

**Recommendation and Report of the
Supreme Court Advisory Committee on
Rules of Juvenile Procedure**

RECOMMENDATION

The Supreme Court Advisory Committee on Rules of Juvenile Procedure recommends that the Supreme Court adopt the following proposed rule:

1 Rule 8.XX Routine use of restraints prohibited.

2 **8.XX(1)** Instruments of restraint, such as handcuffs, chains, irons, or
3 straitjackets, cloth and leather restraints, and other similar items, will not be used
4 on a child during a court proceeding unless a juvenile court officer determines the
5 use of restraints is necessary due to any of the following:

6 a. Recent history of behavior by the child that has placed others at risk of
7 substantial physical harm.

8 b. Documented grounds to believe the child is a substantial risk of flight.

9 c. Documented grounds to show restraints are necessary to prevent
10 physical harm to the child or another person during the court proceeding.

11 **8.XX(2)** If the juvenile court officer determines that the use of restraints is
12 necessary, the juvenile court officer or county attorney must provide notice to the
13 court and the child's attorney outlining the circumstances supporting that
14 determination prior to the child's court proceeding or as soon as practicable. If
15 notice is not given in writing, a record shall be made at the court proceeding.

16 **8.XX(3)** The child's attorney must have the right to have the court
17 reconsider the determination to use restraints prior to the court proceeding.

18 **8.XX(4)** For each subsequent court proceeding during which the juvenile
19 court officer determines restraint of the child is necessary, notice must be
20 provided pursuant to rule 8.17A(2).

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

REPORT

In February 2016, the Supreme Court was asked to consider a model rule prohibiting the routine shackling of juveniles during juvenile court proceedings. Proponents of the model rule included: Brent Pattison, Director of the Middleton Center for Children’s Rights at Drake University Law School; Jeremy N. Rosen, Executive Director ACLU of Iowa; Mike Sorci, Executive Director Youth Law Center; Joe Enriquez Henry, State Director League of United Latin American Citizens of Iowa; Betty C. Andrews, President Iowa-Nebraska NAACP; Arnold Woods, President Des Moines Branch NAACP; Jane Hudson, Executive Director Disability Rights Iowa; the Executive Directors of the National Juvenile Defender Center and the National Center for Mental Health and Juvenile Justice; and the President of the American Orthopsychiatric Association. After additional information was requested and provided, the request was forwarded to this Committee in July 2016.

The Committee consists of thirteen members appointed by the Chief Justice. Six are judges who preside over juvenile courts across the State; seven are attorneys who regularly practice in juvenile courts across the State. The Committee’s work consisted of review of materials, e-mail communications, a telephone conference call meeting, and follow-up communications. Twelve members actively participated. During the deliberative process, an alternative to the model rule was proposed, discussed, and amended. Ultimately, that proposed rule was simpler and tailored to Iowa law and the practices of Iowa juvenile courts. The substance of the original model rule and this proposed rule—that routine use of restraints on children appearing in juvenile court should be the exception, not the rule—is the same. Eleven of twelve members support the proposed rule, including all six judges.

All materials considered by the Committee, as well as a summary of the dissenting member’s comments and proposed changes to the rule, are provided with this report.

Proposed Rule 8.17A is consistent with reforms in juvenile justice occurring across the nation and in Iowa for more than a decade, primarily as a result of developments in the field of adolescent brain development.¹ Twenty-eight states and the District of Columbia have now banned or reduced automatic shackling/restraints of children in juvenile court. Reform has occurred in various ways, including legislation, rule-making by the highest courts of the state, statewide court policy, or administrative order and/or appellate opinions. The Committee carefully considered concerns about courthouse and public safety by reviewing findings from other jurisdictions where shackling has been eliminated or drastically reduced, including Miami-Dade County, New York City, Los Angeles, Maricopa County, and Albuquerque. None of these large jurisdictions have reported any increase in escapes or injuries as a result of changes in shackling/restraint policies, some of which occurred more than ten years ago.

The Committee's review of materials revealed a growing body of research that use of restraints is harmful to children and impairs the ability of children to pay attention, focus, learn, listen, and communicate effectively in court. There are evidence-based concerns that use of restraints may actually increase the likelihood that children will act out in the courtroom setting.

In February 2015, the American Bar Association passed a resolution urging all governments "to adopt a presumption against the use of restraints on juveniles in court." In July 2015, the National Council of Juvenile and Family Court Judges adopted a resolution calling for the end of indiscriminate juvenile shackling ("The NCJFCJ supports a presumptive rule or policy against shackling children; requests for exceptions should be made to the court on

¹ "[O]ver the last decade, juvenile justice has seen remarkable, perhaps watershed, change." *State v. Lyle*, 854 N.W.2d 378, 390 (Iowa 2014). "[W]hile our emerging knowledge of adolescent neuroscience and the diminished culpability of juveniles is indeed compelling, our commonsense understanding of youth, or what 'any parent knows,' has for more than thirty years supported a fundamental and virtually inexorable difference between juveniles and adults for the purposes of punishment." *Id.* at 393 (citations omitted). Unsurprisingly, changes in shackling procedures have accelerated concomitantly with reforms in the treatment of juveniles prosecuted as adults.

an individualized basis and must include a cogent rationale, including the demonstrated safety risk the child poses to him or herself or others.”). Other professional associations that support shackling reform include the Association of Prosecuting Attorneys, the National Child Traumatic Stress Network, the American Academy of Child and Adolescent Psychiatry, the American Orthopsychiatric Association, the Child Welfare League of America, and the National Center for Mental Health and Juvenile Justice.

The Committee firmly believes that it is time to end routine use of restraints on children in juvenile courts across Iowa. The proposed rule requires decisions regarding the use of restraints to be made in advance, on a case-by-case basis, communicated to counsel and the court, and subject to judicial review prior to the hearing. The rule is flexible enough to address situations when individual children may pose a risk of flight or a danger to themselves or others, yet it presumes that most children are not dangerous and will comport themselves appropriately in the courtroom. The proposed rule is consistent with ever-growing bodies of research and legal analysis recognizing the developmental, mental, intellectual, and emotional differences between children and adults. We urge the Supreme Court to adopt the proposed rule.

Respectfully submitted,

Co-chairs: Hon. Deborah Farmer Minot (6th District) and Kevin Maughan (Albia)

Members: Hon. Kellyann Lekar (1st District), Hon. Susan Christensen (4th District), Hon. Stephanie Forker-Parry (3rd District), Hon. Thomas Straka (1st District), Hon. Colin Witt (5th District), Andrea Vitzthum (Des Moines), Kate Hahn (Waterloo), Kimberly Ayotte (Des Moines), Roberta Megel (Council Bluffs), Cole Mayer (Waukee) and Kimberly Auge (Fort Madison)

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