

TESTIMONY OF MIKE FONKERT  
JUST CAMPAIGN DIRECTOR  
KANSAS APPLESEED CENTER FOR LAW AND JUSTICE

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SENATE COMMITTEE ON JUDICIARY  
**IN SUPPORT OF SB 321**  
JANUARY 26, 2022

Members of the Senate Committee on Judiciary:

My name is Mike Fonkert; I am a Campaign Director for Kansas Appleseed Center for Law and Justice, a nonprofit, nonpartisan organization dedicated to the belief that Kansans, working together, can build a state full of thriving, inclusive, and just communities.

**Kansas Appleseed is providing testimony in support of SB 321.** This bill creates a default prohibition on restraints being used on youth during a court hearing and requires them to be removed prior to any court appearance. Shackling restraints would only be able to be used if a hearing is held and the court finds on the record that restraints are the least restrictive means available and are necessary to prevent harm or flight.

The United States Supreme Court has established a clear presumption against adult shackling<sup>1</sup>, but youth in Kansas do not currently have the same protection.

- Kansas is one of 16 states that currently do not have laws, administrative rules, or court rulings establishing a presumption against youth shackling.<sup>2</sup>
- Shackling impedes the attorney-client relationship, runs counter to presumption of innocence, restricts one's ability to assist in their defense, and causes trauma to the youth being restrained.
- The National Juvenile Defender Center observed numerous court hearings in which youth appeared in person and arrived at court from a detention center or other secure facility. In each observed instance, the young person was shackled when they were brought into the courtroom and remained shackled throughout the hearing.<sup>3</sup>

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<sup>1</sup> Deck v. Missouri. 544 U.S. 622, 631-35 (2005); Illinois v. Allen. 397 U.S. 337, 344 (1970).

<sup>2</sup> See MINN. STAT. ANN. § 260B.008: Use of Restraints (2021); GA. UNIFORM RULES JUV. CTS. 20: Physical Restraint of Juveniles in the Courtroom; MICH. CT. RULES 3.906: Use of Restraints on a Juvenile; NAT'L JUVENILE DEF. CTR., ELIMINATING SHACKLING IN JUVENILE COURT: CONTINUING THE MOMENTUM (2019), [https://njdc.info/wp-content/uploads/NJDC\\_Shackling\\_FINAL\\_Web.pdf](https://njdc.info/wp-content/uploads/NJDC_Shackling_FINAL_Web.pdf).

<sup>3</sup> National Juvenile Defender Center. "Limited Justice: An Assessment of Access to and Quality of Juvenile Defense Counsel in Kansas. 2020. <https://njdc.info/wp-content/uploads/Kansas-Assessment-Web.pdf>

The use of unnecessary shackling for youth serves to humiliate, stigmatize, and traumatize those forced to wear them.<sup>4</sup> The Supreme Court has declared the use of shackles for adults to be “inherently prejudicial.”<sup>5</sup> The same is clearly true for youth, and yet these restraints are still regularly used without a formal finding for their need. For these reasons, we strongly support passage of HB 2471.

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<sup>4</sup> Campaign Against Indiscriminate Juvenile Shackling.  
<https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>

<sup>5</sup> *Deck v. Missouri*. 544 U.S. 622, 635 (2005).