



2020 South Dakota Legislature

Senate Bill 6

SENATE JUDICIARY ENGROSSED

Introduced by: The Committee on Judiciary at the request of the Office of the Attorney General

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. The sentencing court may also consider the defendant's conduct evincing a
 19 failure to cooperate with law enforcement as an aggravating circumstance to support a
 20 departure from presumptive probation in all drug or substance abuse matters as defined
 21 by § 34-20B-3. If a departure is made, the judge shall state on the record at the time of
 22 sentencing the aggravating circumstances and the same shall be stated in the dispositional
 23 order. Neither this section nor its application may be the basis for establishing a
 24 constitutionally protected liberty, property, or due process interest.