

Criminal proceedings involving youths



Complicated?
Explained simply!



Published by:

Stiftung SPI | Geschäftsbereich Lebenslagen, Vielfalt & Stadtentwicklung

Clearingstelle – Netzwerke zur Prävention von Kinder- und Jugenddelinquenz

Frankfurter Allee 35 – 37

Staircase C

10247 Berlin

Phone: +49(0)30 449 01 54, Fax: -67

Email: clearingstelle@stiftung-spi.de

Info: www.stiftung-spi.de/clearingstelle

Clearingstelle – Netzwerke zur Prävention von Kinder- und Jugenddelinquenz is financed by the Senatsverwaltung für Bildung, Jugend und Familie Berlin, Illustrations: Jörg Kreutziger
Overall production: Fata Morgana Printers, Berlin; 11/2019

Content

Introduction	5
What is a criminal offence?	6
What is the Juvenile Courts Act?.....	7
For whom does the Juvenile Courts Act apply?.....	8
Concerned parties in criminal proceedings involving youths.....	9
Accused or defendant?	10
Wronged party or victim?.....	11
The principle of mandatory prosecution by the police	12
Police arrest	13
The public prosecutor decides on the stay of proceedings or diversion proceedings.....	14
The public prosecutor prefers charges.....	16
The “Jugendhilfe im Strafverfahren” (youth aid in criminal proceedings offices) / “Jugendgerichtshilfe” (juvenile legal support agency - JGH) invites you to a talk.....	17
Everyone is entitled to have their defence presented in court by a lawyer	20
A judge opens the main proceedings.....	21
Witnesses are heard.....	23

Introduction

Judges and jurors together form the court	24
What reaction can be expected from the court?	26
Probation officers can help you get a grip on life	28
What happens to the data collected during the proceedings?.....	30
Further information	31

What happens during criminal proceedings involving youths can be very complex and sometimes hard to understand. They involve a number of different people, all of whom have a specific function. A young person who receives a letter from the police or judicial system (public prosecutor and courts) sometimes doesn't know how to react. We have tried to explain some important information related to criminal proceedings involving youth in this brochure in easy-to-understand language.

Apart from this brochure, further material is available that deals with criminal proceedings involving youth in different ways. Some are more detailed, some even briefer. All of this information as well as counselling services are available for free. Tips can be found at the end of the brochure.

In this text, we have decided to use the male and female forms alternately, or both together. In every case we mean both sexes.

What is a criminal offence?

Germany has a general Criminal Code (Strafgesetzbuch - StGB). This book lists a number of actions that are liable to prosecution in Germany. But there are other, specific laws (e.g. the German Road Transport Law – StVG – or the Law on Narcotics – BtMG –) that also list punishable actions. Punishable or liable to prosecution mean that these actions are forbidden. Anyone who commits them, or tries to commit them, can be punished. These actions are also called »criminal offences«. Criminal laws also set out the maximum punishment that can be expected. Young people can be punished for everything that adults can be punished for too. There is a further law for young people and adolescents who have committed a criminal offence. This is called the Juvenile Courts Act.

What is the Juvenile Courts Act?

Unlike the criminal laws for adults, the main idea behind the Juvenile Courts Act is that of education. This means that it is not just the criminal offence that has to be taken into account, but also the character and personal circumstances of the offender. All of the parties concerned work towards what will help the young person lead a life free from prosecution in future. This means that the Juvenile Courts Act is not concerned so much with »punishing« young people, but more with their »education«.



For whom does the Juvenile Courts Act apply?

Children under the age of 14 are not criminally responsible. This means that they cannot be convicted by a judge at a juvenile court. But they still have to answer for their actions and police investigations are still carried out. »Youths« are young people between the ages of 14 and 18. The Juvenile Courts Act **always** applies for them. »Adolescents« are young people between the ages of 18 and 21. A decision is taken in each individual case as to whether they are to be judged according to the JGG or the criminal laws for adults.



Concerned parties in criminal proceedings involving youths

The term criminal proceedings involving youths refers to the overall procedure, from the police investigations through to the final judgement by the court.

A number of different people are involved in criminal proceedings involving youths, e.g.:

- The young person who is suspected of having committed a criminal offence;
- One or several people who have been harmed;
- Witnesses;
- Policemen and -women;
- Public prosecutors;
- Social workers;
- Defence lawyers;
- Jurors;
- Judges.

All of these parties concerned place a very specific role in criminal proceedings involving youths.

Accused or defendant?

A person who is suspected of having committed a criminal offence is called the »suspect« or »accused«.

Anyone against whom it has been decided to open main proceedings in court is called a »defendant«. In everyday life, people often speak of offenders instead of the »accused« or »defendant« – although it has to be assumed that the accused/defendant is innocent until a court has decided that they are guilty.

Wronged party or victim?

A »wronged party« has suffered a loss through a criminal offence. *A wronged party, for example, is a classmate whose bicycle has been destroyed or a shop from which something has been stolen.* In everyday life, people often speak of the »victim« of a criminal offence instead of the »wronged party«, even though a court first has to decide whether this is true. The classmate can report something to the police as a wronged party. The police have to make a record of this report. The wronged party is always a witness to the criminal offence at the same time (stealing a mobile phone is a criminal offence). They can be summoned to a court hearing. But as a wronged party, they do not have to say anything that could incriminate themselves or a member of their family. Anyone who has been the victim of a criminal offence needs help and support. Apart from friends, members of the family, social workers or other trusted persons, there are a number of offices that can provide advice and support.

The principle of mandatory prosecution

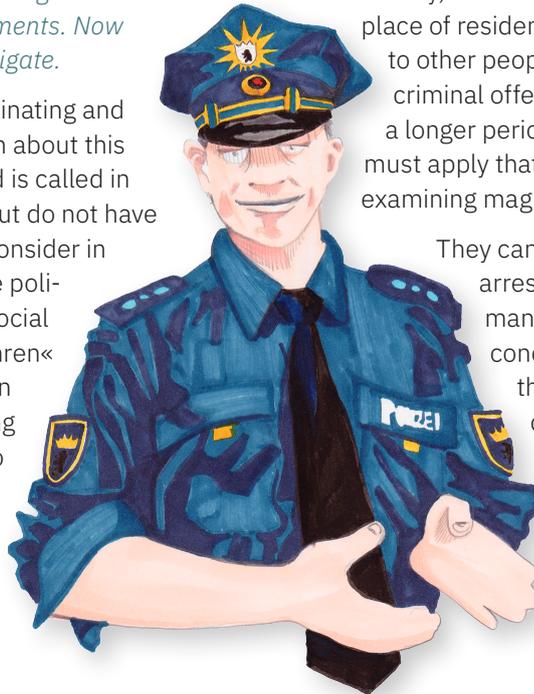
If the law enforcement authorities (police and public prosecutor) hear about a possible criminal offence, they must investigate. This is called the principle of mandatory prosecution or criminal proceedings obligation. *One example: a schoolgirl tells a police officer during an event in her school that one of her girlfriends has secretly taken a photo of a classmate a few weeks ago and has posted this online with some nasty comments. Now the police have to take action and investigate.*

The police is obliged to collect all incriminating and all exculpatory evidence and information about this possible criminal offence. If the accused is called in for questioning by the police they can, but do not have to appear. In other words, they should consider in advance if and what they want to tell the police. A trusted person or, for example, a social worker from »Jugendhilfe im Strafverfahren« (JuHiS)/ »Jugendgerichtshilfe« (JGH) can help them, with their decision. Everything the police discovers will be passed on to the public prosecutor.

Police arrest

In certain cases, the police can temporarily detain a suspect. They can usually keep them in custody until the end of the next day. This kind of deprivation of liberty does not mean that the accused has been or will be sent to prison! People are temporarily detained or arrested, for example, if the police have been able to determine their identity, in other words name, date of birth and place of residence. Or if the accused is a danger to other people or if they may commit further criminal offences. If the person is to be held for a longer period of time, the public prosecutor must apply that they be brought up before the examining magistrate at the duty court.

They can then issue a warrant for their arrest. The young person is then remanded in custody. However, certain conditions have to be met before this happens, such as risk of flight, danger of prejudicing the course of justice (e.g. the destruction of evidence) or the suspicion of a particularly serious crime.



The public prosecutor decides on the stay of proceedings or diversion proceedings

Not every criminal offence that is committed leads to a court case. The public prosecutor decides whether to stay the proceedings, for example because no crime has been committed or there is not enough evidence that the accused has committed the crime. In addition, the public prosecutor can also waive a charge and stay the investigation proceedings after diversion proceedings, for example.

In diversion proceedings, an accused party is advised and accompanied by a social worker. If the accused admits that they have committed the crime, they sit down together to think about how the damage can be repaired or compensated. *One example of compensation could be to paint over illegal graffiti on a house wall.* But there are many more kinds of compensation. Remember: everything an accused person does before a court case to compensate the damage or loss suffered will have a



positive effect on the proceedings. However, you should only make amends for any damage or loss you actually caused. If you are not sure, get advice.

The public prosecutor prefers charges

If the available incriminating evidence is sufficient, the public prosecutor will prefer charges. The accused (for young people, their parents too) will then be sent a **bill of indictment**. It is important to read exactly what this bill of indictment says. Make a note of anything that is not correct. You have to return this objection within a certain period of time. The (now) »accused« must take the bill of indictment seriously. It is wise to seek help and support if you don't know what to do.

The »Jugendhilfe im Strafverfahren«/ »Jugendgerichtshilfe« (JGH) invites you to a talk

Employees of the “Jugendhilfe im Strafverfahren” are also called “Jugendgerichtshelfer” (juvenile court assistants). They do not accuse or defend but are social workers from the Youth Welfare Office. They are sworn to secrecy and only tell the court those things that are important for the case. However, they can still be summoned as witnesses if the court wants to learn more. In this case, they may have to testify what they know.

Their job is:

1. Counselling of young defendants and accused people as well as their parents in the run-up to the court case.
2. To support and accompany these throughout the entire proceedings.



Even before the date of the trial, the accused will receive a letter from »Jugendhilfe im Strafverfahren«. This letter will invite you to a meeting. The purpose of this meeting is to learn more about the accused.

The social worker(s) will ask you questions such as:

1. How do you live?
2. How is your relationship with your parents?
3. How are things going in school?
4. How did the offence of which you have been accused come about?
5. Have you already talked about the offence of which you have been accused in your family?
6. Is anyone supporting you?

The meeting is on a voluntary basis. After this meeting, the »Jugendhilfe im Strafverfahren« will prepare a written statement. This is for the court and the public prosecutor. The statement will summarise the meeting and help the court get a better picture of the accused. In addition, the »Jugendhilfe im Strafverfahren« says whether it believes an educational offer is necessary and which it believes is sensible.

Everyone is entitled have their defence presented in court by a lawyer

In certain cases, the court will order legal defence. The court will then appoint a counsel for the accused or defendant. They have a legal right to this. However, the accused or defendant can also look for their own lawyer. If the accused is not entitled to a legal defence, they should consider together with friends, parents or the »Jugendhilfe im Strafverfahren«, whether legal counsel is sensible and affordable.

Incidentally: a number of districts in Berlin offer free legal advice for young people!

A judge opens the main proceedings

The judge checks whether the alleged crimes are correct in the main proceedings. To this end, they have to get an impression of all the pieces of evidence. Everyone involved in the case has to be in court for this. Witnesses can be heard once again during the proceedings. The public prosecutor, a defence counsel or a co-plaintiff's representative may also ask questions.

Defendants can also have their say about the alleged crime during the hearing. This may be an opportunity to explain to the judge that they did not commit the crime or that they are sorry for their actions. Once the judge has seen and heard all of the evidence, the social worker from the »Jugendhilfe im Strafverfahren« hands in their report. The public prosecutor then sums up the result of the main proceedings and asks the court to pass the sentence they believe to be just. The court now has to reach a decision.

Judges sometimes use a very complicated legal language. So don't be afraid to ask if there's something you don't understand!

Incidentally: Anyone who does not speak German has to be provided with an interpreter who must be present at all stages of the proceedings. It is important to understand as much as possible, particularly with such a difficult topic as criminal proceedings involving youths.



Witnesses are heard

Witnesses are necessary in a number of court cases so that the court can understand just what happened during the alleged criminal offence.

Witnesses are important people who help the police, the public prosecutor and the court to understand or resolve a case. Witnesses are often contacted first by the police. They receive a letter from the police. In this, the witness is told that they should tell the police about a certain incident. If they wish, they can also give their testimony as a witness in writing, or not at all.

If a witness receives a letter from the public prosecutor he or she **must** attend the hearing and make a statement. They also have to do so if the police summons them to the hearing and points out that this is being held on behalf of the public prosecutor. But the witness does not have to incriminate him- or herself, in other words say things that would give them the blame.

Judges, jurors and the court

The main hearing is often held before a magistrate in a juvenile court, who then decides the case on their own. The judge may be accompanied by two people who are not professional judges, they are lay judges. These are always a man and a woman in criminal proceedings involving youths. They are called jurors. In this case, all three together then constitute »the court.«

The jurors can also address questions to the accused and the witnesses during the hearing. The court decides whether to sentence the accused person as guilty. They have the same voting rights as the professional judge.

The proceedings can be brought to an end by either a judgement or a decision. A judgement is a conviction or an acquittal. A decision is the termination of the proceedings with or without a judicial instruction. The ruling is pronounced at the end of the main proceedings, in other words spoken out loud and justified verbally. As of then, the accused has one week's time to »lodge« or »file« an

appeal. This means that the decision can be verified by a higher court. Just how this works should be discussed with a lawyer.

Within one month
of the pronouncement
the written decision
will be sent
to the accused.



What reaction can be expected from the court?

The following reactions are possible under the JGG:

1. Disciplinary measures

This means that the convicted person has to prove, for example, that he attends school regularly, performs certain work or attends a social training course. If he makes an effort to achieve a settlement with the injured party, this is called a settlement between perpetrator and victim.

2. Corrective measures

Examples of such measures are a caution by the judge.

Or the obligation that every effort be made to compensate the damage or loss caused or a personal apology to the injured party.

There is also the option of juvenile detention. This is a temporary deprivation of liberty up to a maximum of four weeks in the remand centre.

3. Juvenile sentence

If a juvenile sentence is passed, this lasts at least six months and a maximum of ten years. Only in the very rare cases of murder (§ 211 StGB) – and then only if the convicted person was an adolescent at the time of the crime and juvenile criminal law applies for them – this can be extended up to 15 years. Juvenile sentences up to two years can be commuted to probation.

If the juvenile sentence is not commuted to probation or in the event of longer juvenile sentences, a convicted young man is sent to prison, in other words the junior detention centre, girls and women to a women's prison.

If the juvenile sentence is commuted to probation, the convicted person is not sent to prison. However, they do have to demonstrate to the court that they do not commit any further criminal offences. They thus have to »prove themselves« for a certain period as stipulated by the court.

Probation officers can help you get a grip on life

The convicted person is assigned a probation officer for the parole period. They have to report to these probation officers at regular intervals. The probation officers try to help the young people solve the problems they are experiencing in their lives so that they can lead a life free from criminal offences.

The probation officers are sworn to secrecy. However, they can be summoned as witnesses if the court wishes to learn more. They also give the court feedback from time to time on whether the parole is going well.

If the convicted person commits a further criminal offence during the parole period or violates obligations or instructions imposed by the court for the parole period, they can be sent to prison.



What happens to the data collected during the proceedings?

Every office and agency involved is obliged to inform the affected persons about which personal data they collect and store. Deadlines exist for all information, after which the entries have to be deleted. An application sometimes has to be made for this deletion.

The passing of a juvenile sentence is entered in the Federal Central Criminal Register. Young people sometimes need information from this register (certificate of good conduct) for job applications etc. However,

this only contains the passing of a juvenile sentences if this has not been commuted to probation or in the case of certain sexual offences. Although the remaining sentences are entered in the educational register, they are not entered in the Federal Central Criminal Register. Nor are they entered in a certificate of good conduct.

Every office and agency or the data protection officers can tell you where to find out more about the data that is saved.

Further information

Further information about criminal proceedings involving youths and counselling services for young people can be found here!



