

COUNTRY FACTSHEET

Sentence Adjustment Mechanisms in Europe
Procedural Barriers & National Contexts

GERMANY

December 2024



**EUROPEAN
PRISON
LITIGATION
NETWORK**

1. Introduction	3
2. Overview of Germany's Penal and Prison System	3
3. Overview of Germany's Sentence Adjustment Mechanisms	5
a. Institutional architecture and players in the system	5
b. Criteria for granting sentence adjustment	6
c. Procedure for applying	8
4. Statistics	8
5. Recall	9
6. Procedural barriers	9
a. Access to Legal Assistance and Representation	9
b. Access to Case Files	10
c. Witnesses and Evidence	10
d. Public Access to Proceedings	10
e. Time Limits	10
f. Access to Appeals	10
g. Premature Applications and Delays	11
7. Differential impact for categories of prisoners	11

1. Introduction

The German criminal justice system is built upon a structured and legally grounded framework for sentencing and sentence adjustments, with a unique interplay between penalties and measures of Betterment and Security. Sentence adjustment for adults falls under the purview of specialized sentence enforcement courts, established within district courts' criminal law branches in locations housing institutions of confinement, such as prisons, forensic psychiatric hospitals, or forensic withdrawal clinics. These courts, operational since January 1, 1975, draw on earlier practices from juvenile justice, where youth court judges oversee enforcement.

This structure aligns with key constitutional principles. In its 1972 ruling, the Federal Constitutional Court (FCC) emphasized the necessity of a legal foundation for sentence enforcement, attribution, and adjustment. By 1977, the FCC further clarified that sentence adjustments in cases of lifelong imprisonment must be governed by formal parliamentary law, rejecting reliance solely on state regulations or executive clemency.

The applicable legal provisions for sentence adjustment are detailed in the Federal Criminal Code (StGB) and the Federal Procedural Code (StPO), with the Narcotics Act addressing release mechanisms tied to drug therapy. Central to the German sanctioning system is the duality of penalties, focused on past guilt, and measures of Betterment and Security, aimed at preventing future offenses. This integrated system highlights the dual objectives of justice and societal protection.

2. Overview of Germany's Penal and Prison System

In Germany, a large proportion of prison sentences, around two-thirds in 2021, are suspended where they do not exceed two years' imprisonment, in accordance with Article 56 of the StGB. In such cases, a probation officer may be appointed, and obligations such as paying a sum to charity or the state may be imposed.

For drug-related offences, the Narcotics Law (BtMG) offers an alternative to imprisonment. A prison sentence of up to two years can be avoided if the offender undergoes extramural therapy. Every day spent in therapy counts as a day of imprisonment, even if the therapy fails. However, this measure is limited to two-thirds of the sentence, and successful therapy allows the execution of the remaining sentence to be cancelled, in accordance with articles 35 and 36 of the BtMG.

In cases where the sentence is not suspended or the probation period fails, usually due to serious recidivism, the convicted person is summoned to prison by the public prosecutor, transferred from pre-trial detention or arrested directly at a court hearing.

Prison sentences vary from a minimum of one month to a maximum of 15 years, or even life imprisonment, according to article 38 of the StGB. Offences tried in the same trial result in a combined maximum sentence of 15 years, or life imprisonment if one of the sentences is already life imprisonment. Multiple sentences are combined into a cumulative sentence that exceeds the heaviest individual sentence, without however reaching the total sum of the individual sentences, in accordance with article 54 of the StGB.

Germany also uses preventive detention. This applies to serious crimes and requires a previous conviction or a proven risk of re-offending, particularly for offences causing serious psychological or physical injury. It is always associated with a prison sentence. At the end of the prison sentence, the sentence enforcement court assesses whether preventive detention is still necessary. There is no time limit on pre-trial detention since the previous ten-year limit was abolished in January 1998. This abolition, applied retroactively, was challenged by the European Court of Human Rights (ECHR) in

the case of *M. v. Germany* (2009), which ruled that this retroactivity was contrary to fundamental rights. However, in 2018, the Grand Chamber of the ECHR validated the current legislation in the case of *Ilseher v. Germany*. In 2011, the German Federal Constitutional Court declared pre-trial detention unconstitutional, but allowed it to continue under certain conditions, including the 'distance' rule. This requires pre-trial detention to be distinct from ordinary prison conditions (FCC, ruling of 4 May 2011).

	2023 ¹	2014 ²	2004 ³
Number of Prisoners	59,545 ⁴	65,710 ⁵	79,676
Per 100,000 inhabitants	70,6	81.4	96.5
Prison density (per 100 places)	80.1	86.3	100.6
Duration (in months) ⁶	4.6	8.5	7.1
Turnover ratio	75.3	na	na
Women (percentage)	5.7	5.7	5.0
Juveniles (14-17, percentage) ⁷	0.5 ⁸	0.8	1.8
Remand (percentage)	20.2	17,1	20.5
Foreigners (percentage)	38.2	29.8	28.2
Elderly (65 and older, percentage of adults) ⁹	1.0 ¹⁰	1.5 ¹¹	1.1 ¹²
Unpaid Criminal Law Fine (percentage) ¹³	12.0	10.0 ¹⁴	10.2
Preventive Detention ¹⁵	601	498	304
Psychiatric hospital (forensic)	6,429 (8,036) ¹⁶	6540 (8175) ¹⁷	5390 (6737) ¹⁸

¹ 1st January 2023.

² 31st March 2014.

³ 31st March 2004.

⁴ Including 1,447 inmates being absent on the day of count, but not released (eg on prison leave or in hospital); the following numbers refer to the actual imprisoned on the day of count (58,098).

⁵ Of which are 112 foreigners held for administrative reasons; SPACE I 2014 refers to 1,500 prisoners held in private prisons or special institutions (p. 37); actually these numbers refer to state prisons with a social therapy approach (p.41), but these are still prisons.

⁶ Based upon the stock and flow.

⁷ The numbers refers to 14-17. However prisoners can be up to 23 years of age in a juvenile prison (section 114 Youth Courts Act).

⁸ 31st March 2022 (Federal Statistical Office); Space I 2024 is unclear on what numbers it refers to.

⁹ 2024 SPACE I numbers; 2014 and 2004 Federal Statistical Office.

¹⁰ Federal Statistical Office on 31st March 2022 refers to 4.3 per cent 60-70, 1.0 per cent 70-80, and 0.1 80 and above; a distinction made by the age of 65 is not included.

¹¹ Federal Statistical Office; please note, since there is an age group 60-65 and one 65-70, in what group prisoners being 65 years of age are counted for is not certain – numbers of 65-70 and 70 and above were applied.

¹² Federal Statistical Office; please note, since there is an age group 60-65 and one 65-70, in what group prisoners being 65 years of age are counted for is not certain - – numbers of 65-70 and 70 and above were applied..

¹³ On the day of count; Federal Statistical Office numbers; only 2014 Space I gave numbers, but this number was not comparable to the Federal Statical Office numbers of that and the other years.

¹⁴ According to Space I: 6.8

¹⁵ Included in the total number of prisoners.

¹⁶ 2021, 31st March 2021, based upon the data collection off he Länder, not all 16 Länder, but 10 of the 11 former western states (excluding Rhineland Palatinate), plus Berlin as a whole, and plus Mecklenburg-Western Pomeranis and Saxony, cf. Jehle (2023), p. 88 – this represents about 83 per cent of the population (2023 figures); number in brackets calculated by referring the numbers to the population of Germany as a whole; one might add about 900 interim detainees (comparable with remand – in the last past years between 600 and 700 persons, cf. Federal Parliament, Drucksache 20/7264, but referring only to parts of Germany, representing about 71 per cent of the overall population).

¹⁷ 1st March 2014, former western states, but including Berlin as a whole (Rhineland Palatinate numbers by 2010), representing about 80 per cent of the population, , cf. Federal Statistical office; number in brackets calculated by referring the numbers to the German population as a whole.

¹⁸ See above for 2014.

Withdrawal clinic (forensic)	4,796 (5,778) ¹⁹	3822 (4777) ²⁰	2412 (3015) ²¹
Prisoners+Psychiatry+Withdrawal ²²	73,359	78,662	89,428
Per 100,000 inhabitants	86.7	96.9	108.4

Numbers: Refer to Space one (2024, 2014 and 2994), Jehle (2023), and the Federal Statistical Office (2015).

3. Overview of Germany's Sentence Adjustment Mechanisms

Germany's legal framework for sentence adjustment and reduction provides for the following mechanisms:

- early release (parole);
- earned days off for prison work;
- drug therapy-based sentence adjustment;
- temporary leave.

These mechanisms are all provided for in the Federal Criminal Code (StGB), the Federal Procedural Code (StPO) and the Narcotics Act addressing release mechanisms tied to drug therapy.

a. Institutional architecture and players in the system

Special Sentence Enforcement Courts

- a. Installed at district courts (criminal law branch) since January 1, 1975.
- b. Decide on sentence adjustments for adults:
 - i. 3 professional judges handle cases of lifelong imprisonment, preventive detention, or placement in forensic psychiatric hospitals.
 - ii. A single judge decides for other sentences.
- c. Appeals can be made within a week to higher district courts for adults and juvenile district courts for juveniles.
- d. Also competent for legal complaints against the prison or forensic institution covering the way of the specific enforcement of a sentence.
- e. The court is not obligated to follow the opinions or statements of any stakeholder.

Prosecution Service

- a. Maintains prosecution files and monitors time limits for court involvement.
- b. Decides on filing immediate complaints on behalf of the state.
- c. Provides statements and recommendations on early release, often based on prison reports and expert evaluations.
- d. Competency lies where the sentence was issued, not where the detainee is held.

Prison or forensic institution

Reports on the prisoner's development and makes recommendations on early release.

Expert evaluators

- a. Psychologists or psychiatrists providing assessments of the convicted person's risk of reoffending.
- b. Mandatory in cases like lifelong imprisonment, preventive detention, or placement in psychiatric hospitals.

¹⁹ See above for 2021.

²⁰ See above for 2014.

²¹ See above for 2014.

²² Referring to the estimated numbers above (those in brackets).

- c. Required by law for prison sentences exceeding two years in specific serious offenses (e.g., crimes against life, physical integrity, or public order).
- d. Opinions assess whether the individual still poses a danger based on prior offenses.
- e. Experts must present their evaluations in court unless all parties waive this requirement.

Defence counsel

- a. Mandatory in cases involving expert participation, with costs prepaid by the court.
- b. Costs are later charged to the convicted person, regardless of the proceeding's outcome.

Convicted person

Must be heard in court unless they waive this right alongside their defence counsel and the prosecution.

b. Criteria for granting sentence adjustment

i. Conditional release

Governed by Sections 57-58 StGB, this is the primary form of sentence adjustment in Germany.

Eligibility:

- **Adult prisoners:**
 - Sentences of any length, including life imprisonment.
 - Time threshold:
 - Two-third of the sentence: standard threshold for eligibility
 - Half of the sentence: For first-time offenders serving up to two years, or in cases of significant personal development and character improvement during incarceration.
 - Minimum of 15 years: lifers
- **Minor prisoners:**
 - Time threshold:
 - One third of the sentence for sentences of one year or more
 - For sentences under one year, release is considered after 6 months in exceptional circumstances.

Criteria:

- The person must not present a risk of re-offending.
- In practise the main criterium to assess the likelihood of reoffending is the testing of inmates in prison leave measures. Long-time detainees will rarely be released without prior extended prison leave.

ii. Earned days off for prison work

Eligibility:

- Number of days earned varies by region (Länder).
- 6-8 days are earned for each year of work.
- These days can be converted into up to 12 days off annually.

Criteria: All prisoners who engage in work while incarcerated.

iii. Drug therapy-based sentence adjustment

This mechanism, governed by Sections 35-36 BtMG, applies specifically to drug-related crimes.

Eligibility:

- Prisoners convicted of drug-related offenses.
- Sentences of up to 2 years.

Criteria:

- Participation in an extramural drug therapy program.
- Each day in therapy counts as one day of imprisonment, even if therapy is unsuccessful.
- Therapy duration is capped at two-thirds of the sentence.
- Successful therapy may result in the suspension of the remainder of the sentence.

iv. Prison leave

Prison leave in Germany can be categorized into different levels based on supervision and duration, with flexibility to accommodate specific purposes or circumstances:

- Supervised prison leave:
 - Prisoners are accompanied by 1-3 armed or uniformed officers and may be cuffed.
 - These leaves serve purposes like maintaining social skills, counteracting imprisonment effects, or attending medical appointments.
 - Used when higher-level leave poses a risk.
- Accompanied prison leave:
 - Prisoners are escorted by trusted individuals, often prison staff.
 - This form of leave may be for rehabilitation or reintegration activities.
- Unaccompanied prison leave:
 - Short-term: Prisoners leave unsupervised for limited periods to specific areas, such as a nearby supermarket.
 - Overnight or extended: Available in some regions after certain durations (e.g., lifers after 10 years) for reintegration or family visits.
- Work outside prison:
 - Unsupervised: Prisoners may work outside during designated hours.
 - Supervised: Often involves group activities near the prison, like gardening.
- Living Outside the Institution: Prisoners in social therapy or forensic clinics may live in assisted housing while technically remaining under custody.
- Other specific leaves: Includes participation in seminars, extended educational programs, or activities with peer accompaniment, demonstrating flexibility in prison leave arrangements.

c. Procedure for applying

Sentence adjustment at the two-thirds mark of a prison sentence occurs automatically. It is the responsibility of the prosecution service to track these dates and initiate proceedings before the sentence adjustment court. In other cases, the prisoner must actively apply for sentence adjustment.

For individuals serving life sentences, the process may be initiated by the prisoner, the prosecution service, or the sentence enforcement court.

A prisoner's application must be submitted directly to the sentence adjustment court. If an application is mistakenly filed with another authority, it should be forwarded to the appropriate court.

4. Statistics

The official statistics on Probation and Parole (“Bewährungshilfestatistik” by the Federal Statistical Office ended referring to 2011. It was due to the low quality and amount of statistics by the Länder. The statistics included only the numbers from the former western states plus Berlin as a whole, but excluding Hamburg. Some of the Länder (10 out of 16) still provide some numbers, representing two-thirds of the overall population, but in some respects the numbers seem to be questionable. Even when the federal statistics existed, only those cases were accounted for, where a probation officer had been installed. All cases without a probation officer were not (and are not) included into the statistics. Some estimates have been made by scholars using the existing numbers and take into account a “re-offending-study”, that uses the official criminal law records as a basis.²³ These numbers by Wolfgang Heinz will be taken into account, even though others speak of quite different numbers.²⁴

The installation of a probation officer is mandatory after serving a juvenile prison term, it should be installed of the parolee being below the age of 27, or the sentence was higher than nine months of imprisonment. After serving the whole sentence of two years or above, or one year or above with sexual crimes, an surveillance order takes place and includes the installation of a probation officer, too (“negative sentence adjustment”, see above).

	2021²⁵	2015	2005
Number of prisoners	49,224	54,437	60,615
Overall number of Probation/Parole and supervision cases	188,475	214,014	231,673
Overall (incl. schedule 35 Narcotics Act, percentage)	63.9 ²⁶	63.2	58.4
Probation (percentage)	44.0 ²⁷	41.4	39.0
Parole (percentage)	16.0	17.5	16.5

	2021²⁸	2015	2005
Prisoners being released	43,950	72,472	84,856

²³ Heinz (2023), who refers i.a. to 2005, 2015 and 2021.

²⁴ E.g. Groß/ Klett-Straub (2020), schedule 57 StGB, para. 6, speaking of below 15 percent of prisoners being granted sentence adjustments.

²⁵ The numbers might not be comparable because of the corona pandemic.

²⁶ 2020.

²⁷ 2020.

²⁸ The numbers might not be comparable because of the corona pandemic.

Serving the whole sentence (percentage)	75.0	73.2	64.4
Suspension (percentage)	13.9	12.7	15.7
Schedule 35 Narcotics Act (percentage)	6.6	4.4	5.6
Suspension, Juveniles (numbers)	967	1,868	3,176
Lifelong imprisonment (numbers)	53	80	56
Preventive Detention (numbers)	59	48	20
Pardon ²⁹ (percentage)	2.1	7.0	10.4

It has been estimated, that about 20-30 per cent of all persons released with a suspension of the sentence were ordered the supervision and support of a probation officer. In 2013 these rates might have reached 40 percent.³⁰

5. Recall

Parole may be revoked if the individual reoffends during the parole period, violates release conditions, or fails to meet with their probation officer as required. In such cases, the individual may be required to serve the remainder of their prison sentence. However, not all violations or reoffences automatically lead to revocation. The outcome depends on several factors, including the nature and severity of the offence or violation, the time already spent on release, and the overall progress of rehabilitation. A hearing—sometimes conducted in writing—will take place, and the individual has the right to appeal the decision.

When reoffending occurs, the decision to revoke parole is primarily influenced by the sentence imposed for the new offence. If the court grants probation for the new offence, parole is unlikely to be revoked.

For individuals serving life sentences, revocation results in their return to prison under the terms of their original life sentence.

6. Procedural barriers

a. Access to Legal Assistance and Representation

Prisoners can be assisted by a lawyer at any stage of the sentence adjustment process, including matters related to prison law, such as prison leave. However, access to legal representation is subject to significant limitations. While legal aid is available for lifers, long-term prisoners, and those in preventive detention or forensic psychiatric hospitals, it is rarely granted for cases related to prison law or withdrawal clinics. Even when legal aid is provided, the financial compensation for lawyers is minimal (around 100 euros per case), which discourages many from taking on prison law cases.

Lawyers may be present in court hearings, but their participation in key interviews—such as those conducted by internal or external experts or prison conferences on sentence progression—is uncommon and often not permitted even when requested. Access to legal representation is further hindered by the lack of internet access in prisons, making it difficult for prisoners to find legal assistance. Inmates often rely on recommendations from fellow

²⁹ These numbers seem to be rather high, they might include „Christmas-Pardons“ granted at the end of the year to prisoners who would have been released between about mid-december and mid-january.

³⁰ Heinz (2023), p. 17.

prisoners, and even phone access to lawyers is complicated in some Länder, such as North Rhine-Westphalia. The situation is even more challenging in preventive detention and psychiatric hospitals, where access to legal counsel is severely restricted.

b. Access to Case Files

Sentence adjustment proceedings in Germany do not follow a fully adversarial model, and access to case files is limited. Prisoners do not have direct access to their files and can only obtain them through their lawyers. Expert opinions and statements from the prison administration are usually shared with the prisoner, but full access to the prison file itself is rare. Prisoners can challenge assessment grids used by experts through cross-examination during hearings, but there are no formal mechanisms to demand full disclosure of all documents relevant to their case.

c. Witnesses and Evidence

The role of witnesses in sentence adjustment hearings is minimal. Public prosecutors are rarely present, and hearings often rely primarily on expert assessments rather than witness testimony. Second expert opinions are uncommon and must be requested by the court itself. While prisoners can commission their own expert evaluations, courts typically consider these less credible, as they are paid for by the prisoner. This limits the ability of prisoners to challenge unfavorable assessments effectively.

d. Public Access to Proceedings

Sentence adjustment hearings are not public. While relatives may be allowed to attend in some cases, their presence is contingent on the consent of all participants, particularly the prisoner. Hearings may take place either in court or within the detention facility, depending on local custom. The use of videoconferencing is extremely rare and was primarily limited to the COVID-19 pandemic period.

e. Time Limits

There are no strict binding time limits for sentence adjustment proceedings, except in cases related to "Betterment and Security" (preventive detention), where periodic reviews must occur within specific intervals. If a court fails to meet these deadlines, it must justify the delay in its decision. If the explanation is deemed insufficient, appeal courts or the Federal Constitutional Court (FCC) may grant financial compensation. However, in most cases, the recognition of an unlawful delay is considered sufficient redress, without additional penalties imposed on the state.

f. Access to Appeals

Prisoners can appeal sentence adjustment decisions to the Higher District Court, which reviews the decision made by the District Court (sentence enforcement court). However, no statistical data is available on the frequency or success rate of appeals. Some Higher District Courts are believed to rarely overturn lower court decisions, though this remains an area for further empirical research. Appeals can be initiated by either the prisoner or the prosecution service, but victims and prison authorities do not have standing to appeal.

g. Premature Applications and Delays

There are no explicit observations on premature applications in Germany. However, delays in processing cases are common, particularly at the appeal stage, where proceedings can take several months due to the lack of statutory time limits for higher courts to issue decisions. The appeal process is generally conducted in writing, though the Higher Court may order additional expert opinions or hold a hearing at its discretion.

7. Differential impact for categories of prisoners

Germany does not officially exclude specific categories of offenders from sentence adjustment mechanisms. However, certain provisions create indirect disparities in access to release. One key example is the supervision order (negative parole), which imposes additional conditions based on the nature of the offense.

For most prisoners, eligibility for a supervision order requires that they have served at least two years of their sentence in full. However, for individuals convicted of sexual offences, the threshold is significantly lower—requiring only one year of completed imprisonment.

Lifers

The number of lifers and their sentence adjustments remain relatively low: Over the past 20 years (2002–2022), approximately 1,800 to 2,000 prisoners were serving life sentences,³¹ with between 48 and 141 being released each year.³² However, these release figures include deaths (4–26), deportations (6–33), and other factors. The number of releases specifically through sentence adjustments varied between 33 (2002) and 82 (2022).³³

Due to the relatively small number of lifers and their releases, identifying a consistent pattern is difficult. However, two key factors contribute to a restrictive approach. First, the severity of the crimes leading to life imprisonment—the vast majority of cases involve (attempted) murder, with only a small number of other offenses (all involving loss of life). This severity is considered a core element in assessing dangerousness. Second, the indeterminate nature of life sentences complicates release preparation, as there is no fixed term to structure rehabilitation. Additionally, institutionalization effects may arise, prison leave opportunities often begin late, and overnight or extended leave (exceeding 24 hours) is significantly restricted for lifers. In most Länder, such leave is only permitted after at least 10 years of imprisonment.

³¹ Dessecker/ Akgül (2024), p. 6.

³² Dessecker/ Akgül (2024), p. 32.

³³ Ibid.



**Funded by the
European Union**

Funded by the European Union. Views and opinions expressed are however those of the authors only and do not necessarily reflect those of the European Union. The European Union cannot be held responsible for them.