

Health Promotion for Young Prisoners

Literature Review

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Executive Summary

In Germany, the criminal liability of a young offender depends after all on the age of the young person by the time of the offence. There is a difference made in between a *juvenile* (between 14 and under 18 years old) and a *young adult* (between 18 and under 21 years old). Under 14 years old offenders are not criminally liable; for 14 to 18 years old offenders the Juvenile Justice Law (JGG) can be applied. If the Juvenile Justice Law or the Penal Law is applicable for 18 to 21 years old offenders has to be individually decided.

All interventions of the Juvenile Justice Law are structured according to the principle of minimum intervention, i.e. penal intervention should only take place if absolutely necessary. A criminal offence of a juvenile or young adult can either be diverted or imposed with different kind of court sanctions including educational measures, disciplinary measures, and youth imprisonment, again structured according to the principle of minimum intervention. Youth sentence is the ultima ratio of the outlined sanctions. The duration of a sentence for *juveniles* is at minimum six months with a maximum of five years and with a possible extension to ten years in the case of very severe offences. The longest possible sentence for *young adults* also lies at ten years.

On the 31.03.2009, the total prison population in Germany accounted for 61.878 with 19,1% of the total prison population under 25 years old and 10,3% of the total population in juvenile sentence. The number of prisoners under 25 years old declined from 2000 until 2009 from 12.853 to 11.807. The number of prisoners convicted under juvenile law constantly declined from 7.396 in 2000 to 6.344 in 2009. 90% of the prisoners in juvenile sentence are 18 years and older. Around 20% of prisoners under juvenile law are foreign nationals or stateless. Robbery and extortion, theft and burglary as well as assault are the main offences of juvenile prisoners.

There exists no comprehensive documentation on the health of young prisoners. Single studies mainly focus on mental health and drug use. Numbers for mental health problems and substance use/ dependence are alarmingly high among young prisoners.

In Germany, there is only little literature available on existing health promotion practice for young prisoners. There exist a wide range of initiatives for young prisoners, but not explicitly with a focus on health promotion.

1. Background information on the criminal justice system

1.1 Criminal liability

In principal, the general law as outlined in the German Penal Law (Strafgesetzbuch; StGB) and the Code of Criminal Procedure (Strafprozessordnung; StPO) applies for juveniles and young adults. There exists a Juvenile Justice Law (Jugendgerichtsgesetz; JGG) specifying particularities for young offenders.

If a young person is criminally liable, and if the Juvenile Justice Law or the Penal Law is applicable, depends after all on the age of the offender by the time of the offence. There is a difference made in between a *juvenile* that is between 14 and under 18 years old and a *young adult* that is defined as between 18 and under 21 years old.

- According to the Penal Law (§19 StGB), a person under the age of 14 is not criminally liable. In this case, the Juvenile Justice Law is not applicable and only the youth welfare can take action.
- In between the age of 14 and 18 years, the Juvenile Justice Law is applicable. According to § 3 JGG, in this age group it again has to be verified if a person is criminally liable.
- A *young adult* as defined above is always criminally liable. If the Juvenile Justice Law or the Penal Law is applicable is decided individually depending on the maturity of the offender and the type of offence (if it is a “typical” juvenile offence). A sentence under the Juvenile Justice Law cannot be longer than 10 years. According to §106 JGG, a young adult, if convicted under Penal Law, also has some privileges in comparison to convicted adults. It can be refrained from a life-long sentence and preventive detention cannot be directly imposed.
- If an offender by the time of offence was 21 years old or older, Juvenile Justice Law is not applicable anymore.

1.2 Non-criminally liable young offenders

For under 14 years old offenders, the criminal justice system is not applicable. If need be, action can be taken by the youth welfare based on the Children’s and Youth Welfare Act (Kinder- und Jugendhilfegesetz or Sozialgesetzbuch VIII). The Youth Welfare Act provides support and education for children and juveniles in need of care upon request of parents or - if parents do not cooperate - the Family Court can apply respective measures.

Inquiry by the police and prosecution service will also take place in case a child is suspected of having committed a crime. The police needs to clarify the circumstances of the crime including

the identity of the child offender as well as of the injured party, clarify if criminally liable persons were involved in the crime and if there are obvious deficits as regards the family situation of the child offender in order to contact the respective authorities. Depending on the severity of the crime, the police can take the child to the police station for further interrogation. If - apart from the child - other criminally liable persons were involved in the crime or the injured party filed a complaint the police is obliged to inform the prosecution service. Due to the non-criminal liability, the charge of the child will be dismissed by all means. The prosecution service will clarify if the family court needs to be informed or other authorities such as the youth welfare office. Regardless of that, the police usually informs the youth welfare office in the case of inquiries related to a crime committed by a child. The youth welfare office will clarify if the youth welfare service needs to be involved and if actions like social training courses, group work and community services need to be applied.

1.3 The criminal justice system and the juvenile justice legislation

1.3.1 The Prosecution process

In Germany, crimes reported to the police are passed to the Public Prosecution Office, which will determine if a case has enough evidence to go to court. In German criminal law the principle of compulsory prosecution (Legalitätsprinzip) is still applicable, meaning that police and prosecution service are obliged to take legal action in any case of suspicion that an offence has been committed (§ 152 II StPO). This principle is meant to ensure the purpose of equality in prosecution. Though theoretically still in force in Germany, the principle of compulsory prosecution has been eased at some points during the last decades. For minor offences, the Prosecution is also allowed to drop a case before a thorough investigation has taken place. In the case of minor drug offences for example, authorities may refrain from prosecution if the offence only relates to a so-called 'small amount' of an illicit drug. How this small amount is defined, differs between the "Laender" (Federal States of Germany). For example, up to three units of consumption can be considered to be such a small amount, however, these units can differ depending on the Federal State. For cannabis the 'small amount' is defined to be something between 6 and 30 grams of hashish or marijuana without considering the proportion of THC. For drugs other than cannabis, some of the Laender only very rarely drop cases at all (§ 31 a BtMG). This is due to different regional traditions of sanctioning, and to the fact that a decision of the Constitutional Court forcing them to recede from compulsory prosecution explicitly only dealt with cannabis (BverfGE 90, 145).

1.3.2 Juvenile courts

According to § 37 JGG, there exist juvenile courts and juvenile prosecutors. In some big cities also specialised youth police units exist (Dünkel, 2010).

Cases that presumably result in non-custodial measures are presided over by a single judge (Jugendrichter) at the local court (Amtsgericht). For cases where a youth sentence is to be

expected, the case will be transferred to the youth court at the local courts which is composed of a judge and two lay assistants (Jugendhoffengericht). In very serious cases such as homicide, manslaughter and since 2006 also sexual offences against minors, the case is filed to the youth chamber (Jugendkammer) at the district court (Landgericht), a court with three professional and two lay judges (Schwurgericht) (Jehle, 2005).

There exists a special youth service in youth court proceedings (Jugendgerichtshilfe, JGH) that is provided by the youth welfare office. The youth service advises the offender and their families and informs the juvenile prosecutor and court about personal and family background of the offender. The youth service further takes part in the court proceedings, examines if a diversion from a formal court sanction applies and is also partly responsible for the aftercare of the offender and supervision of the execution of educational measures (§ 38 JGG; § 50 JGG). The youth service is immediately informed if a young offender is placed in pre-trial detention (§ 72a JGG).

1.3.3 German prison law and the Juvenile Prison Act

The prison system in Germany is regulated since 1977 by the Prison Act (Strafvollzugsgesetz, StVollzG) that is part of the Public Law. Until the beginning of the federalism reform in 2006, prison legislation was subject to the Federal Ministry of Justice (§ 74 GG (Federal Constitution)). Due to the federal structure of Germany and the principle of subsidiarity, the administrations of justice of the different Federal States (Laender) ever since have had authority over prisons in their region (§ 139 StVollzG). There were rules that accounted for all Laender like the administrative regulations for the prison system but due to different political situations in the different Laender and differences in the personal and financial situation of the different administrations of justice, there ever since has been a great variety in its execution.

For a long time, there did not exist a separate law for regulating the juvenile prison system in Germany. The „Bundeseinheitlichen Verwaltungsvorschriften für den Jugendstrafvollzug“ (VVJug), German-wide applicable administrative rules, regulated the execution of juvenile sentences. Juvenile prison legislation based on two articles in the Juvenile Justice Law (§ 91 JGG a. F.; § 92 JGG) defining the responsibilities of the juvenile prison system and decreeing the separate housing of young and adult offenders.

In the course of the federalism reform in 2006, the responsibility for prison legislation was shifted from the Federal Ministry of Justice to the Laender whereas the Federal Constitutional Court has set standards the governments of the Laender have to adhere to. As long as the Laender have not formulated new penal laws, the penal law of 1977 has staid in force (Feest 2007).

In May 2006, the Federal Constitutional Court (Bundesverfassungsgericht) declared the execution of juvenile sentences to be unconstitutional. Due to the federalism reform, the Laender were responsible to formulate Juvenile Prison Laws until the beginning of 2008.

1.3.4 Sanctions of the German juvenile justice system

All interventions of the JGG are structured according to the principle of minimum intervention, i.e. penal intervention should only take place if absolutely necessary.

A criminal offence can either be imposed with a diversion or different kind of court sanctions.

1.3.4.1 Diversion

In a diversion, there will be informal sanctions instead of a formal court proceeding and the case will be dismissed (§ 45 JGG, § 47 JGG). There are different forms of diversion. In the case of petty crimes, it will be refrained from any sanction. There further exists a diversion with education, i.e. there will be measures taken together with parents or schools or victim-offender reconciliation. A diversion with intervention includes minor sanctions like short time community services, social training courses etc. Also after the charge has been filed, it is possible to divert a formal court sanction if the offender in the meantime has undergone respective measures.

1.3.4.2 Formal court sanctions

There are different forms of court sanctions as outlined in the Juvenile Justice Law (§ 5 JGG): educational measures, disciplinary measures, and youth imprisonment, again structured according to the principle of minimum intervention.

1.3.4.2.1 Educational measures (§ 5 I JGG, § 9 ff JGG)

In different court directives (§ 10 JGG), the judge can impose social training courses, victim-offender mediation, can decide about the whereabouts of a person, or impose training courses for traffic offenders.

The judge can further impose drug treatment to drug dependent offenders. In juvenile offenders, parents need to give their consent to drug treatment measures. By the age of sixteen, such treatment can only be imposed with the consent of the juvenile (§ 10 II JGG). Another educational measure is the placement of the young person in a residential home of the youth welfare office or the allocation of a social worker to the young offender (§ 12 JGG).

1.3.4.2.2 Disciplinary measures (§ 5 II JGG, § 13 JGG)

Disciplinary measures in contrast to a youth sentence shall have a warning character and shall not stigmatise. There are three different forms of sanctions: formal warnings, the imposition of conditions as well as youth arrest.

Formal warning

A warning shall after all mirror the young person his/her illegal activity. It is often applied in combination with other sanctioning measures.

Imposition of conditions

The most common sanction is the imposition of conditions. Among these, community services performed by the offender are the most important sanctions. The judge can further impose that the young person by all means retrieves the damages caused by the offence, e.g. by working for the injured person or compensation payment. Compensation payment can also be done to a non-profit organisation always taking into account if and how this payment can be realised. A personal apology to the injured party further forms part of the listed sanctions, but as a sanction taken on its own, only plays a secondary role (Dünkel, 2010).

Youth arrest

There exist three different forms of youth arrest: leisure time arrest (weekend arrest), short arrest with a maximum length of four days as well as long-term arrest in between one and four weeks. Youth arrest is seen a dissuasive penalty, a kind of shock incarceration that intends to change the young delinquents' behaviour (Dünkel, 2010). There currently exist 31 youth arrest houses in Germany with a possible occupancy of 1.044 detainees.

Youth arrest is vaguely regulated through § 90 JGG. The Code of Youth Arrest Procedure (Jugendarrestvollzugsordnung (JAVollzO)), dated back to 1976, regulates the execution of youth arrest. Youth arrest should directly start after rendition in order to stress the link to the young person's offence. In reality, youth arrest often is not started earlier than three to four months after rendition. The JAVollzO foresees an intensely care and support during youth arrest including group work, educative measures as well as aftercare that in reality often cannot be realised due to a lack of resources. An autonomous law regulating youth arrest is currently under discussion (Wulf, 2010).

1.3.4.2.3 Youth sentence (§ 5 II JGG, § 17 JGG)

Youth sentence is the ultima ratio of the outlined sanctions. The duration of a sentence for *juveniles* is at minimum six months with a maximum of five years. In the case of very severe offences, which - corresponding to the general penal law - would be punished with more than ten years of imprisonment, the maximum length of imprisonment of the juvenile can be extended to ten years. Also for *young adults* the maximum length of imprisonment underlies a threshold of ten years

Youth imprisonment can be imposed due to "dangerous tendencies", i.e. deficits that let expect that further offences will be committed or due to the gravity of guilt, i.e. severe crimes like

murder and aggravated robbery. By the age of 24 of the young prisoner, the youth sentence has to be executed following the principles of adult sentence (§ 89b JGG).

Young offenders can be placed in open or closed prisons. Article 91 JGG a. F. allowed for a special form of an open execution of the youth sentence in a youth facility instead of a prison. This article was the base of the "Projekt Chance" in Baden-Württemberg where juvenile prisoners can be placed in youth facilities of the youth service of the youth welfare office. This kind of open execution can now be found in § 27 of the new juvenile prison law of the Land Baden-Württemberg. Juvenile prisoners in between 14 and 23 years old can apply for the project and can stay in the youth facility for the whole time of their sentence. The project is characterized by a strictly structured routine and a densely organised educational programme including school, work, preparation to work, exercising, community services, victim-offender mediation and social training courses (Dölling & Stelly, 2009).

Probation

According to § 21 JGG, a youth sentence under two years can be placed on probation. The length of probation lasts in between two to three years. Probation service in all cases is responsible for supervising the offender for a period of one to two years. The decision if a sentence is placed on probation can be made until the beginning of its execution. The imposition of a youth sentence without probation only accounts for 6,7% of all formal sanctions of the Juvenile Court (Walter, 2000).

According to § 88 JGG, parts of a sentence can be placed on probation after a period of six months of imprisonment. If the sentence is longer than one year, it can only be placed on probation if at least two thirds of the sentence have been served.

Remand

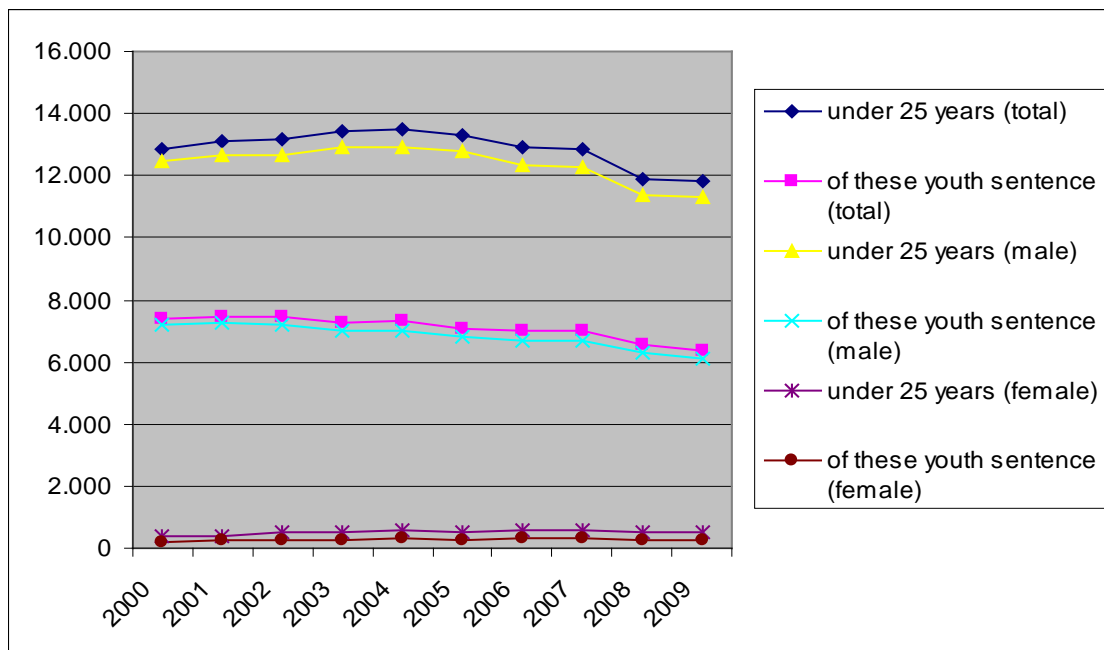
Article 72 JGG stipulates that the use of remand in young offenders should be minimised. The youth judge has to take into account any kind of alternative to remand custody for example the placement in special facilities of the youth welfare office. The judge further in detail has to justify that he took into account such alternatives and that he took into account the special impact youth remand has on young offenders. Youth remand should only be imposed if absolutely necessary and if no alternative placement is possible. In general, youth remand is only seen as applicable if a youth sentence is to be expected. Youth remand can only be imposed on 14 to 15 years old offenders if there is an obvious risk of flight or in the case of serial criminals without fixed abode. If a juvenile is placed on remand, § 72 JGG stipulates that the immediate processing of the case has to be treated with utmost importance (Villmow, 2009).

2. The youth prison population

To date, there exist around 50 prison facilities for young prisoners in Germany (including remand prisons), some of them separate prisons only for young people, some of them special sections of prisons for adult offenders. Juvenile prisons usually hold around 150 to 300 prisoners. The juvenile prisons in Adelsheim, Berlin, Hameln and Siegburg hold about 600 and more detainees. Appropriate accommodation for female young prisoners is difficult and neglected due to their small total number; in some of the Leander there are not more than 10 to 20 female young prisoners (Walkenhorst, 2010).

On the 31.03.2009, the total prison population in Germany accounted for 61.878. On this date, 19,1% (i.e. a total number of 11.807) of the total prison population, were under 25 years old and 10,3% (i.e. 6.344) of the total population were in juvenile sentence (Statistisches Bundesamt, 2009). Around 4,2% (i.e. a total number of 500) of the prison population under 25 years old are females, their proportion lies at 3,7% (i.e. 237) of the population in juvenile sentence.

Figure 1: Development of the number of prisoners under 25 years and in youth sentence 2000-2009 (31.03.2009)



As outlined in figure 1, from 2000 until 2004, there was a slight increase in the prisoners **under 25 years** from 12.853 in 2000 to 13.512 in 2004, followed by a constant decrease to 11.807 in 2009. These numbers reflect the development of the male prison population under 25 years old whereas the number of female prisoners under 25 years rises until 2007, followed by a slight decrease (Statistisches Bundesamt, 2009).

The number of prisoners convicted **under juvenile law** constantly declined from 7.396 in 2000 to 6.344 in 2009. These numbers again reflect the development of the male prison population whereas numbers for females in juvenile sentence show some variation.

Table 1: Age groups of prisoners under juvenile law in percentage (31.03.2009)

Age	Juvenile Law total	Male	Female
14 – 18 years old	10,0	9,9	13,1
18 – 21 years old	49,4	49,7	41,8
21 years and over	40,6	40,4	45,1
Total	100	100	100

10% of the prisoners under juvenile law fall under the age group of the 14-18 years old, around half of the prisoners (49,4%) fall under the category '18-21 years old' and 41% under the category 'more than 21 years old' (compare table 1, Statistisches Bundesamt, 2009). As regards the distribution of the age groups according to gender, the highest percentage for female prisoners, with 45,1%, is found in the highest age group. For male prisoners the highest percentage is found among the 18-21 years old (compare table 1).

On the 31.3.2009 there were 435 juveniles in pre-trial detention, corresponding to a proportion of 3,8% of the total remand population on that date (Statistisches Bundesamt, 2009).

It is estimated that juveniles spend an average of two to three months in remand custody. In 2007, there were 121.354 persons convicted under juvenile law. Of those that were in remand, 2.736 were convicted to a youth sentence, 580 to disciplinary measures, 16 to educational measures and in 63 of the cases the sentence was put on probation (Villmow, 2009).

Table 2: Nationality of prisoners under juvenile law in percentage (31.03.2009)

Age	Nationality		Total
	German	Foreign/ stateless	
All age groups	80,1	19,9	100
14 – 18 years old	71,9	28,1	100
18 – 21 years old	79,0	21,0	100
21 years and over	83,5	16,5	100

Around 20% of prisoners under juvenile law are foreign nationals or stateless (in the total prison population the proportion lies at 21,9%). With increasing age, their proportion in the juvenile prison population decreases. Whereas in the age group of the 14-18 years old, 28% are of foreign nationality, the latter account for only 21% in the age group of the 18 to 21 years old and

for 16,5% in the age group '21 years and older' (compare table 2). In comparison to that, in the age group of the 18 to 21 years old and convicted under adult law, the proportion of young prisoners of foreign nationality lies at 24,3% (Statistisches Bundesamt, 2009; own calculations).

Table 3: Breakdown by the main offence of prisoners under juvenile law (31.03.2009)

Type of offence	Total		Female	
	N	%	N	%
Sexual offences (§ 174-184b StGB)	237	3,7	4	1,7
Homicide (§ 211-222 StGB)	284	4,5	27	11,4
Assault (§ 223-231 StGB)	1522	24,0	39	16,5
Theft and burglary (§242-248c StGB)	1548	24,4	60	25,3
Robbery and extortion (§249-255, 316a StGB)	1712	27,0	33	13,9
Fraud and embezzlement (§ 263-266b StGB)	239	3,8	34	14,3
Drug offences (BtMG)	339	5,3	25	10,5

Offences including robbery and extortion account for 27% of all offences of prisoners under juvenile law. Theft and burglary as well as assault each account for around one quarter of all offences. These type of offences are followed by drug offences (5,3%), homicide (4,5%) fraud and embezzlement (3,8%) and sexual offences (3,7%) (compare numbers in table 3; Statistisches Bundesamt, 2009).

24,5% of all young prisoners serve a sentence under one year. 37,6% serve a sentence of between one and two years and 35% of young prisoners serve a sentence with a duration in between two and five years. The highest possible sentences of between five and ten years can be found in 2,9% of the young prison population (Statistisches Bundesamt, 2009).

3. Health in young prisoners

3.1 Health in prison

Prisoners in Germany have the right to the highest attainable standard of physical and mental health comparable to that in the outside community.

Shortly after imprisonment, an initial medical examination takes place that informs about the general health status of the detainee including size, weight and dental state. The initial examination decides about whether a detainee is able to undergo imprisonment, needs medical assistance, poses a threat to others or whether he/she is able to work or exercise. Furthermore, the initial examination is a safeguarding in case detainees claim for secondary damage related to their imprisonment (Keppler 2007). During the initial examination, HIV and Hepatitis C tests are offered but in most cases counselling before and after the test is scarce. One main difference to the outside community is the lack of free choice of a medical practitioner in penal institutions. Prisoners have the right to get sufficient information about their health status and have to be informed about alternative diagnoses and therapies.

In general, medical practitioners in prisons are full-time employed. Due to the working conditions and a lack of career opportunities, it is difficult to find appropriate personnel. The CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) report for 2005 states that in the visited establishments there was insufficient general practitioner (GP) time provided (CPT recommends a full time employed GP per 300 prisoners). Especially in smaller penal institutions, GPs that work in the outside community, additionally work at a part-time basis in prison. Previously, medical assistants and nurses had to undergo – in addition to their medical vocational training – general vocational training for prison guards. Meanwhile, medical personnel without such additional training can work in prisons (Keppler 2007).

3.1.1 Counselling and care

As regards counselling and care for prisoners, prisons offer different kind of services. Apart from the medical service, there are psychologists that take part in the initial examination of prisoners, are asked for expertise as regards sexual, violence related or drug related offences, offer group or single therapies and/ or psychological counselling. Furthermore, psychologists are often involved into basic and advanced training of prison staff.

The social service of the prison includes social workers, social pedagogues, drug counsellors and debt counsellors that are closely involved into prison life. Teachers are only working in some prisons, especially in prisons for juveniles and in educational facilities of prisons. All prisoners have the right to get pastoral care through a representative of their religious group. In German prisons, pastors of the catholic and protestant church work at full or part time basis. If needed, contacts can also be made to ministers of other religious groups.

Tasks that cannot sufficiently be performed by prison personnel can be assigned to external services. Especially drug and HIV/AIDS services offer counselling and care services for prisoners (Taylor-Schultz 2007).

3.2 Mental health and drug use among young prisoners

In Germany, there exists no comprehensive documentation on the health of adult or young prisoners. Health data for young prisoners come from single studies mainly focussing on mental health and drug use.

Köhler et al. (2010) examined the mental health and personality of 149 juvenile inmates. According to the study, numbers for mental health problems are alarmingly high. Around 81% of the prisoners had some kind of conduct disorder, further prevalent diagnoses were personality disorders (up to 60%), and psychopathic features were found in 21% of the participants. According to the study of Köhler, mental health characteristics in the juvenile prison population are comparable to populations in paediatric and adolescent psychiatry.

Substance use disorders in young prisoners according to the study are especially high for alcohol (with 60% showing alcohol abuse and 20% alcohol dependence), amphetamines (with 40% showing amphetamine abuse and 10% dependence) followed by hallucinogens (38,3% showing abuse and 22% dependence). Dependence rates are especially high for cannabis (54%) (ibd.).

Rösler et al. (2004) find elevated levels of attention deficit-/hyperactivity disorder (ADHD) in young adult male prisoners in comparison to non-delinquent controls. According to the study, only 8,5% of the young prisoners had no psychiatric diagnosis and 64% had at least two different diagnoses.

Article 93a JGG stipulates the placement of drug dependent juvenile offenders in therapeutic facilities (also in open forms), but this article is rarely imposed.

Treatment of prisoners with mental health problems in prison is inadequate mainly due to a lack of resources and due to the fact that alternatives to prison – for example according to § 63 StGB - the placement in a psychiatric hospital - often are not applied (Lehmann, 2009). § 63 StGB – the placement into a drug therapeutic facility – is often applied in the case of severe violence related crimes.

4. Existing health promotion for young prisoners

In general it can be stated that, in Germany, there is only little literature available on existing health promotion practice for young prisoners and also extensive internet research did not bring any remarkable results. There exist a wide range of initiatives for young prisoners, but not explicitly with a focus on health promotion.

The little information on existing health promotion practice for young prisoners was mainly gained through personal knowledge and experience as well as through correspondence with stakeholders in the field.

The AIDS-aid in Munich offers prevention activities for young prisoners and prison staff as well as juveniles in youth arrest houses on HIV/AIDS and hepatitis. It takes account of the specific needs of young prisoners. These often have little knowledge about the higher risk of contracting infectious diseases in prison, risk behaviour and prevention. Several times a month, there are voluntary courses offered on the prevention on HIV and hepatitis.

Discussions during the first conference "Gesund in Haft" – come to the conclusion that health promotion for young prisoners in Germany is often reduced to prevent infection with hepatitis and HIV. Other aspects such as smoking, alcohol, sports and exercising, sexuality and violence are often not included into the concept (Enzmann & Wiessner, 2004).

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