

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for House Bill No. 351, Page 10, Section 221.240, Line 7, by
2 inserting immediately after said section and line the following:

3
4 "556.046. 1. A person may be convicted of an offense included in an offense charged in the
5 indictment or information. An offense is so included when:

6 (1) It is established by proof of the same or less than all the [facts] elements required to
7 establish the commission of the offense charged; or

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

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

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

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

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

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

19 3. Failure of the defendant or defense counsel to request the court to charge the jury with
20 respect to a specific included offense shall not be a basis for plain-error review on direct appeal or
21 post-conviction relief.

22 4. It shall be the trial court's duty to determine if a rational basis in the evidence for a
23 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 for a verdict
27 acquitting the person of the offense charged and convicting the person of the included offense.

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

33 Further amend said bill by amending the title, enacting clause, and intersectional references
34 accordingly.

Action Taken _____ Date _____