

**Prepared Testimony  
of Katherine Bussard**

**Before the Michigan House of Representatives  
Committee on Families, Children and Seniors  
September 26, 2023**

Distinguished Chair and Distinguished Members of the Committee: Thank you for the opportunity to provide testimony today. My name is Katherine Bussard. I serve as Executive Director & C.O.O. of Salt & Light Global and the Great Lakes Justice Center. Today, I testify in my personal capacity to express my deep concerns regarding the constitutionality of House Bill 4085 and HB 4086. I appreciate the fact that HB 4087 is no longer a part of this package and have reviewed the proposed substitutes for HB 4085 and 4086 now before this body.

It is well recognized that the State of Michigan has a compelling government interest in passing laws protecting its citizens, including protecting children from abuse by unfit parents. I am certain that the distinguished members of this body and the Michigan legislature have only these noble intentions in mind in seeking to provide for the needs of homeless and runaway youth. However, it is also well recognized that the manner in which the state acts must be within the limited boundaries of other established law, in order to protect other fundamental rights and prevent unintended harm.

The bill package defines “runaway youth” as an individual who...absents themselves from home...without the permission of a parent...” in HB 4085. Nothing in this bill suggests that the home a child “absents” themselves from is unhealthy or unfit in any way; merely that the child does not wish to be there for any reason. HB 4086 defines “homeless youth” based on the status of a “safe environment,” but fails to delineate what “safe” means. Based on this undefined standard, or the child’s simple choice to be absent from home, these bills purport to provide care (to “homeless” and “runaway youth” for up to 72 hours with or without parental consent.

As written, even the proposed substitutes leave many questions:

- What is the cost of the mental anguish of parents or brothers and sisters, who, for 3 days, are not sure if their child/sibling is safe or even alive?
- Will law enforcement actively investigate children whose families report them missing during those critical first 72 hours?
- How would law enforcement or the state delineate between a child who is runaway by choice or absent by powers not of their own will (abduction)?
- Why are children in foster care exempted (foster parents would be notified, but natural parents would not)?
- If a runaway child gives a false name at a shelter, how would shelter staff verify a child’s identity or determine if they were in foster care or not?
- How will this 72-hour window be balanced with federal law that requires mandatory DOJ reporting and no waiting period for law enforcement to initiate an investigation of a missing person under age 21? [*Section 3701(a) of the Crime Control Act of 1990 (42 U.S.C. 5779(a)*] What will prevent law enforcement resources from being wasted investigating runaways who are receiving shelter, when notice is not given?
- Most importantly, during the first 72 hours, if no one is investigating a missing person because they may be a runaway, what could happen to a child in that time?

## Constitutional Concerns

The Supreme Court of the United States has already ruled in a series of noteworthy landmark cases pertaining to this subject. Summarily, this body of case law concurs with the 1996 Michigan law (MCL 380.10) which protects, “the *fundamental* right of parents and legal guardians to determine direct the care” and upbringing of their children. This right is further protected by the standard of strict scrutiny and due process protections under the 14<sup>th</sup> Amendment of the US Constitution. Notably:

- In *Meyer v. Nebraska*, 262 U.S. 390 (1923), SCOTUS affirmed that the Due Process Clause of the Fourteenth Amendment protects this liberty, incorporating “the right to marry, establish a home, and bring up children.”
- In *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), SCOTUS held that “the child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”
- In *Stanley v. Illinois*, 405 U.S. 645 (1972), SCOTUS upheld the fundamental rights of parents “in the companionship, care, custody, and management” of their children. *Id.* at 651.
- In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), SCOTUS declared that “[t]his primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition.” *Id.* at 232.

Under this body of United States Supreme Court precedent, a Court applies *strict scrutiny* when reviewing government actions that substantially interfere with a citizen’s fundamental rights. U.S. Supreme Court case law articulates a “strict scrutiny” standard that limits the exercise of government power.

“The essence of all that has been said or written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of [a fundamental right].” – *Wisconsin v. Yoder*, 406 U.S. 205 (1972); See also *Adarand v. Peña*, (1995), *Widmar v. Vincent*, (1982), and *Church of the Lukumi Babalu Aye, Inc., v. Hialeah*, (1993).

Courts at various levels of the federal judiciary used this same terminology in at least 125 cases since its introduction in 1972. Its meaning, therefore, is well established and clear.

The proposed legislation constitutes a clear violation of the Due Process clause of the 14<sup>th</sup> Amendment, which protections extends to the fundamental rights of parents, and fails to meet the test of strict scrutiny necessary to circumvent those rights. If enacted, this bill package could result in unlawful interference by the government—not to mention the sheer agony of otherwise fit parents, who, for days on end, could be precluded from knowledge about the wellbeing of their child. There is also a real risk to the wellbeing of the child that should not be underestimated—especially if law enforcement cannot delineate with certainty between missing and runaway children. A lot can happen in 72 hours, and the first hours are often the most critical if a missing person (especially a child) is to survive and be recovered.

While well intentioned, this bill package could have devastating consequences to the children of the state of Michigan and create serious violations of constitutionally protected liberties. I urge that this body table this legislation until it can be re-written in such a way as to provide better safeguards and protect the best interest of all parties involved. Thank you for your consideration on this vital issue.