

FIRST REGULAR SESSION

SENATE BILL NO. 380

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Read 1st time February 26, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1847S.011

AN ACT

To repeal section 559.115, RSMo, and to enact in lieu thereof one new section relating to criminal offenders participating in certain programs provided by the department of corrections.

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

Section A. Section 559.115, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 559.115, to read as follows:

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] **subsection**
16 or order such placement under subsection 4 of section 559.036. Upon the
17 recommendation or order of the court, the department of corrections shall assess
18 each offender to determine the appropriate **one hundred twenty-day** program

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

19 in which to place the offender, [including] **which may include placement in**
20 **the shock incarceration program or institutional treatment program.** When the
21 court recommends and receives placement of an offender in a department of
22 corrections one hundred twenty-day program, the offender shall be released on
23 probation if the department of corrections determines that the offender has
24 successfully completed the program except as follows. Upon successful completion
25 of a [treatment] program **under this subsection**, the board of probation and
26 parole shall advise the sentencing court of an offender's probationary release date
27 thirty days prior to release. [The court shall release the offender unless such
28 release constitutes an abuse of discretion. If the court determined that there is
29 an abuse of discretion, the court may order the execution of the offender's
30 sentence only after conducting a hearing on the matter within ninety to one
31 hundred twenty days of the offender's sentence. If the court does not respond
32 when an offender successfully completes the program, the offender shall be
33 released on probation. Upon successful completion of a shock incarceration
34 program, the board of probation and parole shall advise the sentencing court of
35 an offender's probationary release date thirty days prior to release.] The court
36 shall follow the recommendation of the department unless the court determines
37 that probation is not appropriate. If the court determines that probation is not
38 appropriate, the court may order the execution of the offender's sentence only
39 after conducting a hearing on the matter within ninety to one hundred twenty
40 days [of the offender's sentence. If the department determines that an offender
41 is not successful in a program, then after one hundred days of incarceration the
42 circuit court shall receive from] **from the date the offender was delivered**
43 **to the department of corrections. If the department determines the**
44 **offender has not successfully completed a one hundred twenty-day**
45 **program under this subsection, the offender shall be removed from the**
46 **program and the court shall be advised of the removal.** The department
47 [of corrections a] **shall** report on the offender's participation in the program and
48 [department] **may provide** recommendations for terms and conditions of an
49 offender's probation. The court shall then [release the offender on probation or
50 order the offender to remain in the department to serve the sentence imposed]
51 **have the power to grant probation or order the execution of the**
52 **offender's sentence.**

53 4. **If the court is advised that an offender is not eligible for**
54 **placement in a one hundred twenty-day program under subsection 3 of**

55 **this section, the court shall consider other authorized dispositions.** If
56 the department of corrections one hundred twenty-day program **under**
57 **subsection 3 of this section** is full, the court may place the offender in a
58 private program approved by the department of corrections or the court, the
59 expenses of such program to be paid by the offender, or in an available program
60 offered by another organization. If the offender is convicted of a class C or class
61 D nonviolent felony, the court may order probation while awaiting appointment
62 to treatment.

63 5. Except when the offender has been found to be a predatory sexual
64 offender pursuant to section 558.018, the court shall request [that the offender
65 be placed in] the **department of corrections to conduct a sexual offender**
66 **assessment and place the offender in a** sexual offender assessment unit [of
67 the department of corrections] if the defendant has pleaded guilty to or has been
68 found guilty of sexual abuse when classified as a class B felony. **Upon**
69 **completion of the assessment, the department shall provide to the court**
70 **a report on the offender and may provide recommendations for terms**
71 **and conditions of an offender's probation. The assessment shall not be**
72 **considered a one hundred twenty-day program as provided under**
73 **subsection 3 of this section. The process for granting probation to an**
74 **offender who has completed the assessment shall be as provided under**
75 **subsections 2 and 6 of this section.**

76 6. Unless the offender is being granted probation pursuant to successful
77 completion of a one hundred twenty-day program the circuit court shall notify the
78 state in writing when the court intends to grant probation to the offender
79 pursuant to the provisions of this section. The state may, in writing, request a
80 hearing within ten days of receipt of the court's notification that the court intends
81 to grant probation. Upon the state's request for a hearing, the court shall grant
82 a hearing as soon as reasonably possible. If the state does not respond to the
83 court's notice in writing within ten days, the court may proceed upon its own
84 motion to grant probation.

85 7. An offender's first incarceration for [one hundred twenty days for]
86 participation in a [department of corrections] **one hundred twenty-day**
87 **program under subsection 3 of this section** prior to release on probation shall
88 not be considered a previous prison commitment for the purpose of determining
89 a minimum prison term under the provisions of section 558.019.

90 8. Notwithstanding any other provision of law, probation may not be

91 granted pursuant to this section to offenders who have been convicted of murder
92 in the second degree pursuant to section 565.021; forcible rape pursuant to
93 section 566.030; forcible sodomy pursuant to section 566.060; statutory rape in
94 the first degree pursuant to section 566.032; statutory sodomy in the first degree
95 pursuant to section 566.062; child molestation in the first degree pursuant to
96 section 566.067 when classified as a class A felony; abuse of a child pursuant to
97 section 568.060 when classified as a class A felony; an offender who has been
98 found to be a predatory sexual offender pursuant to section 558.018; or any
99 offense in which there exists a statutory prohibition against either probation or
100 parole.

Unofficial ✓

Bill

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