Juvenile Justice in Foreign Countries

Canada • People’s Republic of China • Czech Republic
Egypt • France • Germany • India • Iran • Israel
Italy • Japan • The Netherlands • The Republic of
Poland • Singapore • Sweden

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JUVENILE JUSTICE IN FOREIGN COUNTRIES: COMPARATIVE ANALYSIS

Introduction

The concept of juvenile justice is a relatively new development, occurring in the last 100 years. Throughout most of the history the young and old alike were subjected to the same systems of justice and could receive the same punishments for their behavior. There was little distinction made between offenders of different ages. Recent years have seen the introduction of different standards of justice for juveniles and the institution of a separate system for handling youthful offenders. The worldwide importance of problems related to dealing with youth crime from the legal point of view was recognized by the Ninth United Nations Congress on Prevention of Crime and Treatment of Offenders that came to the conclusion that youth crime is increasing around the world.\(^1\) The fact that in the year 2000 more than 50 percent of the world population is under the age of 15\(^2\) makes the study of the problem of juvenile delinquency and youth crime even more timely.

This report surveys selected countries for their juvenile laws and organization of the juvenile justice systems by focusing on procedural and institutional developments, juvenile’s rights and the philosophy for punishments and rehabilitation. National reports based on laws and authentic legal materials of foreign nations collected by the Law Library of Congress emphasize specifics of the law enforcement in regard to minors and provide for analysis of national details in application of global trends in this field. The West European countries France, Germany, Italy, The Netherlands, Sweden and countries of British influence Canada and India have been included, with the former Eastern Bloc represented by the Czech Republic, Poland, and the Russian Federation. In the Far East China is contrasted with the western-style Japan and Singapore, while in the Near East Egypt, Iran, and Israel are reviewed.

The selection of countries is representative as much as possible. Countries with the established legal system, with both Common and Continental traditions, are compared with the newly emerging states as well as with the countries in transition. Of a great practical interest is the dealing with this problem in the developing states which apply the existing world experience in prevention of juvenile crime. Each report emphasizes problems and solutions of a particular country without pretense to be general.

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2 Id.
By comparing countries which use different juvenile justice models as well as countries which are undergoing major social or political change, we move into a position of being better able to understand how and why different models may work in some countries and not others. As well, such comparisons may help to illuminate, what kind of factors appear universal in their effect. Comparisons allow us to understand and appreciate the significance of different cultural, economic, moral, political, and social values. While criminal conduct among Indian youth, for example, is not a serious national problem the trend is changing as Western influences invade the Indian economy and culture. Similarly, since the Czech Republic, Poland, and Russia accelerated transition to a free market economy, these countries have began to experience an increasing problem with juvenile delinquents: the increase in youth crime has been attributed to the removal of old structures without rapid replacement by newer, more efficient structures.

Each report provides an overview of national juvenile justice system with the following key points:

- legal and social definition of delinquency;
- nature and status of delinquency;
- existing institutions of juvenile justice;
- role of law enforcement, juvenile courts, corrections, and the broader community in administering juvenile justice;
- special judicial procedures applicable to juveniles;
- general philosophy and practice of punishment and rehabilitation; and
- information on current national statistics and assessment of the effectiveness of the existing juvenile justice system.

Definitions of juvenile status

The major impact on the study of juvenile justice have the varying definitions of juvenile status and considerations of what constitutes delinquent behavior. The distinctions between certain countries are not as dissimilar as might be implied. The legislation of the most countries is in accordance with the U.N. endorsed Standard Minimum Rules for the Administration of Juvenile Justice established in 1984, and commonly known as the Beijing Rules.3

Most countries follow the common policies that have created adolescence as a distinct legal and social status in the society. However, the major theoretical and practical difference between systems and countries is the variation in their definition of what legally constitutes a juvenile or young offender. Some countries (Canada, France, Egypt, Germany, India, Israel, Japan, Singapore) have special laws determining the status of young offenders and measures taken in regard to them. Other (China, The Czech Republic, Iran, Italy, The Netherlands, Poland, Russia, Sweden) have no special act regarding juvenile delinquency and have some related

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provisions in criminal and criminal procedural legislation, sometimes separating rules in regard to the minors in special chapters.

All countries included in this report pay special attention to the age of responsibility and have legally prescribed lower and upper limits of criminal responsibility for minors. Most of the societies do not hold juveniles to an adult standard of responsibility for their conduct. Even though the legal definition of a juvenile varies from jurisdiction to jurisdiction, the majority of states recognize juveniles as individuals below the age of 18. In Japan this age limit is extended up to 20 years and in Sweden up to 21. The Netherlands and Germany provide for the opportunity to apply more soft juvenile laws to the so called “young adults” in the age between 18 and 21, at judge’s discretion if the young offenders committed less severe crimes and lack maturity. In Poland, those juveniles who commit an offense between the age of 13 and 17 are treated as minors. India, which passed its first national Children’s Act in 1986, set uniform age limits for criminal culpability at sixteen for boys and eighteen for girls.

Although Singapore’s judicial system is modeled after the British judicial system, Islamic law sets the age of accountability at puberty, even though some age frames are provided as guidelines. Similar rules exist in Iran. Laws of these countries recognize differences in children and their differing maturation periods. Not only are there variations between countries but even within countries. In Canada, for example, the Young Offenders Act defines the minimum age of responsibility at twelve and the upper limit at eighteen. However, because the provinces are responsible for administering the act, there is considerable variation between the provinces and their respective interpretation of the Act.

In some instances situational factors enable exceptions to the law. For example, in China and Russia while sixteen is preferred lower limit it can be dropped to fourteen if the offense is very serious. In a number of the contributions (Canada, Netherlands, Russia, Singapore), we will see that the limits of criminal responsibility may also involve transfer conditions to the adult system.

Institutions of Juvenile Justice

Juvenile Courts and Judges

In Canada, China, France, Egypt, Germany, India, Italy, Japan, Netherlands, Poland, and Singapore juvenile justice is administered by the youth courts. In some countries these are special departments of the courts of ordinary jurisdiction, in other delinquent cases are included in the jurisdiction of the family courts. In some other countries (Czech Republic, Iran, Russia, Sweden) charges against minors are brought before regular courts, however, special experience and education is required for judges and prosecutors. An interesting system exists in Israel where juvenile courts do not constitute the system of special courts and regular judges act as juvenile court judges due to the temporary appointment by the President of the Supreme Court. These special appointments are not restricted by a predetermined period of time and may continue for many years.
creating jurisdictional specialization of judges. In France and in Egypt the system of juvenile courts operates not only on the district level as it is done in the majority of countries but there is also a special chamber of the court of appeal designated to the resolution of disputes with involvement of minors.

For the juvenile court system, protection and rehabilitation are the overriding missions. For this purpose, in China, youth courts not only handle cases involving juvenile victims or offenders but also deal with cases that involve adults who have committed crimes against minors or corrupted them. In many countries laws provide for special requirement in regard to judges. In France, judges are chosen for this function because of their knowledge and understanding juveniles, in Egypt, one of the members of the judicial panel must be a woman, and in India, the law requires that each member of the court would have special knowledge of child psychology and child welfare.

**Prosecutors and Investigators**

The new statutory language provides in all countries that minors under the jurisdiction of the juvenile court for criminal conduct were in conformity with the interests of public safety and protection, to receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate with their circumstances. This condition is secured through different mechanism of control over the investigation process. In Canada, France, Germany, Italy, Japan, Netherlands, Poland, Russia, and Sweden public prosecutors are involved in the initial stages of the process. The role and duties of the prosecution varies depending on the country.

Investigation of the case may be conducted by the prosecution office or by police. Laws of all countries permit to keep minors in preliminary detention, even though the age of the minors and time frame for the continuation of the detention differ depending on national legislation. Almost all countries prohibit preliminary detention for children younger than 14. An exclusion are Canada and Israel where this limit is decreased to 12 years, and France and Poland prohibiting to keep in detention children younger then 13. Everywhere police can identify the minor offenders and search his/her body and belongings in the same manner that they can do it in regard to adult suspects. Israeli law does not oblige the authorities to obtain a warrant for a search in the minor’s house. Because the minor is not an owner of the house he cannot prevent police from conducting investigative activities.

In some countries certain criminal charges against youth are automatically tried in the adult court, while in other countries the prosecutor is permitted to exercise his or her discretion in determining whether to bring the charges before the juvenile or adult court. In Canada, prosecution has a wide discretion in seeking adult sentences. All intake decisions, including diversions and the decision to proceed with a charge, rest exclusively with the prosecution, albeit in consultation with police and probation officers in some cases. As a rule, the prosecution plays a key role at the dispositional stage when prosecutors make submissions usually based on their own personal view of
the young offender, the seriousness of the offense and offense history, and the predisposition report prepared by a probation officer. The same rule applies to the prosecutor’s activities in other countries. He must request information from the social services and medical evaluation of a juvenile.

Even in the countries where all of the provisions of the Criminal Code are applicable to juvenile offenders as well, according to national laws, the judicial investigation of a crime committed by a person who is under 18 years of age must be carried out by a prosecutor who has particular experience in dealing with young offenders (China, Poland, Russia, Sweden). Under Polish law, police may interrogate a juvenile only being commissioned by a family judge.

In the countries where the participation of the prosecutor is required, the prosecutor may drop the charges against a juvenile if they are not significant or contain no danger for the society or if the facts are not sufficiently established; resort to mediation/compensation; or require a hearing before the judge or the court panel.

*Pretrial Detention*

The processing of a juvenile offender usually begins with the offender’s apprehension by police. In all countries the minor may be taken to a local police lockup. However, the possibilities to detain him vary in different countries, even though the majority of the countries declare in their laws the intention to minimize the extent of detention. Only if there are particular reasons calling for an arrest, a young offender suspected of committing a crime may be arrested and kept in custody while waiting for a trial. Sweden permits to keep a minor at the police station up to a maximum of three hours. In France, this period is no longer than four hours, in Italy 12, and 24 hours in China. In Russia, the offender may be detained up to midnight of the day in which the apprehension occurred. Russian law requires that juveniles who have to be released from custody at night are to be released only into the custody of their parents or legal guardians. If parents or guardians cannot be found or gotten to the place where the juvenile is being held, the police often use this situation as an excuse for abuse and extension of the detention.

In all countries these apprehensions must be recorded, but they are not considered as an arrest. In order to prevent abuse and to protect the educational nature of the punishment, laws of a number of jurisdictions prohibit the detention of minors. Specifically, in Singapore, the Law provides for release of a youngster on bond, except of the cases when a particularly severe crime was committed. Similar rule exists in India, where a juvenile arrested for a crime must be released on bail unless the release is likely to expose the child to association with known criminals or endanger his morals.

All countries try to limit direct contacts between police and the juveniles. In Sweden and Japan, for instance, officials of the social and child protection services must be informed and be given the opportunity to be present during the process of hearing the youngster. In Israel, the law
provides for the involvement of a probation officer immediately upon the arrest of a minor. The decision on minor’s incarceration should be made by a judge of the Juvenile Court. If a minor shall be put into detention center, laws usually specify conditions of their incarceration. German law recommends that juveniles be kept separated from older suspects, and particularly from adults. Similar requirement is included in Iranian and Czech law. In Russia, only the punishment is served by the juveniles separately from adults. All indicted suspects are held together during the pretrial detention.

The differences could be identified not only between the countries, but even within individual countries. Some countries (Canada, Germany) allow a degree of provincial or state autonomy in administering their respective juvenile justice systems and/or managing the cooperating with prosecutors and youth welfare agencies, which is very much a state matter.

**Special Procedures and Juvenile Court Process**

Even though major phases of the criminal proceeding against a juvenile mirror the stages of an adult proceeding, juvenile proceeding permits more general simplification and flexibility in dismissal of the case at various stages when this is in the best interest of the offender. Another common difference is the continuous involvement of the youth welfare agencies. National legislation of all reviewed countries obliges the courts to apply the “in the best interests of justice and of the juvenile” requirement. The court must consider following factors: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile’s prior delinquency record, the juvenile’s present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile’s response to such efforts; the availability of programs designed to treat juvenile’s behavioral problems.

The trial before the juvenile court or trial of juveniles in the regular criminal court adheres to the basic principles of adult criminal proceedings but modifies them as to promote the educational and rehabilitative goals of juvenile justice. The most significant difference from adult proceedings is the almost everywhere existing exclusion of the public from the trial. Usually, only the parties might be presented at the trial. In Germany, even police is excluded from the trial, and in Japan, the law requires to remove the prosecutor from the trial on the grounds that young people could be harmed psychologically by confrontational questioning of the prosecutor. In order to protect privacy of the juvenile and to secure the reintegration of the young accused, some countries introduced special restrictions on publication of the information about the trial in the mass media. These countries are: Singapore, Netherlands, Italy, France, Japan, and India prohibits to identify juveniles in public court reports.

In the inquisitorial systems where the judge has to find the truth, the judge may hold the trial in an accelerated form by foregoing some of the formalities otherwise required by his own discretion or upon request of the prosecutor if the punishment for the committed offense does not foresee imprisonment or placement of a minor in a closed educational facility (Germany, Poland). Swedish law emphasizes that the proceedings regarding the criminal acts committed by young
persons must be handled speedily and the judgment has to be issued at the end of the trial. Even if the law does not provide for easier proceedings in regard to the minors, courts follow existing international norms and adhere to the trend of socializing the court procedure, which leads juvenile courts to the specialization in “treatment without trial” in the spirit of the clinic, as a kind of laboratory of human behavior.

Rights of Juveniles

The rights guaranteed to the accused juveniles protect them throughout the trial process. These rights might be divided into four groups:

- due process,
- representation by an attorney,
- counseling by youth social services, and
- privacy.

The implementation of privacy rights was described above due to their influence on court proceedings. Laws of all reviewed jurisdictions provide for the prohibition of the trial in absentia, even though some countries (Germany, Netherlands, Japan, Israel) allow temporary removal of the subject from the court session when questions arise with respect to the personal circumstances of the life of the suspect. Orders of juvenile courts may be appealed to the higher courts as well as rulings of ordinary courts regarding juvenile cases. The intervention of the subjects and services related to the child protection in order to assure support at any stage of the process is required by laws of all countries. That constitutes a system of rights of the minor to a full and competent participation.

Minors all over the world have the right to legal representation, however, conditions of usage of this right vary in different countries. Canada, Netherlands, and Sweden guarantee free legal defense to all minors, even if the youth has the ability to retain a lawyer. In China, Czech Republic, Poland, and in Russia, the trial cannot be held in absence of an attorney. If the family of a minor failed to hire the defense counsel, an attorney shall be appointed by the court and paid by the state. Even though fees for court appointed attorneys are paid by state funds in Italy, the state may claim them back from families above a certain level of income. Public defense of minors is prohibited in Japan, where only private attorneys may represent juvenile offenders. In Iran, a defense lawyer may be appointed by the guardian of the child in accordance with the judge’s recommendation. If the child in Iran is charged with misdemeanor or petty offense, the guardian may represent the child.

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Penalties, Punishments, and Rehabilitation

Traditionally, the statutory language included the accountability defined as the goal of national juvenile justice system. Most statutory provisions that defined the general purposes of the juvenile court law called for holding juveniles accountable for their criminal conduct. Attempts to make youth offenders accountable resulted in a marked increase in the length of stay served by youths.

In 1970-80s, in response to demands for better protection of juveniles’ rights and decriminalization of societies, national legislatures of the West European countries enacted groundbreaking reforms, under which new crime control measures were undertaken and the punitive functions of juvenile court dispositions were formally recognized by national legislatures. As a result, the new commonly introduced definition of punishment included the imposition of a fine, compulsory community service, supervision under probation or parole, confinement in a juvenile treatment facility, etc. Also, it was specified that punishment could not be retribution. The language of laws suggested softening measures regarding the juvenile offenders because it specified that punishment be consistent with rehabilitative objectives. Because of these reforms and their influence on other countries, the following can happen as a rule with youth who committed crimes and offenses:

- the placement in secure public facilities;
- use of detention for preadjudicated status offenders;
- enter the juvenile justice system or closely related diversion programs; and
- different forms of out-of-home care, such as group homes or foster care arrangements.

These measures coincide with the UN position, which advocates the use of the welfare model and provides that the well-being of young offenders should always come first. According to the Beijing Rules, the countries try to further the well-being of a juvenile and organize their juvenile justice systems in a way that would assist potential integration of a juvenile in the society regardless of different cultural, historical, political, and social variations, bearing in mind that the reaction to juvenile offenders shall be in proportion to the circumstances of the offender and the offense with the respect to the juvenile’s right to privacy at all levels and stages of the judicial process.

Most of the juvenile justice systems included in this research follow this requirement and in regard to the issue of punishment and rehabilitation of young offenders can be characterized as an “offender-oriented criminal justice systems where courts chose between educational measures and penal sanctions in accordance with the suitability of these measures for the individual offender.”

To operationalize accountability in decisions on length of stay and parole readiness, parole board members focused on youth’s acceptance of responsibility for his or her criminal conduct as well as her/his potential for re-offending.

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The study allows one to compare different crime phenomena and societal reactions. An understanding of legal, social, cultural, and political history helps to put trends and practices into perspective. For example, while countries in transition (China, Czech Republic, Poland, Russian Federation) and Canada are preoccupied with punishing young offenders, Western Europeans (France, Netherlands) and several other jurisdictions included in this study are more open to a wide variety of alternatives. China still continues to use the death penalty in regard to the minors, meantime Germany and Singapore see restitution as a more constructive form of conflict resolution than fines or imprisonment, even though in Singapore and Iran the established penalties may be supplemented by corporal punishments.

Detention and incarceration of juveniles in civilized countries is characterized with two dominant trends, which are:

- the use of detention only in cases of unavailability of adequate parental supervision; and
- bearing correctional authorities with the requirement to develop more extensive community programs providing special treatment as an alternative to institutionalization.

For this purpose a variety of specialized institutions for delinquent youth was introduced. These include so called “Houses of Refuge”, reform, industrial, and training schools aimed to remove noncriminal juveniles from secure confinement. Far more complex challenge is to ensure effective programs and services that reduce recidivism and deter future status offenses or delinquent acts. In China, Russia, Czech Republic and some other countries where educational measures are not commonly accepted developed, programs that seek to build the juvenile justice system that helps troubled youth, strengthens families and protects citizens do not simply comply with the major legal norms. Such programs cannot be implemented because of discrepancies in formal legislation and exist because of efforts made by the supporting, mostly non-governmental, organizations.

All countries included in the report define the mission of the established correctional systems as that of substituting treatment and training for retributive punishment. The Czech law openly states that the main purpose of punishment and further rehabilitation of a juvenile is to help him/her to become a good citizen. Similar ideas are included in legislation of other countries. In Italy the intervention of the appropriate support agencies is required, and in India community based welfare agencies are participating in the trial and later in the rehabilitative process. The Netherlands use community service as a tool for offender’s rehabilitation. In order to soften the rehabilitation of a delinquent youth, number of countries restrict the publicity of trials on juveniles. Beyond this, the juvenile justice system is almost everywhere viewed as one of many agencies contributing to the development and support of families, necessary for raising nondelinquent, productive members of the society.
In some jurisdictions this approach entailed the development of a lucrative industry to provide alternative services, specifically mental health services, for noncriminal “acting out” teenagers. As a consequence, in the countries with a weak system of public control over law enforcement, status offenders often relabeled as mentally ill are increasingly being institutionalized in secure mental health settings where conditions parallel those found in juvenile correctional facilities, but without the attendant rights to due process.

Conclusion

The future of juvenile justice and related problems are very much under debate at the edge of the centuries. One hundred years after the founding of juvenile court in Illinois, which started the new era in the world juvenile justice system, many are seriously questioning the very existence of a separate system for juveniles, which got a wide development in the civilized world. Some critics are suggesting the total elimination of the juvenile privileges, including such drastic changes as caning and orphanages. Some however, insist that all that is needed is greater effort to revitalize the original vision of the founders of the juvenile court.  

National reports collected in this survey, which assess the effects of the existing regulations, reflect that few societies appear to have escaped the growing problem of youth crime, although the rates and patterns of delinquency may vary dramatically from one country to another. In India minors comprise 0.6 % of all arrests, and in China 60% of all detainees are minors. It is impossible to say that juvenile crime is a typical characteristic of poor countries or those in transition (e.g., Poland, Russia). In Japan 50% of all crimes are committed by teenagers. A sharp increase is noticed in such well developed countries like Italy and Netherlands. The violence committed by young females is on a sharp rise there.

Facing this alarming statistics, seeing police apprehension and court referral as signs of civic failure and finding little likelihood of therapeutic rehabilitation, governmental authorities in the majority of the researched countries focus public attention on delinquency prevention. In order to achieve this goal and to improve the administration of juvenile justice, the following steps are usually undertaken by the nations:

- the formal system is used only as a last resort; dispositional alternatives are being to developed;
- continuing efforts to narrow the juvenile court’s jurisdiction are aimed to eliminate the court’s power over children for non-criminal conduct;
- elaboration and attempts to implement the procedural justice for the child; and
- the expanded use of non-judicial community agencies as alternative to formal juvenile justice system processing.

International recognition of methods used to solve problems associated with juvenile crime, and relative similarity of national approaches to the issue of treatment of juvenile offenders emphasize the universal character of this phenomenon. Thorough examination in this study of world common trends and solutions to existing problems provides insight into how better to address the crime situation in a particular country. Gathered comparative information provides a practical window of opportunity to gain new insights and adopt, adapt, and develop new responses.

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Eastern Law Division
Law Library of Congress
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<table>
<thead>
<tr>
<th>Country</th>
<th>Separate Law</th>
<th>Age</th>
<th>Transfer to the Adult System</th>
<th>Juvenile Court</th>
<th>Participation of Prosecution</th>
<th>Agency in Charge of Youth</th>
<th>Death Penalty</th>
<th>Corporal Punishment</th>
<th>Adjudication Period</th>
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<td>ASAP</td>
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<td>16 for boys 18 girls</td>
<td>No</td>
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<td>No</td>
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<td>Under 16 - none after 16 - as adult</td>
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<td>Up to 4 weeks</td>
<td>3 hrs.</td>
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Canada

The subject of youth justice has received considerable attention in Canada over the past couple of years.¹ Largely in response to critics who contended that the current system is too lenient, the Government undertook a review that resulted in the issuance of a Youth Justice Strategy in May of 1998. That Strategy announced plans for changes in a number of areas.

Following consultations with provincial governments, the Federal Government drafted a bill to repeal the current Young Offenders Act² and replace it with a Youth Criminal Justice Act. This bill was introduced in the House of Commons on March 11, 1999.³ In a press release issued that same day, the Department of Justice highlighted changes the new law would make. Included among these new provisions are ones designed to:

1) expand the offenses for which a young person convicted of an offense would be presumed to receive an adult sentence;  
2) lower the age for youth who are presumed to receive an adult sentence for murder, attempted murder, manslaughter, and aggravated sexual assault to include 14- and 15-year olds;  
3) permit the publication of names of youths who receive an adult sentence;  
4) give the Crown greater discretion in seeking adult sentences;  
5) increase custodial care for certain serious violent offenders;  
6) permit tougher penalties for adults who fail to comply with undertakings; and  
7) requiring youths and parents to pay legal costs incurred by the provinces.⁴

³ Bill C-68, 36th Parl. 1st Sess.  
See App. II.
In addition to changing the current law, the Government has announced plans to allocate to the provinces an additional Can$206 million over the first three years that the Youth Criminal Justice Act is in effect. Special arrangements have been made with the Province of Quebec. These were necessitated by that Province's commitment to a youth justice system that places a particularly high emphasis on rehabilitation and alternative sentencing over incarceration.

Despite the fact that the proposed Youth Criminal Justice Act would be an entirely new law, critics have contended that it does not vary significantly from the current Young Offenders Act. The largest Opposition party has called on the Government to lower the age limit for the incarceration of juveniles found to have committed homicides to 10. Some critics outside the House of Commons have argued for stiffer mandatory sentences while others have contended that the Government exaggerated the extent to which the new law would constitute a crackdown. However, proponents of a strategy emphasizing rehabilitative efforts have also attacked the general direction of the bill.

If the bill to create the Youth Criminal Justice Act proceeds in the House of Commons, efforts will be made to amend many of its prominent features. Whether the Government is prepared to consider making the law tougher or weaker is not yet clear.

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5 Dan Gardner, *Selling the youth-crime "crackdown"; Reporters were suckers for federal flim-flam*, Ottawa Citizen, March 19, 1999. See App. III.
The attached study on juvenile justice on China written by Xin Ren and published in 1996 has addressed all the issues mentioned in the outline for the project.

According to a recent news report (Tass, April 27, 1998), juvenile delinquency is now threatening China's social stability. A correspondent from the Telegraph (Sept. 13, 1998) reported that 60 percent of all suspects detained by police in China are minors. He also said (May 7, 1998) that China is drafting laws to cope with increasing juvenile crime by those born under its one-child policy. The law would make males aged 14 to 18 punishable under the criminal code. In the early 1980’s, China has banned married couples from having more than one child. As a result, the only child in the family tend to become spoiled and unruly.

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Juvenile delinquency is governed by Chapter 7, Special Provisions concerning Juveniles, articles 74-87 of the Criminal Code,\(^1\) and Chapter 19, Division 1, articles 291-301 of the Code of Criminal Procedure.\(^2\) Failing a specific provision with respect to juveniles, the general provisions of the codes apply.

A juvenile is a person who at the time of commission of an offense has already attained the age of 15 but has not as yet passed the age of 18.

Criminal responsibility of juveniles is greatly reduced in that any offense committed is not considered an offense if its degree of danger to society is small. The purpose of punishment is primarily to assist the juvenile to become a good citizen considering his personal traits, his family upbringing, and the environment where he lives. If the court waives punishment, it may ask the persons who exercise parental authority over the juvenile to create conditions that will enable him to lead an orderly life. The court may, on the other hand, impose protective education on the juvenile if it feels that it will serve the juvenile better than punishment. The court will do so if it believes that the juvenile's education is not properly provided for, that his education has been neglected, or that he should be taken out of the environment in which he has been living. Protective education is provided in special educational institutions, or in health institutions if required by the juvenile's state of health. The juvenile should be trained for his future occupation. Protective education will continue only as long as necessary and will cease upon attainment of age 18 but the court may extend it until the age of 19, if doing so is in the juvenile's interest.

If a person older than 12 and younger than 15 commits an offense which is punishable by exceptional punishment (imprisonment for 15 to 25 years or life), the court will order his protective education. The court may order protective education also in case of any lesser offense if the measure will ensure the person's proper education.

**INSTITUTIONS OF JUVENILE JUSTICE**

Cases against juveniles are heard in the district courts in a panel composed of a presiding judge and two lay assessors who are familiar with the problems of juveniles.

General care and protection of children, including juveniles, is entrusted to the Office of Legal Protection of Children within the district and municipal administration created by social security legislation and regulated by Chapter 2 of the Family Code, articles 41-50.\(^3\)

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PROCEEDINGS AGAINST JUVENILES

Special provisions for the protection of juveniles are embodied in proceedings against juveniles. A juvenile must have a counsel from the time charges are filed against him. A thorough investigation of the level of the juvenile's mental and moral development must be undertaken, including his character, conditions of life, the environment in which he grew up, and any other circumstances relevant to the decision to be made. Such investigation is assigned to the Office of Legal Protection of Children. The juvenile is detained only if his custody cannot be otherwise attained. A copy of the criminal charge is delivered to the Office of the Legal Protection of Children and it participates in the proceedings. The main trial hearing cannot be held in the juvenile's absence. It may be held in a closed court if this is in the juvenile's interest. The presiding judge may have the juvenile leave the courtroom if the matter discussed might negatively affect him but must advise him on the discussion after his return. A representative of the Office of Legal Protection of Children may file motions, question witnesses, and make a final address to the court. A copy of the judgment is delivered to the Office of the Legal Protection of Children, and it may file legal remedies against the judgment. Motions in favor of the juvenile may also be made by his relatives in direct line of descent: brothers, sisters, adopting parents, spouses, and cohabiting companions (common-law spouses).

PENALTIES AND PUNISHMENTS

The court can impose the punishment of imprisonment, forfeiture of items, and if the juvenile is gainfully employed, a fine. The applicable terms of imprisonment are reduced by one half, and the maximum imposed cannot exceed five years and the minimum one year. If the offense committed calls for the imposition of exceptional punishment, the court can impose imprisonment from five to ten years. The court may impose a suspended sentence and admit the juvenile to probation for a term of from one to three years.

Imprisonment is carried out in correctional institutions for juveniles with a view to their rehabilitation.

After the juvenile has served his term of imprisonment, the court decides whether the conviction will be erased from the records. This decision will depend on the juvenile's conduct during imprisonment. In case of a probated sentence, the conviction will be erased if the juvenile has proven himself. A conviction involving payment of a fine will be erased after it has been paid.

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EGYPT

Introduction

By the 1970s the political events and the socio-economic changes in Egypt since the 1952 revolution began to have their effect on the nature and extent of juvenile delinquency. While poverty and illiteracy produced petty offenses and vagrancy in the past, new and more serious forms of delinquency, including theft and violence, began to appear. This brought about a new legislation dealing with juvenile delinquency to replace the relevant articles in the country’s Penal Code.

The Law of Juveniles seeks to establish a balance between the need to punish and the imperative to rehabilitate delinquents. It prohibits any penal punishment of juveniles who are less than fifteen years of age, and subjects them instead to a number of rehabilitative alternatives, including reprimand, vocational training, judicial probationary supervision, institutionalization, and where needed, hospitalization. Those between the ages of fifteen and eighteen may be sentenced with a reduced scale of punishments found in the Penal Code, giving the courts the discretion at the same time to order the convicted juvenile to be sent to a social welfare institution instead.

Statutory Definition of Juvenile and Delinquency

A juvenile in the eyes of Egyptian law is a youth who has not completed the age of eighteen at the time he/she commits the crime or at the time he is found at the threshold of becoming delinquent.

The Law lists eight situations that constitute the threshold of delinquency, creating a social challenge for the State to intervene:

1. Beggary, such as selling items of little worth and unsuitable for earning a living.
2. Collecting useless items from the streets.
3. Engaging in indecent work, such as prostitution, gambling, or assisting adults in these undertakings.
4. Being homeless and sleeping in the streets and public places.
5. Associating with delinquents or persons with suspicious character.

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1 Law No. 31 of 1974.
2 Id., art. 7.
3 Id., art. 15.
4 Id., art. 1.
5 Id., art. 2.
(6) Habitual desertion from training and educational institutions.

(7) Bad behavior and rejecting parental authority.

(8) Having no legitimate means or secure source of living.

Aggravating the social challenge of delinquency are the situations in which the juvenile involved is less than seven years old, is mentally or psychologically ill and partially or totally incapable of discretion or comprehension requiring his/her hospitalization.\(^6\)

**Institutions of Juvenile Justice**

Juvenile Courts sit in each district of the country, with exclusive jurisdiction in cases involving juvenile delinquency. The court is made up of a single judge and two counsellors, one of whom must be a woman. The counsellors investigate and report to the judge on the circumstances of the juvenile before the court delivers its decision.\(^7\)

The Ministry of Social Affairs runs and/or certifies centers for juvenile rehabilitation. Placement in such institutions may not exceed ten years in the case of felonies, five years in the case of misdemeanors, and three for threshold delinquency.\(^8\)

The Minister of Justice, in consultation with the Minister of Social Affairs, appoints the requisite staff to act as the judicial police in the various departments to be in charge of investigating crimes committed by juvenile delinquents.\(^9\)

**Special Procedures and Juvenile Court Process**

Proceedings before the Juvenile Court are closed except for the relatives of the juvenile, witnesses, the lawyers, the social counsellors, and whoever the Court by special permit allows to attend. The judge may however decide in the interest of the juvenile to dispense with his presence during the proceedings, and be satisfied with the presence of his parents or guardian only. If for any reason the Judge decides to ask the juvenile to leave the court, his attorney and the social counsellor must remain present. In this case, the court is required to explain to the juvenile what had transpired while he was out of the court before issuing its order of conviction.\(^10\)

No decision may be handed down by the court in the case of a felony or misdemeanor before hearing the report of the social counsellor or expert explaining the circumstances which led the juvenile

\(^6\) *Id.*, arts. 3 and 4.

\(^7\) *Id.*, arts. 27-29.

\(^8\) *Id.*, art. 13.

\(^9\) *Id.*, art. 24.

\(^10\) *Id.* art. 24.
to commit the delinquent act and the proposals for his/her rehabilitation. If in the opinion of the court the juvenile's bodily, mental or psychological condition requires examination, it shall order such investigation to be conducted before hearing the case.

Notification of any measure required by law or any decision handed down by the court having to do with a juvenile must be made to one of his/her parents or guardian who would have the right, in the interest of the juvenile, to take advantage of the appeal procedures provided by law. Appeals from the Juvenile Court are heard by a special chamber of the Court of First Instance.

Representation of the juvenile by a lawyer is mandatory in felony and misdemeanor cases, and if he/she did not appoint a lawyer, a court-appointed lawyer will be assigned to him/her.

Under Egyptian law, a juvenile who committed a crime and is less than fifteen years of age may not be punished by any of the punishments provided in the Penal Code and must instead be subject to the following measures:

1. Reprimand and warning against repeating the act of delinquency.
2. Placement under the care of his/her parents or guardian, and, if these are not available, a relative, and, if not available, a foster family.
3. Placement in vocational training at a public or private institution or firm for a period not exceeding three years.
4. Imposition of certain duties and restrictions, such as avoiding certain places or appearing before certain persons or authorities, or attending certain guidance meetings for a period of not less than six months and not more than three years.
5. Allowing the juvenile to remain in his/her usual milieu under judicial guidance and supervision for not more than three years.
6. Placement in one of the juvenile rehabilitation centers run or certified by the Ministry of Social Affairs for a period not exceeding ten years in the case of felonies, five in the case of misdemeanors, and three years for being at the threshold of delinquency. The center where the juvenile is placed must report to the court not less than every six months on his/her condition and behavior.
7. Committing him/her to a specialized hospital appropriate for treating him/her under periodic supervision of at least once a year by the court, which is also required to review the reports of the

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11 Id. art. 35.
12 Id. art. 36.
13 Id. art. 39.
14 Id., art. 33.
15 Id., arts. 7 to 14.
attending physicians and decide whether conditions permits his/her release.

As far as juveniles who are more than fifteen years old but less than eighteen are concerned, the law provides for the reduction of punishment provided in the Penal Code for regular convicts. If the Penal Code provides for death or hard labor for life, the sentence will be reduced to a prison term of not less than ten years. Sentence of prison or temporary hard labor will be reduced to a term of not less than six months. Generally speaking, the Law gives the court the discretion to sentence juvenile offenders to a maximum of one third of the punishment in the Penal Code or to simply place him/her in a social welfare center for a period of not less than one year or under judicial supervision, particularly if he/she is convicted of a misdemeanor punishable by a simple prison term.  

Finally, the law prohibits the application to a juvenile of the provisions of the Penal Code dealing with repeat offenses, the suspension of rehabilitative measures provided for juvenile delinquents less than fifteen years of age and until the age of twenty-one, if needed. After that, the court may, at the request of the Attorney General and after consulting the social counsellor, place the convicted youth under judicial supervision for not more than two years or in a hospital to continue his/her treatment as needed.  

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16 Id., art. 15.  
17 Id., arts 17 to 19.
This article reviews the contemporary juvenile criminal system. This system places a higher priority on the protection and education of juvenile offenders than on their punishment. Juveniles are prosecuted before specialized courts, and judges are primarily concerned with a juvenile's rehabilitation. The personality of the juvenile offender is thoroughly examined in order to determine the best rehabilitative measures. Although there is growing concern that the present system fails to discourage juveniles from committing criminal offenses, a comprehensive reform has yet to be undertaken.

Introduction

At the liberation of France, the parliament adopted Ordinance 45-174 of February 2, 1945, which after 50 years is still the cornerstone of French juvenile criminal law. The motivations for the ordinance were expressed in an introductory paragraph published with the law. It states:

There are few problems as important as those concerning the protection of juveniles, and among them, the problems flowing from the prosecution of juvenile offenders. France is not sufficiently rich in children that it has the right to neglect making them healthy human beings. The war, and the moral and material destructions that accompanied it, have dramatically increased the number of juvenile delinquents. Juvenile delinquency is today one of the most important problems. The following Ordinance attests that the provisional government intends to efficiently protect minors and more specifically juvenile offenders.

Although the law has been supplemented and modified to some extent through the years, its general principles are still valid today. Article 1 states that juveniles offenders shall not be prosecuted before criminal courts of general competence but instead before specialized courts. Article 2 stipulates the preeminence of educative measures over criminal sentences, which must remain exceptional, and the presumption of criminal irresponsibility for minors. The presumption of irresponsibility is absolute.


for minors under 13, and, as a result, the courts may choose only educative measures. This presumption is relative for those between 13 and 18 years of age, and criminal sentences may be exceptionally pronounced.

This "humanist" approach has been challenged over the last few years. The rate of juvenile crimes is perceived as being on the rise, the types of crimes committed by juveniles are more serious, and the profile of the juvenile offender has undergone important changes. A juvenile offender is now more likely to be younger, to be a more violent recidivist, and is more likely to come from poor suburbs. These facts have prompted a polemic about the ability of the existing laws to protect the public adequately, and many have asked for a change in policy.³

This article first reviews the contemporary juvenile criminal system by examining specialized institutions for juveniles, pretrial and trial proceedings, and forms of punishment available. It then discusses the status of the reform of the juvenile system.

Institutions of Juvenile Justice

The specific jurisdictions instituted by the legislature are the Judge des enfants (judge for children) and the tribunal pour enfants (tribunal for children). There is also a special chamber of the court of appeal and a Cour d'Assises des mineurs (Court of Assizes for minors).

The Judge for Children

The judge for children is a specialized judge from the Tribunal de Grande Instance (general jurisdiction court), who is chosen for this function because of his knowledge and understanding of juveniles.⁴ He is in charge of investigating some categories of offenses and may decide to judge a case he has investigated. Should he decide to do so, this is an exception to the principle of the separation of judiciary functions, under which investigating judges are prohibited from participating in the trial of criminal cases they have investigated.

The judge for children has jurisdiction over délits and 5th class contraventions.⁵ Inside those limits, the judge decides whether to try the juvenile in his chamber or send the case to the tribunal for children.

³ LE MONDE, Anne Chemin, La relative stabilité de la délîngance juvénile, Mar. 28, 1996 (Nexis Lexis Presse).


⁵ C. org. jud., art. L.531-2; Ord. 1945, art. 8. There are three grades of criminal offense under French law: crimes, délits, and contraventions. Crimes (the gravest offenses) include murder, armed robbery, serious drug offenses and rape. Délits is the largest group and includes offenses such as theft, fraud and assaults. Contraventions are punishable with a fine. There are five classes of contraventions.
The Tribunal for Children

The tribunal for children is a collegiate jurisdiction composed of three members. Its president is one of the judges for children. The other two are assessors who are not judges and who are chosen based both on their interest in matters concerning children and on their skills. They are appointed for a four-year term by decree of the Minister of Justice. They must be at least thirty years old and French nationals.

The venue lies with the tribunal of the place where the offense was committed, where the juvenile's parents or guardians live, or where the juvenile has been found or placed in foster care. When urgent and provisional measures have to be taken, jurisdiction lies where the juvenile is located or arrested.

The Tribunal for children is competent to judge contraventions of the fifth class and délits. For these matters, it has an overlapping jurisdiction with the judge for children; sharing jurisdiction depends on the seriousness of the case. The judge for children, however, cannot pronounce a criminal sentence. The tribunal for children also hears cases concerning crimes committed by juveniles under 16.

There is also an educational board linked to the tribunal for children. Its intervention is mandatory as soon as the imprisonment of a juvenile is considered. The situation of an imprisoned juvenile is followed by the board both during and after the proceedings. When consulted, members of the educational board give priority to probation measures.

Recently, the question has been raised as to whether the judge for children, since he judges as president of the tribunal for children some of the cases he initially investigated, is an impartial judge under article 6 of the European Convention on Human Rights. On July 30, 1992, the Reims Appeals Court held, for the first time, that the composition of a tribunal for children, presided over by the same judge for children who investigated the case, was incompatible with the guaranty to an impartial judge as stated in the Convention. The Cour de Cassation (roughly the equivalent of the Supreme Court for Judicial matters) reversed the decision and held that "if the minor who is charged with a criminal offense is entitled to a just and impartial trial, this principle is not an obstacle to the intervention of a specialized judge at different level of the procedure." The European Court on Human Rights later affirmed this jurisprudence, in a case concerning the Netherlands, whose system, on that particular

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7 C. org. jud., art. 522-3.
8 Supra note 1, art. 3.
9 Id., art. 31.
10 Id., art. 20-1.
11 Id., art. 9.
point, is similar to the French system.\(^\text{12}\)

**The Special Chamber of the Appeal Court**

This chamber comprises three judges from the appeal court.\(^\text{13}\) One of them must be specialized in juvenile matters, otherwise the decision of the special chamber will be quashed by the *Cour de Cassation*. He is called the *conseiller délégué à la protection de l'enfance*. The prosecution is represented by a prosecutor who specializes in juvenile matters and who is appointed by the Prosecutor General.\(^\text{14}\)

The special chamber hears appeals of decisions or judgments rendered by the judge for children, the tribunal for children,\(^\text{15}\) the police court,\(^\text{16}\) and appeals of temporary placement decisions from an investigating judge who is competent to investigate *crimes* committed by minors above 16.\(^\text{17}\)

**The Court of Assizes for Minors**

As seen above, the tribunal for children is incompetent to hear cases concerning *crimes* committed by juveniles aged 16 to 18. They are heard by the Court of Assizes for minors. The principle of specialization is respected in the composition of the court, which includes two judges for children, a judge from the Appeal Court who presides over the hearings, and nine jurors. This court is not permanent and meets every trimester. The office of prosecution is fulfilled by a public prosecutor who normally handles juveniles cases.\(^\text{18}\)

The court’s competence has been extended to military and political offenses committed by minors and to terrorist acts.\(^\text{19}\) Finally, the court is competent to judge lesser offenses connected to the main charges.

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\(^{12}\) Alain Bruel & Denis Salas, *ENFANCE DELINQUANTE, REPERTOIRE PENAL DALLOZ*, p 9.

\(^{13}\) C. org. jud., art. L.223-2.

\(^{14}\) Id.

\(^{15}\) C. org. jud., art. L.223-1.

\(^{16}\) Supra note 1, art. 21.

\(^{17}\) Id., art. 24.

\(^{18}\) Id., art. 20; C. org. jud., arts. L. 511-1 & following.

Pretrial Stages

Preliminary Investigations

Provisions concerning identity checks are applicable to minors.\(^{20}\) When unable to prove their identity, minors can be detained at the police station up to a maximum of four hours. However, the public prosecutor must be immediately informed of the detention, and where possible the minor must be assisted by his legal representative.\(^{21}\)

Minors between the ages of 16 and 18, may be kept in preliminary detention. However, they benefit from two additional guaranties; their parents or representatives must be informed; and they must be brought before either a public prosecutor or an investigating judge before any extension of the detention beyond 24 hours can be considered.\(^{22}\)

A minor between the ages of 13 and 16 may also be the subject of preliminary detention. The law, however, provides for three additional guaranties: (1) the minor must be examined by a designated physician;\(^{23}\) (2) within the first hour of detention he must be informed of his right to consult with an attorney\(^ {24}\); and (3) the extension of the detention is possible only when the offense committed is a crime or is punishable by at least a five-year prison term.\(^ {25}\)

Preliminary detention of minors under 13 is prohibited. However, a minor between 10 and 13 may be detained by the police up to 10 hours when there is grave indicia that he has committed a crime or délit punishable by at least a seven year imprisonment term. Agreement of the judge for children or the investigating judge is mandatory. This detention may be extended for an additional ten hours. The judge's decision must be justified and the juvenile must have appeared before him.\(^ {26}\)

Prosecution

The prosecution is principally reserved for the public prosecutor's office but may also be triggered by the victim. The public prosecutor of the trial court in the jurisdiction in which the tribunal

\(^{20}\) C. pr. pén., arts. 78-1 to 78-3.

\(^{21}\) C. pr. pén., art. 78-3,al.2.

\(^{22}\) Supra note 1, art. 4.

\(^{23}\) Id., art. 4 III.

\(^{24}\) Id., art 4IV. Minors aged sixteen and above and adults are allowed to have their attorney present only after twenty hours of preliminary detention. The parliament is planning in the months to come to modify the preliminary detention system to allow attorneys to be present from the first hour of detention, except in the cases involving drugs and terrorist offenses.

\(^{25}\) Id., art 4V.

\(^{26}\) Id., art 4.
for children is seated is in charge of prosecuting offenses committed by the minors. *Crimes* are prosecuted before the Court of Assizes for minors, *délits* and *contraventions* of the fifth class before the judge for children or the tribunal for children, and *contraventions* of the first four classes before the police court. The prosecutor must ensure that the juvenile is represented by an attorney.

The prosecutor may opt for the following:

1. drop the case when the facts are not sufficiently established;

2. resort to mediation/compensation, and order the minor to aid or compensate the victim or to engage in public service work;\(^{27}\)

3. require a hearing before the judge for children or the tribunal for children on the offense charged as close in time as possible to when the offense was committed. This new procedure was introduced by Law 96-585 of July 1, 1996, in response to the increase in juvenile crimes and to its changing nature. It applies to *délits*. Under the 1945 Law, juvenile judges have great discretion to use all necessary resources both to determine the truth and to learn about the personality of the minor and the appropriate means for his reeducation. This law permits a judge to circumvent the lengthy delays in those cases, presenting facts simple enough to warrant disposing of the case after an initial appearance.\(^{28}\)

4. transfer the case either to a judge for children or to an investigating judge for investigation.

**Investigation**

**Procedure**

Except as provided by the 1996 Law, an investigation is mandatory for *crimes*, *délits*\(^{29}\) and *contraventions* of the fifth class.\(^{30}\) It can be conducted by either a judge for children or an investigating judge in charge of minors. Great importance is given to the necessity of knowing the personality of the juvenile. Therefore, both judges must not only use utmost diligence to reach the truth but also focus on the mental state of the minor. They must put together a personal file on the minor and a case file.

The judge for children may proceed with the investigation, using the forms established in the Criminal Procedure Code or following a more informal procedure. The law provides that he must undertake all the investigation he deems necessary to reveal the truth, knowledge of the minor's

\(^{27}\) C. proc. pén., art 41.

\(^{28}\) J.O. Jul 2, 1996, p 9920 & *Supra* note 1, art. 8-2.

\(^{29}\) *Supra* note 1, art. 5.

\(^{30}\) *Id.*, art. 20-1.
personality, and appropriate means of re-education. The investigating judge does not have this option, and must use the forms established in the Criminal Procedure Code.

In addition to the general criminal procedure rules, four specific rules apply to the investigation of a minor's case: (1) the judge must advise the parents, guardian, or the person responsible for the care of the minor of the prosecution and the legal qualification of the facts; (2) the judge will ask the president of the bar to designate an attorney if the minor or his representative have not retained one; (3) however, if the situation requires it, the judge for children may hear the minor regarding his family or personal situation without following the rule that provides that the minor's attorney must be informed of the questioning at least five days before it occurs; (4) children under age 16 do not have to take an oath when they are questioned.

Provisional Measures

Educative Measures

The judge may temporarily confine the minor to: (1) his parents, guardian, or any other trustworthy person; (2) a reception center; (3) a public or private institution's reception section; (4) the juvenile assistance services, or to a hospital; (5) an educational or professional institution or (6) an observation center, instituted or agreed to by the Ministry of Justice. The juvenile may also be released under supervision. In addition, it is possible to combine one of the confinement measures with supervised release.

Punitive Measures

Pretrial detention is an exceptional measure and may be used by the judge when it is the only way to conserve material evidence, protect witnesses, or impede fraudulent collusion between the accused and any accomplices. Law 87-1062 of December 30, 1987, abolished all form of pretrial detention for minors 13 years old and younger.

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31 Id., art. 8.
32 Id., art 10.
33 Id., arts. 4-1 & 10.
34 Id., art. 8.
35 C. proc. pén., art. 108.
36 Id., art. 10.
37 Id., arts 8, 9.
For minors above 13 years of age, pretrial detention is limited as follows: (1) Minors aged 13 to 16 cannot be placed in pretrial detention when they have committed a délit. Minors above 16 may be placed in pretrial detention for one month, renewable one time when the penalty incurred for the délit is not over seven years of imprisonment. The duration is four months when the penalty is above seven years imprisonment. An extension of four months is possible; however, the total duration cannot exceed one year; (2) In criminal matters, the duration of the pretrial detention for minors between 13 and 16 is limited to six months, renewable once. If the minor is above 16, the duration is limited to one year initially and can be renewed once. The total duration cannot exceed two years. Any extension has to be fully justified by the judge.39

Before any placement measure or pretrial detention is ordered, the educational service of the tribunal for children must be consulted. It must draft a report containing all relevant information on the minor and propose an educational measure.40 Additionally, the minor must be incarcerated in a special quarter of the prison and if possible isolated from all others during the night.41 Pretrial detention orders may be appealed within ten days of the order before the indictment chamber of the competent court of appeals.

Minors can also be placed under judicial control.42 The judge may oblige the minor to submit to one or more of the following: (1) not to leave the territorial limits determined by the judge; (2) not to absent himself from his domicile or the residence fixed by the judge; (3) not to frequent certain places; (4) to inform the judge of any movement beyond the determined limits; (5) to present himself periodically to the agencies or authority designated by the judge; (6) to answer any summons; (7) to submit to measures of examination, treatment or care, even hospitalization, notably for detoxification. If the minor disobeys the obligations, the judge may issue an arrest warrant.

**Referral of the Case to the Competent Court**

At the end of the investigation, the judge, after having passed the case to the public prosecutor for closing arguments, decides where to refer the case. He may: (1) dismiss the case; (2) send the case to the prosecutor's office if the facts constitute a violation of one of the first four classes of contraventions. The case will go to the police court; (3) refer the case to the judge for children or the tribunal for children when the facts constitute a délit or a contravention of the fifth class; (4) refer the case to the children's court when the minor is less than 16 years old and has committed a crime; (5) transfer the case to the general prosecutor of the competent court of appeal when the crime has been committed by a minor between 16 and 18 years of age. The indicting chamber of the court of appeal will review the case, and if it agrees with the judge on the characterization of the facts, it will commit the case to the Court of Assizes for minors.43

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39 *Id.*, art. 11.

40 *Id.*, art. 12.

41 *Id.*, art. 11.

42 *Id.*, art. 8.

43 *Id.*, arts. 8 & 9.
Trial Courts Proceedings and Appellate Review

Trial courts proceedings

The procedural rules differ substantially depending upon the courts involved.

Council Chamber

Important freedom is left to the judge for children when the hearings are taking place in the council chamber. No particular form is imposed, and the hearings are conducted as desired. The judge does not even wear his robe. He is accompanied by a clerk, and the prosecutor's office may send a representative. Also present are the minor, his parents, his attorney, and the victim(s).

Tribunal for Children

The procedure is more formal in the council chamber. In addition to the general rules of procedure that apply, the 1945 ordinance set forth specific rules that are really aimed at protecting the minor. They are as follows:\footnote{44 Id., arts. 13 & 14.}:

• The court renders its verdict after hearing from the minor, the witnesses, the parents, guardians, or other persons responsible for the care of the minor, the prosecution and the defense. It must also hear from the accomplices. These accomplices do not have to take the oath when testifying. These hearings are mandatory.

• Publicity is restricted. Each charge must be ruled on separately in the absence of all others charged. In addition, the law provides that only the witnesses, near relatives, guardian or legal representative of the minor, members of the bar, representatives from the youth protection services, juvenile services or institutions and delegates from the supervised release program be admitted to the hearing. Finally, the presiding judge may at any time order that the witnesses or the minor leave the court room after their testimony for all or part of the hearing.

• The presiding judge may, in the interest of the minor, excuse him from appearing at the hearing. If this is the case, the minor is represented by an attorney, or the father, or the mother, or a guardian.

• The publication of the court record of the hearings is prohibited without exception. Violations are punishable by a 40,000 FF fine (approximately $US 6,500) and two years imprisonment, in case of relapse. The judgment may be published, but the mention of the name of the minor is forbidden. Violation of this rule will result in a 25,000 FF fine (approximately $US 4,200).
Court of Assizes for Minors

The general rules of procedure and the specific rules stated above are applicable. However, they differ on two points.\textsuperscript{45} The presence of the minor at the hearing is requested, and he may be excused only after his examination. He may be excused for all or part of the remaining hearing, but must be present as soon as the closure of the hearing is pronounced. The president must ask two additional questions to which the jury has to respond: (1) should a criminal penalty be given to the accused, and (2) should the accused be excluded from the benefit of penalty reduction provided in article 20-2. A "yes" answer to the first question, requires the vote of at least eight of the twelve members of the jury. Article 20-2 provides that the court may not pronounce a penalty that will be higher than half of the applicable penalty. If the penalty is life imprisonment, it must be reduced to 20 years imprisonment or less.

Civil Actions Before the Civil Courts

The victim of a criminal wrong can make his/her claim for damages directly to the criminal courts instead of filing a separate action in a civil court. These actions, referred to as an action civile devant les juridictions pénales (civil action before the criminal courts), are very frequent. If the accused is found guilty, all the victim has to prove is the extent of his/her injury, which is determined in the great majority of cases by means of a neutral court-appointed expert.

The victim of a criminal wrong committed by a minor may file his/her claim before the judge for children, the investigating judge, the tribunal for children, and the Court of Assizes for minors. The action may be filed against the minor, the person responsible for the minor, or his insurance.\textsuperscript{46} The jurisprudence shows that the minor's civil liability is determined objectively and is not based upon his level of understanding.\textsuperscript{47}

Appellate Review

The special chamber of the Appeal Court hears appeals of decisions or judgment rendered by the judge for children and the tribunal for children and appeals of temporary placement orders rendered by the judge for children or the investigating judge.\textsuperscript{48}

Appeals to the Cour de Cassation are possible when there is no other kind of appeal open. The court will review only issues of law or procedure.

\textsuperscript{45} Id., art 20.
\textsuperscript{46} Id., art. 6.
\textsuperscript{47} Supra note 12, p. 19.
\textsuperscript{48} C. org. jud., art. L.223-1.
Punishment

The main concern is the rehabilitation of the minor. Therefore, higher priority is placed on the protection and education of juvenile offenders than on their punishment. As a result, educational measures are principally used. Educational measures and criminal sentences cannot be combined. The Court of judgment must choose one or the other.

Educational measures are varied. The minor may receive an admonition in the form of a verbal reprimand and then he is placed with his parents, guardian, or any other person responsible for his care. He may be confined to a judicial administration, a private institution, a juvenile social service, or, if needed, to a medical or medical-educational rehabilitation institution. Many judges also advocate removing delinquents from the urban ghettos where they were raised. They feel that juveniles cannot be as easily influenced by the criminal elements responsible for their behavior when they no longer live within that environment.

Supervised release is also possible. It can be ordered concurrently with another type of sentence. This is the only exception to the principle of non-cumulative sentences. In all cases it ceases when the minor reaches majority. Measures of protection, assistance, and supervised education have a temporary character and may be reevaluated and revised at any time, as much as the status of the minor is assumed to be evolving.

Law 93-2 of January 4, 1993, introduced a measure of reparation to the victim or the public community. It gives the prosecutor, the authority handling the investigation, or the court hearing the matter, the option to propose to the juvenile offender a measure or an activity to redress the harm or injury inflicted upon the victim or the community. The victim’s consent is mandatory. The reparation process must be overseen by a person or a public service empowered to do so. At the conclusion of the implementation, the supervising authority will draft a report for the prosecutor, the investigating judge, or the court.

Provisions concerning social and judicial follow-up of sexual offenders are also applicable to minors who commit sexual offenses. This new measure was introduced by the parliament on June 4, 1998, and primarily aims at reducing the percentage of sexual offenders who relapse. The law obliges convicts to submit to surveillance and assistance measures and, in some cases, mandatory medical treatment upon their discharge from prison. In the case of minors, this is accomplished under the supervision of the judge for children.

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49 *Id.*, arts 8, 15, 16, 20, 21.

50 *Id.*, arts. 8 & 19.

51 *Supra* note 1, art. 12-1

Criminal sentences, particularly imprisonment, may be pronounced when the circumstances and personality of the minor seem to require them.\footnote{Id., art. 2.} However, the minor must be specially protected (e.g., separated from adult inmates and provided education or training) to ensure that he is not perverted even further.

**Status of the Reform of the Juvenile System**

In the last few years, many have called for a reform of a juvenile system they feel is outdated and does not adequately protect the public against the realities of contemporary juvenile delinquency. The need of reform is based upon the perception that juvenile delinquency is constantly on the rise and that the offenses committed are more serious than those committed in the past.

In reality, the percentage of crimes committed by juveniles had been relatively stable from 1974 to 1994: 13.3% in 1974, 17.7% in 1979, 14.9% in 1984, 14.1% in 1989, and 14.2% in 1994.\footnote{Supra note 3.} However, it started to increase in 1995, 1996 and 1997. This trend was confirmed by the 1998 statistics. They show that the rate of juvenile crimes has now reached 20%.\footnote{LE MONDE, Jean Michel Apathie, M. Chirac et M. Jospin rivalisent face à la délinquance des mineurs, Jan. 6, 1999 (Nexis Lexis Presse).} There is also evidence that the types of crimes committed by juvenile are more serious. In 1974, 19.8% of violent robberies were committed by juveniles while in 1994, the rate of such juvenile crimes had increased to 26.9%. The rate of assault and battery was 7.2% in 1974; by 1994 it was 11.2%.\footnote{Supra note 3.}

In November 1997, Prime Minister Lionel Jospin created an inter-ministries committee to study the prevention and treatment of juvenile delinquency. The committee published its report in April 1998. The report notes that it is more and more difficult for parents to assume their responsibilities. It proposes that parents be more accountable for their lack of supervision or authority over their children. Greater involvement in their children's school life is also needed. Family benefits should be withdrawn from parents if they are not used in the best interest of the child and then reallocated to social services.

The committee opines that the 1945 Law should remain the cornerstone of the juvenile justice system and that new legislation would not be useful. It proposes better coordination among families, schools, social services, police, and various city services. The committee suggests that the mediation/compensation procedure be used more frequently and that judges resort more often to article 227-17 of the Penal Code. This article provides that parents who gravely compromise the health, security, morality, or education of their children in avoiding their legal obligations may be sentenced to two year imprisonment and a 200,000 FF fine. The committee also recommended better training for police officers and a substantial increase in the funding allocated to judges for children.\footnote{LE MONDE, Cécile Prieur, Une mission interministérielle formule 135 propositions pour lutter contre la délinquance}
Recently, a polemic has arisen between the Minister of Interior and the Minister of Justice. The Minister of Interior has questioned the principles of the 1945 Law. He opposes the presumption of irresponsibility and calls for a tougher law on pretrial detention of minors. He feels that suspension of family benefits is the best way to render parents accountable, and that it should be widely used. He argues that experience shows that parents usually regain authority on their children as soon as payment of benefits is interrupted. He also favors excluding from school those minors 16 years and above who constantly disrupt school life and suggests relocating serious recidivists from the districts where they operate for a lengthy period of time. On the other hand, the Minister of Justice defends the principles of the 1945 Law and is requesting additional funding to better implement them. It is up to the Prime Minister to decide which way this debate should be resolved.  

Conclusion

Education and rehabilitation have long been and are still officially the trademarks of the French juvenile criminal system. Although some have called into question this approach and requested tougher policies, others have been reluctant to move in that direction, preferring instead to maintain the philosophies embodied in the 1945 Ordinance. The government is faced with a dilemma and it has yet to come up with a reform that both reduce the percentage of offenses committed by juveniles, and preserve the delinquent’s chances of regaining his place in society.

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Juvenile Delinquency (Introduction)

Historic development

The German juvenile justice system has its origins in the liberal thinking of the late 19th century when criminal jurisprudence shifted its focus from retribution to rehabilitation. This reform movement prevailed throughout Western Europe and with regard to juvenile justice, it was strongly influenced by the practice in the United States.\textsuperscript{1} In Germany, the main proponent of this school of thinking was Franz von Liszt.\textsuperscript{2} His disciple, Gustav Radbruch,\textsuperscript{3} was instrumental in the enactment of the Youth Court Act of 1923,\textsuperscript{4} which was the first comprehensive juvenile justice act at the federal level. At about the same time, the first federal Youth Welfare Act was enacted.\textsuperscript{5}

The Youth Court Act of 1923 raised the age of criminal responsibility from 12 years to 14 and provided a special system for trying offenders between the ages of 14 and 18 that stressed their rehabilitation through education while also allowing for the imposition of penal sanctions.\textsuperscript{6} The Act adhered to the philosophy that juvenile delinquents are at a special stage of development that calls for different measures than those suitable for adult offenders, a philosophy that is still being applied.\textsuperscript{7}

The Hitler regime disavowed these enlightened principles through the enactment of an Imperial Juvenile Court Act in 1943.\textsuperscript{8} It allowed for the prosecution of children of the age of 12 "when needed due to the gravity of the offense, or to protect the people," and for the treatment of

\begin{enumerate}
\item H. Albrecht, Juvenile Crime and Juvenile Law in the Federal Republic of Germany, in J. Winterdyk, Juvenile Justice Systems 235 (Toronto, 1997).
\item F. V. Liszt, Der Zweckgedanke im Strafrecht, 3 Zeitschrift für die gesamte Strafrechtswissenschaft 1 (1882).
\item G. Radbruch, Rechtspolitik (Berlin, 1914).
\item Jugendgerichtsgesetz, Feb. 16, 1923, Reichsgezetzblatt [RGBl., official law gazette of the German Reich] I at 135.
\item Reichsjugendwohlfahrtsgezetz, July 9, 1922, RGBl. I, p. 633, as amended.
\item F. Schaffstein and W. Beulke, Jugendstrafrecht 1 (Stuttgart, 1995).
\item Reichsjugendgerichtsgesetz, Nov. 6, 1943, RGBl. I, p. 637.
\end{enumerate}
juveniles as adults "when this was justified by the base motives of the offender or the seriousness of the offense." Under these provisions, juveniles were frequently sentenced to death. Officially, the severity of then enacted juvenile justice provisions was justified in terms of rehabilitation; in reality it was meant as a deterrent to counteract the alarming increase in juvenile delinquency of the times.

During the postwar years, West Germany reverted to the more humanitarian doctrines of the 1920s and removed all traces of National Socialist thinking. Drafted under the influence of the Western Occupation powers, the West German Juvenile Justice Act of 1953 benefitted from the American experience in social case work in the reeducation of young offenders. The ideas embodied in the 1953 Act are still reflected in the Youth Court Act of 1976, which is currently in effect after having been reformed in 1990, again under American influence, by increasing the opportunities for diversion and victim-offender mediation while further restricting pretrial detention for juveniles. Since 1990, the Act has also been applied in former East Germany, together with all other German laws that were enacted in former East Germany with only minor modifications and transitional provisions.

Current Legislation

The Youth Court Act is the primary basis for administering juvenile justice. It modifies the substantive provisions of the Criminal Code and other penal statutes by providing sanctions suitable for young offenders. In addition, it modifies the procedural, jurisdictional, and organizational provisions of the Code of Criminal Procedure and the Court Organization Act by requiring special courts and procedures for juvenile offenders. The Youth Court Act does not create special

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10 Nothacker, supra note 6, at 48.
12 J. Wolff, M. Engelkamp, and T. Mulot, DAS JUGENDSTRAFRECHT ZWISCHEN NATIONALSOZIALISMUS UN DEMOKRATIE 117 (Baden-Baden, 1997).
13 Jugendgerichtsgesetz [JGG]., re-enacted Dec. 11, 1974, BGBl. I at 3427, as amended.
16 Supra note 13.
17 Strafgesetzbuch [StGB], re-enacted March 10, 1987, BGBl. I at 945, as amended.
18 Strafprozessordnung [STPO], reenacted April 7, 1987, BGBl. I at 1074, as amended.
19 Gerichtsverfassungsgesetz, reenacted May 9, 1975, BGBl. I at 1077, as amended.
criminal offenses for juvenile offenders—juveniles are punished for the same crimes as adults. Likewise, the basic principles of criminal procedure remain applicable in juvenile proceedings, unless they have been specifically changed. The Youth Court Act is also applied to some extent to contravention proceedings by which administrative fines are imposed. The punishment of such minor offenses is otherwise governed by the Act on Contravention.\textsuperscript{20}

The Act on Child and Youth Welfare of 1990\textsuperscript{21} is the second pillar on which the treatment of young offenders rests. The Youth Welfare Act provides a framework of rules for the organization and operation of the youth welfare agencies that are called upon by the youth courts to provide services in juvenile delinquency cases. The youth welfare agencies also provide assistance to young people and their families in other difficulties. The Act grants every young person the right to be educated toward becoming a responsible and well-adjusted adult and mandates the giving of whatever support is needed to promote this development. However, the Act also provides that social assistance is to be granted in a manner that supports the strength of the family and does not interfere unnecessarily with parental authority.\textsuperscript{22}

**Age Limits**

Under the current system of juvenile justice, suspects who were below the age of 14 when the offense was committed may not be tried at all.\textsuperscript{23} To the extent that it is deemed necessary to take preventive steps against such offenders, educational and social measures can be imposed through the guardianship courts.\textsuperscript{24} However, police investigations against child suspects are a frequent occurrence.\textsuperscript{25}

Juveniles between the ages of 14 and 18 at time of the offense are criminally responsible but they must always be tried under the rules of the juvenile justice system. Within this age group, further distinctions are drawn in that an accused may not be convicted if at the time of the offense he or she was not mature enough to understand the wrongfulness of the conduct.\textsuperscript{26} Furthermore, pretrial detention can only rarely be imposed on suspects below the age of 16 years. Where the system thus allows for a more lenient treatment of a juvenile under certain circumstances, a harsher treatment is strictly prohibited: waivers of juvenile rights or transfers to adult courts are not possible.

\textsuperscript{20} Gesetz über Ordnungswidrigkeiten, reenacted Feb. 19, 1987, BGBI. I, at 602, as amended.

\textsuperscript{21} Kinder- und Jugendhilfegesetz [KJHG], reenacted June 26, 1990, BGBI. I, p. 637, as amended.

\textsuperscript{22} KJHG § 1.

\textsuperscript{23} StGB § 19.

\textsuperscript{24} T. Ramm, JUGENDRECHT 297 (München, 1990).

\textsuperscript{25} Out of every 100,000 children, 4,142 youngsters were suspects in 1996, albeit mostly involving petty offenses [J. Jehle STAFRECHTSPFLEGE IN DEUTSCHLAND 15 (Bonn, 1997)].

\textsuperscript{26} In such cases, the court is limited to the imposition of educational measures but may not convict [JGG, § 3].
Young adults between the ages of 18 and 21 at the time of the offense [hereafter: young adults] are tried under the juvenile justice system if the court determines that the accused lacks the maturity and insight of an adult; without such a decision, young adults are tried as adults before the courts of ordinary jurisdiction. For all age groups, the age of the accused at the time of the offense determines the applicable procedure and forum, although the age at the time of trial is taking into consideration in choosing the appropriate measures or sanctions.

**Juvenile Offenses**

Juveniles and young adults are tried and prosecuted for the same offenses as adults, under the generally applicable statutory provisions of criminal law. The status offenses of American law are unknown in Germany. Not the juvenile justice system, but the youth welfare agencies and in some cases the guardianship courts deal with juvenile misbehavior like truancy or running away, if an intervention becomes necessary.

**Philosophy of the Current System**

The German juvenile justice system can be characterized as an offender-oriented criminal justice system. The courts choose between educational measures and penal sanctions in accordance with the suitability of these measures for the individual offender. The educational measures aim at preventing young people from becoming repeat offenders. Diversion to educational or social measures (including victim compensation) is to be employed in lieu of a formal judicial proceeding if the youthful perpetrator has committed offenses that can be characterized as developmental, particularly in the case of occasional offenders, who, in the German experience can be expected to stop engaging in minor criminal activity once they become adults. Detention is to be avoided as much as possible through the use of ambulatory measures and probation. When a prison sentence is indicated due to the severity of the offense, it must be served separately from adult prisoners in an environment that promotes rehabilitation.

**Violence by Youth**

In recent years, juvenile delinquency has increased in Germany both in frequency and severity. More than 25% of all criminal suspects are below the age of 21 and, while most of

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27 Albrecht, *supra* note 1, at 237.


29 Albrecht, *supra* note 1, at 246.

30 JGG § 91.

their offenses fall into the traditional categories of petty theft, vandalism, and traffic violations, more sinister forms of criminality have also increased. The most worrisome among these are hate crimes against foreigners, violent crimes committed by aliens, random acts of violence committed by German nationals, and drug-related offenses. More than 80% of the more serious juvenile offenses are committed by men.

Most hate crimes against alien guest workers are being committed in East Germany, where gangs of young right wing extremists and their followers randomly attack alien workers in public places, severely beating and even killing them. Such asocial behavior may well be a legacy of the Communist education system that did not prepare young people for a life in freedom and individual responsibility.

The incidence of youth crimes committed by immigrants is high in former West Germany, where aliens comprise about 10% of the population. A much discussed case is that of a young Turkish citizen, who, for data protection reasons is known under the pseudonym "Mehmet." He was expelled from Germany in November, 1998, at the age of 14, after having committed more than 60 serious offenses including robberies, before he had reached the age of criminal responsibility.

In addition, there have been occasional murders, such as the knifing to death of a grocer by two 16 and 17- year old native Germans. This case led to an outcry for harder sanctions, yet professional opinions are divided on the seriousness of the situation and what measures are called for. Aside from the notoriety of this case, homicides are rarely committed by juveniles and the overall German homicide figures are comparatively low. This may be attributable to strict gun-control law. However, the number of batteries and robberies committed by juveniles has been rising.

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32 Jehle, supra note 25, at 14.
33 Kaiser, supra note 28 at 196.
34 Jehle, supra note 25, at 15.
35 Chronik der Gewalt, AP WORLD STREAM, March 29, 1999 [LEXIS/NEWS].
36 U. Andresen, Generation Hass, TAZ, DIE TAGESZEITUNG 1 (March 27, 1999).
37 Kein Rechtsschutz für Mehmet, FRANKFURTER ALLGEMEINE ZEITUNG 4 (Jan. 21, 1999).
40 Having remained, in the past decade, at about 500 cases for the 65 million population of former West Germany, with comparative figures for East Germany [STATISTISCHES JAHRBUCH 1995 at 376 (Wiesbaden, 1995); J. Jehle, supra note 25, at 14].
41 Waffengesetz, reenacted Mar. 8, 1976, BGBl. I at 432, as amended.
42 D. Winden, Totgestochen wegen einer Kleinigkeit, TAZ DIE TAGESZEITUNG 21 (Mar. 24, 1997).
Institutions of Juvenile Justice

The Courts

Juvenile justice is administered by the youth courts. These are special departments of the courts of ordinary jurisdiction. These are state courts at the trial and first appellate level, whereas the courts of last resort are federal. The state courts apply criminal law and criminal procedural law that is preponderantly federal. Nevertheless, juvenile justice administration is very much a state matter, due to the cooperation with prosecutors and youth welfare agencies which are also organized at the state level.

Judges, Lay Judges, and Prosecutors

In juvenile trials, the composition of the judicial panels mirrors adult trials. Thus, minor offenses are tried before a single judge at the local court; more serious offenses are tried before a panel consisting of one professional judge and two lay judges at the regional court, and the most serious criminal offenses, such as murder, manslaughter, or aggravated battery, are tried in the regional court before a chamber consisting of two or three professional judges plus two lay judges. German lay judges participate fully in deciding all issues of culpability and sentencing.

The Youth Court Act requires professional judges and prosecutors to show an aptitude as educators and to have experience in the education of young people. It appears that the practice lags somewhat behind this mandate. Generally, the statutory requirements are deemed fulfilled by a solid knowledge of the law that is relevant for juvenile justice, including constitutional law. There is no special examination to determine the suitability of a judge or prosecutor to be assigned to juvenile matters; instead, the appointments are made by the appellate courts and they that exercise their best judgment. However, uniform administrative guidelines for juvenile justice recommend that juvenile judges and prosecutors be allowed to develop a specialization in this field through long-term assignments to youth courts. In contrast to the professional judges and the prosecutors, lay judges are usually chosen for their experience in dealing with young people. Moreover, often one of the lay judges on the panel is a woman.

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46 H. Ostendorf, JUGENDGERICHTSGESETZ 353 (Köln, 1997).
47 Richtlinien zum Jugendgerichtsgesetz , Apr. 14, 1994, reprinted in Ostendorf, supra note 46, at 975. These guidelines have been adopted jointly by the justice ministers of the state and the Federation.
Police

In general, the police are organized at the state and local level. Police departments vary in their structure and the bigger municipalities have more specialized departments and programs for dealing with juveniles. All police investigations have to comply with the due process requirements of federal procedural law and the police codes of the particular state. Together, these enactments protect individuals against unreasonable searches and seizures, whether they are juveniles or adults.

As compared to the American practice, the German police departments play a lesser role in the administration of juvenile justice because the German police does not have the power to divert a juvenile case to non-penal measures. In Germany, diversion falls into the competence of judge or prosecutor (see below).

According to the prevailing opinion in Germany, involvement of the police in the social aspects of juvenile cases could lead to a conflict of interest between the investigative role of the police and the helping role of the welfare agencies. In particular, a blurring of these opposite functions could lead to violations of the rights of the accused, and infringe on the confidentiality that the social worker owes to his client. Nevertheless, there have been occasional experimental programs aimed at preventing juvenile delinquency that broke down some of the fire walls between police work and social case work.

Youth Welfare Agencies

Social services play a major role in dealing with juvenile delinquency. According to the Youth Court Act, social assistance is to commence at the pretrial stage, be provided throughout the proceeding, during probation, and during the execution of penalties or measures. At all stages, the social services provide expert advice to the prosecutor and the court on the character and development of the suspect and on the suitability of correctional measures or sanctions, while providing guidance and assistance to suspect, comforting him and preventing additional misconduct. An important part of this helping role are efforts to integrate the youngster at school, in the work place, or in the family.

The dual functions of the youth welfare agencies may lead to conflicts of interests. Whereas the role of advising the court requires the caseworker to be objective, the role of being a helper to the suspect requires the caseworker to be supportive of the juvenile. The solution to these

49 E.g., in Rhineland Palatinate, Polizeigesetz, Mar. 26, 1954, GESETZ- UND VERORDNUNGSBLATT FÜR RHEINLAND-PFALZ 31, as amended.
50 Ostendorf, supra note 46, at 410.
51 JGG § 38.
potential conflicts often lies within the conscience of the individual caseworker.\textsuperscript{52} In practice, however, there is some potential for the welfare agency to be perceived as overbearingly powerful and intrusive. Moreover, the welfare agency may not always have a mitigating effect on the court. An empirical study of the 1980's showed that the welfare agencies often recommend more stringent measures and sanctions than were imposed by the court.\textsuperscript{53}

The organization of the youth welfare agencies for the youth courts varies according to the local conditions, even though all the agencies are governed by the Youth and Child Welfare Act.\textsuperscript{54} Large municipalities have special youth court divisions in their welfare offices whereas small communities may have one social worker for a particular district who is in charge of youth welfare in general as well as of youth court assistance. However, it appears, that in most cases, and irrespective of the size of the welfare agency, an individual case worker is assigned to each young suspect. This appointed officer accompanies the case and provides whatever counselling, opinion-writing, etc. is needed.\textsuperscript{55}

**Professional Associations**

Various professional associations are important for the development of juvenile justice in Germany. Noteworthy among them is the German Association of Juvenile Courts and Juvenile Court Aid. The latter is an association of judges, prosecutors, defenders, social workers and other experts in juvenile delinquency. It is organized at the state and federal level and holds conferences, publishes studies, proposes pilot projects and reforms.\textsuperscript{56}

**Special Procedures and Juvenile Court Process**

**Overview**

The criminal proceeding against a juvenile is divided into the phases of police investigation, prosecutorial investigation, possible pretrial detention, trial, possible probation, and the execution of the penalty. These phases mirror the stages of an adult proceeding; however, in juvenile proceeding, more flexibility is provided by allowing for a dismissal of the case at various stages and by allowing for a simplified proceeding, when this is in the best interest of the offender. Another difference from adult proceedings is the continuous involvement of the youth welfare agency. Rapid

\textsuperscript{52} Schaffstein, \textit{supra} note 7, at 174.

\textsuperscript{53} H. Heinz, \textit{ERZIEHERISCHE MASSNAHMEN IM DEUTSCHEN JUGENDSTRAFRECHT} 53 (Bonn, 1986).

\textsuperscript{54} \textit{Supra} note 21.

\textsuperscript{55} P. Wild, \textit{JUGENDGERICHTSHILFE IN DER PRAXIS} 49 (München, 1989).

adjudication is of paramount importance in juvenile cases. However, the practice lags behind the good intentions of the law.\textsuperscript{57}

**Pretrial Phase**

In investigating an offense, the police have to decide when to notify the prosecutor. The Code of Criminal Procedure provides that the prosecutor is the master of the pretrial investigations, that he has to be involved as early as possible, and that he is to direct the police investigations. In reality, however, the police carries out the investigations, requests judicial permissions as necessary, and hands the prosecutor a completed case so that the prosecutor merely has to write the indictment.\textsuperscript{58} This practice is applied in adult as well as in juvenile proceedings.\textsuperscript{59}

In juvenile proceedings, the prosecutor is under a duty to investigate not only the deed, but also evaluate the defendant's way of life and family conditions, his development, his behavior up to the present time, and all other circumstances which might possible serve the assessment of his moral and mental qualities as well as traits of character.\textsuperscript{60} This character portrait of the suspect requires involvement of the welfare agency, if this has not already been done at the level of the police investigation. In addition, the parents should be heard. Teachers and employers should be questioned only if this would not be unduly detrimental to the defendant. If necessary, a psychiatric examination must also be ordered. If the prosecutor foresees the possibility of a conviction and sentence, then the prosecutor or the presiding judge of the youth court must speak with the defendant, before the indictment is preferred.\textsuperscript{61} All these measures, however, can be eliminated if the prosecutor decides not to bring an indictment.

**Diversion during the Pretrial Phase**

The Youth Court Act describes the circumstances under which a case can be dropped by the prosecutor.\textsuperscript{62} This is necessary because German prosecutors are otherwise under an obligation to prosecute all crimes that come to their attention.\textsuperscript{63} The statutory provisions on diversion are


\textsuperscript{59} Ostendorf, *supra* note 46 at 409.

\textsuperscript{60} JGG § 43, ¶ 1.

\textsuperscript{61} JGG § 39.

\textsuperscript{62} JGG §§ 45-47.

\textsuperscript{63} Plea-bargaining is not a part of the German system, and in adult proceedings, cases can be dropped only if they are insignificant, and even
further implemented in the states by ministerial circulars that differ slightly from state to state. Some of these circulars give catalogs of offenses that are suitable for various measures.

According to the Youth Court Act, the prosecutor can terminate a juvenile case without an indictment and without further formalities or measures if the offense was insignificant. According to state circulars, this mode of termination is suitable for offenses such as petty larceny, unauthorized use of a vehicle, driving without a driver's license, or possession of small amounts of marihuana. Juvenile cases are often terminated in this manner, and this is viewed as desirable in that it protects juveniles from being exposed to any of the hazards involved with various social and educational measures.

In more serious cases, the prosecutor may still drop the charge if educational measures are or have been employed. Mediation between victim and offender also justifies a dropping of the charges. This rarely occurs in practice despite numerous pilot projects and working groups. The youth welfare agency usually becomes involved in recommending and carrying out any of these measures.

In even more serious cases, the prosecutor must ask the judge and obtain a confession from the perpetrator before he can drop the case. The judge may issue a reprimand or impose certain conditions, as for instance, restitution or an apology to the victim, participation in a safe driver program, community service, or the payment of a fine to benefit a charitable purpose. In such cases, the prosecutor can dispose of the case only after the perpetrator has followed the judicial instructions before disposing of the case.

**Diversion by the Judge**

Once the indictment is transmitted to the court, the judge becomes the master of the proceeding and his first step is to evaluate whether a trial is warranted on the basis of the indictment. This deliberation takes place in every proceeding, yet in juvenile proceedings the judge is given more opportunity to dismiss the case at this stage than in adult proceedings. The judge may dismiss an indictment for a misdemeanor because of the insignificance of the deed, the same as in adult proceedings. In addition, the judge may dismiss a case if an adequate educational measure

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64 This mode of termination is also available in adult proceedings, but only after the judge has agreed [Id.].

65 Ostendorf, supra note 46, at 441.

66 Diemer, supra note 45, at 435.

67 Ostendorf, supra note 46, at 444.

68 StPO § 153.
has already been imposed or carried out, or is being ordered by the judge. In addition, the judge may dismiss if he is of the opinion that the accused lacks the maturity to be held criminally responsible. A dismissal for any of these reasons is possible also at any stage during the trial but always requires the consent of the prosecutor.69

The Bill of Indictment

The Youth Court Act requires the prosecutor to phrase the indictment so as to avoid any unnecessary detriment to the education of the accused.70 That means that he has to deviate from the rules prevailing in adult proceedings where the indictment must describe in detail the findings of the investigations and the conclusions drawn from them.71 In practice, however, this difference between juvenile and adult proceedings raises questions of due process because it might deny the juvenile accused the opportunity to be informed of the prosecution's case. In any event, the indictment must name the criminal provisions that the accused is charged of violating. In more serious cases, before a panel of judges, the facts of the offense also have to be described.72

Pretrial Detention

According to the Youth Court Act, pretrial detention is to be used sparingly, only as a measure of last resort, when other measures are not feasible, such as placement in an educational institution. Juveniles below the age of 16 may be detained only if they have no abode in Germany or to prevent their imminent escape. Pretrial detention is to be imposed by the judge in a reasoned decision. If detention has been imposed, the case must be tried as soon as possible.73

The law limits the use of pretrial detention because of its severe effect on impressionable youths and the likelihood that the suspect will encounter bad company in the detention facility that will afford him an apprenticeship in crime. For this reason, the law recommends also that juveniles be kept separated from older suspects, and particularly from adults, to the extent that this is feasible.74

The practice, however, lags considerably behind the good intentions of the law. Pretrial detention is imposed frequently, as compared to other countries. In 1993, for instance, twice as

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69 JGG § 47.
70 JGG § 46.
71 In adult criminal proceedings, the prosecutor must describe the entire case in the indictment so that there will be no surprises for the defense [Langbein, supra note 44, at 10].
72 Ostendorf, supra note 46, at 456.
73 JGG § 72.
74 JGG § 93.
many juveniles were in pretrial detention than were serving prison sentences. A separation of juvenile suspects from other suspects is not always carried out, and pretrial detention often lasts for weeks, and even months.\textsuperscript{75} Moreover, it appears that judges impose pretrial detention against the intent of the law, for the purpose of imposing a punishment rather than to guard against escape or repeat offenses. Many judges believe in the salutary effect of short prison terms and, since prison sentences for juveniles must be for a minimum period of for six months and are therefore unavailable for lesser offenses, judges remedy this perceived shortcoming by imposing pretrial detention.\textsuperscript{76}

**Trial Phase**

The trial before the youth court adheres to the basic principles of adult criminal proceedings,\textsuperscript{77} but modifies them so as to promote the educational and rehabilitative goals of juvenile justice. The most significant difference from adult proceedings is the exclusion of the public from the trial. In addition, the law requires the presence of the accused even more strongly than in adult proceedings while being less insistent about the use of the oath for witnesses. These special requirements, however, are again modified when adults and juveniles are tried together or when young adults are tried in juvenile court.

The public has been excluded from juvenile trials since the 1920's, and now as then this has served the purpose of preventing publicity and thereby promoting reintegration of the youth accused. Moreover, a public trial would be an ordeal for a shy and timid youngster, while a more extroverted accused might view the public trial as an opportunity to show off and play hero.\textsuperscript{78} According to current law, only the parties to the proceeding may be present at the trial and pronouncement of the judgement; these are the prosecutor, the defendant, his parents, guardians, and lawyers, his social worker or other educational officer. The victim and his representative may be present. Since 1990, even the police are excluded from juvenile trials. Exceptions can be made by the judge, but only to admit professionals for training purposes.

Experts are rarely put under oath in juvenile trials so as to make the proceeding less formal and intimidating. Witnesses, on the other hand, are asked to testify under oath in trials before panels of judges. In trials before the single judge, however, an oath should be administered only under exceptional circumstances. Foregoing the oath in minor cases may serve the purpose of placing young witnesses in less jeopardy for false testimony.\textsuperscript{79}

\textsuperscript{75} Ostendorf, supra note 57.

\textsuperscript{76} Schaffstein, supra note 7, at 207.

\textsuperscript{77} StPO §§ 226-275.

\textsuperscript{78} Schaffstein, supra note 7, at 198.

\textsuperscript{79} Ostendorf, supra note 46, at 482.
Trials in absentia are generally prohibited in Germany, but certain exceptions from this rule exist for adult trials. For instance, an accused adult can be tried in absentia if he or she wrongfully refused to appear as summoned, while the summon contained notice of the possibility of proceeding without the accused, and the offense would be punished only by certain limited sanctions that may not involve imprisonment or other detainment. Even in such cases, the accused must have had been heard before a judge. In addition, it is possible to conduct part of the trial without the accused under certain circumstances, such as to protect certain witnesses or if the accused is disorderly in the court room.

In juvenile proceedings, these restrictions for adult proceedings are applicable and are handled even more strictly, because it is especially important for the court to have a personal impression of the accused. A juvenile trial may be conducted without the accused only if the prosecutor and the judge agree on this course of action and if there are special reasons to proceed in this manner. For instance, it would be possible to proceed without an accused who is being tried for minor offenses if he was far away from the place of the trial, or if he was tried together with others, and could not be there, and to have a separate trial would require a major effort.

On the other hand, the law allows that a juvenile accused be removed temporarily from the trial when matters are being discussed that would be harmful for the young persons' education. However, this provision of the law is disliked by defense attorneys who feel that secrecy is more harmful to the accused than a candid description or evaluation of events. 

**Accelerated Proceedings**

Upon request of the prosecutor, the judge may hold the trial in an accelerated form by foregoing some of the formalities otherwise required. Trials may not be simplified, however, if a penalty of detention, be it in prison or in an educational facility, can be expected. Even in an accelerated trial, due process must be observed by ensuring the presence of the accused, though not of the prosecutor, and by guaranteeing a hearing to the accused. Accelerated proceedings are possible in Germany because the German criminal trial is an inquisitorial trial in which the judge has

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80 StPO §§ 230 et seq.
81 Schäffstein, supra note 7, at 199.
82 JGG, § 50.
83 Diemer, supra note 45, at 488.
84 JGG § 51.
85 Ostendorf, supra note 46, at 495.
to find the truth. The judge therefore moves the trial, calls witnesses, and interrogates them.

**Proceedings against Young Adults**

As a group, young adults between the ages of 18 and 21 show a high incidence of criminality and their adjudication within the juvenile court system is the subject of much controversy.\(^8^6\) It is up to the youth court to decide whether these suspects should be tried as juvenile delinquents due to their lacking maturity, or as adults. The proceeding will often take place before the youth court, where, even if the young adult is tried as an adult, the judge can reduce the sentence to ten or fifteen years in prison rather than life imprisonment.\(^8^7\) In 1997, 60% of the accused young adults between 18 and 21 were tried as juvenile delinquents. The courts are more likely to treat young adults as juvenile delinquents if they are accused of serious offenses, such as homicide or robbery. On the other hand, young adults accused of traffic offenses are more frequently tried as adults.\(^8^8\)

**Rights of Juveniles**

The rights of the accused of the German Constitution protect juveniles throughout the trial process.\(^8^9\) In particular, adequate provision is made to guarantee a hearing for the young suspect, and this guarantee also extends to his parents or other legal representatives; these persons must be served with any court orders and they are considered participants in the proceeding.

Juvenile suspects are entitled to effective representation by defense counsel. They can retain an attorney in any proceeding. If the accused juvenile is not represented by defense counsel, the court must appoint one under the same conditions that would apply in an adult proceeding; that is, in serious cases, such as an accusation of a felony, or potential commitment to a mental institution.\(^9^0\) In addition, counsel must be appointed for an accused juvenile if the parents or other legal representative have been declared unfit to act on behalf of the accused, if an expert opinion is being prepared that could lead to measures of detention, or if pretrial detention is being imposed on an accused below the age of 18.

Among the rights of the juveniles are their rights to guidance and assistance by the youth welfare agencies. Whereas these rights appear to be benign, and whereas the involvement of social workers and other youth care professionals seems necessary to dispense justice and/or assistance

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\(^{86}\) Schaffstein *supra* note 7, at 56.

\(^{87}\) JGG §§ 105 *et seq*.


\(^{89}\) Grundgesetz für die Bundesrepublik Deutschland, May 23, 1949, BGBl. at 1, art. 103, as amended.

\(^{90}\) StPO § 140.
to the individual offender, these services may also infringe the due process rights of the young suspect, and reforms have been suggested, among them, secrecy protection for the communications between suspect and case worker.\textsuperscript{91}

**Penalties and Punishments**

**Youth Imprisonment**

Youth imprisonment is the severest punishment that can be meted out to a juvenile offender. It is appropriate only when educational measures and other penalties are not sufficient to rehabilitate the perpetrator or to atone for the deed. The minimum term for youth imprisonment is six months and the maximum is four years. For young adults sentenced in a youth court proceeding, the maximum term of imprisonment is ten years. The execution of the sentence can be suspended on probation.\textsuperscript{92}

Despite the benign intent of the law, practitioners have found fault with the current system by alleging that juveniles get harsher penalties than adults and that the uniform guidelines have led to little uniformity. Male offenders are more likely to be imprisoned than female offenders, and aliens are more readily imprisoned than native offenders. In 1990, 17.8\% of the convicted juveniles and young adults were sentenced to youth imprisonment, and 11.2\% of them were initially placed on probation. Since then, the imposition of youth prison sentences has declined somewhat.\textsuperscript{93}

Juvenile offenders must serve their prison terms in juvenile prisons, and these are administered in accordance with uniform guidelines of the justice ministers of the states.\textsuperscript{94} The rehabilitation of the offender is promoted through an individual plan that determines the type of schooling, work, recreation, etc. that is best suited for the juvenile. Separation from adult prisoners aims at avoiding the bad influence and education toward crime that could come from the older prisoners. Youth imprisonment, however, is not nearly as effectively regulated as the execution of adult prison sentences\textsuperscript{95} and it has been suggested that the current deficit of legislation is unconstitutional and detrimental to the young prisoners in that their rights are not properly guaranteed.\textsuperscript{96}

\textsuperscript{91} Ostendorf, supra note 46, at 328.

\textsuperscript{92} JGG §§ 21 et seq.

\textsuperscript{93} Albrecht, supra note 1, at 262.

\textsuperscript{94} Ostendorf, supra note 46, at 1033.

\textsuperscript{95} Prison sentences for adults are regulated in detail in a federal act [Strafvollzugsgesetz, Mar. 16, 1976, BGBI. I at 581]. Prison sentences of juveniles are governed by some rudimentary provisions in the Youth Court Act [JGG §§ 90 et seq.].

\textsuperscript{96} Ostendorf, supra note 46 at 819; Schaffstein supra, note 7, at 229.
Young adults between the ages of 18 and 24 can be placed either in an adult or a juvenile prison, and it is up to the judge to specify whether they should be treated according to the rules for adult or juvenile prisoners.

**Probation**

As in adult proceeding, a suspended sentence is indicated if this is enough of a warning for the offender. In addition, probation is particularly appropriate for young offenders so as to keep them out of prison and away from the bad influences they would encounter there. Under the Youth Court Act, two forms of probation are available in that the judge may either suspend the sentence or suspend the conviction. Of these, the suspended sentence is the more frequently employed method.\(^97\)

The probation period ranges between two and three years; if the offender lapses during that time, the initial sentence becomes due, albeit only after a judicial decision. A suspended sentence only becomes due if the offender commits an equally serious other offense or continuously violates the terms of probation. A probation officer is appointed for up to two years of the probation period. In addition, the judge may impose the same injunctions and conditions that could be imposed as a diversionary measure (see above).

**Other Means of Correction**

Measures of correction are issued by the judge in the form of warnings, mandatory injunctions or short detention. These measures aim at expressing disapproval while falling short of an actual prison sentence. In contrast to prison sentences, these measures are not entered into the judicial register of convictions (unless imposed together with a penalty of imprisonment) but merely recorded in the register of educational measures.\(^98\)

The warning is to be used only for the least serious of cases. It can be issued either at the time of dismissal of the case by the judge, or in form of a judgment at the end of the trial.

Mandatory injunctions are imposed by judgment, yet they are similar to the educational measures that can be used when diversion is indicated. The most common mandatory injunctions are the making of restitution towards the victim, to apologize in person to the victim, to render community service or to make a monetary contribution for a charitable cause.

Short detention can be imposed either for one or two weekends or for a period ranging from one to four weeks. Weekend detention is often served in facilities attached to youth courts whereas

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\(^97\) JGG §§ 21 et seq.

\(^98\) Bundeszentralregistergesetz [BZRG], reenacted Sept. 21, 1984, BGBl. I, p. 1229, § 60, as amended.
the longer form of detention is usually executed in youth prisons. The effectiveness of short detention has been much debated, as has been the manner in which it is executed.\textsuperscript{99} Nevertheless, the measure is used approximately 15\% of adjudicated cases.\textsuperscript{100}

**Rehabilitative and Educational Measures**

Educational measures can be imposed either instead of a trial or during the trial, instead of a convictions, or in the judgment after a trial took place. If imposed in the judgment, their formal names are called instructions, disciplinary guidance, and reformatory education.

Some of the instructions that can be imposed in a judgement are not different from the mandatory injunctions that can be imposed instead of a conviction. Instructions may, for instance, direct the juvenile to obey orders restricting his freedom of movement, to live with a family or in an institution, to report to the governmental employment agency to find work, to render community service, to have a mentor assigned and be told to follow his instructions, to participate in group therapy, to attempt reconciliation with the victim, to avoid the company of certain persons or to stay away from certain entertainment facilities, or to attend traffic school. All these instructions can be issued by the judge without the consent of the parents.

A more intrusive form of instruction is the ordering of a therapeutic medical treatment or the submission to a drug or alcohol rehabilitation program. Such measures can be ordered by the judge only if the parents (or other legal representative) consent; if the juvenile is above the age of 16, his or her agreement must also be obtained.

Disciplinary guidance is imposed through the appointment of a guidance officer. This is done upon recommendation of the youth welfare office, which also appoints the officer and carries out the guidance in accordance with the provisions of the Child and Youth Welfare Act.

Reformatory education in an institution is the severest of the rehabilitative measures in that it requires a change in residence for the young offender and a transfer of parental authority to the institution. Case law restricts this rehabilitative measure to juvenile offenders whose level of maturity and education is significantly below average or whose moral development is in serious danger.\textsuperscript{101}

Corporal punishment is not a part of the German juvenile justice system, and it is specifically prohibited in juvenile detention facilities, whereas there is a difference of opinion whether a mild form of corporal discipline of the type that a parent might be permitted to carry out might be

\textsuperscript{99} Ostendorf, supra note 46, at 183.

\textsuperscript{100} Schaffstein, supra note 7, at 107.

\textsuperscript{101} Diemer, supra note 45, at 147.
permissible in educational detention facilities.\textsuperscript{102}

**Judicial Records for Juvenile Offenses**

The recording of juvenile offenses is a two-edged sword in that it appears necessary so as to have the behavior and character of the young person on record for law enforcement purposes. On the other hand, it is more beneficial for the rehabilitation of the offender to refrain from registering the offense so as not to label him and hinder his advancement in school or work. German law has dealt with this problem through the enactment of more lenient provisions for the recording of juveniles offenses.

In Germany, criminal convictions are generally recorded in the Central Register of the Federal Court of Justice. For juvenile offenders, however, this register is used only to record convictions for which a prison sentence was imposed or suspended. Moreover, information for some types of juvenile convictions is not given to requesting agencies and the records of juvenile convictions are expunged after a shorter period than those for adult convictions. Moreover, a special educational register is kept to record for the imposition of education measures, the dismissal of juvenile proceedings, and acquittals. This register can be used only by the criminal courts, the guardianship courts, the prosecutors, and the youth welfare offices. Other agencies, private persons, and the police cannot obtain information from the educational register.\textsuperscript{103}

**Philosophy of Rehabilitation Programs**

Education and rehabilitation are the guiding principles of the juvenile justice system which purports to correct shortcomings in the previous education of the juvenile so as to avoid future conflicts with the law. Juvenile offenders are to remain part of society and the measures are intended to reintegrate them into social life, instead of further isolating them.\textsuperscript{104} The large catalog of rehabilitative measures that can be imposed allows for much flexibility in dealing with the individual case. Educational measures are to be used whenever it is not necessary to mete out a punishment. Yet even the punishments aim at rehabilitating the juvenile offender.

**Conclusion and Outlook**

Germany has comprehensive framework of statutory provisions and administrative guidelines for dealing with juvenile delinquency. The German system combines judicial action with

\begin{footnotes}
\item[102] German law does not prevent parents from spanking their children, within reasonable limits. Teachers may not spank children, but current law does not preclude the possibility that educators in boarding schools and similar institutions may have rights similar to those of parents. It is possible, however, that legislative proposals abolishing the parental right of physical discipline may be enacted in the foreseeable future. [H. Tröndle, STRAFGESETZBUCH 1169 (München, 1997)].
\item[103] BZRG, supra note 99.
\item[104] T. Ramm, JUGENDRECHT 556 (München, 1990).
\end{footnotes}
welfare measures, favors diversion, and prefers ambulatory measures over detention. The German legislation is well-intentioned and aims for a suitable balance between the various purposes of juvenile justice. However, German experts have expressed the opinion that the practice sometimes lags behind the lofty ideals of the legislation and that proceedings are often handled routinely and in an impersonal manner and thereby fail to do justice to the circumstances of the individual suspect. It has also been alleged that disadvantaged youths and foreigners are more severely punished, and that the process is generally too slow.

Some shortcomings of the juvenile justice system are blamed on the growing caseload of courts, law enforcement agencies and welfare offices. Like most European countries, Germany has experienced an increase in juvenile delinquency. In 1996, 80,846 persons were convicted in juvenile court proceedings in former West Germany (including Berlin). In 1997, the number of convictions in youth court proceedings rose to 87,800, which amounted to 11% of all criminal convictions. Moreover, in recent years, the number of suspects has risen even faster than that of convictions.

In reaction to the increase in juvenile delinquency, particularly violent crime, reforms have been proposed that express disillusionment with the rehabilitative goals of the current juvenile justice system and call for stronger measures. In 1997, the Federal Council proposed to lower the age of full criminal responsibility, to hold parents responsible for the criminality of their children, and always to try young adults as adults. Other reform proposals called for the suspension of drivers licenses; the use of preventive detention, the imposition of a curfew for children, (in imitation of a British example); and teen courts, a reform proposal that is modelled after American institutions. It has also been suggested that preventive educational measures and social work should be provided to troubled youngsters and their families at an earlier age, even to start in nursery school. Major reforms, however, do not appear imminent.

105 Albrecht, supra note 1, at 262.
106 Ostendorf, supra note 72, at 484.
107 In 1996, 10,000 of every 100,000 male juveniles became crime suspects. The figure for young adult male suspects was 11,000 out of every 100,000. In 1996, 81% of the adjudicated cases, educational or disciplinary measures were imposed; in 12% of these cases, the prison sentence was suspended, and only in 7% of the cases was an suspended prison imposed. [Jehle, supra note 25, at 36].
108 Supra note 89, at 20.
109 Bundesrat, parliamentary chamber representing the states.
112 Urlaubsverbot angeblich als Strafe, SDZ (Nov. 16, 1998).
113 Ein Gericht, nur mit Heranwachsenden besetzt, SDZ (Sept. 24, 1998).
Prepared by Edith Palmer
Senior Legal Specialist
Western Law Division
Legal Research Directorate
Law Library of Congress
April 1999
On November 29, 1985, the United Nations General Assembly adopted a resolution prescribing Standard Minimum Rules for the Administration of Juvenile Justice (UNSMRAJJ), designated as the Beijing Rules. The U.N. also exhorted the member nations to provide inter alia appropriate resources to ensure effective implementation and dissemination of the Beijing Rules.

In the following year, in pursuance of the appeal, India enacted the 1986 Act. The object of the Act was to bring the operations of the juvenile justice system into conformity with the United Nations Standard Minimum Rules. Thus, it laid down a uniform legal framework for juvenile justice so as to ensure that no child is lodged in a jail or police lock-up, and also involved informal systems and community-based welfare agencies in the care, protection, treatment, development, and rehabilitation of neglected and/or delinquent juveniles.

The Act provides for the above-stated objectives for rehabilitation of the delinquents. The specific aims of the Act are to establish juvenile welfare boards for neglected juveniles and juvenile court for delinquent juveniles. The Act creates the machinery and infrastructure required for juveniles, their protection, investigation of their offenses, and their ultimate rehabilitation while it also prescribes norms and standards for the administration of the juvenile justice system. Thus, it lays down a specialized approach to the prevention and treatment of juvenile delinquency.

The Act defines a "juvenile" as a person who is below 16 years of age in the case of a boy and below 18 years in the case of a girl. A delinquent juvenile refers to a boy who is found to have committed an offense. A "neglected juvenile" is one who may be found begging or is destitute or homeless, who has an unfit or incapacitated parent/guardian, who lives in a brothel or with a prostitute or any other person who leads an immoral, drunken, or depraved life, or who may be in danger of being abused or exploited. In addition, juvenile authorities may exercise jurisdiction over an "uncontrollable" youth whose parent/guardian is not able to exercise proper care and control over the juvenile. These terms have not been defined in the Criminal Code. The Act states that unless the context otherwise requires, the definition given in the Act shall have effect. Only those words which are not specifically defined in this Act shall have the meanings as understood in the Code of Criminal Procedure of 1973. Thus, the 1986 Act prescribes special proceedings regarding the above mentioned juveniles who commit an act which, if committed by an adult, would be a crime. In effect, the Act authorizes authorities to maintain control and jurisdiction over a wide range of juveniles.

1 M.S. Sabnis, JUVENILE JUSTICE AND JUVENILE Correction 28 (1996).


3 Id. § 2.
Institutions of juvenile justice

The law establishes two types of authorities, Juvenile Welfare Boards and Juvenile Courts, for processing matters of neglected juveniles and delinquent juveniles, respectively. While the law prescribes general standards and procedures which they are to follow, the composition of each board is left to the discretion of the states.

The Welfare Boards have exclusive authority over juveniles who are neglected (or uncontrollable). Each board has a chairman and other such persons who may be appointed at the state level. Each board must have at least one woman. Every member of the board is vested with the authority of a magistrate and they together function as a bench of magistrates.

Delinquent juveniles are handled by juvenile courts whose membership, composition and qualification is left to the discretion of the state governments. Every member must be a metropolitan or judicial magistrate, with one member serving as a principal magistrate. The court is assisted by two honorary social workers, with one being a woman.

Each member of the board or court is required to have special knowledge of child psychology and child welfare. Decisions by the board or court are carried by majority opinion and they are, in turn, reviewable by the District Court (Court of Sessions).

Special Procedures and Juvenile Court Process

The state governments are authorized to establish several types of homes for neglected and delinquent juveniles which are to house them during their inquiry period or as an after-care organization. A juvenile home is meant for neglected children. It provides facilities for education, vocational training and rehabilitation. A special home is for the reception of delinquent juveniles where they can be taught to become useful members of the society. Observation homes may be established for the temporary reception of juveniles during the pendency of any inquiry concerning them by a court or an authorized agency. An after-care organization is meant to take care of juveniles after they leave juvenile homes or special homes, the object being to enable them to lead an honest and industrious life once they are back in society.

Proceedings: neglected children

Any state-authorized organization may remove a neglected child and bring him/her before the board. In other instances, if the board, receives information about a child being neglected, it may order that the child be brought before it. The board may decide to release the juvenile to a parent or place the individual in an observation home or shelter until resolution of the matter. After inquiry, the board may extend the stay of the child until age 18 for boys and 20 for girls. At its discretion, the board may even place the juvenile in custody, of a fit person of guardian for a period not to exceed three years.

Delinquents

A juvenile arrested for a crime must be released on bail unless the release is likely to expose the
child to association with known criminals or endanger his morals, which may ultimately defeat the ends of justice. Such juveniles, who are not so released, may be housed in observation homes until the court or other relevant authority resolves the case. Upon a juvenile's arrest, the parents must be informed immediately of the proceedings and detention. In the meanwhile, a probation officer is notified for preparing an investigative report. A juvenile offender, in case of complicity, cannot be tried with an adult person.

Juvenile boards and courts are not allowed to conduct hearing in the same building as regular courts. Juvenile matters and cases must be resolved within three months unless special circumstances compel continuance beyond that period. All reports and proceedings before boards or the court are to be treated as confidential and any person, including the juvenile, may be excluded from the proceedings. In both neglect and delinquency proceedings, competent authority, parties to the inquiry, parents, police officers and legal practitioners (except in neglect matters) may attend the hearings. The media are prohibited from printing or reporting any inquiry or identifying the juvenile.

**Punishments**

Juvenile court may impose one or more of the following punishments on delinquents:

1. allow the juvenile to go home after advice or admonition;
2. release him/her on probation under the care of a fit person/guardian;
3. fine the juvenile, if over 14 and a wage-earner;
4. incarcerate a boy, over age 14 or a girl over 16 years of age, in a special home for a period of not less than 3 years. If the court so considers, it can reduce or extend this period as well. However, placement in the special home cannot extend beyond age 18 for boys and 20 for girls.
5. If a juvenile is released on probation or fined, the court, in addition, may order him to be placed under supervision for a period up to 3 years, with or without further condition as may be considered necessary.
6. At any time during probation, the delinquent juvenile may also be placed in a special home.

A juvenile cannot be sentenced to death or imprisonment. However, in the case of serious offenses committed by juveniles over age 14 or if the court finds that the juvenile cannot be safely housed in a special home, the court may order his detention in safe custody which may be determined by the court. This detention, may also not exceed the maximum sentence of imprisonment that can be imposed on an adult.

**Statistical information**

After the Juvenile Justice Act had been in full force in 1986, the 1988 compilation of the juvenile offenders and comparison with the total offenders, both under the Penal Code and the Local and Special Law offenses, revealed the following statistics --
<table>
<thead>
<tr>
<th>Offense Category</th>
<th>Juveniles</th>
<th>% Total</th>
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<tbody>
<tr>
<td>Penal Code</td>
<td>Arrested</td>
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<tr>
<td>Murder</td>
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<tr>
<td>Attempt to commit murder</td>
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<td>Culpable homicide</td>
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<tr>
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<tr>
<td>Counterfeiting</td>
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<td>Other Penal Code offenses</td>
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Local & Special Offenses

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<td>Narcotic Drugs Act</td>
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<td>Immoral Traffic Act</td>
<td>633</td>
<td>3.5</td>
</tr>
<tr>
<td>Indian Railways Act</td>
<td>217</td>
<td>0.6</td>
</tr>
<tr>
<td>Foreigners Registration Act</td>
<td>3</td>
<td>0.4</td>
</tr>
<tr>
<td>Protection of Civil Rights Act</td>
<td>15</td>
<td>0.2</td>
</tr>
<tr>
<td>Essential Commodities Act</td>
<td>41</td>
<td>0.6</td>
</tr>
<tr>
<td>Terrorist &amp; Distrup. Activ. Act</td>
<td>11</td>
<td>0.6</td>
</tr>
<tr>
<td>Dowry Prohibition Act</td>
<td>58</td>
<td>1.4</td>
</tr>
<tr>
<td>Other minor offenses</td>
<td>9,512</td>
<td>0.4</td>
</tr>
<tr>
<td>Total</td>
<td>15,476</td>
<td>0.4</td>
</tr>
<tr>
<td>Total all offenses</td>
<td>38,168</td>
<td>0.6</td>
</tr>
</tbody>
</table>

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Conclusion

Juvenile delinquency is a result of complex and other interwoven causes, which are personal. Each delinquent is a social or psychological patient by himself. The family plays a vital role in his life. Large family size, overcrowding, broken homes and criminal behavior of some members, etc., ignite delinquency. Most delinquents come from large families. Unwholesome associates accentuate the problem of delinquency. For effective dealing with the problem, the social and economic conditions must be improved, the protective and rehabilitation agencies must be well funded and managed by qualified specialists.

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IRAN

Legal Definition of Child

The Criminal Code of the Islamic Republic of Iran is based on Islamic principles and these cover the age of criminal responsibility, procedure and punishment. Article 49 of the Criminal Code states:

Children committing a crime are absolved from criminal responsibility. Correction of such children shall be the responsibility of their guardians under the supervision of the court, and if necessary, in the Children Correction Center.

The word *child* is defined as a person who has not attained puberty as required by Islamic jurisprudence.¹

Age of Criminal Responsibility

The age of puberty, according to Islamic jurisprudence, is set at fifteen for a boy and nine for a girl.²

Therefore, a boy who has not completed the age of fifteen and a girl who has not completed the age of nine, are not criminally responsible but may be held in a juvenile correctional institution.

If a child who has not attained the age of puberty and commits the crime of murder or bodily injury, the father has to pay the punitive damage as established by law from the property of the child. If the child has no property and the father is unable to pay, the damage has to be paid from the State treasury.³

Procedure

The Law on the Formation of a Special Criminal Court for Juvenile Offenders of 1959, required that juvenile offenders had to be tried by specially selected judges. The single-judge court had two counselors who provided advice as to the family background and the circumstances which resulted in the commission of the crime by the child. The counselors, however, did not participate in the decision-making by the judge. The court had jurisdiction over juvenile offenders between the ages of six and eighteen.⁴

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¹ F. Ghorbani, MAJMUAHI KAMILI QAVANIN VA MUQAR-RATI JAZ'AEE [Complete Compilation of Criminal Laws and Regulations], Tehran, Daneshvar, 1993.

² F.Ghorbani, MAJMUAH'I KAMILI QAVANIN VA MUQARR'ATI MADANI [Complete Compilation of the Civil Laws and Regulations], Tehran, Ferdowssi, 1989.

³ *Supra* note 1, art. 50.

⁴ *Supra* note 1 at 263.
The Law of July 13, 1994, abolished the Special Juvenile Courts as well as the institution of the public prosecution. The new law requires that juvenile offenders be tried by the courts of general jurisdiction with the judges carefully selected to try the young offenders.\(^5\)

The Law provides that the entire procedure of preliminary investigation from the discovery of the crime to the collection of evidence must be conducted by the judge. If there is any need for further investigation and collecting of evidence, the judge may order law enforcement officers to carry out the investigation as required by the judge. The judge may call for the opinion of psychologists, psychiatrists, or any other qualified persons to help him to make a final decision.\(^6\)

**Representation**

Trials are held in camera and no report of the court proceedings is allowed to be published in the press, radio or on television. Trials may also be held in the absence of the child, if the court so decides. If the crime is of a felonious category the judge may recommend the guardian of the child to appoint a defense lawyer. If the child is charged with a misdemeanor or petty offense, the guardian may represent the child.\(^7\)

Any civil claim in connection with a juvenile crime has to be filed with a civil court.

**Types of Punishment**

Although the Law states that a child who has committed a crime before the age of puberty is not criminally responsible, he may yet be subject to corporal punishment if the judge decides that it is necessary.\(^8\)

If the offender is between the ages of 6 and 12, the court may leave the child in trust of his/her parents or guardian, requiring them to take corrective measures; or send the child to a correctional institution for a term of one to six months.\(^9\)

If the offender is between the ages of 12 and 18, the court may:

- leave the offender in the custody of his/her parents or guardian, requiring them to take corrective measures;
- itself reprimand and admonish the child;
- send the offender to a correctional institution for a term of three months to one year; or

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6 *Supra*, note 1, arts. 6 & 7.

7 *Supra*, note 1, arts. 9 & 10.

8 *Supra* note 1, art. 49 at note 2.

9 *Supra*, note 1, art. 17.
• if the offender is fifteen years of age or older and the crime is of a felonious category, send him to the prison facility of a correctional institution for a term of five months to five years.\textsuperscript{10}

Each correctional institution has three facilities: temporary detention; rehabilitation; and penitentiary. Children charged with a crime whose case is pending in court are initially sent to the temporary detention facility. Girls and boys are held in separate quarters in each facility. \textsuperscript{11}

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\textsuperscript{10} Supra, note 1, art. 18.

\textsuperscript{11} Supra, note 1, arts. 22 and 23.
ISRAEL

Introduction

Juvenile delinquents are minors who commit crimes.¹ Hebrew terminology does not distinguish between juvenile offenders, juvenile delinquents, or juvenile criminals. A minor is generally defined as "a person who has not reached the age of eighteen...."² A different age applies to criminal responsibility. A person under the age of twelve is not criminally responsible.³ Although a minor offender who is twelve or older carries full criminal responsibility, he may be subjected to a lesser punishment. Youth (Trial, Punishment and Modes of Treatment) Law, 5731-1971,⁴ as amended (hereafter the Youth Law) regulates criminal prosecution, punishment and rehabilitation of juveniles. A minor subjected to application of this law is defined as including "a person of full age who on the day of the filing of the information against him was under eighteen years of age".

Status offenses - acts considered offenses only for minors - hardly exist in Israel.

Juvenile crime rates in Israel indicate a consistent decline. Examination of the rates for the 15-16 age group⁵ indicates a consistent decline, from about 27 per 100 to less than 11 cases (cases disposed, excluding non-prosecution cases in 1991 and 1992.⁶

Institutions of Juvenile Justice

• Juvenile Courts System

Minors are adjudicated by Juvenile Courts. The latter are not special courts. Rather, they are Magistrates' Courts or District Courts presiding over proceedings involving defendants who are minors. Such trials are conducted by judges appointed by the President of the Supreme Court "to act as Juvenile Court Judges for a period to be prescribed by him."⁷ This period is customarily two years. In some cases, the appointments of such judges are continuously renewed. There are a number of Magistrates' Courts and District Court judges who serve in effect permanently as Juvenile Court judges. They specialize in adjudication and treatment of juveniles. They are not restricted to any geographical area within the jurisdiction of a particular court, and each one of them arrives on any particular day to

¹ G. Rahav, JUVENILE DELINQUENCY, IN CRIME AND CRIMINAL JUSTICE IN ISRAEL 79 (R. Friedmann, ed. 1998).
⁵ This age group is the only one for which data are available for a prolonged period. Supra note 1 at 80.
⁶ Id.
⁷ Id. sec. 1 & 2.
different courts according to a schedule planned in advance.  

Magistrates Courts or District Courts transfer into Juvenile Courts of the same court if the judge presiding over the trial was appointed a Juvenile Court judge and is hearing a juvenile matter. Therefore, the jurisdiction of a Juvenile Court is identical to that of a court of the same instance, in addition to its special authorities as listed by the Youth Law.

• Police and Juveniles

The law does not provide for special procedures for the interrogation of minors, but the police issued internal rules that apply specifically to juveniles. Special professional units have been established for the purpose of interrogation of minors. In police headquarters that have not established such units, policemen have been qualified as special juvenile investigators after graduation from a special course. If it is suspected that both a juvenile and an adult are involved in committing a crime together, an effort will be made to separate the interrogations of the two. In the course of the interrogation the juvenile interrogator must interview the minor, write his testimony, collect information regarding the minor from his parents, teachers, counselors and friends. The juvenile interrogator should then express an opinion regarding the veracity of the complaint and only then recommend continuation of treatment. An interrogation, of a minor is usually done in the police station, in a special separate interrogation room, and at a time when the minor is not supposed to be at school, except when there is a suspicion that it can harm the investigation or it is necessary for the benefit or protection of the minor.

• Searches and Seizures

The police can search a minor's body and belongings in the same manner that they can search an adult suspect. Different rules apply with regard to a search in the minor's home. A policeman who does not have a search warrant may search the house with the owners or residents' consent. A minor is not an owner and cannot consent to a search in the absence of his parents' consent, or when they are not home. A search done under these circumstances will be deemed illegal. A policeman is authorized, however, to enter and search a house in which there is a reasonable suspicion that a crime is being perpetrated, or in case a person in the house requests police assistance or when the policeman pursues a person who escaped legal arrest and is in the house. In case the policeman has a search warrant, the minor cannot prevent him from entering the house in the absence of the parents.

A search in the suspected minor's place of residence is usually done by a juvenile investigator, when one of the parents is present. The police usually refrains from searching at night unless postponement may hamper the investigation. The investigators should resort to any reasonable measures not to draw the attention of neighbors or passerbys to the search.

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8 E. Sharon, NOAR BEPLILIM, SHITTA, DARKEI TIPUL VEANISHA [Juveniles in Crime, Adjudication, Treatment Methods and Punishment] (Israel, 1990). At the time of publication, the author was vice president of the Juvenile Courts in Israel.

9 Sec. a(3) of the Orders of Police, as reported id. at 92.

10 Id. at 94.
• Probation

Youth (Care and Supervision) Law, 5720-1960,11 as amended, regulates the treatment of any "minor in need of protection."12 The latter is defined as such if-

(1) there is no person responsible for him;

(2) the person responsible for him is not capable of taking care of him or supervising him or neglects such care or supervision;

(3) he has done an act which is a criminal offence and has not been brought to trial;

(4) he has been found vagrant, or begging or hawking in contravention of the Youth Labor Law, 5713-1953;

(5) he is exposed to any bad influence or lives in a place regularly used for illicit purposes;

(6) his physical or physical well-being is impaired or likely to become impaired from any other cause; or

(7) he was born while suffering from drug withdrawal symptoms.

The Juvenile Probation Service (JPS) is a service agency of the government, under the authority of the ministry of welfare. Thus, it is not an agency of the juvenile court. The JPS prepares a psychosocial report about each juvenile arrested by the police and may submit its recommendation for handling the case to the police and the juvenile court. The JPS disposition recommendations may vary widely, from closing the case file without prosecution to prosecuting the case with a recommendation of a locked institution or prison. The cases referred to the JPS include:13

Lawbreaking: breaches of the criminal code and traffic violations, including cases where the police does not intend to prosecute.

Supervision cases: The JPS supervises juveniles under probation or other types of "court disposition in the community"14 including public service orders.

Follow-up: The JPS is in charge of giving a follow-up supervision of one year for juveniles discharged from institutions of the JPS.

Minor victims: The JPS is in charge of providing supervision for minors who may be victims

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11 14 LSI 44 (5720-1960).
12 Id. sec. 2.
13 Supra note 1, at 85.
14 Id. at 85.
of parental abuse. Whenever a child is involved in sex offenses, all the interrogation must be carried only by specially trained interrogators of the JPS.

**Special Procedures and Juvenile Court Process**

The law provides for the involvement of a probation officer, usually immediately upon the arrest of a minor, and in any case where a criminal investigation has revealed that there are grounds for bringing a minor to trial. Under permanent orders of the police, the names of minors under arrest who will be brought to court for extension of arrest or release on bail are provided every morning to the probation service. The law describes the functions of probation officer as follows:

12 (a)

Where a criminal investigation has revealed that there are grounds for bringing a minor to trial, the police shall notify a probation officer, who may thereupon exercise the powers of a welfare officer under the Welfare (Procedure in Matters of Minors, Sick Persons and Absent Persons) Law, 5715-1955, even without a court order.

(b)

A minor who has not yet completed his thirteenth year may only be brought to trial only after consultation with a probation officer.

When deciding whether to extend a minor's incarceration, judges of the Juvenile Court normally take into consideration the view of the probation officer regarding the situation of the minor and his needs. A report of a probation officer is mandatory in any case where the Juvenile Court finds that a minor committed an offense and before it reaches a decision to punish or treat him.

The Law 16 regulates the participation of parents in the proceedings before the court. Accordingly, following an indictment of a minor, the juvenile court is under an obligation to furnish the parents with copies of the summons and the information notifying them that they may be present at the hearing, unless, for special reasons which should be recorded the court decides not to do so. The considerations whether to invite the parents for the proceeding center on the best interest of the minor and the interest of protecting his physical and mental well being. The minor may request the court to remove his parent from the proceedings in order to enable him to say things he does not wish to bring to the parent's attention, such as drug addiction, abuse by the parents, and teenage pregnancies. Any adjudication of a minor in the absence of his parents, whether they were invited and did not show up, or were prevented from participating in any stage of the proceedings, is not impaired by their absence. On the other hand, the parents have a right to file instead of the minor any application permitted to be filed with the court, to examine witnesses and have arguments heard instead of the minor or together with him, including the filing of an appeal.

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15 Youth Law, Sec. 12, supra note 4.

16 The Youth Law, Sec. 19, supra note 4.

17 E. Sharon, supra note 8 at 187.
The public is excluded from proceedings of the Juvenile Court. The Youth Law provides:

A Juvenile Court shall sit in camera, but it may permit a particular person, or particular classes of persons, to be present during the whole or part of the hearing.\(^\text{18}\)

Therefore the court may authorize experts whose testimony is relevant to the trial to testify. Psychiatrists and social workers, particularly those who treated the minor before the criminal activity took place, often see it as a duty to accompany the minor to the court or testify in his favor before the penalty is decided.\(^\text{19}\)

**Rights of Juveniles**

As in the case of every suspect, the minor and his parents have the right to hire a defense attorney to represent the minor in any criminal process.\(^\text{20}\) If the minor is not represented the court is under no obligation to appoint him an attorney, but may do so if it is convinced that the minor’s best interest requires it. In addition, the court will appoint a defense attorney in the following circumstances: minors suspected or arrested for murder or serious offenses punishable by death or life sentence, minors under sixteen brought before a regular court, or those who are deaf, blind, poor, retarded or possibly mentally sick.

**Penalties and Punishments**

The Youth law provides that upon determining a case, a Juvenile Court may either decide to acquit the minor or find that he committed the offense.\(^\text{21}\) If the court finds that the minor committed the offense, it should request an examination and a report from a probation officer. After receipt of the report and other relevant examinations, the court may decide:\(^\text{22}\)

1. to convict and sentence the minor;

2. to order one or more of the measures and modes of treatment enumerated by the law, including home confinement, committal to the care and supervision of a fit person, other than the parent, payment of a fine or compensation, etc.; or

3. to discharge the minor without an order as aforesaid.

Courts should not impose death penalty, imprisonment for life, mandatory imprisonment or a minimum penalty on minors. The main objective of the Juvenile court is to provide the minor with

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\(^{18}\) Supra note 4 sec. 9.

\(^{19}\) E. Sharon, supra note 8, at 190.

\(^{20}\) The Youth Law, supra note 4, sec. 18(d).

\(^{21}\) Supra note 4, sec. 21.

\(^{22}\) Id. sec. 25 & 26.
treatment in order to rehabilitate him.\textsuperscript{23} The age of the minor and the possibility of his rehabilitation is a serious consideration in determining the appropriate penalty. The court should always be directed by the best interest of the minor and do whatever is possible to assist the minor to correct his way. On the other hand, it cannot leave the public exposed to crime acts by juveniles and disregard the severity of the offense committed by minors.\textsuperscript{24}

Imprisonment cannot be imposed on a minor who at the time of being sentenced is under fourteen years of age.\textsuperscript{25} Imprisonment is rarely imposed on those who passed fourteen not long before their trial.\textsuperscript{26} Imprisonment is imposed either as a warning for the future (in case of short incarceration) as rehabilitating, or as a punishment and protection of public safety. Even in the latter case, where the behavior of the minor is seriously deviates from normal, the court cannot completely disregard the minor's needs of treatment and the chances of his rehabilitation.

Instead of a prison sentence, the court is authorized to order the following "modes of treatment":

(1) committal of the minor to the care and supervision of a fit person, other than his parent, for a period prescribed by the court, and the restriction of his parents' rights as his guardians during the said period;

(2) placing the minor under probation;

(3) obtaining an undertaking, from the minor or his parent, with or without security, as to the minor's future behavior;

(4) requiring the minor to report at a day home during a period prescribed by the court;

(5) keeping the minor at a home or closed home for a period prescribed by court;

(6) issuing any other direction as to the behavior of the minor if in the opinion of the court such is necessary for his treatment;

(7) requiring the minor or his parent to pay a fine or the costs of the proceedings;

(8) requiring the minor or his parent to pay compensation to a person who sustained damage as a result of the offense.

\textsuperscript{23} E. Sharon, \textit{supra} note 8, at p. 422.

\textsuperscript{24} \textit{Id.} at 423.

\textsuperscript{25} Youth Law, sec. 25(d).

\textsuperscript{26} Sharon, \textit{supra} note 8, at 424.
Related Statistics and Effectiveness of the Existing Juvenile Justice System (Conclusion)

The rates of delinquency among Jews in Israel increased after the establishment of the state (1948) until the early 1960s (from 7.0 in 1959 to 15.9 per 1000 in 1962). Then, the rates stabilized, and started to decline, more or less steadily, to the present rate of about 12 per 1000. About a quarter of all the juveniles referred to in the Juvenile Probation Service belong to the Arab minority. The higher rate of delinquency among Arab juveniles is said to have existed for many years.27

The law regulates the treatment of delinquents once they are apprehended. Scholars note that "it is much less clear to the various agencies, however, what is to be done before an offense has been committed.... It is fairly clear that at that stage the police have little (if any) ground for intervention, and the problem is considered one belonging to the realm of welfare or education."28

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28 Id. at 90-91.
Juvenile justice in Italy developed relatively late. As late as 1865, the judicial system contained no specific provisions for this purpose. The same judge heard cases involving minors and adults alike, without differentiating in treatment among them.¹

The Zanardelli Code of 1889 introduced only a few provisions pertaining to the criminal liability of minors. It established nine years as the minimum age for liability and in certain cases required a test on minor’s mental development. The Code also introduced some minor reductions in penalties.²

In a circular letter of 1908 the Minister of Justice suggested that cases involving minors should be assigned always to the same investigative judges of the district courts (Tribunali). In so doing, he stressed, perhaps for the first time, the need for specialization in the field of juvenile justice. In the immediately following years, proposals, some profoundly innovative for the times, were elaborated, but they never materialized.³

Juvenile Courts were established in Italy in 1934. However, until the enactment in 1988 of a new set of provisions of juvenile penal procedure, a penal system conceived for adult offenders applied also to minors in spite of all the specific characteristics of youth. As regards substantive penal law, nothing has dramatically changed since the introduction of the penal code in 1930, under the fascist regime. The concept of status offense is foreign to the Italian juvenile system which lacks specific provisions identifying crimes that can be committed exclusively by minors.⁴

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¹ M. Dogliotti, *Breve storia del Tribunale per i minorenni in Italia*, in: 3 GIURISPRUDENZA DI MERITO, 1988 at 673.

² *Id.*

³ *Id.*

Under current Italian law, the age of majority is reached at age 18.\(^5\) Articles 97 and 98 of the Penal Code deal with offenders under that age limit, establishing that those who had not reached the age of 14 at the time they committed a crime are not punishable because of lack of criminal liability. Those, who had reached the age of fourteen but not that of eighteen, are punishable, provided that they had reached a level of mental development that made them, in the formulation of the Italian law, capable of understanding and willing. When, however, a penalty is imposed, it must be reduced.\(^6\)

**Institutions of Juvenile Justice**

Legislation enacted in 1934, as amended, together with the more recent legislation of the late 1980s, represents the statutory basis of the Italian Juvenile judicial system.\(^7\) The Juvenile Court (Tribunale per i minorenni), which is part of the Italian judicial system, has exclusive penal jurisdiction over minors and is located in each district of Appellate courts. It is composed of four members: an appellate court judge who presides, a court magistrate, and two citizens, the latter, a woman and a man at least 30 years of age, are selected for their expertise in the fields of biology, psychiatry, criminal anthropology, education, and psychology, and because they have distinguished themselves in community service. These honorary judges are appointed for three-year-terms, and they may be confirmed for another term. An ad hoc office of the public prosecutor is attached to the Juvenile Court. The law provides that one section of the Appellate Court is designated as Appellate Juvenile Court. This court is also composed of ordinary magistrates and two lay members.

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\(^5\) Law No. 39 of March 8, 1975, amended art. 2 of the Italian Civil Code and established the age of majority at 18, previously set at 21.


In addition, a specialized section of the Judicial police, whose personnel is selected for their specific competence and individual qualifications, is assigned to the juvenile courts. Members of this unit are periodically subject to professional training.

The career judges on juvenile courts are chosen for their specific personal and professional experience in the field; they are offered periodic professional enhancement courses set up jointly by the Ministry of Justice and the Superior Council of the Judiciary.

**Juvenile Court Proceedings**

The reform of the juvenile penal procedure introduced by Decree No. 448/1988 was implemented in the context of a major reform of the Italian Code of Penal Procedure, when the system changed from the previous inquisitorial approach to an accusatory model.

In keeping with the structure of the Code, juvenile proceedings develop in three phases. The preliminary investigation is conducted by the public prosecutor with the cooperation of the judicial police, and is monitored by a judge of the juvenile court in his capacity as Judge for Preliminary Investigations. Subsequently, in a preliminary hearing the juvenile court, composed of one magistrate and two honorary judges, assesses the results of the preliminary investigations and hears the arguments of the prosecutor and of the defense. Eventually, the trial phase takes place before the Court in its ordinary composition of four members.

It has been pointed out, however, that the preliminary hearing before the juvenile court represents the most relevant phase. It is at this stage that a great majority of cases may be disposed of either through the application of lenient measures or by the imposition of punishment other than imprisonment. This process provides convenient, timely, and individualized solutions, and is justified by the need to avoid, whenever possible, the traumatic experience that a criminal trial represents for
The Law imposes notification of any action against a minor to his parents so that through their assistance and that of other persons specifically requested by the minor, he receives emotional and psychological support. In addition, the Law provides for the intervention of the appropriate support services and empowers the public prosecutor, as well as the judge, to hear, even informally, whoever had contacts with the accused minor and to request the intervention of any experts deemed appropriate.

The public is normally excluded from trials before juvenile courts. The Law provides for the protection of confidentiality. The civil action for restoration and for damages is not allowed in criminal proceedings against minors.

Rights of Juveniles

The provisions of the Law that provide for the interventions mentioned above, to assure support at any stage of the process, constitute a minor's system of rights. In this context, provisions pertaining to legal assistance and representation have great relevance. The Law requires that bar councils provide lists of especially qualified lawyers willing to assume legal defense of minor offenders. Those lists, periodically updated, are communicated to the juvenile courts so that attorneys may be appointed whenever necessary. Fees for court appointed attorneys are paid by the State, which may claim the fees back only from families above a certain level of income. The Law requires attorneys

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8 P. Cenci, Riflessioni sull'udienza preliminale minorile; in Il Diritto di Famiglia e delle Persone, 1998, at 366, where the author makes reference to principles upheld by the Constitutional Court in Decision No. 311 of 1997.

9 Decree No. 448/88, supra note 7.


who defend minors before juvenile courts, to update their expertise by attending special professional training courses.

It is worth noting that in cases when the age of the minor is in doubt the juvenile court must ascertain it. If a doubt persists in spite of an investigation, the defendant must be considered to be a minor. When doubt pertaining age arises before an ordinary court in cases where a juvenile defendant appears together with adult defendants, his case must be transferred to the office of the public prosecutor attached to the juvenile court for appropriate action.

**Penalties and Punishments**

Italian law allows arrest in flagrante of a minor only for the most serious offenses and permits police detention for no more than 12 hours of a minor suspected of having committed an offense. After that time has elapsed the minor is released to his family or to anyone having custody rights over him, or when this is not possible, the prosecutor may order the minor to be housed in a special reception center (centro di prima accoglienza) or in a public or a private group home.

The Law states that only four preventive measures (misure cautelari) may be imposed on juvenile offenders.\(^\text{12}\) They are in order of increasing severity: prescrizioni, which consist of ordering the minor to carry out study and work activities; confinement at home or other place of abode, which may entail limits and prohibitions pertaining to the juvenile offender's freedom of communication with the outside, in addition to guidelines for the intervention of the social services; placement in a group home under the supervision of the personnel in charge and with the participation of the social services; and preventive detention.

Decree No. 448/1988, in its original formulation, sought to limit the use of preventive detention

\(^{12}\) See *id.* art. 19 to 23 of Decree No.448/1988.
for minors to a minimum.\textsuperscript{13} This measure may now be imposed in cases of crimes punishable by life imprisonment or by a penalty of at least nine years imprisonment. In addition, such a measure is applicable in cases of aggravated theft, robbery, extortion, weapon and drug related offenses, and for rape. The conditions for imposing preventive detention, as established in article 23 of Decree No. 448/1988 are the following: A serious risk that the offender may tamper with evidence, attempt to escape, and may perpetrate serious crimes when the nature of the crime in connection with the personality of the offender, suggest that this is a serious risk. The duration of preventive detention, as regulated in article 303 of the Code of Penal procedure, however, must be reduced by one-half for minors under the age of eighteen and by two thirds for those under the age of sixteen.

Under Italian law sentences that may be imposed on adult offenders are in principle also applicable, though reduced, to minors between the age of 14 and 18, provided that their ability to understand and to form intent has been specifically ascertained by the court.

While plea bargaining is not an option for minors, other forms of abbreviated trial are applicable to them.\textsuperscript{14} Plea bargaining is expressly excluded by Decree No. 448/1988 as potentially incompatible with the situation of a subject, the minor offender, whose mental development and full competence remains to be ascertained. Also applicable, with considerable latitude, are other measures such as suspended sentence, non-registration of conviction in criminal records, rehabilitation, and alternative sanctions. In addition, Italian law regulates the following specific measures designed for minors.

- \textit{Judicial pardon} is a form of depenalization applicable in cases in which a sentence not exceeding two years in duration is deemed appropriate by the court, provided that the court, having assessed the severity of the offense and the minor’s potential for delinquency, assumes that he will not commit further offenses.\textsuperscript{15}

\textsuperscript{13} More restrictive amending provisions were introduced by Legislative Decree No.12 of Jan.14, 1991, art. 36 to 53.

\textsuperscript{14} M. Bouchard, \textsc{Processo penale minore}, in \textit{X Digesto delle discipline penalistiche} (Torino, UTET, 1995) at 149.

\textsuperscript{15} See art. 169 of the penal code (\textit{supra} note 6) in connection with art. 19 of Royal Decree 1404/1934 (\textit{supra} note 7).
• *The insignificance of the offense* constitutes grounds for dismissal of the case when the behavior is out of character for the minor, that is to say, it has not repeated itself. Since dismissal for insignificance of the offense may be granted only when the trial would jeopardize the minor's education, it may be decided at any stage of the proceedings, and even by the judge of preliminary investigations at the request of the prosecutor.\(^\text{16}\)

• *Suspension of trial for a period of probation* is considered the most innovative and perhaps advanced measure to be taken by juvenile courts. The decision to suspend the trial of a minor and put him on probation for a period of one year up to three years, according to the nature of the crime, may be taken during the preliminary hearing or during the trial. Such a decision must be based on a complete evaluation of the minor's personality.

The application of this measure is not subject to any particular limitation. It may apply in cases involving any crime, including the most serious ones that might entail life imprisonment, as reaffirmed by the jurisprudence of the Supreme court and by a decision of the Constitutional Court.\(^\text{17}\) The court, has further declared the constitutional illegitimacy of certain provisions of the penal code that made life imprisonment applicable to minor offenders.\(^\text{18}\)

During the probation period, the minor offender has to adhere to a program of rehabilitation designed by the court and implemented by social services. The program includes prescriptions aimed at making amends for the consequences of the offence and promoting reconciliation with the victim. Suspension of a trial for probation may be revoked by the court at any time for serious and repeated violations of the program. If probation is revoked, the trial resumes.\(^\text{19}\)

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\(^{16}\) M. Bouchard, *Processo penale minorile*, at 154, in DIGESTO, supra note 14.

\(^{17}\) L. Pepino, *Sospensione del processo con messa alla prova*, in DIGESTO DELLE DISCIPLINE PENALISTICHE (Torino, UTET, 1997) at 483.

\(^{18}\) Constitutional Court Decision No. 168 of April 28, 1994, in FORO ITALIANO, I, at 2045.

\(^{19}\) *Supra* note 17, at 487.
At the conclusion of the probation, the court may declare its successful completion and the consequent extinguishment of the offense. A negative outcome, on the other hand, brings the offender back to trial to a probable sentence that, when imposed, is served in a special institution for minors (prigioni-scuola).  

A system of detention and non-detention security measures, which may be imposed apart from punishment, is laid down in Book I of the Penal Code, which contains provisions applicable to minors. However, the reform of the juvenile penal procedure introduced by Decree No. 448/1988 has had some mitigating effect on the application of such measures to minors. The reform has established that a measure such as release under supervision must be executed in the form of the preventive measures known as prescrizioni or confinement at home, while commitment to a reformatory is replaced by placement in a group home and may be imposed only for those serious crimes for which preventive detention is applicable (see above).

Rehabilitation Programs

Juvenile justice is permeated by a contradiction stemming from the coexistence of two opposing objectives: a penal objective aiming at the protection of society from its minor offenders and a welfare objective, the goal of which is protecting minors from conditions of abandonment and deprivation, and from violence. The mixing of these two objectives has defined, and continues to define, not only different juvenile justice models, but also the relationship between institutions responsible for the control and punishment of illegal behavior (the police, the judiciary, and the penitentiary system) and institutions that offer support for the less privileged, such as welfare agencies.

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20 Id.

21 See art. 36 of Decree No. 448/1988, supra note 7.
The Italian juvenile system, characterized since the beginning by a unitary approach of penal intervention, has undergone some changes over the years. Decree No. 616/1977 has shifted many responsibilities to the social services at the local level, which has resulted in a heavy burden for them and created the potential for an operational crisis at a time of less favorable economic conditions.

Decree No. 448/1988 has not introduced structural changes in this system. Rather it has emphasized the role both of the juvenile services of the Justice Department and of the welfare services instituted by the local authorities. The decree has given the impression however, of favoring the intervention of juvenile services by restoring functions to them, that had been transferred over the years to local welfare services in the context of administrative decentralization enacted by Decree No. 616/1977. The revised system represents the result of a compromise among various ideologies and an attempt to pursue a whole range of objectives that are difficult to reconcile the system. It contains many points of contrast between a correctional viewpoint and an approach that does not depend on penalization.23

The relevant responsibilities of the juvenile services include:

• diagnostic and observation procedures that include analysis of a minor’s personality;

• preparation and the subsequent monitoring and evaluation of the rehabilitation program in the case of suspension of trial for a period of probation;

• evaluations for the purpose of deciding whether or not to interest a minor to local social services, as well as whether or not to grant him limited freedom (semiliberta’);

• emotional and psychological assistance to the minor defendant through all stages of his experience with the penal process, including the phases of investigation, court proceedings, and serving of the sentence;

22 L. Pepino, SERVIZI MINORILI, IN XIII, DIGESTO DELLE DISCIPLINE PENALISTICHE (Torino, UTET, 1997) at 271.

23 U. Gatti, A. Verde, Comparative Juvenile Justice: An Overview of Italy,........................................
• support activities during the application of preventive measures, the serving of the sentence or of alternative sanctions, and when returning to the community;

• monitoring activities during probation and during the application of preventive or security measures, and alternative sanctions to detention.

Conclusion

The establishment of a juvenile justice system in Italy is relatively recent and appears to have been slow to develop and evolve, when one considers that after the legislation was enacted in the early 1930's, a major legislative effort materialized only in 1988, after being inspired by the experience of many juvenile magistrates.

The new juvenile justice system that emerged from the reform of 1988 aimed at harmonizing Italian legislation in the juvenile justice field with the new accusatory model in penal procedure and the obligations assumed by Italy under international law with the 1988 reform, however, is undermined by serious inadequacies in the field of substantive penal law with regard to legislation pertaining to the penitentiary system for juvenile offenders. In addition, organic legislation on social assistance for juvenile delinquents is still sorely missing.24

The need for legislation in these areas is stressed in legal writing.25 It also appears to be viewed as essential by the Italian Constitutional Court, which on various occasions has pointed out the need to secure for minors the special protection established for them by the Constitution.26

24 M. Bouchard, PROCESSO PENALE MINORILE, supra note 14, at 140.

25 D. Cibinel, SISTEMA PENALE MINORILE, supra note 4, at 344, 345.

26 See the following decisions: No.125 of 1992 in CASSAZIONE PENALE, 1992, at 2897, and No. 168 of 1994, in GIURISPRUDENZA ITALIANA, 1994, I, at 357. Reference to some of the decisions of the Constitutional Court of special relevance in the evolution of juvenile penal law is found in F. Palomba, QUALE SANZIONE PER I MINORENNI, ESPERIENZE DI GIUSTIZIA MINORILE, No. 1, 1992.
The Italian juvenile justice system is still open to developments in various directions. The Italian Minister of Justice, in fact, appointed an ad hoc committee in 1994 for the purpose of studying specific problems, and the committee report containing a variety of suggestions has already been published.27

Gathering crime related data in Italy poses difficulties.28 However, it has been reported that the total number of minors reported to the public prosecutor from 1973 to 1993 is relatively stable between 1974 and 1978, but drops sharply from 1979 onward. The rates remain steady until 1987, when they again begin to soar.29

According to recent data, 23,369 minors were reported to the public prosecutor in 1996 and 3984 were sentenced. During the same year, 1792 minors entered juvenile penal institutions. Of that number 380 were females. At the end of the year, 244 of the 1792 minors, among which were 46 females, remained in the institutions for various reasons.30

The 1996 statistics relating to the ratio between Italian and foreign juvenile delinquents, show that 1880 male and 72 female citizens entered special reception centers (centri di prima accoglienza) as opposed to 996 foreign male minors and 842 and female foreign minors.31 These last figures focus the attention on the high numbers of foreign minors, especially females, involved especially one takes into account the substantial difference between population figures for nationals and foreigners.

The increased presence of foreign immigrants in Italy--most of them-- illegals, may in part explain the figures. However, the coexistence within the Italian system of the two divergent objectives mentioned earlier, may have generated a situation in which a more fortunate segment of the juvenile


28See Gatti and Verde, supra note 23.

29 Id. at 187-188.

30 ANNUARIO STATISTICO ITALIANO, 1997.

31 Id.
population takes advantage of the new opportunities for leniency made available by the new legislation, while the others, especially the foreign immigrants, fall under the never completely abandoned, intrinsically punitive aspects of the system.  

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32 See Gatti and Verde, supra note 23 at 187-202. The authors touch upon more common crimes among juveniles and possible connections with organized crime.
The Juvenile Law of 1948 put more emphasis on rehabilitating juvenile delinquents than on punishing them. In view of an ever-increasing number of vicious crimes committed by young people in recent years, as important aspects of reform the Legislative Council has proposed adding more punitive measures and requiring prosecutors' participation in the trials of juveniles. A bill to amend the Law is certain to be passed in the next Diet session that began on January 19, 1999.

I. Introduction

The current juvenile justice system is based on the Juvenile Law of 1948 (hereinafter referred to as the 1948 Law), which replaced a 1922 law. The purpose of the 1948 Law is to promote the sound upbringing of juveniles and to carry out protective and educative measures for the correction of character and environmental adjustment of delinquent juveniles. At the same time, the Law is intended to provide for special measures for crimes committed by juveniles and adults who are harmful to the welfare of juveniles. The 1948 Law is based on the principle of parens patriae under which the State undertakes to augment the role of the juvenile's parents if the parents are found to be incapable of correcting their child's behavior.

The 1948 Law is applicable to any juvenile under 20 years of age, but the Criminal Code states that an act of a person under 14 years of age is not punishable. The 1948 Law divides juveniles into three groups: (1) "juvenile offenders" between 14 and 19 years of age who have committed a crime; (2) "law-breaking juveniles" who have violated the Criminal Code but are less than 14 years old; and (3) "pre-offense juveniles" under the age of 20 who are likely to commit some criminal offense in the near future judging from their personality, conduct, and living environment. The third group is further divided into two categories: those under 14 and those over 14 years old.

In addition to the 1948 Law, the Code of Criminal Procedure is applicable to juvenile criminal cases. In regard to protective measures for juveniles, the Reformatory (Juvenile Training School)
Law, the Offenders’ Prevention and Rehabilitation Law, and the Child Welfare Law are also applicable.

II. Institutions of Juvenile Justice

Police and Public Prosecutor. After the investigation of the case, the police must refer all cases of juvenile offenders directly or via the public prosecutor to the Family Court. Only a small number of cases involving minor violations of law (punishable by a fine or lesser penalty) are referred to the Family Court. Cases of greater severity (punishable by imprisonment or harsher measures) are referred to the public prosecutor.

Upon receipt of the juvenile defender’s file, the public prosecutor must send it to the Family Court; he can write his opinion at the referral but is not allowed to attend the hearing to state his opinion. Thus, he has no power to decide the fate of the case. The Family Court has the sole authority to decide juvenile cases. However, if the Family Court decides that a juvenile case should be considered for a criminal trial, it may transfer the case back to the prosecutor, who must then prosecute the case, except when it involves children under 16 years of age.

All cases of law-breaking juveniles or pre-offense juveniles under 14 years of age must first be reported to the Child Guidance Center designated by the Child Welfare Law. The head of the Child Welfare Center or the prefectural governor refers the case to the Family Court if he or she decides that there is no need to impose protective measures.

Cases involving pre-offense juveniles aged 14 years or older must be directly referred to the Family Court. If psychiatric treatment or special care is deemed necessary, then the case can be referred to the Child Guidance Center. No matter what type of procedure mentioned above is followed, the Family Court handles each case the same as if it had been referred directly to the Court.

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7 Law No. 169, July 15, 1948, as last amended by Law No. 111, July 1, 1972.
9 Law No. 114, Dec. 12, 1947, as last amended by Law No. 74, June 11, 1997.
10 The 1948 Law, supra note 1, art.41.
11 Law No. 131, supra note 6, art. 241.
14 Tanioka & Goto, supra note 3, at 197.
The Child Guidance Center. As of the end of 1993, there existed 693 Child Guidance Centers, with over 73,000 guidance officers and volunteers, that assisted about 400,000 juveniles.\textsuperscript{15} Many guidance centers in small cities are managed by the education department of the municipal government; those in large cities are managed by police departments. In the latter instance, the guidance center resembles a law enforcement agency.\textsuperscript{16} The Child Guidance Centers that operate under the Child Welfare Law carry out the following activities: counselling juveniles and their parents, improving juvenile's social environment, and patrolling the streets in amusement quarters.\textsuperscript{17}

The Child Support Center. In 1995, Child Support Centers were established in four regions, on an experimental basis, and staffed with permanent professional counselors and volunteers in an effort to rehabilitate young criminals. The National Police Agency has recently announced that more centers will be created in several locations within each prefecture. Information on the juveniles gathered by the centers will be shared and discussed with family members, educators, and private counselors. The present youth correction facilities managed directly by police headquarters at the prefectural level are considered largely inappropriate for juvenile lawbreakers.\textsuperscript{18}

III. Special Procedures and Family Court Process

Investigative Function

The Family Court cannot commence trials at its own initiative. It takes cases in a variety of ways: notifications from the general public and the chief of the Juvenile Probation Office; reports from the Family Court probation officers; referrals from public prosecutors, prefectural governors, and the heads of the Child Guidance Centers.\textsuperscript{19}

In addition to the initial investigation conducted by the police, the Family Court may carry out its own investigation, which may include the inspection of evidence, search, and seizure. It may also have a police official, supervising officer, rehabilitation worker, child welfare officer, or child guidance worker render help when necessary for the investigation and supervision of a case.\textsuperscript{20}

When it is deemed necessary for the preparation of a trial, the Family Court takes the following measures for the care and custody of a juvenile: placing him or her under the care of the probation officer of the Family Court or, in more serious cases, under the custody of the Juvenile Custody and Classification Office administered by the Ministry of Justice.\textsuperscript{21}

\textsuperscript{15} Yokoyama, \textit{supra} note 13, at 14.

\textsuperscript{16} \textit{Id.}

\textsuperscript{17} The 1948 Law, \textit{supra} note 1, art. 15-2.


\textsuperscript{19} The 1948 Law, \textit{supra} note 1, arts. 6, 7, 41, & 42; Law No. 142, \textit{supra} note 8, arts. 27 & 27-2.

\textsuperscript{20} The 1948 Law, \textit{supra} note 1, arts. 15 & 16.

\textsuperscript{21} \textit{Id.}, art. 17, ¶1.
The Family Court Probation Officer. Trained in behavioral science, probation officers are responsible for processing the case, investigating the nature and background of the juvenile's delinquency, deciding on the necessity of protection, and providing tentative probation. The probation officer reports on each case before he appears in court; he also attends the case hearing and gives appropriate advice to the delinquent on the basis of the investigation.  

The Juvenile Custody and Classification Office. The juvenile custody and classification officers conduct various tests on inmates according to "the classification of the juvenile's character on the basis of medical, psychological, pedagogical, sociological, and other technical knowledge that contributes to the investigation and hearing of a minor in the Family Court and to the execution of the protective disposition." The maximum term of custody is four weeks.

Hearings

A Family Court hearing is conducted by a single judge under the inquisitorial, not the adversarial, system. The hearing must be conducted "in a friendly manner and with kind consideration." Prosecutors are excluded on the grounds that young people could be harmed psychologically by confrontational questioning of the prosecutor. The juvenile, the parent/guardian, and the defense counsel, known as the "attendant," are required to take part in trials; the juvenile's relatives, teachers, or other persons deemed appropriate may be allowed to attend with the Court's permission. Otherwise, the hearing is not open to the public and confidentiality is assured throughout.

In non-serious cases, the judge may decide on dismissal without holding a hearing after the investigation has been conducted by the Probation Officer. In more serious cases, the Family Court renders a ruling that one of the following protective measures (dispositions) is to be imposed:

- placing the juvenile under the supervision of the Probation (Supervision) Office;
- placing the juvenile in the facilities referred to in the Child Welfare Law, namely, in a home for juvenile training and education (kyogoin) or in a protective institution (yogo shisetsu);
- committing the juvenile to a reformatory (juvenile training school).

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22 Id. art. 8, ¶2 & art. 25,¶1; see also Hiraba, supra note 12, at 85-86.

23 Law No. 169, supra note 7, art. 16.

24 The 1948 Law, supra note 1, art. 17, ¶3.

25 Id., art. 22, ¶1.

26 Id., art. 22, ¶2; arts. 25 & 29 of the Enforcement Regulation of Juvenile Adjudications, Supreme Court Rule No. 33, Dec. 21, 1948, as last amended by Rule No. 4, July 14, 1997.

27 The 1948 Law, supra note 1, art. 21.
The Probation Office. In 1993, there were about 900 probation-parole officers working as professional social workers. Juveniles who are placed under the supervision of the probation office include any person who has been made subject to protective measures by the Family Court or released on parole from a reformatory or prison.

The term of probation lasts until such time as the minor reaches 20 years of age. In cases in which the person will be 20 years of age in less than two years, the term will be two years. When it is deemed necessary, the probation may be suspended or remitted even during the term of supervision.

However, if the Chief of the Probation Office recommends an additional term for the juvenile even after the person reaches 20 years of age, the Family Court may fix the term of probation to be for a certain period before the person reaches the age of 23. There are four kinds of probation: general probation, short-term probation, traffic probation, and short-term traffic probation.

Facilities Under the Child Welfare Law. Juvenile delinquents who need guidance may be placed by the Family Court in a kyogoin. In 1993, 197 delinquent children were placed in 57 such homes. Alternatively, placement may be determined by the governor with the consent of the parents or guardians. The majority of juveniles are placed by this latter method. A yogo shisetsu accommodates children who have no guardians or who are abused or in need of protection.

The Reformatory. Various programs offered by a reformatory include academic education, vocational training, and guidance in life skills. The inmate stays until he or she reaches 20 years of age; an inmate who has not spent one year in the reformatory since commitment may still be detained only for one year from the time of the commitment. The maximum term of stay under the long-term course of treatment is two years; that under the general short-term and special training courses of treatment is six and four months, respectively.

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28 Yokoyama, supra note 13, at 22-23.

29 Law No. 142, supra note 8, art. 33, ¶1.

30 Id., art. 33, ¶3 & 4.

31 Id., art. 42, ¶3.

32 Toshio Sawanobori and Toyoji Saito, SHONEN SHIHO TO TEKISEI TETSUZUKI [Juvenile Justice and Due Process] 271 (Tokyo, Seibundo, 1998). In actual practice, the average term of probation is one year and six months for general probation, six to seven months for short-term probation, and less than four months for short-term traffic probation. Id. at 269.

33 Yokoyama, supra note 13, at 21.

34 Law No. 114, supra note 9, arts. 41 & 44.

35 Law No. 169, supra note 7, art. 11, ¶1.

36 Yokoyama, supra note 13, at 22.
IV. Rights of Juveniles

An attendant (tsukisoinin), who can be a lawyer or a non-lawyer, acts as defense counsel for a juvenile, protects the juvenile's rights before the court, and aids the court in conducting a hearing that is based on the inquisitorial procedure. The attendant may be appointed by the juvenile or by the parent as a matter of volition, not as a matter of right. The 1948 Law does not allow a public defense system, unlike the practice of appointing a public defender in the criminal justice system. It has been suggested that a public defense system similar to the public defense system of the adult criminal court be adopted (please see below).

The juvenile, his legal representative, or the attendant may file an appeal (kokoku) within two weeks against a ruling of protective measures only on the grounds that it is in violation of laws and ordinances that influence the ruling, that there are material errors in the fact-finding, or that the measures effected are definitely unreasonable.

V. Penalties and Punishments

The death penalty cannot be applied to a juvenile under 18 years old. In cases in which a person to be punished by the death penalty is under 18 at the time of the commission of the offense, the penalty will be reduced to a life term. If such an offender is to be punished by a sentence of life imprisonment, the penalty will be reduced to penal servitude or imprisonment for 10 years or more but not more than 15 years.

A juvenile who is sentenced to penal servitude or imprisonment must serve in a prison specifically established for juveniles or in a specifically partitioned part of an adult prison. A juvenile who has reached 20 years of age will be placed in a juvenile prison until he becomes 26 years of age. No pronouncement of confinement in a workhouse in lieu of payment of a fine may be made against a juvenile. Parole may be granted to a juvenile sentenced to penal servitude or imprisonment after the offender has served one to seven years of his/her sentence.

37 According to the Ministry of Justice, about 1.45% of the total juvenile cases and about 60% of the total murder cases were represented by lawyers in the Family Court hearings, respectively. See ASAI SHINBUN, Nov. 18, 1998, at 1.
38 The 1948 Law, supra note 1, art. 32, ¶1.
39 The death penalty may be imposed on a juvenile between the ages of 18 and 19. A youth who was 19 years old at the time of commission of a crime was sentenced to death and executed; see Hiroko Goto, SHONEN HANZAI TO SHONENHO [The Juvenile Crime and Law] 97 (Tokyo, Akashi Shoten, 1997).
40 The 1948 Law, supra note 1, art. 51.
41 Id., art. 56, ¶1.
42 Id., art. 56, ¶2.
43 Id., art. 54.
44 Id., art. 58.
Generally speaking, a new trend in Japan has emerged towards milder sentencing of juveniles. In 1993 only 50 youths were sent to juvenile prisons. There are eight juvenile prisons in Japan where many vocational training programs are offered.\textsuperscript{45} Corporal punishment is expressly prohibited by the School Education Law.\textsuperscript{46}

VI. Related Statistics and Reform Movement

The number of juveniles under 20 years old who commit crimes has been on the rise, from 270,000 in 1995 to about 300,000 in 1997.\textsuperscript{47} Crimes committed by teenagers are now responsible for almost 50% of all crimes committed in Japan. During the first eleven months (January-November) of 1998, a total of 144,228 juveniles between the ages of 14 and 19 were arrested or taken into custody for alleged criminal offenses, an increase of 3.1% over the same period in 1997; 257 were arrested for serious crimes, including murder and attempted murder. This latter statistic constitutes the highest figure recorded for such crimes by juveniles since 1972.\textsuperscript{48}

In 1998, a series of high-profile crimes by juveniles was reported. For example, a 14 year-old boy decapitated a 10 year-old boy and left the severed head at a school gate; a junior high school boy killed his female teacher after being scolded for tardiness; and a 13 year-old boy stabbed to death a classmate as they fought.\textsuperscript{49} Given the new trend for adolescents to commit vicious crimes, the current system under the 1948 Law has become a target of increasing criticism for overly protecting the rights of young suspects.

Since January 1998, the Japan Federation of Bar Associations, the Ministry of Justice, and the Supreme Court have been holding a series of meetings to discuss the revision of the 1948 Law. Finally, the Juvenile Law Committee of the Legislative Council, an advisory panel to the Minister of Justice, has prepared a draft proposal on the basis of various recommendations. This marks the first time that the 50 year-old law has undergone a major review. The highlights of the proposal announced on December 11, 1998, are as follows:\textsuperscript{50}

\begin{itemize}
\item[\textsuperscript{45}] Yokoyama, supra note 13, at 17.
\item[\textsuperscript{46}] Art. 11, Law No. 26, Mar. 31, 1947, as last amended by Law No. 49, June 29, 1994. According to the Ministry of Education, in fiscal year 1997, 414 school teachers who inflicted corporal punishments on their students were subject to disciplinary actions, which include dismissal, suspension, salary cut, warning and admonition. See ASAHI SHINBUN, Dec. 15, 1998, at 1.
\item[\textsuperscript{47}] AP WORLDSTREAM, June 23, 1998, \textit{via} LEXIS/NEXIS, News Library, Curnws File.
\item[\textsuperscript{49}] ASAHI NEWS SERVICE, June 17, 1998, \textit{via} LEXIS/NEXIS, News Library, Curnws File.
\end{itemize}
• The Family Court should handle certain cases by a collegiate body (three-judge panel), even if it retains adjudication by a single judge under the present system.

• The Family Court should require, by a ruling, the presence of the public prosecutor before the court if a youth is alleged to have committed a crime that is punishable by death, penal servitude for life, or a maximum term of not less than three years. Before the ruling, the Court should ask the prosecutor's opinion on the case in question.

• In court, the prosecutor would be allowed to examine the records and real evidence or make copies thereof or question the youth, witnesses, or other interested persons, and to express his opinion on the case according to the rules of the Supreme Court.

• When the prosecutor participates in the hearing, defense counsel should also be required to attend. If no defense counsel appears in a trial in which the prosecutor participates, defense counsel should be assigned by the Family Court.

• The public prosecutor who participates in a trial should also be allowed to file an appeal against Family Court rulings in which "serious factual misjudgments" have been made by the courts. In a kokoku-appeal case, the presence of defense counsel should be allowed.

• Minors should be held in custody in the Juvenile Custody and Classification Home for up to 12 weeks in lieu of the current four weeks; they may be allowed to lodge a complaint against a ruling of custody or its renewal made by the Home.

• After the final ruling is made, the Family Court should disclose the name and address of the troubled juvenile and his or her legal representative as well as the text and the summary of the hearing if the victims (or their families) or their representatives so request within three years of the hearing's conclusion.

VII. Concluding Remarks

The Juvenile Law of 1948 put more emphasis on rehabilitating juvenile delinquents than on punishing them. Juvenile law procedures stress informality in that there is no confrontation between the defendant and the prosecutor. All cases must be referred to the Family Court, but it has the discretion to refer a case back to the prosecutor for a criminal charge. The juveniles who are referred to the prosecutor must be at least sixteen years of age and can be tried as adults.

In view of an ever-increasing number of vicious crimes committed by young people in recent years, the Legislative Council has prepared a draft proposal to amend the 1948 Law by adding more punitive measures and requiring prosecutors' participation in the trials of juveniles, which is the most important aspect of the proposed reform. Nevertheless, the Ministry's proposal fails to include a provision to lower the minimum age for criminal punishment to fourteen years from the current sixteen, as suggested by the ruling party.

It has been argued that the new reform proposal runs counter to the Law's basic philosophy of protecting and reforming juveniles. A bill amending the 1948 Law is certain to be passed in the current Diet session that began on January 19, 1999. It may be said that the juvenile justice system under a
revised law will be based more on balancing deterrence of crime with the protection for and rehabilitation of juvenile offenders.

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THE NETHERLANDS

Introduction

In 1922 the institution of juvenile court judges, competent in civil and criminal matters, was introduced. Much emphasis was placed on informal proceedings; procedural safeguards were considered unnecessary and against the interests of the young offenders. However, over the years the juvenile justice system received mounting criticism, and the judges’ discretionary powers were considered too large. More procedural safeguards were found to be necessary in a changing society that had more vocal youth. Sanctions were considered to be insufficiently geared towards the juvenile, and safeguards for the legal position of juveniles were considered insufficient. Parents, as well as children, could not get themselves heard and had hardly any rights. This situation led in 1979 to the appointment of a committee that eventually brought forward a proposal leading to a major revision of the Juvenile Criminal Law and Procedure. The revised law went into effect in 1995.

A child under the age of 12 years cannot be prosecuted, although the juvenile court may place such a child in a boarding school or a foster home. Juvenile Criminal Procedural Law is applicable to juveniles between the ages of 12 and 18. However, in the case of a person who had reached the age of sixteen, but was not yet eighteen years of age at the time the crime offense was committed, the judge may, where he finds grounds to do so by reason of the character of the offender, the gravity of the offense or the circumstances in which the offense was committed, let the juvenile be tried as an adult. In the case of a person who had reached the age of eighteen, but was not yet twenty-one years of age at the time the criminal offense was committed, the judge may, where he finds grounds so to do by reason of the character of the offender or the circumstances in which the offense was committed, pass judgment in accordance with juvenile law.

Institutions

The juvenile court judges sit singly and serve as both civil and criminal law judges. However, in cases, where in the opinion of the prosecuting officer, custody of more than six months has to be

3 Supra 1, at 9.
5 Code of Criminal Procedure of the Netherlands, art. 486.
6 Id. arts 488-505.
7 Criminal Code of the Netherlands, art. 77b.
8 Id. art. 77c.
imposed, or in cases of mental disturbance, the case must be tried in full court by three judges. The same applies to cases where the criminal act was serious and the circumstances of the act were serious. The juvenile judge is one of three judges on this panel.\(^9\)

When an offence committed by a juvenile between the ages of 12 and 18 comes to the attention of the police, several things may happen. The police may drop the charges and send the juvenile home with a warning, after talking to the parents. The investigating officer who has been assigned to deal with juveniles by the Public Prosecutor may, after obtaining the permission of the Public Prosecutor, suggest that the young offender participate in a special project, a so-called diversion program. The aim of such participation is to prevent the police report from being sent to the Public Prosecutor.\(^10\)

The investigating officer shall inform the accused that he is not obliged to participate in the project and shall inform him of the possible consequences of not participating. Participation shall not be for more than twenty hours. After the juvenile’s successful completion of the project, the investigating officer shall notify the Public Prosecutor and the accused thereof in writing.\(^11\) With few exceptions under such circumstances, the right to prosecute lapses.

Depending on the conditions involved in each case, a search and seizure can be performed.

The Prosecutor’s office has the obligation, unless the prosecution is unconditionally terminated, to obtain information from the Council on Child Protection on the conditions of the life of the suspect.\(^12\) The Council has the opportunity to advise on the desirability of prosecution. Psychiatrists, psychologists and social workers are actively involved in the evaluation process of the juvenile.

**Special Procedures and Juvenile Court Process**

The investigating officer may also report the case to the Prosecutor. The Prosecutor decides whether or not the case will be prosecuted after having received advice regarding the offender from the Council on Child Protection, which plays an important role in the whole process. He may drop the charges, impose a fine, impose the performance of community service, order the repair of the damage resulting from the criminal offense, or require attendance of a training project for a maximum of forty hours.\(^13\) The Prosecutor may also immediately refer the case to a juvenile judge.

Sessions in juvenile court are held in principle behind closed doors, unless the judge decides to open the sessions.\(^14\) However, under all circumstances the parents, guardians and similar persons are

\(^9\) *Supra* note 5, art. 495.

\(^10\) *Supra* note 7, art. 77e.

\(^11\) *Id.* §4.

\(^12\) *Supra* note 5, art. 494.

\(^13\) *Id.* art. 77f.

\(^14\) *Supra* note 5, art. 495, §2.
allowed to be present in the court sessions. In most instances, the advice of the Council on Child Protection is requested.

Rights of Juveniles

By Law, juvenile offenders are entitled to be represented by an attorney, who is paid by state funds, unless the juvenile has his/her own private counsel. When the suspect has not yet reached the age of 16 years, the attorney has the same privileges that are given to the suspect in the Code of Criminal Procedure or the Criminal Code. The attorney has to be notified of all subpoenas, summons, etc. The suspect himself has to be present at all court sessions. During the court session, the suspect may in certain circumstances be temporarily removed from the court session when questions arise with respect to the personal circumstances of the life of the suspect.

Penalties and Punishments

Principal penalties comprise the following: for serious offenses juvenile detention or a fine are imposed; for lesser offenses a fine may be imposed. In lieu of these principal penalties, one or more of the following alternative sanctions may be imposed: community service, work contributing to the repair of the damage resulting from the criminal offense, and/or the attendance at a training project. Additional penalties include forfeiture of goods obtained from the crime, and disqualifying the juvenile from driving a motor vehicle. The following measures may also be imposed: committal to an institution for young persons, confiscation, deprivation of unlawfully obtained gains, and/or compensation of the damage.

In case the person had not reached the age of sixteen at the time the serious offense was committed, the juvenile's detention shall be for a minimum of one day and a maximum of twelve months. For those that are older, the detention can be imposed for a maximum of twenty-four months. Juvenile detention shall be executed at a State institution or a special facility as specified in the Law on Assistance to Young Persons, subsidized for that purpose by the Minister of Justice.

The judge may impose an alternative sanction only at the request of the accused. The request shall state the nature of the alternative sanction. The duration of community service, work to repair the damage resulting from the criminal offense, or of a training project shall be not more than two hundred hours. The period of time in which the work is to be performed shall be not more than six

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15 Supra note 5, art. 489.
16 Id. art. 504.
17 Id. art. 497.
18 Id. art. 77h.
19 Id. art. 77i.
months in cases where the work comprises not more than one hundred hours and not more than one year in the remaining cases. However, the Public Prosecutor's office may in certain circumstances extend this period.\textsuperscript{21}

The judge shall impose an alternative sanction only after having received the opinion of the Council on Child Protection concerning the nature, the contents, and the possibility of execution of the alternative sanction offered. Finally, the alternative sanction can be imposed only when the accused gives his consent.\textsuperscript{22} The Council is charged with preparing and assisting in the implementation of alternative sanctions. The system in the Netherlands, with its strong orientation towards the individual young offender, offers ample possibilities for the use of alternative sanctions.

The judge may impose the measure of committal to an institution for young persons only in cases that involve a serious offense for which judicial custody is allowed, in cases in which the safety of others or the general safety of persons or of property requires such measures to be imposed, and if the measure is in the interest of the most favorable future development of the accused. A minimum of two behavioral scientists have to be consulted.\textsuperscript{23} Those persons exercising legal authority over the convicted minor have to be heard. Appeal procedures are open to the convicted person.

**Legal Requirements and Philosophy of Rehabilitation Programs**

The Dutch juvenile justice system is essentially a welfare system. This system emphasizes the needs of the young people and offers a large array of services to juveniles. Great emphasis is placed on the social and psychological conditions surrounding an offense, and decisions are geared towards the individual needs of young persons with a flexible and comprehensive set of sanctions and various alternatives to traditional punishment. A study carried out by the Institute for Applied Social Sciences in Nijmegen that focused on young people aged 12-25 who came into contact with police showed that offering young people help immediately after they come into contact with the police contributes to reducing problem behavior and delinquency in this group.\textsuperscript{24}

**Related Statistics and Effectiveness of the Existing Juvenile Justice System (Conclusion)**

Juvenile crime as recorded by the police has risen in the last fifteen years. This is true for both male and female juveniles who have been interviewed by the police on suspicion of having committed a criminal offence. The increase has been slightly greater in the case of girls. Whereas only 56 girls per 100,000 were interviewed as suspects by the police in 1980, the figure had risen to 128 per 100,000 by 1996. However, girls are by no means catching up with boys quickly because crime by male juveniles too is on the increase. Police statistics also show that crimes of violence against the

\textsuperscript{21} Id. art. 77m.

\textsuperscript{22} Id. art. 77n.

\textsuperscript{23} Id. art. 77s.

person by girls have recorded the sharpest rise (in percentage terms). However, the absolute figures are small in the case of girls. In 1996 there were 926 cases of violence against the person by girls. The majority of these cases involved assault.\textsuperscript{25}

In response to accounts of alarming reports about the rise in youth crime in the early 1990's, the Lower House asked the then State Secretary for Justice to draw up a policy document setting out a broadly based approach to deal with youth crime. In March 1995, the Youth Crime Committee issued its report, "Met de neus op de feiten" (Facing the Facts). Among other things, the Committee called for a balanced policy aimed at prevention and repression. It indicated the numerous factors (unemployment, the school drop-out rate, and drug use, etc.) underlying youth crime and the integrated approach required on the part of the various government departments in the policy fields concerned. Clear responsibility was also assigned to the municipalities in combating and preventing youth crime. Today, youth crime is at the top of the priority lists of the various tiers of government and relevant organizations. A great deal of information has become available on which coherent programs have been based. Significant gains have, moreover, been made in achieving cooperation among various government agencies.\textsuperscript{26}

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THE REPUBLIC OF POLAND

With recent, alarming increases in juvenile crime rates in Europe, many countries are re-examining their traditionally lenient systems of juvenile justice; Poland is no exception.¹

A description of the juvenile justice system in Poland as of September 1, 1998, is contained in the chapter on Poland in the *International Handbook on Juvenile Justice.*² The article was written by a specialist in the field, Polish scholar, Professor Dobrochna Wojcik, Head of the Department of Criminology at the Institute of Legal Studies of the Polish Academy of Sciences.

Significant changes in this area have been introduced in the new Polish Penal Code³ and the Code of Criminal Procedure⁴, both of which came into force on September 1, 1998⁵ and introduced some major changes in the juvenile justice system.

Article 10, paragraph 1, of the new Penal Code provides that persons age 17 and over who commit an offense are tried under the Penal Code as adults.⁶ In exceptional cases, juveniles who are as young as 15 years of age and have committed some serious offenses enumerated in the Code⁷ may be tried under the Penal Code. However, the new Penal Code permits such liability only if "the circumstances of the case as well as the level of development, the traits and personal conditions of the perpetrator warrant it, and particularly when previously applied educational or corrective measures have proved ineffective."⁸ As in the former Penal Code, the imposition of such liability is not

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¹ *Young, Tough and in Trouble*, 17, *NEWSWEEK INTERNATIONAL*, April 6, 1998, at 17-19 (see Attachment III), and tables on juvenile crime rates from the Polish *STATISTICAL YEARBOOK* [in Polish] (1996) (see Attachment IV).


⁵ Pursuant to provisions of special laws introducing new codes:


⁶ The same provision as the former Penal Code, art. 9, para. 1 (hereinafter the former PenC). Copies of an English translation of appropriate provisions of the former PenC are enclosed--see Attachment II.

⁷ Formerly such possibility was provided for persons aged 16 (former PenC, art. 9, para. 2).

⁸ Art. 10, para. 2; this provision is similar to art. 9, para. 2, of the former PenC.
mandatory and is left to the court's discretion. The new Penal Code introduces an additional limitation, i.e., the penalty imposed on such a juvenile may not be higher than two thirds of the maximum penalty provided for a particular offense; additionally, the court may grant an extraordinary mitigation of the penalty.9

The new Penal Code retains and even extends the category of young adults.10 These are persons under 21 at the time of perpetration or under 24 at the moment of imposition of the penalty.11

The new Penal Code stresses the idea of education as the purpose of penalties for young adults and extends this idea to juvenile delinquents tried under the new Penal Code.12 The Code also states that the court may not apply the penalty of life imprisonment.13

The new Penal Code extends the possibility of the extraordinary mitigation of a penalty to all young adults when educational purposes warrant such mitigation.14

The new Penal Code retains the requirement of mandatory supervision over the conditional suspension of the execution of a penalty when the perpetrator of an intentional offense is a young adult.15

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9 The new PenC, art. 10, para. 3. Art. 10, para. 4, new PenC contains a provision similar to art. 9, para. 3, of the former PenC.

10 Former PenC, art. 120, para. 4.

11 New PenC, art. 115, para. 10. Previously this category included only persons under 21 at the time of the imposition of the penalty--former PenC, art. 120, para. 4.

12 New PenC, art. 54, para. 1 as compared with the former PenC, art. 54, para. 1.

13 New PenC, art. 54, para. 2.

14 New PenC, art. 60, para. 1. The former PenC, art. 57, para. 1, provided for such a possibility for young adults only in "especially justified situations."

15 New PenC, art. 73 of the new Penal Code, as compared with the former PenC, art. 76.
SINGAPORE

Introduction

The statutory basis for juvenile justice in Singapore is to be found in the Criminal Procedure Code (CPC),\(^1\) the Children and Young Persons Act (CYPA),\(^2\) and the Subordinate Courts Act (SCA).\(^3\)

Under the CYPA, a person under the age of fourteen is a "child" and a person fourteen years of age or above and below the age of sixteen is a young person.\(^4\) The CPC defines a "youthful offender" as between the ages of seven and fifteen.\(^5\) The SCA created Juvenile Courts for the purpose of dealing with offenses committed by children and young persons.\(^6\) The SCA also provides that a Juvenile Court is to have the jurisdiction and powers conferred on it by the Children and Young Persons Act.\(^7\)

Institutions of Juvenile Justice

The Juvenile Courts, as mentioned above, were expressly created to handle offenses committed by children and young persons, as defined in various items of legislation. However, this jurisdiction is not exclusive. Courts other than the Juvenile Courts may still try a child or young person, under certain conditions. First, where a child or young person is charged with an offense triable only by the High Court, such as murder, he will be tried by the High Court. Second, where the child or young person is jointly charged with a person above the age of sixteen, the charge will not be heard by a Juvenile Court but by a court with appropriate jurisdiction. Lastly, where a person being tried by a court of appropriate jurisdiction other than a Juvenile Court is found to be a child or a young person that court may still, if it thinks fit to do so, continue with the hearing and determine the proceedings.

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\(^1\) The Criminal Procedure Code 1955, Chapter 68 of the Laws of Singapore.

\(^2\) The Children and Young Persons Act 1993, Chapter 38 of the Laws of Singapore.


\(^4\) \textit{Supra} note 2, §2.

\(^5\) §2 of the CPC defines "youthful offender" as including any child convicted of any offense punishable by fine or imprisonment who in the absence of legal proof to the contrary is above the age of seven and under the age of sixteen years in the opinion of the court before which such child is convicted.

\(^6\) SCA, §2.

\(^7\) SCA, §55.
Special Procedures and Juvenile Court Process

A Juvenile Court is presided over by a Magistrate who is nominated by the President. The Magistrate sits assisted by two advisers from a panel of advisers nominated by the President, although under exceptional circumstances he may sit with only one adviser or alone. He is ordinarily assisted by two advisers from a panel of advisers. The emphasis in the Juvenile Courts is on reform and rehabilitation, not on punishment. The CYPA expressly states that every court dealing with a child or young person brought before it as an offender is to take steps for removing him from undesirable surroundings, and for securing that proper provisions is made for his education and training.

The CYPA provides that when a person apparently below the age of 16 years is arrested, he is to be brought before a Juvenile Court; where this cannot be done forthwith, the arresting officer is to take or send him before a Magistrate, who will inquire into the case and release the person on bond, except under the following circumstances: the offense involved is one triable only by the High Court; it is necessary in that person's interest to remove him from associating with an undesirable person; or the Magistrate has reason to believe that releasing that person would defeat the ends of justice.

The CYPA stipulates that, except as modified or extended by this Act itself, the provisions of the Criminal Procedure Code are to apply to a Juvenile Court as if that court were a Magistrate's Court.

A number of restrictions are imposed upon Juvenile Court proceedings. For instance, there are restrictions on what newspaper reports of such proceedings may or may not reveal regarding the child or young person concerned. A child or young person must not be sentenced or ordered to be imprisoned for any offense, or be committed to prison in default of payment of a fine or costs. The only time that a young person can be ordered imprisoned for an offense, or to be committed to prison in default of a fine, damages, or costs, is when he is of so unruly a character that he cannot be detained in a place of detention or an approved school. Only the High Court can sentence a child or young person to corporal punishment.

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8 CYPA, §32(1).
9 CYPA, §32(3).
10 CYPA, §28(1).
11 CYPA, §30.
12 CYPA, §32(4).
13 CYPA, §35.
14 CYPA, §37.
15 CYPA, §37(2).
16 CYPA, §37(3).
When a child or young person has been convicted of grave crimes such as murder, culpable homicide not amounting to murder, attempted murder, or voluntarily causing grievous hurt, he may be sentenced to be detained for the period specified in the sentence, and the child or young person will be detained in such place or under such conditions as the Minister in charge may direct. If a fine is imposed, or if damages or costs are awarded, the court must, in the case of a child, and may, in the case of a young person, order the fine, damages or costs to be paid by his parent or guardian. The parent or guardian may also be ordered to give security for the good behavior of a child or young person who has been charged with an offense. If the court thinks that a charge is proved, the parent or guardian may be ordered to pay damages or costs, or to give security for the good behavior of the juvenile, without recording a finding of guilt against the child or young person.

The CYPA spells out the procedures to be followed in a Juvenile Court. For example, the court must explain to him in simple language suitable to his age and understanding the substance of the alleged offense. The juvenile will then be asked whether he admit the facts constituting the offense. If he does not, the Court will then hear the evidence of the witnesses in support of the facts. Each witness may, at the close of his evidence in chief, be cross-examined by or on behalf of the child or young person. The court will allow the juvenile's parents or guardian or, in their absence, a relative or other responsible person, to assist him in conducting his defense. If a juvenile who is not legally represented or assisted in his defense, instead of asking questions by way of cross-examination, instead makes assertions, the court itself may question the witness on behalf of the juvenile, and may for this purpose question the juvenile in order to bring out or to clear up any point that may arise out of those questions.

If it appears to the court that a prima facie case has been made out, the court will explain to the juvenile the substance of the evidence against him, and in particular, any points which specially tell against him or require explanation, and the child or young person will be allowed to give evidence on oath or affirmation or to make a statement, if he wishes to do so, and the evidence of any witness of the defense shall be heard. If the juvenile admits the offense, or if the court is satisfied that the offense is proved, he and his parent or guardian, if present, will then be asked if they wish to say anything in extenuation or in mitigation of the penalty or otherwise. The court may, before making its decision, obtain information about the juvenile's general conduct, home surroundings, school record and medical history, to enable it to deal with the case in the best interests of the child or young person, and may put to him any questions that might arise out of any such information that is obtained. The information referred to may include a written report of a probation officer, a welfare officer, a registered medical practitioner, or any other person whom the court thinks fit to provide a report on him. However, when the court has received a report written by any such person, the juvenile must be told the substance of any portion that bears on his character or conduct which the court considers material to the manner in which he should be dealt with, as must also the parent or guardian, if present. Either one of them is entitled to produce evidence relating to such a report.

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17 CYPA, §38(1).

18 CYPA, §42(1) - §42(12).
Rights of Juveniles

A child or young person who has been arrested but who cannot be brought forthwith before a Juvenile Court is entitled to be released on bail, with or without sureties, with the amount of the bond to be determined by a Magistrate who will set it at an amount that he thinks will secure the attendance of the person at the hearing upon the charge, with the bond to be entered into by his parent, guardian, or other responsible person. 19 Bail will not be given in any of the following circumstances: (a) the charge is one triable only by the High Court, (b) it is necessary in the offender's own interest to remove him from association with an undesirable person; (c) the Magistrate has reason to believe that the release would defeat the ends of justice. 20

A juvenile offender, his parent or guardian, has the right to appeal to the High Court against any judgment, sentence, or order of a Juvenile Court. 21

Penalties and Punishments

If the juvenile admits the facts which constitute the offense, or if the court is satisfied that the offense has been proved, the Juvenile Court has a number of options available. 22 The offender may be discharged. He may be discharged, subject to entering into a bond to be of good behavior and to comply with any order that may be imposed. He may be committed to the care of a relative or other fit person for a period to be specified by the court. His parent or guardian may be ordered to exercise proper care and guardianship. Either alone or in combination with another order, the court may make a probation order requiring the juvenile to be under the supervision of a probation officer or a volunteer probation officer for a period ranging from six months or three years. 23 He may be ordered detained in a place of detention for up to six months, 24 sent to an approved school for a period between two and three years, or ordered to pay a fine, damages, or costs.

In cases where the offender is a young person, he may be committed to a Young Offenders Section of a prison. This may be for as long a time a term of imprisonment that a District Court is empowered to order, and only if it is the court's opinion that the juvenile is of so unruly a character

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19 CYPA, §31.
20 Id.
21 CYPA, §46.
22 CYPA, §46(1) - 46(3).
23 In an address by the Senior Minister of State for Community Development Ch'ng Jit Koon on October 15, 1994, the number of volunteer probation officers that had been appointed to look after the well-being of juvenile delinquents of probation was given as being 384, up from only 27 in 1971. See Parental Neglect Leads to Children Becoming Delinquent: Ch'ng Jit Koon, STRAITS TIMES (Singapore) (October 16, 1994), at 21, retrieved from LEXIS-NEXIS database.
24 Boys in a place of detention such as the Singapore Boys' Home, apart from receiving counselling and having to take part in rigorous physical activities, are put through study courses and vocational training, see B. Pereira and Tan Ooi Boon, Juveniles Are Immature and Don't Know the Consequences of Actions, STRAITS TIMES (Singapore) (June 3, 1996), at 34, retrieved from LEXIS-NEXIS database.
that he could not be detained in a place of detention or an approved school. In cases where the offender is a male and has already reached the age of sixteen, and the court is satisfied that it is expedient, with a view to his reformation, that he should undergo a period of training in a reformative training center, the Juvenile Court may order him brought before a District Court to be dealt with under section 13 of the Criminal Procedure Code.

**Legal Requirements and Philosophy of Rehabilitation Programs**

According to one commentator on the Singapore legal system, several changes have been made to the juvenile justice system in response to a steady rise in the number of juvenile offenders.

The management of juvenile offenders was restructured in 1994 with the establishment of a separate, new Juvenile Court Division, and greater emphasis is now placed on the management and treatment of juvenile offenders.\(^{25}\)

A "Communitarian Model of Juvenile Justice" has been introduced, featuring a family conference, attended not only by the offender and his parents, but also by the victim of the crime and his parents, and in addition by the offender's teachers and some of his peers.\(^{26}\)

Family conferencing is a new juvenile justice process that requires the close involvement of the community. It is based on the principle of reintegrative shaming by which the offender is reintegrated into society and also made to realise the consequences of his actions through exposure to those affected by his actions.\(^{27}\)

These family conferences were reportedly introduced in 1994 because the courts found that putting youthful offenders on probation alone was not sufficient to make some of them repent. Forcing them to face up to their families and victims, on the other hand, was found effective because it subjected them to shame and the pangs of conscience.\(^{28}\)

Voluntary social workers are included in the family conferencing process as a deliberate effort to get the community involved in rehabilitating juvenile offenders.\(^{29}\)

**Related Statistics and Effectiveness of the Existing Juvenile Justice System**

Chan refers to the "almost 30% increase" in the number of juvenile delinquents reported for 1993.\(^{30}\) In 1996, police statistics were released showing that the number of juveniles arrested to have


\(^{26}\) *Id.* at 62.

\(^{27}\) *Id.*

\(^{28}\) *Courts Rope in Social Workers in Juvenile Cases, Straits Times (Singapore)* (January 15, 1995), at 3, retrieved from LEXIS-NEXIS database.

\(^{29}\) *Id.*

\(^{30}\) See Chan, *supra* note 25, who cites STRAITS TIMES (SINGAPORE) (March 7, 1994), at 22.
more than doubled in five years: from 1205 in 1990 to 2589 in 1995.\textsuperscript{31} These numbers might seem negligible, given the three million population of the city-state, but the authorities see the trend of rising juvenile delinquency as disturbing. It led to the formation in 1994 of a high-powered inter-ministry committee to look into how problems facing families have affected the growing number of juvenile delinquents. In a speech made in the same year, the Senior Minister of State for Community Development reported that there had been 1892 arrests of juvenile delinquency in 1993, representing a 28\% rise from the figures for 1992.\textsuperscript{32} The number of juveniles involved in serious crimes such as rape and robbery is also reported to have been on the rise recently.\textsuperscript{33}

As to the effectiveness of the existing juvenile justice system, this is hard to assess in the light of the reported increases of recent years. New measures such as the family conferencing process described earlier may help. In any event, Singapore officials are said to be "increasingly worried about juvenile crime, which...has risen sharply in the past five years."\textsuperscript{34} The authorities are reviewing their policies on treatment of young offenders with a view to taking more of them to court rather than letting them off with warnings when petty crimes such as shoplifting are involved.\textsuperscript{35} At the same time, the Singapore Government is exploring ways to identify and to eradicate the root causes of juvenile delinquency, ranging from examination of socio-economic trends and factors to review and evaluation of existing programs and services that address the problems of dysfunctioning families.\textsuperscript{36}

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\textsuperscript{32} \textit{Singapore May Harden Stance on Juvenile Offenders} Reuters despatch, (October 16, 1994), retrieved from LEXIS-NEXIS database.

\textsuperscript{33} \textit{Supra} note 24.

\textsuperscript{34} \textit{Supra} note 31.

\textsuperscript{35} \textit{Supra} note 32.

\textsuperscript{36} \textit{Panel on Family Problems Set Up}, STRAITS TIMES (SINGAPORE) (October 4, 1994), at 1, retrieved from LEXIS-NEXIS database.
Introduction

The Swedish system of criminal justice with regard to juvenile delinquents emphasizes, to a great extent, the social welfare of the young offenders rather than punishment of young persons who commit a crime. Various measures are taken by the social services authorities to provide for the care of young offenders. In practice, the relevant laws provide for the participation of social welfare authorities from the beginning of an investigation concerning a crime allegedly committed by a young person under certain specified age (see below).

There are several laws which enter into operation when a crime is committed by a young person. The main act containing specific provisions for legal proceedings against a young person suspected of a criminal offense is the Law on Special Provisions Concerning the Young Offenders of Law,¹ which was radically amended in 1994 to the welfare of the young and the well-being of society through the cooperation between the police, the prosecutor, the court, the social services and the custodian of the young person accused of criminal conduct.

The 1964 Law on Special Provisions Concerning the Young Offenders of Law

According to section 1, the Law covers matters regarding the offenses committed by young persons under 21 years of age. The age limits for proceedings against a young offender is 15. However, according to section 31, if a person under the age 15 commits a crime, an investigation may be carried out to determine:

(1) If an investigation can show whether the young offender is in need of social services action;
(2) Whether another person above the age of 15 has participated in the crime;
(3) If there is a need to find the stolen goods; and
(4) if there is otherwise an important reason to investigate the matter.

In principle, whenever an investigation regarding a person under the age of 15 is carried out, the custodian of the young person and the representatives of the social services must be notified. However, in certain exceptional cases the duty to inform the custodian could be disregarded.

¹ SVENSK FÖRFATTNINGSAMLING [official law gazette of Sweden (SFS)] 1964:167, as amended.
Juvenile Courts

Sweden does not have any specific juvenile courts. In larger districts with many chambers in a district court, one or two chambers deal with juvenile cases. In smaller districts every available chamber in a district court deals with juvenile cases.

The Prosecution

Although in principle all the provisions of the Criminal Code are applicable to juvenile as well as adult offenders, according to section 2 of the Law on Special Provisions for Young Offenders, the judicial investigation of a crime committed by a person under 18 years of age must be carried out by a prosecutor who has particular experience in dealing with young offenders. Even the police officer who works on the case is required to have a special understanding and interest in dealing with juvenile offenders.

A judicial investigation of a crime allegedly committed by a person under 18 years of age must necessarily be carried out by a prosecutor, if according to the provisions of the Criminal Code, the punishment for the crime in question is more than six months imprisonment. Such investigation must be carried out speedily and should not last more than four weeks as of the date the young offender has received notice that he is under suspicion for the crime committed (sec. 4).

Whenever an investigation is carried out of a crime in which there is reasonable suspicion that a person under 18 is involved, the custodian must be notified and be allowed to participate in the proceedings (sec. 5). Likewise, social services officials must immediately be informed and be given the opportunity to be present during the process of hearing the youngster (sec. 7).

Before making his final prosecutorial decision concerning a case regarding a juvenile offender under 18, the prosecutor must request information from the social services in the community where the youngster resides on whether the offender has confessed to the crime or other grounds exist that may implicate the youth as having been involved in the crime. The request may even cover questions regarding the youngster himself and his living conditions (sec. 10-12).

A police officer who handles an investigation of a crime committed by a person under 18 may request the offender to take prompt measures to bring about redress or limit the extent of damages to the injured party (sec. 13).

If an offender under 18 is reasonably suspected of having committed a crime, the police authority must immediately inform the custodian and leave the youngster to the custody of his custodian or the social services' representative. Under no circumstances should the youngster be kept in police custody more than three hours from the time the prosecutor has made a decision to give notice that he is under suspicion of having committed a crime (sec. 14). Only if there are particular reasons calling for an arrest, may a young offender under 18 years of age suspected of committing a crime be arrested and be kept in custody while waiting for a trial (sec. 23).

Waiver of Prosecution

If a person under 18 years of age has committed a crime, the prosecutor is empowered to waive the prosecution. Such decision may be made if:
(1) special care or other measures can be provided under the rules stipulated in the Social Services Act;²

(2) Special care or other measures can be arranged in conformity with the Law on the Care of Young Persons (see below); or

(3) there are any other measures which can assure that the young offender receives adequate help and support.

A waiver may also be issued if it is apparent that the crime was committed impulsively or out of mischievousness (secs. 16 and 17).

A decision on the waiver of prosecution may be revoked if special circumstances call for a revocation. In revoking a waiver, the prosecutor should take into consideration whether the young person has committed a new crime within six months from the date since the waiver was issued (sec. 22).

The Right to Representation

An accused person under the age of 18 has the right to free representation, the cost being paid by the State (sec. 24).

The Court Proceedings

The court proceedings concerning a person under the age of 21 who has been accused of a crime must be handled by professional judges who have experience and a special interest in dealing with juvenile delinquents. Even lay judges who sit together with the professional judges in criminal cases must fulfil the same requirements. However, if the penalty for the crime under consideration is only a fine, judges other than those with special experience with juvenile delinquents may preside the court (sec. 25).

When a case concerns an offender under 18, the court must notify the custodian regarding the date and the place where the proceedings are to be held. If the matter concerns a crime for which a penalty of imprisonment may follow, the court must hear the custodian (sec. 26).

A case concerning a crime committed by a person under the age of 21 and for which a penalty of imprisonment is prescribed must be held in a manner that does not attract public attention. If proceedings in an open court appear to cause unwarranted harm to the accused person, the court may decide to have the proceedings behind closed doors. However, in such cases the court must allow the relatives of the accused and any other person whose presence affects the outcome of the judgment to be present (sec. 27).

Proceedings regarding criminal acts committed by young persons must be handled speedily, and the judgment of the court, if possible, has to be issued orally at the end of the trial (sec. 30).

**The Penalty**

In principle, the courts in Sweden are reluctant to sentence young people to imprisonment. Thus, under the provisions of Chapter 31 of the Criminal Code in most cases, young offenders receive care or other measures under the Social Services Act or the Law on the Care of Young Persons (see below). Nevertheless, the courts do not hesitate to impose fine or require that youngsters compensate the injured party.

When the court finds itself compelled to issue a sentence other than care it must pay attention to circumstances which according to the provisions of Chapter 30:4 of the Criminal Code provide for a milder sanction than imprisonment. Hence, a conditional sentence and probation should, if the circumstances of a case permit, be chosen instead of prison for a juvenile delinquent who is not committed for care under the relevant laws.

Moreover, Chapter 29:7 of the Criminal Code empowers the court to issue a milder imprisonment penalty than otherwise is prescribed for the crime under consideration. On the whole, no person should be sentenced to life imprisonment for a crime committed before the age of 21. Likewise, under the provisions of the Swedish Constitution, no person should be tortured or be sentenced to capital punishment.

It should be pointed out that Sweden does not have special prisons for young offenders. However, prisoners have their own individual cells, and they are free to associate with other prisoners.

**The Law on the Care of Young Persons**

This Law contains provisions regarding the care to be provided for young persons who for various reasons are in need of help. The basis of the enactment of the Law is to provide the means for the implementation of the Social Services Act in which one of the major duties imposed on authorities concerned is to provide care for young people who for various reasons are in need of assistance from society.

Every effort to provide care under the Law must be made through reaching an understanding with the young person and his custodian, with the exception of the cases in which a young offender is provided special care due to a court decision. Furthermore, in cases in which the young person has been subjected to abuse, or there is a risk to his health and mental development through the use of drugs, there will not be any need for reaching an understanding with either the custodian or the youngster himself. The social services board in the community where the young person resides will decide on the conditions of the help to be provided and the place where the care should be given.

For young offenders and those who endanger their health by using drugs and the like, there are

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3 The Law on Special Provisions for the Care of Young Persons, SFS:190:52, as amended.

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special homes where constant supervision and control can be performed. This sometimes means deprivation of freedom of movement, and the young person will not be allowed to leave the home. The circumstances may also require that the young person’s correspondence be controlled or other material sent to him be inspected. However, it is prohibited to control correspondence between the young person and his lawyer or Swedish authorities.

The social services board must follow up the development of the conditions regarding the young persons who receive care. At an interval of every six months a decision as to whether progress has been achieved is made. The purpose of this process is to ensure that once a satisfactory result has been achieved, the Board may decide to terminate the care. In the meantime, the Board must ensure that contact between the young person and his parents or custodian is not disrupted. However, under certain circumstances the Board may conceal the whereabouts of the young person from the parents or the custodian. A decision by the Board to conceal the whereabouts of the youngster must be reviewed every three months.

Under all circumstances the care provided for young persons under age 18 for the reasons of abuse and the like must be terminated once they reach 18 years of age. For those who receive care for other purposes, such as criminal offenses, the maximum time for staying in a special home is until the age of 21.

Finally, it should be noted that under no circumstances a young person committed to receive care under the provisions of the Law on the Care of Young Persons be deprived of his right to schooling or professional training. On the whole, the main purpose of this arrangement is to prepare young persons for a normal and better life, to enable them to participate in the life of the community and to take their share of responsibility once they are deemed to be ready for an independent life as a free member of society.

Statistics

According to Swedish Criminal Statistics in 1994, there were 152,996 persons who were found to have committed crimes. This included 87,007 crimes such as violation of traffic laws, taxation laws, drug laws, environment laws, etc. Of this total, 15,427 crimes were committed by young persons between 15-18, and 14,122 crimes were committed by young persons between 18-20, about 10% and 9% respectively.

Of the 15,427 total number of crimes committed by young persons under 18, 3,029 crimes were committed by women. Of the total of 14,122 crimes committed by young persons under 20, 1,853 crimes were committed by women.

There was a total of 4,182 waivers of prosecution for the crimes committed by young persons under 18. The number of waivers for the crimes committed by persons under 20 was 1,044. This means that while the percentage of the waiver for persons under 20 was about 6% of the total of 14,122, the percentage of the waiver for the persons under 18 was about 35% of the total of 15,427 crimes by persons of that age category. Only 25 people of the total of 15,427 persons under 18 were sentenced to prison. The corresponding number for persons under 20 (14,122 total) was 806.4

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