
MEMORANDUM

TO: Ohio House of Representatives, Civil Justice Committee, Chairman Brett Hillyer and Members

FROM: Fred Gittes, on behalf of Protecting Ohio's Employees and the Ohio Employment Lawyers Association

SUBJECT: Testimony Opposing HB 281, Regarding Civil Liability for Criminal Acts, Revised Code Section 2307.60

DATE: April 23, 2024

Dear Mr. Chairman and Committee Members,

My name is Fred Gittes. I am president of Protecting Ohio's Employees (POE), which advocates for workplace fairness for Ohio employees, including management and non-management employees. I am also a member of the Ohio Employment Lawyers Association (OELA), a professional organization of attorneys who represent employees in employment matters. I am in my 48th year of lawyering and am the principal of the Gittes Law Group, which handles cases involving discrimination of all types, civil rights, dignitary torts, open government, medical licensing and privileging, and other cases. I also frequently represent individual police officers of all ranks and handle police abuse cases for citizens. I did criminal defense work during my first ten years of practice.

HB 281 proposes to bar the civil action provided in Revised Code Section 2307.60 for a crime victim against a criminal perpetrator unless and until the perpetrator has been convicted of that crime. It also erases the presumption of liability created when a perpetrator has been convicted. Both of these proposed changes to settled law would be grave mistakes.

The sponsors and proponents of this bill have suggested that this bill would merely correct an oversight based on a 2008 amendment to Section 2307.60, and that it would have no impact on victims of crime because they have other means of pursuing civil liability for crimes committed against them. Neither is accurate.

First, Ohio common law and other statutes provide civil relief for some crimes, but not nearly all of them. Many violent crimes give rise to a claim for civil assault. Murders can also be pursued under Ohio's wrongful death statute. But many other crimes have no remedy outside of the crucial provisions of R.C. 2307.60. For instance:

- 1)** This bill would not allow victims of stalking, telephone harassment, and non-assault violations of a protective order to sue their abusers. For example, an abuser's spouse could not hold their spouse accountable for repeatedly violating a restraining order in ways that generate fear, uncertainty, and even unwanted relocation. Unfortunately, such crimes are often left unprosecuted, even if the abuser is brought up on other charges. This bill would make it impossible to take these claims to civil court.
- 2)** The same is true of crimes like importuning, procuring, and compelling prostitution. This means that sex trafficking victims and targets of online and in-person demands for sex would not be able to sue their molesters. Ohio has a well-documented trafficking problem, and prosecutors have often struggled to address that problem through criminal convictions. Passing legislation that amounts to a Sex Traffickers' Bill of Rights is not the answer.
- 3)** The bill would allow employees to be fired for refusing to commit perjury for their employer. For example, an employee who is told to lie under oath about a company's scheme to bribe state or local officials, and is fired for refusing, would have no remedy.
- 4)** This legislation would protect employers who hire illegal immigrants. How? If this legislation were enacted, an employee who is fired for refusing to help their employer hire undocumented workers could not sue under Ohio law for civil damages. Even if an employer is prosecuted for immigration-law violations, the fired employee would not have a remedy unless the employer is specifically convicted of the crime of intimidating or punishing the employee who refused to participate in its illegal conduct.

As the unanimous Ohio Supreme Court recognized in the *Buddenberg v. Weisdack* case in 2020, the self-evident purpose of RC 2307.60 is to guarantee that crime victims of all types—not just those who are violently assaulted, but also those who are subjected to fear, emotional abuse, blackmail, and job loss by criminal acts—have a civil remedy for crimes committed against them.

It is just as clear that not all harmful crimes are prosecuted due to limited prosecutorial resources and community enforcement priorities, and prosecutions can sometimes fail to result in a conviction for reasons that have nothing to do with the defendant's guilt. This is not in any way an attack on prosecutors, merely a recognition of the real and difficult decisions they face every day. Those factors should not stop a victim from asking a civil jury to award them compensation for proven criminal conduct.

Finally, I want to address a provision of the bill that has hardly been discussed in prior hearings. RC 2307.60 currently states that when a criminal prosecution *is* successful and results in a conviction, the perpetrator will be presumed liable for the offense. HB 281 proposes to erase that presumption. I cannot begin to understand why the General Assembly would want to prevent victims of convicted criminals from using a conviction to obtain civil remedies for the harm they have suffered.

Thank you for the opportunity to testify. I would be happy to answer any questions the committee may have.