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Youth Justice in Germany

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Abstract and Keywords

Youth justice in Germany covers juveniles and young adult offenders from 14 to 20 years of age. The legal approach since the enactment of a first Juvenile Justice Act (JJA) in 1923 has combined justice and welfare models. Major law reforms in 1953, 1990, and 2008 emphasized diversion and “educational” and restorative justice measures. The sentencing practice remained moderate despite problems with increasing rates of violent offending during the 1990s. For the last 15 years, juvenile crime rates, particularly violent offences, and the youth population in prisons have decreased (–20 percent since 2005). The practice of diversion (70 percent of all cases) has proved to be effective in preventing reoffending. Youth imprisonment is used only as a last resort (2 percent of all cases of juvenile and young adult offenders). No “punitive turn” can be seen in legislation and sentencing practice in Germany.

Keywords: youth justice in Germany, juvenile criminal procedure, diversion, youth imprisonment, young adult offenders, restorative justice, youth justice policy

1. Overview

This chapter presents a comprehensive outlook regarding youth justice and justice policy in Germany. It begins by describing the development of youth justice in Germany from the beginning of youth justice legislation in the early 20th century to the present. Apart from the period under the Nazi regime, law reforms have gradually developed an “educational” approach to youth justice sanctions (see section 2). Section 3 offers an overview on the sanctions system and describes the differentiation between “informal” reactions or sanctions of diversion and the “formal” sanctions of the youth court. Juvenile criminal procedure follows the justice approach, with strong legal guarantees similar to the criminal procedure for adults (see section 4.). A look at the sentencing practice for juveniles (14 to 17 years of age) and young adults (18 to 20 years of age) reveals an increase of informal (diversionary) measures since 1981 (see section 5.). At the same time youth courts have increasingly used community sanctions, thereby reducing the sanctions of short-term detention (up to 4 weeks, *Jugendarrest*) and of youth imprisonment (see section 6.).

A special issue in German youth justice legislation is the application of the Juvenile Justice Act (JJA; *Jugendgerichtsgesetz*, literally translated as the “Juvenile Courts Act”)[1] to 18- to 20-year-old young adults, which was introduced by the law reform of 1953. Most young adults receive milder sentences than under adult criminal law, in particular in the cases of serious and violent crimes (see section 7.). Transfer of juveniles to courts for adults (waiver-proceedings) is not allowed in Germany.

Sections 9 through 11 deal with the population in juvenile welfare institutions and youth prisons and the development of treatment programs in such institutions. Section 13 describes and comments on current debates in youth justice policy. A salient characteristic of German youth justice practice and policy undoubtedly is the stability of the system, which avoids abrupt changes toward the punitive, as well as extreme changes in the other direction.

2. Historical Development and Overview of the Current Juvenile Justice Legislation

The history of the system of specific social control for minors in Germany dates back to the beginning of the 20th century. After establishing a special youth court early in 1908, specific legislation was only successfully pursued after World War I, opting for a dual approach of welfare *and* justice. Thus, in 1922 the Juvenile Welfare Act of 1922 (JWA; *Jugendwohlfahrtsgesetz*), dealing with young persons in need of care, was passed. One year later the JJA followed, which dealt with juvenile offenders who had committed a criminal offence prescribed by the general penal law (*Strafgesetzbuch*, StGB). A totally welfare-oriented model (such as the Anglo-Saxon welfare model) of juvenile justice did not suit the German "mentality," which remained intent on retaining the option of punishing young offenders. The resulting compromise was a "mixed" system of juvenile justice, combining elements of educational measures with legal ("due process") guaranties that were characteristic of the justice model. The JJA contains provisions for a specific system of reactions/sanctions that are applicable to young offenders, as well as some specific procedural rules for the Juvenile Court and its proceedings (e.g., the principle of non-public trials).

The legislation of 1923 established three pillars of innovation. First, contrary to the general penal law for adults, the legislation of 1923 for the first time "opened the floor" for *educational measures* instead of *punishment* (and especially instead of imprisonment; the corresponding slogan was *Erziehung statt Strafe*). Second, the possibility of abandoning the otherwise strictly applied principle of obligatory prosecution (principle of legality, *Legalitätsprinzip*) was introduced. The JJA was thus a forerunner of the notion of prosecutorial discretion in determining whether and how to prosecute, or whether to dismiss a case due to its petty nature or because educational measures had already been initiated by other institutions or persons (see §§ 45, 47 JJA). The third pillar of innovation of the 1923 legislation was to raise the age of criminal responsibility from 12 to 14 years.

In this context, it is worth mentioning that the only time 12- to 14-year-olds have been re-criminalized since this change in the age limit was under the Nazi regime between 1933 and 1945.[2]

The law of 1923 and the amendments that followed provided no clear definition of the principle of "education." History has demonstrated that under certain ideologies such a lack of precise definitions can result in a totally different interpretation of the meaning and intended use of the educational principle. Thus the Nazis defined "education" as *education through* (rather than instead of) *punishment*; that is, a certain repressive meaning of education prevailed. The introduction of so-called "disciplinary measures"—particularly the short-term detention center (up to four weeks of detention as a short,

sharp shock)—by an administrative decree in 1940 and an amendment to the JJA in 1943 can be seen as a demonstration of the repressive *Zeitgeist* of the Nazi era.

After World War II the legislature raised the age of criminal responsibility from 12 to 14 again and abolished all regulations that were part of the Nazi ideology. However, the reform law of 1953 retained the so-called “disciplinary measures,” as similar approaches had also existed in other European jurisdictions (e. g., the British detention center). The most important reform issue in 1953 was to include young adults between 18 and 21 years of age in the jurisdiction of Juvenile Courts, which could then apply sanctions related either to the JJA or to general criminal law (see later in this section).

The JWA of 1922 was a classic law providing intervention in the sense of the *parens patriae* doctrine, according to which the State “replaces” parents who are not able or willing to fulfill their educational duties. The educational measures provided by the JWA were similar to (or even the same as) the educational measures stipulated in the JJA, such as supervisory directives, care orders, orders to improve the educational abilities of parents, placement in a foster family or in residential care, to name but a few. In 1990, the JWA was replaced by a modern law of social welfare (under the concept of the social welfare state, *Sozialstaat*). The role of the juvenile welfare boards shifted from agent of intervention to one of instituting support. Detention in secure (closed) residential care was largely abolished. In the late 1980s and early 1990s a few closed welfare institutions were re-opened (2014 about 300 places in a few Federal States—which is about 0.3 percent of all places for residential measures in the welfare system, see in detail Dünkel 2011: 549).

The German juvenile justice system has experienced major changes since the 1970s. At first, the changes occurred without any legislative efforts, in a process that has been termed “reform through practice” (“*Jugendstrafrechtsreform durch die Praxis*”). This process was characterized by the development of new, innovative projects by social workers, Juvenile Court prosecutors, and judges. As a consequence, in the 1980s the number of juvenile prison sentences declined considerably following the introduction of “new” community sanctions (see Dünkel, Geng, and Kirstein, 1998; Dünkel, 2011; Heinz, 2014). Major reforms of juvenile justice and welfare legislation were then passed in 1990, following the reunification of Germany, which entailed the introduction of numerous new educational measures and sanctions into the JJA that had previously been practiced only on an experimental basis. In addition, the JWA of 1922 was modernized and is now titled Children’s and Youth Welfare Act (CYWA, *Kinder- und Jugendhilfegesetz* or *Sozialgesetzbuch VIII*). It provides a coherent system of support and education for children and juveniles who are in need of care and whose parents apply for such support. In cases where parents do not apply for such support (non-cooperation), the Family Court on request of the juvenile welfare authorities can apply the necessary measures, including the transfer to foster families or even closed residential care as a last resort (according to §§ 1631b, 1666, 1666a Civil Code, BGB). A law reform of 2008 strengthens

the powers of the Family Court and makes earlier intervention easier in cases where parents neglect their children.

On January 1, 2008 the second amendment to the JJA was enacted, which provides juvenile justice in Germany with an overall aim. § 2 (1) JJA stipulates that the primary aim of the JJA is to prevent individual juveniles and young adults from committing (further) offences. In order to achieve this goal, the imposition and execution of interventions and (as far as possible) the juvenile criminal procedure—with regard to the rights of parents or legal guardians—are to be oriented toward this educational aim. The explanatory paper of the draft clearly states that other aims such as general prevention or the protection of the public are not to be considered.[3] Furthermore, the explanatory paper emphasizes that the application of juvenile sanctions is to be based on empirical evidence and the principles of "what works," which is in line with the Recommendation of the Council of Europe (2003) 20 titled "New Ways of Dealing with Juvenile Delinquency and the Role of Juvenile Justice."[4]

In the following years some amendments were introduced that could be seen as more punitive. In 2008—following reforms of the general criminal law—the so-called subsequent preventive detention was introduced in the JJA. The regulations allowed for subsequent indeterminate detention for serious violent offenders if they expose a high probability for committing further serious, violent crimes. Preventive detention was to be served after the determinate prison sentence had been served. These regulations were outlawed by the European Court of Human Rights (see *M. v. Germany*, decision of December 17, 2009, application No. 19359/04) and later by a decision of the German Federal Constitutional Court (see *Bundesverfassungsgericht*, decision of May 4, 2011, Neue Juristische Wochenschrift 2011: 1931 ff.). In consequence, the German legislation modified and restricted these rules considerably. The 2013 reform law allows for preventive detention for juveniles and young adults only if they have been sentenced to at least 7 (juveniles) or 5 years (young adults) and if they constitute a serious danger of further violent offending. As of this writing (2015), only one young adult is in preventive detention in Germany.

Also in 2013, another reform law was enacted allowing combination of a suspended youth prison sentence with a short period (up to 4 weeks) of unconditional detention. The legal prerequisites are so narrowly formulated that almost no cases can be found with this combination of sentences. Another more punitive approach can be seen in increasing the maximum penalty for 18- to 20-year-old young adults in very serious murder cases from 10 to 15 years.[5] The recent reform history demonstrates that the German legislature is maintaining a generally moderate approach to juvenile delinquency, handing out more punitive sanctions only at the extreme "edges" of the sanctions system for serious violent offenders.

3. The Sanctions System: Informal and Formal Interventions of the German Juvenile Justice Act

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 Figure 13 at the end of the chapter). 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; more specifically, the possible abuse of police power as it occurred under the Nazi regime. Therefore, the responsibility for all forms of diversion are in the realm 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 JJA 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 petty-crime offenders and those who have received other social and/or educational interventions (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 offenses 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.[6]

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 hours), mediation (*Täter-Opfer-Ausgleich*), participation in a training course for traffic offenders (*Verkehrsunterricht*). or certain obligations such as 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 such as 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 Figure 13). 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 catalog of juvenile sanctions by introducing new community sanctions such as community service, the special care order (*Betreuungsweisung*), the so-called social training course (see in detail Dünkel, Geng, and 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 a formal warning, community service, a fine, and detention for one or two weekends or for up to four weeks in a special juvenile detention center (*Jugendarrest*).

Youth imprisonment is executed in separate juvenile prisons.[7] 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 such as the so-called Beijing-Rules of the *United Nations* of 1985.[8] 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 8), the maximum penalty is 10 years, too (see §§ 18, 109 JJA; in case of particularly serious murder, 15 years). The preconditions 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).[9]

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 one to two years, and the period of probation lasts for a total of two to three years.

4. Juvenile Criminal Procedure

Germany has developed an effective system of private and state welfare institutions as well as justice institutions in the field of juvenile crime prevention and of juvenile justice. The agencies organized on the basis of the CYWA are the community youth welfare departments (*Jugendämter*) and the youth services in youth court proceedings (*Jugendgerichtshilfe, JGH*), which have a double task: (1) They fulfil purely welfare-oriented tasks (family aid, protection of children in need of care according to the CYWA); and (2) they support the juvenile prosecutor and court by delivering personal and family background information for the trial, and they are partly responsible for the execution of educational measures (mediation, social training etc. based on the juvenile prosecutor's or judge's decision). The youth services in youth court proceedings (JGH) are also responsible for avoiding unnecessary pre-trial detention. Therefore, they participate in the proceedings as early as possible and are immediately informed if a juvenile is placed in pre-trial detention (see § 72a JJA). The personnel of the JGH are social workers or social pedagogues with at least three years of university education (*Fachhochschulen für Sozialarbeit*). The personnel of private welfare institutions in most cases have the same professional education. Sometimes they also have teachers, psychologists, and social workers with special training (e.g., as mediators) at their disposal. The Federal Probation Service also provides special courses for further professional specialization, for example as a mediator.

The German juvenile justice system provides for *specialized Juvenile Courts* as well for juvenile prosecutors (see § 37 JJA). Even at the level of the police—at least in big cities like Berlin, Hamburgm or Stuttgart—specialized youth police units exist. The juvenile prosecutor and judge are assisted by the social workers of the community youth welfare department. The reality of juvenile prosecutors' and judges' specialization is sometimes problematic, as at least in some Federal States, being a juvenile judge or prosecutor is only seen as the initial stage of a professional career. This results in a rather high degree of personnel fluctuation, and this fluctuation can even be a request of the justice administration. Furthermore, in some rural areas, specialization is limited by a lack of cases, and therefore "juvenile" judges also work in other judicial branches (general criminal law, civil law, etc.). In this respect, from an international comparative perspective, it could be deemed advantageous that German Juvenile Courts cover the whole range of 14- to 21-year-old juveniles and young adults, a practice that enables more specialization than in countries where Juvenile Courts are restricted to deal only with minors.

Where prosecutorial diversion appears inappropriate and the likely sentencing outcome is a non-custodial sanction, the prosecutor submits a case file to the youth judge at the Local Court. In cases of more serious offending that could possibly result in a youth prison sentence, the prosecutor brings the accusation to the Youth Court of the Local Court, which is composed of one professional and two lay judges (see Figure 1). Only in

the most serious cases, usually homicide or manslaughter but since the end of 2006 also of cases with sexual offences against minors or others who should not be exposed to an appeal hearing, the prosecutor submits the file to the Youth Chamber at the District Court (three professional and two lay judges).

The German system of judicial review in juvenile justice provides that the juvenile can only appeal once, either to the District Court (*Landgericht*) in order to effect a second hearing, or to the Higher Regional Court of a Federal State (*Oberlandesgericht*) for a review of legal questions (see § 55 (2) JJA).

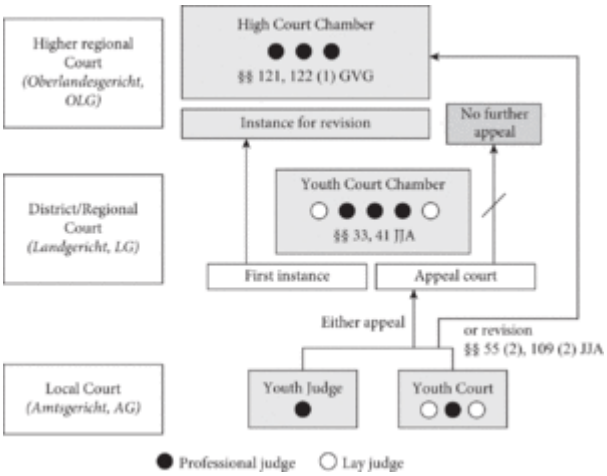

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Figure 1: The German Juvenile Court system

Source: Dünkel, 2011: 566.

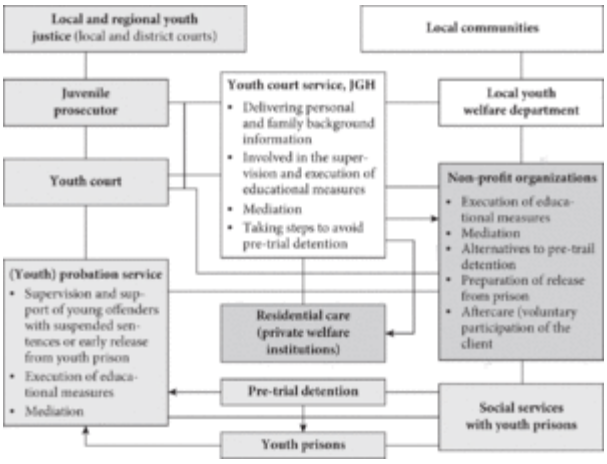

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Figure 2: The multi-agency approach in German juvenile justice

Source: Dünkel, 2011: 567.

The German system of Juvenile Courts is shown in Figure 1.

As stated earlier, various agencies are involved in the German juvenile procedure. This approach can be characterized as a multi-agency approach as proposed by the Council of Europe's Recommendation (2003) 20. The Youth Court Service plays a central role in this context, as can be seen from Figure 2.

Juvenile justice systems, particularly those following the welfare model, are often criticized for failing to guarantee human rights. Compared to the general criminal procedure for adults, the right of access to a legal defense counsel or other basic human rights issues seem to be underdeveloped in some countries, and some critical scholars denounce the juvenile justice system as "second-class justice."

The German juvenile justice system shares this criticism only to a minor extent, as in general the legal procedural rules are very similar for juvenile and adult criminal justice. The JJA states that the procedural rules, for example the rules of evidence, are the same as for general criminal procedure. Deviations from this general rule are based on educational aims. For example, the court hearings are not open to the public (see § 48 JJA) in order to protect the juvenile's privacy and to avoid stigmatization. In juvenile trials the participation of the so-called youth court assistant (*Jugendgerichtshilfe*), that is, a social worker from the community youth welfare department, is required (see § 38 (2) JJA). The youth court assistant has to prepare a social inquiry report and is required to participate in the court trial in order to give evidence about the personal background of the juvenile and to assist the judge in finding the appropriate sanction. However, practice is not always in line with the law, as many youth welfare departments are heavily overburdened. Therefore, particularly in less serious cases, a social inquiry report is not submitted and the presence of the youth court assistant at the court hearing is not always guaranteed.

The right to a defense counsel, in principle, is more elaborate in the juvenile justice system. Since 2010 there have been no differences among cases in which pre-trial detention is imposed, as young adults and adults over 21 have an advocate appointed immediately as it had been before only in cases of juveniles (see § 140 CPC and § 68 No. 5 JJA). Furthermore, there are restrictions for imposing pre-trial detention on juveniles, particularly for 14- and 15-year-old offenders (see § 72 (2) JJA). In addition, and in contrast to adults over 21 years of age, the youth court assistants are obliged to assist the court in pre-trial detention cases in order to find solutions other than detention (see § 72a JJA).

A problematic issue is the right to appeal against Juvenile Court decisions. A court decision cannot be appealed solely on the basis of attempting to effect the imposition of a different educational measure (see § 55 (1) JJA). This is to be criticized in cases where a judge imposes a rather "severe" educational measure like several hundred hours of community service. Unlike in other countries, in Germany community service is not limited to a maximum overall duration (for example, 80 hours in Austria. 120 to 240 hours in other countries; see Dünkel and Lappi-Seppälä, 2013). Thus, in individual cases, a violation of the principle of proportionality has been observed.

Another critical issue concerning the system of judicial review in juvenile justice is that a juvenile can only file *one* appeal, either to the District Court in order to get a second hearing, or to the Higher Regional Court for a review of legal questions (see § 55 (2) JJA). This shortening of review procedures was introduced in order to speed up trials and to enforce the educational approach of juvenile justice. However, from a legal and human rights perspective, this approach puts juveniles at a disadvantage compared to their adult counterparts.

On the other hand, juveniles benefit from the regular exclusion of a joint procedure by the victim or their representative counsel (*Nebenklage*) and from the total exclusion of the so-called private criminal procedure (*Privatklage*, i.e. the private charge if the public prosecutor refuses prosecution in the public interest), neither of which are possible in the German juvenile justice system (see § 80 (1), (3) JJA). At the end of 2006, the possibility of a joint procedure by the victim was introduced for the very few cases of serious violent crimes in which the victim has suffered serious injuries (see § 80 (3) JJA). Joint civil claims, like the French *action civile* (in Germany *Adhäsionsverfahren*), in which the victim can make a claim for compensation of civil damages within the penal court trial, have been admitted in cases of young adults in juvenile criminal procedures (see § 109 (2) JJA).

A few (practically unimportant) rules disadvantage juveniles for the sake of educational concepts. For example, the served period of pre-trial detention—according to the discretion of the judge—might not be taken into account if the remaining period of a juvenile prison sentence is less than six months and therefore estimated as being insufficient for the educational process of reintegration (see § 52a JJA).

In general one can say that the orientation of the German juvenile criminal procedure to preserve fundamental rights is quite well developed and that disadvantages compared to adults are restricted to more exceptional cases. Thus the German juvenile justice system does not share the shortcomings of welfare systems relying more on informal procedures (e.g., roundtables, family conferences. etc.) than on formal legal rights.

5. Informal Ways of Dealing with Juvenile Delinquency: The Practice of Diversion

In the 1980s, diversion became the principal juvenile-justice reaction to juvenile offending in West Germany. In this context it has to be stressed that police-registered juvenile crime during the 1980s had been rather stable, with violent crimes having greatly diminished.[10] The extension of diversion continued even into the 1990s, when official crime rates (violent offending, in particular) had increased. A real increase in crime occurred after the opening of the borders in Eastern Europe and the experience of phenomena such as anomie and social disintegration in the youth subcultures, particularly in the East German Federal States. The rate of young violent offenders registered by the police in East Germany up to 1995 tripled; since then it has been stable or has decreased slightly.[11] The practice of using diversion as a measure of controlling the input of cases into the juvenile justice system is clearly demonstrated in the Eastern Federal States, as well as in the so-called “city-states” of Berlin, Bremen, and Hamburg. The elevated crime rates in these states have been balanced by a more extensive diversion practice (for information about the gap between police-registered suspects and convicted juveniles or young adults see Dünkel, 2011: 560 ff.).

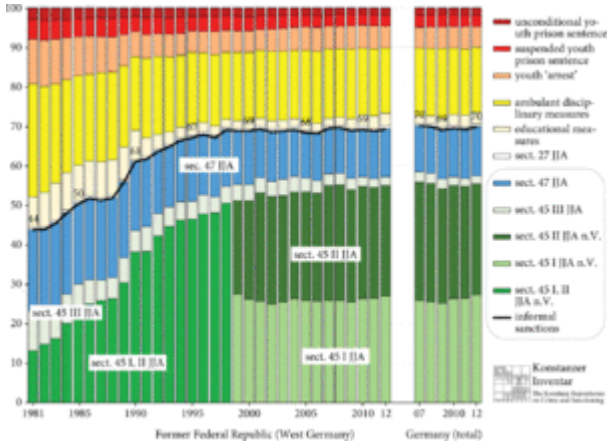

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Figure 3: Diversion rates (dismissals by prosecutors or courts) in the juvenile justice system of Germany, old Federal States, 1981–2012

Source: Heinz, 2014.

Before the law reform, the discharge rates (diversion) in West Germany had already increased from 43 percent in 1980 to 56 percent in 1989. The steady increase continued to 70 percent in 2012 (see Figure 3, see Heinz, 2014). It should be stressed that the increase is particularly attributable to diversion without intervention (according to § 45 (1) JJA) or diversion in combination with mediation or educational measures outside the juvenile justice dispositions (taken by the school authorities or parents according to § 45 (2) JJA), whereas the proportion of diversion combined with educational measures imposed by the court (on request of the juvenile prosecutor according to § 45 (3)) remained stable or recently even slightly reduced (see Figure 3).

However, the large regional disparities have not been eliminated. The discharge rates varied in 2012 between 61 percent in Bavaria, 63 percent in Saarland and 83 percent in Hamburg and 86 percent in Bremen. Apparently, it is the case in all Federal States of Germany that the diversion rates are higher in the urban centers than in the rural areas (see Heinz, 2014: 132). This contributes to the rather stable conviction rates and case-loads of Juvenile Court judges.

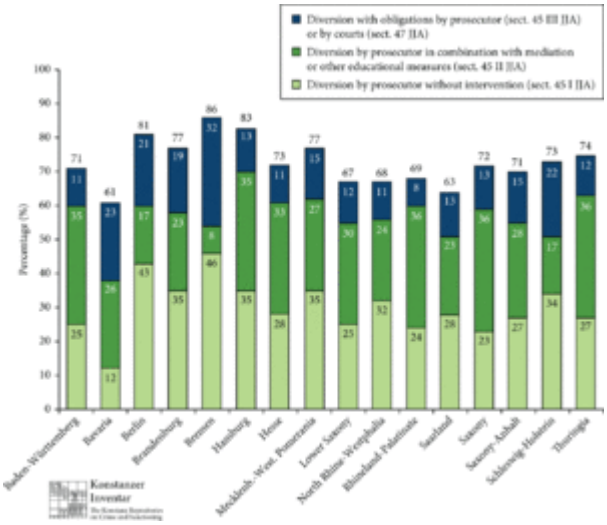

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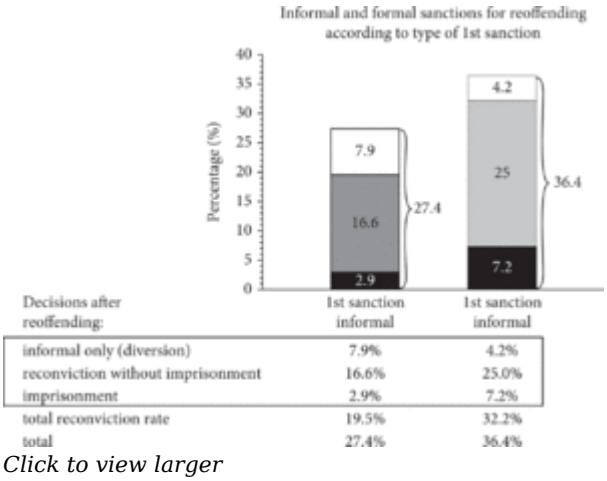
Figure 4: Diversion rates (dismissals by prosecutors or courts) in the juvenile justice system in comparison of the Federal States, 2012

Source: Heinz, 2014.

It is interesting to compare the diversion practice with regard to the Federal States and the different forms of diversion (see Figure 4).

Diversion without any intervention (comparable to a simple warning) is very restrictively used in Bavaria (12 percent of all informal and formal sanctions) in contrast to Brandenburg, Hamburg, Mecklenburg-Western Pomerania (each 35 percent), and Berlin (46 percent) or Bremen (46 percent). Diversion with interventions issued by the juvenile judge vary between 8 percent (Rhineland-Palatinate) and 32 percent (Bremen). Regional sanctioning “styles” and traditions, even within one Federal State, could not been overcome even though the General Prosecutors issued some internal guidelines.



Decisions after reoffending:	1st sanction informal	1st sanction informal
informal only (diversion)	7.9%	4.2%
reconviction without imprisonment	16.6%	25.0%
imprisonment	2.9%	7.2%
total reconviction rate	19.5%	32.2%
total	27.4%	36.4%

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Figure 5: Rates of formal and informal sanctions for reoffending after a first sanction for larceny and a risk period of three years (juveniles, 1961 cohort)

Source: Storz, 1994; Heinz, 2005, 2008.

The strategy of expanding informal sanctions has proved to be an effective means not only for limiting the Juvenile Courts’ workloads, but also with respect to special prevention. The reconviction rates of those first-time offenders who were “diverted” instead of being formally sanctioned were significantly lower. The re-offending rates after a risk period of 3 years were 27 percent versus 36 percent (see Figure 5; see also Dünkel, 2011: 572 ff. with further references). Even for repeat offenders, the re-offending rates after informal sanctions were not higher than after formal sanctions (see Storz, 1994: 197 ff.; Heinz, 2005: 306). The overall recidivism rates in states like Hamburg—with diversion rates of more than 80 percent to 90 percent—was about the same (between 28 percent and 36 percent) as in states like Baden-Württemberg, Rhineland-Palatinate, or Lower Saxony, where the proportion of

diversion at that time accounted for only about 43 to 46 percent, with recidivism rates at around 31 to 32 percent (see Dünkel, 2011: 574). Thus, the extended diversionary practice has at least had no negative consequences concerning the crime rate and general or special prevention. It also reflects the episodic and petty nature of juvenile delinquency.

Another important result concerning the “effectiveness” of diversion is the Freiburg birth cohort study. The study covered more than 25,000 juveniles from the birth cohorts 1970, 1973, 1975, 1978, and 1985. The proportion of diversion instead of formal punishment for 14- and 15-year-old juveniles increased from 58 to 82 percent. Recidivism after two years (according to official crime records) was 25 percent for the diversion group and 37 percent for the juveniles formally sanctioned by the Juvenile Court (see Bareinske, 2004: 188; Heinz, 2006: 186). The difference of 12 percent in favor of diversion corresponds to the above-mentioned earlier studies. The Freiburg birth cohort study demonstrates that the increased use of diversion as shown by Figure 3 does not correspond to an increase in delinquency rates among juveniles. On the contrary, the recidivism rates of comparable delinquents (for different typical juvenile delinquent acts) were significantly lower compared to those formally sanctioned by the court (see Bareinske, 2004: 136 ff.).

Similar results have been obtained with regard to levels of self-reported delinquency of juveniles diverted from the juvenile justice system compared to those who are formally sanctioned. The diversion group reported fewer offences in the three years after being diverted than the control group of formally sanctioned juveniles. Crasmöller therefore concludes that more repressive reactions contribute to an increased likelihood of further delinquency (see Crasmöller 1996: 124 f., 132).

The most comprehensive and in-depth study is the Bremen longitudinal study on juvenile delinquency and integration into the labor market by Schumann and his colleagues, in which 424 juveniles were contacted five times over a period of 11 years. The results revealed that the development of delinquent careers depended primarily on gender, attachment to delinquent peers, and the kinds of sanctions issued by the juvenile justice system. Court sanctions had negative effects also with regard to labor market integration (stable employment; see Prein and Schumann, 2003: 200 ff.; Schumann, 2003, 2003a: 13). On the other hand, it seems that the juvenile justice system itself has less impact (no matter what sentencing decision is made) compared to positive developments in the life course, such as successful school or work integration and good relations to pro-social friends, and negative experiences, such as exclusion in social life or attachment to delinquent peers. Nevertheless, the Bremen longitudinal study also demonstrates that (prosecutorial) diversion instead of (court) punishment is an appropriate means for reducing juvenile and young adult delinquent behavior (see Prein and Schumann, 2003: 208).

6. The Sentencing Practice of Juvenile Courts

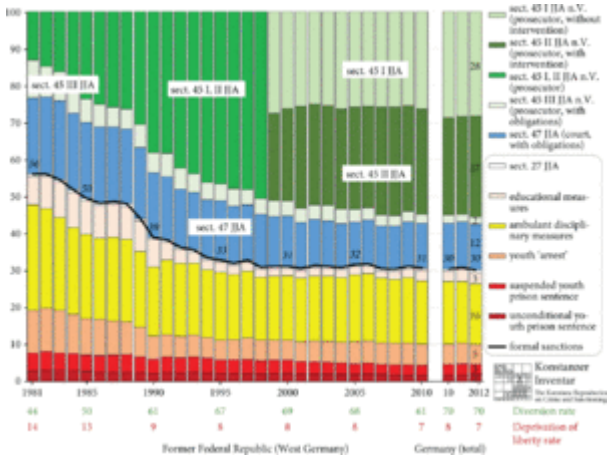

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Figure 6: Diversion and sanctioning practice of Juvenile Courts in Germany (target age group: 14-21-year-old juveniles and young adults), 1981–2012

Source: Heinz, 2014.

At the same time, the proportion of “formal” sanctions has diminished to only 30 percent of all cases that could have entered the system at the Juvenile Court level. Interestingly, major changes in the Juvenile Court’s sentencing practice occurred in the 1980s and early 1990s (see Figure 6). The proportion of sentences to short-term custody in a detention center dropped from 11 percent to only 5 percent (which amounts to a reduction of about 55 percent). Unconditional youth imprisonment (6 months up to five years; in exceptional cases up to 10 years, see section 2) accounted for only 1.5 percent of all formal and informal sanctions against 14- to 21-year-old offenders, suspended youth prison sentences for 3.5 percent. The reduction in the share of youth prison sentences from 8 percent to 5 percent implies a 38 percent reduction since 1981. This is remarkable insofar as in the 1990s the proportion of youth prison sentences remained stable, while the number of violent offenders increased considerably. Also, the reduction in the issuance of community sanctions by the courts from 36 percent to 20 percent is attributable to the extended diversion practice.

Since 2007 statistics on the court sentencing practice present data on the whole of Germany (including the so-called new Federal States of former East-Germany). About 70 percent of youth prison sentences up to 2 years were suspended (71 percent in 2013; combined with the supervision of a probation officer). Since the mid-1970s, prison sentences of up to 1 year have been suspended in about 80 percent of the cases (2013: 81 percent). Even the longer prison sentences of more than 1 year up to 2 years are now suspended in 57 percent of cases (2013), whereas in the mid-1970s such practice was only exceptional (less than 20 percent). The extended practice of probation and suspended sentences (even for repeat offenders) has been a great success, as the revocation rates dropped to only about 30 percent. On the one hand, this could very well indicate that the Probation Service has apparently improved its efficiency, but on the other hand, the courts have also altered their practice by trying to avoid revoking suspended sentences for as long as possible (see Dünkel, 2003: 96 ff.). Again, it becomes

clear that German Juvenile Court judges follow the internationally recognized principle of imposing youth imprisonment as a last resort (*ultima ratio*) and for periods that are as short as possible (*minimum intervention approach*).

The average length of youth prison sentences has risen slightly. The dynamics behind this increase can be explained by a drop in the proportion of sentences of up to 1 year, with a parallel increase in sentences to more than 1 year up to 2 years (see Table 1). However, this has been compensated by a higher rate of suspended sentences (see also above). The proportion of youth prison sentences of more than 5 years has remained stable and very low (2013: 0.5 percent), whereas the sentences from 2 to 5 years have increased. This is, however, not the result of more severe sentencing on behalf of the juvenile judges, but rather due to the increasingly frequent conviction of offenders for more serious crimes, such as robbery and serious bodily injury (see Dünkel, 2011: 579 ff.).

Interestingly, the comparison of the figures for 2006 (related only to West Germany) with the period after 2007 (for the whole of Germany) do not show any difference in the length of sentences and the proportion of suspended sentences, which indicates that the sentencing styles in East and West Germany 25 years after the re-unification of Germany are about the same. The decrease of sentenced juveniles and young adults since 2008 is considerable and has had a major impact on the decrease of the numbers of young offenders in juvenile prisons (see section 11).

Table 1: Length of youth prison sentences, 1975–2006 (old Federal States) and 2007–2013 (total Germany)

Year	YI total (abs.)	Susp. YI (%)	6 m.–1 J. (%)	6 m.–1 y., susp. (% rel. to col. 4)	1–2 y. (%)	1–2 y., susp. (% rel. to col. 6)	2–3 y. (%)	3–5 y. (%)	5–10 y. (%)
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.

Making alternatives to youth imprisonment available to young adults, who are more involved in crime than juveniles (particularly in respect of crimes such as robbery), has contributed to the considerable decline by about 40 percent in the rate of imprisonment of juveniles and young adults between 1983 and 1990. Since 1990 the youth prisoners' rates, however, have increased. But as can be seen in the case of robbery and assault, this is not a result of longer prison sentences being imposed, but rather is attributable to the increase in the absolute numbers of sentenced persons. In the same way, since 2005 the youth prison population decreased because of fewer (violent) crimes and youth prison sentences imposed (see Dünkel, 2011: 579 ff., and section 10).

As indicated under section 1, Germany experienced a reform movement that evolved from the grassroots of the juvenile justice system. Practitioners of private or community organizations (youth welfare departments in the cities) and juvenile prosecutors and judges developed so-called "new community sanctions" from 1974 onward when it became evident that legislative reforms would not be achieved in the near future. These projects were established close to the juvenile courts at the community level, very often by the communal welfare boards, but were then transferred to private organizations. This is a peculiarity of the juvenile welfare system that gives priority to privately run projects (principle of subsidiarity of state versus privately run organizations, see § 4 (2) JWA). The idea of the 1970s and 1980s was to establish appropriate and educational alternatives to the traditional, more repressive sanctions like short-term incarceration in a detention center (*Jugendarrest*, see section 2). The first "new" community sanction to be implemented was the community service order. It was followed or accompanied by the special educational care order. This care order means that a social worker is attached to a juvenile offender as a mentor for a period of usually 6 to 12 months. It is seen as an alternative to the classic probation sanction, in which a probation officer sometimes has 70 or more cases. The care order amounts to more intensive oversight, as in practice a social worker will have no more than 10 to 15 cases. It is evident that the care order can be much more efficient in providing help and social integrative services than a suspended prison sentence with supervision by a probation officer.

Since the beginning of the 1980s another "new" community sanction has been developed: the social training course. This is a group-centered educational measure that targets both leisure-time problems and problems of day-to-day life. Its aim is to improve social competence and skills that are required in private and professional life. Social training courses are organized as regular meetings once or twice per week, often in combination with intensive weekend arrangements (sometimes sporting activities, "adventure" experiences such as sailing, mountaineering, etc.), usually for a period of up to 6 months (see Dünkel, Geng and Kirstein 1998).

The first mediation projects started in the mid-1980s (see Dünkel, 1999: 108; Dünkel and Păroşanu, 2015). At the beginning of the 1990s, 60 percent of the youth welfare departments reported that mediation had been implemented. In 1995 a national poll revealed a total of 368 mediation projects, which is a 68 percent increase from 1992.

However, the authors reported that the majority of mediation schemes ran on an “ad-hoc basis” to cater for individual cases, and not as a priority measure within the ambit of educational measures provided by the JJA (see Wandrey and Weitekamp in Dölling et al., 1998: 130 ff.).

With the reform law of 1990 the legislator recognized the development of “new community sanctions” by creating legal provision for their further and wider application. The Draft Bill mentioned mediation in particular as being “the most promising alternative to the more repressive traditional sanctions” (Bundesratsdrucksache, No. 464/89, 44).

The current JJA in Germany offers many opportunities for arranging mediation or damage restitution. Juvenile prosecutors may waive prosecution if reformatory measures have already been implemented or introduced (§ 45 (2) JJA). The 1990 Act explicitly equates mediation with such a reformatory measure. Significantly, the legislature already accredits sincere efforts by juveniles to resolve conflicts or to provide restitution. This arrangement protects juvenile and young adult offenders if the victim of the crime refuses to cooperate. Successful damage restitution more frequently leads to a dismissal because of “reduced culpability” (pursuant to § 45 (1) JJA; similar to § 153 of the Criminal Procedure Act in adult criminal law). Under the same conditions that apply to Juvenile Court prosecutors, juvenile court judges may waive prosecution to enable subsequent consideration of mediation efforts by young offenders. Restitution of material losses as well as mediation as a sanction that is independent from the Juvenile Court are peculiarities associated with German juvenile law (see §§ 15, 10 JJA). The juvenile justice system, furthermore, provides for damage restitution in conjunction with a suspended term of detention in a remand home or imprisonment.[12] Taking all this into account, it is clear that elements of restorative justice have been implemented at various levels of the German juvenile justice system.[13]

The juvenile law reform of 1990 served as a booster for the further extension of new community sanctions. In a nationwide poll conducted by the Department of Criminology at Greifswald, we investigated the period 2 years before and 2 years after the law came into effect (December 1, 1990). There was a 23 percent increase in the number of projects before and even a 60 percent increase after the statutory amendment in the case of mediation, which amounts to a ratio of 1 to 2.6 (see Dünkel, 2011: 582 f.). Considerable further increases can also be observed for the care order and for social training courses, but not for the community service order in absolute terms. Almost all youth welfare departments already ran community service programs before 1990, however, which rather limited the scope for further expansion.

Official statistics do not provide information about the use of mediation and other so-called “new community sanctions,” with the exception of the community service order as a disciplinary sanction of the youth courts. In 2013 no less than 40 percent of all juveniles and young adults sentenced by youth courts received a community service order (own calculations according to Statistisches Bundesamt, 2015: 312). In contrast, only 3 percent received a reparation order. However, the statistical data are very incomplete, as

mediation and reparation are mainly used in combination with diversion and thus statistically not reported in detail. Court-ordered mediation counts only for about 1 percent of all sentenced juveniles and young adults, but empirical (regional) studies indicate that about 5 to 10 percent of all young offenders dealt by the juvenile justice system may receive a restorative justice measure (see Dünkel and Păroșanu 2015: 312, 316).

The main aim of a nationwide study of the University of Greifswald on new community sanctions was to obtain empirical data about the establishment of these sanctions in the Federal States, particularly in East Germany in the general context of implementing the JJA in the former GDR after the re-unification of Germany. The process of social transition went very quickly in terms of legal reforms. The JJA came into force simultaneously with the re-unification in October 1990, shortly before the amendment of the law in all of Germany. The poll was conducted in 1994 and 1995 and included questionnaires sent to all community welfare departments, private organizations running mediation and other community sanction programs, and to juvenile court judges (see Dünkel, Geng, and Kirstein, 1998).

The results were astonishing, as a mere 4 years after re-unification, the East German *Länder* had not only reached equivalent structures and quality of juvenile welfare, but had even overtaken the “old” Federal States (see Table 2). This development continued in the five years that followed, as is demonstrated by several further studies, particularly in the field of mediation (see Steffens, 1999; Schwerin-Witkowski, 2003).

Table 2: “New” educational community sanctions (offered by private or state organizations) in the old and new Federal States of Germany in 1994

	Youth welfare department	**Social training course**		**Mediation**		**Care order**		**Community service**	
	N	***n***	**%**	***n***	**%**	***n***	**%**	***n***	**%**
Old Federal States (FRG)	479	350	**73.1**	336	**70.1**	408	**85.2**	461	**96.2**
New Federal States (former GDR)	127	96	**75.6**	112	**88.2**	119	**93.7**	127	**100**
Total Germany	606	446	**73.6**	448	**73.9**	527	**87.0**	588	**97.0**

Source: Dünkel, Geng, and Kirstein, 1998.

Community sanctions have seen much progress in Germany. However, it is mainly the community service order that has gained major importance in juvenile justice practice. The other community sanctions, which are more educational and “constructive” than community service or other traditional sanctions, have made far less of an impact. Consequently, half of the community youth departments stated that they had no more than eight young offenders participating in mediation per year. In 50 percent of the youth departments, no more than eight young persons in West and seven young persons in East Germany were under special educational care, and the numbers of participants in social training courses were 18 and 11, respectively. On the other hand, 80 and 78 community service orders were counted in 50 percent of the youth departments. The total number of young offenders sentenced to community service was six to eight times higher than for the other educational sanctions mentioned (see details in Dünkel, 2006; 2011).

7. Young Adults (18 To 20 Years Old) Under the Jurisdiction of the Juvenile Courts (§ 105 JJA)

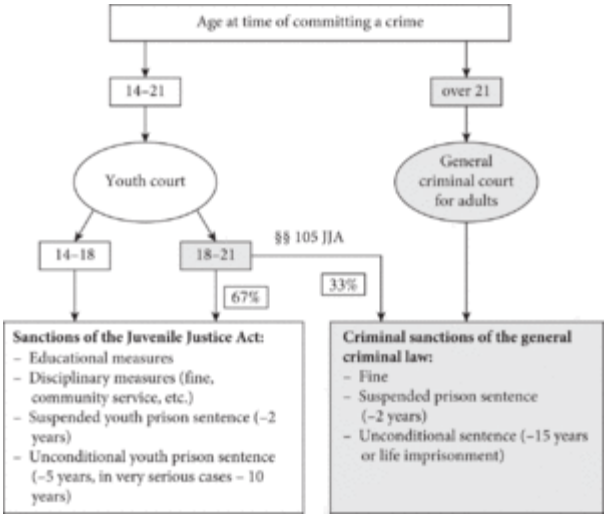

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Figure 7: The German system of sentencing concerning different age groups

In Germany, since the reform law of 1953, all young adults have been transferred to the jurisdiction of Juvenile Courts. Comparing practices internationally, this decision is remarkable, because it points to extending the scope of Juvenile Courts to include young adults over age 18/under 21. Although there is a general tendency in Europe to extend the scope of juvenile justice on young adults (see Pruin, 2007; Dünkel and Pruin, 2011; Pruin and Dünkel, 2015), the German legislation providing the competence to sentence young adults to juvenile courts still is rather exceptional.[14] In most other countries it is also more or less exceptional that adult courts really impose educational sanctions on young adults. The development in Germany has been in the opposite direction. Undoubtedly a major reason is that the reform of 1953 created the jurisdiction of the juvenile court for all young adult offenders independently of whether sanctions of the JJA or of the general Criminal Law (StGB) are

to be applied (see § 108 (2) JJA). The system of sanctioning 18- to 20-year-old offenders and the age groups below and above young adulthood are shown in Figure 7.

Section 105 (1) No. 1 of that law provides for the application of juvenile law 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," he should be punished according to the JJA (*Reifeentwicklung*).

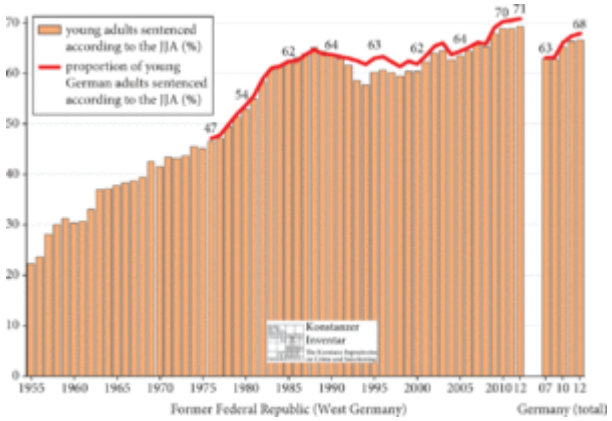

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Figure 8: Percentage of young adults sentenced according to the JJA (§ 105 JJA), 1955–2012 (former Federal Republic (old "Länder"), since 2007: total Germany)

Source: Heinz, 2014.

Furthermore, juvenile law has to be applied if it appears that the motives and the circumstances of the offence are those of a typically juvenile crime (*Jugendverfehlung,* see § 105 (1) No.2 JJA). In 1965 only 38 percent of young adults were sentenced in terms of the Juvenile Justice Act, but by 1990 this proportion had nearly doubled to 64 percent (see Figure 8). In 1995 this share decreased slightly to 60 percent, but then increased again to 67 percent in 2012 (see Heinz, 2014). Since 2007 there are statistical data for all Federal states available including former East Germany. The overall rate of sentencing according to the JJA was 68 percent, with an average of 52 percent in East and 69 percent in West Germany. This makes it clear that the full integration of young adults into the juvenile justice system in West Germany has been accepted in practice. The regulations mentioned above have also been interpreted very widely by the courts to provide for the application of juvenile law in all cases in which there are doubts about an offender's maturity.[15] The Supreme Federal Court (*Bundesgerichtshof,* BGH) held that a young adult has the maturity of a juvenile if "elements demonstrate that a considerable development of the personality is still ongoing" ("*Entwicklungskräfte noch in größerem Umfang wirksam sind*," BGHSt 12: 116; 36: 38). This is the case for the majority of young adult offenders. Thus, the court does not rely on an imaginative prototype of juvenile, but on aspects of each individual's personal development. There is no doubt that these arguments also hold for a further extension of the Juvenile Court's jurisdiction, for example to include 21- to 24-year-old adults (see section 12). The interpretation of a "typical juvenile crime," which is extensively applied, follows a similar logic.[16] However, in practice there are considerable regional differences with respect to specific crimes and different regions.

For the most serious crimes such as murder, rape, or robbery, nearly all (more than 80 percent or even 90 percent) young adult offenders in 2013 were sentenced according to the juvenile law, which in these cases was milder (see Figure 9). The reason is that the higher minimum and maximum sentences provided by the “ordinary” criminal law do not apply in juvenile law (see § 18 (1) JGG). Juvenile Court judges, therefore, are not bound by the otherwise mandatory life sentence for murder, or the minimum of 5 years of imprisonment for armed robbery. German practice appears to be contrary to the so-called waiver decisions in the United States, where serious young offenders are transferred to the “ordinary” criminal justice system (see Stump, 2003).

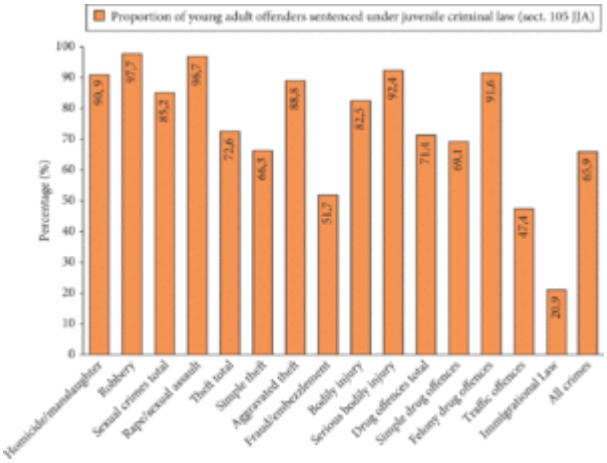

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Figure 9: Percentage of young adults sentenced according to the JJA (§ 105 JJA), 2013, in comparison of different crimes

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

The only area of offences for which young adult offenders are predominantly sentenced according to adult legal provisions are traffic offences (61 percent in 2013). This is due to the procedural possibility of imposing fines without an oral hearing (*Strafbefehl*), which is excluded from the juvenile penal law.

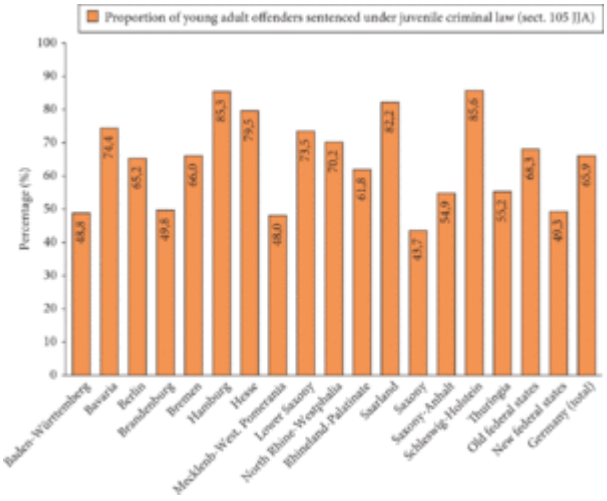

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Figure 10: Percentage of young adults sentenced according to the JJA (§ 105 JJA), 2013, in comparison of different Federal states (*Länder*)

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

There are constitutional reservations about the regional inequalities that have emerged in practice. When the Federal States are compared, in 2012 the share of young adults being sentenced according to juvenile law ranged from 49 percent in Brandenburg and Saxony to 86 percent in Hamburg and 88 percent in Schleswig-Holstein (see Heinz, 2014). The rates for 2013 vary in a similar way (Baden-Württemberg, Brandenburg, Mecklenburg-Western Pomerania, and Saxony below 50 percent; Hamburg, Hesse, Saarland, and Schleswig-Holstein 80 percent and more, see Figure 10). Apparently, Juvenile Court judges have different conceptions of the "typical" personality of juvenile offenders and of the "typical" nature of juvenile delinquency. Overall, there is a north-south divide, with the Federal States in the north increasingly applying juvenile criminal law, whereas in the south juvenile court judges rely to a greater extent on the criminal law for adults.

Regarding the new Federal States (of former East Germany), we must notice that the practice varies, but in general it is more reluctant than in the average of West German Federal States (see above). The low rates in states such as Brandenburg and Saxony are not due to the "distrust" of Juvenile Court judges toward the JJA. Rather, they are the result of a specific bureaucratic routine in the application of the *Strafbefehlsverfahren*, a summary procedure with only a written file in cases of less severe offences, which is only applicable when applying the sanctions of the general criminal law (StGB), in particular, for traffic offences (drunken driving, etc.).

Two discourses can be differentiated in this context. On the one hand, there is the rhetorical" debate in the field of criminal policy and the critique by conservative parties of lenient sentencing through the application of JJA sanctions instead of the provisions of general criminal law.[17] Conservative politicians argue that young adults should be made to assume increased responsibility, thereby allowing for more severe punishment to be imposed. On the other hand, the practitioners on the ground have different problems. They want to eschew the application of the general criminal law in order to avoid the imposition of more severe punishment, and they like to be able to impose fines in a

summary procedure (without an oral hearing), which up to now has not been provided by the JJA (*Strafbefehl*). This procedure is very economical and time-saving and—as indicated earlier—is used particularly for traffic offenders (drunken driving, etc.).

8. Transfer of Juveniles to the Courts for Adults

In Germany, a transfer of juveniles to the criminal court for adults (waiver) is not possible. Even in the case of young adults (18 to < 21 years) the system is working in the opposite direction compared to the US or other waiver systems: the most serious cases are sanctioned under juvenile law, resulting in milder sentences than would be the case for adults (see section 8). Regardless of which set of legal provisions is applied in sentencing, it is always the Juvenile Court that deals with young adult offenders.

9. Preliminary Residential Care and Pre-Trial Detention

According to §§ 71, 72 JJA, priority should be given to educational alternatives instead of placing a juvenile in pre-trial detention. The alternative will most regularly be an open facility of residential care (welfare home), but it could also be a closed welfare institution. In the 1970s such closed institutions were outlawed by most Federal States and practitioners, as they were seen as a symbol of “state repression.” However, at present a more pragmatic debate has led to the reopening of a few facilities for those juveniles who cannot be handled in an open environment, and for whom the aim was nevertheless to avoid pre-trial detention. So in six out of 16 Federal States, some 300 places have been created as closed institutions (see section 10).

Pre-trial detention should be the last resort in order to guarantee a juvenile’s attendance at trial. In 1990 the legislature even intensified the necessary preconditions for pre-trial detention because of the possible detrimental effects such detention can have, particularly on juvenile offenders (see § 72 (1) JJA). Pre-trial detention is prohibited for persons less than 14 years of age. For 14- and 15-year-old offenders, in cases of danger of not standing trial (escape), pre-trial detention is only permitted if the juvenile has already absconded in the past or has no permanent home address (see § 72 (2) JJA).

Nevertheless, the practice of juvenile judges is sometimes problematic, as they also use grounds for pre-trial detention that are not provided by law, such as crisis intervention and short sharp shock ideologies (see Kowalzyck, 2008). Empirical research shows, however, that in general juveniles are only sent to pre-trial detention as a last resort (see Heinz, 2014). The pre-trial detention rates per 100,000 of the age group are included in

Figure 10 and Table 4. The pre-trial detention rates as youth imprisonment in general have decreased considerably in the last 15 years.

10. Legal Aspects and the Extent of the Deprivation of Young Persons' Liberty in Youth Prisons

Youth imprisonment covers the age groups of 14- to 17-year-old juveniles, 18- to 20-year-old young adults, and adults aged 21 to 24 who were sentenced by Juvenile Courts as juveniles or young adults. As mentioned at the beginning of the chapter, 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 absence of primary legislation as 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.[18] In September 2006, a general reform of 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 basic principles of youth imprisonment, and what are viewed as being the most promising concepts of rehabilitation.[19] Nevertheless, there is a strong consensus that the organization of youth prisons, even more than in adult prisons, must be oriented toward 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).[20] 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 December 13, 2008 (mentioned under section 1) brought major improvements, guaranteeing juvenile and young adult inmates an oral hearing, as well as regular legal advice, when complaining to the court.[21]

The actual situation in German youth prisons can be described as follows: In 2014 there were approximately 5,000 young people aged between 14 and 25 in youth custody (March 31, 2014: 4,910), 181 (or 3.7 percent) of them female. Furthermore, 1,908 (of these, 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 Figure 11 and Table 3).

Youth imprisonment rates differ considerably across the Federal States. They are higher in the East, partly because there is more violent crime in the eastern regions. The case of Schleswig-Holstein is interesting in this respect: the imprisonment rate there (2014: 49 per 100,000 of the 14 to 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 129 per 100,000 (see Figure 11). This reflects an explicit criminal policy of opting for different types of sentences and alternatives to custody.

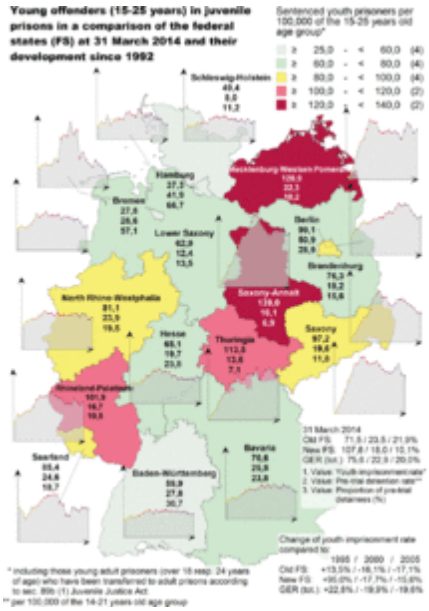

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Figure 11: Young offenders in German juvenile prisons

Source: Federal Statistical Office (Ed.): Strafvollzugsstatistik, 1992–2014 (see www.destatis.de); own calculations.

In the last 10 years a reduction in the rates of youth imprisonment has been observable in almost all Federal States (see Figure 11 and Table 3). With the exception of Berlin, an even stronger decrease can be seen for the rates of juveniles and young adults in pre-trial detention. The overall pre-trial detention rate for 14- to 20-year-old alleged young offenders fell from 47 per 100,000 of the age group in 2000 to 13 in 2014 (= –51.6 percent, see Table 3).

Table 3: Imprisonment rates for juveniles and young adults in youth prisons and in pre-trial detention 2000 and 2014 (March 31) in a comparison of the Federal States

	Youth imprisonment rates		2014 comp. to 2000	Pre-trial detention rates*		2014 comp. to 2000
	2000	2014	in %	2000	2014	in %
Baden-Württemberg	69.4	59.9	–13.8	44.3	27.8	–37.1
Bavaria	76.7	70.6	–8.0	50.0	25.8	–48.4
Berlin	92.9	99.1	6.7	59.8	50.9	–14.8
Brandenburg	124.1	76.3	–38.5	49.8	18.2	–63.4
Bremen	134.4	27.8	–79.3	59.4	26.6	–55.2
Hamburg	52.4	37.3	–28.9	69.5	41.9	–39.8
Hesse	84.4	65.1	–22.9	46.1	19.7	–57.2
Mecklenburg-Western Pomerania	148.4	128.9	–13.2	53.4	22.3	–58.3

Lower Saxony	92.1	62.9	**–**31.8	34.7	12.4	**–**64.3
North Rhine-Westphalia	92.9	81.1	**–**12.7	46.1	23.9	**–**48.1
Rhineland-Palatinate	116.1	101.9	**–**12.3	38.5	16.7	**–**56.6
Saarland	114.2	85.4	**–**25.2	46.0	24.6	**–**46.5
Saxony	145.0	97.2	**–**32.9	61.6	19.6	**–**68.2
Saxony-Anhalt	132.8	139.0	4.7	58.1	16.1	**–**72.3
Schleswig-Holstein	56.6	49.4	**–**12.7	34.9	8.0	**–**77.2
Thuringia	98.3	113.5	15.5	37.8	13.6	**–**64.1
“Old” Federal States (West-Germany)	**85.2**	**71.5**	**–16.1**	**45.6**	**23.5**	**–48.6**

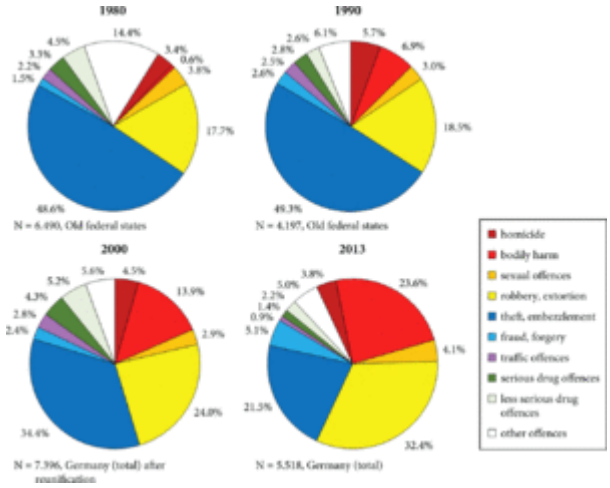
“New” Federal States (East-Germany)	**131.0**	**107.8**	**–17.7**	**53.3**	**18.0**	**–66.2**
Germany total	**94.3**	**75.6**	**–19.8**	**47.2**	**22.9**	**–51.6**

(*) Sentenced per 100,000 of the 15- to 25-year-old population.

(**) Per 100,000 of the 14- to 21-year-old population.

Source: Federal Statistical Office (Ed.): Strafvollzugsstatistik, 2000, 2014 (see www.destatis.de); own calculations.

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 to 20 in 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 percent of the total population of 5,518 youth prisoners (March 31, 2013) were “real juveniles” aged 14 to 18; 90.6 percent of “youth” prisoners in Germany in 2013 were young adults between 18 and 24 years of age (46.2 percent aged 18 to 20; 44.4 percent aged 21 to 24).[22]



Click to view larger

Figure 12: Youth prison population in Germany, 1980–2013, according to the type of offence

Source: Federal Statistical Office (Ed.): Strafvollzugsstatistik, 1980–2013 (see www.destatis.de); own calculations.

Most young detainees are serving sentences for offences involving violence: in 2013 the figures were 23.6 percent for bodily harm/assault; 32.4 percent for robbery; 3.8 percent for homicide; and 4.1 percent for sexual offences. Drug-related offences including drug trafficking accounted for 3.6 percent. These figures have changed considerably over the last 25 years (less simple property and more violent offenders; see Figure 12).

The youth custody system in Germany differs from the prison system for adults in many respects. First, a much wider range of educational and vocational training is offered.[23] Levels of staffing—especially numbers of psychologists, social workers, and teachers employed—are much better.[24] In 2001, for example, there was on average one social worker for every 35 detainees in youth custody facilities, and one psychologist for every 76 detainees, compared with double the number of detainees per professional in adult prisons, which were thus clearly disadvantaged. Most youth custody facilities are smaller than adult prisons.[25] Many of the facilities were constructed or substantially renovated within the last 25 years. Single-cell accommodation is provided now in all facilities, and facilities meet the standards of a modern custodial establishment geared toward resocialization, with residential units and a range of training opportunities (for some recent data, see the results of an empirical study by the Department of Criminology in Greifswald; see section 11).

There are, however, still considerable problems with discipline and subcultures. One factor is the presence of a high proportion of violent offenders, among whom impulsive and sometimes violent reactions to fellow detainees and staff are more common. There are significant differences in this regard from facility to facility. Certain directors manage to run their establishments virtually without recourse to disciplinary measures; indeed, solitary confinement has been abolished in practice in some facilities and throughout some Federal States.[26] Both the specific circumstances of youth custody and the fact that the term *education* is not precisely defined leave much room for discretion and for different conceptions of education in prison and differing arrangements for it. The individual attitudes of directors have a huge influence here.

A further feature that clearly distinguishes youth custody facilities from adult prisons is the rarity with which detainees are granted home visits, allowed to work outside the prison (e.g., doing a day job for an outside employer without supervision by prison staff), or are transferred to open prisons (on March 31, 2014 only 9.9 percent of juveniles, compared with 16.4 percent of detainees in prisons for adults, were in open institutions).[27] This is explained in part by the risk of juveniles abusing the system (e.g., because of the high proportion of juveniles serving sentences for violence), but also to some extent by different styles and traditions of applying the prison law in that respect. There is no other explanation for the fact that detainees in Bremen, Hamburg, and Schleswig-Holstein are granted home leave 7 to 17 times more frequently than their counterparts in Bavaria, without there being any indication for a parallel increase in the rates of system abuse in these three States.[28] The same is true in relation to daily work leave, which is granted 40 times more often in Lower Saxony than in Bavaria.[29] There are equally clear regional differences between the figures for juveniles in open institutions at any given time. While in Brandenburg, Lower-Saxony, and North-Rhine-Westphalia 12 to 4 percent were accommodated in open facilities, the proportion in 7 out of the 16 Federal States was less than 4 percent (average on March 31, 2013: 7.5 percent).[30]

Apart from the structural characteristics of the youth custody system, certain interesting types of reform have been introduced in Germany with regard to practice, both for their potential in promoting reintegration and for their innovative organizational style. On the one hand, efforts have been made to decentralize the traditionally hierarchical model of prison organization in favor of a team-based approach with much delegation of decision making (as at Rockenberg, Hesse). Outward-bound-type initiatives (with rock climbing, biking or canoeing, for example, as at Adelsheim, Baden-Württemberg) have also been introduced with the aim of giving detainees an intensive experience of group activity, fostering a sense of responsibility and confidence. There have also been successful experiments with forms of aggressor-victim mediation and with “democratic” prison communities (based on *Kohlberg*’s theory of moral development).[31] Recently, anti-aggression courses for young perpetrators of violent crime have become widespread.[32] Developments in some parts of the “new” (East German) Federal States still lag behind due to the reality of inadequate facilities and staff shortages (especially shortages in well-

qualified personnel). But in general the situation has changed remarkably, and since the mid-2000s youth imprisonment has largely adjusted to West German conditions.

The positive aspects of practice-rooted prison reforms indicate that it is possible to have a good youth custody system even where the legislative framework and the physical facilities are unsatisfactory. The key factors remain commitment on the part of staff and the motivational influence of the institutions' directors and management personnel.

11. Youth Prisons—Development of Treatment/ Vocational Training and Other Educational Programs in Practice

With respect to youth imprisonment, the Department of Criminology at Greifswald University conducted two survey studies on the actual situation and treatment programs in youth prisons. In 2006 and 2010 a written questionnaire was sent out to all 29 youth prisons in order to get basic information about treatment programs, staffing, and measures for the preparation of release and reintegration into society. The results reveal a much better infrastructure of (and for) treatment than in prisons for adults. More in-depth research about juvenile prisons and their impact on young offenders during their time in prison, as well as after release, has been conducted by the Criminological Institute of Hannover/Lower Saxony.[33]

First of all, the results of the Greifswald study demonstrated that the general situation (problems of overcrowding, poor living conditions, etc.) has improved. Overcrowding, which already in 2006 was restricted only to some of the closed youth prisons, until 2010 has disappeared at all, a trend which continues also over the period from 2010 until today (2015).[34] On average 87 percent of the places in closed and 65 percent in open youth prisons were occupied.

Staffing varied considerably from prison to prison, as staffing and the quality of treatment are the responsibility of each Federal State. Staffing in general is good with a staff–prisoner ratio of about 1: 1 up to 1.5. Looking only at the staff members who are directly involved in treatment and care, such as psychologists and social workers, the following differences and developments can be observed: Whereas in Schleswig-Holstein and Hamburg one psychologist had to take care of 15 or 36 young prisoners, the numbers in Thuringia and Saxony-Anhalt were between 110 and 82 (see Table 4). Due to the new legislation and the jurisprudence of the Federal Constitutional Court, staff equipment (with few exceptions) improved considerably during the period 2006–2010, particularly in Hesse, Mecklenburg-Western Pomerania, and Rhineland-Palatinate. Berlin and Hamburg, which already had a very good staff-prisoner ratio, rose to the best-equipped facilities with regard to treatment staff.

Regarding social workers (based and working in the institution). the staff-prisoner ratio improved considerably. In the worst cases of Schleswig-Holstein and Baden-Württemberg, one social worker in 2010 had to take care of 37 and 32 prisoners, while in Hamburg, Hessen and Rhineland-Palatinate there were only 6, 7, and 11 prisoners per social worker (German average: 17). The variation was considerable again (see Table 4).

Table 4: Number of prisoners per psychologist and social worker in youth prisons in Germany 2006 and 2010.

	Prisoners per psychologist	**Prisoners per social worker/ social pedagogue**
Baden-Württemberg	**57** (84)	**32** (47)
Bavaria	**43** (88)	**22** (42)
Berlin	**26** (42)	**17** (26)
Brandenburg	**44** (38)	**21** (45)
Bremen	**59** (43)	**15** (21)
Hamburg	**35** (35)	**6** (24)
Hesse	**68** (130)	7 (20)
Mecklenburg-Western Pomerania	**46** (137)	**25** (46)
Lower Saxony	**67** (56)	**18** (18)
North Rhine-Westphalia	**62** (84)	**22** (36)
Rhineland-Palatinate	**34** (54)	**11** (29)
Saarland	**77** (110)	**14** (28)
Saxony	**52** (50)	**28** (34)
Saxony-Anhalt	**110** (123)	**25** (93)
Schleswig-Holstein	**15** (33)	**37** (26)
Thuringia	**82** (147)	**31** (74)
"Old" Federal States (West-Germany)	**47** (66)	**16** (28)

“New” Federal States (East-Germany)	**61** (72)	**26** (50)
Germany total	**50** (67)	**17** (32)

Numbers of prisoners per one psychologist and one social worker 2010 (in brackets: 2006)

Source: Dünkel and Geng, 2007a, 2012: 123, 125.

The treatment programs primarily involved school and vocational training, which were elements of rehabilitation in all youth prisons. In addition, almost all prisons (82 percent) offered some kind of (cognitive-behavioral) anti-aggression program.[35] However, the numbers of participants remained modest and only a minority of the young prisoner population could profit from more intensive rehabilitative programs. On the other hand, 68 percent of the closed youth prisons (n = 28) had specific preparatory release programs available and 82 percent depth regulation schemes. Ten out of 28 youth prisons (36 percent) provided for specific aftercare programs organized by the prison authorities. Prison furloughs of several days to help to adapt to social life outside prison were granted in all open facilities (n = 22, 21 of them were departments attached to closed youth prisons, one was an independent youth prison). The proportion of youth prisoners who were granted leaves of absence varied considerably, but the statistics are not always reliable. In some federal States such as Berlin and Bremen, 80–90 percent of youth prisoners were granted such day leaves or work releases, leaving the prison every day for work and coming back only for the night, whereas in other youth prisons, in particular in Saxony and other Eastern German Federal States, less than 20 percent received such leaves.[36] These results indicate that German youth prisons are not yet fully developed as institutions of effective rehabilitation.

Recent studies of recidivism after release from youth prisons revealed reconviction rates of 60–70 percent. However, in turn only about 35 percent returned to prison.[37] Despite high reconviction rates, there are some indications of effective treatment programs that continue the treatment or educational/vocational program after release.[38] There are some positive experiences with anti-aggression programs and cognitive behavioral programs in the tradition of “Reasoning and Rehabilitation” schemes. A reduction of reconviction rates by 10–20 percent can be expected if programs follow principles of effective offender treatment as outlined by the Anglo-Saxon literature.[39]

12. Current Reform Debates and Challenges for the Juvenile Justice System

The contemporary tendencies in juvenile criminal policy to some extend are ambivalent. Conservative parties in the 1990s demanded a lowering of the age of criminal responsibility from 14 to 12, since the registered crime rate of children had increased (an argument that has been refuted by the development in the last 15 years by a strong decline of child crime rates; most of the increase before that period was attributable to petty non-violent offending). After the civil law reform of 2008 brought improved outcomes through earlier and more intensive socio-pedagogic intervention in the family and welfare system,[40] this demand is no longer raised. Nonetheless, conservative politicians urge that the widely extended practice of sentencing young adults according to the JJA should be removed in order to impose harsher punishment for this age group, and that the application of the JJA should be the exception and not the rule. The simple but enticing argument is that young adults have many responsibilities in civil law and should therefore also be responsible like adults in penal matters. Yet these arguments totally neglect the psychological and pedagogic foundation of the JJA. Today, the development of personality and the phase of integration into adult life take an even longer rather than shorter time.[41] New evidence from neuroscience supports these arguments with regard to brain maturation, demonstrating that significant maturation developments occur until about the age of 25.[42] Therefore, German juvenile criminologists and most of the practitioners in juvenile justice urge the retention of current age limits for young adults. They go even further by calling for an extension of the JJA's remit to cover young adults without any exception,[43] and even to include 21 to 24-year-old adults in certain cases where the sanctions of the JJA appear more appropriate.[44] Indeed, in Europe the age limits for criminal responsibility vary considerably.[45] On the one hand, in some countries the tendency to lower the age of criminal responsibility to as low as ten years has been put into practice, such as England and Wales (similar tendencies can be observed in the Netherlands). On the other hand, most Scandinavian countries have retained their moderate approach, with 15 as the age of criminal responsibility. It will be difficult to harmonize the different approaches in Europe, and with regard to the "getting tough" policy in some countries it is not even desirable. However, the majority of countries, particularly in the Baltic, Central, and Eastern European countries, have more or less developed a consensus about age limits of 14, 18, and 21 years.[46] So in conclusion, it seems to be desirable for Germany to maintain its juvenile crime policy and even expand the application of the JJA to young adults without exception.

A major reform debate took place in September 2002 when the German *Juristentag* (a biannual meeting of German lawyers) discussed the issue, "Is the German Juvenile Justice System Still Up to Date?" The principal expert opinion was presented by Hans-Jörg Albrecht, director of the Max-Planck-Institute for Foreign and International Penal Law at

Freiburg. His main concluding proposal was to abolish the idea of education, but to nevertheless retain a separate juvenile justice system with proportionate (and with respect to adult offenders, milder) sanctions.[47] Concerning the abolition of the *leitmotiv* of education, his ideas have been rejected by almost everyone in the German lawyers' assembly, as well as by juvenile criminologists and penal lawyers.[48] Some of Albrecht's concrete proposals, however, corresponded with proposals from the *Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen* (DVJJ), an organization of Juvenile Court judges, prosecutors, social workers active in juvenile justice and welfare, and criminologists. This organization has influenced the reform debate over the last 30 years quite considerably. The DVJJ stands for keeping the idea of education in the sense of special prevention and also to extend the scope of constructive solutions, such as mediation and other community sanctions. In this context a "reconstruction" of the system of community sanctions is being advocated, as well as the further restriction (limitation) of youth prison sentences (abolishing the imposition of a prison sentence because of "dangerous tendencies") and of pre-trial detention. They urge for young adults to be generally covered by the JJA.[49]

Neither the former governments of the Social-Democratic Party and the Green Party (1998–2005) nor the coalition of Social Democrats (SPD) and the Conservative Party (CDU/CSU) (2005–2009 and again since 2013) have been devoted to changing the juvenile justice legislation much. As mentioned in section 1, only small reforms have been passed that in part can be seen as more repressive, but they refer only to some minor groups of very serious offenders (see the reform laws of 2008 and 2013 to introduce *preventive detention* for dangerous juvenile offenders) who have been sentenced to a youth prison sentence of at least 7 years for homicide or other serious violent or sexual offences.[50] Preventive detention according to the new § 7 (2)-(4), 106 (3) JJA is enforced after a person has served the full prison sentence. It is conditionally imposed together with the original conviction. There must be two psychiatric or psychological experts predicting a concrete danger that the juvenile will commit further serious crimes that will cause serious harm to potential victims. The law was passed because of one murder case, in which a recidivist young adult killed a child and was seen as being extremely dangerous. The reform law is typically symbolic legislation that aims to calm moral panic. The original reform of 2008 was reversed after several decisions of the European Court on Human Rights (ECtHR), which stated that the German measure for preventive detention violates Art. 5 and 7 of the European Convention on Human Rights (ECHR). The first decision in December 2009[51] stated that the preventive measure in its content is equivalent to a proper punishment and therefore the preventive sentence would constitute an unlawful (double) punishment in the sense of Art. 7 ECHR (one of the reasons was the similarity of the execution of the preventive measure in the same prisons and under the same living conditions as ordinary prison sentences). The German Constitutional Court took up the arguments of the ECtHR and concluded that all regulations concerning preventive detention are in violation of the German Constitution[52] and therefore had to be replaced by new legislation (before May 31, 2013). The law from

2013 makes preventive detention the absolute exception. Preventive detention since 2013 is provided only for very dangerous violent offenders with personality disorders.

Feelings of insecurity are exploited by most political parties (except, it should be noted, the Green Party). Right-wing populist parties in some State Parliaments, like in Hamburg, have campaigned successfully during elections with law-and-order paroles. The role of the mass media is very important in this context. On the other hand, the election campaign in the Federal State of Hesse in January 2008, which was very strongly dominated by getting-tough policies in juvenile justice, resulted in a complete disaster for the Christian Democratic Party. Since then a consensus of the major parties seems to be prevailing, namely that the existing juvenile justice system should be left more or less untouched. Furthermore, the “culture of education” of those working in juvenile justice is strongly engendered in Germany by permanent further-education of practitioners that is organized by the DVJJ and other organizations. It is remarkable that the governments of the 21st century have left the far-reaching regulations and practice of applying the Juvenile Justice Act to young adult offenders untouched.

13. Summary and Outlook

The German juvenile justice and welfare system shows a remarkable stability and maintenance of the educational ideal. Although more repressive tendencies in parts cannot be denied, the system has not changed and will not change considerably toward a “neo-liberal” approach.[53] Sentencing practice is comparably reasonable, for it retains youth imprisonment as an intervention of absolute “last resort,” also for young adult offenders. Only 2 to 3 percent of all juveniles and young adults receive an unconditional youth prison sentence. Only a small number, about 250 juveniles, are held in closed welfare institutions on any given day, and about 5,500 are held in youth prisons. In 90 percent of the cases, the latter group is aged 18 to 25 years.

Therefore, one can honestly state that juvenile welfare and justice have succeeded in providing reasonable and cautious sentencing, although problems of registered serious (violent) crimes and of specific groups of offenders (migrants, foreigners, drug offenders, Neo-Nazi-offenders, etc.) increased in the 1990s. Recently a considerable decline of youth violence can be observed and a reduction of young offenders in youth prisons as well.

Click to view larger

Figure 13: Sanctions of the German juvenile justice system (*Jugendgerichtsgesetz*, JGG)

Updated version of the graph in Dünkel 2011, p. 622.

It was the honorable Franz von Liszt who shortly after 1900 stated that good social policy is the best criminal policy. The idea of crime prevention has been developed more and more in the past 20 years in Germany. Successful projects have been established; for example, programs to prevent violent or xenophobic crimes in quite a few cities and communities.[54] This development does not detract from the need for reforms of the juvenile justice system, but it points the way to dealing with the causes of crime. Juvenile justice can play only a marginal role in this regard and cannot solve general societal problems (like poverty, unemployment, discrimination, etc.).

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Notes:

([1]) The literal translation of “Jugendgerichtsgesetz” reflects the historical roots of the JJA. It goes back to the adjudication of specialized judges of youth chambers at some courts of bigger cities like Berlin, Cologne, or Frankfurt. The

"Jugendgerichtsbewegung" ("movement for establishing juvenile courts") had a major influence on the first JJA in 1923; see Schaffstein, Beulke, and Swoboda, 2014: 41 ff.

([2]) Lowering the age of criminal responsibility was only an issue (of a more rhetorical or symbolic nature) in the run-up to elections for a few conservative politicians of the Christian Democratic Parties (CDU/CSU) in the 1990s—an issue that had no prospects then or now of being accepted either by the majority of their own parties or by the other political parties in Germany.

([3]) See Bundestagsdrucksache 16/6293: 10; Dünkel, 2008: 2 f., which conforms with the existing jurisprudence of the Higher Courts and the Supreme Court, Bundesgerichtshof, see Eisenberg 2014, note 5 on § 17; Ostendorf 2013, Grdl. Zu §§ 17-18, note 6.

([4]) No. 5: "Interventions with juvenile offenders should, as far as possible, be based on scientific evidence on what works, with whom and under what circumstances," see Council of Europe, 2003.

([5]) For a critical assessment of recent juvenile law reforms and perspectives for further developing the educational orientation see Dünkel, 2014.

([6]) The situation is different in the general Criminal Law for adults (over 18 or over 21 years old) where diversion according to §§ 153 ff. of the Criminal Procedure Act is restricted to misdemeanours. Felony offences (i.e., crimes with a minimum prison sentence provided by law of one year) are excluded.

([7]) For the specific legislation of the *Länder* since 2008, see Kühl, 2012; Ostendorf, 2012.

([8]) See United Nations, 1991; Dünkel, 1994: 43; No. 17.1. of the Beijing Rules restricts youth imprisonment only to cases of serious violent crimes or repeated violent or other crimes if there seems to be no other appropriate solution.

([9]) The precondition of "dangerous tendencies" for imposing a prison sentence is very often heavily criticized as it provides room for stigmatization; see Dünkel, 1990: 466 ff. Law reform proposals urge abolishing the term "dangerous tendencies" and keeping only the precondition of the "gravity of guilt"; see Albrecht, 2002; Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen, 2002; Dünkel, 2002 for further references.

([10]) See Heinz, 2014; Bundesministerium des Inneren/Bundesministerium der Justiz 2006.

([11]) From 1995 onward one can observe a (slightly) diminishing juvenile crime rate in East Germany and an increasing crime rate in West Germany (also concerning violent offences), which results in a "convergent" situation in both parts of Germany, see Dünkel, 2006; Heinz, 2014.

([12]) The same applies for release on probation; for a summary, see Dünkel, 1999.

([13]) After the juvenile justice legislation of 1990, the legislature also passed reforms of the general penal law and the Criminal Procedure Act (StPO), which included some innovation in its emphasis of mediation, see § 46a Criminal Law (StGB) of 1994 and §§ 155a, 155b Criminal Procedure Act (StPO); see Dünkel, 1999: 110.

([14]) The competence of youth courts for young adults in Europe is given only in Austria, Croatia, Germany, and Serbia; see Gensing, 2014. Most European countries, however, apply educational measures of the juvenile justice legislation or mitigated sentences of the general criminal law; see Dünkel and Pruin, 2011; Pruin and Dünkel, 2015.

([15]) See BGHSt 12: 116; BGH Strafverteidiger, 1989: 311; Eisenberg, 2014, notes 7 ff., 36 on § 105; Ostendorf, 2013, note 24 on § 105 (emphasizing that § 105 JJA should be applied if the sanction according to the JGG is more favorable for the young adult).

([16]) The examples mentioned in the cases are crimes committed in groups or under the influence of a group, also hooliganism, sometimes very violent crimes that have derived from a specific situation (possibly in combination with alcohol abuse) etc.; see Eisenberg, 2014, notes 34 ff. on § 105; Ostendorf, 2013, notes 17 f. on § 105.

([17]) These arguments do not consider that sometimes the application of sanctions of the JJA may be a disadvantage rather than a benefit, as can be shown by the fact that in the juvenile justice system the minimum prison sentence is 6 months, in the general criminal law only month; for some empirical evidence of disadvantages in sentencing, see Dünkel, 1990; Pfeiffer, 1991.

([18]) See Bundesverfassungsgericht, Decision of 31 May 2006, Neue Juristische Wochenschrift 2006: 2093 ff.; Dünkel, 2006a, 2006b; Dünkel and van Zyl Smit, 2007.

([19]) See Dünkel and Pörksen, 2007; Eisenberg, 2008; Sonnen in Diemer, Schatz, and Sonnen, 2011: 773 ff.; Ostendorf, 2012; Kühl, 2012.

([20]) For a comparison of the legislation in the different Federal States see Ostendorf, 2012; Kühl, 2012; Sonnen in Diemer, Schatz, and Sonnen, 2011: 773 ff.

([21]) See § 92 JJA in combination with §§ 109 ff. Prison Act; see Dünkel 2008: 3 f.

([22]) For a similar distribution in former years, see Dünkel, 2006b: 13 f.; 2011: 600; Ostendorf, 2012: 21 f.

([23]) The German-speaking reader may find an actual overview in Dünkel and Geng, 2011; 2012; for further readings see Dünkel, 1990: 285 ff.; Trenczek, 1993; Bereswill and Höynck, 2002; Goerdeler and Walkenhorst, 2007; for the theoretical aspects of social pedagogic needs and interventions in youth prisons, see Walkenhorst, 2002; J. Walter, 2007.

([24]) For a summary, see Dünkel, 1990, 2006b; Dünkel and Geng, 2011; 2012; for an overview of staffing in German prisons, see Dünkel, 1996; Dünkel and Geng, 2007a.

([25]) They are, however, larger on average than, for example, typical facilities in the Scandinavian countries and the Netherlands.

([26]) Bremen, Berlin, Lower Saxony, and Rhineland Palatinate, see Dünkel 1996: 19 ff., 102 ff.; for the “good practice” introduced in the Adelsheim youth prison see J. Walter, 1998. Brandenburg has abolished solitary confinement as a disciplinary measure by its prison legislation in 2013.

([27]) Own calculations from Federal Statistical Office (Ed.): Strafvollzugsstatistik 2014: 12 (see www.destatis.de); for earlier data see Dünkel and Geng, 2007, 2007a.

([28]) See Dünkel, 1996a; Dünkel and Rössner in van Zyl Smit and Dünkel, 2001: 327; Dünkel and Schüler-Springorum, 2006.

([29]) See Dünkel, 1996a: 130, figure 49.

([30]) The proportion of juveniles in open custodial facilities, that is, a unit where there are no walls or other hindrances against escapes, traditionally is only half that of adult prisoners in similar establishments, see Dünkel and Geng, 2007; 2007a; see also Dünkel, 1996a: 142, Figure 61.

([31]) See Dünkel and J. Walter, 2005; see also J. Walter and Waschek, 2002.

([32]) See Dünkel and Geng, 2007a; 2012; for an evaluation see Ohlemacher et al., 2001; the German speaking reader will find several project descriptions and evaluations in Bereswill and Höynck, 2002; Goerdeler and Walkenhorst, 2007, and in general in the *Zeitschrift für Jugendkriminalrecht und Jugendhilfe*, edited by Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e. V. (see www.dvjj.de).

([33]) See the contributions for example of Bereswill and Greve, 2001; Hosser, 2001; Hosser and Bosold, 2004; Bereswill, Koesling, and Neuber, 2007 for further references.

([34]) Only two closed Bavarian youth prisons were overcrowded by 2 to 4 percent, see Dünkel and Geng, 2012: 119.

([35]) See Dünkel and Geng, 2012: 127; in 2006 it had been even 96 percent, see Dünkel and Geng, 2007a: 148.

([36]) See Dünkel and Geng, 2012: 131.

([37]) See Jehle, Heinz, and Sutterer, 2003; Jehle et al., 2010: 39; compared with the data for those released in 1994, the 2004 sample showed a reduced recidivism rate: after a risk period of 3 years from 75 percent to 66 percent; the general recidivism rates of those convicted to suspended sentences also decreased (from 54 percent to 49 percent), see Jehle et al., 2010: 29.

([38]) See Dünkel, 2006b: 52 ff.

([39]) See e.g. Andrews et al., 1990; Vennard and Hedderman, 1998; Lösel, 1993, 2001, 2012; Dünkel and Drenkhahn, 2001; Sherman et al., 2006, and Dünkel and Stańdo-Kawecka, 2011.

([40]) See for a summary see Dünkel, 2008a.

([41]) See Dünkel and Pruin, 2011, and in this volume for further references.

([42]) See in summary Dünkel and Geng, 2014; Loeber et al., 2012; the Dutch legislature in 2014 took the findings from neuroscience into account and raised the age for applying juvenile justice sanctions to 22.

([43]) For arguments of comparative law see Pruin, 2007; Dünkel and Pruin, 2011; Pruin and Dünkel, 2015.

([44]) See Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen, 2002.

([45]) See Pruin, 2011; Dünke, Grzywa, and Pruin Šelih, 2011; Dünkel, 2013.

([46]) See Dünkel, 2006c; Pruin, 2011; Dünkel, Grzywa, Pruin, and Šelih, 2011.

([47]) See Albrecht, 2002.

([48]) See e.g. Dünkel, 2002; Streng, 2002; M. Walter, 2002.

([49]) See Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen, 2002, and the recommendations of the Deutsche Juristentag, 2002, see www.djt.de.

([50]) For young adults a youth prison sentence of at least 5 years is required, see § 109 (3) JJA.

([51]) See *M v. Germany*, decision of 17 December 2009, Application no. 19359/04; more recently four other decisions were issued in the same direction, see in particular *Haidn v. Germany*, decision of 13 January 2011, Application no. 6587/04.

([52]) See *Bundesverfassungsgericht* (Federal Constitutional Court), decision of 4 May 2011, 2 BvR 2365/09, 2 BvR 2333)08, 2 BvR 571/10, 2 BvR 1152/10.

([53]) See Cavadino and Dignan, 2006; Bailleau and Cartuyvels, 2007.

([54]) See e.g. Dünkel and Geng, 2003; Dünkel, 2005a; Dünkel, Gebauer, and Geng, 2008; for an overview with international comparisons Krüger, 2010.

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