

22.77B

Inferences In Defrauding A Drug And Alcohol Screening Test

If you find that [(a heating element or device used to thwart) (instructions that provide a method for thwarting)] a drug or alcohol screening test accompanies the [(sale) (giving) (distribution) (marketing)] of synthetic or human substances or products, you may infer intent to defraud a drug and alcohol screening test.

You are never required to make this inference. It is for the jury to determine whether the inference should be made. You should consider all of the evidence in determining whether to make this inference.

Committee Note

720 ILCS 5/17-57(b) (West 2021).

Section 17-57(b) does not bar a trier of fact from inferring that a person who uses a device like a Whizzinator to provide a urine sample has made a substitution under the statute. *People v. Pearson*, 2020 IL App (2d) 180182.

The Committee notes that this inference is permissive, not mandatory. *People v. Pomykala*, 203 Ill.2d 198, 784 N.E.2d 784 (2003); *People v. Funches*, 212 Ill.2d 334, 818 N.E.2d 342 (2004). Mandatory presumptions are unconstitutional in criminal cases. *People v. Watts*, 181 Ill.2d 133, 692 N.E.2d 315 (1998). Accordingly, the Committee drafted the second paragraph of this instruction.