December 31, 2021

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

Re: Rule Petition 21-04, In the Matter of Amending Wis. Stats. §§ 48.299 and 939.299 Regulating the Use of Restraints on Children in Juvenile Court (Juvenile Shackling)

Dear Honorable Justices:

I write with respect to Rule Petition 21-04, which asks you to create by court rule a presumption against the in-court shackling of children who are the subject of delinquency proceedings. As a scholar of criminal justice administration and as a mother and foster mother of many children, my interest in this petition is multi-faceted.

Under Wis. Stat. § 751.12(1), the Court is authorized to promulgate rules that regulate "practice and procedure in judicial proceedings in all courts," for the purpose of streamlining court proceedings and promoting timely decisions on the merits of each case. The petition asks that, in the interest of uniformity, clarity, and fairness across the state, the Court adopt rules clarifying in a manner consistent with *State v. Grinder*, 190 Wis. 2d 541, 527 N.W.2d 326 (1995), that although juvenile court officers retain discretion to order the shackling of children in cases when restraint is "necessary to maintain order, decorum, and safety in the courtroom," there is a presumption against such restraint. Such a presumption is justified by the experience of Wisconsin courts demonstrating that, in the vast majority of cases, order, safety, and decorum are enhanced, rather than undermined, when children appear before the court free from physical restraint. *See, e.g.*, Comments from Anton S. Jamieson, Dane County Circuit Court Commissioner, and John Bauman, Dane County Juvenile Court Administrator (describing the legitimacy-enhancing effects a presumption against shackling has had in Dane County juvenile proceedings).

The experience of the Dane County courts (described in the comments cited above) is particularly noteworthy because it illustrates how avoiding routine shackling can improve the ability of litigants to concentrate and cooperate during hearings. Such a result is consistent with a large body of research on procedural justice which finds that litigants who feel fairly treated by impartial judges are more likely to accept the legitimacy of court decisions—and even to abide by the law in the future—than are those who perceive that they have been treated unfairly or with disrespect by judges. *See generally, e.g.,* Tom Tyler, *Why People Obey the Law* (Princeton 2006). By leaving youth who are presumed innocence unfettered

University of Wisconsin Law School
University of Wisconsin-Madison 975 Bascom Mall Madison, Wisconsin 53706
608-322-7746 E-mail: cklingele@wisc.edu www.law.wisc.edu

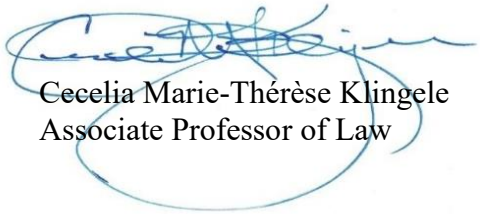
except in rare cases when individualized circumstances require restraint, courts can maintain order and safety while also enhancing the decorum and legitimacy of the proceedings they oversee.

In addition to promoting the decorum of the courtroom and the dignity of those in it, a presumption against restraint promotes other fundamental values of the criminal legal system. As the American Bar Association has explained, "[s]hackling interferes with the attorney-client relationship, chills notions of fairness and due process, undermines the presumption of innocence, and is contrary to the rehabilitative ideals of the juvenile court." ABA Resolution 107A (Feb. 2015) (opposing indiscriminate shackling of juveniles). Although, under Wisconsin law, court rules may not be used to "abridge, enlarge, or modify the substantive rights of any litigant," Wis. Stat. § 751.12(1), court rules may—and ought—be consistent with the existing rights of litigants. Court rule-making processes are subject to similar constraints in other jurisdictions; it is not surprising, therefore, that of the 34 U.S. jurisdictions that already have adopted a presumption against the courtroom shackling of youth, see *States that Limit or Prohibit Juvenile Shackling*, National Center for State Legislatures (Aug. 8, 2021), many have done so through court rule-making processes. *See, e.g.,* Alaska Del. R. 21.5; Fla. R. Juv. P. 8.100; Ill. Sup. Ct. R. 943; *In re Use of Physical Restraints on Respondent Children*, No. CS-2007-01, (N.M. Sept. 19, 2007); Wash. Juv. Ct. R. 1.6.

The negative effects of physical restraint upon children have been well-documented by researchers, but the profoundly detrimental—and potential traumatizing—effects of shackling on children's mental health should be apparent to anyone who cares for or works closely with youth. Indeed, physical restraint of the kind routinely applied in our courtrooms would be intolerable if indiscriminately used by teachers, medical providers, or caregivers. *See* Wis. Stat. § 118.305 (limits on use of restraints in educational settings); Wis. Admin Code DHS § 40.08(6), Wis. Stat. § 51.61(1)(i) (limiting use of physical restraint in residential care and psychiatric treatment settings). In light of the limits that exist on the use of restraints in other settings, it is not surprising that a plethora of medical and child advocacy organizations, including the American Academy of Child and Adolescent Psychiatry, the Child Welfare League of America, and the National Center for Mental Health and Juvenile Justice, have endorsed a presumption against the use of courtroom restraints in juvenile proceedings.

Ultimately, the Court is empowered to set uniform standards for our state that govern the manner in which court hearings are conducted. In the context of juvenile proceedings, the evidence before the Court strongly suggests that a rebuttable presumption against in-court shackling is sensible, dignified, and just. For these reasons, I strongly encourage you to grant Rule Petition 21-04.

Respectfully submitted,



Cecelia Marie-Thérèse Klingele
Associate Professor of Law