

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1525
96TH GENERAL ASSEMBLY

5562L.07C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 221.105, 559.016, 559.036, 559.100, and 559.115, RSMo, and to enact in lieu thereof eight new sections relating to criminal offenders under the supervision of the department of corrections, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 221.105, 559.016, 559.036, 559.100, and 559.115, RSMo, are
2 repealed and eight new sections enacted in lieu thereof, to be known as sections 217.147,
3 217.703, 217.718, 221.105, 559.016, 559.036, 559.100, and 559.115, to read as follows:

**217.147. 1. There is hereby created the "Sentencing and Corrections Oversight
2 Commission". The commission shall be composed of thirteen members as follows:**

3 **(1) A circuit court judge to be appointed by the chief justice of the Missouri
4 supreme court;**

5 **(2) Three members to be appointed by the governor with the advice and consent
6 of the senate, one of whom shall be a victim's advocate, one of whom shall be a
7 representative from the Missouri Sheriffs' Association, and one of whom shall be a
8 representative of the Missouri Association of Counties;**

9 **(3) The following shall be ex officio, voting members:**

10 **(a) The chair of the senate judiciary committee, or any successor committee that
11 reviews legislation involving crime and criminal procedure, who shall serve as co-chair of
12 the commission and the ranking minority member of such senate committee;**

13 **(b) The chair of the appropriations-public safety and corrections committee of the
14 house of representatives, or any successor committee that reviews similar legislation, who
15 shall serve as co-chair and the ranking minority member of such house committee;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (c) The director of the Missouri state public defender system, or his or her designee
17 who is a practicing public defender;

18 (d) The executive director of the Missouri office of prosecution services, or his or
19 her designee who is a practicing prosecutor;

20 (e) The director of the department of corrections, or his or her designee;

21 (f) The chairman of the board of probation and parole, or his or her designee;

22 (g) The chief justice of the Missouri supreme court, or his or her designee.

23 2. Beginning with the appointments made after August 28, 2012, the circuit court
24 judge member shall be appointed for four years, two of the members appointed by the
25 governor shall be appointed for three years, and one member appointed by the governor
26 shall be appointed for two years. Thereafter, the members shall be appointed to serve
27 four-year terms and shall serve until a successor is appointed. A vacancy in the office of
28 a member shall be filled by appointment for the remainder of the unexpired term.

29 3. The co-chairs are responsible for establishing and enforcing attendance and
30 voting rules, bylaws, and the frequency, location, and time of meetings, and distributing
31 meeting notices, except that the commission's first meeting shall occur by February 28,
32 2013, and the commission shall meet at least twice each calendar year.

33 4. The duties of the commission shall include:

34 (1) Monitoring and assisting the implementation of sections 217.703, 217.718, and
35 subsection 4 of section 559.036, and evaluating recidivism reductions, cost savings, and
36 other effects resulting from the implementation;

37 (2) Determining ways to reinvest any cost savings to pay for the continued
38 implementation of the sections listed in subdivision (1) of this subsection and other
39 evidence-based practices for reducing recidivism; and

40 (3) Examining the issue of restitution for crime victims, including the amount
41 ordered and collected annually, methods and costs of collection, and restitution's order of
42 priority in official procedures and documents.

43 5. The department, board, and office of state court administrator shall collect and
44 report any data requested by the commission in a timely fashion.

45 6. The commission shall issue a report to the speaker of the house of
46 representatives, senate president pro tempore, chief justice of the Missouri supreme court,
47 and governor on December 31, 2013, and annually thereafter, detailing the effects of the
48 sections listed in subdivision (1) of subsection 4 and providing the data and analysis
49 demonstrating those effects. The report may also recommend ways to reinvest any cost
50 savings into evidence-based practices to reduce recidivism and possible changes to
51 sentencing and corrections policies and statutes.

52 **7. The department of corrections shall provide administrative support to the**
53 **commission to carry out the duties of this section.**

54 **8. No member shall receive any compensation for the performance of official duties,**
55 **but the members who are not otherwise reimbursed by their agency shall be reimbursed**
56 **for travel and other expenses actually and necessarily incurred in the performance of their**
57 **duties.**

58 **9. Under section 23.253 of the Missouri sunset act:**

59 **(1) The commission authorized under this section shall automatically sunset six**
60 **years after the effective date of this section unless reauthorized by an act of the general**
61 **assembly; and**

62 **(2) If this section is reauthorized, the commission authorized under this section**
63 **shall automatically sunset twelve years after the effective date of the reauthorization of this**
64 **section; and**

65 **(3) This section shall terminate on September first of the calendar year immediately**
66 **following the calendar year in which the commission authorized under this section is**
67 **sunset.**

217.703. 1. The division of probation and parole shall award earned compliance
2 **credits to any offender who is:**

3 **(1) Not subject to lifetime supervision under sections 217.735 and 559.106;**

4 **(2) On probation, parole, or conditional release for a class C or D felony or an**
5 **offense listed in chapter 195; except that, the court may, upon its own motion or a motion**
6 **of the prosecuting or circuit attorney, make a finding that an offender is not eligible if the**
7 **underlying offense is involuntary manslaughter in the first degree, involuntary**
8 **manslaughter in the second degree, aggravated stalking, assault in the second degree,**
9 **sexual assault, domestic assault in the second degree, assault of a law enforcement officer**
10 **in the second degree, statutory rape in the second degree, statutory sodomy in the second**
11 **degree, deviate sexual assault, sexual misconduct involving a child, incest, endangering the**
12 **welfare of a child in the first degree under subdivision (1) or (2) of subsection 1 of section**
13 **568.045, abuse of a child, invasion of privacy or any case in which the defendant is found**
14 **guilty of a felony offense under chapter 571;**

15 **(3) Supervised by the board; and**

16 **(4) In compliance with the conditions of supervision imposed by the sentencing**
17 **court or board.**

18 **2. Earned compliance credits shall reduce the term of probation, parole, or**
19 **conditional release by thirty days for each full calendar month of compliance with the**
20 **terms of supervision. Credits shall begin to accrue after the first full calendar month of**

21 supervision or on October 1, 2012, if the offender began a term of probation, parole, or
22 conditional release before September 1, 2012.

23 3. For the purposes of this section, the term "compliance" shall mean the absence
24 of an initial violation report submitted by a probation or parole officer during a calendar
25 month, or a motion to revoke or motion to suspend filed by a prosecuting or circuit
26 attorney, against the offender.

27 4. Credits shall not accrue during any calendar month in which a violation report
28 has been submitted or a motion to revoke or motion to suspend has been filed, and shall
29 be suspended pending the outcome of a hearing, if a hearing is held. If no hearing is held
30 or the court or board finds that the violation did not occur, then the offender shall be
31 deemed to be in compliance and shall begin earning credits on the first day of the next
32 calendar month following the month in which the report was submitted or the motion was
33 filed. All earned credits shall be rescinded if the court or board revokes the probation or
34 parole or the court places the offender in a department program under subsection 4 of
35 section 559.036. Earned credits shall continue to be suspended for a period of time during
36 which the court or board has suspended the term of probation, parole, or release, and shall
37 begin to accrue on the first day of the next calendar month following the lifting of the
38 suspension.

39 5. Offenders who are deemed by the division to be absconders shall not earn
40 credits. For purposes of this subsection, "absconder" shall mean an offender under
41 supervision who has left such offender's place of residency without the permission of the
42 offender's supervising officer for the purpose of avoiding supervision. An offender shall
43 no longer be deemed an absconder when such offender is available for active supervision.

44 6. Notwithstanding subsection 2 of section 217.730 to the contrary, once the
45 combination of time served in custody, if applicable, time served on probation, parole, or
46 conditional release, and earned compliance credits satisfy the total term of probation,
47 parole, or conditional release, the board or sentencing court shall order final discharge of
48 the offender, so long as the offender has completed at least two years of his or her
49 probation or parole, which shall include any time served in custody under sections 217.718,
50 559.036, and 559.115.

51 7. The award or rescission of any credits earned under this section shall not be
52 subject to appeal or any motion for post-conviction relief.

53 8. At least twice a year, the division shall calculate the number of months the
54 offender has remaining on his or her term of probation, parole, or conditional release,
55 taking into consideration any earned compliance credits, and notify the offender of the
56 length of the remaining term.

57 **9. No less than sixty days before the date of final discharge, the division shall notify**
58 **the sentencing court, the board, and for probation cases the circuit or prosecuting attorney**
59 **of the impending discharge. If the sentencing court, the board, or the circuit or**
60 **prosecuting attorney upon receiving such notice does not take any action under subsection**
61 **4 of this section, the offender shall be discharged under subsection 6 of this section.**

217.718. 1. As an alternative to the revocation proceedings provided under sections
2 **217.720, 217.722, and 559.036 and if the court has not otherwise required detention to be**
3 **a condition of probation under section 559.026, a probation or parole officer may order an**
4 **offender to submit to a period of detention in the county jail, or other appropriate**
5 **institution, upon a determination by a probation or parole officer that the offender has**
6 **violated a condition of continued probation or parole.**

7 **2. The period of detention may not exceed forty-eight hours the first time it is**
8 **imposed against an offender during a term of probation or parole. Subsequent periods**
9 **may exceed forty-eight hours, but the total number of hours an offender spends in**
10 **detention under this section shall not exceed three hundred and sixty in any calendar year.**

11 **3. The officer shall present the offender with a written report detailing in what**
12 **manner the offender has violated the conditions of parole, probation, or conditional release**
13 **and advise the offender of the right to a hearing before the court or board prior to the**
14 **period of detention. The division shall file a copy of the violation report with the**
15 **sentencing court or board after the imposition of the period of detention and within a**
16 **reasonable period of time that is consistent with existing division procedures.**

17 **4. Any offender detained under this section in a county of the first class or second**
18 **class or in any city with a population of five hundred thousand or more and detained as**
19 **herein provided shall be subject to all the provisions of section 221.170, even though the**
20 **offender was not convicted and sentenced to a jail or workhouse.**

21 **5. If parole, probation, or conditional release is revoked and a term of**
22 **imprisonment is served by reason thereof, the time spent in a jail, half-way house, honor**
23 **center, workhouse, or other institution as a detention condition of parole, probation, or**
24 **conditional release shall be credited against the prison or jail term served for the offense**
25 **in connection with which the detention was imposed.**

26 **6. The division shall reimburse the county jail or other institution for the costs of**
27 **detention under this section at a rate determined by the department of corrections, which**
28 **shall be at least thirty dollars per day per offender and subject to appropriation of funds**
29 **by the general assembly. Prior to ordering the offender to submit to the period of**
30 **detention under subsection 1 of this section, the probation and parole officer shall certify**
31 **to the county jail or institution that the division has sufficient funds to provide**

32 reimbursement for the costs of the period of detention. A jail or other institution may
33 refuse to detain an offender under this section if funds are not available to provide
34 reimbursement or if there is inadequate space in the facility for the offender.

35 7. Upon successful completion of the period of detention under this section, the
36 court or board may not revoke the term of parole, probation, or conditional release or
37 impose additional periods of detention for the same incident unless new or additional
38 information is discovered that was unknown to the division when the period of detention
39 was imposed and indicates that the offender was involved in the commission of a crime.
40 If the offender fails to complete the period of detention or new or additional information
41 is discovered that the incident involved a crime, the offender may be arrested under
42 sections 217.720 and 217.722.

221.105. 1. The governing body of any county and of any city not within a county shall
2 fix the amount to be expended for the cost of incarceration of prisoners confined in jails or
3 medium security institutions. The per diem cost of incarceration of these prisoners chargeable
4 by the law to the state shall be determined, subject to the review and approval of the department
5 of corrections.

6 2. When the final determination of any criminal prosecution shall be such as to render
7 the state liable for costs under existing laws, it shall be the duty of the sheriff to certify to the
8 clerk of the circuit court or court of common pleas in which the case was determined the total
9 number of days any prisoner who was a party in such case remained in the county jail. It shall
10 be the duty of the county commission to supply the cost per diem for county prisons to the clerk
11 of the circuit court on the first day of each year, and thereafter whenever the amount may be
12 changed. It shall then be the duty of the clerk of the court in which the case was determined to
13 include in the bill of cost against the state all fees which are properly chargeable to the state. In
14 any city not within a county it shall be the duty of the superintendent of any facility boarding
15 prisoners to certify to the chief executive officer of such city not within a county the total number
16 of days any prisoner who was a party in such case remained in such facility. It shall be the duty
17 of the superintendents of such facilities to supply the cost per diem to the chief executive officer
18 on the first day of each year, and thereafter whenever the amount may be changed. It shall be
19 the duty of the chief executive officer to bill the state all fees for boarding such prisoners which
20 are properly chargeable to the state. The chief executive may by notification to the department
21 of corrections delegate such responsibility to another duly sworn official of such city not within
22 a county. The clerk of the court of any city not within a county shall not include such fees in the
23 bill of costs chargeable to the state. The department of corrections shall revise its criminal cost
24 manual in accordance with this provision.

25 3. **Except as provided under subsection 7 of section 217.718**, the actual costs
26 chargeable to the state, including those incurred for a prisoner who is incarcerated in the county
27 jail because the prisoner's parole or probation has been revoked or because the prisoner has, or
28 allegedly has, violated any condition of the prisoner's parole or probation, and such parole or
29 probation is a consequence of a violation of a state statute, or the prisoner is a fugitive from the
30 Missouri department of corrections or otherwise held at the request of the Missouri department
31 of corrections regardless of whether or not a warrant has been issued shall be the actual cost of
32 incarceration not to exceed:

33 (1) Until July 1, 1996, seventeen dollars per day per prisoner;

34 (2) On and after July 1, 1996, twenty dollars per day per prisoner;

35 (3) On and after July 1, 1997, up to thirty-seven dollars and fifty cents per day per
36 prisoner, subject to appropriations, but not less than the amount appropriated in the previous
37 fiscal year.

 559.016. 1. Unless terminated as provided in section 559.036 **or modified under**
2 **section 217.703**, the terms during which each probation shall remain conditional and be subject
3 to revocation are:

4 (1) A term of years not less than one year and not to exceed five years for a felony;

5 (2) A term not less than six months and not to exceed two years for a misdemeanor;

6 (3) A term not less than six months and not to exceed one year for an infraction.

7 2. The court shall designate a specific term of probation at the time of sentencing or at
8 the time of suspension of imposition of sentence. **Such term may be modified by the division**
9 **of probation and parole under section 217.703.**

10 3. The court may extend a period of probation, however, no more than one extension of
11 any probation may be ordered except that the court may extend the total time on probation by one
12 additional year by order of the court if the defendant admits he or she has violated the conditions
13 of his or her probation or is found by the court to have violated the conditions of his or her
14 probation. Total time on any probation term, including any extension, shall not exceed the
15 maximum term as established in subsection 1 of this section plus one additional year if the
16 defendant admits or the court finds that the defendant has violated the conditions of his or her
17 probation.

 559.036. 1. A term of probation commences on the day it is imposed. Multiple terms
2 of Missouri probation, whether imposed at the same time or at different times, shall run
3 concurrently. Terms of probation shall also run concurrently with any federal or other state jail,
4 prison, probation or parole term for another offense to which the defendant is or becomes subject
5 during the period, unless otherwise specified by the Missouri court.

6 2. The court may terminate a period of probation and discharge the defendant at any time
7 before completion of the specific term fixed under section 559.016 if warranted by the conduct
8 of the defendant and the ends of justice. The court may extend the term of the probation, but no
9 more than one extension of any probation may be ordered except that the court may extend the
10 term of probation by one additional year by order of the court if the defendant admits he or she
11 has violated the conditions of probation or is found by the court to have violated the conditions
12 of his or her probation. Total time on any probation term, including any extension shall not
13 exceed the maximum term established in section 559.016. Procedures for termination, discharge
14 and extension may be established by rule of court.

15 3. If the defendant violates a condition of probation at any time prior to the expiration
16 or termination of the probation term, the court may continue him on the existing conditions, with
17 or without modifying or enlarging the conditions or extending the term[, or, if such] .

18 **4. (1) If a continuation, modification, enlargement or extension is not appropriate[,]**
19 **under subsection 3 of this section, the court shall order placement of the offender in one**
20 **of the department of corrections' one hundred twenty-day programs so long as:**

21 **(a) The underlying offense for the probation is a class C or D felony or an offense**
22 **listed in chapter 195; except that, the court may, upon its own motion or a motion of the**
23 **prosecuting or circuit attorney, make a finding that an offender is not eligible if the**
24 **underlying offense is involuntary manslaughter in the first degree, involuntary**
25 **manslaughter in the second degree, aggravated stalking, assault in the second degree,**
26 **sexual assault, domestic assault in the second degree, assault of a law enforcement officer**
27 **in the second degree, statutory rape in the second degree, statutory sodomy in the second**
28 **degree, deviate sexual assault, sexual misconduct involving a child, incest, endangering the**
29 **welfare of a child in the first degree under subdivision (1) or (2) of subsection 1 of section**
30 **568.045, abuse of a child, invasion of privacy or any case in which the defendant is found**
31 **guilty of a felony offense under chapter 571;**

32 **(b) The probation violation is not the result of the defendant being an absconder**
33 **or being found guilty of, pleading guilty to, or being arrested on suspicion of any felony,**
34 **misdemeanor, or infraction. For purposes of this subsection, "absconder" shall mean an**
35 **offender under supervision who has left such offender's place of residency without the**
36 **permission of the offender's supervising officer for the purpose of avoiding supervision;**

37 **(c) The defendant has not violated any conditions of probation involving the**
38 **possession or use of weapons, or a stay-away condition prohibiting the defendant from**
39 **contacting a certain individual; and**

40 **(d) The defendant has not already been placed in one of the programs by the court**
41 **for the same underlying offense or during the same probation term.**

42 **(2) Upon receiving the order, the department of corrections shall conduct an**
43 **assessment of the offender and place such offender in the appropriate one hundred twenty-**
44 **day program under subsection 3 of section 559.115.**

45 **(3) Notwithstanding any of the provisions of subsection 3 of section 559.115 to the**
46 **contrary, once the defendant has successfully completed the program under this**
47 **subsection, the court shall release the defendant to continue to serve the term of probation,**
48 **which shall not be modified, enlarged, or extended based on the same incident of violation.**
49 **Time served in the program shall be credited as time served on any sentence imposed for**
50 **the underlying offense.**

51 **5. If the defendant is not eligible under subsection 4 of this section for placement**
52 **in a program and a continuation, modification, enlargement, or extension of the term**
53 **under subsection 2 of this section is not appropriate, the court may revoke probation and**
54 **order that any sentence previously imposed be executed. If imposition of sentence was**
55 **suspended, the court may revoke probation and impose any sentence available under section**
56 **557.011. The court may mitigate any sentence of imprisonment by reducing the prison or jail**
57 **term by all or part of the time the defendant was on probation. The court may, upon revocation**
58 **of probation, place an offender on a second term of probation. Such probation shall be for a term**
59 **of probation as provided by section 559.016, notwithstanding any amount of time served by the**
60 **offender on the first term of probation.**

61 **[4.] 6. Probation shall not be revoked without giving the probationer notice and an**
62 **opportunity to be heard on the issues of whether he violated a condition of probation and, if he**
63 **did, whether revocation is warranted under all the circumstances.**

64 **[5.] 7. The prosecuting or circuit attorney may file a motion to revoke probation or at any**
65 **time during the term of probation, the court may issue a notice to the probationer to appear to**
66 **answer a charge of a violation, and the court may issue a warrant of arrest for the violation. Such**
67 **notice shall be personally served upon the probationer. The warrant shall authorize the return**
68 **of the probationer to the custody of the court or to any suitable detention facility designated by**
69 **the court. Upon the filing of the prosecutor's or circuit attorney's motion or on the court's own**
70 **motion, the court may immediately enter an order suspending the period of probation and may**
71 **order a warrant for the defendant's arrest. The probation shall remain suspended until the court**
72 **rules on the prosecutor's or circuit attorney's motion, or until the court otherwise orders the**
73 **probation reinstated.**

74 **[6.] 8. The power of the court to revoke probation shall extend for the duration of the**
75 **term of probation designated by the court and for any further period which is reasonably**
76 **necessary for the adjudication of matters arising before its expiration, provided that some**
77 **affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the**

78 expiration of the period and that every reasonable effort is made to notify the probationer and to
79 conduct the hearing prior to the expiration of the period.

559.100. 1. The circuit courts of this state shall have power, herein provided, to place
2 on probation or to parole persons convicted of any offense over which they have jurisdiction,
3 except as otherwise provided in sections 195.275 to 195.296, section 558.018, section 559.115,
4 section 565.020, sections 566.030, 566.060, 566.067, 566.151, and 566.213, section 571.015,
5 and subsection 3 of section 589.425.

6 2. The circuit court shall have the power to revoke the probation or parole previously
7 granted **under section 559.036** and commit the person to the department of corrections. The
8 circuit court shall determine any conditions of probation or parole for the defendant that it deems
9 necessary to ensure the successful completion of the probation or parole term, including the
10 extension of any term of supervision for any person while on probation or parole. The circuit
11 court may require that the defendant pay restitution for his crime. The probation or parole may
12 be revoked **under section 559.036** for failure to pay restitution or for failure to conform his
13 behavior to the conditions imposed by the circuit court. The circuit court may, in its discretion,
14 credit any period of probation or parole as time served on a sentence.

559.115. 1. Neither probation nor parole shall be granted by the circuit court between
2 the time the transcript on appeal from the offender's conviction has been filed in appellate court
3 and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 5 of this section, a circuit court only upon
5 its own motion and not that of the state or the offender shall have the power to grant probation
6 to an offender anytime up to one hundred twenty days after such offender has been delivered to
7 the department of corrections but not thereafter. The court may request information and a
8 recommendation from the department concerning the offender and such offender's behavior
9 during the period of incarceration. Except as provided in this section, the court may place the
10 offender on probation in a program created pursuant to section 217.777, or may place the
11 offender on probation with any other conditions authorized by law.

12 3. The court may recommend placement of an offender in a department of corrections
13 one hundred twenty-day program **under this section or order such placement under**
14 **subsection 4 of section 559.036**. Upon the recommendation **or order** of the court, the
15 department of corrections shall [determine the offender's eligibility for the program, the nature,
16 intensity, and duration of any offender's participation in a program and the availability of space
17 for an offender in any program] **assess each offender to determine the appropriate program**
18 **in which to place the offender, including shock incarceration or institutional treatment**.
19 When the court recommends and receives placement of an offender in a department of
20 corrections one hundred twenty-day program, the offender shall be released on probation if the

21 department of corrections determines that the offender has successfully completed the program
22 except as follows. Upon successful completion of a treatment program, the board of probation
23 and parole shall advise the sentencing court of an offender's probationary release date thirty days
24 prior to release. The court shall release the offender unless such release constitutes an abuse of
25 discretion. If the court determined that there is an abuse of discretion, the court may order the
26 execution of the offender's sentence only after conducting a hearing on the matter within ninety
27 to one hundred twenty days of the offender's sentence. If the court does not respond when an
28 offender successfully completes the program, the offender shall be released on probation. Upon
29 successful completion of a shock incarceration program, the board of probation and parole shall
30 advise the sentencing court of an offender's probationary release date thirty days prior to release.
31 The court shall follow the recommendation of the department unless the court determines that
32 probation is not appropriate. If the court determines that probation is not appropriate, the court
33 may order the execution of the offender's sentence only after conducting a hearing on the matter
34 within ninety to one hundred twenty days of the offender's sentence. If the department
35 determines that an offender is not successful in a program, then after one hundred days of
36 incarceration the circuit court shall receive from the department of corrections a report on the
37 offender's participation in the program and department recommendations for terms and
38 conditions of an offender's probation. The court shall then release the offender on probation or
39 order the offender to remain in the department to serve the sentence imposed.

40 4. If the department of corrections one hundred twenty-day program is full, the court may
41 place the offender in a private program approved by the department of corrections or the court,
42 the expenses of such program to be paid by the offender, or in an available program offered by
43 another organization. If the offender is convicted of a class C or class D nonviolent felony, the
44 court may order probation while awaiting appointment to treatment.

45 5. Except when the offender has been found to be a predatory sexual offender pursuant
46 to section 558.018, the court shall request that the offender be placed in the sexual offender
47 assessment unit of the department of corrections if the defendant has pleaded guilty to or has
48 been found guilty of sexual abuse when classified as a class B felony.

49 6. Unless the offender is being granted probation pursuant to successful completion of
50 a one hundred twenty-day program the circuit court shall notify the state in writing when the
51 court intends to grant probation to the offender pursuant to the provisions of this section. The
52 state may, in writing, request a hearing within ten days of receipt of the court's notification that
53 the court intends to grant probation. Upon the state's request for a hearing, the court shall grant
54 a hearing as soon as reasonably possible. If the state does not respond to the court's notice in
55 writing within ten days, the court may proceed upon its own motion to grant probation.

56 7. An offender's first incarceration for one hundred twenty days for participation in a
57 department of corrections program prior to release on probation shall not be considered a
58 previous prison commitment for the purpose of determining a minimum prison term under the
59 provisions of section 558.019.

60 8. Notwithstanding any other provision of law, probation may not be granted pursuant
61 to this section to offenders who have been convicted of murder in the second degree pursuant
62 to section 565.021; forcible rape pursuant to section 566.030; forcible sodomy pursuant to
63 section 566.060; statutory rape in the first degree pursuant to section 566.032; statutory sodomy
64 in the first degree pursuant to section 566.062; child molestation in the first degree pursuant to
65 section 566.067 when classified as a class A felony; abuse of a child pursuant to section 568.060
66 when classified as a class A felony; an offender who has been found to be a predatory sexual
67 offender pursuant to section 558.018; or any offense in which there exists a statutory prohibition
68 against either probation or parole.

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