

**§ 164-42. Sentencing structures.**

(a) The Commission shall recommend structures for use by a sentencing court in determining the most appropriate sentence to be imposed in a criminal case, including:

- (1) Imposition of an active term of imprisonment;
- (2) Imposition of a term of probation;
- (3) Suspension of a sentence to imprisonment and imposition of probation with conditions, including the appropriate probation option or options, including house arrest, regular probation, intensive supervision, restitution, and community service;
- (4) Based upon the combination of offense and defendant characteristics in each case, the presumptively appropriate length of a term of probation, or a term of imprisonment;
- (5) Ordering multiple sentences to terms of imprisonment to run concurrently or consecutively;
- (6) For a sentence to probation without a suspended sentence to imprisonment, the maximum term of confinement to be imposed if the defendant violates the conditions of probation.

(b) The sentencing structures shall be consistent with the goals, policies, and purposes of the criminal justice and corrections systems, as set forth in Sections 2 and 3 of the Sentencing and Policy Advisory Commission Act of 1990. As part of its work, the Commission shall offer recommendations for the incorporation of those sections into the sentencing laws of North Carolina. In formulating structures, the Commission also shall consider:

- (1) The nature and characteristics of the offense;
- (2) The severity of the offense in relation to other offenses;
- (3) The characteristics of the defendant that mitigate or aggravate the seriousness of his criminal conduct and the punishment deserved therefor;
- (4) The defendant's number of prior convictions;
- (5) The available resources and constitutional capacity of the Division of Prisons, local confinement facilities, and community-based sanctions;
- (6) The rights of the victims;
- (7) That felony offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentences before they are eligible for parole; and
- (8) That misdemeanor offenders sentenced to an active term of imprisonment, or whose suspended sentence to imprisonment is activated, should serve a designated minimum percentage of their sentence before they are eligible for parole.

(c) The Commission shall also consider the policy issues set forth in G.S. 164-42.1 in developing its sentencing structures.

(d) The Commission shall include with each set of sentencing structures a statement of its estimate of the effect of the sentencing structures on the Division of Prisons and local facilities, both in terms of fiscal impact and on inmate population. If the Commission finds that the proposed sentencing structures will result in inmate populations in the Division of Prisons and local confinement facilities that exceed the standard operating capacity, then the Commission shall present an additional set of structures that are consistent with that capacity. For purposes of this subsection, "standard operating capacity" means the total capacity expected to be available in both local confinement facilities and in the Division of Prisons once all the proceeds of bonds authorized by Chapter 933 of the 1989 Session Laws and Chapter 935 of the 1989 Session Laws have been expended for the construction of prison facilities. (1989 (Reg. Sess., 1990), c. 1076, s. 1; 1991 (Reg. Sess., 1992), c. 812, s. 12; c. 816, ss. 1, 5; 1993, c. 253, s. 5.1; c. 321, s. 200.1; 1993

(Reg. Sess., 1994), c. 591, s. 6(a); 1995, c. 236, s. 1; 1997-256, s. 6; 1997-347, s. 2; 1997-401, s. 2; 1997-418, s. 2; 1997-443, s. 18.6(a); 2009-372, s. 8; 2011-145, s. 19.1(h); 2011-391, s. 43(f); 2017-186, s. 2(nnnnnnnnn); 2021-180, s. 19C.9(q).)