David Sinclair
1392 Washington Street
Bath, ME 04530
Phone: (207) 807-1610
David.Sinclair@legislature.maine.gov

HOUSE OF REPRESENTATIVES
2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: MAINE RELAY 711

March 7, 2024

Testimony of Representative David Sinclair presenting
LD 2247, An Act to Clarify the Minimum Sentencing Standards for a Violation of Operating Under the Influence
Before the Joint Standing Committee on Criminal Justice and Public Safety

Senator Beebe-Center, Representative Salisbury and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, good afternoon. My name is David Sinclair, and I am proud to represent House District 50, which is the City of Bath. I am here to present **LD 2247, An Act to Clarify the Minimum Sentencing Standards for a Violation of Operating Under the Influence**.

A fundamental tenet of our criminal justice system is the principle that a single criminal statute ought to apply and be applied in the same way to each case and each defendant charged under the statute, regardless of which court in which county and in front of which Judge or Justice the matter is heard.

LD 2247 is a concise, bipartisan measure targeted at clarifying the proof standard in 29-A MRSA §2411 with regard to establishing a "High Test OUI" versus a "Simple OUI". The proof standard in this statute is crucial because, unlike a "Simple OUI", a conviction of "High Test OUI" involves a mandatory minimum period of incarceration. The clarification of statute is needed because of an ambiguity caused by differing turns of phrase used in the "Offense" and "Penalties" sections of the statute (29-A MRSA §2411 (1-A) (2) "Operates a motor vehicle [w]hile having an alcohol level of .08 grams or more [...]", contrasted with 29-A MRSA §2411 (5)(A0(3)(i) "Was tested as having an alcohol level of 0.15 grams or more [...]"). The differing phrases leave (at least) two reasonable, but *different*, interpretations, leading to defendants before some courts/jurists being allowed to introduce evidence excluded as irrelevant by other jurists *under the same statute*. (For example, some trial courts are admitting evidence of standard testing error, potential user error and test result reliability generally, whereas other trial courts exclude *the same categories of evidence in the same circumstances under the same statute*, reasoning that the phrase "Was tested as having[. . .]" means precisely (and only) what those words directly convey, *i.e.,* that the test result was at or above a 0.15 level, *regardless of any evidence suggesting test result unreliability.*

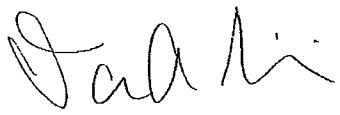
For reference, though each state is different, some other states across the U.S. do not admit Intoxilizer test results as evidence at all, or have strict requirements for the Intoxilizer to ensure it is the newest most accurate technology, recognizing the real possibility for error. The Maine State Chemist has acknowledged that the margin of error for Intoxilizer tests is .01 grams, which, if the evidence was admitted, can be the difference between a "High Test OUI" and a "Simple OUI" conviction.

When a .15 test result is obtained, if that standard error is applied, the high test OUI cannot be proven beyond a reasonable doubt. In courts where the language "was tested as having" is strictly applied, the standard testing error is deemed irrelevant because in those jurists' minds all that is required is that the test result reads as reflecting a particular blood alcohol concentration (BAC) rather than accurately measures a specific BAC.

To resolve the ambiguity, and ensure that a uniform approach is taken in courts statewide with respect to what need be proven to establish a "High Test OUI" (with mandatory incarceration), this bill strikes the "Was tested as having an alcohol level of [...]" language from the "Penalties" section, replacing it with the "while having an alcohol level of [...]" phrasing from the "Offense" section of the same statute. This revision would clarify that the intent of the statute is that evidence related to the reliability of the test result is relevant in *any* OUI prosecution, including in prosecution for "High Test OUI". The revision would unify courts under the predominant trial court interpretation of 29-A MRSA §2411 (5)(A0(3)(i), and ensure that this single statute is applied consistently throughout the state.

A copy of the entirety of 29-A MRSA §2411 is included with this testimony, with the pertinent portions of the statute highlighted, as well as a copy of the Vanassche decision which I believe may be useful as it is cited in the Department of Public Safety's testimony both for ease of reference. I thank the Committee for its careful consideration of this bill, and am happy to answer any questions the members may have.

Respectfully,



David A. Sinclair
Representative, House District 50

§2411. Criminal OUI

1. Offense.

[PL 2003, c. 452, Pt. Q, §77 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

1-A. Offense. A person commits OUI if that person:

A. Operates a motor vehicle:

(1) While under the influence of intoxicants; or

(2) While having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath; [PL 2009, c. 447, §37 (AMD).]

B. Violates paragraph A (../29-A/title29-Asec2411.html) and:

(1) Has one previous OUI offense within a 10-year period;

(2) Has 2 previous OUI offenses within a 10-year period; or

(3) Has 3 or more previous OUI offenses within a 10-year period; [PL 2003, c. 452, Pt. Q, §78 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

C. Violates paragraph A (../29-A/title29-Asec2411.html), failed to submit to a test at the request of a law enforcement officer and:

(1) Has no previous OUI offenses within a 10-year period;

(2) Has one previous OUI offense within a 10-year period;

(3) Has 2 previous OUI offenses within a 10-year period; or

(4) Has 3 previous OUI offenses within a 10-year period; or [PL 2003, c. 452, Pt. Q, §78 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

D. Violates paragraph A (../29-A/title29-Asec2411.html), B (../29-A/title29-Asec2411.html) or C (../29-A/title29-Asec2411.html) and:

(1) In fact causes serious bodily injury as defined in Title 17-A, section 2, subsection 23 (../17-A/title17-Asec2.html) to another person;

(1-A) In fact causes the death of another person; or

(2) Has either a prior conviction for a Class B or Class C crime under this section or former Title 29, section 1312-B (../29/title29sec1312-B.html) or a prior criminal homicide conviction involving or resulting from the operation of a motor vehicle while under the influence of intoxicating liquor or drugs or with an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath. For purposes of this subparagraph, the 10-year limitation specified in section 2402 (../29-A/title29-Asec2402.html) and Title 17-A, section 9-A, subsection 3 (../17-A/title17-Asec9-A.html) does not apply to the prior criminal homicide conviction or to a prior conviction for a Class B or Class C crime under this section or former Title 29, section 1312-B. The convictions may have occurred at any time. [RR 2015, c. 2, §18 (COR).]

[RR 2015, c. 2, §18 (COR).]

2. Pleading and proof. The alternatives outlined in subsection 1-A, paragraph A (../29-A/title29-Asec2411.html) may be pleaded in the alternative. The State is not required to elect between the alternatives prior to submission to the fact finder. In a prosecution under subsection 1-A, paragraph D (../29-A/title29-Asec2411.html), the State need not prove that the defendant's condition of being under the influence of intoxicants or having an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath caused the serious bodily injury or death alleged. The State must prove only that the defendant's operation caused the serious bodily injury or death. The court shall apply Title 17-A, section 33 (../17-A/title17-Asec33.html) in assessing any causation under this section.

[PL 2009, c. 447, §39 (AMD).]

3. Investigation. After a person has been charged with OUI, the officer shall investigate whether the charged person has prior OUI offenses. As part of the investigation, the officer shall make necessary inquiries of the Secretary of State.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

4. Arrest. A law enforcement officer may arrest, without a warrant, a person the officer has probable cause to believe has operated a motor vehicle while under the influence of intoxicants if the arrest occurs within a period following the offense reasonably likely to result in the obtaining of probative evidence of an alcohol level or the presence of a drug or drug metabolite.

[PL 2013, c. 459, §2 (AMD).]

5. Penalties. Except as otherwise provided in this section and section 2508 (../29-A/title29-Asec2508.html), violation of this section is a Class D crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A (../17-A/title17-Asec34.html). The following minimum penalties apply and may not be suspended:

A. For a person having no previous OUI offenses within a 10-year period:

(1) A fine of not less than $500, except that if the person failed to submit to a test, a fine of not less than $600;

(2) A court-ordered suspension of a driver's license for a period of 150 days; and

(3) A period of incarceration as follows:

(a) Not less than 48 hours when the person:

(i) Was tested as having an alcohol level of 0.15 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath;

(ii) Was exceeding the speed limit by 30 miles per hour or more;

(iii) Eluded or attempted to elude an officer; or

(iv) Was operating with a passenger under 21 years of age; and

(b) Not less than 96 hours when the person failed to submit to a test at the request of a law enforcement officer; [PL 2013, c. 389, §1 (AMD); PL 2013, c. 389, §7 (AFF).]

B. For a person having one previous OUI offense within a 10-year period:

(1) A fine of not less than $700, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than $900;

(2) A period of incarceration of not less than 7 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 12 days;

(3) A court-ordered suspension of a driver's license for a period of 3 years; and

(4) In accordance with section 2416 (../29-A/title29-Asec2416.html), a court-ordered suspension of the person's right to register a motor vehicle; [PL 2007, c. 531, §2 (AMD); PL 2007, c. 531, §10 (AFF).]

C. For a person having 2 previous OUI offenses within a 10-year period, which is a Class C crime:

(1) A fine of not less than $1,100, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than $1,400;

(2) A period of incarceration of not less than 30 days, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 40 days;

(3) A court-ordered suspension of a driver's license for a period of 6 years; and

(4) In accordance with section 2416 (../29-A/title29-Asec2416.html), a court-ordered suspension of the person's right to register a motor vehicle; [PL 2007, c. 531, §2 (AMD); PL 2007, c. 531, §10 (AFF).]

D. For a person having 3 or more previous OUI offenses within a 10-year period, which is a Class C crime:

(1) A fine of not less than $2,100, except that if the person failed to submit to a test at the request of a law enforcement officer, a fine of not less than $2,500;

(2) A period of incarceration of not less than 6 months, except that if the person failed to submit to a test at the request of a law enforcement officer, a period of incarceration of not less than 6 months and 20 days;

(3) A court-ordered suspension of a driver's license for a period of 8 years; and

(4) In accordance with section 2416 (../29-A/title29-Asec2416.html), a court-ordered suspension of the person's right to register a motor vehicle; [PL 2013, c. 187, §1 (AMD).]

D-1. A violation of subsection 1-A, paragraph D (../29-A/title29-Asec2411.html), subparagraph (1) is a Class C crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A (../17-A/title17-Asec34.html). The sentence must include a period of incarceration of not less than 6 months, a fine of not less than $2,100 and a court-ordered suspension of a driver's license for a period of 6 years. These penalties may not be suspended; [PL 2005, c. 606, Pt. A, §2 (AMD).]

D-2. A violation of subsection 1-A, paragraph D (../29-A/title29-Asec2411.html), subparagraph (1-A) or (2) is a Class B crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A (../17-A/title17-Asec34.html). The sentence must include a period of incarceration of not less than 6 months, a fine of not less than $2,100 and a court-ordered suspension of a driver's license for a period of 10 years. These penalties may not be suspended; [PL 2005, c. 606, Pt. A, §3 (NEW).]

E. If a law enforcement officer failed to provide the warnings required by section 2521, subsection 3 (../29-A/title29-Asec2521.html), the increase in minimum penalties required because of a refusal to submit to a test is not mandatory; [PL 1997, c. 737, §9 (AMD).]

F. For a person sentenced under paragraph B (../29-A/title29-Asec2411.html), C (../29-A/title29-Asec2411.html) or D (../29-A/title29-Asec2411.html), the court shall order the defendant to participate in the alcohol and other drug program of the Department of Health and Human Services. The court may waive the program pursuant to Title 5, section 20073-B (../5/title5sec20073-B.html), if the court finds that the defendant has completed an alcohol or other drug treatment program subsequent to the date of the offense; and [PL 2011, c. 657, Pt. AA, §78 (AMD).]

G. The court shall order an additional period of license suspension of 275 days for a person sentenced under paragraph A (../29-A/title29-Asec2411.html), B (../29-A/title29-Asec2411.html), C (../29-A/title29-Asec2411.html), D (../29-A/title29-Asec2411.html), D-1 (../29-A/title29-Asec2411.html) or D-2 (../29-A/title29-Asec2411.html) if the person was operating the motor vehicle at the time of the offense with a passenger under 21 years of age. [PL 2005, c. 606, Pt. A, §4 (AMD).]

[PL 2013, c. 187, §1 (AMD); PL 2013, c. 389, §1 (AMD); PL 2013, c. 389, §7 (AFF).]

5-A. Notice and custody. The court shall give notice of a license suspension and shall take physical custody of the driver's license, except when the defendant demonstrates that the defendant's license was previously restored by the Secretary of State following an administrative suspension under section 2453 (../29-A/title29-Asec2453.html) or 2453-A (../29-A/title29-Asec2453-A.html) for operating under the influence based on the same facts and circumstances giving rise to the court-ordered suspension.

[PL 2017, c. 99, §1 (AMD).]

5-B. Additional period of suspension. The Secretary of State may impose an additional period of suspension under section 2451, subsection 3 (../29-A/title29-Asec2451.html) or may extend a period of suspension until satisfaction of any conditions imposed pursuant to chapter 23, subchapter III, article 4 (../29-A/title29-Ach23sec0.html).

[PL 1995, c. 368, Pt. AAA, §9 (NEW).]

6. Aggravated punishment category.

[PL 2003, c. 452, Pt. Q, §83 (RP); PL 2003, c. 452, Pt. X, §2 (AFF).]

7. Surcharge. A surcharge must be charged for a conviction under this section. The surcharge is $30, except that, when the person operated or attempted to operate a motor vehicle while under the influence of drugs or a combination of liquor and drugs, the surcharge is $125. For the purposes of collection procedures, the surcharge is considered a fine. Notwithstanding section 2602 (../29-A/title29-Asec2602.html), this surcharge accrues to the Highway Fund for the purpose of covering the costs associated with the administration and analysis of alcohol level tests.

[PL 2009, c. 447, §42 (AMD).]

8. Juvenile crime. References in this Title to this section include the juvenile crime in Title 15, section 3103, subsection 1, paragraph F (../15/title15sec3103.html), and the disposition, including a suspension, for that juvenile crime in Title 15, section 3314, subsection 3 (../15/title15sec3314.html), except as otherwise provided or except where the context clearly requires otherwise.

[PL 1993, c. 683, Pt. A, §2 (NEW); PL 1993, c. 683, Pt. B, §5 (AFF).]

SECTION HISTORY
PL 1993, c. 683, §A2 (NEW). PL 1993, c. 683, §B5 (AFF). PL 1995, c. 65, §A115 (AMD). PL 1995, c. 65, §§A153,C15 (AFF). PL 1995, c. 368, §§AAA7-10 (AMD). PL 1995, c. 645, §B18 (AMD). PL 1997, c. 737, §§8-11 (AMD). PL 1999, c. 703, §1 (AMD). PL 2001, c. 332, §1 (AMD). PL 2001, c. 511, §3 (AMD). PL 2003, c. 452, §§Q77-83 (AMD). PL 2003, c. 452, §X2 (AFF). PL 2003, c. 633, §8 (AMD). PL 2003, c. 673, §§TT3,4 (AMD). PL 2003, c. 689, §B6 (REV). PL 2005, c. 397, §§B7,8 (AFF). PL 2005, c. 438, §1 (AMD). PL 2005, c. 606, §§A1-4 (AMD). PL 2007, c. 531, §2 (AMD). PL 2007, c. 531, §10 (AFF). PL 2009, c. 447, §§37-42 (AMD). PL 2011, c. 81, §1 (AMD). PL 2011, c. 159, §1 (AMD). PL 2011, c. 657, Pt. AA, §78 (AMD). PL 2013, c. 187, §1 (AMD). PL 2013, c. 389, §1 (AMD). PL 2013, c. 389, §7 (AFF). PL 2013, c. 459, §2 (AMD). PL 2013, c. 604, §2 (AMD). RR 2015, c. 2, §18 (COR). PL 2017, c. 99, §1 (AMD).

Opinion

Argued November 2, 1989.

Decided November 29, 1989.

Appeal from the Superior Court, Cumberland County, Brennan, J.

Paul Aranson, Dist. Atty., Laurence Gardner, Deputy Dist. Atty., Elizabeth Stout, Law Student (orally), Portland, for the State.

Neal L. Weinstein (orally), Old Orchard Beach, for defendant.

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD, HORNBY and COLLINS, JJ.

COLLINS, Justice.

The Defendant, Paul A. Vanassche appeals from a conviction by the Superior Court (Cumberland County, *Brennan, J.*) for operating a motor vehicle under the influence of intoxicating liquor, in violation of 29 M.R.S.A. § 1312-B (Pamph 1988). He was sentenced to forty-eight hours in jail and a $350 fine. We affirm the conviction.

I.

Before midnight on October 21, 1988, Vanassche was arrested in South Portland and charged with Operating Under the Influence of Intoxicating Liquors. Vanassche had been observed driving erratically, and upon being stopped exhibited many signs of intoxication. Before arresting Vanassche, the arresting officer had Vanassche attempt three field sobriety tests, which the Defendant was unable to complete to the officer's satisfaction. At the South Portland police station, Vanassche submitted to a Mobat Sober Meter blood-alcohol breath analysis test, which showed that he had a blood-alcohol level of 0.17% at the time that the test was administered.

The defendant's trial was scheduled as one of three specially assigned cases for Monday, April 24, 1989. All three specially assigned cases involved out-of-state defendants, and all were expected to be tried by juries. Vanassche's trial involved a misdemeanor charge, whereas the two other cases were both felony cases, one of which involved a child sex abuse charge. On Monday, the day set for trial, Vanassche decided to waive his right to a jury trial in order to eliminate the need for time consuming jury selection and thus to facilitate the speedy trial of his case. When the Superior Court learned that Vanassche intended to waive the jury trial, it decided to try the two felony jury trials first, and xcheduled the *Vanassche* trial for Wednesday morning. On Tuesday, April 25, the State, relying upon information that Vanassche would not be tried until Wednesday morning, excused the State's witnesses until Wednesday.

Unexpectedly, however, by 3:10 Tuesday, April 25, one of the cases set for trial before the defendant's had been submitted to the jury and the other had been resolved without a trial. The Superior Court could have held Vanassche's trial on Tuesday afternoon, but because the State's witnesses had been excused, the Superior Court continued the case until Wednesday morning as previously scheduled. Vanassche moved to dismiss on the grounds that this continuance caused undue delay. The Superior Court, which had not been previously advised that trying the case on Wednesday would pose a problem for Vanassche, denied his motion.

At the conclusion of the trial, held on Wednesday, April 26, 1989, the Superior Court convicted Vanassche of Operating Under the Influence of Intoxicating Liquor, Class D, and sentenced him to forty-eight hours in the Cumberland County Jail and a $350 fine. Vanassche appeals the conviction and the sentence to the Law Court.

II.

The first argument that Vanassche presents upon appeal is that the Superior Court committed reversible error by failing to grant Vanassche's motion to dismiss for undue delay. We find no merit to this argument. The order of trial of multiple criminal cases ordinarily rests within the sound discretion of the trial court. *See Lumsden v. State,* 267 A.2d 649, 650 (Me. 1970). Moreover, in a criminal prosecution the granting of a motion for continuance is also within the trial justice's sound discretion. *State v. Greenwald,* 454 A.2d 827, 829 (Me. 1982). The generally applicable criteria for review of the granting of a continuance at a criminal trial are whether the ruling justice abused his discretion and whether the party asserting the abuse has shown "palpable error" or "apparent injustice." *State v. Heald,* 393 A.2d 537, 543 (Me. 1978); *State v. Simmonds,* 313 A.2d 120, 122 (Me. 1973).

The Superior Court did not abuse its discretion by placing the *Vanassche* trial last upon its special docket and continuing commencement of the trial until Wednesday morning. With three criminal cases scheduled on its specially assigned docket for the same Monday, all of which concerned out of state defendants, the Superior Court's decision to give the only nonjury, misdemeanor case the lowest priority was proper. The court also acted prudently by scheduling a specific time at which it anticipated it would first be free to try that case, specifically Wednesday morning, April 26. After the State had reasonably relied upon the court's schedule, and excused the State's witnesses until Wednesday, the Superior Court acted reasonably by choosing not to dismiss the State's case even though the absence of these witnesses turned out to be the only factor that prevented commencement of the trial on Tuesday afternoon. Finally, because Vanassche would have had to wait until Wednesday to try his case had there not been the unexpected resolution of one of the cases scheduled before *Vanassche,* the Superior Court's decision to continue rather than to dismiss the case was reasonable.

Second, Vanassche alleges that the State failed to comply in a timely, meaningful manner with Vanassche's discovery requests, and argues that as a result of this noncompliance Vanassche was rendered unable to present a complete defense. Vanassche admits that the State did not violate an actual discovery order, but alleges that the State violated the terms of a pretrial agreement upon which the defendant relied when he dismissed his discovery motion. The essence of Vanassche's argument is that the defendant was unable to prepare and present expert testimony challenging

the results of the blood-alcohol breath test. Therefore, Vanassche contends, the Superior Court committed error by failing to sanction the State, under M.R.Crim.P. 16(d), by either dismissing the State's case against Vanassche or suppressing all evidence related to the blood-alcohol test.

Even though it appears that the State may have failed to provide important discovery materials to the defendant in a timely manner, we find that the Superior court acted within its discretion when it chose not to sanction the State by dismissing the State's case or by suppressing evidence relating to the breath test. In *State v. Bishop,* 392 A.2d 20, 25-26 (Me. 1978), we held that the imposition of sanctions under Rule 16(d) is not mandatory. "By the express terms of Rule 16(d), the presiding justice `may' take `appropriate' action to remedy a violation of Rule 16(a) . . . . The `appropriate' sanction may be nothing at all." *Id.,* at 26.

During its consideration of Vanassche's motions to sanction, the Superior Court held as a factual matter that a "reasonably competent" criminal defense attorney, such as Vanassche's counsel, should have been placed "on notice that the test is most likely the balloon, Lucky Laboratories Mobat Sober Meter" from the material that Vanassche received. Based on this, the Superior Court stated that Vanassche's counsel has had "since some time last November" to prepare a defense.

We will not set aside findings of fact made by a trial court unless those findings are clearly erroneous, even where those findings are based upon documentary evidence. *Estate of Tully,* 545 A.2d 1275, 1277-78 (1988). In this instance, the documents were sufficient to place the defendant on notice that the Mobat Sober Meter was the test used.

Third, Vanassche challenges the trial court's admission of the blood-alcohol test evidence on due process grounds. Vanassche argues that his constitutional right to minimal due process was violated because he was not able to confront and cross-examine each and every person who was involved with the chain of custody of the Mobat Sober Meter kit upon which Vanassche's blood-alcohol level was tested.

The Maine Rules of Evidence premise admissibility of evidence on the presentation of "evidence sufficient to support a finding that the matter is what the proponent claims." M.R.Evid. 901(a). 29 M.R.S.A. § 1312 does not provide for any requirement for a "chain of custody" beyond that which would be necessary under Rule 901(a). *State v. Labrecque,* 543 A.2d 369, 370 (Me. 1988); *State v. Pickering,* 491 A.2d 560, 562 (Me. 1985). In *State v. Nason,* 498 A.2d 252 (Me. 1985), we noted that a minor interruption in the chain of custody of evidence does not affect its admissibility, but only the weight to be given to the evidence by the trier of fact. *Id.,* at 256 (citing *State v. Johnson,* 434 A.2d 532, 537 (Me. 1981); *Pickering,* 491 A.2d at 560). "Whether the exhibits had been tampered with while in the custody of the police was for the defendant to show and for the jury to determine," we concluded. *Id.* (citing *State v. Desjardins,* 401 A.2d 165, 171 (Me. 1979)).

In *State v. Thompson,* 503 A.2d 689 (Me. 1986), we discussed the admissibility of blood samples challenged by a Defendant who claimed a failure to establish a sufficient chain of custody to guarantee the integrity of the blood specimens:

Chain of custody evidence merely provides one way of satisfying the basic requirements of Rule 901. Proof by that method does not impose any new or extraordinary conditions upon the admission of evidence . . . . The law does not demand that the proponent of evidence demonstrate the chain of custody so overwhelmingly as to eliminate all possibility of tampering with the exhibit involved. On the contrary, for admission purposes, it suffices if the custodial evidence establishes by the fair preponderance of the evidence rule that it is more probable than not that the object is the one connected with the case.

Id., at 691 (citations and quotation marks omitted). In *Thompson* we concluded, "nothing in Rule 901 obligate[s] the State to parade every individual who handled the blood specimens onto the witness stand to testify subject to cross examination. On the contrary, `[a]ny lack of further [evidence] as to the chain of custody properly went to the weight, and not to the admissibility' of testimony based on [those samples]." *Id.*, (citing *Pickering,* 491 A.2d at 562-63).

At trial, the arresting officer possitively identified the Mobat Sober Meter test kit admitted as the one used by him at the Vanassche arrest. He testified that the specific test kit used on Vanassche was sealed in its box when he received it. The officer stated further that after Vanassche blew into the test kit the officer disassembled the kit, placed the kit in its box, sealed the box, put the "necessary inscription" on the box, and delivered it to the drop box at the State Police Barracks in Scarborough. The State's chemist who analyzed the Vanassche test kit testified that only three people have access to the locked drop box. The chemist also testified that a routine procedure exists through which one person with access regularly picks up test kits deposited in the drop box, and that the test kit in question was sealed and undamaged when the State's chemist received it. Based on his scientific training, the chemist testified that there was no reason to believe that the sample had been tampered with so as to invalidate its results.

This evidence is sufficient to support the Superior Court's finding that the breath sample analyzed by the chemist was that of the defendant. *See Pickering,* 491 A.2d at 562 (finding similar evidence sufficient). "Any lack of further testimony as to the chain of custody properly went to the weight, and not to the admissibility, of the breath test." *Id.* (citing *State v. Lewis,* 401 A.2d 645, 647 (Me. 1979); *State v. Beaudoin,* 386 A.2d 731, 733 (Me. 1978); *State v. Stevens,* 137 Vt. 473, 408 A.2d 622, 625 (1979)).

Finally, Vanassche challenges the Superior Court's sentence. The Superior Court imposed the forty-eight hour minimum incarceration period required by section 1312-B for people who tested with a blood-alcohol level of 0.15% or greater. Vanassche contends that this mandatory sentence violates the Seventh Amendment to the Constitution of the United States and Article I, section 9 of the Constitution of the State of Maine because it is not proportional to the crime. The scenario Vanassche envisions is one in which a defendant, intending to drive only a short distance, consumes a large quantity of alcohol immediately prior to driving, and is instantly stopped by the police. Vanassche argues that because the human body takes time to absorb alcohol the defendant may have a blood-alcohol level well below 0.15% when stopped that increases to more than 0.15% by the time the defendant is administered a blood-alcohol test in the station. Vanassche states:

Given the statute in its present form, an arresting officer could watch an individual depart from a bar, arrest him and then wait for his blood alcohol level to peak [above 0.15%, and then administer a blood-alcohol test,] and then have the defendant sentenced under this provision.

Vanassche concludes that the mandatory penalty statute is not proportional to the crime because the statute penalizes severely those who "[are] tested as having a blood alcohol level of 0.15% or more" some period after being stopped rather than those who had a blood alcohol level of 0.15% or more when driving.

"One challenging the constitutionality of a statute bears a heavy burden of proving unconstitutionality since all acts of the Legislature are presumed constitutional." *State v. S.S. Kresge, Inc.*, 364 A.2d 868, 872 (Me. 1976). *See also, State v. Briggs*, 388 A.2d 507, 508 (Me. 1978) (upholding the mandatory sentence imposed by a statute prohibiting "nighthunting" partially upon the presumption of constitutionality attaching to legislative enactments). In *State v. Lubee*, 93 Me. 418, 45 A. 520 (Me. 1899), we held that when determining the question whether the punishment imposed is proportional to the offense, "regard must be had to the purposes of the enactment, and to the importance and magnitude of the public interest sought by it to be protected." *Id.*, 45 A. at 521. The public interest that the overall OUI statute seeks to promote is obviously of the greatest importance.

Nothing in this record indicates that the test for the defendant's blood alcohol level was not administered within a reasonable time after the stop. Section 1312-B2(B) clearly provides that the critical time is " *when the person [w]as tested* as having a blood alcohol level of 0.15% or more." (Emphasis added). This language demonstrates that a 0.15% blood alcohol level is indicative of a defendant having consumed such a reckless or unreasonable quantity of alcohol prior to operating a motor vehicle as to warrant a more stringent penalty. Given the State's substantial interest in protecting the public from drunk drivers, the penalty is sufficiently proportional to the crime to withstand the constitutional challenge.

The entry is:

Judgment affirmed.

All concurring.