



2/21/23

Chairman Manning, Vice Chair Reynolds, and Ranking Member Hicks-Hudson, thank you for the opportunity to provide proponent testimony for SB 26, which will make very important and much-needed reforms to the marijuana OVI law.

I enthusiastically support this bill, because it would change one of the single most unfair, unscientific, and illogical statutes I have ever seen – current law surrounding the marijuana per se law.

First, I want to state the obvious – nobody wants a person who is impaired by drugs to be operating a vehicle in Ohio. However, just as equally, it is fundamentally important that our law only seek to punish the people who are actually impaired, and not sweeping up a vast amount of wholly innocent conduct. Unfortunately, our current law does an incredibly poor job meeting those objectives. It criminalizes people who have a completely *inactive* metabolite in their system for driving. It doesn't matter if the person was completely sober at the time – if they have this substance in their body, they are guilty – even though we know the substance does not impair. This is literally akin to criminalizing people who are driving after having a coffee with caffeine, or a person who takes a Tylenol before driving.

While I could pontificate at length about the current deformities with current law, I would instead like to focus this Committee's attention on how thoughtful and balanced SB 26 is. Again, no one is saying that we should not continue to be vigilant and convict those persons who are actually driving while impaired by marijuana. All this bill does is allow a full and fair trial to give the accused person the ability to contest the case against them and have a jury make the determination as to guilt or innocence. This bill is carefully crafted to make sure that, first, it does not disturb the roadside investigations by law enforcement, so that law enforcement still has all the tools needed to remove dangerous people from the roadway. It also makes concessions to the State to allow them to introduce evidence without the need for an expert witness. I will address each of those in turn.

First, this bill aims to not disturb the often-difficult roadside investigations and determinations that officers have to make to decide whether to arrest someone. Arrest is governed by the probable cause standard. Nothing in this bill would disturb any part of that investigation. Officers would still have the full standard of roadside tests to give to determine if they believed they have probable cause that a person is impaired, and to request a chemical sample. This bill only addresses what comes next – how can a person defend themselves that they were not impaired.



This bill will make all the difference. Instead of conclusively presuming guilt based upon an inactive metabolite, this proposal would instead open the door for a trial on the issue that matters most – was that person impaired. If the test result came back with a concentration of marijuana metabolite in the system, the State would be entitled to tell the jury – without expert testimony – that the jury could consider that as an inference that the person was impaired. In other words, the focus would go back to the critical issue of whether or not the person was impaired. Then, the jury could consider that chemical test alongside other evidence of impairment (or lack thereof). It would allow the defense to present a case arguing that the person was not impaired. And it would leave the ultimate decision of that question in the capable hands of a jury.

I appreciate this Committee giving its attention to the issue at hand. This is a complicated area of law, that meets at the intersection of science, due process, and public safety. However, when you look beyond the surface and really dive deep into this area of law, you can reach but one conclusion – that current law is in desperate need of change, and that SB 26 is a thoughtful, balanced approach to help ensure that Ohio is targeting those people who drive impaired, while not convicting innocent people who have no opportunity to meaningfully defend themselves.

Respectfully,

Blaise Katter, Esq.

Public Policy Chair, OACDL