



# Wisconsin State Public Defender

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January 3, 2022

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

Re: 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)

Honorable Members of the Supreme Court,

Thank you for the opportunity to comment on Rules Petition 21-04 related to the shackling of youth in court. The State Public Defender (SPD) supports the goal of the petition to establish a presumption against shackling with a process for the court to shackle if a security risk justifies the use of restraints.

The SPD has been working to educate and train attorneys providing representation for youth involved in the justice system about the research and impact of indiscriminate shackling on youth and their families. As noted in the petition's supporting memorandum, several individual counties have already adopted policies similar to the petition. Establishing a uniform policy for Wisconsin will ensure that youth appearing in any Wisconsin court are afforded the same presumption against the use of restraints in every courtroom. In addition to the harms that shackling poses to youth, the policy recognizes that appearing in restraints is often unnecessary for security and does not offer an evidence-based risk reduction strategy.

The petition's supporting memorandum lays out the constitutional, statutory, and precedential authority for adopting this petition. In addition to the well-crafted position by the petitioners, we would add that the Supreme Court has exercised its inherent authority to require that circuit court judges make findings before exercising their authority. For example, in Sup. Ct. Order No. 07-12, 2008 WI 37, the court created a rule governing videoconferencing in the courts, including s. 885.56, where the Supreme Court created a non-exhaustive list of factors that the circuit court consider when exercising its discretion. In a majority of counties, the default practice is to shackle youth in the courtroom regardless of evidence that the youth may present a danger. This is not a scenario of "better safe than sorry" but rather an ill-conceived practice that inflicts real short- and long-term harm on youth who come through the Wisconsin juvenile justice system in many counties.

As noted in the petition's supporting memorandum, there is a significant amount of research, evidence, and legal precedent for prohibiting the indiscriminate shackling of youth. Restraints not only make it more difficult for youth to participate in their own hearing, but it is humiliating to the child. That in turn leads to behaviors such as aggression and avoidance that then create their own risk of harm. It also perpetuates generational harm through increased trauma which reduces safety in the courtroom in the short term, and safety in the community in the long term.

The experience in 34 other states and DC, as well as 5 counties in Wisconsin which have adopted a policy substantially similar to what is proposed in the petition is that these policies work well and do not result in increased security concerns. The petition cites data supporting the success of these policies. In fact, some places have noted that security concerns are reduced as youth present with greater dignity and self-respect without restraints. Again, the petition does not ask this Court to prohibit the use of restraints but, instead, requires circuit court judges to make a finding that a security risk exists to a degree that justifies the use of restraints on the youth.

With what we know about the impact of shackling specifically and more generally about brain development in adolescents, we respectfully request adoption of a uniform statewide policy that effectively balances courtroom safety and the well-being of youth in the juvenile justice system. I urge the honorable members of this court to adopt Petition 21-04.

Sincerely,

/s/

Kelli Thompson  
State Public Defender