

By Valarie Honeycutt Spears for Kentucky.com

Should 5-, 6- and 7-year-olds face criminal charges?

In 2009 and 2010, complaints were filed against at least 748 Kentucky children younger than 11 for offenses that included being out of control, minor injury assaults and criminal mischief. Sixty-three of those children were ages 5, 6, and 7, according to a 2011 Herald-Leader analysis of state records. Eight of those children were 5 years old.

State Rep. Darryl Owens, D-Louisville, last week introduced House Bill 143, which would prohibit children 10 or younger from being charged with criminal offenses. Instead, those children could be found neglected or dependent on the state for services.

Juvenile justice and court officials recently told Owens and other Kentucky lawmakers on an interim judiciary committee that children 10 and younger can't comprehend criminal responsibility and would be better served by the social service system. Owens said HB 143 ensures that the behavior is still dealt with.

Kentucky now puts no limits on the age at which a child may be charged. The bill sets that age at 11.

Kentucky would be following at least 11 other states in having laws that don't allow children 10 or younger to be charged criminally.

Owens said in an interview that he has talked to attorneys who told him many children are found incompetent to face criminal charges.

"Their mind just hasn't developed to the point to where they understand what they are doing," Owens said.

Patrick Yewell, executive officer of family and juvenile services for the Administrative Office of the Courts, or AOC, said Thursday that if HB 143 were to become law, the AOC would work closely with the state Cabinet for Health and Family Services.

"We could place the children on diversion," Yewell said, "and, if the child failed the diversion, we could then send the child and his/her family to" the cabinet "as a family in need of services."

Officials in the Cabinet for Health and Family Services won't discuss their position on the legislation.

"The cabinet is in the process of reviewing bills and does not have a comment on this bill at this time," spokeswoman Jill Midkiff said Wednesday.

Under the legislation, the definition of a child who would be neglected or dependent on the state for services would be broadened. The new definition would include a child 10 or younger who violates laws and whose health or welfare is harmed when a parent or guardian repeatedly fails to "exercise reasonable diligence in the control of the child."

HB 143, which has been sent to the House Judiciary Committee for consideration, does not include specifics on the actions officials would take if it were determined a child needed services.

Currently, once a complaint is filed against a child, the county attorney reviews it to see whether there is probable cause. In some cases, children enter the Administrative Office of the Courts' diversion program, in which court-designated workers hold children accountable for their actions and provide treatment. In that case, children don't have juvenile records. But in other cases, children are referred to formal juvenile court.

Ed Monahan, head of the state Department of Public Advocacy, and Hasan Davis, acting commissioner in the Department of Juvenile Justice, joined Yewell in asking members of the interim joint committee on judiciary in September to eliminate criminal court complaints against children younger than 11.

The most frequent charges from 2005 to 2009 were being beyond the control of an adult, fourth-degree assault with minor injury and third-degree criminal mischief, according to data Yewell gave lawmakers. The complaints were filed by school officials, police agencies and residents.

Yewell has said the State Interagency Council — composed of court representatives, social workers, early childhood specialists and mental health professionals — was advocating that social services agencies rather than the criminal justice system handle the behavior.

"This proposed legislation is a move in the right direction," Yewell said in a statement Wednesday. "Addressing the behaviors of these young children through treatment and other alternatives rather than with criminal charges can mean a brighter future for the children, their communities and society as a whole."

House Speaker Greg Stumbo, D-Prestonsburg, last week reiterated his position that he "doesn't generally support decriminalizing otherwise illegal activities by juveniles or otherwise, but I will keep an open mind and will remain neutral on the subject at this point." Senate President David Williams, R-Burkesville, has not reviewed the legislation, spokeswoman Lourdes Baez-Schrader said.