

Testimony on HB 4640: Adding "Threatened Harm" to the Definition of Child Neglect

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**We OPPOSE** the bill because adding the words "or threatened harm" to the legal definition of child neglect would be another step in endorsing more unnecessary interference by government into the territory of families, and because we believe it will harm some of the very children we all want to protect.

**Vague Definition.**

The definition of child neglect would become ... "harm or threatened harm to the child's health or welfare." "Threatened" is a vague word with many possible meanings. "Health" is a vague word with many possible implications. And "welfare" is vague word with many possible meanings. This is true in a standard dictionary and in Black's Law Dictionary. If we all wrote our own definition of these three words, probably none of them would match up. And there are millions of parents, thousands of mandated reporters, thousands of lawyers, and hundreds of judges, across this state. It is highly unlikely that their interpretations of "threatened harm to the health or welfare" would match up with the intent of current State Reps or Senators.

But what is even greater concern is the interpretation of the thousands of Child Protective Service (CPS) workers. While many are decent people, we are very concerned that some over-zealous Child Protective Service workers would misuse the wording and initiate unnecessary interference into the lives of some families.

What one person would normally ignore, another person would consider a threat to a child's welfare. For Example: While some believe 5 immunizations are adequate, and none are necessary, another believes that failure to use 75 of them constitutes threatened harm to a child's health. Adequate clothing in a climate that changes as drastically and suddenly as Michigan's does, could also be open to a variety of interpretations. While a "black eye" or a "goose-egg" might be a matter treated with humor a few days later in one situation, it could lead to a stressful CPS investigation in another family's experience. Also *MI House Concurrent Resolution 14* of 2020 labeled use of pornography as a health concern. I appreciate Rep. Calley's values and intent, but would threatened harm from a possible risk of a non-medical issue become grounds for intervention by CPS under HB 4640?

While we might expect Child Protective Service workers to exercise some "common sense" this is too often in short supply. The MaryAnne Godboldo case is a good example of an over-reaction to "threatened harm" to a child's health. (See tab<sup>1</sup> in the supporting documentation) (<https://www.cchrint.org/issues/maryanne-godboldo/>, <https://detroit.cbslocal.com/tag/maryanne-godboldo/>) The Mike's Hard Lemonade Case is another where "common sense" was sadly lacking. (Tab<sup>2</sup>) (<https://www.aclu.org/press-releases/mikes-hard-lemonade-parental-rights-case-allowed-move-forward-against-judge-who-pre>) After their blood pressure returns to normal, some wonder about the motivation in these cases. Our Citizens For Parental Rights organization has heard from literally hundreds of families about their (strong and credible) claims of unfair and overzealous treatment by CPS and the courts. It is common to hear parents say they are treated as guilty until proven innocent and that CPS workers have been dishonest.

We don't have time for them right now but several anecdotal reports are in the material I've provided. There are thousands of stories all across the country. Tornfamily.com, based in Michigan, states in bold letters, "Taking your baby to the emergency room? Bring your lawyer." (<https://tornfamily.com/>) A rational discussion with

these folks found them to be well informed and credible. An internet search of "medical kidnap" produced millions of hits and there are more examples of CPS interference, based on "threatened harm" than you'll have time to read.

### **Sub-standard Process**

Unfortunately, in neglect/abuse cases the legal standard is "preponderance of evidence" for a judge to take jurisdiction over a child, and only a fraction of cases are heard by a jury. And there is no further opportunity for a jury trial on termination of parental rights which is decided by the judge alone based on "clear and convincing evidence." Also the **normal criminal rules of evidence are not practiced** and **hearsay testimony is allowed**. In one case I have observed the distinct and simultaneous body language of surprise by relatives and attorneys in the middle of one CPS worker's testimony in court. An acquaintance says he has boxes of files from floor to ceiling on his one case. He reports false statements from CPS in court. Also a MI Supreme Court decision on Feb 28, 2020 exposes "unsubstantiated statements" in court by a CPS worker as it states in footnote 1, ([http://publicdocs.courts.mi.gov/SCT/PUBLIC/ORDERS/160626\\_72\\_01.pdf](http://publicdocs.courts.mi.gov/SCT/PUBLIC/ORDERS/160626_72_01.pdf))

\* At the removal hearing, the CPS worker testified that all three children disclosed sexual abuse during the Care House interview. However, review of the interviews at the subsequent hearings evidenced that this allegation was not substantiated."

The representation in court is often sub-standard. I went to the courthouse with another indigent family. The court appointed attorney for the mom showed up about 20 minutes before starting time. The court appointed attorney for the child showed up about 10 minutes before starting time to "meet his client". The court appointed attorney for the father never did show up. These situations are not a mere traffic ticket, or misdemeanor which would be tried on the standard of "beyond reasonable doubt," with criminal rules of evidence, and with hearsay excluded. Abuse/neglect cases can result in the permanent loss of one's children, a penalty which has been compared to the death penalty by at least one judge. And even for those families which win in court, the cost of defense is often reported in five figures or even six figures.

### **Money Influences Decisions**

This is not just a Michigan problem. Many folks across the country state that there is an explanation for the over-zealous behavior of some CPS workers. It is the flow of Federal money to the states (tab<sup>3</sup>) when a child is placed in foster care, an "Increasing Adoption Incentive Bonus" when children are placed in adoptive homes, plus a flow of money for adoption care. There is a partial explanation of this flow of money at our web-site: <https://citizensforparentalrights.com/federal-money-and-cps/> and much more is in the materials I provided (tab<sup>4</sup>), including documentation on how Michigan receives money and the close ties between the courts and the Department of DHHHS (tab<sup>5</sup>). These subsidies are distributed on a "per-child-taken-from-the-parents" basis. I have included evidence that Federal money also influences decisions by county commissioners and state legislators. (tab<sup>6</sup>) This is more profound and influential at the Department level. I have also heard credible reports (some first-hand) of a judge stating in open court that he/she did not want to do anything that would cut off the flow of Federal money, and CPS workers (in the presence of family members) talking about the bonus money they will receive if a case goes a certain way. There is a video on-line of a Judge telling CPS workers in a training session that a certain finding must be made at the beginning of the case, or they will forfeit federal money and have a child they cannot pay for.(tab<sup>7</sup>) I also have included a copy of a training presentation for CPS workers in Michigan from several years ago, which includes the statement that It doesn't make common sense, It makes dollars and sense.(tab<sup>8</sup>) A similar training presentation from 2015 in Minnesota affirms the importance of Social Security Title IV-E money in "findings" made by CPS workers: " Finding must be in the very first order removing the child from the care of the parent; – If finding is not in the very first order, Title IV-E reimbursement

is never available" ([http://www.mncourts.gov/mncourtsgov/media/scao\\_library/CJI/2015-Title-IV-E-Judges-Presentation-Powerpoint.pdf](http://www.mncourts.gov/mncourtsgov/media/scao_library/CJI/2015-Title-IV-E-Judges-Presentation-Powerpoint.pdf))

The distribution of money at the state level also rewards adopting kids out to strangers. On the MI DHHS web-page, bonuses of up to \$10,000 are offered to a private agency that places a child for adoption. And placement with a relative doesn't count. (tab<sup>9</sup>) Tennessee Attorney Connie Reguli has harsh words for Child Protection laws and Arkansas Senator Alan Clark said, ***"No horror movie ever prepared you for ... It obliterates the mirage of what you thought being an American meant. It changes you and scars you forever."***

(<https://amiracleforus.wordpress.com/2017/08/03/how-cps-judges-break-law-to-destroy-families/>) Author Stephen Krason writes, "... the current CPS has not only damaged untold numbers of families but also undercut the legitimacy of parental authority through the continuous threat to parents of child removal."

(<https://amiracleforus.wordpress.com/2015/04/23/protecting-families-and-children-from-the-child-protective-system/>) Many more books have been written on the alleged mistreatment by CPS.

I have included Senator Schaefer's scathing analysis from several years ago showing the faults of a corresponding agency in another state, entitled "*The Corrupt Business of Child Protective Services*" followed by a 2015 article from yet another state entitled "*The Skullduggery of Federal Adoption Incentives for States and Counties*"(tab<sup>10</sup>)

Our country needs to change the funding structure. Currently, with unlimited power to tax but no Constitutional power in the area of families, the Congress extracts money from Michigan taxpayers and offers it back if the state's Legislative Branch will write the laws they want. Then the Executive Branch responds well to the incentives that put a bounty on the heads of our children and grandchildren. Our recommendation is a gradual transition to flat grants based on population and reduced Federal taxation during transition to state-level funding. This would neutralize the negative effects of the Federal incentives. State control is constitutionally appropriate and state legislators are just as intelligent as folks in Congress for these issues and are better equipped by their closer proximity to families. And we all know that when Michigan taxpayer money goes to Lansing, it is significantly reduced when it takes a detour through Washington, D.C.

### **Yet Another Explanation**

Another explanation for the over-zealous behavior is the fact that some CPS workers have been through an abusive experience and view life through the emotional scars of that experience. That is exactly the case for one CPS worker in my county, that I know well.

### **Worse off in Foster Care**

Also important are the findings from many studies that children are **worse off in foster care** than in a moderately abusive home with their own parents. One very recent third-party investigation entitled "*Throwaway Kids*" said "We are sending more foster kids to prison than college" (tab<sup>11</sup>)

(<https://www.kansascity.com/news/special-reports/article238243099.html>) Several other very credible studies are included. (tab<sup>12</sup>)

Several family stories are included in the packet. (tab<sup>13</sup>) Also included is a report on an arrest for numerous falsified positive drug test results by CPS, and comments from parents who say it sounds all too familiar (tab<sup>14</sup>).

MI Representative Mary Whiteford stated in a March, 2021 newsletter to constituents,

Did you know that 80% of people on death row and over 50% of people in jail and prison are former foster children? I was appointed chair of a special task force on adoption and foster care by Speaker Wentworth and Appropriations

Chair Albert. Over 6 months I am planning weekly meetings with people in the adoption and foster care "world." If you have any experiences in this, please reach out to me! I intend to have interim recommendations in preparation for my 2021-2022 budget, final recommendations in August.

I am also spearheading a workgroup on recommendations to increase the number of safe havens for survivors of human trafficking then include these in my budget recommendation. I've heard anecdotally many of these victims are former foster children as well.

I am starting to believe that the foster care system is one of our greatest calamities in the history of Michigan. I will do my best to ensure that these vulnerable and traumatized children have a true champion and forever family.

### **Attorney's Comments**

I have contacted several attorneys for a brief comment on the probable unintended consequences of HB 5153 of 2020 –the equivalent bill in the previous legislative session. One attorney from Rockford replied

"...I see this as opening an even bigger door for CPS to remove children.

I wonder who created this amendment. It must have been someone influenced by CPS or the like.

What would be great (IMHO) would be to change the definition of 'child abuse' to require a criminal conviction. That would be very good.

The way this bill is written now, it just makes the situation worse. We need to reign in CPS (and government in general) not give them more power over our most vulnerable citizens."

### **Constitutional Due Process**

Another attorney replied at length. Again this is in regard to the HB 5153, the equivalent bill in the previous legislative session. Below is his e-mail. This is from Dr. William Wagner, a former law professor at Cooley Law School, and co-author of the proposed Parental Rights Amendment to the U.S. Constitution.

Dear John

Sorry for the late reply. We just filed another US Supreme Court brief and had a Supreme Court argument date ... all while I was also teaching in Israel. Catching up today... Here is my analysis, for what it is worth.

House Bill 5153 – WW Analysis 031220

The Child Abuse and Neglect Prevention Act currently defines *neglect* as "harm" to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment specified in the current law (e.g., the failure to provide adequate food). House Bill 5153 redefines the word *neglect*, in to include "threatened harm" in addition to "harm". Although it is possible to discern a good intent behind the proposal (e.g., protect a child from harmful neglect before it actually occurs), a possible constitutional concern exists.

The Amended Language Possibly Violates Procedural Due Process Requirements of the 14th Amendment by Failing to Provide Fair Notice of the Conduct it Proposes to Prohibit.

The Fourteenth Amendment to the U.S. Constitution provides that state governments must not "deprive any person of life, liberty, or property, without due process of law." The due process Clause of 14th Amendment to the U.S. Constitution requires, at a minimum, notice of what a government policy prohibits. Michigan's Constitution likewise requires due process. This constitutional rule of law provides predictability for individuals in the conduct of their affairs. An unambiguously drafted law affords prior notice to the citizenry of conduct proscribed. In this way, the rule of law provides predictability for individuals in their personal and professional behavior. Although citizens may choose to roam between legal and illegal actions, governments of free nations insist that laws give an ordinary citizen notice of what is prohibited, so that the citizen may act accordingly.

The ambiguous language of HB 5153 possibly fails to provide the public with adequate notice of the kind of conduct prohibited by the law. This failure creates a precarious proposition for citizens attempting to discern what constitutes

prohibited conduct, so as to conform their personal and professional behavior to the law. Because government authorities can use ambiguity in the language to decide, after the fact, what the law prohibits, the possibility of facing adverse government action is unpredictable.

Specifically, the vagueness of the undefined word "threatened" possibly fails to provide adequate notice of what the law prohibits. Threats comes in many forms. The public has no way of predicting what morally-relative choice a government authority will choose when making an enforcement decision. Because no articulated rule of law gives notice to the public of what the phrase proscribes, unpredictable possibilities of prosecution exist.

When, as here, ambiguous language prevents notice of what constitutes prohibited conduct, accusers (and sympathetic authorities) arbitrarily define the prohibited conduct after the commission of the act. Thus, the conduct prohibited by the proposed amendment could depend on the whim of an accuser's personal feelings—rather than on a clearly expressed rule of law articulated in the language of the provision. An accuser gets to define what this language means without limit by simply filing charges alleging some action violates the law.

The potential means by which government authorities can apply the law to selectively challenge citizen's actions vividly illustrates why our State and Federal Constitutions prohibit such statutory ambiguity. Arbitrarily enforcement undermines good governance under the rule of law. A principal precept of the rule of law is that it provides predictability for individuals in the conduct of their affairs. As discussed above, vague provisions provide no such predictability and open the door for government authorities to decide what the law means after the conduct occurs. That which is prohibited becomes clear only after a government authority selectively enforces the vague law against a citizen—based upon the authority's own morally relative construal of the ambiguous language.

I would recommend therefore, that the word "threatened" be specifically defined in the proposed law to alleviate some of the above raised concerns.

I hope this helps.

In His service,

William

**Prof. William Wagner, President**

**Salt & Light Global - Great Lakes Justice Center**

### **Appeal**

I had thought also that the language of HB 4640, if passed, would be appealed as vague, and struck down in court as have several other portions of MI Child Protection law. So in the end a family might win a case, but in the course of the struggle, the legal bills might require another mortgage on the house, and the emotional harm to the kids would take a long time to reverse.

### **Constitutional Conflict, Fourth Amendment**

Where there is no crime there should be no punishment. We all have the capability to inflict harm on each other, but should not be prosecuted or punished if ***it has not happened.***

The Fourth Amendment of the U.S. Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Cornell Law says that the goal of this amendment "is to protect people's right to privacy and freedom from unreasonable intrusions by the government." ([https://www.law.cornell.edu/wex/fourth\\_amendment](https://www.law.cornell.edu/wex/fourth_amendment), 6-10-2020)

This principle should also apply to parenting in the home and not be subject to prosecution for some perceived violation of a vague and undefined threat to health or welfare. While we would not object to a knock on the door and a verbal question about the safety of children, we strongly object to interference or prosecution by way of such a broad and vaguely defined threat of harm subject to numerous personal opinions of what a threat of harm is.

### **Child Abuse by Government**

False accusations and wrong prosecution by government are just as abusive and do just as much harm as parental abuse or neglect. Most parents would rather lose their wealth than their children. Most parents would rather temporarily lose their freedom than their children. For most children the thing they would least want to lose is their parents.

A trial for prosecution of "threatened harm" is trial probably commenced after an anonymous report, with the lowest level of process, with the worst possible punishment, for a crime that hasn't yet happened.

### **Intent of the Bill**

Information received last year is that Rep Glenn's intent is to tweak the law so that it uses the same language rather than conflicting language in two different locations in the law. We would rather see it subtracted from the first rather than added to the second. A new or substitute bill would be required to accomplish this.

### **Word from Allied Organizations**

Michael Ramey of ParentalRights.Org, the national organization attempting to pass the Parental Rights Amendment to the US Constitution, asked that I inform you that they do not like the language even though they realize it exists elsewhere in Michigan law.

Mike Donnelly, Senior Counsel for Home School Legal Defense Association did not ask us to share it with you, but I did receive a copy of a private e-mail stating that they also oppose the language.

### **Conclusion: Counterproductive**

After considerable reading, lobbying, training, telephone counseling, in-person counseling, court-watching, and hearing from hundreds of families, my judgment is that adding the words "threatened harm" to the definition of neglect would probably cause more harm than good for the children we all want to protect.

### **Options From Here**

At this point there are few options I can see that would avoid the disadvantages of the bill.

- One would be to withdraw the bill.
- A second would be to allow folks to testify and then postpone a vote on the bill. Either of these could be followed by a case of benign neglect of the bill.
- Third the Committee could vote to reject it.
- A fourth and even better option would be to delete the words "or threatened harm" from the definition of "child abuse" (page 1, line 3) and from the definition of "child neglect" (page 2, line 5).

Thank you for your consideration. I would be happy to take questions or talk with your further by phone or in person.

Sincerely,

John Tuinstra, BS, MA, MA  
President, Citizens for Parental Rights

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**Good sources for more information**

[www.parentalrights.org](http://www.parentalrights.org)

[www.nccpr.org](http://www.nccpr.org) (National Coalition for Child Protection Reform)

[www.citizensforparentalrights.com](http://www.citizensforparentalrights.com)

**Supporting Information** supplied to Committee members and available to others on request.

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**Supporting Information Tab Index**

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