Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony Support of Senate Bill 203
Marijuana OVI
Sponsors Senator Manning

Chairman Hoagland, Vice Chair Johnson, Ranking Member Thomas, and members of the Senate Veterans and Public Safety Committee. I am Niki Clum, Legislative Policy Manager for the Office of the Ohio Public Defender (OPD). Thank you for the opportunity to testify in support in Senate Bill 203.

Under current law, individuals can be convicted of operating a vehicle while intoxicated (OVI) in one of two ways. First, the prosecution proves beyond a reasonable doubt the individual was impaired at the time they were operating the vehicle. This is usually established by law enforcement testifying to their observations of indicators of impairment and performance on field sobriety test. The second way is that the individual had over a certain amount of drugs or alcohol in their breath, blood, or urine. This conviction is achieved simply by the prosecution proving beyond a reasonable doubt that the individual was operating a vehicle and a chemical test taken close in time to the operation of the vehicle was a certain level specified by law. This is commonly referred to a "per se OVI." Most people know that the legal limit of alcohol on an individual's breath is .08. Whether it is true or not, the thinking behind per se statutes is that a certain level of alcohol or drugs in a person's system most likely results in a level of impairment that is dangerous for drivers. For marijuana, current law declares that a person with a urine concentration of at least 15 nanograms or more of marijuana metabolite or a blood concentration of five nanograms or more of marijuana per can be convicted of per se OVI.

I used to work as a misdemeanor prosecutor where I prosecuted more OVIs than is comfortable to think about. Most of the cases I prosecuted, particularly the cases that went to trial, were OVIs due to impairment. These cases heavily relied on dashboard camera footage and the testimony of officers to show the driver was impaired. I do not recall having a single per ser OVI case go to trial. That is because of the ease of proving guilt for the prosecutor. As I mentioned below, these cases do not require proof of impairment, only proof of driving

and a chemical test showing a certain concentration. What we all knew, prosecutors and defense attorneys alike, was that Ohio's current per se OVI law regarding marijuana concentration in the body is not necessarily related to impairment. Being over the legal limit, does not mean the driver was impaired. This is because marijuana and its metabolite can stay in the blood for up to 36 hours and in urine for up to 21 days.[1] Therefore, the individual charged with per se OVI may have used marijuana days before operating the vehicle. Their use could have been perfectly legal if the individual had a prescription for medical marijuana.

SB203 improves current law by removing from statutory per se marijuana OVI offenses. Senator Manning stated during sponsor testimony a per se amount may be included in a future version of the bill. OPD encourages Senator Manning and this committee to reject that idea for the reason outlined above. OVI law is about getting dangerously impaired drivers off the roads. It should not be about prosecuting people for simply using marijuana, whether legally or illegally. Prosecutors can still prosecute OVIs that involve impairment due to marijuana use the same as prosecutors do now, as I did, by showing evidence of impairment through the officer's testimony, dashboard footage, field sobriety test, and any other evidence that may be relevant.

While OPD is supportive of SB203's improvements to current law, we do have concerns with provisions in SB203 that allow the trier of fact to infer impairment when an individual has 25 nanograms or more of delta-9-tetrahydrocannibinol (THC) in their urine or 5 nanograms or more of THC in their blood. OPD appreciates that these amounts do not result in a per se OVI conviction, but the bill allows for a rebuttable inference of guilt. However, these levels of marijuana in the body are not accurate indicators of impairment. The National Highway Transportation Safety Administration (NHTSA) manual is the bible of field sobriety test and OVI investigation. In a report to Congress, NHTSA stated, "The psychoactive ingredient in marijuana, delta-9-tetrahydrocannabinol (THC), does not correlate well with impairment." "THC is stored in fatty tissues in the body and can be released back into the blood sometimes long after ingestion. Some studies have detected THC in the blood at 30 days post ingestion (Heustis, 2007.)" "Urine test results cannot be used to prove that a driver was under the influence

[1] Dan Wagener, M.A., When Wll Marijuana Show Up on a Drug Test?, American Addiction Centers, https://americanaddictioncenters.org/marijuana-rehab/how-long-system-body

of the drug at the time of arrest or testing. Detection of THC or other cannabinoids in urine does not necessarily reflect recent use."[2] The THC levels specified in the bill are arbitrary and the science does not support considering these amounts as evidence of impairment.

SB203 is positive step for Ohio's OVI law. Individuals should not be convicted of OVI just because they used marijuana, perhaps legally, at some point in the past. While SB203 makes positive advancements, the desire to rely on THC levels in the blood and urine to determine impairment should be avoided. Thank you for the opportunity to provide testimony. I am happy to answer any questions.

[2] National Highway Transportation Safety Administration – Marijuana Impaired Driving: A Report to Congress, July 2017, https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf.