S T A T E O F T E N N E S S E E
OFFICE OF THE
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April 25, 2000

Opinion No. 00-077

Constitutionality of House Bill 3062/Senate Bill 2320

QUESTION

Does House Bill 3062/Senate Bill 2320, as drafted, unconstitutionally shift the State's burden to prove the existence and validity of prior DUI convictions to the defendant to prove that the convictions did not occur as stated?

OPINION

No. This statute only creates a permissive inference which does not unconstitutionally shift the burden of proof to the defendant.

ANALYSIS

A statute can create either an entirely permissive inference or presumption or a mandatory presumption. A permissive inference or presumption allows, but does not require, the trier of fact to find the elemental fact from proof presented by the prosecutor and places no burden of any kind on the defendant.[1] A permissive inference or presumption leaves the trier of fact free to credit or reject the inference or presumption and does not shift the burden of proof.[2] Statutes which create entirely permissive inferences or presumptions are not unconstitutional on their face.[3]

Tennessee courts have consistently held that "prima facie evidence" provisions such as the one proposed here do not operate to shift any burden of proof to the defendant.[4] At the very most, a statute which allows a presumption to be considered as prima facie evidence creates nothing more than a permissive inference. These statutes do not require a defendant to prove anything. Therefore, as long as the jury is properly instructed about the nature of the permissive inference, the statute does

[1] *County Court of Ulster County, New York v. Allen*, 442 U.S. 140, 99 S.Ct., 2213, 2224, 60 L.Ed. 777 (1979).

[2] *Id*., 442 U.S. at 157, 99 S.Ct., at 2225.

[3] *Id*., 442 U.S. at 163, 99 S.Ct., at 2227.

[4] *State v. Merriweather*, 625 S.W.2d 256 (Tenn. 1981); *State v. Bryant*, 585 S.W.2d 586 (Tenn. 1979); *State v. Bush*, 541 S.W.2d 391 (Tenn. 1976); *State v. Woodson*, 705 S.W.2d 667 (Tenn. Crim. App. 1985).

not unconstitutionally shift the burden of proof to the defendant.[5]

House Bill 3062/Senate Bill 2320 provides in part:

> (3) Notwithstanding any other rule of evidence or law to the contrary, in the prosecution of second or subsequent offenders under this chapter the official driver record maintained by the Department and produced upon a certified computer printout shall constitute prima facie evidence of the prior conviction. A telecopier facsimile of such printout delivered to the clerk of the court or the district attorney which includes a separate certification of authenticity with the facsimile transmission shall constitute prima facie evidence of the prior conviction.

Tennessee courts have consistently held that "prima facie evidence" provisions such as that contained in this bill create only a permissive inference. Therefore, it is the opinion of this Office that since the trier of fact is free to credit or reject the inference, the burden of proof is not shifted to the defendant.

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[5] *Woodson*, 705 S.W.2d at 680.