

# Conditional Sentences and Electronic Monitoring



**Priv.-Doz. Dr. Rita Haverkamp**

Max Planck Institute for Foreign and International Criminal Law  
Department of Criminology

## 1. Suspended Sentences

1.1. Imprisonment

1.2. Youth imprisonment

1.3. Suspension of imposition of youth imprisonment

## 2. Conditional Release

2.1. Fixed-term imprisonment

2.2. Life imprisonment

2.3. Suspension of remainder of youth penalty

## 3. Probation Service

3.1. Role and duties

3.2. Baden-Württemberg and Bavaria

## 4. Electronic Monitoring

4.1. Applications, correctional goals and technical means

4.2. Framework in Hesse, Baden-Württemberg and Germany

## **Suspended Sentence**

- Imprisonment,
- Youth imprisonment,
- Execution of the sentence is suspended on probation

## **Legal basis of the probation decision**

- Adults: sec. 56 Criminal Code
- Juveniles from 14 up to 17 years: sec. 21 Youth Courts Act
- Young adults from 18 up to 20 years if youth criminal law is applied: Sec. 105 subsec. 1 in conjunction with sec. 21 Youth Courts Act

## Length of the probation decision

- 2 to 5 years with regard to a custodial sentence, sec. 56a subsec. 1 Criminal Code
- 2 to 3 years with regard to youth penalty, sec. 22 subsec. 1 Youth Courts Act

## Legal conditions of the probation decision

- The sentence pronounced does not exceed two years, sec. 56 subsec. 2 Criminal Code, sec. 21 subsec. 2 Youth Courts Act
- Positive legal prognosis, sec. 56 Criminal Code, sec. 21 Youth Courts Act

## Types of probation measures

### 1. Conditions,

- Sec. 56b Criminal Code, sec. 15 Youth Courts Act
- Obligations
- Exhaustive list
- Repressive purpose

### 2. Directions

- Sec. 56c, 56d Criminal Code, sec. 10, 24 Youth Courts Act
- Obligations/instructions
- Non exhaustive list
- Preventive purpose

# Suspended sentences

<b>Sec. 56b subsec. 2 Criminal Code</b>	<b>Conditions</b>
No. 1	Restitution for the harm caused
No. 2	Sum of money to a charitable organisation
No. 3	Community Service
No. 4	Money to the public treasury (only adults)

<b>Sec. 15 subsec. 1 Youth Courts Act</b>	
No. 1	Restitution for the harm caused
No. 2	Sum of money to a charitable organisation
No. 3	Community Service
No. 4	Apology (only youths under 21 years)

# Suspended sentences

<b>Sec. 56c subsec. 2 Criminal Code</b>	<b>Directions</b>
No. 1	One's residence, education, work or leisure, or ordering financial affairs
No. 2	Report at certain times to the court or another authority
No. 3	Contact prohibition with the victim or other persons
No. 4	Possession prohibition of particular objects
No. 5	Maintenance obligations
<b>Sec. 56c subsec. 3 Criminal Code</b>	<b>Only with the consent of the offender</b>
No. 1	Medical treatment of an invasive nature or treatment for addiction
No. 2	Reside in a suitable home or institution

# Suspended sentences

<b>Sec. 10 Youth Courts Act</b>	<b>Directions</b>
No. 1	Instructions relating to place of residence
No. 2	Live with a family or residential accommodation
No. 3	Accept a training position or employment
No. 4	Community Service
No. 5	Care assistant
No. 6	Special skills training course
No. 7	Victim-offender mediation
No. 8	Contact prohibition to certain persons or places
No. 9	Road-traffic training course



# Suspended sentences

<b>Sec. 10 subsec. 2 Youth Courts Act</b>	<b>Directions with consent of the parents or guardian or legal representative</b>
First sentence	Specialist rehabilitation treatment
First sentence	Treatment for addiction
Second sentence	With the consent of the youth with more than 16 years

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

- Special youth sentence in sec. 27 Youth Courts Act
- No certainty about the necessity to impose youth penalty
- Finding as to the youth's guilt while suspending the decision to impose youth custody for a probationary period
- Probationary period: at least 1 year, but not more than 2 years
- Supervision and guidance of a probation officer for all or part of the probationary period

## Revocation

- adults: sec. 56f Criminal Code
- youth under 21 years:
  - suspended youth penalty as to sec. 26 Youth Courts Act
  - imposition of youth penalty as to sec. 30 Youth Courts Act
- Committing an offence during the probationary period showing that the expectation on which the suspension was based has not been fulfilled
- Grossly or persistently violation of directions or persistently evading probation officer and fear of re-offending
- Grossly or persistent violation of conditions

## Conditional release

- Fixed-term imprisonment, sec. 57 Criminal Code
- Life imprisonment, sec. 57a Criminal Code
- Suspension of remainder of youth custody, sec. 88 Youth Courts Act
- Authority responsible for taking such a decision: chamber for the execution of sentence at the regional court

## Length of the probation decision

- 2 to 5 years as to fixed-term imprisonment
- 5 years as to life imprisonment
- 2 to 3 years as to youth imprisonment: reduction to 1 year or extension to 4 years possible

## Legal conditions of fixed-term imprisonment

- After **two thirds** of the imposed sentence, but not less than 2 months, and
  - Appropriate release considering public safety and security, and
  - Consent of the convicted person
- 
- After **one half** of the imposed sentence, but not less than 6 months, and
  - First sentence of imprisonment up to 2 years, or
  - Comprehensive evaluation (offence, personality, development in custody), and
  - Public safety and security as well as the consent

## Legal conditions of life imprisonment

- After 15 years of the imposed sentence
- No continued enforcement due to the particular seriousness of the convicted person`s guilt
- Appropriate release considering public safety and security, and
- Consent of the convicted person

## Legal conditions of suspension of remainder of youth penalty, sec. 88 Youth Courts Act

- Duration of youth penalty, sec. 18 Youth Courts Act
  - Minimum 6 months
  - Maximum 5 years
  - Maximum 10 years when general criminal law prescribes a maximum sentence of more than ten years
- Part of the sentence served and justified given the youth's development and due regard to the interest of the general public in security
- Before 6 months served: especially important grounds
- More than 1 year of youth penalty: at least one third served

## Authority responsible for supervising

- Court of decision (suspended sentence) or the chamber for the execution of sentence at the regional court (conditional release)
- Assistance of the probation office in case of placement
- Supervision of the probation measures in addition to the court
- Youth under 21 years: obligatory placement under the supervision and guidance of probation officer

## Regulation on probation service

- Sec. 56d Criminal Code
- Sec. 24, 25 Youth Courts Act as to conditional youth imprisonment
- Sec. 29 in conjunction with sec. 24 Youth Courts Act as to the suspension of imposition of youth custody



## Role and aims

- Dual function, sec. 56d subsec. 3 Criminal Code
- Rights and duties:
  - Right of information
  - Assistance and support
  - Mandatory control of requirements, directions and commitments
  - Reporting and notification requirements
  - Non-disclosure obligation
- No separate binding authority over the offender, sec. 56d subsec. 4 Criminal Code

## **Legal framework and practical implementation**

- Partial regulations at Federal State level
- Privatization of the probation service in Baden-Württemberg since 2007
- The probation service as one of the land's judicial authorities in Bavaria

## Baden-Württemberg

- Legal basis for privatization: sec. 7 subsec. 1, sec. 8 No. 1 Federal State Act on Probation and Court Assistance and Social Work in Enforcement of Sentences
- Decision of the Federal Constitutional Court: Non-permissible judicial review of the administrative court in Sigmaringen (BVerfG Beschluss vom 21.06.2011 - 2 BvL 15/08)
- Caseload per probation officer under 80 persons

## Bavaria

- Regulation of probation service in the Announcement of the Bavarian Ministry of Justice on probation service, probationary supervision and legal assistance
- Reform of the probation service from 2003 to 2007
- „Standards of quality in the probation service in Bavaria“
- Caseload per probation officer more than 100 persons

## Comparison between Baden-Württemberg and Bavaria

- In contrast to Baden-Württemberg no state law in Bavaria
- Main difference concerning structure and organisation
- Similarities according to supervision und guidance by the probation service, but differences in detail:
  - Focus on supervision of conduct in Baden-Württemberg
  - Bavarian quality standards for the whole probation phase with further possibilities for individual support
- Better caseload in Baden-Württemberg than in Bavaria

# Electronic Monitoring

## Applications in Germany

Preliminary investigations	Avoiding pre-trial detention	Hesse since May 2000
Main proceedings		
Execution of a prison sentence (Front Door Model)	Probation order	Hesse since May 2000
	Alternative imprisonment of default	Baden-Württemberg since October 2010
While serving a sentence (Indoor Model)	Application during prison leave	Baden-Württemberg since October 2010
	Conditional release preparation	Baden-Württemberg since October 2010 Hesse since 2008 youths
Release (Back Door Model)	Conditional release	Hesse since May 2000
	Supervised release of dangerous offenders	Germany since January 2011
	Pardon	Hesse since May 2000

## Correctional goals

### *Intermediate sanction (front door model)*

- Restriction to stay at the offender's residence
- Moderately punitive for minor offences
- Facilitate rehabilitation by remaining with the family and by working further

### *Progression (in and back door model)*

- Stepwise transition to freedom
- Facilitate rehabilitation by a supervised and guided adaption phase
- Intensive supervision for middle and long term prisoners

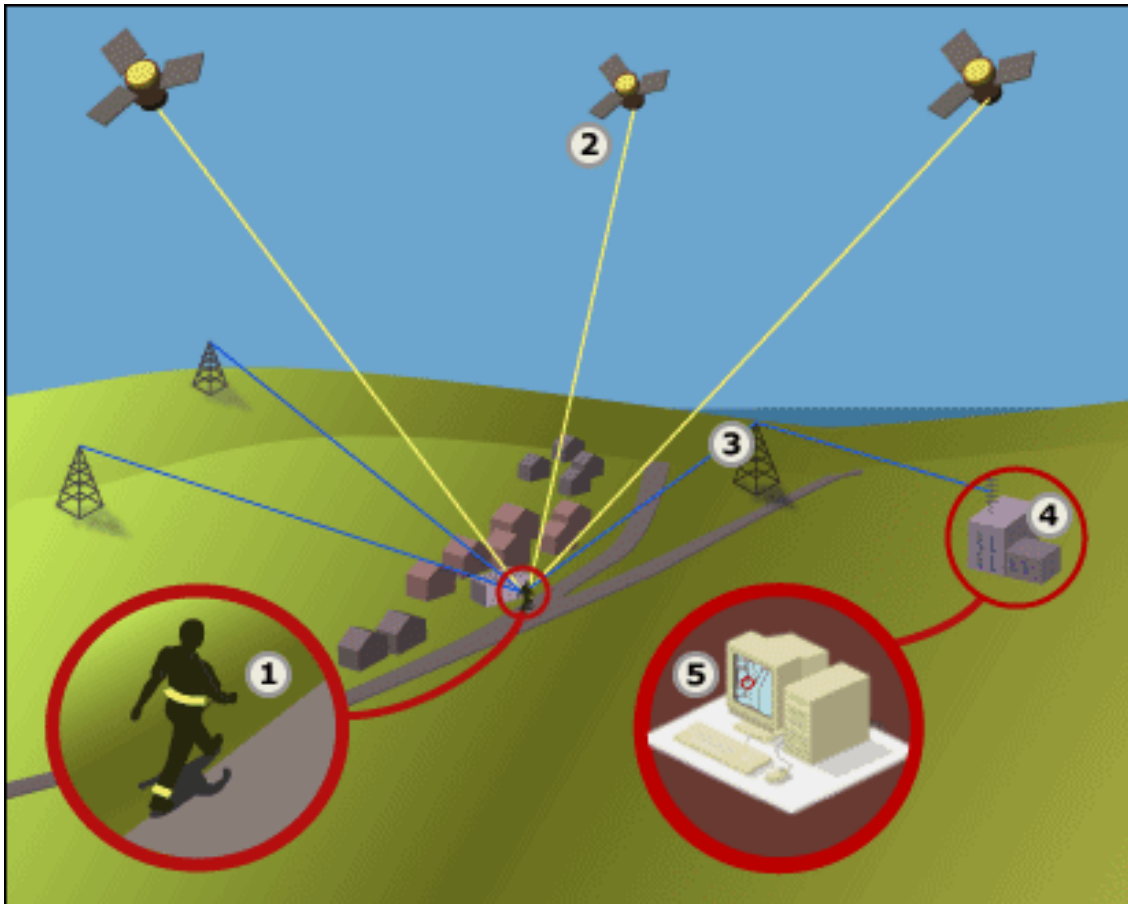
## Correctional goals

### *Supervision (back door model)*

- Control of dangerous offenders without conditional release
- Increase the offender' s inhibitions to commit further crimes by increasing the risk of discovery
- Improve victim protection



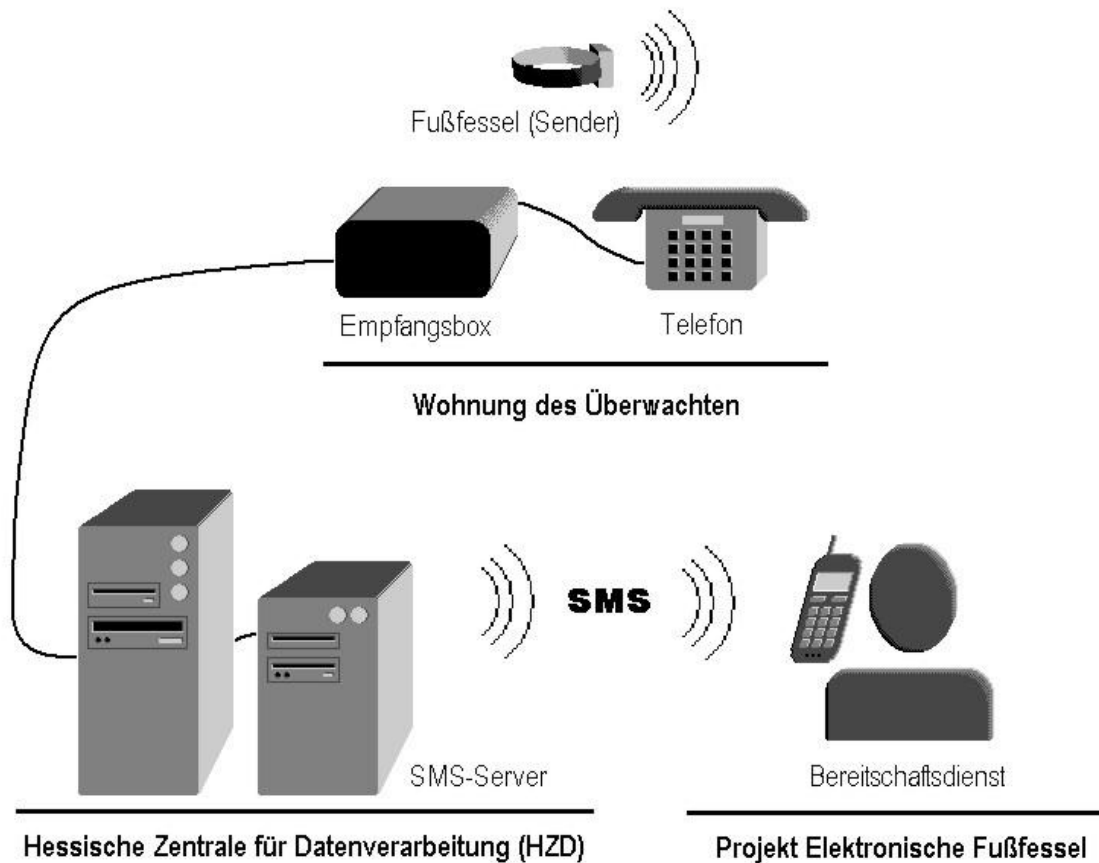
## Technical means



## Global Positioning System (GPS):

- Baden-Württemberg
- Germany

## Technical means



## Radio Frequency Technology (RF):

- Hesse
- Only monitoring house arrest

## Hesse

- implemented as a pilot in Frankfurt on Main in May 2000, since 2007 statewide
- Scope of application:
  - Based on the existing law as a court order
  - Suspension of arrest warrant (sec. 116 Code of Criminal Procedure), provision of suspended sentence (sec. 56, 56c, 56f Criminal Code), provision of conditional release (sec. 57 Criminal Code), conditional release preparation (sec. 16 subsec. 3 Hessian Act on Execution of Prison Sentences against Youth), supervision of conduct (sec. 68b Criminal Code), pardon (sec.19 Hessian Ordinance on Pardon)

## Hesse

- 95-100 participants on a regular basis per year
- Purpose of promoting reintegration
- Only with the consent of the participant (Frankfurt on Main Regional Court, order of 6 December 2000, file no. 5/27 Qs 64/00)
- Individually set up schedule for every week
- Evaluation by the Max Planck Institute



## First target group

- Offenders who are too unreliable to observe the conditions set by the court

## Second target group

- Avoiding pretrial detention
- More effective way of surveillance in comparison to an obligation to register with the police

## Differences to traditional probation in Hesse

- More structured course of day
- Constant reminder of being on probation or the suspended arrest warrant
- Intensified contacts between probation service and participant
- 24 hours availability

## Consequence

- Stabilising effect on the conduct of the participants during the programme due to the combination of technology and pedagogical concept
- No significant effect on reconviction

## Baden-Württemberg

- Implemented as a pilot from October 2010 to March 2012
- Scope of application:
  - Execution of punishment: Act on Electronic monitoring in Enforcement of Prison Sentences (EASTVollzG, GBl. 2009, 360)
  - Alternative to imprisonment of default
  - Premature transfer to work release/daytime release
  - Preparing prisoners for conditional release (home detention)
- With the consent of the convicted offender
- Evaluation by the Max Planck Institute

## Germany

- Electronic Monitoring of detention via GPS for dangerous offenders since 1 January 2011
- Preventive measure of rehabilitation and security within the scope of supervision of conduct (sec. 68b subs. 1, first sentence, no. 12 Criminal Code)
- Restrictive requirements in sec. 68b subs. 1, second sentence Criminal Code
- Without the consent of the convicted person possible
- Offence: refusal to carry the devices (sec. 145 Criminal Code)



## Germany

- Implementation of electronic monitored detention: Federal States
- Joint Electronic Monitoring Authority of the Federal States in Hesse since January 2012
- First order in January 2011 in Rostock: constitutional complaint to the Federal Constitutional Court which has not decided yet
- Electronic monitored detention in one case in Baden-Württemberg and in two cases in Bavaria at the end of February 2012 (questioning of 7 federal states)
- One revocation of electronic monitoring in Bavaria due to reoffending for a similar offence

# Conclusion

year	convicted person Youth Courts Act		convicted persons Criminal Code		total
	juveniles	youth adults	youth adults	adults	
1990	34 684	42 590	24 382	590 667	692 323
1995	37 668	39 063	25 824	657 434	759 989
2000	49 510	44 330	29 157	609 736	732 733
2005	57 687	48 968	28 261	645 743	780 659
2008	62 216	54 062	32 101	747 312	895 691
2009	60 900	55 979	29 912	697 729	844 520
2010	55 388	53 076	27 015	677 787	813 266

# Conclusion

<b>2010</b>	<b>Number</b>	<b>Percent</b>
Convicted persons in total	813 266	
Convicted persons Criminal Code	704 802	
thereof imprisonment	129 717	18
thereof suspended sentence	92 057	71
Convicted person Youth Courts Law	108 464	
thereof youth penalty	17 241	16
thereof suspension of imposition	556	3
thereof suspended sentence	10 858	63

# Conclusion

year	placement under probation service Criminal Code			
	probation	parole		total
		number	percent	
1990	55 259	42 320	43	97 579
1995	63 394	39 395	38	102 789
2000	75 706	41 467	35	117 173
2005	90 283	38 122	30	135378
2008	97 351	39 679	29	146 832
2009	97 445	40 017	29	147 582
2010	96 806	40 142	29	147 613

# Conclusion

year	placement under probation service Youth Courts Act			
	probation	parole		total
		number	percent	
1990	24 914	8 888	26	33 802
1995	22 781	6 577	22	29 350
2000	27 434	6 612	19	34 046
2005	28 326	6 319	18	35 680
2008	28 320	6 456	19	35 904
2009	27 209	6 361	19	34 658
2010	25 181	6 210	20	32 461

**Thank you very much!**

Priv.-Doz. Dr. Rita Haverkamp

Senior Researcher

[www.mpicc.de](http://www.mpicc.de)

Tel.: +49 (761) 7081-279

Fax: +49 (761) 7081-294

[h.haverkamp@mpicc.de](mailto:h.haverkamp@mpicc.de)

