

Beth Rosenberg
Children’s Action Alliance
4001 North 3rd Street, Suite 160
Phoenix, AZ 85012
602-266-0707, ext 206
broseberg@azchildren.org

**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of:)
) Supreme Court No. R-15-0036
)
PETITION TO CREATE A) **Comment to Petition**
JUVENILE MECHANICAL)
RESTRAINTS RULE,)
ARIZONA RULES OF PROCEDURE)
FOR THE JUVENILE COURT)
_____)

Pursuant to Rule 28(D), Rules of the Supreme Court, Beth Rosenberg respectfully submits this comment for the Court’s consideration on behalf of Children’s Action Alliance. Children’s Action Alliance is a non-profit, non-partisan child advocacy organization that works to improve children's health, education and security in Arizona through information and action.

I. Reasons Proposed Rule Amendments Should Be Adopted

Children's Action Alliance supports the proposed Rule of Procedure for the Juvenile Court, R-15-0036, to provide for a presumption that children shall be free of mechanical restraints when appearing in or while in the courthouse of the Superior Court, Juvenile Division, unless there is no less restrictive alternatives to prevent flight or physical harm of another person, and that any decision to utilize mechanical constraints shall be a judicial determination.

In review of the proposed rule and the recommendations submitted by David K. Byers on behalf of the Juvenile Court Directors and the Presiding Juvenile Court Judges, we remain supportive of the proposed Rule submitted by Christina Phillis on behalf of the Arizona Public Defender's Association, and find the recommendations from Mr. Byers to be lacking in several critical areas.

1. Mr. Byers' recommendation does not fully embrace the recommendations of the National Council of Juvenile and Family Court Judges' (NCJFCJ) Resolution that was submitted as Appendix B. This resolution cites the harm imposed on children when shackles are utilized in court and recommends that judges should have the ultimate authority to determine whether or not a child needs to be shackled in the courtroom. Mr. Byers' recommendation is that this decision be left to the county probation departments.
2. Mr. Byers' recommendation does not take into account children brought to the court by the Arizona Department of Juvenile Corrections (ADJC). I have personally witnessed a child who was small in stature in the courtroom with hands and feet shackled while being escorted and supervised by two very burley ADJC officers. This child was dually adjudicated, thus clearly having a history of trauma that the use of shackles just exacerbated. To my knowledge, this child was neither a flight nor security risk. It was clearly just routine operating procedure on the part of ADJC that the court did not question.

3. Mr. Byers' recommendation for an amendment to the Detention Operations Standards allows for the use of mechanical restraints on condition of "... the presence or absence of court personnel assigned to provide security." (see Appendix A, Amendment E.3.). This exception allows a child to be harmed by the use of shackles based on the court's personnel decisions as opposed prioritizing what is best for the child.

It is recommended that the following compromises be considered in the Court Rule and the proposed Juvenile Detention Standards.

1. The court has supported and seeks discretion in decision-making in criminal and delinquency matters and in the spirit of the NCJFCJ resolution, it is recommended that the court have final decision-making authority when Probation Officers make a determination that shackles are warranted. The Court Rule and Juvenile Detention Standards could allow for probation departments to make initial decisions regarding the use of mechanical restraints. A Court Rule, however, should be adopted that provides:

"UPON REQUEST OF THE JUVENILE, THE COURT SHALL HOLD A HEARING FOR THE SOLE PURPOSE OF WHETHER OR NOT TO ALLOW THE USE OF MECHANICAL RESTRAINTS."

The proposed revised Detention Standards could be amended to read:

E. Mechanical Restraints.

....

4. The court may determine whether OR NOT to restrain any juvenile BASED ON A RECOMMENDATION OF THE PROBATION OFFICER OR due to a threat to the safety, security or control of the court room.

2. The court should have the authority and obligation to make decisions upon the

use of shackles for children in the courtroom from ADJC. The court's decision in this matter should follow the guidelines in the proposed Court Rule by Christina Phillis.

3. It is recommended that the proposed revised Juvenile Detention Standards delete the allowance for the use of mechanical restraints based on the absence of court personnel. The proposed detention standards should be amended to read:

E. Mechanical Restraints.

...

3. Exceptions shall be determined on an individualized basis by the detention administrator or designee or by the lead juvenile detention officer if risk of flight or harm elevates during transport. Exceptions must have a documented rationale of the demonstrated safety risk the child poses to themselves or others, AND the risk of flight. , and the presence or absence of court personnel assigned to provide security. If a decision has been made that the use of mechanical restraints is necessary they shall be the least restrictive option necessary to maintain safety, security and control.

RESPECTFULLY SUBMITTED this _____ day of May, 2016

Beth Rosenberg, LCSW

On behalf of Children's Action Alliance