

Testimony before the House Judiciary Committee
In support of HB 2462
On behalf of the Oregon State Bar Military and Veterans Law Section
March 19, 2019

Chair Williamson, 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 2462 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 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 2 (1) summarizes the various legal protections and programs that, at arraignment, trial court judges would give notification. Section 2 (1) inadvertently omits reference to the diversion programs the legislature created in 2010 and 2011. The -2 amendments would correct that omission, by inserting the necessary reference into Section 2 (1).
- Section 2 (2) 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 2 (2) eliminates that possibility.

- Section 3 (1)—as it would be amended by the -2 amendments—is intended to help create a more reliable record of the number of servicemembers enmeshed in the criminal justice system, by having servicemember defendants’ lawyers, with their clients’ consent, notify trial courts that their clients are servicemembers.² Moreover, to further help create a more reliable record of the number of servicemembers enmeshed in the criminal justice system, it is hoped that the Judicial Department’s current efforts to modify the state’s Uniform Criminal Judgment will end with the inclusion of a “checkbox,” which identifies those defendants who are servicemembers.
- Section 3 (2)—as it would be amended by the -2 amendments—recognizes the possibility that information about a defendant’s servicemember status could be abused. Section 3 (2) allows the servicemember to exclude his or her military service from public dissemination, by having the court seal and otherwise not disclose information about the defendant’s servicemember status.

We appreciate the Committee’s consideration of HB 2462, and urge its support of the bill, including its -2 amendments. Finally, I would gladly do my best to answer any questions the Committee may have.

² Standard 2.2, items 6.a.2 and 6.a.3, of the Oregon State Bar’s *Specific Standards for Representation in Criminal & Juvenile Delinquency Cases* instruct defense counsel to identify which of their clients are servicemembers. This instruction is a contractual obligation of lawyers providing indigent-defense services funded by the Public Defense Services Commission.