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Senate Bill 55 Sponsor Testimony

Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and members of the House Judiciary Committee, thank you for allowing me the opportunity to provide sponsor testimony on Senate Bill 55. The true goal of this bill is to make sure people driving under the influence are held accountable and those using marijuana legally and are not impaired are not wrongfully convicted.

With medical and recreational marijuana use legalized in Ohio, under current law, marijuana users could be convicted of an OVI even if they are not under the influence. This is because inactive marijuana metabolites can remain in a person's system for up to 30 days. Someone who last used marijuana as long as a month ago can fail a drug test for metabolites and be guilty of OVI without any way to prove their sobriety. Even a single use of marijuana can cause a person to fail a drug test for as long as three days afterward.

Ohio currently tests only for the inactive metabolites from marijuana that remain detectable days or weeks after consumption, long after impairment ends. The revised code must be updated to reflect the science of impairment. To that end, this bill accomplishes the following:

- Establishes the per se level to five nanograms of Delta-9 THC, the primary psychoactive substance in marijuana, per milliliter of a person's whole blood.
- Removes the per se limits for urine and replaces it with an evidentiary standard that may be used to infer that a driver is impaired.
- Specifies that, under the evidentiary standard, a trier of fact may infer, without a need for expert testimony, that a person is under the influence of marijuana if the person either
 - Has a concentration of at least 25 nanograms of Delta-9 THC per milliliter of the person's urine.
 - Has a concentration of at least two but less than five nanograms of Delta-9 THC per milliliter of the person's whole blood.
 - Has a concentration of at least five nanograms of Delta-9 THC per milliliter of the person's oral fluid.

The National Highway Traffic Safety Administration concluded, in a Report to Congress, that due to the way that marijuana is metabolized, it is impossible to correlate impairment with the amount of THC in a person's system.¹ After working with experts and interested parties to find a compromise, we did our best to come up with what we think is an appropriate per se level, though many in the scientific community do not believe per se levels are always appropriate in these types of cases. While no system is perfect, the changes made in this bill help to make testing more accurate in determining actual impairment.

Additionally, throughout the Senate committee process, we made definitional changes to ensure that we are capturing different variants of THC (Delta 8, 9, 10, etc.). This is largely reflective of federal law definitions and what has been done in other legislation.

Members of the Committee, thank you again for allowing me to testify, I'd be happy to answer questions at this time.

¹ NHTSA Marijuana-Impaired Driving: Report to Congress, July 2017. For example, see pg. 13 to 14 "While alcohol concentration (BAC or BrAC) is an accurate measurement of alcohol impairment of driving, the presence of THC in the driver's body has not been shown to be a reliable measure of marijuana impairment of driving."
<https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>