

RECEIVED  
12-15-2021  
CLERK OF WISCONSIN  
SUPREME COURT

STATE OF WISCONSIN  
IN SUPREME COURT  
Case No 2020AP000192-CR

---

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

CHRYSTUL D. KIZER,

Defendant-Appellant.

---

Review of a Court of Appeals Decision Reversing a Non-Final Order Entered  
in the Kenosha County Circuit Court, the Honorable David P. Wilk, Presiding

---

**AMICI CURIAE BRIEF OF  
LEGAL MOMENTUM, WISCONSIN COALITION AGAINST SEXUAL  
ASSAULT, HARVARD LAW SCHOOL GENDER VIOLENCE  
PROGRAM, CORNELL LAW SCHOOL GENDER JUSTICE CLINIC,  
DIVERSE & RESILIENT, JEWISH WOMEN INTERNATIONAL,  
LOVELACE CONSULTING SERVICES, INC., NATIONAL ALLIANCE  
TO END SEXUAL VIOLENCE, NATIONAL COALITION AGAINST  
DOMESTIC VIOLENCE, RIGHTS4GIRLS, SANCTUARY FOR  
FAMILIES, THE INSTITUTE TO ADDRESS COMMERCIAL SEXUAL  
EXPLOITATION, AND WORLD WITHOUT EXPLOITATION  
IN SUPPORT OF DEFENDANT-APPELLANT**

---

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

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

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

*\*Admitted Pro Hac Vice*

*Attorneys for Amici*

**TABLE OF CONTENTS**

INTERESTS OF AMICI CURIAE.....1

ARGUMENT .....2

    I.    VICTIMS OF HUMAN TRAFFICKING  
          SUFFER SEVERE TRAUMA.....4

    II.   RECENT LEGAL REFORMS ACROSS  
          THE UNITED STATES RECOGNIZE THE  
          HORRIFIC CONSEQUENCES OF  
          HUMAN TRAFFICKING. ....8

    III.  WISCONSIN’S AFFIRMATIVE DEFENSE  
          FOR TRAFFICKING VICTIMS ALIGNS  
          WITH WIDESPREAD LEGISLATIVE  
          REFORMS TO PROTECT VICTIMS OF  
          HUMAN TRAFFICKING. ....12

    IV.  SEX TRAFFICKING VICTIMS SUCH AS  
          CHRYSTUL SHOULD BE PERMITTED  
          TO PROVE THEY SATISFY THE  
          AFFIRMATIVE DEFENSE IN  
          § 939.46(1m). ....16

CONCLUSION.....19

ADDENDUM – INTERESTS OF AMICI

## TABLE OF AUTHORITIES

### Cases

<i>In re Mental Commitment of R.L.</i> , 2005 WI App 59, 280 Wis. 2d 559, 694 N.W.2d 510.....	14
<i>Lipscomb v. Abele</i> , 2018 WI App 58, 384 Wis. 2d 1, 918 N.W.2d 434.....	12
<i>People v. L.G.</i> , 41 Misc. 3d 428 (Crim. Ct. 2013).....	14
<i>State v. Kizer</i> , 2021 WI App 46, 398 Wis. 2d 697, N.W.2d 136.....	12, 18
<i>State v. Martin</i> , 2018-Ohio-3226, 154 Ohio St. 3d 513.....	13
<i>State v. Richardson</i> , 189 Wis. 2d 418, 525 N.W.2d 378 (Ct. App. 1994) .....	16

### Statutes

22 U.S.C. § 7101(b)(19) .....	9
CA Penal Code § 236.23.....	10
IA § 710A.3 .....	11
KY § 529.170.....	10
MT § 45-5-710.....	10
ND § 12.1-41-13.....	10
NY Penal Law § 230.01.....	10
OK 21 § 748 .....	11
SC § 16-3-2020.....	11
Wis. Stat. § 939.46 .....	passim

Wis. Stat. § 939.50 .....	18
Wis. Stat. § 948.02 .....	18
Wis. Stat. § 948.051 .....	18
Wis. Stat. § 948.093 .....	18
Wis. Stat. § 973.015 .....	10, 13
WY § 6-2-708 .....	11

### **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) .....	15, 18
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> .....	8
Chitra Raghavan & Kendra Doychak, <i>Trauma-Coerced Bonding and Victims of Sex Trafficking</i> , 17 Int'l J. Emergency Mental Health & Human Resilience (2015).....	4
Christine A. Courtois, <i>Complex Trauma, Complex Reactions</i> , 41 <i>Psychotherapy</i> (2004).....	5
Government Accountability Office, <i>Human Trafficking: Actions Taken to Implement Related Statutory Provisions</i> (2016) .....	9
Human Rights Project for Girls, <i>The Sexual Abuse to Prison Pipeline</i> (2015).....	6
James Levine, <i>Mental Health Issues in Survivors of Sex Trafficking</i> , 4 <i>Cogent Medicine</i> (2017).....	4
Jessica Contrera, <i>He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him</i> , <i>Washington Post</i> (Dec. 17, 2019),	

<a href="https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/">https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/</a> .....	3, 4
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> .....	7
Megan Annitto, <i>Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors</i> , 30 Yale L. & Pol’y Rev. (2011).....	7
National Conference of State Legislatures, <i>Human Trafficking State Laws</i> (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> .....	10
National Survivor Network, <i>Impact of Criminal Arrest and Detention on Survivors of Human Trafficking</i> (Aug. 2016).	7
Our Daughters Are Not for Sale, H. CON. RES. 66, 113th Cong. (2013).....	8
Patricia Kerig & Julian Ford, <i>Trauma Among Girls in the Juvenile Justice System</i> , Nat’l Child Traumatic Stress Network (2014).....	5, 6
Polaris Project, <i>Grading Criminal Record Relief Laws for Survivors of Human Trafficking</i> (2019).....	10, 15
Polaris Project, <i>Reauthorizing the Trafficking Victims Protection Act</i> (June 29, 2017).....	9
<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) .....	8
<i>Report of the Task Force on Trafficking of Women and Girls</i> , American Psychological Association (2014).....	5
Rich Williams, <i>State Efforts to Combat Child Trafficking</i> , National Conference of State Legislatures (Apr. 2017) .....	11

Statewide Human Trafficking Committee, <i>The Wisconsin Human-Trafficking Protocol and Resource Manual</i> (May 2012).....	12
U.S. Dep't of Justice, <i>Causes and Correlates of Girls' Delinquency, Girls Study Group</i> (April 2010) .....	6
Vittoria Ardino, <i>Offending Behaviour: The Role of Trauma and PTSD</i> , <i>European Journal of Psychotraumatology</i> (2012) .....	17
Wisconsin Department of Justice, <i>2019 Law Enforcement Assessment of Sex Trafficking in Wisconsin</i> (2019).....	7, 18

## INTERESTS OF AMICI CURIAE<sup>1</sup>

Amici are thirteen organizations that work to eradicate gender-based violence in all its forms, including the commercial sex trafficking of women and girls. The instant case implicates Amici's expertise and experience in issues of racial, sexual, and economic inequality and vulnerability leading to sexual exploitation, and the severe complex traumatic effects of child sex trafficking.

---

<sup>1</sup>The interests of Amici are discussed with greater specificity in the Addendum.

## 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 being trafficked. Wis. Stat. § 939.46(1m). This defense reflects a broad, national consensus that human trafficking is a horrific crime, and courts should take its devastating impact into account when victims are accused of criminal activity.

The circuit court 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. The Court of Appeals reversed, holding § 939.46(1m) provides a complete defense for “any offense” committed as a “direct result” of being trafficked, including, under certain circumstances, intentional homicide. Amici submit this brief to show that, far from being “absurd” (as characterized by the circuit court), the legislature’s decision to create a *complete* defense for trafficking victims is fully justified by the long-term trauma associated with trafficking and the 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 site known to facilitate sex-trafficking that has since been shut down by the federal government. The decedent molested Chrystul in exchange for money and trafficked 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/> (“Contrera”). 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 told the police that the

decendent had abused her, he was not detained and instead remained free to continue abusing girls and producing 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 law, and Wisconsin's commendable efforts to protect human trafficking victims will be rendered meaningless.

**I. VICTIMS OF HUMAN TRAFFICKING SUFFER 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”). 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) (“Courtois”) (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 7 (2014) (“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* 5 (2015) (“[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* 2-4 (Aug. 2016) (“NSN Survey”) (finding that more than 90% of trafficking victims have been arrested at least once).<sup>2</sup> One notable example is 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>.

---

<sup>2</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 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 Dep’t of Justice, *2019 Law Enforcement Assessment of Sex Trafficking in Wisconsin* at 4 (2019) (“Wisconsin DOJ”).

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

Given the far-reaching, 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> (“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); U.S. Dep’t of Justice, *Report of the Attorney General’s National Task Force on Children Exposed to Violence* 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). Reauthorizations of the TVPA have been signed into law 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 enabling trafficking victims to seal, vacate, or expunge previous criminal convictions. Polaris Project, *Grading Criminal Record Relief Laws for Survivors of Human Trafficking* (2019) (“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*, <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, California, Kentucky, Montana, and North Dakota expressly extend this defense to non-prostitution-related crimes,<sup>3</sup> while other states expressly limit the defense to prostitution-related offenses.<sup>4</sup> Comparatively, Wisconsin has joined Iowa,

---

<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, e.g., NY Penal Law § 230.01.



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>5</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 youth as survivors of trauma who should be provided rehabilitative services rather than as perpetrators of crimes”).

---

<sup>5</sup> *See* IA § 710A.3; OK 21 § 748; SC § 16-3-2020; WY § 6-2-708.

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

Section 939.46(1m) fits squarely within the wave of nationwide legislation recognizing the severe 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 the Court of Appeals found, 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. *State v. Kizer*, 2021 WI App 46, ¶15, 398 Wis. 2d 697, 963 N.W.2d 136 (“Op.”). This straightforward reading of the phrase “any offense” in § 939.46(1m) is further supported by “the language of surrounding or closely related statutes.” *Lipscomb v. Abele*, 2018 WI App 58, ¶18, 384 Wis. 2d 1, 918 N.W.2d 434. Specifically, 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.4, *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”). Instead of adopting a categorical approach, the

legislature required that the crime occur as a “direct result” of trafficking, a fact-specific inquiry that rests with the jury.

Additionally, the Court must interpret the statutory language in view of its purpose. *In re Mental Commitment of R.L.*, 2005 WI App 59, ¶6, 280 Wis. 2d 559, 694 N.W.2d 510. The core purpose of safe harbor laws is to protect rather than punish trafficking victims. 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 § 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.”). 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* 12 (March 2019) (“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”).

The State attempts to conflate the complete defense in § 939.46(1m) with the general defense of coercion. Petitioner Br. 22-25. But if the legislature intended to limit trafficking victims' protections to the general coercion defense, there would be no reason to enact a separate law specifically for trafficking victims.<sup>6</sup>

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

Chrystul's case follows 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 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, 431, 525 N.W.2d 378

---

<sup>6</sup> The State has previously asserted that an undated memo from the Wisconsin Coalition Against Sexual Assault ("WCASA") supports its interpretation of the statute. *See* Op. 17 n.7. In fact, as amicus to this brief, WCASA's position is that § 939.46(1m) operates as a **complete** defense to "any" crime that occurs as a direct result of trafficking, including homicide.

(Ct. App. 1994) (allowing expert testimony on whether battered woman exhibited “low self-esteem, social isolation and ‘learned helplessness’” to assess her culpability). This fear and desperation are heightened where, as here, authorities are aware of the abuser’s conduct yet fail to act. *See Contrera*.

Notwithstanding Chrystul’s status as a victim of child sex trafficking, the State suggests that a series of unproven allegations about Chrystul’s conduct constitute “intervening factors” and render the defense inapplicable in her case. *See* Petitioner Br. 19. But the notion that a violent crime cannot result directly from human trafficking cannot be reconciled with widely recognized psychological and behavioral consequences that being trafficked has on children and their conduct. *See supra* at 9-12; Vittoria Ardino, *Offending Behaviour: The Role of Trauma and PTSD*, *European Journal of Psychotraumatology* 1 (2012) (“A considerable body of literature has documented the relationship between trauma/child abuse and subsequent aggressive and criminal acts”). As the Court of Appeals recognized, the consequences of human trafficking are fact-specific and should be evaluated

accordingly. *See* Op. ¶15; 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>7</sup>

At this stage, the Court does not have the requisite factual record to assess whether Chrystul’s alleged conduct was the “direct result” of her victimization. Op. 6 n.4 (“[B]oth parties agree that the record is not currently in a posture that would allow [the Court] to appropriately rule . . . as to the applicability of the defense to Kizer’s case”). Instead, the Court need only determine whether Chrystul should have the opportunity to offer evidence as to that defense, which the jury may freely credit or reject. Consistent with § 939.46(1m)’s

---

<sup>7</sup> The State implies that sex between an adult and minor is not inherently coercive, and Chrystul would have to identify a “specific coercive act[]” to qualify as a victim. Petitioner Br. 23. 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. 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.



plain language and ameliorative purpose, we urge the Court to grant Chrystul this opportunity.

### **CONCLUSION**

Amici respectfully request that the Court affirm the Court of Appeals' order and remand with directions consistent with that decision.

Dated: December 14, 2021

Respectfully submitted,

*Electronically signed by Naikang Tsao*

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

BOIES SCHILLER FLEXNER LLP  
Sigrid McCawley\*  
Lindsey Ruff\*  
55 Hudson Yards  
New York, NY 10001  
kchesley@bsflp.com  
(212) 303-3525

LEGAL MOMENTUM  
Lynn Hecht Schafran\*  
Jennifer M. Becker\*  
32 Broadway Suite 1801  
New York, NY 10004  
lschafran@legalmomentum.org  
(212) 413-7518

*Attorneys for Amici*  
*\*Admitted Pro Hac Vice*

**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 2,973 words, excluding the Addendum.

Dated: December 14, 2021.

*Electronically signed by Naikang Tsao*  
Naikang Tsao

**CERTIFICATION OF COMPLIANCE WITH  
WIS. STAT. § 809.19(12)(f)**

I hereby certify that:

I have submitted an electronic copy of this brief, which complies with the requirements of Wis. Stat. § 809.19(12)(f).

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: December 14, 2021.

*Electronically signed by Naikang Tsao*  
Naikang Tsao

### **ADDENDUM – INTERESTS OF AMICI**

Legal Momentum, the Women's Legal Defense and Education Fund, is the first and longest serving national non-profit dedicated to gender equality. For more than 50 years, Legal Momentum has advanced equal rights for girls and women through legislative efforts, impact litigation, and education and considers sex trafficking to be one of the most extreme forms of gender-based violence.

Wisconsin Coalition Against Sexual Assault ("WCASA") is a state-wide organization dedicated to ending sexual violence. For over 30 years, WCASA has supported and complemented Wisconsin's community-based sexual assault service provider programs. Among other functions, WCASA works to shape and enhance policy and law by introducing, tracking, and responding to bills that affect survivor of sexual assault and communities. WCASA recognizes that anti-racism work is sexual violence prevention work.

Harvard Law School's Gender Violence Program works to develop and reform laws and policies on issues related to sexual assault, intimate partner violence, and sex trafficking and

prostitution in order to educate leaders who contribute to the advancement of justice and the well-being of society.

The Cornell Law School Gender Justice Clinic engages in local, national, and global legal and advocacy efforts to address gender-based violence and discrimination. Issues covered include intimate partner violence, sexual assault, gender-based violence in institutional settings, discrimination at work and in the criminal legal system, and discrimination based on gender identity or sexual orientation, among others.

Diverse & Resilient is a non-profit organization that aims to achieve health equity and improve the safety and well-being of LGBTQ people and communities in Wisconsin, including through anti-violence programs that serve survivors of intimate partner, sexual, and hate- or community-based violence. Diverse & Resilient centers works for the liberation of all Black, Indigenous and other People of Color.

Jewish Women International (JWI) is the leading Jewish organization working to empower women and girls by ensuring and protecting their safety, health, rights, and economic security. JWI aims to ensure that women and girls of every race, culture, gender identity, sexual orientation, and ability thrive in healthy

relationships, control their financial futures, and realize the full potential of their personal strength.

Lovelace Consulting Services, Inc. provides high-level consulting, technical assistance, and training to people, organizations, and systems seeking social, political, and professional transformation through racial equity, diversity and inclusion, intersectionality, and ending gender-based violence.

The National Alliance to End Sexual Violence educates the policy community about federal laws, legislation and appropriations impacting the fight to end sexual violence. Among other functions, its team of experts and advocates track legislation, publish written analyses, and advise members of Congress and the executive branch.

The National Coalition Against Domestic Violence (“NCADV”) is a non-profit organization with the mission to be the voice of victims and survivors of domestic violence. NCADV’s vision is to create a culture where domestic violence is not tolerated and where society empowers victims and survivors while holding abusers accountable.

Rights4Girls advocates for the dignity and rights of young women and girls so that every girl can be safe and live a life free of

violence and exploitation. Rights4Girls works to change the narrative and policies that criminalize girls who have been impacted by gender-based violence by, *inter alia*, educating lawmakers and advocating policy reforms, providing training and technical assistance to judges and services providers, conducting research and producing reports, and launching public awareness campaigns.

Sanctuary for Families is a leading service provider and advocate for survivors of domestic violence, sex trafficking, and related forms of gender violence. Sanctuary for Families provides direct services – including legal and counseling services – conducts outreach and training, and engaged in systems-change advocacy.

The Institute to Address Commercial Sexual Exploitation, Villanova University Charles Widger School of Law (“the Institute”), educates and provides technical assistance to those who respond to commercial sexual exploitation in Pennsylvania, the United States and beyond, by promoting victim-centered, trauma-informed multidisciplinary collaboration. The Institute aims to improve the legal system’s response to commercial sexual exploitation in order to support survivors and hold perpetrators accountable.



World Without Exploitation is a community of organizations and individuals who seek to leverage their various skills and backgrounds to end human trafficking and sexual exploitation.