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10 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

11 **In Re:**

R-15-0036

12 **PETITION TO CREATE A**
13 **JUVENILE MECHANICAL**
14 **RESTRAINTS RULE, ARIZONA**
15 **RULES OF PROCEDURE FOR**
16 **THE JUVENILE COURT**

MARICOPA COUNTY ATTORNEY'S
RESPONSE TO PETITION TO
CREATE A JUVENILE RESTRAINTS
RULE

17 The Maricopa County Attorney hereby responds to the Petition to Create a
18 Juvenile Restraints Rule and asks this Court to deny the Arizona Public Defender
19 Association's ("APDA") request to create a juvenile rule regarding mechanical
20 restraints. The basis for this request to deny this Petition is set forth below.

21 Respectfully submitted this 26 day of May, 2016

22
23 WILLIAM G. MONTGOMERY
24 MARICOPA COUNTY ATTORNEY

25 By 
26 MARK FAULL
27 CHIEF DEPUTY
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2 **I. INTRODUCTION**

3 The State of Arizona currently has thirteen juvenile detention centers—two in
4 Maricopa County and eleven throughout the rest of the State. The use of mechanical
5 restraints on juveniles being transported from detention to Superior Court varies from
6 county to county. The physical configuration of these detention centers and their
7 proximity to the various court centers also varies by jurisdiction. The transportation
8 staff responsible for moving juveniles from detention centers to and from the courts
9 differs by county as well. Some counties, such as Pima County, Yuma County, and
10 Santa Cruz County have terminated the use of restraints with juveniles while the
11 juvenile is in court. Maricopa County, Pinal County, Gila County, and Cochise
12 County are currently in the process of reviewing their policies and practices.

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16 With this background, the APDA has asked this court to create a rule of
17 juvenile procedure that bars the use of restraints on juveniles in courtrooms unless
18 there are specific findings by the court. The proposed rule requires written finding of
19 fact to justify the use of restraints and further limits the nature of the restraints in the
20 courtroom even when ordered by the court. The rule also states that restraints should
21 not be used “in the courthouse . . . to the greatest extent possible.” [Petition at 8].
22 Because the proposed rule is an unnecessary, arbitrary and vague restriction on courts
23 and those with juvenile transportation responsibilities, the Maricopa County Attorney
24 asks this Court to deny the Petition.
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1 **II. DISCUSSION**

2 **A. The proposed rule that restricts restraints in the courtroom is**
3 **unnecessary and arbitrary.**

4 The first portion of the proposed rule deals with the use of mechanical
5 restraints in the courtroom. The proposed rule would essentially create a default
6 where juveniles would not be restrained unless the court makes specific, required
7 findings in writing. In this regard, the rule is unnecessary and unduly restrictive on a
8 court's authority. Arizona courts have long recognized that the court is ultimately
9 responsible for security within the courtroom. *See State v. Chavez*, 98 Ariz. 236, 241,
10 403 P.2d 545, 549-50 (1965). The proposed rule would significantly limit a court's
11 discretion in deciding how to best protect the courtroom. Under the proposed rule, a
12 court could only permit a juvenile¹ to be restrained if the juvenile is displaying
13 threatening or physically aggressive behavior or the juvenile is likely to flee as shown
14 by an expressed intention or attempted escape within the last three months. [Petition
15 at 8]. This is a significant limitation on the court's authority. A court should be able
16 to exercise its discretion in determining the best way to secure a courtroom and not be
17 limited to the two very specific considerations included in the proposed rule. A court
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25 ¹ The Petition uses both "child" and "juvenile" in the proposed rule. [Petition at 8].
26 While the terms are defined synonymously, most of the current rules use "juvenile."
27 Ariz. R. Juv. Ct. 1(B); E.g. Ariz. R. Juv. Ct. 10(a), 23, 29, 30. Therefore, "juvenile"
28 is used throughout this comment.

1 is in the best position to determine what is appropriate in a particular situation and a
2 rule of procedure should not unnecessarily constrain the court's discretion
3 particularly in a matter as important as courtroom security.
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5 In addition to restricting a court's discretion, the proposed rule is unnecessary
6 because court's already have the authority to decide when and if a particular juvenile
7 should be restrained. In Maricopa County, for example, hearing officers currently
8 entertain and grant oral motions to remove mechanical restraints during courtroom
9 proceedings when they believe it is appropriate. The current procedure allows the
10 court to exercise discretion as necessary. Courts should be allowed to continue to
11 exercise discretion in these matters as they see fit without being restricted by
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Petitioner's arbitrary rule.

16 Additionally, the proposed rule chooses arbitrary requirements that are not
17 based on the facts and circumstances of any particular case or juvenile. For example,
18 in determining if the juvenile is a flight risk, the proposed rule limits the court's
19 consideration of actual escape attempts to those that occurred in the last three months.
20 [Petition at 8, A(b)(ii)]. Why should a judge's consideration be limited to attempted
21 escapes in three months instead of four or six or twelve? Why is three a magic
22 number? If a juvenile successfully escaped five months ago, does the rule prevent a
23 court from considering that fact as a flight risk when the juvenile is later arrested
24 because it did not happen within the last three months? Why would a court be
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1 allowed to consider any expression of intent to flee but they could only consider
2 actual attempts to flee that occurred within the last three months? There is nothing in
3 the Petition to justify these odd distinctions and timing requirements. A court's
4 sound discretion about how to best provide for the security of a courtroom should not
5 be curtailed by such arbitrary, unnecessary requirements.
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8 **B. There is no due process right to be free of mechanical restraints in the
9 courtroom.**

10 Petitioner cites *Application of Gault* 387 U.S. 1 (1967) with an insinuation that
11 the case created a due process right for juveniles to be free from restraints. [Petition at
12 6]. While that case addressed due process in juvenile proceedings, it does not support
13 the idea that restraints on juveniles in the courtroom causes due process concerns.
14 *Gault* held that juveniles had the right to have notice of the charges, the right to be
15 advised regarding the right to counsel, the right against self-incrimination, and the
16 right to confront and cross examine witnesses. *Id.* at 33-34, 41-41, 55-56. That case
17 had nothing to do with the use of restraints. Due process concerns are simply not
18 implicated by appropriately restraining juveniles in courtrooms and during transport
19 to and from secured detention facilities.
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23 Petitioner's citation to *Deck v. Missouri*, 544 U.S. 622 (2005) is completely
24 misplaced in this discussion because that case dealt with the use of restraints in front
25 of a *jury*. As Petitioner notes, juveniles do not have the right to a jury trial.
26 Petitioner's suggestion that a judge would somehow be influenced by the fact that a
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1 juvenile was restrained and that would “inhibit” the juvenile’s presumption of
2 innocence makes no sense at all. A judge will always know the juvenile’s custody
3 status and security risk. Juries and judges are not the same; judges routinely have to
4 set aside irrelevant material or suppressed material and decide the case based only on
5 the evidence admitted at trial. Petitioner has provided no information to suggest that
6 courts are incapable of doing this with regards to juveniles in restraints. Due process
7 concerns do not support Petitioner’s rule.
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10 **C. Decisions regarding when to restrain juveniles during transport to**
11 **court should be left to those responsible for transportation depending on**
12 **the needs of the individual jurisdiction.**

13 After proposing a rule that unduly restricts a court’s discretion to take
14 necessary measures to secure their own courtroom, Petitioner’s proposed rule then
15 attempts to restrict how juveniles are transported within the courthouse. Using
16 restraints during transport is a completely separate consideration from shackling
17 during courtroom proceedings. While the court must deal with security issues in the
18 courtroom, that authority should not expand to controlling how or when individuals
19 are secured in the hallways and movement to and from detention centers. Other than
20 a general objection to using restraints to secure juveniles who are in custody,
21 Petitioner cites to no legal authority that suggests there are due process implications
22 concerning how juveniles are transported to court. Currently, decisions regarding
23 how to safely and securely transport juveniles are made by an arm of the court – the
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1 Juvenile Probation Department. As a result of their reliance on evidence based
2 practices, Maricopa County Juvenile Probation began limiting the use of mechanical
3 restraints with detained youth in 2014. Over 4,600 youth have been transported
4 without major incident since the protocol was implemented. In assessing risk during
5 transportation, probation staff has information gleaned from the juvenile's behavior
6 in detention, prior law enforcement contacts, conduct during past detainments, and
7 other pertinent records. Detention staff are the best trained and in the best position to
8 make a determination on whether restraints during transportation are necessary. This
9 decision should be left to them.

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13 To that end, risk assessments are integral to a probation officer's training. It is
14 inherent in their day to day job obligations to understand the risk level of the daily
15 population of juveniles in their care. They need sufficient flexibility to make those
16 determinations on a case by case basis in the face of new facts that may arise moment
17 to moment. Petitioner's rule would create a vague preference for not using restraints
18 during transport that may be interpreted in a way that will unduly hinder the officer's
19 ability to make security decisions to protect themselves, the public, and the juveniles.
20 Subpart D of Petitioner's rule is poorly defined, but to the extent it limits a probation
21 officer's discretion regarding restraints during transport it is unwise and potentially
22 dangerous; to the extent it permits officers to make decisions based on the types of
23 considerations discussed above, it is completely unnecessary because that is being
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1 done every day.

2 The needs of individual counties vary across the State and each jurisdiction
3 needs flexibility to restrain juveniles as appropriate depending on their particular
4 circumstances. In Arizona, thirteen jurisdictions have a detention center that is
5 unique in its physical structure, juvenile population, and transportation requirements.
6 For example, Santa Cruz County does not use restraints in the courtroom, but they
7 have an operational capacity of only 16 in their detention center. Compare that with
8 Maricopa County where we have two separate facilities with the current capacity for
9 96 juveniles in each facility. In some counties, detention facilities are attached to the
10 courtroom and in others they are not. The point is that local jurisdictions vary widely
11 and they need the flexibility to either restrain or not restrain depending on their own
12 unique circumstances. Rules with vague presumptions and arbitrary requirements
13 will only confuse the situation and make already difficult and important decisions
14 about safety and security that much more complex.
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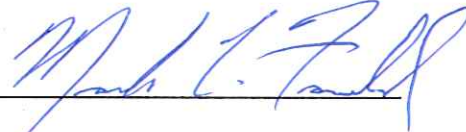
20 **III. CONCLUSION**

21 Jurisdictions are working through the issues Petitioner raises on their own and
22 in light of their own circumstances. Judges already have the authority to control the
23 safety of their individual courtrooms by permitting or prohibiting restraints on a case-
24 by-case, juvenile-by-juvenile basis. Petitioner's rule restricts that discretion and is
25 unnecessary and potentially dangerous. Additionally, Juvenile Probation Officers are
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1 fully aware of the concerns Petitioner raises and they are in the best position to
2 decide, based on the risks presented in a given situation, how to transport juveniles to
3 and from court. Petitioner's requested rule adds unneeded complexity to
4 circumstances that are being appropriately addressed based on local needs throughout
5 Arizona. Therefore, the Maricopa County Attorney asks this Court to deny the
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8 Petition.

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10 Respectfully submitted this 20 day of May, 2016.

11 WILLIAM G. MONTGOMERY
12 MARICOPA COUNTY ATTORNEY

13 By 
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15 MARK FAULL
16 CHIEF DEPUTY
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