

Restraining In-custody Defendants

301.1 PURPOSE AND SCOPE

Defendants have a constitutional right to be free from restraints during court proceedings. In some cases, that right takes is secondary to maintaining safety and order in the courtroom. The principles in this area are summarized in court cases such as Tiffany A. v. Superior Court.

301.2 PROCEDURE FOR COMPLETING A RESTRAINT ASSESSMENT

When an in-custody defendant's hearing is confirmed, a case number will be generated by SCMO Dispatch for each assessment completed. A Restraint Assessment Check Off List is to be given to dispatch to be completed no later than the following Monday by noon. When dispatch has completed printing the assessment information, they will file the assessment with all other reports. It will be the deputy's responsibility to contact dispatch and retrieve the restraint assessment information. It will also be the responsibility of the deputy assigned to the courtroom at the onset of the jury trial/preliminary hearing to maintain control over the assessment check off list and other confidential information until submitted to his/her supervisor. No copies will be made of any information contained in the assessment check off list unless approved by a supervisor. Once the deputy has received all the information it will be his/her responsibility to determine whether or not the assessment check off list establishes the MANIFEST NEED to restrain the defendant. The type of restraint used must be the least visible and least restrictive form of restraint that will address the risk posed by the defendant in question.

If an objection is made by defense counsel regarding the restraints, the Judge will hold a formal restraint hearing (for trials- w/court counsel) or informal restraint hearing (for preliminary hearings -judge only). It will be the assigned deputy's responsibility to be familiar with the restraint assessment packet for that defendant and take the stand when required to answer questions.

Defendants who are in custody will be restrained at Jury Trial/Preliminary Hearings ONLY IF there is a "MANIFEST NEED".

301.2.1 MANIFEST NEED

EXAMPLES OF MANIFEST NEED The issue breaks down into two considerations that justify restraints:

- A) Safety
- B) Order in the Courtroom

The following are examples that could justify restraints:

1. Violent behavior while in court
2. Escape attempts
3. Threats or other statements of intent to escape
4. Possession of weapons while in custody

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5. Fights or physical resistance involving law enforcement officers or other custodial staff
6. Fights with other inmates
7. Violent behavior while in custody
8. Threats to judges or law enforcement
9. Threats to witnesses or other persons in court
10. Outbursts or other disruptive behavior while in court.
11. Conduct while in custody that shows the defendant refuses to follow the directions of law enforcement personnel. (Such conduct must be substantial and generally must occur repeatedly to warrant restraints.)

What are NOT grounds for restraints according to current case law:

- Being in custody
- Being charged with a violent crime (current charge)
- Facing the death penalty
- Shortages of security personnel
- Deficient court facilities

It is impossible to list everything that could amount to "manifest need," and the deputy completing an assessment must always use good judgment. Additionally, deputies completing restraint assessments should consult with home court deputies to see if there is other pertinent restraint information about the defendant.

301.3 PROCEDURE FOR PRELIMINARY HEARINGS

Defendants appearing for preliminary hearings will not be restrained unless there has been an individualized assessment establishing a need to do so. Since it is unlikely that there will be grounds for restraints in most cases, this means most defendants will not be restrained.

If the preliminary hearing is held at the main courthouse, the deputy will contact dispatch to retrieve the restraint assessment information.

Where there are grounds for restraint, the deputies should put the defendant in restraints. A restraint assessment then must be completed prior to placing the defendant in restraints. Unless the defense objects, there will not be any need to do anything further.

If there is an objection from the defense, the judge will hold an informal hearing on the subject. The deputy will not be placed under oath and will not be subject to extensive cross-examination. Rather, the judge will ask the deputy on the record why restraints are being requested, and the deputy will need to explain why restraints are needed. Then the judge will allow the defense attorney to ask questions.

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The deputy should advise the judge as soon as the determination has been made to place the defendant in restraints.

301.4 PROCEDURE FOR JURY TRIALS

When a deputy is assigned a defendant for jury trial in his/her courtroom, he/she is responsible for completing the restraint assessment and making the determination of what type of restraint to use.

The restraint assessment check off list will be initiated in the trial readiness courtroom and provided to dispatch, typically on Friday morning. Once dispatch receives the form, they are to print and attach all necessary information to the face page. Once the information has been retrieved, dispatch will file the restraint assessment with all other reports. When deputies have a need for the restraint assessment, they are to request it from dispatch. Dispatch will then provide them the restraint assessment.

Once the deputy receives the assessment, he/she needs to review the information and make a determination of the type of restraint the defendant will have. The deputy should be prepared to testify to the reason(s) the restraint was placed on the defendant. The "Manifest Need" requirements must be met. Each deputy must make the determination whether or not to inform the judge regarding the defendant's restraint status. Notification of the judge will be based on the preference of each judge.

When a deputy makes the determination that manifest need has been met, the deputy is to place appropriate restraint on the defendant. If defense counsel objects, a supervisor and General Counsel shall be notified immediately. The deputy should then be prepared to testify regarding the manifest need for restraint.

If at any time an in-custody is not going to be restrained during jury trials, a supervisor and dispatch must be notified.

Once the deputy has no need for the assessment, he/she is to submit the assessment with a report tracking sheet to a supervisor. The assessment will be maintained with all other reports.