

**Rule 296. Use of Restraints in Court Proceedings Under the Mental Health and Developmental Disabilities Code.**

**(a) General.** In all proceedings before a court on a petition for involuntary admission pursuant to section 3-701 *et seq.* of the Mental Health and Developmental Disabilities Code (405 ILCS 5/3-701 *et seq.*) and/or a petition for the administration of psychotropic medication and/or electroconvulsive therapy pursuant to section 2-107.1 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/2-107.1) and/or a petition for judicial admission for persons with intellectual disabilities pursuant to section 4-501 of the Mental Health and Developmental Disabilities Code (405 ILCS 5/4-501), the respondent named in such petition shall not be placed in restraints, unless, prior to any appearance on any such petition, the court shall conduct a separate hearing on the record as to the manifest necessity for such restraints. The respondent and the respondent's attorney shall have the opportunity to be present and to be heard at such hearing. A court's finding of manifest necessity shall be based on whether there is a threat to persons present at the hearing, a risk of elopement, or when necessary to maintain order during the proceeding. The following factors, among others, may be considered in making this decision:

- (1) the specific acts or conduct alleged to have been performed by the respondent named in the petition filed with the court;
- (2) as to whether the respondent poses a risk of danger to him/herself or others:
  - (A) any prior use of restraints in a court proceeding or clinical setting;
  - (B) prior history of acts of physical aggression toward him/herself or others;
- (3) as to whether there is a risk of elopement:
  - (A) the respondent's physical ability to elope;
  - (B) motivational factors such as psychotic delusion or severe social stressors;
  - (C) any past elopements, attempted elopements, or evidence of any present plan to elope;
  - (D) risk from an external support system that may aid in elopement;
  - (E) the physical security of the courtroom or the room in which the proceeding is being held, including the number of entrances and exits, the number of guards necessary to provide security, and the adequacy and availability of alternative security arrangements.

**(b) Evidence and Risk Assessment.** For the purpose of the restraint hearing only, the court may consider an assessment as to the risk of respondent's dangerousness, elopement potential, and/or current clinical mental health status, prepared and signed by a person who is familiar with the respondent and who has been trained and certified in preparing risk assessments, such as a physician, clinical psychologist, clinical social worker, clinical professional counselor, or registered nurse with supervisory responsibilities. Any such risk assessment shall be provided to the court and counsel prior to the commencement of the hearing by the agency transporting the person. The assessment can be considered by the court only for a determination as to the use of restraints, unless counsel stipulate to its use otherwise. During the hearing, at the court's discretion, all counsel may either present evidence or make proffers and arguments that are relevant to the court's consideration of the use of restraints. At the court's discretion, the respondent may remain shackled during the restraint hearing.

**(c) Findings of Fact.** If the court finds that restraints are manifestly necessary, the court shall state its findings of fact on the record as to the basis for the order entered.

**(d) Use of Restraints.** If a decision is made to use restraints, the court must allow the least restrictive restraints necessary. Under no circumstances should a respondent be restrained to another person, a wall, the floor, or furniture while in the courtroom.

Adopted Mar. 21, 2019, eff. immediately.

#### COMMITTEE COMMENTS

In the case of *In re Benny M.*, 2017 IL 120133, ¶ 34, the Supreme Court held that the use of restraints on a respondent in an involuntary treatment proceeding should only be used upon a finding of manifest necessity. A finding of manifest necessity must be based on the risk of flight, threats to the safety of people in the courtroom, or maintaining order during the hearing. *Id.* ¶ 34.

Adult criminal, juvenile delinquency, and mental health cases should all maintain a dignified judicial process that includes the respectful treatment of those persons who are subjects of the court proceedings. *Id.* ¶ 28. The formal dignity reflects the importance of the matters at issue and a seriousness of purpose that helps to inspire confidence in the judicial system. *Id.*

Respondents named in these petitions are routinely seen by mental health professionals prior to filing of the petitions. These professionals prepare assessments as to the risk that the respondent may be to him/herself and others, and these assessments may be relevant to the respondent's dangerousness, elopement potential, and current clinical mental health status. When an assessment is prepared by appropriate personnel, after noting that all parties have received the risk assessment, a court should be able to consider the factors set forth in the report along with the evidence and/or proffers and arguments of counsel to make its findings as to the manifest necessity regarding the use of any restraints. This, of course, does not limit the court from hearing other evidence on the issue of restraints if deemed necessary.