

# Information Principles of juvenile criminal proceedings

As the suspect/accused<sup>1</sup> in a criminal case, you need to be told about how criminal cases proceed. This general information is intended to give you and your parents/legal guardians<sup>2</sup> an overview of the contents and the chronology of juvenile criminal proceedings. Not everything will apply to your case. If you or your parents/guardians have further questions or want to communicate something that is important for your proceedings, please contact your defence lawyer, the public prosecutor's office or the relevant station. If you have received an indictment, you can also contact the juvenile court<sup>3</sup> with questions about the proceedings. Throughout the proceedings you can also ask the youth justice support service (see 3. below) for advice and help.

## 1. How does a preliminary investigation begin?

If you are suspected of having committed a criminal offence, the public prosecutor's office and the police will initiate preliminary proceedings against you. If you were a juvenile (i.e. 14 to 17 years old inclusive) at the time of the offence, juvenile criminal law applies. The aim of juvenile criminal law is not primarily to punish you, but to make you reflect on your offence and, above all, to prevent you from committing further offences. If you were an adolescent (i.e. 18 to 20 years of age) at the time of the offence, juvenile criminal law may still apply to you in certain circumstances, i.e. if you were equivalent to a juvenile in terms of your personal development when you committed the offence or if the offence is a typical juvenile offence.

By and large juvenile criminal proceedings are governed by the same rules as criminal proceedings against adults. The public prosecutor's office and the police must investigate all circumstances that could help to clear up the offence you are accused of. These can be both incriminating and exculpatory circumstances. The principle of proportionality must be observed in all investigative measures against you. This means that only those measures are permitted that are least likely to interfere with your rights and have the same chances of success as other possible measures.

## 2. What rights do I have as an accused?

Even before the public prosecutor's office decides whether your case will go to court, you will have the opportunity to comment on the accusation in what is known as an examination of the accused. Before that, you will also be told what you are accused of.

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<sup>1</sup> The masculine gender used here for better readability should be held to include all other genders and/or sexual orientations.

<sup>2</sup> Parents/legal guardian' refers to any holder of parental responsibility.

<sup>3</sup> At the Local Court, cases involving juvenile offenders are heard and determined by youth court judges and lay assessors (Schöffen). Regional Courts have specific juvenile divisions. To the extent that this publication refers to the youth court system, it should be held to include the rare cases where a juvenile offender is indicted and possibly tried as an adult.

You may make a statement during this interview, **but you are not obliged to**. You can **request that evidence be taken** that could exonerate you, such as the examination of further witnesses.

If you are **under 18 years of age: your parents/legal guardians** normally have the same right as you do **to be informed** about the allegation prior to the first interview. Your parents/legal guardians also have the same right as you **do respond to the charges, ask questions or lodge requests**.

Anything you say whilst being questioned will be taken down in writing, to be signed by you. At the end of the interview, you should read carefully whether your statement was transcribed correctly. It is also possible that the public prosecutor's office or the police will **audio or video-tape** your interview. In such cases, you can object to the disclosure of the recording to those entitled to see the case file. Transfer of the recording or the release of copies to parties other than those entitled to see the case file can only happen with your consent.

If you are **under 18 years of age: You may be accompanied** by your parents/legal guardians **to the interview and other investigative actions**, unless there are any particular reasons for not allowing this.

**Exceptions** apply, for example, if your parents/legal guardians cannot be reached within a reasonable time or if they are suspected of having been involved in the offence you are accused of. In this case, **another person of trust of at least 18 years of age must be informed**, who you can normally choose yourself and who may then also be present with you during your interview or any other investigative measures.

You, or your parents/legal guardians, may at any time hire a **defence lawyer of your choice at your own expense** and have them assist you.

If counsel is mandatory under the law, a **public defender** must usually be appointed for you independently by the court even before the first hearing - even without your application - unless you or your parents/legal guardians have already appointed a lawyer of your choice. You can ask for a specific public defender. Your hearing may then have to be postponed for a reasonable period so that the public defender can attend. **The public defender's fee will initially be paid by the state**. If you are convicted, you may end up having to pay these costs.

Defence counsel may be mandatory, for example, if the charge is particularly serious or a juvenile sentence is expected. Irrespective of this, you can apply for the appointment of a public defender at any time by writing or speaking to the police or public prosecutor's office. A court, or, in urgent cases, the public prosecutor's office, must decide on your application before you are questioned or made to take part in an ID parade.

You, the lawyer you have hired or the assigned public defender are entitled **to see the case file** as soon as the investigation is completed, in order to get an insight into how the investigation is progressing.

### **3. Involvement of the *Jugendgerichtshilfe* (juvenile justice support service)**

**Juvenile justice support**, i.e. social workers with the local council's family services department, will usually be informed of the accusations and the preliminary proceedings against you before your first hearing - or no later than immediately afterwards. The juvenile justice officer will invite you to an interview, in particular to find out more about your living and family circumstances, what you have been up to and all other relevant circumstances. It is ok for your parents/legal guardians to be there as well. The juvenile justice officer will brief the public prosecutor's office and, after the indictment, the juvenile court. This will also happen if you voluntarily talk to him or her about the alleged offence, because they are not bound by confidentiality rules.

This is chiefly about how best to react to the offence you have been accused of. Also assessed is the feasibility of support from *Jugendhilfe* or other measures that might make indictment and possible conviction unnecessary. For this reason, the advice from the youth court support service (*Jugendgerichtshilfe*) should be submitted to prosecutors before an indictment is filed.

It is up to *Jugendgerichtshilfe* to look after you throughout the proceedings, as dictated by individual circumstances.

### **4. Prosecutors decide whether to discontinue the case or move for indictment**

- Following the police investigation, your case will be handed over to the public prosecutor's office. They will then evaluate the results of the investigation to date. If the public prosecutor's office comes to the conclusion that you **did not commit the offence** or that it is unlikely that a criminal offence can be proven against you, the case **will be discontinued**, which is normally the end of the matter.
- Even if, in the opinion of the public prosecutor's office, **you can be considered as the perpetrator**, these proceedings do not necessarily have to lead to an indictment or a court hearing. The public prosecutor's office can also discontinue the proceedings under certain circumstances, for example
  - if you are given a 'stern talking-to' at the prosecutor's office, the police or a juvenile judge's chambers
  - in return for restitution under the *TOA* victim support scheme,
  - with a view to an interview with the juvenile court services, or if you make use of suitable youth welfare services,

- in return for unpaid community service,
- if a suitable corrective-educational measure has already been administered or initiated,
- if the alleged offence is deemed to be not serious enough.
- In all other cases, the prosecutor's office **will lodge an indictment with the juvenile court**. The juvenile court must then decide on a trial.

An indictment is only brought if the offence can be proven against you with **overwhelming probability** after a comprehensive investigation of the facts, along with legal assessment.

### 5. You are indicted. What happens next?

After receiving the indictment, the court will run an independent assessment of facts and legal points to see whether the case can go ahead. The juvenile court will serve you and, if applicable, your parents/legal guardians with the indictment (i.e. formally send it to you) and set you a deadline within which you can comment on the accusation and request individual evidence to be taken. You - or your lawyer if you have one - can request access to your file.

Between the time of the indictment and the main hearing, your options include:

- getting in touch, as soon as possible, with your juvenile justice support office (*Jugendgerichtshelfer*) to discuss the next steps, such as offering an apology to the victim(s), providing restitution or taking part in a *Jugendhilfe*-sponsored programme.
- identify any previously unnamed witnesses (this must be done in writing) or, if possible, presenting them in person at the trial
- hiring a defence lawyer -if you have not already done so – at your own cost, or request the services of a public defender.

### 6. What happens in a trial?

If the court allows the indictment and a trial is scheduled, you will typically receive a notice to appear (summons) a few weeks earlier, but no later than a week before the trial date.

It is your privilege, but also your **duty**, to appear at the trial!

If you are absent without a proper excuse, the court can order **the police to pick you up** and deliver you to the trial. In individual cases, however, **the court may issue a bench warrant** simply because you have failed to turn up voluntarily.

The trial will typically be attended by the defendant (that's you), one or more judges, a prosecutor, a someone from the juvenile justice support service and your defence lawyer (if appointed or assigned).

If you are **under 18 years of age**: In principle, your **parents/legal guardians** may also attend the trial. If, for some reason, they are barred from the courtroom or if they cannot be contacted in time, the court will permit someone close to you to stand in for them, provided that person is 18 or over and of appropriate character.

If you were under 18 years of age at the time of the alleged offence, the court hearing will normally be held *in camera*, that is **without public or press**. If, on the other hand, you or any co-defendant were 18 or over, the trial is generally held in public. In these cases, the court can exclude the public if it is in your interest or in the interest of a co-defendant. You are entitled to make a request to that effect.

The trial typically proceeds as follows:

- After witnesses have been instructed about their duty to tell the truth and then asked to wait outside the courtroom, the judge asks you some **questions about your personal details**, which they have to answer truthfully (name, address, date of birth). After that, the prosecutor reads out the indictment.
- The judge then informs you about **your right to decline to give evidence**. To the extent that you are waiving this right, you may give your side of the story. Questions might be asked by the judge(s) or the other parties to the proceedings.
- During the **evidence hearing**, the juvenile court may question witnesses, hear what expert witnesses have to say, read out documents or examine exhibits. You - if applicable, your parents/legal guardians, too - may also ask questions of the witnesses and experts. By the way, you should always ask if there is anything you did not understand.
- The juvenile court will also listen to the **Jugendgerichtshilfe** representative. They will describe your developmental stage and current personal situation. They will also give their view on whether you are criminally responsible for the offence you are accused of or, if you were already 18 or older when you committed the offence, whether you should be treated, punishment-wise, as a juvenile or an adult. In addition, the juvenile justice support service officer make a statement with regard to the options to be considered if you are found guilty.
- To complete the evidence hearing, the judge will usually read out an extract from the *Erziehungsregister* to determine whether there have, in the past, been criminal proceedings against you or if you have ever been convicted. The juvenile court may discontinue the proceedings at this stage, and, if need be, impose conditions (see 7 below). Otherwise, the public prosecutor and your defence lawyer, if you have one, file motion to give their view on how the juvenile court's verdict should go. Then you and your parents/legal guardians have the opportunity to say something and file a motion of your own (the 'final remarks').

- At the end of the trial, **the court announces the verdict** and gives the reasons. If you have been sentenced, the judge will finally explain to the options for appeal.

## 7. How might the court decide?

- Acquittal

If the juvenile court comes to the conclusion that you did not commit the offence of which you are accused or that you cannot be proven to have committed the offence, it will acquit you.

- Discontinuation of proceedings

With the consent of the public prosecutor's office, the juvenile court can also discontinue the proceedings during the trial, and possibly impose conditions. This is an option, for example, if a corrective-educational measure has already been carried out or initiated. The criminal proceedings can then be concluded without further prosecution or court judgment.

- Conviction

If, on the other hand, the juvenile court comes to the conclusion that you committed the offence you are accused of, it finds you guilty and orders one or more measures, depending on the circumstances, up to and including the imposition of a juvenile sentence in a detention centre. If you were an adolescent at the time of the offence and the juvenile court applies adult criminal law, a fine or custodial sentence may be imposed on you, depending on the offence.

Depending on your developmental stage and attitude with regard to the offence, the juvenile court may, for example

- give you a caution
- order you to perform community service/unpaid work,
- order you to pay a sum of money to a charitable institution,
- order that support be provided by a probation officer for a certain period of time or that you undergo a counselling and support programme,
- order participation in a social training course or a restitution scheme with aggrieved parties (in particular the *TOA* victim support programme),
- sentence to serve youth detention of up to four weeks,
- sentence you to a juvenile detention, with sentences of up to two years possibly suspended
- order secondary consequences under the law, such as a temporary ban on driving licence applications, or the seizure of ill-gotten gains.

The juvenile court will also explain to you **what you can do if you do not agree with the verdict.**

You have extensive **rights to review** measures taken and decisions made throughout the criminal proceedings if you feel that your rights have been violated as a result. This also includes the special legal remedies and appeals against judgements that your parents/legal guardians can also file in your favour. The public prosecutor's office may file appeals and legal remedies both in your favour and against you.

If a conviction is not appealed in time or judicial review is disallowed, the measures ordered by the court will eventually be enforced.

Do you still have **questions** or **need assistance**?

There are counselling centres and youth welfare offices in your area as well. Do not hesitate to use these skilled support services.

It goes without saying that, the youth officers at the local police station are also ready to give advice and help.