

Übersetzung durch Chris Pavis und Neil Mussett

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## **Youth Courts Act**

Youth Courts Act in the version of the promulgation of 11 December 1974 (Federal Law Gazette) Part I, p. 3427, as last amended by Article 15 of the Act of 4 May 2021 (Federal Law Gazette Part I, page 882)

### **Part 1 Scope**

#### **Section 1**

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

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

#### **Section 2**

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

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

### **Part 2 Juveniles**

#### **Title 1**

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

#### **Chapter 1**

##### **General provisions**

#### **Section 3**

##### **Criminal liability**

A juvenile bears criminal liability if, at the time of the act, he or she has reached a level of moral and intellectual maturity sufficient to enable him or her to understand the wrongfulness of the act and to conduct himself or herself in accordance with such understanding. For the

purposes of bettering a juvenile who bears no criminal liability due to a lack of maturity, the judge may order the same measures as the judge responsible for family and guardianship matters.

#### **Section 4**

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

The provisions of general criminal law apply to classify an unlawful act by a juvenile as a serious criminal offence, or a less serious criminal offence, and in assessing when the act has been barred by statute.

#### **Section 5**

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

- (1) Supervisory measures may be ordered in response to a criminal offence committed by a juvenile.
- (2) Where supervisory measures do not suffice, disciplinary measures or a youth penalty may be imposed to punish an offence committed by a juvenile.
- (3) Disciplinary measures or a youth penalty are 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 or 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 is no loss of the capacity to hold public office and attain public electoral rights (section 45 (1) of the Criminal Code).

#### **Section 7**

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

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

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

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

(4) If placement in a psychiatric hospital ordered in respect of an offence of the type designated in subsection (2) in accordance with section 67d (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 had already been sentenced to at least three years' youth penalty, or placed in a psychiatric hospital, because of one or several such offences which he or she committed prior to the offence leading to placement in accordance with section 63 of the Criminal Code, and

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

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

## **Section 8**

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

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

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

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

## **Chapter 2 Supervisory measures**

### **Section 9 Types of measure**

“Supervisory measures” mean:

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

### **Section 10 Instructions**

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

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

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

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

(1) The judge determines the duration of instructions. The duration may not exceed two years; in the case of an instruction in accordance with section 10 subsection (1) sentence 3 no. 5, the duration is not to exceed one year; it is not to exceed six months in the case of an instruction in accordance with section 10 subsection (1) sentence 3 no. 6.

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

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

youth detention if the juvenile complies with the instruction after the detention has been imposed.

## **Section 12**

### **Supervisory assistance**

After hearing the youth welfare office, the judge may, under the conditions set out in Book 8 of the Social Code, require the juvenile to avail himself or herself of supervisory assistance:

1. in the form of supervisory assistance by a social worker within the meaning of section 30 of Book 8 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 Book 8 of the Social Code.

## **Chapter 3**

### **Disciplinary measures**

## **Section 13**

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

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

(2) "Disciplinary measures" mean:

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

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

## **Section 14**

### **Reprimands**

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

## **Section 15**

### **Conditions**

(1) The judge may require the juvenile to:

1. make good, to the best of his or her ability, for harm 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.

No unreasonable demands may be made of the juvenile in so doing.

(2) The judge is to only order payment of a sum of money if

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

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

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

- (1) "Youth detention" means detention of the juvenile during leisure time, or short-term or long-term detention.
- (2) Detention during leisure time is imposed during the juvenile's weekly leisure time, and is counted as one or two periods of leisure time.
- (3) Short-term detention is imposed in lieu of detention during leisure time if an uninterrupted period of execution appears expedient given the purpose of the supervision, and neither the juvenile's education and training, nor his or her employment, are adversely affected. A two-day period of short-term detention is deemed equivalent to one leisure period.
- (4) Long-term detention is at least one week, and not more than four weeks, in duration. It is counted in entire days or weeks.

#### **Section 16a** **Youth detention in addition to youth penalty**

- (1) If the imposition or execution of youth penalty is suspended on probation, youth detention may additionally be imposed in derogation from section 13 (1), if
1. this is necessary, taking account of the notice on the significance of suspension on probation, and taking account of the possibility of instructions and conditions, in order to make clear to the juvenile his or her responsibility for the wrong that has been done, and of the consequences of committing further criminal offences,
  2. this is necessary in order to initially remove the juvenile from his or her environment where there are damaging influences, initially for a limited period, and to prepare for the probationary period through treatment in execution of youth detention, or
  3. this is necessary in order to exert a more emphatic educational influence on the juvenile in execution of youth detention, or in order thereby to create better prospects for success for an educational influence during the probationary period.
- (2) Youth detention in accordance with subsection (1) no. 1 is not necessary as a rule if the juvenile has already served youth detention as long-term detention, or remand detention has been imposed on him or her not only for a short period.

### **Chapter 4** **Youth penalty**

#### **Section 17** **Form and conditions**

- (1) "Youth penalty" means deprivation of liberty in a facility for its execution.
- (2) The judge imposes a youth penalty if, as a result of the harmful inclinations demonstrated by the juvenile during the act, supervisory measures or disciplinary measures are not sufficient for the purposes of supervision, or if such penalty is necessary given the seriousness of the juvenile's guilt.

#### **Section 18** **Duration of youth penalty**

- (1) The minimum duration of youth penalty is six months; its maximum duration is 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 is ten years. The statutory range of penalties under general criminal law does not apply.

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

## **Section 19**

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## **Chapter 5**

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

## **Section 20**

**(repealed)**

## **Section 21**

### **Suspension of sentence**

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

## **Section 22**

### **Probationary period**

- (1) The judge fixes the duration of the probationary period. It may not exceed three years' duration, or be of less than two years' duration.
- (2) The probationary period commences on the day on which 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. The probationary period may however be shortened to no less than two years in the cases designated in section 21 (2).

## **Section 23**

### **Instructions and conditions**

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

## **Section 24**

### **Probationary assistance**

- (1) The judge places the juvenile under the supervision and guidance of a full-time probation officer for a maximum of two years during the probationary period. The judge may also place



the juvenile under the supervision of a volunteer probation assistant if this appears conducive to the purposes of the supervision. Section 22 (2) sentence 1 applies accordingly. (2) The judge may vary or revoke a decision taken in accordance with subsection (1) prior to expiry of the probationary period; he or she may also issue a new order placing the juvenile under supervision during the probationary period. The maximum duration designated in subsection (1) sentence 1 may be exceeded in such cases.

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

### **Section 25**

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

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

### **Section 26**

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

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

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

Sentence 1 no. 1 applies accordingly if the act is committed in the period between the time when the decision to suspend sentence is taken and the time when that decision enters into force. Section 57 (5) sentence 2 of the Criminal Code also applies accordingly if youth penalty was suspended subsequently by an order.

(2) The court however refrains from revocation of suspension if it is sufficient:

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

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

### **Section 26a**

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



If the judge does not revoke the suspension, he or she releases the offender from serving the youth penalty on expiry of the suspension period. Section 26 subsection (3) sentence 1 applies.

## **Chapter 6**

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

#### **Section 27**

##### **Conditions**

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

#### **Section 28**

##### **Probationary period**

- (1) The probationary period may not exceed two years' duration, or be of less than one year's, duration.
- (2) The probationary period commences on the day on which the judgment establishing the juvenile's guilt enters into force. It may subsequently be shortened to one year or, prior to its expiry, be extended to a maximum of two years.

#### **Section 29**

##### **Probationary assistance**

The juvenile is placed under the supervision and guidance of a probation officer for all or part of the probationary period. Section 23, section 24 (1) sentences 1 and 2, section 24 (2) and (3), section 25, and section 28 (2) sentence 1, apply accordingly.

#### **Section 30**

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

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

## **Chapter 7**

### **Combination of offences**

#### **Section 31**

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

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

imposing youth penalty. Section 26 (3) sentence 3 and section 30 (1) sentence 2 remain unaffected.

(3) If it is conducive to the purposes of supervision, the court may refrain from including in the new decision offences for which a conviction has been obtained. In so doing, it may declare supervisory or disciplinary measures spent if it imposes a 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 where youth criminal law would apply to some, and general criminal law to the others, youth criminal law is applied to them all if the main focus lies with those offences which are to be assessed under youth criminal law. If that is not the case, general criminal law applies to them all.

## **Title 2**

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

#### **Chapter 1**

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

### **Section 33**

#### **Youth courts**

(1) The youth courts have jurisdiction to hear cases involving youth misconduct.

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

### **Section 33a**

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

(1) The lay youth assessors' court is composed of the youth court judge, who is to preside, and two lay youth assessors. One man and one woman are present as lay youth assessors at each main hearing.

(2) The lay youth assessors do not participate in decisions taken outside the main hearing.

### **Section 33b**

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

(1) The youth panel is 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 is 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 decides on its composition in the main hearing. If the main proceedings have already been opened, it decides on this when scheduling the main hearing date. It decides that it is composed of three judges, including the presiding judge, as well as two lay youth assessors, insofar as

1. the provisions of general law, including the provision set out in section 74e of the Courts Constitution Act, do not stipulate that the case falls within the jurisdiction of the jury court,

2. it has jurisdiction in accordance with section 41 (1) no. 5 or

3. the participation of a third judge appears necessary, given the scope or difficulty of the case. In other cases, the grand youth panel decides that it is composed of two judges, including the presiding judge, and two lay youth assessors.

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

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

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

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

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

(7) Section 33a (1) sentence 2, and subsection (2), apply accordingly.

## **Section 34**

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

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

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

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

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

## **Section 35**

### **Lay youth assessors**

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

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

- (3) The youth assistance committee's list of proposed candidates constitutes a list of candidates within the meaning of section 36 of the Courts Constitution Act. Inclusion in the list requires 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 is displayed at the youth welfare office for public inspection for a period of one week. The time at which it is to be displayed is announced publicly in advance.
- (4) The youth court judge chairs the lay youth assessors' electoral committee at which decisions are taken on objections to the youth assistance committee's list of candidates, and at which the lay youth assessors and replacement lay youth assessors are elected.
- (5) The lay youth assessors are included in lists of lay assessors, which are kept separately for men and women.
- (6) The election of the lay youth assessors takes place at the same time as the election of the lay assessors for the courts of assessors and the criminal panels.

### **Section 36**

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

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

### **Section 37**

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

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

### **Section 37a**

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

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

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

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

## **Section 38**

### **Youth courts assistance service**

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

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

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

(4) A representative of the youth courts assistance service attends the main hearing insofar as this is not waived in accordance with subsection (7). The person who has carried out the research is to be seconded. Should no representative of the youth courts assistance service appear at the main hearing, despite being informed in good time in accordance with section 50 (3) sentence 1, and if no waiver has been declared in accordance with subsection (7), the funding institution of public youth welfare may be instructed to pay the costs caused thereby; section 51 (2) of the Code of Criminal Procedure applies accordingly.

(5) Insofar as no probation officer has been appointed to do so, the youth courts assistance service ensures that the juvenile complies with instructions and conditions. It informs the youth court of considerable failures to comply. In the event of the submission to a person designated in accordance with section 10 (1) sentence 3 no. 5, it exercises care and supervision if the youth court does not appoint another person to do so. It cooperates closely with the probation officer during the probation period. It remains in contact with the juvenile during enforcement, and assumes responsibility for his or her reintegration into society.

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

(7) The youth court, and in the preliminary proceedings the youth public prosecution office, may waive compliance with the requirements of subsection (3), and may waive compliance with the requirements of subsection (4) sentence 1, on request by the youth courts assistance service, insofar as this is justified on the basis of the circumstances of the case and compatible with the best interests of the juvenile. Such waiver is notified to the youth courts assistance service and to the further parties participating in the proceedings as early as possible. Such waiver may particularly be considered in the preliminary proceedings if it can be expected that the proceedings will be completed without any public charge being filed. The waiver of the presence of a representative of the youth courts assistance service at the main hearing may be restricted to parts of the main hearing. It may also be stated during the main hearing, and does not require a motion to be filed in this case.

## **Chapter 2 Jurisdiction**

### **Section 39**

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

- (1) The youth court judge has jurisdiction to deal with youth misconduct on proviso that only supervisory measures, disciplinary measures, incidental penalties, and consequences permissible under the present Act, or the withdrawal of permission to drive, are to be expected, and providing the public prosecutor files charges before the criminal court judge. The youth court judge does not have jurisdiction to deal with matters brought against juveniles and adults joindered in accordance with section 103 if the judge at the local court would not have jurisdiction to deal with the adults under the provisions of general law. Section 209 (2) of the Code of Criminal Procedure applies accordingly.
- (2) The youth court judge may not hand down a youth penalty exceeding one year's duration; he or she may not order placement in a psychiatric hospital.

### **Section 40**

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

- (1) The lay youth assessors' court has jurisdiction to deal with all youth misconduct which does not fall within the jurisdiction of another youth court. Section 209 of the Code of Criminal Procedure applies accordingly.
- (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 admit a particular matter for adjudication as a result of the particular scope of the matter.
- (3) Before issuing an order to admit a matter for adjudication, the presiding judge of the youth panel invites the indicted accused to indicate within a particular timeframe whether he or she wishes to apply for specific evidence to be taken prior to the main hearing.
- (4) The order by which the youth panel decides to admit or refuse a case for adjudication is not subject to appeal. The order accepting the matter for adjudication is joindered with the decision to open the hearing.

### **Section 41**

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

- (1) The youth panel, as a court handing down the ruling in the first instance, has jurisdiction in matters
1. which fall within the jurisdiction of the jury court according to the provisions of general law, including section 74e of the Courts Constitution Act,
  2. which it accepts for adjudication following a submission of the lay youth assessors' court as a result of the special scope of the matter (section 40 (2)), and
  3. brought against juveniles and adults joindered in accordance with section 103 if a grand criminal panel would have jurisdiction for dealing with the adults in accordance with the provisions of general law,
  4. in which the public prosecution office files a charge before the youth panel because of the particular need for protection of the persons aggrieved by the criminal offence who can be considered as witnesses, and
  5. in which the accused is accused of an offence of the type designated in section 7 (2), and a higher penalty than five years' youth penalty, or placement in a psychiatric hospital, is to be anticipated.
- (2) The youth panel also has 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 also takes the decisions listed in section 73 (1) of the Courts Constitution Act.

### **Section 42**

#### **Geographical jurisdiction**



(1) In addition to the judge who has jurisdiction in accordance with general procedural law or with the special provisions, jurisdiction lies 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 who is entrusted with the tasks of the head of enforcement.

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

(3) If the defendant changes his or her 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 is referred to the next court superior to them both.

### **Chapter 3**

#### **Criminal proceedings against juveniles**

##### **Subchapter 1**

##### **Preliminary proceedings**

##### **Section 43**

###### **Scope of investigations**

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

(2) The accused undergoes an examination where necessary, i.e. to establish the state of his or her development or any other characteristics relevant to the proceedings. An expert specialising in examining juveniles is assigned to carry out the order where possible.

##### **Section 44**

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

If a youth penalty is to be anticipated, the public prosecutor or the president of the youth court is to 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 dispenses with prosecution if a supervisory measure has already been enforced or initiated, and if he or she considers neither the participation of the judge in accordance with subsection (3), nor the bringing of charges, to be necessary. An attempt by the juvenile to achieve a settlement with the aggrieved person is considered equivalent to a supervisory measure.

(3) The public prosecutor proposes issuance of a reprimand, of instructions in accordance with section 10 (1) sentence 3 nos. 4, 7 and 9, or conditions by the youth court judge, if the accused admits his or her 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 dispenses with the prosecution; where instructions or conditions are imposed, he or she however only dispenses with the prosecution once the juvenile has complied with them. Section 11 (3) and section 15 (3) sentence 2 do not apply. Section 47 (3) applies accordingly.

#### **Section 46**

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

The public prosecutor is to set out the principal results of the investigations in the bill of indictment (section 200 (2) of the Code of Criminal Procedure) such as to ensure that knowledge of them as far as possible does not involve any disadvantages for the accused's education and development.

#### **Section 46a**

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

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

#### **Subchapter 2**

##### **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 (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 (3) sentence 1 against a juvenile who has confessed his or her guilt, or
4. the defendant lacks criminal liability on grounds of insufficient maturity.

In the cases designated in sentence 1 nos. 2 and 3, the judge may temporarily discontinue the proceedings, with the consent of the public prosecutor, and fix a period of no more than six months in which the juvenile must comply with the conditions, instructions or supervisory measures. The decision is handed down as an order of the court. That order is not subject to appeal. If the juvenile complies with the conditions, instructions or supervisory measures, the judge discontinues the proceedings. Section 11 (3) and section 15 (3) sentence 2 do not apply.

(2) Discontinuation of proceedings requires 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 sets out the grounds for the decision, and is not subject to appeal. The defendant is not informed of the grounds if it is to be feared that knowledge of them could involve disadvantages for his or her education and development.

(3) Fresh charges may only be brought for the same act 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 may not declare itself to lack jurisdiction because the case is to be brought before a court of the same or a lower level dealing with general criminal matters. Section 103 (2) sentences 2 and 3 remains unaffected.

#### **Section 48** **Exclusion of the public**

- (1) The deliberations before the decision-taking court, including the announcing of its decisions, are not open to the public.
- (2) Besides the participants in the proceedings, the aggrieved person, his or her parent or guardian, and his or her legal representative, and, where the defendant is subject to the supervision and guidance of a probation officer, or to the care and supervision of a care assistant, or if a social worker has been assigned to him or her, the probation officer, the care assistant and the social worker are permitted to be present. The same applies to the head of institution in cases in which the juvenile receives supervisory assistance in a residential home or comparable institution. The judge may admit other persons for special reasons, i.e. for training purposes.
- (3) If young adults or adults are also defendants in the proceedings, the deliberations are held in public. The public may be excluded if this is in the supervisory interests of juveniles who are defendants.

#### **Section 49** **Administering of oath**

- (1) In proceedings before the youth court judge, an oath is 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) does not apply 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 general proceedings, if there are special reasons to do so, and with the consent of the youth public prosecution office.
- (2) The presiding judge is to also issue an order to summons the parents or guardians and the legal representatives. The provisions concerning the summons, the consequences of failure to appear, and compensation for witnesses, apply accordingly.
- (3) The youth courts welfare office is informed of the place and time of the main hearing in good time prior to the scheduled date. The representative of the youth courts welfare office is permitted to speak at the main hearing on request. If no representative of the youth courts assistance service is present, a written report by the youth courts assistance service may be read out in the main hearing, subject to the provisos of section 38 (7) sentence 1.
- (4) If a probation officer assigned to the juvenile attends the main hearing, he or she is to be heard as to the juvenile's development during the probationary period. Sentence 1 applies accordingly to a care assistant assigned to the juvenile, and to the leader of a social skills training course attended by the juvenile.

#### **Section 51** **Temporary exclusion of participants**

- (1) The presiding judge is to exclude the accused for the duration of discussions in the deliberations which could be disadvantageous to his or her education and development. He or she informs the defendant of the deliberations held in his or her absence insofar as is necessary for the purposes of his or her 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 discussing the personal circumstances of the accused in his or her presence would make considerably more difficult any necessary future cooperation between the persons named and the youth courts assistance service when it comes to implementing youth court sanctions which are to be anticipated,
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 danger to the life, limb or liberty of the accused, of a witness, or of another person, or of other considerable harm 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 sentence 1 nos. 3 to 5, the presiding judge may also exclude the parent or guardian and legal representatives of the aggrieved person from the hearing, in cases falling under no. 3, also if other considerable impairment of the well-being of the aggrieved party is to be feared. Parents and guardians and legal representatives are excluded if the preconditions of sentence 1 no. 5 are met, and the exclusion of the person whose life is affected is applied for. Sentence 1 no. 5 does not apply insofar as the persons whose lives are affected are opposed to exclusion from the main hearing.

(3) Section 177 of the Courts Constitution Act applies accordingly.

(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 suitably informs 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) is also permissible if they are appointed as counsel (section 69).

(6) If the parents and guardians and the legal representatives are excluded from a not inconsiderable part of the main hearing, the presiding judge permits the presence of another adult individual who is suited to protect the interests of the juvenile for the duration of their exclusion. The juvenile is to be afforded the opportunity to designate an adult individual enjoying his or her confidence. The other suitable individual present is permitted to speak in the main hearing on request. If no other person is permitted to be present in accordance with sentence 1, a representative of youth welfare must be present to care for the juvenile in the criminal proceedings against juveniles.

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

### **Section 51a**

#### **Recommencement of the main hearing**

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

### **Section 52**

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

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

#### **Section 52a**

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

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

(2) (repealed)

#### **Section 53**

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

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

#### **Section 54**

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

(1) If the defendant is found guilty, the grounds for the judgment also set out which circumstances were decisive to fixing his or her 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 is to be taken here in particular of the defendant's moral, intellectual and physical make-up.

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

#### **Subchapter 3 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 more far-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 does not apply if the judge has ordered supervisory assistance to be made use of in accordance with section 12 no. 2.

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

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

(4) Section 356a of the Code of Criminal Procedure applies accordingly insofar as a person concerned in accordance with subsection (1) sentence 1 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 is only admissible 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.

#### **Subchapter 4**

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

#### **Section 57**

##### **Decision on suspension**

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

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

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

(4) Section 260 (4) sentence 4, and section 267 (3) sentence 4, of the Code of Criminal Procedure, apply accordingly.

#### **Section 58**

##### **Further decisions**

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

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

(3) Jurisdiction lies with the judge who ordered the suspension. He or she may transfer all or part of the decisions to the youth court judge in whose district the juvenile resides. Section 42 (3) sentence 2 applies accordingly.

#### **Section 59**

##### **Contesting decisions**

(1) An immediate complaint is admissible against a decision ordering or rejecting suspension of a youth penalty, if such order is to be contested alone or only jointly with the decision on

ordering youth detention in accordance with section 16a. The same applies 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 (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 is admissible against the revocation of suspension of youth penalty (section 26 (1)).

(4) The order concerning remission of youth penalty (section 26a) may not 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 also has jurisdiction to hand down a decision on the complaint.

### **Section 60**

#### **Probation plan**

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

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

(3) The juvenile is to confirm by his or her signature that he or she has read the probation plan, and to promise that he or she intends to comply with the instructions and conditions. The parent or guardian and the legal representative is to also sign the probation plan.

### **Section 61**

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

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

1. after exhausting the possibilities of investigation, the findings that have been made are not yet able to give rise to the expectations stipulated in section 21 (1) sentence 1, and

2. as a result of indications in the life led by the juvenile, or of other specific circumstances, there are prospects that such an expectation will be justified in the foreseeable future (section 61a (1)).

(2) A corresponding reserve may also be pronounced if

1. circumstances of the nature designated in subsection (1) no. 2 have emerged in the main hearing which, by themselves or in conjunction with other circumstances, might give rise to the expectation stipulated in section 21 (1) sentence 1,

2. the findings which relate to the circumstances which are significant in accordance with no. 1 require further investigations, and

3. the interruption or suspension of the main hearing would lead to delays which would be educationally disadvantageous, or would be disproportionate.



(3) Section 16a applies accordingly if the reserve is pronounced in the judgment. The reserve is included in the operative part of the judgment. The grounds for the judgment must list the circumstances which determined this. When the judgment is proclaimed, the juvenile is informed of the significance of the reserve, and of his or her conduct in the period until the subsequent decision.

#### **Section 61a**

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

(1) The reserved decision is handed down at the latest six months after the judgment gains legal force. The court may set a shorter maximum period with the reserve. For special reasons, and with the consent of the convict, the period in accordance with sentence 1 or 2 may be extended by order to a maximum of nine months from when the judgment gains legal force.

(2) The court has jurisdiction for the reserved decision in the judgment of which it was possible to verify the underlying factual findings for the last time.

#### **Section 61b**

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

(1) The court may issue instructions and conditions to the juvenile for the period between the judgment gaining legal force and expiry of the period that is relevant in accordance with section 61a (1); sections 10 and 15 (1) and (2), section 23 (1) sentences 1 to 3 and subsection (2), apply accordingly. The court is to place the juvenile under the supervision and guidance of a probation officer for this period; this is only to be waived if sufficient guidance and monitoring are guaranteed by the youth courts assistance service. Sections 24 and 25 apply accordingly in all other cases. Probationary assistance and youth courts assistance service work closely together. Here, they may also pass to one another personal data regarding the convict where this is necessary to properly perform the guidance and monitoring tasks of the respectively other agency. Section 58 (1) sentences 1, 2 and 4, and subsection (3) sentence 1, and section 59 (2) and (5), apply accordingly to the decisions in accordance with this subsection. The provisions of section 60 apply accordingly.

(2) If sufficient grounds emerge prior to expiry of the period which is relevant in accordance with section 61a (1) to presume that suspension of youth penalty on probation will be refused, section 453c of the Code of Criminal Procedure, and section 58 subsections (2) and (3) sentence 1, apply accordingly.

(3) If the youth penalty is suspended on probation, the point in time from when the judgment gains legal force in which the suspension of a subsequent ruling was reserved is allowed against the probationary period in accordance with section 22 until the ruling on the suspension gains legal force.

(4) If the suspension is rejected, the court may allow services rendered by the juvenile in compliance with instructions, conditions, assurances or offers against the youth penalty. The court allows the contributions if the legal consequences of the offence would otherwise exceed the degree of culpability. Section 26 (3) sentence 3 applies accordingly with regard to youth detention which was imposed in accordance with section 16a (section 61 (3) sentence 1).

#### **Subchapter 5**

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

#### **Section 62**

##### **Decisions**

(1) Decisions in accordance with sections 27 and 30 are handed down in the form of a judgment based on main proceedings. Section 267 (3) sentence 4 of the Code of Criminal Procedure apply accordingly to the decision to suspend imposition of a 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 a youth penalty is necessary (section 30 subsection (1)), an order is issued stating that the decision to impose the penalty is to remain suspended.

(4) Section 58 (1) sentences 1, 2 and 4, and section 58 (3) sentence 1, apply accordingly to the other decisions which become necessary as a result of the suspension of imposition of a youth penalty.

### **Section 63** **Contesting decisions**

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

(2) Section 59 subsections (2) and (5) apply accordingly in all other cases.

### **Section 64** **Probation plan**

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

## **Subchapter 6** **Supplementary decisions**

### **Section 65** **Subsequent decisions on instructions and conditions**

(1) Subsequent decisions relating to instructions (section 11 (2) and (3)) or conditions (section 15 (3)) are taken by order of the judge at first instance after hearing the public prosecutor and the juvenile. Insofar as necessary, the representative of the youth courts assistance service, the care assistant appointed in accordance with section 10 (1) sentence 3 no. 5, and the leader of the social skills training centre acting in accordance with section 10 (1) sentence 3 no. 6, are heard. Where consideration can be given to imposing youth detention, the juvenile is afforded the opportunity to make an oral statement before the judge. The judge may transfer the proceedings to the youth court judge in whose district the juvenile is resident if the juvenile has changed his or her place of residence. Section 42 (3) sentence 2 applies accordingly.

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

### **Section 66** **Supplementation of decisions in force for multiple convictions**

(1) Where measures or a 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 hands down a like decision thereafter. This does 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 (3).

(2) The decision is 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 takes his or her decision by order. The same applies to jurisdiction and procedure for issuing the order as applies to the subsequent formulation of an aggregate penalty under the general provisions. If a youth penalty has been served in part, jurisdiction lies with the judge entrusted with the tasks of the head of enforcement.

## **Subchapter 7** **Common provisions on procedure**

## **Section 67**

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

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

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

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

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

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

(4) The youth court may remove the rights in accordance with subsections (1) to (3) from parents, or from guardians and legal representatives, insofar as they are suspected of participating in the accused's misconduct, or insofar as they have been convicted of participation. Where a parent, or guardian or legal representative, fulfils the conditions set out in sentence 1, the judge may remove those rights from both parties if abuse of those rights is to be feared. If the parents, or the guardians and the legal representatives, no longer hold those rights, the judge with jurisdiction for family or guardianship matters appoints a carer to preserve the accused's interests in the proceedings which are pending. The main hearing is 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 the present Act. Absentee parents or guardians are deemed to be represented at the main hearing, or in any other court hearing, by the parents or guardians who are present. Where provision is made for notices or summonses to be issued, it is sufficient for these to be addressed to one of the parents or guardians.

## **Section 67a**

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

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

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

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

1. such notification would cause concern with regard to a considerable detriment to the best interests of the juvenile, in particular in the case of a risk to the life, limb or liberty of the juvenile, or if the provisos of section 67 (4) sentence 1 or 2 apply,
2. such notification would considerably endanger the purpose of the investigation, or

3. the parents or guardians, or the legal representatives, cannot be reached in good time.

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

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

(6) The procedure in accordance with section 67 (4) applies accordingly to the permanent deprivation of the rights in accordance with subsections (1) and (2).

#### **Section 68** **Necessary defence**

A case of necessary defence is deemed to exist if

1. a case of necessary defence would exist in proceedings against an adult,
2. the parents or guardians, and the legal representatives, have had their rights withdrawn in accordance with the present Act,
3. the parents or guardians, and the legal representatives, have been excluded from the hearing in accordance with section 51 (2), and the impairment of the defence of their rights can no longer be sufficiently compensated for by subsequent information (section 51 (4) sentence 2), or by the presence of another suitable adult individual,
4. consideration may be given to placing the accused in an institution for the purpose of preparing an expert report on his or her personal development (section 73), or
5. the imposition of a youth penalty, suspension of the imposition of youth penalty, or the ordering of accommodation in a psychiatric hospital or in an institution for withdrawal treatment, can be anticipated.

#### **Section 68a** **Time of appointment of obligatory defence counsel**

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

(2) Section 141 (2) sentence 2 of the Code of Criminal Procedure does not apply.

#### **Section 68b** **Questioning and identity parades prior to the appointment of obligatory defence counsel**

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

1. necessary in order to avert serious harmful effects on the life, limb or liberty of an individual, or
2. immediate action on the part of the criminal prosecution authorities is imperatively required in order to avert a serious risk to criminal proceedings relating to a serious criminal offence,

also taking the best interests of the juvenile into account.

The right of the juvenile to also ask questions of defence counsel to be selected by him or her at any time, including prior to the questioning, remains unaffected.

### **Section 69**

#### **Adviser**

- (1) The presiding judge may appoint an adviser for the accused at any stage in the proceedings if the circumstances do not warrant the appointment of obligatory defence counsel.
- (2) The parent or guardian, and the legal representative, may not be appointed as an adviser if this could be expected to be disadvantageous to his or her education and development.
- (3) The adviser may be permitted to inspect the files. He or she otherwise has the same rights in the main hearing as defence counsel. He or she is not entitled to defend the accused.

### **Section 70**

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

- (1) The youth courts assistance service, in appropriate cases also the judge responsible for family and guardianship matters, the family judge, and the school, are informed of the initiation and outcome of the proceedings. They inform the youth public prosecution office if they become aware that other criminal proceedings are pending against the accused. The judge responsible for family and guardianship matters furthermore informs the youth public prosecution office of other measures taken by the family and guardianship courts, and of the variance or lifting of such measures where the judge responsible for family and guardianship matters does not consider that the interests meriting protection of the accused, or of any other person or body affected by the notification, override such notification.
- (2) The youth courts assistance service is informed of the initiation of the proceedings at the latest at the time when the juvenile is summonsed to first be questioned as an accused person. In the event of the first questioning as an accused person taking place without a prior summons, the notification must take place at the latest without undue delay after the questioning.
- (3) In the event of the juvenile being temporarily deprived of his or her liberty, the bodies implementing the deprivation of liberty notify the youth public prosecution office and the youth welfare office ex officio of knowledge that they have obtained on the basis of a medical examination insofar as such knowledge gives rise to doubts as to whether the juvenile is fit for trial or for specific investigative acts or measures. Section 114e of the Code of Criminal Procedure remains unaffected in all other cases.

### **Section 70a**

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

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

1. the parents and guardians, and the legal representatives, or another suitable adult individual, are to be informed in accordance with section 67a,

2. he or she may demand that defence counsel participate in cases of obligatory defence counsel (section 68) in accordance with section 141 of the Code of Criminal Procedure, and with section 68a, and in accordance with section 70c (4) may demand the postponement or interruption of his or her questioning for a reasonable period,

3. in accordance with section 48, questioning before the court handing down the ruling is to be held in camera as a matter of principle and, should the main hearing be held in public by way of exception subject to specific prerequisites, may request that the hearing be held in camera, or that specific individuals be excluded,

4. he or she may object to a copy of the audio and video recording of his or her questioning being given to those entitled to inspect the file in accordance with section 70c (2) sentence 4 of the present Act in conjunction with section 58a (2) sentence 6, and subsection (3) sentence 1, of the Code of Criminal Procedure, and that his or her consent is required to provide the recording or copies thereof to other bodies,

5. he or she may be accompanied in the case of investigative acts by his or her parents or guardians, and legal representatives, in accordance with section 67 (3), or by another suitable adult individual,

6. he or she may demand a review of the measures and decisions in question in respect of an alleged violation of his or her rights on the part of one of the participating authorities or of the court.

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

1. accommodation of his or her personal circumstances in the proceedings in accordance with sections 38, 43 and 46a,

2. the right to a medical examination to which he or she is entitled in accordance with *Land* law, or with the law of the police forces of the Federation, in the event of temporary deprivation of liberty, as well as with regard to the entitlement to medical support, insofar as it emerges that such is necessary during this deprivation of liberty,

3. the application of the principle of proportionality in the event of temporary deprivation of liberty, namely

a) of the priority attaching to other measures by means of which the purpose of the deprivation of liberty can be achieved,

b) the limitation of the deprivation of liberty to the shortest appropriate period of time, and

c) the consideration of the particular strains caused by the deprivation of liberty in view of his or her age and state of development, as well as the accommodation of any particular other vulnerability,

4. the other measures that may be considered as a rule in suitable cases,

5. the ex officio examinations that are prescribed in cases involving detention,

6. the right to the presence of the parents or guardians, and of the legal representatives, or of another suitable adult individual, at the main hearing,

7. his or her right, and his or her obligation, to be present at the main hearing in accordance with section 50 (1) and with section 51 (1).

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

1. in accordance with section 89c, he or she is to be accommodated separately from adults,
  2. in accordance with the Prison Acts (*Vollzugsgesetze*) of the *Länder*,
    - a) care is to be taken of his or her health, physical and mental development,
    - b) his or her right to education and training is to be safeguarded,
    - c) his or her right to family life, and in this regard the possibility to meet his or her parents and guardians, as well as his or her legal representatives, is to be guaranteed,
    - d) his or her access is to be guaranteed to programmes and measures which promote his or her development and reintegration, and
    - e) he or she is to be guaranteed freedom of religion and ideology.
- (4) In the event of temporary deprivation of liberty other than in remand detention, the juvenile is informed of his or her rights applicable thereto in accordance with subsection (3) no. 2, in case of his or her being taken into police custody, also of his or her right to be accommodated separately from adults in accordance with the provisions material therefor.
- (5) Section 70b of the present Act, and section 168b (3), of the Code of Criminal Procedure, apply accordingly.
- (6) Insofar as a juvenile who has been arrested is given written instructions in accordance with section 114b of the Code of Criminal Procedure, such instructions also contain the additional information in accordance with this section.
- (7) Other obligations to provide information and instructions remain unaffected by the provisions contained in this section.

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

- (1) Prescribed instructions must be given to the juvenile in a manner which corresponds to his or her age and state of development and education. They are also addressed to his or her parents or guardians, and statutory representatives, if they are present, and must in doing so be given in such a manner as to enable them to comply with their responsibility with regard to the object of the instruction. If no parents or guardians, or statutory representatives, are present when the instruction is given to the juvenile regarding the significance of the legal consequences ordered by the court, the instruction thereon must be issued to them in writing.
- (2) If co-accused persons are present when instructions are given regarding the significance of suspension of youth penalty on probation, or the significance of the reserve of such a subsequent decision, who are juveniles or young adults who are only sentenced to supervisory measures or disciplinary measures, the instruction is to also give them an understanding of the significance of the decision.

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

- (1) The questioning of the accused is carried out in a manner in accordance with his or her age and state of development and education.
- (2) Outside the main hearing, a video and audio recording may be made of the questioning. A video and audio recording is made of questioning other than by a judge if the participation of defence counsel is obligatory at the time of the questioning, but no defence counsel is present. Section 136 (4) sentence 2 of the Code of Criminal Procedure, also in conjunction with section 163a (3) sentence 2 or subsection (4) sentence 2 of the Code of Criminal Procedure, remains unaffected in all other cases. Section 58a subsections (2) and (3) of the Code of Criminal Procedure apply accordingly if a video and audio recording is made of the questioning.



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

(4) If the participation of defence counsel is or becomes obligatory at the time when the accused is questioned or an identity parade takes place (section 58 (2) of the Code of Criminal Procedure), it is postponed or interrupted for a suitable period if no defence counsel is present and no case exists falling under section 68b. Sentence 1 does not apply if defence counsel has explicitly waived being present.

### **Section 71**

#### **Preliminary orders on supervision**

(1) Until the judgment enters into final effect, the judge may issue preliminary orders concerning supervision of the juvenile, or suggest the provision of services in accordance with Book 8 of the Social Code.

(2) The judge may order temporary placement in a suitable youth welfare services home if this is also apposite, given the measure which is to be expected, in order to protect the juvenile from a further risk to his or her 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 apply by analogy to temporary placement. Temporary placement is 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 (1) sentence 2 of the Code of Criminal Procedure), account is also taken of the special strain which executing custody has on juveniles. Where remand detention is imposed, the detention order sets out the reasons which demonstrate that other measures, particularly temporary placement in a youth welfare service home, are not sufficient, and that remand detention is not disproportionate.

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

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

(3) The decision on enforcement of a custody order, and on the measures to avoid it being enforced, is 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 (2)) may also be ordered under the same conditions for issuing a custody order. In this case, the judge may subsequently replace the placement order with a custody order if that proves to be necessary.

(5) If a juvenile is being held in remand detention, the proceedings are 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 courts assistance service in custody matters**

The youth courts assistance service is informed without delay of the enforcement of a custody order; it is to already be informed when a custody order is issued. The youth courts assistance service is informed when a juvenile is placed under temporary arrest if it can be



expected from the investigations so far that the juvenile will be brought before the judge in accordance with section 128 of the Code of Criminal Procedure.

### **Section 73**

#### **Placement for observation purposes**

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

(2) An immediate complaint against the decision is admissible. It has a delaying effect.

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

### **Section 74**

#### **Costs and expenses**

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

### **Subchapter 8**

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

### **Section 75**

(repealed)

### **Section 76**

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

The public prosecutor may apply to the youth court judge in writing or orally for a decision to be taken in the simplified procedure for matters involving juveniles if it can be expected that the youth court judge will impose only instructions, order supervision by a social worker or probation officer, apply disciplinary measures, impose a driving ban, withdraw permission to drive, and impose a bar not exceeding two years or seizure. The public prosecutor's application is equivalent to public charges.

### **Section 77**

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

(1) The youth court judge declines to take a decision by simplified procedure if the matter is not suitable for the procedure, i.e. if it is probable that supervisory assistance within the meaning of section 12 no. 2 will be ordered, or youth penalty will be imposed, or if comprehensive evidence needs to be taken. 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 submits a bill of indictment.

### **Section 78**

#### **Procedure and decision**

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

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

(3) It is permissible to deviate from procedural provisions in order to simplify, accelerate and structure proceedings in a juvenile-friendly manner, providing that such deviation does not impair the investigation of the truth. The provisions concerning the presence of the accused (section 50), the status of the parents or guardians, and of the legal representatives, and their notification (sections 67 and 67a), and notifications to official bodies (section 70), and

the information of the juvenile (section 70a), must be observed. If the accused fails to attend the oral hearing, and if his or her absence is not adequately excused, he or she may be ordered to be brought before the judge if this has been threatened in the subpoena.

## **Subchapter 9**

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

#### **Section 79**

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

- (1) No penalty order may be issued against a juvenile.
- (2) The accelerated procedure set out under general procedural law is inadmissible.

#### **Section 80**

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

- (1) No private prosecution may be brought against a juvenile. Misconduct which may be pursued by private prosecution under the provisions of general law is also prosecuted by the public prosecutor if supervisory reasons or a justified interest of the aggrieved person which are not counter to the aim of the supervision so require.
- (2) A counter action is admissible against a juvenile who brings a private prosecution. No youth penalty may be imposed.
- (3) The public charge lodged may only be joined as an ancillary prosecutor by someone who has been aggrieved

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

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

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

Section 395 (2) no. 1 subsections (4) and (5) and sections 396 to 402 of the Code of Criminal Procedure, apply accordingly in all other cases.

#### **Section 81**

##### **Adhesion procedure**

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

## **Subchapter 10**

### **Ordering of preventive detention**

#### **Section 81a**

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

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

## **Title 3**

### **Enforcement and execution**

#### **Chapter 1**

##### **Enforcement**

## **Subchapter 1**

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

#### **Section 82**

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

- (1) The head of enforcement is the youth court judge. He or she also performs 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 is otherwise assigned according to the provisions of Book 8 of the Social Code.
- (3) In cases falling under section 7 subsections (2) and (4), the enforcement of placement and responsibility therefor is orientated in line with the provisions of the Code of Criminal Procedure if the person concerned has reached the age of 21.

#### **Section 83**

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

- (1) The decisions of the head of enforcement in accordance with sections 86 to 89a and section 91 (2), as well as with sections 462a and 463, of the Code of Criminal Procedure are deemed to be decisions of the youth court judge.
- (2) Jurisdiction for judicial decisions which become necessary during enforcement in response to an order made by the head of enforcement lies with the youth panel in cases in which:
  1. the decision at first instance was taken by the head of enforcement himself or herself, or by a lay youth assessors' court of which he or she was the presiding judge,
  2. the head of enforcement, in performance of the tasks of the criminal enforcement panel of the court, would be required to take a decision concerning an order that he or she issued himself or herself.
- (3) The decisions taken in accordance with subsections (1) and (2) may, unless otherwise provided, be contested with an immediate complaint. Sections 67 to 69 apply accordingly.

#### **Section 84**

##### **Geographical jurisdiction**

- (1) The youth court judge initiates enforcement in all proceedings in which the decision at first instance was taken by him or her, or by a lay youth assessors' court of which he or she was the presiding judge.
- (2) Except in the cases designated in subsection (1), where a decision taken by another judge is to be enforced, initiation of enforcement lies with the youth court judge at the local court who bears responsibility for the supervisory functions of the family and guardianship judge. If the sentenced person has reached the age of majority in these matters, responsibility for initiating enforcement lies 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) Enforcement is assured by the youth court judge in the cases designated in subsections (1) and (2) 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 surrenders enforcement to the youth court judge with jurisdiction in the capacity of execution officer in accordance with section 90 (2) sentence 2.
- (2) Where a youth penalty is to be enforced, enforcement is transferred, after reception of the person convicted in the facility for execution of youth penalty, to the youth court judge at the local court in the district of which the facility for execution of the youth penalty is located. The governments of the *Länder* are authorised to issue statutory instruments stipulating that

enforcement is transferred to the youth court judge at a different local court if this appears more expedient for contact reasons. The governments of the *Länder* may issue statutory instruments transferring such authority to the judicial authorities of the *Länder*.

(3) Where one of the *Länder* maintains a facility for execution of a youth penalty within the territory of one of the other *Länder*, the *Länder* concerned may agree that the youth court judge at a local court of the *Land* which maintains the facility for execution of youth penalty is to have jurisdiction. Where such agreement is reached, enforcement is transferred to the youth court judge of the local court in the district of which the authority responsible for supervising the facility for execution of the youth penalty has its headquarters. The government of the *Land* which maintains the facility for execution of the youth penalty is authorised to issue statutory instruments according to which the youth court judge of another local court acquires 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) applies accordingly to enforcement of a measure of reform or prevention in accordance with section 61 no. 1 or 2 of the Criminal Code.

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

(6) Where the convicted person has reached twenty-four years of age, the head of enforcement with jurisdiction in accordance with subsections (2) to (4) may surrender enforcement of the youth penalty executed according to the provisions applicable to the 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 for longer and, in the light of the convicted person's personality, the basic characteristics particular to youth criminal law are no longer significant to future decisions; the surrender is binding. The provisions of the Code of Criminal Procedure and the Courts Constitution Act concerning enforcement of sentence apply on surrender.

(7) Section 451 (3) of the Code of Criminal Procedure applies accordingly with regard to the jurisdiction of the public prosecutor in enforcement proceedings.

## **Subchapter 2 Youth detention**

### **Section 86**

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

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

### **Section 87**

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

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

(2) Section 450 of the Code of Criminal Procedure applies accordingly to crediting against youth detention of periods spent in remand detention.

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

court which took the decision, the public prosecution office, and the representative of the youth courts assistance service.

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

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

### **Subchapter 3 Youth penalty**

#### **Section 88**

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

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

#### **Section 89**

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

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

### **Section 89a**

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

- (1) If a prison sentence is also to be enforced against a convicted person sentenced to youth penalty, youth penalty is generally enforced first. The head of enforcement interrupts the enforcement of the youth penalty if half of the youth penalty, with a minimum of six months, has been served. He or she may interrupt enforcement earlier if consideration may 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 may be given to its renewed suspension. Section 454b (4) of the Code of Criminal Procedure applies accordingly.
- (2) If a 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 is enforced; the sentence is 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 declares enforcement of the youth penalty completed.
- (3) Section 85 (6) applies accordingly in the cases designated in subsection (1), with the proviso that the head of enforcement may surrender enforcement of the youth penalty if the convicted person has reached twenty-one years of age.

### **Section 89b**

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

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

### **Subchapter 4**

#### **Remand detention**

### **Section 89c**

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

- (1) As long as the juvenile has not yet reached the age of 21 at the time of the offence, remand detention is enforced in accordance with the provisions pertaining to the enforcement of remand detention for young detainees, and where possible in the institutions provided for young detainees. If the person concerned has reached the age of 21, but not yet 24, when the arrest warrant is enforced, remand detention may be enforced in accordance with these provisions and in these institutions.
- (2) If the juvenile has not yet reached the age of 18, he or she may only be accommodated together with young detainees who have reached the age of 18 if such joint accommodation is not counter to his or her best interests. He or she may only be accommodated with detainees who have reached the age of 24 if this is in his or her best interests.
- (3) The decision in accordance with subsection (1) sentence 2 is taken by the court. The institution provided for admission, and the youth courts assistance service, is heard prior to the decision being taken.

### **Chapter 2**

#### **Execution**

### **Section 90**

#### **Youth detention**

- (1) Execution of youth detention is to arouse the juvenile's sense of self-respect and make him or her fully aware that he or she must take responsibility for the wrong he or she has



done. Execution of youth detention is to be structured in an educational manner. It is to help the juvenile to overcome those difficulties which contributed to his or her commission of the criminal offence.

(2) Youth detention is executed in the *Land* judicial authority's youth detention centres or facilities for detention during leisure time. The execution officer is 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 24, youth custody is to be executed in accordance with the provisions relating to execution of sentences applicable to adults.

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

## **Section 92**

### **Legal recourse in execution**

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

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

(3) The youth panel rules by resolution. It determines according to its discretion whether an oral hearing is to be held. At the request of the juvenile, the latter is heard in person prior to a ruling. The juvenile is notified thereof. If no oral hearing is carried out, the hearing takes place in the prison facility as a rule.

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

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

(6) Subsections (1) to (5) do not apply if a youth penalty in accordance with section 89b (1) is executed in accordance with the provisions relating to execution of sentences applicable to adults, or if the juvenile has reached the age of 24 during execution of a measure involving deprivation of liberty. The provisions contained in sections 109 to 121 of the Prison Act apply to the verification of enforcement measures.

## **Section 93**

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



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

#### **Section 93a**

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

(1) The measure set out in section 61 no. 2 of the Criminal Code is executed in an institution in which the therapeutic resources and social assistance required to treat juveniles suffering from addiction are available.

(2) In order to achieve the desired aim of the treatment, execution may be relaxed and implemented in a broadly liberal manner.

#### **Title 4**

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

##### **Sections 94 to 96**

##### **(Repealed)**

#### **Section 97**

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

(1) Where the youth court judge has been convinced that a juvenile sentenced to youth penalty has proved himself or herself to be a law-abiding individual by dint of irreproachable conduct, he or she declares, of his or her 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 on application of the public prosecutor or, if the convicted person is still a minor at the time of the application, on application of the representative of the youth courts assistance office. Such declaration is inadmissible in the case of a conviction in accordance with sections 174 to 180, or section 182, of the Criminal Code.

(2) The order may not be made earlier than two years after serving or remission of the penalty, unless the convicted person has demonstrated himself or herself to be particularly deserving of having the entry struck off. The order is inadmissible while the penalty is being executed, or during a probationary period.

#### **Section 98**

##### **Procedure**

(1) Jurisdiction lies 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 lies with the youth court judge in whose district the convicted person resides.

(2) The youth court judge as a preference assigns the body which has looked after the convicted person since he or she served his or her sentence to investigate his or her conduct and his or her period of probation. He or she may also conduct investigations of his or her own. He or she hears 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 is heard.

#### **Section 99**

##### **Decision**

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

#### **Section 100**

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

Where, in the case of a conviction entailing no more than two years' youth penalty, remission of penalty or of a remainder of a penalty is ordered after probationary suspension, the judge declares at the same time that the offence be struck from the criminal record. This does not apply in the case of a conviction in accordance with sections 174 to 180 or section 182 of the Criminal Code.

#### **Section 101**

##### **Revocation**

Where the convicted person who has had an entry struck from his or her 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 revokes the striking of the entry from the criminal record, in the judgment or subsequently by order. He or she may refrain from revocation in special cases.

#### **Subchapter 5**

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

#### **Section 102**

##### **Jurisdiction**

The provisions of the present Act are without effect on 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 (1) and (2) of the Courts Constitution Act), the Federal Court of Justice also renders decisions on complaints against decisions of those higher regional courts which order or refuse to grant probationary suspension of a youth penalty (section 59 (1)).

#### **Section 103**

##### **Joinder of several criminal matters**

- (1) Criminal cases brought against juveniles and adults may be joindered 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 lies with the youth court. This does not apply if the criminal matter against adults would, in accordance with the provisions of general law including the provision set out in section 74e of the Courts Constitution Act, fall within the jurisdiction of the economic crimes panel or of the criminal panel designated in section 74a of the Courts Constitution Act; in a case of this type, these criminal panels also have jurisdiction for the criminal case against the juvenile. To examine whether the economic crimes panel or the criminal panel has jurisdiction in accordance with section 74a of the Courts Constitution Act, section 6a, section 225a (4), section 270 (1) sentence 2 of the Code of Criminal Procedure apply accordingly in the matter designated in sentence 2; section 209a of the Code of Criminal Procedure applies on the condition that these criminal panels may also be assimilated to higher level courts in relation to the youth panel.
- (3) Where the judge orders separation of the joindered matters, the matter which has been separated off is immediately surrendered to the judge who would have had jurisdiction had the joinder not taken place.

#### **Section 104**

##### **Proceedings against juveniles**

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

1. youth misconduct and its consequences (sections 3 to 32),
2. the inclusion and legal status of youth courts assistance service (section 38 and section 50 (3)),
3. the scope of investigations in preliminary proceedings (section 43),
4. dispensing with prosecution and discontinuation of the proceedings by the judge (sections 45 and 47),
  - 4a. holding the hearings in camera (section 48 (3) sentence 2),
5. remand detention (sections 52, 52a 72 and 89c),
6. the grounds for the judgment (section 54),
7. procedures applicable to legal remedies (sections 55 and 56),
8. the procedure for probationary suspension of youth penalty and sentencing to youth penalty (sections 57 to 64),
9. the participation and legal status of the parents and guardians and of legal representatives (section 50 (2), section 51 subsections (2) to (7), and sections 67 and 67a),
10. obligatory defence counsel (sections 68 and 68a),
11. notifications to official bodies (section 70),
  - 11a. notification of the juvenile (section 70a),
  - 11b. instructions (section 70b),
  - 11c. questioning of the accused person (section 70c),
12. placement for observation purposes (section 73),
13. costs and expenses (section 74),
14. 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 the present Act is at the discretion of the court.

(3) Insofar as is required for reasons of state security, and compatible with the best interests of the juvenile, the court may issue an order dispensing with the participation of the youth courts assistance service and stating that the rights of the parents and guardians, and of the legal representatives designated in section 67 subsections (1) and (2), are suspended.

(4) Where the court considers compulsory care measures necessary, it leaves it to the judge responsible for family and guardianship matters to select and order them. Section 53 sentence 2 applies accordingly.

(5) The following decisions are transferred to the youth court judge in whose district the juvenile is:

1. decisions which become necessary after probationary suspension of youth penalty;

2. decisions which become necessary following suspension of imposition of a youth penalty, with the exception of decisions on the fixing of the penalty and the spending of sentence (section 30);
3. decisions which become necessary after the reserve of a subsequent decision on the suspension of youth penalty, with the exception of the reserved decision itself (section 61a).

## **Part 1 Young adults**

### **Chapter 1 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 applies the provisions applicable to a juvenile set out in sections 4 to 8, section 9 no. 1, sections 10 and 11, as well as 13 to 32, accordingly if:

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

(2) Section 31 (2) sentence 1, and section 31 (3), also apply 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 is ten years. If the offence is murder, and if the maximum sentence in accordance with sentence 1 is inadequate because of the particular grievousness of the culpability, the maximum sentence is 15 years.

#### **Section 106**

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

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

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

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

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

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

2. on the basis of the overall assessment of the young adult, and of his or her offence or offences, it can be ascertained with adequate certainty, or is at least likely, that

he or she has a proclivity towards criminal offences of the nature designated in no. 1, and as a result thereof is a danger to the public at the time of the conviction.

(4) Subject to the further prerequisites of subsection (3) sentence 2, the court may also proclaim such a reserve if

1. the conviction is effected because of one or more less serious criminal offences in accordance with sections 176a and 176b of the Criminal Code,

2. the other prerequisites of section 66 (3) of the Criminal Code are met where this does not refer to section 66 (1) sentence 1 no. 4 of the Criminal Code, and

3. the relevant previous offences, and those to be anticipated in future, are also of the nature stipulated in no. 1 or 3 sentence 2 no. 1 by means of which the victim is seriously mentally or physically harmed, or has been or would be exposed to such danger.

(5) If, in addition to the punishment, the ordering of preventive detention is reserved, and if the convict has not yet reached the age of 27, the court orders 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 is taken on this in each case after six months. The criminal enforcement chamber has jurisdiction for subsequent ordering in accordance with sentence 2. Section 66c (2), and section 67a (2) to (4), of the Criminal Code remain unaffected.

(6) The court orders preventive detention if the overall assessment of the convict, of his or her offence or offences, and additionally of his or her development until the time of the decision, reveals that he or she can be expected to commit criminal offences of the type designated in subsection (3) sentence 2 no. 1, or subsection (4); section 66a (3) sentence 1 of the Criminal Code applies accordingly.

(7) If the placement in a psychiatric hospital ordered in respect of an offence of the type designated in subsection (3) sentence 2 no. 1, in accordance with section 67d of the Criminal Code, has been declared completed because the state ruling out or reducing culpability on which the placement was based did not exist at the time of the decision on completion, the court may subsequently order placement in preventive detention if

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

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

(8) (repealed)

## **Chapter 2**

### **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 (1), and sections 35 to 38, apply accordingly to young adults.

### **Section 108 Jurisdiction**

- (1) The provisions on the jurisdiction of the youth courts (sections 39 to 42) also apply to misconduct by young adults.
- (2) The youth court judge has jurisdiction for misconduct by young adults if it can be expected that general criminal law will apply and if, in accordance with section 25 of the Courts Constitution Act, the criminal court judge would have taken the decision.
- (3) Section 24 (2) of the Courts Constitution Act applies if general criminal law is to be applied in respect of the unlawful act of a young adult. Jurisdiction lies with the youth panel 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 (3), (4) and (7)). The decision on a reduced composition in the main hearing (section 33b) is not permissible if the ordering of accommodation in preventive detention, its reservation or ordering of placement in a psychiatric hospital, can be anticipated.

### **Section 109 Procedure**

- (1) Of the provisions on criminal proceedings against juveniles (sections 41 to 81a), sections 43, 46a, 47a and 50 (3) and (4), sections 51a and 68 nos. 1, 4 and 5, sections 68a, 68b and 70 (2) and (3), sections 70a, 70b (1) sentence 1, and subsection (2), as well as sections 70c, 72a to 73, and 81a, apply accordingly in proceedings against a young adult. The provisions contained in section 70a are only applied insofar as the notification is based on provisions which are not ruled out in accordance with the law applicable to young adults. The youth courts assistance service, and in appropriate cases also the school, is informed of the initiation and outcome of the proceedings. They 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 (1) sentence 1 nos. 1, 2 and 3, and section 47 (2) and (3), sections 52, 52a, section 54 (1), sections 55 to 66, 74, and section 79 (1), as well as section 81, also apply accordingly. Section 66 also applies if no single set of measures, or a youth penalty, has been established in accordance with section 105 (2). Section 55 (1) and (2) do not apply if the decision was taken in accelerated proceedings under general procedural law. Section 74 does not apply in the context of a ruling on the expenses of the applicant in accordance with section 472a of the Code of Criminal Procedure.
- (3) Section 407 (2) sentence 2 of the Code of Criminal Procedure does not apply in proceedings against a young adult.

## **Chapter 3 Enforcement, execution and striking from the criminal record**

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

- (1) Of the provisions on enforcement and execution applicable to juveniles section 82 (1), and sections 83 to 93a, apply accordingly to young adults provided the judge has applied youth criminal law (section 105) and imposed measures that are permissible in accordance with the present Act or a youth penalty.
- (2) Section 89c (1) and (3) apply accordingly to the enforcement of remand detention with regard to persons who were young adults at the time of the offence.

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

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



## **Chapter 4**

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

#### **Section 112**

##### **Corresponding application**

Sections 102, 103, and section 104 (1) to (3) and (5), apply accordingly to proceedings against young adults. The provisions designated in section 104 (1) only apply insofar as they are not ruled out in accordance with the law applicable to young adults. Where the judge considers it necessary to impose instructions, he or she leaves it to the youth courts judge in whose district the young adult resides to select and order them.

#### **Part 4**

### **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) applies, with the following derogations, to the duration of a juvenile or young adult's period of service with the Federal Armed Forces:

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

#### **Section 112b**

**(repealed)**

#### **Section 112c**

##### **Enforcement**

(1) The head of enforcement refrains 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 may not be taken of those special characteristics by deferring enforcement.

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

**Footnote:** Part 4 (sections 112c to 112e): Does not apply in Berlin in accordance with section 123 sentence 1.

#### **Section 112d**

##### **Hearing the disciplinary officer**

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

**Footnote:** Part 4 (sections 112c to 112e): Does not apply in Berlin in accordance with section 123 sentence 1.

#### **Section 112e**

##### **Proceedings before courts with jurisdiction for general criminal matters**

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

**Footnote:** Part 4 (sections 112c to 112e): Does not apply in Berlin in accordance with section 123 sentence 1.

#### **Part 5**

#### **Concluding and transitional provisions**

#### **Section 113**

##### **Probation officers**

At least one full-time probation officer is 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 are set out in legislation of the *Länder*.

#### **Section 114**

##### **Execution of imprisonment in a facility for execution of youth penalty**

Custodial sentences imposed under the provisions of general criminal law may also be executed in a facility for execution of youth penalty in the case of convicted persons who have not yet reached the age of 24 and who are suitable for execution of youth penalty.

#### **Section 115**

**(repealed).**

#### **Section 116**

##### **Temporal application**

The present Act also applies to misconduct engaged in prior to its entry into force.

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

**(repealed)**

#### **Section 121**

##### **Transitional provision**

- (1) The provisions of Chapter 3 of the Introductory Act to the Courts Constitution Act in its previous version 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 a youth penalty, youth detention and placement in a psychiatric hospital or an institution for withdrawal treatment.
- (2) Section 33b (2), in the version valid until 31 December 2011, applies to proceedings which became pending with the youth panel pending prior to 1 January 2012.
- (3) Section 74f of the Courts Constitution Act applies accordingly in the version valid until 31 December 2011 if the public prosecution office has transmitted the files to the presiding judge of the court with jurisdiction prior to 1 January 2012 in proceedings in which a ruling is to be handed down on the ordering of preventive detention which is reserved in the judgment or carried out subsequently.

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

**(repealed)**

#### **Section 125**

##### **Entry into force**

The present Act enters into force on 1 October 1953.