



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

*JUST/2013/JPEN/AG/4573*

*Snapshot*

*Italy*



**Alternatives to detention for juvenile criminal offenders  
ITALY**

**I.) Target group**

**Juvenile under the age of majority:** 14-17

**Age of (full) criminal responsibility:** 18

**Minimum age of deprivation of liberty:** 14

**Typical gender of children in detention:** 89% males and 11% females

**Comparable statistical data:**

**Tab. 1**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Total number of minors at the age of criminal responsibility (14 - 17) <sup>1</sup>	2.308.870	2.279.534	2.226.869	2.233.475	2.278.587
Juvenile signalled by Judicial Authorities to U.S.S.M. (Social Service Offices for minors) <sup>2</sup>	22.139	18.878	18.527	17.133	16.317
Total entrances of young offenders in Juvenile Penal Institutes	1.222	1.172	1.246	1.252	1.201
% of minors in pre trial detention in Juvenile Penal Institutes	/	79% (=926)	82% (=1020)	78% (=976)	81% (=979)
Total number of minors taken in charge by USSM		18.363	20.157	20.407	20.213
- precautionary measure	/	2.666	3.124	3.722	3.538
- probation		4.584	5.455	5.647	5.634
- alternative measures to detention		300	378	408	389

Source: Ministry of Justice – Juvenile Justice Department

**II.) Characteristics of penal measures applicable**

**Crime, also criminal offence** – Crime is that juridical fact forecast by law (principle of legality) to which the legal system relates as consequences a punishment.

**Principal punishments imposed for Criminal Offences**

• **Pecuniary punishment** –

Offenders who at time of commission of the offence were under age or hadn't, according to the criteria set out in the Criminal Code, the ability of discernment, can't be submitted to administrative sanctions (*Art. 2 Law 24<sup>th</sup> November 1981, n. 689*).

• **Imprisonment:** (cost 424,64 euro per day<sup>3</sup>)

Under 14 years: Art. 97 of the Italian Penal Code states that a person who has not reached the age of 14 at the moment when he or she committed a crime can't be punished

14 -21 years (imputable) – The same measures forecast for adults in the penal code are applied with some exceptions related to the rehabilitative function of sentences targeted to youngsters<sup>4</sup> but art. 98 of the Penal Code forecast the

<sup>1</sup> The data refers to 1<sup>st</sup> January of each following year.

<sup>2</sup> Social Service Offices for minors (U.S.S.M.) Provide young offenders with assistance in every stage of criminal proceedings. They also enforce measures against sexual abuse as well as those under the Hague Convention. They also disseminate information concerning the status of young offender under criminal proceedings and work out reintegration projects in cooperation with the Juvenile Judicial Authority. The U.S.S.M. play a supporting and monitoring role during the enforcement stage of non-custodial pre-trial measures made by the Judicial Authority against young offenders in cooperation with other juvenile justice services and with local bodies.

<sup>3</sup> Maximum cost. *Isabella Mastropasqua, Maria Maddalena Leogrande, Concetto Zanghi, Alessio Gili, Maria Stefania Totaro, Luca Pieroni (a cura di). "La recidiva nei percorsi penali dei minori autori di reato". Report di ricerca, Collana I numeri pensati.*

<sup>4</sup> Life sentence for under age is prohibited by the main international standard (i.e. art. 37 Convention of the rights of the child, New York 1989) that have been duly ratified by the Italian legislation.

application of extenuating circumstance for the imputable youth offender. Other Penal code articles of reference: 63,65,67,69.

• **Treatment measure:** the principles governing the treatment measures targeted to youth offenders are the ones governing the code of criminal procedures (D.P.R.448/88) i.e.

- Principle of suitability principle of minor offensiveness
- Principle of de-stigmatization
- Principle of residuality of detention
- Principle of self-selectiveness of the criminal lawsuit

Sentences and intervention addressed to youth offenders must tend to *youth's rehabilitation and re-inclusion*.

## Penal measures

### Types of custody:

- *police arrest* – A youth enters in the juvenile justice system as caught in the act of committing an offence (in flagrante) or as suspected to have committed an offence (police custody). The youth is hence accompanied to a First Reception Centre (CPA) and can stay there for a maximum of 96 hours.
- *pre-trial custody* – precautionary measure at high level of coercion consisting of imprisonment for a duration varying according to the committed offense and the age of the youth at the time of the fact. The pre-trial custody lasts for a minimum of two months and may be extended for a maximum of six months.
- *imprisonment of convicts* – see above. To be highlighted that juvenile offenders with sentence of detention can stay in the juvenile penal institution till 21 years of age (the crime of course was committed while under age). Once reached the age, they'll continue to execute the sentence in an adult prison.

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

<i>Stages of criminal proceedings and standard procedures</i>	<i>Alternatives, possible for (juvenile) offenders<sup>5</sup></i>
<p><b>Preliminary investigation</b></p> <ul style="list-style-type: none"> <li>- Notification of the crime and booking of the same in the appropriate register by the Public Prosecutor.</li> <li>- Starting of preliminary investigation conducted by the Public Prosecutor through the criminal investigation Department of the Police (under the supervision of the Judge of the preliminary investigations – GIP)<sup>6</sup></li> </ul> <p>Two the possible options:</p> <ul style="list-style-type: none"> <li>• Dismissal of the case</li> <li>• Indictment</li> </ul> <p>Indictment give origin to Preliminary Hearing.</p>	<p>Among preventive measures applicable at this stage alternative to detention and custody we highlight the following ones:</p> <ul style="list-style-type: none"> <li>• Accompaniment of the youth by <b>CPA</b> (first reception centre) where he can stay for a maximum of 96 hours.</li> <li>• Accompaniment of the youth by a <b>Ministerial or private Community</b></li> <li>• Accompaniment of the youth by his/her <b>parents residence</b> (Parents have the duty to monitor youth's behavior).</li> </ul>
<p><b>Preliminary Hearing</b></p> <p>The <i>Preliminary Hearing</i> is the most important hearing in the Juvenile Trial in which the Judge has a broad power of definition of the trial. This is the first contact that the juvenile offender has with the criminal process.</p> <p>The Court can decide to commit the minor for trial, find 'no grounds for prosecution', place the youth on Probation, or may apply an alternative sanction to detention.</p>	<ul style="list-style-type: none"> <li>• <b>Nonsuit for irrelevance of the fact</b> (Sentenza di non luogo a procedere per irrilevanza del fatto) Art.27 of D.P.R. 448/88. It states that if the offence is petty and when to proceed with the case would have negative effects on the minor's education, the Public Prosecutor may ask the magistrate to dismiss the case on the grounds of irrelevance of the offence. Furthermore, the judge, upon request by the Public Prosecutor, may apply a safety measure.</li> <li>• <b>Prescriptions</b> (Prescrizioni) Art.20 of D.P.R. 448/88. The Judge may give rules of conduct concerning studying, working or other activities which are useful to the minor's education, at the same time entrusting the minor to the check and assistance of the juvenile Services of the Justice Administration.</li> <li>• <b>Staying at home</b> (Permanenza in casa) Art.21 of D.P.R.</li> </ul>

<sup>5</sup> If we talk about alternatives measures to detention the Italian law (D.P.R.448/88 and Penal Code) considers those measures applied in phase of execution of the sentence allowing to reduce the time spent in penal institution (See the form. These are the same applied to adults and limit in any case the personal freedom of the youth). Given the aims of J.O.D.A. project we considered alternatives in a broader sense and included Probation as well as those preventive and precautionary measures applied in phase of preliminary investigation and preliminary hearing alternative to custody (that is applied only if a severe risk of subversion of evidence and attempt to escape exist or if the crime is considered a serious risk to society).

<sup>6</sup> In all the different phases detention is used only as last resort.

	<p>448/88). The judge may order the minor to stay at home, as a precautionary measure not involving detention. This implies the obligation for the minor to stay at his family home or at another place of private residence, with a wide discretionary power on the judge's side as for the studying or working needs, or for other activities which contribute to the minor's education, with surveillance duties entrusted to a parent or to the people whose home the minor is staying at.</p> <ul style="list-style-type: none"> <li>• <b>Placement in Community</b> (Collocamento in comunità) Art.22 of D.P.R. 448/88. The Judge may order the minors' placement within a community, which is a precautionary measure of an intermediate level between staying at home and detention, where great importance is given to initiatives for the re-socialization and social re-inclusion activated by local authorities and social private institutions.</li> <li>• <b>Probation</b> (Sospensione del processo e messa alla prova) Art. 28 D.P.R. n. 448/88. This measure can be obtained either at the Preliminary Hearing but also during the course of the trial. The probationary period may be as long as three years for a serious crime<sup>7</sup>.</li> <li>• <b>Judicial Pardon</b> (Perdono giudiziale) Art.32 of D.P.R. 448/88. This is a form of decriminalization applicable only once. In this case a pardon is applied when, having assessed the gravity of the offence and the individual criminal capacity, the magistrates presumes that minor will not commit any further offence. This measure remains on the minor's criminal record until he/she reaches the age of 21 years.</li> </ul>
<p><b>Debating Hearing (Accusatorial trial)<sup>8</sup> and eventual execution of the sentence</b> (In phase of execution of the sentence the alternatives applied to youths are the same forecast for adults).</p>	<ul style="list-style-type: none"> <li>• <b>Entrust to Social Services (art. 47 Penitentiary regulation)</b> can be disposed by the Re-entry Judge when the sentence doesn't exceed the 3 years and the measure can be useful to youth's rehabilitation reducing the risk of recidivism. As regards youths offenders they are submitted to the same legislation, however, for them the</li> </ul>

<sup>7</sup> During *Probation* and the *Extinction of sentence for irrelevance of the offence* the magistrate may impose prescriptions (Prescrizioni), which are aimed at making amends for the consequences of the offence and promoting reconciliation with the victim. During this phase and in phase of execution of the sentence VOM (Victim offender mediation) can be applied. To be highlighted that VOM can be applied as well in phase of preliminary investigation according to Article 9 of the D.P.R. no. 448/88 "Investigations/assessment on the personality of the minor" (Accertamenti sulla personalità del minorenne).

<sup>8</sup>In addition to the normal procedures, the Code also provides for other types of criminal law procedures, the so-called "*Alternative procedures*" that are five.

**a. Abbreviated trial** (Giudizio abbreviato). A defendant may ask, with the consent of the Public Prosecutor, for a decision to be pronounced on the basis of the evidence collected during the preliminary phase. If the judge considers it possible to adjudicate on the basis of the said evidence, he/she pronounces the judgement. Where a sentence is pronounced, the penalty is reduced by one-third.

**b. Bargaining the sentence** (Patteggiamento, Applicazione di pena su richiesta). When the envisaged sentence does not exceed two years, the defendant or the PM may ask for a given sentence to be applied. If the two parties agree and the judge considers the proposed sentence appropriate, he/she applies the negotiated sentence. The advantages for the defendants are that they are granted a reduction of up to one-third of the sentence, they do not have to pay Court costs and they are not subjected to any security measures. Anyway, PM can not close a case autonomously by means of a simplified trial or by reaching a simple agreement with the person being investigated or indicted, without the involvement of the Court. It is true that the Italian Law System also envisages simplified means of "negotiated" sentences between the prosecution and the defence. But it's always necessary for the Judge to control that they guarantee the principle of the obligation to take criminal action, which is a pillar of the Italian Criminal Procedure System. Thus, for example, according to the Italian System, the two parties can merely "propose" a negotiated sentence, while it is up to the Judge to decide on the adequacy of the proposed sentence. The sentence can only be executed if the Judge considers it appropriate.

**c. Proceeding by Decree** (Decreto penale di condanna). If the Public Prosecutor believes that only a pecuniary penalty should be applied, he/she asks the GIP to decide the case by Decree. If this request is accepted by the GIP, a Decree containing the sentence is issued. If the defendant appeals against the sentence, an ordinary criminal law procedure is instituted.

**d. Immediate trial** (Giudizio immediato). When there is conclusive evidence, the Public Prosecutor and the defendant can ask to pass immediately from the preliminary investigative phase to the Court hearing, without holding a preliminary hearing.

**e. Summary trial** (Giudizio direttissimo). This type of trial can be applied when an offender is caught red-handed (in flagrante delicto), or when the commission of an offence is confessed. The defendant appears directly by the Court, although he/she has the right to apply for an abbreviated trial or the bargaining of the sentence.

**Detention can be applied only when it proceeds for crimes not including manslaughter for which the law establishes a life sentence or detention not less than the maximum of 9 years.**

art. 12 prescribe the execution of alternatives in diurnal polifunctional services.

- **House arrest:** it allows offenders to serve their sentences in their own home when the minor have particular needs about health, study, work and family.
- **Semi-custody (art. 48 penitentiary regulation):** it consists in giving the offender the possibility to spend a part of the day outside prison in order to participate in educational, work or other activities that are useful for his/her social rehabilitation.
- **Early release (:** it is granted to those offenders that have participated in a re-educational pathway, and consists of a reduction of 45 days for every six months of detention effectively executed.