

Rules of Evidence—Presumption or Inference; House Sub. for SB 318

House Sub. for SB 318 amends the Code of Evidence to specify how a statutory or common law presumption or inference against a criminal defendant is to be construed and to establish a permissive inference when a person is found to possess certain quantities of a controlled substance.

Rules of Evidence

The bill adds provisions to the Rules of Evidence regarding how presumptions or inferences operate. In criminal cases, presumptions or inferences, including those in which certain facts are evidence of another fact or of guilt, are allowable under the bill. The bill clarifies that the judge may reject any presumption or inference, and prohibits the judge from instructing the jury they must accept a fact against the defendant.

The bill permits the judge to include instructions on presumptions or inferences only if the presumption or inference is supported by the facts. When such instruction occurs, the judge is required to instruct the jury that:

- The jury is to consider all facts of the case with the presumption or inference;
- The jury may accept or reject the presumption or inference when determining whether the prosecution has met the burden of proof; and
- The burden of proof never shifts to the defendant.

Intent to Distribute—Permissive Inference

Under the possession with intent to distribute provisions of the Kansas Criminal Code, a rebuttable presumption of an intent to distribute exists if a person possesses certain quantities of controlled substances.

For purposes of court proceedings related to a case involving possession with intent to distribute, the bill replaces the “rebuttable presumption” of such intent to distribute with “an inference,” if the facts of the case support such an inference. [*Note:* Black’s Law Dictionary defines the term “rebuttable presumption” to mean a legal inference or assumption that a fact exists because of the known or proven existence of some other fact or group of facts. The term “permissive inference” is defined to mean a presumption that a trier of fact is free to accept or reject from a given set of facts.]