

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking accompanies this form.

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ARCHIVES DIVISION
SECRETARY OF STATE

Oregon Criminal Justice Commission
Agency and Division

213
Administrative Rules Chapter Number

Amends Oregon Sentencing Guidelines and rules to implement legislation and to update grid

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amendment of Sentencing Guidelines and rules to categorize certain new and amended crimes into crime categories and classify certain new and amended crimes as person crimes; update sentencing guidelines grid to be consistent with existing law; update statutory citations to certain crimes; and make other minor changes further described below

Statutory Authority:

ORS 137.667

Other Authority:

Statutes Implemented:

ORS 137.667; HB 3400 (2015); SB 1567 (2016); HB 4014 (2016); HB 4082 (2016); HB 4128 (2016)

Need for the Rule(s):

Under ORS 137.667(1), the Criminal Justice Commission ("Commission") is required to review legislation creating new crimes and modifying existing crimes, and adopt any necessary changes to the sentencing guidelines. The Commission also may classify offenses as person crimes.

The 2016 Oregon Legislature enacted legislation creating new crimes and modifying existing crimes, including the felony crimes Promoting Prostitution and Extortion. The 2016 Oregon Legislature also created or modified misdemeanor crimes including Criminal Impersonation and Obstructing Governmental or Judicial Administration. Additionally, in both the 2015 and 2016 legislative sessions the legislature created new crimes and modified existing crimes with regard to controlled substances including marijuana.

With regard to these and other offenses, the Commission must decide whether to classify new and modified crimes as person crimes, and decide crime seriousness scale categorization (if any) for new and modified felony crimes for which it has not received an express legislative classification. These rule changes implement the Commission's categorizations and classifications with regard to 2015 and 2016 legislation relating to controlled substances. The legislature has mandated the crime seriousness scale of many of the controlled substances offenses pertaining to marijuana, and the rules reflect those mandatory categorizations. The rule changes also implement the Commission's categorizations and classifications with regard to 2016 legislation relating to other new and modified crimes.

The rule changes also include correcting and updating statutory citations, updating the sentencing guidelines grid to reflect current law, and deletion of a duplicative guidelines provision.

Documents Relied Upon, and where they are available:

HB 3400 (2015); SB 1567 (2016); HB 4014 (2016); HB 4082 (2016); HB 4128 (2016) are available on the legislature's website: https://www.oregonlegislature.gov/bills_laws

Fiscal and Economic Impact:

Most classifications pertaining to controlled substance crimes including marijuana offenses are the result of a legislative directive over which the Commission has no discretion and therefore should have no fiscal impact on state agencies, units of local government, or the public. Any such fiscal impact would be caused by the legislature's policy choice with regard to the directive to classify the crimes in certain manners, rather than by the Commission's implementation of the legislative directive. With regard to the classifications over which the Commission does have discretion, the legislature has created or modified the underlying crimes, and much of the fiscal and economic impact will be due to the legislative changes to the crimes. The impact of the Commission's classification of these legislative changes into certain crime categories and as person misdemeanors or felonies may have some fiscal impact, but that impact cannot be measured at this time. Specifically, there may be a fiscal impact on state and local governments to prosecute offenders charged with these crimes, and to incarcerate or supervise persons convicted and sentenced under these rules. However, it is unknown at this time how many persons will commit these offenses, how they will be charged, whether they will be convicted, and how they will be sentenced, all of which have bearing on whether and to what extent

additional incarceration and supervision will be required such that state and local governments will be required to expend additional funds to prosecute, incarcerate, and supervise these offenders. Additionally, under the status quo without Commission action to classify these crimes, courts would be required by law to classify the offenses themselves. This would result in a lack of uniformity in sentencing, and it is unclear whether the courts would, without the Commission's categorizations as guidance, sentence the offenses in a way that would result in higher or lower costs to state and local governments. Additionally, under the HB 3194 (2013) Justice Reinvestment Grant Program counties may be eligible for state funding on the basis of several factors, including but not limited to reduction of the county's utilization of imprisonment in a Department of Corrections institution while protecting public safety and holding offenders accountable. It is unclear the extent to which the Commission's categorization of an offense at a certain level would lead to greater or lesser incarceration at the Department of Corrections, since that depends on a number of factors outside of the Commission's control such as prosecutorial discretion in charging and offering pleas, how many offenders that do proceed to trial are convicted, and the trial court's decisions in sentencing those offenders that are convicted. Finally, the updates to the sentencing guidelines grid and the changes to legal citations in rules reflect current law and there is no predicted fiscal impact occasioned by this update.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The proposed rule modifications to controlled substance crimes mandated by the legislature have no anticipated fiscal impact on state agencies, local governments, businesses or the general public. Additionally, there should be no cost to state agencies, units of local government, or the public to comply with these rules. The rule changes over which the Commission has discretion require crimes to be categorized in certain ways for purposes of sentencing in court and do not impose additional requirements directly upon state agencies, units of local government, or the public. There may be a cost to state and local governments to incarcerate or supervise persons convicted and sentenced under these rules, but for the reasons stated above that cost cannot be quantified at this time.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

None.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None.

c. Equipment, supplies, labor and increased administration required for compliance:

None.

How were small businesses involved in the development of this rule?

Small businesses were not involved in the development of these rules.

Administrative Rule Advisory Committee consulted?:No

If not, why?:

With regard to the rule changes over which the Commission has discretion, the public had an opportunity to comment at public meetings of the Commission on April 26, 2015 and June 23, 2016. With regard to the classification of the crimes implementing a legislative directive over which the Commission had no discretion, an advisory committee would not have been of substantive assistance. Additionally, the public had an opportunity to comment on the legislature's actions with regard to HB 4014 (2016) at a public hearing on February 2, 2016; and with regard to HB 3400 (2015) at public hearings held on March 30, 2015, May 20, 2015, June 1, 2015 and June 3, 2015.

<u>11-10-2016 Close of Business</u>	<u>Julie Vaughn</u>	<u>julie.vaughn@oregon.gov</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address