

**Chair:** Justice Debra Lehrmann

**Deputy Chair:** Justice Rebeca Aizpuru Huddle

**Executive Director:** Jamie Bernstein

**To: Supreme Court Advisory Committee**

**From: Jamie Bernstein, Children's Commission**

**Subject: Rule on Restraints in Juvenile Court**

**Date: August 23, 2022**

The U.S. Supreme Court has long held that adult criminal defendants must not be restrained (or “shackled”) in court unless restraints are justified by an essential state interest specific to the defendant: *Deck v. Missouri*, 544 U.S. 622 (2005); *Holbrook v. Flynn*, 475 U.S. 560 (1986); *Illinois v. Allen*, 397 U.S. 337 (1970). The Texas Court of Criminal Appeals has applied this standard in several recent cases, including non-capital cases: *Ex parte Chavez*, 560 S.W.3d 191 (Tex. Crim. App. 2018); *Bell v. State*, 415 S.W.3d 278 (Tex. Crim. App. 2013). In *Bell*, the Court of Criminal Appeals explained that the right to appear at trial unbound by visible shackles is firmly rooted in English common-law principles and “that the right may be overcome in a particular instance by essential state interests such as physical security, escape prevention, or courtroom decorum.” 415 S.W.3d at 281. Though none of these cases involve juveniles, Texas courts have held that a juvenile has the same constitutional rights as an adult would have in criminal proceeding since a juvenile proceeding seeks to deprive the juvenile of liberty. *In the Matter of J.R.*, 907 S.W.2d 107, 109 (Tex. App.—Austin 1995, no writ).

Since *Bell*, the Texas Legislature has considered three bills to prohibit the use of indiscriminate shackling in juvenile proceedings: House Bill 679 (85th Legislature), House Bill 4267 (86th Legislature), and House Bill 488 (87th Legislature).

In addition, in 2019, the 86th Legislature passed House Bill 2737, which added Texas Government Code § 22.0135 related to restraints in juvenile court:

The Supreme Court, in conjunction with the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families [(“Children’s Commission”)], annually shall provide guidance to judges who preside over child protective services or juvenile cases to establish greater uniformity across the state...related to...a child's appearance before a court in a judicial proceeding, including the use of a restraint on the child ... during the proceeding....[T]he Supreme Court shall adopt the rules necessary to accomplish the purposes of this section.



In response to the Legislature's directive to provide annual guidance related to child protective services and juvenile cases, the Children's Commission annually releases the Child Protection Law Bench Book and in 2022 a chapter on dual involvement with the child welfare and juvenile justice systems will be added. In response to the directive to address the use of restraints in juvenile court, the Children's Commission convened a meeting on the use of restraints in juvenile court on August 6, 2020. The participants represented various stakeholder groups, including juvenile courts, probation departments, prosecutors, parent and child advocates, academics, and members of the Texas Legislature. The goals of the meeting were threefold: conduct an inventory of existing practices across Texas regarding the use of restraints in juvenile court, provide a forum for dialogue, and lay the foundation for statewide guidance on the use of restraints in juvenile court.

At the meeting, participants discussed court practices and policies regarding the use of restraints on juveniles across Texas, the types of restraints used, factors considered in determining the need for restraints, and the impact of remote participation on the use of restraints. A detailed report of the meeting is attached as **Attachment A**. The report concludes:

Although the discussion provided a baseline for current practices throughout Texas, further efforts are needed to examine whether additional training, tools, or court rules are necessary to address the use of restraints in court. The right of a juvenile to appear in court without restraints must be balanced against the need for courtroom safety and security. To strike a balance of these interests, decisions should be made on an individualized basis, using established criteria, and should factor in whether the particular youth presents a risk of danger or risk of flight. Distinctions can also be drawn on what type of restraints, if any, are needed. The Children's Commission will continue to provide a forum for a multi-disciplinary group that reflects various jurisdictions throughout Texas to further explore the need for court rules and/or to develop guidance on the use of restraints in juvenile court.

The Children's Commission has since researched other jurisdictions' approaches to the issue. To date, thirty-one other states, including the District of Columbia, have rules, statutes, or administrative orders governing the use of restraints in juvenile court proceedings. These are attached as **Attachment B**. In sum:

- All require an individualized assessment, i.e., they prohibit indiscriminate shackling.
- About half list factors the court must consider when assessing whether the juvenile poses a risk. Some of these factors are broad (e.g. "any relevant factor") while others are more specific (e.g. past attempts to flee, a history of disruptive or aggressive behavior, threats made to self or others, seriousness of the charge, security resources in the courtroom, etc.)
- About half define the types of restraints that are prohibited/limited.



- A few expressly require that, even when restrained, juveniles must be able to write and handle documents.
- Procedures for challenging/recommending the use of restraints vary considerably. In some states, the child and their counsel must have an opportunity to speak before shackles are ordered. Other states leave the decision solely to the discretion of the judge or place the burden on the prosecution to justify the use of shackles. In some jurisdictions, courts allow the probation/detention officers to recommend the use of restraints.

The wide variance in practice across Texas creates an environment where due process protections may be applied inconsistently. As such, the Children's Commission supports a rule, adapted from those of other states, with the elements referenced below. Regarding placement of the rule, Rule 6. Time Standards for the Disposition of Cases already addresses juvenile cases and could be amended to include procedures for the review of the use of restraints in juvenile court. Supplemental commentary or guidance can address additional details (i.e., factors for courts to consider) but the rule itself should not be overly prescriptive and should give courts flexibility to establish procedures that meet the needs of the jurisdiction.

### **Proposed Rule on the Use of Restraints in the Juvenile Court**

- (a) Restraints, such as handcuffs, chains, irons, and other similar items, must not be used on a child during a juvenile court proceeding unless the court determines that:
  - (1) the use of restraints is necessary because the child presents a substantial risk of:
    - (A) inflicting physical harm on the child or another person; or
    - (B) flight from the courtroom; and
  - (2) there is no less restrictive alternative to restraints that will prevent physical harm or flight.
- (b) Any party may request a hearing on the necessity of restraints.
- (c) If the court determines that restraints are necessary, the court must:
  - (1) make that determination in a written order;
  - (2) when feasible, issue the order before the child enters the courtroom and appears before the court;
  - (3) make findings of fact in support of the order; and
  - (4) order the least restrictive type of restraint necessary to prevent physical harm or flight.
- (d) This rule does not apply to the use of restraints when transporting the child to or from the courtroom.



# Attachment A



# Restraints in Juvenile Court Discussion

August 6, 2020  
12:00 p.m. - 2:00 p.m.



Disclaimer: The materials in this tool kit should not be construed as an advisory or ruling by or from the Supreme Court of Texas on specific cases or legal issues. These materials are solely intended to address the improvement of the law, the legal system, and the administration of justice. The information included in this report was published in March 2021.



## **Participant List\***

\*Please note, this list reflects the organization and affiliation of participants on the date of the meeting.

### **Facilitator**

– Hon. Gary Coley, Judge, 74th District Court

### **Attendees**

- Laura Angelini, General Administrative Counsel, Bexar County Juvenile District Courts
- Hon. Renee Betancourt, Judge, 449th District Court
- Amy Bruno, Chief of Staff for Representative Gene Wu, Texas House of Representatives
- Hon. Darlene Byrne, Judge, 126th Civil District Court
- William Carter, Chief Juvenile Probation Officer, Lubbock County Juvenile Probation
- Louis Castillo, Director of Detention, El Paso Probation Department
- Cathy Cockerham, Liaison for Program Development, Texas Court Appointed Special Advocates
- Molly Davis, Staff Attorney, Judicial Commission on Mental Health
- Hector Gomez, Office of Court Administration, Court Security Director
- Henry Gonzales, Executive Director, Harris County Juvenile Probation Department
- H. Lynn Hadnot, Executive Director, Collin County Juvenile Probation Services
- Durrand Hill, Chief Prosecutor Juvenile Division, Dallas County District Attorney's Office
- Chris Hubner, General Counsel, Travis County Juvenile Probation
- Tarsha Jackson, Parent Advocate, Urban Community Network
- Hon. Lisa Jarrett, Judge, 436th District Court
- Karl Johnson, Deputy Chief, Bexar County Juvenile Probation
- Hon. Cheryll Mabray, Judge, Child Protection Court of the Hill Country
- Bennie Medlin, Director, Tarrant County Juvenile Services
- Brett Merfish, Director of Youth Justice, Texas Appleseed
- Chief Jay Monkerud, Chief Juvenile Probation Officer, Caldwell County Juvenile Probation
- Hon. Valencia Nash, Judge, Justice of the Peace 1-2, Dallas
- Lauren Rose, Director of Public Policy, Texas Network of Youth Services
- Kristina Sandoval, Training & Personnel Coordinator, Brazoria County Juvenile Justice Dept.
- Lou Serrano, Deputy Executive Director, Probation Services, Texas Juvenile Justice Department
- Hon. Leah Shapiro, Judge, 315th District Court
- Hon. Randy Shelton, Judge, 279th Civil District Court
- Dr. Sherri Simmons-Horton, Assistant Professor, University of Texas at San Antonio
- Kaci Singer, Deputy General Counsel for County Matters, Texas Juvenile Justice Department
- Matt Smith, Asst. Executive Director & Director of Mental Health Services, Williamson County Juvenile Services
- Stephanie Stevens, Clinical Professor, St. Mary's University School of Law
- Hon. Cyndi Wheless, Judge, 417th District Court
- Representative James White, State Representative, Texas House of Representatives
- Lynne Wilkerson, Chief Juvenile Probation Officer, Bexar County Juvenile Probation Department
- Representative Gene Wu, State Representative, Texas House of Representatives

### **Children's Commission Staff**

– Jamie Bernstein, Executive Director

## I. Meeting Overview & Legislative Background

This meeting's format changed from in-person in April 2020 to fit an abbreviated, virtual format in August 2020 due to the COVID-19 pandemic.

Judge Gary Coley, Judge of the 74th District Court in McLennan County and Commissioner on the Supreme Court of Texas Children's Commission, facilitated the meeting. Judge Coley provided an overview of the goals for the meeting including:

- Conducting an inventory of practices across Texas regarding the use of restraints in juvenile court to ensure there is an accurate picture of the use of restraints;
- Creating a neutral and common space for dialogue and an opportunity for civil discourse on this complex topic; and
- Laying the foundation for developing workable, consistent statewide guidance on the use of restraints in juvenile court.

HB 2737 (86<sup>th</sup> Leg. Session) added the following provisions in Texas Government Code Section 22.0135 related to restraints in juvenile court (included in relevant part below):

- *The Supreme Court, in conjunction with the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families, annually shall provide guidance to judges who preside over child protective services cases or juvenile cases to establish greater uniformity across the state for:*
  - *(2) in juvenile cases, issues related to:*
  - *(D) a child's appearance before a court in a judicial proceeding, including the use of a restraint on the child and the clothing worn by the child during the proceeding; and*
- *The supreme court shall adopt the rules necessary to accomplish the purposes of this section.*

Representative Gene Wu authored HB 2737 and noted at the meeting that the bill was intended to provide courts with the opportunity to provide guidance on this issue rather than mandating a uniform solution statewide. Representative James White added that it is important to focus on constitutional considerations and ensure fairness for the youth impacted. Representative White cited the case of *Lainey v. State*, 117 S.W.3d 854 (2003), and urged participants to extend the presumption against shackling to apply to youth.



## II. Scope of the Discussion

The purpose of the meeting was to discuss the use of restraints in juvenile court. There are several fundamental terms and concepts that informed the scope of the discussion during the meeting. **Restraints** refer to both handcuffs that restrain a youth's wrists and hands, ankle restraints that limit leg movement, and body chains that connect hand and leg restraints. Another term sometimes used to describe the use of restraints is shackling. **Court** generally refers to in-person hearings and a physical appearance in the courtroom. Participants discussed virtual hearings required in response to COVID-19, however, the focus of the meeting was on the use of restraints during in-person proceedings. Although HB 2737 referenced above also contemplates guidance about the clothing worn in court, the discussion centered on the use of restraints as a threshold issue.

## III. Reducing Restraints: A Local Example

Judge Leah Shapiro of the 315<sup>th</sup> District Court shared the background and history on the use of restraints in her court in Harris County. She noted that historically, juveniles in Houston were shackled indiscriminately regardless of history, offense, or age. For example, an eleven-year-old youth arrested for cell phone theft would appear in court in "all fours" meaning hands and feet in restraint connected by a chain, the same restraints used for transport.

Judge Shapiro noted that a youth's experience in restraints, or a parent's experience seeing their child in restraints, can be traumatic and it was a priority to change this practice when she took the bench in 2018. The first step was to assemble all the stakeholders involved so that the practice change would be effective. This included each of the three law enforcement entities impacted: Harris County Precinct 1, the Sheriff's Office, and the Juvenile Probation Department.

In May 2019, the court initiated an effort to stop indiscriminate shackling, which Judge Shapiro defined as the use of shackling in every case without criteria to determine whether it is appropriate under the circumstances. Rather than a standing order, Judge Shapiro began conducting individual assessments for each youth that would appear in the court every day. The court considers the following factors to make the determination about whether the youth will appear in court in restraints:

- Whether the youth is likely to escape or there is a risk of flight;
- Whether there is a danger to the youth or other individuals; or
- Whether there is a prior courtroom behavior that presents a safety concern.

The decision about whether to restrain the youth in the 315<sup>th</sup> District Court does not take into account the seriousness of the offense because there are youth in detention and youth in the community who are accused of the same offenses. As a result, the offense itself provides little insight to the judge about the need to restrain the youth in court. For example, in certification hearings, determinate stipulations, and pleas for cases as serious as murder and capital murders, youth may appear in court without restraints if the factors above are not present.

Other considerations include whether wearing the restraint would impair the mental capacity of the youth, the ability to communicate with counsel, and whether the restraint would detract from the dignity or decorum of the courtroom.

Initially, there were formal, individual findings for each youth including whether a restraint was used, what type of restraint was used (wrist, ankle, or both), and the grounds or basis for that decision. The defense bar expressed concern that those findings could be used against the youth at a later date. The Sheriff's Department, the entity responsible for courtroom safety in the 315<sup>th</sup> District Court, expressed concerns about accountability if there were to be an incident in court when the youth was not restrained. To balance these concerns, the Probation Department generates and provides a form about each detained youth to the Sheriff's Department and the Court. Judge Shapiro reviews the form and makes a determination about whether restraints are needed. The form notes any behavioral incidents including the date of the incident, the behavior presented (e.g., contraband, assaulting staff, etc.), and the consequence for the behavior. The Sheriff's Department takes that information and creates a different form with the name of the youth, the attorney for the youth, an option to circle whether or not to use restraints, a column for the type of restraint (wrist, ankle, or both), and a notes section. The form is then shared with detention staff, the attorneys, and the Bailiff.

There are also mechanisms in place for the parties to review any emerging circumstances on the day of court. If there are concerns, the attorneys can request additional review from the judge. Sample Orders as well as opportunities to go on the record are available, if necessary. If an issue escalates in court and the youth is not restrained, there will be a recess to maintain courtroom security.

Typically, there is only one Bailiff present and Probation provides an additional officer to monitor the youth in court. Also, there is no movement allowed by the youth once the hearing begins. There is only one youth present in court at a time.

Judge Shapiro indicated that safety is paramount but that to date the only restraints used were wrist restraints. One initial practical issue was that the Probation Department only had “all fours” restraints and had to acquire handcuffs.

In August 2019, the Probation Department also provided a polo and khaki pants for all youth in detention for their court appearance. Representative Wu noted that in his capacity as an attorney for youth, he noted a significant change in demeanor and experience for youth appearing in court without restraints and jumpsuits. Judge Shapiro added that there are very serious and important issues discussed in court and that it has been beneficial for youth and families to appear without restraints and in plain clothes.

#### **IV. Identifying a Baseline**

Judge Coley asked participants for feedback about current practices to create a baseline understanding about different perspectives from around the state. He noted the COVID-19 impacts on day-to-day functioning for all Texas courts and the children and families served. With that in mind, participants discussed several questions aimed at developing a baseline that documents current practices and contemplates future opportunities for improvement. Note: the information included below is only accurate as of the date of the meeting, August 6, 2020.

1. *Does your county have a written policy regarding the use of restraints on children appearing before the court in hearings under Texas Family Code Chapter 54 Judicial Proceedings?*

Judge Wheless stated that there is no such formal policy in Collin County. She noted that juveniles appear in plain clothes and without shackles before juries. In consultation with Chief Hadnot, Judge Wheless defers to Probation about which youth need to be shackled in court in non-jury cases. Judge Wheless added that the county is working toward securing clothing for all detained youth to wear in court. Chief Hadnot further explained that Collin County historically used restraints for judicial proceedings in the District Court building for security reasons. In the secure facility courtroom, juveniles appear for detention hearings before a juvenile referee normally and no restraints are used. In the facility, there is more personnel support and the flight risk is very minimal. In both the secure facility and district court settings, the default is now a presumption not to use restraints of any kind unless there is a substantiated risk or justification.

Chief Medlin noted that in Tarrant County there has been a policy for at least 15 years that allows for restraints on a discretionary basis but generally youth are not restrained unless they pose a security threat. Chief Medlin recalled only one incident of using restraints within the past 12 months. In Tarrant County, if there is a security threat, Probation relays

the information to the court and the judge makes a determination about whether to restrain the youth in court.

Judge Nash shared that there is no written policy on restraints in Dallas County. Mr. Hill indicated that in Dallas County it is very infrequent for a youth to appear in court in restraints.

Judge Byrne noted that there is no written policy in Travis County, but that the presumption is not to use restraints in court. If restraints are requested, attorneys approach the bench and explain why a restraint is needed and what the safety concerns are.

Judge Shapiro added that there is no written policy on restraints in Harris County.

Judge Betancourt indicated that in Hidalgo County although there is no written policy, youth are restrained at every appearance, but the county is considering a change in practice. Judge Betancourt further noted that criteria to make decisions about the use of restraints will be important.

In Jefferson County, Judge Shelton indicated that youth are not restrained on a regular basis unless certain circumstances exist. However, Judge Shelton also noted that detention staff have limited tools available to maintain their own safety.

Chief Wilkerson stated that Bexar County does not have a written policy concerning use of restraints in the courtrooms. The courts establish their own courtroom rules.

Mr. Castillo stated that in El Paso County all youth are restrained in court per written policy.

Mr. Smith stated that in Williamson County, juvenile court hearings occur in two locations. In the court next to the detention center, youth are not restrained unless there is a concern, and the judge will ultimately make that determination. The criteria for restraining youth are risk of flight and danger to the youth or other individuals. In the downtown courthouse, youth are transported across a parking lot and into the building and the leg restraints which are used for transport are not removed for court. Williamson County is contemplating the possibility of plain clothes for juveniles and using restraints for transport only. One concern about using plain clothing is the need for changing clothes, including the need for pat down searches. He added that these are local practices, not written policy.

Chief Monkerud emphasized that there are only 45 detention centers covering 254 counties in Texas. He noted that some courthouses are not secure and do not connect to detention centers. For example, in the past court was conducted on the second floor of a building and it would pose a great security risk to youth and other individuals in court if the youth were

not restrained. He stated that transport becomes a big challenge in smaller jurisdictions. Chief Monkerud indicated that most youth in Caldwell County remain in the same leg restraints used for transport. This is not a written policy but local practice that applies only to those youth who are detained. He further underscored that having adequate staff to maintain courtroom safety is another key consideration. Judge Mabray agreed that many rural jurisdictions do not have the facilities or personnel to adequately monitor youth without restraints.

Chief Carter added that in Lubbock County there is no written policy, and the judge sets the courtroom protocol. He further noted that if the disposition hearing is for an out-of-home placement then restraints are used. Chief Carter shared that in Lubbock, Juvenile Probation personnel utilize a restraint technique referred to as “Handle with Care.” However, law enforcement personnel are trained in a different technique. If a juvenile becomes aggressive towards the judge in a threatening manner, the Bailiff can use any method at their disposal to protect the judge.

Representative White expressed concern that individuals appearing before court in death penalty cases are not shackled in the courtroom, but youth are shackled in juvenile justice cases. Represented White underscored that juveniles should not receive harsher treatment than adults and that juveniles should have the opportunity to participate in court without restraints.

*2. When youth are restrained, what type of restraints are used? Leg/Ankle, Arm/Wrist, or both?*

In addition to the comments included above, there were other practices regarding the use of restraints discussed at the meeting.

Ms. Sandoval added that in Brazoria County Probation transports all detained juveniles in ankle and wrist restraints. The detention facility is located 5 miles from the courthouse where the hearings are held. The juveniles remain in restraints at all times while outside of the detention facility.

In Caldwell and El Paso Counties, both ankle and wrist restraints are used. In the past, Collin County used both. In Lubbock, leg restraints are only used in rare circumstances.

*3. If juveniles are in detention, do they appear before the court at detention adjudication/disposition/modification hearings? In person? By video technology?*

At the time of the meeting, most Texas jurisdictions utilized virtual hearings to maintain health and safety with regard to COVID-19. Participants generally agreed that holding court

in person is preferred, but there was a desire to continue the positive aspects of utilizing technology including increased efficiencies in court proceedings and increased visitation and family engagement.

Chief Monkerud indicated that in central Texas during the COVID-19 pandemic many youth appear in person, and that the only hearings held remotely are detention hearings. He cited Texas Family Code Section 54.012 that states interactive video detention hearings are only allowed if the youth and their attorney agree. As a result, many hearings have occurred in person. One challenge for rural jurisdictions is that detention facilities refuse to accept the youth back after they appear before the court in person due to concerns related to COVID-19. In the past, detention centers did not have the technology to conduct virtual hearings, but all are equipped to do so now.

Judge Shelton indicated that access to updated technology would make it possible to utilize remote hearings moving forward. Judge Byrne responded that there may be federal emergency COVID-19 funds available to assist with the technology needed for remote hearings.

In Lubbock County, most detention hearings occur by Zoom in response to COVID-19. Juveniles appear in person during adjudication, disposition, and modification hearings.

At the time of the meeting, hearings in El Paso, Dallas, Williamson, Houston, Jefferson, and Travis Counties were all virtual. In Brazoria and Lubbock Counties, detention hearings were virtual but other hearings were conducted in person. Most of these counties utilized Zoom and this is likely to continue in the future, at least as a supplemental hearing option when in-person proceedings resume.

4. *How do virtual hearings impact decisions related to restraints in court?*

Judge Shelton shared that Zoom has diffused tension in many hearings and when youth appear they are less combative. Judge Coley added that the virtual hearings lend themselves to a more comfortable and conversational climate.

Chief Carter noted that there is a regional detention center in Lubbock that houses youth from 38 counties. As a result, some youth must be detained for transit to the non-secure area of the building where virtual court hearings are conducted. For the hearings, youth are not restrained. Chief Carter suggested that going forward, virtual hearings will assist with appearing in court without restraints for courts around the state.

5. *If a juvenile only appears before the court in restraints sometimes, what factors contribute to that decision?*



Judge Byrne indicated that in Travis County the presumption is to not use restraints, but anyone involved in the proceeding can raise the issue of the need for restraints. Typically, this decision occurs at a bench conference without the youth present, but this is the process regardless of the stage of the case. The attorneys will voice any concerns and the court will make a ruling, but this only occurs on rare occasions. Judge Byrne further noted that the determination about which restraint to use depends on the circumstances. If a youth poses a risk of flight, leg restraints will be used. If a youth exhibits assaultive behavior, handcuffs will be used. Judge Byrne also explains to each youth why they are restrained so that in the future restraints may not be necessary. Since restraints are only required in about 1% of cases, Judge Byrne noted that there is adequate court time to discuss these issues with the youth.

In El Paso, the decision was made several years ago to use restraints in every hearing when a youth is detained so there are no individual case considerations, but this is something Probation may explore in the future.

In Collin County, Probation makes the determination about whether to utilize restraints, in conjunction with the transport team. Chief Hadnot indicated that these decisions will be made based on substantiated behaviors that can inform the decision. The classification of the offense is not determinative of whether the youth will appear in court in restraints. Chief Hadnot relayed a couple of examples where the offense was serious but the youth did not need to be restrained in court and conversely where the offense was a misdemeanor, but the youth presented a flight risk as well as a safety concern. Judge Wheless added that she prefers to keep the information from being shared *ex parte* and that is why the information flows through Probation.

Dr. Simmons Horton inquired about whether there is information from the jurisdictions as to who is restrained in court, including information broken down by gender, race, offense, CPS involvement, etc. This question was unresolved at the meeting. However, Judge Wheless emphasized that it is imperative to reduce the human decision points and to base decisions on Risk Instruments only.

In Lubbock, the decision about whether to use restraints in court is made by the judge who sets courtroom protocol. Chief Carter added that in Lubbock County, youth with a Child in Need of Supervision (CINS) and misdemeanor offenses are rarely detained so the data would likely suggest that youth who appear in restraints are charged with felony offenses.

In Tarrant County, restraints are rarely used in court. If restraints are requested, the decision to place juveniles in restraints (i.e., handcuffs and leg restraints) is made by the judge, in consultation with the attorneys and Probation staff. The primary driver for these

decisions is the juvenile's behavior at the time of the hearing or juvenile's past behavior in the courtroom.

Ms. Merfish added that other states which have stopped indiscriminate shackling have not included the offense as a factor. Ms. Merfish noted that common factors from other states that have addressed this issue include a history of disruptive courtroom behavior, physical harm to juvenile or another person, and flight risk.

*6. Do you believe your jurisdiction would oppose a presumption of no restraints in court without an individualized/identifiable need on a case-by-case basis?*

Mr. Castillo indicated that it is likely El Paso County would be opposed to this presumption. He said a presumption to use restraints unless there are circumstances to have them removed on an individual basis would be better received.

Chief Monkerud noted that Caldwell County would likely oppose this presumption as well. He suggested that small departments and staff resources may also cause other jurisdictions to be opposed to this presumption.

Chief Wilkerson added that a presumption against leg shackles may be more feasible in other jurisdictions.

Chief Medlin shared his belief that some jurisdictions may oppose a presumption of no restraints due to staffing concerns, location and configuration of court rooms, and the preference of judges and law enforcement assigned to court security.

*7. What are the barriers to creating a presumption against using restraints in juvenile court unless there is a safety or flight risk concern?*

Chief Hadnot noted that lack of resources and personnel in small and medium jurisdictions is an important consideration in determining whether this presumption will be feasible. Further, if a youth gets out of control in court, most restraints require a team intervention, and this will be impactful if there are not additional officers available. Another issue is the presence of multiple law enforcement entities (Sherriff, Probation, etc.) and the various ways they are trained.

Mr. Gomez provided a perspective on court security from the Office of Court Administration. Mr. Gomez noted that he conducts courthouse security audits around the state. He added that court takes place in a wide range of physical locations making court security very inconsistent. Mr. Gomez shared that some important considerations are the design of the courthouse and availability of adequate staff.

Ms. Merfish responded that in other states that have banned indiscriminate shackling, additional staff resources were not needed. She added that judicial oversight controls for the risk of safety and flight risk concerns. Ms. Merfish cited the following examples of jurisdictions that did not increase staff when transitioning away from using restraints.

- *Miami-Dade County, FL limited juvenile shackling in 2006. Since then, more than 25,000 children have appeared in the county's juvenile court without injury or escape. (Source: Miami-Dade Public Defender)*
- *The Children's Court Division of Albuquerque, NM has limited shackling for 12 years and seen no escapes and only three incidents of children "acting out in court." (Source: Juvenile and Family Court Journal, Spring 2015)*
- *In New Orleans Parish, LA, security staffing was reduced after shackling reform due to budget cuts. The parish conducts roughly 4,000 juvenile hearings a year and has had no incidents. (Source: Louisiana Center for Children's Rights)*
- *Clayton County, GA had no escapes or violence in more than a year of limiting shackling. At times, an additional deputy has been stationed outside the court since the change. However, that deputy has never been called upon to act, as there have been no incidents. (Source: Sheriff Victor Hill & deputies.)*

Chief Monkerud shared an idea raised by another central Texas Probation Chief about Texas Family Code Section 53.02 which outlines reasons for juveniles to be placed and maintained in detention including likelihood to abscond, danger to youth or others, and other criteria. He suggested these criteria could also be used to determine whether to restrain a youth in court. For example, if a youth is in detention because there is not a parent or other custodian to care for the youth, the youth may not need to be restrained in court.

Mr. Castillo underscored the need to be data driven and to only set a presumption if the data reveal the need.

Chief Carter noted that currently, the judge already has the authority to ask for a juvenile to be restrained or not. He opined that there should not be a broad, sweeping rule to tell judges how to conduct their courtroom proceedings.

Ms. Angelini added that in Bexar County, the Sheriff's Office has a written policy that anyone in custody must be restrained. Once the youth is in the courtroom, it seems that the judge's will would prevail. This could potentially create tension if the judge and the Sheriff's Office are not aligned on this issue.

Participants discussed the possible objection of defense counsel and others about judges hearing potentially prejudicial information about a youth's behavior pre-disposition. Judge

Wheless indicated that this is why she defers to Probation and does not hear underlying information about the youth's behavior. Judge Shapiro added that in her court the information is only used to determine whether to restrain the youth and the information is not otherwise used in hearings.

## **V. Recommendations & Conclusion**

Several Texas jurisdictions, generally large to mid-size urban and suburban areas, do not utilize restraints in court during juvenile proceedings. For these jurisdictions, procedures are in place for Probation, law enforcement, attorneys, and judges to determine whether restraints are appropriate on a case-by-case basis depending on the circumstances. Some of the key factors to consider for these jurisdictions are past courtroom behavior, a risk of danger to the youth or others, or a risk of flight; seriousness of the offense has been identified as a factor that is not necessarily indicative of the need for restraints. The jurisdictions that have shifted away from using restraints unless these factors are present have successfully maintained courtroom security and found it to be beneficial to the experience of the youth and family in court.

Some Texas jurisdictions, especially small and rural areas, utilize restraints in every juvenile hearing where the child is detained. Although the issue presented at the meeting centered on the use of restraints in court, many youth are detained during transport from detention facilities that can be far away from court and this presents many logistical challenges when there is no secure area once the youth arrive at court. The physical layout of the court may also make it difficult for Probation staff to ensure the safety of the youth and others or prevent the youth from running away if they are not restrained. Also, the availability of adequate personnel could be another important consideration if youth are not restrained in court and a security issue arises.

Virtual hearings in response to COVID-19 present new opportunities for youth to appear in court without restraints but it is unclear whether this practice will continue when in-person proceedings resume.

Over half the states in the United States have added some limitation on the use of restraints in juvenile court through legislation, rule, or policy. In Texas there is no controlling law, rule, or policy on this issue and each court makes individual determinations about the use of restraints in juvenile court. Although the discussion provided a baseline for current practices throughout Texas, further efforts are needed to examine whether additional training, tools, or court rules are necessary to address the use of restraints in court. The right of a juvenile to appear in court without restraints must be balanced against the need for courtroom safety and security. To strike a balance of these interests, decisions should

be made on an individualized basis, using established criteria, and should factor in whether the particular youth presents a risk of danger or risk of flight. Distinctions can also be drawn on what type of restraints, if any, are needed. The Children's Commission will continue to provide a forum for a multi-disciplinary group that reflects various jurisdictions throughout Texas to further explore the need for court rules and/or to develop guidance on the use of restraints in juvenile court.









SUPREME COURT OF TEXAS PERMANENT JUDICIAL  
COMMISSION FOR CHILDREN, YOUTH AND FAMILIES

Children's Commission  
201 W. 14th Street  
Austin, Texas 78701  
[texaschildrenscommission.gov](http://texaschildrenscommission.gov)

## Attachment B

## State Shackling Rules

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West's Alaska Statutes Annotated  
Alaska Court Rules  
Delinquency Rules  
Part VII. Adjudication

Delinquency Rules Rule 21.5

Rule 21.5. Use of Restraints on the Juvenile

Currentness

**(a)** Restraints such as handcuffs, waist belts, and footcuffs shall not be used on a juvenile during a court proceeding unless they are necessary because the juvenile is otherwise uncontrollable or constitutes a serious and evident danger to self or others, there is reason to believe that the juvenile will try to escape, or there is no less restrictive alternative available to maintain order and safety in the courtroom given available security resources.

**(b)** If a juvenile appears at a court proceeding in restraints, and if there is an objection to the restraints or if the juvenile is appearing without counsel, the judge must make a finding, based on an individualized assessment of the particular juvenile and the available security resources, whether the restraints are necessary. In subsequent proceedings in the same case, a judge may rely on a finding that was made previously, as long as the circumstances have not materially changed. When ruling on the necessity of restraints, the judge shall consider the following factors:

- (1) any threats that the juvenile has made to cause harm to self or others, or to cause a disturbance;
- (2) any behavior of the juvenile indicating that the juvenile presents a current threat to the juvenile's own safety, or to the safety of other people in the courtroom, or to the orderly course of the proceedings;
- (3) any past escapes or attempts to escape, and the seriousness of the current charge, to the extent it raises a concern that the juvenile has an incentive to attempt to escape;
- (4) the existence of any less restrictive alternative to maintain order and safety in the courtroom, taking into account available security resources; and
- (5) the recommendations of security personnel charged with custody of the juvenile.

**Credits**

[Adopted effective April 15, 2015.]

*Table of Rules*

Delinquency Rules Rule 21.5, AK R DELINQ RULES Rule 21.5



Currency with amendments received through June 15, 2022.

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## Arizona Statutes Annotated - 2017

Arizona Revised Statutes Annotated  
Rules of Procedure for the Juvenile Court ([Refs & Annos](#))  
Part II. Delinquency and Incurrigibility  
1. General Delinquency Provisions

### 17B A.R.S. Juv.Ct.Rules of Proc., Rule 12

#### Rule 12. Attendance of Juvenile at Proceedings

##### [Currentness](#)

**A. Personal Appearance.** A juvenile accused of committing a delinquent or incorrigible act shall appear before the court for all proceedings as directed by the court. The juvenile shall personally appear before the court for the following:

1. Any adjudication hearing;
2. Any disposition hearing;
3. Any transfer hearing; and
4. Any change of plea.

**B. Telephonic or Video Appearance.** For purposes of these rules, the appearance by telephone or video conferencing of the juvenile shall be considered a personal appearance. The juvenile may appear telephonically or by video conferencing only as stipulated to by the parties and authorized by the court.

**C. Voluntary Absence.** The court may infer that the juvenile's absence is voluntary if the juvenile had notice of the date, time and place of hearing, the right to be present at the hearing and had received a warning that the hearing would go forward in the juvenile's absence if the juvenile failed to appear.

**D. Failure to Appear.** The failure of the juvenile to appear at the adjudication or any other hearing, except the disposition hearing, shall not prevent the court from proceeding in the juvenile's absence and/or issuing a warrant to secure the juvenile's attendance.

#### **E. Mechanical Restraints.**

1. When a juvenile appears before a judicial officer at a hearing in the juvenile's delinquency case, the juvenile shall be free of mechanical restraints unless there are no less restrictive alternatives that will prevent flight or physical harm to the juvenile or another person. Relevant factors in determining whether the use of mechanical restraints is warranted include:

- a. The juvenile has displayed threatening or physically aggressive behavior towards others;
  - b. The juvenile is likely to flee, has expressed an intention to flee, or has previously attempted to flee secure care;
  - c. A probation officer, detention administrator or designee, or juvenile detention officer has recommended the use of mechanical restraints; and
  - d. A present security situation in the courtroom or courthouse, including a risk of gang violence or gang-related conduct or a specific concern due to a witness presence, warrants the use of mechanical restraints.
2. A prior determination by a court that the juvenile should appear in mechanical restraints remains in effect until further order of the court.
  3. If a juvenile is brought before the judicial officer in mechanical restraints, the juvenile may object through counsel. After the judicial officer has heard from the juvenile, the state, and any detention personnel, and considered the factors listed in subparagraphs (1)(a)-(d) above, the judicial officer shall approve or disapprove the use of restraints.
  4. Except when a juvenile appears before a judicial officer at a hearing in the juvenile's delinquency case, the use of mechanical restraints shall be governed by the Policies and Procedures in effect for the courts in the specific county as required by the Arizona Juvenile Detention Standards.
  5. Any restraints shall allow the juvenile limited movement of the hands to read, handle documents, and write.
  6. Mechanical restraints include handcuffs, leg irons, belly chains, zip ties, spit hoods and masks, and any other device used to restrain movement of the arms, legs or torso.

#### **Credits**

Added Oct. 27, 2000, effective Jan. 1, 2001. Amended Sept. 2, 2016, effective Jan. 1, 2017.


#### **APPLICATION**

<Rules 9 through 35 shall apply to cases in which the offense occurred on or after January 1, 2001; Rules 36 through 66 shall apply to cases filed on or after January 1, 2001; and, Rules 67 through 87 shall apply to actions commenced on or after January 1, 2001.>

#### **HISTORICAL NOTES**

Former Rule 12, Transfer for Criminal Prosecution; Initiation of Proceedings, amended Dec. 23, 1983, effective March 1, 1984; Dec. 12, 1991, effective March 1, 1992; Jan. 27, 1994, effective June 1, 1994, was repealed by order dated Oct. 27, 2000, effective Jan. 1, 2001.

## LIBRARY REFERENCES

Infants  2072, 2097, 2557, 2573.  
Westlaw Topic No. 211.  
C.J.S. Infants §§ 121, 140.

## RESEARCH REFERENCES

### Treatises and Practice Aids

5 Arizona Practice § 4:4, Petition.  
5 Arizona Practice § 9:6, Practical Considerations.

## NOTES OF DECISIONS


Exclusion of children 2

News media 4


Transfer hearings 3

Validity of prior rule 1


### 1 Validity of prior rule


Juvenile court rule, giving juvenile court discretion to exclude the general public from juvenile hearings, did not conflict with requirement in Const. Art. 6, § 15 that juvenile proceedings be held “in chambers.” *Wideman v. Garbarino* (1989) 160 Ariz. 16, 770 P.2d 320. Infants  1006(1)

### 2 Exclusion of children


Juveniles, who viewed testimony of victim's six-year-old brother via closed-circuit television in room adjoining courtroom, were not “excluded” from their delinquency proceeding within meaning of A.R.S. Juv.Ct.Rules of Proc. Rule governing exclusion of child from juvenile court proceedings, as juveniles were able to confer with their counsel during breaks in testimony which were taken for such purpose; juveniles were placed in separate room because witness feared to testify in their presence because of prior threats they had made against him. *Matter of Appeal in Pinal County Juvenile Action Nos. J-1123 and J-1124* (App. Div.2 1985) 147 Ariz. 302, 709 P.2d 1361. Infants  2573

### 3 Transfer hearings

Hearing in juvenile court on motion to transfer juvenile to adult court for criminal prosecution could not be held in the absence of the juvenile, who had committed himself voluntarily to in-patient treatment at mental health facility, although court had option of issuing bench warrant for juvenile's arrest. *Appeal of Maricopa County Juvenile Action No. J-102981* (App. Div.1 1985) 147 Ariz. 316, 709 P.2d 1375. Infants  2990

Juvenile court's denial of juvenile's motion to close transfer hearing to the public was not grounds for remand in order that closed hearing might be conducted, regardless of whether it was proper to open the hearing, absent evidence that failure to close hearing in any way impeded testimony of the witnesses or otherwise resulted in any prejudice which substantively affected his transfer. *Appeal in Juvenile Action J-96695* (App. Div.1 1985) 146 Ariz. 238, 705 P.2d 478. Infants  3112

### 4 News media

There was no abuse of discretion by juvenile judge in admitting news media and public to transfer hearing. *Wideman v. Garbarino* (1989) 160 Ariz. 16, 770 P.2d 320. Infants  2990

17B A. R. S. Juv. Ct. Rules of Proc., Rule 12, AZ ST JUV CT Rule 12

Current with amendments received and effective through 9/1/17

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Barclays Official California Code of Regulations Currentness  
Title 15. Crime Prevention and Corrections  
Division 1. Board of State and Community Corrections  
Chapter 1. Board of State and Community Corrections  
Subchapter 5. Minimum Standards for Juvenile Facilities  
Article 5. Classification and Segregation

15 CCR § 1358

§ 1358. Use of Physical Restraints.

The facility administrator, in cooperation with the responsible physician and mental health director, shall develop and implement written policies and procedures for the use of restraint devices. Restraint devices include any devices which immobilize a youth's extremities and/or prevent the youth from being ambulatory.

Physical restraints may be used only for those youth who present an immediate danger to themselves or others, who exhibit behavior which results in the destruction of property, or reveals the intent to cause self-inflicted physical harm. Physical restraints should be utilized only when it appears less restrictive alternatives would be ineffective in controlling the youth's behavior.

In no case shall restraints be used as punishment or discipline, or as a substitute for treatment. The use of restraint devices that attach a youth to a wall, floor or other fixture, including a restraint chair, or through affixing of hands and feet together behind the back (hogtying) is prohibited. The use of restraints on pregnant youth is limited in accordance with [Penal Code Section 6030\(f\)](#) and [Welfare and Institutions Code Section 222](#).

The provisions of this section do not apply to the use of handcuffs, shackles or other restraint devices when used to restrain youth for movement or transportation within the facility. Movement within the facility shall be governed by Section 1358.5, Use of Restraint Devices for Movement Within the Facility.

Youth shall be placed in restraints only with the approval of the facility manager or designee. The facility manager may delegate authority to place a youth in restraints to a physician. Reasons for continued retention in restraints shall be reviewed and documented at a minimum of every hour.

A medical opinion on the safety of placement and retention shall be secured as soon as possible, but no later than two hours from the time of placement. The youth shall be medically cleared for continued retention at least every three hours thereafter.

A mental health consultation shall be secured as soon as possible, but in no case longer than four hours from the time of placement, to assess the need for mental health treatment.

Continuous direct visual supervision shall be conducted to ensure that the restraints are properly employed, and to ensure the safety and well-being of the youth. Observations of the youth's behavior and any staff interventions shall be documented at least every 15 minutes, with actual time of the documentation recorded.

In addition to the requirements above, policies and procedures shall address:

- (a) documentation of the circumstances leading to an application of restraints.



- (b) known medical conditions that would contraindicate certain restraint devices and/or techniques.
- (c) acceptable restraint devices.
- (d) signs or symptoms which should result in immediate medical/mental health referral.
- (e) availability of cardiopulmonary resuscitation equipment.
- (f) protective housing of restrained youth. While in restraint devices, all youth shall be housed alone or in a specified housing area for restrained youth which makes provision to protect the youth from abuse.
- (g) provision for hydration and sanitation needs.
- (h) exercising of extremities.

Note: Authority cited: [Sections 210 and 885, Welfare and Institutions Code](#). Reference: [Section 6030\(f\), Penal Code](#); and [Section 222, Welfare and Institutions Code](#).

#### HISTORY

1. New section filed 3-6-97; operative 4-5-97 (Register 97, No. 10).
2. Amendment of subsections (a), (c) and (d) filed 1-11-2001; operative 2-10-2001 (Register 2001, No. 2).
3. Amendment of subsections (b)-(d) filed 6-23-2003; operative 7-23-2003 (Register 2003, No. 26).
4. New subsection (f) filed 5-23-2008 as an emergency; operative 5-23-2008 (Register 2008, No. 21). Pursuant to [Penal Code section 5058.3](#), a Certificate of Compliance must be transmitted to OAL by 10-30-2008 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 5-23-2008 order transmitted to OAL 9-10-2008 and filed 10-23-2008 (Register 2008, No. 43).
6. Amendment of section and Note filed 12-2-2013; operative 4-1-2014 (Register 2013, No. 49).
7. Amendment filed 11-14-2018; operative 1-1-2019 (Register 2018, No. 46).

This database is current through 6/24/22 Register 2022, No. 25

15 CCR § 1358, 15 CA ADC § 1358

Connecticut General Statutes Annotated  
Title 46b. Family Law (Refs & Annos)  
Chapter 815T. Juvenile Matters (Refs & Annos)  
Part I. General Provisions

C.G.S.A. § 46b-122a

§ 46b-122a. Use of mechanical restraints during juvenile  
proceedings. Statistics concerning use of restraints

Effective: October 1, 2015

[Currentness](#)

There shall be a presumption in juvenile proceedings that all mechanical restraints shall be removed from a preadjudicated detained juvenile prior to and throughout the detainee's appearance in court. In juvenile proceedings, in-court use of mechanical restraints on preadjudicated detainees shall be by order of the court and pursuant to Judicial Branch written policy. The Judicial Branch shall keep statistics on the use of mechanical restraints on juveniles during proceedings and, notwithstanding any provision of [section 46b-124](#), shall provide such statistics to any member of the public upon request, provided any identifying information concerning a juvenile is redacted.

**Credits**

(2015, P.A. 15-183, § 3.)

C. G. S. A. § 46b-122a, CT ST § 46b-122a

The statutes and Constitution are current with all enactments of the 2022 Regular Session enrolled and approved by the Governor on or before July 1, 2022 and effective on or before July 1, 2022.

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
ADMINISTRATIVE ORDER 15-07**

**Individual Determinations for the Use of Restraints on Respondents**

**WHEREAS**, pursuant to D.C. Code § 16-2301.02, the purpose of the delinquency system is to deal with the problem of juvenile delinquency while treating children as children in all phases of their involvement, to place a premium on their rehabilitation, and to provide for the safety of the public;

**WHEREAS**, the decision of whether to restrain respondents during juvenile court proceedings impacts courtroom security, personnel resources, and judicial administration;

**WHEREAS**, the vast majority of jurisdictions have abandoned the indiscriminate use of restraints in juvenile cases through changes to court rules, amendments to institutional policies, or through statutory reform;

**WHEREAS**, no court rule, institutional policy or statute in the District of Columbia addresses the use of restraints on respondents during juvenile court proceedings; and it is most appropriate that decisions on the use of restraints depend on individual determinations; and

**WHEREAS**, the term “restraints” means any device used to control or bind the movement of a person’s body or limbs.

**NOW, THEREFORE**, it is by the Court,

**ORDERED**, that the Family Court will make an individualized determination on the use of restraints at initial hearings for cases brought under Title 16, Chapter 23, of the D.C. Code. It is further,

**ORDERED**, that respondents will remain in restraints while they are transported in the courthouse through secure corridors. It is further,

**ORDERED**, that respondents will remain in restraints when they enter the courtroom before the Family Court makes an individualized determination on the use of restraints. It is further,

**ORDERED**, that the Family Court will provide respondents with an opportunity to contest the use of restraints when making an individualized determination. It is further,

**ORDERED**, that counsel may waive the appearance of a respondent who does not wish to enter the courtroom in restraints until after an individualized determination has been made. It is further,

**ORDERED**, that the Family Court may receive information relevant to the determination of the use of restraints from the agency, or agencies, charged with supervision or custody of the child. It is further,

**ORDERED**, that the Family Court will make an independent and individualized determination on the use of restraints. It is further,

**ORDERED**, that the Family Court will order the removal of restraints, unless the Family Court finds that there is reason to believe that the use of restraints is necessary for the safety of the respondent or others, or to prevent flight. It is further,

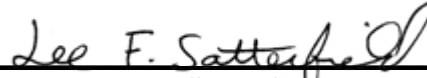
**ORDERED**, that when the use of restraints is ordered, the Family Court will make written findings of fact in support of the order. It is further,

**ORDERED**, that this Administrative Order shall take effect on April 6, 2015.

**SO ORDERED.**

**BY THE COURT:**

**DATE: April 3, 2015**

  
**Lee F. Satterfield**  
**Chief Judge**

**Copies to:**

Judges  
Magistrate Judges  
Executive Officer of the Court  
Clerk of the Court  
Division Directors  
Defender Services Branch Chief  
Council of the District of Columbia, Chairman of the Committee on the Judiciary  
Council of the District of Columbia, Chairman of the Committee on Education  
Attorney General of the District of Columbia  
Director of the Public Defender Service  
Director of the Department of Youth Rehabilitation Services  
United States Marshals  
District of Columbia Bar  
Daily Washington Law Reporter  
Library



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

West's Delaware Code Annotated

Title 10. Courts and Judicial Procedure

Part I. Organization, Powers, Jurisdiction and Operation of Courts

Chapter 9. The Family Court of the State of Delaware

Subchapter III. Procedure

Part A. Proceedings in the Interest of a Child

10 Del.C. § 1007B

§ 1007B. Use of restraints on a child

Currentness

(a) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a child during a court proceeding and must be removed either prior to or after the child has entered the courtroom for an appearance before the Court unless the Court finds both of the following conditions are met:

(1) The use of restraints is necessary due to 1 of the following factors:

- a. The juvenile is presently uncontrollable and constitutes a serious and evident danger to himself or herself or others;
- b. There are safety risks for the youth or staff in the court room, including but not limited to the presence of known gang associates, or other individuals including relatives, who could pose a risk to youth and staff;
- c. The juvenile has a history of noncompliance with law enforcement, court security, and DYRS staff, including evidence of prior attempts to escape custody, disruptive behavior at a detention facility, and other relevant factors.

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(b) In making a determination that restraints are necessary, the Court may receive and consider such information and evidence it believes relevant to the findings required by subsection (a) of this section. The Court shall provide the child or child's attorney an opportunity to be heard as part of any hearing to determine whether the use of restraints is necessary. If restraints are ordered, the Court shall make written findings of fact in support of the order.

(c) Any use of restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing.

**Credits**

Added by [80 Laws 2016, ch. 413, § 1.](#)

10 Del.C. § 1007B, DE ST TI 10 § 1007B

Current through ch. 324 of the 151st General Assembly (2021-2022). Some statute sections may be more current, see credits for details. Revisions to 2022 Acts by the Delaware Code Revisors were unavailable at the time of publication.

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West's Florida Statutes Annotated  
Florida Rules of Juvenile Procedure (Refs & Annos)  
Part II. Delinquency Proceedings (Refs & Annos)  
F. Hearings

Fla.R.Juv.P. Rule 8.100

## Rule 8.100. General Provisions for Hearings

Currentness

Unless otherwise provided, the following provisions apply to all hearings:

**(a) Presence of the Child.** The child shall be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests.

**(b) Use of Restraints on the Child.** Instruments of restraint, such as handcuffs, chains, irons, straitjackets, cloth and leather restraints, or other similar items, shall not be used on a child during a court proceeding except when ordered by the court prior to the child's appearance in the courtroom in accordance with this rule. Instruments of restraint must be removed prior to the child's appearance unless after an individualized assessment of the child the court finds that:

(1) The use of restraints is necessary due to one of the following factors:

(A) to prevent physical harm to the child or another person;

(B) the child's history of disruptive courtroom behavior that has placed others in potentially harmful situations or that presents a substantial risk of inflicting physical harm or himself or herself or others as evidenced by recent behavior; or

(C) a founded belief that the child presents a substantial risk of flight from the courtroom; and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

(3) In making a determination that the use of instruments of restraint is necessary, pursuant to subdivision (b)(1), the court shall consider:

(A) any past escapes or attempted escapes by the child;

(B) evidence of a present plan of escape by the child;

(C) a credible threat by the child to harm himself or herself or another person during court;

(D) evidence of self-injurious behavior on part of the child; and

(E) any other factor that is relevant in determining whether the use of instruments of restraint are necessary pursuant to subdivision (b)(1).

(4) The court shall provide the child's attorney an opportunity to be heard before the court orders the use of restraints. Counsel shall be appointed for this hearing if the child qualifies for such appointment and does not waive counsel in writing as required by [rule 8.165](#).

(5) If restraints are ordered, the court shall make specific and individualized findings of fact in support of the order and the least restrictive restraints shall be used. Any restraints shall allow the child limited movement of his or her hands to read and handle documents and writings necessary to the hearing.

(6) Under no circumstances should a child be restrained using fixed restraints to a wall, floor, or furniture.

**(c) Absence of the Child.** If the child is present at the beginning of a hearing and during the progress of the hearing voluntarily absents himself or herself from the presence of the court without leave of the court, or is removed from the presence of the court because of disruptive conduct during the hearing, the hearing shall not be postponed or delayed, but shall proceed in all respects as if the child were present in court at all times.

**(d) Invoking the Rule.** Prior to the examination of any witness the court may, and on the request of any party in an adjudicatory hearing shall, exclude all other witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

**(e) Continuances.** The court may grant a continuance before or during a hearing for good cause shown by any party.

**(f) Record of Testimony.** A record of the testimony in all hearings shall be made by an official court reporter, a court approved stenographer, or a recording device. The records shall be preserved for 5 years from the date of the hearing. Official records of testimony shall be provided only on request of a party or a party's attorney or on a court order.

**(g) Notice.** When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

#### Credits

Former Rule 8.220 amended Dec. 28, 1984, effective Jan. 1, 1985 ([462 So.2d 399](#)). Renumbered as new Rule 8.100 and amended May 9, 1991, effective [July 1, 1991 \(589 So.2d 818\)](#). Amended Nov. 5, 1992, effective Jan. 1, 1993 ([608 So.2d 478](#)); [Jan. 26, 1995 \(649 So.2d 1370\)](#); [April 29, 1999 \(753 So.2d 541\)](#); July 6, 2000 (opinion withdrawn on denial of rehearing March 15, 2001); [March 15, 2001 \(796 So.2d 470\)](#); [June 26, 2008 \(985 So.2d 534\)](#); Dec. 17, 2009, effective Jan. 1, 2010 ([26 So.3d 552](#)); Dec. 6, 2018, effective Jan. 1, 2019 ([258 So. 3d 1254](#)).



[Notes of Decisions \(32\)](#)

West's F. S. A. R. Juv. P. Rule 8.100, FL ST JUV P Rule 8.100

Current with amendments received through 6/15/2022. Some rules may be more current, see credits for details.

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Iowa Code Annotated

Iowa Court Rules

I. Rules of Practice and Procedure

Chapter 8. Rules of Juvenile Procedure (Refs & Annos)

Restraint of Juveniles During Court Proceedings

I.C.A. Rule Rule 8.41

Rule 8.41. Routine use of restraints prohibited

Currentness

**8.41(1)** Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, will not be used on a child during a court proceeding unless the juvenile court upon the recommendation of the juvenile court officer or the county attorney makes a finding on the record that restraints are necessary due to any of the following:

- a. Recent behavior of the child has placed others at risk of substantial physical harm.
- b. Sufficient grounds to believe the child is a substantial flight risk.
- c. Sufficient grounds to show restraints are necessary to prevent physical harm to the child or another person during the court proceeding.
- d. There are no less restrictive alternatives to restraints, including the presence of a security officer. The juvenile court officer is not considered a security officer.

**8.41(2)** If the juvenile court officer or the county attorney recommends that restraints are necessary, the juvenile court officer or county attorney must provide notice to the court and the child's attorney outlining the circumstances supporting that recommendation prior to the child's appearance in each court proceeding or as soon as practicable. If notice is not given in writing, a record must be made at the court proceeding.

**8.41(3)** The child's attorney, the juvenile court officer, and the county attorney must have an opportunity to be heard before the court prior to any court proceeding for which any recommendation to restrain the child has been made.

**8.41(4)** For subsequent court proceedings in the same case, the court may rely on a previous finding if the security circumstances relating to the child have not materially changed.

**8.41(5)** Any restraint must allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a child be restrained using fixed restraints to a wall, floor, or furniture.

**8.41(6)** Any restraint of children in the courtroom must balance legitimate security needs against the care, protection, and positive mental and physical development of the child while preserving the dignity and decorum of the courtroom and security of the court proceeding and court personnel.

**Credits**

Adopted Oct. 25, 2017, eff. Jan. 1, 2018.

I. C. A. Rule Rule 8.41, IA R Rule 8.41

State court rules are current with amendments received through June 1, 2022. Some rules may be more current, see credits for details.

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West's Smith-Hurd Illinois Compiled Statutes Annotated

Court Rules

Illinois Supreme Court Rules (Refs & Annos)

Article IX. Child Custody or Allocation of Parental Responsibilities Proceedings

Part C. Child Custody Proceedings Under Articles II, III and IV of the Juvenile Court Act of 1987

ILCS S. Ct. Rule 943

Rule 943. Use of Restraints on a Minor in Delinquency  
Proceedings Arising Under the Juvenile Court Act

Currentness

**(a)** Instruments of restraint shall not be used on a minor during a court proceeding unless the court finds, after a hearing, that the use of restraints is necessary for one or more of the following reasons:

- (1) Instruments of restraint are necessary to prevent physical harm to the minor or another person; or
- (2) The minor has a history of disruptive behavior that has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior; or
- (3) There is a well-founded belief that the minor presents a substantial risk of flight from the courtroom;

and there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the minor or another person, including, but not limited to the presence of court personnel, law enforcement officers, or bailiffs.

**(b)** The court must provide the minor's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall enter an order setting forth its findings of fact.

**(c)** Any restraints authorized under this rule must be the least restrictive restraints necessary and must allow the minor limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances, should a minor be restrained to another minor, wall, the floor, or furniture while in the courtroom.

**(d)** For purposes of this rule:

- (1) "Instruments of restraint" and "restraints" are handcuffs, leg shackles, leg irons, belly belts, belly chains, or other restraint devices used to restrict a minor's free movement of limbs or appendages, including those made of cloth and leather; and
- (2) A "minor" is an individual under the jurisdiction of the juvenile court, as provided in Article V of the Illinois Juvenile Court Act.

**Credits**

Adopted Oct. 6, 2016, eff. Nov. 1, 2016.

**COMMITTEE COMMENTS**

(Oct. 6, 2016)

This rule is not intended to limit the court's inherent authority to control its courtroom and/or ensure the integrity of the proceedings are maintained in the event of disruptive behavior by the minor during the proceedings.

I.L.C.S. S. Ct. Rule 943, IL R S CT Rule 943

Current with amendments received through 7/1/22. Some rules may be more current, see credits for details.

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West's Annotated Indiana Code  
Title 31. Family Law and Juvenile Law  
Article 30.5. Juvenile Law: Preliminary Proceedings  
Chapter 2. Restraining Juveniles in Court

IC 31-30.5-2-1

### 31-30.5-2-1 Restraint of juveniles in court; requirements

Effective: July 1, 2015

[Currentness](#)

Sec. 1. (a) Except as provided in subsection (b), a juvenile shall not be restrained in court unless the court has determined on the record, after considering the recommendation of the sheriff or transport officer, that the juvenile is dangerous or potentially dangerous.

(b) A court may order a juvenile restrained without considering the recommendation of the sheriff or transport officer if the juvenile has caused a physical disruption while in open court.

#### Credits

As added by [P.L.187-2015](#), [SEC.27](#), eff. July 1, 2015.

I.C. 31-30.5-2-1, IN ST 31-30.5-2-1

The statutes and Constitution are current with all legislation of the 2022 Second Regular Session of the 122nd General Assembly effective through July 1, 2022.

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Baldwin's Kentucky Revised Statutes Annotated  
Juvenile Court Rules of Procedure and Practice  
IV. Process in Public Offense Cases

Kentucky Juvenile Rules of Practice and Procedure JCRPP Rule 20

JCRPP 20. Use of restraints on a child charged with a status or public offense in court

Currentness

There shall be a presumption that no child shall be restrained upon entry into the courtroom. This presumption may be rebutted with good cause shown.

**Commentary**

Use of restraints in a courtroom has generally been defined to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior. (National Council of Juvenile and Family Court Judges, Resolution Regarding Shackling of Children in Juvenile Court, 2015 [hereinafter NCJFCJ Resolution]).

The Association of Prosecuting Attorneys has issued a Statement of Principles concerning the use of restraints in court that states in part, “[t]here should be a presumption against the use of restraints on juveniles in court without appropriate evidence-based and data-driven assessments indicating that there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including, but not limited to, the public, court personnel, law enforcement officers, or bailiffs.” The prosecutors note that minors “are impressionable and the indiscriminate use of restraints in court has been shown to influence juveniles such that it negatively impacts their future behavior and also fosters a negative perception of the criminal justice system, including decreasing their level of cooperation and engagement with courtroom stakeholders.” (Association of Prosecuting Attorneys, Statement of Principles, 2015).

This concern is echoed by the National Council of Juvenile and Family Court Judges as it notes that restraining children in court may infringe upon the presumption of innocence, undermine confidence in the fairness of our justice system, interfere with the right to a fair trial, impede communication with judges, attorneys, and other parties, and limit the child's ability to engage in the court process. Given that research in social and developmental psychology has indicated that restraints can interfere with healthy identity development, be traumatizing and contrary to the developmentally appropriate approach to juvenile justice; negatively influence how a child behaves as well as how a child is perceived by others; and promote punishment and retribution over rehabilitation and development of children under the court's jurisdiction, it is critical to recognize the need for continued attention and consistent judicial leadership to ensure that policies regarding treatment of children in juvenile and family court are fair, age appropriate and promote justice. (NCJFC Resolution).

This rule is likewise in accord with the American Bar Association, Criminal Justice Section Resolution 107A, which states thusly: “RESOLVED, That the American Bar Association urges all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard and finding that the

restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.” (American Bar Association, Criminal Justice Section Resolution 107A, 2015).

The NCJFCJ Resolution supports a presumptive rule or policy against shackling children, recommends that requests for exceptions be made to the court on an individualized basis and that such requests must include a cogent rationale, including the demonstrated safety risk the child poses to him or herself or others. In accord with juvenile and family court practice, JCRPP 20 creates such a rule in its purest and simplest form.

#### **Credits**

HISTORY: Adopted by Order 2019-15, eff. 2-1-20

KY Juvenile Court Rules JCRPP Rule 20, KY ST JUV CT JCRPP Rule 20

Current with amendments received through May 1, 2022. Some sections may be more current, see credits for details.

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West's Louisiana Statutes Annotated  
Louisiana Children's Code (Refs & Annos)  
Title IV. Juvenile Court Administration  
Chapter 2. Scheduling and Conduct of Cases

LSA-Ch.C. Art. 408

Art. 408. Duty of court to control proceedings; use of restraints on a child

Effective: August 1, 2018

[Currentness](#)

A. The court shall require that the proceedings be conducted with dignity and in an orderly and expeditious manner, and shall control the proceedings so that justice is done. The court may exclude any person whose conduct is disruptive if the person fails promptly to heed the court's admonition to refrain from such conduct.

B. (1) Restraints shall not be used upon a child during any juvenile court proceeding except in a delinquency proceeding as specifically provided in this Paragraph.

(2) A court may permit a child to be restrained in the courtroom only upon the court's individualized determination that the use of restraints is necessary because the child presents a particularized risk of physical harm to himself or another or presents a particularized substantial risk of flight from the courtroom, and that there are no less restrictive alternative measures to prevent flight or physical harm. The fact that the child is detained is insufficient to warrant a finding that the use of restraints is necessary.

(3) If it is alleged that the use of restraints upon a child is necessary, the district attorney or law enforcement shall inform the judge and the attorney for the child prior to the proceeding. The attorney for the child shall be given an opportunity to be heard and object on the record. If the use of restraints is ordered, the judge shall state on the record the reasons therefor.

(4) In accordance with Paragraph A of this Article, a court may authorize the use of restraints when the conduct of the child during a hearing presents an imminent threat, risk of flight, or physical harm.

(5) This Paragraph does not apply when the child is in a detention center, when the child is in transport from a detention center to the courthouse, or when the child is held in the courthouse outside of the room where the juvenile delinquency proceeding will occur.

**Credits**

Added by [Acts 1991, No. 235, § 4, eff. Jan. 1, 1992](#). Amended by [Acts 2018, No. 453, § 1](#).

**Editors' Notes**

**COMMENTS--2018**

(a) The intent of Paragraph B of this Article is to allow for most youth who come to court to be unrestrained, with appropriate rare exceptions. Unnecessary use of restraints in court is stigmatizing and traumatizing to children, is incompatible with the presumption of innocence when done prior to adjudication, hinders the communication between the youth and court officials including the child's attorney, and is counter to the goal of a rehabilitative juvenile justice system.

(b) Subparagraph (B)(3) provides for the procedure if it is alleged that a youth needs to be restrained. The procedure is intended to be expedited, balancing the child's due process rights against unnecessary restraint and with individualized determination with the court's interest in efficient procedure. This Subparagraph does not require a full contradictory hearing to make a determination. Instead, the prosecutor or law enforcement officer with the information giving rise to a potential need to restrain is authorized to inform the court and the attorney for the child of the basis of the need to restrain the youth. The child has a right to be heard through counsel and to object, providing reasons why the child should not be restrained. The court makes a determination on the need to restrain and, if ordering restraint, gives reasons on the record.

(c) Subparagraph (B)(4) provides that if the child is engaging in disruptive behavior indicating an imminent risk of harm or flight while a hearing is ongoing, the court may authorize the use of restraints.

(d) Subparagraph (B)(5) clarifies that this Paragraph applies only when the child is in the courtroom, not in the detention center or in transport, or while being held in the courthouse outside of the room where the proceedings will occur.

#### **COMMENT--1991**

The source of this article is C.J.P. Article 74. Disruption of court proceedings is also actionable as contempt pursuant to Title XV, Chapter 2.

#### [Notes of Decisions \(3\)](#)

LSA-Ch.C. Art. 408, LA Ch.C. Art. 408

Current through the 2022 First Extraordinary Session.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title XVII. Public Welfare (Ch. 115-123b)

Chapter 119. Protection and Care of Children, and Proceedings Against Them (Refs & Annos)

M.G.L.A. 119 § 86

§ 86. Use of restraints during court proceedings

Effective: July 12, 2018

[Currentness](#)

(a) For the purposes of this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:--

“Juvenile”, (1) a person appearing before a division of the juvenile court department who is (i) subject to a delinquency proceeding, (ii) a child requiring assistance or (iii) a child in a care and protection proceeding or (2) a person under the age of 21 in a youthful offender proceeding.

“Restraints”, a device that limits voluntary physical movement of an individual, including leg irons and shackles, which have been approved by the trial court department.

(b) A juvenile shall not be placed in restraints during court proceedings and any restraints shall be removed prior to the appearance of a juvenile before the court at any stage of a proceeding unless the justice presiding in the courtroom issues an order and makes specific findings on the record that: (i) restraints are necessary because there is reason to believe that a juvenile presents an immediate and credible risk of escape that cannot be curtailed by other means; (ii) a juvenile poses a threat to the juvenile's own safety or to the safety of others; or (iii) restraints are reasonably necessary to maintain order in the courtroom.

(c) The court officer charged with custody of a juvenile shall report any security concern to the presiding justice. On the issue of courtroom or courthouse security, the presiding justice may receive information from the court officer charged with custody of a juvenile, a probation officer or any other source determined by the court to be credible.

The authority to use restraints shall reside solely within the discretion of the presiding justice at the time that a juvenile appears before the court. A juvenile court justice shall not impose a blanket policy to maintain restraints on all juveniles or a specific category of juveniles who appear before the court.

**Credits**

Added by [St.2018, c. 69, § 80, eff. July 12, 2018](#).

M.G.L.A. 119 § 86, MA ST 119 § 86

Current through Chapter 76 of the 2022 2nd Annual Session. Some sections may be more current, see credits for details.

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**RESOLUTION REGARDING  
SHACKLING OF CHILDREN IN JUVENILE COURT**

**Whereas,** the Maryland Judiciary endorses the principles of the National Council of Juvenile and Family Court Judges (NCJFCJ) Resolution on Shackling of Children in Juvenile Court; and

**Whereas,** the Maryland Judiciary concurs in the NCJFCJ Resolution's definition of shackles to include handcuffs, waist chains, ankle restraints, zip ties, or other restraints that are designed to impede movement or control behavior; and

**Whereas,** the shackling of children during proceedings before judges and juvenile magistrates may infringe upon the presumption of innocence, undermine confidence in the fairness of our justice system, interfere with the right to a fair trial, impede communication with judges, magistrates, attorneys, and other parties, and limit the child's ability to engage in the court process; and

**Whereas,** research in social and developmental psychology suggests that shackling children interferes with healthy identity development; and

**Whereas,** placing children in shackles can be traumatizing and contrary to the developmentally appropriate approach to juvenile justice; and

**Whereas,** placing children in shackles can negatively influence how a child behaves as well as how a child is perceived by others; and

**Whereas,** shackling promotes punishment and retribution over the rehabilitation and development of children who are under the court's jurisdiction; and

**Whereas,** shackling is contrary to the goals of juvenile justice, as defined in the *NCJFCJ Juvenile Delinquency Guidelines* to implement a continuum of effective and least intrusive responses to reduce recidivism and develop competent and productive citizens; and

**Whereas,** continued attention and consistent judicial leadership are necessary to ensure that policies regarding shackling are maintained regardless of changes in leadership or administration; and

**Whereas,** the Maryland Judiciary has the ability to advance and maintain policies and practices that limit the use of restraints or shackles.

**BE IT THEREFORE RESOLVED AS FOLLOWS:**

The Maryland Judiciary supports the NCJFCJ Resolution urging the advancement of a trauma-informed and developmentally appropriate approach to juvenile justice that limits the use of shackles in the courtroom.

The Maryland Judiciary hereby responds to the NCJFCJ's call to utilize the leadership in its courts to convene security personnel and other justice system stakeholders to address shackling and to work together to identify ways to ensure the safety of children and other parties.

The Maryland Judiciary commits to the ongoing review of policies and practices related to shackling children.

The Maryland Judiciary hereby adopts as policy the presumption against the shackling of children during proceedings in the Juvenile Court. The Maryland Department of Juvenile Services and the law enforcement agencies that are responsible for the transport or transfer of children to, from, and within courthouses shall retain the discretion to employ practices that will ensure the security of the child and others. Once in the court or hearing room, however, a child is to be unshackled and remain so absent a particularized security concern. The judge or juvenile magistrate conducting the proceeding shall determine whether the child needs to be shackled in the court or hearing room pursuant to this policy. Security personnel have the ongoing responsibility for maintaining security and order throughout the proceeding.

*Recommended by the Maryland Judicial Council for adoption by the Maryland Judiciary on September 16, 2015 and accepted by the Chief Judge of the Court of Appeals, September 21, 2015, Annapolis, MD.*

Maine Revised Statutes Annotated  
Maine Rules of Court  
Rules of Unified Criminal Procedure (Refs & Annos)  
IX. General Provisions

ME Rules of Unified Criminal Procedure, Rule **43A**

Rule **43A**. Physical Restraint of Juveniles

Currentness

**(a) Physical restraints in a courtroom prohibited absent court order.** Physical restraints shall not be used on a juvenile in a courtroom except when ordered by the court prior to or during the juvenile's appearance in the courtroom in accordance with this Rule.

**(b) Determination by the court.** If the transporting agency, the judicial marshal, other designated court security officer, or the State requests that physical restraints be used on a juvenile in the courtroom, the court shall be notified of that request. Upon such request, the court shall ensure that the juvenile, the juvenile's attorney, and the State are informed of the request. Additionally, prior to or during a proceeding, with similar disclosure to the parties present, and based on an individualized assessment of the particular juvenile and the available security resources, the court on its own motion may make a preliminary determination that one or more of the grounds for use of physical restraints listed in subsection (c) exists. If the juvenile or attorney for the juvenile objects, the court shall, whenever practical, provide the juvenile or the juvenile's attorney with an opportunity to state the basis of the objection before the court renders a decision on the use of restraints.

The court may order the use of physical restraints on a juvenile in the courtroom only if, based on an individualized assessment of the particular juvenile and the available security resources, it determines that:

- (1) One or more of the grounds for use of physical restraints set out in subsection (c) exists; and
- (2) There are no less restrictive alternatives reasonably available to maintain order and safety in the courtroom, or to prevent the risk of flight.

**(c) Grounds for use of physical restraints.** The following are grounds for the use of physical restraints in the courtroom:

- (1) The present behavior of the juvenile creates a current and substantial threat to the juvenile's safety or to the safety of others in the courtroom, or that it creates a substantial risk of flight; or
- (2) The juvenile's past behavior, including but not limited to behavior and conduct in a courtroom, creates a current and substantial risk that the juvenile will threaten the juvenile's safety or the safety of others in the courtroom, or that creates a substantial risk of flight.

**(d) Findings.** If the use of physical restraints is ordered over the objection of the juvenile, the court shall make findings of fact on the record in support of the order.

#### Credits

[Adopted October 15, 2015, effective November 1, 2015.]

#### Editors' Notes

#### ADVISORY NOTE--OCTOBER 2015

Rule 43A is enacted to clarify the procedures and standards applicable when a request has been made to physically restrain a juvenile appearing before the court in a proceeding pursuant to the Maine Juvenile Code. Federal law recognizes the constitutional due process right of an adult defendant in a criminal jury proceeding to appear in court without physical restraints unless the judge has made an individualized determination that special circumstances justify use of those restraints. *See, e.g., Deck v. Missouri*, 544 U.S. 622, 629-32 (2005). The interests of the juvenile in appearing without restraints and the authority of the court to promote safety for all concerned in juvenile proceedings have not been extensively addressed by federal or state courts.

Through this Rule, Maine joins a growing number of states in recognizing that the best practice in juvenile proceedings is to avoid the use of physical restraints when it can be done without compromising the safety of the juvenile or others in the courtroom, and without creating a risk of flight.

Rules U. **Crim. Proc.** Rule 43A, ME R U **CRIM P** Rule 43A

Current with amendments received through July 1, 2022. Some rules may be more current, see credits for details.



## WESTLAW CLASSIC

Michigan Compiled Laws Annotated  
Michigan Court Rules of 1985

## Rule 3.906. Use of Restraints on a Juvenile

MI R SPEC P MCR 3.906 | Michigan Compiled Laws Annotated | Michigan Court Rules of 1985 | Effective: September 1, 2021 (Approx. 2 pages)

**Effective: September 1, 2021**

[

MI Rules MCR **3.906** |

**Rule 3.906. Use of Restraints on a Juvenile**

Currentness

(A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a juvenile during a court proceeding unless the court finds that the use of restraints is necessary due to one of the following factors:

- (1) Instruments of restraint are necessary to prevent physical harm to the juvenile or another person.
- (2) 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 himself or herself or others as evidenced by recent behavior.
- (3) There is a founded belief that the juvenile presents a substantial risk of flight from the courtroom.

(B) The court's determination that restraints are necessary must be made prior to the juvenile being brought into the courtroom and appearing before the court. The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall state on the record or in writing its findings of fact in support of the order.

(C) Any restraints used on a juvenile in the courtroom 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 using fixed restraints to a wall, floor, or furniture.

**Credits**

[Adopted July 28, 2021, effective September 1, 2021, 507 Mich.]

**Editors' Notes**

**COMMENTS**

Staff Comment to 2021 Adoption

[The addition of MCR **3.906** establishes a procedure regarding the use of restraints on a juvenile in court proceedings.

[MI Rules MCR **3.906**, MI R SPEC P MCR **3.906**

Current with amendments received through June 1, 2022. Some rules may be more current, see credits for details

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# Order

**Michigan Supreme Court  
Lansing, Michigan**

July 28, 2021

Bridget M. McCormack,  
Chief Justice

ADM File No. 2020-17

Addition of Rule 3.906  
of the Michigan Court  
Rules

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Brian K. Zahra  
David F. Viviano  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Elizabeth M. Welch,  
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following addition of Rule 3.906 of the Michigan Court Rules is adopted, effective September 1, 2021.

## [NEW] Rule 3.906 Use of Restraints on a Juvenile

- (A) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a juvenile during a court proceeding unless the court finds that the use of restraints is necessary due to one of the following factors:
  - (1) Instruments of restraint are necessary to prevent physical harm to the juvenile or another person.
  - (2) 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 himself or herself or others as evidenced by recent behavior.
  - (3) There is a founded belief that the juvenile presents a substantial risk of flight from the courtroom.
- (B) The court's determination that restraints are necessary must be made prior to the juvenile being brought into the courtroom and appearing before the court. The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall state on the record or in writing its findings of fact in support of the order.
- (C) Any restraints used on a juvenile in the courtroom 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 using fixed restraints to a wall, floor, or furniture.

*Staff comment:* The addition of MCR 3.906 establishes a procedure regarding the use of restraints on a juvenile in court proceedings.

The staff comment is not an authoritative construction by the Court. In addition, adoption of an amendment in no way reflects a substantive determination by this Court.

CAVANAGH, J. (*concurring*). I support the majority's order—and I am not alone; a majority of the public comments received likewise support the adoption of this rule.<sup>1</sup> And Michigan now joins 31 other states (plus the District of Columbia) that have established a procedure regarding the use of restraints on a juvenile in court proceedings.<sup>2</sup> That there is overwhelming support for this court rule, and others like it across the country, should not be misconstrued as suggesting that the majority does not appreciate the complexity of the problem and the available solutions, or that the majority does not value or prioritize the safety and security of our local courtrooms. To the contrary, this Court, like every other court in this state, is often called upon to weigh competing interests in difficult situations and make the best decision it can. That is, in fact, the very essence of our job. Here, in my view, those potentially competing interests include giving trial judges the flexibility, discretion, and autonomy they need to control the procedures and security in their courtrooms and ensuring that juveniles who interact with Michigan's justice system are not subjected to physical, mental, and emotional trauma or judicial bias as a result of being shackled. There is no serious debate that these interests are important and deserving of careful consideration, and I find it unfair to suggest, as my dissenting colleague does, that the court rule is “underdeveloped” or adopted without careful consideration.

Our careful consideration of these competing interests has revealed that the indiscriminate shackling of juveniles is a practice to be avoided when it does not jeopardize the safety of the courtroom. Social science shows that the use of restraints on a juvenile has the potential to cause bias or prejudice on the part of the judge or jury in a courtroom setting, thereby possibly impinging on a juvenile's rights to due process and the presumption of innocence. It has also been shown that shackling causes unnecessary stress and is harmful to juveniles and their families because it causes shame and humiliation. Children with disabilities are at risk of exacerbated harm from shackling, and the use of restraints can create difficulties for the attorney-client relationship. While no one seriously disputes that courtroom safety is important, studies show that shackling

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<sup>1</sup> The Court received 15 comments during the public comment period. Nearly all commenters expressed support for the concept of the proposal or the actual published version.

<sup>2</sup> See National Juvenile Defender Center, *Campaign Against Indiscriminate Juvenile Shackling*, available at <<https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>> (accessed July 18, 2021) [<https://perma.cc/ZPE4-FZN6>].

youth has little effect on courtroom safety<sup>3</sup> and is inconsistent with the rehabilitative goals of the juvenile justice system, which are not punitive in nature. In fact, minimizing restraints has been shown to improve engagement and communication in the courtroom and between a juvenile and her attorney.<sup>4</sup>

My dissenting colleague argues that trial judges should have flexibility to exercise their discretion to manage the security of the courtrooms. I agree. This rule simply requires exercise of that discretion before a young person is shackled in the courtroom. I also agree that the factors identified by my dissenting colleague as relevant to the safety and security of our local courtrooms are valid concerns for a trial court to consider in evaluating whether a juvenile should be shackled while in the courtroom. But I disagree that the new court rule does not give trial courts the ability to consider these factors in making that decision. For example, nothing in this court rule prohibits a trial court from considering a juvenile's mental condition, character, or reputation for dangerousness when considering whether "[i]nstruments of restraint are necessary to prevent physical harm to the juvenile or another person" as provided in MCR 3.906(A)(1). The rule does, however, prohibit a trial judge from *indiscriminately* shackling young people appearing in the courtroom without considering these factors. But why would a trial judge want to shackle a young person when it is not necessary for safety reasons?

I am, admittedly, less concerned than my dissenting colleague about our trial courts' ability to establish the actual procedures necessary to effectuate the requirements of MCR 3.906. With virtually every other court rule established by this Court, we have successfully relied on our trial courts to exercise their discretion and experience to ensure—at the granular level—that both the spirit and the letter of the court rule are complied with. I have complete confidence that this rule does not present a challenge our trial courts cannot meet with the same level of competence they continue to exhibit with respect to all other court rules, especially with the discretion afforded to trial courts to use remote or virtual hearings when necessary.

VIVIANO, J. (*dissenting*). I dissent from the majority's order because I think the new rule it adopts is underdeveloped and confusing, and, as a result, has the potential to jeopardize the safety and security of judges, court staff, litigants, and members of the public who attend court hearings. Although I do not necessarily object to a rule governing the procedure for determining whether restraints should be used on juvenile

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<sup>3</sup> See National Juvenile Defender Center, *Campaign Against Indiscriminate Juvenile Shackling: Toolkit*, available at <<https://njdc.info/wp-content/uploads/2016/01/Toolkit-Final-011916.pdf>> p 5 (accessed July 18, 2021) [<https://perma.cc/KX79-99LW>].

<sup>4</sup> See National Juvenile Defender Center, *Campaign Against Indiscriminate Juvenile Shackling: Issue Brief*, available at <[https://njdc.info/wp-content/uploads/2016/01/NJDC\\_CAIJS\\_Issue-Brief.pdf](https://njdc.info/wp-content/uploads/2016/01/NJDC_CAIJS_Issue-Brief.pdf)> pp 2-3 (accessed July 18, 2021) [<https://perma.cc/YCK6-WFJD>].

defendants during court hearings, we should allow considerable flexibility for trial judges to manage their own courtrooms, including making determinations regarding the level of security that is necessary to protect the safety and security of all involved. That concern was universally expressed by every law enforcement agency and judicial association that submitted public comments concerning this proposed rule change.

My primary concern with this new rule is that it limits the safety factors that a trial court may consider and apparently does not allow trial courts to consider other factors that they have always considered in making pretrial release decisions. Thus, for example, a trial court apparently cannot consider a juvenile's "mental condition, including character and reputation for dangerousness." MCR 6.106(F)(1)(d). Also excluded from the list are "the seriousness of the offense charged, the presence or absence of threats, and the probability of conviction and likely sentence," MCR 6.106(F)(1)(e), and the juvenile's "prior criminal record, including juvenile offenses," MCR 6.106(F)(1)(a).<sup>5</sup> I can think of no justification for limiting trial courts from full consideration of all factors bearing on the safety and security of court proceedings.

In addition, although the new procedure appears to allow for a determination regarding the use of restraints to be made before a juvenile enters the courtroom (in contrast to the proposed rule, which appeared to require the restraints to be removed even before the trial court had an opportunity to address the issue), it remains unclear how such a determination will be initiated (i.e., by the court on its own initiative or at the request of the prosecutor or law enforcement officer?). What we do know is even more problematic: the court's determination regarding the use of restraints will be made out of the presence of the juvenile, since the trial court's "determination . . . must be made prior to the juvenile being brought into the courtroom and appearing before the court." MCR 3.906(B). This may raise questions regarding a defendant's constitutional right to be present during "stage[s] of trial where [their] substantial rights might be adversely affected." *People v Mallory*, 421 Mich 229, 247 (1984). And, as if to emphasize the Court's indifference to the safety concerns that have been raised, the new rule omits any express reference to a procedure whereby the prosecutor or a law enforcement official can raise the issue of restraints, but instead requires that only one party to the proceeding—"the juvenile's attorney"—be given "an opportunity to be heard before the court orders the use of restraints." MCR 3.906(B). Does this mean that the prosecutor does not have a right to be heard on this topic?

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<sup>5</sup> It is also unclear what is meant by "*a founded belief* that the juvenile presents a substantial risk of flight from the courtroom." MCR 3.906(A)(3) (emphasis added). Is that as opposed to an *unfounded* belief?

Court security lapses can have tragic consequences. Because I think this new rule is confusing and has the potential to jeopardize the safety of court proceedings, I respectfully dissent.

ZAHRA, J., joins the statement of VIVIANO, J.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 28, 2021

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

West's North Carolina General Statutes Annotated  
Chapter 7B. Juvenile Code (Refs & Annos)  
Subchapter II. Undisciplined and Delinquent Juveniles  
Article 24. Hearing Procedures

N.C.G.S.A. § 7B-2402.1

§ 7B-2402.1. Restraint of juveniles in courtroom

Effective: October 1, 2007

[Currentness](#)

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 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.

**Credits**

Added by [S.L. 2007-100](#), § 1, [eff. Oct. 1, 2007](#).

N.C.G.S.A. § 7B-2402.1, NC ST § 7B-2402.1

The statutes and Constitution are current through S.L. 2022-10 of the 2022 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes. Some statute sections may be more current; see credits for details.

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West's Revised Statutes of Nebraska Annotated  
Chapter 43. Infants and Juveniles  
Article 2. Juvenile Code  
(c) Law Enforcement Procedures

Neb.Rev.St. § 43-251.03

### 43-251.03. Limitation on use of restraints; written findings

#### Currentness

(1) Restraints shall not be used on a juvenile during a juvenile court proceeding and shall be removed prior to the juvenile's appearance before the juvenile court, unless the juvenile court makes a finding of probable cause that:

(a) The use of restraints is necessary:

(i) To prevent physical harm to the juvenile or another person;

(ii) Because the juvenile:

(A) Has a history of disruptive courtroom behavior that has placed others in potentially harmful situations; or

(B) Presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior;  
or

(iii) Because the juvenile presents a substantial risk of flight from the courtroom; and

(b) There is no less restrictive alternative 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.

(2) The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

(3) For purposes of this section, restraints includes, but is not limited to, handcuffs, chains, irons, straitjackets, and electronic restraint devices.

#### Credits

Laws 2015, LB 482, § 3, eff. Aug. 30, 2015.

Neb. Rev. St. § 43-251.03, NE ST § 43-251.03

Current through the end of the 2nd Regular Session of the 107th Legislature (2022)

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Revised Statutes Annotated of the State of New Hampshire

Title X. Public Health (Ch. 125 to 149-R)

Chapter 126-U. Limiting the Use of Child Restraint Practices in Schools and Treatment Facilities

N.H. Rev. Stat. § 126-U:13

## 126-U:13 Restriction of the Use of Mechanical Restraint in Courtrooms.

Effective: September 1, 2010

[Currentness](#)

At any hearing under RSA 169-B, RSA 169-C, or RSA 169-D, the judge may subject a child to mechanical restraint in the courtroom only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the child's escape, or provide for the safety of the courtroom. Whenever practical, the judge shall provide the child and the child's attorney an opportunity to be heard to contest the use of mechanical restraint before the judge orders its use. If mechanical restraint is ordered, the judge shall make written findings of fact in support of the order.

### Credits

**Source.** 2010, 375:2, eff. Sept. 1, 2010.

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N.H. Rev. Stat. § 126-U:13, NH ST § 126-U:13

Current through Chapter 143 of the 2022 Reg. Sess. Some statute sections may be more current, see credit for details.

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New Jersey Statutes Annotated

New Jersey Rules of Court

**Part V.** Rules Governing Practice in the Chancery Division, Family **Part**

**Chapter IV.** Juvenile Delinquency Actions

Rule 5:19. General Provisions

R. **5:19-4**

## **5:19-4.** Use of Restraints on a Juvenile

### Currentness

(a) 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 into the courtroom. Instruments of restraint may be used if, on application to or by the court, the court finds 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 presents a substantial risk of flight from the courtroom; and

(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 self-injurious behavior on the **part** of the juvenile;

(5) any recent 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;

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

(c) 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) 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.

#### Credits

Note: Adopted November 9, 2016 to be effective January 1, 2017.

R. 5:19-4, NJ R CH DIV FAM PT R. 5:19-4

New Jersey rules are current with amendments received through May 15, 2022. Some rules may be more current; see credits for details.

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West's New Mexico Statutes Annotated  
 State Court Rules  
 10. Children's Court Rules and Forms  
 Article 2. Delinquency Proceedings (Refs & Annos)

NMRA, Rule 10-223A

## RULE 10-223A. PHYSICAL RESTRAINTS IN THE COURTROOM

Currentness

**A. Purpose.** This rule is intended to balance legitimate security needs in court facilities with the purpose of the Children's Code to provide care, protection, and wholesome mental and physical development of children subject to children's court proceedings and to preserve the dignity, decorum, and safety of judicial proceedings involving children.

**B. Use of Physical Restraints in the Courtroom; Reasonable Grounds Required.** Children shall not be brought before the court wearing any physical restraint devices except as ordered by the court during or prior to the hearing, based on particularized security needs relating to the facility, available security personnel and other resources, individualized determinations in a particular case, or other reasonable grounds supporting a need for physical restraints. In proceedings before a jury, every reasonable effort must be made to avoid the jury's observation of the child in physical restraints.

**C. Challenge to the Use of Restraints.** Before or after any child is ordered restrained, the court shall permit any party to be heard on the issue of whether reasonable grounds exist for use of physical restraints in a particular situation or as to a particular child.

### Credits

[Approved effective Sept. 30, 2011. Amended effective April 9, 2012.]

### Editors' Notes

### COMMITTEE COMMENTARY

This rule is intended to express the policy of not having children in physical restraints inside the courtroom except where required by legitimate security concerns in a particular case, at a location in general, or in light of other relevant temporary or permanent circumstances. It does not control transport procedures or other matters outside the courtroom. The rule requires no particular formality in timing or mode of raising or addressing security concerns and permits a presiding judge to promulgate and evaluate either general or specific requirements as the need may arise.

NMRA, Rule 10-223A, NM R CHILD CT Rule 10-223A  
 Current with amendments received through June 1, 2022.

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West's Nevada Revised Statutes Annotated  
Title 5. Juvenile Justice (Chapters 62-63)  
Chapter 62D. Procedure in Juvenile Proceedings  
Miscellaneous Provisions

N.R.S. 62D.415

62D.415. Use of instrument of restraint on child during proceeding

Effective: October 1, 2015

[Currentness](#)

1. An instrument of restraint may be used on a child during a court proceeding only if the restraint is necessary to prevent the child from:

(a) Inflicting physical harm on himself or herself or another person; or

(b) Escaping from the courtroom.

2. Whenever practical, the judge shall provide the:

(a) Child and his or her attorney an opportunity to be heard regarding the use of an instrument of restraint before the judge orders the use of an instrument of restraint.

(b) Prosecuting attorney an opportunity to be heard regarding whether the use of an instrument of restraint is necessary pursuant to subsection 1.

3. In making a determination pursuant to subsection 2 as to whether an instrument of restraint is necessary pursuant to subsection 1, the court shall consider the following factors:

(a) Any previous escapes or attempted escapes by the child.

(b) Evidence of a present plan of escape by the child.

(c) A credible threat by the child to harm himself or herself or another person.

(d) A history of self-destructive tendencies by the child.

(e) Any credible threat of an attempt to escape by a person not in custody.

(f) Whether the child is subject to a proceeding:

(1) That is not in the jurisdiction of the juvenile court pursuant to subsection 3 of [NRS 62B.330](#); or

(2) For transfer or certification for criminal proceedings as an adult pursuant to [NRS 62B.335](#), [62B.390](#) or [62B.400](#).

(g) Any other factor that is relevant in determining whether the use of an instrument of restraint on the child is necessary pursuant to subsection 1.

4. The determination of the judge pursuant to subsection 2 must contain specific findings of fact and conclusions of law supporting the determination.

5. If an instrument of restraint is used on a child, the restraint must allow the child limited movement of his or her hands to hold any document or writing necessary to participate in the proceeding.

6. As used in this section, “instrument of restraint” includes, without limitation, handcuffs, chains, irons and straightjackets.

#### **Credits**

Added by [Laws 2015, c. 361, § 3.5, eff. Oct. 1, 2015](#).

N. R. S. 62D.415, NV ST 62D.415

Current through Ch. 2 (End) of the 33rd Special Session (2021). Text subject to revision and classification by the Legislative Counsel Bureau.



Compilation of Codes, Rules and Regulations of the State of New York  
Title 9. Executive Department  
Subtitle E. Office of Children and Family Services  
Part 168. State Schools and Centers (Refs & Annos)

9 NYCRR 168.3

Section 168.3. Use of physical and medical restraints

Currentness

(a) *Physical restraints.* Permissible physical restraints, consisting solely of handcuffs and footcuffs, shall be used only in cases where a child is uncontrollable and constitutes a serious and evident danger to himself or others. They shall be removed as soon as the child is controllable. Use of physical restraints shall be prohibited beyond one-half hour unless a child is being transported by vehicle and physical restraint is necessary for public safety. If restraints are placed on a child's hands and feet, the hand and foot restraints are not to be joined, as for example, in hog tying. When in restraints, a child may not be attached to any furniture or fixture in a room nor to any object in a vehicle.

(1) The division shall prohibit the utilization of foot manacles.

(2) Physical restraints may be utilized beyond one-half hour only in the case of vehicular transportation where such utilization of physical restraints is necessary for public safety.

(b) *Medical restraint.* For the purposes of this Part, medical restraint shall mean medication administered either by injection or orally for the purposes of quieting an uncontrollable child.

(1) Medical restraint shall be administered only in situations where a child is so uncontrollable that no other means of restraint can prevent the child from harming himself.

(2) Medical restraint shall be authorized only by a physician and be administered only by a registered nurse or a medical doctor.

(c) *Prn orders of psychiatric medication.* A *pro re nata* order, authorizing a registered nurse to administer prescribed psychiatric medication, for purposes of crisis intervention, may be used by the Division for Youth pursuant to the following guidelines:

(1) Prescription by medical doctor. Before any Prn order may be prescribed, a medical doctor must examine the child and determine the need for such an order in terms of the individual child's ongoing treatment needs at the facility. These Prn orders shall be prescribed on an individual basis and shall not be prescribed *pro forma* to all children at the time of their arrival at a facility, as follows:

(i) The medical doctor must sign the order and the medical doctor must provide specific instructions and guidelines for the nurse.

(ii) Periodic review of all Prn orders must be made by a medical doctor, monthly, including physically examining the child.

(iii) At the time of the periodic review, the medical doctor must indicate, in writing, reasons for his continuing the Prn order.

(2) Administration by registered nurse. A registered nurse may administer a Prn order when the actions of the child clearly present a danger to himself or other residents, as follows:

(i) She must physically examine the child and refer to the child's medical record including the specific instructions left by the medical doctor for utilization of the Prn order.

(ii) The pulse and blood pressure of children receiving such medication must be taken during the first half hour by the nurse and periodically thereafter until his release.

(iii) The nurse must keep a record indicating the results of those examinations and shall prepare a medication report indicating reasons giving rise to her dispensing the medication.

(iv) If the initial or subsequent examination by the nurse reveals the development of any symptoms indicating an adverse reaction to the medication, she shall immediately notify the medical doctor.

(d) *Reporting requirements.* Use of physical and medical restraints shall be reported, pursuant to subdivision (j) of section 168.2 of this Part.

#### **Credits**

Sec. added, filed July 18, 1973; ams. filed: Aug. 2, 1974; Feb. 26, 1975; March 31, 1977 eff. March 31, 1977. Substituted new (a).

Current with amendments included in the New York State Register, Volume XLIV, Issue 28 dated July 13, 2022. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 9, § 168.3, 9 NY ADC 168.3

Baldwin's [Ohio](#) Revised Code Annotated  
Rules of Superintendence for the Courts of [Ohio](#) (Refs & Annos)

**Sup. R. Rule 5.01**

**Sup R 5.01** Local child restraint rule

[Currentness](#)

Each court or division of a court shall adopt a local rule governing the use of physical restraints on children appearing in court proceedings before the court or division. The local rule shall do all of the following:

(A) Create a presumption that physical restraint shall not be utilized unless the judge or magistrate before whom the child is appearing makes an individualized determination on the record that there is no less restrictive alternative to the use of physical restraint and that the physical restraint of the child is necessary because of either of the following:

- (1) The child represents a current and significant threat to the safety of the child's self or other persons in the courtroom;
- (2) There is a significant risk the child will flee the courtroom.

(B) Require the judge or magistrate to permit any party, as defined in [Juv.R. 2\(Y\)](#), to be heard on the issue of whether the use of physical restraint is necessary for that particular child at that particular proceeding;

(C) If physical restraint is found necessary by the judge or magistrate, require the restraint be the least restrictive necessary to meet the risk requiring the restraint and in a manner which does not unnecessarily restrict the movement of the child's hands.

**CREDIT(S)**

(Adopted eff. 7-1-16)

Relevant Additional Resources

Additional Resources listed below contain your search terms.

**RESEARCH REFERENCES**

**Treatises and Practice Aids**

[Painter & Pollis](#), [Ohio Appellate Practice App L](#), Rules of Superintendence for the Courts of [Ohio](#) (Selected Rules).

Rules of Superintendence Rule [5.01](#), OH ST [SUP](#) Rule [5.01](#)

Current with amendments received through July 1, 2022. Some rules may be more current, see credits for details.

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West's Oregon Revised Statutes Annotated

Title 34. Human Services; Juvenile Code; Corrections

Chapter 419A. Juvenile Code: General Provisions and Definitions (Refs & Annos)

Restraints

O.R.S. § 419A.240

419A.240. Use of physical restraints during juvenile court proceedings

Effective: January 1, 2022

[Currentness](#)

During any juvenile court proceeding under this chapter and ORS chapters 419B and 419C regarding a youth, adjudicated youth or young person:

(1)(a) Instruments of physical restraint, such as handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items, may not be used during the juvenile court proceeding and must be removed prior to the youth, adjudicated youth or young person being brought into the courtroom unless the court finds that the use of restraints is necessary due to an immediate and serious risk of dangerous or disruptive behavior and there are no less restrictive alternatives that will alleviate the immediate and serious risk of dangerous or disruptive behavior.

(b) If the means do not exist to remove instruments of physical restraint as described in paragraph (a) of this subsection prior to the youth, adjudicated youth or young person being brought into the courtroom, such restraints shall be removed prior to commencement of the proceeding.

(c) Instruments of physical restraint removed under this subsection must remain removed for the duration of the proceeding.

(2) In determining whether an immediate and serious risk of dangerous or disruptive behavior exists, the court may consider:

(a) Whether the youth, adjudicated youth or young person has a history of dangerous or disruptive behavior that has placed the youth, adjudicated youth or young person or others in potentially harmful situations as evidenced by recent behavior;

(b) Whether the youth, adjudicated youth or young person presents a substantial risk of inflicting physical harm on himself or others; and

(c) Whether the youth, adjudicated youth or young person presents a substantial risk of flight from the courtroom or courtroom premises.

(3) In determining whether a less restrictive alternative will alleviate the immediate and serious risk of dangerous or disruptive behavior, the court may consider the presence of court personnel, law enforcement officers, juvenile department staff or counselors, or bailiffs.

(4) When the use of restraints is requested by a law enforcement agency, the juvenile department or other party to the juvenile court proceeding, the request must be made in writing and presented to the court and other parties prior to the youth, adjudicated youth or young person's appearance in the courtroom for the juvenile court proceeding. The request must describe discrete, recent, concrete and observable examples of behaviors or risk factors that justify the use of restraints.

(5) The court shall provide the attorney for the youth, adjudicated youth or young person an opportunity to be heard prior to ordering the use of restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

(6) Any restraints used must allow the youth, adjudicated youth or young person limited movement of the hands to read and handle documents and writings necessary to the juvenile court proceeding. Under no circumstances should a youth, adjudicated youth or young person be restrained to a stationary object or another person.

(7) Restraints may not be used as punishment, for convenience or as a substitute for staff supervision.

#### **Credits**

Added by [Laws 2017, c. 257, § 2](#), eff. Jan. 1, 2018. Amended by [Laws 2021, c. 489, § 48](#), eff. Jan. 1, 2022.

O. R. S. § 419A.240, OR ST § 419A.240

Current through Chapter 2 enacted in the 2022 Regular Session of the 81st Legislative Assembly, which convened February 1, 2022 and adjourned sine die March 4, 2022, pending classification of undesignated material and text revision by the Oregon Reviser. See ORS 173.160. Some statute sections may be more current, see credits for details.

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Purdon's Pennsylvania Statutes and Consolidated Statutes  
Title 42 Pa.C.S.A. Judiciary and Judicial Procedure (Refs & Annos)  
Part VI. Actions, Proceedings and Other Matters Generally  
Chapter 63. Juvenile Matters (Refs & Annos)  
Subchapter C. Procedures and Safeguards

42 Pa.C.S.A. § 6336

§ 6336. Conduct of hearings

Effective: November 26, 2014

[Currentness](#)

**(a) General rule.**--Hearings under this chapter shall be conducted by the court without a jury, in an informal but orderly manner, and separate from other proceedings not included in section 6303 (relating to scope of chapter).

**(b) Functions of district attorney.**--The district attorney, upon request of the court, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.

**(c) Record.**--If requested by the party or ordered by the court the proceedings shall be recorded by appropriate means. If not so recorded, full minutes of the proceedings shall be kept by the court.

**(d) Proceeding in camera.**--Except in hearings to declare a person in contempt of court and in hearings as specified in subsection (e), the general public shall be excluded from hearings under this chapter. Only the parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding or in the work of the court shall be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his delinquency are being heard.

**(e) Open proceedings.**--The general public shall not be excluded from any hearings under this chapter:

(1) Pursuant to a petition alleging delinquency where the child was 14 years of age or older at the time of the alleged conduct and the alleged conduct would be considered a felony if committed by an adult.

(2) Pursuant to a petition alleging delinquency where the child was 12 years of age or older at the time of the alleged conduct and where the alleged conduct would have constituted one or more of the following offenses if committed by an adult:

(i) Murder.

(ii) Voluntary manslaughter.

(iii) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(iv) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(v) Involuntary deviate sexual intercourse.

(vi) Kidnapping.

(vii) Rape.

(viii) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(ix) Robbery of motor vehicle.

(x) Attempt or conspiracy to commit any of the offenses in this paragraph.

Notwithstanding anything in this subsection, the proceedings shall be closed upon and to the extent of any agreement between the child and the attorney for the Commonwealth.

**(f) Discretion of court.**--The court at any disposition proceeding under subsection (e) shall have discretion to maintain the confidentiality of mental health, medical or juvenile institutional documents or juvenile probation reports.

**(g) Summary offenses.**--The provisions of subsection (d), insofar as subsection (d) relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary, the Philadelphia Municipal Court or a court of common pleas.

**(h) Adjudication alternative.**--The magisterial district judge may refer a child charged with a summary offense to an adjudication alternative program under section 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure.

#### Credits

1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978. Amended 1986, Dec. 11, P.L. 1521, No. 165, § 9, effective in 60 days; 1995, April 6, P.L. 997, No. 11 (Spec. Sess. No. 1), § 1, effective in 60 days; 2012, Oct. 25, P.L. 1655, No. 204, § 7, effective in 90 days [Jan. 23, 2013]; 2014, Sept. 27, P.L. 2482, No. 138, § 2, effective in 60 days [Nov. 26, 2014].

#### Editors' Notes

#### SUSPENDED IN PART



<For purposes of delinquency proceedings, [Pa.R.J.C.P. No. 800](#) suspends 42 Pa.C.S.A. § 6336(b), insofar as inconsistent with Pa.R.J.C.P. Nos. 242(B)(1)(b), 406(A)(2)(b), and 512(A), which provide the district attorney shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.>

<For purposes of delinquency proceedings, [Pa.R.J.C.P. No. 800](#) suspends 42 Pa.C.S.A. § 6336(c), insofar as inconsistent with [Pa.R.J.C.P. No. 127\(A\)](#), which requires all proceedings to be recorded, except for detention hearings.>

<For purposes of dependency proceedings, [Pa.R.J.C.P. No. 1800\(2\)](#) suspends 42 Pa.C.S.A. § 6336(c) insofar as inconsistent with [Pa.R.J.C.P. No. 1127\(A\)](#) and [1242\(B\)\(2\)](#), which require all proceedings to be recorded, except for shelter care hearings.>

### BAR ASSOCIATION COMMENT

Source Note: Reenactment of act of December 6, 1972 (No. 333), § 19 (11 P.S. § 50-316).

### JT. ST. GOVT. COMM. COMMENT

This section is derived from Section 24 of the Uniform Act. Subsection (a) continues existing law which does not authorize a jury trial: *Commonwealth v. Johnson*, 211 Pa.Superior Ct. 62, 234 A.2d 9 (1969). In *Debacker v. Brainard*, 90 S.Ct. 163, 164 (1969), the United States Supreme Court dismissed the appeal as an inappropriate case to decide the issue of a juvenile's constitutional right to a jury trial.

In subsection (b) the duty is placed upon the district attorney upon the request of the court to present the evidence in support of the petition to ensure that the probation officer who must in most cases subsequently supervise the treatment of the adjudged delinquent is not also his prosecutor. Since under this act in delinquency cases the Commonwealth has a burden of proof and must go forward with the evidence, except in the simplest cases participation by a "Commonwealth" attorney is necessary.

Subsection (c) requires the recording of the proceedings or the keeping of minutes without specifying the method by which the record is made. In *Gault* the need for an adequate record as a basis for review was noted. The final orders of the court would, of course, be subject to appeal as provided in the Act of 1895, June 24, P.L. 212, § 7, as amended, 17 P.S. 181, 182, 184, 184.1 and 190 [Repealed].

In connection with subsection (d), the Comment to Section 24 of the Uniform Act notes:

"There has been some recent tendency to permit publicity [of] juvenile court proceedings on the theory that this will act as a curb to juvenile delinquency. There is little evidence to support this theory and considerable indication that it affords the hard-core delinquent the kind of recognition he wants. On the other hand, the harm it causes may be great in the case of the repentant offender.

"The section as drawn permits the court in its discretion to admit news reporters. This is frequently done with the understanding that the identity of the cases observed will not be published, a procedure generally satisfactory to the news media.

"The exception in contempt cases is probably required in *In re Oliver*, 333 U.S. 257, 68 S.Ct. 499, ..."

Notes of Decisions (60)

42 Pa.C.S.A. § 6336, PA ST 42 Pa.C.S.A. § 6336

Current through 2022 Regular Session Act 35. Some statute sections may be more current, see credits for details.

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West's Pennsylvania Administrative Code  
Title 237. Juvenile Rules  
Part I. Rules  
Subpart A. Delinquency Matters  
Chapter 1. General Provisions  
Part A. Business of Courts

237 Pa. Code Rule 139

Rule 139. Use of Restraints on the Juvenile.

Currentness

Restraints shall be removed prior to the commencement of a proceeding unless the court determines on the record, after providing the juvenile an opportunity to be heard, that they are necessary to prevent:

- 1) physical harm to the juvenile or another person;
- 2) disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or
- 3) the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom.

**Official Note:** Rule 139 adopted April 26, 2011, effective June 1, 2011.

**Credits**

Adopted June 1, 2011.

Current through Pennsylvania Bulletin, Vol. 52, Num. 26, dated June 25, 2022. Some sections may be more current, see credits for details.

237 Pa. Code Rule 139, 237 PA ADC Rule 139

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Code of Laws of South Carolina 1976 Annotated  
Title 63. South Carolina Children's Code (Refs & Annos)  
Chapter 19. Juvenile Justice Code  
Article 13. Dispositional Powers of the Court (Refs & Annos)

Code 1976 § 63-19-1435

§ 63-19-1435. Use of restraints on juveniles in court.

Effective: June 2, 2014

[Currentness](#)

(A) If a juvenile appears before the court wearing instruments of restraint, such as handcuffs, chains, irons, or straightjackets, the court in any proceeding may not continue with the juvenile required to wear instruments of restraint unless the court first finds that:

(1) the use of restraints is necessary due to one of the following factors:

(a) the juvenile poses a threat of serious harm to himself or others;

(b) the juvenile has a demonstrable recent record of disruptive courtroom behavior that has placed others in potentially harmful situations; or

(c) there is reason to believe the juvenile is a flight risk; and

(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, court personnel, law enforcement officers, or bailiffs.

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

**Credits**

HISTORY: 2014 Act No. 186 (S.440), § 1, eff June 2, 2014.

Code 1976 § 63-19-1435, SC ST § 63-19-1435

Current through 2022 Act No. 239, except Act No. 226, subject to final approval by the Legislative Council, technical revisions by the Code Commissioner, and publication in the Official Code of Laws.

West's **Tennessee** Code Annotated  
State Rules of Court

**Tennessee** Rules of Juvenile Practice and Procedure  
Delinquent/Unruly Proceedings

**Tennessee** Rules of Juvenile Procedure, Rule **204**

Rule **204**. Use of Restraints on Children in the Courtroom

Currentness

(a) Children appearing in juvenile court may be restrained if the court determines that:

- (1) The behavior of the child represents a threat to his or her safety or the safety of other people in the courtroom; or
- (2) The behavior of the child presents a substantial risk of flight from the courtroom; and
- (3) There are no less restrictive alternatives to restraints that will prevent flight or risk of harm to the child or another person in the courtroom.

(b) Any party may request to be heard as to whether or not restraints are necessary, and upon request, a judge shall make findings on the record regarding the decision to restrain the child.

**Credits**

[Adopted effective July 1, 2016.]

**Editors' Notes**

**ADVISORY COMMISSION COMMENTS**

The general statutory requirement is to “remove the taint of criminality” from children appearing in our juvenile courts.

It is not anticipated by this Commission that juvenile courts will be required to engage in an extensive fact-finding hearing prior to ruling that restraints on a particular child are appropriate. It is further understood that **Tennessee** juvenile courtrooms vary greatly in structure, availability of security personnel and their ability to handle security concerns. A few of the factors the court may wish to consider prior to ruling restraints are appropriate are:

- 1) The seriousness of the charges;
- 2) The delinquency history of the child;
- 3) Any past disruptive courtroom behavior by the child;
- 4) Any past escape attempts by the child;

5) Any security risks at a particular time in a courtroom due to structure and/or low staffing levels of security personnel.

The Commission is seeking to promote an individual determination by the court as to whether a child should be restrained in the courtroom. The focus of this rule should be balancing between the child's best interest and the safety of the courtroom. This rule only addresses children within the courtroom. It does not address transportation to and from the courthouse and to and from the courtroom.

A large number of children in delinquency proceedings have suffered neglect or abuse, and/or have physical or mental disabilities. Restraints on these children are particularly inappropriate in most circumstances.

Communication between a child and an adult attorney is often difficult, and restraints compound that problem. Children disengage from communication with their attorneys even more than adult defendants because “juveniles have limited understanding of the criminal justice system and the roles of the institutional actors within it.” *Graham v. Florida*, 560 U.S. 48, 51 (2010).

Juvenile Procedure Rule 204, TN R JUV P Rule 204

State court rules are current with amendments received through May 1, 2022. Some rules may be more current; see credits for details.

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West's Utah Code Annotated  
Title 80. Utah Juvenile Code  
Chapter 6. Juvenile Justice  
Part 6. Delinquency Proceedings

U.C.A. 1953 § 80-6-609  
Formerly cited as UT ST § 78A-6-122

§ 80-6-609. Restraint of a minor

Effective: September 1, 2021  
[Currentness](#)

(1) As used in this section, “restrained” means the use of handcuffs, chains, shackles, zip ties, irons, straightjackets, and any other device or method that is used to immobilize a minor.

(2)(a) The Judicial Council shall adopt rules that address the circumstances under which a minor may be restrained while appearing in juvenile court.

(b) The Judicial Council shall ensure that the rules consider both the welfare of the minor and the safety of the juvenile court.

(c) A minor may not be restrained during a juvenile court proceeding unless restraint is authorized by rules of the Judicial Council.

**Credits**

[Laws 2021, c. 261, § 176, eff. Sept. 1, 2021.](#)

U.C.A. 1953 § 80-6-609, UT ST § 80-6-609

Current with laws through the 2022 Third Special Session. Some statutes sections may be more current, see credits for details.

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West's Vermont Statutes Annotated  
Title Thirty-Three. Human Services  
Part 4. Juvenile Proceedings  
Chapter 51. General Provisions (Refs & Annos)

33 V.S.A. § 5123

§ 5123. Transportation of a child

Currentness

(a) The Commissioner for Children and Families shall ensure that all reasonable and appropriate measures consistent with public safety are made to transport or escort a child subject to this chapter in a manner that:

- (1) reasonably avoids physical and psychological trauma;
- (2) respects the privacy of the child; and
- (3) represents the least restrictive means necessary for the safety of the child.

(b) The Commissioner for Children and Families shall have the authority to select the person or persons who may transport a child under the Commissioner's care and custody.

(c) The Commissioner shall ensure supervisory review of every decision to transport a child using mechanical restraints. When transportation with restraints for a particular child is approved, the reasons for the approval shall be documented in writing.

(d) It is the policy of the State of Vermont that mechanical restraints are not routinely used on children subject to this chapter unless circumstances dictate that such methods are necessary.

**Credits**

2009, No. 28, § 2, eff. May 21, 2009.

33 V.S.A. § 5123, VT ST T. 33 § 5123

The statutes are current through Acts of the Adjourned Session of the 2021-2022 Vermont General Assembly (2022) effective as of June 9, 2022. Some sections might be more current; see effective date in individual sections.



West's Revised Code of Washington Annotated  
Part IV. Rules for Superior Court  
Juvenile Court Rules (Jucr) (Refs & Annos)  
Title 1. Scope and Application of Rules

Juvenile Court Rules, JuCR 1.6

RULE 1.6. PHYSICAL RESTRAINTS IN THE COURTROOM

Currentness

**(a) Use of Restraints on Juvenile Respondents.** Juveniles shall not be brought before the court wearing any physical restraint devices except when ordered by the court during or prior to the hearing. Instruments of restraint, such as handcuffs, ankle chains, waist chains, strait jackets, electric-shock producing devices, gags, spit masks and all other devices which restrain an individual's freedom of movement shall not be used on a respondent during a court proceeding and must be removed prior to the respondent's appearance before the court unless the court finds both that:

(1) The use of restraints is necessary due to one of the following factors:

(A) Present behavior of the respondent represents a current threat to his or her own safety, or the safety of other people in the courtroom;

(B) Recent disruptive courtroom behavior of the respondent has placed others in potentially harmful situations or presents a substantial risk of inflicting physical harm to himself or herself or others; or

(C) Present behavior of the respondent presents a substantial risk of flight from the courtroom; and

(2) There are no less restrictive alternatives to restraints that will prevent flight or physical harm to the respondent of another person, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

**(b) Challenge to the use of restraints.** Before or after any juvenile is ordered restrained, the court shall permit any party to be heard on the issue of whether the use of physical restraints is necessary in a particular situation or as to a particular child.

**Credits**

[Adopted effective September 1, 2014.]

JuCR 1.6, WA R JUV CT JuCR 1.6

State court rules are current with amendments received through 6/1/22. Notes of decisions annotating these court rules are current through current cases available on Westlaw. Some rules may be more current, see credits for details.