

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that new Rule 139 be adopted and prescribed. These proposed modifications address the use of restraints on a juvenile during a court proceeding.

The following *Explanatory Report* highlights the intent of this Rule. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the Rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the *Explanatory Reports*.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Tuesday, January 11, 2011.

11/29/2010

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

Christine Riscili, Esq.
Counsel

EXPLANATORY REPORT

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's 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. (p. 54 of Report).

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 wanted 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 paragraph (B)(1), restraints may be used if it is determined that they are necessary to prevent: 1) 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 had a history of such behavior or there are other factors present that make the juvenile very likely to pose a risk.

In addition, paragraph (B)(2) requires the least restrictive restraint to be used if it is determined that restraints are necessary.

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 bound 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.

Rule 139. Use of Restraints on the Juvenile

A. Use of Restraints. Restraints, such as handcuffs, chains, shackles, irons, or straitjackets, shall be removed prior to the commencement of a court proceeding unless the requirements of paragraph (B) are met.

B. Exception. Restraints may be used during a court proceeding if the court determines that:

1) they are necessary:

a) to prevent physical harm to the juvenile or another person;

b) to prevent disruptive courtroom behavior, evidenced by a history of behavior that created potentially harmful situations or presented substantial risk of physical harm; or

c) to prevent the juvenile, evidenced by an escape history or other relevant factors, from fleeing the courtroom; and

2) there are no less restrictive alternatives to restraints that will prevent harm, disruptive behavior, or flight.

COMMENT

The use of any restraints is highly discouraged. The routine use of excessive restraints on juveniles is a practice that is contrary to the 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 need to be restrained to protect themselves and others and to maintain security in the courtroom. See 42 Pa.C.S. § 6301 for purposes of the Juvenile Act .

Pursuant to paragraph (B), only in extreme cases should restraints be used. If a juvenile has a history of disruptive behavior, may present substantial risk of physical harm to any person, including himself or herself, or may flee, the court may order the use of restraints. When ordering the use of restraints, the court is to order the least restrictive type of restraint to prevent the behavior.