



Access to justice for children

Country fact sheet: **Germany**¹



Overview

Country size: 357 582 km²

General Population: 83,2 million

Number of Children: 10,4 million
(children under 14 years, status: 2018)

Date of ratification of the Convention on the Rights of the Child: Signed on 20 November 1989 and came into force on 5 April 1992

Date of abolition of the death penalty: 1949

Minimum ages

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

Age of imprisonment: 14 years

Age until juvenile justice legislation is applied: 18 years (if under 21 the court decides whether juvenile justice legislation is applied).

Type of legal system

The German legal system is based on a civil law system.

Specialisation of the system and professionals

Germany provides for several specialised institutions and professionals including:

- Child police units / child police
- Child prosecution office / child prosecutors
- Child Chamber (court)
- Child legal aid
- Child social work service / child social workers
- Child probation service / child probation officers
- Children's Courts Assistance, which is referred to as *Jugendgerichtshilfe (JGH)*

Child-specific legislation**

- [Basic Law of the Federal Republic of Germany](#) or *Grundgesetz (GG)* – the German Constitution which has provisions pertaining to children. [English version](#). Each German state also has its own constitution with specific protections for children.
- [German Criminal Code](#) or *Strafgesetzbuch (StGB)* – provides for the minimum age of criminal responsibility. [English version](#).
- [Youth Courts Law](#) or *Jugendgerichtsgesetz (JGG)* – provides rules for the prosecution of children between 14-18 and young adults between 18-21. [English version](#).
- [Courts Constitution Act](#) or *Gerichtsverfassungsgesetz (GVG)* – provides for certain procedural protections for victims and witnesses. [English version](#).
- Other relevant legislation includes [German Code of Criminal Procedure](#) or *Strafprozessordnung (StPO)* ([English](#)), the [Act for Protection against Violence](#) (English not available), and [Guidelines for Criminal and Administrative Fine Proceedings](#). (English not available).

The [Convention on the Rights of the Child](#) is not directly applicable in German's justice system.

** Please note that the English translations may not include the most recent amendments and, thus, may not fully correspond with the German legal texts.

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 Directives 2016/800** on procedural safeguards for children who are suspects or accused persons in criminal proceedings and 2016/1919 on legal aid for suspects and accused persons in criminal proceedings have been transposed and came into force at the end of 2019. Certain amendments were made to the *StGB* and *StPO*.

Cross-cutting safeguards

- Children under the legal minimum age of criminal responsibility ("MACR") (under 14 years) alleged to have committed an offence cannot be prosecuted for the offence. See *StGB, Section 19*.
- For youths aged between 18 and 21 years, the court decides whether the *JGG* applies or whether the offender is fully liable under the *StGB*.
- Proceedings against children are not open to the public. If young adults or adults are also defendants, the proceedings are public, but the public may be excluded if it is shown to be in the interest of the child defendant. See *JGG, Section 48*.
- Children have the right to be present at and participate in their trial. See *JGG, Section 50* and *StPO, Sections 230 and 231*.
- Parents or legal guardians may be present at all stages of the legal proceedings but may be excluded from a hearing if it is suspected they are involved in the child's misconduct, there is a fear of danger to the well-being of the child, or the presence of the parent or legal guardian will impair jeopardise reaching the truth. See *JGG, Sections 51 and 67*.
- In certain cases, children will have defence counsel appointed. This includes if counsel would have been appointed for an adult or if the child's parent or legal guardian has been excluded from the hearings. In addition, legal assistance will likely be free. See *JGG, Sections 68 and 74*.
- Equal treatment for all is guaranteed by the *GG*.
- Other rights for child suspects and accused include the right to participate in the proceedings and decision-making

process, right to have decisions based on the best interests of the child, and the right to information.

Specific procedural measures

- Some localities have interdisciplinary teams who work with child repeat offenders. For example, the City of Cologne has a team of police, social workers, and prosecutors who focus on children who are repeat offenders. They are referred to as the House of Juvenile Justice or "*Haus des Jugendrechts*".
- Before a child offender is prosecuted, the child is assessed by the *JGH*. The assessment is read in court so that the prosecutor and judge can use the information to determine a fair procedure.

Diversion and alternatives to detention

- Pre-trial detention is considered as a last resort. Instead of detention, every other possible measure should be considered, including temporary placement in a youth welfare service home. See *JGG, Sections 71 and 72*.
- Detention (not longer than 4 weeks in duration) and "*Youth Imprisonment*" (deprivation of liberty in a facility) is to be a measure of last resort. The judge may apply educational measures (most common), which include social training courses, community service, and mediation. The judge may also apply disciplinary measures, including reprimands, reparation orders and imposition of conditions. The third category is suspended youth imprisonment (probation) and determinate youth imprisonment of 6 months up to 5 years, or in serious cases, 10 years. The disciplinary measure should be proportionate to the offence. See *JGG, Sections 13-18*.
- Diversion is possible at all levels of the child justice process. The prosecutor may initiate diversion without the judge's consent. In such cases, if the child admits his or her guilt, the prosecutor may propose a reprimand for the judge's approval. Also, the judge may issue instructions to the child, which should not unreasonably hinder the way the child conducts his or her life. These include, performing certain work tasks, attending social training, complying with no contact orders, and reaching a settlement with the victim. See *JGG, Sections 10, 45 and 47*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Germany 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 Germany for its failure to fully transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- During the proceedings, the judge will determine whether a child victim should testify before the offender or only in front of the judge. Child victims or witnesses' testimony should be recorded so that a child will not need to testify

more than one time. See *StPO, Section 58* and *Guideline for Criminal and Fine Proceedings, Section 18*.

- The protection of the child witness/victim is paramount during the proceedings. If required, a restraining order may be entered against the offender, and the youth welfare office together with the family court may take measures to prevent revictimization. See *Protection Against Violence Act, Section 1*.
- Other rights for child victims and witnesses include the right to legal assistance, right to have one's parents or guardians present at the proceedings, and the right to be informed.

Focus on status offences

Behaviour such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco may be addressed through the social welfare or child protection sectors. As such, the behaviour of the child is not criminalized, but adults may be held responsible for certain actions (for example, parents may be fined for a child's failure to attend school and an adult who provides alcohol or tobacco to a child may be charged under the law).

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 holding an annual child court day, where experts from all fields of child justice speak about criminal proceedings involving children and providing child-friendly free legal assistance. A list of relevant NGOs will be made available upon request.

In addition, German law offers protections for vulnerable groups, including:

- The Anti-Discrimination Centre ("*Antidiskriminierungsstelle*") - a national agency which combats discrimination. The legal basis for the Centre is the General Equal Treatment Act (*Antidiskriminierungsgesetz*). The Centre counsels, conducts research, and starts campaigns with other NGOs. One of its current campaigns is called *fair@school*. This campaign aims at diversity and anti-discrimination at school and focuses on refugee children and children with disabilities.