

A-Engrossed
Senate Bill 999

Ordered by the Senate February 3
Including Senate Amendments dated February 3

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Veterans' Affairs)

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.

Modifies circumstances under which current or former member of Armed Forces, Reserves or National Guard may be offered diversion from criminal prosecution.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to diversion; creating new provisions; amending ORS 135.881 and 135.886; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 135.881 is amended to read:

6 135.881. As used in ORS 135.881 to 135.901:

7 (1) "District attorney" has the meaning given that term *[by]* **in** ORS 131.005 *[(8)]*.

8 (2) "Diversion" means referral of a defendant in a criminal case to a supervised performance
9 program prior to adjudication.

10 (3) "Diversion agreement" means the specification of formal terms and conditions which a de-
11 fendant must fulfill in order to have the charges against the defendant dismissed.

12 (4) "**Servicemember**" means a person who:

13 (a) **Is a member of the Armed Forces of the United States, the reserve components of**
14 **the Armed Forces of the United States or the National Guard; or**

15 (b)(A) **Served as a member of the Armed Forces of the United States, the reserve com-**
16 **ponents of the Armed Forces of the United States or the National Guard; and**

17 (B) **Received an honorable discharge, a general discharge under honorable conditions or**
18 **a discharge under other than honorable conditions.**

19 **SECTION 2.** ORS 135.886 is amended to read:

20 135.886. (1) After an accusatory instrument has been filed charging a defendant with commission
21 of a crime other than driving while under the influence of intoxicants as defined in ORS 813.010,
22 and after the district attorney has considered the factors listed in subsection (2) of this section, if
23 it appears to the district attorney that diversion of the defendant would be in the interests of justice
24 and of benefit to the defendant and the community, the district attorney may propose a diversion
25 agreement to the defendant the terms of which are established by the district attorney in conform-
26 ance with ORS 135.891. A diversion agreement under this section is not available to a defendant

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 charged with the crime of driving while under the influence of intoxicants as defined in ORS 813.010.

2 (2) In determining whether diversion of a defendant is in the interests of justice and of benefit
3 to the defendant and the community, the district attorney shall consider at least the following fac-
4 tors:

5 (a) The nature of the offense; however, **except as provided in subsection (3) of this section,**
6 the offense must not have involved **physical** injury to another person;

7 (b) Any special characteristics or difficulties of the offender;

8 (c) Whether the defendant is a first-time offender; if the offender has previously participated in
9 diversion, according to the certification of the Department of Justice, diversion [*shall*] **may** not be
10 offered;

11 (d) Whether there is a probability that the defendant will cooperate with and benefit from al-
12 ternative treatment;

13 (e) Whether the available program is appropriate to the needs of the offender;

14 (f) The impact of diversion upon the community;

15 (g) Recommendations, if any, of the involved law enforcement agency;

16 (h) Recommendations, if any, of the victim;

17 (i) Provisions for restitution; and

18 (j) Any mitigating circumstances.

19 **(3) In determining whether diversion of a defendant who is a servicemember is in the**
20 **interests of justice and of benefit to the defendant and the community, the district attorney**
21 **shall consider all of the factors listed in subsection (2) of this section, including the nature**
22 **of the offense, except that the offense must not:**

23 **(a) Have involved serious physical injury to another person; or**

24 **(b) Be classified as a Class A or B felony and have involved physical injury to another**
25 **person.**

26 **(4) As used in this section, “physical injury” and “serious physical injury” have the**
27 **meanings given those terms in ORS 161.015.**

28 **SECTION 3. The amendments to ORS 135.881 and 135.886 by sections 1 and 2 of this 2010**
29 **Act apply to offenses for which there has not been an adjudication of guilt on or before the**
30 **effective date of this 2010 Act.**

31 **SECTION 4. This 2010 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
33 **on its passage.**

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