

Should Defendants be Handcuffed in Court?

The Public Service Association prison officer Branch President Steve McMahon believes that the Downing Centre escape should never have been possible, and wants to ensure it will never happen again. He wants all defendants who are in the 'dock' to be handcuffed, with the exception of pregnant women and those with medical conditions. The dock is where those in custody normally sit while in court, and also where defendants sit during jury trials and sentencing proceedings in the higher courts.

The story so far...

Last week, we reported on the [extraordinary escape of Ali Chahine from the Downing Centre District Court](#). Unfortunately for Mr Chahine, he was re-arrested on Monday 4 October – less than a week after his bolt for freedom.

He was found hiding at a unit in Alexandria, and has since been charged with escaping lawful custody, as well as two counts of assault occasioning actual bodily harm.

Mr Chahine's bare footed bolt has sparked the call for all defendants to be handcuffed in the dock.

The bureaucratic response

At first, NSW Corrections Minister David Elliot tried to blame the judge for the escape, saying that he should have ordered Chahine to be handcuffed.

But a person in Mr Elliot's position should be aware such decisions are normally made by Corrective Services after assessing the risk – not by the judge, who normally knows nothing in advance about the defendant or even the nature of

the case.

Mr McMahon's response was to appeal to the NSW Corrective Services Commissioner Peter Severin to implement an across the board policy for all defendants to be handcuffed in court while they are in the dock.

[Mr McMahon told ABC news](#) that the Public Service Association had been "asking for a very long time that there be a blanket decision... [and that the issue] be taken out of the judges and magistrates hands and allow us to handcuff prisoners while they're on the dock."

Criticism

There have been a [number of studies](#) showing that the way a defendant is presented in court can affect a jury's determination of guilt. Specifically, there are concerns that requiring defendants to wear handcuffs could unfairly lead the jury to believe that they are dangerous, thereby increasing the likelihood of a conviction. It could also be argued that requiring defendants to wear handcuffs for several hours a day during trials that could last for weeks or even months is unnecessary and cruel, not to mention limiting their ability to write notes.

Forcing defendants to wear handcuffs would also go against centuries of legal tradition. As far back as the 1700s, the great legal mind Judge William Blackstone famously wrote that:

"it is laid down in our antient books, that, though under an indictment of the highest nature... [a defendant must be] brought to the bar without irons, or any form of shackles or bonds; unless there be evident danger of an escape."

This was quoted in an [influential United States case](#) which embedded the principle into US law.

And the fact remains that escapes from courthouses are

extremely rare. In addition to all these points, who is to say that handcuffs will prevent an eager escapee from making a dash for freedom, given that stocky Mr Chahine was able to escape from level 3 of a secure courthouse in bare feet.