

SECOND REGULAR SESSION

# SENATE BILL NO. 974

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

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

ADRIANE D. CROUSE, Secretary.

6188S.011

## 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Section A. Section 556.046, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 556.046, to read as follows: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] 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.

2. The court shall **[not]** be obligated to charge the jury with respect to an included offense **[unless] only if:**

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

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

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

**3. Failure of the defendant or defense counsel to request the court to charge the jury with respect to a specific included offense shall**

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

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 rational basis in the evidence for  
31 acquitting the person of the immediately higher included offense and there is a  
32 rational basis in the evidence for convicting the person of that particular included  
33 offense.]

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Bill

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