September 7, 2018

The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

RE: Urge Signature on SB 439 (Mitchell, Lara) – Jurisdiction of the Juvenile Court

Dear Governor Brown:

Our organizations are writing as co-sponsors to urge you to sign Senate Bill 439 (Mitchell, Lara), which will establish a minimum age of juvenile court jurisdiction for status and delinquency offenses in California, except in the most serious cases of murder and forcible rape. SB 439 protects protecting children under 12 years old from the harms and adverse consequences of justice system involvement and encouraging more effective alternatives to prosecution.

SB 439 will end costly juvenile court processing for hundreds of young children each year, resulting in declines in delinquency court and juvenile probation caseloads and ensuring that the far smaller number of children whose behavior is indicative of an acute and unaddressed need receive services through child welfare, health, or mental health systems. Under SB 439, counties are likely to see reductions in overall systems contact and net savings across all implicated agencies.

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 with devastating consequences on a child’s future, decreasing their likelihood of school graduation and increasing their likelihood of incarceration;
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.

Background

Currently, California has no law specifying a minimum age for prosecution in juvenile court, which allows young children of any age to be prosecuted.1 SB 439 would exclude children 11 years old and younger from prosecution in juvenile court, protecting them from the negative impacts of formal justice system involvement

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1 California Welfare and Institutions Code §§ 601 and 602.

Children’s Defense Fund - California, National Center for Youth Law, Center on Juvenile and Criminal Justice, Youth Justice Coalition - Los Angeles, W. Haywood Burns Institute, Anti-Recidivism Coalition
and even initial processing; promoting their rights, health, and well-being through alternative child-serving systems; and reducing wasteful spending on unnecessary juvenile justice proceedings where the evidence rarely rises to the level of an offense worth sustaining as true.

Specifically, SB 439 would amend California Welfare & Institutions Code section 602 to establish a minimum age of juvenile court jurisdiction of 12 years old for delinquency cases. It would also amend California Welfare & Institutions Code section 601 to exclude children 11 and younger from prosecution and formal processing through juvenile court for status offenses.

1. Juvenile Court Prosecution is Unnecessary and Harmful to Young Children

Prosecuting young children in juvenile court runs contrary to scientific research and court decisions that recognize that children are inherently less culpable than adults and that the very young are the least able to engage meaningfully with the justice system, including with their own attorneys.² The United States Supreme Court and scientists alike have observed that the hallmark characteristics of children – including immaturity, impulsivity, and a lesser ability to foresee the consequences of their decisions – render them more vulnerable in criminal justice processes and necessitate different treatment.

As compared to older adolescents and young adults, young children are more vulnerable to influence and have a diminished ability to understand court proceedings. A 2003 study found that almost 60 percent of 11- to 13-year-olds demonstrated insufficient understanding of court proceedings.³ Even when they may comprehend, younger adolescents and children are more likely to defer to the influence of their attorney or another adult when making consequential decisions. For example, youth under the age of 15 are more likely than older adolescents to comply with adult directives when determining whether to speak to the police, accept a prosecutor’s plea offer, or agree to a consultation with a defense attorney.⁴

In addition to concerns about young people’s vulnerabilities in navigating the justice system, research shows that contact with the juvenile justice system can have lasting and negative psychological and health impacts for youth and young children.⁵ Even minor contact with the system can have devastating consequences for a young person. For example, a study of older youth found that a single arrest decreases a young person’s likelihood of high school graduation by 22 percentage points.⁶ Perhaps most significantly, 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 convictions and incarceration.⁷ Presumably, young children experience even more profound effects.

2. Early-age Involvement in the Justice System Is Rare and Declining, and Ultimately Resource Draining

Despite our growing understanding of the diminished culpability and capacities of children in the context of the justice system, 637 referrals were made to prosecute children under 12 in California in 2017.

Fortunately, justice system contact for children under 12 is increasingly rare, with arrests of children ages 11 and younger declining by more than 50 percent since 2010. Of the approximately 72,000 youth referrals to probation in 2017, less than one percent involved children under age 12.

Data on the underlying offenses for which children under 12 are referred to the juvenile delinquency courts, indicates that a large share of referrals are for relatively minor offenses. In 2016, 11 percent of children were referred for a status offense, such as truancy or a curfew violation, which is not considered criminal if committed by an adult. Another 58 percent of children were referred for misdemeanor offenses, such as petty theft. The most common offense type for which children under 12 were referred was misdemeanor assault and battery, which can encompass schoolyard fights and other similar behaviors.

As many of the behaviors that bring young children into the juvenile justice system involve non-serious many children under 12 will require no significant intervention. For those who would benefit from services, it remains difficult to estimate the fiscal impact of serving children through child welfare, education, mental or physical health care, or other community-based interventions. However, it is expected that SB 439 will reduce overall systems contact, resulting in lower net costs across implicated county agencies.

When children are referred to juvenile delinquency court, most of their cases are closed or dismissed. Between 2007 and 2016, 80 percent of cases involving children under 12 were closed at intake, diverted, or resulted in informal probation, meaning that counties were expending resources to draw children into the initial stages of the justice system without ultimately prosecuting them or mandating services.

SB 439 would further positive trends and reduce wasteful spending by ensuring that all young children in need of services are managed through alternatives to the justice system. Counties that continue to expend justice system resources on the prosecution of young children are needlessly diverting local funds away from other child-serving systems. These vital resources would be better spent on services that can provide immediate and long-term benefits to children and their families.

Importantly, the cost to counties of responding to a child through community-based treatment and services is modest compared to the cost of placing that child in detention. The most recent estimate of county detention costs found that, on average, counties allocate $128,501 per year for each youth detained in juvenile hall.8 By contrast, counties report an average cost of $1,857 annually for each youth served through family counseling, $2,971 for each youth who receives mentoring, $169 per youth for after school programming, and $5,000-$15,000 per youth for wraparound services.9,10

To comply with SB 439, some counties will need to develop an infrastructure for responding to the small number of children whose behavior necessitates a formal intervention. Those counties may leverage the Youth Reinvestment Fund, which was included in the 2018-19 Budget Act and will deliver nearly $40 million for local youth diversion. The Fund establishes more favorable matching conditions for small counties, which tend to be the most reliant on the juvenile justice system for managing children under 12 with behavioral needs.

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3. Disparity Pervades California’s Reliance on Early-age Court Processing

Though children ages 11 and younger comprise a small share of the juvenile justice system in California, their prosecution occurs unevenly across the state. The absence of a minimum age law in the state has produced stark differences in the treatment of children under 12, by location, race, and ethnicity.

In 2015, 11 of California’s 58 counties referred no young children to juvenile probation, and 30 referred 10 or fewer. In fact, just six counties made up nearly half of all referrals: Kern, Los Angeles, San Bernardino, San Diego, San Joaquin, and Tulare. The high concentration of cases suggests that for some children, the likelihood of early-age involvement in the juvenile justice system can be a function of geography rather than a result of the circumstances of their case. These geographic differences also suggest that in counties with few referrals, young children are already routinely diverted out of the justice system and into alternative, child-serving systems.

Data also indicate that young children of color are referred to probation at higher rates than white youth. For example, Black youth under 12 are five times more likely than White youth to be referred to probation, 6.8 times more likely to be petitioned in juvenile court, and 9.2 times more likely to be declared a ward of the court. Close to 80 percent of children under 12 who are referred for prosecution are Latino or Black. SB 439 would ensure that young children of color are no longer subjected, disproportionately, to the harm and stigma of the juvenile court system.

4. There is Increasing National and International Support for Minimum Age Laws

SB 439 would bring California into compliance with the United Nations Convention on the Rights of the Child, which declares that all nations must establish a minimum age for their justice systems. 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. The Committee on the Rights of the Child further encouraged nations to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level. 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 theirs was set higher.

Currently, 21 states in the United States have established a minimum age for juvenile court jurisdiction, which range from age 6 to 12. In Nebraska, for example, children under the age of 11 cannot be prosecuted in a juvenile or criminal court, while New York sets its minimum at age seven. Just this year, Massachusetts passed a law increasing the minimum age for a child to be found delinquent from 7 to 12. Over the past several decades the American Academy of Pediatrics, the American Bar Association, and the National Academy of Sciences have each recommended that states adopt minimum age reforms that consider the science of child development.

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11 California Department of Justice. 2017. Data received through special request. On file with the sponsors.
12 California Department of Justice. 2017. Data received through special request. On file with the sponsors.
14 Committee on the Rights of the Child, General Comment No. 10 (April 2007)
16 Texas Family Code § 51.02 and New York Family Court Act § 301.2(1).
17 Massachusetts General Law Chapter 119 Sections 52, 54, 67, 68, and 84.
Establishing a minimum age of 12 for juvenile delinquency court jurisdiction would align California with international human rights standards and allow the state to serve as a leader nationwide in advancing more humane and effective means of addressing the needs of children 11 and younger.

5. Alternative Systems Can Better Meet the Needs of Young Children

Many youth who experience early justice system contact have histories of early-age maltreatment, trauma, learning problems, or other underlying and unaddressed behavioral and environmental conditions. When young children engage in problematic behaviors, it can signal deeper, unaddressed needs. For young children, these needs are not adequately addressed through the juvenile justice system, which can exacerbate existing trauma. Rather, children’s underlying behavioral needs are better 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. By first considering the root causes of a problematic behavior, local service providers can devise targeted interventions that meaningfully engage a child’s family, friends, school, and community, placing youth on the path to healing. In the most severe cases where children present psychiatric disorders, temporary and longer-term secure holdings, in additional to mental health evaluations and treatment, are available.

There are also many childhood behaviors that do not require any intervention. For some youth, common lapses such as violating curfew or participating in a schoolyard fight can result in needless and harmful juvenile justice system involvement. These are common adolescent behaviors that are not suggestive of an unmet need. Rather, they reflect a child’s age, maturity, and decision-making ability. As evidenced by the number of cases that are referred and rejected for prosecution outright each year, California’s court and probation systems largely recognize that the juvenile justice system is not suitable for young children, whether they are acting on an unaddressed need or exhibiting a common childhood behavior.

Our Organizations Urge Support for SB 439

Each year, hundreds of children are needlessly subjected to the adverse consequences of formal juvenile justice processing. These harms disparately impact children of color and children in certain California counties. Research shows that early exposure to the justice system can exacerbate underlying vulnerabilities and hinder the delivery of needed services.

By establishing a minimum age of juvenile delinquency court jurisdiction, SB 439 presents California with an opportunity to recognize the unique needs and vulnerabilities of youth, better meet their needs and promote public safety through more effective child-serving agencies, and to align our treatment of children with science, court decisions and international standards.

Throughout the legislative process, SB 439 received strong support from children ages 6 to 11 who actively participated in hearings, attended meetings, and assisted in the development of supporting material. As a youth- and child-led bill, SB 439 applies direct experience and research to the issue of juvenile court jurisdiction, demonstrating the young children cannot successfully navigate the complexities of the justice system nor advocate for needed services while under the jurisdiction of a juvenile court.

For these reasons, the proud co-sponsors of SB 439 respectfully urge your signature.

Sincerely,

Patricia Soung, Children’s Defense Fund - California
Michael Harris, National Center for Youth Law

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Maureen Washburn, Center on Juvenile and Criminal Justice
Kim McGill, Youth Justice Coalition - Los Angeles
Laura Ridolfi, W. Haywood Burns Institute
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CC:  Daniel Seeman, Office of Governor Brown (Daniel.Seeman@gov.ca.gov)
     Honorable Holly J. Mitchell, California State Senate (Author)
     Honorable Ricardo Lara, California State Senate (Author)