



Sanctions Systems and Sentencing Practices in Europe

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1 Basic principles for juvenile sanctions systems in Europe

- **The recommendations of 2003 and of 2008 (as earlier Rec.) rely on the following principles:**
- **Principle of minimum intervention**
- **Priority of diversion**
- **Principle of subsidiarity with regards to custodial sanctions: deprivation of liberty as a last resort**
- **Deprivation of liberty as short as possible**
- **The execution of community and custodial sanctions must preserve the human rights and dignity of the offender**



2. Reactions of the juvenile justice system and dispositions of the juvenile court

- **Diversion without any sanction (police or prosecutor)**
- **Diversion after educational measures have taken place (e. g. mediation, victim-offender-reconciliation, reparation, apology to the victim)**
- **Diversion with (minimum) educational interventions (prosecutor or juvenile court)**
- **Diversion by the juvenile judge**
- **Court dispositions:**
- **Community sanctions: Reprimand, educational measures, social training course, community service, fine, combination order, probation, suspended sentence etc.**
- **Detention centre, secure training centre, youth imprisonment**



Deprivation of liberty and youth imprisonment as a last resort

- **Youth imprisonment can mean very different forms and particularly length of deprivation of liberty**
- **England/Wales: detention and training order for juveniles aged 10-17: maximum 2 years.**
- **Germany: youth imprisonment for juveniles and young adults aged 14-21: minimum 6 months, maximum 5 years, exceptionally 10 years.**
- **Greece: same range of sentences for 13-18 years old juveniles as in Germany.**
- **Netherlands: for 12-15 years old juveniles: maximum 1 year, for 16-18 y.: maximum 2 years.**



Deprivation of liberty and youth imprisonment as a last resort

- **Portugal: for 12-16 years old juveniles: maximum 3 years.**
- **Sweden and Switzerland: for 15-18 years old juveniles: maximum 4 years.**
- **Are countries like England or the Netherlands more lenient compared to Germany or Greece?**
- **Probably not, as both countries provide for long-term sentences under specific legislation (CYPA 1933) or through the possibility of a transfer to the general courts for adults (for at least 16 years old offenders in the Netherlands).**



Age structure of inmates in youth prisons

- Which age groups are targeted by youth prisons?
- Examples:
- Austria: 14-27
- England and Wales: 10/12/15-18/21
- France: 13-18/23
- Germany: 14-25
- Greece: 13-25
- Netherlands: 12-21
- Spain: 14-21



Table 1: Diversionary and court dispositions in European juvenile justice systems

	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	England/Wales	Estonia	Finland	France	Germany	Greece	Hungary	Italy	Ireland	Kosovo	Latvia	Lithuania	The Netherlands	Northern Ireland	Poland	Portugal	Romania	Russia	Scotland	Serbia	Slovakia	Slovenia	Spain	Sweden	Switzerland	Turkey	Ukraine	
Informal sanctions																																			
Non interventional diversion (i. e. absolute discharge/ withdrawal)	X		X		X	X	X	X	X	X	X	X	X				X	X	X		X	X	X	X		X			X	X	X	X			
(Conditional) Diversion with intervention	X	X	X ¹	X	X ¹	X	X ²	X	X ¹	X	X	X	X	X	X ¹⁷	X	X	X	X	X	X	X	X	X ¹	X ⁽¹⁾	X	X	X	X	X	X ¹	X	X ¹⁸	X ¹	
Diversionary measures																																			
Reprimand/caution		X ¹²	X					X	X		X	X				X			X		X				X									X	
Suspending prosecution for probation period	X							X						X														X						X	
Out of court settlement (i.e. victim-offender mediation, reparation)	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X		X	X	X ³	X		X	X	X ³	X	X	X	X	X	X	X		X
Community service/work	X		X	X					X			X	X			X		X	X							X	X		X	X					
Fines (or comparable)	X											X	X																						



	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	England/Wales	Estonia	Finland	France	Germany	Greece	Hungary	Italy	Ireland	Kosovo	Latvia	Lithuania	The Netherlands	Northern Ireland	Poland	Portugal	Romania	Scotland	Serbia	Slovakia	Slovenia	Spain	Sweden	Switzerland	Turkey	Ukraine	
Special obligations/ orders concerning the everyday life, training courses/ programmes	X		X	X				X			X	X	X	X		X	X	X	X	X		X			X	X							X	
Institutional educational measures (or similar)			X																X						X								X	
Formal sanctions																																		
Reprimand/warning	X	X	X	X		X		X		X	X	X	X	X		X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X
Fines	X				X	X	X	X	X	X	X	X ²¹	X			X	X	X	X	X	X	X		X				X	X		X	X	X	X
Victim-offender mediation, reparation order (or comparable sanction/measure)		X ¹³			X			X ⁴	X		X	X	X		X	X	X ⁵	X		X	X	X	X	X	X	X			X		X ¹⁵		X	X
Community service/ work		X					X ⁶	X ⁷	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X
Special obligations/ orders concerning the everyday life, training courses (or comparable sanction/ measure)		X		X			X ⁶	X ⁸	X	X ⁹	X	X	X		X ¹⁶	X	X ⁵		X ¹⁶	X		X	X	X	X	X		X	X	X	X	X	X	X
Referral to an attendance centre (or comparable)				X			X	X			X				X	X	X				X		X					X				X		



	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	England/Wales	Estonia	Finland	France	Germany	Greece	Hungary	Italy	Ireland	Kosovo	Latvia	Lithuania	The Netherlands	Northern Ireland	Poland	Portugal	Romania	Russia	Scotland	Serbia	Slovakia	Slovenia	Spain	Sweden	Switzerland	Turkey	Ukraine	
Short time detention								X	X		X	X							X					X					X ¹¹				X		
Supervision/-surveillance		X		X	X			X	X	X ⁹	X	X	X		X	X	X	X		X		X	X	X	X	X	X		X		X	X			
Confiscation/disqualification from driving a vehicle									X					X						X		X							X	X	X				
Conviction without sentence	X						X		X	X		X																		X	X				
Institutional educational measures (or similar)		X		X	X	X	X		X		X		X	X	X	X ¹⁰	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X
Suspended/conditional imprisonment	X ¹⁹		X ¹⁹	X ¹⁹	X	X ¹⁹	X		X ¹⁹	X ¹⁹	X ¹⁹	X ¹⁹	X ²¹	X ¹⁹	X ¹⁹		X ²⁰	X ¹⁹	X ¹⁹	X ¹⁹	X		X	X ¹⁹	X			X ¹⁹		X ¹⁹	X	X ¹⁹	X ¹⁹	X ¹⁹	
Probation					X			X								X	X				X					X									
Imprisonment/detention	X	X ¹⁴	X ⁽¹⁴⁾	X	X	X	X	X ¹⁴	X ¹⁴	X	X	X	X	X	X	X ¹⁴	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

Note: 1) Referral to social service, juvenile commissions or a similar body, 2) Youth contract, 3) Youth/family conference, 4) Reparation order, 5) On the basis of supervision, 6) In case of suspended sanction, 7) Reparation order and community service order (offenders aged 16-17), 8) Referral order, community service order, curfew order, 9) Juvenile punishment order, 10) Probation order coupled with an obligation to reside in a certified hostel residence, 11) One to three weekends, 12) Parents can also be cautioned, 13) and group conference, 14) Placement in educational institutions like youth homes etc. which are – especially seen by a welfare approach – no youth prisons, but can be defined as comparable with regards to the consequences for the juveniles, 15) Reparation order: in combination with referral to the Social Services, VOM: just voluntarily, 16) House arrest 17) "Pre-trial-probation" as a special form 18) Postponement, 19) With supervision, 20) Combined with community service, 21) If the young offender is sentenced after his/her 18th birthday.



3. Characteristics of the sanctioning practice in selected countries



Sentencing practices – paramount orientations

Austria: **Diversion (50%), community sanctions,
imprisonment as last resort (9% of court disposals)**

Bulgaria: **Traditionally imprisonment (80-90%), now
“only” ca. 50%; recently: mediation (ca. 40% of court
disposals)**

Croatia: **Diversion (50%), community sanctions,
imprisonment as last resort (5% of court disposals)**

Denmark: **Diversion counts only 20%; community
sanctions very widespread; deprivation of liberty is the
absolute exception**



Sentencing practices – paramount orientations (2)

England/Wales: Getting tough philosophy; less diversion (final warnings); more detention and tougher community sanctions

Finland: Almost no diversion; fines as most applied sanction, imprisonment as the absolute last resort (less than 1%)

France: Diversion (59%), community sanctions, increased supervision in the community; imprisonment only 10% of court disposals

Germany: Diversion (69%), community sanctions (community service; imprisonment only 6% of court disposals and 2% of all informal and formal sanctions! (see below 7.)



Sentencing practices – paramount orientations (3)

Netherlands: Police diversion (HALT-projects) counts for 40%; prosecutorial diversion: 65%; formal court decisions: 46% community service, 31% detention

Spain: Getting tough approach, increasing detention rates, but also diversion and mediation as major orientation

Switzerland: Educational measures by the juvenile court; detention in open residential homes, imprisonment less than 1%

Ukraine (as Russia): Orientation at suspended prison sentences (probation), almost no other community sanctions; high imprisonment rates

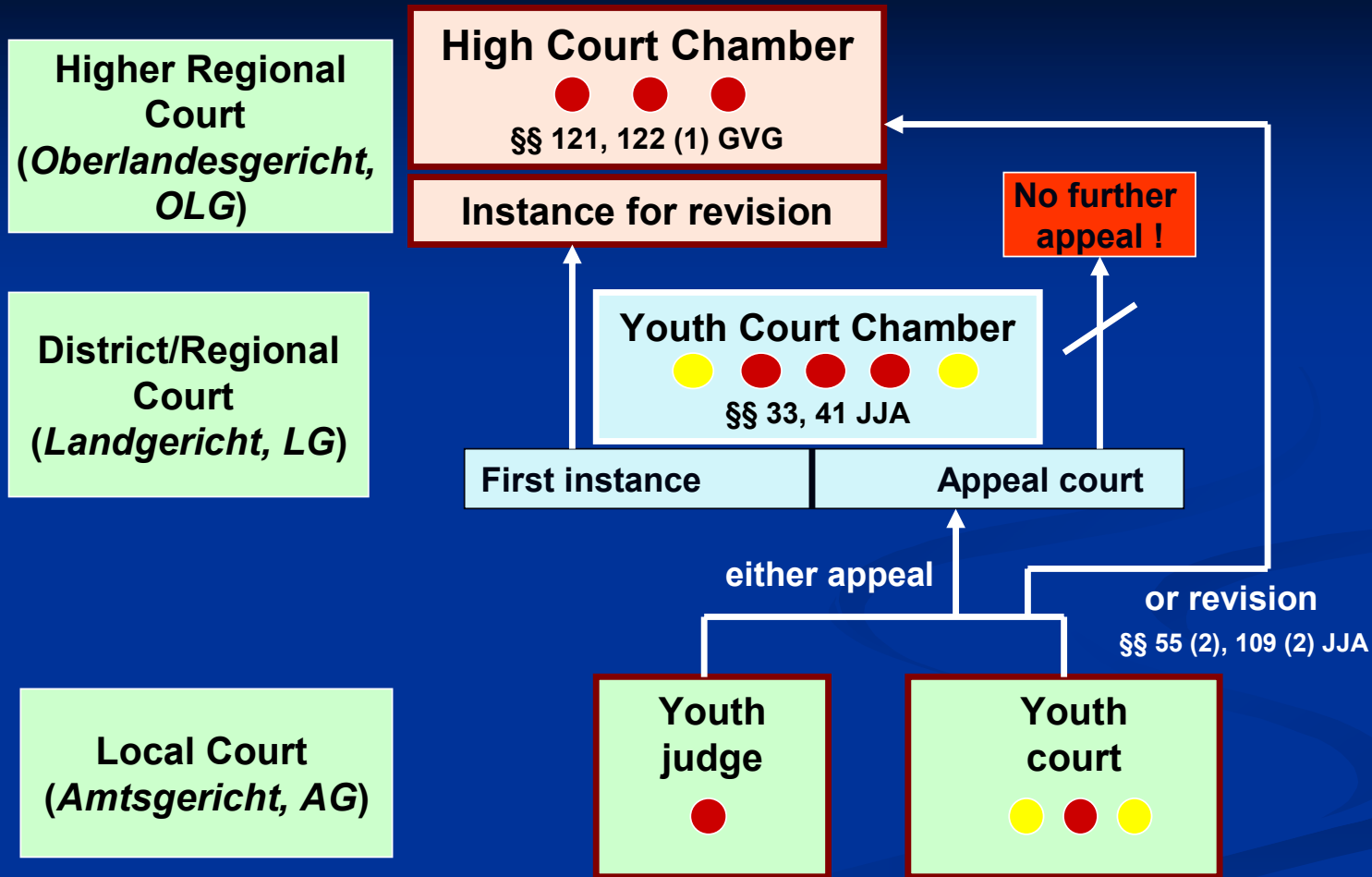


4. Juvenile welfare and juvenile justice in Germany: The multi-agency approach

- **A separate juvenile justice system can only function if there is an infrastructure for the educational dispositions.**
- **In Germany, such a structure has been implemented by a two track system of welfare and justice laws, the Child and Youth Welfare Act (CYWA, *Kinder- und Jugendhilfegesetz*) and the Juvenile Justice Act (JJA, *Jugendgerichtsgesetz*, both reformed in 1990).**
- **These laws demand the implementation of a network of private, state welfare and justice agencies.**
- **But first: a look on the German juvenile court system:**



The German juvenile court system



● Professional judge ● Lay judge



Basic philosophy of the German Juvenile Justice Act

- **Priority of diversion (minimum intervention)**
- **Priority of mediation and restorative justice**
- **Priority of educational community sanctions**
- **Youth imprisonment (as short as possible within the range of 6 months up to 5, exceptionally 10 years) as a last resort („ultima ratio“).**
- **No transfer of juveniles to adult courts, even in most serious cases.**
- **The jurisdiction of the juvenile court includes 14-17-year old juveniles as well as 18-20-years old young adults! (see Dünkel 2003; 2005)**



Basic philosophy of the German Child and Youth Welfare Act (CYWA)

- **Children (under 14 years), juveniles (14-17) and young adults (18-20) have the right to support and education and to being protected in their personal development by the child and youth welfare agencies (Sect. 1 of the Child and Youth Welfare Act).**
- **The youth services are established at the local community level,**
- **priority is given to private non-profit organisations (Sect. 4 II CYWA),**
- **which must be accredited by the regional (federal state level) youth welfare departments of the ministries of social affairs (*Landesjugendämter*).**



dji
Deutsches
Jugendinstitut



Centre for the Prevention of Youth Crime (ed.)
**Prevention of Youth Crime in Germany:
Educational Strategies**

Trends, Experiences and Approaches



Arbeitsstelle Kinder- und
Jugendkriminalitätsprävention

Band 8

Published 2004
download from:
http://cgi.djt.de/bibs/Bd8_prevention.pdf



5. Co-operation of welfare and justice agencies

- **Germany has developed an effective system of private and state welfare as well as of justice institutions in the field of juvenile crime prevention and of juvenile justice.**
- **The agencies organised on the basis of the CYWA are:**
- **The community youth welfare departments (*Jugendämter*) and the youth services in youth court proceedings (*Jugendgerichtshilfe, JGH*) which have a double task:**
- **They fulfil purely welfare oriented tasks (family aid, protection of children in need of care according to the CYWA)**
- **They support the juvenile-prosecutor and court by delivering personal and family background information for the trial and they are partly responsible for the execution of educational measures (mediation, social training etc.)**



Co-operation of welfare and justice agencies (2)

- **The youth services in youth court proceedings (*JGH*) are also responsible for avoiding unnecessary pre-trial detention.**
- **Therefore they participate in the proceedings as early as possible and are immediately informed if a juvenile is arrested (in pre-trial detention, see Sect. 72a JJA).**
- **The personnel of the *JGH* are social workers or social pedagogues with at least three years of university education (*Fachhochschulen für Sozialarbeit*).**



Co-operation of welfare and justice agencies (3)

- **The personnel of private institutions in most cases have the same professional education, sometimes they also have teachers, psychologists and social workers with special training, e. g. as mediators at their disposal).**
- **There are special courses for further professional specialisation, e. g. as a mediator, provided by the Federal probation service.**
- **In order to understand the different tasks and co-operation of welfare and justice agencies one should have a look at the German youth sanctioning system of the JJA:**



Sanctions of the German juvenile justice system (Jugendgerichtsgesetz, JGG)

diversion (informal sanctions, dismissal of the case)
possibly in combination with directives etc., §§ 45, 47 JGG **70%**

formal (court) sanctions **30%**

principle of „subsidiarity“ (§ 5 II JGG): disciplinary measures and youth imprisonment only if educational sanctions are not sufficient

educational measures
§ 5 I JGG, § 9 JGG

disciplinary measures
§ 5 II JGG, § 13 JGG

youth imprisonment
§ 5 II JGG, 17 JGG

court directives
§ 10 JGG

measures of the Juvenile Welfare Act
§ 12 JGG, SGB VIII

caution
§ 14 JGG

suspended sentence,
§ 21 JGG

unconditional

whereabouts

traineeship/working pl.

community service

supervisory directive

social training course

victim-offender mediation

traffic instruction

other directives

conditions
§ 15 JGG

§ 27 JGG: probation

§ 57 JGG: preliminary probation sentence

reparation

youth detention centre
§ 16 JGG

apology

leisure-time detention

community service

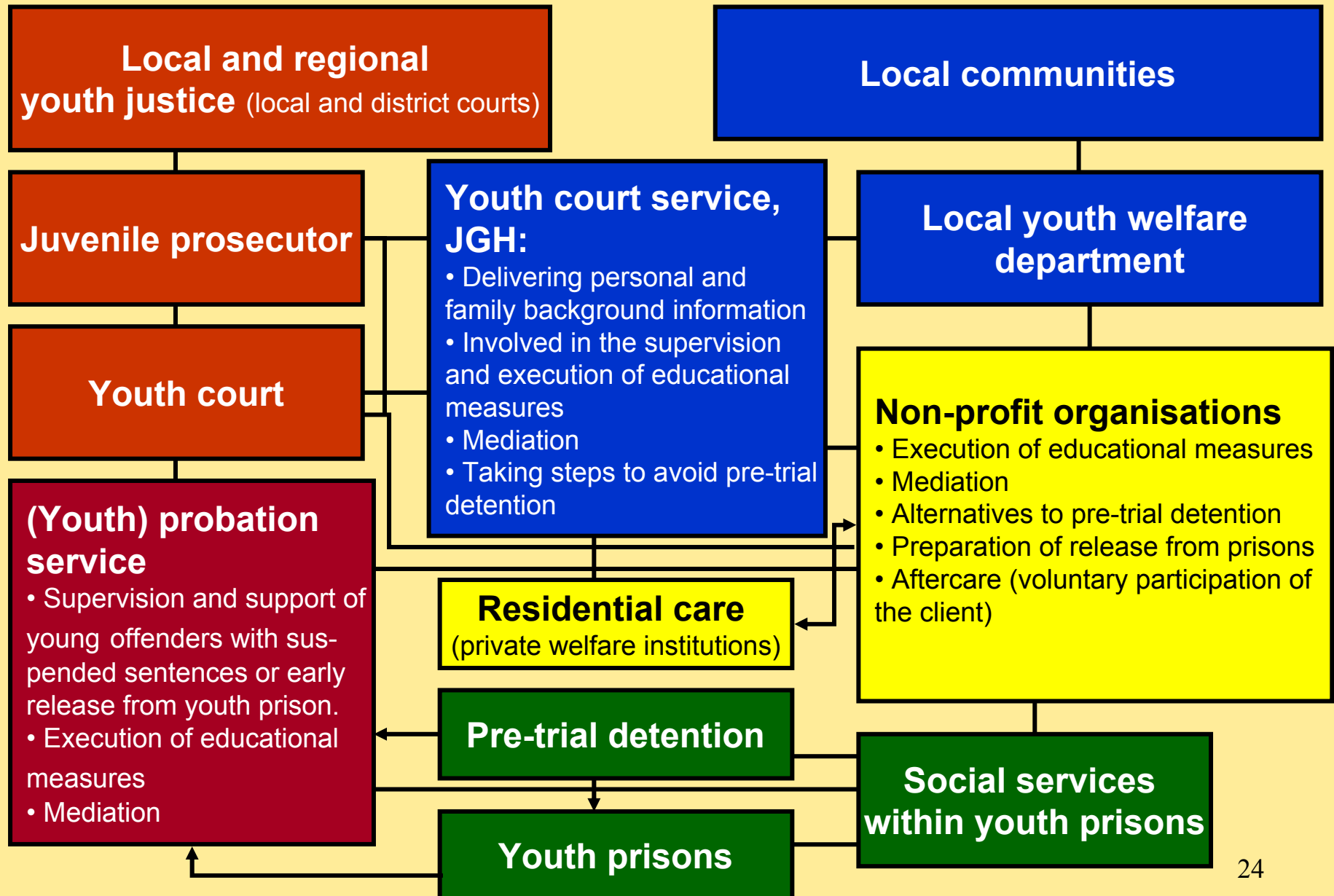
short-term detention

fine

long-term det. (-4 w.)

combination of discipl. m. and educational m.
§ 8 I JGG

youth imprisonment in combination with directives/disc. meas.
§§ 8 II, 23 JGG



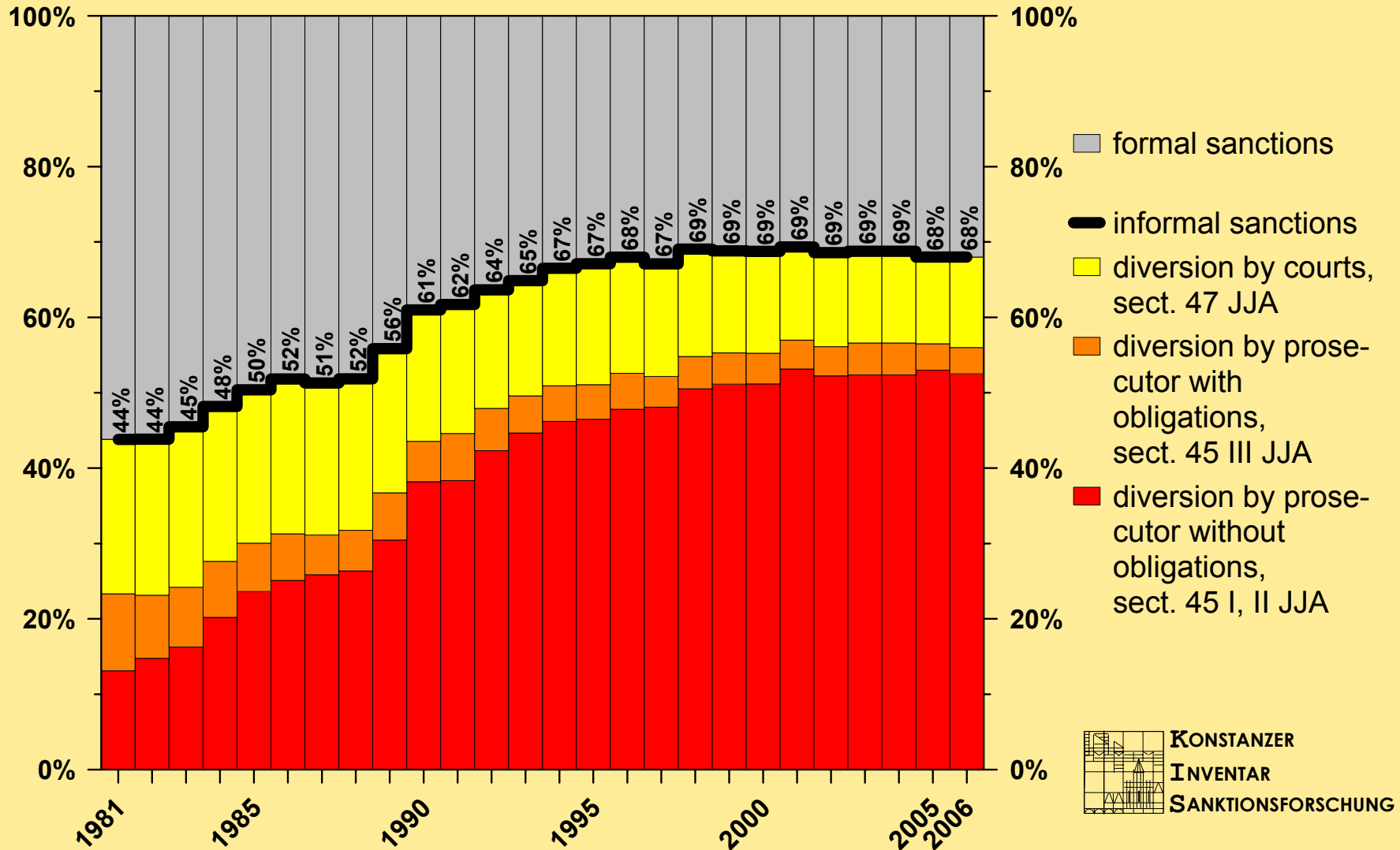


6. Sanctioning practice of juvenile justice in Germany

- The sanctioning practice in Germany can be characterised by a (in the last decades stable) mild and rational approach with respect to the principles of minimum intervention, mediation and education.**
- There has been a considerable increase in the use of diversion and educational measures,**
- a decrease in short term imprisonment (up to 4 weeks, *Jugendarrest*) and even in youth imprisonment.**
- This policy - with good reason - has been maintained even under the pressure of media fuelled debates on getting tough on youth crime.**

Diversion rates (dismissals by prosecutors or courts) in the juvenile justice system of Germany, old federal states, 1981-2006

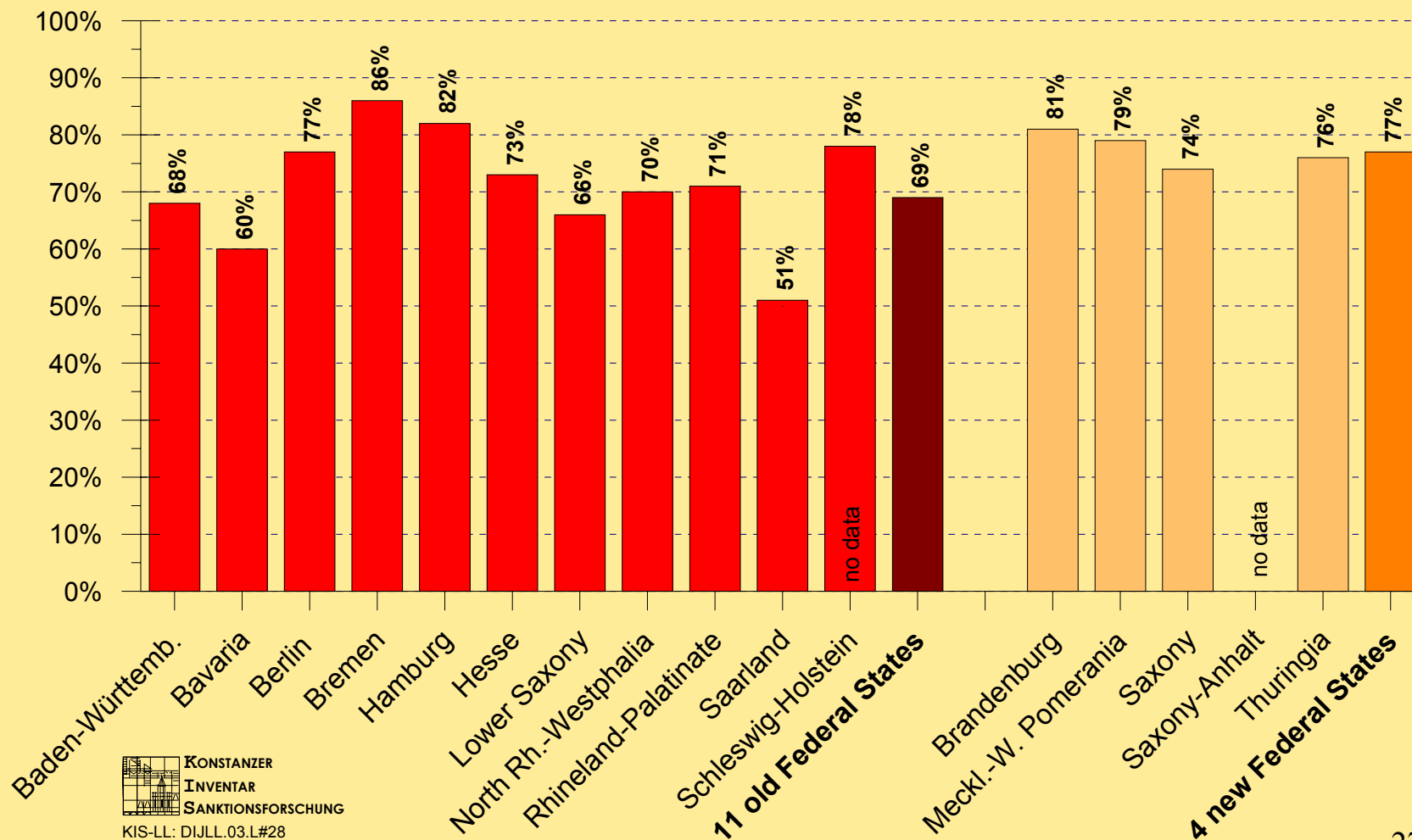
Proportion of diversion with and without obligations related to all informal and formal sanctions





Diversions rates (dismissals by prosecutor or courts) in the juvenile justice system of Germany in comparison of the Federal States, 2004

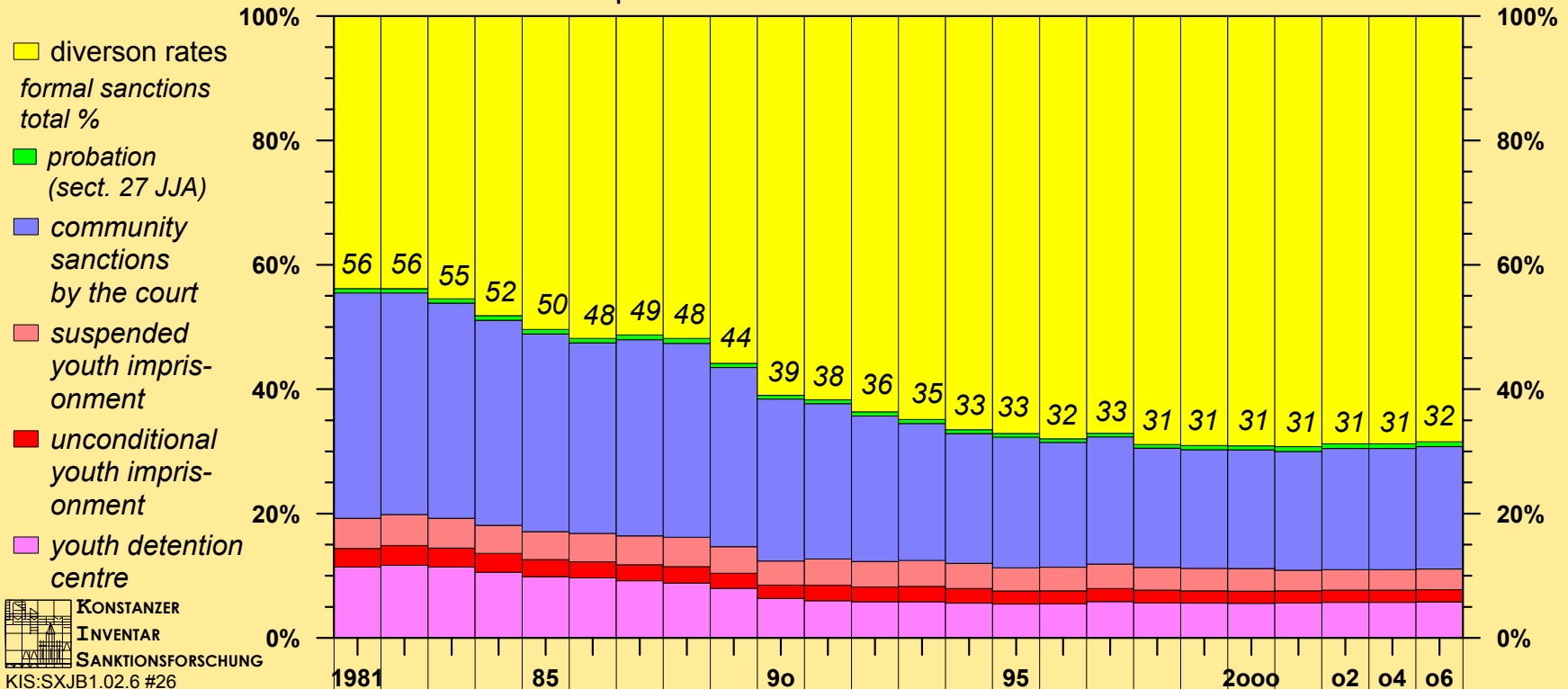
Proportion of diversion according to sect. 45, 47 JJA related to all informal and formal sanctions





Sanctioning practice in the juvenile justice system of Germany, old Federal States, 1981 - 2006

Proportion related to all informal and formal sanctions



KONSTANZER
INVENTAR
SANKTIONSFORSCHUNG
KIS: SXJB1.02.6 #26



7. Is diversion an effective youth justice strategy?

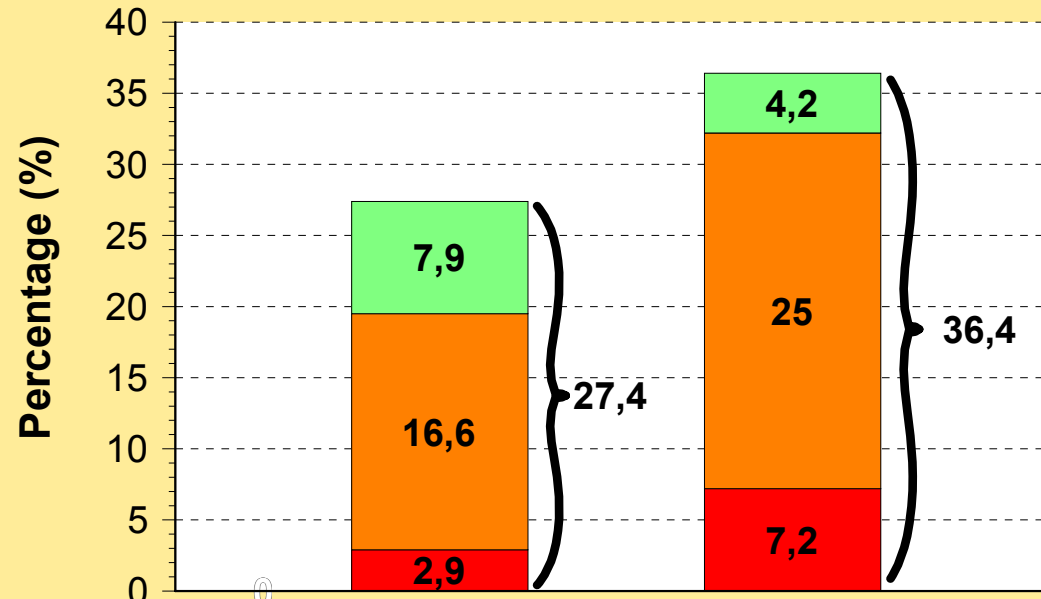
Recidivism after non-intervention vs. punishment

- **There is empirical evidence that diversion „works“.**
- **The recidivism rates are lower or at least not higher than after formal court procedures and convictions.**
- **The following German data of *Heinz & Storz* (1992) are quite impressive:**



Rates of formal and informal sanctions after a first sanction for larceny and a risk period of 3 years (juveniles, cohort 1961)

Informal and formal sanctions for reoffending according to the kind of the 1st sanction



Decisions after reoffending:

informal only (diversion)

reconviction without imprisonment

imprisonment

total reconviction rate

total

7,9%

16,6%

2,9%

19,5%

27,4%

4,2%

25,0%

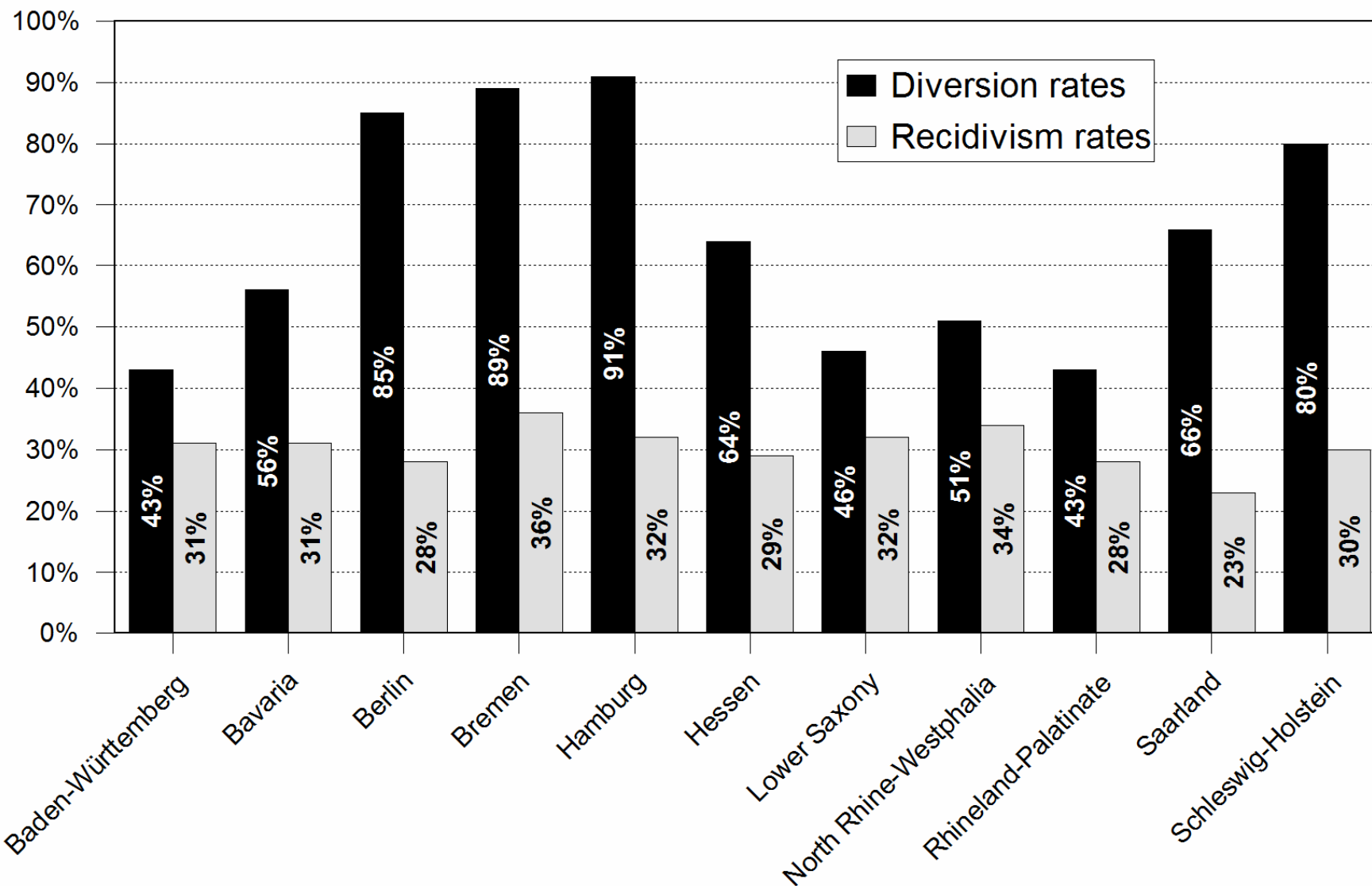
7,2%

32,2%

36,4%



Diversions rates and recidivism in comparison of the federal states in West-Germany (simple theft, first time offenders, birth cohort 1961)





What works with diversion? (2)

- **The German results are confirmed by British empirical research demonstrating that reconviction rates of offenders with a conditional discharge had lower reconviction rates (39%) than those sentenced to fines (43%), probation (55%) or community service (48%, see *Moxon* 1998, p. 91).**
- **Looking at the costs and the impact of different sentences and interventions it is evident that informal warnings and cautions are the less expensive measures.**
- **They are classified by *Moxon* (1998, p. 97) by “low re-offending for first offenders”.**



What works with diversion? (3)

- **„Caution plus“, i. e. a combination with restorative justice schemes as pure restorative justice are more expensive, but „promising in terms of re-offending“.**
- **There has to be, however, some cautiousness in interpreting the comparison of different sanctions and interventions because there is always a degree of selection bias which is not always seriously controlled.**
- **In general we may conclude, that the theoretical assumptions of diversion as an effective strategy can be confirmed by some empirical evidence, although further research into “what works, with whom, under which circumstances” is also needed in this context.**



8. Summary and conclusion

- **Juvenile justice systems have developed sanctions systems that differ from the general criminal law by a large variety of educational and community based interventions.**
- **The principle that deprivation of liberty must remain a measure of last resort is recognized world wide, but not all jurisdictions practice this principle in the same way.**
- **However, also in the Middle and Eastern European countries youth imprisonment and other custodial sanctions loose importance.**
- **New community sanctions have emerged in Western Europe since the late 1970s, in Eastern Europe since the early 1990s.**



Summary and conclusion (2)

- **Diversion has gained major importance and proofed to be a successful alternative way of dealing with “everyday” petty offences.**
- **Mediation and other restorative justice measures such as family group conferencing have successfully been implemented in some countries (Belgium, Germany, Northern Ireland etc.) and are supported by recent reforms in many countries.**
- **Other “constructive” educational sanctions or measures (educational or vocational training, anti-aggression programmes) have also been successfully implemented and expanded in the last decades.**



Summary and conclusion (3)

- **The international human rights instruments such as the ERJOSSM of 2009 give a clear orientation to a humane and in terms of the rehabilitation of offenders promising further development of juvenile justice.**
- **This orientation deserves full support and national legislators and practitioners should take advantage of exchanging good practices and experiences.**



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Thank you for your attention!

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