

**Enrolled**  
**Senate Bill 188**

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 persons confined in a correctional facility; creating new provisions; amending ORS 137.750, 420A.035, 421.445, 655.505, 655.510, 655.515, 655.535, 655.540 and 655.555; and declaring an emergency.

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

**SECTION 1.** Sections 2 to 7, 9 and 10 of this 2013 Act are added to and made a part of ORS 420.060 to 420.235.

**SECTION 2.** (1) The Oregon Youth Authority may establish and administer a work release program in which persons who are committed to the custody of the Department of Corrections and placed in the physical custody of the youth authority under ORS 137.124 or other statute may be authorized to leave assigned quarters for the purpose of:

- (a) Participating in private, gainful employment;
- (b) Participating in a work program approved by the youth authority, including work with public or private agencies or persons, with or without compensation;
- (c) Obtaining in this state additional education, including but not limited to vocational, technical and general education;
- (d) Participating in alcohol or drug treatment programs;
- (e) Participating in mental health programs;
- (f) Specific treatment to develop independent living skills; or
- (g) Other purposes established by the youth authority by rule.

(2) After consulting with the Department of Corrections, the youth authority shall adopt rules to carry out the provisions of sections 2 to 7 of this 2013 Act.

(3) The provisions of this section do not apply to persons sentenced under ORS 137.635, 137.700 or 137.707 or any other provision of law that prohibits eligibility for any form of temporary leave from custody.

**SECTION 3.** (1) The Oregon Youth Authority shall administer the work release program described in sections 2 to 7 of this 2013 Act by means of such staff organization and personnel as the Director of the Oregon Youth Authority considers necessary or advisable. In addition to other duties, the youth authority may:

- (a) Locate employment for qualified applicants;
- (b) Effect placement of persons under the work release program;

(c) Prescribe any special conditions that are appropriate to ensure compliance by a person participating in the work release program with the general procedures and objectives of the work release program; and

(d) Collect, account for and make disbursements from earnings, if any, of persons under the work release program.

(2) The youth authority may enter into agreements with public or private agencies or persons for the employment of persons participating in the work release program or for providing services related to the work release program.

**SECTION 4.** The Oregon Youth Authority may contract with the governing bodies of political subdivisions in this state, with the federal government and with any private agencies approved by the youth authority for the quartering in suitable local facilities of persons enrolled in the work release program described in sections 2 to 7 of this 2013 Act.

**SECTION 5.** (1) Each person assigned to participate in the work release program described in sections 2 to 7 of this 2013 Act shall promptly surrender to the Oregon Youth Authority all compensation the person receives, if any, other than amounts involuntarily withheld by the employer of the person.

(2) The youth authority shall adopt rules providing for the disposition of any compensation earned by persons under sections 2 to 7 of this 2013 Act.

**SECTION 6.** A person assigned by the Oregon Youth Authority to participate in the work release program described in sections 2 to 7 of this 2013 Act, or any other work program, is not an agent, employee or servant of a youth correction facility, the youth authority, the Department of Corrections or this state or a political subdivision of this state:

(1) While working, seeking gainful employment or otherwise participating in the work release or other work program; or

(2) While going to the place of employment or work release assignment from the place where the person is quartered or while returning therefrom.

**SECTION 7.** The unauthorized absence of a person assigned to the work release program from the place of employment or work assignment or the assigned quarters, if the absence is contrary to the rules or specific conditions applicable to the person under sections 2 to 7 of this 2013 Act:

(1) Immediately terminates the assignment of the person to the work release program; and

(2) Constitutes escape in the second degree from a correctional facility under ORS 162.155.

**SECTION 8.** ORS 137.750 is amended to read:

137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of a crime, the court shall order on the record in open court as part of the sentence imposed that the defendant may be considered by the executing or releasing authority for any form of temporary leave from custody, reduction in sentence, work release or program of conditional or supervised release authorized by law for which the defendant is otherwise eligible at the time of sentencing, unless the court finds on the record in open court substantial and compelling reasons to order that the defendant not be considered for such leave, release or program.

(2) The executing or releasing authority may consider the defendant for a program described in subsection (1) of this section only upon order of the sentencing court appearing in the judgment.

(3) As used in this section:

(a) "Executing or releasing authority" means the Department of Corrections, State Board of Parole and Post-Prison Supervision, **Oregon Youth Authority**, Psychiatric Security Review Board, Oregon Health Authority, sentencing court or supervisory authority.

(b) "Supervisory authority" has the meaning given that term in ORS 144.087.

**SECTION 9.** Persons committed to the custody of the Department of Corrections and placed in the physical custody of the Oregon Youth Authority under ORS 137.124 or any other statute:

- (1) Are entitled to the protection and benefits of ORS 655.505 to 655.555.
- (2) Are not entitled to the protection and benefits of ORS chapter 656 or 657.

**SECTION 10.** A youth offender or a person committed to the custody of the Department of Corrections and placed in the physical custody of the Oregon Youth Authority under ORS 137.124 or other statute may be supervised by any employee or agent of a local, state or federal governmental agency while the youth offender or committed person is assigned to a youth correction facility and participating in a work release program or other work program provided by the youth authority, pursuant to an agreement between the agency and the youth authority. An agreement entered into under this section must require that persons exercising custodial supervision over the youth offender or committed person receive security training approved and provided by the youth authority in consultation with the Department of Corrections.

**SECTION 11.** ORS 420A.035 is amended to read:

420A.035. The Oregon Youth Authority may deposit money belonging to youth offenders or others in youth authority custody in a trust account in the State Treasury separate and distinct from the General Fund. Interest earned by the account, if any, shall accrue to the benefit of the account.

**SECTION 12.** ORS 421.445 is amended to read:

421.445. Notwithstanding any other law, inmates participating in a program operated by the Department of Corrections or Oregon Corrections Enterprises may be supervised by any employee or agent of a local, state or federal governmental agency pursuant to an agreement between the agency and the department or the agency and Oregon Corrections Enterprises. An agreement entered into under this section must require that the person exercising custodial supervision over inmates receive security training approved and provided by the department [of Corrections].

**SECTION 13.** ORS 655.505 is amended to read:

655.505. As used in ORS 655.505 to 655.555:

(1) "Attending practitioner" means Department of Corrections or Oregon Youth Authority medical staff, or specialists assisting Department of Corrections or Oregon Youth Authority medical staff, while the inmate is committed to the physical and legal custody of the Department of Corrections. At all other times, "attending practitioner" means a person licensed in Oregon or another state as a medical doctor, doctor of osteopathy, doctor of optometry, doctor of dentistry or nurse practitioner who provides services within the scope of the license.

(2) "Authorized work or occupational training assignment" means the work assignment of an inmate:

- (a) As authorized by ORS 421.305 to 421.340;
- (b) As authorized by ORS 421.450 to 421.480;
- (c) As authorized by ORS 144.410 to 144.525; [or]

**(d) As authorized by ORS 420.011;**

**(e) As authorized by sections 2 to 7 of this 2013 Act; or**

[(d)] **(f)** In any other inmate activity or program, including, but not limited to, on-the-job training established by the Department of Corrections under section 41, Article I, Oregon Constitution, whether or not compensation has been established by the Director of the Department of Corrections for participation in the activity or program.

(3) "Department" means the Oregon Department of Administrative Services.

(4) "Injury" means:

(a) An accidental injury or accidental injury to prosthetic devices occurring in the course of, and caused in major part by, an authorized work or occupational training assignment requiring medical services and resulting in disability or death; or

(b) Any disease or infection that:

(A) Arises out of, and in the course of, an authorized work or occupational training assignment;

(B) Is caused in major part by ingestion, absorption or inhalation of, or contact with, dust, fumes, vapors, gases, radiation or other substances to which a worker who is not an inmate is not ordinarily subjected or exposed while working;

(C) Requires medical services; and

(D) Results in disability or death.

(5) "Inmate" means a person committed to the physical and legal custody of the Department of Corrections.

(6) "Medical services" means reasonable and necessary services prescribed by an attending practitioner for conditions resulting from injury for a period that the nature of the injury or the process of recovery requires. "Medical services" includes medical, surgical, hospital, nursing, ambulance and other related services, drugs, medicine, crutches and prosthetic appliances, braces and supports and, when necessary, physical restorative services.

(7) "Medically stationary" means that no further material improvement would reasonably be expected from medical treatment or the passage of time.

(8) The terms "beneficiary," "child" and "dependent" [are defined as provided] **have the meanings given those terms** in ORS 656.005.

**SECTION 14.** ORS 655.510 is amended to read:

655.510. (1) Every inmate shall receive benefits as provided in ORS 655.505 to 655.555 for injury sustained in an authorized work or occupational training assignment **if the injury:**

(a) [Where the injury] Is proximately caused by or received in the course of the authorized work or occupational training assignment, with or without negligence of the inmate;

(b) [Where the injury] Is not intentionally self-inflicted;

(c) [Where the injury] Is not a result of a willful violation of work rules or rules regulating inmate conduct or premises security; and

(d) [Where the injury] Does not occur to an active participant in an assault or combat that is not connected to the job assignment and that constitutes a deviation from customary duties.

(2) An injury must be established by medical evidence supported by objective findings. The medical evidence must be substantiated by verifiable pathological indication of injury that includes, but is not limited to, range of motion, atrophy, muscle strength, palpable muscle spasm and diagnostic evidence substantiated by clinical findings. Objective findings do not include physical findings or subjective responses to physical examinations that are not consistently reproducible, measurable or observable, or do not fit an anatomical pattern and that cannot be demonstrated after reasonable medical evaluation. A claimant's statement to a physician or other party does not constitute objective medical evidence sufficient to substantiate an injury.

(3) The following circumstances do not constitute a basis for establishing an injury:

(a) Compulsion to participate in employment or training;

(b) Disciplinary action taken by the Department of Corrections **or the Oregon Youth Authority;**

(c) Action taken by the Department of Corrections **or the Oregon Youth Authority**, to protect the safety of persons [other than inmates or of other inmates] or to maintain order; or

(d) Actions of other inmates **or youth offenders as defined in ORS 419A.004.**

(4) The filing of claims for benefits under ORS 655.505 to 655.555 is the exclusive remedy of an inmate or beneficiary of the inmate for injuries compensable under ORS 655.505 to 655.555 against the state or its political subdivisions or any person or entity that contracts with the Department of Corrections **or the Oregon Youth Authority** for the services of inmate labor, any person or entity that employs an inmate in a work release program established under ORS 144.420 **or section 2 of this 2013 Act** or any owner or manager of premises where authorized work or occupational training assignments occur, regardless of negligence. This section applies to any work-related injury to, or conditions of, an inmate whether or not the injury **or conditions are** [is] determined to be compensable under ORS 655.505 to 655.555.

**SECTION 15.** ORS 655.515 is amended to read:

655.515. If an inmate sustains an injury as described in ORS 655.510, benefits shall be delivered in a manner similar to that provided for injured workers under the workers' compensation laws of this state, except that:

(1) No benefits, except medical services and any occupational training or rehabilitation services provided by the Department of Corrections **or the Oregon Youth Authority**, shall accrue to the inmate until the date of release from confinement and shall be based upon the condition of the inmate at that time.

(2) Benefits shall be discontinued during any subsequent period of reconfinement in a penal institution.

(3) Costs of rehabilitation services to inmates with disabilities shall be paid out of the Insurance Fund established under ORS 278.425 in an amount approved by the Oregon Department of Administrative Services, which shall be the reasonable and necessary cost of such services.

(4) Medical services when the inmate is confined in a Department of Corrections facility shall be those provided by the Department of Corrections, **and medical services when the inmate is confined in a youth correction facility as defined in ORS 420.005 shall be those provided by the Oregon Youth Authority**. After release, medical services shall be paid only if necessary to the process of recovery and as prescribed by the attending practitioner. No medical services may be paid after the attending practitioner has determined that the inmate is medically stationary other than for reasonable, periodic repair or replacement of prosthetic appliances. The department, by rule, may require that medical and rehabilitation services after release must be provided directly by the state or its contracted coordinated care organization.

**SECTION 16.** ORS 655.535 is amended to read:

655.535. Claims payments and administrative costs of the Oregon Department of Administrative Services shall be charged by the department to the Department of Corrections **or the Oregon Youth Authority** pursuant to ORS 278.435.

**SECTION 17.** ORS 655.540 is amended to read:

655.540. (1) The assessments paid to the Oregon Department of Administrative Services by the Department of Corrections **or the Oregon Youth Authority** shall be credited as a component of the Insurance Fund pursuant to ORS 278.425 and 278.435.

(2) Funds credited to the inmate injury component of the Insurance Fund for the purposes of ORS 655.505 to 655.555 may be used to effect insurance or reinsurance with any authority or instrumentality, public or private, or otherwise to distribute the liability for compensation payable to persons entitled to recover under ORS 655.505 to 655.555.

**SECTION 18.** ORS 655.555 is amended to read:

655.555. The Oregon Department of Administrative Services, with the approval of the Department of Corrections **and the Oregon Youth Authority**, shall adopt rules necessary to administer the inmate injury fund. The rules may provide for procedures, benefits and coverage that vary from the workers' compensation system.

**SECTION 19.** The amendments to ORS 655.555 by section 18 of this 2013 Act apply to rules necessary to administer the inmate injury component of the Insurance Fund that are adopted on or after the effective date of this 2013 Act.

**SECTION 20.** 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 April 17, 2013**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 14, 2013**

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Tina Kotek, Speaker of House

**Received by Governor:**

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

**Approved:**

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

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John Kitzhaber, Governor

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

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

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Kate Brown, Secretary of State