is a jury. Obviously, a defendant should be able to consult effectively with counsel in all cases. **Prison attire and unnecessary physical restraint are offensive even when there is no jury.** * * * * * * (c) * * * Because the rule rests only in part upon the possibility of jury prejudice, it should not be limited to jury trials." ABA Standards. Trial by Jury sec. 4.1. Commentary 92-94 (1968). (Emphasis Mine).

The court also acknowledged that the rule against restraints is not absolute and that trial judges retain the "the responsibility of insuring a proper trial and that there may be circumstances which will justify the restraint of an accused stating that "A defendant may be shackled when there is reason to believe that he may try to escape or that he may pose a threat to the safety of people in the courtroom or if it is necessary to maintain order during the trial . . . In the absence of such a showing, however, which must be established clearly on the record (*People v. Boose*, 66 Ill. 2d 261, 267), an accused cannot be tried in shackles whether there is to be a bench trial or a trial by jury."

Finally, the State pointed to the "poor security" that existed in the courtroom and argued that this was a sufficient justification for requiring the defendant to remain handcuffed during the adjudicatory hearing. The court stated that this "argument does not impress . . ." and stated that "There is nothing in the record to show that the defendant posed a threat of escape. While the record is not absolutely clear as to the status of the security in the courtroom, we consider that if guards or deputies were not present, they should have been summoned in order to resolve the security problem. Physical restraints should not be permitted unless there is a clear necessity for them."

O.C.G.A. §15-11-1 expressly states that it is the intent of the General Assembly that every child is provided "due process of law, as required by the Constitutions of the United States and the State of Georgia, through which every child and his or her parent and all other interested parties are assured fair hearings at which legal rights are recognized and enforced." Based on the aforementioned analysis, the court concludes that a blanket policy of requiring all children in court appearances to be shackled, regardless of their age, size, gender, pending charges, history of violence, or risk of escape, is unconstitutional. The matter of blanket concerns the fundamental liberty to be free from external restraint, due process requires an individualized determination by the court of dangerousness and a finding that there are no less restrictive alternatives before permitting the juvenile to be restrained in court.

The court is also concerned with impact of restraints on the child's right to counsel. Since the creation of the juvenile courts, children have been extended some, but not all, of the constitutional rights accorded to their adult counterparts. In the seminal case of In re Gault, Justice Fortas pronounced that children were equally deserving of due process rights. 387 U.S. at 33. One of the most important of those due process rights recognized by the Court was the

child's right to be represented by counsel when faced with a charge of delinquency. Id. at 39, n.65 (referring to National Crime Commission Report, pp. 86-87, "The Commission believes that no single action holds more potential for achieving procedural justice for the child in the juvenile court than provision of counsel. The presence of an independent legal representative of the child, or of his parent, is the keystone of the whole structure of guarantees that a minimum system of procedural justice requires.").

Indiscriminately shackling youths inside the courtroom makes it very difficult, if not impossible, for youths to communicate with their attorneys. Physically, if children are shackled, they are prevented from writing notes to their attorney. See Perlmutter, "Unchain the Children," 9 Barry L. Rev. at 37. Thus, shackling limits the type of communication children can have with their attorneys and therefore, frustrates their right to counsel.

It is also important to understand that while an adolescent might only be a couple of years away from being defined as an "adult," the mind of an adolescent is very different than the mind of an adult.[10] Children experience shackling personally. They do not have the ability to understand that all youths are shackled. The youth sees shackling as a personal injustice perpetrated by the court, and therefore, distrusts those associated with the court. This distrust can affect the relationship the youth has with his attorney. If the child attributes the attorney as being part of the system that has shackled him, then a real risk exists the child will not be able to speak openly with his attorney. The fact that a youth has a right to counsel becomes moot when the youth distrusts his attorney.

C. USE OF RESTRAINTS ON JUVENILES: BEST INTEREST ANALYSIS

Shackling of juveniles in courtroom proceedings is antithetical to the juvenile court

[10] Marty Beyer, Ph.D., Developmentally- Sound Practice in Family and Juvenile Court, 6 Nev. L. J. 1215, 1226-7 (2006).

goal of rehabilitation and treatment as set forth in O.C.G.A. 15-11-1 and the general goal of the juvenile court and the reasons for which it is separated from the adult criminal justice system.. Experts in psychology and medicine 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. Dr. Marty Beyer, a nationally recognized expert in matters of juvenile justice, 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 concludes, in her expert opinion, 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 expressly mandated by the juvenile code. 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, and 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.

D. BLANKET USE OF RESTRAINTS UNWARRANTED

There is no evidence of security risks posed by unshackled children.[11] On the contrary, evidence shows that unshackled children pose no greater risks to the safety of the courtroom than do shackled children.[12]

Nationally, there has been a movement to unshackle children in the courtroom. Currently, 24 states do not have a regular practice of shackling their youth. Prior to Florida adopting a uniform rule prohibiting the shackling of children without a showing to support the use of restraints. Miami-Dade County juvenile courts elected to only shackle children based on individual findings of a security threat. The movement to unshackle children in the courtroom seems to beg the question as to why courts decided to implement blanket policies of shackling children in the first place. Carlos Martinez, Miami-Dade County Public Defender, has written that,

> In Miami-Dade, since the first child was unshackled, more than 3,000 (detained children have appeared in court, few have been determined to be a flight or safety risk to justify

[11] See Perlmutter, "Unchain the Children," 9 Barry L. Rev. at 14 ("...data on the incidence of courtroom violence, and particularly violence perpetrated by juveniles, is sparse and not supportive of a blanket shackling policy.") (citing Hon. Fred A. Geiger, Courtroom Violence: The View from the Bench, 576 Annals Am. Acad. Pol. & Soc. Sci. 102, 103 (July 2001)).

[12] Emily Banks, et al., The Shackling of Juvenile Offenders: The Debate in Juvenile Justice Policy, Center for Children and Families ("CCF"), University of Florida Levin School of Law 1, 9 (2008), available at http://www.law.ufl.edu/centers/childlaw/pdf/shackling.pdf .

> shackling. We have not had courtroom escapes or injuries caused by the detained but unshackled children. Despite seeing a high number of detained children in court each day, our judges dispense justice one-child-at-a-time, without additional courtroom personnel. We do not have armed officers in court.[13]

This statistic was provided in 2007 and as of today, the number of children appearing in court is seven times greater and the outcomes remain the same. In our efforts to study this issue, the Sheriff of Clayton County, Victor Hill, and this court traveled to Miami-Dade Juvenile Court to conduct a site visit and learn the operational details in the application of a no-shackling policy. We met with the Chief Judge, staff, and the personnel responsible for the security of the juvenile inmates and the courtroom. We also observed the escorting of the juvenile inmates from the adjacent detention center following them to the courthouse and into the secure hallway just outside the courtroom. We proceeded to take a seat inside the courtroom and observed the handling of the juveniles during the proceedings without the use of restraints and without any incident. It became quite apparent the importance of addressing the children and families in a respectful manner to avoid inciting their emotion. In those cases the child had to return to detention, the judge made a point to speak with a kind and calming tone and to explain why he/she was being returned to detention (i.e. risk to the community and pending evaluations) and that the decision was not personal or grounded in anger.

The findings in another Florida county, Alachua County, were similar. Based on observation research conducted by the Center for Children and Families (CCF), 95% of unshackled children were "compliant."[14]

There can be no dispute that judges have discretionary authority within the courtroom to manage security and decorum. Deck, 544 U.S. at 632 ("We do not underestimate the need to

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[13] Carlos Martinez, Challenging the Shackling of Juveniles in Court, 2 COD Network Newsletter 5 (July 2007), available at http://www.lajusticecoalition.org/doc/COD%20Newsletter%202007.pdf.
[14] Banks, et al., The Shackling of Juvenile Offenders, at 9.

restrain dangerous defendants to prevent courtroom attacks, or the need to give trial courts latitude in making individualized security determinations"). However, this discretion has never been utterly unbridled, nor has its exercise been authorized to the detriment of a defendant's constitutionally protected rights. The Court in Deck was careful to note that the exercise of a judge's discretion with respect to shackling must be a case-specific determination couched in concerns relevant to the defendant at that point in trial. Deck, 544 U.S. at 633. These attitudes toward judicial discretion, particularly with respect to restraining defendants, reflect the overarching concern of In re Gault, that "[u]nbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and practice." 387 U.S. at 18.

E. CONCLUSION

Whereas, juvenile courts of this State are primarily responsible for the moral, emotional, mental, and physical welfare of children and youth, and that it is the responsibility of the Court pursuant to O.C.G.A. §15-11-1 to preserve and strengthen family relationships, countenancing the removal of a child from his or her home only when state intervention is essential to protect such child and enable him or her to live in security and stability. The General Assembly further intended that "Above all, (juvenile courts shall liberally construe the juvenile code) to reflect that the paramount child welfare policy of this state is to determine and ensure the best interests of its children." The overall function of the juvenile court is to identify such children and youth whose well-being is threatened and to assist, protect, and restore said children and youth as law abiding members of society. Gardner v. Lenon, 154 6A. App.748, 270 S.E. 2d 36 (1980), In re B. H., 190 Ga. App.131, 378 S. E. 2d 175 (1989).

Based on the aforementioned constitutional, statutory, rehabilitative and therapeutic jurisprudence reasons, the practice of indiscriminately shackling detained children in court,

irrespective of the child's age, height, weight, gender, offense, or threat to public safety outside of the courtroom, is contrary to the principles of due process and harmful to children and shall be prohibited and replaced with a local rule as set forth below that provides reasonable guidelines for determining on a case by case basis when the use of restraints are permissible.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the practice of the indiscriminate use of restraints on children in the courtroom shall be prohibited and replaced with a local rule that establishes guidelines for the use of said restraints on a case-by-case basis.

IT IS FURTHER ORDERED that instruments of restraint shall not be used on a child during a court proceeding and must be removed prior to the court's appearance before the court unless the court finds both that:

1. The use of restraints is necessary to prevent physical harm to the child or another person;
2. The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on him or herself or others as evidenced by recent behavior; or
3. There is a founded belief that the child presents a substantial risk of flight from the courtroom; and

There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including but not limited to, other non-visible restraints made available through technology, the presence of court personnel, law enforcement officers, or bailiff.

IT IS FURTHER ORDERED that the Sheriff's Office personnel responsible for the security of the courtroom shall inform the judge if he or she believes any of the risk factors exist upon which the judge shall make an individual assessment which shall include an opportunity to be heard from the child's attorney.

IT IS FURTHER ORDERED that this order shall become effective within a reasonable time from the date of this order with consideration of the time required to establish operating procedures and provide for training.

SO ORDERED this 25th day of February, 2015.

Steven C. Teske

Honorable Steven C. Teske
Chief Judge, Juvenile Court
Clayton Judicial Circuit