

To: JJPOC Diversion Subgroup
From: Legislative Advocacy Clinic | Yale Law School
Date: 04/02/2018
Re: Raising Minimum Age of Juvenile Jurisdiction in Connecticut

Landscape

- Statutes of 20 states specify a minimum age for delinquency adjudication. Two states set an age of 12. 11 states/territories set a minimum age of 10. Three states set a minimum age of eight. Three states set a minimum age of seven. One state sets a minimum age of six.¹
- Children can be subject to formal processing in juvenile court, including detention and confinement, a process that research and best practices would suggest is counter to the standard of the “best interests of the child.” The “best interests of the child” is one of the founding principles of the US juvenile justice system and is the operating standard in child welfare law and in the United Nations Convention of the Rights of the Child.²
- Article 40 of the United Nations Convention on the Rights of the Child (1989) declared that all nations set a minimum age of criminal responsibility (MACR) below which no child would be subject to formal prosecution. Subsequently, Article 4 of the Beijing Rules specified that this MACR be no younger than 12, and encouraged countries not to lower their MACR to 12 if they were set higher.³
- There is no federal statute regarding the minimum age of juvenile justice jurisdiction. In the majority of states, statutes, common law, court rules, or precedents determine the minimum age at which a child can be processed in the juvenile justice system.

Relevant Connecticut Statutes

- Conn. Gen. Stat. § 46b-120(1)(A)(i) - Sets minimum age of juvenile court jurisdiction to seven.⁴

Relevant Statistics

- In 2017, 483 children were arrested under 12 in Connecticut. Of these children, 453 children were between 10-12 and 30 children were under 10.⁵

Policy Arguments for Raising Minimum Age

- Children who are arrested or charged are significantly more likely to have histories of child maltreatment, learning problems, or underlying, unaddressed behavioral health conditions.⁶

¹ National Juvenile Defender Center, <http://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/> (last updated, September 2016)

² CYNTHIA PRICE COHEN, INTRODUCTORY NOTE TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (1989), 28 I.L.M. 1448.

³ United Nations Convention on the Rights of the Child, 28 I.L.M. 1448 (1989).

⁴ Conn. Gen. Stat. Ann. § 46b-120 (West).

⁵ Connecticut Department of Public Safety Crime in Connecticut 2017 report. <https://www.ct.gov/opm/cwp/view.asp?a=2974&q=471538>

- Up to 90 percent of court-involved youth report exposure to some type of traumatic event, often first occurring within the first five years of life. Subjecting victimized children to court proceedings and/or confinement may indeed further perpetuate cycles of victimization and maladaptive responses.⁷
- Decades of research, including rigorous systematic reviews, have shown that formally processing youth in the juvenile justice system does not result in preventing future crime, but instead increases the likelihood of future criminal behavior.⁸
- Early contact with the juvenile justice system has a negative prognosis on future behaviors that increases inversely with age of first contact. Without receipt of appropriate therapeutic interventions individuals who first become involved in the justice system as children are more likely to become chronic offenders – a pattern that can continue into adulthood.⁹
- Incarceration itself likely hinders youths' healthy development as secure confinement has been shown to have a detrimental effect on youths' development of psychosocial maturity.¹⁰ Psychosocial maturity includes the ability to (1) control one's impulses; (2) consider the implications of one's actions on others; (3) delay gratification in the service of longer term goals; and (4) resist the influence of peers.¹¹ Accordingly, psychologists have proposed three aspects of measuring psychosocial maturity. (1) Temperance: the ability to control impulses, including aggressive impulses. (2) Perspective: the ability to consider other points of view, including those that take into account longer term consequences or that take the vantage point of others. (3) Responsibility: the ability to take personal responsibility for one's behavior and resist the coercive influences of others.
- According to a 2015 DOJ study that followed 1,300 serious juvenile offenders for 7 years, the authors found youth whose antisocial behavior persisted into early adulthood were found to have lower levels of psychosocial maturity in adolescence and deficits in their development of maturity (i.e., arrested development) compared with other antisocial youth. The vast majority of juvenile offenders, even those who commit serious crimes, grow out of antisocial activity as they transition to adulthood. Most juvenile offending is, in fact, limited to adolescence. This study suggests that the process of maturing out of

⁶ Rolf Loeber, David P. Farrington and David Petechuk, *Child Delinquency: Early Intervention and Prevention*, Child Delinquency Bulletin Series (Ed. J. Robert Flores), DEPT. OF JUSTICE 1, 6-7 (2003), <https://www.ncjrs.gov/pdffiles1/ojjdp/186162.pdf>

⁷ Dierkhising, C. B., Ko, S. J., Woods-Jaeger, B., Briggs, E. C., Lee, R., & Pynoos, R. S. (2013). Trauma histories among justice-involved youth: Findings from the National Child Traumatic Stress Network. *European Journal of Psychotraumatology*, 4, 1-12. <http://dx.doi.org/10.3402/ejpt.v4i0.20274>.

⁸ Petrosino, Anthony, Carolyn Turpin-Petrosino, and Sarah Guckenburgh. 2010. *Formal System Processing of Juveniles: Effects on Delinquency*. Campbell Systematic Reviews 2010:1. <http://www.campbellcollaboration.org>.

⁹ Loeber, *supra* note 6.

¹⁰ Julia Dmitrieva et al., Arrested Development: The Effects of Incarceration on the Development of Psychosocial Maturity, 24 DEV. & PSYCHOPATHOLOGY 1073, 1080 (2012).

¹¹ Laurence Steinberg et al., *Psychosocial Maturity and Desistance From Crime in a Sample of Serious Juvenile Offenders*, Office of Juvenile Justice and Delinquency Prevention, March 2015, www.ojjdp.gov/pubs/248391.pdf

crime is linked to the process of maturing more generally, including the development of impulse control and future orientation.¹²

- Alternatives to formally processing children in the juvenile justice system – such as by increasing the use of community-based treatment programs utilizing restorative justice practices, and providing wraparound services to the child’s entire family to help improve contextual variables that may impact the child’s behavior– can be more effective in promoting positive pathways to healthy lifestyles and rehabilitation.

Legal Arguments for Raising Minimum Age

- Findings from developmental and neuroscience research have informed four recent US Supreme Court decisions, reflecting an evolving understanding of the interplay among criminal culpability, neurocognitive development, and adolescent behavior. These trends in jurisprudence have resulted in enhanced due-process protections for children and have pushed the justice system toward a developmental approach in considering culpability.
 - *Roper v. Simmons*, 543 U.S. 551 (2005), abolished the juvenile death penalty.
 - *Graham v. Florida*, 130 S. Ct. 2011 (2010), found that sentencing adolescents to life without parole for a crime other than homicide violates the 8th Amendment;
 - *Miller v. Alabama*, 132 S. Ct. 2455 (2012) extended the *Graham* decision to abolish mandatory life without parole for all youth and require judicial consideration of all mitigation, including age and psychosocial factors, before life without parole can be imposed.
 - *Montgomery v. Louisiana* case (2016) applied *Miller* retroactively.
- Juvenile competency to stand trial, also referred to as adjudicative competence, is perhaps one of the most basic and bedrock components of due-process safeguards in the justice system; the concept requires a youth to have a rational and factual understanding of the proceedings against him or her and be able to consult with his or her lawyer with a reasonable degree of rational understanding. Many youth, particularly children under 12, lack adjudicative competence to understand legal proceedings in the juvenile justice system.¹³
- There are three abilities that courts have generally acknowledged as relevant in determining questions of competency related to a person's ability to participate in his/her defense and receive a fair trial. These are the ability to: (1) understand the nature and possible consequences of charges, the trial process, the participants' roles, and the accused's rights in the process; (2) participate with and meaningfully assist counsel in developing and presenting a defense; and (3) make decisions to exercise or waive important rights. Over the last couple of decades, several state courts have ruled on issues pertaining to juveniles' competence to stand trial. In some of these cases, a juvenile's disability was considered and factored into the courts' decisions.¹⁴

¹² *Id.*

¹³ Eraka Bath & Joan Gerring, National Trends in Juvenile Competency to Stand Trial, 53 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 265 (2014).

¹⁴ *In re Charles B.*, 978 P.2d 659, 660 (Ariz. 1998) (“Although the Juvenile ... has no mental disorder or disability, he fits the definition of incompetent' ... because he lacks a present ability to consult with his attorney with a reasonable degree of rational understanding, and he does not have a rational and factual understanding of the proceeding against him.”); *Golden v. State*, 21 S.W.3d 801, 803 (Ark. 2000) (holding that a juvenile has a due process right to a competency determination prior to adjudication and

- In one study, the authors surveyed 338 judges and defense attorneys regarding their beliefs about competence standards. Judges and defense attorneys believe that it is particularly important for juveniles to have competence-related legal capacities, compared to adults. However, lower levels of competence were considered necessary for juveniles adjudicated in juvenile court than for juveniles adjudicated in criminal court. Developmental immaturity was seen as *moderately important* to juveniles' competence, although it was rated as less important than mental disorders or cognitive impairments. Furthermore, relatively few judges appear to agree that adolescents should be found incompetent on the basis of developmental immaturity alone. The implications of these findings are discussed.¹⁵
- Connecticut, unlike 21 other states, lacks a **mandatory juvenile competency hearing statute**.¹⁶
- Juveniles' Competence to Exercise Miranda Rights¹⁷
 - Several leading cases provide extensive lists of factors for trial judges to consider when they assess the validity of juveniles' waiver decisions:
 - Factors considered by the courts in resolving this question include: 1) age of the accused; 2) education of the accused; 3) knowledge of the accused as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and remain silent; 4) whether the accused is held incommunicado or allowed to consult with relatives, friends or an attorney; 5) whether the accused was interrogated before or after formal charges had been filed; 6) methods used in interrogation; 7) length of interrogations; 8) whether the accused refused to voluntarily give statements on prior occasions; and 9) whether the accused has repudiated an extra judicial statement at a later date.
 - Although the age of the accused is one factor that is taken into account, no court, so far as I have been able to learn, has utilized age alone as the controlling factor and ignored the totality of circumstances in determining whether or not a juvenile has intelligently waived his rights against self-incrimination and to counsel.¹⁸
 - In *Yarborough v. Alvarado*, 541 U.S. 652 (2004), the United States Supreme Court examined another aspect of the Miranda framework and again rejected youthfulness and inexperience as factors that merit special consideration. The

that such evaluation should apply an “age-appropriate” capacity standard to juveniles which is different from the capacity standard used for adults); *In re J.M.*, 769 A.2d 656, 662 (Vt. 2001) (holding that the “evaluations of a particular juvenile's competency are to be made with regard to juvenile [developmental] norms”). See generally *In re S.H.*, 469 S.E.2d 810, 811 (Ga. Ct. App. 1996) (stating that providing juveniles with procedural rights in delinquency proceedings would be meaningless if the defendant were not capable of exercising them).

¹⁵ Jodi L. Viljoen & Twila Wingrove, *Adjudicative Competence in Adolescent Defendants Judges' and Defense Attorneys' Views of Legal Standards for Adolescents in Juvenile and Criminal Court*, 13 PSYCHOL. PUB. POL'Y & L. 204 (2007)

¹⁶ National Conference of State Legislatures, *Juvenile Justice: States with Juvenile Competency Laws* (Oct. 2015), <http://www.ncsl.org/research/civil-and-criminal-justice/states-with-juvenile-competency-laws.aspx> (last updated Nov. 13, 2016).

¹⁷ Barry C. Feld, *Juveniles' Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice*, 91 MINN. L. REV. 26 (2006)

¹⁸ *West*, 399 F.2d at 469; see also *Fare*, 442 U.S. at 725 (listing factors); *Riley v. State*, 226 S.E.2d 922, 926 (Ga. 1976); *State v. Benoit*, 490 A.2d 295, 302 (N.H. 1985).

Miranda framework provides that when police “interrogate” a suspect who is “in custody,” they must administer the cautionary warning in order to dispel the “inherent coercion of custodial interrogation. In *Alvarado*, police asked the parents of a seventeen-year-old to bring him to the station for an interview, then denied the parents' request to be present while the police questioned him and interviewed him alone for about two hours, during which time he made incriminating statements. Because the officer did not Mirandize the juvenile prior to questioning, the issue arose of whether *Alvarado* was “in custody” and therefore entitled to the advisory. The Court reviewed several prior decisions addressing the issue of custody and emphasized that the test for “custody” was an objective one-- whether a reasonable person in the suspect's position would feel that her freedom of movement was restrained to the degree associated with formal arrest.²⁶ Although certain facts pointed toward a finding that the juvenile was in custody and others pointed in the opposite direction, the Court ultimately affirmed the trial court's conclusion that he was not in custody. The Court insisted that, as an objective status, a finding of “custody” does not include consideration of how the suspect's age or prior experience with law enforcement might affect his feelings of restraint. The Court explicitly rejected the idea that youthfulness or inexperience have any bearing on objective determinations of custody.

- Approximately one dozen states mandate additional procedural requirements for juveniles beyond the “totality” approach endorsed by *Fare*. These jurisdictions require the presence of a parent or other “interested adult” at a juvenile's interrogation as a prerequisite to a valid waiver of Miranda rights. Jurisdictions with a per se rule assume that most juveniles lack competence to exercise or waive their Miranda rights unaided and believe that they require an adult's assistance to make this decision.¹⁹
- Juvenile competence as witnesses
 - Legal and social science literature are replete with discussion and debate about the strengths and weaknesses of child witnesses.²⁰
 - Concern about the suggestibility of children when being questioned by investigators outside the courtroom has led courts and legislatures to adopt special precautions to ensure the reliability of children's testimony.⁷⁵ Much of this

¹⁹ See, e.g., Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1287, n.65 (2004); Andy Clark, Comment, “Interested Adults” with Conflicts of Interest at Juvenile Interrogations: Applying the Close Relationship Standard of Emotional Distress, 68 U. CHI. L. REV. 903, 910-19 (2001); David T. Huang, Note, “Less Unequal Footing”: State Courts' Per Se Rules for Juvenile Waivers During Interrogations and the Case for Their Implementation, 86 CORNELL L. REV. 437, 449-55 (2001) (summarizing variations in states' per se rules requiring parental presence or an “interested adult” at a juvenile's interrogation).

²⁰ See generally SHERRIE BOURG CARTER, CHILDREN IN THE COURTROOM: CHALLENGES FOR LAWYERS AND JUDGES (2005); STEPHEN J. CECI & MAGGIE BRUCK, JEOPARDY IN THE COURTROOM: A SCIENTIFIC ANALYSIS OF CHILDREN'S TESTIMONY (1995); BILLY WRIGHT DZIECH & CHARLES SCHUDSON, ON TRIAL: AMERICA'S COURTS AND THEIR TREATMENT OF SEXUALLY ABUSED CHILDREN (2d ed. 1991); DEBRA A. POOLE & MICHAEL LAMB, INVESTIGATIVE INTERVIEWS OF CHILDREN: A GUIDE FOR HELPING PROFESSIONALS (1998)

scholarship and commentary has focused on interviewing and presenting the testimony of younger children.²¹

- Yet while numerous procedures have been adopted to ensure that suggestible children and youth are not improperly influenced by the professionals who interview them,¹¹⁴ there have been few procedures mandated to protect youth when they are thought to be the perpetrators.

Scientific Arguments for Raising Minimum Age

- Research has found that children under 12 who played youth tackle football had more behavioral and cognitive problems later in life than those who played in their teens. According to one of the study's authors, the brain experiences key forms of cognitive development between ages 10 to 12, and repetitive head impacts may stunt such growth. Delayed development is particularly important in the courtroom context.²²
- One study found youths aged 15 and younger had courtroom performance equivalent to those found incompetent to stand trial. These youth performed worse in court than older teens due to their inability to make mature choices or comply with authority.²³
- Youths in early and mid-adolescence generally are neurologically immature. Their brains are “unstable”; they have not yet attained their adult neurological potential to respond effectively to situations that require careful or reasoned decisions and they may be more inclined than adults to act impulsively and without planning. The upshot is that the recent neurological research reveals that psychological immaturity in adolescents (to which we now turn) likely has a basis in biology.²⁴
- Studies show adolescents who have difficulty regulating their behavior are likely to commit crime regardless of how they perceive the justice system.²⁵
- Early adolescence is characterized by gains in deductive reasoning and abstract thinking, including the ability to think about hypothetical situations and to consider that others have perspectives different from one's own. By mid-adolescence, tentative evidence suggests that teens' capacities for reasoning and understanding may roughly approximate that of adults—at least in the abstract. However, little research examines adolescent decision making in stressful and unstructured contexts, where choices have

²¹ See, e.g., Mich. Comp. Laws Serv. § 722.628(6) (LexisNexis 2005) (mandating that child protective services investigators use a model interview protocol); *State v. Michaels*, 642 A.2d 1372 (N.J. 1994) (requiring “taint” hearings to ensure that children have not experienced suggestive interviewing before their testimony may be admitted at trial); State of Mich., Governor's Task Force on Children's Justice & Department of Human Services, Forensic Interviewing Protocol (2005).

²² Alosco M, Kasimis A, Stamm J, Chua A, Baugh C, Daneshvar D, et al. *Age of first exposure to American football and long-term neuropsychiatric and cognitive outcomes*. *Transl Psychiatry* 2017; 7: e1236.

²³ Thomas Grisso, et al., *Juveniles ' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. AND HUMAN BEHAVIOR 333 (2003).

²⁴ Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793, 813 (2005)

²⁵ Fine, A., Wolff, K., Baglivio, M., Piquero, A., Frick, P., Steinberg, L., & Cauffman, E. (2018). *Does the effect of justice system attitudes on adolescent crime vary based on psychosocial maturity?* *Child Development*, 89, 468-479.

personal salience and decision makers must rely on experience and knowledge. These factors may impede the effective use of youthful cognitive capacities.²⁶

- Juveniles, in particular, often fail to appreciate the significance and function of rights. Psychological research suggests that adolescents have difficulty grasping the basic concept of a “right” as an absolute entitlement that they can exercise without adverse consequences. They are more likely than adults to conceive of a “right” as something that authorities allow them to do, but which those in power also may unilaterally retract or withhold. Research also indicates that children from poorer and ethnic-minority backgrounds anticipate that law enforcement officials will punish them if they exercise their rights.
- Developmental psychologists argue that immaturity per se produces the same deficits of understanding, impairment of judgment, and inability to assist counsel as does mental illness, and renders many juveniles legally incompetent. The generic developmental limitations of juveniles, rather than mental illness or mental retardation, adversely affect youths' ability to understand legal proceedings, to assist counsel, and to make rational decisions. The existence of a separate juvenile court reflects youths' diminished competence, limited understanding, impaired reasoning ability, and lessened decision-making ability.
- Most juveniles younger than thirteen or fourteen years of age exhibited the same degree of impairment as severely mentally ill adult defendants and lacked even basic competence to understand or to participate in their defense.²⁷
- A significant proportion of juveniles younger than sixteen years of age lacked competence to stand trial, to make legal decisions, and to assist counsel, and many older youths exhibited substantial impairments. Grisso reported that: [A]pproximately one fifth of 14- to 15-year-olds are as impaired in capacities relevant to adjudicative competence as are seriously mentally ill adults who would likely be considered incompetent to stand trial by clinicians who perform evaluations for courts. . . . Not surprisingly, juveniles of below-average intelligence are more likely than juveniles of average intelligence to be impaired in abilities relevant for competence to stand trial. Because a greater proportion of youths in the juvenile justice system than in the community are of below-average intelligence, the risk for incompetence to stand trial is therefore even greater.
- Even adolescents who may be legally competent in terms of formal understanding often make poorer legal decisions than do adults because of adolescents' more limited time-perspective, emphasis on short-term versus long-term consequences, and concerns about peer approval.
- While research on adjudicative competence in juveniles is newly emerging, the body of empirical research is developing such that tentative conclusions may be drawn concerning children's competence-related abilities at different ages and the impact of mental illness and mental retardation on competence. First, as expected, age is strongly related to competence. Research findings suggest that many children younger than age 13 or 14 are incompetent and that, coincident with developing abilities in abstract thinking, most children aged 14 to 15 and older are competent. Ages twelve to fourteen represent a

²⁶ *Id.*

²⁷ Grisso et al., *Juveniles' Competence to Stand Trial*, at 344 (“30% of 11- to 13-year-olds, and 19% of 14- to 15-year-olds, were significantly impaired on one or both of these subscales [measuring understanding and reasoning].”)

transitional period vis-a-vis competence. However, there is considerable heterogeneity within age groups. “[T]he more critical information for policy debate is the heterogeneity and variability among adolescents in their relevant abilities. . . . As a consequence, for youths aged 14 through 16, age itself tends to be a poor indicator of abilities associated with the defendant role.” Second, IQ is consistently related to competence, with the likelihood of competence declining with lower IQ scores. Third, juveniles with a history of severe mental illness (particularly psychosis), mental retardation, or special educational placements, are more likely to be incompetent.

- Developmental and social psychologists strongly question whether a typical juvenile has the capacity to make “knowing, intelligent, and voluntary” waiver decisions in the Miranda Rights context. The foremost research, by Thomas Grisso, reports that most juveniles simply do not understand a Miranda warning well enough to invoke or waive their rights in a “knowing and intelligent” manner. This lack of understanding places juveniles at a comparative disadvantage with adults in their ability to exercise their rights. Of the components of the Miranda warning, juveniles most frequently misunderstood that they had the right to consult with an attorney and to have one present when police questioned them. Grisso reports that younger juveniles exhibited even poorer understanding of their Miranda rights than did mid-adolescents:

As a class, juveniles younger than fifteen years of age failed to meet both the absolute and relative (adult norm) standards for comprehension. . . . The vast majority of these juveniles misunderstood at least one of the four standard Miranda statements, and compared with adults, demonstrated significantly poorer comprehension of the nature and significance of the Miranda rights.²⁸

California Model Statute

SECTION 1.

Section 601 of the Welfare and Institutions Code is amended to read:

601.

(a) Any **person under 18** *minor between 12* years of age *and 17 years of age, inclusive*, 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** *a minor between 12 years of age and 17 years of age, inclusive*, when he or she violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.

(b) If a minor *between 12 years of age and 17 years of age, inclusive*, has four or more trancies within one school year as defined in Section 48260 of the Education Code or a school attendance review board or probation officer determines that the available public and private services are insufficient or

²⁸ Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1152-54 (1980) (reporting that a majority of juveniles who received Miranda warnings did not understand them well enough to waive their rights; that only 20.9% of the juveniles, as compared with 42.3% of the adults, exhibited understanding of all four components of a Miranda warning; and that 55.3% of juveniles, as contrasted with 23.1% of the adults, manifested no comprehension of at least one of the four warnings)

inappropriate to correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. However, it is the intent of the Legislature that a minor who is described in this subdivision, adjudged a ward of the court pursuant solely to this subdivision, or found in contempt of court for failure to comply with a court order pursuant to this subdivision, shall not be held in a secure facility and shall not be removed from the custody of the parent or guardian except for the purposes of school attendance.

(c) To the extent practically feasible, a minor who is adjudged a ward of the court pursuant to this section shall not be permitted to come into or remain in contact with any minor ordered to participate in a truancy program, or the equivalent thereof, pursuant to Section 602.

(d) Any peace officer or school administrator may issue a notice to appear to a minor who is within the jurisdiction of the juvenile court pursuant to this section.

SEC. 2.

Section 602 of the Welfare and Institutions Code is amended to read:

602.

(a) Except as provided in Section 707, any **person minor** who is **under 18 between 12** years of age **and 17 years of age, inclusive**, when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge **such person the minor** to be a ward of the court.

(b) Any minor who is under 12 years of age when he or she is alleged to have committed any of the following offenses is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court:

(1) Murder.

(2) Rape by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

(3) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

(4) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

(5) Sexual penetration by force, violence, duress, menace, or fear of immediate and unlawful bodily injury.

SEC. 3.

Section 602.1 is added to the Welfare and Institutions Code, to read:

(a) In order to ensure the safety and well-being of minors who are under 12 years of age and whose behavior would otherwise bring them within the jurisdiction of the juvenile court pursuant to Section 601 or 602, it is the intent of the Legislature that counties pursue appropriate measures to serve and protect a child only as needed, avoiding any intervention whenever possible, and using the least restrictive alternatives through available school-, health-, and community-based services. It is the intent of the Legislature that counties use existing funding for behavioral health, mental health, or other available existing funding sources to provide the alternative services required by this section.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

California Statute Legislative History

- California Senate Bill 439 introduced in 02/15/17. Authored by State Senator Holly Mitchell (D) and Ricardo Lara (D).
- In 2017, there were 637 children under 12 in California who were referred to probation. The vast majority were for minor violations: 66 percent were referred for status offenses — acts such as truancy or curfew violations that are not considered criminal if committed by an adult — and misdemeanor offenses.²⁹
- Santa Clara County, which adopted a set of protocols designed to prevent juvenile detention for children under the age of 13 in most cases, could serve as a model for other counties on how to implement the changes.
- In January 2009, the Juvenile Justice Commission (JJC) initiated an investigation of a 10-year old child who had been placed in Juvenile Hall. This investigation initially began with the intention of understanding the process for placement of young juveniles in Juvenile Hall. It published a report in 2010 that recommended:³⁰
 1. Santa Clara County's Juvenile Hall detention policy should be that children 12 years old and younger not be detained in Juvenile Hall when arrested.
 2. Local alternatives should be developed for safe, emergency placement of children 12 and under who commit a serious crime.
 3. The CITA Court protocols (Court for Individualized Treatment of Adolescents) should serve children 12 years and younger even if there is not a responsible adult available.
 4. Therapeutic Foster Care homes should be developed to accommodate on a longer-term basis, children 12 years old and younger.
 5. The County should explore working with neighboring counties to develop a continuum of shared placements appropriate for children 12 years old and younger who commit a serious crime.
- At time of passage, the state budget included a \$37 million for the Youth Reinvestment Fund, which would provide counties with funding for community-based services to divert youth from formal justice system involvement. Advocates expressed desire to use this pot of money to divert young people from the justice system or lean on other systems to address the unmet needs of young children who end up in the justice system.
- Co-sponsors of the bill included Center on Juvenile and Criminal Justice, Children's Defense Fund – California, National Center for Youth Law, Haywood Burns Institute, Youth Justice Coalition – Los Angeles, Anti-Recidivism Coalition.³¹

²⁹ Laura Garnette, *Juvenile Court Is No Place for Kids—California Must Set a Minimum Age*, S.F. CHRON. (Aug. 18, 2018) <https://www.sfchronicle.com/opinion/openforum/article/Juvenile-court-is-no-place-for-kids-13153447.php>.

³⁰ Juvenile Justice Commission, *Children 12 Years Old and Younger in Juvenile Hall* (Jan. 5, 2010) <http://www.scsccourt.org/documents/jjc/2010/Children12AndUnderInJHall.pdf>.

³¹ Maureen Washburn, *SB 429 Heads to the Governor's Desk*, CTR. ON JUV. AND CRIM. JUST. (Sept. 12, 2018) <http://www.cjcj.org/news/12236>.

- While district attorneys in the state remain opposed to the bill, there was been some support for the bill in some quarters of the probation field in the state, including an op-ed written by Santa Clara County Chief Probation Officer Laura Garnette.
- Assembly amendments to the bill included requiring youth younger than age 12 who allegedly commit certain violent felonies — including murder and violent sexual assault — to remain under the purview of juvenile delinquency courts. Additionally, youth under the age of 12 must be released to a parent or caregiver if they come into contact with law enforcement because of a crime or status offense, starting in 2020.³²
- In signing SB 439, Gov. Jerry Brown (D) also passed Senate Bill 1391, which eliminates the ability to try a defendant under the age of 16 as an adult, thereby sending them to prison. Those convicted under the new law would be held in locked juvenile facilities instead of adult prisons.

California Bill Analyses & Debates³³

- Senate Committee on Public Safety Hearing (04/04/2017) Votes: 5-1
 - Discussion of Need: “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. 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 DOJ Data: 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 arrest for violating a criminal statute or a committing a status offense. Law enforcement officers have three options 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 age. Out of 687 children under 12 subject to detention following a referral to probation, 40 were detained.
 - Argument in Support by The Pacific Juvenile Defender Center: (1) developmentally appropriate, non-criminal responses should be afforded to all young children – not just the ones who can afford to pay for them. (2) 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

³² California Legislature Passes Bill Setting Juvenile Justice Minimum Age at 12, CHRON. OF SOC. CHANGE (Sept. 4, 2018), <https://chronicleofsocialchange.org/news-2/california-bill-that-would-prohibit-prosecution-of-children-under-12-heads-to-governor>.

³³ SB-439 JURISDICTION OF THE JUVENILE COURT, https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB439 (last visited 02/14/2019)

them to emulate. (3) 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. (4) Even the children who are placed on probation for minor offenses suffer serious collateral consequences.

- Argument in Opposition by California District Attorneys Association: (1) 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. (2) 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. (3) SB 439 outlines no alternative recourse that can be taken against youths under age 12 who commit truly heinous acts.
- Supporters: 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, Aspiranet, Black Women Organized for Political Action, California Alliance for Youth and Community Justice, California Attorneys for Criminal Justice, California Catholic Conference, California Coalition for Women Prisoners, California Public Defenders Association, California School-Based Health Alliance, California Youth Empowerment Network, Communities United for Restorative Youth Justice, Contra Costa County Defenders Association, Courage Campaign, Fair Chance, Fair Chance Project, Felony Murder Elimination Project, Friends Committee on Legislation of California, Interfaith Communities United for Justice and Peace, 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, Project Rebound, Public Counsel, Reentry Solutions Group, Root & Rebound, Urban Peace Institute, W. Haywood Burns Institute, Women's Foundation of California, Youth Law Center, San Francisco Public Defender, Silicon Valley De-Bug, Society for Adolescent Health and Medicine, The Children's Initiative, Urban Peace Institute, Western Center on Law and Poverty, Youth Law Center, #Cut50, 60 individuals.
- Opposition: California District Attorneys Association, Sacramento County District Attorney's Office, California Police Chiefs Association, Chief Probation Officers of California, San Diego County District Attorney
- Assembly Committee on Public Safety (06/27/2017)
 - Argument in Support: According to the National Center for Youth Law, a Co-sponsor of this bill, "We support the establishment of a minimum age of juvenile delinquency jurisdiction for the following reasons: "1. Formal justice processing is harmful to children's health and development, exposing them unnecessarily to a system that they do not fully understand; 2. Early-age involvement in the justice system is increasingly rare and characterized by high rates of case dismissal, meaning that counties are spending wastefully on these cases; 3. Early-age court processing in California is beset with geographic, racial, and ethnic disparities; 4. There is increasing national and international support for minimum age laws; 5. Alternative services outside of the juvenile justice system- such as community-

- and-family based health and mental health, education, and child welfare services- can better meet the needs of young children while maintaining public safety.”
- According to the Chief Probation Officers of California (CPOC), “[T]his bill does not take into account the individualized circumstances or needs of a minor under 12 and what services, treatment, and setting might be most suitable for them in order to best serve their needs and balance the public safety. Concern with children who have committed serious or violent offenses.
 - Assembly Committee on Appropriations (06/27/2018)
 - Fiscal Effect
 - 1) Unknown, potentially significant reimbursable mandated local costs, likely in the hundreds of thousands to millions of dollars annually, for counties to develop and implement alternative interventions for children under age 12 who would otherwise come under the jurisdiction of a juvenile court.
 - 2) Unknown, potentially significant savings to county probation departments by reducing the number of juveniles under the supervision of probation departments.
 - 3) Potentially significant savings to juvenile courts by reducing the number of cases. For example, in 2016 roughly 800 children under age 12 were arrested for offenses that would not be heard by juvenile courts under the provisions of this bill.
 - Senate Vote (08/20/2018) 24-13 (10-0 in Appropriations). Assembly Vote (08/30/2018) 43-32.
 - Adds exception for serious/heinous crimes of murder, rape, sodomy, etc.
 - Clarifies legislative intent: States legislative intent that counties use the least restrictive means of intervention, and avoid intervention whenever possible, when a child under the age of 12 engages in conduct that would otherwise bring him or her under the jurisdiction of the juvenile court. States legislative intent that counties use existing funding for behavioral or mental health, or other existing funding sources to provide the alternative services required.

Massachusetts Model Statute: *Chapter 69 of the Acts of 2018*

SECTION 72. Section 52 of chapter 119 of the General Laws, as so appearing, is hereby amended by striking out the definition of “Delinquent child” and inserting in place thereof the following definition:-

“Delinquent child”, a child between 12 and 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense shall not include a civil infraction, a violation of any municipal ordinance or town by-law or a first offense of a misdemeanor for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment.

SECTION 73. Section 54 of said chapter 119, as so appearing, is hereby amended by striking out, in line 2, the word “seven” and inserting in place thereof the following figure:- 12.

Massachusetts Statute Legislative History

- Massachusetts Senate Bill 2371 was reported from the committee of conference on 4/4/2018. It was sponsored by the [Criminal Justice Conference Committee](#), a bi-partisan working group composed of leaders of the Massachusetts Senate and House of Representatives. They were tasked with working out differences between the two chambers' respective omnibus bills on criminal-justice reform. The Senate passed its legislation, S. 2200, in October 2017, and the House followed suit November 2017 with H. 4011 and H. 4012. Senator Will Brownsberger (D) and Representative Claire Cronin (D)—co-chairs of the legislative Judiciary Committee, which initially worked on the issue—lead the panel, joined by Senator Cynthia Stone Creem (D), Senate Minority Leader Bruce Tarr (R), House Majority Leader Ronald Mariano (D), and Representative Sheila Harrington (R).
- In July 2016, the Massachusetts Senate passed comprehensive juvenile justice reforms, but they were not taken up by the House. During this same period, Gov. Charlie Baker; Ralph Gants, the chief justice of the state Supreme Judicial Court; House Speaker Robert DeLeo, and then-Senate President Stan Rosenberg publicly committed to pursue data-driven criminal justice reform. They invited the Council on State Governments to analyze and recommend reforms to address recidivism and reentry in the adult criminal justice system.
- MA has one of the lowest incarceration rates. However, it also has one of the worst racial disparities in incarceration. These two competing arguments laid the groundwork for more comprehensive reforms.
- According to Citizens for Juvenile Justice (CfJJ), a Massachusetts nonprofit advocacy group that led efforts to pass S.2371, a significant barrier to advocating for the reforms was transparency in the legal system. Information related to diversion, prosecution, arraignment, and court process and disposition data were inaccessible to the public.³⁴
- As a result, four major strategies were pursued:
 1. “Young people, who are most impacted, were key voices in the campaign. We allied with youth-led organizations who prioritized justice reforms, particularly around the expungement of records.”
 2. “To expand our geographic and field-of-expertise diversity we organized a statewide coalition of allies pursuing juvenile justice reforms. By including in the omnibus legislation many priorities that would prevent young people’s entry into the justice system, we were able to expand coalition membership to bring in allies from the education, mental health, medical and other nonjustice-related fields.”
 3. “One benefit to filing standalone as well as omnibus legislation was that we increased the number of legislative champions who are passionate on these issues.”
 4. “We expanded our grassroots outreach on adult system reforms to include these advocates. Our coalitions worked closely to ensure our advocacy supported each other, and we did not stay in our own silos.

³⁴ Sana Fadel, *How Our Coalition Helped Push Big Reforms in Massachusetts*, JUV. JUST. INFO. EXCHANGE (July 2, 2018), <https://jjie.org/2018/07/02/how-our-coalition-helped-push-big-reforms-in-massachusetts/>.