

INTRODUCTION

The Supreme Court of Pennsylvania has adopted new Rule 139 with this Recommendation. This new rule is effective June 1, 2011.

EXPLANATORY REPORT APRIL 2011

The purpose of this rule is to eliminate shackling during a court proceeding in almost every case. Only in the few extreme cases should such restraints be utilized.

The Committee considered this issue in light of the Report from the Interbranch Commission on Juvenile Justice (ICJJ). In the ICJJ Report, the Commission asked the Juvenile Justice Delinquency Prevention Committee of the Pennsylvania Commission on Crime and Delinquency to perform a study to reduce and if possible eliminate shackling in Pennsylvania's juvenile courtrooms.¹

The Committee believes it is appropriate to address the use of restraints in the courtroom and to limit the use of such restraints by Rule of Court, especially in those cases where the juvenile does not pose a risk. The Committee wants to ensure that the routine use of excessive restraints is discouraged because it is contrary to philosophy of balanced and restorative justice and undermines the goals of providing treatment, supervision, and rehabilitation to juveniles. However, there are some circumstances when juveniles should be restrained to protect themselves and others and to maintain security in the courtroom.

Pursuant to paragraphs (1) through (3), restraints may be used if it is determined that they are necessary to prevent: 1) physical harm to the juvenile or another person; 2) disruptive courtroom behavior; or 3) the juvenile from fleeing. In all three circumstances, there should be evidence that the juvenile has a history of such behavior or there are other factors present that make the juvenile very likely to pose a risk.

The Committee believes that the juvenile should be given an opportunity to comment prior to the use of restraints and that the court should make its findings on the record if restraints are utilized.

¹ Interbranch Commission on Juvenile Justice, *Report*, May 2010, at page 54.

It is also important to note that this rule only affects the use of restraints in court proceedings. Sheriffs, probation officers, and other persons providing transportation of juveniles to and from detention facilities, placement facilities, and other locations may be governed by internal procedures and policies, including insurance policies, to use restraints during the transportation of juveniles. The use of restraints in those situations is governed by local policies of operation.