

IN THE SUPREME COURT OF MARYLAND

Misc. No. 2, September Term, 2024
SCM-MISC-0002-2024

THE KEY SCHOOL, INCORPORATED, et al.
Appellants

v.

VALERIE BUNKER,
Appellee

*CERTIFIED QUESTION OF LAW from the
United States District Court for the District of Maryland,
Civil Case Number 1:23-cv-02662-MJM
(The Honorable Matthew J. Maddox)*

**BRIEF OF HUMAN RIGHTS FOR KIDS
AS *AMICUS CURIAE* SUPPORTING APPELLEE
(FILED WITH CONSENT OF ALL PARTIES)**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	2
ARGUMENT	3
I. Sexual Abuse Experienced Among Children in Maryland’s Criminal Justice System Is Prevalent.	3
A. Child sexual abuse has long existed in Maryland’s juvenile justice system.	7
B. Survivors often have no recourse after enduring sexual abuse in juvenile detention facilities.	10
II. Youth Are Particularly Vulnerable to Abuse at the Hands of Predatory Adults.	11
III. The Faces of Sexual Abuse by Predatory Adults in Maryland’s Juvenile Detention Facilities.	14
IV. International Human Rights Standards Counsel for Finding the CVA Constitutional.	21
CONCLUSION.....	26

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>Fulmati Nyaya v. Nepal</i> , CCPR Comm. No. 2556/2015 (Mar. 18, 2019)	24
<i>Mr. C v. Australia</i> , CCPR Comm. No. 900/199 (Human Rights Comm. Nov. 23.1999)	23
State Cases	
<i>McLain v. Maryland</i> , No. C-03-CV-23-003939 (Cir. Ct. Balt. Cnty. Md. Oct. 1, 2023).....	6, 10
Federal Statutes	
18 U.S.C. § 2243(c).....	24, 25
34 U.S.C. § 30302.....	25
2023 Child Victims Act (CVA).....	<i>passim</i>
Prison Rape Elimination Act.....	4, 25
Constitutional Provisions	
Maryland Constitution Article III, Section 40	3, 26
Maryland Declaration of Rights Article 24	3, 26
International	
United Nations Convention on the Rights of the Child art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3.....	21, 22
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Caroline R. Alder, “*Flawed From the Inception*”: *167 Years of Maltreatment at the Charles H. Hickey Jr. School*, 83 Md. L. Rev. Online 65 (2023)7, 8

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Emily D. Buehler, <i>Substantiated Incidents of Sexual Victimization Reported by Juvenile Justice Authorities, 2013-2018</i> 14 (Mar. 2023), available at https://bjs.ojp.gov/document/sisvrjja1318.pdf	5, 11
Erin Cox & Steve Thompson, <i>Lawsuits allege dozens were sexually abused in Md. Juvenile Facilities</i> , <i>Washington Post</i> (Oct. 2, 2023), https://tinyurl.com/muxtzh54	9, 11
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INTEREST OF AMICUS CURIAE¹

Human Rights for Kids (“HRFK”) is a non-profit organization dedicated to the promotion and protection of the human rights of children. HRFK combines research and public education, coalition building and grassroots mobilization, as well as policy advocacy and strategic litigation, to advance critical human rights on behalf of children. A central focus of its work is advocating in state and federal legislatures and courts for comprehensive justice reform for children consistent with international human and children’s rights norms.

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than *amicus curiae*, or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION

“I cannot be untouched, and I cannot unsee what I’ve seen.”

-- Penelope, a survivor of child sexual abuse in a Maryland juvenile facility.

Children are society’s most precious yet most vulnerable members. Among the various forms of abuse they may suffer, sexual abuse is particularly egregious and devastating, necessitating specific legislative action. The 2023 Child Victims Act (“CVA”) addresses this critical need by eliminating the statute of limitations on child sexual abuse crimes in Maryland. It is essential that this Court uphold the constitutionality of the CVA to ensure that survivors have a meaningful opportunity to seek justice.

This brief focuses on a profoundly troubling issue: the pervasive sexual abuse of Maryland’s youth within juvenile detention facilities. The abuse perpetrated by those entrusted with these children’s care is shocking in prevalence and heart-wrenching in nature. As youths in the criminal justice system, victims are often coerced or threatened into silence. It may take years to work through the trauma and feel safe to come forward. The CVA offers a crucial pathway for these survivors, allowing them to pursue justice on their own terms when they are ready—providing a necessary means for redress and accountability and ensuring that justice is accessible and equitable.

In this brief, we share the harrowing experiences of three survivors—individuals who endured sexual abuse decades ago and now see the CVA as their last hope for justice. Their testimonies are just a few examples of the bleak reality youth in Maryland’s juvenile detention facilities have faced over the decades and highlight the urgent need for the CVA.

The CVA is constitutional under Article 24 of the Maryland Declaration of Rights and Article III, Section 40 of the Maryland Constitution. Article 24 guarantees due process and protects against deprivation of rights without proper legal procedures. Rather than violate these principles, the CVA protects them by ensuring that children can seek redress for sexual abuse committed against them when they are often not able or willing to do so before traditional limitations periods have expired. This is consistent with principles of international law and similar federal and other state legislation.

ARGUMENT

I. Sexual Abuse Experienced Among Children in Maryland’s Criminal Justice System Is Prevalent.

Child sexual abuse by trusted state authorities should be unimaginable, yet it remains alarmingly widespread. A comprehensive national review by the Annie E. Casey Foundation revealed systemic abuse in state-funded youth correctional facilities across 29 states, including Maryland, and the District of

Columbia since 2000.² There is substantial evidence that this systemic maltreatment has continued in Maryland since 2011.³ Nationwide, from 1970 through 2011, 52 lawsuits over conditions of confinement in state-funded youth correctional facilities resulted in court-sanctioned remedies to address systemic problems with violence, physical or sexual abuse by facility staff, or excessive use of isolation and restraints.⁴

Incarcerated children are especially vulnerable to abuse because facility staff exercise complete control over the environment. The most recent national survey conducted by the U.S. Department of Justice (“DOJ”) under the federal Prison Rape Elimination Act found that 7% of youth incarcerated in juvenile facilities reported being victimized sexually in the prior year.⁵ A review of substantiated incidents of sexual victimization reported by juvenile facilities from 2013 to 2018 revealed of the more than 12,000 allegations of sexual victimization reported, 34% alleged sexual misconduct by adult staff.⁶ Of those

² Richard Mendel, *Maltreatment of Youth in U.S. Juvenile Corrections Facilities: An Update* 20 (2015), available at <https://assets.aecf.org/m/resourcedoc/aecf-maltreatmentyouthuscorrections-2015.pdf>.

³ *Id.* at 3.

⁴ *Id.* at 2.

⁵ Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, The Sentencing Project (Mar. 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>.

⁶ Laura M. Maruschak & Emily D. Buehler, *Sexual Victimization Reported by Juvenile Justice Authorities, 2013-2018* 5 (June 2021), available at

reported incidents, only 42% resulted in a form of legal action being taken by authorities against the perpetrator.⁷ This confirms the startling reality that more often than not, child victims of sexual abuse are forced to pursue legal action on their own.

Maryland's Department of Juvenile Services is no exception to this disturbing reality. Since the passage of the CVA in 2023, more than 200 survivors have come forward and filed suit, alleging they were sexually abused in one of Maryland's juvenile detention facilities.⁸ One lawsuit, representing 63 plaintiffs, details rampant abuse at 15 juvenile detention facilities spanning several decades.⁹ One survivor was only seven years old when she was first victimized by a staff member who promised protection in exchange for compliance with the abuse.¹⁰ In similar cases, abusers preyed on impressionable children's vulnerability by withholding basic necessities that

<https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/svrjja1318.pdf>

⁷ Emily D. Buehler, *Substantiated Incidents of Sexual Victimization Reported by Juvenile Justice Authorities, 2013-2018* 14 (Mar. 2023), available at <https://bjs.ojp.gov/document/sisvrjja1318.pdf>.

⁸ Lea Skene, *200 Victims Allege Child Sex Abuse in Maryland Youth Detention Facilities*, AP (Feb. 8, 2024), <https://apnews.com/article/maryland-juvenile-detention-child-sexual-abuse-lawsuits-f16ecfb7c76da6c46f538152c95a215f>.

⁹ *Id.*

¹⁰ *Id.*

should have been their right—such as food, phone calls, and time outside—to manipulate the children into enduring the abuse.¹¹

For many victims, sexual abuse was more violent. One survivor reported that staff members would routinely enter children’s cells at night and rape them, sometimes in groups. Others survivors similarly allege that children were repeatedly beaten and raped in their cells.¹² These children often faced physical violence and threats that they would be placed in solitary confinement or be the subject of negative behavioral reports if they did not submit to the abuse.¹³ One 15-year-old was raped several times a week over 15 months, and was forced to engage repeatedly in group sex acts with other youth. The adult staff perpetrators threatened to kill him if he reported it.¹⁴

This sexual abuse is not isolated to a few facilities in Maryland. At least 20 complaints stem from incidents at a facility in Laurel, 37 from incidents at the Charles Hickey Jr. School (“Hickey”) in Baltimore County, five from the Baltimore City Juvenile Justice Center, and 25 from the Cheltenham Youth

¹¹ *Id.*

¹² *Id.*

¹³ AP, *Victims Allege Sex Abuse in Maryland Youth Detention Facilities Under New Law Allowing Them to Sue*, AP (Dec. 14, 2023), <https://www.usnews.com/news/us/articles/2023-12-14/victims-allege-sex-abuse-in-maryland-youth-detention-facilities-under-new-law-allowing-them-to-sue>.

¹⁴ Complaint at 29-32, *McLain v. Maryland*, No. C-03-CV-23-003939 (Cir. Ct. Balt. Cnty. Md. Oct. 1, 2023).

Detention Center (“Cheltenham”).¹⁵ In all, the recent complaints come from 15 facilities across the state, some of which are now closed.¹⁶ And, as discussed below, prevalent cases of abuse have surfaced previously at each of the Cheltenham,¹⁷ Hickey,¹⁸ Noyes,¹⁹ and Salisbury²⁰ facilities over the last several decades.

A. Child sexual abuse has long existed in Maryland’s juvenile justice system.

Sexual abuse is not a recent phenomenon in Maryland’s juvenile facilities. The more than 200 recent complaints stem from conduct dating as far back as 1969.²¹

These actions are not the first time Maryland has come under scrutiny for sexual abuse in its juvenile detention facilities. As far back as 2004, a DOJ investigation of the Cheltenham and Hickey facilities revealed “inappropriate

¹⁵ Cassidy Jensen, *In new lawsuit, additional 63 people allege abuse at Department of Juvenile Services facilities, bringing total to 200*, Baltimore Sun (Feb. 8, 2024) <https://www.baltimoresun.com/2024/02/08/department-juvenile-services-new-abuse-lawsuit/>.

¹⁶ *Id.*

¹⁷ Caroline R. Alder, *“Flawed From the Inception”: 167 Years of Maltreatment at the Charles H. Hickey Jr. School*, 83 Md. L. Rev. Online 65, 95 (2023).

¹⁸ *Id.*

¹⁹ David Snyder & Katherine Shaver, *Abuse of Md. Youths Leads to Firings, Reassignment*, Washington Post (Mar. 30, 2005), <https://www.washingtonpost.com/archive/local/2005/03/31/abuse-of-md-youths-leads-to-firings-reassignment/9f179672-1e2a-41d8-a029-fd8509a4f3c5/>.

²⁰ Jensen, *supra* note 16.

²¹ Jensen, *supra* note 16.

staff-youth relationships” with children as young as 14 years old, as well as admissions of sexual abuse by staff members,²² and a number of staff members were found to have sexually abused children under their care.²³ The report also found that, at Hickey, leadership knowingly hired staff with prior felony convictions or records of abusing children.²⁴ In 2005, Maryland reached a settlement with the DOJ, agreeing to improve conditions at Cheltenham and Hickey.²⁵

Later in 2005, journalists discovered that staff members at the Noyes Children’s Center in Rockville were routinely directing youth inmates to strip naked and beat other children.²⁶ News soon thereafter broke that a correctional officer had raped a teenage girl at the Salisbury Detention Center. When the teenager returned to that facility the following year, the same guard raped her again.²⁷

²² U.S. Dep’t of Justice Civil Rights Division, Investigation of the Cheltenham Youth Facility in Cheltenham, Md., and the Charles H. Hickey Jr. School in Baltimore, MD, 13 (Apr. 9, 2004), *available at* https://www.prisonlegalnews.org/media/publications/cripa_cheltenham_md_investigation_findings_4-9-04.pdf.

²³ Caroline R. Alder, *“Flawed From the Inception”: 167 Years of Maltreatment at the Charles H. Hickey Jr. School*, 83 Md. L. Rev. Online 65, 93 (2023).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Snyder, *supra* note 20.

²⁷ Jensen, *supra* note 16.

In a 2009 report by the DOJ, more than a third of youth surveyed at Backbone Mountain Youth Center reported forceful sexual abuse by the staff.²⁸ Twelve years later, a 2021 report from the Maryland Attorney General revealed a staff member of the Lower Eastern Shore Children’s Center was indicted for sexually abusing a 15-year-old girl after she was released from the facility.²⁹ That same year, a female staff member at the Victor Cullen Center was charged with sexual misconduct against a teenage boy at the facility.³⁰

The breadth of time covered by recent complaints, the troubled histories of Maryland’s juvenile detention facilities, and the sheer number of facilities and victims involved do not reflect a few “bad apples” at select facilities. Rather, they reveal a pervasive culture of sexual abuse, and the neglect that enables it.

²⁸ Allen J. Beck, Paige M. Harrison & Paul Guerino, *Special Report: Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*, DOJ BJS (2009) <https://bjs.ojp.gov/content/pub/pdf/svjfry09.pdf>.

²⁹ *2021 Third Quarter Report*, Maryland Juvenile Justice Monitoring Unit, 38 (2021) https://www.marylandattorneygeneral.gov/JJM%20Documents/21_Quarter3.pdf.

³⁰ Erin Cox & Steve Thompson, *Lawsuits allege dozens were sexually abused in Md. Juvenile Facilities*, Washington Post (Oct. 2, 2023), <https://tinyurl.com/muxtzh54>.

B. Survivors often have no recourse after enduring sexual abuse in juvenile detention facilities.

Survivors of sexual abuse, particularly children in juvenile detention facilities, often do not report their abuse. They may fear negative repercussions, face disbelief, or be overwhelmed by their own trauma, leading them to suffer in silence. This lack of reporting contributes to the fact that only a small fraction of abusers face serious consequences.³¹

Some survivors, like Claudia McLain, made attempts to report their abuse, but their voices were ignored.³² Claudia's complaints resulted in losing the ability to make phone calls and receive visitors. She noted that the abuse was an open secret at the facility, but the children's accounts were dismissed because they were deemed untrustworthy by administrators because "[they were] the bad one[s] because [they were] there."³³ When Claudia's mother raised concerns, nothing was done.³⁴ As one survivor described, "There was no one to tell [The] staff were all in it together."³⁵ Another survivor was threatened with transfer to an adult prison if he spoke out.³⁶ This situation in

³¹ Jessica Contrera, et al., *Abused by the Badge*, Washington Post (June 12, 2024), <https://tinyurl.com/nccvdn7u>.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Complaint at 2, *McLain v. Maryland*, No. C-03-CV-23-003939 (Cir. Ct. Balt. Cnty. Md. Oct. 1, 2023).

³⁶ *Id.*

Maryland mirrors a national pattern: victims are frequently silenced and ignored.³⁷

The conditions in Maryland’s juvenile facilities are particularly dire. As one recent complaint described it: “Having taken these children’s liberty, the State then paid the personnel who relentlessly raped, sodomized, beat, threatened, and tortured them in nightmarish ways. All while turning a blind eye for decades.”³⁸ The CVA offers these survivors a long-denied path to justice later in life, allowing them the chance to process their trauma and find support from those who will believe and advocate for them.

II. Youth Are Particularly Vulnerable to Abuse at the Hands of Predatory Adults.

The CVA is especially crucial for addressing abuse in the juvenile justice system, given the severe trauma that children already face from being incarcerated. Research consistently shows that youth involved in the juvenile justice system are more likely to have experienced adverse childhood experiences (“ACEs”) both before and because of their detention.³⁹ ACEs

³⁷ Buehler, *supra* note 8.

³⁸ *Erin Cox & Steve Thompson, Lawsuits allege dozens were sexually abused in Md. Juvenile Facilities*, Washington Post (Oct. 2, 2023), <https://tinyurl.com/muxtzh54>.

³⁹ Isaiah B. Pickens, et al., *Victimization and Juvenile Offending*, National Child Traumatic Stress Network (2016), https://www.nctsn.org/sites/default/files/resources/victimization_juvenile_offending.pdf (“The relationship between early victimization and juvenile offending is one of the most consistent and robust associations in research

encompass a range of severe challenges, including physical, emotional, and sexual abuse; neglect; separation from parents; incarceration of a household member; and exposure to domestic violence, mental illness, or substance abuse in the home. These experiences have profound and lasting effects on physical, emotional, and mental health.

Youth with ACEs are at a heightened risk of adverse outcomes, such as mental health disorders, substance abuse, educational and employment difficulties, prolonged interaction with the juvenile justice system, and ongoing victimization.⁴⁰ This increased vulnerability often leads to higher rates of delinquency and recidivism.⁴¹ The juvenile justice system has historically

literature.”). *See also* Lindsey A. Belisle, et al., *Examining the prevalence of adverse childhood experiences (ACEs) among justice-involved youth in the U.S.: The importance of accounting for race/ethnicity, gender, and gendered racial/ethnic groups* (March 2024), available at <https://pubmed.ncbi.nlm.nih.gov/38359774/>; Jacquelynn F. Duron, et al., *The Influence of Adverse Childhood Experiences (ACEs) on the Functional Impairment of Justice-Involved Adolescents: A Comparison of Baseline to Follow-Up Reports of Adversity*, 19 *Youth Violence and Juvenile Justice* 4 (Oct. 2021); Thalia Gonzalez, *Youth Incarceration, Health, and Length of Stay*, 45 *Fordham Urb. L.J.* 45 (Dec. 2017); and Dongdong Li, et al., *Impact of Childhood Maltreatment on Recidivism in Youth Offenders* (Oct. 2015), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4702282/pdf/10.1177_0093854815598598.pdf.

⁴⁰ Meripa T. Godinet, et al., *Early childhood maltreatment and trajectories of behavioral problems: Exploring gender and racial differences* (Mar. 2014), available at <https://pubmed.ncbi.nlm.nih.gov/23993147/>.

⁴¹ *See* Dongdong Li, et al., *Impact of Childhood Maltreatment on Recidivism in Youth Offenders* (Oct. 2015), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4702282/pdf/10.1177_0093854815598598.pdf; and Helen W. Wilson, et al., *Trauma History and PTSD*

struggled to offer adequate protection and support, leaving these vulnerable youth susceptible to further victimization.⁴²

The systemic environment in juvenile facilities exacerbates this vulnerability. Children in these settings are uniquely at risk of exploitation and coercion by predatory staff who operate under the guise of guardianship. Those with a history of ACEs are particularly vulnerable, as their past traumas may impair their ability to recognize abusive behaviors and make them more susceptible to manipulation.⁴³

This creates a troubling cycle: the very system intended to rehabilitate and support these youth often contributes to a prolonged cycle of victimization, trauma, and re-incarceration. The CVA provides a critical avenue for

Symptoms in Juvenile Offenders on Probation (2013), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3834597/pdf/nihms523995.pdf>

⁴² See, e.g., Meg Anderson, *Youth detention facilities face increased scrutiny amid a wave of abuse lawsuits* NPR (May 17, 2024), <https://www.npr.org/2024/05/17/1251963778/youth-detention-juvenile-crime-sexual-abuse-lawsuits>; Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, The Sentencing Project (Mar. 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>; and Eileen M. Ahlin, *Risk Factors of Sexual Assault and Victimization Among Youth in Custody*, 36 *Journal of Interpersonal Violence* 3-4 (Feb. 2021).

⁴³ See Jamie R. Yoder, et al, *Effects of Childhood Polyvictimization on Victimization in Juvenile Correctional Facilities: The Mediating Role of Trauma Symptomatology*, 17 *Youth Violence and Juvenile Justice* 2 (Apr. 2019).

addressing these issues, offering survivors a chance to seek justice and break the cycle of abuse and re-victimization.

III. The Faces of Sexual Abuse by Predatory Adults in Maryland’s Juvenile Detention Facilities.

S.S.⁴⁴

S.S. is a posterchild for how adverse extrinsic circumstances can ensnare a child in the criminal justice system at a young age. He was born and raised in Baltimore in the late 1970s. He came from a large family—his mother was one of 15 children. Both his father and his uncles served in the military. His father’s long-term station abroad led to his parents’ divorce, and his mother had a son by another man. S.S. found it hard to navigate this new family dynamic.

S.S. experienced the drug epidemic that hit Baltimore hard in the 1980s firsthand. His mother became heavily addicted to drugs, often leaving her children with nothing to eat. By age 12, S.S. was forced to provide for his entire family by dealing drugs himself, which eventually landed him in trouble with the law.

Following his first arrest, S.S. was sent to the Thomas J.S. Waxter Children’s Center (“Waxter”), where state authorities were supposed to provide care and rehabilitation. But his experience at Waxter left him deeply scarred.

⁴⁴ The initials of some survivors have been used to protect their identities.

The guards fostered a climate of violence, encouraging the children to fight each other like animals in cages. Those deemed “ring leaders” were subjected to solitary confinement and abuse.

S.S. vividly recalls the first time he was sexually abused at Waxter. It was a notable day, with representatives from the White House visiting for a tour. The children were instructed to behave perfectly. However, as often happens with children, a food fight broke out during lunch. The guards, humiliated and furious in front of their distinguished guests, singled out S.S. and others they believed were responsible for the disruption.

A guard isolated S.S. in a detention room. After leaving him alone, he returned, turned off the lights, and forced S.S. against the wall. He grabbed S.S.’s hand and touched his own body with it, then shoved S.S. to his knees and subjected him to sexual acts, including forcing his head against the guard’s genitals, simulating oral sex. Powerless and terrified, S.S. was unable to stop the abuse.

The next day S.S. was transferred to Cheltenham. There, S.S. was placed in a special unit that was afforded privileges, like his own bunk. But these privileges carried a price—more sexual abuse. One of the guards would sneak into the boys’ bunks at night while they were sleeping and fondle them. S.S. recalls one night needing to go to the bathroom, located in the hall. He called out to the guard, who led him to the bathroom in the pitch black. Once in the

bathroom, all alone in this vulnerable state, the guard sexually abused him. S.S. woke up the next morning in tears. He soon realized that many of the other boys would similarly wake up in tears. S.S. learned to avoid using the bathroom all night so he would never have to suffer another such encounter. Like so many other boys at those facilities, S.S. never told a soul about what happened to him for fear of the stigma attached to male-on-male sexual abuse.

These traumatic experiences left S.S. feeling hopeless and trapped in a cycle of recidivism. After being sentenced to 17 years in federal prison for unlawful gun possession, he faced the crushing reality of being unable to protect his young children from similar abuse or trauma.

This sense of helplessness ignited a profound transformation within him. S.S. resolved to turn his life around: “I stopped doing my time and started using my time.” While incarcerated, he earned his college degree and pursued additional classes, which helped him secure a job upon release. Through perseverance and dedication, S.S. achieved a record for the fastest promotion within his company and is now committed to creating a stable and secure life for himself and his family.

As part of his transformation, S.S. has chosen to speak out anonymously about the abuses he suffered in Maryland’s juvenile detention facilities. After decades of burying his trauma, he discovered the strength and power in confronting his past. By sharing his story, S.S. aims to let others know they

are not alone. He understands that not everyone may be ready to share their experiences publicly, but, as a survivor, he knows firsthand that the impact of child abuse casts a lifelong shadow.

K.B.

K.B. grew up in public housing in Salisbury, as one of seven children. She was 15 years old when she found herself in the wrong place at the wrong time. While out shopping, K.B.'s friend asked her to hold her bag. As K.B. headed for the exit, a clerk stopped her to check the bag she was holding. The friend had stuffed a sweater inside—and K.B. took the fall for shoplifting. She was placed in the J. DeWeese Carter Center before being transferred to Waxter.

At Waxter, both male and female guards quickly began to groom K.B., initially offering her special privileges such as extra food. This apparent kindness, however, came at a horrific cost. While alone in her cell or in the shower, the guards coerced her into undressing and molested her, fondling her breasts and genitals. Their exploitation escalated as they began to make even basic privileges, like visits and phone calls, dependent on K.B.'s submission to their abuse. This torment continued for four months. During this period, K.B. was placed in solitary confinement—a form of cruel and unusual punishment that, while claimed to be for her protection, K.B. believes was intended to facilitate further abuse.

Similar sexual abuse was widespread at Waxter, and most other victims kept quiet for fear of retaliation. K.B., however, eventually made the brave decision to report the abuse to her counselor. Upon doing so, she was transferred to another juvenile detention facility, where she endured further sexual abuse until her release a year and a half later.

After her release, K.B. sought justice for the abuse she endured yet found no resolution. She reported the abuse to her juvenile service worker, but no action was taken. Instead, she was placed in counseling, where she was wrongly told that the abuse was her fault and that had she not shoplifted, she would never have ended up in the facility. This only deepened her shame and led her to suppress the trauma, trying to forget the abuse.

Now, at 42, and currently unhoused, K.B. struggles with depression because of the abuse's long-term impact on her mental and emotional well-being. She lives in constant anxiety and is hyper-vigilant about the safety of her eight children, though she has not shared her own traumatic experiences with them. Her children, too, are affected by the generational trauma and anxiety stemming from her unresolved past.

K.B. is a strong advocate for eliminating the limitation period on childhood sexual assaults, knowing that many survivors have endured similar or even more severe experiences. Despite her attempts to seek justice during the time of her abuse, she faced denial and shame at every turn. Now, over 20

years later, she has an opportunity to be heard. Although her justice may be delayed, it does not have to be denied.

Penelope Shafer

Penelope Shafer was 13 years old when she was committed to the Montrose School for Girls in Baltimore (“Montrose”). During her six months at Montrose, Penelope was raped daily by the school’s head. Unable to cope with her trauma after being released, Penelope engaged in destructive coping behavior, by self-medicating with drugs and alcohol. Penelope’s life was forever changed by the trauma she endured during her stay at Montrose, and her abusers were never held accountable.

Penelope’s childhood was marred by a neglectful mother. Penelope did not have a father figure in her life. Instead, Penelope’s mother would invite her many boyfriends into the home—a pattern that made Penelope feel ignored, unloved, and unsafe. Those feelings intensified when her mother knowingly allowed more than one of her boyfriends to molest Penelope in their home.

Penelope’s troubled relationship with her mother ultimately led to her being sent to Montrose. After Penelope stayed out late one evening, her mother reported her as a runaway to the police, and she was taken to juvenile court. Despite the judge’s acknowledgement that Penelope had committed no offenses and was free to go, her mother insisted on her placement at Montrose and even paid for her stay.

Penelope was terrified of being sent to Montrose, fearing the potential attacks and abuse from the other girls there. Her true horror, however, came from those who were supposed to protect her. Shortly after arriving at Montrose, Penelope was placed in a “special” room connected to the quarters of the head of the school. This proximity allowed him to enter her room *every night* and rape her. His partner, aware of the abuse, did nothing to intervene. They both used intimidation to force Penelope into submission, convincing her that the abuse was her fault.

Penelope suffered life-long consequences from the horrific abuse she endured at Montrose. Shortly after her release, she turned to heroin to numb the pain from her trauma. Now more than fifty years later, Penelope continues to live as an alcoholic. No matter how hard she tries to move past her suffering as a child, Penelope has been stuck in an inescapable, vicious cycle of self-destructive and reckless behavior. She has spent decades in therapy working to heal from her post-traumatic stress disorder—having been anointed a “warrior princess” by her therapist—but she still cannot forgive her many abusers. Penelope regularly battles suicidal ideations and has attempted suicide.

The somber truth is that Montrose destroyed Penelope’s life. In addition to her substance abuse, Penelope sold drugs and stayed in abusive intimate relationships to get by. Although she was blessed with three sons, she

acknowledges that she was not a good mother. She only has a stable relationship with her youngest. She is grateful that he forgives and accepts her, despite her shortcomings. More than anything, she respects his ability to do this, since she herself cannot do the same for those who wronged her.

More than fifty years removed from her abuse at Montrose, Penelope still resents the lack of accountability that her abusers faced. They got away with ruining her life and, almost certainly, the lives of many other girls. Crushingly, she admits, “I cannot be untouched, and I cannot unsee what I’ve seen.” But her hope is that others similarly victimized as children can feel empowered to share their stories and get help and justice for their traumas before going down a similar dark path.

IV. International Human Rights Standards Counsel for Finding the CVA Constitutional.

The experiences of S.S., K.B., and Penelope underscore the urgent need to safeguard children from systemic harm and abuse by state actors. International human rights standards reinforce this imperative.

The Convention on the Rights of the Child (“CRC”), adopted by the United Nations in 1989, enshrines the protection of children’s best interests as a fundamental principle. According to Article 3 of the CRC, “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the

best interests of the child shall be a primary consideration.”⁴⁵ The primacy of the best interest of the child is a consistent throughline in international human rights standards, which has been emphasized by the Inter-American Commission on Human Rights:

Giving primary consideration to the best interests of the child who is being held responsible for his or her criminal acts does not imply neglect for public safety. While children should be held accountable as appropriate for their criminal behavior, interventions that focus on their best interests, and that are therefore geared toward their rehabilitation, are also better for the society and public safety as a whole.⁴⁶

The International Covenant on Civil and Political Rights (“ICCPR”), to which the United States is a party, obliges states to ensure the “inherent dignity” and “inalienable rights” of all are protected.⁴⁷ Article 7 of the ICCPR prohibits “torture” and “cruel, inhumane, or degrading treatment or punishment,” while Article 10 requires that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent

⁴⁵ Convention on the Rights of the Child art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁴⁶ *The Situation of Children in the Adult Criminal Justice System in the United States*, Inter-American Commission on Human Rights, 59 (Mar. 1, 2019).

⁴⁷ International Covenant on Civil and Political Rights Preamble, Dec. 16, 1966, 999 U.N.T.S. 171; *see also* Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (“[R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”).

dignity of the human person.”⁴⁸ Article 17 of the ICCPR further obliges states to ensure no person is subjected to “unlawful attacks on his honour or reputation.”⁴⁹ And the ICCPR specifically requires states to protect children from discrimination and abuse:

Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.⁵⁰

Under the CRC, these rights extend to children who are in the custody and care of the State, including protection from sexual abuse.⁵¹ The obligation to protect youth from violence, as reflected in Article 19 of the CRC, is best viewed as a “measure[] of protection as [is] required by [a child’s] status as a minor” mandated by Article 24 of the ICCPR.⁵²

Conduct that leads to the humiliation or debasement of children violates both the ICCPR and CRC.⁵³ Indeed, the United Nations Human Rights

⁴⁸ International Covenant on Civil and Political Rights at Arts. 7 & 10.

⁴⁹ *Id.* at 17.

⁵⁰ *Id.* at Art. 24.

⁵¹ Convention on the Rights of the Child at Art. 19 § 1 (“States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of mental violence . . . including sexual abuse.”).

⁵² *Id.*

⁵³ *Mr. C v. Australia*, CCPR Comm. No. 900/1999, 9 (Human Rights Comm. Nov. 23, 1999).

Committee has noted that “every possible economic and social measure should be taken . . . to prevent [children] from being subjected to acts of violence . . . cruel and inhumane treatment or from being exploited by means of forced labour or prostitution.”⁵⁴ That same committee found violations of Articles 7 and 24 of the ICCPR where members of the Royal Nepalese Army repeatedly raped a 15-year old girl in their custody.⁵⁵

Similarly, the United States views sexual abuse, especially in a correctional setting, as “devastating” for victims and communities.⁵⁶ The United States has also advised that violations of Article 7 of the ICCPR are prohibited under federal laws that provide civil and criminal sanctions for, among other things, “rape, sodomy, or molestation.”⁵⁷ Under 18 U.S.C. § 2243(c), the DOJ may investigate and bring a criminal prosecution against staff of federal agencies who engage in any sexual activity with inmates at

⁵⁴ U.N. Human Rights Comm., CCPR General Comment No. 17: art. 24, Rights of the Child (Apr. 7, 1989).

⁵⁵ *Fulmati Nyaya v. Nepal*, CCPR Comm. No. 2556/2015, 8 (Mar. 18, 2019).

⁵⁶ Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, Nov. 11, 2021, CCPR/C/USA/5; Press Release, *Justice Department Releases Final Rule to Prevent, Detect and Respond to Prison Rape*, DOJ (May 17, 2012), <https://www.justice.gov/opa/pr/justice-department-releases-final-rule-prevent-detect-and-respond-prison-rape>.

⁵⁷ Fifth periodic report submitted by the United States of America under article 40 of the Covenant pursuant to the optional reporting procedure, Nov. 11, 2021, CCPR/C/USA/5.

correctional facilities.⁵⁸ And, similarly, the Prison Rape Elimination Act seeks to establish a “zero-tolerance” standard for prison rape.⁵⁹

By enacting the CVA, the Maryland legislature has affirmed that protecting vulnerable youth is a fundamental human rights issue consistent with international treaties designed to safeguard children’s rights and similar federal initiatives. Twenty-two other states⁶⁰ have also enacted comparable laws to uphold the fundamental rights of children. The CVA’s provisions ensure that institutions that facilitate abuse cannot evade justice simply due to the passage of time, reinforcing the principles advanced by the CRC of “honour” and “reputation,” and promotion of freedom from “debasement,” “humiliation,” and “cruel and inhumane treatment.”

In short, international human rights law strongly counsels Maryland to establish and maintain a correctional justice system that effectively safeguards its youth and provides robust mechanisms for redress and accountability in the case of sexual abuse.

⁵⁸ 18 U.S.C. § 2243(c).

⁵⁹ 34 U.S.C. § 30302.

⁶⁰ Erin Cox, *Maryland Senate Votes to Ease Path for Child Sex Abuse Victims to Sue*, Washington Post (Mar. 16, 2023), <https://www.washingtonpost.com/dc-md-va/2023/03/16/maryland-child-sex-abuse-lawsuits/>.

CONCLUSION

The undeniable evidence of rampant sexual abuse within Maryland's juvenile detention facilities and its effects, supported by courageous testimony of survivors who endured such abuse at the hands of facility authorities, starkly reveals the urgent need for reform. Statistics demonstrate that, prior to the enactment of the CVA, Maryland's justice system failed to meet essential standards of protection and accountability. In response, Maryland has aligned itself with the steps taken by many other states and the international community by enacting the CVA. This crucial legislation provides a vital pathway to long-denied justice for child sexual abuse victims, addressing the gaps where state oversight and administrative procedures previously failed. Accordingly, this Court should affirm that the CVA does not violate Article 24 of the Maryland Declaration of Rights or Article III, Section 40 of the Maryland Constitution.

Dated: August 7, 2024

Respectfully submitted,

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1. This brief contains 5,620 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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/s/ James Dold _____
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RULE 8-504(a)(8) STATEMENT OF FONTS

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No. SCM-MISC-0002-2024

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