

SECOND REGULAR SESSION

[CORRECTED]

SENATE BILL NO. 974

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time January 30, 2018, and ordered printed.

6188S.01I

ADRIANE D. CROUSE, Secretary.

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Section A. Section 556.046, RSMo, is repealed and one new section
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]
4 **elements** required 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] **only if:**

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

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

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

18 3. **Failure of the defendant or defense counsel to request the**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 **court to charge the jury with respect to a specific included offense shall**
20 **not be a basis for plain-error review on direct appeal or post-conviction**
21 **relief.**

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

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

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

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

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

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Bill

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