



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Denmark



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A. Juvenile Justice

Denmark does not have a particular Juvenile Justice system or a Juvenile Justice Law which is independent of the regular laws and systems applicable for everybody. Juvenile offenders are in principle dealt with within the same complex of laws, practices, routines etc. as anybody else. Also they are sentenced in the same courts and by the same judges as offenders of any other age. Denmark does not have even a separation of the courts in civil and criminal courts. Every courtroom and every judge meet civil and criminal cases on a regular basis.

But on the other hand exceptions exist in order to maintain the needs, interests and rights of children and juveniles. Offenders under the age of 18 benefit from a number of sentencing policies and options not available for adults like for instance diversion to the welfare authorities and institutions.

The criminal as well as the procedural and social legislations and practices are basically based on the fundamental consideration that cases against the youngest offenders require rehabilitative rather than punitive responds. Therefore alternatives to imprisonment such as withdrawal of the charge and suspended sentences on the condition of for instance following the instructions from the social welfare are very much close by in juvenile cases. In order to encourage the juvenile to change his behavior into a more appropriate direction criminal reactions more frequently lead to a non-custodial measure the younger the offender is and even more if he is also a first time offender.

According to the criminal law (straffeloven, lovbekendtgørelse nr 1028 22/08/2013), §15, the legal age of criminal responsibility is 15. Due to a particular political situation it was temporarily lowered to 14 from 2010 to 2012. To put the legal age of criminal responsibility into a relevant perspective of today it is worth to mention that the age of (sexual) consent is 15 as well, whereas a Dane has the right to vote, to marry, to withdraw/

apply for membership of a church, to apply for a driver's license and to decide on his own personal and financial circumstances from the age of 18. He can buy cigarettes and beer in a store from he is 16 and he can buy alcohol in a bar or restaurant from he is 18.

In Denmark criminal procedural rules are normally kept. The media are very active and aware of injustice and possible mistakes.

Below follow under "A. Juvenile Justice" *firstly* an introduction to the Danish criminal procedures and sanctions for juveniles between 15 and 18 (a) and *secondly* an introduction to rules and practices concerning children below 15 (b). *Thirdly* a few statistics on juvenile justice can be seen (c). Under "B. Restorative approach within juvenile justice" an introduction to the Victim-offender program is presented and "C. Foster care within the juvenile justice system" is almost empty as this is not an option in Denmark.

Imprisonment (suspended as well as unsuspended), fines and Community Service Orders are all regulated in the criminal law §§ 31-67, the Youth Sanction is regulated in the criminal law § 74a, the electronic curfew is regulated in the Code of Execution of Penalties (straffuldbyrdelsesloven, lovbekendtgørelse nr 435 15/05/12) §78 a-f, and finally the main regulation about social welfare interventions to children and juveniles involved with antisocial/criminal behavior is to be found in the law on social services (lov om social service, lovbekendtgørelse nr 1093 05/09/2013) §§ 52-58. Regulation of investigation, custody (pre-trial imprisonment), criminal procedure, charges and withdrawal of charges is laid down in the procedural law (retsplejeloven, lovbekendtgørelse nr 1139 24/9/2013).

The text is based on legal rules and a few reports plus official statistics. References are mention in the text.

A. Juveniles

The police are obliged to inform the social authorities and – if possible – invite them for the questioning of a juvenile in cases where the charge relates to violation of the criminal law. If the offence – according to any other law – may lead to imprisonment the authorities should be invited as well. The police are not obliged to invite the social authorities if the questioning takes place during or in direct connection with the committing of the offence provided that the punishment in the concrete case will be no more severe than a fine. This obligation is not legally defined, but laid down in internal instructions.

As for the rules on criminal procedure, there are a few remarkable rules explicitly focusing on juveniles. This is §768a which in subsection 2 says that unless the court finds that there are extraordinary circumstances a person below 18 cannot be kept in custody (pre-trial prison) longer than 4 months if the maximum sentence for the crime in question is below 6 years and no longer than 8 months if the maximum sentence for the crime in question is 6 years or more. In cases with older suspects the same time limits are 6 and 12 months.

Solitary confinement during custody has a maximum of 4 weeks if the suspect is below 18 unless he is suspected for having committed a crime against the state, § 770c, subsection 5. Solitary confinement of persons below 18 has been tried in the Danish Supreme Court, which decided that this was not as such against article 37c in the UN Convention on the Rights of the Child or article 3 in the European Human Rights Convention. In addition the Supreme Court said that the court has to be very reluctant in using solitary confinement to juveniles, and in the concrete case it was not justified. The case, which was about a robbery, was published in U1999.1415H (weekly law journal).

Persons below 18 being in custody may be transferred to alternative institutions such as a closed juvenile institution run by the social service instead of staying in the custody (city jail). But there is no rule that excludes the possibility that the juvenile stays in the same place as adults being in custody. The two boys in the case mentioned above were placed in a city jail in solitary confinement.

Before a criminal case goes to court all information about the person must be available if there is any chance that he will not be convicted to unsuspended imprisonment. The type of information which is collected is for instance where and with whom is the accused living, what kind of occupation does he have, is he married, does he have children, siblings, parents, is he educated, is he skilled. The reason for this is that the court must know concrete options for for instance obtaining adequate accommodation in an alternative institution. Further the judge must know if it is seen as realistic to supervise the offender if he is not deprived of his liberty. In cases with adult offenders this information is provided by the probation service, procedural law, § 808. But in cases with juvenile offenders the court preparatory work is carried out by the social services. If the juvenile offender is sentenced to a non-custodial punishment the supervision and support is also carried out by social authorities and not the probation service.

Turning to the sanctions the starting point is that when a person has turned 15 and is found guilty to an offence he or she may be convicted to all the kinds of punishments that are relevant for the offence and prescribed in the criminal law. There is no such thing as one legal maximum for juveniles and another for adults. The only sentence which can impossibly be used to a person below 18 is life time imprisonment. The decisive parameters for the sentencing are the type of crime, the gravity of the crime, former sentences for comparable crimes, and personal conditions, like for instance age, occupation and criminal record.

The main punishments are mentioned in the criminal code § 31 to be prison and fine. Prison is used in a suspended and an unsuspended form. A suspended prison sentence may be strengthened by the condition of fulfilling a Community Service Order. An unsuspended sentence may when the length does not exceed 5 months, be changed by the Department of Corrections into a so called "home execution" where the offender does not go to prison but stay at home and does his main daily duty (work or school) with an electronic curfew permanently fixed around the ankle during the time of the duration of the sentence to imprisonment.

We begin with the sanctions that may be used towards juveniles and do not include deprivation of liberty.

Withdrawal of charges, fines and suspended sentences form the basis of the non-custodial punishments. Most typically the public prosecutor respectively the courts are encouraged to have them in mind before imprisonment in cases towards juveniles – not least first time juvenile offenders.

For very minor crimes the prosecutor sometimes has the legal power to withdraw a charge, §§ 718-728, concerning juveniles especially §722, subsections 2 and 3 in the procedural law. In these cases the criminal guilt is not tried in court but it is a precondition for a withdrawal of the charge that the suspect pleads guilty. Most often a withdrawal of charge is conditioned and the conditions which may be used are for a great part the same as the conditions in a suspended sentence (see more about conditions below). The conditions must be accepted by a judge.

In cases where the offence (even a minor one) is reported to the police and the police formally find it realistic to have criminal guilt tried in court withdrawal of charge is the only possible diversion from court in the Danish criminal procedural system. Withdrawal of charge is not solely for juveniles but young age is an explicitly mentioned reason for considering this option.

In 1998, the so-called Youth Contract was introduced in Denmark. This is formed as a special condition in a withdrawal of charges. The aim was to introduce a quicker and more adequate reaction (i.e. leading to less recidivism) towards crimes which had not caused personal harm and were committed by juveniles who did not already have a substantial criminal record. By including not only the offender but also the parents and the social authorities in the preparation and signing of a contract before having it approved by the court, it was the hope that all parties (not least the parents) would feel more committed. Like all non-custodial measures the Youth Contract always includes a standard condition of not re-offending within a certain period of time. Furthermore it puts individual obligations on the juvenile to participate in certain activities, for instance to finish school and go through a social training program. If the juvenile fulfils the period and the obligations of the contract the withdrawal of the charge will be deleted from his or her criminal record one year after the contract was signed, i.e. practically in the moment it is fulfilled. “Normally” withdrawal of charges is deleted from the criminal record after two years.

According to evaluations the Youth Contract does not, however, seem to have speeded up the process markedly. And a study of recidivism after having fulfilled a Youth Contract compared to recidivism after an ordinary withdrawal of charges is not delivering convincing proof that Youth Contract lowers recidivism. The study points out that in the light of among other things the fact that withdrawal of charges already has a strikingly lower recidivism rate than (other) penalties this may not be that surprising. Within 2 years after a withdrawal of charge 20% of juveniles relapse into crime. This is very close

to the recidivist rate of Youth Contract as well as Community Service Order. (<http://www.justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Forskning/Forskningsrapporter/2003/ungdomskontraktordningen.pdf>)

Fines are very rarely used in cases with juveniles and always relatively standardized like: possession of 10 gram cannabis for own use means a fine of 3000 Dkr. Alongside with the fine the social welfare is informed in order to encourage them to consider how to support the juvenile. A fine may be imposed by the court, but more often it is simply accepted by the offender after having received a letter from the police commissioner.

A suspended sentence to imprisonment is seen as a relatively severe sentence for a juvenile. First time a person receives a suspended sentence it is most typical not made clear how long the prison sentence would have been had it not been suspended. If the person receives another suspended sentence, however, the court very often writes in the sentence how long the prison sentence would have been. This is meant as a signal of severity.

Community Service is an extra severe condition in a suspended sentence. The service is organized by the probation service and must be planned in respect of daily job, school etc. of the offender. The court decides the number of hours between 30 and 300. The maximum was raised in 2011 from 240 to 300 hours. This was a political indication of willingness to accept community service in very rare situations where an unsuspended sentence up till 2 years would be the alternative.

In case of a withdrawal of charges as well as suspended sentences with or without Community Service Orders, a compulsory requirement of leading a law-abiding life for the following period will always be included. Additionally to that a duty to comply with a number of conditions concerning residence, school attendance, work, leisure-time activities, etc. will often follow in juvenile cases. In juvenile cases the types of conditions are based in as well the criminal law as the code on social services. There are wide possibilities for the court to formulate the conditions individually as there is no codified limitation. However, the reason why the court is involved in the conditions is to secure a certain degree of proportionality and fairness.

Except for cases which end up in a Community Service Order the Child Welfare System takes over preparation before the case comes to court as well as supervision, support and control after court from the probation services, which is doing the follow up in cases with adult offenders.

The electronic curfew is placed somewhere between sanctions without and sanctions with deprivation of the liberty. This is the reason why it is mentioned as the last example of not liberty depriving sanctions. It was introduced gradually from the beginning of the 2000s. In case the length of an unsuspended prison sentence is five months or shorter and in case the offender does not go directly from court to prison (which he for instance does if he is defined as being member of a gang) he will, shortly after court, receive a letter

from the Department of Corrections informing him of his right to apply for a so-called “home-serving”. This implies that the person must wear an electronic curfew around his ankle for a period equal to the length of his sentence. The curfew does not enable the Probation Service to monitor the offender’s movements and whereabouts, but to control that he does not leave his home except for the periods of the day agreed upon with the Probation Service. There will for instance be fixed periods of 10 minutes where he has to pass his own door step every morning and afternoon when he goes to school or work etc.

Contrary to the community service the electronic curfew is not “imposed” by the judge in court but by the Department of Prison and Probation after the unsuspended sentence in court. Accordingly, the curfew is not mentioned in the criminal code but is instead described in the Corrections Act, §§ 78a-78f.

Now turning to the sanctions that do include deprivation of the liberty we start out by describing the unsuspended imprisonment and the types of institution where a prison sentences may be served.

In Denmark crime related deprivation of juveniles’ liberty may take place in prison (open or closed), in a secure or open social institution or in a so called pension administered by the Department of Corrections. Denmark has no specific juvenile prisons.

When juveniles below 18 are sentenced to imprisonment efforts are made primarily to transfer them to a closed (high security) juvenile institution run by the social services, secondarily they should be located in either the closed prison for young men up to 29 (which is also housing women of all ages) or in the special youth unit in one of the open prisons. The choice between open and closed prison/institution is mainly based on length of the sentence and type of crime. In both prisons efforts are made to create adequate social activities, school and training for the juveniles.

The fact that there is one closed prison and one unit in an open prison dedicated for juveniles and young adults implicates of course that juveniles normally will serve their sentence in a prison which is located more far away from home than adults. This situation is created by the fact that Denmark is a very small country with a low number of juvenile offenders and at the same time aims to meet international standards to the largest degree possible and to balance severity and support in the sanctioning.

Not to be mixed up with the Youth Contract (mentioned above), Denmark introduced the Youth Sanction by an amendment to the criminal law on July 1, 2001, §74a. Contrary to the Youth Contract the Youth Sanction is meant for juveniles with a more substantial criminal career and need for behavioral training. The Youth Sanction is imposed by the courts after an ordinary criminal procedure (contrary to Youth Contract) but it is executed by the social authorities. Youth Sanction includes deprivation of liberty without including imprisonment.

The Youth Sanction was a result of a strong political demand on action towards serious

offences, committed by juveniles, who have not reached the age of 18 at the time of the crime. The Youth Sanction is defined as an alternative to a prison sentence of between one and 12 months and maybe sometimes up to 18 months. The Youth Sanction consists of three phases altogether lasting two years. The first period must take place in a so-called closed juvenile institution (these institutions are of the same security level as closed prisons and custodies and they are identical with the institutions where juveniles in alternative custody and juveniles serving unsuspended prison sentences are placed); later on follows a period in an open residential institution. Both institutional accommodations are managed by the Social Welfare System and not by the penalty system. In this context the aim is less to impose a punishment and more to help the citizen, however, the means of power in the institutions – not least the closed institutions – are very much alike those of a prison. Altogether the placements in (different categories of) institutions may not exceed one and a half year and of this period up to one year may be – but rarely is – in closed institution. The last phase, of which the duration must be at least 6 months, is aftercare or supervision in freedom. As the length of a Youth Sanction is always two years, the length of the last period of supervision depends on how long time has been spent in institutions.

The Youth Sanction has been debated in the light of criminal law values, especially proportionality between crime and punishment and equal punishment for equal crime. The courts are not obliged to tell how long a possible prison sentence would be if the Youth Sanction had not been imposed in a particular case, but researchers estimate that a major part of the sentences might have resulted in imprisonment for a markedly shorter time than the 2 years (for instance Vestergaard 2004). This indicates that Youth Sanction in some (not few) cases out of proportions compared to “normal” punishment. About equality the following example is absolutely realistic: A 17 year old and an 18 year old have committed a crime together. The court may send the 18-year-old in prison for 3 months corresponding to the gravity of the crime. The 17-year-old may be imposed with a Youth Sanction consisting of a stay of realistically 2 but legally up to 12 months in a high security (social) institution followed by a stay of 6 months in an open institution and ending up by supervision for minimum 6 months. Further if they spent time in custody before court the time in custody will be deducted from the time in prison for the 18 years old offender but not deducted from the time in Youth Sanction for the 17 years old offender. Finally the 18 years old will most probably be released on parole after 2/3 of the sentence. Parole is not an option in the 2 year period of the Youth Sanction.

B. Children

The starting point when talking about children’s deviancy (or crime) is that the “spirit” in all reactions is expected to be taking care of the best interest of the child. Consequently the intention should not be – directly or indirectly - to punish the child but rather to guide the behavior of the child into a more appropriate direction. This basic ideology is - at least from a Danish point of view – a typical and important characteristic of the Scandinavian Welfare Model.

When a child is below the age of criminal responsibility, i.e. 15, all deviant behavior (also if it is identical with a legally defined crime) is a challenge for the social welfare. There will be no charge, no court and no conviction.

Even if there is no legal possibility of criminal prosecution of children below the age of 15, there exist some practices concerning the investigation of children's behavior when criminal offences have been committed by the children or by somebody else while the children were present. To some degree, this is legitimated by the fact that persons above the age of criminal responsibility may be involved in the same offence and they – for their part – should be kept responsible. Furthermore, there may be a need to clarify the total scope of the crime and to secure that items are returned to their owner.

In order to minimize the risk of harm and maximize the security of the child against whom criminal investigation takes place, the parents and the social welfare systems are to be notified and are expected to be present during an interview or interrogation by the police.

As a consequence of the fact that the behavior of a child cannot lead to legal conviction, the possibility of instigating legal inquiries against a child are limited. Though there is a legal possibility of detaining a child when necessary in order to clear up a criminal case, a child may under no circumstances be taken into custody.

Like adults children may be kept by the police for (as far as possible not more than) 6 hours if necessary to prevent public order or personal health from being threatened by the person, the police code (politiloven nr 444 of 09.06.04). If a child is under influence of alcohol or drugs it may be taken care of by the police by being locked up. But if the child is not yet 12 years old it cannot be placed in detention.

The police code does not change the general rule in the Danish Constitution § 71, subsection 3, which secures everybody, who is arrested by the police the right to see a judge within 24 hours. It is not a legally defined presumption for being arrested that a person has reached the age of criminal responsibility (procedural law, section 755). But when a child is arrested, it must be kept in an office or the like and may never be placed in a jail or prison cell. Children will, in any case, be let out before 24 hours as there is no legal possibility for the judge to decide to keep them any longer.

When a child is suspect of a serious crime, it will be noted in the investigative record. This is a file with no public access functioning as a tool for the police for investigation of crimes.

The amount of registrations of crimes committed has decreased from 8.800 in 2006 to 3.200 in 2012 (Crime 2012, see below under c).

In Denmark there is absolutely no way of imposing a legally formalized penalty on a child below 15. But on the other hand there are legal responses to deviant (criminal) behavior.

The starting point would be social intervention in the home as for instance a mentor for the child and some support or training for the family. Later on there are legal possibilities of removing the child from its home by referring to criminal behavior, other kind of antisocial behavior or for instance drug use. The social intervention is not defined as a sanction but as a welfare initiative based on the needs of the child and it is regulated in the law on social services (lov om social service, lovbekendtgørelse nr 1093 05/09/2013) §58.

The child may be placed in closed (high security) institutions (identical with the institutions mentioned above where juveniles are located), in other institutions, rented rooms or in foster families.

If a removal from home is reasoned by criminal behavior, drug use or the like it may be decided without the consent of the child or the parents if necessary by force.

The removal of a child from home is decided by a special commission in the municipality under the responsibility of the city council (børn og unge udvalget). And the parents and/or the child must be provided with legal advice. But unlike a court procedure there is no legal control by a judge of the criminal guilt of the child, no legal control of the evidence and no legal decision on the length of the period where the child must stay in the alternative place. The criteria are described as the need of the child.

C. A rough overview of the scope of juvenile crime and punishment

Statistics Denmark is a national state institution which collects statistical data from state institutions, among others from police, courts and prisons. Each year Statistics Denmark publishes crime statistics in a publication called "Crime" followed by the specific year. The publication is not only a collection of the numbers of the year but also in some cases a ten-year development overview. "Crime 2012", published November 2013, is the main source for the information in the following.

There are two main categories of punishable rules namely the rules in the criminal law and the rules in what is called all the special codes, including for instance the traffic code, the weapon law, the law on euphoriant drugs and a long list of laws to the protection of the environment, the safety in factories etc.

Due to the change of the age of criminal responsibility in 2010 from 15 to 14 and again in 2012 from 14 back to 15 the registrations of reported crime for which children, who cannot be punished, are not coherent. In the text Statistics Denmark explains that in 2012 there were 3.172 crimes (criminal law plus special codes) for which children were registered. This is 9.8 reported crime pr. 1.000 inhabitants in the age 10-14 years (incl.) in the year before the changes of ages started (2009) there were 16 crimes per 1.000 inhabitants in the same age group and three years earlier (2006) the number was 25 crimes pr. 1.000 inhabitants. Statistics Denmark concludes that the relative number of

crimes for which children below the age of criminal responsibility are reported seems to have been declining since 2006.

The publication does not contain information on reported crimes related to age group for other age groups than the children. But there seems to be a tendency to fall in the numbers of reported crime in general like for the children though less markedly.

The statistics on sentences for criminal law crime, which is the type of crimes followed by the most severe sentences and also the types of crimes where juveniles are more visible (compared to special codes) show a tendency to fall for the age group 15-19 years old.

In 2002 there were 2.700 sentences directed at juveniles aged 15-19 for crimes against the criminal law pr. 100.000 inhabitants in the age group whereas there were 2.100 sentences pr. 100.000 in the same age group in 2012.

If we turn to the prison sentences there were 978 prison sentences in 2002 directed at 15-19 years old individuals pr. 100.000 in the age group, whereas in 2012 there were 851.

In 2012 sentences directed at juveniles formed 4% of all sentences. An absolute number of 301 (2%) out of a total of 12.300 sentences to unsuspended deprivation of the liberty were directed at individuals aged 15-19. Out of them 67 were sentences to Youth Sanction and the rest were sentences to imprisonment. 100 out of the 234 unsuspended prison sentences (301-67) were of duration of three months or shorter time.

For the withdrawal of charges the numbers for 2012 were 369 decisions concerning juveniles out of a total of 3.826 (9%).

10 years before namely 2002 sentences directed at juveniles formed 6 % of all sentences. The share of the unsuspended sentences which were directed at juveniles was 3% (307 out of 10.086) but the share of the withdrawals of charges was 19% (224 out of 2.694).

Over the period 2002-2012 the rate of Youth Sanctions of the total of all unsuspended sentences to juveniles has differed. 2002-2005 the Youth Sanction formed about one fifth of the total. The share rose to over one fourth in 2006 and 2007. Since 2007 it has been declining to 13 % in 2011 but increasing again to 17% in 2012. The Youth Sanction is mainly used in cases about rape, serious assault and robbery and is not used in cases about theft. The Youth Sanction is relatively more used in areas far away from the capital and absolutely least used in the capital Copenhagen.

Youth Sanction is absolutely more often used to boys than to girls and rarely to 17 years old juveniles but more often to 15 and 16 years old persons. Out of the 67 sentences to youth Sanction in 2012 50 sentences were directed at juveniles of Danish origin.

Related resource: <http://justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Forskning/Forskningsrapporter/2013/Redeg%C3%B8relse%20om%20US%202013.pdf>

B. Restorative Justice within juvenile justice

This part is based on the law on victim offender mediation (lov om Konfliktråd, nr 467 12/06/2009) and the Report 1501 published by a Committee before the law was decided. (Betænkning1501/2008).

Initially it must be stressed that the program in Denmark that has anything in common with the ideas behind Restorative Justice, namely Konfliktråd (hereafter: Victim-Offender-Mediation, VOM), is *not* a program that in any case replaces a criminal justice procedure. It is always a supplement to a criminal procedure. This means that, in principle, even if VOM is successfully fulfilled an ordinary criminal justice procedure including conviction and sentencing will follow.

Furthermore there is no explicated intention that juvenile cases should be more relevant for VOM than other cases. In principle there are no limitations or preferences for VOM what offenders age, gender, type of crime etc concerns.

VOM is a program that solely includes the victim, the offender and the mediator. There is no intention of including the community, relatives, friends or anybody else. No other stakeholders can be involved.

Bearing this in mind it is debatable whether VOM is Restorative Justice in the understanding of important theorists like Howard Zehr or Tony Marshall, who both argue that other stakeholders like for instance schoolteachers, colleagues, NGO's or other relevant community representatives should be included.

In Denmark, VOM was first introduced on experimental and geographically limited basis after the introduction of the idea of Reflexive Law in the late 1980s and the Restorative Justice ideology in the world wide criminological debates up through the 1990s.

The law on VOM came into force by January 1st 2010 and introduced VOM as a nationwide program run by the local police. The law instituted a nationwide program and was implemented after two periods of local experiments dating back to 1994. While the experiences from the experiments were not quantitatively overwhelming, from a qualitative perspective they were evaluated positively. The codified VOM strategy is almost a carbon copy of the most recent pilot, and there were only few differences between the two experimental programs.

Today VOM is a concept of voluntarily confrontation between offender and victim with the support of a neutral mediator. The law on VOM states in § 4 directly that VOM does not replace punishment or other formal legal responses (like for instance psychiatric treatment or the Youth Sanction) to offending. This was the most questioned point before the law was approved by the parliament.

The majority of the committee which prepared the law for the parliament, namely seven persons, argued that it was preferable for VOM to retain its role as a supplement to the criminal justice process as it had been during the pilots. Some of the arguments voiced in this regard were along the lines of “it will become too easy for the offender”, while others were predictions that some offenders would not be deeply regretful and would only participate in VOM to avoid the formal criminal procedure and sentencing (the issue of “sincere remorse”). One of the arguments that were mentioned very often from the majority was that, because it is an unbreakable principle that taking part in VOM must be absolutely voluntary, a replacement of the ordinary criminal procedure with VOM would put very much power into the hands of the victims. A victim of a minor theft would in that case – by denying VOM – have the power to dictate a criminal justice procedure whereas another victim of a serious assault by accepting VOM could divert “his” case into the alternative procedure. As a consequence, this might lead to unacceptable losses of proportionality and equality.

The minority, which consisted of five members of the committee, stated that VOM should be used in lieu of a criminal procedure (and punishment) in some cases where the sentence to imprisonment would not be long. Cases that would otherwise result in sentences to community service orders or electronic curfew were mentioned as being possibly appropriate in this regard, as were cases with young and/or first time offenders. The minority argued that this should at least be tried on an experimental basis. The viewpoints were mainly that there are very positive international evaluations indicating that VOM used in lieu of a criminal procedure and punishment correlates to much lower levels of recidivism than ordinary criminal justice cases. Regarding the risk of “fake” apologies and insincere remorse on behalf of offenders, the minority was of the opinion that the mediators would “catch” these (expectedly few) cases and simply abort mediation, which of course would result in an ordinary criminal justice procedure.

Ultimately, the viewpoints from the majority prevailed in the drafting of the bill and in the subsequent law on VOM.

VOM must mandatorily be offered to the parties in all criminal cases that are found suitable by the local VOM-coordinator, who is appointed by the police but is not a police officer. Suitability is in principle independent of crime, gender and age but it is an indispensable precondition for VOM that the offender confesses at least to the actual objective circumstances surrounding the crime. Additionally VOM will never be established if either victim or offender refuses to participate. And finally an individual victim must be identified. This excludes for instance cases of criminal pollution.

The need for voluntariness of participation per se, both for victim and offender, never really came to be scrutinized in the debates. Rather, this was a factor in which there appeared to be blanket consensus. Both parties can leave the mediation at any stage.

VOM – as it may be obvious from above – is very much victim-focused in Denmark. This was echoed in the remarks of an external evaluator in an evaluation of the second

experimental period of VOM, who stated, “...that in Denmark is a dominant focus on the victims and it might be considered to draw in a crime preventive perspective in the Danish model for VOM....”.

International Standards have never been mentioned in political or public debates in relation to VOM, nor has classical literature like Nils Christie’s article “Conflicts as property”. Also, international experiences with Restorative Justice like they are illustrated by i. e. Bazemore/Ellis have also received very little attention.

C. Foster care within the juvenile justice system

Foster care is not an option in juvenile justice. Foster care is used in situations when children are in need of basic care because of illness, alcohol or other massive problems in the home. A child may also be placed in a fulltime or part-time foster home if the child itself has a handicap and its permanent presence at home may cause problems for siblings.

Crime may be involved when a child is placed in a foster home that may be parents' crime or crime committed by the child. But as the child is not criminal responsible this is not a justice intervention. In case crime and anti-social behavior is the dominant reason for a child to be taken away from home it will normally be taken to a closed juvenile institution.

Foster care is also not used as alternative for imprisonment. Even if juveniles sentenced to imprisonment normally are diverted from prison they are not placed in foster homes but in institutions or pensions.

In Denmark it is debated that social institutions take part in executions of punishment, which is often the case in juvenile cases. It is argued that confusions and inequality may appear due to different ideologies and staff-training in social service and penalty system. It is obvious that these viewpoints will be even stronger if private foster homes would be involved, too.

**European Project ‘Alternatives
to Custody for Young Offenders -
Developing Intensive and Remand
Fostering Programmes’**

JUST/2011-2012/DAP/AG/3054



With financial support from the Daphne III Programme of the European Union