http://www.coe.int/tcj

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 26/02/2013
[PC-OC\Docs 2013\PC-OC (2013)2]

PC-OC (2013) 02 Bil

EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS

COMITÉ D'EXPERTS
SUR LE FONCTIONNEMENT
DES CONVENTIONS EUROPÉENNES DANS LE DOMAINE PÉNAL
(PC-OC)

Examples of national legislation and procedures with regard to conditional release and measures involving deprivation of liberty

Exemples de législation et de procédures nationales concernant la libération conditionnelle et des mesures privatives de liberté

STATES / ETATS

ARMENIA / ARMENIE

Information on national legislation of the Republic of Armenia and procedures with regard to conditional release and measures involving deprivation of liberty

Extract from the Criminal Code of the Republic of Armenia

Article 76. Exemption from punishment on parole.

1. The person sentenced to imprisonment or disciplinary battalion can be released on parole, if the court finds that for his correction there is no need to serve the remaining part of the punishment. Also, the person can be completely or partially exempted from supplementary punishment. When exempting from punishment on parole, the court also takes into account the fact of mitigation of damage to the aggrieved by the convict.

2. When applying exemption from punishment on parole, the court can impose on the person the obligations envisaged in part 5 of Article 70 of this Code, which the person will carry out during the unserved part of the punishment.

3. Exemption from punishment on parole can be applied only if the convict has actually served:

1) no less then one third of the punishment for not grave or medium-gravity crime;
2) no less than half of the punishment for a grave crime;
3) no less than two thirds of the punishment for a particularly grave crime, also, of the punishment assigned to the person previously released on parole (if the parole was canceled on the grounds envisaged in part 6 of this Article), with the exception of cases provided by point 4 of the current part of the article.
4) no less then one fourth of the punishment for commitment of crimes provided by the following articles of the current Code: Art. 104 (2) murder with aggravating circumstances, Art. 132 (2) human trafficking with aggravating circumstances, Article 132.2 (2)(3) Trafficking of a child or a person deprived of understanding the nature and significance of his/her act because of a mental breakdown, with aggravating circumstances, Art. 138 (3) Rape, with aggravating circumstances, 139 (2) violent sexual actions, with aggravating circumstances, 175(2) robbery with violence, with aggravating circumstances, 217 (2)(3) terrorism, with aggravating circumstances, Art. 218(2) taking hostages, with aggravating circumstances, Art. 221(2)(3) Hijacking or capture of an aircraft, ship or train, with aggravating circumstances, Art 222(1) Banditry, Art. 226(3) Illegal turnover of narcotic drugs or psychotropic materials with the purpose of sale, with aggravating circumstances, Art. 269 (3) Theft or extortion of narcotic drugs or psychotropic materials, with aggravating circumstances, Art 299(1) High treason, Art. 305 Assassination of a state, political or public figure, Art. 384(1)(2) Aggressive war, Art. 391(2) Inaction or making an illegal command during armed conflict, with aggravating circumstances, Art. 392 Crimes against human security, Art. 393 Genocide, Art. 394 Ecocide.

4. The actual term of imprisonment served by a person can not be less than 3 months.

5. A life-server can be released on parole, if the court finds that the person does not need to serve the punishment any longer and has in fact served no less than 20 years of imprisonment.

6. If during the unserved period of the punishment the convict

1) Maliciously avoids fulfilling the obligations provided by the court when exempting from punishment on parole, then the court, with the motion by the body in charge of the control over the sentenced person's behavior, makes a decision of elimination of exemption from punishment and continuation of the unserved part of the punishment;

2) commits a negligent crime, then the court decides the issue of keeping or elimination of parole
3) commits a willful crime, then the court assigns a punishment based on the rules envisaged in Article 67 of this Code. If a crime through negligence has been committed, the same rules are used to assign punishment and the court eliminates the parole.

7. If a life-server deliberately commits a new crime, which is punishable by imprisonment, the period mentioned in part 5 of this Article is suspended until the expiry of the term for the new punishment.

Article 25. Insanity.

1. The person who was in the state of insanity when committing a socially dangerous crime is not liable to criminal liability, i.e., the person could not understand the dangerous nature of one's actions (inaction) or control one's actions as a result of chronic mental illness, temporary mental disorder, mental retardation or other mental disease.

2. Forced medical measures can be imposed by the court with respect to the person who committed socially dangerous actions in an insane state.

3. Also not subject to punishment, is the person who committed a crime in the state of insanity, however, had fallen mentally ill before sentencing by the court, which deprived him of the capability of understanding the actual nature and significance of his actions (inaction) or controlling them. Forced medical measures can be imposed by the court with respect to such a person, and after recovery this person can be subjected to punishment.

Article 26. Limited sanity.

1. A sane person who, due to mental disorder, when committing the crime could not entirely understand the actual nature of one's action (inaction) and its social danger, or control one's actions, is subject to criminal liability.

2. Limited sanity is taken into account as a mitigating circumstance when imposing the punishment and can become the ground for the enforcement of medical measures, parallel to the punishment.

Measures of medical enforcement.

Article 97. Grounds for application of medical enforcement measures.

1. The court can apply medical enforcement measures in relation to the person who:
1) committed the act envisaged in an article of the Special Part of this Code in an insane state.
2) Who after the committal of the crime develops such a mental disorder which makes assignment or implementation of the punishment impossible.
3) Who committed a crime in the state of limited sanity.
4) Who committed a crime and has been recognized as one in need of treatment against alcohol or drug addiction.:

2. Medical enforcement measures in relation to persons mentioned in part 1 of this Article are assigned only when the mental disorder is related to the danger of inflicting other essential damage or to the danger for other persons or themselves.

3. The procedure of application of medical enforcement measures is established by laws

4. The court can submit necessary documents to health-care bodies in relation to the persons mentioned in part 1 of this Article whose mental state is not dangerous, to solve the issue of treatment of these people or sending them to neurological institutions.

Article 98. Types of medical enforcement measures.

1. The types of medical enforcement measures are:
   1) outpatient supervision by psychiatrist and enforced treatment;
   2) enforced treatment in general psychiatry hospitals;
   3) enforced treatment in special psychiatry hospitals;

2. The court can assign in addition to punishment a outpatient supervision by psychiatrist and enforced treatment for those convicted for committal a crime in the state of mental disorder not ruling out sanity, but who need treatment against alcohol, drugs or mental disorder not ruling out sanity.

Article 99. Outpatient supervision by psychiatrist and enforced treatment.

Outpatient supervision by psychiatrist and enforced treatment can be assigned if the person in his mental state does not need to be admitted to a psychiatry hospital.

Article 100. Enforced treatment in psychiatry hospital.

Enforced treatment in psychiatry hospital can be assigned, if the state of mental disorder of the person requires treatment, care, such conditions of keeping and supervision which can be implemented only in a psychiatry hospital.

Article 101. Assignment, change and termination of enforced medical measures.

1. When assigning enforced medical measures the court takes into account the mental disorder of the person, the nature of committed act and the degree of danger for the society.

2. In case of the person's recovery or change of his illness when there is no need in enforced medical measure, the court, based on the conclusion of the medical institution, makes a decision to terminate the application of these measures.

3. Based on the conclusion of the medical institution, the court can decide also to change the type of the enforced medical measure.

Article 102. Offsetting the period of application of enforced medical measures.

In case of treatment of a person whose mental disorder occurred after committing a crime, when assigning or resorting the serving of the punishment, the period of application of enforced medical measures in the psychiatry hospital is offset to the punishment, calculating one day in the psychiatry hospital as equal to one day of imprisonment.

Article 103. Enforced medical measures added to execution of punishment.

1. In cases provided by part 2 of Article 98 of the current Code, enforced medical measures are applied at the place of imprisonment, and in relation to convicts sentenced to other types of punishment, in outpatient medical institutions that have psychiatric care.

2. Termination of application of enforced medical measures together with execution of punishment is realized by the court, by the motion of the body executing the punishment, based on the conclusion of a commission of psychiatrists.

AUSTRIA/AUTRICHE

According to Austrian Law the decision on conditional release is taken by the competent regional court not before having served half of the sentence imposed if there is a positive prognosis that the person will refrain from further criminal behaviour. When examining conditional release accompanying measures such as the assignment of a probation officer, instructions (to provide compensation for the damage caused by the offence, to undergo a specific training, to be treated for drug addiction, etc.) shall be taken into account. The person has to be released indicating a period of probation if there is reason to believe that he/she will refrain from further criminal behaviour (Section 46 para 1 of the Criminal Code). Having served half, but not yet two thirds of the sentence imposed conditional release can only be refused if in the light of the seriousness of the act committed the further enforcement of the sentence is deemed to be necessary on an exceptional basis to prevent other possible perpetrators from criminal behaviour (Section 46 para 2 of the Criminal Code).

Conditional release is also possible from certain measures involving deprivation of liberty. Mentally ill offenders can be released on parole, if the warning to commit the person to an institution together with a continued medical treatment after release and measures such as the assignment of a probation officer, instructions, etc are considered sufficient - taking into account the personality of the offender, his/her state of health, his/her previous life, the nature of the offence committed, the success of a medical treatment during detention and chances of a positive future life – to eliminate danger emanating from the mentally ill offender. Mentally ill offenders who can be held responsible for the crimes committed can be released from the measures only together with a release from the sentence imposed (Section 45 para 1 of the Criminal Code) Offenders addicted to drugs or alcohol can be committed to a specific institution. A release from this measure, which must not exceed two years, is also possible together with a release from the sentence imposed if there is reason to believe, that the warning to commit the person to an institution together with measures such as the assignment of a probation officer, instructions (in particular to be treated for addiction) are sufficient to overcome the addiction (Section 45 para 2 of the Criminal Code).

A conditional release from other measures, such as a commitment to an institution for dangerous re-offenders is not possible under Austrian law (Section 45 para 4). .

FINLAND / FINLANDE

In Finland transfer of sentenced persons is regulated by the Act on International Co-operation in the Enforcement of Certain Penal Sanctions. According to Article 1 of the Act Finland can enforce a foreign judgment which the person has been left without punishment but is imposed to involuntary psychiatric treatment. And vice versa – a person with such a sanction can be transferred from Finland to another state.

GERMANY / ALLEMAGNE

Conditional release from imprisonment is regulated in the following provisions:

Section 57 (1) of the German Criminal Code (hereinafter referred to as StGB) provides that the court shall suspend execution of the remainder of a fixed term of imprisonment and grant probation, if two thirds of the imposed sentence, but not less than two months, have been served (no. 1), the release is appropriate considering the security interests of the general public (no. 2), and the convicted person consents (no. 3). To be considered in making the decision are, in particular, the personality of the convicted person, his/her previous history, the circumstances of the offence, the importance of the legal interest endangered should he/she re-offend, the conduct of the convicted person while in custody, his/her living circumstances and the anticipated effects of the suspension of the remainder of the sentence on him/her.

The court may also suspend execution of the remainder of the prison sentence after half of a fixed-term of imprisonment has been served, but not less than six months thereof (section 57 (2) StGB), if the convicted person is serving his/her first term of imprisonment, such term not exceeding two years (no. 1), or a comprehensive evaluation of the offence, the personality of the convicted person and his/her development while in custody show that special circumstances exist (no. 2), and if the remaining requirements of section 57 (1) StGB have been fulfilled.

In accordance with section 57a (1) StGB the court shall suspend execution of the remainder of a sentence of imprisonment for life and grant probation, if fifteen years of the sentence have been served (no. 1), the particular seriousness of the convicted person's guilt does not require its continued execution (no. 2); and the requirements of § 57 (1), first sentence, nos. 2 and 3 StGB are met. Section 57 (1), second sentence, and (6) StGB shall apply mutatis mutandis. If imprisonment for life has been imposed as an aggregate sentence, section 57b provides that the individual offences shall be comprehensively evaluated in determining the particular seriousness of the guilt (section 57a (1), first sentence, no. 2 StGB).

Conditional release in the case of placement in a psychiatric hospital (section 63 StGB), in an institution for withdrawal treatment (section 64 StGB) or in preventive detention (section 66 StGB) is governed by section 67d (2) StGB. It states that if no maximum period has been provided or the period has not yet expired, the court shall suspend the measure on probation if it can be expected that the person subject to the measure will not commit any further unlawful acts if released. If a term of imprisonment is executed prior to a simultaneously ordered placement [this applies to preventive detention], the court shall review, before execution of the term of imprisonment has been completed, whether the purpose of the measure still requires the placement concerned [that means, whether the person subject to the measure still poses a danger to the general public]. If that is not the case, the court shall suspend the execution of the placement on probation (section 67c (1) StGB).

Apart from suspension on probation, such placements shall be terminated according to the following provisions:

Placement in an institution for withdrawal treatment may not exceed a period of two years (section 67d (1) StGB). If the maximum period has expired, the person concerned shall be released and the measure shall thereby be terminated (section 67d (4) StGB). The court shall also declare the placement in an institution for withdrawal treatment terminated if the prerequisites of section 64 no longer apply (section 67d (5) StGB). If, after the execution of the placement in a psychiatric hospital has begun, the court finds that the prerequisites for the measure no longer apply or that the continued enforcement of the measure would be disproportionate, the court shall declare it terminated (section 67d (6) StGB). If a person has spent ten years in preventive detention, the court shall declare the measure terminated and order

his/her release if there is no danger that the person concerned will, due to his/her propensity, commit serious offences which would inflict severe mental or physical harm on the victims.

Section 67e (1) StGB provides that the court may review at any time whether the further enforcement of the placement in preventive detention should be suspended or whether it should be declared terminated. It is obliged to do so before the expiry of fixed time-limits. The time-limit shall be six months in the case of placement in an institution for withdrawal treatment, one year in the case of placement in a psychiatric hospital and two years in the case of placement in preventive detention (section 67e (2) StGB).

It should be noted, however, that the Act on the Nationwide Implementation of the Distance Requirement in the Law of Preventive Detention of 5 December 2012 (Federal Law Gazette, Part I, page 2425 et seq.) will amend the provisions on preventive detention as of 1 June 2013. In particular, additional reviews of the placement in preventive detention will be required.

The newly created section 66c (1) no. 1 StGB essentially provides that preventive detention will be executed in institutions which offer individualised care to the person under placement – including, in particular, psychiatric, psycho-therapeutic and socio-therapeutic treatment – the purpose of which is to reduce his/her dangerousness to the general public in order for execution of the measure to be suspended on probation or declared terminated as early as possible. If the court has ordered placement in preventive detention in the judgment, made a deferred or subsequent order for placement in preventive detention or reserved the option to order preventive detention in the judgment, the offender has to be offered such a treatment already during the (preceding) execution of the prison sentence, the aim being that the execution or the order of placement in preventive detention should, as far as possible, be made unnecessary.

The new version of section 67c (1), first sentence, no. 2 StGB provides that the execution of preventive detention will also be suspended on probation at the end of the preceding execution of the prison sentence (i.e. that execution of preventive detention will not even begin), if the placement would be disproportionate because the offender was not offered sufficient care within the meaning of section 66c (2) in conjunction with section 66c (1) no. 1 StGB (new version).

The new version of section 67d (2), second sentence StGB provides for the suspension of any ongoing execution of preventive detention, if continued execution would be disproportionate, because the person under placement was not offered sufficient care within the meaning of section 66c (1) no. 1 before the expiry of a period of six months at the most, as set by the court.

Furthermore, the interval for the periodic review of the placement in preventive detention will be reduced by the new version of section 67e (2) StGB from two years to one year; after ten years of preventive detention it will be reduced to nine months.

POLAND / POLOGNE

Act of 6 June 1997

The Penal Code
GENERAL PART

Chapter VIII.
Measures connected with the placing the perpetrator under probation

Article 66. § 1. The court may conditionally discontinue the criminal proceedings if the guilt and social consequences of the act are not significant, the circumstances of its commission do not raise doubts, and the attitude of the perpetrator not previously penalised for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that even in the event of the discontinuance of the proceedings, he will observe the legal order and particularly that he will not commit an offence.

§ 2. Conditional discontinuance shall not be applied to the perpetrator of an offence for which the statutory penalty exceeds 3 years deprivation of liberty.

§ 3. In the event that the injured party has been reconciled with the perpetrator, the perpetrator has redressed the damage or the injured party and the perpetrator have agreed on the method of redressing the damage, the conditional discontinuance may be applied to a perpetrator of an offence for which the statutory penalty does not exceed 5 years deprivation of liberty.

Article 67. § 1. The conditional discontinuance shall be made for the term of probation which is between one and two years, which shall run from the date the judgement becomes valid and final.

§ 2. In discontinuing conditionally the criminal proceedings, the court may, in the probation period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.

§ 3. In discontinuing conditionally the criminal proceedings, the court shall obligate the perpetrator to redress the damage in whole or in part or the court may impose on the perpetrator duties mentioned in Article 72 § 1 section 1-3, 5, 7a or 7b, and additionally, the court may adjudicate pecuniary consideration as specified in Article 39 section 7 and an interdiction of driving motor vehicles mentioned in Article 39 section 3, up to 2 years. Imposing a duty on the perpetrator of a crime committed with the use of violence or unlawful threat with regard to a person close to the perpetrator mentioned in Article 72 § 1 section 7b, the court shall specify the way of frequenting of the perpetrator with the injured.

§ 4. The provision of Article 74 shall be applied accordingly.

Article 68. § 1. The court shall resume the criminal proceedings, if the perpetrator has during the probation period committed an intentional offence, for which he has been validly and finally sentenced.

§ 2. The court may resume the criminal proceedings if the perpetrator during the probation period flagrantly breaches the legal order, and in particular if he committed an offence other than that specified in § 1, evades supervision, does not perform the obligations or penal measure imposed or if he does not fulfil the settlement concluded with the injured person.

§ 3. The court may resume the criminal proceedings if, after the decision on the conditional discontinuance was rendered but before it became valid and final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The criminal proceedings conditionally discontinued may not be resumed any later than 6 months after the expiration of the probation period.

Article 69. § 1. The court may conditionally suspend the execution of a penalty of deprivation of liberty of up to 2 years, restriction of liberty or a fine adjudicated as a one-off penalty, if it is regarded as sufficient to attain the objectives of the penalty with respect to the perpetrator, and particularly to prevent him from relapsing into crime.

§ 2. In suspending the execution of a penalty, the court shall primarily take into consideration the attitude of the perpetrator, his personal characteristics and conditions, his way of life to-date and his conduct after the commission of the offence.

§ 3. Suspension of the execution of the penalty shall not be applied to the perpetrator as specified in Article 64 § 2, unless there is an exceptional case justified by extraordinary circumstances; suspension of the execution of the penalty specified in Article 60 § 3 through 5 shall not be applied to the perpetrator as specified in Article 64 § 2.

§ 4. Suspension of the execution of the penalty or fine shall not be applied to the perpetrator of an act of a hooligan nature. With regard to the perpetrator of an act of a hooligan nature and the perpetrator of a crime defined in Article 178a § 4, the court may conditionally suspend the execution of the punishment of the depravation of liberty specifically in justified cases.

Article 70. § 1. Suspension of the execution of a penalty shall be granted for a probation period, which runs from the time the sentence becomes valid and final and is for:

1) from 2 to 5 years - in the case of a conditional suspension of the execution of a penalty of deprivation of liberty,
2) from one year to 3 years - in the case of a conditional suspension of the execution of a fine or a penalty of restriction of liberty.

§ 2. In the case of the conditional suspension of the execution of a penalty with respect to a perpetrator who is a young offender or the one specified in Article 64 § 2, the probation period is from 3 to 5 years.

Article 71. § 1. In suspending the execution of the punishment of the depravation of liberty, the court may adjudicate a fine at the amount of up to 270 daily rates, in the event that the imposition of such penalty on a different ground is not possible; in suspending the execution of the punishment of the depravation of liberty, the court may adjudicate a fine at the amount of up to 135 daily rates.

§ 2. In the event of ordering the execution of the penalty of the deprivation or restriction of liberty, the fine adjudicated under § 1 shall not be subject to execution; the penalty of deprivation or restriction of liberty shall be reduced by the number of days equal to the number of daily fines paid, rounded up to the nearest full day.

Article 72. § 1. In suspending the execution of a penalty, the court may obligate the sentenced person :

1) to inform the court of the probation officer about the progress of the probation period,
2) to apologise to the injured person,
3) to carry out a duty incumbent upon him in order to provide support for another person,
4) to perform remunerated work, to pursue an educational activity or train himself for an occupation,
5) to refrain from abusing alcohol or using other intoxicants,
6) to submit to treatment, specifically to detoxification or rehabilitation, or therapeutic treatment,
6a) to participate in corrective and educational programmes,
7) to refrain from frequenting specified community circles or places,
7a) to refrain from frequenting with the injured or other persons in a specific manner or approaching the injured or other persons,
7b) to leave a place shared together with injured person,

8) to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence.

§ 1 a. in the event that the duty mentioned in § 1 section 7b is imposed on the perpetrator of a crime committed with the use of violence or unlawful threat with regard to a person close to the perpetrator, the court shall specify the manner of frequenting the perpetrator with the injured.

§ 2. The court may obligate the perpetrator to redress the damage in whole or in part, unless it has adjudicated a penal measure as specified in Article 39 section 5, or to pay a pecuniary consideration as specified in Article 39 section 7.

Article 73. § 1. In suspending the execution of a penalty, the court may, in the probation period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.

§ 2. The placing under supervision is mandatory with respect to a young perpetrator of an intentional offence, perpetrator specified in Article 64 section 2, and with respect to the perpetrator of an offence committed on the basis of sexual orientations disorders.

Article 74. § 1. The time and manner of execution of the imposed obligations, specified in Article 72 shall be determined by the court after hearing from the sentenced person; the imposition of the obligation specified in Article 72 § 1 section 6 shall require the additional consent from the sentenced person.

§2. If educational considerations so warrant, the court may, during the probation period, institute, extend or modify the obligations imposed on a person sentenced to a deprivation of liberty with a conditional suspension of its execution, as mentioned in Article 72 § 1 sections 3 through 8, or release him from these obligations (except the obligation specified in Article 72 § 2), and likewise either place the sentenced person under supervision or release him from the aforesaid.

Article 75. § 1. The court shall order the execution of the penalty, if the sentenced person during the probation period, committed an intentional offence similar to the previous one, for which he has been validly and finally sentenced for a penalty of deprivation of liberty.

§ 1 a. The court shall order the execution of the punishment if the person sentenced for a crime committed with the use of violence or unlawful threat with regard to a person that is close to the perpetrator or to a juvenile living with the perpetrator during the probation period grossly violates law by repeated use of violence or unlawful threat with regard to a person that is close to the perpetrator or to a juvenile living with the perpetrator.

§2. The court may order the execution of the penalty, if the sentenced person in the probation period flagrantly breaches the legal order, and, in particular, if he committed an offence other than that specified in §1, has not paid the fine, has evaded supervision, or failed to fulfil the obligations or penal measures imposed.

§ 3. The court may order the execution of the penalty if, after the sentencing decision was rendered but before it became valid and final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The order to execute the penalty may not be issued any later than 6 months after the end of the probation period.

Article 76. § 1. The sentence shall be expunged by virtue of law 6 months from the termination of the probation period.

§ 2. If a fine or a penal measure were imposed upon the sentenced person, the expunction of the sentence may not occur before the execution, remission or prescription thereof; this shall not be applied to the penal measure specified in Article 39 section 5.

Article 77. § 1. The court may conditionally release a person sentenced to the penalty of deprivation of liberty from serving the balance of the penalty, only when his attitude, personal characteristics and situation, his way of life prior to the commission of the offence, the circumstances thereof, as well as his conduct after the commission of the offence, and while

serving the penalty, justify the assumption that the perpetrator will after release respect the legal order, and in particular that he will not re-offend.

§ 2. In particularly justified cases the court, in imposing the penalty of deprivation of liberty, may determine more rigorous restrictions to prevent the possibility of him benefiting from the conditional release other than those specified in Article 78.

Article 78. § 1. The sentenced person may be conditionally released after serving at least half of the punishment.

§ 2. The sentenced person defined in Article 64 § 1 may be conditionally released after serving two thirds of the punishment whereas the sentenced person specified in Article 64 § 2 may be conditionally released after serving three quarters of the punishment.

§ 3. The person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and the person sentenced to deprivation of liberty for life, after serving 25 years of the sentence.

Article 79. § 1. The provisions of Article 78 § 1 and 2 shall be applied accordingly to a sum of two or more penalties not amenable to an aggregate penalty, which the sentenced person has to serve as subsequent terms; the provision of Article 78 § 2 shall be applied if even one of the offences has been committed in the conditions specified in Article 64.

§ 2. Notwithstanding the conditions specified in Article 78 § 1 or 2, the sentenced person may be conditionally released after serving 15 years deprivation of liberty.

Article 80. § 1. In case of conditional release, the portion of the penalty which remains to be served constitutes a probation period, which may not, however, be less than 2 or longer than 5 years.

§ 2. If the sentenced person is the person specified in Article 64 § 2, the probation period may not be shorter than 3 years.

§ 3. In a case of the conditional release of a person sentenced to deprivation of liberty for life, the probation period shall be 10 years.

Article 81. In case of revocation of the conditional release, the sentenced person may not again be conditionally released before the lapse of one year from the date of committing him to the penal institution, and in case of the penalty of deprivation of liberty for life, before the lapse of 5 years.

Article 82. If in the probation period and in the course of the following 6 months, the conditional release has not been revoked, the sentence shall be considered to have been served at the time of the conditional release.

Article 83. A person sentenced to a penalty of limitation of liberty who has completed at least half of the adjudged penalty, respected the legal order, performed diligently the work ordered by the court, and fulfilled the obligations imposed upon him, may be relieved by the court from the rest of the penalty, considering it as executed.

Article 84. § 1. The court may, after half of the period for which the penal measures specified in Article 39 sections 1 through 3 were imposed, consider them executed, if the sentenced person has respected the legal order and he has been subjected to the penal measure for at least one year.

§ 2. The provision of § 1 shall not be applied if the penal measures specified in Article 39 section 2 and 3 have been adjudicated under Article 41 § 1a, Article 41a § 3 or Article 42 § 2 or 3.

Article 84a § 1**.** The obligation to refrain from staying in particular environments and places, the interdiction of communicating with particular persons, or interdiction of leaving a specified whereabouts without court's permission, adjudicated forever, may be regarded to be fulfilled, if the conduct of the convict after he committed an offence and when serving his prison

sentence justifies the assumption that after obligation or interdiction is revoked, he shall not commit another offence against sexual latitude or decency committed against a minor, and obligation or interdiction has been in force for at least 10 years.

§ 2. In the proceeding concerning the further use of obligation or interdiction referred to in § 1, the court requests for expert opinion.

§ 3. A motion from the injured person or from their counsel, filed before 2 years after the decision was taken to refuse to accept obligation or interdiction as referred to in § 1 and regarded to be fulfilled, is not considered.

Chapter X.
Preventive Measures

Article 93. The court may adjudicate preventive measures, as provided for in this chapter, that relate to placing the perpetrator in a closed medical institution or refer the perpetrator to an outpatient clinic for treatment only if it is necessary to prevent the perpetrator from a repeated commission of a prohibited act related to his mental disease, sexual orientation disturbance, mental disability or addiction to alcohol or to any other intoxicant; prior to deciding about such preventive measure, the court shall hear to psychiatrists and psychologists and in the cases of sexual orientation disturbance also to sexologists.

Article 94. § 1. If the perpetrator has committed a prohibited act of significant harm to the community, in a state of irresponsibility as specified in Article 31 §1, and that there is a high probability that he will commit such an act again, the court shall commit him to a suitable psychiatric institution.

§ 2. The duration of the stay in the institution shall not be fixed in advance; the court shall decide on the release of the perpetrator from the institution if his stay there is no longer deemed necessary.

§ 3. The court may again decide on committing a perpetrator as specified in § 1 to a suitable psychiatric institution if it is advisable in the light of the circumstances specified in § 1 or Article 93; the order may not be issued later than 5 years after the release from the institution.

Article 95. §1. In sentencing a perpetrator to a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence committed in a state of diminished accountability as specified in Article 31 §2, the court may order his commitment to a penal institution where special medical treatment or rehabilitation measures shall be applied.

§ 2. If it is advisable in the light of the effects of medical treatment or rehabilitation, the court may conditionally release the perpetrator as specified in § 1, sentenced to the penalty of a deprivation of liberty not exceeding 3 years, under conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.

Article 95a. § 1. Upon the imposition of a penalty of deprivation of liberty without a conditional suspension of the execution of the same for an offence against sexual latitude due to sexual orientation disturbance, the court may decide, after serving the sentence by the perpetrator, to refer the perpetrator to a closed medical institution or to an outpatient clinic for a pharmacological treatment or psychotherapy with an intention of preventing repeated commission of such offence, including specifically the decrease of disturbed sex drive of the perpetrator. Pharmacological treatment shall not be applied if such treatment is hazardous to life or health of the sentenced person.

§ 1a. The court shall adjudicate placing the perpetrator mentioned in § 1 that is sentenced for an offence described in Article 197 § 3 section 2 or 3 in a closed medical institution or to refer such perpetrator to an outpatient clinic.

§ 2. Within the time limit of up to 6 months prior to the expected conditional suspension or penalty execution the court shall indicate:

1) the need and way of executing the measure adjudicated by the court mentioned in § 1,
2) the manner of executing the measure adjudicated by the court mentioned in § 1a.

§ 2a. The court may decide about the change of the manner of executing a preventive measure specified in § 1 or 1a.

§ 2b. The court shall decide to place the perpetrator in a closed medical institution if the perpetrator evades ambulatory treatment mentioned in § 1 or 1a.

§ 3. Provisions in Article 94 § 2 and 3 shall be applied accordingly.

Article 96. § 1. In imposing a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence connected with an addiction to alcohol or the other intoxicant, the court may decide to commit the perpetrator to a closed medical institution for withdrawal treatment, if there is a high probability of him committing another offence connected with his addiction.

§ 2. The measure specified in § 1 shall not be imposed if the perpetrator was sentenced to the penalty of deprivation of liberty exceeding 2 years.

§ 3. The duration of the stay in the closed withdrawal treatment institution shall not be fixed in advance, it may, however, not be for less than 3 months or for more than 2 years. The court shall decide on the release from the institution on the basis of the results of the treatment, having heard the opinion from the person conducting the treatment.

§ 4. The duration of stay of the perpetrator in the institution as specified in § 1 shall be credited to the penalty.

Article 97. § 1. Depending on the progress in the treatment of the perpetrator specified in Article 96 § 1, the court may send him, for a probation period lasting from 6 months to 2 years, for outpatient treatment or to a rehabilitation programme in a rehabilitation/treatment facility. At the same time the court may place him under the supervision of a probation officer or a person of public trust, public institution or community organisation whose responsibilities include educational care, preventing the demoralisation of or providing to the sentenced persons.

§ 2. The court may again order placing the perpetrator in the closed withdrawal treatment institution or in a penal institution, if the perpetrator under probation, evades treatment or rehabilitation, commits an offence or flagrantly breaches the legal order or breaches the rules of the treatment/rehabilitation facility.

§ 3. If in the probation period and in the course of the following 6 months, no order on the placement of the sentenced person again in a closed withdrawal treatment institution or a penal institution has been issued, the penalty shall be considered to have been served at the lapse of the probation period.

Article 98. If it is advisable in the light of the effects of the treatment specified in Article 96 § 3, the court shall conditionally release the sentenced person from the serving of the balance of the sentence, under the conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.

Article 99. §1. If the perpetrator has committed a prohibited act in a state of insanity as specified in Article 31 §1, the court may apply, as preventive measures, the interdictions or the obligations specified in Article 39, sections 2 or 3, if it is deemed necessary for the protection of legal order, and the forfeiture specified in Article 39 section 4.

§2. The interdictions specified in § 1 shall be adjudged without specification of the period of time; the court shall decide to annul the interdiction, if the reasons for the imposition thereof are no longer applicable.

Article 100. If the social consequences of the act are insignificant, and also, in case of the conditional discontinuance of the proceedings, or upon ascertaining that a circumstance exists excluding a penalty for the perpetrator of the prohibited act, the court may apply the forfeiture provided for in Article 39 section 4.

SWEDEN / SUEDE

The Swedish Penal Code (1962:700),

Chapter 26, on imprisonment

Section 6

A person serving imprisonment for a fixed term shall, unless otherwise provided by the second or third paragraph, be conditionally released when two-thirds of the sentence, but at least one month, has been served.

If there are exceptional reasons against a conditional release, it shall be postponed as set out in Section 7. In assessing whether there are exceptional reasons against a conditional release special attention shall be paid to whether the prisoner has seriously breached the regulations and conditions that apply to enforcement of the sentence.

Conditional release may not, however, be granted from imprisonment imposed in accordance with the provisions of Chapter 28, Section 3, or from imprisonment in conversion of a fine. Law (2006:431).

The Forensic Mental Health Care Act (1991:1129)

Section 15

In the case of person receiving forensic mental care under Section 4 the senior consultant shall immediately decide that this care shall be terminated when the conditions for such care are no longer in place.
The senior consultant shall give continuous consideration to the termination of the forensic mental care.

Forensic mental care under the first paragraph shall be terminated no later than:

1. when the decision on a deprivation of liberty expires in the case of a person who has been arrested or detained;

2. when he or she may no longer be retained at the assessment unit in the case of a person admitted under Section 10 of the Act on Forensic Mental Examinations (1991:1137);

3. for a person who is an inmate of a prison, when the release from prison takes place;

4. for a person who has been admitted to a special residential home for young people on account of a sentence to secure youth care under Chapter 32, Section 5 of the Penal Code at the end of the enforcement of the sentence. Law (2008:416).

Special Discharge Review
Section 16

In the case of forensic mental care under Chapter 31, Section 3 of the Penal Code with a special discharge review the care shall be terminated when:

1. there is no longer a risk that the patient will relapse into serious crime as a result of the mental disturbance that led to the decision on a special discharge review; and

2. in the light of the patient's mental health and other personal circumstances there is no longer any other reason for him or her:

    a) to be admitted to a health care facility for mental care combined with a deprivation of liberty or other coercion; or

    b) to receive out-patient forensic mental care. Law (2008:416).

Section 16 a

A question concerning special discharge review shall be examined by the administrative court following a notification by the senior consultant or an application by the patient.

The senior consultant shall notify the question of a special discharge review no later than four months after the order of the court has become enforceable under Chapter 31, Section 3 of the Penal Code or when the patient has arrived at the health care facility on a later date, from that date. Thereafter a notification shall be made no later than every sixth month from the date on which the administrative court made its most recent order in the question.

The senior consultant shall immediately notify a question of special discharge review when he or she considers that the forensic mental care can be terminated or should shift to or out-patient or in-patient forensic mental care.

When making an order for out-patient forensic mental health care the court shall stipulate the special conditions under Section 3 b, first paragraph, point 3 that shall apply to the care. The special conditions may be conditions set out in Section 26, third paragraph of the Act on Compulsory Mental Care (1991:1128). The court may leave it up to the senior consultant to take decisions on the special conditions. When there is reason to do so, the court may withdraw this right to make decisions. Law (2009:810).

ISRAEL / ISRAËL

Information on National Legislation and Procedures Regarding Conditional Release and Measures Involving Deprivation of Liberty

Section 1: Conditional Release Laws

Summary of the main provisions in the Conditional Release Law, 2001-5761
The overall legal framework for conditional release of prisoners in Israel was established by the Conditional Release Law, 2001-5761 (hereinafter: the "**Law**") that codified the rules relating to conditional release under one law. The following is a brief summary of the main points of the Law:

Parole Boards
The Law regulates the responsibilities of parole boards - quasi-judicial bodies competent to hear and determine the matter of conditional release of prisoners. In addition, the Law defines several conditions, as well as the various considerations, that the parole boards must or may consider when deciding whether to accept or to reject a prisoner's request for a conditional release. It should be emphasized that the conditional release of a prisoner under the Law is different than his early release, since the meaning of conditional release is not the annulment of the sentence imposed on the prisoner by the court, but rather, the granting of a license allowing the prisoner to serve the remainder of his sentence outside the prison walls. In addition to the regular parole boards authorized to decide in most cases, the Law also establishes a special parole board, authorized to decide on the conditional release of prisoners sentenced to life imprisonment (hereinafter: "**Life Prisoner**").

Conditions of Release
The Law defines three pre-conditions, which must be fulfilled when deciding whether to approve a prisoner's request for conditional release:

1. The prisoner served at least two-thirds of the total sentence imposed on him,
2. The prisoner merits a release, and
3. The prisoner's release does not endanger the public safety.

The Considerations of the Parole Board
According to article 9 of the Law, the parole board should consider the anticipated jeopardy arising from the release of the prisoner, not only to the public safety, but also to the safety of the prisoner's family, the victim of the offence, and to the state's security; the chances for the rehabilitation of the prisoner; and his behavior while in prison.

In order to reach a conclusion with regard to the above mentioned criteria, the Law lists certain data regarding the prisoner, which the parole board must take into account. Such data may include among others, the offence for which the prisoner was imprisoned and the circumstances of its execution; the prisoner's criminal record; mitigations of sentence he received and previous decisions of the parole board concerning him; his behavior in prison; professional opinions relevant to the prisoner and the opinion of the Prisoner Rehabilitation Authority, if exists; as well as personal background concerning the prisoner, including his age and family.

It is important to mention that although the Law does not give the parole board discretion as to whether the data mentioned by the Law should be considered or not, it does not limit the parole board from considering additional data concerning the prisoner not detailed in the Law.

Considerations of Public Interest
Article 10 of the Law adds another level of considerations that the parole board may consider when deciding on a conditional release, but only in particularly severe cases and under special circumstances. Unlike the considerations mentioned above, which relate only to the circumstances surrounding the specific case of the prisoner, the considerations in article 10

exceed the particular case and deal with the implications of the decision to release the prisoner on public interest. In this context, the Law notes the public confidence in the judicial system, law enforcement and public deterrence. Nonetheless, the Law imposes strict limitations on the parole board in that regard, thus minimizing the Board's permission to weigh those public interest considerations only in cases when the public values mentioned above are likely to be severely damaged, as a result of a prominent disproportion between the offense committed and the period of incarceration (if the prisoner is released). In addition, the Law states that those kinds of public considerations shall not replace the "regular" considerations of article 9 but will only be added to them. The authority of the parole board to consider public considerations, usually a prerogative given only to the court, was a highly disputed issue in Israel. In 2001, an extended panel of the Supreme Court determined that the parole board may consider the public interest in special cases and the Law adopted this ruling, though limiting its use.

The "Conditions" Within the Conditional Release
According to the Law, there are two kinds of conditions accompanying the conditional release. The primary condition is that prisoner will not commit any other felony or misdemeanor (as those terms are defined in the Israeli Penal Law, 1977-5737) during the period of his conditional release. The breaching of this condition would result, except in special cases, in the renewal of the full incarceration of the prisoner until the end of his original sentence.

In addition, the parole board may, at its discretion, impose further conditions and limitations on the prisoner, such as a night curfew or partaking in a rehabilitation program. Correspondingly, a breach of these secondary conditions by the prisoner will not necessarily be cause to return the prisoner to full incarceration in prison. Rather, this matter is left up to the parole board who may decide whether to return the prisoner to his imprisonment or not and for what period of time. The conditions decided upon by the parole board will be written in the license that the prisoner must carry with him during the period of his conditional release.

Parole Boards and the state's president authority
According to Article 11(b) of the Israeli Basic Law: The President of the State (1964), the President of the State of Israel holds the power to pardon offenders and to reduce or commute prison sentences. The special Parole Board is allowed, at the request of a **Life Prisoner**, to recommend to the President that he use his above-mentioned authority and determine the Life Prisoner's sentence. However, such a recommendation can only be made after the Life Prisoner has served at least 7 years in prison and shall not be for a sentence less than 30 years.

In a case where the special Parole Board did not find that the Life Prisoner merited a commutation of his sentence, it has to reconsider the matter at least every two years, or at any time, at the request by the President or the Justice Minister. In addition, the special Parole Board can recommend that the President further determine the sentence of the Life Prisoner.

It is important to note in that regard, that any prisoner released under the authority of the President under Article 11(b) above, shall be considered a prisoner under conditional release, and will be subject to the provisions of the Law, as described above.

Section 2: Laws on Sex Offenders

Public Protection from Sexual Offences Law 5766-2006
The Public Protection from Sexual Offences Law (hereinafter: "**the Public Protection Law**") was enacted for the purpose of balancing the safety of the public from recidivistic sexual perpetrators and the perpetrators rights to rehabilitation after they have finished serving their sentence. Article 1 of the Public Protection Law states that: "The purpose of this law is to protect the public from recurring sexual offences by sexual offenders, through evaluation and danger assessments during the criminal proceedings, and supervision programs." The public protection law refers to adult sex offenders only.

The Public Protection Law is divided into two sections. The first section deals with the protection of the public from recidivistic sexual perpetrators, after they are released from imprisonment. In Israel, contrary to other states, there is no public database containing information on sexual perpetrators and their whereabouts, in order to respect their privacy and allow them the possibility of rehabilitation without their being banned from society. The second section deals with procedures for the rehabilitation of convicted sex offenders, both during their incarceration in prison and in special centers within the community, after they are released.

The Public Protection Law refers mainly to procedures regarding the release of sex offenders from lawful custody. Article 6 to the public protection law states that prior to reaching a decision regarding the early release of sex offenders from prison, parole boards must first receive a professional evaluation of the level of danger the sex offender may pose to society (this evaluation applies to the following laws as well). Furthermore, a court which decides to convict a sex offender but does not sentence him to imprisonment, must receive a similar evaluation prior to that decision. These evaluations must be written by a psychiatrist, psychologist, social worker or clinical criminologist. If the evaluation estimates that the sex offender poses a certain degree of danger to society, a court, after conducting a hearing on the matter, may issue a supervision order setting limitations on the sex offender, such as a prohibition on drinking alcohol, driving a vehicle, being in contact with minors and even a curfew for certain hours during the day.

The Israeli Prison System operates a supervision unit that is responsible for the sex offenders' registration, which includes personal details regarding the sex offender, the sex offender's sentence and punishment and the limitations imposed on the sex offender in accordance with the supervision order. The supervision unit is also responsible for conducting routine inspections of sex offenders who were given a supervision order, in accordance with the Public Protection Law, and sex offenders are obliged to meet periodically with supervision officers and to comply with their instructions.

Supervision orders are limited to a maximum of 5 years according to the Public Protection Law. Nevertheless, if after 5 years after receiving an updated evaluation the court finds that a sex offender still poses a danger to society, the court can issue a new supervision order which is also limited to a maximum term of 5 years. In total, the Public Protection Law allows the renewal of supervision orders to a maximum total of 20 years.

Limitations on the Return of a Sex Offender to the Surroundings of the Victim Offence Law 5765-2004

The purpose of this law (hereinafter: "**the Limitations Law**") is to protect victims of sexual offences from psychological damage caused by an encounter with the sex offender who committed the crimes against them. In order to prevent such an encounter, the victim, the Attorney General, or someone on his behalf or a welfare officer, may request that the court that convicted the sex offender, issue an order prohibiting the sex offender from living or working in the vicinity of his victim. A court will issue such order if it finds that the victim would experience psychological damage if the offender lived or worked in the victim's vicinity. The court may request a professional examination of the victim's condition and the damages the victim may suffer if the offender stays in his vicinity.

The limitation order can be issued for a term of up to 3 years and once it expires the court can issue a new order, if it deems it necessary. The limitations law enables a sex offender who received a limitation order to submit a request for a hearing before the court which issued the order, if circumstances have changed since the issuing of the order. Furthermore, the sex offender is entitled to appeal the limitation order to a higher court.

Prevention of Employment of Sex Offenders in Certain Institutions Law 5761-2001
The purpose of this law (hereinafter: "**the Prevention of Employment Law**") is to prevent convicted sex offenders, especially pedophiles, from working near minors and people with disabilities whom they may be able to harm more easily. According to the Prevention of Employment Law, any adult who wishes to work in an institutions or businesses where minors and/or people with disabilities are usually found (such as schools, day cares, youth movements, hospitals etc.) must first obtain formal authorization from the police, stating he has no criminal record of sex offences. Police authorization may be given to someone convicted of sexual offences, but only if 20 years or more have passed since his conviction. A sex offender whose request to receive authorization was denied, may appeal the refusal before a committee made up of a magistrate judge and two experts on the behavior of sexual offenders. The committee may reverse the police's decision but only after receiving a professional evaluation indicating that the appellant does not pose any danger to minors and/or the mentally disabled.

Section 3: Laws on Mentally Ill Persons

The Law for Treatment of the Mentally Ill, 5751 – 1991
The Law for Treatment of the Mentally Ill (hereinafter: "**the law**") defines the rights of the mentally ill, as well as the measures that can be taken for them. The law does not refer to all mental disturbances that are not mental illnesses (i.e.: personal disturbances, delinquency, etc.).
A mentally ill individual is one who suffers from a mental illness which impairs his/her judgment and sense of reality.

Hospitalization in a Psychiatric Hospital
According to section 3 of the law, the pre-condition for committing an individual to a psychiatric hospital, except if he/she has been issued an hospitalization order, is that the individual must have undergone a medical examination (mental and physical) in a hospital, and it was determined that he/she must be hospitalized. If the patient is a minor, he/she must be examined by a child/youth psychiatric expert and only if this condition is met, may the question of his/her consent or lack of consent to being hospitalized be examined.

Voluntary Commitment
According to section 4 of the law, a patient who requests to be committed to a psychiatric hospital of his or her own free will must sign a consent form for hospitalization and receiving of treatment. Nonetheless, there are special treatments determined according to the statutes of the law, for which the individual will be required to sign a separate consent form in order to receive them (currently, this only refers to electric shock therapy).
If an individual agrees to be hospitalized, he/she may not be released immediately; but rather only within 48 hours of his/her request for release. During this period, the hospital may submit a request to the district psychiatrist to issue a compulsory hospitalization order if the psychiatrists treating the patient in the hospital believe that the patient's situation meets the conditions required for compulsory hospitalization.

Compulsory Hospitalization by means of a District Psychiatrist
The district psychiatrist is appointed to issue orders for compulsory psychiatric testing. According to sections 6 and 7 of the law, in order to issue such an order, the psychiatrist must be persuaded that the individual for whom the compulsory testing is being requested is: (1) Ill and as a result of the illness, significantly impaired in terms of judgment capabilities or the ability to ascertain reality; (2) Liable to endanger him/herself or others and poses an immediate physical danger; (3) Has refused to be tested by a psychiatrist.
According to section 8 of the law, a compulsory testing order issued by the district psychiatrist is valid for 10 days from the day it is issued.
After the individual undergoes psychiatric testing, the hospital is permitted to submit a written rationale to the district psychiatrist, requesting that an urgent hospitalization order be issued. The conditions for issuing an urgent compulsory hospitalization order are identical to the conditions for

issuing a compulsory testing order (illness + an immediate physical danger to oneself or to others).
According to section 10 of the law, compulsory hospitalization according to a district psychiatrist's order is for an initial period of only 7 days. According to the hospital's rationale, the psychiatrist is permitted to extend the hospitalization period for an additional 7 days. At the conclusion of the 14 days, authority regarding continuation of the hospitalization is transferred to the district psychiatric board, which is then authorized, according to a hospital rationale, to continue the hospitalization to a maximum of 3 months. Afterwards, the board is authorized to extend the hospitalization for periods of up to 6 months each. In every instance, the conditions for extending compulsory hospitalization are identical to the original conditions for compulsory testing and compulsory hospitalization (meaning illness + an immediate physical danger to oneself or to others).

Hospitals are permitted, according to their own discretion, to release someone who is hospitalized under compulsory hospitalization in civil proceedings, or may grant the individual leaves. If the patient or his/her immediate family member opposes, approval of the district psychiatrist is required for release. The district psychiatrist's decision may be appealed before the psychiatric board.

Compulsory hospitalization in criminal proceedings
It is important to distinguish between compulsory hospitalization in civil proceedings and compulsory hospitalization in criminal proceedings. Compulsory hospitalization in criminal proceedings is performed according to a judge's order as part of criminal proceedings against an individual. In principle, a just criminal trial requires the defendant to have an understanding of the trial proceedings, ability to participate in the proceedings and ability to defend himself or herself. The relevant point in time where the defendant's fitness to stand trial is at the time of the trial and not the person's fitness at the time of the commission of the offence.
According to Section 15 of the law, in the event that a defendant is being prosecuted and during the criminal proceeding the court believes (based on evidence presented before the court) that the defendant suffers from mental illness and therefore cannot stand trial, the court may order that the defendant be hospitalized or receive medical treatment. The Court shall give the order only after a District Psychiatrist's evaluation of the defendant. If the court finds the defendant unfit to stand trial due to his/her mental state, the court may still decide to resume with the criminal proceeding and the order given by the court on how to treat the mentally ill defendant will be valid until the trial is over.
It should be noted that the law determines different and stricter instructions regarding compulsory hospitalization of minors. Only the Juvenile Court has the authority to give an order to forcibly hospitalize a minor above the age of 15 who opposes his/her hospitalization.

Hospitalization of detainees
According to Section 16 to the law, in the event a court orders the arrest of a person and believes (based on evidence presented before the court) that the detainee is mentally ill and requires hospitalization, the court may decide that the detainee will be kept in a hospital, as determined by the District Psychiatrist. The Court shall give the order only after a District Psychiatrist's evaluation of the detainee.

Compulsory Hospitalization not by means of a District Psychiatrist Order
According to section 5 of the law, a psychiatric hospital manager may also make a decision regarding the necessity of an urgent compulsory hospitalization in unique cases and under special circumstances by means of an exception.
The period of urgent compulsory hospitalization of this type may not be more than 48 hours. At the end of this period, the patient will be released unless a hospitalization order was given during that period or the patient consents to his/her hospitalization.
In a case in which a minor is brought to a psychiatric hospital by a welfare officer, the hospital manager is permitted to receive the minor for hospitalization against his/her will after a mental and physical examination, even if the conditions for hospitalization according to Section 9a have not been met, if testing has found there to be a substantial possibility that the minor is mentally ill

or is seriously mentally disturbed, and is thus liable to endanger him/herself or poses an immediate physical danger to others.
The period of urgent hospitalization of this type may not be more than 48 hours; at the end of this period, the minor should be released, unless a hospitalization order has been issued during that period, or the minor's guardian agrees to the minor's hospitalization or, if a minor who is at least 15 years old consents to his/her own hospitalization, or if a court orders the minor to be hospitalized according to the juvenile law provisions.

The Welfare Law (Care for Mentally Disabled), 5730 – 1969
Sections 19A-19J of the Welfare Law (Care for Mentally Disabled), 5730 – 1969 (hereinafter: "**the welfare law**"), detail the procedures with regard to conditional release and measures which involve deprivation of liberty of the mentally disabled.
According to section 19A of the welfare law, in the event a court gives the order to arrest an individual who is mentally disabled, the court will also order whether the detainee should be kept separately or in a locked home, if it is for the benefit of the detainee. In any case, the mentally disabled individual will not be detained in a locked home unless the investigation is completed.
According to section 19B of the welfare law, in the event a defendant is prosecuted and during the criminal proceeding the court believes (based on evidence presented before the court) that: (1) the defendant does not have full mental capacity and therefore can not stand trial, or that (2) the defendant committed the crime but can not be held criminally liable due to lack of full mental capacity at the time of the commission of the crime, the court shall then order that the defendant will be brought for evaluation by a diagnosis committee that will also decide on the measures to be taken in handling the defendant.
According to Section 19C of the welfare law, in the event that a court convicted a person in a criminal case and found that he or she suffers from lack of full mental capacity, the court may, instead of sentencing that person, to give an order that the convicted person will be brought for evaluation by a committee that will also decide on the measures to be taken in handling him or her.
According to Section 19D of the welfare law, in the event that a court convicted a person in a criminal case and sentenced this person for imprisonment, the court may order that the term of imprisonment shall be carried out in a locked home.
According to section 19E of the welfare law, in order for the court to give orders as detailed in sections 19A-19D of the welfare law, the court may order that the person in question will be brought for evaluation by a diagnosis committee.

The Criminal Procedure Law, 5742-1982
While the law for the Treatment of the Mentally Ill, 5751-1991, deals with the authorities of the court concerning the mentally ill, Sections 170 and 171 of the Criminal Procedure Law, 5742-1982, complete the legal framework by defining the procedure of the actual criminal proceedings whereby the defendant was found mentally ill.
Section 170(a)-(c) of the Criminal Procedure Law concerns the question of whether to continue or discontinue criminal proceedings pertaining to defendants, who are unfit to stand trial due to mental illness, and whether to acquit him or her.
Specifically, Section 170(a) maintains that where a court has decided that a defendant is not fit to stand trial because of a lack of full mental capacity, the court shall discontinue criminal proceedings against that defendant. However, if the defense counsel requests an investigation into the defendant's guilt, the court shall investigate it, and it may do so pursuant to its own motion for special reasons, which shall be recorded.
Section 170(b) indicates that at the conclusion of an investigation into the defendant's guilt, if the court holds that it is not proven that the defendant committed the crime, or that he is not guilty, for a reason other non-responsibility due to mental illness, then the court shall acquit the defendant. On the other hand, if the court does not see any reason to acquit the defendant, it shall merely discontinue the criminal proceedings against him, which may occur even before the conclusion of the investigation. Section 170(c) allows for the court's decision under subsection (b) to be subject to an appeal.

Section 171 concerns a defendant who is once again brought to stand trial after he had been hospitalized as a mentally ill person, and subsequently, released. This section states that where such a person is brought to stand trial, the court may receive evidence given during an investigation under section 170 without hearing it again. However, a party may subject a witness to cross-examination or further cross-examination, and the defendant may request that his witnesses be heard again; where this is not possible, the court shall take this fact into account in weighing the evidence.