

December 28, 2021

Clerk of the Wisconsin Supreme Court  
110 East Main Street, Suite 215 P.O.  
Box 1688 Madison, WI 53701-1688

Re: Petition to the Wisconsin Supreme Court to amend Wis. Stats. §48.299 and §938.299  
Regulating the Use of Restraints on Children in Juvenile Court

Dear Honorable Justices,

I am writing on behalf of my organization, Kids Forward, Inc. in support of the proposed rule governing the use of restraints in children in the juvenile court. Kids Forward is a one-hundred year old public policy organization that advocates for effective, long-lasting solutions that break down barriers to success for children and families in Wisconsin. Using research and a community-informed approach, we work to help every kid, every family, and every community thrive.

Furthermore, our work seeks to understand the life situations of every child and family, and act out of a deep concern for those furthest from opportunity. To this end, Kids Forward has been a long-standing and vocal advocate for improving the lives and outcomes of youth involved in the juvenile justice system in Wisconsin. It is integral to our mission that young people and their families and communities are given the resources, tools and support they need to reach their full potential and ultimately be thriving members of the community. Having a youth justice system that is equitably administered across racial, economic and geographic lines is critical to achieving the future that we all envision for our state's children. Consequently, our more recent advocacy has emphasized the need to address the shameful racial disparities present in the system, provide developmentally appropriate and trauma-informed responses, implement known best practice in youth justice and lastly, the building of a system that focuses on prevention, compassion, rehabilitation and meeting the needs of struggling youth.

As a result, we strongly support the petition for a rule that would establish a presumption against shackling children in juvenile court, with judicial authority to override that presumption when a child is a danger to themselves or others, or a significant risk of escaping from court. Kids Forward is in favor of this rule change for a number of important reasons.

First, a disproportionate number of Black and Brown youth are involved in the youth justice system in Wisconsin. As a consequence of racial bias embedded in nearly all aspects of the system it too often results in differential and negative impacts in terms of arrests and sentencing for youth of color. Specifically, African American youth are three times more likely to be arrested and Native American youth are two times as likely to be arrested as compared to white youth. Furthermore, African American youth made up a disproportionate number of those sent to secure detention based on data secured in 2016. These disparities remain today and, as a result, it is likely that there is a disproportionate number of youth of color who are unnecessarily being shackled and the unintended consequence is a reinforcing of race based stereotypes that contribute to the ongoing challenge of reducing disparities. Changing the presumption of shackling would be a critical step in interrupting disparities in the system.

In addition, it would demonstrate to these same youth that, while in court, the system itself intends on the equitable administration of justice and fairness regardless of race.

Second, nearly 80% of youth in the youth justice system in Wisconsin are also dually involved youth – they are also in the child welfare system. This means that they are likely to have already experienced some trauma. Consequently, shackling children likely only compounds that trauma and the system inadvertently takes an active role in retraumatizing them. Notably, both systems are premised on the philosophy of safety and rehabilitation and that same premise should extend to the rules on shackling. This rule change would emphasize the rehabilitative nature of the system and discourage and move away from a purely punitive one by presuming that a child is in fact a child deserving of our collective and societal compassion, empathy and in need of our support rather than deserving of confinement and in need of controlling.

Third, in recent decades scientific research around youth development and youth brain development has yielded important information that is applicable to the youth justice system. That includes prevalent research about self-perception and its key to mental health, and how that has an influence on their future. Studies have shown that one night in detention can dramatically increase recidivism in youth as a consequence of perceiving themselves as bad or undeserving. Similarly, interviews with system-involved youth describe the negative impact that the experience has on their sense of self and self-worth. Moreover, it is reasonable to think that being presented before their parents and others in shackles can have the same impact. Failing to take this into account when considering changing the presumption would ignore the evidence-based research that argues to the contrary.

Moreover, shackling undermines the ability of the youth to participate in their own hearing and demonstrate to themselves as well as the court that they have a meaningful contribution to make to the proceedings and are not secondary to the others present in the room. Youth, especially teens and emerging adults, are desiring to be seen and heard and listened to. Indiscriminately shackling them without reasons related to their safety or that of others sends an entirely different message. What we know about youth development is that it is ongoing, it does not start and stop with a court hearing or period of confinement. For this reason, everything that society conveys to young people is of critical importance and for those that come into contact with the court system, that experience need not set them back further or interfere with the rehabilitation, upon which the system is based.

For the above stated reasons we are in favor of the petition amending Wis. Stats. §48.299 and §938.299 Regulating the Use of Restraints on Children in Juvenile Court. Thank you for the opportunity to comment on the proposed rule.

Sincerely,  
  
Erica Nelson  
Advocacy Director, Kids Forward