



**Opponent testimony submitted to the
Ohio House Civil Justice Committee
House Bill 352
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Chair Hambley, Vice Chair Patton, Ranking Member Brown and Members of the Ohio House Civil Justice Committee, thank you for the opportunity to provide testimony in opposition to Senate Bill 352. As Ohio's statewide coalition, the Ohio Alliance to End Sexual Violence (OAESV) advocates for comprehensive responses and rape crisis services for survivors and empowers communities to prevent sexual violence.

OAESV created and maintains Ohio's rape crisis center core operating standards, trains rape crisis center employees, and provides direct advocacy in counties without services. In Fiscal Year 2018, OAESV and our member programs served 22,464 sexual violence survivors – many of whom experienced sexual harassment, including sexual violence, in their workplace. As this committee is aware, House Bill 352 makes numerous significant changes to Ohio Revised Code Chapter 4112. OAESV's testimony specifically relates to the proposed changes related to sexual harassment.

If passed, House Bill 352 would:

- Reduce the amount of time workplace sexual harassment (including sexual violence) survivors have to seek redress from six to two years;
- Provide employers with an affirmative defense – if the employer can prove by a preponderance of the evidence that (1) the employer exercised reasonable care to prevent or promptly correct any sexually harassing behavior; and (2) the employee alleging the hostile work environment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.¹
- Mandate that survivors file a grievance with the Ohio Civil Rights Commission prior to filing a lawsuit under Ohio law. As the grievance is required before filing a lawsuit, survivors will be forced to decide four years earlier than they previously would have.

Sexual harassment and sexual violence are about power and control.² Workplace sexual harassment thrives across industries, but is especially burdensome against low-paid workers who have a lack of

¹This affirmative defense is not available if the employer took a tangible employment action after the report (termination, demotion, etc.).

² Lyn Yonack, *Sexual Assault Is About Power: How the #MeToo campaign is restoring power to victims*, <https://www.psychologytoday.com/us/blog/psychoanalysis-unplugged/201711/sexual-assault-is-about-power>.

power in the workplace.³ Workplace harassment results in numerous consequences for the victim, including physical and mental health problems, reductions in opportunities for advancement, and lost opportunities for increased income.⁴ Persons experiencing workplace sexual harassment are especially vulnerable to continued harassment, as they are often reluctant to report to Human Resources or other colleagues due to the risk of lost financial stability.

This problem is not going away, in fact, the number of sexual harassment complaints filed with the Equal Employment Opportunity Commission (EEOC) increased 14% from 2017 to 2018. As our state and nation endure the economic impact of COVID-19, employment access is at its lowest point since the Great Depression.⁵ Without financial safety nets or the prospect of other positions, harassed employees are less willing to report sexual harassment or sexual assault.⁶ As many low-wage positions comprise essential front-line COVID-19 work, the risk of retaliation and consequences for reporting are at an all-time high.⁷

Under current law, survivors of workplace sexual harassment (including sexual violence) may choose between a federal system that requires administrative exhaustion within 180 or 300 days of discrimination before filing a lawsuit, and our state system which lacks an exhaustion requirement. Each system has other advantages and disadvantages relating the specifics of any given case, but many survivors make decisions about filing based on whether they wish to utilize an administrative system before filing in court. This bill will take that decision away. This can be very harmful, as survivors may not fully have time to process and make decisions about workplace sexual harassment claims in two years. This bill will reduce civil options to a workplace sexual harassment claim with a two-year statute of limitations and a sexual battery claim with a one-year statute of limitations.

Because of the affirmative defense provided by this legislation, employers will be incentivized to push reporting survivors into preventative or corrective “opportunities” with little guidance on what that means in practice or how to make sure it is safe and trauma informed. This will likely also lead to victim blaming trends. As survivors are currently influenced to remain silent by the post-COVID-19 economy and job market, they will likely see these new standards as inhibitors to reporting, and sexual harassment will flourish as we rebuild a new “normal” for workplaces and colleague interactions.

Ultimately, House Bill 352’s sexual harassment provisions will inhibit survivor safety. As our workforce recovers, worker protections must remain robust. Thank you for the opportunity to testify. In addition to my written testimony, I am available for any questions from committee members via email or phone at ccrary@oacsv.org or 216-658-1381.

³ “In workplaces, an organization’s tolerance of sexual harassment allows harassment to thrive. An organization’s culture, systems, and policies can permit or reward harassment, allow for retaliation against those who come forward, and prioritize protecting those in power or the organization from liability over addressing harassment.” Sarah Crawford, *What Works at Work: Promising Practices to Prevent and Respond to Sexual Harassment in Low-Paid Jobs*, National Women’s Law Center (June 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/05/Convening-report-English-Final.pdf>.

⁴ Elyse Shaw, Ariane Hegewisch, and Cynthia Hess, *Sexual Harassment and Assault at Work: Understanding the Cost*, *Institute for Women’s Policy Research*, (October 15, 2018), <https://iwpr.org/publications/sexual-harassment-work-cost/>.

⁵ Heather Long and Andrew Van Dam, *U.S. unemployment rate soars to 14.7 percent, the worst since the Depression era*, *The Washington Post* (May 8, 2020), <https://www.washingtonpost.com/business/2020/05/08/april-2020-jobs-report/>.

⁶ Maya Raghu and Andrea Johnson, *COVID-19 Shows us We Need Me Too Now More than Ever*, National Women’s Law Center (April 9, 2020), <https://nwlc.org/blog/covid-19-shows-us-we-need-me-too-now-more-than-ever/>.

⁷ *Id.*