



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone (503) 378-3349
Fax (503) 378-4462
www.oregon.gov/opds

March 28, 2017

Senate Judiciary Committee
Senator Floyd Prozanski, Chair
Senator Kim Thatcher, Vice-Chair
Oregon State Legislature
Salem, OR

Chair Prozanski, Vice-Chair Thatcher, and Committee Members,

Oregon has long recognized the right of adult defendants to be free from physical restraints during criminal trials. *State v. Smith*, 11 Or 205 (1883). This right is derived from common law and the fifth and fourteenth amendments of the US Constitution. Oregon courts have recognized elements of prejudice to a shackled defendant including infringement on the presumption of innocence and the dignity of judicial proceedings, inhibition with consultation with his or her attorney, and interference with his or her decision to take the stand as a witness. *State v. Kessler*, 57 Or App 469 (1982). As a result, adult defendants have the right to appear without physical restraint unless there is evidence of an “immediate and serious risk of dangerous or disruptive behavior.” *State v. Moore*, 45 Or App 837 (1980).

In 1995, the Oregon Court of Appeals extended the right to appear in court free from shackles to juveniles. *State v. Millican*, 138 Or App 142 (1995). The Court of Appeals found that juveniles have the same right as adult defendants to appear free from physical restraints. “Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.” *Millican*, 45 Or App at 860.

Since the 1995 opinion in *Millican*, the issue of shackling juveniles has prompted much discussion, debate, and reform in Oregon and across the country. According to the National Juvenile Defender Center’s Campaign Against Indiscriminate Juvenile Shackling, 23 states have limited juvenile shackling through legislation, court rule, or case law.¹ Oregon is the only western region state which has not limited indiscriminate juvenile shackling.²

¹ Campaign Against Indiscriminate Juvenile Shackling Issue Brief, National Juvenile Defender Center, http://njdc.info/wp-content/uploads/2016/01/NJDC_CAIJS_Issue-Brief.pdf.

² Alaska, Washington, California, Idaho, Nevada and Utah have policies or rules in place to limit juvenile shackling. See http://njdc.info/wp-content/uploads/2016/01/NJDC_CAIJS_Issue-Brief.pdf.

Indiscriminate juvenile shackling unnecessarily humiliates, stigmatizes, and traumatizes young people. Shackling interferes with the attorney-client relationship, runs counter to the presumption of innocence, and draws into question the rehabilitative purpose of the juvenile court system. Juveniles are entitled to an adequate defense, a fair trial, and the presumption of innocence—all fundamental rights upon which indiscriminate shackling impedes.³

Furthermore, when youth are not automatically restrained in court, they communicate more effectively and are able to more fully participate in their own defense. As a result, the juvenile court system is legitimized. There are a number of studies which support the conclusion that youth are more likely to comply with court orders and less likely to reoffend when they perceive the system to be fair and respectful.⁴

An affidavit of Dr. Marty Beyer, a national expert in the relationship between adolescent development, trauma and disability, states that “it is generally accepted by juvenile justice and mental health professionals that the use of physical restraints with children and adolescents would be limited to rare situations when a young person poses an immediate threat to others’ safety. Physical restraints should not be a routine practice with children and adolescents.”⁵ Furthermore, Dr. Beyer notes that the experience of being shackled can make a young person feel humiliated, interferes with development of positive self-identity, compromises moral development, contributes to the mistrust of the justice system, and may exacerbate trauma-related coping mechanisms including self-destructive behavior and aggressiveness.⁶

Given the body of research regarding the significant potential for harm related to indiscriminate juvenile shackling in the courtroom, a number of national organizations have issued statements in opposition to the practice including: The National Council of Juvenile and Family Court Judges, the Child Welfare League of America, the American Bar Association, the American Academy of Child and Adolescent Psychiatry, the National Association of Counsel for Children, and the American Association of Prosecuting Attorneys.

Despite the holding in the *Millican* case, indiscriminate juvenile shackling during court proceedings continues in many Oregon jurisdictions. Shackling impedes on the fundamental fairness of Oregon’s justice system and is a structural limitation which impacts the quality of legal representation provided in delinquency cases.⁷ According to a 2015 survey of public

³ McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, Journal of Law & Policy Vol. 38:213 (2012).

⁴ *Core Principals for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System* The Council of State Governments Justice Center (2014).

⁵ Affidavit of Dr. Marty Beyer, January 2015. <http://njdc.info/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf>

⁶ *Id.*

⁷ The Public Defense Services Commission Strategic Plan limits legislative advocacy to advocating for sufficient funding to ensure quality delivery of services, and promoting legislative and policy changes that advance efficiencies, fairness, and compliance with Oregon and national standards of justice. *PDSC Strategic Plan for 2016-2021*, <https://www.oregon.gov/OPDS/docs/Reports/PDSCStrategicPlan2016-2021.pdf>.

defenders in Oregon, 12 of Oregon's counties routinely and indiscriminately shackle youth during court proceedings while in 10 of Oregon's counties, youth are rarely, if ever, shackled during court. Three counties shackle youth inconsistently. Six of Oregon's counties have written shackling policies. The inconsistency among counties indicates that safety and order can be maintained even in jurisdictions that limit juvenile shackling.⁸

Senate Bill 846 codifies the holding from the *Millican* case: that juveniles have the right to be free from shackles during court proceedings unless the court finds an immediate and serious risk of dangerous or disruptive behavior. The -1 amendment to SB 846 also accounts for the diversity of Oregon's courthouses by permitting shackles to be removed inside of the courtroom prior to the proceeding if there are not appropriate facilities to do so outside of the courtroom.

Over twenty years have passed since the *Millican* holding. The Constitution, the caselaw, and the science support the presumption that youth should remain free of restraints unless there is an individualized determination made, by the court, that shackling is necessary to prevent an immediate and serious risk of disruptive behavior. Fundamental to our justice system is the presumption of innocence. Routine shackling contravenes this presumption, sends the wrong message to the youth, and runs counter to the reformatory purpose of the juvenile court system.

Thank you for your consideration.

Sincerely,

Amy Miller
Deputy General Counsel

⁸ See Shackling and Courtroom Safety handout included with this document for specific examples.