



**STATEMENT OF THE OHIO STATE BAR ASSOCIATION  
IN SUPPORT OF SENATE BILL 26**

Before the Senate Judiciary Committee  
Senator Nathan Manning, Chair

Chairman Manning, Vice-Chair Reynolds, and Ranking Member Hicks-Hudson, I am honored to have the opportunity to appear before this Committee and provide testimony regarding the well-considered marijuana OVI legislation encompassed in Senate Bill 26. The Ohio State Bar Association (OSBA) supports this legislation.

This legislation is long overdue as our current law was not well thought out and makes criminals out of people engaged in completely legal activities, in that completely sober and responsible drivers are branded as impaired drivers based upon faulty, unsupported science. Moreover, this is not a secret; there is not a scientist, toxicologist or expert in this state or country that would assert that the scientific procedures and theories underlying our current law are designed to punish those who drive while under the influence of marijuana and free those who drive soberly and responsibly.

My name is Tim Huey, and I am an attorney here in Columbus, Ohio. I have been in practice over 35 years and during that time the nature of my practice and my professional activities have provided an opportunity to study and learn a great deal about OVI laws, not just in Ohio but throughout the country and also the science underlying drug and alcohol impairment.

Allow me to share a little about my background and how I have developed this expertise. My practice has focused on this area of law throughout my career. I authored a manual/textbook on Ohio OVI Law. I have served as President of the Ohio Association of Criminal Defense Lawyers, as a member of the Traffic Law Committee of the Ohio State Bar Association, and as President of the national DUI Defense Lawyers Association. As a result of this background, I have been honored to have been asked to give in excess of one hundred CLE presentation to judges, lawyers, and even members of this body on these OVI related topics, frequently related to marijuana use and driving. I also have experience working with the Legislature when I was honored to be appointed to serve as a member on the Criminal Justice Recodification Committee, as well as having testified before legislative committees related to OVI and traffic law matters.

It is with that expertise that I appear before you today in strong support of SB 26, which is a desperately needed revision to OVI laws related to marijuana impairment. I appear on behalf of not only the members of the DUI Defense Lawyers Association, but also on behalf of legions of lawyers and scientists who I have been in contact with, discussed these matters with, and in many instances, served on the faculty with at legal seminars across the nation – all of whom have

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expressed a strong opinion that something must urgently be done about Ohio's marijuana OVI laws. And when I say that SB 26 is desperately needed, I do not use that phrase lightly. What I want to address here today are the numerous issues with Ohio's current law and why our laws so desperately need to be fixed. In that regard, I have three main points to make. Firstly, the current OVI marijuana laws passed at the turn of the millennium are absolutely not supported by science in any way, shape, or form.

Secondly, any previous justifications that were made to ignore the science can no longer be supported, particularly in light of Ohio's enactment of medical marijuana and other states' legalization efforts. As I will discuss, this has resulted in a situation where individuals who legally ingest marijuana-related items, results in persons being legally unable to operate a vehicle in Ohio days, weeks, and months after the fact, even when there is zero evidence of driving impairment.

Thirdly, having frequently attended and spoken at national legal and scientific conferences, anytime Ohio's marijuana OVI law is discussed, it is viewed across the nation as an extremely poor law on the subject and makes Ohio look foolish.

## 1. The Science

First and most importantly, Ohio's marijuana per se law is completely unsupported by science. For ease of discussion, first I would like to take a moment to explain the science behind marijuana and THC.

When marijuana is consumed, the psychoactive ingredient that produces an impairing affect is called Delta-9 THC. The Delta-9 THC then quickly metabolizes, or breaks down, into what is called Hydroxy-THC. Hydroxy-THC has only minor psychoactive ability and only has a slight affect with the human body. Hydroxy-THC then further breaks down into *Carboxy*-THC. It is unanimously understood by every scientific expert on the subject that *Carboxy*-THC is completely inactive. It has no psychoactive properties whatsoever.

During my time across the nation teaching lawyers, scientists, and judges about this, I have found that a visual aid helps to emphasize this point as well as anything. As you see below, I use an active, burning fire to represent the psychoactive Delta-9 THC, the active ingredient in marijuana. I use hot embers to illustrate the Hydroxy THC. Finally, *Carboxy*-THC is like the cold ash that is left in the fireplace, long after any psychoactive component is extinguished.



THC  
 $\Delta^9$  tetrahydrocannabinol  
Main Isomer & principal  
psychoactive constituent

Hydroxy-THC  
a.k.a. 11-OH-THC  
Main metabolite of THC  
Minor psychoactive potential

Carboxy-THC  
a.k.a. THC-COOH  
a.k.a. 11-nor-9-Carboxy-THC  
Inactive metabolite of THC

In a rational world, what substance would you think makes the most sense to test for to determine the level of marijuana in a person's system. One would think the obvious answer is Delta-9 THC, the active ingredient in marijuana. However, the shocking answer is that Ohio only tests for the inactive Carboxy-THC, which we know can lay dormant in a person's body for weeks or even months after use.

Science already tells us that it is a fool's errand to try to find an amount of any drug that is automatically impairing in a person's system. It is an incontrovertible fact that drugs simply interact with a person different than alcohol, and that concentrations of drugs cannot define impairment, unlike with alcohol. In other words, there is no comparable number that equates to the .08 limit for alcohol, try as we might to find it. There are numerous members of the scientific and forensic community who feel very strongly about this issue. Although they could not be here today due to scheduling constraints, I look forward to this committee hearing about the extremely numerous scientific, peer-reviewed published studies which overwhelmingly make this very point.

So, in a world where per se laws simply don't work for drug impairment, Ohio foolishly compounds its problem by tying the per se threshold to an *inactive* drug, Carboxy-THC. It is completely unsupported by science and is causing a very real harm of convicting untold numbers of innocent people every year.

## 2. There Is NO Justification to Depart from Science

The point of our OVI law is to criminalize actual driving impairment. Nobody wants a person out driving if they are incapable of doing so due to impairment by any substance, including marijuana. But in today's world, where marijuana can be legally consumed in various scenarios, it makes no sense to continue to criminalize having inactive marijuana residue in a person's body when there is no other evidence of impairment.

Historically, I was very much a part of the discussions that eventually led a previous General Assembly to pass the current per se law based upon Carboxy THC. At the time, the discussion centered around the idea that since marijuana was already illegal, there was no reason that a person should be driving with any residual portion of the drug in the person's system. In effect, the result of current law is to turn nearly every unlawful possession case into a potential OVI case and make Ohio an effective "zero tolerance" state. While that was a very poor justification, even then, to completely ignore the science, that justification does not begin to hold scrutiny in today's world. Ohio has now joined numerous other states in permitting medical marijuana use for patients who need the relief. Ohioans can legally travel and consume marijuana in other states. However, this completely legal behavior has drastic consequences under the current law – no medical marijuana patient in Ohio can legally drive at any time, ever, in Ohio. Even though they are not impaired or under the influence of marijuana at the time of the driving. This is untenable and must change.

### 3. Ohio's Reputation

Finally, Ohio's Marijuana Per Se OVI Law is viewed as so lacking in scientific support that the law is frequently made subject of ridicule.

I can literally relate to this committee that across the nations, in both legal and forensic science conferences, Ohio's current marijuana per se laws have been discussed, and the rationale underlying these laws is rejected by all reputable scientists across the spectrum, particularly including government/state scientists.

When the scientific basis (or lack thereof) for a law is so universally condemned, that is a major sign that the law needs to change. Criminalizing a presence of an inactive substance in a person's body, and conclusively determining a person is impaired based on nothing more than that result, is truly absurd. Thus, it is high time we fix this flawed law, or Ohio will continue to be a laughingstock when this issue is discussed.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Huey". The signature is stylized with a long horizontal line extending to the right.

Tim Huey, Attorney at Law on behalf of the OSBA.