



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

JUST/2013/JPEN/AG/4573

*Snapshot
Spain*



Alternatives to detention for minors in conflict with the law. SPAIN

I.) TARGET GROUP.

Juvenile, also minor, under the age of majority: 14-17.

Age of (full) criminal responsibility: 18.

Minimum age of deprivation of liberty: 14.

Comparable statistical data:

Prosecutor office report 2014 (data of 2013) Measures imposed		
Open measures	Probation	10.085
	Reprimand	751
	Community services	4.697
	Cohabitation with another person, family or educational group.	483
	Not allowed to use motorbike or car driving licences, take away the right to obtain them, including administrative licenses for hunting or use of any weapons.	121
	Other	2.850
Total Open Measures		18.987
Deprivation of liberty	Closed imprisonment	754
	Semi-open imprisonment	3.079
	Open imprisonment	231
	Weekend stay	1.256
	Therapeutic imprisonment (in closed, semi-open and open regime).	523
Total Deprivation of Liberty		5.843
Total out-of-court means, through reconciliation or reparation (art. 19), or following consideration by the Technical Team that it would be beneficial to do so (art. 27.4)		6.687

II.) CHARACTERISTICS OF PENAL MEASURES APPLICABLE.

Crime and misdemeanour: The set of acts classified as offences (serious criminal offences) or faults by the Spanish *Penal Code* or in the *special penal laws*

Principal Punishments Imposed for Criminal Offences.

- **Pecuniary punishment** – daily rates. It does not exist in our minors' legislation. Civil responsibility is possible based on the damages derived from the crime committed (the minor along with their parents or legal representatives must jointly respond)
- **Probation** (this is the measure most frequently imposed in Spain): Maximum length 2 years. Probation is also imposed as a second part of the measure in cases of imprisonment (in these kinds of cases, the length of probation can be exceeded).
- **Community work:** Maximum length 100 hours, although in some cases, depending on the minor's age and in cases of more serious offences, this can reach 150 or 200 hours.
- **Cohabitation with another person, family or educational group.** This measure can also be imposed on a precautionary basis (until the hearing and without any time limit). It can not surpass the 3 year limit, or 6 years if the minor is over 16 years of age.

Types of custody:

- **Detention** - up to 48 hours (judicial detention up to 48 hours, police custody up to 24 hours)
- **Pre-trial detention** - According to the severity of the incidents, assessing the social and personal circumstances, the risk of absconding and recidivism in similarly serious cases.
Up to six months, could be extended by a maximum of three months (on demand of Prosecutors office, with a previous hearing with the solicitor by way of reasoned order)
- **Imprisonment (terms)** - *General rule: length of imprisonment measures can not last longer than 2 years (open, semi open, closed and therapeutic regime).*

Exceptions and general rules:

GENERAL RULES		EXCEPTIONS		
Organic Law 5/2000	No violence nor intimidation. No risk to human life or physical integrity. No participation in groups or gangs. Art. 9.1.	Serious offenses with violence or intimidation, risk to human life or physical integrity. Offence committed in group or gangs. Art 9.2	Very serious offenses. (Recidivism)	Offenses set out in the penal code with prison sentences of no less than 15 years (homicide, murder, rape, terrorism..)
If the crime was committed with 14 or 15 years.	2 years maximum. Closed regime can not be used.	3 years maximum. Closed regime can be used.	2 years maximum. Closed regime can be used.	1- 5 years. Closed regime compulsory. More than 2 offenses (one of them from the Art.10.2) (6 years)
If the crime was committed with 16 or 17 years.	2 years maximum. Closed regime can not be used.	6 years maximum. Closed regime can be used.	1 to 6 years. Closed regime compulsory.	1-8 years. Closed regime compulsory. More than 2 offenses (one of them from the Art. 10.2) (10 years)

- **Weekend Stay:** *Maximum length 8 weekends. Although in some cases, depending on the minors age, the seriousness of the offence and the way in which it was committed, it can be extended to 12 or 16 weekends.*

III.) When a crime is committed or respective information received...

STAGES OF CRIMINAL AND STANDARD PROCEEDINGS	POSSIBLE ALTERNATIVES FOR JUVENILE OFFENDERS
<p>PRELIMINARY INVESTIGATION</p> <p>Investigating the facts of the crime, the participation of the minor and the proposal of the most accurate measure in accordance with the minor's best interests is carried out by the juvenile prosecutor.</p>	<ul style="list-style-type: none"> - Withdrawal / release. <i>Art.17.5. When the detainee is brought to the Public Prosecutor, a decision must be made within the 48 hours following detention on either the minor's release, withdrawal of the case (referred to in the following article), or an investigation. This will then be put to the appropriate juvenile judge along with the correct precautionary measures, as stated in article 28.</i> - Withdrawal by correction in the family and education environment. <i>Art.18. The Public Prosecutor may withdraw the case when the acts consist of non-violent, less serious offences, intimidation or misdemeanour offences.</i> - Dismissal and closure of the file. Extrajudicial settlements (conciliation and reparation)



	<p><i>Art. 19. File dismissal because of reparation or conciliation between the minor and the victim.</i></p> <ul style="list-style-type: none"> - Precautionary measures (Art.28): <ul style="list-style-type: none"> • Probation. • Cohabitation with another person, family or educational group. • Not allowed to approach or contact the victim or their relatives, or anyone else determined by the judge.
<p>PROSECUTION DETERMINING THE RESPONSIBILITY OF THE MINOR AND AGREEMENT ON THE MOST ACCURATE MEASURE. This task is carried out by the Juvenile Judge, who will determine the guilt or innocence of the minor, and in the case of guilt, decides on the most accurate measure. (After the period of instruction has been completed)</p>	<ul style="list-style-type: none"> - Dismissal (Art.33). - Absolution. The Judge can absolve the minor. - Imposition of non custodial sentences (Art.7): <ul style="list-style-type: none"> • Community services. • Attendance at a day centre. • Probation. • Socio-educational tasks. • Outpatient treatment. • Cohabitation with another person, family or educational group. • Driving licence for both motorbikes and cars taken away, as well as the right to obtain them, and any administrative licenses for hunting or use of any weapons. • Not allowed to approach or contact the victim or their relatives or other people determined by the judge. • Absolute disqualification. - Suspension of the execution of the sentence. <p><i>Art.40. Suspension of the execution of the sentence.</i> <i>The judge responsible for the execution, having heard the public defender, the Public Prosecutor or counsel for the minor as the case may be, the technical team and the public entity of child protection and re-education representatives, may agree to deliberately suspend the execution of the sentence, when the measure imposed does not exceed two years, during a determinate time and up to a maximum of 2 years.</i></p>



EXECUTION (there is a condemnatory sentence which imposes an imprisonment term)

The execution is the fulfilling of the sentence and the imposed measures.

The execution of measures is carried out by the Public Entity and the control of the legality of the execution belongs to the Juvenile Judge.

Modification possibilities of the imposed measure of imprisonment.

– **Imposed measure modification.**

Art. 13. Modification / change of the imposed measure.

The judge... can at any moment drop the imposed measure, reduce its duration or substitute it for another, as long as the modification is made in the best interests of the minor and the reasoning behind this decision is sufficiently explained.

– **Substituting measures.**

Art. 51. Substituting measures.

Art.51.1. The judge responsible for the execution of measures, having heard the public defender, the Public Prosecutor or counsel for the minor as the case may be, the technical team and the public entity of child protection and re-education representatives, might decide to drop the imposed measures or substitute them for others which he believes are more suitable according to what is set out in the law. These new measures might have to be completed over the same amount of time or less than originally stated, provided that they could have also been imposed when initially dealing with the committed crime.

Art.51.3. The judge, having heard the public defender, the Public Prosecutor or counsel for the minor as the case may be, the technical team and the public entity of child protection and re-education representatives, could drop the measure imposed at any time that an agreement between both parties is reached and the minor reconciles with the victim (referred to in article 19 of the current law). This is so long as he judges that the act and the time already completed of the imposed measure sufficiently expresses the appropriate reproach for the crime committed.

