UNSHACKLE the Children

A NATIONAL OVERVIEW OF
STATE IMPLEMENTATION EXPERIENCES

THE GAULT CENTER

shack·le (/ˈSHak(ə)l/):
Shackles are instruments of restraint, typically made of metal, but which can also be cloth, leather, or plastic. Shackles used in delinquency court today often include leg irons, belly chains, and handcuffs.

Introduction

When the Gault Center[1] launched the Campaign Against Indiscriminate Juvenile Shackling ("the Campaign") in 2014, only 13 states had legislation, court rules, or caselaw limiting indiscriminate shackling in juvenile court. Today, 39 states, DC, and Puerto Rico limit or prohibit the indiscriminate shackling of children, while just 11 states do not.[2]

Since the launch of the Campaign, we have spoken with youth defenders, juvenile court judges, courthouse security personnel, policymakers, young people, and families from across the country about their experiences with shackling in juvenile courtrooms. In jurisdictions that limit shackling, we have heard about experiences before and after reform. In jurisdictions where indiscriminate shackling is still common, court personnel often inquire about how reforms have been implemented in other states and whether safety incidents in courtrooms have increased because of those reforms.

1 The Gault Center was formerly known as the National Juvenile Defender Center (NJDC). NJDC changed its name to the Gault Center on January 1, 2022.

2 The following jurisdictions limit or prohibit the indiscriminate shackling of children: **Alaska** (Ak. Delinq. Ct. R. 21.5 (2015)); **Arizona** (Ariz. Juv. Ct. R. Proc. 208(f) (2022)); **California** (Cal. Welf. & Inst. § 210.6(b) (2018)); **Colorado** (Colo. Jud. Branch, Report to the Colorado General Assembly: Policies for Juvenile Restraints in Courtrooms (2015)) (This report outlines each judicial district's policy on the use of restraints on children in juvenile court in Colorado in response to the Colorado Supreme Court Chief Justice's request for all 22 judicial districts to adopt such policies unique to each district in 2015); **Connecticut** (Conn. Gen. Stat. Ann. § 46b-122a (2015)); **Washington, D.C.** (D.C. Super. Ct., Administrative Order 15-07 (Apr. 3, 2015)); **Delaware** (Del. Code Ann. tit. 10, § 1007B (2017)); **Florida** (Fla. R. Juv. Proc. 8.100(b) (2010)); **Georgia** (Ga. Juv. Ct. R. 20 (2020)); **Idaho** (State v. Doe, 333 P.3d 858 (Idaho Ct. App. 2014)); **Illinois** (Ill. Sup. Ct. R. 943 (2016)); **Indiana** (Ind. Code § 31-30.5-2-1 (2015)); **Iowa** (Iowa R. Juv. Proc. 8.41 (2017)); **Kentucky** (Ky. Juv. R. Prac. & Proc. 20 (2016)); **Louisiana** (La. Child. Code Ann. art. 408(B) (2018)); **Maine** (Me. R. Crim. Proc. 43A (2015)); **Maryland** (*In re* D.M., 228 Md.App. 451 (Md. Ct. Spec. App. 2016)); **Massachusetts** (Mass. Gen. Laws Ann. ch. 119 § 86 (2018)); **Michigan** (Mich. Ct. R. 3.906 (2021)); **Minnesota** (Minn. Stat. § 260B.008 (2022); **Missouri** (Missouri Juvenile Officer Performance Standards 26-27 (2017) (Missouri has a statewide policy limiting the use of indiscriminate shackles on youth in juvenile court through the Missouri Juvenile Officer Performance Standards, which were promulgated by the Missouri Supreme Court in 2017. However, these standards have not yet been adopted by statewide court rules or legislation that would be binding on juvenile courts across the state.); **Montana** (H.B. 742, 68th Leg., Reg. Sess. (Mont. 2023)); **Nebraska** (Neb. Rev. Stat. Ann. § 43-251.03 (2015)); **Nevada** (Nev. Rev. Stat. § 62D.415 (2015)); **New Hampshire** (N.H. Rev. Stat. § 126-U:13 (2010)); **New Jersey** (N.J. Ct. R. 5:19-4 (2017)); **New Mexico** (N.M. R. Child. Ct. 10-223A (2012)); **New York** (N.Y. Fam. Ct. Act § 162-a (2021)); **North Carolina** (N.C. Gen. Stat. § 7B-2402.1 (2007)); **North Dakota** (N.D. R. Juv. Proc. 10.1 (2019)); **Ohio** (Ohio R. Superintendence § 5.01 (2016)); **Oregon** (Or. Rev. Stat. § 419A.240 (2018)); **Pennsylvania** (237 Pa. Code § 139 (2011)); **Puerto Rico** (2022 P.R. Laws Act 47, Ley de Menores de Puerto Rico–Procedimientos Alternos para Menores de (13) Años); **South Carolina** (S.C. Code Ann. § 63-19-1435 (2014)); **Tennessee** (Tenn. R. Juv. Proc. 204 (2016)); **Texas** (Tex. R. Jud. Admin. 17 (2023)); **Utah** (Utah Code Jud. Amin. 4-905 (2020)); **Vermont** (Vt. Stat. Ann. tit 33, § 5123(d) (2009)) (While Vermont's statute does not explicitly limit the use of indiscriminate shackling of youth in court proceedings, it broadly states that the state's policy is that "mechanical restraints are not routinely used on children…unless circumstances dictate that such methods are necessary."); **Washington** (Wash. Juv. Ct. R. 1.6 (2014)); **Wisconsin** (Wis. Stat. § 938.299(2m) (2022)).

Feedback from people in jurisdictions that have adopted reforms is promising. Incidents of flight or safety are extremely rare or nonexistent, and children and others in the courtroom have responded overwhelmingly favorably to the absence of shackles. Although limited, available data appears to validate these perceptions.

To provide a more complete picture of jurisdictions' experiences, we conducted confidential telephone interviews with personnel from 29 of the states that have a statute, court rule, or administrative order limiting the use of indiscriminate shackling of youth in court. We asked about their involvement with reforming their state's shackling rules and laws, obstacles to passing such reform, progress since the reform, and their perspective about any gaps in implementation. While this was not an exhaustive survey of court practices related to shackling reform across states, the themes that emerged provide important insights.

Two themes speak to the positive changes that young people, their families, and courthouse personnel experienced when shackling was reduced:

- A presumption against shackling does not create or increase safety risks; and
- Children's demeanor in court and interactions with judges improve when they are not shackled.

A third theme encourages careful planning and monitoring of implementation by jurisdictions considering shackling reform and, potentially, additional reforms and implementation efforts in states that already limit shackling:

- State oversight and education of all personnel are crucial to consistent and successful implementation.

This report offers the results of our survey interviews, as well as feedback we have received during the years we have focused on this work; information from jurisdictions currently working to reform their shackling practices; and, where available, data about shackling practices and safety. Our goals are to inform the work of youth defenders and juvenile court personnel as they strive to limit shackling and improve the juvenile courtroom environment for young people and to raise awareness of the trauma, harms, and racial disparities exacerbated by shackling.

Why Reform Shackling Practices?

In jurisdictions that have no rules or laws governing the use of shackles on a young person in a courtroom, shackling is often allowed indiscriminately, without specific reason or judgment. In contrast, more than a decade ago, the U.S. Supreme Court recognized the right of adults not to be shackled at trial except where there are compelling security reasons.[3] The decision noted how the law has long recognized that shackles are inherently humiliating and "ten[d] to confuse and embarrass" people's "mental faculties."[4]

Affidavits from a diverse group of experts assert that shackling unnecessarily humiliates, stigmatizes, and traumatizes young people;[5] impedes the attorney-client relationship;[6] chills due process protections;[7] runs counter to the presumption of innocence;[8] and draws into question the rehabilitative ideals of juvenile court.[9] National organizations' resolutions and policy statements condemn indiscriminate use of shackles[10] and highlight the increased harm to children with a history of trauma exposure, which includes most youth with juvenile legal system involvement.[11] National conferences have included sessions on ending indiscriminate shackling, and there has been increased media awareness and attention to the harms of shackling.[12]

Compounding the psychological harm of shackling is the significant trauma the use of shackles causes Black, Latino/a, and Native/Indigenous youth and their families. Stark racial disparities exist in the delinquency system, including higher arrest rates for similar conduct committed by white children, fewer opportunities for diversion, and higher likelihood of being detained and incarcerated.[13] These disparities exist despite research showing no differences in development or behavior across racial and ethnic groups.[14] This overrepresentation in the legal system makes Black, Latino/a, Native/Indigenous, and youth from other historically oppressed communities significantly more likely than their white peers to face physical restraint at the hands of law enforcement, whether in public or inside a courtroom.

A growing body of literature considers the effects of policing on the mental and physical health of Black, Latino/a, and Native/Indigenous people, and specifically on the trauma associated with disproportionate,

3 Deck v. Missouri, 544 U.S. 622, 626 (2007).
4 *Id.* at 631 (citing People v. Harrington, 42 Cal. 165, 168 (Cal. 1871)).
5 *See, e.g.*, Affidavit by Donald Rosenblitt, Child Psychiatrist and Psychoanalyst, Founder and Executive and Clinical Director, Lucy Daniels Ctr. 2 (Jan. 6, 2015); Affidavit by Eugene Griffin, Attorney and Child Psychologist, Director of Research, ChildTrauma Academy 3 (Apr. 18, 2016); Affidavit by Julian Ford, Clinical Psychologist, Professor of Psychiatry, U. Conn. Sch. Med. 2 (Dec. 11, 2014); Affidavit by Gwen Wurm, Developmental-Behavioral and General Pediatrician, Assistant Professor, U. Mia. Miller Sch. Med. 3-4 (Jan. 7, 2015); Affidavit by Robert Bidwell, Pediatrics and Adolescent Medicine Physician, Assoc. Clinical Professor of Pediatrics, Univ. Haw. 3 (Feb. 12, 2015); Affidavit by Marty Beyer, Clinical Psychologist, Independent Child Welfare and Juvenile Justice Consultant 2-4 (Jan. 15, 2015); Affidavit by Louis J. Kraus, Child and Adolescent Psychiatrist, Chief of Child and Adolescent Psychiatry, Rush U. Med. Ctr. 1 (Feb. 26, 2015).
6 *See, e.g.*, Affidavit by Julian Ford, *supra* note 5, at 4; Affidavit by Robert Bidwell, *supra* note 5, at 4; Affidavit by Marty Beyer, *supra* note 5, at 5; Affidavit by Louis J. Kraus, *supra* note 5, at 2; Affidavit by Gwyneth Campbell Rost, Speech-Language Pathologist, Assistant Professor of Communication Disorders, U. Mass. Amherst 2-3 (Feb. 27, 2015).
7 *See, e.g.*, Affidavit by Robert Bidwell, *supra* note 5, at 4; Affidavit by Marty Beyer, *supra* note 5, at 5.
8 *See, e.g.*, Affidavit by Louis J. Kraus, *supra* note 5, at 2; Affidavit by Gwyneth Campbell Rost, *supra* note 6, at 1-2.
9 *See, e.g.*, Affidavit by Robert Bidwell, *supra* note 5, at 6; Affidavit by Louis J. Kraus, *supra* note 5, at 1; Affidavit by Gwyneth Campbell Rost, *supra* note 6, at 1.
10 Nat'l Council of Juv. and Fam. Ct. Judges, Resolution Regarding Shackling of Children in Juvenile Court (2015) [hereinafter NCJFCJ Resolution]; Am. Bar Assoc., Resolution 107A (2014) [hereinafter ABA Resolution].
11 Nat'l Ctr. For Mental Health and Juv. Just., Policy Statement on Indiscriminate Shackling in Juvenile Court (2014).
12 Nat'l Juv. Def. Ctr., Campaign Against Indiscriminate Juvenile Shackling Toolkit 15 (2016) [hereinafter Campaign Toolkit].
13 *See generally* Sarah Hockenberry & Charles Puzzanchera, Nat'l Ctr. for Juv. Just., Juvenile Court Statistics 2018 58 (2020).
14 *See, e.g.*, Joshua Rovner, The Sentencing Project, Racial Disparities in Youth Commitments and Arrests (2016); Lloyd D. Johnston et al., Nat'l Inst. on Drug Abuse, Monitoring the Future: National Survey Results on Drug Use, 1975-2009 (2010); Laura Kann et al., Ctrs. for Disease Control and Prevention, Youth Risk Behavior Surveillance—United States, 2013 (2014); Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28 (2009).

unnecessary, and aggressive policing in their communities.[15] For example, research has shown that over-policing and increased police stops in these communities may lead to heightened emotional distress and PTSD among youth.[16] While these studies do not analyze the impact of physical restraints of youth, disparate and targeted police stops undoubtedly include the use of handcuffs and multiply the traumatic effects of policing on Black, Latino/a, and Native/Indigenous youth.[17]

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When Black youth are shackled in court, it is a painful reminder of the "images of slaves on the auction block, not of children presumed to be innocent in a court of law."[18] It is critical to consider the harms of shackling young people through a lens of historical racial trauma and with an understanding of how the continued use of the instruments of slavery impacts young people and their families who see their children brought into the courtroom bound in chains.

A Presumption Against Shackling Does Not Create or Increase Safety Risks.

Throughout the course of our work with jurisdictions to eliminate the automatic shackling of youth, court personnel have reported similar outcomes to those mentioned by interviewees during this survey: there have been few, if any, reports of compromised courtrooms or public safety due to unshackling youth.

Though most jurisdictions do not keep data on the shackling of children, six diverse jurisdictions made data available to the Campaign in 2016. That data indicates no evidence of compromised safety for young people or court staff after ending the automatic use of shackling. For example, in Miami, which ended the automatic use of shackles in 2006, between 2006 and 2016, more than 25,000 children appeared in Miami-Dade County's juvenile court without injury or escape.[19]

Connecticut limited shackling in 2015. "After 1,500 youth had come through the court, 94 percent of them unshackled," only one youth made an "escape attempt," walking out of court and later that day turning himself in.[20] Among the other four jurisdictions, all but one reported no safety incidents — and the one that

15 *See, e.g.*, Dylan B. Jackson et al., *Police Stops and Sleep Behaviors Among At-Risk Youth*, 6 Sleep Health 433 (2020); Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 Psych. and Cognitive Sci. 8261 (2019); Zuleka Henderson, *In Their Own Words: How Black Teens Define Trauma*, 12 J. Child and Adolescent Trauma 141 (2017).
16 *See, e.g.*, Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65. J. Adolescent Health 627 (2019); *see also* Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 Proc. of the Nat'l Acad. of Sci. 8261 (2019).
17 *See, e.g.*, Victor J. St. John et al., Child Trends, Emory Univ. Sch. of L., Barton Child L. and Pol'y Ctr., Reducing Adverse Police Contact Would Heal Wounds for Children and Their Communities (2022); Affidavit by Marty Beyer, *supra* note 5, at 3-4.
18 Kim Taylor-Thompson, *Gideon at Fifty – Golden Anniversary or Mid Life Crisis*, 11 Seattle J. for Soc. Just., 867, 880-81 (2013).
19 Campaign Toolkit, *supra* note 12, at 5.
20 *Id.*

did reported only three incidents of youth "acting out in court" over 12 years.[21] No jurisdiction reported compromised safety due to the unshackling of young people in the courtroom.[22]

Outside of this survey, judges and other court officials also frequently provide us with positive feedback about ending the automatic shackling of youth. In 2021, when asked to comment in support of a proposed rule to end the automatic shackling of youth in Michigan, Judge Kenneth King, from the Middlesex Juvenile Court in Massachusetts, stated:

> Though there was a great deal of trepidation when the rule [in Massachusetts] was approved in 2009, its implementation has been virtually seamless. To my knowledge, there have been very few incidents resulting from a young person being unrestrained in court and none in a courtroom where I have presided.[23]

When asked a similar question in 2015, Judge Susan Ashley of New Hampshire said, "Automatically restraining a juvenile in the courtroom deprives that young person of the opportunity to show the court they are capable of self-control. . . . A juvenile coming into the courtroom free from physical restraint can experience confidence in his or her ability to maintain good behavior in the community."

In many jurisdictions, judges have led or been an integral part of advocating for shackling reforms.[24] The leading national juvenile court judicial organization, the National Council of Juvenile and Family Court Judges (NCJFCJ), has asserted that the judiciary should lead these efforts, stating that "consistent judicial leadership is necessary to ensure that policies regarding shackling continue to be upheld regardless of changes in leadership or administration."[25]

Advocates in Wisconsin who successfully petitioned the Wisconsin Supreme Court for a rule against the indiscriminate shackling of youth during court proceedings[26] reported similar experiences among five Wisconsin counties that had previously limited shackling. In La Crosse County, though the sheriff's office may request that a child be shackled in court, Judge Ramona Gonzalez remembered receiving only two requests in the prior five years.[27] And the La Crosse County Sheriff's Department recalled that only two children had run out of the courtroom since implementation of the policy in 2016; one child was found in the courthouse, the other "down the block."[28] Judge Gonzalez noted two or three instances of disruptive behavior in the courtroom, but none serious enough to precipitate a change in policy.[29]

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21 *Id.*
22 *Id.* (Showing that all six jurisdictions that provided data demonstrated the maintenance of order and safety after limiting the use of shackles. The jurisdictions include: Miami-Dade County, Florida, Albuquerque, New Mexico, Clayton County, Georgia, New Orleans, Louisiana, Maricopa County, Arizona, and the state of Connecticut).
23 E-mail from The Honorable Kenneth King, Judge, Middlesex, Mass. Juv. Court to Christina Gilbert, Senior Staff Att'y & Pol'y Couns., The Gault Ctr. (Sept. 29, 2021,1:28PM EST) (on file with author).
24 *See, e.g.*, Campaign Toolkit, *supra* note 12, at 5; Darlene Byrne, *Shackling Children is not Justice*, Del. Online (Jan. 26, 2016), https://www.delawareonline.com/story/opinion/contributors/2016/01/26/shackling-children-not-justice/79379318/; Gracie Bonds Staples, *A Judge's Push to Unshackle Kids in Court*, The Atlanta J. Const. (May 3, 2019), https://www.ajc.com/news/local/judge-push-unshackle-kids-court/0K6k0ExUgiN521jGsDGL1K/; Wis. Sup. Ct. Order No. 21-04 (2022).
25 NCJFCJ Resolution, *supra* note 10, at 1.
26 Memorandum in Support from Eileen Hirsch in the Matter of Amending Wis. Stats. §48.299 and §938.299 Regulating the Use of Restraints on Children in Juvenile Court (Sept. 13, 2021) [hereinafter Memorandum in Support]; *see also* Wis. Sup. Ct. Order No. 21-04 (2022); Wis. Stat. § 938.299 (2022).
27 Memorandum in Support, *supra* note 26, at 8.
28 *Id.* at 8-9.
29 *Id.*

Similarly, in Dane County, Wisconsin, Judge Everett Mitchell reported that "the county had not had any issues with disruptions or acting out since the policy was implemented. In fact, he believes the practice has led to fewer security problems rather than more."[30] Eau Claire County reported "zero escapes, and zero significant incidents of harm or disruption."[31] The county's youth services manager supported the policy, noting that the juvenile court's goal is accountability and safety, not shame and dehumanization.[32] The secure detention manager and his staff, who escort children to and from court, reported being "very comfortable with the policy of shackling only in rare cases for safety or security reasons."[33]

"the practice has led to fewer security problems rather than more."

Likewise, the overwhelming majority of national survey interviewees reported they had not seen or heard of any incidents of compromised safety following the implementation of the presumption against shackling rule or law in their states. Although numerous states were initially reticent to support reforms limiting shackling of youth in court due to concerns of safety and fears of courtroom outbursts, most interviewees said these concerns were unfounded, and they had not seen any evidence to support them. Few interviewees reported any instances of "acting out" since their reforms went into effect, and the few who did made clear they were minor actions, such as a child kicking a water fountain.

Children's Demeanor in Court and Interactions with Judges Improve When They Are Not Shackled.

As has been established by the U.S. Supreme Court, shackling may impede a presumption of innocence and the ability to communicate with counsel and is "something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold."[34]

National organizational resolutions specifically note the impairment of shackling on the juvenile court system's goal of rehabilitation.[35] Shackling can also impair memory and cognition. An affidavit from a speech and language pathologist describes how handcuffs impair "comprehension and memory for what has been heard, both by drawing attention from what is being said and by changing the overt perception of what is being said. Youth who are restrained have attention drawn to restraint, and away from linguistic interactions."[36]

Our survey interviews reflect these same sentiments and indicate that rather than compromising safety, the unshackling of youth leads to an increase in their wellbeing, positive behavior, and engagement during hearings. During interviews, youth defenders observed that when unshackled, clients were much less

30 *Id.* at 10.
31 *Id.* at 9.
32 *Id.*
33 Memorandum in Support, *supra* note 26, at 9.
34 Illinois v. Allen, 397 U.S. 337, 344 (1970).
35 *See, e.g.*, NCJFCJ Resolution, *supra* note 10, at 1 (stating that shackling "is contrary to the goals of juvenile justice"); ABA Resolution, *supra* note 10, at 2 (stating that shackling is "contrary to the rehabilitative ideals of the juvenile court.").
36 Affidavit by Gwyneth Campbell Rost, *supra* note 6, at 2.

> "the unshackling of youth leads to an increase in their wellbeing, positive behavior, and engagement during hearings."

distracted and better able to participate in hearings, as many would stare at and fidget with the shackles on their wrists. Interviewees also noted that without shackles, a child can write questions for their attorney during the hearing.

One defender shared a story in which a young woman, who had been in detention as a teenager, spoke about her experience being shackled in court. The young woman recalled sitting in court and hearing the judge speaking to her, but later, she could not remember anything the judge had said because she was too distracted thinking about how the shackles were hurting her wrists. A defender from another state said he could see noticeable relief and appreciation in his clients as soon as the shackles were removed.

In Wisconsin, lawyers who represent children in juvenile court have also described the effect of shackling on attorney-client communication.[37] One defender described clients as "distracted and embarrassed. . . They crouch down. Sometimes they have to sign papers, but it's hard for them to sign with cuffs chained to their waists."[38] Another said she has had "numerous clients who are physically harmed by the use of shackles. I have seen red marks and indentations on my client's wrists and legs. Beyond the physical pain, it impacts on their ability to be present and responsive in court." [39] That attorney also noted that children who come from homes with a history of trauma experience strong emotions around shackling, sometimes making the shackles "all they can talk about or look at," and in other cases, causing them to disassociate from the proceedings."[40]

Judges across the country notice such differences, too. In 2016, Judge Darlene Byrne of Travis County, Texas, said:

> I decided not to wait for the law to change before I reformed practice in my own courtroom. The outcomes have been outstanding. We hear about 3,000 juvenile cases in my district. In only two cases did I deem shackles necessary because those youth posed a significant risk. In more than a year since I and all my colleagues have stopped automatic shackling, there have been no escapes and no violence. Far more compelling is what did happen: More engaged kids and families, more meaningful conversations, more success.[41]

In addition to reporting how unshackling has had positive impacts on youth, some survey interviewees described observing improvements in the way judges interact with youth. Several noted that without shackles on, youth were more likely to be perceived as the children they are, instead of as "inmates." Defenders noted that interactions between the youth and judges appeared to be more conversational, with youth more engaged and judges better able to make a connection with the young people appearing before them.

37 Memorandum in Support, *supra* note 26, at 6.
38 *Id.*
39 *Id.*
40 *Id.*
41 Byrne, *supra* note 24.

Judges themselves also reflected similar differences and reasoning for unshackling children:

> Dane County [Wisconsin] established a presumption against shackling children in secure custody while in hearings before judges in 2016. When Dane County Judge Everett Mitchell was interviewed in 2016, he cited dignity and decorum as a reason for his decision to have children appear in court without shackles whenever possible. He said that his goal was for youth "to see a court process in which they are respected and heard."[42]

In 2019, Dane County extended that practice to hearings in front of court commissioners, and the Dane County Juvenile Court administrator reported that the change "has gone remarkably well and there have been no significant issues by youth in court since that time. Youth report that they feel more respected, and their behavior in court has demonstrated that belief. The change has been very positive for all involved."[43]

"kids are less sullen, less embarrassed, and more likely to engage in conversation in the courtroom if they are not shackled."

In Eau Claire County, Wisconsin, since implementing such a policy in 2016, Judge Michael Schumacher reported that "[h]e believes that kids are less sullen, less embarrassed, and more likely to engage in conversation in the courtroom if they are not shackled. Courtroom interactions are better and more productive. He has seen 'no downside' to a presumption against shackling."[44]

Additionally, almost all defenders interviewed as part of the national survey said they noticed a positive change in the demeanor of their clients' families in court. Interviewees described how it was often incredibly distressing for families to see their child or sibling in shackles, adding to the stress of an already traumatic situation. Many defenders noted that prior to the rule against automatic shackling, they would see parents cry at the sight of their child being marched into court, bound with handcuffs, leg irons, and belly chains. The defenders pointed out that the removal of shackles took away the harsh stigma of criminality and enabled youth to walk into the courtroom and give their family members a hug, or at least a wave.

Judges have noticed this difference, as well. In 2016, Judge Jay Blitzman of Middlesex County, Massachusetts, said:

> Limiting shackling has not adversely affected the flow of business one iota. But it has improved the atmosphere and the culture of the courtroom. When a child can turn and actually say hello and you see somebody smile back, that changes things for the child and the family member. It also makes it easier for the management of the courtroom.[45]

42 Joe Forward, *Shackling Kids: Counties Shifting on Policy, But Wisconsin in the Minority*, State Bar of Wis. (Dec. 6, 2017), https://www.wisbar.org/news-publications/insidetrack/pages/article.aspx?Volume=9&Issue=23&ArticleID=26018; Memorandum in Support, *supra* note 26, at 7.
43 Memorandum in Support, *supra* note 26, at 10.
44 *Id.*
45 Campaign Toolkit, *supra* note 12, at 5.

State Oversight and Education of All Court Personnel Are Crucial to Consistent and Successful Implementation.

Jurisdictions sometimes ask whether working toward reform on a county or courtroom basis is effective. As highlighted in the Campaign's Toolkit on ending shackling,[46] laws and statewide court rules with a presumption against shackling are the most effective ways to protect youth. Policies alone are insufficient.[47] Laws and statewide court rules are clearer, more enforceable, and enduring.

In Connecticut, prior to the law change, the state had a policy with the goal of limiting the shackling of young people. However, "an investigation found that 75 percent of detained youth were still being shackled in court. In some regions, 100 percent were shackled."[48] In Oregon, prior to the adoption of a statewide court rule, some counties had policies limiting shackling, but even within those counties, practices tended to change based on who was sitting on the bench.[49]

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Without clear statewide laws or rules with mechanisms for compliance, young people will continue to experience justice by geography.

In some jurisdictions where there is no monitoring of compliance, individuals charged with unshackling youth prior to entering the courtroom have refused to follow the rule. In others, a lack of clarity or differing interpretations of laws and rules makes consistent and successful implementation a challenge. Without any clear enforcement mechanism in place, there are limited options for recourse.

One state statute says youth should not appear before the court wearing restraints unless there is a court finding that they are necessary.[50] However, interviewees reported that in some smaller counties within this state, there was resistance from deputies who complained that poor facility design and time constraints make removing shackles inconvenient.

One attorney noted an instance in which a newly hired sheriff brought a child into the courtroom in shackles. The defense attorney's request to remove the shackles pursuant to the statute was honored, but she feared that less experienced defenders would not know to make such a request. In similar instances in several other states, defenders noted that although sheriffs brought youth into the courtroom unshackled once they were apprised of the rule, a judge seeing a child in shackles might unknowingly assume the youth is dangerous or violent. These unintentional errors are potentially harmful to a young person and their case, as shackling determinations can be prejudicial.

46 *Id.*
47 *Id.* at 14.
48 *Id.*
49 *Id.*
50 S.C. Code Ann. § 63-19-1435 (2014).

In most states included in our survey, even with a presumption against shackling youth in court, the prosecution may still request that a child be shackled, and most courts must then make a finding on the record if they accept the prosecution's motion. Defenders in some states noted that when a prosecutor made a request for shackles, defenders would have to choose between allowing the child to be shackled in court or subjecting the child to a hearing in which the prosecution may introduce their disciplinary record. For example, an attorney in one state mentioned that a client's disciplinary record from a prior detention for an entirely unrelated offense had been introduced as a reason to require shackles.

One defender noted that because the discretion whether to shackle a child was left to sheriffs' departments in each county, some counties essentially continued the practice of indiscriminate shackling. In those counties, the sheriffs' departments created policies in which youth were automatically shackled based on offense or other criteria, therefore removing the opportunity for an individual judicial determination of the necessity of shackles.

Similarly, in another state, the statewide rule required each court to adopt a local rule regarding the use of shackles in court. In one instance, this led to a judge instituting a policy with a presumption against the use of restraints for most youth without incident. However, upon the retirement of that judge, his replacement immediately reversed the policy so that all youth were once again automatically shackled when brought to court from detention. The judge did not provide any justification for such a drastic change in policy.[51]

Another issue raised by survey interviewees was the interpretation of what constitutes "good cause" to require youth to be shackled. While each state's statute or rule varies in the language used, most have some method by which a judge can determine that youth be shackled, such as finding they are disruptive, dangerous to themselves or others, or likely to be a flight risk.[52]

According to Arizona's court rule, relevant factors the judge should consider in the determination of whether a youth should be shackled include whether a youth displayed "threatening or physically aggressive behavior," "expressed an intention to flee," and presented "a security situation in the courtroom."[53] Although these factors appear limited on their face, a defender recalled an instance where the judge ordered a youth to be shackled after finding he had run away from home one time in the previous six months.

The court rule in Illinois asserts that a youth shall not wear restraints unless found to be necessary for one of the delineated reasons, including "[t]he minor has a history of disruptive behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior."[54] Despite the

51 Campaign Toolkit, *supra* note 12, at 14.
52 Most states outline limits on when restraints may be ordered, including requiring a determination that there are no less restrictive alternatives to shackling. Some of the delineated factors are as broad as "any relevant factor," while others are more specific, with an intent to guide the individualized assessment of each child, including factors like past attempts to flee, a history of disruptive or aggressive behavior, threats made to self or others, the seriousness of the charge, security resources in the courtroom, and the child's delinquency history.
53 Ariz. Juv. Ct. R. Proc. 208(f) (2022).
54 Ill. Sup. Ct. R. 943(a)(2) (2016).

presumption against restraints, an Illinois defender said that deputies can request a child remain shackled in court for what seems like almost any reason, including if a child merely swears at the deputy while in holding before the hearing, constituting "disruptive" behavior.[55]

While practices regarding what constitutes "good cause" vary from state to state, they also appear to vary between courts within a state. Multiple defenders reported that while they could speak about their experience in a specific court or county, they knew of different practices being employed in other counties across their state.

To ensure consistency and fairness, factors to be considered as part of a law or rule when determining whether a judge may order restraints must be the same across a state and should be very narrowly tailored to the rarest of circumstances. Therefore, rather than specific offenses or *any* history of "disruptive" behavior, a better factor to consider would be any *recent* or *present* behavior that represents an *imminent* threat of harm.

Additionally, the incongruent ways in which individuals choose to follow the rule when it is left to their discretion highlights the critical need for the decisions — in those very rare instances in which the use of shackling meets specific criteria — to be left to a judicial officer, rather than law enforcement or others.

After reforms occur, proper training of all court personnel could prevent children from being brought into court wearing shackles and burdened with the attendant and unnecessary humiliation and trauma. In addition to receiving education on the rule itself, court personnel should learn why indiscriminate shackling of youth is harmful, how it exacerbates racial trauma in the legal system, and why it is unnecessary in the overwhelming majority of instances.

Conclusion

The juvenile court system should not harm the children it exists to serve. Shackling youth, which humiliates, stigmatizes, and traumatizes them, perpetrates harm. Our survey findings make clear that shifting to a presumption against shackling does not reduce court safety. And in light of the fact that adults have not faced these practices for more than a decade, the current practices of shackling youth in court must be viewed as unnecessary at best and, possibly, barbaric. Further, shackling of youth, especially youth of color, is a painful reminder of the inhumane and immoral history of slavery in this nation.

Given what we know about the harms of shackling and the success of current reforms, it is imperative that states still indiscriminately shackling youth in court consider adopting reforms of their own, as well as expand shackling reform to other arenas, such as the shackling of youth during transportation to and from court, as has been done in California and Vermont.[56]

55 *Id.* (Prohibiting the use of restraints on a minor during a court proceeding "unless the court finds, after a hearing, that the use of restraints is necessary for one or more of the following reasons:… (2) The minor has a history of disruptive behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior….and there are no less restrictive alternatives to restraints that will prevent flight or physical harm…").

56 *See, e.g.*, Cal. Welf. & Inst. § 210.6(a) (2018); Vt. Stat. Ann. tit 33, § 5123 (2009).

Recommendations

Jurisdictions Working Toward Ending Indiscriminate Shackling on a State Level

- **All legal system decisionmakers and personnel** should continue to pursue educational opportunities to deepen their understanding of the harms of shackling youth.
- **All legal system decisionmakers and personnel** should pursue educational opportunities to understand the historical systemic racism of the youth legal system and shackling as one of its components.
- **All legal system decisionmakers and personnel** should pursue educational opportunities to understand the trauma inflicted on youth by law enforcement and the legal system.
- **Judges** should use their leadership roles to create a presumption against indiscriminate shackling in their individual jurisdictions/courtrooms. This should be viewed as only a first step. Reform on a statewide level is still necessary.
- **Youth defense attorneys** should file individual motions requesting that their client's shackles be removed in every case in which such a motion aligns with their client's expressed interests.
- **Advocates and court personnel** should work with directly impacted communities to educate legislators or court rules committee members to pass laws or statewide court rules with a presumption against indiscriminate shackling.
- **Advocates and court personnel** should continue to work with directly impacted communities on reform efforts to end the use of physical restraints in other settings, such as transportation, detention and residential placement facilities, and schools.

Recommendations

States with Existing Protections Against Indiscriminate Shackling

- **All legal system personnel** should continue to pursue educational opportunities to deepen their understanding of the harms of shackling youth.
- **All legal system personnel** should pursue educational opportunities to understand the historical systemic racism of the youth legal system and shackling as one of its components.
- **All legal system personnel** should pursue educational opportunities to understand the trauma inflicted on youth by law enforcement and the legal system.
- **Courts** should collect and report data on youth who are shackled. Data should include gender, race/ethnicity, and reasons for youth being shackled.
- **Courts** should collect and report data on any "safety" incidents or escape attempts of unshackled youth. Such data should include gender, race/ethnicity, and a descriptor of the type of incident.
- **State legislatures, court rules committees, or any other appropriate oversight body** should create a mechanism to ensure the law or court rule preventing the indiscriminate shackling of youth is being applied and enforced evenly across jurisdictions. Such mechanisms may include data collection and reporting requirements, mandatory forms for the rare occasion a child is shackled, requiring specific supervisory authority to sign off on such forms, ensuring hearings regarding shackling are done on the record, and unscheduled court observation by an entity designated by the oversight body.
- **Attorneys and advocates** should consider litigation if the law or rule is not being followed.
- **Community members and advocates** should develop and implement court-watching protocols that include observation and analysis of the enforcement of shackling reform.

For technical assistance with issues related to ending the automatic shackling of youth in court, please contact the Gault Center at inquiries@defendyouthrights.org.