

# Commitment to Change Workgroup

January 12, 2024



# Agenda



- Welcome (Recording Reminder)
- OHA proposed civil commitment rule changes
- Intellectual disability civil commitment
- Substance use disorder civil commitment
- Updated workgroup timeline

# Welcome, Laura!

Laura Cohen, LCSW, Behavioral Health Business Analyst, Oregon Judicial Department



# Workgroup Membership

Oregon Tribes – Angie Butler

Mothers of the Mentally Ill – Jerri Clark

Oregon Health Authority – Zach Thornhill

Oregon State Hospital – Dr. Katherine Tacker

Oregon Department of Human Services – Chelas Kronenberg

Disability Rights Oregon – Jude Kassar

Mental Health and Addiction Association of Oregon – Janie Gullickson

NAMI Oregon – Chris Bouneff

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

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

# Workgroup Membership (cont.)

Coordinated Care Organizations – Melissa Thompson

Oregon Criminal Defense Lawyers Association – Allison Knight

Oregon District Attorneys Association – Channa Newell

Association of Oregon Community Mental Health Providers –Cherryl Ramirez

Association of Oregon Counties – Marcus Vejar

League of Oregon Cities – Dakotah Thompson

Oregon State Sheriffs' Association – Sheriff Matt Phillips

Oregon Association Chiefs of Police – Jim Ferraris

Oregon Association of Hospitals and Health Systems – Meghan Slotemaker

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

Governor's Office – Juliana Wallace

# CTC Workgroup Timeline

<b>January 11</b>	Workgroup Meeting <ul style="list-style-type: none"><li>• Proposed Civil Commitment Rule Changes</li><li>• Commitment of Persons with an Intellectual Disability</li><li>• Substance Use Disorder as a Basis for Commitment</li></ul>
<b>*Workgroup Members Respond to Ideas Survey*</b>	
<b>February 9</b>	Workgroup Meeting <ul style="list-style-type: none"><li>• Ideas Survey Discussion</li></ul>
<b>*Workgroup Members Respond to Final Recommendations Survey*</b>	
<b>March 8</b>	Workgroup Meeting <ul style="list-style-type: none"><li>• Link between Aid &amp; Assist and Civil Commitment; Extremely Dangerous Commitment</li></ul>
<b>April 12</b>	Workgroup Meeting <ul style="list-style-type: none"><li>• Review workgroup report draft</li></ul>
<b>*Final Workgroup Report Submitted to Chief Justice*</b>	
<b>May 10</b>	Workgroup Meeting <ul style="list-style-type: none"><li>• Next steps on civil commitment reform</li></ul>

# Topic 2: Civil Commitment of Individuals with an Intellectual Disability



# Intellectual Disability vs. Developmental Disability?

## **Intellectual Disability**

involves challenges with

- 1) Intellectual functioning (such as learning, problem solving, judgment) and
- 2) Adaptive functioning (activities of daily life such as communication and independent living)

Measured by IQ of 70 or below with onset before age 18

(formerly referred to as mental retardation)

## **Developmental Disability**

is a diverse group of conditions that result in an impairment in physical, learning, language or behavior.

Onset is at birth or during childhood and is expected to continue indefinitely



# Intellectual Disability vs. Developmental Disability?

## **Intellectual Disability, ORS 427.005(10)**

means an intelligence quotient of 70 or below as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior, that is manifested before the individual is 18 years of age

## **Developmental Disability, ORS 427.005(4)**

means

- autism, cerebral palsy, epilepsy or other condition diagnosed by a qualified professional that:
  - (a) Originates before an individual is 22 years of age and is expected to continue indefinitely;
  - (b) Results in a significant impairment in adaptive behavior as measured by a qualified professional;
  - (c) Is not attributed primarily to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability or attention deficit hyperactivity disorder; and
  - (d) Requires supports similar to those required by an individual with an intellectual disability.

# ORS Chapter 427.215: Need for Commitment

A person with an Intellectual Disability (ID) is in need of commitment for residential care, treatment and training if the person is

- 1) Determined eligible for developmental disability services under ORS 427.104\*; and
- 2) Either:
  - a. dangerous to self or others; *or*
  - b. unable to provide for the person's basic personal needs and not receiving care is necessary for the health, safety or habitation of the person

\*ORS 427.104 requires the Oregon Department of Human Services to contract with each community developmental disabilities program to determine the eligibility of individuals to receive developmental disability service

# Question to Think About

Oregon's civil commitments laws require consideration of two components:

1. Diagnostic criteria (clinical diagnosis)
2. Behavioral criteria (danger to self or others, unable to meet basic needs)

Focusing on the **diagnostic criteria**:

- Mental health disorder (Chapter 426)
- Intellectual disability (Chapter 427)

Should we expand the diagnostic criteria beyond mental health disorder and intellectual disabilities to include other cognitive deficits?

# Other Conditions that Impact Cognitive Function

**Dementia**

**Traumatic Brain Injury**

**Huntington's Disease**

**Parkinson's Disease**

**Autism**

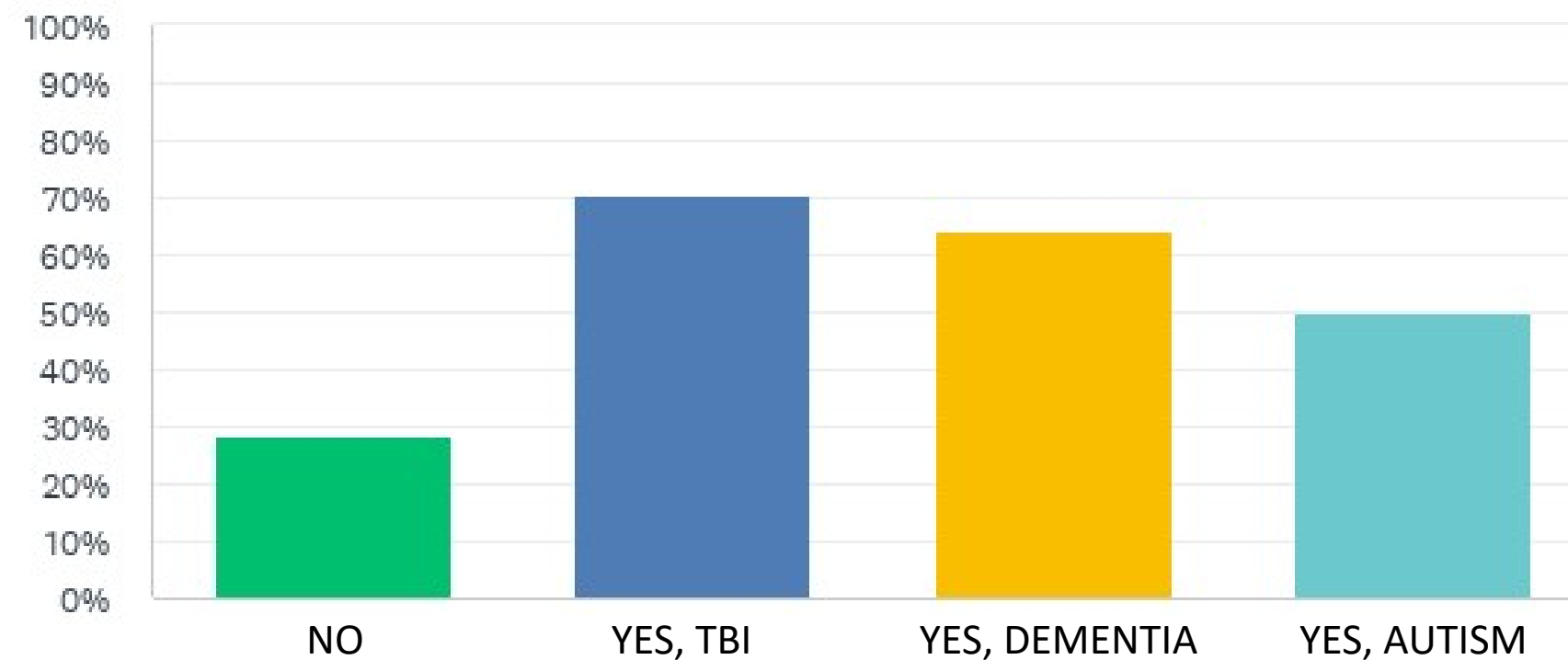
**Developmental Disability**



These conditions aren't addressed in ORS Chapter 427

# Constituent Feedback

Q3 Should Oregon statute be expanded to allow civil commitment for individuals who, as a result of cognitive deficits other than intellectual disability, are a danger to themselves or others or unable to meet their basic needs? Select one or more of the following answer choices that express your opinions.



# Expansion of Cognitive Deficit Eligibility Criteria?

## *Sample of Constituent Survey Comments*

YES	NO	SOME
<p>“If the point of these laws (which still have narrow criteria) is to protect vulnerable people and the public, why are we siloing and sectioning off folks who need care?”</p>	<p>“It’s time to repeal civil commitment for ID since the DD system has implemented an entitlement system through k plan where everyone can access support based on need...”</p>	<p>“This is a challenge. My belief is that anytime someone is facing jail time vs. civil commitment, as the result of TBI or dementia, or their life could be lost, civil commitment is the better choice. I did not select autism because autism is similar to other developmental disabilities and the spectrum for “autism” is very wide.”</p>
<p>“We have a duty to protect the community as a whole and those who are dangerous need help to keep themselves safe and those around them.”</p>	<p>“Civil commitment is not a solution. It’s a taking of rights. We need to offer services and supports to all these groups voluntarily.”</p>	
	<p>“Civil commitment of IDD is already not used much – I think expanding guardianship programs is a more appropriate response.”</p>	

# Expansion of Cognitive Deficit Eligibility Criteria?

## *Sample of Constituent Survey Comments*

YES	NO	SOME
<p>“The point is that a person, because of something going wrong in their brain, is dangerous and needs medical treatment in order to stabilize and recover enough to resume functional safety in their life. If the brain is leading to dangerous behaviors, then doctors who know how to treat the brain and help it heal are needed, regardless of the reason for the brain's malfunction that is leading to the dangerous behaviors. ALSO, it's common for any of these conditions to co-occur with severe mental illness such that they are used as a reason to deny life-saving care (perhaps saving someone money but certainly endangering lives).”</p>	<p>“... sometimes hospitalization and high level of care is required...but I don't think it should be lumped in with civil commitment.”</p>	<p>“Yes, with the caveat that there needs to be some evidence that commitment could actually improve the person's condition.”</p>

# Discussion Question

Should we expand the diagnostic criteria beyond mental health disorder and intellectual disabilities to include other cognitive deficits?





# Break (5 minutes)



# ORS Chapter 426 vs. ORS Chapter 427

ORS 427 follows the same general process as ORS Chapter 426 with several notable differences.

Think about how the differences can inform our larger conversation about civil commitment in Oregon.



# Civil Commitment Under ORS Chapter 427

ORS 427 (Intellectual Disability)	Different than ORS 426 (Mental Disorder)
<p><b>Notice to Court:</b> Any two persons may notify the court in writing that a person has an ID and is in need of residential care, treatment or training</p>	<p>Initiation of commitment process may also be by the local health officer or any magistrate or judge</p>
<p><b>Court Review Prior to Investigation:</b> If court find sufficient evidence for investigation, court forwards notice to the community developmental disabilities program director</p>	<p>Investigation happens before court considers whether evidence is sufficient</p>
<p><b>Investigation:</b> Community developmental disabilities program (CCDP) director or designee immediately investigates whether the person has an ID and is in need of commitment by interviewing or examining person. If further investigation is warranted, shall include diagnostic evaluation and may include interviews of parties associated with person. Investigator also opines whether alternatives to commitment are available and if a guardian or conservator is needed.</p>	<p>If person is not held in custody pending hearing and can be located, investigator must contact within 3 days after CMHP receives NMI, and investigation must be completed within 15 days after CMHP received NMI. Investigator shall be allowed access to medical records.</p>

**What concerns, if any, do you have the 427 process? What do you think about the differences between 426 and 427?**

# Civil Commitment Under ORS Chapter 427

ORS 427 (Intellectual Disability)	Different than ORS 426 (Mental Disorder)
<p><b>Investigation Report to Court:</b> Report submitted to court within 30 days of receipt of notice from court</p>	<p>If person is not in custody pending hearing, and person can be located, report must be submitted within 15 days after CMHP receives NMI. unless court grants extension. If person is in custody, report required to court, person's counsel, and examiner within 24 hours before hearing.</p>
<p><b>Probable Cause Finding and Citation:</b> If, based on investigation, court finds probable cause that person has an ID and is in need of commitment, court shall issue citation for commitment hearing to person or guardian indicating specific reason that person needs to be committed, time, place for commitment hearing, and person's rights. Citation to be served by community developmental disabilities program director or designee.</p>	<p>ORS Chapter 426 is silent on who must issue citation.</p>

**What concerns, if any, do you have the 427 process? What do you think about the differences between 426 and 427?**

# Civil Commitment Under ORS Chapter 427

ORS 427 (Intellectual Disability)	Different than ORS 426 (Mental Disorder)
<p><b>Examination:</b> Cost of examination shall be paid by county of residence. Examiner may use evaluation report completed within previous year in lieu of repeating full evaluation. If examiner finds person meets criteria, examiner report shall include type of treatment and training person needs and if voluntary treatment is appropriate.</p>	<p>Vague on who pays for examiner (although legislative history supports interpretation that county pays).</p>
<p><b>Hearing:</b> If person is detained, court shall hold hearing within 7 judicial days. Court may, for good cause, postpone the hearing for not more than 72 hours to allow preparation for the hearing and order continuation of detention during a postponement, if requested by the person, the legal counsel, guardian of the person, an examiner or on the court's own motion. Person or legal guardian of person shall have opportunity to consult with legal counsel prior to being brought before the court.</p>	<p>Requires hearing to occur within 5 judicial days of court issuing citation; upon request, for good cause, court may postpone hearing for up to 5 judicial days</p>

**What concerns, if any, do you have the 427 process? What do you think about the differences between 426 and 427?**

# Civil Commitment Under ORS Chapter 427

ORS 427 (Intellectual Disability)	Different than ORS 426 (Mental Disorder)
<p><b>Detention Pending Hearing:</b> If court finds probable cause that person would pose imminent threat or serious danger to self or others if not taken into custody pending investigation, person may be taken into custody. If person is not incarcerated, they may not be confined to jail or prison or any facility with persons charged with a crime.</p>	<p>If person is held in custody before hearing, investigation shall be complete at least 24 hours before hearing</p>
<p><b>Adjudication:</b> If court finds person is NOT in need of commitment, person is discharged. If court finds person is in need of commitment, court may:</p> <ul style="list-style-type: none"> <li>• Release person and dismiss case if person is able to give informed consent and is willing to participate in treatment and training</li> <li>• Allow relative, friend or guardian of person to care for person for 1 year; conditionally releasing person and placing them in their care and custody</li> <li>• Order commitment of person to DHS for care, treatment or training for up to 1 year</li> <li>• May appoint legal guardian or conservator in a separate order</li> </ul>	<p>Commitment up to 180 days</p>

**What concerns, if any, do you have the 427 process? What do you think about the differences between 426 and 427?**

# Civil Commitment Under ORS Chapter 427

ORS 427 (Intellectual Disability)	Different than ORS 426 (Mental Disorder)
<b>Right to Appeal:</b> Person has the right to appeal commitment order.	Same
<p><b>Placement:</b> DHS has discretion and authority to direct person under commitment to a facility that is best able to treat and train the person in the least restrictive setting.</p> <ul style="list-style-type: none"> <li>• If not confined in a hospital or other facility, a “suitable” individual must be assigned to act as an attendant.</li> <li>• If confined, person must have an attendant in charge of person.</li> <li>• DHS may delegate to local community developmental disabilities program director responsibility of placement or transfer of placement.</li> </ul>	Court may order conditional release. If court orders commitment, OHA assigns person to treatment facility or may place person in outpatient commitment
<b>Changes in Placement:</b> DHS may transfer or discharge person; must inform person/guardian of change 30 days prior; person may appeal.	No notification requirements

**What concerns, if any, do you have the 427 process? What do you think about the differences between 426 and 427?**

# Civil Commitment Under ORS Chapter 427

ORS 427 (Intellectual Disability)	Different than ORS 426 (Mental Disorder)
<p><b>Recommitment:</b> Provisions for continuing commitment pursuant to ORS 427.235 to 427.292 (original commitment process)</p>	<p>Different process for recertification</p>
<p><b>Discharge:</b> At any time, for good cause and in the best interest of the person, the department may decide to transfer discharge the person as no longer in need of residential care, treatment or training. At least 30 days prior to the transfer or discharge, the department shall notify, by regular mail, the person and the guardian or other individual entitled to custody of the person of the decision to transfer or discharge. In the case of a medical emergency, the department is not required to give 30 days' notice but shall give the notice as soon as possible under the circumstances.</p>	<p>Upon discharge, OHA must file a written certificate with the last committing court and the court of residence. Chapter 427 has no requirement for DHS to notify court if the person is discharged from commitment in less than 1 year or if person passes away</p>

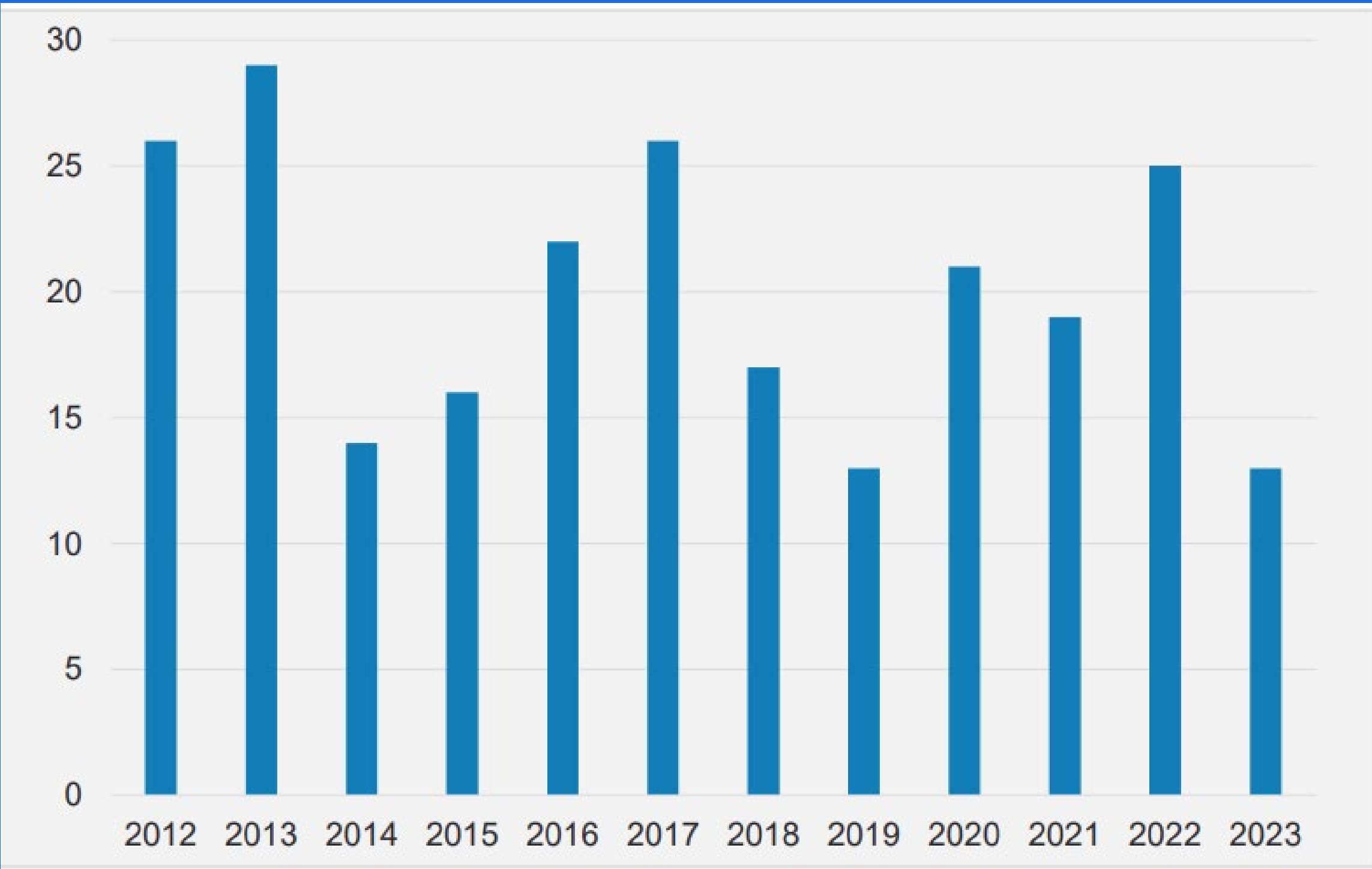
**What concerns, if any, do you have the 427 process? What do you think about the differences between 426 and 427?**



## Questions to Think About

- Why is civil commitment under ORS Chapter 427 statute (intellectual disabilities) used so infrequently compared to ORS Chapter 426 (mental health disorders)?
- Are committed individuals being placed in the appropriate level of care currently?
- What placements are needed in the continuum of care for people with intellectual disabilities?
- How do placements under ORS Chapter 427 differ from placements under ORS 426?

# Commitments Under ORS Chapter 427, 2012-2023\*



DHS ODDS Presentation to Senate Human Services, 1/11/24  
(reported as number of “completed civil commitments of Oregonians with I/DD”)

# Commitments Under ORS Chapter 427, 2023

## OJD Data

(Odyssey data\* pulled 1/11/24)

- 27 intellectual disability civil commitment cases filed
  - 15 resulted in commitment orders
  - 8 dismissed
  - 4 pending
- 19 civil commitments
  - 15 on cases filed in 2023
  - 4 on cases filed in 2022
  - 5 circuit courts: Lane, Linn, Multnomah, Marion, Yamhill)

\*Data based on data entry by courts

## DHS Data

(1/11/24 presentation to legislature)

- 19 active civil commitments
  - 13 new commitments
  - 6 recommitments
- All but one person with confirmed co-occurring mental health diagnosis (schizophrenia, mood disorder, bipolar disorder, risk of suicide, etc.)
- 42% female; 58% male
- 4 Locations: Lane, Linn, Multnomah and Marion Counties (majority in Marion)
- Placements
  - 42% served at Stabilization and Crisis Unit (SACU) managed by ODDS

# ID Civil Commitment Placements

## What percentage of individuals were placed in each setting type?

- **Oregon State Hospital:** No treatment tailored for people with intellectual disabilities
- **Stabilization and Crisis Unit (SACU):** 24-hour crisis residential program operating under guidance of ODDS
  - Services are accessed through regional or county CDDPs
  - Serves individuals with I/DD, often with co-occurring mental health issues, whose support needs exceed the supports offered or provided by community-based residential programs
  - Individuals may come from family homes, other community programs, legal institutions or hospital settings, often entering SACU in crisis
  - SACU works to stabilize and transition individuals to lower levels of care with goal of reintegrating them into other community-based settings
- **Acute Psychiatric Department of Community-Based Hospital:** *e.g.*, Unity, Providence (362 adult beds available across 9 hospitals)
- **Community-Based Residential Programs:** Adult foster care
- **Home-Based Placements:** Family home

# Homework



All workgroup members\* to complete the Commitment To Change “Ideas” survey\*

Read ALL materials provided in advance of the next meeting

\*This survey is designed to be completed by **Workgroup members only**



# Staff contacts

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