

**AMENDMENT TO
TRIAL COURT OF THE COMMONWEALTH
COURT OFFICER POLICY AND PROCEDURES MANUAL**

The Trial Court of the Commonwealth Court Officer Policy and Procedures Manual, Chapter 4, Courtroom Procedures, Section VI, Juvenile Court Sessions is hereby amended by inserting the following:

Use of Restraints in the Juvenile Court Department

1. **Purpose.** The purpose of this subsection is to provide procedures and guidelines and promote uniformity in practice when using restraints on juveniles that appear before the Juvenile Court.
2. **Applicability.** This subsection is applicable to all Divisions of the Juvenile Court and to all proceedings within the jurisdiction of the Juvenile Court, and to any and all stages of those proceedings.
3. **Definitions.** *Juveniles* - Persons appearing before the Juvenile Court under the age of seventeen in delinquency and children in need of services cases, under the age of eighteen in care and protection cases and under the age of twenty-one in youthful offender cases; *Restraints* - Devices that limit voluntary physical movement of an individual. The only instruments of restraint approved by the Security Department are handcuffs and leg irons, also known as shackles (See chapter 11).
4. **Presumption Against Use of Restraints.** There is a presumption that restraints shall be removed from juveniles while appearing in a courtroom before a justice of the Juvenile Court.
5. **Use of Restraints on Juveniles Appearing Before the Juvenile Court.** Restraints may not be used on juveniles during court proceedings and must be removed prior to the appearance of juveniles before the court at any stage of any proceeding, unless the justice presiding in the courtroom issues an order and makes specific findings on the record that restraints are necessary because there is reason to believe that a juvenile may try to escape, or that a juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or restraints are reasonably necessary to maintain order in the courtroom. The justice presiding in the courtroom shall consider one or more of the following factors prior to issuance of any order and findings: (a) the seriousness of the present charge (supporting a concern that the juvenile had an incentive to attempt to escape); (b) the criminal history of the juvenile; (c) any past disruptive courtroom behavior by the juvenile; (d) any past behavior that the juvenile presented a threat to his or her own safety, or the safety of other people; (e) any present behavior that the juvenile represents a current threat to his or her own safety, or the safety of other people in the courtroom; (f) any past escapes, or attempted escapes; (g) risk of flight from the

courtroom; (h) any threats of harm to others, or threats to cause a disturbance, and (i) the security situation in the courtroom and courthouse, including risk of gang violence, or attempted revenge by others.

It shall be the responsibility of the court officer charged with custody of a juvenile to report any security concerns with said juvenile to the justice presiding in the courtroom. The justice presiding in the courtroom may attach significance to the report and recommendation of the court officer charged with custody of the juvenile, but shall not cede responsibility for determining the use of restraints in the courtroom to the court officer. The justice presiding in the courtroom may receive information from the court officer charged with custody of the juvenile, a probation officer, or any source which the court determines in its discretion to be credible on the issue of courtroom or courthouse security.

The decision to use restraints shall be the sole determination of the Juvenile Court justice who is presiding in the courtroom at the time that a juvenile appears before the court. No Juvenile Court justice shall impose a blanket policy to maintain restraints on all juveniles, or a specific category of juveniles, who appear before the court.

COMMENTARY

This amendment to the Trial Court of the Commonwealth Court Officer Policy and Procedures Manual prohibits the use of restraints on juveniles in the courtroom without an order and specific finding by a Juvenile Court justice that restraints are necessary because there is reason to believe that the juvenile may try to escape, or that the juvenile may pose a threat to his or her own safety, or to the safety of other people in the courtroom, or if it is reasonably necessary to maintain order in the courtroom. In some cases, the Juvenile Court justice, with information from the court officer charged with custody of the juvenile and defense counsel, will be able to decide in advance whether restraints are necessary during the appearance of a juvenile. In those cases, the justice is still be required to issue an order and make specific findings on the record that restraints are necessary.

The Supreme Court of Illinois stated over thirty years ago that “shackling . . . of the accused should be avoided if possible because: (1) it tends to prejudice the jury against the accused; (2) it restricts his ability to assist his counsel during trial; and (3) it offends the dignity of the judicial process.” *People v. Boose*, 66 Ill. 2d 261, 265-266 (1977). “The possibility of prejudicing a jury, however, is not the only reason why courts should not allow the shackling of an accused in the absence of a strong necessity for doing so. The presumption of innocence is central to our administration of criminal justice. In the absence of exceptional circumstances, an accused has the right to stand trial ‘with the appearance, dignity, and self-respect of a free and innocent man.’” *In re Derwin Stanley*, 67 Ill. 2d 33, 37 (1977). Massachusetts cases are in accord as it relates to trial of an adult defendant in a criminal case before a jury. See *Commonwealth v. Brown*, 364 Mass. 471, 475 (1973).

Shackling of juveniles in courtroom proceedings is antithetical to the Juvenile Court goals of rehabilitation and treatment. California, Connecticut, Florida, New Mexico, New York, North Dakota, North Carolina and Vermont do not shackle juveniles as a result of State Supreme Court decisions that have ruled against blanket shackling orders for juveniles, or statutes that prohibit unnecessary restraints. See *Tiffany A. v. The Superior Court of Los Angeles County*, 150 Cal. App. 4th 1344, 1362 (2007)(juvenile court could not use shackles on minors “absent an individualized determination of need”).

The United States Supreme Court has not addressed the issue of whether juveniles have the right to appear in court without shackles. The Florida Supreme Court in approving an amendment to the Florida Rules of Juvenile Procedure on December 17, 2009, found that the blanket practice of shackling young defendants was “repugnant, degrading, humiliating, and contrary to the stated primary purpose of the juvenile justice system” The court further stated that “[w]e recognize, without deciding, that indiscriminate use of restraints on children in the courtroom in juvenile delinquency proceedings may violate the children’s due process rights and infringe on their right to counsel. We agree . . . that the presumption should be that children are not restrained when appearing in court and that restraints may be used only upon an individualized determination that such restraints are necessary.”