



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: April 26, 2016

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: H.B. 211 (Youth Shackling]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 211 which limits the use of shackles and other physical restraints on children appearing in juvenile delinquency proceedings except in situations where the court determines that the use of restraints is necessary and there are no less restrictive alternatives that will prevent flight or physical harm to the child or other courtroom participants. SCPD endorses the proposed legislation and has the following observations.

Background on the bill is provided by the attached January 23, January 30, and March 16, 2016 News Journal articles. In a nutshell, the bill would bar automatic use of restraints (e.g. handcuffs; chains; straitjackets) for juveniles appearing in Family Court delinquency proceedings. The Court could authorize use of restraints only on a case-by-case basis justified by findings that restraints are necessary and there are no less restrictive alternatives (lines 32 - 48). The preamble to the bill, as well as the 3 attached articles, underscore the reasons why shackling of juveniles should be limited. It undermines the presumption of innocence, is demeaning and traumatizing, and deters dialog. Since minorities are statistically more likely to be placed in juvenile detention facilities, the use of shackles is disproportionately applied to minorities. According to the January 23 article, 71.8% of juveniles admitted to detention facilities in Delaware are minorities - "making it seven times more likely that African-American youth will be placed in a state detention center than white youth."

According to the January 23, 2016 article, "twenty-three states have banned the practice of juvenile shacking by legislation or court order" and "about half of those have done so since 2014." Many prominent organizations are supporting a national initiative to ban or reduce the

use of restraints in delinquency proceedings (lines 11-20). For example, the American Academy of Child & Adolescent Psychiatry issued a policy statement characterizing the routine shackling of juveniles as “demeaning, humiliating, and stigmatizing” and contributing to trauma (lines 14-16).

The bill is accompanied by the attached \$232,996.24 fiscal note. It envisions the hiring of four YRS counselors to “enable two YRS staff members to be present with each youth in a court room.”

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations or position on the proposed legislation.

cc: Mr. Brendan O’Neill, Public Defender’s Office
Ms. Kathleen MacRae, ACLU
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 211 youth shackling 4-19-16

A push to end shackling of children in Delaware courts

Jessica Masulli Reyes, The News Journal 3:25 p.m. EST January 23, 2016



(Photo: Getty Images/Stockphoto)

Children and teens appear every day in Delaware courtrooms with ankles locked together by metal leg irons.

Their crimes range from drug possession and theft to gun charges and rape. All are in state custody because they cannot afford to post bail. All are presumed innocent until proven guilty.

"They are shackled and brought into court like a slave more or less," said state Rep. James Johnson, D-New Castle. "That is something that will stick with you the rest of your life."

Defense attorneys and child advocates say this daily scene in Family Court is grisly -- youth are restrained and left traumatized by a criminal justice system that is supposed to rehabilitate, not punish, them. That is why there is an effort to end the shackling of youth during proceedings at the state's three courthouses.

Adult defendants in Delaware are not usually shackled during trials so as not to influence juries. Typically, adult defendants wear leg irons only during other court proceedings.

For juveniles, handcuffs and belly chains are removed once they get to the courtroom, but leg irons remain during all proceedings. Nearly half of all states have ended this practice in the United States.

Johnson introduced a bill in the House of Representatives in June to limit the use of shackles except in rare circumstances where the court can show that restraints are necessary to prevent flight or physical harm to the child or others. The bill is on hold in the House Judiciary Committee and could get support if the Department of Services for Children, Youth and Their Families doesn't change its policy on shackling juveniles on its own.



SPONSOR: Rep. J. Johnson & Sen. Townsend
Rep. Bantrock, Bennett, Kowalik, Lyons, Sen. Patawa
HOUSE OF REPRESENTATIVES
14th GENERAL ASSEMBLY
HOUSE BILL NO. 211

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY PROCEEDINGS AND THE USE OF RESTRAINTS ON A CHILD.

1 WHEREAS, juvenile delinquency proceedings in Delaware's Family Court are rehabilitative in nature and in the
2 interest of rather than against the child; and
3 WHEREAS, Delaware law prohibits a child alleged to be delinquent from being placed in secure detention unless
4 no means less restrictive of the child's liberty will ensure the child's appearance for court and detention is necessary based
5 on the nature of the offense or for the protection of the public; and
6 WHEREAS, the mandatory or indiscriminate shackling of juveniles in custody during their court appearances is
7 contrary to the rehabilitative purpose of the juvenile justice system; and
8 WHEREAS, the United States Supreme Court has held the mandatory shackling of adult defendants
9 unconstitutional because visible shackling undermines the presumption of innocence and can interfere with an accused's
10 ability to communicate with their attorney; and
11 WHEREAS, the American Bar Association has adopted a resolution urging all federal, state, local, territorial and
12 tribal governments to adopt a presumption against the use of restraints on juveniles in court and permitting the use of
13 restraints only when necessary to prevent flight or harm to the juvenile or others; and
14 WHEREAS, the American Academy of Child & Adolescent Psychiatry has issued a policy statement opposing
15 mandatory or routine shackling of juveniles as "dehumanizing, humiliating and stigmatizing" of juveniles and a practice that
16 akin to the trauma many justice-involved youth have already experienced; and
17 WHEREAS, many other child advocacy organizations -- including the Child Welfare League of America, the
18 American Orthopsychiatric Association, the National Center for Mental Health and Juvenile Justice, the National
19 Association of Counsel for Children and the National Juvenile Defender Center -- all oppose the indiscriminate use of
20 physical restraints on youth appearing in court; and
21 WHEREAS, the General Assembly believes the use of physical restraints on youth appearing in court should occur
22 only in those rare cases where no less restrictive alternatives will prevent flight or physical harm to the child or other
23 courtroom participants;

HD: KL: TEH 103140216 Page 1 of 2 Released: 06/24/2015 01:13 PM

Delaware courts: Some push to end shackling of children

The department's division that handles youth detention and transport to court is looking forward to young people attending court free of shackles, a spokeswoman said, but is concerned about the layout of the Family Court facilities in Dover and Georgetown. The 3-decade-old courts are in desperate need of upgrades and pose security concerns, court officials have said.

In November, Delaware Supreme Court Chief Justice Leo E. Strine Jr. stressed to lawmakers the need for funds to upgrade these buildings.

One judge in Dover was spat on by an inmate when they were forced to share the same elevator in the back of the courthouse, according to an attorney. And because the facilities are small, those seeking protective orders bump into people they are accusing and lawyers have little space to discuss cases with their clients.

"We will need to work with our system partners – Family Court, the Attorney General's Office and the Public Defender's Office – to ensure that any changes that are implemented can be done in a way that can provide for the safety of the youth and others in the courthouse provided the challenges of the physical plant in some of the court facilities," department spokeswoman Dawn Thompson said in a statement.

Buy Photo



Chief Defender Brendan O'Neill in his office in Wilmington. The Office of Defense Services is supporting legislation that would eliminate the shackling of juveniles in Delaware. (Photo: The News Journal)

Delaware Chief Public Defender Brendan O'Neill said the matter is pressing and can't wait for those changes.

"The practice of routinely shackling kids coming into court without an affirmative finding that they pose a genuine security risk is just flat out wrong," he said. "We are trying to change it."

Feeling like a 'caged animal'

In January 2014, the National Juvenile Defender Center, a nonprofit in Washington, D.C., launched a nationwide campaign to end indiscriminate juvenile shackling. The campaign comes amid a flurry of criminal justice reform efforts, including [pushes to end the money bail system](#) ([/story/news/crime/2015/11/07/doing-away-cash-bail/74619298/](#)) and a proposal to [scale back mandatory minimum sentences](#) ([/story/news/crime/2015/12/28/inmates-serving-life-prison-hope-end-three-strikes-law/76792526/](#)).

"People are realizing that the things we have done in the past have not worked and should be changed," Johnson said. "This is one of the changes that should be made."

Twenty-three states have banned the practice of juvenile shackling either by legislation or court order. About half of those have done so since 2014.

Most recently, in September, the Maryland Court of Appeals and the state Judicial Council adopted an anti-shackling policy that leaves the decision to shackle a youth up to a judge if there are safety concerns.

Maryland Public Defender Paul B. DeWolfe, a strong supporter of the change, wrote in an editorial in the Baltimore Sun last year that during the media storm surrounding the death of Freddie Gray, one instance of juvenile shackling stood out to him. A teen was arrested by Baltimore police during protests and told an [NBC reporter that being shackled felt like a "caged animal."](#) (<http://www.baltimoresun.com/news/opinion/oped/bs-ed-shackling-juveniles-20150519-story.html>)

"It's tragic," DeWolfe told The News Journal. "It's tragic to see a 12- or 13-year-old coming into a courtroom ... in chains. It's completely unnecessary and goes against the whole principle of juvenile court."



[Six in 10 Delaware inmates are black](#)

[\(http://www.delawareonline.com/story/news/crime/2015/10/17/six-10-delaware-inmates-black/73585456/\)](http://www.delawareonline.com/story/news/crime/2015/10/17/six-10-delaware-inmates-black/73585456/)



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[Will death penalty ruling affect Delaware?](#)

[\(http://www.delawareonline.com/story/news/local/2016/01/14/supreme-court-ruling-floridas-death-penalty-affect-delaware/78745374/\)](http://www.delawareonline.com/story/news/local/2016/01/14/supreme-court-ruling-floridas-death-penalty-affect-delaware/78745374/)

DeWolfe praised the end of the practice in Maryland, but said there are still some jurisdictions not complying with the new policy. In particular, Baltimore has resisted the change and continued to keep leg irons or handcuffs on children during hearings, he said.

"We are litigating those cases and trying to get that before the Court of Appeals," he said. "But, by and large across the state, once the proclamation was put into effect, the practice stopped. It's been a great success and long overdue."

Christina Gilbert, a staff attorney and policy counsel at the National Juvenile Defender Center, said this shows the importance of ensuring the change is mandatory statewide.

"A number of states, I anticipate, in addition to Delaware, will shift in the next year or so," she said.

What does Delaware do?

Juveniles who are detained in Delaware are transported by the Division of Youth Rehabilitative Services to the state's three courthouses in Kent, Sussex and New Castle counties.

When they arrive, handcuffs and belly chains are removed, but leg irons remain during court proceedings. On a case-by-case basis, judges can consider if an individual poses a safety risk and should have the additional restraints left on.

Even with the restraints on, youth can still pose a risk, some say. For example, a 17-year-old defendant kicked out the window in a van that was taking him in shackles from a family court proceeding in September.

Buy Photo



Wilmington police searching for a 17-year-old who escaped from a juvenile correction van in September. He was caught about a month later. (Photo: JOHN J. JANKOWSKI JR./SPECIAL TO THE NEWS JOURNAL)

He jumped out of the moving vehicle in Wilmington and was on the run from authorities for about a month.

Advocates say these types of scenarios are rare – and need to be weighed against the more widespread harm that shackles can inflict on children.

The developing brain

Delaware courts: Some push to end shackling of children

Attempts by The News Journal to speak with youth who have been detained and their families were unsuccessful.

Karen DeRasmo, executive director of Prevent Child Abuse Delaware, said the experience of being shackled can impact a child's brain at a time when it is still developing.

"What we always have to imagine and appreciate is that kids' brains are in the process of developing," she said. "They tend to think much more concretely about things. They don't have some of the higher level of thought processes that adults have."

For that reason, shackling could be traumatizing to a young person, especially because those who are entering the juvenile justice system are probably already experiencing a higher level of toxic stress in life, she said.

"It could indeed cause them more trauma because they don't have the same facilities to deal with that situation," she said. "It could actually affect the way their brain is developing and how they are going to view the world going forward."

Gilbert said eliminating juvenile shackling can also change the courtroom environment from one of an authoritative, penal system to one of openness and fairness.

"We know that the idea of procedural justice is so important to youth," she said. "The juvenile court is designed to be different from the adult court system. It is supposed to be rehabilitative, not punishing."

Shackling also more heavily impacts poor black and Hispanic youth who enter the system and cannot afford to pay bail, O'Neill and DeRasmo said.

In 2014, 4,303 juveniles arrested in Delaware and 1,038 admissions into juvenile detention facilities. Of those detained, 71.8 percent were African-American (<https://www.google.com/search?q=6+in+10+inmates+delaware&ie=utf-8&oe=utf-8>) – making it seven times more likely that African-American youth will be placed in a state detention center than white youth.

"It seems like one more way we are doing harm when we don't have to," DeRasmo said.

Although House Bill 211 is on hold, Johnson said that if an agreement with the children's department does not eliminate juvenile shackling soon, the bill could be put to the forefront in the legislative session.

"I think now is the time," Johnson said. "We want to move forward with it."

Contact Jessica Masulli Reyes at (302) 324-2777, jmreyes@delawareonline.com or Twitter @JessicaMasulli.

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COMMENT

Shackling children is not fair or just in my court



DELAWARE VOICE JUDGE DARLENE BYRNE

Juvenile court is where kids who have broken the law come to take responsibility. As a judge and a parent, I know that it is far more effective to demonstrate responsibility than it is to give lectures on the topic. That is one reason why I put a stop to the automatic shackling of children in my courtroom. I have a responsibility to see that everyone is treated fairly and that the court works effectively to rehabilitate children. There is nothing fair or rehabilita-

tive about wrapping a child in chains.

My courtroom is in Texas, where like Delaware and 25 other states there are no restrictions on shackling in the juvenile court. Case law has long established that adult defendants cannot usually be shackled. That protection has never been extended to kids. So kids are routinely bound in handcuffs, leg irons and belly chains.

This is changing. Delaware's legislature will soon consider a proposal to put reasonable limits on juvenile shackling. In the past two years, 10 states and the District of Columbia have reformed their practices. National organizations from the Child Welfare League of

America to the American Bar Association to my organization, the National Council of Juvenile and Family Court Judges, are calling for such limits. This is an idea whose time, thank goodness, has finally come.

I decided not to wait for the law to change before I reformed practice in my own courtroom. The outcomes have been outstanding. We hear about 3,000 juvenile cases in my district. In only two cases did I deem shackles necessary because those youth posed a significant risk. In more than a year since I and all my colleagues have stopped automatic shackling, there have been no escapes and no violence.

Far more compelling

is what did happen: More engaged kids and families, more meaningful conversations, more success. Certainly juvenile courts are charged with holding kids accountable. We never take law breaking lightly. Our primary mission, however, is to rehabilitate. As a juvenile judge, I work in partnership with many professionals to find and address those factors that are leading to problem behavior. It is often an untreated mental illness, unresolved trauma, family dysfunction or learning difficulties.

It helps if the child is willing to really talk to me — not merely mumble one-syllable answers as he looks down at his shackled feet. It helps if the parents see me as a

caring partner in their child's success. If I allow their child to be paraded about in chains, I have not earned anyone's trust.

The juvenile court was established to rehabilitate, and shackling makes that less likely. While juvenile shackling reform has been led by juvenile defenders in some states, prosecutors are supportive as well. The Association of Prosecuting Attorneys supports juvenile shackling reform precisely because the change will make more kids successful and less likely to come back to court again. Research shows that youth who experience procedural fairness gain respect for the law and are more likely to cooperate with

the court.

Even more fundamentally, shackling reform is the right thing to do for our children. Mental health experts across the country warn that shackling is such a negative experience that it can do permanent harm to children, particularly those who have survived trauma, as the vast majority of kids in the juvenile justice system who I want the children who come into my courtroom to feel remorse for what they have done. That is justice. But I do not want to humiliate or traumatize them in any way. That is not justice. It is something else entirely.

Darlene Byrne is president of the National Council for Juvenile and Family Court Judges.

Juvenile shackling, three-strikes bill take first steps

 Matthew Albright, The News Journal 6:19 p.m. EDT March 16, 2016



(Photo: MATTHEW ALBRIGHT, THE NEWS JOURNAL)

A bill that would stop the shackling of juvenile defendants in court and a bill that would scale back the state's three-strikes laws breezed through their first steps in the General Assembly Wednesday.

House Bill 211, sponsored by Rep. J.J. Johnson, D-New Castle, would require that courts not shackle juvenile defendants unless there is a particular need to do so. Currently, Johnson says courts are shackling young defendants by default.

"This legislation, to me, is bringing our justice system into the 21st century," Johnson said.

A News Journal article in January exposed the practice of shackling children and teens who appear in

Delaware courtrooms.

Defense attorneys, lawmakers and child advocates argued at the time that the daily scene in Family Court was grisly with youth being restrained by heavy metal leg irons.

The bill's supporters, including the ACLU, public defender's office and state Supreme Court Chief Justice Leo Strine Jr., say shackles are psychologically damaging to young defendants and naturally make them seem guilty, hurting the presumption of their innocence around which the justice system is built.

Johnson also argues shackles are a troubling symbol "quite similar to a noose." He showed legislators some of the shackles at a Wednesday meeting in the House Judiciary Committee, the chains clinking as he moved.

"This is something we should have moved away from years ago," Johnson said.

STORY: [A push to end shackling of children in Delaware courts \(/story/news/crime/2016/01/23/push-end-shackling-children-delaware-courts/78759444/\)](/story/news/crime/2016/01/23/push-end-shackling-children-delaware-courts/78759444/)

STORY: [inmates serving life hope for end to three-strikes law \(/story/news/crime/2015/12/28/inmates-serving-life-prison-hope-end-three-strikes-law/76792526/\)](/story/news/crime/2015/12/28/inmates-serving-life-prison-hope-end-three-strikes-law/76792526/)

The House Judiciary Committee unanimously voted Wednesday to send the bill to the full House. Should the House approve the bill, it would also have to pass the Senate before heading to Gov. Jack Markell's desk.

Later, the Senate Judiciary Committee released a bill by Sen. Karen Peterson, D-Stanton, that would curtail the habitual offender, or "three-strikes" laws (<http://legis.delaware.gov/legislature.nsf/FSMain?OpenFrameset&Frame=right&src=/legislature.nsf/7F4F680C99E8E0D1852569C10055E9D4/39AA2F3C3C34CF5A85257E0E005A56C7>) that place

mandatory harsh penalties on people convicted of a felony offense after two previous crimes. The bill would eliminate mandatory life sentences and remove some crimes from the list of offenses that trigger mandatory sentences.

Supporters of the bill, from Attorney General Matt Denn to the ACLU, say the current law ties judges' hands and leads to some people getting disproportionately harsh penalties.

The bill has to pass both the full Senate and the House before heading to Markell for signature.

Contact Matthew Albright at malbright@delawareonline.com, (302) 324-2428, or on Twitter @TNJ_malbright.

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Juvenile shackling, three-strikes bill take first steps

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148TH GENERAL ASSEMBLY

FISCAL NOTE

BILL: HOUSE BILL NO. 211
SPONSOR: Representative J. Johnson
DESCRIPTION: AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY PROCEEDINGS AND THE USE OF RESTRAINTS ON A CHILD.

ASSUMPTIONS:

1. This legislation is effective upon enactment.
2. This Act limits the use of shackles and other physical restraints on children appearing in juvenile delinquency proceedings except in situations where the court determines that the use of restraints is necessary and there are no less restrictive alternatives that will prevent flight or physical harm to the child or other courtroom participants.
3. The Department of Children, Youth and Their Families, Division of Youth Rehabilitative Services (YRS) is responsible for the transportation of juveniles from both the New Castle County Detention Center (NCCDC) and the Stevenson House facilities to Family Court that would be impacted by this Act.
4. There are currently 9.0 full-time and 1.0 casual/seasonal positions dedicated as Youth Rehabilitative Counselors, two of which are Youth Rehabilitative Counselor Supervisors. The current population at NCCDC is approximately 50 juveniles and 45 juveniles at Stevenson House. This unit is responsible for transportation to and from Family Court, Superior Court, and any medical related transports.
5. Based on current resources, YRS has indicated for the safety of all involved, 4.0 additional full-time Youth Rehabilitative Counselors are required to cover statewide Family Court trips. This will enable two YRS staff members to be present with each youth in a court room. In order to meet the requirements of Preventing Prison Rape Act (PREA), at least one position will be female.
6. The estimated State agency costs for the 4.0 additional full-time Youth Rehabilitative Counselors is \$232,996.24 (estimate includes salary and other employment costs (OEC's)).

Cost:

Fiscal Year 2017	\$232,996.24
Fiscal Year 2018	\$232,996.24
Fiscal Year 2019	\$232,996.24