

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**Appeal from the Michigan Court of Appeals  
(Gadola, C.J.; Borrello and Patel, JJ.)**

---

SHANNON BLACKMAN,

Plaintiff-Appellee/Cross-Appellant,

v

TYLER DAVID MILLWARD

Defendant-Appellant/Cross-Appellee.

Supreme Court No. 167867  
Court of Appeals No. 367240  
Calhoun County Circuit Court  
LC Case No. 2019-2623-DS

---

Anna M. Moss (P74040)  
Co-Counsel for Plaintiff/Cross-Appellant  
Legal Services of South Central Michigan  
123 W. Territorial Rd.  
Battle Creek, MI 49015  
(269) 965-3951  
amoss@lsscm.org

Tyler David Millward  
In Propria Persona  
Central Michigan Correctional Facility  
MDOC Prisoner # 569068  
320 Hubbard St.  
St. Louis, MI 48880

Megan A. Reynolds (P69967)  
Co-Counsel for Plaintiff/Cross-Appellant  
Michigan Poverty Law Program  
15 South Washington Street, Suite 202  
Ypsilanti, Michigan 48197  
(734) 436-2908, ext. 627  
mreynolds@mplp.org

---

**PLAINTIFF-APPELLEE/CROSS APPELLANT'S SUPPLEMENTAL BRIEF**

**ORAL ARGUMENT REQUESTED**

## II. TABLE OF CONTENTS

INDEX OF AUTHORITIES .....	iv
STATEMENT OF JURISDICTION.....	ix
QUESTIONS PRESENTED BY THIS COURT.....	ix
STATUTES AT ISSUE.....	x
STATEMENT OF FACTS .....	1
SUPPLEMENTAL ARGUMENT.....	4
I. An action to revoke an acknowledgement of parentage under MCL 722.1445(2) is not subject to the limitations period set forth in MCL 722.1437(1).....	4
A. Standard of Review:.....	4
B. Analysis:.....	5
2. MCL 722.1445(2) Establishes a Cause of Action for Which Revocation of an Acknowledgment of Parentage Is an Expressly Conferred Legislative Remedy.....	5
3. MCL 722.1445(2) Contains No Temporal Limitation, as Evidenced by Its Plain Language: .....	10
4. The Court of Appeals correctly found that § 1445(2) and § 1437 are mutually exclusive and apply to disparate factual circumstances: .....	12
5. MCL 722.1445(2)–(3), MCL 722.25(2), and MCL 722.27a(4) Are In Pari Materia and Impose the Same Substantive Limitation Based on Waiver Through Cohabitation and a Mutual Custodial Environment, Not on Timing. ....	14
6. Section 1445(3) is the Legislature’s chosen bright line rule on when a mother’s right to protection must give way to the child’s relationship with an offending father.....	19
II. The Trial Court Properly Applied MCL 722.1445(2), MCL 722.25(2), and MCL 722.27a(4) in Finding the Child Was Conceived Through Nonconsensual Sexual Penetration Based on Defendant’s CSC Convictions and Other Undisputed Facts .....	21
A. STANDARD OF REVIEW.....	21
B. ANALYSIS.....	22
1) The trial court properly found that Defendant’s convictions and other undisputed facts were sufficient to meet the clear and convincing evidence standard under both the CCA and the RPA.....	22
2) Ambiguity in the Term ‘Fact-Finding Hearing’ Under MCL 722.1445(2) Should Be Resolved in Harmony with In Pari Materia Provisions Exempting Conviction-Based Cases from Additional Hearings.....	29
3. Sections 25(2) and 27a(4) of the Child Custody Act bar trial courts from conducting the best-interest hearing that would ordinarily be required:.....	33

4. MCL 722.1445(2) Bars Best-Interest Hearings Where Nonconsensual Conception Is Established. The Court of Appeals Correctly Held Relief Is Mandatory, and Defendant Did Not Appeal That Ruling..... 34

a. The Standards of the Juvenile Code Are Inapplicable to the Determination of Whether a Best-Interest Hearing Is Required..... 35

b. Scholars Who Oppose Private Termination Actions Acknowledge the Unique Legitimacy of RSCCA-Based Statutes..... 40

III. If this Court determines that an evidentiary hearing to establish the exact date of conception is required in order to satisfy MCL 722.1445(2), such a hearing should be narrowly focused on the circumstances of conception. .... 42

CONCLUSION AND REQUESTED RELIEF ..... 44

STATEMENT REGARDING WORD COUNT..... 45

**INDEX OF AUTHORITIES**

**Cases**

**Michigan:**

*Birznieks v Cooper*,  
405 Mich 319, 331; 275 NW2d 221 (1979) ..... 21

*Blackman v Millward*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2024)  
(Docket No. 367240) ..... 3, 11, 12, 13, 34-35

*Book-Gilbert v Greenleaf*,  
302 Mich App 538; 840 NW2d 743 (2013) ..... 10, 11, 14

*Chandler v Dowell Schlumberger Inc*,  
456 Mich 395; 572 N.W.2d 210 (1998) ..... 32

*City of S. Haven v. Van Buren Cnty Bd of Com'rs*,  
478 Mich 518; 734 NW2d 533 (2007) ..... 6

*Colon v Rodriguez*, 144 Mich App 805; 377 NW2d 321 (1985) .....41

*Dep't of Talent & Economic Dev/Unemployment Ins Agency v Great Oaks Country Club, Inc*,  
507 Mich 212; 968 NW2d 336 (2021) ..... 29

*Dudewicz v Norris Schmid, Inc*,  
443 Mich 68; 503 NW2d 645 (1993) ..... 21, 28, 32

*Eldred v Ziny*,  
246 Mich App 142; 631 NW2d 748 (2001) ..... 33

*Empson-Lavolette v Crago*,  
280 Mich App 620; 760 NW2d 793 (2008) ..... 21, 31

*Glaubius v Glaubius*,  
306 Mich App 157; 855 NW2d 221 (2014)..... 4, 5, 21

*House Speaker v State Admin Bd*,  
441 Mich 547; 495 NW2d 539 (1993) ..... 13

*In re Certified Question from United States Court of Appeals for the Ninth Circuit*,  
499 Mich 477; 885 NW2d 628 (2016) ..... 29

*In re Ferranti*,  
504 Mich 1; 934 NW2d 610 (2019) ..... 4

<i>In re Gach</i> , 315 Mich App 83; 889 NW2d 707 (2016) .....	38
<i>In re Pederson</i> , 331 Mich App 445; 951 NW2d 704 (2020) .....	22
<i>In re Sanders</i> , 495 Mich 394; 852 NW2d 524 (2014) .....	22, 37, 38
<i>In re VanDalen</i> , 293 Mich App 120; 809 NW2d 412 (2011) .....	4
<i>King v Reed</i> , 278 Mich App 504; 751 NW2d 525 (2008) .....	21
<i>Koontz v Ameritech Servs, Inc</i> , 466 Mich 304; 645 NW2d 34 (2002).....	10
<i>Lakin v Rund</i> , 318 Mich App 127; 896 NW2d 76 (2016) .....	5
<i>Marquis v Hartford Accident &amp; Indemnity (After Remand)</i> , 444 Mich 638; 513 NW2d 799 (1994) .....	10
<i>Mayor of Cadillac v Blackburn</i> , 306 Mich App 512; 857 NW2d 529 (2014) .....	22
<i>Midwest Inst of Health, PLLC v Gov of Mich</i> , 506 Mich 332; 958 NW 2d 1 (2020) .....	22
<i>Milne v Robinson</i> , 513 Mich 1; 6 NW3d 40 (2024) .....	13, 16
<i>Moll v Abbott Laboratories</i> , 444 Mich 1; 506 NW2d 816 (1993) .....	4
<i>Monroe Beverage Co., Inc. v. Stroh Brewery Co.</i> , 454 Mich. 41; 559 NW2d 297 (1997) .....	6
<i>O'Connell v Dir of Elections</i> , 316 Mich App 91; 891 NW2d 240 (2016) .....	15, 18
<i>People v Arnold</i> , 508 Mich 1; 973 NW2d 36 (2021) .....	28

*People v Hoffman*,  
339 Mich App 65; 981 NW2d 65 (2021) ..... 28

*People v Lewis*,  
302 Mich App 338, 344-346; 839 NW 2d 37 (2013) ..... 28

*People v Russo*,  
439 Mich 584, 596; 487 NW2d 698 (1992) ..... 32

*Phillips v Mirac Inc*,  
470 Mich 415; 685 NW2d 174 (2004) ..... 22

*South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental  
Quality*, 502 Mich 349; 917 NW2d 603 (2018) ..... 10

*Sprenger v Bickle*,  
307 Mich App 411; 861 NW2d 52 (2014) ..... 44

*Rathbun v State*,  
284 Mich 521; 280 NW 35 (1938) ..... 15, 18

*Taylor v Taylor*,  
323 Mich App 197; 916 NW2d 652 (2018) ..... 8, 11

*Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*,  
347 Mich App 280; 14 NW3d 472 (2023) ..... 4

*Varran v Granneman*,  
312 Mich App 591; 880 NW2d 242 (2015) ..... 21

*Vushaj v Farm Bureau Gen Ins Co of Mich*,  
284 Mich App 513; 773 NW2d 758 (2009) ..... 4

*Wayne Co Prosecutor v Dep't of Corrections*,  
451 Mich. 569; 548 NW2d 900 (1996) ..... 12

*Western Mich Univ Bd of Control v State*,  
455 Mich 531; 565 NW2d 828 ..... 21

**Other States:**

*In re Parentage of D.S.*,  
2021 IL App (1st) 192257; 197 NE3d 92 (2021) ..... 20, 27 39-40, 42, 43

*In re Parentage of RV*,  
22 Wash App 2d 300; 511 P3d 148 (2022)..... 26-27, 39, 43

*In the Interest of ZE*, 221 A3d 260 (2019) ..... 43

**Federal:**

*Michael H. v Gerald D.*,  
491 US 110; 109 S Ct 2333; 105 L Ed 2d 91 (1989)..... 38-39

*NLRB v SW Gen, Inc*,  
580 US 288; 137 S Ct 929; 197 L Ed 2d 263, 267 (2017) ..... 16, 34

*Santosky v Kramer*,  
455 U.S. 745; 102 S Ct 1388; 71 L Ed 2d 599 (1982) ..... 36, 38

*Troxel v Granville*,  
530 US 5; 120 S Ct 2054; 147 L Ed 2d 49 (2000) ..... 37

**Statutes**

34 USC 21301 *et seq* (Rape Survivor Child Custody Act)..... 3, 6, 16, 26, 36-39, 43

34 USC 21302 .....35, 36, 37

34 USC 21302(6) ..... 39

42 U.S.C. § 666(a)(5)(D)(iii) ..... 17

MCL 712A.19b(1) ..... 41

MCL 722.25(2)..... *passim*

MCL 722.25(3)..... 18, 34

MCL 722.26(1) ..... 27, 44

MCL 722.27a(4)..... *passim*

MCL 722.27(c) ..... 19

MCL 722.1011 (repealed) ..... 17

MCL 722.1433(d)..... 9

MCL 722.1435 ..... 6, 11

MCL 722.1437..... *passim*

MCL 722.1437(1) ..... 4, 12, 17, 21

MCL 722.1437(5)..... 6, 8-9, 13

MCL 722.1441(1) ..... 9

MCL 722.1441(2) ..... 8, 9, 11

MCL 722.1441(1)(b)(ii)(A) ..... 8

MCL 722.1441(3)(b)(ii)(A) ..... 8

MCL 722.1441(4)(a)(i) ..... 8

MCL 722.1443(2)..... 7  
MCL 722.1443(4) ..... 35  
MCL 722.1443(10)..... 9  
MCL 722.1443(11) ..... 9  
MCL 722.1443(12)..... x  
MCL 722.1443(16) ..... 9  
MCL 722.1443(17) ..... 9  
MCL 722.1445(1)..... 6  
MCL 722.1445(2)..... *passim*  
MCL 722.1445(3)..... *passim*  
MCL 750.122(7)(b)..... 1, 2, 3, 24, 25, 26, 29  
MCL 750.520d(1)(e)(i)..... 1, 2, 23, 26, 28

**Public Acts**

1993 PA 259..... 14, 18  
1996 PA 305 ..... 17  
2016 PA 96..... 18, 30  
2016 PA 178.....6, 15-16, 18, 30, 32, 37

**Legislative History**

Senate Legislative Analysis, SB 557 (December 1, 2011) ..... 17  
Senate Legislative Analysis, SB 858 (2016 PA 178) (June 22, 2016)..... 15-16, 32, 33, 36  
House Legislative Analysis, HB 4481 (2016 PA 96)(August 9, 2016) ..... 18, 30-31

**Court Rules**

MRE 201..... 23

**Other**

Black’s Law Dictionary (12th ed. 2024) ..... 5  
Smith, *Termination of Parental Rights as a Private Remedy: Rationales, Realities, and Alternatives*, 72 Syracuse L. Rev. 1173 (2022) ..... 40-4

## STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to MCR 7.303(B)(1); MCR 7.305(B)(3); and MCR 7.305(B)(5)(a).

The Court of Appeals issued its published opinion on October 29, 2024. (10/29/24 COA Opinion). An application for leave to appeal to this Court was filed by Defendant on December 10, 2024. Plaintiff timely filed her Cross-Application for leave to appeal on January 6, 2025. On April 4, 2025, this Court granted oral argument on the applications and ordered supplemental briefing.

## QUESTIONS PRESENTED BY THIS COURT

- (1) **Whether an action to revoke an acknowledgement of parentage based upon a claim that the child was conceived as a result of nonconsensual sexual penetration, MCL 722.1445(2), is subject to the limitations period set forth in MCL 722.1437(1)?**

Plaintiff answers “NO.”

The Trial Court answered “Yes, but that plaintiff had met the burden to warrant extending the statute of limitations under MCL 722.1443(12)(e).”

The Court of Appeals answered “NO.”

Defendant answers “YES.”

- (2) **Whether the Calhoun Circuit Court erred by refusing to conduct a fact-finding hearing to determine whether the child was conceived as a result of nonconsensual sexual penetration and, if so, the requirements of such a hearing. See MCL 722.1445(2).**

Plaintiff answers “NO.”

The Trial Court answered “NO.”

The Court of Appeals answered “YES.”

Defendant answers “YES.”

**STATUTES AT ISSUE****722.1445 Determination of paternity.**

(1) If an action is brought by an alleged father who proves by clear and convincing evidence that he is the child's father, the court may make a determination of paternity and enter an order of filiation as provided for under section 7 of the paternity act, 1956 PA 205, MCL 722.717.

(2) If an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration, the court shall do 1 of the following:

- (a) Revoke an acknowledgment of parentage for an acknowledged father.
- (b) Determine that a genetic father is not the child's father.
- (c) Set aside an order of filiation for an affiliated father.
- (d) Make a determination of paternity regarding an alleged father and enter an order of revocation of paternity for that alleged father.

(3) Subsection (2) does not apply if, after the date of the alleged nonconsensual sexual penetration described in subsection (2), the biological parents cohabit and establish a mutual custodial environment for the child.

(4) As used in this section, "sexual penetration" means that term as defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

---

**722.25 Child custody dispute; controlling interests, presumption; award of custody to parent convicted of criminal sexual conduct or acts of nonconsensual sexual penetration; prohibition; support or maintenance obligation; defense; "offending parent" defined.**

(1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) An offending parent is not entitled to custody of a child described in subsection (2) without the consent of that child's other parent or guardian.

(4) Notwithstanding other provisions of this act, subsection (2) does not relieve an offending parent of any support or maintenance obligation to the child. The other parent or the guardian of the child may decline support or maintenance from the offending parent.

(5) A parent may assert an affirmative defense of the provisions of subsection (2) in a proceeding brought by the offending parent regarding a child described in subsection (2).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

(7) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (2) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration as described in subsection (2).

---

**722.27a Parenting time. (Excerpt)**

(4) Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not grant parenting time to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) A parent may assert an affirmative defense of the provisions of subsection (4) in a proceeding brought by the offending parent regarding a child described in subsection (4).

[.....]

(19) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (4) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration as described in subsection (4).

---

**722.1437 Action for revocation of acknowledgment of parentage; filing; agreement to transfer prosecutor's responsibilities; proceeding on behalf of state; affidavit; order for blood or tissue typing or DNA identification profiling; forwarding copy of order to state registrar; vacating acknowledgment of parentage; amending birth certificate; representation.**  
Sec. 7.

(1) The mother, the acknowledged parent, an alleged father, or a prosecuting attorney may file an action for revocation of an acknowledgment of parentage. An action under this section must be filed within 3 years after the child's birth or within 1 year after the date that the acknowledgment of parentage was signed, whichever is later. The requirement that an action be filed within 3 years after the child's birth or within 1 year after the date the acknowledgment is signed does not apply to an action filed on or before June 12, 2013.

(2) The prosecuting attorney and the department may enter into an agreement to transfer the prosecutor's responsibilities under this act to 1 of the following:

(a) The friend of the court, with the approval of the chief judge of the circuit court.

(b) An attorney employed or contracted by the county under section 1 of 1941 PA 15, MCL 49.71.

(c) An attorney employed by, or under contract with, the department.

(3) A proceeding under this section is conducted on behalf of the state and not as the attorney for any other party.

(4) An action for revocation under this section must be supported by an affidavit signed by the person filing the action that states facts that constitute 1 of the following:

(a) Mistake of fact.

(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress in signing the acknowledgment.

(5) If the court in an action for revocation under this section finds that an affidavit under subsection (4) is sufficient, the court must order blood or tissue typing or DNA identification profiling as required under section 13(5). The person filing the action has the burden of proving, by clear and convincing evidence, that the acknowledged parent is not the father of the child.

(6) The clerk of the court must forward a copy of an order of revocation entered under this section to the state registrar. The state registrar must vacate the acknowledgment of parentage and may amend the birth certificate as prescribed by the order of revocation.

(7) Whether an action for revocation under this section is brought by a complaint in an original action or by a motion in an existing action, the prosecuting attorney, an attorney appointed by the county, the friend of the court, or an attorney appointed by the court is not required to represent any party regarding the action for revocation.

## STATEMENT OF FACTS

Plaintiff-Mother respectfully refers this Court to the Statement of Facts set forth in her Cross-Application for Leave to Appeal and does not restate them here, except as necessary to clarify for purposes of this Supplemental Brief.<sup>1</sup>

This appeal arises from a motion filed in March of 2022 by Defendant to compel parenting time with the minor child who was born to the victim of the multiple criminal sexual conduct offenses for which Defendant is currently imprisoned.

In 2019, Defendant was convicted in three separate jurisdictions of third-degree criminal sexual conduct under MCL 750.520d(1)(e)(i), which criminalizes sexual penetration by a teacher of a student between the ages of 16 and 18 enrolled at the school where the actor is employed.<sup>2</sup> Defendant was also convicted under MCL 750.122(7)(b) for witness intimidation involving Plaintiff, with offense dates extending from the opening of the criminal investigation in February 2018 until his arrest in November 2018.<sup>3</sup> As he acknowledged to the trial court, Defendant contacted Plaintiff after he was forced to resign from her school and solicited her to recant her original statements and lie to the police.<sup>4</sup>

Plaintiff gave birth to the child involved in this case in December 2018 when she was 17 years old. By the time of the child's birth, Defendant had been arrested and charged with criminal sexual conduct and other charges.<sup>5</sup> He has been continuously incarcerated since the child's birth.<sup>6</sup> He has likewise been subject to a no-contact order barring him from communicating with Plaintiff since 2018.<sup>7</sup>

---

<sup>1</sup> Alphabetical appendices in this Supplemental Brief correspond to those previously filed with Plaintiff's Cross-Application. New appendices are identified using Roman numerals.

<sup>2</sup> Otis Report (**Appendix VII**).

<sup>3</sup> Complaint and Judgment of Sentence. (**Appendix VI**).

<sup>4</sup> Defendant's Response to Plaintiff's Motion to Revoke Acknowledgment of Parentage, at 1. (**Appendix K**).

<sup>5</sup> Transcript at 10. (**Appendix C**).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 10, 12.

Plaintiff responded with a motion under MCL 722.25(2) and 722.27a(4) of the Child Custody Act (CCA) and MCL 722.1445(2) of the Revocation of Paternity<sup>8</sup> Act (RPA), seeking a judicial finding that Defendant is an “offending parent” ineligible for custody or parenting time under the CCA and seeking revocation of the acknowledgment of parentage (AOP) under the RPA.<sup>9</sup> The trial court granted Plaintiff’s request for relief under both the CCA and the RPA.<sup>10</sup>

Defendant appealed to the Court of Appeals only on the RPA issue, arguing that mothers who move to revoke an AOP under § 1445(2)(a) must be held to the many irreconcilable requirements of MCL 722.1437, which is a more general section of the RPA governing actions to revoke an AOP for a man who is not the child’s biological father. Defendant also alleged that the trial court erred by relying on judicial notice of his CSC convictions and his Witness Tampering conviction to establish that the child was born as a result of nonconsensual sexual penetration.

Defendant contended that the child was conceived several weeks after he resigned as a teacher and thus, the child was not conceived as a result of the conduct proscribed by MCL 750.520d(1)(e)(i). Alternatively, to cover his bases in case it turns out the child was conceived before he resigned, Defendant has argued that “the sexual intercourse proscribed by MCL 750.520d(1)(e) is consensual.”<sup>11</sup> He identified the “primary question presented” by his appeal as whether sexual penetration by a teacher of a student between the ages of 16 and 18 “can constitute ‘nonconsensual sexual penetration’ merely because the relationship is prohibited by statute due to one of the parties being employed as a teacher at a school attended by the other party.”<sup>12</sup>

While Defendant’s Supplemental Brief falsely claims Plaintiff has not refuted the allegation that the child was conceived after his resignation, the record reflects that

---

<sup>8</sup> The short title of the Act was amended by P.A. 29 of 2024, effective April 2, 2025, to the Revocation of Parentage Act.

<sup>9</sup> Plaintiff was initially a self-represented litigant. She prepared her own handwritten “Response to Motion Regarding Parenting Time.” (**Appendix J**). After obtaining representation, she filed, through counsel, Plaintiff’s Motion to Revoke Acknowledgment of Parentage and Other Relief. (**Appendix D**).

<sup>10</sup> Transcript at p. 13-14; Opinion and Order of Trial Court at 6-7. (**Appendix B**).

<sup>11</sup> *Defendant’s Brief on Appeal (Amended)* at 47. (**Appendix G**).

<sup>12</sup> *Id.* at 12.

Plaintiff, speaking on her own behalf, alleged otherwise.<sup>13</sup> Throughout these proceedings, Plaintiff has consistently maintained that if the timing of conception relative to Defendant's resignation is deemed legally dispositive, medical testimony would be necessary to determine it; otherwise, the resignation date is irrelevant, and requiring medical evidence in a case where Defendant has already been convicted imposes an undue burden on a victim based solely on Defendant's scheme to manufacture doubt by proposing a different date.<sup>14</sup>

The trial court did not find Defendant's allegation that the child was conceived after he resigned to be a matter that required an evidentiary hearing. Instead, the trial court adopted the reasoning set forth in Plaintiff's brief regarding the plain language and legislative intent of the federal Rape Survivor Child Custody Act, (RSCCA) 34 USC. § 21301 et seq., which was enacted by the Michigan Legislature in 2016. The RSCCA, and the Michigan statutes at issue in this case, are designed to prevent offending parents from using their legal standing in parentage proceedings to exert continued control over, or harass, the survivor-parent.<sup>15</sup> The trial court also took note of Defendant's witness intimidation offense against Plaintiff and the fact that she was at all times under the age of 18, which is the age our Legislature has chosen for a student to consent to a teacher.<sup>16</sup>

The Court of Appeals affirmed the trial court's statutory interpretation of MCL 722.1445(2) as being a separate, mutually exclusive cause of action under the RPA for mothers moving to revoke the legal parentage of the offending biological father of a child conceived by nonconsensual sexual penetration.<sup>17</sup> The panel likewise rejected Defendant's contention that the trial court was required to conduct a best-interest hearing prior to revoking an AOP.<sup>18</sup>

The panel held that a trial court could take judicial notice of a conviction to satisfy § 14452(2), or, alternatively, take judicial notice of parties' ages and/or positions of

---

<sup>13</sup> Plaintiff's Response to Motion Regarding Parenting Time (**Appendix J**).

<sup>14</sup> See e.g. Plaintiff's Cross Application at 27.

<sup>15</sup> See Opinion and Order, at 6-7 (**Appendix B**).

<sup>16</sup> Transcript at 13-14.

<sup>17</sup> *Blackman v Millward*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2024) (Docket No. 367240); slip op at 8-9.

<sup>18</sup> *Id.* at \_\_\_; slip op at 11.

authority at the time of a conception when there had been no criminal conviction, however, the panel concluded that the trial court erred in this case because defendant disputed the date of conception.<sup>19</sup> This appeal and cross-appeal followed.

## SUPPLEMENTAL ARGUMENT

### **I. An action to revoke an acknowledgement of parentage under MCL 722.1445(2) is not subject to the limitations period set forth in MCL 722.1437(1).**

#### **A. Standard of Review:**

The question whether a cause of action is barred by the applicable statute of limitations is one of law, which this Court reviews *de novo*. *Moll v Abbott Laboratories*, 444 Mich 1, 26; 506 NW2d 816 (1993). Issues of statutory interpretation and application of the Revocation of Paternity Act are reviewed *de novo* as questions of law. *Glaubius v Glaubius*, 306 Mich App 157, 164; 855 NW2d 221 (2014).

**PRESERVATION** – This issue was raised for the first time in Defendant-Appellant’s motion for reconsideration and should be reviewed for plain error if this Court determines that the revocation of his legal parentage is equivalent to the termination of his parental rights as in a child welfare matter. An issue raised for the first time in a motion for reconsideration is not preserved for appellate review. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Plain-error review does not apply to unpreserved issues in civil cases except when termination of parental rights is involved. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 294; 14 NW3d 472 (2023). “To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.” *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citation omitted). If those three requirements are met, reversal is warranted when the error “seriously affected the fairness, integrity or public reputation of judicial proceedings.” *In re Ferranti*, 504 Mich 1, 29; 934 NW2d 610 (2019) (quotation marks, citations, and alterations omitted).

---

<sup>19</sup> *Id.*

**B. Analysis:**

**2. MCL 722.1445(2) Establishes a Cause of Action for Which Revocation of an Acknowledgment of Parentage Is an Expressly Conferred Legislative Remedy**

Defendant-Appellant erroneously contends that MCL 722.1445(2) provides only a remedy for mothers of children conceived through nonconsensual sexual penetration, rather than establishing a standalone cause of action. On that basis, he argues that claims under § 1445(2) are subject to the time limitations applicable to actions brought under the more general provision, MCL 722.1437.

A cause of action is a “group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.” *Black's Law Dictionary* (12th ed). Causes of action can be distinguished from one another as a matter of law on the basis of their necessary elements. See e.g. *Lakin v Rund*, 318 Mich App 127, 132; 896 NW2d 76 (2016).

The Michigan Court of Appeals has emphasized that to correctly identify which facts would entitle a given party to sustain an action under the RPA requires a court to parse not only the type of legal parentage sought to be revoked, but also the identity of the moving party, and whether the statute provides distinct provisions for that moving party and/or for circumstances relating to the child at issue. *Glaubius*, 306 Mich App at 165.

The RPA is a complex statutory framework that contains within it a multitude of causes of action but only two possible remedies.

A “remedy” is “[t]he means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.” *Black's Law Dictionary* (12th ed.) (citing Douglas Laycock, *Modern American Remedies* 1 (4th ed. 2010) (“A remedy is anything a court can do for a litigant who has been wronged or is about to be wronged. The two most common remedies are [money] judgments . . . and [injunctions].”).

The only forms of relief a court may grant under the RPA are: (1) revoking the legal parentage of an individual who had previously established legal parentage and, (2) if

applicable, the court may make a new determination of parentage for the individual replacing the prior legal parent as the child's new legal parent.<sup>20</sup>

Defendant's insistence that the four "governing provisions" at § 1435 are the only RPA "causes of action," and that § 1445(2) merely provides a remedy, gets it exactly backward. The cause of action at § 1445(2) is what allows a mother of a child whose biological father is her sexual offense assailant a right to seek a judicial remedy. That cause of action did not exist until Michigan adopted the federal Rape Survivor Child Custody Act<sup>21</sup> in 2016.<sup>22</sup>

In contrast, the legal remedy the mother is seeking is an order revoking the legal paternity of the man previously established as the legal father. While that remedy is the same remedy available elsewhere under disparate sections of the RPA, only § 1445(2) is a cause of action that may be used to pursue that remedy if the legal father is also the biological father of the child. In every other section of the RPA, the elements of the cause of action involve proving that the legal father is not the biological father of the child.<sup>23</sup> By passing Public Act 178 of 2016, the Legislature added a distinct cause of action at §1445(2) with the express legislative purpose of benefiting mothers who conceived a child as a result of a sexual offense.

Defendant cites *City of S. Haven v. Van Buren Cnty Bd of Com'rs*, 478 Mich 518; 734 NW2d 533 (2007) to imply that Plaintiff is claiming a cause of action where the Legislature did not intend one. (AT Supp. Brf. 12-13). That case reaffirmed the well-established principle of law that, "where a statute gives new rights and prescribes new remedies, such remedies must be strictly pursued; and a party seeking a remedy under the act is confined to the remedy conferred thereby and to that only." *Monroe Beverage Co., Inc. v. Stroh Brewery Co.*, 454 Mich. 41, 45, 559 NW2d 297 (1997).

In this case, Plaintiff seeks nothing more than the precise remedy the Legislature expressly authorized. Section 1445(2) provides that, upon granting relief to the mother,

---

<sup>20</sup> See MCL 722.1445(1).

<sup>21</sup> 34 USC 21301 et seq

<sup>22</sup> 2016 PA 178. (**Appendix XII**).

<sup>23</sup> The moving party under §1437 "has the burden of proving by clear and convincing evidence that that acknowledged parent is not the father of the child." MCL 722.1437(5).

“the court **shall do** 1 of the following” to effectuate that remedy—underscoring the Legislature’s intent to mandate judicial action once the statutory elements are met. The actions enumerated are:

- (a) Revoke an acknowledgment of parentage for an acknowledged father.
- (b) Determine that a genetic father is not the child's father.
- (c) Set aside an order of filiation for an affiliated father.
- (d) Make a determination of paternity regarding an alleged father and enter an order of revocation of parentage for that alleged father.

Because the list at § 1445(2) does not authorize a court to revoke the legal parentage of a presumed father, there exists no cause of action in circumstances of a marital rape.

It is self-evident that this list outlines the actions the court may make in granting relief under § 1445(2). The drafting of § 1445(2) mirrors MCL 722.1443(2), which similarly enumerates the actions a court may take in granting relief under the Revocation of Paternity Act (RPA) to any moving party who has met the statutory requirements applicable to that moving party.

Ultimately, the phrase “revoke an acknowledgment of parentage” refers to a type of relief that can be granted under either § 1437 or § 1445. The key difference between these two provisions lies in the legal grounds for bringing the action, not in the nature of the relief being sought.

### **Examples of variable statutes of limitations within the RPA:**

Defendant attempts to obscure the Legislature’s deliberate imposition of different statutes of limitation—or none at all—for various moving parties under the RPA. In his Supplemental Brief, Defendant acknowledged that not all actions under the RPA are subject to a three-year limitation period. He argued, however, that the exceptions to this rule are irrelevant because they do not apply to the facts of this case. *Id.* To the contrary, these exceptions are highly relevant because they directly refute Defendant’s central claim—that the Legislature would never permit a RPA action to proceed without an absolute time limit. (See AT Supp Brf, at p. 14).

For example, the mother, alleged father, and the Department of Health and Human Services (MDHHS) may all file an action to revoke legal parentage beyond the child's third birthday, without regard to the child's age, if that legal parent "having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for a period of 2 years or more before the filing of the action." See §§ 1441(1)(b)(ii)(A); 1441(3)(b)(ii)(A); and 1441(4)(a)(i).

Similarly, the RPA permits a party to file an action with no time limit under § 1441(2). Under § 1441(2) there is no time restriction on an action filed by a presumed parent "if the presumed parent raises the issue in an action for divorce or separate maintenance."

Moreover, the Court of Appeals has rejected the notion that the absence of a time bar in a given RPA subsection implies that a general limitations period should be read in for consistency. The Court of Appeals reviewed § 1441(2) in *Taylor v Taylor*, 323 Mich App 197, 199; 916 NW2d 652 (2018), where the trial court had erroneously applied a three-year statute of limitations to the RPA motion filed by the presumed parent in a divorce action, based on its general applicability to other parties and actions under Section 11 of the RPA. The Court concluded: "we are left with only one rather unremarkable conclusion: the Legislature intended exactly what it said. The presumed father may raise the issue in a paternity action filed within three years of the child's birth OR in a divorce action (**without regard to the child's age**)." *Id.* at 201 (emphasis added).

This Court should reach the same unremarkable conclusion here. This Court must give effect to the Legislature's words as written and affirm that § 1445(2) provides an independent cause of action that may be initiated without regard to the child's age.

**Examples of variable causes of action within the RPA:**

Defendant's contention that there are only four causes of action under the RPA is also without merit. He confuses the four types of legal parentage described at Section 5 of

the RPA with a total count of causes of action.<sup>24</sup> In reality, each subsection contains within it multiple causes of actions defined by different elements for different moving parties, including the legal father, the alleged father, the mother, and the prosecuting attorney acting on behalf of the IV-D child support program of MDHHS.

The RPA includes several stand-alone provisions that operate independently of—and override—the four “governing provisions” defined at § 1435. These stand-alone provisions govern special categories of parentage, several of them based on how the child was conceived.

For example, while alleged biological fathers generally have standing under each of the four governing provisions, there is a specific exception at MCL 722.1443(16) for any alleged father “of a child conceived as a result of acts for which the father was convicted of criminal sexual conduct under sections 520b to 520e of the Michigan penal code.” See MCL 722.1443(16). This subsection, which predates the amendment that added § 1445(2), categorically denies an opportunity for an offending biological father to file an RPA action under any otherwise available subsection.

Similarly, the Legislature recently created an exception within the RPA for children conceived as a result of assisted reproduction. An action may not be brought under any subpart of the RPA if the biological parent is a “donor” of a child conceived by assisted reproduction. See MCL 722.1443(11) and MCL 722.1433(d). Elsewhere, there are categorical exceptions barring RPA actions by a biological parent if the child was adopted, MCL 722.1443(10), or if the child is under the jurisdiction of the probate court, MCL 722.1443(17).

Beyond those broad exceptions, the RPA has different elements for the causes of actions relating to the same type of parentage, depending on which party is the moving party. For example, under § 1441(1) a mother is required to name the alleged father in her complaint for revocation whereas the legal father, under § 1441(2) is not.

In short, the Legislature has determined, based on a variety of public policies goals, to categorically exempt or to alter the rules within the RPA for certain moving parties.

---

<sup>24</sup> Defendant relies on the four sections, labeled at 722.1435, as “Governing Provisions for certain actions”.

The Legislature’s special treatment of actions brought by mothers of children conceived as a sexual offense at § 1445(2) is plainly such a stand-alone provision with elements tailored to that moving party and the circumstances of conception.

**3. MCL 722.1445(2) Contains No Temporal Limitation, as Evidenced by Its Plain Language:**

When interpreting a statute, the primary goal is to discern and give effect to the intent of the Legislature. *Koontz v Ameritech Servs, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). The most reliable evidence of that intent is the plain language of the statute. *South Dearborn Environmental Improvement Ass’n, Inc v Dep’t of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). When construing a statute, courts “must look to the object of the statute in light of the harm it is designed to remedy, and strive to apply a reasonable construction that will best accomplish the Legislature’s purpose.” *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). “Generally, when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion. The courts may not read into the statute a requirement that the Legislature has seen fit to.” *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541-42; 840 NW2d 743 (2013) (quotation marks and citation omitted).

The plain language of § 1445(2)-(3) reads:

(2) If an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration, the court **shall** do 1 of the following:

(a) Revoke an acknowledgment of parentage for an acknowledged father.” (emphasis added).....

(3) Subsection (2) does not apply if, after the date of the alleged nonconsensual sexual penetration described in subsection (2), the biological parents cohabit and establish a mutual custodial environment for the child.

As the Court of Appeals panel concluded, the plain language of § 1445(2) is clear and unambiguous that once a mother establishes the predicate facts that her child was conceived as a result of criminal sexual conduct, and that the exception at § 1445(3) does not apply, she is entitled to mandatory relief. *Blackman v Millward*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2024) (Docket No. 367240); slip op at 11. (“The directive to revoke the AOP is mandatory— the court shall revoke the AOP. This language does not leave any room for a trial court to exercise its discretion otherwise.”) The trial court may not condition that relief on either the age of the child or on further evidentiary best-interest hearing. *Id.* at 8, 11.

The express inclusion of a temporal statute of limitations in other sections of the RPA makes plain that its omission from § 1455(2), combined with the inclusion of a substantive, rather than a temporal, limitation on the cause of action at § 1445(3) was deliberate. See *Book-Gilbert*, 302 Mich App at 542. Had the Legislature intended to require mothers who had proven their case under § 1445(2) to then proceed to § 1437 to satisfy yet another separate set of procedural requirements, it would have expressed that intention and would not have mandated that the court “shall do one of the following.”

Defendant’s contention that “because there are no dueling limitations periods”<sup>25</sup> this Court must read in the statute of limitations from § 1437 into § 1445(2) is exactly the argument that was rejected by the Court of Appeals in *Taylor*, 323 Mich App at 199. In that case, the Court gave effect to the plain language of § 1441(2) describing the two different causes of action (paternity action versus divorce action by a presumed parent) by finding that the Legislature deliberately included a time bar for the former and deliberately omitted a time bar for the later. *Id.* The same is true for § 1437 and § 1445(2).

Defendant’s argument that the requirements of § 1437 should be read into § 1445 should be rejected.

---

<sup>25</sup> AT Supp Brf at 15.

**4. The Court of Appeals correctly found that § 1445(2) and § 1437 are mutually exclusive and apply to disparate factual circumstances:**

The Court of Appeals panel rejected Defendant's argument that § 1437 is the controlling statute of limitations and, instead, correctly held that § 1445(2) governs this case. (*Blackman*, \_\_\_ Mich App at \_\_\_; slip op at 9). The panel reasoned:

§ 1445(2), enacted to implement the policy purposes of the [federal Rape Survivor Child Custody Act] RSCCA, applies only in narrow and specific circumstances: when a child is conceived as a result of "nonconsensual sexual penetration." Under this scenario, the biological identity of the father is not in question. Instead, for public policy reasons, the Legislature has determined that an AOP can be revoked because the child was conceived as a result of nonconsensual sexual penetration. MCL 722.1445(2)(a). The circumstances for when § 1445(2) applies, where biological identity is not at issue, are fundamentally different than the circumstances applicable to § 1437, where biological identity is the central question.

Defendant now contends that the Court of Appeals panel repealed § 1437 by implication with this ruling. This Court has repeatedly stated that "the burden on the party claiming an implied repeal is a heavy one." *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich. 569, 576; 548 NW2d 900 (1996). Despite the general presumption against it, a repeal by implication may be found where there is a clear and irreconcilable conflict between two statutes, or when a subsequent law was clearly intended to occupy the entire field covered by a prior enactment. *Id.* at 577.

The only party claiming a repeal by implication in this matter, and therefore carrying that heavy burden, is Defendant. Plaintiff argued, and the Court of Appeals agreed, that § 1445(2) operates independently of § 1437 for a legislatively-designated group entitled to special rights under the RPA, namely mothers raising a child conceived as a result of a sexual offense. (*Blackman*, \_\_\_ Mich App at \_\_\_; slip op at 9). Defendant grossly misrepresents the panel's published decision in asserting that "it ruled that the three-year limitation period contained in [§ 1437(1)] was impliedly repealed by [§ 1445(2)]." (AT Supp. Brf. at 15). The panel made no such ruling, either explicitly or implicitly.

The Court of Appeals panel acted in accordance with this Court's established precedent, which requires that when two statutes are allegedly in conflict, they must be construed harmoniously if any reasonable interpretation allows for such reconciliation. See e.g. *House Speaker v State Admin Bd*, 441 Mich 547, 562-564; 495 NW2d 539 (1993). The panel found that the two provisions present alternative methods to revoke an acknowledgement of parentage, which apply independent of one another, to different categories of legal fathers. (*Blackman*, \_\_\_ Mich App at \_\_\_; slip op at 9).

Defendant's claim that the panel impliedly repealed § 1437 must fail because the panel's interpretation of § 1445(2) does nothing to eliminate or interfere with the requirements that apply under § 1437. Nor does § 1445(2) occupy the entire field covered by § 1437. In fact, there is no overlap. The moving party under §1437 "has the burden of proving by clear and convincing evidence that that acknowledged parent is not the father of the child." MCL 722.1437(5). The Court of Appeals harmonized §§ 1437 and 1445 by reasonably interpreting each as operating independently within its own legal framework and serving distinct legislative purposes.

### **Specific Statute Controls Over the General:**

The Court of Appeals panel reasoned that "because § 1445 is the more recent and more specific statute, it controls over § 1437, which is the older and more general statute." (*Blackman*, \_\_\_ Mich App at \_\_\_; slip op at 8). The general/specific canon applies when two statutes that are in *pari materia* conflict, and to resolve the conflict, the more specific provision prevails over the more general one. *Milne v Robinson*, 513 Mich 1, 12; 6 NW3d 40 (2024). "[C]ourts generally presume that the Legislature gave more deliberate consideration to the specific issue when enacting the more specific statute and therefore treat this provision as an exception to the general act or provision that would otherwise govern to avoid rendering the more specific provision nugatory." *Id.* at 15 (quotation marks and citation omitted).

Plaintiff agrees with the Court of Appeals' approach to resolving any perceived conflict between § 1437 and § 1445(2). As more fully set forth in her Application and in her Answer, Plaintiff has consistently argued that § 1445(2) was enacted in 2016 with the express legislative purpose of authorizing a specific cause of action for survivors of sex

crimes who are raising the child of their offender.<sup>26</sup> In contrast, § 1437, enacted in 2012, provides a general cause of action for mothers, alleged fathers, acknowledged fathers, and the child support program to seek revocation where the acknowledged father may not be the biological father.<sup>27</sup> In enacting § 1445(2), the Legislature gave more deliberate consideration to the unique circumstances faced by a mother raising her assailant's biological child, opting for the substantive limitation in § 1445(3) rather than a time bar.

**5. MCL 722.1445(2)–(3), MCL 722.25(2), and MCL 722.27a(4) Are In Pari Materia and Impose the Same Substantive Limitation Based on Waiver Through Cohabitation and a Mutual Custodial Environment, Not on Timing.**

The Court of Appeals panel correctly found that the only limitation applicable to claims brought under MCL 722.1445(2) is the one expressly provided by the Legislature in MCL 722.1445(3), which states:

(3) Subsection (2) does not apply if, after the date of the alleged nonconsensual sexual penetration described in subsection (2), the biological parents cohabit and establish a mutual custodial environment for the child.

This language exactly mirrors the substantive bar to relief that the Legislature first enacted in 1993 when adding protections for survivors of sexual assault to the CCA.<sup>28</sup>

The exception to the prohibition on a court awarding custody to an offending parent at MCL 722.25(2) and the exception to the prohibition on a court awarding parenting time to an offending parent at MCL 722.27a(4) have the exact same wording and read:

This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

Statutes that address the same subject matter or share a common purpose are in *pari materia* and must be read collectively as one law. *Book-Gilbert*, 302 Mich App at 542. The object of the *in pari materia* rule is to give effect to the legislative intent expressed in

<sup>26</sup> See Plaintiff's Cross-Application, at 19-21.

<sup>27</sup> *Id.* at 13-14.

<sup>28</sup> 1993 PA 259. Enrolled House Bill No. 4064. (**Appendix IX**).

harmonious statutes. *O'Connell v Dir of Elections*, 316 Mich App 91, 98-99; 891 NW2d 240 (2016). “[I]n determining the meaning of a particular statute, resort may be had to the established policy of the legislature as disclosed by a general course of legislation. With this purpose in view therefore it is proper to consider, not only acts passed at the same session of the legislature, but also acts passed at prior and subsequent sessions.” *Rathbun v State of Michigan*, 284 Mich 521, 543-544; 280 NW 35 (1938).

These CCA provisions are in pari materia with § 1445(2)-(3) because they share a common purpose in protecting the mother from being compelled to co-parent with her assailant and, importantly, from being forced to litigate<sup>29</sup> a custody dispute with the offending father. By prohibiting a court from granting custody or parenting time, the in pari materia CCA provisions suspend the normal rules of the CCA and prohibit a court from allowing an action involving an offending father, whenever it might be initiated, from proceeding to the evidentiary hearing that would ordinarily be required by the CCA.

In his Supplemental Brief, Defendant repeatedly claims that this Court must apply the CCA’s statutory presumption that it is in the best interests of a child to have a strong relationship with both parents, even to cases that involve a child conceived by nonconsensual sexual penetration.<sup>30</sup> This is false. Both § 25(2) and § 27a(4) begin with a non-obstante clause, signaling that the prohibition takes precedence over any other potentially conflicting provisions in the CCA. In statutes, “notwithstanding” clauses show that one provision prevails over another in the event of a conflict. *NLRB v SW Gen, Inc*, 580 US 288, 290; 137 S Ct 929; 197 L Ed 2d 263, 267 (2017). By inclusion of a “notwithstanding” clause, the Legislature mandated that trial courts must not apply the ordinary presumption and must deny the offending parent’s motion, without the ordinarily required best-interest hearing.

---

<sup>29</sup> One clear expression of the Legislative intent to protect victims from the effects of litigation with the offending father is found in the supporting arguments for Public Act 178 of 2016: “The rapist then can use the situation to manipulate his victim. For instance, he might use a potential custody or parenting time dispute as leverage to persuade the mother to drop any claims of criminal sexual conduct, or use parenting time as an opportunity to assault her again. Even if the rapist’s actions do not go that far, just requiring a mother to negotiate or mediate with her assailant could traumatize her yet again. The bill will protect rape survivors and their children from being revictimized by the attacker.” (Senate Legislative Analysis, SB 858 at \*2 (June 22, 2016) (**Appendix XIV**).

<sup>30</sup> See AT Supp Brf at p.16 (quoting MCL 722.27a(1)).

Legislative history of Senate Bill 858 of 2016, which added § 1445(2) to the RPA, reflects that it was designed to ensure the RPA and CCA work together synergistically to protect the victim and her child from being forced into contact with an offending father through domestic relations proceedings he would otherwise have standing to pursue if his legal paternity were preserved.

Senate Legislative Analysis of Senate Bill 858 states:

The bill complements provisions of the Child Custody Act and fills gaps in the protections offered by Public Act 96. While Public Act 96 provides an important enhancement to the protections offered to sexual assault victims and their children in custody and parenting time cases, it only addresses rights of access to a child without providing for termination of parental rights. The Child Custody Act's focus on rights of access to children falls short of protecting victims and their children from having to deal with paternity issues. This could lead to uncertainties about other laws that govern parental rights and responsibilities.... In addition, Public Act 96 does not allow a sexual assault victim to take the initiative to protect herself and her child from contact with the assault perpetrator. <sup>31</sup>

The Legislature's clear intent was not to limit the amount of time a mother has to assert the defense or to initiate an affirmative action but rather to let the substantive restriction at § 1445(3), which mirrors the CCA word for word, continue to serve as the only bar to relief under both statutes.

### **Summary of legislative history relevant to statute of limitations:**

The legislative history of Michigan's version of the federal Rape Survivor Child Custody Act, 34 U.S.C 21301 et seq, and the legislative history of the RPA, were fully briefed in both Plaintiff's Application and her Brief in Opposition to Defendant's Application and will not be repeated in this Supplemental Brief. However, it may be useful to include a brief summary of the relevant legislative history that informs the "controlling question of how the Legislature intended for these statutes to interact" in relation to the question presented. See *Milne*, 513 Mich at 12-13.

---

<sup>31</sup> Senate Legislative Analysis, SB 858, 2016 PA 178 of 2016 at \*3 (June 22, 2016). **Appendix XIV).**

Section 1437's origins lie first in the Acknowledgment of Parentage Act.<sup>32</sup> The Legislature included no statute of limitations in the Acknowledgment of Parentage Act.<sup>33</sup> Instead, an action for rescission could be filed by one of the parties who signed the acknowledgment (i.e. the mother or the acknowledged father) at any time so long as the claim was supported by an affidavit setting forth facts constituting one of the following: mistake of fact, newly discovered evidence, fraud, misrepresentation or misconduct, or duress in signing the acknowledgement.<sup>34</sup>

The time bar to rescind an AOP that is now at MCL 722.1437(1) was not introduced until the Michigan Legislature passed the RPA in 2012.<sup>35</sup> The RPA repealed what had been § 1011 of the Acknowledgment of Parentage Act, and moved that language regarding revocation to subsection 7 of the RPA to what became § 1437(1).<sup>36</sup> The language of the new § 1437 maintained the same criteria for rescission of an acknowledgment mandated by federal law.<sup>37</sup> Because the RPA created standing for a non-signatory to the acknowledgment to file an action to revoke it (e.g. an alleged father could now file an action to revoke the acknowledged father against the wishes of the mother or the acknowledged father), the Legislature imposed a time bar that did not apply when the action had only been available to the signatories of the acknowledgment.<sup>38</sup>

While Defendant implies that Michigan's adoption of § 1445(2) was nothing more than a cash grab to secure federal dollars authorized under the federal RSCCA, Michigan first enacted legislation to protect survivors of sexual assault from the harms associated with being forced into custody disputes with their assailants in 1993, more than a decade before Congress did.<sup>39</sup> The origins of § 1445(2) are traceable to those 1993 amendments to the CCA. In 1993, the Legislature added §§ 25(2) and 27a(4) to the CCA, initially limiting their application to cases in which the offending parent had been convicted under the Michigan Penal Code. From the outset, the prohibitions on courts awarding custody

---

<sup>32</sup> MCL 722.1002(d).

<sup>33</sup> 1996 PA 305, at § 11.

<sup>34</sup> MCL 722.1011 (repealed).

<sup>35</sup> 2012 PA 159.

<sup>36</sup> See Senate Legislative Analysis, SB 557 at \*3-4 (December 1, 2011) (**Appendix XIII**). See also MCL 722.1007(h).

<sup>37</sup> See 42 U.S.C. § 666(a)(5)(D)(iii).

<sup>38</sup> Senate Legislative Analysis, SB 557 at \* 7 (December 1, 2011) (**Appendix XIII**).

<sup>39</sup> Public Act 259 of 1993 (**Appendix IX**).

or parenting time to an offending parent were broad and categorical. For example, MCL 722.25(3) provides: “An offending parent is not entitled to custody of a child [described in the Act] without the consent of the child’s other parent or guardian.” Since 1993, the Legislature has acted several times to expand protections under the CCA.

In 2016, the Legislature amended §§ 25(2) and 27a(4) again through Public Act 96 of 2016, adding recognition of equivalent criminal convictions under other states or federal law and, alternatively, to allow a mother to prove by testimony, in the absence of a criminal conviction, that a child was conceived as a result of uncharged conduct equivalent to criminal sexual conduct.<sup>40</sup> P.A. 96 reaffirmed the categorical prohibitions on awarding custody or parenting time to the offending parent, again without imposing a statutory time bar. Concurrently, the passage of Public Act 178 added § 1445(2) to the RPA, with the stated purpose of expanding the mother’s procedural and substantive rights to file an affirmative, proactive action to terminate the legal parentage of the offender.<sup>41</sup> Together, these two enactments brought Michigan in line with the minimum requirements of the federal RSCCA.

In accordance with the canons of statutory interpretation, this Court should read §§ 25(2), 27a(4), and 1445(2) collectively as one law and give effect to the legislative intent expressed in harmonious statutes. *O’Connell*, 316 Mich App at 98-99. By tracing the legislative history on this subject, this Court can discern a uniform and consistent purpose underlying the Legislature’s actions. See *Rathbun*, 284 Mich at 543-544. Since 1993, Michigan’s statutory framework has evolved steadily in the direction of expanding protections for mothers of children conceived as a result of sexual offenses, while removing procedural barriers. The Legislature’s policy trajectory has been clear: to prioritize the safety and autonomy of sexual assault survivors and to clarify that the usual presumptions favoring contact between both parents and the child do not apply in these exceptional circumstances. Each amendment has moved in the direction of greater access to relief, not increased restriction.

---

<sup>40</sup> See amended MCL 722.25(2) and MCL 722.27a(4).

<sup>41</sup> Public Act 96 of 2016 (**Appendix XI**). See also, House Legislative Analysis, HB 4481 (August 9, 2016) (**Appendix XV, at page 5**).

**6. Section 1445(3) is the Legislature’s chosen bright line rule on when a mother’s right to protection must give way to the child’s relationship with an offending father.**

Without citing any legislative history or other authority, Defendant asserts that the Legislature intended to apply the same balancing test from § 1437 to actions under § 1445(2) if the child has had any contact with the offending father. (AT Supp Brf at 17). But the Legislature has already articulated the appropriate balance for this distinct context: §1445(3) itself is the test, tailored to the unique circumstances of mothers raising children conceived through sexual assault or abuse.

The Legislature clearly contemplated that there would have to be a bright line drawn where the mother of a child conceived by nonconsensual sexual penetration could be deemed to have waived her protections by allowing contact between the father and the child. It drew that line in 1993 with the plain language of the CCA at § 25(2) and § 27a(4).

This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

The word “mutual” modifies the familiar CCA term of art “custodial environment”<sup>42</sup> implying that the bar is set higher than a separate established custodial environment for each parent under the CCA. The requirement of co-residence and the establishment of a mutual custodial environment provides judges with objective criteria for determining whether the mother has waived her rights.

In 2016, the Legislature maintained this same bright line test using identical language encoded at RPA §1445(3): “Subsection (2) does not apply if, after the date of the alleged nonconsensual sexual penetration described in subsection (2), the biological parents cohabit and establish a mutual custodial environment for the child.”

---

<sup>42</sup> “The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered.” MCL 722.27(c).

One of the two available published decisions interpreting a state analog of the federal RSCCA provides guidance on why states that have adopted the RSCCA appropriately set the bar high for finding a waiver. The Appellate Court of Illinois reasoned that, were it to accept the father’s argument—that the mother’s acquiescence to some contact between the child and himself constituted a waiver—it would create the opportunity for an offender father, “who might have obtained the mother’s consent [for contact with the child] as a result of coercion, to do exactly that which the Parentage Act seeks to protect against.” *In re Parentage of D.S.*, 2021 IL App (1st) 192257; 197 NE3d 92, 103 (2021).

Defendant’s argument that, even though he has been continuously incarcerated since before the child’s birth, Plaintiff waived her right to statutory protection by allowing contact with his mother, who in turn allowed phone calls with Defendant, must be rejected by this Court. Defendant’s theory of the case is based on myths about the relationships between sexual offense perpetrators and victims that social science has long since dispelled.<sup>43</sup> The vast majority of perpetrators of sexual offenses, especially those who perpetrate against minors, share some pre-existing set of relationships in common with the victim and many are family members.<sup>44</sup> If victims were to be deemed to have waived their rights by allowing contact with family members of the perpetrator, no victim who shares an extended network with her perpetrator would be able to benefit from § 1445(2), § 25(2), or § 27a(4). Additionally, victims who are groomed as children commonly experience a delay in recognizing themselves as a victim, especially if the adults around them are unsupportive.<sup>45</sup> Defendant’s proposed offers of proof in his Supplemental Brief, in addition to being extra-record hearsay material that should be disregarded by this Court, are irrelevant to the statutory test at § 1445(3), which, by its plain language, focuses solely on the objective criteria of cohabitation that has led to the establishment of a mutual custodial environment. To the extent that Defendant alleges Plaintiff was required to maintain contact with members of his family, that is of course false. A fit parent has a protected constitutional right to make decisions regarding any

---

<sup>43</sup> (See Plaintiff’s Appendix I: Brief of Amicus Curiae Michigan Coalition to End Domestic and Sexual Violence, submitted to the Court of Appeals, at 8-14).

<sup>44</sup> *Id.* at 8-9.

<sup>45</sup> *Id.* at 12-14.

visitation with a third-party. *Varran v Granneman*, 312 Mich App 591, 609-10; 880 NW2d 242 (2015).

Lastly, and importantly, MCL 722.1445(2), MCL 722.25(2) and MCL 722.27a(4), are remedial statutes designed for the benefit of mothers who are parenting children conceived as a result of nonconsensual sexual penetration. “A remedial statute is designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good.” *Western Mich Univ Bd of Control v State*, 455 Mich 531, 545; 565 NW2d 828 (1997). Courts must liberally construe remedial statutes in favor of the persons intended to be benefited. *Empson-Laviolette v Crago*, 280 Mich App 620, 629; 760 NW2d 793 (2008). See also *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 77; 503 NW2d 645 (1993). Remedial statutes “are to be construed liberally, to carry out the purpose of the enactment, suppress the mischief and advance the remedy contemplated by the Legislature; .... they are to be construed ‘giving the words the largest, the fullest, and most extensive meaning of which they are susceptible.’” *Birznieks v Cooper*, 405 Mich 319, 331 n 12; 275 NW2d 221 (1979). Courts must give statutory language a reasonable construction that best accomplishes the purpose of the statute. *King v Reed*, 278 Mich App 504, 515; 751 NW2d 525 (2008).

Thus, to effectuate the remedial purpose of MCL 722.1445(2), liberally construing it to be limited only by the substantive bar in § 1445(3)—and not by the procedural time bar in § 1437(1)—best fulfills the Legislature’s intent. The Court of Appeals panel did not err in its construction of MCL 722.1445(2), and its decision on this issue should be affirmed.

## **II. The Trial Court Properly Applied MCL 722.1445(2), MCL 722.25(2), and MCL 722.27a(4) in Finding the Child Was Conceived Through Nonconsensual Sexual Penetration Based on Defendant’s CSC Convictions and Other Undisputed Facts**

### **A. STANDARD OF REVIEW**

“When reviewing a decision related to the Revocation of Paternity Act, this Court reviews the trial court’s factual findings, if any, for clear error.” *Glaubius*, 306 Mich App

at 164. “The trial court has committed clear error when this Court is definitely and firmly convinced that it made a mistake.” *Id.*

Issues of statutory interpretation and application of the RPA are reviewed de novo as questions of law. *Id.*

Questions of procedural due process are reviewed de novo. *In re Sanders*, 495 Mich 394, 394; 852 NW2d 524 (2014). Unpreserved constitutional questions are reviewed for plain error affecting substantial rights. *In re Pederson*, 331 Mich App 445, 462-463; 951 NW2d 704 (2020).

Courts must presume the constitutionality of a statute unless its unconstitutionality is clearly apparent. *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 516; 857 NW2d 529 (2014). A court can only refuse to sustain the validity of a statute when “invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.” *Phillips v Mirac Inc*, 470 Mich 415, 423; 685 NW2d 174 (2004). Additionally, courts must construe a statute to preserve its constitutionality. *Midwest Inst of Health, PLLC v Gov of Mich*, 506 Mich 332, 340; 958 NW 2d 1 (2020).

## **B. ANALYSIS**

### **1) The trial court properly found that Defendant’s convictions and other undisputed facts were sufficient to meet the clear and convincing evidence standard under both the CCA and the RPA.**

While acting in propria person, Plaintiff attempted to invoke her affirmative defenses under §§ 25(2) and 27a(4) in her first response to Defendant’s parenting time motion.<sup>46</sup> The referee bypassed §§ 25(2) and 27a(4) and improperly scheduled a best-interest hearing.<sup>47</sup> Only after obtaining counsel, and filing a motion requesting a judicial hearing, was Plaintiff able to bring her claim for relief under §§ 25(2) and 27a(4) to the court’s attention and ask that the judge cancel the evidentiary hearing.<sup>48</sup> Plaintiff also

---

<sup>46</sup> See Plaintiff’s Response to Defendant’s Motion Regarding Parenting Time (**Appendix J**).

<sup>47</sup> Register of Action, items 39-40, dated 4/18/2023.

<sup>48</sup> Plaintiff’s Motion to Revoke Acknowledgment of Parentage and Other Relief at ¶ 23 (**Appendix D**).

filed an affirmative motion under § 1445(2) requesting to revoke Defendant's legal parentage.

After a brief judicial hearing, in which the trial court heard directly from the Defendant, the court granted both forms of requested relief.<sup>49</sup> Pursuant to the CCA, the trial court canceled the pending parenting time hearing and, pursuant to the RPA, revoked the AOP.

The trial court's fact finding, albeit brief, was sufficient to establish the predicate facts to support a claim under § 1445(2), as well as under §§ 25(2) and 27a(4), and to eliminate the exception to relief under § 1445(3). The following facts are undisputed as established through: (1) Defendant's admissions in his written responses and oral statements before the trial court; (2) admissions in Defendant's briefs once he retained counsel; and (3) court records in this case and other cases which the trial court took judicial notice under MRE 201:

- Defendant was convicted in St. Joseph County Circuit Court (Docket No. 1922618-FH-1) of third-degree criminal sexual conduct under MCL 750.520d(1)(e)(i) (teacher/student), for an offense committed against Plaintiff on June 14, 2017.<sup>50</sup>
- Defendant was convicted in Branch County Circuit Court (Docket No. 19112651-FH-C) of third-degree criminal sexual conduct under MCL 750.520d(1)(e)(i) (teacher/student), for an offense committed against Plaintiff on July 1, 2017.<sup>51</sup>
- Defendant was convicted in Calhoun County Circuit Court (Docket No. 180000003388-FH) of third-degree criminal sexual conduct under MCL 750.520d(1)(e)(i) (teacher/student), for an offense committed against Plaintiff on July 30, 2017.<sup>52</sup>
- Plaintiff was a 16-year-old student at a school where Defendant was her teacher on each of the dates corresponding to those charged offenses.<sup>53</sup>

---

<sup>49</sup> Tr. at 13-14.

<sup>50</sup> Tr. at 13; Otis Report (**Appendix VII**).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Opinion and Order, at 2.

- Defendant continued to be employed as a teacher in the school Plaintiff attended until he was forced to resign on February 13, 2018.<sup>54</sup>
- Defendant continued to sexually penetrate Plaintiff after the dates of the charged offenses, while she remained his student.<sup>55</sup>
- Defendant describes this “admittedly unlawful phase” of the sexual relationship as continuous and ongoing.<sup>56</sup>
- Plaintiff was at all relevant times under the age of 18, the statutorily proscribed age of consent for students in relation to an individual holding a position of authority under MCL 750.520d(1)(e)(i).<sup>57</sup>
- MCL 750.520d(1)(e)(i) is included within the statutory definition of “nonconsensual sexual penetration” by reference to the range of Michigan penal code offenses at MCL 722.25(2) and MCL 722.27a(4).
- Plaintiff gave birth to the minor child before her 18<sup>th</sup> birthday.<sup>58</sup>
- When representing herself before securing counsel, Plaintiff asserted that she conceived during the offense Defendant committed against her.<sup>59</sup>
- Defendant claimed in the trial court that the conception occurred “around March 15, 2018.”<sup>60</sup>
- Defendant was also convicted in Calhoun Circuit Court (Docket No. 190000000408-FH) under MCL 750.122(7)(b) for witness intimidation involving Plaintiff.<sup>61</sup>

---

<sup>54</sup> Tr at 10.

<sup>55</sup> Defendant’s acts of witness intimidation included influencing Plaintiff to retract her original statement and lie to police. Defendant’s Response to Plaintiff’s Motion to Revoke Acknowledgment of Parentage, at 1. (**Appendix K**). As a result, the offense dates of the convictions were only dates supported by evidence not requiring corroboration by the Plaintiff.

<sup>56</sup> Tr at p. 10; See also Appellant’s Brief on Appeal to Court of Appeals at 12, (“The only aspect of Tyler and [Plaintiff]’s relationship that rendered their relationship illicit was Tyler’s employment as a teacher at the Athens High School that [Plaintiff] attended.”); See also p. 14 (“As a result of Tyler and [Plaintiff]’s consensual, albeit statutorily-prohibited, relationship, criminal charges were brought against Tyler.”)

<sup>57</sup> Tr at 13-14.

<sup>58</sup> Tr at 13-14.

<sup>59</sup> Plaintiff’s Response to Motion Regarding Parenting Time, at 2. (**Appendix J**). (“I was a victim in a crime and this child resulted out of that crime. Tyler was charged with CSC 3<sup>rd</sup> degree (student-teacher). I was the student.”)

<sup>60</sup> Defendant’s Response to Plaintiff’s Motion to Revoke Acknowledgment of Parentage, at 1. (**Appendix K**).

<sup>61</sup> Complaint and Judgment of Sentence. (**Appendix VI**); Otis Report (**Appendix VII**).

- The span of offense dates for Defendant’s Witness Intimidation conviction encompasses February 20, 2018 through November 1, 2018. <sup>62</sup>
- The trial court took judicial notice of the court records in Defendant’s Witness Intimidation docket as one factor in reaching its conclusion. <sup>63</sup>
- Defendant admitted to contacting Plaintiff after she gave her original statement to law enforcement and “begging” her to recant her statement and thereafter “lie to the police.”<sup>64</sup>
- Defendant was arrested on November 14, 2018. (Tr at 10)
- The child was born on December 14, 2018. (Tr at 10).
- Defendant was incarcerated on the date the child was born and has remained incarcerated for the whole of the child’s life. (Tr at 10-11).
- An acknowledgement of parentage was signed by Defendant when it was brought to him by a corrections officer. (Tr at 10-11).
- Any telephone or electronic contact between the child and Defendant occurred exclusively while the child was under the control of Defendant’s mother. (Tr at p. 11).
- Defendant has been subject to no-contact orders prohibiting any form of communication with Plaintiff. Before the trial court, Defendant claimed to have complied with these no-contact orders. (Tr at p. 10, 12). This discredits Defendant’s self-aggrandizing statements to this Court that he was “in a relationship” with Plaintiff for “years” after he was convicted.

Based on the above undisputed facts, the trial court did not clearly err in concluding that the sexual penetration resulting in Plaintiff’s pregnancy satisfied the statutory definition of nonconsensual sexual penetration. Even Defendant’s proposed date of conception of “around March 15,” falls within the period Defendant was engaged in witness intimidation<sup>65</sup>—conduct that further exemplifies his abuse of authority over his

---

<sup>62</sup> *Id.*

<sup>63</sup> Tr at 13-14.

<sup>64</sup> Defendant’s Response to Plaintiff’s Motion to Revoke Acknowledgment, at 1. (**Appendix K**).

<sup>65</sup> Complaint and Judgment of Sentence (**Appendix VI**). (The date of offense for Defendant’s conviction under MCL 750.122(7)(b) for Witness Intimidation against Plaintiff span a continuous period of February 20, 2018 through November 1, 2018.)

student and his efforts to evade accountability for his criminal sexual behavior. The trial court reasonably rejected Defendant's attempt to manufacture doubt by suggesting an alternate conception date, particularly where the full timeline was already before the court through judicially noticed records and in Defendant's admission to witness intimidation.<sup>66</sup> Defendant failed to demonstrate that further fact-finding was warranted.

The trial court, in the absence of any Michigan case law interpreting Michigan's version of the RSCCA, followed persuasive authority included in Plaintiff's brief on reconsideration, in concluding that, regardless of the precise date of conception, any sexual penetration was nonconsensual where the origins of the relationship was educator abuse of a student and the disputed dates fell within the period of the teacher's ongoing campaign of witness intimidation, both of which had been proven beyond a reasonable doubt in Defendant's criminal cases in three different jurisdictions.

As the Washington Court of Appeals held in interpreting its version of the RSCCA, a trial court may reasonably infer that conception was nonconsensual on any date it occurred where evidence is shown that the categorical nature of the relationship was coercive and nonconsensual. *In re Parentage of R. V.*, 22 Wash App 2d 300, 319; 511 P3d 148 (2022). The biological father insisted that the survivor-parent was not entitled to relief because she did not testify about specific dates and he had not been convicted. *Id.* The appellate court upheld the trial court's decision to deny further fact-finding on specific dates, given the mother's testimony described long-term sexual abuse. *Id.* at 316.

Persuasive authority from Illinois was also briefed in the trial court. The Appellate Court of Illinois held that a court may limit fact finding in cases arising under Illinois's version of the RSCCA by taking judicial notice of the parties' ages at the time the child was conceived. See *In re Parentage of D.S.*, 197 NE3d at 102. After the biological father conceded that the parties' ages established the prima facie elements of statutory rape, the trial court permitted only a "tight hearing" on the issue of standing and not "fitness." *Id.* at 97. The trial court denied the father's request for a best-interest hearing, agreeing with the mother's argument that a best-interest hearing "is simply not contemplated" by Illinois version of the RSCCA. *Id.* at 98. The Appellate Court of Illinois affirmed, holding

---

<sup>66</sup> Defendant's Response to Plaintiff's Motion to Revoke Acknowledgment, at 1. **(Appendix K)**.

that the statute requires no judicial determination beyond whether the child was conceived through nonconsensual sexual penetration. *Id.* at 102.

These precedents from sister states support that fact-finding in cases under Michigan's version of the RSCCA should be narrowly focused on establishing whether conception resulted from nonconsensual sexual penetration. If the court finds that the child was so conceived, relief is mandatory and not contingent upon best-interest findings.

Counsel for Plaintiff was unaware, before receiving his written response, that Defendant would allege that the child was conceived after he resigned.<sup>67</sup> However, Counsel responded to the allegation at the hearing by asking the trial court to find that the date of Defendant's resignation was not dispositive of the required findings under the CCA and the RPA and that Defendant's allegation of a date of conception after the resignation was a distraction.<sup>68</sup> Counsel emphasized that the legislative purpose behind the CCA is "equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved. MCL 722.26(1).

At the time of the hearing, Counsel for Plaintiff referenced *People v Lewis*, 302 Mich App 338, 344-346; 839 NW 2d 37 (2013) which supports that timing of the sexual penetration of a student by a teacher is not always conclusive of whether the student can give valid consent.<sup>69</sup> Attorneys for both parties subsequently offered additional briefing to the trial court on the relevant MCL 750.520d(1)(e)(i) case law for Defendant's motion for reconsideration.<sup>70</sup>

This Court found in *Lewis* that a student, over 16 but under 18, could not give valid consent to a substitute teacher for sexual contact that occurred over the summer, because, while the offender may not have been employed as a teacher, the origin of the relationship mattered more than the temporal moment when the offense occurred. *Lewis*, 302 Mich

---

<sup>67</sup> *Tr.* at 3.

<sup>68</sup> *Tr.* at 7.

<sup>69</sup> *Tr.* at 7-8.

<sup>70</sup> Defendant's motion and brief, at 28-29 (**Appendix L**); Plaintiff's brief in opposition, at 29-30 (**Appendix H**).

App at 346-47 (internal citations omitted). While the subsequent Court of Appeals decision in *People v Hoffman*, 339 Mich App 65; 981 NW2d 65 (2021) limited the scope of *People v Lewis*, it did not overturn it. The *Hoffman* Court found that a teacher cannot be prosecuted for acts that occurred after the teacher left employment, even if the abuse began during the teacher's employment. *Id.* at 70.

Importantly, this case is not governed by the Michigan Penal Code or the heightened standards of criminal law. Penal statutes must be strictly construed and ambiguities resolved in favor of lenity. *People v Arnold*, 508 Mich 1, 24 n 51; 973 NW2d 36 (2021). The issue is not whether Defendant may be convicted of additional offenses for conduct after his resignation. The issue here is the CCA and RPA provisions designed to benefit survivor-parents and provide them with new rights and remedies to untether themselves from forced co-parenting with their offender. Remedial statutes must be liberally construed to effectuate their protective purpose. *Dudewicz*, 443 Mich at 77.

This Court should affirm the trial court's application of the statutory framework. The rationale of the federal RSCCA, as implemented by Michigan at MCL 722.25(2), 722.27a(4), and 722.1445(2), is served by affirming that the trial court's fact-finding was sufficient without remanding for additional evidentiary hearing to establish an exact date of conception. If allowed to stand, the panel's opinion would create a loophole enabling any convicted CSC offender to force his victim to endure an invasive hearing simply by disputing the date of conception in relation to the offense date. Interpreting the statute as the panel did, forces the survivor-parent to prove a negative. This standard would impose an insurmountable burden on survivors of forcible date rape where consensual sex may have occurred shortly before the offense date. Worse still, it would allow convicted offenders to compel invasive evidentiary hearings in cases like this one involving prolonged abuse, simply because only certain dates were formally charged.

Defendant's crimes against Plaintiff are not mitigated by the fact that he continued to coerce her into furtively having intercourse in the days and weeks following his resignation from his role as her teacher, especially while he continued to deny the relationship to authorities and coerce her to lie to police. Defendant's briefing suggests that by March 2018, when he alleges the conception occurred, the parties were in some

new era where they could step out into the light and claim a lawful relationship. However, they were not. The Witness Intimidation charge shows that during March 2018, Defendant was still trying to deny a sexual relationship with Plaintiff to save himself from accountability for his crimes. The trial court appropriately emphasized Defendant's Witness Intimidation offense<sup>71</sup> because it demonstrates that the disputed dates are a formalism that does not obscure the reality that the child was conceived "as a result of" the criminal conduct for which Defendant was justly convicted.

**2) Ambiguity in the Term 'Fact-Finding Hearing' Under MCL 722.1445(2) Should Be Resolved in Harmony with In Pari Materia Provisions Exempting Conviction-Based Cases from Additional Hearings**

When interpreting a statute, a Court's purpose is to ascertain and effectuate the legislative intent at the time it passed the act. *See In re Certified Question from United States Court of Appeals for the Ninth Circuit*, 499 Mich 477, 482; 885 NW2d 628 (2016). Amendments of the statute under consideration properly form part of its context. *Dep't of Talent & Economic Dev/Unemployment Ins Agency v Great Oaks Country Club, Inc*, 507 Mich 212, 227; 968 NW2d 336 (2021).

In this case, the plain language of § 1445 must be read in the context of the 2016 amendments to §§ 25a(2) and 27a(4) that coincided with the Legislative adoption of §1445(2). The statutory history of the amendments to §§ 25a(2) and 27a(4) is relevant to interpreting § 1445(2) because the "fact finding hearing" language of § 1445(2) reflects the broader language establishing the predicate fact of a nonconsensual sexual penetration added to §§ 25a(2) and 27a(4) in 2016.

From 1993 until 2016, the CCA provisions at §§ 25a(2) and 27a(4) required proof of a criminal conviction. With the passage of Public Act 96 of 2016,<sup>72</sup> the Legislature added language to §§ 25a(2) and 27a(4) allowing a civil "fact-finding hearing" in cases where there had not been a conviction.<sup>73</sup> Contemporaneous with these amendments to the CCA, the Legislature passed Public Act 178 of 2016, adding 1445(2) to the RPA and,

---

<sup>71</sup> Tr at 3, 6-8.

<sup>72</sup> 2016 PA 96. (Appendix VI).

<sup>73</sup> House Legislative Analysis, HB 4481 (2016 PA 96) (August 9, 2016)(Appendix XV).

reflecting the new option, used the more expansive “fact finding hearing” construction without spelling out the same list of criminal convictions that remains in the CCA. With the 2016 amendment, the Legislature identified a criminal conviction as the highest evidentiary threshold —satisfying the clear and convincing standard — and, through the use of a disjunctive 'or,' allowed an unproven allegation of sexual assault or abuse to serve as an alternative basis for meeting that standard subject to a fact-finding hearing.<sup>74</sup>

A close analysis of the exact language is important. When §25 and §27 are read in conjunction with §1445, the ambiguity arises with the phrase “as a result of” in §1445(2). In amending §25(2) and §27a(4), a disjunctive “or” was added into the act, laying out who the provisions of the acts apply to. §25(2) reads:

... if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child’s biological parents is convicted of criminal sexual conduct [list of included crimes] or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent.

§27a(4) contains identical language about a proceeding regarding parenting time.

In contrast, the language of §1445(2) reads:

If an action is brought by a mother who, after a fact-finding hearing, proves by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration, the court shall do 1 of the following

The conflict between the statutes arises from the requirements for a fact-finding hearing. Sections 25(2) and 27a(4) require only a conviction, or in the absence of that, a fact-finding hearing. §1445(2), on the other hand, does not account for a mother who already has a conviction against the father, and instead seems to require a fact-finding hearing where the CCA would clearly not require one.

Importantly, all three statutes are remedial statutes to be liberally construed in favor of the intended beneficiary. *Empson-Laviolette v Crago*, 280 Mich App at 630. The intended beneficiary of the 2016 amendments to the CCA and the RPA are mothers raising the child of their offender.

---

<sup>74</sup> See Plaintiff’s Cross Application at 16-17.

The amendments of §25 and §27 have a stated purpose to add the option of a fact-finding hearing only for those cases where there had been **no prior conviction**:

The bill is considered necessary because not all rapes result in conviction of the perpetrator... Moreover, some victims may choose not to report the rape or pursue prosecution for reasons of their own, only to discover months later that they are pregnant. In some cases, perpetrators have threatened to fight the women they impregnated for custody if they pursued prosecution, promising not to see the child if they drop the case but later filing for custody or parenting time anyway.... Enactment of the bill will protect women whose attackers use custody or parenting time actions to manipulate or further victimize them. Knowing that they will not be successful in a court action, yet may be ordered to pay child support, may deter them from pursuing seeking custody or parenting time”<sup>75</sup>

The Legislature was concerned about the psychological effects litigating custody related matters would have on the victim and the ways the offending parent could use the threat of custody litigation to coerce the victim. It was very clearly not their intent to prolong a proceeding that could be decided on the basis of a prior conviction of the offending parent. Rather, the “fact-finding hearing” is described after a disjunctive “or” as an alternative in cases where no prior conviction existed in both CCA provisions following the 2016 amendments.

The stated rationale behind the amendment to §1445 was to empower mothers to terminate the rights of the offending father who might otherwise use the existence of his parental rights to further abuse, harass, and manipulate them. The amendments were designed to protect mothers from having to interact with their former abuser as part of litigating a child custody or parenting time case. <sup>76</sup>

A court must look to any findings presented by the legislature, the history surrounding the act and how it has been amended over time, and other sources of information, such as legislative bill analyses, to discern the *purpose* of the change. *People*

---

<sup>75</sup> House Fiscal Agency Analysis as enacted HB 4481, at 10, (August 9, 2016). (**Appendix XV, at 10-11**).

<sup>76</sup> Senate Legislative Analysis, SB 858 (2016 PA 178) (June 22, 2016) at 2. (“The rapist then can use the situation to manipulate his victim. For instance, he might use a potential custody or parenting time dispute as leverage to persuade the mother to drop any claims of criminal sexual conduct, or use parenting time as an opportunity to assault her again. Even if the rapist's actions do not go that far, just requiring a mother to negotiate or mediate with her assailant could traumatize her yet again. The bill will protect rape survivors and their children from being revictimized by the attacker.”) (**Appendix XIV**).

*v Russo*, 439 Mich 584, 596; 487 N.W.2d 698 (1992). Looking only to the literal interpretation of the statute without considering legislative intent could lead to an incorrect interpretation that does not accurately capture the true purpose of the amendment. *Dudewicz* 443 Mich at 77. When legislative intent of a statute has been clearly expressed, it is entitled the utmost respect. *Chandler v Dowell Schlumberger Inc*, 456 Mich 395, 398; 572 N.W.2d 210 (1998).

This Court concluded in *Russo* that the amendment to the statute of limitations in sexual crimes involving minors was remedial and the purpose was to provide additional protection to victims. *Russo*, 439 Mich at 596. Thus, the Court found that although the language of the statute was forward looking, it could be applied retroactively because the purpose of the amendment indicated it was meant to apply to present and future victims. *Id.* To limit the statute solely to prospective effect, would render it useless and contravene the purpose of amending it. *Id.* at 597. Although the plain language of the statute suggests only a prospective application, the Court interpreted the statute to apply retroactively as well, to protect the entire class of intended beneficiaries. *Id.*

Legislative analyses of the amendments to §§ 25, 27, and 1445 recognized that not all rapes result in convictions and, for that reason, the Legislature chose to permit fact-finding hearings where necessary, in the absence of a conviction. The § 1445 amendment was expressly identified as filling any gaps in the protections for mother left by the CCA by giving mothers a proactive way to protect herself and the child.<sup>77</sup> Given the statutes' remedial purpose, they should be construed liberally in favor of mothers to understand that a "fact finding hearing" under 1445(2) is not a requirement where there is a conviction against the offending father.

Defendant's proposed interpretation of 1445(2) runs counter to the clear legislative intent of the 2016 amendments. He asks this Court to conclude that the Legislature, rather than lowering the bar for victims of uncharged sexual assaults, actually intended to raise it for victims who already secured a criminal conviction by requiring a "fact finding"

---

<sup>77</sup> Senate Legislative Analysis, SB 858 (2016 PA 178) (June 22, 2016) at 3.(Appendix XIV).

hearing on top of the proof of a conviction. This would defeat the very purpose of the 2016 amendments to the CCA and the RPA.

**3. Sections 25(2) and 27a(4) of the Child Custody Act bar trial courts from conducting the best-interest hearing that would ordinarily be required:**

The magnitude of the Legislature’s 1993 departure from the traditional framework of the CCA cannot be overstated. By enacting §§ 25(2) and 27a(4), the Legislature deliberately carved out an exception to the long-standing principle that “[a]bove all, custody disputes are to be resolved in the child’s best interests.” *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001). The plain language enacting §§ 25(2) and 27a(4) shows that the shift was intentional and designed to be transformative for the intended beneficiaries of those provisions. The result is that once a court makes the predicate finding that a parent is an “offending parent” and the child was conceived as a result of nonconsensual sexual penetration, the court shall not undertake additional fact finding because the court lacks the discretion to make any other disposition of the case than to rule in favor of the survivor-parent.

First, as already discussed, the Legislature began both §§ 25(2) and 27a(4) with a “notwithstanding” clause. In statutes, “notwithstanding” clauses show that one provision prevails over another in the event of a conflict. *NLRB v SW Gen, Inc*, 580 US at 290. By inclusion of “notwithstanding,” the Legislature mandated that trial courts must not apply the presumption in favor of a relationship with both parents and must deny the offending parent’s claim for contact with the child categorically.

Second, the Legislature included a statement that “[a]n offending parent is **not entitled** to custody of a child described in subsection (2) without the consent of that child’s other parent or guardian” MCL 722.25(3)(emphasis added). There is no comparable language elsewhere in the CCA that allows one parent to veto the rights of the other parent. This is possible because the “notwithstanding” clause suspends the legal presumptions that would otherwise apply.

Interpreting 1445(2) as Defendant suggests, to mandate a best-interest hearing in cases with a confirmed offending father would render §§ 25(2) and 27a(4) nugatory. The Legislature acted to prevent an offending father who targeted a teenage or otherwise vulnerable victim from winning a custody battle against her on the basis of his economic and social advantages that otherwise factor heavily in a best-interest analysis.

Defendant's insistence that §§ 25 and 27a are irrelevant to this Court's analysis of §1445(2) is illogical and perplexing given the trial court's express finding that Defendant, as an offending parent, is categorically ineligible for custody or parenting time under §§ 25 and 27a. Because those findings were not appealed, they are now res judicata.

Even if this Court accepted Defendant's invitation to rule that §1445(2) is facially unconstitutional because it does not allow a best-interest hearing to offending parents, §§ 25(2) and 27a(4) would still bar him from seeking custody or parenting time.

The trial court did not err in relying on the evidence of Defendant's convictions to find that Plaintiff has satisfied her burden, nor in properly interpreting § 1445(2) and §§ 25(2) and 27a(4) as requiring the trial court to remove the evidentiary best-interest hearing that had been scheduled from the court's calendar.

**4. MCL 722.1445(2) Bars Best-Interest Hearings Where Nonconsensual Conception Is Established. The Court of Appeals Correctly Held Relief Is Mandatory, and Defendant Did Not Appeal That Ruling**

Defendant presents an unpreserved facial challenge to § 1445(2) in his Supplemental Brief. He accurately asserts that "MCL 722.1445(2) not only authorizes but mandates termination of parental rights upon a showing that a child was conceived as a result of nonconsensual sexual penetration without any showing of parental unfitness." This, however, does not support that § 1445(2) is constitutionally infirm.

The Court of Appeals panel concluded that § 1445(2) does not use a fitness standard or subject the granting of the remedy to a best-interest, not even the more narrow best-interest test specific to actions under the RPA at MCL 722.1443(4). *Blackman*, \_\_\_ Mich App \_\_\_, slip op. at \*10-11. Defendant did not appeal this ruling, nor

include it in his question presented in his application to this Court. The panel interpreted § 1445(2) and its sole limiting exception at § 1445(3) as follows:

Cohabiting after the birth of the child and establishing a mutual custodial environment for the child is the only way that the termination described in subsection (2) can be avoided. Section 1445(3) makes no mention of considering the best interests of the child. **Rather, the only burden of proof is to establish “by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration.”** MCL 722.1445(2). Subsections (2)-(4) of § 1445 were adopted to implement the policy mandates in the RSCCA, which include a policy determination that “men who father children through rape should be prohibited from visiting or having custody of those children.” 34 USC 21302(1).  
*Id.* at \*11.

The panel’s observation that the RSCCA’s policy mandate altered the burden of proof is one that Defendant seems unable or unwilling to grasp. The burden of a mother moving under § 1445(2) is solely to prove that the child was conceived as a result of nonconsensual sexual penetration.

**a. The Standards of the Juvenile Code Are Inapplicable to the Determination of Whether a Best-Interest Hearing Is Required**

The federal and state case law cited by Defendant to challenge the constitutionality of 1445(2) are inapposite because, as the panel noted, the statutes involved here are not rationalized by the State’s compelling interest in ensuring the need for children to receive adequate care. Rather, the RSCCA, and the various state laws that mirror it, are premised on the State’s compelling interest in protecting the survivor-parent’s competing fundamental right to parent their child free from the known harms associated with the state forcing the survivor to coparent with the offending biological parent. This statutory scheme serves a compelling interest and is not overly broad.

The Congressional findings in the RSCCA at 34 U.S.C. 21302 are not stated in terms of vague “best interests of the child” and they do not deem the offending parent “unfit” by the standards of child welfare law. Instead, they focus almost exclusively on the harm to the survivor-parent, with the only reference to the best-interest of the child being

the secondary harm that results if the survivor parent suffers trauma from continued interaction with the offending parent. They read in part:

Congress finds the following:

(1) Men who father children through rape<sup>78</sup> should be prohibited from visiting or having custody of those children.

[ . . . ]

(6) The Supreme Court established that the clear and convincing evidence standard satisfies due process for allegations to terminate or restrict parental rights in *Santosky v. Kramer* (455 U.S. 745 (1982)).

[ . . . ]

(8) A rapist pursuing parental or custody rights forces the survivor to have continued interaction with the rapist, which can have traumatic psychological effects on the survivor, making it more difficult for her to recover.

(9) These traumatic effects on the mother can severely negatively impact her ability to raise a healthy child.

(10) Rapists may use the threat of pursuing custody or parental rights to coerce survivors into not prosecuting rape, or otherwise harass, intimidate, or manipulate them.

The legislative history of MCL 722.1445(2) references these Congressional findings. It emphasizes that offenders often use the existence of a child in common “to manipulate [their] victim,” and that requiring a survivor to litigate a domestic relations matter with her assailant exposes her to retraumatization.<sup>79</sup>

In recognition of these harms, the Michigan Legislature transformed the traditionally child-centered orientation of the CCA to address the unique needs of survivor-parents. As discussed above, both §§ 25(2) and 27a(4) are separated from the general presumptions in the CCA by a “notwithstanding” clause. It is unmistakably clear that the legislative purpose behind the RSCCA and §§ 1445(2), 25(2), and 27a(4) is not grounded in “parental fitness” or the “best interests of the child.” Rather, these statutes are animated by a compelling interest in protecting survivors of sexual violence from

---

<sup>78</sup> Rape” is the general term used by the RSCCA, but each state is permitted to define “rape” in relation to its respective criminal code offenses and/or by a general definition of consensual sexual penetration, as Michigan has done.

<sup>79</sup> Senate Legislative Analysis, SB 858 (2016 PA 178) (June 22, 2016) at 2. (**Appendix XIV**).

further harm. As such, an offending parent may not be found “fit” to parent on the basis of the statutory best-interest factors.

The United States Supreme Court’s substantive due process case law includes “a presumption that fit parents act in the best interests of their children” and that “there will normally be no reason for the State to inject itself into the private realm of the family.” *In re Sanders*, 495 Mich at 410, quoting *Troxel v Granville*, 530 US 57, 68-69; 120 S Ct 2054; 147 L Ed 2d 49 (2000). Consequently, the Due Process Clause, as recognized by Justice O’Connor in *Troxel*, “does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a ‘better’ decision could be made.” *Troxel*, 530 US at 72-73. The United States Supreme Court and this Court have found that, on balance with the State’s interest as *parens patriae*, the private interest of the natural parent may only be infringed if the State establishes a grounds for termination by clear and convincing evidence. *Santosky v Kramer*, 455 US 745, 766; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

The Michigan Legislature drafted 1445(2) to meet the constitutional minimum by specifying that the burden of proof is clear and convincing evidence. Again, not clear and convincing evidence that the offending parent is “unfit” but of the nonconsensual nature of the conception. In the context of the Juvenile Code, where the countervailing public interest is defined as child protection, and the burden of proof is defined in terms parental fitness, procedural due process requires that the respondent parent be permitted to rebut a presumption of unfitness with evidence that they have rectified conditions that gave rise to the grounds for termination. *In re Gach*, 315 Mich App 83, 97; 889 NW2d 707 (2016). In contrast, here, where the countervailing public interest is not based on parental fitness, and where the burden of proof is nonconsensual sexual penetration, it is logical that offending parent cannot rebut that finding on the grounds of “fitness.”

Further, the breadth of 1445(2), and the parallel CCA provisions at issue, is narrow. Sec 1445(2) does not provide standing to “any person” to terminate the rights of an offending parent. The right belongs personally to the “mother” under 1445(2). So, for example, if the mother died in childbirth, her extended family would have no standing to

allege that the offending father's rights should be terminated under 1445(2). Such a termination would have to be raised, if at all, under the Juvenile Code.

It has been repeatedly recognized that the right to parent is not absolute. *In re Sanders*, 495 Mich at 409-410. The substantive due process case law regarding parentage focuses on balances of interests and not absolutes. State interests beyond the protection of a child from an unfit parent may justify interference with parental rights when more complex and competing countervailing interests are at stake. For example, in *Michael H. v Gerald D.*, 491 US 110, 130; 109 S Ct 2333; 105 L Ed 2d 91 (1989), the majority upheld a California parentage law and found that the competing private interests between the parties made it "a question of legislative policy and not constitutional law," because, given the competing interests between biological and legal parents, there was no way "one disposition can expand a 'liberty' of sorts without contracting an equivalent liberty on the other side." *Id.* The same is true here with the competing private interests between the survivor-parent, looking to escape her offender, and the private interest of the offending parent who wants to claim the rights of his biological parentage. Congress<sup>80</sup> and the Michigan Legislature settled the issue through legislation and ensured it met constitutional minimums by including a clear and convincing burden of proof.

Appellate courts of sister states considering constitutional challenges to their state's version of the RSCCA have interpreted it as not being premised on a fitness or best-interest hearing but rather on a "legitimate government interest in protecting victims of sexual assault and children birthed as a result of sexual assault." *In re Parentage of RV*, 22 Wash App 2d at 321. The Washington court rejected the father's arguments that the statute was not narrowly tailored because it does not require any analysis as to whether his contact with the child is in the best interests of the child, as well as the argument that no compelling state interest is advanced by the RSCCA analog law. *Id* at 318.

While it did not directly address the constitutional question, the Appellate Court of Illinois affirmed a trial court's decision to limit the fact-finding hearing to the sole issue of whether the biological father met the statutory definition of an offending biological father, holding that the statute requires no judicial determination beyond whether the

---

<sup>80</sup> 34 U.S.C. 21302(6).

child was conceived through nonconsensual sexual penetration. *In re Parentage of D.S.*, 197 NE3d at 102. It concluded that a best-interest analysis “is simply not contemplated” by the statute. *Id.* at 98.

As it relates to *In re Parentage of D.S.*, Plaintiff must respond to the allegation in Defendant’s Supplemental Briefing that Plaintiff has “failed to cite even a single case which has held that a father’s rights to a child conceived of nonconsensual sexual contact can be terminated where both a biological connection and a father-child relationship exist.”<sup>81</sup> This is an obstinate repetition of an untruth that was previously rebutted by Plaintiff’s Answer to Defendant’s Application. *In re Parentage of DS* is exactly on point. It has been cited in every brief filed by Plaintiff since her reconsideration brief in the trial court. The facts of the case involve a biological father who fathered the child in an act that is nonconsensual sexual penetration under Illinois law on the basis of the ages of the parties. *Id.* at 102. The offending father had established a relationship with the child when the mother allowed the child to live with the offending father’s parents. *Id.* at 96. Significantly, the child was temporarily placed in his care by child welfare officials. *Id.* Nevertheless, the Illinois appellate court affirmed the trial court’s order denying this motion for parenting time categorically, without a best-interest hearing, once it was established that the child was conceived as the result of the statutory rape of a teenaged girl. *Id.* at 98.

Defendant’s reliance on inapposite Juvenile Code cases to argue that men who father children through nonconsensual sexual penetration cannot have their parental rights terminated without a best interest hearing is fundamentally flawed. He contends that such individuals, as a class, are entitled to the protections and procedures of the Juvenile Code before termination can occur. This argument misstates the law and must be rejected by this Court.

---

<sup>81</sup> AT Supp Brf. at 30.

**b. Scholars Who Oppose Private Termination Actions  
Acknowledge the Unique Legitimacy of RSCCA-Based Statutes**

Even scholars who generally oppose laws creating private rights of action to terminate parental rights acknowledge that statutes allowing survivors of sexual offenses to terminate the rights of the offending father are constitutional and supported by compelling public policy rationales.

In a recent law review article, Professor Deirdre M. Smith, a leading child welfare scholar, critically examined state statutes authorizing private causes of action for termination of parental rights. While she generally urged lawmakers to consider less restrictive alternatives to such private actions, she identified one notable exception: cases involving children conceived through sexual assault, which she noted has “a distinct policy basis and rationale.”<sup>82</sup> In these instances, Professor Smith acknowledged that the government’s rationale in protecting survivors is unique such that termination of the offending parent’s rights is the only viable course of action and there is no other alternative available to meet the government’s objective to prevent further victimization of the petitioning parent.<sup>83</sup>

It is important to her analysis that most states have implemented RSCCA “as a **stand-alone private remedy to be sought by the survivor-parent of the child.**” *Id.* at 1244. She notes that by creating these private causes of action rather than adding it as a new ground on the list of statutory grounds for termination, state legislatures made a deliberate choice to alter the due process analysis of competing interests at stake. She notes that in those states “if a court finds that the child was conceived from a sexual assault, the court must terminate the offending parent’s rights; no consideration may be given to the child’s best interest.” *Id.* at 1245. Instead of the state’s in *parens patriae* role being balanced against the respondent’s right to parent, the

---

<sup>82</sup> Deirdre M. Smith, TERMINATION OF PARENTAL RIGHTS AS A PRIVATE REMEDY: RATIONALES, REALITIES, AND ALTERNATIVES, 72 Syracuse L. Rev. 1173, at 1203. **(Appendix II).**

<sup>83</sup> *Id.* at 1177-1178. See also *Id.* at 1258 (“The circumstances of those proceedings are sufficiently unique that nothing short of termination of the perpetrator’s rights can serve such rationale.”)

counterbalancing interest is to protect the interests of the child and the victim of a sexual assault.<sup>84</sup>

The Michigan Legislature made that deliberate choice when it enacted 1445(2). Although MCL 712A.19b(1) already grants a nonrespondent parent<sup>85</sup> standing to petition for termination of the other parent's rights under the Juvenile Code, the Legislature did not simply incorporate the language now found in Section 1445(2) into the existing list of statutory grounds for termination. Instead, the it created a separate cause of action for survivors and prohibited the trial court from conducting a best-interest hearing once the predicate facts are established.

Effectively, these statutes conferring a private right of action for survivors provide a legislative definition of parental unfitness. Because the right to parent is constitutionally protected, a non-state petitioner carries the same burden to prove by clear and convincing evidence that the termination is warranted. *Colon v Rodriguez*, 144 Mich App 805, 813; 377 NW2d 321 (1985). However, the threshold for termination in a private action may be set by the Legislature using statutory grounds that differ substantially from the Juvenile Code.

Smith noted that the legislative purpose behind the RSCCA is incompatible with a presumption in favor of preserving a relationship between the child and the biological father. She observed that a less drastic remedy than parental rights termination is available to children in other scenarios, but not where co-parenting requires the mother to have ongoing contact with her assailant.

. . . where the purpose is to prevent further victimization of the assaulted parent, a termination order may be the only route to secure such outcome.<sup>86</sup>

---

<sup>84</sup>*Id.* at. 1203 (“In such contexts, a statute may even dispense with the requirement to consider a child’s best interests, addressing only the narrow question about the circumstances of the child’s conception.... [T]his basis for private termination has a distinct policy basis and rationale...”)

<sup>85</sup> Conferring standing to file a petition to “the child, the child’s guardian, or custodian, or a “concerned person” See MCL 712A.19b(1).

<sup>86</sup> Smith, *supra*, at p. 1177-1178.

**III. If this Court determines that an evidentiary hearing to establish the exact date of conception is required in order to satisfy MCL 722.1445(2), such a hearing should be narrowly focused on the circumstances of conception.**

In response to this Court's question about the requirements of a fact finding hearing to establish whether a child was conceived as a result of nonconsensual sexual penetration, Plaintiff offers the following answer.

The plain language of §§ 25(2), 27a(4) and 1445(2) mandate that, without a conviction to establish the predicate fact, the court must hold a fact-finding hearing to determine if the child was conceived as a result of an act that constitutes nonconsensual sexual penetration. The procedure in such a case, should follow the contours of the persuasive authority briefed by Plaintiff in her Application. The trial court should conduct what the Illinois court referred to as a "tight hearing"<sup>87</sup> to establish no more than necessary to make a finding on the predicate facts by clear and convincing evidence.

If, as in the Illinois case *Parentage of D.S.*, the predicate facts can be ascertained based on statutory elements under the Michigan penal code, such as the age or other incapacity of the victim, the relationship that existed between the parties, the trial court should strictly limit the testimony and evidence to those relevant facts.<sup>88</sup> If those elements obviate consent under the Michigan penal code, then the trial court should disallow any testimony or other evidence offered to prove consent.

If, as in the Washington case *Parentage of R.V.*, there has been no conviction and no statutory rape offense would apply, the trial court should limit testimony to the alleged circumstance of conception.<sup>89</sup> In the less common scenario involving a singular act of forcible penetration by an offender with no existing relationship to the victim, this testimony may be limited to a single date. However, in more typical cases exemplified by *Parentage of R.V.*, the parties may have a pattern of chronic sexual abuse that would require taking more testimony regarding the nature of the relationship. *Id.* at 315. The trial court may conclude that, without regard to the exact date, conception would have

---

<sup>87</sup> *In re Parentage of D.S.*, 197 NE3d at 97.

<sup>88</sup> *Id.*

<sup>89</sup> *In re Parentage of RV*, 22 Wash App 2d at 318.

been nonconsensual on any date it occurred based on such a pattern of conduct. *Id.* at 316.

Plaintiff is unaware of any case interpreting a state analog of the RSCCA where the offending father had already been convicted of a sexual offense against the mother.<sup>90</sup> However, as illustrated by the Sanilac County case referenced by Plaintiff at the trial court hearing, other courts have read the statutes at issue in this case to allow for revocation of legal parentage on the basis of judicial notice of the biological father's conviction for criminal sexual conduct against the mother.<sup>91</sup>

Plaintiff's position is that a trial court may rely on evidence that a biological father has been convicted of criminal sexual conduct against the mother to find that the child was conceived "as a result of" such conduct when the nature of the offense and the timeline of the disputed dates makes the exact date of the conception a distinction without a difference, similar to the reasoning in *Parentage of R. V.* For example, if the father were convicted of offenses such as incest, child sexual abuse involving a minor below the statutory age of consent, or human trafficking of the mother, the alignment between the offense date and the date of conception becomes irrelevant. The nature of these crimes reflects a profound imbalance of power and coercion, rendering any potential co-parenting relationship inherently harmful and contrary to the survivor's well-being and her ability to create a healthy environment for the child. In other cases involving contested timelines, where a dating partner is convicted of forcibly sexually penetrating an individual with whom it is undisputed he had consensual sex hours or days earlier, determining whether the pregnancy resulted from the consensual or nonconsensual act is immaterial to the legal and equitable analysis. The survivor's right to be free from continued entanglement with her assailant is not diminished by prior consensual contact. Michigan appellate courts have resolved ambiguity in dates of conception consistent with public policy in *Sprenger v Bickle*, 307 Mich App 411, 419; 861 NW2d 52 (2014). Ultimately, this Court's interpretation of the laws protecting survivor-parents must give

---

<sup>90</sup> *In the Interest of Z.E.*, 221 A.3d 260 at \*2 (Pa Super Ct, 2019) Offending father was not convicted of child sexual abuse until decades after the abuse began. Based on that conviction, the Pennsylvania court allowed the mother to terminate the father's rights under the Adoption code even though the children were born when she was an adult. **(Appendix III)**.

<sup>91</sup> Transcript, at p. 9; See also Appellee's **Appendix XVI** [(1) "Assistant prosecutor fired for case that granted rapist joint custody," MLive, October 20, 2017); (2) "Judge, prosecutor vow changes over custody, rape case," The Detroit News, October 17, 2017.]

effect to their remedial purpose, consistent with the directive that the CCA is equitable in nature and shall be liberally construed.<sup>92</sup>

### **CONCLUSION AND REQUESTED RELIEF**

The Court of Appeals' decision will have implications for future survivors of sexual crimes and their children. Accordingly, Plaintiff respectfully requests that the Court grant leave, vacate the portion of the Court of Appeals decision that remanded for additional fact-finding and reinstate the judgment of the lower court that Plaintiff has established by clear and convincing evidence that the child at the center of this case was conceived as a result of nonconsensual sexual penetration and that Defendant is statutory ineligible for custody or parenting time under the Child Custody Act and that that his prior legal paternity remain revoked under MCL 722.1445(2).

In the alternative, Plaintiff asks this Court to grant leave to appeal to address what constitutes sufficient "fact-finding hearing" in the context of a motion brought under MCL 722.25(2), MCL 722.27a(4), and/or MCL 722.1445(2) when the biological father has been convicted of a criminal sexual conduct offense against the mother but the father proposes a different date for when he alleges the conception occurred.

Respectfully Submitted,

Dated July 22, 2025

**/s/ Megan A. Reynolds**  
Megan A. Reynolds (P69967)  
Michigan Poverty Law Program  
Co-Counsel for Plaintiff-Appellee/Cross-Appellant  
15 South Washington Street, Suite 202  
Ypsilanti, Michigan 48197

**/s/ Anna M. Moss**  
Anna M. Moss (P74040)  
Legal Services of South Central Michigan  
Co-Counsel for Plaintiff-Appellee/Cross-Appellant  
123 W. Territorial Rd.  
Battle Creek, MI 49015

---

<sup>92</sup> MCL 722.26(1)

**STATEMENT REGARDING WORD COUNT**

In compliance with MCR 7.212(B)(1), I declare the word count within those portions of this brief subject to the limitation set forth in MCR 7.212(B) is 15,997.

Dated July 22, 2025

/s/ **Megan A. Reynolds**  
Megan A. Reynolds (P69967)