§ 60.04 Authorized disposition; controlled substances and marihuana felony offenses.

1. Applicability. Notwithstanding the provisions of any law, this section shall govern the dispositions authorized when a person is to be sentenced upon a conviction of a felony offense defined in article two hundred twenty or two hundred twenty-one of this chapter or when a person is to be sentenced upon a conviction of such a felony as a multiple felony offender as defined in subdivision five of this section.

2. Class A felony. Every person convicted of a class A felony must be sentenced to imprisonment in accordance with section 70.71 of this title, unless such person is convicted of a class A-II felony and is sentenced to probation for life in accordance with section 65.00 of this title.

3. Class B felonies. Every person convicted of a class B felony must be sentenced to imprisonment in accordance with the applicable provisions of section 70.70 of this chapter, a definite sentence of imprisonment with a term of one year or less or probation in accordance with section 65.00 of this chapter provided, however, a person convicted of criminal sale of a controlled substance to a child as defined in section 220.48 of this chapter must be sentenced to a determinate sentence of imprisonment in accordance with the applicable provisions of section 70.70 of this chapter or to a sentence of probation in accordance with the opening paragraph of paragraph (b) of subdivision one of section 65.00 of this chapter.

4. Alternative sentence. Where a sentence of imprisonment or a sentence of probation as an alternative to imprisonment is not required to be imposed pursuant to subdivision two, three or five of this section, the court may impose any other sentence authorized by section 60.01 of this article, provided that when the court imposes a sentence of imprisonment, such sentence must be in accordance with section 70.70 of this title. Where the court imposes a sentence of imprisonment in accordance with this section, the court may also impose a fine authorized by article eighty of this title and in such case the sentence

shall be both imprisonment and a fine.

5. Multiple felony offender. Where the court imposes a sentence pursuant to subdivision three of section 70.70 of this chapter upon a second felony drug offender, as defined in paragraph (b) of subdivision one of section 70.70 of this chapter, it must sentence such offender to imprisonment in accordance with the applicable provisions of section 70.70 of this chapter, a definite sentence of imprisonment with a term of one year or less, or probation in accordance with section 65.00 of this chapter, provided, however, that where the court imposes a sentence upon a class B second felony drug offender, it must sentence such offender to a determinate sentence of imprisonment in accordance with the applicable provisions of section 70.70 of this chapter or to a sentence of probation in accordance with the opening paragraph of paragraph (b) of subdivision one of section 65.00 of this chapter. When the court imposes sentence on a second felony drug offender pursuant to subdivision four of section 70.70 of this chapter, it must impose a determinate sentence of imprisonment in accordance with such subdivision.

6. Substance abuse treatment. When the court imposes a sentence of imprisonment which requires a commitment to the state department of corrections and community supervision upon a person who stands convicted of a controlled substance or marihuana offense, the court may, upon motion of the defendant in its discretion, issue an order directing that the department of corrections and community supervision enroll the defendant in the comprehensive alcohol and substance abuse treatment program in an alcohol and substance abuse correctional annex as defined in subdivision eighteen of section two of the correction law, provided that the defendant will satisfy the statutory eligibility criteria for participation in such program. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and those rules and regulations governing discipline and removal from the program. No such period of

court ordered corrections based drug abuse treatment pursuant to this subdivision shall be required to extend beyond the defendant's conditional release date.

7. a. Shock incarceration participation. When the court imposes a sentence of imprisonment which requires a commitment to the department of corrections and community supervision upon a person who stands convicted of a controlled substance or marihuana offense, upon motion of the defendant, the court may issue an order directing that the department of corrections and community supervision enroll the defendant in the shock incarceration program as defined in article twenty-six-A of the correction law, provided that the defendant is an eligible incarcerated individual, as described in subdivision one of section eight hundred sixty-five of the correction law. Notwithstanding the foregoing provisions of this subdivision, any defendant to be enrolled in such program pursuant to this subdivision shall be governed by the same rules and regulations promulgated by the department of corrections and community supervision, including without limitation those rules and regulations establishing requirements for completion and such rules and regulations governing discipline and removal from the program.

b. (i) In the event that an incarcerated individual designated by court order for enrollment in the shock incarceration program requires a degree of medical care or mental health care that cannot be provided at a shock incarceration facility, the department, in writing, shall notify the incarcerated individual, provide a proposal describing a proposed alternative-to-shock-incarceration program, and notify him or her that he or she may object in writing to placement in such alternative-to-shock-incarceration program. If the incarcerated individual objects in writing to placement in such alternative-to-shock-incarceration program, the department of corrections and community supervision shall notify the sentencing court, provide such proposal to the court, and arrange for the incarcerated individual's prompt appearance before the court. The court shall provide the proposal and notice of a court appearance to the people, the incarcerated individual and the appropriate defense attorney. After considering the proposal and any submissions by the parties, and after a

reasonable opportunity for the people, the incarcerated individual and counsel to be heard, the court may modify its sentencing order accordingly, notwithstanding the provisions of section 430.10 of the criminal procedure law.

(ii) An incarcerated individual who successfully completes an alternative-to-shock-incarceration program within the department of corrections and community supervision shall be treated in the same manner as a person who has successfully completed the shock incarceration program, as set forth in subdivision four of section eight hundred sixty-seven of the correction law.