

RECEIVED  
09-28-2020  
CLERK OF WISCONSIN  
COURT OF APPEALS

STATE OF WISCONSIN  
COURT OF APPEALS – DISTRICT II  
Case No 2020AP000192-CR

---

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRYSTUL D. KIZER,

Defendant-Appellant.

---

On Appeal from a Non-Final Order Entered in  
the Kenosha County Circuit Court,  
the Honorable David Wilk Presiding

---

**AMICI CURIAE BRIEF OF LEGAL  
MOMENTUM AND HARVARD LAW  
SCHOOL'S GENDER VIOLENCE PROGRAM  
IN SUPPORT OF DEFENDANT-APPELLANT**

---

FOLEY & LARDNER  
Naikang Tsao  
WI Bar No. 1036747  
150 East Gilman Street  
Madison, WI 53703  
(608) 258-4250

LEGAL MOMENTUM  
Lynn Hecht Schafran\*  
32 Broadway Ste. 1801  
New York, NY 10004  
(212) 413-7518

BOIES SCHILLER FLEXNER LLP  
Karen Chesley\*  
Lindsey Ruff\*  
55 Hudson Yards  
New York, NY 10001  
(212) 303-3525

*Attorneys for Amici*

*\*Pro Hac Vice Forthcoming*

## TABLE OF CONTENTS

INTERESTS OF AMICI CURIAE.....	1
ARGUMENT .....	2
I. VICTIMS OF HUMAN TRAFFICKING SUFFER UNIQUELY SEVERE TRAUMA.....	4
II. RECENT LEGAL REFORMS ACROSS THE UNITED STATES RECOGNIZE THE HORRIFIC CONSEQUENCES OF HUMAN TRAFFICKING.....	7
III. WISCONSIN'S AFFIRMATIVE DEFENSE FOR TRAFFICKING VICTIMS ALIGNS WITH WIDESPREAD LEGISLATIVE REFORMS TO PROTECT VICTIMS OF HUMAN TRAFFICKING. .....	11
IV. SEX TRAFFICKING VICTIMS SUCH AS CHRYSTUL SHOULD HAVE THE OPPORTUNITY TO PROVE THAT THEY CAN SATISFY THE AFFIRMATIVE DEFENSE IN SECTION 939.46(1m). ....	14
CONCLUSION .....	17

## TABLE OF AUTHORITIES

### Cases

<i>State v. Martin</i> , 2018-Ohio-3226, 154 Ohio St. 3d 513.....	17
<i>In re Mental Commitment of R.L.</i> , 2005 WI App 59.....	18
<i>Lipscomb v. Abele</i> , 2018 WI App 58.....	16
<i>People v. L.G.</i> , 41 Misc. 3d 428 (Crim. Ct. 2013).....	18
<i>State v. Fitzgerald</i> , 2019 WI 69, 387 Wis. 2d 384, 929 N.W.2d 165.....	17
<i>State v. Richardson</i> , 189 Wis. 2d 418 (Ct. App. 1994) .....	19

### Statutes

22 U.S.C. § 7101(b)(19) .....	14
CA Penal Code § 236.23.....	15
IA § 710A.3 .....	15
KY § 529.170.....	15
MT § 45-5-710.....	15
ND § 12.1-41-13.....	15
NY Penal Law § 230.01.....	15
OK 21 § 748 .....	15
SC § 16-3-2020.....	15
Wis. Stat. § 939.46 .....	passim
Wis. Stat. § 939.50 .....	9

Wis. Stat. § 948.02 .....	9
Wis. Stat. § 948.051 .....	8, 15
Wis. Stat. § 948.093 .....	9
Wis. Stat. § 973.015 .....	14, 17
WY § 6-2-708 .....	15

### Other Authorities

American Bar Association, <i>Workable Solutions for Criminal Record Relief: Recommendations for Prosecutors Serving Victims of Human Trafficking</i> at 12 (March 2019).....	19, 20
American Psychological Association, <i>Resolution on Human Trafficking in the United States, Especially of Women and Girls</i> (2017), <a href="https://www.apa.org/about/policy/trafficking-women-girls">https://www.apa.org/about/policy/trafficking-women-girls</a> .....	12
Chitra Raghavan & Kendra Doychak, <i>Trauma-Coerced Bonding and Victims of Sex Trafficking</i> , 17 Int'l J. Emergency Mental Health & Human Resilience (2015) .....	9
Christine A. Courtois, <i>Complex Trauma, Complex Reactions</i> , 41 Psychotherapy (2004).....	10
FOSTA H.R. 1865.....	13
Government Accountability Office, <i>Human Trafficking: Actions Taken to Implement Related Statutory Provisions</i> (2016) .....	13
Human Rights Project for Girls, <i>The Sexual Abuse to Prison Pipeline</i> (2015) .....	11
James Levine, <i>Mental Health Issues in Survivors of Sex Trafficking</i> , 4 Cogent Medicine (2017).....	9

Jessica Contrera, <i>He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him</i> , Washington Post (Dec. 17, 2019), <a href="https://www.washingtonpost.com/graphics/2019/local/c-hild-sex-trafficking-murder/">https://www.washingtonpost.com/graphics/2019/local/c-hild-sex-trafficking-murder/</a> .....	8
Margaret Renkl, <i>An Act of Mercy in Tennessee</i> , N.Y. Times (Jan. 14, 2019), <a href="https://www.nytimes.com/2019/01/14/opinion/cyntoia-brown-mercy.html">https://www.nytimes.com/2019/01/14/opinion/cyntoia-brown-mercy.html</a> .....	12
Megan Anitto, <i>Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors</i> , 30 Yale L. & Pol’y Rev. (2011) .....	11
National Conference of State Legislatures, <i>Human Trafficking State Laws</i> (last visited Aug. 31, 2020), <a href="https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws">https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws</a> .....	14
National Survivor Network, <i>Impact of Criminal Arrest and Detention on Survivors of Human Trafficking</i> (Aug. 2016) .....	11
Our Daughters Are Not for Sale, H. CON. RES. 66, 113th Cong. (2013) .....	12
Patricia Kerig & Julian Ford, <i>Trauma Among Girls in the Juvenile Justice System</i> , Nat’l Child Traumatic Stress Network (2014) .....	10
Polaris Project, <i>Grading Criminal Record Relief Laws for Survivors of Human Trafficking</i> (2019) .....	14, 18
Polaris Project, <i>Reauthorizing the Trafficking Victims Protection Act</i> (June 29, 2017), <a href="https://polarisproject.org/blog/2017/06/reauthorizing-the-trafficking-victims-protection-act/">https://polarisproject.org/blog/2017/06/reauthorizing-the-trafficking-victims-protection-act/</a> .....	13
<i>Report of the Attorney General’s National Task Force on Children Exposed to Violence</i> , U.S. Dep’t of Justice 21 (Dec. 12, 2012) .....	12
<i>Report of the Task Force on Trafficking of Women and Girls</i> , American Psychological Association (2014) .....	9

Rich Williams, <i>State Efforts to Combat Child Trafficking</i> , National Conference of State Legislatures (Apr. 2017).....	15
Statewide Human Trafficking Committee, <i>The Wisconsin Human-Trafficking Protocol and Resource Manual</i> (May 2012).....	16
U.S. Dep't of Justice, <i>Causes and Correlates of Girls' Delinquency, Girls Study Group</i> (April 2010) .....	11
Wisconsin Department of Justice, <i>2019 Law Enforcement Assessment of Sex Trafficking in Wisconsin</i> (2019).8, 11	

## INTERESTS OF AMICI CURIAE

Legal Momentum, the Women's Legal Defense and Education Fund, is a national non-profit gender justice advocacy organization. For 50 years, Legal Momentum has advanced equal rights for girls and women through legislative efforts, impact litigation, education and direct representation of clients. Legal Momentum considers sex trafficking to be one of the most extreme forms of violence against women and girls.

Harvard Law School's Gender Violence Program works to eradicate gender-based violence in all its forms from intimate partner homicide to campus sexual assault to stopping the commercial sex trafficking of women and girls. The instant case implicates critically important issues of racial and sexual inequality, economic vulnerability leading to sexual exploitation, and the severe complex traumatic effects of child sex trafficking.

## ARGUMENT

Wisconsin law gives a victim of human trafficking the right to present an affirmative defense that “any offense” she committed occurred as a “direct result” of her trafficking. Wis. Stat. §939.46(1m). This defense reflects a broad, national consensus that human trafficking is a uniquely horrific crime, and courts should take its devastating impact into account when victims are accused of criminal activity.

The circuit court, however, narrowly read §939.46(1m) to deny Appellant Chrystul Kizer—a child sex trafficking victim—the opportunity to present the defense to a jury at her forthcoming criminal trial. Amici submit this brief to show that, far from being “absurd” as characterized by the circuit court (and echoed by the State), the legislature’s decision to create a ***complete*** defense for trafficking victims is fully justified by the long-term trauma inflicted by trafficking and is supported by the fact that §939.46(1m) was enacted as part of a nationwide wave of legislative changes to enhance the legal rights of trafficking victims. This background further demonstrates why it is inappropriate to graft a premature and impossibly high standard of causation onto §939.46(1m), as

the State urges, particularly given the State's reliance on a set of unproven assertions about the nature of the crime here.

Chrystul is precisely the type of person the Wisconsin Legislature intended to protect when it enacted §939.46(1m). When she was only 16, Chrystul met the decedent—a man twice her age—on Backpage.com, a known sex-trafficking site that has since been shut down by the federal government. The decedent molested Chrystul in exchange for money and sold her through Backpage.com to others, sometimes more than once a day. See Contrera, *He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him*, Washington Post (Dec. 17, 2019), <https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/>. Chrystul's trafficker molested numerous other children and filmed himself sexually abusing “about a dozen underage black girls,” including Chrystul, some who “appear to be as young as 12.” *Id.* Although a 15-year-old victim revealed his abuse to the police, he was not detained and instead remained free to continue his abuse and production of child pornography. *Id.*

If Chrystul cannot obtain relief through §939.46(1m) based on the horrific abuse she suffered, amici fear no victim will realize the intended benefit of this provision, and Wisconsin's commendable efforts to protect human trafficking victims will be rendered meaningless.

**I. VICTIMS OF HUMAN TRAFFICKING SUFFER UNIQUELY SEVERE TRAUMA.**

As amici have observed firsthand, trafficking victims suffer devastating consequences as result of the crimes they have endured. The neurological and psychological impacts of human trafficking are well-documented. *See, e.g.,* Levine, *Mental Health Issues in Survivors of Sex Trafficking*, 4 Cogent Medicine 1, 2 (2017) (identifying neurological consequences including “changes in brain structure and function”); Raghavan & Doychak, *Trauma-Coerced Bonding and Victims of Sex Trafficking*, 17 Int'l J. Emergency Mental Health & Human Resilience, 583 (2015) (discussing “wide range of physical, sexual, and emotional consequences” that affect “somatic, cognitive, affective, behavioral, and relational functioning”). Indeed, it is well established that victims of human trafficking are at particular risk of “severe and

potentially life-threatening” physical and mental health problems, including complex PTSD, dissociation, and self-injurious behaviors. *Report of the Task Force on Trafficking of Women and Girls*, American Psychological Association, 40-45 (2014).

The trauma associated with human trafficking profoundly alters victims’ cognitive functioning and ability to make autonomous decisions. *See, e.g., Courtois, Complex Trauma, Complex Reactions*, 41 *Psychotherapy* 412, 414 (2004) (complex trauma leads to “anger and self-destructiveness” and “amnesias and dissociative episodes and depersonalization”). These adverse outcomes are especially pronounced in child trafficking victims. *See Kerig & Ford, Trauma Among Girls in the Juvenile Justice System*, Nat’l Child Traumatic Stress Network (2014) at 7 (“Trauma disrupts a number of emotional, cognitive, and interpersonal processes that are important for adolescent development, particularly capacities for affective- and self-regulation, interpersonal trust, and effective problem-solving”).

Altered cognition and decision-making abilities can lead victims of human trafficking to engage in an array of

seemingly anomalous behaviors, including “unhealthy strategies for resolving conflicts (i.e., physical and relational aggression) and regulating emotions (i.e., drug and alcohol use).” *Id.* This conduct can increase the risk of—or directly result in—victims’ contact with the criminal justice system. See Human Rights Project for Girls, *The Sexual Abuse to Prison Pipeline* (2015) at 5 (“[S]exual abuse is one of the primary predictors of girls’ entry into the juvenile justice system”); U.S. Dep’t of Justice, *Causes and Correlates of Girls’ Delinquency*, *Girls Study Group* (April 2010) (“[V]iolent victimization remained an important risk factor for subsequent violent behavior by girls.”).

The causal link between victimization and criminality creates a cycle of abuse whereby victims are penalized for their reactions to their own trauma. See National Survivor Network, *Impact of Criminal Arrest and Detention on Survivors of Human Trafficking* (Aug. 2016) at 2-4 (hereinafter, “NSN Survey”) (finding that more than 90% of trafficking victims have been arrested at least once).<sup>1</sup> One

---

<sup>1</sup> As reflected in Chrystul’s case, police and judicial interventions often penalize trafficking victims rather than perpetrators. See Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses*

notable example is the case of Cyntoia Brown, who was recently pardoned after enduring fifteen years in prison for the murder of a man who purchased her for sex when she was a child. See Margaret Renkl, *An Act of Mercy in Tennessee*, N.Y. Times (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/opinion/cyntoia-brown-mercy.html>.

## II. RECENT LEGAL REFORMS ACROSS THE UNITED STATES RECOGNIZE THE HORRIFIC CONSEQUENCES OF HUMAN TRAFFICKING.

Given the far-reaching, uniquely devastating impacts of human trafficking, there is nothing unusual about treating its victims differently than victims of other crimes. Numerous experts and advocates—including amici here—have called for legal reforms focused on protection of trafficking victims, rather than punishment. See, e.g., American Psychological Association, *Resolution on Human Trafficking in the United States, Especially of Women and Girls* (2017), <https://www.apa.org/about/policy/trafficking-women-girls>

---

to the Commercial Sexual Exploitation of Minors, 30 Yale L. & Pol’y Rev. 1, 18 (2011) (“[Y]oung girls are prosecuted at reportedly higher rates than even the men who exploit them.”). In Wisconsin, the Department of Justice has proposed adding additional resources to help police identify and treat victims of trafficking, which police authorities reported were lacking. See Wisconsin Department of Justice, *2019 Law Enforcement Assessment of Sex Trafficking in Wisconsin* at 4 (2019) (hereinafter, “Wisconsin DOJ”).

(hereinafter, “APA”) (encouraging legislation treating trafficking victims as victims rather than criminals). Government reports have similarly supported new legislation to give human trafficking victims specific protections. *See, e.g., Our Daughters Are Not for Sale*, H. CON. RES. 66, 113th Cong. (2013); *Report of the Attorney General’s National Task Force on Children Exposed to Violence*, U.S. Dep’t of Justice 21 (Dec. 12, 2012).

These calls for reform have been effective, with both federal and state legislatures enacting bipartisan legislation to protect trafficking victims. At the federal level, the Trafficking Victims Protection Act (“TVPA”) made trafficking a federal crime in 2000 and specifically provided that “[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked.” 22 U.S.C. §7101(b)(19). The TVPA has been reauthorized by presidents Bush, Obama, and Trump with significant bipartisan support. Polaris Project, *Reauthorizing the Trafficking Victims Protection Act* (June 29, 2017) (“Trafficking is one issue where there continues to

be strong, genuine support from both sides of the aisle...”). More recently, Congress enacted the Allow States and Victims to Fight Online Sex Trafficking Act, which amends Section 230 of the Communications Decency Act to exclude only the enforcement of sex trafficking laws from the broad immunity provided to online platforms for all other crimes. *See* H.R. 1865; *see also* Government Accountability Office, *Human Trafficking: Actions Taken to Implement Related Statutory Provisions* (2016).

At the state level, nearly every state, including Wisconsin, has enacted a mechanism for trafficking victims to seal, vacate, or expunge previous criminal convictions. Polaris Project, *Grading Criminal Record Relief Laws for Survivors of Human Trafficking* (2019) (hereinafter, “Polaris Report”); Wis. Stat. §973.015(2m). And, as is particularly relevant here, a majority of states have—like Wisconsin—enacted safe harbor laws providing victims of human trafficking an affirmative defense for criminal conduct linked to their trafficking. *See* National Conference of State Legislatures, *Human Trafficking State Laws* (last visited

Aug. 31, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws>; Wis. Stat. §948.051.

These safe harbor laws vary in coverage. For example, several states limit their applicability to prostitution-related offenses.<sup>2</sup> Other states, including California, Kentucky, Montana, and North Dakota, extend this defense to non-prostitution-related crimes that are non-violent.<sup>3</sup> Comparatively, Wisconsin has joined Iowa, Oklahoma, South Carolina, and Wyoming by not limiting or extending the defense to any particular category of crime, but rather, requiring the defendant to establish a nexus between their crime and victimization based on the particular facts of the case.<sup>4</sup> Regardless of scope, these laws share a common purpose of supporting, rather than criminalizing, victims of abuse and exploitation. *See, e.g., Williams, State Efforts to Combat Child Trafficking*, National Conference of State Legislatures (Apr. 2017) (noting safe harbor laws “focus[] on treating trafficked

---

<sup>2</sup> *See, e.g.,* NY Penal Law §230.01 (“In any prosecution under [specific criminal subsections], it is an affirmative defense that the defendant’s participation in the offense was a result of having been [trafficked]”).

<sup>3</sup> *See* CA Penal Code §236.23; KY §529.170; MT §45-5-710; ND §12.1-41-13.

<sup>4</sup> *See* IA §710A.3; OK 21 §748; SC §16-3-2020; WY §6-2-708.

youth as survivors of trauma who should be provided rehabilitative services rather than as perpetrators of crimes”).

### **III. WISCONSIN’S AFFIRMATIVE DEFENSE FOR TRAFFICKING VICTIMS ALIGNS WITH WIDESPREAD LEGISLATIVE REFORMS TO PROTECT VICTIMS OF HUMAN TRAFFICKING.**

In amici’s experience, §939.46(1m) fits squarely within the wave of nationwide legislation recognizing the harsh consequences of child sex trafficking and providing protections to victims. See Statewide Human Trafficking Committee, *The Wisconsin Human-Trafficking Protocol and Resource Manual* at 12 (May 2012) (“The development of the anti-human trafficking movement in Wisconsin mirrors similar national and international movements to eliminate this devastating human rights crime”).

As Appellant’s Brief explained (at 8-14), the plain language of §939.46(1m) grants trafficking victims the opportunity to offer evidence that “any offense” occurred as a direct result of their victimization. But in the event the Court finds §939.46(1m) to be ambiguous, it must interpret the statutory language “in context, that is, in relation to the language of surrounding or closely related statutes.”

*Lipscomb v. Abele*, 2018 WI App 58, ¶18. Unlike Wisconsin’s expungement provision, §939.46(1m) does not contain language limiting it to prostitution. *Compare* §973.015(2m) (victims of human trafficking may seek expungement of “the record of the violation of s.944.30”) *with* §939.46(1m) (victims of human trafficking have an affirmative defense for “any offense” committed as a direct result of trafficking). And unlike the safe harbor laws of several other states, §939.46(1m) does not limit the defense to any particular category of crime. *See* n.2, *supra*. The Wisconsin legislature could have limited §939.46(1m) to prostitution-related offenses by modeling it after its own expungement provision or after one of the many examples of safe harbor laws set forth by other states, but it chose not to do so. *Cf. State v. Martin*, 2018-Ohio-3226, 154 Ohio St. 3d 513, 519 (declining to exclude violent offenses from statute requiring appointment of guardian for juvenile trafficking victims charged with crimes, reasoning, “[w]hile it could have done so, the legislature placed no limitation on the offenses to which [the statute]

applies”).<sup>5</sup> Instead of adopting a categorical approach, the legislature required that the crime occur as a “direct result” of trafficking, a fact-specific inquiry that should rest with the jury.<sup>6</sup>

Additionally, the Court must interpret the statutory language in the context of its purpose. *In re Mental Commitment of R.L.*, 2005 WI App 59, ¶6. The core purpose of safe harbor laws is to protect rather than punish victims of trafficking. Other courts have interpreted anti-trafficking protections broadly in light of their remedial purpose. For instance, in *People v. L.G.*, a New York criminal court held that a defendant’s conviction for possession of a weapon in the fourth degree could be vacated—despite the fact that New York’s vacatur law is expressly limited to prostitution offenses—because “her participation in that offense was undeniably connected to the coerced trafficking activity.” 41 Misc. 3d 428, 437 (Crim. Ct. 2013) (interpreting NY CPL

---

<sup>5</sup> As the State concedes, it is improper to “read a limitation into [a law] that does not exist.” Respondent Br. at 13.

<sup>6</sup> The State attempts to weaken the complete defense in §939.46(1m) by conflating it with the general defense of coercion. Respondent Br. at 12. But if the legislature intended to limit trafficking victims’ protections to the general coercion defense, there would be no reason to enact an independent provision specifically for trafficking victims.

§440(1)(i)). The court reasoned that interpreting New York’s vacatur law to cover only prostitution offenses would “neither address the coercive forces confronting trafficking victims nor comport with the ameliorative legislative purposes.” *Id.* at 438-39. Indeed, the traumatic effects of trafficking do not translate into the basis of a defense for only certain crimes and not others. *See, e.g.*, Polaris Report at 15 (noting “trafficking survivors are not all victimized or charged in the same way” and that victimization can cause “a wide range of offenses . . . even violence”); *id.* at 17 (“Many survivors of trafficking are not able to show that they were under duress at the time of their arrest because duress doesn’t align with all manifestations of human trafficking.”).<sup>7</sup>

**IV. SEX TRAFFICKING VICTIMS SUCH AS CHRYSTUL SHOULD HAVE THE OPPORTUNITY TO PROVE THAT THEY CAN SATISFY THE AFFIRMATIVE DEFENSE IN §939.46(1m).**

---

<sup>7</sup> Even prosecutors surveyed by the American Bar Association “unanimously agree[d]” that anti-trafficking efforts should “extend beyond just prostitution-related offenses” because the victims are harmed in far more ways than simply participation in the sex trade. American Bar Association, *Workable Solutions for Criminal Record Relief: Recommendations for Prosecutors Serving Victims of Human Trafficking* at 12 (March 2019) (hereinafter, “ABA Recommendations”) (“[P]articipants talked about their frustration with laws that limit eligible offenses, as those laws tie prosecutors’ hands when they are otherwise inclined to consent to clearing of additional offenses”).

Chrystul's case appears to follow a pattern common in trafficking cases, which arises from the extreme trauma that is described above. The sexual exploitation of a child victim like Chrystul frequently erodes the child's sense of self and security, potentially causing her to act out of fear and desperation in interactions with her trafficker. *See Courtois, supra*, at 419 ("Some [trauma survivors] have no conceptualization of what it means to be safe and do not believe they can ever be safe"); *cf. State v. Richardson*, 189 Wis. 2d 418, 430 (Ct. App. 1994) (allowing expert testimony on whether battered woman exhibited "low self-esteem, social isolation and 'learned helplessness'" to assess her culpability). Here, this fear was no doubt exacerbated by the fact that it appears her trafficker was being investigated for molesting several other children and creating child pornography, yet authorities inexplicably failed to detain him or prevent him from continuing to abuse children. *See p. 3, supra*.

Notwithstanding Chrystul's status as a victim of child sex trafficking, the circuit court refused to allow her to invoke a relevant legal defense based on the unfounded assumption that violent crime can never result directly from human

trafficking. This ruling cannot be reconciled with widely recognized understandings of victimization, trauma, and cognitive and behavioral outcomes stemming from trafficking. *See* pp. 4-7, *supra*. The consequences of human trafficking are fact-specific and, as the plain language of §939.46(1m) and similar state statutes dictate, should be evaluated accordingly. *See* ABA Recommendations at 12-13 (state legislation to protect trafficking victims who commit crimes should ensure that “cases can and should be considered on a case-by-case basis, rather than limited by narrow legislation that precludes relief in the appropriate circumstances”).<sup>8</sup>

At this stage, the Court need not determine whether Chrystul’s alleged conduct occurred as a “direct result” of her victimization. Instead, the Court need only determine

---

<sup>8</sup> The State implies that sex between an adult and minor is not inherently coercive, and Chrystul would have to identify a “coercive action[] used to compel [her] to partake in trafficking” to qualify as a victim. Respondent Br. at 17. But any commercial sex act with a minor constitutes trafficking, with or without any force, fraud, or coercion. *See* Wis. Stat. §948.051; Wisconsin DOJ at 4 (“[Survey] [r]esponses indicate that many agencies would benefit from training about the dynamics of child sex trafficking and the statutory elements of Trafficking of a Child[,] which provide that any involvement of a minor in sexual acts for money or anything of value, with or without any force, fraud or coercion, is an offense against that minor” (internal brackets omitted)). Further, Chrystul could not possibly have consented to her own sexual abuse, as a minor cannot consent to sex in Wisconsin. Wis. Stat. §§939.50, 948.02, 948.093.

whether Chrystul should have the opportunity to offer evidence that it did, which the jury may freely credit or reject. Consistent with §939.46(1m)'s plain language and ameliorative purpose of protecting trafficking victims, we respectfully urge the Court to grant Chrystul this opportunity.

### **CONCLUSION**

Amici respectfully request that the Court reverse the circuit court's order and remand with directions consistent with the Court's decision.

Dated: September 25, 2020

Respectfully submitted,

/s/ Naikang Tsao

FOLEY & LARDNER

Naikang Tsao

WI Bar No. 1036747

150 East Gilman Street

Madison, WI 53703

NTsao@foley.com

(608) 258-4250

BOIES SCHILLER FLEXNER LLP

Karen Chesley\*

Lindsey Ruff\*

55 Hudson Yards

New York, NY 10001

kchesley@bsfllp.com

(212) 303-3525

LEGAL MOMENTUM

Lynn Hecht Schafran\*

32 Broadway Suite 1801

New York, NY 10004

lschafran@legalmomentum.org

(212) 413-7518

*Attorneys for Amici*

*\*Pro Hac Vice Forthcoming*

**CERTIFICATION AS TO FORM AND LENGTH**

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,999 words.

Dated: September 25, 2020.

/s/ Naikang Tsao

Naikang Tsao

**CERTIFICATION AS TO ELECTRONIC FILING**

I hereby certify that I have submitted an electronic copy of this brief, which complies with the requirements of section 809.19(12), Stats. I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: September 25, 2020

/s/ Naikang Tsao

Naikang Tsao