Drake UNIVERSITY
Law School

ACLU
AMERICAN CIVIL LIBERTIES UNION of IOWA

505 Fifth Ave., Ste. 901
Des Moines, IA 50309
www.aclu-ia.org

Honorable Mark S. Cady
Chief Justice of the Iowa Supreme Court

Clerk of the Supreme Court
Judicial Branch Building,
1111 East Court Avenue
Des Moines, Iowa 50319

Delivered by e-mail to rules.comments@iowacourts.gov

June 16, 2017

Re: Comments on proposed new rule of juvenile procedure, Rule 8.XX Routine use of restraints prohibited.

Dear Chief Justice Cady:

These comments are submitted jointly by the Drake Law School's Joan and Lyle Middleton Center for Children's Rights and the ACLU of Iowa.

We deeply appreciate the hard work of the Supreme Court Advisory Committee on Rules of Juvenile Procedure in its consideration of our initial proposed rule. The Committee included a diverse group of judges, county attorneys, and attorneys for children. The Committee's Report and Recommendation shows strong support for prohibiting the routine use of restraints, and was clearly the result of thoughtful debate and deliberation. The Committee's proposed rule would make Iowa the 30th state to prohibit the routine use of restraints in juvenile court hearings.

As noted in the Committee's Report, and in our February 24, 2016 cover letter to our original proposed rule, there is a growing consensus "that use of restraints is harmful to children."[1] Restraints also "impair the ability of children to pay attention, focus, learn, listen, and communicate effectively in court."[2] Both the U.S. and Iowa Constitutions enshrine a fundamental right to be free of unwarranted restraints, and it is the duty of the district courts, not security officers, to balance any infringement on this fundamental right and the need for

[1] Recommendation and Report of the Iowa Supreme Court Advisory Committee on Rules of Juvenile Procedure, 3.

[2] Recommendation and Report of the Iowa Supreme Court Advisory Committee on Rules of Juvenile Procedure, 3.

courtroom security.[3] Courts have long deferred to juvenile officers in maintaining security within juvenile facilities. This deference, however, does not extend to the courtroom, where courts jealously guard one of the foundational principle of our juvenile and criminal justice systems: those who appear before the court are innocent until proven guilty. Children are different from adults, but children have constitutional rights, too, including the right to be free of unwarranted restraints.

There are some important differences between our original proposed rule and the rule proposed by the Committee. We strongly recommend that the Iowa Supreme Court adopt the following refinements to the rule as proposed by the Committee:

1. The Rule should require judges, not JCOs, to make findings regarding the need for restraints.

The Committee's proposed Rule 8.XX allows a JCO alone, with no court findings and potentially no court involvement at all, to determine whether or not a child should be restrained. Nowhere in the Committee's rule is the district court required to make any findings about the fundamental right to be free from unwarranted restraints. In addition, the Committee's rule does not include any mechanism for judicial review sue sponte, undermining the Court's ability to protect the children in its courtrooms, as well as the Court's long recognized right to control those courtrooms. Only by requiring that judges, and not JCOs, make an individualized finding about the necessity of the use of restraints on the children who appear before them will the Rule appropriately recognize that children are innocent until proven guilty and deserving of the court's protection

2. The Rule should require the Court to make findings that there are not less restrictive alternatives to restraints before ordering them.

The Committee's proposed Rule completely eliminates the requirement that the district court make a finding that there are no less restrictive alternatives to the restraints used. Our original proposed rule imposes this requirement for two reasons.. First, such a requirement recognizes the individualized nature of the appropriateness of restraints, which is consistent with the principle of proportionality: what restraints are appropriate and necessary for an extreme and rare case will be wholly inappropriate and unduly restrictive for most children. The inappropriate and unduly restrictive use of restraints, in turn, is inconsistent with the rehabilitative goals of the juvenile court system, and violate children's fundamental rights. Thus, to uphold the dignity, mental health, and procedural rights of children to assist their attorney in their defense, the district court should be required to make a formal finding that there are no less restrictive alternatives available. Such a requirement is also consistent with the powers and deference traditionally given to the district court judge's authority to control the courtroom environment and protect the children who appear before it. Finally, the requirement is consistent with the

[3] See, e.g., United States v. Sanchez-Gomez, No. 13-50561, 2017 WL 2346995 (9th Cir. May 31, 2017) (holding that the U.S. Constitution enshrines a fundamental right to be free of unwarranted restraints and Courts, not security officers, must decide whether or not the need for security outweighs this fundamental right for adult pre-trial detainees).

standards of procedure in place in the majority of those states where a rule limiting the use of restraints is already in place. Therefore, we urge the Court to adopt a Rule that requires judges to make a finding that there are no less restrictive alternatives available before approving the use of restraints.

3. The Rule should require written notice of whether restraints are necessary in the JCO's application for detention.

The Committee's proposed rule only places one prerequisite on a JCO seeking to restrain a child in Court, which is that the JCO notify the court of the JCO's determination before the hearing, or as soon as practicable. The Committee's rule allows a JCO to provide said notice to the court orally and/or in writing. If the notice is provided orally, the proposed rule provides that "a record shall be made at the court proceeding," but the rule provides no specific guidance on what must be included in the record to guide the district court and parties appearing before it, and provides no right for the child's attorney to be heard.

Further, under the Committee's proposed rule, the JCO's decision that restraints are necessary is subject to the district court's decision-making or discretion only if the child's attorney affirmatively requests such a review, and only prior to the hearing. The Committee's proposed rule does not include any mechanism for the Court to consider the matter of the child's restraints once a hearing has commenced. Such consideration may become necessary, however, and this Court should amend the proposed rule to allow for this scenario. Examples of the necessity of this option include situations when a pre-hearing request by an attorney is not feasible due to the facts of the case, as well as those situations in which conditions arise during the hearing itself which require a change in the use of restraints: either to use some level of restraints, change the type of restraint used, or remove restraints. These emergent conditions may include physical and emotional implications to the child, as well as changing legal needs to work with defense counsel or participate in their hearing.

In addition to providing notice the district court, the rule requires the JCO to notify the child's attorney of the JCO's determination before the hearing or as soon as practicable. The rule allows a JCO to provide said notice to the child's attorney orally and/or in writing. If the notice to the child's attorney is provided only orally the rule provides that "a record shall be made at the court proceeding." But again, the rule provides no specific guidance on what must be included in the record, and provides no right for the child's attorney to be heard. This impedes child's attorney's ability to meaningfully challenge the use of restraints.

For all the above reasons, we therefore propose that the final rule require JCOs to submit a written request for restraints, and do so at the same time the JCO submits an application for detention.[4] Doing so at that time allows the district court to consolidate its consideration of like

[4] Iowa Code section 232.44 already requires a county attorney or a JCO to submit an application for detention "within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, of the time of the child's admission to a shelter care facility, and within twenty-four hours, excluding Saturdays, Sundays, and legal holidays, of the time of a child's admission to a detention facility."

matters for judicial economy, and, more importantly, provides adequate notice to the child's attorney of the JCO's intent to restrain the child in court.

Taking into account the above considerations, we propose the rule be adopted in the following form:

Rule 8.XX Routine use of restraints prohibited.

8.XX(1) Instruments of restraint, such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, and other similar items, may not be used on a child during a court proceeding and must be removed prior to the child being brought into the courtroom unless the court finds that:

(A) The use of restraints is necessary due to any of the following factors:

(i) Documented grounds to show restraints are necessary to prevent physical harm to the child or another person during the court proceeding; or

(ii) Recent history of disruptive courtroom behavior by the child that has placed others at substantial risk of physical harm; or

(iii) Documented grounds to believe that the child is a substantial risk of flight from the courtroom; and

(B) There are no less restrictive alternatives to restraints that will prevent physical harm to the child or another person or flight, including, but not limited to, the presence of court personnel, law enforcement officers, or bailiffs.

8.XX(2) If the juvenile court officer believes that the use of restraints is necessary to prevent physical harm to the child or another person during the court proceeding, or flight from the courtroom, the juvenile court officer or county attorney may request, in writing, that the court find the use of restraints is necessary. The request shall outline the circumstances supporting that belief. If such a request is made, the request must be submitted to the court at the same time as the application for detention is submitted. The juvenile court officer or county must provide a copy of the request to the child's attorney at the time the request is submitted to the court or as soon as practicable. If notice is not given to the child's attorney in writing, a record shall be made at the court proceeding, including, but not limited to, the reason(s) why notification of the written request was not practicable prior to the court proceeding.

8.XX(3) The court shall provide the child's attorney an opportunity to be heard before the court makes a determination about the use of restraints, and including but not limited to the lack of notification of a request for restraints. If restraints are ordered, the court shall make written findings of fact in support of the order.

8.XX(4) For each subsequent court proceeding for which the juvenile court officer believes that the use of restraints is necessary to prevent physical harm to the child or another person during the court proceeding, or flight from the courtroom, the juvenile court officer or

---

Thus, requiring a county attorney or JCO to submit a written request for restraints at the same time as the application for detention will result in time-savings for the Court and the parties.

county attorney must submit a written request to the court and provide a copy to the child's attorney, pursuant to rule 8.XX(2).

8.XX(5) Any restraints must allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing. Under no circumstances should a child be restrained using fixed restraints to a wall, floor or furniture.

Please contact our organizations by phone or email as provided below if you have any questions.

Sincerely,

Brent Pattison, *Director*
Joan and Lyle Middleton Center for Children's Rights
Neal and Bea Smith Law Center
2400 University Ave.
Des Moines, IA 50311
brent.pattison@drake.edu
P: 515-271-1810
F: 515-271-4100

Rita Bettis, *Legal Director*
ACLU Foundation of Iowa, Inc.
505 Fifth Ave. Ste. 901
Des Moines, IA 50309
rita.bettis@aclu-ia.org
P: 515-207-0567
F: 515-243-8506