



## 2020 South Dakota Legislature

# Senate Bill 7

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

1 **An Act to revise the eligibility for presumptive probation.**

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

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

4 **22-6-11. Presumptive sentence of probation or fully suspended penitentiary**  
 5 **sentence--Departure for aggravating circumstances.**

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

22 **Section 2.** That a NEW SECTION be added:

1           **22-6-12. Presumptive sentence of probation or fully suspended penitentiary**  
2 **sentence--Departure for multiple offenses.**

3           A person is only entitled to presumptive probation for two offenses within a ten-  
4 year period. No previous conviction or plea of guilty occurring more than ten years prior  
5 to the date of the violation being charged may be used to determine that the violation  
6 being charged is a second, third, or subsequent offense. Any period during which the  
7 person was incarcerated for a previous violation may not be included when calculating  
8 whether the time period in this section has elapsed. For a person convicted of three or  
9 more eligible offenses under § 22-6-11, the court has discretion to sentence the person  
10 as allowed by law, including probation under § 22-6-11.

11           Only presumptive probation violations occurring on or after July 1, 2020, shall be  
12 considered within the ten-year look back period under this section.