



Senators Holly J. Mitchell and Lara

SB 439 - Setting a Minimum Age for Juvenile Court Prosecution

THIS BILL

SB 439 would exclude children 11 years old and younger from prosecution in juvenile court. The bill would protect young children from the negative impacts of formal justice system involvement, promote their rights, health, and well-being through alternative child-serving systems, and decrease the amount of resources wasted in the juvenile justice system. It would amend California Welfare & Institutions code 601 and 602 to establish that juvenile court jurisdiction excludes children 11 years old and younger from prosecution.

ISSUE

California has no law specifying a minimum age for juvenile justice jurisdiction, meaning that young children of any age can be prosecuted in the juvenile justice court system. In 2015, 687 referrals were made in California to prosecute children under 12. Of these referrals, only 100 were prosecuted. In the end, fewer than 9 percent of the prosecuted cases ended in a sustained petition. Moreover, young children of color are far more likely to become justice system involved for the same acts as White children.

Although these young children represent only 0.2% of cases in juvenile court, it remains important to protect this extremely vulnerable group. Numerous scientific studies, court decisions and experience have demonstrated that children are less culpable than adults for the same acts, and are less able to meaningfully navigate justice system processes, including working with their own attorneys. Moreover, system involvement can have lasting and negative psychological and health impacts on children. Ultimately, the needs underlying their alleged offenses are better addressed through alternatives to prosecution, including through child welfare, education, health care or human services.

BACKGROUND

The United Nations Convention on the Rights of the Child recommends a minimum age of criminal responsibility of at least 12 years old. As of 2014, 20 states had established a minimum age threshold for juvenile delinquency jurisdiction, with twelve states setting a minimum age of 10. California has an opportunity to be a leader in this critical area of juvenile justice reform.

There are several reasons to consider setting a minimum age of juvenile justice jurisdiction. These include:

- The inherent lesser culpability of young children under criminal law, given their expected developmental immaturity, as repeatedly recognized in recent United States Supreme Court decisions
- The diminished capacity of young children to make intentional decisions regarding participation in crime or understand that an act was morally wrong;
- The lesser ability of young children to understand court proceedings and meaningfully participate, emotionally or cognitively, in working with attorneys to wage their own defense
- The wasteful spending on prosecution and court proceedings on cases that end up largely dismissed or not sustained;
- Evidence that formal justice processing is harmful for children's health and development;
- The disproportionate impact juvenile court prosecution has on young children of color;
- Existing alternative services outside of the juvenile justice system – such as community-and family based health, education and welfare services – are more beneficial for young children and for public safety.

SUPPORT

Children's Defense Fund - California (Sponsor)
National Center on Youth Law (Co-Sponsor)
Center on Juvenile and Criminal Justice (Co-Sponsor)
Youth Justice Coalition (Co-Sponsor)
Anti-Recidivism Coalition (Co-Sponsor)
W. Haywood Burns Institute (Co-Sponsor)
Alameda County Office of Education
Alliance for Boys and Men of Color
Asian Americans Advancing Justice-California
California Alliance for Youth and Community Justice
California School-Based Health Alliance
Courage Campaign
Common Sense Kids Action
Contra Costa County Defenders Association
Fair Chance Project
Legal Services for Prisoners with Children
MILPA (Motivating Individual Leadership for Public
Advancement)
National Institute for Criminal Justice Reform
Prison Law Office
Public Counsel
Reentry Solutions Group
Society for Adolescent Health and Medicine
Urban Peace Institute

Youth Law Center
#cut50



OPPOSITION

California District Attorneys Association
Sacramento County District Attorney's Office

FOR MORE INFORMATION

Jorge Barajas, Legislative Aide
Office of Senator Holly J. Mitchell
(916) 651-4030
Jorge.Barajas@sen.ca.gov

SB 439:

End the Prosecution of Children Under 12

California currently has **NO** minimum age for prosecuting children.

Over a 10-year period, nearly 14,000 young children's cases were referred to probation for possible prosecution. Children as young as five years old were referred to probation and thereby exposed to the harms of formal justice system processing. Children of color were referred at the highest rates and bear the brunt of young-age court processing.

Most cases of young children between 2007-2016 were dismissed or closed without further action – formal processing is *wasteful* and *harmful*.



- 62% closed at intake
- 13% diverted
- 5% on informal probation

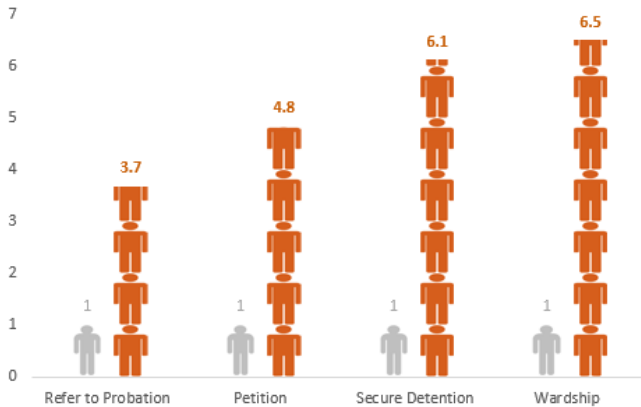
- 33% dismissed
- 34% on informal or non-wardship probation

- 78% on formal/"home on probation"
- 22% in out-of-home placement



Young Children of Color bear the brunt

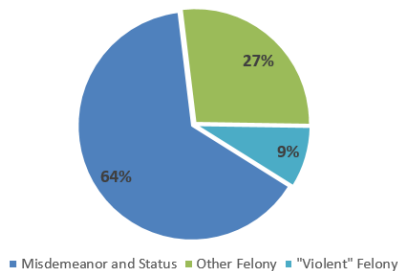
Cumulative Disadvantage for Black Youth
Ages 11 and Under (2007-2016)



Black and Latino children under 12 see increasingly disparate treatment as they move through the juvenile justice system.

Most young children are referred for non-serious offenses

- Only 12% of youth referred for "violent" felonies became a ward of juvenile court.
- One youth was referred for homicide in 10 years. The case was closed at intake.



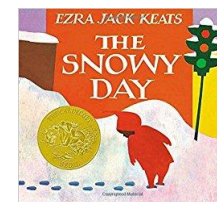
Children are still learning and growing.

They are not capable of understanding complex legal processes.



5-year-old (12 children referred)

- In kindergarten
- Learning letters



6-year-old (61 children referred)

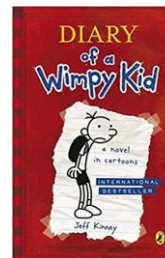
- In first grade
- Sounding out basic words

7-year-old (216 children referred)

- In second grade
- Recognizes some words by sight

8-year-old (515 children referred)

- In third grade
- Learning to write stories



9-year-old (1,283 children referred)

- In fourth grade
- Enjoys short chapter books

10-year-olds (2,914 children referred)

- In fifth grade
- Makes connections between books and real life

11-year-old (8,577 children referred)

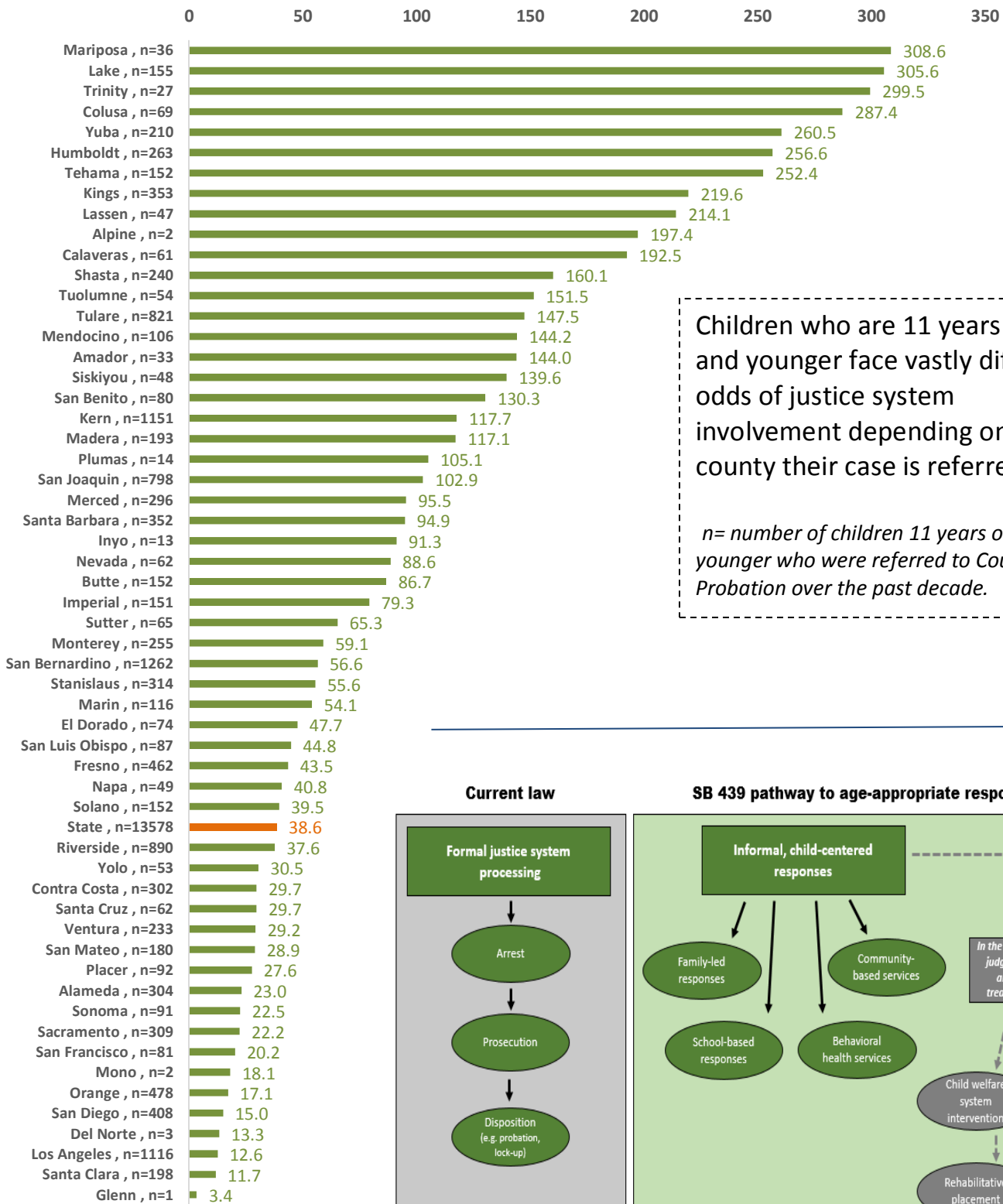
- In sixth grade
- Uses books to find new information



Young children face significant geographic disparities

Rate of Referral for youth 11 and Younger (2007-2016)

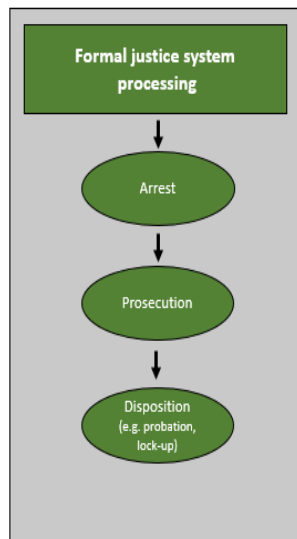
(per 100,000 youth ages 5-11 year olds in county, n = number of children referred to probation)



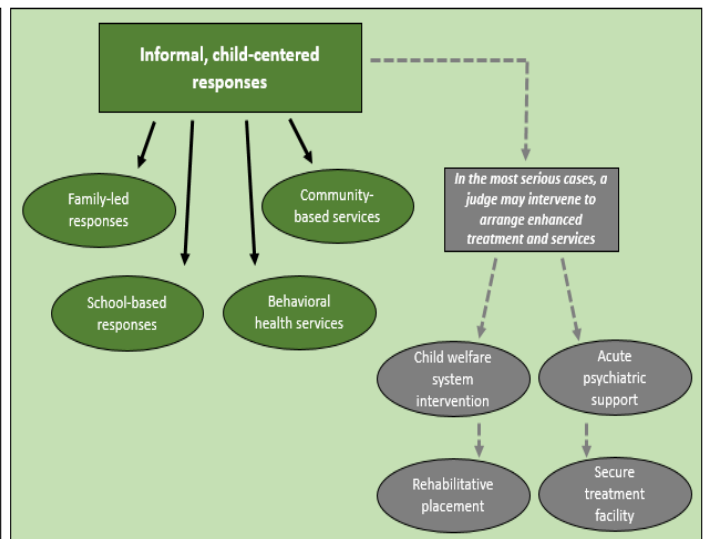
Children who are 11 years old and younger face vastly different odds of justice system involvement depending on the county their case is referred in.

n = number of children 11 years old and younger who were referred to County Probation over the past decade.

Current law



SB 439 pathway to age-appropriate responses



For more information: Laura Ridolfi, lrldolfi@burnsinstitute.org; Maureen Washburn, maureen@cjcj.org; Kim McGill, kim@youth4justice.org; and Patricia Soung, psoung@childrensdefense.org.