Ohio General Assembly
House Criminal Justice Committee
Testimony on HB37
Judge Kenneth R. Spanagel (retired)
April 9, 2024

Chairperson Abrams, Vice Chair Williams, Ranking Member Brown, and the members of the Criminal Justice Committee. I am Judge Ken Spanagel, retired. I thank the Committee for this opportunity to testify on HB37. I retired in January after 36 years on the bench at the Parma Municipal Court, as one of the longest serving Municipal or County Court judges in the history of Ohio. I am in my 19th year, serving on the Criminal Sentencing Commission. I have taught through the Judicial College and other. Organizations for over 30 years on every aspect of OVI related law. In 1992, which is when our current system of per se violations and ALS was created, I taught every Municipal and County Court Judge in the state on that significant change. I taught extensively when SB17 from a previous session. created mandatory interlock and the jail/house arrest options. I have taught literally everything related to the IDAT and IDIAM Funds, and the various changes to those funds, which have included the ability to declare a surplus to apply the IDAT fund to offenses other than OVI offenses, to use the IDAT fund For IDIAM purposes should that fund drop to zero, and the ability to move funds as necessary from Municipal or County Courts to another in the same county. After 36 years, I have strong institutional knowledge of how our OVI laws have. evolved., I'm able to offer a unique perspective on HB37.as well as OVI law in general.

I have learned that in all things of life, I never complain, I observe. My testimony is observations. On HB37. I am aware that not all these observations can be agreed with by the members of the committee,

as one of the primary sponsors is on the committee. However please accept these observations for your considerations, as you discuss and decide how the bill will proceed.

I would first like to observe as to the required warning line at line. 3671, regarding a mandatory warning for future offenses of aggravated vehicular assault or homicide. Looking to the future, I can see a procedural difficulty on future offenses. From my defense perspective, there could be an issue as to whether that requisite warning was given to a defendant, after many years. It is easy to provide proof of prior convictions; however, would a future prosecutor have to find the record of an old OVI proceeding from the municipal court oral record that the requisite warning was given, or could that be a defense to a future homicide or assault? I have taught for years that good practice was to use the sentencing chart from retired Judge Weiler, at each plea hearing, to advise a defendant of all potential future penalties, and gave the defendant that chart. No one gets impaired with the intention to commit an aggravated vehicular homicide or assault. I would suggest that the committee that that portion as constructed could create future problems. for future offenses of that type.

Although anyone can express an opinion as to policy changes, policy changes are within the realm of the General Assembly and not the judiciary. Some of my comments will relate to policy changes, and others to functionality that exists already, to serve some of the purposes of the bill. I will speak as to line 3257, regarding a mandate for 180 days of alcohol monitoring prior to granting privileges. This would create a one-year hard time at a minimum with the 180-day alcohol monitoring. Current law already exists to address whether a person who fts the parameters of this to get privileges. Some of the proposed changes divest. Judges of judicial discretion, which we exercise every day in these cases. A third offender already has six months of mandatory hard time before any potential privileges, and would mandate an interlock, restricted plate, and mandatory treatment. A judge is not required to grant privileges after six months of hard time but can also structure. A sentencing plan to achieve the prevention of driving without protection for the state. The mandatory interlock which already exists, which would preclude an Offender from legally operating a motor vehicle. In the event of interlock violations, current law exists to lengthen a suspension

on an interlock violation. That also can include additional alcohol monitoring. The purpose of interlock is to prevent an offender from driving a vehicle, which is the primary protection for the public. Whether or not a defendant can complete 180 days cam, in addition to current hard time, is a proposal, that is more doomed to failure, as opposed to success.

Little known is that there already exists what is called habitual alcohol suspension through the BMV. It requires an alcohol treatment program and six months of doctor certified sobriety. I have had a few individuals who successfully completed that; however, I still recall from the past a case where a defendant completed treatment and was within the monitored sobriety through a doctor, but admitted to the doctor after five months that he had one beer. The doctor refused to sign off. A better analogy would be that every day for 6 months you put out a plate of fresh baked chocolate chip cookies, and you tell your children or grandchildren they are for church and do not eat any! I suspect that over those six months those children will have at least one cookie. With the ready availability of alcohol, it may be likely that these offenders may have a beer. This proposal would do nothing more than create an impediment to driving ability, which can already be addressed by the judge. With hard time, as well as the interlock and restricted plate requirements. The purpose of sentencing to protect the public is achieved. To create what would be an unnecessary roadblock does not serve the purposes of sentencing. I would query whether any responsible alcohol addiction treatment professional would concur that such a sobriety requirement, even. with successful treatment, would succeed. We also can, separate. From interlock violations to requiring drug testing, which can include detection of alcohol several days after consumption. That can be done through community control, and the judge could then address violations, with appropriate sentencing modification.

I understand that from a financial standpoint, it is neutral to the state; However, the proposed increase in mandatory minimum fines does not serve a legitimate public purpose. With all due respect to the sponsors, the 180 Day CAM requirement is a solution in search of a problem and is nothing more than a cash cow for the interlock and Cam businesses. The doubling of the fine goes exclusively to IDIAM Find to provide the necessary funds for the proposal. When including other allocations of fines and ALS

reinstatement fees, of a $750 fine, $500 would go to the IDIAM fund, with no increases in the various other fine allocations. I use both funds extensively because both make sense. Many times, I have used the house arrest and cam combo as part of a treatment process while the defendant is on house arrest and is engaging in mandatory treatment. It looks good that all the money is going to the indigent fund, to provide for indigent defendants. However, it should be acknowledged that many of the people paying for that increase are indigent defendants, who are paying for their own technology. The State ADAMHS Board Receives annual reports from all courts. on their receipts, disbursements, and balance. Since I have not looked at the most recent data, I cannot say how much has been expended, but I know that my court has always had a healthy surplus, and having declared the surplus we have for many, many years, used the. IDAT Funds for other offenses requiring treatment. To require a 180-day additional period of sobriety by technology does not serve a legitimate governmental purpose, but certainly enhances the business community. Current law already exists to enable judges to monitor defendant's alcohol or drugs by testing or interlock violation and can take any appropriate action that judge deems reasonable. The 180-day cam requirement. Is not only unnecessary, but more than likely would be self-defeating.

If you expand the look back to 20 years, I can see possible unintended consequences. Let's say that a person in their youth is in college and had issues with prior OVI offenses. 20 years later, after decades of responsible living, that person gets a third OVI offense, at his child's wedding. That person may face 180 days of cam monitoring to get a driving privilege. Although youth may not have been perfect, that person may be a Successful businessperson, maybe a good. friend of yours, or perhaps even a member of the General Assembly. Should that person be required to have an alcohol monitor for 180 days to get driving privileges, the public would still be protected by having an interlock and restricted plate to operate a motor vehicle.

The bill also requires mandatory interlock on ALS violations. This proposal has come up previously and has not passed in previous sessions. Although public safety is foremost, it is rare that a person commits a second offense with a first one pending. The Judge involved could certainly terminate privileges on a

second offense and has the ability to order interlock on limited privileges if that judge deems it appropriate. Discretionary Pretrial interlock is available and can be used. There are some people who, although stopped and charged, are not guilty of an OVI offense. Our system believes in innocent until proven guilty. The mandatory use of interlock, as opposed to our current discretionary process, creates a presumption of guilt until proven innocent. Current. law provides for the protection of the Public, as judges currently have that ability to use current law to protect the public. I will also note what could be a drafting flaw. At line 1554 it deviates from the previous language and refers to an Offender not consenting to interlock as opposed to the other proposed sections if a victim consents to an interlock.

Although it is a policy decision, an increase from 55 days house arrest on a third offense to 180 days significantly increases the mandatory minimum sentencing, Current law provides for this option from the Sentencing Judge. I have many times in the appropriate set of circumstances issued a mandatory minimum with additional house arrest depending upon the case. By way of example, on a second offense with a refusal I would give the mandatory 5 days jail, but the 18 days of house arrest might increase to 48 days or more, to be consistent with what would have been an OVI with a prior refusal. Judges already have the necessary tools to achieve the purposes of most of this bill. If someone has a problem with the sentencing practices of a judge, then that is a matter to discuss with the judge, whether it comes from the prosecutor, defense counsel, or legislators.

In closing, I would like to share a brief historical perspective. In 1992, when most of our current system was created, The Cleveland Plain Dealer quoted an unnamed House member that.

"I voted for this bill. I don't know what was in it, but I don't want to be on record as opposing an OVI bill." As this bill moves through your committee process and in the future, I hope that you discuss all of the testimony received as well as mine, and consider that there already exists many tools to achieve that which you wish to do, without what would be a burdensome financial increase with no benefit to the public or law enforcement, but would merely create a much greater fund for a business purpose that does not truly

relate to the purposes of sentencing. I thank the Committee for their time and stand ready to answer any questions you may have whether now or you may contact me at

Jdork1005@yahoo.com, or by phone at 4402632724. Thank You.

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