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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice

From: Office of Revisor of Statutes

Date: February 15, 2024

Subject: Bill Brief on HB 2385

HB 2385 creates an inference of an intent to distribute a controlled substance based on the quantity of the substance possessed instead of a rebuttable presumption.

Section 1 amends K.S.A. 21-5705, the statute that criminalizes distributing a controlled substance or possessing a controlled substance with the intent to distribute that controlled substance. Current law in subsection (e) provides that in a prosecution under this section, there shall be a rebuttable presumption of an intent to distribute if any person possesses a certain quantity of a controlled substance. Subsection (e) is amended to provide that there shall be an inference of an intent to distribute if such inference is supported by the facts and such person possesses a certain quantity of a controlled substance.

Section 2 amends K.S.A. 60-416, the statute that describes the impact of presumptions. A new subsection (b) is added to provide that in a criminal case, any presumption or inference against the defendant created by statute or common law 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. When the judge instructs the jury on a presumption or inference against the defendant, the judge shall instruct the jury that (1) the jury may consider the presumption or inference long with all other evidence in the case, (2) the jury may accept or reject the presumption or inference in determining whether the prosecution has met the burden of proof; and (3) the burden of proof never shifts to the defendant.