

House Bill 3692

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 **as introduced**.

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.

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.**

23 (b) **“Traumatic brain injury” does not include a brain injury that is congenital, degener-**
24 **ative or induced by birth trauma.**

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 3.** On or before July 30, 2010, the Governor shall make the initial appointment
25 to the Oregon Traumatic Brain Injury Strategic Partnership Advisory Council under section
26 2 (2)(g) of this 2010 Act.

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

29 (a) By December 1, 2011:

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

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

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

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

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

42 (a) Maximizing provider capacity and provider training;

43 (b) Maximizing the coordination of services; and

44 (c) Contracting with private sector agencies to develop services for individuals with
45 traumatic brain injuries.

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

3 (a) Collaborate on policies, programs and services for individuals with traumatic brain
4 injuries; and

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

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

9 (3) The staff described in subsection (1) of this section shall work with the council on a
10 0.50 full-time equivalent basis.

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

12 (a) Collaborate with the Oregon Traumatic Brain Injury Strategic Partnership Advisory
13 Council in the development of the reports and plans described in section 4 of this 2010 Act;
14 and

15 (b) Encourage and facilitate:

16 (A) Collaboration among state agencies that provide services to individuals with tra-
17umatic brain injuries;

18 (B) Collaboration among nongovernmental entities that provide services to individuals
19 with traumatic brain injuries; and

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

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

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

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

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

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

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

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

39 137.290. (1) In all cases of conviction for the commission of a crime or violation, excluding
40 parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon
41 the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this
42 section. Except when the person successfully asserts the defense set forth in ORS 419C.522, the
43 unitary assessment shall also be imposed by the circuit court and county court in juvenile cases
44 under ORS 419C.005 (1). The unitary assessment is a penal obligation in the nature of a fine and
45 shall be in an amount as follows:

- 1 (a) \$107 in the case of a felony.
- 2 (b) \$67 in the case of a misdemeanor.
- 3 (c) \$97 in the case of a conviction for driving under the influence of intoxicants.
- 4 (d) \$37 in the case of a violation as described in ORS 153.008.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
33 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
34 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
35 the payment as provided in this section.

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

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

38 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
39 419C.450 and a monetary obligation imposed under ORS 811.706.

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

44 (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the
45 conviction, but which do not fall under category 1, category 2 or category 3 of the obligation cate-

1 gories. These include, but are not limited to, fines and other monetary obligations that the law ex-
 2 pressly directs be paid to an agency, person or political subdivision of the state, and any other
 3 obligation to reimburse for payment of a reward under ORS 131.897. Notwithstanding paragraph (c)
 4 of this subsection, the portion of assessments collected as required by ORS 137.290 (2)(c) and (d)
 5 shall be considered category 4 obligations.

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

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

11 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
 12 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
 13 tiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall first
 14 transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the
 15 moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer
 16 moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys have
 17 been ordered paid to the account under category 2. When the moneys due the account have been
 18 fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as defined
 19 in ORS 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid in
 20 proportion to the amounts ordered. The clerk of a circuit court shall monthly transfer the moneys
 21 credited under category 3 as directed by the State Court Administrator for deposit in the State
 22 Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300.
 23 The clerk of a justice or municipal court shall monthly transfer the moneys credited under category
 24 3 to the Department of Revenue as provided in ORS 305.830.

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

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

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

38 **(a) The clerk shall monthly transfer the moneys collected under ORS 137.290 (2)(e) to the**
 39 **State Treasurer for deposit in the Oregon Brain Injury Fund established under section 8 of**
 40 **this 2010 Act; and**

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

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

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

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

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

5 [(b)] encourage and facilitate:

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

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

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

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

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

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

18 **SECTION 12.** Section 7 of this 2010 Act becomes operative on July 1, 2011.

19 **SECTION 13.** The amendments to ORS 137.290 and 137.295 by sections 9 and 10 of this 2010
20 Act apply to convictions for traffic violations entered on or after the effective date of this
21 2010 Act.

22 **SECTION 14.** Sections 3 and 4 of this 2010 Act are repealed January 2, 2013.

23 **SECTION 15.** The amendments to section 6 of this 2010 Act by section 11 of this 2010 Act
24 become operative January 2, 2013.

25 **SECTION 16.** This 2010 Act being necessary for the immediate preservation of the public
26 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect
27 on its passage.

28