

Enrolled
Senate Bill 187

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Department of Corrections)

CHAPTER

AN ACT

Relating to conditional release; amending ORS 420A.206; and declaring an emergency.

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

SECTION 1. ORS 420A.206 is amended to read:

420A.206. (1)(a) If, after the hearing required by ORS 420A.203, the court determines that conditional release is the appropriate disposition, the court shall direct the Department of Corrections to prepare a proposed release plan. The Department of Corrections shall submit the release plan **to the court** no later than 45 days after [completion of the hearing] **receipt of the court's direction to prepare the plan**. The Department of Corrections shall incorporate any conditions recommended by the court and shall consider any recommendations made by the Oregon Youth Authority. The release plan submitted to the court must include:

- (A) A description of support services and program opportunities available to the person;
 - (B) The recommended conditions of the release and supervision;
 - (C) The level of supervision required;
 - (D) Conditions or requirements that provide for the safety of the victim, the victim's family and the community;
 - (E) For persons whose sentences include a requirement to make restitution or to pay compensatory fines or attorney fees and who have not yet made full payment, a payment schedule;
 - (F) Any conditions reasonably necessary to further the reform and rehabilitation of the person and to ensure compliance with the other conditions imposed; and
 - (G) Any special conditions necessary because of the person's individual circumstances.
- (b) If the court does not approve the proposed release plan, the court shall return the plan to the Department of Corrections with recommended modifications and additions. The Department of Corrections shall submit a revised plan to the court no later than 15 days after receipt of the court's recommended modifications and additions.
- (c) If the court does not approve the revised plan, the court shall make any changes that the court deems appropriate and prepare the final release plan. The final release plan must require, in addition to any other conditions, that the person:
- (A) Comply with the conditions of post-release supervision;
 - (B) Be under the supervision of the Department of Corrections and its representatives and follow the direction and counsel of the Department of Corrections and its representatives;
 - (C) Answer all reasonable inquiries of the court or the supervisory authority of the Department of Corrections;

(D) Report to the supervision officer as directed by the court or the supervisory authority of the Department of Corrections;

(E) Not own, possess or be in control of any dangerous weapon or deadly weapon, as those terms are defined in ORS 161.015, or any dangerous animal;

(F) Respect and obey all municipal, county, state and federal laws;

(G) Participate in a victim impact treatment program; and

(H) Pay any restitution, compensatory fine or attorney fees ordered and regularly perform any community service ordered.

(2) When the court has approved a final release plan, the court shall enter an order conditionally releasing the person. The order of conditional release shall:

(a) State the conditions of release;

(b) Require the person to comply fully with all of the conditions of release;

(c) Confirm that the person has been given a copy of the conditions of release;

(d) Continue the person's commitment to the legal custody of the Department of Corrections;

(e) Provide that the Department of Corrections or its designee shall supervise the person;

(f) Provide that the period of supervision is the entire remainder of the sentence of imprisonment imposed, taking into account any reduction in the sentence under ORS 421.121 or any other statute, unless the conditional release is revoked or suspended; and

(g) Require that the Department of Corrections or its designee submit a report to the court no later than 90 days after the person is conditionally released and at least every 180 days thereafter informing the court of the person's circumstances and progress on conditional release.

(3)(a) A person conditionally released under this section remains within the jurisdiction of the sentencing court for the period of the conditional release.

(b) At any time after the entry of an order of conditional release, the court, on its own motion or on motion of the Department of Corrections, may amend the conditional release order to modify the conditions of the person's release and supervision, providing that the modifications are consistent with the requirements for conditions of release in subsections (1) and (2) of this section. Before entering an amended order under this paragraph, the court shall provide the Department of Corrections and the person with a reasonable amount of time to comment on the proposed modifications. The court shall serve the Department of Corrections and the person with a copy of the amended order at least 15 days before the order takes effect.

(c) The Department of Corrections and the supervisory authority may adjust the level of the person's supervision as is appropriate to the person's progress and conduct in the community.

(4)(a) If an officer of the Department of Corrections or the supervisory authority or a law enforcement officer has reasonable grounds to believe that a person released under this section has violated a condition of the release, the officer may take the person into custody and detain the person pending a hearing on the alleged violation as provided in paragraph (c) of this subsection. No later than 24 hours after a person is taken into custody under this subsection, the Department of Corrections or the supervisory authority shall file a notice and affidavit with the court as provided in paragraph (b) of this subsection and serve a copy of the notice and affidavit on the person.

(b) When a notice and affidavit is filed under paragraph (a) of this subsection and if the court finds that the notice and affidavit state reasonable grounds to believe the person has violated a condition of the release, the court shall issue an order that the person appear and show cause why the conditional release should not be revoked or suspended as a sanction for the alleged violation. When a court issues an order under this paragraph, the court shall:

(A) Serve a copy of the order to show cause on the person and the district attorney; and

(B) Provide the person with written notice containing the following information:

(i) The time, place and purpose of the hearing;

(ii) That the person has the right to have adverse witnesses present at the hearing for purpose of confrontation and cross-examination unless the court determines that good cause exists for not permitting confrontation;

(iii) That the person has the right to subpoena witnesses and present documentary evidence and testimony of witnesses;

(iv) That the person has the right to be represented by counsel and, if financially eligible, to have counsel appointed at state expense as provided in paragraph (d) of this subsection; and

(v) The possible sanction authorized if the court determines that the person has violated the conditions of release.

(c) The court shall hold the hearing no more than 15 days after issuing the order to appear and show cause. The court may order the person to be detained pending the hearing and disposition.

(d) In a hearing under this subsection:

(A) The person has the right to be represented by counsel and, if financially eligible, to have counsel appointed at state expense if the court determines, after request, that the request is based on a timely and colorable claim that:

(i) The person has not committed the alleged violation of the release conditions;

(ii) Even if the violation is a matter of public record or is uncontested, there are substantial reasons that justify or mitigate the violation and make revocation inappropriate and the reasons are complex or otherwise difficult to develop or present; or

(iii) The person, in doubtful cases, appears to be incapable of speaking effectively on the person's own behalf;

(B) The Department of Corrections or the supervisory authority has the burden of proving the alleged violation by a preponderance of the evidence;

(C) The state is a party and is represented by the district attorney;

(D) The standards for the introduction and admissibility of evidence in contested case hearings under ORS 183.450 (1) and (2) apply in the hearing;

(E) If the court finds that the person has violated the conditions of release and that subsection (5) of this section does not apply, the person has the burden of establishing good cause why the conditional release should not be revoked or suspended; and

(F) At the conclusion of the hearing, the court shall enter an order containing findings of fact and, if the court finds that the person violated a condition of release, stating what sanctions are imposed.

(e) Except as provided in subsection (5) of this section, when the court finds that the person has violated a condition of release, the court shall impose one or more of the following sanctions:

(A) Adjustments to the level of supervision;

(B) Modifications of the conditions of release;

(C) Any appropriate available local sanctions including, but not limited to, community service work, house arrest, electronic surveillance, restitution centers, work release centers or day centers;

(D) Suspension of conditional release for up to 180 days; or

(E) Revocation of conditional release.

(5) At the conclusion of the hearing, the court shall revoke the person's conditional release and order the person committed to the physical custody of the Department of Corrections to be confined for the entire remainder of the sentence of imprisonment imposed, taking into account any reduction in the sentence under ORS 421.121 or any other statute, if the court finds that:

(a) The person has been convicted of a new criminal offense;

(b) The person has violated the condition prohibiting ownership, possession or control of a dangerous weapon or deadly weapon, as those terms are defined in ORS 161.015, or a dangerous animal; or

(c) The person's conditional release has been suspended twice under this section within the past 18 months.

(6)(a) The state, the Department of Corrections or the person may appeal from an order of conditional release under this section. The appellate court's review is limited to claims that the court failed to comply with the requirements of law in ordering the conditional release.

(b) The state, the Department of Corrections or the person may appeal from an order of the court entered under subsection (4) or (5) of this section. The appellate court's review is limited to claims that:

- (A) The disposition is not authorized under this section;
- (B) The court failed to comply with the requirements of law; and
- (C) The finding of the court that the person did or did not violate a condition of release is not supported by substantial evidence in the record.

SECTION 2. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate February 12, 2013

.....
Robert Taylor, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House April 3, 2013

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State