



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0554/P1
EHS:klm

DOA:.....Schmidt, BB0151 - Use of restraints on a child in court

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT *to create* 48.299 (2), 938.299 (2) and 967.13 of the statutes; **relating to:**
the use of restraints on a child in juvenile or criminal court.

Analysis by the Legislative Reference Bureau

CORRECTIONAL SYSTEM

JUVENILE CORRECTIONAL SYSTEM

Use of restraints on a child

This bill generally prohibits the use of restraints on anyone under the age of 18 when appearing before the juvenile court or criminal court. The bill provides that, upon a request of the district attorney, corporation counsel, or other appropriate county official, a court may order the use of restraints on a child if, after a hearing, it issues written findings of fact showing that the use of restraints is necessary under certain conditions. The bill also requires that any restraints used on a child must allow limited movement of the hands and prohibits the use of fixed restraints that are attached to a wall, floor, or furniture.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.299 (2) of the statutes is created to read:

48.299 (2) (a) Except as provided in par. (b), instruments of restraint such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, or other similar items may not be used on a child during a court proceeding under this chapter and shall be removed prior to the child being brought into the courtroom to appear before the court.

(b) A court may order a child to be restrained during a court proceeding upon request of the district attorney, corporation counsel, or other appropriate official specified under s. 48.09 if the court finds all of the following:

1. That the use of restraints is necessary due to one of the following factors:

a. Instruments of restraint are necessary to prevent physical harm to the child or another person.

b. The child has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or the child presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

c. There is a reasonable belief that the child presents a substantial risk of flight from the courtroom.

2. That there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the child or another person, including the presence of court personnel, law enforcement officers, or bailiffs.

(c) The court shall provide the child's attorney an opportunity to be heard before the court orders the use of restraints under par. (b). The court shall make written findings of fact in support of any order to use restraints under par. (b).

(d) If the court orders a child to be restrained under par. (b), the restraints shall allow the child limited movement of the hands to read and handle documents and writings necessary to the hearing.

(e) No child may be restrained during a court proceeding under this chapter using fixed restraints attached to a wall, floor, or furniture.

SECTION 2. 938.299 (2) of the statutes is created to read:

938.299 (2) USE OF RESTRAINTS ON A JUVENILE. (a) Except as provided in par. (b), instruments of restraint such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, or other similar items may not be used on a juvenile during a court proceeding under this chapter and shall be removed prior to the juvenile being brought into the courtroom to appear before the court.

(b) A court may order a juvenile to be restrained during a court proceeding upon request of the district attorney, corporation counsel, or other appropriate official specified under s. 938.09 if the court finds all of the following:

1. That the use of restraints is necessary due to one of the following factors:

a. Instruments of restraint are necessary to prevent physical harm to the juvenile or another person.

b. The juvenile has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or the juvenile presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

c. There is a reasonable belief that the juvenile presents a substantial risk of flight from the courtroom.

2. That there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including the presence of court personnel, law enforcement officers, or bailiffs.

(c) The court shall provide the juvenile's attorney an opportunity to be heard before the court orders the use of restraints under par. (b). The court shall make written findings of fact in support of any order to use restraints under par. (b).

(d) If the court orders a juvenile to be restrained under par. (b), the restraints shall allow the juvenile limited movement of the hands to read and handle documents and writings necessary to the hearing.

(e) No juvenile may be restrained during a court proceeding under this chapter using fixed restraints attached to a wall, floor, or furniture.

SECTION 3. 967.13 of the statutes is created to read:

967.13 Use of restraints on an individual under 18 years of age. (1)

Except as provided in sub. (2), instruments of restraint such as handcuffs, chains, irons, or straitjackets, cloth and leather restraints, or other similar items may not be used on an individual under 18 years of age during a court proceeding and shall be removed prior to the individual being brought into the courtroom to appear before the court.

(2) A court may order an individual under 18 years of age to be restrained during a court proceeding upon the request of the prosecutor if the court finds all of the following:

(a) That the use of restraints is necessary due to one of the following factors:

1. Instruments of restraint are necessary to prevent physical harm to the individual or another person.

2. The individual has a history of disruptive courtroom behavior that has placed others in potentially harmful situations or the individual presents a substantial risk of inflicting physical harm on himself or herself or others as evidenced by recent behavior.

3. There is a reasonable belief that the individual presents a substantial risk of flight from the courtroom.

(b) That there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the individual or another person, including the presence of court personnel, law enforcement officers, or bailiffs.

(3) The court shall provide the attorney of the individual under 18 years of age an opportunity to be heard before the court orders the use of restraints under sub. (2). The court shall make written findings of fact in support of any order to use restraints under sub. (2).

(4) If the court orders an individual under 18 years of age to be restrained under sub. (2), the restraints shall allow the individual limited movement of the hands to read and handle documents and writings necessary to the hearing.

(5) No individual under 18 years of age may be restrained during a court proceeding using fixed restraints attached to a wall, floor, or furniture.

(END)