

2020 South Dakota Legislature

House Bill Draft 167

Introduced by:

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 offender failed to cooperate with law enforcement in the investigation
20 of the violation. If a departure is made, the judge shall state on the record at the time of
21 sentencing the aggravating circumstances and the same shall be stated in the dispositional
22 order. Neither this section nor its application may be the basis for establishing a
23 constitutionally protected liberty, property, or due process interest.