

FIRST REGULAR SESSION

# HOUSE BILL NO. 530

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE EVANS.

1066H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 488.029 and 556.046, RSMo, and to enact in lieu thereof two new sections relating to criminal offenses.

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

Section A. Sections 488.029 and 556.046, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 488.029 and 556.046, to read as follows:

488.029. There shall be assessed and collected a surcharge of one hundred fifty dollars  
2 in all criminal cases for any violation of chapter ~~[195]~~ **579** in which a crime laboratory makes  
3 analysis of a controlled substance, but no such surcharge shall be assessed when the costs are  
4 waived or are to be paid by the state or when a criminal proceeding or the defendant has been  
5 dismissed by the court. The moneys collected by clerks of the courts pursuant to the provisions  
6 of this section shall be collected and disbursed as provided by sections 488.010 to 488.020. All  
7 such moneys shall be payable to the director of revenue, who shall deposit all amounts collected  
8 pursuant to this section to the credit of the state forensic laboratory account to be administered  
9 by the department of public safety pursuant to section 650.105.

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

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

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

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

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.

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

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

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

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

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

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 purposes of this section if:**

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

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

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

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