

1997
Amended Felony Sentencing
Guidelines Rules

Oregon Criminal Justice Commission
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Notice Rule for Rulemaking

OAR 213-01-000 Prior to the adoption, amendment or repeal of any rule, the chairperson of the Criminal Justice Commission or designee shall give notice of the proposed action at least twenty-eight (28) days prior to the effective date:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360.
- (2) By mailing a copy of the notice to persons on the Criminal Justice Commission mailing list established pursuant to ORS 183.335(7).
- (3) By mailing or furnishing a copy of the notice 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) Oregon District Judges Association;
 - (m) State Court Administrator;
 - (n) American Civil Liberties Union;
 - (o) Association of Oregon Counties;
 - (p) Crime Victims United;
 - (q) Oregon Association of 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) State Public Defenders;
 - (w) Rules Coordinator, Department of Corrections;
 - (x) Association of Municipal Court Judges; **[and]**
 - (y) Justices of the Peace Association[.]; **and**
 - (z) **Board of Parole and Post-Prison Supervision.**

Rulemaking Procedure

OAR 213-01-005 (1) All new and revised rules will be adopted in accordance with the provisions of ORS Chapter 183 and the Model Rules of Procedure adopted by the Oregon Attorney General. **[and effective September 9, 1995]**

(2) Amendments to the following divisions and appendices take effect on November 1, 1997: OAR 213-01-000, 005(2); 213-03-001(14), (15); 213-08-007(3); 213-10-002(3), (4), (5); 213-12-020(5); Appendices 2 and 3.

Statement of Purposes and Principles

OAR 213-02-001 (1) The primary objectives of sentencing are to punish each offender appropriately, and to insure the security of the people in person and property, within the limits of correctional resources provided by the Legislative Assembly, local governments and the people.

(2) Sentencing guidelines are intended to forward the objectives described in section (1) by defining presumptive punishments for felony convictions, subject to judicial discretion to deviate for substantial and compelling reasons; and presumptive punishments for post-prison or probation supervision violations, again subject to deviation.

(3) The basic principles which underlie these guidelines are:

(a) The response of the corrections system to crime, and to violation of post-prison and probation supervision, must reflect the resources available for that response. A corrections system that overruns its resources is a system that cannot deliver its threatened punishment or its rehabilitative impact. This undermines the system's credibility with the public and the offender, and vitiates the objectives of prevention of recidivism and reformation of the offender. A corrections system that overruns its resources can produce costly litigation and the threat of loss of system control to the federal judiciary. A corrections system that overruns its resources can increase the risk to life and property within the system and to the public.

(b) Oregon's current sentencing system combines indeterminate sentences with a parole matrix. Although many citizens believe the indeterminate sentence sets the length of imprisonment, that sentence only sets an offender's maximum period of incarceration and the matrix controls actual length of stay. The frequent disparity between the indeterminate sentence length and time served under the matrix confuses and angers the public and damages the corrections system's credibility with the public. Sentences of imprisonment should represent the time an offender will actually serve, subject only to any reduction authorized by law.

(c) Under sentencing guidelines the response to many crimes will be state imprisonment. Other crimes will be punished by local penalties and restrictions imposed as part of probation. All offenders released from prison will be under post-prison

supervision for a period of time. The ability of the corrections system to enforce swiftly and sternly the conditions of both probation and post-prison supervision, including by imprisonment, is crucial. Use of state institutions as the initial punishment for crime must, therefore, leave enough institutional capacity to permit imprisonment, when appropriate, for violation of probation and post-prison supervision conditions.

(d) Subject to the discretion of the sentencing judge to deviate and impose a different sentence in recognition of aggravating and mitigating circumstances, the appropriate punishment for a felony conviction should depend on the seriousness of the crime of conviction when compared to all other crimes and the offender's criminal history.

(e) Subject to the sentencing judge's discretion to deviate in recognition of aggravating and mitigating circumstances, the corrections system should seek to respond in a consistent way to like crimes combined with like criminal histories; and in a consistent way to like violations of probation and post-prison supervision conditions.

Definitions

OAR 213-03-001 As used in these rules:

(1) "Bench probation" means a probationary sentence, which directs the probationer to remain under the supervision and control of the sentencing judge.

(2) "Board" means the State Board of Parole and Post-Prison Supervision.

(3) "Correctional supervision status" means any form of incarcerative or non-incarcerative supervision which is served by an offender as part of a sentence for a criminal conviction.

(4) "Department" means the Department of Corrections.

(5) "Departure" means a sentence, except an optional probationary sentence, which is inconsistent with the presumptive sentence for an offender.

(6) "Dispositional departure" means a sentence which imposes probation when the presumptive sentence is prison or prison when the presumptive sentence is probation. An optional probationary sentence is not a dispositional departure.

(7) "Dispositional line" means the solid black line on the Sentencing Guidelines Grid (Appendix 1) which separates the grid blocks in which the presumptive sentence is a term of

imprisonment and post-prison supervision from the grid blocks in which the presumptive sentence is probation which may include local custodial sanctions.

(8) "Durational departure" means a sentence which is inconsistent with the presumptive sentence as to term of incarceration, term of supervised probation or number of sanction units which may be imposed as a condition of probation.

(9) "Grid" means the Sentencing Guidelines Grid set forth as Appendix 1.

(10) "Grid block" means a box on the grid formed by the intersection of the crime seriousness ranking of a current crime of conviction and an offender's criminal history classification.

(11) "Juvenile adjudication" means a formal adjudication or finding by a court that the juvenile has committed an act, which, if committed by an adult, would be punishable as a felony.

(12) "Non-person felonies" are any felonies not defined as a person felony in section (14) of this rule.

(13) "Optional probationary sentence" means any probationary sentence imposed pursuant to OAR 213-05-006.

(14) "Person felonies" are in numerical statutory order: ORS 162.165 Escape I; ORS 162.185 Supplying Contraband as defined in Crime Categories 6 and 7 (Appendix 3); ORS 163.095 Aggravated Murder; ORS 163.115 Murder; ORS 163.115 Felony Murder; ORS 163.118 Manslaughter I; ORS 163.125 Manslaughter II; ORS 163.145 Negligent Homicide; ORS 163.165 Assault III; ORS 163.175 Assault II; ORS 163.185 Assault I; ORS 163.205 Criminal Mistreatment I; **ORS 163.213 Use of Stun Gun, Tear Gas, Mace I**; ORS 163.225 Kidnapping II; ORS 163.235 Kidnapping I; ORS 163.275 Coercion as defined in Crime Category 7 (Appendix 3); ORS 163.355 Rape III; ORS 163.365 Rape II; ORS 163.375 Rape I; ORS 163.385 Sodomy III; ORS 163.395 Sodomy II; ORS 163.405 Sodomy I; ORS 163.408 Sexual Penetration II; ORS 163.411 Sexual Penetration I; ORS 163.425 Sexual Abuse II; ORS 163.427 Sexual Abuse I; ORS 163.525 Incest; ORS 163.535 Abandon Child; ORS 163.670 Using Child In Display of Sexual Conduct; **ORS 163.684 Encouraging Child Sex Abuse I**; **ORS 163.686 Encouraging Child Sex Abuse II**; ORS 163.732 Stalking; ORS 163.747 Violation of Officer's Stalking Order; ORS 163.750 Violation of Court's Stalking Order; ORS 164.075 Theft by Extortion as defined in Crime Category 7 (Appendix 3); ORS 164.225 Burglary I as defined in Crime Categories 8 and 9 (Appendix 3); ORS 164.325 Arson I; ORS 164.395 Robbery III; ORS 164.405 Robbery II; ORS 164.415 Robbery I; ORS 164.877(3) Tree Spiking (Injury); ORS 166.087 Abuse of Corpse I; ORS 166.165 Intimidation I; ORS 166.220 Unlawful Use of a Weapon; ORS 166.275 Inmate In Possession of Weapon; ORS 167.012 Promoting Prostitution; ORS 167.017 Compelling Prostitution; ORS 468.951 Environmental Endangerment; ORS 811.705 Hit and Run Vehicle (INJURY); **ORS 830.475 Hit and Run Boat**; **1997 Oregon Laws Ch. 561 Buying/Selling the Custody of a Minor**; **1997 Oregon Laws Ch. 694 Felony Domestic Assault**; **1997 Oregon Laws Ch. 719(3) Possession of Material Depicting Sex. Explicit Conduct of Child I**; **1997 Oregon Laws Ch. 719(4)**

Possession of Material Depicting Sex. Explicit Conduct of Child II; 1997 Oregon Laws Ch. 749 Felony Possession of a Hoax Destructive Device, and attempts or solicitations to commit any Class A or Class B person felonies as defined herein.

(15) "Person Class A misdemeanors" are in numerical statutory order: ORS 162.315 Resisting Arrest; ORS 163.160 Assault IV; ORS 163.190 Menacing; ORS 163.195 Recklessly Endanger Another; ORS 163.200 Criminal Mistreatment II; ORS 163.208 Assault Officer; **ORS 163.212 Use of Stun Gun, Tear Gas, Mace II;** ORS 163.415 Sexual Abuse III; ORS 163.545 Child Neglect; ORS 163.575 Endanger Welfare of Minor; ORS 163.605 Criminal Defamation; **ORS 163.687 Encouraging Child Sex Abuse III;** ORS 163.732(1) Stalking; ORS 163.747 Violating Officer's Stalking Protective Order; ORS 163.750(1) Violating Court's Stalking Order; **ORS 166.065(4) Harassment/Offensive Sexual Contact;** ORS 166.155 Intimidation II; **[ORS 488.164 Hit and Run Boat]; 1997 Oregon Laws Ch. 749 Misdemeanor Possession of a Hoax Destructive Device;** and attempts or solicitations to commit any Class C person felonies as defined in section (14) of this rule.

(16) "Presumptive sentence" means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime seriousness ranking of the current crime of conviction and the offender's criminal history.

(17) "Primary offense" means the offense of conviction with the highest crime seriousness ranking. If more than one offense of conviction is classified in the same crime category, the sentencing judge shall designate which offense is the primary offense.

(18) **"Supervisory agent" means the local community corrections agency responsible for supervising the offender.**

~~[(18)]~~ **(19) "Supervisory authority" means the state and local corrections agency or official [or officials] designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities or both.**

Sentencing Guidelines Grid

OAR 213-04-001 (1) The sentencing guidelines grid is a two-dimensional classification tool. The vertical axis is the Crime Seriousness Scale, which classifies current crimes of conviction. The horizontal axis is the Criminal History Scale, which classifies criminal histories.

(2) Each grid block states the presumptive sentence for an offender whose crime of conviction and criminal history place him or her in that grid block. The solid black line dividing the grid blocks is the dispositional line. The grid is set forth as Appendix 1.

Crime Seriousness Scale

OAR 213-04-002 (1) The Crime Seriousness Scale consists of eleven categories of crimes. Each crime category represents crimes of relatively equal seriousness. The complete Crime Seriousness Scale is set forth as Appendix 2.

(2) When the statutory definition of an offense includes a broad range of criminal conduct, the offense may be subclassified factually in more than one crime category to capture the full range of criminal conduct covered by the statutory offense. The list of subclassified offenses is set forth as Appendix 3.

(3) Drug related offenses are separately classified and subclassified. Those classifications are set forth as Appendix 4.

Aggravated Murder

OAR 213-04-003 The offense of Aggravated Murder is not ranked in the Crime Seriousness Scale because the sentence is set by statute as death or mandatory life imprisonment (ORS 163.095-163.105).

Other Unranked Offenses

OAR 213-04-004 Except for ORS 163.095-163.105 Aggravated Murder, when a person is convicted of any other felony [**or crime punishable by state imprisonment**] which is omitted from the Crime Seriousness Scale, the sentencing judge shall determine the appropriate crime category for the current crime of conviction and shall state on the record the reasons for the offense classification.

Attempts and Solicitations

OAR 213-04-005 (1) A conviction for an attempted crime shall be ranked on the Crime Seriousness Scale at two crime categories below the appropriate category for the completed crime. A sentence imposed for an attempted crime shall not exceed the maximum sentence permitted for such criminal conduct under ORS 161.405.

(2) A conviction for soliciting a crime shall be ranked on the Crime Seriousness Scale at two crime categories below the appropriate category for the completed crime. A sentence imposed for a solicitation offense shall not exceed the maximum sentence permitted by law for such criminal conduct under ORS 161.435.

(3) A conviction for attempted aggravated murder, or soliciting aggravated murder shall be ranked on the Crime Seriousness Scale at crime category 10.

(4) A conviction for an attempt or solicitation of an offense ranked on the Crime Seriousness Scale at crime category 1 or 2 shall be ranked at crime category 1.

Criminal History Scale

OAR 213-04-006 (1) The Criminal History Scale includes nine mutually exclusive categories used to classify an offender's criminal history according to the extent and nature of the offender's criminal history at the time the current crime or crimes of conviction is sentenced. The nine categories in the scale are labeled alphabetically and are arranged in order of seriousness from the most serious (Criminal History Category A) to the least serious (Criminal History Category I).

(2) An offender's criminal history is based upon the number of adult felony and Class A misdemeanor convictions and juvenile adjudications in the offender's criminal history at the time the current crime or crimes of conviction are sentenced. For crimes committed on or after Nov. 1, 1989 a conviction is considered to have occurred upon the pronouncement of sentence in open court. For crimes committed prior to Nov. 1, 1989 a conviction is considered to have occurred upon pronouncement in open court of a sentence, or upon the pronouncement in open court of the suspended imposition of a sentence. Prior adult convictions or juvenile adjudications which have been expunged shall not be considered when classifying an offender's criminal history. Prior findings of "guilty except for insanity" shall not be considered when classifying an offender's criminal history.

(3) Whether a prior offense should be classified as a misdemeanor conviction or a felony conviction for criminal history purposes shall be determined by the classification of the offense at the time of conviction as announced by the sentencing judge rather than by the sentence imposed for the crime.

Criminal History Categories

OAR 213-04-007 The criminal history categories in the Criminal History Scale are:

Criminal History

Category Descriptive Criminal History

- A The offender's criminal history includes three or more person felonies in any combination of adult convictions or juvenile adjudications.
- B The offender's criminal history includes two person felonies in any combination of adult convictions or juvenile adjudications.
- C The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony; and one or more adult conviction or juvenile adjudication for a non-person felony.
- D The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony; but no adult conviction or juvenile adjudications for a non-person felony.

- E The offender's criminal history includes four or more adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
- F The offender's criminal history includes two or three adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
- G The offender's criminal history includes four or more adult convictions for Class A misdemeanors; one adult conviction for a non-person felony; or three or more juvenile adjudications for non-person felonies, but no adult conviction or juvenile adjudication for a person felony.
- H The offender's criminal history includes no adult felony conviction or juvenile adjudication for a person felony; no more than two juvenile adjudications for non-person felonies; and no more than three adult convictions for Class A misdemeanors.
- I The offender's criminal history does not include any juvenile adjudication for a felony or any adult conviction for a felony or Class A misdemeanor.

Person Class A Adult Misdemeanor Convictions

OAR 213-04-008 Every two prior adult convictions of person Class A misdemeanors in the offender's criminal history shall be counted as one adult conviction of a person felony for criminal history purposes.

Prior ORS 813.010 (DUII) Convictions

OAR 213-04-009 If the current crime of conviction is for ORS 163.118 Manslaughter I, ORS 163.125 Manslaughter II or ORS 163.145 Negligent Homicide and the crime involved the use of a vehicle, every three prior convictions for ORS 813.010 (Driving Under the Influence of Intoxicants) or comparable statutory offense or ordinance violation in the offender's criminal history shall be counted as one person felony for criminal history purposes.

Burglary I

OAR 213-04-010 (1) A prior Burglary I (ORS 164.225) conviction for an offense committed after the effective date of these rules shall be classified for criminal history:

- (a) As a prior person felony if that prior conviction was classified as a Crime Category 9 or 8 offense on the Crime Seriousness Scale (Appendix 2); and

b) As a prior non-person felony if that prior conviction was classified as a Crime Category 7 offense on the Crime Seriousness Scale (Appendix 2).

(2) A prior Burglary I (ORS 164.225) conviction for an offense committed before the effective date of these rules or any juvenile adjudication for conduct, committed before or after the effective date of these rules, which if committed by an adult would have constituted Burglary I shall be classified as a prior person felony if the State proves by a preponderance of the evidence that the criminal conduct would have been classified as a Crime Category 9 or 8 offense on the Crime Seriousness Scale (Appendix 2), however if the State does not meet that burden of proof, then the prior offense shall be classified as a prior non-person felony in crime category 7 (Appendix 2).

Out-of-State Adult Convictions And Juvenile Adjudications

OAR 213-04-011 (1) An out-of-state adult conviction shall be used to classify the offender's criminal history if the elements of the offense would have constituted a felony or Class A misdemeanor under current Oregon law.

(2) Out-of-state juvenile adjudications shall be used to classify the offender's criminal history if the elements of the offense would have constituted a felony under current Oregon law if committed by an adult.

(3) Out-of-state adult convictions and out-of-state juvenile adjudications described in subparagraphs (1) and (2) of this section shall be classified as person felonies or person Class A misdemeanors if the elements of the offense would have constituted an offense under Oregon law listed at OAR 213-03-001(14) or (15).

(4) Any adult conviction arising from a federal or military tribunal shall be classified as a person felony or person Class A misdemeanor if the elements of the offense would have constituted an offense under Oregon law listed at OAR 213-03-001(14) or (15).

(5) Any adult conviction or juvenile adjudication under a subsequently repealed statute shall be classified as a person felony or person Class A misdemeanor if the elements of the offense would have constituted an offense currently listed at OAR 213-03-001(14) or (15).

Proof Of Criminal History

OAR 213-04-013 (1) The offender's criminal history shall be admitted in open court by the offender or determined by a preponderance of the evidence at the sentencing hearing by the sentencing judge.

(2) Except to the extent disputed in accordance with section (3), the summary of the offender's criminal history prepared for the court by the state shall satisfy the state's burden of proof as to an offender's criminal history.

(3) Upon receipt of the criminal history summary prepared for the court by the district attorney, the offender shall immediately notify the district attorney and the court with written notice of any error in the proposed criminal history summary. Except to the extent any disputed part is thereafter changed by agreement of the district attorney and the defendant with the approval of the sentencing judge, the state shall have the burden of producing further evidence to satisfy its burden of proof as to any disputed part or parts of the criminal history and the sentencing judge shall allow the state reasonable time to produce such evidence to establish the disputed portion of the criminal history by a preponderance of the evidence.

Place And Term Of [Imprisonment] Incarceration

OAR 213-05-001 (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.**

[(2)] (3) Notwithstanding the term of imprisonment imposed by the sentencing court, an offender who enters and successfully completes the special alternative incarceration program (SUMMIT boot camp), 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.

Term Of Post-Prison Community Supervision

OAR 213-05-002 (1) A term of community supervision is part of the sentence for any **felony** offender who is sentenced to **[prison] the legal and physical custody of the Department or to the supervisory authority.** This term of community supervision shall be described as post-prison supervision. Departures on the duration of post-prison supervision shall not be allowed.

(2) The duration of post-prison supervision shall be determined by the crime seriousness category of the most serious current crime of conviction:

(a) one year for Crime Categories 1-3;

(b) two years for Crime Categories 4-6; and

(c) three years for Crime Categories 7-11, except for murder which shall be as described in OAR 213-05-004.

(3) The term of post-prison supervision shall begin upon completion of the offender's prison term **or such term as directed by the supervisory authority**. For offenders successfully completing the alternative incarceration program (boot camp) described in ORS 421.500 et. seq., the term of post-prison supervision begins upon release pursuant to ORS 421.508(3).

(4) The term of post-prison supervision, when added to the prison term, shall not exceed the statutory maximum indeterminate sentence for the crime of conviction. When the total duration of any sentence (prison incarceration and post-prison supervision) exceeds the statutory maximum indeterminate sentence described in ORS 161.605, the sentencing judge shall first reduce the duration of post-prison supervision to the extent necessary to conform the total sentence length to the statutory maximum.

(5) The duration of post-prison supervision established under section (2) of this rule does not apply to dangerous offender departure sentences, which shall be governed by ORS 144.232.

Supervisory Responsibility

OAR 213-05-003 When a term of post-prison supervision is imposed as part of a sentence, the offender shall serve the term of supervision in the community under the supervision of the Department of Corrections or a corrections agency designated by the Department.

Post-Prison supervision for Murder And Aggravated Murder

OAR 213-05-004 (1) The term of Post-prison supervision for an offender serving a sentence for murder or aggravated murder shall be for the remainder of the offender's life, unless the Board finds a shorter term appropriate. In no case shall the term of supervision be less than three years.

(2) The limit on sanctions for post-prison supervision violations provided in OAR 213-11-004(3) shall not apply to offenders on post-prison supervision as a provision of this rule.

Judgment Of Conviction

OAR 213-05-005 Each judgment of conviction for an offense committed on or after the effective date of these rules shall state the length of incarceration and the length of post-prison supervision. The judgment of conviction shall also expressly provide that if the offender violates the conditions of post-prison supervision, the offender shall be subject to sanctions imposed by the supervisory agent or additional **[imprisonment] incarceration** imposed by the Board in accordance with these rules.

Optional Probationary Sentences

OAR 213-05-006 (1) If an offense is classified in grid blocks 8-G, 8-H or 8-I, the sentencing judge may impose an optional probationary sentence upon making the following specific findings on the record:

- (a) An appropriate treatment program is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism;
- (b) The recommended treatment program is available and the offender can be admitted to it within a reasonable period of time; and
- (c) The probationary sentence will serve community safety interests by promoting offender reformation.

(2) The sentencing judge shall not impose an optional probationary sentence if:

- (a) A firearm was used in the commission of the offense; or
- (b) At the time of the offense, the offender was under correctional supervision status for a felony conviction or a juvenile adjudication as defined in OAR 213-03-001(11).

(3) A probationary sentence imposed for an offense classified in grid blocks 8-G, 8-H and 8-I when not authorized by this rule is a departure.

Presumptive Probation Sentences

OAR 213-05-007 (1) Except as provided by OAR 213-09-001, if the offense is classified in a grid block below the dispositional line, the presumptive sentence shall be:

(a) A term of probation which may include custody and conditions of supervision; or

(b) Straight jail subject to the limits in OAR 213-05-013.

(2) Each grid block below the dispositional line of the grid includes two components of a presumptive probationary sentence. The top number in each grid block is the number of sanction units that may be imposed as part of a presumptive probationary sentence. The bottom number in each grid block is the maximum number of sanction units that may be imposed as a jail term.

Duration Of Probation

OAR 213-05-008 (1) The presumptive duration of probation shall be determined by the crime seriousness category of the most serious current crime of conviction:

- (a) eighteen months for Crime Categories 1-2;
- (b) two years for Crime Categories 3-5;
- (c) three years for Crime Categories 6-8; and
- (d) five years for Crime Categories 9-11.

(2) (a) Subject to OAR 213-03-001(8) and paragraph (d) of this section, the sentencing judge may without departure impose a duration of bench probation other than the presumptive durations in Section (1) of this rule when necessary to ensure the conditions and purposes of probation are met, or extend the length of probation subject to OAR 213-05-008(2)(d) upon finding a violation or violations of the conditions of probation or when necessary to ensure that the conditions of probation are completely satisfied.

(b) Subject to subsection (d) of this section, the sentencing judge may by departure impose a greater term of supervised probation when necessary to ensure that the conditions and purposes of probation are met.

(c) When an offender is convicted of a crime of a sexual nature (including but not limited to ORS 163.305 - 163.465, 163.525, 167.670, 163.673, 163.677, 163.680), or the sentencing judge finds a sex offender treatment program is appropriate, the judge may without departure impose a sentence of probation up to 5 years.

(d) A probationary term shall not exceed five years.

(3) The time during which the offender has absconded from supervision and a bench warrant has been issued for the offender's arrest shall not be counted in determining the time served on a sentence of probation.

(4) Nothing in this rule shall preclude the sentencing judge from imposing a period of bench probation as the probationary sentence required or permitted by the sentencing guidelines.

Non-Presumptive Probationary Sentences

OAR 213-05-009 If the sentencing judge imposes a probationary sentence as a dispositional departure or as an optional probationary sentence, the duration of probation shall be as provided by OAR 213-05-008.

Modification Of Probationary Terms

OAR 213-05-010 (1) A sentencing judge may shorten or terminate a probationary sentence or transfer supervision to bench probation upon a finding that supervision is no longer necessary to accomplish the purposes of the imposed sentence.

(2) Modification of a probationary sentence which results in shortening the term, termination, or transfer to bench probation shall not require a hearing.

Sanction Units

OAR 213-05-011 (1) When imposing a probationary sentence, the sentencing judge may require that the offender serve a term of custody supervision in a correctional facility or as part of a custody program. The term of custody supervision shall be imposed as a number of sanction units. Sanction units not used to set an initial term of custody are automatically reserved for use as sanctions for probation violations or to insure the purposes of probation are being served.

(2) The number of sanction units that may be imposed as part of a presumptive probationary sentence shall be determined by the grid block classification of the offense:

(a) up to 90 sanction units for offenses classified in Crime Categories 1 and 2 and grid blocks 3-G, 3-H and 3-I;

(b) up to 120 sanction units 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 180 sanction units for offenses classified in grid blocks 5-F, 6-F through 6-I, and 7-F through 7-I.

(3) If the sentencing judge imposes a probationary sentence as a dispositional departure or as an optional probationary sentence, the sentencing judge may impose up to 180 sanction units as a part of the sentence. Imposition of more than 180 sanction units is a departure.

(4)(a) Notwithstanding the fact that the court has sentenced a person to a term of incarceration, when an offender is committed to the custody of the supervisory authority of a county under ORS 137.124(2) or (4), the supervisory authority may execute the sentence by imposing sanctions other than incarceration if deemed appropriate by the supervisory authority.

(b) If the supervisory authority imposes a sanction other than incarceration on a person under paragraph (a) of this subsection, the supervisory authority shall promptly notify the sentencing court and the district attorney of the imposition of the alternate sanction.

(c) Prior to the imposition of a sanction other than incarceration by the supervisory authority, or within four judicial days after receiving notice from the supervisory authority that an alternative sanction has been imposed on a person pursuant to paragraph (a) of this subsection, the court, upon motion of the district attorney or on its own motion, may direct the supervisory authority to execute the sentence by incarcerating the person.

[(4)] (5) Notwithstanding the limits on sanction units established in sections 2 and 3 of this rule, an additional number of non-jail sanction units may be used to sanction violations of conditions of a probation sentence. There shall be no departure on these additional non-jail sanction units, nor may they be used as jail sanction units pursuant to the findings allowed in OAR 213-05-013(3). These additional non-jail sanction units are:

(a) up to 30 additional non jail sanction units for offenses classified in Crime Seriousness Categories 1 and 2 and grid blocks 3-G, 3-H and 3-I;

(b) up to 60 additional non-jail sanction units 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 90 additional non-jail sanction units for offenses classified in grid blocks 5-F, 6-F through 6-I, 7-F through 7-I, and offenses in which a sentence of probation was imposed as a departure or pursuant to OAR 213-05-006 (Optional Probation).

Custodial Supervision

OAR 213-05-012 (1) The sanction units imposed as part of a probationary sentence shall be used to set a term of custodial supervision in a correctional facility or as part of a custody program. Credit for sanction units shall only be granted for time actually served. Good time credits, work time credits, or early release shall not count towards satisfaction of sanction units.

(2) When sanction units are imposed as part of a probationary sentence, the offender shall receive credit for having served those sanction units as follows:

(a) **JAIL:** Each day of jail incarceration equals one (1) sanction unit.

(b) **RESIDENTIAL CUSTODIAL TREATMENT FACILITY:** Each day of actual confinement in a 24-hour residential custodial treatment facility equals one (1) sanction unit when the program is satisfactorily completed including up to one year of any required

aftercare. Aftercare may continue for more than one year, but custody unit credit shall be granted following satisfactory completion of one year.

(c) **RELEASE PROGRAMS:** Each day of partial confinement in a release program, in which the offender is confined in a custodial facility when not on release, equals one (1) sanction unit for each day of partial incarceration.

(d) **HOUSE ARREST:** Each day of satisfactory compliance with the requirements of house arrest equals one (1) sanction unit if the offender satisfactorily completes the house arrest.

(e) **COMMUNITY SERVICE:** Sixteen hours of community service under the direct supervision of a supervisor designated by the supervisory authority equals one sanction unit.

(3)(a) When the sentencing judge orders jail time as part of a probationary sentence, the judge shall sentence the offender directly to the custody of the supervisory authority with jurisdiction over the county jail.

(b) When the sentencing judge recommends a custodial facility or program other than jail, the judge shall sentence the offender directly to the custody of the supervisory authority with jurisdiction over that facility or program. To impose such a sentence, the judge must determine that space is available in that facility or program and that the offender meets the eligibility criteria established for that facility or program by the supervisory authority.

(4) The supervisory authority shall keep a record of all sanction units served by the offender during the course of the probationary term. When sanction units are served only upon the satisfactory completion of a custodial program, the supervisory authority, when appropriate, shall certify that the offender has satisfactorily completed a custodial program and the number of sanction units served by the offender as part of the program.

(5) Where the sentencing judge finds that a custodial rehabilitation program designed to deal with drug or alcohol abuse or sexual behavior is essential to minimize the offender's likelihood of engaging in future criminal conduct, the requirement that the offender enter and satisfactorily complete such a program shall not be limited by the sanction units set forth in OAR 213-05-011 or the provisions of this rule.

Jail As Part Of Probation

OAR 213-05-013 (1) Subject to the provisions of sections (2) and (3) of this rule, the maximum number of sanction units that may be used to impose a jail term as part of a probationary sentence shall be as follows:

- (a) Up to 30 sanction units for offenses classified in Crime Categories 1 and 2 and grid blocks 3-G, 3-H and 3-I;
- (b) Up to 60 sanction units 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 90 sanction units for offenses classified in grid blocks 5-F, 6-F through 6-I, and 7-F through 7-I, and if a probation sentence is imposed as a departure from a presumptive prison term or as an optional probation sentence.

(2) Within the limitations established by this rule on the use of jail as part of a probation sentence, the sentencing judge may impose:

- (a) a jail term of no more than one-third of the jail sanction units described in section 1 of this rule as part of a probation sentence to be served immediately upon sentencing;
- (b) one or more jail terms as a sanction for probation violations over the term of probation; or
- (c) both (a) and (b) of this section so long as the total length of jail incarceration does not exceed the limits established by this rule on the use of jail as part of a probationary sentence.

(3) The limitations established by this rule on the use of jail as part of a probationary sentence may be exceeded if the sentencing judge, after consulting with the appropriate supervisory authority, finds on the record that local jail space provided by the county is available for a longer term. Upon making such a finding, the sentencing judge may, without departure, use:

- (a) up to the maximum number of jail sanction units described in section 1 of this rule at the time of initial sentencing; and
- (b) up to the maximum number of sanction units described in OAR 213-05-011(2) and (3) to impose jail for violations of conditions of the probation sentence.

Level Of Community Supervision

OAR 213-05-014 (1) The Department or its designees shall use a risk assessment classification system to classify offenders for supervision purposes.

(2) The level of supervision shall be established by the Department or its designees based on the offender-risk classification. The level of supervision may be increased or decreased by the supervisory authority in response to the offender's conduct under supervision and as is necessary to manage the offender in the community.

Non-Custody Conditions Of Probation

OAR 213-05-015 The sentencing judge may impose any additional non-custodial special conditions of probation as provided by law.

Departure Probationary Sentences

OAR 213-05-016 A probationary sentence, which exceeds the applicable limitation on the use of custodial supervision as part of a probationary sentence is a departure.

Record Of Sanction Units

OAR 213-05-017 The supervisory authority or the supervisory authority's designee shall keep a record of all sanction units served by the offender while under the jurisdiction of the supervisory authority. The record shall be maintained in a form that will enable the sentencing judge to determine whether the sanction units imposed as part of a probationary sentence have been served.

Permissible Plea Agreements

OAR 213-07-001 The sentencing judge shall comply with the rules of this division when accepting a negotiated plea as a plea agreement for any offense committed on or after the effective date of these rules.

Criminal History

OAR 213-07-002 (1) An offender's criminal history classification shall be accurately represented to the sentencing judge in the plea agreement.

(2) If a controversy exists as to the inclusion of a prior conviction or juvenile adjudication in an offender's criminal history or as to the classification of a prior conviction or juvenile adjudication, the district attorney and defense may stipulate to the inclusion, exclusion or classification of the conviction or juvenile adjudication as part of a plea agreement subject to the approval of the sentencing judge.

Stipulated Grid Block

OAR 213-07-003 (1) Subject to the provisions of OAR 213-07-002 and the approval of the sentencing judge, the district attorney and defense may stipulate to the grid block classification within the Sentencing Guidelines Grid which will provide the presumptive sentence for the offender.

(2) If the sentencing judge accepts the stipulated grid block classification and imposes a sentence other than the presumptive sentence for the stipulated grid block, the sentence is a departure.

Stipulated Presumptive Sentence

OAR 213-07-004 (1) The district attorney and the defense may stipulate to a specific sentence within the presumptive sentence range for the stipulated grid block classification.

(2) If the sentencing judge accepts the plea agreement, the judge shall impose the stipulated sentence.

Stipulated Non-Presumptive Sentence

OAR 213-07-005 (1) The district attorney and defense may stipulate to a sentence outside the presumptive sentence range for a stipulated grid block classification.

(2) If the parties stipulate to an optional probationary sentence, the sentencing judge may accept the plea agreement only after making the findings as required by OAR 213-05-006.

(3) If the parties stipulate to a departure sentence, the sentencing judge may accept the plea agreement if the judge finds on the record substantial and compelling reasons for the departure.

Departure Sentences

OAR 213-08-001 Except as provided in OAR 213-05-006, the sentencing judge shall impose the presumptive sentence provided by the guidelines unless the judge finds substantial and compelling reasons to impose a departure. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

Departure Factors

OAR 213-08-002 (1) Subject to the provisions of sections (2) and (3) of this rule, the following nonexclusive list of mitigating and aggravating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(a) Mitigating factors:

- (A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.
- (B) The defendant acted under duress or compulsion (not sufficient as a complete defense).
- (C) The defendant's mental capacity was diminished (excluding diminished capacity due to voluntary drug or alcohol abuse).
- (D) The offense was principally accomplished by another and the defendant exhibited extreme caution or concern for the victim.
- (E) The offender played a minor or passive role in the crime.
- (F) The offender cooperated with the state with respect to the current crime of conviction or any other criminal conduct by the offender or other person. The offender's refusal to cooperate with the state shall not be considered an aggravating factor.
- (G) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.
- (H) The offender's criminal history indicates that the offender lived conviction-free within the community for a significant period of time preceding his or her current crime of conviction.
- (I) The offender is amenable to treatment and an appropriate treatment program is available to which the offender can be admitted within a reasonable period of time; the treatment program is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and the probation sentence will serve community safety interests by promoting offender reformation.

(b) Aggravating factors:

(A) Deliberate cruelty to victim.

(B) The offender knew or had reason to know of the victim's particular vulnerability, such as the extreme youth, age, disability or ill health of victim, which increased the harm or threat of harm caused by the criminal conduct.

(C) Threat of or actual violence toward a witness or victim.

(D) Persistent involvement in similar offenses or repetitive assaults. This factor may be cited when consecutive sentences are imposed only if the persistent involvement in similar offenses or repetitive assaults is unrelated to the current offense.

(E) Use of a weapon in the commission of the offense.

(F) The offense involved a violation of public trust or professional responsibility.

(G) The offense involved multiple victims or incidents. This factor may not be cited when it is captured in a consecutive sentence.

(H) The crime was part of an organized criminal operation.

(I) The offense resulted in a permanent injury to the victim.

(J) The degree of harm or loss attributed to the current crime of conviction was significantly greater than typical for such an offense.

(K) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim.

(2) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the Crime Seriousness Scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct

constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(3) If the parties stipulate to a departure sentence, the sentencing judge may accept the plea agreement if the judge finds on the record substantial and compelling reasons for the departure.

Duration Of Departures

OAR 213-08-003 (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 213-02-001 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 under 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.

Dispositional Departure Limitations

OAR 213-08-005 (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 213-05-002.

(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.

Departure Limitations On The Use Of Sanction Units

OAR 213-08-006 (1) A departure on the number of sanction units imposed as part of a probationary sentence shall not total more than double the maximum number of sanction units permitted as part of the sentence as described in OAR 213-05-011(2) and (3).

(2) Notwithstanding the provisions of section (1) of this rule, the maximum number of sanction units that may be used to impose a jail term as part of a probationary sentence shall be limited to the maximum number of sanction units included in the sentence as provided by OAR 213-05-011(2) and (3).

Departure Limitations In Consecutive Sentences

OAR 213-08-007 (1) The court may depart from the limits established by OAR 213-12-020 for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any individual offense being sentenced consecutively.

(2) Except as provided by section (3) of this rule, the sentencing judge shall comply with the provisions of OAR 213-08-001 to 213-08-006 when a departure sentence is imposed for an offense sentenced consecutively.

(3) When a departure sentence is imposed for any individual offense sentenced consecutively, the incarceration term of that departure sentence shall not exceed twice the maximum incarceration term that may be imposed for that offense as provided in OAR 213-12-020(2)(a). This limit on the duration of a departure sentence does not apply to any indeterminate sentence imposed on a dangerous offender under ORS 161.725 and 161.737[.] **nor to consecutive sentences imposed for crimes that have different victims.**

Statutorily Mandated Imprisonment

OAR 213-09-001 (1) If a mandatory prison sentence is required or authorized by statute, the sentence imposed shall be that determinate sentence or the sentence under these rules whichever is longer.

(2) If the provisions of ORS 137.635, require the imprisonment of an offender for whom the grid provides presumptive probation, the offender shall be imprisoned for a duration determined as follows:

- (a) 11-12 months for an offense classified in Grid Block 7-I;
- (b) 12-13 months for an offense classified in Grid Block 7-H;
- (c) 13-14 months for an offense classified in Grid Block 7-G; and
- (d) 14-15 months for an offense classified in Grid Block 7-F.

(3) Notwithstanding subsection (1) of this rule, if it is the first time an offender is subject to the provisions of ORS 161.610(4)(a), the court may impose a lesser sentence in accordance with these rules.

Offenders Found Guilty Except For Insanity

OAR 213-09-002 The rules of the Criminal Justice Commission shall not apply to any offender found guilty except for insanity pursuant to ORS 161.295. The disposition of such an offender shall be as provided by the provisions of ORS 161.295 to 161.403.

Other Sanctions

OAR 213-09-003 In addition to the presumptive or departure sentence, the sentencing judge may impose any restitution, fine, fee or other monetary payment authorized or required by law.

Revocation Of Probation

OAR 213-10-001 The decision to revoke probation is discretionary and may be exercised upon a finding that the offender has violated one or more of the conditions of probation, or that the offender has participated in new criminal activity.

Revocation Sanctions

OAR 213-10-002 (1) For those offenders whose presumptive sentence was probation, the sentence upon revocation shall be **[a prison term up to a maximum of six months] to the supervisory authority for a term up to a maximum of six months.**

(2) For those offenders whose probationary sentence was either a departure from a presumptive prison sentence or a sentence imposed pursuant to OAR 213-05-006, the sentence upon revocation shall be a prison term up to the maximum presumptive prison term which could have been imposed initially, **if the presumptive prison term exceeds 12 months. For those presumptive prison terms 12 months or less, the sentence upon revocation shall be to the supervisory authority, up to the maximum presumptive prison term.**

(3) Notwithstanding (2) of this rule, if a probation sentence is revoked under Section 1(5) of 1997 Oregon Laws Chapter 850 (Enrolled SB 1049), the court shall impose the presumptive prison term.

[(3)] (4) When imposing a revocation sanction, the sentencing judge shall also set a term of post-prison supervision in accordance with OAR 213-05-002.

[(4)] (5) No revocation sanction may exceed the limitations established by this rule.

Conditions Of Post-Prison Supervision

OAR 213-11-001 (1) The Department shall prepare a proposed release plan for each offender prior to the offender's release from prison.

(2) The proposed release plan shall be submitted to the Board not less than sixty (60) days prior to the offender's release and shall include:

(a) A description of support services and program opportunities available to the offender;

(b) The recommended conditions of supervision;

(c) The level of supervision which shall be consistent with the offender's risk assessment classification;

(d) Any conditions necessary to assist the reformation of the offender; and

(e) Any other conditions and requirements as may be necessary to promote public safety.

(3) If the proposed release plan is not approved by the Board, the Board shall return the plan to the Department with its recommended modifications. The Department shall submit a revised plan to the Board not less than ten days prior to the offender's release.

(4) If the revised plan is not acceptable to the Board, the Board shall determine the provisions of the final plan prior to the offender's release.

Responsibility For Post-Prison Supervision

OAR 213-11-002 Upon release from prison, the offender shall be supervised by the Department or the corrections agency designated by the Department.

Level Of Post-Prison Supervision

OAR 213-11-003 During the term of post-prison supervision, the Department or its designee may adjust the level of supervision and recommend to the Board revisions to the conditions of supervision appropriate to the offender's conduct in the community.

Post-Prison Supervision Sanctions

OAR 213-11-004 (1) The [Department or its designee] supervisory authority shall use a continuum of administrative sanctions for violation of the conditions of post-prison supervision. The sanction continuum shall include: adjustments to the level of supervision, modification of or addition to the conditions of community supervision as approved by the Board, and any other appropriate available local sanction.

(2) If the [Department or its designee] violation of post-prison supervision is new criminal activity or if the supervisory authority finds that [local sanctions] the continuum of sanctions [are] is insufficient punishment for any violation of the conditions of post-prison supervision, [it] the supervisory authority may request the Board to [return the offender to a state correctional facility] impose the most restrictive local options available including incarceration in jail.

(3) If requested to [return an offender to a state correctional facility] impose the most restrictive local option available pursuant to subsection (2), the Board shall hold a hearing to determine whether [prison] incarceration in jail is appropriate and may impose an appropriate term of incarceration up to ninety (90) days for a technical violation and up to one hundred and eighty (180) days for conduct constituting a crime. Except as provided in OAR 213-05-004(2) during the full term of post-prison supervision, for violations of the conditions of supervision, an offender may not be required to serve more than:

- (a) Six months of incarceration if the term of post-prison supervision is one year;
- (b) Nine months of incarceration if the term of post-prison supervision is two years; or
- (c) Twelve months of incarceration if the term of post-prison supervision is three years or longer.

(4) An offender ordered to serve a term of [prison] incarceration in jail as a sanction for a post-prison supervision violation is not eligible for earned-credit time or transitional leave.

(5) An offender ordered to serve a term of [prison] incarceration in jail as a sanction for a post-prison supervision violation shall receive credit for time served in a state or local correctional facility on the supervisory violation prior to the Board's imposition of a [prison term sanction] term of incarceration in jail.

Concurrent And Consecutive Sentences

OAR 213-12-001 When multiple convictions have been entered against a single defendant, the sentencing judge may impose consecutive or concurrent sentences as provided by ORS 137.122, 137.123 and 137.370.

Consecutive Sentences

OAR 213-12-002 (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 213-08-005 (1) imposed pursuant to a dispositional departure for the primary offense, as defined in OAR 213-03-001(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 213-08-005 (1) imposed pursuant to a dispositional departure of the primary sentence except by departure as provided by OAR 213-08-007.

(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.

[(3)] (4) The supervision term of **[the]** 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.

[(4)] (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.**

Sentences Imposed Consecutively To A Prior Remaining Sentence

OAR 213-12-003 (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.

[(2)] (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).

Multiple Supervision Terms

OAR 213-12-004 (1) If the offender has been sentenced to multiple terms of post-prison supervision, the terms of post-prison supervision shall be served as a single term. The maximum sanction for a post-prison supervision violation in such a case shall be limited as provided by OAR 213-11-004 for a single term of post-prison supervision.

(2) When an offender is serving multiple terms of probationary supervision, the sentencing judge may impose revocation sanctions for supervision violations as provided by OAR 213-10-002 for the violation of each separate term of probationary supervision.

(a) If more than one term of probationary supervision is revoked for a single supervision violation, the sentencing judge shall impose the **[prison term] incarceration** sanctions concurrently.

(b) If more than one term of probationary supervision is revoked for separate supervision violations, the sentencing judge may impose the **[prison term] incarceration** sanctions concurrently or consecutively.

Sentencing Report

OAR 213-13-001 (1) A sentencing report shall be submitted forthwith to the Criminal Justice Commission by the sentencing court for each sentence imposed for felonies committed on or after November 1, 1989.

(2) The sentencing report shall provide the following offense and offender information:

(a) Offender identification information;

(b) Court processing information;

(c) Offense conviction information for each crime of conviction;

(d) All prior convictions for felonies or Class A misdemeanors and all juvenile adjudications as described in OAR 213-04-006(2);

(e) Whether the offender is eligible for an optional probationary sentence as provided by OAR 213-05-006;

(f) The presumptive sentence for each crime of conviction; and

(g) Any other information needed to identify the presumptive sentence in accordance with these rules.

(3) The sentencing report shall provide the following information about the sentence imposed for each crime of conviction:

(a) a description of the sentence imposed, including:

(A) the prison term of incarceration and the term of post-prison supervision; or

(B) the duration of probation, number of sanction units, any term of jail incarceration and whether treatment or evaluation was ordered as part of probation;

(b) the total amount of financial obligations associated with the sentences;

(c) if multiple sentences are imposed, whether the sentences are to be served concurrently or consecutively;

(d) whether a statutorily mandatory minimum sentence has been imposed; and

(e) If a departure sentence is imposed, the type of departure (durational or dispositional) and each aggravating or mitigating factor relied upon to impose the departure sentence.

(4) If the offender has been revoked from probation pursuant to OAR 213-10-001, the sentencing report shall provide the following information:

(a) the reasons for revocation;

(b) the revocation sanction imposed; and

(c) whether the incarceration term is to be served concurrently or consecutively with any other sentence.

(5) The staff of the Criminal Justice Commission shall develop the sentencing report form in accordance with the provisions of this rule and shall submit it to the Supreme Court of Oregon for approval prior to distribution for use by trial courts. The form shall display the following statement on its face: The completed form shall be submitted to the Criminal Justice Commission forthwith. ORS 137.010(8).

Minimum Contents Of Presentence Reports

OAR 213-13-010 Except as provided by section (7), each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after November 1, 1989, shall at a minimum include the following information:

(1) A summary of the factual circumstances of the crime or crimes of conviction and an appropriate classification of each crime of conviction on the Crime Seriousness Scale (Appendix 2). If the crime of conviction is subclassified in Appendix 3 or 4, the presentence report shall state the factual circumstances that justify the proposed subclassification.

(2) A listing of all prior adult felony and Class A misdemeanor convictions and all prior juvenile adjudications and an assessment of the appropriate classification of the criminal history on the Criminal History Scale pursuant to OAR 213-04-006 to 213-04-013.

(3) A proposed grid block classification for each crime of conviction and the presumptive sentence for each crime of conviction.

(a) If the proposed grid block classification is a grid block above the dispositional line, the presentence report shall state the presumptive prison term range and the presumptive duration of post-prison supervision.

(b) If the proposed grid block classification is Grid Block 8-G, 8-H or 8-I, the presentence report shall state whether the offender is eligible for an optional probationary sentence. If the offender is eligible, the presentence report may include a recommendation that an optional probationary sentence be imposed with a further recommendation for the appropriate conditions of probation.

(c) If the proposed grid block classification is a grid block below the dispositional line, the presentence report shall provide the following information:

(A) the presumptive term of probation;

(B) the maximum number of sanction units that may be imposed and the number of sanction units that may be used to impose jail time as part of the probationary sentence;

(C) a recommendation for the appropriate conditions of probation including both custody and non-custody conditions; and

(D) any other information relevant to the imposition of a presumptive sentence as provided by these rules.

(4) A victim statement as required by ORS 137.530(3) and 144.790(2).

(5) A recommendation as to whether a departure from the guidelines is appropriate. If a recommendation is made, the presentence report shall indicate the aggravating or mitigating factors upon which the departure recommendation is made. Such recommendations shall be consistent with the requirements for departures as defined by OAR 213-08-001 to 213-08-007.

(6) Any additional information as provided upon request of the sentencing judge.

(7) The sentencing judge may waive the requirement for any information necessary to establish the presumptive sentence if that information has been made part of an accepted plea agreement.

Format For Presentence Reports

OAR 213-13-011 The format for all presentence reports for offenders convicted of a felony committed on or after November 1, 1989, shall be as provided by the Department.

Effective Date

OAR 213-20-001 As provided by Section 90, Chapter 790, Oregon Laws 1989, the rules of divisions 2 to 13 become effective on November 1, 1989.

CRIME SERIOUSNESS SCALE

This appendix represents the complete Crime Seriousness Scale of the grid. When an offense has been subcategorized it will appear in two or more crime categories. An abbreviated description of the subcategorization factors is included in this appendix for each subcategory of the offense as it appears on the Crime Seriousness Scale. Appendices 3 and 4 should be consulted for a complete description of offense subcategories.

CRIME CATEGORY 11

FELONY CLASSIFICATION

ORS 163.115 MURDER (U)

CRIME CATEGORY 10

FELONY CLASSIFICATION

ORS 163.118 MANSLAUGHTER I (A)

ORS 163.375 RAPE I* (A)

(If aggravated by factors listed below; otherwise CC 9.)

ORS 163.405 SODOMY I * (A)

(If aggravated by factors listed below; otherwise CC 9.)

ORS 163.411 SEXUAL PENETRATION I * (A)

(If aggravated by factors listed below; otherwise CC 9.)

ORS 163.185 ASSAULT I (A)

(If victim did not substantially contribute to the commission of the offense by precipitating the attack; otherwise CC 9.)

ORS 163.235 KIDNAPPING I (A)

ORS 164.325 ARSON I (A)

(If offense represented threat of serious physical injury; otherwise CC 9, 8 or 7.)

ORS 163.095 Aggravated Murder (Attempt or Solicit)

* Rape I, Sodomy I and Sexual Penetration with Foreign Object I shall be ranked at Crime Category 10 if one or more of the following factors were included in the commission of the offense:

- (a) the offender used or threatened to use a weapon;
- (b) the offender caused or threatened to cause serious physical injury;
- (c) the victim was under the age of twelve; or
- (d) the victim was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

CRIME CATEGORY 9

FELONY CLASSIFICATION

ORS 163.375 RAPE I	(A)
(If not categorized at CC 10.)	
ORS 163.405 SODOMY I	(A)
(If not categorized at CC 10.)	
ORS 163.411 SEXUAL PENETRATION I	(A)
(If not categorized at CC 10.)	
<u>ORS 163.175 ASSAULT II</u>	(B)
ORS 163.185 ASSAULT I	(A)
(If victim(s) substantially contributed to the commission of the offense by precipitating attack; otherwise CC 10.)	
ORS 164.325 ARSON I	(A)
(If offense did not represent a threat of serious physical injury (CC 10) and the economic loss is greater than \$50,000; otherwise CC 8 or 7.)	
ORS 164.225 BURGLARY I	(A)
(If offender was armed with a deadly weapon, or caused, threatened or attempted physical injury; otherwise CC 8 or 7.)	
<u>ORS 164.405 ROBBERY II</u>	(B)
ORS 164.415 ROBBERY I	(A)
ORS 163.225 KIDNAPPING II	(B)

CRIME CATEGORY 8

FELONY CLASSIFICATION

ORS 163.125 MANSLAUGHTER II	(B)
ORS 163.145 NEGLIGENT HOMICIDE	(C)
ORS 163.670 USING CHILD IN DISPLAY OF SEXUAL CONDUCT	(A)
ORS 163.673 DEALING DEPICTIONS OF CHILD SEXUAL CONDUCT	(B)
(If part of organized operation; otherwise CC 2.)	
ORS 163.677 TRANSPORTING CHILD PORNOGRAPHY	(B)
(If part of organized operation; otherwise CC 2.)	
<u>ORS 163.684 ENCOURAGING CHILD SEX ABUSE I</u>	(B)
ORS 163.732 STALKING	(C)
ORS 163.747 VIOLATE OFFICER	(C)
STALKING ORDER	
ORS 163.750 VIOLATE COURT	(C)
STALKING ORDER	
ORS 167.017 COMPELLING PROSTITUTION	(B)
ORS 167.012 PROMOTING PROSTITUTION	(C)

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.)

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.)

ORS 163.427 SEXUAL ABUSE I (B)

[ORS 163.175 ASSAULT II (B)]

ORS 163.365 RAPE II (B)

ORS 163.395 SODOMY II (B)

ORS 163.408 SEXUAL PENETRATION II (B)

ORS 164.877(3) TREE SPIKING-INJURY (B)

AGGRAVATED DRUG OFFENSES (See, Appendix 4.)

ORS 166.275 INMATE POSSESSION OF WEAPON (A)

(if firearm, otherwise CC 7)

ORS 167.262 USE MINOR DRUG OFFENSE (A)

(CC 4 if minor less than 3 yrs. younger than offender)

1997 Oregon Laws Ch. 561 BUYING/SELLING (B)

THE CUSTODY OF A MINOR (If the conduct is likely to

endanger the health or welfare of the child, otherwise CC 5)

CRIME CATEGORY 7

FELONY CLASSIFICATION

ORS 164.325 ARSON I (A)

(If the offense cannot be ranked at CC 8, 9 or 10.)

ORS 164.225 BURGLARY I (A)

(If the offense cannot be ranked at CC 8 or 9.)

ORS 163.535 ABANDON CHILD (C)

(If child is placed in immediate physical danger; otherwise CC 3.)

ORS 163.425 SEX ABUSE II (C)

ORS 163.275 COERCION (C)

(If threat of physical injury; otherwise CC 6.)

ORS 164.075 THEFT BY EXTORTION (B)

(If threat of physical injury; otherwise CC 2, 3, 4, 5 or 6.)

ORS 162.165 ESCAPE I (B)

ORS 166.275 INMATE IN POSSESSION

OF WEAPON (if firearm CC 8) (A)

ORS 166.429 FURNISHING FIREARM IN

FURTHERANCE OF FELONY (B)

ORS 163.205 CRIMINAL MISTREATMENT I (C)

ORS 162.185 SUPPLYING CONTRABAND (C)

(If the contraband includes one or more firearms; otherwise CC 4, 5 or 6.)

FELONY
CLASSIFICATION

[ORS 164.405 ROBBERY II	(B)]
<u>ORS 163.213 USE OF A STUN GUN,</u>	
<u>TEAR GAS, MACE I</u>	(C)
ORS 163.165 ASSAULT III	(C)
ORS 163.385 SODOMY III	(C)
ORS 163.355 RAPE III	(C)
ORS 162.025 BRIBE RECEIVING	(B)
ORS 166.165 INTIMIDATION I	(C)
ORS 163.275 COERCION	(C)
(No threat of physical injury; otherwise CC 7.)	
ORS 162.015 BRIBERY	(B)
ORS 162.117 PUBLIC INVESTMENT FRAUD	(B)
ORS 162.265 BRIBING A WITNESS	(C)
ORS 162.325 HINDERING PROSECUTION	(C)
ORS 166.270 EX-CON IN POSSESSION	
OF FIREARM	(C)
ORS 166.370(1) and (3)(a) INTENT POSS.	
FIREARM OR DANG. WEAP. IN PUBLIC	
BUILDING; DISCHARGE FIREARM IN	
SCHOOL	(C)
ORS 166.410 ILLEGAL MANUFACTURE,	
IMPORTATION OR TRANSFER OF FIREARMS	(B)
ORS 166.272 UNLAWFUL POSSESSION	
OF FIREARM	(B)
ORS 166.420 REGISTRATION OF HANDGUN	
TRANSFERS	(C)
ORS 166.382 POSSESSION OF	
DESTRUCTIVE DEVICE	(C)
ORS 166.384 UNLAWFUL MANUFACTURE	
OF DESTRUCTIVE DEVICE	(C)
ORS 163.257 CUSTODIAL INTERFERENCE I	(C)
ORS 162.185 SUPPLYING CONTRABAND	(C)
(The contraband involves a dangerous weapon	
not a firearm--CC 7; otherwise CC 4 or 5.)	
ORS 162.155 ESCAPE II	(C)
ORS 164.057 AGGRAVATED THEFT	(B)
(Economic loss was greater than \$50,000; otherwise CC 5.)	
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.)	
ORS 166.220 UNLAWFUL USE OF WEAPON	(C)

**FELONY
CLASSIFICATION**

[ORS 164.405 ROBBERY II	(B)]
<u>ORS 163.213 USE OF A STUN GUN, TEAR GAS, MACE I</u>	(C)
ORS 163.165 ASSAULT III	(C)
ORS 163.385 SODOMY III	(C)
ORS 163.355 RAPE III	(C)
ORS 162.025 BRIBE RECEIVING	(B)
ORS 166.165 INTIMIDATION I	(C)
ORS 163.275 COERCION	(C)
(No threat of physical injury; otherwise CC 7.)	
ORS 162.015 BRIBERY	(B)
ORS 162.117 PUBLIC INVESTMENT FRAUD	(B)
ORS 162.265 BRIBING A WITNESS	(C)
ORS 162.325 HINDERING PROSECUTION	(C)
ORS 166.270 EX-CON IN POSSESSION OF FIREARM	(C)
ORS 166.370(1) and (3)(a) INTENT POSS. FIREARM OR DANG. WEAP. IN PUBLIC BUILDING; DISCHARGE FIREARM IN SCHOOL	(C)
ORS 166.410 ILLEGAL MANUFACTURE, IMPORTATION OR TRANSFER OF FIREARMS	(B)
ORS 166.272 UNLAWFUL POSSESSION OF FIREARM	(B)
ORS 166.420 REGISTRATION OF HANDGUN TRANSFERS	(C)
ORS 166.382 POSSESSION OF DESTRUCTIVE DEVICE	(C)
ORS 166.384 UNLAWFUL MANUFACTURE OF DESTRUCTIVE DEVICE	(C)
ORS 163.257 CUSTODIAL INTERFERENCE I	(C)
ORS 162.185 SUPPLYING CONTRABAND	(C)
(The contraband involves a dangerous weapon not a firearm--CC 7; otherwise CC 4 or 5.)	
ORS 162.155 ESCAPE II	(C)
ORS 164.057 AGGRAVATED THEFT	(B)
(Economic loss was greater than \$50,000; otherwise CC 5.)	
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.)	
ORS 166.220 UNLAWFUL USE OF WEAPON	(C)

ORS 811.705 HIT & RUN VEHICLE (INJURY)	(C)
ORS 166.015 RIOT	(C)
ORS 163.525 INCEST	(C)
(If one of the participants is under the age of 18; otherwise CC 1.)	
ORS 164.315 ARSON II *	(C)
ORS 164.215 BURGLARY II*	(C)
ORS 164.055 THEFT I *	(C)
ORS 164.085 THEFT BY DECEPTION *	(C)
<u>ORS 165.692 FILING A FALSE CLAIM FOR</u>	
<u>HEALTH CARE PAYMENT</u>	(C)
ORS 163.125 THEFT OF SERVICES *	(C)
ORS 164.075 THEFT BY EXTORTION *	(B)
ORS 165.055(3)(A) CREDIT CARD FRAUD *	(C)
ORS 165.013 FORGERY I *	(C)
ORS 165.022 CRIMINAL POSSESSION	
FORGED INSTRUMENT I*	(C)
ORS 164.065 THEFT OF LOST/MISLAID	(C)
PROPERTY *	
ORS 164.140(4) POSSESSION OF	
RENTED PROPERTY *	(C)
ORS 165.065 NEGOTIATING BAD CHECKS *	(C)
ORS 164.377(3)COMPUTER CRIME*	(C)
CHAPTER 59. BLUE SKY LAWS *	
& SECURITIES LAWS	(C)
ORS 164.365 CRIMINAL MISCHIEF I *	(C)
ORS 164.365(1)(a)(F)CRIMINAL	
MISCHIEF I - POLICE ANIMAL	(C)
ORS 819.300 POSSESSION OF STOLEN VEHICLE*	(C)
ORS 164.135 UNAUTHORIZED USE OF VEHICLE *	(C)
ORS 162.275 BRIBE RECEIVING BY WITNESS	(C)
ORS 162.285 TAMPERING W/ WITNESS	(C)
ORS 162.065 PERJURY	(C)
ORS 164.877(1) TREE-SPIKING	(C)
MAJOR DRUG OFFENSES(See, Appendix 4.)	
ORS 164.377 COMPUTER FRAUD (LOTTERY) *	(C)
ORS 165.074 UNLAWFUL CREDIT CARD *	(C)
ORS 164.869 UNLAWFUL RECORD LIVE	
PERFORMANCE *	(C)
ORS 164.868 UNLAWFUL LABEL SOUND	
RECORDING *	(C)
ORS 164.872 UNLAWFUL LABEL VIDEOTAPE *	(C)
ORS 167.388 INTERFERE LIVESTOCK	
PRODUCTION *	(C)
<u>ORS 830.475 HIT AND RUN BOAT</u>	(C)
<u>1997 Oregon Laws Ch. 694 FELONY</u>	(C)

DOMESTIC ASSAULT

1997 Oregon Laws Ch. 719 POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF A CHILD I (B)

* 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.

CRIME CATEGORY 5

FELONY CLASSIFICATION

<u>ORS 163.686 ENCOURAGING CHILD SEX ABUSE II</u>	(C)
ORS 164.395 ROBBERY III	(C)
ORS 164.057 AGGRAVATED THEFT	(B)
(If not categorized at CC 6.)	
ORS 819.310 TRAFFICKING IN STOLEN VEHICLES	(C)
(If not categorized at CC 6.)	
ORS 164.095 THEFT BY RECEIVING	(C)
(If part of an organized operation; otherwise CC 3.)	
ORS 162.185 SUPPLYING CONTRABAND	(C)
(If contraband includes a controlled substance but no firearms (CC 7) or dangerous weapons (CC 6); otherwise CC 4.)	
ORS 164.315 ARSON II *	(C)
ORS 164.215 BURGLARY II*	(C)
ORS 164.055 THEFT I *	(C)
ORS 164.085 THEFT BY DECEPTION *	(C)
ORS 163.125 THEFT OF SERVICES *	(C)
ORS 164.075 THEFT BY EXTORTION *	(B)
ORS 165.055(3)(A) CREDIT CARD FRAUD *	(C)
ORS 165.013 FORGERY I *	(C)
ORS 165.022 CRIMINAL POSSESSION	
FORGED INSTRUMENT I*	(C)
ORS 164.065 THEFT OF LOST/MISLAID PROPERTY *	(C)
ORS 164.140(4) POSSESSION OF RENTED PROPERTY *	(C)
ORS 165.065 NEGOTIATING BAD CHECKS *	(C)
ORS 164.377(3)COMPUTER CRIME*	(C)
CHAPTER 59. BLUE SKY LAWS *	
& SECURITIES LAWS	(C)
ORS 164.365 CRIMINAL MISCHIEF I *	(C)
ORS 164.135 UNAUTHORIZED USE OF VEHICLE *	(C)
ORS 819.300 POSSESSION OF STOLEN VEHICLE*	(C)
ORS 164.377 COMPUTER FRAUD (LOTTERY) *	(C)
ORS 165.074 UNLAWFUL CREDIT CARD *	(C)
ORS 166.087 ABUSE OF CORPSE I	(B)

- ORS 164.869 UNLAWFUL RECORD LIVE PERFORMANCE * (C)
- ORS 164.868 UNLAWFUL LABEL SOUND RECORDING * (C)
- ORS 164.872 UNLAWFUL LABEL VIDEOTAPE * (C)
- ORS 167.388 INTERFERE LIVESTOCK PRODUCTION * (C)
- 1997 Oregon Laws Ch. 561 BUYING OR SELLING** (B)
- THE CUSTODY OF A MINOR (if cannot be ranked at CC 8)**
- 1997 Oregon Laws Ch. 749 FELONY POSSESSION** (C)
- OF A HOAX DESTRUCTIVE DEVICE**

* Property offenses marked with an asterisk shall be ranked at Crime Category 5 if the property stolen was \$10,000 but less than \$50,000, excluding the theft of a motor used primarily for personal rather than commercial transportation.

CRIME CATEGORY 4

FELONY CLASSIFICATION

- ORS 162.205 FTA I (C)
- ORS 165.032 CRIMINAL POSSESSION OF FORGERY DEVICE (C)
- ORS 162.185 SUPPLYING CONTRABAND (C)
- (If offense cannot be ranked at CC 5, 6 or 7.)
- ORS 163.245 CUSTODIAL INTERFERENCE II (C)
- ORS 164.315 ARSON II * (C)
- ORS 164.215 BURGLARY II * (C)
- ORS 164.055 THEFT I * (C)
- ORS 164.085 THEFT BY DECEPTION * (C)
- ORS 163.25 THEFT OF SERVICES * (C)
- ORS 164.075 THEFT BY EXTORTION * (B)
- ORS 165.055(3)(A) CREDIT CARD FRAUD * (C)
- ORS 165.013 FORGERY I * (C)
- ORS 165.022 CRIMINAL POSSESSION FORGED INSTRUMENT I* (C)
- ORS 164.065 THEFT OF LOST/MISLAID PROPERTY *(C)
- ORS 165.581 CELLULAR COUNTERFEITING I** (B)
- ORS 164.140(4) POSSESSION OF RENTED PROPERTY * (C)
- ORS 165.065 NEGOTIATING BAD CHECKS * (C)
- ORS 164.377(3)COMPUTER CRIME* (C)
- CHAPTER 59. BLUE SKY LAWS & SECURITIES LAWS* (C)
- ORS 164.365 CRIMINAL MISCHIEF I * (C)
- (EXCEPT ORS 164.365(1)(e))

ORS 164.135 UNAUTHORIZED USE OF VEHICLE *	(C)
ORS 819.300 POSSESSION OF STOLEN VEHICLE*	(C)
DRUG OFFENSES(See, Appendix 4.)	
ORS 181.519 F/REG. SEX OFFENDER	(C)
ORS 163.547 CHILD NEGLECT I	(B)
ORS 167.262 USE MINOR DRUG OFFENSE	(A)
(CC 8 if minor 3 or more yrs. younger than offender)	
ORS 164.377 COMPUTER FRAUD (LOTTERY) *	(C)
ORS 165.074 UNLAWFUL CREDIT CARD *	(C)
ORS 164.869 UNLAWFUL RECORD LIVE PERFORMANCE *	(C)
ORS 164.868 UNLAWFUL LABEL SOUND	
RECORDING *	(C)
ORS 164.872 UNLAWFUL LABEL VIDEOTAPE *	(C)
ORS 167.388 INTERFERE LIVESTOCK	(C)
PRODUCTION *	

1997 Oregon Laws Ch. 719 POSSESSION OF MATERIAL DEPICTING SEX. EXPLICIT CONDUCT OF CHILD II

* Property offenses marked with an asterisk shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

- (a) The value of the property stolen or destroyed was \$5,000 or more but less than \$10,000; or
- (b) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

CRIME CATEGORY 3

FELONY CLASSIFICATION

<u>ORS 162.355 SIMULATING LEGAL PROCESS</u>	(C)
ORS 162.365(b) CRIMINAL IMPERSONATION OF PEACE OFFICER, <u>JUDGE OR JUSTICE OF THE PEACE</u>	(C)
ORS 163.535 ABANDON CHILD	(C)
(If not ranked at CC 7.)	
ORS 164.095 THEFT BY RECEIVING	(C)
(If not ranked at CC 5.)	
ORS 165.070 POSSESSION OF FAKE COMMUNICATIONS DEVICE	(C)
ORS 163.555 CRIMINAL NONSUPPORT	(C)
ORS 167.137 [PROMOTING] <u>UNLAWFUL GAMBLING I</u>	(C)
ORS 167.062(4) PROMOTING LIVE SEX SHOW	(C)
ORS 166.085 ABUSE OF CORPSE II	(C)
ORS 167.137 POSSESSION OF GAMBLING RECORDS I	(C)

ORS 167.322 AGGRAVATED ANIMAL ABUSE I	(C)
ORS 164.315 ARSON II *	(C)
ORS 164.215 BURGLARY II *	(C)
ORS 164.055 THEFT I *	(C)
ORS 164.085 THEFT BY DECEPTION *	(C)
ORS 163.125 THEFT OF SERVICES *	(C)
ORS 164.075 THEFT BY EXTORTION *	(B)
ORS 165.055(3)(A) CREDIT CARD FRAUD *	(C)
ORS 165.013 FORGERY I *	(C)
ORS 165.022 CRIMINAL POSSESSION	
FORGED INSTRUMENT I *	(C)
ORS 164.065 THEFT OF LOST/MISLAID PROPERTY *	(C)
ORS 164.140(4) POSSESSION OF RENTED PROPERTY *	(C)
ORS 165.065 NEGOTIATING BAD CHECKS *	(C)
ORS 164.377(3)COMPUTER CRIME*	(C)
CHAPTER 59. BLUE SKY LAWS *	
& SECURITIES LAWS	(C)
ORS 164.365 CRIMINAL MISCHIEF I *	(C)
(EXCEPT ORS 164.365(1)(e))	
ORS 164.135 UNAUTHORIZED USE OF VEHICLE *	(C)
ORS 819.300 POSSESSION OF STOLEN VEHICLE*	(C)
ORS 162.305(2)(b) TAMPER LOTTERY RECORDS	(C)
ORS 162.367 FALSE LAW ENFORCEMENT ID	(C)
ORS 164.377 COMPUTER FRAUD (LOTTERY) *	(C)
ORS 165.074 UNLAWFUL CREDIT CARD *	(C)
ORS 164.869 UNLAWFUL RECORD LIVE PERFORMANCE *	(C)
ORS 164.868 UNLAWFUL LABEL SOUND RECORDING *	(C)
ORS 164.872 UNLAWFUL LABEL VIDEOTAPE *	(C)
ORS 167.388 INTERFERE LIVESTOCK PRODUCTION *	(C)
ORS 166.085 ABUSE OF CORPSE II	(C)

* Property offenses marked with an asterisk shall be ranked at Crime Category 3 if either of the following factors was included in the commission of the offense:

- (a) the value of the property stolen or destroyed was \$1,000 or more but less than \$5,000;
- or
- (b) the property stolen was a vehicle valued at more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation.

**FELONY
CLASSIFICATION**

ORS 163.680 VIEWING CHILD'S SEXUAL CONDUCT (C)	
ORS 163.673 DEALING DEPICTIONS OF CHILD SEXUAL CONDUCT (B)	
[ORS 163.677 TRANSPORTING CHILD PORNOGRAPHY (B)	
(If not ranked at CC 8.)	
ORS 496.992(3) VIOLATION OF WILDLIFE LAWS (C)	
ORS 411.630 OBTAINING PUBLIC ASSISTANCE UNLAWFULLY (C)	
ORS 411.840 OBTAIN/USE FOOD STAMPS UNLAWFULLY (C)	
ORS 165.090 RECEIVING SPORTS BRIBE (C)	
ORS 165.085 SPORTS BRIBERY (C)	
ORS 164.315 ARSON II * (C)	
ORS 164.215 BURGLARY II * (C)	
ORS 164.055 THEFT I * (C)	
ORS 164.085 THEFT BY DECEPTION * (C)	
ORS 163.125 THEFT OF SERVICES * (C)	
ORS 164.075 THEFT BY EXTORTION * (B)	
ORS 165.055(3)(A) CREDIT CARD FRAUD * (C)	
ORS 165.013 FORGERY I * (C)	
ORS 165.022 CRIMINAL POSSESSION FORGED INSTRUMENT I * (C)	
<u>ORS 165.579 CELLULAR COUNTERFEIT II</u> (C)	
ORS 164.065 THEFT OF LOST/MISLAID PROPERTY *(C)	
ORS 164.140(4) POSSESSION OF RENTED PROPERTY * (C)	
ORS 165.065 NEGOTIATING BAD CHECKS * (C)	
ORS 164.377(3) COMPUTER CRIME* (C)	
CHAPTER 59. BLUE SKY LAWS & SECURITIES LAWS* (C)	
ORS 164.365 CRIMINAL MISCHIEF I * (C)	
(EXCEPT ORS 164.365(1)(e))	
ORS 164.135 UNAUTHORIZED USE OF VEHICLE * (C)	
ORS 819.300 POSSESSION OF STOLEN VEHICLE* (C)	
ORS 163.672 POSSESS CHILD PORN (C)	
ORS 167.164 POSSESS GRAY MACHINE (C)	
ORS 164.377 COMPUTER FRAUD (LOTTERY) * (C)	
ORS 165.074 UNLAWFUL CREDIT CARD * (C)	
ORS 164.869 UNLAWFUL RECORD LIVE PERFORMANCE * (C)	
ORS 164.868 UNLAWFUL LABEL	

- SOUND RECORDING * (C)
- ORS 164.872 UNLAWFUL LABEL VIDEOTAPE * (C)
- ORS 167.388 INTERFERE LIVESTOCK PRODUCTION * (C)

1997 Oregon Laws Ch. 860 FELONY ATTEMPTING (C)

TO ELUDE (in a vehicle)

1997 Oregon Laws Ch. 867 CHEATING (C)

AT GAMBLING

* 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.

CRIME CATEGORY 1

**FELONY
CLASSIFICATION**

- ORS 166.450 ALTERING FIREARM ID. (C)
- ORS 475.993(2)(a) FAILURE TO MAINTAIN RECORDS/CONTROLLED SUBSTANCES (C)
- ORS 822.605 FALSE SWEARING VEHICLE BUSINESS (C)
- ORS 803.230 FORGE/ALTER VEHICLE TITLE/REG. (C)
- ORS 167.212 TAMPERING W/ DRUG RECORDS (C)
- ORS 803.080 UNLAWFULLY PUBLISHING CERTIFICATE OF TITLE (C)
- ORS 163.515 BIGAMY (C)
- ORS 166.660 UNLAWFUL PARAMILITARY ACTIVITY (C)
- ORS 163.525 INCEST (C)
- (If the incestuous relationship is between adults; otherwise CC 6.)
- ORS 163.651 THROW OBJECT OFF OVERPASS (C)
- DRUG POSSESSION/PERSONAL USE (See, Appendix 4.)
- ORS 468.953 SUPPLY FALSE INFO TO AGENCY (ENVIRONMENTAL) (C)
- ORS 811.182 DWS (C)
- 1997 Oregon Laws Ch. 783 UNLAWFUL USE OF** (C)

A VITAL RECORD OR REPORT

APPENDIX 3

OFFENSE SUBCATEGORIES

The offenses in this appendix have been divided into different subcategories for the Crime Seriousness Scale of the grid. The statutory definition of each offense in this appendix captures a wide spectrum of criminal conduct. The following offense subcategories have been identified to classify the most common forms of these statutory offenses. Consequently, each subcategory includes a unique set of offense-specific characteristics that represents a different degree of crime seriousness for sentencing purposes.

The subcategorized offenses in alphabetical order are:

ABANDONMENT OF A CHILD (ORS 163.535)

CRIME CATEGORY 7

Abandonment of a Child shall be ranked at Crime Category 7 if the child victim was placed in immediate danger as a consequence of the offender's criminal conduct.

CRIME CATEGORY 3

Abandonment of a Child shall be ranked at Crime Category 3, if it cannot be ranked at Crime Category 7.

AGGRAVATED THEFT (ORS 164.057)

CRIME CATEGORY 6

Aggravated Theft shall be ranked at Crime Category 6 if the amount of loss caused by the criminal conduct was more than \$50,000.

CRIME CATEGORY 5

Aggravated Theft shall be ranked at Crime Category 5 if it cannot be ranked at Crime Category 6.

ARSON I (ORS 164.325)

CRIME CATEGORY 10

Arson I shall be ranked at Crime Category 10 if the commission of the offense represented a threat of serious physical injury.

CRIME CATEGORY 9

Arson I shall be ranked at Crime Category 9 if it cannot be ranked at Crime Category 10, and the amount of damage caused by the criminal conduct was \$50,000 or more.

CRIME CATEGORY 8

Arson I shall be ranked at Crime Category 8 if it cannot be ranked at Crime Category 10, and the amount of damage caused by the criminal conduct was \$25,000 or more but less than \$50,000.

CRIME CATEGORY 7

Arson I shall be ranked at Crime Category 7 if it cannot be ranked at Crime Category 8, 9 or 10.

ASSAULT I (ORS 163.185)

CRIME CATEGORY 10

Assault I shall be ranked at Crime Category 10 if the victim(s) did not substantially contribute to the commission of the offense by precipitating the attack.

CRIME CATEGORY 9

Assault I shall be ranked at Crime Category 9 if the victim(s) substantially contributed to the commission of the offense by precipitating the attack.

BURGLARY I (ORS 164.225)

CRIME CATEGORY 9

Burglary I shall be ranked at Crime Category 9 if any of the following factors were included in the commission of the offense:

- a.) The offender was armed with a deadly weapon; or
- b.) The offender caused or threatened physical injury to the victim.

CRIME CATEGORY 8

Burglary I shall be ranked at Crime Category 8 if

- a.) The offender did not cause or threaten physical injury to the victim and did not possess a deadly weapon (CC 9); but

b.) The offense was committed in an occupied dwelling.

CRIME CATEGORY 7

Burglary I shall be ranked at Crime Category 7 if it cannot be ranked at Crime Category 8 or 9.

BUYING OR SELLING THE CUSTODY OF A MINOR (1997 OREGON

LAWS CH. 561)

CRIME CATEGORY 8

Buying or Selling the Custody of a Minor shall be ranked at Crime Category 8 if the conduct is likely to endanger the health or welfare of the child, otherwise it shall be ranked at Crime Category 5.

CRIME CATEGORY 5

Buying or Selling the Custody of a Minor shall be ranked at Crime Category 5 if it cannot be ranked at Crime Category 8.

COERCION (ORS 163.275)

CRIME CATEGORY 7

Coercion shall be ranked at Crime Category 7 if the offender threatened to cause physical injury to some person (ORS 163.275(1)(a)).

CRIME CATEGORY 6

Coercion shall be ranked at Crime Category 6 if it cannot be ranked at Crime Category 7.

DEALING IN DEPICTIONS OF CHILD'S SEXUAL CONDUCT (ORS 163.673)

CRIME CATEGORY 8

Dealing in Depictions of Child's Sexual Conduct shall be ranked at Crime Category 8 if the offender was acting as part of an organized operation to transport or distribute child pornography.

CRIME CATEGORY 2

Dealing in Depictions of Child's Sexual Conduct shall be ranked at Crime Category 2 if it cannot be ranked at Crime Category 8.

DRUG-RELATED OFFENSES (See APPENDIX 4)

INCEST (ORS 163.525)

CRIME CATEGORY 6

Incest shall be ranked at Crime Category 6 if one of the participants is less than eighteen years of age and the age differential between the two participants is more than three years.

CRIME CATEGORY 1

Incest I shall be ranked at Crime Category 1 if it cannot be ranked at Crime Category 6.

INMATE POSSESSION OF WEAPON (ORS 166.275)

CRIME CATEGORY 8

Inmate in possession of a weapon shall be ranked at Crime Category 8 if the weapon was a firearm.

CRIME CATEGORY 7

Inmate in possession of a weapon shall be ranked at Crime Category 7 if it cannot be ranked at Crime Category 8.

PROPERTY OFFENSES

The same offense seriousness subcategories shall be used for the following offenses ("property offenses"):

Arson II (ORS 164.315)

Blue Sky Laws and Securities Laws (ORS Chapter 59)

Burglary II (ORS 164.215)

Computer Crime (ORS 164.377)(2)(3)

Credit Card Fraud (ORS 165.055(3)(b))

Criminal Mischief I (ORS 164.365)(EXCEPT ORS 164.365(1)(f)).

Criminal Possession of Forged Instrument I (ORS 165.022)

Forgery I (ORS 165.013)

Negotiating Bad Checks (ORS 165.065)

Possession of Rented Property 164.140(4))

Possession of Stolen Vehicle (ORS 819.300).

Theft I (ORS 164.055)

Theft by Deception (ORS 164.085)

Theft by Extortion (ORS 164.075)(except if threat of physical injury (CC 7))

Theft of Lost/Mislaid Property (164.065)

Theft of Services (ORS 164.125)

Unauthorized Use of Vehicle (ORS 164.135)

Computer Fraud (Lottery) (ORS 164.377)

Unlawful Credit Card Factoring (ORS 165.074)

Unlawful Record Live Performance (ORS 164.869)

Unlawful Label Sound Recording (ORS 164.868)
Unlawful Label Videotape (ORS 164.872)
Interference with Livestock Production (ORS 167.388)

CRIME CATEGORY 6

Property offenses shall be ranked at Crime Category 6 if the value of the property stolen or destroyed, or if the face value of the instrument forged, possessed or negotiated was \$50,000 or more, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

ORS 165.055(3)(a) Credit Card Fraud shall be ranked at Crime Category 6 if the property stolen or attempted to be stolen was \$50,000 or more.

CRIME CATEGORY 5

Property offenses shall be ranked at Crime Category 5 if the value of the property stolen or destroyed, or if the face value of the instrument forged, possessed or negotiated was \$10,000 or more but less than \$50,000, excluding the theft of a motor vehicle used primarily for personal rather than commercial transportation.

ORS 165.055(3)(a) Credit Card Fraud shall be ranked at Crime Category 5 if the property stolen or attempted to be stolen was \$10,000 or more but less than \$50,000.

CRIME CATEGORY 4

Property offenses shall be ranked at Crime Category 4 if either of the following factors was included in the commission of the offense:

- a.) The value of the property stolen or destroyed, or the face value of the instrument forged, possessed or negotiated was \$5,000 or more but less than \$10,000; or
- b.) For offenses charged under ORS 165.055(3)(a), the value of the property stolen or destroyed was \$5000 or more but less than \$10,000; or
- c.) The property stolen was a vehicle valued at \$10,000 or more and used primarily for personal rather than commercial transportation.

CRIME CATEGORY 3

Property offenses shall be ranked at Crime Category 3 if either of the following factors was included in the commission of the offense:

- a.) The value of the property stolen or destroyed, or the face value of the instrument forged, possessed or negotiated was \$1,000 or more but less than \$5,000; or

- b.) For offenses charged under ORS 165.055(3)(a), the value of the property stolen or destroyed was \$1000 or more but less than \$5000; or
- c.) The property stolen was a vehicle valued at more than \$1,000 but less than \$10,000 and used primarily for personal rather than commercial transportation.

CRIME CATEGORY 2

Property offenses shall be ranked at Crime Category 2 if they cannot be ranked at Crime Category 3, 4, 5, or 6.

RAPE I (ORS 163.375)

CRIME CATEGORY 10

Rape I shall be ranked at Crime Category 10 if one or more of the following factors was included in the commission of the offense:

- a.) The offender used or threatened to use a weapon;
- b.) The offender caused or threatened to cause serious physical injury;
- c.) The victim was under the age of twelve; or
- d.) The victim was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

CRIME CATEGORY 9

Rape I shall be ranked at Crime Category 9 if it cannot be ranked at Crime Category 10.

SEXUAL PENETRATION WITH FOREIGN OBJECT (ORS 163.411)

CRIME CATEGORY 10

Sexual Penetration with Foreign Object shall be ranked at Crime Category 10 if one or more of the following factors was included in the commission of the offense:

- a.) The offender used or threatened to use a weapon;
- b.) The offender caused or threatened to cause serious physical injury;
- c.) The victim was under the age of twelve; or
- d.) The victim was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

CRIME CATEGORY 9

Sexual Penetration with Foreign Object shall be ranked at Crime Category 9 if it cannot be ranked at Crime Category 10.

SODOMY I (ORS 163.405)

CRIME CATEGORY 10

Sodomy I shall be ranked at Crime Category 10 if one or more of the following factors was included in the commission of the offense:

- a.) The offender used or threatened to use a weapon;
- b.) The offender caused or threatened to cause serious physical injury;
- c.) The victim was under the age of twelve; or
- d.) The victim was incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

CRIME CATEGORY 9

Sodomy I shall be ranked at Crime Category 9 if it cannot be ranked at Crime Category 10.

SUPPLYING CONTRABAND (ORS 162.185)

CRIME CATEGORY 7

Supplying Contraband shall be ranked at Crime Category 7 if the offender supplied a firearm or firearms as contraband.

CRIME CATEGORY 6

Supplying Contraband shall be ranked at Crime Category 6 if it cannot be ranked at Crime Category 7 and the offender supplied one or more dangerous weapons (not including firearms) as contraband.

CRIME CATEGORY 5

Supplying Contraband shall be ranked at Crime Category 5 if it cannot be ranked at either Crime Category 6 or 7 and the offender supplied a controlled substance or substances as contraband.

CRIME CATEGORY 4

Supplying Contraband shall be ranked at Crime Category 4 if it cannot be ranked at Crime Category 5, 6 or 7.

THEFT BY EXTORTION (ORS 164.075)

CRIME CATEGORY 7

Theft by Extortion shall be ranked at Crime Category 7 if the offender threatened to cause physical injury to some person (ORS 164.075(1)(a)).

OTHERWISE RATE AS A PROPERTY OFFENSE

Theft by Extortion shall be ranked as a Property Offense in Crime Categories 2, 3, 4, 5 or 6 as may be appropriate if it cannot be ranked at Crime Category 7.

THEFT BY RECEIVING (ORS 164.095)

CRIME CATEGORY 5

Theft by Receiving shall be ranked at Crime Category 5 if the offender was acting as part of an organized fencing operation.

CRIME CATEGORY 3

Theft by Receiving shall be ranked at Crime Category 3 if it cannot be ranked at Crime Category 5.

TRAFFICKING IN STOLEN VEHICLES (ORS 819.310)

CRIME CATEGORY 6

Trafficking in Stolen Vehicles shall be ranked at Crime Category 6 if one or both of the following factors were included in the commission of the offense:

- a.) The offender was acting as part of an organized operation; or
- b.) The value of the property taken from one or more victims was greater than \$50,000.

CRIME CATEGORY 5

Trafficking in Stolen Vehicles shall be ranked at Crime Category 5 if it cannot be ranked at Crime Category 6.

TRANSPORTING CHILD PORNOGRAPHY INTO STATE (ORS 163.677)

CRIME CATEGORY 8

Transporting Child Pornography into State shall be ranked at Crime Category 8 if the offender was acting as part of an organized operation to transport or distribute child pornography.

CRIME CATEGORY 2

Transporting Child Pornography into State shall be ranked at Crime Category 2 if it cannot be ranked at Crime Category 8.

**OFFENSE SUBCATEGORIES
FOR
DRUG-RELATED OFFENSES**

The following crime seriousness subclassifications have been identified for drug-related offenses.

CRIME CATEGORY 8--AGGRAVATED DRUG OFFENSES

ORS 475.999 Manufacture or Delivery of Controlled Substance to Minor or Student Within 1,000 Feet of School

ORS 475.995 Distribution to Minors

Distribution to Minors shall be classified in Crime Category 8 if the offender is more than three years older than the person receiving the drugs. If the offender is less than three years older than the person receiving the drugs, the Distribution to Minors shall be ranked according to the subcategories identified for ORS 475.992.

ORS 167.262 Using a Minor in Controlled Substance Offenses

Using a minor in a drug offense shall be ranked in Crime Category 8 unless the minor is less than three (3) years younger than the offender, in which case the offense will be ranked in Crime Category 4.

ORS 475.992 Manufacture and Delivery

Manufacture and Delivery of Controlled Substances shall be ranked at Crime Category 8 if the violation involves substantial quantities as set forth at ORS 475.996(1)(a)

475.992 Manufacture/Delivery/Possession

Manufacture, Delivery or Possession of Controlled Substances shall be ranked at Crime Category 8 if the violation is a commercial drug offense as set forth at ORS 475.996(1)(b).

CRIME CATEGORY 6--MAJOR DRUG OFFENSES

475.992 Delivery

Delivery of heroin, cocaine or methamphetamine for consideration shall be ranked at Crime Category 6.

475.992 Possession

Possession of a Controlled Substance shall be ranked at Crime Category 6 if the violation involves substantial quantities as set forth at ORS 475.996(2)(b).

CRIME CATEGORY 4--DRUG OFFENSES

475.992 Manufacture and Delivery

All other Manufacture or Delivery of Controlled Substances shall be ranked at Crime Category 4 if they cannot be ranked at Crime Category 8 or 6.

ORS 167.262 Using a Minor in Controlled Substance Offense

Using a minor in a drug offense shall be ranked at Crime Category 4 if the minor is less than three (3) years younger than the offender. In all other cases this offense shall be ranked in Crime Category 8.

CRIME CATEGORY 1--DRUG POSSESSION FOR PERSONAL USE

475.992(4) Possession

Possession of a Controlled Substance shall be ranked at Crime Category 1 if it cannot be ranked at Crime Category 6 or 8.