

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on October 15, 2012 by the
Criminal Justice Commission
Date prior to or same as filing date
213

Agency and Division Administrative Rules Chapter Number

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to become effective upon filing. Rulemaking Notice was published in the September, 2012 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Changes to Notice Rule, Updating Sentencing Guidelines Citations, and Repeal of SB 77 Rules

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 or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND: OAR 213-001-0000; OAR 213-005-0001; OAR 213-008-0003; OAR 213-008-0005; OAR 213-012-0020; OAR 213-012-0030

REPEAL: OAR 213-001-0000(T); OAR 213-070-0000, 213-070-0005, 213-070-0010, 213-070-0020, 213-070-0030, 213-070-0040, 213-070-0050

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 137.667; ORS 183.341(2) and (4); ORS 203.095

Other Auth.:

Stats. Implemented: ORS 137.667; 166.070(2); ORS 183.341(2) and (4); ORS 203.095

FILED

OCT 16 2012

**ARCHIVES DIVISION
SECRETARY OF STATE**

RULE SUMMARY

The Criminal Justice Commission (CJC) is required under ORS 137.667(1) to review all legislation creating new crimes or modifying existing crimes, and to adopt by rule necessary changes to the sentencing guidelines. CJC may also classify offenses as person felonies or person misdemeanors. ORS 137.667(1). Under the Oregon Administrative Procedures Act (APA), agencies are required to adopt rules pertaining to rulemaking procedures. ORS 183.341. The APA also requires that agencies give the public a minimum of 21 days' notice of a proposed rulemaking before the rule becomes effective. ORS 183.335(1)(b). CJC has adopted such rules. However, the public notice period required under the CJC rules is greater than the public notice period required under the APA, *i.e.*, 28 days' notice versus 21 days' notice.

Occasionally, in order to have CJC's proposed changes to the sentencing guidelines administrative rules take effect in a timely manner, it is necessary for CJC to provide notice that meets the statutory APA minimum notice requirement of 21 days, but which is later than CJC's existing notice requirement of 28 days. This rule change makes permanent a temporary rule that modifies CJC's existing administrative rules regarding notice to the public of proposed rulemaking so that CJC's notice requirements are consistent with the advance public notice time period required by the APA. CJC's advance notice requirements pertaining to legislators, interested parties, and other specific entities listed in CJC's notice rules remain unchanged.

In 2009, the Oregon Legislature created the crime of Aggravated Harassment. HB 3271 (2009). A person commits that offense, in relevant part, when the person propels a dangerous substance at a staff member (a defined term), knowing the staff member to be a staff member, while the staff member is acting in his or her official capacity. This same crime was previously a form of Assault III, and was codified at ORS 163.165(1). The Legislature requires that persons convicted of propelling a dangerous substance at a

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staff member (currently Aggravated Harassment, previously Assault III) be sentenced to a term of imprisonment in a state correctional facility. The references to this requirement in CJC's rules currently use the old Assault III citation. The rule change updates those citations to the location where the requirement is currently found, in ORS 166.070, the Aggravated Harassment statute.

Finally, CJC was required under *former* ORS 203.095 (2009) (SB 77 (2009)) to adopt rules pertaining to public safety services guidelines to aid CJC in determining whether a county provided a minimally adequate level of public safety services in certain defined areas. In 2012, the Oregon Legislature amended ORS 203.095 to remove CJC's authority in this regard, and to give the Governor authority, in certain circumstances, to determine whether a county is providing a minimally adequate level of state required services. HB 4176 (2012). As a result, CJC is repealing its rules pertaining to determination of a minimally adequate level of public safety services

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

DIVISION 1

PROCEDURAL RULES

213-001-0000

Notice Rule for Rulemaking

Prior to the adoption, amendment or repeal of any permanent rule, the chairperson of the Criminal Justice Commission or designee shall give notice of the proposed action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days prior to the effective date of the proposed rule.
- (2) By furnishing a copy of the notice to persons on the Criminal Justice Commission mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date of the proposed rule.
- (3) By furnishing a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days prior to the effective date of the proposed rule.
- (4) By furnishing a copy of the notice at least 28 days prior to the effective date of the proposed rule to:
 - (a) Associated Press;
 - (b) The Oregonian, Portland, Oregon;
 - (c) East Oregonian, Pendleton, Oregon;
 - (d) Statesman Journal, Salem, Oregon;
 - (e) Medford Mail Tribune, Medford, Oregon;
 - (f) The Register Guard, Eugene, Oregon;
 - (g) The Bulletin, Bend, Oregon;
 - (h) Oregon State Bar Bulletin;
 - (i) Chief Justice, Oregon Supreme Court;
 - (j) Chief Judge, Oregon Court of Appeals;
 - (k) Oregon Circuit Judges Association;
 - (l) Office of the Attorney General;
 - (m) State Court Administrator;
 - (n) American Civil Liberties Union;
 - (o) Association of Oregon Counties;
 - (p) Crime Victims United;
 - (q) Oregon Association Chiefs of Police;
 - (r) Oregon Community Corrections Directors Association;
 - (s) Oregon Criminal Defense Lawyers Association;
 - (t) Oregon District Attorneys Association;
 - (u) Oregon State Sheriffs Association;
 - (v) Office of Public Defense Services;
 - (w) Rules Coordinator, Department of Corrections;
 - (x) Association of Municipal Court Judges;
 - (y) Justices of the Peace Association; and
 - (z) Board of Parole and Post-Prison Supervision.

Stat. Auth.: ORS 183.341(2) and (4)

Stats. Implemented: ORS 183.341(2) and (4)

DIVISION 5

SENTENCING

213-005-0001

Place and Term of Incarceration

(1) If an offense is classified in a grid block above the dispositional line, the presumptive sentence shall be a term of imprisonment within the durational range of months stated in the grid block. The sentencing judge should select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) Terms of incarceration 12 months or less shall be served at the direction of the supervisory authority. Terms of incarceration greater than 12 months shall be served in the legal and physical custody of the Department.

(3) Notwithstanding the term of imprisonment imposed by the sentencing court, and as authorized by the court pursuant to ORS 137.750 for crimes committed on or after December 5, 1996, an offender who enters and successfully completes a special alternative incarceration program, in accordance with the rules and procedures adopted by the Department of Corrections pursuant to ORS 421.500 et. seq., may be released early to serve the term of post-prison supervision imposed as part of the original sentence.

(4) Notwithstanding section (2) of this rule:

(a) Terms of incarceration 12 months or less imposed pursuant to ORS 166.070(2) shall be served in the legal and physical custody of the Department; and

(b) Offenders sentenced under 2011 Or Laws ch 598 shall serve a mandatory minimum term of incarceration of 90 days, without reduction for any reason.

Stat. Auth.: ORS 137.667, 421.512 & 2003 OL Ch. 464

Stats. Implemented: ORS 137.667, 137.669, 137.750, 166.070(2), 421.512; 2011 OL Ch. 3 |1; 2011 OL Ch. 598

DIVISION 8

DEPARTURES

213-008-0003

Duration of Departures

(1) When a sentencing judge departs in setting the duration of a prison term, the judge shall consider the purposes and principles of these guidelines as described in OAR 213-002-0001 to impose a sentence which is proportionate to the seriousness of the crime of conviction and the offender's criminal history.

(2) A durational departure from a presumptive prison term shall not total more than double the maximum duration of the presumptive prison term. In no case may the sentence exceed the statutory maximum indeterminate sentence described in ORS 161.605.

(3) The limit on durational departures established by section (2) of this rule does not apply to the indeterminate sentence imposed on a dangerous offender ORS 161.725 and 161.737.

(4) Durational departure sentences of 12 months or less shall be served at the direction of the supervisory authority. Durational departure sentences greater than 12 months shall be served in the legal and physical custody of the Department.

(5) Notwithstanding section (4) of this rule, terms of incarceration 12 months or less imposed pursuant to ORS 166.070(2) shall be served in the legal and physical custody of the Department. Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 – ORS 137.669 & 1999 OL Ch. 1011 (HB 2273); ORS 166.070(2)

213-008-0005

Dispositional Departure Limitations

(1) When a sentencing judge imposes a prison term as a dispositional departure, the term of incarceration shall be:

(a) Up to six months for offenses classified in Crime Categories 1 and 2, or grid blocks 3-G, 3-H and 3-I;

(b) Up to twelve months for offenses classified in grid blocks 3-A through 3-F, 4-C through 4-I, and 5-G through 5-I; and

(c) Up to eighteen months for offenses classified in grid blocks 5-F, 6-F through 6-I, and 7-F through 7-I.

(2) When a sentencing judge imposes a prison term as a dispositional departure, the term of post-prison supervision shall be determined by the crime seriousness category of the most serious current crime of conviction as required by OAR 213-005-0002.

(3) Any sentence inconsistent with the provisions of this rule shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure. Such a sentence shall not exceed double the maximum duration set forth in section (1) of this rule.

(4) Any sentence imposed pursuant to this section that is 12 months or less shall be served at the direction of the supervisory authority. Any sentence imposed pursuant to this section that is greater than 12 months shall be served in the legal and physical custody of the Department.

(5) Notwithstanding section (4) of this rule, terms of incarceration 12 months or less imposed pursuant to ORS 166.070(2) shall be served in the legal and physical custody of the Department. Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 – ORS 137.669 & 1999 OL Ch. 1011 (HB 2273); ORS 166.070(2)

DIVISION 12

CONCURRENT AND CONSECUTIVE SENTENCES

213-012-0020

Consecutive Sentences

(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an incarceration term and a supervision term.

(2)(a) Subject to the provisions of subsection (b) of this section, the presumptive incarceration term of the consecutive sentences is the sum of:

(A) The presumptive incarceration term or the prison term defined in OAR 213-008-0005(1) imposed pursuant to a dispositional departure for the primary offense, as defined in OAR 213-003-0001(17); and

(B) Up to the maximum incarceration term indicated in the Criminal History I Column for each additional offense imposed consecutively.

(b) The total incarceration term of the consecutive sentences, including the incarceration term for the primary offense, shall not exceed twice the maximum presumptive incarceration term or the prison term defined in OAR 213-008-0005(1) imposed pursuant to a dispositional departure of the primary sentence except by departure as provided by OAR 213-008-0007.

(c) The incarceration term of any probationary sentence is the maximum jail sentence that could be imposed as provided by these rules as part of the probationary sentence for that offense.

(3)(a) If the court imposes a sentence that includes a term of incarceration that exceeds 12 months and the term is to be served consecutively to a term of incarceration of 12 months or less for a felony that was imposed in a previous proceeding, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department.

(b) If the court imposes a felony sentence that includes a term of incarceration that is 12 months or less and the term is to be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding or in the same proceeding, the court shall commit the defendant to the legal and physical custody of the Department.

(4) The supervision term of consecutive sentences shall be:

(a) The presumptive post-prison supervision term imposed for the primary offense if the sentence for any offense includes a prison term; or

(b) The presumptive probation term of each offense if no sentence includes a prison term. All presumptive probation terms imposed as provided by this subsection shall run concurrently.

(5) Sections (1), (2), and (3) of this rule shall not apply to any sentence imposed on a dangerous offender under ORS 161.725 and 161.737, nor shall sections (2) and (3) apply to consecutive sentences imposed for crimes that have different victims.

(6) Notwithstanding section (3)(b) of this rule, terms of incarceration 12 months or less imposed pursuant to ORS 166.070(2) shall be served in the legal and physical custody of the Department. Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - ORS 137.669 & 1999 OL Ch. 1011 (HB 2273); ORS 166.070(2)

213-012-0030

Sentences Imposed Consecutively to a Prior Remaining Sentence

(1) When a sentence is imposed consecutively to a sentence imposed in a prior proceeding, the incarceration term of the new sentence is added to the remaining incarceration term of the prior sentence. If any sentence includes a prison term, the incarceration term of all sentences shall be served in prison.

(2)(a) Notwithstanding paragraph (1) of this section, if the court imposes a sentence that includes a term of incarceration that exceeds 12 months and the term is to be served consecutively to a term of incarceration of 12 months or less that was imposed in a previous proceeding, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department.

(b) If the court imposes a felony sentence that includes a term of incarceration that is 12 months or less and the term is to be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding or in the same proceeding, the court shall commit the defendant to the legal and physical custody of the Department.

(3) When a sentence is imposed consecutively to a sentence imposed in a prior proceeding, the supervision term or terms of the new sentence shall be served concurrently with the prior sentence as follows:

(a) If the supervision term of the new sentence is a term of probationary supervision, the supervision shall begin at the date of sentencing.

(b) If the supervision term of the new sentence is a term of post-prison supervision, the supervision term shall begin upon the completion of the incarceration term of the combined sentences, or upon release pursuant to ORS 421.508(3).

(4) Notwithstanding section (2)(b) of this rule, terms of incarceration 12 months or less imposed pursuant to ORS 166.070(2) shall be served in the legal and physical custody of the Department.
Stat. Auth.: ORS 137.667

Stats. Implemented: ORS 137.667 - ORS 137.669 & 1999 OL Ch. 1011 (HB 2273); ORS 166.070(2)