# Written Testimony in Support for SB 1522

This legislation is an acknowledgement of the tremendous progress we have made in building home and community-based supports for people with intellectual and developmental disabilities in Oregon. Involuntary commitment of people with intellectual disabilities is no longer needed because we have created a system of support for all eligible people to voluntarily receive the supports they need in their homes and in the community rather than involuntarily in institutional settings.

Involuntary commitment is no longer appropriate because our system relies legally and financially on providing services in home and community-based non-institutional settings. We rely on the enhanced 6% match rate we receive from Medicaid for complying with these regulations.

All our services are funded as non-institutional settings that are voluntarily chosen with guarantees of the rights and freedoms of community living. Involuntarily committing people to a non-institutional setting poses systemic fiscal and legal risks.

In 2013, the Oregon Developmental Disabilities system adopted the Community First Choice Option or K Plan under the Affordable Care Act which made access to services for qualifying people with intellectual and developmental disabilities an entitlement under our Medicaid state plan. This means everyone in the DD system should have access to the care and support they need to not be a danger to themselves or others or lack care needed for their safety and meeting their basic needs.

Oregon has had an involuntary or civil commitment law for over 160 years. The intention of the law has been and continues to be to order care and treatment in a hospital for people the 1862 law called “insane or idiotic”. People with intellectual disabilities and people with mental health conditions were both housed at the privately run and publicly funded Hawthorne Asylum in 1862, and

would be housed together at what would later become the Oregon State Hospital until in 1907, when a separate institution, the Oregon State Institution for the Feeble-minded, later known as Fairview Training Center and Hospital, was established for people with intellectual disabilities.

With a separate institution came a separate civil commitment law for people with intellectually disabilities, 427 vs 426, to segregate the two institutions between people with intellectual disabilities and people with mental or behavioral health disabilities.

The civil commitment statute was created for involuntary commitment to an institutional hospital. Fairview Training Center and Hospital closed in 2000 and Eastern Oregon Training Center and Hospital closed in 2009 leaving no institutions for people with intellectual and developmental disabilities in Oregon. At that point, it would have made sense to repeal the involuntary commitment statute for people with intellectual disabilities since there was no institution to civilly commit people with intellectual disabilities to.

The Aging and People with Disabilities system never had an institution and never had a commitment statute.

People were committed to institutions based upon diagnoses that were often of questionable accuracy given to people whose capabilities were often misunderstood and underestimated. They were taken to the institution and left there, locked up. Thankfully, we don't have these institutions for people with intellectual disabilities anymore. It is misleading to the courts to have the statute in place. The statute is the front door to an institution. We closed the institutions but left the front door. It is time to finally close the door on institutions for people with intellectual disabilities in Oregon.

Of the less than 20 people currently involuntarily committed for an intellectual disability, virtually all have a significant mental health diagnosis. They are not really being committed due to an intellectual disability which is really just a score on an IQ test that does not test for or correlate with dangerousness.

Under guidance given by the World Health Organization in 2021, involuntary commitment and involuntary treatment are considered human rights violations under the United Nations Convention on the Rights of Persons with Disabilities in force since 2008.

The statute calls for the removal of rights and for involuntary confinement and detention for people who have not been charged with any crimes. The US Supreme Court has ruled decisively that involuntary commitment is for care and treatment and cannot be used for punishment.

There should be no need to involuntarily commit anyone because they have an intellectual disability. If they qualify for services, they have home and community-based supports available to them. If they do not qualify, we don't have a way of providing them the supports they would be committed for. For much of its 160-year history, the civil commitment law has had an avoidance of commitment provision which states that if there are other viable options for a person's safe keeping, commitment can't be pursued. With K plan, people with intellectual disabilities have viable options to where they should not need to be committed.

Ending involuntary commitment is an important step in our deinstitutionalization process. In Benton County, we have not civilly committed anyone in nearly twenty years which is true for most counties in Oregon. Less than a handful of counties have any involuntary commitments, and one county has most of them.

Civil commitment cannot compel a provider or facility to care for someone. It cannot compel Medicaid to pay for a service. It cannot compel the police to bring someone back. We have people who are not committed who the police return to their home regularly. There have also been people who are committed where the police do nothing and are not compelled to by the statute, especially if they are not breaking any laws. It is a lot of work and moral compromise for no real benefit.

The 427 statute has not really made sense since 2009 when we closed all DD institutions, and made even less sense since 2013

when we adopted k plan as an entitlement to services. It is time to repeal the involuntary commitment provisions for people with intellectual disabilities under the 427 statute. Oregon should be proud to be at the point in our deinstitutionalization process and the development of our home and community-based system to where this provision is no longer needed or appropriate. Ending involuntary commitment is an important step in our maturity as a system that supports the health, safety, rights, and choices of people with intellectual and developmental disabilities.

We have made great progress in having the supports we need for people with developmental disabilities to have full lives in the community. When our institutions were cited for human and civil rights violations, we closed them and built robust home and community-based supports to meet people's needs for health and safety with protections for their rights and choices. We are fortunate to be at the place where we can take these important steps in the building of our community.

**Response to ODAA SB 1522**

I would like to express my full support for the passage of this legislation which is both timely and overdue. I would also like to address some of the concerns raised by the Oregon District Attorneys Association regarding the repeal of civil commitments based on having an intellectual disability.

First, it is important to be clear that the DD system is not a correction or carceral system, is not a replacement for a corrections or carceral system, and does not relieve the need for other systems like corrections, law enforcement, and behavioral health to make reasonable accommodations for people with disabilities and not discriminate in their systems as required by the Americans with Disabilities Act.

The US Supreme Court in several decisions including Rouse v Cameron has clearly stated that civil commitment is for the purpose of treatment and may not be used for purposes of punishment. Civil commitment is not an alternate form of punishment for people the corrections system cannot legally punish.

When ODAA says, "If the state cannot proceed, there is no justice for the victim and the community is denied a measure of safety and rehabilitation through offender accountability." This is not in any way the purpose or function of civil commitment.

Civil commitment is civil not criminal. People committed have not been convicted of a crime. People are presumed innocent in our system and if they are not proven guilty, they are still presumed innocent. Civil commitment is not a punishment for people presumed guilty but not proven guilty.

ODAA say in their statement, "The systems [criminal and civil] do not communicate or coordinate their efforts." And "a criminal case…has no bearing on the civil commitment process." It is inappropriate to try to use civil commitment as an end around for criminal conviction and punishment.

Virtually everyone committed under 427 has a significant mental health diagnosis which is the real reason for commitment not their score on an IQ test. They would still be eligible for commitment under 426 if it were felt to be needed, and the system chose not to discriminate based on disability. The MH system still has institutional settings to which they can commit people. DD does not.

The difference in facilities that the two systems can commit to is clear. Under 426, it is hospitals and institutional settings. Under 427, it is community-based settings. People cannot be legally "confined" and "detained" as the statute reads in community-based DD settings funded by Medicaid. This creates a conflict between state and federal law. The 427 statute allows me as a community DD director to confine and detain people to a setting where federal law does not allow me to. Federal law overrides state law so our

state 427 law needs to change. We cannot legally confine and detain people in any of the facilities listed in the 427 statute.

The DD system has committed to provide appropriate support to everyone in our system. Because the system is committed to support people, we don't need to commit people to get support from the system. This is not true of the mental health system where people are involuntarily committed to services that they can't access voluntarily.

ODAA says in its statement that of the 16 people involuntarily committed to SACU under 427, all were placed voluntarily. This makes the point that the 427 commitment was a waste of time, energy, and resources that accomplished nothing. They say themselves, "There is no causation between the commitment and the placement." This means there is no point in the commitment. It was irrelevant and unnecessary. It accomplished nothing.

The ODAA cite a person with autism and people with other developmental disabilities not being considered to have a mental disorder and can't be committed under 426. Developmental disabilities like autism are also not considered intellectual disabilities and they could not be committed under 427 either. People with autism, other developmental disabilities, dementia, or a whole host of conditions that may result in them being a danger to themselves or others cannot be committed under either 426 or 427. 426 and 427 were meant as commitments to particular hospitals, Oregon State Hospital and Fairview Training Center.

426 and 427 are not services and do not create services or leverage or improve access to services. They have no impact on capacity, workforce, or availability of providers. They are just a legal mechanism to remove someone's rights and make decisions against their will. Guardianship also does not create any service capacity. It is simply a decision-making mechanism. I would support increased guardianship resources, but it is not within the scope of this bill and not necessary for us to proceed with repeal.

Aid and assist, guilty except for insanity, and 426.701 are not accessed because of their intellectual disability. They would encounter these because of their mental health condition. The brokenness of the legal and corrections system is not the responsibility of DD to fix. 427 does nothing to fix these broken systems.

ODAA also wrongly states of people with intellectual disabilities that "the person doesn't qualify for mental health services because that is not what the person needs." People with intellectual disabilities do qualify, do benefit from, and do need mental health services. They do not get them because often they suffer discrimination from the MH system which is also addressed in this legislation. It is illegal already, but sadly it needs to be pointed out again in legislation. Mental health services are appropriate and effective for people with intellectual disabilities but still they are denied.

Federal Medicaid rules make 427 commitments unnecessary and irrelevant. They no longer do anything. They do not create capacity. They do not make a provider accept someone for service. They do not mandate any law enforcement response. They do not actually "confine" and "detain" the person in a facility. Federal and state law cannot be reconciled so the state law is functionally irrelevant, and we are misleading the courts when they use the 427 commitment process.

ODAA seems to have a fundamental misunderstanding of the DD system. It would be better for them to address the inequities in their own system rather than perpetuating inequities in the DD system and attempting to block our attempts to serve people more equitably with protections for their health, safety, rights, and choices.

It seems to me that we accept a great deal of community risk in some situations and not others. There are over 10,000 alcohol and tobacco related deaths every year in Oregon. Smokers and drinkers are demonstrably dangerous to themselves and to others through secondhand smoke, drunk driving, and other ways. We don't civilly

commit them and mandate treatment for smoking and drinking. Political extremists and gun owners represent significant demonstrable community danger to themselves and others that we accept to protect their 1st and 2nd Amendment rights respectively. Why would we not accept an almost negligible community risk from people with intellectual disabilities to protect their 14th Amendment rights to equal protection and due process?

There is no demonstrated connection between danger to self and other and a score on an IQ test. People with intellectual disabilities are probably less of a risk to themselves and others than people in the general population because they have more access to support than the general population does. Understanding that there are people in the general population, people with developmental disabilities, people with dementia , or any number of groupings of people who could pose a danger to themselves or others for whom there is no civil commitment statute, how do you handle those situations to protect the community? Why should it be different for people with intellectual disabilities?

Jasper Smith

Benton County Developmental Diversity Program