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Office of the Chief Public Defender

Memorandum of Law in Support
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Raised Bill No. 1095
An Act Concerning the Use of Restraints on a Child who is Subject to a Delinquency Proceeding

"The courtroom's formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual's liberty through criminal punishment…The routine use of shackles…would undermine these symbolic yet concrete objectives" *Deck v Missouri,* 544 US 622, 631 (2005).

Juveniles arrested and brought into court in the state of Connecticut are currently indiscriminately shackled at the arms and legs, regardless of age, size, alleged offense, or suspected risk of flight or injury. This practice is inconsistent with state and federal law, is psychologically damaging to accused youth, and is contrary to the rehabilitative purpose of the juvenile justice system. The Office of Chief Public Defender thus requests that this legislature ban the indiscriminate shackling of juveniles immediately, and leaves the decision to restrain - in individual cases of danger to the child or the community - to the presiding judge.

Shackling of juveniles after arrest and prior to adjudication is in direct violation of state, federal, and international law. "The law has long forbidden routine use of visible shackles…it permits a State to shackle a criminal defendant only in the presence of a special need". *Deck v Missouri,* 544 US 622, 625 (2005). The Court has found that the right to appear at trial without restraint is "a basic rule embodying notions of fundamental fairness: trial courts may not shackle defendants routinely, but only if there is a particularized reason to do so". *Deck,* 544 US at 627.

The Court has also found the practice of indiscriminate shackling to be in violation of the Sixth, Eighth, and Fourteenth Amendments. In *Way v. United States*, the Court ruled that "freedom from handcuffs, shackles, or manacles of a defendant during the trial of a criminal case is an important component of a fair and impartial trial" 285 F.2d 253, 254 (1960), and later found that "a criminal defendant is entitled to not only a fair trial, but the appearance of a fair trial, and restraint not necessary to maintain order, decorum, and safety in the courtroom is violative of that principle". *Flowers v State*, 43 Wis. 2d 353, 361 (1969). Not only does shackling interfere with a defendant's right to a fair trial, but the practice also exposes the accused to unnecessary restraint, which the Court has found to be excessive (see *Furman v. Georgia* 408 US 423, 279 (1972)). The infliction of discomfort or even pain, as shackles can cause, as a punishment for past conduct is in violation of the Eighth Amendment. (See *Hope v Pelzer*, 536 US 730 (2002)). Although the Eighth Amendment does not necessarily apply to pretrial detainees, the Fourteenth Amendment's due process clause certainly does (see *Bell v Wolfish*, 441 US 520, 535 (1979)), and the Court has found in several cases that the standards for punishment protection guaranteed by the Eighth and Fourteenth Amendments are equivalent in terms of conditions of confinement, and thus both applicable: "A pretrial detainee's due process rights are at least as great as the Eighth Amendment protections available to a convicted prisoner". *Cf. Jacobs v. West Feliciana Sheriff's Dept*, 228 F.3d 388, 393 (2000).[1] And, with this in mind, "due process does not permit the use of visible restraints if the trial court has not taken account of the circumstances of the particular case". *Deck,* 544 US at 631.

Indiscriminate shackling is not only contradictory to the protections of the Constitution, but also to the basic presumption of innocence that "lies at the foundation of the administration of our criminal law". *Coffin v. United States*, 156 US 432, 453 (1895). "Visible shackling undermines the presumption of innocence and the related fairness of the fact finding process". *Deck,* 544 US at 630. Shackling also interferes with the defendant's ability to assist in the defense of his or her case[2] and introduces an irrefutable bias into the judicial process. While United States case law relevant to shackling is predominately based on the premise that it is primarily the jury that is biased by the sight of a shackled defendant[3], the argument against shackling juveniles is equally pertinent and weighty. "[A]lthough judges may be less susceptible to 'prejudice' from the appearance of a defendant in chains than a lay juror would be, a shackled juvenile defendant may nonetheless be prejudiced in

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[1] This argument was made by Lawrence Dupuis, Legal Director, ACLU Wisconsin, in a letter dated June 23, 2005, Re: Shackling of Juvenile Defendants, addressed to the Honorable Gerald P. Ptacek, Chief Judge, Racine County Circuit Court, Wisconsin.

[2] The Court has found that "one of the defendant's primary advantages of being present at the trial, his ability to communicate with his counsel, is greatly reduced when the defendant is in a condition of total physical restraint" *Illinois v. Allen,* 397 US 337 (1970), and that "[s]hackles can interfere with the accused's 'ability to communicate' with his lawyer…with a defendant's ability to participate in his own defense" *Deck,* 544 US, at 631.

[3] In *Holbrook v. Flynn*, the Court noted that "shackling and prison clothes are unmistakable indications of the need to separate a defendant from the community at large". 475 US 560 (1986).

his ability to mount a meaningful defense…shackling of juveniles can impair their ability to communicate with counsel and undermine their confidence (and thus their credibility) as witnesses in their own defense".[4]

Finally, the indiscriminate use of shackling is contradictory to basic human rights principles, which without question apply to juveniles not yet found guilty of a crime. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty states, "instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed".[5] The Court has previously turned to international law for guidance in the matters of juvenile rights, finding that the "opinion of the world community…does provide respected and significant confirmation for our own conclusions." *Roper v. Simmons*, 543 US 551, 578 (2005).[6]

The practice of shackling, in addition to being unconstitutional, is also demeaning, degrading, and at times psychologically traumatizing, especially to developing youth. "Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage" *Eddings v. Oklahoma*, 455 US 104, 115 (1982). Psychologists have found that shackling may be particularly damaging to delinquent youth. According to psychiatrist Dr. Donald Rosenblitt, "an experience like shackling…is likely to increase the possibility of future misconduct and criminality" and is "a procedure that undermines and subverts the very goals of the juvenile justice system of rehabilitation of children and protection of the public".[7] Juvenile defendants are likely to have experienced damaging experiences, such as family death, abuse, struggling in school, and/or multiple foster home placements, and thus are more vulnerable to this "inherently humiliating experience".[8] "The Court, in order to protect the mental health of most juvenile defendants, must be cognizant of the research and expert opinions of mental health professionals who contend that indiscriminately shackling children in court may cause severe psychological damage and impede the rehabilitative intentions of the Court and juvenile justice system".[9] As a psychologically traumatizing experience for delinquent youth, shackling is in direct conflict with the "rehabilitation of juveniles" which is "a

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[4] Dupuis, Re: Shackling, 2005.
[5] Article 64 (G.A. Res. 45/113, U.N. GAOR, 45th Sess., Supp. No. 49A, art. 64, U.N. Doc. A/45/49 (1990)), cited in Dupuis, Re: Shackling, 2005.
[6] In *Roper*, the Court referenced article 37 of the United Nations Convention of the Rights of the Child, which states, "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". Within the same clause of the article is the decree, "[n]o child shall be subjected to torture or other cruel, inhuman, or degrading treatment," strongly suggesting that shackling of both arms and legs is in violation of international law protecting the rights of children (Convention on the Rights of the Child, G.A. Res 44/25, UN, art. 37, 20 Nov 1989, entered into force 2 Sept 1990).
[7] Rosenblitt, Dr. Donald L., "Motion to prohibit shackling of minor child in court and other public areas absent a judicial finding of need," Legal Aid of North Carolina, filed in the matter of Rebecca C., Guilford County Court, before Chief District Court Judge Joseph E. Turner, file 04-JB-000370, 5-6.
[8] "Motion to prohibit shackling of minor child in court and other public areas absent a judicial finding of need," Legal Aid of North Carolina, filed in the matter of Rebecca C., Guilford County Court, before Chief District Court Judge Joseph E. Turner, file 04-JB-000370, 5-6
[9] Ibid, 7.

primary objective [of the Juvenile Justice Code]" *In re Hezzie R.*, 219 Wis. 2d 848, 873 (1998) and the "major purpose of the separate juvenile justice system". *State ex rel. Herget v. Circuit Court for Waukesha County*, 84 Wis. 2d 435, 451 (1978).

The indiscriminate shackling of juveniles has been criticized across the country, and is a practice that is increasingly less frequent. Legal groups including the ACLU, Legal Aid, and Public Defender offices have requested that shackling be used only in individual cases of risk of flight or injury. In September of 2006, Miami-Dade County, Florida adopted this practice, and without increasing staff, has experienced no increase in incidents of escape or violence.[10] In Wisconsin, shackling has been eliminated in every county but one – which was severely criticized by the ACLU in 2005, and agreed to eliminate the process upon implementation of courtroom security.[11] In Vermont, the Agency of Human Services adopted a policy to stop shackling and introduced a bill into the House in January 2006 to create statewide change.[12] Finally, and most recently, Legal Aid of North Carolina has filed a motion to address the issue in the Guilford County courts.[13]

The indiscriminate shackling of juveniles is a critical issue that demands the state's attention immediately. Shackling juveniles without determination of risk of flight or injury is inconsistent with our laws, with our goals for the rehabilitation of children, and with our commitment to uphold the rights of all defendants, regardless of age, gender, or alleged offense. The Office of Chief Public Defender respectfully requests that the legislature address this issue and find that juveniles demand and deserve the rights afforded to all criminally accused.

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[10] Diaz, Missy. "Ruling OKs shackling juvenile offenders in Palm Beach County courts". *South Florida Sun-Sentinel*, 2 Feb 2007. Broward County, Florida also eliminated indiscriminate shackling at the same time; data on violence or escape in this county is not available.

[11] (These measures of courtroom security included restricted access to juvenile court and alarm systems at building exits – measures that are already in place in Connecticut's juvenile courts) Tunkieicz, Jennie. "Juvenile shackling demeaning, advocates charge; ACLU, NAACP object". *The Milwaukee Journal Sentinel*, 28 Jul 2005.

[12] CFCPP Intervention Committee Meeting Minutes. Waterbury, VT, 19 Jan 2006

[13] "Debate over shackling juveniles in court". *The Herald-Sun*, 16 Feb 2007.