HB 2488 Testimony

My testimony is neutral on this bill, but I would support inclusion of provisions from Senate Bill 129 to repeal ORS 427 civil commitment for people with intellectual disabilities in Oregon as part of this legislation.

Legislation to repeal civil commitment based on a person's IQ score has been introduced in two previous sessions and both times opposition from the Oregon District Attorneys Association has prevented the Oregon Developmental Disabilities service system from doing what it wants to and needs to do.

In the last session, our system was united in support of repeal legislation. There was testimony from the Office of Developmental Disabilities Services, Disability Rights Oregon, The Arc of Oregon, county developmental disability programs (including Multnomah County, the largest county in the state), Oregon Community Brokerages, Residential Ombudsman, DD Coalition, defense attorneys, Association of Oregon Community Mental Health Programs, self-advocates, and private citizens. The only testimony in opposition was the Oregon District Attorneys Association. The legislation passed out of committee and passed the Oregon Senate only to fail in the Oregon House.

It was interesting to me that we have an association of attorneys who are advocating to keep a 163-year-old law that is unenforceable because it conflicts with federal regulations that were introduced in 2013 and 2014. It is a law to commit people to an institution that no longer exists and has not existed since 2000 and 2009. None of the settings listed in the current statute are settings where we can legally commit people and "confine" and "detain" them as the statute requires. If we did, we would be sued by other lawyers for violating people's rights under federal laws. We no longer have institutional settings for involuntarily committing people with intellectual disabilities. The law is a relic of a previous era. We

have grown and evolved as a system to be able to voluntarily meet people's needs without the need for involuntary commitment.

Federal Medicaid rules make ORS 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. They do not help and may actually hinder someone from accessing behavioral health supports. 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.

ORS 426 and 427 commitments 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. Guardianship still does not allow us to confine and detain a person in contravention of Medicaid requirements for service.

Of the 16 people last session who were civilly committed under 427, all of them had major mental health diagnoses and could have been committed under 426. The reason they were deemed a danger to themselves, or others was not for their intellectual disability, but due to their need for mental health support. Due to discrimination from the behavioral health system, committing them under 427 did not help them access mental health supports and probably made it even more difficult. Of the 16 people, all of them voluntarily agreed to their DD supports so they did not need to be involuntarily committed at all. There is no danger to removing their civil commitment because it had no impact on their services or supports.

There are many problems with ORS 426 commitments, but at least the behavioral health system has settings where it is legal to commit someone, and they may receive a service or support that

would not otherwise be available to them voluntarily. This is not the case with ORS 427 commitments where we do not have settings that are legal to restrict people's rights and freedoms and where all services and supports are available voluntarily.

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 behavioral health system where people are involuntarily committed to services that they are unable to access voluntarily.

We don't appreciate the District Attorneys Association intervening in our system and telling us what we can and can't do without an understanding of our system and its federal legal requirements. Last session, the Oregon District Attorneys Association told a scare story of an individual who was not even committable under 427 because they did not have an intellectual disability. They told a scare story of a person already in a supported setting voluntarily where an involuntary commitment would do nothing. They told a scare story of a person who was not even eligible for DD services. They willfully confused civil commitments with criminal actions and procedures.

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 to not discriminate in their systems under 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, involuntary commitment and involuntary treatment is a human rights violation under the United Nations Convention on the Rights of Persons with Disabilities.

If people are at risk of murdering and raping people, it is probably not appropriate to put them in unsecure group homes and foster homes with vulnerable people. If public safety is at risk, reasonable accommodations for their disabilities should be made to allow them to participate in the legal, corrections, and behavioral health systems in a way that is safe and appropriate to them and the community. The failure of the behavioral health, law enforcement, corrections, and legal systems to make legally required reasonable accommodations for people with disabilities is not a justification to pressure the DD system to violate the rights and freedoms of people with disabilities.

Repealing ORS 427 involuntary commitments for people with intellectual disabilities would be a wonderful way to celebrate our progress for the 35th anniversary of the Americans with Disabilities Act this year.

I hope the legislature will not be misled again and will allow the DD system to move forward as a rights-based, person-centered, self-directed, and community integrated approach to supporting the health and safety of Oregonians. Repealing ORS 427 civil commitments is a small acknowledgement of a much larger accomplishment, the universal access to appropriate support in the community for people with developmental disabilities. We have shown that people can succeed with the right supports and no amount of the wrong supports will ever adequately address community needs.

Respectfully submitted,

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