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LESSER INCLUDED OFFENSES (STANDARD INSTRUCTION)¹

If you decide that the defendant is not guilty of the crime of [greater offense], then you should go on to consider and decide whether he/she is guilty of a similar, but less serious, crime.

A similar, but less serious, crime is different from a more serious crime in one of two ways: either it requires a less serious physical act, or it requires a less serious mental intent.

Here, if you decide that the defendant is not guilty of [greater offense], then you should consider whether the State has proven beyond a reasonable doubt that he is guilty of the similar, but less serious crime of [lesser offense].

¹ *State v Taylor*, 141 N.H. 89, 94-96 (1996), holding that an “acquittal first” instruction is the proper transitional instruction in New Hampshire except under special circumstances. *See* Lesser Included Offenses (special instruction.)