



December 21, 2021
The Clerk of the Supreme Court
Attn: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

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

To: Justices of the Supreme Court

We are writing on behalf of the Midwest Juvenile Defender Center (MJDC) and its parent organization, the National Juvenile Defender Center (NJDC)/The Gault Center,ⁱ in support of Rule Petition 21-04. The Gault Center is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in youth defense.ⁱⁱ Wisconsin is currently one of eight states comprising the MJDC.ⁱⁱⁱ Through our work on an anti-shackling campaign,^{iv} we engage with advocates, judges, members of the media, and medical professionals across the country to educate stakeholders on the harms of shackling young people, and promote laws, regulations, and court orders prohibiting the presumption of shackling youth during court proceedings.

Why Reform Shackling Practices?

The stigma and trauma caused by shackling youth, and the interference with due process rights and attorney client-communication have been fully outlined in Petitioner’s Memorandum of Support (“Memo”)^v and supporting documents.^{vi} Dr. Coffey and Ms. Rodrik’s Affidavit asserts that shackling will exacerbate feelings of trauma,^{vii} impede rehabilitative efforts,^{viii} and is likely stigmatizing and dehumanizing for young people.^{ix} Their expert opinions are consistent with those of a diverse group of professionals from around the country, who aver that shackling unnecessarily humiliates, stigmatizes, and traumatizes young people,^x impedes the attorney-client relationship,^{xi} chills due process protections,^{xii} runs counter to the presumption of innocence,^{xiii} and calls into question the rehabilitative ideals of the juvenile court.^{xiv} Several major organizational resolutions and policy statements also condemn the indiscriminate use of shackles^{xv} and highlight the increased harm to children with a history of trauma exposure, which includes most youth with legal system involvement.^{xvi}

Stark racial disparities in the legal system exacerbate the impact of shackling on youth of color. Despite research showing that behaviors and development are consistent across racial groups, young people of color face higher arrest rates for similar conduct committed by white children, benefitting from fewer opportunities for diversion, and being far more likely to be detained and incarcerated.^{xvii} This over-representation in the legal system makes Black

and Latinx youth significantly more likely than their white peers to face physical restraint at the hands of law enforcement, whether on the streets or inside the courtroom.

2021 National Survey Shows Shackling Reform Does Not Increase Security Risks, but Does Improve Youth Interactions with Judges

When we launched an anti-shackling campaign in 2014, only 13 states had legislation, court rules, or caselaw limiting indiscriminate shackling in juvenile court. Today, 34 states and DC limit or prohibit the indiscriminate shackling of children, while just 16 states do not.^{xxiii} States that prohibit the indiscriminate shackling of children include every neighboring state of Wisconsin.^{xxix} Three of the four neighboring states ended the automatic shackling of youth through statewide court rule, as is proposed here.^{xx}

To provide a more complete picture of jurisdictions' experiences, we conducted confidential telephone interviews with stakeholders from 29 of the 34 states that have a statute, court rule, or administrative order limiting the use of indiscriminate shackling of youth in court.^{xxi} The themes that emerged from these discussions provide important insights. Two of the themes speak to the positive changes that young people, their families, and courthouse stakeholders experienced when shackling was reduced: 1) A presumption against shackling does not create or increase safety risks. 2) Children's demeanor in court and interactions with judges improve when they are not shackled.^{xxii}

Our interview findings mirror those outlined in Petitioner's Memo, highlighting the successes of individual Wisconsin jurisdictions that have already ended the practice of automatically shackling youth in court.^{xxiii}

A Presumption Against Shackling Neither Creates nor Increases Safety Risks

2016 data from six diverse jurisdictions indicates no evidence of compromised safety for young people or court staff after ending the automatic use of shackling. For example, between 2006–2016, in Miami, which ended automatic shackling in 2006, more than 25,000 children appeared in Miami-Dade County's juvenile court without injury or escape. Another jurisdiction reported just three incidents of youth "acting out in court" over 12 years.^{xxiv} No jurisdiction reported compromised safety due to the unshackling of young people in the courtroom.^{xxv} Our 2021 national survey interviewees made the same reports, as have additional judges around the country.^{xxvi}

Stakeholders who petitioned the Wisconsin Supreme Court in 2021 in favor of a rule against the indiscriminate shackling of youth in court reported similar experiences among five Wisconsin counties that have already limited shackling.^{xxvii}

Children's Demeanor in Court & Interactions with Judges Improve When They are Not Shackled

As the United States Supreme Court has recognized, shackling may impede the presumption of innocence and the ability to communicate with counsel and is “something of an affront to the very dignity and decorum of judicial proceedings that the judge is seeking to uphold.”^{xxviii} National organization resolutions specifically note the detrimental impact shackling has on the juvenile court system’s goal of rehabilitation.^{xxix}

Our 2021 national survey interviews indicated an increase in young people’s wellbeing, positive behavior, and engagement during hearings in which youth were unshackled. Judges across the country notice such differences, too. In 2016, Judge Darlene Byrne of Travis County, Texas, said:

I decided not to wait for the law to change before I reformed practice in my own courtroom. The outcomes have been outstanding. We hear about 3,000 juvenile cases in my district. In only two cases did I deem shackles necessary because those youth posed a significant risk. In more than a year since I and all my colleagues have stopped automatic shackling, there have been no escapes and no violence. Far more compelling is what did happen: More engaged kids and families, more meaningful conversations, more success.^{xxx}

In addition to reporting how unshackling has had positive impacts on youth, some survey interviewees described observing improvements in the way judges interact with youth. Several noted that without shackles on, youth were more likely to be perceived as the children they are, instead of as “inmates.” Interviewees noted interactions were more conversational, with youth more engaged and judges better able to make a connection with the young people appearing before them.

Almost all defenders interviewed as part of the national survey also reported a positive change in the demeanor of their clients’ families in court. Interviewees described how it was incredibly distressing for families to see their child or sibling in shackles, adding to the stress of an already traumatic situation. Judge Jay Blitzman of Middlesex County, Massachusetts explained:

Limiting shackling has not adversely affected the flow of business one iota. But it has improved the atmosphere and the culture of the courtroom. When a child can turn and actually say “hello” and you see somebody smile back, that changes things for the child and the family member. It also makes it easier for the management of the courtroom.^{xxxi}

The Memo filed with the proposed rule petition describes similar experiences in Wisconsin.^{xxxii}

Judicial Leadership is Critical to Ending the Automatic Shackling of Youth

Our national survey also reflected several factors that increase the successful implementation of shackling reforms, including that judicial leadership can be key to the effective adoption and implementation of such reforms.

The decision to shackle a child in a courtroom in the rare instances in which they meet specific criteria should be left to the discretion of a judicial officer, rather than law enforcement or other individuals. In many jurisdictions, judges have led or been an integral part of advocating for shackling reforms.^{xxxiii} Indeed, the leading national juvenile court judicial organization, the National Council of Juvenile and Family Court Judges (NCJFCJ), has asserted that it should be the judiciary who leads these efforts, stating “consistent judicial leadership is necessary to ensure that policies regarding shackling continue to be upheld regardless of changes in leadership or administration.”^{xxxiv}

This finding is echoed by what we have observed when states allow individual judges or judicial districts to create their own policies: practices change when there is transition on the bench and are not implemented uniformly or consistently.^{xxxv}

Given what we know about the harms of shackling and the success of reforms, it is imperative that states still indiscriminately shackling youth in court consider adopting reforms of their own.

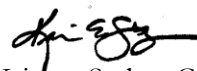
The Gault Center/NJDC and MJDC support the proposed rule prohibiting the routine use of restraints in youth court because it promotes humane treatment of children, protects children’s constitutional rights, and strengthens the rehabilitative purpose of the youth justice system while maintaining safety. For the above reasons, we urge that the Supreme Court of Wisconsin adopt Proposed Rule Petition 21-04.

Thank you.

Sincerely,



Christina J. Gilbert, Senior Youth Policy Counsel
The Gault Center/NJDC



Kristen Staley, Co-Director
MJDC

ⁱ NJDC will be changing its name on January 3, 2022, to The Gault Center.

ⁱⁱ <https://njdc.info/>

ⁱⁱⁱ <https://njdc.info/regional-centers/>

^{iv} <https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>

^v Eileen Hirsch, MEMORANDUM IN SUPPORT OF AMENDING WIS. STATS. §48.299 AND §938, WIS. SUP. CT. (2021), <https://www.wicourts.gov/supreme/docs/2104memo.pdf> [hereafter, MEMORANDUM IN SUPPORT].

^{vi} Coffey Aff. <https://www.wicourts.gov/supreme/docs/2104appa.pdf>.

^{vii} Id. ¶ 22.

^{viii} Id. ¶ 20.

^{ix} Id. ¶ 14, 17.

^x See, e.g. Rosenblitt Aff. ¶¶ 11-12, <https://njdc.info/wp-content/uploads/2014/09/Rosenblitt-Affidavit-NotarizedCV-Final-1-6-15.pdf>; Griffin Aff. ¶¶ 18-19, <https://njdc.info/wp-content/uploads/2014/09/Griffin-Affidavit-II.pdf>; Ford Aff. ¶ 6, <https://njdc.info/wp-content/uploads/2014/09/Ford-Affidavit-Final-Dec-2014.pdf>; Wurm Aff. ¶¶ 10- 11, <https://njdc.info/wp-content/uploads/2015/01/Gwen-Wurm-full-shackling-affidavit-Jan-2015.pdf>; Bidwell Aff. ¶¶ 8-9, <https://njdc.info/wp-content/uploads/2014/09/Bidwell-Shackling-Affidavit-General-April-2015.pdf>; Beyer Aff. ¶¶ 10-12,18, <https://njdc.info/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf>; Kraus Aff. ¶¶ 7-8, <https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>.

^{xi} 6 See, e.g. Ford Aff. ¶ 14, <https://njdc.info/wp-content/uploads/2014/09/Ford-Affidavit-Final-Dec-2014.pdf>; Bidwell Aff. ¶ 10 <https://njdc.info/wp-content/uploads/2014/09/Bidwell-Shackling-Affidavit-General-April2015.pdf>; Beyer Aff. ¶ 20, <https://njdc.info/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf>; Kraus Aff. ¶ 10, <https://njdc.info/wp-content/uploads/2014/09/Kraus-Affidavit-General-Final.pdf>; Rost Aff. ¶ (7) (c-d), <https://njdc.info/wp-content/uploads/2014/09/Gwyneth-Rost-Affidavit-Final-2015.pdf>.

^{xii} See, e.g. Bidwell Aff. ¶ 10, <https://njdc.info/wp-content/uploads/2014/09/Bidwell-Shackling-Affidavit-GeneralApril-2015.pdf>; Beyer Aff. ¶ 20, <https://njdc.info/wp-content/uploads/2014/09/Beyer-Affidavit-w-CV-Jan-2015-Final.pdf>.

^{xiii} See, e.g. Kraus Aff. ¶ 11, <https://njdc.info/wp-content/uploads/2014/09/Kraus-Affidavit-General-Final.pdf>; Rost Aff. ¶ 7a, <https://njdc.info/wp-content/uploads/2014/09/Gwyneth-Rost-Affidavit-Final-2015.pdf>

^{xiv} Aff. ¶ 7a, <https://njdc.info/wp-content/uploads/2014/09/Gwyneth-Rost-Affidavit-Final-2015.pdf>. 9 See, e.g. Bidwell Aff. ¶ 15, <https://njdc.info/wp-content/uploads/2014/09/Bidwell-Shackling-Affidavit-GeneralApril-2015.pdf>; Kraus Aff. ¶ 9, <https://njdc.info/wp-content/uploads/2014/09/Kraus-Affidavit-General-Final.pdf>; Rost Aff. ¶ 7, <https://njdc.info/campaign-against-indiscriminate-juvenile-shackling/>.

^{xv} NAT'L COUNCIL OF JUV. AND FAM. CT. JUDGES, RESOLUTION REGARDING SHACKLING OF CHILDREN IN JUVENILE COURT (2015), https://njdc.info/wp-content/uploads/2015/10/NCJFCJ_Resolution-Regarding-Shackling-of-Children-in-JuvenileCourt.pdf [hereafter, NCJFCJ RESOLUTION]; AM. BAR ASSOC. RESOLUTION 107A (2014), <https://njdc.info/wpcontent/uploads/2014/09/ABA-Report-Resolution-2015-107A-Revised-Approved.pdf> [hereafter, ABA RESOLUTION].

^{xvi} NAT'L CTR. FOR MENTAL HEALTH AND JUV. JUSTICE, POLICY STATEMENT ON INDISCRIMINATE SHACKLING IN JUVENILE COURT (2014), <https://njdc.info/wp-content/uploads/2014/09/NCMHJJ-Position-Statement-on-Shackling-of-Juveniles-032615-with-logos.pdf>.

^{xvii} See generally Sarah Hockenberry & Charles Puzanchera, NAT'L CTR. FOR JUV. JUST., JUVENILE COURT STATISTICS 2018, 58 (2020), <http://www.ncjj.org/pdf/jcsreports/jcs2018.pdf>.

^{xviii} AK: AK. DELINQ. CT. R. 21.5 (2015); AZ: ARIZ. JUV. CT. RULES OF PROC. 12(E) (2017); CA: CAL. CODE. REGS. Tit. 15, § 1358 (2017); CT: CONN. GEN. STAT. ANN. § 46b-122a (2015); DC: D.C. Super. Ct. Admin. Order 15-07 (2015); DE: DEL. CODE ANN. Tit. 10, § 1007B (2017); FL: FLA. R. JUV. PROC. 8.100(b) (2010); ID: State v. Doe, 333 P.3d 858 (Idaho Ct. App. 2014); IL: ILL. SUP. CT. R. 943 (2016); IN: IND. CODE § 31-30.5-2-1 (2015); IA: IOWA R. JUV. CT. PROC. 8.41 (2017); KY: KY. JUV. R. PRAC. & PROC. 23 (2016); LA: LA. CHILD. CODE ANN. § art. 408 (2018); ME: ME. R. CRIM. PROC. R. 43A (2015); MD: In re D.M.; 228 Md. App. 451 (Md. Ct. Spec. App. 2016); MA: Trial Ct. of the Commonwealth, CT. OFFICER POL'Y PROCS. MANUAL, Ch. 4, § VI (2010); MI: Michigan JuCR 3.906 (2021); NE: NEB. REV. STAT. ANN. § 43-251.03 (2015); NV: NEV. REV. STAT. ANN. § 62D.415 (2015); NH: N.H. REV. STAT. § 126-U:13 (2010); NJ: N.J. R. CH. DIV. FAM. PART. 5:19-4 (2017); NM: N.M. CHILD. CT. R. 10-

223A (2012); NY: N.Y. COMP. CODES R. & REGS. Tit. 9, § 168.3(a) (2013); NC: N.C. GEN. STAT. § 7B-2402.1 (2007); ND: N.D. R. JUV. PROC. 20 (2017); OH: OHIO SUP. R. § 5.01 (2016); OR: OR. REV. STAT. ANN. § 419A.240 (2018); PA: 237 PA. CODE § 139 (2011), 42 PA. CONS. STAT. § 6336 (2012); SC: S.C. CODE ANN. § 63-19-1435 (2014); TN: TENN. R. JUV. PROC. 204 (2016); UT: UTAH CODE ANN. § 78A-6-122 (2015); VT: VT. STAT. ANN. tit 33, § 5123 (2013); WA: WASH. JUV. CT. R. 1.6 (2014); MN (goes into effect April 2022), <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/11/>, Section 20.

^{xix} IA: IOWA R. JUV. CT. PROC. 8.41 (2017); IL: ILL. SUP. CT. R. 943 (2016); MN (goes into effect April 2022), <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/11/>, Section 20; MI: Michigan JuCR 3.906 (2021).

^{xx} IA: IOWA R. JUV. CT. PROC. 8.41 (2017); IL: ILL. SUP. CT. R. 943 (2016); MI: Michigan JuCR 3.906 (2021).

^{xxi} Publication of survey findings will be released publicly in Spring 2022.

^{xxii} The third theme that emerged encourages careful planning and monitoring of implementation by jurisdictions considering shackling reform and, potentially, additional reforms and implementation efforts in states that already limit shackling.

^{xxiii} Eileen Hirsch, MEMORANDUM IN SUPPORT, 8 (2021), <https://www.wicourts.gov/supreme/docs/2104memo.pdf>.

^{xxiv} CAIJS FACTSHEET (2016), https://njdc.info/wp-content/uploads/2016/03/CAIJS_Shackling-and-Courtroom-Safety3.4.16.pdf (citing New Mexico, JUV. AND FAM. CT. J., Spring 2015).

^{xxv} *Id.*

^{xxvi} Email from The Honorable Kenneth King, Judge, MIDDLESEX JUV. COURT IN MASS. to Christina Gilbert, Senior Staff Attorney & Policy Counsel, NAT'L JUV. DEF. CTR. (Sept. 29, 2021, 1:28PM EST) (on file with author)

^{xxvii} Eileen Hirsch, MEMORANDUM IN SUPPORT, 8 (2021), <https://www.wicourts.gov/supreme/docs/2104memo.pdf>.

^{xxviii} *Illinois v. Allen*, 397 U.S. 337, 344 (1970).

^{xxix} See, e.g. NCJFCJ RESOLUTION (2015), <https://www.ncjfcj.org/wp-content/uploads/2019/08/regarding-shackling-of-children-in-juvenile-court.pdf> (stating that shackling “is contrary to the goals of juvenile justice”); ABA RESOLUTION (2014), <https://njdc.info/wp-content/uploads/2014/09/ABA-Report-Resolution-2015-107A-Revised-Approved.pdf> (stating that shackling is “contrary to the rehabilitative ideals of the juvenile court.”)

^{xxx} Judge Darlene Byrne, Shackling Children is Not Justice (2016), <https://www.delawareonline.com/story/opinion/contributors/2016/01/26/shackling-children-notjustice/79379318/>

^{xxxi} CAIJS TOOLKIT (2016), https://njdc.info/wp-content/uploads/2016/03/CAIJS_Shackling-and-Courtroom-Safety3.4.16.pdf.

^{xxxii} Eileen Hirsch, MEMORANDUM IN SUPPORT, 6 (2021), <https://www.wicourts.gov/supreme/docs/2104memo.pdf>.

^{xxxiii} CAIJS FACTSHEET (2016), https://njdc.info/wp-content/uploads/2016/03/CAIJS_Shackling-and-Courtroom-Safety3.4.16.pdf; see also Judge Darlene Byrne, Shackling Children is Not Justice (2016), <https://www.delawareonline.com/story/opinion/contributors/2016/01/26/shackling-children-notjustice/79379318/>; Gracie Bonds Staples, A Judge’s Push to Unshackle Kids in Court, THE ATLANTA J. CONST.,

^{xxxiv} NCJFCJ RESOLUTION (2015), https://njdc.info/wp-content/uploads/2015/10/NCJFCJ_Resolution-RegardingShackling-of-Children-in-Juvenile-Court.pdf.

^{xxxv} CAIJS TOOLKIT (2016), https://njdc.info/wp-content/uploads/2016/03/CAIJS_Shackling-and-Courtroom-Safety3.4.16.pdf.