

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 318**

As Recommended by House Committee on  
Corrections and Juvenile Justice

**Brief\***

House Sub. for SB 318 would amend 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 would add provisions to the Rules of Evidence regarding how presumptions or inferences operate. The bill would provide in criminal cases, presumptions or inferences, including those in which certain facts are evidence of another fact or of guilt, are allowable. Further, the bill would clarify that the judge may reject any presumption or inference, and the judge would be prohibited from instructing the jury they must accept a fact against the defendant.

The bill would permit 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 would be required to instruct the jury that:

- The jury is to consider all facts of the case with the presumption or inference;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The jury could 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.

The bill would replace the rebuttable presumption with “an inference,” if the facts 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.]

### ***Technical Amendments***

The bill would also make technical amendments, including correcting a statutory reference.

### **Background**

The House Committee on Corrections and Juvenile Justice recommended a substitute bill incorporating provisions related to a permissive inference of an intent to distribute a controlled substance.

SB 318, as passed by the Senate, would have required city attorneys to review certain audio and video evidence and

remove a requirement that municipal courts collect fingerprints of certain persons convicted of violation of certain driver's license or liability insurance ordinances.

[*Note:* The audio/visual evidence and fingerprinting provisions were not retained in the substitute bill.]

***HB 2385 (Permissive Inference-Intent to Distribute)***

The bill was introduced by the House Committee on Corrections and Juvenile Justice in the 2023 Session at the request of Representative E. Smith on behalf of Representative Waggoner.

*House Committee on Corrections and Juvenile Justice*

In the House Committee hearing on February 15, 2024, **proponent** testimony was provided by two representatives of the Office of the Attorney General. The proponents stated evidence is needed to support an inference and that the amendments would primarily affect bench trials because a prosecutor already has the authority to choose not to give a jury instruction concerning a rebuttable presumption.

Written-only neutral testimony was provided by a representative of the Kansas Judicial Council.

No other testimony was provided.

The House Committee made technical amendments to the bill.

**Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on HB 2385, as introduced, the Kansas Sentencing Commission estimates enactment of the bill may have an effect on prison admissions, bed space, and the

workload of the Commission, but an effect cannot be determined.

The Office of Judicial Administration and the Department of Corrections indicate enactment of the bill would not have a fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Crimes; Rules of Evidence; controlled substances; permissive inference; rebuttable presumption