

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 338
99TH GENERAL ASSEMBLY

0801H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 556.046, RSMo, and to enact in lieu thereof one new section relating to convictions of included offenses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 556.046, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 556.046, to read as follows:

556.046. 1. A person may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when:

(1) It is established by proof of the same or less than all the ~~[facts]~~ **elements** required to establish the commission of the offense charged; or

(2) It is specifically denominated by statute as a lesser degree of the offense charged; or

(3) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein.

2. The court shall ~~[not]~~ be obligated to charge the jury with respect to an included offense ~~[unless]~~ **only if:**

(1) **It is established by proof of the same or less than all the elements required to establish the commission of the offense charged;**

(2) There is a **rational** basis **in the evidence** for a verdict acquitting the person of the offense charged and convicting him **or her** of the included offense; **and**

(3) **Either party requests the court to charge the jury with respect to a specific included offense.**

3. **Failure of the defendant or defense counsel to request the court to charge the jury with respect to a specific included offense shall not be a basis for plain-error review on direct appeal or post-conviction relief.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

19 **4. It shall be the trial court's duty to determine if a rational basis in the evidence**
20 **for a verdict exists.**

21 **5.** An offense is charged for the purposes of this section if:

22 (1) It is an indictment or information; or

23 (2) It is an offense submitted to the jury because there is a **rational** basis for a verdict
24 acquitting the person of the offense charged and convicting the person of the included offense.

25 ~~[3. The court shall be obligated to instruct the jury with respect to particular included~~
26 ~~offense only if there is a rational basis in the evidence for acquitting the person of the~~
27 ~~immediately higher included offense and there is a rational basis in the evidence for convicting~~
28 ~~the person of that particular included offense.]~~

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