

Chapter 13

Germany

Jürgen Mutz

1 HISTORICAL DEVELOPMENT OF THE PROBATION SERVICE SYSTEM

1.1 The start of probation in Germany

The provision of aid and support to offenders (Straffälligenhilfe) in Germany began in the private sector. Until the early part of the 20th century the state was not interested in helping offenders; instead it imposed punishment in the hope of improving those who had committed a criminal offence. Providing support has its roots in Christian humanitarian aid, and initially focused only on initiatives for inmates. This support was extended to released prisoners only at a later stage, which then became embedded into broader societal structures through the establishment of private organisations such as the Rhine-Westphalian Society in Support of Prisons (Rheinisch-Westfälische Gefängnisgesellschaft) in 1826 and the Society in Supporting Released Prisoners in Württemberg (Verein zur Fürsorge für entlassene Strafgefangene in Württemberg) in 1830. Nowadays private aid complements the governmental and professional care for offenders. There is a diverse and complex network through which private charitable organisations and associations for probation, aftercare and offenders' aid offer support to offenders, released prisoners and their families and to victims of crime as well.

Whilst in the beginning private aid to offenders was exclusively supported through voluntary work, this provision has now turned into a professional system with full-time employees. The current state-run probation system has close links with the democratic development of the Federal Republic of Germany post-1945. However, as early as the turn of the 20th century there were ideas about the use of punishment, not only to protect society but also to bring about the offender's improvement. To this end, in the 1920s some German cities set up offices for court assistants (Gerichtshelfer), who had to put together a personal investigation report of a suspect or accused person; in the years 1933 to 1945, however, all these efforts came to nothing.

The first legislation introducing a system of probation with trained professional probation officers came into force for young offenders on 1 October 1953 by the Juvenile Court Act (Jugendgerichtsgesetz) and for adults on 1 January 1954 by an amendment of the Criminal Code (Strafgesetzbuch).

1.2 Important developments

It was the Criminal Law Reform (Strafrechtsreform) of 1969 that led to a qualitative and quantitative expansion of the probation system, by considerably widening the possible use of suspension of sentences on probation as well as the use of conditional release, i.e. suspension of remainder of sentence. The service responsible for personal investigation reports regarding adult offenders was codified on 1 January 1975 by an amendment of the Code of Criminal Procedures (Strafprozessordnung). In the same year a new measure named Supervision of Conduct (Führungsaufsicht) and an extension of social work in penal institutions by the Prison Act (Strafvollzugsgesetz) came into force. The years after 1980 saw the expansion of tasks covered by the social services within the criminal justice

system. One important element was the introduction of community service (gemeinnützige Arbeit) instead of custody in case a fine (Geldstrafe) is not paid; another element was the codification of the victim-offender mediation (Täter-Opfer-Ausgleich). In some federal states (Bundesländer) the introduction of support to victims (Opferhilfe) has received increased attention. The probation service (Bewährungshilfe(dienst)), that started with ten employees, currently has around 2,700 probation officers working with courts and public prosecutors plus about 900 social workers carrying out their tasks in penal institutions (Vollzugsanstalten).

1.3 Probation activities in a nutshell

Unlike in other European countries, there is not a unity of concept regarding the social services, working in the criminal justice system and being part of it. Due to their different functions, the social workers or social pedagogues have different professional names: probation officers (Bewährungshelfer) mainly have to assist, to guide and to supervise offenders in the case of a suspended sentence (Strafaussetzung zur Bewährung) or a conditional release. They are also in charge in the case of the supervision of a convict's conduct, which is a special measure of recovery and protection (Maßregel der Besserung und Sicherung). Social workers, whose basic duty is to investigate the personality of an offender and his social relations, are called Gerichtshelfer, verbatim translated into English 'court assistants'. They carry out social work first and foremost in the field of psychosocial proceedings. In some states they are also tasked with victim-offender mediation and community service. Social workers / social pedagogues, who are working in penal institutions, are called social workers in the prison system or social workers in penal institutions (Sozialarbeiter des Strafvollzuges). They are to render assistance towards rehabilitation, to make up for deficits and to improve life prospects.

Logically, instead of 'probation service' the general term for all kinds of 'probation' staff working in this field is 'social services in the criminal justice system' (Soziale Dienste der Justiz). The social services are part and parcel of the penal system. In the past the services have expanded, but due to fiscal constraint this development has stopped. Now it is time to improve the performance of the probation services by internal reforms. That is why the federal states make efforts to reorganise their relevant service and its working methods in order to make the system work at optimum efficiency. Keywords among others are: binding professional standards, specialisation, case management, and risk assessment. Victim-offender mediation and the support of victims gain significance.

2 LEGISLATIVE BASIS AND MISSION

2.1 Legislative basis and mission statement

The Federal Republic of Germany is, as the name implies, federally structured. Numerous acts have been passed by federal government regulating the tasks and functions of probation officers, of court assistants and social workers in penal

institutions across the entire country. These include the Criminal Code, the Juvenile Court Act, the Code of Criminal Procedure, the Judicature Act (Gerichtsverfassungsgesetz) as well as the Prison Act. To whom probation work is applied is regulated by the federal legislation. But according to the federal structure of Germany the rules concerning organisation, local and regional authority as well as operating standards and the selection and recruitment of staff fall within the responsibilities of the individual 16 federal states (article 294 Introduction Act of the Criminal Code (Einführungsgesetz zum Strafgesetzbuch)). A uniform structure for the organisation of the social services within the criminal justice system is not intended. On the other hand, the services do not build independent organisations with individual guiding principles or special mottoes. Only in one state we find a separate organisation. Since 1 January 2007 the private association Neustart, a subsidiary of the Austrian association Neustart, is responsible for the probation service and the court assistance in Baden-Wuerttemberg. 'Our help creates security' is a headline of its self-promotion.

As to the mission statement of the social services, one can say: In general, the service puts into effect that the constitutional principle of the social welfare state is valid also in the criminal justice system; the service makes an important contribution to legal and social peace in society, by helping to find solutions to personal and social problems. In particular the service aims at enabling the offender to live his or her life in a law-abiding and responsible way and to (re-) integrate with the local community, in order to prevent re-offending and by that protect the community and its members.

2.1.1 Court assistance

The public prosecution office (Staatsanwaltschaft) should extend its investigation to the circumstances pertaining to the legal consequences of the offence. In order to do so the prosecutor may resort to court assistance (Code of Criminal Procedure, Article 160, paragraph 3) and ask for a personal investigation report. As mentioned above court assistants belong to the Social Services in the criminal justice system. Their original and basic task (until today) is to investigate the personality of an offender and his or her social relations. Court assistants may also be commissioned to report in cases, in which it might be an option to prevent pre-trial detention. The public prosecutor and/or the court may ask for a report on the victim as well, especially concerning the effect of the offence and the strain under which the current proceedings are putting the victim. In some federal states court assistance is responsible for organizing victim-offender-mediation and community service as an alternative to unenforceable fines.

If a probation officer is not assigned, court assistants may be asked for a report in the enforcement and in the post-trial phase in order to support the public authorities for penal execution (Strafvollstreckungsbehörden) and the courts in their decision making, particularly when it comes to a revocation of probation or conditional release (Code of Criminal Procedure, Article 463d). Finally court assistance might be called in pardon proceedings. Court assistants may cooperate with the other social services in the criminal justice system, with police, prisons, youth and social welfare authorities, charitable organizations,

counselling centres and facilities of private associations. The main distinction between court assistants and probation officers is due to the different relationship to the respective target group. To put it simply: In contrast to probation officers court assistants do not have the specific task to care for their clients for a certain period of time. They act more or less as a clearing house. Generally one can say: Court assistants are responsible whenever a probation officer is not appointed and social advice and competence is wanted by the public prosecution office or the court.

2.1.2 Probation service

When the court imposes the sentence of imprisonment for a period not longer than one year, the court has to suspend the execution of the sentence and to grant a probation time, if the criminal prognosis is satisfactory. A sentence of not more than two years may be suspended if there are special circumstances with regard to the offence and the offender's personality (Criminal Code, article 56). By the decision of the court the offender will be subject to supervision of a probation officer, if this is indicated to restrain the convict from re-offending. As a rule, the court has to order the supervision of a probation officer, when the court suspends a sentence of more than nine months imprisonment and - supplementary - the offender is under 27 years of age (Criminal Code, Article 56 d paragraphs 1 and 2). There are comparable criteria for the court's decision on conditional release when the offender has served two-thirds or in special cases half of the sentence. A probation officer will be assigned, if this is indicated to prevent further crimes. As a rule, the supervision of a probation officer is ordered if the offender at least has served one year of his sentence (Criminal Code, Article 57 paragraph 3).

The probation officer provides advice and support to the probationer. In agreement with the court he or she supervises that his or her client adheres to conditions and directives of the court. They report in intervals fixed by the court on how the probationer conducts his or her life and inform the court of gross or persistent infringements of conditions and directives (Criminal Code, article 56d paragraph 3). The probation officer has to manage this double pack of help and control. And it seems to be obvious, that there is no competition between the two tasks; they complement each other. Experience shows that without control probation can't be managed, and often it is assistance that prevents re-offending. It depends on the individual case which actions, reactions and interventions are more necessary than others. In the German system the combination of assistance and surveillance is a typical feature of the profession 'probation officer', making it a very special category of social worker.

2.1.3 Social work in penal institutions

Social work in prison is governed by Article 71 of the Prison Act, according to which the inmate has the right to receive social support within the penal institution in order to solve his or her personal problems. The support given is aimed at enabling the inmate to look after his or her own affairs. The Prison Act, Article 155 paragraph 2, stipulates that the penal institution according to its special tasks has to plan for the needed number of social workers. Social workers in penal institutions cover a wide range of tasks. They are needed mainly at the beginning and the end of the sentence and have to work collaboratively with other criminal justice authorities as well as with other social services in general.

2.1.4 Probation service for juvenile offenders

The Juvenile Court Act governs the treatment of young offenders from 14 to including 20 years of age. Juvenile court assistance (Jugendgerichtshilfe) plays an important role. This service however belongs to the local youth welfare office

(Jugendamt). Probation officers on the other hand are part of the social services of the criminal justice system in most of the federal states. It is not unusual that a probation officer is responsible for both young and adult offenders. In contrast to adult criminal law, the court has to assign a probation officer whenever a young offender sentence (Jugendstrafe) or the remainder of a young offender sentence (Restjugendstrafe) is suspended for probation.

2.3 Crime prevention

Probation services are part of the crime prevention field. Their work is classified as tertiary (post-incident) prevention, because it is directed to prevention of re-offending. The importance of crime prevention is increasingly recognised in Germany. At the community level numerous projects and inter-disciplinary bodies are concerned with crime prevention programmes. At the federal state level, prevention panels have been set up comprising representatives of society. On the national level, the German Forum for Crime Prevention has been founded. The biggest event in the field of crime prevention is the annually organised German Congress on Crime Prevention (Deutscher Präventionstag). On all levels probation officers are more or less involved, partly on their own initiative, partly on the basis of state regulations.

2.4 Victim protection and assistance

Victim protection and victim assistance gain more ground increasingly. Victim-offender mediation was codified within the Juvenile Court Act in 1990 and in the Criminal Code in 1994. One aim of this instrument of restorative justice is to serve the victim whose integrity should be restored and who should get redress. In some federal states professional mediators are provided by the probation service. In some states court assistants with a special training act as mediators, in other states non-governmental associations offer their services. In some states the ministries of justice have taken measures to provide services for victims. In Lower Saxony (Niedersachsen) for instance the foundation 'Help for Victims' (Stiftung Opferhilfe Niedersachsen) is organising the necessary assistance for victims since 2001 by running local victim assistance offices which cooperate with the police, social authorities, youth welfare services, lawyers and NGOs. There are 11 victim assistance offices, one in each regional court district (Landgerichtsbezirk) with 12 full-time victim assistants. In 2005 the victim assistants of Lower Saxony were in charge of 1.552 victims. In 2002, by contrast, there were only 934 victims asking for assistance. Counselling and help for victims and witnesses include necessary backings. In other federal states NGOs that partly get financial subsidies from the government, look after victims, offering their advice and assistance.

3 THE ORGANIZATION OF PROBATION SERVICES

3.1 Main characteristics

Due to the federal structure of Germany, there is no single concept for the organisation of probation services, or 'social services within the penal system'. The federal states can freely administer federal laws through state-laws, regulations and general operating instructions. The federal states opted for different concepts. In one concept (Figure 1) the probation officers, who are mainly responsible for help and control in the post trial phase, are assigned to the regional court. The service, mainly dealing with personal and social inquiry reports, belongs to the public prosecution office in most states. In some states both services form part of the same office (Figure 2), which does not imply, however, that their respective tasks are carried out on a joint basis. A third concept (Figure 3) stipulates that the social services are directly accountable to the Ministry of Justice (Justizministerium) - not integrated into the court or the prosecutor's office. Departments within the social services are managed by specially qualified social workers, whilst those social services integrated into the regional courts or the public prosecution services are headed by the heads of the respective authorities. Over recent years, these organisations have also assigned special executive tasks to social workers. However, in contrast to the heads of social services department, most have neither the authority to manage, nor to give instructions.

Since 1 January 2007, in the state of Baden-Württemberg the probation service and the court assistance are managed by the private not-for-profit limited company (gGmbH) Neustart, the Ministry of Justice of Baden-Württemberg being the supervisory body (Figure 4). Like in Austria the Ministry of Justice of Baden-Württemberg and Neustart entered into a general contract, which states the obligations and competencies of the Ministry of Justice, as the purchaser, and Neustart as the provider of services. Neustart has two managing directors (Geschäftsführer) at the top. Across the whole land there are nine organising agency centres (Einrichtungszentralen), each run by an organising agency director (Einrichtungsleiter). The centres have branches (Außenstellen), in which a head of department (Abteilungsleiter) is in charge of managing the work of the service (for further details please see the chapter of Austria). The social services in prisons are under the control of the prison governors. In the state of Hessen, however, one prison is partly privatised and the social service is passed on to a private provider.

3.2 Internal organization

Figure 1

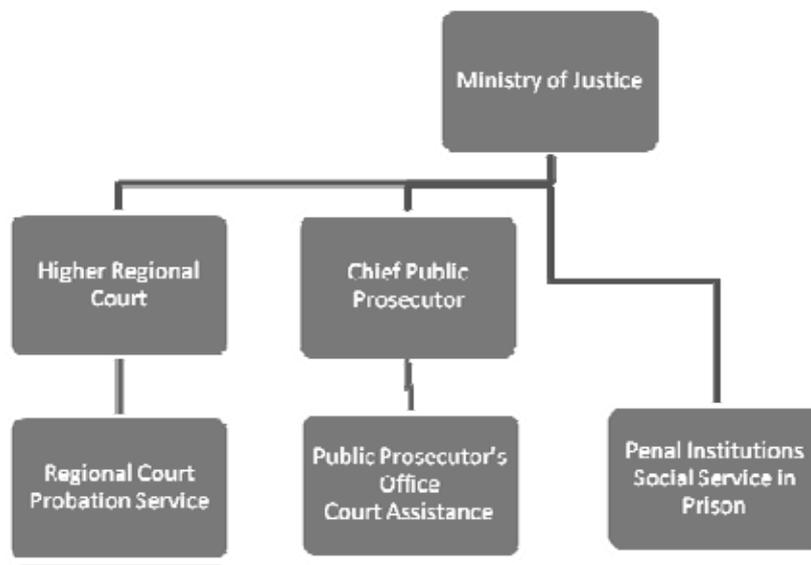


Figure 2

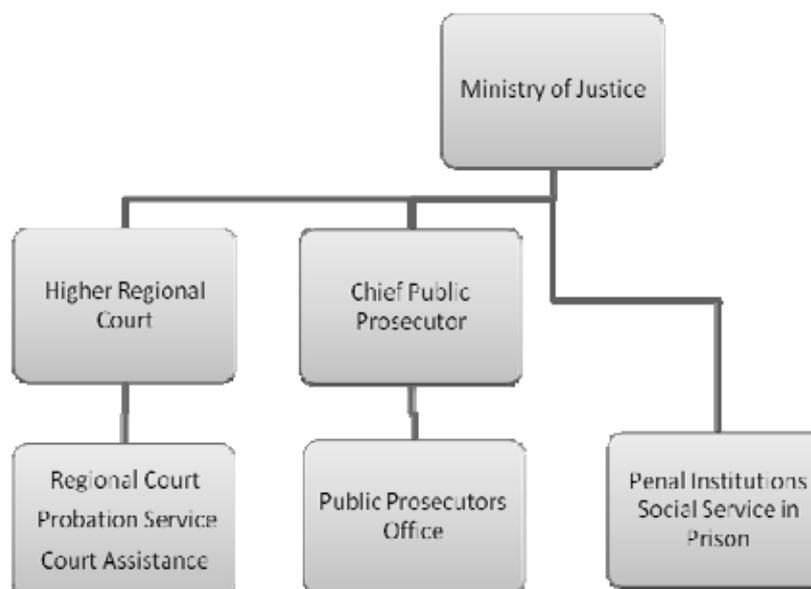


Figure 3

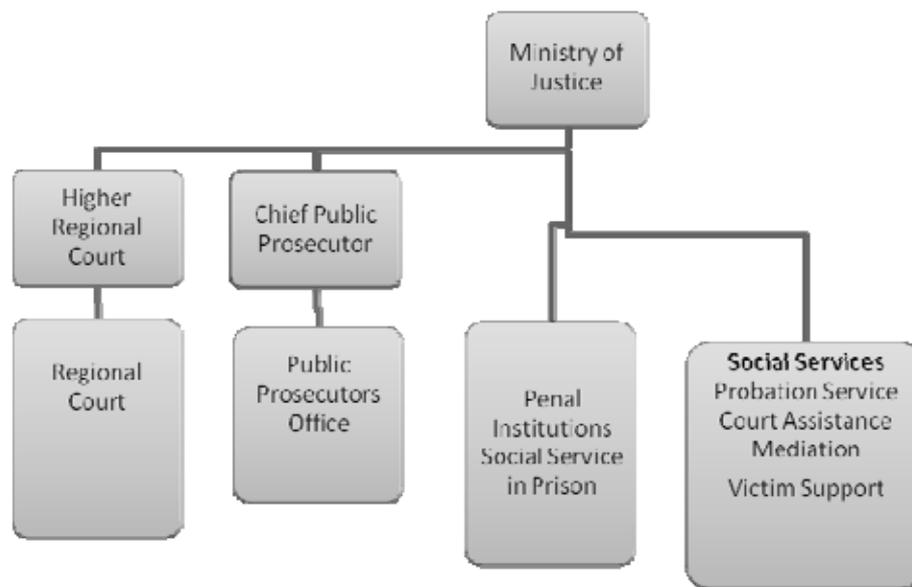
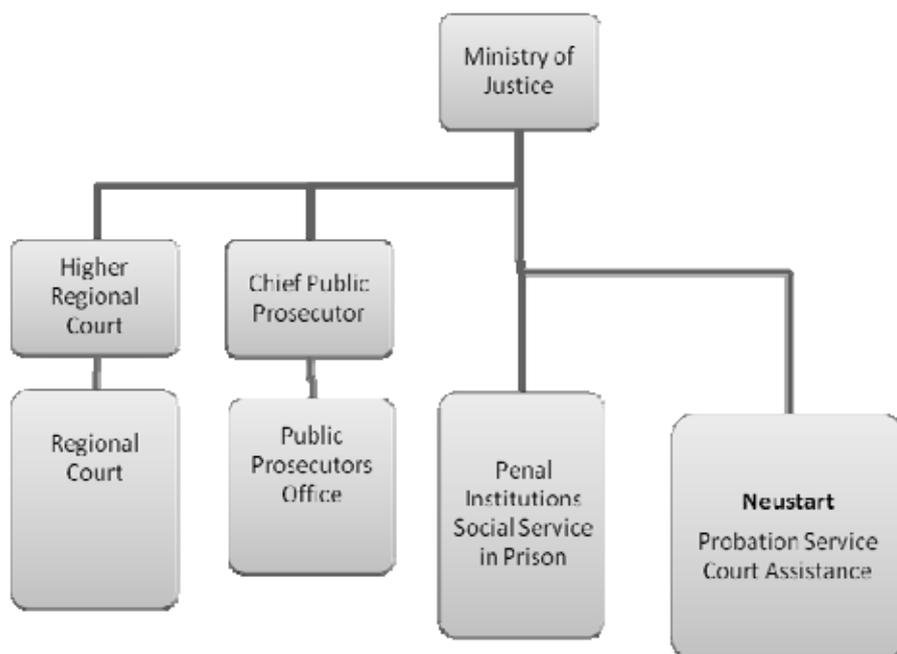


Figure 4



Key:

<i>Higher Regional Court</i>	<i>Oberlandesgericht</i>
<i>Regional Court</i>	<i>Landgericht</i>
<i>Chief Public Prosecutor</i>	<i>Generalstaatsanwalt</i>
<i>Public Prosecution Office</i>	<i>Staatsanwaltschaft</i>
<i>Court Assistance</i>	<i>Gerichtshilfe</i>
<i>Penal Institution</i>	<i>Justizvollzugsanstalt</i>
<i>Social Service in Prison</i>	<i>Sozialer Dienst im Justizvollzug/Strafvollzug</i>
<i>Mediation</i>	<i>Täter-Opfer-Ausgleich (TOA)</i>
<i>Victim Support</i>	<i>Opferhilfe</i>

3.2.1 Probation workers

Irrespective of the above-mentioned models, the social services within the criminal justice system are staffed by professional graduate social workers (Diplomsozialarbeiter) or graduate social pedagogues (Diplomsozialpädagogen). As already mentioned above, on the whole one distinguishes in Germany the staff members according to their tasks. About 2,500 probation officers are supervising 150,000 offenders, 200 officers are occupied with court assistance tasks and approximately 900 social workers are working in penal institutions. The main task of a probation officer in his or her function as *Bewährungshelfer* is to assist, guide and supervise offenders in the case of a suspended sentence or of the remainder of a sentence. Additional duties vary from Land to Land. The original main task of a court assistant was to investigate the personality of an offender and his environment and to report on his or her findings to the public prosecutor or to the court. In most federal states their area of responsibility has been expanded. They also have to organise community service and as a mediator they are involved in victim-offender mediation. The caseload of a probation officer is not the same everywhere. It varies from 70 to 100 offenders to be supervised. In addition to qualified social workers, the services also employ assistants for secretarial, administrative and clerical work. By internal arrangement they can focus on particular tasks such as clerical work, filling in forms, telephone duties or reception work. There are regulations about the proportion of different staff members, e.g. in the ratio of six probation officers to one assistant.

3.2.1.1 Vocational and operational supervision

According to the Public Service Law (*Öffentliches Dienstrecht*) there is a difference between operational supervision (*Dienstaufsicht*) and vocational supervision (*Fachaufsicht*). Operational supervision refers to the proper conduct of business, according to the general rules and regulations governing public administration and the state laws and ordinances pertaining to the respective area of work. It includes operational instructions concerning filing, correspondence, meeting deadlines, invoicing for hours worked, work-related travel and special holiday entitlements e.g. for recuperation.

Vocational supervision was and is still organised in several states as follows: the judge in charge of probation proceedings supervises probation officers, while the public prosecutor supervises court assistants and the governor or relevant

head of department supervises the social workers in penal institutions. The legal tasks of the officers are subject to supervision. These include: the frequency of contact with probationers; the type and intensity of support; documentation on contact with clients, relevant others and institutions; timely and comprehensive reporting; proof of compliance with conditions and directives; assessing and evaluating important data as input for decisions to be taken by the courts, the prosecution and/or the penal institution.

According to this model, vocational and operational supervision are carried out by the legal professionals or by senior management within the administration, i.e. by people who do not have a training and expertise in social work. Recent developments increasingly aim to have supervision carried out by employees with the appropriate knowledge (see model figure three and four). In this context, special professional supervision by supervisors in the same profession is considered to be a consultation process. Employees receive guidance and support for their work.

3.2.2 Education and training

The probation service, the court assistants and the social service within penal institutions are staffed by professional social workers or social pedagogues. They have to complete six semesters of training at a polytechnic for social work. At the end of their training they receive a degree of social work or social pedagogy. This is followed by one year on-the-job training. In some states the practical year forms part of an eight-semester course.

The training provides insight into all areas of social work. There is no standardised course valid for all German colleges. The syllabus varies from state to state because education, university and college courses fall within the remit of the federal states and are thus not governed by federal law. However, the content of the training is very similar and comprises for example:

- general foundations, methods and tasks; empirical research, history and methods of social work;
- basic knowledge of law and administration; family law, penal law, social and labour law, constitutional law;
- societal and organisational frameworks;
- basic educational, psychological and medical issues;
- socialisation, education and family issues;
- basic knowledge of approaches and interventions: theories, group processes, health, illnesses and disabilities.

There are no college courses specifically designed for probation officers, court assistants or social workers in penal institutions. Therefore some federal states carry out introductory courses for new staff. Other states make use of the range of courses offered by a specialised NGO, the DBH - Association for Social Work, Criminal Law and Criminal Policy (DBH e.V.-Fachverband für soziale Arbeit, Strafrecht und Kriminalpolitik). This association offers special seminars that deal with initial challenges for newly recruited members of social services within the penal system and familiarise the participants with their particular roles. In addition, the Public Service Act stipulates that members of staff shall participate regularly in further training courses. These are offered by the ministries of justice

in the various states and by numerous training institutes, one of them the Institute for Education (Bildungswerk) of the DBH.

3.2.3 Other organisations involved in probation work

All over Germany there are private associations who aim at helping offenders, especially concerning aftercare. Other NGOs have set themselves the task to promote probation. They help in offering accommodation for probationers, victim-offender mediation, community service facilities or backings if money is needed for instance for a monthly rent. With these associations the probation service is co-operating very closely. On a national level, two NGOs are important advocates for community sanctions and measures including probation: The DBH and the German Foundation for Crime Prevention and Offender Aid (Deutsche Stiftung für Verbrechenverhütung und Straffälligenhilfe) are emphasising in their activities the importance of probation and offender aid, with a view to crime prevention.

4 PROBATION IN DIFFERENT PHASES OF THE CRIMINAL PROCESS

4.1 General

Social work plays an important role in the criminal justice system of Germany. This has to do with the fact that re-socialisation and integration of ex-offenders into society is a chief point of the German Criminal Law in general and of the implementation of sanctions in particular. If one realises for example all the facts which a judge has to consider when he or she is going to pass a judgement, one will understand that they must know all about the personality of the offender. The investigation, the expert knowledge, the assistance of a social worker is in demand in this context. And so it is with the necessary assistance for and supervision of offenders, who should be enabled to cope with life without committing a new criminal offence. The most important parts of the legal framework are already explained in chapter 2. Further legal details and corresponding references are set out below, in the sections that deal with work carried out in the pre-trial phase (investigation phase), trial phase (main court proceedings) and post-trial phase (implementation process). The main tasks of the social service in the criminal justice system that are codified in the federal law are carried out all over the country. Additional duties are differently regulated by the legislation of the Länder. Providing details of all the relevant state laws and regulations would take us too far. In the following sections, however, I will refer to some state orders.

Table 1: Activities of probation during the different stages of criminal procedure (partly all over the country, partly applicable only to some or even to one federal state)

	Before trial	During trial and sentence execution	Following release
Preparing and presenting a pre-sentence report	x	x	
Preparing and presenting a social enquiry report with a view to a suspended sentence or probation	x	x	
Supervision / assistance to offenders whose pre-trial detention has been conditionally suspended	x	x	
Victim support	x	x	x
Victim - offender - mediation	x	x	x
Support and information during remand	x	x	
Supervision / assistance to offenders whose cases were conditionally waved	x	x	
Supervision, guidance and assistance of offenders with suspended sentences		x	
Assistance / support to prisoners in prison		x	
Inquiry with a view to release inmates under conditions		x	
Supervision, guidance and assistance of offenders, who are conditionally released / parole			x
Organizing / supervising community service	x	x	x
Co-ordinating / supervising training or learning projects	x	x	x
Organisation and supervision of electronic monitoring		x	x
Supervising of drug- / alcohol-treatment programs		x	x
Advisory report with respect to pardon		x	x
Supervision / guidance / assistance to persons who are granted pardon			x
Assistance to ex-inmates on their demand			x
Offering information and advice to the	x	x	x

public			
Active involvement in crime prevention committees	x	x	x

4.2 Pre-trial phase

4.2.1. General

Social court assistance plays a key role in advising the public prosecutor and the judge on their decisions to be taken concerning alternatives to prosecution or finding the just punishment. Court assistance is not automatically initiated but relies on the prosecutor or the court issuing an instruction. Prosecutor and judge may commission court assistance to investigate and to report, they are not obliged to do so.

The evaluation of the statistics of all public prosecution offices in Germany proves that of all proceedings in which it would have been possible to file a charge against an offender, more than one-third were discontinued by a decision of the prosecutor. The public prosecutor has the discretion to waive prosecution of an offender when he or she is of the opinion that the offender's guilt is low and that discontinuance is not against the public interest (Code of Criminal Procedure, article 153). They may further refrain from prosecuting (unless the Criminal Code assigns a minimum sentence of one year) provided that the court and the offender agree, if it seems sufficient to impose one or more conditions (CCP, article 153a). These conditions can be:

- the offender has to pay a certain amount of money to a non-profit organisation or to the state;
- the offender has to render community service;
- the offender has to pay a fixed sum of money for maintenance (of his wife or children);
- the offender has to make amends for the damage;
- the offender is trying hard to achieve a settlement with the victim and to make reparations;
- the offender attends a special seminar for road traffic offences.

When the prosecutor has decided to bring a charge against the offender, the judge, under the mentioned circumstances and with the agreement of the prosecutor and the offender, can halt the proceedings as well.

4.2.2 Pre-trial report

When the public prosecutor considers refraining from prosecuting, he or she may ask the court assistant to look after crucial aspects regarding the relevant offender, e.g. their living conditions, drug addiction, debts, unemployment et cetera. The court assistant will have an aim-orientated conversation with the offender, provided that the offender agrees. If it is indicated, the court assistant will speak with other persons as well. They will report on their investigations to the prosecutor. Often it is necessary and also expected to add recommendations, how to deal with the person in question regarding the further proceedings. The public prosecutor may also commission an investigation report, if he or she is in doubt whether a charge should be brought against the offender or a written fixed

penalty order should be applied for from the relevant court. The public prosecutor may request a full pre-sentence report (Gerichtshilfebericht) in order to do justice to all the circumstances that are important for the judgement of the court, as named below.

The Federal High Court of Justice (Bundesgerichtshof) has underlined in several rulings on criminal matters that assessing the offender's personality is equally important to establishing the circumstances of the offence. Nevertheless, not all federal states recognise the importance of a personal investigation (pre-sentence) report as desired. And not all public prosecution offices make use of their discretion, as they should do. The court assistant, when working on the investigation for the prosecutor or the court, has at the same time the obligation to offer the offender professional advice with regard to existing social and personal conflicts, being by no means in the position of a defence counsel. The court assistant may refer the offender to responsible offices or to associations who offer help with reference to the special needs of the offender. The court assistant may also find out whether a relevant institution is prepared to admit the offender if they are willing to undergo a detoxification programme.

The prosecutor or the judge - not the police - may ask the court assistant to investigate and report in cases, in which it is doubtful whether an offender should be taken in pre-trial detention. In such a case, the court assistant will have a personal contact with the suspect and such persons the offender relates to, in order to enable the penal authority to assess whether the social ties of the offender rule out the risk of abscondence. Having conversation with the suspect and persons of their milieu, the social worker will also offer his or her advice and - if necessary - will refer the persons affected (this can be the family of the offender) to social help institutions or offender's aid associations. In addition, as long as the offender is being held in remand custody the social service of the remand centre is also responsible for taking care of the offender's needs. The court assistant is the first social worker of the criminal system that the suspect meets. This first contact is particularly important, for it prepares the ground for the work of other colleagues, who possibly will follow. Contact between the court assistant and the alleged offender should be established as early as possible. Experience shows that immediately after the offence has been committed the alleged offender is particularly amenable to re-socialisation and any necessary help. It is also early enough in the process to avoid social supports breaking down.

4.2.2.1 Involvement and intervention after a suspension of proceedings

As explained above, the prosecutor and the judge have the possibility to suspend the proceedings on special conditions and to drop the case when the offender has followed the directives imposed. When the offender gets problems to carry out his duties, perhaps because of a personal crisis, the prosecutor or the judge may ask the court assistant to intervene and to look after the offender. In case of a community service condition, in most federal states it is the responsibility of the court assistant to organise the place of work and to supervise whether the offender is following the condition.

4.2.2.2 Victim-offender mediation

It is the task of the court assistants, when being instructed by the public prosecutor, to find out whether victim-offender mediation is a possibility to respond to an offence. If the prosecutor is willing to withdraw prosecution on condition that the offender makes efforts to come to a settlement with the victim, in most federal states it is the task of the court assistant to organise the victim-offender mediation and to act as mediator. In the guidelines of the state of Brandenburg we find an official description of this alternative to deal with delinquent behaviour: 'Victim-offender-mediation refers to efforts undertaken - with the support of a mediator - to overcome problems, stress and conflict between the offender and the victim after an offence has been committed. It entails both victim and offender coming together with the offender being prepared to make reparation to the victim for the damage caused by the offence. It is the aim of the mediation to restore legal peace and to reconcile victim and offender; it provides an opportunity to settle the conflict between victim and offender by the offender making a personal commitment.'

Victim-offender mediation provides a framework in which victim and offender can work through and perhaps settle the conflict arising from the offence. In this context financial or symbolic reparations or reparations through community service play an important role in the reconciliation process. This type of reconciliation saves the victim from filing a civil case or being called as a witness. Offenders' conversations with mediators show again and again how important it is for the offender to come face-to-face with the victim. Many offenders try to neutralise the wrong committed by their offence. Mediators report on the different methods offenders employ to this end:

- the offender hides behind a competing conflict situation: 'It was the victim who started it. He insulted me';
- the offender resorts to a competing normative concept: 'I don't run to the police every time I lose a fight';
- the offender voices doubts about the consequences of the offence: 'I didn't rip the jacket, it was already torn';
- the offender devalues the victim: 'The victim is only after money'.

Statements of this type are geared to denying the wrong committed by the offence. In voicing them the offender attempts to justify not having to shoulder responsibility for the consequences of the offence. However, direct confrontation with the emotions of the victim, with the psychological, physical and material consequences of the offence can change the offender's attitude and behaviour. Indeed, having to face the victim and making efforts to remove the consequences of the offence can have a beneficial, long-term effect on the offender and might be of disciplinary value. The participation of both the victim and the offender in the mediation process must be on a voluntary basis. It has to relate to damage, including the emotional damage, as specified in law. Victim-offender mediation leads to better victim management. Injuries suffered by the victim are recognised, appreciated and discussed. It gives the offender the opportunity to help the victim to overcome fear, aggression and mental stress. Experience proves that the involvement of a competent mediator in the victim-offender

mediation process is indispensable. It is therefore necessary to qualify the court assistants for this very special work. The federal ministries did so. Take, for example, Lower-Saxony (Niedersachsen) and Sachsen-Anhalt: In Lower-Saxony until April 2007 about 30 court assistants have got a further training on the job and an additional qualification as mediator in criminal law. In Sachsen-Anhalt 36 members of the social service are qualified mediators.

In this context, a very important part plays the Service Bureau for Victim-Offender Mediation and Conflict Settlement (Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung) in Cologne, a project of the Association for Social Work, Criminal Law and Criminal Policy (DBH). This non-governmental institution has contributed a lot to the development of the alternative to deal with offenders and injured. It has promoted victim-offender mediation by dissemination of literature, awareness raising, organization of congresses and seminars, statements and comments with reference to criminal politics, legislation and legal practice, offering advice for local and regional projects and – last but not least – training of mediators. Wanting to ensure that victim-offender mediation is offered everywhere in the country, ministries of justice are contributing financial support to NGOs that are working on the subject.

4.2.2.3 Victim support

One field of work of the judicial social service in Sachsen-Anhalt is to advise and to help victims. The social workers inform about legal aid (Prozesskostenhilfe), the victim's legal rights according to the Law on Compensation of Victims (Opferentschädigungsgesetz) and the progress of the criminal proceedings. They look after those who are in crisis straight after the offence or victims who need a psychosocial long-term care. The aid package is free. Victims come and ask for help, either being informed about the institution by the media or their attention being drawn to the service by the police. In other federal states the governments have established foundations, which - financially supported by the state - take care of victims. In Baden-Württemberg e.g. there is the State Foundation for the Protection of Victims (Landesstiftung Opferschutz), in Lower-Saxony the Foundation Victim Support devotes itself to victims of offences. The regional offices of the foundation in Lower-Saxony co-operate with the police, social authorities, lawyers and non-governmental associations for victim support.

4.3 Trial and enforcement phase

4.3.1 General

In legal terms the trial phase commences with the public prosecution office filing charges before the court. By this point, investigations will have been completed and court assistants usually will have already been involved (see above), at least in severe cases. Whenever the public prosecutor has not yet ordered a pre-sentence report, the judge can ask the court assistant to report on the offender's personality and all circumstances, which are important with regard to the legal consequences of the offence. With the opening of the trial the court sends the accused offender the indictment and asks him or her to raise objections against

the opening of the trial and/or to provide evidence that would need to be investigated before the trial opens. There is hardly any scope in this phase for intervention by the social services with regard to the course of events. The court assistant as well as the probation officer (if the accused has already been on probation) may be present during the trial and on request of the presiding judge comment on the interventions they deem appropriate. But they have no other power to influence the court. In this phase it is down to the public prosecutors and the courts to decide on the type and scope of any sanctions, as well as whether or not any charges should be dropped. Like in the pre-trial period, the social service, especially the court assistants, will have to supervise the offender if the court decides to suspend the proceedings on conditions the offender has to conform to. If so instructed by the court, they will organise and control community service or arrange for victim-offender-mediation.

As to the decision of the court concerning the judgement one should know the following. The kind and the length of the sentence depends on the legal regulation, that is to say, the minimum and the maximum of the sentence prescribed in the relevant section of the Penal Law and on the judicial award of punishment. In addition, the Criminal Code contains fundamental principles regarding the award of punishment:

The offender's guilt is the basis of the award. Moreover the court has to take into consideration:

- the effect of the sanction on the future life of the offender in the community;
- the motives and the aims of the offender;
- the mind of the offender and his volition;
- the degree of his or her undutiful behaviour;
- the way the offender committed the offence and the effects of the offence;
- the former life of the offender, his or her personal and economic relations;
- his or her behaviour after the offence, especially their efforts to repair the damage after the offence has been committed, and their efforts to come to a settlement with the victim.

The court can mitigate the sentence considerably (CC, articles 46a, 49) if the offender has managed to repair the damage or a major part of it or if he or she has seriously strived for making reparations as part of their efforts to achieve a settlement with the victim. A life sentence thus can be substituted by a custodial sentence of no less than three years. In cases of time-restricted custodial sentences no more than three quarters of the maximum award may be imposed. The court may completely refrain from punishment if the sanction incurred is less than one-year imprisonment or a fine not exceeding 360 days' income. In order to classify the importance of the social service within the criminal justice system in the right way, one should know about the sanctions and measures the system contains.

- Fine (CC, article 40): the fine depends on the offender's income / salary. The minimum of the fine is the sum a person earns in five days (5 Tagessätze), and the maximum is the amount of 360 days' income.

In the event of non-payment:

- imprisonment: one per-diem-rate is matching one-day imprisonment (CC, article 43);

- imprisonment does not take place, according a judge's decision, if deliberation would be an unfair hardship for the convict (CCP, article 459);
- convicts may ask for community service in order to avoid imprisonment (Introductory Act on the Criminal Code, article 293 in connection with general discharging decrees (Tilgungsverordnungen) of the Länder).
- Warning with the right to pass sentence later reserved (CC, article 59): if a person is found guilty and the fine is not more than 180 per-diem-rates the judge may warn the convict and suspend the fine for a period of between one and two years, if there are special circumstances which intercede exempting the convict from punishment. The courts do not often impose this sanction.
- Imprisonment ((Freiheitsstrafe) CC, article 38 and following): the minimum is one month, the maximum is 15 years; for special crimes life-sentence. Imprisonment for less than six months is only allowed, if this is indispensable to impress the offender or to defend the legal system (CC, article 47).
- Suspended imprisonment / suspended sentence (CC, article 56 and following): if the convict has been sentenced to an imprisonment of a period not longer than one year the court has to suspend the implementation of the sentence and to grant probation provided that the criminal prognosis is satisfactory. A sentence of not longer than two years may be suspended if there are special circumstances with regard to the offence and the offender's personality. The period of the probation time is between two and five years. In order to let the convict feel that they are punished, the court may impose conditions (Auflagen) that the probationer has to fulfil, such as compensation, payment of money for the benefit of a non-profit organisation or the state, or community service (CC, article 56b). If it seems necessary to influence the convict's way of living, the court may impose directives, for instance with regard to their residence, training, work or leisure time and economic situation. Directives may also concern relations with other persons, the possession of certain objects or the liabilities of maintenance. With the agreement of the convict, they can be directed to stay in a (medical) treatment institution or to live in a hostel (CC, article 56c). The court puts the probationer under the control of a probation officer during the period of suspension or during a part of this period if this is indicated to restrain the convict from re-offending (CC, article 56d). As a rule, the court has to order the supervision of a probation officer when the court suspends a sentence of more than nine months imprisonment and (supplementary) the offender is under 27 years of age. Suspension must be revoked and the sentence has to be executed by decision of the court (CC, article 56f)
 - when the convict re-offends and (supplementary) demonstrates with the new offence that he or she was not able to stand the test (not all offences lead to revocation);
 - when the convict persistently or grossly fails to comply with the directives or persistently rejects the supervision of the probation officer, giving reason by this to assume that he or she will re-offend;
 - when the convict persistently or grossly fails to comply with imposed conditions.

The court, however, will not cancel the suspension order when it considers that an extension of the period of probation or the imposition of further

directives or conditions or the appointment of a probation officer would be sufficient to maintain the positive prognosis. It is the court that has to declare the sentence to be fully served when the offender during their term of probation has given no reason to revoke the suspension.

- Interdiction of driving motor vehicles (Fahrverbot) for a term of one to three months(CC, article 44).

Preventive measures that are not intended as a punishment but are based on a judgement are measures of reformation and protection ((Maßregeln der Besserung und Sicherung) CC, article 61 and following)):

- placement in a psychiatric hospital (Unterbringung in einem psychiatrischen Krankenhaus);
- placement in an institution for treating addiction (alcoholics, drug addicts) (Unterbringung in einer Entziehungsanstalt);
- confinement for the sake of public security (Sicherungsverwahrung);
- seizure of the driving license (Entziehung der Fahrerlaubnis);
- prohibition to work on one's previous job (Berufsverbot);
- supervision of conduct ((Führungsaufsicht).

The placement in an institution in which measures of reformation (of the offender) and protection (for the public) are performed can be suspended, when there is a reasonable chance that the patient will not re-offend. In this case supervision of conduct follows automatically. The judge might also give supervision of conduct, if an offender has committed serious crimes and is likely to re-offend. In both cases, a special supervision office and a probation officer have to supervise the offender, the probation officer also offering advice and assistance to the offender. A special measure for drug-addicts is the postponement of the execution of a prison sentence ((Zurückstellung der Strafvollstreckung) Narcotics Act, article 35, 36). When a drug addict is sentenced to imprisonment of no longer than two years, the execution can be put back in favour of a therapy in an institution for treating addicts. The time the convict is staying in the therapeutic establishment has to be charged to the convict's imprisonment sentence up to two-thirds of the penalty. Generally, the convict will be put on probation for the remaining rest of the sentence after having regularly finished the therapy.

4.3.2 Pre-sentence report

Concerning the contents of the pre-sentence report and the ground for its request, I refer to the remarks in previous sections. Just to underline some crucial points at this passage: The public prosecution office and the court are entitled to request the report. The court assistant will not start investigations independently. The court assistant has to ask the suspect whether he or she agrees with preparing the report. If the defendant is not willing to cooperate, there will be no report. If the defendant does not agree with the content of the report, the court assistant will add this to his or her remarks. The report does not only contain information on the offender's personality and their social environment, but also a psycho-social diagnosis and a situation analysis and if it deems sensible recommendations for the decision to be made by the court. The

report will be taken to the criminal file. Only the judicial authorities, the defence counsel and the lawyer of the victim can access the file.

4.3.3 Probation procedures and processes

The legal regulations concerning the suspension of sentence on probation are already described in chapter two. We remember the basis: a probation officer will be assigned if

- it is deemed necessary in order to prevent the probationer from committing further offences;
- less dramatic interventions are not considered adequate to achieve a successful outcome;
- a positive prognosis as to the future of the offender can only be given if he or she is assigned a probation officer.

This demonstrates that in forming a prognosis on the convicted offender's chances of leading a life without crime in future, the assignment of a probation officer is deemed to be an important feature and a precondition for suspending the sentence. The sequence of examination also demonstrates that assigning a probation officer is not only considered to be a supportive but is also seen to be a legal intervention in the life of the convicted offender. The work of the probation officer begins after the conviction has become final and binding. The judge nominates the probation officer by name, often after being informed by the probation office which of the officers in the district will be responsible in the relevant case, depending on the schedule of work distribution. The work of the probation service terminates with the end of the probation period (as a rule) or once a suspended sentence has been revoked. Probation is one way to react with a community sanction. The aim of the probation officers is to render imprisonment unnecessary. In addition, they aim to use their influence to minimise the frequently damaging effects of imprisonment by preventing prison sentences without probation, and by trying to ensure that prison sentences are not inappropriately long.

As already mentioned in chapter two, the probation officer is assigned in accordance with the Criminal Code to help and to guide the convicted offender. In agreement with the court they supervise that their clients adhere to conditions and directives of the court. They report in intervals fixed by the court on how the probationer conducts his or her life. The obligation to report relates in particular to violations against conditions and directives. There are no legal rules regarding the methods probation officers have to use, the frequency of contacts between the probation officer and his client or the way of monitoring the fulfilment of obligations. The law stipulates only that the supervision has to be exerted in agreement with the court. So the requirements of the individual case decide on the intensity of the supervision. Professional standards and administrative orders however offer guide-lines how to deal with the case. The standards of the state of Lower Saxony e.g. explain that the first contact with the probationer should be established within 14 days after the probation officer has received the decision of the court. In the first conversation with the offender the probation officer should inform and clarify about

- the legal mission of probation;

- the sentence and the court's decision;
- conditions and directives;
- the consequences of breaching conditions and directives;
- entitlements and obligations;
- options regarding assistance and care;
- accessibility and office counselling of the probation officer.

At the beginning of the probation time

- the personal and social situation of the probationer should be discussed;
- the next contacts should be bindingly agreed on;
- the current and coming need for help and care should be clarified.

The further activities of the probation officer should be steps in a dynamic process and constantly new defined regarding the contents and the actions to be taken. The frequency of contacts depends on the living conditions of the offender and should follow their subjective and objective necessities. Also in other federal states there are no concrete rules how the probation officer has to monitor the fulfilment of the offenders' obligations. The standards of the Rhineland-Pfalz e.g. declare more generally: The way and the scope of the supervision depend on the requirements of the individual case – always taking into consideration the court decision. It has to be monitored continuously and consistently that the offender fulfils his or her obligations. The offender has to be informed about the consequences of breaching the conditions and directives. Necessary aid and advice have to be offered.

It makes sense to set the probation service (and not e.g. the police) the task to monitor whether the offender carries out his or her duties. The probation officer is able to realise not only a breach of a condition but also the problem, the difficulties, the reason behind the misconduct. This enables the probation officer to offer the convict advice and assistance. And they are in the position to report the court the infringement and at the same time to explain and make clear why the offender failed and what has already been arranged in order to prevent a repeated breach. The information provided by the probation service is an important element in the court's review as to whether decisions need to be made in the course of probation proceedings.

Probation work means not only to be active as a part of the criminal justice system with duties listed in the Criminal Code. Probation work is social work as well. The offer of aid and care is related to the needs of the probationer and is geared towards aid to stimulate self-help. In an Internet presentation the Ministry of North Rhine-Westphalia has drawn up some aspects of the social work in criminal law:

- work on human relations. Development of a helping relationship through individual advice and group work quick first contact and preparation of release;
- psycho-social advice. Help the offender in dealing with interpersonal conflicts. Dialogues concerning the family and couple situation;
- aid for addicts, development of a motivation to undergo therapy, make contacts with counselling agencies, find a place in a therapeutic institution;
- help with the regulation of debts, promotion of motivation to deal with the debts, development of plans how to regulate the debts, make contacts with advisory service for debtors;

- assistance to organise practical life, finding a job/professional training (job creation scheme, retraining, rehabilitation measures, - looking for a flat and safeguarding accommodation - advice and assistance at economic difficulties);
- work with projects. for sex offenders. on schedules against violent behaviour and others.

It belongs to the characteristic features of a probation officer that they are able to diagnose and predict the offender's behaviour (anamnesis, diagnosis, treatment planning, social prognosis, criminal prognosis, social report et cetera). They are able to intervene (decide and act) professionally, spontaneously and creative in unforeseeable situations. They are able to work in a team and to learn. If a probation officer is not assigned, the court may ask the court assistance to look after the convict with regard to the conditions and directives given and to intervene if necessary. An alternative could be to assign a probation officer afterwards. If the suspension of the sentence is linked with the condition of community service things will be handled the same as in the pre-trial phase, with the variation that, if a probation officer is involved they will contact the place of work.

4.3.3.1 Electronic monitoring

So far in Germany electronic monitoring is introduced only in the state of Hesse. This measure will be ordered by the court to ensure the monitoring of the offender's readiness to adhere to conditions and directives in the case of a suspended sentence on probation. Not all offenders are affected, but only those who are likely to have no or just a little sense of responsibility and self-discipline. The surveillance of this special measure is one of the tasks of the probation officers.

4.3.3.2 Victim support

On trial, victim support plays a role which gets more and more attention. Victim support services and employees or volunteers of victim support organisations are entitled to accompany a victim, when he or she is summoned before the court as witness.

4.3.3.3 Implementation of sentences

The authorities that are responsible for the implementation of imprisonment and following decisions are

- the public prosecution office in its capacity as public authority for penal execution ((Strafvollstreckungsbehörde) CCP, article 461). This office has to start the implementation of the sentence by bringing the convict to prison either by serving a writ on the convict or a warrant of appearance (Vorführbefehl) unless the convict is already in remand custody;
- the prison administration in its capacity as penal system authority ((Strafvollzugsbehörde) Penal Code, article 139). The prison administration is responsible for the treatment of the imprisoned person inclusively the allowance of semi-liberty, of leaving prison for going out ((Ausgang) for one

- day) or for holiday ((Urlaub) up to seven days) or for working or training outside prison (Freigang);
- the court, that is the penal enforcement division at the regional court ((Strafvollstreckungskammer) Judicature Act, article 78 and following) - These courts have to decide on suspension of remainder of sentence on probation (conditional release).

4.3.3.4 Social work in penal institutions

There are certain offenders and certain offences that require custodial sanctions. However, also in these cases one central function of imprisonment is to prepare the re-integration of the offender into their community after release. Because of this aim there are numerous tasks for social workers within the various penal institutions. Social work has to provide social support during imprisonment, as well as helping prisoners to come to terms with any personal problems and dealing with their affairs on the outside. Social workers within penal institutions define their social support, in accordance with article 71 of the Prison Act, as follows:

- high-lighting personal problems of offenders;
- help offenders in finding their proper identity and teaching ways of gaining personal skills (confidence building, self-esteem, authority);
- highlighting problems resulting from the social environment;
- showing ways to prevent getting into conflict with law in future;
- providing problem-solving skills and training (e.g. social training on how to deal with interpersonal conflicts);
- working with the offender's environment (family, support after release) ;
- organising specific care and support (e.g. educational support, therapy) as part of structuring the prisoner's period within the penal institution as well as reviewing the schedule.

4.4 Post-release phase

The penal enforcement division at the regional court has to take the decision that a prisoner is to release before having served the entire sentence according to CC, article 57,

- if they have served two-thirds, at least two months and (supplementary);
- if it can be reasonably expected, that they will not re-offend and
- if the prisoner agrees.

The court can decide on a release when a convict has completed only half of the sentence

- if they are serving a sentence which is not longer than two years and if they are staying in prison for the first time or;
- the overall evaluation of the offence, of the prisoner's personality and their development in the time in prison indicate an exceptional good report on the convict.

In all cases the court has to look into the consequences of the release: It has to be in accordance with the public's interest in security. The conditional released persons are on probation for at least two and at most five years. The probation

time - even if shortened at a later date - may not be less than the rest of the sentence. The court decides after having heard the inmate and on expert advice of the penal institution, the advice usually build on the statement of the responsible team, of which the social worker is an important member. The legal arrangements of the conditional release are the same as in the cases of suspended sentences with regard to conditions, directives, appointment of a probation officer, revocation and relief of the suspended rest-imprisonment. That is: A probation officer can be assigned, if this is indicated to restrain the convict from re-offending. As a rule, the court has to put the convict under the supervision of a probation officer, when the prisoner has served at least one year of his sentence prior to release. In the enforcement period the public prosecution office may call in the court assistance (if a probation officer is not assigned) for investigations and advice when the public authority for penal execution has to decide on applications of convicts. These tasks account for a considerable part of the work of court assistants. The involvement of the service is mainly considered in the following cases:

- the enforcement of imprisonment in default of payment of a fine should be replaced by community service;
- a convict applies to make it easier to pay the fine by granting instalments;
- a convict applies for suspension of the rest of his sentence; the public prosecution office has to comment on the application and wants to know first the circumstances and living conditions of the address after release;
- a convict asks to shorten the waiting time for getting back his driving licence;
- a convict applies for reduction of the period of entry in the Central Federal Register (Bundeszentralregister).

Offenders, who have been granted pardon - what only applies in rare cases -, get supervision by the probation service, if this is ordered in the pardon decision. It is standard practice that the plea for clemency leads to call in the relevant social worker for a specialist comment. Usually, the federal states (with exception of Bavaria (Bayern) and Saxony (Sachsen)) pass a Christmas amnesty every year. About 2000 prisoners are released annually up to 12 weeks before their normal time of discharge if this dates around Christmas. Murderers, sex offenders and violent criminals are excluded. In doubtful cases, the advice of the social worker of the penal institution will be obtained.

As long as the convict serves his or her sentence, the penal institution is responsible for organising the imprisonment. Either the governor of the prison or a senior civil servant or a leading team have to decide on the treatment of the offender which involves semi-liberty, leaving prison for one day, holiday, working / training outside and special group projects as for instance hikes, climbing or other sporting events. The social workers of the penal institution take part in planning and realisation of such steps forward and often they are in charge on special tours. The relaxation of the restriction of liberty may be allowed with approval of the inmate, if there is no danger of escape or misuse of the relaxation for offending.

4.5 Care and after-care outside the criminal justice system

In most federal states the activities of the social services in the criminal justice system end when the offenders have served completely their custodial or non-custodial sanctions or measures. In these cases other authorities are responsible for social, financial and health care. Being informed by the social services, the ex-offender will contact - depending on their problems - the department of social security, the public health department, jobcentres or offices for advice and counselling concerning accommodation, debts and drugs. In addition, all over the country there are non-governmental organisations offering aftercare for ex-offenders. Partly full-time employees, partly volunteers take care of those who ask for help. Several associations put supervised housing or flats or/and leisure facilities at disposal. Some ministries of justice support NGOs who offer aftercare. In Baden-Württemberg the Association for Aftercare and Probation (Verband für Straffälligen- und Bewährungshilfe) is funded for this work by the ministry. In other states, for instance in Northrhine-Westfalia, it is the express task of the probation service to remain adviser and assistant with the agreement of the offender for an appropriate period, as a rule for six months after the time of assignment ended. It is part of the duties of the probation Service in Northrhine-Westfalia to inform and advise other persons about tasks and chances of the service and of associations for probation and aftercare. Further tasks are the active involvement in local working groups, in projects and in official co-ordination circles as well as in criminal prevention committees.

5 FINANCES, REGISTRATION, EVALUATION AND OUTSIDE OPINION

5.1 Finances

In most federal states there is no extra state budget for the social services in the criminal justice system. The state funds for the probation service, the court assistance, the victim support service, the mediation and the social service in penal institutions are allocated to many different state authorities. Therefore there are no figures available to account for the entire Federal Republic of Germany's budget. The following description is based on the state of Saxony-Anhalt which, with its area of 20,000 km² and its population of 2.5 million, ranks 10th in the 16 Federal States. In Saxony-Anhalt, social services have their own section within the state budget - without the cost of social work in penal institutions. It can be assumed that the following description of finance and accounting procedures gives a fair indication of the situation in the other Federal States.

5.1.1 Budget in the state of Saxony-Anhalt

The budget allocation for the social services within the penal system does not anticipate any revenue. It merely lists expenditure arising from the work of the social services, including that of non-governmental organisations that provide support to offenders. Expenditure is subdivided into personnel and material costs. Personnel costs refer to all expenditure relating to members of staff in

court assistance, the probation service, victim-offender mediation and victim support. In 2006 these costs amounted to 5,037,800 Euro. Material costs, related to the activities of all members of staff, amounted to 637,700 Euro, the item appropriation and subsidies was 653,700 Euro, from it expenditure for victim-offender mediation and releasing debts of offenders was 318,000 Euro, 220,500 Euro was provided for financial support to non-governmental organisations offering offender support and the rest - 115,200 Euro - for other grants and subsidies.

5.2 Accounting

With this 2006 budget, social services within the penal system supervised 7,131 probationers, provided court assistance in 6,749 cases and supported 415 victims. Staff was composed of 113 probation officers and court assistants, eight victim advisers and one witnesses' accompanist. As part of the accounting procedures a comparison is made between community-based social services and those provided in penal institutions in Saxony-Anhalt:

- Through their work, court assistants managed to avoid 92,475 days of substitute sentences by the use of community service. One day of substitute imprisonment costs 83.32 Euro. Thus the social services managed to save 7,705,017 Euro;
- It is interesting to draw a comparison between the costs for offenders who are serving their sentence in the community and those within penal institutions. The total expenditure for both personnel and material costs of the social service, including the subsidies for the relevant NGOs, was in 2006 6,329,200 Euro, while the budget for the penal institutions was 69,384,600 Euro (the average number of inmates in Saxony-Anhalt in 2006 having been 2,544 offenders).

There are different calculations in the Federal Republic of Germany regarding the one-day's cost of a probationer and an inmate. In principle however, the messages are identical: One day's support provided by a probation officer costs 2 up to 2.50 Euro. The cost of one day in a penal institution is from 67 Euro (without budget for building) to 100 Euro. The costs of social services within the criminal justice system forms part of the state budget, and as such are subject to review by the court of auditors, according to the budgetary rules for public services. Accounting and auditing are carried out on an annual basis. The audit comprises checks on whether the laws and regulations have been adhered to, whether public funds have been used wisely and economically, and whether the funds were spent on the lowest number of staff needed to do the work, and the lowest costs for materials. State funds are not supplemented by donations or any other financial support, apart from the core funds derived from taxpayer's money. Sponsorship is only relevant to non-governmental organisations that appeal for donations to their funding. Inmates with regular work contracts must contribute towards accommodation and subsistence. There are no plans apparent, however, for contribution to be made by probationers towards the cost of probation services or court assistance. Nor are financially well-off clients asked to pay a contribution. They are, however, expected to pay their own travel expenses and related costs when calling on social staff.

5.3 Registration

The probation service opens a file on each new case. Information about the respective offender (data about their living conditions and lifestyle, diagnosis, documentation about the probation course, the plan how to go on) is recorded in a standardised form. The forms of the new arrival and of those who leave probation are monthly sent to the statistical office of the relevant state. This written procedure, however, is replaced gradually by using electronic data processing. Holding the data on computer brings about automatically drawing up a set of statistics. The statistical offices bring together all reported cases, edit and publish the results, some of them accessible for instance in the Internet. The statistics are used as basis for budget debates within the state parliaments and for the allocation of staff to the social services through the state governments. They are also part and parcel of the information required in order continuously develop the aims of criminological policies. And they are used for scientific research. It goes without saying that personal data always remain anonymous.

6 PROBATION CLIENTS' RIGHTS

During the pre-trial phase, accused offenders have the right to decide whether they want to give information to the court assistant. They are not obliged to contribute to a personal investigation report. Before the court assigns a probation officer to the accused or to a convicted offender, he or she has the right to comment. A convicted offender also has the right to be heard before the court issues any directives or conditions for the probation period, amends them or replace them with different directives or conditions. The same holds true if the court considers revoking its rulings. The accused/convicted offender has the right to appeal against court rulings before the relevant court of appeal. After each court ruling, the offender must be informed of their right to appeal. Throughout the pre-trial and trial phase the offender has the right to a defence lawyer. If the offender does not have his or her own lawyer there are certain circumstances, described in the Code of Criminal Procedure (CCP, article 140), whereby the court has to assign a lawyer.

Probation officers are not authorised to take unilateral decisions which interfere with a client's personal rights: should the probation officer deem such decisions necessary, they can initiate action before the court. The offender also has the right to request the court to make changes concerning the probation period e.g. reducing the length of the probation period, amending or suspending directives or conditions. Should the client disagree with the appearance, behaviour or any action taken by the probation officer, they have the right to complain to the judge in charge of probation decisions. The client can also complain to the service superior if they are of the opinion that the probation officer has neglected his or her duties. The Prison Act enables the prisoner, whilst serving a prison sentence, to have the opportunity to complain to the head of the penal institution or the representative of the regulatory authority. They can request a court ruling on interventions ordered by the penal institution.

Every penal institution has a penal advisory committee ((Anstaltsbeirat) Penal Code, article 162), whose voluntary members are nominated by the parish council and appointed by the Ministry of Justice. Inmates may go to the members of this council when they have any complaints. Another option is to turn to the delegate of a parliamentary party of state parliament, who is responsible for prison-system matters. Finally there is the possibility to send a petition to the petition committee of the state parliament against unjust treatment by a state authority. Offenders who do not speak German have the right to an interpreter during trial. In practice, communication between the client and the probation officer normally takes place through someone in the client's circle of influence that is able to provide the necessary interpretation.

7 NEW DEVELOPMENTS

The fundamental duties of probation services have remained until today: personal/social investigation reports; assistance, guidance, supervision in cases of suspended sentences and suspended remainder of sentences; social and personal assistance in prisons. Following the changes in society and the outcomes of criminological research, new and broader forms of care have come in evidence: different kinds of leisure activities and the treatment of behavioural difficulties have been offered, work and accommodation projects have started, in response to violence and right-wing extremism, training courses have been organised. Risk assessment and risk management are introduced or are to be introduced. Community service has become more important, and victim-offender mediation has gained significance. The victim has come into view; victim support and victim protection gain ground. Crime prevention increases in importance. Recently, the federal states have issued new guidelines for the staff and new quality standards are being developed relating to working methods. Previous structures of the service are under scrutiny; some states have taken the initiative to reform the organisation of their services. These movements base on some special developments:

- it is more and more accepted that imprisonment should be the last resort. In consequence, the figures of suspended sentences are rising. Offenders, who were locked up before, are put under the supervision of the probation service these days. There are more difficult offenders with complex personal and social problems;
- the tasks of the service have increased, as mentioned above. It does no longer revolve only around help and control of individual offenders;
- due to the fiscal constraint in the state budgets there are no funds available which would be necessary for the service to expand. On the contrary, governments intend to save money.

In Baden-Württemberg government expects a rise in quality of social work in penal matters by the implemented privatisation of the service: reduction of bureaucracy, more flexibility, an increased professional competence should help to cope with the growing requirements.

In Lower-Saxony the Ministry of Justice is just reforming the social services. The project named JustuS (Justiz und Sozialdienst = Justice and Social Service) has

published first results, after a thorough planning with the participation of the services:

- the previous separate services, working outside the penal institutions, will be brought together in a united organisational structure;
- qualified social workers will take responsibility of the management of the lower dependant offices. Operational and vocational supervision will be concentrated at a higher regional court or at the chief prosecution office;
- the services shall have their own budget;
- an effective quality management shall continuously develop the binding quality standards. The new professional senior management will take responsibility for steering the development;
- further items are: risk management with focus on sex offenders and other offenders who are likely to re-offend; case management; get volunteers involved; powerful software; optimise the system of documenting and reporting.

It is not without importance to stress that the Association of German Probation Officers (Arbeitsgemeinschaft Deutscher Bewährungshelferinnen und Bewährungshelfer) welcomes the reform. In Saxony-Anhalt the development of the quality of social work and raising of the service's profile as well as risk assessment to realise the specific offenders' need for help and control are on the agenda. In addition, the Ministry is looking into the possible consequences concerning effectiveness and efficiency that involvement of the social service in penal institutions would have.

8 IMPORTANT PUBLICATIONS

M.Kurze, *Soziale Arbeit und Strafjustiz - Eine Untersuchung zur Arbeit von Gerichtshilfe, Bewährungshilfe, Führungsaufsicht* (Social Work and Criminal Justice - an examination concerning court assistance, probation and supervision of conduct), 1999, Wiesbaden, Band 26 der Schriftenreihe der kriminologischen Zentralstelle, ISBN 978-926371-42-3

W. Sohn (Ed.), *Referatedienst Kriminologie - Schwerpunkt: Kriminalprävention* (service on papers in Criminology - main focus: crime prevention), 1999, Wiesbaden, Folge 9, Band 17 der Schriftenreihe der Kriminologischen Zentralstelle, ISBN 3-926371-47-1

J.Weidner, *Anti-Aggressivitäts-Training für Gewalttäter* (Anti-aggressiveness training of violent criminals). Mönchengladbach, 2001, ISBN 3-927066-88-5

R. Egg, J-M Jehle, E Marks (Hrsg.), *Aktuelle Entwicklungen in den sozialen Diensten der Justiz - Strukturen, Spezialisierung, Qualifizierung* (Actual developments within the social services in the criminal justice system - structures, specialisation, qualification, 1996, Wiesbaden, Band 20 der Schriftenreihe der kriminologischen Zentralstelle, ISBN 978-3-926371-31-7

F. Dünkler, B. Geng, W. Kirstein, *Soziale Trainingskurse und andere neue ambulante Maßnahmen nach dem JGG in Deutschland* (Social practice courses and other measures in the community for young offenders), 1998, Bonn, Herausgegeben vom Bundesministerium der Justiz, Forum Verlag Godesberg, ISBN 3-930982-44-7

D.Döllingu.a., 1998, Bonn, *Täter-Opfer-Ausgleich in Deutschland - Bestandsaufnahme und Perspektiven* (Victim-offender-mediation - stocktaking and perspectives). Herausgegeben vom Bundesministerium der Justiz, Forum Verlag Godesberg, ISBN 3-930982-32-3

Bewährungshilfe, Fachzeitschrift für Soziales, Strafrecht und Kriminalpolitik (specialist journal for social matters, criminal law and criminal policy – quarterly published). Herausgeber: DBH e.V. - Fachverband für Soziale Arbeit, Strafrecht und Kriminalpolitik, erscheint vierteljährlich im Forum Verlag Godesberg GmbH, Mönchengladbach, ISSN 0405-6779.

9 CONTACT DETAILS

Ministry of Justice
(Bundesministerium der Justiz)
Mohrenstraße 37
D-1017 Berlin
Tel.: +49-30-18580-0
Fax: +49-30-18580-9525
www.bmj.de

DBH – Association for Social Work, Criminal Law and Criminal Policy
(DBH - Fachverband für Soziale Arbeit, Strafrecht und Kriminalpolitik)
Aachener Straße 1064
D-50858 Köln
Tel.: +49-221-94865112
Fax: +49-221-94865121
www.dbh-online.de
peter-reckling@dbh-online.de

German Foundation for Crime Prevention and Offender Support (Deutsche Stiftung für Verbrechensver-hütung und Straffälligenhilfe)
Contact: German Congress on Crime Prevention and Offender Support (Deutscher Präventionstag)
Am Waterlooplatz 5 A
D-30169 Hannover
Tel.: +49-511-2354949
Fax: +49-511-2354950
DPT@praeventionstag.de
www.praeventionstag.de

Association of Probation Officers (Arbeitsgemeinschaft Deutscher Bewäh-
rungshelfern und Bewährungshelfer)
Extumer Weg 10
D-26603 Aurich
Tel.: +49-4941-61928
Fax: +49-4941-61929
gerz@bewaehrungshilfe.de
www.bewaehrungshilfe.de

Association German Court Assistance
(Arbeitsgemeinschaft Deutsche Gerichts-
hilfe e.V. (ADG))
Seitenhalde 31/1
D-72793 Pfullingen
Tel.: +49-7121-799249
Fax: +49-7121-798044
r.d.hering@t-online.de
<http://adg-gerichtshilfe.de>

Federal Association Social Work in Penal Institutions
(BAG Soziale Arbeit im Justizvollzug)
c/ Jürgen Taege
Waldenburger Straße 5
D-45470 Mülheim
Tel.: +49-208-4372594
kontakt@bag-sozialarbeit.eu
www.bag-sozialarbeit.de

Service Bureau for Victim-Offender Mediation and Conflict Settlement
(Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung)
Aachener Straße 1064
D-50858 Köln
Tel.: +49-221-94865122
Fax: +49-221-94865123
info@toa-servicebuero.de
www.toa-servicebuero.de

National centre for Criminology
(Kriminologische Zentralstelle e.V.)
Viktoriastraße 35
D-65189 Wiesbaden
Tel.: +49-611-15758-0
Fax: +49-611-15758-10
info@krimz.de
<http://www.krimz.de>

Tübingen University Department of Criminology (Institut für Kriminologie der
Universität Tübingen)
Sand 7
D-72076 Tübingen
Tel.: +49-7071-2972931
Fax: +49-7071-295104
ifk@uni-tuebingen.de
www.ifk.jura.uni-tuebingen.de

Criminal statistics databases

Federal Statistical Office Germany
(Statistisches Bundesamt Deutschland)
www.destatis.de/shop

Statistical Offices of the Länder and the Federal Statistical Office
(Gemeinsames Datenangebot der Statisti-
schen Ämter des Bundes und der Länder)
www.Statistik-Portal.de/Statistik-Portal
www.forschungsdatenzentrum.de

The Konstanz Repositories on Crime and Sanctioning
(Konstanzer Inventar Sanktions-forschung)
www.uni-konstanz.de/rtf/kis

ANNEX 1

1. Criminal statistics

One should know that official German statistics regarding the criminal justice system often refer only to former West Germany and Berlin. Adequate basic statistics are currently not yet available for all new Länder. The reported figures in this chapter are taken from the publications of the Federal Statistical Office of Germany (www.destatis.de/shop), and from Jehle, Jörg-Martin (2005), *Criminal Justice in Germany*, Forum Verlag Godesberg, Mönchengladbach. On 30 November 2006, 65,526 adults were imprisoned, including 11,414 in remand custody. At the same time, there were 170,273 probationers, including 35,784 young offenders according to the Juvenile Court Act *.

The public prosecution offices of the whole of Germany had to do with 4,766,070 (in 2003) preliminary investigations, including those against juveniles **.

The way the cases were dealt with:

- 26.7 % dismissed or discontinued (lack of evidence)
- 21.0 % unconditional termination
- 5.6 % conditional termination
- 0.2 % death of accused, lack of criminal responsibility
- 12.7 % application for a penal order
- 12.0 % public charges
- 21.9 % other disposals (including proceedings passed on to other public prosecution offices and to an administrative authority, in connection with another case etcetera)

Cases processed by the courts of the whole of Germany (in 2003)

Total number of accused: 992,534.

- 483,436 (48.7 %) judgement
- 125,174 (12.6 %) conditional termination
- 94,253 (9.5 %) unconditional discharge
- 32,107 (3.2 %) other discharge (e.g. because of impediments to proceedings, absence of the accused, extradition, expulsion)
- 22,887 (2.3 %) penal order
- 234,677 (23.6 %) other conclusions to case (e.g. combination with another case, withdrawal of appeal and private charge)

Sanctions against adults (former West Germany and Berlin) in 2005 ***:

- 674,004 (100 %) Total persons sentenced under general criminal law
- 545,971 (81 %) fine
- 90,085 (13.4 %) prison sentence suspended
- 37,896 (5.6 %) prison sentence not suspended

Probation ******31 December 2005**

134,489 adult probationers under supervision, of them

89,810 (70.4 %) with suspended sentence

7,783 (29.6 %) with suspended remainder of sentence

Table 1 Ending of probationary time

year	probationers	completed supervision time	successful	percent age	revocation
2003	130,667	36,666	25,061	68.3 %	11,605
2004	132,275	41,095	28,562	69.5 %	12,533
2005	134,489	40,059	28,033	70,0 %	12,026

* Federal Statistical Office, Number of Inmates in German Penal Institutions on 30 November 2006, www.ec.destatis.de

** Jehle, *ibidem*, pp. 20, 26

*** Federal Statistical Office, Conviction Statistics (Strafverfolgungsstatistik) 2005, specialist series 10 R, section 2 and 3

**** Federal Statistical Office, Probation Statistics (Bewährungshilfestatistik) 2005, relating to former West Germany and Berlin – without Hamburg