

B-Engrossed
House Bill 2413

Ordered by the House May 29
Including House Amendments dated April 30 and May 29

Sponsored by Representatives GELSER, GREENLICK, Senator MORRISETTE; Representative BOONE

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 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.

Establishes Oregon Brain Injury Trust Fund. Continuously appropriates moneys in fund to department to fund programs related to traumatic brain injury. Increases unitary assessment by \$2. Requires municipal court clerk to transfer moneys collected from assessment to fund.

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 providing for revenue raising that requires
4 approval by a three-fifths majority.

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

6 **SECTION 1. As used in sections 1 to 7 of this 2009 Act:**

7 (1) **“Contractor” means a nonprofit organization with which the Department of Human**
8 **Services contracts to provide experience and expertise in traumatic brain injuries.**

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

12 (A) **Cognition.**

13 (B) **Language.**

14 (C) **Attention.**

15 (D) **Reasoning.**

16 (E) **Abstract thinking.**

17 (F) **Judgment.**

18 (G) **Problem solving.**

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

20 (I) **Psychosocial behavior.**

21 (J) **Physical functions.**

22 (K) **Information processing.**

23 (L) **Memory.**

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

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

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

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

8 (A) Children's services;

9 (B) Mental health;

10 (C) Public health; and

11 (D) Vocational rehabilitation;

12 (b) The Director of Veterans' Affairs or the director's designee;

13 (c) The Director of the Department of Corrections or the director's designee;

14 (d) The Director of the Economic and Community Development Department or the di-
15 rector's designee;

16 (e) The Adjutant General or the Adjutant General's designee;

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

19 (g) The following members appointed by the Governor:

20 (A) The executive director of a state brain injury association;

21 (B) A representative from an organization serving veterans;

22 (C) A representative of a federally recognized tribe located in Oregon;

23 (D) A neurologist who has experience working with individuals with traumatic brain in-
24 juries;

25 (E) A neuropsychologist who has experience working with individuals with traumatic
26 brain injuries;

27 (F) A social worker or clinical psychologist who has experience working with individuals
28 with traumatic brain injuries;

29 (G) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation
30 counselor, occupational therapist or physical therapist, who has experience working with
31 individuals with traumatic brain injuries;

32 (H) An individual with a traumatic brain injury;

33 (I) A family member of an individual with a traumatic brain injury; and

34 (J) A member of the public who has experience with issues related to the causes of
35 traumatic brain injuries.

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

40 (4) The council members appointed by the Governor under subsection (2)(g) of this sec-
41 tion shall serve for terms of three years and may not serve more than two consecutive
42 terms.

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

45 (6) The council shall elect by majority vote one of its members to serve as chairperson

1 for a two-year term. The chairperson shall act as the presiding officer of the council.

2 **SECTION 3.** On or before July 30, 2010, the Governor shall make the initial appointments
3 to the Oregon traumatic brain injury strategic partnership advisory council under section 2
4 (2)(g) of this 2009 Act. Notwithstanding section 2 (4) of this 2009 Act, the terms of the
5 members initially appointed by the Governor shall be staggered to end as follows:

6 (1) Three members on June 30, 2011.

7 (2) Three members on June 30, 2012.

8 (3) Four members on June 30, 2013.

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

11 (a) By December 1, 2010, submitting to the Legislative Assembly and the Governor:

12 (A) A preliminary report, created in collaboration with the contractor, containing a
13 comprehensive statewide plan to address the needs of individuals with traumatic brain inju-
14 rries, including the use of public-private partnerships;

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

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

19 (b) By December 1, 2011, submitting a final report, created in collaboration with the
20 contractor, containing a comprehensive statewide plan to address the needs of individuals
21 with traumatic brain injuries.

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

24 (a) Increasing provider capacity and provider training;

25 (b) Improving the coordination of services;

26 (c) Establishing agreements with private sector agencies to develop services for individ-
27 uals with traumatic brain injuries; and

28 (d) Recommending other actions the council deems appropriate.

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

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

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

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

36 (3) The staff described in subsection (1) of this section shall work with the council on a
37 0.50 full-time equivalent basis.

38 **SECTION 6.** (1) The Department of Human Services shall contract with a contractor with
39 experience and expertise in providing assistance and services to individuals with traumatic
40 brain injuries to:

41 (a) Provide a preliminary report, created in collaboration with the contractor, containing
42 a comprehensive statewide plan to address the needs of individuals with traumatic brain in-
43 juries, including the use of public-private partnerships;

44 (b) Provide a report on the development of a comprehensive statewide information and
45 referral network outside the department for individuals with traumatic brain injuries;

1 (c) Provide a report on the development of a statewide registry to collect data regarding
2 individuals with traumatic brain injuries;

3 (d) Provide a report on the efforts of the contractor to provide services for individuals
4 with traumatic brain injuries;

5 (e) By December 1, 2011, submit a final report, created in collaboration with the council,
6 containing a comprehensive statewide plan to address the needs of individuals with traumatic
7 brain injuries; and

8 (f) Encourage and facilitate:

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

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

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

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

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

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

21 **SECTION 7.** The Department of Human Services shall provide funding to the contractor
22 for programs that facilitate existing support groups for individuals with traumatic brain in-
23 juries and their families.

24 **SECTION 8.** ORS 137.290 is amended to read:

25 137.290. (1) In all cases of conviction for the commission of a crime or violation, excluding
26 parking violations, the trial court, whether a circuit, justice or municipal court, shall impose upon
27 the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this
28 section. Except when the person successfully asserts the defense set forth in ORS 419C.522, the
29 unitary assessment shall also be imposed by the circuit court and county court in juvenile cases
30 under ORS 419C.005 (1). The unitary assessment is a penal obligation in the nature of a fine and
31 shall be in an amount as follows:

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

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

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

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

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

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

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

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

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

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

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

1 **(e) \$2 if the conviction is for a traffic violation, as defined in ORS 801.557.**

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

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

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

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

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

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

17 **SECTION 9.** ORS 137.295 is amended to read:

18 137.295. (1) When a defendant convicted of a crime or violation in the circuit, justice or munic-
19 ipal court, or allowed diversion in such a case, makes a payment of money to be credited against
20 monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute
21 the payment as provided in this section.

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

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

24 (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS
25 419C.450 and a monetary obligation imposed under ORS 811.706.

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

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

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

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

42 (5) The clerk shall monthly transfer the moneys credited under category 1 and under category
43 2 to the victims for whose benefit moneys under that category were ordered paid. If there are mul-
44 tiple victims for whose benefit moneys have been ordered paid under category 2, the clerk shall first
45 transfer moneys credited under category 2 to the victim, as defined in ORS 137.103 (4)(a). When the

1 moneys due the victim, as defined in ORS 137.103 (4)(a), have been fully paid, the clerk shall transfer
2 moneys credited under category 2 to the Criminal Injuries Compensation Account if moneys have
3 been ordered paid to the account under category 2. When the moneys due the account have been
4 fully paid, the clerk shall transfer moneys credited under category 2 to any other victims, as defined
5 in ORS 137.103 (4)(b) or (d), for whose benefit moneys under that category were ordered paid in
6 proportion to the amounts ordered. The clerk of a circuit court shall monthly transfer the moneys
7 credited under category 3 as directed by the State Court Administrator for deposit in the State
8 Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300.
9 The clerk of a justice or municipal court shall monthly transfer the moneys credited under category
10 3 to the Department of Revenue as provided in ORS 305.830.

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

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

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

24 **(a) The clerk shall monthly transfer the moneys collected under ORS 137.290 (2)(e) to the**
25 **State Treasurer for deposit in the Oregon Brain Injury Trust Fund established under section**
26 **10 of this 2009 Act; and**

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

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

32 **SECTION 10. (1) The Oregon Brain Injury Trust Fund is established in the State Treas-**
33 **ury, separate and distinct from the General Fund. Interest earned by the trust fund shall**
34 **be credited to the fund. Moneys in the trust fund are continuously appropriated to the De-**
35 **partment of Human Services to fund the programs described in, and to carry out the pro-**
36 **visions of, sections 1 to 7 of this 2009 Act.**

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

39 **SECTION 11. Section 7 of this 2009 Act becomes operative on July 1, 2011.**

40 **SECTION 12. The amendments to ORS 137.290 and 137.295 by sections 8 and 9 of this 2009**
41 **Act apply to convictions for traffic violations committed on or after the effective date of this**
42 **2009 Act.**