



2024 South Dakota Legislature

House Bill 1038

HOUSE JUDICIARY ENGROSSED

Introduced by: **Representative Fitzgerald**

1 **An Act to exclude certain habitual DUI offenders from eligibility for presumptive**
 2 **probation.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 22-6-11 be AMENDED:**

5 **22-6-11.** The sentencing court shall sentence an offender convicted of a Class 5
 6 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-
 7 18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-
 8 22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2,
 9 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-
 10 34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation,
 11 and any mandatory minimum sentence under chapter 32-23, as applicable.

12 If the offender is under the supervision of the Department of Corrections, the court
 13 shall order a fully suspended state incarceration sentence pursuant to § 23A-27-18.4. The
 14 sentencing court may impose a sentence other than probation or a fully suspended state
 15 incarceration sentence if the court finds aggravating circumstances exist that pose a
 16 significant risk to the public and require a departure from presumptive probation under
 17 this section. If a departure is made, the judge shall state on the record at the time of
 18 sentencing the aggravating circumstances and the same shall be stated in the dispositional
 19 order. Neither this section nor its application may be the basis for establishing a
 20 constitutionally protected liberty, property, or due process interest.