


<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John Marsh, Acting Director</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> SB 439 Compliance  (Supersedes 2019-DLE-02)</p>	<p><i>No.</i> 2019-DLE-04</p> <p><i>Date:</i> July 5, 2019</p>	<p><i>Contact for information:</i> Sarah Belton Supervising Deputy Attorney General Bureau of Children's Justice (510) 879-0009</p>

**TO: All California State and Local Law Enforcement Agencies**

This Bulletin provides a summary of Senate Bill (SB) 439, which amended Welfare and Institutions Code sections 601 and 602, and added section 602.1. The purpose of this bill is to protect youth under the age of 12 from the negative impacts of formal involvement with the justice system through alternative youth-oriented services. (Assem. Com. on Public Safety, 3rd reading analysis of Sen. Bill No. 439 (2017-2018 Reg. Sess.) as amended Aug. 20, 2018, p. 2.) The amendments to sections 601 and 602, effective January 1, 2019, establish age 12 as the minimum age whereby a juvenile court may exercise jurisdiction over a youth,<sup>1</sup> except when a youth under the age of 12 has been alleged to have committed murder or rape, sodomy, oral copulation, or sexual penetration by force, violence, or threat of great bodily harm. Section 602.1, effective January 1, 2020, directs counties to create alternative services for youth under the age of 12 who would otherwise be subject to the jurisdiction of juvenile court, and directs counties to release youth under the age of 12 whose behavior brings them into contact with law enforcement to their parent, guardian, caregiver, or other county-established alternative program.

This Bulletin provides a summary of the law and suggested protocols that law enforcement officers should follow when they come into contact with youth under the age of 12 whose conduct, if committed by a youth 12 through 17 years old, inclusive, could otherwise subject them to the jurisdiction of the juvenile court.

This Bulletin does not create or confer any rights for or on any person or entity, nor does it impose any requirements beyond those required under applicable law and regulations.

Please direct your questions regarding this Bulletin to Sarah Belton, Supervising Deputy Attorney General of the Bureau of Children's Justice at the California Department of Justice, at [Sarah.Belton@doj.ca.gov](mailto:Sarah.Belton@doj.ca.gov).

**SB 439's CHANGES TO THE LAW**

In September 2018, California enacted SB 439, amending Welfare and Institutions Code sections 601 and 602, and adding section 602.1. A summary of the changes to the law impacted by SB 439 are discussed below:

**1. Establishes Age 12 as the Floor for Juvenile Court Jurisdiction Over a Youth, Except as Provided**

SB 439 amends the Welfare and Institutions Code to establish that only a youth between the ages of 12 and 17, inclusive, may fall within juvenile court jurisdiction or be adjudged a ward of the court under any violation of the law. Youth under the age of 12 are subject to juvenile court jurisdiction *only if* they have allegedly committed one of the following enumerated crimes under Welfare and Institutions Code section 602(b):

<sup>1</sup> For the purposes of this Bulletin, "youth" refers to individuals under the age of 18.

- (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.

## **2. Directs Counties to Establish Alternative Programs for Youth Under Age 12**

On or after January 1, 2020, if the juvenile offense does not fall under the section 602(b) exceptions, the added Welfare and Institutions Code section 602.1(a) directs counties to use existing funding for behavioral health, mental health, or other available existing funding sources to provide the least restrictive alternative school-based, health-based, and community-based programming for youth under the age of 12 who have engaged in behavior as described in Welfare and Institutions Code sections 601 and 602(a), and would otherwise be subject to juvenile court jurisdiction.<sup>2</sup>

## **3. Directs Law Enforcement to Release Youth Under Age 12**

On or after January 1, 2020, the added Welfare and Institutions Code section 602.1(b) directs counties to release youth under the age of 12, whose behavior brings them to the attention of law enforcement, to the youth's parent, guardian, caregiver, or other designated county program.

### **EXISTING LAW**

Several existing laws currently govern juvenile court jurisdiction, and the arrest and detention of youth.

#### **1. Penal Code Section 26**

Under Penal Code section 26, youth under 14 years of age are presumed to lack criminal capacity. Police officers are to administer a Gladys R. questionnaire to all youth under age 14 that they apprehend to assess whether each child has the capacity to understand the wrongfulness of the alleged crime. (See *In re Gladys R.* (1970) 1 Cal.3d 855.)

SB 439 does not amend Section 26, but by excluding youth under age 12 from juvenile court jurisdiction, capacity under Section 26 would only be implicated for youth between the ages of 12 and 14, and all youth age 12 and under alleged to have committed any of the crimes enumerated in Welfare and Institutions Code section 602(b), instead of all youth under 14 years of age.

#### **2. Welfare and Institutions Code Section 709**

Youth under the age of 18 are presumed competent to stand trial. (See *In re R.V.* (2015) 61 Cal.4th 68, 70 [“the most straightforward reading of [Wel. & Inst. Code § 709] text is that the provision contains an implied presumption of competency”].)

---

<sup>2</sup> Funds may be available to support youth diversion programs throughout communities in the State of California via grants from the Board of State and Community Corrections. (See Youth Reinvestment Grant and Tribal Youth Diversion Grant Programs, Board of State and Community Corrections <[http://www.bscc.ca.gov/s\\_youthreinvestmentgrant](http://www.bscc.ca.gov/s_youthreinvestmentgrant)> [as of April 19, 2019].)

SB 439 does not amend section 709, but by excluding youth under age 12 from juvenile court jurisdiction, competency under section 709 would only be implicated for youth above the age of 12, instead of all youth under the age of 18.

### **3. Welfare and Institutions Code Section 707**

Welfare and Institutions Code section 707 provides for two circumstances when the case of a youth under the age of 18 may be transferred to adult criminal court.

A district attorney or other prosecuting officer may make a motion to transfer a youth from juvenile court to adult criminal court: (1) when a youth is alleged to have committed a felony when they were 16 years of age or older; or (2) when a youth is alleged to have committed a serious offense specified under section 707(b) when they were 14 or 15 years of age, but were not apprehended prior to the end of juvenile court jurisdiction. Following a motion to transfer, the juvenile court shall order the probation officer to submit a report on the youth, and the court will subsequently hold a fitness hearing to consider the factors enumerated in section 707(a)(3).

As a general matter, adult criminal court has no original jurisdiction over a case involving an individual under the age of 18, because transfer of a youth to adult criminal court may only occur after the approval of a judge in juvenile court.<sup>3</sup> SB 439 does not amend section 707, but by excluding youth under the age of 12 from juvenile court jurisdiction, and given that existing law only provides for the transfer of youth to adult criminal court under the circumstances outlined above, only youth ages 14 to 17, inclusive, are eligible for transfer to adult criminal court. A youth under the age of 14 may not be transferred to adult criminal court even if the youth has committed one of the offenses enumerated under section 602(b).

### **4. Arrests and Reporting Requirements**

Penal Code sections 13010, 13010.5 and 13020 require law enforcement agencies to report arrests to the California Department of Justice, as prescribed by the 2014 Criminal Statistics Reporting Requirements.<sup>4</sup> SB 439 does not affect existing juvenile arrest reporting requirements.

### **5. Welfare and Institutions Code Sections 300, 305, and 340**

Welfare and Institutions Code section 300 defines youth who may be adjudged a dependent of the juvenile court under certain circumstances that place the youth in danger or at risk of harm if left in the custody of their parent or guardian. Section 340 provides for circumstances under which the juvenile court may file for protective custody of a youth who comes within section 300. Section 305 provides for circumstances under which an officer may refer a youth to temporary custody, including when a youth is a person who comes within section 300.

SB 439 does not amend sections 300, 305, or 340. Youth under the age of 18 may be adjudged a dependent of the juvenile court and/or placed in temporary or protective custody when deemed necessary by an officer or juvenile court, respectively.<sup>5</sup>

---

<sup>3</sup> Adult criminal court does have original jurisdiction over a youth if the youth has been previously tried in adult criminal court. (Welf. & Inst. Code, § 707.01, subd. (a)(3).)

<sup>4</sup> Criminal Statistics Reporting Requirements (April 2014) California Department of Justice, pp. 2, 6 <<https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/rptreq.pdf>> (as of March 4, 2019).

<sup>5</sup> For additional information regarding the implementation of SB 439 in the dependency context, refer to the Permanency Policy Bureau, at (916) 657-1858.

**SUGGESTED PROTOCOL TO COMPLY WITH SB 439**

In light of SB 439, below are suggested law enforcement protocols for engaging with youth under the age of 12 who could otherwise be subject to juvenile court jurisdiction pursuant to Welfare and Institutions Code sections 601 and 602(a), and have not allegedly committed one of the enumerated crimes under Welfare and Institutions Code section 602(b). Law enforcement officers should consider the below suggestions in conjunction with any existing county protocol, including consultation with the District Attorney.

Prior to January 1, 2020:

1. An officer may release, or counsel and release the youth.
2. An officer may attempt to contact youth's parent, guardian, or caregiver for the purposes of releasing the youth to an adult.
3. In the alternative, or in addition, an officer may direct the youth to the child welfare department or other county program or agency that engages with youth under 12.
4. An officer may issue the youth a citation or referral to the probation department. However, the probation department is limited in the subsequent action that it may take:
  - a. A probation department may not recommend that the youth be detained pursuant to Welfare and Institutions Code section 636(c).
  - b. A probation department need not commence an investigation pursuant to Welfare and Institutions Code section 652.
5. An officer may take child into temporary custody if they have reasonable cause to believe that the child would be adjudged a dependent child of the court pursuant to Welfare and Institutions Code section 300 *and* the child:
  - a. Has an immediate need for medical care;
  - b. Is in immediate danger of physical or sexual abuse; or
  - c. The child's environment poses an immediate threat to the child's health and safety.

(Welf. & Inst. Code, § 305, subd. (a).)
6. An officer may not book into custody or detain the youth in a juvenile detention center on suspicion of a crime, unless the officer has determined the youth has committed an offense under Welfare and Institutions Code section 602(b). To make this determination, the officer should have reasonable cause for believing the youth is a person subject to juvenile court jurisdiction as defined in Welfare and Institutions Code sections 601 or 602. (Welf. & Inst. Code, § 625, subd. (a).)

7. A law enforcement agency should locate existing county programs, agencies, shelters, or other resources that address or engage with youth under the age of 12, and identify county-established process for youth under the age of 12 whose behavior would otherwise subject them to juvenile court jurisdiction pursuant to Welfare and Institutions Code section 601 and 602.
8. For a youth who is currently under the custody of the juvenile court because of an alleged offense, a law enforcement agency may follow the above suggested protocols for the youth if they meet the following criteria:
  - a. Youth allegedly committed an offense before January 1, 2019;
  - b. The alleged offense is not an offense listed under Welfare and Institutions Code, section 602(b);
  - c. Youth was less than 12 years of age at the time of the alleged offense; and
  - d. Youth's case has not yet been adjudicated.

On or after January 1, 2020, the following protocol is suggested in addition to the above:

1. An officer should attempt to release youth to parent, guardian, or caregiver, unless the officer determines the youth has committed an offense listed under Welfare and Institutions Code section 602(b). To make this determination, the officer should have reasonable cause for believing the youth is a person subject to juvenile court jurisdiction as defined in Welfare and Institutions Code section 601 or 602. (Welf. & Inst. Code, § 625, subd. (a).)
2. In the alternative, or in addition, an officer should adhere to county-established process for youth under the age of 12 whose behavior would otherwise subject them to juvenile court jurisdiction pursuant to Welfare and Institution Code sections 601 and 602.