

December 27, 2021

Clerk of the Wisconsin Supreme Court  
Deputy Clerk - Rules  
P.O. Box 1688  
Madison, WI 53701-1688

Subject: In Support of Rule Petition 21-04, In the Matter of Amending Wis. Stats. §§ 48.299 and 938.299 Regulating the Use of Restraints on Children in Juvenile Court (Juvenile Shackling)

Dear Honorable Justices:

Disability Rights Wisconsin (DRW) is the designated Protection and Advocacy system for Wisconsinites with disabilities. We are charged with protecting and enforcing the legal rights of individuals with disabilities. As part of our work, DRW focuses on the intersection of disability and the justice system.

We are concerned about policies in the juvenile justice system that can have a disproportionately negative impact on youth with disabilities, particularly youth with mental health conditions, who are consistently over-represented in this system. Many of these youth are impacted by traumatic backgrounds which can be exacerbated by certain policies and practices in this system. We believe that one such policy involves the shackling of youth in juvenile court proceedings. DRW believes that there should be a presumption against shackling youth in juvenile court and therefore write in support of the Petition to Amend Wis. Stat. §§ 48.299 and 938.299 Regulating the Use of Restraints on Children in Juvenile Court.

Youth with mental health conditions are particularly vulnerable to being restrained. DRW has worked to minimize the use of restraints in settings such as mental health hospitals, residential and day treatment centers and schools. The vulnerability that youth face in these other settings can be made worse in the courtroom, where so much about their future is at stake.

In a 2015 policy statement<sup>1</sup>, the National Center for Mental Health and Juvenile Justice stated many reasons that youth with behavioral health needs are particularly vulnerable to negative impacts from shackling in court, including:

- Exacerbates distress and can directly contribute to the worsening of symptoms of mental disorders, compromising daily functioning;

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<sup>1</sup> Campaign Against Indiscriminate Juvenile Shackling Toolkit (Updated January 2016); <https://njdc.info/wp-content/uploads/2016/01/Toolkit-Final-011916.pdf>

- Can undermine trust in adults in positions of caretaking or responsibility who might otherwise be able to work effectively with a youth with behavioral health needs;
- May trigger memories of past maltreatment and specifically exacerbate post-traumatic symptoms such as anger, anxiety, dissociation, mistrust and non-compliance; and
- May deepen depression due to the shame and humiliation associated with public shackling, and in some cases may contribute to self-harming behavior or suicidality.

These negative impacts are both harmful to the youth's ability to participate fully in the proceedings of the courtroom, and significantly undermine the rehabilitative goals of the juvenile justice system. As part of our work with youth with disabilities, we have heard many concerns from our clients and their parents, including that being restrained is scary and makes them feel like others think of them as "animals"; it heightens their distress; and that they are less able to think clearly. On the other side of the coin, data from many jurisdictions around the country has demonstrated that shackling is not necessary to maintain courtroom safety.

DRW strongly supports Supreme Court rule Petition 21-04 and the revisions it proposes on shackling in juvenile court, most importantly that courtroom restraints are prohibited unless a judge makes a specific finding that one or more of the factors laid out in the proposed rule change are met. Thank you for the opportunity to comment on this important proposed rule and please feel free to contact DRW if you have any questions.

Sincerely,



Kit Kerschensteiner  
Director of Legal and Advocacy Services

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