

# SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM

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## **Guide to South Dakota Courts**



# Welcome to the South Dakota Unified Judicial System

The South Dakota Constitution divides the powers of state government among three independent branches: Executive Branch led by the Governor, Legislative Branch led by the President of the Senate and Speaker of the House of Representatives, and Judicial Branch (court system) supervised by the Supreme Court.

The South Dakota Unified Judicial System (UJS) safeguards the rights of every citizen and assures due process of law. This means that the government must respect all the legal rights that are owed to a person according to the law. Everyone has the right to a fair trial, the right to be heard, and a chance to defend themselves before any government action.

The UJS is dedicated to providing a fair, impartial and accessible court system that upholds the rule of law and is worthy of the public's trust and confidence. Our vision is justice for all.

This guide provides an overview of the court system in South Dakota—what its job is, how it works, and how it serves the public and society. In addition to the material in this guide, the Unified Judicial System's website at <https://ujls.sd.gov> contains more detailed information about South Dakota's court system.



<https://ujls.sd.gov>

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# Important Principles of South Dakota Courts

**Mission:** The Unified Judicial System (UJS) is dedicated to providing a fair, impartial, and accessible court system that upholds the rule of law and is worthy of the public's trust and confidence.



## **Openness**

Our courts work to provide a transparent judicial process. The court system aims to be open to public scrutiny, ensuring that court proceedings, decisions and operations are visible and understandable to the community. This openness helps to ensure that justice is not only done but is seen to be done, fostering a sense of fairness and accountability.

## **Effectiveness**

The goal of our courts is to deliver justice efficiently and fairly. This includes timely case processing, delivering fair and impartial judgments, and ensuring that the legal process is free of unnecessary delays. An effective court system maintains high standards of judicial performance and continually seeks to improve its procedures and outcomes.

## **Accessibility**

All individuals, regardless of their background or circumstances, must have access to the court system and its services. This includes physical access to court facilities, availability of information and resources in multiple languages, affordable legal assistance, and support services for individuals with disabilities. By being accessible, the court system ensures that justice is within reach for everyone.

Together, these principles work toward creating a judicial system that the public can trust and have confidence in, knowing that it is fair, transparent and dedicated to serving the needs of the state's citizens.

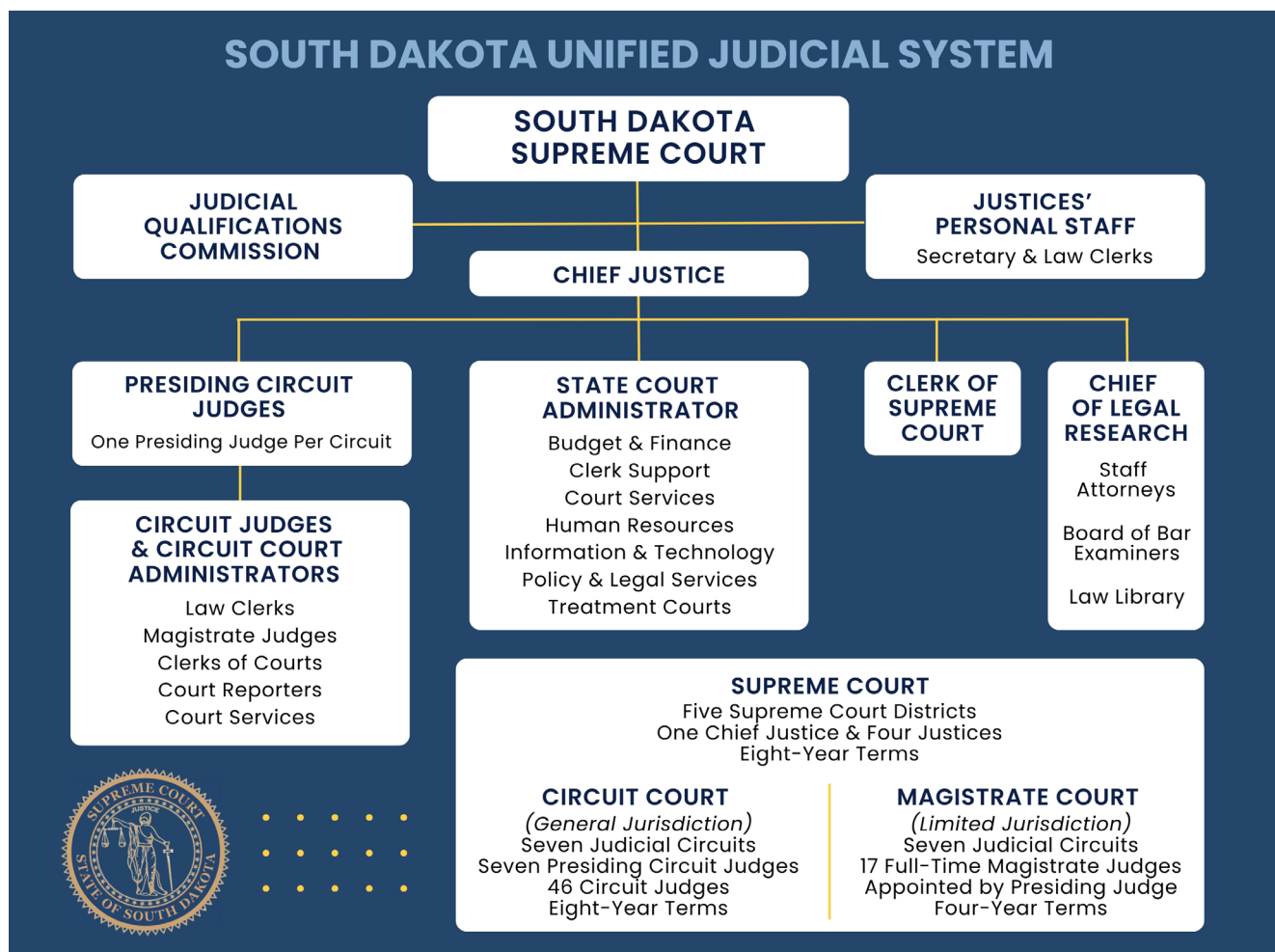
# Structure of South Dakota Courts

There are two levels of courts in South Dakota: Supreme Court and circuit courts. In addition, magistrate courts operate under supervision of the circuit courts.

**Circuit courts** are the state's trial courts and handle criminal and civil cases. **Magistrate courts** assist the circuit courts and handle misdemeanor criminal cases and minor civil cases.

The **Supreme Court** is the state's highest court and makes final decisions on state law. The Supreme Court most often serves as an appellate court and hears appeals of circuit court decisions. The Supreme Court also has original jurisdiction over certain types of proceedings, which means the matter is filed directly with the Supreme Court.

The Supreme Court manages the statewide court system. South Dakota courts are organized into a unified judicial system. The **State Court Administrator's Office** provides centralized services for South Dakota's courts.





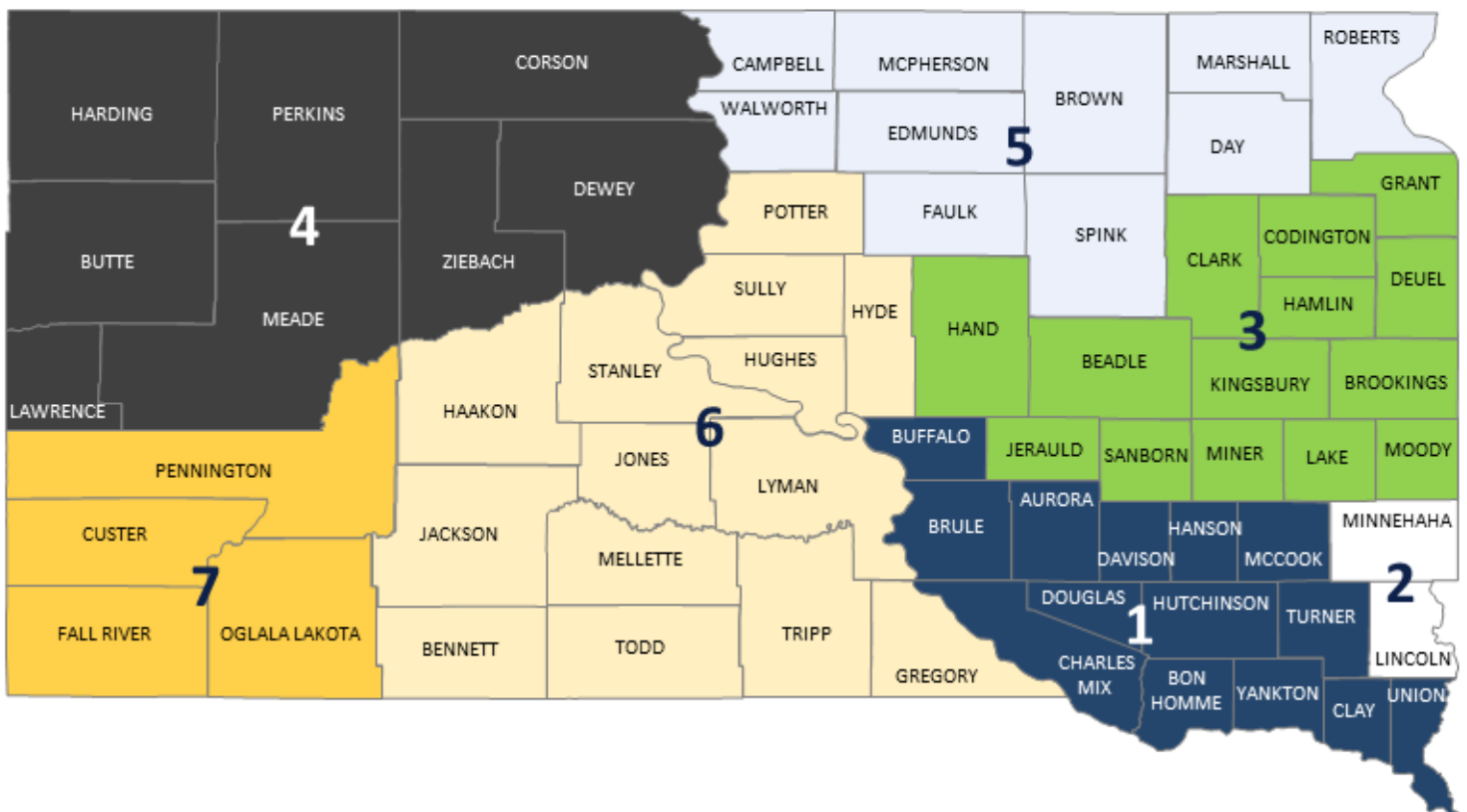
# Circuit Courts

Circuit courts are the state's trial courts, or the court where a case is first heard. South Dakota is divided into seven judicial circuits (see below). Circuit court judges hear both civil and criminal cases. In cases with no jury, the judge decides the case. In cases with a jury, the judge rules on what evidence may be considered by jurors to reach their verdict. The judge also instructs the jury on points of law.

## Magistrate Courts

Magistrate courts assist the circuit courts in handling misdemeanor criminal cases and minor civil actions. They also handle small claims cases and conduct preliminary hearings in all criminal cases. Magistrate courts have limited jurisdiction but make the judicial process more accessible to the public by providing a means of direct court contact for the average citizen. The jurisdiction of a magistrate court varies depending on whether a magistrate or clerk magistrate presides.

## South Dakota Judicial Circuits



# Criminal Cases

## Petty Offenses

Petty offenses are non-criminal violations of ordinances, city codes or prohibited acts. These offenses can include things like minor traffic violations and parking violations. Petty offense violations may result in fines. The legal process for petty offenses does not require a court appearance if the fine is paid. However, people can contest their tickets or charges and must then appear in court for a hearing.

## Misdemeanor Offenses

Misdemeanors are criminal offenses that are more serious than petty offenses but less severe than felonies. The courts categorize misdemeanors into classes based on their seriousness and whether or not a court appearance is required.

At their first court appearance, the accused is informed of their constitutional rights and the charges against them. The accused must plead guilty or not guilty to the charge. With court approval, the accused may plead no contest. If the accused pleads guilty or no contest, the judge sets a sentence. If the accused pleads not guilty, they may request a jury trial if permitted by law.

Moving traffic violations, for the most part, are classified as misdemeanors. The law enforcement officer gets the accused's name, address, driver's license number and the vehicle license number. The officer then issues a summons, which states the time and place the accused must appear in court. The officer may release from custody the accused if they sign a promise to appear in court. If the accused refuses to sign the promise to appear, they will immediately be taken before the nearest magistrate or judge. Certain misdemeanors do not require a court appearance if the fine is paid.

Misdemeanor convictions in a magistrate court can be appealed to a circuit court.

## Felony Offenses

Felonies are crimes punishable by imprisonment in the state penitentiary or death. Felonies are divided into eight classes by their maximum penalties. A felony case begins with a complaint filed in court by law enforcement, a formal accusation of a criminal offense filed by the prosecuting attorney, or a grand jury indictment. The complaint, formal accusation or indictment must list the charges against the accused.



### LEGAL TERM

An **indictment** is a formal accusation of a crime issued by a grand jury, charging that a person has committed a criminal offense. An indictment is a plain, concise and definite statement of the offense charge.

After an arrest warrant is issued, the accused (defendant) is brought before a magistrate or circuit judge for **arraignment**. The arraignment allows the defendant to hear the charges in court and to enter a plea. At the arraignment:

- The complaint or formal accusation is read to the defendant.
- The defendant is informed of their rights, including the right to an attorney.
- A trial date is set.
- Bond may be set to ensure the defendant appears at the trial.

If a criminal case begins with a formal accusation filed by a prosecuting attorney, the accused can request a preliminary hearing. At a preliminary hearing, the magistrate or judge determines whether the state has enough evidence to show that a crime has been committed. The magistrate or judge must also determine that there is probable cause to believe the defendant committed the crime.

If the judge determines that the state has established these two things, or if the defendant waives the right to a preliminary hearing, the defendant must stand trial in circuit court on the charges. If the defendant was formally accused by a grand jury, the preliminary hearing is bypassed, and the defendant is brought before a magistrate or circuit judge for arraignment.

When appearing in circuit court, the defendant is asked to plead either guilty or not guilty to the charges. If the plea is guilty, there is no trial, and the judge sentences the defendant. If the defendant pleads not guilty, a date is set for jury trial. The defendant may choose to waive the jury trial and be tried by the judge. If the defendant is found not guilty, the case is over, and the defendant is released. If found guilty, the court sentences the defendant.

A defendant can not be tried again for charges from the same incident if the court or jury has found the defendant innocent of the charges. If the defendant feels an error (or errors) was made during the circuit court trial, the conviction may be appealed to the South Dakota Supreme Court.



#### LEGAL TERM

The ***prosecuting attorney*** represents the state in a criminal case.



# Civil Cases

Civil lawsuits are cases in which a person claims they have been injured by the actions of another person. An injury is any harm done to a person's body, property, reputation or rights.

When a person believes they have been injured by another person, they may visit with an attorney to explain their side of the issue or incident. The attorney evaluates the information to determine if the person has a case. The attorney may interview possible witnesses and study statutes and prior court decisions.

If the attorney believes the client has a case, the attorney prepares a complaint, which is a written claim against the other party. The complaint is filed with the clerk of courts in the county where the action is to be tried. Based on this complaint, the client becomes the plaintiff in the case. The person the case is brought against becomes the defendant.

The defendant is served (provided) the complaint along with a summons, which is a formal notice that a lawsuit has been started against them. Usually, the defendant consults with an attorney who will prepare an answer to the complaint. An answer is a defendant's formal written response to allegations within the complaint. Copies of the answer are served (provided) to the plaintiff's attorney and filed with the county clerk of courts.

When the complaint, answer and other pretrial papers have been filed, the case is ready to be heard. Discussions between the parties' attorneys may result in settlement of the case without a trial. If no settlement is reached, a trial date is set on the court's calendar. A judge hears civil cases, unless one of the parties to the lawsuit demands a jury trial.



## LEGAL TERM

The ***plaintiff*** is the person who files a civil lawsuit or small claims action in court.

# Small Claims Court

Small claims court is an informal court which allows people to sue for small losses of money or property. This procedure allows people to handle their own claim in court without hiring a lawyer and with minimum expenses. Small claims court is the fastest, least expensive and least complicated method of settling disputes over limited sums of money. The limit set by law for small claims action is \$12,000 or less.

A small claims action must be filed either in the county where the defendant (person the complaint is against) lives or in the county there the loss occurred. To start the process, the plaintiff (person filing the claim) or their attorney must provide a signed, written statement on a court form describing how the loss or damage occurred. The clerk of courts in the plaintiff's county can explain the process and file the necessary paperwork in the proper court.

The fee and court costs for filing a small claims action vary depending on the amount of loss claimed and the number of defendants. The fees and costs must be paid by the plaintiff at the time of filing.

After entering a case into the system, the clerk of courts will assign the date by which the defendant must answer or the date and time of a hearing. After receiving the notice of lawsuit, the defendant may contact the plaintiff to attempt to settle the action out of court.

If the defendant contests the claims, the trial is held before a circuit court or magistrate judge. Each side is given an opportunity to present its case, and the judge asks questions to make sure all of the facts are presented. In most cases, the judge will decide the case at that time. Small claims decisions cannot be appealed to a higher court.

A defendant may wish to have the case transferred to circuit court.



## LEGAL TERM

The **defendant** is a person sued in a civil lawsuit or accused in a criminal proceeding.

# Probate and Guardianship Cases

Probate and guardianship filings frequently come before circuit courts.

When a person dies, their estate (property) must be distributed to their heirs. **Probate** is the legal process by which estates of deceased persons are distributed. The function of the court is to protect the property rights of the decedent in passing property to their heirs.

**Guardianships** are created to protect the property rights of minors, to represent minors who are involved in lawsuits, and to protect the rights of persons who are mentally incompetent.

## Family Cases

Circuit courts are responsible for handling hearings on law violations committed by juveniles. State's attorneys conduct intake screenings to assure that only those juveniles who require the court's attention are taken before the judge for a formal hearing. Juveniles who present a threat to themselves, their families or to the community at large are formally charged and their cases supervised by the court.

Juveniles not requiring a formal hearing are diverted to court services for diversion services, to a court-approved diversion program operated by state attorneys, or may be referred to community-based social service agencies for proper treatment and handling. Because of the nature of the juvenile, the offense or the family circumstances, it is often in the best interest of the child, the child's family and the community to divert the case from the courts, especially when the offense is minor and relates directly to family problems.

At times parents cannot cope with the pressures of their responsibilities, and they cause emotional and physical harm to their children. It then becomes the court's duty to provide protective services to the child. Examples of such cases include nonsupport, dependency, neglect and child abuse.

Additionally, circuit courts hear family relations cases involving divorce, legal separations, annulments and child custody.

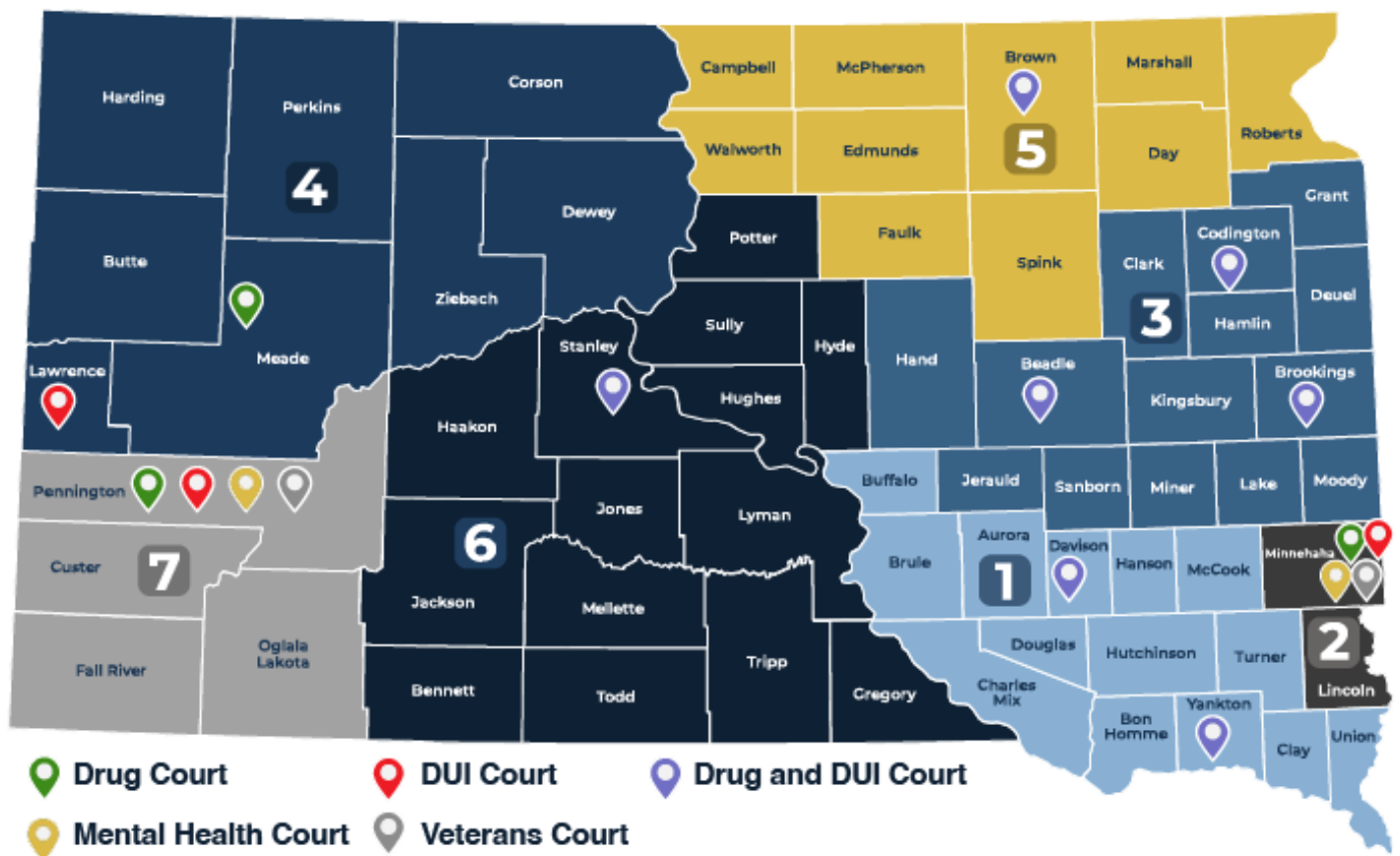
# Treatment Courts

Treatment courts provide an alternative approach to rehabilitating those substantially impacted by a substance use disorder or mental health disorder who are likely to continue to commit crimes without intervention. The target population of treatment courts are high-risk, high-need individuals facing the likelihood of prison. Treatment courts are voluntary programs that provide intensive supervision and treatment services.

In these courts, treatment providers ensure that each person receives an individualized, evidence-based treatment plan, while court services officers ensure close community supervision. They work as a team with law enforcement, defense, prosecution and the judge to hold participants accountable and provide ongoing support. Treatment courts save lives, reunite families, make communities safer and save money.

In South Dakota, treatment courts include drug court, DUI court, veterans court and mental health court. Seventeen treatment courts operate across the state.

## South Dakota Treatment Courts



# South Dakota Supreme Court

## Appeals

When a person involved in a legal action believes that the judge in the circuit court has made an error in deciding the law of the case, that party may bring the case to the Supreme Court for a remedy. This is called an appeal. The court hearing the appeal is called the **appellate** court. The party bringing the appeal is an **appellant**. The other party—usually the party who was successful in the lower court—is the **appellee**.

Under South Dakota law, civil appeals to the Supreme Court can be filed anytime within 30 days after service of notice of entry of final judgment in circuit court. Appeals of criminal trial judgments must be filed within 30 days after final judgment is handed down in circuit court. The parties involved in the appeal are then given time to prepare their case for argument before the Supreme Court.

- Within 10 days after filing a notice of appeal, the attorney for the appellant may order a transcript of the trial from the circuit court reporter. The court reporter has 45 days to prepare the transcript, unless an extension is requested.
- After the trial transcript has been received, the appellant has 45 days to file a brief with the clerk of the Supreme Court. (In appeals of abuse and neglect cases, a 25-day period is given to file a brief.) This brief must identify the errors that the appellant believes were committed at the trial and must cite case law in support of these arguments.
- A new 45-day period begins during which the appellee must file a brief. (In appeals of abuse and neglect cases, a 25-day period is given to file a brief.) This brief must answer the points raised by the appellant and cite statutory and case law in support of the appellee's position.
- A 30-day period begins during which the appellant may file a reply brief in answer to the points contained in the appellee's brief. (In appeals of abuse and neglect cases, a 15-day period is given to file a reply brief.)

Once all of these steps have been completed, the case is ready for consideration by the Supreme Court.

The Supreme Court may decide to hear “oral arguments” in the case, in which both parties are permitted to come before the Court and give a short presentation (an argument) to support their position in the case. There is no trial, the lawyers do not confront each other, and the Court does not take testimony from witnesses. Usually, the



attorneys for the parties involved stand before the Court and speak for 15 minutes to emphasize or clarify the main points of the appeal. The members of the Court may ask questions or make comments during the lawyers' presentations.

The public can listen to oral arguments "live" on the South Dakota Unified Judicial System's website at <https://uj.s.sd.gov>.

In other cases, the justices do not hear oral arguments, but rather they consider only the lower court's trial record and the legal briefs filed by the attorneys in arriving at their decision.

Following oral arguments, the Court meets in private conference to discuss the cases heard that day, as well as those in which no oral arguments were heard.

Each case is assigned to one of the justices to study the settled case record, research the law, and write an opinion which affirms, reverses or modifies the ruling of the circuit court. The proposed opinion is circulated among the members of the Supreme Court for review. If a justice concurs with the opinion, the justice will join that opinion. If a justice disagrees, the justice writes a dissenting opinion. When the proposed opinion has received approval by a simple majority of the five justices, it becomes the decision of the Supreme Court.

In limited cases, the Supreme Court may issue an order, rather than an opinion, which affirms or reverses a lower court ruling.

In South Dakota, every appeal that is ready to be heard by the Supreme Court is placed on the Court's calendar within a matter of months. With the exception of small claims actions, everyone has the right to appeal to the South Dakota Supreme Court.



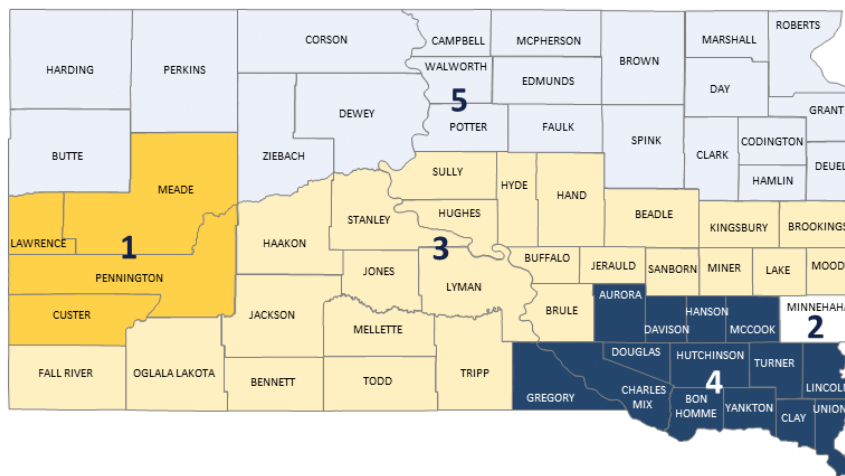
### **MAGISTRATE APPEALS**

A similar procedure exists to appeal magistrate court decisions to a circuit court. Except for small claims actions, an appeal from magistrate court to circuit court may be filed within 10 days of the magistrate court's final judgment. Within 30 days after the filing of the trial transcript, the appellant must file a brief. The appellee then has 30 days in which to file an answering brief. Within 10 days after receipt of the appellee's brief, the appellant may file a reply brief.

# Judges

## Supreme Court Justices

The Governor appoints the five members of the South Dakota Supreme Court, known as justices. One justice is selected from each of five geographic appointment districts. Justices face a nonpolitical retention election three years after appointment and every eight years after that. The Chief Justice of the Supreme Court is elected by and from among the five justices to serve a four-year term, and may be re-elected to additional terms. The Chief Justice administers the state's unified court system.



## Circuit Court Judges

Circuit court judges are elected by the voters within each circuit. In the event of a vacancy, the Governor appoints a replacement from a list of nominees selected by the Judicial Qualifications Committee. There are 46 circuit court judges. One judge in each of the seven judicial circuits is appointed by the Chief Justice of the Supreme Court to act as the **presiding judge**. Presiding judges administer court operations within their circuit.

Circuit court judges hear both civil and criminal cases. In cases tried without a jury, the judge decides the case. In cases tried before a jury, the judge rules on what evidence may be considered by jurors on reaching their verdict. The judge also instructs the jury on points of law pertaining to the case.

## Magistrate Judges and Clerk Magistrates

Magistrate courts assist the circuit courts in handling misdemeanor criminal cases and minor civil actions. These courts have limited jurisdiction but make the judicial process more accessible to the public by providing a means of direct court contact.

The jurisdiction of a magistrate court varies depending on whether a magistrate judge or clerk magistrate presides. There are 17 magistrate judges. Clerk magistrates are not attorneys but are clerks who receive specialized training. They provide functions that need to be handled quickly. Both magistrate judges and clerk magistrates are appointed by the presiding judge of each judicial circuit.

# Circuit Court Staff

In each of the seven judicial circuits, the presiding judge appoints a **circuit court administrator** to assist with the administration of the circuit courts.

**Clerk of courts** staff in each county maintain the official court files of all cases brought before the court.

**Court reporters** take verbatim notes (exact words) on all that is said in court. They prepare transcripts on appeals and when requested by the judge or an attorney on either side of a case.

**Court services** supervises adults and juveniles who are placed on probation by the courts. **Court services officers** conduct investigations and recommend to the sentencing judge plans for juveniles and adults who may be placed on probation. They also provide supervision, counseling and community referral services to those placed on probation.

Working with various government and private providers, court services officers provide intensive community-based services and intensive juvenile and adult probation services as an alternative to committing individuals to the Department of Corrections.

Juvenile cases are often screened prior to the filing of formal charges. In many instances, these cases are referred to court services for diversion programs. It is often in the best interest of the juvenile and community to divert the case from the courts, especially for minor cases.



# Juries

The **master jury list** is comprised of a county's voter registration list and driver's license or state identification cardholder list. A master jury list is created for a full year. A new panel of prospective jurors is drawn from this list. A panel is drawn for each term of court held during a year.

Juries are usually made up of 12 jurors, but the parties may agree to a six-member jury. In most civil cases, five-sixths of the jury must agree on a verdict. In criminal cases, the jury must come to a unanimous agreement on the verdict.

## Jury Trial

The United States and South Dakota constitutions guarantee a defendant the right of trial by jury when one is accused of an offense punishable by imprisonment. The trial jury (petit jury) decides the outcome of civil or criminal trials. Jurors are selected at random from the county's master jury list for each term of court.

The first step of the trial is "voir dire," which is the process of questioning potential jurors to assure that the jury selected is fair and unbiased. Attorneys for both sides, and sometimes the judge, question potential jurors to determine their ability to render an unbiased verdict.

Jurors hear testimony and view the evidence offered during the trial. After all evidence has been presented, the judge instructs the jury on the law to be applied to the evidence presented and explains the different verdicts that may be returned. After closing arguments by the attorneys, the jurors are sent to the jury room to deliberate in private until they reach a verdict.

While the judge interprets the law in every case, the jury in a jury trial is responsible for determining the facts based on the evidence presented. The jury's verdict reflects these facts as they relate to the law. Each citizen who serves as a juror has a very important role in the administration of justice.



### LEGAL TERM

**Bailiffs** make sure that no one talks to or improperly influences the jury while it is hearing a case or deciding a verdict. Bailiffs open court and maintain order when the judge requests it.

## Grand Jury

Grand juries are made up of six to 10 people selected from the county's master jury list. A grand jury has broad investigatory powers to:

- Inquire into misdemeanors and felonies that are committed and able to be tried in its county.
- Investigate and inspect jails and inquire into their management.
- Investigate alleged misconduct of public officials within its county.

The grand jury may call witnesses, require sworn testimony, and demand that records and other evidence be produced in addition to whatever evidence or information is provided by the state's attorney. The grand jury may call on either the state's attorney or the judge to seek advice concerning the law and legal procedure.

Because grand jury proceedings are not open to the public, the only person permitted to attend sessions is a witness called to testify. Even the state's attorney and judge may not be present while the grand jury is discussing or voting on a case.

After its investigation, the grand jury can return an indictment (a statement charging that a crime has been committed) or determine that no crime has been committed. With an indictment, the defendant is then brought before a circuit judge for arraignment and a trial.

Traditionally in state courts, grand juries have been used to investigate alleged crimes in public office and criminal events requiring a special investigation by a judicial body before charges are brought.





# Attorneys

## Prosecution

The Attorney General, who is elected by the citizens of South Dakota, is the principal law enforcement officer in the state. The Attorney General maintains general supervision over enforcement of state laws through each county's elected state's attorney. The Attorney General and the state's attorneys are not members of the judiciary or the Unified Judicial System.

When requested, the Attorney General renders legal opinions to state's attorneys or various government departments. When requested by either the Governor or the State Legislature, or when the welfare of the state demands it, the Attorney General represents the state in criminal or civil actions brought in any court.

A state's attorney is elected in each South Dakota county to defend or prosecute all civil or criminal actions for the state or county when the state or county has an interest in the suit. Depending on the volume of legal activity involving a county, the state's attorney position may be part time or full time.

## Defense Counsel

In criminal cases, the defendant has the right to be represented by a lawyer. If the defendant wants a lawyer and cannot afford to hire one, it is the court's duty, in cases involving a sentence of imprisonment, to appoint a lawyer to represent the defendant at public expense. Often, defendants are required as a part of their sentence to reimburse the cost of their court-appointed attorney.

It is important to remember that even though they are paid by the public, an appointed counsel or a public defender must work for the defendant by doing the same things that counsel paid by the defendant would do.



### COUNTY PUBLIC DEFENDER'S OFFICES

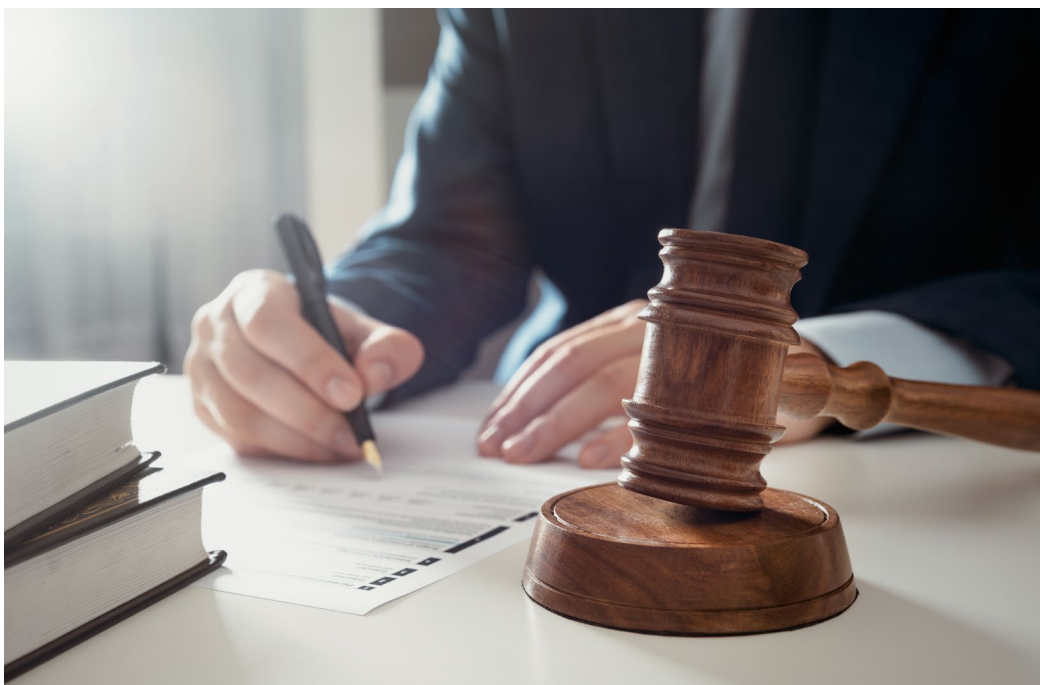
In Lawrence, Pennington and Minnehaha counties, a public defender's office represents defendants who cannot afford a lawyer.

# Probation

Probation is a sentence that judges can impose on people convicted of crimes. Probation is typically given to first-time offenders who are convicted of non-violent crimes. Probation allows offenders to serve their sentence in the community under supervision of a court services officer.

A sentence of probation may require an offender to serve time in the county jail, pay fines, pay restitution to the victims of their crime, seek counseling for substance abuse or for mental health or family issues, or to perform community service work.

People on probation remain under the authority of the court. Offenders who violate the conditions of their probation may be returned to court and re-sentenced to prison.



## PAROLE

Probation is different than parole. In **parole**, offenders are supervised by parole officers upon their release from prison under the supervision of the Department of Corrections, an executive branch agency.

# Other Court Activities

## Judicial Qualifications Commission

The Judicial Qualifications Commission investigates complaints against judges believed to be acting improperly. The non-partisan commission hears and investigates complaints and recommends to the Supreme Court whether disciplinary actions should be taken. If the Commission finds a complaint is justified, it may recommend that the judge be censured, removed from office or retired.

The Judicial Qualifications Commission also reviews applications for vacancies on the Supreme Court and the circuit court bench. The Commission nominates the most qualified applicants to the Governor, who in turn appoints a person to fill the vacancy.

The membership of the Commission consists of two judges, three attorneys and two lay persons appointed by the Governor.

## Conduct of Attorneys

Because the work of the courts depends to a great extent upon the cooperation and assistance of lawyers, it is necessary to have rules governing the way lawyers deal with their clients, the courts and the public. The South Dakota Supreme Court has final supervision of lawyers and has adopted a body of rules called the South Dakota Rules of Professional Conduct. These rules establish standards for lawyers' conduct and provide for disciplinary proceedings if a lawyer violates the code.



The Supreme Court appoints a five-member **Board of Bar Examiners** to manage the requirements for admission to practice law in South Dakota. The Board of Bar Examiners administers the bar examination and examines an applicant's good moral character.



## **SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM**

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