§ 220.20 Plea; meaning of lesser included offense for plea purposes.

1. A "lesser included offense," within the meaning of subdivisions four and five of section 220.10 relating to the entry of a plea of guilty to an offense of lesser grade than one charged in a count of an indictment, means not only a "lesser included offense" as that term is defined in subdivision thirty-seven of section 1.20, but also one which is deemed to be such pursuant to the following rules:

(a) Where the only culpable mental state required for the crime charged is that the proscribed conduct be performed intentionally, any lesser offense consisting of reckless or criminally negligent, instead of intentional, performance of the same conduct is deemed to constitute a lesser included offense;

(b) Where the only culpable mental state required for the crime charged is that the proscribed conduct be performed recklessly, any lesser offense consisting of criminally negligent, instead of reckless, performance of the same conduct is deemed to constitute a lesser included offense;

(c) Where according to the allegations of a count a defendant's participation in the crime charged consisted in whole or in part of solicitation of another person to engage in the proscribed conduct, the offense of criminal solicitation, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;

(d) Where according to the allegations of a count a defendant's participation in the crime charged consisted in whole or in part of conspiratorial agreement or conduct with another person to engage in the proscribed conduct, the crime of conspiracy, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;

(e) Where according to the allegations of a count charging a felony a defendant's participation in such felony consisted in whole or in part of providing another person with means or opportunity for engaging in the proscribed conduct, the crime of criminal facilitation, in any appropriate degree, is, with respect to such defendant, deemed to constitute a lesser included offense;

(f) Where the crime charged is assault or attempted assault, in any

degree, allegedly committed by intentionally causing or attempting to cause physical injury to a person by the immediate use of physical force against him, or where the crime charged is menacing, as defined in section 120.15 of the penal law, the offense of harassment, as defined in subdivision one of section 240.25 of the penal law, is deemed to constitute a lesser included offense;

(g) Where the crime charged is murder in the second degree as defined in subdivision three of section 125.25 of the penal law, allegedly committed in the course of the commission or attempted commission of a designated one of the underlying felonies enumerated in said subdivision, or during immediate flight therefrom, such designated underlying felony or attempted felony is deemed to constitute a lesser included offense. If such designated underlying felony is alleged to be robbery, burglary, kidnapping, or arson, without specification of the degree thereof, or an attempt to commit the same, a plea of guilty may be entered to the lowest degree thereof only, or as the case may be to attempted commission of such felony in its lowest degree, unless the allegations of the count clearly indicate the existence of all the elements of a higher degree;

(h) Where the crime charged is criminal sale of a controlled substance, any offense of criminal sale or possession of a controlled substance, in any degree, is deemed to constitute a lesser included offense.

(i) Where the crime charged is criminal possession of a controlled substance, any offense of criminal possession of a controlled substance, in any degree, is deemed to constitute a lesser included offense.

(j) Where the offense charged is unlawful disposal of hazardous wastes in violation of section 27-0914 of the environmental conservation law, any offense of unlawful disposal or possession of hazardous wastes as set forth in sections 71-2707, 71-2709, 71-2711 and 71-2713 of such law, in any degree, is deemed to constitute a lesser included offense;

(k) Where the offense charged is unlawful possession of hazardous wastes in violation of section 27-0914 of the environmental conservation law, any offense of unlawful possession of hazardous wastes as set forth in sections 71-2707 and 71-2709 of such law, in any degree, is deemed to constitute a lesser included offense.

2. An offense is deemed to be a lesser included offense with respect to a crime charged in an indictment, pursuant to the provisions of subdivision one, only for purposes of conviction upon a plea of guilty and not for purposes of conviction by verdict. For the latter purpose, an offense constitutes a lesser included one only when it conforms to the definition of that term contained in subdivision thirty-seven of section 1.20.