

Shackling Children in Juvenile Court: The Growing Debate, Recent Trends and the Way to Protect Everyone’s Interest

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Introduction

In the past several years, the debate about the propriety of shackling¹ accused juvenile delinquents² in court has

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increased exponentially.³ From Connecticut to California, attorneys, courts, sheriffs' departments and legislatures have disputed the necessity of shackling children who have been brought to court⁴ to face allegations of delinquent behavior.⁵

The juvenile shackling issue has been the subject of a great deal of study both in and out of the courtroom. In

¹ For the purpose of this article, "shackles" means all types of mechanical restraints placed upon accused juvenile delinquents in a courtroom. Generally, this means handcuffs or leg irons. *See, e.g.*, Loraine County (Ohio) Domestic Relations Court Website, Frequently Asked Questions, available at <http://www.loraincounty.com/domesticrelations/faq/> (last visited Aug. 31, 2007).

For a discussion of courtroom shackling of adult criminal defendants, see Sheldon R. Shapiro, *Propriety and Prejudicial Effect of Gagging, Shackling, or Otherwise Physically Restraining Accused During Course of State Criminal Trial*, 90 A.L.R. 3d 17 (1979).

² For the purpose of this article, the terms "juvenile," "delinquent," and "accused" will be used interchangeably. According to New Jersey statutes, which are fairly typical, a juvenile is "an individual under the age of 18 years." N.J. STAT. ANN. § 2A:4A-22(a) (2008). Delinquency is defined as "the commission of an act by a juvenile which if committed by an adult would constitute: (a) A crime; (b) a disorderly persons offense or petty disorderly persons offense; or (c) a violation of any other penal statute, ordinance or regulation." N.J. STAT. ANN. 2A:4A-23 (2008).

New Jersey uses the term "crime" for actions that are commonly called "felonies" in other jurisdictions. A "disorderly persons offense" describes what is more commonly referred to as a "misdemeanor."

³ *See, e.g.*, Martha T. Moore, *Should Kids Go To Court in Chains?, Debate Intensifies Over Shackling Young Defendants*, USA TODAY, June 18, 2007, at 1.

⁴ Since most of the recent activity concerns shackling juveniles during court proceedings, this article shall limit its analysis to that issue. Questions concerning shackling juveniles during arrest, detention and transportation are beyond the scope of this article. Nevertheless, shackling of juveniles under any circumstances remains controversial. *See, e.g.*, Edith Brady-Lunny, *Father Says Restraint of Son at Probation Meeting Was Improper*, PANTAGRAPH (Bloomington-Normal, ILL.), July 7, 2007. *See also In re B.F. and S.A.*, 595 A.2d 280 (Vt. 1991), for a discussion of judicial authority to order a juvenile restrained during transportation, as opposed to authority to order restraints while in the courtroom; section II, *infra*, for a discussion of which juveniles are shackled in court.

⁵ *See, e.g.*, *Tiffany A. v. Superior Court*, 59 Cal. Rptr. 3d 363 (Cal. Ct. App. 2007) (rejecting the Juvenile Delinquency Court's use of shackling solely because of inadequate security at the facility and holding 'manifest need' must exist in order to warrant the use of such restraints).

Illinois, a recent report from the Juvenile Defense Assessment Project, prepared by attorneys from Northwestern University's Children and Family Justice Center and the National Juvenile Defender Center recommended "no child should be brought into the courtroom in shackles except under extraordinary circumstances backed by evidence."⁶ Nevertheless, proponents of shackling argue that there are instances where restraints are required both for the protection of accused juvenile delinquents and for the safety of persons in the courtroom. Shackling is often necessary, and proponents of shackling generally point to the need to maintain order and security in the courtroom in support of their position.⁷ This article will discuss the current debate over shackling, its history and direction, and provide jurisdictions with a roadmap for understanding the arguments and outcomes from the various states and localities which have already dealt with this issue. While the shackling of children in court has been an issue for approximately thirty years, the recent firestorm is unprecedented.

II. Who is Shackled

Accused juvenile delinquents, just like adult criminal defendants, are not shackled in the courtroom unless they are held in some type of detention pending the outcome of their charges. In other words, juvenile defendants who walk into court off the street are not shackled upon entry.⁸ The rules for detaining juveniles are different than those for adults.⁹ In the case of juveniles, shackling is only used to restrain those who

⁶ Jeremy Crimmins, *Report Finds Many Holes in Juvenile Cases*, CHI. DAILY LAW BULLETIN, Oct. 31, 2007, at 10001.

⁷ See *supra* note 7 and accompanying text for further discussion on this issue.

⁸ On at least one occasion, a juvenile who arrived in court to face charges was shackled after exhibiting nervous behavior that caught the interest of court security officers. The behavior of the juvenile at issue in Louisiana in the Interest of D.R., 560 So.2d 57 (La. Ct. App. 1990), apparently caused officers to believe that he would abscond.

⁹ As stated *supra* note 3, for a discussion of courtroom shackling of adult criminal defendants, see Sheldon R. Shapiro, *Propriety and Prejudicial Effect of Gagging, Shackling, or Otherwise Physically Restraining Accused During Course of State Criminal Trial*, 90 A.L.R. 3d 17 (1979).

are brought to court directly from a juvenile detention facility for a delinquency hearing.¹⁰ For example, in New Jersey, a juvenile who is taken into custody¹¹ will be released pending disposition¹² of his case “where it will not adversely affect the health, safety or welfare of a juvenile.”¹³ Detention prior to disposition is generally employed only in the following cases: where a juvenile has a “demonstrable record of recent willful failure to appear at juvenile court proceedings,” or when failure to detain a juvenile accused of an act that would be a crime if committed by an adult would seriously jeopardize the “safety of persons or property.”¹⁴ While juveniles are not entitled to bail, they may contest their detention in a hearing, represented by counsel, before a judge.¹⁵

But “[s]hackling is not limited to delinquency cases.”¹⁶ Juvenile shackling opponents in Florida argue against the practice of forcing accused delinquents to attend all court appearances in shackles, if the matter is unrelated to

¹⁰ See, e.g., *S.Y. v. McMillan*, 563 So.2d 807, 808 (Fla. Dist. Ct. App. 1990), noting that “use of shackles during court appearances is limited to juveniles who are being detained pursuant to [Florida statutes]”.

¹¹ In New Jersey, “the taking of a juvenile into custody (for an act of delinquency) shall not be construed as an arrest, but shall be deemed a measure to protect the health, morals, and well being of the juvenile.” N.J. STAT. ANN. § 2A:4A-31(c) (2008).

¹² For an overview of disposition proceedings, which are the functional equivalent to sentencing hearings in the adult system, see Symposium, *The Children Left Behind: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings in Louisiana*, 46-48, available at http://www.lajusticecoalition.org/doc/JJPL-Children_Left_Behind.pdf (last visited Apr. 15, 2008).

¹³ Two factors typically determine whether a child will be detained: flight risk and risk of harm to self or others. See, N.J. STAT. ANN. § 2A:4A-34(a) (2008), ALA. CODE § 12-15-1(21)(f) (1975); FLA. STAT. ANN. § 985.24 (West 2007) (allowing for detention additionally if juvenile has prior record of committing property offense).

¹⁴ N.J. STAT. ANN. § 2A:4A-34(c) (2008). A statute creating a pre-trial detention scheme similar to New Jersey’s was found to be constitutional by the United States Supreme Court in *Schall v. Martin*, 467 U.S. 253 (1984).

¹⁵ N.J. STAT. ANN. § 2A:4A-38 (2008), COLO. REV. STAT. § 19-2-508(2) (2007).

¹⁶ Martinez, *infra* note 35, at 10

allegations of delinquency.¹⁷ Carlos Martinez, a Miami Dade public defender and one of the architects of the Florida attack on shackling, explains the dilemma facing “cross-over” children, which he defines as “those with a delinquency offense who also have a dependency case because a parent [allegedly] abused, neglected or abandoned the child” and therefore the child is in protective custody.¹⁸ These “cross-over” children “are brought to dependency court hearings in chains and shackles to face the parent who is accused of abusing, neglecting or abandoning the child.”¹⁹ Martinez acknowledges that only those juveniles who are detained at the time of the hearing are shackled in court.²⁰

III. History of Shackling

Shackling has long been employed to restrain both juveniles and criminals.²¹ While shackling is no longer designed for use as a punishment, at one time a primary purpose for shackling was discipline. For example, in Edmund Burke’s 1808 *The Annual Register*, a passage on punishment for juvenile delinquents describes how shackling could be used as an effective means for disciplining young boys.²²

In his book, Burke describes a system where:

On a repeated or frequent offense, after admonition has failed, the lad to whom an offender presents the card, places a wooden log around his neck, which serves as a pillory, and with this he is sent to his seat. This log may weigh from four to six pounds, some more some less. . .

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, noting that “the child that is detained and shackled on day one, and is released from secure detention, appears in court without shackles at the next court hearing.”

²¹ *Id.*

²² THE ANNUAL REGISTER FOR THE YEAR 1808 (Edmund Burke, ed., 1808).

When logs are unavailing, it is common to fasten the legs of offenders together with wooden shackles, one or more, according to the offense. The shackle is a piece of wood, mostly a foot long, sometimes six or eight inches, and tied to each leg. When shackled, he cannot walk but in a very slow, measured pace .

...²³

In 2005, the United States Supreme Court supplied a dissertation on various courts' treatment of courtroom shackling in *Deck v. Missouri*.²⁴ This opinion involved an appeal of the re-trial of the penalty phase of a capital murder conviction. During the penalty phase re-trial, the *Deck* defendant was restrained in shackles, a belly chain and leg irons that were visible to the jury.²⁵ After the re-trial, he was sentenced to death. The Supreme Court reversed and remanded to the Missouri state trial court for another re-trial of the penalty phase.²⁶ Both Justice Breyer's majority opinion and Justice Thomas' dissent include a thorough history of shackles and shackling, both in and out of the courtroom.²⁷

Justice Breyer noted that the rule "forbid[ding] routine use of visible shackles during the guilt phase . . . permit[ting] a State to shackle a criminal defendant only in the presence of a special need" has "deep roots in common law."²⁸ In particular:

In the 18th century, Blackstone wrote that 'it is laid down in our ancient books, that, though under an indictment of the highest nature,' a defendant 'must be brought to the bar without irons, or any manner of shackles or bonds'

²³ *Id.* at 148-50. In his dissent in *Deck v. Missouri*, 544 U.S. 622, 636-67 (2005), Justice Thomas discussed the physical pain and discomfort caused by shackling.

²⁴ 544 U.S. 622 (2005).

²⁵ *Id.* at 624-26.

²⁶ *Id.* at 626.

²⁷ *Id.* at 624-26; 631-32.

²⁸ *Id.* at 626.

unless there be evident danger of an escape. . .
Blackstone and
other English authorities recognized that the
rule did not apply at ‘the time of arraignment’
or like proceedings before a judge. It was
meant to protect defendants appearing at trial
before a jury.²⁹

Breyer noted that “American courts have traditionally followed Blackstone’s ‘ancient’ English rule, while making clear that ‘in extreme and exceptional cases, where the safe custody of the prisoner and the peace of the tribunal imperatively demand, the manacles may be retained.’”³⁰ “While . . . earlier courts disagreed about the degree of discretion to be afforded trial judges, they settled virtually without exception on a basic rule embodying notions of fundamental fairness: Trial courts may not shackle defendants routinely, but only if there is a particular reason to do so.”³¹ Moreover,

courts and commentators share close to a consensus that, during the guilt phase of a trial, a criminal defendant has a right to remain free of physical restraints that are visible to the jury’ that the right has a constitutional dimension; but that the right may be overcome in a particular instance by essential state interests such as physical security, escape prevention, or courtroom decorum.³²

Thus the Supreme Court has acknowledged that traditionally, the decision to use shackles in the courtroom requires a nuanced evaluation of the circumstances presented in each individual case.³³

²⁹ *Id.* (citations omitted).

³⁰ *Id.* (citations omitted).

³¹ *Id.* (citations omitted).

³² *Id.* (citations omitted).

³³ *Id.*

IV. The Arguments of Opponents to Juvenile Shackling

Opponents of courtroom shackling attack the practice on a number of grounds, and in a variety of ways. Most prominently, they argue that “routine shackling practice is punishment before a finding of guilt.”³⁴ They contend that courts fail to use any discretion in determining which juveniles to shackle, reasoning that it is illogical for “a 4-foot-1 child charged with a misdemeanor [to] come[] in with the same shackles as a 6-foot-1 15-year-old charged with escape.”³⁵

³⁴ Carlos Martinez, *Why are Children in Florida Treated as Enemy Combatants?*, 29(1) CORNERSTONE, 10, 11 (May-Aug. 2007). CORNERSTONE is a publication of the National Legal Aid & Defender Association. Mr. Martinez is the Chief Assistant Public Defender, Law Offices of the Public Defender, 11th Judicial Circuit Court of Florida (Miami-Dade).

In his majority opinion in *Deck v. Missouri*, 544 U.S. 622 (2005), Justice Breyer noted that courts have traditionally limited a trial court’s discretion to shackle criminal defendants for many of the same reasons advocates supply for opposing juvenile shackling. Specifically:

the Constitution, in order to help the accused secure a meaningful defense, provides him with a right to counsel. The use of physical restraints diminishes that right. Shackles can interfere with the accused’s ability to communicate with his lawyer. Indeed, they can interfere with a defendant’s ability to participate in his own defense, say by freely choosing whether to take the witness stand on his own behalf.

Judges must seek to maintain a judicial process that is a dignified process. The courtroom’s formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual’s liberty through criminal punishment. . . . The routine use of shackles in the presence of juries would undermine these symbolic yet concrete objectives. As this Court has said, the use of shackles at trial affronts the dignity and decorum of judicial proceedings that the judge is seeking to uphold.

Id. at 631-32 (citations omitted).

³⁵ Jane Musgrave, *Judge Weighs Court Policy on Shackling All Juveniles*, PALM BEACH POST (Fla.), Dec. 15, 2007, at 1C, quoting Palm Beach

The most obvious method of attacking this indiscriminate policy of shackling all juveniles in all court proceedings is by filing motions and lawsuits, such as those filed in Florida in 2007.³⁶ However, the efforts of the anti-shackling movement “did not begin or end in the courtroom.”³⁷ Opponents have appealed to the media and larger community, including academics, social justice groups, other practitioners and child advocates, up to and including the legislative branch.³⁸

Attorneys using litigation to halt shackling have also enlisted social services and child welfare professionals in their endeavor. In one such instance, noted child psychologist Marty Beyer recently supplied an affidavit in support of a motion to prohibit the mandatory courtroom shackling of all detained juveniles in Florida’s Miami-Dade County.³⁹ In her affidavit, Beyer outlined the support for her professional opinion that “the use of physical restraints with children and

Public Defender Carey Haughwout, counsel in a lawsuit brought in U.S. District Court to compel the court to amend its policy on juvenile shackling. The suit was later dismissed on procedural grounds. Jane Musgrave, *Judge Rejects Lawsuit to Unshackle Minors*, PALM BEACH POST (Fla.), Dec. 22, 2007, at 1A.

³⁶ See section IV, *infra*, for a more detailed discussion of the controversy in Florida. See also Martinez, *supra* note 7 at 10-15; Martha T. Moore, *Should Kids Go To Court in Chains?, Debate Intensifies Over Shackling Young Defendants*, USA TODAY, at 1 (June 18, 2007).

³⁷ *Id.* at 15.

³⁸ Martinez, *supra* note 7, at 15. The bill mentioned in the article sought to establish “a presumption that securely detained children will not be chained or shackled in the courtroom, except in extraordinary circumstances, and for the shortest period of time possible necessary to protect the people in the courtroom; and that the use of exceptional restraints must be reserved for the rare case where the court makes an individualized determination that unusual facts warrant such an extreme measure.” *Id.*

³⁹ The affidavit can be found at <http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf>. The affidavit was attached to an amicus brief filed by the University of Miami Children’s Law Clinic in support of motions in individual cases filed by Miami-Dade Public Defender’s Office. For more on the Public Defender’s Office’s crusade to end juvenile shackling, see Carol Marbin Miller, *Public Defenders Want Chains Out of Juvenile Courts*, MIAMI HERALD, Sept. 11, 2006.

adolescents should be limited to rare situations when a young person poses an imminent threat to others' safety."⁴⁰

Beyer's affidavit focuses on the shame and humiliation being restrained brings to adolescents, as well as the actual physical pain shackles cause.⁴¹ In her opinion, courtroom shackling needlessly traumatizes juveniles and is thereby counter to the family court's goal of rehabilitation.⁴² She notes that when shackled children belong to a minority group, or have been the victim of abuse, the effect can be especially traumatic.⁴³

Furthermore, Beyer explains that shackling ultimately may be counterproductive because shackling agitates juveniles, thereby making them more difficult for court personnel to manage after appearing in court.⁴⁴ "Children learn that a fundamental principle of our democracy is that a person is innocent until proven guilty. Being shackled gives [juveniles] the opposite message. This conflict between what adults say and do is harmful to young people's moral development."⁴⁵

V. The Support for Shackling Juveniles

Courts and security personnel justify the use of mechanical restraints on detained juveniles as a safety precaution. Specifically,

the use of ankle restrains upon minors 'is like having another deputy present . . . Just as having a deputy at the minor's side causes him or her to think twice about any attempt to escape or cause trouble, so do ankle restraints, which every minor immediately realizes eliminates any possibility of making a serious escape attempt. (In the absence of a more

⁴⁰ Beyer Aff., *supra* note 39, para. 7.

⁴¹ *Id.* at para. 8 through 20.

⁴² *Id.* at para. 8.

⁴³ *Id.* at para. 8 through 20.

⁴⁴ *Id.* at para. 17.

⁴⁵ *Id.* at para. 15.

secure courtroom facility) ankle restraints are the simplest, least intrusive method of maintaining security.⁴⁶

Some who support shackling (a group that includes representatives from all parties in the criminal law society) reason that “shackling the juveniles is as much for their own protection as it is for others in the courtroom.”⁴⁷ “When confronted with an out-of-control juvenile it may be necessary for police, court marshals or juvenile authorities to use shackles in order to prevent the juvenile from causing injury to the public, the authorities, or him or herself.”⁴⁸ Finally, some proponents of juvenile shackling argue that shackles are not punishment, but rather a means of keeping violence out of the courtroom⁴⁹ and preventing escape.⁵⁰

⁴⁶ *Tiffany A. v. Superior Court*, 59 Cal. Rptr. 3d 363 (Cal. Ct. App. 2007), quoting “the sheriff’s sergeant in charge of the security and custody at the (L.A. County) courthouse.” According to this sergeant, “the risk of minors escaping the courtroom is significant given the design of the courtroom and location of the courthouse.” *Id.*

⁴⁷ Missy Diaz, *Judges: Policy on Shackles to Stay; Juvenile Offenders will Continue to be Restrained*, SUN-SENTINEL (Fort Lauderdale, Fla.), Feb. 2, 2007 at 1B (interview with Jeanne Howard, a “chief assistant state attorney who heads county’s juvenile division”).

⁴⁸ Connecticut House Judiciary Committee, Testimony of the Division of Criminal Justice, H.B. 7406, An Act Concerning Youthful Offenders, Delinquent Children and Drug-Free Zones, Joint Committee on Judiciary – April 4, 2007, available at <http://www.ct.gov/csao/cwp/view.asp?A=1802&Q=376652> (last visited Aug. 31, 2007).

⁴⁹ Martha T. Moore, *Should Kids Go To Court in Chains?, Debate Intensifies Over Shackling Young Defendants*, USA TODAY, at 1 (June 18, 2007), quoting Hunter Hurst, Director of the National Center of Juvenile Justice.

Use of shackles as punishment is currently out of favor. *See, e.g., Joe Clark Criticized for Putting New Jersey Youth Inmates in Shackles*, JET (Oct. 21, 1996). This was not always the case. *See, e.g., Edmund Burke*, THE ANNUAL REGISTER FOR THE YEAR 1808, at 148-50 (1808), available at <http://books.google.com/books?id=A9dm7zskLg8C&pg=RA5-PA152&lpg=RA5-PA152&dq=shackle+delinquent&source> (last visited Sept. 9, 2007).

⁵⁰ *See, e.g., State v. Oglesby*, 622 S.E.2d 152 (N.C. 2005), where the North Carolina appellate court ruled that the trial court did not abuse its

VI. Legislative Reaction to Shackling

In 2007, at least two state legislatures, Connecticut and North Carolina, addressed the blanket practice of shackling juveniles in the courtroom. The statutes proposed in Connecticut⁵¹ and passed in North Carolina⁵² signify a growing repudiation of the practice of shackling and affirmation of the rights of juveniles within the adjudicatory process.

Under the North Carolina statute, courts are still permitted to shackle juveniles but only upon a showing of necessity, such as risk of escape or where safety concerns are implicated.⁵³ The child and the child's attorney are, where

discretion in ordering a juvenile defendant to be restrained with leg shackles. In *Oglesby*, court security officers had requested that the juvenile be shackled out of concern about the juvenile's desire to abscond. The court noted that the shackles could not be seen and there was no evidence that the jury was affected by, or even aware of, the restraints. *Id.* The 16 year old defendant was on trial for murder in an adult criminal court. *Id.*

See also Michael Miyamoto, *Three Teen Murder Suspects Recaptured After Escape*, VISALIA TIMES-DELTA (CALIF.), Dec. 13, 2007, at 1a. (discussing the escape of three teenage murder defendants from a California courthouse. All three were scheduled to be tried as adults).

⁵¹ H.R. 7406, Gen. Assemb., Jan. Reg. Sess. (Conn. 2007).

⁵² General Assembly of North Carolina, House Bill 1243 (introduced March 29, 2007). This bill, entitled "Adjudication; restraint of juveniles in courtroom," reads as follows:

A judge may subject a juvenile to physical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the juvenile's escape, or provide for the safety of the courtroom. The judge shall provide the juvenile and the juvenile's attorney an opportunity to be heard to contest the use of restraints before the judge orders the use of restraints. If restraints are ordered, the judge shall make findings of facts in support thereof.

H.R. 1243, 2007 Gen. Assemb., Reg. Sess. (N.C. 2007). This bill was adopted June 20, 2007 as N.C. GEN. STAT. ANN. § 7B-2402.1 (West 2007).

⁵³ N.C. GEN. STAT. ANN. §7B-2402.1 (2007). This statute, entitled "Restraint of juveniles in courtroom," provides as follows:

At any hearing authorized or required by this Subchapter, the judge may subject a juvenile to physical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the

practicable, entitled to a hearing on the necessity of physical restraints prior to their use and the judge is further required to make findings of fact in support of the decision to use restraints.⁵⁴

A similar bill has been proposed in Connecticut.⁵⁵ This bill differs from the North Carolina statute in that it limits coverage to children under the age of sixteen but prohibits the use of any physical restraints prior to the child being convicted or adjudged delinquent.⁵⁶ The only exception to this rule is where shackles or other restraints are “necessary to ensure public safety.”⁵⁷ The statute does not place limitations on the use of shackles during transportation of a juvenile, which means that, outside the courtroom, the child has no protection from shackling.⁵⁸ While the prohibition on shackling proposed in Connecticut appears to be more absolute than in North Carolina, it lacks the provision for a hearing on the issue or a requirement the judge make factual findings to justify use of physical restraints in the courtroom. Also, the exception for “public safety” echoes the justification for the

juvenile's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the juvenile and the juvenile's attorney an opportunity to be heard to contest the use of restraints before the judge orders the use of restraints. If restraints are ordered, the judge shall make findings of fact in support of the order.

⁵⁴ *Id.*

⁵⁵ Conn. H.B. 7406 (as amended May 23, 2007); Conn. S.B. 1325 (as amended March 6, 2007). This bill, which is essentially identical as proposed in each house, reads as follows:

Section 5. At any proceeding concerning the alleged delinquency of a child, no child under sixteen years of age shall be physically restrained by the use of shackles, handcuffs or other mechanical restraint prior to being convicted or adjudicated as delinquent, unless the judge determines that restraints on the child are necessary to ensure public safety. Nothing in this section shall be construed as preventing a child from being physically restrained while being transported from one place to another.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

existing, unregulated use of shackles. This, in combination with the absence of a requirement the judge make findings of fact, may provide a loophole in the regulatory scheme which effectively leaves the status of shackling unchanged. Opponents to juvenile shackling must wait and watch carefully as it remains to be seen what form the bill will take if it is passed, and how judges will interpret the phrase “to ensure public safety.”

The most important change brought by such legislation is that it sends the message that courts and lawmakers will no longer sanction the use of shackles as a matter of course. Moreover, these legislative enactments effectively shift the burden from the juvenile to the bench to establish the necessity for physically restraining a child. Formerly, the juvenile had to show that the restraints were unnecessary or unconstitutional; such challenges have generally been unsuccessful in juvenile hearings.⁵⁹ The shift in this burden is an affirmation of juvenile rights and marks the beginning of an important and crucial change in the treatment of juvenile offenders at adjudication. Recent efforts by public defenders in Florida,⁶⁰ Wisconsin,⁶¹ New York,⁶² and other places have

⁵⁹ Even where courts condemn the blanket use of shackling, it is often found that a court's refusal to order the shackles removed amounted to harmless error, which leaves the disposition of the case unchanged and provides no impetus for changes in the standard use of shackling. *See, e.g. In re DeShaun M.*, 56 Cal. Rptr. 3d 627 (Cal. Ct. App. 2007); *State ex. rel. Juvenile Dep't of Mulnomah County v. Millican*, 906 P.2d 857 (Or. Ct. App. 1995).

⁶⁰ Missy Diaz, *Judges: Policy on Shackles to Stay; Juvenile Offenders will Continue to be Restrained*, SUN-SENTINEL (Fort Lauderdale, Fla.), Feb. 2, 2007, at 1B; Nancy L. Othon, *Judges Resist Motion to Ban Shackles from Juvenile Court*, SUN-SENTINEL (Fort Lauderdale, Fla.), Nov. 3, 2006, at 1B; Shreema Mehta, *'Systemic' Flaws Found in Florida Juvenile Court System*, NEW STANDARD, Oct. 30, 2006; Editorial, *End the Shackling of Juveniles*, ST. PETERSBURG TIMES, Oct. 3, 2006, at 10A; Graham Brink, *Shackling in Juvenile Courts Faces Test: Three Judges in Broward Have Banned the Practice. One Bay Area Public Defender Also Wants a Ban*, ST. PETERSBURG TIMES, Sept. 27, 2006; Terry Aguayo, *Florida: Shackling of Juveniles is Opposed*, N.Y. TIMES, Oct. 3, 2006, Sec. A, Col. 5, p. 20; *Public Defenders Ask to Unshackle Juvenile Defendants*, NBC6.com, available at <http://www.nbc6.net/news/9823666/detail.html> (last visited Sept. 11 2006);

brought the shackling issue to national attention.⁶³ Indeed, when juvenile defenders in several Florida counties filed a flurry of motions seeking to have shackles removed, their efforts were covered by the *New York Times* and *USA Today*.⁶⁴

Nevertheless, the recent action by Florida Public Defenders was not the earliest effort to contest juvenile shackling. The effort to halt shackling of Florida's juvenile defendants dates as far back as 1990, when a Florida appellate court decided *S.Y. v. McMillan et al.*⁶⁵

VII. How Courts Treat Juvenile Shackling

A. *Derwin Staley: An Illinois Court Finds Shackling to Constitute Reversible Error*

*In re Derwin Staley*⁶⁶ is the first reported appellate decision addressing the issue of juvenile shackling. In this case, the Appellate Court of Illinois reversed an adjudication of delinquency based solely on the fact that the juvenile was shackled during his trial.⁶⁷ In 1975, fifteen-year-old Staley was adjudicated delinquent for an act that would have constituted aggravated battery if committed by an adult.⁶⁸ He was placed in a juvenile detention facility.⁶⁹ Staley had been

⁶¹ Jennie Tunkieicz, *Juvenile Shackling Demeaning, Advocates Charge: ACLU, NAACP Object to Practice of Chaining All Detention Center Defendants*, MILWAUKEE JOURNAL SENTINEL, July 28, 2005);

⁶² Fernanda Santos, *Challenging State Shackles on Juveniles*, N.Y. TIMES, Dec. 14, 2005, at Sec. B, Col. 6, p. 10.

⁶³ Martha T. Moore, *Should Kids Go To Court in Chains?, Debate Intensifies Over Shackling Young Defendants*, USA TODAY, June 18, 2007, at 1.

⁶⁴ Fernanda Santos, *Challenging State Shackles on Juveniles*, N.Y. TIMES Dec. 14, 2005, at Sec. B, Col. 6, p. 10; Martha T. Moore, *Should Kids Go To Court in Chains?, Debate Intensifies Over Shackling Young Defendants*, USA TODAY, June 18, 2007, at 1. See also *supra* note 22.

⁶⁵ *S.Y. v. McMillan et al.*, 563 So.2d 807 (Fla. Ct. App. 1990). See note 95 through 113 *infra*, for a discussion of *S.Y.*

⁶⁶ 352 N.E.2d 3 (Ill. App. Ct. 1976).

⁶⁷ *Id.* at 6.

⁶⁸ *Id.* at 5.

⁶⁹ *Id.*

detained in such a facility at the time of the assault.⁷⁰ He was immediately taken to court while wearing handcuffs.⁷¹ He was assigned a public defender, who requested that the shackles be removed.⁷² A detention officer accompanying Staley did not object, but the prosecutor did.⁷³ The court ordered that the juvenile stay shackled.⁷⁴

At trial, Staley's public defender was not available, but the trial was held anyway with a substitute defender.⁷⁵ Staley's substitute defender also asked that Staley's shackles be removed.⁷⁶ The judge issued a conditional denial of the defense request, citing the lack of a secure courtroom.⁷⁷ The judge specifically reserved the right to reconsider the issue during the afternoon session if Staley did not disrupt the proceedings.⁷⁸ When the judge originally ordered that Staley remain shackled, he stated that "he didn't want what was allegedly going on at the (detention center) to occur in the courtroom."⁷⁹ The bulk of the trial was concluded in the morning, and the substitute defender did not renew his request after the lunch break. Staley was adjudicated delinquent.⁸⁰

In considering the merits of his appeal, the appellate court noted that while juvenile delinquency hearings are nearly identical to criminal trials, there is no jury.⁸¹ Since there are no jurors, there is no chance that a juror, acting as the judge of the facts, would be predisposed to find an accused juvenile guilty based solely on the sight of the accused in restraints.⁸²

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

Yet the appellate court found the trial court's failure to remove the shackles without conducting a thorough hearing on the issue to constitute reversible error. In coming to this conclusion, the court noted that even in the absence of a jury,

there are other reasons for the rule. Binding a defendant can impair his ability to communicate with counsel and thus effectively assist in his defense. It is destructive of the dignity and decorum of the court and the judicial process. The impairment of defendant's ability to assist in his own defense could stem from a physical handicap imposed by the shackles and from the accompanying mental distress and confusion that could result. It is difficult to establish by proof the prejudice to a defendant, but we must recognize that it could exist and we believe a good reason must be shown by the State to justify shackling a defendant during his trial, before it was determined whether he is innocent or guilty.⁸³

The appellate court found no evidence in the record to support a finding that shackling was necessary to prevent disruption, escape, or injury to others in the room.⁸⁴ In the opinion of the appellate court, there was nothing proving that the court's security concerns could have been addressed by a less intrusive measure, such as posting an additional guard.⁸⁵ Even though there was some evidence that Staley had tried to escape in the past, and was on trial for a crime of violence against a security officer, the majority found that the failure to remove his shackles was fatal to his adjudication.⁸⁶

The dissenting justice, highlighting his belief that the majority was going out on a limb, opened his opinion by noting that his "esteemed colleagues have set sail upon

⁸³ *Id.* at 6.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

previously uncharted waters, and I cannot accompany them.”⁸⁷ The author highlighted the most obvious difference between delinquency and criminal matters when he noted that:

This is a case of first impression, and the majority opinion relies exclusively upon a case involving a trial before a jury, and no cases dealing with the question of physical restraints upon a defendant at a bench trial have been cited. The common law rule that a defendant is entitled to appear at trial without shackles is a corollary to the due process requirement that there must be no conduct which would inflame the passion prejudice *of the jury* against the accused by undermining the presumption of his innocence.⁸⁸

The dissent focused extensively on the difference between criminal and juvenile trials, reasoning that “[t]here are valid reasons for distinguishing between bench trials and jury trials. A trial judge by training and experience is an impartial arbiter in our adversary system of justice. We should not presume that a judge will be prejudiced by seeing a defendant in handcuffs throughout a bench trial any more than we assume a judge to have been influenced by hearing improper evidence.”⁸⁹

The dissent also found the majority’s other positions equally unconvincing. Specifically, Staley was not confined in bonds nor gags nor ‘total physical restraint’ but rather handcuffs. Common sense compels me to conclude that handcuffs impose such a minimal burden on in court communications between an accused and his attorney as to be worthy of little weight in this case.

⁸⁷ *Id.* at 7.

⁸⁸ *Id.* (emphasis in original).

⁸⁹ *Id.*

Furthermore, the maintenance of the ‘dignity and decorum of the court and the judicial process’ referred to by the majority must be balanced against the safety and security the court, and at this distance, I cannot fault a decision which preserves security at the expense of decorum where a jury is not present. In any event, matters of courtroom decorum rest within the sound discretion of the trial court.⁹⁰

Nevertheless, while the dissent and the majority disagreed about the proper outcome of the matter before them and the appropriate application of precedent, both agreed that some sort of balancing test was necessary to determine the issue of juvenile shackling. In the ensuing thirty years, courts have unanimously embraced the need to strike a balance between courtroom security and decorum.⁹¹

B. S.Y. v. McMillan: Shackling in Florida

Even after *Staley*, juvenile shackling was not a major issue until recently. Modern awareness of this issue can be traced in part to the 1990 decision by the Florida Court of Appeals in *S.Y. v. McMillan et al.*⁹² While the case facially concerns a juvenile’s petition of *habeas corpus* challenging his detention,⁹³ the true basis for his petition is far more significant. *S.Y.* filed his petition to contest a policy that required him, as well as all detained juveniles, to face his

⁹⁰ *Id.* at 8 (citations omitted).

⁹¹ Thirty years later, the North Dakota Supreme Court relied primarily upon *Staley* in determining that a juvenile hearing panel violated an accused juvenile’s due process rights when it ordered the juvenile handcuffed during a trial without making a finding that such restraints were necessary. *In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007). Despite the violation of the juvenile’s constitutional rights, the court affirmed his adjudication of delinquency, in light of overwhelming evidence of the juvenile’s guilt. *Id.* The juvenile in question had been caught in the act of burglarizing a home. *Id.* at 328.

⁹² *S.Y. v. McMillan*, 563 So.2d 807 (Fla. Ct. App. 1990).

⁹³ *Id.*

charges while wearing shackles.⁹⁴ At the time S.Y. was originally charged, the two judges assigned to juvenile delinquency matters in the jurisdiction where S.Y. was facing charges had “a general policy that all juveniles held in secure detention [were] to be shackled during all court appearances. No individual hearing[s] [were] held to determine if shackling [was] necessary to prevent escape or disruptive behavior.”⁹⁵

In response to S.Y.’s petition for *habeas corpus*, as wells as those filed by similarly situated juveniles, the trial court deemed S.Y. to be a representative of a class of all securely detained juveniles in their jurisdiction.⁹⁶ After conducting an evidentiary hearing *en banc*, the trial court denied his motion.⁹⁷ On appeal, while the reviewing court did not cite *Staley*, and affirmed S.Y.’s adjudication of delinquency,⁹⁸ the appellate panel did “question the propriety of the issuance of a blanket order [shackling juveniles] in the manner in which it was done in this case.”⁹⁹

The only evidence noted in the appellate decision was the testimony from the Chief Bailiff.¹⁰⁰ The appellate court summarized the Bailiff’s testimony by saying that “the use of shackles had a positive effect on the security and decorum of the courtroom.¹⁰¹ Additionally, fights among the juveniles and escape attempts had decreased.”¹⁰²

As noted, the appellate court did not agree with the trial court’s methods, but they did not overturn the decision. In coming to its conclusion, the appellate court relied on Florida statutes, stating that the “[u]se of shackles during court

⁹⁴ *Id.*

⁹⁵ *Id.* The appellate court noted a number of “inexplicable” procedural quirks in the way the trial court handled the motion. *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.* at 808.

¹⁰⁰ The appellate decision does not indicate whether the testimony of the Bailiff was the only testimony considered by the trial court.

¹⁰¹ *Id.*

¹⁰² *Id.*

appearances is limited to juveniles who are being detained.”¹⁰³ Furthermore, “[t]he criteria for secure detention is narrow, and a juvenile who is detained has already been determined to meet that criteria.”¹⁰⁴ Here, as in the *Staley* decision, the fact that there was no jury to be poisoned by the sight of a defendant in shackles was also an important consideration.¹⁰⁵

Following *S.Y. v. McMillian*, Palm Beach public defenders brought a separate suit challenging juvenile shackling policies in Florida in federal court, but the suit was recently dismissed on procedural grounds.¹⁰⁶ In a twelve page opinion, United States District Court Judge Donald M. Middlebrook ruled that the federal court was an inappropriate venue to determine whether a Florida county could impose a blanket policy requiring all detained juveniles to be shackled in court. However, he suggested that the county in question, Palm Beach, look to its neighboring counties of Broward and Miami-Dade, where officials “have come up with procedures so that not all juveniles – only those who pose a risk – are shackled.”¹⁰⁷

The local press enthusiastically supported one Palm Beach County judge’s policy of keeping shackles off of juveniles appearing in front of him.¹⁰⁸ In a recent editorial, the

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* Thirty years later, a California court faced with nearly identical facts came to the opposite conclusion. *In re Torrin D.*, 2007 Cal. App. Unpub. LEXIS 318 (Cal. Ct. App., 2007). In *In re Torrin D.*, a juvenile used the trial court’s denial of his motion to have his shackles removed as the sole basis for the appeal of an adjudication of delinquency. The appellate court, relying on *United States v. Howard*, 463 F.3d 999 (9th Cir. 2006), held that a court may not issue a “general policy of shackling a defendant for a proceeding in front of a judge’ unless there is at least some evidence that their policies are based on legitimate penological justifications.” *Id.* Since the *Torrin D.* defendant had started a fight in the juvenile detention center, the appellate court found there was at least some evidence that keeping him in shackles was warranted. *Id.*

¹⁰⁶ Jane Musgrave, *Judge Rejects Lawsuit to Unshackle Minors*, PALM BEACH POST (FLA.), Dec. 22, 2007, at 1A.

¹⁰⁷ *Id.*

¹⁰⁸ Editorial, *One Juvenile Judge Setting A Good Example By Removing Shackles in Some Cases*, SOUTH FLA. SUN-SENTINEL, Jan. 25, 2008; Nancy

South Florida Sun-Sentinel applauded Judge Peter Blanc's "reasonable approach" of "hav[ing] young defendants appear . . . without the chains – as long as the juvenile's attorney has met with and can vouch for his client."¹⁰⁹ This editorial noted, as did Judge Middlebrook in his previously discussed opinion, that other south Florida counties were moving away from blanket shackling policies.¹¹⁰

C. Tiffany A.: A California Court Finds Blanket Juvenile Shackling Policies Unconstitutional

While local and national papers were focusing on the Florida shackling controversy, a California appellate court nullified a similar blanket policy in that state. In light of *In re Tiffany A.*,¹¹¹ such policies now violate California law. This case provides a blueprint for a rational policy on courtroom shackling.

Sixteen-year-old Tiffany A. was detained in Lancaster County, California, after having been charged with unlawful taking of her mother's vehicle.¹¹² Pursuant to a standard policy within the jurisdiction, she was shackled during her initial appearance before the court.¹¹³ The trial court denied her motion to have the shackles removed, citing security concerns.¹¹⁴ A subsequent, more formal motion requesting removal of the shackles was also denied.¹¹⁵

The second motion addressed not only Tiffany A.'s situation, but also sought to have the blanket policy invalidated by the court.¹¹⁶ Tiffany A.'s attorneys sought to have the court adopt instead a new policy, whereby the court

L. Othon, *Fewer Juveniles Shackled in Court; Circuit Judge Limits Restraints to Leg Irons*, SOUTH FLA. SUN-SENTINEL, Jan. 20, 2008, at 1B.

¹⁰⁹ Editorial, *One Juvenile Judge Setting A Good Example By Removing Shackles in Some Cases*, SOUTH FLA. SUN-SENTINEL, Jan. 25, 2008.

¹¹⁰ *Id.*

¹¹¹ 150 Cal. App. 4th 1344 (Cal. Ct. App. 2007).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 1350-51.

¹¹⁶ *Id.*

would make individualized shackling determinations for each detained juvenile brought to court to face charges.¹¹⁷ However, the court based its denial of the second motion on inadequate courtroom security in Lancaster.¹¹⁸ Tiffany A. appealed, and the appellate court overturned the trial court's order.¹¹⁹

In coming to its conclusion, the appellate court denied requests by both parties for an evidentiary hearing.¹²⁰ However, the court did note the ample evidence concerning Lancaster's courtroom security developed in the record by the lower court.¹²¹ In denying both parties' requests for an evidentiary hearing, the appellate tribunal noted that:

[the issue is not whether the juvenile delinquency court's and the sheriff's department's concerns over security at the Lancaster Juvenile Courthouse are credible.] Instead, the issue before this court is whether the juvenile delinquency court can legally adopt a blanket policy requiring the use of physical restraints for all minors at all court proceedings without requiring an additional showing of need for restraints for each minor.¹²²

Further evidence gathering was not necessary to decide that issue.¹²³

The court began its analysis by noting that California courts have been confronting the shackling issue with regard to criminal defendants since 1871.¹²⁴ While most cases concerned a defendant's right to be free of shackles

¹¹⁷ *Id.* at 1351.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 1351-52.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.* at 1354.

¹²³ *Id.*

¹²⁴ *Id.*

while in the presence of a jury, the California courts had also determined that a blanket policy to shackle criminal defendants in the absence of a jury, similar to Tiffany A.'s situation, violated the law.¹²⁵ Specifically, under California law, it is not proper to shackle a defendant absent "manifest need for such restraints."¹²⁶ This rule "serves not merely to insulate the jury from prejudice, but to maintain the composure and dignity of the individual accused, and to preserve respect for the judicial system as a whole; [as] these are paramount values to be preserved irrespective of whether a jury is present during the proceeding."¹²⁷ Accordingly, a showing that there is a need to shackle an individual criminal defendant in specific circumstances is necessary to satisfy California law.¹²⁸

The mere fact that a defendant was in custody would not justify shackling.¹²⁹ Nor would a court's reliance upon "inadequate facilities" validate a decision to keep a defendant in handcuffs while in the courtroom.¹³⁰ Something more, like a defendant's demonstrated propensity for violence or an inclination to escape is necessary to justify shackling.¹³¹ In light of this assessment of California legal history, the court ruled that

any decision to shackle a minor who appears in the juvenile delinquency court for a court proceeding must be based on the nonconforming conduct and behavior of that individual minor. Moreover, the decision to shackle a minor must be made on a case-by-case basis. In accord with (precedent) the amount of need necessary to support the order will depend on the type of proceeding.

¹²⁵ *Id.* (citing *Solomon v. Superior Court*, 122 Cal. Ct. App. 3d 532 (1981); *People v. Fierro*, 1 Cal.4th 173 (1991)).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 1358.

¹³⁰ *Id.*

¹³¹ *Id.*

However, the juvenile delinquency court may not, as it did here, justify the use of shackles *solely* on the inadequacy of the courtroom facilities or the lack of available security personnel to monitor them.¹³²

Individual trial courts could continue to factor courtroom security into their decisions. However, security was only a factor, not the sole issue for courts to consider.¹³³

VIII. Overview and Conclusion

Research indicates that the courts that have addressed the juvenile shackling issue have uniformly condemned blanket policies mandating that all detained juveniles be shackled in court.¹³⁴ These courts have not completely banned courtroom shackling of juveniles.¹³⁵ Nor have these appellate courts permitted individual jurisdictions to rely upon courtroom security as a justification to shackle all juvenile defendants. Rather, appellate courts have determined that trial courts must consider an array of factors in determining whether an individual juvenile is to be shackled when facing charges.¹³⁶ The recent legislative proposals in Connecticut and North Carolina suggest a similar approach.¹³⁷

When discussing the propriety of juvenile shackling, one cannot lose sight of the fact that any policy will be limited to detained juveniles. This is important for a number of reasons. First, those juveniles who are not detained yet show up to face charges have, by their mere presence, done something to gain the court's trust. Second, under the law of most states, juveniles have the right to contest their detention. If a juvenile comes to court from a detention facility, a court has already made an individual determination that a specific

¹³² *Id.* (emphasis in original).

¹³³ *Id.* (emphasis in original).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Supra* notes 49-50 and accompanying text.

juvenile is a threat to abscond or is a threat to himself or others.¹³⁸

Nevertheless, the authors suggest that a statute requiring a court to make an individual determination regarding a juvenile's shackling would do little to upset the *status quo*. Courts would conduct a brief, on the record review of the individual juvenile before them. Factors for the court's consideration should be those outlined in the appellate decisions discussed herein¹³⁹. Specifically:

1. the court's obligation to maintain order and protect the safety of all in the courtroom;
2. the juvenile's record of contacts with the juvenile justice system and the nature of the charges pending against him or her;
3. possibility of the juvenile making a serious escape attempt;
4. danger, if any, an individual juvenile presents to himself or others in the courtroom;
5. juvenile's history, or lack thereof, of compliance with law enforcement, court security officers, probation and parole officers, and officers within the juvenile detention facility;
6. the juvenile's conduct in the matter currently before the court;

¹³⁸ N.J. STAT. ANN. § 2A:4A-34(a) (2008).

¹³⁹ The North Dakota Supreme Court presented a similar checklist in *In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007). That court presented the following factors for consideration: the accused's record, temperament, and the desperateness of his situation' the security situation at the courtroom and the courthouse' the accused's physical condition' and whether there was an adequate means of providing security that was less prejudicial. *Id.* at 332 (citation omitted).

7. the impairment, if any upon the juvenile's ability to communicate with counsel and thus effectively assist in his defense;
8. the impact upon the dignity and decorum of the court and the judicial process;
9. any additional mental distress and confusion that that courtroom shackling would impose upon the juvenile; and
10. availability of less intrusive security measures, such as the posting of additional guards.

It is unlikely that such an analysis would unduly burden the court or contribute to any backlog. These factors are similar to those a court must consider in a detention hearing or, for that matter, a bail hearing.

In conclusion, both sides in the shackling debate raise serious issues that courts and legislatures must consider in determining the propriety of juvenile shackling. Courtroom security along with the dignity and propriety of the judicial process are factors that a judge must consider any time a defendant walks into a courtroom. Both considerations are paramount to the orderly administration of justice. Therefore, both factors should enter into the shackling debate.

The decision to keep a juvenile shackled in court should not be an easy one. The two overriding factors a judge must consider, the safety of those in the courtroom and the fairness of the process, may sometimes conflict. If the court can conduct a fair process while the juvenile's hands remain free, the court should be obliged to do so.

Nevertheless, there are circumstances where the court cannot do its job unless the juvenile is restrained. We believe that the ten-point checklist included in this section provides a mechanism for the court to weigh the appropriate facts, and explain its decision on the record. The impartial and

evenhanded administration of justice demands that all participants believe that they are getting a fair deal. We believe that fairness demands that courts shackle juveniles only as a last resort, when shackling is required to ensure the legitimacy of the process.