

40-35-104. Sentencing alternatives.

(a) A defendant convicted of a **felony or a misdemeanor** in this state shall be sentenced in accordance with this chapter.

(b)

(1) A **defendant** who is **convicted** of a felony after November 1, 1989, and who is sentenced to a total **sentence of at least one (1) year but not more than three (3) years, shall not** be **sentenced to serve the sentence in the department of correction**, if the legislative body for the county from which the defendant is being sentenced has either contracted with the department, or has passed a resolution that expresses an intent to contract for the purpose of housing convicted felons with such sentences. **If the sentencing court concludes that incarceration is the appropriate sentencing alternative, the defendant must be sentenced to the local jail or workhouse and not to the department.**

(2) A defendant who is convicted of a felony after November 1, 1989, and who is sentenced to at least one **(1) year but not more than six (6) years, shall not** be **sentenced to serve the sentence in the department of correction** if the defendant is being sentenced from a county with a population of not less than four hundred seventy-seven thousand eight hundred eleven (477,811), according to the 1980 federal census or any subsequent federal census, and the legislative body for the county has contracted with the department or has passed a resolution that expresses an intent to contract for the purpose of housing convicted felons with such sentences. If the sentencing court concludes that incarceration is the appropriate sentencing alternative, the defendant must be sentenced to the local jail or workhouse and not to the department.

(c) **The following sentencing alternatives in any appropriate combination are authorized for defendants otherwise eligible under this chapter:**

(1) Payment of a **fine** either alone or in addition to any other sentence authorized by this subsection (c);

(2) Payment of restitution to the victim or victims either alone or in addition to any other sentence authorized by this subsection (c);

(3) A sentence of confinement that is suspended upon a term of probation supervision that may include community service or restitution, or both;

(4) A sentence of **periodic confinement** that may be served in a local jail or workhouse **in conjunction with a term of probation;**

(5) A sentence of **continuous confinement** to be served in a local jail or workhouse **in conjunction with a term of probation;**

(6) A sentence of continuous confinement in a local jail or workhouse;

(7) **Work release** in accordance with § 40-35-315;

(8) A sentence of continuous confinement in the department of correction if the conviction is for a felony and the sentence is at least one (1) year, **unless:**

(A) The sentence is prohibited by subsection (b); or

(B) The defendant is convicted of a violation of § 39-14-103, involving property valued at **less than two thousand five hundred dollars (\$2,500)**, and the defendant is sentenced as an especially mitigated offender as defined in § 40-35-109 or a standard offender as defined in § 40-35-105; or

(9) A community-based alternative to incarceration as a condition of probation, such as participation in a **day reporting center program, a recovery and treatment program, or another appropriate community-based program.** A defendant may be ordered to participate in a recovery and treatment program **only if such a program is indicated by the results of a clinical assessment.**

(d) This chapter does not deprive a court of any authority conferred by law, including, but not limited to, § 40-35-313, to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose costs and other monetary obligations if specifically authorized by law.

(e) This chapter does not prevent a court from imposing a sentence of death specifically authorized by law.

(f) The **court shall strongly consider** utilizing available and appropriate sentencing alternatives for any defendant who, as appropriately documented, including through a validated risk and needs assessment under § 40-35-207(a)(10), has a behavioral health need, such as a **mental illness** as defined in § 33-1-101, or is **chemically dependent** as defined in § 16-22-103. The **court has sole discretion** whether to utilize available sentencing alternatives under this subsection (f).