

***Child Friendly Justice – Wishful Thinking?!***

**Petra Guder**

From: Marc Coester and Erich Marks (Eds.):  
International Perspectives of Crime Prevention 7  
Contributions from the 8th Annual International Forum 2014  
within the German Congress on Crime Prevention  
Forum Verlag Godesberg GmbH 2015

978-3-942865-38-8 (Printausgabe)  
978-3-942865-39-5 (eBook)

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## **Child Friendly Justice – Wishful Thinking?!**

### **1. Introduction**

In the early 20th century, the United States had a leading position regarding juvenile justice reforms which were internationally recognized and replicated. The constitution of the first Juvenile Court in Chicago was a tremendous achievement establishing a Juvenile Justice System. The architecture of the Eastern State Penitentiary in Philadelphia served as “the model for many prisons worldwide“. The separation of juveniles and adults led to the “House of Refuge-Movement. The Glen Mills Schools were once the 2nd House of Refuge in the United States after New York, then based in Philadelphia. In turn, the Glen Mills Schools adapted their campus set up for a new facility out in the country in the Village Glen Mills from the “Raue Haus” in Hamburg, Germany. Back then it seemed to be much easier to learn from each others and replicate each others’ models than it is today.

Today the Chicago Juvenile Court is one of the leading US-Courts in the Models for Change-Initiative launched by the US-National Council of Youth and Family Court Judges. Diversions, Deinstitutionalisation, Decriminalization are the key words in all initiatives regarding effective Interventions (Blueprints, Sherman Report). They stand for a fundamental change in beliefs and practices throughout the US how to treat troubled youth successfully.

Nevertheless the United States are often associated with high incarceration rates and “Zero Tolerance“-policies. Internationally, the current reform process remains widely unnoticed. The media mainly... continues to focus on how tough on crime the United States are, whenever politicians and policy makers are blowing the whistle, that for instance the German or other Juvenile Justice System is too “soft”.

There seems to be a quick readiness to replicate restrictive and retributive interventions which have already proven not to be effective – or, even worse, have negative effects, such as Boot Camps, Scared Straight Programs and Short, Sharp Shock-Arrest-Interventions supposedly on public demand – but is it really in the public interest, that programs are implemented which do more harm than good and perhaps produce more victims in the future?

There also seems to be a commensurable reluctance to look at the respectable research, among others, by Delbert Elliott et al. regarding effective Interventions against Juvenile Violence. The programs and results are often said to be „too American“, it is also argued, that they are not replicable because of cultural differences, a different system, set up of the American Juvenile Justice System and/or data protection. Despite the fact, that fundamental theories in sociology have once been developed in the United

States and are internationally acknowledged, it seems to be rather difficult to learn from recent reform strategies and to consider the implementation of intervention programs, which have already proven to be effective.

In fact, the American Juvenile Justice System does not even exist as a whole, as much as there is no such European Juvenile Justice System. Hans-Jürgen Kerner pointed it out in a recent conversation: There are “lots of black and white and different shades of grey.” According to a recent study, the juvenile incarceration in the US rate has fallen 41 percent in the past 15 years, reaching the lowest level since 1975.

Today we had not only the honor, but also a great opportunity to hear and to learn firsthand from three great individuals and leaders in the field of US Juvenile Justice, what current US Juvenile Justice is all about. Hon. Judge Patricia M. Martin, Administrative Judge, Child Protection Unit, Cook County Family Court (Chicago) and past president of the National Council of Youth and Family Court Judges (NCJFCJ) and Hon. Judge David E. Stucki, current President of the NCJFCJ, had a broad historical perspective and most recent reform strategies to share. Richard Ross, Professor, Photographer and Researcher, University of California, had given us eye-opening views of incarcerated youth and youth deprived of their liberty in various institutions throughout the US. If the systems differ so much – how then can it be that some of the photographs taken in US Facilities look quite similar to those of facilities in Europe, including Germany? Is there in fact a “learning process” if it comes down to the set up of secure facilities still existing today? Is there an “Architecture of Authority” as Richard Ross described it in one of his previous, with the Guggenheim Fellowship awarded projects in 2007, documenting architectural spaces worldwide that exert power of individuals confined within them?

Research carried out by Dünkel et al. has shown, that the approaches how to tackle Juvenile Delinquency successfully, differ commensurably from country to country throughout Europe and even the system set ups differ. There are different beliefs regarding the accurate age of responsibility to be held accountable for a crime, although the vast majority of European States consider the age of 14 as appropriate. Culturally, Europe is much more diverse including many different languages, constitute many obstacles to communication. For many practitioners and even researchers is it more obvious to look at European neighbors than considering the United States as a genuine source for meaningful and effective interventions. In those countries that are in the process of establishing a Juvenile Justice System or have recently done so, there was more of a readiness to “go west”. others, Scandinavian Countries and the Netherlands, which seem to have a more pragmatic approach. Contrary to that the trend and pendulum seems to swing again towards harsher tendencies to tackle juvenile crime more successfully.

## 2. Child Friendly Justice

Child friendly Justice Guidelines for Europe are setting a framework for European Membership Countries, how to reach Child friendly justice procedures.

The National Council of Youth and Family Court Judges of the United States has developed several procedures and standards for a child oriented, child friendly system reform.

Other countries, such as Africa have developed similar frameworks. Needless to say that the understanding and interpretation of the term “Child Friendly Justice” and the understanding of child friendly procedures and approaches differs widely. But such guidelines are only effective, if they get put in action and are not put on the upper shelf of a book case.

### 2.1 History of European Child Friendly Justice Guidelines

*“Don’t walk in front of me; I may not follow. Don’t walk behind me; I may not lead. Walk beside me and be my friend”* Attributed to Albert Camus

- In 2010, the Council of Europe adopted Guidelines on child friendly justice intended for use by professionals working in the criminal, civil or administrative justice systems
- Mission: Enhancement of children’s access to and treatment in justice
- The Guidelines address themes such as:
  - Family
  - mistrust of authority and the
  - need for respect, and the
  - Importance for children and young people to be listened to

The issues covered include information, representation and participation rights, protection of privacy, safety, a multidisciplinary approach and training and safeguards at all stages of proceedings and deprivation of liberty.

### 2.2 Child Friendly Justice-Principles

- Participation
  - children to be informed about their rights, appropriate ways to access justice, consulted and heard in proceedings involving or affecting
  - due weight to the children’s views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.
- Best interests of the child

- Dignity
- Protection from discrimination

Rule of law principle should apply fully to children as it does to adults

### **3. Juvenile Justice and the Media**

As Richard Ross already pointed out, the media does not focus so much on positive outcomes and positive news about crime decline. The Cook County experience shows, as Judge Martin told us, that the media attention was centered about negative outcomes of the juvenile court as well - it seems that good news don't sell. Misleading media reports tend to influence the public and policy makers to change procedures, mostly leading towards a call for reform to establish more harsh approaches. No wonder, that contrary to child friendly justice approaches, the media draws a different picture of the reality of juvenile justice today. Let's take a glimpse at several media headlines in Germany and the US:

#### **Most recent Headlines regarding the US:**

„Exchange Student from Hamburg shot in Missouri“  
 „Scandalous Death Penalty Execution“

#### **Common associations regarding US- Juvenile Justice Policies:**

„Three Strikes And You Are Out“, „Zero Tolerance“, „Get Tough On Crime“, „Boot Camp“, „Scared Straight“.

#### **Most recent headlines regarding German Juvenile Justice Policies:**

“50 school truants from Hamburg facing arrest”  
 „Offenders are getting younger and much more brutal“  
 “Monsterkids“  
 „Extended term of imprisonment for young Offenders“  
 „With harsh sentencing and incarceration successful against notorious offenders – Every 2nd of all 552 intensive offenders in Berlin is incarcerated.”  
 “Collaboration of Justice and Police successful”

*(Tagesspiegel 08.02.10)*

The media is a powerful tool not only informing the public but also building opinions and beliefs. But can such headlines like those mentioned above, really serve as an appropriate foundation for judging each other countries (Juvenile) Justice Policies? Can such headlines serve as an appropriate base value for a knowledgeable, research based juvenile Justice? Or are other data sources needed?

## 4. What works?

### 4.1 Expansive, international scientifically proven results

Contrary to the picture the media draws, it seems to be well worth taking a look at Juvenile Justice Periodicals, Conference Agendas and Resolutions as well as fundamental research results which were collected in the past. This International research provides a solid foundation about risk and protective factors and how to buffer negative factors. In comparison, it turns out, that there are many similarities and the subjects, fields of interests and problems seem relatively similar. Unsurprisingly, a NCJFCJ conference agenda in the US on the national and state level does in fact not read very different from one in Germany hosted by the DVJJ or perhaps elsewhere in Europe. They provide a repository for practitioners, how to design interventions effectively:

- Chicago School (early 20th Century/University of Chicago)
  - First and until appr. 1930 dominant Sociology in the US
  - Concept of Social Ecology: Processes/Relations of adjustment between human communities and their physical-geographical Environment
  - Conditions of rapid urbanization and development of subcultures and criminal environments
  - Sociology of criminal activities and environments (McKay/Park/Shaw/Thrasher), but neither picked up nor cultivated in German Criminology (accord. to KrimLex)
- Subcultural-Theory (Miller)
  - Learning Theories (a.o. Sutherland/ Cressey)
  - Group Culture Theory (Cohen 1961)
- Labelling Approach (a. o. Sack 1978)

a.o.

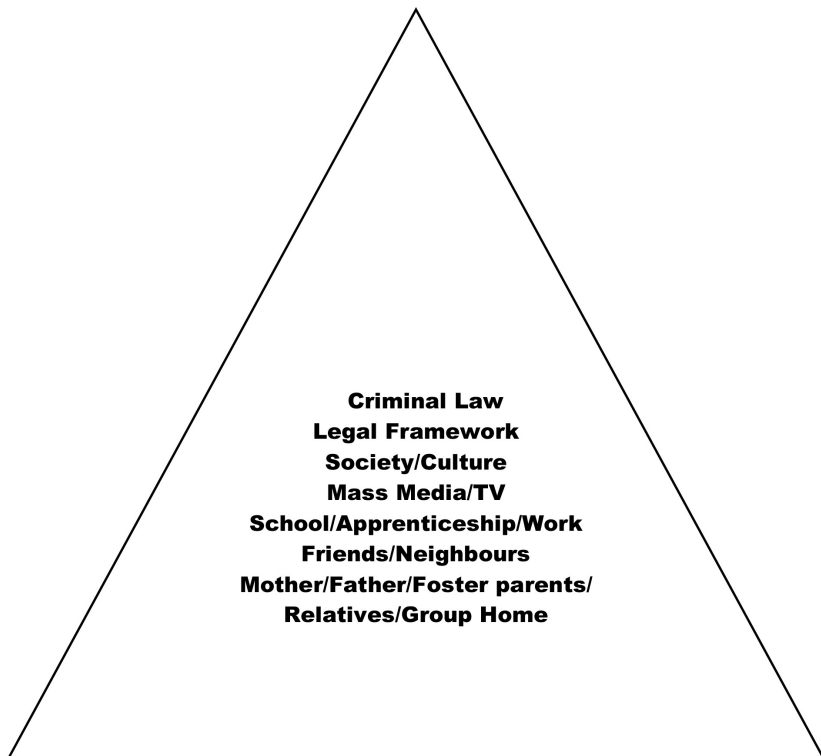
Longitudinal Studies, some Examples:

- Laub/Sampson 2003-Delinquent Boys-Divergent Lives (Turning Points)
- Farrington 2006 Cambridge Study (Important Risk Factors youth age 8-10), Delinquent Families/risk taking/bad academics/poverty/lack of educational competency in families)
- Bannenberg/Rössner 2005: Perry-Preschool-Prevention-Project, long term effects (40+ years)/behavioral intervention for children age 3-5: not individual dispositions and developments, but the applied interventions contribute to continue or desist from deviant behaviors - Shapland 2014: Sheffield Longitudinal Study shows that offenders who had the chance to actively participated in restorative justice procedures, such as victim-offender mediation) are less likely to reoffend

- Shapland 2014: Sheffield Longitudinal Study shows that offenders, who had the chance to actively participate in restorative justice procedures (such as victim-offender-mediation) are less likely to reoffend

#### 4.2 What do we know about norms?

This graphic, commonly known as norms pyramid, shows at what stage the most norms are learnt. The Justice System is the last resort to help develop an understanding of norms. Many other instances have a much more intensive impact before the Justice System gets even involved.



#### 4.3 Evaluation Studies

##### 4.3.1 Elliott-Blueprints for Violence Prevention (1996), now Blueprints for Healthy Youth Development

The Blueprints provide an ongoing evaluation of intervention programs, which have proven to be effective. Blueprints for Violence Prevention, now Blueprints for Healthy Youth Development /Demand for a nationwide prevention initiative.

The Blueprints were initiated by:

Center for the Study and Prevention of Violence/University of Colorado/Boulder

Colorado Division of Criminal Justice

Centers for Disease Control and Prevention

Pennsylvania Commission on Crime and Delinquency

<p><b>Programs 1996:</b>  <b>Thinking Strategies (PATHS)</b>          (Greenberg/Kusche)</p> <ul style="list-style-type: none"> <li>- Big Brothers Big Sister of America (McGill)</li> <li>- Quantum Opportunities (Lattimore)</li> <li>- <b>Multisystemic Therapy</b> (Henggeler)</li> <li>- <b>Functional Family Therapy</b> (Alexander)</li> <li>- Midwestern Prevention Project (Pentz)</li> <li>- Life Skills Training (Botvin Bestand 1998/2002:</li> <li>- <b>Nurse-Home-Visitation (Olds)</b></li> <li>- Incredible Years (Webster)</li> <li>- Bullying Prevention Program (Olweus)</li> <li>- <b>Promoting Alternative</b> )</li> <li>- <b>Multisystemic Therapy Foster Care</b> (Chamberlain)</li> </ul>	<p><b>2014:</b></p> <ul style="list-style-type: none"> <li>• Brief Alcohol Screening and Intervention for College Students</li> <li>• <b>Functional Family Therapy</b></li> <li>• <b>LifeSkillsTraining</b></li> <li>• <b>Multidimensional Treatment Foster Care</b></li> <li>• <b>Multisystemic Therapy</b></li> <li>• New Beginnings (Intervention für Children of Divorce)</li> <li>• <b>Nurse-Family-Partnership</b></li> <li>• Positive Action</li> <li>• Project Towards No Drug Abuse</li> <li>• <b>Promoting Alternative Thinking Strategies</b></li> </ul> <p>Additional List of promising programs</p>
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Because of ongoing research some of the initial programs that could not meet the criteria anymore were removed from the list. The vast majority of programs has shown such sustainable effects that they remained on the list until today (those were italicized in table). An initiative of Hamburg University to translate the Blueprints into German to serve as an initiative for a nationwide discussion about effective programs failed because of concerns that the programs were „too American.“

#### 4.3.2 Sherman Report/Preventing crime: What works, what doesn't, what's promising.

On April 27, 1996, the 104th United States Congress enacted the Conference Report requiring the Attorney General to provide an independent, comprehensive and scientific evaluation of the „diverse group of programs funded by the Department of Justice to assist State and local law enforcement and communities in preventing crime.“ The University of Maryland was chosen to prepare such report. From August 1996 to January 1997 the effectiveness of intervention programs in the following areas was evaluated:

**-Crime Prevention, specially youth violence**

**-Reduction of risk factors for youth violence, including those found within community environments, schools and families**

## **-Increase of protective factors against crime and delinquency**

### **4.3.3 What else works?**

There are additional lists and databases for effective Prevention programs which have proven to work, although the criteria differ widely.

- Best Evidence Encyclopaedia (BEE)
- The U.S. Department of Education What Works Clearinghouse
- The National Registry of Evidence-Based Programs and Practices
- The Office of Juvenile Justice and Delinquency Prevention Model Programs Guide
- The Office of Justice Programs Crime Solutions
- The Coalition for Evidence-Based Policy Social Programs That Work (Top Tier)
- The Center for Disease Control Community Guide
- Judges' Ethics

### **4.3.4 Applied Science: US-Juvenile Justice Reform Examples**

- Goal: Reduce number of children in placements/Three of the biggest court districts (Chicago/Los Angeles and New York) were able reduce placements spectacularly
- NCJFCJ Resource Guidelines
  - Improving Court Practice in Child Abuse and Neglect Cases
  - Adoption and Permanency Guidelines& Principles/Improving Court Practice in Child Abuse and Neglect Cases
  - Juvenile Delinquency Guidelines & Principles/Improving Court Practice in Juvenile Delinquency Cases
  - Graduated Sanctions Guidelines
  - Guidelines for Disproportionate Minority Contact
  - Graduated Sanctions Guidelines
  - Judges Ethics

### **Further initiatives:**

- Office for Juvenile Delinquency and Delinquency Prevention (since 1974) (OJJDP)
- Director since 2013: Robert Listenbee, until then one of the leading reformers in the State of Pennsylvania
- Coordinating Council on Juvenile Justice and Delinquency Prevention
- Federal Advisory Committee on Juvenile Justice
- Models for Change

## Foundations

- Mc Arthur Foundation
- Annie Casey Foundation (Models for Change Initiative, provides funding for states, who meet criteria for change initiatives)/Funding of „Juvenile in Justice“.

## Examples:

- Pennsylvania/statewide implementation of Blueprints
- Funding of Juvenile in Justice-Documentary to support change

## Implementation of new procedures and diagnostic Instruments:

- Risk and Strengths / Needs-Assessments
- Competency based /. Deficit oriented
- Diversion
- Decriminalization (of status offenders, a. o. school truants to eliminate arrests)
- Deinstitutionalisation in favor of community based intervention programs
- Improvement of the participation of parents and children in judicial procedures

## 4.4 Last but not least

### 4.4.1 Death Penalty abolished for Juveniles

The Supreme Court abolished capital punishment for juvenile offenders on March 2, 2005, ruling 5 to 4 that it is unconstitutional to sentence anyone to death for a crime he or she committed while younger than 18.

In concluding that the death penalty for minors is cruel and unusual punishment, the court cited a „national consensus“ against the practice, along with medical and social-science evidence that teenagers are too immature to be held accountable for their crimes to the same extent as adults.

Breakdown of the 72 people on death rows who were juveniles when they committed their crimes:

- Texas: 29
- Alabama: 14
- Mississippi: 5
- Ariz., La., N.C.: 4 each
- Fla., S.C.: 3 each
- Ga., Pa.: 2 each
- Nev., Va.: 1

*Source: The Associated Press*

#### 4.4.2 Supreme Court abolishes Life without parole for Juveniles

In 2012, the Supreme Court ruled that the death penalty for all crimes and life without parole for crimes other than homicide is unconstitutional (Miller Decision). The rulings have forced states to think very differently about how to hold juveniles, but to date (2014) only 13 out of 28 states have complied with the supreme court ruling to abolish mandatory life without parole for juveniles in their states.

#### 4.5 Reform Problems

- States are politically highly independent
- Sanctions and intervention options differ widely, individually applied interventions are dependent the juveniles place of residence
- State policies are dependent on how the political relevant positions are filled (compare: Recent research conducted by Susanne Karstedt, UK)
- High skepticism among practitioners against evaluation and research findings
- reluctance against scientifically proven interventions (“we know by ourselves, what works trough experience”)
- Data protection concerns regarding multidisciplinary collaboration
- Cultural concerns against implementation of effective, scientifically proven intervention programs
- Slow reform process- it is difficult to change what is
- even though actually a international scientifically proven level of knowledge exists: “The wheel does not really be reinvented.”

#### 5. Conclusion

The problems listed above could easily describe any other scenario in any other country and/or for example on the European Continent. Thinking about how difficult it turned for Dünkel et al to provide a European comparison of Juvenile Justice systems, illustrates that the scenario, the stakeholders and activists for reform are facing in the US could be taken anywhere on the planet.

Some arguments do not sound new for everyone, who wants to facilitate and/or initiate change: “We never did that before,” “we never did it like that,” “we are good enough,” “our system is better than others,” alleged data protection or cultural concerns cripple or at least hinder initiatives for change. Hidden agendas hamper open and productive discussions, considerations and priority of individual and/or organizational benefits lead often to half-hearted compromises. Informed knowledge is much needed to overcome these obstacles in order to help troubled children more effectively. Those are the ones, which are supposed to be the center of every discussion, decision, attempt to integrate them into society successfully and help their parents to increase their parenting skills. The United States has not found all the answers, and the EU has not found all the answers either. One of the con-

clusions of this workshop becomes very clear: The problems children, families and courts face are similar in the US and EU - why then not learn from each other?

Why is it, that a school truant in Hamburg has a high chance to get locked up in an secure juvenile arrest facility for not paying his/her fine and being criminalized for his/her behavior while at the same time a school truant in Hamburgs twin city Chicago is no longer considered a status offender and not being locked up in a arrest facility anymore for the very same behavior in order to decriminalize such behavior?

David Stucki informed us about the US-Initiative to raise the age for the application of juvenile law to 18 and is referring to scientifically proven data suggesting that. Why then, contrary to that, are European States debating to lower the age of responsibility and on the other end, to strictly limit the application of juvenile law to 18?

Why does one country in Europe establish a specific arrest law for juvenile offenders while in another (the US) research has proven, that such short term arrests do harm more than they do good and increase instead of decrease the risk of reoffending? Would such research not be also applicable for those youth at risk in Europe receiving short term arrest sentences and as a consequence have to lead to the elimination of such similar policies?

Is it really a cultural difference, which leads to completely contrary decisions at the very same time?

People like Richard Ross are much needed to point their finger into the right direction, into the direction of the children as the center of every action.

It speaks for the US Reform Process that the work of Richard Ross was funded by the Annie E. Casey Foundation to help promoting change. It is, by the way, a very good example how media support could turn bad news into a constructive debate for change for the better. This is a good lesson to learn from the US besides all efforts which have been taken or are under way to reform the juvenile justice system based on valid research data and make justice more child friendly, even though if this term does not specifically exist in the US. Although US juvenile courts have been in operation for over 115 years finding and evaluating best practice programs is an emerging practice in the states today. While the attempt of Child Rights Activists in the US to ratify the Childs Rights Convention is still widely hindered by some State concerns and a conservative attitude towards children rights versus parents rights. The concern the ratification could restrict/affect the single states independence, many of our colleagues, if working in the field or conducting research are in fact working towards a child friendly reform of the Juvenile Justice System. This is at least promising.

The European Child friendly Justice Guidelines promote further child-friendly actions and encourage member states of the EU to:

- promote research into all aspects of child-friendly justice, including child-sensitive interviewing techniques and dissemination of information and training on such techniques;
- exchange practice and promote co-operation in the field of child-friendly justice internationally

It is well worth not to limit this exchange of practice and the co-operation to European Member States and to open this window more widely to gain a broader perspective.

It is true that the US have still not ratified the UN Convention of the Rights of the Child – but to conclude it can be truly said, that the US have in fact made tremendous efforts toward Child friendly Justice without using this specific term. Listening to the words of Patricia Martin, Richard Ross and David Stucki it becomes quite obvious, that the US and the EU have a great deal to share about similar situations of children and families in need of court intervention, especially in the areas of positive outcomes. The reform process in the United States is certainly a good learning experience to look at and to come to a continuous exchange of ideas in the future. From this day forward ongoing exchange provides the best opportunity to improve the lives of our youth and will make their court experience a real child friendly one by collaborating towards a child friendly justice around services, programs, studies, trainings, sharing data and evaluative methods between the US and the EU. This workshop has been a good first step, but only a first step. The result of this workshop could not be summarized any better than with the words Judge Patricia Martin said at the end answering questions from the audience: „We have much to share and learn from each other. We are losing generations of youth and therefore we need to work together to resolve and improve our methods of reform in a more expedite manner.“ Wishful and wise thinking, constant exchange of ideas, application of research data to policy making and daily practical work will help us to improve our systems in a child friendlier manner and will ensure to make child friendly justice every day a little better than it was yesterday.

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