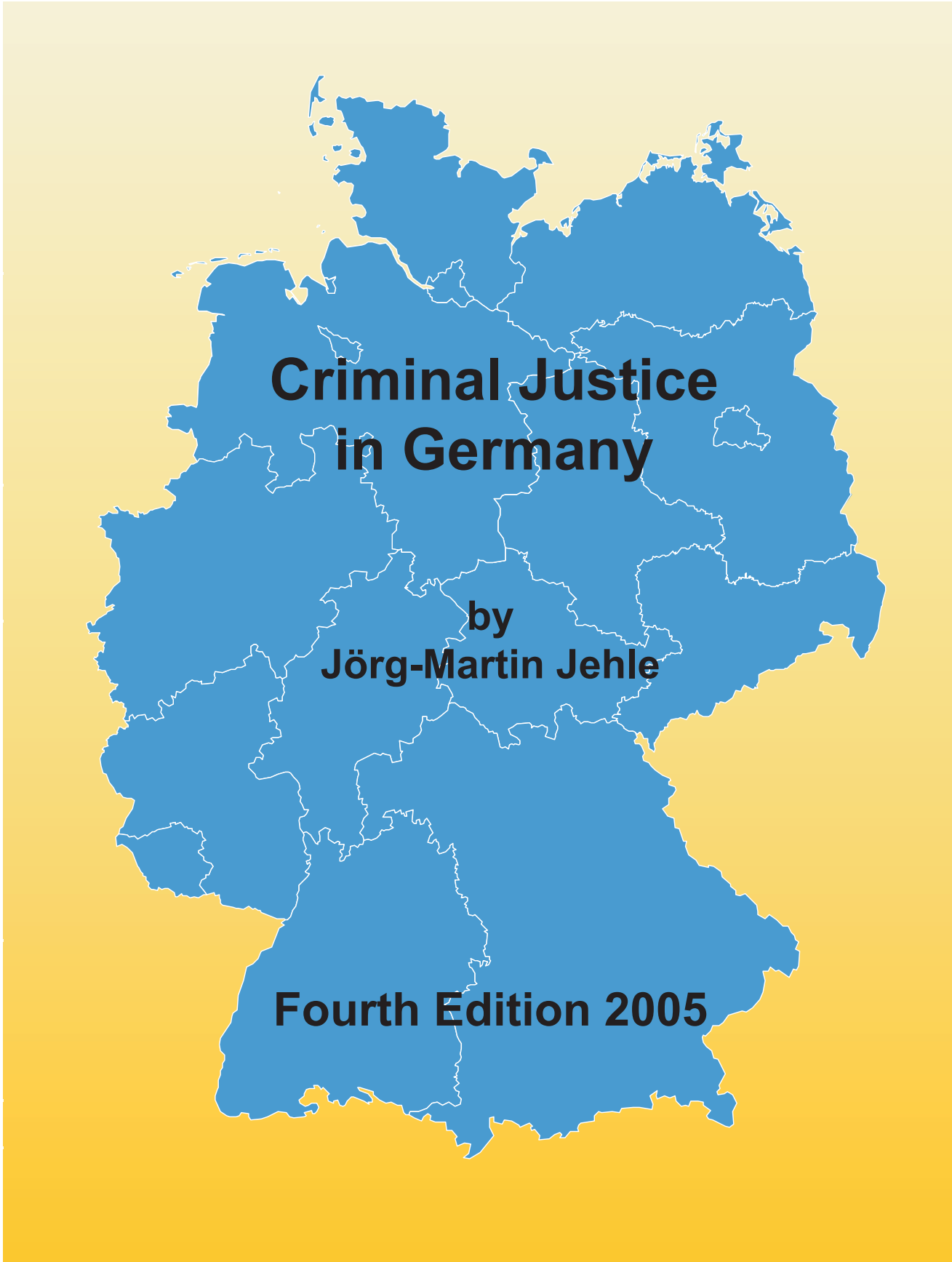




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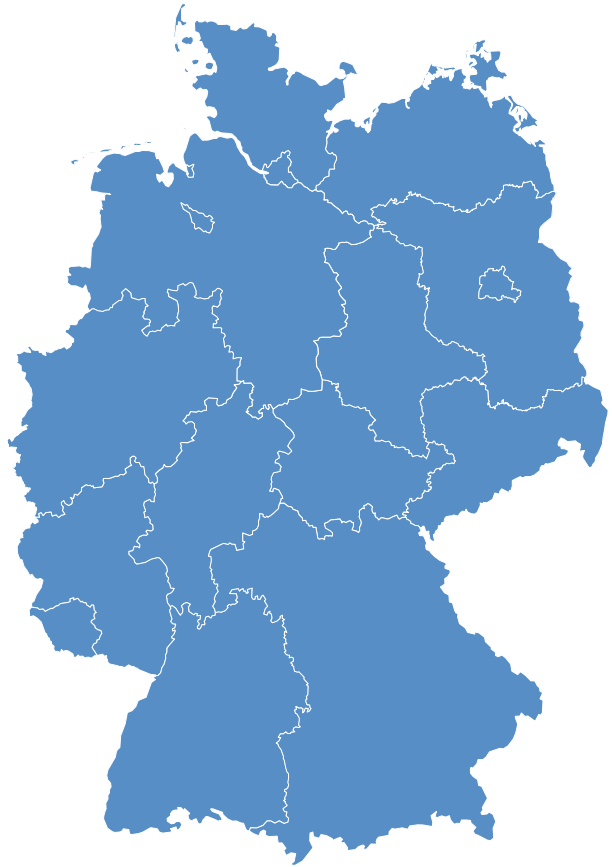


# **Criminal Justice in Germany**

by  
**Jörg-Martin Jehle**

**Fourth Edition 2005**





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**Facts and Figures**

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## Preface

Dear reader,

the image the public has of crime, its investigation and prosecution is influenced above all by spectacular individual cases of violent crime. These are the offences the mass media report on. Of course they are one of the forms crime takes. Everyday reality is, however, dominated by the multitude of property offences of a petty or semi-serious nature.

This publication aims to present a realistic picture of punishable behaviour and its prosecution using selected statistical data. Beyond this, it should provide an insight into our criminal justice system.

All levels of the criminal justice system are described from the police, prosecutorial and court activities to sentencing, imprisonment and probation. Nevertheless, it is not possible to present all the branches of criminal procedure and sanctions numerically in a publication of this kind. Additionally this edition has chapters on Offender-Victim Mediation and in the end on reconviction.

I hope that this new version is met by the same level of interest as the previous editions and can contribute to a fact-based debate on coping with crime in Germany.

Those who would like to study the crime situation and criminal law reactions in greater depth are referred to the Federal Government's first periodic safety report. It can be found on the internet at: [www.bmj.de](http://www.bmj.de).

A handwritten signature in black ink on a light green rectangular background. The signature reads "Brigitte Zypries" in a cursive script.

Brigitte Zypries  
Federal Minister of Justice



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## **I. Introduction**

### **1. Aims and principles**

This brochure intends to provide a review of the main criminal justice data in Germany. It aims to inform the general public and, for the sake of conciseness, is therefore unable to include every detail or to engage in a discussion of academic literature.

The brochure covers all levels of prosecution, sentencing and execution of sentence, from the work of the prosecution and court authorities through to conviction, imprisonment and probation. In order to give an idea of the scale of the problem, the brochure also includes the police crime figures on recorded crime and suspects.

It is very difficult to compare and contrast the data collected at the various levels of the law-enforcement process (police, prosecution, courts, prison service, probation service). This is partly because the data are collected at different dates. Another reason is the different methods used to collect the various statistics. For example, unlike the conviction statistics (Strafverfolgungsstatistik), the police crime statistics place the offences in categories in line not only with statutory requirements, but also with the criminological needs of the police; the prosecution authorities and the criminal courts mainly record numbers of cases, and to some extent of persons; but the prison and probation authorities only count persons, with the key data being recorded for a fixed date in the year.

The collapse of the GDR, German reunification and the opening of the borders to countries in eastern Europe resulted in sharp rises in the number of people coming into Germany and increased migratory flows. These developments are also reflected in the criminal justice statistics and must be borne in mind when comparisons are drawn with earlier years.

When the territory of the Federal Republic of Germany expanded to include the former GDR on 3 October 1990, the statistics also needed to be adapted, and this has occurred to varying degrees: at police level, the new Länder (the former GDR) are generally included in the statistics. The police crime statistics retain only a few exceptions where figures refer solely to the former West Germany and the whole of Berlin. However, so far the conviction statistics, which mainly cover those judged and sentenced, for the most part include only data for former West Germany and Berlin (although from 1998 onwards basic statistics are available for Brandenburg, Saxony and Thuringa, as of 2002 also for Mecklenburg-Vorpommern; current figures for those judged and sentenced in these Länder are to be found in the comments on Table 12a in the appendix); while this on the one hand permits comparisons with the pre-1990 figures, on the other hand it makes it difficult to relate the court statistics to the police data. In contrast to this, the so-called business statistics recorded by the Public Prosecutor's Office and the courts, as well as the prison and probation service statistics, refer - with a few exceptions - to the whole of Germany.

The brochure aims to collate the latest available data at each level. On the statistical prosecution and penal court levels the latest figures are for 2003. As far as the police, the prosecution service are concerned, entries are also for 2003, for prison statistics they are even possible for 2004. For probation, however, figures are only available up to 2002.



**Diagram 1: Presentation of statistics recorded during prosecution, sentencing and execution of sentence**

Stage of procedure	Reporting authority	Where data held
<b>Investigation</b> Suspicion of criminal act Passed on to Public Prosecutor's Office Pending cases Final decision (public charge, termination etc.)	<b>Police</b>  <b>Public Prosecution Office</b> <b>Public Prosecution Office</b>	<b>Police crime statistics*</b> Register of proceedings <b>Public Prosecution Business statistics*</b>
<b>Intermediate proceedings</b> <b>Main proceedings</b> Judgments Sentences	<b>Court</b> <b>Court</b> <b>Public Prosecution Office</b> <b>Public Prosecution Office</b>	<b>Court business statistics*</b>  <b>Conviction statistics*</b> <b>Conviction statistics*</b> Central Federal Register
<b>Execution of sentence</b> Prison Sentences Suspended sentence - subject to supervision by probation officer - Not suspended - when served - Remission / completion of sentence	<b>Public Prosecution Office</b>  <b>Court</b> <b>Public Prosecution Office</b> <b>Prison service</b>	Central Federal Register  <b>Probation statistics*</b> Central Federal Register <b>Prison statistics*</b>
<b>Sentencing of repeat offenders</b>	<b>Public Prosecution Office or Court</b>	Central Federal Register (basis for the reconviction statistic*)

\* Source of data for the figures which follow (see appendix, p. 55).

## 2. Review of the law enforcement process

The police and their crime statistics are closest to the reality of crime. The police register the criminal offences which they have discovered through investigation or which have otherwise been made known to them. The police find out about most crimes through information from the public; however, they remain unaware of many crimes because they are not detected, e.g. tax evasion, or are not reported by victims or witnesses, this is particularly the case for minor offences.

After the police have processed the case, they pass it on to the Public Prosecution Office, which drops the case if no suspect is found, if there is no sufficient ground for suspicion, or if the accused's guilt is of a minor nature and there is no public interest in prosecution. Further, the Public Prosecution Office can terminate the case under certain conditions, such as the payment of a fine, with the approval of the court and the suspect's consent. In the remaining cases, the Public Prosecution Office prefers a charge against the suspect or applies for a penal order from the competent court. Special arrangements apply to criminal

proceedings against juveniles (14 to 17 years) and young adults (18 to 20 years) (see section IV.4. below).

The court examines the charge(s) and (usually) commences the main proceedings. Depending on the seriousness and the nature of the alleged crime, the first court responsible will be one consisting of a criminal judge (Strafrichter), or of a professional judge and two lay judges (Schöffengericht), a grand criminal chamber, a court with three professional and two lay judges (grosse Strafkammer, Schwurgericht), or the criminal panel at a higher regional court (Strafsenat am Oberlandesgericht) (see IV.1.1 below).

During the main proceedings the case can be terminated (e.g. because the accused's guilt is of a minor nature and there is no public interest in prosecution), perhaps with a condition being imposed. Otherwise the proceedings will end in acquittal or conviction. If the accused is convicted, he will normally be sentenced to punishment. The sentence is imposed in line with the guilt of the offender; at the same time, the punishment is intended to prevent further crimes.

For adults, punishment generally takes the form of a fine or a prison sentence, with the further possibility of a driving ban as an ancillary punishment; for juveniles and young adults special arrangements apply (see IV.4. below). In addition to punishments, the Criminal Code's system of legal consequences also includes other measures of rehabilitation and security. These aim to reform the individual or protect the public from further offences by him and are permitted by law when punishment will not suffice to protect the public. Such measures include the withdrawal of permission to drive or committal to a psychiatric hospital or an institution for withdrawal treatment. These measures can also be imposed under certain conditions on offenders who, for reasons of insanity or other mental disturbance, lack criminal responsibility but are at risk of re-offending.

If the convict is sentenced to a prison sentence of up to two years, the court will suspend execution of the sentence on probation if it is to be expected that the offender will not commit any further crimes and there are no other reasons not to suspend the sentence (see IV.3.2. below for the precise conditions). At the same time, the court can impose conditions (e.g. a fine) or instructions and place the offender under the supervision of a probation officer for the term of probation.

If the sentence cannot be suspended on probation, or if the suspension is revoked, e.g. because the person has re-offended, the offender must serve the period of imprisonment in a penal institution.

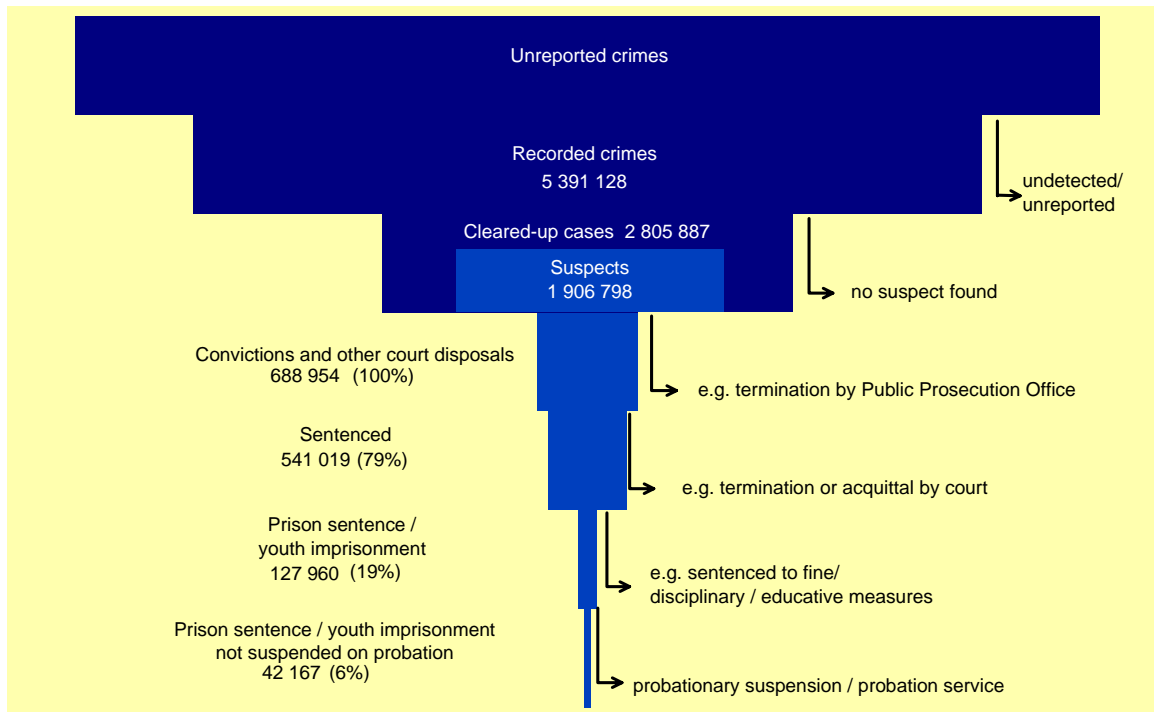
Diagram 2 illustrates the law enforcement process and gives an impression of the scale of the problem. The figures date from 2003, since data are available from that year for all the relevant aspects. They refer to the former West Germany and the whole of Berlin (since the new Länder are for the most part not yet covered by the conviction statistics) and cover all offences except for traffic offences (which are not included in the police crime statistics; see II. below).

No precise estimate of the "dark number" of crimes not recorded by the police can be given. Of the 5.4 million recorded crimes, roughly half are cleared up, and about 1.9 million suspects are found for these (see II below).

The next level for which - crime-related - statistics exist, is the decisions by the criminal courts; these are contained in the conviction statistics. It is impossible to paint a precise picture of what happens between the police and the court level (see III.1 below). It can be stated that the number of persons involved falls due to cases being terminated, e.g.

because of insufficient evidence, the insignificance of the offence, joinder of more than one set of criminal proceedings or other disposals by the Public Prosecution Office, so that the number of persons whose case is decided in court is reduced to approximately 690 000. In the diagram, this figure is given as 100 %. Most of the sanctions imposed are fines or - in the case of juveniles and young adults - educative or disciplinary measures; only a small minority are given a prison sentence, and most sentences of this kind are suspended with the offender being put on probation (see IV.3 below).

**Diagram 2: Review of the criminal law enforcement process**  
 - Former West Germany and Berlin\* -  
 (excluding traffic offences)



\* The police crime statistics refer to the whole of Berlin from 1991, the conviction statistics refer to the whole of Berlin from 1995.  
 Source: 2003 police crime statistics, published by the Federal Criminal Police Office, Wiesbaden, table 24, p. 68 and table 55, p. 94; 2003 conviction statistics (Strafverfolgungsstatistik), published by the Federal Statistical Office, Wiesbaden, table 2.1, 2.3 and 4.1.

## II. Crimes and suspects - at police level

Information about work at police level is contained in the police crime statistics, published by the Federal Criminal Police Office since 1953.

These statistics do not cover all recorded crimes. They register the illegal acts dealt with by the police, including punishable attempts. They contain the narcotics offences handled by the customs authorities. Other offences not dealt with by the police are, however, omitted. These are mostly tax and customs offences. Crimes against the state and traffic offences are also not included. The offences are categorised in line not only with statutory requirements but also with criminological needs; for example, there is a "handbag theft" category. The offences are recorded statistically once the police investigation has been concluded and before they are handed on to the Public Prosecution Office.

The ability of the police crime statistics to provide an overall picture of criminality is primarily impaired by the fact that the police fail to detect some of the crimes committed. The level of unrecorded crime depends on various factors, and particularly on the willingness of the population to report crime - a factor which varies according to the nature of the crime. Also, the legal aspects of the case may change in the course of law enforcement proceedings.

The police crime statistics therefore do not provide a true reflection of actual crime, but merely an approximation as to what is happening, whose accuracy depends on the type of crime involved. The data supply information about the police's investigation work and can be viewed as an indicator of the population's concern about crime.

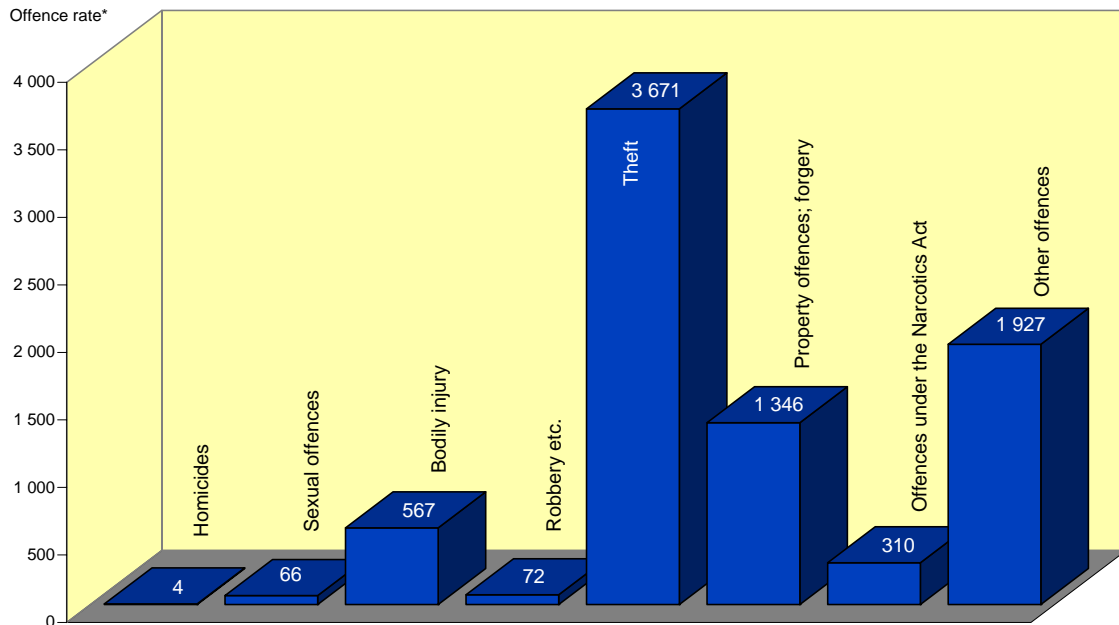
### 1. Recorded cases

Every *offence known* to the police is counted. If, as the case is dealt with, further illegal acts by the same suspect become known, they are counted as one case if they are the repeated commission of the same offence against the same person or the repeated commitment of the same offence against unknown persons, e.g. the purchase of stolen works of art over a lengthy period of time by an antiques dealer. If an action violates several criminal sections or one criminal section several times, it is also counted as one case. The case is then recorded under the offence for which the law provides the most severe punishment.

The *frequency rate* is the number of recorded cases per 100 000 inhabitants, either in total or for individual types of offences. However, the significance of the frequency rate is impaired by the fact that the statistics record offences committed not only by the resident population but also by foreigners not included in the population figures (see the remarks about the *suspect rate* in II.3. below). The frequency rate may therefore sometimes be overstated.

Approximately half of the detected cases are of theft. Serious offences against the person, such as homicide or offences against sexual self-determination (sexual offences), are relatively rare. For every 100 000 inhabitants, there are 4 homicides, but almost 3 700 thefts (table 1 and diagram 3).

Diagram 3: Recorded cases  
- Whole of Germany -



\* Frequency rate = number of offences per 100 000 inhabitants.  
Source: 2003 police crime statistics, Federal Criminal Police Office, Wiesbaden; see table 1 for absolute figures.

It should be borne in mind that this does not represent the actual level of crime. Firstly, the crimes undetected by the police are not included, and secondly the offence is registered as described by the police or described to the police. In the course of the law enforcement process, a homicide may turn out to be an accident, or a case of bodily injury to be attempted murder.

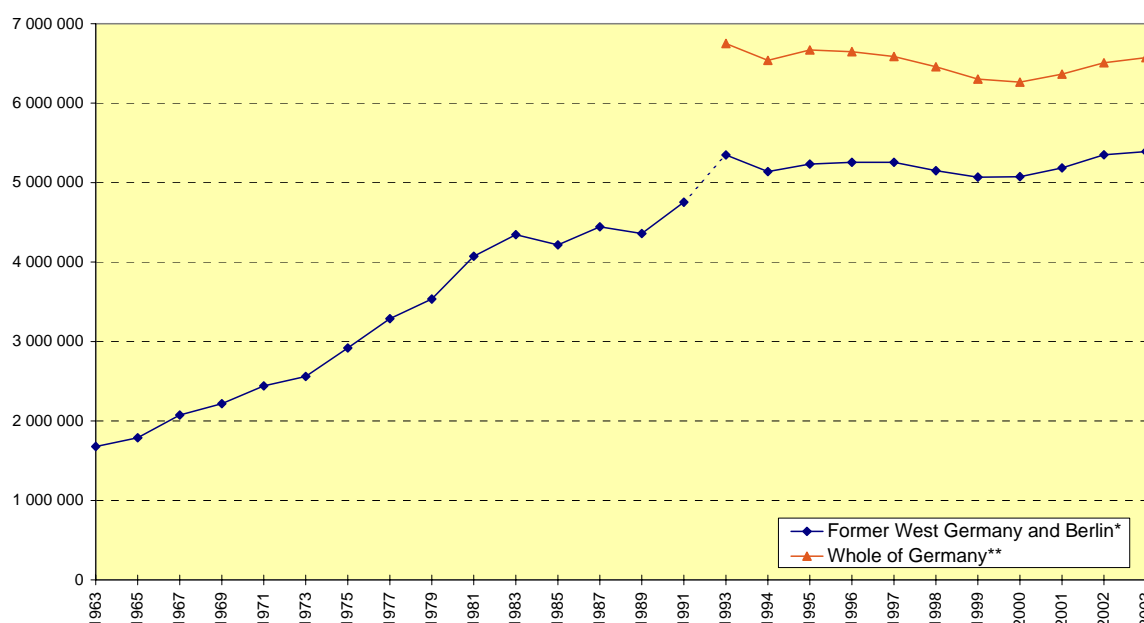
Table 1: Detected cases and frequency rate  
- Whole of Germany -

Crimes	Detected cases	Frequency rate
Total crimes	6 572 135	7 963
Homicides (§§ 211-213, 216, 217, 218 ff., 222*)	3 465	4
Sexual offences (§§ 174-184b*)	54 632	66
Bodily injury (§§ 223-227, 229, 230*)	467 944	567
Robbery, extortion resembling robbery, assault of a motor vehicle driver resembling robbery (§§ 249-252, 255, 316a*)	59 782	72
Total theft (§§ 242, 243-244a, 248a-c*)	3 029 390	3 671
including: theft under aggravating circumstances (§§ 243-244a*)	1 488 458	1 803
Property offences; forgery (§§ 263-283d, 246-248a, 146-152a*)	1 111 228	1 346
Offences under the Narcotics Act (§§ 29-30 of the Act)	255 575	310
others	1 590 119	1 927

\* §§ = sections of the Criminal Code.  
Source: 2003 police crime statistics, published by Federal Criminal Police Office, Wiesbaden, table. 5, p. 32 ff.

Diagram 4.1 (see table 4.1a in annex for absolute figures) shows the development of the numbers of recorded crimes. The number has been rising almost steadily since 1963. In 1983, at 4.3 million, it was more than twice, and in 1993, at 5.3 million, more than three times the level in 1963. The continuous rise has only been interrupted by slight declines (partly due to statistical changes) in 1985 and 1989. This was followed by a sharp rise in the short term up until 1993 - coinciding with German unification and the opening of borders to the eastern European countries. Between 1993 and 2000 a stable situation with a slight downwards trend can be observed for the former West Germany as well as for Germany as a whole. From 2000 onwards, however, a slight rise takes place. The trends described here are also to be seen in the frequency figures (crimes per 100 000 inhabitants; see Tab. 4.1a in the appendix).

Diagram 4.1: Recorded crimes 1963 - 2003



\* Until 1990 West Berlin; from 1991 whole of Berlin.

Figures for the whole of Germany were already available in 1991. However, due to initial difficulties in the data collection they are first shown here as of 1993.

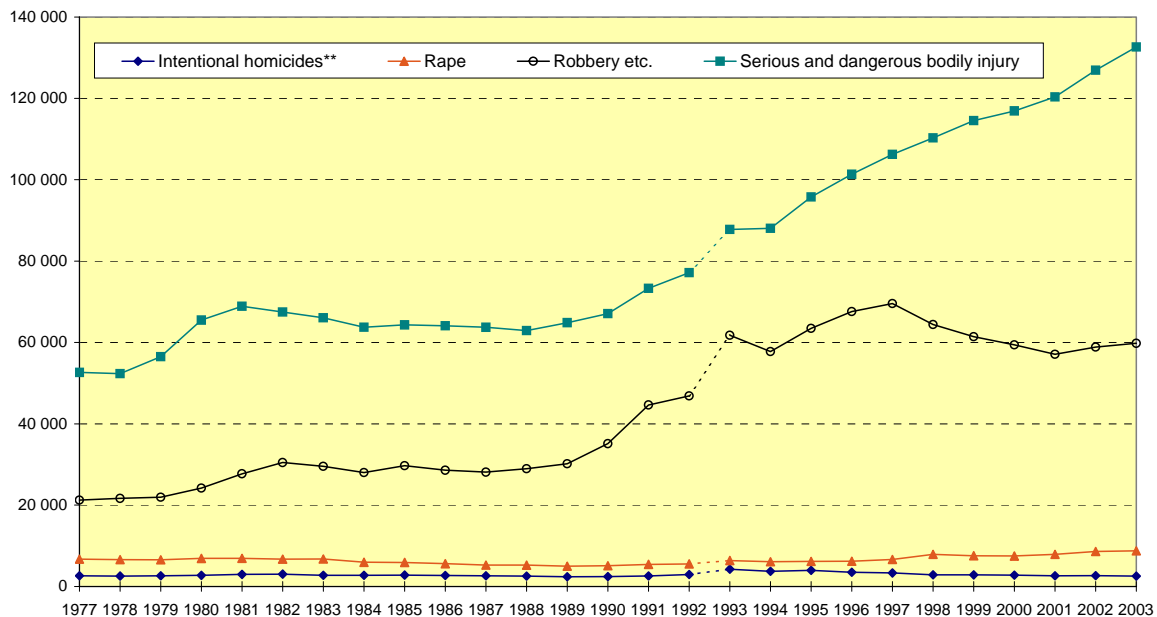
Source: Police crime statistics for the relevant years, published by the Federal Criminal Police Office, Wiesbaden, table 1.1; from 1997 onwards section 2.1.1; see table 4.1a in annex for absolute figures.

Diagram 4.2 (see table 4.2a in annex for absolute figures) shows the trend in selected violent crimes over the last 20 years. The police crime statistics record the following categories of crime as "violent crime": intentional homicides, rape and serious sexual duress, robbery and extortion accompanied by violence, dangerous and serious bodily injury, as well as kidnapping for extortion, hostage-taking, bodily injury leading to death, and attacks on air traffic. However, the numbers for the latter categories are very small.

Between 1977 and 1981, there was a slight or a clear rise in all these categories of offence. For example, the number of cases of dangerous and serious bodily injury rose from 52 000 in 1977 to 68 800 in 1981. Between 1982 and 1989 the figures remained relatively constant or even fell slightly. As of 1989, a - more or less - sharp rise in violent crime can be observed at first. It should, however, be remembered that the figures since 1993 are higher because they refer to the whole of Germany; furthermore there is no uniform trend:

whilst among the quantitatively most important groups on the one hand the number of cases of dangerous and serious bodily injuries rises steadily, the number of robberies on the other hand has been declining since 1997.

Diagram 4.2: Selected violent crimes 1977 – 2003\*



\* Until 1990 Former West Germany and West Berlin; from 1991 including all Berlin; from 1993 whole of Germany.  
 \*\* Including the cases of murder and manslaughter committed between 1951 and 1989 and recorded by the Central Investigation Group on Governmental and Unification-Related Crime ("border incidents").  
 Source: Police crime statistics for the relevant years, published by the Federal Criminal Police Office, Wiesbaden, table 2.18, from 1997 onwards table 219; see table 4.2a in annex for absolute figures and definitions.

There are a number of possible reasons for the long term rise in crime, in particular, changes in the population structure. Up until the mid-1980s, the statistics are affected by the fact that those born in high-birth-rate years entered age groups more likely to commit crimes and by the increase in the population due to the influx of foreigners and ethnic Germans from abroad. From 1989 onwards, the fact that the fall of the Berlin Wall, German reunification and the opening of the borders to eastern European countries resulted in massive rises in the number of people coming into Germany and increased migratory flows has had an impact on the figures. Additional causes are seen to result from long-term shifts in the country's social structure. Furthermore only time will tell whether the development of the last few years will continue and these numbers stabilise at a high level.

## 2. Clear-up rates

Almost half of all cases recorded are cleared up (table 2).

A *cleared-up case* implies an illegal act for which a suspect is caught red-handed or is at least known by name as a result of police investigations.

Table 2: Clear-up rate  
- Whole of Germany -

	Cases recorded	Cases cleared up	Clear-up rate
Total crimes	6 572 135	3 486 685	53%

Source: 2003 police crime statistics, published by the Federal Criminal Office, Wiesbaden, table 1, p. 25.

The clear-up rate for all recorded crime is given here only in order to provide an impression of the scale of criminal justice activities. There are great variations between the different categories of crime: e.g. 96 % of homicides are solved, but only 13 % of serious thefts.

### 3. Suspects

A *suspect* is anyone who is suspected to have committed an illegal act after police investigations have produced sufficient indications of this. This includes perpetrators, inciters and accessories. Each person involved is recorded on the basis of this definition, irrespective of whether there may be exceptional grounds for personal exemption from culpability or whether the person lacks criminal responsibility. The figures therefore also include children under 14, who are below the age of criminal responsibility.

If several cases of the same offence are established against a single suspect, he will only be counted once in the same Land (federal state). If he is suspected of different offences in several cases, he is registered separately for each category, but only once for the combined category or for the total of offences.

Table 3: Suspects by age and sex  
- Whole of Germany -

Age groups	Suspects		
	Total	Male	Female
Total	2 355 161	1 800 062	555 099
Adults (21 and over)	1 687 440	1 293 239	394 201
Young adults (18-20)	247 456	198 010	49 446
Juveniles (14-17)	293 907	218 181	75 726
Children*	126 358	90 632	35 726

\* Including those under 8 years of age - unlike in diagram 5.

Source: 2003 police crime statistics, published by the Federal Criminal Police Office, Wiesbaden, table 32, p. 74.

*Non-German suspects* are persons of foreign nationality, stateless persons and those of uncertain nationality.

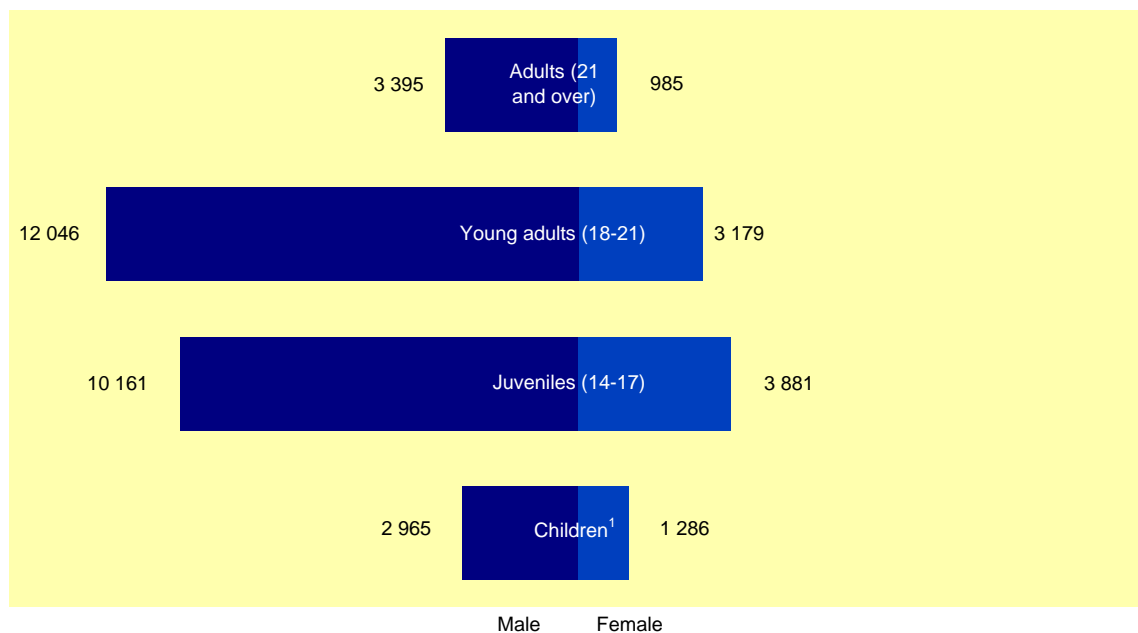
The *suspect rate* is the number of suspects established for every 100 000 inhabitants of the relevant population group, excluding children below 8 years of age. This figure allows one to determine the specific criminality level in certain groups of the population. However, it is only given for German suspects. It is impossible to calculate meaningful suspect rates for non-German suspects because the population statistics do not include unregistered foreigners staying in Germany legally (e.g. as tourists, on business, cross-border commuters,



stationed armed forces or diplomats) or illegally. Furthermore, as the last census showed, even the figures for the officially registered foreign resident population are very unreliable.

More than three quarters of suspects are men; women only account for almost one-quarter. As is to be expected, the vast majority of suspects are adults (21 and over), but, as a proportion of their age group, they are less involved in crime than juveniles (14-17) and young adults (18-20; for definition of these groups see IV. 4). A comparison of the age groups shows that the highest suspect rates are recorded for (German) juveniles and particularly young adults: of every 100 000 of the relevant age group, a good 12 000 of young male adults and more than 10 000 male juveniles, i.e. roughly every eight young adult and one in ten juveniles, are on police records, which is the case for only one in thirty adults. However, it should be remembered that the crimes in which children and juveniles are mostly involved are generally less serious in nature, such as shoplifting, bicycle theft or criminal damage, and that the vast majority of young suspects are only recorded once or during a short period of their lives (table 3 and diagram 5).

Diagram 5: Suspect rate\* - Germans by age and sex  
- Whole of Germany -



\* Suspect rate = number of suspects per 100 000 of the relevant age group.

<sup>1</sup> over 8.

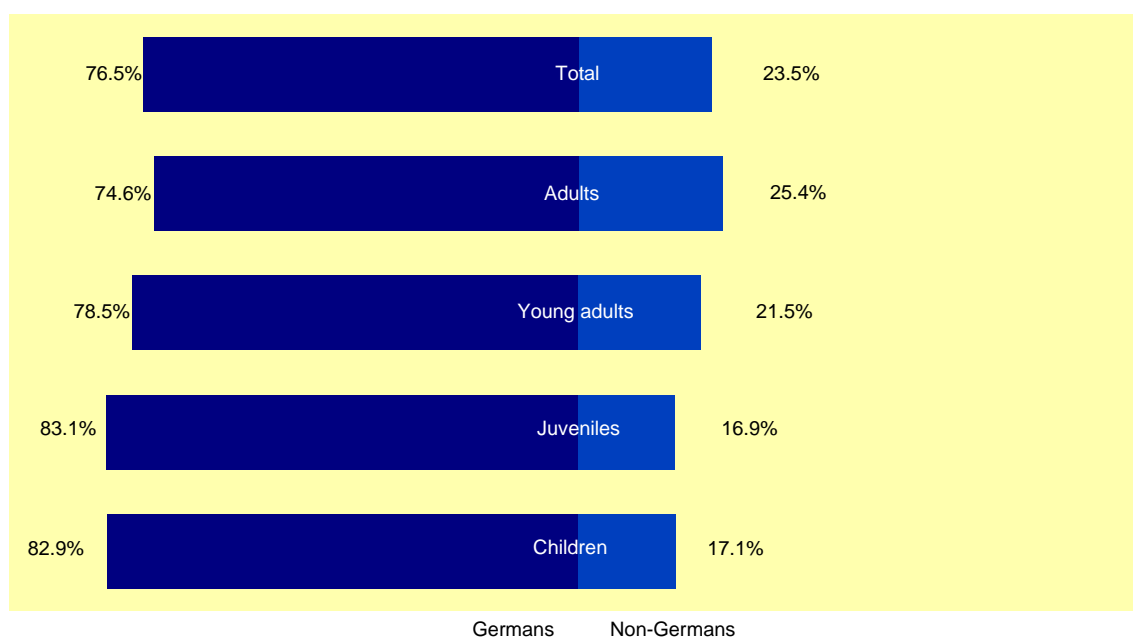
Source: 2003 police crime statistics, published by the Federal Criminal Police Office, Wiesbaden; see table 5a in annex for absolute figures.

Non-German suspects account for just under 24 % of all suspects; this is higher than their proportion of the population of approximately 9 % (see diagram 6). However, the different pattern of crime reporting in the population must be borne in mind here, as must the fact that the suspects include tourists, armed forces personnel and their families stationed in Germany, cross-border commuters and persons staying illegally in Germany - none of

whom are included in the population figures. Furthermore, the structure of this group is different from that of the German population (in terms of age, sex and social structure). The crime figures also include a large proportion of offences which can only be committed by non-Germans, such as breaches of the Aliens Act and the Asylum Procedure Act. It should be noted that, within the group of non-Germans, there are great variations in the proportions of suspects according to nationality and the reason why they are in Germany.

The proportion of non-German suspects varies between the age groups: from 17 % for children to 25 % for adults: i.e. roughly every fourth adult suspect and almost every fifth child suspect is not German. It should also be borne in mind that only a small minority of both the German and the non-German resident population are recorded as suspects by the police, and most of them are suspects in less serious cases.

**Diagram 6: Suspects by age and nationality**  
- Whole of Germany -



Source: 2003 police crime statistics, published by the Federal Criminal Police Office, Wiesbaden; see table 4 for absolute figures.

A comparison of German and non-German suspects reveals a similar distribution of criminality between the various age groups (table 4). However, there are relatively more German 14-17 year-old suspects, and relatively more non-German adult suspects. A possible explanation may lie in the different age structure of the non-German population. In the long term, comparisons such as these which are based on nationality will of course become less meaningful due to foreign residents becoming German in increasing numbers on the one hand and the massive immigration of ethnic Germans on the other which has taken and is still taking place.

Table 4: Suspects by age and nationality  
- Whole of Germany -

Age group	German		Non-German	
	Number	%	Number	%
Total	1 801 410	100.0	553 750	100.0
Adults	1 258 205	69.8	429 234	77.5
Young adults	194 350	10.8	53 106	9.6
Juveniles	244 098	13.6	49 809	9.0
Children	104 757	5.8	21 601	3.9

Source: 2003 police crime statistics, published by the Federal Criminal Police Office, Wiesbaden, table 33, p. 75.

### **III. Prosecution**

#### **1. Decisions by the Public Prosecution Office**

After the cases have been processed by the police, they are passed on to the Public Prosecution Office. The Public Prosecution Office is also informed directly about certain cases, e.g. because they are reported to it or it learns of them itself.

As it is "in charge" of the investigation proceedings, the Public Prosecution Office takes further steps to clear up the case and identify a suspect. The intention is to ascertain whether there is sufficient evidence against the accused for main proceedings to be opened, i.e. a level of suspicion which makes a subsequent conviction likely.

If the investigations provide sufficient indications to assume that a criminal act has occurred and a suspect can be named, the Public Prosecution Office will principally bring a charge against the accused at the relevant court (see IV.1.1. below).

If it is a simple case which can be dealt with quickly, the Public Prosecution Office can apply to the criminal judge or the Schöffengericht for "accelerated proceedings". In such cases, a formal charge will usually not be filed.

In simple cases, the Public Prosecution Office can apply for a penal order without previous trial. This simplified procedure, with no oral proceedings, makes it possible to deal with uncomplicated cases quickly. However, this approach cannot be applied to "Verbrechen" (offences with a minimum punishment of a one year prison sentence). Also, there are limits to the level of sanction that can be imposed in such proceedings: at most, this can be either a fine or a suspended custodial sentence of up to one year.

Penal orders and accelerated proceedings are not permitted in cases involving juveniles. Instead, the Public Prosecution Office can apply for "simplified proceedings", as long as no period of custody in a young offender institution or measures to reform the offender or protect the public are likely.

If no suspect is found, if the act is not criminal or if there are other procedural impediments, e.g. if the case falls under the statute of limitations, the Public Prosecution Office will discontinue the proceedings in accordance with Section 170 paragraph 2 of the Code of Criminal Procedure.

The proceedings can also be terminated if the offender's guilt is of a minor nature and there is no public interest in prosecution. This termination can involve the imposition of certain conditions, such as financial redress for the injury caused by the act, the payment of a fine, the undertaking of community service, or, as of the year 2000, offender-victim mediation. Furthermore, the Public Prosecution Office can refrain from prosecution if the crimes involved are insignificant additional offences compared with the main crime with which the accused is charged.

In the case of certain crimes (trespass, minor bodily injury, criminal damage, etc.), the Public Prosecution Office can advise that a private prosecution be pursued if there is no public interest in prosecution; the injured party must then bring a charge himself. This is not possible in cases involving juveniles.

The approach taken by the Public Prosecution Office in individual cases is recorded in the statistics of the courts and Public Prosecution Offices. Unlike the police crime statistics, which register cases and persons, and the conviction statistics, which refer to persons, these generally register the number of proceedings. It is also possible for several crimes to be brought together in one set of proceedings or for one set of proceedings to be directed against several suspects, so that the number of proceedings recorded is less than the number of accused. The statistics also include cases of which the Public Prosecution Office, but not the police, is aware. In 2003, that applied to about one-fifth of the total number. Additionally, unlike the police crime statistics, all motoring offences and regulatory offences (apart from proceedings for the imposition of administrative fines) are recorded. In 2003 the Public Prosecution Office at the regional courts and the local courts dealt with 4 766 070 and at the higher regional courts with 2 604 investigative proceedings. In view of their relative rarity, the latter will not be taken into consideration during further discussion of this subject. In order to create a basis for comparison with the court figures, table 5 shows the way the case was dealt with in terms of the number of persons.

Table 5: Number of persons investigated\* and the way the cases were dealt with  
- Whole of Germany - \*\*

Case dealt with by:	Number of persons	Percentage
Total	5 624 822	100.0
Public charge(s)	674 136	12.0
Application for a penal order	619 827	11.0
Conditional termination	279 096	5.0
Other disposals	4 051 763	72.0

\* Only cases dealt with by the Public Prosecution Office at the regional courts and local courts; excluding those (few) dealt with by the Public Prosecution Offices at the higher regional courts.

\*\* for Schleswig-Holstein 1997 figures only.

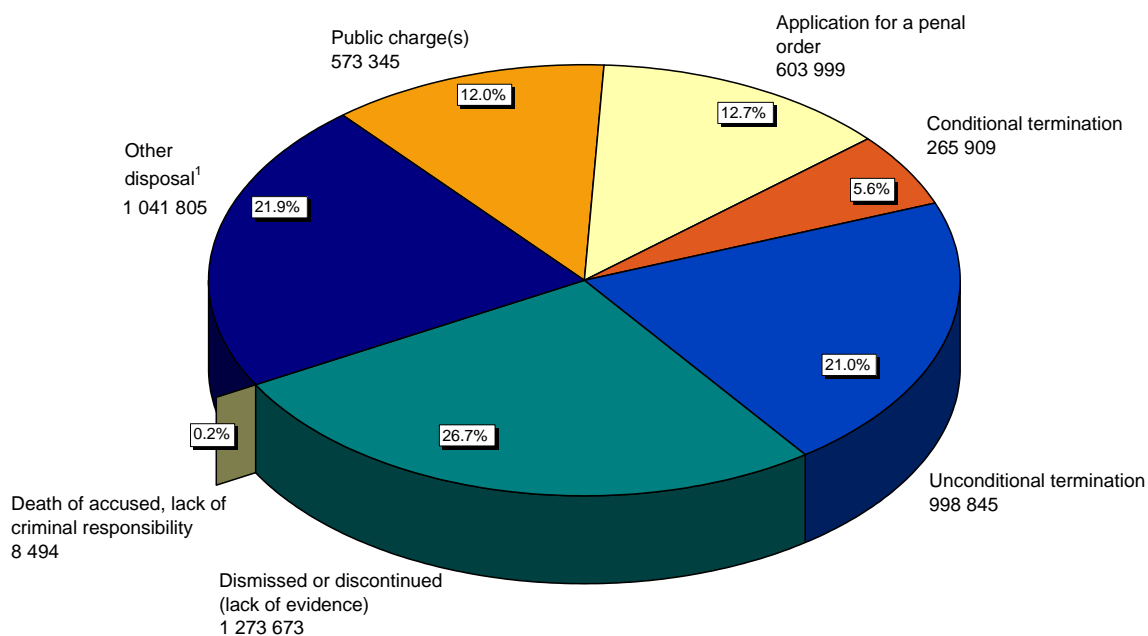
Source: 2003 Statistics of the Public Prosecution Offices, published by the Federal Statistical Office, Wiesbaden, table 2.4.

It is noticeable that less than one-third of the accused persons face charges, applications for penal orders or a conditional discharge; the proceedings against all the other persons are dealt with in a different way. The only statistics available relating to these other decisions for the whole of Germany, however, refer to the number of proceedings, and not of individuals.

Diagram 7 shows that 12 % of the proceedings dealt with by the Public Prosecution Office resulted in a charge being brought, 13 % in an application for a penal order, and 6 % in a conditional discharge. 21 % of proceedings result in unconditional terminations; these are mainly petty offences committed by adults (Section 153 of the Code of Criminal Procedure) or by young persons (Section 45 paragraph 1 of the Act on Juvenile Courts; Section 45 paragraph 2 is also included here) and insignificant additional offences (Section 154 paragraph 1 of the Code of Criminal Procedure). A little over one-quarter of the proceedings end in dismissal or discontinuation in accordance with Section 170 paragraph 2 of the Code of Criminal Procedure, particularly due to lack of evidence about the crime or the suspect or because of an impediment to the proceedings (e.g. statute of

limitations), or the conditions for continuing the proceedings are lacking. The "other" ways of dealing with the case, affecting just over one-fifth of all cases, generally involve passing the proceedings on to another Public Prosecution Office or - in the case of regulatory offences - to the regulatory authority, or the recommendation that a private prosecution be brought.

**Diagram 7:**  
**Cases dealt with by the Public Prosecution Office\***  
**- Whole of Germany -**  
**Total number of cases: 4 766 070**



\* The number of proceedings, not persons, dealt with by the Public Prosecution Office at the Regional Courts and the Local Courts are counted.

<sup>1</sup> Including proceedings passed on to other Public Prosecution Offices (n=196 152), to an administrative authority (regarding regulatory offences; n=218 244), in connection with another matter (n=249 001), provisional termination (n=128 400), recommendation that private proceedings be brought (n=163 537), application for securing proceedings (n=527), applications for simplified juvenile proceedings (n=19 336), applications for summary decisions (n=39 456).

Source: 2003 Statistics of the Public Prosecution Offices, published by the Federal Statistical Office, Wiesbaden, table 2.2.

## 2. Procedural coercive measures, particularly remand custody

The Public Prosecution Office can order coercive measures or apply for their imposition by a judge in order to secure the investigation. Such means can include the seizure of evidence, searches, attachment in rem, measures for identification purposes and, the most intrusive, remand custody.

Remand custody can only be ordered by a judge where the accused is strongly suspected of having committed the crime (i.e. it is very likely that he will be punished), where the

detention is not disproportionate to the significance of the case and to the likely punishment, and there are grounds for remand custody, such as the accused’s flight, the risk of flight or the risk of evidence being tampered with (Section 112 of the Code of Criminal Procedure).

The most important figures are contained in the conviction statistics. These refer to those who have been judged in court, and who were arrested during the prosecution procedure and kept in remand custody; in other words, the small minority of arrested persons whose cases were dropped by the Public Prosecution Office are not included.

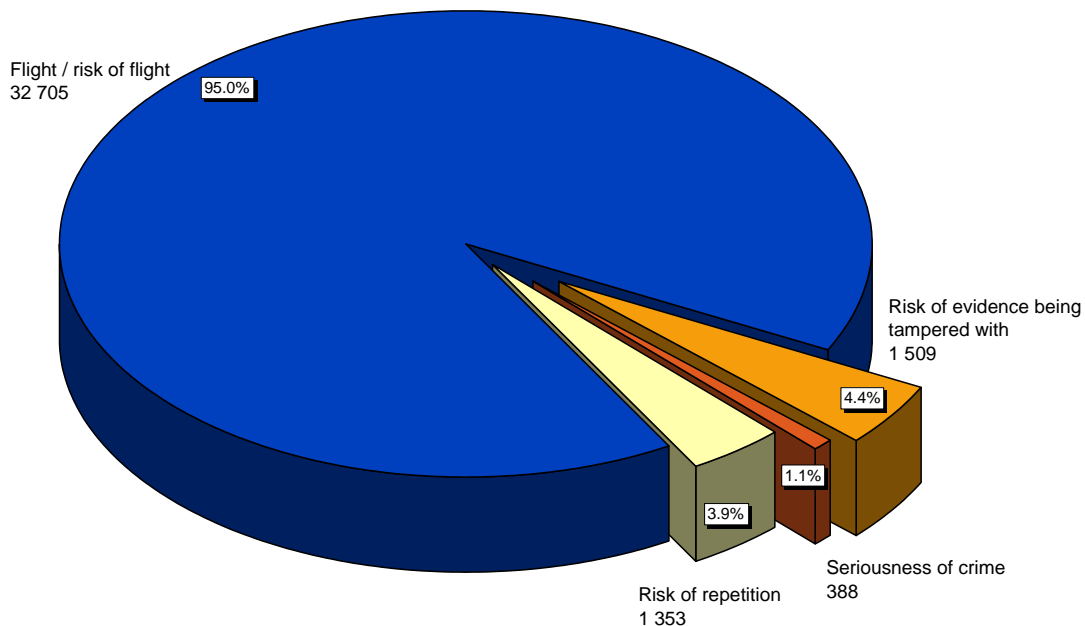
34 414 persons, or 4 % of all those judged in court in the former West Germany and Berlin, were previously in remand custody; for females, the figure is only 1.7 %. However, the detention rate fluctuates widely depending on the charge: it is particularly low in the case of traffic offences, and particularly high in the case of homicides.

The suspect fleeing or the risk of flight is easily the main reason for imposing remand custody; there are far fewer cases where it is imposed because of a risk that evidence will be tampered with, i.e. that evidence will be manipulated or witnesses influenced (Section 112 paragraph 2 of the Code of Criminal Procedure). There are even fewer cases where remand custody is imposed because of the seriousness of the crime (Section 112 paragraph 3 of the Code of Criminal Procedure) or of the danger of repetition in the case of sexual crimes or other serious crimes (Section 112a of the Code of Criminal Procedure) (diagram 8 and table 8a in annex).

### Diagram 8: Grounds for Remand Custody\*

- Former West Germany and Berlin -

Total persons in remand custody: 34 414

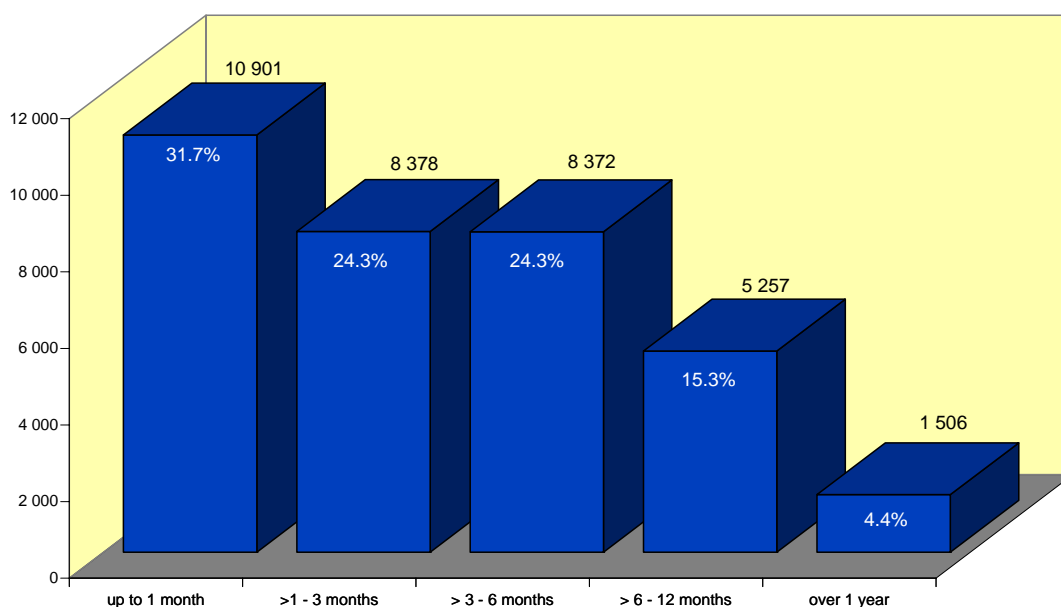


\* Several reasons at once are possible; therefore the total exceeds 100 %.  
 Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 6.1.

There is also a wide discrepancy between the numbers of men and women in remand custody 92 % of those held in remand custody and subsequently tried were male.

The length of remand custody varies widely: for 32 % it is fairly brief, up to one month of detention, for 24 % between one and three months, and roughly 24 % of those in remand custody remain in custody for between 3 and 6 months. Although remand custody can only last for longer than 6 months under specific conditions, 20 % are detained for longer than 6 months. In the case of over 1 500 persons (4 %), the custody even lasts longer than a year (diagram 9). Once again, criminal proceedings and thus also remand custody tend to last longer for serious crimes than for less serious offences. The average length of remand custody is somewhat lower for women than for men.

**Diagram 9: Length of remand custody**  
- Former West Germany and Berlin -



Source: 2003 conviction statistics, published by the Federal Statistical Office; see table 8a in annex for absolute figures.



## **IV. Sentencing, penal sanctions**

### **1. Court proceedings**

#### *1.1 How the courts are organised*

Once the charge has been filed by the Public Prosecutor's Office, the court checks whether there are sufficient grounds to suspect the accused of the crime he is alleged to have committed and main proceedings can begin.

Generally, the local court (Amtsgericht) is the court of first instance. If the crime is one where the punishment is not likely to be more than two years' imprisonment, the case is presided over by a single judge. If imprisonment of between two and four years is likely or an allegation of a "Verbrechen" (offences with a minimum punishment of a one year prison sentence) is to be heard, the case will normally come before a judge and two lay assistants (Schöffengericht). The regional court (Landgericht) is responsible for serious cases, and the Small Criminal Chamber at a regional court (Strafkammer) hears all cases in which imprisonment of over four years or commitment to a psychiatric hospital or to preventive detention (post imprisonment) is to be expected. A court with three professional and two lay judges (Schwurgericht) hears particularly serious cases, above all those resulting in a person's death.

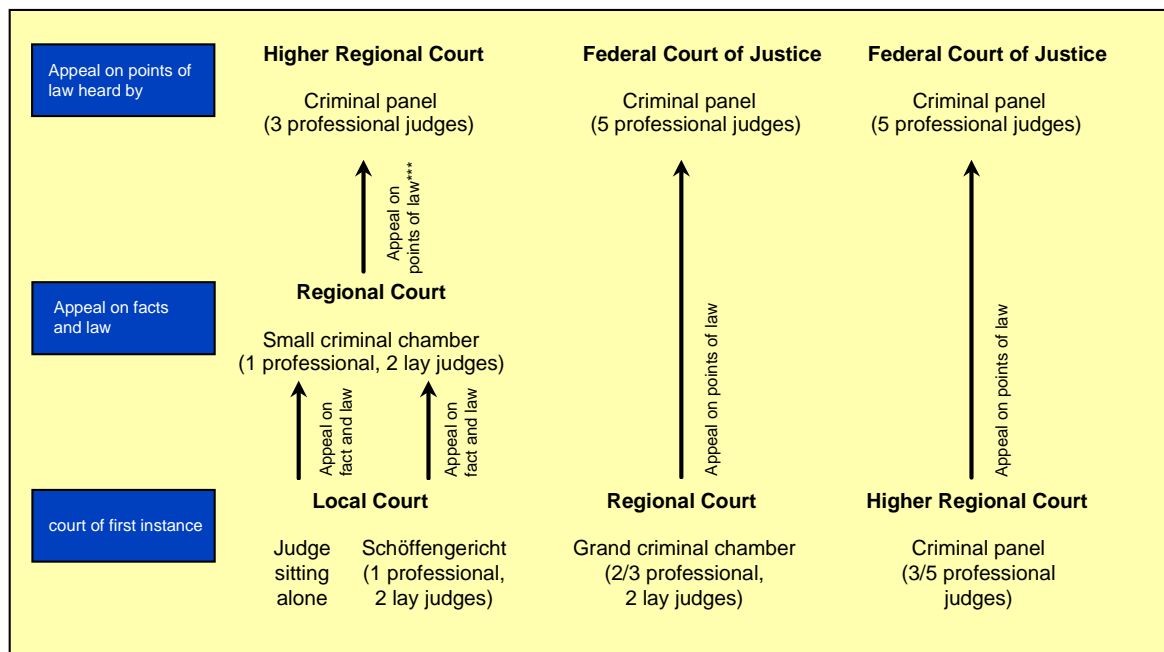
In exceptional cases, including crimes against the state, the Higher Regional Court (Oberlandesgericht) is responsible.

Appeals against judgements by the local court can be made to the Regional Court (Small Criminal Chamber), which will review the facts of the case. Instead of such an appeal (on the facts of the case), it is also possible to lodge an appeal with the Higher Regional Court on points of law regarding the ruling made in the first instance by the criminal judge or the Schöffengericht. Appeals on points of law can also be lodged against the appellate judgement by the Small Criminal Chamber at the Regional Court. If the court of first instance is the Grand Criminal Chambers at a Regional Court or the Schwurgericht, an appeal can be made on points of law to the Federal Court of Justice (in exceptional cases to the Higher Regional Court). If the court of first instance is the Higher Regional Court, appeal on points of law can only be made to the Federal Court of Justice. In all cases, an appeal on points of law can only be based on the argument that the judgement is based on a violation of the law.

There are special juvenile courts for cases against juveniles and young adult offenders. The distribution of responsibilities between the judge of a Juvenile Court (Jugendrichter), the Juvenile Court consisting of a judge and two lay assistants (Jugendschöffengericht), and the Juvenile Court Division (Jugendkammer) is governed by the Act on Juvenile Courts. If the only punishment is likely to be educative or disciplinary measures and the charge is filed with a criminal judge, the Jugendrichter is responsible. The Jugendkammer is primarily responsible in cases which (if they involved adults) would be heard by the Schwurgericht. However, the Jugendkammer also acts in cases involving the protection of young people, i.e. crimes committed by adults which injure a child or a juvenile. Apart from that, cases against juveniles and young adult offenders are normally heard in the first instance by the Jugendschöffengericht.

In the juvenile court process, each person entitled to challenge a judgement has only one right of appeal: an appeal against judgements of a Jugendrichter or the Jugendschöffengericht regarding the facts of the case can be heard by the Jugendkammer, or an appeal on points of law can be made to the Higher Regional Court; an appeal on points of law can be made against judgements by the Jugendkammer to the Federal Court of Justice.

Diagram 10: Stages of appeal in criminal cases involving adults



\* The following are Grand Criminal Chambers with special responsibilities: Schwurgericht; Wirtschaftsstrafkammer (economic offences chamber), Staatsschutzkammer (chamber for crimes against the state). The diagram omits the possibility of appeals on points of law to the higher regional court against the judgements of the Grand Criminal Chamber when the appeal refers solely to the violation of a provision of Länder legislation.

\*\* The Higher Regional Court is the court of first instance for charges of treason and endangering the state and for charges of involvement in a terrorist association filed by the Federal Public Prosecutor.

\*\*\* Alongside the appeal on points of law against judgements by the Regional Court as an appellate court it is also possible to file an immediate appeal on points of law to the Higher Regional Court against judgements given in the first instance by the Local Court.

As with the statistics on proceedings dealt with by the Public Prosecution Office, the court business statistics also primarily count the number of proceedings. Several offences can be treated in one set of proceedings, or one set of proceedings can involve several suspects, so that the number of proceedings recorded is lower than the number of people accused.

Table 6 is intended to give a brief overview of court jurisdictions and the number of cases dealt with by the various courts in 2003 at the various stages of appeal. The table only includes criminal prosecutions. It omits proceedings for the imposition of administrative fines, for which the administrative authorities are normally responsible.

Table 6: Court jurisdictions and number of criminal prosecutions processed  
- Whole of Germany -

Type of Court	1st instance	Appeal (on facts)	Appeal (on law)
Local court			
- Criminal judge	538 772	-	-
- Schöffengericht	40 559	-	-
- Juvenile court judge	236 519	-	-
- Jugendschöffengericht	62 920	-	-
Regional court			
- Criminal division <sup>1</sup>	-	47 499	-
- Grand criminal division <sup>2</sup>	12 007	-	-
- Juvenile criminal division <sup>3</sup>	2 589	8 660	-
Higher regional court	15	-	5 401
Federal Court of Justice	-	-	3 073

<sup>1</sup> Including Wirtschaftsstrafkammer.

<sup>2</sup> Including Schwurgericht and Wirtschaftsstrafkammer.

<sup>3</sup> Juvenile criminal division and grand juvenile criminal division.

Source: 2003 statistics of criminal courts, published by the Federal Statistical Office, Wiesbaden, tables 1.2, 3.2, 6.2 and 9.2.

### 1.2 How the courts process cases

Proceedings before the courts can end in other ways than with the passing of a judgment: for example, if there are procedural impediments, if there is insufficient proof of guilt for a conviction, or if the act is not punishable for certain reasons, such as self-defence, the court will reject the opening of proceedings. If the guilt of the accused is minimal, the court may drop the proceedings with the agreement of the Public Prosecution Office and of the accused, perhaps imposing certain conditions.

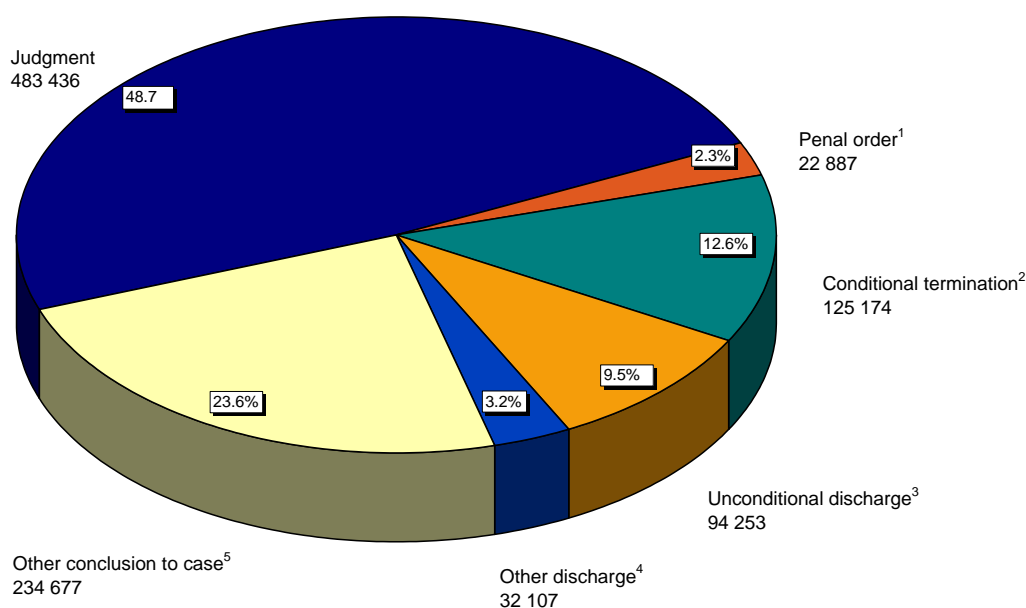
The court business statistics count both the number of proceedings and the number of persons. In order to create better comparability with the conviction statistics, the figures referring to persons are used here. However, it should be remembered that this means that these figures are then no longer comparable with the numbers of proceedings listed in table 6, as one set of proceedings may involve judgements against several persons.

Cases involving just under half of the accused end in judgement after the main proceedings have been completed. 2 % of cases end in a penal order after the main proceedings have commenced, in accordance with Section 408a of the Code of Criminal Procedure. However, the many cases in which the court issues a penal order in response to a written application from the Public Prosecution Offices in accordance with Section 407 of the Code of Criminal Procedure are not included here; they are only counted in the number of cases dealt with by the Public Prosecution Office (see III.1. above). 25 % of court cases of the accused end with a discharge; among them 10 % as unconditional and 13 % as conditional discharges.

The cases of 24 % of the accused end in other ways: for example, insufficient evidence, or the fact that the court lacks jurisdiction, etc. can mean that proceedings are not opened or that they are referred to another court. If there are several proceedings against one accused, they can be held together (diagram 11).

## Diagram 11: Cases processed by the courts\* - Whole of Germany -

Total number of accused: 992 534\*\*



\* Recording the way the cases of the individual defendants were processed by the Local Courts and the Regional Courts.

\*\* Excluding administrative offences.

<sup>1</sup> Only penal orders issued after main proceedings have commenced, in accordance with Section 408a of the Code of Criminal Procedure.

<sup>2</sup> Discharges in accordance with Section 153a paragraph 2 of the Code of Criminal Procedure, Section 37 paragraph 2 and Section 38 paragraph 2 of the Narcotics Act, Section 47 paragraph 1 page 1 figures 2 and 3 of the Act on Juvenile Courts.

<sup>3</sup> E. g. discharges because of insignificance of offence in accordance with Section 153 paragraph 2 of the Code of Criminal Procedure (n=48 513 cases), or because it is an insignificant additional offence in accordance with Section 154 paragraph 2 of the Code of Criminal Procedure (n=32 072 cases), or in accordance with Section 47 paragraph 2 page 2 figure 1 of the Act on Juvenile Courts and Section 47 paragraph 1 page 2 figure 4 of the Act on Juvenile Courts.

<sup>4</sup> E. g. discharges because of extradition, expulsion or absence of the accused; because of impediments to proceedings.

<sup>5</sup> E. g. combination with another case (n=118 221 cases), withdrawal of private charge/appeal (n=66 441 cases), reference to another court (n=9 257 cases), refusal to open main proceedings (n=4 979 cases)

Source: 2003 statistics of the criminal court, published by the Federal Statistical Office, Wiesbaden, table 2.3 and 4.3.

## 2. Persons judged and sentenced by category of crime

The conviction statistics (Strafverfolgungsstatistik) provide information about the numbers of sentences passed and penal sanctions. They count the number of persons. If several crimes by one person are treated in one set of proceedings, only the crime which can carry the heaviest punishment is counted. If the same person is convicted of several crimes in several proceedings, the person is counted separately for each set of proceedings.

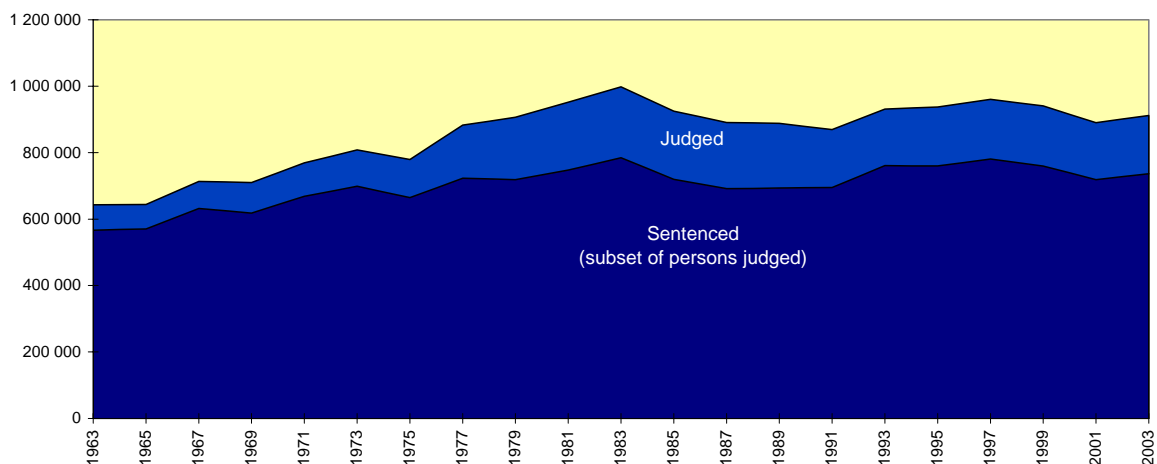
The total number of crimes includes traffic offences, but the individual sub-categories do not. For example, negligent bodily injury or negligent homicide in conjunction with a traffic accident are not included in the category "Other crimes against the person", but only in the category "Traffic offences" and "Total number of crimes".

The category "*persons judged*" includes all the accused against whom penal orders have been issued or criminal proceedings have been finally and absolutely concluded by judgement or discharge following the opening of main proceedings. Apart from convictions, this figure also covers persons in whose cases a different decision has been reached, such as acquittal, dispensing with punishment, or measures of rehabilitation and security.

"*Persons sentenced*", on the other hand, are adults sentenced to a prison sentence, (military) detention or a fine, or young people sentenced to a young offender institution, disciplinary measures or educative measures. Only those who have reached the age of criminal responsibility can be sentenced, i.e. persons aged at least 14.

Diagram 12 (see table 12a in annex for absolute figures) briefly reviews the development and level of the total numbers of persons judged. The number rose from just under 650 000 to almost 1 000 000 between 1963 and 1983. From then until 1991, there was a continuous decline. This decline was due to the fact that the Public Prosecution Office was increasingly issuing discharges, either conditional or unconditional, for minor offences (see III.1. above); these cases thus resulted in neither a charge nor a penal order. During the early and mid 1990s the numbers rose again (as did the numbers of suspects). Between 1997 and 2001 a slight decline was to be observed, since then the numbers have been rising significantly. In 2003, the number of persons judged was 911 848. The number of persons sentenced has developed similarly to the number of persons judged. In 2003 the number of persons sentenced was 736 297. The number of persons sentenced as a proportion of those judged fell between 1963 and 1979; from the early 1980s onwards this proportion remained stable at circa 80% (see Table 12a in the appendix).

Diagram 12: Persons judged and sentenced 1963 – 2003  
- Former West Germany and Berlin\* -



\* Until 1994 West Berlin, from 1995 whole of Berlin.

Source: Conviction statistics for the relevant year, published by the Federal Statistical Office, Wiesbaden; see table 12a in annex for absolute figures. Also for 4 new Länder for 2003.

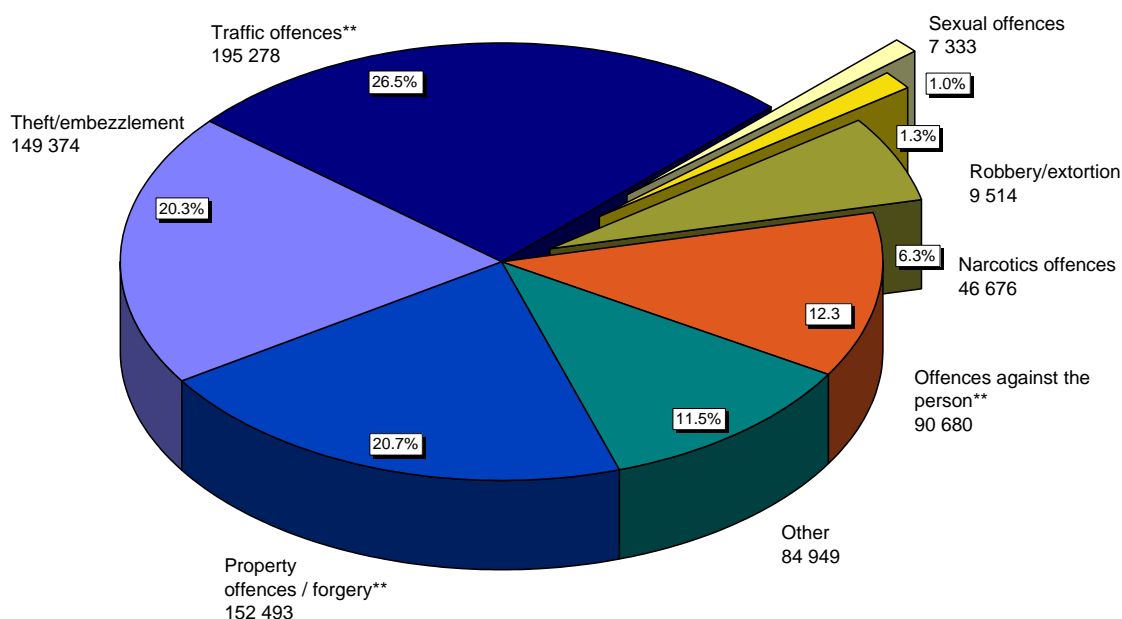
Diagram 13 shows the crimes to which the sentences refer. It should be remembered that only the most serious offence is recorded statistically, i.e. if several crimes have been committed, the less serious will not be included in the figures. 27 % of all sentences in 2003 were for criminal traffic offences; 42 % involved property offences (theft, embezzlement and criminal damage, robbery and extortion, fraud, forgery of documents and other property offences); theft and embezzlement alone accounted for 20 % of the total figure. The proportion of sexual offences was exactly 1 % in 2003; that of other offences against the person, e.g. insult, bodily injury or homicide, was approx. 12 %; that of narcotics offences was 6 %.

If these figures are compared with the distribution of crimes as recorded by the police crime statistics (see II.1. above), there is a clear shift in the relative significance of certain categories of crime. This is partly because (unlike in the police statistics) traffic offences are included; also, many of the less serious offences, particularly with regard to theft, criminal damage, bodily injury and insult, do not reach the courts, because these cases are dropped by the Public Prosecution Office or dealt with by private prosecution.

### Diagram 13: Sentences by category of crime\*

- Former West Germany and Berlin -

Total of persons sentenced: 736 297



\* Only the most serious offence.

The following §§ are paragraphs of the StGB:

\*\* Motoring offences: Sections 142, 222, 230, 315b, 315c, 316, 323 of the Criminal Code; Sections 21, 22, 22a of the Road Traffic Act.

Unlike the categories of offences contained in table 1, offences against the person include: Sections §§ 185-189, 169-173, 201-206, 211-222, 223-231, 234-241a of the Criminal Code; property offences / falsification include: Sections 257-261, 263-266b, 267-281, 283-305a of the Criminal Code.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 2.1.

### **3. Sentencing of adults**

#### *3.1 Types of sanctions and their relative frequency*

The main punishments under general (i.e. adult) criminal law take the form of fines and prison sentences (with or without the sentence being suspended on probation). In certain cases, the law also permits or imposes additional penalties, such as a driving ban and/or a ban from holding public office.

The most severe measure of the military criminal system is detention.

If the accused is sentenced to a prison sentence of up to two years, execution of the sentence can be suspended and the convicted person put on probation. In a period of probation to be determined by the court, the person sentenced should demonstrate that being sentenced was itself sufficient warning and that he will not commit any further crimes. At the same time, as the punishment is suspended, the negative effects of confinement are avoided, e.g. that the individual is torn away from his previous life, work and social contacts. In combination with suspending the sentence and imposing a period of probation, the court can impose conditions on the person sentenced (e.g. a fine) or issue instructions affecting his conduct, e.g. he can be placed under the supervision of a probation officer for the period of probation.

If the person sentenced re-offends during the probationary period, or if he fails to meet conditions or follow instructions, the suspension of the sentence can be revoked, meaning that he must now serve the prison sentence.

The longer the prison sentence, the more stringent are the preconditions for suspending the sentence and granting probation. Prison sentences of under six months are suspended by the court and the individual put on probation if it is likely that he will not commit any further crimes without going to prison. Prison sentences of between six months and a year are suspended in the same way, unless it is necessary for the person to serve the sentence in order to preserve legal order. Prison sentences of between one and two years can be similarly suspended if, additionally, an overall assessment of the crime and the convict's person personality indicate special circumstances.

If the punishment cannot be suspended and the individual placed on probation, or if the suspension is revoked, e.g. because the person has re-offended, the person must serve his sentence in a penal institution. After at least two-thirds of the term of imprisonment has been served, the remaining period is suspended and probation imposed - so long as the person agrees and this can legitimately be done in consideration of the interest of public safety. In exceptional cases, the remainder of the sentence can be suspended and probation imposed at an earlier stage, i.e. once half of the term of imprisonment has been served. Similarly, the remainder of a sentence to life imprisonment can be suspended and probation imposed once 15 years have been served, if the particular gravity of the convicted offender's guilt does not necessitate his remaining in prison, and if the prognosis is favourable and the prisoner agrees.

In addition to the sanctions mentioned above, it is also possible for measures other than punishment to be imposed in order to reform the offender or protect the public (committal

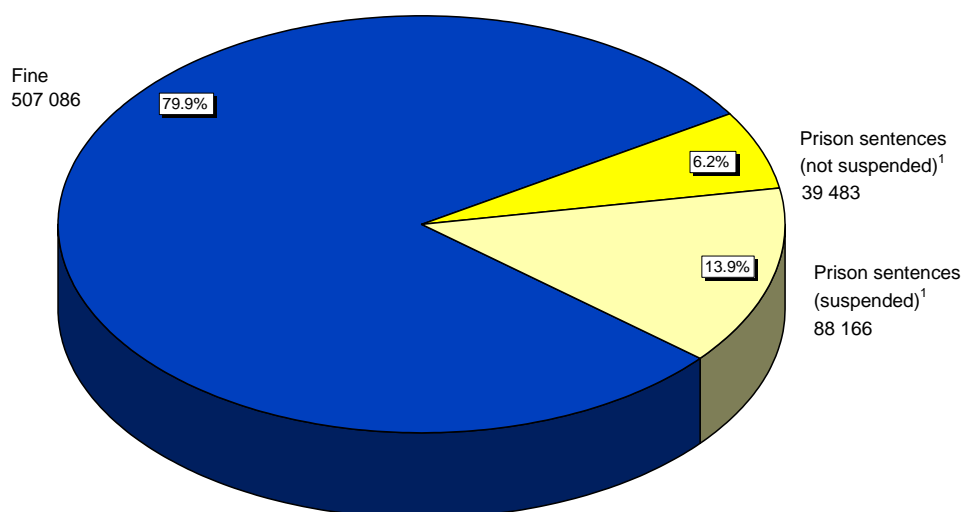
to a psychiatric hospital or institution for withdrawal treatment, preventive detention (post imprisonment), supervision of conduct, withdrawal of permission to drive, ban from the pursuit of certain occupations). Even if the person is acquitted due to lack of criminal responsibility, it may be possible for such measures to be imposed, e.g. he can under certain conditions be committed to a psychiatric hospital or an institution for withdrawal treatment. These measures can be suspended on probation if there are special circumstances indicating that their objective can still be achieved.

In total 634 735 adults were sentenced under general criminal law in 2003. 18 % of them were female (114 895). Easily the most frequent sentence imposed on adults is a fine, in 507 086 cases (or 80 % of the total); in the other cases a prison sentence or (rarely) military detention was imposed.

Roughly two-thirds of the 127 649 prison sentences or military detention were suspended on probation, i.e. 14 % (88 166) of all sentences result in the person receiving a suspended sentence and being placed on probation, and 6 % (39 483) are sent to prison without a suspension (diagram 14).

**Diagram 14: Sanctions against adults\***  
- Former West Germany and Berlin -

Total persons sentenced under general criminal law: 634 735



\* Only the most severe punishment in each case.

<sup>1</sup> military detention included (n=15).

<sup>2</sup> military detention included (n=123).

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 2.3.

### 3.2 Prison Sentences

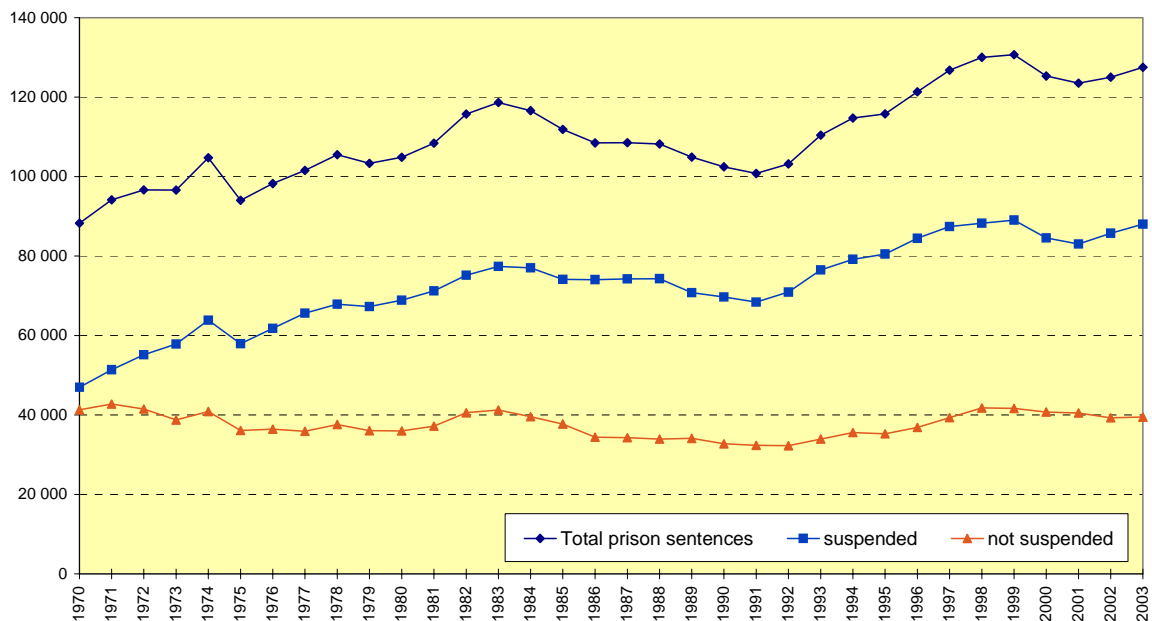
Diagram 15 (see table 15a in annex for absolute figures) shows that there was an increase in the number of prison sentences imposed between 1970 and 1983, from just under 90 000 to almost 120 000. The figures dropped slightly in 1973, 1975 and 1979 only. Between 1984 and 1991, the number of prison sentences declined visibly, only to rise again



strongly between 1992 and 1999 up to a level of 130 000. After a brief period of decline, prison sentences were up again to 128 000 cases in 2003. The number of prison sentences not suspended declined slightly in the late 1970s and then, after a brief increase between 1980 and 1983, fell noticeably, only to rise strongly between 1992 and 1998. Since then, however, a slight decline is to be observed to 39 500 cases in 2003. In contrast, there was a continuing sharp rise in the number of suspended prison sentences until 1983; yet thereafter this number also declined. Between 1992 and 1998, however, a significant rise in suspended prison sentences could be observed. After a brief period of decline between 1999 and 2001, the numbers rise again in the years thereafter.

In general, it can be stated that since the early 1970s, the proportion of prison sentences which are suspended has risen enormously, so that they accounted for two thirds of all prison sentences in 2003.

Diagram 15: Prison sentences 1970 – 2003  
- Former West Germany and Berlin\* -

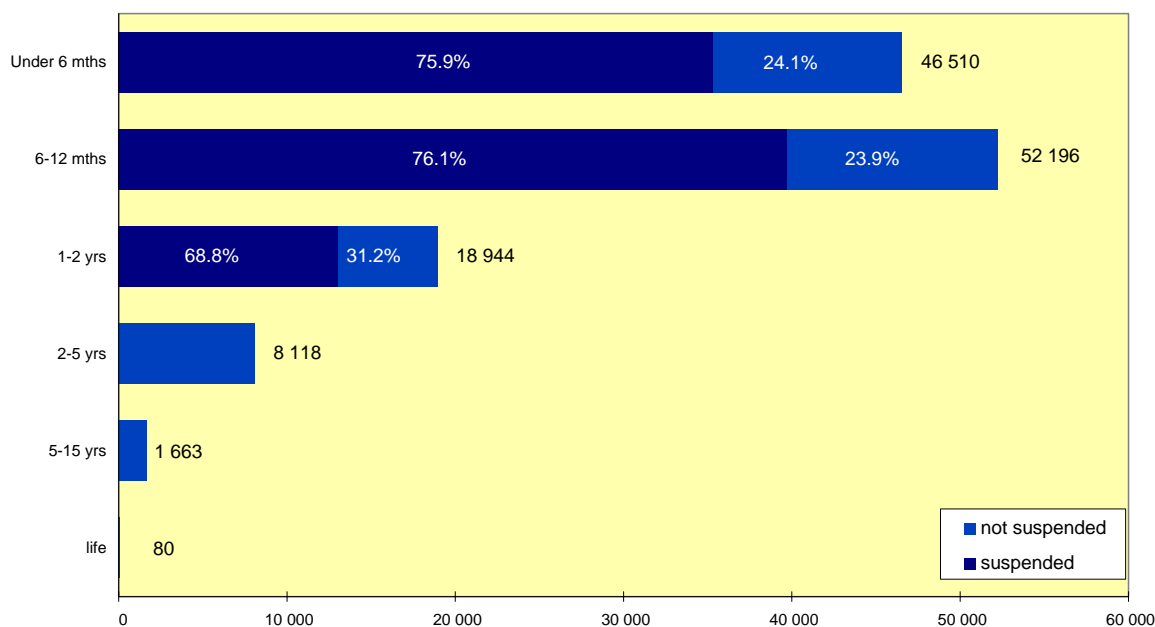


\* Until 1994, West-Berlin; from 1995 whole of Berlin.

Source: Conviction statistics for the relevant years, published by the Federal Statistical Office, Wiesbaden; see table 15a in annex for absolute figures.

With regard to the length of the prison sentences, most are under 12 months. In each case approximately two fifths are short terms of below six months and terms of between six and twelve months. 15 % are terms of between 1 and 2 years. The proportion of prison sentences which are suspended declines in line with the length of the term, but even for sentences of 1-2 years the proportion is above two-thirds. 6 % of prison sentences are for terms of over two years, and 1.3 % of sentences are for over five years. 0.1 % of prison sentences are to life imprisonment (diagram 16).

Diagram 16: Length of prison sentence (adults)  
- Former West Germany and Berlin -



Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 3.1.

### 3.3 Fines

Fines are imposed in daily units. This is intended to ensure that they have the same impact on offenders who have committed equally serious crimes but live in different economic circumstances. The total fine derives from the number of daily units and the level of those units, e.g. if someone is sentenced to 30 daily units at a rate of EUR 30, the fine will total EUR 900. Whilst the level of the daily units is oriented towards the ability to pay, generally towards the net income of the person, the number of daily units imposed reflects the degree of guilt.

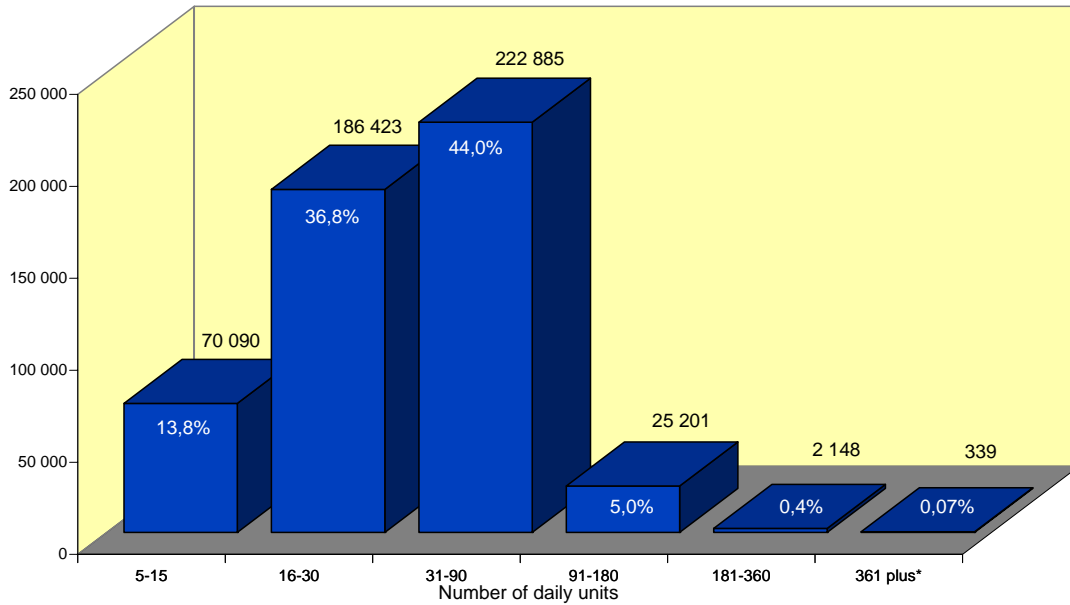
Since the personal and financial position of many individuals does not permit them to pay the whole fine immediately, they can be granted a deadline for payment or allowed to pay off the fine in instalments. If the person fails to pay the fine, it will be replaced by imprisonment. When calculating the term of imprisonment to replace a fine, one daily unit equates to one day of imprisonment. However, where the law of the individual Länder permits, the law-enforcement authorities can allow the person to do community service rather than go to prison.

Fines are not suspended. However, in the case of fines of up to 180 daily units a caution can be issued: the court finds the person guilty, cautions him, stipulates a fine and reserves the right to impose the fine during a period of probation. This approach is rarely taken in practice. The 5 500 cases are not included in the figures below. Nor are 324 cases considered in which no punishment was imposed because it was felt that the offender had suffered enough due to the consequences of his actions.

Approximately half of the 507 086 fines imposed were of up to 30 daily units, another two-fifths of between 31 and 90 daily units. In 5 % of the cases, the number of units exceeded 90, and only 0.4 % of fines were for more than 180 daily units (diagram 17).

Diagram 17: Fines - number of daily units  
 - Former West Germany and Berlin -

Total number of fines: 507 086



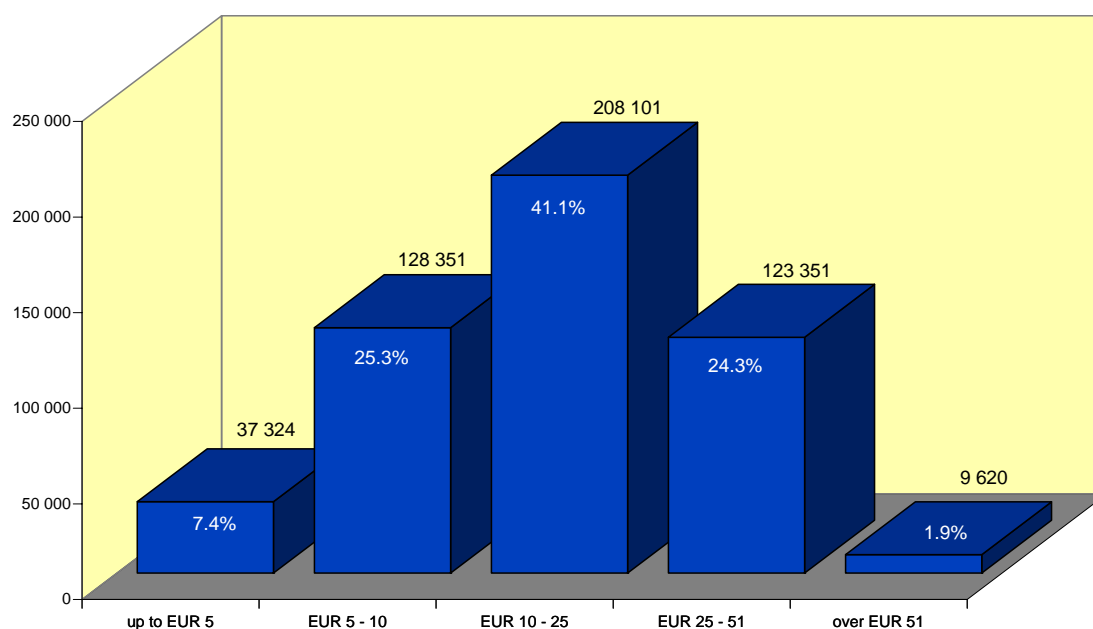
\* Only up to 360 daily units as an independent sanction; higher levels only where it forms part of a package of sanctions.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 3.3.

41 % of the fines imposed were comprised of a daily unit of between EUR 10 and 25. Less than one-tenth of fines were at a rate of under EUR 5, over a quarter between EUR 5 and 10, and also over a quarter between EUR 25 and 51. 2 % of those sentenced to a fine pay a daily unit of more than EUR 51 (diagram 18).

## Diagram 18: Fines - level of daily units - Former West Germany and Berlin -

Total: 506 747\*



\* Excluding the 339 cases with 361 or more daily units.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 3.3.

### 3.4 Other measures and additional sanctions

The main additional sanctions consist of driving bans, forfeiture and confiscation. A driving ban of up to three months can be imposed if the crime for which the person was sentenced was related to the driving of a vehicle. In the case of forfeiture and confiscation the offender is forced to relinquish the assets or other advantages obtained by the crime and the objects used to commit the crime.

Some of the measures other than punishment to reform the offender or protect the public can be imposed separately (i.e. independently of the main punishment). If the offender's culpability is at least diminished, a combination of such measures and a fine or a prison sentence is possible.

The most frequent such measure is the withdrawal of permission to drive. Unlike a driving ban, which is intended to serve as a short-term warning, it aims to remove unsuitable drivers from road traffic. When the court withdraws permission to drive, it will stipulate a period in which the offender cannot be granted permission anew. After the expiry of the period the administrative agency will first examine whether the offender is suited to driving a vehicle. If this is not the case, permission to drive can be permanently refused.

Other measures, involving a stay in an institution for treatment, are rarely imposed. The most frequent such measure (1 643 cases) is to place addicted offenders in an institution for withdrawal treatment; in 876 cases, mentally disturbed offenders were committed to psychiatric hospitals. Preventive detention (post imprisonment) can only be ordered in combination with a prison sentence and only when the offender is regarded as dangerous because of a tendency to commit serious crimes. It was only imposed in 66 cases (table 7).

Table 7: Other measures and additional sanctions  
- Former West Germany and Berlin -

	Total Crimes	Excluding motoring offences
Driving ban	32 737	5 456*
Forfeiture, confiscation	18 092	17 300
Measures to reform offender / protect public		
- Withdrawal of permission to drive	125 998	9 045*
- Committal to psychiatric hospital	876	866
- Committal to institution for withdrawal treatment	1 643	1 554
- Preventive detention (post imprisonment)	66	66
- Ban on occupation and supervision of conduct <sup>1</sup>	196	188

\* this usually applies to cases in which a person was convicted for a more serious offence which is included in the prosecution statistics alongside a road traffic offence.

<sup>1</sup> Only supervision of conduct ordered by court; the figure omits supervision of conduct in relation to the suspension of measures to reform offender/protect public.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 5.

#### 4. Sanctions under juvenile criminal law

In the case of juvenile offenders (14 - 17 years inclusive) and young adults (18 - 20 years inclusive) convicted under juvenile criminal law the criminal justice system aims to educate the offender and provides for special sanctions: firstly, educative and disciplinary measures and, secondly, youth imprisonment with the possibility of suspension and probation. The imposition of additional legal consequences and measures to reform the offender and protect the public is only possible to a limited extent. A young adult offender is required to be processed under juvenile criminal law if he is like a juvenile in terms of his development or if the offence was a transgression of a juvenile nature.

The educative measures include the issuing of instructions and the requirement that the offender accept certain forms of educative assistance, i.e. socio-educational support or in the form of residential accommodation with back-up support from social workers. These measures are not really intended to punish, but to promote the juvenile's upbringing in an educative dimension. For example, the instructions may refer to the place of residence, participation in a course of social training, work, or attempts to achieve offender-victim mediation.

In contrast, disciplinary measures are also intended as a sanctioning reaction. The juvenile is to be made aware of the injustice of his action, without this requiring youth imprisonment. Disciplinary measures include cautions, the imposition of conditions (reparations for the injury, apologies to the injured party, payment of a fine, work) and detention, which can range from a weekend to up to four weeks. Educative and disciplinary measures can be imposed simultaneously.

Youth imprisonment is the only real criminal punishment available under the Act on Juvenile Courts. There are differences compared with adult imprisonment rules. The length of

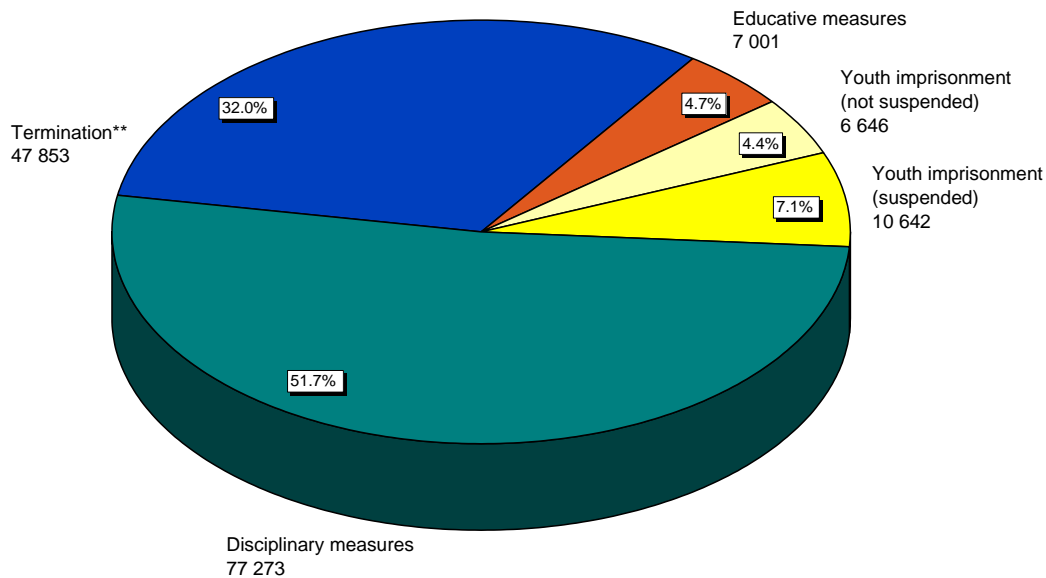
the period is limited to between six months and ten years. The judge imposes youth imprisonment when the criminal tendencies of the juvenile, which have become apparent as a result of his crime, indicate that educative or disciplinary measures will not suffice to reform the offender or when punishment is needed because of the seriousness of the offence. If it is not possible to ascertain with certainty during the main proceedings whether the criminal tendencies of the offender are such that youth imprisonment is actually needed, the judge will only pronounce the guilt of the juvenile. The decision as to whether a sentence to youth imprisonment should be imposed is suspended for a certain probationary period. The following tables do not include the 1 985 cases in which the decision on whether to impose a sentence of youth imprisonment was suspended in this way (in accordance with Section 27 of the Act on Juvenile Courts).

The proceedings can be dropped by the Public Prosecution Office with the approval of the court in accordance with Section 45 paragraph 3 of the Act on Juvenile Courts and by the juvenile court itself in accordance with Section 47 of the Act. Furthermore, in accordance with Section 45 paragraphs 1 and 2 of the Act, the Public Prosecution Office can itself decide to drop the case without referring to the court. These decisions can, where they are taken by the court or with the approval of the court, be linked to the imposition of certain conditions and instructions on the offender. In minor cases, it may be sufficient for other educative measures to be taken or introduced or for the offender to attempt to make good the injury suffered by the victim.

In 2003, 101 562 persons were convicted under juvenile criminal law (table 19a in annex). Nine-tenths of the juvenile and young adult offenders were male; one-tenth were female. In 83 % of convictions educative and disciplinary measures were imposed. 10 % of offenders were sentenced to youth imprisonment with the sentence suspended; 7 % were given a sentence to youth imprisonment without it being suspended.

### Diagram 19: Sanctions under juvenile criminal law\* - Former West Germany and Berlin -

Total sanctions: 149 415



\* Cases discontinued by the juvenile courts in accordance with adult criminal law are omitted here.

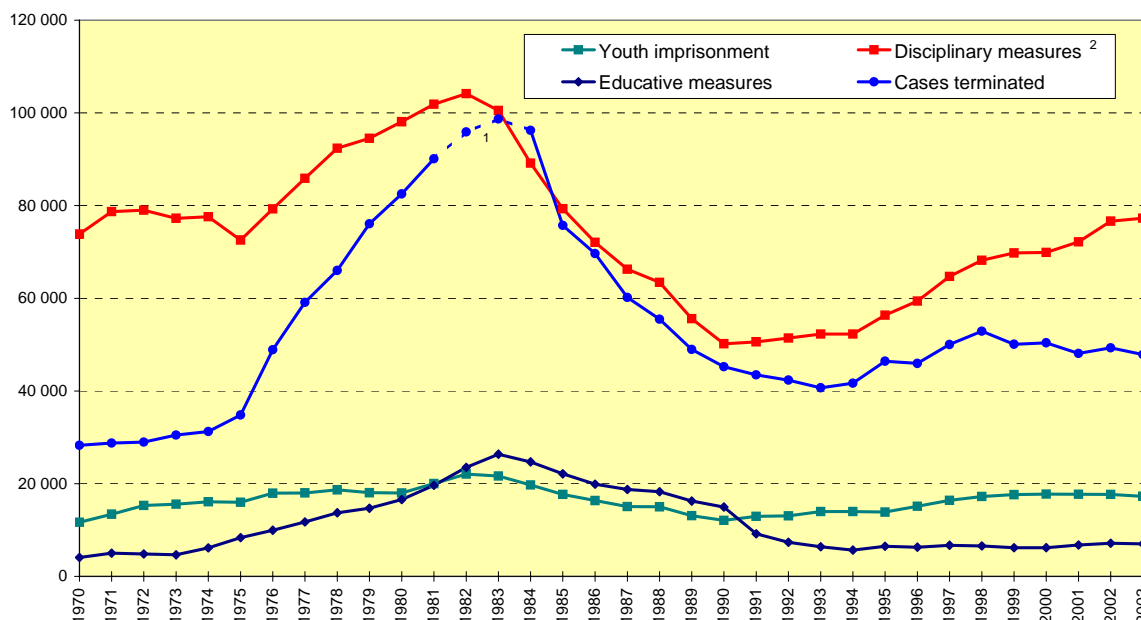
\*\* according to Section 45 paragraph 3 and section 47 of the Act on Juvenile Courts.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden; see table 19a in annex for absolute figures.

Diagram 19 provides an overview of the sanctions imposed in the juvenile criminal justice system, including cases dropped in accordance with Section 45 paragraph 3 and Section 47 of the Act on Juvenile Courts. The most common sanction takes the form of disciplinary measures: in 2003, more than 77 000 offenders were sentenced to over 109 000 different disciplinary measures; detention, as the only disciplinary measure involving a stay in an institution, was imposed in almost 19 000 cases and affected 19 % of all those convicted. Approximately 7 000 offenders had an educative measure, almost always in the form of an instruction, imposed upon them as their severest punishment. 17 288 offenders were given a sentence to youth imprisonment: 54 % of the youth imprisonment sentences were between 6 and 12 months, 34 % between 1 and 2 years. 11 % of the youth imprisonment sentences were for between 2 and 5 years, and 0.6 % for between 5 and 10 years (see table 19a in annex for absolute figures).

In just under 48 000 cases, proceedings were dropped by the Public Prosecution Office with the approval of the court in accordance with Section 45 paragraph 3 of the Act on Juvenile Courts or by the juvenile courts themselves in accordance with Section 47 of the Act, without a sentence being passed following main proceedings. However, the prosecution statistics do not include the many cases dropped by the Public Prosecution Office without the involvement of the court in accordance with Section 45 paragraph 1 or 2 of the Act on Juvenile Courts.

Diagram 20:  
Sanctions under juvenile criminal law 1970 - 2003\*  
- Former West Germany and Berlin\*\* -



\* Only the most severe sanction in each case.

\*\* Until 1994 West Berlin; from 1995 whole of Berlin.

<sup>1</sup> The figures for "Decisions in accordance with Section 45 paragraph 3 and Section 47 of the Act on Juvenile Courts" for 1982 and 1983 do not include decisions under Section 45 of the Act. For this reason the numbers for the diagram are estimated on the basis of the previous and subsequent years.

<sup>2</sup> Section 45 paragraph 3 of the Act corresponds to Section 45 paragraph 1 of the Act until 1990.

Source: Conviction statistics for the relevant years, published by the Federal Statistical Office, Wiesbaden; see table 20a in annex for absolute figures.

Diagram 20 and table 20a (in annex) show that the figures for sanctions under juvenile criminal law remained fairly constant between 1970 and 1974. From 1975 until the early 1980s, the number of non-custodial sanctions or measures increased. There was also a rise in the number of sentences to youth imprisonment between 1979 and 1982. Thereafter until the early 1990's there was a continuous decline, particularly with regard to cases dropped in accordance with Section 45 paragraph 3 (pre-1990 equivalent: Section 45 paragraph 1) and Section 47 of the Act on Juvenile Courts and with regard to disciplinary measures, and there was also a drop in the number of sentences to youth imprisonment. One factor behind this was certainly the demographic trend. The baby-boom years affected the figures from the 1970s to the early 1980s. Since then, the numbers of people in the juvenile age groups have fallen. Furthermore, the Public Prosecution Office is increasingly tending to drop cases without the approval of the courts in accordance with Section 45 paragraphs 1 and 2 of the Act on Juvenile Courts (the prosecution statistics do not contain exact statistics on this). From the early to mid 1990s, educative measures being the exception, one could once again observe a clear rise for all the forms of reaction, which has, however, slowed overall since the end of the 1990s; since then there has even been a reduction in the number of proceedings ended in accordance with sections 45, paragraph 3, and 47.



## 5. Special topic: Offender-Victim Mediation

Offender-Victim Mediation (Täter-Opfer-Ausgleich; abbreviated: TOA), which was given a legislative basis for the first time in 1990, refers to an offender's efforts to achieve a settlement with the injured party and in doing so to make good his or her offence, or to go a long way towards doing so. A settlement of this kind can take place at any stage during criminal proceedings and can cause the authorities to refrain from prosecution (§ 45 section 3 of the Act on Juvenile Courts – see above IV.4.), to drop the prosecution (§ 153a section 1 line 2 Nr. 5 Code of Criminal Procedure, § 47 section 1 no. 3 Act on Juvenile Courts, see above IV.1.) or to refrain from imposing a or milden the sanction (§ 46a StGB). According to juvenile criminal law, the judge can issue the instruction that the judged offender is to make efforts towards Offender-Victim Mediation (§ 10 section 1 line 3, no. 7 Juvenile Criminal Code). In order to enable TOA to be used more frequently and easily the criminal code provisions were augmented procedurally in 1999 with the new paragraphs 155a and 155b in the Code of Criminal Procedure. These oblige the prosecution service and the court to consider the possibilities for reaching a settlement between the accused and the victim at all procedural stages.

Offender-Victim Mediation is usually achieved upon prosecution service initiative although a TOA institution, usually the juvenile court service, the court service or a specialist independent organisation will be involved. This organisation will consider whether a case is generally suited for TOA, whether the victim and perpetrator are prepared to enter settlement discussions, lead these discussions, record the result of these, supervise the actual compensatory efforts and inform the prosecution service and court of success or failure.

Official statistics do not record the use of Offender-Victim Mediation. Since 1995 there are Federal TOA statistics (see "Täter-Opfer-Ausgleich in der Entwicklung" by Hans-Jürgen Kerner and Arthur Hartmann, ed. by the Federal Ministry of Justice, Berlin 2005; available online [www.bmj.bund.de/toa](http://www.bmj.bund.de/toa)), funded by the Federal Ministry of Justice, collected and prepared by a research group, which recently published statistics 2002. The data are collected from institutions which carry out TOA. Because participation in the TOA statistics is on a voluntary basis the available results are not representative of all settlement institutions or all German cases. The TOA statistics present a variety of information about the institutions, the caseload, the case characteristics and about the course and results of this measure. The central findings are briefly summarised in the following:

Of the reporting *Institutions*, the majority are independent although the participating youth protection offices and judicial social services are likely to be under-represented. Approximately three quarters of the institutions involved are specialised in TOA. Among them about one third deal exclusively with juveniles and young adults, with adults only or with all age groups respectively.

Since the first collection round in 1993 the *caseload* of procedures considered suitable for conflict resolution has risen from 1 066 to 4 381, i.e. it has quadrupled. TOA is usually initiated in the pre-trial stage (90 % of cases in 2002) with the prosecution service playing the decisive role (in 80 % of cases).

The *offences* affected are mainly bodily injury (47 %) and criminal damage (12 %), property and asset related crimes (6 %) as well as robberies (2 %) play a comparatively small part. As far as the *injured parties* are concerned, these are almost exclusively (95 %) natural persons, the majority (almost two thirds) being male resulting from the high proportion of bodily harm offences. Fitting to the spread of offences, the consequences of the act are bodily harm (43 %) outweighing material (24 %) and psychological (24 %) damage. Among the *accused* first time offenders are most common (70 %) and – as is the case for all offenders – men are dominant (80 %). As far as age is concerned there is an upward trend amongst adults – to 55 % of the accused and 67 % of the injured parties.

A significant pre-condition of TOA is the *willingness to reach a settlement* on the injured party's behalf; this is high at 73 % amongst young and 63 % amongst adult victims. Understandably the willingness to reach a settlement amongst the accused is higher at 92 % amongst young and 77 % amongst adult perpetrators.

The *settlement discussion* between perpetrator and victim is central to the TOA concept; in two thirds of cases (75 % among young, 55 % among adult accused) this takes place in the presence of a mediator. In the remaining cases other forms of conciliation are used, e.g. using alternating discussions between the mediator and the injured party and the perpetrator.

If a compensation attempt is made it usually leads to a positive *result*: In 80 % of cases an agreement is reached which satisfies both parties and is carried out: in a further 4 % of cases a partial settlement agreement is reached. Only in 16 % of cases does the TOA fail altogether, due to the parties not reaching an agreement, the injured party withdrawing in the course of proceedings or the perpetrator breaking off compensatory efforts.

Table 8: Content of the Action agreed through Offender-Victim Mediation – 2002

	Cases	in %
No action agreed	146	8.3
Apology	1 233	69.8
Present	86	4.9
Restitution	40	2.3
Compensation for Pain and Suffering	241	13.6
Work for the Victim	101	5.7
Common activity with the victim	49	2.8
Damages	443	25.1
Other	240	13.6

\* It is possible to agree that more than one action be carried out; for this reason the total is above 100%.

Source: Kerner/Hartmann, Täter-Opfer-Ausgleich in der Entwicklung, Berlin 2005, S. 154; author's own presentation.

As one would expect, the payment of damages or compensation for pain and suffering are the most common *action agreements* alongside apologies (see table 8). If the TOA-institution views the settlement attempt as completed, it will inform the prosecution service or, where relevant, the court of this. The *time lapse* between case entry and return to judicial organs is 21 weeks or less in half the proceedings.

## V. Probation

The probation service's main task is to look after those offenders placed on probation. It also looks after persons whose conduct is subject to supervision.

When the prison sentence is suspended, or the remainder of the sentence is suspended (see IV.3.1. above), the court can order that the offender be placed under the *supervision of a probation officer*; in the case of youth imprisonment (see IV.4.) this is obligatory. Other conditions (e.g. making good the injury caused, community service) or instructions (e.g. regarding place of residence, or regular reporting by the offender to the court or another agency) can also be imposed.

*Supervision of conduct* is one of the measures taken to reform the offender and protect the public. It is imposed when a sentence committing to an institution for withdrawal treatment or a psychiatric hospital is suspended or when continuing accommodation there is suspended, after a period of preventive detention (post imprisonment) has been served, or when the court expressly requires it for particular crimes. The most frequent case in practice is supervision of conduct following the full serving of a prison sentence of at least two years. The offender is then subject to the control and assistance of the supervisory agency and the probation officer. Supervision of conduct can also be linked to instructions. The office supervising the conduct monitors the behaviour of the offender and compliance with any instructions.

The juvenile criminal justice system has a special feature. In accordance with Section 27 of the Act on Juvenile Courts, it is possible for the judge merely to declare the guilt of the juvenile in the main proceedings, but to leave open the decision as to whether to impose a prison sentence and to appoint a probation officer to supervise a period of probation. If, during that period, the bad behaviour of the juvenile makes it clear that the offence was committed because of criminal tendencies, a prison sentence will be imposed in accordance with Section 30 paragraph 1 of the Act on Juvenile Courts. If this is not the case, the guilty verdict is extinguished after the probationary period has expired.

The probation officer assists and looks after the offender. With the approval of the court, he monitors compliance with the conditions and instructions. The period of probation either ends "successfully", with remission of the punishment or the end of supervision; or the court revokes the suspension of the sentence or of the remainder of the sentence under certain conditions - if the offender commits new crimes during the probationary period, seriously or continually violates conditions and instructions, or continually evades supervision by the probation officer.

The probation service keeps its own statistics. The number of probation orders recorded there is greater than the number of people subject to it. This is mainly because a single offender in court for several offences in various trials can be placed on probation several times.

There are two different counting methods: the number of probation orders in force on a fixed date, i.e. 31 December of each year, and all the periods of probation concluded in the

course of a year. Supervision of conduct which was previously counted has no longer been included in the last few years.

22 % of the probation orders in force on the fixed date result in accordance with juvenile criminal law, 78 % in accordance with adult criminal law (Table 9). As the length of probation periods in accordance with juvenile criminal law are generally shorter than those in accordance with adult criminal law, the proportion of young probationers, who occupy the probation service personnel in the course of one year is significantly higher (see below).

Table 9: Number of ongoing periods of probation\*  
- Former West Germany and Berlin -\*\*

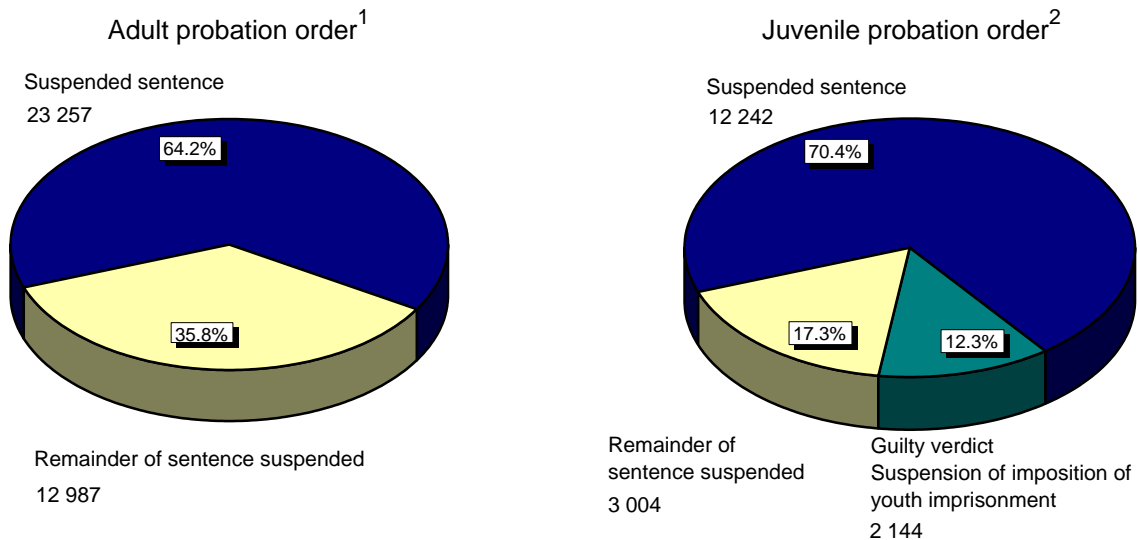
	Periods of probation		Probation under			
	Total	Percentage	adult law		juvenile law	
Total	161 211	100 %	125 278	78 %	35 933	22 %

\* probation periods supervised by full-time probation officers only; including multiple probation periods relating to an individual probationer.

\*\* excluding Hamburg.

Source: Probation Service Statistics 2002, published by the Federal Statistical Office, Wiesbaden (Fachserie 10, Reihe 5), table 1.1.

Diagram 21: Reasons for probation orders\*  
- Former West Germany and Berlin\*\* -



\* probation orders supervised by full-time probation officers only.

\*\* excluding Hamburg.

<sup>1</sup> excluding the 458 probation orders by way of pardon as well as a further probation orders suspending life imprisonment.

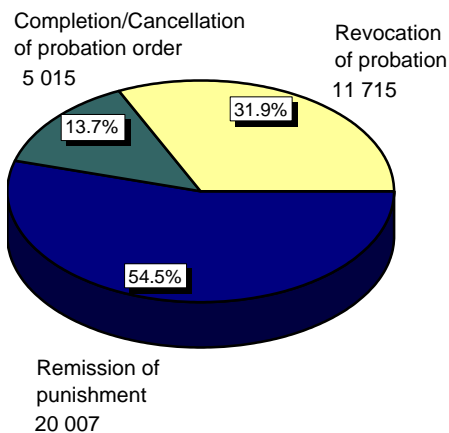
<sup>2</sup> excluding the 76 probation orders by way of pardon.

Source: 2002 probation service statistics, published by the Federal Statistical Office, Wiesbaden, tables 6 and 7.

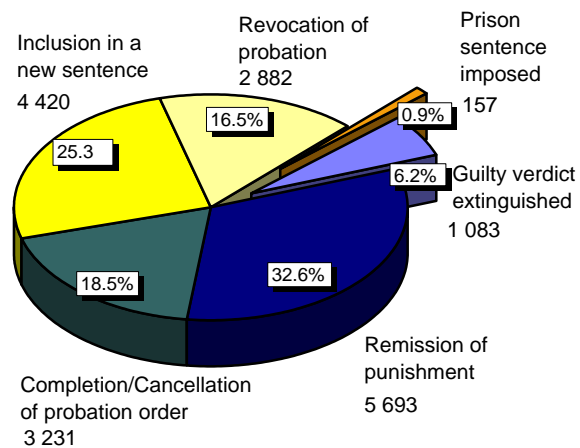
Diagram 21 provides an overview of the number of probation orders which ended in 2002, in some way it illustrates the turnover. All probation orders which come to an end are counted, therefore the cases in which probation ended because the suspension of the sentence was revoked and the prison sentence imposed are also included. Firstly the diagram shows that overall the young probationers make up approximately one-third of the probation service's clientèle. If one differentiates by reason for the probation order, the suspending of a prison sentence (64 %) or youth imprisonment (Jugendstrafe 70 %) respectively, clearly forms the majority. In addition, for younger probationers there is the peculiarity of suspending the imposition of a sentence to youth imprisonment in accordance with § 27 JGG (12 %). At the same time those released early from prison (36 %) and youth imprisonment (17 %) respectively, form a significant group.

Diagram 22: Reasons why the probationary period ended\*  
 - Former West Germany and Berlin -\*\*

Probation order in accordance with adult criminal law



Probation order in accordance with juvenile criminal law



\* probation orders supervised by full-time probation officers only.

\*\* excluding Hamburg.

Source: 2002 probation service statistics, published by the Federal Statistical Office, Wiesbaden (Fachserie 10, Reihe 5), table 3.2; see table 22a in annex for absolute figures and for a more detailed break down of the reasons for ending a probation period.

Diagram 22 (for absolute numbers see table 22a in the annex) includes a special feature; in showing the reasons for ending a probation period it allows - in contrast to all other sanctions - conclusions to be drawn about the course and the "success" of the punishment. In the current edition of the probation service statistics (of 2002) the following differentiations are made for *adults*: firstly probation periods ending in remission of the prison sentence all together or the remaining punishment due to a successful period of probation; these make up 55 %. In these cases the suspending of a sentence can be regarded as a success. In contrast, the revocation of a suspended sentence or of the suspension of a remaining sentence ends the probation period with the consequence that the person concerned has to serve either the complete or the remaining prison sentence; this is the case in

32 % here, meaning that just under one-third of cases represent a clear failure for probation. In 83 % of the cases of revocation this occurs at least partly because of a new crime committed during the probation period; the remaining revocations presumably for the most part result due to the conditions laid down for probation not being fulfilled. Naturally not every new offence, e.g. one punished by a fine, leads to a revocation. A revocation will only occur when the sentenced offender „shows that the expectation upon which the granting of probation was based has not been fulfilled“ (§ 56 f StGB).

The category completion/cancellation of the probation order covers cases in which the probation service supervision is ended earlier than the probation period initially laid down without the prison sentence being enforced or it's suspension being revoked. In these cases the probationer has also proved himself, if this means that nothing has become known during the probation period which led to the suspension of the sentence or the remainder of the sentence being revoked. However, no conclusions can be drawn here as to a complete success because the period of probation can be longer than the period under probation service supervision.

The situation is more complex in relation to those probationers sentenced in accordance to *juvenile criminal law*. Firstly, it is necessary to deal with the peculiarity of suspending the imposition of a sentence to youth imprisonment: at first glance the relationship between success, i.e. extinguishing the conviction, and failure, i.e. imposition of youth imprisonment, would appear to be fairly good. However, one has to consider that many of the 2 144 cases of suspending the imposition of a sentence to youth imprisonment are also hidden in the categories inclusion in a new judgment, cancellation and completion of supervision by the probation service.

With regard to the probation orders in accordance with juvenile criminal law (including the cases of § 27 JGG) as a whole, an unambiguous success can be established in just under 40 % of cases where the sentence has been remitted or the conviction extinguished. A clear failure meaning a revocation of the suspension or imposition of youth imprisonment respectively occurs in just under one-fifth of cases. The revocation results in the majority of cases (74 %) in part or solely because of a new crime.

The cases resulting in completion/cancellation of the supervision of the probation service can for the most part be regarded as successful if one bears the restrictions mentioned above in mind. On the other hand, the cases "inclusion in a new sentence" can for the most part be considered as failures because most will be dealing with crimes committed at a *later time during* the probation period for which the probationer is convicted. Even here, however, it is not possible to be completely certain as to this categorisation because the reason for inclusion can also be crimes committed by the juvenile or young adult *before* the sentence to a probation order.

Overall the majority of the sentences to a probation period achieve their intended goal.

## VI. Penal institutions

### 1. Scale and nature of imprisonment

Only a small proportion of those sentenced actually spend a period in prison: those sentenced to youth imprisonment without suspension, or those whose prison sentence was suspended but whose suspension was then revoked. In addition, there are those who are kept in preventive detention following a prison sentence. Finally, offenders sentenced to a fine end up in prison if they fail to pay their fine and have to serve a period of imprisonment instead.

However, the penal institutions also accommodate people not sentenced by the criminal courts: those in remand custody (see also above III.2), or those deprived of their freedom for other reasons. The latter include people in other judicially imposed forms of detention (e.g. under civil law - in very rare cases) and those in custody awaiting deportation (although the latter are not always housed in penal institutions).

Information about the prison system is to be found in the Federal Statistical Office's prison statistics. Part of the data refer to a fixed date, usually the 31.03 of the year. Whilst interpreting these numbers it should be borne in mind that short-term prisoners are under-represented in comparison to long-term prisoners; the likelihood of a prisoner serving a longer sentence being included in a count which is only carried out once a year is much higher than that of one sentenced to a short term of imprisonment.

On the 31.03.2004, 81 166 people were imprisoned in 203 penal institutions, about half of them in single and in shared cells respectively (table 10).

Table 10: Penal institutions: capacity and actual population\*  
- Whole of Germany -

	Number
Number of penal institutions	203
Capacity	79 204
of which: - Single cells <sup>1</sup>	49 673
- Shared cells <sup>1</sup>	28 705
Actual population	81 166
of which: - Single cells <sup>1</sup>	41 296
- Shared cells <sup>1</sup>	39 087

\* excluding those temporarily absent (n=1 413) on the 31.03.2004.

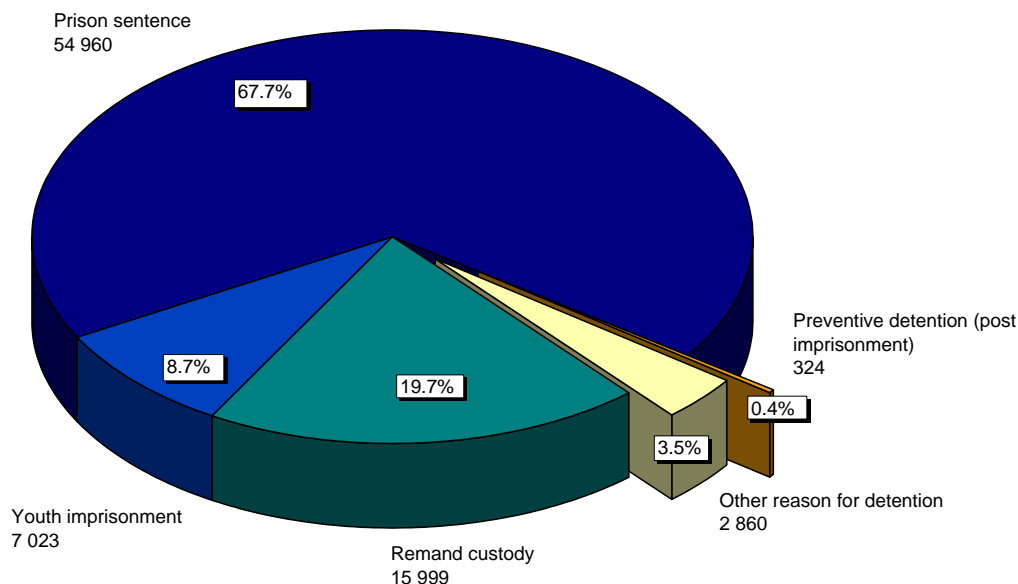
<sup>1</sup> The figures do not add up to 100 % because differentiated numbers are not available for Bremen.

Source: Prison statistics 2004, published by the Federal Statistical Office Wiesbaden, Current Number of Prisoners and Detainees, fixed date 31.03.

These figures do not include those prisoners who were temporarily absent, e.g. as a result of temporary release measures, on the day of counting, but for whom a place must be reserved. They amounted to some 1 413 persons, i.e. around 2 % of occupied places on the on this fixed date.

### Diagram 23: Nature of imprisonment - Whole of Germany -

Total prison population: 81 166\*



\* excluding those temporarily absent (n=1 413) on the 31.03.2004.

Source: Prison statistics 2004, published by the Federal Statistical Office Wiesbaden, Current Number of Prisoners and Detainees, fixed date 31.03.

76 % of the people in prison are serving a prison sentence; approx. 20 % are in remand custody. Prisoners detained for other reasons, e.g. those in custody awaiting deportation (diagram 23 and table 11), account for 4 % of the prison population.

The numbers of those in preventive detention (post imprisonment) are small (0.4 %). Women account for a small proportion of the prison population: 95 % of inmates are male.

Table 11: Scale and nature of imprisonment\*  
- Whole of Germany -

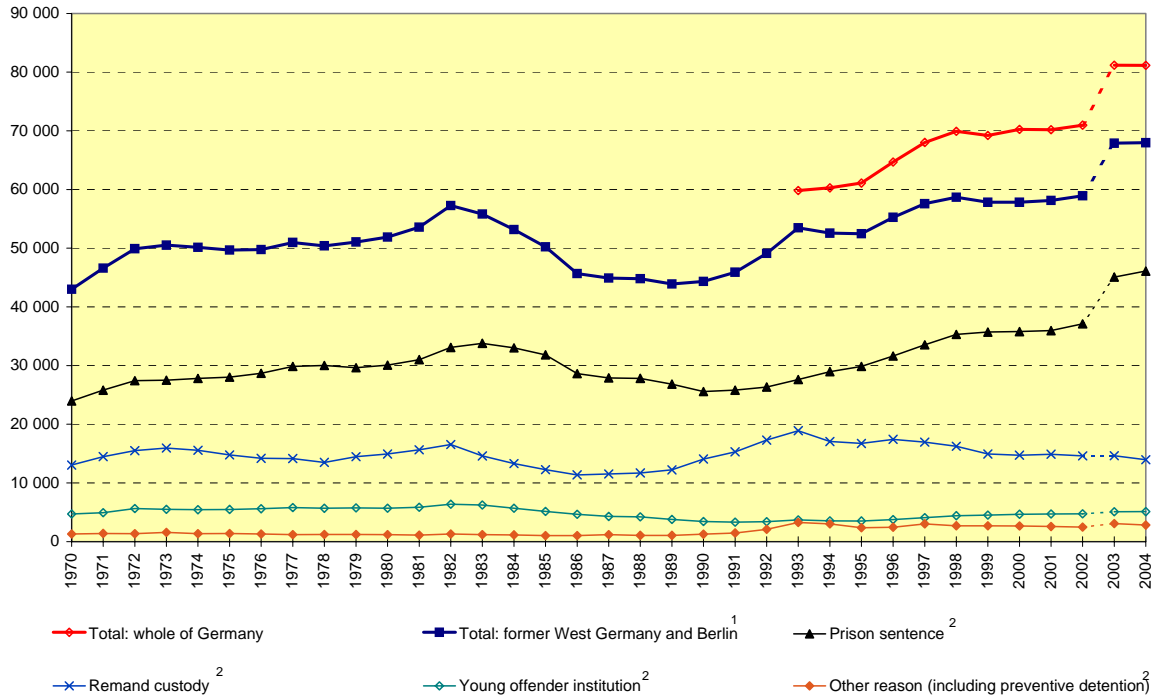
Nature of imprisonment	Total	Male	Female
Total	81 166	77 014	4 152
Remand custody	15 999	15 138	861
Youth imprisonment	7 023	6 733	290
Prison sentences	54 960	52 266	2 694
Preventive detention (post imprisonment)	324	324	0
Other reason	2 860	2 553	307
of which: - Military detention	11	11	0
- Awaiting deportation	1 582	1 346	236

\* excluding those temporarily absent (n=1 413) on the 31.03.2004.

Source: Prison statistics 2004, published by the Federal Statistical Office Wiesbaden, Current Number of Prisoners and Detainees, fixed date 31.03.



Diagram 24:  
Number of prisoners at year-end by nature of imprisonment\*



\* counted on the fixed date 31.12. until 2002; 31.03. thereafter; excluding those temporarily absent (on the 31.03.04 this was 1 413 persons for the Federal Republic of Germany in total, 1 206 persons for former West Germany and Berlin<sup>1</sup>).

<sup>1</sup> Until 1991 West-Berlin, as of 1992 whole of Berlin.

<sup>2</sup> only Former West Germany and Berlin<sup>1</sup>.

Source: Prison statistics for the relevant years, published by the Federal Statistical Office Wiesbaden (up until 2002 Fachserie 10, Reihe 4.2, page 5, Fixed date 31.12.; as of 2003 new publication, Current Number of Prisoners and Detainees, fixed date 31.03).

The overview of the prison population figures, which refer only to the Former West Germany and West Berlin (and the whole of Berlin from 1992), show that there were sharp rises between 1977 and 1982, particularly for adults sentenced to imprisonment (including for non-payment of fines) and for those in remand custody. In contrast, the numbers in youth imprisonment only rose slightly, and the number of persons in prison for other reasons remained fairly constant until 1990 before rising relatively sharply between 1991 and 1993.

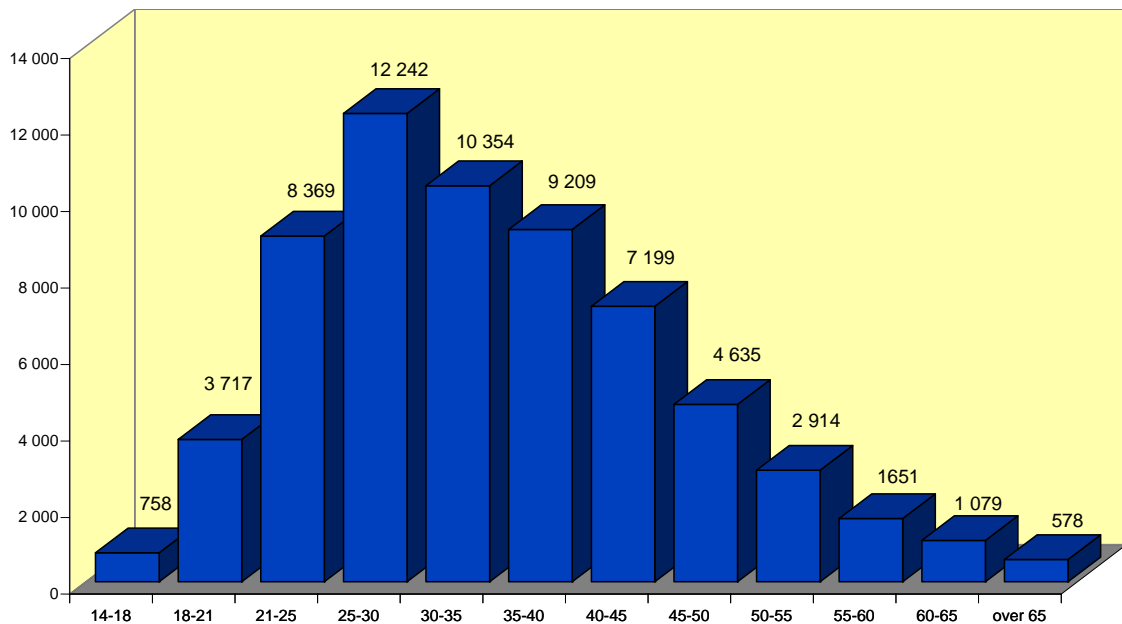
After peaking in 1982/83, the figures for those serving youth imprisonment and prison sentences and those in remand custody declined continuously during this period. There was a renewed clear rise in remand custody between 1990 and 1993; since 1994 a slight declining trend has become noticeable. In contrast the figures for adult imprisonment have been rising strongly and those for youth imprisonment moderately since 1991 (diagram 24). This is due to more prison and youth imprisonment sentences being imposed on the one hand (see above diagrams 15 and 20) and on the other to the rise in the proportion of longer prison sentences.

If one includes East Germany (new Länder) in the statistics on the level of total number of prisoners, a constant and clear rise in the figures becomes apparent between 1993 and 1998 (due to early problems a presentation of the statistics from earlier years has little value); within this the relative growth of the prison population was stronger in the East

than in the West. Between 1999 and 2002 the figures stagnated at a high level. The significantly higher numbers for 2003 and 2004 in part do not reflect real growth but are caused by the 31.03 having become the fixed counting date, whereas this was previously 31.12.; a date upon which the prison population was smaller as a result of Christmas amnesties and a high level of temporary release measures.

**Diagram 25: Prisoners by age**  
- Whole of Germany -

Total number of prisoners: 63 373



Source: 2004 prison statistics, published by the Federal Statistical Office, Wiesbaden (Fachserie 10, Reihe 4.1), table 3.1; fixed date 31.03.

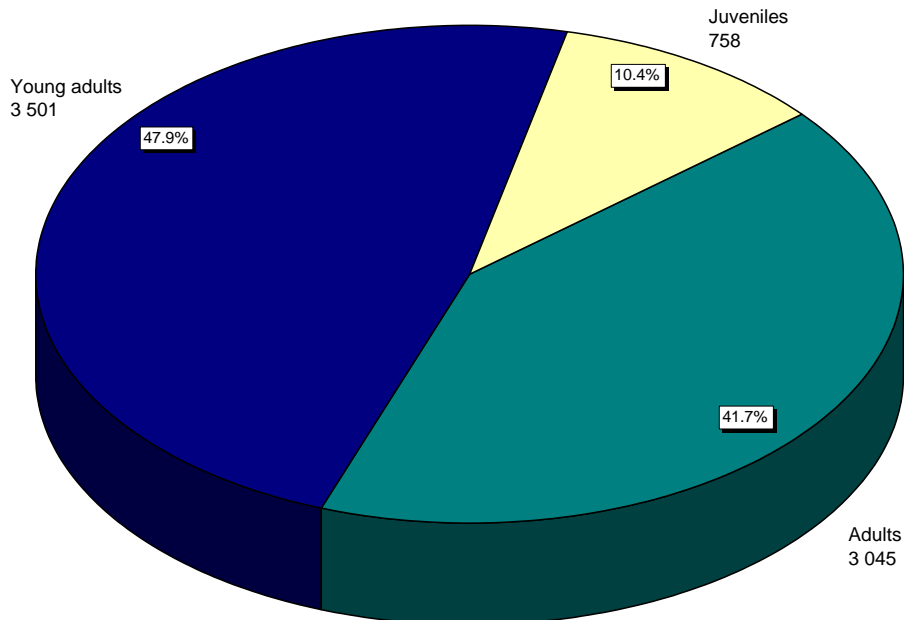
## 2. Prisoners and Age

Data regarding the age structure of the prison population are taken from the statistics referring to 31 March 2001.

Diagram 25 shows that more than two thirds of prisoners are aged between 21 and 40. 7.1 % of prisoners are juveniles and young adults. 9.8 % of prisoners are over 50, and only 2.6 % over 60.

## Diagram 26: Inmates in youth imprisonment\* - Whole of Germany -

Total: 7 304



\* Including adult prisoners housed in a juvenile penal institution.

Source: 2004 prison statistics, published by the Federal Statistical Office, Wiesbaden (Fachserie 10, Reihe 4.1), table 3.1; fixed date 31.03.

With regard to the inmates in youth imprisonment, it is noticeable that only 10 % of inmates are aged under 18. 48 % are young adults, and 42 % adults over 21 (diagram 26). There are several reasons for this: serious offences which result in a person being sentenced to youth imprisonment without the sentence being suspended tend to be committed by young adults rather than juveniles. Since whether or not the offender is dealt with by the juvenile criminal justice system or the adult courts depends on the date when the crime was committed, people aged over 21 can also be sentenced to youth imprisonment. Only after the offender is aged over 24 is the sentence passed by a juvenile court normally served in an adult institution.

### 3. Prospective length of imprisonment

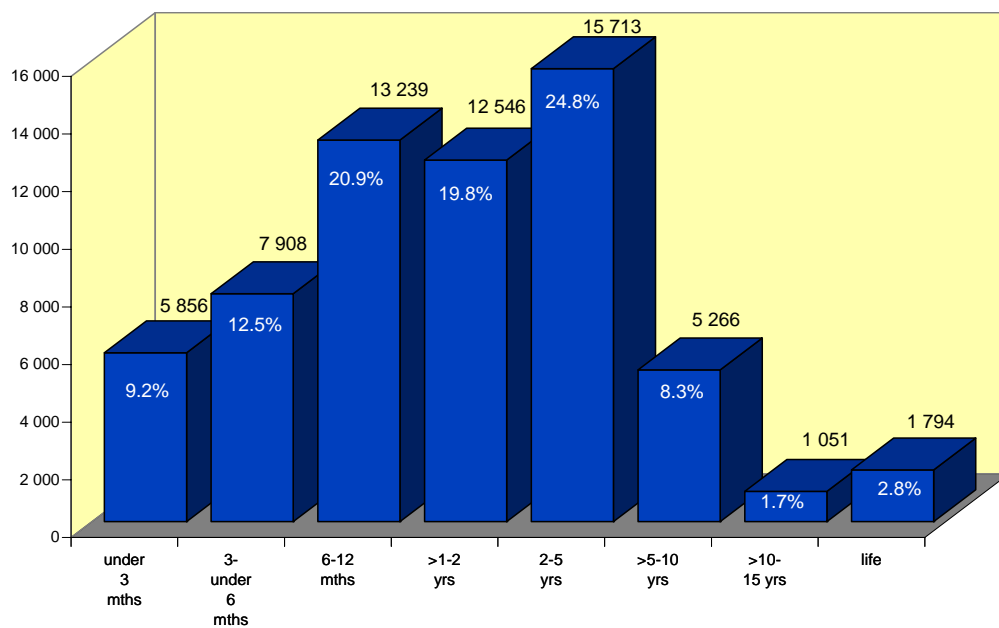
There are no official statistics on the actual period of imprisonment. The prison statistics only contain data on the prospective length of imprisonment. This consists of the length of the sentence minus remand custody. They do not include early release, e.g. after the remainder of the sentence has been suspended or after a pardon.

According to the statistics, 22 % of those in prison on a certain day are likely to be in prison for less than six months. The proportion of those likely to be in prison for between 6 and 12 months is almost just as high, 21 %. 13 % can expect to be in prison for more than 5 years (diagram 27). However, the figures are very much influenced by the fact that they

are recorded on a fixed date; if one takes the prisoners starting their sentence in the course of a year, the short-term (less than a year) prisoners are clearly represented in a higher proportion.

Diagram 27: Prospective length of imprisonment\*  
- Whole of Germany -

Total of prisoners: 63 373



\* Sentence imposed minus deductible remand custody.

Source: 2004 prison statistics, published by the Federal Statistical Office, Wiesbaden (Fachserie 10, Reihe 4.1), table 3.1; fixed date 31.03.

## VII. Reconviction

Preventing re-offending is one of the most important tasks assigned to criminal law. In how far this is achieved is for the most part unknown in Germany. Although demanded for over 100 years, descriptive reconviction statistics including all sanctions have never been available. Relatively detailed information can be found concerning the number of police suspects and those judged by a court according to offence, age, sex and sanction. The further offending behaviour of these persons is, however, entirely unknown as far as official statistics are concerned.

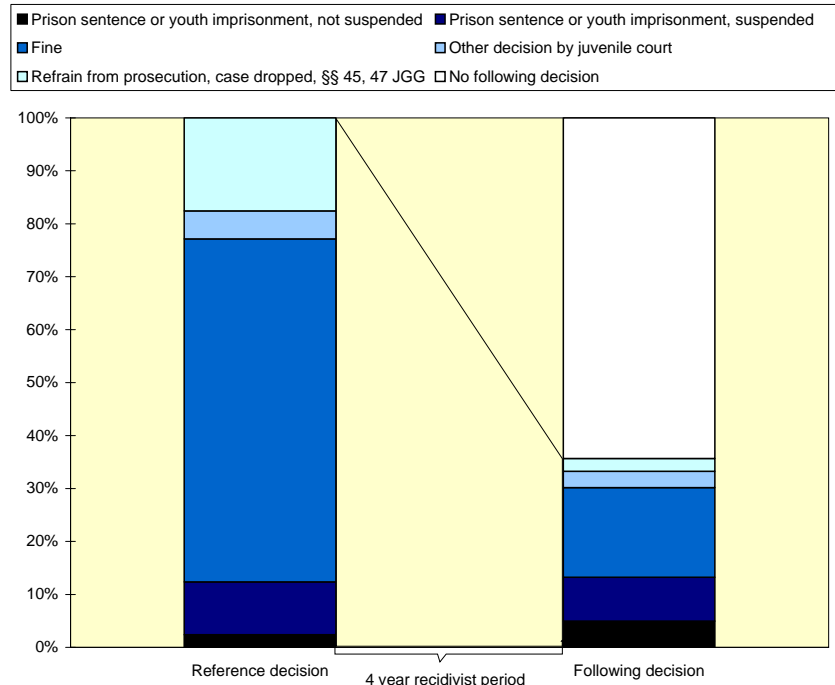
In the current official legal statistics system using the prosecution and prison statistics one can merely determine the proportion of persons convicted or prisoners with a previous conviction. These previous conviction proportions are, however, not identical with the reconviction rates. A certain prospective view can only be won from the probation service statistics which include data on persons whose punishment suspension was revoked "solely or also because of a new offence" (see above V.).

In contrast the Central Federal Register's unique data enable further observation of a person who has come to the attention of the criminal justice system. During the 1980s the Central Federal Register Office itself conducted first evaluations. After conceptional preparation work by the Kriminologische Zentralstelle and a first test run from 1995 onwards, on the initiative of the Federal Ministry of Justice, the Federal Statistical Office commissioned the creation of altered reconviction statistics in 1999. The result is now available (*Legalbewährung nach strafrechtlichen Sanktionen - Eine kommentierte Rückfallstatistik* by Jörg-Martin Jehle, Wolfgang Heinz and Peter Sutterer; Bundesjustizministerium (Hrsg.), Berlin 2003).

For the first time in Germany the demand for reconviction statistics including all criminal-ly sanctioned offenders has been met by this work. In order to achieve this, all persons subject to a criminal sanction or released from prison in a reference year (in this case, 1994) are observed for a four year period in order to see whether they re-offend. The data basis for this evaluation are the entrances in the Central Register and in the Register of Educative Measures according to the Act on Juvenile Courts which are usually first deleted after 5 years. The aim is not to present individuals in their personal development, but for statistical purposes the multitude of data must be reduced to a few workable and meaningful criteria and categories. This does not mean a conclusive committal to a set evaluative pattern in the sense of a regular statistical presentation, the data (existing in the form of individual sets of data) could be evaluated in other ways.

On the basis of the Central Federal Register's data it is possible to inform about reconviction rates in relation to sanction, offence, age and sex of the sanctioned person. Here is a summary of some of the central results drawn from the multitude of possible conclusions. The majority of persons convicted, subject to a sentence or other reactions under juvenile criminal law or - in the case of those sentenced to imprisonment - released from prison in the reference year 1994 do not re-offend within the entire 4 year reconviction period (diagram 28; see also Tables 29a and b in the annex). Only about one third (approx. 35%) are registered again.

Diagram 28: Reference decision type<sup>1</sup>  
and following decision type<sup>2</sup>



<sup>1</sup> 1 234 reference decisions which do not fit into the categories named are excluded.

<sup>2</sup> 289 cases of following decisions which do not fit into the categories named were excluded.

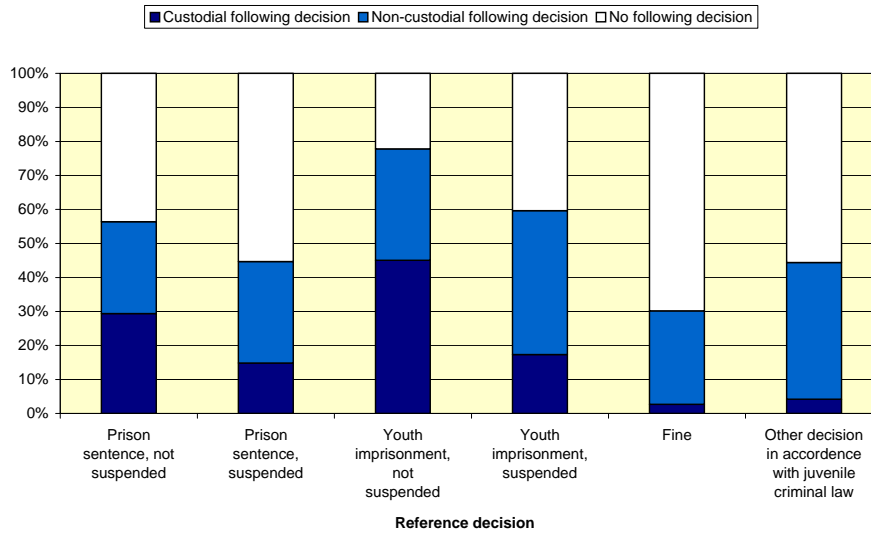
Source: Jehle/Heinz/Sutterer, Legalbewährung nach strafrechtlichen Sanktionen, Berlin 2003, p. 33.

If one looks more closely at the type of sanction, the following picture is to be seen: Among the reference decisions considered, fines and non-custodial measures under juvenile criminal law dominate clearly. Custodial sentences and juvenile imprisonment, particularly those which are not suspended only play a small part. This proportion is different in relation to the following decision during the reconviction period: even though fines and non-custodial reactions according to juvenile criminal law make up the majority of reconvictions, the importance of prison and youth imprisonment sentences grows.

Diagram 29 (see also Tables 29a and b in annex) shows the rate of reconviction by reference decision. Thereby the type of sanction of the reference decision is summarised in three rough groups in accordance with general criminal law (suspended and not suspended prison sentence and fine) and juvenile criminal law (suspended and not suspended youth imprisonment as well as other juvenile criminal law reactions).

Tendentially the results show: the more severe the reference decision is, the more likely a reconviction: the highest reconviction rate of 78 % can be seen in relation to not suspended youth imprisonment, the lowest of 30 % with the fine.

Diagram 29: Following decision type by reference decision type



\* In order to provide an overview the following decision's sanction type is categorised in two large groups: all reactions which do not include not suspended prison or youth imprisonment sentences are labelled as "non-custodial" following decisions, therefore all suspended prison and youth imprisonment sentences are included. Only prison and youth imprisonment sentences are "custodial" following decisions.  
 Source: Jehle/Heinz/Sutterer, Legalbewahrung nach strafrechtlichen Sanktionen, Berlin 2003, p. 37.

If one differentiates further according to the following decision's type of sanction, two major groups can be identified: all reactions which do not include not suspended prison or youth imprisonment sentences are labelled as "non-custodial" following decisions, these others are "custodial" following decisions. As one would expect the more severe reference decisions lead to a higher proportion of custodial following decisions: of persons who are released from prison after serving youth imprisonment or a prison sentence 45 % or 29 % respectively return to prison.

The most important results can be summarised as follows:

For the majority of persons who have come to the criminal justice system's attention offending (within the observation period) remains a one-off occurrence. Only about one third of persons sanctioned under criminal law or released from prison re-offends within the 4 year reconviction period.

In as far as a following reaction under criminal law occurs, this usually does not lead to an executed term of imprisonment: most cases of reconviction are treated more mildly.

Persons who have been sentenced to a prison sentence display a higher risk of reconviction than those who were sentenced to milder sanctions.

Suspended sentences produce better results than executed prison sentences and sentences to youth imprisonment.

Although the majority of prisoners re-offend, most of them do not return to prison after release.

## **Annex**

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## 2. Tables

Table 4.1a: Recorded crimes 1963 - 2003

Year	Former West Germany and Berlin*	Frequency rate <sup>1</sup> ; Former West Germany and Berlin*	Whole of Germany**	Frequency rate <sup>1</sup> ; Whole of Germany**
1963	1 678 840	2 914	-	-
1965	1 789 319	3 031	-	-
1967	2 074 322	3 465	-	-
1969	2 217 966	3 645	-	-
1971	2 441 413	3 983	-	-
1973	2 559 974	4 131	-	-
1975	2 919 390	4 721	-	-
1977	3 287 642	5 355	-	-
1979	3 533 802	5 761	-	-
1981	4 071 873	6 603	-	-
1983	4 345 107	7 074	-	-
1985	4 215 451	6 909	-	-
1987	4 444 108	7 265	-	-
1989	4 358 573	7 031	-	-
1991	4 752 175	7 311	-	-
1993	5 347 780	8 032	6 750 613	8 337
1994	5 138 663	7 665	6 537 748	8 038
1995	5 232 363	7 774	6 668 717	8 179
1996	5 254 557	7 768	6 647 598	8 125
1997	5 255 253	7 742	6 586 165	8 031
1998	5 149 955	7 576	6 456 996	7 869
1999	5 069 260	7 452	6 302 316	7 682
2000	5 074 482	7 439	6 264 723	7 625
2001	5 184 536	7 579	6 363 865	7 736
2002	5 349 423	7 785	6 507 394	7 893
2003	5 391 128	7 822	6 572 135	7 963

<sup>1</sup> Recorded crimes per 100 000 of the total population.

\* Until 1990 West Berlin; from 1991 whole of Berlin.

\*\* The figures for the whole of Germany are also available for 1991 and 1992, but because of difficulties in collecting them, they cannot be used for comparisons with the following years. Since 1993, the data for former East Germany have been generally comparable with those for former West Germany.

Source: Police crime statistics for the relevant years, published by the Federal Criminal Police Office, Wiesbaden, table 1.1., as of 1997 section 2.1.1.

Table 4.2a: Selected violent crimes 1977 - 2003\*

Year	Total violent crimes <sup>1</sup>	Intentional homicides <sup>2</sup>	Rape <sup>3</sup>	Robbery etc. <sup>4</sup>	Serious and dangerous bodily injury <sup>5</sup>
1977	83 545	2 644	6 725	21 265	52 628
1978	83 403	2 564	6 598	21 648	52 334
1979	87 889	2 632	6 576	21 950	56 487
1980	99 554	2 733	6 904	24 193	65 479
1981	106 762	2 963	6 925	27 710	68 876
1982	108 024	3 044	6 708	30 465	67 474
1983	105 421	2 768	6 763	29 561	66 057
1984	100 736	2 760	5 954	28 012	63 746
1985	102 967	2 796	5 919	29 685	64 314
1986	101 307	2 702	5 604	28 581	64 097
1987	100 003	2 651	5 281	28 122	63 711
1988	99 872	2 543	5 251	28 952	62 889
1989	102 645	2 415	4 987	30 152	64 840
1990	109 997	2 419	5 112	35 111	67 095
1991	126 245	2 583	5 454	44 638	73 296
1992	132 834	2 934	5 568	46 845	77 160
1993	160 680	4 259	6 376	61 757	87 784
1994	156 272	3 751	6 095	57 752	88 037
1995	170 170	3 960	6 175	63 470	95 759
1996	179 455	3 500	6 228	67 578	101 333
1997	186 447	3 312	6 636	69 569	106 222
1998	186 306	2 877	7 914	64 405	110 277
1999	186 655	2 851	7 565	61 420	114 516
2000	187 103	2 770	7 499	59 414	116 912
2001	188 413	2 641	7 891	57 108	120 345
2002	197 492	2 664	8 615	58 867	126 932
2003	204 124	2 541	8 766	59 782	132 615

\* Until 1990 Former West Germany and West Berlin; 1991 and 1992 including whole of Berlin; from 1993 whole of Germany.

<sup>1</sup> "Violent crime" includes the following categories of offence; intentional homicides (Sections 211, 212, 213, 216 of the Criminal Code)<sup>6</sup>; rape and serious sexual duress (Sections 177, para. 2, 3 and 4, 178 of the Criminal Code)<sup>6</sup>; robbery, extortion accompanied by violence, robbery of a motor vehicle driver (Sections 249-252, 255, 316a of the Criminal Code)<sup>6</sup>; bodily injury resulting in death (Section 227 of the Criminal Code)<sup>6</sup>; serious and dangerous bodily injury (Sections 224-226 of the Criminal Code)<sup>6</sup>; kidnapping for extortion (Section 239a of the Criminal Code)<sup>6</sup>; hostage-taking (Section 239b of the Criminal Code)<sup>6</sup>; attack on air traffic (Section 316c of the Criminal Code)<sup>6</sup>.

<sup>2</sup> "Intentional homicides" include murder (Section 211 of the Criminal Code)<sup>6</sup>; manslaughter and killing a person at his request (Sections 212, 213, 216 of the Criminal Code)<sup>6</sup>; from 1991 onwards, the figure includes the cases of murder and manslaughter committed between 1951 and 1989 and recorded by the Central Investigation Group on Governmental and Unification-Related Crime.

<sup>3</sup> The 6<sup>th</sup> Act on Criminal Law Reform regulates rape and sexual duress together in one provision. Therefore, as of 1998 the Police Crime Statistics count other serious forms of sexual duress alongside rape in this category, which probably explains the rise between 1997 and the following years.

<sup>4</sup> Including extortion accompanied by violence and robbery of a motor vehicle driver (Sections 255, 316a of the Criminal Code)<sup>5</sup>.

<sup>5</sup> Until the 6<sup>th</sup> Act on Criminal Law Reform including poisoning (Section 229 of the Criminal Code).

<sup>6</sup> The section numbers used here for the individual crimes are those laid down in the 6<sup>th</sup> Act on Criminal Law Reform. Before that act some section numbers, content and the number of crimes belonging to offence groups was in part different.

Source: Police crime statistics for the relevant years, published by the Federal Criminal Police Office, Wiesbaden, table 2.18, as of 1997 table 219.

Table 5a: Suspect number and rate\*: Germans by age and sex  
- Whole of Germany -

Age group	Suspects			Suspect rate	
	Total	Male	Female	Male	Female
Adults (21 and over)	1 258 205	954 973	303 232	3 395	985
Young adults (18-21)	194 350	155 267	39 083	12 046	3 179
Juveniles (14-17)	244 098	179 123	64 975	10 161	3 881
Children <sup>1</sup>	100 643	71 280	29 363	2 965	1 286

\* Suspect rate = number of suspects per 100 000 of the relevant age group.

<sup>1</sup> Children over 8.

Source: 2003 police crime statistics, published by the Federal Criminal Police Office, Wiesbaden, table 61, p. 99.

Table 8a: Reasons for and length of remand custody  
- Former West Germany and Berlin -

	Offences		
	Total	Male	Female
Persons statistically recorded as having served remand custody	926 758 34 414	763 277 31 635	163 481 2 779
Reasons for detention (several possible)			
Flight / risk of flight	32 705	30 042	2 663
Risk of evidence being tampered with	1 509	1 392	117
Crimes against life (Section 112 para. 3 of the CCP <sup>1</sup> )	388	353	35
Risk of repetition:			
- of sexual offences	368	359	9
- of offences under Section 112a para. 1 fig. 2 of CCP <sup>1</sup>	985	925	60
Length of remand custody:			
up to 1 month	10 901	9 658	1 243
over 1 to 3 months	8 378	7 655	723
over 3 to 6 months	8 372	7 919	453
over 6 to 12 months	5 257	4 966	291
over 1 year	1 506	1 437	69

<sup>1</sup> Code of Criminal Procedure.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, table 6.1.

Table 12a: Persons judged and persons sentenced 1963 - 2003  
- Former West Germany and Berlin\* -

Year	Persons judged	Persons sentenced	Proportion of persons sentenced of persons judged
1963	643 326	566 683	88 %
1965	643 948	570 392	89 %
1967	713 383	632 060	88 %
1969	710 047	618 173	87 %
1971	769 047	668 564	87 %
1973	807 936	698 912	87 %
1975	779 219	664 536	85 %
1977	882 855	722 966	82 %
1979	906 232	718 779	79 %
1981	952 091	747 463	79 %
1983	998 205	784 657	79 %
1985	924 912	719 924	78 %
1987	890 666	691 394	78 %
1989	888 089	693 499	78 %
1991	869 195	695 118	80 %
1993	931 051	760 792	82 %
1995	937 385	759 989	81 %
1997	960 334	780 530	81 %
1999	940 683	759 661	81 %
2001	890 099	718 702	81 %
2003**	911 848	736 297	81 %

\* Until 1994 West Berlin; from 1995 whole of Berlin.

\*\* Numbers are available for 2003 for the new Länder except for Saxony-Anhalt: Brandenburg (judged, sentenced, proportion), Mecklenburg-Vorpommern (judged, sentenced, proportion), Saxony (judged, sentenced, proportion), Thuringia (judged, sentenced, proportion).

Source: Conviction statistics for the relevant years, published by the Federal Statistical Office, Wiesbaden, table 1.3 and 2.1.

Table 15a: Prison sentences 1970 - 2003  
- Former West Germany and Berlin\* -

Year	Total prison sentences	suspended	not suspended
1970	88 248	46 972	41 276
1971	94 135	51 385	42 750
1972	96 651	55 148	41 503
1973	96 589	57 842	38 747
1974	104 726	63 863	40 863
1975	94 019	57 924	36 095
1976	98 233	61 801	36 432
1977	101 540	65 631	35 909
1978	105 506	67 889	37 617
1979	103 325	67 278	36 047
1980	104 850	68 878	35 972
1981	108 390	71 223	37 167
1982	115 726	75 182	40 544
1983	118 638	77 391	41 247
1984	116 595	77 031	39 564
1985	111 876	74 147	37 729
1986	108 472	74 075	34 397
1987	108 528	74 239	34 289
1988	108 214	74 305	33 909
1989	104 890	70 783	34 107
1990	102 454	69 705	32 749
1991	100 766	68 407	32 359
1992	103 187	70 936	32 251
1993	110 429	76 496	33 933
1994	114 749	79 172	35 577
1995	115 767	80 516	35 251
1996	121 326	84 452	36 874
1997	126 775	87 440	39 335
1998	130 022	88 271	41 751
1999	130 693	89 052	41 641
2000	125 305	84 552	40 753
2001	123 533	83 015	40 518
2002	125 019	85 746	39 273
2003	127 511	88 043	39 468

\* Until 1994 West Berlin, from 1995 whole of Berlin.

Source: Conviction statistics for the relevant years, published by the Federal Statistical Office, Wiesbaden, table 3.1.

Table 19a: Sanctions under juvenile criminal law  
- Former West Germany and Berlin\* -

Sanctions under juvenile criminal law (only most severe sanction)	Total offences	Excluding traffic offences
Termination*	47 853	41 150
Total sentenced	101 562	86 923
of which:		
Educative measures	7 001	5 934
of which: Instructions <sup>1</sup>	22 118	18 896
Educative support <sup>1</sup>	240	225
Residential care <sup>1</sup>	53	50
Disciplinary measures	77 273	64 255
of which: Warning <sup>1</sup>	27 925	22 949
Condition <sup>1</sup>	62 382	50 841
Detention <sup>1</sup>	18 992	17 649
Youth imprisonment	17 288	16 734
Suspended	10 642	10 280
Not suspended	6 646	6 454
Length of youth imprisonment		
6 - 12 months	9 348	8 986
of which: Suspended	7 246	6 978
Not suspended	2 102	2 008
1 - 2 years	5 955	5 795
of which: Suspended	3 396	3 302
Not suspended	2 559	2 493
2 - 5 years	1 882	1 851
5 - 10 years	103	102

\* Cases dropped in accordance with the Act on Juvenile Courts only; Excluding cases dropped in accordance with the Criminal Procedure Code (Total offences n=6 737, excluding road traffic offences n=5 985).

<sup>1</sup> Under the main categories (disciplinary/educative measures), those offenders are counted for whom these measures were the most severe punishment. In the breakdown of disciplinary measures (warning, condition, youth detention) and educational measures (instructions, educative support, education in home), *all* the measures of this sort are included, irrespective of whether they are the most severe sanction or are combined with other sanctions. The sum of the sub-groups therefore exceeds the figure for the main category.

Source: 2003 conviction statistics, published by the Federal Statistical Office, Wiesbaden, tables 2.2, 2.3, 4.1 and 4.3.

Table 20a: Sanctions under juvenile criminal law 1970 - 2003\*  
- Former West Germany and Berlin\*\* -

Year	Youth imprisonment	Disciplinary measures	Educative measures	Cases terminated
1970	11 687	73 841	4 065	28 285
1971	13 414	78 700	5 027	28 757
1972	15 296	79 011	4 835	28 964
1973	15 586	77 250	4 657	30 503
1974	16 088	77 587	6 155	31 254
1975	15 983	72 572	8 376	34 825
1976	17 947	79 277	9 961	48 908
1977	18 019	85 886	11 754	59 118
1978	18 673	92 379	13 740	66 004
1979	18 045	94 495	14 696	76 081
1980	17 982	98 090	16 577	82 518
1981	20 022	101 855	19 640	90 090
1982	22 083	104 136	23 541	55 886
1983	21 659	100 526	26 367	58 676
1984	19 733	89 156	24 708	96 248
1985	17 672	79 330	22 124	75 736
1986	16 364	72 064	19 892	69 637
1987	15 054	66 260	18 759	60 167
1988	15 003	63 415	18 273	55 505
1989	13 090	55 604	16 257	48 968
1990	12 103	50 193	14 978	45 236
1991	12 938	50 592	9 198	43 472
1992	13 040	51 428	7 371	42 343
1993	13 991	52 277	6 396	40 687
1994	13 998	52 276	5 691	41 696
1995	13 880	56 357	6 494	46 428
1996	15 146	59 385	6 315	45 940
1997	16 399	64 696	6 712	50 029
1998	17 220	68 207	6 574	52 903
1999	17 645	69 769	6 188	50 085
2000	17 753	69 892	6 195	50 392
2001	17 722	72 167	6 786	48 106
2002	17 684	76 643	7 155	49 315
2003	17 288	77 273	7 001	47 853

\* Figures for 1982 and 1983 do not contain the cases dropped in accordance with Section 45 paragraph 3 (formerly Section 45 paragraph 1) of the Act on Juvenile Courts.

\*\* Until 1994 West Berlin, from 1995 whole of Berlin.

Source: Conviction statistics for the relevant years, published by the Federal Statistical Office, Wiesbaden, tables 2.2 and 2.3.

Table 22a: Reasons why the probationary period ended\*  
- Former West Germany and Berlin -\*\*

	Periods ended under adult criminal law		Periods ended under juvenile criminal law	
Total	100.0 %	36 737	100.0 %	17 466
Remission of punishment	54.5 %	20 007	32.6 %	5 693
Completion of probation order	5.7 %	2 089	16.4 %	2 868
Cancellation of probation order	8.0 %	2 926	2.1 %	363
Revocation of probation, thereof	31.9 %	11 715	16.5 %	2 882
- only or partly due to a new crime	26.5 %	9 743	12.1 %	2 122
- due to other reasons	5.4 %	1 972	4.4 %	760
Inclusion in a new sentence			25.3 %	4 420
Guilty verdict extinguished			6.2 %	1 083
Prison sentence imposed, thereof			0.9 %	157
- only or partly due to a new crime			0.6 %	105
- due to other reasons			0.3 %	52

\* Probation periods overseen by full time probation officers only.

\*\* Excluding Hamburg.

Source: 2002 probation service statistics, published by the Federal Statistical Office, Wiesbaden (Fachserie 10, Reihe 5), table 3.2.



Table 24a: Number of prisoners and detainees by nature of imprisonment\*

Year	Total: whole of Germany	Total: former West Germany and Berlin <sup>1</sup>	Prison sentence <sup>2</sup>	Remand custody <sup>2</sup>	Young offender institution <sup>2</sup>	Other reason (incl. preventive detention) <sup>2</sup>
1970		42 999	23 965	13 038	4 709	1 287
1971		46 608	25 805	14 489	4 924	1 390
1972		49 903	27 418	15 502	5 633	1 350
1973		50 522	27 504	15 943	5 497	1 578
1974		50 142	27 798	15 556	5 429	1 359
1975		49 676	28 039	14 773	5 489	1 375
1976		49 754	28 679	14 181	5 597	1 297
1977		50 979	29 846	14 152	5 791	1 190
1978		50 395	30 006	13 496	5 681	1 212
1979		51 051	29 635	14 470	5 741	1 205
1980		51 889	30 072	14 929	5 691	1 197
1981		53 597	31 009	15 636	5 858	1 094
1982		57 277	33 088	16 539	6 362	1 288
1983		55 816	33 788	14 600	6 233	1 195
1984		53 166	33 014	13 303	5 699	1 150
1985		50 225	31 825	12 254	5 134	1 012
1986		45 666	28 613	11 373	4 654	1 026
1987		44 903	27 898	11 527	4 288	1 190
1988		44 804	27 815	11 703	4 215	1 071
1989		43 900	26 837	12 222	3 773	1 068
1990		44 335	25 581	14 070	3 421	1 263
1991		45 892	25 803	15 292	3 322	1 475
1992		49 106	26 345	17 290	3 384	2 087
1993	59 833	53 482	27 625	18 897	3 691	3 269
1994	60 289	52 565	28 964	17 056	3 537	3 008
1995	61 108	52 462	29 853	16 725	3 525	2 359
1996	64 680	55 257	31 626	17 424	3 748	2 459
1997	68 029	57 578	33 537	16 954	4 067	3 020
1998	69 917	58 686	35 313	16 246	4 419	2 708
1999	69 214	57 831	35 698	14 921	4 522	2 690
2000	70 252	57 832	35 783	14 729	4 656	2 665
2001	70 203	58 134	35 959	14 897	4 712	2 566
2002	70 977	58 931	37 105	14 615	4 735	2 476
2003	81 176	67 899	45 087	14 633	5 096	3 083
2004	81 166	67 970	46 094	13 959	5 098	2 819

\* counted on the fixed date 31.12. until 2002; 31.03. thereafter; excluding those temporarily absent (on the 31.03.04 this was 1 413 persons for the Federal Republic of Germany in total, 1 206 persons for former West Germany and Berlin<sup>1</sup>).

<sup>1</sup> Until 1991 West Berlin, from 1992 whole of Berlin.

<sup>2</sup> Only Former West Germany and Berlin<sup>1</sup>.

Source: Prison statistics for the relevant years, published by the Federal Statistical Office Wiesbaden (up until 2002 Fachserie 10, Reihe 4.2, page 5, Fixed date 31.12.; as of 2003 new publication, Current Number of Prisoners and Detainees, fixed date 31.03.).

Table 29a: Most serious following decision by sanction group

	Sanction groups of reference decision						
	Total	PS n.s.	PS s.	YI n.s.	YI s.	Fine	Other AJC
Cases total	946 136	19 551	85 460	3 265	8 676	612 747	216 437
No FD	608 264	8 523	47 283	724	3 502	427 893	120 339
FD, including	337 872	11 028	38 177	2 541	5 174	184 854	96 098
<b>A. Prison sentence</b>	109 272	8 275	24 187	1 879	2 548	62 491	9 892
a. 5 yrs.	1 319	231	272	56	42	628	90
a. 2 - 5 yrs.	7 185	1 046	1 435	328	292	3 364	720
a. 1 - 2 yrs. n.s.	7 855	1 384	2 209	415	345	2 790	712
s.	6 747	292	969	85	176	4 244	981
6 - 12 m. n.s.	14 506	2 094	5 041	416	484	5 373	1 098
s.	28 882	1 324	5 652	293	610	17 800	3 203
under 6 m. n.s.	9 723	991	3 707	135	199	4 059	632
s.	33 055	913	4 902	151	400	24 233	2 456
<b>B. Youth imprisonment</b>	16 176	0	8	169	335	502	15 162
a. 5 yrs.	108	0	0	4	1	7	96
a. 2 - 5 yrs.	2 523	0	1	45	49	79	2 349
a. 1 - 2 yrs. n.s.	2 551	0	2	51	46	63	2 389
s.	3 264	0	0	29	73	122	3 040
6 - 12 m. n.s.	1 112	0	3	21	45	28	1 015
s.	6 618	0	2	19	121	203	6 273
<b>C. Fine</b>	160 222	2 715	13 915	460	1 726	121 191	20 215
<b>D. Other AJC</b>	51 936	3	20	30	557	534	50 792
Detention	8 863	0	4	13	202	128	8 516
Measure by JCJ	20 096	1	2	8	190	219	19 676
D. a. sect. 45, 47	22 973	2	14	9	165	187	22 596
<b>E. Meas./add.S. u.CC</b>	84 865	2 757	10 730	539	1 081	55 590	14 168
Prev. det. (p.i.)	47	36	2	0	1	7	1
Comm psy. Hosp.	47	36	2	0	1	7	1
Comm.withd.treat.	1 316	217	349	48	30	521	151
Supervisison o.c.	1 013	191	239	39	24	427	93
Withd/Susp. per. d.	64 940	1 704	7 895	339	800	43 742	10 460
Driving ban	9 867	283	1 295	30	103	6 068	2 088

FD: following decision (all decisions under A, B, C, D, isolated measures as well as custody reserving punishment)

PS: Prison sentence

YI: Youth imprisonment

a: about

yrs.: years

m.: months

n.s.: not suspended

s.: suspended

Measure by JCJ: measure imposed by juvenile court judge (educative measure, disciplinary measure, section 27 JGG)

Other AJC: Other Reaction under Act on Juvenile Courts (all, also section 3, second sentence, except youth imprisonment)

D. a. sect. 45, 47: Decision according to sections 45, 47 (AJC)

Meas./add.S. u.CC: Other measures and additional sanctions according to Criminal Code

Prev. det. (p.i.): Preventive detention (post imprisonment)

Comm psy. Hosp.: Committal to psychiatric hospital

Comm.withd.treat.: Committal to institution for withdrawal treatment

Supervisison o.c.: Supervision of conduct

Withd/Susp. per d.: Withdrawal / Suspension of permission to drive

Table 29b: Most serious following decision by sanction group in percent

	Sanction groups of reference decision						
	Total	PS n.s.	PS s.	YI n.s.	YI s.	Fine	Other AJC
Cases total	100,00	100,00	100,00	100,00	100,00	100,00	100,00
No FD	64,29	43,59	55,33	22,17	40,36	69,83	55,60
FD, including	35,71	56,41	44,67	77,83	59,64	30,17	44,40
<b>A. Prison sentence</b>	11,55	42,33	28,30	57,55	29,37	10,20	4,57
a. 5 yrs.	0,14	1,18	0,32	1,72	0,48	0,10	0,04
a. 2 - 5 yrs.	0,76	5,35	1,68	10,05	3,37	0,55	0,33
a. 1 - 2 yrs. n.s.	0,83	7,08	2,58	12,71	3,98	0,46	0,33
s.	0,71	1,49	1,13	2,60	2,03	0,69	0,45
6 - 12 m. n.s.	1,53	10,71	5,90	12,74	5,58	0,88	0,51
s.	3,05	6,77	6,61	8,97	7,03	2,90	1,48
under 6 m. n.s.	1,03	5,07	4,34	4,13	2,29	0,66	0,29
s.	3,49	4,67	5,74	4,62	4,61	3,95	1,13
<b>B. Youth imprisonment</b>	1,71	0,00	0,01	5,18	3,86	0,08	7,01
a. 5 yrs.	0,01	0,00	0,00	0,12	0,01	0,00	0,04
a. 2 - 5 yrs.	0,27	0,00	0,00	1,38	0,56	0,01	1,09
a. 1 - 2 yrs. n.s.	0,27	0,00	0,00	1,56	0,53	0,01	1,10
s.	0,34	0,00	0,00	0,89	0,84	0,02	1,40
6 - 12 m. n.s.	0,12	0,00	0,00	0,64	0,52	0,00	0,47
s.	0,70	0,00	0,00	0,58	1,39	0,03	2,90
<b>C. Fine</b>	16,93	13,89	16,28	14,09	19,89	19,78	9,34
<b>D. Other AJC</b>	5,49	0,02	0,02	0,92	6,42	0,09	23,47
Detention	0,94	0,00	0,00	0,40	2,33	0,02	3,93
Measure by JCJ	2,12	0,01	0,00	0,25	2,19	0,04	9,09
D. a. sect. 45, 47	2,43	0,01	0,02	0,28	1,90	0,03	10,44
<b>E. Meas./add.S. u.CC</b>	8,97	14,10	12,56	16,51	12,46	9,07	6,55
Prev. det. (p.i.)	0,00	0,18	0,00	0,00	0,01	0,00	0,00
Comm psy. Hosp.	0,00	0,18	0,00	0,00	0,01	0,00	0,00
Comm.withd.treat.	0,14	1,11	0,41	1,47	0,35	0,09	0,07
Supervision o.c.	0,11	0,98	0,28	1,19	0,28	0,07	0,04
Withd/Susp. per. d.	6,86	8,72	9,24	10,38	9,22	0,07	4,83
Driving ban	1,04	1,45	1,52	0,92	1,19	0,99	0,96

FD: following decision (all decisions under A, B, C, D, isolated measures as well as custody reserving punishment)

PS: Prison sentence

YI: Youth imprisonment

a: about

yrs.: years

m.: months

n.s.: not suspended

s.: suspended

Measure by JCJ: measure imposed by juvenile court judge (educative measure, disciplinary measure, section 27 JGG)

Other AJC: Other Reaction under Act on Juvenile Courts (all, also section 3, second sentence, except youth imprisonment)

D. a. sect. 45, 47: Decision according to sections 45, 47 (AJC)

Meas./add.S. u.CC: Other measures and additional sanctions according to Criminal Code

Prev. det. (p.i.): Preventive detention (post imprisonment)

Comm psy. Hosp.: Committal to psychiatric hospital

Comm.withd.treat.: Committal to institution for withdrawal treatment

Supervision o.c.: Supervision of conduct

Withd/Susp. per d.: Withdrawal / Suspension of permission to drive





