

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 157**  
99TH GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, February 16, 2017, with recommendation that the Senate Committee Substitute do pass.

0354S.02C

ADRIANE D. CROUSE, Secretary.

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**AN ACT**

To repeal section 556.046, RSMo, and to enact in lieu thereof one new section relating to jury instructions on included offenses.

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*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Section A. Section 556.046, RSMo, is repealed and one new section  
2 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  
2 charged in 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 required  
4 to establish the commission of the offense charged; or

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

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

9 2. The court shall not be obligated to charge the jury with respect to an  
10 included offense unless there is a **rational basis in the evidence** for a verdict  
11 acquitting the person of the offense charged and convicting him of the included  
12 offense. **It shall be the trial court's duty to determine whether or not a**  
13 **rational basis in the evidence for a verdict exists before deciding**  
14 **whether or not one or more instructions on any lesser included offense**  
15 **is warranted. A jury's right to disbelieve all or part of the evidence in**  
16 **a case does not constitute a rational basis in the evidence for a verdict**  
17 **acquitting the defendant of the offense charged and convicting him or**  
18 **her the included offense under this section for purposes of the trial**  
19 **court's obligation to instruct the jury with respect to any included**  
20 **offenses.** An offense is charged for purposes of this section if:

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

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

25 3. The court shall be obligated to instruct the jury with respect to a  
26 particular included offense only if there is **both**:

27 (1) A **rational** basis in the evidence for acquitting the person of the  
28 immediately higher included offense; and

29 (2) There is a **rational** basis in the evidence for convicting the person of  
30 that particular included offense. **A jury's right to disbelieve all or part of**  
31 **the evidence in a case does not constitute a rational basis in the**  
32 **evidence under this subsection for purposes of the trial court's**  
33 **obligation to instruct the jury with respect to any included offense.**

34 4. For purposes of this section, "rational basis" means a basis  
35 wherein a reasonable juror could draw inferences from the evidence  
36 presented that an essential element of the greater offense has not been  
37 established and that would warrant convicting the defendant of the  
38 lesser offense.

39 5. It is the intent of the legislature to reject and abrogate earlier  
40 case law relating to required lesser-included offense instructions,  
41 including the holding in *State v. Jackson*, 433 S.W.3d 390 (Mo. banc  
42 2014) and all cases citing, interpreting, applying, or following that case.  
43 It is the intent of the legislature to apply these provisions retroactively.

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