M E M O R A N D U M

TO: Illinois Supreme Court Rules Committee

FROM: Chicago Appleseed Fund for Justice and Goldberg Kohn, Ltd.

DATE: October 12, 2015

RE: Juvenile Shackling Impact Statement

Introduction

In 1977, the Illinois Supreme Court in *In re Staley* held that it was reversible error for a trial court to require a juvenile to appear at an adjudicatory hearing while handcuffed, ultimately declaring, "Physical restraints should not be permitted unless there is a clear necessity for them."[1] Many believed that "[i]mplicit in this ruling is the notion that some individualized determination of need must be made before restraints are utilized."[2] In light of the Court's decision in *Staley*, Illinois often has been cited as the leader in the movement away from the indiscriminate shackling of juveniles without individualized determinations of safety risks.[3] However, juvenile shackling in Illinois remains pervasive and arbitrary. The Illinois Supreme Court recently held that a child may appear shackled in court until the judge notices the child is shackled,[4] which ultimately puts the burden on juvenile defenders with heavy caseloads to object to shackling.[5] And, in practice, youths in Illinois regularly appear shackled in court without cause. A 2007 report authored by lawyers from the National Juvenile Defender Center and

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[1] *In re Staley*, 364 N.E.2d 72, 74 (Ill. 1977).
[2] Kim M. McLaurin, *Children in Chains: Indiscriminate Shackling of Juveniles*, 38 WASH. U. J.L. & POL'Y 213, 220 (2012).
[3] *See, e.g.*, Gabe Newland, *A Solution to Michigan's Child Shackling Problem*, 112 MICH. L. REV. FIRST IMPRESSIONS 161, 168 (2014) ("The trend away from child shackling began with *In re Staley*."); McLaurin, *supra* note 1, at 220 ("The Supreme Court of Illinois was the first to address blanket shackling of juveniles in 1977.")
[4] *In re Jonathon C.B.*, 898 N.E.2d 227, 244 (Ill. 2011).
[5] *Id.* at 262 (J. Burke, dissenting) ("[t]he majority places the onus on Jonathon to show that the trial court was aware that he was wearing shackles"); *see generally* CATHRYN CRAWFORD ET AL., ILLINOIS: AN ASSESSMENT OF ACCESS TO COUNSEL & QUALITY OF REPRESENTATION IN DELINQUENCY PROCEEDINGS 61 (2007), *available at* https://www.macfound.org/media/article_pdfs/ILJJFINALREPORT.PDF.

Northwestern Law School's Children and Family Justice Center assessing juvenile access to counsel and quality of representation in delinquency proceedings in Illinois noted that in half of the sixteen counties the authors visited in Illinois, "children entered the court wearing ankle shackles and handcuffs or belly chains."[6] Even more distressingly, the authors observed that "[i]n most instances, shackling was not based on any individualized determination that the child posed a security risk, but instead was standard policy. Many of the shackled children were charged with non-violent offenses."[7] In one county, a judge explained to the investigators that it was "sheriff's policy" to shackle children, and she had no jurisdiction to overrule that decision.[8]

As *Staley* recognized nearly four decades ago, indiscriminate juvenile shackling offends the Constitution, violating children's due process rights, inhibiting children's ability to participate in their own defense, and undermining the presumption of innocence. Shackling humiliates and traumatizes children, causing psychological harm that both threatens the dignity of the judicial process and contradicts the rehabilitative goals of the system. At the same time, evidence shows that juvenile shackling is unnecessary to promote courtroom safety. The concerns associated with indiscriminately shackling Illinois' children pervade every stage of juvenile proceedings, including charging, pre-trial, trial, and sentencing, and the corresponding risks cannot be overstated. It is time for the Illinois Supreme Court to lead the way again in setting juvenile shackling policy.

In re Staley **and Shackling Law in Illinois**

In *Staley*, "the first [case nationwide] to address the blanket shackling of juveniles,"[9] the Illinois Supreme Court considered whether a trial court erred when it required a 15-year-old to

[6] CRAWFORD ET AL., *supra* note 5, at 61.
[7] *Id.*
[8] *Id.*
[9] McLaurin, *supra* note 2, at 220.

appear at a hearing before the judge in handcuffs, despite the objection of his attorney.[10] In upholding the decision of the appellate court that the trial court had erred, the Court stated:

> The presumption of innocence is central to our administration of criminal justice. In the absence of exceptional circumstances, an accused has the right to stand trial with the appearance, dignity, and self-respect of a free and innocent man. It jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged. Also . . . shackling restricts the ability of an accused to cooperate with his attorney and to assist in his defense.[11]

While the Court acknowledged that "there may be circumstances which will justify the restraint of an accused," it ultimately concluded that "[p]hysical restraints should not be permitted unless there is a clear necessity for them."[12]

Staley thus essentially extended to juveniles, regardless of whether appearing before a jury or a judge, the Court's holding in *People v. Boose* that "an accused should not be kept in restraints while in court . . . unless there is a manifest need for such restraints."[13] The Court's decision in *Boose* was echoed in the most recently decided U.S. Supreme Court case regarding shackling, *Deck v. Missouri*.[14] In *Deck*, the U.S. Supreme Court considered the constitutionality of using visible shackles on a defendant during the penalty phase of a capital case.[15] The Court noted that "[t]he law has long forbidden routine use of visible shackles during the guilt phase; it

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[10] *In re* Staley, 364 N.E.2d 72, 72 (Ill. 1977).
[11] *Id.* at 73.
[12] *Id.* at 74.
[13] *See In re Jonathon C.B.*, 958 N.E.2d 227, 243 (Ill. 2011). While the Court in *Boose* was concerned with a defendant shackled in front of a jury, the court in *Staley* rejected the State's argument that *Boose* did not apply to a hearing in front of a judge, explaining, "The possibility of prejudicing a jury, however, is not the only reason why courts should not allow the shackling of an accused in the absence of a strong necessity for doing so. . . . The reasons for forbidding shackling are not limited to trials by jury." *Staley*, 364 N.E.2d at 73. Notably, however, the Illinois Appellate Court recently ruled that the *Boose* presumption regarding shackling does not apply to post-conviction relief proceedings, though the "the matter of shackling still remains within the trial court's discretion when a defendant has raised the issue with the trial court." People v. Kelley, N.E.2d 770, 778 (Ill. App. Ct. 4th 2013), *appeal denied* 996 N.E.2d 19 (Ill. 2013).
[14] *Deck v. Missouri*, 544 U.S. 622, 634 (2005).
[15] *Id.* at 624.

permits a State to shackle a criminal defendant only in the presence of a special need."[16] Examining the history of state court decisions regarding shackling, the Court further explained that the states "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."[17] While the Court noted that lower courts disagree "about the specific procedural steps a trial court must take prior to shackling, about the amount and type of evidence needed to justify restraints, and about what forms of prejudice might warrant a new trial," it noted that lower courts nevertheless "have not questioned the basic principle."[18]

The U.S. Supreme Court has not addressed indiscriminate juvenile shackling specifically, in the sentencing phase or otherwise. In Illinois, then, *Boose* provides guidance to courts determining whether shackles are necessary for juveniles: the seriousness of the present charge against the defendant; defendant's temperament and character; his age and physical attributes; his past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies.[19] *Boose* further specifies that the record must clearly disclose the reason underlying the trial court's decision for the shackling and show that the accused's attorney was given an opportunity to oppose this decision.[20]

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[16] *Id.* at 626; *see also Holbrook v. Flynn*, 475 U.S. 560, 568–69 (1986) ("considering whether "deployment of security personnel in a courtroom during trial is the sort of inherently prejudicial practice that, like shackling, should be permitting only where justified by an essential state interest specific to each trial"); Illinois v. Allen, 397 U.S. 337, 343–44 (1970) (finding that "no person should be tried while shackled and gagged except as a last resort").
[17] *Deck*, 544 U.S. at 627.
[18] *Id.* at 629.
[19] *People v. Boose*, 362 N.E.2d 303, 306 (Ill. 1977).
[20] *Id.*

Although it may appear that *Staley*'s extension of *Boose* to juveniles eliminated the practice of shackling juveniles without cause in Illinois,[21] recent Illinois case law in fact undermines *Staley*'s protections. In *In re Jonathon C.B.*, an Illinois appellate court held, and the Illinois Supreme Court affirmed, that a trial court did not err in failing to conduct a *Boose* hearing to determine whether restraints were necessary for a juvenile who appeared shackled in court.[22] During his trial, the juvenile's counsel did not object to the shackles or request a *Boose* hearing, and the Illinois Supreme Court rejected the argument that "the unnecessary shackling of a minor so offends basic notions of justice that courts have a *sua sponte* duty to conduct a *Boose* hearing" before a child can appear in court in shackles.[23] Rather, the Court held that once a circuit court notes on the record that a child is in shackles—so presumably, only once the child's attorney raises the issue—the court must conduct a *Boose* hearing.[24] And, as described previously, even despite these limited protections, juveniles in Illinois are regularly shackled without cause.

Shackling Offends Children's Constitutional Rights

Indiscriminate shackling undermines fundamental legal principles and offends certain Constitutional rights. The concerns implicated by shackling are as pronounced, if not more, in the context of shackling juveniles.

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[21] The American Bar Association, for example, in its resolution urging governments to adopt a presumption against the use of restraints on juveniles in court and to permit juvenile shackling only after a finding that restraints are the least restrictive means necessary to ensure safety, states that Illinois ended the practice of indiscriminately shackling juveniles with the *Staley* decision. *See* AM. BAR ASS'N, PROPOSED RESOLUTION 107A AND REPORT 2–3 (2015), *available at* http://www.americanbar.org/ news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/107a.html (hereafter referred to as ABA PROPOSED RESOLUTION 107A); *see also* McLaurin, *supra* note 2, at 220 ("Implicit in [the *Staley*] ruling is the notion that some individualized determination of need must be made before restraints are utilized.")

[22] *In re Jonathon C.B.*, 958 N.E.2d 227, 244 (Ill. 2011)

[23] *Id.* at 242.

[24] *Id.* at 244.

Indiscriminate Shackling Violates Due Process

The Illinois Supreme Court observed in both *Boose* and *Staley* that "shackling of the accused should be avoided if possible because . . . it tends to prejudice the [factfinder] against the accused."[25] Indeed, the U.S. Supreme Court held in *Deck* that "given their prejudicial effect, due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case."[26] The Court thus declared:

> [I]t is clear that this Court's prior statements gave voice to a principle deeply embedded in the law. We now conclude that those statements identify a basic element of the "due process law" protected by the Federal Constitution. Thus, the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.

While the defendant in *Deck* was an adult appearing before a jury, the U.S. Supreme Court observed in *In re Gault*, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[27] And the *Staley* court clearly recognized that the concerns regarding prejudice apply with equal force to juveniles in delinquency proceedings before a judge. Quoting Section 4.1(c) of the ABA Standards relating to trial by jury, the Court stated, "Because the rule rests only in part upon the possibility of jury prejudice, it should not be limited to jury trials."[28]

Indeed, all courtroom actors—witnesses, probation officers, and even judges—have strong implicit biases that may produce discriminatory behavior.[29] As the New York Court of Appeals explained, "[J]udges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder."[30] Even judges admit that they are not

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[25] *Boose*, 362 N.E.2d at 265; *In re* Staley, 364 N.E.2d 72, 73 (Ill. 1977).
[26] *Deck v. Missouri*, 544 U.S. 622, 634 (2005).
[27] *In re* Gault, 387 U.S. 1, 13 (1967).
[28] *Staley*, 364 N.E.2d at 73.
[29] *See generally* Anthony G. Greenwald & Linda Hamilton Kreiger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 956–61 (2006); *see also* Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195 (2009) (finding that judges harbor implicit racial biases).
[30] *People v. Best*, 979 N.E.2d 1187, 1189 (N.Y. 2012).

immune to the bias that shackles create: "Visible shackles give the impression to *any* trier of fact that a person is violent, a miscreant, and cannot be trusted."[31] This tendency infects proceedings at every phase of a juvenile's case, including at charging, pre-trial, trial and sentencing.

Shackling Inhibits Children's Ability to Participate in Their Defense

In both *Boose* and *Staley*, the Illinois Supreme Court also explained that shackling should be avoided because it "restricts [a defendant's] ability to assist his counsel during trial."[32] In *Deck*, the U.S. Supreme Court further clarified that the "use of physical restrains diminishes" a defendant's Sixth Amendment right to counsel, the purpose of which is "to help the accused secure a meaningful defense."[33] In particular, the Court noted, "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."[34] The Court in *Deck* additionally noted that shackles tend to "confuse and embarrass" defendants' "mental facilities," which can "materially . . . abridge and prejudicially affect" a defendants' ability to participate in his or her own defense.[35]

The need for effective attorney-client communication is even more important for children than it is for adults, because children are less likely to understand the complicated events unfolding before them.[36] However, both the U.S. Supreme Court and many experts have noted that juvenile defendants already have more difficulty navigating the attorney-client relationship than adults,[37] and this difficulty is exacerbated when juveniles are shackled. At the most basic

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[31] *Id.* at 1190.
[32] *People v. Boose*, 362 N.E.2d 303, 305 (Ill. 1977); *Staley*, 364 N.E.2d at 73.
[33] *Deck v. Missouri*, 544 U.S. 622, 631 (2005).
[34] *Id.* (internal quotation marks omitted).
[35] *Id.*
[36] Newland, *supra* note 3, at 166.
[37] *See Graham v. Florida*, 560 U.S. 48, 78 (2010) ("Juveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it."); McLaurin, *supra* note 2, at 229 (citing Brief for the NAACP Legal Defense & Educational Fund, Inc., Charles Hamilton Houston Institute for Race &

level, "[s]hackled children find it physically difficult—and oftentimes impossible—to hold papers they are asked to review in court, or provide counsel with notes."[38] Further, shackling "can undermine trust in adults in positions of caretaking or responsibility who might otherwise be able to work effectively with a youth with behavioral health needs."[39]

A child who has been shackled may also feel removed from the juvenile justice system that was created to serve her, undermining her participation in both her defense and the entire adjudicatory process. As the U.S. Supreme Court explained in *Deck*, the use of visible shackles in court "suggests to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'"[40] And Dr. Marty Beyer, a psychologist and nationally renowned adolescent-development expert, explains, that juveniles "are more vulnerable to lasting harm from feeling humiliation and shame than adults. In the midst of their identity and moral development, demeaning treatment by adults may solidify adolescents' alienation, send mixed messages about the purpose of the justice system, and confirm their belief that they are bad."[41] Essentially, then, "[a] shackled, teenaged defendant is more likely that an adult to respond to his/her state of restraint and to disengage from effective communication with his or her attorney."[42] For non-violent juveniles, "it seems unfair to be shackled. . . . Because of where they are developmentally, their reaction to the unfairness of being shackled may preoccupy them,

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Justice, and National Association of Criminal Defense Lawyers as Amici Curiae in Support of Petitioners at 6, Graham v. Florida, 560 U.S. 48, 78 (2010) (citing Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLIN. PSYCH. 459, 468–71 (2009); Patricia Puritz & Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Juvenile Defense Practice*, 45 FAM. CT. REV. 466, 474 (2007)) ("Even without the distraction of shackling, adolescents have difficulty with "judgment, decision-making, and ability to develop the trust, confidence and open communication necessary for an effective attorney-client relationship.").

[38] ABA PROPOSED RESOLUTION 107A, *supra* note 21, at 5.

[39] CAMPAIGN AGAINST INDISCRIMINATE CHILD SHACKLING, TOOLKIT 6 (2015), *available at* http://njdc.info/wp-content/uploads/2014/09/Toolkit-Final-6-22-8-18-15.pdf.

[40] *Deck v. Missouri*, 544 U.S. 622, 630 (2005).

[41] Aff. of Dr. Marty Beyer ¶ 10, *In re R.C.*, No. 2006-CJ-004506 (Fla. Cir. Ct. Aug. 23, 2006), *available at* http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf.

[42] McLaurin, *supra* note 2, at 224.

interfering with their paying attention to what the judge says in the courtroom."[43] Again, this phenomenon is as true, and can be as prejudicial, during non-trial phases of a case as during trial.

Shackling Undermines the Presumption of Innocence

One of the fundamental principles of our criminal justice system is that a defendant is innocent until proven guilty. But as the Supreme Court explained in *Deck*, "[v]isible shackling undermines the presumption of innocence and the related fairness of the factfinding process. It suggests to the jury that the justice system itself sees a 'need to separate a defendant from the community at large.'"[44] As the Illinois Supreme Court said in *Staley*, "In the absence of exceptional circumstances, an accused has the right to stand trial with the appearance, dignity, and self-respect of a free and innocent man."[45] Shackling the accused without clear cause therefore "jeopardizes the presumption [of innocence]'s value and protection and demeans our justice."[46] Shackling before a charge has even been brought is just as prejudicial.

Many juveniles do not yet have a fully formed sense of identity, and thus shackling juveniles often undermines their own sense of innocence and even self-worth. As Dr. Beyer explains:

> Being shackled in public is humiliating for young people, whose sense of identity is vulnerable. The young person who feels he/she is being treated like a dangerous animal will think less of him/herself. . . . Knowing they are capable of remaining calm in the courtroom without handcuffs or shackles, young people conclude it must be something bad about them that justifies the chains.[47]

Indeed, one child questioned on this topic described, "I felt that I was already convicted as guilty in my case because appearing in shackles in court I got degrading looks from other people in

[43] Aff. of Dr. Marty Beyer, *supra* note 41, ¶ 14.
[44] *Deck*, 544 U.S. at 630 (internal citations omitted) (quoting Holbrook v. Flynn, 475 U.S. 560, 569 (1986)).
[45] *In re Staley*, 364 N.E.2d 72, 73 (Ill. 1977).
[46] *Id.*
[47] Aff. of Dr. Marty Beyer, *supra* note 41, ¶¶ 10, 13.

court. I also feel that judge thought of me as a troubled teenager because I was in shackles."[48] Another lawyer recounted the experience of a juvenile client who appeared shackled in court: "Our client has a difficult time believing that the presumption of innocence still cloaks him when all he can feel are chains."[49]

Shackling Children Contradicts both the Dignity of the Judicial Process and the Rehabilitative Goals of the Juvenile Justice System

In addition to the constitutional problems posed by shackling juveniles, shackling undermines both the dignity of the judicial process in general and the rehabilitative goals of the juvenile justice system in particular. Explaining how shackling can undermine a dignified judicial process, the Court in *Deck* stated that a dignified judicial process reflects "the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment" and "a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve."[50]

These considerations take on additional weight when considering the psychological harm shackling, in any form at any phase, causes children—harm that undermines the rehabilitative goals of the juvenile justice system. In *Kent v. United States*, the U.S. Supreme Court emphasized that the objective of the juvenile court system is "to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt, and punishment."[51] Subsequent decisions similarly recognized that inherent differences between

[48] Newland, *supra* note 3, at 167 n.52 (citing Letter from Colin Castenada to Justice Charles Johnson, Chair, Wash. State Supreme Court Rules Comm. (Apr. 30, 2014), *available at* http://www.courts.wa.gov/court_Rules/proposed/2014Feb/JuCR1.6/Colin%20Castenada.pdf).
[49] ABA PROPOSED RESOLUTION 107A, *supra* note 21, at 4 (citing Mary Berkheiser, *Unchain the Children*, NEV. LAW. MAG. 30 (June 2012), *available at* http://nvbar.org/articles/content/deans-column-unchain-children).
[50] *Deck*, 544 U.S. at 631.
[51] *Kent v. United States*, 383 U.S. 541, 544 (1996).

adolescents and adults necessitate treating juveniles in the justice system differently.[52] In particular, the U.S. Supreme Court explained in *Graham* that "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds" that last through late adolescence.[53] Differences between juveniles and adults thus underscore the purpose of a separate juvenile system: "The rationale guiding these holdings—children's relative lack of maturity, limited ability to consider the consequences of their actions, and increased capacity to reform their behavior—provides the foundation for juvenile justice."[54]

The indiscriminate shackling of juveniles is absolutely contrary to that rehabilitative goal; it instead humiliates and traumatizes children who have often already experienced trauma, leaving possibly life-long psychological repercussions.[55] Shackling can cause children significant physical, mental or emotional health impairment; it is anti-therapeutic for many children in delinquency proceedings who have suffered physical or sexual abuse, have mental illness, or other disabilities; and it may further traumatize children who have been previously victimized, especially when restraint was a part of the abuse.[56] The National Center for Mental Health and Juvenile Justice summarizes the research on the serious psychological effects shackling has on juveniles. In particular, shackling:

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[52] *See J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2398–99 (2011) (holding that age matters when determining whether a child is in "custody" according to *Miranda v. Arizona*); *Roper v. Simmons*, 543 U.S. 551, 575, 578–79 (2005) (banning the death penalty for children under eighteen); *Graham v. Florida*, 560 U.S. 48, 81–82 (2010) (prohibiting life-without-parole sentences for children under eighteen convicted of non-homicide offenses); *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012) (prohibiting mandatory life- without-parole sentences for children under eighteen).

[53] *Graham*, 560 U.S. 48 at 68.

[54] Newland, *supra* note 3, at 163; see also McLaurin, *supra* note 2, at 226 ("All these decisions and laws implicitly and explicitly recognize that children and adolescents are not developmentally on par with adults. Given these developmental differences, children and adolescents require disparate treatment.")

[55] *See* Am. Academy of Child & Adolescent Psychiatry, *Policy Statement on Mandatory Shackling in Juvenile Court Settings* (Feb. 17, 2015), https://www.aacap.org/AACAP/Policy_Statements/2015/Mandatory_Shackling_in_ Juvenile_Court_ Settings.aspx (hereafter referred to as AACAP, *Policy Statement*); Aff. of Dr. Marty Beyer, *supra* note 41, ¶¶ 7–21.

[56] EMILY BANKS ET AL., CTR. ON CHILDREN & FAMILIES, THE SHACKLING OF JUVENILE OFFENDERS: THE DEBATE IN JUVENILE JUSTICE POLICY 3 (2008), *available at* https://www.law.ufl.edu/_pdf/academics/centers-clinics/centers/ shackling.pdf.

- Exacerbates distress and can directly contribute to the worsening of symptoms of mental disorders, compromising daily functioning;

- May precipitate reactive behaviors arising from emotional dysregulation due to fear and/or anger which then prompt "disciplinary" responses such as further physical or mechanical restraints, seclusion or administrative segregation, or "chemical restraints" with medication;

- May trigger memories of past maltreatment and specifically exacerbate post-traumatic symptoms such as anger, anxiety, dissociation, mistrust and non-compliance;

- May deepen depression due to the shame and humiliation associated with public shackling, and in some cases may contribute to self-harming behavior or suicidality;

- May contribute to intensification of negative thoughts and feelings and so inadvertently increase risks of self-medication with substance abuse or through high-risk, high intensity behavior intended to block these thoughts and feelings.[57]

As law professor Kim McLaurin additionally points out, shackling particularly affects minority children, who are disproportionately represented in the juvenile justice system.[58] The restraints used to shackle juveniles are often the same type as those used to restrain slaves and thus have "significant negative connotations" for African-American children.[59] The "critical psychosocial task of adolescence" is the development of one's identity, including the development of an ethnic identity. Shackling juveniles "in a manner similar to restraints used on slaves . . . in full view of family, friends, court personnel, and the public" thus negatively impacts children's ethnic and social identity development.[60] Dr. Beyer similarly describes, "For youth of color, being degraded in public may be experienced as racism (even if the practice is universal) which is extremely harmful to the development of a positive identity."[61]

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[57] CAMPAIGN AGAINST INDISCRIMINATE JUVENILE SHACKLING, TOOLKIT 6 (2015) (hereafter referred to as CAIJS TOOLKIT), *available at* http://njdc.info/wp-content/uploads/2014/09/Toolkit-Final-6-22-8-18-15.pdf.
[58] McLaurin, *supra* note 2, at 230.
[59] *Id.*
[60] *Id.*
[61] Aff. of Dr. Marty Beyer, *supra* note 41, ¶ 12.

For these reasons, the American Academy of Child and Adolescent Psychiatry issued a policy statement in 2015 stating that " the mandatory or routine shackling of juveniles in courtroom settings should be prohibited, and that shackling should only be used in cases in which an individualized determination has been made that such restrictive procedures are necessary to ensure and maintain safety."[62] Similarly, in its report identifying the effects of trauma generally, the Justice Policy Institute urges that "[a]t all stages of processing, care should be taken to not further traumatize youth entering child-serving systems, most of whom have previous traumatic experiences or concurrent mental illness." In particular, every effort should be made to place juvenile offenders "in the least restrictive setting possible with access to this treatment and with minimal use of seclusion and restraints."[63] The National Center for Mental Health and Juvenile Justice also has issued a policy statement strongly opposing the widespread shackling of youth appearing in court.[64]

Shackling Juveniles is Unnecessary for Courtroom Safety

Several juvenile courts have examined the effect that instituting a presumption against juvenile shackling had on courtroom violence, finding absolutely no increase in courtroom violence. Out of the "more than 20,000 detained children have appeared before the court unbound" since 2006, when Miami–Dade County adopted a presumption against shackling, "no child has harmed anyone or escaped from court."[65] A pilot program to reduce shackling in Nevada similarly showed no increase in courtroom violence.[66] Boulder, Colorado also has "not

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[62] AACAP, *Policy Statement*, *supra* note 55.
[63] ERICA J. ADAMS, JUSTICE POLICY INST., HEALING INVISIBLE WOUNDS: WHY INVESTING IN TRAUMA-INFORMED CARE FOR CHILDREN MAKES SENSE 10 (2010), *available at* http://www.justicepolicy.org/images/upload/10-07_REP_ HealingInvisibleWounds_JJ-PS.pdf.
[64] CAIJS TOOLKIT, *supra* note 57, at 6.
[65] CARLOS J. MARTINEZ, UNCHAIN THE CHILDREN: FIVE YEARS LATER IN FLORIDA 1 (2011), *available at* http://www.pdmiami.com/unchainthechildren/shackling_update_december_2011.pdf.
[66] Newland, *supra* note 3, at 163 (citing Email from Brigid Duffy, Chief Deputy Dist. Attorney, Juvenile Div., Clark Cnty. Dist. Attorney's Office, to Gabe Newland (July 15, 2014, 3:14 PM) (on file with author)).

had any problems" since adopting a presumption against shackling in 2014.[67] According to Chief Juvenile Prosecutor Peggy Jessel, Boulder has "not deemed anyone to need the restraints," and there have been "no incidents in the courtroom."[68] Advocates in Arizona, Massachusetts, Utah, and "numerous other locales report a lack of escape attempts and physical violence perpetuated by unshackled youth in courtrooms."[69]

Further, the majority of juvenile defendants in Illinois are not charged with violent crimes, further decreasing the need for their restraint. In 2012, only 751 reported juvenile arrests were for a violent crime (murder, non-negligent manslaughter, forcible rape, robbery and aggravated assault).[70] By contrast, 1,395 reported juvenile arrests were for property crimes, such as burglary, larceny-theft, motor vehicle theft and arson, and 1,337 reported arrests were for drug abuse.[71]

Conclusion

Despite the Illinois Supreme Court's decision in *Staley*, indiscriminate juvenile shackling is still a pervasive problem in Illinois. Shackling, however, causes juveniles significant constitutional and psychological harm, while diminishing the dignity of the judicial process in general and undermining the rehabilitative goals of the juvenile justice system. Further, shackling juveniles in court is entirely unnecessary for promoting courtroom safety. The Illinois Supreme Court Rules Committee now has the opportunity to prohibit juvenile shackling except in the rare case where a court makes individualized findings that justify the measure. We urge

[67] *Id.* (citing Email from Lisa A. Polansky, Exec. Dir., Ctr. for Juvenile Justice, to Gabe Newland (Mar. 13, 2014, 6:02 PM) (on file with author)).
[68] *Id.* (citing Email from Peggy Jessel, Chief Deputy Dist. Attorney, 20th Judicial Dist. Juvenile Div., to Gabe Newland (June 27, 2014, 12:08 PM) (on file with author)).
[69] ABA PROPOSED RESOLUTION 107A, *supra* note 21, at 8 n.57.
[70] Office of Juvenile Justice and Delinquency Prevention, *Statistical Briefing Book*, http://www.ojjdp.gov/ojstatbb/crime/qa05103.asp?qaDate=2012&text=yes (last visited October 12, 2015).
[71] *Id.*

the Committee to adopt a common-sense rule creating a presumption against shackling of juveniles at every phase of proceedings absent demonstrated cause.