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Senator John Eklund – Sponsor Testimony
Senate Bill 33
House Criminal Justice Committee
May 16, 2017

Good Afternoon Chairman Manning, Vice-Chair Rezabek, Ranking Member Celebrezze, and members of the committee. Thank you for the opportunity to give sponsor testimony on Senate Bill 33 and to encourage your support on this legislation. SB 33 allows disclosure of information from the law enforcement automated data system “LEADS” to a defendant in a traffic or criminal case.

SB 33 will make it clear that a defendant has a right to see and have a copy of his or her traffic and criminal record during a traffic or criminal case. This is consistent with Criminal Rule 16(B)(2) which requires that the prosecution provide the defendant “a copy of defendant's prior criminal record.” However, I have been made aware that a number of prosecutors feel that if they provide copies of such records to defendants they may be violating statutes related to the LEADS.

The above scenario gives rise to traffic cases where a defendant’s sentence could be enhanced by prior convictions and the only individuals having access to that information is the prosecutor and law enforcement. In order to properly represent a defendant it is necessary for defense counsel to have all the information so that a defense or plea can be appropriately pursued. Otherwise ludicrous situations occur, such as a person who is charged with driving under suspension being told he is not allowed to see the “secret” records which purportedly establish that he was under suspension.

In addition, it is not unheard of for such records to contain errors due to transposed social security numbers, two people having similar names or a person giving a false name. Therefore, the defendant should be entitled to have a copy of his own record as he is in the best position to ascertain whether the records contain errors and/or to take steps to correct the errors.

SB 33 would make clear that the defendant has the right to these records and that there is nothing in the statutes related to LEADS that prohibits a prosecutor from providing them. Further it provides that this information would only be available to the defendant and the attorney representing the defendant.

During the senate process of SB 33 we did add clarifying language that (1) copies of the defendants records may be provided to the defendant and the defendant's counsel will come from LEADS and (2) a prosecutor may make a motion to redact personal information including: residential address, date of birth, social security number, and photographs of any witness, law enforcement officer, or prosecutor. The Ohio State Bar Association supports this legislation.

Thank you for the opportunity to provide testimony on Senate Bill 33, and I will be glad to answer any questions you may have.