



**Nathan Manning**  
State Senator  
13<sup>th</sup> District

### **Senate Bill 26 Sponsor Testimony**

Vice Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee, thank you for allowing me the opportunity to provide sponsor testimony on Senate Bill 26. The crux of this bill is to update and align Ohio's marijuana OVI provisions with the scientific consensus regarding impairment and the presence of THC in a person's body.

Currently, Ohio tests only for the inactive metabolites from marijuana that remain detectable days or weeks after consumption, long after impairment ends. In addition, given that the scientific community has tried repeatedly to set a level of impairment for marijuana (like the .08 level of blood alcohol), it is clear that Ohio must move on from strict per se offenses for marijuana impairment and instead consider marijuana impairment on a case-by-case basis. To that end, this bill accomplishes the following:

- Removes the per se limits for marijuana and marijuana metabolites for purposes of determining an OVI violation.
- Replaces the per se limits 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, the primary psychoactive substance in marijuana, per milliliter of the person's urine.
  - Has a concentration of at least five nanograms of Delta-9 THC per milliliter of the person's blood.
- As there is no longer a per se level for marijuana, removes the automatic license suspension imposed for a per se offense.
- Makes clear that the Rules of Evidence apply to OVI cases just like every other traffic and criminal case.

The need for new policy is primarily due to the advent of medical marijuana.

Under current law, medical marijuana users are technically unable to legally drive in Ohio- 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. So, 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. When these levels were originally set, the attitude was that marijuana use was always illegal, so whether or not the person was impaired was irrelevant.

With legal use now available to a much wider array of Ohioans, that rationale is no longer applicable.

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.<sup>1</sup> The consensus of the scientific community is clear that there is no acceptable limit of marijuana that automatically makes a person impaired. Impairment must be considered on a case-by-case basis considering all of the available evidence, including whether or not there is any THC in the person's body.

This bill also avoids potential constitutional problems associated with punishing sober people for past drug use under United States Supreme Court case law.

This proposal seeks to remedy this problem by creating a marijuana threshold at which point the law would allow the jury to infer impairment simply by the evidence presented, but the defense would also be able to show evidence of sobriety at trial, leaving the determination of impairment to the jury as is proper.

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

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<sup>1</sup> 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>