

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

400Y0273

## SENATE BILL NO. 28

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

1 FOR AN ACT ENTITLED, An Act to revise the exceptions to presumptive probation.

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

3 Section 1. That § 22-6-11 be amended to read:

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



- 1 its application may be the basis for establishing a constitutionally protected liberty, property, or
- 2 due process interest.