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# International Summaries

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## Detention Pending Trial and Educational Intent in the Case of Young Offenders

*West Germany emphasizes educational and therapeutic measures for juvenile offenders. Pretrial detention may conflict with therapeutic goals. The author assesses this possibility and discusses other options.*

By Michael Walter

### THE RELATIONSHIP BETWEEN DETENTION PENDING TRIAL AND EDUCATION ACCORDING TO THE JUVENILE CRIMINAL JUSTICE ACT

The major differences between criminal laws pertaining to adults and to juveniles is that educational measures are given primary importance in laws about juvenile offenders. Education refers to any steps intended to have a therapeutic effect on the psychological and sociological development of the offender.

The Juvenile Criminal Justice Act views the relationship between pretrial detention and the educational goal as an uncertain, but reconcilable one. According to the Act, pretrial detention should be imposed only when its intended effect (i.e., the prevention of escape, collusion, or continuation of criminal activities) cannot be achieved through other forms of intervention known for greater therapeutic value. For example, the Act provides for short-term stays in the therapeutic environment of homes for juvenile delinquents as alternatives to prison. Although the home appears to be the better alternative, pretrial detention and education do not exclude each other. If detention is necessary, it can also take place in a therapeutic framework.

### PRACTICAL IMPLEMENTATION OF THE LEGAL PROVISIONS

Implementation of the provisions of the Juvenile Criminal Justice Act is the exception rather than the rule. Some of these exceptions, however, are note-

worthy. In Uelzen, a small town in northern Germany, a special section in the 120-year-old courthouse jail cares for juveniles awaiting trial. The city of Freiburg offers individual and group therapy, instructional and recreational programs, and employment counseling to its young offenders. In Berlin, juveniles awaiting trial are housed in a reformatory rather than a conventional prison. In view of the large number of juvenile detentions (2,767 prisoners awaiting trial in 1976), such isolated attempts at uniting education and detention amount to little more than the proverbial "drop in the bucket."

### DETENTION PENDING TRIAL AND JUVENILE JUDGES

In addition to the conflict between the educational intention of the law and its implementation, there is a contradiction between the current lack of therapeutic value in pretrial detention and the therapeutic value that judges attribute to it. Often, juvenile judges will actually choose detention over other, more therapeutic measures because they believe it has an educational effect. The following points will illustrate this statement.

### The Anti-educational Character of Pretrial Detention

Pretrial detention is intended to assure that the accused is present for the trial and that the investigation and the execution of the sentence proceed smoothly. Rehabilitation is not its primary function. Pretrial detention is not merely lacking in educational value, it is actually anti-educational in character. Treating an offender before he had been tried involves a considerable legal problem. In initiating the treatment, the therapist will naturally try to deal with the behavioral deviancies which led to the accused's arrest. In this manner, the psychologist risks violating the legal con-

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cept that prisoners are to be treated as if they were innocent until proven guilty. Although the initiation of treatment does not necessarily affect the judge's decision, it still appears to anticipate a guilty verdict and is therefore objectionable. This problem is avoidable only through the limitation of educational endeavors.

The anti-educational aspect becomes even clearer if we consider the type of behavior provoked by pretrial detention. First, worrying about the approaching trial absorbs much of the prisoner's energy. Concern over the outcome results in a sense of insecurity which makes him particularly unreceptive and unwilling to learn. In addition, juveniles in pretrial detention are considered transitory, and the therapists, who have little prospect of successfully completing the treatment, are reluctant to make any deeper commitments.

Clearly, education during pretrial detention is possible only to a very limited degree and should focus on three basic tasks: (1) to counteract depression and assure the accused that he has not been entirely abandoned, (2) to provide incentives and rewards for socially acceptable behavior, especially in work and recreation, and (3) to provide the practical aid necessitated by sudden imprisonment.

It should be noted, however, that the structure of pretrial detention allows disciplinary measures (such as the limitation of reading materials and visits for juveniles under pretrial detention) to be labeled as educational measures. The danger resulting from such a proceeding is that the idea of education will be associated exclusively with this type of restriction and thereby jeopardize the offender's belief in the genuineness of any therapy.

## Various Educational Intentions Pursued Through Pretrial Detention

According to our thesis, pretrial detention is imposed as an educational measure in spite of its anti-therapeutic character. We shall now examine specific pedagogic intentions not covered by the Act which affect a judge's decision to impose pretrial detention.

Pretrial detention is a means of immediate crisis intervention. There are many reasons why a juvenile should not remain in the surroundings that contributed to his offense. In order to avoid any damaging influences from the environment, the juvenile is placed on pretrial detention.

Pretrial detention functions as the beginning of long-term reform treatment. At liberty, the juvenile resisted attempts to influence his behavior. He should, at least temporarily, experience the harshness of present and the threat of future prison life to increase his willingness to cooperate. In addition, pretrial detention gives the authorities the opportunity to determine whether effective treatment can be provided outside prison and which correctional alternatives are suitable.

## Indications That Functions of Pretrial Detention, Are Being Extended

The assertion that preventive detention is actually being used as crisis intervention and as a demonstration of the realities of prison life while determining an appropriate method of treatment must be proven. Although there are no case studies or interviews with juvenile court representatives, several facts indicate that our suspicions are not entirely unfounded.

Risk of escape to cover up unnamed reasons for confinement. According to statistics, the risk of escape constitutes the major justification for pretrial detention in West Germany, especially in the case of juveniles. There are several characteristics of the typical person on pretrial detention.

According to a study conducted in Uelzen, the juvenile on pretrial detention has had previous court experience; he is a 19-year-old male, unskilled and single, living with his parents, and accused of theft. If it is taken into consideration that a person of this age group usually has close ties to his peers, to one or both parents, and to a girlfriend, the chances of his running away are very slim. The prospect of a long prison term, which might precipitate a suspect's escape, is not as great for juveniles as for adults, at least in theft cases. The majority of young offenders on pretrial detention are socially disadvantaged and awkward in their relations with authorities; they have little in common with experienced criminals who might be suspected of clever manipulation or escape.

We suspect that the fear and reticence of juvenile suspects in dealing with public authorities are often interpreted as an intention to escape. The Juvenile Criminal Justice Act requires the judge to specify why he suspects such an intention, but, according to legal commentaries, the reasons that constitute a probable cause are very general. Lack of job or marriage ties, connections with dubious persons, previous convictions, probation, and indifference to law and order are the characteristics most often named, while such qualities as concern for family responsibilities supposedly signify a reduced risk. It is obvious that any juvenile with a criminal record could be suspected of harboring a desire to escape. Hence, a juvenile judge's decision in favor of pretrial detention because of the high risk of escape is not in violation of the law. There is no reason as yet to suspect that lower-class juveniles are stamped as higher risks simply because of their economic background. In assuming the risk of escape and imposing detention, the judges are probably motivated by the well-intended consideration that the accused must be prevented from becoming a hardened criminal.

Strong suspicion or certain guilt? While detention because of the risk of escape is usually based on vague evidence, the court's "strong suspicion" that the accused is indeed responsible for the offense can in some ways be considered an understatement. The normal usage of the term "suspicion" implies the possibility of the accused's innocence; the court's assessment of the offense has not been completed. In reality, there is usually little

doubt concerning the guilt of the accused. Even if the extent of his involvement (e.g., number of crime participants, number of offenses in a series, profit made, exact mode of perpetration) remains unclear, there is little doubt about the substance of the accusation. This is reflected in the small number of acquittals for all cases of pretrial detention. The number of juvenile acquittals is even lower since it is easier to obtain confessions from young people.

Again we must emphasize that, from the judge's point of view, this kind of detention is usually well intentioned. Often the first insight into the accused's personal circumstances convinces the authorities of severe problems; pretrial detention, although not ideal, seems the best solution.

Preventive detention as a preliminary treatment decision. If preventive detention implies the juvenile's criminality, a prison term after the trial would necessarily follow. Generally, this is not the case. According to estimates, only 49.5 percent of juveniles in West Germany receive jail sentences following detention.\* Although comprehensive figures on the juvenile offenders receiving treatment after pretrial detention are not available, indications are that they are high.

In any case, we can state with certitude that the possibility of avoiding any legal consequences after release from pretrial detention is small and the probability of receiving a prison sentence is high. However, a jail term is not the inevitable legal consequence of pretrial detention since various forms of outpatient therapy and counseling are frequently imposed. As a result, pretrial detention often marks the beginning of a more intensive treatment either in prison or on probation. A definite decision on treatment takes place only after the decision for pretrial detention. Therefore, the opinions formed about the juvenile during detention (including the effects of confinement) probably affect the decision about the therapy.

The extended functions of pretrial detention indicated in the three sections above may be summarized as follows: the personal traits describing a high-risk offender are also those which make immediate therapeutic crisis intervention necessary. We may assume that this is the reason that the risk of escape is used so frequently to provide an acceptable rationale for pretrial detention. As a rule, the justification for instructing an endangered juvenile in fundamental social norms (i.e., the society's laws) is found in the fact that he is in

\*Translator's note: Although rarely acquitted, juveniles who have served pretrial detention often receive probation or short prison terms which are considered fulfilled with the already served detention period.

jail. In this respect, pretrial detention constitutes the beginning of a treatment program that has not found its concrete form. If we consider pretrial detention to be the first phase of an extended treatment, certain therapeutic functions (removal from present social environment, introduction to the reality of prison life, determination of further treatment possibilities) are undeniably present. Such functions—partly intended for immediate results, partly for future rehabilitation—can best be classified by the terms "crisis intervention" and "introduction to therapy."

#### ALTERNATIVES TO PRETRIAL DETENTION-- THE JUDGE'S DILEMMA

Pretrial detention is usually preferred to the alternatives provided by the Act because the therapeutic accommodations (homes, reformatories) envisaged by the law seldom exist. It is regrettable that alternatives to pretrial detention cannot be extended to the great number of suspected young adult offenders. Finally, commitment to an ordinary reformatory is not always advisable since juveniles charged with serious crimes might disturb the normal functioning of the institution.

The best solution for the future appears to be the establishment of special facilities to suit the particular needs of those who must be removed from their normal environment. Such closed facilities could be used to handle both juveniles and young adults.

#### RETURNING PRETRIAL DETENTION TO A SUBORDINATE POSITION

We have to assume that pretrial detention will never be entirely replaceable; however, it can be restored to its former subsidiary position by the adoption of more efficient alternatives. This will take time because the required facilities do not yet exist. We suggest that any alternative provisions also include offenders between 18 and 21 years of age.

The legal prerequisites for imposing pretrial therapeutic confinement would be extended to include the following: (1) immediate crisis intervention: the offender's developmental irregularities can be treated only by his prompt removal from the present social environment, and (b) stepping stone for long-term therapy: the preliminary evaluation of the offender indicates that extended treatment will be necessary.

These suggestions are not intended to promote more pretrial confinement of young people; rather, the current rationale for confinement should be officially replaced by legal provisions that reflect the educational intentions of the judges.