STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE BARBER/ESPINOZA, MINORS.

Supreme Court No. 167745

Court of Appeals No. 369359

Lenawee Cir. Ct. No. 23-000033-NA

Amicus Brief of Center for the Rights of Abused Children

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INTEREST OF AMICUS

The Center for the Rights of Abused Children is a nonprofit organization based in Arizona that works in legislatures and courtrooms nationwide to advance and protect the constitutional rights of abused and abandoned children, each of whom deserves a safe and loving home. Although the Center believes that family is the foundation of every child's well-being, it well knows that in serious cases of child abuse or neglect, when parents can't or won't take care of their children, the State maintains a fundamental duty to step in to protect them. To that end, the Center has shepherded dozens of reforms through state legislatures in a bipartisan manner to improve child welfare systems, including landmark legislation in Arizona to guarantee independent, client-directed legal counsel for every child in foster care throughout their dependency proceedings. Through its children's law clinic, the Center provides pro bono legal assistance to thousands of children, families, and attorneys annually, including direct representation and legal training regarding the rights of children and families involved in foster care. This case is of special importance to the Center as it implicates a core mission of the organization—to protect the constitutional rights of children to be safe from sexual, mental, and emotional abuse.[1]

[1] None of the parties' counsel authored this amicus brief in whole or in part, nor contributed money that was intended to fund the preparation or submission of the brief. Further, no person has contributed money intended to fund the preparation and submission of this brief. *See* MCR 7.312(H)(5).

INTRODUCTION

This case is about whether Michigan's "child protection law," MCL 722.621, et seq., is adequate to protect a uniquely abused child or requires a court to order a child to confront and interact with their abuser, thereby continuing the harm to that child. To ask that question is to answer it. In a perverse interpretation of the child protection law, the court of appeals held that when a parent permits her acquaintance or drug dealer to sexually assault her child in exchange for compensation, that distinctly harmful betrayal is *not* an aggravated circumstance that relieves a court from its typical duty to attempt reunification between a parent and child before terminating parental rights. In doing so, the court ignored the statutory text and context, disregarded the substantial constitutional rights of the child, and flipped the State's child welfare system on its head, turning it into a cudgel that operates to require a child to undergo painful and unnecessary continuing contact with their abuser. In doing so, the court of appeals' opinion is likely to harm innumerable child victims, as such nearly unfathomable conduct by parents continues throughout the State.

This case began when the Michigan Department of Health and Human Services ("DHHS" or "the State") filed a petition seeking permanent custody of two children, CB and ME (the "Children"). *In re Barber/Espinoza*, ___ Mich App ___; 2024 WL 4244578 at *1 (Sept 19, 2024). The petition alleged that their mother ("Mother") provided improper supervision, threatened harm, and exposed them to drug abuse and sexual exploitation, including trafficking. *Id.* The primary evidence came from a forensic interview with CB, the older child, who disclosed that she had been sexually assaulted by adult men on two separate occasions—once when she was between two and four years old, and again around age nine. *Id.* As the court of appeals stated, "[t]he abuse included oral and anal penetration." *Id.* In both instances, CB said Mother observed the abuse and did nothing to stop it and that, during one of the assaults, Mother permitted it to occur in exchange for drugs. *Id.* She also described witnessing Mother's

drug use, which she believed involved heroin. *Id.* As a result of these experiences, CB suffered severe emotional trauma requiring mental health treatment. *Id.*

After hearing testimony from caseworkers at the preliminary hearing, the trial court found probable cause to support these allegations. *Id.* It immediately suspended all parenting time and contact between Mother and the Children. *Id.* In a subsequent written order, the trial court authorized the petition, determined that reasonable efforts at reunification were not required due to aggravated circumstances, and removed the children from Mother's care. *Id.* The Children were placed in the custody of their father. *Id.*

The court of appeals reversed the trial court's order terminating the parental rights of the Mother to CB and ME, holding that: "Where, as here, the perpetrators were neither a parent, guardian, or custodian of CB, and never resided with the children, the conduct at issue is not an 'aggravated circumstance' for purposes of MCL 722.638(1)." *Id.* at *6. The court of appeals thus determined that the trial court erred in suspending Mother's visitation, *id.*, and that such error was prejudicial and affected Mother's substantial rights, *id.*at *7.

Despite the court of appeals' confounding contrary decision, it should be uncontroversial that facilitating the sexual abuse of one's toddler in exchange for drugs is an act of such depravity that it obviates any need for reunification services, including visitation. The reason for this is simple: It protects the child's fundamental rights to bodily autonomy, physical safety, and emotional security. To say otherwise introduces the absurdity that mother has the right to force CB to sit in a room with her and look her in the eye—the very same eye Mother turned blind as CB was subjected to horrific sexual abuse—in the misguided hope that forcing CB to relive the trauma Mother inflicted on her will somehow rehabilitate Mother to no longer facilitate the perpetration of actions that were

clearly heinous in the first place. Because CB has clear, protectable constitutional rights, the trial court was not only allowed, but duty bound, to protect CB's rights regardless of whether a statute prescribed it.

In that vein, and nearly a century ago, this Court "heartily agree[d]" that:

> The law of this state is settled that the parents may not bargain away the children's welfare, the children's rights, that the court may always do what seems reasonable and necessary to protect the children's rights, and having in mind that policy or rule, the court made a special effort in this particular case to see to it that these parents should not do that very thing.

Wiersma v Wiersma, 241 Mich 565, 566 (1928) (quoting the trial court); see also *Johns v Johns*, 178 Mich App 101, 106 (1989) ("Parents may not bargain away a child's welfare and rights").

These words still ring poignantly today. Because Mother had already bargained away the Children's rights by selling CB for drugs, the court was empowered to do what seemed reasonable and necessary to protect the Children's rights including by ending the abuser's access to the child. Thus, at bottom, the trial court properly enforced the law because it protected the Children's constitutional rights.

ARGUMENT

I. Mother abused CB when she sexually exploited her, and MCL 722.638 does not require Mother to have penetrated CB to constitute an aggravating circumstance.

The court of appeals erred in determining that MCL 722.638 requires a parent, guardian, or someone residing in the home to be *both* the aggravator *and* the abuser to trigger its requirement that the Department file a petition. *In re Barber/Espinoza*, 2024 WL 4244578 at *5. It did so because it failed to follow the whole-text canon by ignoring the fact that 'sexual exploitation' is defined by statute. See *TOMRA of N Am, Inc v Dep't of Treasury*, 505 Mich 333, 350 (2020)

("we must always read the text as a whole") (citing Scalia & Garner, Reading Law: The Interpretation of Legal Texts 167 (2012)). Had the court of appeals read the definition section of the child protection law, MCL 722.622, it would have seen that the legislature defined child abuse to include sexual exploitation, which is in turn statutorily defined to include allowing, permitting, or encouraging prostitution.

The statute at issue, MCL 722.638(1)(a), has two requirements. The first clause requires that the "Department determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home has abused the child or a sibling of the child." MCL 722.638(1). And the second clause requires that "the abuse *included*" one of a list of circumstances, including "[c]riminal sexual conduct involving penetration, attempted penetration, or assault with the intent to penetrate." MCL 722.638(1)(a)(*ii*) (emphasis added).

According to the definitions section of the child protection law, child abuse is broadly defined to include, among other things, "sexual exploitation." MCL 722.622(g). In turn, the child protection law defines "sexual exploitation" by way of "[c]onfirmed sexual exploitation" to "mean[ ] a confirmed case that involves allowing, permitting, or encouraging a child to engage in prostitution." MCL 722.622(r). Prostitution is not defined by the statute, so it is proper to look to dictionary definitions to discern the meaning of the term. *Hecht v Nat'l Heritage Acads, Inc*, 499 Mich 586, 621 (2016).

Thus, the term "prostitution" is commonly defined as the "act or practice of prostituting," which is to "offer (oneself or another) for sexual hire." The American Heritage Dictionary of the English Language 1051 (1981); see also Prostitution, Black's Law Dictionary (12th ed, 2024); Scalia & Garner, Reading Law, *supra*, at 69 ("Words are to be understood in their ordinary, everyday meanings").

Properly applying these definitions, it becomes apparent that the court of appeals erred by reading a requirement into the statute that the parent or guardian must be the one to commit the act of penetration—an interpretation the statutory text does not support. It was appropriate for the Department to determine that Mother abused CB when she received drugs from a man in exchange for that man to have oral and anal sex with CB. Mother permitted, allowed, or encouraged CB to be held out for sexual hire with the payment being drugs. This is sexual exploitation, which is squarely within the definition of abuse, and which Mother committed.

Having established that Mother abused CB within the ambit of the first requirement of MCL 722.638(1)(a), the next clause then omits the parent or guardian requirement. The second part requires that "the abuse"—in this case Mother permitting CB to be held out for sexual hire—"included . . . [c]riminal sexual conduct involving penetration." MCL 722.638(1)(a)(*ii*). The statute requires that a parent or guardian commits *the abuse*, but does not require that the parent have committed the *penetration*. Indeed, the definition of 'sexual exploitation' does not itself require penetration, but rather could admit of acts such as cunnilingus in exchange for money or drugs. Such acts would still constitute abuse under MCL 722.622, but would lack an aggravating circumstance under MCL 722.638.

To hold otherwise, as the court of appeals did, would render the definition of sexual exploitation surplusage. See *Wyandotte Elec Supply Co v Elec Tech Sys, Inc*, 499 Mich 127, 140 (2016). 'Allowing,' 'permitting,' or 'encouraging' prostitution are each distinct from 'engaging in' prostitution. Mother did not proffer up her own body in exchange for drugs; that would not constitute child abuse. And Mother did not commit a criminal sexual act involving penetration; if she did, that would still not constitute prostitution. If the statute requires Mother to have committed the criminal sexual act involving penetration, there is no circumstance in which a parent, guardian, or someone in the home is able

to allow, permit, or encourage the exploitation—that person would be committing it instead. Thus, under the court of appeals' reading of MCL 722.638, sexual exploitation can *never* be aggravated and the term is surplusage.

Instead, to give the term real meaning and trigger the mandatory filing requirement in MCL 722.638(a)(1), the parent or guardian need only commit abuse in the form of offering or allowing prostitution. Then, that prostitution becomes aggravated if it includes penetration. The statutory scheme as a whole makes it clear that the identity of the individual committing the aggravating act is not dispositive—what matters is that the abuse itself, as defined by statute, somehow included an aggravating factor.[2]

The court of appeals erred because it failed to read the entire text of the child protection laws and consider the full legal ramifications of Mother's actions. It seems rather unlikely that the legislature would deem the allowing, permitting, or encouraging of prostitution as abuse, but then pull back and deem that such prostitution could never be aggravated by penetration. It is far more likely that the statute requires that the parent, guardian, or someone in the home has abused the child in order to establish the imminency of the risk of harm to the child from an adult in the home, but then allow that the abuse could

[2] To be sure, the statute does not define what it means to "confirm" sexual exploitation. However, the trial court made written factual findings consistent with sexual exploitation after an evidentiary hearing, and the court of appeals could discern no issue with the trial court's findings. *In re Barber/Espinoza*, 2024 WL 4244578 at *6 n.5 ("We find no issue with the trial court's underlying factual finding that CB was subjected to the sexual abuse alleged, which respondent either facilitated or knew about without intervening."). Surely a judicial determination that sexual exploitation occurred meets the statutory requirement.

include the actions of someone living outside the home as an aggravating circumstance, such as a drug dealer penetrating a toddler.

II. Foster children in Michigan have both substantive and procedural due process rights to be free from unnecessary harm, which the trial court respected when it suspended Mother's contact with the Children; application of any statute requiring reversal of that suspension would thus violate the Children's due process rights.

The U.S. Constitution protects children in state custody from both physical and emotional harm. The U.S. Supreme Court has held that individuals in government care—including children in foster care—have a substantive due process right to reasonable safety, freedom from bodily restraint, and protection from known harms. The trial court respected that duty. After a full evidentiary hearing, the court found that allowing continued visitation with Mother would cause further harm to the Children. Any interpretation of the statute that would mandate continued contact with their abuser—after the court found such contact would cause harm—would violate the Children's substantive due process rights, and to do so after that determination was made pursuant to an evidentiary hearing would undermine the fundamental procedural safeguards the Constitution requires. Therefore, even if the court of appeals' interpretation of the statute were correct on the text, but see *supra* Part I, that interpretation would raise grave constitutional concerns for this portion of the child protection law, supporting an alternative interpretation that does not infringe the Children's rights. *In re Certified Questions From US Dist Court, W Dist of Mich, S Div*, 506 Mich 332, 340 (2020).

"No State shall . . . deprive any person of life, liberty, or property without due process of law." US Const Amend XIV. "No person shall be . . . deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. "It is true that children, as well as their parents, have a due process liberty interest in their family life." *In re Clausen*, 442 Mich 648, 686 (1993).

By taking legal custody of the Children and placing them in foster care, the Court assumed a solemn duty to ensure their safety and well-being going forward—a duty it embraced through a process marked by fairness and due care. The error, then, lay not within the trial court's decision, but rather in the court of appeals' opinion which accepted the procedures used, but nonetheless denied the Children their substantive rights after the trial court found that they would be significantly harmed by continued contact with Mother.

A. When the trial court removed the Children from their Mother's home, it took an affirmative action that created a corresponding affirmative duty to protect the Children's safety and personal security under the Due Process Clauses of the Fourteenth Amendment.

The U.S. Supreme Court has held that when the State takes an individual into protective custody the Due Process Clause of the Fourteenth Amendment imposes a duty on the state to actively ensure that it protects the safety and security of that person. This includes, as happened here, when the State removes a child from the home of an abusive parent. Thus, after the trial court ordered the Children removed from Mother, it incurred an active obligation to ensure their safety and security, which would include the obligation to not subject them to a person who had already abused and sexually exploited them.

In *Youngberg v Romeo*, 457 US 307 (1982), the Supreme Court recognized that the state assumes an affirmative duty to protect individuals in its custody and care. *Youngberg* involved the involuntary commitment of an adult with very low mental capacity. *Id.* at 309. The Court first recognized that the "right to personal security constitutes a 'historic liberty interest' protected substantively by the Due Process Clause." *Id.* at 315. Importantly, the Court held that "[i]f it is cruel and unusual punishment to hold convicted criminals in unsafe conditions, it must be unconstitutional to confine the involuntarily committed—who may not be punished at all—in unsafe conditions." *Id.*at 315-316.

Likewise, in *Ingraham v Wright*, 430 US 651 (1977), a case on which *Youngberg* relied and which involved teachers instituting corporal punishment on the children they taught, the Court held that the "Due Process Clause of the Fifth Amendment, later incorporated into the Fourteenth, was intended to give Americans at least the protection against governmental power that they had enjoyed as Englishmen against the power of the crown." *Id.* at 672-673. "Among the historic liberties so protected was a right to be free from and to obtain judicial relief, for unjustified intrusions on personal security." *Id.* at 673.

This principle, that the state has an affirmative duty to protect those in its custody, applies with special force in child protection proceedings. In *DeShaney v Winnebago Cty Dep't of Soc Servs*, 489 US 189 (1989), the Court held "that when the State takes a person into its custody . . . the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *Id.* at 199-200.

This line of cases shows that when the State "removed the children from [Mother's] care, placing them with their father," *In re Barber/Espinoza*, 2024 WL 4244578 at *1, the Fourteenth Amendment imposed upon it a corresponding duty to assume some responsibility for their safety.[3] By taking the Children into protective custody, the State accepted an affirmative duty to provide the

[3] Every circuit has reached the same conclusion. See, e.g., *Connor B ex rel Vigurs v Patrick*, 774 F3d 45, 53 (CA 1, 2014); *Doe v NY City Dep't of Soc Servs*, 649 F2d 134, 141-142 (CA 2,1981); *Nicini v Morra*, 212 F3d 798, 808 (CA 3, 2000) (en banc); *Doe ex rel Johnson v SC Dep't of Soc Servs*, 597 F3d 163, 175 (CA 4, 2010); *MD ex rel Stukenberg v Abbott*, 907 F3d 237, 249-250 (CA 5, 2018); *Meador v Cabinet for Human Res*, 902 F2d 474, 475-477 (CA 6, 1990); *Reed v Palmer*, 906 F3d 540, 552 (CA 7, 2018); *Norfleet ex rel Norfleet v Arkansas Dep't of Human Servs*, 989 F2d 289, 292 (CA 8, 1993); *Tamas v Dep't of Soc & Health Servs*, 630 F3d 833, 846-847 (CA 9, 2010); *Gutteridge v Oklahoma*, 878 F3d 1233, 1238-1239 (CA 10, 2018); *HAL ex rel Lewis v Foltz*, 551 F3d 1227, 1231 (CA 11, 2008); *Smith v DC*, 413 F3d 86, 95 (CA DC, 2005).

Children with safe living conditions and to prevent unjustified intrusions on their personal security.

Forcing the Children to continue contact with someone who had already permitted CB's sexual exploitation would neither constitute safe conditions nor prevent intrusions on their personal security. See *In re JK*, 468 Mich 202, 211 (2003) (quoting *In re Trejo*, 462 Mich 341, 354 (2000) (recognizing that children in termination proceedings have a "right and need for security and permanency"); *In re Rinesmith*, 144 Mich App 475, 483 (1985), *abrogated on other grounds as recognized in People v LaLone*, 432 Mich 103, 117 n 11 (1989) (holding that "[a]lthough respondent did not personally physically or sexually abuse the children, she permitted the continuance of an environment in which the children were likely to be continually abused" caused the children harm). As such, once the trial court removed the Children and found that CB had serious mental health issues after Mother sexually exploited her, the State took an affirmative action that gave the Children a constitutionally protected liberty interest in their own safety and security that would be violated by continuing contact with Mother. Here, the trial court correctly found—after employing proper process as seen below—that it was duty bound to not allow Mother to have contact with the Children. Regardless of what any statute says, this is a sufficient basis for this Court to vacate the court of appeals' opinion and affirm the trial court's decision.

B. The trial court afforded all parties the procedural process due, and the court of appeals erred by reversing the trial court's order that respected the Children's substantive and procedural due process rights.

This Court may be assured that the trial court came to the correct conclusion—one that respected the Children's substantive due process rights—because it also respected all parties' procedural due process rights, only after which did it correctly find that the Children should not be required to have visits

with Mother. Given the process the trial court afforded all parties, this Court can have confidence that the trial court arrived at the correct conclusion of restricting Mother's visitation to vindicate the Children's rights.

Substantively, as addressed above, "due process extends the right to be free from the infliction of unnecessary harm to children in state-regulated foster homes." *Meador*, 902 F2d at 476. Further, a State may, through its statutes, "create[ ] a vested claim of entitlement pursuant to *Board of Regents v Roth*, 408 US 564 (1972), such that deprivation of that benefit without due process of law violates the protection of liberty (a procedural due process claim)." *Id.* To create such an entitlement, the statutory scheme should "mandate[ ] that officials follow guidelines and take affirmative actions to ensure the well-being and promote the welfare of children in foster care." *Id.* (quoting *Taylor v Ledbetter*, 818 F2d 791, 799 (CA 11, 1987)).

Michigan has adopted statutes creating an entitlement to children in foster care such that they have procedural due process rights. When investigating a report of abuse or neglect, DHHS "must take necessary action to prevent further abuses, to safeguard and enhance the child's welfare, and to preserve family life where possible." MCL 722.628(2). This is a clear command for DHHS officials to take affirmative actions to ensure children's wellbeing and to promote their welfare, and children in foster care therefore have due process protections.

It is through this lens of procedural due process that this Court may be assured that the trial court correctly vindicated the Children's substantive due process rights. Under the framework of *Matthews v Eldridge*, 424 US 319, 335 (1976), due process requires courts to weigh:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally,

> the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

In re Rood, 483 Mich 73, 92-93 (2009) (quoting *Matthews*).

i. Private Interests Affected

Child protection cases present a unique application of the first *Matthews* prong because the official action affects two or more different people who may have conflicting—or even diametrically opposed—interests, requiring a balancing test within a balancing test. As this Court has observed, "[s]ubsection 19b(5) attempts to strike the difficult balance between the policy favoring the preservation of the family unit and that of protecting a child's right and need for security and permanency." *In re JK*, 468 Mich at 211 (quoting *In re Trejo*, 462 Mich at 354).

The Children's interest in safety and emotional security is paramount. A parent of course has the fundamental right to the care and custody of her natural offspring. *Santosky v Kramer*, 455 US 745, 753 (1982). However, "[p]arents are not permitted to exercise their rights in a manner which would violate the rights of their children, and when this is done, and only then, do the courts have a right to interfere with custody, control and upbringing of a child and, is often said, protect the 'best interests of the child.'" *Paton v Paton*, 363 Mich 192, 198 (1961) (citing *Herbstman v Shiftan*, 363 Mich 64 (1961)).

The Children, meanwhile, have an equally important interest in not being revictimized by having to routinely see the person who abused and sexually exploited them. *In re JK,* 468 Mich at 211; see also *MD by Stukenberg v Abbott*, 907 F3d 237, 251 (CA 5, 2018) ("[E]gregious intrusions on a child's emotional well-being—such as, for example, persistent threats of bodily harm or aggressive verbal bullying—are constitutionally cognizable."); *In re Maricopa Cty Juv Action No. JD-561*, 638 P.2d 692, 695 (Ariz. 1981) ("Recognizing that children are persons with their own special needs, Arizona courts have acknowledged

the right of a child to effective parental care. Implicit in this right of proper care and control are the rights to good physical care and emotional security." (citations omitted)).

ii. Risk of Erroneous Deprivation

Although determining the private interests affected presents a tricky legal issue, the procedures employed by the trial court were nevertheless appropriate.

The procedure used here was an adversarial evidentiary hearing in a court of record. The hearing was held before depriving Mother of her visitation. The parties were provided notice and an opportunity to be heard. Each was provided with an attorney. The trial court made written findings. Although the parties disagree on whether Mother was provided notice of her appellate rights, none seems to doubt that she was entitled to an appeal, and ostensibly the Children were as well had the trial court decided differently, or if their interests had actually aligned with Mother's.

The procedures were constitutionally adequate, and no additional safeguards would reduce the risk of error.

iii. Government Interest

The government's interest in child protection proceedings has been variously described as: "of the highest order," *In re Ferranti*, 504 Mich 1, 59 n.17 (2019) (Markman, J., dissenting); "significant," *In re VanDalen*, 293 Mich App 120, 132-133 (2011); "substantial," *City of Owosso v Pouillon*, 254 Mich App 210, 218 (2002); and "vital," *Maricopa Cty Juv Action No. JD-561*, 638 P.2d at 394-395.

After employing these appropriate procedures and considering that the Children's constitutionally protected liberty interests were, in fact, diametrically opposed to Mother's, the trial court correctly protected the Children's right to not be subjected to the unnecessary and egregious emotional harm that would

occasion visits with Mother. Thus, any statute that purports to require the trial court to continue visitation under these circumstances would unconstitutionally trample on both the substantive and procedural due process rights of the Children and could not be applied here. See *In re Certified Questions From US Dist Court*, 506 Mich at 340. The only other conclusion would be the unconscionable—and unconstitutional—absurdity that the State took protective custody of the Children, found that Mother presented imminent harm to the Children, but was nevertheless required to subject the children to her anyway.

III. Without this Court's intervention, the harms caused by the court of appeals' decision will be deep and widespread.

Although the harms to CB in this case is itself enough to merit the Court's time and thoughtful consideration, the Court's decision in this case will have wide-ranging and critical implications for children across the State.[4] Although Mother's conduct shocks the conscience in a way not seen in many other forms of child abuse, her decision to traffic her daughter in exchange for drugs or other things of value is unfortunately far too common.

Sex trafficking of a minor child by a parent or other familial relation is the most common type of exploiter-victim relationship in these cases. According to a study by the Polaris Project, analyzing human trafficking trends during the COVID-19 pandemic from 2020-2022, even while the pandemic

[4] Indeed, the court of appeals has already had to grapple with this opinion on five separate occasions, sometimes citing it approvingly. *In re Walters*, ___ Mich App ___; 2025 WL 20947, *5 (2025) ("This necessarily implies that establishing an exception to the duty to provide reunification services is a mandatory prerequisite to termination at the initial disposition."); *In re B Hurt-Ernsberger*, No. 370609; 2025 WL 893023, *6 (Mich App 2025); *In re Story*, No. 371170; 2025 WL 641223, *5 (Mich App 2025); *In re LL Kahn*, No. 370871; 2024 WL 4820726, *4 (Mich App 2024); *In re Wicker*, No. 371168; 2025 WL 243178, *3 (Mich App 2025).

"suppressed commercial activity across industries, human trafficking continued to thrive," with over 27,000 victims of sex trafficking reported to the hotline, and 44% of exploiters of sex trafficking being family members of the victims. Polaris Project, *Human Trafficking During the COVID and Post-COVID Era* (2023).[5] And it is highly possible that these numbers are underreported. As the United Nations Office on Drugs and Crime explained in a 2022 report, "[d]uring the protective measures applied in response to the Covid-19 pandemic, sexual exploitation . . . may have also been pushed into less visible and less safe locations, making this form of trafficking more concealed and harder to be detected." UN Office on Drugs & Crime, *Global Report on Trafficking in Persons* at IV (2022).[6]

Victims of familial sex trafficking can often suffer greater harms than other victims, given that they are less likely to fight back or flee from their exploiters. Overwhelmingly, when a victim of human trafficking manages to escape their exploitation, the initial action is done by the victim themselves. *Id.* But when victims are exploited by their own family members, they are significantly less likely "to speak out due to their loyalty to and reliance on their family" and "fear what will happen once they report a family member" for trafficking, leading many victims "to stay with what they know." *No One Can Hurt You Like Family: What We Know About Familial Trafficking Identification and Response*, Comm Policing Dispatch, Vol 17, Iss 1 (Jan 2024).[7] Thus, "juvenile familial trafficking victims were less likely to run away" from their abuse, and can commonly "develop educational or social delays, Post-Traumatic Stress

[5] Available at https://polarisproject.org/wp-content/uploads/2020/07/Hotline-Trends-Report-2023.pdf.

[6] Available at https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_web.pdf.

[7] Available at https://cops.usdoj.gov/html/dispatch/01-2024/familial_trafficking.html.

Disorder (PTSD), psychological disorders," *id.*, and "[s]tudies demonstrate significant psychological and physical harm, and high levels of clinical need in these sometimes younger, child victims, including high rates of PTSD (80%), psychiatric hospitalization (35%) and suicide attempts (48%)," Nat'l Child Traumatic Stress Network, *About Child Sex Trafficking*.[8]

The most common scenario for familial sex trafficking is exactly what happened here—"family members selling a child in exchange for drugs," which is unfortunately becoming increasingly "prominent in communities where drug addiction to heroin, fentanyl, and meth is prevalent." *No One Can Hurt You Like Family*, *supra*. For this reason, criminal justice organizations have noticed a "troubling trend" where parents "have resorted to trafficking their children in exchange for drugs, according to the Federal Bureau of Investigation," with traffickers "typically exploit[ing] their victims inside their own homes or at a cheap motel to avoid spending too much money and fund their drug habits." Samantha Kamman, *FBI Exposes Troubling Trend of Texas Parents Trafficking Children for Drugs*, Christian Post Reporter (Jan 27, 2025).[9] Individual examples of this practice are, unfortunately, legion. See, e.g., *Allentown Man Arrested for Raping 2 Young Girls; A Victim's Mother 'Sold' Her for Cash, Drugs, Police Say*, NBC10 Philadelphia (Sept 4, 2024).[10]

Taken all together, there will be significant, real-world consequences for Michigan children resulting from this Court's decision. Although it is almost too

[8] Available at https://www.nctsn.org/what-child-trauma/traumatypes/sex-trafficking/about-child-sex-trafficking.

[9] Available at https://www.christianpost.com/news/parents-in-el-paso-trafficking-children-for-drugs-fbi.html.

[10] Available at https://www.nbcphiladelphia.com/news/local/allentown-man-arrested-raping-2-young-girls-victims-mother-sold-her-for-cash-drugs/3959910/.

gruesome to believe, cases like this one will continue to present themselves, with parents selling their children for drugs or money, likely to fuel their own untreated addictions. Given the rightful prominence of the bests interests of the child in termination proceedings, see, e.g., *In re Olive/Metts,* 297 Mich App 35, 40 (2012), any interpretation of Michigan law that does not allow the courts and GALs to protect a sex trafficked child without having to seek reunification with an abusive parent risks rendering the entire child-protection regime a hollow tool. Given the extensive risks Michigan children would face under the court of appeals' interpretation of MCL 712A.19a, this Court must take great care not to simply affirm that decision under a misguided attempt at strict textualism that ignores both the statutory context and the child's extensive constitutional rights, but rather provide proper analysis for the decision.

CONCLUSION AND RELIEF REQUESTED

When the State justifiably intervenes in the parent-child relationship such that it must remove them from their home for their own safety, it also necessarily incurs duties to the children to ensure their continued safety and security. In this case, the trial court protected those procedural rights by holding an evidentiary hearing, and it then protected the Children's substantive due process rights by keeping them safe from a mother who had abused and sexually exploited them in exchange for drugs. Unfortunately, the court of appeals then applied a hypertextual interpretation of Michigan statutes to deny the Children the substantive rights they accrued when the State took them into protective custody. It is thus imperative for this Court to vindicate the Children's constitutional rights by vacating the court of appeals' opinion and affirming the trial court's decision.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the formatting rules in MCR 7.212(B). See MCR 7.312(A), (H)(3). I certify that this document contains 5,699 countable words. The document is set in Garmond, and the text is in 13-point type with 1.5 line spacing and 8 points of spacing between paragraphs.

Respectfully submitted,

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