



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

June 2013

This National Report has been prepared by Dr Julia Behrens for Milieu Ltd in partnership with ICF GHK under Contract No JUST/2011/CHIL/PR/0147/A4 with the European Commission, DG Justice.

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Executive summary

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

The German criminal justice system takes into account the best interests of the child by providing extensive rights for child victims, witnesses and suspects, accused and offenders. The key elements of the judicial system regarding children are the right of children to be informed in a child-friendly manner of their rights, the right to be accompanied and supported by a trusted person or by a legal counsel during the proceedings and the right to be protected from harm.

The specific rights of children as victims and suspects must be distinguished. Most rights of adult victims and witnesses also apply to children whereas the legal provisions for child suspects, accused and offenders are completely different from those applying to adults. As a victim is always also a witness to a crime, their rights are mainly the same, although in certain cases the rights of child victims are more extensive.

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

Child victims and witnesses

Regarding the reporting of a crime, there are no specific provisions for children, but also no age limit to report a crime. Witness support organisations ensure that the child's special requirements, age, maturity and level of understanding are taken into account by the respective authority.

Witnesses must be informed about their rights as early as possible, as a rule in writing, and as far as possible in a language they understand. There are no additional provisions on how to explain these rights in a child-friendly manner and thus this depends on the individual application and assessment by the professionals involved. The child always needs to be accompanied by a parent or a guardian. Several provisions in Germany protect the child witness's privacy and family life. For instance, children do not need to testify against family members and they have the right to be questioned separately from the offender. In addition, only the presiding judge questions the child witness. The judge should be specifically trained on how to communicate with children but this is not an obligation.

Only the participants to the proceedings have the right to be heard in criminal proceedings. Witnesses (whether children or adults) do not have formal participation rights. However, everyone (whether a child or adult) who can contribute to solve the case will be heard as a witness.

Victims of a crime may have the assistance of an attorney from the moment of the first interview. In addition, they have rights to legal remedy and compensation. These rights are not specific to children. However, on behalf of the child victim, a legal representative can bring a private prosecution (*Privatklage*) or a claim for property damage or he/she may join the proceedings as a private accessory prosecutor (*Nebenklage*). For severe offences, such as sexual abuse, an attorney as counsel for the child will be appointed upon application.

Child suspects, defendants and offenders

From the beginning of the investigation and the commencement of criminal proceedings against a child, the youth court assistance service is involved to evaluate the background and psychological development of the child.

The child has to be informed about his/her rights in a way taking his/her level of development, education and maturity into account. The same information must also be given to his/her parents or guardians or other legal representatives (i.e. those given legal authority to act on behalf of the child). The parent or guardian and the legal representative of the accused child have the right to be heard, to ask questions and submit applications or to be present during acts of investigation to the same extent as the accused himself/herself. The legal representative's right to select a defence counsel and to file for legal remedies are also available to the parent or guardian. However, the judge may remove such rights from the parent or guardian and the legal representative insofar as they are suspected of participating in the accused child's misconduct or insofar as they have been convicted of such participation.

If the parent or guardian and the legal representative no longer hold those rights, the judge with jurisdiction for family or guardianship matters shall appoint a carer to preserve the accused's interests in the proceedings¹.

A compulsory defence counsel must be appointed by the presiding judge, for example if the child committed a serious offence or if the parent or guardian and the legal representative have had their rights withdrawn or were excluded from the hearing or if pre-trial detention has been imposed².

Pre-trial detention can only be imposed and enforced on children if its purpose cannot be achieved by a preliminary supervision order or by other measures if they are considered proportionate.

Proceedings where children are involved take place in specific youth courts.

For guidance and support when attending proceedings, the presiding judge can appoint an adviser for the accused child at any stage in the proceedings if the circumstances do not warrant the appointment of a compulsory defence counsel.

The public prosecutor may dispense with a prosecution with formal proceedings being conducted only if the prosecution does not see any possibility to end the criminal proceedings in an informal way. The judge may also discontinue the proceedings and impose supervisory measures as an order of the court instead of a judgment. Where the main proceedings take place and end with a judgment, the court may impose supervisory measures (*Erziehungsmassregeln*) and where these do not suffice, disciplinary measures (*Zuchtmittel*) or a youth penalty (*Jugendstrafe*). The imposition of supervisory measures is possible even for serious crimes. In order to ensure that measures and sanctions for children in conflict with the law are in compliance with the principle of proportionality, the child's age, physical and mental well-being and development are taken into consideration.

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

Despite the overall positive and protective system of the rights of victims, witnesses, suspects, defendants and offenders in criminal proceedings in Germany, the following gaps have been identified:

A child that does not yet have the intellectual maturity to sufficiently understand the importance of their right of refusal to testify, cannot testify against the will of his/her parent or legal representative, unless they are accused themselves. This provision limits the child's right to express his/her opinion in court, as it cannot always be taken for granted that the parent acts in the best interest of the child.

Children as witnesses can only participate in proceedings in their own right regarding the reporting of a crime and giving testimony if they have the intellectual maturity to understand their right to refuse to testify. Otherwise, they can only enforce their rights or participate through the action of their parent or guardian. This fails to consider the principle of children's evolving capacities and their right to be heard. Once again, it cannot always be taken for granted that the parent only acts in the best interest of the child.

The appointment of a psychologist for the child as a witness during the proceedings is a discretionary decision of the judge. This should be a legally binding right, in order to better meet the child's needs.

In Germany the possibility of preventive detention exists also for children. Retroactively ordered preventive detention of adults was deemed a violation of the European Convention of Human Rights by the European Court of Human Rights. This applies even more so to children.

¹ Section 67 of the [Youth Courts Law](#).

² Section 68 of the [Youth Courts Law](#).

Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union
RiStBV	<i>Richtlinien für das Strafverfahren und das Bußgeldverfahren</i> - (Guidelines for criminal proceedings and for administrative-fine proceedings)
MACR	The minimum age of criminal responsibility

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

The legal framework and the institutions relevant to children in criminal proceedings can be clearly distinguished between those involved with children as victims and witnesses on the one hand and those regarding child suspects. The rights of victims and witnesses are in many aspects the same although victims' rights are in parts more extensive and carry greater enforcement powers. Most legal provisions protecting the best interest of victims and witnesses apply both to adults and children. Some specific provisions and guidelines apply only to the child witness or victim of a crime. Regarding children above 14 years of age (referred to as youth in the law), specific laws, courts, prisons and procedures ensure that they are never treated as adults and young adults are almost always treated as children above 14 years of age³. It should be noted that whilst in German law different terminology is used for children of different ages (e.g. youth or juvenile), for the purposes of this study the term child or children will be used for any person below the age of 18 (in line with the Council of Europe guidelines on child-friendly justice). Differences in treatment between different ages of children will be clarified as appropriate.

The prevention and prosecution of sexual or other physical abuse is the policy focus for children as victims and witnesses⁴.

The application of criminal law to children above 14 years of age is aimed at preventing them from relapsing into criminal behaviour. In order to achieve this goal, the legal remedies of youth crime are primarily educational⁵. The intervention of the Youth Courts Law is characterised by the principle of 'subsidiarity' or 'minimum intervention'. This means that penal action should only be taken if absolutely necessary. Furthermore, sanctions must be limited by the principle of proportionality⁶. It should be noted that the public prosecutor may dispense with prosecution. The judge may also discontinue the proceedings and impose supervisory measures as an order of the court instead of issuing a judgment. Where the main proceedings take place and end in a judgment, the court may impose supervisory measures (*Erziehungsmassregeln*) and where these do not suffice, disciplinary measures (*Zuchtmittel*) or a youth penalty (*Jugendstrafe*). The imposition of supervisory measures is possible even for serious crimes. In order to ensure that measures and sanctions for children above 14 years of age who are in conflict with the law are in compliance with the child's age, their physical and mental well-being and development are taken into consideration.

Once proceedings have been initiated, an investigation into the accused child's life and family background, development, previous conduct and other circumstances should be conducted as soon as possible in order to assist in the assessment of his psychological, emotional and character status.

The laws, guidelines and policy measures are based on the competence of the federal government. However, the support institutions for victims and witnesses are regionally and locally organised and do not generally co-ordinate their activities.

However, a [Round Table on 'Sexual Abuse of Children in Relationships of Dependence and Power in Private and Public Institutions and within the Family Environment'](#) was established in 2010 where around 60 high-level representatives from the civil society, the church and the political domain participated. The working group has already drawn up a series of specific

³ According to Section 1(2) of the [Youth Courts Law](#) 'youth' is defined as anyone who, at the time of the act, has reached the age of 14 but not yet 18 years of age; 'young adult' is defined as anyone who, at the time of the act, has reached the age of 18 but not yet the age of 21.

⁴ [Action Plan 2011 of the federal government on the protection of children and youth from sexual violence and exploitation](#).

⁵ Section 2(1) of the [Youth Courts Law](#).

⁶ Frieder Dünkel, '[Juvenile Justice in Germany: Between Welfare and Justice](#)', p. 4 (pp. 1-37).

proposals on ways in which the legislator can improve the protection of victims during investigations and criminal proceedings. Some of them have already been implemented, such as the greatest possible avoidance of multiple interviews of victims as witnesses through the increased use of judicial questioning by video link or the possibility of appointing a legal counsel for the victim.

For the purposes of this study, a brief overview of the key elements of the institutional and legal framework relevant to children as victims, witness and as suspects is provided. For a more detailed description of the German criminal justice systems please see the European Commission's [e-Justice portal](#).

Children as victims and witnesses

The second Victim's Rights Reform Act ([Das zweite Opferrechtsreformgesetz](#)) of 2009 introduced major improvements regarding the rights of victims in criminal proceedings, in particular for children, mainly by amending the German Criminal Code of Procedure. The amendments aim at achieving high quality evidence while helping to protect the victims' and witness' welfare. However, it should also be noted that children who are witnesses but not victims in proceedings, do not have access to a number of specialised services and protective measures.

By way of example, the public prosecutor and the police are now legally obliged to inform victims, including child victims, of their rights, such as the right to receive support and assistance by victim support institutions, counselling or psychosocial support in a quick manner and in a language they understand. This support is especially important for vulnerable victims, such as children. At the interview of victims, a person whom they trust can be present upon their request, except where this could endanger the purpose of the investigation.

The Guidelines for the Public Prosecution Office ([Richtlinien für das Strafverfahren und das Bußgeldverfahren - RiStBV](#)) and the Courts Constitution Act complement the legal framework of protective measures for victims and children. The Guidelines ensure, inter alia, that proceedings involving children are dealt with as quickly as possible and the Court Constitutional Act provides for the jurisdiction of the Youth Courts also in cases where children are victims of offences committed by adults⁷.

Victim support organisations such as '[Der weiße Ring](#)' or Child and Youth Services (*Kinder und Jugendhilfe*) and the Youth Emergency Service (*Jugendnotdienst*) support and accompany children when reporting a crime and ensure that their special requirements, age, maturity and level of understanding are taken into account by the respective authority⁸.

Child Protection Systems for abuse and neglect

With respect to child abuse and neglect, the Federal Ministry for Families, Senior Citizens, Women and Youth introduced a National Action Plan in 2011 on '[The protection of children and youth from sexual violence and exploitation](#)'. The Action Plan plays a key role in the federal government's overall strategy for the protection of children and young people from every form of violence and discrimination.

In this context, the ministry introduced recommendations, inter alia, 'Guidelines for institutions', 'Strengthening the rights of victims' and 'Improvements of access to support for victims'. The main focus of these recommendations is on:

- Prevention
- Intervention
- Prevention of sexual violence and exploitation in the digital media (including child pornography)

⁷ Section 26(1) first sentence and Section 74b of the Courts Constitution Act.

⁸ Child and Youth Services and the Youth Emergency Service are organised on the level of the *Länder*.

- Fight against human trafficking and sexual exploitation of girls and boys
- Research
- International Cooperation

Several initiatives, websites and brochures implement these recommendations providing information to parents on how to deal with sexual abuse. For instance, the brochure '[Mutig fragen-besonnen handeln](#)' gives information to parents on how to deal with sexual abuse of their children.

A national phone number called 'Number Against Sorrow' ([Nummer gegen Kummer](#)), co-funded by the European Union and the Federal Ministry for Families, Senior Citizens, Women and Youth provides legal and psychological support to children in difficult situations.

Knowledge and awareness is one key element in preventing abuse and neglect of children. The Federal Centre for Health Education ([Bundeszentrale für gesundheitliche Aufklärung](#)) offers health education through various brochures and websites informing inter alia on the prevention of sexual abuse.

The federal government will launch an initiative called 'Initiative to Prevent' ([Initiative zur Prävention](#)) in 2013 targeted at raising awareness and educating children about sexual violence.

Within the context of these initiatives, the Federal Government addresses also the specific needs of migrant children, who are particularly vulnerable.

Child suspects, defendants and offenders

The legal framework of the German youth justice system is based on the Youth Courts Law (*Jugendgerichtsgesetz*), which deals with the consequences for child offenders above 14 years of age who have committed a criminal act stipulated in the general Criminal Code (*Strafgesetzbuch*). Punishable crimes are thus the same as for adults. A child, who has not attained the age of 14 at the time of the offence, is deemed to act without guilt⁹. Nevertheless, a child who has reached the age of seven can be held responsible for damage caused to another person under civil law¹⁰.

The [Guidelines to the Youth Courts Law](#) can be used for interpretative purposes providing guidance on the provisions of the Act to the public prosecutor and the judges.

The Youth Courts Law consists of a specific system of educational measures and sanctions applicable to child offenders and of specific procedural rules for the youth court and its proceedings (e.g., accelerated proceedings). Above all, the aim of the youth justice system is to reintegrate child offenders into society.

As opposed to the Criminal Code for adults, obligatory prosecution, i.e. the principle of legality (*Legalitätsprinzip*), is applied in a more lenient way with respect to children. This means that the prosecutor has the discretion to prosecute or to dispense with prosecution because of the petty nature of the offence or because educational measures are considered to be more appropriate.

At all stages of the investigation and the proceedings, the youth court assistance service is responsible for evaluating the background and psychological development of the child. For this purpose, they support the court by conducting research into the accused child's personality, his/her development and environment, and express their opinion on the measures to be taken. Youth criminal trials are not open to the public; only the parents of the accused and the victim may attend the trial.

During the entire criminal procedure, child offenders are fully separated from adult suspects. This applies to court proceedings, which are held in a specific youth court, to pre-trial detention and to penalties depriving the child of his/her liberty, which are served in prison

⁹ Section 19 of the German Criminal Code.

¹⁰ Section 828 of the German Civil Code.

facilities specialised in handling children. The youth prisons are equipped with sport and educational facilities and are staffed with personnel with educational expertise.

Training requirements of professionals

Judges sitting in the youth courts and public prosecutors handling matters involving children above 14 years of age are required by law to have appropriate education and training as well as experience in the education and upbringing of children¹¹. There is no obligatory training for police officers and defence counsel working with children. If training is provided, for example by victim support organisations, attendance is voluntary and mostly not continuous.

The Federal Ministry of Justice has laid down detailed procedures for interviewing and dealing with child victims and witnesses¹². For example, it requires that only prosecutors and judges experienced with children should be involved in criminal proceedings with child victims. Prosecutors, judges and police officers expected to be trained on how to respect the best interests of the child¹³. However, these guidelines are not obligatory.

The German Judicial Academy (*Deutsche Richterakademie*) offers interregional training to judges from all branches of the justice system, as well as public prosecutors. The aim of the Academy is to provide further training for judges and public prosecutors in their specialist areas, as well as enhance their political, social, economic, academic and foreign language skills. More than 150 further training events are organised each year at the training centres and, nearly 5,000 judges and public prosecutors attend seminars held by the German Judicial Academy every year¹⁴.

After three to five years, judges become appointed for life. For individual cases, a judge may be challenged both when s/he has been barred by law from exercising judicial office and where there is a risk of bias¹⁵.

In order to effectively implement the victim support measures and to provide the relevant knowledge and capacity to deal with children, the Federal Ministry of Justice initiated a training of social workers to support victims psychosocially and psychologically during proceedings¹⁶.

Definition of 'child' and 'youth', age and maturity

The definition of a child is dependent on which law is of relevance. Thus the Youth Protection Act considers a child to be any person below the age of 14 years¹⁷. At the same time, some provisions on the protection of children also include persons who are not yet 18 years old, for example with respect to some witness protective measures, such as the option to record the questioning of witnesses and victims on an audio-visual medium. There is no age limit concerning when a child may provide evidence in court, but rather this depends on his/her level of development and maturity.

A 'youth' is any person who is 14 but not yet 18 years of age; a 'young adult' is any person who is aged 18 or over but not yet 21 years of age¹⁸. Children under the age of 14 are not held responsible for criminal offences¹⁹. Children above 14 years of age are only held

¹¹ Section 37 of the [Youth Courts Law](#).

¹² [Guidelines of the Federal Ministry of Justice](#) for the protection of children as victims/witnesses on criminal proceedings.

¹³ [Guidelines of the Federal Ministry of Justice](#) for the protection of children as victims/witnesses on criminal proceedings, p. 12.

¹⁴ For more information, please see: <http://www.deutsche-richterakademie.de/icc/draen/nav/123/broker?editmode=false>.

¹⁵ Section 24(1) of the [German Code of Criminal Procedure](#).

¹⁶ The training is conducted by a victim support organisation: "[Rights would help](#)" (*Recht Würde helfen*); for more information please see <http://www.rwh-institut.de/index.php?id=4>.

¹⁷ Section 1 of the Youth Protection Act.

¹⁸ Section 1(2) of the [Youth Courts Law](#).

¹⁹ Section 19 of the [German Criminal Code](#).

responsible under the Youth Courts Law, when they show a sufficiently mature moral and mental state of development at the time of the offence so that they understand the unlawfulness of the offence and are able to act in line with that understanding²⁰.

Regarding young adults, the judge can apply the provisions applicable to children if the overall assessment of the perpetrator's personality, circumstances and motives of the act indicate that it constituted 'youth misconduct'²¹. In practice, the Youth Courts Law is almost always applied to young adults²².

It should be noted that whilst in German law different terminology is used for children of different ages (e.g. youth or juvenile), for the purposes of this study the term child or children will be used for any person below the age of 18 (in line with the Council of Europe guidelines on child friendly justice). Differences in treatment between different ages of children will be clarified as appropriate.

Participation of children and measures against discrimination

By ratifying the UN Convention on the Rights of the Child in 1992, Germany undertook several legislative and policy initiatives to guarantee the rights of the child with regard to participation and non-discrimination. The National Action plan 'For a Germany Fit for Children 2005-2010' (*'Der Nationale Aktionsplan „Für ein kindergerechtes Deutschland 2005-2010'*) and the final report on the success of the implementation of the National Action Plan aims at the improvement of, inter alia, equal opportunities through education, ensuring a non-violent upbringing and preventing violence and neglect of children in child-raising.

According to the Action Plan, children have the right to participate in their family, at school, at the nursery, in housing and urban planning and in the societal debate about Germany's future. These rights are enshrined in the Child and Youth Welfare Act (SGB VIII), the *Länder's* regulations on participation in day nurseries and schools and in municipal ordinances. Municipal development planning has to consider young people's social and cultural needs, through the participation of youth associations, e.g. by youth groups or representative forms like children and youth parliaments and school councils.

In order to improve leisure activities and integrate minorities at school, the National Action Plan aims at introducing extracurricular education by local youth welfare offices and schools. The federal government promotes the improvement of socially deprived or economically underdeveloped rural areas through a number of projects and programmes like 'young people's development and opportunities; (*Entwicklung und Chancen junger Menschen*), 'Social town' (*Soziale Stadt*) and a restructuring of the youth migration services.

In 2012 a new federal child protection law entered into force aiming at improving the protection of children by strengthening their role and opportunities for participation. The law includes support measures for families and institutions and measures for better cooperation among the relevant actors as well as child protection networks²³.

²⁰ Section 3 of the [Youth Courts Law](#).

²¹ Section 105 of the [Youth Courts Law](#).

²² Information based on an interview with youth judge.

²³ For more information please see 'New Federal Child Protection Law', the Federal Government website, available at <http://www.bundesregierung.de/Content/DE/Artikel/2012/01/2012-01-03-kinderschutz.html>.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There are no specific provisions for children to report a crime. Any person – including the child victim, his or her parents or guardians, relatives, friends or neighbours or witnesses – can report a crime in their own right without a representative to any police station or police officer, any public prosecution office, or any local court. There is no specific obligatory training for police officers on how to interact with children reporting a crime. However, many police departments provide for special child-friendly interview rooms and for Victim Protection Services ensuring that the child is treated in a child-friendly manner²⁴.

The crime can be reported anonymously or under a pseudonym, in writing or orally. Oral information must be recorded in writing²⁵.

Once a crime is reported, the report cannot be withdrawn. The prosecuting authorities are obliged to investigate the facts of every suspected criminal offence as soon as they obtain knowledge of it²⁶.

There is no specific time-limit for reporting and investigating an offence. However, after the lapse of a certain period of time, which depends on the seriousness of the crime, most crimes cannot be punished any more. In this context, it is noteworthy that regarding sexual abuse of children, the limitation period is suspended until the victim is 18 years old²⁷ i.e. the period during which a crime can be reported and will be investigated does not start running until the victim turns 18.

Witness support organisations such as '*Der weiße Ring*' or Child and Youth Services (*Kinder und Jugendhilfe*) and the Youth Emergency Service (*Jugendnotdienst*) support children in reporting a crime and ensure that their special requirements, age, maturity and level of understanding are taken into account by the respective authority²⁸.

Whoever reports a crime will get a case number. When children report a crime, their parents or guardian receive the crime reference number on their behalf. The victim can follow up on what the police do and submit further information using the case number. At a later stage, he or she can also ask the police or the public prosecution office for the public prosecutor's file number of the case, which will be different from the number given by the police. It is preferable to cite reference numbers and file numbers when contacting the authorities²⁹.

2.1.2 Provision of information

Child victims, as all victims, must be informed about their rights as early as possible by the authority they first come into contact with (the police, the public prosecutor), as a rule in

²⁴ For example: Victim Protection Service of the Police in North Rhine-Westphalia: http://www.polizei.nrw.de/rhein-kreis-neuss/artikel__3043.html.

²⁵ Section 158(1) of the [German Code of Criminal Procedure](#).

²⁶ Section 160 of the [German Code of Criminal Procedure](#).

²⁷ Section 78b(1) n.1 of the [German Criminal Code](#). According to Section 78(2)(3) of the German Criminal Code, murder under specific aggravating circumstances is not subject to the statute of limitations. Otherwise the limitation period is thirty years for offences punishable by life imprisonment; twenty years for offences punishable by a minimum term of imprisonment of more than ten years; ten years for offences punishable by a minimum term of imprisonment of more than five years but no more than ten years; five years for offences punishable by a minimum term of imprisonment of more than one year but no more than five years; and three years for all other offences.

²⁸ Child and Youth Services and the Youth Emergency Service are organised on the level of the *Länder*.

²⁹ [European Commission's E-justice portal](#).

writing, and as far as possible in a language they understand³⁰. There are no additional provisions on how to explain these rights in a child-friendly manner. The child always needs to be accompanied by a parent or a guardian.

In the same way as all victims, child victims are informed:

- about their right to join the public prosecution as private accessory prosecutors (*Nebenklage*), which gives child victims of certain crimes extensive possibilities to influence the main proceedings (e.g., challenge judges or experts, exercise the right to ask questions or the right to apply for evidence, or the right to make statements). Private accessory prosecutors may apply to have a legal counsel appointed for them or to be awarded legal aid for having such counsel³¹;
- about the right to assert a claim for damage to property arising out of the criminal offence in criminal proceedings³²;
- about the possibility of asserting a claim for compensation against the accused during the criminal proceedings in accordance with the Crime Victims Compensation Act (*Opferentschädigungsgesetz*)³³;
- about the possibility of applying for orders to be issued against the accused in accordance with the Act on Civil Law Protection against Violent Acts and Stalking (*Gewaltschutzgesetz*)³⁴;
- about the right to receive support and assistance through victim support institutions, e.g. in the form of counselling or psychosocial support during the proceedings³⁵;
- about the right to be accompanied during the interview by a person of trust, unless their presence would endanger the purpose of the investigation³⁶;
- about the right to legal counsel during questioning from the moment of the first interview³⁷. The attorney may review the files that are available to the court, if s/he can show a legitimate interest in this regard³⁸
- about the right to legal aid under certain circumstances³⁹;
- about the right of the attorney to review the files⁴⁰;
- about the right to request information over whether the convicted person has been ordered to refrain from contacting or consorting with the victim⁴¹;
- about the right to request information whether custodial measures have been ordered or terminated in respect of the accused or the convicted person, or whether for the first time a relaxation of the conditions of detention or leave has been granted⁴²;
- about the possibility of getting help and support from a victim support organisation⁴³;

³⁰ Section 406f of the [German Code of Criminal Procedure](#).

³¹ Section 406h(1) n. 1 of the [German Code of Criminal Procedure](#). This can happen if the child was victim of severe offences such as a crime against sexual self-determination, attempted murder, abandonment, bodily harm, human trafficking.

³² Section 406h(1) n. 2 of the [German Code of Criminal Procedure](#).

³³ Section 406h(1) n. 3 of the [German Code of Criminal Procedure](#).

³⁴ Section 406h(1) n. 4 of the [German Code of Criminal Procedure](#).

³⁵ Section 406h(1) n. 5 of the [German Code of Criminal Procedure](#).

³⁶ Section 406f (2) of the [German Code of Criminal Procedure](#).

³⁷ Section 406f of the [German Code of Criminal Procedure](#).

³⁸ Section 406e of the [German Code of Criminal Procedure](#).

³⁹ Section 406f(4) of the [German Code of Criminal Procedure](#).

⁴⁰ Section 406e of the [German Code of Criminal Procedure](#).

⁴¹ Section 406d(1) n. 1 of the [German Code of Criminal Procedure](#).

⁴² Section 406d(1) n. 2 of the [German Code of Criminal Procedure](#).

- about the right to contest the decision and the time limit provided for this⁴⁴;
- about the right to be notified of the termination of the proceedings and of the outcome of the court proceedings to the extent that they are relevant for the victim⁴⁵.

Any child victim and child witness (like adults) in criminal proceedings can be informed⁴⁶:

- about the right to refuse to testify against close relatives to protect the family⁴⁷;
- about the right to be reimbursed for travel costs, expenses incurred, loss of time, difficulties in housekeeping or loss of income (up to certain limits)⁴⁸;
- about the right to be informed if and why the public prosecution office decides not to continue with the prosecution⁴⁹.

A witness summons shall specify procedural requirements serving the interests of the witness, the forms of assistance available to witnesses, as well as the legal consequences of failure to appear⁵⁰.

Victim support organisations such as ‘Der weiße Ring’ or Child and Youth Services (*Kinder und Jugendhilfe*) and the Youth Emergency Service (*Jugendnotdienst*) support and accompany children when they first come into contact with the police, the public prosecutor or the court and ensure that their special requirements, age, maturity and level of understanding are taken into account by the respective authority⁵¹.

2.1.3 Protection from harm and protection of private and family life

2.1.3.1 Protection from harm and protection of private life

There are several provisions in Germany protecting child victims and witnesses from harm and their private life. For example, the questioning of child witnesses and victims can be recorded through audio-visual means⁵².

Many police departments provide for special child-friendly interview rooms and for Victim Protection Services ensuring that the child is interviewed in a child-friendly manner⁵³.

Only the presiding judge questions child victims and witnesses to avoid interviewing of the child by different people⁵⁴. The judge is expected to be specifically trained on how to communicate with children. However, this is not a legal requirement.

In proceedings relating to certain serious crimes, particularly of a sexual or life threatening nature, the questioning of a child may be replaced by the showing of an audio-visual recording of his or her previous interview⁵⁵. This is only allowed if the defendant and his/her defence counsel were given the opportunity to participate in such questioning to ensure that the defendant's right to contest the content of such statements is respected.

If there is an imminent risk of serious detriment to the well-being of the child witness (as of the adult witness) if he/she is questioned in the presence of persons who are entitled to be

⁴³ Section 406d(1) n. 5 of the [German Code of Criminal Procedure](#).

⁴⁴ Section 171 2nd sentence of the [German Code of Criminal Procedure](#).

⁴⁵ Section 406d of the [German Code of Criminal Procedure](#).

⁴⁶ [European Commission's E-justice portal](#).

⁴⁷ Section 52(1) of the [German Code of Criminal Procedure](#).

⁴⁸ Section 220(2) of the [German Code of Criminal Procedure](#).

⁴⁹ Section 171 1st sentence of the [German Code of Criminal Procedure](#).

⁵⁰ Section 48(2) of the [German Code of Criminal Procedure](#)

⁵¹ Child and Youth Services and the Youth Emergency Service are organised on the level of the *Länder*.

⁵² Section 58a(1) n. 1 of the [German Code of Criminal Procedure](#).

⁵³ For example: Victim Protection Service of the Police in North Rhine-Westphalia:
http://www.polizei.nrw.de/rhein-kreis-neuss/artikel__3043.html

⁵⁴ Section 241a [German Code of Criminal Procedure](#).

⁵⁵ Section 255a(2) of the [German Code of Criminal Procedure](#).

present, such as the defendant, and if that risk cannot be averted in some other way, the questioning of the child witness can be carried out in the absence of these persons with simultaneous audio-visual transmission of the questioning⁵⁶.

The court may order the defendant to leave the courtroom during the questioning of a child, if the defendant's presence is a risk to the well-being of the child⁵⁷. The media need to consider the particular vulnerability and the right to privacy of children involved criminal proceedings⁵⁸.

In order to prevent violations by the media of the right of children to their private life, the court may order the public, including the media, to leave the courtroom⁵⁹.

A child victim or witness whose testimony is essential and whose body, life, health, freedom or important material goods are endangered can remain completely anonymous or may participate in a witness protection programme. The programme includes the possibility of temporarily assuming a new identity⁶⁰.

In cases of domestic violence, a protection order can be issued upon request of the victim which orders the removal of the accused from a joint home and bans him or her from approaching the victim⁶¹. In the interest of protecting children, the person(s) having custody (generally the parents) may be totally or partly denied their custody rights. The same applies to their access rights (including contact). The police can also send the offender away from the family home or arrest him/her before the court order is issued⁶².

Guidelines for criminal proceedings aim, inter alia, at the protection of children. For instance, in order to minimise the stress of child victims their repeated questioning prior to the main proceeding should be avoided⁶³. Furthermore, children should be questioned before other witnesses and taken care of in the waiting room⁶⁴. In the case of sexual crimes, the questioning of children must be conducted in the presence of a child psychology expert⁶⁵. If the person accused of a sexual crime lives in the same household as the victim, the Youth Office must be promptly notified so that the necessary measures for the protection of the victim can be taken, such as removal of the child from the household⁶⁶.

Cases involving child victims can be heard at the Regional Court (*Landgericht*) instead of the Local Court (*Amtsgericht*); in this way child victims are relieved from the burden of having to go through two proceedings⁶⁷. In addition to the courts with jurisdiction over general criminal matters, Youth Courts have jurisdiction for criminal offences committed by adults which injure or directly endanger a child, or violations by adults of legal provisions serving the protection or education of young people⁶⁸.

In matters relating to the protection of children, the public prosecutor should bring charges before the Youth Courts if child victims must act as witnesses in the proceedings or if a hearing before the Youth Court appears expedient for other reasons⁶⁹.

⁵⁶ Section 168e and 247a of the [German Code of Criminal Procedure](#).

⁵⁷ Section 247 2nd sentence of the [German Code of Criminal Procedure](#).

⁵⁸ N. 4.2. and 13.3 of the [Guidelines for publications](#).

⁵⁹ Section 172 n. 4 of the [Courts Constitution Act](#).

⁶⁰ Section 1 of the Act to Harmonise Protection for Witnesses (*Zeugenschutzharmonisierungsgesetz*).

⁶¹ Section 1 of the Protection Against Violence Act (*Gewaltschutzgesetz*).

⁶² [European Commission's E-justice portal](#).

⁶³ Pursuant to RiStBV n. 19(1) (The Guidelines for the public prosecution Office ([Richtlinien für das Strafverfahren und das Bußgeldverfahren - RiStBV](#))).

⁶⁴ Pursuant to RiStBV n. 135(3).

⁶⁵ Pursuant to RiStBV n. 222(1).

⁶⁶ Pursuant to RiStBV n. 221 (2),

⁶⁷ Section 24(1) n. 3 of the [Courts Constitution Act](#).

⁶⁸ Section 26(1) of the [Courts Constitution Act](#).

⁶⁹ Section 26(2) of the [Courts Constitution Act](#).

In addition, the German Code of Criminal Procedure contains several general provisions protecting witnesses (both adults and children). For example a child witness will be allowed to state another address on the documents served to the parties instead of his/her actual place of residence if he/she justifiably fears that his/her or another person's legally protected interests might be endangered. If there is well-founded reason to fear that revealing the identity or the place of residence or the whereabouts of the witness would endanger the witness's or another person's life, limb or liberty, the witness may be permitted to not provide personal identification data or to provide such data only in respect of an earlier identity. Documents establishing the witness's place of residence or identity shall be kept by the public prosecution office. They should only be included in the files when the fear of danger ceases⁷⁰.

2.1.3.2 *Protection of family life*

Any witness has the right to refuse to testify against close relatives to protect his/her family life⁷¹. If children do not yet have the intellectual maturity to sufficiently understand the importance of their right to refuse to testify, they can testify only if they wish to do so and if their legal representative also agrees to their questioning. If the statutory legal representative of the child is the suspect, he/she may not decide on the exercise of the child's right to refuse to testify⁷².

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

The German legislation provides for several measures to ensure that criminal proceedings involving children are dealt with as quickly as possible in order to protect the best interests of the child.⁷³

For child victims and witnesses there are no provisional decisions, preliminary judgments or specific enforcement procedures; however, cases where a child has been injured or directly endangered or cases where the legislative framework for the protection or education of children has been violated can be adjudicated by the Youth Courts, regardless of the age of the offender.⁷⁴

Judges sitting in the Youth Courts and public prosecutors handling matters involving children above 14 years of age are required by law to have appropriate education and training as well as experience in the education and upbringing of children⁷⁵.

In order to minimise the stress on child victims, the police are encouraged to protect the best interests of the child by adapting to the child's pace and attention span and by trying to keep disruption and length of proceedings to a minimum. Some courts provide for toys in the waiting rooms and for separate entrances for the defendant and the witness. However, all these measures are not based on any legal obligation. The extent of their actual implementation thus varies⁷⁶.

⁷⁰ Section 68 of the [German Code of Criminal Procedure](#).

⁷¹ Section 52(1) of the [German Code of Criminal Procedure](#). The following persons may refuse to testify: 1) the fiancé(e) of the accused or the person to whom the accused has made a promise to enter into a civil partnership; 2) the spouse of the accused, even if the marriage no longer exists; 2) the civil partner of the accused, even if the civil partnership no longer exists; 3) a person who is or was lineally related or related by marriage, collaterally related to the third degree or related by marriage to the second degree to the accused.

⁷² Section 52(2) of the [German Code of Criminal Procedure](#).

⁷³ E.g. RiStBV n. 221(1).

⁷⁴ Section 26(1) of the [Courts Constitution Act](#).

⁷⁵ Section 37 of the [Youth Courts Law](#).

⁷⁶ According to an interview with a judge working with child witnesses.

While child victims are questioned they can be accompanied, upon request, by, a person they trust, except where this could endanger the purpose of the investigation⁷⁷. This person can either be a parent or a legal representative or a social worker of the Youth Offices.

The judge can appoint psychologists to support the child and to make him or her better understand the layout of the court and the role of the officials involved. However, this is at the discretion of the judge.

In order to avoid a multiplication of hearings the victim may bring a claim for property damage against the accused arising out of the criminal offence in criminal proceedings if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court⁷⁸.

2.1.5 Protecting the child during interviews and when giving testimony

Protection during interview/ evidence giving

Measures protecting the child during interviews and when giving testimony are described under [Section 2.1.3](#)

Child friendly environment

Measures providing for a child friendly environment are described under [Section 2.1.4](#).

A legal representative is not mandatory during interviews, but can be appointed as described under [Section 2.1.7](#).

Admissibility and value of evidence

Child victims and witnesses are questioned without giving an oath⁷⁹. Therefore, they can only be held liable for giving false unsworn testimony, but they cannot be held liable for perjury⁸⁰. This however does not diminish the value of a child's testimony or the evidence he/she provides as an oath is in general only exceptionally taken.

2.1.6 Right to be heard and to participate in criminal proceedings

Only the accused and his/her defence counsel have the right to be heard in criminal proceedings. Child victims and witnesses (like adults) have no right to be heard, but only an obligation to testify if they can contribute to solve the case.

There is no age limit for giving a testimony. The value and weight of the testimony depends on the maturity and credibility of the witness⁸¹. The judge is encouraged to consider the special needs, age and level of understanding of the child in order and to use a language the child can understand⁸². However, there is no legal obligation to do so.

A legal representative's agreement or active participation is not a prerequisite to continue with the proceedings. For more information on the right to a lawyer, please see [Section 2.1.7](#).

The institutions will normally ensure that the testimony is translated if it is given in a language other than German. However, there is no right to an interpreter free of charge for witnesses⁸³.

⁷⁷ Section 406f(2) of the [German Code of Criminal Procedure](#).

⁷⁸ Section 402 of the [German Code of Criminal Procedure](#).

⁷⁹ Section 60 n. 1 of the [German Code of Criminal Procedure](#).

⁸⁰ Section 153 of the German Criminal Code.

⁸¹ This can be inferred from the absence of a provision on age limits for witnesses and was confirmed in interviews.

⁸² This information is based on an interview with a judge.

⁸³ [European Commission's E-justice portal](#).

In order to enable child victims/witnesses to have full access to justice, they can receive assistance through a social worker or another person of trust⁸⁴.

In summary, children can only participate in proceedings in their own right when reporting a crime and giving testimony if they have the intellectual maturity to understand their right to refuse to testify⁸⁵. Otherwise, they can only enforce their rights or participate through the actions of their parent or legal representative. For the right of the legal representative on behalf of the child victim to participate in the proceedings as a private prosecutor or to join the proceedings as a private accessory prosecutor, please see [Section 2.1.8](#).

2.1.7 Right to legal counsel, legal assistance and representation

Children cannot choose their own legal counsel and representation in their own name. Where the parents are the alleged offenders, or when there are conflicting interests between parents and children, a guardian can be appointed by the Youth Office to represent the views and interests of the child⁸⁶.

Child victims may have the help of an attorney from the moment of the first interview. Furthermore, a person whom they trust can be present at the interview, except where this could endanger the purpose of the investigation⁸⁷. The attorney may review the files that are available to the court, if s/he can show a legitimate interest in this regard⁸⁸. Regarding the option to receive legal aid as private accessory prosecutor, please see [Section 2.1.8](#).

Besides legal assistance for child victims, child witnesses also have the right to legal counsel during questioning under certain circumstances. A child witness who does not have a legal counsel and is in need of protection may be assigned legal counsel at public expense for the duration of the questioning⁸⁹.

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

There are no remedies or compensation rights specifically for children⁹⁰.

Where the public prosecution office decides not to prosecute because there is no public interest in doing so, for certain crimes the child victims' legal representative can bring a private prosecution (*Privatklage*) instead of the public prosecutor⁹¹.

Furthermore, child victims, like adults, can join the proceedings as a private accessory prosecutor (*Nebenklage*) through their legal representative. This can happen if the child was a victim of severe offences such as a sexual crimes, attempted murder, abandonment, bodily harm, human trafficking. Victims as private accessory prosecutors have extensive rights to influence the main proceedings, such as the right to ask questions or to apply for evidence to be taken, or to make statements⁹². A private accessory prosecutor may apply for the appointment of a counsel or for legal aid for using a counsel⁹³. Such counsel may be appointed provisionally, if this is imperative for special reasons, and if the assistance of

⁸⁴ Section 406f (2) of the [German Code of Criminal Procedure](#).

⁸⁵ Section 52(2) of the [German Code of Criminal Procedure](#).

⁸⁶ According to an interview with a judge.

⁸⁷ Section 406f of the [German Code of Criminal Procedure](#).

⁸⁸ Section 406e of the [German Code of Criminal Procedure](#).

⁸⁹ Section 68b of the [German Code of Criminal Procedure](#).

⁹⁰ Information obtained from an interview with a defence lawyer.

⁹¹ Section 374 of the [German Code of Criminal Procedure](#). Such offences are, inter alia trespass (Section 123 of the Criminal Code); defamation (Sections 185 to 189 of the Criminal Code); violation of the privacy of correspondence (Section 202 of the Criminal Code); bodily injury (Sections 223 and 229 of the Criminal Code); stalking (Section 238 subsection (1) of the Criminal Code) or threat (Section 241 of the Criminal Code); taking or offering a bribe in business transactions (Section 299 of the Criminal Code); criminal damage to property (Section 303 of the Criminal Code).

⁹² Section 395 of the [German Code of Criminal Procedure](#).

⁹³ Section 406h(1) n. 1 of the [German Code of Criminal Procedure](#).

counsel is urgently required and the granting of legal aid appears to be possible, but a decision cannot be expected on time⁹⁴. For severe offences, such as sexual abuse, a legal counsel will be appointed upon application of the private accessory prosecutor, if he/she is below 18 years of age or cannot sufficiently safeguard his/her own interests her or himself. The appointment shall end unless an application for granting legal aid is filed within a time limit to be set by the judge, or if legal aid is refused⁹⁵.

The child private accessory prosecutor can contest the judgment. This cannot, however relate to a change in the sentence imposed upon the offender, or have the defendant sentenced for a different criminal offence. For some offences, the private accessory prosecutor has the right to lodge an immediate complaint against the order refusing to open the main proceedings or terminating the proceedings⁹⁶.

In addition, the private accessory prosecutor may take up appeal measures independently of the public prosecution office⁹⁷.

On behalf of the child victim, a legal representative may bring a claim for property damage against the accused in order to be compensated for the damage arising out of the criminal offence⁹⁸. The claim must specify the subject of, and the grounds for, the claim and should set forth the evidence available. Making an application has the same effect as bringing an action in civil litigation. The applicant and the indicted accused shall, upon application, be granted legal aid under the same provisions as in civil litigation as soon as charges have been brought⁹⁹.

Upon application from the child victim - represented by his/her legal representative - or his/her heir, and from the accused, the court can include, in the court record, a settlement in respect of the claims arising out of the criminal offence¹⁰⁰. The court will decide upon this application in the judgment in which the accused is pronounced guilty of a criminal offence¹⁰¹. The victim can lodge an immediate complaint against a negative decision of the court¹⁰².

The provisions of the Code of Criminal Procedure governing compensation for victims do not apply in proceedings against a child¹⁰³.

In addition, the victim can assert a claim for compensation against the accused during the criminal proceedings in accordance with the Crime Victims Compensation Act (*Opferentschädigungsgesetz*)¹⁰⁴.

2.2 The child as a witness

In general it should be noted that a victim of a crime is usually also a witness of the crime. Therefore, the child as a victim enjoys the same rights as a witness. However, victims enjoy a more comprehensive protection of their rights than witnesses who are not victims. Therefore, this Section shall focus only on the differences, if any, between the rights of child victims and child witnesses. Otherwise reference will be made to the relevant sections on the rights of child victims.

⁹⁴ Section 406g(4) of the [German Code of Criminal Procedure](#).

⁹⁵ Section 397a of the [German Code of Criminal Procedure](#).

⁹⁶ Section 400 of the [German Code of Criminal Procedure](#).

⁹⁷ Section 401 of the [German Code of Criminal Procedure](#).

⁹⁸ Section 403 of the [German Code of Criminal Procedure](#).

⁹⁹ Section 404 of the [German Code of Criminal Procedure](#).

¹⁰⁰ Section 405 of the [German Code of Criminal Procedure](#).

¹⁰¹ Section 406 of the [German Code of Criminal Procedure](#).

¹⁰² Section 406a of the [German Code of Criminal Procedure](#).

¹⁰³ Section 81 of the [Youth Courts Law](#). Regarding the rights in sections 403 to 406c of the Code of Criminal Procedure.

¹⁰⁴ Section 406h(1) n. 3 of the [German Code of Criminal Procedure](#).

2.2.1 Reporting a crime

See [Section 2.1.1](#) as the same rules for apply for both child victims and child witnesses.

2.2.2 Provision of information

See [Section 2.1.2](#) which differentiates between the information given to child victims and child witnesses who are not victims.

2.2.3 Protection from harm and protection of private and family life

See [Section 2.1.3](#) insofar as it differentiates between the rights of child witnesses, who are not victims.

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

See [Section 2.1.4](#) insofar as it refers to the rights of the witness and not the victim.

2.2.5 Protecting the child during interviews and when giving testimony

See [Section 2.1.5](#) insofar as it refers to the rights of the witness and not the victim.

2.2.6 Right to be heard and to participate in criminal proceedings

See [Section 2.1.6](#) with respect to the right of child witnesses to be heard and participate in criminal proceedings.

2.2.7 Right to legal counsel, legal assistance and representation

The witness has the right to legal counsel during questioning. A witness who does not have legal counsel and is in need of protection may be assigned legal counsel at public expense for the duration of the questioning¹⁰⁵. As explained under [Section 2.1.7](#), the witness who is also the victim has more rights which they may exercise through a lawyer, such as the right to request information whether the suspect is in custody, the right to inspect the files under certain circumstances or to obtain information from the files.

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

The child witness can be compensated for his/her expenses¹⁰⁶. Otherwise, there are no remedies or compensation rights specifically for child witnesses who are not victims of a crime. For victims, please see [Section 2.1.8](#).

2.3 The child as a suspect/ defendant

2.3.1 Age of criminal responsibility

The German Youth Courts Law (*Jugendgerichtsgesetz*) applies when a youth or a young adult commits an offence which is punishable under general criminal law. A 'youth' is any person who is 14 but not yet 18 years of age at the time of the offence; a 'young adult' is any person who is 18 years old or over but not yet 21 years of age at the time of the offence¹⁰⁷. Children under the age of 14 are not held responsible for criminal offences¹⁰⁸. Nevertheless, a child who has reached the age of seven can be held responsible for the damage caused to another person under civil law¹⁰⁹.

¹⁰⁵ Section 68b of the [German Code of Criminal Procedure](#).

¹⁰⁶ Section 71 of the [German Code of Criminal Procedure](#).

¹⁰⁷ Section 1(2) of the [Youth Courts Law](#).

¹⁰⁸ Section 19 of the [German Criminal Code](#).

¹⁰⁹ Section 828 of the German Civil Code.

A child above 14 years of age is only held responsible under the German Criminal Code, when he or she presents a sufficiently mature moral and mental state of development at the time of the offence so that he or she understands the unlawfulness of the offence and is able to act in line with that understanding¹¹⁰. The judge can impose supervisory measures (*Erziehungsmaßnahmen*), disciplinary measures (*Zuchtmittel*) and youth penalty (*Jugendstrafe*) as discussed in further detail in [Section 3.1.2](#).

Regarding young adults (aged between 18 and 21 years old), the judge can apply the provisions applicable to children above 14 years of age if the overall assessment of the perpetrator's personality, taking account of his or her family environment, shows that at the time of the act his or her moral and intellectual development was equivalent to that of a child between 14 and 18 years of age, or the type, circumstances and motives of the act indicate that it amounted to a 'youth misconduct'¹¹¹.

Therefore, the minimum age of criminal responsibility (MACR) in Germany does not vary depending on the type of crime but on the age and mental state of development of the child.

2.3.2 Provision of information

If it is expected that a child above 14 years of age shall be subject to a penalty, the public prosecutor or the president of the youth court must question the accused before charges are brought¹¹². The accused child must be informed of his or her rights in a way that considers his/her level of development, education and majority. The parents or guardians and the legal representative of the accused child must also be informed of the child's rights; if they are not present during the questioning, such information must be provided to them in writing¹¹³.

At the commencement of the first interview by the public prosecutor or the president of the youth court the accused must be informed¹¹⁴:

- of the offence with which s/he is charged and of the applicable criminal law provisions;
- of the fact that the law grants her/him the right to respond to the charges, or not to make any statement on the charges;
- about his/her right to consult with a defence counsel of his/her choice, at any stage of the proceedings, even prior to the interview;
- that he may request evidence to be taken in his/her defence;
- that s/he may submit a written statement in certain cases;
- of the possibility of perpetrator-victim mediation;
- of the opportunity to dispel the grounds for suspecting him/her and to assert the facts which speak in his/her favour.

Parents or guardians and legal representatives are to be informed of all aspects of judicial proceedings¹¹⁵.

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

Once proceedings have been initiated, an investigation into the accused child's life and family background, development, previous conduct and other circumstances should be conducted as soon as possible in order to assist in the assessment of his character and psychological and emotional state. The parent or guardian and the legal representative, the

¹¹⁰ Section 3 of the [Youth Courts Law](#).

¹¹¹ Section 105 of the [Youth Courts Law](#).

¹¹² Section 44 of the [Youth Courts Law](#).

¹¹³ Section 70a of the [Youth Courts Law](#).

¹¹⁴ Section 136 of the [German Code of Criminal Procedure](#).

¹¹⁵ Section 67(2) of the [Youth Courts Law](#).

school and his/her instructors need to be contacted and should, insofar possible, be heard¹¹⁶.

The parent or guardian and the legal representative of the accused child have a right to be heard, to ask questions and make applications or to be present during acts of investigation to the same extent as the accused child her or himself. Therefore, please see [Section 2.3.2](#).

The right to select a defence counsel and to file for legal remedies is also recognised to the parent or legal representative of the child suspect. However, the judge may remove such rights from the parent or guardian and the legal representative if they are suspected of participating in the accused child's misconduct or if they have been convicted of such participation. If the parent or guardian and the legal representative no longer hold those rights, the judge with jurisdiction for family or guardianship matters shall appoint a carer to preserve the accused child's interests in the proceedings¹¹⁷.

Regarding the rights of which the child is to be informed at the beginning of the investigation, please see [Section 2.3.2](#).

The youth court assistance service must be informed without delay when a custody order is issued against a child and when a child is to be placed under temporary arrest¹¹⁸. There are no specific provisions on how the child is arrested and transported to the police or to the prison.

Regarding the legal time limits and more information on arresting a child, please see [Section 2.3.4](#).

2.3.4 Conditions for pre-trial detention/ custody

Pre-trial detention can only be imposed and enforced on children above 14 years of age if its purpose cannot be achieved by a preliminary supervision order or by other measures and if it is proportional. It can be ordered if the accused child is strongly suspected of the offence and if there is a ground for arrest. A ground for arrest exists if, on the basis of certain facts, it is established that the accused child has fled or is hiding, there is a risk that the s/he will evade the criminal proceedings or the accused child's conduct gives rise to strong suspicion that s/he will destroy, alter, remove, suppress, or falsify evidence, improperly influence the co-accused, witnesses, or experts, or cause others to do so¹¹⁹.

In general pre-trial detention should not last longer than six months. However, exceptionally, pre-trial detention can last for more than six months, if, because of a particular difficulty or the unusual extent of the investigation or some other important reason, a judgment has not yet been issued¹²⁰.

When pre-trial detention is ordered during the investigation, the detention order must justify why other measures, particularly temporary placement in a youth welfare service home, are not sufficient and provide evidence that pre-trial detention is not disproportionate¹²¹. In assessing the proportionality of this measure, account must also be taken of the stress which pre-trial detention has on children¹²².

For children under sixteen years of age, pre-trial detention due to a risk of flight is accepted only if the accused child has already absconded from the proceedings or has made efforts to do so, or has no fixed residence¹²³.

¹¹⁶ Section 43 of the [Youth Courts Law](#).

¹¹⁷ Section 67 of the [Youth Courts Law](#).

¹¹⁸ Section 72a of the [Youth Courts Law](#).

¹¹⁹ Section 112 of the [German Code of Criminal Procedure](#).

¹²⁰ Section 121(1) of the [German Code of Criminal Procedure](#).

¹²¹ Section 72(1) of the [Youth Courts Law](#).

¹²² Section 72(1) of the [Youth Courts Law](#).

¹²³ Section 72(2) of the [Youth Courts Law](#).

Decisions on the enforcement of a custody order are taken by the judge who issued the order or, in urgent cases, by the youth court judge in whose district pre-trial detention would have to be carried out¹²⁴.

If a child is being held in pre-trial detention, the proceedings must be conducted particularly quickly¹²⁵. In order to protect the child, where possible, he/she shall be placed in pre-trial detention in a special institution, or at least in a special department of the prison or in a youth detention institution¹²⁶. However, this is not always the case in practice. Sometimes children are detained together with adults¹²⁷. Furthermore, the serving of pre-trial detention should be structured in an educational manner ensuring that children in pre-trial custody are kept in a safe place, appropriate to their needs¹²⁸.

If pre-trial detention is ordered, the youth court assistance service (*Jugendgerichtshilfe*) must be immediately informed. The youth legal support organisations as well as the defence lawyer have the right to communicate with the child¹²⁹.

2.3.5 Protection of private and family life

In order to prevent violations of child suspects' privacy rights by the media and to avoid stigmatisation, the court may exclude the public from the trial of a child¹³⁰. The recording of the hearing through audio-visual means, to be published or presented in the public through the TV or radio, is prohibited¹³¹.

The presiding judge can order that the accused child is not present during the hearing if this could be disadvantageous to his/her education and development. However, the child must be informed of the deliberations held in his/her absence insofar as is necessary for the purposes of his/her defence.

Furthermore, the accused child's parent or guardian and legal representative may be excluded from the hearing, for the following reasons¹³²:

- if there is a risk of considerable educational harm to the child;
- if the parents/guardians/legal representatives are suspected of being involved in the accused child's misconduct, or, if they have been convicted of participation;
- if there is a risk to the life, limb or liberty of the accused child, of a witness or of another person;
- if it is feared that their presence will prevent ascertaining the truth; or
- if the personal life of a party concerned with the proceedings, witness or victim is discussed.

Several provisions ensure that the identity of all defendants (children and adults) is protected¹³³.

Most sanctions imposed upon children will not be registered in the Federal Crime Register but in a separate register, to which access is more restricted. Only youth penalties (*Jugendstrafe*)¹³⁴ - suspended or not - are recorded in the Federal Crime Register¹³⁵. For

¹²⁴ Section 72(3) of the [Youth Courts Law](#).

¹²⁵ Section 72(5) of the [Youth Courts Law](#).

¹²⁶ Section 93(1) of the [Youth Courts Law](#).

¹²⁷ Information obtained through an interview with an attorney.

¹²⁸ Section 93(2) of the [Youth Courts Law](#).

¹²⁹ Section 72a and 72b of the [Youth Courts Law](#).

¹³⁰ Section 172 n. 4 of the [Courts Constitution Act](#) and Section 48 of the [Youth Courts Law](#).

¹³¹ Section 169 second sentence of the [Courts Constitution Act](#)

¹³² Section 51 of the [Youth Courts Law](#).

¹³³ Section 474 until 491 of the [German Code of Criminal Procedure](#).

¹³⁴ Section 27-30 of the [Youth Courts Law](#).

more information on data protection relating to the Federal Crime Register, please see [Section 3.1.4.](#)

2.3.6 Alternatives to judicial proceedings

In criminal proceedings against children, the principle of subsidiarity (*Subsidiaritätsprinzip*) plays a key role dictating that only if the prosecution does not see any possibility to end the criminal proceedings in an informal way, shall the child be prosecuted.

In order to avoid a trial, the public prosecutor may dispense with prosecution if the child has committed a misdemeanour, the child's guilt is of a minor nature and there is no public interest in the prosecution¹³⁶. In order to dispense with prosecution the public prosecutor does not need the judge's consent.

The public prosecutor shall dispense with prosecution if a supervisory measure has already been enforced and if s/he considers that the pressing of charges or the involvement of a judge is not necessary¹³⁷.

Supervisory measures may require the child to¹³⁸:

- comply with instructions relating to her/his place of residence;
- live with a family or in a residential accommodation;
- accept a training place or employment;
- perform certain work tasks;
- submit him or herself to the care and supervision of a specific person (care assistant);
- attend a social skills training course;
- attempt to achieve a settlement with the aggrieved person (settlement between offender and victim);
- avoid contact with certain persons or frequenting places providing public hospitality or entertainment;
- attend a road-traffic training course;
- avail himself/herself of supervisory assistance by a social worker or in a day and night-time institution.

The public prosecutor shall propose to the youth court judge the issuance of a reprimand, instructions or conditions if the accused child admits his/her guilt and if the public prosecutor considers that the ordering of such a judicial measure is necessary but the pressing of charges is not appropriate. If the youth court judge agrees to the proposal, the public prosecutor shall dispense with the prosecution.

Examples of instructions include the obligation to perform certain work, the obligation to attempt to achieve a settlement with the victim or to attend a road-traffic training course¹³⁹.

The purpose of issuing a reprimand is to make the wrongfulness of the child's actions absolutely clear to him/her¹⁴⁰.

Conditions require the child to:

¹³⁵ Morgenstern, C., Arndt, E. M., '[Judicial Rehabilitation in Germany – The Use of Criminal Records and the Removal of Recorded Convictions](#)' [2011] 3 European Journal of Probation 1, 20 – 35.

¹³⁶ Section 45(1) of the [Youth Courts Law in conjunction with Section 153 of the German Code of Criminal Procedure](#).

¹³⁷ Section 45(2) of the [Youth Courts Law](#).

¹³⁸ Section 9 of the [Youth Courts Law](#).

¹³⁹ Section 10(1) of the [Youth Courts Law](#).

¹⁴⁰ Section 14 of the [Youth Courts Law](#).

- make good, to the best of his ability, for damage caused as a result of the offence;
- apologise personally to the aggrieved person;
- perform certain tasks; or
- pay a sum of money to a charitable organisation.

In so doing, no unreasonable demands may be made of the child¹⁴¹.

After the public prosecutor has submitted the bill of indictment, the judge may discontinue the proceedings¹⁴²:

- when the child has committed a misdemeanour, if the child's guilt is of minor nature and there is no public interest in the prosecution;
- when a supervisory measure has been imposed and executed, thus rendering unnecessary the issuance of a court decision;
- if the child has confessed his/her guilt and the judge considers a decision by judgment unnecessary; in that case the judge may order the performance of certain work tasks, require the child to attempt to achieve a settlement with the aggrieved person (settlement between offender and victim), or to attend a road-traffic training course, or
- when the defendant is not criminally responsible on the grounds of insufficient maturity¹⁴³.

With the consent of the parent or guardian and the legal representative, the judge may also require the child to undergo specialist rehabilitative treatment or addiction treatment. If the child is more than 16 years of age, such condition should be imposed only with her/his consent¹⁴⁴.

Where the proceedings end with instructions and not with a final judgment, the case will not be noted in the child's criminal record¹⁴⁵. However, such instructions will be included in the educative measures register (*Erziehungsregister*). For more information the Federal Crime Register, please see [Section 3.1.4](#).

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

Measures to minimise the burden and hardship of being involved in criminal proceedings are described in [Sections 2.3.3, 2.3.5 and 2.3.6](#)

In general it can be said that when children commit less serious offences, the investigation procedure can end with diversion measures.

Proceedings where children are involved take place in specific youth courts. Judges sitting in the youth courts and public prosecutors handling matters involving children should have appropriate education and training as well as experience in the education and upbringing of children. The premises of the proceedings are less intimidating and more child-friendly than normal courts¹⁴⁶.

In order to provide guidance and support to child suspects attending the proceedings, the presiding judge can appoint an adviser for the accused child at any stage in the proceedings even if s/he is not obliged to appoint a defence counsel. The parent or guardian and the legal representative may not be appointed as advisers if this could be expected to be

¹⁴¹ Section 15 of the [Youth Courts Law](#).

¹⁴² Section 47(1) of the [Youth Courts Law in conjunction with Section 153 of the German Code of Criminal Procedure](#).

¹⁴³ Section 47(1) of the [Youth Courts Law](#).

¹⁴⁴ Section 10(2) of the [Youth Courts Law](#).

¹⁴⁵ According to Section 4 n. 4 of the Act Governing the Federal Register of Criminal and Court Records, only cases where youth penalty was imposed are registered.

¹⁴⁶ Section 39 of the [Youth Courts Law](#).

disadvantageous to the child's education and development. The adviser can be permitted to review the case files. S/he otherwise has the same rights in the main hearing as any defence counsel¹⁴⁷.

In youth trials the participation of the so-called youth courts assistance service (*Jugendgerichtshilfe*), a social worker of the youth welfare offices, is required¹⁴⁸. They are in charge of describing aspects relating to the education, upbringing, social life and welfare of the child, which could be relevant to the proceedings. In addition, they are required to participate in the trial in order to give evidence about the personal background of the child and to assist the judge in finding the appropriate sanction.

The presiding judge can exclude the accused child from the hearing to protect him or her, if there is a risk of considerable educational disadvantages. The parent or guardian and legal representative can be excluded when personal circumstances of the accused child are being discussed, or if they are suspected of being involved in the child's misconduct, or when they have been convicted of participation¹⁴⁹.

The public prosecutor may apply to the youth court judge in writing or orally for a decision to be taken in the simplified procedure for matters involving children. This can be done if it can be expected that the youth court judge will impose only instructions, order supervision by a social worker or probation officer, apply disciplinary measures, impose a driving ban, suspend the driving licence and impose a bar not exceeding two years or order forfeiture or seizure¹⁵⁰.

The youth court judge can issue a decision under the simplified procedure for matters involving children on the basis of an oral hearing. To simplify, accelerate and structure proceedings in a child-friendly manner, it is permissible to deviate from procedural provisions, provided that such deviation does not impair the investigation of the truth. The provisions concerning the presence of the accused, the status of the parent or guardian and of the legal representative and the notification of decisions must be observed. If the accused fails to attend the oral hearing, and if his/her absence is not adequately excused, he/she can be ordered to be brought before the judge¹⁵¹.

Private prosecution (*Privatklage*) is not possible against children¹⁵². Regarding the option of lodging charges against a child as an ancillary prosecutor (*Nebenklage*), this is only possible by someone who has been the victim of a serious criminal offence, such as against life, physical integrity or sexual self-determination which has seriously mentally or physically damaged the victim or has exposed him/her to such a danger¹⁵³.

2.3.8 Protecting the child during interviews and when giving testimony

At the commencement of the first interview by the public prosecutor or the president of the youth court the accused must be informed about his/her rights¹⁵⁴.

The parent or guardian and the legal representative, the school and his/her instructors need to be contacted and should, insofar as possible, be heard¹⁵⁵.

¹⁴⁷ Section 69 of the [Youth Courts Law](#).

¹⁴⁸ Section 38 of the [Youth Courts Law](#).

¹⁴⁹ Section 51 of the [Youth Courts Law](#).

¹⁵⁰ Section 76 of the [Youth Courts Law](#). For more information on possible sentences for youth, please see Section **Error! Reference source not found.**

¹⁵¹ Section 78 of the [Youth Courts Law](#).

¹⁵² Section 80(1) of the [Youth Courts Law](#).

¹⁵³ Section 80(3) of the [Youth Courts Law](#).

¹⁵⁴ Section 136 of the [German Code of Criminal Procedure](#).

¹⁵⁵ Section 43 of the [Youth Courts Law](#).

The parent or guardian and the legal representative of the accused child have a right to be heard, to ask questions and make applications or to be present during acts of investigation to the same extent as the accused child her or himself.

The presiding judge can order that the accused child is not present during the hearing if this could be disadvantageous to his/her education and development. However, the child must be informed of the deliberations held in his/her absence insofar as is necessary for the purposes of his/her defence.

In youth trials the participation of the so-called youth courts assistance service (*Jugendgerichtshilfe*), a social worker of the youth welfare offices, is required¹⁵⁶.

Please see [Sections 2.3.2](#), [2.3.3](#), [2.3.5](#), [2.3.7](#) and [2.3.10](#) as all aspects on the protection of children during interviews are already dealt with in those Sections.

2.3.9 Right to be heard and to participate in criminal proceedings

Every participant in criminal proceedings (adult or child) has the right to be heard before the court¹⁵⁷. They have the right to respond to the charges, or not to make any statement on the charges¹⁵⁸.

The public prosecutor or the president of the youth court must inform the child about his/her rights by taking into account his/her level of development, education and majority. The same instructions must be given to his parent or guardian and the legal representative. If they are not present during the interview, the instructions must be given to them in writing¹⁵⁹.

Where a court, in deciding on an appeal on a point of law, has violated a participant's right to be heard in such a manner as to affect the outcome of the case, then upon application the court must restore the proceedings to the situation prior to that decision¹⁶⁰.

The parent or guardian and the legal representative of the accused child has a right to be heard, to ask questions and make applications or to be present during acts of investigation to the same extent as the accused child himself/herself. The legal representative's right to select a defence counsel and to file for legal remedies shall also accrue to the parent or guardian. However, the judge may remove such rights from the parent or guardian and the legal representative if they are suspected of participating in the accused's misconduct or insofar as they have been convicted of participation. If the parent or guardian and the legal representative no longer hold those rights, the judge with jurisdiction for family or guardianship matters shall appoint a carer to preserve the accused's interests in the proceedings¹⁶¹.

The presiding judge can appoint an adviser for the accused at any stage in the proceedings if the circumstances do not warrant the appointment of compulsory defence counsel. The parent or guardian and the legal representative may not be appointed as adviser if this could be expected to be disadvantageous to his/her education and development¹⁶².

The presiding judge can order that the accused child is not present in the court-room for the duration of discussions if these could be disadvantageous to his/her education and development. S/he must be informed of the deliberations held in his/her absence insofar as is necessary for the purposes of his/her defence¹⁶³.

¹⁵⁶ Section 38 of the [Youth Courts Law](#).

¹⁵⁷ Section 33 of the [German Code of Criminal Procedure, Article 103\(1\) of the Basic Law, Article 6 of the European Convention on Human Rights](#).

¹⁵⁸ Section 136(1) of the [German Code of Criminal Procedure](#).

¹⁵⁹ Section 70a of the [Youth Courts Law](#).

¹⁶⁰ Section 356a of the [German Code of Criminal Procedure](#).

¹⁶¹ Section 67 of the [Youth Courts Law](#).

¹⁶² Section 69 of the [Youth Courts Law](#).

¹⁶³ Section 51 of the [Youth Courts Law](#).

For more information about the implementation of the right to be heard, please also see Sections [2.3.2](#), [2.3.3](#), [2.3.7](#) and [2.3.10](#).

2.3.10 Right to legal counsel, legal assistance and representation

Accused children (like adults) must be advised that the law grants them the right, at any stage, even prior to their questioning, to consult with a defence counsel of their choice.

Children must be appointed a defence counsel free of charge by the presiding judge, when the conditions for appointing a defence counsel to an adult are met, i.e.¹⁶⁴:

- the main hearing at first instance is held at the Higher Regional Court or at the Regional Court;
- the accused child is charged with a felony;
- the proceedings may result in an order prohibiting the pursuit of an occupation;
- the accused child has been in an institution for at least three months based on judicial order or with the approval of the judge and will not be released from such institution at least two weeks prior to commencement of the main hearing;
- the accused child may be committed in order to assess his/her mental condition;
- the previous defence counsel has been excluded from participating in the proceedings by a court decision¹⁶⁵.

In addition, a child has the right to a compulsory defence counsel:

- if the parent or guardian and the legal representative have had their rights withdrawn or been excluded from the hearing; or
- if consideration may be given to placing the accused in an institution for the purpose of preparing an expert report on his personal development; or
- if pre-trial detention has been imposed¹⁶⁶.

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

In order to ensure that the criminal proceedings in Germany, where children are involved, are as short as possible, legal remedies are sought only when absolutely necessary¹⁶⁷.

Upon notification of a decision which can be appealed within a given timeframe, the child, and the parent or legal representative, will be informed of the options for contesting such decision and of the relevant time limits and the procedures prescribed¹⁶⁸.

A decision, which orders only supervisory measures or disciplinary measures, cannot be appealed in order to subject the child to another educational measure. Furthermore, the child can only bring one appeal, either to the Regional Court (*Landgericht*) in order to get a second hearing, or to the high court of a Higher Regional Court (*Oberlandesgericht*) for a review of legal questions. The parent or guardian or the legal representative may withdraw a legal remedy filed by the child only with the child's consent¹⁶⁹.

If a child has been sentenced to an aggregate penalty as a result of several criminal offences, the appeal court may, prior to the main hearing, declare the judgment concerning part of the penalty to be enforceable if the child's guilt for some of the offences has not been contested. The order is only admissible if it is in the accused child's interest. This part of the

¹⁶⁴ Section 68 n. 1 of the [Youth Courts Law](#)

¹⁶⁵ Section 140(1) of the [German Code of Criminal Procedure](#).

¹⁶⁶ Section 68 n. 2-5 of the [Youth Courts Law](#)

¹⁶⁷ N. 1 to Section 55 of the [Guidelines to the Youth Courts Law](#).

¹⁶⁸ Section 35a of the [German Code of Criminal Procedure](#).

¹⁶⁹ Section 55 of the [Youth Courts Law](#).

penalty may not exceed the penalty provided for those criminal offences where the child's guilt has not been contested. An immediate complaint may be filed against this order¹⁷⁰.

Where a court, in deciding on an appeal on a point of law, has violated a child's right to be heard in such a manner as to affect the outcome of the case, upon application of the child, represented by a parents or legal representative, the court must restore the proceedings to the situation prior to the decision¹⁷¹.

¹⁷⁰ Section 56 of the [Youth Courts Law](#).

¹⁷¹ Section 356a of the [German Code of Criminal Procedure](#).

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim

3.1.1 Reporting a crime

Provision of information to the victim

There are no rules specifically for children on the provision of information. Child victims (as adults) can, upon application, be notified of the termination of the proceedings and of their outcome to the extent that they relate to them. In addition, they have the right to be informed whether the convicted person has been ordered to refrain from contacting or consorting with them. A child needs to submit this application through a legal representative. The notification is given in writing by the police or the court¹⁷².

The child victim can also request information whether custodial measures have been ordered or terminated in respect of the accused or the convicted person, or whether the conditions of detention have been made more lenient or a leave of absence has been granted¹⁷³.

Provision of information to the offender

If the defendant is found guilty in trial s/he will first be notified orally on the grounds for the judgment. Later s/he will receive them also in writing. The judgment sets out the circumstances which were decisive to the determination of the punishment, the measures ordered, or the reasons from refraining from imposing disciplinary measures and punishment. The child's moral, intellectual and physical capacity will also be taken into account. The child offender will not be informed of the grounds of the judgment if there is cause to fear that doing so might be disadvantageous for his/her education and development¹⁷⁴.

The defendant must also be informed about his/her rights to judicial review. In this regard, please see [Section 2.3.11](#).

3.1.2 Sentencing

The key principle of the German youth judicial system is that the detention of children should be a measure of last resort ('*ultima ratio*'). As mentioned above, only children above 14 years of age may be sentenced for an offence they have committed. In order to ensure that measures and sanctions for children in conflict with the law are in accordance with the principle of proportionality and the child's age, physical and mental well-being and development, the judge can impose supervisory measures (*Erziehungsmassregeln*), disciplining measures (*Zuchtmittel*) and a youth penalty (*Jugendstrafe*). Supervisory measures and disciplinary measures, as well as several supervisory measures or several disciplinary measures, may be ordered in combination. For supervisory measures without a judgment, please see [Section 2.3.6](#).

Supervisory measures mean the issuing of instructions and an order to avail oneself of supervisory assistance¹⁷⁵.

Instructions are directions and prohibitions by which the youth must conduct his/her life and which are intended to promote and guarantee his education. Instructions must not place unreasonable demands on the way the child conducts his/her life. In particular, the judge may instruct the youth to:

¹⁷² Section 406d of the [German Code of Criminal Procedure](#).

¹⁷³ Section 406d of the [German Code of Criminal Procedure](#).

¹⁷⁴ Section 54 of the [Youth Courts Law](#).

¹⁷⁵ Section 9 of the [Youth Courts Law](#).

1. comply with instructions relating to his/her place of residence;
2. live with a family or in residential accommodation;
3. accept a training place or employment;
4. perform certain work tasks;
5. submit himself/herself to the care and supervision of a specific person (care assistant);
6. attend a social skills training course;
7. attempt to achieve a settlement with the aggrieved person (settlement between offender and victim);
8. avoid contact with certain persons or frequenting places providing public hospitality or entertainment; or
9. attend a road-traffic training course.

With the consent of the parent or guardian and the legal representative, the judge may also require the child to undergo specialist rehabilitative treatment or addiction treatment. If the child is more than 16 years of age, such conditions should be imposed only with his/her consent¹⁷⁶.

After hearing the youth welfare office, the judge may require the child to have supervisory assistance from a social worker or to attend a residential institution¹⁷⁷.

If a youth penalty is not imposed, but it is still considered that the child assumes responsibility for the wrong he/she has done, the court will impose **disciplinary measures**. These include:

1. reprimands to make absolutely clear to the child the wrongfulness of his actions¹⁷⁸;
2. imposition of conditions, which can require the child to:
 - reverse, to the best of his/her ability, the damage caused as a result of the offence;
 - apologise personally to the aggrieved person;
 - perform certain tasks; or
 - pay a sum of money to a charitable organisation¹⁷⁹.
3. youth detention (*Jugendarrest*), which is detention for a period not exceeding four weeks.

Sentence options available are leisure hours detention (*Freizeitarrrest*) on two or four days, short-term detention (*Kurzarrrest*) for up to four days, or full-time detention (*Dauerarrrest*) for one to four weeks¹⁸⁰.

Youth penalty refers to measures entailing the deprivation of the child's liberty in a facility where he/she shall be held separately from adults. It can be imposed if, as a result of the harmful inclinations demonstrated by the child during the act, supervisory measures or disciplinary measures are not sufficient for the purposes of supervision or if such a penalty is necessary given the seriousness of the child's guilt¹⁸¹.

The minimum duration of youth penalty can be six months; its maximum duration five years. If the act constitutes a serious criminal offence for which the general criminal law prescribes a maximum sentence of more than ten years' deprivation of liberty, the maximum duration of youth penalty can be ten years¹⁸². The German parliament (*Deutscher Bundestag*) is

¹⁷⁶ Section 10 of the [Youth Courts Law](#).

¹⁷⁷ Section 12 of the [Youth Courts Law](#).

¹⁷⁸ Section 14 of the [Youth Courts Law](#).

¹⁷⁹ Section 15 of the [Youth Courts Law](#).

¹⁸⁰ Section 16 of the [Youth Courts Law](#).

¹⁸¹ Section 17 of the [Youth Courts Law](#).

¹⁸² Section 18 of the [Youth Courts Law](#).

currently discussing a legislative proposal on amending the Youth Court Law which, amongst others, contains a proposal to introduce a maximum duration of youth penalty of 15 years¹⁸³. Further details on the measures entailing the deprivation of a child's liberty are provided in [Section 3.1.3](#).

3.1.3 Deprivation of liberty

The Basic Law, the German Constitution, states that personal freedom is inviolable¹⁸⁴. Restrictions are thus only permitted on the basis of a formal law. In addition, the decision to deprive someone of his/her freedom may only be taken by a judge¹⁸⁵.

Children above 14 years of age in Germany can be deprived of their liberty:

- as a measure of reform and prevention;
- through pre-trial detention;
- through youth custody (youth detention and youth penalty);
- through placement in preventive detention;
- before their deportation.

In order to protect society from the offender (or the potential offender), **measures of reform and prevention** can be imposed, such as the placement in a psychiatric hospital or an institution for addiction treatment¹⁸⁶.

For conditions on when youth can be placed in **pre-trial detention**, please see [Section 2.3.4](#).

Youth custody (youth detention and youth penalty) should be used only as a last resort, when supervisory and other disciplinary measures no longer suffice¹⁸⁷.

Please see [Section 3.1.2](#) on the conditions of youth detention and youth penalty.

A Youth penalty can be suspended. If more than six months have lapsed since the court issued the decision, it should not be enforced in full if that is appropriate for supervisory reasons. Enforcement of youth detention is inadmissible if one year has passed since the decision was issued by the court¹⁸⁸. The youth penalty sentence imposed may be suspended for a probationary period if the court considers that the judgment itself, even though not enforced, has had enough educational and warning effects on the child¹⁸⁹. Even the actual pronouncing of a youth penalty sentence may, for educational reasons, be suspended on condition of good conduct¹⁹⁰.

A convicted child, who has reached the age of 18, and is not suitable for youth detention, can be detained according to the rules for adults¹⁹¹.

Youth detention measures should increase the child's sense of self-respect and make him/her understand that he/she must take responsibility for the wrong he/she has done. Youth detention should be structured and carried out in an educational manner. It should help the child to overcome those difficulties which contributed to the commission of the

¹⁸³ Draft Law on the Expansion of Youth Court's Action Space (*Entwurf eines Gesetzes zur Erweiterung der jugendgerichtlichen Handlungsmöglichkeiten*), available at <http://dipbt.bundestag.de/dip21/btd/17/093/1709389.pdf>.

¹⁸⁴ Article 2(2) of the German Basic Law (*Grundgesetz*).

¹⁸⁵ Article 104(2) of the German Basic Law (*Grundgesetz*).

¹⁸⁶ Section 7(1) of the [Youth Courts Law](#).

¹⁸⁷ Section 5(2) and Section 17(2) of the [Youth Courts Law](#).

¹⁸⁸ Section 87(3) of the [Youth Courts Law](#).

¹⁸⁹ Section 21 of the [Youth Courts Law](#).

¹⁹⁰ Section 27 of the [Youth Courts Law](#).

¹⁹¹ Section 89b of the [Youth Courts Law](#).

criminal offence. Youth detention shall be executed in the Land judicial authority's youth detention centres or facilities for detention during leisure time¹⁹².

These measures are applied in accordance with the principle of 'leniency before severity' (*Priorität der früheren Stufe*). This reflects the principle of proportionality and means in practice that any given measure may be imposed only if the next less severe measure does not suffice in terms of educative effect¹⁹³. In practice, unconditional youth imprisonment accounts only for 2% and the suspended youth prison sentence for 4% of all formal and informal sanctions against 14-21 year-old offenders¹⁹⁴. The court may order **placement in preventive detention** after the child has served a penalty sentence of at least seven years because of a serious criminal offence against life, physical integrity or of a sexual nature, or because he/she was found guilty of robbery causing death, theft, use of force to retain stolen goods, blackmail, and use of force or threats against life or limb by means of which the victim suffered severe mental or physical damage. This is possible if before the child serves his/her sentence, facts become known indicating that the child may constitute a considerable danger to the public and that he/she is highly likely to commit criminal offences of the above nature again¹⁹⁵.

The practice of ordering preventive detention after the initial conviction was ruled a violation of the European Convention on Human Rights by the European Court of Human Rights¹⁹⁶. In reaction to this the Federal Constitutional Court held in May 2011 that such preventive detention is unconstitutional¹⁹⁷. The German Parliament (*Deutscher Bundestag*) has to amend the respective laws by June 2013 and is currently discussing a new legislative proposal on subsequent preventive detention, which will also affect children¹⁹⁸.

3.1.4 Criminal records

Only a youth penalty (*Jugendstrafe*)¹⁹⁹ - suspended or not - will be recorded in the Federal Crime Register²⁰⁰. Where the proceedings end with instructions and not with a final judgment, the case will be registered in the Educative Measures Register (*Erziehungsregister*) to which access is more restricted²⁰¹.

Courts, public prosecution and prison administrations, criminal investigation departments of the police, tax authorities and a few specific organisations have unrestricted access to all

¹⁹² Section 90 of the [Youth Courts Law](#).

¹⁹³ Horst Viehmann, 'Strategies for Violence Prevention within the German framework of Juvenile Criminal Law' in [Crime Prevention and Criminal Justice](#), for the XII. United Nations Congress on Crime Prevention and Criminal Justice 2010, p. 109 published by the Federal Ministry of Justice, pp. 1-29.

¹⁹⁴ Frieder Dünkel, 'Migration and ethnic minorities in Germany: impacts on youth crime, juvenile justice and youth imprisonment', 2012, available at http://www.rsf.uni-greifswald.de/fileadmin/mediapool/Lehrstuehle/duenkel/Germany_youngMig.pdf, p. 22 (pp-1-42).

¹⁹⁵ Section 7(2) of the [Youth Courts Law](#).

¹⁹⁶ According to Article 7: no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations. Judgement available at:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?{"dmdocnumber":\["879804"\],"itemid":\["001-102621"\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?{).

¹⁹⁷ Judgement available at: http://www.bverfg.de/entscheidungen/rs20110504_2bvr236509.html.

¹⁹⁸ Draft Law on the Federal Implementation of the Minimum Distance Rule in Subsequent Preventive Detention (*Entwurf eines Gesetzes zur bundesrechtlichen Umsetzung des Abstandsgebotes im Recht der Sicherungsverwahrung*), German Bundestag, Drucksache 17/9874 6.6.2012, available at <http://dipbt.bundestag.de/dip21/btd/17/098/1709874.pdf>.

¹⁹⁹ Section 27-30 of the [Youth Courts Law](#).

²⁰⁰ Morgenstern, C., Arndt, E. M., '[Judicial Rehabilitation in Germany – The Use of Criminal Records and the Removal of Recorded Convictions](#)' [2011] 3 European Journal of Probation 1, 20 – 35.

²⁰¹ According to Section 4 n. 4 of the Act Governing the Federal Register of Criminal and Court Records, only cases where youth penalty was imposed are registered.

information in the criminal records by requesting a so-called **register statement** (*Bundeszentralregisterauszug*)²⁰². When the person concerned is above 14 years of age he/she may inspect his/her files upon request²⁰³.

The certificate of conduct can be requested by an employer. It contains less information than the register statement²⁰⁴, e.g. day fines and very short prison sentences will not be included in the certificate if no other entry can be found in the register. Regarding children, only non-suspended prison sentences of more than two years will be recorded²⁰⁵.

Depending on the sentence for the offence, the information on children's offences will be deleted after a shorter period of time than is the case for adult, i.e. after three up to twenty years²⁰⁶.

²⁰² Section 41 of the Act Governing the Federal Register of Criminal and Court Records.

²⁰³ Section 42 of the Act Governing the Federal Register of Criminal and Court Records.

²⁰⁴ Section 32 of the Act Governing the Federal Register of Criminal and Court Records.

²⁰⁵ Section 32(2) n. 3 of the Act Governing the Federal Register of Criminal and Court Records.

²⁰⁶ Section 34 of the Act Governing the Federal Register of Criminal and Court Records.

4 Strengths and potential gaps

Strength regarding children as victims and witnesses

In summary, the criminal judicial system for child victims and witnesses and child suspects can be described as advanced and satisfactory. In particular the following aspects should be highlighted:

- Victim support organisations such as ‘*Der weiße Ring*’ or the Child and Youth Services (*Kinder und Jugendhilfe*) and the Youth Emergency Service (*Jugendnotdienst*) support children in reporting a crime and ensure that their special requirements, age, maturity and level of understanding are taken into account by the respective authority.
- Child victims, as adult victims, must be informed about their rights as early as possible, as a rule in writing, and as far as possible in a language they understand.
- Proceedings where children are involved can take place in specific youth courts, even when the offender is an adult.
- There are several provisions in Germany protecting children as witnesses and victims during the proceedings, e.g. the questioning of child witnesses and victims can be recorded via audio-visual means while such questioning is conducted solely by the presiding judge.
- Any witness, including children, has the right to refuse to testify against close relatives to protect family life.
- Child victims have the right to assert a claim for compensation against the accused during the criminal proceedings in accordance with the Crime Victims Compensation Act (*Opferentschädigungsgesetz*).
- Victims of a crime may have the assistance of an attorney from the moment they are first questioned. Furthermore, a person whom they trust can be present at the questioning, except where this could endanger the purpose of the investigation²⁰⁷. The attorney may inspect the files that are available to the court, if he/she can show a legitimate interest in this regard.

Gaps regarding children as victims and witnesses

Despite the overall positive protection system for child victims and witnesses in criminal proceedings in Germany, the following gaps have been identified:

- If children do not yet have the intellectual maturity to sufficiently understand the importance of their right of refusal to testify, they may testify only if they wish to do so and if their legal representative consents. This means that an immature child cannot testify against the will of his/her parent or legal representative, unless they are accused themselves. This provision limits the child's right to express his/her opinion in court as it cannot always be taken for granted that the parent always acts in the best interest of the child.
- Children can only participate in proceedings in their own right when reporting a crime and when they testify if they have the intellectual maturity to understand their right to refuse to testify. Otherwise, they can only enforce their rights or participate through the action of their parent or guardian. This fails to acknowledge their evolving capacity and their right to be heard. It cannot always be taken for granted that the parent always acts in the best interest of the child.
- The fact that the appointment of a psychologist for the child during proceedings is at the discretion of the judge can risk that a child does not always receive such assistance when it is needed.

²⁰⁷ Section 406f of the [German Code of Criminal Procedure](#).

Strength regarding youth suspects, defendants and offenders

In summary, the criminal judicial system for child suspects, defendants and offenders can be described as advanced, as it is in line with the principle of proportionality, taking into account the child's age, physical and mental well-being. In particular the following issues should be mentioned:

- The German criminal youth law takes well into account the level of maturity and development of the child. Application of the criminal legislation to children aims at preventing them from committing new criminal offences and at reintegrating them into society. In order to achieve this goal, the legal consequences to youth crime have a primarily educational purpose. Informal sanctions, such as diversion or suspension are imposed as a rule, especially for first-time offenders. Sanctions are measures of last resort ('*ultima ratio*').
- As opposed to the Criminal Code for adults, obligatory prosecution (embodying the principle of legality (*Legalitätsprinzip*)) is applied in a more lenient way, by giving the prosecutor the discretion to prosecute or to dispense with prosecution because of the petty nature of the offence or because educational measures are considered more appropriate.
- At all stages of the investigation and the proceedings, the youth court assistance service is involved to help evaluate the background and psychological development of the child. For this purpose, it supports the participating authorities by researching the accused child's personality, level of development and environment, and expresses its opinion on the measures to be imposed. Youth criminal trials are not open to the public; only the parents of the accused and the victim may attend the trial.
- During the entire criminal procedure, child offenders are fully separated from adult suspects. This applies to court proceedings, which are held in a specific youth court, and to pre-trial detention or youth penalty, which are served in prison facilities specialised on youth interests and needs. For example the youth prisons provide for sport and educational facilities and are staffed with personnel with educational expertise. The provisions of the Code of Criminal Procedure governing compensation for the victim do not apply in proceedings against a child offender. Pre-trial detention can only be imposed and enforced on children if its purpose cannot be achieved by a preliminary supervision order or by other measures and if it is proportionate.

Gaps regarding child suspects, defendants and offenders

Despite the overall positive protection of child suspects, defendants and offenders in criminal proceedings in Germany, the following gaps have been identified:

- There is no definite time limit for pre-trial detention. Even though pre-trial detention in principle lasts up to six months, it can be extended if a judgment has not been issued due to the particular difficulty or the unusual length of the investigation or some other important reason which justifies extension of pre-trial detention.
- A compulsory defence counsel is not appointed for all offences committed by a child, but rather only in the case of a serious offence, if the parent or guardian and the legal representative have had their rights withdrawn or were excluded from the hearing, or if pre-trial detention has been imposed.
- Preventive detention ordered after a conviction (i.e. detention of the child or adult convict in excess of the sentence originally imposed by the court due to facts which have arisen after the trial) has been ruled to be in violation of the European Convention on Human Rights by the European Court of Human Rights²⁰⁸. In reaction to this the Federal

²⁰⁸ According to Article 7: no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at

Constitutional Court issued a verdict in May 2011, holding subsequent placement in preventive detention unconstitutional²⁰⁹.

- A child cannot appeal a decision, which orders only supervisory measures or disciplinary measures, solely in order to be subject to another educational measure. Furthermore, the child can only bring one appeal, either to the Regional Court (*Landgericht*) in order to get a second hearing, or to the high court of a Higher Regional Court (*Oberlandesgericht*) for a review of legal questions. This might in some cases limit the child's rights to legal remedy.
- Training for judges, public prosecutors and police officers on how to work with children is not mandatory.

the time when it was committed, was criminal according the general principles of law recognized by civilized nations. Judgement available at:

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\"dmdocnumber\":\[\"879804\"\],\"itemid\":\[\"001-102621\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx#{\).

²⁰⁹ The German Parliament (*Deutscher Bundestag*) has to amend its respective laws by June 2013 and is currently discussing a new legislative proposal on subsequent preventive detention, which will also affect children; for more information please see <http://dipbt.bundestag.de/dip21/btd/17/098/1709874.pdf>.

Conclusions

The criminal judicial system for children victims and witnesses as well as for suspects in Germany can be considered overall as child-friendly and mainly exemplary in taking into account the child's age, physical and mental well-being as well as their educational needs.

The protection of child victims is driven by several policy initiatives, legislation and with the support of governmental and non-governmental institutions. Child and adult victims and witnesses enjoy the same rights to a large extent. However, some rights only apply to child victims and some only to victims in general taking into account their particular vulnerability.

A child above 14 years of age is only held responsible under the German Criminal Code, when he or she presents a sufficiently mature moral and mental state of development at the time of the offence so that he or she understands the unlawfulness of the offence and is able to act in line with that understanding. The judge can impose supervisory measures (*Erziehungsmassregeln*), disciplinary measures (*Zuchtmittel*) and a youth penalty (*Jugendstrafe*). Regarding child suspects, defendants and offenders the criminal justice system is targeted at the reintegration of the child and at avoiding renewed criminal offences. In order to achieve this goal, the legal approach to youth crime follows primarily an educational concept. Informal sanctions, such as diversion or suspension are imposed as a rule, especially for first-time offenders.

Despite the overall good protection of children in criminal proceedings, some gaps have been identified both with respect to child victims/witnesses (e.g., concerning child victims' capacity to testify) and child suspects/offenders (e.g., concerning pre-trial and preventive detention of children).

Annex – Legislation reviewed during the writing of this report

- Federal Child Protection Law, of 22 December 2011
- Protection Against Violence Act, of 11 December 2011
- Act to Harmonise Protection for Witnesses, of 11 December 2011
- Residence Act, of 20 July 2004
- The Guidelines for the Public Prosecution Office, of 1 January 1977
- Act Governing the Federal Register of Criminal and Court Records, of 18 March 1971
- Guidelines to the Youth Courts Law, of 15 February 1955
- Youth Courts Law, of 4 August 1953
- European Convention on Human Rights of 4 November 1950
- Courts Constitution Act., of 12 September 1950
- German Code of Criminal Procedure, of 12 September 1950
- The Basic Law, of 23 May 1945
- German Civil Code, of 18 August 1896
- German Criminal Code, of 15 May 1871