

1 **IN THE JUVENILE COURTS OF THE NORTHERN JUDICIAL CIRCUIT**
2 **STATE OF GEORGIA**

3 **ORDER NO.: 2020-007**

4
5 Protocol Pursuant to Uniform Juvenile
6 Court Rule 20
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8 On April 2, 2020 the Supreme Court of Georgia met and issued Uniform Juvenile
9 Court Rule 20. Said Rule 20 is to be effective in all juvenile courts of the State of Georgia
10 beginning on July 1, 2020.

11 **FINDINGS OF FACT**

12 The Supreme Court of Georgia has rule making authority as an inherent power,
13 pursuant to the Constitution of the State of Georgia (1983) Article VI, Section IX,
14 Paragraph I and as recognized by statute. O.C.G.A. 15-1-5 and O.C.G.A. 15-11-58.

15 Rule 20, by its own terms, becomes effective on July 1, 2020.

16 Rule 20 prohibits, and was adopted for the purpose of prohibiting, the
17 indiscriminate shackling of youth during juvenile court proceedings and reads thusly:

18 Consistent with applicable law, a juvenile may not be
19 physically restrained during a court proceeding unless such
20 restraint is authorized by court order or local protocol of the
21 court. Every juvenile court shall establish a written protocol
22 that addresses the circumstances under which a juvenile
23 may be physically restrained while appearing in court,
24 which considers the welfare and due process rights of the
25 juvenile, the integrity of the judicial proceeding, and the
26 safety of the court and the public.

27 The Juvenile Courts of the Northern Judicial Circuit do not have, and are in need
28 of, the instant written protocol for the use of physical restraints upon youth during

1 court proceedings as the court has previously relied upon the protocol of the Superior
2 Courts.

3 Not all juveniles should be physically restrained while in the courtroom and
4 during court proceedings, however it is necessary for the proper function of the court,
5 promoting the unique ends of the juvenile justice system, maintenance of the judicial
6 proceedings, safety of the public, and the welfare of the juvenile that some juveniles be
7 subject to physical restraint while in the courtroom and during courtroom proceedings.
8 All juveniles are entitled to an individualized assessment of their risk and the need for
9 physical restraints while in the courtroom either through a detention assessment
10 instrument (DAI) guided intake decision, Detention Hearing decision, or both. A
11 juvenile should have a method to seek relief from a formulaic protocol which imposes
12 physical restraint on the juvenile while inside the courtroom. The State should have a
13 method to seek to physically restrain a juvenile the State believes endangers the public
14 safety, presents a flight risk, or presents a significant risk of disruption of essential State
15 functions (such as court proceedings), where a formulaic protocol does not otherwise
16 impose physical restraint on the identified juvenile.

17 CONCLUSIONS OF LAW

18 The Juvenile Courts of the Northern Judicial Circuit are required to develop a
19 written protocol on the use of restraints on youth in juvenile court proceedings. The
20 court shall take into account the following factors in establishing said protocol:

- 21 1. the welfare of the juvenile,
- 22 2. the due process rights of the juvenile,
- 23 3. the integrity of the judicial proceedings,
- 24 4. the safety of the court, and
- 25 5. the safety of the public.

26 The written protocol shall be effective on July 1, 2020.

1 The protocol, pursuant to Rule 20, shall only apply to proceedings in the Juvenile
2 Court and shall not apply when the child is not physically located inside the courtroom,
3 such as when the child is being transported.

4 The welfare of juveniles is paramount to the juvenile justice system, including
5 the juvenile justice system of Georgia. The juvenile justice process has been specifically
6 designed to avoid the fully adversary process of adult criminal proceedings and instead
7 to achieve an idealistic prospect of intimate, informal, and protective proceedings.
8 *McKeiver v. Pennsylvania*, 403 U.S. 528 (1970). In Georgia, the ideal is extended further
9 beyond mere protection of the juvenile. The purpose of delinquency proceedings in
10 Georgia is to accord due process while simultaneously providing appropriate
11 supervision, sanctions, and protection of the community while simultaneously
12 rehabilitating any delinquent juvenile and reintegrating that juvenile back into both
13 their home as well as society in general; and avoiding punishment of the juvenile.
14 O.C.G.A. §15-11-470.

15 Juveniles accused of a delinquent act generally have the same due process rights
16 as adults, with the exception of demanding bail and right to trial by a jury. *In re Gault*,
17 387 U.S. 1 (1967) and *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). Juveniles are
18 therefore entitled to the same probable cause findings for arrest and search, entitled to
19 have their parents/guardians notified of their detention, the right to contact and consult
20 with an attorney upon demand therefor, the right to confront and cross-examine
21 witnesses against them, including the right to be present at any significant step in the
22 prosecution against them, the right against self-incrimination. *Id.* Juveniles are also
23 entitled to have any delinquency charges against them proved to the standard of
24 beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970). A juvenile is also
25 protected against double jeopardy. *Breed v. Jones*, 421 U.S. 519 (1975).

26 The remaining factors to be taken into account are state interest factors which
27 must be balanced against the due process rights of any accused juvenile. The due
28 process afforded in a delinquency proceeding need not meet the standards of those

1 same rights as provided in an adult criminal trial or administrative proceeding because
2 of the unique ends of juvenile justice. *Kent v. U.S.*, 383 U.S. 541 (1966). However, it
3 must still “measure up to the essentials of due process and fair treatment.” *Id.* From
4 this requirement of due process and fair treatment there has developed a two part
5 inquiry for the determination of fundamental fairness of a juvenile proceeding:

- 6 1. Does the action serve a legitimate state objective?
- 7 2. Are their adequate procedural safeguards to authorize the action?

8 *Schall v. Martin*, 467 U.S. 253 (1984). The effect of the *Schall* case is a balancing test
9 wherein the due process interests of the child are weighed against the distinctive state
10 interests involved in the administration of juvenile justice.

11 There are significant State interests to be analyzed pursuant to Rule 20. The
12 integrity of judicial proceedings, the safety of the court, and the safety of the public are
13 all inherent functions of the State and among the basic purposes for which the
14 government was originally established by the people. *U.S. Constitution, Preamble*. These
15 basic functions of government have long been recognized by the various courts of the
16 State and Federal government as legitimate government interests, and all due process
17 decisions based upon legitimate rules thereon are afforded the highest deference to the
18 government possible: the rational basis test, going at least as far back as the formal
19 adoption of the rational basis test in *Nebbia v. New York*, 291 U.S. 502 (1934).

20 The Supreme Court has continued to accept the legitimate state interest in
21 maintaining orderly judicial proceedings and the need to keep the court and public safe
22 during those proceedings. *Illinois v. Allen*, 397 U.S. 337 (1970) (the right to be free of
23 restraints, in an adult jury trial, is not absolute); *Estelle v. Williams*, 425 U.S. 501 (1976)
24 (court not required to provide adult defendant in a jury trial with civilian clothes absent
25 objection from the defendant); *Holbrook v. Flynn*, 475 U.S. 560 (1986) (presence of law
26 enforcement at adult jury trial not prejudicial to defendant as showing him dangerous
27 or culpable); *Deck v. Missouri*, 544 U.S. 622 (2005) (Adult capital Defendant not
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1 absolutely entitled to be free of restraint during penalty phase of trial so long as
2 essential state interest specific to defendant exists).

3 The balancing test required in developing any protocol for the use of physical
4 restraints on youth must begin with the question whether or not the use of physical
5 restraints serves a legitimate state objective. The answer, unequivocally, is yes. The use
6 of physical restraints on detained juveniles serves the legitimate state function of
7 ensuring the safety of the court and public as well as maintaining the integrity of
8 judicial proceedings as noted in the cases cited above. Secondly, there must exist
9 adequate procedural safeguards to authorize the action. Here, adequate procedural
10 safeguards exist and they can be strengthened.

11 Before a child is detained in the State of Georgia an officer must have probable
12 cause to detain the child, however this is not the end of the inquiry as it may be in an
13 adult case- a juvenile is afforded additional procedural safeguards. Once an officer has
14 made a decision to detain the officer must immediately release the child to his parent or
15 guardian, deliver the child to a medical facility, or failing the above, immediately bring
16 the child before the juvenile court for an intake decision. The latter being the only
17 method in which a detention can be effected for any significant period of time- certainly
18 any length long enough for any protocol on the use of physical restraints in a courtroom
19 to become applicable. At the intake decision the child must have an individualized
20 Detention Assessment Instrument (DAI) processed which scores the child on objective
21 factors. O.C.G.A. 15-11-502 and Standing Orders of the Juvenile Court of the Northern
22 Judicial Circuit 2020-001, 2020-004. The individualized DAI ensures that children are
23 not detained arbitrarily but only when accused of serious felonies, or only after
24 repeated adjudications as a delinquent child. While the DAI is subject to override, the
25 override can only be granted by a neutral judicial officer. The “neutral magistrate” has
26 long, and repeatedly, been an accepted procedural safeguard of due process. *U.S. v.*
27 *Lefkowitz*, 285 U.S. 452 (1932); *Giordenello v. U.S.*, 357 U.S. 480 (1958); *Jones v. U.S.*, 362
28 U.S. 257 (1960); *Katz v. U.S.*, 389 U.S. 347 (1967); *U.S. v. United States District Court*, 407

1 U.S. 297 (1972); *U.S. v. Chadwick*, 433 U.S. 1 (1977); *Lo-Ji Sales v. New York*, 442 U.S. 319
2 (1979). It is also important to note that the judicial officer may override a detention
3 decision authorized by the DAI and release the accused juvenile. O.C.G.A. 15-11-502
4 and Standing Orders of the Juvenile Court of the Northern Judicial Circuit 2020-001,
5 2020-004. The State maintains a legitimate interest in restraining the freedom of
6 movement of both children accused of serious felonies and children who have
7 repeatedly committed delinquent acts. The court also notes that an intake decision
8 differs from a detention decision. The detention decision must come after an intake
9 decision is approved, within 48 or 72 hours depending on whether the intake was made
10 with, or without, a warrant. This provides yet another procedural safeguard on the use
11 of physical restraints on a juvenile in the courtroom.

12 These procedural safeguards can be expanded by making use of already
13 provided means- the motion hearing. Any juvenile, or their attorney, who believes they
14 should not be restrained as a result of the protocol set forth herein is specifically
15 authorized by the below protocol to move for an additional individualized
16 determination of the balancing tests set forth herein as they apply to the specific
17 juvenile in question.

18 Taking into account the required factors of, as well as the stated purpose of Rule
19 20, and the explicit language of Rule 20, the court issues the following, to wit:

20 **ORDER: WRITTEN PROTOCOL FOR USE OF PHYSICAL RESTRAINTS ON**
21 **CHILDREN DURING JUVENILE COURT PROCEEDINGS**

22 **IT IS ORDERED THAT** the practice of indiscriminate use of restraints on
23 juveniles in the courtroom shall be prohibited. The Juvenile Courts of the Northern
24 Judicial Circuit issue the following protocol on the use of physical restraints during
25 courtroom proceedings in accord with Uniform Juvenile Court Rule 20.

26 **IT IS ORDERED THAT** instruments of restraint shall not be used in the
27 courtroom on a juvenile where that juvenile has been unconditionally released at either
28 intake or the detention hearing.

1 **IT IS ORDERED THAT** instruments of restraint shall not be used in the
2 courtroom on a juvenile who has been conditionally released at any stage of the
3 delinquency proceedings where those conditions do not include secure detention.

4 **IT IS ORDERED THAT** instruments of restraint shall be used in the courtroom
5 on any juvenile who is currently detained in secure detention facility.

6 **IT IS ORDERED THAT** instruments of restraint shall be used in the courtroom
7 on a juvenile who is currently under a court order which includes secure detention as a
8 sanction.

9 **IT IS ORDERED THAT** instruments of restraint may be used to restrain a
10 juvenile not subject to restraint pursuant to this protocol upon motion made and the
11 court finding as follows:

- 12 1. The use of restraints is necessary to prevent physical harm to the child or
13 another person; or
- 14 2. The child has a history of disruptive courtroom behavior that has placed
15 other in potentially harmful situations or presents a substantial risk of
16 inflicting physical harm on him/her self or others as evidenced by recent
17 behavior, or
- 18 3. There is a founded belief that the child presents a substantial risk of flight
19 from the courtroom.

20 In addition to at least one of the above, the court must also find that there are no less
21 restrictive alternatives to restraint that will prevent flight or physical harm to the child
22 or another person, including but not limited to, other non-visible restraints made
23 available through technology, the presence of court personnel, law enforcement officers,
24 or bailiff.

25 **IT IS ORDERED THAT** instruments of restraint may be removed from a child
26 otherwise subject to restraint as a result of this protocol during court proceedings upon
27 motion made and the court finding as follows:

- 28 1. The use of restraints is unduly prejudicial to the juvenile; or

- 1 2. The use of physical restraints is unnecessary to insure the safety of the public; or
- 2 3. The use of physical restraints is unnecessary to maintain the integrity of the
- 3 judicial proceedings; or
- 4 4. There is no legitimate State interest in the use of physical restraint on the instant
- 5 juvenile; or
- 6 5. Other legitimate reason as set forth in the juvenile's motion that physical
- 7 restraint ought not be required.

8 Any motion made to restrain, or release from physical restraint, a juvenile should
9 be in writing, and should be made sufficiently in advance to allow a hearing on same.
10 A juvenile subject to physical restraints under this protocol who desires to be released
11 from physical restraints may make use of the Northern Circuit Juvenile Court
12 Courtroom Behavior Agreement (Exhibit A) in support of their motion. The failure to
13 agree to the Northern Circuit Juvenile Court Courtroom Behavior Agreement may be
14 used as *prima facie* evidence by the court that the juvenile should not be released from
15 physical restraint.

16 Upon a motion being made the judge shall make an individual assessment of the
17 risk taking into account the welfare of the juvenile, the due process rights of the
18 juvenile, the integrity of the judicial proceedings, the safety of the court, and the safety
19 of the public. Prior to making any determination, there shall be an opportunity for the
20 child's attorney to be heard and for the prosecuting attorney to be heard.

21 **IT IS ORDERED THAT** Sheriff's Office personnel responsible for the security of
22 the courtroom shall inform the judge if he or she believes any factors exist which
23 necessitate the use of physical restraints upon a juvenile inside the courtroom.

24 **IT IS ORDERED THAT,** any child wishing to make use of the Northern Circuit
25 Juvenile Court Courtroom Behavior Agreement (Exhibit A) in their motion for release
26 from physical restraint have that agreement read to them either by their attorney or DJJ
27 personnel, as appropriate. That should the juvenile agree to enter into the agreement
28 that the juvenile affix their signature, or mark, in the space provided and the person

1 who read the agreement to the juvenile affirm both the juvenile's agreement and the
2 fact the signing officer read the agreement to the juvenile by affixing their signature in
3 the space provided.

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5 SO ORDERED this 15th day of June, 2020, effective July 1, 2020.

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Warren C. Caswell
11 Judge of the Juvenile Courts
12 Northern Judicial Circuit
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1 **NORTHERN JUDICIAL CIRCUIT JUVENILE COURTS**
2 **COURTROOM BEHAVIOR AGREEMENT**

3 The Juvenile Court respects your human dignity and the feelings of your parents
4 and other family members who may be in the courtroom during your hearings. You
5 have been accused of a delinquent act serious enough to place you in a youth detention
6 facility, but the Court respects your rights to be treated fairly and respectfully. This
7 respect includes the removing of your restraints and handcuffs before entering the
8 courtroom unless you have been identified as a risk to misbehave due to things you
9 have said or done. The Court desires in all cases possible to save you and your family
10 the image of you being restrained by the use of mechanical devices such as handcuffs
11 and shackles. However, protection of others in the courtroom is also important and for
12 the Court. To support your motion to remove the restraints and handcuffs you may
13 agree, by signing below, that you will show good behavior at all times and do the
14 following:

- 15 1. I agree to keep my hands at my sides at all times I am standing and/or walking
16 while in the courtroom;
- 17 2. I agree to keep my hands on the table at all times, except when required to sign
18 any documents;
- 19 3. I agree to stand at all times when asked by my attorney or the judge to speak;
- 20 4. I agree not to make physical contact with any person, including family, (attorney
21 not included) without permission of the deputy sheriff;
- 22 5. I agree to follow all instructions of the deputy sheriff and remain respectful at all
23 times;
- 24 6. If the judge determines that I must return to detention pending my next hearing,
25 I agree to remain respectful and not misbehave;
- 26 7. I understand that if I misbehave, the deputy will remove me from the courtroom
27 and my hearing may be continued to another day causing a delay that would
28 result in a longer stay in detention; and;

1 8. I agree to behave while being transported to and from the courthouse and obey
2 all instructions of the deputies during transport.

3 By signing this agreement, I am saying that 1) the above conditions have been read to
4 me, 2) I have been given an opportunity to ask questions to make sure I understand
5 what they mean; and 3) I agree to obey these conditions and behave in court.

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9 _____
10 Youth Signature

Attorney or DJJ Personnel (Mark One)

11 Original: Court File

12 Cc: Arresting agency

13 DJJ

14 Child

15 Child's attorney

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21 (EXHIBIT A)
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