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

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

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

Section 1. That § 22-6-11 be AMENDED:

22-6-11. Presumptive sentence of probation or fully suspended penitentiary sentence--Departure for aggravating circumstances.

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