



Access to justice for children

Country fact sheet: **Austria**¹



Overview

Country size: 83 900 km²

General Population: 8,9 million

Number of Children: 1,721 million
(0-19 years old in 2021)

Date of ratification of the Convention on the Rights of the Child:
6 August 1992

Date of abolition of the death penalty: 7 February 1968

Minimum ages

Minimum age of criminal responsibility ("MACR"): 14 years

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: 21 years

Type of legal system

The Austrian legal system is based on the civil law system.

Specialisation of the system

Austria provides for several specialised institutions including:

- Child legal aid
- Child social work services
- Child probation services
- Juvenile Courts Assistance Service which is referred to as *Jugendgerichtshilfe (JGH)*

Austria also provides for several specialised professionals including:

- Child prosecutors
- Child judges
- Child social workers

Child-specific legislation

- [Federal Constitutional Act on the Rights of Children](#) or *Bundesverfassungsgesetz über die Rechte von Kinder (Rights of Children Act)* – outlines the rights of children including the rights to protection and care, participation, and a non-violent upbringing. Also provides protections for children with disabilities.
- [Austrian Juvenile Courts Act](#) or *Jugendgerichtsgesetz (JGG)* – provides specific provisions for children in conflict with the law, including, criminal liability, juvenile court trials, and detention.
- [Austrian Code of Criminal Procedure](#) or *Strafprozessordnung (StPO)* – provides specific provisions for interacting with victims who are children.

The [Convention on the Rights of the Child](#) is directly applicable in Austria's justice system.

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in December 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

The [EU Criminal Law Amendment Act 2020](#) or *Strafrechtliches EU-Anpassungsgesetz 2020*, serves to implement **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings. The law which amended the *JGG*, requires that cases involving children in conflict with the law be carried out expeditiously, and that the accused be informed of his or her rights. This law also set parameters for the interrogation of child suspects and for medical examinations. The provisions of the federal law largely came into force on 1 June 2020.

Cross-cutting safeguards

- Children under the legal minimum age of criminal responsibility (under 14 years) alleged to have committed an offence cannot be prosecuted for the offence. See *JGG*, Sections 1(1) and 4(1).
- Children (14-18 years) are not liable for prosecution if the child is not yet mature enough to see the injustice of the act or to act upon this insight. Furthermore, if the child commits an offence (punishable by imprisonment for up to three years) before reaching the age of 16, he or she will not be held liable if the application of juvenile criminal law is not required to deter the juvenile from committing further criminal offences. See *JGG*, Sections 1(2) and 4(2).
- The *JGG* applies until the age of 21. See *JGG*, Section 1(5).
- Children have the right to engage with an attorney at all stages of criminal proceedings. Where the obligation to pay legal expenses is harmful to the future development of the child, an attorney must be provided at no charge. See *JGG*, Section 39.
- Children in conflict with the law have the right to privacy during proceedings. The public can be excluded from the main trial if it is in the interest of the child. See *JGG*, Section 42.
- Equal treatment and protection from discrimination is guaranteed by the *Federal Constitutional Law on the Rights of Children* and other constitutional rights.

- Other safeguards include the right to information and the requirement to make decisions in the best interests of the child. See *JGG*, Sections 32(a), 33, 37(1) and *Rights of Children Act*.

Specific procedural measures

The *JGH* plays an important role in assessing the situation of the child in conflict with the law. This includes an in-depth assessment of the individual and their living conditions. This assessment also includes recommendations on measures which are necessary to correct problem behaviour. This process is to assist the court in acting in the best interest of the child.

Diversion and alternatives to detention

- Detention is considered as a measure of last resort to be applied for the shortest appropriate period of time. See *JGG*, Section 35.
- Children may await their trial in the community. See *JGG*, Section 35.
- Diversion from judicial proceedings can be initiated at the prosecution-level. The public prosecutor can refrain from a criminal proceeding if the guilt of the accused is not regarded as serious, and the accused's actions did not result in death (with an exception for the negligent death of a family member). See *JGG*, Section 7.
- A financial penalty is an option as a corrective measure. Payment of any sum of money should only be proposed if the child can pay it without impairing his or her development. See *JGG*, Sections 7 and 8.
- Sentencing can be reserved for a probationary period of 1 to 3 years if it can be assumed that the sentence and threat of conviction will prevent the offender from committing further criminal acts. See *JGG*, Section 13.
- Children must be detained separately from adults. See *JGG*, Section 55.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Austria has not fully transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Austria for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- Child victims of violence or exploitation have the right to adequate compensation and rehabilitation. See *Rights of Children Act, Article 5(2)*.

- *StPO* also has special provisions for vulnerable victims, including children. These allow the victims to demand to be questioned by a person of the same gender, to have an interpreter, and to refuse to answer certain sensitive questions. See *StPO, Section 66a*.
- Additional rights and safeguards provided to victims include the right to be represented, right to have an assessment for the special need of protection, right to be informed of the subject matter and progress of the proceedings, right to have translation assistance, right to avoid contact with the offender, and right to protection from revictimization. See *StPO, Section 66*.

Focus on status offences

Some behaviour of children is considered to be a status offence and therefore, may result in criminal liability for children, as discussed below. These offences include:

- *Truancy* - the headteacher must file a criminal complaint if the student is a persistent truant and previous attempts to resolve the matter have not worked.
- *Possession of Alcohol/Tobacco & Violation of Curfew*– These laws vary from state to state within Austria. In some states, the child is warned, and other measures are taken before the child is fined. Parents are also liable to fines for the child's possession of alcohol/tobacco or violation of the curfew.
- *Begging* – Begging is an administrative offence which is punishable by a fine. Failure to pay the fine could lead to imprisonment for up to one week.
- *Romantic Relationships* – Sexual contact by two individuals who are both below the age of 14 is prohibited, but violators will not be held criminally liable. Sexual contacts that do not lead to sexual intercourse remain unpunished if the age difference between the young people does not exceed four years and the younger partner is already 12 years old. If sexual intercourse occurs, this remains unpunishable if the difference in age does not exceed three years and the younger partner is already 13 years old.

Other relevant information

There are a variety of civil organisations working to improve the rights of children in contact with the law. Initiatives of non-governmental organisations (NGOs) include offering conferences to keep judges and public prosecutors working in the field informed on subject matter and striving to maintain a minimum age of criminal responsibility of no younger than 14 years old. A list of relevant NGOs will be made available upon request.