



Office of the Ohio Public Defender

Timothy Young, State Public Defender

**Testimony in Opposition of SB285
Distracted Driving
Sponsors Senator Kunze and O'Brien**

Chairman Manning, Vice Chair Brenner, Ranking Member Maharath, and members of the Senate Local Government, Public Safety and Veterans Affairs Committee. I am Niki Clum, legislative liaison for the Office of the Ohio Public Defender (OPD). Thank you for the opportunity to testify in opposition of SB285.

As the committee knows, SB285 prohibits the use of electronic wireless communication devices (EWCD) while operating a motor vehicle. The bill makes this a primary offense. OPD has no objection to those provisions of the bill. However, OPD does oppose the provision in the bill that adds using an EWCD while driving to the Aggravated Vehicular Homicide statute when the death is the proximate result of using an EWCD. Under the bill, the offense is a felony of the second degree, with mandatory prison time, and a lifetime license suspension. Individuals convicted of this offense will be required to serve 2 – 8 years in prison. OPD also opposes the provision in the bill that adds using an EWCD while driving to the Aggravated Vehicular Assault statute when the serious physical harm is the proximate result of using an EWCD. Under the bill, the offense is a felony of the third degree, with mandatory prison time, and a 2 -10-year license suspension. Individuals convicted of this offense will be required to serve 12 – 36 months in prison.

This committee heard testimony that other states who made using an EWCD while driving a primary offense saw fewer fatalities. OPD has no reason to doubt that is accurate, and OPD, as I stated, does not oppose this provision in the bill. OPD does question, however, whether adding the use of an electronic device to the Aggravated Vehicular Homicide and Aggravated Vehicular Assault statutes will deter drivers from using their cell phones while driving. This skepticism is for two reason. First, individuals who use their phone while driving do not think their actions will result in harm to another. Second, the research and data are clear that harsher penalties do not deter criminal behavior.¹

As Highway Safety Program Manager May stated during proponent testimony “[m]ost drivers today understand the dangers of drunk driving, speeding and driving without a seat belt, but many underestimate the danger of using a mobile phone or device while driving.” Under this bill, however, the individual’s intent or specific circumstances are largely irrelevant. SB285 will require courts to send every perpetrator to prison, including the 18-year-old girl who texts her mother that she will be home soon and the 75-year-old grandfather who was putting his grandson’s baseball game into his navigation system.

In this time of economic uncertainty, the OPD believes there are better ways to spend taxpayer dollars than to incarcerate individuals for a mandatory term of years who may have no other criminal history and never intended to cause harm. The court should have discretion as to the sentence. Additionally, SB285 will continue to punish these individuals for years after their release from prison, if not the rest of their lives. A felony conviction can severely hinder an individual’s ability to obtain employment, housing, financial aid, professional licenses, and social services. In these challenging times, Ohio is not benefitted by making it impossible for capable people to obtain adequate housing and employment.

During proponent testimony, this Committee heard that Ohio cannot write our way out of this with tickets, but we need to change the culture, as was done with seat belts and drunk driving. The OPD agrees with the idea that it will take candid conversations and driver education to stop these terrible tragedies from occurring. Until we achieve the cultural change we saw for drunk driving and seat belt utilization, SB285 will saddle more individuals with a felony record and spend taxpayer dollars incarcerating Ohioans who made a bad decision but had no bad intent.

Thank you for the opportunity to provide testimony. I am happy to answer any questions at this time.

ⁱ *Five Things About Deterrence*, National Institute of Justice, Office of Justice Programs, <https://nij.gov/fivethings/pages/deterrence.aspx>; citing Daniel S. Nagan, *Deterrence in the Twenty First Century*, 2013; see also David J. Harding, *Do Prisons Make Us Safer? New research that prisons prevent far less violent crime than you might think*, Scientific American, June 21, 2019, <https://www.scientificamerican.com/article/do-prisons-make-us-safer/>; Economist at Columbia and the University of Michigan found that the threat of longer prison sentences does not reduce crime. The National Institute of Justice found that “severity of punishment does little to deter crime.”

