

SB 1522 Oral Testimony

Thank you chair Gelser Blouin and members of the committee for the opportunity to offer my support for Senate Bill 1522 to remove involuntary commitments for people with intellectual disabilities from our statutes in Oregon.

My name is Jasper Smith and I am with the Benton County Developmental Diversity Program in Corvallis.

Legislation for the involuntary commitment of people deemed “insane and idiotic” to be confined and detained at a state institution was passed over 160 years ago in 1862. People with intellectual disabilities and people with mental health disabilities were sent to the same institution until 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 Aging and People with Disabilities system never had an institution and never had a commitment statute.

The civil commitment statute was created as the front door 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 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. We closed the institutions, but we left the front door. The courts see the door but don't realize there is nothing behind it.

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.

With k plan came a 6% enhanced federal match on all of our non-institutional home and community-based services. These services must meet federal regulations including that they are voluntarily chosen by the individual or their legal representative and they have the rights and freedoms of community living. We rely legally and financially on the enhanced 6% match rate we receive from Medicaid for complying with these regulations.

The state 427 statute that allows me as a community DD director to involuntarily “confine” and “detain” someone in a facility is overridden by federal law that does not allow me to do that in any of the facilities listed in the 427 statute. There is a conflict between state and federal law that makes our state law unnecessary, irrelevant, and dangerously misleading.

Involuntary commitment is not a service, does not create services or capacity for services, does not compel any service provider to provide a service, and does not compel law enforcement to respond. It does not actually “confine” and “detain” anyone in a facility. It does nothing.

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 which does not assess for or correlate with dangerousness. 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 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.

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.

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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.

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.

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.

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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 this 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 and natural next step in our maturity as a system.

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.

Thank you for the opportunity to share with you today.