

427 Civil Commitment Worker’s Guide

Office of Developmental Disabilities Services

Topic:	ORS 427 Civil Commitments
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Overview

Description: This worker guide explains ORS 427 Civil Commitments for individuals with intellectual disabilities, which may last up to 12 months and may be renewed annually as necessary. Oregon Revised Statutes (ORS) 427.215 through 427.306 delegates certain civil commitment responsibilities to the Oregon Department of Human Services (ODHS), the Office of Developmental Disabilities Services (ODDS) and/or Community Developmental Disabilities Programs (CDDPs).

The intent of this worker guide is to provide information for the purpose of inter-agency compliance with the Oregon Department of State Policy (OSP), Federal Bureau of Investigation (FBI) and National Instant Check System (NICS) requirements as enacted in [ORS 181A.290](#), and consistent statewide standard operating procedures and clarification on who is eligible and what to consider for individuals who may require a civil commitment.

Purpose/Rationale: Individuals with an intellectual disability may need to be civilly committed when they have demonstrated they are a danger to themselves or others, or are unable to provide for their basic individual needs, and are not receiving care as necessary, based on their own choice or choices being made by others for them. This includes care for the health, safety or the habilitation of the individual.

General Information: Involuntary commitment or civil commitment is a legal process through which an individual who experiences an Intellectual Disability (ORS [427.215](#)) or has symptoms of severe mental illness ([ORS 426](#)) or is court-ordered into the care and custody of the State of Oregon.

For all individuals who may be better served under an [ORS 426 Mental Health Civil Commitment](#), CME's should consult local Behavioral Health Organization providing [Oregon Health Authority 426 Commitment services](#).

Intellectual Disability Civil Commitment - ORS 427.215 Individuals who do not have an intellectual disability are not eligible for a civil commitment under ORS 427.
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ORS 427.215 Need for commitment

For the purposes of ORS 427.235 to 427.290, a person with an intellectual disability is in need of commitment for residential care, treatment and training if the person is either:

- Dangerous to self or others; or
- Unable to provide for the person's basic personal needs and not receiving care as is necessary for the health, safety or habilitation of the person

Things that may be helpful to consider:

- Is the individual at risk of leaving their home and requires to be returned by police?
- Does the individual require residential care, treatment or training?
- Is the individual refusing basic needs for health, safety or habilitation as documented over time?

ORS 427.235 Civil Commitment Investigation

Only CDDPs can complete a civil commitment investigation under [ORS 427.235](#). If an individual receives case management from a brokerage, the brokerage must contact the CDDP investigator for assistance.

When a 427 civil commitment may be necessary, CDDP and Brokerage staff should communicate throughout the civil commitment process for appropriate coordination of services related to the commitment process.

ORS 427.290 Court Determination of Commitment

Only a Judge can determine an individual is eligible for civil commitment. If a Judge orders an individual to be civilly committed under ORS 427.215, the commitment can be for no more than 12 months. A new petition prior to the end of the 12 months should be submitted if an individual requires on-going civil commitment for an additional 12 months and no alternative guardianship has been established.

Civil commitments should not be confused with a guardianship, conservatorship or Health Care representative. If a CME may be submitting a petition for commitment of an individual, a CME may wish to carefully consider, and document in progress notes as required by OAR 411-415:

1. What would the civil commitment of an individual attain?
2. How will a civil commitment keep the individual safe and prevent them from injuring themselves or others?
3. Is there an alternative guardian available to petition for guardianship instead of a civil commitment?
4. What behavior data over the last year would suggest the need for a civil commitment?
5. What would happen if the individual was not civilly committed?
6. What other safe alternatives have been explored and found insufficient?

Procedure(s) that apply:

Case Management Entities considering a 427 civil commitment for an individual in their services should follow the below procedures.

Steps to a 427 Civil Commitment under ORS 427.215
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- 1) **ORS 427.235(1) Petition** - Any two individuals may submit a signed petition to the circuit court, or the court with probate jurisdiction for a county. The petition indicates that an individual within the county has an intellectual disability and is in need of a civil commitment for residential care, treatment and/or training.
 - a) The petition template (posted on the ODDS Staff Tools page) should be used unless the court with probate jurisdiction requires a specific petition form and procedures for filing an ORS 427 petition.
 - b) The petitioners may be any members from the community, law enforcement, clinicians, or members of the medical community, or any two individuals who have information about the individual behaviors that necessitate a civil commitment.

- c) Any individual who acts in good faith shall not be held civilly liable for filing a petition.
- d) While not required by all counties or always addressed by the court, a warrant of detention may be ordered by the court during commitment steps, detainment, processes, and specific detention documents vary by jurisdiction, in accordance with 427.255(1) and (2). If a court finds probable cause to take an individual into custody, a warrant may be issued to a CDDP. Paragraph (2) describes requirements for care provided to an individual who is taken into custody due to risk concerns, which the CDDP must follow.

2) **ORS 427.235(1) Court notification to proceed and notice to CDDP**

If there is sufficient evidence to proceed, the court orders the CDDP to proceed with an investigation, to include the need for commitment, investigation report and recommendations to the court. This means that the CDDP can then complete an investigation into the reasons why an individual may need to be committed to ODHS. There are specific timelines that will need to be met as indicated by the court.

3) **427.235(3) CDDP investigation and evaluation**

Once the court orders the CDDP to proceed with an investigation, the CDDP has 30 days from the date of the order on the notice to complete the investigation and submit an investigation report the court. The CDDP director, or the *designee of the director*, shall immediately investigate to determine whether the person has an intellectual disability and is in need of commitment for residential care, treatment and training. Investigations are often completed by a Services Coordinator, Protective Services or other appropriate staff as designated by the CDDP director.

a) The investigation includes:

- i) An interview of the individual alleged to have an intellectual disability, where possible, in the home of the individual or other place familiar to the individual.
- ii) Appropriate interviews with the individual's relatives, neighbors, teachers, clinicians or law enforcement, or others who witnessed or have knowledge of behaviors warranting a petition.
- iii) Determination of any alternatives to commitment are available.
- iv) Determination and recommendation to the court whether the individual is incapacitated and in need of a guardian or conservator.

b) A diagnostic evaluation as described in ORS 427.105 includes:

- i) An evaluation by a licensed clinical psychologist if one has not been completed within 12 months
- ii) A social history
- iii) An appropriate individual test of intellectual capacity, and
- iv) An adaptive behavior assessment.

- 4) **Copies of investigation** – Upon completion, and at least four (4) business days prior to the commitment hearing, copies of the investigative report and diagnostic evaluation must be submitted to:
- a) The ODHS at: ODDS.DE@dhsosha.state.or.us
 - b) The individual alleged to have an intellectual disability; and
 - c) The individual's legal representative (parents or guardian, as appropriate) and
 - d) The CME

Copies of the investigation must be provided to the court as indicated below.

- 5) **Affidavit from ODHS** – Following receipt of the investigation report and diagnostic evaluation, ODDS will complete an Affidavit affirming the individual has an Intellectual disability and is in need of residential care, treatment or training or refuses basic individual needs for health, safety

or habilitation. The affidavit will be returned within three (3) business days, or within one (1) business day if the individual's hearing is expedited due to a warrant of detention.

6) **Submission to the court** - The CDDP must submit the following documents to the court within 30 days of receiving notice from the court:

- a) The investigative report
- b) Diagnostic evaluation
- c) ODHS ODDS Affidavit of Intellectual disability
- d) Other documents required by local jurisdiction

7) **ORS 427.245 Hearing:**

Citation Notice to Appear; Right to Legal Counsel Probable cause for commitment hearing - Following the receipt of the

investigation and evaluation reports, the court will determine if there is probable cause that the individual has an intellectual disability and is in need of commitment for residential care, treatment and training. If the court deems probable cause exists, the court shall issue a citation with the hearing information prior to scheduling the hearing. If an individual is detained under ORS 427.255, the hearing must be within seven (7) judicial days.

The citation will contain:

- a) A notice of the time and place of the commitment hearing and:
- b) The right to legal counsel, 7)
- c) The right to have legal counsel appointed if the individual is unable to afford legal counsel,
- d) The right to have legal counsel appointed immediately if so requested,
- e) The right to subpoena witnesses on behalf of the individual to testify at the hearing,
- f) The right to cross-examine all witnesses
- g) Any other information as the court may direct.

- 8) **Service of hearing notice** - The CDDP must serve a certified copy of the original citation and notice of the hearing to the individual and legal representative and/or guardian prior to the hearing, as indicated in ORS 427.245(2), and as the court directs. The individual, the parents of the individual, or the legal representative and/or guardian of the individual, shall have the opportunity to consult with legal counsel prior to being brought before the court. The CDDP director, or the designee of the director, shall advise the individual of the purpose of the citation and the possible consequences of the proceeding.
- 9) **ORS 427.290 Commitment hearing and Order of Commitment**
The evidence standard for a commitment is “clear and convincing” which is a higher standard than other civil cases. The individual will be given the opportunity to appear at the hearing. The court will make a determination of need for commitment using the standard outlined in ORS 427.290. The court may order the commitment of the individual to ODHS ODDS, not to exceed 12 months or one year, from the date of the signed court order. The court may also order appointment of a guardian or conservator, or commit the individual into the care of a friend, relative or legal guardian upon request; this order may be revoked during the commitment and the individual committed to ODDS if the court deems it is in the best interest of the individual.
- 10) **ORS 427.300 Assignment to appropriate facility following an Order of Commitment** – If the court determines there is a need for commitment, and ODHS is noted as the Department responsible for assigning the individual to a facility best able to provide treatment and training to the individual, which is facilitated and coordinated by the CDDP within the jurisdiction. This means the CDDP is responsible for the safety and well-being for the individual, until the commitment expires.

A CDDP should coordinate case management services if an individual is enrolled in a brokerage, and CMEs should consider appropriate settings in

accordance with maintaining the individual's safety, health, and training needs, in a variety of placements including a residential setting.

- a) The Order of Commitment must be kept on file by the CDDP and
- b) A copy of the Order of Commitment must be sent to ODDS within five (5) business days of the receipt of the order (ODDS.DE@dhsosha.state.or.us)

11) **ORS 427.306 – Least restrictive environment**

The committed individual should be detained in the least restrictive setting consistent with the person's emotional and physical needs and the protection of others.

12) **Copies of records to ODDS**

Following a court determination of civil commitment, the CDDP must assure they have sent copies of all documents listed below for every civil commitment to ODDS:

- a) Copy of investigation report (Step 4 and 5)
- b) Copy of Diagnostic Evaluation report (Step 4 and 5)
- c) Copy of Order of Commitment (signed judgment) (Step 10, within 5 business days)

13) **Consecutive Commitment**

A new commitment should be completed prior to the 12th month of a commitment termination if:

- a) The individual continues to exhibit behaviors that are dangerous to self and others, or
- b) Continues to be unable to care for their own basic need, and
- c) The team believes that without a commitment, the threat to the individual is still present.
- d) The new 427 civil commitment documents should be submitted to the court before the end of the 12th month, for a hearing to conclude and a new commitment to be issued for the day after when the previous commitment expires. Submission after the 12th month may

mean the individual has a period of time when the 427 civil commitment is not in place.

The need for a new commitment may be assessed through consideration of the Oregon Needs Assessment (ONA), interviews with the individual's support team, and through re-evaluation by a licensed clinical psychologist completing a new diagnostic evaluation for a 427 civil commitment.

14) **ORS 427.295 Appeals**

An appeal may be filed by the individual or by counsel. Civil commitment appeals do not require action by ODDS or the CDDP until the final order, if the commitment is overturned. The commitment remains in place during an appeal and continues if the appeal results in the original order being upheld. However, if the CDDP receives a court order indicating the commitment is stayed or overturned, consult with ODDS before acting.

15) **ORS 427.300(2) Notice of Exit or Transfer**

An individual may be transferred between facilities when:

- a) Good cause exists, and
- b) It is in the best interest of the individual, and
- c) Written notice of transfer or exit is sent *at least 30 days prior to transfer or discharge.*

A Notice of Exit or Transfer forms must be sent to:

- a) The individual and
- b) Their legal representatives and
- c) The individual's service providers

In the case of a medical emergency, 30 days' notice is not required if the emergency is defined in ODDS Oregon Administrative Rule (OAR) as:

- d) An increase in level of care needed, or
- e) The individual's behavior poses an imminent danger to self or others.

Except in a medical emergency, the person has the right to an administrative hearing prior to an involuntary transfer or discharge. ORS 441.605 (4) and the department's rules governing transfer notices and hearings for residents of long-term care facilities apply to a transfer or discharge under this section. If the person is being transferred or discharged for a medical emergency, the hearing must be held no later than seven days after the transfer or discharge. The department shall maintain a space in the facility for the person pending the administrative order.

16) **Reporting to OSP**

Upon request by ODDS the CDDP must provide a list of individuals in the CDDP who are currently committed under ORS 427, which may be required annually. ODDS communicates minimum necessary information for 427 civil commitments to the OSP, as indicated in [DD-AR-21-032](#) and ORS 181A.290

Forms and guides that apply:

[DE4617 Petition](#)

[DHS 0719C Notice of Exit/Transfer](#) – Community Living/Supported Living Services

[DHS 0719E Notice of Exit/Transfer](#) – Day Support Activities/Employment Services

Definitions:

Refer to [427.005 Definitions](#)

Reference(s):

Oregon Revised Statutes, [Chapter 427](#) and [Chapter 426](#) (Mental Health)

[SPD-AR-12-009](#) Reporting Civil Commitment Information

[APD-AR-17-014](#) Reporting Civil Commitment Information (replaces AR 12-009)

[Oregon Health Authority Behavioral Health Services](#) (426 Commitment)

[DD-AR-21-032](#) ORS 427 Civil Commitments (replaces AR-17-014)

ODDS Staff Tools Resources:

[ORS 427 Civil Commitment Worker Guide](#)

[Sample Notice to Proceed](#)

[Investigation Report Template](#)

[Warrant of Detention Template](#)

[ODDS 427 Affidavit Template](#)

Contact(s):

ODDS.DE@dhsosha.state.or.us