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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 878                      **Hearing Date:** June 27, 2017  
**Author:** Gipson  
**Version:** May 22, 2017  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Juveniles: Restraints*

## HISTORY

**Source:** Youth Law Center

**Prior Legislation:** AB 2530 (Atkins) Ch. 726, Stats. of 2012  
AB 568 (Skinner) Vetoed in 2011  
AB 1900 (Skinner) Vetoed in 2010  
AB 478 (Lieber) Ch. 608, Stats. of 2005

**Support:** American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Public Defenders Association; Center on Juvenile and Criminal Justice; Children Now; Disability Rights California; Legal Services for Children; National Association of Social Workers, California Chapter; National Center for Youth Law; Pacific Juvenile Defender Center

**Opposition:** California State Sheriffs' Association; Chief Probation Officers of California

**Assembly Floor Vote:** 41 - 30

## PURPOSE

*The purpose of this bill is to: (1) limit the use of restraints to transport a minor from a juvenile detention facility; (2) clarify when restraints may be used in juvenile court; (3) require a probation department to document the reason for the use of restraints on a juvenile; and (4) require a court to document on the record the reason for restraining a minor during a juvenile court proceeding.*

*Existing law* mandates all facilities of the Division of Juvenile Facilities to ensure the safety and dignity of all youth in their care. (Welf. & Inst. Code, § 224.73.)

*Existing law* requires the Board of Corrections to develop guidelines for the operation and maintenance of nonsecure placement facilities for juveniles alleged or found to be wards of the court. (Welf. & Inst. Code, § 210.1.)

*Existing law* prohibits the restraint of a ward known to be pregnant or in recovery from delivery, except as specified. (Welf. & Inst. Code, § 222, subd. (b).)

*Existing law* prohibits the use of restraints on pregnant inmates or those recovering from delivery, as specified. (Pen. Code, § 3407.)

*This bill* provides that restraints may be used when a minor is being transported outside of a local juvenile detention facility only upon a determination made by the probation department, in consultation with the transporting agency, that restraints are necessary to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

*This bill* requires that the least restrictive form of restraint be used consistent with the legitimate security needs of each minor if a determination is made that mechanical restraints are necessary,

*This bill* requires that in each case in which mechanical restraints other than handcuffs are used, the reasons for the use of restraints and the instrument or instruments of restraint used be documented.

*This bill* provides that the above restrictions on restraints do not apply to restraints used by medical care providers in the course of medical treatment or transportation.

*This bill* provides that restraints may only be used during a juvenile court proceeding if the court determines that the individual minor's behavior in custody or in court establishes a manifest need to use restraints to prevent physical harm to the juvenile or another person or due to a substantial risk of flight.

*This bill* provides that it is the prosecution's burden to demonstrate the need to use restraints on a minor during a juvenile court proceeding.

*This bill* requires that the least restrictive form of restraint be used and the reasons for the use of restraints be documented on the record if the court makes a determination that mechanical restraints are necessary.

## **COMMENTS**

### **1. Need for This Bill**

According to the author:

Existing law prohibits restraints on a female ward of a local juvenile facility who is pregnant or in recovery from delivery. Existing law also prohibits the use of restraints on a minor during a court appearance except upon an individualized showing of need.

Existing law does not provide any limitation on the use of restraints when a detained minor who is neither pregnant nor in recovery from delivery is transported outside of a secure facility. It does not restrict the type of restraints which may be used during transportation or prescribe when restraints may be used. With respect to restraints during court appearances, existing law prescribes neither precise criteria for determining when restraints should be used nor a clear process for making a determination of need.

This bill would (1) prohibit the use of restraints during court appearances; (2) prohibit the use of restraints except handcuffs when a minor is transported outside of a secure facility; and (3) permit the use of handcuffs during transportation upon an individualized determination that a particular minor poses a risk to his or her own safety, to public safety, or of flight.

## 2. Shackling in the Courtroom

Under federal law, before ordering a person shackled at trial, the trial court must (1) be persuaded by compelling circumstances that some measures are needed to maintain security, and (2) pursue less restrictive alternatives before it imposes physical restraints, which may be used only as a “last resort.” (*Castillo v. Stainer* (9th Cir. 1992) 983 F.2d 145 147; *United States v. Baker* (9th Cir. 1993) 10 F.3d 1374, 1401.) Where the trial court is found to have ordered shackling without complying with the necessary criteria, a constitutional violation of the right to due process has occurred. (*Castillo v. Stainer, supra*, 983 F.2d at 147; *Brewster v. Bordenkircher* (4th Cir. 1984) F.2d 913, 917.)

The lead California case on shackling in the courtroom is *People v. Duran* (1976) 16 Cal.3d 282. In *Duran* the California Supreme Court reaffirmed earlier decisions and held that an “unnecessary show of restraint of an accused in the presence of the jurors is prejudicial. Ordinarily, the defendant should not be manacled or unduly restrained.” (*Id.*, at p. 290; see also *Spain v. Rushen* (9th Cir. 1989) 883 F.2d 712, 716 [generally, a criminal defendant has a constitutional right to appear before a jury free of shackles].)

“We believe that it is manifest that the shackling of a criminal defendant will prejudice him in the minds of the jurors. When a defendant is charged with any crime, and particularly if he is accused of a violent crime, his appearance before the jury in shackles is likely to lead the jurors to infer that he is a violent person disposed to commit crimes of the type alleged. (See *Illinois v. Allen* (1970) 397 U.S. 337, 344 [further citations omitted].) The removal of physical restraints is also desirable to assure that ‘ever defendant is ... brought before the court with the appearance, dignity, and self-respect of a free and innocent man. [Citations omitted.] Finally, the United States Supreme Court has acknowledged that physical restraints should be used as a last resort not only because of the prejudice created in the jurors’ minds, but also because ‘the use of this technique is itself something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold.’ (*Illinois v. Allen, supra*, 397 U.S. 337, 344....)” (*People v. Duran, supra*, 16 Cal.3d at p. 290.)

In *People v. Hill* (1998) 17 Cal.4th 800, the California Supreme Court reiterated that the test for shackling rests upon any showing of unruliness, an announced intent to escape, or evidence of any nonconforming conduct that disrupts or would disrupt the judicial process if unrestrained. (*Id.* at p. 841.)

In *Tiffany A. v. Superior Court* (2007) 150 Cal.App.4th 1344, the Court of Appeal discussed shackling in the context of juvenile court proceedings. The minor in *Tiffany A.* sought a writ of prohibition alleging that policy allowing the use of physical restraints on all minors who appeared in the Lancaster juvenile court violated established law. The Los Angeles County Sheriff’s Department argued juvenile proceedings are different and the necessary showing of

need should be particularized as to the individual because there is no jury, and the proceedings are often brief, uncontested and do not involve witnesses. (*Id.* at p. 1348.) The Court of Appeal held that any decision to shackle a minor during a court proceeding had to be based on the non-conforming conduct and behavior of the individual minor, and had to be made on a case-by-case basis irrespective of the type of hearing or proceeding. (*Id.* at p. 1359.) The court also noted that it is the prosecution's burden to demonstrate need. (*Id.* at p. 1357.)

Similarly, in *In re DeShaun M.* (2007) 148 Cal.App.4th 1384, 1386-1387, the Court of Appeal held that a minor has a constitutional right to be free of shackles at a jurisdictional hearing, absent a showing of manifest need for their use. The court noted that although primary concern regarding the use of restraints is the resultant prejudice, “that is not the only reason for the limitation of their use. Also of concern is the potential unsettling effect on the defendant and therefore on his ability to present a defense, and ‘the affront to human dignity, the disrespect for the entire judicial system which is incident to unjustifiable use of physical restraints, as well as the effect such restraints have upon a defendant's decision to take the stand.’” (*Id.* at p. 1387, citations omitted.)

The bill prohibits the use of restraints on a minor in juvenile court unless the court determines that the individual minor’s behavior in custody or court establishes a manifest need to use restraints to prevent physical harm to the juvenile or another person or due to a substantial risk of flight. This bill requires that the least restrictive form of restraints be used, and requires the court to document the reasons on the record for its determination that restraints are necessary.

### 3. Restraints for Transporting Minors

In *Tiffany A.*, *supra*, 150 Cal.App.4th at 1350, fn. 4, the court noted that it was not considering the use of physical restraints while transporting minors and that the petitioner did not raise the issue in the petition.

In February 2015, the Chief Probation Officers of California compiled data from a survey on transporting youth from juvenile hall. Forty-nine of out of 58 counties responded to the survey. Out of the 49 respondents, 48 counties affirmatively answered that the probation department transports youth from juvenile hall to court, medical appointments, or elsewhere. And 47 of those county probation departments confirmed that minors are restrained when transported, with the Alameda County Probation Department being the only department indicating that it did not use restraints when transporting minors.<sup>1</sup> (See *Transporting Youth From Juvenile Hall Survey*, February 2015.)

At least one county, Contra Costa, is seeking to change the routine practice of restraining minors to transport them from juvenile hall to juvenile court. The Contra Costa County Probation Department’s current policy is to shackle all juveniles during transport. Critics argue that “the indiscriminate use of restraints, particularly when youth are out in public wearing shackles, is damaging and unnecessary.” Acknowledging the controversy surrounding the policy, the Contra Costa County Probation Department is developing a risk assessment tool for transportation which would take into account the nature of a minor’s offense and behavior in juvenile hall,

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<sup>1</sup> It is unclear whether the Santa Cruz County Probation Department uses restraints during transport. The department indicated it did not use restraints, but in the follow up question as to types of restrains, the department answered it used shackles and leg restraints.

among other factors to help determine whether restraints are necessary. (See M. Beagle, *Contra Costa Seeking Alternative to Shackling During Transport of Juveniles*, Richmond Confidential, October 30, 2015, <<http://richmondconfidential.org/2015/10/30/contra-costa-hopes-to-change-the-shackling-of-juveniles-in-transportation/>> [as of 6/20/2017].)

This bill requires an individualized determination made by the probation department, in consultation with the transporting agency, that restraints are necessary to transport a minor to prevent physical harm to the juvenile or another person or due to a substantial risk of flight. The bill requires that the least restrictive means of restraint be used if it is determined that mechanical restraints are necessary, and requires the probation department to document its reasons for restraining an individual minor.

#### 4. Argument in Support

According to the National Center for Youth Law:

In California, young people who are detained in juvenile hall are often placed in full restraints – handcuffs, a belly belt, and leg shackles – whenever they are transported outside of the hall, to a court appearance or doctor’s appointment, for example. Young people may spend hours in restraints as they wait to appear in court – where they may remain restrained, impeding their ability to communicate effectively with their attorney and focus on the proceedings.

The routine practice of shackling is deeply harmful to young people. Beyond the physical discomfort inherent in being placed in restraints for prolonged periods, the routine use of shackles causes young people grave psychological harm. Young people in the juvenile justice system suffer from high rates of trauma and mental illness, which can be exacerbated by the use of restraints. The routine shackling of juveniles is an inherently humiliating experience for children. It criminalizes young people and can cause them to view themselves as dangerous criminals. These outcomes are contrary to the rehabilitative purpose of the juvenile court. Rather than engaging in practices that stigmatize and harm, the juvenile justice system should be providing supports and services to help young people reach their full potential.

The indiscriminate use of restraints is not necessary to preserve public safety. Only about 10% of juvenile arrests are for violent felonies, and the majority of detained youth are detained for misdemeanors or nonviolent felonies. Indeed, most young people who are detained will quickly be released back into their community, and less than 20% of young people who are arrested will be sent to a secure facility. The indiscriminate use of shackling makes little sense, given that the risk the young people pose to public safety is minimal and the potential harm to them is significant.

AB 878 (Gipson) protects young people and public safety by providing that handcuffs only be used in transportation when there has been an individualized determination that they are necessary to protect the young person or the public.

The bill also bars the use of the most harmful forms of restraint, and it eliminates the use of restraints in court so that youth can participate fully in their court

hearings. These measures are necessary to ensure that indiscriminate and unnecessary use of shackles does not harm young people or impede the rehabilitative goals of the juvenile court.

## 5. Argument in Opposition

According to the Chief Probation Officers of California:

Probation is charged with the safety and well-being of the youth in our care and custody. It's important to note that probation has been very successful over the last decade in decreasing juvenile arrest and detention rates and focusing on prevention and diversion. As a result, the kids that [are] in our juvenile facilities, which would therefore be the youth impacted under this bill, are youth that present the highest-risk and highest-needs in the local system.

It is imperative to the safety of all youth being transported, as well as the safety of the transporting officers, that determinations as to what types of restraints are necessary given the circumstances remain with probation and the transportation agency. Instead, AB 878 switches the presumption to say that restraints shall not be used and only handcuffs can be used upon determination of a standardized assessment. Determinations on the use of restraints should continue to be guided by the policies of the probation department and the trained peace officer professionals who are charged with carrying out the duties for the care and custody of youth....

Probation is extremely committed to the youth we serve and remains focused on working with them on treatment services, education, and many other important aspects that are critical to their futures. In the course of probation's work toward this end, it is necessary to allow probation to make the appropriate determinations as to how best to transport youth to ensure their safety, the safety of other youth being transported at the same time, as well as the safety of staff.

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