

2020 South Dakota Legislature

Senate Bill 6**AMENDMENT 6A FOR THE INTRODUCED BILL**

1 **An Act to revise certain conditions under which presumptive probation may be**
2 **applied.**

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. Presumptive sentence of probation or fully suspended penitentiary**
6 **sentence--Departure for aggravating circumstances.**

7 The sentencing court shall sentence ~~an offender a~~ person convicted of a Class 5 or
8 Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-18-
9 1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-
10 22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2,
11 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-
12 34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation.
13 If the ~~offender~~ person is under the supervision of the Department of Corrections, the court
14 shall order a fully suspended penitentiary sentence pursuant to § 23A-27-18.4. The
15 sentencing court may impose a sentence other than probation or a fully suspended
16 penitentiary sentence if the court finds aggravating circumstances exist that pose a
17 significant risk to the public and require a departure from presumptive probation under
18 this section. ~~For the purposes of this section, it is also an aggravating circumstance if the~~
19 ~~court determines the person failed to cooperate with law enforcement in an ongoing~~
20 ~~investigation. The sentencing court may also consider the defendant's conduct evincing a~~
21 ~~failure to cooperate as an aggravating circumstance to support a departure from~~
22 ~~presumptive probation in all drug or substance abuse matters as defined by § 34-20B-3.~~
23 If a departure is made, the judge shall state on the record at the time of sentencing the
24 aggravating circumstances and the same shall be stated in the dispositional order. Neither
25 this section nor its application may be the basis for establishing a constitutionally protected
26 liberty, property, or due process interest.