

Submitted: 5/27/99

Reviewed by committee: 5/27/99

Approved by committee: 5/27/99

**DRAFT**

**LESSER INCLUDED OFFENSES (SPECIAL INSTRUCTION)<sup>1</sup>**

If you decide that the defendant is not guilty of the crime of [greater offense], or if after reasonable efforts you are unable to reach a verdict on the charge 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], or if after reasonable efforts you are unable to reach a verdict on [greater offense], then you should consider whether the State has proven beyond a reasonable doubt that he/she is guilty of the similar, but less serious crime of [lesser offense].

---

<sup>1</sup> “Although we hold that an “acquittal first” instruction is the proper transitional instruction in New Hampshire, we recognize that there are circumstances in which the trial court may issue a reasonable efforts instruction. A situation in which that might occur is when the state and the defendant agree to a reasonable efforts instruction, either before the judge’s charge or with the court’s approval, when the jury is deadlocked.” *State v Taylor*, 141 N.H. 89,96 (1996). Accord, *State v Schultz*, 141 N.H. 101,105, (1996).