

## SB 439: Minimum Age of Juvenile Court Prosecution

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On September 30, 2018, Governor Jerry Brown signed into law Senate Bill 439 (authored by Senator Holly J. Mitchell) 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 both children's well-being and public safety.

The change in law aligns California with the United Nations Convention on the Rights of the Child<sup>1</sup> and the recommendations of the American Academy of Pediatrics, the American Bar Association, and the National Academy of Sciences, all recognizing the developmental vulnerabilities of young children in the context of the justice system.<sup>2</sup>

### Key Clarifications about SB 439

To develop an implementation plan that complies with SB 439, several implications of the change in law are important to note. These include that:

- Youth under 12 cannot be prosecuted except for murder or forcible rape.
- Youth under 12 cannot be detained, as no delinquency or criminal court has jurisdiction over them.
- Counties must have a protocol for addressing alternatives to prosecution for youth under 12 by January 1, 2020, even though juvenile court jurisdiction is no longer permissible starting January 1, 2019. In the meantime, counties may individually troubleshoot the circumstances and needs of each individual youth under 12 who otherwise was or may have been under juvenile court jurisdiction.

It is also important to recognize that 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). That said, best practices research counsels that dependency system intervention, including removal of children from their home, should also be sparing and used as a last resort.

The explicit language of SB 439 also provides several guiding principles that are critical for the developing effective policies and practices in keeping with the spirit of the law:

- Counsel and release should be the default in the vast majority of cases.
- Responses thereafter should be the least restrictive alternatives through available school, health and community-based services.
- An intervention at all should be avoided wherever possible (recognizing the research on desistance shows that many youth who exhibit some problematic behavior do better without any intervention than with some).

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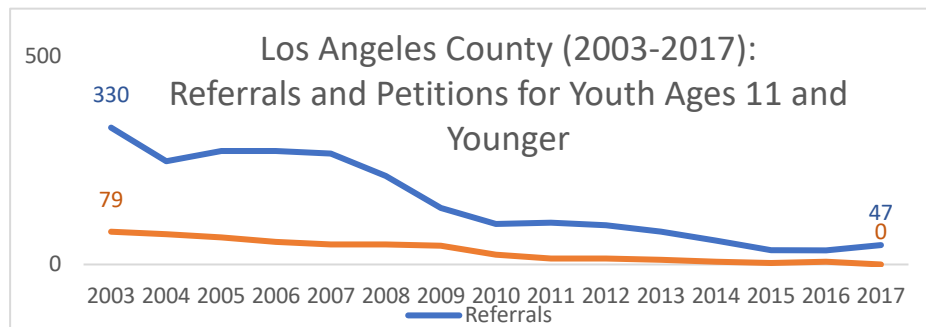
<sup>1</sup> United National General Assembly. 1989. United Nations Convention on the Rights of the Child. Geneva: United Nations.

<sup>2</sup> American Academy of Pediatrics, Committee on Adolescence. 2011. Health care for youth in the juvenile justice system. *Pediatrics*, 128, 1219-1235; American Bar Association. 1977. Standards Related to Juvenile Delinquency and Sanctions. Washington DC: American Bar Association; National Research Council. 2013. Reforming Juvenile Justice: A Developmental Approach. Washington DC: National Academies Press.

## Profile of Younger Children’s Justice Involvement in Los Angeles County

Fortunately, data shows a downward trend over the last decade in total referrals and petitions of youth under 12 in Los Angeles County:

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Youth pop (5-11)</b>	916,481	900,602	895,479	894,576	888,081	882,700	879,557	875,834	871,822	869,080	N/A
<b>Referrals</b>	268	213	137	97	101	95	79	57	35	34	47
<b>Petitions</b>	48	48	45	23	14	15	11	7	4	7	0



Between 2007-2017, Black and Latino youth made up the overwhelming total of youth referred (90 percent) to the juvenile justice system:

Referrals of Children under 12 in Los Angeles County by Race (2007-2017)												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total ('07-17)
<b>Black</b>	103	80	54	30	47	31	26	28	18	16	19	452 (39%)
<b>Latino</b>	141	113	70	58	44	52	47	21	13	14	24	597 (51%)
<b>White</b>	19	16	9	6	7	10	4	6	3	2	3	85 (7%)
<b>API</b>	5	4	4	3	2	2	0	2	1	2	0	25 (2%)
<b>Other</b>	0	0	0	0	1	0	2	0	0	0	1	4
<b>Annual total</b>	268	213	137	97	101	95	79	57	35	34	47	1163

Consistent with statewide data, over 80 percent of cases of younger children referred between 2007-2017 are closed or dismissed at the outset. Of those petitioned, the racial disparity increases with Black and Latino children comprising 94 percent of the total:

Petitions of Children under 12 in Los Angeles County by Race (2007-2017)												
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total ('07-17)
<b>Black</b>	22	22	21	11	9	6	4	6	2	7	0	110 (50%)
<b>Latino</b>	23	23	21	12	3	8	7	0	1	0	0	98 (44%)
<b>White</b>	2	3	3	0	2	1	0	1	1	0	0	13 (6%)
<b>API</b>	1	0	0	0	0	0	0	0	0	0	0	1
<b>Other</b>	0	0	0	0	0	0	0	0	0	0	0	0
<b>Annual total</b>	48	48	45	23	14	15	11	7	4	7	0	222

Very few younger children are adjudicated to be formal wards of juvenile court under Welfare and Institutions Code section 602. For example, in recent years, two-thirds of the petitions against children under 12 are resolved pre-filing:

Total Referrals, Petitions and Dispositions of Children under 12 in Los Angeles County (2015 – 2017)						
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

Between 2014-2017, the offenses for which younger children have been prosecuted have primarily been theft, misdemeanor assault and battery and felony robbery. All of the cases were resolved as misdemeanors.

Offenses underlying Petitions of Children under 12 (2014-2017)						
	Theft	Assault and Battery	Robbery	Motor vehicle theft	Other Misdemeanor	Total
2014	1	2	0	3	1	7
2015	1	3	0	0	0	4
2016	0	1	6	0	0	7
2017	0	0	0	0	0	0

Although these numbers are low, national evidence and initial findings from local stakeholders suggest these young people face unique challenges with high levels of acuity, especially related to school support, trauma, and mental health.

### Active and Pending Cases in Los Angeles County in December 2018

In December 2018, the three public defender offices had identified eight active cases in Los Angeles of youth who were under 12 at the time of their alleged offenses. Notable characteristics of these eight cases include:

- **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 a ward 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 placement 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.