

Campaign Against Indiscriminate Juvenile Shackling

ABOUT THE CAMPAIGN

The Campaign Against Indiscriminate Juvenile Shackling (CAIJS), created in August 2014, works to support stakeholders, advocates, and policymakers in their efforts to amend laws, court rules, policies and practices in states to end the automatic shackling of children in juvenile court. The Campaign assists these groups in developing laws and policies that have a presumption against shackling and only allow for the use of restraints in individual cases where there is substantial evidence and findings are made that restraints are necessary to prevent an escape or a youth from causing physical harm to the youth or others. The Campaign also provides tools and resources for juvenile defense attorneys to advocate in court against the use of restraints on their clients, particularly in jurisdictions where statewide shackling reform has not yet passed. CAIJS is a project of the National Campaign to Reform State Juvenile Justice Systems and the

SHACKLING IN JUVENILE COURTS

Indiscriminate shackling is common in juvenile courts in most states around the country. The practice unnecessarily humiliates, stigmatizes and traumatizes young people, damages the attorney-client relationship, chills due process protections, runs counter to the presumption of innocence and draws into question the rehabilitative purpose of juvenile courts. In most states, detained youth are shackled in court without any proof they are a flight or safety risk. Courts recognize the right of adults not to be shackled at trial except where there are compelling security reasons. Shackles are instruments of restraint, made of metal, cloth, leather or plastic, and usually include leg irons, belly chains, and handcuffs. Shackling can cause both physical pain and severe psychological harm. The practice impedes the ability of a youth to fully process, understand, and participate in their legal proceedings. Indiscriminate shackling can also re-traumatize youth who have already experienced trauma.

CAIJS PROGRESS

Since 2014, 10 states and the District of Columbia* have limited juvenile shackling, as have many counties and individual judges.

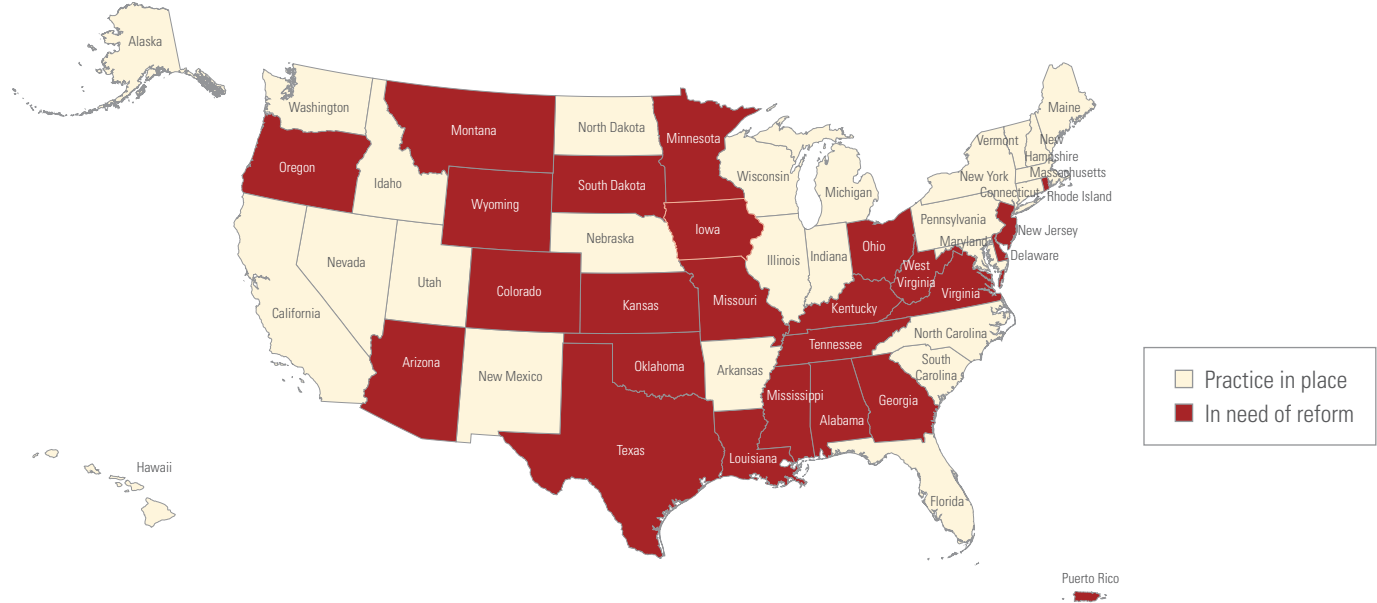
- June 2, 2014 South Carolina legislation signed.
- June 6, 2014 Washington State Supreme Court adopts rule.
- December 11, 2014 Alaska Supreme Court passes order.
- March 30, 2015 Utah legislation signed.
- April 1, 2015 Connecticut statewide policy goes into effect.
- April 6, 2015 District of Columbia administrative order goes into effect.
- April 29, 2015 Nebraska legislation signed.
- May 5 Indiana legislation signed.
- June 5 Nevada legislation signed.
- July 2 Connecticut legislation signed.
- September 21 Maryland policy goes into effect.
- November 1 Maine Supreme Court adopts rule.

*An additional 13 states had legislation, court rules, or case law limiting indiscriminate shackling in juvenile court prior to the beginning of the Campaign.

THE ROAD TO REFORM

Shackling reform often starts with a champion. Champions in various states have included public defenders, children's advocacy organizations, judges, legislators, and others. CAIJS provides these champions, advocates, and policymakers with technical assistance, such as research, letters, written and oral testimony, access to affidavits from experts in mental health and other professions and policy statements from organizations such as the American Bar Association, the National Council of Juvenile and Family Court Judges and the Child Welfare League of America, as well as communications plans and support. The Campaign also assists

Map of Indiscriminate Shackling of Youths in the U.S.



in organizing coalitions and strategic planning, — for example, discerning whether a court rule or legislation is the more likely path to success in a given jurisdiction.

“Shackling doesn’t protect communities. It harms them. Ending the indiscriminate imposition of restraints on children and youth would prevent retraumatizing them and would safeguard their legal rights.” - Child Welfare League of America

HIGHLIGHTING CHAMPIONS FOR SHACKLING REFORM

Champion: Judge Darlene Byrne

The Honorable Darlene Byrne has served as judge of the 126th Judicial District Court in Travis County in Austin, Texas since 2001. She also serves as President of the Board of Directors of the National Council of Juvenile and Family Court Judges (NCJFCJ), which issued an influential policy statement against indiscriminate shackling. Judge Byrne wrote in The New York Times that the automatic shackling of children “undermines rehabilitative efforts and thus harms us all.”

Champion: John “Jay” Elliot

Mr. Jay Elliot is a juvenile defense attorney in South Carolina. Along with other juvenile justice advocates, he started the Lawyers

Committee for Children’s Rights. This organization was key to passage of legislation banning the indiscriminate shackling of juveniles in South Carolina. Mr. Elliot also co-authored and was instrumental in a resolution calling for the end of indiscriminate juvenile shackling adopted by the American Bar Association.

Champion: Dr. Robert Bidwell

Dr. Robert Bidwell is a physician board certified in pediatric and adolescent medicine. Dr. Bidwell produced a sworn affidavit based on his extensive knowledge, research, and experience with adolescents, including those who are incarcerated. His affidavit addressing the emotional, psychological, and physical harms of shackling has been a critical tool, along with the affidavits from many other medical and mental health experts, for advocates to share with legislators and policymakers across the country. Dr. Bidwell also played a vital role in ending indiscriminate juvenile shackling in the largest judicial district of his home state, Hawaii.

BETTER YOUTH OUTCOMES

When youth are not automatically restrained in court, they have better communication with all parties in the courtroom and understanding of the process, can participate in their own defense, and the rehabilitative purpose of juvenile court may be met.

- Judge Jay Blitzman, First Justice of the Juvenile Court of Massachusetts, Middlesex Division: “(Ending indiscriminate 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."

- Children are more likely to comply with the court and less likely to reoffend when they perceive that the system treats them fairly. A number of studies support this and explicitly discuss how important being treated respectfully is to adolescents. (See *Core Principals for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System*. The Council of State Governments Justice Center, 2014)
- Stigmatizing children interferes with their development into responsible adults. As leading child psychologist Dr. Marty Beyer writes: "In the midst of their identity and moral development, demeaning treatment by adults may solidify adolescents' alienation, send mixed messages about the justice system, and confirm their belief that they are all bad, all of which undermine the rehabilitative goal of court intervention."
- Judge Susan Ashley, New Hampshire: "Juvenile court hearings are the only occasions that juveniles can, in-person, demonstrate to the court their rehabilitation and understanding of their own responsibility for their actions. Automatically restraining a juvenile in the courtroom deprives that young person of the opportunity to show the court they are capable of self-control. To the extent that restraints result in an unnatural posture and gait, or a submissive demeanor, a juvenile may feel wholly defeated as he or she enters the courtroom. As a judge, I expect eventual success for each juvenile appearing before me, whether they are coming to court from their parent's home or from secure detention. 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."

"Surely there is a way to ensure public safety without the unnecessary dehumanization of the very people the court is supposed to be helping." -Washington Post Editorial Board

- David LaBahn, executive director of the Association of Prosecuting Attorneys: "Communities will not collaborate

with prosecutors if the courtroom is seen as a place where children are treated with disdain."

- A court appearance *quadruples* the chances that a child will not complete high school. It is approximately twice as damaging as arrest alone. Research into the connection between court appearance and school dropout identifies stigmatization during the court process as the main culprit. Children repeatedly identify shackling as a stigmatizing experience. A high school diploma has a strong protective effect against criminal activity as adolescents mature.

"Our judicial system works on the presumption of innocence, but sending a child into a courtroom in chains sends a clear message not just to court officials but to the kid in question: we view you as a threat and a hardened criminal, even before you've been found guilty. And for better or worse, kids often live up to the expectations we have for them." - U.S. Senator Chris Murphy

ARE THERE INCREASED SECURITY RISKS WHEN JUDGES HAVE DISCRETION OVER SHACKLING IN THEIR COURTROOMS?

In jurisdictions that have stopped indiscriminate juvenile shackling, order has been maintained and juveniles have not escaped.

- Miami-Dade County did away with the practice in 2006. Since then more than 25,000 children have appeared in the county's juvenile court without injury or escape.
- Travis County, Texas, courtroom of Judge Darlene Byrne. In FY 2013 and FY 2014, there were a total of 6,638 juvenile hearings. None of the children were shackled. No additional security was required. There were no escapes or violent incidents.
- New Orleans Parish, Louisiana has ended indiscriminate juvenile shackling. The Parish conducts roughly 4,000 juvenile hearings a year and has had no incidents since the new policy went into effect. Due to budget cuts, courtrooms actually have less security personnel than they did in the days of indiscriminate shackling.
- A jurisdiction in California that handles approximately 6,000 cases per year has been operating for eight years without

indiscriminate shackling. There have been two to three escape attempts, and the children never left the building. Similarly, a New Mexico judge in a heavy caseload courtroom has abandoned presumptive shackling for 12 years and seen no escapes and only three incidents of children "acting out in court." (*Juvenile and Family Court Journal*, Spring 2015)

- In Maricopa County, Arizona, nearly 2,500 detained youth have appeared in court since the county began limiting shackling. The court remains safe, and there have been no escapes.
- Connecticut ended indiscriminate shackling in 2015. After 1,500 youth had come through the court, 94 percent of them unshackled, there was only one escape attempt. The youth walked out of court and later that day turned himself in.

- Nebraska Judge Patrick McDermott: "I have been a judge for going on 17 years. During that time, I averaged 600 juvenile cases per year for 10 of those years and about 250 for the other seven. I am not a judge who detains often, so over that span I have had something in the nature of 250 kids who have appeared while in detention. It has only been in the very recent past that I have seen the reemergence of shackles. So I can say that I have dealt with 225 to 230 kids in detention who were not shackled and have had only a single incident where the child ran from the hallway."

For more resources on juvenile shackling reform, visit: <http://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>



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The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.