



**Testimony of Kimberly McCullough, Policy Director**  
**Supporting SB 846**  
**House Committee on Judiciary**  
**May 4, 2017**

Chair Barker and Members of the Committee:

The American Civil Liberties Union of Oregon<sup>1</sup> supports SB 846, which would prohibit the use of physical restraints on youth in juvenile court proceedings, with limited exceptions. As a nonpartisan organization dedicated to the preservation and enhancement of civil liberties and civil rights, the ACLU of Oregon supports reducing trauma to justice-involved youth and upholding due process rights by ending the indiscriminant use of restraints on youth in juvenile court.

**SB 846 extends due process protections to youth.** Adults have the right to appear in court without shackles unless they pose a risk in court.<sup>2</sup> Youth are entitled to the same procedural rights as adults in court proceedings.<sup>3</sup> Therefore, the right to appear in court without shackles should be extended to Oregon’s youth.

**SB 846 restores the dignity of the court.** *Deck v. Missouri* not only affirmed due process rights, but it also highlighted that Deck deserved the right to participate in “dignified courtroom proceedings.” The presence of restraints or shackles, absent a justifiable need, undermines the dignity of court proceedings. Like adults, children deserve the right to participate in “dignified courtroom proceedings.”

**SB 846 reduces the harmful effects of shackles on children.** We know that children who enter the justice system have experienced some form of trauma.<sup>4</sup> The use of restraints can re-traumatize or “exacerbate the symptoms of mental disorders, including PTSD” in justice-

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<sup>1</sup> The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonprofit, nonpartisan organization dedicated to preservation and enhancement of civil liberties and civil rights with more than 40,000 members in the State of Oregon.

<sup>2</sup> In *Deck v. Missouri*, the U.S. Supreme Court held that the Constitution prohibits the use of shackles during the penalty and guilt phase of criminal proceeding unless the use is justified, prohibiting the indiscriminate use of restraints during adult court proceedings. 544 U.S. at 630-632.

<sup>3</sup> *In re Gault*, 387 U.S. 1 (1967).

<sup>4</sup> According to the Justice Policy Institute, 75-93% of justice-involved youth have experienced trauma. “Healing Invisible Wounds: Why Investing in Trauma-Informed Care for Children Makes Sense,” Justice Policy Institute, 2010.

involved children. Currently, 24 states and the District of Columbia prohibit the automatic use of restraints on youth in juvenile courts. Oregon should do the same, thereby allowing juvenile courts to function in a trauma-informed manner that reduces harm to the children it serves.

**SB 846 aligns Oregon’s juvenile courts with the rehabilitative mission of Oregon’s juvenile justice system.** Our juvenile justice system was founded on the concept of rehabilitation of young people, with the recognition that they are still physically and psychologically developing. Over and over, the U.S. Supreme Court has ruled that youth should not be treated as severely as adults in the justice system.<sup>5</sup> Prohibiting the use of physical restraints on youth in juvenile court proceedings will allow the court to better provide rehabilitation to each child that comes before the court.

For these reasons, the ACLU of Oregon urges you to support SB 846.

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<sup>5</sup> *Roper v. Simmons* 542 U.S. 551 (2005) (holding people under the age of 18 cannot be sentenced to death); *Graham v. Florida* 560 U.S. (2010) (holding people under 18 who commit a non-homicidal offense must be offered a “meaningful” or “realistic” opportunity for release); *J.D.B. v. North Carolina* 564 U.S. (2011) (holding that the age of a child is relevant when determining police custody); *Miller v. Alabama* 567 U.S. (2012) (holding that it is unconstitutional to sentence a child to mandatory life without the possibility of parole).