

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

APPEAL FROM THE MICHIGAN COURT OF APPEALS

**PATRICK M. METER, P.J., and DAVID H. SAWYER  
and THOMAS C. CAMERON, JJ.**

**PEOPLE OF THE STATE OF MICHIGAN  
Plaintiff-Appellant**

v

**DANIEL RAY BEAN  
Defendant-Appellee.**

**No. 159384**

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**Circuit Court No. 17-000174-FC  
COA No. 342953**

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**BRIEF BY PROSECUTING ATTORNEYS ASSOCIATION  
OF MICHIGAN AS AMICUS CURIAE  
IN SUPPORT OF PEOPLE OF THE STATE OF MICHIGAN  
Filed under AO 2019-6**

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Statement of the Question

I.

When the words of a statute are unambiguous, the judicial inquiry is complete. MCL 750.520b(1)(c) provides that a defined criminal sexual act constitutes 1<sup>st</sup>-degree criminal sexual conduct if occurring under circumstances involving the commission of *any other felony*. May a sexual assault on a minor committed by a parent, guardian, or custodian of the minor constitute the “other felony” of 2<sup>nd</sup>-degree child abuse within the text of MCL 750.520b(1)(c)?

Amicus answers: YES

Statement of Facts

Amicus joins the statement of facts supplied by the People.

## Argument

### I.

When the words of a statute are unambiguous, the judicial inquiry is complete. MCL 750.520b(1)(c) provides that a defined criminal sexual act constitutes 1<sup>st</sup>-degree criminal sexual conduct if occurring under circumstances involving the commission of *any other felony*. A sexual assault on a minor committed by a parent, guardian, or custodian of the minor may constitute the “other felony” of 2<sup>nd</sup>-degree child abuse within the text of MCL 750.520b(1)(c).

### Introduction

In granting leave to appeal, this Court directed that the parties address:

- whether second-degree child abuse, MCL 750.136b(3)(b), is an adequate predicate “other felony” to sustain a charge of CSC-I, MCL 750.520b(1)(c), when the alleged act of child abuse is a sexual penetration that is the same sexual penetration that forms the basis of the CSC-I charge.

In *People v. Hampton*<sup>1</sup> this Court has ordered a MOAA, specified that the case was to be heard together with this case, and directed that the parties address:

- whether the Legislature intended to elevate to felony-murder those instances of first-degree child abuse in which the only act of abuse is the child’s murder. See MCL 750.316(1).

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<sup>1</sup> *People v. Hampton*, 505 Mich. 933 (2019).

The questions are somewhat similar, though in the end the analysis is substantially different,<sup>2</sup> but in each the question of that which the Legislature intended is not different from the question of that which the Legislature enacted. And so amicus here examines whether the 1<sup>st</sup>-degree criminal sexual conduct statute the legislature enacted in MCL 750.520b(1)(c) includes 2<sup>nd</sup>-degree child abuse, MCL 750.136b(3)(b), as a predicate “any other felony” in aggravation of the degree of the offense, when the alleged act of child abuse is a sexual penetration that is the same sexual penetration that forms the basis of the criminal sexual conduct charge, and answers that the assault on the child here was broader than, though included, penetration, and that 2<sup>nd</sup>-degree child abuse is “any other felony,” and can thus serve as a predicate for the 1<sup>st</sup>-degree CSC charge.

### **Standard of Review**

The proper construction of a statute is a question of law, reviewed de novo.<sup>3</sup>

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<sup>2</sup> In the present case the statute refers to a sexual penetration occurring “under circumstances involving the commission of any other felony,” and thus the argument here as to whether the charged 2<sup>nd</sup>-degree child abuse can constitute the “other felony,” where in *Hampton* the 1<sup>st</sup>-degree murder statute, MCL 750.316, *specifies* the offenses that serve as predicates to raise the degree of the offense from 2<sup>nd</sup>-degree to 1<sup>st</sup>-degree murder, and *names* 1<sup>st</sup>-degree child abuse as one of those crimes. The argument in *Hampton*, then, will necessarily differ from that here.

<sup>3</sup> *People v. Feeley*, 499 Mich. 429, 434 (2016).

## Discussion

*[We] ask, not what this [legislature] meant, but what those words would mean in the mouth of a normal speaker of English, using them in the circumstances in which they were used. . . . We do not inquire what the legislature meant; we ask only what the statute means.*<sup>4</sup>

**A. The task of statutory construction is to determine the objectified intent of the legislature; that is, that which a reasonable person would gather from the text of the law, placed in its proper context**

Both the United States Supreme Court and this Court have made plain that the lodestar of construction of a statute is the text itself, and, where that text is not ambiguous, the text is not only the beginning but also the *end* of the court’s inquiry. It is the text, after all, which is enacted into law. The United States Supreme Court has said, for example, that “[a]s with any other question of statutory interpretation, we begin with the text of the [statute] . . . (‘The task of resolving the dispute over the meaning of [a statutory text] begins where all such inquiries must begin: with the language of the statute itself.’)<sup>5</sup> Indeed, “courts must presume that a legislature says in a statute what it means and means in a statute what it says there. . . . When the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”<sup>6</sup> And this Court has said

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<sup>4</sup> Oliver Wendell Holmes, Jr., “The Theory of Legal Interpretation,” 12 Harv. L. Rev. 417, 417–419 (1899). See also A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012) (“The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means”).

<sup>5</sup> *Nebraska v. Parker*, –U.S.–, 136 S. Ct. 1072, 1079, 194 L. Ed. 2d 152 (2016) (second brackets in the original).

<sup>6</sup> *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254, 112 S. Ct. 1146, 1149, 117 L. Ed. 2d 391 (1992).

that “[w]e first examine the language of the statute and if it ‘is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written.’”<sup>7</sup> Also, “[w]here the language of the statute is unambiguous, the plain meaning reflects the Legislature’s intent and this Court applies the statute as written. Judicial construction under such circumstances is not permitted. . . . Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to determine legislative intent.”<sup>8</sup>

What is sought by the reviewing court, then, is “a sort of ‘objectified’ intent—the intent that a reasonable person would gather from the text of the law, placed alongside the remainder of the corpus juris. As Bishop’s old treatise nicely put it, elaborating upon the usual formulation: ‘[T]he primary object of all rules for interpreting statutes is to ascertain the legislative intent; *or exactly, the meaning which the subject is authorized to understand the legislature intended.*’”<sup>9</sup>

When a court undertakes to “effect the intent of the legislature,” then, what is it the court is attempting to do? The process is one of *discovery*, not creation, revision, or amendment; it is to discover what a reasonable person would gather from the text of the law, placed

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<sup>7</sup> *Martin v. Beldean*, 469 Mich. 541, 546 (2004).

<sup>8</sup> *People v. Borchard-Ruhland*, 460 Mich. 278, 284 (1999); *Pohutski v. City of Allen Park*, 465 Mich. 675, 683 (2002) (“Where the language is unambiguous, ‘we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written’”).

<sup>9</sup> Antonin Scalia, *A Matter of Interpretation*, p. 17 (emphasis in the original). And see Felix Frankfurter, “Some Reflections on the Reading of Statutes,” 47 COLUM. L. REV. 427, 538 (1947)(quoting Justice Holmes as saying, with regard to legislative intent, “I don’t care what their intention was. I only want to know what the words mean”).

alongside the remainder of the corpus juris. Judge Easterbrook has written that “intent is empty.”<sup>10</sup> By this he meant not that the legislature is not the lawgiver, with the role of the court to discover what law it is the legislature has enacted, but that there is no collective *subjective* legislative intent: “Peer inside the heads of legislators and you find a hodgepodge. . . . Intent is elusive for a natural person, fictive for a collective body.”<sup>11</sup> When a court looks to determine “what the law is” when the law is a statute, it is more precise to say the court should attempt to ascertain the “expressed” intent of the legislature, which naturally leads one to the *public* expression of intent; namely, the text of the statute.<sup>12</sup> The law is what the “objective indication of the words” of the statute, in their context, including that of the statutory scheme, mean.<sup>13</sup> And when necessary to the task—but only then—aids to construction may be employed, such as established canons of construction, and even legislative history, where it exists, and where it is helpful—and it often is not.

Returning, then, to the principles of statutory construction as oft-stated by this Court, they may be summarized as follows:

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<sup>10</sup> Frank Easterbrook, “Text History, and Structure in Statutory Interpretation,” 17 HAR. JRNL L. & PUB. POLICY 62, 68 (1994).

<sup>11</sup> *Id.* See also *United States v. Mitra*, 405 F.3d 492, 495 (CA 7, 2005)(the legislature is “a ‘they’ and not an it’ . . . . Legislation is an objective text approved in constitutionally prescribed ways; its scope is not limited by the cerebrations of those who voted for or signed it into law”).

<sup>12</sup> See Lawrence H. Tribe, “Comment,” in *A Matter of Interpretation* 65, 66 (“I never cease to be amazed at the arguments of judges, lawyers, or others who proceed as though legal texts were little more than interesting documentary evidence of what some lawgiver had in mind. . . . it is the *text’s* meaning, and not the content of anyone’s expectations or intentions, that binds us as law”) (emphasis in original).

<sup>13</sup> Scalia, *A Matter of Interpretation* at 29.

- The primary aim of construction is to effect the “intent of the Legislature” in the sense that its intent was objectified by the legislature in a written text.
- A court examines the language of the statute, and if a reasonable person would gather a particular meaning from the words of the statute as used in the ordinary sense, placing the statute in context with the rest of the statutory scheme, it enforces that understanding, and its inquiry is at an end.
- Where a reasonable person could gather multiple meanings from the words of the statute as used in the ordinary sense, placing the statute in context with the rest of the statutory scheme, then other objective indicators of understanding are employed to the extent they are helpful, such as canons of construction and legislative history.

Because the People are sovereign in our constitutional democracy,<sup>14</sup>

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<sup>14</sup> Mich. Const. 1963, Art. I, § 1: “All political power is inherent in the people.”

and because the constitutional system put in place by the People delegates the lawmaking authority to the legislative branch, with law to be enacted in a prescribed manner, including the assent of the governor unless his or her veto is overridden, the task of the judiciary in a case or controversy involving application of a statute is to enforce the law that the legislature enacted, discovering that law by reviewing the meaning of the statutory text as a reasonable person would gather it from the words employed, placed in proper context.<sup>15</sup>

**B. The statutes involved, and the exegetical parsing by the Court of Appeals**

The pertinent statutes provide:

MCL 750.520b(1)(c): (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists: \*\*\* (c) Sexual penetration occurs under circumstances involving the commission of *any other felony*.

MCL 750.136b(3)(b): A person is guilty of child abuse in the second degree if any of the following apply: \*\*\* (b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

The critical phrase is “under circumstances involving the commission of any other felony.” In its exegetical parsing of the phrase, the Court of Appeals first deconstructed the term “any other felony.” Turning to a dictionary—Merriam-Webster’s Collegiate Dictionary (11th ed)—the court cited that dictionary’s definition of “other” as “‘being the one (as of two or more) remaining or not included;’ ‘being the one or ones distinct from that or those first mentioned or

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<sup>15</sup> Context, of course, matters. “If you tell me, ‘I took the boat out on the bay,’ I understand ‘bay’ to mean one thing; if you tell me, ‘I put the saddle on the bay,’ I understand it to mean something else.” Scalia, *A Matter of Interpretation* 26. But it is also true that “Contextual exegesis notwithstanding, it is axiomatic that the clearest evidence of congressional [legislative] intent is the plain language of [the] statute itself. Where the text is plain and unambiguous, we must apply a statute according to its terms.” *Williamson v. Recovery Ltd. Partnership*, 731 F.3d 608, 618 (CA 6, 2013).

implied;’ or ‘not the same [or] different.’”<sup>16</sup> The court did not define “felony,” but under the penal code a felony is any offense “for which the offender, on conviction may be punished by death, or by imprisonment in state prison.”<sup>17</sup> Further, offenses are considered distinct under the law, despite overlap in proofs or elements, if each requires proof of an element the other does not.<sup>18</sup> A felony, then, is “distinct” and “not included” within another—is not the same, but different—if the elements differ, in that each requires proof of an element the other does not.

The court also considered the statutory purpose teased out of the statute in *People v Jones*.<sup>19</sup> There the panel inferred that because the legislature had not narrowly defined “the coincidence or sequence of the sexual act and the other felony,” its purpose in aggravating the sexual offense when the sexual offense occurs under circumstances involving the commission of any other felony was to “address the increased risks to, and the debasing indignities inflicted upon, victims by the combination of sexual offenses and other felonies.” Turning to the “key language of the statute” — “occurs under circumstances involving”— the court cited *People v Waltonen*<sup>20</sup> for the proposition that the statute does not “demand that the sex act occur during the commission of the felony, although this generally will be the case,” but requires “a direct interrelationship [whatever that means] between the felony and the sexual penetration.” *Waltonen* summarized that “the prosecution is required to submit evidence sufficient to establish probable cause to believe that

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<sup>16</sup> *People v. Bean*, No. 342953, 2019 WL 637313, at 2 (2019), appeal granted, 504 Mich. 975 (2019).

<sup>17</sup> MCL 750.7.

<sup>18</sup> See *People v. Smith*, 478 Mich. 292, 305 (2007) (“In order to determine whether a defendant who, by a single act, commits two distinct criminal violations may be punished for both, the United States Supreme Court held that ‘the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not’”).

<sup>19</sup> *People v Jones*, 144 Mich App 1, 4 (1985).

<sup>20</sup> *People v Waltonen*, 272 Mich App 678, 692-693 (2006).

defendant sexually penetrated the victim, that defendant committed the underlying felony, and that there existed a direct interrelationship between the felony and the sexual penetration, which does not necessarily require that the penetration occur during the commission of the felony.”<sup>21</sup>

From this exegetical parsing, along with the perceived legislative purpose, the court here concluded that there was no “other felony” within the meaning of the statute because “there [was] *no separate act*”<sup>22</sup> underlying the ‘other felony,’”<sup>23</sup> the 2<sup>nd</sup>-degree child abuse, and thus no “no ‘increased risks’ or “debasement indignities inflicted” upon the child,”<sup>24</sup> as though the statute reads “any other act” rather than “any other felony.” Further, said the court, here there can be “no ‘direct interrelationship between the felony and the sexual penetration’ because the felony is the sexual penetration. . . . the exact same conduct.”<sup>25</sup> The 2<sup>nd</sup>-degree child abuse here, then, said the court, could not serve as the predicate “other felony” under MCL 750.520b(1)(c),<sup>26</sup> though not only does each offense require proof of an element the other does not, but the two share no elements whatever. As parsed by the Court of Appeals, then, the statutory provision “any other felony” does not mean “all other felonies,” but is limited to those felonies involving a separate act from the sexual assault, which cause “increased risks” or inflict “debasement indignities” upon the victim. This does not simply parse but amends the statute.

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<sup>21</sup> *Id.*, at 680.

<sup>22</sup> Which, as the People have pointed out, is itself inaccurate; there were acts other than sexual penetration involved in the sexual abuse of the child.

<sup>23</sup> *Bean*, at 2 (emphasis supplied).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

### C. The Court of Appeals has rewritten the statute

In concluding that the phrase “any other felony” in MCL 750.520b(1)(c) means not *every* other felony, but a limited field of felonies, those demonstrating “increased risks” or “debasing indignities” beyond the act of commission of the sexual assault, the Court of Appeals rewrote the statute to accord with the purpose it believed evinced by the statutes involved. But this is inconsistent with the ordinary view of the language employed. Various decisions make the point: “when interpreting a statute, ‘any’ means ‘all’”;<sup>27</sup> “[a]ny’ does not refer to certain things and not others. ‘Any’ means ‘every’ and ‘all.’ *It is unlimited*”;<sup>28</sup> “[w]e have repeatedly held that the word ‘any’ means ‘all’ or ‘every’ and *imports no limitation*”;<sup>29</sup> “[a]ny” means ‘every; all’”;<sup>30</sup> “[a]ny” means ‘every’ and ‘all’ and *suggests the absence of limits altogether*.”<sup>31</sup> And so the parsing by the Court of Appeals both contradicts the statute—by limiting its reach to a smaller field than “every and all” other felonies—and supplements it, by adding to it the words of limitation it found in the purpose it inferred—any other felony “that demonstrates increased risks or debasing indignities,” and which was accomplished by a “separate act” from the sexual act penetration. But a judicial inference of legislative purpose “cannot be used to contradict text or to supplement it”;<sup>32</sup> further, “the limitations of a text—what a text chooses *not* to do—are as much a part of its ‘purpose’ as its affirmative

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<sup>27</sup> *United States v. Caniff*, 955 F.3d 1183, 1190 (CA 11, 2020).

<sup>28</sup> *Caf%21e Erotica of Fla., Inc. v. St. Johns Cty.*, 360 F.3d 1274, 128 (CA 11, 2004) (emphasis supplied).

<sup>29</sup> *People v. Silburn*, 98 N.E.3d 696, 704 (N.Y., 2018) (emphasis supplied).

<sup>30</sup> *Nat'l Pride At Work, Inc. v. Governor of Michigan*, 481 Mich. 56, 77 (2008).

<sup>31</sup> *Stone v. Michigan*, 247 Mich. App. 507, 523 n. 35 (2001) rev'd on other grounds 467 Mich. 288, 651 N.W.2d 64 (2002) (emphasis supplied).

<sup>32</sup> Antonin Scalia & Bryan A. Garner, *Reading Law* 57 (2012). See e.g. *Bellitto v. Snipes*, 935 F.3d 1192, 1201 (CA 11, 2019).

dispositions,” so that in parsing a statute a court must “reject the replacement or supplementation of text with purpose.”<sup>33</sup>

As laid out by M Crim JI 17.20a, child abuse in the 2<sup>nd</sup> degree under MCL 750.136b(3)(b) is established on proof that:

First, that [name defendant] is the [parent / guardian] of [name child].

OR

First, that [name defendant] had care or custody of or authority over [name child] when the abuse allegedly happened, regardless of the length of time the child was cared for by, in the custody of, or subject to the authority of that person.

Second, that the defendant knowingly or intentionally did an act likely to cause serious physical or mental harm to [name child] regardless of whether such harm resulted.

[Choose (a) or (b) or both:]

(a) By “serious physical harm” I mean any physical injury to a child that seriously impairs the child’s health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(b) By “serious mental harm” I mean an injury to a child’s mental condition that results in visible signs of an impairment in the child’s judgment, behavior, ability to recognize reality, or ability to cope with the ordinary demands of life.

Third, that [name child] was at the time under the age of 18.

The offense, then, may only be committed by a parent or guardian, or one with custody or control, of a child under the age of 18, and the defendant must knowingly or intentionally do an act likely to cause serious physical or mental harm to the child, regardless of whether the harm resulted, and that act need not be a sexual act of any kind.

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<sup>33</sup> Id., 57, 58.

Criminal sexual conduct in the 1<sup>st</sup> degree requires a sexual penetration,<sup>34</sup> and where charged as having occurred during the commission of another felony, the age of the victim is not relevant and need not be proven, nor must the defendant be the parent, guardian, or custodian of the victim.

The offenses not only each contain an element that the other does not, but they share no elements whatever. One may certainly commit 1<sup>st</sup>-degree criminal sexual conduct without committing child abuse, and one may commit child abuse in the 2<sup>nd</sup> degree without committing criminal sexual conduct. Defendant's argument devolves to the claim that "sexual penetration of a minor aged 13 to 16 would always be committed during an 'other felony,' which would be child abuse. Thus, it would always be CSC I, contrary to the statutory language."<sup>35</sup> But this is not true. The child abuse statute is applicable only to a person who is "a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person." Sadly, many sexual assaults of minors are committed by defendants not in this category. Nor is every sexual act on a minor

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<sup>34</sup> See M Crim JI 20.1(2):

[Choose (a), (b), (c), or (d):]

(a) entry into [name complainant]'s [genital opening1 / anal opening] by the defendant's [penis / finger / tongue / (name object)]. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(b) entry into [name complainant]'s mouth by the defendant's penis. Any entry, no matter how slight, is enough. It does not matter whether the sexual act was completed or whether semen was ejaculated.

(c) touching of [name complainant]'s [genital openings / genital organs] with the defendant's mouth or tongue.

(d) entry by [any part of one person's body / some object] into the genital or anal opening of another person's body. Any entry, no matter how slight, is enough. It is alleged in this case that a sexual act was committed by [state alleged act]. It does not matter whether the sexual act was completed or whether semen was ejaculated.

<sup>35</sup> Defendant's brief, p. 12.

performed by an adult falling within this category child abuse in the second degree under the statute (though they may generally be). The victim may be unconscious or incapacitated in some manner, and under the circumstances it may not be that it can be proven that the act was likely to cause serious physical or mental harm. Further, the prosecution argues that the sexual conduct of the defendant performed on the victim included but was not limited to penetration (digital) of the vagina but included touching her legs, breasts, and vaginal area skin-to-skin. And even if a *particular* sexual penetration is both criminal sexual conduct because performed on a minor, *and* child abuse in the 2<sup>nd</sup> degree, because performed by a parent, guardian, or custodian of the minor, and, under the circumstances, constituting an intentional act likely to cause mental harm, thus elevating the degree of the criminal sexual conduct on the 13 to 16 year-old minor to criminal sexual conduct in the 1<sup>st</sup> degree, this is within the legislative purpose as expressed in the text of its statutes.

MCL 750.520b(1)(c) refers to “any other felony,” and that the penetration occur “*under circumstances involving* the commission of any other felony.”<sup>36</sup> “Other”

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<sup>36</sup> It might be argued that “any other felony” is ambiguous so as to need construction beyond its language. As Justice Viviano very recently pointed out in concurring to an order denying leave to appeal, the current threshold for statutory ambiguity is that “a provision of the law is ambiguous only if it ‘irreconcilably conflict[s]’ with another provision, or when it is equally susceptible to more than a single meaning,” which Justice Viviano suggests may—or may not—be too stringent. *Griffin v. Swartz Ambulance Service*, –Mich.–, 2020 WL 5499060, (No. 159205, 9-11-2020) (slip order, at 10). Amicus would note here that “the fact that a statute can be ‘applied in situations not expressly anticipated by [the legislature] does not demonstrate ambiguity. It demonstrates breadth,” *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 212, 118 S. Ct. 1952, 1956, 141 L. Ed. 2d 215 (1998) (cleaned up), and one does not know whether the legislature anticipated child abuse in the 2<sup>nd</sup> degree aggravating a criminal sexual penetration of a minor committed by a parent, guardian, or custodian, in many circumstances to criminal sexual conduct in the 1<sup>st</sup>-degree. It may or may not have, but what it did is enact a statute with breadth, covering “any other felony.” And, after all, “it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed.” *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79, 118 S. Ct. 998, 1002, 140 L. Ed. 2d 201(1998). The *Reading Law* treatise defines ambiguity as an “uncertainty of meaning based not on the scope of a word or phrase but on a semantic dichotomy that gives rise to any of two or more quite different but almost equally plausible interpretations.” *Reading Law*, supra, at 425. Amicus submits that under any reasonable standard, no ambiguity threshold is met here.

as to what? As to the already described felony that is, the criminal sexual penetration described previously in the statute, and defined in MCL 750.520a(r). Where that felonious penetration occurs in “circumstances involving any the commission of any other felony,” the degree of the crime is 1<sup>st</sup>-degree criminal sexual conduct. Where the criminal penetration, then, is committed by a parent, guardian, or custodian of a minor, and under the circumstances is an act “likely to cause serious physical or mental harm to a child regardless of whether harm results,” the penetration has occurred in “circumstances involving” the commission of child abuse in the 2<sup>nd</sup> degree— “any other felony.”

#### **D. Conclusion**

Should the legislature wish to limit the reach of the 1<sup>st</sup>-degree criminal sexual conduct statute to limit the class of “other felonies” to those committed by an act wholly distinct from the act constituting the sexual offense, it may, of course, do so, but it has not at this time so limited the reach by requiring proof that the other felony involve a “separate act or acts,” or caused further “debasing indignities” to the victim.

**Relief**

WHEREFORE, the amicus joins the People's request that this Honorable Court reverse the Court of Appeals.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

I certify that the foregoing brief complies with AO 2019-6. The body-text font is 12 point Century Schoolbook set to 150% line spacing. This document contains 4443 countable words.