

SECOND REGULAR SESSION

HOUSE BILL NO. 1990

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORLEW.

5411H.021

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 556.046 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 556.046 as enacted by senate bill no. 223, ninety-first general assembly, first regular session, 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 as enacted by senate bill no. 491, ninety-seventh general assembly, second regular session and section 556.046 as enacted by senate bill no. 223, ninety-first general assembly, first regular session, are repealed and one new section enacted in lieu thereof, to be known as section 556.046, to read as follows: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 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 **rational** basis for a verdict acquitting the person 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 **rational** basis for a verdict acquitting the person of the offense charged and convicting the person of the included offense.

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.

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

18 **4. For purposes of this section, "rational basis" means a basis wherein a reasonable**
19 **juror could draw inferences from the evidence presented that an essential element of the**
20 **greater offense has not been established and that would warrant convicting defendant of**
21 **the lesser offense.**

22 **5. It is the intent of the legislature to reject and abrogate earlier case law relating**
23 **to required lesser-included offense instructions including, but not limited to, the holding**
24 **in *State v. Jackson*, 433 S.W.3d 390 (Mo. banc 2014) and all cases citing, interpreting,**
25 **applying, or following that case. It is the intent of the legislature to apply these provisions**
26 **retroactively.**

 556.046. 1. A defendant may be convicted of an offense included in an offense charged
2 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 to establish
4 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.

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9 unless there is a **rational** basis for a verdict acquitting the defendant of the offense charged and
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17 immediately higher included offense and there is a **rational** basis in the evidence for convicting
18 the defendant of that particular included offense.

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