

MÁS INFORMACIÓN SOBRE LA LEGISLACIÓN PENAL DE MENORES EN ALEMANIA:  
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## **Youth Courts Law**

Youth Courts Law in the version of the promulgation of 11 December 1974 (Federal Law Gazette [BGBl.] Part I p. 3427, most recently amended by Article 3 of the Act of 22 December 2010 (Federal Law Gazette Part I p. 2300)

### **Part I Scope**

#### **Section 1**

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

- (1) This Law shall apply if a youth or young adult engages in misconduct punishable under the provisions of general law.
- (2) “Youth” shall mean anyone who, at the time of the act, has reached the age of fourteen but not yet eighteen years; “young adult” shall mean anyone who, at the time of the act, has reached the age of eighteen but not yet twenty-one years.

#### **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 youth 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 Law.

### **Part II Youths**

#### **First Title**

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

#### **First Chapter**

##### **General provisions**

#### **Section 3**

##### **Criminal liability**

A youth shall bear criminal liability if, at the time of the act, he has reached a level of moral and intellectual maturity sufficient to enable him to understand the wrongfulness of the act and to conduct himself in accordance with such understanding. For the purposes of bettering a youth 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 youths**

The provisions of general criminal law shall be applied to classify an unlawful act by a youth 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 youth.
- (2) Where supervisory measures do not suffice, disciplinary measures or youth penalty may be imposed to punish an offence committed by a youth.
- (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, numbers 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) If after sentencing to at least seven years' youth penalty because or also because of a serious criminal offence
  1. against life, physical integrity or sexual self-determination, or
  2. 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 mental or physical damage or was exposed to such a danger, facts become known prior to the end of the execution of this youth penalty indicating a considerable danger emanating from the convict for the public, the court may subsequently order placement in preventive detention if it emerges in the overall evaluation of the convict, of his offence or offences, and additionally of his development during the execution of the youth penalty that he is highly likely to commit criminal offences of the above nature again.

- (3) 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 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 will once more commit offences of the nature designated in subsection 2.

(4) The regular deadline for review as to whether the further enforcement of placement in preventive detention is to be suspended on probation (section 67e of the Criminal Code) shall be one year in cases falling under subsections 2 and 3.

### **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 pursuant to section 12, number 2.

(2) The judge may only impose instructions and conditions and order supervision by a social worker in combination with youth penalty. Where the youth 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 judge may order imposition of those incidental penalties and incidental consequences admissible under this Law.

### **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 youth can conduct his life and which are intended to promote and guarantee his education. Instructions must not place unreasonable demands on the way the youth conducts his life. In particular, the judge may instruct the youth 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 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 youth to undergo specialist rehabilitative treatment or addiction withdrawal treatment. If the youth 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 pursuant to section 10, subsection 1, third sentence, number 5, the duration should not exceed one year; in the case of an instruction pursuant to section 10, subsection 1, third sentence, number 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 youth culpably fails to comply with instructions, youth detention may be imposed if he 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 youth 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 youth to avail himself 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 youth must be made acutely aware that he must assume responsibility for the wrong he 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 youth the wrongfulness of his actions.

### **Section 15**

#### **Conditions**

- (1) The judge can require the youth 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 youth.

- (2) The judge should order payment of a sum of money only if
1. the youth has engaged only in minor misconduct and it is to be assumed that he will pay the sum from money of which he is allowed to personally dispose, or
  2. the proceeds which the youth has gained from his offence or the payment which he received for committing the criminal offence is to be withdrawn from him.
- (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 youth 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 youth during leisure time, or short-term or long-term detention.
- (2) Detention during leisure time shall be imposed during the youth’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 youth’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.

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

##### **Section 17**

**Form and conditions**

(1) “Youth penalty” shall mean deprivation of liberty in a facility provided for its execution. (2) The judge shall impose youth penalty if, as a result of the harmful inclinations demonstrated by the youth 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 youth’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 judge shall suspend enforcement of the sentence on probation if it can be expected that the youth 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 in a law-abiding manner. Account shall be taken of the youth's personality, his prior life, the circumstances in which he acted, his conduct after the act, his living environment and the effects which suspension of sentence can be expected to have on him.

(2) In accordance with the conditions set out in subsection 1, the judge 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 youth'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 youth's conduct during the probationary period by the issuance of instructions. He may also impose conditions on the youth. He 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 youth gives assurances concerning his future conduct or offers to provide services apt to make amends for the wrong he has done, the judge shall, as a general rule, temporarily refrain from imposing instructions and conditions if it can be expected that the youth 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 youth under the supervision and guidance of a full-time probation officer. The judge may also place the youth 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 may also issue a new order placing the youth 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 youth with help and guidance. Acting in agreement with the judge, he shall monitor fulfilment of instructions, conditions, assurances and offers.

The probation officer should promote the youth's supervision and wherever possible work together on a basis of trust with the youth's parent or guardian or his legal representative. In the exercise of his office he shall have rights of access to the youth. He may require the youth's parent or guardian, his legal representative, his school or the person providing him with training to provide information about the youth'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 youth conducts himself. He 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 judge shall revoke probationary suspension of youth penalty if the youth:

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 will commit further criminal offences, or
3. seriously or persistently violates conditions.

The first sentence, number 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.

(2) However the judge 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 youth 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 youth in compliance with instructions, conditions, assurances or offers (section 23). However, if the judge revokes suspension he may give credit against the youth penalty for services rendered by the youth in compliance with conditions or corresponding offers.

### **Section 26a**

#### **Remission of youth penalty**

If the judge does not revoke the suspension, he 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 youth'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 youth'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 youth'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 youth 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 youth's poor conduct during the probationary period, that the offence censured in the court's verdict against him is a result of the youth's harmful inclinations demonstrated to an extent requiring imposition of youth penalty, the judge shall order imposition of that penalty which he would have handed down at the time of the verdict had a certain assessment of the youth's harmful inclinations been possible.

(2) If the conditions set out in subsection 1 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 youth**

(1) Even if a youth has committed several criminal offences, the judge shall impose only one set of supervisory measures, disciplinary measures or a single youth penalty. Insofar as provided for in this Law (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 youth'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 judge shall have discretion to give credit for periods of youth detention already served when imposing youth penalty.

(3) If it is conducive to the purposes of supervision, the judge may refrain from including in the new decision offences for which a conviction has been obtained. In so doing, he may declare supervisory or disciplinary measures spent if he 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 legal ordinances 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 legal directive by which that authority is transferred to the judicial administrations of the Länder.

- Section 33a**
- (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**

- (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 that it shall be composed in the main hearing of two judges including the presiding judge as well as two lay youth assessors insofar as the provisions of general law, including the provision set out in section 74e of the Constitution of the Courts Law, do not stipulate that the case falls within the jurisdiction of the jury court or, given the scope or difficulty of the case, the participation of a third judge does not appear necessary. If a case has been referred back by the court examining the appeal on law only, the youth panel which has regained jurisdiction may establish its composition afresh in accordance with the first sentence.
- (3) 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 youths should be transferred to the youth court judge. Deviation from the aforementioned is permissible for special reasons, id est. 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 mean:
  1. supporting the parent, the guardian or the carer by appropriate measures (section 1631, subsection 3, sections 1800 and 1915 of the Civil Code),
  2. those measures intended to ward off a danger to the youth (sections 1666, 1666a, section 1837, subsection 4, and section 1915 of the Civil Code).
  3. (deleted)

### **Section 35 Lay youth assessors**

- (1) The 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 Constitution of the Courts Law. The latter committee should elect an equal number of men and women.
- (2) The youth assistance committee should 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 assistant lay youth assessors. The individuals proposed should have appropriate education and training as well as experience in the education and upbringing of youths.
- (3) The youth assistance committee's list of proposed candidates shall constitute a list of candidates within the meaning of section 36 of the Constitution of the Courts Law. 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 assistant 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 youths**

Youth public prosecutors shall be assigned to proceedings falling within the jurisdiction of the youth courts.

### **Section 37**

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

Judges sitting in the youth courts and public prosecutors handling matters involving youths should have appropriate education and training as well as experience in the education and upbringing of youths.

### **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) Representatives of the youth court assistance service shall highlight the supervisory, social and care-related aspects in proceedings before the youth courts. For this purpose, they shall support the participating authorities by researching into the accused's personality, his development and his environment, and shall express a view on measures to be taken. In custody cases they shall report without delay on the results of their enquiries. The representative of the youth court assistance service who carried out the enquiries should be sent to appear at the main hearing. Insofar as no probation officer is appointed to do so, they shall ensure that the youth complies with instructions and conditions. They shall inform the judge of serious failures of compliance. Where a youth is placed under their supervision pursuant to section 10, subsection 1, third sentence, number 5, they shall exercise care and supervision unless the judge has entrusted this to another person. During the probationary period, they shall work together closely with the probation officer. During execution of the sentence they shall remain in contact with the youth, and they shall look after the youth's reintegration into society.

(3) The youth court assistance service shall be involved at all stages of the proceedings against a youth. 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.

## **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 Law 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 youths and adults joindered pursuant to 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 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 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 capable of handing down decisions 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 Constitution of the Courts Law,
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 youths and adults joindered pursuant to 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 Constitution of the Courts Law.

#### **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 enforcement officer.

(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 enforcement officer.

(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 Youth criminal proceedings**

#### **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 with training should insofar as possible be heard. The school or person providing training shall not be heard if the youth 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 3.

(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 youths shall be assigned to carry out the order.

#### **Section 44 Questioning the accused**

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 considers neither the participation of the judge pursuant to subsection 3 nor the bringing of charges to be necessary. An attempt by the youth 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 pursuant to section 10, subsection 1, third sentence, numbers 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 shall however dispense with the prosecution only once the youth 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.

#### **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 youth 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, numbers 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 youth 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 youth 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, 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 youth 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 youths 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 public prosecutor.
- (2) The presiding judge should also issue an order to summons the parent or guardian and the legal representative. The provisions concerning summonses, the consequences of failure to appear and compensation for witnesses shall apply mutatis mutandis.
- (3) The representative of the youth courts welfare office shall be informed of the place and time of the main hearing. He shall be permitted to speak on request.
- (4) If a probation officer assigned to the youth attends the main hearing, he should be heard as to the youth's development during the probationary period. The first sentence shall apply mutatis mutandis to a care assistant assigned to the youth and the leader of a social skills training course attended by the youth.

#### **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 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, numbers 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 number 3, also if other considerable impairment of the wellbeing of the aggrieved party is to be feared. Parents and guardians and legal representatives shall be excluded if the preconditions of the first sentence, number 5, are met and the exclusion of the person whose life is affected is applied for. The first sentence, number 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 Constitution of the Courts Law 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).

## **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 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)

### **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 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 makeup.
- (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 pursuant to section 12, number 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 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. Jurisdiction for issuing the order subsequently shall lie with the judge who handed down the decision on the matter at first instance; the public prosecutor and the youth shall be heard.
- (2) If the judge has refused suspension in the judgment, it may subsequently be ordered only if, since the judgment 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 youth shall, in suitable cases, be asked whether he can give assurances concerning his future conduct or he offers to render services suitable to make amends for the wrong he has done. Where consideration can be given to an instruction to undergo rehabilitative treatment or addiction withdrawal treatment a youth who has reached sixteen years of age shall be asked whether he 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 youth and the probation officer shall be heard. Where consideration can be given to a decision pursuant to section 26 or to imposition of youth detention, the youth 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 pursuant to section 453c of the Code of Criminal Procedure.
- (3) Jurisdiction shall lie with the judge who ordered the suspension. He can transfer all or part of the decisions to the youth court judge in whose district the youth 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. 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 shall give the plan to the youth and at the same time caution him 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 shall be instructed to give notice each time he changes the place where he resides or where he receives training or works during the probationary period. Where changes are subsequently made to the probation plan, the youth 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 youth should confirm that he has read the probation plan and promise that he wishes to comply with the instructions and conditions. The parent or guardian and the legal representative should also sign the probation plan.

#### **Section 61 (deleted)**

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

#### **Section 62 Decisions**

- (1) Decisions pursuant to 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 youth 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 can expect a youth penalty to be imposed if he 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 youth. Insofar as necessary, the representative of the youth court assistance service, the care assistant appointed pursuant to section 10, subsection 1, third sentence, number 5, and the leader of the social skills training centre acting in accordance

with section 10, subsection 1, third sentence, number 6, shall be heard. Where consideration can be given to imposing youth detention, the youth 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 youth is resident if the youth 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 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 enforcement officer.

### **Seventh Subchapter**

#### **Common provisions on procedure**

### **Section 67**

#### **Position of the parent or guardian and of the legal representative**

(1) Insofar as the accused has a right to be heard, to ask questions and make applications or to be present during acts of investigation, the same rights shall also accrue to the parent or guardian and to the legal representative.

(2) Where provision is made for notices to the accused, the corresponding notice should also be addressed to the parent or guardian and to the legal representative.

(3) The legal representative's right to select defence counsel and to file for legal remedies shall also accrue to the parent or guardian.

(4) The judge may remove such rights from the parent or guardian and the legal representative insofar as they are suspected of participating in the accused's misconduct or insofar as they have been convicted of participation. Where the parent or guardian or the 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 parent or guardian and the legal representative no longer hold those rights, the judge with jurisdiction for family or guardianship matters shall appoint a carer to preserve the accused's interests in the 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 Law. At the main hearing or in any other hearing before the judge, the absentee parent or guardian shall be deemed to be represented by the parent or guardian who is 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 68**

#### **Compulsory defence counsel**

The presiding judge shall appoint defence counsel for the accused if

1. defence counsel would have to be appointed for an adult,

2. the parent or guardian and the legal representative have had their rights withdrawn in accordance with this Law,
3. the parent or guardian and the legal representative 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),
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. remand detention or provisional committal is to be enforced against him pursuant to section 126a of the Code of Criminal Procedure if he has not yet reached eighteen years of age; defence counsel shall be appointed without delay.

### **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 shall otherwise have the same rights in the main hearing as defence counsel.

### **Section 70 Notifications**

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 public prosecutor 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 public prosecutor 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 affected by the notification override such notification.

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

- (1) Until the judgment enters into final effect, the judge may issue preliminary orders concerning supervision of the youth 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 youth 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

youths. Where investigation 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 youth has reached sixteen years of age, imposition of remand detention due to a risk of flight shall be admissible only if he:

1. had already absconded from the proceedings or made efforts to do so, or
2. he has no fixed abode or residence within the area in which this Law 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 youth 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 youth is placed under temporary arrest if it can be expected from the investigations so far that the youth will be brought before the judge pursuant to 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 youths and that he 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 youth.

#### **Eighth Subchapter**

##### **Simplified procedure for cases involving youths**

#### **Section 75**

(deleted)

#### **Section 76**

**Conditions for applying the simplified procedure for matters involving youths** 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 youths 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 order forfeiture 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, number 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 youths by judgment on the basis of an oral hearing. He may not impose supervisory assistance within the meaning of section 12, number 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 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 youth-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 parent or guardian and of the legal representative (section 67) and notification of decisions (section 70) must be observed. If the accused fails to attend the oral hearing, and if his absence is not adequately excused, he 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 youth.
- (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 youth. 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 youth 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 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, or 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. In other respects, section 395, subsection 2, number 1, and sections 396 to 402 of the Code of Criminal Procedure shall apply mutatis mutandis.

## **Section 81**

### **Compensation for the aggrieved person**

The provisions of the Code of Criminal Procedure governing compensation for the aggrieved person (sections 403 to 406c of the Code of Criminal Procedure) shall not be applied in proceedings against a youth.

## **Tenth Subchapter**

### **Ordering of preventive detention**

#### **Section 81a**

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

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

(2) If a decision is to be taken on the subsequent ordering of preventive detention in accordance with section 7, subsection 2, the enforcement authority shall in good time forward the files to the public prosecution office of the court which has jurisdiction. If the public prosecution office examines whether subsequent ordering of preventive detention can be considered, it shall inform the person concerned accordingly. The public prosecution office is to lodge the application for subsequent ordering of preventive detention at the latest six months prior to the time when the execution of the youth penalty or of the measure of reform or prevention involving deprivation of liberty against the person concerned ends. It shall promptly pass the files to the presiding judge of the court with its application.

## **Third Title**

### **Enforcement and execution**

#### **First Chapter**

##### **Enforcement**

#### **First Subchapter**

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

#### **Section 82**

##### **Enforcement officer**

(1) The enforcement officer shall be the youth court judge. He 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 3, 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 enforcement officer pursuant to 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 enforcement officer shall lie with the youth panel in cases in which:

1. the decision at first instance was taken by the enforcement officer himself or by a lay youth assessors' court of which he was the presiding judge,
  2. the enforcement officer, in performance of the tasks of the criminal enforcement panel of the court, would be required to take a decision concerning an order he himself issued.
- (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 by a lay youth assessors' court of which he 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 pursuant to 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 provided for execution of youth penalty, to the youth court judge at the local court in whose district the facility provided for execution of youth penalty is located. The governments of the Länder shall be authorised to issue regulations 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 regulations transferring such authority to the judicial authorities of the Länder. (3) Where one of the Länder maintains a facility provided 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 provided 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 whose district the authority responsible for supervising the facility provided for execution of youth penalty has its headquarters. The government of the Land which maintains the facility provided for execution of youth penalty shall be authorised to issue regulations 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 pursuant to section 61, number 1 or 2, of the Criminal Code.
- (5) For important reasons the enforcement officer 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 enforcement officer with jurisdiction pursuant to 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 Constitution of the Courts Law 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 enforcement officer 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 enforcement officer 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 shall refrain from enforcement in full if that is apposite for supervisory reasons. He 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 can expect to be imposed as a result of a separate act, will no longer fulfil its supervisory purpose. Prior to the decision, the enforcement officer shall if possible hear the judge who took the decision, the public prosecutor 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.

## **Third Subchapter Youth penalty**

### **Section 88**

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

- (1) The enforcement officer 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 youth'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 enforcement officer should take his decision sufficiently early to allow the measures required to prepare the convicted person for life after release to be taken. He 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

youth'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 enforcement officer 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 enforcement officer orders enforcement of the remainder of youth penalty to be suspended, section 22, subsection 1, 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 enforcement officer. 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**

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### **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 enforcement officer shall interrupt enforcement of the youth penalty if half of the youth penalty, with a minimum of six months, has been served. He 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 3, 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 enforcement officer may surrender enforcement of the youth penalty if the convicted person has reached twenty-one years of age.

## **Second Chapter Execution**

### **Section 90 Youth detention**

(1) Execution of youth detention should arouse the youth's sense of self-respect and make him fully aware that he must take responsibility for the wrong he has done. Execution of youth detention should be structured in an educational manner. It should help the youth 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 enforcement officer shall decide on the exception from youth penalty.

### **Section 92**

#### **Legal recourse in execution of youth detention, youth penalty and placement in a psychiatric hospital or in an institution for withdrawal treatment**

- (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, numbers 1 and 2, of the Criminal Code). Sections 109 and 111 to 120 subsection 1 of the Prison Act, as well as section 67, subsections 1 to 3 and 5, shall apply mutatis mutandis to the application; 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 whose district the enforcement authority involved is headquartered. Section 110, second sentence, of the Prison Act shall apply mutatis mutandis. If a Land operates a facility provided for execution of youth penalty in the territory of another Land, the Länder involved may agree that the youth panel at the Regional Court has jurisdiction in whose district 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 youth, the latter shall be heard in person prior to a ruling. The youth 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 when ruling on applications in accordance with subsection 1. This may only be a judge on probation if he 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 youth.
- (6) If youth penalty is executed in accordance with the provisions relating to execution of sentences applicable to adults in accordance with section 91, subsection 1, or if the youth has reached the age of twenty-four during execution of the measure in accordance with section 61, number 1 or number 2, of the Criminal Code, subsections 1 to 5 shall not apply. The provisions contained in sections 109 to 121 of the Prison Act shall apply to the application for a court ruling.

### **Section 93**

#### **Remand detention**

- (1) Where possible a youth shall be placed in remand detention in a special institution, or at least in a special department of the prison or in a youth detention institution. (2) Execution of remand detention should be structured in an educational manner.
- (3) Representatives of the youth court assistance service and, if the accused has been placed under the supervision and guidance of a probation officer or the care and supervision of a care worker or if a social worker has been appointed to him, the assistant and the social worker shall have the same rights of contact with the accused as defence counsel.

#### **Section 93a**

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

- (1) The measure set out in section 61, number 2, of the Criminal Code shall be executed in an institution in which the therapeutic resources and social assistance required to treat youths 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 youth sentenced to youth penalty has proved himself to be a law-abiding individual by dint of irreproachable conduct, he 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 pursuant to 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 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 served his sentence to investigate his conduct and his period of probation. He may also conduct investigations of his own. He 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 considers that the conditions applicable to the striking from the criminal record have not yet been fulfilled, he 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 pursuant to 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 may refrain from revocation.

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

#### **Section 102 Jurisdiction**

The provisions of this Law 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 Constitution of the Courts Law) 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 youths 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 Constitution of the Courts Law, fall within the jurisdiction of the economic crimes panel or of the criminal panel designated in section 74a of the Constitution of the Courts Law; in a case of this type these criminal panels shall also have jurisdiction for the criminal case against the youth. To examine whether the economic crimes panel or the criminal panel have jurisdiction according to section 74a of the Constitution of the Courts Law, 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 youths**

- (1) In proceedings against youths before the courts with jurisdiction for general criminal cases the provisions set out in this Law 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),
  5. remand detention (sections 52, 52a and 72),

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 parent and guardian and of the legal representative (section 67 and section 50, subsection 2),
  10. compulsory defence counsel (section 68),
  11. notifications (section 70),
  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 Law shall be at the discretion of the judge.
- (3) Insofar as is required for reasons of state security, the judge may issue an order dispensing with the involvement of the youth court assistance service and participation of the parent and guardian and of the legal representative.
- (4) Where the judge considers compulsory care measures necessary, he 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) Decisions which become necessary after probationary suspension of youth penalty shall be transferred to the youth court judge in whose district the youth resides. The same shall apply to decisions 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).

### **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 youth set out in sections 4 to 8, section 9, number 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 was still equivalent to a youth 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.

##### **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. Subject to the other prerequisites of section 66 of the Criminal Code, the court may reserve ordering of preventive detention if
  1. the young adult is sentenced to at least five years' imprisonment in respect of a criminal offence of the nature designated in section 66, subsection 3, first sentence, of the Criminal Code, by means of which the victim suffered severe mental or physical damage or was exposed to such a danger,
  2. the relevant previous offences under the general provisions are also those of the type designated in number 1, and
  3. the overall assessment of the offender and of his offences reveals that he is a danger to the public as a result of a proclivity towards such criminal offences. Section 66a, subsection 3, of the Criminal Code shall apply *mutatis mutandis*.
- (4) 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.
- (5) If subsequent to sentencing to at least five years' imprisonment in respect of a criminal offence of the nature designated in subsection 3, second sentence, number 1, facts become known prior to the end of the execution of this prison sentence indicating that the convict poses a considerable risk to the public, the court may subsequently order him to be placed in preventive detention if the overall assessment of the convict, his offences and additionally of his development when in prison reveals that he is highly likely to commit once more criminal offences of the type designated in subsection 3, second sentence, number 1. If none of the criminal offences on which the conviction was based were committed after 1 April 2004, and if it was hence not possible to reserve preventive detention in accordance with subsection 3, second sentence, the court shall take into account as facts within the meaning of the first sentence also such which were already recognisable at the time of the conviction.
- (6) If the placement in a psychiatric hospital ordered in respect of an offence of the type designated in subsection 3, second sentence, number 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 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 will once more commit offences of the nature designated in subsection 3, second sentence, number 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 Constitution of the Courts Law, 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 Constitution of the Courts Law 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, 5 and 6), jurisdiction shall lie with the youth panel.

### **Section 109 Procedure**

(1) Of the provisions on criminal proceedings against youths (sections 41 to 81a) sections 43, 47a, section 50, subsections 3 and 4, section 68, numbers 1 and 3, and section 73 and section 81a, shall apply mutatis mutandis to proceedings against a young adult. 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, numbers 1, 2 and 3, and section 47, subsections 2 and 3, sections 52, 52a, section 54, subsection 1, sections 55 to 66, subsection 74, subsection 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 pursuant to 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 aggrieved party 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 youths 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 pursuant to this Law or youth penalty.

(2) Section 93 shall apply mutatis mutandis where the individual who was a young adult at the time of the act has not reached twenty-one years of age. In the case of young adults who have reached twenty-one but not yet twenty-four years of age, remand detention may be executed according to the provisions contained in section 93.

#### **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 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 youth 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 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 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 youth 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 enforcement officer 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 enforcement officer pursuant to 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 enforcement officer imposes instructions or requirements on a soldier in the Federal Armed Forces, refrains from enforcing youth detention pursuant to section 112c, subsection 1, or appoints a soldier as probation officer, he should hear the youth 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 youths 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 number 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 provided for execution of youth penalty**

Custodial sentences imposed under the provisions of general criminal law may also be executed in facility provided 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 Law shall also be applied to misconduct engaged in prior to its entry into force.

#### **Sections 117 to 120**

**(repealed)**

#### **Section 121**

##### **Transitional provision**

The provisions of the third chapter of the Introductory Act to the Constitution of the Courts Law 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.

#### **Sections 122 to 124**

**(repealed)**

**Section 125**

**Entry into force** This

Law shall enter into force on 1 October 1953.