

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

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 19, 2012, with recommendation that the Senate Committee Substitute do pass.

5562S.08C

TERRY L. SPIELER, Secretary.

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Section A. Sections 221.105, 559.016, 559.036, 559.100, and 559.115, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 217.147, 217.703, 217.718, 221.105, 559.016, 559.036, 559.100, and 559.115, to read as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 Commission". The commission shall be composed of thirteen members as follows:

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

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

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

(a) The chair of the senate judiciary committee, or any successor committee that reviews legislation involving crime and criminal procedure, who shall serve as co-chair of the commission and the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 ranking minority member of such senate committee;

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

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

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

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

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

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

30 2. Beginning with the appointments made after August 28, 2012,
31 the circuit court judge member shall be appointed for four years, two
32 of the members appointed by the governor shall be appointed for three
33 years, and one member appointed by the governor shall be appointed
34 for two years. Thereafter, the members shall be appointed to serve
35 four-year terms and shall serve until a successor is appointed. A
36 vacancy in the office of a member shall be filled by appointment for the
37 remainder of the unexpired term.

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

43 4. The duties of the commission shall include:

44 (1) Monitoring and assisting the implementation of sections
45 217.703, 217.718, and subsection 4 of section 559.036, and evaluating
46 recidivism reductions, cost savings, and other effects resulting from the
47 implementation;

48 (2) Determining ways to reinvest any cost savings to pay for the
49 continued implementation of the sections listed in subdivision (1) of
50 this subsection and other evidence-based practices for reducing

51 recidivism; and

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

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

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

68 7. The department of corrections shall provide administrative
69 support to the commission to carry out the duties of this section.

70 8. No member shall receive any compensation for the
71 performance of official duties, but the members who are not otherwise
72 reimbursed by their agency shall be reimbursed for travel and other
73 expenses actually and necessarily incurred in the performance of their
74 duties.

75 9. The provisions of this section shall automatically expire on
76 August 28, 2018.

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

3 (1) Not subject to lifetime supervision under sections 217.735 and
4 559.106 or otherwise found to be ineligible to earn credits by a court
5 pursuant to subsection 2 of this section;

6 (2) On probation, parole, or conditional release for an offense
7 listed in chapter 195 or for a class C or D felony, excluding the offenses
8 of aggravated stalking, sexual assault, deviate sexual assault, assault
9 in the second degree under subdivision (2) of subsection 1 of section
10 565.060, sexual misconduct involving a child, endangering the welfare

11 of a child in the first degree under subdivision (2) of subsection 1 of
12 section 568.045, incest, invasion of privacy, and abuse of a child;

13 (3) Supervised by the board; and

14 (4) In compliance with the conditions of supervision imposed by
15 the sentencing court or board.

16 2. If an offender was placed on probation, parole, or conditional
17 release for an offense of:

18 (1) Involuntary manslaughter in the first degree;

19 (2) Involuntary manslaughter in the second degree;

20 (3) Assault in the second degree except under subdivision (2) of
21 subsection 1 of section 565.060;

22 (4) Domestic assault in the second degree;

23 (5) Assault of a law enforcement officer in the second degree;

24 (6) Statutory rape in the second degree;

25 (7) Statutory sodomy in the second degree;

26 (8) Endangering the welfare of a child in the first degree under
27 subdivision (1) of subsection 1 of section 568.045; or

28 (9) Any case in which the defendant is found guilty of a felony
29 offense under chapter 571,

30 the sentencing court may, upon its own motion or a motion of the
31 prosecuting or circuit attorney, make a finding that the offender is
32 ineligible to earn compliance credits because the nature and
33 circumstances of the offense or the history and character of the
34 offender indicate that a longer term of probation, parole, or conditional
35 release is necessary for the protection of the public or the guidance of
36 the offender. The motion may be made any time prior to the first
37 month in which the person may earn compliance credits under this
38 section. The offender's ability to earn credits shall be suspended until
39 the court or board makes its finding. If the court or board finds that
40 the offender is eligible for earned compliance credits, the credits shall
41 begin to accrue on the first day of the next calendar month following
42 the issuance of the decision.

43 3. Earned compliance credits shall reduce the term of probation,
44 parole, or conditional release by thirty days for each full calendar
45 month of compliance with the terms of supervision. Credits shall begin
46 to accrue for eligible offenders after the first full calendar month of

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

49 4. For the purposes of this section, the term "compliance" shall
50 mean the absence of an initial violation report submitted by a
51 probation or parole officer during a calendar month, or a motion to
52 revoke or motion to suspend filed by a prosecuting or circuit attorney,
53 against the offender.

54 5. Credits shall not accrue during any calendar month in which
55 a violation report has been submitted or a motion to revoke or motion
56 to suspend has been filed, and shall be suspended pending the outcome
57 of a hearing, if a hearing is held. If no hearing is held or the court or
58 board finds that the violation did not occur, then the offender shall be
59 deemed to be in compliance and shall begin earning credits on the first
60 day of the next calendar month following the month in which the report
61 was submitted or the motion was filed. All earned credits shall be
62 rescinded if the court or board revokes the probation or parole or the
63 court places the offender in a department program under subsection 4
64 of section 559.036. Earned credits shall continue to be suspended for
65 a period of time during which the court or board has suspended the
66 term of probation, parole, or release, and shall begin to accrue on the
67 first day of the next calendar month following the lifting of the
68 suspension.

69 6. Offenders who are deemed by the division to be absconders
70 shall not earn credits. For purposes of this subsection, "absconder"
71 shall mean an offender under supervision who has left such offender's
72 place of residency without the permission of the offender's supervising
73 officer for the purpose of avoiding supervision. An offender shall no
74 longer be deemed an absconder when such offender is available for
75 active supervision.

76 7. Notwithstanding subsection 2 of section 217.730 to the
77 contrary, once the combination of time served in custody, if applicable,
78 time served on probation, parole, or conditional release, and earned
79 compliance credits satisfy the total term of probation, parole, or
80 conditional release, the board or sentencing court shall order final
81 discharge of the offender, so long as the offender has completed at least
82 two years of his or her probation or parole, which shall include any

83 time served in custody under section 217.718 and sections 559.036 and
84 559.115.

85 8. The award or rescission of any credits earned under this
86 section shall not be subject to appeal or any motion for post-conviction
87 relief.

88 9. At least twice a year, the division shall calculate the number
89 of months the offender has remaining on his or her term of probation,
90 parole, or conditional release, taking into consideration any earned
91 compliance credits, and notify the offender of the length of the
92 remaining term.

93 10. No less than sixty days before the date of final discharge, the
94 division shall notify the sentencing court, the board, and, for probation
95 cases, the circuit or prosecuting attorney of the impending discharge.
96 If the sentencing court, the board, or the circuit or prosecuting
97 attorney upon receiving such notice does not take any action under
98 subsection 4 of this section, the offender shall be discharged under
99 subsection 6 of this section.

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

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

14 3. The officer shall present the offender with a written report
15 detailing in what manner the offender has violated the conditions of
16 parole, probation, or conditional release and advise the offender of the
17 right to a hearing before the court or board prior to the period of
18 detention. The division shall file a copy of the violation report with the
19 sentencing court or board after the imposition of the period of

20 detention and within a reasonable period of time that is consistent with
21 existing division procedures.

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

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

33 6. The division shall reimburse the county jail or other
34 institution for the costs of detention under this section at a rate
35 determined by the department of corrections, which shall be at least
36 thirty dollars per day per offender and subject to appropriation of
37 funds by the general assembly. Prior to ordering the offender to submit
38 to the period of detention under subsection 1 of this section, the
39 probation and parole officer shall certify to the county jail or
40 institution that the division has sufficient funds to provide
41 reimbursement for the costs of the period of detention. A jail or other
42 institution may refuse to detain an offender under this section if funds
43 are not available to provide reimbursement or if there is inadequate
44 space in the facility for the offender.

45 7. Upon successful completion of the period of detention under
46 this section, the court or board may not revoke the term of parole,
47 probation, or conditional release or impose additional periods of
48 detention for the same incident unless new or additional information
49 is discovered that was unknown to the division when the period of
50 detention was imposed and indicates that the offender was involved in
51 the commission of a crime. If the offender fails to complete the period
52 of detention or new or additional information is discovered that the
53 incident involved a crime, the offender may be arrested under sections
54 217.720 and 217.722.

221.105. 1. The governing body of any county and of any city not within

2 a county shall fix the amount to be expended for the cost of incarceration of
3 prisoners confined in jails or medium security institutions. The per diem cost of
4 incarceration of these prisoners chargeable by the law to the state shall be
5 determined, subject to the review and approval of the department of corrections.

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

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

37 been issued shall be the actual cost of incarceration not to exceed:

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

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

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

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

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

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

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

10 2. The court shall designate a specific term of probation at the time of
11 sentencing or at the time of suspension of imposition of sentence. **Such term**
12 **may be modified by the division of probation and parole under section**
13 **217.703.**

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

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

7 2. The court may terminate a period of probation and discharge the

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

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

22 4. **(1) If a continuation, modification, enlargement or extension is not**
23 **appropriate[,] under subsection 3 of this section, the court shall order**
24 **placement of the offender in one of the department of corrections' one**
25 **hundred twenty-day programs so long as:**

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

40 **(b) The probation violation is not the result of the defendant**
41 **being an absconder or being found guilty of, pleading guilty to, or being**
42 **arrested on suspicion of any felony, misdemeanor, or infraction. For**

43 **purposes of this subsection, "absconder" shall mean an offender under**
44 **supervision who has left such offender's place of residency without the**
45 **permission of the offender's supervising officer for the purpose of**
46 **avoiding supervision;**

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

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

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

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

64 **5. If the defendant is not eligible under subsection 4 of this**
65 **section for placement in a program and a continuation, modification,**
66 **enlargement, or extension of the term under subsection 2 of this section**
67 **is not appropriate, the court may revoke probation and order that any**
68 **sentence previously imposed be executed. If imposition of sentence was**
69 **suspended, the court may revoke probation and impose any sentence available**
70 **under section 557.011. The court may mitigate any sentence of imprisonment by**
71 **reducing the prison or jail term by all or part of the time the defendant was on**
72 **probation. The court may, upon revocation of probation, place an offender on a**
73 **second term of probation. Such probation shall be for a term of probation as**
74 **provided by section 559.016, notwithstanding any amount of time served by the**
75 **offender on the first term of probation.**

76 **[4.] 6. Probation shall not be revoked without giving the probationer**
77 **notice and an opportunity to be heard on the issues of whether he violated a**

78 condition of probation and, if he did, whether revocation is warranted under all
79 the circumstances.

80 [5.] 7. The prosecuting or circuit attorney may file a motion to revoke
81 probation or at any time during the term of probation, the court may issue a
82 notice to the probationer to appear to answer a charge of a violation, and the
83 court may issue a warrant of arrest for the violation. Such notice shall be
84 personally served upon the probationer. The warrant shall authorize the return
85 of the probationer to the custody of the court or to any suitable detention facility
86 designated by the court. Upon the filing of the prosecutor's or circuit attorney's
87 motion or on the court's own motion, the court may immediately enter an order
88 suspending the period of probation and may order a warrant for the defendant's
89 arrest. The probation shall remain suspended until the court rules on the
90 prosecutor's or circuit attorney's motion, or until the court otherwise orders the
91 probation reinstated.

92 [6.] 8. The power of the court to revoke probation shall extend for the
93 duration of the term of probation designated by the court and for any further
94 period which is reasonably necessary for the adjudication of matters arising
95 before its expiration, provided that some affirmative manifestation of an intent
96 to conduct a revocation hearing occurs prior to the expiration of the period and
97 that every reasonable effort is made to notify the probationer and to conduct the
98 hearing prior to the expiration of the period.

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

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

15 or for failure to conform his behavior to the conditions imposed by the circuit
16 court. The circuit court may, in its discretion, credit any period of probation or
17 parole as time served on a sentence.

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

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

14 3. The court may recommend placement of an offender in a department
15 of corrections one hundred twenty-day program **under this section or order**
16 **such placement under subsection 4 of section 559.036.** Upon the
17 recommendation **or order** of the court, the department of corrections shall
18 [determine the offender's eligibility for the program, the nature, intensity, and
19 duration of any offender's participation in a program and the availability of space
20 for an offender in any program] **assess each offender to determine the**
21 **appropriate program in which to place the offender, including shock**
22 **incarceration or institutional treatment.** When the court recommends and
23 receives placement of an offender in a department of corrections one hundred
24 twenty-day program, the offender shall be released on probation if the
25 department of corrections determines that the offender has successfully completed
26 the program except as follows. Upon successful completion of a treatment
27 program, the board of probation and parole shall advise the sentencing court of
28 an offender's probationary release date thirty days prior to release. The court
29 shall release the offender unless such release constitutes an abuse of discretion.
30 If the court determined that there is an abuse of discretion, the court may order
31 the execution of the offender's sentence only after conducting a hearing on the
32 matter within ninety to one hundred twenty days of the offender's sentence. If

33 the court does not respond when an offender successfully completes the program,
34 the offender shall be released on probation. Upon successful completion of a
35 shock incarceration program, the board of probation and parole shall advise the
36 sentencing court of an offender's probationary release date thirty days prior to
37 release. The court shall follow the recommendation of the department unless the
38 court determines that probation is not appropriate. If the court determines that
39 probation is not appropriate, the court may order the execution of the offender's
40 sentence only after conducting a hearing on the matter within ninety to one
41 hundred twenty days of the offender's sentence. If the department determines
42 that an offender is not successful in a program, then after one hundred days of
43 incarceration the circuit court shall receive from the department of corrections a
44 report on the offender's participation in the program and department
45 recommendations for terms and conditions of an offender's probation. The court
46 shall then release the offender on probation or order the offender to remain in the
47 department to serve the sentence imposed.

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

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

59 6. Unless the offender is being granted probation pursuant to successful
60 completion of a one hundred twenty-day program the circuit court shall notify the
61 state in writing when the court intends to grant probation to the offender
62 pursuant to the provisions of this section. The state may, in writing, request a
63 hearing within ten days of receipt of the court's notification that the court intends
64 to grant probation. Upon the state's request for a hearing, the court shall grant
65 a hearing as soon as reasonably possible. If the state does not respond to the
66 court's notice in writing within ten days, the court may proceed upon its own
67 motion to grant probation.

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

72 8. Notwithstanding any other provision of law, probation may not be
73 granted pursuant to this section to offenders who have been convicted of murder
74 in the second degree pursuant to section 565.021; forcible rape pursuant to
75 section 566.030; forcible sodomy pursuant to section 566.060; statutory rape in
76 the first degree pursuant to section 566.032; statutory sodomy in the first degree
77 pursuant to section 566.062; child molestation in the first degree pursuant to
78 section 566.067 when classified as a class A felony; abuse of a child pursuant to
79 section 568.060 when classified as a class A felony; an offender who has been
80 found to be a predatory sexual offender pursuant to section 558.018; or any
81 offense in which there exists a statutory prohibition against either probation or
82 parole.

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