

House Bill 3396

Sponsored by Representative SHIELDS; Representatives BEYER, CAMERON, ESQUIVEL, FREEMAN, GALIZIO, HUFFMAN, JENSON, RILEY, SCHAUFLE, G SMITH, STIEGLER, THATCHER, WHISNANT, WITT, Senators BATES, GEORGE, MORRISETTE (at the request of Oregon War Veterans Association and Jesse Wm. Barton)

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**.

Directs district attorney to consider servicemember's traumatic brain injury or mental disorder as factor in determining eligibility for diversion.

Allows court to order servicemember placed on probation into treatment program under certain conditions.

Directs Oregon Criminal Justice Commission to adopt rules that establish defendant's status as servicemember with traumatic brain injury or mental disorder as mitigating factor that sentencing judge may consider as substantial and compelling reason to impose downward departure in sentence.

A BILL FOR AN ACT

1
2 Relating to diversion of servicemembers with brain disorders resulting from military service; creat-
3 ing new provisions; and amending ORS 135.881 and 135.886.

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

5 **SECTION 1.** ORS 135.881 is amended to read:

6 135.881. As used in ORS 135.881 to 135.901:

7 (1) "District attorney" has the meaning given that term *[by]* **in** ORS 131.005 *[(8)]*.

8 (2) "Diversion" means referral of a defendant in a criminal case to a supervised performance
9 program prior to adjudication.

10 (3) "Diversion agreement" means the specification of formal terms and conditions which a de-
11 fendant must fulfill in order to have the charges against the defendant dismissed.

12 (4) "Servicemember" means a defendant who:

13 (a)(A) **Is a veteran as that term is defined in ORS 408.225, except that the veteran need**
14 **not have been discharged or released from active duty under honorable conditions;**

15 (B) **Is a member of the United States Armed Forces or the reserve components of the**
16 **United States Armed Forces; or**

17 (C) **Served in the reserve components of the United States Armed Forces; and**

18 (b) **Has been diagnosed with a traumatic brain injury or mental disorder that resulted**
19 **from military service. Mental disorder includes, but is not limited to, combat stress or**
20 **post-traumatic stress disorder.**

21 **SECTION 2.** ORS 135.886 is amended to read:

22 135.886. (1) After an accusatory instrument has been filed charging a defendant with commission
23 of a crime other than driving while under the influence of intoxicants as defined in ORS 813.010,
24 and after the district attorney has considered the factors listed in subsection (2) of this section, if
25 it appears to the district attorney that diversion of the defendant would be in the interests of justice
26 and of benefit to the defendant and the community, the district attorney may propose a diversion
27 agreement to the defendant the terms of which are established by the district attorney in conform-

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 ance with ORS 135.891. A diversion agreement under this section is not available to a defendant
 2 charged with the crime of driving while under the influence of intoxicants as defined in ORS 813.010.

3 (2) In determining whether diversion of a defendant is in the interests of justice and of benefit
 4 to the defendant and the community, the district attorney shall consider at least the following fac-
 5 tors:

6 (a) The nature of the offense; however, **except as provided in subsection (3) of this section,**
 7 the offense must not have involved injury to another person;

8 (b) Any special characteristics or difficulties of the offender;

9 (c) Whether the defendant is a first-time offender; if the offender has previously participated in
 10 diversion, according to the certification of the Department of Justice, diversion [*shall*] **may** not be
 11 offered;

12 (d) Whether there is a probability that the defendant will cooperate with and benefit from al-
 13 ternative treatment;

14 (e) Whether the available program is appropriate to the needs of the offender;

15 (f) The impact of diversion upon the community;

16 (g) Recommendations, if any, of the involved law enforcement agency;

17 (h) Recommendations, if any, of the victim;

18 (i) Provisions for restitution; and

19 (j) Any mitigating circumstances.

20 **(3) In determining whether diversion of a defendant who is a servicemember is in the**
 21 **interests of justice and of benefit to the defendant and the community, the district attorney**
 22 **shall consider all of the factors listed in subsection (2) of this section, including the nature**
 23 **of the offense, except that the offense must not have involved serious physical injury, as**
 24 **defined in ORS 161.015, to another person.**

25 **(4) If the district attorney elects to offer diversion to a defendant described in subsection**
 26 **(3) of this section, the district attorney shall give preference to treatment programs that**
 27 **have a history of successful treatment of servicemembers who suffer from traumatic brain**
 28 **injuries or mental disorders resulting from military service.**

29 **SECTION 3. (1) As used in this section, “servicemember” has the meaning given that**
 30 **term in ORS 135.881.**

31 **(2) A court, prior to sentencing a defendant who has been convicted of a criminal offense**
 32 **that carries a term of incarceration in county jail or state prison and who alleges that the**
 33 **offense was committed as a result of a mental disorder or a traumatic brain injury resulting**
 34 **from military service, shall hold a hearing to:**

35 **(a) Determine if the defendant is a servicemember; and**

36 **(b) Assess whether the defendant suffers from a mental disorder or a traumatic brain**
 37 **injury as a result of military service.**

38 **(3) The court may order the defendant into a treatment program for a period that may**
 39 **not exceed the period the defendant would have served in county jail or a state prison if the**
 40 **court finds:**

41 **(a) That the defendant is a person described in subsection (2)(a) and (b) of this section;**

42 **(b) That the defendant is eligible for probation; and**

43 **(c) That the defendant agrees to enter a treatment program and that an appropriate**
 44 **treatment program is available.**

45 **(4) A defendant granted probation under this section and ordered into a treatment pro-**

1 **gram shall earn sentence credits for the actual time the defendant serves in a treatment**
2 **program.**

3 **(5) If the court orders a defendant into a treatment program under subsection (3) of this**
4 **section, the court shall give preference to treatment programs that have a history of suc-**
5 **cessful treatment of servicemembers who suffer from mental disorders or traumatic brain**
6 **injuries resulting from military service.**

7 **SECTION 4. (1) As used in this section, “servicemember” has the meaning given that**
8 **term in ORS 135.881.**

9 **(2) The Oregon Criminal Justice Commission shall adopt rules consistent with section 3**
10 **of this 2009 Act that establish a defendant’s status as a servicemember as a mitigating factor**
11 **that a sentencing judge may consider as a substantial and compelling reason to impose a**
12 **downward departure from a presumptive sentence.**

13 **SECTION 5. Section 3 of this 2009 Act and the amendments to ORS 135.881 and 135.886**
14 **by sections 1 and 2 of this 2009 Act apply to offenses committed by servicemembers on or**
15 **after the effective date of this 2009 Act.**

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