§13-A. Included offenses

1. The court shall not instruct the jury to consider, nor shall the court as factfinder consider, a lesser included offense, as defined in subsection 2, unless on the basis of the evidence there is a rational basis for finding the defendant guilty of that lesser included offense. If a rational basis exists, the lesser included offense shall be considered by the factfinder if requested by either the State or defendant; otherwise, its consideration shall be a matter within the discretion of the court.
[PL 1979, c. 512, §21 (NEW).]

2. For purposes of this section, a lesser included offense is an offense carrying a lesser penalty which:

A. As legally defined, must necessarily be committed when the offense or alternative thereof actually charged, as legally defined, is committed. If the lesser offense is defined in a manner that it may be committed in alternative ways, each alternative which meets the above definition shall be deemed to be a lesser included offense. Facts which are a basis for sentencing classification of either the crime charged or the lesser crime shall be considered alternatives of those crimes; [PL 1979, c. 512, §21 (NEW).]

B. Meets the requirements of paragraph A, except that a culpable state of mind is required which is different than that charged but which results in lesser criminal liability; or [PL 1979, c. 512, §21 (NEW).]

C. Is by statute expressly declared to be charged when the greater offense is charged. [PL 1979, c. 512, §21 (NEW).]

[PL 1979, c. 512, §21 (NEW).]

3. The court in its discretion may instruct the jury to consider, or may as factfinder consider, any other offense or another alternative of the offense charged, although that other offense or alternative is not a lesser included offense, if:

A. On the basis of the evidence, there is a rational basis for finding the defendant guilty of the other offense; [PL 1979, c. 512, §21 (NEW).]

B. The other offense does not carry a greater penalty than the offense charged; [PL 1979, c. 512, §21 (NEW).]

C. Both the State and the defendant consent to the consideration of the other offenses by the factfinder; and [PL 1979, c. 512, §21 (NEW).]

D. The defendant waives any applicable right to an indictment for the other offense. [PL 1979, c. 512, §21 (NEW).]

When the other offense is defined in such a manner that it may be committed in alternative ways, the court may instruct the jury to consider, or may as factfinder consider, any alternative which meets the requirements of this subsection.
[PL 1979, c. 512, §21 (NEW).]

SECTION HISTORY

PL 1979, c. 512, §21 (NEW).

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