

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By \_\_\_\_\_

1 AMEND House Committee Substitute for Senate Bill No. 12, Page 6, Section 559.105, Line 28, by  
2 inserting after all of said section and line the following:

3  
4 "559.115. 1. Neither probation nor parole shall be granted by the circuit court between the  
5 time the transcript on appeal from the offender's conviction has been filed in appellate court and the  
6 disposition of the appeal by such court.

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

15 3. The court may recommend placement of an offender in a department of corrections one  
16 hundred twenty-day program under this [section] subsection or order such placement under  
17 subsection 4 of section 559.036. Upon the recommendation or order of the court, the department of  
18 corrections shall assess each offender to determine the appropriate one hundred twenty day program  
19 in which to place the offender, [including] which may include placement in the shock incarceration  
20 program or institutional treatment program. When the court recommends and receives placement of  
21 an offender in a department of corrections one hundred twenty-day program, the offender shall be  
22 released on probation if the department of corrections determines that the offender has successfully  
23 completed the program except as follows. Upon successful completion of a [treatment] program  
24 under this subsection, the board of probation and parole shall advise the sentencing court of an  
25 offender's probationary release date thirty days prior to release. [The court shall release the offender  
26 unless such release constitutes an abuse of discretion. If the court determined that there is an abuse  
27 of discretion, the court may order the execution of the offender's sentence only after conducting a  
28 hearing on the matter within ninety to one hundred twenty days of the offender's sentence. If the  
29 court does not respond when an offender successfully completes the program, the offender shall be  
30 released on probation. Upon successful completion of a shock incarceration program, the board of  
31 probation and parole shall advise the sentencing court of an offender's probationary release date  
32 thirty days prior to release.] The court shall follow the recommendation of the department unless the

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 court determines that probation is not appropriate. If the court determines that probation is not  
2 appropriate, the court may order the execution of the offender's sentence only after conducting a  
3 hearing on the matter within ninety to one hundred twenty days [of the offender's sentence. If the  
4 department determines that an offender is not successful in a program, then after one hundred days of  
5 incarceration the circuit court shall receive from] from the date the offender was delivered to the  
6 department of corrections. If the department determines the offender has not successfully completed  
7 a one hundred twenty day program under this subsection, the offender shall be removed from the  
8 program and the court shall be advised of the removal. The department [of corrections a] shall  
9 report on the offender's participation in the program and [department] may provide  
10 recommendations for terms and conditions of an offender's probation. The court shall then [release  
11 the offender on probation or order the offender to remain in the department to serve the sentence  
12 imposed] have the power to grant probation or order the execution of the offender's sentence.

13 4. If the court is advised that an offender is not eligible for placement in a one hundred  
14 twenty day program under subsection 3 of this section, the court shall consider other authorized  
15 dispositions. If the department of corrections one hundred twenty-day program under subsection 3  
16 of this section is full, the court may place the offender in a private program approved by the  
17 department of corrections or the court, the expenses of such program to be paid by the offender, or in  
18 an available program offered by another organization. If the offender is convicted of a class C or  
19 class D nonviolent felony, the court may order probation while awaiting appointment to treatment.

20 5. Except when the offender has been found to be a predatory sexual offender pursuant to  
21 section 558.018, the court shall request [that the offender be placed in the sexual offender assessment  
22 unit of the department of corrections] the department of corrections to conduct a sexual offender  
23 assessment if the defendant has pleaded guilty to or has been found guilty of sexual abuse when  
24 classified as a class B felony. Upon completion of the assessment, the department shall provide to  
25 the court a report on the offender and may provide recommendations for terms and conditions of an  
26 offender's probation. The assessment shall not be considered a one hundred twenty day program as  
27 provided under subsection 3 of this section. The process for granting probation to an offender who  
28 has completed the assessment shall be as provided under subsections 2 and 6 of this section.

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

36 7. An offender's first incarceration [for one hundred twenty days for participation in a  
37 department of corrections program ] under this section prior to release on probation shall not be  
38 considered a previous prison commitment for the purpose of determining a minimum prison term  
39 under the provisions of section 558.019.

40 8. Notwithstanding any other provision of law, probation may not be granted pursuant to this  
41 section to offenders who have been convicted of murder in the second degree pursuant to section

1 565.021; forcible rape pursuant to section 566.030; forcible sodomy pursuant to section 566.060;  
2 statutory rape in the first degree pursuant to section 566.032; statutory sodomy in the first degree  
3 pursuant to section 566.062; child molestation in the first degree pursuant to section 566.067 when  
4 classified as a class A felony; abuse of a child pursuant to section 568.060 when classified as a class  
5 A felony; an offender who has been found to be a predatory sexual offender pursuant to section  
6 558.018; or any offense in which there exists a statutory prohibition against either probation or  
7 parole."; and

8  
9 Further amend said bill by amending the title, enacting clause, and intersectional references  
10 accordingly.