

House Bill 2413

Sponsored by Representative GELSER, Senator MORRISETTE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Oregon traumatic brain injury strategic partnership advisory council and specifies duties. Requires Department of Human Services to collaborate with council to develop comprehensive plan for services to individuals with traumatic brain injuries. Requires reports to Governor and Legislative Assembly. Increases unitary assessment by \$2 to fund activities required by Act.

A BILL FOR AN ACT

1
2 Relating to services for individuals with traumatic brain injuries; creating new provisions; amending
3 ORS 137.290 and 137.295; and providing for revenue raising that requires approval by a three-
4 fifths majority.

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

6 **SECTION 1. As used in sections 1 to 8 of this 2009 Act:**

7 (1) **"Traumatic brain injury" means injury to the brain caused by physical trauma re-**
8 **sulting from, but not limited to, incidents involving collisions, falls or physical assaults that**
9 **is of sufficient severity to result in impairment in one or more of the following areas:**

10 (a) **Cognition.**

11 (b) **Language memory.**

12 (c) **Attention.**

13 (d) **Reasoning.**

14 (e) **Abstract thinking.**

15 (f) **Judgment.**

16 (g) **Problem solving.**

17 (h) **Sensory, perceptual and motor abilities.**

18 (i) **Psychosocial behavior.**

19 (j) **Physical functions.**

20 (k) **Information processing.**

21 (2) **"Traumatic brain injury" does not include a brain injury that is congenital, degener-**
22 **ative or induced by birth trauma.**

23 **SECTION 2. (1) The Oregon traumatic brain injury strategic partnership advisory council**
24 **is established as an advisory council to the Governor and the Department of Human Services**
25 **regarding services for individuals with traumatic brain injuries.**

26 (2) **The council is composed of the following members:**

27 (a) **The Director of Human Services, or the director's designee, and four representatives**
28 **from the department, appointed by the director, each with expertise in one of the following**
29 **areas:**

30 (A) **Children's services;**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 **(B) Mental health;**
 2 **(C) Public health; and**
 3 **(D) Vocational rehabilitation;**
 4 **(b) The Director of Veterans' Affairs or the director's designee;**
 5 **(c) The Director of the Department of Corrections or the director's designee;**
 6 **(d) The Director of the Economic and Community Development Department or the di-**
 7 **rector's designee;**
 8 **(e) The Adjutant General or the Adjutant General's designee;**
 9 **(f) The executive director of the organization designated to administer the state pro-**
 10 **tection and advocacy system described in ORS 192.517; and**
 11 **(g) The following members appointed by the Governor:**
 12 **(A) The executive director of a state brain injury association;**
 13 **(B) A representative from a nonprofit organization serving individuals with traumatic**
 14 **brain injury;**
 15 **(C) A representative from an organization serving veterans;**
 16 **(D) A representative of a federally recognized Native American tribe located in Oregon;**
 17 **(E) A neurologist who has experience working with individuals with traumatic brain in-**
 18 **juries;**
 19 **(F) A neuropsychologist who has experience working with individuals with traumatic**
 20 **brain injuries;**
 21 **(G) A social worker or clinical psychologist who has experience working with individuals**
 22 **who have traumatic brain injuries;**
 23 **(H) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation**
 24 **counselor, occupational therapist or physical therapist, who has experience working with**
 25 **individuals with traumatic brain injuries;**
 26 **(I) Two individuals with traumatic brain injuries;**
 27 **(J) Two family members of individuals with traumatic brain injuries; and**
 28 **(K) Two members of the public who have experience with issues related to the causes**
 29 **of traumatic brain injuries.**
 30 **(3) A member of the council is not entitled to compensation, but may be reimbursed from**
 31 **funds available to the council for actual and necessary travel and other expenses incurred**
 32 **by the member in the performance of the member's official duties in the manner and amount**
 33 **provided in ORS 292.495.**
 34 **(4) The council members appointed by the Governor under subsection (2)(g) of this sec-**
 35 **tion shall serve for terms of three years and may not serve more than two consecutive**
 36 **terms.**
 37 **(5) The members of the council shall, to the extent practicable, be appointed to represent**
 38 **both rural and urban areas of the state.**
 39 **(6) The council shall elect by majority vote one of its members to serve as chairperson**
 40 **for a two-year term. The chairperson shall act as the presiding officer of the council.**
 41 **SECTION 3. On or before July 30, 2010, the Governor shall make the initial appointments**
 42 **to the Oregon traumatic brain injury strategic partnership advisory council under section 2**
 43 **(2)(g) of this 2009 Act. Notwithstanding section 2 (4) of this 2009 Act, the terms of the**
 44 **members initially appointed by the Governor shall be staggered to end as follows:**
 45 **(1) Four members on June 30, 2011.**

1 (2) Four members on June 30, 2012.

2 (3) Five members on June 30, 2013.

3 **SECTION 4.** (1) The duties of the Oregon traumatic brain injury strategic partnership
4 advisory council include:

5 (a) By November 1, 2010, providing recommendations to the Department of Human Ser-
6 vices on criteria to be used to select programs facilitating support groups for individuals with
7 traumatic brain injuries and their families under section 8 of this 2009 Act.

8 (b) By December 1, 2010, submitting to the Legislative Assembly and the Governor:

9 (A) A preliminary report, created in collaboration with the department, containing a
10 comprehensive statewide plan to address the needs of individuals with traumatic brain inju-
11 ries, including the use of public-private partnerships and a public awareness campaign;

12 (B) A report on the development of a comprehensive statewide information and referral
13 network outside of the department for individuals with traumatic brain injuries;

14 (C) A report on the development of a statewide registry to collect data regarding indi-
15 viduals with traumatic brain injuries; and

16 (D) A report on the efforts of the department to provide services for individuals with
17 traumatic brain injuries.

18 (c) By December 1, 2011, submitting a final report, created in collaboration with the de-
19 partment, containing a comprehensive statewide plan to address the needs of individuals with
20 traumatic brain injuries.

21 (2) In developing the comprehensive statewide plan required by this section, the council
22 and the department shall consider:

23 (a) Increasing provider capacity and provider training;

24 (b) Improving the coordination of services;

25 (c) The feasibility of establishing agreements with private sector agencies to develop
26 services for individuals with traumatic brain injuries; and

27 (d) Other actions the council deems appropriate.

28 (3) The council may utilize the advice or services of a nationally recognized expert, or
29 other individuals as the council deems appropriate, to assist the council in carrying out its
30 duties under this section.

31 **SECTION 5.** (1) The Department of Human Services shall designate staff who shall:

32 (a) Coordinate policies, programs and services for individuals with traumatic brain inju-
33 ries; and

34 (b) Provide staff support to the Oregon traumatic brain injury strategic partnership ad-
35 visory council established under section 2 of this 2009 Act.

36 (2) The department shall provide data and information that is requested by the council
37 and is in the possession or control of the department.

38 **SECTION 6.** (1) The Department of Human Services shall:

39 (a) Provide information and referral services to individuals with traumatic brain injuries
40 until a statewide referral and information network is established outside of the department;
41 and

42 (b) Encourage and facilitate:

43 (A) Collaboration among state agencies that provide services to individuals with trau-
44 matic brain injuries;

45 (B) Collaboration among nongovernmental entities that provide services to individuals

1 with traumatic brain injuries; and

2 (C) Community participation in the development of a comprehensive statewide plan to
3 address the needs of individuals with traumatic brain injuries.

4 (2) By December 1 of each even-numbered year, the department shall issue a report to
5 the Governor and the Legislative Assembly containing:

6 (a) A summary of action taken by the department to meet the needs of individuals with
7 traumatic brain injuries; and

8 (b) Recommendations for improvements in services to address the needs of individuals
9 with traumatic brain injuries.

10 **SECTION 7.** In collaboration with the Oregon traumatic brain injury strategic partner-
11 ship advisory council established under section 2 of this 2009 Act, the Department of Human
12 Services shall conduct a public awareness campaign that includes television, radio and print
13 advertising to make Oregon residents aware of the issues facing individuals with traumatic
14 brain injuries.

15 **SECTION 8.** (1) The Department of Human Services shall provide funding to programs
16 that facilitate support groups to individuals with traumatic brain injuries and their families.

17 (2) The department shall use a request for proposal process to select the programs to
18 receive funding under this section. The Oregon traumatic brain injury strategic partnership
19 advisory council shall provide recommendations to the department on the criteria to be used
20 in selecting the programs.

21 **SECTION 9.** Section 4 of this 2009 Act is amended to read:

22 **Sec. 4.** [(1)] The duties of the Oregon traumatic brain injury strategic partnership advisory
23 council include:

24 [(a)] (1) [By November 1, 2010,] Providing recommendations to the Department of Human Ser-
25 vices on criteria to be used to select programs facilitating support groups for individuals with
26 traumatic brain injuries and their families under section 8 of this 2009 Act.

27 [(b) By December 1, 2010, submitting to the Legislative Assembly and the Governor:]

28 [(A) A preliminary report, created in collaboration with the department, containing a compre-
29 hensive statewide plan to address the needs of individuals with traumatic brain injuries, including the use
30 of public-private partnerships and a public awareness campaign;]

31 [(B) A report on the development of a comprehensive statewide information and referral network
32 outside of the department for individuals with traumatic brain injuries;]

33 [(C) A report on the development of a statewide registry to collect data regarding individuals with
34 traumatic brain injuries; and]

35 [(D) A report on the efforts of the department to provide services for individuals with traumatic
36 brain injuries.]

37 [(c) By December 1, 2011, submitting a final report, created in collaboration with the department,
38 containing a comprehensive statewide plan to address the needs of individuals with traumatic brain
39 injuries.]

40 [(2) In developing the comprehensive statewide plan required by this section the council and the
41 department shall consider:]

42 [(a) Increasing provider capacity and provider training;]

43 [(b) Improving the coordination of services;]

44 [(c) The feasibility of establishing agreements with private sector agencies to develop services for
45 individuals with traumatic brain injuries; and]

1 *[(d) Other actions the council deems appropriate.]*

2 *[(3) The council may utilize the advice or services of a nationally recognized expert, or other in-*
 3 *dividuals as the council deems appropriate, to assist the council in carrying out its duties under this*
 4 *section.]*

5 **(2) Advising the Department of Human Services and the Governor regarding services for**
 6 **individuals with traumatic brain injuries.**

7 **SECTION 10.** ORS 137.290 is amended to read:

8 137.290. (1) In all cases of conviction for the commission of a crime or violation, excluding
 9 parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon
 10 the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this
 11 section. Except when the person successfully asserts the defense set forth in ORS 419C.522, the
 12 unitary assessment shall also be imposed by the circuit court and county court in juvenile cases
 13 under ORS 419C.005 (1). The unitary assessment is a penal obligation in the nature of a fine and
 14 shall be in an amount as follows:

15 (a) \$107 in the case of a felony.

16 (b) \$67 in the case of a misdemeanor.

17 (c) \$97 in the case of a conviction for driving under the influence of intoxicants.

18 (d) \$37 in the case of a violation as described in ORS 153.008.

19 (2) The unitary assessment shall include, in addition to the amount in subsection (1) of this
 20 section:

21 (a) \$42 if the defendant was driving a vehicle that requires a commercial driver license to op-
 22 erate and the conviction was for violating:

23 (A) ORS 811.100 by driving at a speed at least 10 miles per hour greater than is reasonable and
 24 prudent under the circumstances; or

25 (B) ORS 811.111 (1)(b) by driving at least 65 miles per hour;

26 (b) \$500 if the crime of conviction is a crime found in ORS chapter 163;

27 (c) \$500 if the crime of conviction is a violation of ORS 475.890 or 475.892; *[and]*

28 (d) \$1,000 if the crime of conviction is a violation of ORS 475.886 or 475.888[.]; **and**

29 **(e) \$2 if the conviction is for a traffic violation, as defined in ORS 801.557, other than the**
 30 **violations specified in paragraph (a) of this subsection.**

31 (3) Subject to subsection (4) of this section, the court in any case may waive payment of the
 32 unitary assessment, in whole or in part, if, upon consideration, the court finds that payment of the
 33 assessment or portion thereof would impose upon the defendant a total monetary obligation incon-
 34 sistent with justice in the case. In making its determination under this subsection, the court shall
 35 consider:

36 (a) The financial resources of the defendant and the burden that payment of the unitary as-
 37 sessment will impose, with due regard to the other obligations of the defendant; and

38 (b) The extent to which such burden can be alleviated by allowing the defendant to pay the
 39 monetary obligations imposed by the court on an installment basis or on other conditions to be fixed
 40 by the court.

41 (4) If a defendant is convicted of an offense, the court:

42 (a) May waive all or part of the unitary assessment required under subsections (1) and (2)(a)
 43 **and (e)** of this section only if the court imposes no fine on the defendant.

44 (b) May not waive the portion of the unitary assessment required under subsection (2)(c) or (d)
 45 of this section, except in juvenile cases under ORS 419C.005 (1).

1 **SECTION 11.** ORS 137.295 is amended to read:

2 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
3 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
4 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
5 the payment as provided in this section.

6 (2) There are four categories of monetary obligations. The categories are as follows:

7 (a) Category 1 consists of compensatory fines under ORS 137.101.

8 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
9 419C.450 and a monetary obligation imposed under ORS 811.706.

10 (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed
11 under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary
12 obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal
13 cases for which moneys the law does not expressly provide other disposition.

14 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
15 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-
16 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
17 pressly directs be paid to an agency, person or political subdivision of the state, and any other
18 obligation to reimburse for payment of a reward under ORS 131.897. Notwithstanding paragraph (c)
19 of this subsection, the portion of assessments collected as required by ORS 137.290 (2)(c) and (d)
20 shall be considered category 4 obligations.

21 (3) As long as there remains unpaid any obligation under category 1, the clerk shall credit to-
22 ward category 1 all of each payment received.

23 (4) After the total obligation has been credited under category 1, then as long as there remains
24 unpaid any obligation under both categories 2 and 3, the clerk shall credit toward each such cate-
25 gory 50 percent of each payment received.

26 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
27 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
28 tiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall first
29 transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the
30 moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer
31 moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys have
32 been ordered paid to the account under category 2. When the moneys due the account have been
33 fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as defined
34 in ORS 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid in
35 proportion to the amounts ordered. The clerk of a circuit court shall monthly transfer the moneys
36 credited under category 3 as directed by the State Court Administrator for deposit in the State
37 Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300.
38 The clerk of a justice or municipal court shall monthly transfer the moneys credited under category
39 3 to the Department of Revenue as provided in ORS 305.830.

40 (6) When the entire amount owing for purposes of either category 2 or category 3 has been
41 credited, further payments by the defendant shall be credited by the clerk entirely to the unpaid
42 balance of whichever of those categories remains unpaid, until both category 2 and category 3 have
43 been entirely paid.

44 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
45 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-

1 ligations under category 4 and shall monthly transfer the moneys so received to the appropriate
2 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions
3 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-
4 ment for reward under ORS 131.897. The clerk shall monthly transfer the portion of assessments
5 collected as required by ORS 137.290 (2)(c) and (d) to the county for administration of substance
6 abuse treatment programs described in ORS 430.420.

7 (8) Notwithstanding subsection (5) of this section[,]:

8 **(a) The clerk shall monthly transfer the moneys collected under ORS 137.290 (2)(e) to the**
9 **State Treasurer to be deposited to the credit of the Department of Human Services Account;**
10 **and**

11 **(b) The clerk of a circuit court shall monthly transfer the moneys attributable to parking vio-**
12 **lations to the State Treasurer for deposit in the General Fund.**

13 (9) The clerk of a justice or municipal court must make the transfers required by this section
14 not later than the last day of the month immediately following the month in which a payment is
15 made.

16 **SECTION 12. The Department of Human Services shall use all moneys deposited to the**
17 **credit of the department under ORS 137.295 (8)(a) to carry out the provisions of sections 1**
18 **to 8 of this 2009 Act.**

19 **SECTION 13. The amendments to section 4 of this 2009 Act by section 9 of this 2009 Act**
20 **become operative on January 2, 2014.**

21 **SECTION 14. Section 8 of this 2009 Act becomes operative on July 1, 2011.**

22 **SECTION 15. The amendments to ORS 137.290 and 137.295 by sections 10 and 11 of this**
23 **2009 Act apply to convictions for traffic violations committed on or after the effective date**
24 **of this 2009 Act.**

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