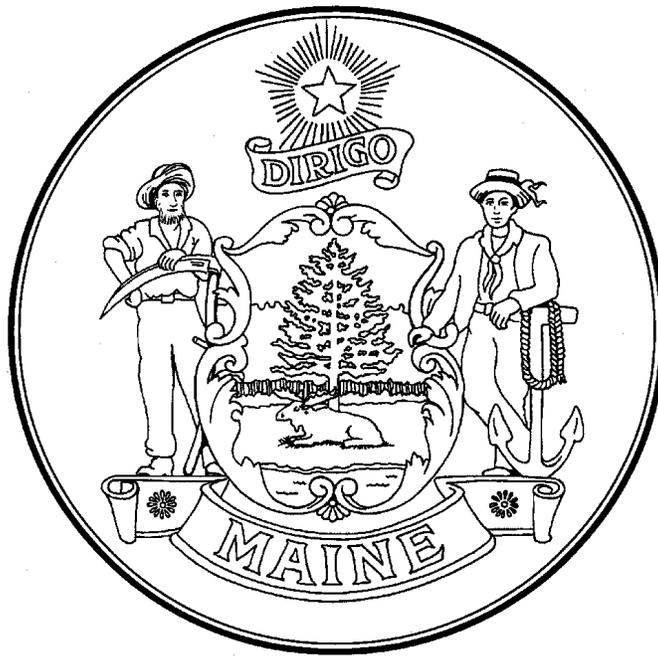


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Senate Legislative Record
One Hundred and Twenty-Seventh Legislature
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SENATE REPORTS - from the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Strengthen the Laws on Operating a Motor Vehicle under the Influence of Intoxicants"

S.P. 661 L.D. 1628

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-420)** (5 members)

Tabled - March 23, 2016, by Senator **ROSEN** of Hancock

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 23, 2016, Reports **READ**.)

Senator **ROSEN** of Hancock moved the Senate **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report.

On motion by Senator **ALFOND** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Brakey.

Senator **BRAKEY:** Thank you, Mr. President. I rise today in opposition to the passage of the Minority Ought to Pass Report for one simple reason; the measures contained in this bill are not grounded in science. This allows law enforcement to draw blood from a driver to determine THC levels in the individual's system and enter it into evidence for charging an individual with DUI. There are many problems with this. The primary flaw behind this proposal is the fact that THC in a person's blood is not a reliable indicator of impairment. The threshold this bill sets is 5 nanograms of THC in the blood, but that threshold means little from person to person. On one side of this threshold this law would cause us to incriminate individuals who are not impaired and a person who uses cannabis regularly for treatment of serious medical conditions, as is allowed under Maine State law, can have a THC blood level significantly above 5 nanograms at all times and yet not experience any impairing effects as a result of that THC. In addition to this, THC can remain in an individual's bloodstream for weeks, triggering a positive result in a blood test after many days of abstinence, while not causing any impairment to the individual. Imagine a completely legal medical cannabis patient taking their medication days ago before being pulled over but being charged with DUI because a blood test came up positive. Imagine if we treated alcohol this way. Imagine if you had a few drinks of alcohol a week before driving a vehicle. Obviously, you would not be impaired from drinks a week prior but that didn't matter because the law says you should be charged with DUI. Would we stand for that as reasonable policy? Of course we wouldn't. Also on the other side of this threshold, and I think this is where maybe some advocates for this policy may really want to stop and consider, a recreational marijuana user who doesn't consume marijuana regularly can easily be impaired by less than 5 nanograms of THC in their system. In Colorado, for example, hundreds of cases are being thrown out due to the fact that a driver was showing signs of impairment but tested positive for less than 5 nanograms of THC. Someone who

is impaired, who shouldn't be behind the wheel of a vehicle, gets off because they are underneath this artificial threshold. The end result of this policy is we'll be punishing drivers who are not impaired while giving those who are significantly impaired behind the wheel legal cover because they were under the arbitrary 5 nanograms threshold. I think there are better methods to determine impairment and enforce against DUI than this. In short, this policy makes little sense. Not only is it a violation of civil liberties to take an individual's blood, it is a violation that does not make anyone safer on the roads. It is the illusion of safety, but not safety. It is wishful thinking, but not science. I encourage the Chamber to reject the motion. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Gerzofsky.

Senator **GERZOFSKY:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I believe in the committee process pretty well and the committee looked at this bill, worked it a lot. It's just not ready for prime time. This isn't the right bill for the right time. None of us what to see anybody driving impaired on anything. I don't care if you're drinking too much coffee. If you're impaired you shouldn't be driving. You have to have some sort of a standard, some sort of a measure that's accurate and can help law enforcement not hinder them. Right now we don't have any accurate testing. Right now we're going to be drawing blood out of people, which I have a problem with, to take a test that nobody can say is accurate. Nobody can say how effective it's going to be. Mr. President, I move Ought Not to Pass on this motion and maybe we can get onto another motion. Thank you very much, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Gratwick.

Senator **GRATWICK:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I, too, rise in opposition to the current motion, just agreeing with my two prior colleagues. The assays that are now used for over 150 metabolites of cannabinoids are not accurate and are not standardized. There are at least seven different laboratories that have come up with assays that I know about, that I've seen recently. There different laboratories and different assays. There is gas chromatography, there's high pressure liquid chromatography. Many different ways to do this, but the long-short of it is that numbers are not accurate and I think putting a law in effect that is based on inaccurate science would be inappropriate. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Cyrway.

Senator **CYRWAY:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I just wanted to touch a little bit about OUIs in general. You don't just test for alcohol, you don't just test for THC, which is delta-9 tetrahydrocannabinol. This basically is a test that comes after the fact when an officer pulls someone over. They have to do a sobriety test because they had a 51% chance for probable cause when they pulled them over. First they have to have some evidence that the person was under the influence of something. If they cross the line twice or maybe they're driving at night with no headlights on, or maybe they're all over the road, maybe they almost hit another vehicle. There is

some reason why they have to pull someone over. Secondly, you have to make sure that when you go and do a sobriety test you're going to have some evidence of maybe just how the person is acting, how they talk, those types of things. You kind of gain evidence as you go. Then you get them out of the car if you feel that they are possibly under the influence and do a sobriety test. You have to do three different tests. Once you do the sobriety test, and you feel that they are at some point under the influence of a drug of some sort or alcohol, than you're going to probably end up taking them to do an alcohol breathalyzer test. If they don't have any alcohol, it doesn't show there's any alcohol or maybe very little, and the person is showing signs of being inebriated, than you are going to say you're going to have to do some other tests. There could be other circumstances. There could a circumstance of somebody having diabetes, diabetic type situation, where their sugar levels could be off and cause this. You could have a drug that they are prescribed on and you can always ask them if they have any prescription drugs and whatever they've been taking or whatever. Then it would go to possibly the test that would have to show the THC level or the drug that they were taking. Most of the time blood tests are not taken unless there's an accident. If there's an injury, we can't do a breathalyzer test on them. We have to have a blood test if there are any injuries. It takes steps to get to this point. It's not like we take a test and say, "Oh, you've got too much THC so you're under the influence," and then do the sobriety test. It doesn't work that way. I just wanted to make sure, Mr. President, that we all knew how it worked. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Diamond.

Senator **DIAMOND:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I would ask you to support the Minority Ought to Pass Report. I do that for a couple of reasons. First off, operating under the influence means operating under any influence, whether it's prescribed medication, whether it's alcohol, whether it's marijuana. No matter what it is, the OUI law is just that, operating under the influence. The sad part of these OUI accidents and tragedies are that victims are all innocent. Someone comes over the top of a hill, they're in the middle of the road, they hit somebody who had no idea what was going to happen to them, and it's all innocent victims. I think we need to understand that OUI is a serious, serious offense. I would also say to you that we've been fighting OUIs since back in the 80s. We've made some tremendous advances in this area. We know that we've made advances because the numbers are dropping, because we are very stringent about our penalties. We also know that marijuana can, in fact, influence one. One can become intoxicated by having too much, whatever that much is, of marijuana. For us to say, and to ignore, that that could be a problem and turn our backs on this problem doesn't make sense. I would ask you to remember that all operating under the influence, for whatever reason, we need to hit head on and I would say to you that I would like to also remind you that this whole purpose of discussing the marijuana levels, the nanograms, and all of that, the bottom line is someone can be under the influence with marijuana and they can cause a tragedy to innocent victims and I would ask you to support the Minority. We need to get this started. We can't turn our backs on people who are on the roads driving under the influence. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Miramant.

Senator **MIRAMANT:** Thank you, Mr. President. Men and women of the Senate, I respect all the colleagues who have spoken and there is no excuse for driving under the influence of something that is distracting, that is causing a problem with driving that affects other people. Nobody's arguing for that. It seems that there is no state that has a set level because, as some of my colleagues talked about, it doesn't match the standards for science. It isn't a party line thing to have a question about this bill because we want the science to be accurate. The committee that was tasked with putting together this number really didn't have agreement. They just felt like they had to report something out. There was a lot of disagreement about this right at the base level. Colorado's been working at this longer and still hasn't come up with a solution because this is not science. Everything that was mentioned about the effects of operating under the influence; someone could defend that they weren't under the influence for less than the 5 nanograms, and they could be wrong. Someone could be tested later, much later than their using the product, whether it was medical marijuana or legal marijuana if they were in another state, and it could come back positive when they're not impaired. We've determined a level with alcohol, the .08. At first that seemed draconian but there was plenty of proof. We had independent testing of that number, people impaired to that number and higher and lesser numbers. That seemed to be something we could agree upon. This is nothing that we can agree upon. It's just a random number pulled out of the air. Let's make Maine the first to pick the random non-science number because operating under the influence and hurting innocent people is horrible thing, if anybody supports that I'd like to talk to them, but it's not enough to make up something as a number and throw it out there without really working this properly and working with other states to do it. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to the pending motion. I think every one of us is really concerned about drivers who are impaired. I'm amazed that we're at this point with the proposal before us, however, with 5 nanograms. That's 5 billion of a gram. Science doesn't tell us that that means someone is impaired. No other states are here. One state's considering a study, research, not just people sitting around the table talking about it, to try and determine how they can establish impairment for marijuana. We haven't done that and what this report contains doesn't represent that sort of information. As a Body, we failed to pass something that research shows is far more impairing than being drunk, texting while driving, and yet here we are saying that we want to consider someone impaired for a level of substance in their blood that is not proven to mean they are impaired. There is no reliability to that figure. I think we have to take a moment to realize that it really is about impairment and whether there is certainty in that because people take prescription drugs for pain all the time. Can one say that they're under the influence of that or not? It depends entirely on the level and we do not criminalize someone having a prescription pain pill, taking the prescribed

amounts, and yet here we are about to say that someone, whether for medicinal reasons or not, legally taking a substance that in an amount that we have not established means they're impaired, should be treated under the laws impaired because of that. I'm sorry. I very much would love us to do something about impaired drivers. I just don't believe that we should be putting people in jail or charging them with criminal activity who are, in fact, not impaired. I think if this state is serious about dealing with this matter we should be looking to fund some research like other states are considering today and get to the bottom of what the right way is to do this. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Cyrway.

Senator **CYRWAY:** Thank you, Mr. President. Ladies and gentlemen of the Senate, when it comes to prescription drugs, illegal drugs, it doesn't matter. If you're impaired, you're impaired. If you get into an accident and you was under the influence and you caused the accident and you was impaired, there's evidence of impairment, whatever it is, we have to do our job to take care of the situation, to protect the families that get hurt from these serious situations. I've had to go to these situations where serious accidents have happened, where people have lost their lives or they've lost limbs or lost their children, and we have to be responsible when it comes to OUIs. OUIs are not just an easy thing of saying, "Okay, the person showed signs of being all over the road." There might be other factors there. Maybe there were signs of being across the line or whatever, but then they cause a serious accident and then we may have to go to other steps. This is just one of the steps. It happens even for prescription drugs. Then we let the courts decide if that was an OUI, a legal OUI, or not. We really need pieces to put together. This is just one of the pieces. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Johnson.

Senator **JOHNSON:** Thank you, Mr. President. I feel compelled to respond to that. The difference is, Mr. President, that when we get a prescription pain killer, or other drugs for that matter, those are pretty well researched. There are advisories on the bottle that tell you if the dosage that you are prescribed means that you should not be driving. We have that information. We don't have that information for 5 nanograms of THC in the blood. We should not be making this a crime before we know what impairment means. Thank you, Mr. President.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Gerzofsky.

Senator **GERZOFSKY:** Thank you, Mr. President. I would like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **GERZOFSKY:** Thank you, Mr. President. Simple question, if you're driving erratic down the road, you haven't had too much coffee, you haven't had any marijuana, you haven't had too much to drink, is there still a charge that you could be pulled over and cited?

THE PRESIDENT: The Senator from Cumberland, Senator Gerzofsky poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Diamond.

Senator **DIAMOND:** Thank you, Mr. President. Ladies and gentlemen of the Senate, the answer to that, of course, obviously is yes. Whether you are under the influence or not, if you're driving distracted or if you're driving in a manner that is not safe, of course you can be pulled over. I would take this opportunity, Mr. President, to say that the good Senator from Lincoln, Senator Johnson, made some good points. I would just point out that whether the prescription bottle, of pain killers, says you should or should not drive is irrelevant. If you are influenced by that medication you are OUI. Simple as that. We do have the measurement; we have the police officer on the road. I'd also say getting to a level takes time. Don't forget, we started with OUI at .1. Then we backed it back to .08. Why? Because we learned more about it. We didn't avoid putting in a measurement because we weren't at the right point at a specific time. Again, I would urge you to support the Minority Ought to Pass. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Hancock, Senator Rosen to Accept the Minority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#567)

YEAS: Senators: BAKER, BREEN, BURNS, COLLINS, CUSHING, CYRWAY, DAVIS, DIAMOND, EDGECOMB, HAMPER, HILL, LANGLEY, LIBBY, MCCORMICK, ROSEN, SAVIELLO, VOLK, WHITTEMORE, THE PRESIDENT - MICHAEL D. THIBODEAU

NAYS: Senators: ALFOND, BRAKEY, DILL, GERZOFSKY, GRATWICK, HASKELL, JOHNSON, KATZ, MASON, MILLETT, MIRAMANT, PATRICK, VALENTINO, WILLETTE

EXCUSED: Senator: WOODSOME

19 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **ROSEN** of Hancock to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-420) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Ordered sent down forthwith for concurrence.