

GENERAL OFFICE MEMORANDUM 18-160

TO: ALL DISTRICT ATTORNEY PERSONNEL

FROM: JOHN K. SPILLANE   
Chief Deputy District Attorney

SUBJECT: SENATE BILL NO. 439 – PROSECUTING MINORS UNDER  
THE AGE OF 12

DATE: DECEMBER 4, 2018

Senate Bill 439 (SB 439) recently amended Welfare and Institutions Code sections (WIC) 601 and 602, and added WIC § 602.1. SB 439 prohibits prosecution of minors under the age of 12 unless the minor commits murder or forcible sex crimes.<sup>1</sup> The added section, WIC § 602.1, requires that this same class of minors who cannot be prosecuted must be released to a parent or guardian when they commit crimes or are truant. While the amendments to WIC §§ 601 and 602 become operative January 1, 2019, the provisions of WIC § 602.1 are subject to delayed implementation and go into effect on January 1, 2020.

In light of the amendments to WIC §§ 601 and 602, effective immediately, the Juvenile Division shall no longer file cases on minors under 12 years unless an exception applies.

The amendments to WIC §§ 601 and 602 are retroactive to all cases not yet final on appeal pursuant to the recent case of *People v. Superior Court (Lara)* (2018) 4 Cal.5th 299. Therefore, pending cases that do not fall within the exceptions shall be dismissed on January 1, 2019. “Pending” means prior to judgment being entered. The fact that a minor is on probation or is under the court’s jurisdiction does not necessarily mean a case is “pending.”

SB 439 does not provide any procedure for the recall and dismissal of cases that are final<sup>2</sup>. All cases that are final on the operative date remain unaffected by SB 439. Any attempt to dismiss a case that is final should be opposed.

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Attachment

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<sup>1</sup> WIC § 602(b) lists the exceptions. PC § 187 is an exception, as are the following sex crimes when there is evidence of force, violence or threat of great bodily harm: PC § 261(a)(2) (Rape), PC § 286(b)(2)(A) (Sodomy), PC § 288a(c)(2)(A) (Oral Copulation) and PC § 289(a)(1)(A) Sexual Penetration. A reference sheet is attached.

<sup>2</sup> A case becomes final after any appeal is concluded, and the time to seek review at a higher court runs out. For example, because a juvenile has 60 days in which to file an appeal in the Court of Appeal, if no such appeal is filed then the judgment is final after 60 days. (Cal. Rule of Court (CRC) 8.406(a)(1).) If a juvenile appeals to the Court of Appeal, and the judgment is affirmed, that appellate case is final 30 days after the opinion is issued. (CRC 8.470, 8.264(b)(1).) The juvenile then has 10 days to seek review in the California Supreme Court. (CRC 8.500(e)(1).) If the juvenile does not seek such review, the case is therefore final on the date 40 days after the date the opinion is issued in the Court of Appeal.

Filing on a Minor Under 12 Years Old  
WIC 602(a)

A minor under the age of 12 may not be prosecuted in juvenile court with the following exceptions:

- Murder PC 187

The following sex crimes if they involve force, violence, or threat of great bodily harm:

- Rape PC 261(a)(2)
- Sodomy PC 286(b)(2)(A)
- Oral Copulation PC 288a(c)(2)(A)
- Sexual Penetration PC 289(a)(1)(A)

WIC 602(b).