

SECOND REGULAR SESSION

HOUSE BILL NO. 2642

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EVANS.

5660H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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Section A. Sections 488.029 and 556.046, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 488.029 and 556.046, to read as follows: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 in all criminal cases for any violation of chapter ~~[195]~~ **579** in which a crime laboratory makes analysis of a controlled substance, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state or when a criminal proceeding or the defendant has been dismissed by the court. The moneys collected by clerks of the courts pursuant to the provisions of this section shall be collected and disbursed as provided by sections 488.010 to 488.020. All such moneys shall be payable to the director of revenue, who shall deposit all amounts collected pursuant to this section to the credit of the state forensic laboratory account to be administered 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 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]~~ **elements** 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.

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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