

Youth, Rights & Justice

ATTORNEYS AT LAW

To: Senate Committee on Judiciary, 2017 Oregon Legislative Assembly

From: Mark McKechnie, MSW, Executive Director, Youth, Rights & Justice

Date: March 28, 2017

RE: Support for SB 846 and the -1 amendments

Chair Prozanski and Members of the Committee:

My name is Mark McKechnie and I am the executive director of Youth, Rights & Justice (YRJ). YRJ's court-appointed attorneys have represented youth in the juvenile justice system in Oregon since 1975. YRJ was appointed on over 500 juvenile delinquency matters in 2016.

Some of you heard an informational hearing on the practice of indiscriminate shackling of youth in Oregon in May 2016. We want to thank Senators Gelser and Frederick for sponsoring SB 846 to address the concerns expressed during that hearing. YRJ supports SB 846 and the proposed -1 amendments.

Indiscriminate shackling occurs when youth are restrained during court hearings without an individual determination and finding by the court regarding the youth's likelihood to be assaultive, physically disruptive or to attempt to flee if not restrained. Nationally and in Oregon, very few of these incidents ever occur when youth are left unshackled, yet the practice of routinely shackling youth can have damaging and lasting effects on the youth who experience this.

According to the National Juvenile Defender Center: "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."

In addition to the legal issues with shackling, we, as professionals, are more aware than ever before about the impacts of trauma on the lives of young people. Youths who contact the justice system typically have experienced far more numerous and severe traumatic events in their young lives and are disproportionately more likely to suffer from Post-Traumatic Stress Disorder (PTSD) or other mental or emotional disorders when compared to other youth in the general population. The practice of shackling youth indiscriminately can compound and exacerbate these experiences of trauma and related disorders and symptoms.

For these reasons, at least six Oregon counties have court rules or policies that are consistent with national models and Oregon case law. They prohibit indiscriminate shackling of youth and require

individualized determinations of risk when considering whether an individual youth should be shackled. These counties are: Crook, Deschutes, Jackson, Linn, Marion, and Yamhill Counties. While these counties range in size, they collectively have a relatively high rate of detention admissions. Comparison counties that lack clear policies and consistent practices related to shackling have significantly fewer detention admissions per capita. (See attached handout.) This means that counties who detain relatively high numbers of youth are able to safely implement policies against the indiscriminate shackling of juveniles. Counties with lower detention rates should be able to do so, as well.

Multnomah County has relatively few youth who are shackled in court on an annual basis, but the county also lacks a clear policy. As a result, practices can shift over time and from case to case. It is important for SB 846 to provide clear and consistent guidance to every juvenile court and every county in Oregon on the basic requirements for determining when it is necessary to shackle a youth. Because shackling can have a harmful impact on youth and their court cases, particularly when used unnecessarily or indiscriminately, it is important for courts to have clear procedures and clear authority to order it when appropriate. But it is also important to recognize that shackling is often unnecessary, at best, and harmful, at worst, for most young people who come in contact with Oregon's juvenile justice system.

Youth, Rights & Justice urges your support of SB 846.

Policies on Shackling Juveniles in Oregon
Six Counties with Policies for Individualized Risk Determination
and Six Counties Without

Selected counties	2014 Youth population, 10-17	Have policy consistent with model	Individualized Judicial Determination	Routinely shackle in courtroom/during hearing	Youth detention admits 2014	Detention admits per 1,000 child population	County has own detention facility
Marion	36,870	Y	Y	N	883	23.95	Y
Jackson	19,845	Y	Y	N	523	26.35	Y
Deschutes	16,971	Y	Y	N	201	11.84	Y
Linn	12,592	Y	Y	N	333	26.45	Y
Yamhill	11,206	Y	Y	N	495	44.17	Y
Crook	2,064	Y	Y	N	69	33.43	N
	99,548				2,504	25.15	
<i>Multnomah</i>	63,626	<i>N</i>	<i>Sometimes</i>	N	721	11.33	Y
<i>Clackamas</i>	42,899	<i>N</i>	<i>N</i>	Y	318	7.41	N
<i>Lane</i>	32,149	<i>N</i>	<i>Sometimes</i>	N	974	30.30	Y
<i>Douglas</i>	9,695	<i>N</i>	<i>N</i>	Y	275	28.37	Y
<i>Josephine</i>	7,652	<i>N</i>	<i>N</i>	<i>Video appearance</i>	102	13.33	Y
<i>Benton</i>	6,975	<i>N</i>	<i>N</i>	N	82	11.76	N
	162,996				2,472	15.17	

Compiled by Mark McKechnie, Youth, Rights & Justice February 2016
 Using surveys of defense attorneys by OPDS and Oregon JJIS data