



Health Services
LOS ANGELES COUNTY

April 2, 2020

**Los Angeles County
Board of Supervisors**

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First District

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Second District

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Kathryn Barger
Fifth District

TO: Supervisor Kathryn Barger, Chair
Supervisor Hilda L. Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Janice Hahn

FROM: Christina R. Ghaly, M.D. 
Director

SUBJECT: **STATUS REPORT ON SETTING A MINIMUM AGE FOR
LOS ANGELES COUNTY'S JUVENILE JUSTICE
SYSTEM (ITEM NO. 21, AGENDA OF OCTOBER 30,
2018)**

Christina R. Ghaly, M.D.
Director

Hal F. Yee, Jr., M.D., Ph.D.
Chief Deputy Director, Clinical Affairs

On September 30, 2018, Governor Jerry Brown signed into law Senate Bill 439 to establish a minimum age of 12 years old for prosecuting youth in juvenile court in California, except in the most serious cases of murder and forcible rape. The intent of the law is to protect young children from the harms and adverse consequences of justice system involvement and encourage more effective interventions, if appropriate, to improve children's well-being. In response to the passage of SB 439, the Board of Supervisors (Board) unanimously adopted a motion introduced by Supervisors Hilda L. Solis and Mark Ridley-Thomas on October 30, 2018, to set a minimum age for Los Angeles County's (LA County) juvenile justice system. The motion directs the Department of Health Services Office of Diversion and Reentry's Division (ODR's) of Youth Diversion and Development (YDD) to develop a comprehensive plan to divert younger children from juvenile court jurisdiction and detention.

In February 2018, YDD executed work orders with Patricia Soung and the Children's Defense Fund - California (including sub-contractors Public Counsel and the Youth Justice Coalition) as consultants to support the development of recommendations regarding minimum age for arrest and confinement for youth in LA County.

In October 2019, YDD provided a status report that included updates regarding the temporary protocol developed in January 2019 to provide a specific plan for the pending and active cases over which the Juvenile Court lost jurisdiction, a draft inventory of available youth services, and emerging themes from interviews and focus groups conducted to inform the drafting of a comprehensive long-term plan.

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Over the past 120 days, YDD and this team of consultants have brought various groups of stakeholders together to review the draft comprehensive plan and provide feedback to ensure that the final plan builds on the LA County's current youth diversion and development efforts; complies with SB 439; identifies holistic programming and services for youth and families based on best practices, with a focus on positive youth development; utilizes "counsel and release" as the default in the vast majority of cases and graduated responses thereafter, with Dependency Court jurisdiction as a last resort; and includes recommendations regarding the minimum age for arrest and confinement of youth in LA County based on a review of best practices and relevant research.

Below are the final recommendations for implementing SB 439 and further diversion of younger children in LA County as well as an updated protocol for SB 439 (see Exhibit A) excerpted from the larger comprehensive report developed by YDD and the project's consultants. For more detail on the research and considerations that led to these final recommendations, see Exhibit B: Comprehensive Plan for SB 439 Implementation.

Excerpt from Comprehensive Plan for SB 439 Implementation:

Recommendations and Protocol

At least three overriding realities drive the conclusions of this implementation project: 1) the profile of the impacted youth population, the historically low and declining numbers, nature, and early dismissal and resolution of allegations against children under 12 informally or as low level offenses; 2) research and community input showing the actual and potential harms of system involvement to youth, as well as the effectiveness or promising impacts of alternatives to justice systems and punitive practices, and 3) the expanding infrastructure and investment in LA County and statewide in diversion and youth development generally.

Given the current landscape of existing holistic services for youth who are system-impacted and at risk of system involvement, the ultimate recommendation in this plan is to leverage and better implement existing resources including better identification, utilization, access, communication and coordination, training and protocols, and data collection and evaluation to strengthen, connect, or expand existing resources. This includes, for example, a recommendation to implement and meaningfully assess an existing category of Short-Term Residential Treatment Programs called Children's Crisis Residential Programs created under state law for both youth under and over 12.

The specific recommendations below do not at this time recommend the development of any new services, programs or placements for youth under 12. For 12-year old's, this plan does include a recommendation to develop and adopt a robust policy and protocol for presumptively prohibiting their detention.

For youth over the age of 12, this report recommends deferring many questions related to other minimum age policies for further research and decision-making, especially in light of new and overlapping planning projects that have emerged in the last year. Among the notable projects is a motion adopted on August 13, 2019 to study the feasibility of and

propose a path for restructuring the juvenile justice system in LA County such that responsibility over all justice system involved youth would be transferred from probation to another system, existing or new altogether. As such, questions that were unanswered here should be merged into the global examination of juvenile probation and alternative youth-serving systems in LA County. As LA County drills deeper into the specifics of implementation, the guiding principles of younger children diversion should inform all efforts to reimagine ineffective, harmful, and punitive systems and practices to create and strengthen healthy, healing ones instead.

The recommendations for implementation of SB 439 fall into the following categories: service delivery and infrastructure, police training and protocols, placements, additional minimum age policies, and beyond SB 439.

Section 1: Recommendations on Service Delivery and Infrastructure

1. YDD in collaboration with the Department of Mental Health (DMH) and Office of Child Protection (OCP), should increase access to and utilization of existing prevention and early intervention services and infrastructure for youth under 12 who are at risk of future justice involvement. These strategies to increase access and utilization to resources for youth impacted by SB 439 should include:
 - 1.1. Continuing to build and update a central repository of information about resources for youth through available education, child-welfare, and health-oriented providers, prioritizing those that are holistic and community-based and designating those available for youth under 12.
 - 1.1.1. Compiling information about resources specific to young people who are in disproportionately impacted or particularly vulnerable populations, including Black and Hispanic/Latino youth, undocumented youth, LGBTQ youth, foster youth, and youth with serious mental or physical health needs.
 - 1.1.2. Connecting the information and resources to justice systems and other youth-serving systems including schools through facilitating spaces for cross-sector communication, coordination and collaboration.
 - 1.1.3. Making information about identified resources accessible to the community through a variety of outreach communications and technologies in collaboration with youth and community leaders.
 - 1.2. Working with existing services to decrease eligibility restrictions and improve cultural responsiveness so that justice-involved young people especially those who are in disproportionately impacted or particularly vulnerable populations are not excluded from accessing or meaningfully utilizing services.
 - 1.3. Providing support for research, evaluation, and youth/community engagement focused on holistic, community-based youth development and restorative/transformational justice approaches for partners across systems,

including coordination with other county initiatives focused on positive youth development such as the Department of Parks and Recreation's LA County Youth Networking Group and public-private partnerships like Ready to Rise.

2. YDD should work with the Chief Executive Office to explore avenues for additional resources and staffing to support the implementation of SB 439 recommendations, including at least one full time SB 439 implementation coordinator housed in YDD. Future phases should include additional staff to support research and evaluation in addition to positions for young people and system-impacted people.
3. YDD should work with the Center for Strategic Partnerships to engage philanthropy as thought partners in addition to potential funding partners focused on components of this work for which public funding is not available.

Section 2: Recommendations on First Responder Training and Protocols

4. YDD should work with the Public Defender's Office in collaboration with youth/community leaders and other stakeholders to continue to develop and disseminate outreach materials and trainings on the change in law; alternatives to the justice system; and developmentally appropriate, trauma-informed, racially equitable approaches to youth focusing on first responders like police, schools, congregate care, service providers, and communities disproportionately impacted by youth arrest. These strategies to increase awareness of appropriate responses to youth impacted by SB 439 should include:
 - 4.1. Clarifying that YDD be an entity to receive diversion and development referrals, including of youth under age 12.
 - 4.2. Clarifying that law enforcement agencies who have contact with youth under 12 shall report such contacts to YDD for the purposes of coordinating potential service referrals, monitoring and enforcement, and research and evaluation.
 - 4.3. Clarifying that the Public Defender's Office should be contacted immediately about improper citations and petitions by law enforcement agencies of youth under 12.
 - 4.4. Addressing the need for alternatives to transportation in police cars and temporary detention at police stations to reduce the negative impact of trauma and stigmatization on youth and families.
 - 4.5. Language, visuals, and mediums for know your rights information that are culturally relevant and accessible.
5. YDD should maintain specific protections on collection, access to, and use of information for youth under 12 over whom the court can no longer have jurisdiction through LA County information-sharing protocols and legislative amendments if necessary, reflecting the protocols for information generated by informal service referrals established by the YDD model. These protections for data on youth impacted by SB 439 should:

- 5.1. Include high-quality and well-coordinated record-keeping among the network of community-based organizations providing services to youth under 12.
 - 5.2. Ensure regular assessment and cross-sector review of de-identified data to avoid duplication of services and hold partners accountable to standards of quality and equity.
 - 5.3. Provide data capacity-building and support as needed to improve system, program, and service delivery effectiveness.
 - 5.4. Prohibit the sharing of individualized referral or service-utilization data for youth under 12 impacted by SB 439 by referring law enforcement agencies and service providers with other law enforcement and justice system agencies.
 - 5.5. Prohibit the use in any future court proceedings of statements made by youth under 12 impacted by SB 439 in the course of referral or participation in services.
6. YDD should monitor the implementation of SB 439 through maintaining regular collaboration and communication with law enforcement agencies, the Probation Department, Public Defender's Office and District Attorney's Office about youth under 12 who come into contact with law enforcement and the justice system.

Section 3: Recommendations on Addressing the Need for Placements

7. The SB 439 Support Team developed for the 2019 Temporary Protocol—including YDD, the Probation Department, the Department of Children and Family Services (DCFS), the Children's Defense Fund, Public Counsel, and the Children's Law Center—should continue to support the resolution of law enforcement contacts with youth under 12 and ensure return home as the default, always taking into account the child's risk of harm to him/herself or others. Reflecting evidence of promising practices, it is recommended that a child under 12 does not require, and should not be placed in, a locked facility when the following strategies are available:
- 7.1. All placements recommended are non-secure, though such placements may and can adopt high security measures in order to ensure the safety of a child, other children, and staff.
 - 7.2. In the rare instances children under 12 cannot return home immediately, the Support Team should work together to utilize and ensure adequate capacity and access to existing short and longer-term placements available through the education, welfare and health pathways and systems.
 - 7.3. In cases where psychiatric care is required, the Support Team should connect youth and families to Children's Hospitals.

- 7.4. Where psychiatric care is not needed, the Support Team should consult DCFS for short-term placement with resource families and relative/non-relative caregivers first.
- 7.5. Where resource families and relatives/non-family relatives are not viable options, DCFS should use temporary housing like Short Term Residential Therapeutic Programs (STRTPs).
8. LA County should pursue collaborative efforts including community based organizations serving youth and system impacted youth and families to evaluate and improve of placements for children under 12 as well as all youth. This research should include:
 - 8.1. Exploring the need for and capacity to strengthen temporary housing options like STRTPs, including access to and payment for them.
 - 8.2. Developing access to resource families, and relative/non-family caregivers and STRTPs without the involvement of the DCFS.
 - 8.3. Implementing Children's Crisis Residential Programs (CCRP) as a subcategory of STRTPs to serve youth under 12, as well as considering CCRPs an alternative to juvenile halls and camps for youth 12 and older.

Section 4: Recommendations on Additional Minimum Age Policies

9. LA County should adopt a protocol for presumptively prohibiting detention of 12 year old's with a system of overrides to permit detention of a 12 year old only in the rare instance.
10. LA County should continue to assess the feasibility of expanding the minimum age of detention of youth older than 12 years old as new information arises about their placement needs.

Section 5: Recommendations Beyond SB 439

11. YDD should continue to strengthen and expand implementation of its diversion protocol, making pre-booking or pre-arrest diversion available to all legally eligible youth under 18 through:
 - 11.1. Ensuring existing sites are implementing the protocol effectively
 - 11.2. Cultivating additional law enforcement and service provider partners to divert youth at the earliest point possible.
 - 11.3. Cultivating school and community pathways to diversion without involving law enforcement or school discipline by connecting diversion to efforts promoting

youth development, restorative and transformative justice, and positive school climates.

12. The Youth Justice Work Group should research, and/or identify opportunities for further research on, alternative models for safe and healing-centered practices, supports and placements for all youth.

12.1. The research should address the needs and experiences of justice-involved youth, including their mental health needs and diagnoses; school-based arrests/discipline and promising practices to improve school climate; placement models that are community-run and available 24 hours a day, seven days a week; multi-disciplinary crisis response teams; and models for community training institutes focused on youth and community development, positive school climate, and restorative/transformative justice.

13. LA County should continue to engage and support impacted youth and communities in the development, implementation and monitoring of all diversion and development efforts, including all of the above related to SB 439, by developing a dependable mechanism by which resources for stipends, transportation, and food can be provided to youth participating in the YDD Steering Committee and other youth advisory councils and commissions.

Exhibit A: RECOMMENDED SB 439 PROTOCOL

Guiding Principles for SB 439 Implementation:

- End arrest, detention and prosecution of children under 12, except in murder and forcible sex offenses cases.
- Reflecting research and evidence on effective diversion, counsel and release to family should be the default in most all of cases, accounting for the child's risk of harm to themselves or others.
- Responses thereafter should be the least restrictive alternatives through available school, health and community-based services.
- Dependency system intervention should also be sparing.

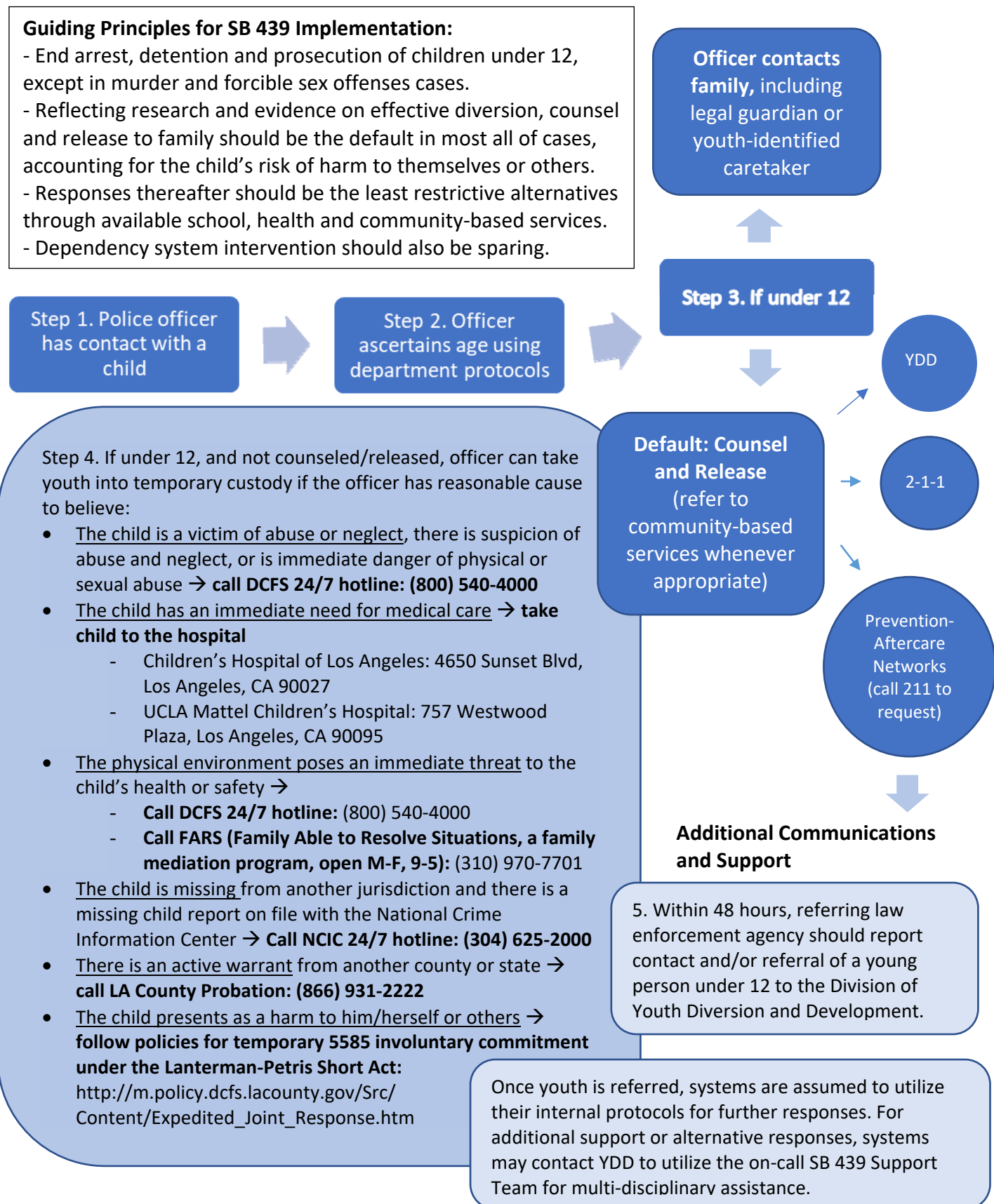


Exhibit B: Full Comprehensive Plan (see attached)

The above recommendations for implementing SB 439 and further diversion of younger children in LA County are excerpted from the larger comprehensive report developed by YDD; this project's consultants from the Children's Defense Fund California, Public Counsel, and Youth Justice Coalition; and the stakeholders who were convened to provide feedback and guidance on initial plans. YDD will continue to provide regular updates on the implementation and will submit the next update in 180 days.

If you have any questions or need additional information, please contact Peter Espinoza, Retired Judge, Director of ODR at (213) 288-8644 or by email at pespinoza2@dhs.lacounty.gov.

CRG:pe

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Senate Bill 439 and Diversion of Younger Children in Los Angeles County: Recommendations on Implementation

**Submitted by
the Office of Diversion and Reentry, Division of Youth Diversion and Development¹**

January *, 2020

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- I. Law as Amended under SB 439

¹ Patricia Soung, a consultant and Youth Justice Policy Director and Senior Staff Attorney at Children’s Defense Fund-California, served as a consultant to the Office of Diversion and Reentry, Division of Youth Diversion and Development (YDD) on implementation of SB 439 and other minimum age policies. She authored this report in collaboration with Taylor Schooley, Senior Research Manager at YDD.

A. Overview and Rationale of Senate Bill 439

In 2019, California joined 22 other states in the country in establishing a minimum age for a child to face prosecution in delinquency court. By passing Senate Bill 439 (SB 439), California became one of two states to set the highest floor for juvenile delinquency jurisdiction at age 12², consistent with the recommendations of the United Nations Committee on the Convention on the Rights of the Child,³ the American Academy of Pediatrics, the American Bar Association, and the National Academy of Sciences.

Co-authored by Senators Holly Mitchell and Ricardo Lara, SB 439 established a legal bar against prosecuting children under 12 years old in California – except in the most serious cases of murder and forcible sex offenses. Under SB 439, the law now provides the following:

- Youth under 12 cannot be prosecuted except for murder or forcible sex offenses.⁴
- Youth under 12 cannot be detained, as no delinquency court has jurisdiction over them, except for murder or forcible sex offenses.
- Counties must have a protocol for addressing alternatives to prosecution for youth under 12 in place by January 1, 2020.

The adoption of SB 439 is rooted in five key justifications. First, youth are developmentally different from adults,⁵ as affirmed by a growing body of scientific research and court decisions. On one hand, they are more vulnerable because of their greater immaturity, impulsivity, and lesser ability to foresee consequences when compared to adults, and on the other, they are more malleable and capable of change, such that greater leniency, care and protection should drive all law and policy responses.⁶ Second, even minor contact with the juvenile and criminal justice systems can have lasting and negative psychological and health impacts for youth and young children.^{7,8} Third, research shows that formally processing youth in the juvenile justice system does not deter future crime, but instead can increase the likelihood of future criminal

² Massachusetts General Law Chapter, 119 Sections 52, 54, 67, 68, and 84 (2018).

³ United Nations Convention on the Rights of the Child. Geneva, 1989.

⁴ See Welfare and Institutions Code section 602(b). The exceptions include: murder; rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury; and sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

⁵ American Academy of Pediatrics, Committee on Adolescence, *Health care for youth in the juvenile justice system*, Pediatrics, 128, 1219-1235 (2011); American Bar Association, *Standards Related to Juvenile Delinquency and Sanctions* (1977); American Bar Association; National Research Council, *Reforming Juvenile Justice: A Developmental Approach* (2013).

⁶ See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); Bath, E. & Gerring, J. *National Trends in Juvenile Competency to Stand Trial*, Journal of the American Academy of Child and Adolescent Psychiatry, 53, 265-268 (2014); Grisso, T. et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' & Adults' Capacities as Trial Defendants*, Law & Human Behavior, 27, 333–363 (2003).

⁷ Dierkhising, C.B., Ko, S.J., Woods-Jaeger, B., Briggs, E.C., Lee, R. & Pynoos, R.S. *Trauma histories among justice-involved youth: findings from the National Child Traumatic Stress Network*. *Eur J Psychotraumatol*, 4 (2013).

⁸ Kirk, D. & Sampson, R. *Juvenile Arrest and Collateral Educational Damage in the Transition to Adulthood*, Sociology of Education, 88(1), 36-62 (2013).

convictions and incarceration.⁹ Fourth, the racial disparities in the arrest, referral and prosecution of young children under 12 are stark, and thus serve as reminders that the criminalization of youth and over-reliance on criminal justice processes are symptoms of persistent inequity and structural racism. And lastly, the trends in early-age involvement in the justice system – including the small and declining numbers, high rates of case dismissal and informal and low-level resolution – confirm that prosecution of young children simply does not make sense.

All combined, research and data show that law enforcement contacts and formal processing of younger children, who are disproportionately Black and Latino, are overwhelmingly unnecessary and potentially harmful short and long-term. Such contacts also cost billions of dollars for police services, court and attorney costs, probation supervision and detention facilities. The intent of the new minimum age law is to protect young children from the harms and adverse consequences of justice system involvement, and to invest in and improve alternatives that better promote youth well-being and broader public safety.

⁹ Petrosino, A., Turpin-Petrosino, C. & Guckenburg, S. *Formal system processing of juveniles: Effects on delinquency*, Woburn, Massachusetts: Campbell Systematic Reviews, The Campbell Corporation (2010).

B. LA County Board of Supervisors Motion

Upon passage of SB 439, the Los Angeles County Board of Supervisors unanimously adopted a motion introduced by Supervisors Hilda Solis and Mark Ridley-Thomas on October 30, 2018, directing the Office of Diversion and Reentry's Division of Youth Diversion and Development (YDD) to develop a plan for implementing the new law and divert younger children from juvenile court jurisdiction and detention.

The October 2018 motion instructed that the plan should:

1. Build on the County's current youth diversion and development efforts;
2. At a minimum, comply with the recently passed Senate Bill 439;
3. Include as a first priority a specific plan for the pending or active cases, over which the Juvenile Court is expected to lose jurisdiction in January 2019;
4. Identify holistic programming and services for youth and families based on best practices, focused on positive youth development¹⁰, that may be appropriate for younger youth;
5. Consistent with the County's current youth diversion plan, utilize "counsel and release" as the default in the vast majority of these cases and graduated responses thereafter, with Dependency Court jurisdiction to be a last resort; and
6. Include recommendations regarding the minimum age for arrest and confinement of youth for Los Angeles County, including expanding on the requirements set by SB 439, based on a review of best practices, and relevant research

The motion also required YDD to consult with the Probation Department and collaborate with county agencies and community stakeholders.¹¹

This report summarizes the data, research and recommendations for implementing SB 439 and diversion of younger children more broadly.¹² A draft resource guide will accompany the submission of this report to YDD so as to continue compiling a non-exhaustive list of programs, services, placements and initiatives in Los Angeles County for youth.

¹⁰ Positive youth development has become a term of art defined in many ways. One definition we endorse is that youth development is "an alternative approach to community health and public safety that builds on the strengths of youth, families and communities, addresses the root causes of crime and violence, prevents youth criminalization, recognizes youth leadership and potential, and turns young people's dreams into realities." LA for Youth, Violence Prevention Coalition and Youth Justice Coalition, *Building a Positive Future for LA's Youth* (September 2016).

¹¹ See appendices for individuals who attended meetings related to SB 439 implementation and diversion of younger children.

¹² The Office of Diversion and Reentry, housed at the Department of Health Services, was authorized to hire a consultant implement the components of the October 30, 2018 motion. The Office hired Patricia Soung, a consultant and Youth Justice Policy Director and Senior Staff Attorney at Children's Defense Fund-California, who partnered with Ruth Cusick at Public Counsel and Kim McGill at Youth Justice Coalition to engage school and community stakeholders in implementation of the new law SB 439 and county motion.

C. Implementation of SB 439 and Beyond

In recent years, the numbers of young children arrested, referred and prosecuted have been small and declining (see section D), such that the corresponding scope of implementing SB 439 should remain small and should not tax existing systems significantly. At the same time, the charge under SB 439 and other potential minimum age policies for Los Angeles County is ambitious – it is part of pervasive rethinking across California and the nation about how to fundamentally transform ineffective systems for all justice-involved youth, and ensure positive youth development approaches instead. The efforts to develop implementation recommendations on diverting younger children in Los Angeles County have thus appreciated this balance – of describing a modest scope of work and responsibility, and of advancing more seismic shifts across all youth-serving systems to support all young people’s development.

Welfare and Institutions Code (WIC) section 602.1 provides explicit guiding principles for implementing SB 439 in keeping with the spirit of recent, broader reforms to transform punitive approaches to all youth:

- Counsel and release of a child back home should be the default in most all cases – accounting for public safety considerations, including the child’s risk of harm to him/herself or others.
- Responses thereafter should be the least restrictive alternatives through available school, health and community-based services.
- Interventions should be appropriate to serve and protect a child and pursued only when necessary.

Three additional principles have been centered during discussions by system and community representatives about the change in law:

- Given the diversity of California’s 58 counties, the development of formal protocols should otherwise be driven at the local level.
- Under existing law, dependency courts have broad discretion to take jurisdiction over youth, including youth under 12, and including in cases where a youth’s behavior is beyond parental control but there is no finding of abuse or neglect (*In re RT*, 2017 CA Supreme Court). But research counsels that dependency system intervention, including removal of children from their home, should also be sparing and used as a last resort.
- Compliance with SB 439 should also ensure that other systems, like education, adopt intervention approaches that support young people and their families by addressing root causes and reducing reliance on harsh discipline to address youth misbehaviors.

Implementation Phases

Since the passage of SB 439, the following phases of implementation took place:

- 1) Data and Information Collection about Los Angeles County: Initial data was gathered about trends over recent years in the arrest, prosecution, adjudication and disposition of younger children in Los Angeles, including their ages, demographics and offense types.

- 2) Case Planning for Current and Active Cases of Youth under 12: The public defender offices planned ahead of 2019 for transitional legal representation for each youth where needed. No placements or services were deemed disrupted by the change in law.
- 3) Implementation Planning: The Office of Diversion and Reentry hired consultants to facilitate engagement and develop recommendations for a comprehensive diversion plan for younger children.
- 4) Notice and Communications: An initial notice explaining the motion, change in law, and plans for implementation in 2019 was drafted and disseminated in December 2018. Periodic updates about upcoming phases of implementation were sent throughout 2019.
- 5) Best Practices Research: Research was conducted about best practices for secure alternatives to arrest, detention and prosecution, as well as alternatives to punitive school discipline practices, including reliance on police, expulsion and suspensions.
- 6) Initial Outreach to Law Enforcement: Key law enforcement agencies were engaged to discuss and establish understandings about the new law.
- 7) Support Team and Temporary Protocol – A temporary, multidisciplinary team was established to provide rapid response to and support any new law enforcement contacts and interventions with youth under 12. The team also developed a temporary protocol for system responses until a more comprehensive protocol becomes available.
- 8) Mapping Available County Services, Placements and Resources: An initial mapping of existing, holistic services and placements available for children and youth through public agencies and community-based service providers is being developed.
- 9) Systems and Community Engagement: Stakeholder meetings focused on engaging schools, health and welfare systems, community-based providers, and youth and families, as the systems to serve youth in lieu of a law enforcement system. Meetings took place on:
 - November 6, 2018 – with the Public Defender Office and Alternative Public Defender Office (and follow up thereafter with the Independent Juvenile Defender Panel) to discuss current and pending cases where jurisdiction was imposed on a youth under 12;
 - December 4, 2018 – with the Probation Department leadership;
 - June 27, 2019 – with school districts in 10 geographic areas that comprise the first YDD cohort;¹³
 - July 18, 2019 – at two workshops at the Youth Development Summit with community-based organizations and other stakeholders;
 - September-November 2019 – in six community-based engagements meetings coordinated by Youth Justice Coalition and hosted by Chucos Justice Center,

¹³ Invitations were made to representatives from: Antelope Valley Union High School District, Culver City Middle School District, Culver City Unified School District, Culver Park Continuation School, Eastside Union School District, El Monte Union High School District, Hawthorne School District, Inglewood School District, Inglewood School Police, Lancaster School District, Lawndale Elementary School District, Los Angeles School Police Department, Palmdale School District, Pasadena Unified School District and Westside Union School District.

Coalition for Engaged Education, Homeboy Industries, Inner City Struggle, Social Justice Learning Institute and Youth Justice Coalition.

- October 3, 2019 – with various stakeholders to discuss mental health needs and placements specifically; and
- December 9, 2019 – with cross-system stakeholders to respond with additional feedback to draft recommendations.

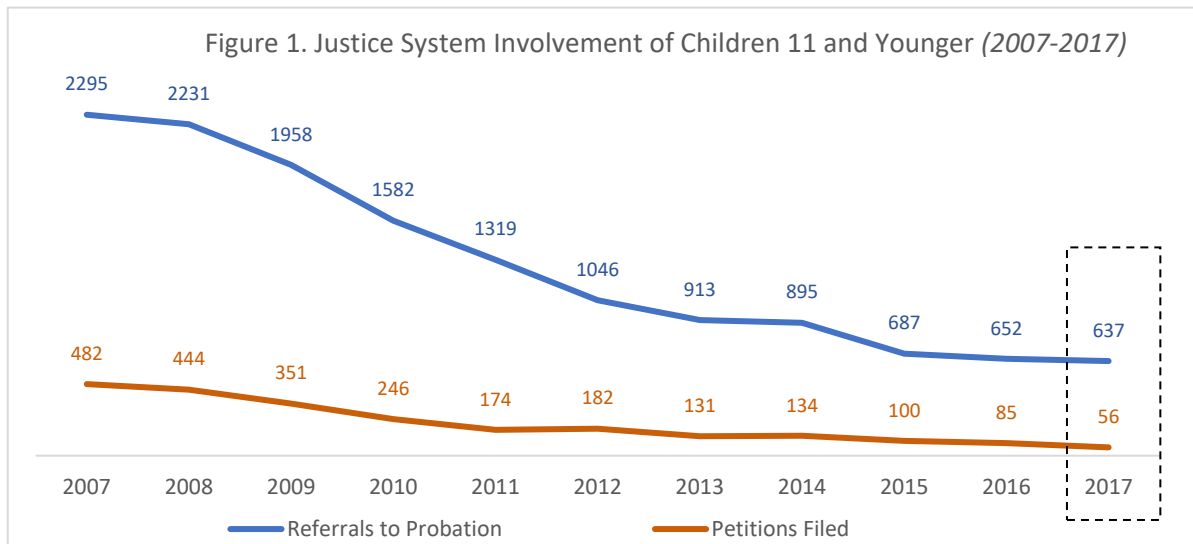
D. Key Data on Younger Children Involved in Justice Systems

State and local data have critically informed the development and implementation of minimum age laws, including the nature and scope of alternative responses needed. In the section below, data trends in recent years for both Los Angeles County and the state of California highlight the following:

- **Declining and low overall numbers** – The numbers of arrests, referrals and prosecutions of youth, including those under 12 years old, are relatively small and continue to decline across the state and in Los Angeles County.
- **Persistent racial disparity** – Black and Latino youth are still referred, prosecuted and formally adjudicated at the highest rates.
- **High proportion of dismissals and informal resolutions** – Very few younger children are adjudicated to be formal wards of juvenile court under WIC section 602; most are closed at intake, diverted at the outset or via informal probation.
- **Almost all shown to be low-level offenses** - The vast majority of the small number of youth under 12-years-old who are detained are released at their first hearing and cases that are prosecuted have all been resolved as misdemeanors.

1. State Data – Children Under 12

Between 2007 and 2017, over 14,000 children under 12 were referred to probation for possible prosecution in California.¹⁴ The number of children under the age of 12 referred to the justice system each year is relatively small and accounts for less than one percent of all justice system referrals. Over time, the number of children under 12 who are referred to the justice system and prosecuted have declined dramatically – referrals to probation decreased by 72 percent and petitions decreased by 88 percent from 2007 to 2017. Children as young as five years old were referred to probation for possible formal justice system processing.

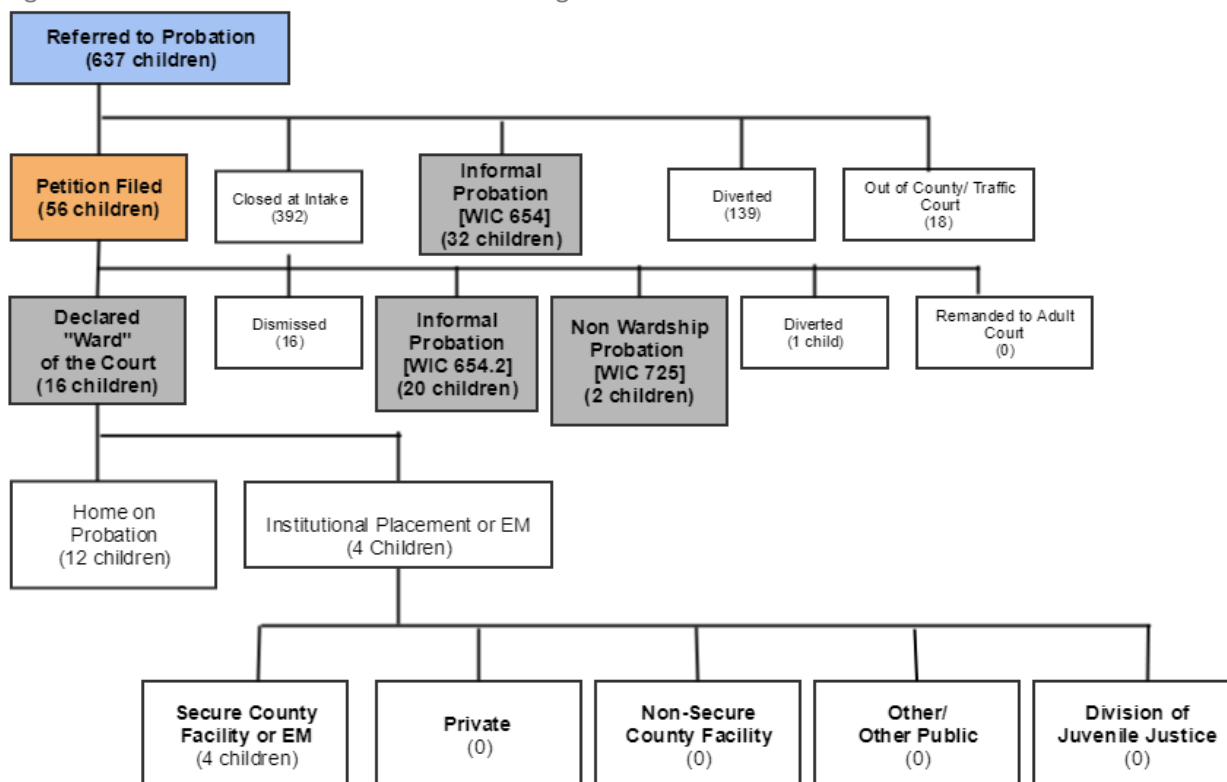


¹⁴ California Department of Justice data.

Further analysis of 2017 data reveals that statewide only 637 children were referred to Probation that year; 56 had a petition filed; and 70 were on probation supervision, including:

- WIC § 654 Probation (*pre-petition informal probation limited to 6 months*);
- WIC § 654.2 Probation (*informal probation limited to 6 months*);
- WIC § 725 Probation (*non-wardship probation limited to 6 months*); and
- WIC § 602 Wardship Probation.

Figure 2. Numbers of Children Under 12 Throughout Juvenile Justice Process



The data from 2017 is consistent with data over recent years showing the vast majority of cases (about 85%) were closed at intake, diverted at the outset or resulted in informal probation.

In California, children of color under 12 years old continue to be more likely than White youth to have contact with the juvenile justice system as overall numbers decrease. From 2007-2017, Black children under 12 were 3.7 times as likely to be referred to probation; 4.9 times as likely to have a case petitioned in juvenile court; 6.1 times as likely to be securely detained; and 6.6 times as likely to become formal wards of the court than their White peers. Close to 80% of children under 12 who have been referred for prosecution are Latino or Black.¹⁵

Data also shows that the that children under 12 are referred to, prosecuted and adjudicated in juvenile courts for relatively minor offenses. In 2015 for instance, law enforcement agencies reported referring 54 youth under 12 to Probation for a “violent felony.”¹⁶ The majority of

¹⁵ California Department of Justice. 2017. Data received through special request. On file with the sponsors.

¹⁶ The California Department of Justice [2015 Annual Juvenile Justice Report](#) shows 61 referrals for “Violent Offenses”; this analysis includes 54 cases (which may involve several offenses referred), counting only the most serious offense associated with the referral. All cases that had multiple offenses associated with a “Violent Felony” referral were from San Bernardino County; the most serious referral offense was “Felony Assault.”

these cases (70%) were closed at intake (34) or dismissed by juvenile court (4). Of the remaining six cases sustained in court, all were adjudicated as misdemeanor assault and battery. In 2015, the breakdown of the felony offenses referred by age and race/ethnicity and, where applicable, offense are as follows:

- (1) **One child under 12 had a case referred for forcible rape.** The case involved an 11-year old Latino boy and the case was closed at intake.
- (2) **5 children were referred for robbery** - 4 of these cases were closed at intake and 1 case involving a 10-year-old White boy was dismissed by Juvenile Court:

Figure 3. Number of Children by Race under Age 12 Referred for Robbery and Closed at Intake.

	White	Black	Latino	API	Total
7 years old	0	1	0	0	1
8 years old	0	2	0	0	2
9 years old	0	1	0	0	1
Total	0	4	0	0	4

- (3) **48 children under 12 were referred for assault** - 30 of these cases were closed at intake:

Figure 4. Number of Children by Race under Age 12 Referred for Assault and Closed at Intake.

	White	Black	Latino	API	Total
8 years old		1		0	1
9 years old		2	3	0	5
10 years old	2	1	3	0	6
11 years old	6	7	3	0	16
Total	8	11	8	0	30

Figure 5. Number of Children by Race under Age 12 Referred for Assault and Dismissed by Juvenile Court.

	White	Black	Latino	API	Total
10 years old	0	0	1	0	1
11 years old	0	1	1	0	2
Total	0	1	2	0	3

Figure 6. Number of Children by Race under Age 12 Referred for Assault and Diverted.

	White	Black	Latino	API	Total
10 years old	0	1	0	0	1
11 years old	1	1	0	0	2
Total	1	2	0	0	3

Figure 7. Number of Children by Race under Age 12 Referred for Assault and Placed on Informal Probation.

	White	Black	Latino	API	Total
10 years old	0	1	1	0	2
11 years old	2	2	1	0	5
Total	2	3	2	0	7

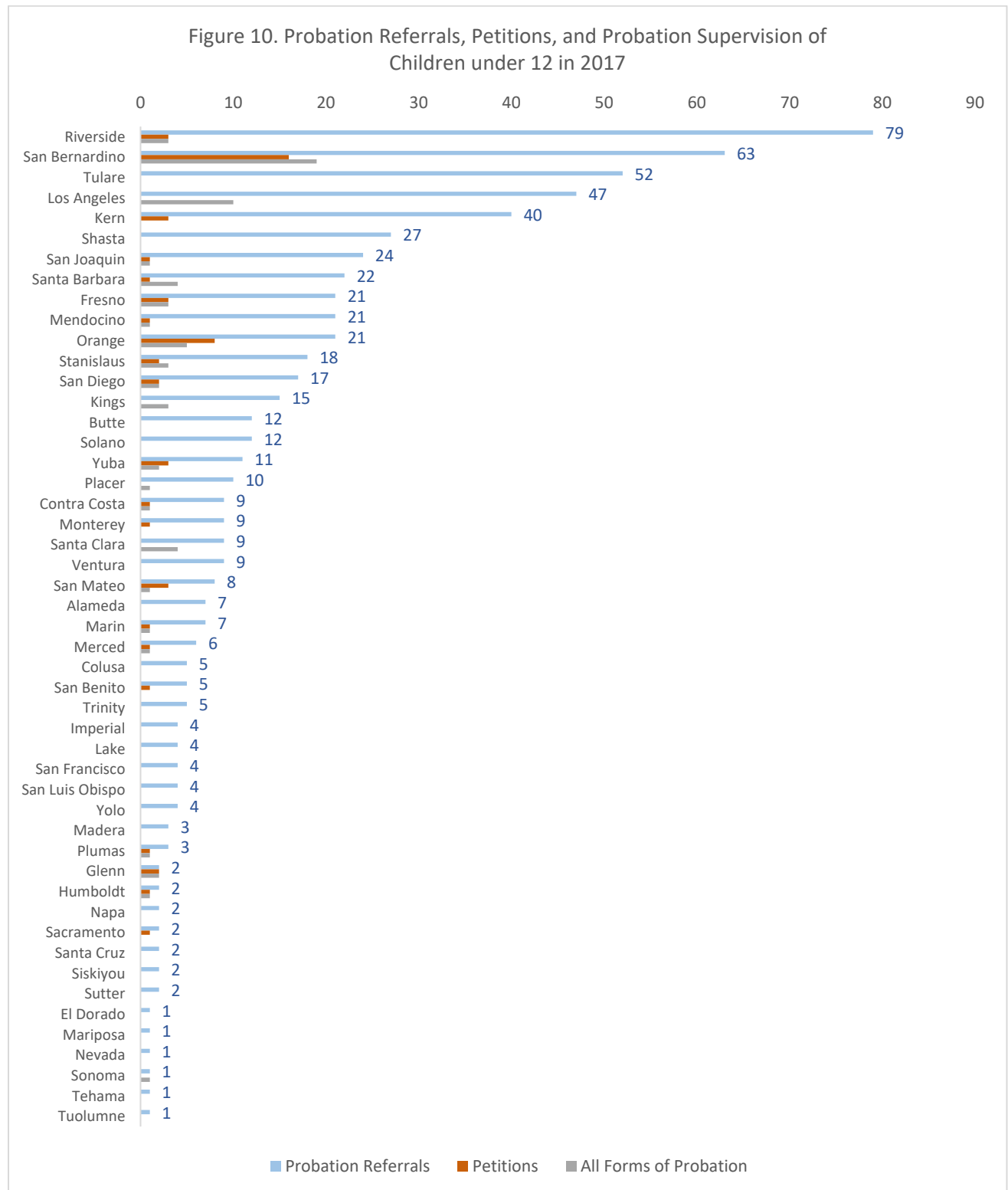
Figure 8. Number of Children by Race under Age 12 Referred for Assault – Resulting in a Sustained Petition for Misdemeanor Assault and Battery and Non-Wardship Probation.

	White	Black	Latino	API	Total
11 years old	1	0	1	0	2
Total	1	0	1	0	2

Figure 9. Number of Children by Race under Age 12 Referred for Assault – Resulting in a Sustained Petition for Misdemeanor Assault and Battery and Wardship Probation.

	White	Black	Latino	API	Total
11 years old	1	1	2	0	4
Total	1	1	2	0	4

Geographically, referrals for young children are concentrated in a relatively small number of counties. Seven counties with the highest numbers of referrals for youth under 12 comprise over 50 percent of the state total. In 2017, Los Angeles County had the fourth highest number of arrests referred to probation reported for youth under 12.



2. Los Angeles County Data – Children Under 12

Data for Los Angeles County is consistent with statewide trends. Between 2007 and 2017, the number of arrests, referrals and prosecutions of youth under 12 years old, in Los Angeles County was relatively small and, with the exception of the last available year, on the decline.

Figure 11. Number of Referrals, Arrests and Petitions of Children under 12 in Los Angeles County by year (2007-17)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Pop (5-11)	916,481	900,602	895,479	894,576	888,081	882,700	879,557	875,834	871,822	869,080	N/A
Arrests	687	558	445	328	269	228	175	129	116	83	93
Referrals	268	213	137	97	101	95	79	57	35	34	47
Petitions	48	48	45	23	14	15	11	7	4	7	0

Despite the small numbers of youth at each stage of criminal justice processing, stark racial disparities persist at every stage. Between 2007-2017 in Los Angeles, Black and Latino youth made up 92% of youth under 12 who were arrested, 90% of youth under 12 who were referred to the juvenile justice system, and 94% of youth who were prosecuted.

Figure 12. Referrals of Children under 12 in Los Angeles County by Race (2007-17)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total ('07-17)
Black	103	80	54	30	47	31	26	28	18	16	19	452 (39%)
Latino	141	113	70	58	44	52	47	21	13	14	24	597 (51%)
White	19	16	9	6	7	10	4	6	3	2	3	85 (7%)
API	5	4	4	3	2	2	0	2	1	2	0	25 (2%)
Other	0	0	0	0	1	0	2	0	0	0	1	4 (<1%)
Total	268	213	137	97	101	95	79	57	35	34	47	1163

Figure 13. Petitions of Children under 12 in Los Angeles County by Race (2007-17)

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total ('07-17)
Black	22	22	21	11	9	6	4	6	2	7	0	110 (50%)
Latino	23	23	21	12	3	8	7	0	1	0	0	98 (44%)
White	2	3	3	0	2	1	0	1	1	0	0	13 (6%)
API	1	0	0	0	0	0	0	0	0	0	0	1 (<1%)
Other	0	0	0	0	0	0	0	0	0	0	0	0
Total	48	48	45	23	14	15	11	7	4	7	0	222

Very few younger children are adjudicated as formal wards of the juvenile court under WIC section 602 in Los Angeles County. Over 80% of cases of younger children referred between 2015-2017 were closed or dismissed at the outset.

Figure 14. Total Referrals, Petitions and Dispositions of Children under 12 in Los Angeles County (2015-17)

Referrals to Probation	Petitions Filed	Informal Probation (WIC 654, <i>pre-petition</i>)	Informal Probation (WIC 654.2)	Non-Ward Probation (WIC 725a)	Wardship	All forms of Probation
116	11	20	0	1	10	31

Referrals and prosecutions of children under 12 in Los Angeles County are relatively minor in nature. Between 2015 and 2017, the majority of offenses for which younger children have been prosecuted in Los Angeles have primarily been theft, misdemeanor assault and battery, and felony robbery. Every case was eventually resolved as a misdemeanor.

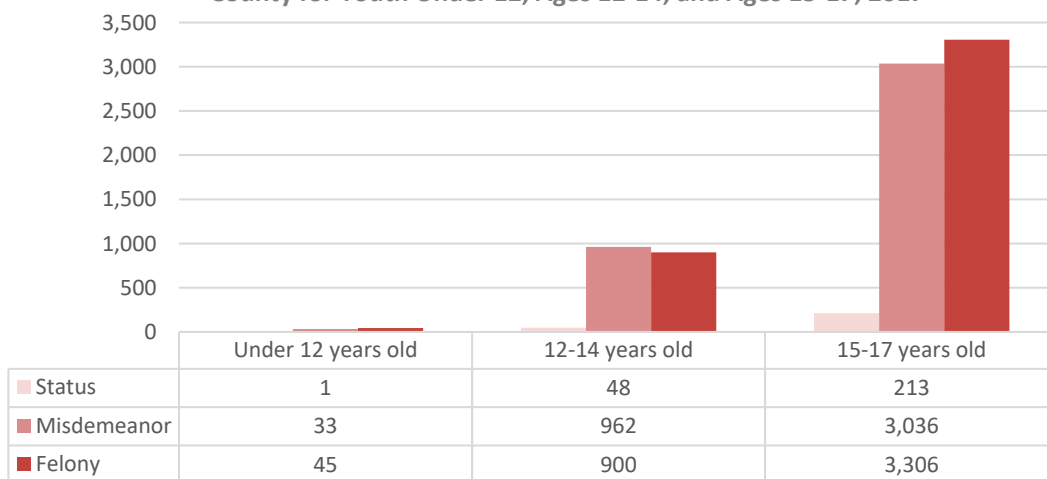
Figure 15. Offenses underlying Petitions of Children under 12 (2014-2017)

	Theft	Assault/ Battery	Robbery	Motor vehicle theft	Other Misdemeanor	Other felony	Total
2014	1	2	0	3	1	0	7
2015	1	3	0	0	0	0	4
2016	0	1	6	0	0	0	7
2017	0	0	0	0	0	0	0

3. Los Angeles County Data - Children Ages 12-14

In considering recommendations for minimum age policies beyond Senate Bill 439, data on arrests and referrals to probation was also analyzed for youth ages 12-14 in Los Angeles County (by age, race/ethnicity, and offense level).

Figure 16. Referrals to Probation by Alleged Offense Level in Los Angeles County for Youth Under 12, Ages 12-14, and Ages 15-17; 2017



Youth involvement with the justice system increases dramatically from age 11 to age 12 and continues to do so for every additional year beyond the age of 12.

Figure 17. Youth Arrests in Los Angeles County by Alleged Offense Level for Youth Ages 12-14, 2017

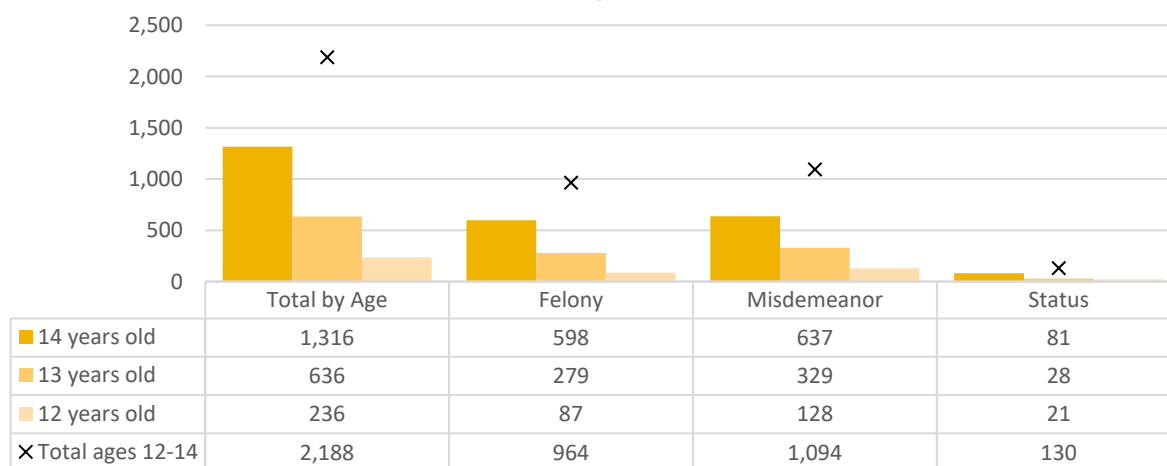


Figure 18. Youth Arrests in LA County by Race/Ethnicity, Ages 12-14 (2017)

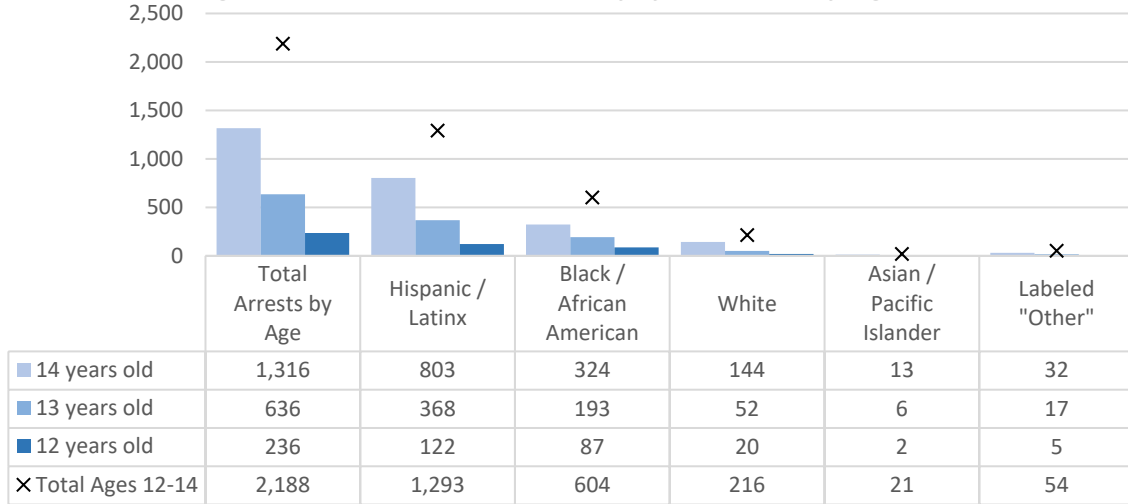
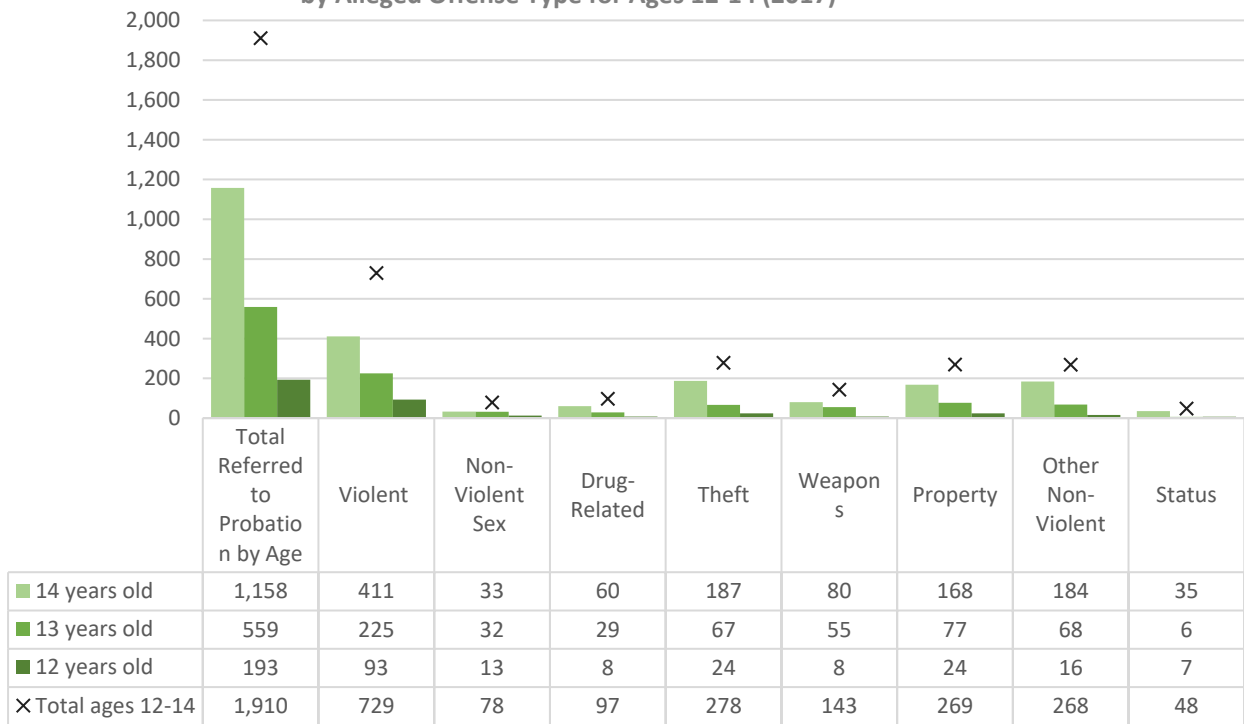


Figure 19. Youth Referred to Probation in Los Angeles County by Alleged Offense Type for Ages 12-14 (2017)



This report does not include a recommendation to expand the minimum age of *prosecution* at this time – given the considerable increase in the both the number and severity of youth arrests and referrals to prosecution of youth 12 years old and older, the need for additional data and ongoing work to better understand the service and placement needs of all youth and the ultimate authority that lies with the District Attorney’s Office or state statute to set limitations on prosecution.

Further data on the numbers, demographics, the underlying alleged offenses and underlying needs of youth detained in juvenile hall were not available or not made available. Still, this report does recommend below: a minimum age policy barring detention for 12-year-old youth; a strong protocol allowing a departure from the policy only in the rarest instance; and a commitment to further research and identify best practices in detention and alternatives for older youth.

4. Active and Pending Cases in Los Angeles County in December 2018

To further understand the immediate needs in implementing Senate Bill 439, the three public defender offices collaborated with YDD in December 2018 to identify eight active cases in Los Angeles where youth were under 12 at the time of their alleged offenses and juvenile courts would lose jurisdiction. Notable characteristics of these eight cases included:

- Competency – As of November 2018, three cases were suspended on the basis of potential incompetency of the youth to stand trial.
- Post-disposition – Three youth had been formally adjudicated wards of the court and were in a post-disposition procedural posture.
- Out-of-home placement – One youth was in an out-of-home placement which was out-of-state and funded through his IEP.
- No current, formal dependency involvement – None of the eight youth were in the dependency system. However, three youth had previous dependency involvement.
- Learning disabilities – Six youth had individualized educational plans (IEPs) based on identified learning disabilities; the bases of four of the IEPs was “emotional disturbance.”
- Development disability – One youth was a Regional Center client.
- School-based incidents – Three youth were referred for school-based incidents; none of the underlying incidents occurred at group homes.
- Detention – Each youth was initially detained, and each was released at their detention hearing upon argument by the Public Defenders Office.

Taken together, the characteristics of recent cases suggested:

- No alternative placements needed to be secured for these youth in 2019.
- Alternative agencies, primarily focused on education and developmental needs, could continue to provide services.
- Advocacy was critical to ensure placements and services are appropriate for youth.

5. Research on Diversion/Alternative Placements to Detention for Younger Children

Some children under 12 who were arrested, prosecuted and/or detained prior to SB 439 may have needed interventions beyond counsel and release back home, or a referral to community-based services. Research on other states and counties that have minimum age policies on detention or prosecution show that alternative interventions have typically included:

- 1) **Multi-Disciplinary Teams** – Diverse teams determine the best response for a youth under the minimum age cut-off. The teams are composed differently, but all serve the same purpose: to assess and provide an individualized response for a child accused of wrongdoing.
- 2) **Stated values** – Several counties suggested or stated explicitly that the most important aspect of their minimum age protocols was articulating and ensuring shared values about how young people accused of crimes should be treated. Those values drove

communication and decision-making about supporting each youth, as well as service delivery and placement.

3) **Services** – In other states and counties, services are either completely voluntary, or ordered through dependency or a third kind of jurisdiction entitled “Children in Need of Services”, “Youth in Need of Protective Services or “Families in Need of Services.”

- For instance in Nebraska, beyond placing a child under 11 in temporary custody for 24 hours through the Department of Health and Human Services, the County Attorney may file a case in the interests of the child to maintain jurisdiction to order and ensure ongoing services to a child. In this case, the parent(s)/guardian(s) would face adjudication and noncompliance could result in the child being taken away.
- In Texas, children under the minimum age of jurisdiction are explicitly included in the list of young people eligible for services through the Department of Family and Protective Services (DFPS), although they must be referred to DFPS by law enforcement, courts, or probation.
- In Pennsylvania, police decide what rises to the level of a child welfare referral and which children can just be taken home. Children under the minimum are often referred to non-binding services (along with the families) by the child welfare system without any formal dependency court involvement.

4) **Placements** – Temporary and/or longer-term placements are typically available through:

- Department of Health and Human Services (DHHS)
 - Massachusetts has community-based resource centers that serve as a physical place to which children can be taken if they commit an offense. The Health and Human Services department administers these resource centers and provides service referrals to children and families requiring assistance.
 - In San Diego, the Polinsky Children’s Center serves as a temporary emergency shelter for children, including those under 12, and is run by DHHS.
 - In Nebraska, where the minimum age of jurisdiction is 11, youth may be referred to DHHS for temporary custody up to 24 hours.
- Department of Children and Family Services
 - In San Diego, the Cool Bed Program is a certified foster home where probation youth ages 12-18 arrested for a misdemeanor family crime may go and be supervised for 5-7 days. There is no equivalent available for under 12-year-olds.
- Department of Developmental Disabilities and Mental Health – for cases involving developmental disabilities, or mental illness, there are typically pathways to:
 - Short-term stays at non-detention facilities like children’s or psychiatric hospitals
 - Short and longer-term, small group home placements, instead of large, state-run institutions, in conjunction with community-based services. In California, there are have been problems having youth be accepted by these placements.
 - Secure residential treatment facilities, as an alternative to out-of-state placements and state-run psychiatric hospitals.

10) Findings from Research and Stakeholder Discussions

This section draws from data, research and diverse engagement meetings to arrive at the following agreements and concerns about implementing diversion of younger children. Typically, the concerns involve either disagreements or unresolved questions. It is important to note that much of the feedback goes beyond the call of SB 439 and other potential minimum age policies. Together these findings implicate and urge that justice, health, welfare, education and community-based systems overall adopt and are held accountable for effective approaches in developing all youth, including younger children.

Agreements

1) **Any contact with law enforcement can be harmful and should be avoided when possible.**

One of the driving rationales behind SB 439 was to minimize the negative impacts of even early law enforcement contacts shown to be unnecessary and potentially harmful in the immediate and long-term. Entering the juvenile justice system, even briefly, increases the likelihood of dropping out of school as well as of future involvement in the adult justice system. For instance, youth who were in custody—even for a few days—were 39% less likely to finish high school and 67% more likely to be in prison by the age of 25 than were their peers without system contact.¹⁷ The odds of high school drop-out are nearly doubled by a first-time arrest and nearly quadrupled by a first-time court appearance.¹⁸ Diversion from the justice system to alternative interventions can effectively deter future offending, school misconduct, school truancy and suspensions.¹⁹

At community meetings, residents affirmed that their contacts with law enforcement resulted in a range of adverse consequences, including:

- Mental health issues, such as increased anger, trauma, depression, stress and fear, including of deportation and family separation;
- Barriers to education and employment caused directly by law enforcement involvement or indirectly through permanent criminal records;
- Negative labeling, stigmatizing and internalization affecting self-esteem and perception by others; and
- Exposure to gangs and criminal activity not otherwise exposed to.

2) **Effective alternatives rooted in holistic youth development should be explored – but not over-used – to address the underlying causes of justice system contacts.**

Many youth who experience justice system contacts have histories of early-age maltreatment, trauma, learning problems, or other underlying and unaddressed behavioral and environmental conditions.²⁰ Involvement with the juvenile justice system can

¹⁷ Aizer and Doyle, "Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges" (2013).

¹⁸ Sweeten, G., "Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement", Justice Quarterly, Volume 23, No. 4 (2006).

¹⁹ Jordan Bechtold Beardslee, "Under the Radar or Under Arrest: How Does Contact with the Juvenile Justice System Affect Delinquency and Academic Outcomes?", University California of Irvine (2014).

²⁰ Loeber, R., Farrington, D. & Petechuk, D. "Child Delinquency: Early Intervention and Prevention", Washington DC. US Department of Justice - Office of Juvenile Justice & Delinquency Programs (2003).

exacerbate existing trauma. As research and community leaders suggest, children's underlying behavioral needs should be addressed through alternative child-serving systems, such as community- and family-based health and mental health, education, child welfare services, and other community-based services and programs that meaningfully engage children, their families and communities and promote healing.

There is also agreement that young children should not be removed from their homes as a default. In the most severe cases where young children present psychiatric disorders, temporary and longer-term secure holdings, in addition to mental health evaluations and treatment, are available through existing health systems. In other rare instances, the dependency system may consider removing a child from their home.

Across the board, community residents advocated for strong, holistic youth development infrastructure, with attention to improved, comprehensive assessment tools and processes to identify the right kind of intervention for youth and families across systems. However, even where some type of intervention is deemed appropriate, community and law enforcement and other system representatives alike pointed out that the diversion approaches through any system should be proportionate, and focused on developing the strengths and well-being of youth and families. There was consensus that diversion can also risk being more intensive, unnecessary and harmful to youth than either the justice system or leaving them alone.

3) Violence and harm and threats of such need to be taken seriously - effective intervention is part of public safety.

Research and feedback from the community and system representatives underscore the reality of threats and dangers and the harm inflicted on communities as a result. Although no cases of under-12-year-olds were cited, the District Attorney's Office offered several examples of 12-year-olds alleged to have inflicted serious harm or posed serious threats. Law enforcement, including the prosecutor's office, share an interest in understanding and promoting effective alternative interventions and placements to reduce harm, promote youth development, and ensure community safety.

4) Los Angeles has a growing infrastructure of youth-serving initiatives, programs, and supports but should improve access and coordination.

Stakeholders recognized that Los Angeles County has a wealth of youth development initiatives, programs and services to strengthen and expand, but there was still general consensus – by judges, police, attorneys, community workers, youth, and families – that there is a need to better identify and use these resources, evaluate them, and better coordinate to avoid duplicating such resources.

5) It is important not to widen the net or bring more youth into the dependency system.

There was repeated cautioning and agreement that implementation of diversion of younger children should avoid over-relying on and involving youth in the dependency system. While retaining wide latitude to intervene where there is abuse or neglect, or a lack of control by parents and guardians, dependency courts should be used as a last resort for young children and families with substantial unmet needs.

Concerns

1) Lack of data about detained youth

In considering recommendations on further detention policies for youth 12-years-old and older, further data on the numbers, demographics, the underlying alleged offenses and underlying needs of youth, is needed. Further information-gathering about youth detained and supervised by the Probation Department and Department of Mental Health are needed to better understand the appropriate type and level of intervention needed. Stakeholders also raised concerns about this lack of data and information about the characteristics and experiences of youth involved in the justice system.

2) Effectiveness of interventions

Overall, feedback was consistent that more data and evaluation is also needed about the effectiveness of all public and private community-based systems of care for youth. Simply put, we still do not know enough about what works or is implemented well. Even if something is called “holistic” and “culturally relevant” or “youth development,” the fidelity to those concepts and their impacts on youth need to be better studied and supported. There is agreement that accountability and supports for both government systems and community-based organizations are important, and youth and their communities should meaningfully inform the design, delivery and evaluation of interventions.

3) Lack of temporary housing and secure alternatives to juvenile halls and camps for youth under 12 and few options for youth over 12.

There is a strong, widely shared belief that children under 12-years-old do not need any secure alternatives to juvenile halls at all – and those available through health systems in cases of medical crisis and through dependency systems in cases of abuse and neglect are sufficient. With regards to non-secure alternatives, there are questions about Short-Term Residential Therapeutic Programs (STRTPs)²¹, resource families (including those approved to provide Intensive Services Foster Care (ISFC)), relative/non-relative caregivers, and other temporary housing – including about the barriers to placement for justice-involved youth, the availability of placements prior to any child welfare system involvement, and the effectiveness of supports and services in such settings. Stakeholders interested in justice reform thus recognize that there must be greater attention and linkages to implementation of continuum of care reform happening on the dependency side.

The questions of what secure alternatives do and should exist for youth age 12 and older are unanswered. For all ages, further research is needed, including about:

²¹ STRTPs were a concept resulting from Continuum of Care Reform, an effort authorized by Senate Bill 1013 (2012) and launched in September 2012 by the California Department of Social Services (CDSS) in partnership with the County Welfare Directors Association of California to improve the rate setting system, and the services and programs serving children and families in the continuum of placement settings. In January 2015, CDSS released a report to the legislature that outlined the comprehensive approach to improving the experience and outcomes of children in foster care and made recommendations to improve the Continuum of Care through legislative action. Section 1502 of the Health and Safety Code defines STRTPs as: “a residential facility operated by a public agency or private organization and licensed by the department pursuant to Section 1562.01 that provides an integrated program of specialized and intensive care and supervision, services and supports, treatment, and short-term, 24-hour care and supervision to children.”

- **The two local Community Treatment Facilities** – that serve 12- to 17-year-old youth, and whether they can be expanded to serve as alternatives to juvenile halls and camps generally, including for youth under the age of 12; and
- **Children’s Crisis Residential Programs** – which is a subcategory of licensing under STRTPs and was created in 2017 through legislation "to serve children, nonminor dependents, and individuals 18 to 20 years of age, experiencing mental health crises as an alternative to psychiatric hospitalization."²² Legislative materials that created CCRPs specifically addressed the lack of children’s mental health crisis residential services for children under 12.²³ Health and Safety Code section 1562.03 provides that CCRPs shall provide “therapeutic programming” seven days a week “to maintain an appropriate treatment setting and services, based on individual children's needs” and that the program shall be sufficient staffed “to accept children 24 hours per day, seven days a week and to admit children, at a minimum, from 7 a.m. to 11 p.m., seven days a week, 365 days per year.” As of December 2019, Los Angeles County has not developed CCRPs.

4) Unfinished definitions or dialogues to reach clarity and agreements or disagreements

From prosecutors and police to community representatives, many beliefs and goals do converge around needing to reduce reliance on policing, prosecution and court processes to respond to youth. At the same time, there is a sense that concepts and language like “ending youth incarceration” and “transformative justice” need to be better and specifically defined. There is a call all around to continue to listen and elaborate.

Beyond SB 439

1) Other systems may also need to be transformed to be more holistic, better resourced, and more capable of partnering with community-based services.

Implementing SB 439 true to its intent of decriminalizing the behaviors of young children implicates the practices of entire justice systems, other systems and communities – and the resources and readiness of all of them. For instance, to avoid the negative impacts intended, a youth under 12 should be diverted away from both prosecution in courts and expulsion from school. Repeatedly, community representatives discussed the need to avoid stigmatization and pathology in over-relying on traditional mental health diagnosis and treatment as well.

In short, extensive feedback from system and community representatives alike dealt with reforms to whole justice, health, education and community-based provider systems generally – not necessarily specifically for youth under 12. The feedback is important reminder of the need to shift attitudes, practices and investments towards holistic healing across the board for youth at risk of involvement or involved in justice systems.

²² California Department of Social Services, “Short Term Residential Therapeutic Program Interim Licensing Standards: Subchapter 3” (Released January 29, 2019), Section 87098.10, page 5; *see also* “Assembly Bill 501: Factsheet” (2017).

²³ *See* Assembly Bill 501: Factsheet” (2017). “With 47 out of 58 counties lacking any child/adolescent psychiatric hospital inpatient beds for children under 12 (and fewer than 70 beds statewide) the need for children’s mental health crisis residential services could not be more acute.”

G) Recommendations on Implementing SB 439 and Diversion of Younger Children

At least three overriding realities drive the conclusions of this implementation project: 1) the profile of the impacted youth population – the historically low and declining numbers, nature, and early dismissal and resolution of allegations against children under 12 informally or as low-level offenses; 2) research and community input – showing the actual and potential harms of system involvement to youth, as well as the effectiveness or promising impacts of alternatives to justice systems and punitive practices, and 3) the expanding infrastructure and investment in Los Angeles County and statewide in diversion and youth development generally.

Given the current landscape of existing holistic services for youth who are system-impacted and at risk of system involvement, the ultimate recommendation in this plan is to leverage and better implement existing resources—including better identification, utilization, access, communication and coordination, training and protocols, and data collection and evaluation—to strengthen, connect, or expand existing resources. This includes, for example, a recommendation to implement and meaningfully assess an existing category of Short-Term Residential Treatment Programs called Children’s Crisis Residential Programs created under state law for both youth under and over 12.

The specific recommendations below do not at this time recommend the development of any new services, programs or placements for youth under 12. For 12-year-olds, this plan does include a recommendation to develop and adopt a robust policy and protocol for presumptively prohibiting their detention. For youth over the age of 12, this report recommends deferring many questions related to other minimum age policies for further research and decision-making, especially in light of new and overlapping planning projects that have emerged in the last year. Among the notable projects is a motion adopted on August 13, 2019 to study the feasibility of and propose a path for restructuring the juvenile justice system in Los Angeles County – such that responsibility over all justice system-involved youth would be transferred from probation to another system, existing or new altogether. As such, questions that were unanswered here should be merged into the global examination of juvenile probation and alternative youth-serving systems in Los Angeles. As this County drills deeper into the specifics of implementation, the guiding principles of younger children diversion should inform all efforts to reimagine ineffective, harmful, and punitive systems and practices to create and strengthen healthy, healing ones instead.

The recommendations for implementation of SB 439 fall into the following categories: service delivery and infrastructure, police training and protocols, placements, additional minimum age policies, and beyond SB 439.

Section 1: Recommendations on Service Delivery and Infrastructure

1. The Division of Youth Diversion and Development (YDD), in collaboration with the Department of Mental Health (DMH) and Office of Child Protection (OCP), should increase access to and utilization of existing prevention and early intervention services and infrastructure for youth under 12 who are at risk of future justice involvement. These

strategies to increase access and utilization to resources for youth impacted by SB 439 should include:

- 1.1. Continuing to build and update a central repository of information about resources for youth through available education, child-welfare, and health-oriented providers, prioritizing those that are holistic and community-based and designating those available for youth under 12;
 - 1.1.1. Compiling information about resources specific to young people who are in disproportionately impacted or particularly vulnerable populations, including Black and Hispanic/Latinx youth, undocumented youth, LGBTQ youth, foster youth, and youth with serious mental or physical health needs;
 - 1.1.2. Connecting the information and resources to justice systems and other youth-serving systems—including schools—through facilitating spaces for cross-sector communication, coordination and collaboration;
 - 1.1.3. Making information about identified resources accessible to the community through a variety of outreach communications and technologies in collaboration with youth and community leaders;
 - 1.2. Working with existing services to decrease eligibility restrictions and improve cultural responsiveness so that justice-involved young people—especially those who are in disproportionately impacted or particularly vulnerable populations—are not excluded from accessing or meaningfully utilizing services; and
 - 1.3. Providing support for research, evaluation, and youth/community engagement focused on holistic, community-based youth development and restorative/transformational justice approaches for partners across systems, including coordination with other county initiatives focused on positive youth development such as the Department of Parks and Recreation’s County Youth Networking Group and public-private partnerships like Ready to Rise.
2. YDD should work with the Chief Executive Office to explore avenues for additional resources and staffing to support the implementation of SB 439 recommendations, including at least one full time SB 439 implementation coordinator housed in YDD. Future phases should include additional staff to support research and evaluation in addition to positions for young people and system-impacted people.
 3. YDD should work with the Center for Strategic Partnerships to engage philanthropy as thought partners in addition to potential funding partners focused on components of this work for which public funding is not available.

Section 2: Recommendations on First Responder Training and Protocols

4. YDD should work with the Public Defender’s Office in collaboration with youth/community leaders and other stakeholders to continue to develop and disseminate outreach materials and trainings on the change in law; alternatives to the justice system; and developmentally

appropriate, trauma-informed, racially equitable approaches to youth—focusing on first responders like police, schools, congregate care, service providers, and communities disproportionately impacted by youth arrest. These strategies to increase awareness of appropriate responses to youth impacted by SB 439 should include:

- 4.1. Clarifying that YDD be an entity to receive diversion and development referrals, including of youth under age 12;
 - 4.2. Clarifying that law enforcement agencies who have contact with youth under 12 shall report such contacts to YDD for the purposes of coordinating potential service referrals, monitoring and enforcement, and research and evaluation;
 - 4.3. Clarifying that the Public Defender’s Office should be contacted immediately about improper citations and petitions by law enforcement agencies of youth under 12;
 - 4.4. Addressing the need for alternatives to transportation in police cars and temporary detention at police stations to reduce the negative impact of trauma and stigmatization on youth and families; and
 - 4.5. Language, visuals, and mediums for know-your-rights information that are culturally relevant and accessible.
5. YDD should maintain specific protections on collection, access to, and use of information for youth under 12 over whom the court can no longer have jurisdiction through County information-sharing protocols and legislative amendments if necessary, reflecting the protocols for information generated by informal service referrals established by the YDD model. These protections for data on youth impacted by SB 439 should:
- 5.1. Include high-quality and well-coordinated record-keeping among the network of community-based organizations providing services to youth under 12;
 - 5.2. Ensure regular assessment and cross-sector review of de-identified data to avoid duplication of services and hold partners accountable to standards of quality and equity;
 - 5.3. Provide data capacity-building and support as needed to improve system, program, and service delivery effectiveness;
 - 5.4. Prohibit the sharing of individualized referral or service-utilization data for youth under 12 impacted by SB 439 by referring law enforcement agencies and service providers with other law enforcement and justice system agencies; and
 - 5.5. Prohibit the use in any future court proceedings of statements made by youth under 12 impacted by SB 439 in the course of referral or participation in services.
6. YDD should monitor the implementation of SB 439 through maintaining regular collaboration and communication with law enforcement agencies, the Probation

Department, Public Defender's Office and District Attorney's Office about youth under 12 who come into contact with law enforcement and the justice system.

Section 3: Recommendations on Addressing the Need for Placements

7. The SB 439 Support Team developed for the 2019 Temporary Protocol—including the Office of Diversion and Reentry's Division of Youth Diversion and Development, the Probation Department, the Department of Children and Family Services, the Children's Defense Fund, Public Counsel, and the Children's Law Center—should continue to support the resolution of law enforcement contacts with youth under 12 and ensure return home as the default, always taking into account the child's risk of harm to him/herself or others. Reflecting evidence of promising practices, it is recommended that a child under 12 does not require, and should not be placed in, a locked facility when the following strategies are available:
 - 7.1. All placements recommended are non-secure, though such placements may and can adopt high security measures in order to ensure the safety of a child, other children, and staff.
 - 7.2. In the rare instances children under 12 cannot return home immediately, the Support Team should work together to utilize and ensure adequate capacity and access to existing short and longer-term placements available through the education, welfare and health pathways and systems;
 - 7.3. In cases where psychiatric care is required, the Support Team should connect youth and families to Children's Hospitals;
 - 7.4. Where psychiatric care is not needed, the Support Team should consult DCFS for short-term placement with resource families and relative/non-relative caregivers first; and
 - 7.5. Where resource families and relatives/non-family relatives are not viable options, DCFS should use temporary housing like Short Term Residential Therapeutic Programs (STRTPs).
8. The County should pursue collaborative efforts—including community-based organizations serving youth and system-impacted youth and families—to evaluate and improve of placements for children under 12 as well as all youth. This research should include:
 - 8.1. Exploring the need for and capacity to strengthen temporary housing options like STRTPs, including access to and payment for them;
 - 8.2. Developing access to resource families, and relative/non-family caregivers and STRTPs without the involvement of the Department of Children and Family Services; and
 - 8.3. Implementing Children's Crisis Residential Programs as a subcategory of STRTPs to serve youth under 12, as well as considering CCRPs an alternative to juvenile halls and camps for youth 12 and older.

Section 4: Recommendations on Additional Minimum Age Policies

9. The County should adopt a protocol for presumptively prohibiting detention of 12-year-olds with a system of overrides to permit detention of a 12-year-old only in the rare instance.
10. The County should continue to assess the feasibility of expanding the minimum age of detention of youth older than 12-years-old as new information arises about their placement needs.

Section 5: Recommendations Beyond SB 439

11. YDD should continue to strengthen and expand implementation of its diversion protocol, making pre-booking or pre-arrest diversion available to all legally eligible youth under 18 through:
 - 11.1. Ensuring existing sites are implementing the protocol effectively;
 - 11.2. Cultivating additional law enforcement and service provider partners to divert youth at the earliest point possible;
 - 11.3. Cultivating school and community pathways to diversion without involving law enforcement or school discipline by connecting diversion to efforts promoting youth development, restorative and transformative justice, and positive school climates; and
12. The Youth Justice Work Group should research, and/or identify opportunities for further research on, alternative models for safe and healing-centered practices, supports and placements for all youth. The research should address the needs and experiences of justice-involved youth, including their mental health needs and diagnoses; school-based arrests/discipline and promising practices to improve school climate; placement models that are community-run and available 24 hours a day, 7 days a week; multi-disciplinary crisis response teams; and models for community training institutes focused on youth and community development, positive school climate, and restorative/transformative justice.
13. The County should continue to engage and support impacted youth and communities in the development, implementation and monitoring of all diversion and development efforts, including all of the above related to SB 439, by developing a dependable mechanism by which resources for stipends, transportation, and food can be provided to youth participating in the YDD Steering Committee and other youth advisory councils and commissions.

Exhibit A: RECOMMENDED SB 439 PROTOCOL

Guiding Principles for SB 439 Implementation:

- End arrest, detention and prosecution of children under 12, except in murder and forcible sex offenses cases.
- Reflecting research and evidence on effective diversion, counsel and release to family should be the default in most all of cases, accounting for the child's risk of harm to themselves or others.
- Responses thereafter should be the least restrictive alternatives through available school, health and community-based services.
- Dependency system intervention should also be sparing.

Step 1. Police officer has contact with a child

Step 2. Officer ascertains age using department protocols

Step 3. If under 12

Officer contacts family, including legal guardian or youth-identified caretaker

Step 4. If under 12, and not counseled/released, officer can take youth into temporary custody if the officer has reasonable cause to believe:

- The child is a victim of abuse or neglect, there is suspicion of abuse and neglect, or is immediate danger of physical or sexual abuse → **call DCFS 24/7 hotline: (800) 540-4000**
- The child has an immediate need for medical care → **take child to the hospital**
 - Children's Hospital of Los Angeles: 4650 Sunset Blvd, Los Angeles, CA 90027
 - UCLA Mattel Children's Hospital: 757 Westwood Plaza, Los Angeles, CA 90095
- The physical environment poses an immediate threat to the child's health or safety →
 - **Call DCFS 24/7 hotline: (800) 540-4000**
 - **Call FARS (Family Able to Resolve Situations, a family mediation program, open M-F, 9-5): (310) 970-7701**
- The child is missing from another jurisdiction and there is a missing child report on file with the National Crime Information Center → **Call NCIC 24/7 hotline: (304) 625-2000**
- There is an active warrant from another co → **call LA County Probation: (866) 931-222**

Default: Counsel and Release (refer to community-based services whenever appropriate)

YDD

2-1-1

Prevention-Aftercare Networks (call 211 to request)

Additional Communications and Support

5. Within 48 hours, referring law enforcement agency should report contact and/or referral of a young person under 12 to the Division of Youth Diversion and Development.

Once youth is referred, systems are assumed to utilize their internal protocols for further responses. For additional support or alternative responses, systems may contact YDD to utilize the on-call SB 439 Support Team for multi-disciplinary assistance.

GLOSSARY

- **Office of Diversion and Reentry, Youth Diversion and Development (YDD)** – YDD was created in 2017 as the result of a cross-system collaboration to develop a countywide blueprint for expanding youth diversion in Los Angeles County at the earliest point possible; in January 2018, YDD selected 9 service providers as the first cohort to receive law enforcement diversion referrals.
- **Department of Children and Family Services Prevention-Aftercare Networks (P&As)** – DCFS institutionalized its community-based networks of service providers in 2015 and established ten countywide Prevention and Aftercare networks (P&As). These include a broad range of public, private, and faith-based member organizations that bring resources to the shared goal of preventing child abuse and neglect, along with designated lead agencies responsible for convening, organizing, and leading local grassroots groups.
- **211** – 211 LA is the central source for providing information and referrals for all health and human services in LA County. The 2-1-1 phone line is open 24 hours, 7 days a week, with trained Community Resource Advisors prepared to offer help with any situation, any time. If calling from outside Los Angeles County or cannot directly dial 2-1-1, call **(800) 339-6993**.