

# Annual Rules Report

*Per House Bill 4106 (2016 Regular Session)*

January 23, 2024

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## Oregon Criminal Justice Commission

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## **Executive Summary**

Pursuant to House go (2016 Regular Session), the Oregon Criminal Justice Commission (CJC), as a rulemaking agency, must submit an annual report to the Legislative Assembly covering agency rulemaking actions taken during the preceding 12-month period (described as “the reporting period” herein). The report must describe any rules adopted, amended, or repealed in accordance with ORS 183.335(2) and (3), and it must describe need and justification for, and explanation of, any temporary rulemaking undertaken during the reporting period. This report contains the rulemaking information required of the CJC during the preceding 12-month period, in accordance with HB 4106. It is submitted to the Legislative Assembly following the requirements of ORS 192.245 (covering report submissions).

During the reporting period in question – February 1, 2023, through January 31, 2024 – the CJC amended 10 rules: four rules were adopted as permanent that had previously been adopted as temporary, to administer the Illegal Marijuana Market Enforcement Grant Program; and six rules were amended pursuant to the CJC’s role as state sentencing commission following changes to criminal law during the 2023 Regular Session. No temporary rules were adopted, and no rules were repealed or suspended, during this reporting period.

A copy of this report is available to members of the Legislative Assembly upon request. Please contact the CJC via email at [criminal.justice@cjc.oregon.gov](mailto:criminal.justice@cjc.oregon.gov) or via phone at (503) 378-4830 to request a paper or electronic copy. The report is also available online at the CJC’s Publications website: <https://www.oregon.gov/cjc/sac/pages/publications.aspx>.

## **I. HB 4106 Report Introduction**

The Oregon Criminal Justice Commission (CJC) is a state agency with rulemaking authority and is subject to the Oregon Administrative Procedures Act's requirements found in ORS 183.335. In relevant part, ORS 183.335 controls public notice required of executive-branch rulemaking agencies. ORS 183.335(2) describes what required public notices must include. ORS 183.335(3) describes requirements for giving interested persons reasonable opportunities to submit views, including requirements for when an oral public hearing on a rulemaking action must take place, how the hearing must be advertised, and related recordkeeping duties.

Pursuant to House Bill (HB) 4106 (2016 Regular Session), the CJC, as a rulemaking agency, must submit an annual report, due February 1, to the Legislative Assembly covering agency rulemaking actions taken during the preceding 12-month period (described as "the reporting period" herein).

First, the report must describe any rules adopted, amended, or repealed in accordance with ORS 183.335(2) and (3). Next, for any rules adopted, amended, or suspended during the preceding 12-month period, the CJC must also provide: (1) the number of rules in question and a list of these rules, (2) a statement of need for each rule, (3) any agency findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned, and (4) an explanation of why proceeding under ORS 183.335(5) – the section covering temporary rulemaking – was the most appropriate method for adopting, amending or suspending the rule, as well as why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3).

This report contains the rulemaking information required of the CJC during the reporting period, in accordance with HB 4106. It is submitted to the Legislative Assembly following the requirements of ORS 192.245 (covering report submissions).

## **II. Agency Rules Report for the Reporting Period**

The CJC amended agency rules in two instances during the reporting period: (1) the Sentencing Guidelines Grid, in its role as the state's sentencing commission, and (2) the Illegal Marijuana Market Enforcement Grant Program. The CJC did not adopt any temporary rules, nor did it repeal or suspend any rules during this reporting period. The following describes all required reporting components for the two instances in which the CJC amended existing rules.

### **A. The Oregon Sentencing Guidelines Grid**

Pursuant to ORS 137.667, the CJC serves as the state's sentencing guidelines commission. As such, when the Oregon Legislature creates new crimes or modifies existing crimes, the Commission must review legislative changes to determine whether the legal changes necessitate (1) new or modified person crime designations; (2) new or modified crime seriousness categorizations, (3) addition of legislatively-established crime seriousness categorizations, or any combination of those actions. The CJC maintains person-crime designations and crime seriousness categorizations through administrative rule (see, e.g. OAR 213, Division 4, "The Sentencing Guidelines Grid").

Following the 2023 Regular Legislative Session, 13 bills created new crimes or modified existing crimes in ways that necessitated Commission review for potential sentencing guidelines modifications. Of those, the Commission determined that six bills required modifications to the agency's existing sentencing guidelines rules. These changes to Oregon Administrative Rules (OAR), Chapter 213, are listed as follows:

Sentencing Grid Rule Modifications:

- OAR 213-003-0001 (Definitions)
- OAR 213-080-0002 (Departure Factors)
- OAR 213-017-0004 (Crime Category 8)
- OAR 213-017-0006 (Crime Category 6)
- OAR 213-019-0008 (Crime Category 8 – Controlled Substances and Aggravated Drug Offenses)
- OAR 213-019-0010 (Crime Category 6 – Controlled Substances and Major Drug Offenses).<sup>1</sup>

**B. The Illegal Marijuana Market Enforcement Grant Program**

During the 2021 Second Special Session, the Legislature enacted Senate Bill (SB) 893, and during the 2022 Regular Session, the Legislature enacted House Bill (HB) 4074, both of which modified the existing Illegal Marijuana Market Enforcement Grant Program. Initially, temporary rules were adopted in 2022 to expediently implement these legislative program changes, prompted by an ongoing worker abuse crisis related to illegal marijuana cultivation and distribution. During this reporting period, the agency adopted these rules as permanent program rules, which allow funds for qualifying law enforcement agencies and community-based organizations to address the labor trafficking and worker-abuse humanitarian crisis in Oregon related to the illegal marijuana market, as well as define “community-based organization” and “humanitarian crisis” for the purposes of the program.

Illegal Marijuana Market Enforcement Grant Program Modifications:

- OAR 213-080-0010 (Authority and Application)
- OAR 213-080-0030 (Definitions)
- OAR 213-080-0040 (Grant Applications)
- OAR 213-080-0050 (Grant Application Review Criteria)

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<sup>1</sup> However, unlike standard agency rulemaking, the CJC's sentencing guidelines modifications are subject to legislative approval once they have been adopted. ORS 137.667(2).

**C. Agency Findings of Need Justifying Temporary Rulemaking Rules Adopted, Amended, or Repealed During Reporting Period and Explanations for Why Temporary Rulemaking was Appropriate in Adopting, Amending, or Suspending Any Rules During Reporting Period**

The 2023 sentencing guideline update rules were not filed as temporary rules – they were published using the regular permanent rule notice and comment period processes. Therefore, no justification of or explanations for why temporary rulemaking was necessary are applicable.

**D. Agency Findings of Need Justifying Temporary Rulemaking Rules Adopted, Amended, or Repealed During Preceding 12-Month Period and Explanations for Why Temporary Rulemaking was Appropriate in Adopting, Amending, or Suspending Any Rules During Preceding 12-Month Period**

The CJC did not promulgate any temporary rules during the reporting period.

**E. Total Rules Adopted, Amended, or Repealed During the Reporting Period**

In total, the CJC amended 10 rules during the reporting period. No temporary rules adopted, nor were any rules repealed or suspended during the reporting period.