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Nerea Marteache
Editors

International Handbook of Juvenile Justice

Second Edition

 Springer

International Handbook of Juvenile Justice

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Edited by

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Preface

In 2000 a group of European academics decided to form a European Society of Criminology. From the start, the new Society encouraged the creation of working groups on specialized topics. One of the first such working groups was focused on “juvenile justice,” launched by Josine Junger-Tas. Josine also was the lead author of the first edition of this book. Tragically, she passed away on January 22, 2011. She was quite a prolific scholar and passionate advocate for the rights of children everywhere. The idea for this book emerged from the juvenile justice working group in the European Society of Criminology. The working group addressed a number of recent developments in juvenile justice in our own countries, developments that were leading toward an ever more punitive, but not necessarily more effective, system in juvenile justice.

The working group grew in membership over time, and Europeans were joined by a number of American and Canadian experts. This added a truly international dimension to our undertaking. The working group raised a number of key questions in its deliberations. In particular, members were interested in how the juvenile justice evolved and emerged in different states during the last 25 years. The similarities and differences across states became a key point of discussion. This discussion was fuelled in part by the emergence of new states in Eastern Europe, as well as the growing impact of globalization. For many of the older western democracies of Europe, the Welfare system that had existed for most of the twentieth century was evolving, often toward a model that placed more responsibility on individual juveniles and included increased punitiveness. The first volume, published in 2006, addressed these issues, largely in the context of European traditions. That volume was organized into four parts: The Anglo-Saxon Orientation, Western Continental Europe, Eastern Europe, and Two “Special” Systems. In all 19 different countries were represented in that volume. All of the countries whose juvenile justice systems were represented in the first volume were European or North American. The current volume (the second edition) takes a more global look at juvenile justice.

The current volume includes 25 chapters, 6 more than the first edition. In addition to covering juvenile justice systems in North America and Europe, systems from Asia, South America, Africa, and the Middle East are included. In this sense, the book is truly international and goes well beyond the countries covered in the first edition. While hardly all-inclusive, this approach is far more global and comprehensive. A book cannot be considered to be truly international if it ignores multiple continents (Africa, Asia, and South America) or the juvenile justice systems of the two most populous countries in the world (China and India). It is a credit to Dr. Junger-Tas that the book has found its way to a second edition and now truly merits the designation as an “International” Handbook.

Perhaps future editions will expand the number of countries. One virtue of this more comprehensive set of nations is that the book provides a foundation for truly comparative work. We hope that it is instrumental in sparking comparisons of the key issue of juvenile justice.

The inclusion of a diverse set of countries allows for consideration of the role of several key issues in juvenile justice. Given the breadth of countries covered in the second edition, we thought it important to include a set of common issues to be covered. Each chapter is organized around ten key issues in the study and understanding of juvenile justice. These include:

1. The legal status of juveniles
2. Age of majority
3. The country's stance toward the UN Committee on the Rights of the Child
4. Trends in juvenile crime over the period 2004–2014
5. Causes of juvenile crime
6. Policing and juveniles
7. Courts and juveniles
8. Custodial rules for juveniles (detention, prison, mixing juveniles with adults)
9. Alternative sanctions for juveniles: home confinement, restorative justice, restitution, etc.
10. Differences in treatment of boys and girls

This common frame makes comparisons across countries more straightforward.

Readers will notice the addition of Dr. Nerea Marteache as a co-editor. Her contributions have been of high quality and were essential to the timeliness and quality of the edited volume. As was the case with the first edition, we were very fortunate in finding a great number of outstanding experts in the field prepared to write a chapter on trends in juvenile justice in their own country. We are grateful to each of them for their contributions to this work. They were patient with our requests to address a common set of issues as well as our cajoling them for their chapters and revisions. Assembling a group of international scholars to produce a volume in a language that is not their native tongue poses many challenges.

Special mention should also be addressed to those of our English-speaking colleagues who helped us with language issues. Dr. John Shjarback and Natasha Khade provided excellent assistance in this regard. John recently earned a Ph.D. in criminology and criminal justice at Arizona State University and Natasha is a first year doctoral student. They provided considerable help in proofreading and editing chapters. Considering the large number of authors for whom English is not their first language, this was by no means a light task and we owe them many thanks!

Finally, we hope that this book, which has collected information on juvenile justice systems in so many nations, will find its way to an international public of academics, policy makers, and practitioners and may open the eyes of many to different solutions for similar problems.

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THE LEGAL STATUS OF JUVENILES

The legal status of juveniles is defined by civil and penal law and in certain other laws concerning specific rights and duties. According to § 1 (2) of the German Juvenile Justice Act (*Jugendgerichtsgesetz*, JGG), a juvenile is a person who at the time of committing a criminal offence has reached the age of 14 and not yet the age of 18. The same paragraph also deals with young adults, i.e., the age group of between 18 and under 21 years of age. As will be shown, this age group of young adults is also dealt by the juvenile justice system. In civil law, children under 7 years of age are not responsible for any act, whereas persons at the age of 18 reach the status of full contractual capability. Between 7 and 17 there is a limited contractual capability and children can be responsible for acts of damage if they had the capacity to understand the wrongdoing and to act according to that.

There are other age limits beyond the threshold of 18. Children at the age of 14 can choose their religion, at 16 they can marry, and at 17 they are allowed to make their driver's license.

There is no criminal responsibility for those under 14. In these cases, only Juvenile Welfare and Civil Law can be applied (JWL, called *Sozialgesetzbuch* Vol. VIII, SGB VIII of 1990 and the Civil Code, *Bürgerliches Gesetzbuch*, BGB). The juvenile welfare agencies act on the local level of the communities on the demand of parents; exceptionally measures can be imposed by the Family Court, §§ 1631b, 1666, 1666a BGB (incl. placement in closed residential care).

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AGE OF MAJORITY

As has been said criminal responsibility in Germany starts at 14 years of age, but between 14 and 18 the juvenile is only criminally responsible if he/she “according to his/her physical and psychological development is able to recognize the wrongdoing of the criminal act and is able to act according to this cognitive discernment” (§ 3 JJA). Full criminal responsibility is given at the age of 18, but until the young adult reaches the age of 21, the sanctions of the JJA apply if a global examination of the offender’s personality and of his social environment indicates that at the time of committing the crime the young adult in his moral and psychological development was like a juvenile or if the motives and the circumstances of the offence are those of a typically juvenile crime (§ 105 I No. 1 et 2 JJA).

Civil majority is given at the age of 18, before that age (from 7 to 17 years of age) juveniles can contract only with the consent of their parents (see sect. 104, 106 Civil Law, *Bürgerliches Gesetzbuch*, *BGB*). Children between 7 and 17, however, can contract in matters of daily life, e.g., buy things in a bakery or supermarket, if the goods belong to the daily life. Juveniles between 14 and 17 years of age have enlarged rights to dispose of pocket money and earnings without the consent of parents.

THE COUNTRY’S STANCE TOWARDS THE UN COMMITTEE ON THE RIGHTS OF THE CHILD

Germany has ratified the Convention of the Rights of the Child (CRC) in 1992. Since then the Convention is a binding Federal Law, but in its legal status below the Federal Constitution. The Constitutional Court (*Bundesverfassungsgericht*), however, in a recent decision concerning a conflict with the jurisprudence of the European Court on Human Rights (ECtHR) has emphasized that the interpretation of the German Constitution should be in conformity with the Human Rights as enshrined in the European Convention on Human Rights (ECHR). In the respective case, the Court changed its jurisprudence in favor of the ECtHR’s view on the nature of preventive detention (see BVerfG [Federal Constitutional Court], decision of 4 May 2011—2BvR 2365/09—www.bverfg.de/e/rs20110504_2bvr236509.html; see in detail Drenkhahn et al. 2012).

The CRC and the Recommendations of the Committee of the Rights of the child are taken seriously although not all German legislation on juvenile justice and procedure is in line with international human rights standards such as the European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM). Some indication is given below (see also Dünkel 2011b).

TRENDS IN JUVENILE CRIME OVER THE LAST DECADES, IN PARTICULAR THE PERIOD 2004–2014

Juvenile delinquency became a major issue in the 1960s and 1970s, when official crime rates increased and a lack of adequate delinquency treatment and prevention became evident. At that time no self-report or victimization surveys existed yet. In the 1980s, called the “golden age” of German juvenile justice, juvenile delinquency declined at the same time as major liberal reforms with expanding diversion new community sentences and restorative justice measures, in particular victim-offender mediation, took place (see Dünkel 2006, 2011a). The early 1990s brought different challenges to the youth justice system, as after the German reunification, the East-German federal states showed a strong increase of the juvenile crime rate and in particular the violent crime rate.

Since the mid-1990s the increase of juvenile crime rates levelled off and since the early 2000s another remarkable decrease of registered as well as self-reported juvenile delinquency could be observed (see Baier et al. 2009; Heinz 2014; Baier and Prätör 2016; for similar results in other European countries, see Junger-Tas et al. 2010). In particular, violent offences and therefore violent victimization particularly decreased (see also Dünkel et al. 2008).

When talking about juvenile delinquency in Germany, one has to consider that due to the German juvenile justice system, which deals with 14–17-years-old juveniles as well as with 18–20-years-old young adults statistics refer always to these age groups. Police statistics also refer to young adults between 21 and 25 years of age. Figure 15.1 shows the development of registered juvenile and young adult delinquency from 1984 until 2013. Young adults (18–20) and juveniles show higher prevalence rates than the other age groups, but the levelling off and decrease in the last 10 years is clearly visible (see Fig. 15.1). This decrease is seen as a result of the widespread crime prevention programs in schools and local communities (see Heinz 2015a).

Female juvenile delinquency is also levelling off according to registered crime statistics, but less than the rates of male juveniles. Self-report studies show that the reporting rate for females increased between 1998 and 2006. The increase of female juvenile delinquency in this period to a major part can be explained by this (see Heinz 2015b: 284). Still the prevalence rates for young females are about half of the ones for males (23.6 versus 43.6, see Baier et al. 2009: 65; Heinz 2015b: 276; with regard to violent offences the ratio is about 1: 3, for shoplifting 1:1).

Patterns of Registered Juvenile Delinquency in Germany

Juvenile delinquency—as in other countries (see Junger-Tas et al. 2010)—in general is characterized by its petty and episodic nature (see Spieß 2012, 2015). The large majority of delinquent acts committed by juveniles are property offences, primarily theft, property damage, vandalism, and minor drug crimes. Spieß (2012) demonstrated that in 2010 69% of all registered crimes of juveniles and 56% of (18–20 years old) young adults comprised shoplifting, vandalism,

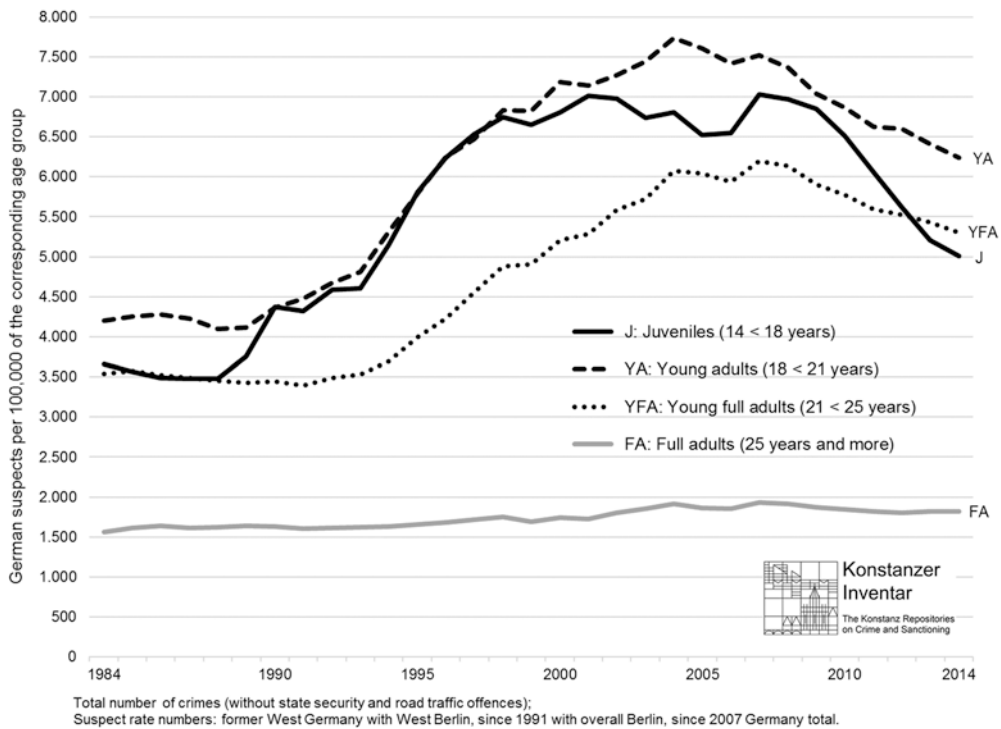


FIGURE 15.1. Police registered suspects of crimes per 100,000 of the population according to different age groups. *Source:* Heinz (2015a).

damage to property, and simple bodily injury. During the 1990s, an increase of violent crimes slightly changed the picture, but not the structure in general. The increase of violence was mainly characterized by bodily injury, often group fights without weapons. Violent acts still counted for only about 10% (2010) of juvenile delinquency (7% simple bodily injury, 3% more serious violent acts; Spieß 2012). 2014, 54% of violent crimes of 14–21-years-old juveniles and young adults were simple bodily injury (without weapons), 35% severe bodily injury, 11% robbery, 1.5% sexual offences (incl. rape and 0.4% (attempted) homicide. The registered prevalence rate for bodily injury decreased very considerably, for severe bodily injury from 2007 to 2014 by 45% (see Heinz 2015a; Spieß 2015). Therefore, juvenile delinquency is not seen as a major problem of the German society. Other age groups such as adults between 21 and 40 between 1998 and 2008 showed a strong increase of registered prevalence rates (+20% and +40%, whereas the rates for juveniles and young adults decreased.

Self-Reported Juvenile Delinquency and Victimization

In the last representative poll with regard ninth grade pupils in Germany in 2007/8 44% of male and 24% of female juveniles report having committed one of the 12 crimes or delinquent acts. However, vandalism, simple bodily injuries

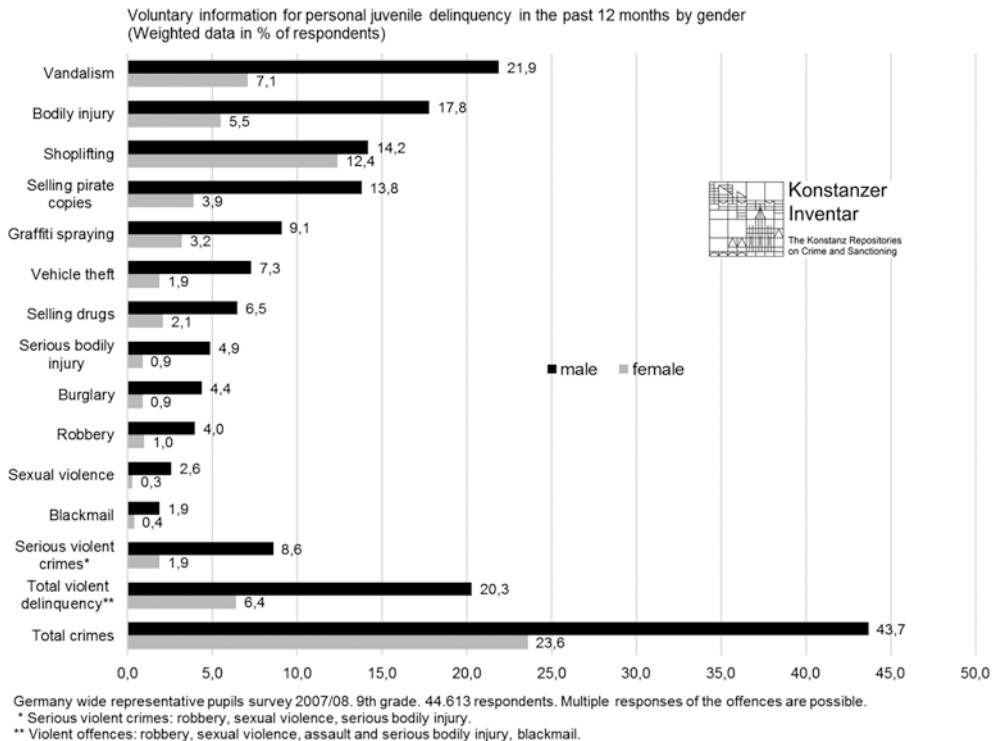


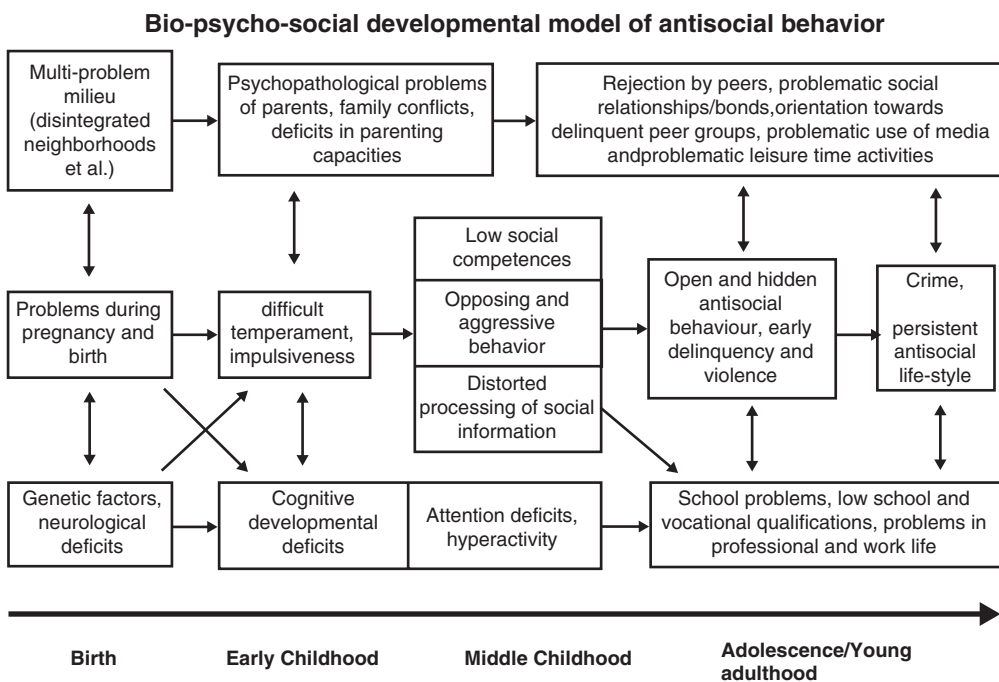
FIGURE 15.2. Self-reported delinquency of ninth grade pupils in Germany, 2007/2008. Source: Baier et al. (2009: 69, Figure 5.6); Heinz (2015a).

(without weapons) and shoplifting dominated, whereas serious crimes like robbery or serious bodily injury remained the exception. Young females—with the exception of shoplifting—show significant lower prevalence rates than their male counterparts (see Heinz 2015b: 276 and Fig. 15.2 above; Enzmann 2010: 58 ff).

CAUSES OF JUVENILE CRIME

German criminology is using the same theories for explaining juvenile crime as they have been developed in the Anglo-American literature (Oberwittler 2012). Strong emphasis is given to the notion of juvenile delinquency as a “normal” phenomenon and of its episodic nature. It is because of this and the petty nature of most juvenile crimes that German juvenile justice policy remained moderate by emphasizing diversion, restorative justice, and “constructive” educational measures imposed by the youth court. In the last decades, however, empirical evidence has been found that a small percentage of male juveniles developed carriers of persistent offending. Explanations given are more or less stress and social developmental theories emphasizing a lack of control by the family, a lack of self-control, schooling problems, deficits concerning personality disorders and

others (see, e.g., the developmental model of Beelmann and Raabe 2007; see also Lösel and Bliesener 2003). The model can be seen as a modern form of a multi-factorial approach. An accumulation of risk factors does not necessarily lead to a criminal life style, but in most cases is counteracted by protective factors (resilience) and life events, which prevent becoming a persistent offender. Even those who develop a multi-recidivist carrier regularly stop offending during the third decade of life. In a recent panel study on 13- to 18-years-old pupils, the peak age of involvement in violent delinquency was 14 and for property offences 15 (for both females and males, in the case of females on a lower level, see Boers 2008: 346; Oberwittler 2012: 791 f. with further references).



Source : Beelmann & Raabe 2007, modified to Losel & Bender 2003.

A few life course-oriented studies have been conducted (see, e.g., Schumann 2003a, b), which demonstrate the difficulties of problematic juveniles to integrate in adult life, in particular professional life. They also confirm the general German juvenile justice policy to avoid negative stigmatization by diverting young offenders from the justice system as far and as long as possible.

In general, German criminology uses the same theories as the Anglo-American literature to explain juvenile delinquency by referring to anomie and structural theories of crime, learning theories, control theories, and rational choice or routine activity concepts (see Oberwittler 2012: 801 ff., 812 ff.). In the last years, more and more integrated theories such as Wikström’s situational action theory (see, e.g., Wikström 2007) are used for explanation with some

similarities to the bio-psycho-social model cited above. But also social inequality and disorganization are important theoretical approaches, in particular for explaining violent crimes (see Oberwittler 2012: 830 ff. with further references).

POLICING AND JUVENILES

The German juvenile justice system covers the age groups of juveniles (14–17-years-old) and young adults (18–20-years-old) offenders (see §§ 1, 105 JJA). The relevant legislation is the Juvenile justice Act (JJA), originally passed in 1923, with major amendments in 1943, 1953, 1990, 2008, and 2013 see in Detail Dünkel 2006, 2011a). Both age groups are sentenced by specialized youth courts.

Special juvenile policing in the narrow sense implies that there are specialized police, prosecutors, and youth judges. In the police level in bigger cities, special youth units have been introduced. In some model areas, “Houses of Youth Justice” (*Häuser des Jugendrechts*, see Feuerhelm and Kügler 2003) have been established, where the police, juvenile prosecutors, social workers of the local community, and sometimes mediation schemes work together. The idea behind is to find quick solutions and to avoid detention, due to the efforts of the social work unit, which tries to find alternative solutions to resolving the underlying problems causing the committing of crimes. Juvenile prosecutors and judges must be experienced in questions of education (see § 37 JJA), a legal regulation which sometimes is neglected (see Dünkel 2011a).

The juvenile justice system is strictly based on the idea of education and minimum intervention, in order to avoid stigmatization and negative effects of formal interventions. Therefore, diversion, i.e., the dismissal of cases by the juvenile prosecutor or the youth court has priority (see 5. below). Mediation is given priority in this area of intervention (see § 45(2) JJA), other minor (“informal”) diversionary interventions may be community service orders, reparation to the victim, or reprimands (diversion without interventions is given priority to diversion in combination with certain educational measures, which have to be approved by the youth court, see § 45(3) JJA). “Formal” court dispositions are the so-called educational (see § 10 JJA) and disciplinary measures (see § 13 ff. JJA), for example, mediation, reparation to the victim, community service, the so-called social training courses, the supervisory directive (executed by the welfare authorities or the juvenile probation service), etc. “Disciplinary” measures include a week-end detention or detention of up to 4 weeks in a special unit (not prison). Educational and disciplinary sanctions are not classified as punishment and therefore not registered in the records of young offenders.

Youth imprisonment should be used only as a last resort and for the minimum period acceptable (see §§ 17, 18 JJA). However, short-term imprisonment of less than 6 months is not seen as “educationally” appropriate, and therefore the Juvenile Justice Act forbids such penalties. The maximum youth prison sentence is 5 years, in cases of very serious crimes committed by juveniles 10 years

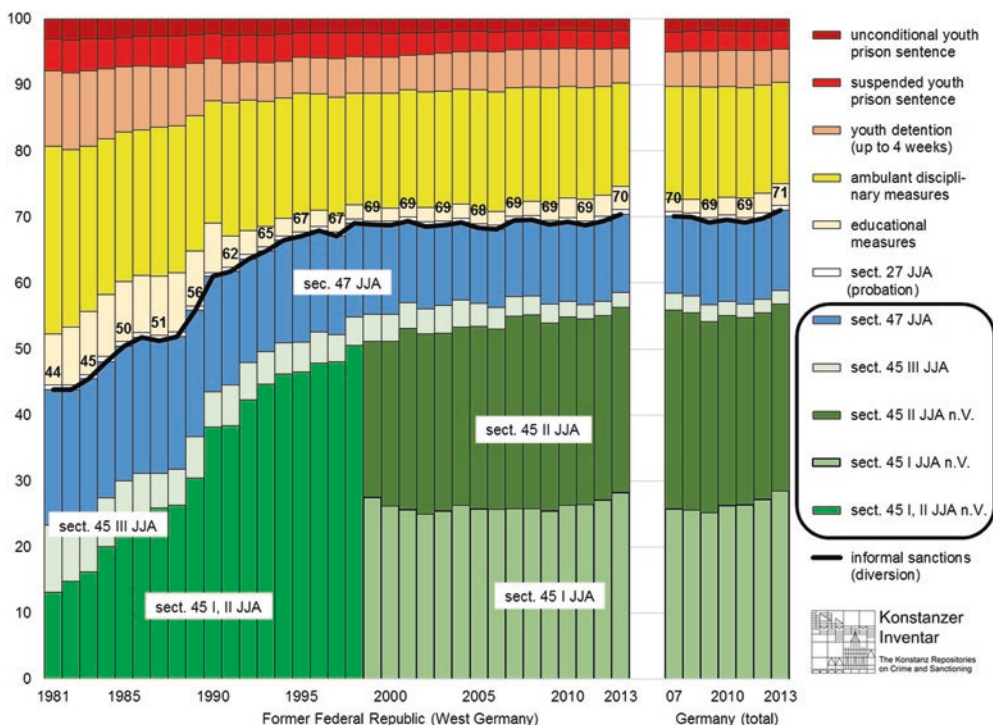


FIGURE 15.3. “Informal” and “formal” (court) sanctions in the German juvenile justice system, 1981–2013. *Source:* Heinz (2015a).

(see § 18 JJA). In the case of young adults, the maximum term in general is 10 years. Since 2013 the maximum penalty may be 15 years for very serious and qualified murder cases.

Youth courts deal with juvenile and young adult offenders. Waiver procedures for serious juvenile offenders are not provided. Young adults, however, according to their maturity, can be sentenced either with sanctions of the general Criminal Law or of the JJA. The practice in two thirds, in serious violent cases even in more than 90% of cases applies the milder juvenile law (in order to avoid higher minimum sentences of the general criminal law, see Dünkel 2006, 2011a; Pruin and Dünkel 2015).

The “penal climate” and the sentencing practice in Germany in general can be characterized as moderate. This is particularly true in the juvenile justice system. As can be seen from Fig. 15.3, 71% of all juveniles and young adults in 2013 were dismissed by the juvenile prosecutor (sect 45 JJA) or the judge (sect. 47 JJA), in most cases because of the pettiness of the offence (sect. 45 I JJA) or because educational measures have been taken by others (parents, school or because mediation, reparation has been agreed).

COURTS AND JUVENILES

The other side of the “medal” showing the “formal” sanctions of the youth court reveals that unconditional youth prison sentences are restricted to the very last resort by counting only for 2% of all juvenile and young adult offenders.

About 85% of youth prison sentences are between 6 months and 2 years, more than 70% of them are suspended, i.e., the juvenile is supported and supervised by the probation service (see Dünkel 2011a; Heinz 2014; Table 15.1 below). The short-term detention order (up to 4 weeks)—although being much criticized and in practice on the decline—still makes for 5% of all offenders sentenced by youth courts. Formal educational and disciplinary measures in the community comprise for 19% (2013). They have partly been replaced by “informal” reactions (dismissal of cases) as described above.

Altogether, one can characterize the German approach to deal with juvenile delinquency as “evidence-based” and moderate (see Dünkel 2011a; Heinz 2014, 2015a). In contrast to other European (see Dünkel et al. 2011; Dünkel 2013, 2015) and non-European countries (see Zimring et al. 2015), a punitive turn in sanctioning juvenile and young adult offenders cannot be seen in Germany. Despite some problems of increasing violent crime rates in the 1990s, Germany kept the moderate way of dealing with these offenders (see Heinz 2009; Dünkel 2012 and Fig. 15.4). Much emphasis was given to further developing crime prevention programs and improving social integrative strategies of state and private youth welfare agencies (see Centre for the Prevention of Youth Crime 2004; Deutsches Jugendinstitut 2015).

TABLE 15.1. Length of youth prison sentences, 1975–2006 (old Federal States) and 2007–2012 (total Germany)

Year	YI total (abs.)	susp. YI (%)	6 m.–1 J. (%)	6 m.–1 y.,	1–2 y.,	2–3 y. (%)	3–5 y. (%)	5–10 y. (%)	
				susp. (% rel. to col. 4)	susp. (% rel. to col. 6)				
1975	15,983	55.9	70.1	74.9	20.4	16.7	5.9	0.6	
1980	17,982	62.2	71.0	79.4	20.1	28.6	4.5	2.1	0.7
1985	17,672	61.9	65.0	79.1	24.6	42.4	5.9	2.6	0.8
1990	12,103	64.3	62.2	79.2	28.0	53.7	6.4	2.4	0.6
1995	13,880	63.9	56.8	78.5	32.4	59.7	7.2	3.0	0.6
2000	17,753	62.1	54.8	78.5	33.8	56.4	7.9	2.9	0.5
2005	16,641	60.7	54.0	77.1	34.4	55.5	8.0	3.1	0.5
2006	16,886	60.5	53.7	77.6	34.0	55.3	8.4	3.3	0.5
2007	20,480	60.7	53.7	77.0	34.6	56.0	8.0	3.2	0.6
2008	19,255	62.3	53.1	80.5	34.5	56.8	8.4	3.3	0.7
2010	17,241	63.0	50.0	82.1	36.6	60.0	9.2	3.7	0.5
2013	13,187	60.2	49.0	80.9	36.5	57.4	9.7	4.3	0.5

Note: *m.* months; *YI* Youth Imprisonment; *susp.* *YI* Suspended Youth Imprisonment (probation); *y* year(s)

Source: Federal Statistical Office (Ed.): Strafverfolgungsstatistik 1975–2013; own calculations

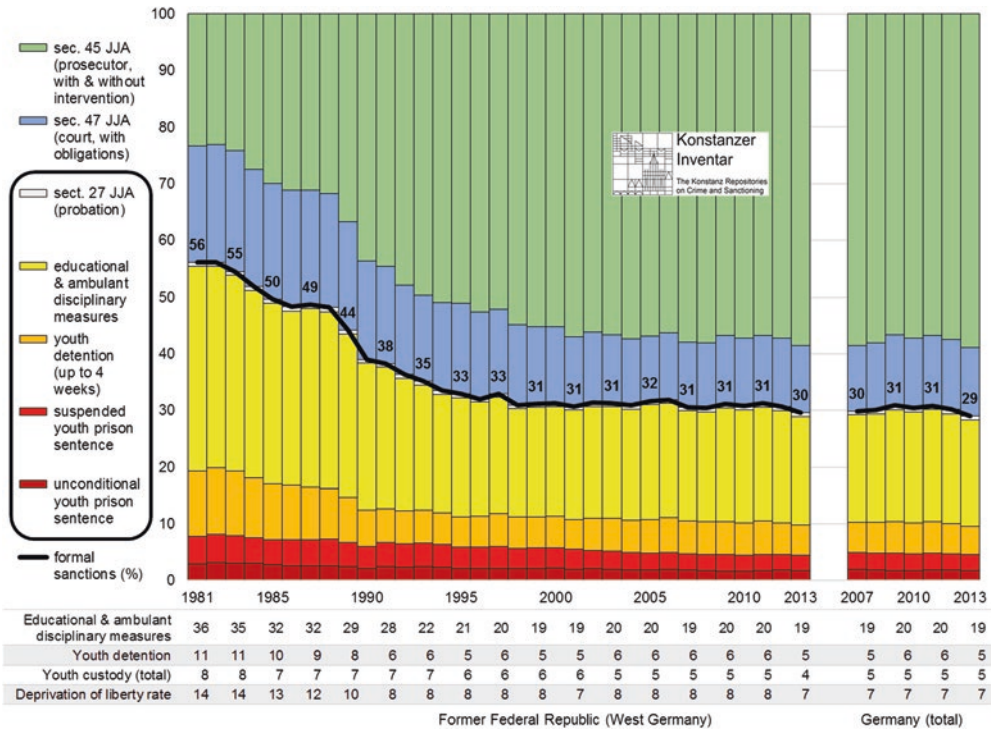


FIGURE 15.4. Sanctions of the Youth Court, 1981–2013. *Source:* Heinz (2015a).

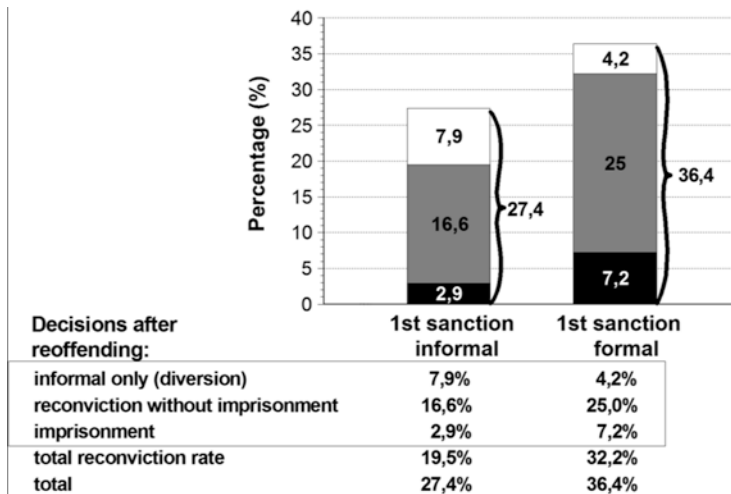


FIGURE 15.5. Rates of formal and informal sanctions for reoffending after a first sanction for larceny and a risk period of 3 years (juveniles, 1961 cohort). *Source:* Heinz and Storz (1994).

Recidivism rates after informal sanctions are lower than after formal court sentences (see Heinz 2014 and Fig. 15.5 below) and recidivism rates after being under the supervision of the probation service and after release from youth

prisons have declined from 54% to 49% and from 75% to 66% for those released in 2004 compared to 1994 (after a risk period of 3 years, see Jehle et al. 2010: 29; the latest recidivism statistics for those released 2007 indicated stable recidivism rates, see Jehle et al. 2013).

CUSTODIAL RULES FOR JUVENILES (DETENTION, PRISON, MIXING JUVENILES WITH ADULTS)

Youth imprisonment covers the age groups of 14–17-year-old juveniles, 18–20-year-old young adults and adults aged 21–24 who were sentenced by juvenile courts as juveniles or young adults. The German juvenile justice legislator does not follow a clear separation of juveniles and (young) adults as required by the CRC and other international standards. The reason for this is that German juvenile courts deal with 14- to 20-year-old offenders. If they impose a youth prison sentence, it is felt that it would be better to keep the young adult inmates within the juvenile prisons in order to prevent negative effects of prisons for adults. The internal structure of youth prisons in Germany, however, provide for separate living groups in different buildings. Often, special living groups for inmates under 18 are organized.

As mentioned before, the duration of sentences to youth imprisonment ranges from 6 months to 5 years. In serious felony cases or in cases involving young adult offenders, the maximum limit is 10 years. The average sentence to be served is between 1 and 2 years; therefore, the average stay in a youth prison is slightly more than 1 year.

The legal situation for young prisoners changed at the beginning of 2008. Before 2008 only a few general legal provisions existed in the JJA and in the Prison Act for adult prisoners. There had not been a differentiated legal framework covering the legal rights and duties of young prisoners. The Federal Constitutional Court (*Bundesverfassungsgericht*) outlawed this missing primary legislation as being unconstitutional, as in Germany any restriction of fundamental human rights has to be based on regulations in law. Administrative rules are deemed an insufficient basis. The Federal Constitutional Court obliged the legislators of the Federal States to pass primary legislation before the end of 2007. In September 2006, a general reform of the legislative competences came into force, transferring the competences for prison legislation to the Federal States (“*Länder*”). The new State Laws in the Federal States vary to some extent and express different political orientations on what is to be seen as the primary goal and the basic principles of youth imprisonment, and what are viewed as being the most promising concepts of rehabilitation. Nevertheless, there is a strong consensus that the organization of youth prisons, even more than in adult prisons, must be oriented towards rehabilitation and education. Furthermore, the unanimous opinion is that youth prisoners shall be accommodated in small living groups and individual cells during the night. All youth prisons should also

provide a variety of school and vocational training programs, special (social) therapeutic units, and a system of progressive preparation for release (including leaves of absence, early release schemes and continuous care and aftercare). Although the competence of youth prison legislation has been transferred to the Federal States, legislation concerning prisoners' complaints rights and procedures are still Federal Law. The reform law of 13 December 2008 brought major improvements, guaranteeing juvenile and young adult inmates an oral hearing as well as regular legal advice when complaining to the court.

The actual situation in German youth prisons can be described as follows: In 2014, there were approximately 5000 young people aged between 14 and 25 in youth custody (31 March 2014: 4910), 181 (or 3.7%) of them female. Further 1908 (of them 51 females) had been sentenced according to the JJA, but were transferred to adult prisons because of reaching the age of 25 or due to better treatment offers in adult prisons after reaching the age of 18 (see § 89b JJA; they are counted as "youth prisoners" in the following Fig. 15.6).

Youth imprisonment rates differ considerably across the Federal States. They are higher in the East, partly because there was more violent crime in the eastern regions. The case of Schleswig-Holstein is interesting in this respect: the imprisonment rate there (2015: 36 per 100,000 of the 14–25 age group) has been reduced to a level less than half of that of many other states; in neighboring Mecklenburg-Western Pomerania, for example, it was 120 per 100,000 (see Fig. 15.6 below). This reflects an explicit criminal policy of opting for different types of sentences and alternatives to custody.

In the last 10 years, a reduction in the rates of youth imprisonment has been observable in almost all Federal States (see Fig. 15.6). With the exception of Berlin an even stronger decrease can be seen for the rates of juveniles and young adults in pretrial detention. The overall pretrial detention rate for 14- to 20-years-old alleged young offenders fell from 47 per 100,000 of the age group in 2000 to 2013 in 2014 (= -51.6%). The youth imprisonment rate altogether decreased by 21% in the last 5 years since 2010, which is to a large extent the result of a strong decline of youth offending rates, in particular violent youth crime.

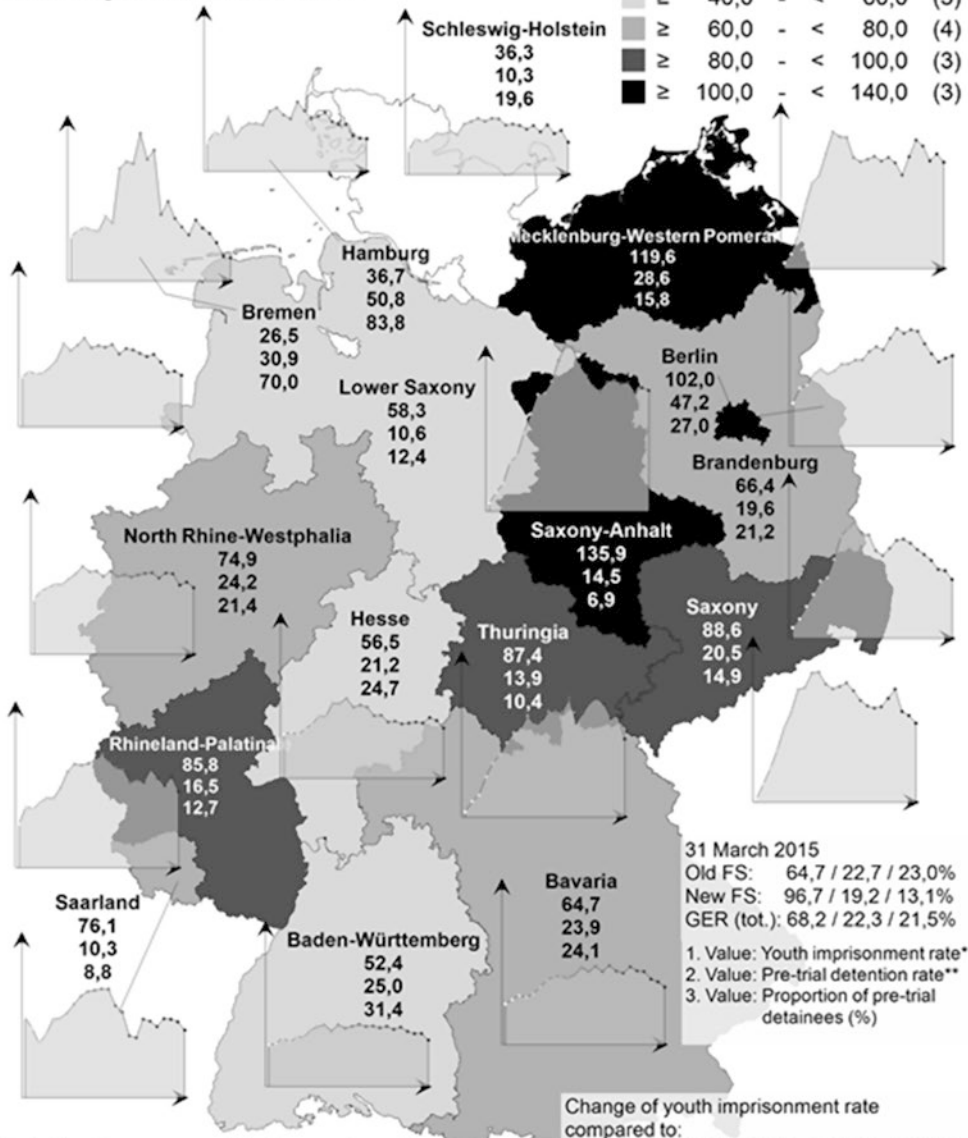
Strictly speaking, youth custody in Germany does not necessarily imply prison for *juveniles*: very often, it is prison for young adults aged over 18. This reflects the fact that the system of criminal law for juveniles includes young adults aged 18–20 into the jurisdiction of juvenile courts. As a result, youth custody facilities house many young adults aged up to 24, who are serving custodial sentences. Only 9.4% of the total population of 5518 youth prisoners (31 March 2013) were "real juveniles" aged 14 to 18. 90.6% of "youth" prisoners in Germany in 2013 were young adults between 18 and 24 years of age (46.2% aged 18–20, 44.4% 21–24, see also Dünkel 2011a: 600; Ostendorf 2016: 21 f.).

Most young detainees are serving sentences for offences involving violence: in 2013, the figures were 23.6% for bodily harm/assault; 32.4% for robbery; 3.8%

Young offenders (15-25 years) in juvenile prisons in a comparison of the federal states (FS) at 31 March 2015 and their development since 1992

Sentenced youth prisoners per 100,000 of the 15-25 years old age group*

≥ 25,0	- <	40,0	(3)
≥ 40,0	- <	60,0	(3)
≥ 60,0	- <	80,0	(4)
≥ 80,0	- <	100,0	(3)
≥ 100,0	- <	140,0	(3)



* including those young adult prisoners (over 18 resp. 24 years of age) who have been transferred to adult prisons according to sec. 89b (1) Juvenile Justice Act

** per 100,000 of the 14 - 21 years old age group

FIGURE 15.6. Young offenders in German juvenile prisons. *Source:* Federal Statistical Office (Ed.): *Strafvollzugsstatistik 1992–2015* (own calculations).

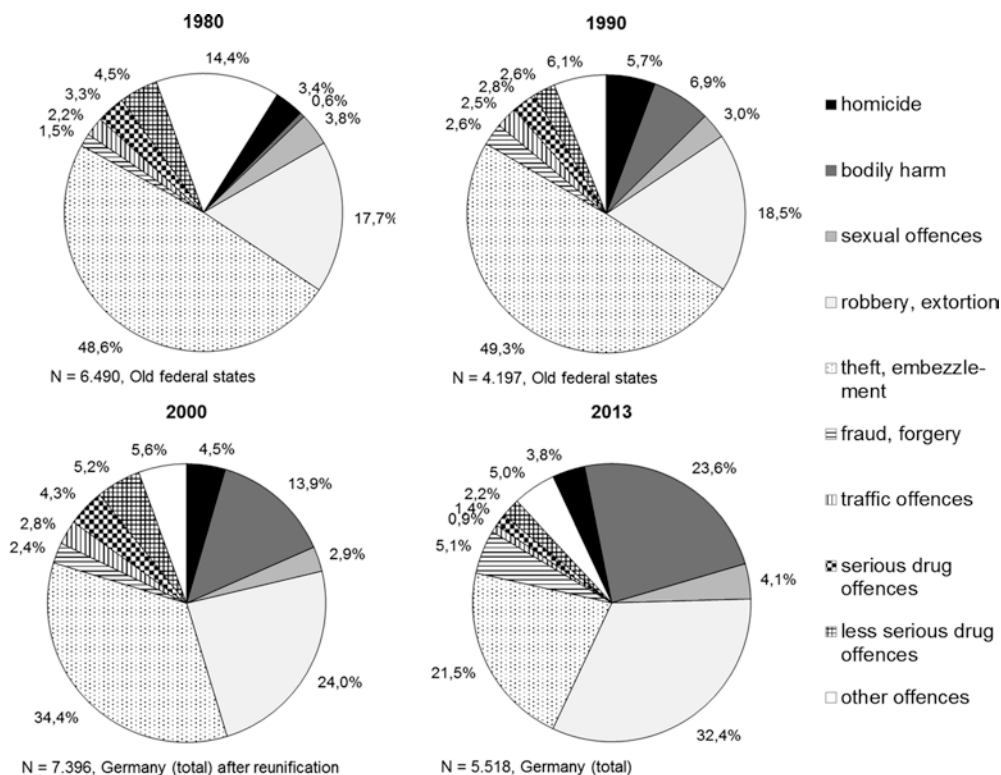


FIGURE 15.7. Youth prison population in Germany, 1980–2013, according to the type of offence. *Source:* Federal Statistical Office (Ed.): *Strafvollzugsstatistik 1980–2013* (own calculations).

for homicide; and 4.1% for sexual offences. Drug-related offences including drug trafficking accounted for 3.6%. These figures have changed considerably over the last 25 years (less simple property and more violent offenders, see Fig. 15.7).

ALTERNATIVE SANCTIONS TO JUVENILES: EDUCATIONAL MEASURES, RESTORATIVE JUSTICE, AND RESTITUION

The German juvenile justice system provides for a large variety of community sanctions including restorative justice measures such as reparation, excuse to the victim, community service, and victim-offender mediation. The following graph demonstrates the disposals of the juvenile court. Home confinement or in the European terminology house arrest is not used in Germany, and in particular electronic monitoring is not an issue. Germany does not rely on technical forms

of social control, but rather on social pedagogic ways of dealing with juvenile delinquency.

In cases of criminal offences as defined by the general Criminal Law, the interventions of the JJA are characterized by the principle of “subsidiarity” or “minimum intervention” (see the diagram at the end of the article). This means that penal action should only be taken if absolutely necessary. Furthermore, sanctions must be limited by the principle of proportionality. The legislative reform of the JJA in 1990, passed in the same year as that of the JWA, underlines the principle of Juvenile Court sanctions as a last resort (“ultima ratio”). Therefore, priority is given to diversion, and where the Juvenile Courts do impose sanctions, primacy is given to educational or disciplinary measures instead of youth imprisonment.

The most important response to petty offending is the dismissal of the case without any sanction being issued. In this context, one should emphasize that police diversion, like the British form of cautioning or warnings, is not allowed in Germany. The underlying reason for this is of a historical nature, lying more specifically in the possible abuse of police power as it occurred under the Nazi regime. Therefore, all forms of diversion are provided for only at the level of the Juvenile Court prosecutor or the Juvenile Court judge. The police are strictly bound by the principle of legality. All criminal offences have to be referred to the public prosecutor.

The 1990 reform of the Juvenile Justice Act in Germany extended the legal possibilities for diversion considerably. The legislature thus reacted to the reforms that had been developed in practice since the end of the 1970s. The law now emphasizes the discharge of juvenile and young adult offenders on grounds of the petty nature of the crime committed, or because of other social and/or educational interventions that have taken place (see § 45 (1) and (2) JJA). Efforts to make reparation to the victim or to participate in victim-offender reconciliation (mediation) are explicitly put on a par with such educational measures. There is no restriction concerning the nature of offences that are eligible; felony offences (“*Verbrechen*”) can also be “diverted” under certain circumstances (e.g., a robbery) if the offender has repaired the damage or made another form of apology (restitution/reparation) to the victim.

We can differentiate four levels of diversion. Diversion without any sanction (“non-intervention”) is given priority in cases of petty offences. Diversion with measures taken by other agencies (parents, the school) or in combination with mediation is the second level of diversion (“diversion with education”). The third level is “diversion with intervention.” In these cases, the prosecutor proposes that the Juvenile Court judge impose a minor sanction, such as a warning, community service (usually between 10 and 40 h), mediation (“*Täter-Opfer-Ausgleich*”), participation in a training course for traffic offenders (“*Verkehrsunterricht*”) or certain obligations like reparation/restitution, an apology to the victim, community service or a fine (§ 45 (3) JJA). Once the young offender has fulfilled

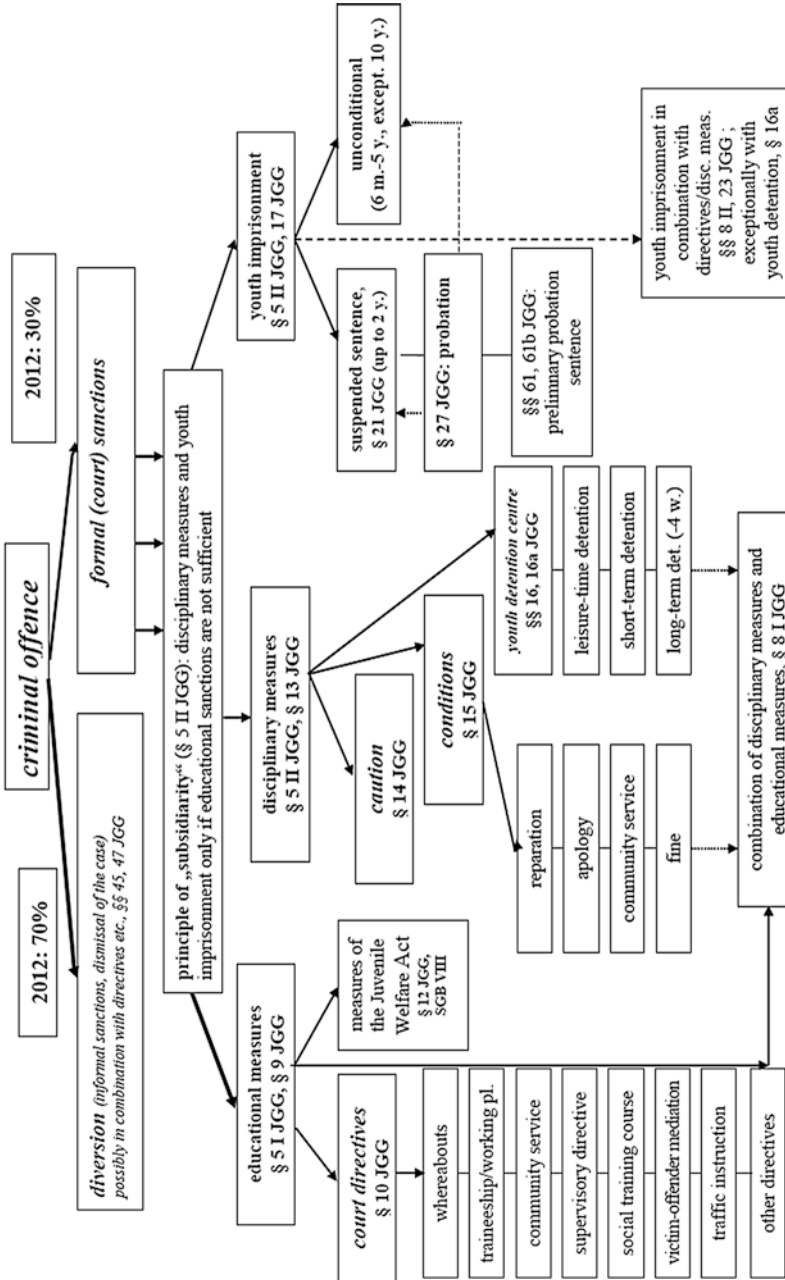
these obligations, the Juvenile Court prosecutor will dismiss the case in cooperation with the judge. The fourth level is the introduction of levels one to three in the Juvenile Court proceedings after a charge has been filed. In practice, the Juvenile Court judge will fairly often face the situation that the young offender has, in the meantime (after the prosecutor has filed the charge), undergone some form of educational measure like mediation, which would deem a “formal” court sanction unnecessary. Section 47 of the JJA enables the judge to dismiss the case in these instances.

Also formal sanctions of the Juvenile Court are structured according to the principle of minimum intervention (“*Subsidiaritätsgrundsatz*”; see the diagram at the end of the text). Juvenile imprisonment has been restricted to being a sanction of last resort, if educational or disciplinary measures appear to be inappropriate (see §§ 5 and 17 (2) JJA). The reform of the Juvenile Justice Act of 1990 extended the catalogue of juvenile sanctions by introducing new community sanctions like community service, the special care order (“*Betreuungsweisung*”), the so-called social training course (see in detail Dünkel/Geng/Kirstein 1998) and mediation (see Dünkel 1996, 1999; Dünkel and Păroșanu 2015). The educational measures of the Juvenile Court, furthermore, comprise different forms of directives concerning the everyday life of juvenile offenders in order to educate and to prevent dangerous situations. Thus, the judge can forbid contact with certain persons and prohibit going to certain places (“*whereabouts*,” see § 10 JJA). Disciplinary measures include the formal warning, community service, a fine, and detention for 1 or 2 weekends or for up to 4 weeks in a special juvenile detention center (“*Jugendarrest*”).

Youth imprisonment is executed in separate juvenile prisons. Youth prison sentences are only a sanction of last resort (“*ultima ratio*,” see §§ 5 (2), 17 (2) JJA), in line with the view espoused by international rules like the so-called Beijing-Rules of the United Nations of 1985. The minimum length of youth imprisonment is 6 months for 14–17-year-old juveniles, and the maximum limit is set at 5 years. In cases of very serious offences for which adults could be punished with more than 10 years of imprisonment, the maximum length of youth imprisonment is 10 years. In the case of 18–20-year-old young adults sentenced according to the JJA (see Section “*Custodial Rules for Juveniles (Detention, Prison, Mixing Juveniles with Adults)*” above) the maximum penalty is 10 years, too (see §§ 18, 109 JJA; in case of particularly serious murder 15 years). The pre-conditions for youth imprisonment are either the “*dangerous tendencies*” of the offender that are likely to exclude community sanctions as inappropriate, or the “*gravity of guilt*” concerning particular, serious crimes (such as murder, aggravated robbery etc.; see § 17 (2) JJA).

Youth imprisonment sentences of up to 2 years can be suspended (a similar sanction as probation) in cases of a favorable prognosis; in all cases, the probation service gets involved. The period of probationary supervision is 1 to 2 years, and the period of probation lasts for a total of 2–3 years.

Sanctions of the German juvenile justice system (Jugendgerichtsgesetz, JGG)



DIFFERENCES IN TREATMENT OF BOYS AND GIRLS

Formally, there are no differences in the treatment of boys and girls by the juvenile justice system. Female juvenile offenders constitute only a small part of the clientele of juvenile courts, as they primarily commit less serious offences which—to a large extent—are dismissed by the juvenile prosecutors. Unfortunately, there are no statistics available on the diversion practice. On the youth court level, we dispose of statistical data, which, however, are of only limited value. In general, we may say that young female offenders (aged 14–20) in only 1.8% of the cases received a youth prison sentence, the proportion of their male counterparts being 7%, i.e., more than three times higher. The proportion of those sentenced to a short-term detention (up to 4 weeks) was 18.1% for males and 15% for females. All other young female and male offenders were sentenced with community sanctions, amongst them 11% (males) and 4.9% (females) to a suspended youth prison sentence (i.e., probation). The at first glance “milder” sanctioning practice for young female offenders may be interpreted in the light of less severe crimes committed by them. Looking only on certain categories of crimes, the differences are less visible or even disappear. The proportion of young offenders sent to youth prisons or youth detention is almost the same in the case of robbery and extortion (see Fig. 15.8). In the case of burglary, the proportion of those sentenced to youth imprisonment in 2014 was 4.3% for females and 14.3% for males, for serious bodily injury 2.7% against 9.7% for males. If females receive a custodial sentence, it will more likely be only a short-term detention of up to 4 weeks than youth imprisonment of at least 6 months.

The interpretation of the data is difficult as the less severe sentencing practice towards female young offenders may be caused by less serious forms of crimes even within the categories of burglary, etc. (see Heinz 2015b: 284). There is the observation that females when committing crimes in groups, they are not the leading persons, but rather supporting their male co-offenders which may result in “milder” sentences.

One of the results of different sentencing practices is that female offenders make only for a small proportion of young offenders in youth prisons. On 31 March 2014, only 181 of the 4910 sentenced offenders in youth prisons were females (3.7%, see Federal Office of Statistics, Ed., *Strafvollzugsstatistik 2014*: 10). There are problems to accommodate them close to their families or places of future residence and to provide the necessary treatment, schooling and vocational training facilities, as in most Federal States only a few females are in custody. Some youth prison units started to have mixed units with males and females in order to prevent the isolation of young females and to give them the chance to participate in rehabilitation programs (see in detail Haverkamp 2015a, b).

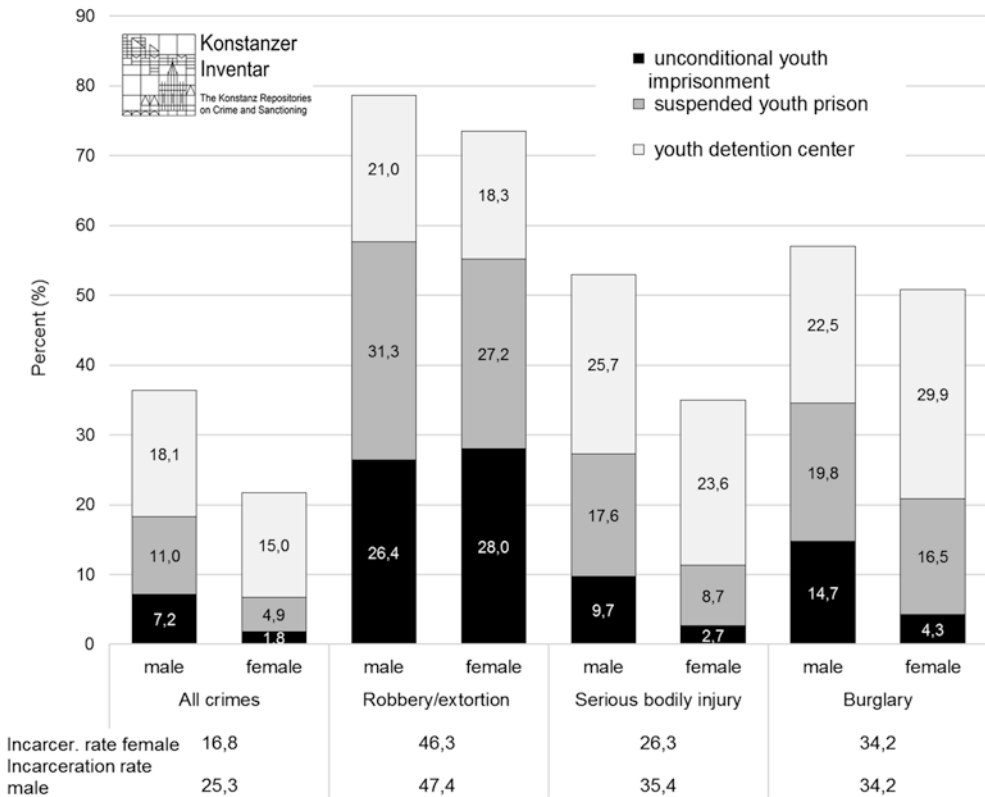


FIGURE 15.8. Sentencing young female and male offenders by youth courts in 2014. Source: Federal Office of Statistics (Ed.). Strafverfolgung 2014, author’s calculations.

SUMMARY AND OUTLOOK

Juvenile delinquency in Germany is declining in the past 10 years and therefore not a major social problem. There has been empirical research on the increase and causes of juvenile crime in the 1990s, but the recent development is not yet clearly understood. One explanation could be that crime prevention projects have been effective, another, that the economic situation in particular for young people has improved and is rather favorable. The German economy is booming and youth unemployment is not a serious problem. In addition, young people have optimistic views on their future and the social climate in general is positive.

The youth justice system in Germany is strictly based on the idea of education and positive special prevention. The organization of specialized youth prosecution and courts and the sanctions system can be characterized as a mixed justice and welfare model integrating minimum intervention and restorative justice measures. The sentencing practice is moderate and stable over the last decades, more than 70% of all juvenile and young adult offences are diverted, youth imprisonment is the very “last resort.”

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