VETO MESSAGE ON SB 5439-S2

May 10, 1995

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 9, 30, 31, 33, 35, 38, 50, 51, 55, 57, 59, 64, 76, 77, 78, 79 and 80 Engrossed Second Substitute Senate Bill 5439 entitled:

"AN ACT Relating to revising procedures for nonoffender at-risk youth and their families;"

I commend the legislature for its hard work and bipartisan approach in passing Engrossed Second Substitute Senate Bill No. 5439. This important legislation, which relates primarily to the laws governing at-risk youth and families in conflict, squarely addresses the major problems that have arisen since the enactment of our 1977 Juvenile Justice Act. It empowers parents to help their children when they have run away or when their child's substance abuse or mental health problems place them in serious danger of harming themselves or others. In addition, it establishes a voluntary, community-based process to assist families in conflict, thereby helping to prevent or alleviate such problems as truancy, running away, substance abuse, mental illness, and juvenile delinquency. Further, it compels school districts to address the troubling issue of truancy among their students.

Although I am vetoing certain sections of the bill -- some for technical purposes and others for their unintended effects -- our goal of supporting parents and protecting our children remains uncompromised.

In signing Engrossed Second Substitute Senate Bill No. 5439, I am confirming the understanding and intent that the criteria specified in section 12(2)(a) apply to and must be satisfied in any and all situations where a youth is to be placed or to remain for any period of time in a secure crisis residential center (CRC) up to the five-day limit specified. Those situations include, but are not limited to, when a youth first appears at a secure CRC and remains for any period of time; when a youth first appears at a semi-secure CRC and is immediately transferred to a secure CRC; or when a youth first appears at or is placed in a semi-secure CRC, at any time during the five-day period.

My reasons for vetoing these sections are as follows:

Section 9 - Parental Financial Contribution

Section 9 requires the parents of a child placed in a CRC to contribute $50 per day for the expense of the placement. The section also permits the Department of Social and Health Services (DSHS) to establish a payment schedule requiring lesser payment based on parents' ability to pay. The underlying premise of this section -- that parents should shoulder a reasonable proportion of the state's cost for providing care to their children -- is something with which I wholeheartedly agree. However, as drafted, this section is inconsistent with federal child support guidelines and may jeopardize our state's receipt of federal funding. Accordingly, I am directing DSHS to collect parental contributions administratively using the current child support system.

Section 30 - Habitual Runaways

Section 30 permits a court, during the disposition phase of an at-risk youth (ARY) or a child in need of services (CHINS) petition proceeding, to make a finding that the child who is the subject of the proceeding is an habitual runaway. The court may place an habitual runaway in a facility with adequate security for up to 180 days to ensure that the child not only remains in the facility, but also participates in programming designed to remedy the child's behavioral difficulties.– To order this disposition, the court must find that the placement is clearly necessary to protect the child and that less restrictive orders would be inadequate. This section also permits the court, as an additional sanction, to order the suspension of an habitual runaway's driver's license for 90 days.

I have several concerns with this section. First, I am concerned about the serious constitutional issue raised by the unusual procedure set forth. This section allows the court to find that a child is an habitual runaway without requiring this allegation to be pled and proved during the fact-finding hearing. This appears to violate the due process rights of youth who would have no opportunity to contest such a finding during a proceeding. The language does not provide a clear understanding of the legislature's intent in establishing this disposition and gives courts almost unlimited discretion in using it. The section allows the court to place an habitual runaway in a secure facility– that offers programming designed to remedy behavior difficulties.– Unfortunately, these terms are not defined, leaving it unclear what type of secure facilities and programming the legislature intends to make available for habitual runaways. Further, there is nothing in this section that prohibits the court from placing a youth in an out-of-state facility or in a facility program that is not state approved or certified, nothing requiring a court to consider whether the receiving facility has any space available that is appropriate to meet the child's needs, and nothing restricting a court from ordering a 180-day secure placement in cases where the parent has neither sought nor desires such an intrusive action.

Second, this section appears to be punishment-oriented in contrast to the overall focus of the legislation which is more appropriately oriented toward treatment. The section explicitly refers to the ability of the court to suspend an habitual runaway's driver's license as an additional sanction.– This referral suggests that the preceding portion of section 30, relating to 180-day placements, is a sanction as well. By locking up young people as a sanction for running away from home, this section essentially recriminalizes this conduct. Such an effect is clearly contrary to the intent of treating troubled youth, and not punishing runaways.

Third, I am concerned about the fiscal issues relating to this provision. The section currently states that only state funds specifically appropriated for this purpose may be used to pay for these secure placements. If no funds are appropriated, this placement becomes an option only for those parents who can afford it. Even if funds were specifically appropriated, however, the level would likely be insufficient to cover the costs of this expensive disposition. I believe that scarce resources can be

better targeted toward the bill's more treatment-oriented provisions.

Finally, I believe this provision is unnecessary in light of the other significant tools provided in this legislation to strengthen parents' ability to protect and help their children. For example, this bill allows the state to briefly hold a runaway in a locked CRC for the purpose of assessing the youth's condition and treatment needs. This brief hold– period provides parents with the opportunity to reestablish contact with their runaway child (where such contact is not inappropriate) and to obtain services or other assistance that might be helpful in resolving the family conflict. To assist families who may need services, the bill authorizes the formation of community-based, multidisciplinary teams which are to develop voluntary treatment plans and coordinate referrals.

Parents' ability to maintain the care, custody, and control of their child are strengthened by requiring courts to accept properly filed at-risk youth petitions -- the process through which parents may obtain a court order requiring their child to obey reasonable parental authority which includes regular school attendance, counseling, employment, refraining from the use of alcohol or drugs, and participation in a substance abuse or mental health outpatient treatment program. Current law provides that youth who violate these court orders may be found in contempt and placed in confinement for up to 7 days. Parents who wish to place their minor child in an approved substance abuse or mental health treatment program may apply for admission without their child's consent. The bill also permits parents to appeal the decision of a county designated specialist not to commit the parents' minor child for involuntary inpatient treatment and seek court approval of an out-of-home placement for their child for a total period not to exceed 180 days. In light of this diverse and powerful set of tools, section 30 is unnecessary to help parents ensure the protection of their children.

Section 31 - Driver's License Suspensions

Section 31 requires the Department of Licensing (DOL) to suspend a juvenile's driving privileges for 90 days upon receiving an order pursuant to section 30. Because I have vetoed section 30, this section is ineffective.

Section 33 - Placement Review Hearings

Section 33 requires that permanency planning occur when children are placed in out-of-home care pursuant to an order under chapter RCW 13.32A. Specifically, a hearing must be held whenever any child under age 10 has remained in out-of-home care for more than nine months. If a child over age 10 has remained in out-of-home care for more than 15 months, a hearing must be held. At the hearing, the court must determine if the matter should be referred to DSHS for the filing of a dependency petition. In determining whether the case should be referred, the court must also determine if it is in the best interest of the child and family to begin permanency planning.

This section conflicts with existing state law that strictly

limits the duration of placements and proceedings under RCW 13.32A. It also conflicts with federal funding requirements for permanency planning for children. Whenever a child is placed in out-of-home care under DSHS supervision, permanency planning begins from the date of placement and continues until the child returns home or some alternative permanency planning goal is achieved.

Section 33 also assumes that a child placed in out-of-home care under RCW 13.32A would remain there indefinitely. However, section 24(1) and (4) of this bill limits the duration of an out-of-home placement under a CHINS petition to a maximum of nine months.

Section 35 - Violation of Shelter Notification as a Misdemeanor Offense

Section 35 makes the violation of the requirements in section 34 of this legislation a misdemeanor. Section 34 requires shelter providers to report the location of a known runaway to the youth's parent, local law enforcement, or DSHS within 8 hours.

Youth shelters play an important role in providing many of our most vulnerable youth with a safe refuge from the streets. While I believe that shelter providers should have to notify DSHS, a parent, or law enforcement of the youth's presence as a way to access appropriate services or to reunite the family, where appropriate, I do not agree with making a violation of this requirement a crime.

In addition, I strongly believe that shelters providing services for vulnerable youth must be licensed to protect their safety and well-being. Yet, despite a law requiring licensure, a number of shelters are not licensed. Accordingly, in an effort to achieve improved compliance with this mandate, I am directing DSHS, in cooperation with shelter providers or their representatives, to conduct a thorough review of our current licensing requirements and to provide me with recommended changes, including legislative amendments, by September 30, 1995.

Section 38 - Sibling Information

Section 38 requires CRC administrators to request from DSHS the names of the admitting youth's siblings who have been under the jurisdiction of the juvenile rehabilitation administration or who are the subject of a dependency proceeding. In addition, DSHS must provide information on whether the presenting youth has run away multiple times.

Although sibling information may in some cases be useful in assessing the situation of a runaway child, I am troubled by the privacy implications of this section. I understand that some of this information may be confidential and, under current law, cannot be disclosed to the CRC administrator. The laws surrounding confidentiality have posed a number of problems relating to records and information sharing. As a result, several members of the legislature have committed to conducting a comprehensive review of those laws during the interim. I believe that this issue should be addressed as part of that review, with any changes to statute coming after the review is complete. We want to ensure that the privacy interests of siblings and of their families are protected.

Section 50 - Outpatient Drug/Alcohol Treatment: Notice to Parents

Section 50 requires that treatment providers must notify parents within 48 hours that their minor child has voluntarily requested substance abuse treatment.

This section violates federal law governing confidentiality of alcohol and drug abuse records which states that these treatment records may be disclosed only with the consent of the patient or as authorized by law. Where, as in this instance, there would be a conflict between state and federal law, federal law would be controlling. In addition, I am greatly concerned about the chilling effect that this requirement may have on minors seeking treatment for a substance abuse problem -- particularly older youth. Therapists and counselors typically seek to involve the parents in a family counseling setting which is a more effective and appropriate means to provide parents such information.

Sections 51 and 57 - Treatment Referrals by School District Personnel

Section 51 and 57 state that school district personnel are not authorized to refer minors to any treatment program or provider without providing notice of the referral to the minor's parent.

The majority of referrals of minors to substance abuse programs across the state come from school districts. From these referrals, many youth receive assistance for their substance abuse problems. This language would have the effect of prohibiting school districts from making these referrals, thereby causing many youth with serious problems not to seek the treatment they need. I do not want to erect any obstacle that would prevent any youth who seeks treatment from obtaining it.

Section 55 - Notice to Parents for Outpatient Mental Health Treatment

Section 55 requires treatment providers to notify parents that their child has voluntarily sought outpatient mental health treatment. I am vetoing this section because of the chilling effect it will have on youth seeking such treatment.

Section 59 - Child Welfare Services

Section 59 includes technical changes to RCW 74.13.031. This section was also substantively amended in Senate Bill No. 5029 which makes changes related to a children's services advisory committee and other changes not properly merged with this section.

Section 64 - Specialized Foster Homes as CRCs

Section 64 deletes the provision permitting specialized foster homes to be used as CRC beds. It also requires DSHS to provide the legislature with a report comparing secure and semi-secure CRCs.

I believe the deletion of specialized foster homes was an inadvertent amendment by the legislature because the bill continues the use of semi-secure CRCs, and specialized foster homes comprise a number of these beds. However, I agree with the legislature that to the extent we use secure CRC beds for a limited purpose, DSHS should report to the legislature on their use. Accordingly, I am directing DSHS to report to the legislature within one year after the initial contracts establishing secure CRCs are established. The report shall evaluate and compare the use and operation, including resident demographics of semi-secure and secure facility CRCs.

Sections 76 through 80 - Truancy

As with the immediately preceding sections of this bill, sections 76 through 80 address the issue of truancy. Sections 76 through 79 attempt to discourage students' unexcused absences from school by denying driving privileges to those students who have substantially failed to carry out their attendance responsibilities.

Section 76 requires school districts, at the beginning of each new academic period, to list those students who in the previous 180 days have substantially failed to carry out their attendance responsibilities. Because I am vetoing sections 77 through 80, which deal with a minor's ability to apply for a driver's license, this section is not necessary.

Section 77 prohibits a student from enrolling in commercial driver's training unless the principal of the minor's school attests that the student is not on the district's list of truant students. Section 78 prohibits the Department of Licensing (DOL) from considering an application of any minor for a driver's license unless DOL is provided with proof that the applicant is not on the particular district's list of truant students. Section 79 requires DOL, upon notification by a school district that the student is on the district's truancy list, to suspend the student's license for 90 days.

While I support the legislature's effort to compel students to attend school regularly, I believe these provisions do not

constitute sound public policy. Rather than discouraging students from missing school, I believe these sections could actually encourage students older than age 15, who are not required by law to attend school, to drop-out in order to protect their driving privilege. Thus, the actual effect of these sections could be to increase the number of school dropouts rather than to reduce truancy. Further, section 79 does not require appropriate notice of students' license suspension to parents and also lacks necessary due process in the form of a pre-suspension hearing by the state.

Truancy is an extremely important issue as it frequently is an early indicator of other problems. If we are going to address this issue effectively, the whole community must be involved. Truancy is not only the responsibility of our schools. Although the bill compels school districts to take tangible steps to address this issue, it's clearly not the entire answer. Accordingly, I urge the legislature, together with representatives of schools, education organizations, appropriate state agencies and other interested groups, to convene a work group as soon as possible to develop effective recommendations redefining compulsory attendance and truancy within the context of our state's education restructuring efforts and evaluating the critical connection between school attendance, youth violence, incarceration, and related social problems. It is clear that the problems of school attendance continue to be an obvious symptom of youth at-risk; however, other significant factors beyond the classroom should also be considered and addressed to ensure the safety and the quality education of our students.

Section 80 requires the superintendent of public instruction, in consultation with others, to develop necessary forms and procedures for demonstrating that students are not on the school's truancy list. Because I have vetoed sections 76 through 79, this section is not necessary.

For these reasons, I have vetoed sections 9, 30, 31, 33, 35, 38, 50, 51, 55, 57, 59, 64, 76, 77, 78, 79 and 80 of Engrossed Second Substitute Senate Bill No. 5439.

With the exception of sections 9, 30, 31, 33, 35, 38, 50, 51, 55, 57, 59, 64, 76, 77, 78, 79 and 80, Engrossed Second Substitute Senate Bill No. 5439 is approved.

Respectfully submitted,
Mike Lowry
Governor