



J.O.D.A.
Juvenile Offenders Detention
Alternative in Europe

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National Report

Estonia



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A. Juvenile justice structure

Minors are between 14-17 years of age.

For all offences committed between 7-13 years of age, regardless of severity, educational sanctions can be applied only through Juvenile Justice Committees, dealt with below.

Since 14 years of age, youth can be sent to prison in Estonia.

Estonian juvenile justice approach

According to the law...

- *child – less than 18 years of age (in vernacular: laps)*
- *minor – between 7-17 years of age (in vernacular: alaealine)*
- *young prisoner/probationer – 14-20 years of age (according to the Imprisonment Act)*

Criminal responsibility age is 14.

Here and elsewhere:¹

juvenile = minor (7-17 years who has committed some offence)

young offender – minors and young prisoners and young probationers

One of main objectives of the current offending reduction policy is: *reduction and prevention of juvenile violence and delinquency.*²

The studies of other states indicate that juvenile violence is mainly expressed with respect to another juvenile, it occurs more often in schools and in connection with leisure activities. Also, by analysing juvenile crime of violence registered in Estonia, it becomes evident that violence against juveniles is mainly used by persons of their age and by acquaintances and juvenile violence is seldom directed against strangers. Juveniles use violence most often in the street and in other public places; a little more than every third case of violence took place either in school or in another child care institution. Settling of quarrels by violence that is typical of juveniles refers to the fact that young people do not know how to communicate or make themselves understandable without causing damage to others. It also indicates tolerance of young people toward the use of violence.

Another document that sets guidelines for the work, is *Criminal policy development plan until 2018*. As it sets, the primary objectives of criminal policy are the prevention of recidivism and juvenile delinquency. The prevention of juvenile delinquency helps to prevent criminal offences in adulthood; the prevention of recidivism reduces the number of criminal offences and the risk of falling victim to crime.

In order to prevent minors turning to crime and for early identification of children at risk, the local governments shall develop a system for early identification of problems occurring in growing environment; the Ministry of Social Affairs together with local governments shall develop the parenting skills of parents and improve cooperation between the specialists of this field. Dealing with the problems occurring in school environment helps to prevent minors turning to crime. The Ministry of Education and Research together with local governments and schools shall take measures for the prevention of non-performance of the obligation to attend school, bullying in schools and other problems occurring in school environment which affect mental and physical security of pupils.³

¹ Nevertheless, when not very exactly speaking about legal texts, “juvenile justice” concerns always the area of implementing justice for people up to 21 years old who are in some context entitled to any kind of special treatment.

² *Development Plan for Reducing Violence for 2010-2014*

³ *Criminal policy development plan until 2018*

Juvenile justice institutions

Juvenile Justice Committees (JJC) are established and acting according to the Juvenile Sanctions Act. There are JJCs in all administrative regions of the country (15) and, additionally in lots of local communities too, that are coordinated from the regional level, in that case.

They deal with the offences that are committed by the children 7-13 years and, 14-17 years, too. ⁴

Police has its **youth and prevention units** everywhere in the country.

These officers are giving lectures in schools, organize different activities for youth and, of course, make necessary formal proceedings with offending youth.

There are specialized **juvenile prosecutors** in every region of Estonia.

When a crime is committed and the police have ended up the investigation and, the perpetrator is between 14-17 years (under 18), the prosecutor has actually in every criminal case lots of alternative proceedings available. Only very rare juvenile cases are sent to the court and, this system is dealt with more profoundly below.

It is the absolute priority for all criminal investigations where minor is involved as perpetrator, that whenever possible the investigation is finished within 3 months.

There are **no juvenile courts/judges** in Estonia. Nevertheless, it is customary that in every courthouse some criminal judges are more versed in juvenile matters and they handle the cases with minor offenders.

There are specialized **youth probation officers** who deal with all young people 14-21 years of age who have their sentence as community service, supervision of conduct, conditional probation sentence, early release from prison and parole.

In Estonia, the probation service is subjugated to the prison service. All probation officers are non-uniformed and, there is a special unit that manages all young offender cases.

There are ca 6000 people managed by the probation service, ca 10% of them young people.

There are **two reformatories** that are managed by Ministry of Education and Research, one for boys and another for girls. Youth are sent there by the JJCs, but with a formal approval from the court, as these institutions are limiting ones liberty quite severely. Youth can be placed there between 10-18 years of age, usually for one or two years. This sanction is not providing a criminal record, reformatories are primarily educational institutions.

There are usually 40 boys and 25 girls in reformatories, most of them 14-15 years old.

Within the actual **prison system**, there are special units for minors in one big prison, for both remand and convicts. All 14-17 year old are separated from older prisoners and, prison officers who have proper training are dealing with them. (Also, 18-20 years old are separated from other adults.) Imprisonment is very extreme measure for minors, in last years usually not more than 20 remands and 20 convicts of 14-17 are kept there. There are ca 3000 people in Estonian prisons, altogether.

Partially, **victim support service (functioning also as mediation)** is also related to juvenile justice. Around 4500 people are annually seeking help from those counsellors that are under Ministry of Social Affairs. Most of clients suffer from family violence, the rest are sent there by the police or other institutions. Victim support service performs formal conciliation, foreseen in Penal Code as alternative to punishment, ca 600-700 cases per year. Anyway, the number of minors is not great.

⁴ JJCs work most closely with the communities. In the child welfare system of local communities, there are ca 150 child welfare workers altogether. It means that, on an average, there are ca 1650 children per one worker, at the moment. (Not all communities have child welfare staff. In that case the function is fulfilled by a social worker.)

Sanctions for the juveniles and different proceedings

When a law has been trespassed and a young perpetrator is found...

AGE	MISDEMEANOUR	CRIME	Implementation
0-6	Police forwards the child to the parents or finds another secure placement, if the child has been detained. Local community child welfare worker is informed. <u>No legal action.</u>		
7-13	Police forwards the child to the parents or finds another secure placement, if the child has been detained. Local community child welfare worker is informed. Formal investigation is not initiated or will be terminated. <u>All materials of the offence are sent to the JJC for sanctions</u>		JJC applies one of 9 sanctions or, several of them. Reformatory possible since 10 years
14-17	Police or other administrative body has 2 possibilities: - send the case to the JJC - apply a punishment (fine)	Police makes full investigation and forwards the case to the prosecutor who has several options: - full termination (no criminal record) and sending to the JJC - opportunity termination ⁵ - referring to conciliation - sending to the court, for simplified or full proceedings ⁶	JJC applies one of 9 sanctions or, several of them. Conciliation is performed by the Victim Support Service
18-20	Ordinary proceedings	Ordinary proceedings	Only in prisons these young people are kept separately and in probation service, specialized officers are dealing with them.
21-	Ordinary proceedings		

Out of all youth 7-17 years, 1,5% are dealt with by JJC's. 60% of the ca 3000 cases per year are youngsters below 14 years responsibility age who have committed misdemeanours or crimes. Most of those above 14 years have committed a crime, but those are mostly first-time crimes and/or not very severe so that the prosecutor has found possible to terminate the case.

65% of the referrals to the JJC come from the police (misdemeanours or crimes below 14), 20% from the prosecutor (only crimes above 14) and the rest are other agencies who can make referrals (i.e. local authorities).⁷

Out of all crimes of minors 14-17, $\frac{3}{4}$ of the cases are terminated or other opportunity measures chosen by the prosecutor. In $\frac{1}{3}$ of the cases it means sending to the JJC, the rest are other means of opportunity. But, in juvenile cases, conciliation is not used very often, mostly due to the long term that has already passed since the crime was committed, until the end of proceedings.

Estonian court system is not overburdened with the load of criminal cases because the prosecutor's office uses their means of opportunity in criminal proceedings quite a lot. Out of all investigated crimes, only 25% end up in the court. But, out of these, again $\frac{3}{4}$ are just for the formal approval of the alternative agreement of simplified measure, proposed by the prosecutor. Just a small fracture of the crime encounter full criminal proceedings at the court.⁸

⁵ See next page and ff.

⁶ Substitutes of imprisonment or means of release from punishment will apply, as described before.

⁷ Delinquency of minors in Estonia (Research, 2007)

⁸ Efficaciousness of juvenile punishments, 2008

Sanctions for the juveniles through JJC's

- 1) warning;
- 2) sanctions concerning organisation of study;
- 3) referral to a psychologist, addiction specialist, social worker or other specialist for consultation;
- 4) conciliation;
- 5) an obligation to live with a parent, foster-parent, guardian or in a family with a caregiver or in a children's home;
- 6) community service;
- 7) surety;
- 8) participation in youth or social programs or medical treatment programs;
- 9) sending to reformatory

Actual number of Sanctions applied, as of 2012⁹ (full data for 2013 is still not available), according to the number of occurrence:

warning	1114	36%
referral to a psychologist...	757	24%
community service	676	22%
participation in youth or social programs	412	13%
sending to reformatory	57	2%
an obligation to live with a parent	52	2%
sanctions concerning organisation of study	42	1%
surety	12	0%
conciliation	4	0%
ALTOGETHER	3126	

In some cases, several sanctions are applied.

Also, when a minor does not comply with a sanction, there will be re-hearing and a new sanction can be appointed. Moreover, when a minor avoids compulsory meetings in the JJC, the police can be involved to find and bring the minor to the JJC. (The minor can be kept in the police cells up to 48 hours, before the JJC will decide for a sanction. This is the maximum time of administrative detention, without judicial approval.)¹⁰

Reformatory: 2 ways of referring

*Age 10-18, 10-12 in exceptional cases (most of juveniles 14-16)
The decree usually for 1 or 2 years, it can be shortened or prolonged*

Through the JJC (95% cases)	Directly from the court (5% cases)
Very repeated misdemeanours or, Usually several crimes Case materials from police (misdemeanour or all cases under 14) or prosecutor (crime over 14) JJC (7 persons) makes a decision Court approves (1 person)	The criminal case is sent from prosecutor to the court for full hearing May also be for the first crime when is was not very serious Full hearing, 1 judge and 2 magistrates Involves criminal record

⁹ Juvenile justice committees annual report, 2012

¹⁰ Juvenile justice committees overview of 1999-2004

Ministries and Institutions involved

Estonia

Territory: 45.000 sq. km
Population: 1.310.000
State administration: 15 counties / prefectures
Local administration: 215 municipalities (30 towns and 185 parishes)

MINISTRY OF JUSTICE

PROSECUTOR'S OFFICE

4 District Offices
Special prosecutors on juveniles

COURTS

4 County Courts

Judges specialized on juveniles

DEPARTMENT OF PRISONS

4 prisons
Prison population: 3000 inmates
Out of these: 40 minors
14-17 years of age
(Young inmates are: 14-20)

VIRU PRISON

(special department for juveniles and young inmates – to be kept separately from adults)

Most of juveniles are released after serving ½ of the time, continuing under probation supervision

Resettlement Unit (Probation Service)

Probation is under the prisons
Special units for young offenders (until 25 years of age)
App. 6000 people under supervision

MINISTRY OF INTERIOR

POLICE AND BORDER GUARD DEPARTMENT

Department
Youth and Prevention Unit
4 Police Prefectures
Youth and Prevention Units
Youth police: 80 officers

Ministry of Regional Affairs

15 Prefectures
Juvenile Justice Committee
in every prefecture

Also, JJC in some municipalities

Altogether, appr. 3000 cases annually

Every committee consists of 7 persons:

- *Chairman*
- *Deputy*
- *Secretary*
- *4 other members: police and probation officers, child welfare worker and a psychologist*

2 main tasks:

- *hearing the cases mostly sent by the police (smoking, misuse of alcohol, other offences) then, criminal cases from the prosecutor's office*
- *coordination of the preventive work in the territory*

MINISTRY OF EDUCATION AND RESEARCH

YOUTH WORK DEPARTMENT

Some connection with JJC
Annual statistics

GENERAL EDUCATION DEPARTMENT

All state schools
2 reformatories: Tapa and Kaagvere

*As of 2014, in these reformatories:
70 young offenders
100 staff*

*Mandatory school age:
17 years or 9 grades (gymnasium)*

Every year some 1000 students abrupt their studies before meeting this requirement

B. Sanctions for misdemeanours and crimes

Offences are criminal offences and misdemeanours.

A criminal offence is an offence which is provided for in *Penal Code* and the principal punishment prescribed for which is *a pecuniary punishment or imprisonment*.

A misdemeanour is an offence which is provided for in this *Penal Code or another Act* and the principal punishment prescribed for which is *a fine or detention*.

For a *misdemeanour*, the following principal punishments are possible:

- fine - 12-1200 EUR (usually imposed by the police or, another public authority, i.e. local community, customs service etc.)
- detention - up to 30 days (in the police cells, imposed only by the court)

For a *criminal offence*, the following principal punishments are possible (by the court)

- pecuniary punishment (fine) - 120-2000 EUR
(for minors 120-1000 EUR and only when the minor has personal income)
- imprisonment - 30 days - 20 years, or life imprisonment
(for minors up to 10 years and no life imprisonment)

Substitutes of imprisonment

For criminal offences, the imprisonment (or detention) can be substituted by:

- *community service*

One day of detention or imprisonment corresponds to two hours of community service. The duration of community service shall not exceed 8 hours a day. If an offender or convicted offender performs community service during the time free from his or her other work or studies, the duration of community service shall not exceed four hours a day. An offender or convicted offender shall not be remunerated for this. If a court imposes community service, the court shall determine the term for the performance of the service which shall not exceed twenty-four months in the case of criminal offences and twelve months in the case of misdemeanours. If an offender or convicted offender evades community service, a convicted offender fails to comply with supervisory requirements or perform the obligations imposed on him or her, the court may, on the basis of a request of a police authority or a report prepared by a probation officer, enforce the detention or imprisonment imposed on the offender or convicted offender. In the case of execution of the detention or imprisonment, the sentence shall be deemed to be served to the extent of the community service served by the offender or convicted offender, whereas two hours of community service correspond to one day of detention or imprisonment.

In practice, most of community service cases are from a couple of hundred hours, up to one thousand hours. For minors, it is customary to impose less than a hundred hours.

But, last year in one juvenile case, the 2 years term of imprisonment was substituted with 1264 hours of community service.

Community service is organised and supervised by the probation officers. Prison and probation service has contracts with lots of service providers (NGOs, local authorities, enterprises) who receive these people to work on behalf of them and keep diaries for the probation service. 20% of all clients of the probation (i.e. ca 1500 out of 6000) are performing community service now.

- *electronic surveillance*

If a court imposes imprisonment of up to six months, the court may substitute the imprisonment by electronic surveillance. One day of imprisonment corresponds to one day of electronic surveillance. Imprisonment shall be substituted by electronic surveillance only with the consent of the convicted

offender. If a convicted offender fails to submit to electronic surveillance or withdraws his or her consent for application of electronic surveillance prior to the expiry of the term of the punishment, the court shall order, based on the report of the probation officer, enforcement of the substituted imprisonment.

This type of control has been in existence since 2007 but, it has still not very wide scope of usage. Current devices combine GPS and GSM technologies and there is very exact, online surveillance furthering developed. The probation officer can set limits of movement with exactness of streets and, in case of trespassing, the system of alarm is activated automatically.

Usually, the term of imposing is some 3-4 months. After that, the restrictions are alleviated and, other means of less controlling are imposed.

During the first, testing period of the electronic surveillance, 2007-2011 altogether 800 persons went through this system and, 5% of them were sent (back) to prison.

Also, electronic surveillance is used when somebody is not arrested for remand detention but there is need for a better control of movements.

Thirdly, electronic surveillance is used when a prisoner applies for an early parole. Through an ordinary procedure, in most of imprisonment cases, a convict has to serve 2/3 of the sentence before being entitled for an early parole. But, with the electronic surveillance, the convict may be released already after having served 1/2 of the sentence.

Actually, every day around 110 people are carrying these electronic surveillance devices.

Means of release from punishment

- Probation with subjection of convicted offender to supervision of conduct¹¹

If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that the service of the imposed imprisonment for a specified term by the convicted offender is unreasonable, the court may order suspension of the sentence on probation.

Probation shall be imposed for a period of *eighteen months to three years*.

¹¹ *During the Supervision of conduct, a convicted offender is required to comply with the following supervisory requirements:*

to reside in a permanent place of residence determined by the court;

to report at intervals determined by the probation supervisor at the probation supervision department;

to submit, in his or her place of residence, to the supervision of the probation officer and provide the probation officer with information relating to the performance of the offender's obligations and his or her means of subsistence;

to obtain the permission of a probation officer before leaving his or her place of residence within the territory of Estonia for longer than fifteen days;

to obtain the permission of the probation officer before changing residence, employment or place of study;

to obtain the permission of a probation officer before leaving the territory of Estonia and staying outside the territory of Estonia.

Taking into consideration the circumstances relating to the commission of the criminal offence and the personality of the convicted offender, the court may impose the following obligations on the convicted offender for the period of supervision of conduct:

to remedy the damage caused by the criminal offence within a term determined by the court;

not to consume alcohol or narcotics;

not to hold, carry or use weapons;

to seek employment, acquire general education or a profession within the term determined by the court;

to undergo the prescribed treatment if the offender has previously consented to such treatment;

to perform the maintenance obligation;

not to stay in places determined by the court or communicate with persons determined by the court;

to participate in social assistance programmes;

to submit to electronic surveillance if the offender has previously consented to such surveillance.

- Probation (without supervision)

If a court, taking into consideration the circumstances relating to the commission of a criminal offence and the personality of the offender, finds that service of the imprisonment imposed for a specified term or payment of the amount of the pecuniary punishment by the convicted offender is unreasonable, the court may order suspension of the sentence on probation.

Probation shall be ordered for a period of *three to five years*.

- Electronic surveillance

Here it means: the obligation imposed on a convicted offender for the term ordered by the court to submit to monitoring of compliance with the restrictions of freedom of movement by an electronic device attached to the body of the convicted offender which permits determination of the location of the convicted offender. The court may order electronic surveillance with the term of *one to twelve months*. (Also described in the previous chapter.)

- Release on parole

If a person has been convicted of commission of a criminal offence¹² in the *second degree*, or a criminal offence in the *first degree through negligence*, the court may release the convicted offender on parole if he or she has actually served:

- 1) at one third but not less than six months of the term of the imposed punishment and the person agrees to the application of the electronic surveillance; or
- 2) at least half but not less than six months of the term of the imposed punishment.

If a person has been convicted of intentional commission of a criminal offence in the *first degree*, the court may release the person on parole if the convicted person has actually served:

- 1) at half but not less than six months of the term of the imposed punishment and the person agrees to the application of the electronic surveillance; or
- 2) at least two-thirds of the term of the imposed punishment.

A period of probation shall be determined to the extent of the unserved part of the term of the punishment but for not less than one year. During the period of probation, the person shall be subject to supervision of conduct.

¹² **Penal Code, § 4. Degrees of criminal offences**

(1) Criminal offences are criminal offences in the first and in the second degree.

(2) A criminal offence in the first degree is an offence the maximum punishment prescribed for which in this Code is imprisonment for a term of more than five years, life imprisonment or compulsory dissolution.

(3) A criminal offence in the second degree is an offence the punishment prescribed for which in this Code is imprisonment for a term of up to five years or a pecuniary punishment.

Opportunity in criminal proceedings

According to the Code of Criminal Procedure, the prosecutor's office holds very wide scope of action in all criminal cases but, especially where young perpetrators are concerned.

1. Referral of materials to juvenile justice committee

If a Prosecutor's Office finds that a minor who has committed a criminal offence in the age of 14 to 18 can be influenced without imposition of a punishment or a sanction prescribed in § 87 of the Penal Code, the Prosecutor's Office shall terminate the criminal proceeding by a ruling and refer the criminal file to the juvenile justice committee of the place of residence of the minor.

This stipulates only the cases of minors.

The following ones are possible for all perpetrators but, with the minors these are also used often.

2. Termination of criminal proceedings in case of lack of public interest in proceedings and in case of negligible guilt

If the object of criminal proceedings is a criminal offence in the second degree and the guilt of the person suspected or accused of the offence is negligible, and he or she has remedied or has commenced to remedy the damage caused by the criminal offence or has paid the expenses relating to the criminal proceedings, or assumed the obligation to pay such expenses, and there is no public interest in the continuation of the criminal proceedings, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused.

In addition to this termination, there may be imposed (as it is usually done) one or several obligations on the perpetrator, like:

- to pay the expenses relating to the criminal proceedings or compensate for the damage caused by the criminal offence*
- to pay a fixed amount into the public revenues or to be used for specific purposes in the interest of the public*
- to perform 10 to 240 hours of community service*
- not to consume narcotics and to undergo the prescribed addiction treatment.*

3. Termination of criminal proceedings due to lack of proportionality of punishment

If the object of criminal proceedings is a criminal offence in the second degree, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim if:

- 1) the punishment to be imposed for the criminal offence would be negligible compared to the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence;
- 2) imposition of a punishment for the criminal offence cannot be expected during a reasonable period of time and the punishment which has been or presumably will be imposed on the suspect or accused for the commission of another criminal offence is sufficient to achieve the objectives of the punishment and satisfy the public interest in the proceeding.

A request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone, in both abovementioned terminations.

4. Termination of criminal proceedings on the basis of conciliation

If facts relating to a criminal offence in the second degree which is the object of criminal proceedings are obvious and there is no public interest in the continuation of the criminal

proceedings and the suspect or the accused has reconciled with the victim, the Prosecutor's Office may request termination of the criminal proceedings by a court with the consent of the suspect or accused and the victim.

This stipulation does not apply in criminal offences committed by an adult person against a victim who is a minor.

Again, a request of a Prosecutor's Office shall be adjudicated by a ruling of a judge sitting alone.

Special sanctions for minors by the court

Moreover, the court can implement some special measures even when the prosecutor has not found any need for that.

Penal Code, § 87. Sanctions applicable to minors

(1) Taking into account the level of the moral and mental development of a person of 14 to 18 years of age and his or her ability to understand the unlawfulness of his or her act or to act according to such understanding, the court may release the person from punishment and impose the following sanctions on him or her:

- 1) admonition;
- 2) subjection to supervision of conduct /.../
- 3) placement in a youth home;
- 4) placement in a /reformatory/.

(2) A court may subject a person of less than 18 years of age to supervision of conduct for up to one year. On the basis of a report prepared by the probation officer, a court may extend the term of supervision of conduct by up to one year or, as an exception, until the convicted offender attains 18 years of age.

Actually, these cases are not very frequent and happen only when during the proceedings at the court it is found that there is anyway some possibility of releasing a youngster from the punishment. For instance, just 5% of cases of sending to the reformatory are done directly by the court, the rest 95% are through the JJs. The youth home has not been used at all, as there is no such established.

Crime and punishment data¹³

As of 2013, the national crime survey data is as follows

- 40.000 crimes (the number has been constantly falling last 10 years)
- 275.000 misdemeanours (mostly handled and punished by the police)

The minors have committed 9% of all crimes.

More than half of these are related to stealing or burglary or other crimes against property.¹⁴

Second major group is crimes against other person but, mostly these are not very serious youth fights in school or other places where young people gather. Actually, any bullying that has even some kind of physical impact, is considered a crime.

The minors have committed ca 10% of all misdemeanours, too.

Nevertheless, here Estonian statistics are not comparable to most of other EU countries. For instance, most of juvenile misdemeanours are here just for possessing or using alcoholic drinks or tobacco (ca 75%, altogether). In most of such cases, police appoints fines to minors or sends them to the JJs.

¹³ Comparative data on crime and justice in Estonia, 2013

¹⁴ Duration of criminal proceedings of juvenile offenders, 2012

Different proceedings and recidivism

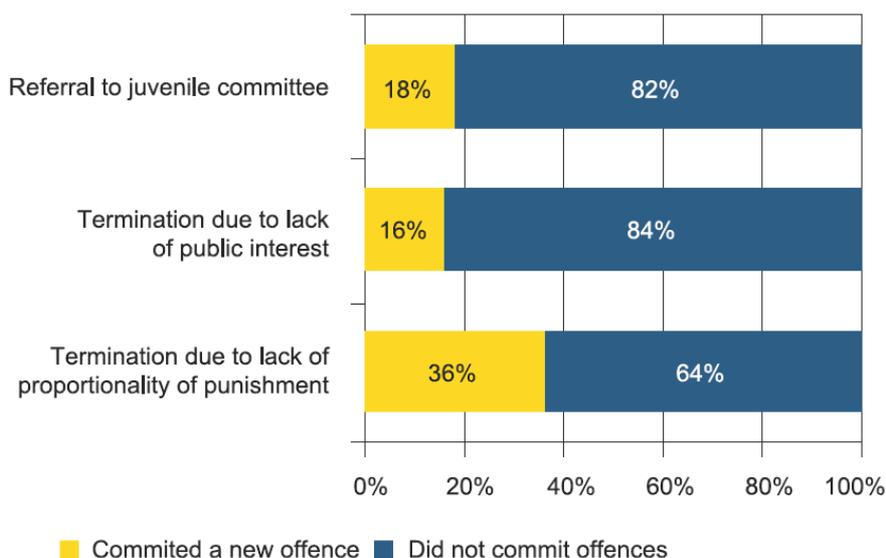
In case of less serious criminal offences and under some other conditions, the Prosecutor's Office has been granted the right of discretion or the right not to send a person who has committed a criminal offence to the court and terminate proceedings against the person. Prosecutor's Office has actively used this possibility in Estonia since the implementation of the Code of Criminal Procedure. The term "termination due to reasons of expediency" refers on one hand to this that when the judicial proceedings are not conducted this will help to save the state resources, but also, for example, the time and money of people who have committed criminal offences and suffered thereby. On the other hand, the expediency marks the prosecutor's conviction that people with respect to whom the proceedings are terminated can be directed to lead law-abiding life also without applying criminal punishment.

Recidivism rate in case of these people with respect to whom the proceedings were terminated has remained during the one-year observation period on the level of **18%** during last five years. If within first three months after the termination of proceedings 5% committed a new criminal offence, then within three years every third from people with respect to whom the proceedings were terminated committed a new crime – compared to people released from prison, this indicator is nearly *two times lower*.¹⁵

The situations in which the criminal matters of minors who had committed criminal offences were referred to juvenile justice committee for hearing, the proceedings were terminated due to lack of public interest in proceedings, and proceedings were terminated due to lack of proportionality of punishment, which were separately observed.

In case of minors referred to juvenile justice committee we are dealing with people who have often committed criminal offences for the first time. At the same time, also in their case one could have assumed a somewhat higher recidivism rate than actually became evident from the analysis, as in general the recidivism of young people is higher when compared to other age groups.¹⁶

As it is obvious from this one-year analysis, referral to the juvenile justice committee is creating least possibilities for recidivism. Most probably the reasons are twofold: they might be not so serious cases and, the JJC's have also different educational sanctions to apply for a period of time.



¹⁵ Recidivism in Estonia 2010, summary

¹⁶ Criminal recidivism in Estonia, 2010

Demographical situation and relations to the crime

Out of 1.3 million population, Estonians make up 70%. Out of the rest 30%, an absolute most of them are Russians or other native Russian speakers. Estonia has insignificant Roma community and almost no immigrants coming from other countries, due to our geographical situation and, quite strict and deterring state policy against immigrants.

Most of those, abovementioned Russian families came to Estonia during the Soviet era, working here in big factories or other planned economy businesses. Unfortunately, the integration of non-Estonians into the contemporary society takes more than one generation. Most of these minority members do not speak Estonian language at all or not very well, therefore their options on the job market are not so wide and their socio-economical problems are bigger.

Therefore, the criminal activity of non-Estonians is usually 50-60% higher than of Estonians.

Accordingly, in the prisons, only 40% of prisoners are Estonians.

These factors are most dominant with the convicted criminals 25-40 years of age. Russian men of this age are more involved in violent crime than Estonian men.

Nevertheless, when we look at current minor offenders, we can see that the number of Estonians is definitely higher and therefore it is possible to expect some better stabilisation of the juvenile offences in their demographical segments, during current decade. Different, not so well self-sufficient layers of the society are anyway beginning to cope with better and this has a positive impact on the juvenile offences.

On the other hand, all Estonian society is aging and, the proportion of young people has been falling. Therefore, the average juvenile crime has remained on the same level – for all 10.000 young people between 14-17 years of age, the number of offenders has constantly been around 300.¹⁷

By age groups the recidivism of young people up to 26 years old exceeded many times the recidivism of people over 54 years old – both with respect to people released from prison and convicted offenders but, also of people with respect to whom proceedings were terminated due to reasons of expediency. In case of termination, the recidivism rate of young people depending on age was 20%, however, the recidivism rate of people over 54 years old was 5%. The annual recidivism indicator of convicted young people reached up to 36%, while in case of people over 54 years old it remained on the level of 13%.¹⁸

One-year recidivism survey according to the age and type of conviction

	Released from prison	Convicted offenders	Proceeding terminated
Under 18	59%	36%	20%
18–26	45%	29%	21%
27–35	39%	25%	17%
36–44	35%	21%	15%
45–53	26%	14%	13%
54 or more	17%	13%	5%

¹⁷ Juvenile violent crime, 2010

¹⁸ Recidivism in Estonia 2010, summary

Juveniles in prison

Years ago, there were hundreds of minors in our prisons and, they were mostly living in 4-8-beds rooms. That had inevitably all impacts of institutionalisation and creating of subculture, permanent bullying and harassing. A decade ago, it can be stated, around 20% of minor inmates had suffered some kind of sexual harassment while in prison. Which made them more antisocial and deprived, furthering desperate criminal careers. Nowadays the scene is much brighter and controlled.

Although the number of minors in prison has been recently fluctuating between 35 and 40 (the number of all young offenders 14-20 is around 200), their actual conditions within the prison system should be explained more in detail. All minors (remand and convicts) are held in Viru Prison that has a special department for minors and other young detainees. An absolute most of prisoners in Estonia are kept in closed facilities; the same applies for minors, too.

There are 4 prisons in Estonia that are regionally dispersed. Two of them are new facilities, for around 1000 people who are living in twin cells.

Other 2 prisons have much older facilities, some people still share 8-bed cells. Hopefully, the final new prison will be established by 2017 and, since then all detainees are kept in contemporary facilities where dignity and personal development of persons is much better ensured.

A minor remand detainee...

Anybody can be kept in the police cells without judicial approval up to 48 hours. After that, if necessary, the court pronounces the remand term. Usually it is for up to 6 months, for the term of investigation. (Yes, remand terms are quite long in Estonia.)

Mostly the remanded are transferred to the prison, as soon as possible, because police cells do not have proper facilities or healthcare or courtyards.

Remanded in prison are almost all time locked up in their twin cells. 1 hour of courtyard and, for minors, at least some social activities are also foreseen.

They have their private clothes but, all correspondence and phone calls are limited, for the purpose of ensuring greater isolation and facilitating the investigation.

A minor convict...

They are obliged to wear prison uniform. Minors have different colour uniform, in order to make a visible separation from the adults. Mainly, minors are not allowed to smoke tobacco, which is a punishable deed in prison.

There are lots of disciplinary penalties foreseen in the Imprisonment Act, most severe of them, for minors, up to 20 days in segregation unit (punishment cell). (For adults, the maximum is 45 days.)

All minors are obliged to study. There are schools operating in all prisons, both formal education as well as vocational training.



*A prison cell where minors are kept
Viru Prison,
established 2008*

Education in prisons

So-called prison education is a part of Estonian national education system, organized by the Ministry of Education and Research. Prison education is regulated in legislation including the Education Act, the Imprisonment Act, and others.

All prisoners have a right for education by the law.

In prison, it is possible to obtain education both in Estonian and in Russian.

According to the Education Act, school attendance is mandatory until possessing primary education (9 years of school) or the age of 17. So, studying in prison is voluntary for the adult detainees – and **mandatory for minor offenders**.

General education on the levels of **primary and secondary school** is organized by the regional education facilities. Thereby the school diploma does not show that the student has mastered it in prison. In every prison, there is possible to obtain full secondary education of 12 years.

Vocational education: prisoners are provided with the opportunity to acquire vocational education according to their wish and attitude. Prisoners who have not acquired basic education can choose between vocational education and shorter vocational training courses.

Vocational education is available in all prisons. Classes are also held in Estonian and Russian. The most common professions are metal, woodwork, construction and sewing.

The objective of providing an opportunity to prisoners to acquire education is to ensure that the prisoners have adequate knowledge, skills and ethical principles that would allow the prisoners to continue their education and work after release.

Higher education (third level of education): prisoners may, at their request, be permitted to study at educational institutions located outside prisons. There are 5 to 7 such cases per year. The permit to study outside the penitentiary gives the prisoner the right to be outside the prison area according to the curriculum in daytime; by evening the prisoner must return to the penitentiary facilities. Anyway, such cases are very rare and exceptional here.

Prisoners who are not proficient in Estonian **language** can, at their request, be provided with an opportunity to study Estonian. Non-Estonians are integrated into the Estonian society by the state language and civic duty courses organized by the prison. The prisoners have the right, if they wish, to make the Estonian language proficiency test.

When compiling the individual schedule to be fulfilled the educational worker or the official from the social office finds out the detainee's educational level and the wish or the need to continue the studies. The educational worker explains to the prisoner the possibilities to continue the studies in and out of the prison area. The records of the prisoner's educational background and studying in prison are entered to the prison registry.

All this described above is supported with different social rehabilitation programs in prison. The prisoners attend those voluntarily.

C. Restorative approach within juvenile justice

During the last decade, Estonia is more and more inclining to restorative models in implementing justice. Coming out from the Soviet criminal and penal system is not an easy endeavour. We had established harsh punishing approach and long-term prison sentences as a standard reaction of the society. Still, public expectations for punishments are usually very simplified and do not consider personal rehabilitation of convicts or wider stabilisation in the society.¹⁹

Values underlying restorative practices stem from the belief that crime is not only breaking the law but also damaging people, relationships and communities. Restorative practices require offenders to take responsibility for their actions and for the harm they have caused. For restorative practices to take effect it is important that communities join in a co-operative effort and the government support these developments.²⁰

On another hand, especially when talking about juvenile offenders, there has appeared very lenient approach to all crimes by minors. Practitioners become worried when the authorities take no proper legal action, even after several repeated crimes by a minor. Effective tertiary prevention, in order to be really effective, necessitates both quickness of the response as well as inevitability of punishment. Still, we do not mean the level or nature of the punishment but a valid reaction as such.

Two ways of implementing the restorative approach

According to Juvenile Sanctions Act, there is a possibility to mediate juveniles as part of the decision of a juvenile justice committee (JJC). This system has been functioning since 1998.

Since 2007, a section on conciliation (mediation) in the Code of Criminal Procedure came into force which allows for prosecutors and judges to refer a case to mediators and mediation. If the mediation is successful, the criminal investigation will be terminated according to principle of opportunity and there will be no criminal record for the perpetrator.²¹

Therefore, our juvenile justice system has currently two major implementing agencies related to the restorative justice.

1. In every case that is referred to **the JJC**, there is a possibility of appointing a sanction 'conciliation' (or, 'mediation'). JJC's hire different suitable specialists to perform that work. Sometimes there will be just one or two meetings between all parties concerned but, when the case necessitates, there will be a longer rehabilitation undertaken, than involves other specialists, too, like family therapist.

The JJC system mostly employs family mediators to fulfil this function because quite often there is more conflict between the parents of the perpetrator and victim, than between the youth concerned. And, therefore, mostly there is not used formal sanction 'mediation' but a 'referral to the specialist' which enables a longer and more profound process of actual restorative justice implemented.

Those specialists or mediators may be hired as private persons or through NGOs or companies. All costs of the sanctions imposed are carried by the appointing JJC's, from the finances they have available from the state budget.

¹⁹ Crime Prevention in Estonia, EUCPN report 2011

²⁰ Victims of crime in Estonia, 1993-2000

²¹ Supporting Victims of Crime in Estonia

There is just one major hindrance for successful restorative conciliation in this field. Usually, the corresponding sanction is decided not before than some months after an offence was committed. Therefore, the time-lapse has already been quite significant for young people and, quite often there is no more actual need for conciliation or, it does not have any proper meaning or purpose. Also, quite often such conciliation has already been performed, with the help of police officers who were dealing with the case or, local social welfare workers or child protection specialists. Therefore, formal data is definitely insufficient in the field. Out of all ca 3000 juvenile cases handled by JJs annually, only 4 (four) ended up in formal conciliation. Nevertheless, we can assume that in ca 5% of the cases, some kind of informal conciliation has taken place.

2. Victim Support Department (VSD) was created in 2005, it operates under the Ministry of Social Affairs. They have 15 centres and 27 specialists employed across Estonia, in every county, who are in full payroll and other referring parties do not have to pay extra for their service. This service has several functions that are related to juvenile justice and child welfare. According to the Estonian Code of Criminal Procedure, victim support specialists also participate when the police are interrogating children who have been exposed to domestic violence and sexual violence. This is done to ensure children's rights during interrogation. In 2011, most people took initiative themselves to turn to a victim support specialist (57%), over a third were sent there by police (35%) and a few people were guided there by other authorities (8%), incl. shelters, hospitals, municipalities etc. Since most of the victim support specialists are located in the same building as the police, police officers also may forward people straight to the victim support specialist or invite the specialist to participate when they are meeting with the victim(s).

When victim support or corresponding child protection is related just to one party concerned, the mediation always involves both quarrelling (-ed) parties.

Specially trained victim support specialists also work as mediators (Estonian Victim Support Act refers to mediation as conciliation). ***Mediation service is a function of the VSD*** that is organising the mediation procedure and monitoring of compliance with the requirements of a written agreement entered into as a result thereof.

Mediation Service was created as an alternative to the punishment in criminal justice. It can only be implemented when someone has committed a second degree criminal offence, the circumstances of the crime are clear and there is no doubt about the perpetrator(s). The ruling about the implementation of the mediation service is issued by the prosecutor or court and it has to be approved by both the victim and perpetrator. When the victim of crime is a juvenile and the perpetrator is an adult, mediation service cannot be implemented.

The motivation for the perpetrator to agree to go through mediation is that the investigation will end and the data will not be registered in the Punishment Register (criminal record).

The mediator meets with both parties and explains the mediation process. The interests of both the victim and offender are under consideration giving a chance for both sides to express their feelings about the committed offence. Each mediation procedure only focuses on a specific offence; all past occurrences cannot be mended at once. Mediators cooperate with psychologists, psychiatrists, debt counsellors, women shelters, child protection specialists and other specialists.

Annually, about 700 cases are mediated. 90% of them concern physical abuse²² (small violence) between people who usually know each other. These are family quarrels, children fighting at school etc.

²² **Penal Code, § 121. Physical abuse**

Causing damage to the health of another person, or beating, battery or other physical abuse which causes pain, is punishable by a pecuniary punishment or up to 3 years' imprisonment.

The most popular conditions set in a conciliation agreement are politeness (84%), pecuniary conditions (27%), restraining from alcohol/drug abuse (18%), treatment or therapy (14%) and promise to do certain things, e.g. housework (11%).

Civil conciliation

Moreover, one type of conciliation is stipulated in the Conciliation Act, concerning civil matters.

Notaries, sworn advocates and other parties can be formal conciliators.

It concerns juvenile matters mostly only in those cases when a child is in a complicated situation between the parents and those multidimensional family matters are impossible to solve otherwise.

Usually it is relevant when some case or persons will afterwards go to the court. Judges are very likely to take into serious consideration when such formal conciliation has been performed and, this can be a reason for releasing from punishment.

Community service

Community service can be appointed by JJC's or, the Prosecutors' Office.

In both cases, this has quite often restorative aims and impact.

There are lots of cases when a youngster is sent to perform the service exactly on the spot where the offence was perpetrated. For instance, whenever possible with the graffiti-makers, they will go back to the same public place in order to smash it and restore the previous state.

Other initiatives

Naturally, there are lots of pilot projects and programmes run in this field. As every local JJC has their own budget and they are, to some extent, independent in their decisions, there are small restorative programmes carried out in every county. Nevertheless, most of these have not achieved a nation-wide status.

One principal programme that has been run for 10 years already by Crime Prevention Foundation and has spread to lots of counties is *multi-system mentoring (MSM)*.²³

MSM has its evidence-based practices on contemporary multisystem therapy programme. Here it is combined with professional case managers, external supervisors and volunteer or semi-volunteering mentors, acting as front-line therapists.

Most of juveniles are sent to the programme by JJC's, sometimes also directly from the police or local authorities.

In MSM, all network of a juvenile is mapped and all relevant persons will be concerned as well as involved, when they agree to cooperate. Usually the referral is for 6-12 months. Mediation is, whenever necessary and possible, also part and parcel of the agenda.

In MSM, besides all relevant private persons involved, local community child welfare or social welfare specialists are always actively involved. There cannot be any successful secondary or tertiary restorative justice performed without that actual community involvement where the perpetrator is living.

NB! It is enough for initiating a criminal case when a victim has just "felt pain" as a subjective feeling, without any lasting impact. Out of 1807 crimes committed by minors in 2012, 629 were thefts, followed by 574 cases of physical abuse. The last means that no (serious) damage to another person was done.

²³ Mentoring of CPF

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