

A-Engrossed
House Bill 3692

Ordered by the House February 10
Including House Amendments dated February 10

Sponsored by COMMITTEE ON HUMAN SERVICES (at the request of the Brain Injury Association of Oregon)

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.

Establishes Oregon Traumatic Brain Injury Strategic Partnership Advisory Council and specifies duties. Requires council to develop comprehensive plan for services to individuals with traumatic brain injuries. Requires reports to Governor and Legislative Assembly.

Establishes Oregon Brain Injury Fund. Continuously appropriates moneys in fund to Oregon Health Authority to fund programs related to traumatic brain injury. Increases unitary assessment by \$5. Requires court clerk to transfer moneys collected from assessment to fund.

Authorizes Oregon Health Authority to establish statewide traumatic brain injury registry system and to conduct studies of traumatic brain injury morbidity and mortality. Requires health care facilities that diagnose or provide treatment for traumatic brain injury to provide authority with access to traumatic brain injury patient case data. Makes data confidential and privileged.

Declares emergency, effective on passage.

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; appropriating money; and declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 7 of this 2010 Act:**

6 (1) **"Contractor" means a nonprofit organization that has experience and expertise in**
7 **providing assistance and services to individuals with traumatic brain injuries.**

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

11 (A) **Cognition.**

12 (B) **Language.**

13 (C) **Attention.**

14 (D) **Reasoning.**

15 (E) **Abstract thinking.**

16 (F) **Judgment.**

17 (G) **Problem solving.**

18 (H) **Sensory, perceptual and motor abilities.**

19 (I) **Psychosocial behavior.**

20 (J) **Physical functions.**

21 (K) **Information processing.**

22 (L) **Memory.**

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

3 **SECTION 2.** (1) The Oregon Traumatic Brain Injury Strategic Partnership Advisory
4 Council is established as an advisory council to the Governor and the Oregon Health Au-
5 thority regarding services for individuals with traumatic brain injuries.

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

7 (a) The Director of Human Services, or the director's designee, and a representative from
8 the Department of Human Services, appointed by the director, with expertise in vocational
9 rehabilitation.

10 (b) The Director of the Oregon Health Authority, or the director's designee, and a rep-
11 resentative from the authority, appointed by the director, with expertise in mental health
12 treatment.

13 (c) The Director of Veterans' Affairs or the director's designee.

14 (d) The Director of the Department of Corrections or the director's designee.

15 (e) The Adjutant General or the Adjutant General's designee.

16 (f) The executive director of the organization designated to administer the state pro-
17 tection and advocacy system described in ORS 192.517.

18 (g) A member appointed by the Governor who is an individual with a traumatic brain
19 injury or a family member of an individual with a traumatic brain injury.

20 (3) A member of the council is not entitled to compensation, but may be reimbursed from
21 funds available to the council for actual and necessary travel and other expenses incurred
22 by the member in the performance of the member's official duties in the manner and amount
23 provided in ORS 292.495.

24 (4) The council member appointed by the Governor under subsection (2)(g) of this section
25 shall serve for a term of three years and may not serve more than two consecutive terms.

26 (5) The members of the council shall, to the extent practicable, be appointed to represent
27 both rural and urban areas of this state.

28 (6) The council shall elect by majority vote one of its members to serve as chairperson
29 for a two-year term. The chairperson shall act as the presiding officer of the council.

30 **SECTION 3.** On or before July 30, 2010, the Governor shall make the initial appointment
31 to the Oregon Traumatic Brain Injury Strategic Partnership Advisory Council under section
32 2 (2)(g) of this 2010 Act.

33 **SECTION 4.** (1) The duties of the Oregon Traumatic Brain Injury Strategic Partnership
34 Advisory Council include submitting to the Legislative Assembly and the Governor:

35 (a) By December 1, 2011:

36 (A) A preliminary report, created in collaboration with the contractor described in sec-
37 tion 6 of this 2010 Act, containing a comprehensive statewide plan to address the needs of
38 individuals with traumatic brain injuries, including the use of public-private partnerships;

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

41 (C) A report on the efforts of the contractor to provide services for individuals with
42 traumatic brain injuries.

43 (b) By December 1, 2012, a final report, created in collaboration with the contractor,
44 containing a comprehensive statewide plan to address the needs of individuals with traumatic
45 brain injuries.

1 **(2) The comprehensive statewide plan required by this section shall include further**
2 **actions that the council deems appropriate, including but not limited to:**

3 **(a) Maximizing provider capacity and provider training;**

4 **(b) Maximizing the coordination of services; and**

5 **(c) Contracting with private sector agencies to develop services for individuals with**
6 **traumatic brain injuries.**

7 **SECTION 5. (1) The Director of the Oregon Health Authority shall designate staff who**
8 **shall:**

9 **(a) Collaborate on policies, programs and services for individuals with traumatic brain**
10 **injuries; and**

11 **(b) Provide staff support to the Oregon Traumatic Brain Injury Strategic Partnership**
12 **Advisory Council established under section 2 of this 2010 Act.**

13 **(2) The Oregon Health Authority shall provide data and information that is requested by**
14 **the council and is in the possession or control of the authority.**

15 **(3) The staff described in subsection (1) of this section shall work with the council on a**
16 **0.50 full-time equivalent basis.**

17 **SECTION 6. (1) The Oregon Health Authority shall contract with a contractor to:**

18 **(a) Collaborate with the Oregon Traumatic Brain Injury Strategic Partnership Advisory**
19 **Council in the development of the reports and plans described in section 4 of this 2010 Act;**
20 **and**

21 **(b) Encourage and facilitate:**

22 **(A) Collaboration among state agencies that provide services to individuals with trau-**
23 **matic brain injuries;**

24 **(B) Collaboration among nongovernmental entities that provide services to individuals**
25 **with traumatic brain injuries; and**

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

28 **(2) By December 1 of each even-numbered year, the contractor shall issue a report to the**
29 **Governor and the Legislative Assembly containing:**

30 **(a) A summary of action taken by the contractor to meet the needs of individuals with**
31 **traumatic brain injuries; and**

32 **(b) Recommendations for improvements in services to address the needs of individuals**
33 **with traumatic brain injuries.**

34 **SECTION 7. The Oregon Health Authority shall provide funding to the contractor de-**
35 **scribed in section 6 of this 2010 Act for programs that facilitate existing support groups for**
36 **individuals with traumatic brain injuries and their families.**

37 **SECTION 8. (1) The Oregon Brain Injury Fund is established in the State Treasury, sep-**
38 **arate and distinct from the General Fund. Interest earned by the Oregon Brain Injury Fund**
39 **shall be credited to the fund. Moneys in the fund are continuously appropriated to the**
40 **Oregon Health Authority to fund the programs described in, and to carry out the provisions**
41 **of, sections 1 to 7 of this 2010 Act.**

42 **(2) Notwithstanding ORS 293.190, moneys in the Oregon Brain Injury Fund at the end of**
43 **a biennium do not revert to the General Fund.**

44 **SECTION 9. ORS 137.290 is amended to read:**

45 **137.290. (1) In all cases of conviction for the commission of a crime or violation, excluding**

1 parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon
2 the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this
3 section. Except when the person successfully asserts the defense set forth in ORS 419C.522, the
4 unitary assessment shall also be imposed by the circuit court and county court in juvenile cases
5 under ORS 419C.005 (1). The unitary assessment is a penal obligation in the nature of a fine and
6 shall be in an amount as follows:

- 7 (a) \$107 in the case of a felony.
- 8 (b) \$67 in the case of a misdemeanor.
- 9 (c) \$97 in the case of a conviction for driving under the influence of intoxicants.
- 10 (d) \$37 in the case of a violation as described in ORS 153.008.

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

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

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

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

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

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

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

21 **(e) \$5 if the conviction is for a traffic violation, as defined in ORS 801.557.**

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

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

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

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

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

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

37 **SECTION 10.** ORS 137.295 is amended to read:

38 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
39 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
40 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
41 the payment as provided in this section.

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

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

44 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
45 419C.450 and a monetary obligation imposed under ORS 811.706.

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

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

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

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

17 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
18 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
19 tiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall first
20 transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the
21 moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer
22 moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys have
23 been ordered paid to the account under category 2. When the moneys due the account have been
24 fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as defined
25 in ORS 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid in
26 proportion to the amounts ordered. The clerk of a circuit court shall monthly transfer the moneys
27 credited under category 3 as directed by the State Court Administrator for deposit in the State
28 Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300.
29 The clerk of a justice or municipal court shall monthly transfer the moneys credited under category
30 3 to the Department of Revenue as provided in ORS 305.830.

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

35 (7) When category 1, category 2 and category 3 have been entirely paid and any obligation re-
36 mains owing under category 4, the clerk shall credit further payments by the defendant to the ob-
37 ligations under category 4 and shall monthly transfer the moneys so received to the appropriate
38 recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions
39 in justice and municipal courts and giving last priority to persons entitled to moneys as reimburse-
40 ment for reward under ORS 131.897. The clerk shall monthly transfer the portion of assessments
41 collected as required by ORS 137.290 (2)(c) and (d) to the county for administration of substance
42 abuse treatment programs described in ORS 430.420.

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

44 (a) **The clerk shall monthly transfer the moneys collected under ORS 137.290 (2)(e) to the**
45 **State Treasurer for deposit in the Oregon Brain Injury Fund established under section 8 of**

1 **this 2010 Act; and**

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

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

7 **SECTION 11.** Section 6 of this 2010 Act is amended to read:

8 **Sec. 6.** (1) The Oregon Health Authority shall contract with a contractor to[:]

9 [(a) Collaborate with the Oregon Traumatic Brain Injury Strategic Partnership Advisory Council
10 in the development of the reports and plans described in section 4 of this 2010 Act; and]

11 [(b)] encourage and facilitate:

12 [(A)] (a) Collaboration among state agencies that provide services to individuals with traumatic
13 brain injuries;

14 [(B)] (b) Collaboration among nongovernmental entities that provide services to individuals with
15 traumatic brain injuries; and

16 [(C)] (c) Community participation in the development of a comprehensive statewide plan to ad-
17 dress the needs of individuals with traumatic brain injuries.

18 (2) By December 1 of each even-numbered year, the contractor shall issue a report to the Gov-
19 ernor and the Legislative Assembly containing:

20 (a) A summary of action taken by the contractor to meet the needs of individuals with traumatic
21 brain injuries; and

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

24 **SECTION 12.** As used in sections 12 to 19 of this 2010 Act:

25 (1) **“Health care facility” means a hospital or an ambulatory surgical center as those**
26 **terms are defined in ORS 442.015.**

27 (2) **“Practitioner” means a person who has a professional license and who is qualified by**
28 **training to diagnose or treat traumatic brain injury in patients.**

29 **SECTION 13.** (1) **The Oregon Health Authority may establish a uniform, population-based,**
30 **statewide traumatic brain injury registry system for the collection of data to determine the**
31 **incidence of traumatic brain injury and related data.**

32 (2) **The purpose of the registry is to provide data to design, target, monitor, facilitate and**
33 **evaluate efforts to determine the causes or sources of traumatic brain injury among resi-**
34 **dents of Oregon and to reduce the burden of traumatic brain injury in Oregon. The efforts**
35 **may include, but are not limited to:**

36 (a) **Targeting populations to evaluate the need for screening or other traumatic brain**
37 **injury control services;**

38 (b) **Contacting individuals with traumatic brain injuries to assess care needs and to pro-**
39 **vide referrals, information and support;**

40 (c) **Supporting the operation of health care facility registries in monitoring and upgrading**
41 **traumatic brain injury care and the outcomes of treatment for traumatic brain injuries;**

42 (d) **Investigating suspected clusters or excesses of traumatic brain injury both in occu-**
43 **pational settings and in the state’s environment generally;**

44 (e) **Conducting studies to identify traumatic brain injury hazards to the public health and**
45 **to identify traumatic brain injury hazard remedies; and**

1 (f) Projecting the benefits and costs of alternative policies regarding traumatic brain in-
2 jury prevention or treatment.

3 (3) The authority shall:

4 (a) Adopt rules necessary to carry out the purposes of this section, including but not
5 limited to methods for collecting the data and procedures for accessing the data. When
6 adopting rules under this paragraph, the authority shall consider the definitions, standards
7 and procedures established by the Centers for Disease Control and Prevention's National
8 Center for Injury Prevention and Control, with the goal of achieving uniformity in the col-
9 lection and reporting of data.

10 (b) Conduct a program of epidemiologic analyses of traumatic brain injury registry data
11 collected under subsection (1) of this section to assess traumatic brain injury control, pre-
12 vention, treatment and causation in Oregon.

13 (c) Utilize the data collected under subsection (1) of this section to promote, facilitate
14 and evaluate programs designed to reduce the burden of traumatic brain injury on residents
15 of Oregon.

16 (d) Collaborate in traumatic brain injury studies with practitioners, epidemiologists and
17 health care facilities, and publish reports on the results of the studies.

18 (e) Cooperate with the Centers for Disease Control and Prevention in providing traumatic
19 brain injury incidence data.

20 **SECTION 14.** (1) Any health care facility in which traumatic brain injury patients are
21 diagnosed or provided treatment for traumatic brain injury shall provide the Oregon Health
22 Authority with access to traumatic brain injury patient case data within a time period and
23 in a process prescribed by the authority by rule.

24 (2) For the purpose of ensuring the accuracy and completeness of data collected under
25 section 13 of this 2010 Act, the authority may periodically review all records that identify
26 cases of traumatic brain injury, establish characteristics of traumatic brain injury, specify
27 treatment of the traumatic brain injury or indicate the medical status of any traumatic brain
28 injury patient.

29 **SECTION 15.** The Oregon Health Authority may conduct special studies of traumatic
30 brain injury morbidity and mortality. As part of the studies, the authority may obtain in-
31 formation that applies to a patient's traumatic brain injury and that may be in the medical
32 record of the patient. The record holder may either provide the requested information to the
33 authority or provide the authority access to the relevant portions of the patient's medical
34 record. Neither the authority nor the record holder may bill the other for the cost of pro-
35 viding or obtaining this information.

36 **SECTION 16.** (1) All identifying data regarding individual patients, health care facilities
37 and practitioners provided to the Oregon Health Authority under section 14 of this 2010 Act
38 is confidential and privileged. Except as required in connection with the administration or
39 enforcement of public health laws or rules, a public health official, employee or agent may
40 not be examined in an administrative or judicial proceeding as to the existence or contents
41 of data collected under the statewide traumatic brain injury registry system.

42 (2) All identifying information obtained by the authority in connection with a special
43 study under section 15 of this 2010 Act is confidential and privileged and may be used solely
44 for the purposes of the study, as provided in ORS 432.060.

45 (3) This section does not prohibit the authority from publishing statistical compilations

1 relating to morbidity and mortality studies under section 15 of this 2010 Act that do not
2 identify individual cases or prevent use of this information by third parties to conduct re-
3 search as provided by section 17 of this 2010 Act.

4 **SECTION 17.** (1) The Oregon Health Authority shall adopt rules under which confidential
5 data may be used by third parties to conduct research and studies for the public good. Re-
6 search and studies conducted using confidential data from the statewide traumatic brain in-
7 jury registry system must be reviewed and approved as provided in 45 C.F.R. 46.

8 (2) The authority may enter into agreements to exchange information with other trau-
9 matic brain injury registries in order to obtain complete reports of Oregon residents diag-
10 nosed or treated in other states and to provide information to other states regarding the
11 residents of other states diagnosed or treated in Oregon. Prior to providing information to
12 any other registry, the authority shall ensure that the recipient registry has comparable
13 confidentiality protections.

14 **SECTION 18.** (1) An action for damages arising from the disclosure of confidential or
15 privileged information may not be maintained against any person, or the employer or em-
16 ployee of any person, who participates in good faith in providing data or information to the
17 Oregon Health Authority or providing access to traumatic brain injury registry data or in-
18 formation for traumatic brain injury morbidity or mortality studies in accordance with sec-
19 tion 14 or 15 of this 2010 Act.

20 (2) A license of a health care facility or practitioner may not be denied, suspended or
21 revoked for the good faith disclosure of confidential or privileged information in accordance
22 with section 13, 14 or 15 of this 2010 Act.

23 (3) This section does not apply to the unauthorized disclosure of confidential or privileged
24 information when the disclosure is due to gross negligence or willful misconduct.

25 **SECTION 19.** Section 13 of this 2010 Act does not prohibit a health care facility from
26 operating its own traumatic brain injury registry or require a health care facility to operate
27 its own traumatic brain injury registry.

28 **SECTION 20.** Section 7 of this 2010 Act becomes operative on July 1, 2011.

29 **SECTION 21.** The amendments to ORS 137.290 and 137.295 by sections 9 and 10 of this 2010
30 Act apply to convictions for traffic violations entered on or after the effective date of this
31 2010 Act.

32 **SECTION 22.** Sections 3 and 4 of this 2010 Act are repealed January 2, 2013.

33 **SECTION 23.** The amendments to section 6 of this 2010 Act by section 11 of this 2010 Act
34 become operative January 2, 2013.

35 **SECTION 24.** This 2010 Act being necessary for the immediate preservation of the public
36 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect
37 on its passage.

38