

# CRIMINAL JUSTICE COMMISSION

## ANNUAL RULES REPORT

HB 4106  
(2016 SESSION)

FEBRUARY 2020



# TABLE OF CONTENTS

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Executive Summary.....	iii
Report begins on.....	iv
Appendix 1 - House Bill 4106.....	viii

# EXECUTIVE SUMMARY

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## **HB 4106 Annual Rules Report**

To: Legislative Assembly

From: Criminal Justice Commission

Pursuant to ORS 192.245, the Criminal Justice Commission (“CJC”) is submitting via email this Annual Rules Report (“Report”) and Executive Summary. The Report summarizes the rules adopted, amended, repealed, or suspended by the CJC during the calendar year of 2019. One copy of the Report will be distributed to the Legislative Administrator.

In accordance with ORS 183.335(2) and (3), during 2019, there were 11 rules amended and no rules adopted, repealed, or suspended. There were seven temporary rule changes under ORS 183.335(5).

A copy of both the Executive Summary and the Report is available to members of the Legislative Assembly upon request. Please contact the Criminal Justice Commission via email at [criminal.justice@oregon.gov](mailto:criminal.justice@oregon.gov) or via phone at (503) 378-8487 to request a paper or electronic copy. The Report is also available online at the following link: [https://www.oregon.gov/cjc/about/Documents/CJC\\_AnnualRulesReport2020.pdf](https://www.oregon.gov/cjc/about/Documents/CJC_AnnualRulesReport2020.pdf).

# ANNUAL RULES REPORT

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## **INTRODUCTION:**

House Bill 4106 requires agencies subject to ORS 183.335 to provide an annual report to the Legislative Assembly no later than February 1 of each year regarding all rules adopted, amended, repealed, or suspended during the preceding 12-month period. This Report covers the calendar year of 2019.

## **RULE CHANGES PURSUANT TO ORS 183.335(2) AND (3):**

Oregon Revised Statute (ORS) 183.335(2) requires agencies to provide notice prior to the adoption, amendment, or repeal of any rule. This notice must meet a number of requirements, outlined in ORS 183.335(2)(a)–(b). When a rule change is proposed, ORS 183.335(3) requires agencies to give interested persons reasonable opportunity to submit data or views. The following rules were amended pursuant to the requirements and procedures of ORS 183.335(2) and (3):

<b>FILING CAPTION</b>	<b>RULES AMENDED</b>	<b>TOTAL AMENDED: 11</b>
Amends rule to include additional types of evaluations.	213-060-0030; 213-060-0140	2
Amends Oregon Sentencing Guidelines and rules in light of 2019 legislation.	213-003-0001; 213-008-0002; 213-017-0005; 213-017-0006; 213-017-0007; 213-017-0008; 213-017-0009; 213-017-0010; 213-018-0050	9

No rules were adopted, repealed, or suspended in 2019.

## **RULE CHANGES PURSUANT TO ORS 183.335(5):**

Oregon Revised Statute (ORS) 183.335(5) allows agencies to adopt, amend, or suspend a rule without prior notice or hearing, notwithstanding ORS 183.335(1)–(4). In 2019, seven rules were amended using the process outlined in ORS 183.335(5).

**Number and list of rules amended pursuant to ORS 183.335(5):**

FILING CAPTION	RULES AMENDED	TOTAL AMENDED: 7
Amends rules to implement SB 1013 (2019).	213-003-0001; 213-004-0003; 213-004-0004; 213-004-0005; 213-017-0001; 213-017-0002; 213-017-0003	7

No rules were adopted or suspended using the process outlined in ORS 183.335(5) in 2019.

**Statement of need for each rule and all of the agency’s findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned:**

The CJC is required to review legislation creating new crimes and modifying existing crimes, and to adopt any necessary changes to the Oregon Sentencing Guidelines. The CJC may also classify offenses as person felonies or person misdemeanors. During the 2019 Regular Session, the Oregon Legislature enacted Senate Bill 1013 (2019) which created new crimes and modified existing crimes, including the offenses of Aggravated Murder, Murder I, and Murder II. Senate Bill 1013 became effective on September 29, 2019.

Prior to Senate Bill 1013, the offenses of Murder I and Murder II did not exist. Senate Bill 1013 changed much of what used to be the crime of Aggravated Murder into the new crime of Murder I. Much of what used to be the pre-Senate Bill 1013 crime of Murder became the new crime of Murder II. After Senate Bill 1013 went into effect in September 2019, the CJC rules still referred to the out-of-date offense of Murder and did not contain any reference to the new offenses of Murder I and Murder II.

When there is no express legislative classification or categorization, the CJC must decide whether to classify new and modified crimes as person crimes, and decide the crime seriousness scale categorization (if any). Senate Bill 1013 did not contain an express legislative directive to classify or categorize the new felony offenses (Aggravated Murder, Murder I, and Murder II) in a particular way. Accordingly, at a public meeting held on December 20, 2019, the CJC considered the legislation (Senate Bill 1013) creating and modifying these felony crimes and voted to classify the offenses as person felonies. The CJC also determined the crime seriousness scale categorizations for these offenses.

In order to avoid any further gap between the effective date of the legislation (September 29, 2019) and the effective date of the rules, the CJC adopted temporary

rules to implement Senate Bill 1013. Failing to promptly adopt these rule changes would have resulted in practitioners throughout the state referring to inaccurate and incomplete sentencing guidelines with regard to sentencing of persons convicted of the offenses of Aggravated Murder, Murder I, and Murder II (as well as attempts and solicitations of these crimes). Without these amendments to the sentencing guidelines, judges would lack the guidance required to sentence offenders; practitioners would lack guidance in cases involving persons accused of these crimes; and offenders would be sentenced under inaccurate and incomplete guidelines leading to a lack of uniformity in sentencing, uncertainty in sentencing, and additional litigation to ensure proper sentencing of offenders.

213-003-0001 (Definitions)

A temporary rule amendment was necessary to implement mandatory and discretionary classifications of offenses as person crimes after SB 1013 (2019). This rule was amended to include the new crimes of Murder I and Murder II, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

213-004-0003 (Aggravated Murder, Murder I, and Murder II)

A temporary rule amendment was necessary to implement the ranking of criminal offenses after SB 1013 (2019). This rule was amended to include the new crimes of Murder I and Murder II, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

213-004-0004 (Other Unranked Offenses)

A temporary rule amendment was necessary to implement the ranking of criminal offenses after SB 1013 (2019). This rule was amended to include the new crimes of Murder I and Murder II, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

213-004-0005 (Attempts and Solicitations)

A temporary rule amendment was necessary to implement the ranking of criminal offenses after SB 1013 (2019). This rule was amended to include the new crimes of Murder I and Murder II, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

213-017-0001 (Crime Category 11)

A temporary rule amendment was necessary to implement changes to Crime Category 11 following changes to the murder offenses after SB 1013 (2019). This rule was amended to remove the crime ranking for the previous crime of Murder, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

213-017-0002 (Crime Category 10)

A temporary rule amendment was necessary to implement the categorization of

criminal offenses as Crime Category 10 and to implement SB 1013 (2019). This rule was amended to include the crimes of Attempt or Solicit Aggravated Murder and Attempt or Solicit Murder I, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

213-017-0003 (Crime Category 9)

A temporary rule amendment was necessary to implement the categorization of criminal offenses as Crime Category 9 and to implement SB 1013 (2019). This rule was amended to include the crime of Attempt or Solicit Murder II, to provide sentencing guidance, and to ensure the accuracy and completeness of the Oregon Sentencing Guidelines.

**An explanation of why proceeding under ORS 183.335(5) was the most appropriate method for adopting, amending, or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3):**

Prior to Senate Bill 1013, the offenses of Murder I and Murder II did not exist. Senate Bill 1013 changed much of what used to be the crime of Aggravated Murder into the new crime of Murder I. Much of what used to be the pre-Senate Bill 1013 crime of Murder became the new crime of Murder II. After Senate Bill 1013 went into effect in September 2019, the CJC rules still referred to the out-of-date offense of Murder and did not contain any reference to the new offenses of Murder I and Murder II. Any additional gap between the effective date of Senate Bill 1013 and the effective date of the rules would result in serious prejudice to the public interest, as outlined below.

Failing to promptly adopt the changes of Senate Bill 1013 would have resulted in practitioners throughout the state referring to inaccurate and incomplete sentencing guidelines with regard to sentencing of persons convicted of the offenses of Aggravated Murder, Murder I, and Murder II (as well as attempts and solicitations of these crimes). Without temporary amendments to the sentencing guidelines, judges would lack the guidance required to sentence offenders; practitioners would lack guidance in cases involving persons accused of these crimes; and offenders would be sentenced under inaccurate and incomplete guidelines leading to a lack of uniformity in sentencing, uncertainty in sentencing, and additional litigation to ensure proper sentencing of offenders. The time required for the permanent rulemaking process would further exacerbate these consequences.

# APPENDIX 1 – HOUSE BILL 4106

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78th OREGON LEGISLATIVE ASSEMBLY--2016 Regular Session

## Enrolled House Bill 4106

Sponsored by Representatives KENNEMER, GOMBERG, Senator JOHNSON; Representatives DAVIS, DOHERTY, EVANS, HOYLE, HUFFMAN, KENY-GUYER, KOMP, MCLANE, PILUSO, SPRENGER, STARK, WEIDNER, WILSON, WITT, Senators BEYER, BOQUIST, KNOPP, THATCHER (Presession filed.)

CHAPTER .....

AN ACT

Relating to state agency adoption of temporary rules.

Be It Enacted by the People of the State of Oregon:

**SECTION 1.** (1) As used in this section:

(a) "Agency" has the meaning given that term in ORS 183.310.

(b) "Rule" has the meaning given that term in ORS 183.310.

(c) "Statement of need" means the statement described in ORS 183.335 (5)(c).

(2) No later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed or suspended during the preceding 12-month period. The report must include:

(a) The number of rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3); and

(b) With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335 (5):

(A) The number of rules;

(B) A list of the rules;

(C) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned; and

(D) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

**Passed by House February 17, 2016**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate February 26, 2016**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2016

**Approved:**

.....M.,....., 2016

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State