EU-Project
Violence within family: Minors who assault their parents

First Report
The following is a short description of the system of helps and forces concerning children and youth in Germany. It is separated in 2 parts:

1. Child - and Youth Services in Germany
2. Juvenile law in Germany

Index

1. Child and Youth Services in Germany
   1.1. Recipients of Child and Youth Services
   1.2. Tasks of Child and Youth Services
   1.3. Implementation
   1.4. The Youth Office

2. Juvenile Criminal Law in Germany
   2.1. Legal politic considerations
   2.2. Age and maturity levels
   2.3. Juvenile delinquency
   2.4. History
   2.5. Possible sanctions
   2.6. Reform movements
   2.7. Procedure
1. Child and Youth Services in Germany

( www.wikipedia.de / http://kinder-jugendhilfe.org )

In Germany all services and tasks of public institutions in support of young people and their families are summed up as Youth Services (in fact Child and Youth Services). These were newly composed and revised fundamentally in 1990/91 in the Social Security Code VIII (Child and Youth Services Act). Since then the Social Security Code VIII has encountered a series of revisions; last, at the end of 2005 by the Law for further development of Child and Youth Services.

1.1. Recipients of Child and Youth Services

Recipients are:

- Children (under 14 years of age)
- Juveniles (between 14 and under 18 years of age)
- Adolescents (between 18 and 21 years of age)
- Young adults (between 18 and under 27 years of age)
- Young person (under 27 years of age)
- Custodians (generally parents, as the case may be: legal guardians or caretakers)

1.2. Tasks of Child and Youth Services

The tasks of Child and Youth Services are regulated in the Child and Youth Services Act. The Child and Youth Services Act is the term for the collectivity of legal regulations in the Federal Republic of Germany concerning Child and Youth Services.
The tasks of Child and Youth Services include in detail:

- The whole complex of Child and Youth support, this contains all offers of non-school related Child and Youth work, for example Child and Youth homes (often wrongly labelled as Youth centres), Youth clubs and recreational facilities, the support of youth self-organisation, work environment related Youth work, international youth meetings, measures of Child and Youth recreation, forms of non-school related youth education, Child and Youth work in (as written in the Social Security Code VIII) “sociability, sports and games” and last but not least youth consultation, support of youth organisations and their fusions (e.g. country- and district youth circles), Youth social work and educational Child and Youth protection,

- Services for family support (for example consultation for separation and divorce),

- Child day care services (day care facilities, school care clubs, kindergarten, crèches, day care centres),

- Socio-educational provision
Educational consultation takes place in special counselling centres. It serves to give individual advice to children and juveniles, parents and other legal guardians concerning family related problems, upbringing and educational questions as well as questions regarding separation and divorce.
• **Social group work:**
  This is about overcoming developmental difficulties and behaviour problems of older children and juveniles. This ought to come about in the form of social learning within the group. The social group work is suitable for parents, children and juveniles, who are willing to change something about their difficult situation and want to accomplish this with others within a group.

• **Educational supervisor, support assistant:**
  Children and juveniles should be supported by an educational supervisor to cope with developmental problems with the inclusion of their social environment. Focus of the function as a supervisor is on the arrangement about education by the juvenile court. In this context it is to be mentioned that in a juvenile court procedure the judge can impose supervision by a certain person on the juvenile, which in this case would be the educational supervisor.

• **Socio-educational family service:**
  Fundamental purpose of this service is to supervise and accompany families in their educational functions. Generally this happens by the assignment of a so-called family assistant, who directly grants support and encouragement of self-help in collaboration with the family in the everyday life of the family in a longer duration. Aim of the socio-educational family service is to prevent or mitigate the falling apart of notably loaded families.

• **Education in a day group:**
  This service measure is a special offer for children and juveniles, who show a background of certain living and age situations with trouble in the interfamilial area. The young people notice that their behaviour and efforts do not correspond to the expectations of the environment. This often results in diverse disorders, such as anxiety states, refusal of performances, concentration dysfunctions, frequent eruptions, excessive adjustment and centre of attention claims, as well as extreme development delays in cognitive, emotional and social areas.

• **Full time care:**
  The full time care as the placement into a foster family for day and night is a classic instrument of Youth Service. Depending on the demands of individual cases, it can be a terminable education help or be disposed to a continuing basis. The aim of the placement into full time care can therefore go in two different directions: either the return into the family of origin or the permanent replacement of the family of origin by a foster home.

• **Residential care, other supervised forms of living:**
  In this service form children and juveniles are supported in their development by the combination of everyday life with pedagogic and therapeutic offers. Suitable individual, social, special pedagogic, therapeutic as well as academic and vocational measures are offered. There can be specialisations,
example special pedagogic living groups or living groups with gender specific approaches or the special aim of independency.

- **Intensive socio-educational individual support:** This individual support is supposed to be granted to juveniles in especially compromised living situations (e.g. punk-, prostitute-, drug-, or non-settled-milieu), who usually refuse other services of the Youth services and in the long run are in danger to end up as older juveniles in asylums or facilities of psychiatry, without the intensive individual support by supervisors, youth counsellors or custody assistants.

In the past years the help for education was especially expanded in the ambulant area, particularly in big cities, to avoid more expensive measures like stationary placements. In this area there has additionally been established a transition to flexible services, so that single social pedagogues have to be able to provide diverse forms of helps as one person.

- Services for physical or mentally disabled children and juveniles.
- Services for young adolescents.

**Other tasks**

So called other tasks of Youth Services are for example:

- Intensive socio-educational individual support,
- Consultation and support for single parents with the assertion of the claim to maintenance,
- Participation in family court and guardianship court, youth court help
- Taking children and juveniles into care when their welfare is endangered, for example the placement into residential care,
- Adoption of official guardianships, custodianships and fosterage for minors
- Certification of paternity authentication, maintenance obligation and fosterage.
Summary:

<table>
<thead>
<tr>
<th>Tasks and Objectives</th>
<th>Child and Youth Services Act</th>
<th>§ 11-15 KJHG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth work</td>
<td>Furtherance of education and upbringing within the family</td>
<td>§ 16 - 21 KJHG</td>
</tr>
<tr>
<td>Socio-educational provision for young people</td>
<td>Support of children in day care establishments and day care</td>
<td>§ 22 - 26 KJHG</td>
</tr>
<tr>
<td>Socio-educational child and youth protection</td>
<td>Socio-educational provision for children with problems</td>
<td>§ 27 - 41 KJHG</td>
</tr>
<tr>
<td>§ 11-15 KJHG</td>
<td>Integration assistance for children and young persons with emotional disabilities</td>
<td>Help for young adults</td>
</tr>
</tbody>
</table>

- international youth work
- support for youth organisations

- family education
- family advice
- family holiday schemes
- separation and divorce consultation

- crèche (Krippe)
- kindergarten
- day care centre
- self-organised group

- non-residential socio-educational provision
- foster family
- residential care

source: www.kinder-jugendhilfe.org

1.3. Implementation

Services of the Youth Service (for example the service of a Kindergarten, a consultation centre for education and upbringing) are predominantly offered by non-profit organisations. Benefit commitments are directed to the public Youth Service.

The huge independent welfare agencies have a special, legally approved status as the head organisations of the social welfare service and therefore have an influence on the social policy of the federal government. These include:

- The Diakonisches Werk (DW) of the Evangelical Church,
- The German Caritas-organisation of the Catholic Church,
- The German Red Cross (DRK),
- The labour welfare (AWO),
- The Paritätische Wohlfahrtsverband (DPW) and
The central welfare of Jewish people in Germany (ZWST)

While the practical implementation of services in the Youth Service is mainly incumbent on the independent welfare agencies, the public Youth service is mostly responsible for sovereign tasks as well as planning and controlling. By financing non-profit organisations, they provide for their offers and services. Responsible authorities are the communal Youth Offices and the country Youth offices.

Some of the services of the Youth Service- for example helps for education and upbringing or child day care- can be legally claimed. Legal claims and benefit commitments are opposed to the local institutions of public Youth Service, which are mostly the Youth Offices of the districts and independent cities. Beyond-local institutions are mostly the countries. Other services (like recreational offers for juveniles) are legal duty tasks, but without an individually enforceable legal claim (possibility)

The conception of the before mentioned tasks of the social Security Code VIII is submitted by the public Youth Services.

<table>
<thead>
<tr>
<th>Tasks and Objectives</th>
<th>Support and Advancement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Promotion of education and upbringing within the family</td>
<td></td>
</tr>
<tr>
<td>The child and youth services realise that education and upbringing within the family are faced with growing demands, challenges and sometimes risks in modern society.</td>
<td>To succeed in bringing up and educating their children, families/parents need a wide range of advisory services, support and relief.</td>
</tr>
</tbody>
</table>

The task of child and youth services is

to strengthen parents’ responsibility for care and upbringing/education of their children ...
to support and advise by

- advice in matters of upbringing and education
- family leisure time and holiday schemes
- family education
- support for single parents
- advice in matters of partnership, separation, divorce

source: www.kinder-jugendhilfe.org
First Report: Description of the minors criminal legal system currently in force in Germany

source: www.kinder-jugendhilfe.org

Kordula Gützlag - Philipp Becker
1.4. The youth office

A special feature of the child and youth service- and in the administration structure of the Federal Republic unique in this form- are the two divisions of the authority youth office. It consists of the administration of the youth office and the Youth Services Committee. This way citizens theoretically participate in the fundamental decisions of the child and youth services.

<table>
<thead>
<tr>
<th>Structures</th>
<th>institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation of the youth office at the local level</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>The youth office</th>
<th>Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Youth Services Committee</td>
<td>Ongoing administrative functions performed in accordance with the statutes of and the resolutions passed by the local council and by the Youth Services Committee.</td>
</tr>
<tr>
<td>The Youth Services Committee deals with all matters of child and youth services an, in particular, with:</td>
<td></td>
</tr>
<tr>
<td>- advice given to young people an families with problems</td>
<td></td>
</tr>
<tr>
<td>- suggestions and proposals for the development of child and youth services</td>
<td></td>
</tr>
<tr>
<td>- youth service planning</td>
<td></td>
</tr>
<tr>
<td>- funding of and public support for the voluntary sector</td>
<td></td>
</tr>
</tbody>
</table>

Composition of the Youth Services Committee:

- 2/5 of the members are representatives of youth organisations, welfare organisations, religious communities, associations
- 3/5 of the members are representatives of the local council

Administrative structure of the youth office:

<table>
<thead>
<tr>
<th>Principal youth officer of the youth office</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
</tr>
<tr>
<td>Planning</td>
</tr>
<tr>
<td>Supervision</td>
</tr>
<tr>
<td>Consulation</td>
</tr>
<tr>
<td>Organisation</td>
</tr>
<tr>
<td>Staff</td>
</tr>
<tr>
<td>Finance</td>
</tr>
<tr>
<td>Public relations</td>
</tr>
</tbody>
</table>

source: www.kinder-jugendhilfe.org
2. Juvenile criminal law in Germany

2.1. Legal politic considerations

Background for the need of a special criminal law and criminal procedures for young criminals is the outlook that juvenile delinquencies are often relatively harmless and temporary lapses (so called episodes of juvenile delinquencies), that can occur in almost every young person while integrating into the social life of adults, no matter to which social class they belong. In such cases juvenile criminals should indeed be punished by serious admonitions or slight penalties; however there is a need to consider, that an excessive penalty can affect their development in a negative way.

The law furthermore assumes that young criminals lack the discrimination of justice and injustice essential for penal accountability. Even if the ability to discriminate was given, the juvenile often would not be able to act according to their comprehension. Therefore according to the juvenile court law in each criminal procedure against a juvenile it is to be positively detected , that at the time of the crime he was morally and mentally mature enough to understand the injustice of his deed and to act according to this comprehension: The so called liability/ accountability maturity (§ 3 juvenile court law). Unlike the determination of the criminal responsibility/incapability in the adult court law, the estimation of the maturity of accountability is dependent on the crime that the criminal committed. Especially 14-year-old criminals can lack the comprehension of the injustice of complex actions, even though they basically know that they are not allowed to beat someone or to steal from someone.

Another special characteristic of young criminals opposed to adults is their higher formability.

This justifies that especially the legal consequences of the juvenile criminal law are different from those of the general criminal law. While in that case the extent of the penalty is significantly measured on the criminal responsibility of the criminal, in the juvenile criminal law almost always put special preventive (educational) aspects in the foreground. Therefore juvenile criminal law is educational criminal law. Not expiation, retaliation, determent or protection of the general public, but education, socialisation and re-socialisation affect the type and extent of the reaction to the criminal act. Not the criminal act, but the broadly recognised personality of the criminal is in the foreground.

Even more than in the general criminal law, in juvenile criminal law the rehabilitation of a socially adequate behaviour is the main aim. The importance of the learning of norms and the compensation of socialisation deficits are particularly emphasised. These aims- the criminal law control- are to be measured on the bounds of the constitutional state and the basic rights. Particularly the juvenile criminal law is an intervention into the education and upbringing privilege of parents, according to article 6 of the Basic Constitutional Law.
2.2. Age and maturity levels

People before the completion of their 14th year of age are not criminally responsible. (§ 19 criminal code). For adults on the other hand the general criminal law is applied. For the transition time the juvenile court law is applied in Germany. It is non-restrictively adaptive for juveniles, this means people who were between 14 and 17 years of age while committing the crime (§ 1 para. 2 Halbs. 1 juvenile court law).

For adolescents (18 to 20 years of age) central norms (not all of them though) of the juvenile criminal law according to the measure of §§ 105 ff. juvenile court law can be applied. It particularly has to be verified if at the time of the crime the adolescent was to be equated to a juvenile or if he committed a juvenile-typical crime. Practically the juvenile criminal law is often used for adolescents. This is especially true for severe crimes, so that for example in the group of convicted adolescents that committed severe violent crimes; the conviction according to the juvenile criminal law describes the normality (more than 90 percent). However the execution of the juvenile criminal law or adult criminal law on adolescents is administered differently in the federal states.

A special regulation the juvenile criminal law encounters for the case, when crimes are to be condemned simultaneously, that the criminal committed in different age and maturity levels. This constellation for example exists, when the criminal committed a crime at the age of 17 (therefore a juvenile), and commits another crime at the age of 19 or 22 (therefore an adolescent or even adult). For this § 32 juvenile criminal law regulates, that in these cases either the juvenile criminal law or he adult criminal law have to be applied consistently for all crimes. This means it is uneligible to build a collective penalty out of a forfeited youth penalty and a forfeited prison sentence. The judicature justifies this with the fact that juvenile penalties and prison sentences are different and not compatible.

2.3. Juvenile delinquency

Typical crimes of minors are thievery, for example in form of shoplifting, damage of property (for example in the form of graffiti), criminal assaults and transport acquisitions. In addition to this the so called „Abrippen“ on schoolyards and on the way to school happens more frequently: By juvenile criminals often disposed as bagatelle, these cases are actually deprivation and extortion crimes against classmates, often with the purpose to get cigarettes, cell phones or cash. In the group of adolescents on the other hand also a lot of adult-typical crimes like con and road traffic crimes occur. Violations against the controlled substances legislation also happen more often. Concerning executed violence of juveniles directed to parents, there are hardly any insights. There is assumed to be a high estimated number of unreported cases.
2.4. History

Developmental psychologically children are not able to understand the injustice of a crime and to act according to this perception/knowledge until a certain age. Chronologically this knowledge is to be seen in the time of the development of a public criminal law. With the criminal code from 1871, the age of criminal responsibility/accountability was assigned to the age of 12, until the 18th year of age alleviated penalty frames were applied. During the 19th century the age of criminal responsibility of partially 8, 10 or 12 was raised to 14 in many German states.

At the end of the 19th century efforts to create a special juvenile criminal law increasingly aroused. The first steps reflected in the first juvenile court in 1908 and the construction of the first juvenile prison in 1912. In 1923 the juvenile court law was adopted, which laid its emphasis on education and upbringing measures. However in the Third Reich it was changed dramatically. Today’s juvenile criminal law passed the Bundestag in 1953 and its essential features were built up on the law of 1923.

2.5. Possible penalties

The range of penalties is diversified. Therefore the judge possesses a series of instruments to find the adequate penalty for the criminal. § 5 of the juvenile criminal law distinguishes between three groups:

a. Educational and upbringing measures,

b. Means of correction and

c. Youth penalty

The choice of the legal consequence is complied according to what promises the best profit for his re-socialisation according to the criminal's personality. If diverse measures promise the same result, the measure is to be chosen that describes the least intervention. It is to keep in mind that the juvenile criminal law should not cause a worse positioning of the juvenile: the barrier of the adequate penalty to the criminal responsibility is not to be extravagated in the juvenile criminal law.

Comparatively often the completion of gratuitous work hours, for example in non-profit organisations is imposed to juveniles. This can especially help those juveniles, who dropped out of school or their apprenticeship, to get more structure into their everyday life. A juvenile or adolescent who already has a fixed salary can for example be sentenced to give - at least partial- financial damage compensation. The promulgation of arrest on the other hand is often considered for criminals, that have attracted attention more than once, but no harmful dispositions have been determined that are required for the promulgation of juvenile penalties. To achieve an optimal influence on the criminal, a lot of measures can be combined.

However, since often the institution of legal proceedings or other informal measures are enough to show the juvenile the seriousness of the lapse, for this case the
juvenile criminal law offers the possibility of abandoning the prosecution (§ 45 juvenile court law) and to close the proceedings (§ 47). This reaction abandonment is executed in the sense of educational tolerance.

a. Educational measures are educational actions that the juvenile court law provides, to react to a criminal act of a juvenile or adolescent. The wording of § 9 (juvenile court law) defines: Educational measures are 1. The placing of orders/directives, 2. The arrangement to make a claim on helps for education and upbringing according to § 12.

Educational measures do not count as penalties and therefore are not registered in the Federal Central Criminal Register. They rather represent commandments and prohibitions that are supposed to have an effect on the lifestyle of the juvenile.

As an educational measure the juvenile or adolescent can by conviction be obliged to:
- accept working premises or an apprenticeship
- live in residential care
- accomplish performances (community work)
- participate in a social training course
- refrain contact with certain people or visiting certain places (public houses or amusement places)
- participate in drivers/traffic education

Not until the educational measures do not suffice, means of correction or the actual criminal penalty of the juvenile criminal law can be disposed.

b. means of correction are brief penalties with educational effect that are supposed to come down on the juvenile or adolescent as a lesson. They are no actual criminal penalties according to § 13 III juvenile court law, but a part of the two-tracked penalty system in the juvenile criminal law: education instead of penalty and education by penalty.

These include:
Premonitions: Premonitions are striking formal reprehensions with the reservation of injustice. The difference to exhortations only exists in the process: The premonition occurs after the conviction.
Sanctions: Sanctions are tightened premonitions in form of a crime related expiation act.
Youth arrest: (youth arrest is a short-termed imprisonment with delinquency compensating and educational features). They are divided into three categories: leisure arrest, short-time arrest and constant arrest.

c. The Youth penalty: is a specially conceived prison sentence for juveniles (14-17 years of age) and adolescents (18 through 20 years of age) in the German juvenile criminal law. It is the only criminal penalty provided by the juvenile criminal law and stands out from the means of correction and educational measures that are usually intended by the juvenile criminal law. It may only be imposed when so called dangerous dispositions exist or the delinquency is especially severe (§ 17 para. 2
juvenile court law). Relevant for the execution of youth penalty is the age of the criminal at the time of the crime, not at the time of condemnation.

The youth penalty lasts at least six months and at most 5 years. Is the juvenile/adolescent guilty of a crime, that according to the general criminal law is endangered to be prosecuted with a prison sentence of more than 10 years, the maximal capacity of the youth penalty is 10 years. The youth penalty is served in penitentiaries for juveniles. Currently there is no legal regulation for this penal system. However diverse proposals are being prepared at present.

Purpose of the penalty, next to the educational idea, is the expiation of the delinquency. However the youth penalty may not be based upon the consideration, that the general public should be protected or deterred (prohibition of general preventive justification). As opposed to the adult execution, the execution director is responsible for the control of the execution; this is the juvenile judge that is responsible for the penitentiary in the local court district.

2.6. Reform movements

At the end of 2003 diverse parties demanded the raise of the maximum duration of the juvenile penalty to 15 years. However this was rejected among experts almost unanimously, for the purpose of the juvenile criminal law would not be complied, the execution of youth penalty with a duration of more than 7 years lies below the per-mil area of all convicts nationwide and the criminality would be battled against more effective by a proper integration and social policy then being deterred by high penalties. The over-occupancy in juvenile institutions would be intensified by high penalties.

2.7. Procedure

The youth criminal procedure takes place within the criminal law sector of ordinary courts. In principle the code of criminal procedure is applied in youth criminal procedures; however the juvenile court law differs from the regulations of the code of criminal procedures in significant aspects. This way the opposed regulations of the code of criminal procedures are replaced by §§ 43 - 81 and 109 juvenile court law. These features are based on the educational thought as well.

Responsible for the condemnation of juveniles are the juvenile courts. These are not autonomous court authorities, but departments of the district courts and courts of the country courts. In the division of the Public prosecution service, specific departments with prosecutors of the juvenile court are responsible. According to § 37 of the juvenile court law, judges and prosecutors of the juvenile court shall be educational qualified and experienced in youth work, however this is only comprehended as an order regulation and hardly implemented in practice. Instead judges and prosecutors have to get familiar with the material over the years. Especially in small district courts judges are often responsible for adult as well as juvenile and adolescent offenders/criminals and merely act as criminal judge or judge of the juvenile court at a time.
A special feature of the juvenile criminal proceeding is the interposition of the juvenile court help (§ 38 juvenile court law), which is integrated into the proceeding as a special organ for the representation of the educational, social and care aspects. On one hand it has the task to provide prosecution and court with the necessary information for the exploration of the personality of the suspected or accused person, especially for the determination of the stage of maturity (§§ 3, 105 juvenile court law). On the other hand it should accompany the young person during the procedure. In criminal procedures, that are merely directed against juveniles, according to § 48 juvenile court law the public is to be excluded from the trial. This is not applied for procedures that are directed against adolescents. Even if juveniles and adolescents are accused at the same time, the trial is public.

2.8. Juvenile court law

The juvenile court law is the law that regulates majorly the formal juvenile criminal law. The juvenile court law is applicable for all criminal responsible (§ 19 criminal code: at least 14 years of age) juveniles. Adolescents (18- under 21 years) can be included into the part of the law according to § 105 juvenile court law, as far as they do not feature the necessary understanding and responsibility according to maturity aspects. In case of doubt the juvenile court is obliged to execute juvenile criminal law. The juvenile court help plays an important role in criminal procedures against juveniles and adolescents, which accompanies the procedure from the beginning to the end, initiates in the main trial if the juvenile criminal law of the general criminal law should be executed on adolescents and makes suggestions for to-be apprehended measures. For the rest the juvenile court law is lex specialis to material and formal criminal law, where no special regulations of the juvenile court law grasp, the criminal code or the code of criminal procedure is applicable.

The objective/factual area of regulations is the formal criminal law. Elements of a crime are not found in the juvenile court law; they are regulated by the criminal code and the lateral criminal law. Material-legal regulations are restricted to the legal consequence side.