

Commitment to Change Workgroup

FEBRUARY 10, 2023



Agenda



- Welcome - Chris Thomas
- Public record reminder
- Workgroup member introductions
 - Who
 - Representing
- Recap highest hopes & worst fears
- Constituent survey findings
- Revisit CTC Workgroup framework
- Pre-hearing requirements
- Examination
- Homework

Workgroup Membership

Oregon Health Authority – **Zachary Thornhill**

Oregon State Hospital – Dr. Katherine Tacker

Oregon Department of Human Services – Chelas Kronenberg

Disability Rights Oregon – Dave Boyer

Mental Health and Addiction Association of Oregon – Janie Gullickson

NAMI Oregon – Chris Bouneff

Oregon House – **Andy Smith** for Rep. Jason Kropf (D); Rep. Christine Goodwin (R)

Oregon Senate – Sen. Floyd Prozanski (D); Sen. Kim Thatcher (R)

Workgroup Membership (cont.)

Oregon Criminal Defense Lawyers Association – **May Lee Browning** for Allison Knight

Oregon District Attorneys Association – **Channa Newell**

Association of Oregon Community Mental Health Providers – Cheryl Ramirez

Association of Oregon Counties – **Brad Anderson**

League of Oregon Cities – Dakota Thompson

Oregon State Sheriffs' Association – Sheriff Matt Phillips

Oregon Association Chiefs of Police – **Jim Ferraris (unable to attend)**

Oregon Association of Hospitals and Health Systems – Meghan Slotemaker

Oregon Judicial Department – Hon. Nan Waller; Hon. Matt Donohue

OCTOBER RECAP

Highest Hopes

“Listen and Learn”

“Provide humane and timely services, bring concepts and areas together”



OCTOBER RECAP

Worst Fears

“Fear the learning curve will limit potential outcomes”

“This is a topic area I don’t have a lot of knowledge about”



Constituent Feedback by Member (through 2/9/23)

Organization Name	Responses (% of total)	Responses (number)
Oregon Health Authority (Health Systems Division)	25.32%	40
Oregon State Hospital	23.42%	37
Oregon Department of Human Services (Office of Developmental Disabilities Services)	2.53%	4
Disability Rights Oregon	2.53%	4
Mental Health and Addiction Association of Oregon	5.70%	9
Oregon Family Support Network	0.63%	1
NAMI Oregon	1.27%	2
Oregon Criminal Defense Lawyers Association	5.06%	8
Oregon District Attorneys Association	2.53%	4
Association of Oregon Community Mental Health Providers	5.70%	9
Oregon State Sheriffs' Association	6.33%	10
Oregon Association of Hospitals and Health Systems	4.43%	7
Oregon Judicial Department	10.13%	16
I am the Workgroup Member	4.43%	7
	Answered	158
	Skipped	2

Constituent Feedback Responses: Overarching Themes

Theme 1: Coordinate with all parties and systems

- “Facilities are sometimes **uninformed** on how to facilitate this when attorneys are trying to make contact...” – *Oregon Judicial Department Constituent*
- “The patient may be **exhibiting symptoms** that place the **legal representative** or themselves in danger. Thus, arranging for the visit might also put **hospital staff at risk.**” – *Oregon Association of Hospitals and Health Systems Constituent*
- “**Timely coordination** between timelines and **parties** needing to meet [**are barriers**]...” – *Mental Health and Addiction Association of Oregon Constituent*

Theme 2: Collaborate to improve care and access

- “Could a **peer support** be engaged in this process [**service of citation**]? Or A **neutral third party** like CASA for kids?” – *NAMI Oregon Constituent*
- “The most **trauma informed approach** that is the safest for the individual and the person serving the citation.” – *Oregon Association of Hospitals and Health Systems Constituent*

Constituent Feedback Responses: Overarching Themes

Theme 3: Distrust of legal system bars access to care

- "...Lack of diverse representation that may affect ability of PAMI to trust counsel." – *Oregon Sherriff's Association Constituent*
- "In my experience, representation doesn't care and won't show up. When I was committed..." – *Disability Rights Oregon Constituent*

Theme 4: Lack of resources are barriers

- "...were the PAMI is residing may cause barriers..." – *Mental Health and Addiction Association of Oregon Constituent*
- "Often they are remote in location (if for example, pre hearing placement is out of county) which can be a barrier to adequate meetings with their legal counsel. To some extent video and phone systems alleviate this issue." – *Oregon District Attorneys Association Constituent*

Revisiting the CTC Workgroup Framework

Be thinking about:

- Where are we now
- Where are we going
- How will we get there
- Negotiating and decision-making



Timeline and Phases

Phase 1: Overview

Phase 2: Statute review

Phase 3: Systems view

Phase 4: Work session

Phase 5: Review draft

Phase 6: Finalize report

Date	Topic
Oct. 2022	Welcome: Introductions, Objectives, Schedule, and Processes
Nov. 2022	Framework for Civil Commitment Reform, Systemic and incremental reform
Dec. 2022	Overview of Current Civil Commitment Process, Initiation of Civil Commitment (Holds, Notice of Mental Illness, Court Case)
Jan. 2023	Investigation, Diversion, Probable Cause Determination
Feb. 2023	Pre-Hearing Requirements, Examination
Mar. 2023	Hearing
Apr. 2023	Adjudication, Standards for Commitment, Alternatives to Commitment (Voluntary Admission, Conditional Release)
May 2023	Assisted Outpatient Treatment
Jun. 2023	Commitment placements
Jul. 2023	Recertification of Commitment, Discharge and Dismissal
Aug. 2023	Statutory Organization of Justice-Involved Behavioral Health Processes
Sep. 2023	Civil Commitment System Funding, Transportation, & Liability
Oct. 2023	Data Sharing, Confidentiality
Nov. 2023	Rights of Committed Persons, Alternatives to Commitment (Guardians, Psychiatric Advanced Directives, AOT reimagined)
Dec. 2023	Work Session pt. 1
Jan. 2024	Work Session pt. 2
Feb. 2024	Review Report Draft pt. 1
Mar. 2024	Review Report Draft pt. 2
April 2024	Finalize report

Think Outside of the Box: Don't be Constrained by Current Statute



Decision-Making with Nuance: All Voices are Important



Majority rule:

- Leaves out dissenting voices

Consensus rule:

- Time-consuming
- Inefficient in large groups

Decision-making with nuance:

- Opportunity to think outside the box
- Includes breadth and depth of voices

Topic 1: Pre - Hearing Requirements

Be thinking about:

- What needs to occur between notice of mental illness and the civil commitment hearing (five days)



Service of citation

ORS 426.090 Citation; service.

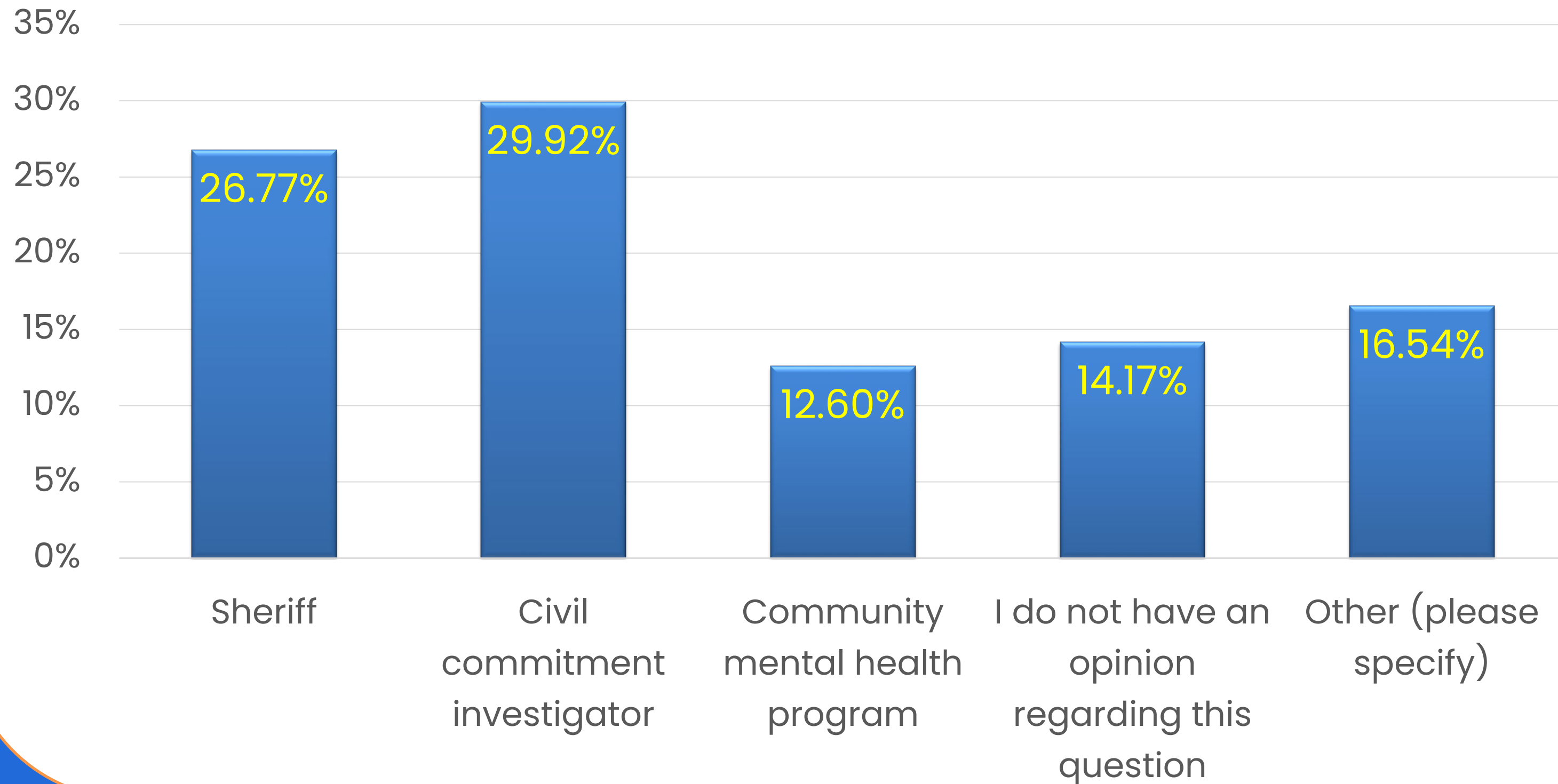
The judge shall issue a citation to the person alleged to have a mental illness... The citation shall be served upon the person by delivering a duly certified copy of the original thereof to the person in person prior to the hearing...

ORS 426.080. Execution and return of citation or warrant of detention.

... In executing the warrant of detention or citation, the person has all the powers provided by *ORS 133.235, 161.233, 161.242 and 161.245* and may require the assistance of any peace officer or other person.

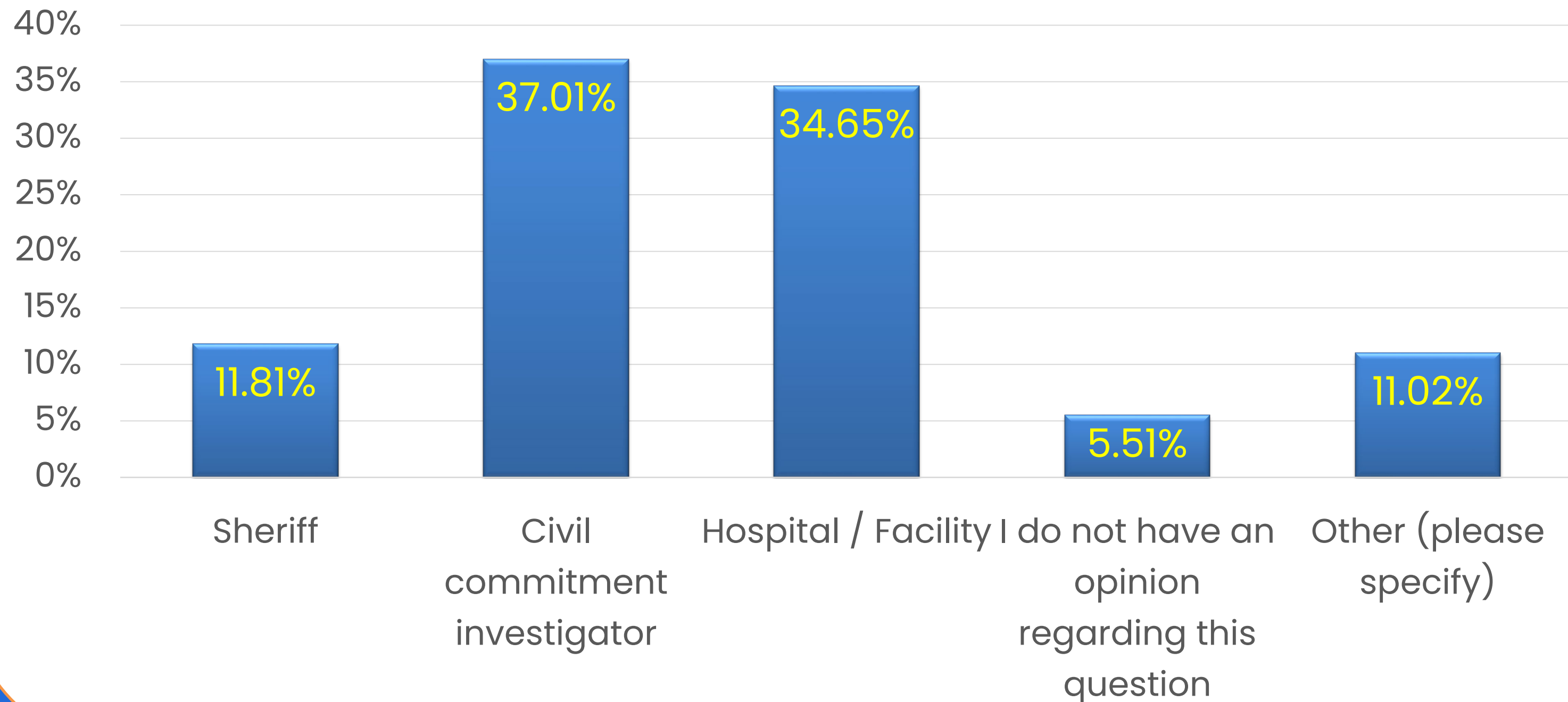
Constituent Feedback Responses

Who do you believe should serve the citation when the PAMI is in **the community**?



Constituent Feedback Responses (cont.)

Who do you believe should serve the citation when the PAMI is **detained** before the hearing?



Discussion Question 1

- *The judge issues the citation for a civil commitment hearing to the PAMI*
- *Statute and rules are silent on who is responsible for serving this citation to the PAMI*
- *Currently, counties vary on who serves a citation for the court to the PAMI*

Who should be responsible for providing service of the citation for a civil commitment hearing?



Content of citation

ORS 426.090 Citation; service.

The judge shall issue a citation to the person alleged to have a mental illness stating the **nature of the information filed** concerning the person and the **specific reasons the person is believed to be a person with mental illness**. The citation shall further contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, and, if requested, to have legal counsel immediately appointed, the right to subpoena witnesses on behalf of the person to the hearing and other information as the court may direct.

Constituent Feedback: Sampling of Quotes

What do you think every PAMI should know before their civil commitment hearing?

Theme 1: Risks/benefits of civil commitment

- “The **consequences** to them of being civilly **committed to an institution.**” – *Oregon Department of Human Services (Office of Developmental Disabilities Services) Constituent*
- “... a discussion of the **risks and benefits** of the process...” – *Oregon State Hospital Constituent*
- “What a civil commitment means, in plain language. Meaning, **what happens to their rights.**” – *Association of Oregon Mental Health Providers Constituent*

Constituent Feedback: Sampling of Quotes (cont.)

What do you think every PAMI should know before their civil commitment hearing?

Theme 2: Right to legal counsel

- “The person's right to counsel should **clearly explain** that the **attorney will work for them and advocate for their goals** (that is, does not work for the County, Hospital, etc.)” – *Oregon Criminal Defense Lawyers Association Constituent*
- “Full **rights disclosure** needed when a person **declines legal counsel**” – *Oregon Health Authority (Health Systems Division) Constituent*

Discussion Question 2

In practice, the content of citations vary. Under ORS 426.090, the citation shall include:

- *Nature of the information filed & reasons person is believed to be a PAMI,*
- *Time & place of commitment hearing,*
- *Right to legal counsel or court-appointed legal counsel if PAMI is unable to afford legal counsel,*
- *Right to subpoena witnesses on PAMI's behalf, and*
- *Other information as the court may direct*

What information beyond this should be provided to the PAMI and their legal counsel before the civil commitment hearing?



Counsel access to medical records

ORS 426.075 Notice and records of treatment prior to hearing; procedures

(3) [records established by the Oregon Health Authority by rule] ... shall be made available to counsel for the person alleged to have a mental illness **at least 24 hours prior to the hearing.**

Discussion Question 3

Counsel's right to access medical records requires the cooperation of medical and legal systems.

What barriers impact counsel's access to medical records?

What changes need to occur to facilitate counsel's prompt access to medical records?



Adequate time to consult with counsel

ORS 426.090 Citation; service.

...The person shall have an opportunity to consult with legal counsel prior to being brought before the court.

Discussion Question 4

Under ORS 426.075(3), the medical record shall be made available to counsel at least 24 hours prior to the hearing, and under ORS 426.090, the PAMI shall have an opportunity to consult with legal counsel before being brought to court.

If PAMI's counsel does not receive the report within 24 hours prior to the hearing, what is the appropriate remedy (e.g., continuance)?



Warrant of Detention

ORS 426.070 Notice and records of treatment prior to hearing; procedures

(5)(b)(A) If the court finds that there is **probable cause** to believe that failure to take the person into custody **pending the investigation or hearing** would **pose serious harm or danger to the person or to others**, the court may issue a **warrant of detention** to the community mental health program director or designee or the sheriff of the county or designee **directing the director, sheriff or a designee** to take the person **alleged to have a mental illness into custody** and produce the person at the time and place stated in the warrant.

Discussion Question 5

The *court* can *issue a warrant of detention* to take the PAMI into custody pending the hearing if the court determines the PAMI “*would pose serious harm or danger to the person or to others*” in the community.

What does the judge need to know to decide whether to issue a warrant of detention?



Discussion Question 6

Are there any other issues on pre-hearing requirements we should discuss?



Break (5 minutes)



Topic 2: Examination

Be thinking about:

- Role of mental health examiner
- Purpose of examination report



Examiner Roles and Responsibilities

ORS 426.120 Examination report; rules.

- (1) Examiners appointed under ORS 426.110 shall do all of the following:
 - (a) **Examine the person** as to mental condition.
 - (b) **Initiate the examination process prior to the hearing.** Any failure to comply with this paragraph shall not, in itself, constitute sufficient grounds to challenge the examination conducted by an examiner.
 - (c) Make their separate **reports in writing**, under oath, to the court.
 - (d) Upon **completion of the hearing**, file the reports with the clerk of the court.

Examiner Roles and Responsibilities (cont.)

ORS 426.075 Notice and records of treatment prior to hearing; procedures.

- (2) ... The records established by the Oregon Health Authority by rule and the investigation report shall be made available to the examiners at least 24 hours before the hearing in order that the examiners may review the medical record and have an opportunity to inquire of the medical personnel concerning the treatment of the person alleged to have a mental illness during the detention period prior to the hearing.

ORS 426.120 Examination report; rules.

- (3) The examiner shall be allowed access to licensed independent practitioners, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention and the investigation report.

Discussion Question 7

Under ORS 426.075(2), the relevant medical records “shall be made available” to the mental health examiner at least 24 hours before the hearing.

What barriers, if any, impact the mental health examiner’s access to medical records?



Scope of the Examination Report (statute)

ORS 426.120 Examination report; rules.

(2) ...a **nonexclusive list** of requirements relating to the content of examination reports...

(a) If the examiners find, and show by their reports, that the person examined is a person with mental illness, the reports shall include a recommendation as to the **type of treatment facility** best calculated to help the person recover from mental illness.

(b) Each report shall also advise the court whether in the opinion of the examiner the person with mental illness would cooperate with and benefit from a program of **voluntary treatment**.

(c) Reports shall contain the **information required by the Oregon Health Authority by rule**. The authority shall adopt rules necessary to carry out this paragraph

Scope of the Examination Report (rule)

OAR 309-033-0960. Mental Health Examiner's Report to the Court.

- (1) Examiner assessment of evidence. The examiner shall provide in a report to the court the examiner's opinion whether the **evidence supports or contradicts**:
 - (a) The allegation that the **person has a mental disorder**;
 - (b) The allegation that the person is **a danger to self or others, or is unable to provide for basic personal needs** and is not receiving such care as is necessary for health and safety; and
 - (c) That the person would **cooperate with** and benefit from **voluntary treatment**.

Scope of the Examination Report (**rule cont.**)

OAR 309-033-0960. Mental Health Examiner's Report to the Court.

- (2) ... In addition to considering other evidence presented at the hearing, the examiner shall conduct a **mental status examination** and a **psychosocial history** to determine whether the person alleged to be mentally ill has a mental disorder.

Scope of the Examination Report (**rule cont.**)

Mental status examination:

- Appearance, behavior, thought content, thought process, insight, judgment, cognitive testing, *and* emotions

Psychosocial history:

- Psychiatric history, family history (of psychiatric treatment or commitment), history of drug or alcohol use disorder, history of loss of function, social function, personal finances, *and* medical issues.

Based on OAR 309-033-0960. Mental Health Examiner's Report to the Court.

Scope of the Examination Report (**rule cont.**)

Assessment of dangerousness

(suicide, assaultiveness, or violence)

- History and presence of thoughts, plans, or attempts;
- Means and ability to carry out plans;
- Potential lethality of the plan;
- Probable imminence of an attempt; *and*
- Available support systems which may prevent person from attempting

*Based on OAR 309-033-0960. Mental Health Examiner's
Report to the Court.*

Scope of the Examination Report (**rule cont.**)

Assessment of person's ability to provide for basic needs:

- History of person's ability;
- Current use of resources to obtain food, shelter, and health care necessary for health and safety;
- Behaviors which expose the person or others to danger;
- Available support systems; *and*
- Availability of guardian if person lacks capacity for self care

Based on OAR 309-033-0960. Mental Health Examiner's Report to the Court.

Process of the examination

What needs to happen

- Prior to hearing: initiate the examination process
- During hearing: cross-examine PAMI and consider evidence presented at hearing
- Upon completion of hearing: submit written final report, under oath, to the court

Based on ORS 426.120 Examination report; rules.

Discussion Question 8

ORS 426.120(2) and OAR 309-033-0960 outline the current scope of the examiner's report to the court. However, statute and rules are unclear on the actual process for the examination report(s).

What is the actual process for the examination report(s)?



Discussion Question 9

Why isn't the examiner's initial report submitted to the court prior to the hearing?

How does the examiner's participation in the hearing impact the examiner's final submitted recommendations?



Examiner qualifications and training (statute)

ORS 426.110. Appointment of examiners; qualifications; costs.

- (1) The judge shall appoint **one qualified examiner**. If **requested**, the judge shall appoint **one additional qualified examiner**. A request for an additional examiner under this subsection must be made in writing and must be made by the person alleged to have a mental illness or the attorney for the person.

Examiner qualifications and training (statute cont.)

ORS 426.110. Appointment of examiners; qualifications; costs.

(2) To be qualified for purposes of this section, an examiner must:

(a) Agree to be an examiner.

(b) Be one of the following:

(A) A **physician** licensed by the Oregon Medical Board who is competent to practice **psychiatry** as provided by the Oregon Health Authority or the Psychiatric Security Review Board by rule.

(B) Certified by **the authority or the Psychiatric Security Review Board** as a **mental health examiner** qualified to make examinations for involuntary commitment proceedings

Examiner qualifications and training (rules)

Qualified Mental Health Professional certification

QMHP certification includes a **bachelor's degree** in nursing or occupational therapy, or a **master's degree** or higher in psychology, social work, or other behavioral science field.

Based on OAR 309-036-0105. Definitions

Examiner qualifications and training (rules cont.)

OAR 309-033-0950. Certification of Mental Health Examiners

(2) Qualifications for certification of persons other than psychiatrists. The Division shall certify, as a qualified mental health examiner for **three years** or until such time as the Division terminates the certificate, a QMHP who meets all of the following:

- (a) Has at least **three years clinical experience** in the diagnosis and treatment of severely mentally ill adults who suffer primarily from a psychotic disorder;
- (b) Presents acceptable **written references** from **two persons** who have the above qualifications and can demonstrate direct knowledge of the person's qualifications;
- (c) Is **recommended by the director** to be an examiner in the county; and *[cont. on next pg.]*

Examiner qualifications and training (rules cont.)

OAR 309-033-0950. Certification of Mental Health Examiners

- (d) Has established **individual competence through training** provided by the Division in the following areas:
- (A) The **role and duties** of an examiner and the process of examination;
 - (B) **Oregon statutes and administrative rules** relating to the civil commitment of mentally ill persons;
 - (C) Establishing **clear and convincing evidence** for mental disorder;
 - (D) The **mental status examination**; and
 - (E) The **assessment** of suicidality, assaultiveness, homicidality and inability to care for basic needs.

Examiner qualifications and training (rules cont.)

OAR 309-033-0950. Certification of Mental Health Examiners

(3) Qualifications for recertification. The Division may recertify for **three years**, or until such time as the Division terminates the certificate of, any mental health examiner who meets the following:

(a) The examiner has been an examiner certified by the Division **after July 1, 1988**;

(b) The examiner has successfully completed **eight hours of training** provided by the Division relating to the assessment and diagnosis of mental disorder and, changes in statutes and administrative rules relating to civil commitment; and

(c) The **director recommends the person** to be an examiner in the county.

Discussion Question 10

Given the mental health examiner's roles and responsibilities, what should the examiner's education and training requirements include?



Behavioral Health Professionals Who Provide Recommendations to the Court

Realm	Credential	Purpose
Civil Commitment - Investigator	QMHP w/ OHA Certification	Determine whether there is probable cause to believe that the person is in fact a person with mental illness.
Civil Commitment - Examiner	Psychiatrist or QMHP w/ OHA Certification	Find, and show by their reports, that the person examined is a person with mental illness.
Aid & Assist Forensic Evaluator	Certified and licensed psychiatrist or psychologist	Determine defendant's fitness to proceed by reason of incapacity.
Guilty Except for Insanity	Certified and licensed psychiatrist or psychologist	Determine if, as a result of a qualifying mental disorder at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law.
Extremely Dangerous Persons	Psychiatrist or QMHP w/ OHA Certification	Determine if the person is extremely dangerous and suffers from a qualifying mental disorder that is resistant to treatment.
Extreme Emotional Disturbance	Licensed psychiatrist or psychologist (statute void of certification language)	Determine if the crime, was committed under the influence of extreme emotional disturbance if the disturbance is not the result of the person's own intentional, knowing, reckless or criminally negligent act and if there is a reasonable explanation for the disturbance.

Discussion Question 11

Who should oversee the mental health examiner's function?

For instance, should community mental health programs (CMHPs) oversee the mental health examiners, or should this role be independent from the CMHP?



Discussion Question 12

Are there any other issues on examinations that we should discuss?



Homework



- All workgroup members to distribute March survey to their CTC WG constituent email distribution list (and to create email distribution list if have not done so already)
- Read ALL materials provided in advance of the next meeting
- Schedule a 30-minute introduction meeting with Behavioral Health Analyst, Candace Joyner, if you have not done so already (candace.n.joyner@ojd.state.or.us)

Staff contacts

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