



Michael K. Singer

Chief Judge, Thirteenth Judicial District

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CHIEF JUDGE DIRECTIVE 15-001 (JUVENILE SHACKLING)

THIRTEENTH JUDICIAL DISTRICT, COLORADO

It has long been the practice of the Thirteenth Judicial District to require in-custody juveniles charged in juvenile delinquency proceedings to appear in handcuffs, waist restraints and leg restraints (shackles).

It is the duty of this Court to uphold and apply the United States Constitution, the Colorado Constitution and laws and standards set forth by the legislature of this state. It has long been the law in Colorado that juvenile defendants are not to be treated as criminals. "There is fundamental difference between a criminal proceeding and a delinquency proceeding, and in our view the clear legislative intent is that the handling of juvenile delinquents should be oriented towards rehabilitation and reformation, and not punishment as such." *People ex rel Terrell v. District Court*, 164 Colo. 437, 444-45, 435 P.2d 763 (1967). "The [children's] code was designed to benefit youthful offenders." *C.C.C. v. District Court*, 188 Colo. 437, 442, 535 P.2d 1117 (1975).

The principal goal of the juvenile justice system is to rehabilitate young offenders. In order to achieve this goal, the Court must continually evaluate its own practices and procedures to determine whether they effectuate rehabilitation. Across the country, courts and legislatures are grappling with the question of whether juvenile defendants should be restrained or

shackled when they appear in juvenile court. Some social science literature indicates that the practice of shackling juveniles is antithetical to positive growth, rehabilitation and development. In recognizing these findings, State Supreme Courts in California, Connecticut, Florida, New Mexico, New York, North Dakota, North Carolina, Massachusetts and Vermont have already ruled against the indiscriminate shackling of juveniles. Many districts in Colorado also restrict the indiscriminate use of shackles.

As against such concerns, traditional concerns regarding court security must also be taken into account. As our culture in general has grown increasingly disrespectful of authority and the institutions of civil society, security concerns have increased to the point where even younger parties to the court system can pose risks that were not even contemplated in decades past. Some juveniles are also impulsive in their behavior, especially when confronted with allegations of wrongdoing. Further, courts have a responsibility to ensure safety in the courtroom, to the degree reasonably practical. Finally, some courthouses in this District are not well-equipped to provide security without the use of restraints.

This Court has had the opportunity to review the legal and social science literature on the practice of indiscriminately shackling juveniles in court, other orders of various courts, and to consider courtroom security issues in light of the unique challenges posed within this Judicial District. The Court has also considered comments from a variety of court participants, including court staff, defense counsel, prosecutors, and law enforcement officials. Based upon this review, this Court makes the following findings:

- 1) It is critical to the rehabilitative goals of the juvenile justice system that adolescents develop a strong positive identity. In the midst of their identity and moral development, demeaning treatment by adults may solidify some adolescents' alienation, and send mixed messages about the purpose of the juvenile justice system, thereby undermining the rehabilitative goal of court intervention.
- 2) Indiscriminate shackling may brand and stigmatize juvenile defendants in ways that adversely affect how others regard them, and the manner in which they regard themselves.
- 3) The policy of subjecting all children and adolescents in the juvenile system to shackling without regard to their age, gender, mental health history, history of violence, or risk of runaway is contrary to many basic tenets of developmental pediatric practice.
- 4) The indiscriminate shackling of juveniles, many of whom do not present a danger to themselves or others during courtroom proceedings, may also offend the dignity of the judicial process.
- 5) Court security concerns must be appropriately balanced against the disadvantages of juvenile shackling. At times, such concerns override those disadvantages.

- 6) It is permissible for courts to engage in certain presumptions concerning dangerousness, even if these are adverse to juveniles in given circumstances. *People v. Juvenile Court*, 893 P.2d 81 (Colo.1995).

Based upon these findings, this Court hereby ORDERS:

In every juvenile delinquency case,

(A) There shall be a rebuttable presumption that all juveniles accused of, or adjudicated for offenses that would constitute Class One or Class Two Felonies, Crimes of Violence, offenses involving the use of firearms, knives, clubs, explosives, or dangerous or illegal weapons (as defined in Colorado Revised Statutes), or disarming a peace officer, (including Attempts or Conspiracies to commit any of the foregoing), and Escape or Attempted Escape, shall be restrained in court. This presumption shall also apply when the prosecution demonstrates, by means of written motion prior to the hearing, that any of the following circumstances exist:

(1) The Juvenile is currently housed in isolation for dangerous behaviors to self or others; or

(2) The Juvenile has made recent and credible threats of serious bodily harm to self or other persons while in a secured facility; or

(3) The Juvenile has mental health issues and has displayed bizarre, erratic, disruptive or combative behavior.

(4) The Juvenile is currently under investigation for Escape or Attempted Escape from a secured facility or Juvenile has a known current credible plan to escape from a secured facility or from court but is not charged;

(5) And there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the Juvenile or other persons.

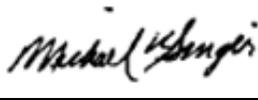
(B) In all other cases, except as provided in Section (F), there shall be a rebuttable presumption that restraints shall not be used.

(C) In the event any party, or law enforcement officials request that restraints be utilized, or not be utilized, in spite of either of the foregoing presumptions, consistent with the demands of the docket, the court shall provide the parties with an opportunity to be heard before the court orders the use of, or removal of, restraints. If restraints are ordered, the court shall make findings of fact in support of the order. The Juvenile's defense counsel may waive the Juvenile's appearance at the hearing on the use of restraints, with the consent of the Juvenile.

- (D) Should the court order restraints be used, the least restrictive form shall be used to be effective to address the security concern, consistent with sound security practices.
- (E) A finding of restraint of a juvenile is limited to that court appearance only.
- (F) The presumption against restraints shall not apply in counties where adequate means to ensure court security are lacking, due to either 1) insufficient personnel to safely supervise juveniles in the courtroom; or 2) inadequate security arrangements in the courtroom because of the physical layout of the facility; concerns with members of the audience; potential gang activity, or other security concerns representing a present threat to the proceedings, or persons in the courtroom. Under such circumstances, law enforcement officials should bring their concerns to the attention to the presiding judge as soon as practicable prior to the hearing.
- (G) Nothing shall prevent a judge or magistrate from allowing a juvenile who otherwise is shackled to have his or her writing hand free for the purpose of taking notes or signing documents.
- (H) This Order does not prevent the use of restraints that are concealed in some fashion, such as those applied under the clothing of a juvenile. Further, it does not affect the use of restraints during a jury trial, as that issue is addressed by means of existing case law.
- (I) In all events, the final determination concerning the use of restraints rests with the presiding judicial officer, who may take into account any information he or she chooses, or rule summarily if docket pressures require.
- (J) As to any juvenile who is not physically restrained while in the courtroom, law enforcement and transportation staff are authorized to remove and reattach any physical restraints used during transportation of the juvenile to and from the courtroom immediately before and after entering the courtroom, as they deem necessary for security reasons.
- (K) As used in this Order, "juvenile" means a person under the age of eighteen years at the time of the court appearance in question.

APPROVED AND ADOPTED this _____ day of May, 2015, effective June 1, 2015.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Michael Sanger", is written above a solid horizontal line.

Chief Judge