September 12, 2014

Darrell E. Parker
Court Executive Officer
1100 Anacapa Street
Santa Barbara, CA 93101
Via email: CtAdmin@sbcourts.org

Re: Opposition to Proposed Closure of Santa Barbara Juvenile Court

Dear Mr. Parker,

We write to express our concern at the Santa Barbara Superior Court's proposal to close the juvenile court and clerk's office currently located at 4500 Hollister Avenue in Santa Barbara. Closing the juvenile court will increase the amount of time that young people are inappropriately shackled and increase the risk that the confidentiality of juvenile court proceedings will be compromised. It is also apparent that the proposed new hearing site will require significant modifications to address safety concerns and the need for a space for attorneys to consult privately with their clients before it is suitable for use as a juvenile court site. These costly modifications undercut the cost-savings rationale for the proposed closure and will almost certainly not be able to be made prior to the proposed closure of the juvenile court in early October.

We strongly urge you to reconsider the decision to close the juvenile court and transfer juvenile proceedings to the Jury Assembly Building. At the very least, the serious practical and legal issues associated with the proposed closure require that additional consideration be given to the decision and that the closure be delayed to provide adequate time to address these issues to the extent possible.

I. Failure to Provide Sufficient Notice and Opportunity for Public Comment

Pursuant to Government Code section 68106 and California Rule of Court 10.620(d)(3), prior to any decision to permanently close a court location, the Superior Court must provide notice and an opportunity to comment. The court is then required to "review and consider all public comments received."[1] The Superior Court has set a deadline of October 6, 2014 for public comment on the planned closure of the juvenile court. The notice also announces that the closure will take place on October 10, 2014. The short period between the deadline for public

[1] Gov. Code § 68106(b)(2)(A); Cal. Rules of Court, rule 10.620(d)(3).

comment and the planned date of closure raises concerns that public comments will not be given serious consideration prior to the planned closure. In fact, a three-day period creates the appearance that the decision to close the juvenile court is already a final one. The failure to provide an opportunity for public comment prior to making a final decision to close the juvenile court would constitute a violation of Government Code section 68106.

In addition, we are concerned that the Superior Court does not appear to have made a Spanish translation of the notice of closure available to the public. California courts must comply with Government Code §§ 11135 *et seq.* and its accompanying regulations which provide that no one shall be "denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state," on the basis of "linguistic characteristics."[2] As entities funded and operated by the state, California's courts are prohibited by state law from discriminating against limited English proficient (LEP) individuals. California courts must also comply with Title VI of the Civil Rights Act of 1964 and its implementing regulations which prohibit direct and indirect recipients of federal financial assistance from discriminating on the basis of national origin.[3]

California Department of Education (CDE) enrollment data for the juvenile court school system in Santa Barbara County reveals that a significant percentage (62.5%) of all youth enrolled in the system and, thus, detained in Santa Barbara's juvenile detention facilities, are either LEP or come from homes where English is not the primary language.[4] Of all enrolled LEP youth, 97% are Spanish speaking.[5] Given these numbers, it is clear that LEP youth and their families will be directly impacted by the closure of the juvenile court in Santa Barbara. They, like all other impacted youth and families, should have a meaningful opportunity to voice their concerns regarding the closure and that cannot be done if notice of the closure is only available in English. The failure to provide a Spanish-language version of the notice is troubling not only due to the fact that a sizeable Spanish-speaking population exists in Santa Barbara County, but also because

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[2] Cal. Gov. Code §11135; Cal. Code Regs. Title 22, Section 98210(b).
[3] 42 U.S.C. § 2000d *et seq*. See also U.S. Dept. of Justice, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455-41472 (2002); Thomas E. Perez, Assistant Attorney General, U.S. Dept. of Justice, Civil Rights Division, *Letter to State Courts* (Aug. 16, 2010) <www.lep.gov/final_courts_ltr_081610.pdf> (as of Sept. 11, 2014).
[4] See CDE DataQuest Report, *Santa Barbara County Juvenile Court School Language Group Data to Determine '15 Percent and Above' Translation Needs for 2013-14* <http://data1.cde.ca.gov/dataquest/lc/SchoolLC.aspx?Level=School&cSelect=Santa+Barbara+County+Juvenile+Court%2D%2DSanta+Barbara+County+Office+of+Education%2D%2D4210421%2D4230157&cYear=2013-14> (as of Sept. 11, 2014).
[5] See CDE DataQuest Report, *English Learner Students by Grade-Santa Barbara Juvenile Court (4210421-4230157) 2013-14*<http://data1.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=School&TheYear=2013-14&SubGroup=All&ShortYear=1314&GenderGroup=B&CDSCode=42104214230157&RecordType=EL> (as of Sept. 11, 2014).

Latino youth are overrepresented in Santa Barbara's juvenile justice system.[6] The failure to provide meaningful notice concerning the closure to Santa Barbara County's Spanish-speaking residents violates both Title VI and Government Code § 11135. In order to comply with your obligations under both state and federal civil rights statutes, you must re-issue the Notice and make it available to the public in English and in Spanish. We would also request that a copy of the new English/Spanish notice be given to all detained youth so that they can share it with their family members and voice their own concerns regarding the closure.[7]

II. The Proposed Closure Will Increase Inappropriate Shackling of Juveniles

The Notice indicates that as of October 14, 2014, all juvenile delinquency and dependency matters that would have been heard at the Juvenile Court will now be heard at the Jury Assembly Building. Based on our conversations with local advocates, we believe that due to the inadequate configuration of the new location, the Superior Court plans to shackle young people while they are transported to the Jury Assembly Building and while they await their hearings. Our understanding is that young people in shackles would then climb steps outside of the building to reach a conference room. All detained youth would then sit, shackled, in a conference room while awaiting their hearing, which would take place in a separate room. This proposal would increase the amount of time that young people spend in physical restraints. The Jury Assembly Building is more than five miles farther from the juvenile hall than is the juvenile court, increasing the time that young people are shackled while being transported by about 25 minutes.

In addition, our understanding is that juvenile probation officers will remain stationed at the current juvenile court. At present, young people can meet with their probation officers before and after their hearings. However, if the juvenile court is closed, youth will need to be transported to meet with their probation officers separate from their court dates. This not only will increase transportation costs, but also increase the time that young people spend outside of the classroom and in physical restraints.

Shackling all young people as they are transported to and await their hearings is contrary to California law, incompatible with the rehabilitative purpose of the juvenile delinquency system,

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[6] CDE enrollment data reveals that 87.5% of all youth enrolled in Santa Barbara's juvenile court school system are Latino. See CDE DataQuest Report, *Enrollment by Ethnicity for 2013-14* (Santa Barbara Juvenile Court School) <http://data1.cde.ca.gov/dataquest/Enrollment/EthnicEnr.aspx?cType=ALL&cGender=B&cYear=2013-14&Level=School&cSelect=Santa+Barbara+County%2D%2DSanta+Barbara+C%2D%2D4210421%2D4230157&cChoice=SchEnrEth> (as of Sept. 11, 2014).

[7] Please be aware that the Civil Rights Division of the Department of Justice is currently investigating the failure on the part of the Superior Court of California, Los Angeles County and the Judicial Council of California to provide adequate language assistance to LEP residents pursuant to Title VI. As a result of the DOJ's intervention and investigation, the Judicial Council created a Joint Working Group for California's Language Access Plan and prepared a draft ***Strategic Plan for Language Access in the California Courts*** for which they are now seeking public comment. The Judicial Branch of California, *LAP Joint Working Group*, <http://www.courts.ca.gov/24466.htm> (as of Sept. 11, 2014); The Judicial Branch of California, *Invitations to Comment*, <http://www.courts.ca.gov/policyadmin-invitationstocomment.htm> (as of Sept. 11, 2014).

and is out of line with best practices for dealing with juvenile detainees. The proposal to close the juvenile court will significantly increase the time that young people spend in physical restraints, opening the court to legal challenges on this issue.

In *Tiffany A. v. Superior Court* (2007) 150 Cal.App.4th 1344, the Court of Appeals, citing due process concerns, struck down a blanket court room shackling policy stemming from an avowed security staff shortage at a Lancaster juvenile courtroom.[8] The court held that decisions to shackle a minor appearing in juvenile court must be made on a case-by-case basis and must rest on the minor's behavior, rather than general concerns about lack of adequate facilities or personnel.[9] In making this determination, the Court of Appeals observed that the use of shackles during hearings not only impedes the accused's right to participate in his own defense and impedes the presumption of innocence, but also represents an "affront to human dignity" that manifests "disrespect for the entire judicial system."[10] The Court of Appeals also recognized that indiscriminate shackling was especially inappropriate in the juvenile context, as "the objectives of the juvenile justice system . . . justify a less punitive approach" and indiscriminate shackling "creates the very tone of criminality juvenile procedures were intended to avoid."[11]

Although *Tiffany A.* dealt with indiscriminate shackling during court proceedings, many of the concerns expressed by the Court apply with equal force to indiscriminate shackling during transportation and while awaiting a hearing. Use of restraints is a dangerous and traumatic experience, particularly for children. It may have lasting psychological effects.[12] Chaining young people like adult convicts sends them the message that they are considered dangerous and even beyond saving – hardly the rehabilitative message that should be conveyed in juvenile court proceedings.

The shackling of juveniles is a national issue, and there is a growing recognition that best practices dictate that children not be shackled either during court proceedings or transportation. Attached is a 2010 decision from New York in which the Court held that there must be an individualized determination of need for shackling in transportation.[13] And the most recent Juvenile Detention Alternatives Initiative (JDAI) facility assessment standards state that belly chains and leg shackles not be used during transportation without a particularized reasons and administrator approval.[14]

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[8] *Tiffany A. v. Superior Court* (2007) 150 Cal.App.4th 1344, 1359.
[9] *Id*.
[10] *Id.* at 1355 (quoting *People v. Duran* (1976) 16 Cal.3d 282, 290). .
[11] *Tiffany A. v. Superior Court*, *supra*, at 1361.
[12] When the issue of courtroom shackling was litigated in Florida, numerous experts opined that shackling was psychologically harmful and gratuitously punitive. Emily Banks et al., The Shackling of Juvenile Offenders: The Debate in Juvenile Justice Policy (undated) p. 5. A copy of a 2006 declaration from Dr. Marty Breyer in one of these cases is attached as an exhibit to this letter.
[13] *John F. v. Carrion* (N.Y.Sup.Ct. 2010) No. 407117/07.
[14] Annie E. Casey Foundation, Juvenile Detention Alternatives Initiative, Juvenile Detention Facility Assessment (2014) p. 173, *available at* <http://www.jdaihelpdesk.org/Featured%20Resources/Juvenile%20Detention%20Facility%20Assessment%202014%20Update.pdf> (as of Sept. 11, 2014).

In short, the proposed plan to close the juvenile court in Santa Barbara and the concomitant increase in the use of mechanical restraints on juveniles in Santa Barbara raise significant legal and practical concerns.

III. The Proposed Plan Fails to Protect Detained Youths' Confidentiality

California law requires that juvenile court proceedings remain confidential, with very limited exceptions. Only certain individuals are authorized to access the juvenile case file,[15] and the public is not admitted to most juvenile court hearings.[16] This confidentiality is crucial to the rehabilitative mission of the juvenile court. As the Court of Appeals has recognized, "[p]rivate hearings . . . have been considered an important tool in the juvenile court system, both in terms of eliminating or reducing any stigma which might attach and, more broadly, in assisting in the rehabilitative process."[17]

If juvenile matters are to be heard in the Jury Assembly Building rather than a separate juvenile court, steps must be taken to maintain the confidentiality that is so vital to the juvenile court process. We are concerned that the Superior Court appears not to have taken the necessary steps to ensure confidentiality. For example, if young people are led, shackled, into the building via an outdoor staircase in full view of the public, the confidentiality of their identities and participation in juvenile court proceedings would be compromised. There would be nothing to prevent members of the press or the public from taking photographs of young people entering the building shackled and posting those photographs on the internet, with potential long-ranging consequences for the young people in question. Further, the plan to hold juvenile court proceedings in a building in which large numbers of jurors regularly assemble makes it a question of when, not if, the confidentiality of a juvenile court proceeding will be violated.

Beyond these legal concerns, exposing young people to the view of the public while they are shackled would contradict the rehabilitative mission of the juvenile court by exposing them to increased stigma and embarrassment. The plan to close the juvenile court should not proceed before adequate modifications to the Jury Assembly Building have been made to assure that the confidentiality of juvenile court proceedings will be protected.

IV. The Proposed Plan Does Not Provide Adequate Opportunity to Consult Confidentially with Counsel

We are concerned that the proposed plan to hold young people in a conference room while they wait for their hearings does not provide adequate opportunity for young people to consult confidentially with their attorneys. Young people involved in delinquency proceedings have a constitutional and statutory right to the assistance of an attorney at all stages of the

[15] Welf. & Inst. Code § 827; Cal. Rules of Court, rule 5.552.
[16] Welf. & Inst. Code § 676; Cal. Rules of Court, rule 5.530(3).
[17] *San Bernardino County Dept. of Public Social Services v. Superior Court* (1991) 232 Cal.App.3d 188, 199.

proceedings.[18] An attorney cannot provide effective assistance to her client if she does not have the opportunity to speak to that client in confidence and discover facts relevant to the case – an opportunity that the proposed plan currently does not provide. A young person will likely be unwilling to share sensitive personal information with his attorney while seated in a room full of other young people who would also hear it.

In order to ensure that attorneys are able to provide constitutionally adequate representation to their clients, the Superior Court must provide a space for attorneys to speak confidentially with their clients, such as individual interview rooms. If no such space currently exists in the Jury Assembly Building, it would need to be constructed prior to holding any juvenile court hearings in the building.

V. The Proposed Plan Does Not Adequately Protect the Safety and Welfare of Youth

a. Safety

The proposed plan raises two clear safety concerns. First, if young people are entering the building through a steep outdoor staircase while shackled, there is a significant risk of physical injury – particularly if leg restraints are used. The risk of a child falling on the staircase would increase in inclement weather. The failure to address this obvious safety concern raises questions about whether sufficient consideration has been given to the needs of youth in making the decision to close the juvenile court.

Second, the decision to hold all young people awaiting a hearing in one conference room could create problems. Some young people who are detained may have interpersonal conflicts that make it unwise to hold them in the same room. We understand that presently this possibility is addressed in the juvenile court by holding detained young people in individual rooms with toilet facilities available. It is our understanding that no such individual rooms are available at the Jury Assembly Building should this become an issue. Again, the failure to address the fact that safety concerns may require that some detained youth await their hearings in separate rooms calls into question whether the decision to close the juvenile court has received sufficient consideration.

Title 15 of the California Code of Regulations imposes minimum conditions for court holding facilities in which minors are held while awaiting a court appearance. These regulations require that minors in court holding facilities be segregated in accord with an established classification plan, that such facilities provide "secure non-public access, movement within, and egress," and that minors be segregated from adults.[19] The regulations also require a written plan documenting unscheduled safety checks on minors held in such facilities at least twice every 30 minutes and the establishment and implementation of a written plan to provide for the safety of staff and minors at the facility.[20]

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[18] *In re Gault* (1967) 387 U.S. 1, 41 [87 S.Ct. 1428. 1451]; Welf. and Inst. Code §§ 633, 634.
[19] Cal. Code Regs. Title 15, Section 1161.
[20] Cal. Code Regs. Title 15, Sections 1162 & 1163.

The Title 15 regulations exist to ensure the safety of young people and staff. They demonstrate the importance of segregation, privacy, and above all, careful planning in designing temporary holding facilities for minors. The Superior Court's proposal fails to provide these basic safety protections and endangers the welfare of detained young people.

b. Education

As discussed above, the proposed closure of the juvenile court in Santa Barbara will require detained youth to make additional trips from the juvenile hall to meet with their probation officers. This will result in young people missing more days of school and/or the minimum instructional minutes mandated by law.[21] Missing school days or instructional time is detrimental to all students, but is especially harmful for students who are already significantly behind in credits, as are many youth involved in the juvenile delinquency system.

VI. Fiscal Considerations are Insufficient Grounds for Closing the Juvenile Court and Denying Rights

The Notice indicates that the decision to close the juvenile court was based on financial considerations. At the outset, we note that the decision to hold juvenile court proceedings in the Jury Assembly Building creates significant additional costs of its own. Beyond the additional transportation costs that the Court will incur when it has to transport young people to meetings with probation officers that otherwise would have occurred at the juvenile court on hearing dates, it is clear that significant and costly modifications to the physical plant of the Jury Assembly Building will need to occur before it is suitable for use as a juvenile court building. Moreover, the Court will lose the practical and fiscal advantages of the physical proximity of the current juvenile court to the offices of the juvenile probation officers. These costs must be considered in determining whether the decision to close the juvenile court is a fiscally sound one.

Even if the closure of the juvenile court would result in some cost savings to the Superior Court, we question whether juvenile court proceedings are the right place to look for ways to save money. Children's rights to due process and confidentiality must trump financial considerations. Inadequate funding is not a "defense to a county's obligation to provide statutorily required benefits"[22] and financial cost alone does not determine "whether due process requires a particular procedural safeguard."[23]

We understand that California courts are facing budgeting difficulties. But balancing public budgets on the backs of detained children is troubling, especially as these children are overwhelmingly poor and are often among the most vulnerable children in the state. The role of

[21] Educ. Code § 48645.3(a); 15 C.C.R. § 1370(b)(4).
[22] *Cooke v. Superior Court* (1989) 213 Cal.App.3d 410, 414.
[23] *Mathews v. Eldridge* (1976) 424 U.S. 319, 348 [96 S.Ct. 893, 909].

the juvenile court is to provide young people under its jurisdiction with "care, treatment, and guidance."[24] The decision to close the juvenile court will make that vital mission more difficult. We urge you to reconsider that decision.

Sincerely,

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cc: Anna M. Medina, Attorney, U.S. Department of Justice, Civil Rights Division
Hon. Arthur Garcia, Presiding Judge of the Santa Barbara County Superior Court
Hon. James Herman, Assistant Presiding Judge of the Santa Barbara County Superior Court

[24] Welf. & Inst. Code § 202(b).

Youth Law Center is a national public interest law firm that works to protect the rights of children in the foster care and justice systems and to ensure that they receive the necessary support and services to become healthy and productive adults. Since 1978, Center lawyers have worked across the United States to reduce unnecessary incarceration; ensure safe and humane conditions when youth are removed from their homes; keep children out of adult jails; and secure equitable treatment for children in the child welfare and juvenile justice systems. Youth Law Center attorneys are nationally recognized experts on the legal rights of children in institutions, and have engaged in extensive institutional litigation, drafting standards and regulations for juvenile facilities, and training juvenile system professionals around the country on conditions law. The Center advocates for increased accountability of the juvenile justice and child welfare systems, and champions professional and public education.

California Rural Legal Assistance, Inc. (CRLA) was founded in 1966 as a nonprofit legal services program. Its mission is to strive for economic justice and human rights on behalf of California's rural poor. Today, CRLA has 21 offices, many in rural communities from the Mexican border, including San Diego County, to Northern California. Each year, CRLA provides more than 40,000 low-income rural Californians with free legal assistance and a variety of community education and outreach programs. Half of CRLA's resources are committed to multi-client cases that grapple with the root causes of poverty. The impact of CRLA's litigation has touched the lives of literally millions of low-income individuals, improving conditions for farm workers, new immigrants, single parents, school children, the elderly, people with disabilities, and entire communities. It has also been necessary to bring CRLA's advocacy to a national audience in order to maintain its ability to address the more political and controversial issues found in rural communities.

AFFIDAVIT OF DR. MARTY BEYER

Dr. Marty Beyer, being first duly sworn, hereby deposes and says:

1. My name is Marty Beyer. I am a clinical psychologist licensed in the District of Columbia, Virginia, Washington and Alaska.

2. I have a Ph.D. in clinical/community psychology from Yale University. I am an independent child welfare and juvenile justice consultant. My expertise is adolescent development: how a young person's cognitive, moral and identity development, trauma and disabilities affected the offense and should be the basis for designing rehabilitative services. I have assessed more than 100 juveniles accused of serious offenses. I have been involved in improving services for delinquents in Florida and several other states and assisted in federal Department of Justice investigations of juvenile facilities. I have also been involved in reform in foster care practices in several states and serve as a clinical consultant to child welfare workers and supervisors making decisions about children who have been physically and sexually abused. I

frequently provide training on child and adolescent development for judges, lawyers, and staff in child welfare and juvenile justice.

3. I have testified numerous times as an expert witness assessing the factors articulated by the United States Supreme Court in juvenile transfer / waiver cases, including maturity and prospects for protecting the public and rehabilitating the young person (*Kent v. United States*, 383 U.S. 541 (1966); *Stanford v. Kentucky*, 492 U.S. 361 (1989)). I have provided expert testimony concerning adolescent development research cited by the United States Supreme Court in striking down the death penalty for juveniles (*Roper v. Simmons,* 543 U.S. 551 (2005)).

4. My publications include "Immaturity, Culpability and Competency in Juveniles" (2000), "What's Behind Behavior Matters: The Effects of Disabilities, Trauma and Immaturity on Juvenile Intent and Ability to Assist Counsel" (2001), Best Practices in Juvenile Accountability (U.S. Department of Justice, 2003), "Health Services for Youth in Juvenile Justice Programs" (co-authored with Michael Cohen, M.D. and Larry Burd, Ph.D., in Clinical Practice in Correctional Medicine, 2006), and "Fifty Delinquents in Juvenile and Adult Court" (2006).

5. This affidavit is based on articles and books and my clinical experience in working with delinquents and families.

6. I have appeared in juvenile and family courts around the country. Detained juveniles are seldom handcuffed or shackled in juvenile or family courts. I have often sat in court when a juvenile was holding hands with a parent or taking notes on the court proceedings or drawing pictures to cope with his/her anxiety and attention difficulties.

7. It is generally accepted by professionals that the use of physical restraints with children and adolescents should be limited to rare situations when a young person poses an imminent threat to others' safety. Physical restraints should not be a routine practice with children and adolescents.

8. Juvenile and family courts are based on the recognition that adolescents are different from adults and are more susceptible to harm because they are in the process of developing. This malleability is the foundation of the juvenile and family court's goal of rehabilitation.

9. Adolescents gradually develop a strong positive identity. Approval of others is a powerful influence on adolescents' self-esteem. The experience of being shackled in the courthouse, in front of family and strangers, makes a young person feel disapproved of and ashamed.

10. Being shackled in public is humiliating for young people, whose sense of identity is vulnerable. The young person who feels he/she is

being treated like a dangerous animal will think less of him/herself. Children and adolescents are more vulnerable to lasting harm from feeling humiliation and shame than adults.

11. On television, both on live court programs and dramas, young people see adults charged with murder wearing elegant clothing, being treated with respect, and not shackled in court. The young person who asks, "Why were they allowed to hold their heads up high and I am humiliated with handcuffs and chains?" is likely to conclude it is something especially bad about them that accounts for this demeaning treatment.

12. For youth of color, being degraded in public may be experienced as racism (even if the practice is universal) which is extremely harmful to the development of a positive identity.

13. The negative effects of humiliation on developing teenagers is one of the reasons that restraints are only allowed under unusual circumstances in juvenile facilities. In most juvenile programs if a youth must be placed in restraints because of a demonstrated immediate threat to others' safety, the policies require that he/she be checked frequently by medical staff and provided counseling in order to calm down and return to group activities in a short time. These required services are not provided to the young person who may be shackled all day before, during and after

court. In the unusual situation where a young person is in restraints in the facility, he understands his behavior was out of control and as soon as he can calm down, the restraints will not be necessary. This sends a sensible message, in contrast to the shackling of all youth going to court from detention, most of whom are not exhibiting dangerous behavior at the time. Knowing they are capable of remaining calm in the courtroom without handcuffs or shackles, young people conclude it must be something bad about them that justifies the chains.

14. During adolescence, young people gradually define their moral values, integrating the simple rights and wrongs of childhood and teachings about morality at home and in their religion. During this process, adolescents tend to be moralistic, insisting on what should be and intolerant of anything that seems unfair. For most young people who believe that, even though they were arrested, they will not harm others and will not misbehave in the courtroom, it seems unfair to be shackled. Adolescents do not have the adult cognitive abilities to say, "This is not unfairness directed at me personally, all juveniles who go into court are shackled." Because of where they are developmentally, their reaction to the unfairness of being shackled may preoccupy them, interfering with their paying attention to what the judge says in the courtroom.

15. Children learn that a fundamental principle of our democracy is that a person is innocent until proven guilty. Being shackled gives them the opposite message. This conflict between what adults say and do is harmful to young people's moral development.

16. Teenagers often talk with shock about how they were treated in the police station. They express disappointment in police officers, who they trusted to be fair and kind. Their trust in adults is also violated when they are shackled in the courtroom. They may feel betrayed by their parents who cannot protect them from the humiliation of being shackled. When the judge, who is an important authority figure, condones unfair, demeaning treatment in the form of handcuffs or shackles, how could the young person believe the judge is concerned about or wants to help him/her?

17. In the midst of their identity and moral development, demeaning treatment by adults may solidify adolescents' alienation, send mixed messages about the purpose of the justice system, and confirm their belief that they are bad, all of which undermine the rehabilitative goal of court intervention.

18. Many court-involved young people have experienced severe trauma, including the death of family members, physical and sexual abuse, exposure to domestic and street violence, and school failure due to learning

disabilities. Some have been additionally traumatized by multiple placements in the foster care system. Their depression, difficulties trusting others, fearfulness, aggression, substance abuse and school concentration problems are often caused by untreated trauma. For those who have been physically or sexually abused, handcuffs and shackles are likely to flood the young person with painful memories and may be experienced by him/her as re-victimization. For any traumatized youth, being handcuffed or shackled could make them feel once again that they cannot control hurtful things that happen to them. Such powerlessness is damaging and could undermine progress the youth has made in recovering from earlier trauma. Any abuse of power by an adult can provoke in a traumatized young person a combination of self-blame and sense of betrayal that can lead to self-destructiveness or aggression.

19. Detention staff frequently comment about the difficulty in managing youth who are upset after court. Shackling youth could add to the symptoms of untreated trauma--sadness, hurt, anger, and being untrusting—which juvenile facilities lack sufficient mental health staff to respond to.

20. Shackles and handcuffs are also physically painful, not just for younger and smaller youth, but for any typical teenager who wiggles restlessly when seated or who is being moved around the courthouse.

21. Parents are not allowed to physically or emotionally abuse their children. Emotional abuse includes restriction of movement, such as tying a child's arms or legs together. Excessive physical discipline is prohibited even when parents believe their children must be punished. The child welfare system removes children from parents who do not use other methods to discipline their children or who are emotionally abusive because the longlasting harm of abuse is well-known. Physical and emotional abuse makes young people feel helpless and powerless. Research has connected physical abuse to adolescent depression and suicide as well as becoming aggressive and over-reacting to perceived hostility in others. The use of corporal punishment by parents of adolescents is a known risk factor for depression, suicide, alcohol abuse, physical abuse of children, and domestic violence. While children shackled in court are not being abused by their parents, being shackled by adults in authority whom they trust to care for them could have similar harms.

Further affiant sayeth not.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 23, 2006.

_____

Sworn to me and subscribed in my presence on August 23, 2006.

_____
NOTARY PUBLIC

My commission expires: _____

Seal:

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. MILTON A. TINGLING J.S.C. PART 44

Justice

F, John

- v -

Carrion, Gladys

INDEX NO. 407117/07

MOTION DATE 4/23/09

MOTION SEQ. NO. 004

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

Plaintiff, John F, by his parent, Margarita F, on behalf of himself and all others similarly situated, brings this Motion for Summary Judgment to enjoin Defendant, Gladys Carrion, in her official capacity as Commissioner of the New York State Office of Children and Family Services, ("OCFS"), from shackling children without first conducting a behavioral evaluation. Plaintiff also seeks to enjoin Defendant from joining the hand and foot of a child that is in restraints. Lastly, Plaintiff seeks a declaratory judgment to declare Defendants current practice with regards to shackling youth and joining the hand and foot of subject children to be violative of Title 9, New York Code, Rules and Regulations ("9 N.Y.C.R.R.") §168.3.

The facts of this case are undisputed. Plaintiff was placed in the custody of Defendant for twelve (12) months on December 8, 2006 by Judge Larabee of the New York County Family Court ("NYCFC"). *Plaintiff's Amended Complaint, Class Action* ¶ 38. Plaintiff was a resident of OCFS' Tryon Residential Center ("Tryon"). *Id* .at ¶ 39. Tryon and other OCFS facilities use a three (3) tier system of behavior: Orientation, Adjustment and Transition, where children graduate from one level to the next upon exhibiting good behavior. *Id.* at ¶ 41. Plaintiff began residing at Tryon in May of 2007, graduated to Adjustment in August of 2007 and reached Transition on October 25, 2007. *Id.* at ¶ 42.

Dated: 1/19/10

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J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☑ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

Plaintiff's twelve (12) month placement was set to expire on November 28, 2007 but OCFS filed a petition on September 20, 2007 to extend his placement. *Id.* at ¶ 43. November 1, 2007 was the first court proceeding in New York County Family Court regarding the extension. *Id.* At 4:00 am that day, Plaintiff was placed in handcuffs, footcuffs and a belly restraint. *Id.* at ¶ 45. A metal restraint box was placed over the chain linking his handcuffs to one another which prevented Plaintiff from separating his hands father than the width of the metal box. *Id.* Prior to him being shackled and transported, Plaintiff was not assessed for mood or mental state. *Id.* at ¶ 46.

The distance from Tryon to NYCFC is approximately 200 miles. *Id.* at ¶44. Plaintiff was also accompanied by two (2) male OCFS staff members. *Id.* at ¶ 46. Upon his arrival at NYCFC, Plaintiff was in OCFS boys' uniform, shackled and brought through the front public entrance. *Id.* at ¶ 48. He was taken in a public elevator to the waiting area of Judge Larabee's courtroom and remained there until his case was called at 12:45pm. *Id.* at ¶ 50. His matter was adjourned and Plaintiff returned to Tryon where his shackles were finally removed at 6:15pm; totaling approximately fifteen (15) hours of restraint. *Id.* at ¶ 54.

Plaintiff's motion for Summary Judgment is now before the Court. To obtain summary judgment it is necessary that the movant establish his cause of action or defense sufficiently to warrant the court as a matter of law in directing judgment in his favor and he must do so by a tender of evidentiary proof in admissible form. To defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact. *Zuckerman v. City of New York*, 49 N.Y.2d 557 (NY Ct. of App. 1980).

Title 9, New York Code, Rules and Regulations ("9 N.Y.C.R.R.") §168.3: Use of Physical and Medical Restraints governs the case at hand. Specifically subsection (a) and (a)(2) where it states:

> "(a) Physical Restraints: Permissible physical restraints, consisting solely of handcuffs and footcuffs, shall be used only in cases where a child is uncontrollable and constitutes serious and evident danger to himself and others. They shall be removed as soon as the child is controllable. Use of physical restraints shall be prohibited beyond one-half hour unless a child is being transported by vehicle and physical restraint if necessary for public safety. If restraints are placed on a child's hands and feet, the hand and foot are not to be joined, as for example, in hog tying. When in restraints, a child may not be attached to any furniture or fixture in a room nor to any object in a vehicle."...
>
> "(a)(2) Physical restraints may be utilized beyond one-half hour only in the case of vehicular transportation where such utilization of physical restraints is necessary for public safety."

The issue in this case is whether OCFS shackles all of its youth during transportation to, from and during court proceedings without first assessing whether the

youth would pose a threat to the public is violative of Title 9, New York Code, Rules and Regulations ("9 N.Y.C.R.R.") §168.3.

Where a question of statutory interpretation is one of pure statutory reading and analysis, dependent only on an accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of an administrative agency, and on such occasions, the courts are free to ascertain the proper interpretation from the statutory language and intent and may undertake the function of statutory interpretation without any deference to the agency's determination. *Roberts v. Tishman Speyer Properties, L.P.*, 874 N.Y.S.2d 97 (1st. Dept. 2009).

The statute does not assess the necessity for the use of restraints by location, rather by behavior. It only creates a timing exception for juveniles who pose a threat to public safety in regards to transportation. Based upon all of the papers submitted to this Court, Defendant has not put forth any documents in evidentiary form contesting or contradicting Plaintiff's contention that it shackles all of its juveniles regardless of location, behavior or threat posed to the public. In fact, Defendant recognizes on page eleven (11) of its Memorandum of Law in Opposition to Plaintiff's Motion for Summary Judgment ("Opposition Memorandum"), that restraints are not normally necessary except for when the youth is "uncontrollable and constitutes a serious and evident danger to himself and others."

Defendant relies on the assumption that family court appearances involve congested areas where emotions may run high, to justify their procedure of blanket shackling of juveniles in their custody. Defendant contends "there is no requirement that an individual determination be made with respect to public safety" thereby admitting that no such determination is ever made prior to shackling and transporting its juveniles. *Id.* That statement implies that all juveniles are shackled from the moment they leave their OCFS facility until their return to said facility. What OCFS has been doing is putting the carriage before the horse. Although the statute does not literally spell out the need for some form of an evaluation of a child's behavior, it indirectly requires OCFS to reach a conclusion regarding subject child's behavior prior to shackling.

It is the responsibility of the Congress to make new laws and amend existing ones. Article I section 8 of the United States Constitution provides "The Congress shall have power to... make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Missing the crucial step of evaluating juveniles distorts the purpose of §168.3 and allows OCFS to attempt to create law where is lacks authority to do so. Defendant relies on multiple policies that have been issued over time regarding the use of mechanical restraints to govern and direct their practice.

However, it is well settled procedure and law that a manager, former deputy, supervisor or any other member of any government entity shall not and cannot usurp the authority of the legislature by overriding what is written in statute with what is written as inter office policy.

Therefore, not only do OCFS' policies lack authority, they completely contradict the language of §168.3. "Former Deputy Director Louis Mann revised the policy to require use of mechanical restraint both in transport and while at the location to which the juvenile is transported to which included handcuffs (double locked), waist chain/belt and leg irons and the use of the black box..." Not only does the policy permit hog tying where the statute clearly prohibits, but it allows shackling of all youth- regardless of behavioral assessment or without apparent need. Prior to the 1996 revision, a policy titled "Transport Standards of the DFY State Wide Youth Transport System ("SYTS") was issued. The SYTS fails to mention when the use of mechanical restraints are appropriate. Interestingly enough, section D(2)(a) of the SYTS policy requires a risk assessment to be conducted for each youth in transport situation. Such assessments include security needs, risk of assault, Absent Without Official Leave or self injury, level of training and experience of available staff relevant to the risk and staffing, and transport ratios available to address the risk factors involved. Said risk assessment is further adopted in the "Transportation of Residents- Statewide Transport System". Thus, for Defendant to contend it is not obligated to perform any individualized assessment of each individual is to violate its own written policies, even had its policies were in line with the New York Statues.

As for Defendant's bald allegation that an OCFS official was advised by a Court Officer responsible for all court officers in New York City family court that OCFS would have to use restraints on juvenile delinquents being held in public areas of the courthouse, there has been no name, affidavit, documentation or authority to support it. As such, same is rejected as baseless and unsupported.

Lastly, under §168.3 how long a juvenile should remained shackled is clear. Specifically, §168.3(a)(2), allows the use of restraints beyond one-half hour only in the case of vehicular transportation where such utilization of physical restraint is necessary for public safety. Thus, in the case of John F. and those similarly situated, a 15 hour span of being shackled is an egregious disregard for the half hour limit imposed on OCFS by statute. Again, the determination of whether a juvenile poses a threat to public safety relies upon some form of risk assessment of the juvenile prior to shackling. Something clearly and utterly lacking under OCHS' current policies.

Accordingly, Plaintiff has requested and it is hereby declared that: (1) The shackling of John F. was done without first conducting an assessment to determine whether he was uncontrollable and constituted a serious and evident danger to himself or others thereby violating 9 N.Y.C.R.R §168.3(a); (2) Defendant's shackling of John F. by joining his hand and foot with a restraint belt and a restraint box violated 9 N.Y.C.R.R §168.3(a); (3) Defendant's policy and

practice of shackling children in their custody in non-secure and limited secure residences with handcuffs and footcuffs, without an individualized determination that the children are uncontrollable or constitute a serious and evident danger to themselves and others at the time they are in the courthouse while the children are in New York City's court buildings violates 9 N.Y.C.R.R §168.3(a); (4) Defendant's joining of children's hand and foot transported to New York City's courts by way of restraint belts and restraint boxes violates 9 N.Y.C.R.R §168.3(a).

Plaintiff's request to have John F. declared neither uncontrollable nor a danger to himself and others at the time he was shackled is denied as no evaluation was done to reach such a conclusion.

As for Plaintiff's request for permanent and preliminary Injunctions, Defendant is hereby enjoined from restraining John F. with handcuffs and/or footcuffs for future court appearances unless Defendant determines John constitutes a serious and evident danger to himself and others while in the courthouse. Defendant is also enjoined from joining John's hands and feet, as in hogtying, by any means at any time.

Defendant is further enjoined from restraining, with handcuffs and/or footcuffs, children placed in their non-secure or limited secure custody pursuant to Article 3 of the Family Court Act, during the time the children spend in New York City Court buildings except that Defendant may restrain an individual child in the court building only if defendant makes a reasonable determination that the child constitutes a serious and evident danger to himself and others at the time defendant seeks to restrain the child. Defendant is further enjoined from joining subject children's hands and feet, as in hogtying, by any means, at any time.

Plaintiffs request for Defendant to pay expenses and reasonable attorney's fees incurred in the prosecution of this matter is granted pursuant to New York Equal Access To Justice Act, CPLR Article 86 and CPLR 909.

CPLR Article 9(a) list the prerequisites to a class action. One or more members of a class may sure or be sued as a representative parties on behalf of it all if: (1) the class is so numerous that joinder of all members, whether otherwise required or permitted is impracticable; (2) there are questions of law or fact common to the class which predominate over any questions affecting only individual members;(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (4) the representative parties will fairly and adequately protect the interest of the class; and (5) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

The proposed action meets the requirements of §901(a). The number of children in OCFS custody is substantial and joinder of all members is impracticable. Whether or not the children in OCFS custody were shackled

without first being evaluated and were shackled in a manner consistent with hog tying are questions of law or fact common to the class which predominate over any questions affecting only individual matters. The claims or defenses of the representative party, John F., are typical of the claims or defenses of the class. John F. will fairly and adequately protect the interest of the class. Lastly, a class action is superior to other available methods for the fair and efficient adjudication of the controversy. §901(a)(5)(b) does not apply. Therefore, this class is hereby certified.

Accordingly, Plaintiff's motion for summary judgment is hereby granted.

The issue of Attorneys' fees is set down for a hearing. Parties are to appear on May 12, 2010 at 9:30am.

1/25/10

HON. MILTON A. TINGLING
J.S.C.