INTERNATIONAL JUVENILE JUSTICE OBSERVATORY

ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Finland

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A. Juvenile Justice

1. Legal framework

Introduction

Juvenile Justice in Finland has one foot in the adult criminal justice system and another foot in the child welfare system. This is the result of the development that started in the early years of the last century in the Nordic countries. These countries came up with a system of child protection legislation which granted municipal authorities the right to intervene in children´s behaviour. This signified the birth of a specific Nordic Juvenile Justice Model, as opposed to continental European and Anglo-Saxon juvenile justice systems with specific juvenile courts and codes for young offenders only.

As the system stands today in Finland, all offenders under the age of 15 are dealt with only by the child welfare authorities. Young offenders aged 15 to 17 are dealt with both by the child welfare system and the system of criminal justice. Young adults aged 18 to 20 are only dealt with by the criminal justice authorities.

The functioning of these two systems – child welfare and criminal justice – is based on fundamentally differing principles. The criterion for all child welfare interventions is the best interest of the child. All interventions are supportive and criminal acts have little or no formal role as a criterion or as a cause for these measures. The 'criminal justice side', on the other hand, makes much less difference between offenders of different ages. All offenders from the age of 15 years onwards are sentenced in accordance with the same Criminal Code. Strictly speaking, there is no separate juvenile criminal system in Finland in the sense in which this concept is usually understood in most other legal systems. There are no Juvenile Courts and the number of specific penalties only applicable to juveniles

has been quite limited. Nevertheless, young offenders are in many respects treated differently to adults due to limiting rules for the full application of penal provisions. Offenders aged 15 to 17 receive mitigated sentences, there are additional restrictions in the use of unconditional prison sentences, as well as specific forms of community orders.

Age limits in the Finnish criminal justice system

Children under the age of fifteen. The age of criminal responsibility is fifteen years. This age has remained the same since the Penal Code was adopted in 1889. Even though offences committed by children under the age of fifteen cannot be dealt with by the courts as criminal offences, these children are subject to civil liability and may thus be ordered to pay compensation to the victim and forfeit property (e. g. weapons) to the State. Furthermore, children and their parents can participate in mediation. Acts committed by children under the age of 15 result in measures included in the Child Welfare Act; the case is forwarded to the municipal social welfare or child welfare board where further measures are then considered. The criterion for all child welfare measures is the best interest of the child (see below section C).

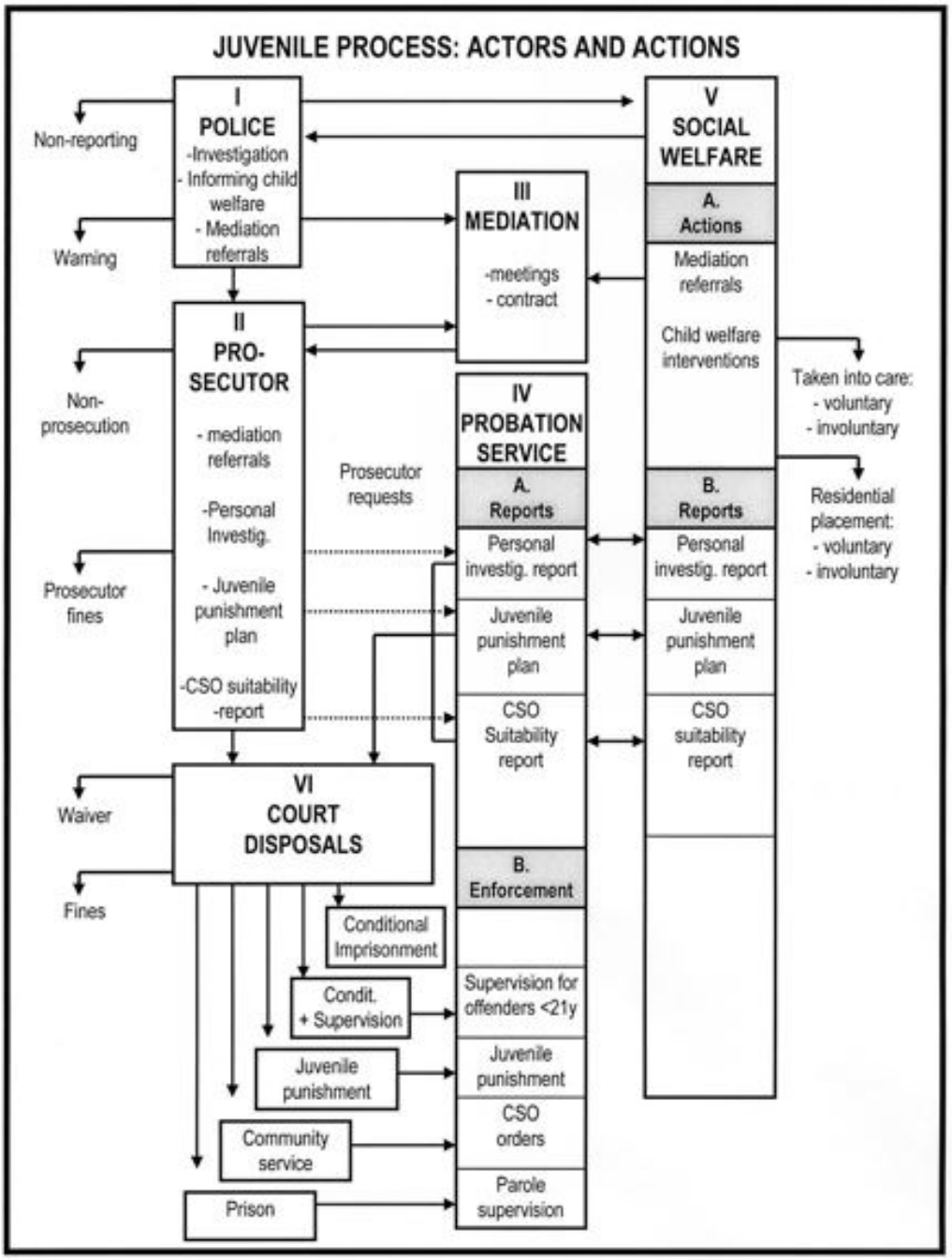
Young persons aged 15 to 17 years. Offenders aged between fifteen and twenty at the time of the offence are subject to the Young Offenders Act. However, provisions concerning young adults (18 to 20 years) are quite restricted. Most of the special provisions are applicable only to the 15 to 17 age group. The primary differences in the sentencing of young offenders and adult offenders lie in the fact that offenders aged fifteen to seventeen benefit from a mitigated scale of punishment. They also benefit from a greater possibility of further measures being waived. Furthermore, an offender who was under eighteen at the time of the offence cannot be sentenced to unconditional imprisonment unless there are weighty reasons for doing so. In addition, a JPO may be imposed on an offender who was younger than 18 at the time of the offence. Finally, there are also some differences in criminal procedure and in the enforcement of punishments.

Young adults aged 18 to 20. There are no specific arrangements applicable only to this age group. However, all offenders below the age of 21 (thus also the age category 18-20) are released on parole earlier than adults (first-time offenders after one third and others after half, while adults are released after half or two thirds). In addition, offenders under 21 may be placed under supervision within the framework of a sentence to conditional imprisonment.

Process

Juvenile criminal procedure is based on co-operation between the police, the prosecutor, mediation office, the Probation Service, social services and child welfare, and the courts. The relationships between different actors and major actions are illustrated below (see *Figure 1*).

Figure 1: Actors and actions in the Finnish juvenile process



Police. There are no special "youth police" in Finland. However, in some local areas, there are special arrangements at the police-level that concern juveniles. If a child under the age of 15 is suspected of a crime, they can be questioned and the act can be investigated regardless of the fact that a child cannot be criminally responsible for the offence. A child under the age of 15 cannot in any case be arrested or remanded in custody.

When the person to be questioned is under the age of 18, the custodial parent and child welfare officials must be given the possibility of being present during questioning. The investigation is usually conducted by police officers who are specially trained to deal with juvenile crime.

The police work in close co-operation with child welfare. It is the duty of the police to inform child welfare authorities whenever a person under the age of 18 is suspected of an offence. The police may also play an active part in making referrals to mediation.

Prosecution. The handling of juvenile cases places several special duties with the public prosecutor. Extra attention must be paid to the speedy handling of the case. Before proceeding with a case the prosecutor must consider diversionary options, non-prosecution and mediation. Non-prosecution may be accompanied by an oral caution which will be communicated to the young offender in form of a hearing in the prosecutor's office. Non-prosecution may also be linked with mediation (but not necessarily).

Personal investigation report. For each young offender under the age of 21 who is charged with an offence which is predicted to result in a sentence that is more severe than a fine, a *personal investigation report* must be prepared. The report is made either by social welfare officials or by the Probation Service, but the prosecutor must file the request for such a report. The aim of the personal investigation report is to provide the court with more detailed information concerning the background of the offender as well as of the circumstances of the offence. The request for a personal investigation report is addressed to the Probation Service, which will pass the request for social welfare authorities in those (smaller rural) regions where reports are prepared by the social services (and not by the Probation Service).

The report is compiled either by social welfare officials or by the Probation Service, depending on local resources and practical arrangements. The other reports include a juvenile punishment plan, a plan for conditional supervision and a community service suitability report. The Probation Service collects all the relevant information by contacting e. g. the social services, the offender and usually also the offender's legal guardians before deciding whether to recommend community service or a JPO in that particular case.

In all these cases the Probation Service has an active role, as these reports also include suggestions and proposals for the courts. The assessment of suitability for community service or eligibility for a JPO has a decisive impact on the court's decisions. Preparing these reports takes place in co-operation both with the social services and the suspected offender.

Mediation. Mediation has been implemented in Finland since the early 1980s, first on a local and experimental basis. In 2006 this practice was enforced to cover the whole country. Mediation can start at any time between the commission of the offence and execution of the sentence and by any of the interested parties. In practice, cases are referred to mediation mostly by the police. Mediation will be dealt in more detail in section B below.

Courts. There are no juvenile courts in the Finnish system. Juvenile cases are to be dealt with in ordinary courts. The normal composition of the local court in juvenile cases is one legally trained judge and three lay judges. If called for by the complexity of the matter or other special reasons, the composition may be supplemented by a second legally trained judge and a fourth lay judge. Simple criminal cases may also be dealt with in the local court by one legally trained judge sitting alone if the maximum punishment for the offence in question is a fine or imprisonment for no more than eighteen months. Should the case be dealt with in this way, the most severe penalty that a judge can impose is a fine.

However, specific rules apply to the handling of cases involving young offenders. In the court proceedings, cases involving juvenile crimes must be taken to the main court hearing within two weeks of the summons (Chapter 5, section 13 of the Criminal Procedure Act).

If the case is tried in a court, a minor is entitled to free legal council, unless this would be obviously unnecessary. This right has to be taken into account *ex officio* also in cases in which the juvenile himself does not request to have a lawyer. In addition, if the person to be prosecuted is under the age of 18, the custodial parent and child welfare officials must be given the possibility to be present during trial.

In Finland, there are not two distinct procedural stages, in which the first would decide the question of a minor's guilt (conviction stage) and the other would pronounce the sanction (sentencing stage). Thus, no separate sentencing hearings are held. The sentence is imposed by the professional judge at the end of the trial.

If the minor is to be held responsible, the court cannot choose between pronouncing a punishment or an educational measure. The only available option would be the imposition of a criminal sanction. All educational measures are delivered through the separate child welfare system. However, some punishments (conditional imprisonment and a JPO) contain educational elements (see above).

2. The sanctions system

Since the early 1970s Finland shaped its sanctioning system in the spirit of "humane neo-classicism". The overall aim of these law reforms – 20 to 25 in total – was to reduce the use of imprisonment. The reforms started during the mid-1960s, and continued up to the mid 1990s.[1] The overall effect of these policy reforms is reflected in a dramatic fall in Finnish prison population rates. At the beginning of the 1950s the prison population rate in Finland was four times higher than in the other Nordic countries. Finland had almost 200 prisoners per 100,000 inhabitants, while the figures in Sweden and Norway were around 50. Even during the 1970s, Finland's rate continued to be among the highest in Western Europe. In the early 1970s Finland had some 120 prisoners/100,000 inhabitants, while the corresponding figures at that time in England and Wales were almost half. Today the situation is the opposite.

This policy of decarceration had even more dramatic effects on juveniles. Between 1985 and 2000 the number of prison sentences imposed by the courts on 15 to 17-year-olds fell from 400-450 to 60-70. Even more substantial changes took place in terms of the numbers of prisoners. In the same period, the overall numbers fell by 35% (from 4,500 to a little below 3,000). In the 18 to 20 age group, the figures fell by over 50% (200 to 100) and in the age group of 15 to 17-year-olds even by 75% (from 35 to less than 10). However, the number of juvenile prisoners continued to decline, reaching in 2010s a low of 70-80 prisoners aged 18 to 20 (two percent of the overall prisoner rate) and 5-10 prisoners aged 15 to 17 (which includes remand prisoners; this corresponds to 0.1% of the overall prisoner rate, see figure 3 in appendix).

Even though new alternatives have been introduced, the present Finnish sanctions system is still fairly simple. General punishments are fines, conditional imprisonment, community service and unconditional imprisonment. Specific punishments for young offenders include supervision connected with a conditional sentence, and the JPO. In addition, the law includes two forms of diversion: non-prosecution and waiver of punishment in the courts (discharge).

Diversion (non-prosecution)

Finland follows the principle of legality in prosecution. The prosecutor is basically entitled to prosecute in all cases in which there is sufficient evidence of a suspect's guilt. However, the rigid requirements of the principle of legality are softened through the provisions of (diversionary) non-prosecution. The grounds for non-prosecution are defined in detail in the law.

The main grounds relate to the *seriousness* (petty nature) of the offence and the *young age* of the offender (young offenders under the age of 18). Thus, the prosecutor can

1 Fort he following, see for details Lappi-Seppälä 2001, 2010 and 2011.

waive prosecution when a penalty no more severe than a fine is to be expected for the offence, and the offence is deemed to be petty considering the harmfulness of the act or the culpability of the offender.

A second possibility for a waiver is when an offence is committed by a person under 18 years of age and a penalty no more severe than a fine or imprisonment for at most six months is to be expected for the offence, and the offence is deemed to be the result of thoughtlessness or imprudence rather than heedlessness at the prohibitions and commands of the law.[2]

Non-prosecution can also be based on *reasons of equity or criminal policy expediency* "when trial and punishment are deemed unreasonable or pointless considering the reconciliation between the offender and the complainant or other action taken by the offender to prevent or remove the effects of his offence,[3] his personal circumstances, other consequences of the offence to him, actions by the social security and health authorities, or other circumstances."[4] This section covers non-prosecution also on the basis of reconciliation and mediation (as well as other reparative actions taken by the offender). Victim-offender-mediation was specifically added to the law in 1995. Since then it has quickly gained more and more importance as a factor justifying non-prosecution.

Non-prosecution is most widely applied in cases of juveniles. In the 15-17 years age group, the share of non-prosecution varies at around 20% of all court disposals and 6% of all disposals (prosecutors fines included). More recently the expansion of mediation has been reflected also in the prosecution practices, as the number of cases diverted on the bases of "equity related" reasons has been increasing. However, no exact data are available about the number of decisions made on the basis of mediation.

Fines

Fines are the most widely used sanction in Finland, also for juveniles. In Finland, the day-fine system is applied, ranging from between one and 120 day-fine units depending on each individual case. The number of day-fines is based on the seriousness of the offence while the amount of a day-fine depends on the financial situation of the offender. A one day-fine corresponds roughly to one-third of the gross daily income of the offender. A fine may be imposed either in an ordinary trial or, in the case of certain petty offences, through simplified summary penal proceedings (penalty orders).[5] The vast majority of

2 Chapter 1, section 7 of the Criminal Procedure Act.

3 Note that the Finnish law does not recognize the possibility of plea bargaining and offers no "crown witness" provisions. However, at the moment, the ministry of justice is planning to propose an arrangement that would allow the prosecutor and the suspect to negotiate on some parts of the charge.

4 Chapter 1, section 8 of the Criminal Procedure Act.

5 In addition, for minor traffic offences there is a summary penal fee that is set at a fixed amount (petty fine). This fine is imposed by the police. In the case of non-payment, summary penal fees cannot be converted into imprisonment.

fines are ordered in a summary process by the prosecutor.

Fines are the most common penalty for all age groups, accounting for 75% of court sentences for 15–17 year olds, 61% in the 18–20 age group and 55% for those aged over 20. The clear majority of fines are imposed by the prosecutor (representing over 90 % of all sanctions in all offender groups).

The extraordinary high percentage of fines in Finland needs an additional explanation. Among the factors explaining the extensive use of fines are that also minor criminal cases are taken in Finland either to prosecutor or to the court, traffic offenses are often dealt by day-fines. In addition to small traffic offenses[6], a substantial number of fines in the group below 18 is imposed for unlawful possession of alcohol. Thus, in 2005 the majority (60 %) of all fines (total 14 000) in the age group 15-17 years were impose either for traffic offenses (45 %) or possession of alcohol (15 %). Almost half of the remaining fines (6000) are imposed for petty theft (2700). Assault and petty assault cover 5 % of fines.

Conditional imprisonment

Sentences to imprisonment for up to two years can be imposed conditionally. The choice between conditional and unconditional imprisonment is based mainly on blameworthiness (harm, culpability and prior convictions).

For offenders under 18 there is a clear prioritisation for imposing prison sentences conditionally and therefore unconditional sentences can be imposed only in exceptional cases. On the other hand, all prison sentences over two years must be imposed unconditionally. For 15 to 17-year-olds this is usually reserved for homicides, aggravated robberies and aggravated drug offences.

Young offenders under the age of 21 years (at the time of the offence) may be placed under *supervision*. In practice, about half of all conditionally sentenced young offenders under the age of 18 are placed under supervision. The role of supervision is basically supportive. Conditionally sentenced offenders under the age of 20 at the time of the offence may be put under community supervision if this is considered "justified in view of the promotion of the social adjustment of the offender and of the prevention of new offences". This decision is made by the court in connection with the original sentence. The supervision is the responsibility of staff members of the Probation Service or of voluntary private supervisors. Supervision primarily consists of regular meetings with a supervisor. In some cases, the offender is required to participate in various group activities. Supervision can be discontinued after six months if it is deemed no longer necessary.

6 Which in the age group-15-17 are heavily concentrated to driving and "tuning" of light weight motorcycles, as a part of special youth culture, see Rantala 2013.

A person who has been sentenced to conditional imprisonment can be ordered to serve the sentence in prison if he/she commits a new offence during the probation period for which the court imposes a sentence of imprisonment. Thus, a behavioural infraction alone is not enough for enforcement of a conditional prison sentence. It is also possible to enforce only part of the earlier conditional sentence.

Conditional imprisonment is the "backbone" of community penalties in Finland. It covers around 17 % of court dispositions in the age group of 15-17, and 24 % in the age-groups 18-20. This sanction has a strong position as a general alternative to incarceration, corresponding to roughly one fourth of all sanctions imposed by the courts.

Community Service

Prison sentences of up to eight months may be commuted to community service (from 20 to 200 hours). Community service consists of regular, unpaid work carried out under supervision. The sentence is usually performed in segments of three or four hours, ordinarily on two days per week. A maximum of ten hours can be served in an effort to address an offender's substance abuse problem, either in terms of a traffic safety course organised by the Traffic Safety Organisation or at a treatment clinic.

Since community service can only be ordered instead of unconditional imprisonment, and since young offenders may receive such prison sentences only in exceptional cases, community service is of rather limited relevance for offenders under 18. But for young adults (18-20) and adults it is a more widely used option, corresponding about half of the prison sentences (see appendix table 2 and figures 1-2).

Juvenile Punishment Orders

Juvenile Punishment Order (JPO) was introduced on an experimental basis in 1997 as a new form of sanction. The sanction was stabilized in 2004.

A JPO is a four to twelve month long community sanction comparable in severity to conditional imprisonment, and which should be used when the conditions set by the Act are fulfilled. The duration of a JPO is determined by the court, whereas the detailed content thereof is set by the Probation Service.

Offenders aged 15 to 17 at the time of the offence can be sentenced to a JPO if, "in view of the seriousness of the offence and the circumstances connected with the act, a fine is to be deemed an insufficient punishment, and there are no weighty reasons that require the imposition of an unconditional sentence of imprisonment." JPOs are rated on the same severity level as conditional imprisonment. The court should favour a JPO if it is deemed "justified in order to prevent new offences and to promote the social adjustment of the young offender". In practice, the main criterion is prior convictions.

The JPO consists of work programmes, supervision and activity programmes that aim to promote social adjustment, the person's sense of responsibility and his/her social relations. The content of the punishment is set by the Probation Service in more detail. Before the offender can be sentenced to juvenile punishment, the Probation Service must have drafted an enforcement plan which includes both their view on whether a sentence to a JPO is called for in the youth's particular social situation, and a preliminary outline of the content of the punishment. What is particular to the Finnish JPO is that the court cannot interfere in its content.

Juvenile penalty has made its way very slowly, corresponding only 20-30 cases/year. The basic explanation for this seems to be that young offenders suitable for JPOs are already under child welfare measures. They have problems with intoxicants to some extent; some had a serious problem with drug abuse or were continuously engaged in drinking. Thus, often the young offenders in this group had already been the focus of a large variety of measures imposed by the authorities. As the "candidates" for JPO already are under the interventions by the child welfare authorities, this new sanction has had evident difficulties in finding its own role in the Finnish juvenile justice system.

Imprisonment

A sentence to (unconditional) imprisonment may be imposed either for a determined period or for life. The general minimum sentence of imprisonment is 14 days and the general maximum is 12 years.

Imprisonment has a very restricted role among the youngest age-groups (as young persons under the age of eighteen may be sentences to prison only if there are special reasons at hand; and, never to life imprisonment). The annual number of prison sentences in the group 15-18 has varied from 50 to 100, which corresponds to about 1% of all sentences in this age group. About 8% of offenders aged between 18 and 20 are sentenced to imprisonment while the figure for adults (over 20) is 14%.

The general decline in the use of imprisonment can be seen also in the prison figures. The number of prisoners aged 15 to 17 fell from over 100 in the mid-1970s to less than 10 in the 1990s. Prisoners from the 18-20 years age group fell from over 350 to less than 100. The percentage of juvenile and young prisoners in the overall prison population has also seen dramatic reductions.

Due to the small number of juvenile prisoners (at the moment 5 to 7 persons under the age of 18), there are no specific prisons for juveniles. However, the age of the prisoner and his/her specific needs are taken into account in the enforcement in several ways. This applies also to young adults. Even if there are no specific juvenile prisons, the law requires that young offenders be separated from adults (should this be in the best interest of the juvenile) and that in the enforcement of a sentence special attention must be paid to the specific needs of juveniles. In practice this means that young prisoners are placed

in prisons specialized with programme-work that is suited to younger age groups and that juvenile prisoners in these prisons are placed in separate wards. Consequently, the majority of prisoners under the age of 21 serve their sentence in a prison specialized in programmes for young adults. Other major criteria for allocating prisoners to prisons relate to the possibilities of maintaining ties to family, friends and to the local community.[7]

7 For details, see Lappi-Seppälä 2010.

B. Restorative Justice within Juvenile Justice

Introducing mediation

The most important restorative justice practice in Finland is undoubtedly *mediation*. Mediation started on an experimental basis in the early 1980s, to be soon expanded in to a national practice during the 1990s. Mediation does not constitute a part of the criminal justice system, but it has frequent interrelations with that system as far as referral of cases and their further processing is concerned. The Criminal Code mentions an agreement or settlement between the offender and the victim as a possible justification for prosecutors to waive charges, for courts to waive punishment and as grounds for sentence mitigation.

The first mediation experiment in Finland started in 1983.[8] During the 1990s the movement expanded quickly. By the early 2000s mediation services were available to about 80 percent of the population. In order to secure equality before the law, Mediation Act was passed in 2006 to secure equal access to mediation for all. Provincial governments are obliged to arrange mediation services in their region. The overall organizational responsibility and supervision lies within the Ministry of Social Affairs.

Since 1st June 2006 mediation services have been available throughout the entire country. Mediation as defined in the law, refers to "a non-chargeable service in which a crime suspect and the victim of that crime are provided the opportunity to meet confidentially through an independent conciliator, to discuss the mental and material harm caused to the victim by the crime and, on their own initiative, to agree on measures to redress the harm."[9]

Formal requirements for mediation

Mediation is possible according to the Act of mediation (2006) only between parties that have "personally and voluntarily expressed their willingness for mediation" (§ 2). Furthermore it is required that the "parties are able to understand the meaning and significance of mediation and of the decisions that are carried out during the mediation process". Consent is required for all parties. Consent can also be withdrawn at any stage of the process, in which case the mediation process will be terminated.

Mediation is available for all age groups, but its principle relevance lies in younger age-groups. As mediation is informal by its nature, and not defined as a criminal punishment,

8 See further: *Grönfors* 1989 and *Iivari* 2000.

9 Law on Mediation 2006, Chapter 1, section 1.

it may be applied also for offences committed by children below the age of criminal responsibility. However, in this respect the law further requires that "if a child under 18 years of age is likely to be a party to mediation, his/her parent or guardian must give consent ". Also, certain restrictions may apply when the victim is young.

Regarding applicable offence types, in principle any type of crime can be dealt with through mediation. However, the 2006 Mediation Act also provides general guidelines to define which types of cases are "more suitable", and which types of cases are "less suitable". In this judgement one should take into account "the nature and method of the offence's commission, the relationship between the suspect and the victim, and other issues related to the crime as a whole". This is a fairly round statement, but the law also defines three more detailed limitations:

1. Violence in close relations should be mediated only in cases referred by the police and the prosecutor;

2. Mediation of violence in close relationships should be excluded if violence was repeated or there had been earlier, unsuccessful mediation processes;

3. Mediation is forbidden if the victim is below the age of 18 and he/she is in a specific need of protection due to his/her young age.

The law accords the criminal history of the offender no general relevance as a selection criterion with the exception of domestic violence. However, in practice at least the police seem to exclude offenders with long criminal histories from mediation in cases of other offence types as well.

There are no formal requirements related to the admission of guilt. However, the case has to be "clear" in the sense that the offender admits his/her guilt. In mediation, there can be no dispute whether the crime has occurred and who was the perpetrator.

The mediation process

Mediation can be initiated at any time between the commission of the offence and the execution of the sentence and by any of the involved parties. There are no differences in the mediation process according to different stages of the criminal procedure at which the mediation has started.

The initiative for submitting cases to mediation comes, as a rule, from the police or from the prosecutor. Once a case has been referred to the mediation office, the office contacts the parties in order to ascertain their willingness to participate in mediation. Where this is agreed, a first meeting is arranged. The sessions are often held in the evening, participants are addressed on first-name terms and the flow of discussion is relatively free. As a rule, it can be enough to have just one session, but quite often more are needed. The mediators' guidelines include suggestions on how to arrange the sessions. However,

it is also emphasized that each session is an individual one.

In terms of confidentiality, while court proceedings are public, Finnish mediation processes are not. This is also stated in the law: "Mediation is organised away from the public". This was already the informal norm before the new law came into force. The strong emphasis on confidentiality also means that research information of the mediation process remains partly hidden as it has also been difficult for researchers to gain access to mediation sessions.

The 2006 law also requires personal participation: "The parties must attend mediation meetings in person" (§ 18). One is allowed to have assistance in the meeting, but this must be agreed upon beforehand. Mediator's guidelines take a critical stance towards the use of legal advisers. Children under 18 may have their care-takers in the sessions if they so wish. Should this be against the interest of a child over the age of 15, it is also possible to exclude this right from the child's parent. However, the parents of a child under 15 always have the right to attend the meetings.

There are no formal procedural safeguards that extend beyond those that apply to children as described above. Cases of violence in close relationships are a partial exception in this regard. Taking into account the demanding nature of such cases, the mediator's guidelines advise that mediation sessions always be attended by two mediators.

The mediator's principal role is only to mediate and to act on a neutral basis. They have no formal authority, but their knowledge of the ways and means of the criminal justice system does give them some power to influence the content of the settlements. They can, for instance, say that this or that amount would or would not stand if compensation were to be decided by the court.

The legislation states no formal time limits for the duration of mediation. However, the prosecutor – when referring a case to mediation – usually announces the time within which mediation should be carried out before he/she will decide on the prosecution. This time is – as a rule – from two to three months.

Once the process has started it normally leads to a written contract that contains the subject (what sort of offence), the content of a settlement (how the offender has consented to repair the damages), the place and date of the restitution as well as consequences for a breach of the contract.

The consequences/effects of mediation

What happens after a successful mediation depends largely on the category and seriousness of the offence. In complainant offences, successful mediation automatically means that the police will close the investigations. If the case has already gone to the prosecutor, he/she will drop the prosecution.

In non-complainant offences it is at the discretion of the prosecutor whether or not the process is continued. This is regulated by the grounds on non-prosecution. Dropping the charge would be possible according to the law if prosecution seemed "either unreasonable or pointless" due to successful reconciliation, and if non-prosecution did not violate "an important public or private interest". In these cases non-prosecution remains discretionary. Unlike in some other countries, mediation does not automatically divert the case from the criminal justice system. This may narrow its diversionary effect, but on the other hand, it also prevents mediation from becoming restricted to trivial cases.

Should the prosecutor take the case to the court, the court may also waive from penal measures, or mitigate the sentence according to general sentencing rules, which nominate mediation as a general ground for mitigation.

Mediation also has "civil consequences". Contracts drafted in mediation processes are binding in the same sense as all civil contracts. Should some of the parties feel to have been misled by false information etc, it would be possible to take the case to a civil court.

Organization and coordinating agencies

The key co-ordinating agencies include the Ministry of Social and Welfare Affairs (which is responsible for organizing and supervising mediation), the Advisory Board on Mediation in Criminal Cases, the mediation office, and the mediation officer in charge.

The Mediation Act establishes the Advisory Board on Mediation in Criminal Cases. This Board acts under the auspices of the Ministry of Social Welfare and Health, and is appointed by the government for a period of three years. Its duties are to monitor and assess developments in mediation and to make proposals for its future development as well as to promote co-operation between mediation and other activities.

The actual delivery of mediation services is organized by publicly funded mediation office. The municipal social welfare authorities usually have a hand in coordinating the mediation services and providing them with some logistics.

Cases are allocated to mediators by the mediaition offices. Mediation sessions – in turn – are run by voluntary mediators. The qualifications for mediators are defined in law fairly loosely. Mediators must have passed a short training course. In addition it is required that "he /she otherwise has the training, skills and experience that a proper functioning as a mediator would require". Mediators are unpaid volunteers. They are not considered public officials in their capacity as mediators. In practice many volunteer mediators do have a job in the municipal social services. But, as mediators, they work outside their working hours and on a voluntary basis.

Statistical data on mediation

In numbers mediation plays a substantial role in the Finnish justice system. Mediation cases can be counted in different ways. The often used unit "referral" may include several offences, several victims and/or several offenders. The statistics published by the Ministry of Social and Health Affairs tries to keep these units separate.

According to official statistics, in 2012 there was a total of 8 472 referrals to VOM involving 11 908 offences.[10] These offences in turn involved 11 994 suspects and 9 265 victims. During the year 2012 mediation-processes started in 7 957 cases. In all, 574 of the 7 957 processes that were initiated in 2012 were interrupted, which equals an overall failure rate of about 7%.

The clear majority of cases involve either minor forms of assault and battery (56 %) or minor property offences (26 %). As can be seen, a majority (about 64 %) of offences are non-complainant offences. When these figures arew reflected against cases dealt by the criminal justice system, it looks like one out of five assaults (22 %) known to the police has been diverted to mediation. The share is almost equal in disturbing domestic peace and defamation (17 %). More than one out of ten (14 %) cases of damage to property are referred to mediation. But for thef offenses the share is 2 %. In the younger age-groups (below 18 years), more than one third of the offenses eligble for mediation are diverted.

Most cases are sent to mediation by the police (82%) or by the prosecutor (14%). Only a small number of cases come directly from either the parties or the social welfare authorities (two percent each).

In a little below half (41 %) of the cases the offender was under the age of 21, 12% of the cases involved children below the age of criminal responsibility, and one fifth (17 %) were attributable to the age group from 15-17. The majority of the victims were aged 30 and older (see table 1).

10 All data is for the National Institute of Health and Welfare.

Table 1: Mediation according to the age of the parties, 2012

	N	%
The age of the offender/perpetrator (at the time of the offence/event)	12 305	100
< 15 y.	1 516	12
15-17 y.	2 053	17
18-20 y.	1 536	12
21-29 y.	2 475	20
30-64 y.	4 456	36
65-y.	269	2
The age of the victim/plaintiff	9 762	100
< 15 y.	725	7
15-17 y.	726	7
18-20 y.	1 106	11
21-29 y.	2 126	22
30-64 y.	4 710	48
65+ y.	369	4

Source: National Institute of Health and Welfare

* Includes also a small number of civil cases, which are not reported separately

Out of the 11 558 agreements drafted, 37 % consisted of monetary compensations and 5 % compensation through work. The majority of agreements consisted of symbolic compensation, for instance an apology (40 %), withdrawal from claims (10 %) and promise not to repeat the behaviour (8 %) and return of the property (0.5 %). The total monetary value of compensations was 1.94 million euros.

Experience of the participants and the views of different stakeholders have been explored in several reports. In overall, the parties' experiences with mediation have been quite positive.[11] There are no substantial differences between the different genders. The same applies to differences between offenders and victims.

Reoffending studies indicate (*Mielityinen* 1999, a quasi-experimental setting, controlling for offence type and prior criminality) that reoffending was generally lower in the mediation-group (56% against 62% in the control group). However, one cannot rule out the impact of selection processes, as those willingly participating in mediation have already shown signs of pro-social attitudes.

11 See especially Iivari 2010. See also Grönfors 1989, Järvinen 1993 and Iivari 2000.

C. Foster Care and child welfare interventions

Best interest of the child

The criterion for all child welfare interventions is the best interest of the child. Also, interventions in the event of offences are predicated on the fact that the child is endangering his or her future. These interventions comprise in the first instance *support interventions in community care*. The authorities should undertake community-based supportive measures without delay if the health or development of a child or young person is endangered or not safeguarded by their environment, or if they are likely to endanger their own health or development. The most intrusive measures are the transfer of guardianship, placements in a foster home or in residential or other (institutional) care. These come into question for example when the community-based measures are insufficient.

Child welfare interventions

The first step measures in child welfare consist of different open care measures, such as support interventions in community care. The authorities are obliged to undertake community-based supportive measures without delay if the health or development of a child or young person is endangered or not safeguarded by their environment, or if they are likely to endanger their own health or development. The officials are guided by the "principle of least intrusive measures". In less problematic cases these measures are usually limited to one or a series of discussions with the young offender and his parents. If it becomes apparent through these discussions that there are serious problems in the home (economic problems, internal conflicts, etc.), an attempt will be made to resolve these problems. The list of open care measures is extensive. In addition to economic and social support for the parents, they may include also psychological support and psychiatric services, substance abuse programs, school related work, structured open care programs for the children (for example MST), appointment of contact persons (mentors) etc.[12]

Should these measures prove to be insufficient, the authorities need to consider more intrusive measures.

12 See from the lists covering close to 30 different types of programs and interventions for Finland in Marttunen 2008 p.369-371.

Foster care orders

The most intrusive child welfare measures are transfer of guardianship and placement in a foster home or in residential care. Foster care orders can be imposed both on voluntary and involuntary basis. Most care orders are voluntary (the parents and/or the child agree on the matter). The conditions for involuntary care order and institutional placement are roughly similar in all Nordic countries, while the types and names of institutions vary in the Nordic countries.

In Finland an involuntary care order can be imposed under the following three criteria: (1) The child's health or development is risked either by (a) environmental reasons (often the parents' own behaviour and substance abuse problems) or (b) due to the child's own behaviour, (2) open care measures are deemed to be insufficient and (3) the care order is in the best interest of the child. The child's own behaviour refers to situations where the child is using intoxicants, committing more than petty criminal acts or other comparable behaviour is seriously endangering his/her development. In practice repeated minor offenses may serve as a ground for a care order (together with the other criteria), but a single offense for that purpose must be of a fairly serious nature. The role of criminal behaviour is, thus, subsidiary, but not irrelevant. The preliminary works of the 1983 Child Welfare Act point out that while repeated criminal acts may serve as grounds for an involuntary care order, care orders are not justified "solely for public protection" (Gov. prop. 13/1983, p.25-26).

Voluntary foster care orders are still issued by the child welfare board (leading social worker). Involuntary orders are decided by the administrative court on request of the leading social worker. The content of such a request is defined in detail by the law. It must include, among other things, a report of the open care measures tried so far, plans how to organize contacts with the child, his parents and close relatives, and a plan for the placement unit, and a report of the hearing of the parties (a child over 12 must always be heard during the process). Also the court hears the views of the parties involved. The case is to be handled as "urgent", a reasoned decision must be given with instructions for an appeal. In 2008 92 % of demands for a care order were accepted and 8 % rejected (Heino & Hiittola 2009). The appeal on the matter is taken to the Supreme Administrative Court. Foster care orders are in force until they are terminated by the decision of the leading social worker. The grounds for the care orders must be re-examined at least once a year in connection with the redrafting of the individual care plan. In addition, the parents and the child (over 12 years) have always the right to contest the care order and demand its termination from the leading social worker. For this request a reasoned decision must be given with a right to appeal to administrative court.

Child welfare institutions

To be taken into foster care means that the child is placed outside his/her home. This may mean many things. The system is fairly complex and consists of several different types of institutions with different units. The child may be placed in, the "custody" of the child's relatives, in another family, professional (private) family-homes, children's homes, special children's homes, juvenile homes, and reformatory schools. A clear majority of the children are placed in families and private family homes. For children in need of more intensive care and supervision there are also special children's homes and juvenile homes.

The total number of children of all ages and placed in institutions is around 10 000 (in 2007). One out of ten of these placements are classified as involuntary. Of the age-group 15-17 some 3300 children are placed in institutions, of which 400 involuntarily. The concept of an "institute" is to be understood in a broad sense. It includes also forms of supported housing and private family homes (with usually 1-3 children in care). The "Actual institutions" consist of children's homes, Juveniles homes and State reformatories. The latter places around 300 children, of which 200 are from the age group 15-17. Around 10-15 % of these placements are classified as involuntary. An effort is made below to put these figures in a comparative perspective with other Nordic countries.

State reformatory schools. Most secured institutions, designed for older children and teenagers are the state reformatory schools. State reformatory schools have traditionally served the function of the "last institution" in the chain of different child protection measures. This has now changed, as the reformatories have been specialized into different areas and developed their own working profile. Today, punitive motives have no role in the deciding of the placements. As a criterion, criminal offending is only indirectly involved as an indicator of self-endangerment of the well being of the child. The overriding principle for all child welfare actions is the best interest of the child. Neither are the reformatory schools closed institutions, in the sense the term is understood in most jurisdictions. However, there are restrictions for movement in various degrees (such as going to town), in order to guarantee participation in the daily teaching program, which is quite fixed. The list of possible restrictions and the pre-conditions for their application is defined in the law. The list in the law is exhaustive. There is no "general authority based on institutional powers" to interfere in the fundamental rights of institutionalized children. None of these restrictions are allowed to be used as punishments. As a rule, written decision is required with reasons provided for the use of any of these measures. The decision must be attached with instructions for appeal. In case of continuous absconding or serious threats for safety and security, more intrusive restrictions may be imposed under the framework of ISC (see below).

There are 6 state reformatory schools with around 300 children altogether. The average size of one school is 50 beds. However, the law prohibits having more than 25 beds in one building complex, and more than 7 beds in one unit. All children must have a room of their own. The majority of children also in the state reformatories are there on a voluntary

basis. Reformatory schools are first and foremost schools. The basic aim is to ensure and complete the curriculum of the ground-school and to pursue studies also after that.

Intensive specific care. The concept of "closed institution" disappeared from the Finnish child welfare legislation during the 1980s. Still, earlier practices to restrict the movement of children with serious behavioural difficulties continued in the state reformatories, but without clear legislative basis. After the 1995 constitutional reform, which required explicit legislative basis for any infringements of fundamental rights, new provisions for ISC were drafted in 2007. The term "intensive specific care" was chosen since the term "closed care" was deemed to be "inconsistent with the new constitution, international human rights commitments as well as the aims and nature of the proposed new type of child welfare working method" (Gov. Proposal 2007).

At the moment ISC provides the most intensive form of control under the Child Welfare Act. For this purpose there are small units with 3-6 beds in three reformatory schools and in one communal children's home. The overall number of beds with the required facilities for intensive care under the Child Protection Law runs at the moment in between 20-30.[13]

ISC is reserved for acute cases when the child for example seriously endangers his/her health or other people's health with substance abuse, by serious and continuing crime and no other form of the child protection measures is deemed to be sufficient. In practice the placement in ISC may take place in cases when the child is constantly absconding from his/her regular placement unit and thereby seriously endangers his/her own health or development. The aim of intensive care is to interrupt a circle of self-destructive behavior and to improve the child's own ability to take the responsibility of his/her own life. ISC is not to be used for punitive purposes. However, the freedom of movement and contacts to the outside world may be subjected to restrictions which the children may, undoubtedly, feel as punitive or repressive. For this reason the preconditions and process for ISC is defined in detail in the law. Constant book-keeping is required for actions and interventions as well as an assessment of their effects and impact on the child. The maximum duration for ISC is 30 days. This can be extended by a new decision by 60 days for exceptionally weighty reasons. The decision is based on multi-professional assessment.

The inmates cannot leave the unit without the company of an adult – the outer doors are locked. The teenagers study in the facilities of the intensive special care unit, separated from other students. In these units there is significantly more staff than in other student units. The average number of staff in 3-4 bed units is 12-14. The staff includes immediate educators with various education backgrounds. In addition, the children and teenagers placed in intensive special care units are able to use the services of residential school specialists and other supporting services.

13 See for the following presentation in more detail Pösö et al 2010.

Daily life in ISC is tightly scheduled. Central activities include school classes, group discussions and individual discussions, participations in daily household routines, and leisure activities. Children attend to normal school classes. Another distinctive feature is the constant presence of staff. This feature is assumably given different interpretations from the viewpoint of staff and the pupils. For the staff the "active presence of the staff" and the "constant effort to reach and uphold contact with child" presents a means for providing the child a "feeling of safety and security" as well as a method of building a functioning relation of trust and confidence. For some of the children these same activities may represent a feeling of constant supervision.

Closed care is usually associated with involuntary treatment. However, of the 71 placements in ISC in 2006-2007, over 70 % have been consensual in the sense that neither the parents nor the teenagers resisted placement in ISC. Defining the placements as consensual in this sense does not, of course, mean that the placement in ISC is something that the teenagers would have wished for or wanted. Still, this may reveal an interesting and distinct feature in the Finnish child protection system. Even serious forms of problem behaviour are seen as matters of treatment, care and education, to be approached from a consensual basis.

Placement decision is taken by the leading social worker. It must be based on a multi-professional assessment made by experts in education, social work, psychology and medicine. A separate statement in which all these aspects are represented is always needed. In cases of involuntary care, the decision must be made by the administrative court. The child (over 12 y) and his/her custodian must be heard. The decision may be reviewed by the appeal court. There is a procedure for a continuing assessment by a specific follow up group whether there is need to continue this form of care. The following must be included: staff, those involved in the multi-professional assessments and the child's own social worker.

At the moment there are around 20-30 places suitable for ISC.[14] The children and teenagers that are placed in the units of intensive special care are aged between 12-18 years with an average age little over 15 years. The most common reasons for placement in the units of intensive special care are cases classified as behavioural problems (83,0 %), absconding (59,6 %), use of intoxicants (39,7 %), and problems in school (35,5 %). Around half (in some studies around 70 %) have received psychiatric treatment. Three out of four have experienced previous placements in institutions.

14 In addition to four reformatory schools two psychiatric hospitals in Finland have same kind of special units that take care of children and teenagers who require special care on the grounds of the Law on Mental Health (see below). The city of Helsinki has also one corresponding unit of intensive special care. Moreover, some private child welfare organizations educate and take care of a few children and teenagers every year on the grounds of decisions on the need of special care – they do not have actual units of intensive special care.

Residential care in child welfare in numbers

The most common reasons for care-orders are linked to parental alcohol consumption and mental health problems as well as to various forms of family conflicts. The older the child, the more reasons are linked to the child's destructive behaviour.

In 2008 a separate analysis was conducted in order to find out the number of children who are placed in child welfare institutions against their own will and for reasons associated with their own behaviour. The results indicate that there are about 100 10 to 14-year-old and 150 15 to 17-year-old minors in child welfare institutions with such a background each year. At the same time the number of prisoners under the age of 18 varies around five to seven.[15]

This all means that the child protection system plays a far more important role also as a form of social control, as compared to the criminal justice system. In the Finnish model the criminal justice and the child welfare systems seem, in a way, to complement one another. Should the juvenile already be under the child welfare interventions, there is no need for more intrusive penal measures. Even repeated offending may be dealt by conditional sentences. The low use of both prison sentences and JPO is most probably explained by the fact that should the child already be placed in a child welfare institution, these measures hardly would improve her/his situation. The risks involved in this dualistic system relate to the supervision and monitoring of the child welfare practices. One has to take care of all necessary legal safeguards and secure that institutional care-orders are really used as a last resort, also under the child welfare.

15 See Marttunen 2008 and Kuula & Marttunen 2009.

Appendix: Statistics on sanctions

Table 1: Case-disposals and non prosecution by age groups, 2012

2004		15-17 years	18-20 years	Over 21 years
A.	Court disposals	3 527	7 657	5 003
B.	Disposals by courts and prosecutors	15 933	28 562	225 373
C.	Non prosecution (N) - as % of B - as % of A	1 025 6,4 29,1	655 2,3 8,6	4 251 2,0 8,9

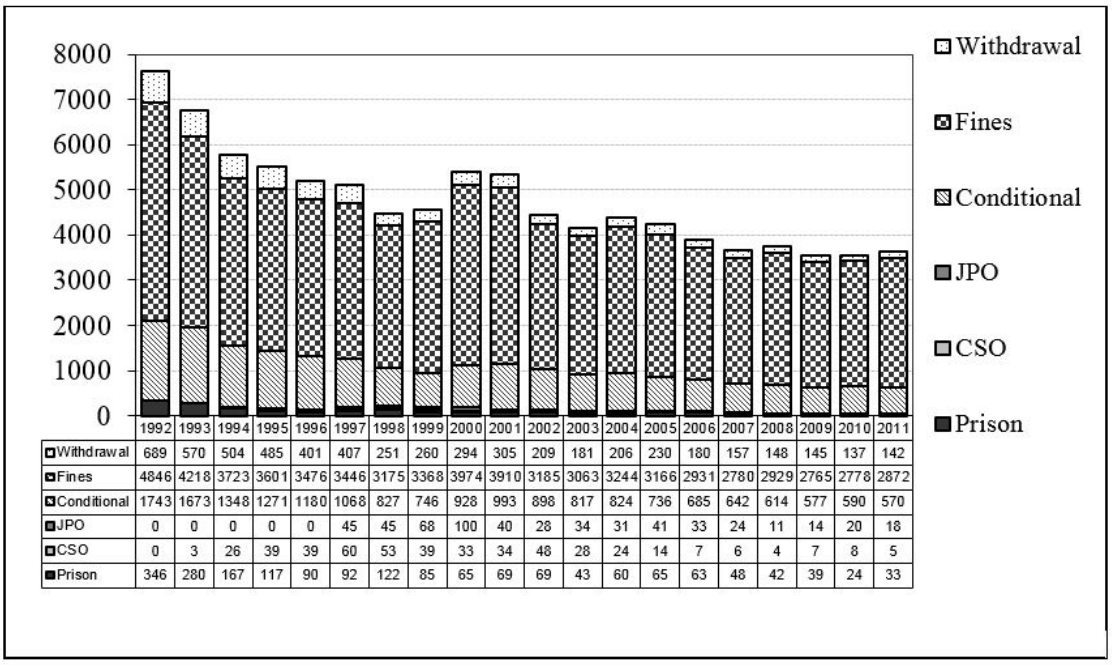
Source: Statistics Finland.

Table 2: Penalties imposed on different age groups in year 2011

	15–17 years		18–20 years		Over 21 years	
	N	%	N	%	N	%
Waiver	142	3,9	52	0,7	508	1,0
Fines (courts)	2 872	78,9	4 919	65,6	28 854	57,9
Conditional	570	15,7	1 989	26,5	12 516	25,1
Juvenile Punishment	18	0,5	0	0,0	0	0,0
Community service	5	0,1	176	2,3	2 315	4,6
Prison	33	0,9	364	4,9	5 626	11,3
Total (courts)	3 557	100	7 578	100	49 732	100
Prosecutor fines	12 406		20 905		174 368	
Population (ca)	191 000		194 000		3 940 000	

Source: Statistics Finland.

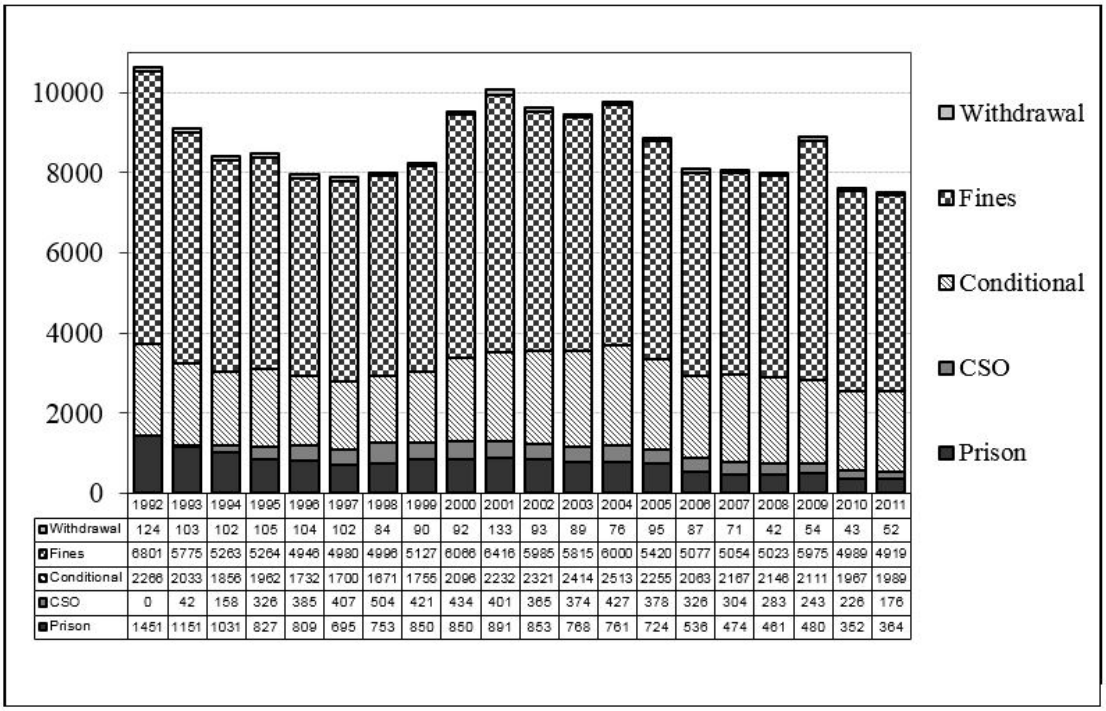
Figure 1: The use of different sentencing alternatives, 1992-2011 (15 to 17-year-olds)



	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Withdrawal	689	570	504	485	401	407	251	260	294	305	209	181	206	230	180	157	148	145	137	142
Fines	4846	4218	3723	3601	3476	3446	3175	3368	3974	3910	3185	3063	3244	3166	2931	2780	2929	2765	2778	2872
Conditional	1743	1673	1348	1271	1180	1068	827	746	928	993	898	817	824	736	685	642	614	577	590	570
JPO	0	0	0	0	0	45	45	68	100	40	28	34	31	41	33	24	11	14	20	18
CSO	0	3	26	39	39	60	53	39	33	34	48	28	24	14	7	6	4	7	8	5
Prison	346	280	167	117	90	92	122	85	65	69	69	43	60	65	63	48	42	39	24	33

Source: Statistics Finland.

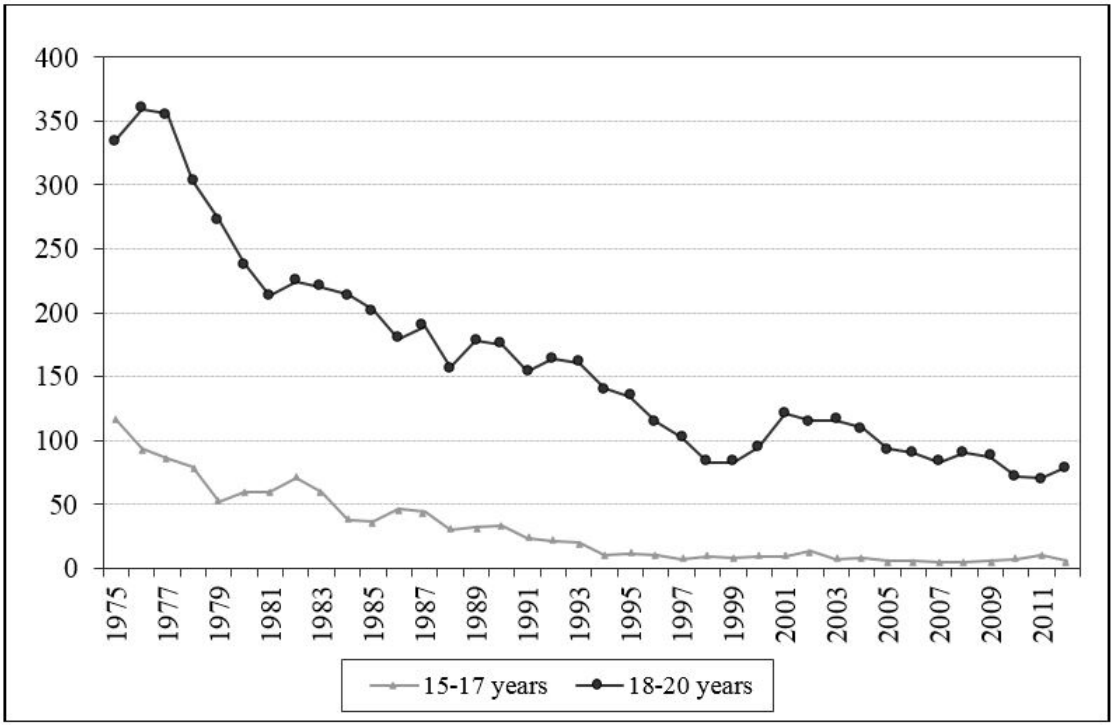
Figure 2: The use of different sentencing alternatives, 1992-2011 (18 to 20-year-olds)



	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Withdrawal	124	103	102	105	104	102	84	90	92	133	93	89	76	95	87	71	42	54	43	52
Fines	6801	5775	5263	5264	4946	4980	4996	5127	6066	6416	5985	5815	6000	5420	5077	5054	5023	5975	4989	4919
Conditional	2266	2033	1856	1962	1732	1700	1671	1755	2096	2232	2321	2414	2513	2255	2063	2167	2146	2111	1967	1989
CSO	0	42	158	326	385	407	504	421	434	401	365	374	427	378	326	304	283	243	226	176
Prison	1451	1151	1031	827	809	695	753	850	850	891	853	768	761	724	536	474	461	480	352	364

Source: Statistics Finland.

Figure 3: The number of juvenile prisoners, 1975-2012 (annual averages, absolute figures, remand included)



Source: Statistics Finland.

Bibliography

- Elonheimo, H. (2003) Restorative justice theory and the Finnish mediation practices. Paper Presented at the Third Annual Conference of the European Society of Criminology, Helsinki, 27-30 August 2003

- Hiitola, Johanna & Heinonen, Hanna 2009. Huostaanotto ja oikeudellinen päätöksenteko. Hallintooikeuksien ratkaisut huostaanottoasioissa 2008. Terveyden ja hyvinvoinninlaitos, Raportti 46/2009. Yliopistopaino, Helsinki 2009.

- Grönfors, M. (1989) Mediation – Experiment in Finland. In Crime Prevention and Intervention (ed) Albrecht, P-E & Backes, O). Berlin – New Yourk. .

- Iivari, J. (2000) Victim-offender mediation in Finland. In: The European Forum on Victim-Offender Mediation and Restorative Justice (Ed.): Victim-Offender Mediation in Europe. Making Restorative Justice Work. Leuven: Leuven University Press.

- Iivari, J. (2010): Oikeutta oikeuden varjossa. Rikossovittelun täytäntöönpanon arviointitutkimus. Terveyden ja hyvinvoinnin laitos, Helsinki.

- Järvinen, S. (1993) Rikosten sovittelu Suomessa. Oikeuspoliittisen tutkimuslaitoksen julkaisuja 116/1993. Helsinki.

- Kuula, T., and Marttunen M. (2009) Laitoksessa rikosten vuoksi: Selvitys alaikäisenä vastentahtoisesti huostaan otetuista. OPTL:n tutkimustiedonantoja 89/2009. National Research Institute of Legal Policy publication no. 89/ 2009. Helsinki: National Research Institute of Legal Policy. http://www.optula.om.fi/45951.htm.

- Lappi-Seppälä, T. (2001) Sentencing and Punishment in Finland: The Decline of the Repressive Ideal. In: Tonry, M., Frase, R. (Eds.): Punishment and Penal Systems in Western Countries. New York: Oxford University Press, p. 92-150.

- Lappi-Seppälä, T. (2006) Finland: A Model of Tolerance? In: Muncie, J., Goldson, B. (Eds): Comparative Juvenile Justice. Sage publications.

- Lappi-Seppälä, T. (2010) Finland. In: Dünkel, Frieder, Grzywa, Joanna, Horsfield, Philip, Pruin, Ineke (Eds.) in collaboration with Andrea Gensing, Michele Burman and David O´Mahony 2010. Juvenile Justice Systems in Europe. Corrent Situation and Reform Developments Vol 1-4. Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologia. Band 36. Forum Verlag Godesberg 2010.

- Lappi-Seppälä, T. (2012) Nordic Youth Justice: Juvenile Sanctions in Four Nordic Countries. In Crime and Justice: A Review of Research, vol. 40, ed. Michael Tonry & Tapio Lappi-Seppälä. Chicago: University of Chicago Press.

- Marttunen, M. (2008): Nuorisorikosoikeus (Juvenile Criminal Justice). National Research Institute of Legal Policy. Research reports 236/2008.

- Mielityinen, I. (1999) Rikos ja sovittelu. Valikoituminen, merkitys ja uusintarikollisuus. (Crime and Mediation. Selection of Cases, the Significance and Meaning of Mediation to the Participants, and Reoffending.) Helsinki: Oikeuspoliittisen tutkimuslaitoksen julkaisuja 167, 1999.

- Pösö, T., Kitinoja M., and Kekoni T. 2010. "Locking Up for the Best Interest of Child: Some Preliminary Remarks on 'Special Care.'" Youth Justice 10(3):245–57.

- Rantala, K. (2013). Mopolla sakkoja – tai niitä pakoon. In Hinkkane V. and Mäkipää L. (eds). Suomalainen kriminaalipolitiikka (Finnish Criminal Policy. Festschrift for Tapio Lappi-Seppälä). University of Helsinki. Forum Iuris 2013.

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