

Übersetzung durch Chris Pavis und Neil Mussett  
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## **Youth Courts Act**

Youth Courts Act in the version of the promulgation of 11 December 1974 (Federal Law Gazette [BGBl.] Part I p. 3427, most recently amended by Article 21 of the Act of 25 June 2021 (Federal Law Gazette Part I p. 2099)

### **Part I Scope**

#### **Section 1**

##### **Scope as to persons and substantive scope**

- (1) This Act shall apply if a juvenile or young adult engages in misconduct punishable under the provisions of general law.
- (2) "Juvenile" shall mean anyone who, at the time of the offence, has reached the age of fourteen but not yet eighteen; "young adult" shall mean anyone who, at the time of the offence, has reached the age of eighteen but not yet twenty-one.
- (3) If it is doubtful whether the accused had reached the age of eighteen at the time of the offence, the procedural provisions applicable to juveniles shall be applied.

#### **Section 2**

##### **Goal of criminal law relating to young people; application of general criminal law**

- (1) The application of criminal law relating to young people is above all to counter renewed criminal offences on the part of a juvenile or young adult: In order to achieve this goal, the legal consequences, and with respect for the parental right of upbringing also the procedure, shall be orientated primarily in line with the educational concept.
- (2) The provisions of general law shall apply only insofar as not otherwise provided for in this Act.

### **Part II Juveniles**

#### **First Title**

##### **Youth misconduct and its consequences**

#### **First Chapter General provisions**

#### **Section 3 Criminal liability**

A juvenile shall bear criminal liability if, at the time of the act, he or she has reached a level of moral and intellectual maturity sufficient to enable him or her to understand the wrongfulness of the act and to conduct himself or herself in accordance with such understanding. For the purposes of bettering a juvenile who bears no criminal liability due to

a lack of maturity the judge may order the same measures as the judge responsible for family and guardianship matters.

#### **Section 4**

##### **Legal classification of acts committed by juveniles**

The provisions of general criminal law shall be applied to classify an unlawful act by a juvenile as a serious criminal offence or a less serious criminal offence and in assessing when the act shall be barred by statute.

#### **Section 5**

##### **Consequences of youth offences**

- (1) Supervisory measures may be ordered in response to a criminal offence committed by a juvenile.
- (2) Where supervisory measures do not suffice, disciplinary measures or youth penalty may be imposed to punish an offence committed by a juvenile.
- (3) Disciplinary measures or youth penalty shall be dispensed with if placement in a psychiatric hospital or institution for withdrawal treatment renders punishment by the judge dispensable.

#### **Section 6**

##### **Incidental consequences**

- (1) The court may not hand down a decision entailing loss of the capacity to hold public office, to attain public electoral rights or the right to elect or vote in public matters. The court may not order public announcement of the conviction.
- (2) There shall be no loss of the capacity to hold public office and attain public electoral rights (section 45 subsection (1) of the German Criminal Code).

#### **Section 7**

##### **Measures of reform and prevention**

- (1) Placement in a psychiatric hospital or an institution for withdrawal treatment, supervision of conduct or withdrawal of permission to drive (section 61 nos. 1, 2, 4 and 5 of the German Criminal Code) may be ordered as measures of reform and prevention within the meaning of general criminal law.
- (2) In the judgment, the court may reserve ordering preventive detention if
  1. the juvenile is sentenced to at least seven years' youth penalty because or also because of a serious criminal offence
    - a) against life, physical integrity or sexual self-determination, or
    - b) in accordance with section 251 of the Criminal Code, also in conjunction with section 252 or section 255 of the Criminal Codeby means of which the victim suffered severe emotional or physical damage or was exposed to such a danger, and
  2. the overall evaluation of the juvenile and of his/her offence or offences reveals that he or she is highly likely to commit criminal offences of the nature designated in no. 1 again.

The court shall order preventive detention if the overall evaluation of the convict, of his offence or offences, and additionally his development up to the time of the ruling reveals that he or she is likely to commit criminal offences of the nature designated in the first sentence, no. 1; section 66a subsection (3), first sentence, of the Criminal Code shall apply mutatis mutandis. Section 67c subsection (1) of the Criminal Code shall apply mutatis mutandis to the review of whether accommodation in preventive detention is to be suspended at the end of the execution of the youth penalty, and to the commencement of supervision of conduct.

(3) If the ordering of preventive detention is reserved in addition to youth penalty, and if the convict has not yet turned twenty-seven, the court shall order that youth penalty is already to be executed in a socio-therapeutic facility, unless the resocialisation of the convict cannot be better promoted thereby. This order may also be issued subsequently. As long as enforcement in a socio-therapeutic facility has not yet been ordered or the inmate has not yet been transferred to a socio-therapeutic facility, a new decision shall be taken on this in each case after six months. The criminal enforcement panel shall have jurisdiction for the subsequent order in accordance with the second sentence if the person concerned has reached the age of twenty-four, otherwise the youth panel which has jurisdiction for the ruling on measures entailing deprivation of liberty in accordance with section 92 subsection (2). Section 66c subsection (2) and section 67a subsections (2) to (4) of the Criminal Code shall apply mutatis mutandis in other respects with regard to the enforcement of the youth penalty.

(4) If placement in a psychiatric hospital ordered in respect of an offence of the type designated in subsection (2) in accordance with section 67d subsection (6) of the Criminal Code has been declared completed because the state ruling out or reducing culpability on which the placement was based did not exist at the time of the decision on completion, the court may subsequently order placement in preventive detention if

1. the placement of the person concerned in accordance with section 63 of the Criminal Code was ordered because of several such offences or if the person concerned because of one or several such offences which he or she committed prior to the offence leading to placement in accordance with section 63 of the Criminal Code had already been sentenced to at least three years' youth penalty or placed in a psychiatric hospital, and

2. the overall assessment of the person concerned, his offences and additionally of his development until the time of the decision reveals that it is highly likely that he or she will once more commit offences of the nature designated in subsection (2).

(5) The regular deadline for review as to whether the further enforcement of placement in preventive detention is to be suspended on probation or deemed to have been dealt with (section 67e of the Criminal Code) shall be six months in cases falling under subsections (2) and 4 if the person accommodated has not yet reached the age of twenty-four when the period commences to run.

## **Section 8**

### **Combination of measures and youth penalty**

(1) Supervisory measures and disciplinary measures, as well as several supervisory measures or several disciplinary measures, may be ordered in combination. Youth detention may not be combined with an order to provide supervisory assistance in accordance with section 12 no. 2.

(2) In addition to youth penalty, only instructions and conditions and supervision by a social worker may be ordered in combination with youth penalty. Subject to the prerequisites of section 16a, youth detention may also be ordered in addition to the imposition of a youth penalty or the suspension of its imposition. Where the juvenile is subject to probationary supervision, any concurrent order for supervision by a social worker shall be suspended until expiry of the probationary period.

(3) In addition to supervisory measures, disciplinary measures and youth penalty, the imposition of those incidental penalties and incidental consequences admissible under this Act may be ordered. A driving ban may not be imposed for more than three months.

## **Second Chapter**

### **Supervisory measures**

## **Section 9**

### **Types of measure**

“Supervisory measures” shall mean:

1. the issuing of instructions,
2. an order to avail oneself of supervisory assistance within the meaning of section 12.

### **Section 10 Instructions**

(1) Instructions shall be directions and prohibitions by which the juvenile can conduct his life and which are intended to promote and guarantee his education. Instructions must not place unreasonable demands on the way the juvenile conducts his life. In particular, the judge may instruct the juvenile to:

1. comply with instructions relating to his 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 or 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.

(2) With the consent of the parent or guardian and the legal representative, the judge may also require the juvenile to undergo specialist rehabilitative treatment or addiction withdrawal treatment. If the juvenile is more than sixteen years of age, such condition should be imposed only with his consent.

### **Section 11 Duration of and subsequent amendments to instructions; consequences of failure to comply**

(1) The judge shall determine the duration of instructions. The duration may not exceed two years; in the case of an instruction in accordance with section 10 subsection(1), third sentence, no. 5, the duration should not exceed one year; in the case of an instruction in accordance with section 10 subsection(1), third sentence, no. 6, it should not exceed six months.

(2) The judge may amend instructions, lift them or prior to expiry extend their duration to no more than three years if this is conducive to the purposes of supervision.

(3) If the juvenile culpably fails to comply with instructions, youth detention may be imposed if he or she had previously been cautioned as to the consequences of culpable non-compliance. The period of youth detention imposed in such cases may not exceed a total duration of four weeks if there is a conviction. The judge shall dispense with enforcement of youth detention if the juvenile complies with the instruction after the detention has been imposed.

### **Section 12 Supervisory assistance**

After hearing the youth welfare office the judge may, under the conditions set out in the Eighth Book of the Social Code, require the juvenile to avail himself or herself of supervisory assistance:

1. in the form of supervisory assistance by a social worker within the meaning of section 30 of the Eighth Book of the Social Code, or
2. in a day and night-time institution or in another form of supervised accommodation within the meaning of section 34 of the Eighth Book of the Social Code.

### **Third Chapter** **Disciplinary measures**

#### **Section 13** **Types of measure and their application**

- (1) The judge shall apply disciplinary measures to punish the criminal offence if youth penalty is not indicated, but if the juvenile must be made acutely aware that he or she must assume responsibility for the wrong he or she has done.
- (2) "Disciplinary measures" shall mean:

1. reprimands,
2. imposition of conditions,
3. youth detention.

- (3) Disciplinary measures shall not carry the same legal consequences as a criminal sentence.

#### **Section 14** **Reprimands**

The purpose of issuing a reprimand is to make absolutely clear to the juvenile the wrongfulness of his actions.

#### **Section 15** **Conditions**

- (1) The judge can require the juvenile to:

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

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

- (2) The judge should order payment of a sum of money only if

1. the juvenile has engaged only in minor misconduct and it is to be assumed that he or she will pay the sum from money of which he or she is allowed to personally dispose, or
2. the proceeds which the juvenile has gained from his offence or the payment which he or she received for committing the criminal offence is to be withdrawn from him or her.

- (3) The judge may subsequently vary conditions or dispense with compliance with them either in full or in part where this is conducive to the purposes of supervision. Section 11 subsection (3) shall apply mutatis mutandis where the juvenile culpably fails to comply with conditions. Where youth detention has been enforced, the judge may declare conditions to have been met either in full or in part.

#### **Section 16** **Youth detention**

(1) “Youth detention” shall mean detention of the juvenile during leisure time, or short-term or long-term detention.

(2) Detention during leisure time shall be imposed during the juvenile’s weekly leisure time and shall be counted as one or two periods of leisure time.

(3) Short-term detention shall be imposed in lieu of detention during leisure time if an uninterrupted period of execution appears expedient given the purpose of the supervision and neither the juvenile’s education and training, nor his employment, are adversely affected. A two-day period of short-term detention shall be deemed equivalent to one leisure period.

(4) Long-term detention shall be at least one week and not more than four weeks in duration. It shall be counted in entire days or weeks.

#### **Section 16a**

##### **Youth detention in addition to youth penalty**

(1) If the imposition or execution of youth penalty is suspended on probation, youth detention may additionally be imposed in derogation from section 13 subsection (1), if

1. this is necessary, taking account of the notice on the significance of suspension on probation, and taking account of the possibility of instructions and conditions, in order to make clear to the juvenile his responsibility for the wrong that has been done and the consequences of committing further criminal offences,

2. this is necessary in order to initially remove the juvenile from his environment where there are damaging influences, initially for a limited period, and to prepare for the probationary period through treatment in execution of youth detention, or

3. this is necessary in order to exert a more emphatic educational influence on the juvenile in execution of youth detention, or in order thereby to create better prospects for success for an educational influence during the probationary period.

(2) Youth detention in accordance with subsection (1) no. 1 shall not be necessary as a rule if the juvenile has already served youth detention as long-term detention or remand detention has been imposed on him or her not only for a short period.

#### **Fourth Chapter** **Youth penalty**

#### **Section 17**

##### **Form and conditions**

(1) “Youth penalty” shall mean deprivation of liberty in a facility for its execution.

(2) The judge shall impose youth penalty if, as a result of the harmful inclinations demonstrated by the juvenile 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 juvenile’s guilt.

#### **Section 18**

##### **Duration of youth penalty**

(1) The minimum duration of youth penalty shall be six months; its maximum duration shall be five years. If the act constitutes a serious criminal offence for which general criminal law prescribes a maximum sentence of more than ten years’ deprivation of liberty, the maximum duration of youth penalty shall be ten years. The statutory range of penalties under general criminal law shall not apply.

(2) Youth penalty shall be calculated such as to make it possible to achieve the desired supervisory aim.

#### **Section 19**

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## **Fifth Chapter**

### **Probationary suspension of youth penalty**

#### **Section 20** **(deleted)**

#### **Section 21** **Suspension of sentence**

- (1) Where sentencing involves the imposition of youth penalty not exceeding one year, the court shall suspend enforcement of the sentence on probation if it can be expected that the juvenile will regard the sentence itself as a warning and, while not gaining the experience of serving the sentence, will gain from the supervisory influence of the probation and henceforth conduct himself or herself in a law-abiding manner. Account shall be taken of the juvenile's personality, his prior life, the circumstances in which he or she acted, his conduct after the act, his living environment and the effects which suspension of sentence can be expected to have on him or her. The court shall also suspend the execution of the sentence on probation if the expectation designated in the first sentence is only established by the imposition of youth detention in accordance with section 16a in addition to youth penalty.
- (2) In accordance with the conditions set out in subsection(1), the court shall also suspend on probation enforcement of a longer period of youth penalty not exceeding two years if enforcement is not indicated on grounds relating to the juvenile's personal development.
- (3) Suspension of sentence cannot be limited to part of the youth penalty. It shall not be excluded because of credit given for periods of remand detention or other deprivation of liberty.

#### **Section 22** **Probationary period**

- (1) The judge shall fix the duration of the probationary period. It may not exceed three years', nor be of less than two years', duration.
- (2) The probationary period shall commence on the day the decision to suspend the youth penalty enters into force. It may subsequently be shortened to one year or, prior to its expiry, be extended to a maximum of four years. However, in the cases designated in section 21 subsection (2) the probationary period may be shortened to no less than two years.

#### **Section 23** **Instructions and conditions**

- (1) The judge should exercise a supervisory influence on the juvenile's conduct during the probationary period by the issuance of instructions. He or she may also impose conditions on the juvenile. He or she may also make, vary or revoke such orders subsequently. Section 10, section 11 subsection (3), and section 15 subsections (1), (2) and (3), second sentence, shall apply mutatis mutandis.
- (2) If the juvenile gives assurances concerning his future conduct or offers to provide services apt to make amends for the wrong he or she has done, the judge shall, as a general rule, temporarily refrain from imposing instructions and conditions if it can be expected that the juvenile will comply with his assurances or offers.

#### **Section 24** **Probationary assistance**

- (1) For a maximum of two years during the probationary period, the judge shall place the juvenile under the supervision and guidance of a full-time probation officer. The judge may also place the juvenile under the supervision of a volunteer probation assistant if this appears conducive to the purposes of the supervision. Section 22 subsection (2), first sentence, shall apply mutatis mutandis.
- (2) The judge may vary or revoke a decision taken in accordance with subsection (1) prior to expiry of the probationary period; he or she may also issue a new order placing the juvenile



under supervision during the probationary period. In such cases, the maximum duration designated in subsection(1), first sentence, may be exceeded.

(3) The probation officer shall provide the juvenile with help and guidance. Acting in agreement with the judge, he or she shall monitor fulfilment of instructions, conditions, assurances and offers. The probation officer should promote the juvenile's supervision and wherever possible work together on a basis of trust with the juvenile's parent or guardian or his legal representative. In the exercise of his office he or she shall have rights of access to the juvenile. He or she may require the juvenile's parent or guardian, his legal representative, his school or the person providing him or her with training to provide information about the juvenile's conduct.

## **Section 25**

### **Appointment and duties of the probation officer**

The probation officer shall be appointed by the judge. The judge may issue instructions for the performance of his tasks in accordance with section 24 subsection(3). The probation officer shall report, at intervals fixed by the judge, on the manner in which the juvenile conducts himself or herself. He or she shall inform the judge of serious or persistent violations of instructions, conditions, assurances and offers.

## **Section 26**

### **Revocation of probationary suspension of sentence**

(1) The court shall revoke probationary suspension of youth penalty if the juvenile:

1. commits a criminal offence during the probationary period, and thereby demonstrates that the expectation on which the suspension was based has not been fulfilled,
2. seriously or persistently violates instructions or persistently evades the probation officer's supervision and guidance and thereby gives cause for concern that he or she will commit further criminal offences, or
3. seriously or persistently violates conditions.

The first sentence, no. 1, shall apply mutatis mutandis if the act is committed in the period between the time when the decision to suspend sentence is taken and the time when that decision enters into force. Section 57 subsection (5), second sentence, of the Criminal Code shall also apply mutatis mutandis if youth penalty was suspended subsequently by an order.

(2) However, the court shall refrain from revocation of suspension if it is sufficient:

1. for further instructions to be issued or conditions to be imposed,
2. to extend the suspension or supervision period to a maximum of four years, or
3. to place the juvenile under the supervision of a probation officer once more prior to expiry of the probation period.

(3) No reimbursement shall be effected for services rendered by the juvenile in compliance with instructions, conditions, assurances or offers (section 23). However, if the court revokes suspension it may give credit against the youth penalty for services rendered by the juvenile in compliance with conditions or corresponding offers. Youth detention which was imposed in accordance with section 16a shall be counted towards the youth penalty to the degree that it was served.

## **Section 26a**

### **Remission of youth penalty**

If the judge does not revoke the suspension, he or she shall release the offender from serving the youth penalty upon expiry of the suspension period. Section 26 subsection(3), first sentence, shall apply.



## **Sixth Chapter**

### **Suspension of imposition of youth penalty**

#### **Section 27**

##### **Conditions**

If, after exhausting all forms of investigation, there can be no certainty as to whether while committing the criminal offence the juvenile's harmful inclinations were demonstrated to such an extent as to necessitate imposition of youth penalty, the judge may issue a finding as to the juvenile's guilt while suspending the decision to impose youth penalty for a probationary period which the judge shall fix.

#### **Section 28**

##### **Probationary period**

- (1) The probationary period may not exceed two years', nor be of less than one year's, duration.
- (2) The probationary period shall commence on the day the judgment establishing the juvenile's guilt enters into force. It may subsequently be shortened to one year or, prior to its expiry, be extended to a maximum of two years.

#### **Section 29**

##### **Probationary assistance**

The juvenile shall be placed under the supervision and guidance of a probation officer for all or part of the probationary period. Section 23, section 24 subsection(1), first and second sentences, section 24 subsections (2) and(3), section 25 and section 28 subsection(2), first sentence, shall apply mutatis mutandis.

#### **Section 30**

##### **Imposition of youth penalty; spending of sentence**

- (1) If it results, primarily from the juvenile's poor conduct during the probationary period, that the offence censured in the court's verdict against him or her is a result of the juvenile's harmful inclinations demonstrated to an extent requiring imposition of youth penalty, the court shall order imposition of that penalty which it would have handed down at the time of the verdict had a certain assessment of the juvenile's harmful inclinations been possible. Section 26 subsection (3), third sentence, shall apply mutatis mutandis.
- (2) If the conditions set out in subsection (1), first sentence, do not obtain upon expiry of the probationary period, the sentence shall be considered spent.

## **Seventh Chapter**

### **Combination of offences**

#### **Section 31**

##### **Commission of several offences by a juvenile**

- (1) Even if a juvenile has committed several criminal offences, the court shall impose only one set of supervisory measures, disciplinary measures or a single youth penalty. Insofar as provided for in this Act (section 8) different types of supervisory measures and disciplinary measures may be ordered in combination, or measures may be combined with youth penalty. The statutory maximum limits applicable to youth detention and youth penalty may not be exceeded.
- (2) If the juvenile's guilt has already been finally established in relation to some of the criminal offences or a supervisory measure, disciplinary measure or youth penalty determined though not yet completely implemented, served or otherwise disposed of, account shall be taken of the judgment and similarly only measures or youth penalty imposed. The court shall have discretion to give credit for periods of youth detention already served when imposing youth penalty. Section 26 subsection (3), third sentence, and section 30 subsection (1), second sentence, shall remain unaffected.

(3) If it is conducive to the purposes of supervision, the court may refrain from including in the new decision offences for which a conviction has been obtained. In so doing, it may declare supervisory or disciplinary measures spent if it imposes youth penalty.

### **Section 32**

#### **Combination of offences committed at different ages and different stages of maturity**

If sentence is passed simultaneously for a combination of offences of which youth criminal law would apply to some and general criminal law to the others, youth criminal law shall be applied to them all if the main focus lies with those offences which should be assessed under youth criminal law. If that is not the case, general criminal law shall apply to them all.

### **Second Title**

#### **Constitution and procedure of youth courts**

### **First Chapter**

#### **Constitution of youth courts**

### **Section 33**

#### **Youth courts**

- (1) The youth courts shall have jurisdiction to hear cases involving youth misconduct.
- (2) "Youth courts" shall mean the criminal court judge sitting as a youth court judge, the court of assessors (lay youth assessors' court) and the criminal panel (youth panel).
- (3) The governments of the *Länder* shall have the authority to issue statutory instruments permitting a judge sitting in one of the local courts to be appointed as a youth court judge for the districts of several local courts (district youth court judge) and permitting a joint lay youth assessors' court for the districts of several local courts to be established in one of the local courts. The governments of the *Länder* may issue a statutory instrument by which that authority is transferred to the Land departments of justice.

### **Section 33a**

#### **Composition of the lay youth assessors' court**

- (1) The lay youth assessors' court shall be composed of the youth court judge who shall preside and two lay youth assessors. One man and one woman shall be present as lay youth assessors at each main hearing.
- (2) The lay youth assessors shall not participate in decisions taken outside the main hearing.

### **Section 33b**

#### **Composition of the youth panel**

- (1) The youth panel shall be composed of three judges including the presiding judge as well as two lay youth assessors (grand youth panel); in appeal proceedings concerning the facts and law of judgments of the youth court judge it shall be composed of the presiding judge and two lay youth assessors (small youth panel).
- (2) At the opening of the main hearing, the grand youth panel shall decide on its composition in the main hearing. If the main proceedings have already been opened, it shall decide on this when scheduling the main hearing date. It shall decide that it shall be composed of three judges, including the presiding judge, as well as two lay youth assessors, insofar as
  1. the provisions of general law, including the provision set out in section 74e of the Courts Constitution Act, do not stipulate that the case falls within the jurisdiction of the jury court,
  2. it has jurisdiction in accordance with section 41 subsection (1), no. 5, or
  3. given the scope or difficulty of the case, the participation of a third judge appears necessary. In other cases, the grand youth panel shall decide that it shall be composed of two judges, including the presiding judge, and two lay youth assessors.

(3) The participation of a third judge shall as a rule be necessary in accordance with subsection (2), third sentence, no. 3, if

1. the youth panel has taken over the case in accordance with section 41 subsection (1) no. 2,
2. the main hearing is likely to last more than ten days, or
3. the subject-matter of the case is one of the criminal offences designated in Section 74c subsection (1), first sentence, of the Courts Constitution Act.

(4) Subsection (2) shall apply mutatis mutandis in proceedings on an appeal on points of fact and law against a judgement of the lay youth assessors' court. The grand youth panel shall decide that it shall be composed of three judges, including the presiding judge, and two lay youth assessors, even if the impugned judgment was for a youth penalty of more than four years.

(5) If the grand youth panel has decided that it shall be composed of two judges, including the presiding judge, and two lay youth assessors, and if prior to the commencement of the main hearing new circumstances emerge which, in accordance with subsections (2) to (4), necessitate that the panel be composed of three judges, including the presiding judge, and two youth lay assessors, it shall decide on such a composition.

(6) If a case has been remitted by the court of appeal on points of law only or the main hearing has been suspended, the youth panel with respective jurisdiction may decide once more on its composition in accordance with subsections (2) to (4).

(7) Section 33a subsection (1), second sentence, and subsection (2), shall apply mutatis mutandis.

## **Section 34**

### **Tasks of the youth court judge**

(1) The youth court judge is charged with all tasks incumbent on a judge sitting in a local court in criminal proceedings.

(2) The supervisory functions incumbent on the family and guardianship judge for matters concerning juveniles are to be transferred to the youth court judge. It shall be permissible to derogate from the above for special reasons, i.e. if the youth court judge is appointed to sit in the district of several local courts.

(3) Supervisory functions incumbent on the family and guardianship judge shall encompass

1. supporting the parents, the guardian and the carer by taking appropriate measures (section 1631 subsection (3), sections 1802 subsection (1), first sentence, and 1813 subsection (1) of the Civil Code),
2. those measures intended to ward off a danger to the juvenile (sections 1666 and 1666a, also in conjunction with section 1802 subsection (2), third sentence, and section 1813 subsection (1) of the Civil Code).
3. (deleted)

## **Section 35**

### **Lay youth assessors**

(1) The lay assessors sitting in the youth courts (lay youth assessors) shall be elected upon a proposal of the youth assistance committee for a period of four years in the court's calendar by the committee prescribed by section 40 of the Courts Constitution Act. The latter committee is to elect an equal number of men and women.

(2) The youth assistance committee is to propose an equal number of men and women, and at least twice the number of persons as are required to act as lay youth assessors and replacement lay youth assessors. The individuals proposed are to have appropriate education and training as well as experience in the education and upbringing of juveniles.

- (3) The youth assistance committee's list of proposed candidates shall constitute a list of candidates within the meaning of section 36 of the Courts Constitution Act. Inclusion in the list shall require the assent of two thirds of the committee's voting members present, but of at least half the members of the youth assistance committee who are entitled to vote. The list of candidates shall be displayed at the youth welfare office for public inspection for a period of one week. The time at which it is to be displayed shall be announced publicly in advance.
- (4) The youth court judge shall chair the lay youth assessors' electoral committee at which decisions are taken on objections to the youth assistance committee's list of candidates, and at which the lay youth assessors and replacement lay youth assessors are elected.
- (5) The lay youth assessors shall be included on lists of lay assessors, which shall be kept separately for men and women.
- (6) The election of the lay youth assessors shall take place at the same time as the election of the lay assessors for the courts of assessors and the criminal panels.

### **Section 36**

#### **Public prosecutors handling matters involving juveniles**

- (1) Youth public prosecutors shall be assigned to proceedings falling within the jurisdiction of the youth courts. Judges on probation and civil servants on probation are not to be appointed as youth public prosecutors within the first year after their appointment.
- (2) Tasks incumbent on youth public prosecutors may only be assigned to public prosecutors at local courts (*Amtsanwälte*) if they satisfy the special requirements which are made for performing tasks incumbent on youth public prosecutors. The performance of tasks incumbent on youth public prosecutors may be assigned to trainee jurists under the supervision of a youth public prosecutor in individual cases. Trainee jurists may only perform representation in hearings in proceedings before the youth courts under the supervision and in the presence of a youth public prosecutor.

### **Section 37**

#### **Selection of youth court judges and public prosecutors handling matters involving juveniles**

- (1) Judges sitting in the youth courts, and youth public prosecutors handling matters involving juveniles, are to have appropriate education skills and training, as well as experience in the education and upbringing of juveniles. They are to have knowledge of the areas criminology, education and social education, as well as youth psychology. A judge or public prosecutor not proven to have knowledge of these areas is only to be assigned the tasks incumbent on a youth court judge or youth public prosecutor for the first time if he or she can be expected to acquire such knowledge by attending relevant further training or other relevant further skill-building as soon as possible.
- (2) It shall only be possible to derogate from the requirements of subsection (1) in the case of judges and public prosecutors who are only deployed on a stand-by basis to carry out tasks incumbent on youth court judges or youth public prosecutors if proper operation of the stand-by service in a manner acceptable for the judges and public prosecutors concerned would not otherwise be assured.
- (3) Individuals deployed as youth court judges in Local Courts, or as the presiding judge of a youth panel, are where possible to already have experience from previously carrying out tasks in a youth court or youth public prosecution office. It shall be possible to derogate therefrom in the case of judges who only carry out tasks incumbent on the youth court judge on a stand-by basis. A judge on probation may not carry out tasks incumbent on the youth court judge in the first year of his or her nomination.

### **Section 37a**

#### **Cooperation in joint bodies**

- (1) Youth court judges and youth public prosecutors may work together on a cross-case basis with public facilities and other agencies the work of which impacts on young people's

circumstances for the purpose of performing tasks in a coordinated manner, in particular by attending joint conferences and taking part in comparable joint bodies.

(2) Youth public prosecutors are to take part in such cooperation related to individual cases if they consider this to be helpful in achieving the goal in accordance with section 2 subsection (1).

## **Section 38**

### **Youth courts assistance service**

(1) Assistance for the youth courts shall be provided by the youth welfare offices working in conjunction with the youth assistance associations.

(2) The representatives of the youth court assistance service shall highlight the supervisory, social and other aspects that are significant with regard to the goals and tasks of youth welfare in proceedings before the youth courts. For this purpose, they shall support the participating authorities by researching into the personality, the development and the family, social and economic background of the juvenile, and shall make a statement with regard to any potential particular vulnerability, as well as to the measures that are to be taken.

(3) Information is to be provided as soon as possible with regard to the result of the research in accordance with subsection (2), as soon as it is significant in the proceedings. In detention-related cases, the representatives of the youth courts assistance service shall report expeditiously regarding the outcome of their research. Should the circumstances that are significant in accordance with subsection (2) change in essential respects, they shall carry out additional research where necessary, and shall report thereon to the youth public prosecution office, and after the charge has been filed, to the youth court.

(4) A representative of the youth courts assistance service shall attend the main hearing insofar as this is not waived in accordance with subsection (7). The person is to be seconded who has carried out the research. Should no representative of the youth courts assistance service appear at the main hearing, despite being informed in good time in accordance with section 50 subsection (3), first sentence, and if no waiver has been declared in accordance with subsection (7), the funding institution of public youth welfare may be instructed to pay the costs caused thereby; section 51 subsection (2) of the Code of Criminal Procedure shall apply *mutatis mutandis*.

(5) Insofar as no probation officer has been appointed to do so, the youth courts assistance service shall ensure that the juvenile complies with instructions and conditions. It shall inform the youth court of considerable failures to comply. In the event of the submission to a person designated in accordance with section 10 subsection (1), third sentence, no. 5, it shall exercise care and supervision if the youth court does not appoint another person to do so. It shall cooperate closely with the probation officer during the probation period. It shall remain in contact with the juvenile during enforcement, and shall assume responsibility for his or her reintegration into society.

(6) The youth court assistance service shall be involved at all stages of the proceedings against a juvenile. It should involve itself as early as possible. The representatives of the youth court assistance service shall always be heard prior to the imposition of instructions (section 10); if a care order can be considered, they should also express a view as to who should be appointed as care assistant.

(7) The youth court, and in the preliminary proceedings the youth public prosecution office, may waive compliance with the requirements of subsection (3), and on request by the youth courts assistance service may waive compliance with the requirements of subsection (4), first sentence, insofar as this is justified on the basis of the circumstances of the case and compatible with the best interests of the juvenile. Such waiver shall be notified to the youth courts assistance service and to the further parties participating in the proceedings as early as possible. Such waiver may particularly be considered in the preliminary proceedings if it can be expected that the proceedings will be completed without any public charge being filed. The waiver of the presence of a representative of the youth courts assistance service at

the main hearing may be restricted to parts of the main hearing. It may also be stated during the main hearing, and shall not require a motion to be filed in this case.

## **Second Chapter Jurisdiction**

### **Section 39**

#### **Substantive jurisdiction of the youth court judge**

(1) The youth court judge shall have jurisdiction to deal with youth misconduct providing only supervisory measures, disciplinary measures, incidental penalties and consequences permissible under this Act or the withdrawal of permission to drive are to be expected and providing the public prosecutor files charges before the criminal court judge. The youth court judge shall not have jurisdiction to deal with matters brought against juveniles and adults joindered in accordance with section 103 if the judge at the local court would not have jurisdiction to deal with the adults under the provisions of general law. Section 209 subsection(2) of the Code of Criminal Procedure shall apply mutatis mutandis.

(2) The youth court judge may not hand down youth penalty exceeding one year's duration; he or she may not order placement in a psychiatric hospital.

### **Section 40**

#### **Substantive jurisdiction of the lay youth assessors' court**

(1) The lay youth assessors' court has jurisdiction to deal with all youth misconduct which does not fall within the jurisdiction of another youth court. Section 209 of the Code of Criminal Procedure shall apply mutatis mutandis.

(2) Up until the opening of the main proceedings, the lay youth assessors' court may of its own motion obtain a decision from the youth panel as to whether it wishes to accept a particular matter for adjudication as a result of the particular scope of the matter.

(3) Before issuing an order to accept a matter for adjudication, the presiding judge of the youth panel shall invite the indicted accused to indicate within a particular time frame whether he or she wishes to apply for specific evidence to be taken prior to the main hearing.

(4) The order by which the youth panel decides to accept or refuse a case for adjudication shall not be subject to appeal. The order accepting the matter for adjudication shall be joined with the decision to open the hearing.

### **Section 41**

#### **Substantive jurisdiction of the youth panel**

(1) The youth panel, as a court handing down the ruling in the first instance, shall have jurisdiction in matters

1. which fall within the jurisdiction of the jury court according to the provisions of general law, including section 74e of the Courts Constitution Act,
2. which it accepts for adjudication following a submission of the lay youth assessors' court as a result of the special scope of the matter (section 40 subsection (2)), and
3. brought against juveniles and adults joindered in accordance with section 103 if a grand criminal panel would have jurisdiction for dealing with the adults in accordance with the provisions of general law,
4. in which the public prosecution office files a charge before the youth panel because of the particular need for protection of the persons aggrieved by the criminal offence who can be considered as witnesses, and
5. in which the accused is accused of an offence of the type designated in section 7 subsection (2), and a higher penalty than five years' youth penalty or placement in a psychiatric hospital is to be anticipated.



(2) The youth panel shall also have jurisdiction for deliberating and deciding on appeals on fact and law as a legal remedy against judgments of the youth court judge and the lay youth assessors' court. It shall also take the decisions listed in section 73 subsection (1) of the Courts Constitution Act.

## **Section 42**

### **Geographical jurisdiction**

(1) In addition to the judge who has jurisdiction in accordance with general procedural law or with the special provisions, jurisdiction shall lie with

1. the judge entrusted with performing the supervisory functions assumed by the family and guardianship judges concerning the accused,
2. the judge in whose district the accused is at liberty at the time the charges are brought, and
3. until the accused has served the youth penalty in full, the judge entrusted with the tasks of the head of enforcement.

(2) If possible, the public prosecutor should bring the charges before the judge responsible for performing the supervisory functions of the family and guardianship judge; however, until the accused has served the youth penalty in full, they should be brought before the judge entrusted with the tasks of the head of enforcement.

(3) If the defendant changes his place of residence the judge may, with the consent of the public prosecutor, transfer the case to the judge in whose district the defendant is resident. If the judge to whom the case has been transferred has concerns about accepting the case, the matter shall be referred to the next court superior to them both.

## **Third Chapter**

### **Criminal proceedings against juveniles**

#### **First Subchapter**

#### **Preliminary proceedings**

### **Section 43**

#### **Scope of investigations**

(1) Once proceedings have been initiated, investigations should be conducted as soon as possible into the accused's life and family background, his development, his previous conduct and all other circumstances apt to assist in assessing his psychological, emotional and character make-up. The parent or guardian and the legal representative, the school and the person providing him or her with training should insofar as possible be heard. The school or person providing training shall not be heard if the juvenile could as a result fear suffering undesirable disadvantages, id est. loss of his training place or his job. Account shall be taken of section 38 subsection (6) and section 70 subsection (2).

(2) If necessary, id est. to establish the state of his development or any other characteristics relevant to the proceedings, the accused shall undergo examination. Where possible an expert specialising in examining juveniles shall be assigned to carry out the order.

### **Section 44**

#### **Questioning the accused should youth penalty be anticipated**

If youth penalty is to be expected the public prosecutor or the president of the youth court should question the accused before charges are brought.

### **Section 45**

#### **Dispensing with prosecution**

(1) The public prosecutor may dispense with prosecution without the judge's consent if the conditions set out in section 153 of the Code of Criminal Procedure are met.



(2) The public prosecutor shall dispense with prosecution if a supervisory measure has already been enforced or initiated and if he or she considers neither the participation of the judge in accordance with subsection (3) nor the bringing of charges to be necessary. An attempt by the juvenile to achieve a settlement with the aggrieved person shall be considered equivalent to a supervisory measure.

(3) The public prosecutor shall propose issuance of a reprimand, of instructions in accordance with section 10 subsection (1), third sentence, nos. 4, 7 and 9, or conditions by the youth court judge if the accused admits his guilt and if the public prosecutor considers that the ordering of such a judicial measure is necessary but the bringing of charges not apposite. If the youth court judge agrees to the proposal, the public prosecutor shall dispense with the prosecution; where instructions or conditions are imposed he or she shall however dispense with the prosecution only once the juvenile has complied with them. Section 11 subsection (3) and section 15 subsection (3), second sentence, shall not be applied. Section 47 subsection (3) shall apply mutatis mutandis.

#### **Section 46**

##### **Principal results of the investigations**

The public prosecutor should set out the principal results of the investigations in the bill of indictment (section 200 subsection (2) of the Code of Criminal Procedure) such as to ensure that knowledge of them shall as far as possible involve no disadvantages for the accused's education and development.

#### **Section 46a**

##### **Filing of charges prior to reporting by the youth courts assistance service**

Apart from cases falling under section 38 subsection (7), the charge may also be filed prior to a report from the youth courts assistance service in accordance with section 38 subsection (3) if this is in the best interests of the juvenile and it can be anticipated that the outcome of the research will be available at the latest at the beginning of the main hearing. A report shall be made to the youth public prosecution office and the youth court after the charge has been filed.

#### **Second Subchapter**

##### **The main proceedings**

#### **Section 47**

##### **Discontinuation of proceedings by the judge**

(1) If the bill of indictment has been submitted, the judge may discontinue the proceedings if

1. the conditions set out in section 153 of the Code of Criminal Procedure have been met,
2. a supervisory measure within the meaning of section 45 subsection (2) which renders a decision by judgment dispensable, has already been conducted or initiated,
3. the judge considers a decision by judgment dispensable and orders a measure listed in section 45 subsection (3), first sentence, against a juvenile who has confessed his guilt, or
4. the defendant lacks criminal liability on the grounds of insufficient maturity.

In the cases designated in the first sentence, nos. 2 and 3, the judge may temporarily discontinue the proceedings with the consent of the public prosecutor and fix a period of no more than six months in which the juvenile must comply with the conditions, instructions or supervisory measures. The decision shall be handed down as an order of the court. That order shall not be subject to appeal. If the juvenile complies with the conditions, instructions or supervisory measures, the judge shall discontinue the proceedings. Section 11 subsection (3) and section 15 subsection (3), second sentence, shall not apply.

(2) Discontinuation of proceedings shall require the consent of the public prosecutor unless the latter has already given consent for their preliminary discontinuation. The order discontinuing proceedings may also be issued in the main proceedings. It shall set out the grounds for the decision and shall not be subject to appeal. The defendant shall not be informed of the grounds if it is to be feared that knowledge of them could involve disadvantages for his education and development.

(3) Fresh charges may be brought for the same act only on the basis of new facts or evidence.

#### **Section 47a**

##### **Pre-eminence of the youth courts**

After the main proceedings have been opened, a youth court cannot declare itself to lack jurisdiction on the ground that the case should be heard by a court of the same or a lower level dealing with general criminal matters. Section 103 subsection (2), second and third sentences, shall remain unaffected.

#### **Section 48**

##### **Exclusion of the public**

(1) The deliberations before the decision-taking court, including the announcing of its decisions, shall not be open to the public.

(2) Besides the participants to the proceedings, the aggrieved person, his parent or guardian and his legal representative, and, where the defendant is subject to the supervision and guidance of a probation officer or the care and supervision of a care assistant or if a social worker has been assigned to him or her, the probation officer, care assistant and the social worker are permitted to be present. The same shall apply to the head of institution in cases in which the juvenile receives supervisory assistance in a residential home or comparable institution. The judge may admit other persons for special reasons, id est. for training purposes.

(3) If young adults or adults are also defendants in the proceedings, the deliberations shall be held in public. The public may be excluded if this is in the supervisory interests of juveniles who are defendants.

#### **Section 49**

##### **Administering of oath**

(1) In proceedings before the youth court judge, an oath shall be administered to witnesses only if the judge considers it necessary to do so given the decisive importance of the testimony or in order to obtain truthful testimony. The youth court judge may refrain from administering an oath to experts in all cases.

(2) Subsection (1) shall not be applied if young adults or adults are also defendants in the proceedings.

#### **Section 50**

##### **Presence at the main hearing**

(1) The main hearing may take place in the absence of the defendant only if this would be permissible in the general proceedings, if there are special reasons to do so and with the assent of the youth public prosecution office.

(2) The presiding judge is to also issue an order to summons the parents or guardians and the legal representatives. The provisions concerning the summons, the consequences of failure to appear and compensation for witnesses shall apply mutatis mutandis.

(3) The youth courts welfare office shall be informed of the place and time of the main hearing in good time prior to the scheduled date. The representative of the youth courts welfare office shall be permitted to speak at the main hearing on request. If no representative of the youth courts assistance service is present, a written report by the youth courts assistance service may be read out in the main hearing, subject to the provisos of section 38 subsection (7), first sentence.

(4) If a probation officer assigned to the juvenile attends the main hearing, he or she should be heard as to the juvenile's development during the probationary period. The first sentence shall apply mutatis mutandis to a care assistant assigned to the juvenile and the leader of a social skills training course attended by the juvenile.

### **Section 51**

#### **Temporary exclusion of participants**

(1) The presiding judge should exclude the accused for the duration of discussions in the deliberations which could be disadvantageous to his education and development. He or she shall inform the defendant of the deliberations held in his absence insofar as is necessary for the purposes of his defence.

(2) The presiding judge may also exclude the accused's parent or guardian and legal representative from the hearing where

1. there is a risk of considerable educational disadvantages because of a fear that by discussing the personal circumstances of the accused in their presence, necessary future cooperation between the persons named and youth courts assistance service in implementing youth court sanctions which are to be anticipated is made considerably more difficult,
2. they are suspected of being involved in the accused's misconduct, or to the degree that they have been convicted in respect of participation,
3. there is fear of a danger to the life, limb or liberty of the accused, of a witness or of another person or of another considerable impairment to the well-being of the accused,
4. it is to be feared that their presence will impair the ascertainment of the truth, or
5. circumstances from the personal life of a party concerned by the proceedings, witness or person aggrieved by an unlawful act are discussed the discussion of which in their presence would breach interests in need of protection unless the interest of the parent or guardian and legal representatives in their being discussed in their presence outweighs such interests.

In cases falling under the first sentence, nos. 3 to 5, the presiding judge may also exclude the parent or guardian and legal representatives of the aggrieved person from the hearing, in cases falling under no. 3, also if other considerable impairment of the well-being of the aggrieved party is to be feared. Parents and guardians and legal representatives shall be excluded if the preconditions of the first sentence, no. 5, are met and the exclusion of the person whose life is affected is applied for. The first sentence, no. 5, shall not apply insofar as the persons whose lives are affected are opposed to exclusion from the main hearing.

(3) Section 177 of the Courts Constitution Act shall apply mutatis mutandis.

(4) In cases falling under subsection (2), an agreement is to be sought with regard to leaving the courtroom prior to exclusion. The presiding judge shall suitably inform the parent or guardian and legal representatives of the accused, as soon as they are present once more, of the essential content of what has been testified, or of the deliberations held, during their absence.

(5) The exclusion of the parent or guardian and of legal representatives in accordance with subsections (2) and (3) shall also be permissible if they are appointed as counsel (section 69)

(6) If the parents and guardians and the legal representatives are excluded from a not inconsiderable part of the main hearing, the presiding judge shall permit the presence of another adult individual who is suited to protect the interests of the juvenile for the duration of their exclusion. The juvenile is to be afforded the opportunity to designate an adult individual enjoying his or her confidence. The other suitable individual present shall be permitted to speak in the main hearing on request. If no other person is permitted to be present in

accordance with the first sentence, a representative of youth welfare must be present to care for the juvenile in the criminal proceedings against juveniles.

(7) Subsection (6) shall apply mutatis mutandis if no parents or guardians and no legal representatives are present at the main hearing because it was not possible to reach them within a reasonable period.

#### **Section 51a**

##### **Recommendation of the main hearing**

In the event of it not emerging until during the main hearing that the participation of defence counsel in accordance with section 68 no. 5 is necessary, the main hearing shall be recommenced if the juvenile did not have defence counsel from the time of the commencement of the main hearing.

#### **Section 52**

##### **Credit for remand detention when calculating youth detention**

Where youth detention is ordered and where its purpose has been achieved in full or in part by serving remand detention or some other form of deprivation of liberty resulting from the act, the judge may stipulate in the judgment that, or the extent to which, the youth detention shall not be enforced.

#### **Section 52a**

##### **Credit for remand detention when calculating youth penalty**

(1) Where the accused has had remand detention or another form of deprivation of liberty imposed on him or her as a result of an offence which is or has been the subject of the proceedings, this shall be credited against the youth penalty. The judge may however order that credit shall be withheld in full or in part if credit is not justified given the defendant's conduct after the offence or for supervisory reasons. Supervisory reasons shall be deemed to exist if, once credit has been given for deprivation of liberty, the remaining supervisory effect required on the defendant is not guaranteed.

(2) (repealed)

#### **Section 53**

##### **Transfer of matters to the family or guardianship judge**

In his judgment the judge may leave it to the judge responsible for family or guardianship matters to select and order supervisory measures if he or she does not impose youth penalty. The judge responsible for family or guardianship matters must then order imposition of a supervisory measure providing the circumstances on which the judgment were mainly based have not changed.

#### **Section 54**

##### **Grounds for the judgment**

(1) If the defendant is found guilty, the grounds for the judgment shall also set out which circumstances were decisive to fixing his punishment, for the measures ordered, for leaving the selection and ordering of them to the judge responsible for family or guardianship matters, or for refraining from imposing disciplinary measures and punishment. Account should be taken here in particular of the defendant's moral, intellectual and physical make-up.

(2) The defendant shall not be informed of the grounds for the judgment if there is cause to fear that doing so might be disadvantageous for his education and development.

### **Third Subchapter Legal remedies**

#### **Section 55**

##### **Contesting decisions**

(1) A decision which orders only supervisory measures or disciplinary measures, or which leaves the selection and ordering of supervisory measures to the judge responsible for family

or guardianship matters, cannot be contested on the basis of the extent of the measures, nor can it be contested because other or farther-reaching supervisory measures or disciplinary measures ought to have been ordered or because the selection and ordering of supervisory measures has been left to the judge responsible for family or guardianship matters. This provision shall not apply if the judge has ordered making use of supervisory assistance in accordance with section 12 no. 2.

(2) Whoever has submitted an admissible appeal on fact and law may no longer submit an appeal on law only against the judgment in the first-mentioned appeal. If the defendant, the parent or guardian or the legal representative has submitted an admissible appeal on fact and law, none of the aforementioned may avail themselves of an appeal on law only as a legal remedy against the judgment in the appeal on fact and law.

(3) The parent or guardian or the legal representative may withdraw a legal remedy filed by him or her only with the consent of the accused.

(4) Section 356a of the Code of Criminal Procedure shall apply mutatis mutandis insofar as a person concerned in accordance with subsection (1), first sentence, is prevented from challenging a decision or in accordance with subsection (2) is unable to lodge an appeal against the ruling on the appeal on points of fact and law.

## **Section 56**

### **Partial enforcement of an aggregate penalty**

(1) If a defendant 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 findings on the guilt in relation to one or several criminal offences have not been contested. The order shall be admissible only if it is in the accused's recognised interest. The part of the penalty may not exceed the penalty applicable to a conviction for those criminal offences where the findings on the defendant's guilt have not been contested.

(2) An immediate complaint may be filed against this order.

## **Fourth Subchapter**

### **Procedure for probationary suspension of youth penalty**

## **Section 57**

### **Decision on suspension**

(1) Probationary suspension of youth penalty shall be ordered in the judgment or subsequently by order of the court if execution of the penalty has not yet commenced. If the decision on suspension has not been reserved in the judgment, jurisdiction for issuing the order subsequently shall lie with the court which handed down the decision on the matter at first instance; the public prosecution office and the juvenile shall be heard.

(2) If the court has not reserved the decision on suspension for a subsequent order or refused suspension in the judgment or in a subsequent order, it may subsequently be ordered only if, since the judgment or order was handed down, circumstances have come to light which, on their own or in conjunction with the circumstances which are already known, justify probationary suspension of youth penalty.

(3) Where consideration can be given to instructions or conditions (section 23) the juvenile shall, in suitable cases, be asked whether he or she can give assurances concerning his future conduct or he or she offers to render services suitable to make amends for the wrong he or she has done. Where consideration can be given to an instruction to undergo rehabilitative treatment or addiction withdrawal treatment a juvenile who has reached sixteen years of age shall be asked whether he or she gives his consent thereto.

(4) Section 260 subsection (4), fourth sentence, and section 267 subsection (3), fourth sentence, of the Code of Criminal Procedure shall apply mutatis mutandis.

## **Section 58**

### **Further decisions**

(1) Decisions which become necessary due to the suspension (sections 22, 23, 24, 26 and 26a) shall be taken by order of the judge. The public prosecutor, the juvenile and the probation officer shall be heard. Where consideration can be given to a decision in accordance with section 26 or to imposition of youth detention, the juvenile shall be given the opportunity to make an oral statement before the judge. Grounds shall be set out in the order.

(2) The judge shall also supervise enforcement of the provisional measures in accordance with section 453c of the Code of Criminal Procedure.

(3) Jurisdiction shall lie with the judge who ordered the suspension. He or she can transfer all or part of the decisions to the youth court judge in whose district the juvenile resides. Section 42 subsection (3), second sentence, shall apply mutatis mutandis.

### **Section 59** **Contesting decisions**

(1) An immediate complaint shall be admissible against a decision ordering or rejecting suspension of youth penalty if such order is to be contested alone or only jointly with the decision on ordering youth detention in accordance with section 16a. The same shall apply if a judgement is contested solely because the penalty has not been suspended.

(2) A complaint may be filed against a decision on the duration of the probationary period (section 22), the duration of the period of probationary assistance (section 24), a fresh order to undergo probationary assistance during the probationary period (section 24 subsection (2)) and on instructions and conditions (section 23). The complaint may relate only to the fact that the probationary period or the period of probationary assistance was subsequently lengthened, that probationary assistance was ordered afresh or that an order which has been imposed is illegal.

(3) An immediate complaint shall be admissible against the revocation of suspension of youth penalty (section 26 subsection (1)).

(4) The order concerning remission of youth penalty (section 26a) cannot be contested.

(5) If an admissible appeal on law only is filed against a judgment and a complaint filed against a decision relating to probationary suspension of youth penalty ordered in the judgment, the court hearing the appeal on law only shall also have jurisdiction to hand down a decision on the complaint.

### **Section 60** **Probation plan**

(1) The presiding judge shall set out the conditions and instructions imposed in a probation plan. He or she shall give the plan to the juvenile and at the same time caution him or her as to the significance of the suspension, the period of probation and probationary assistance, the instructions and conditions and about the possibility of revoking the probation. At the same time, he or she shall be instructed to give notice each time he or she changes the place where he or she resides or where he or she receives training or works during the probationary period. Where changes are subsequently made to the probation plan, the juvenile shall also be advised as to the essential content.

(2) The probation officer's name shall be entered in the probation plan.

(3) By his signature the juvenile should confirm that he or she has read the probation plan and promise that he or she wishes to comply with the instructions and conditions. The parent or guardian and the legal representative should also sign the probation plan.

### **Section 61** **Reserve of a subsequent ruling on suspension**

(1) In the judgment, the court may explicitly reserve the ruling on the suspension of youth penalty on probation for a subsequent order if



1. after, exhausting the possibilities of investigation, the findings that have been made are not yet able to give rise to the expectations stipulated in section 21 subsection (1), first sentence, and
  2. as a result of indications in the life led by the juvenile or of other specific circumstances there are prospects that such an expectation will be justified in the foreseeable future (section 61a subsection (1)).
- (2) A corresponding reserve may also be pronounced if
1. circumstances of the nature designated in subsection (1) no. 2 have emerged in the main hearing which, by themselves or in conjunction with other circumstances, might give rise to the expectation stipulated in section 21 subsection (1), first sentence,
  2. the findings which relate to the circumstances which are significant in accordance with no. 1 require further investigations, and
  3. the interruption or suspension of the main hearing would lead to delays which would be educationally disadvantageous or would be disproportionate.
- (3) Section 16a shall apply mutatis mutandis if the reserve is pronounced in the judgment. The reserve shall be included in the operative part of the judgment. The grounds for the judgment must list the circumstances which determined this. When the judgment is proclaimed, the juvenile shall be informed of the significance of the reserve and of his/her conduct in the period until the subsequent decision.

#### **Section 61a**

##### **Period and jurisdiction for the reserved decision**

- (1) The reserved decision shall be handed down at the latest six months after the judgment gains legal force. The court may set a shorter maximum period with the reserve. For special reasons and with the consent of the convict, the period in accordance with the first or second sentence may be extended by order to a maximum of nine months from when the judgment gains legal force.
- (2) The court shall have jurisdiction for the reserved decision in the judgment of which it was possible to verify the underlying factual findings for the last time.

#### **Section 61b**

##### **Further decisions in case of reserve of the decision on suspension**

- (1) The court may issue instructions and conditions to the juvenile for the period between the judgment gaining legal force and expiry of the period that is relevant in accordance with section 61a subsection (1); sections 10 and 15 subsections (1) and (2), section 23, subsection (1), first to third sentences, and subsection (2), shall apply mutatis mutandis. The court is to place the juvenile under the supervision and guidance of a probation officer for this period; this is only to be waived if sufficient guidance and monitoring are guaranteed by the youth court assistance service. Sections 24 and 25 shall apply mutatis mutandis in other respects. Probationary assistance and youth court assistance service shall work closely together. Here, they may also pass to one another personal data regarding the convict where this is necessary to properly perform the guidance and monitoring tasks of the respectively other agency. Section 58 subsection (1), first, second and fourth sentences, and subsection (3), first sentence, and section 59 subsections (2) and (5), shall apply mutatis mutandis to the decisions in accordance with this subsection. The provisions of section 60 shall be applied mutatis mutandis.
- (2) If sufficient grounds emerge prior to expiry of the period which is relevant in accordance with section 61a subsection (1) to presume that suspension of youth penalty on probation will be refused, section 453c of the Code of Criminal Procedure and section 58 subsections (2) and (3), first sentence, shall apply mutatis mutandis.
- (3) If the youth penalty is suspended on probation, the time from when the judgment in which the suspension of a subsequent ruling was reserved gains legal force shall be allowed



against the probationary period in accordance with section 22 until the ruling on the suspension gains legal force.

(4) If the suspension is rejected, the court may allow services rendered by the juvenile in compliance with instructions, conditions, assurances or offers against the youth penalty. The court shall allow the contributions if the legal consequences of the offence would otherwise exceed the degree of culpability. Section 26 subsection (3), third sentence, shall apply mutatis mutandis with regard to youth detention which was imposed in accordance with section 16a (section 61 subsection (3), first sentence).

### **Fifth Subchapter**

#### **Procedure for suspension of imposition of youth penalty**

##### **Section 62**

##### **Decisions**

(1) Decisions in accordance with sections 27 and 30 shall be handed down in the form of a judgment based on main proceedings. Section 267 subsection (3), fourth sentence, of the Code of Criminal Procedure shall apply mutatis mutandis to the decision to suspend imposition of youth penalty.

(2) With the consent of the public prosecutor an order that the guilty verdict be considered spent may be also ordered after expiry of the probationary period without a main hearing.

(3) If a main hearing conducted during the probationary period reveals that youth penalty is necessary (section 30 subsection(1)), an order shall be issued stating that the decision to impose the penalty shall remain suspended.

(4) Section 58 subsection (1), first, second and fourth sentences, and section 58, subsection (3), first sentence, shall apply mutatis mutandis to the other decisions which become necessary as a result of the suspension of imposition of youth penalty.

##### **Section 63**

##### **Contesting decisions**

(1) An order that the guilty verdict be considered spent (section 62 subsection (2)) or that the decision to impose youth penalty shall remain suspended (section 62 subsection (3)) may not be contested.

(2) In other cases section 59 subsections (2) and (5), shall apply mutatis mutandis.

##### **Section 64**

##### **Probation plan**

Section 60 shall apply mutatis mutandis. The juvenile shall be advised of the significance of the suspension, the period of probation and the period of probationary assistance, of the instructions and conditions and that he or she can expect a youth penalty to be imposed if he or she demonstrates poor conduct during the probationary period.

### **Sixth Subchapter**

#### **Supplementary decisions**

##### **Section 65**

##### **Subsequent decisions on instructions and conditions**

(1) Subsequent decisions relating to instructions (section 11 subsections(2) and (3)) or conditions (section 15 subsection (3)) shall be taken by order of the judge at first instance after hearing the public prosecutor and the juvenile. Insofar as necessary, the representative of the youth court assistance service, the care assistant appointed in accordance with section 10 subsection (1), third sentence, no. 5, and the leader of the social skills training centre acting in accordance with section 10 subsection (1), third sentence, no. 6, shall be heard. Where consideration can be given to imposing youth detention, the juvenile shall be given the opportunity to make an oral statement before the judge. The judge may transfer the proceedings to the youth court judge in whose district the juvenile is resident if the

juvenile has changed his place of residence. Section 42 subsection (3), second sentence, shall apply mutatis mutandis.

(2) If the judge has refused to change instructions, his order cannot be contested. If he or she has imposed youth detention, an immediate complaint may be filed against the order. That complaint shall have a delaying effect.

## **Section 66**

### **Supplementation of decisions in force for multiple convictions**

(1) Where measures or youth penalty have not been fixed as an aggregate (section 31), and where the supervisory measures, disciplinary measures and penalties recognised in the legally effective decisions have not yet been implemented, served or otherwise disposed of in full, the judge shall hand down a like decision thereafter. This shall not apply insofar as the judge had dispensed with taking account of criminal offences for which final sentence has been passed in accordance with section 31 subsection (3).

(2) The decision shall be taken by judgment based on a main hearing if applied for by the public prosecutor or if the presiding judge considers it appropriate. If no main hearing is conducted, the judge shall take his decision by order. The same shall apply to jurisdiction and procedure for issuing the order as applies to the subsequent formulation of an aggregate penalty under the general provisions. If youth penalty has been served in part, jurisdiction shall lie with the judge entrusted with the tasks of the head of enforcement.

## **Seventh Subchapter**

### **Common provisions on procedure**

## **Section 67**

### **Position of the parents or guardians and of the legal representatives**

(1) Insofar as the accused has a right to be heard, or to ask questions and make applications, this right shall also accrue to the parents or guardians and to the legal representatives.

(2) The legal representatives' rights to select defence counsel and to file for legal remedies shall also accrue to the parents or guardians.

(3) With regard to investigatory acts at which the juvenile is entitled to be present, namely at his or her questioning, the parents and guardians and legal representatives shall be permitted to be present insofar as

1. this is in the best interests of the juvenile, and
2. their presence does not obstruct the criminal proceedings.

The prerequisites set out in the first sentence, nos. 1 and 2 shall be deemed to have been complied with as a rule if none of the reasons for exclusion stated in section 51 subsection (2) apply, and no failure to comply with an order that was given in order to maintain order that is to be addressed in accordance with section 177 of the Courts Constitution Act has taken place. If no parent or guardian or legal representative is present because they are prohibited from attending, or because it was not possible to reach a parent or guardian or legal representative within a reasonable period, another adult individual who is suited to protect the interests of the juvenile shall be notified shall be permitted to be present if the prerequisites of the first sentence, nos. 1 and 2 are complied with in respect of this individual.

(4) The youth court may remove the rights in accordance with subsections (1) to (3) from parents or guardians and legal representatives insofar as they are suspected of participating in the accused's misconduct, or insofar as they have been convicted of participation. Where a parent or guardian or a legal representative fulfils the conditions set out in the first sentence, the judge may remove those rights from both parties if abuse of those rights is to be feared. If the parents or guardians and the legal representatives 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 proceedings which are pending. The main hearing shall be suspended until the carer has been appointed.

(5) Where there are several parents or guardians, each of them may exercise the rights of parents and guardians set out in this Act. Absentee parents or guardians shall be deemed to be represented at the main hearing, or in any other court hearing, by the parents or guardians who are present. Where provision is made for notices or summonses to be issued, it shall be sufficient for these to be addressed to one of the parents or guardians.

#### **Section 67a**

##### **Notification of the parents and guardians, and of the legal representatives**

(1) If a notification to the accused is prescribed, the corresponding notification is to be addressed to the parents and guardians and to the legal representatives.

(2) The information which the juvenile is to receive in accordance with section 70a is in each case to also be issued to the parents and guardians and to the legal representatives as soon as possible. In the case of the juvenile being temporarily deprived of his or her liberty, the parents or guardians and the legal representatives shall be informed of the deprivation of liberty and of the reasons therefor as soon as possible.

(3) Notifications and information to parents and guardians and to legal representatives in accordance with subsections (1) and (2) shall not be provided insofar as

1. such notification would cause concern with regard to a considerable detriment to the best interests of the juvenile, in particular in the case of a risk to the life, limb or liberty of the juvenile, or if the provisos of section 67 subsection (4), first or second sentence, apply
2. such notification would considerably endanger the purpose of the investigation, or
3. the parents or guardians or the legal representatives cannot be reached in good time.

(4) If, in accordance with subsection (3), neither parents or guardians nor legal representatives are notified, another adult individual who is suited to protect the interests of the juvenile shall be notified. The opportunity is to be afforded to the juvenile prior to this to name an adult individual enjoying his or her trust. Another suitable adult individual may also be the representative of the youth courts assistance service who is responsible for the juvenile in criminal proceedings against juveniles.

(5) Should there no longer be any reasons why notifications and information in accordance with subsection (3) may be omitted, notifications and information prescribed in the further proceedings shall also once more be addressed to the parents and guardians concerned, as well as to legal representatives affected. Furthermore, in such cases they shall retroactively also receive such notifications and information that the juvenile already received in accordance with section 70a insofar as these remain significant in the course of the proceedings, or as soon as they become significant.

(6) The procedure in accordance with section 67 subsection (4) shall apply mutatis mutandis to the permanent deprivation of the rights in accordance with subsections (1) and (2).

#### **Section 68**

##### **Compulsory defence counsel**

A case of compulsory defence counsel shall be deemed to exist if

1. a case of compulsory defence counsel would exist in proceedings against an adult,
2. the parents or guardians and the legal representatives have had their rights withdrawn in accordance with this Act,

3. the parents or guardians and the legal representatives have been excluded from the hearing in accordance with section 51 subsection (2), and the impairment in the defence of their rights can no longer be sufficiently compensated for by subsequent information (section 51 subsection (4), second sentence) or by the presence of another suitable adult individual,

4. consideration may be given to placing the accused in an institution for the purpose of preparing an expert report on his personal development (section 73), or

5. the imposition of youth penalty, suspension of the imposition of youth penalty, or the ordering of accommodation in a psychiatric hospital or in an institution for withdrawal treatment, can be anticipated.

#### **Section 68a**

##### **Time of appointment of obligatory counsel**

(1) In cases of compulsory defence counsel, obligatory counsel shall be appointed to a juvenile who does not yet have defence counsel, at the latest before the juvenile is questioned or an identity parade is carried out with him or her. This shall not apply if a case of compulsory defence exists solely because the juvenile is being accused of a serious criminal offence, a dispensation with criminal prosecution can be anticipated in accordance with section 45 subsection (2) or (3), and the appointment of obligatory counsel would be disproportionate at the time stated in the first sentence, including taking account of the best interests of the juvenile and of the circumstances of the individual case.

(2) Section 141 subsection (2), second sentence, of the Code of Criminal Procedure shall not be applied.

#### **Section 68b**

##### **Questioning and identity parades prior to the appointment of compulsory defence counsel**

Questioning of the juvenile or identity parades in derogation from section 68a subsection (1) may be carried out with him or her in the preliminary proceedings insofar as this is also

1. necessary in order to avert serious harmful effects on the life, limb or liberty of an individual, or

2. immediate action on the part of the criminal prosecution authorities is imperatively required in order to avert a serious risk to criminal proceedings relating to a serious criminal offence,

also taking the best interests of the juvenile into account. The right of the juvenile to also ask questions of defence counsel to be selected by him or her at any time, including prior to the questioning, shall remain unaffected thereby.

#### **Section 69**

##### **Adviser**

(1) 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.

(2) The parent or guardian and the legal representative may not be appointed as adviser if this could be expected to be disadvantageous to his education and development.

(3) The adviser can be permitted to inspect the files. He or she shall otherwise have the same rights in the main hearing as defence counsel. He or she shall not be entitled to defend the accused.

#### **Section 70**

##### **Notifications to official bodies**

(1) The youth court assistance service, in appropriate cases also the judge responsible for family and guardianship matters, the family judge and the school shall be informed of the

initiation and outcome of the proceedings. They shall inform the youth public prosecution office if they become aware that other criminal proceedings are pending against the accused. The judge responsible for family and guardianship matters shall furthermore inform the youth public prosecution office of other measures taken by the family and guardianship courts and of the variance or lifting of such measures where the judge responsible for family and guardianship matters does not consider that the interests meriting protection of the accused or of any other person or body affected by the notification override such notification.

(2) The youth courts assistance service shall be informed of the initiation of the proceedings at the latest at the time when the juvenile is summonsed to his or her first questioning as an accused person. In the event of the first questioning as an accused person taking place without a prior summons, the notification must take place at the latest without undue delay after the questioning.

(3) In the event of the juvenile being temporarily deprived of his or her liberty, the bodies implementing the deprivation of liberty shall notify the youth public prosecution office and the youth welfare office ex officio of knowledge that they have obtained on the basis of a medical examination insofar as such knowledge gives rise to doubts as to whether the juvenile is fit for trial or for specific investigative acts or measures. Section 114e of the Code of Criminal Procedure shall remain unaffected in other respects.

### **Section 70a**

#### **Notification of the juvenile**

(1) Insofar as the juvenile is informed that he or she is an accused person, he or she shall be informed without undue delay of the basic principles of criminal proceedings against juveniles. He or she shall also be informed without undue delay of the next steps that are to be taken in the proceedings against him or her, insofar as the purpose of the investigation is not endangered thereby. Furthermore, the juvenile shall be informed without undue delay that

1. the parents and guardians, and the legal representatives, or another suitable adult individual, are to be informed in accordance with section 67a,
2. he or she may demand that defence counsel participate in cases of compulsory defence counsel (section 68) in accordance with section 141 of the Code of Criminal Procedure, and with section 68a, and in accordance with section 70c subsection (4) may demand the postponement or interruption of his or her questioning for a reasonable period,
3. in accordance with section 48, the questioning before the court handing down the ruling is to be held in camera as a matter of principle and, should the main hearing be held in public by way of exception subject to specific prerequisites, may request the hearing to be held in camera, or specific individuals to be excluded,
4. he or she may object to a copy of the audio and video recording of his or her questioning being given to those entitled to inspect the file in accordance with section 70c subsection (2), fourth sentence, of the present Act in conjunction with section 58a subsection (2), sixth sentence, and subsection (3), first sentence, of the Code of Criminal Procedure, and that his or her consent is required to provide the recording or copies thereof to other bodies,
5. he or she may be accompanied in the case of investigative acts by his or her parents or guardians and legal representatives in accordance with section 67 subsection (3), or by another suitable adult individual,
6. he or she may demand a review of the measures and decisions in question in respect of an alleged violation of his or her rights on the part of one of the participating authorities or of the court.

(2) The juvenile shall furthermore be informed with regard to the following as early as possible insofar as this is significant in the proceedings, or as soon as this becomes significant in the proceedings:

1. accommodation of his or her personal circumstances in the proceedings in accordance with sections 38, 43 and 46a,
2. the right to a medical examination to which he or she is entitled in accordance with *Land* law, or with the law of the police forces of the Federation, in the event of temporary deprivation of liberty, as well as with regard to the entitlement to medical support, insofar as it emerges that such is necessary during this deprivation of liberty,
3. the application of the principle of proportionality in the event of temporary deprivation of liberty, namely
  - a) of the priority attaching to other measures by means of which the purpose of the deprivation of liberty can be achieved,
  - b) the limitation of the deprivation of liberty to the shortest appropriate period of time, and
  - c) the consideration of the particular strains caused by the deprivation of liberty in view of his or her age and state of development, as well as the accommodation of any particular other vulnerability,
4. the other measures that can be considered as a rule in suitable cases,
5. the ex officio examinations that are prescribed in cases involving detention,
6. the right to the presence of the parents or guardians, and of the legal representatives, or of another suitable adult individual, at the main hearing,
7. his or her right, and his or her obligation, to be present at the main hearing in accordance with section 50 subsection (1) and with section 51 subsection (1).

(3) Should remand detention be ordered with regard to the juvenile, he or she shall furthermore be informed that

1. in accordance with section 89c, he or she is to be accommodated separately from adults,
2. in accordance with the Prison Acts (*Vollzugsgesetze*) of the *Länder*
  - a) care is to be taken of his or her health, physical and mental development,
  - b) his or her right to education and training is to be safeguarded,
  - c) his or her right to family life, and in this regard the possibility to meet his or her parents and guardians, as well as his or her legal representatives, is to be guaranteed,
  - d) his or her access is to be guaranteed to programmes and measures which promote his or her development and reintegration, and
  - e) he or she is to be guaranteed freedom of religion and ideology.

(4) In the event of temporary deprivation of liberty other than in remand detention, the juvenile shall be informed of his or her rights applicable thereto in accordance with subsection (3) no. 2, in case of his or her being taken into police custody, also of his or her right to be accommodated separately from adults in accordance with the provisions material therefor.



(5) Section 70b of the present Act and section 168b subsection (3) of the Code of Criminal Procedure shall apply mutatis mutandis.

(6) Insofar as a juvenile who has been arrested is given written instructions in accordance with section 114b of the Code of Criminal Procedure, such instructions shall also contain the additional information in accordance with this section.

(7) Other obligations to provide information and instructions shall remain unaffected by the provisions contained in this section.

#### **Section 70b Instructions**

(1) Prescribed instructions must be given to the juvenile in a manner which corresponds to his age and state of development and education. They shall also be addressed to his parents or guardians and statutory representatives if they are present, and must in doing so be given in such a manner as to enable them to comply with their responsibility with regard to the object of the instruction. If no parents or guardians or statutory representatives are present when the instruction is given to the juvenile regarding the significance of the legal consequences ordered by the court, the instruction thereon must be issued to them in writing.

(2) If co-accused persons are present when instructions are given regarding the significance of suspension of youth penalty on probation or the significance of the reserve of such a subsequent decision who are juveniles or young adults who are only sentenced to supervisory measures or disciplinary measures, the instruction is to also give them an understanding of the significance of the decision.

#### **Section 70c Questioning of the accused**

(1) The questioning of the accused shall be carried out in a manner in accordance with his or her age and state of development and education.

(2) Outside the main hearing, a video and audio recording may be made of the questioning. A video and audio recording shall be made of questioning other than by a judge if the participation of defence counsel is compulsory at the time of the questioning, but no defence counsel is present. Section 136 subsection (4), second sentence, of the Code of Criminal Procedure, also in conjunction with section 163a subsection (3), second sentence, or subsection 4, second sentence, of the Code of Criminal Procedure, shall remain unaffected in other respects. Section 58a subsections (2) and (3) of the Code of Criminal Procedure shall apply mutatis mutandis if a video and audio recording is made of the questioning.

(3) A video and audio recording in accordance with subsection (2) shall not affect the provisions of the Code of Criminal Procedure on the taking of minutes regarding investigative acts. Minutes shall always be taken of questioning of the accused outside the main hearing if no video and audio recording is made thereof.

(4) If the participation of defence counsel is or becomes compulsory at the time when the accused is questioned or an identity parade takes place (section 58 subsection (2) of the Code of Criminal Procedure), it shall be postponed or interrupted for a suitable period if no defence counsel is present and no case exists falling under section 68b. The first sentence shall not apply if defence counsel has explicitly waived being present.

#### **Section 71 Preliminary orders on supervision**

(1) Until the judgment enters into final effect, the judge may issue preliminary orders concerning supervision of the juvenile or suggest the provision of services in accordance with the Eighth Book of the Social Code.

(2) The judge may order temporary placement in a suitable youth welfare services home if this is also apposite, given the measure which is to be expected, in order to protect the juvenile from a further risk to his development, in particular from committing further criminal offences. Sections 114 to 115a, 117 to 118b, 120, 125 and 126 of the Code of Criminal



Procedure shall apply by analogy to temporary placement. Temporary placement shall be implemented in accordance with the rules applicable to the youth welfare service home.

## **Section 72**

### **Remand detention**

(1) Remand detention may be imposed and enforced only if its purpose cannot be achieved by a preliminary supervision order or by other measures. In assessing its proportionality (section 112 subsection (1), second sentence, of the Code of Criminal Procedure) account shall also be taken of the special strain which executing custody has on juveniles. Where remand detention is imposed, the detention order shall set out the reasons which demonstrate that other measures, particularly temporary placement in a youth welfare service home, are not sufficient and that remand detention is not disproportionate.

(2) Until the juvenile has reached sixteen years of age, imposition of remand detention due to a risk of flight shall be admissible only if he or she:

1. had already absconded from the proceedings or made efforts to do so, or
2. he or she has no fixed abode or residence within the area in which this Act is applicable.

(3) The decision on enforcement of a custody order and on the measures to avoid it being enforced shall be taken by the judge who issued the custody order or, in urgent cases, by the youth court judge in whose district remand detention would have to be executed.

(4) Temporary placement in a youth welfare service home (section 71 subsection (2)), may also be ordered under the same conditions for issuing a custody order. In this case, the judge may subsequently replace the placement order with a custody order if that proves to be necessary.

(5) If a juvenile is being held in remand detention, the proceedings shall be conducted particularly expeditiously.

(6) The competent judge may, for important reasons, transfer all or some of the judicial decisions concerning remand detention to another youth court judge.

## **Section 72a**

### **Involvement of the youth court assistance service in custody matters**

The youth court assistance service shall be informed without delay of the enforcement of a custody order; it should be informed already when a custody order is issued. The youth court assistance service shall be informed when a juvenile is placed under temporary arrest if it can be expected from the investigations so far that the juvenile will be brought before the judge in accordance with section 128 of the Code of Criminal Procedure.

## **Section 73**

### **Placement for observation purposes**

(1) In order to prepare an expert opinion on the accused's state of development, the judge may, after hearing an expert and the defence counsel, order that the accused be taken to an institution appropriate for the examination of juveniles and that he or she be placed under observation there. In the preparatory proceedings, the decision shall be taken by the judge who would have jurisdiction to open the main proceedings.

(2) An immediate complaint against the decision shall be admissible. It shall have a delaying effect.

(3) The period of custody in the institution shall not exceed six weeks' duration.

## **Section 74**

### **Costs and expenses**

The imposition of costs and expenses on the defendant may be dispensed with in proceedings against a juvenile.

## **Eighth Subchapter**

### **Simplified procedure for cases involving juveniles**

#### **Section 75** **(deleted)**

#### **Section 76**

##### **Conditions for applying the simplified procedure for matters involving juveniles**

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 juveniles 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, withdraw permission to drive and impose a bar not exceeding two years or seizure. The public prosecutor's application shall be equivalent to public charges.

#### **Section 77**

##### **Rejection of the application**

(1) The youth court judge shall decline to take a decision by simplified procedure if the matter is not suitable for the procedure, id est. if it is probable that supervisory assistance within the meaning of section 12 no. 2 will be ordered or youth penalty will be imposed or if the taking of comprehensive evidence is necessary. The decision may be taken until the time when the judgment is pronounced. It may not be contested.

(2) If the youth court judge refuses to take a decision by simplified procedure, the public prosecutor shall submit a bill of indictment.

#### **Section 78**

##### **Procedure and decision**

(1) The youth court judge shall issue a decision under the simplified procedure for matters involving juveniles by judgment on the basis of an oral hearing. He or she may not impose supervisory assistance within the meaning of section 12 no. 2 youth penalty or placement in an institution for withdrawal treatment.

(2) The public prosecutor shall not be obliged to attend the hearing. If he or she does not attend, his consent shall not be required for the proceedings to be discontinued during the hearing or for proceedings to be conducted in the absence of the defendant.

(3) To simplify, accelerate and structure proceedings in a juvenile-friendly manner, it shall be permissible to deviate from procedural provisions, providing that such deviation does not impair the investigation of the truth. The provisions concerning the presence of the accused (section 50), the status of the parents or guardians and of the legal representatives and their notification (section 67 and 67a), and notifications to official bodies (section 70), and the information of the juvenile (section 70a) must be observed. If the accused fails to attend the oral hearing, and if his absence is not adequately excused, he or she can be ordered to be brought before the judge if this has been threatened in the subpoena.

## **Ninth Subchapter**

### **Suspension of provisions of general procedural law**

#### **Section 79**

##### **Penalty order and accelerated procedure**

(1) No penalty order may be issued against a juvenile.

(2) The accelerated procedure set out under general procedural law shall be inadmissible.

#### **Section 80**

##### **Private prosecution and private ancillary prosecution**

(1) No private prosecution may be brought against a juvenile. Misconduct which under the provisions of general law may be pursued by private prosecution shall also be prosecuted by the public prosecutor if supervisory reasons or a justified interest of the aggrieved person which does not go against the aim of the supervision so require.

(2) A counter action shall be admissible against a juvenile who brings a private prosecution.  
No youth penalty may be imposed.

(3) The public charge lodged may only be joined as an ancillary prosecutor by someone who has been aggrieved

1. by a serious criminal offence against life, physical integrity or sexual self-determination, or in accordance with section 239 subsection (3), section 239a or section 239b of the Criminal Code, by means of which the victim has been mentally or physically seriously damaged or exposed to such a danger,

2. by a particularly serious case of a criminal offence in accordance with section 177 subsection (6) of the Criminal Code by means of which the victim suffered serious emotional or physical damage, or was exposed to such a danger, or

3. by a serious criminal offence in accordance with section 251 of the Criminal Code, also in conjunction with section 252 or section 255 of the Criminal Code.

Section 395 subsection (2) no. 1, subsections (4) and (5), and sections 396 to 402 of the Code of Criminal Procedure, shall apply mutatis mutandis in other respects.

#### **Section 81**

##### **Adhesion procedure**

The provisions of the Code of Criminal Procedure governing the adhesion procedure (sections 403 to 406c of the Code of Criminal Procedure) shall not be applied in proceedings against a juvenile.

#### **Tenth Subchapter**

##### **Ordering of preventive detention**

#### **Section 81a**

##### **Procedure and decision**

Section 275a of the Code of Criminal Procedure and sections 74f and 120a of the Courts Constitution Act shall apply mutatis mutandis to the procedure and the decision on the ordering of placing in preventive detention.

#### **Third Title**

##### **Enforcement and execution**

#### **First Chapter**

##### **Enforcement**

#### **First Subchapter**

##### **Status of enforcement and jurisdiction**

#### **Section 82**

##### **Head of enforcement**

(1) The head of enforcement shall be the youth court judge. He or she shall also perform the tasks assigned by the Code of Criminal Procedure to the criminal enforcement panel of the court.

(2) Insofar as the judge has ordered supervisory assistance within the meaning of section 12, further jurisdiction shall otherwise be assigned according to the provisions of the Eighth Book of the Social Code.

(3) In cases falling under section 7 subsections (2) and (4), the enforcement of placement and responsibility therefor shall be orientated in line with the provisions of the Code of Criminal Procedure if the person concerned has reached the age of 21.

#### **Section 83**

##### **Decisions in enforcement proceedings**

(1) The decisions of the head of enforcement in accordance with sections 86 to 89a, and section 91 subsection (2), as well as to sections 462a and 463, of the Code of Criminal Procedure shall be deemed to be decisions of the youth court judge.

(2) Jurisdiction for judicial decisions which shall become necessary during enforcement in response to an order made by the head of enforcement shall lie with the youth panel in cases in which:

1. the decision at first instance was taken by the head of enforcement himself or herself or by a lay youth assessors' court of which he or she was the presiding judge,
2. the head of enforcement, in performance of the tasks of the criminal enforcement panel of the court, would be required to take a decision concerning an order he or she issued himself or herself.

(3) The decisions taken in accordance with subsections (1) and (2) may, unless otherwise provided, be contested with an immediate complaint. Sections 67 to 69 shall apply *mutatis mutandis*.

#### **Section 84** **Geographical jurisdiction**

(1) The youth court judge shall initiate enforcement in all proceedings in which the decision at first instance was taken by him or her or by a lay youth assessors' court of which he or she was the presiding judge.

(2) Except in the cases designated in subsection (1), where a decision taken by another judge is to be enforced, initiation of enforcement shall lie with the youth court judge at the local court who bears responsibility for the supervisory functions of the family and guardianship judge. If in these matters the sentenced person has reached the age of majority, responsibility for initiating enforcement shall lie with the youth court judge at the local court which would have had responsibility for the supervisory functions of the family and guardianship judge if the individual concerned had lacked legal majority.

(3) In the cases designated in subsections (1) and (2), enforcement shall be assured by the youth court judge unless otherwise provided for under section 85.

#### **Section 85** **Surrender and transfer of enforcement**

(1) Where youth detention is to be enforced, the youth court judge who first had jurisdiction shall surrender enforcement to the youth court judge with jurisdiction in the capacity of execution officer in accordance with section 90 subsection (2), second sentence.

(2) Where youth penalty is to be enforced, enforcement shall be transferred, after reception of the person convicted in the facility for execution of youth penalty, to the youth court judge at the local court in the district of which the facility for execution of youth penalty is located. The governments of the *Länder* shall be authorised to issue statutory instruments stipulating that enforcement shall be transferred to the youth court judge at a different local court if this appears more expedient for contact reasons. The governments of the *Länder* may issue statutory instruments transferring such authority to the judicial authorities of the *Länder*.

(3) Where one of the *Länder* maintains a facility for execution of youth penalty within the territory of one of the other *Länder*, the *Länder* concerned may agree that the youth court judge at a local court of the *Land* which maintains the facility for execution of youth penalty should have jurisdiction. Where such agreement is reached, enforcement shall be transferred to the youth court judge of the local court in the district of which the authority responsible for supervising the facility for execution of youth penalty has its headquarters. The government of the *Land* which maintains the facility for execution of youth penalty shall be authorised to issue statutory instruments according to which the youth court judge of another local court shall acquire jurisdiction if this appears more expedient for contact reasons. The *Land* government may issue a regulation transferring such authority to the judicial authorities of the *Land*.

(4) Subsection (2) shall apply mutatis mutandis to enforcement of a measure of reform or prevention in accordance with section 61 no. 1 or 2 of the Criminal Code.

(5) For important reasons the head of enforcement may surrender, reserving the right of revocation, enforcement to a youth court judge who would otherwise not have or who no longer has jurisdiction.

(6) Where the convicted person has reached twenty-four years of age, the head of enforcement with jurisdiction in accordance with subsections (2) to (4) may surrender enforcement of youth penalty executed according to the provisions applicable to execution of adult penalties, or of a measure of reform and prevention, to the enforcement authority with jurisdiction under the provisions of general law if execution of the penalty or measure is likely to continue longer and, in the light of the convicted person's personality, the basic characteristics special to youth criminal law are no longer significant to future decisions; the surrender is binding. Upon surrender, the provisions of the Code of Criminal Procedure and the Courts Constitution Act concerning enforcement of sentence shall be applied.

(7) Section 451 subsection (3) of the Code of Criminal Procedure shall apply mutatis mutandis with regard to the jurisdiction of the public prosecutor in enforcement proceedings.

## **Second Subchapter Youth detention**

### **Section 86**

#### **Conversion of detention during leisure time**

The head of enforcement may convert detention during leisure time into short-term detention if the conditions set out in section 16 subsection (3) have subsequently been met.

### **Section 87**

#### **Enforcement of youth detention**

(1) Enforcement of youth detention shall not be suspended on probation.

(2) Section 450 of the Code of Criminal Procedure shall apply by analogy to the crediting against youth detention of periods spent in remand detention.

(3) The head of enforcement shall refrain from enforcing youth detention in full or, if youth detention has been served in part, from enforcing its remainder if circumstances have become known since the judgment was handed down which, alone or in conjunction with the circumstances already known, justify refraining from enforcement on supervisory grounds. If more than six months have elapsed since the judgment entered into full force, he or she shall refrain from enforcement in full if that is apposite for supervisory reasons. He or she may refrain from enforcing youth detention in full if it can be expected that youth detention, in parallel with a penalty imposed against the convicted person as a result of a separate act or which he or she can expect to be imposed as a result of a separate act, will no longer fulfil its supervisory purpose. Prior to the decision, the head of enforcement shall if possible hear the court which took the decision, the public prosecution office and the representative of the youth court assistance service.

(4) Enforcement of youth detention shall be inadmissible if one year has elapsed since the decision entered into full force. In cases coming under section 16a, execution may no longer be commenced once three months have passed since entry into legal force. Youth detention which was imposed in accordance with section 16a and has not yet been served shall no longer be enforced if the court

1. revokes the suspension of the youth penalty (section 26 subsection (1)),
2. hands down a youth penalty the imposition of which had been suspended on probation (section 30 subsection (1), first sentence), or
3. rejects the suspension of the youth penalty in a subsequent order (section 61a subsection (1)).

### **Third Subchapter Youth penalty**

#### **Section 88**

##### **Suspension of remainder of youth penalty**

- (1) The head of enforcement may suspend enforcement of the remainder of the youth penalty on probation if the convicted person has served part of the sentence and if suspension can be justified given the juvenile's development, and also having due regard to the interest of the general public in security.
- (2) If six months of the sentence have not yet been served, an order to suspend enforcement of the remainder may only be issued on especially important grounds. In the case of youth penalty exceeding one year suspension, it shall be only permissible if the convicted person has served at least one third of the penalty.
- (3) In the cases designated in subsections (1) and (2), the head of enforcement should take his decision sufficiently early to allow the measures required to prepare the convicted person for life after release to be taken. He or she may revoke his decision up until the convicted person's release if, by virtue of new facts or facts that have subsequently come to light relating to the juvenile's development, and also having due regard to the interest of the general public in security, responsibility can no longer be taken for suspension.
- (4) The execution officer shall take his decision having heard the public prosecutor and the head of the executing institution. The convicted person shall be given an opportunity to make an oral statement.
- (5) The head of enforcement may fix time periods not exceeding six months prior to the expiry of which an application by the convicted person to suspend the remainder of sentence on probation shall be inadmissible.
- (6) If the head of enforcement orders enforcement of the remainder of youth penalty to be suspended, section 22, first sentence, and subsection (2), first and second sentences, as well as sections 23 to 26a, shall apply mutatis mutandis. The judge who hears the case shall be substituted by the head of enforcement. Section 58, section 59 subsections (2) to (4), and section 60, shall be applied mutatis mutandis to the procedure and the contesting of decisions. A complaint by the public prosecutor against the order to suspend the remainder of sentence shall have a delaying effect.

#### **Section 89**

##### **Youth penalty on reserve of the decision on suspension**

If the court has reserved the decision on suspension of youth penalty to be handed down in a subsequent order, youth penalty may not be executed prior to expiry of the period relevant in accordance with section 61a subsection (1). This shall not apply if the suspension was previously rejected in an order handed down on the basis of the reserve.

#### **Section 89a**

##### **Interruption and enforcement of youth penalty in combination with imprisonment**

- (1) If a prison sentence is also to be enforced against a convicted person sentenced to youth penalty, youth penalty shall generally be enforced first. The head of enforcement shall interrupt enforcement of the youth penalty if half of the youth penalty, with a minimum of six months, has been served. He or she may interrupt enforcement earlier if consideration can be given to suspending the remainder of the penalty. A remainder of sentence which is enforced because its suspension has been revoked may be interrupted if half of the remainder, with a minimum of six months, has been served and consideration can be given to its renewed suspension. Section 454b subsection (4) of the Code of Criminal Procedure shall apply mutatis mutandis.
- (2) If youth penalty is also to be enforced against a convicted person in addition to life imprisonment, and if the most recent conviction relates to a criminal offence which the convict committed prior to the previous conviction, only life imprisonment shall be enforced; the sentence shall be deemed to be the judgment in the proceedings in which it was possible



most recently to examine the underlying factual findings. If the enforcement of a remainder of the life imprisonment is suspended by the court on probation, the court shall declare enforcement of the youth penalty completed.

(3) In the cases designated in subsection (1), section 85 subsection (6) shall apply mutatis mutandis with the proviso that the head of enforcement may surrender enforcement of the youth penalty if the convicted person has reached twenty-one years of age.

#### **Section 89b**

##### **Exception from execution of youth penalty**

(1) Youth penalty may be enforced with regard to a convicted person who has reached the age of 18 and is not suited to execution of youth penalty in accordance with the provisions pertaining to enforcement on adults, instead of in accordance with the provisions on the execution of youth penalty. If the accused has reached the age of 24, youth penalty is to be enforced in accordance with the provisions pertaining to enforcement on adults.

(2) The head of enforcement shall decide on the exception from execution of youth penalty.

#### **Fourth Subchapter Remand detention**

#### **Section 89c**

##### **Enforcement of remand detention**

(1) As long as the juvenile has not yet reached the age of 21 at the time of the offence, remand detention shall be enforced in accordance with the provisions pertaining to the enforcement of remand detention for young detainees, and where possible in the institutions provided for young detainees. If the person concerned has reached the age of 21, but not yet 24, when the arrest warrant is enforced, remand detention may be enforced in accordance with these provisions and in these institutions.

(2) If the juvenile has not yet reached the age of 18, he or she may only be accommodated together with young detainees who have reached the age of 18 if such joint accommodation is not against his or her best interests. He or she may only be accommodated with detainees who have reached the age of 24 if this is in his or her best interests.

(3) The decision in accordance with subsection (1), second sentence, shall be taken by the court. The institution provided for admission, and the youth courts assistance service, shall be heard prior to the decision being taken.

#### **Second Chapter Execution**

#### **Section 90**

##### **Youth detention**

(1) Execution of youth detention should arouse the juvenile's sense of self-respect and make him or her fully aware that he or she must take responsibility for the wrong he or she has done. Execution of youth detention should be structured in an educational manner. It should help the juvenile to overcome those difficulties which contributed to his commission of the criminal offence.

(2) Youth detention shall be executed in the *Land* judicial authority's youth detention centres or facilities for detention during leisure time. The execution officer shall be the youth court judge in the place of execution.

#### **Section 91**

##### **Purpose of executing youth penalties**

(1) Vis-à-vis a convicted person who has reached the age of eighteen and who is not suitable for execution of youth penalty, youth penalty may be executed in accordance with the provisions relating to execution of sentences applicable to adults, instead of in accordance with the provisions for youth custody. If the convict has reached the age of



twenty-four, youth custody should be executed in accordance with the provisions relating to execution of sentences applicable to adults.

(2) The head of enforcement shall decide on the exception from youth penalty.

## **Section 92**

### **Legal recourse in execution**

(1) A court ruling may be applied for against a measure to arrange individual circumstances in the field of youth detention, youth penalty and measures for placement in a psychiatric hospital or in an institution for withdrawal treatment (section 61 nos. 1 and 2 of the Criminal Code) or in preventive detention. Sections 109 and 111 to 120, subsection (1) of the Prison Act, as well as section 67 subsections (1), (2) and (5), and section 67a subsection (1) shall apply mutatis mutandis to the verification of enforcement measures; *Land* law may provide that the application may not be lodged until after proceedings for an amicable settlement of the dispute.

(2) The youth panel shall rule on the application in the district of which the participating enforcement authority is headquartered. The youth panel shall also have jurisdiction for rulings in accordance with Section 119a of the Prison Act. If a *Land* operates a facility for execution of youth penalty in the territory of another *Land*, the participating *Länder* may agree that the youth panel at the Regional Court has jurisdiction in the district of which the supervisory authority which is responsible for the facility is headquartered.

(3) The youth panel shall rule by resolution. It shall determine according to its discretion whether an oral hearing is to be held. At the request of the juvenile, the latter shall be heard in person prior to a ruling. The juvenile shall be notified thereof. If an oral hearing is not carried out, the hearing shall as a rule take place in the prison facility.

(4) The youth panel shall be occupied with one judge, except in cases falling under subsection (2), second sentence. This may only be a judge on probation if he or she has already been assigned adjudicatory tasks in criminal proceedings over a period of one year. If the case is particularly difficult in legal terms, or if it has fundamental significance, the judge shall submit the case to the youth panel for a ruling on acceptance. If one of the prerequisites for acceptance applies, the youth panel shall accept the application. It shall rule on this by a resolution. Re-transfer shall be ruled out.

(5) Section 121 of the Prison Act shall apply to the costs of the proceedings on proviso that it is possible to refrain in accordance with section 74 from imposing costs and expenses on the juvenile.

(6) If youth penalty in accordance with section 89b subsection (1) is executed in accordance with the provisions relating to execution of sentences applicable to adults, or if the juvenile has reached the age of twenty-four during execution of a measure involving deprivation of liberty, subsections (1) to (5) shall not apply. The provisions contained in sections 109 to 121 of the Prison Act shall apply to the verification of enforcement measures.

## **Section 93**

### **Court jurisdiction and court proceedings in measures requiring a prior court order or court approval**

In the enforcement of youth detention, youth penalty and measures for placement in a psychiatric hospital or in an institution for withdrawal treatment, or in preventive detention, insofar as, in accordance with the prison statutes, a measure requires a prior court order or court approval, the Local Court shall have jurisdiction in the district of which the measure is carried out. If a *Land* operates a facility for the execution of the deprivation of liberty designated in the first sentence on the territory of another *Land*, the participating *Länder* may agree that the Local Court has jurisdiction in the district of which the authority responsible for the facility has its headquarters. Section 121b of the Prison Act, as well as section 67 subsections (1), (2) and (5) and section 67a subsections (1), (3) and (5), shall apply mutandis to the procedure.

### **Section 93a**

#### **Placement in an institution for withdrawal treatment**

- (1) The measure set out in section 61 no. 2 of the Criminal Code shall be executed in an institution in which the therapeutic resources and social assistance required to treat juveniles suffering from addiction are available.
- (2) In order to achieve the desired aim of the treatment, execution may be relaxed and implemented in a broadly liberal manner.

### **Fourth Title**

#### **Striking from the criminal record**

#### **Sections 94 to 96 (Repealed)**

### **Section 97**

#### **Striking from the criminal record by judicial instruction**

- (1) Where the youth court judge has been convinced that a juvenile sentenced to youth penalty has proved himself or herself to be a law-abiding individual by dint of irreproachable conduct, he or she shall declare of his own motion or on application of the convicted person, of the parent or guardian or of the legal representative, that the entry be struck from the criminal record. This may also occur upon application of the public prosecutor or, if the convicted person is still a minor at the time of the application, upon application of the representative of the youth courts assistance office. Such declaration shall be inadmissible in the case of a conviction in accordance with sections 174 to 180, or section 182, of the Criminal Code.
- (2) The order may not be made earlier than two years after serving or remission of the penalty unless the convicted person has demonstrated himself or herself to be particularly deserving of having the entry struck off. The order shall be inadmissible while the penalty is being executed or during a probationary period.

### **Section 98 Procedure**

- (1) Jurisdiction shall lie with the youth court judge of the local court responsible for supervisory functions of the family and guardianship judge for matters concerning the convicted person. If the convicted person is a major, jurisdiction shall lie with the youth court judge in whose district the convicted person resides.
- (2) The youth court judge shall as a preference assign the body which has looked after the convicted person since he or she served his sentence to investigate his conduct and his period of probation. He or she may also conduct investigations of his own. He or she shall hear the convicted person and, if the latter is a minor, the parent or guardian and the legal representative, as well as the school and the competent administrative authority.
- (3) Once the investigations have been completed, the public prosecutor shall be heard.

### **Section 99 Decision**

- (1) The youth court judge shall give his decision by order.
- (2) If he or she considers that the conditions applicable to the striking from the criminal record have not yet been fulfilled, he or she may defer the decision by not more than two years.
- (3) An immediate complaint may be filed against the order.

### **Section 100**

#### **Striking from the criminal record following remission of penalty or of a remainder of penalty**

Where, in the case of a conviction entailing no more than two years' youth penalty, remission of penalty or of a remainder of penalty is ordered after probationary suspension, the judge

shall at the same time declare that the offence be struck from the criminal record. This shall not apply in the case of a conviction in accordance with sections 174 to 180 or section 182 of the Criminal Code.

#### **Section 101 Revocation**

Where the convicted person who has had an entry struck from his criminal record receives a further custodial sentence due to a conviction for a serious criminal offence or a deliberate misdemeanour prior to expiry of the file note, the judge shall, in the judgment or subsequently by order, revoke the striking of the entry from the criminal record. In special cases he or she may refrain from revocation.

### **Fifth Subchapter Juveniles brought before courts with jurisdiction for general criminal matters**

#### **Section 102 Jurisdiction**

The provisions of this Act shall be without effect to the jurisdiction of the Federal Court of Justice and the higher regional court. In criminal matters falling within the jurisdiction of the higher regional courts at first instance (section 120 subsections (1) and (2) of the Courts Constitution Act) the Federal Court of Justice shall also take decisions on complaints against decisions of those higher regional courts which order or refuse to grant probationary suspension of youth penalty (section 59 subsection (1)).

#### **Section 103 Joinder of several criminal matters**

(1) Criminal cases brought against juveniles and adults may be joined in accordance with the provisions of general procedural law if this is apposite in order to investigate the truth or on other important grounds.

(2) Jurisdiction shall lie with the youth court. This shall not apply if the criminal matter against adults would, according to the provisions of general law including the provision set out in section 74e of the Courts Constitution Act, fall within the jurisdiction of the economic crimes panel or of the criminal panel designated in section 74a of the Courts Constitution Act; in a case of this type these criminal panels shall also have jurisdiction for the criminal case against the juvenile. To examine whether the economic crimes panel or the criminal panel have jurisdiction according to section 74a of the Courts Constitution Act, in the matter designated in the second sentence, section 6a, section 225a subsection (4), section 270 subsection (1), second sentence, of the Code of Criminal Procedure shall apply mutatis mutandis; section 209a of the Code of Criminal Procedure shall apply on the condition that these criminal panels may be assimilated to higher level courts also in relation to the youth panel.

(3) Where the judge orders separation of the joined matters, the matter which has been separated off shall immediately be surrendered to the judge who would have had jurisdiction had the joinder not taken place.

#### **Section 104 Proceedings against juveniles**

(1) In proceedings against juveniles before the courts with jurisdiction for general criminal cases the provisions set out in this Act shall apply to:

1. youth misconduct and its consequences (sections 3 to 32),
2. the inclusion and legal status of youth court assistance service (section 38, and section 50 subsection (3)),
3. the scope of investigations in preliminary proceedings (section 43),

4. dispensing with prosecution and discontinuation of the proceedings by the judge (sections 45 and 47),
  - 4a. holding the hearings in camera (section 48 subsection (3), second sentence),
  5. remand detention (sections 52, 52a 72 and 89c),
  6. the grounds for the judgment (section 54),
  7. procedures applicable to legal remedies (sections 55 and 56),
  8. the procedure for probationary suspension of youth penalty and sentencing to youth penalty (sections 57 to 64),
  9. the participation and legal status of the parents and guardians and of legal representatives (section 50 subsection (2), section 51 subsections (2) to (7), and sections 67 and 67a),
  10. compulsory defence counsel (sections 68 and 68a),
  11. notifications to official bodies (section 70),
  - 11a. the notification of the juvenile (section 70a),
  - 11b. instructions (section 70b),
  - 11c. the questioning of the accused person (section 70c),
  12. placement for observation purposes (section 73),
  13. costs and expenses (section 74),
  14. the suspension of other provisions of general procedural law (sections 79 to 81), and
  15. procedure and decision when ordering preventive detention (section 81a).
- (2) The application of further procedural provisions set out in this Act shall be at the discretion of the court.
- (3) Insofar as is required for reasons of state security, and compatible with the best interests of the juvenile, the court may issue an order dispensing with the participation of the youth court assistance service and stating that the rights of the parents and guardians, and of the legal representatives designated in section 67 subsections (1) and (2), are suspended.
- (4) Where the court considers compulsory care measures necessary, he or she shall leave it to the judge responsible for family and guardianship matters to select and order them. Section 53, second sentence, shall apply *mutatis mutandis*.
- (5) The following decisions shall be transferred to the youth court judge in whose district the juvenile is:
1. decisions which become necessary after probationary suspension of youth penalty;
  2. decisions which become necessary following suspension of imposition of youth penalty with the exception of decisions on the fixing of the penalty and the spending of sentence (section 30);
  3. decisions which become necessary after the reserve of a subsequent decision on the suspension of youth penalty, with the exception of the reserved decision itself (section 61a).

### **Part III**

#### **Young adults**

**First Chapter**  
**Application of substantive criminal law**

**Section 105**  
**Application of youth criminal law to young adults**

(1) Where a young adult engages in misconduct punishable under the provisions of general law, the judge shall apply the provisions applicable to a juvenile set out in sections 4 to 8, section 9 no. 1, sections 10 and 11, and 13 to 32, *mutatis mutandis* if:

1. the overall assessment of the perpetrator's personality, taking account of his living environment, demonstrates that at the time of the act he or she was still equivalent to a juvenile in terms of his moral and intellectual development, or
2. the type, circumstances and motives of the act indicate that it constituted youth misconduct.

(2) Section 31 subsection (2), first sentence, and section 31 subsection (3), shall also be applied even if the young adult has already been convicted with legal effect according to the provisions of general criminal law for part of the criminal offences.

(3) The maximum period of youth penalty applicable to young adults shall be ten years. If the offence is murder, and if the maximum sentence in accordance with the first sentence is inadequate because of the particular grievousness of the culpability, the maximum sentence shall be 15 years.

**Section 106**

**Mitigation of general criminal law with regard to young adults; preventive detention**

(1) Where general criminal law is to be applied in response to the criminal act by a young adult, the court may hand down a custodial sentence of ten to fifteen years' duration in place of life-long imprisonment.

(2) The court may order that the loss of capacity to hold public office and attain public electoral rights (section 45 subsection (1) of the German Criminal Code) shall not obtain.

(3) Preventive detention may not be ordered in addition to the penalty. The court may reserve ordering of preventive detention in the judgment if

1. the young adult is sentenced to at least five years' imprisonment in respect of one or more serious criminal offences
  - a) against life, physical integrity or sexual self-determination, or
  - b) in accordance with section 251 of the Criminal Code, also in conjunction with section 252 or section 255 of the Criminal Code,

by means of which the victim suffered severe emotional or physical damage or was exposed to such a danger, and

2. on the basis of the overall assessment of the young adult and of his offence or offences, it can be ascertained with adequate certainty or is at least likely that he or she has a proclivity towards criminal offences of the nature designated in no. 1 and as a result thereof is a danger to the public at the time of the conviction.

(4) Subject to the further prerequisites of subsection (3), second sentence, the court may also proclaim such a reserve if

1. the conviction is effected because of one or more less serious criminal offences in accordance with sections 176a and 176b of the Criminal Code,
2. the other prerequisites of section 66 subsection (3) of the Criminal Code are met where this does not refer to section 66 subsection (1), first sentence, no. 4, of the Criminal Code, and

3. the relevant previous offences and those to be anticipated in future are also of the nature stipulated in no. 1 or subsection (3), second sentence, no. 1 by means of which the victim is seriously mentally or physically harmed or has been or would be exposed to such a danger.

(5) If in addition to the punishment the ordering of preventive detention is reserved, and if the convict has not yet reached the age of twenty-seven, the court shall order that the penalty is already to be executed in a socio-therapeutic facility unless the resocialisation of the offender cannot be better promoted thereby. This order may also take place subsequently. As long as execution in a socio-therapeutic facility has not yet been ordered or the inmate has not yet been transferred to a socio-therapeutic facility, a fresh decision shall be taken on this in each case after six months. The criminal enforcement chamber shall have jurisdiction for subsequent ordering in accordance with the second sentence. Section 66c subsection (2), and section 67a subsections (2) to (4), of the Criminal Code shall remain unaffected thereby.

(6) The court shall order preventive detention if the overall assessment of the convict, of his offence or offences and additionally of his development until the time of the decision reveals that he or she can be expected to commit criminal offences of the type designated in subsection (3), second sentence, no. 1, or subsection (4); section 66a, subsection (3), first sentence, of the Criminal Code shall apply mutatis mutandis.

(7) If the placement in a psychiatric hospital ordered in respect of an offence of the type designated in subsection (3), second sentence, no. 1 in accordance with section 67d of the Criminal Code has been declared completed because the state ruling out or reducing culpability on which the placement was based did not exist at the time of the decision on completion, the court may subsequently order placement in preventive detention if

1. the placement of the person concerned in accordance with section 63 of the Criminal Code was ordered because of several such offences, or if the person concerned because of one or several such offences which he or she committed prior to the offence leading to placement in accordance with section 63 of the Criminal Code had already been sentenced to at least three years' youth custody or placed in a psychiatric hospital, and

2. the overall assessment of the person concerned, his offences and additionally his development until the time of the decision reveals that it is highly likely that he or she will once more commit offences of the nature designated in subsection (3), second sentence, no. 1.

(7) (repealed)

## **Second Chapter**

### **Constitution of the court and procedure**

#### **Section 107**

##### **Constitution of the court**

Of the provisions on the constitution of youth courts, sections 33 to 34 subsection (1), and sections 35 to 38, shall apply mutatis mutandis to young adults.

#### **Section 108**

##### **Jurisdiction**

(1) The provisions on the jurisdiction of the youth courts (sections 39 to 42) shall also apply to misconduct by young adults.

(2) The youth court judge shall also have jurisdiction for misconduct by young adults if it can be expected that general criminal law will apply and if, according to section 25 of the Courts Constitution Act, the criminal court judge would have taken the decision.

(3) If general criminal law is to be applied in respect of the unlawful act of an young adult, section 24 subsection (2) of the Courts Constitution Act shall apply. If a higher penalty than



four years' imprisonment or placement of the accused in a psychiatric hospital is to be anticipated in an individual case, alone or in addition to a penalty, or in preventive detention (section 106 subsections (3), (4) and (7)), jurisdiction shall lie with the youth panel. The decision on a reduced composition in the main hearing (section 33b) shall not be permissible if the ordering of accommodation in preventive detention, its reservation or ordering of placement in a psychiatric hospital, can be anticipated.

### **Section 109 Procedure**

(1) Of the provisions on criminal proceedings against juveniles (sections 41 to 81a) sections 43, 46a, 47a and 50 subsections (3) and (4), sections 51a, 68, nos. 1, 4 and 5, sections 68a, 68b and 70 subsections (2) and (3), sections 70a, 70b subsection (1), first sentence, and subsection (2), sections 70c, 72a to 73 and 81a, shall apply mutatis mutandis in proceedings against a young adult. The provisions contained in section 70a shall only be applied insofar as the notification is based on provisions which are not ruled out in accordance with the law applicable to young adults. The youth court assistance service and, in appropriate cases, also the school shall be informed of the initiation and outcome of the proceedings. They shall inform the public prosecutor if they become aware that other criminal proceedings are pending against the person charged with the offence. The public may be excluded if this is apposite in the young adult's interest.

(2) If the judge applies youth criminal law (section 105), section 45, section 47 subsection (1), first sentence, nos. 1, 2 and 3, and section 47 subsections (2) and (3), sections 52, 52a, section 54 subsection (1), sections 55 to 66 74 and section 79 subsection (1), and section 81, shall apply mutatis mutandis. Section 66 shall also be applied if no single set of measures or youth penalty has been established in accordance with section 105 subsection (2). Section 55 subsections (1) and (2), shall not be applied if the decision was taken in accelerated proceedings under general procedural law. Section 74 shall not apply in the context of a ruling on the expenses of the applicant in accordance with section 472a of the Code of Criminal Procedure.

(3) Section 407 subsection (2), second sentence, of the Code of Criminal Procedure shall not be applied in proceedings against a young adult.

## **Third Chapter Enforcement, execution and striking from the criminal record**

### **Section 110 Enforcement and execution**

(1) Of the provisions on enforcement and execution applicable to juveniles section 82 subsection (1), and sections 83 to 93a, shall apply mutatis mutandis to young adults provided the judge has applied youth criminal law (section 105) and imposed measures admissible in accordance with this Act or youth penalty.

(2) Section 89c subsections (1) and (3) shall apply mutatis mutandis to the enforcement of remand detention with regard to persons who were young adults at the time of the offence.

### **Section 111 Striking from the criminal record**

The provisions concerning striking from the criminal record (sections 97 to 101) shall apply mutatis mutandis to young adults insofar as the judge has imposed youth penalty.

## **Fourth Chapter Young adults appearing in courts with jurisdiction for general criminal matters**

### **Section 112 Application mutatis mutandis**

Sections 102, 103 and section 104 subsections (1) to (3) and (5) shall apply mutatis mutandis to proceedings against young adults. The provisions designated in section 104

subsection (1) shall be applied only insofar as they are not excluded according to the law applicable to young adults. Where the judge considers it necessary to impose instructions he or she shall leave it to the youth courts judge in whose district the young adult resides to select and order them.

**Part Four**  
**Special provisions applicable to soldiers in the Federal Armed Forces**

**Section 112a**  
**Application of youth criminal law**

Youth criminal law (sections 3 to 32 and section 105) shall apply, with the following derogations, to the duration of a juvenile or young adult's period of service with the Federal Armed Forces:

1. Supervisory assistance within the meaning of section 12 may not be ordered.
2. (repealed)
3. When issuing instructions and conditions, the judge should take account of the special characteristics of service in the armed forces. He or she should adjust instructions and conditions which have already been issued to those special characteristics.
4. A soldier can be appointed as a voluntary probation officer. He or she shall not be subject in that activity (section 25, second sentence) to the judge's instructions.
5. A probation officer who is not a soldier may not monitor matters for which the juvenile or young adult's military superiors are responsible. Measures taken by the disciplinary officer shall take precedence.

**Section 112b**  
**(repealed)**

**Section 112c**  
**Enforcement**

(1) The head of enforcement shall refrain from enforcing youth detention imposed as a result of an act committed prior to commencement of the period of service against soldiers in the Federal Armed Forces if this is required due to the special characteristics of service in the armed forces, and if account cannot be taken of those special characteristics by deferring enforcement.

(2) The decision of the head of enforcement in accordance with subsection (1) shall be a decision of the youth court judge within the meaning of section 83.

*Footnote: Part Four (sections 112c to 112e): Shall not apply in Berlin in accordance with section 123, first sentence.*

**Section 112d**  
**Hearing the disciplinary officer**

Before the judge or the head of enforcement imposes instructions or requirements on a soldier in the Federal Armed Forces, refrains from enforcing youth detention in accordance with section 112c subsection (1), or appoints a soldier as probation officer, he or she should hear the juvenile or young adult's next-ranking disciplinary officer.

*Footnote: Part Four (sections 112c to 112e): Shall not apply in Berlin in accordance with section 123, first sentence.*

**Section 112e**  
**Proceedings before courts with jurisdiction for general criminal matters**

Sections 112a and 112d shall apply in proceedings against juveniles or young adults before the courts with jurisdiction for general criminal matters (section 104).

*Footnote: Part Four (sections 112c to 112e): Shall not apply in Berlin in accordance with section 123, first sentence.*

**Part Five**  
**Concluding and transitional provisions**

**Section 113**  
**Probation officers**

At least one full-time probation officer shall be appointed for the district of each youth court judge. The appointment may be made for several districts or be dispensed with entirely if disproportionately high expenditure would be incurred as a result of the small no. of criminal matters. Details concerning the activities of the probation officer shall be set out in legislation of the *Länder*.

**Section 114**  
**Execution of imprisonment in a facility for execution of youth penalty**

Custodial sentences imposed under the provisions of general criminal law may also be executed in facility for execution of youth penalty in the case of convicted persons who have not yet reached the age of twenty-four and who are suitable for execution of youth penalty.

**Section 115**  
**(repealed)**

**Section 116**  
**Temporal application**

This Act shall also be applied to misconduct engaged in prior to its entry into force.

**Sections 117 to 120**  
**(repealed)**

**Section 121**  
**Transitional provision**

(1) The provisions of the third chapter of the Introductory Act to the Courts Constitution Act in its previous version shall continue to apply to sets of proceedings already pending on 1 January 2008 for a court ruling on the lawfulness of measures in execution of youth penalty, youth detention and placement in a psychiatric hospital or an institution for withdrawal treatment.

(2) Section 33b subsection (2), in the version valid until 31 December 2011 shall apply to proceedings which became pending with the youth panel pending prior to 1 January 2012.

(3) Section 74f of the Courts Constitution Act shall apply mutatis mutandis in the version valid until 31 December 2011 if the public prosecution office has transmitted the files to the presiding judge of the court with jurisdiction prior to 1 January 2012 in proceedings in which a ruling is to be handed down on the ordering of preventive detention which is reserved in the judgment or carried out subsequently.

**Sections 122 to 124**  
**(repealed)**

**Section 125**  
**Entry into force**

This Act shall enter into force on 1 October 1953.