



Testimony in Support of Senate Bill 33
Presented by Cleve M. Johnson
Chair, Traffic Law Committee
Ohio State Bar Association

Before the House Criminal Justice Committee
Nathan Manning, Chair
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Good afternoon Chairman Manning and members of the committee. Thank you for the opportunity to give proponent testimony on Amended Senate Bill 33.

SB 33 corrects a flaw in the law that no one intentionally created and no one particularly seeks to maintain. This bill protects prosecutors against being sanctioned for doing their job and complying with the criminal rules. It also enables defense attorneys to do their job and provide competent representation by giving them access to records necessary to effectively represent their clients.

Rule 16 of the Ohio Criminal Rules requires prosecutors to provide the defendant with a copy of his record of convictions. Some prosecutors refuse to comply with the rule because they are afraid that they will be sanctioned for violating the LEADS statutes. They do this even when they are shown multiple letters from the chief LEADS officer and other public officials indicating such disclosure is allowed. This is a persistent problem that has continued for many years. Now some who have not dealt with the problem from the defense side think that the problem can be fixed with a simple regulation. The problem is that we have prosecutors who are violating the criminal rules because they are scared of a statute. A regulation can't override a statute. A change in the statutory law is needed.

In many cases it would be malpractice for a defense attorney to fail to examine his client's record. When counsel is denied access to that record, in a real sense, involuntary malpractice is forced upon counsel and the client is forced to accept inadequate representation.

American courts generally disfavor secret evidence that is only available to one side. That is what happens, however, when the state but not the defendant is given access to the defendant's criminal or traffic record. In driving under suspension cases, guilt or innocence depends on what is in the LEADS printout. Often in such cases, the prosecution wants the defendant to obtain a valid license as a condition of resolving the case. The LEADS printout is the road map to doing this. Achieving this goal is often difficult or impossible without a printout.

While prosecutors will often let counsel look at such records even if they do not allow them to copy them, this frequently is very close to worthless especially for the more voluminous records that take time to study and cannot be quickly jotted down. Even when access to counsel is granted, counsel is often admonished not to show the records to his client. It is difficult to understand what the harm is in showing someone his or her own record but this is what happens. So if counsel

wants to do something as simple as asking his client if the violation was really his, he may be doing something improper in the eyes of some prosecutors.

While it might be thought that the defendant knows what his or her record is, that may not be the case. Memory is frail and nobody remembers specifics like case numbers and dates. Records may also contain information that is inaccurate because social security numbers are transposed or the court records were inaccurately entered into the BMV computer. In addition, it is relatively common for a person who is arrested to give the police someone else's social security number in order to escape responsibility for their actions.

In a very real sense, SB 33 is necessary for justice and fairness to prevail. There were amendments made in the Senate to address concerns of the Department of Public Safety and the prosecutors. The OSBA supports those changes. The Ohio State Bar Association urges the committee to favorably report the bill.