AMERICAN BAR ASSOCIATION

CRIMINAL JUSTICE SECTION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

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 in-person 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.

REPORT

Children in juvenile court should be restrained in only the rarest of circumstances. Yet youth who are in custody, whether for an initial appearance, adjudication of guilt, or post-conviction hearing, are routinely brought before the court in leg irons, handcuffs, and belly chains. Indeed, the indiscriminate shackling of youth in the nation's juvenile courts has become widespread in recent years. Shackling interferes with the attorney-client relationship, chills notions of fairness and due process, undermines the presumption of innocence, and is contrary to the rehabilitative ideals of the juvenile court.[1]

The overwhelming majority of juveniles are in court for non-violent offenses.[2] In 2011, the juvenile violent crime arrest index rate was the lowest in three decades.[3] Yet in many courts across the country, all youth, regardless of their alleged offense, are shackled in juvenile proceedings. Some jurisdictions extend this to children charged with status offenses – non-criminal misbehavior.[4]

In response to the phenomenon of blanket policies shackling children and youth in court, a number of jurisdictions have sharply limited the practice, whether by judicial decision, legislation, or court rule-making.

North Carolina, Pennsylvania, and South Carolina have restricted the practice by statute.[5] Florida, New Mexico, and Washington State have curtailed the practice through the rule-making authority of those states' highest courts, and Massachusetts has done so through a statewide official court policy.[6] In terms of court decisions, Illinois ended the

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[1] The practice has been roundly criticized. *See,* Perlmutter, *Unchain the Children: Gault, Therapeutic Jurisprudence and Shackling*, 9 Barry Law Rev. 1 (2007) (arguing that blanket shackling policies stigmatize and harm children, violate due process norms and vitiate the aims of the juvenile justice system); Zeno, *Shackling Children During Court Appearances: Fairness and Security in Juvenile Courtrooms,* 12 J. Gender Race & Just. 257 (2009) (asserting that shackling juveniles is antithetical to the twin goals of rehabilitation and treatment in the juvenile court and harmful to children); Kim McLaurin, *Children in Chains: Indiscriminate Shacking of Juveniles,* 38 WASH. U. J. L. & POL'Y 213 (2012) (noting that U.S. Supreme Court jurisprudence distinguishes youthful offenders from their adult counterparts, intensifying the need for scrutiny of the practice and arguing the absence of individualized determinations of necessity is unconstitutional).

[2] OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, STATISTICAL BRIEFING BOOK, JUVENILE COURT CASES, 2011, http://ojjdp.gov/ojstatbb/court/qa06201.asp?qaDate=2011 (last visited Sept. 19, 2014).

[3] CHARLES PUZZANCHERA, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, JUVENILE ARRESTS 2011 6 (Dec. 2013), *available at* http://www.ncjj.org/Publication/Juvenile-Arrests-2011.aspx.

[4] For example, in considering its rule prohibiting a blanket policy of shackling youth in the state's juvenile courts, the administrative office of the courts there noted that juvenile offenders and status offenders were "routinely shackled" in juvenile court in a majority of the counties. Cover sheet, Proposed Rule JuCR 1.6, available at www.courts.wa.gov/ under "Rules."

[5] N.C. Gen. Stat. § 7B-2402.1 (2010); 42 Pa. Cons. Stat. § 6336.2 (Pennsylvania has also restricted the practice via court rule, codified as Pa.R.J.C.P 139); S.B. 440, 120th Gen. Assemb., Reg. Sess. (S.C. 2014).

[6] Fla. R. Juv. P. 8.100(b) (2011); *In re* Use of Physical Restraints on Respondent Children, No. CS-2007-01, (N.M. Sept. 19, 2007); Wash. Juv. Ct. R. 1.6; Mass. Trial Court of the Commonwealth Court Officer Policy & Procedures Manual ch. 4, § 6 (2010).

practice in 1977.[7] Courts in Oregon, North Dakota and California have followed suit.[8] Many localities are beginning to institute their own rules to curtail the practice.[9]

These measures all employ a presumption against the use of restraints on young people in their courts. Generally, they provide that restraints should be employed as the least restrictive alternative means available to the court, and imposed only to prevent harm to the juvenile or others, or to prevent flight.[10] The juvenile, through counsel, must be given an opportunity to challenge the imposition of restraints.

There are compelling reasons to end the automatic shackling of juveniles, and the American Bar Association should exercise leadership in bringing about needed reforms to halt this practice.

The automatic shackling of children and adolescents is contrary to law.

The automatic shackling of youth violates notions of fairness and due process. Under the United States Constitution, the use of visible restraints imposed on adult criminal defendants at trial and sentencing may only be employed "in the presence of a special need."[11] This requires the state to demonstrate a safety interest specific to a particular trial, such as potential security problems or a risk of flight from the courtroom.[12] This principle dates at least as far back as British common law. The United States Supreme Court in *Deck v. Missouri* concluded that the common law history on shackling reflected "a basic element of 'due process of law' protected by the Federal Constitution."[13] Blackstone's 1769 *Commentaries on the Laws of England* noted that "it is laid down in our ancient books" that a defendant "must be brought to the bar without irons, or any manner of shackles or bonds; unless there be evident danger of an escape."[14] Indeed, the main rationale against shackling at common law holds constant today: "If felons come in judgment to answer,…they shall be out of irons, and all manner of bonds, so that their pain shall not take away any manner of reason, nor them constrain to answer, but at their free will."[15]

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[7] *In re Staley*, 364 N.E.2d 72 (Ill. 1977).
[8] *In re Millican*, 906 P.2d 857 (Or. Ct. App. 1995); *In re R.W.S.*, 728 N.W.2d 326 (N.D. 2007); *Tiffany A. v. Superior Court*, 150 Cal.App.4th 1334 (2007).
[9] Localities include Boulder, Colorado; Maricopa and Pima Counties in Arizona; and Anchorage, Alaska.
[10] For example, Florida requires that restraints be removed in the courtroom, unless they are necessary to prevent physical harm to the child or another person; the child has a recent history of disruptive behavior which is potentially harmful; or there is a founded belief of a substantial risk of flight. Fl. R. Proc. 8.100. Pennsylvania and South Carolina statutes are to the same effect. 42 Pa. Cons. Stat. § 6336.2; S.C. Code Ann. § 63-19-1435 (2014 Supp.).
[11] *Deck v. Missouri*, 544 U.S. 622, 625 (2005).
[12] *Id.* at 629. *See also Holbrook v. Flynn*, 475 U.S. 560, 568-569 (1986).
[13] *Deck*, 544 U.S. at 626.
[14] *Id.* Another contemporaneous source held similarly that "a defendant 'ought not be brought to the Bar in a contumelious Manner; as with his Hands tied together, or any other Mark of Ignominy and Reproach ... unless there be some Danger of a Rescous [rescue] or Escape.'" *Id.* at 630-31, quoting 2 W. Hawkins, Pleas of the Crown, ch. 28, § 1, p. 308 (1716–1721) (section on arraignments)).
[15] *Id.* at 626, quoting 3 E. Coke, Institutes of the Laws of England *34.

It is clear that adults at trial should be shackled only "as a last resort."[16] The same can be said for children in delinquency court. As the Supreme Court observed in *In re Gault*, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[17] The *Gault* Court highlighted the importance of "the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process" of juvenile court procedure.[18] The anti-shackling principles espoused in *Deck* apply with equal—if not greater—force for juveniles.

Fairness at trial starts with the most fundamental tenet of American criminal jurisprudence—the presumption of innocence.[19] Shackling undermines the presumption of innocence and denigrates the factfinding process.[20] As the Supreme Court held in *Deck*, "[it] jeopardizes the presumption's value and protection and demeans our justice for an accused without clear cause to be required to stand in a courtroom in manacles or other restraints while he is being judged."[21] An accused juvenile also has "the right to stand trial 'with the appearance, dignity and self-respect of a free and innocent man.'"[22] While *Deck* applies to jury trials, its underlying principles are fundamental across all proceedings, including those with judicial factfinders. "[J]udges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder."[23] Judges themselves have rejected the argument that they are insulated from prejudice: "To make this assumption is to degrade a defendant's right to be presumed innocent. Visible shackles give the impression to *any* trier of fact that a person is violent, a miscreant, and cannot be trusted," wrote New York's highest jurist.[24] Moreover, other parties in court and members of the public are prejudiced by the sight of a defendant in shackles. Although the public does not determine a person's guilt or innocence, courts cannot "ignore the way the image of a handcuffed or shackled defendant affects the public perception of that person."[25]

A youth who must defend himself in court should not also have to struggle with "a disheartening suspicion that he is presumed guilty."[26] One clinical law professor recounts the experience of a youth client whose request to be unchained was denied—"Our client has a difficult time believing that the presumption of innocence still cloaks him when all he can feel are chains."[27] Simply put, youth in juvenile court are entitled to a presumption of innocence, and indiscriminate shackling undermines this presumption.

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[16] *Illinois v. Allen*, 397 U.S. 337, 344 (1970).
[17] 387 U.S. 1, 13 (1967).
[18] *Id.* at 26.
[19] *Deck*, 544 U.S. at 626, citing *Coffin v. United States*, 156 U.S. 432, 453 (1895).
[20] *Id.* at 630.
[21] *Id.*
[22] *In re Staley*, 364 N.E.2d 72, 73 (Ill. 1977), citing *Eaddy v. People*, 174 P.2d 717, 719 (Colo. 1946).
[23] *People v. Best*, 979 N.E.2d 1187, 1189 (2012).
[24] *Id.* at 1190 (Lippman, J., dissenting) (agreeing with the majority's rule but rejecting the majority's finding of harmless error).
[25] *Id.* at 1189 (majority opinion).
[26] *In re C.B.*, 898 N.E.2d 252, 271 (Ill. 2008) (Appleton, J., dissenting).
[27] Mary Berkheiser, *Unchain the Children*, NEV. LAW. MAG. 30 (June 2012), *available at* http://nvbar.org/articles/content/deans-column-unchain-children.

The clear implication of the practice is that the child is being punished through the use of shackles and other restraints prior to an adjudication of guilt. Almost universally, the decision to employ shackles or other restraints is made by court security staff – a law enforcement function. Using shackles as punishment prior to trial is a deprivation of due process of law.[28] "Liberty from bodily restraint always has been recognized as the core of the liberty protected by the Due Process Clause from arbitrary governmental action."[29]

Shackling interferes with juveniles' ability to participate in their own defense.

Shackling greatly impedes one's ability to consult or confer with counsel, take notes, or even take the stand in one's own defense. Deck recognizes this.[30] Shackled children find it physically difficult—and oftentimes impossible—to hold papers they are asked to review in court, or provide counsel with notes. The inability to effectively communicate with counsel is a problem of constitutional significance. *Gault* guarantees juveniles the right to counsel. The Supreme Court recently acknowledged that communication between juveniles and counsel is often strained, even where shackles are not an issue.[31]

Difficulty interacting with counsel puts juveniles at a considerable disadvantage in adjudicatory proceedings. These relations are particularly strained because "[j]uveniles mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it."[32] Furthermore, "[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel…all can lead to poor decisions by one charged with a juvenile offense."[33] Restraints can only exacerbate this already fragile relationship. As one shackled youngster has said:

> It just made my attorney not like me. I felt like he wasn't even trying to work with me or reduce my time. I felt like everybody was looking at me like I was a monster. I was so worried about how everyone was seeing me in shackles that I couldn't concentrate because it made me feel like a monster. I felt unfairly treated. I was unable to focus.[34]

Discussing the impact of the psychological weight of the shackles, an Illinois appellate judge observed, "[a]nyone who can sit in chains with no diminution of courage and

[28] *Bell v. Wolfish*, 441 U.S. 520 (1979).
[29] *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982), citing *Greenholtz* v. *Nebraska Penal Inmates*, 442 U.S. 1, 18 (1979).
[30] *Deck v. Missouri*, 544 U.S. 622, 631 (2005).
[31] *See Graham v. Florida*, 560 U.S. 48, 78 (2010).
[32] *Graham v. Florida*, 560 U.S. 48, 78 (2010).
[33] *Id.*
[34] Letter from C.O. to Washington State Supreme Court, Re: Proposed JuCR 1.6 – Physical Restraints in the Courtroom (on file with the Campaign Against Indiscriminate Juvenile Shackling (hereinafter CAIJS)).

confidence has a thicker hide than the common run of humanity."[35] This is a lot to expect of a child in trouble with the law.

The practice of automatically shackling children and adolescents is contrary to the purpose of the juvenile justice system.

Our nation's courts must communicate deliberation, decorum and dignity. Discussing the practice of shackling the accused, and limiting its use, at least as applied to adult offenders, the United States Supreme Court observed:

> 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. And it reflects a seriousness of purpose that helps to explain the judicial system's power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve.[36]

These considerations are even more important in the state's juvenile courts. Their purpose includes the goal of rehabilitation, recognized in *Gault*.[37] Limiting the imposition of restraints on children only to those who truly present a risk of harm or flight will further ensure the dignity of the juvenile courts. Indeed, as one court recognized, "allowing a young person who poses no security hazard to appear before the court unshackled, with the dignity of a free and innocent person, may foster respect for the judicial process."[38]

In contrast, indiscriminate shackling disserves this purpose. After extensive hearings before the Florida Supreme Court conducting an inquiry into the practice as a part of its rule-making authority, the court said:

> [W]e find the indiscriminate shackling of children in Florida courtrooms… repugnant, degrading, humiliating, and contrary to the stated primary purposes of the juvenile justice system and to the principles of therapeutic justice, a concept which this Court has previously acknowledged.[39]

In the wake of the Kids for Cash scandal revealing the abhorrent treatment of court-involved children in Luzerne County, Pennsylvania, the Pennsylvania Supreme Court acted on recommendations for reform to enact a rule limiting the use of shackles.[40] The court found shackling practices to be contrary to the philosophy of balanced and

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[35] *In re C.B.*, 898 N.E.2d 252, 271 (Ill. 2008) (Appleton, J., dissenting).
[36] *Deck v. Missouri*, 544 U.S. 622, 631 (2005).
[37] *In re Gault*, 387 U.S. 1, 14 (1967).
[38] *In re Millican*, 906 P.2d 857 (Or. Ct. App. 1995).
[39] *In re Amendments to Fla. Rules of Juvenile Procedure*, 26 So.2d 552, 556 (Fl. 2009).
[40] The rule was reinforced by statute. *See supra* note 3.

restorative justice.[41] The practices further undermined "the goals of providing treatment, supervision, and rehabilitation to juveniles."[42] The Chief Justice of the Massachusetts Juvenile Court similarly found juvenile shackling to be antithetical to these goals.[43] The routine use of restraints in juvenile proceedings undermines the goals and objectives of family courts across the country.

The automatic shackling of children and adolescents is contrary to their interests.

Indiscriminate and routine shackling of youth in the juvenile court contradicts the central tenets of *Gault*, which reflect a modern understanding of therapeutic justice. It should be clear to even a casual observer in a courtroom that the use of shackles on children as young as nine or ten, or even those age fourteen to sixteen, is degrading. A psychologist with substantial experience working with children involved in the juvenile justice system warns that treating children in this way leads to shame and humiliation.[44] Indeed, experts and medical professionals agree that "[p]ublic shackling is an inherently humiliating experience for children to endure."[45] Compounding this is the fact that "children and adolescents are more vulnerable to lasting harm from feeling humiliation and shame than adults."[46] The nature of shackling necessarily signals that child is dangerous, thereby increasing the likelihood that the child will be treated as dangerous by others.

A decade ago, the Supreme Court recognized in *Roper v. Simmons* that childhood is a thing apart from adulthood, informed not only by common sense but science.[47] As well, science should inform the decision whether to shackle children in court.

The latest research indicates that the teenage years are crucial to identity development and self-esteem.[48] A stable sense of self is critical to the development of moral and ethical values and the achievement of long-term goals.[49] "Shackling is inherently shame producing."[50] Feelings of shame and humiliation may inhibit positive

[41] *Adoption of New Rule 139 of the Rules of Juvenile Court Procedure*, Pennsylvania Supreme Court, No. 527, April 26, 2011.
[42] *Id*.
[43] *Id*. at 3.
[44] Affidavit of Dr. Marty Beyer, (Aug. 2006) (on file with CAIJS).
[45] Affidavit of Dr. Donald L. Rosenblitt, *In the Matter of Rebecca C*., No. 04-JB-000370, Motion to Prohibit Shackling of Minor Child, Ex. 1 (2007).
[46] Affidavit of Dr. Marty Beyer, (Aug. 2006) (on file with CAIJS).
[47] 543 U.S. 551, 569 (2005).
[48] *See, e.g.*, Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court, in* YOUTH ON TRIAL 9, 27 (Thomas Grisso & Robert G. Schwartz eds., 2000); ELISABETH SCOTT & LAURENCE STEINBERG, RETHINKING JUVENILE JUSTICE 52 (2008); Affidavit of Dr. Laura Vanderbeck, Jan. 8, 2007 (on file with CAIJS).
[49] *See Adolescent Development, Module 1* of TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM 11-17 (National Juvenile Defender Center & Juvenile Law Center eds., 2009).
[50] Email from Dr. Rosenblitt to David A. Shapiro, (Sept. 12, 2014, 13:06 EDT) (on file with CAIJS).

self-development and productive community participation.[51] Shackling doesn't protect communities. It harms them.

At Midyear 2014, in resolution 109B, the American Bar Association passed a resolution calling for "the development and adoption of trauma-informed, evidence-based approaches and practices on behalf of justice system-involved children." Ending the indiscriminate imposition of restraints on children alleviates the impact of trauma and its legal ramifications on children and their families.

The automatic shackling of children and adolescents is unnecessary.

The most common argument in favor of indiscriminate shackling focuses on courtroom safety and order.[52] Shackles are not necessary, however, to maintain either safety or order—both of which can be achieved with less restrictive means. These include, for instance, the presence of court personnel, law enforcement officers, and bailiffs, or locking the courtroom door to deter flight.[53]

Florida courts have successfully relied on shackling alternatives to ensure courtroom safety and order. In the two years after Florida's rule took effect, only one instance of disorderly behavior was reported in the entire state: a boy struck his stepfather, a registered sex offender who had been convicted three times for lewd and lascivious acts on the boy.[54] Before the Florida Supreme Court eliminated indiscriminate shackling statewide in 2009, Miami-Dade County halted the practice in 2006.[55] Five years later, a study revealed that "[s]ince then, more than 20,000 detained children have appeared before the court unbound….In that time, no child has harmed anyone or escaped from court."[56] This success has been replicated in many other jurisdictions across the country.[57]

Nor is the requirement of an opportunity of the juvenile to be heard on the decision to impose restraints burdensome or impractical. To begin with, the opportunity for the juvenile to be heard is satisfied in practice by giving counsel for the youngster to object whether or not the child is present in court. In Massachusetts, where the imposition of restraints is regulated by administrative rule, court security staff is required to notify the presiding judge of any "security concerns," and counsel for the juvenile is given an

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[51] Affidavit of Dr. Laura Vanderbeck, Jan. 8, 2007 (on file with CAIJS).
[52] *See, e.g.*, Comm. on Crim. Justice, *A Policy Analysis of Shackling Youth in Florida's Juvenile Courts*, S. 2010-110, at 7–9 (2009), *available at* http://archive.flsenate.gov//////_//cj.pdf (reporting the views of prosecutors, public defenders, sheriffs, juvenile judges, and Florida's juvenile justice agency on whether to prohibit indiscriminate shackling throughout the state).
[53] *See* Fla. R. Juv. P. 8100(b) (2013) (effective Jan. 1, 2010) (providing examples of less restrictive means).
[54] Carlos J. Martinez, *Unchain the Children: Five Years Later in Florida* 6 (2011), http://www.pdmiami.com//___.pdf.
[55] Bernard P. Perlmutter, *"Unchain the Children":* Gault, *Therapeutic Jurisprudence, and Shackling*, 9 BARRY L. REV. 1, 23 (2007).
[56] Martinez, *supra* note 54, at 1.
[57] Advocates in Arizona, Colorado, Massachusetts, Nevada, Utah, and numerous other locales report a lack of escape attempts and physical violence perpetuated by unshackled youth in courtrooms.

opportunity to challenge the decision at a sidebar prior to the call of the case.[58] In Florida, if the trial court is considering the imposition of restraints, counsel for the juvenile may be heard before the youngster is brought to the courtroom, or the juvenile may enter the courtroom in restraints when the motion to remove them is taken up.[59]

Nothing in this resolution is meant to prohibit the reasonable use of restraints or other security measures in the transport of children to and from the courtroom by security personnel. Moreover, the resolution does not mean that a juvenile may never be restrained with the use of hardware. Instead, the resolution intends that such instances in the nation's courts be rare. The trend in courts around the country facing this question insists on the exercise of fact-specific discretion in determining when to require restraints on juveniles, taking into account:

> [T]he accused's record, temperament, and the desperateness of his situation; the security situation at the courtroom and the courthouse; the accused's physical condition; and whether there was an adequate means of providing security that was less prejudicial.[60]

Thus, this resolution adequately and accurately reflects this trend, and leaves intact effective measures to ensure the security of our nation's courts. Shackling of youth need and should not play a major role in this pursuit.

CONCLUSION

This resolution promotes fairness and the rule of law in juvenile proceedings, provides for the imposition of restraints when needed for safety, protects the due process rights and well-being of youth, and upholds the rehabilitative principles of juvenile courts. Shackling of children in the courtroom without compelling justification is an inherently stigmatizing and traumatic practice that compromises the presumption of innocence. Wholesale reliance on shackles in the juvenile court without an individualized determination that they are actually necessary is contrary to law, undermines the purpose of the juvenile court, and is inimical to the interests of children and youth in conflict with the law.

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[58] *See note 5, supra.*
[59] Report of Robert W. Mason, Director, Florida Fourth Judicial Circuit Public Defender, Juvenile Division, September 19, 2014 (phone interview).
[60] *In re R.W.S.*, 728 N.W.2d 326, 331 (N.D. 2007).

Responsible for improving the administration of justice in across the country, the American Bar Association is uniquely positioned to advocate the reform of this egregious practice, in favor of a rule which promotes the integrity of the courts and the dignity of citizens before them—including the youngest.

Respectfully submitted,

Jim Felman and Cynthia Orr, Chairs
Criminal Justice Section
February 2015

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GENERAL INFORMATION FORM

Submitting Entity: Criminal Justice Section

Submitted By: Jim Felman and Cynthia Orr, Chairs

1. Summary of Resolution

The resolution urges federal, state and local governments and agencies to restrict the use of restraints on juveniles in court to those juveniles who present a risk of harm or flight, to employ a presumption against the use of restraints in court, and to give the juvenile an opportunity to be heard on whether restraints are the least restrictive alternative. The resolution does not seek to impose limitations on security measures for transporting juveniles to and from the courtroom.

2. Approval by Submitting Entity.

This resolution was approved by the Criminal Justice Section Council at its Fall Meeting on October 25, 2014.

3. Has this or a similar resolution been presented to the House or Board previously?

No similar resolution has been submitted previously to the House of Delegates or Board of Governors.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

ABA Criminal Justice Standard 6-3.2 relating to Special Functions of the Trial Judge requires the court maintain security in the courtroom with due deference to dignity and decorum, accomplished in the least obtrusive and disruptive manner, minimizing any adverse impact. ABA Criminal Justice Section Standard 23-5.9 relating to Treatment of Prisoners allows for the use of restraints as a security precaution during transfer or transport, using the least restrictive form of restraint appropriate and only as long as the need exists. These standards would be unaffected. There is no relevant ABA Juvenile Justice Standard. One principle of those standards, however, is that the least restrictive alternative should be the choice of decision makers for intervention in the lives of juveniles. Flicker, *IJA/ABA Juvenile Justice Standards: A Summary and Analysis*, (Ballinger Publishing Co. 1982) p. 23.

5. What urgency exists which requires action at this meeting of the House?

Many jurisdictions are now considering limitations on the use of restraints in court proceedings involving juveniles, and the ABA is uniquely positioned to provide guidance to federal, state and local jurisdictions on the use of such restraints.

6. Status of Legislation

This resolution does not support a specific piece of legislation.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

Adoption of the policy will allow the ABA to support legislation or rule making at the federal, state and local levels to impose restrictions on the use of restraints on juveniles in court, and members will work with national and local groups seeking to reform the practice of the indiscriminate use of restraints on juveniles in the courts.

8. Cost to the Association (Both direct and indirect costs)

Adoption of the resolution will not result in expenditures by the Association.

9. Disclosure of Interest

We are not aware of potential conflicts of interest related to this resolution.

10. Referrals.

At the same time this policy resolution is submitted to the ABA Policy Office for inclusion in the 2015 Midyear Agenda Book for the House of Delegates, it is being circulated to the chairs and staff directors of the following ABA entities:

Standing Committees
American Judicial System Standing Committee
Ethics and Professional Responsibility
Federal Judiciary
Legal Aid and Indigent Defendants
Professionalism

Special Committees and Commissions
Children and the Law
Coalition on Racial and Ethnic Justice
Commission on Domestic and Sexual Violence
Commission on Youth at Risk
Death Penalty Representation Project
Hispanic Legal Rights and Responsibilities
Sexual Orientation and Gender Identity

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Sections, Divisions
Government and Public Sector Lawyers Division
Individual Rights and Responsibilities
Family Law
Judicial Division
Litigation
State and Local Government Law
Young Lawyers Division

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution urges federal, state and local governments and agencies to restrict the use of restraints on juveniles in court to those juveniles who present a risk of harm or flight, employing a presumption against the use of restraints in court, and giving the juvenile an opportunity to be heard on whether restraints are the least restrictive alternative. The resolution does not seek to impose limitations on security measures for transporting juveniles to and from the courtroom.

2. Summary of the Issue that the Resolution Addresses

The overwhelming majority of juveniles are in court for non-violent offenses. In 2011, the juvenile violent crime arrest index rate was the lowest in three decades. Yet in many courts across the country, all youth, regardless of their alleged offense, are shackled in juvenile proceedings. Some jurisdictions extend this to children charged with status offenses – non-criminal misbehavior.

3. Please Explain How the Proposed Policy Position will address the issue

This resolution promotes fairness and the rule of law in juvenile proceedings, provides for the imposition of restraints when needed for safety, protects the due process rights and well-being of youth, and upholds the rehabilitative principles of juvenile courts. Shackling of children in the courtroom without compelling justification is an inherently stigmatizing and traumatic practice that compromises the presumption of innocence. Wholesale reliance on shackles in the juvenile court without an individualized determination that they are actually necessary is contrary to law, undermines the purpose of the juvenile court, and is inimical to the interests of children and youth in conflict with the law.

4. Summary of Minority Views

None are known.