Conditional Sentences and Electronic Monitoring

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Outline

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 Sentences

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
Suspended sentences

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
Suspended sentences

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

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

<table>
<thead>
<tr>
<th>Sec. 15 subsec. 1 Youth Courts Act</th>
<th>Conditions</th>
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<tbody>
<tr>
<td>No. 1</td>
<td>Restitution for the harm caused</td>
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<tr>
<td>No. 3</td>
<td>Community Service</td>
</tr>
<tr>
<td>No. 4</td>
<td>Apology (only youths under 21 years)</td>
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## Suspended sentences

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

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

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

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
Suspended sentences

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
Conditional release

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
Conditional release

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
Conditional Release

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
Probation Service

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
Probation Service

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
- 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

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<th>Preliminary investigations</th>
<th>Avoiding pre-trial detention</th>
<th>Hesse since May 2000</th>
</tr>
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<tbody>
<tr>
<td><strong>Main proceedings</strong></td>
<td></td>
<td></td>
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<tr>
<td>Execution of a prison sentence (Front Door Model)</td>
<td>Probation order</td>
<td>Hesse since May 2000</td>
</tr>
<tr>
<td></td>
<td>Alternative imprisonment of default</td>
<td>Baden-Württemberg since October 2010</td>
</tr>
<tr>
<td>While serving a sentence (Indoor Model)</td>
<td>Application during prison leave</td>
<td>Baden-Württemberg since October 2010</td>
</tr>
<tr>
<td></td>
<td>Conditional release preparation</td>
<td>Baden-Württemberg since October 2010</td>
</tr>
<tr>
<td>Release (Back Door Model)</td>
<td>Conditional release</td>
<td>Hesse since May 2000</td>
</tr>
<tr>
<td></td>
<td>Supervised release of dangerous offenders</td>
<td>Germany since January 2011</td>
</tr>
<tr>
<td></td>
<td>Pardon</td>
<td>Hesse since May 2000</td>
</tr>
</tbody>
</table>
Electronic monitoring

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
Electronic Monitoring

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
Electronic monitoring

Technical means

Global Positioning System (GPS):

- Baden-Württemberg
- Germany
Electronic monitoring

Technical means

Radio Frequency Technology (RF):

- Hesse
- Only monitoring house arrest
Electronic Monitoring

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)
Electronic Monitoring

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
Electronic monitoring

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
Electronic Monitoring

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
Electronic Monitoring

Baden-Württemberg

- Implemented as a pilot from October 2010 to March 2012
- Scope of application:
  - 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
Electronic Monitoring

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)
Electronic Monitoring

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

<table>
<thead>
<tr>
<th>year</th>
<th>convicted person Youth Courts Act</th>
<th>convicted persons Criminal Code</th>
<th>total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>juveniles</td>
<td>youth adults</td>
<td>youth adults</td>
</tr>
<tr>
<td>1990</td>
<td>34 684</td>
<td>42 590</td>
<td>24 382</td>
</tr>
<tr>
<td>1995</td>
<td>37 668</td>
<td>39 063</td>
<td>25 824</td>
</tr>
<tr>
<td>2000</td>
<td>49 510</td>
<td>44 330</td>
<td>29 157</td>
</tr>
<tr>
<td>2005</td>
<td>57 687</td>
<td>48 968</td>
<td>28 261</td>
</tr>
<tr>
<td>2008</td>
<td>62 216</td>
<td>54 062</td>
<td>32 101</td>
</tr>
<tr>
<td>2009</td>
<td>60 900</td>
<td>55 979</td>
<td>29 912</td>
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<tr>
<td>2010</td>
<td>55 388</td>
<td>53 076</td>
<td>27 015</td>
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## Conclusion

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

<table>
<thead>
<tr>
<th>year</th>
<th>placement under probation service Criminal Code</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>probation</td>
</tr>
<tr>
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</tr>
<tr>
<td>1990</td>
<td>55 259</td>
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<tr>
<td>1995</td>
<td>63 394</td>
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<tr>
<td>2000</td>
<td>75 706</td>
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<td>2005</td>
<td>90 283</td>
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<tr>
<td>2008</td>
<td>97 351</td>
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<td>97 445</td>
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<td>2010</td>
<td>96 806</td>
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## Conclusion

<table>
<thead>
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<th>year</th>
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<tbody>
<tr>
<td></td>
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<tr>
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<td>22,781</td>
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<tr>
<td>2010</td>
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<td>6,210</td>
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</table>
Thank you very much!

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