

SECOND REGULAR SESSION

# SENATE BILL NO. 1038

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Read 1st time February 22, 2000, and 1,000 copies ordered printed.

4143S.011

TERRY L. SPIELER, Secretary.

## AN ACT

To repeal section 556.046, RSMo 1994, relating to criminal procedure, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 556.046, RSMo 1994, is repealed and one new section enacted in lieu thereof, to be known as section 556.046, to read as follows: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 defendant 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 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 there is a basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense. **An offense is charged for purposes of this section if:**

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

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

**3. The court shall be obligated to instruct the jury with respect to a particular included offense only if there is a basis in the evidence for acquitting the defendant of the immediately higher included offense and there is a basis in the evidence for convicting the defendant of that particular included offense.**

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