February 6, 2018

To: Senator Sara Gelser, Chair
Senate Committee on Human Services

FR: Shannon Flowers, Deputy Public Defender
Shannon Storey, Chief Defender
Juvenile Appellate Section, Office of Public Defense Services

RE: SB 1526

On behalf of the Juvenile Appellate Section of the Office of Public Defense Services, we write to share our general support for the -1 amendments as well as to share our concern that some of the proposed wording may give rise to untended consequences at odds with this committee's intent in amending the statute.

Currently, ORS 419B.504 authorizes juvenile courts to terminate a parent's parental rights based on, among other things, "[e]motional illness, mental illness or mental retardation of the parent of such nature and duration as to render the parent incapable of providing proper care for the child or ward for extended periods of time." Our understanding is that the intent of SB 1526 is to eliminate the use of the term "mental retardation" and not to lower the standard for terminating parental rights based on a parent's mental illness or intellectual disability. We further understand that, with the -1 amendments, SB 1526 attempts to achieve those goals by modifying ORS 419B.504 to authorize courts to terminate a parent's parental rights based on "[a] mental health condition of such nature and duration as to render the parent incapable of providing proper care for the child or ward for extended periods of time."

We wholeheartedly agree with the proposal to eliminate the archaic term "mental retardation" from ORS 419B.504. However, we are concerned that the additional proposed amendments may have the unintended consequence of obscuring the legal standards for terminating a parent's parental rights rather than clarifying that the court may not do so based upon a parent's disability alone. First, the term "mental health condition" is extremely broad and does not necessarily require proof of a condition that rises to the level of a diagnosable mental disorder. Second, the term "proper care" is ambiguous and subjective. We are concerned

that the opaqueness of these terms may confuse the bench and bar potentially necessitating increased litigation (to have the appellate courts weigh in to define the terms) in lieu of increased just and timely outcomes for families, as this committee intends.

We thank the committee for its time and attention to this important issue for Oregon families.