

Testimony before the Senate Judiciary Committee
In support of HB 2462A
On behalf of the Oregon State Bar Military and Veterans Law Section
April 22, 2019

Chair Prozanski, members of the Committee:

My name is Jesse Barton. I'm an attorney in Salem and I'm here today on behalf of the Military and Veteran Law Section of the Oregon State Bar. The section is made up of lawyers from all of Oregon who represent servicemembers in a wide range of legal areas.

House Bill 2462A is intended to provide a directive to trial court judges to notify servicemembers facing criminal prosecution of the various legal protections and programs they are afforded under state and local Oregon law. The following are summaries of the intent of bill's provisions:

- Section 1(1) defines “servicemember.” This definition actually is broader than the Criminal Code’s definition (created in 2010). *See* ORS 135.881(4). The Criminal Code’s definition excludes veterans who incurred “bad paper” discharges (*i.e.*, bad conduct and dishonorable discharges, both of which require courts martial convictions). Section 1’s definition is consistent with 10 USC § 1553(d), the Veterans Treatment Court Uniform Law Commission Model, and a 2017 resolution of the American Bar Association. Those sources recognize that in some instances, misconduct, resulting in servicemembers’ bad paper discharges, was a consequence of their suffering from post-traumatic stress and/or traumatic brain injury, and call for leniency in allowing such servicemembers program eligibility.¹
- Section 1 (2) summarizes the various legal protections and programs that, at arraignment, trial court judges would give notification regarding. This subsection was amended in the House because the original bill inadvertently omitted reference to the diversion programs the legislature created in 2010 and 2011.
- Section 1 (4) prohibits treating military service as an **aggravating** sentencing factor. This is consistent with ORS 137.090(2)(a), which specifically allows treating military service as a **mitigating** sentencing factor. But ORS 137.090(2)(a) uses ORS 135.881(4)’s

¹ Some of the legal protections and programs use the narrower definition from ORS 135.881(4). As a result, some servicemembers would be notified of legal protections and programs for which they are ineligible.

narrower definition of “servicemember.” This makes it possible to use military service as an aggravating factor, **if** the servicemember incurred a bad paper discharge. Section 1 (4) eliminates that possibility.

We appreciate the Committee’s consideration of HB 2462A, and urge its passage.

Finally, I would gladly do my best to answer any questions the Committee may have.