

House Substitute for SENATE BILL No. 318

AN ACT concerning crimes, punishment and criminal procedure; relating to presumptions; modifying the rules of evidence to provide rules for presumptions and inferences; replacing the rebuttable presumption of intent to distribute controlled substances with a permissive inference; amending K.S.A. 21-5705 and 60-416 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-5705 is hereby amended to read as follows: 21-5705. (a) It shall be unlawful for any person to distribute or possess with the intent to distribute any of the following controlled substances or controlled substance analogs thereof:

(1) Opiates, opium or narcotic drugs, or any stimulant designated in ~~subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107(d)(1), (d)(3) or (f)(1),~~ and amendments thereto;

(2) any depressant designated in ~~subsection (e) of K.S.A. 65-4105(e), subsection (e) of K.S.A. 65-4107(e), subsection (b) or (c) of K.S.A. 65-4109(b) or (c) or subsection (b) of K.S.A. 65-4111(b),~~ and amendments thereto;

(3) any stimulant designated in ~~subsection (f) of K.S.A. 65-4105(f), subsection (d)(2), (d)(4), (d)(5) or (f)(2) of K.S.A. 65-4107(d)(2), (d)(4), (d)(5) or (f)(2) or subsection (e) of K.S.A. 65-4109(e),~~ and amendments thereto;

(4) any hallucinogenic drug designated in ~~subsection (d) of K.S.A. 65-4105(d), subsection (g) of K.S.A. 65-4107(g) or subsection (g) of K.S.A. 65-4109(g),~~ and amendments thereto;

(5) any substance designated in ~~subsection (g) of K.S.A. 65-4105(g) and subsection (e), (d), (e), (f) or (g) of K.S.A. or 65-4111(c), (d), (e), (f) or (g),~~ and amendments thereto;

(6) any anabolic steroids as defined in ~~subsection (f) of K.S.A. 65-4109(f),~~ and amendments thereto; or

(7) any substance designated in ~~subsection (h) of K.S.A. 65-4105(h),~~ and amendments thereto.

(b) It shall be unlawful for any person to distribute or possess with the intent to distribute a controlled substance or a controlled substance analog designated in K.S.A. 65-4113, and amendments thereto.

(c) It shall be unlawful for any person to cultivate any controlled substance or controlled substance analog listed in subsection (a).

(d) (1) Except as provided further, violation of subsection (a) is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 3.5 grams;

(B) drug severity level 3 felony if the quantity of the material was at least 3.5 grams but less than 100 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 100 grams but less than 1 kilogram; and

(D) drug severity level 1 felony if the quantity of the material was 1 kilogram or more.

(2) Violation of subsection (a) with respect to material containing any quantity of marijuana, or an analog thereof, is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 25 grams;

(B) drug severity level 3 felony if the quantity of the material was at least 25 grams but less than 450 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 450 grams but less than 30 kilograms; and

(D) drug severity level 1 felony if the quantity of the material was 30 kilograms or more.

(3) Violation of subsection (a) with respect to material containing any quantity of heroin, as defined by ~~subsection (e)(1) of K.S.A. 65-4105(c)(12),~~ and amendments thereto, or methamphetamine, as defined by ~~subsection (d)(3) or (f)(1) of K.S.A. 65-4107(d)(3) or (f)(1),~~ and amendments thereto, or an analog thereof, is a:

(A) Drug severity level 4 felony if the quantity of the material was less than 1 gram;

(B) drug severity level 3 felony if the quantity of the material was at least 1 gram but less than 3.5 grams;

(C) drug severity level 2 felony if the quantity of the material was at least 3.5 grams but less than 100 grams; and

(D) drug severity level 1 felony if the quantity of the material was 100 grams or more.

(4) Violation of subsection (a) with respect to material containing any quantity of a controlled substance designated in K.S.A. 65-4105, 65-4107, 65-4109 or 65-4111, and amendments thereto, or an analog thereof, distributed by dosage unit, is a:

(A) Drug severity level 4 felony if the number of dosage units was fewer than 10;

(B) drug severity level 3 felony if the number of dosage units was at least 10 but less than 100;

(C) drug severity level 2 felony if the number of dosage units was at least 100 but less than 1,000; and

(D) drug severity level 1 felony if the number of dosage units was 1,000 or more.

(5) For any violation of subsection (a), the severity level of the offense shall be increased one level if the controlled substance or controlled substance analog was distributed or possessed with the intent to distribute on or within 1,000 feet of any school property.

(6) Violation of subsection (b) is a:

(A) Class A person misdemeanor, except as provided in subsection (d)(6)(B); and

(B) nondrug severity level 7, person felony if the substance was distributed to or possessed with the intent to distribute to a minor.

(7) Violation of subsection (c) is a:

(A) Drug severity level 3 felony if the number of plants cultivated was more than 4 but fewer than 50;

(B) drug severity level 2 felony if the number of plants cultivated was at least 50 but fewer than 100; and

(C) drug severity level 1 felony if the number of plants cultivated was 100 or more.

(e) In any prosecution under this section, there shall be ~~a rebuttable presumption~~ *an inference* of an intent to distribute if ~~any such an inference is supported by the facts and such~~ person possesses the following quantities of controlled substances or analogs thereof:

(1) 450 grams or more of marijuana;

(2) 3.5 grams or more of heroin or methamphetamine;

(3) 100 dosage units or more containing a controlled substance; or

(4) 100 grams or more of any other controlled substance.

(f) It shall not be a defense to charges arising under this section that the defendant:

(1) Was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance or controlled substance analog;

(2) did not know the quantity of the controlled substance or controlled substance analog; or

(3) did not know the specific controlled substance or controlled substance analog contained in the material that was distributed or possessed with the intent to distribute.

(g) As used in this section:

(1) "Material" means the total amount of any substance, including a compound or a mixture, which contains any quantity of a controlled substance or controlled substance analog.

(2) "Dosage unit" means a controlled substance or controlled

substance analog distributed or possessed with the intent to distribute as a discrete unit, including but not limited to, one pill, one capsule or one microdot, and not distributed by weight.

(A) For steroids, or controlled substances in liquid solution legally manufactured for prescription use, or an analog thereof, "dosage unit" means the smallest medically approved dosage unit, as determined by the label, materials provided by the manufacturer, a prescribing authority, licensed health care professional or other qualified health authority.

(B) For illegally manufactured controlled substances in liquid solution, or controlled substances in liquid products not intended for ingestion by human beings, or an analog thereof, "dosage unit" means 10 milligrams, including the liquid carrier medium, except as provided in subsection (g)(2)(C).

(C) For lysergic acid diethylamide (LSD) in liquid form, or an analog thereof, a dosage unit is defined as 0.4 milligrams, including the liquid medium.

Sec. 2. K.S.A. 60-416 is hereby amended to read as follows: 60-416. (a) A presumption, which by a rule of law may be overcome only by proof beyond a reasonable doubt; or by clear and convincing evidence, shall not be affected by K.S.A. 60-414 or 60-415, *and amendments thereto*, and the burden of proof to overcome it continues on the party against whom the presumption operates.

(b) (1) *In a criminal case, any presumption or inference against the defendant created by statute or common law, including, but not limited to, a presumption or inference that certain facts are prima facie evidence of another fact or of guilt, is permissive. The trier of fact may accept or reject the presumption or inference in each case, and the judge shall not direct the jury to find a fact against the defendant. The judge may instruct the jury on the presumption or inference only if the presumption or inference is supported by the facts.*

(2) *When the judge instructs the jury on a presumption or inference against the defendant, the judge shall instruct the jury that:*

(A) *The jury may consider the presumption or inference along with all other evidence in the case;*

(B) *the jury may accept or reject the presumption or inference in determining whether the prosecution has met the burden of proof; and*

(C) *the burden of proof never shifts to the defendant.*

Sec. 3. K.S.A. 21-5705 and 60-416 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in
HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.