

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on June 17, 2009 by the

Criminal Justice Commission

213

Agency and Division

Administrative Rules Chapter Number

Craig Prins

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Rules Coordinator

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to become effective upon filing through December 13, 2010.

RULE CAPTION

Amends Oregon sentencing guidelines regarding animal abuse classifications

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: OAR 213-017-0004; 213-017-0006; 213-017-0009

SUSPEND:

Stat. Auth.: ORS 137.667

Other Auth.:

Stats. Implemented: ORS 137.667

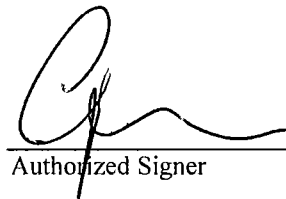
FILED

JUN 17 2009

ARCHIVES DIVISION
SECRETARY OF STATE

RULE SUMMARY

Under ORS 137.667(2), the Criminal Justice Commission may adopt changes to the sentencing guidelines. CJC adopted temporary rules changing the classification of Felony Animal Abuse I (ORS 167.320(4)) from a Crime Category 3 to a Crime Category 6 on the Crime Seriousness Scale, and changing the classification of Aggravated Animal Abuse I (ORS 167.322) from a Crime Category 3 to a Crime Category 8 on the Crime Seriousness Scale. Those rules require legislative approval before becoming effective. The temporary rules had an effective date of January 1, 2010, to parallel the effective date of the possible legislative approval. The rules are now being amended to delete the changes to the Crime Categories for Aggravated Animal Abuse I and Felony Animal Abuse I, because those changes were not approved by the 2009 Legislative Assembly. These rules must be adopted immediately to enable the legislature to approve them during the 2009 legislative session.



Authorized Signer

CRAIG PRINS

Printed name

6-17-09

Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

ARC 940-2005

CJC 3-2009 (TEMP)

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Criminal Justice Commission

213

Agency and Division

Administrative Rules Chapter Number

In the Matter of: the amendment of OAR 213-017-0004, 213-017-0006, and 213-017-0009 of the Sentencing Guidelines

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Amends Oregon sentencing guidelines regarding animal abuse classifications

Statutory Authority: ORS 137.667

Other Authority:

Stats. Implemented: ORS 137.667

Need for the Temporary Rule(s):

Under ORS 137.667(2), the Criminal Justice Commission may adopt changes to the sentencing guidelines. CJC adopted temporary rules changing the classification of Felony Animal Abuse I (ORS 167.320(4)) from a Crime Category 3 to a Crime Category 6 on the Crime Seriousness Scale, and changing the classification of Aggravated Animal Abuse I (ORS 167.322) from a Crime Category 3 to a Crime Category 8 on the Crime Seriousness Scale. Those rules require legislative approval before becoming effective. The temporary rules had an effective date of January 1, 2010, to parallel the effective date of the possible legislative approval. Those rules are now being amended to delete the changes to the Crime Categories for Aggravated Animal Abuse I and Felony Animal Abuse I, because those changes were not approved by the 2009 Legislative Assembly. These rules must be adopted immediately to enable the legislature to approve them during the 2009 legislative session. This rule change is necessary to delete rule text that the legislature does not wish to approve, and concomitantly to permit the legislature to approve only the rule text that it desires to approve.

Documents Relied Upon, and where they are available: None.

Justification of Temporary Rule(s):

CJC finds that following the permanent rulemaking process, rather than taking this temporary rulemaking action, will result in serious prejudice to the public interest because it will cause the following specific consequences: These rules would amend the sentencing guidelines. Subject to exceptions not applicable here, the legislature must approve all amendments to the sentencing guidelines before such rules go into effect. The legislature typically meets only once per biennium, and is currently in session. Temporary rules are needed so that the rule language will be in place to facilitate legislative approval during this legislative session. Engaging in the permanent rulemaking process at this time would mean that the legislature would not have the opportunity to consider approval of these rules during the current session. The next opportunity for such approval would be at best during a possible interim session next year, at worst, at the next regularly scheduled legislative session two years from now. Serious prejudice would result if the people of the state of Oregon had to wait at least one year, possibly two, for the legislature to approve these rules so that they could go into effect. It will also ensure that judges throughout the state are following the most current rules that have been legislatively approved, rather than waiting to implement changes that are desired by the legislature but have not been approved.



Craig Pwines

6.17.09

Authorized Signer

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 945-2005

DIVISION 17

CRIME SERIOUSNESS SCALE

213-017-0004

Crime Category 8

The following offenses are classified at crime category 8 on the Crime Seriousness Scale:

- (1) AGGRAVATED DRUG OFFENSES (See division 19).
- (2) ORS 163.125 -- MANSLAUGHTER II -- (B). (If not categorized at CC 9.)
- (3) ORS 163.145 -- NEGLIGENT HOMICIDE -- (B). (If not categorized at CC 9.)
- (4) ORS 163.207 -- FEMALE GENITAL MUTILATION -- (B)
- (5) ORS 163.365 -- RAPE II -- (B).
- (6) ORS 163.395 -- SODOMY II -- (B).
- (7) ORS 163.408 -- SEXUAL PENETRATION II -- (B).
- (8) ORS 163.427 -- SEXUAL ABUSE I -- (B).
- (9) ORS 163.537 -- BUYING/SELLING THE CUSTODY OF A MINOR -- (B). (If the conduct is likely to endanger the health or welfare of the child, otherwise CC 5)
- (10) ORS 163.670 -- USING CHILD IN DISPLAY OF SEXUAL CONDUCT -- (A).
- (11) ORS 163.684 -- ENCOURAGING CHILD SEX ABUSE I - (B).
- (12) ORS 163.732 -- STALKING -- (C).
- (13) ORS 163.750 -- VIOLATE COURT STALKING ORDER -- (C).
- (14) ORS 164.225 -- BURGLARY I -- (A). (If offender did not cause, threaten or attempt physical injury and was not armed with a deadly weapon (CC 9) but the offense was committed while the dwelling was occupied; otherwise CC 7.)
- (15) ORS 164.325 -- ARSON I -- (A). (If the offense did not represent a threat of serious physical injury (CC 10) and economic loss is \$25,000 or more but less than \$50,000; otherwise CC 9 or CC 7.)
- (16) ORS 164.877(3) -- TREE SPIKING-INJURY -- (B).
- (17) ORS 166.275 -- INMATE POSSESSION OF WEAPON -- (A). (if firearm, otherwise CC 7.)
- (18) ORS 167.012 -- PROMOTING PROSTITUTION -- (C).
- (19) ORS 167.017 -- COMPELLING PROSTITUTION -- (B).
- (20) ORS 167.262 -- USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE -- (A). (CC 4 if minor less than 3 yrs. younger than offender)
- (21) ORS 811.705 -- HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) -- (B).
- (22) 2007 Oregon Laws Ch 876 -- ONLINE SEXUAL CORRUPTION OF A CHILD I - (B).

Stat. Auth.: ORS 137.667, 811.707 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667-137.669, 811.707 & 2003 OL Ch. 453, 815, 2007 OL Ch. 876

213-017-0006

Crime Category 6

The following offenses are classified at crime category 6 on the Crime Seriousness Scale:

- (1) Chapter 59 -- BLUE SKY LAWS & SECURITIES LAWS* -- (C).
- (2) MAJOR DRUG OFFENSES (See division 19.)

- (3) ORS 162.015 -- BRIBERY -- (B).
- (4) ORS 162.025 -- BRIBE RECEIVING -- (B).
- (5) ORS 162.065 -- PERJURY -- (C).
- (6) ORS 162.117 -- PUBLIC INVESTMENT FRAUD -- (B).
- (7) ORS 162.155 -- ESCAPE II -- (C).
- (8) ORS 162.185 -- SUPPLYING CONTRABAND -- (C). (The contraband involves a dangerous weapon not a firearm CC 7; Otherwise CC 4 or 5.)
- (9) ORS 162.265 -- BRIBING A WITNESS -- (C).
- (10) ORS 162.275 -- BRIBE RECEIVING BY WITNESS -- (C).
- (11) ORS 162.285 -- TAMPERING W/ WITNESS -- (C).
- (12) ORS 162.325 -- HINDERING PROSECUTION -- (C).
- (13) ORS 163.160(3) -- FELONY DOMESTIC ASSAULT -- (C).
- (14) ORS 163.165 -- ASSAULT III -- (C).
- (15) ORS 163.208 -- ASSAULT OF A PUBLIC SAFETY OFFICER -- (C).
- (16) ORS 163.213 -- USE OF A STUN GUN, TEAR GAS, MACE I -- (C).
- (17) ORS 163.257 -- CUSTODIAL INTERFERENCE I -- (C).
- (18) ORS 163.264 -- SUBJECTING ANOTHER PERSON TO INVOLUNTARY SERVITUDE I -- (B). (If offender physically restrained or threatened to physically restrain a person; otherwise CC 9.)
- (19) ORS 163.275 -- COERCION -- (C). (No threat of physical injury; otherwise CC 7.)
- (20) ORS 163.355 -- RAPE III -- (C).
- (21) ORS 163.385 -- SODOMY III -- (C).
- (22) ORS 163.432 -- ONLINE SEXUAL CORRUPTION OF A CHILD II -- (C).
- (23) ORS 163.465 -- FELONY PUBLIC INDECENCY -- (C).
- (24) ORS 163.525 -- INCEST -- (C). (If one of the participants is under the age of 18; otherwise CC 1.)
- (25) ORS 163.547 -- CHILD NEGLECT IN THE FIRST DEGREE -- (B).
- (26) ORS 163.688 -- POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I -- (B).
- (27) ORS 164.055 -- THEFT I* -- (C).
- (28) ORS 164.057 -- AGGRAVATED THEFT -- (B). (Economic loss was greater than \$50,000; otherwise CC 5.)
- (29) ORS 164.065 -- THEFT OF LOST/MISLAID PROPERTY * -- (C).
- (30) ORS 164.075 -- THEFT BY EXTORTION* -- (B).
- (31) ORS 164.085 -- THEFT BY DECEPTION* -- (C).
- (32) ORS 164.125 -- THEFT OF SERVICES* -- (C).
- (33) ORS 164.135 -- UNAUTHORIZED USE OF VEHICLE* -- (C).
- (34) ORS 164.138 -- CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* -- (C).
- (35) ORS 164.140(4) -- POSSESSION OF RENTED PROPERTY* -- (C).
- (36) ORS 164.162 -- MAIL THEFT OR RECEIPT OF STOLEN MAIL -- (C).
- (37) ORS 164.215 -- BURGLARY II* -- (C).
- (38) ORS 164.315 -- ARSON II* -- (C).
- (39) ORS 164.365 -- CRIMINAL MISCHIEF I* -- (C).
- (40) ORS 164.377 -- COMPUTER FRAUD (LOTTERY)* -- (C).
- (41) ORS 164.377(3) -- COMPUTER CRIME* -- (C).

- (42) ORS 164.868 -- UNLAWFUL LABEL SOUND RECORDING* -- (C).
- (43) ORS 164.869 -- UNLAWFUL RECORD LIVE PERFORMANCE* -- (C).
- (44) ORS 164.872 -- UNLAWFUL LABEL VIDEOTAPE* -- (C).
- (45) ORS 164.877(1) -- TREE-SPIKING -- (C).
- (46) ORS 164.889 -- INTERFERE W/ AGRICULTURAL RESEARCH* -- (C).
- (47) ORS 165.013 -- FORGERY I* -- (C).
- (48) ORS 165.022 -- CRIMINAL POSSESSION OF FORGED INSTRUMENT I* -- (C).
- (49) ORS 165.055(3)(A) -- CREDIT CARD FRAUD* -- (C).
- (50) ORS 165.065 -- NEGOTIATING BAD CHECKS* -- (C).
- (51) ORS 165.074 -- UNLAWFUL FACTORING PAYMENT CARD * -- (C).
- (52) ORS 165.692 -- FILING A FALSE CLAIM FOR HEALTH CARE PAYMENT -- (C).
- (53) ORS 165.800 -- IDENTITY THEFT* -- (C).
- (54) ORS 166.015 -- RIOT -- (C).
- (55) ORS 166.165 -- INTIMIDATION I -- (C).
- (56) ORS 166.220 -- UNLAWFUL USE OF WEAPON -- (C).
- (57) ORS 166.270 -- EX-CON IN POSSESSION OF FIREARM -- (C).
- (58) ORS 166.272 -- UNLAWFUL POSSESSION OF FIREARM -- (B).
- (59) ORS 166.370(1) -- INTENT POSS. FIREARM OR DANG. WEAP. IN and (5)(a) -- PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL -- (C).
- (60) ORS 166.382 -- POSSESSION OF DESTRUCTIVE DEVICE -- (C).
- (61) ORS 166.384 -- UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE -- (C).
- (62) ORS 166.410 -- ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS -- (B).
- (63) ORS 166.643 -- UNLAWFUL POSSESS SOFT BODY ARMOR -- (B). (If offender committed or was attempting to commit a person felony or misdemeanor involving violence, otherwise CC 4.)
- (64) ORS 167.057 -- LURING A MINOR -- (C).
- (65) ORS 167.339 -- ASSAULT OF A LAW ENFORCEMENT ANIMAL -- (C).
- (66) ORS 167.388 -- INTERFERE LIVESTOCK PRODUCTION* -- (C).
- (67) ORS 647.145 -- TRADEMARK COUNTERFEITING II* -- (C).
- (68) ORS 647.150 -- TRADEMARK COUNTERFEITING I* -- (B).
- (69) ORS 811.182 -- DRIVING WHILE SUSPENDED/REVOKED -- (C).
- (70) ORS 811.705 -- HIT & RUN VEHICLE (INJURY) -- (C).
- (71) ORS 813.010 -- FELONY DRIVING UNDER THE INFLUENCE -- (C).
- (72) ORS 819.300 -- POSSESSION OF STOLEN VEHICLE* -- (C).
- (73) ORS 819.310 -- TRAFFICKING IN STOLEN VEHICLES -- (C). (If part of an organized operation or if value of property taken from one or more victims was greater than \$50,000; otherwise CC 5.)
- (74) ORS 830.475 -- HIT AND RUN BOAT -- (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 6 if the value of the property stolen or destroyed was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

Stat. Auth.: ORS 137.667 & 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 2001 OL Ch. 147, 635 & 828 2003 2001

OL Ch. 383, 453, 543, 2005 OL Ch. 708, 2007 OL Ch. 684, 811, 869, & 876, SB 1087 (2008), Ballot Measure 57 (2008)

213-017-0009

Crime Category 3

The following offenses are classified at crime category 3 on the Crime Seriousness Scale:

- (1) ORS Chapter 59 -- BLUE SKY LAWS & SECURITIES LAWS* -- (C).
- (2) ORS 162.305(2)(b) -- TAMPER LOTTERY RECORDS -- (C).
- (3) ORS 162.355 -- SIMULATING LEGAL PROCESS -- (C).
- (4) ORS 162.365(3)(b) -- CRIMINAL IMPERSONATION OF PEACE OFFICER, JUDGE OR JUSTICE OF THE PEACE -- (C).
- (5) ORS 162.367 -- FALSE LAW ENFORCEMENT ID -- (C).
- (6) ORS 163.535 -- ABANDON CHILD -- (C).(If not ranked at CC 7.)
- (7) ORS 163.555 -- CRIMINAL NONSUPPORT -- (C).
- (8) ORS 164.055 -- THEFT I* -- (C).
- (9) ORS 164.065 -- THEFT OF LOST/MISLAID PROPERTY* -- (C).
- (10) ORS 164.075 -- THEFT BY EXTORTION* -- (B).
- (11) ORS 164.085 -- THEFT BY DECEPTION* -- (C).
- (12) ORS 164.095 -- THEFT BY RECEIVING -- (C).(If not ranked at CC 5.)
- (13) ORS 164.125 -- THEFT OF SERVICES* -- (C).
- (14) ORS 164.135 -- UNAUTHORIZED USE OF VEHICLE * -- (C).
- (15) ORS 164.140(4) -- POSSESSION OF RENTED PROPERTY * -- (C).
- (16) ORS 164.215 -- BURGLARY II* -- (C).
- (17) ORS 164.315 -- ARSON II* -- (C).
- (18) ORS 164.365 -- CRIMINAL MISCHIEF I* -- (C).
- (19) ORS 164.377(5) -- COMPUTER FRAUD (LOTTERY)* -- (C).
- (20) ORS 164.377(5) -- COMPUTER CRIME* -- (C).
- (21) ORS 164.868 -- UNLAWFUL LABEL SOUND RECORDING* -- (C).
- (22) ORS 164.869 -- UNLAWFUL RECORD LIVE PERFORMANCE* -- (C).
- (23) ORS 164.872 -- UNLAWFUL LABEL VIDEOTAPE* --(C).
- (24) ORS 164.889 -- INTERFERE W/ AGRICULTURAL RESEARCH* -- (C).
- (25) ORS 165.013 -- FORGERY I* -- (C).
- (26) ORS 165.022 -- CRIMINAL POSSESSION OF FORGED INSTRUMENT I* -- (C).
- (27) ORS 165.055(4)(B) -- CREDIT CARD FRAUD* -- (C).
- (28) ORS 165.065 -- NEGOTIATING BAD CHECKS* -- (C).
- (29) ORS 165.070 -- POSSESSION OF FAKE COMMUNICATIONS DEVICE -- (C).
- (30) ORS 165.074 -- UNLAWFUL FACTORING PAYMENT CARD * -- (C).
- (31) ORS 165.800 -- IDENTITY THEFT* -- (C).
- (32) ORS 166.085 -- ABUSE OF CORPSE II -- (C).
- (33) ORS 167.062(4) -- PROMOTING LIVE SEX SHOW - (C).
- (34) ORS 167.137 -- UNLAWFUL GAMBLING I -- (C).
- (35) ORS 167.137 -- POSSESSION OF GAMBLING RECORDS I -- (C).
- (36) ORS 167.320 -- FELONY ANIMAL ABUSE I -- (C).
- (37) ORS 167.322 -- AGGRAVATED ANIMAL ABUSE I -- (C).
- (38) ORS 167.388 -- INTERFERE LIVESTOCK PRODUCTION* -- (C).
- (39) ORS 647.145 -- TRADEMARK COUNTERFEITING II* -- (C).

- (40) ORS 647.150 -- TRADEMARK COUNTERFEITING I* -- (B).
- (41) ORS 819.300 -- POSSESSION OF STOLEN VEHICLE* -- (C).
- (42) 2003 Oregon Laws Ch 804 UNLAWFUL DISTRIB. CIGARETTES -- (C) <60,000.
- (43) 2003 Oregon Laws Ch 804 -- UNLAWFUL DISTRIB. TOBACCO PRODUCTS -- (C)
- (44) 2003 Oregon Laws Ch 550 -- ORGANIZE SPEED RACING EVENT -- (C)
- (45) 2003 Oregon Laws Ch 632 -- UNLAWFUL POSSESSION FICTITIOUS ID -- (C)
- (46) 2003 Oregon Laws Ch 633 -- UNLAWFUL PRODUCTION ODOT ID CARDS -- (C)
- (47) 2007 Oregon Laws Ch 684 -- CRIMINAL POSSESSION OF A RENTED OR LEASED MOTOR VEHICLE* -- (C).

* Property offenses marked with an asterisk shall be ranked at Crime Category 2 if the value of the property stolen or destroyed was less than \$1,000.

Stat. Auth.: ORS 137.667, 2003 OL Ch. 453

Stats. Implemented: ORS 137.667 - 137.669, 164.889, 166.642, 2003 OL Ch. 383, 453, 550, 632, 633, 2007 OL Ch. 684