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IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) No. R-15-0036
)
) COMMENT OF ARIZONA
Petition to Create a Juvenile Mechanical)	ATTORNEYS FOR CRIMINAL
Restraints Rule, Arizona Rules of) JUSTICE REGARDING PETITION
Procedure for the Juvenile Court) TO CREATE A JUVENILE
) MECHANICAL RESTRAINTS
) RULE
)
)

Pursuant to Rule 28 of the Arizona Rules of Supreme Court, Arizona Attorneys for Criminal Justice (“AACJ”) hereby submits the following comment to the above-referenced petition to adopt the proposed Rule regarding Juvenile Restraints (the “Petition”) submitted by the Arizona Public Defender Association.

AACJ, the Arizona state affiliate of the National Association of Criminal

Defense Lawyers, was founded in 1986 to give a voice to the rights of the criminally accused and to those attorneys who defend the accused. AACJ is a statewide not-for-profit membership organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

The Maricopa County Public Defender's Office joins this comment in favor of the petition. MCPD is the largest indigent defense firm in the State of Arizona with over 200 deputy public defenders providing indigent legal services in the Maricopa County Justice and Superior Courts. MCPD represents juveniles in adult court proceedings and has an ongoing interest in the treatment of juveniles as part of its mission. MCPD has reviewed this comment and joins in its position and reasoning.

For the reasons that follow, AACJ and MCPD urge the court to adopt the Proposed Rule. Although the Petition did not suggest a location within the Rules for its proposal, the Administrative Office of the Courts (AOC) filed a comment that suggests placing this language within a new Rule 12(e), Ariz. R. P. Juv. Ct. AACJ agrees with that location for the new language.

1. The decision to restrain even a pretrial inmate impacts due process.

Before Arizona became a state, its courts considered the propriety of shackling an inmate at a pretrial hearing and determined that individual security considerations must justify such an action.¹

The duty of such decisions rest with the judge, and it is a violation of the defendant's rights to defer blindly to another entity.² While many courts

¹ *Parker v. Territory*, 5 Ariz. 283, 287 (1898), *citing* existing statute Paragraph 1106, Pen. Code (“A person charged with a public offense shall not before conviction be subjected to any more restraint than is necessary for his detention to answer the charge.”).

The Court in *Parker* also cited *People v. Harrington*, 42 Cal. 167, *citing* 2 Hale, P. C. 219; 4 Bl. Comm. 322; Layer's Case, 6 St. Trials (4th Ed., by Hargrave) 230; Waite's Case, 1 Leach, 36 (“It has, however, been the rule at common law that a prisoner brought into the presence of the court for trial, upon his plea of not guilty to an indictment for any offense, was entitled to appear free from all manner of shackles or bonds; and, prior to 1722, when a prisoner was arraigned or brought to the bar of a court to plead, he was presented without manacles or bonds, unless there was evident danger of his escape.”).

² *State v. Henry*, 189 Ariz. 542, 550 (1997). The trial court “must have grounds for ordering restraints and should not simply defer to the prosecutor's request, a sheriff's department's policy, or security personnel's preference for the use of restraints. Rather, the judge should schedule a hearing at the defendant's request regarding the need for the restraints.” *State v. Cruz*, 218 Ariz. 149, 168, ¶ 119 (2008); *see also Gonzalez v. Pfler*, 341 F.3d 897, 904 (9th Cir.2003).

evaluating the propriety of restraints have concentrated on the concerns regarding the violation of the defendant's presumption of innocence, there are other factors which raise concern, specifically the distraction of restraints.³ Much of the case law discusses the distractions that electric restraint devices cause and the impact on a defendant's right to be present at trial. The Petition ably proves that the impact of shackles and other non-electric restraints on a juvenile is similarly distracting, and even traumatizing, to the juvenile. Clearly if a juvenile is humiliated and traumatized, they are not concentrating on assisting in their defense. The juvenile's right to be present at their hearing is also violated.

2. The Proposed Rule would ensure consistent and clear standards to evaluate the propriety of restraints

As noted in the Petition, "Children appearing in court in leg irons and handcuffs should be the rare exception, not the norm."⁴ The proposed rule takes the steps necessary to enact this principle. The Proposed Rule also ensures that

As noted in the petition, *State v. Chavez* likewise holds that the safety of a courtroom is relegated to the court. 98 Ariz. 236 (1965).

³ *Illinois v. Allen*, 397 U.S. 337, 344 (1970); *State v. Bassett*, 215 Ariz. 600, 603, ¶ 17 (App.2007); see also *United States v. Durham*, 287 F.3d 1297, 1306 n.7 (11th Cir.2002); *Duckett v. Godinez*, 67 F.3d 734, 747-48 (9th Cir. 1995).

⁴ Petition, Page 3.

there are sufficient limitations on the application of restraints to juveniles while ensuring the safety of the public, court staff, and the juvenile.

The AOC's Comment raises concerns regarding the proposed rule. The Juvenile Court Administrators raised concerns regarding layout of the courtroom, adequate staffing, and lack of holding rooms. It should be noted at the outset that there should be no presumption that juveniles are dangerous, nor that every juvenile unfortunate enough to be seen in a certain courtroom must be shackled. Secondly, staffing can be modified to meet increased need, and is preferable to the traumatic and humiliating application of shackles. Finally, such concerns can already be considered by a judicial officer when determining whether the application of shackles is appropriate.⁵

However, it would be highly inappropriate to abandon the responsibility for making such a determination regarding necessity of restraints to the detention administration. Moreover, as discussed above, it would be an abdication of the duty of the judicial officer, who is charged with ensuring that all persons coming before the court are afforded due process of law. The rules must clearly state that this responsibility lies with the judge.

The reluctance of the courts to actually “try and list all the criteria to be considered in a new court rule” is likewise unreasonable. The Petition named

⁵ See Petition Proposed Rule Subsections A and D.

several factors along with a comprehensive note that the safety of the courtroom must be taken into account. The courts have neither directly criticized those factors nor named any of their own to add. A right must be enforced with clear parameters and there is clear precedent in the case law. Leaving restraint factors “up to local policy” is maintenance of the status quo and generates inconsistent results that are tantamount to no enforcement of the rights of the juvenile.

For the reasons set forth above, AACJ and MCPD respectfully request this Court grant the Petition.

DATED: May 20, 2016.

ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE

By /s/ _____
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MARICOPA COUNTY PUBLIC DEFENDER’S OFFICE

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This comment e-filed this date with:

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