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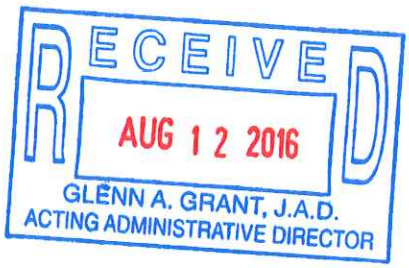


August 10, 2016

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Juvenile Shackling Report
P.O. Box 037
Trenton, NJ 08625-0037

Re: Proposed Rule 5:19-4; Use of Restraints on a Juvenile
Comments of The Office of the Public Defender

Dear Judge Grant:

On behalf of the Office of the Public Defender (OPD), we respectfully submit these comments to proposed court rule 5:19-4.

Initially, OPD wishes to thank the Supreme Court for establishing the Working Group on the Indiscriminate Shackling of Juveniles. We also commend the Working Group for the excellent work it has done on this critical issue.

OPD wholeheartedly agrees with the Working Group's recommendation to prohibit the indiscriminate use of restraints on a juvenile during a court proceeding. We also support the reasons outlined in the Working Group's detailed report. Our comments here are aimed primarily at providing greater clarity to the Working Group's proposed draft. In that regard, we have attempted to delineate clearly the two principal reasons for ordering restraints and,

separately, the factors that should inform the trial court's decision on restraints.

OPD has included its revised rule as **Attachment A**. We have also included **Attachment B**, which tracks the changes we made to the Working Group's draft rule 5:19-4.

In addition to the organizational changes we recommend, OPD suggests adding "current" before "self-injurious behavior" in factor (4). OPD submits that reliance on past self-injurious behaviors has little value in assessing the present risk of physical harm to the juvenile or another.

OPD further recommends including a standard by which the court must make the determination as to whether restraints are necessary. Therefore, OPD respectfully suggests including in paragraph (b) of proposed rule 5:19-4 the following language: "instruments of restraint may be used only if, on application to or by the court, the court finds a reasonable basis to believe that" instruments of restraint are necessary to prevent physical harm or the substantial risk of flight.

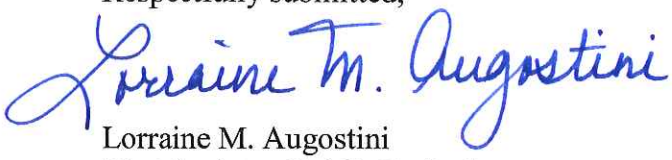
The final substantive addition OPD suggests is the provision that "[i]n no case shall the use of physical restraints be premised primarily on the inadequacy of courtroom facilities or lack of available security personnel." This provision is consistent with the Working Group's goal of striking an appropriate balance between maintaining safety in the courtroom and minimizing the psychological harm that attends the routine shackling of juveniles. *See:* Tiffany A. v. The Superior Court of Los Angeles County, 150 Cal.App. 4th 1344, 1359, 1362, 59 Cal. Rptr. 3d 363, 365 (Cal. Ct. App. 2007) (inadequacy of courtroom facilities, lack of available security personnel or inconvenience alone cannot justify the use of shackles on a juvenile in court).

Finally, OPD urges the Administrative Office of the Courts to collect data on the implementation of any new court rule involving the use of restraints on juveniles. As a model Juvenile Detention Alternatives Initiative (JDAI) site, New Jersey is well aware of the important

role data-collection plays in improving the juvenile justice system. In this instance, data-collection should focus on how often a court determines that instruments of restraint are deemed necessary and the reason(s) for those determinations. A geographic breakdown of the data should also be included. Data analysis is the most helpful means to understand practice, address issues and improve outcomes for children.

OPD appreciates the opportunity to provide these comments on proposed rule 5:19-4.

Respectfully submitted,



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Enclosures

5:19-4. Use of Restraints on a Juvenile. [new]

(a) Except under the circumstances enumerated below, instruments of restraint, such as handcuffs, chains, irons, straitjackets and cloth and leather restraints, shall not be used on a juvenile during a court proceeding and must be removed prior to the juvenile's entry into the courtroom.

(b) Instruments of restraint may be used only if, on application to or by the court, the court finds a reasonable basis to believe that:

(1) instruments of restraint are necessary to prevent physical harm to the juvenile or another person; or

(2) the juvenile presents a substantial risk of flight from the courtroom.

(c) In making the determination that instruments of restraint are necessary, the court may consider the following factors:

(1) any past escapes or attempted escapes by the juvenile;

(2) any evidence of a present plan of escape involving the juvenile;

(3) any credible threats by the juvenile to harm him or herself or others during court;

(4) any evidence of current self-injurious behavior on the part of the juvenile;

(5) any history of recent disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on the juvenile or others as evidenced by recent behavior; or

(6) any other factors the court deems relevant to assess present risk in the court proceeding.

(d) Before instruments of restraint can be ordered, the court must determine that no less restrictive alternative to restraints, including, but not limited to, the presence of court personnel, law enforcement officers or bailiffs, will prevent flight or physical harm to the juvenile or others.

(e) The court shall provide the juvenile's attorney and the prosecutor an opportunity to be heard before the court orders the use of instruments of restraint. If restraints are ordered, the court shall make findings of fact on the record in support of the order.

(f) If instruments of restraint are deemed necessary, the least restrictive restraints shall be used. Any restraints shall allow the juvenile limited movement of the hands to read, write and handle documents necessary to the hearing. Under no circumstances shall a juvenile be restrained to a stationary object or another person.

(g) In no case shall the use of physical restraints be premised primarily on the inadequacy of courtroom facilities or lack of available security personnel.

5:19-4. Use of Restraints on a Juvenile. [new]

(a) Except under the circumstances enumerated below,[1] [I]instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, shall not be used on a juvenile during a court proceeding and must be removed prior to the juvenile's entry [being brought] into the courtroom. [and appearing before the court.]

(b) Instruments of restraint may be used only if, on application to or by the court, the court finds a reasonable basis to believe that:

(1) **[**The use of restraints is necessary due to one of the following factors: (A)**]** Instruments of restraint are necessary to prevent physical harm to the juvenile or another person; or

[(B) The juvenile has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on the juvenile or others as evidenced by recent behavior; or**]**

[(C)**]**(2) The juvenile presents a substantial risk of flight from the courtroom; **[**and**]**

[1] New text is underlined and deleted text is bracketed.

(c) In making the determination that instruments of restraint are necessary, the court may consider the following factors:

[(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs. (b) In making the determination that instruments of restraint are necessary, the factors that can be considered are:]

(1) any past escapes or attempted escapes by the juvenile;

(2) evidence of a present plan of escape involving the juvenile;

(3) any credible threats by the juvenile to harm him or herself or others during court;

(4) evidence of current self-injurious behavior on the part of the juvenile;

(5) any history of recent disruptive courtroom behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on the juvenile or others as evidenced by recent behavior;

[(5)](6) any other factors the court deems relevant to assess present risk in the court proceeding.

(d) Before instruments of restraint can be ordered, the court must

determine that no less restrictive alternative to restraints, including, but not limited to, the presence of court personnel, law enforcement officers or bailiffs, will prevent flight or physical harm to the juvenile or others.

[(c)](e) The court shall provide the juvenile's attorney and the prosecutor an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make findings of fact on the record in support of the order.

[(d)] (f) If restraints are deemed necessary, the least restrictive restraints shall be used. Any restraints shall allow the juvenile limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a juvenile be restrained to a stationary object or another person.

(g) In no case shall the use of physical restraints be premised primarily on the inadequacy of courtroom facilities or lack of available security personnel.

Note: Adopted _____ to be effective _____