



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Denmark

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Contents

Executive summary	i
Abbreviations	ii
1 Overview of Member State’s approach to children in criminal proceedings and specialised services dealing with such children	1
2 Child-friendly justice before and during criminal judicial proceedings	4
2.1 The child as a victim	4
2.1.1 Reporting a crime.....	4
2.1.2 Provision of information.....	5
2.1.3 Protection from harm and protection of private and family life.....	5
2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment	6
2.1.5 Protecting the child during interviews and when giving testimony.....	6
2.1.6 Right to be heard and to participate in criminal proceedings.....	8
2.1.7 Right to legal counsel, legal assistance and representation.....	8
2.1.8 Remedies or compensation exist for violation of rights and failure to act.....	8
2.2 The child as a witness	9
2.2.1 Reporting a crime.....	9
2.2.2 Provision of information.....	9
2.2.3 Protection from harm and protection of private and family life.....	9
2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment	9
2.2.5 Protecting the child during interviews and when giving testimony.....	9
2.2.6 Right to be heard and to participate in criminal proceedings.....	9
2.2.7 Right to legal counsel, legal assistance and representation.....	9
2.2.8 Remedies or compensation for violation of rights and failure to act	10
2.3 The child as a suspect/ defendant	10
2.3.1 Age of criminal responsibility	10
2.3.2 Provision of information.....	10
2.3.3 Immediate actions following first contact with police or other relevant authority	11
2.3.4 Conditions for pre-trial detention/ custody	12
2.3.5 Protection of private and family life	13
2.3.6 Alternatives to judicial proceedings.....	13
2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment	14
2.3.8 Protecting the child during interviews and when giving testimony.....	14
2.3.9 Right to be heard and to participate in criminal proceedings.....	15
2.3.10 Right to legal counsel, legal assistance and representation.....	15
2.3.11 Remedies or compensation for violation of rights and failure to act	16
3 Child-friendly justice after judicial proceedings	17
3.1 The child as a victim or offender	17
3.1.1 Provision of information.....	17
3.1.2 Sentencing	17
3.1.3 Deprivation of liberty	20
3.1.4 Criminal records	20
4 Strengths and potential gaps	21
Conclusions	22
Annex – Legislation reviewed during the writing of this report	23

Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

In criminal law cases, specialist institutions are not in place to deal with child victims and child witnesses. The normal police, prosecution and court services deal with such children. However, guidance is provided with regard to, for example, questioning of child victims and witnesses and the right to assistance from a representative from the social services of the local municipality. The police must also provide guidance to victims on the rules governing appointment of special legal representation.

Overview of children's involvement before, during and after judicial proceedings

There are no special or separate procedures for criminal proceedings involving children. There are, however, a number of special measures to protect the child within the traditional criminal system.

The age of criminal responsibility in Denmark is 15 years of age. A number of specially trained youth judges with special knowledge of juvenile delinquency, punishment, treatment and rehabilitation of youth suspects and offenders work towards a fast and effective processing time, in line with the objectives of the specialised juvenile system, when it comes to child offenders between 15 and 18 years of age.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

One of the strengths of the legal framework in Denmark is its requirement for police departments and social services to cooperate. Another strength is the fast procedures regarding child offenders, which constitutes an increased effort by the Danish government to combat crimes committed by children.

There are also positive perspectives with regard to the general system of Victim-Offender Mediation. This system is relatively new and the coming years will show its possible benefits with regard to child offenders between 15 and 18 years of age.

A gap in the Danish system is that children are not provided with specific rights as children in the criminal system. Generally they are also not provided with any special information on procedures or rights. Child suspects and offenders between 15 and 18 years of age are not considered as children by the system. Instead they are treated as adult suspects and offenders.

Another gap in the Danish system is the fact that there is no maximum imprisonment for child offenders.

United Nations human rights monitoring committees as well as Danish NGOs argue that it should be prohibited to use solitary confinement against child offenders in Denmark and that child offenders should not be put in prisons with adults, a practice which is sometimes still employed in Denmark.



Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union
NGO	Non-Governmental Organisation

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

In Denmark, persons under the age of 18 do not have full legal capacity and are described as minors. Minors do not have the right to vote and do not have full legal capacity to decide personal and property matters.

The special anti-discrimination legislation in Denmark does not cover children in criminal proceedings. All criminal proceedings are, however, conducted in the public sector in Denmark and thus children in criminal proceedings are protected against discrimination by the general principle of equality in public law. The general principle of equality in public law is an unwritten principle of law and constitutes a more general requirement of equal treatment within the public sector. Thus, it does not list a specific number of anti-discrimination grounds.

There is no explicit requirement to take into consideration the best interests of the child within the Danish criminal law system.

In criminal law cases, specialist institutions are not in place to deal with child victims and child witnesses. The formal police, prosecution and court services deal with such children. However, guidance is provided with regard to, for example, questioning of child victims and witnesses and the right to assistance from a representative from the social services of the local municipality. The police must also provide guidance to victims on the rules governing appointment of special legal representation.

With regard to child offenders, they are also being dealt within the normal services of police, prosecution and court. There are no youth courts or the like for child offenders in Denmark, but a number of specially trained judges with specialist knowledge of juvenile delinquency, punishment, treatment and rehabilitation of youth suspects and offenders will generally on an ad hoc basis deal with child offenders between 15 and 18 years of age.

A number of special provisions do, however, provide for an improved child-friendly environment of child offenders in the traditional systems. This includes the participation of a representative from the social services of the local municipality in the interviewing of the child suspect. The Director of Public Prosecutions has prescribed specific rules on how the prosecution service must process cases against child offenders between 15 and 18 years of age, including an obligation to notify the holder of parental custody¹. This instruction also governs notification of the social authorities and the holder of parental custody when the police detain and question children under the age of 15 as well as the specific approach to follow in these cases, including the appointment of a legal representative.

Local collaboration between schools, social services and the police

All municipalities have special cooperation between schools, social services and the police to reduce juvenile crime. Municipalities use this cooperation to take action against crime committed by children. Most of the municipalities have at least one coordinator of this special cooperation between schools, social services and the police, and about a third of municipalities have more than one. Nationwide there are around 2800 municipal employees within this special cooperation².

Police

The National Police has reported that the subject of "children and young persons" constitutes an important element in the basic and supplementary training of the police force at the Police

¹ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012*).

² Information in Danish language on national efforts to prevent and tackle juvenile crimes can be found [here](#).

College. The training is based on the consideration of the best interests of the child and comprises special protection measures, including measures in connection with the deprivation of liberty of children and young persons within criminal procedures and in other contexts, and the cooperation with other authorities, including social services. Moreover, problems relating to children and young persons are reviewed in courses on civil and administrative law, psychology and sociology³.

Furthermore, video interviews with children in connection with cases concerning sexual offences must be conducted by specially trained police officers. The National Commissioner of Police has advised that the training programme of the Police College includes two special courses on sexual abuse of children and video interviews with children. The aim of the “sexual abuse of children” course is to ensure that police officers can work fast and efficiently while at the same time considering the child’s best interests when they investigate cases involving sexual assaults on children. The aim of the “video interviews with children” course is to qualify specially selected police officers to conduct video interviews with children in cases involving sexual offences to ensure the highest possible certainty of obtaining a clear and correct statement from the child and to consider the best interests of the child and the legal rights of the defendant at the same time⁴.

Prosecution services

In cases where a suspect is under the age of 18, special provisions state that the prosecution service makes decisions about prosecution as soon as possible. But there is no maximum timeframe.

Courts of law

The normal courts of law adjudicate the sentencing of children. The city courts (first tier) have a number of specially trained youth judges with specialist knowledge of juvenile delinquency, punishment, treatment and rehabilitation of youth suspects and offenders⁵.

Protection against child abuse and neglect

A number of public institutions and NGOs work to protect children against abuse and neglect.

The National Council for Children is an independent national institution for children. It is politically independent and acts on its own decisions. In administrative terms, the Council is linked with the Danish Ministry of Social Affairs and Integration. The [National Council for Children](#) works to safeguard the rights of children.

The NGO called [KRIM](#) offers legal advice or help to persons including children who have been exposed to police brutality, who are in prison, who are remanded in custody, who are charged with a criminal offence or who are the next of kin to such persons.

The NGO called [Children’s Welfare](#) in Denmark is a private, humanitarian organisation working for children’s rights in Denmark. Children’s Welfare facilitates a Child Helpline, which is a toll-free, anonymous, professional body offering counselling over the phone to more than 10,000 children every year. These children often have to cope with very serious problems such as violence and sexual abuse. Children’s Welfare also offers adult representation for children who need the support of a grown-up in their encounter with social services.

[Save the Children](#) Denmark is a NGO working with local communities to put children’s rights on the public and political agenda. Save the Children Denmark participates in the writing of

³ UN Committee on the Rights of the Child, Fourth Periodic Report by Denmark, 22 January 2010, CRC/C/DNK/4, page 7.

⁴ UN Committee on the Rights of the Child, Fourth Periodic Report by Denmark, 22 January 2010, CRC/C/DNK/4, page 86.

⁵ Letter from the Ministry of Justice to the Legal Committee of the Parliament, 28 February 2011. Sagsnr. 2009-730-1015.



the alternative reports to the UN Child Committee pointing out for example to the problems of children in Danish prisons.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

Victims of crimes are generally considered to be witnesses in the criminal proceedings. There are, however, a number of additional rules for the treatment of victims and their special rights during criminal proceedings⁶. Child victims have the same rights as adult victims⁷. In addition to general rules on victims, there are a couple of special provisions as well as administrative guidelines for the special treatment of children as victims.

As a starting point, nobody – including children – can be forced by the police to express their opinion during questioning⁸. Everybody – including children, is, however, obliged to testify in the actual court procedure if they are called in as witnesses⁹.

2.1.1 Reporting a crime

There are no specific provisions on children reporting a crime.

Everybody including children can report a crime directly to the Danish police. It can be done by going to the nearest police station or by calling 114. In urgent cases the emergency number 112 can be dialled.

There is no deadline for reporting a crime to the police. However, the law provides for certain time limits after which the crime will not be investigated. After that period a victim can still submit a report but the police will not open an investigation. On 3 June 2013 the Danish Parliament adopted a Bill, with exceptions to the statute of limitations for crimes of sexual abuse against children. According to the Penal Code the limitation period for criminal liability for sexual abuse of children should not begin running before the victim turns 21 years of age.¹⁰

When a crime is reported, the police will immediately issue a receipt. The receipt will be handed to the person who reports the crime either personally or by mail. This receipt contains a reference number, which can be used to receive information from the police about the progress of the case.

There is no obligatory form to use when reporting a crime. When a victim visits a police station or reports a crime by phone, the police officer will draft a written report. The victim does not have to sign the report. Anonymous reports are also accepted.

Often children do not report themselves if they have been subjected to a crime.

There is a notification obligation for persons engaged in the public service or public office if they have knowledge or reason to believe that a child has been subjected to a crime, violence or other abuse¹¹. Employees within the area of children, educational, social and health services etc. are under that obligation. The notification must be provided to the local municipality.

All citizens in Denmark are obliged to notify the municipality if they have knowledge of degrading treatment of a child¹².

⁶ Chapter 66 a of the Administration of Justice Act (*Retsplejeloven*).

⁷ The Director of Public Prosecutions, Instructions RM 8/2007 - reviewed in July 2011 (*Rigsadvokaten, Meddelelse nr. 8/2007 - rettet juli 2011*).

⁸ Section 750 of the Administration of Justice Act (*Retsplejeloven*).

⁹ Section 168 of the Administration of Justice Act (*Retsplejeloven*).

¹⁰ Section 94 (4) of the Penal Code (*Straffeloven*) entering into force on 1 July 2013.

¹¹ Section 153 of the Service Act (*Serviceoven*).

¹² Section 154 of the Service Act (*Serviceoven*).

The municipality will then report a suspected abuse to the police.

Police districts may have a special contact person that the local municipality can contact in cases where there is a suspicion of children being victims of violence or other abuse. The aim of this partnership is to be able to determine whether there are grounds for an actual reporting of a crime at an early stage¹³.

2.1.2 Provision of information

All victims, adults and children, must be provided with a range of information on their rights and on the progress of the case from the moment the crime is reported and throughout criminal proceedings including after judgment and sentencing.

There are no rules obligating the authorities to provide information to children in a child-friendly manner¹⁴.

The victim, adult or child, has to be informed about the various rules before being interviewed. Information that has to be provided by the police will include¹⁵:

- how to get a lawyer appointed by the court;
- how to claim compensation from the offender during the criminal proceedings;
- how to receive compensation from the State;
- how to use the [Victim Counselling](#) that is established in every police district of Denmark offering personal advice and support to victims;
- rights and duties of the victim;
- if the person is a victim of a serious crime like violence or a sexual offence, the police will explain the expected development of the case and designate a special contact person within the police or within the prosecution¹⁶.

In cases where an offender has been imprisoned for violence or sexual abuse, the victim must be informed about the time of the offender's release from prison¹⁷.

2.1.3 Protection from harm and protection of private and family life

In general, close relatives of a defendant are not obliged to testify during the actual trial proceedings¹⁸. This is for example the case if a child is a victim of a crime committed by his/her parents. The court may, however, order the victim to testify if it is of crucial importance for the outcome of the case. In cases regarding child victims, the court may assess whether an order to testify violates the protection of private life and family life according to the European Convention on Human Rights¹⁹.

The prosecution or a witness can request the court to make prior decisions on the closing of the doors to the courtroom or a ban on the publishing of minutes or names of the case. In general, it is a criminal offence to publicly disclose the identity of a victim of a sexual crime²⁰.

¹³ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 13 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 13*).

¹⁴ Information provided by stakeholder from the Director of Public Prosecutions.

¹⁵ Chapter 66 a of the Administration of Justice Act (*Retsplejeloven*).

The Director of Public Prosecutions, Instructions RM 8/2007 - reviewed in July 2011, section 2 (*Rigsadvokaten, Meddelelse nr. 8/2007 - rettet juli 2011, afsnit 2*).

¹⁶ Executive Order No. 1108 of 21 September 2008 (*Bekendtgørelse nr. 1108 af 21. September 2007 om politiets og anklagemyndighedens pligt til at vejlede og orientere forurettede i straffesager og til at udpege en kontaktperson for forurettede*).

¹⁷ Section 741 g of the Administration of Justice Act (*Retsplejeloven*).

¹⁸ Section 171 of the Administration of Justice Act (*Retsplejeloven*).

¹⁹ Gorm Toftegaard Nielsen, *Straffesagens gang, Jurist- og Økonomforbundets Forlag* (2011), page 179.

²⁰ Section 1017 b of the Administration of Justice Act (*Retsplejeloven*).

The court can also decide in advance that the accused must leave the courtroom during the interviewing of a victim or a witness²¹. Also the local police may implement a number of practical measures, such as police escort, patrolling and guarding. The possibility to make prior decisions on these issues is supposed to prevent the victim from unnecessary anxiety.

It is not permitted to take photographs or TV-pictures of victims, witnesses or the accused²².

In extraordinary cases where the measures that can be initiated by the police districts are not considered sufficient, the Danish Security and Intelligence Service may initiate witness protection measures within the framework of the so-called [witness protection programme](#).

The media has ethical rules on reporting from court proceedings. However, there are no special rules regarding children in criminal cases. In general, according to the [Press Ethical Rules](#): “The mention of a person’s family history, occupation, race, nationality, creed, or membership of organisations should be avoided unless this has something directly to do with the case”.

There is also a possibility for the police to record interviews by video to be used as evidence during the trial procedure for the child to avoid having to repeat the story several times which can cause additional suffering, see section [2.1.4](#).

2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment

When the police receive a report of a serious offence against a child, it must be determined whether the child should be interviewed by video recording. The video recorded interview must be done urgently and if possible within a week from the report. The aim is to secure the memory of the child victim and at the same time to protect the child from having to be interviewed at a time when treatment of the child is taking place²³.

If a child below 15 years of age has to be questioned as a victim or a witness in a case of sexual abuse or violence, the police must notify the local municipality. In such cases the local municipality will send an observer from social services to be present during the questioning of the child. If a child is between 15 and 18 years of age, no such notification will take place.

In cases of sexual abuse the police must consider whether the child should have a medical examination. The holders of parental responsibility/custody must generally give their consent to the examination. If the child is above 12 years of age, the opinion of the child should be included in the assessment²⁴. If the holders of parental responsibility/custody object to the medical examination and if there is a risk that the child will be subjected to further maltreatment, the child and youth committee of the local municipality will be able to decide that the child must be medically examined. This is the case even if the holders of parental responsibility/custody and the child below 16 years of age refuse the medical examination²⁵.

2.1.5 Protecting the child during interviews and when giving testimony

In cases of sexual abuse of children or of violence against children, there is a possibility for the police to make video recordings of interviews to be used as evidence during the trial procedure²⁶. In this way the child does not have to participate in the trial procedure and the child is protected against meeting the accused. The special rules on video interviews are

²¹ Section 845 of the Administration of Justice Act (*Retsplejeloven*).

²² Section 32 (6) of the Administration of Justice Act (*Retsplejeloven*).

²³ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 3 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 3*).

²⁴ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 12 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 12*).

²⁵ Section 792 d of the Administration of Justice Act (*Retsplejeloven*).

The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 12 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 12*).

²⁶ Section 872 of the Administration of Justice Act (*Retsplejeloven*).

meant for children below 13 years of age. In special situations, video interviews can be used as evidence during the trial also for older children²⁷.

If the holders of custody refuse to have the interview recorded via audio-visual means, the police must refer the matter to be decided by the court²⁸. In general, close relatives of a defendant are not obliged to testify and participate in an interview²⁹. This rule also applies for children and is relevant if a child is a victim of a crime committed by his/her parents.

Video interviews of children are conducted in separate rooms arranged in a child-friendly manner, with toys, drawing tools and paper. The police officer will be specially trained in the questioning of children. The police officers will, on a continuous basis, receive further training and supervision, and will share experiences with each other.

Before the actual undertaking of the video interview, the police officer will normally visit the child at home to get an impression of the child and prepare him or her for the questioning as well as for the child to feel safer during the process. At this stage, the police officer will consider whether a grandparent or another person (e.g. a reassuring person from the school or from an after-school programme) who is not supposed to witness or in other ways be part of the case, should accompany the child to the interview.

If the child is particularly affected by the abuse, a child expert can assist in the questioning of the child by helping the police officer to formulate the questions to pose.

The child victim's lawyer, the local municipality observer, the child expert and the defender of the accused will all be able to follow the interview from the monitor facility. They will be allowed to pose questions to the police officer during the break for him or her to ask the child afterwards. Only the police officer and the "reassuring person" will actually be present with the child during the interview. The aim is to help the child feel as safe as possible³⁰. Before the interview, the "reassuring person" will be instructed in helping the child by holding his or her hand, comforting but not in any way interfering in the actual questioning.

Depending on the age of the child, he or she will be informed that the accused afterwards will hear his or her explanation.

The accused will not be allowed to follow the interview from the monitor facility. The thinking is that it is more likely that the child will tell the truth if the accused is not present in a nearby monitor facility. Afterwards, the accused will have the possibility to see the video recorded interview. If this results in further questions from the defendant, another video recorded interview of the child can take place. This must take place urgently and normally within 2 weeks.

In general, the police must inform the court if there is a need to give special consideration to a victim or witness in a criminal case³¹. This general rule also applies to children.

Arrangements can thus be made for victims or witnesses in cases of violence or sexual abuse that they will wait in a special room before entering the courtroom³². This will prevent them from meeting the suspected or other witnesses.

²⁷ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 2 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 2*).

²⁸ Section 747 of the Administration of Justice Act (*Retsplejeloven*).

The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 3 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 3*).

²⁹ Section 171 of the Administration of Justice Act (*Retsplejeloven*).

³⁰ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 8 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 8*).

³¹ Section 193 of the Administration of Justice Act (*Retsplejeloven*).

³² The Director of Public Prosecutions, Instructions RM 8/2007 - reviewed in July 2011, section 4 (*Rigsadvokaten, Meddelelse nr. 8/2007 - rettet juli 2011, afsnit 4*).

The court may decide how and by whom children below 15 years of age should be interviewed for their testimony during the actual trial³³. For children between 15 and 18 years of age, no such special rules apply. There is a limit as to how young a child can be when being questioned. In a concrete case, a 5-year-old was ordered by the court to testify whereas in another case, the court refused to allow the questioning of a 3-year-old³⁴.

2.1.6 Right to be heard and to participate in criminal proceedings

There is no general right to be heard in Danish law.

Victims and witnesses in general are not parties to criminal proceedings and do not have legal standing. As such they do not have formal participation rights during those proceedings and are only able to participate and be heard to the extent provided in the Administration of Justice Act (*Retsplejeloven*). The judge may, however, decide to hear the child. See above section [2.1.5](#).

2.1.7 Right to legal counsel, legal assistance and representation

The victim in a case of sexual abuse, violence or other serious crimes has the right to request a lawyer appointed by the court free of charge³⁵. Victims of other crimes do not have the right to request a lawyer free of charge.

In cases of sexual abuse of children or violence against children where the child has not requested a lawyer him- or herself, the police must as a rule submit a request to the court for the appointment of a lawyer for the child³⁶.

As a rule, the victim must have had a chance to talk to the lawyer before being questioned.

The powers and tasks of the victim's lawyer are limited. The lawyer can attend the interview of the child and pose further questions. The lawyer also has the right to a copy of the police report regarding questioning of the victim as well as other documents like medical reports on the victim. During the actual trial procedure, the lawyer of the victim may pose further questions to the victim but not to other witnesses. Finally, the lawyer can help with compensation issues³⁷.

In general, a victim can always seek additional legal counsel at his or her own expense.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

Victims in general have limited rights with respect to altering key decisions about proceedings.

If the police reject a report, if the investigation is ended, if prosecution is dropped or withdrawn, victims in general have to be informed. They also have the possibility to appeal these decisions to the higher prosecuting authority³⁸.

Compensation claims can be dealt with during the criminal trial. It can be done as a civil claim put forward by the victim or the prosecution, and as such attached to the criminal case³⁹. In case the defendant is sentenced, it means that the court can decide that the defendant must pay compensation to the victim.

³³ Section 183 (3) of the Administration of Justice Act (*Retsplejeloven*).

³⁴ Gorm Toftegaard Nielsen, *Straffesagens gang, Jurist- og Økonomforbundets Forlag* (2011), page 169.

³⁵ Section 741 a of the Administration of Justice Act (*Retsplejeloven*).

The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 4 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 4*).

³⁶ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 4 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 4*).

³⁷ Gorm Toftegaard Nielsen, *Straffesagens gang, Jurist- og Økonomforbundets Forlag* (2011), side 184.

³⁸ Section 749 (3) and section 724 of the Administration of Justice Act (*Retsplejeloven*).

³⁹ Sections 685 and 991 of the Administration of Justice Act (*Retsplejeloven*).

Victims can claim compensation for personal injury from the Danish Government⁴⁰.

2.2 The child as a witness

In general, the provisions applicable to victims of a crime in the Administration of Justice Act (*Retsplejeloven*) are also applicable to witnesses.

As a starting point, nobody – including children – can be forced by the police to express their opinions during an interview⁴¹. Everybody – including children, is, however, obliged to testify in the actual court procedure if they are called in as witnesses⁴².

2.2.1 Reporting a crime

See section [2.1.1](#) above as the same rules apply to child victims and witnesses.

2.2.2 Provision of information

The police are obliged to inform the witness that they do not have to testify if they are close relatives of the defendant⁴³. No specific regulations are in place relating to information that a child witness should receive explaining his or her rights. .

2.2.3 Protection from harm and protection of private and family life

See section [2.1.3](#) above as the same rules apply to child victims and witnesses.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

See section [2.1.4](#) above as the same rules apply to child victims and witnesses.

The possibility to interview children by video recording is the same for child witnesses as for child victims in cases of sexual abuse and violence⁴⁴.

2.2.5 Protecting the child during interviews and when giving testimony

See section [2.1.5](#) above as the same rules apply to child victims and witnesses except that the court does not appoint a lawyer free of charge for child witnesses.

2.2.6 Right to be heard and to participate in criminal proceedings

See section [2.1.6](#) above as the same rules apply to child victims and witnesses.

2.2.7 Right to legal counsel, legal assistance and representation

The child witness has no right to request a lawyer appointed by the court free of charge⁴⁵.

In general, a witness can always seek legal counsel at his or her own expense.

The police must notify the local municipality when a person below 15 years of age has to be questioned as a witness in a case of sexual abuse. In these cases the local municipality must send a representative from social services to be present during the interview. The

⁴⁰ Act on Compensation from the Government to victims of crimes (*Lov om erstatning fra staten til ofre for forbrydelser*).

⁴¹ Section 750 of the Administration of Justice Act (*Retsplejeloven*).

⁴² Section 168 of the Administration of Justice Act (*Retsplejeloven*).

⁴³ Section 753 of the Administration of Justice Act (*Retsplejeloven*).

⁴⁴ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 2 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 2*).

⁴⁵ Section 741 a of the Administration of Justice Act (*Retsplejeloven*). The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 4 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 4*).

representative must support the child and must ensure that the interview is conducted with care and in a manner that is geared to the nature of the case and the age of the child⁴⁶.

The court may decide how, and by whom, child witnesses below 15 years of age should be interviewed for their testimony during the actual trial. The court may call in a representative from the local municipality to support the child during the testimony⁴⁷.

2.2.8 Remedies or compensation for violation of rights and failure to act

Witnesses in general have very limited rights with respect to altering key decisions about proceedings. Normally, witnesses will not have the possibility to appeal procedural decisions.

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

Until July 2010, the age of criminal responsibility in Denmark was 15 years of age. From 1 July 2010 to 1 March 2012 the age of criminal responsibility was 14 years. In March 2012, the Penal Code was changed and again today children under the age of 15 cannot be punished and there are no exceptions to that rule⁴⁸.

However, the police may investigate such cases regarding suspects below 15 years of age, e.g. to determine the extent of the crime and whether other persons may be suspected and to return any seized objects. This means that the police may detain and interrogate children below 15 years of age. However, the children cannot be taken to court and sentenced as they are under the age of criminal responsibility. After being detained and questioned by the police, children below 15 years of age will be handed over and dealt with by social services. The situation of children below 15 years of age who commit offences will be further described in the administrative contextual overview.

At 15 years of age, a child is considered fully criminally responsible and is judged by criminal courts in the same way as adults. A number of specially trained youth judges with specialist knowledge of juvenile delinquency, punishment, treatment and rehabilitation of youth suspects and offenders do, however, work for a fast and effective processing time when it comes to child offenders between 15 and 18 years of age.

2.3.2 Provision of information

When a child suspect below 15 years of age is detained, the police must make the detainee familiar with the charge and the length of detention as soon as possible. The police report must document that this rule is observed⁴⁹.

When a child suspect is aged 15 and above, he or she must be informed about the criminal charges and that he or she is not obliged to speak. The police report should document that this rule is observed⁵⁰.

There is no other obligation to inform the child suspect about his/her rights. In general, the same rules apply for child offenders between the age of 15 and 18 as for adult offenders. No special rules obligate the authorities to inform child offenders about their rights. The exceptions are the notification of social services and the parents. The parents of a child offender between 15 and 18 years of age must be informed by the police as soon as

⁴⁶ The Director of Public Prosecutions, Instructions RM 2/2007 - reviewed in September 2012, section 4 (*Rigsadvokaten, Meddelelse nr. 2/2007 - rettet september 2012, afsnit 4*).

⁴⁷ Section 183 (3) of the Administration of Justice Act (*Retsplejeloven*).

⁴⁸ Section 15 of the Penal Code (*Straffeloven*).

⁴⁹ Section 821 a (2) of the Administration of Justice Act (*Retsplejeloven*).

⁵⁰ Section 752 of the Administration of Justice Act (*Retsplejeloven*).

possible if their child is arrested or questioned⁵¹. If a child below 15 years of age is detained or interrogated, his or her parents must also be informed as soon as possible⁵².

When a child suspect below 15 years of age is detained, a representative from social services must be called in as soon as possible. This notification is optional if the detention is of very short duration. This applies, for example, if the child is released immediately after being detained because it is found that the detention is unjustified. Notification must, however, always be given to social services if the child needs special support.⁵³ If the child suspect is detained or if the child suspect needs to be questioned, the parents of the child must also be informed as soon as possible⁵⁴.

When a child suspect between 15 and 18 years of age is detained, a representative from social services must be called in as soon as possible if the child suspect needs to be questioned and if the child is suspected of committing a crime that can lead to imprisonment⁵⁵. In other cases the police must notify the social services if the child is in need for special support⁵⁶. If the child suspect is arrested or if the child suspect will be questioned, the parents of the child must also be informed as soon as possible⁵⁷.

The prosecution service must make decisions about prosecution within a reasonable period of time. If the suspect is held in custody or under the age of 18, the decision must be made as soon as possible. The prosecution service is obliged in connection with lengthy charging to inform the suspect of the conditions on which the case is based and the time when the decision as to prosecution may be expected. This duty of information takes effect 1 year and 6 months after the time of the initial charge⁵⁸.

2.3.3 Immediate actions following first contact with police or other relevant authority

Detention of a child suspect below 15 years of age must be carried out with as much care as possible⁵⁹.

In assessing whether detention of a child under 15 years of age would be proportionate, emphasis must be placed on the burden that such interference is likely to involve because of the child's young age⁶⁰. Handcuffs and similar means of power must not be used against children under 15.

See [section 2.3.2](#) on first contacts.

With regard to arrest and detention of child offenders between 15 and 18 years of age, new guidelines have entered into force⁶¹. See below [section 2.3.4](#).

⁵¹ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.2 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.2*).

⁵² The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 2.5 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 2.5*).

⁵³ Section 821 d of the Administration of Justice Act (*Retsplejeloven*). The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 2.4 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 2.4*).

⁵⁴ Section 821 d of the Administration of Justice Act (*Retsplejeloven*). The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 2.5 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 2.5*).

⁵⁵ Section 752 (2) of the Administration of Justice Act (*Retsplejeloven*).

⁵⁶ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.1 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.1*).

⁵⁷ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.2 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.2*).

⁵⁸ Section 718 a of the Administration of Justice Act (*Retsplejeloven*).

⁵⁹ Section 821 a (3) of the Administration of Justice Act (*Retsplejeloven*).

⁶⁰ Section 821 c of the Administration of Justice Act (*Retsplejeloven*).

⁶¹ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.3 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.3*).

2.3.4 Conditions for pre-trial detention/ custody

The police have the possibility to detain children under the age of 15 who are suspected of criminal conduct if the general requirements for arrest are met and if the purpose of the detention cannot be obtained in a less interventionist way than through detention⁶². The police can only detain a child for a short period of time before the child is given to the parents or social services.

When the police detain a child below 15 years of age, the detention will take place at the police station and it must be as lenient and short as possible. It may only exceed six hours if the investigation requires it, and it may in no circumstance exceed 24 hours. The child must not be placed alone in a room unless it is necessary for safety reasons or it is exceptionally required by investigative considerations. Placement of a child in isolation may in no circumstances exceed 6 hours. The Director of Public Prosecutions has criticised the fact that the rules on detention of children under 15 are not always followed in practice. The police districts have therefore been asked to review all cases of detention of children and explain the results in their yearly reports⁶³.

New guidelines have entered into force with regard to child offenders between 15 and 18 years of age being arrested⁶⁴. As a general rule, child offenders being arrested should not be placed in detention or prison. If, however, such placement is necessary, the duration of such placement must be as short as possible. Only in exceptional circumstances can a child offender be placed in detention or jail overnight.

There are special guidelines for placing child offenders between 15 and 18 years of age in custody⁶⁵. A person under the age of 18 should, as far as possible, be detained in surrogate custody, i.e., a residential institution for young persons⁶⁶. Pre-trial detention of child offenders between 15 and 18 years of age is permitted for up to eight months, and this limit is subject to further extension in cases of exceptional circumstances⁶⁷.

An offender under the age of 18 may only be placed or kept in custody in solitary confinement if extraordinary circumstances so require. Solitary confinement of child offenders must be an exception⁶⁸. Solitary confinement is permitted for up to 4 weeks⁶⁹. It appears from the preparatory work for the provision that solitary confinement due to the proportionality requirement as a dominant principal rule will be impossible for child offenders who are 15 or 16 years old⁷⁰. The UN Committee on the Rights of the Child has criticised the use of solitary confinement of child offenders in Denmark⁷¹.

⁶² Section 821 a of the Administration of Justice Act (*Retsplejeloven*).

⁶³ Information from the Director of Public Prosecutions, No. 5/2011, 26. August 2011.

⁶⁴ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.3 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.3*).

⁶⁵ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.4 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.4*).

⁶⁶ Section 965 of the Administration of Justice Act (*Retsplejeloven*).

⁶⁷ Section 768 a of the Administration of Justice Act (*Retsplejeloven*).

The Director of Public Prosecutions, Instructions RM 6/2008 - reviewed in February 2012, section 2.2 (*Rigsadvokaten, Meddelelse nr. 6/2008 - rettet februar 2012, afsnit 2.2*).

⁶⁸ The Director of Public Prosecutions, Instructions RM 4/2008 - reviewed in February 2012, section 2.3 (*Rigsadvokaten, Meddelelse nr. 4/2008 - rettet februar 2012, afsnit 2.3*).

⁶⁹ Section 770 c of the Administration of Justice Act (*Retsplejeloven*).

⁷⁰ Committee on the Rights of the Child, Fourth Periodic Report by Denmark, CRC/C/DNK/4 of 22 January 2010, page 85.

⁷¹ Committee on the Rights of the Child, Concluding observations Denmark, CRC/C/DNK/CO/4, 7 April 2011, page 14.

2.3.5 Protection of private and family life

Intervention, which requires a suspicion or a charge may, as a rule, also be used against children under the age of criminal responsibility, for example, interception of communications, surveillance, data reading, bodily interference such as a body search, other types of searches, seizure and disclosure of documents⁷². Intervention, which may be carried out for the purpose of later identification, cannot be used against children under 15 years of age, i.e. taking fingerprints and personal photographs for later identification⁷³.

For child offenders between 15 and 18 years of age, information about his/her personal matters will be obtained from the offender's municipality. In minor cases, such information will not be obtained⁷⁴.

When the accused is under 18 years of age, the court may close the door to the courtroom and/or prohibit public communication of the sentence⁷⁵. In general, it is not permitted to take photographs or TV-pictures of accused persons entering or leaving the courtroom⁷⁶.

The media has ethical rules on reporting from court proceedings. However, there are no special rules regarding children in criminal cases. In general, according to the [Press Ethical Rules](#): "The mention of a person's family history, occupation, race, nationality, creed, or membership of organisations should be avoided unless this has something directly to do with the case".

2.3.6 Alternatives to judicial proceedings

There are generally no special or separate procedures for criminal proceedings against children. There are a number of special measures to protect the child within the traditional criminal system. The system of victim-offender mediation is relevant for convicted child offenders in order to prevent them from falling back into crime. However, it is not an alternative to traditional criminal proceedings.

A person under the age of 18 should, for example, as far as possible be detained in surrogate custody, i.e. a residential institution for young persons⁷⁷.

A special fast track procedure has been established for child offenders between 15 and 18 years of age. In cases where the offender aged between 15 and 18 confesses to the crime, the processing time should not be more than 2 months for the police, the prosecution and social services⁷⁸. For child offenders committing violence or another serious crime there is another fast track procedure (7 + 7 + procedure) meaning that the police should investigate the case within 7 days and after that, social services has 7 days to finish a draft "crime action plan" for the offender. After that the prosecution must send the case to the court as quickly as possible⁷⁹.

The National Social Appeals Board has assessed almost 300 cases where the police have notified the local municipalities / social services about suspects of serious crimes being between 15 and 18 years of age. The assessment illustrates that in almost half the cases

⁷² Section 821 b of the Administration of Justice Act (*Retsplejeloven*).

⁷³ Section 792 of the Administration of Justice Act (*Retsplejeloven*).

⁷⁴ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.5 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.5*).

⁷⁵ Section 29 b and 30 of the Administration of Justice Act (*Retsplejeloven*).

⁷⁶ Section 32 (6) of the Administration of Justice Act (*Retsplejeloven*).

⁷⁷ Section 965 of the Administration of Justice Act (*Retsplejeloven*).

⁷⁸ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.6 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet marts 2012, afsnit 3.6*).

⁷⁹ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.6 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.6*).

social services have not lived up to the requirements of the law. Most frequent failures by the social services include⁸⁰:

- failure to meet the deadline in the 7 day fast track procedure;
- failure to follow the rules on the preparation of the “crime action plan”;
- failure to react on previous notifications;
- failure to introduce special measures at an earlier stage.

One alternative to traditional criminal proceedings is a juvenile contract. If prosecution cannot be stopped without conditions, a condition of juvenile contract will be set⁸¹. A juvenile contract is an agreement where the child offender obligates him or herself to participate in a number of activities and the prosecution stops investigating the case. The parents participate in the work on the juvenile contract and must give their consent to the conditions. Conditions can be social measures. Other conditions can be that the offender must comply with special stipulations relating to residence, work and education.

The child offender, parents, social services and the police must sign the juvenile contract and the court must approve the conditions. Social services are responsible for monitoring compliance. If the child does not comply, social services will leave it to the police to take the case to court.

2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment

A representative from social services must be present and support the suspect between 15 and 18 years of age during the interview in the actual court procedure⁸². The representative must ensure that the hearing takes into account that it is a child being questioned. The representative must support the child and ensure that the interview takes place with as much care as possible.

2.3.8 Protecting the child during interviews and when giving testimony

When a child suspect below 15 years of age is detained, a representative from social services must be called in as soon as possible. The representative must, to the greatest extent possible, have access to monitor the interview⁸³. The representative must ensure that the hearing takes into account that it is a child being questioned. The representative must support the child and ensure that the interviewing takes place with as much care as possible⁸⁴.

If the child suspect aged under 15 is detained or if the child suspect must be questioned, the parents of the child must also be informed as soon as possible. The parents must, to the greatest extent possible, have access to monitor and be present during the questioning⁸⁵.

See [section 2.3.10](#) regarding the right to legal assistance.

When a child suspect between 15 and 18 years of age is detained, a representative from social services must be called in as soon as possible if the child suspect must be interviewed

⁸⁰ National Social Appeals Board, Survey of municipal efforts in the field of juvenile justice – May 2012 (*Ankestyrelsens undersøgelse af Kommunernes indsats på området for unge kriminelle - Maj 2012*).

⁸¹ Section 722 and 723 of the Administration of Justice Act (*Retsplejeloven*).

⁸² Executive Order No. 79 from 04/02/1998 amended by Executive Order No. 827 from 28/06/2010, section 5 (*Bekendtgørelse om kommunens bistand til børn og unge i forbindelse med uden- og indenretlig afhøring*).

⁸³ Section 821 d of the Administration of Justice Act (*Retsplejeloven*). The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 2.4 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 2.4*).

⁸⁴ Executive Order No. 79 from 04/02/1998 amended by Executive Order No. 827 from 28/06/2010, section 5 (*Bekendtgørelse om kommunens bistand til børn og unge i forbindelse med uden- og indenretlig afhøring*).

⁸⁵ Section 821 d of the Administration of Justice Act (*Retsplejeloven*). The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 2.5 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 2.5*).

and if the child is suspected of committing a crime that can lead to imprisonment. The representative must, to the greatest extent possible, have access to monitor and be present during the questioning⁸⁶. The representative must ensure that the hearing takes into account that it is a young person who is being questioned. The representative must support the suspect and ensure that the interview takes place with as much care as possible⁸⁷.

A representative from social services must also be present and in the same way support the young suspect between 15 and 18 years of age during the interview in the court procedure⁸⁸.

In other cases, the police must also notify social services if the child is in need of special support⁸⁹.

If the child suspect between 15 and 18 years of age is arrested or if the suspect must be interviewed, the parents of the suspect must be informed as soon as possible. Again, the parents must, to the greatest extent possible, have access to monitor and be present during the questioning⁹⁰.

2.3.9 Right to be heard and to participate in criminal proceedings

For offenders between 15 and 18 years of age, the same rules on participation apply as for adult offenders. No special rules are in place obliging, for example, the police or the prosecutor to take the child's maturity or age or best interests in general into account during the questioning. One exception is that the parents of the child offender will be present during the interview by the police. Children do not have the right to decide that their parents should not participate in the interview by the police. Only investigative considerations can prevent a parent from participating in the questioning. During the actual trial proceedings, parents will always have the right to be present in the court⁹¹.

2.3.10 Right to legal counsel, legal assistance and representation

There is a special rule on the appointment of a lawyer / legal representative to a child suspect below 15 years of age⁹². The police or parents can request the court to appoint a legal representative for the child below 15 years of age. This representative can be any lawyer acting free of charge. The rule only applies in special cases where the child below the age of 15 is suspected of committing a crime which would have led to deprivation of liberty had the child been 15 years of age. Even though the child is below 15 years of age and cannot be sentenced by a court, the child may still be detained and questioned by the police and if the child is suspected of a very serious crime, he or she may need legal representation during the interview.

A child between 15 and 18 years of age being charged of a crime has the right to a court appointed legal representative free of charge. The child or his/her parent can appoint the lawyer at their own choice. Furthermore, each court has appointed a number of lawyers who regularly act as defence counsel in criminal cases and who can also be appointed free of charge to the child offender. If the child between 15 and 18 years of age does not want a particular lawyer, the court will appoint the lawyer who is "next in line" on the court list.

⁸⁶ Section 752 (2) of the Administration of Justice Act (*Retsplejeloven*).

⁸⁷ Executive Order No. 79 from 04/02/1998 amended by Executive Order No. 827 from 28/06/2010, section 5 (*Bekendtgørelse om kommunens bistand til børn og unge i forbindelse med uden- og indenretlig afhøring*).

⁸⁸ Executive Order No. 79 from 04/02/1998 amended by Executive Order No. 827 from 28/06/2010, section 5 (*Bekendtgørelse om kommunens bistand til børn og unge i forbindelse med uden- og indenretlig afhøring*).

⁸⁹ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.1 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.1*).

⁹⁰ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 3.2 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 3.2*).

⁹¹ Information provided by a stakeholder from the Director of Public Prosecutions.

⁹² Section 821 e of the Administration of Justice Act (*Retsplejeloven*).

2.3.11 Remedies or compensation for violation of rights and failure to act

Compensation from the Government can be paid to child offenders who have been arrested or subjected to other "criminal procedure" interventions, if it later turns out that prosecution is abandoned or the suspects are acquitted⁹³.

At the request of the child offender or his/her representative/parent, a legal representative is appointed for him/her free of charge to help the requesting of compensation⁹⁴. The child or his/her representative can appoint this lawyer at their own choice or choose one of the court-appointed lawyers who regularly act as defence counsel in criminal cases.

In general, a child can complain to the Children's Ombudsman if the child believes that his or her rights have been violated.

⁹³ Chapter 93 a of the Administration of Justice Act (*Retsplejeloven*).

⁹⁴ Section 1018 f (2) of the Administration of Justice Act (*Retsplejeloven*).

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

If the child is a victim of a serious crime such as violence or a sexual offence, the police will explain the expected development of the case and designate a special contact person within the police or within the prosecutor's office to inform the child during the case⁹⁵.

In general, the prosecutor's office informs the victim about the time of the court hearings and if the victim has so requested, the prosecutor's office informs the victim if the judgement is appealed or if the case is to be resumed⁹⁶.

In cases where an offender has been imprisoned for violence or sexual abuse, the victim must be informed about the time of the offender's release from prison⁹⁷.

The suspect, whether child or adult, is informed about court hearings in the case and about the possibility to appeal the judgement⁹⁸. The court is responsible for providing the information.

Social services and parents of the child suspect are also informed about court hearings of the case.

3.1.2 Sentencing

Every police district has established a youth consultation. Members of the youth consultation are representatives from the various local municipalities in the police district, a representative from the region and the probation services, the police and prosecution, experts and representatives from secure institutions. The youth consultation will be consulted in individual cases involving criminals between 15 and 18 years of age and will have the following tasks⁹⁹:

- provide options for the prosecutor's penalty claim and the court's penalty judgement in individual criminal cases involving child offenders under 18 years of age;
- provide options for the most appropriate placement if a juvenile sanction or an unconditioned imprisonment is imposed on the child offender.

It is generally relevant for the sentencing as a mitigating circumstance that the offender was not 18 years old at the time of the crime¹⁰⁰. It is the offender's age at the time of the crime that is relevant in this regard.

The normal courts of law adjudicate the sentencing. The city courts (first tier) have a number of specially trained youth judges who have received special training in the alternatives to imprisonment in cases involving criminals between 15 and 18 years of age. The youth judges will also be particularly trained in communicating with the young criminals and in the necessary dialogue with the various social service institutions involved in such cases. The aim is that the youth judges with their special knowledge of juvenile delinquency,

⁹⁵ Executive Order No. 1108 of 21 September 2008 (*Bekendtgørelse nr. 1108 af 21. September 2007 om politiets og anklagemyndighedens pligt til at vejlede og orientere forurettede i straffesager og til at udpege en kontaktperson for forurettede*).

⁹⁶ Section 741 f of the Administration of Justice Act (*Retsplejeloven*).

⁹⁷ Section 741 g of the Administration of Justice Act (*Retsplejeloven*).

⁹⁸ Section 748 of the Administration of Justice Act (*Retsplejeloven*).

⁹⁹ Letter from the Director of Public Prosecutions, 30. June 2010. Journal nr. RA-2010-380-0010.

¹⁰⁰ Section 82 of the Penal Code (*Straffeloven*).

punishment, treatment and rehabilitation can secure a fast and effective processing time and at the same time focus on treating the case from a holistic perspective¹⁰¹.

The following sentences can be issued against children:

Warning or fine

As a general rule, fines for children under 18 years must be halved¹⁰².

Prosecution is barred

For child offenders between 15 and 18 years of age, prosecution can fully be barred (meaning that the child is not prosecuted)¹⁰³.

Suspended prison sentence

The court can impose a suspended prison sentence¹⁰⁴. The judgment can stipulate that the matter of sentencing can be postponed and that it will lapse after a probationary period. Where a sentence is passed, enforcement can be postponed and may lapse after a probationary period.

The court may determine that a suspended sentence is to have conditions attached, examples of which include the following¹⁰⁵:

1. the offender is put under a supervision order;
2. the offender must comply with special stipulations relating to, e.g. residence, work, education;
3. the offender must reside in a suitable home or institution;
4. the offender must refrain from abuse of alcohol, narcotic drugs or similar medication;
5. the offender must undergo detoxification treatment for abuse of alcohol or narcotics;
6. the offender must undergo psychiatric treatment.

A child offender between 15 and 18 years of age who is put under a supervision order will be put under the supervision of social services.

Community service

The court may, if the accused person is deemed suitable, pass a conditional sentence with conditions relating to community service¹⁰⁶.

Juvenile sanction

For child offenders between 15 and 18 years of age, there is an option of imposing a special "sanction for juveniles"¹⁰⁷. Sanctions for juveniles are alternatives to traditional, unconditional custodial sentences for juveniles who commit serious crimes. The aim of the sanction is to help young persons between 15 and 18 years of age to refrain from reoffending through structured and controlled social education and therapy.

¹⁰¹ Letter from the Ministry of Justice to the Legal Committee of the Parliament, 28 February 2011. Sagsnr. 2009-730-1015.

¹⁰² The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 4.1 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 4.1*).

The Director of Public Prosecutions, Instructions RM 9/2005 - reviewed in October 2012, section 2.2 (*Rigsadvokaten, Meddelelse nr. 9/2005 - rettet oktober 2012, afsnit 2.2*).

¹⁰³ Section 722 of the Administration of Justice Act (*Retsplejeloven*).

¹⁰⁴ Section 56 of the Penal Code (*Straffeloven*).

¹⁰⁵ Section 57 of the Penal Code (*Straffeloven*).

¹⁰⁶ Section 62 of the Penal Code (*Straffeloven*).

¹⁰⁷ Section 74 a of the Penal Code (*Straffeloven*).

This involves issuing a two-year order for structured, supervised socio-educational treatment. The process consists of a number of different phases, all under the supervision of the municipal authorities.

To enhance the response of social services with regard to juveniles subject to sanctions for juveniles, the offender's action plans must set goals and targets for education and employment. All young people subject to juvenile sanctions must have an assigned coordinator. This coordinator, who will be assigned for the duration of the process, must be the offender's contact and must ensure continuity of the various phases of the treatment process.

The social measures in a juvenile sanction will normally end when the child offender turns 18. However, some of the measures, e.g. the coordinator or the institution, may continue to the age of 23 if the offender agrees¹⁰⁸.

The effect of juvenile sanctions has been evaluated. A study by the Ministry of Justice's research unit from 2009 shows no overall deterrent effect of juvenile sanctions as compared to unconditional prison sentences¹⁰⁹.

Unconditional prison sentence

Child offenders between 15 and 18 years of age who have received a prison sentence are placed in secure residential centres managed by social services, functioning as surrogate prisons. In special circumstances these institutions can refuse a young criminal, which means that child offenders will be imprisoned in the ordinary prison system. The Danish Institute for Human Rights has raised concern that children may be placed in ordinary prisons¹¹⁰. NGOs have criticised the fact that due to lack of space in secured residential centres, where children sentenced to imprisonment should be placed, the number of juvenile offenders placed in the normal prison system has increased¹¹¹.

An offender who is below 18 years of age at the time of the crime cannot be sentenced to life imprisonment but otherwise there is no longer a maximum length of imprisonment for offenders below 18 years of age¹¹². Previously and until 2010 there was a maximum of 8 years imprisonment for offenders who were under 18 years when the crime was committed.

Victim-Offender Mediation

[Victim-offender mediation](#) is a face-to-face meeting between victim and offender. It was introduced as a general offer to all victims and offenders in 2010 – thus not especially focusing on child offenders. It is voluntary for both parties to attend the meeting, which is held by an impartial third person (a mediator) as moderator. Victim-offender mediation is not a substitute for punishment, but is a supplement to punishment. Thus victim-offender mediation takes place after the sentencing in post-trial detention.

In 2010, 387 offenders in total participated in victim-offender mediation¹¹³. In 2010, 22 offenders below 15 years of age and 113 offenders between 15 and 18 years of age participated in mediation. There are no statistics for the various age groups in 2011 and 2012.

¹⁰⁸ The Director of Public Prosecutions, Instructions RM 4/2007 - reviewed in December 2012, section 4.4 (*Rigsadvokaten, Meddelelse nr. 4/2007 - rettet december 2012, afsnit 4.4*).

¹⁰⁹ Susanne Clausen & Britta Kyvsgaard, Juvenile sanctions. An evaluation of the effects – 2009 (*Ungdomssanktionen. En effektvurdering*, 2009).

¹¹⁰ Danish Institute for Human Rights, Parallel report to the UN Committee on the Rights of the Child on the 4th periodic report by the government of Denmark, July 2010, page 16.

¹¹¹ [Summary](#) prepared by the Office of the High Commissioner for Human Rights for the Universal Periodic Review of Denmark in 2011.

¹¹² Section 33 (3) of the Penal Code (*Straffeloven*).

¹¹³ Information provided by a stakeholder from the Secretariat of Victim-Offender Mediation.

3.1.3 Deprivation of liberty

Child offenders between 15 and 18 years of age who have received a prison sentence are placed in secure/locked residential centres managed by social service, functioning as surrogate prisons. In that way, the child offenders are not detained with adult criminals. In special circumstances such as lack of space, these institutions can refuse a child criminal, which means that child offenders may be imprisoned in the ordinary prison system.

The Danish Institute for Human Rights has raised concern that children are placed in ordinary prisons¹¹⁴. The Working Group of the Universal Periodic [Review of Denmark](#) in 2011 recommended Denmark to prohibit incarceration of minors together with adults, as well as to prohibit solitary confinement of minors. Other stakeholders have raised similar concerns¹¹⁵.

3.1.4 Criminal records

The criminal registry keeps information about everybody's criminal records. There are two types of criminal records:

1. private criminal record that can be disclosed to the individual person in question (furthermore, companies have an opportunity to obtain a consent form in which an employee authorises the employer to obtain the private criminal record from the employee);
2. police criminal record that cannot be disclosed to any private person but is only for the use of the police and in special occasions for the use of other public authorities.

Crimes will appear on the individual's private criminal record for 2 to 5 years depending on the seriousness of the crime. An unconditional imprisonment will for example appear for 5 years.

If prosecution is barred without conditions, it will appear on the criminal record for 2 years. If prosecution is barred with the condition of a juvenile contract (see [Section 2.3.6](#)), it will appear on the criminal record for 1 year.

Crimes will appear on the individual police criminal record for at least 10 years. For a child suspect who was below 15 years of age when the investigation of his/her crime was registered in the criminal record, the registration will automatically be deleted after 8 years. This will not take place if, in the meantime, the child is sentenced for other serious crimes. In such cases, the registration in the police criminal record will be deleted after 20 years¹¹⁶.

¹¹⁴ Danish Institute for Human Rights, Parallel report to the UN Committee on the Rights of the Child on the 4th periodic report by the government of Denmark, July 2010, page 10.

¹¹⁵ Information provided by an attorney stakeholder.

¹¹⁶ Executive Order No. 218 of 27/3/2001 on treatment of personal information in the Central Crime Registry, Annex 4 (*Bekendtgørelse* nr. 218 from 27/3/2001).

4 Strengths and potential gaps

One of the strengths of the legal framework in Denmark is its focus on the cooperation between police departments and social services. However, in practice the cooperation does not always work sufficiently well as illustrated by the survey of the Danish National Social Appeals Board. The survey documents that, in almost half the cases, social services have not lived up to the requirements of the law to meet the deadlines, to react on previous notifications, or to introduce special measures at an earlier stage.

A gap in the Danish system is that children (in all roles – victim/witness/suspect) are not provided with specific rights as children in the criminal justice system over the course of criminal proceedings. They are generally also not provided with any special information, e.g. there is no mention of the UN Convention on the Rights of the Child in the legislation.

Child suspects and offenders between 15 and 18 years of age are not seen as children by the system. Instead they are treated as adult suspects and offenders. Even though the age of criminal responsibility in Denmark is 15 years of age, children below 15 years of age may still be detained and interviewed by the police. In all other respects children below 15 years of age are dealt with in the administrative system.

A strength is the speed of criminal procedures regarding child offenders. One example is the special fast track procedure in cases where the offender between 15 and 18 years of age confesses to the crime. In these cases, the processing time should not be more than 2 months for the police, the prosecution and social services. For more information see [section 2.3.6](#).

There are also positive perspectives with regard to the general system of [Victim-Offender Mediation](#). This system is relatively new and the coming years will show its possible benefits with regard to child offenders. Another strength is the number of alternatives to prison like community service and juvenile sanctions.

The lack of a maximum length of imprisonment for child offenders between 15 and 18 years of age remains a gap in the Danish system. The Danish Institute for Human Rights is concerned about the maximum length of prison sentences for children¹¹⁷. The Danish Prison and Probation Service makes yearly [statistics](#) on length of sentence of offenders in Danish prisons and detentions. However, the statistics do not differentiate among ages of offenders and no information or examples are given with regard to the length of sentences of child offenders between 15 and 18 years of age.

Moreover, United Nations human rights monitoring committees as well as Danish NGOs argue that it should be prohibited to use solitary confinement against child offenders in Denmark and that child offenders should not be put in prisons with adults.

¹¹⁷ Danish Institute for Human Rights, Parallel report to the UN Committee on the Rights of the Child on the 4th periodic report by the government of Denmark, July 2010, page 16. [Parallel Report to the UN Committee on the Rights of the Child](#).

Conclusions

Denmark does not have specialist institutions in place to deal with child victims and child witnesses in criminal judicial proceedings. The normal police, prosecution and court services will deal with such children. However, guidance is provided with regard to, for example, questioning of child victims and witnesses and the right to assistance from a representative from the social services of the local municipality. The police must also provide guidance to victims on the rules governing appointment of special legal representation.

The age of criminal responsibility in Denmark is 15 years. In general, no special or separate procedures are in place for criminal proceedings against child suspects and offenders between 15 and 18 years of age. They are not provided with any specific rights as children in the criminal system and in general do not receive any special information on the procedures that will be followed or any related rights. Instead, they are generally treated as adult suspects and offenders, although they will normally be placed in secure residential centres functioning as surrogate prisons for children between 15 and 18 years of age. In addition, a number of special measures are in place to protect the child offender within the traditional criminal system, such as surrogate custody.

United Nations human rights monitoring committees as well as Danish NGOs point out that the Danish system does not stipulate a maximum imprisonment for child offenders between 15 and 18 years of age. They also argue that it should be prohibited to use solitary confinement against child offenders between 15 and 18 years of age in Denmark and that child offenders should not be put in prisons with adults.

Annex – Legislation reviewed during the writing of this report

- Administration of Justice Act – Consolidated Act no. 1008 of 24 October 2012
- Penal Code – Consolidated Act no. 1007 of 24 October 2012
- Service Act – Consolidated Act no. 810 of 19 July 2012