

New Jersey Rules of Evidence

Article III - Presumptions

N.J.R.E. 301. Effect of Presumption

Except as otherwise provided in Rule 303 or by other law, a presumption discharges the burden of producing evidence as to a fact (the presumed fact) when another fact (the basic fact) has been established.

If evidence is introduced tending to disprove the presumed fact, the issue shall be submitted to the trier of fact for determination unless the evidence is such that reasonable persons would not differ as to the existence or nonexistence of the presumed fact. If no evidence tending to disprove the presumed fact is presented, the presumed fact shall be deemed established if the basic fact is found or otherwise established. The burden of persuasion as to the proof or disproof of the presumed fact does not shift to the party against whom the presumption is directed unless otherwise required by law. Nothing in this rule shall preclude the judge from commenting on inferences that may be drawn from the evidence.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 302. Choice of Law

In civil actions or proceedings, the existence and effect of a presumption respecting a fact which is an element of a claim or defense as to which federal law or the law of another jurisdiction supplies the rule of decision shall be determined in accordance with that federal or other law.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993.

N.J.R.E. 303. Presumptions Against the Accused in Criminal Cases

(a) *Scope.* --Except as otherwise provided by law, in criminal cases presumptions against an accused, recognized at common law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilt, are governed by this rule. As used in this rule, the term "element of the offense" shall include any issue on which the prosecution bears the burden of persuasion beyond a reasonable doubt.

(b) *Submission to jury.* --The judge may not direct the jury to find a presumed fact against the accused. If a presumed fact establishes an element of the offense, the judge may submit the question of the existence of the presumed fact to the jury upon proof of the basic fact but only if a reasonable juror on the evidence as a whole, including the evidence of the basic fact, could find the presumed fact beyond a reasonable doubt. If the presumed fact has a lesser effect, the question of its existence may be submitted to the jury provided the basic facts are supported by sufficient evidence or are otherwise established, unless the judge determines that reasonable jurors on the evidence as a whole could not find the existence of the presumed fact.

(c) *Instructing the jury.* --Whenever the existence of a presumed fact against the accused is submitted to the jury, the judge may instruct the jury that it may regard the basic fact as sufficient evidence of the presumed fact but that it is not required to do so. In addition, if the presumed fact establishes guilt or is an element of the offense, the judge shall instruct the jury that its existence, on all of the evidence, must be proved beyond a reasonable doubt. The judge shall not use the word "presumed" or "presumption" in instructions to the jury.

NOTE: Adopted September 15, 1992 to be effective July 1, 1993; paragraph (c) amended September 15, 2004 to be effective July 1, 2005.