

To the Members of the Oregon Senate Judiciary Committee

Senate Bill 846

Testimony of Elizabeth Welch, Circuit Court Judge, retired

Good Morning Chair Prozanski and Members of the Committee

The issue before you today is SB 846, a bill to restrict the shackling of juveniles when they appear before the Court. Why is it an issue worthy of legislation? Are kids shackled in court anywhere in Oregon? Some jurisdictions rely on a case-by-case determination of risk before a youth is shackled while others routinely shackle youth during court appearances. .

I started working in the DAs Office in Portland, in Juvenile Court in 1969 and served a total of 5 years in that capacity. As a Circuit Court Judge for 17 years; I was the Chief Judge of Family Court in Multnomah County for 14 years. In all those years as a prosecutor and Judge there was no written rule on the subject of shackling.

After my retirement I served as a Plan B Judge and had the opportunity to observe firsthand the dramatically different practices in Juvenile Courts around the State. I am currently member of the Public Defense Services Commission.

The Juvenile Court system was begun over 100 years ago based upon the recognition that the criminal court system was not an appropriate process for children charged with crimes. Among the primary motivations for the creation of a separate court was the recognition that having children in jails, etc. with adults was harsh and counterproductive. Most importantly it was recognized that most young people break the law due to immaturity, poor peer relationships and lack of judgment.

Juvenile Justice literature and the science of adolescent development have long recognized the danger of "Labeling.". It has been demonstrated that with exposure of juveniles to the trappings of jail, courtroom hearings, etc. comes the danger of self identifying as criminals. The Scared Straight program produced the opposite of the intended effect!

We have maintained a separate juvenile court system so that the kids who are basically okay can learn from their mistakes and make better choices in the future without having to experience the consequences of criminal conviction. That is certainly not all juveniles but it is a significant part of the youth who are introduced to the Court's processes.

Treating children as if they are dangerous and scary sends all the wrong messages. The message of shackling is you are bad, you are scary, you are a menace.

It is incumbent on the those who favor routine shackling in the juvenile courtroom to identify its purposes. Shackling is a common practice with adults--it prevents problems. The benefits must be balanced against the detriments.

I believe in the Juvenile Justice system. It is our society's expression of its commitment to protect children from the consequences of youthful mistakes. Yet we seem to mindlessly adopt criminal court processes without regard to their implications.

There will be a few young people who for a variety of reasons may need to be shackled. That should occur only after a hearing before the Court and a decision by the Judge that such is necessary. That procedure is followed in many courts and not in others.

It is the Judge's responsibility to determine how a hearing or trial is to be conducted. In juvenile court such decisions should be made with full recognition of the principles underlying the Juvenile Justice system and to act in the Best Interests of the child and the community.

I understand that you have received a copy of Judge John Collins letter opinion which limits shackling in Yamhill County by requiring the court to make an individual determination as to whether shackling is reasonable and necessary. Judge John Collins' decision **is right on** .

SB 846 also addresses the shackling of dependent wards of the Court being transported by DHS. Children in the custody of DHS are wards of the Court and in the legal custody of DHS. There is nothing in the relationship of DHS with such young people that authorizes the use of such restraints.

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