
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 439 **Hearing Date:** April 4, 2017
Author: Mitchell
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Jurisdiction of the Juvenile Court*

HISTORY

Source: Center on Juvenile and Criminal Justice
Children's Defense Fund
National Center on Youth Law
Youth Justice Coalition

Prior Legislation: None

Support: Alameda County Office of Education; Alliance for Boys and Men of Color; American Academy of Pediatrics, California; American Civil Liberties Union of California; Anti-Recidivism Coalition; Asian Americans Advancing Justice-California; California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; California School-Based Health Alliance; Contra Costa County Defenders Association; Courage Campaign; Fair Chance Project; Friends Committee on Legislation of California; Legal Services for Prisoners with Children; Motivating Individual Leadership for Public Advancement; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; Pacific Juvenile Defender Center; Prison Law Office; Public Counsel; Reentry Solutions Group; Root & Rebound; Urban Peace Institute; W. Haywood Burns Institute; Youth Law Center; 13 individuals

Opposition: California District Attorneys Association

PURPOSE

The purpose of this bill is to establish 12 years of age as the minimum age for which the juvenile court has jurisdiction and may adjudge a person a ward of the court.

Existing law provides that the juvenile court has jurisdiction over any person under 18 years of age who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age. Existing law further provides that the juvenile court may adjudge the person a ward of the court. (Welf. and Inst. Code § 601(a).)

Existing law provides that the juvenile court has jurisdiction over a minor who has four or more trancies within one school year or one for whom a school attendance review board or probation officer has determined that the available services are insufficient or inappropriate to correct the habitual truancy of the minor. (Welf. and Inst. § 601(b).)

Existing law provides that the juvenile court has jurisdiction over any person who is under 18 years of age when he or she violates any law of California or of the United States, or any ordinance of any city or county of California other than an aged-based curfew, except as provided in Welfare and Institutions Code Section 707. Existing law authorizes a juvenile court to adjudge a person under these circumstances a ward of the court. (Welf. and Inst. § 602.)

This bill establishes 12 years of age as the minimum age for juvenile court jurisdiction.

COMMENTS

1. Need for This Bill

California has no law specifying a minimum age for juvenile justice jurisdiction, meaning that young children of any age can be processed in the juvenile justice system provided that they meet the standards of **capacity** and **competency** under state law. Criminal **capacity** is most aptly defined as the mental ability that a person must possess to be held accountable for a crime or the ability to understand right from wrong. Outlined in California Penal Code 26, “all persons are capable of committing crimes except those belonging to the following classes: children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.”

Based on this law, police are supposed to administer a “Gladys R.” questionnaire to all children under 14 who are apprehended for a crime; the purpose of this assessment is to determine if a child has capacity to understand the wrongfulness of the crime.

In the criminal context, **competency** is the ability to understand the charges and the proceedings, to consult meaningfully with counsel, and to assist in one’s own defense. California Welfare and Institutions Code Section 709 states that a child is incompetent to stand trial in juvenile court if, “[S]he/he lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding of the nature of the charges or proceedings against him or her.” Numerous amounts of studies have demonstrated that juveniles lack the neurodevelopmental framework to be fully competent and capable to stand trial. The United Nations Convention on the Rights of the Child recommends a minimum age of at least 12 years old. As of 2014, 18 states had established a minimum age threshold for juvenile delinquency jurisdiction: one state has set a minimum age of 6 years old, four states have set an age of 7, one state has set an age of 8, and twelve states have set an age of 10. In 2016, the Massachusetts Senate passed legislation to raise the minimum age of juvenile delinquency jurisdiction to age 11. Legislation has been introduced in Illinois to raise the minimum age of detention to age 13.

The best ways to address the needs of young children who exhibit delinquency must be carefully evaluated and reframed within a neurodevelopmental framework. Minimum age legislation that excludes children younger than 12 years of age from contact with the juvenile justice system and that provides a consistent protocol to establish capacity and competency is an important policy goal for the state of California.

Prop 57 (2016) changed some provisions of Welfare and Institutions Code §602 only to reflect the discretion restored to judges to decide whether a youth should be prosecuted as an adult in criminal court. This bill does not conflict with Proposition 57 due to the fact that Prop 57 did not change the minimum age or age categories of young people who could be tried as adults. In contrast, legislation to exclude from the jurisdiction of the juvenile court youth under a certain age is not related to anything contemplated by Prop 57.

Finally, Proposition 47 (2014) was approved by an overwhelming 60 percent of the voters. Prop 47 created the Safe Neighborhoods and Schools Fund (SNSF), to be spent on mental health and substance use services, truancy and dropout prevention, and victim services. The passage of Prop 47 reflects a broad consensus by the California electorate that we should limit the interactions between our youth and the criminal justice process; thereby attacking the school-to-prison pipeline and providing children and families the resources to thrive.

2. Background

a. Capacity and Competency

Historically, children have not been considered to have the capacity to commit crimes. Criminal capacity describes the ability to understand right from wrong. Under Penal Code section 26, “all persons are capable of committing crimes.” An exception exists for children under the age of 14 “in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness.” This rebuttable presumption shifts the burden to prosecutors to prove that a child had capacity. A *Gladys R.* hearing is held to determine whether a child has capacity. Testimony regarding the child’s capacity from those who know the child, including the child’s parents, is introduced during the hearing. If it cannot be proven that the child has capacity, the juvenile court’s jurisdiction over the child is terminated.

Competency describes the ability of a person to understand the charges and the proceedings, to consult meaningfully with counsel, and to assist in his or her defense. Under Welfare and Institutions Code section 709, “a minor is incompetent to proceed if he or she lacks sufficient present ability to consult with counsel and assist in preparing his or her defense with a reasonable degree of rational understanding, or lacks a rational as well as factual understanding, of the nature of the charges or proceedings against him or her.” Section 709 further states that “[i]f the court finds substantial evidence raises a doubt as to the minor’s competency, the proceedings shall be suspended.” If the issue of incompetence is raised, the court will hold a competency hearing. An expert will be appointed to evaluate whether the minor suffers from mental disorder, developmental disability, developmental immaturity, or other condition, and whether the condition impairs the minor’s competency. Incompetence must be shown by a preponderance of the evidence.

b. DOJ Data on Juveniles in the Justice System

The California Department of Justice (DOJ) publishes an annual report on juvenile justice in the state, including the number of arrests, referrals to probation departments, petitions filed, and dispositions for juveniles tried in juvenile and adult courts. A juvenile may be arrested for violating a criminal statute or committing a status offense. A status offense involves conduct that would not be a crime if committed by an adult. Examples of status offenses include running away, curfew violations, truancy, and incorrigibility. Law enforcement officers have three options¹ upon arresting a juvenile: (1) Refer to the probation department; (2) Handle within the department where juveniles are counseled and released; or (3) Turn over to another agency.

The DOJ's 2015 report includes the following data:

- Out of 71,923 juvenile arrests, 984 arrests were of children under 12 years of age²
 - Of those 984 arrests of children under 12, 314 were for felonies, 579 were for misdemeanors, and 91 were for status offenses³
 - Of those 984 arrests of children under 12, 723 were referred to probation, 248 were counseled and released, and 13 were turned over to another agency⁴
- Out of 819 referral offenses⁵, 263 were for felonies, 512 were for misdemeanors, and 44 were for status offenses⁶
- Out of 687 children under 12 subject to detention following a referral to probation, 40 were detained
 - Of those 40 children detained, 38 were held in a secure facility
- Out of those 687 children under 12 subject to detention, 100 petitions were filed with the court, 476 cases were closed at intake, 28 juveniles were placed on informal probation, 77 cases were diverted, 2 cases were transferred, and 4 cases were handled in traffic court⁷
 - Of the 100 petitions that were filed in cases of children under 12, 40 were dismissed, 1 was transferred, 22 were placed on informal probation, 7 were placed on non-ward probation, and 30 were placed on wardship probation⁸
- No children under 12 were referred to probation for homicide in 2015⁹
- The most common offense type for which children under 12 were referred was assault and battery¹⁰

3. Effects of Incarceration on Juveniles

A growing body of research suggests that incarceration has several negative consequences on juveniles. Many juvenile offenders have histories of family dysfunction and maltreatment,

¹ <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf?> – p. 15

² *Id.* at p. 70

³ *Id.*

⁴ *Id.*

⁵ As many as 5 offenses can be listed per referral leading the number of referral offenses to be greater than the number of referrals.

⁶ <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj15/jj15.pdf?> – p. 80

⁷ *Id.*

⁸ *Id.* at p. 95

⁹ *Id.* at p. 81

¹⁰ *Id.* at p. 83

mental illness, and substance abuse as well as special education needs.¹¹ Some have noted that because incarceration removes a juvenile from the environment in which his or her offending behavior occurs and the factors that contribute to that behavior, incarceration limits the potential for the use of rehabilitative efforts that directly address those factors.¹² Others have observed that the nature of incarceration limits rehabilitation.¹³ These researchers posit that incarceration environments are frequently characterized by victimization, social isolation, and unaddressed or exacerbated mental health, educational, and health needs which may limit rehabilitation and have negative effects that contribute to recidivism.¹⁴ Additional research has documented the negative outcomes during adulthood of incarceration during adolescence.¹⁵ Research has shown that community-based rehabilitative interventions that facilitate collaboration between juvenile justice, mental health, and other services are an effective alternative to incarceration.¹⁶ Further, a 2011 report¹⁷ on the nation's juvenile correctional facilities concluded that "except in cases where juvenile offenders have committed serious crimes and pose a clear and present danger to society, removing troubled and delinquent young people from their homes and families is expensive and unnecessary—with results no better (and often far worse) on average than community-based supervision and treatment."

4. What This Bill Will Do

This bill will prohibit the prosecution of children under the age of 12 years in the juvenile court.

5. Argument in Support

The Pacific Juvenile Defender Center supports this bill stating:

As lawyers representing young people in juvenile court proceedings, our members regularly encounter cases in which children who are still in elementary school are being thrust into the machinery of the court system. These children are almost exclusively poor youth of color, from families that struggle to provide for them, and neighborhoods that are deficient in the supports and services that could help to keep the child on track. Many have experienced serious trauma and disruption at home, and violence in the community. A significant number have been placed out of home because of abuse or neglect. Some have serious mental health disorders. Often they have fallen through the cracks at school in having undiagnosed learning disabilities, suffering from bullying, harassment or other negative peer pressures, or having problems at home that have gone undetected by the adults around them. It is fair to say that when young children present at the front door of juvenile justice, they are almost always the victim of multiple system failures.

¹¹ Lambie & Randell, *The Impact of Incarceration on Juvenile Offenders* (2013) 33 Clinical Psych. Rev. 448, 450 [literature review of several published psychological studies].

¹² *Id.* at p. 452.

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Id.* at p. 455.

¹⁶ *Id.* at pp. 455-456; Henggeler & Schoenwald, *Evidence-Based Interventions for Juvenile Offenders and Juvenile Justice Policies That Support Them* (2011) 25 Social Policy Report 1, pp. 5-7.

¹⁷ Mendel, *No Place for Kids: The Case for Reducing Juvenile Incarceration* (2011) (<http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>) – p. 38

Moreover, the behavior that brings these children to the attention of the system is often age-typical behavior that, were they from more affluent or well-connected families, would result in a parent conference with the school or police, informal sanctions, or diversion from the system altogether. In our view, developmentally appropriate, non-criminal responses should be afforded to all young children – not just the ones who can afford to pay for them.

The juvenile justice system has little to offer these young people. Despite the rehabilitative goals of the system, the reality is that much of what happens is punitive. Young children often wind up in juvenile halls – locked up with much older youth who may prey on them, and who are unlikely to model the kind of behavior we want them to emulate. Because their cases often raise issues of competence to stand trial, they are also likely to be detained for much longer than older youth as the competence proceedings play out. Once their cases reach the disposition phase, they may wind up being placed in group homes or secure facilities that extend their confinement even longer.

Even the children who are placed on probation for minor offenses suffer serious collateral consequences. The court process typically requires a series of court appearances, each of which results in youth missing school – depriving them of days of education they will never get back, and giving them a “delinquent” label. In addition, courts often impose multiple probation conditions that require substantial time, effort and resources to fulfill....These conditions would be overwhelming for a person of any age, but placing such conditions on young children simply sets them up for failure and further intrusion into the system. Further, going through the court process may have insidious collateral consequences years down the road, even though the person was very young – for example, when they want to pursue a particular profession, join the military or navigate the immigration system.

According to researchers, what young children need more than anything is to be placed in as “normal” a setting as possible – preferably with their own family – where they can have the support of caring adults, learn skills, develop interests, and engage with prosocial youth....Each of these goals is significantly more difficult to achieve in the juvenile justice system....

6. Argument in Opposition

According to the California District Attorneys Association:

Existing law, Penal Code section 26, already excludes from prosecution youths age 13 and under who genuinely lack the maturity, teaching, and understanding that would enable them to grasp that what they have done was wrong. Put another way, youths age 13 and under who *can* be proven to have known the wrongfulness of their acts *can* be prosecuted in juvenile court. SB 439 would effectively wipe out prosecution of juveniles age 11 and under, regardless of whether the People can prove that the youths knew of the wrongfulness of their acts.

Because PC 26 already protects youths who cannot be shown to know the wrongfulness of their acts, all SB 439 does is give a complete pass to youths 11 and under who *did* know that their actions were wrong.

Further, SB 439 outlines no alternative recourse that can be taken against youths under age 12 who commit truly heinous acts. On occasion, youths under the age of 12 commit truly serious offenses that need and deserve handling by the courts.

One particularly haunting example is the 1993 murder of two-year-old James Bulger by two ten-year-old boys near Liverpool, England. The two boys spotted the toddler at a shopping center, kidnapped him while his mother was distracted, took him on a short journey wherein they physically abused him, and finally fractured his skull and killed him. They left his body on railroad tracks, where it was severed by an oncoming train.

Under SB 439, crimes such as this could not be prosecuted at all in California.

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