

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

400B0377

## SENATE BILL NO. 19

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

1 FOR AN ACT ENTITLED, An Act to repeal presumptive probation.

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

3 Section 1. That § 22-6-11 be repealed.

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, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-34-5, and any person ineligible for~~  
9 ~~probation under § 23A-27-12, to a term of probation. If the offender is under the supervision of~~  
10 ~~the Department of Corrections, the court shall order a fully suspended penitentiary sentence~~  
11 ~~pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation~~  
12 ~~or a fully suspended penitentiary sentence if the court finds aggravating circumstances exist that~~  
13 ~~pose a significant risk to the public and require a departure from presumptive probation under~~  
14 ~~this section. If a departure is made, the judge shall state on the record at the time of sentencing~~  
15 ~~the aggravating circumstances and the same shall be stated in the dispositional order. Neither~~



1 ~~this section nor its application may be the basis for establishing a constitutionally protected~~  
2 ~~liberty, property, or due process interest.~~

3 Section 2. That § 23A-27-53 be amended to read:

4 23A-27-53. After receiving a plea of guilty for a violation of § 22-42-5 or 22-42-5.1, a court  
5 that has jurisdiction of the defendant may, without entering a judgment of guilt, and with the  
6 consent of the defendant, defer the imposition of sentence and place the defendant on probation  
7 or fully suspend a penitentiary sentence and place the defendant on parole for a period, terms,  
8 and conditions as the court deems best. The conditions shall include that the defendant complete  
9 a drug and alcohol evaluation and complete any recommended course of treatment. If after one  
10 year, the defendant has successfully completed the course of treatment and complied with all  
11 conditions of probation or parole, the court shall dismiss the charge under § 22-42-5 or 22-42-  
12 5.1 upon the defendant pleading guilty to ingestion under § 22-42-15 or possession under § 22-  
13 42-15.1. If the defendant violates any conditions of probation or parole, the court or the Board  
14 of Pardons and Paroles shall revoke the deferred imposition of sentence and impose and execute  
15 the sentence. No person who has previously been granted a deferred imposition of sentence is  
16 eligible to be granted a second deferred imposition of sentence. A defendant is ineligible for the  
17 deferred imposition of sentence under this section if aggravating circumstances exist ~~as defined~~  
18 ~~by § 22-6-11~~ that pose a significant risk to the public.

19 Section 3. That § 16-22-29 be amended to read:

20 16-22-29. A parolee or probationer who is eligible for earned discharge credits and serving  
21 a sentence or sentences ~~exclusively subject to presumptive probation pursuant to § 22-6-11~~ for  
22 a Class 6 or Class 5 felony violation of chapter 22-42, regardless of date of offense, shall be  
23 discharged from probation or parole supervision upon completion of all treatment programs  
24 required as a condition of the person's probation or parole ~~provided if~~ provided if the parolee or probationer

1 has been on supervision for a minimum of twelve full continuous calendar months and in the  
2 twelve full continuous calendar months the parolee or probationer:

- 3 (1) Has not been under or received a sanction for violation of conditions of supervision;
- 4 (2) Has not absconded from supervision;
- 5 (3) Has not been placed in jail or prison;
- 6 (4) Has not had a probation or parole violation report submitted and does not have a  
7 pending probation or parole violation report or pending criminal offense; and
- 8 (5) Has complied with all conditions of the person's supervision including completion  
9 of any treatment program required as a condition of probation or parole.

10 A parolee or probationer serving an eligible South Dakota sentence in another state under  
11 the Interstate Compact for Adult Offender Supervision who meets the criteria in this section is  
12 entitled to discharge in the same manner as a parolee or probationer supervised in South Dakota.  
13 Each drug court participant who meets the criteria in this section is entitled to discharge in the  
14 same manner as a parolee or probationer if the participant has successfully completed the drug  
15 court program.

16 Within thirty days following a probationer or parolee meeting the criteria for discharge under  
17 this section, the supervising court services officer or parole agent shall submit a notice of  
18 compliant discharge.

19 The notice of compliant discharge for a parolee shall be submitted to the secretary of the  
20 Department of Corrections. If the secretary finds the parolee met the criteria for compliant  
21 discharge, the secretary shall within fifteen days of receipt of the notice from the parole agent  
22 issue a certificate of discharge pursuant to § 24-15A-7.

23 The notice of compliant discharge for a probationer shall be submitted to the sentencing  
24 court. If the court finds that the probationer has met the criteria for compliant discharge, the

1 court shall enter an order discharging the probationer from probation.

2 A parolee or probationer who meets the criteria for a compliant discharge but, prior to the  
3 issuance of the certificate of discharge, receives a formal sanction, absconds, is placed in jail  
4 or prison, violates supervision conditions resulting in the submission of a parole or probation  
5 violation report, or who fails to comply with supervision conditions shall be removed from the  
6 compliant discharge process. The offender shall be retained on supervision or in custody.