

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 29, 2011 by the

Criminal Justice Commission		213
Agency and Division		Administrative Rules Chapter Number
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Rules Coordinator	Address	Telephone

to become effective November 1, 2011 through April 27, 2012.
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Amends Oregon's sentencing guidelines in light of 2011 Or Laws ch 598 (SB 395)
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: 213-003-0001; 213-017-0006; 213-017-0008

SUSPEND:

Stat. Auth.: ORS 137.667

Other Auth.:

Stats. Implemented: ORS 137.667; 2011 Or Laws ch 598 (SB 395); 2011 Or Laws ch 3 § 1 (BM 73)

RULE SUMMARY

2011 Or Laws ch 3 § 1 (BM 73) became effective on December 2, 2010. Under BM 73, a Driving Under the Influence of Intoxicants offense under ORS 813.010 committed on or after December 2, 2010 is a class C felony if the defendant has two prior convictions for DUII entered within 10 years of the date of the new offense. Prior to the enactment of 2011 Or Laws ch 598 (SB 395), ORS 813.012(1) required that BM 73 DUIIs be categorized as a Crime Category 6 on the Crime Seriousness Scale. As amended by Section 1 of SB 395, ORS 813.012(1) now provides that a conviction for felony DUII has a crime-seriousness ranking of 6 only if the conviction is a felony under ORS 813.010(5). SB 395 went into effect on June 30, 2011. Since that time, there has been no crime seriousness ranking in the guidelines specifically categorizing BM 73 DUII offenses for purposes of sentencing. When a crime is unranked, the court must choose the appropriate the crime-seriousness ranking. OAR 213-004-0004. This has resulted in courts throughout the state imposing inconsistent sentences for BM 73 DUII.

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 sentencing guidelines. CJC may also classify offenses as person felonies or person misdemeanors. ORS 137.667(1). The rule change classifies BM 73 DUII as a Crime Category 4 on the Crime Seriousness Scale. It also clarifies that BM 73 DUII is a person felony. The rule change also clarifies that only felony DUII under ORS 813.010(5), not BM 73 felony DUII, is categorized as a Crime Category 6 on the Crime Seriousness Scale.

Authorized Signer

Printed name

Date

Craig Prins

11/1/11

*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