

CHAPTER [22-6](#)
AUTHORIZED PUNISHMENTS

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[22-6-1](#). Felony classes and penalties--Restitution--Habitual criminal sentences.

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class A felony: death or life imprisonment in a state correctional facility. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in a state correctional facility. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;
- (3) Class C felony: life imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed;
- (4) Class 1 felony: fifty years imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed;
- (5) Class 2 felony: twenty-five years imprisonment in a state correctional facility. In addition, a fine of fifty thousand dollars may be imposed;
- (6) Class 3 felony: fifteen years imprisonment in a state correctional facility. In addition, a fine of thirty thousand dollars may be imposed;
- (7) Class 4 felony: ten years imprisonment in a state correctional facility. In addition, a fine of twenty thousand dollars may be imposed;
- (8) Class 5 felony: five years imprisonment in a state correctional facility. In addition, a fine of ten thousand dollars may be imposed; and
- (9) Class 6 felony: two years imprisonment in a state correctional facility or a fine of four thousand dollars, or both.

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A, B, or C felony, the maximum sentence may be a term of years in a state correctional facility, and a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter [23A-28](#).

Nothing in this section limits increased sentences for habitual criminals under §§ [22-7-7](#), [22-7-8](#), and [22-7-8.1](#).

Source: SDC 1939, § 13.0606; SL 1976, ch 158, §§ 6-1, 6-4; SL 1977, ch 189, § 16; SL 1978, ch 158, § 4; SL 1979, ch 160, § 1; SL 1980, ch 173, § 8; SL 1985, ch 192, § 2; SL 1997, ch 143, § 5; SL 2005, ch 120, § 148; SL

22-6-1.1. Sentence to jail in lieu of penitentiary in minor felonies.

If a person is convicted of a Class 5 or Class 6 felony, the court may sentence the person so convicted to imprisonment in the county jail of the county where such person was convicted, for a term of not more than one year.

Source: SDC 1939, § 13.0604; SL 1963, ch 55; SDCL, § 23-48-20; SL 1978, ch 185, § 16; SL 1989, ch 192, § 1.

22-6-1.2. Minimum sentence for subsequent felony sex crime conviction.

If an adult has a previous conviction for a felony sex crime as defined by § [22-24B-1](#), any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § [22-6-1](#), up to twenty-five years. The court may suspend a portion of the prison sentence required under this section.

Source: SL 2006, ch 121, § 3.

22-6-1.3. Life imprisonment not imposed on defendant under eighteen years of age.

The penalty of life imprisonment may not be imposed upon any defendant for any offense committed when the defendant was less than eighteen years of age.

Source: SL 2016, ch 121, § 2.

22-6-2. Misdemeanor classes and penalties--Restitution--Misdemeanor when no penalty imposed.

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter [23A-28](#).

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

Source: SDC 1939, §§ 13.0105, 13.0607; SDCL § [22-1-5](#); SL 1976, ch 158, §§ [1-3](#), [6-2](#), [6-5](#); SL 1977, ch 189, § 17; SL 1978, ch 158, § 5; SL 1985, ch 192, § 3; SL 1989, ch 255, § 2; SL 1990, ch 158, § 1; SL 1991, ch 186, § 2; SL 1991, ch 187, § 4; SL 1991, ch 337, § 1; SL 1992, ch 158, § 1; SL 1993, ch 172, § 1; SL 1994, ch 161; SL 1995, ch 120, § 1; SL 1997, ch 126, § 1; SL 1997, ch 143, § 6; SL 2005, ch 120, § 173.

22-6-5.1. Double sentence for crime by prisoner-Exception.

A court may sentence any person convicted of a crime committed while that person was a prisoner as defined by § [22-11A-1](#), to a term of not more than twice the maximum term allowed by the statute for the commission of the same crime by a person not so confined. However, the provisions of this section do not apply if, for the same offense, the prisoner is subject to an enhanced penalty as an habitual offender.

Source: SL 1961, ch 50, § 2; SDCL, § 23-48-42; SL 1978, ch 185, § 18; SL 2005, ch 120, § 429; SL 2006, ch 117, § 4.

22-6-5.2. Enhanced penalty for second, third, or subsequent violations--Limitation.

No enhanced penalty may be imposed for any second, third, or subsequent violation, except for an offense pursuant to the provisions of chapter [32-23](#), unless the defendant was convicted of or plead guilty or nolo contendere to the prior offense previous in time to committing the relevant second, third, or subsequent offense.

Source: SL 2005, ch 120, § 430; SL 2012, ch 119, § 1.

22-6-6. Repealed by SL 2005, ch 120, § 431, eff. July 1, 2006.

22-6-6.1. Concurrent or consecutive sentences at discretion of court.

If a defendant is convicted of two or more offenses, regardless of when the offenses were committed or when the judgment or sentence is entered, the judgment or sentence may be that the imprisonment on any of the offenses or convictions may run concurrently or consecutively at the discretion of the court.

Source: SDC 1939 & Supp 1960, § 34.3705; SDCL, § 23-48-22; SL 1978, ch 185, § 17; SL 1983, ch 175; SL 2001, ch 111, § 1; SL 2005, ch 120, § 432.

22-6-7. Petty offense actions--Procedure.

Actions for violations of petty offenses are civil proceedings in which the state is the plaintiff. Such actions are governed by chapter [23-1A](#).

Source: SL 1976, ch 158, § [6-3](#); SL 1977, ch 193, § 26; SL 2005, ch 120, § 433.

22-6-8. Restitution to victims at discretion of court.

Notwithstanding § [22-6-1](#) or [22-6-2](#), if there is an insurer, self insurance, reciprocal insurance, or an insurance pool available to compensate the victim by means of a civil liability determination, the court in imposing sentence on a defendant who has been found guilty of a misdemeanor or felony may order that the defendant make restitution to a victim in accordance with the provisions of chapter [23A-28](#).

Source: SL 1998, ch 129, § 1; SL 2005, ch 120, § 434.

22-6-9. Protection order in cases of assault or crimes of violence--Affidavit of injury--Procedures.

Any person who has suffered physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9) may petition the court for a protection order. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the injury and the acts which caused the injury. The petition shall be governed by the procedures and penalties described in §§ [22-19A-8](#) to [22-19A-16](#), inclusive.

Source: SL 2000, ch 101, § 1.

[22-6-10](#). Application of penalties provided in SL 2005, ch 120 to offenses committed prior to effective date prohibited.

Nothing in SL 2005, chapter 120 may be construed to permit the imposition of any lesser or greater penalty that may be provided for in SL 2005, chapter 120 as punishment for any offense which was committed prior in time to July 1, 2006 regardless of when the sentence for such offense may be imposed.

Source: SL 2005, ch 120, § 435.

[22-6-11](#). Presumptive sentence of probation or fully suspended state correctional facility sentence--Departure for aggravating circumstances.

The sentencing court shall sentence an offender 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](#), [22-22-24.3](#), subdivision [22-23-2](#)(2), [22-24-1.2](#), [22-24B-2](#), [22-24B-12](#), [22-24B-12.1](#), [22-24B-23](#), [22-30A-17](#) if the property stolen is a firearm, [22-30A-46](#), [22-42-7](#), subdivision [24-2-14](#)(1), [32-23-4.6](#), [32-34-5](#), and any person ineligible for probation under § [23A-27-12](#), to a term of probation. If the offender is under the supervision of the Department of Corrections, the court must order a fully suspended state incarceration sentence pursuant to § [23A-27-18.4](#). The sentencing court may impose a sentence other than probation or a fully suspended state incarceration 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. If a departure is made, the judge must state the aggravating circumstances on the record at the time of sentencing and 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.

Source: SL 2013, ch 101, § 53; SL 2016, ch 137, § 4; SL 2017, ch 95, § 1; SL 2017, ch 98, § 4; SL 2023, ch 82, § 11; SL 2024, ch 80, § 1; SL 2024, ch 81, § 1; SL 2024, ch 87, § 10.