



# National Institute of Justice

R e s e a r c h P r e v i e w

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## Alternative Sanctions in Germany: An Overview of Germany's Sentencing Practices

In the wake of major changes to the world order—the defeat of communism in 1989, the collapse of the Berlin Wall in 1990, and the breakdown of socialist hopes for the future—Germany's crime rate, stable for a decade, began to climb. Impoverished young adults (aged 18 to 25) and newly arrived political refugees, in competition for scarce jobs and resources, responded to these circumstances with a spate of theft, robbery, and burglary. During 1994, these crimes abated somewhat after enactment of strict immigration laws, which barred entry to an immigrant underclass and thus eased unemployment and poverty.

In the years leading up to reunification, Germany experienced benefits brought about by the gradual judicial adoption of alternative sanctions. From about midcentury, the emphasis on imprisonment, or, in the case of youthful offenders, *jungendarrest* (a short-term incarceration lasting from 2 days to 4 weeks), gave way to alternative measures: suspensions, probation, community service, and a system of day-fines instituted in the 1970's. Between 1982 and 1990, incarceration of juveniles decreased more than 50 percent—from 9,500 to 4,500 cases; during the same period, adult imprisonment dropped from 39,000 to 33,000.

Research in Germany indicates that youthful offenders sent to prison had higher rates of recidivism than those given alternative sanctions. Removing youths from society—even when incarceration included job training—appeared to negatively affect their ability to find employment when released. Among youths who received alternative sentences, their rates of recidivism were affected by judges' and social workers' attitudes and communication abilities. Low recidivism rates were positively correlated with officials' beliefs in their clients' rehabilitation and their ability to communicate supportively with offenders.

### Effects of imprisonment

Studies conducted by the Criminological Research Institute of Lower Saxony explored individual and regional disparities in sentencing and sought to determine the effects of sentencing practices on offending patterns and career criminality. Results showed that the number of offenders per 100,000 inhabitants increased by 7 percent in regions where imprisonment was the sentencing norm and decreased by 13 percent in regions that opted for alternative sentencing. Although unable to establish a cause and effect relationship, researchers also found a correlation between the decline in imprisonment of young offenders over a 4-year period and a significant drop in cases of burglary—a crime viewed as a barometer of societal violence and typically committed by those well along in their criminal careers.

In another study, researchers looked at what happened to young offenders imprisoned in the 1970's, when prison combined with job training was thought to be a promising rehabilitation. However, the recidivism rate for young offenders in the early 1980's was between 70 and 80 percent. Although about 40 percent were unemployed when they committed the offenses that resulted in incarceration, within 3 months of release, offenders' unemployment rate was 60 percent. In spite of intensive job training and good intentions, prisons were believed to destroy postrelease opportunities for normal living.

In another study, interviews with juveniles found that the strongest deterrents to crime for most youths were fear of being caught by the police and the negative reactions of parents and society. Interestingly, fear of punishment was not mentioned by these youths as a factor militating against criminal behavior.

These findings suggest that when youths are imprisoned for offenses, they are more likely to later embrace

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criminality than are young people given alternative sanctions. Judges, therefore, began to avoid giving prison sentences to the extent possible.

## The role of the judiciary

In Germany, judges have lifetime appointments and are the sole arbiters in the disposition of cases involving youthful offenders between the ages of 18 and 20. These offenders may be dealt with under adult or juvenile law, but most judges prefer the latter because it affords multiple options and wider sentencing discretion. For example, under juvenile law, a judge has the latitude to issue a community service order to a youth convicted of homicide, if mitigating circumstances are found.

Sentencing practices vary considerably among the judiciary. After reviewing some 2,000 case dispositions, researchers assigned judges to one of two groups: “authoritarian” judges and “liberal” judges deemed more communicative, more positive in their expectations of offenders, and milder in their sentencing approach. Social workers who were responsible for monitoring community service sentences were similarly categorized. The rates at which offenders disobeyed judicial orders were analyzed according to the type of judge and social worker involved in their cases:

- In cases where both the judge and social worker were liberal, offender disobedience was 6.5 percent.
- In cases where the judge was liberal and the social worker was authoritarian, offender disobedience was 11.3 percent.
- In cases where the judge was authoritarian and the social worker was liberal, offender disobedience was 14.4 percent.
- In cases where both the judge and social worker were authoritarian, offender disobedience was 27.3 percent.

Social workers were also asked to predict outcomes for their clients before they began serving their sentences: liberal social workers had positive expectations, while the authoritarian types predicted failure. In general, offenders’ behavior correlated with social workers’ attitudes. Recidivism rates were similarly affected; for example, of 426 cases reviewed in which the offender was under the age of 20, sentencing by liberal and authoritarian judges resulted respectively in 23.9 and 33.5 percent of cases of recidivism.

Munich’s judiciary was informed of these findings. The judges subsequently engaged a psychologist to observe and analyze their on-the-job attitudes, behavior, and demeanor. As a result, some judges modified their behavior, while others switched from criminal to civil law. Subsequent widespread dissemination and publication of these research results effected change in Germany’s

sentencing policies and practices. A close collaboration among community groups, social workers, police, prosecutors, churches, academia, and the judiciary produced alternative programs—often financed through fines imposed on offenders—that emphasized a holistic approach to corrections and productive social worker/client relationships.

Contrary to supposition, the increased presence of females within the legal and criminal justice professions was found to have had no impact on the decarceration movement. The first women entering these arenas were as punishment-oriented as men. However, further research has shown that female law students (now numbering around 50 percent of the class) are generally less punitive than their male counterparts. As the proportion of female to male practitioners grows, imprisonment rates may be affected.

## Future research

German researchers are planning investigations into several areas of criminal justice, including victim surveys to uncover pockets of unreported crime, such as family violence and protection rackets; prisoner studies, with scheduled followup, to gain insight into the prison experience and learn how agencies formed to help ex-prisoners are functioning; police surveys to explore how officers handle and define crime; and analyses of data from blind questionnaires on police violence.

The German system of criminal justice, characterized by judicial immunity to politics and close relationships between criminologists, judges, and prosecutors permits objective investigations into criminal justice problems and practices. It also permits criminal justice professionals to effect public policy. For example, when politicians wanted to change the law to increase mandatory imprisonment of juveniles, 153 German judges and prosecutors publicly objected to the change on the basis of their experiences and research findings.

This document is based on Christian Pfeiffer’s presentation to an audience of researchers and criminal justice practitioners as part of NIJ’s Research in Progress Seminar Series. Dr. Pfeiffer is director of the Kriminologisches Forschungsinstitut Niedersachsen and president of Germany’s Juvenile Court Judges organization. A 60-minute VHS videotape of the seminar *Sentencing Policy and Crime Rates in Reunited Germany* is available for \$19 (\$24 in Canada and other countries). Please ask for NCJ 152237.

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