Senate Testimony for HB 3234

My name is Jasper Smith and I am with the Benton County Developmental Diversity Program. Though this bill introduces some minor common sense changes, they are within an overall framework that I think is wrong for Oregon so I am neutral on this bill and would simply like to give some background and context. 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 persons the 1862 law called "insane or idiotic". People with intellectual disabilities or 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 a separate institution, Fairview Hospital was established for people with intellectual disabilities. With a separate institution came a separate civil commitment law for this population, 427 vs 426, in 1917 to segregate the two institutions between IDD and MH/BH. The 1917 law allowed commitment for people over age 5 and the 1921 amendment removed all age limits. In 1923, Oregon passed a law to establish the Board of Eugenics that called for "sterilization of all feeble-minded, insane, epileptics, habitual criminals, moral degenerates, and sexual perverts who are a menace to society."

The civil commitment statute is for involuntary commitment to an institutional hospital. Fairview 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 provisions in 427 since there is no institution to civilly commit people with intellectual disabilities to.

There is no longer any need for this provision in the 427 statute. If a person with an intellectual disability was a danger to themselves or others due to a mental health condition, they could still be involuntarily committed under the 426 statute. If the system

chooses, 426 could be used without discrimination based on IDD. For any system, I think it is an inappropriate use of civil commitment to be an alternative form of punishment and incarceration when criminal commitment is unavailable. The DD system is not a carceral or correctional system. Involuntary commitment risks bringing the same inequities found in the corrections system into the DD system.

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 or 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 basic needs. Furthermore, under Medicaid, the services must be voluntary and chosen by the person or their legal representative. Oregon's Home and Community-based Services system is grounded in federal definitions of what constitutes a home and community-based setting as opposed to an institutional setting. 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 voluntary non-institutional setting poses systemic fiscal risks and ethical risks to our system. Designating certain settings as institutional to involuntarily commit people is going backwards and not a direction we would like to go as a system.

Involuntarily committing people to home and community based settings as listed in the 427 statute does not require those settings to serve the person, does not require Medicaid to pay for the settings, and does not allow us to restrict people to those settings unless they voluntarily agree to a limitation.

Involuntary commitment conflicts with the rights outlined in the same 427 statute. It is an inherent and unresolvable conflict within our system and the statute.

It is wrong to associate ID with any particular danger to self or other. Why call it out? If I have dementia and I am a danger to myself and others, that is not grounds to involuntarily commit me, why should ID be grounds? In some countries, one's political beliefs are grounds for commitment to institutions. They should not be and we should be careful what we allow as grounds for commitment.

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 people'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.

The 427 law states that the Community Developmental Disabilities Program Director, which would be me for Benton County, is responsible to assign a person to a suitable facility. I don't see how state law allowing me to do this trumps federal Medicaid law which does not allow me to do this for the facilities we have available. The definition of "facility" in 426 vs 427 are vastly different and hardly represent equivalent settings. An activity center in 427 is not equivalent to a state mental hospital in 426. As stated already, we do not have a hospital or institution for people with intellectual disabilities to which we can commit people. The services we do have must be voluntarily chosen by a person or their legal representative as a condition for Medicaid funding. The Aging and People with Disabilities system never had an institution and never had a commitment statute. Involuntarily committing people with intellectual disabilities has not really made sense since 2009 and has made even less sense since 2013. It is time to repeal the involuntary commitment provisions for people with IDD 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 services 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 disabilities.