

9-16

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 September 16, 2009 by the

Criminal Justice Commission	213
Agency and Division	Administrative Rules Chapter Number
Craig Prins	885 Summer Street NE, Salem, OR, 97301
Rules Coordinator	Address
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to become effective September 16, 2009 through March 14, 2010.

**RULE CAPTION**

**Amends Oregon sentencing guidelines in light of Oregon Laws 2009, Chapter 660 (House Bill 3508)**  
**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:** OAR 213-018-0022

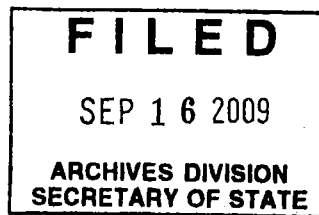
**AMEND:** OAR 213-017-0004; OAR 213-017-0006

**SUSPEND:**

Stat. Auth.: ORS 137.667

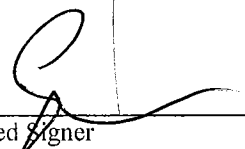
Other Auth.:

Stats. Implemented: ORS 137.667; HB 3508 (2009)



**RULE SUMMARY**

HB 3508 (2009) became effective on July 1, 2009. Section 39 of HB 3508 reclassifies the crime of Assault in the Third Degree if that crime resulted from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving while under the influence of intoxicants to a Class B felony. Under Section 40 of HB 3508, the crime seriousness category under the sentencing guidelines for that crimes is changed to a level 8. The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. Additionally, Section 40 of HB 3508 (2009) requires CJC to classify Assault in the Third Degree that is committed from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving under the influence of intoxicants to a crime category 8 on the sentencing guidelines grid. The rule amendments and adoption classifies ORS 163.165(2)(b) as a Crime Category 8 on the Crime Seriousness Scale. The rule changes also include numbering changes necessitated by adding to the list of numerically ordered crimes, and updated statutory citations.

	<i>Craig Prins</i>	9.15.09
Authorized Signer	Printed name	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 4-2009(T)

**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 and 213-017-0006, and the adoption of OAR 213-018-0022 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 in light of Oregon Laws 2009, Chapter 660 (House Bill 3508)**

Statutory Authority: ORS 137.667

Other Authority:

Stats. Implemented: ORS 137.667; Oregon Laws 2009, chapter 660 (HB 3508)

Need for the Temporary Rule(s):

HB 3508 (2009) became effective on July 1, 2009. Section 39 of HB 3508 reclassifies the crime of Assault in the Third Degree if that crime resulted from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving while under the influence of intoxicants to a Class B felony. Under Section 40 of HB 3508, the crime seriousness category under the sentencing guidelines for that crimes is changed to a level 8.

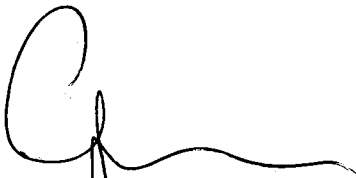
The Criminal Justice Commission (CJC) is required under ORS 137.667 to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the crime seriousness scale. Additionally, Section 40 of HB 3508 (2009) requires CJC to classify Assault in the Third Degree that is committed from the operation of a motor vehicle and the defendant was the driver of a motor vehicle and was driving under the influence of intoxicants to a crime category 8 on the sentencing guidelines grid. The rule changes are necessary to comply with those legislative directives.

Documents Relied Upon, and where they are available:

HB 3508 (2009), which is available on the Oregon Legislature's website: [www.leg.state.or.us](http://www.leg.state.or.us)

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: Section 39 of HB 3508 (2009), which changes the offense in ORS 163.165(2)(b) from a Class C felony to a Class B felony, by its terms is effective on July 1, 2009. Additionally, Section 40 of HB 3508 (2009), which changes the crime category of the offense in ORS 163.165(2)(b) to a crime category 8, by its terms is effective on July 1, 2009. A temporary rule is needed so that the classification of a crime committed under ORS 163.165, as well as its placement on the sentencing guidelines crime seriousness category, is in place as directed by the legislature. This will enable judges statewide to properly sentence people who commit this crime on or after the effective date of the statutory amendment. Any further gap between the effective date of the rule and the effective date of the statutory change would result in lack of uniformity in sentencing and lack of guidance for judges required to sentence people for this offense on or after July 1, 2009.



Authorized Signer

Craig Prins

Printed name

9.15.09.

Date

## 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 163.165 -- ASSAULT III -- (B). (If not categorized at CC6.)
- (5) ORS 163.207 -- FEMALE GENITAL MUTILATION -- (B).
- (6) ORS 163.365 -- RAPE II -- (B).
- (7) ORS 163.395 -- SODOMY II -- (B).
- (8) ORS 163.408 -- SEXUAL PENETRATION II -- (B).
- (9) ORS 163.427 -- SEXUAL ABUSE I -- (B).
- (10) 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.)
- (11) ORS 163.670 -- USING CHILD IN DISPLAY OF SEXUAL CONDUCT -- (A).
- (12) ORS 163.684 -- ENCOURAGING CHILD SEX ABUSE I -- (B).
- (13) ORS 163.732 -- STALKING -- (C).
- (14) ORS 163.750 -- VIOLATE COURT STALKING ORDER -- (C).
- (15) 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.)
- (16) 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.)
- (17) ORS 164.877(3) -- TREE SPIKING-INJURY -- (B).
- (18) ORS 166.275 -- INMATE POSSESSION OF WEAPON -- (A). (if firearm, otherwise CC 7.)
- (19) ORS 167.012 -- PROMOTING PROSTITUTION -- (C).
- (20) ORS 167.017 -- COMPELLING PROSTITUTION -- (B).
- (21) ORS 167.262 -- USING A MINOR IN CONTROLLED SUBSTANCE OFFENSE -- (A).  
(CC 4 if minor less than 3 yrs. younger than offender.)
- (22) ORS 811.705 -- HIT & RUN VEHICLE (DEATH/SERIOUS INJURY) -- (B).
- (23) 2007 Oregon Laws Ch 876 -- ONLINE SEXUAL CORRUPTION OF A CHILD I -- (B).

Stat. Auth.: ORS 137.667, 811.707, & 2003 OL Ch. 453, & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669, 811.707 & 2003 OL Ch. 453, 815, & 2007 OL Ch. 876, & 2009 OL Ch. 660

**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). (If the offense cannot be ranked at CC 8.)
- (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\* v (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, & 2009 OL Ch. 660

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), & 2009 OL Ch. 660

## **DIVISION 18**

### **OFFENSE SUBCATEGORIES**

#### **213-018-0022**

##### **Assault III (ORS 163.165)**

(1) CRIME CATEGORY 8: Assault III shall be ranked at Crime Category 8 if the assault resulted from the operation of a motor vehicle and the driver of the motor vehicle was driving while under the influence of intoxicants.

(2) CRIME CATEGORY 6: Assault III shall be ranked at Crime Category 6 if it cannot be ranked at Crime Category 8.

Stat. Auth.: ORS 137.667 & 2009 OL Ch. 660

Stats. Implemented: ORS 137.667 - 137.669 & 2009 OL Ch. 660