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FPR 10/2013 Focus “Delinquent Children and Young People”

Children and young people as so-called “intensive offenders”

Summary

Persistent or “intensive offenders” (*Intensivtäter*) is the term used in Germany – especially by the police and the justice system – to designate those children and young people who attract attention with repeated and serious delinquent behaviours. There is no standard definition accepted throughout Germany. The group of children and young people described in this way only make up a small proportion of all the children and young people who attract attention with delinquent behaviour. Of all the offences committed by this age group that are known to the police, however, between 30 and 60 per cent – depending on the definitions used – are attributed to these “intensive offenders”. Media reports make very little mention of “normal” juvenile delinquency, which can often be categorized as petty crime; instead the headlines are dominated by particularly serious offences, which are blamed on “intensive” juvenile offenders. Such media treatment makes this small group of children and young people all the more relevant for criminal policy.

I. Introduction

When delinquency in childhood and youth becomes the subject of media reporting, the focus is almost always on particularly severe and “spectacular” violent crimes, with serious – in extreme cases fatal – consequences for the victim. Often the crime has been committed in a public place, in some cases there is footage from surveillance cameras, and the corresponding pictures or videos are released to the public. If the offender or offenders¹ are found, these are often young people who have been accused of a number of other offences in the past, and who feature on a police list of so-called “persistent intensive offenders”. The media coverage creates the impression that there are extremely “dangerous” young people, who cannot be stopped by either prevention or the traditional resources of the police and the justice system.

The professional and academic discourses on the topic also pay considerable attention to those children and young people who are frequently and intensively involved in illegal behaviour. Here the debate about juvenile “multiple and persistent and intensive offenders” (*Mehrfach- und Intensivtäter*) is primarily defined from a police and justice perspective. The starting point are the criminal offences and the endangerment of public safety. It is therefore mainly the police and the justice system, which under pressure to prove their legitimacy, seek new strategies to deal with this group. The widespread professional and academic view – that the primary response to child and youth delinquency should be educational measures – fades into the background here. Thus the

¹ In the majority of cases these are male and not female adolescents. If, however – and this is still the –, exception girls commit an offence, this leads to even greater media attention, because this behaviour is contrary to the generally accepted gender-role expectation.

discussion about “persistent” juvenile offenders is important for the whole discourse about the prevention of delinquency in childhood and youth, which has been considerably expanded in Germany over the last two decades.

All this is sufficient reason to engage with the topic of “persistent” child and youth offenders on a professional and scholarly level. The following paper begins with a critical discussion of the term “intensive offender”. After some criminological findings on “multiple and intensive” juvenile offenders, the focus shifts to the way child and youth services, the police and the justice system deal with this group of children and young people. The paper concludes by identifying some key challenges.

II. The concept of the “intensive offender”

The adjective in the title – “Children and young people as *so-called* intensive offenders” – suggests, on the one hand, that children and young people are quite commonly referred to as “intensive offenders” or as “multiple and persistent offenders”, but also, on the other hand, that the use of these terms needs to be subjected to critical scrutiny. The terms are mainly used in police and judicial contexts.

II.1. Different police definitions based on reported crimes

The term “intensive offenders” describes a group of children and young people who have been linked by the police with multiple and/or serious criminal offences within a certain period. There is, however, no standard definition accepted throughout Germany. The different federal states and in some cases the individual cities have established their own definitions by combining the dimensions of number, severity and time frame of the alleged offences. The spectrum ranges from three criminal offences in the last six months, or two violent crimes, to over ten criminal offences in the last year. In some cases especially serious offences are given greater weighting, and sometimes the investigating officers’ personal impressions of the suspect, and thus their subjective assessments, are also taken into account. The definitions used vary considerably, as Posiege/Steinschulte-Leidig observed in 1999.² One specific example is a joint circular on intensive juvenile offenders issued on 26 June 2011 by the Ministers of Justice and the Interior for the federal state of Brandenburg: “Intensive juvenile offenders’ refer to those *Jugendliche* and *Heranwachsende* [young people in the 13-17 and 18-20 age groups] charged with offences, whose personality and social integration are endangered by an increasingly entrenched criminal development, and where there is ‘sufficient suspicion’ that they have committed offences that are particularly disruptive to law and order, such as violent crimes or serious property crimes, or that they have, in at least 10 cases within the last 12 months, committed criminal offences of some weight, exceeding the category of minor culpability (*geringe Schuld*).”³

As far as police definitions are concerned, it can be noted here, that these are mainly based on the offences recorded in the police crime statistics. They thus refer only to reported and suspected crimes, and are not founded on legally binding convictions. Behind the definitions is the (sometimes

² In the literature since the end of the 1990s, this has always been described as an unsatisfactory state of affairs (cf. e.g. Posiege/Steinschulte-Leidig, *Intensivtäter. Eine Übersicht zu aktuellen Entwicklungen*, 1999, Wolke, in: *Kriminalistik* 57, pp. 500-506, and Roth, in: *Kriminalistik* 58, pp. 318-321).

³ See www.bravors.brandenburg.de/sixcms/detail.php?gsid=land_bb_bravors_01.c.51518.de [accessed 2 August 2013].

implicit) assumption that these data allow insight into potential criminal careers which, as a particular challenge to public safety, necessitate relevant action by the police. As a result, young people in the 13-17 and 18-20 age groups, and in some cases children, are registered in so-called “intensive offenders’ lists” by the police, based on regionally specific definitions. The status of “multiple and intensive offenders” turns the children and young people into a special group, for which specific police procedures and programmes are deployed. In some cases the lists rank the young people according to the number and severity of their offences. Depending on the resources of the specialized organizational units responsible for the group in any given region, it may be that not all the “persistent offenders” on the list are admitted to special programmes, but only, for example, the first 50 on the list.

In various federal states, e.g. in Berlin, Bremen and Lower Saxony,⁴ a further group of so-called “threshold offenders” (*Schwellentäter*) have been defined in addition to “intensive offenders”. These children and young people (ages 13-17 and 18-20) are also suspected of having committed a number of offences, but have not yet crossed the threshold to the status of intensive offenders. As it is feared that they will commit further offences, however, the police procedures and programmes applied here are similar to those used for “intensive offenders” – the aim being to prevent the “threshold offenders” from becoming “intensive offenders”.

It must be regarded as especially problematic when children aged under 14 are defined as “intensive offenders” or even as “threshold offenders”, since children under the age of 14 are, according to the German *Jugendgerichtsgesetz* (Juvenile Courts Act) (§ 1 para. 2 JGG), below the age of criminal responsibility. This constitutes an absolute bar to criminal proceedings, i.e. even if children are accused of illegal acts, they cannot legally be convicted of a criminal offence. In line with this, the term used here is not child *crime*, but child *delinquency*.

II.2. Size of the resulting group of child and youth “intensive offenders”

As there is no standardized definition throughout Germany, no statistical data are available on a national level. To nonetheless give an impression of the number of individuals in different federal states who are registered as “intensive offenders”, according to the definitions in these states, the results of a nationwide survey for 2006 and 2007 will be quoted here: Baden-Württemberg 532 “intensive offenders”, Brandenburg 533, Bremen 345, Hamburg 684, Saxony-Anhalt 741, Schleswig-Holstein 397, and North Rhine-Westphalia 822 “intensive offenders” aged 13-17 and 486 aged 18-20.⁵

In Berlin, the police crime statistics for 18 December 2012, for the programme “Täterorientierte Ermittlungsarbeit” (“Offender-Oriented Investigations”), list a total of 759 under-21-year-olds as “intensive” (342), “threshold” (97) or “neighbourhood-oriented multiple offenders” (*kiezorientierte Mehrfachtäter*) (320). Of these, 38 are children, 339 are *Jugendliche* (aged 13-17), and 382 are *Heranwachsende* (aged 18-20).⁶ The Berlin statistics also record that 66.2 per cent of the young

⁴ Cf. Landesrahmenkonzept (federal state framework): “*Minderjährige Schwellen- und Intensivtäter*”, see <http://www.schure.de/21021/jusit.htm> [accessed 25 April 2016].

⁵ This information is taken from Steffen, in: Bundesministerium der Justiz, *Das Jugendstrafrecht vor neuen Herausforderungen*, 2009, pp. 83-100, p. 88. A comparison between the federal states is not helpful, as the definitions are different and the numbers given are not weighted according to the number of children and young people in the different federal states.

⁶ Cf. Der Polizeipräsident in Berlin, *Polizeiliche Kriminalstatistik Berlin 2012*, pp. 148f., own calculation.

people in the programme have a migrant background.⁷ For the city of Munich in 2012, 87 minors (six of them girls) are classified as “intensive offenders” in the so-called “Proper-Liste” (“Projekt personenorientierte Ermittlungen und Recherchen”, i.e. “Project for Person-Oriented Investigations and Enquiries”). Around 55 per cent of these minors did not have a German passport.⁸

The vast majority of these young offenders are male. Particularly in the big cities (especially those in western Germany), a substantial proportion of the young people registered as “intensive offenders” have a migrant background. The offences cover a broad spectrum, ranging from fare evasion to bodily injury and robbery, and including violations of the *Betäubungsmittelgesetz* (German narcotics law), and various property offences. Violent crimes often play a significant role.

III. Problems of children and young people who are classified as “intensive offenders”

Who are these children and young people who are given the label of “intensive offenders”? Setting aside the alleged offences, this is a very small number of children and young people, who are growing up with substantial psycho-social stresses. Often the children and young people come from extremely difficult family backgrounds, and their school careers are characterized by interruptions and changes, and sometimes even a refusal to attend school. In many cases, the children and young people have their own experiences of victimhood. Often they have a long history of problems, and the pedagogical and therapeutic assistance offered them has had limited success at best. The institutions dealing with these children and young people and their families – child and youth services, the police, the justice system, schools and child and adolescent psychiatric services – are frequently overwhelmed and at a loss.⁹

Ohder, who carried out an extensive study on “persistent offenders” in Berlin, also observes a number of risk factors for this group: “background of difficult and oppressive social and economic circumstances, health problems, a lack of school-leaving qualifications and usable vocational training, or a strong orientation towards delinquent cliques and peer groups”.¹⁰

IV. “Intensive offenders” from a criminological perspective

Although the term “intensive offender” is hardly used in the criminological discourse, partly for the above-mentioned reasons, “chronic” or “persistent” offenders receive at least as much attention as ubiquitous and episodic forms of child delinquency and juvenile crime. It has been proven in many criminological studies that a small group of young people, between five and ten per cent of those who get into trouble with the law, are responsible for half of all criminal offences – a result that can be found in both reported and unreported crime. Over a long period of time, these young people often go on to commit more serious offences. If these cases are analysed *retrospectively*, the deviant behaviour often begins in childhood, and an accumulation of problems can be observed.¹¹ It

⁷ Ibid. p. 149.

⁸ Cf. Polizeipräsidium München, *Sicherheitsreport 2012*, pp. 70f.

⁹ Cf. Holthusen, *Modellprojekt: Kooperation im Fall von jugendlichen “Mehrfach- und Intensivtätern”*, 2004.

¹⁰ See Ohder, *Intensivtäter in Berlin Teil II*, 2007, p. 72.

¹¹ Cf. Steffen (see footnote 5), pp. 85f.

becomes clear, moreover, that the offenders are also the victims of neglect, abuse and other crimes; shifts in status from victim to offender and vice versa can frequently be observed.

How can “normal”, transitory child and youth delinquency be distinguished *prospectively* from those cases in which a criminal career is likely? This question is highly relevant, and is of central importance for the complex criminological studies carried out in the area of process research. Some statistical connections are apparent, e.g. that a criminal career becomes more likely in poor social conditions, but at the same time the reverse argument – that anyone growing up in poor social conditions will become criminal in the long term – is not valid. Here risk factors have to be held up against protective factors. Another aspect to be taken into account is that children and young people show different degrees of resilience. Since there are a multitude of factors interacting or cancelling each other out, and since these connections are not static, it is impossible to make reliable case-specific prognoses predicting criminal careers.

As it would exceed the scope of this paper to consider national and international criminological studies in any detail, it will suffice to mention a few points here, following the criminologist Boers.¹² While criminological process research has long assumed that early deviant behaviour is an important predictor of delinquent careers, this has been relativized by more recent research. Furthermore, there is evidence that social deficits – even in relation to personal risk factors – are of high importance for the continuation of delinquency.¹³ Another relevant factor in the context of “intensive offenders” is that interruptions can be expected for this group too; this means rejecting the previously held thesis of continuity. Against this background, the question of interruptions or discontinuities is becoming increasingly important for criminology.¹⁴ Schumann points out, furthermore, that contact with the authorities can actually be counter-productive, since the related processes of exclusion exacerbate negative developments.¹⁵

V. Dealing with “persistent and intensive” youth offenders

The observation made in section II – that the term “intensive offender” is mainly associated with the police perspective – also applies when it comes to dealing with “multiple and intensive” youth offenders. The figures given in section II.2 do not show a large group, but clearly there are too many children and young people affected to speak of isolated cases. In places where the police or the public prosecutor’s office keep records of “intensive offenders”, according to their own definitions, and maintain corresponding lists, there are generally specific procedures for dealing with such offenders, sometimes in the form of projects. A key component of these procedures is usually an offender-oriented investigative approach, in which the same police officer is always responsible for a particular young person, regardless of the location and nature of the crime. This form of police responsibility has become more and more widespread in recent years. It gives the police officer responsible an overall view of the alleged offences, and, over time, a chance to get to know the young person and often his or her family. From then on, the young person is under special

¹² Cf. Boers, in: Dölling/Jehle, *Täter – Taten – Opfer*, 2013, pp. 6-35

¹³ Cf. Boers, in: Bundesministerium der Justiz, *Das Jugendstrafrecht vor neuen Herausforderungen*, 2009, p. 126.

¹⁴ Ibid.

¹⁵ See Schumann, in: Dollinger/Schmidt-Semisich, *Handbuch Jugendkriminalität*, 2010, pp. 243-257, p. 254.

observation, and may for example undergo *Gefährderansprachen* (warnings to potential offenders)¹⁶ and *Erziehungsgesprächen* ('educational talks', e.g. between police, judges or social workers, and young offenders and/or their parents).

The above-mentioned procedures are very much focused on the children and young people's delinquency, not on the problematic situations and constellations discussed in sections III and IV, which are equally important. Since, however, dealing with these problems can play a major role in the interruption of potentially delinquent careers, the police force is becoming more interested in working not only with the justice system, but also with other institutions with a pedagogical or therapeutic focus – such as schools, child and youth services, or child and adolescent psychiatry. The introduction of offender-oriented case management also facilitates case-related cooperation with other institutions, as the same person (and not several people) is the relevant contact throughout.

Cooperation between institutions is nonetheless extremely difficult in these cases, as shown in a study by the *Centre for the Prevention of Youth Crime* at the *German Youth Institute* (DJI) on the topic "Cooperation in the case of 'multiple and intensive' youth offenders". The study looked retrospectively at particularly serious cases of young people who had repeatedly come to the attention of the authorities.¹⁷ In all cases, the children had already been in trouble at an early age at school. Analysis of files from the police, the justice system, schools, child and youth services, child and adolescent psychiatrists, and the public employment service showed that the difficult cases were "shunted" back and forth between the institutions and jurisdictions. This resulted in multiple discontinuities and shifts in responsibility. Often, the relevant information was not available in the different institutions at the right time. It became clear that the more difficult the situation was, the harder it was to cooperate.

The issue of cooperation in the case of "multiple and intensive" youth offenders has already been the subject of critical debate at the 26th German *Jugendgerichtstag* (conference for professionals involved in juvenile court proceedings), held in Leipzig in 2004. The working group "Grenzen der Erziehung – Intensivtäter außen vor?" ("Limits of education – intensive offenders left out?") came to the following conclusion: "The approach to intensive offenders has so far been characterized mainly by administrative bustle and a lack of coordination, as well as a lack of pedagogical imagination. As a result, the individuals and institutions trying to raise or educate these young people regularly experience an oppressive helplessness, which leads to periodic demands for a stricter approach to multiple and intensive offenders. What is actually needed – especially in view of the regional, cultural and ethnic heterogeneity of these young people – is a change in institutional and pedagogical strategies. For this we need a 'culture of cooperation' in the institutions and support systems involved (including schools), and professionalized, specialized approaches, which so far exist only in rudimentary form."¹⁸

To improve case-related cooperation between institutions, new models and projects have been tested in recent years. Only two of these will be discussed briefly here. In the *Häuser des Jugendrechts* (Juvenile Law Centres), which mainly exist in Baden-Württemberg, Rhineland-Palatinate

¹⁶ So-called *Gefährderansprachen* are used by the police as part of risk prevention, to alert potential offenders to the consequences of possible actions, and thus prevent offences before they are committed.

¹⁷ Cf. Holthusen (see footnote 9).

¹⁸ Findings of the 26th *Jugendgerichtstag*, *Forum 1, Working Group 1.1, 3rd paragraph*: see www.dvjj.de/veranstaltungen/jugendgerichtstage/26-jgt-2004/forum-1-ergebnisse-der-arbeitskreise [accessed 2 August 2013].

and Hesse, the police, the public prosecutor's office and the juvenile court youth services work together in the same building, "under the same roof". This is intended to improve communication and cooperation and to speed up procedures. The Juvenile Law Centre in Cologne specializes in young people who have repeatedly come to the attention of the authorities. Another focus of current professional and academic debate is lying on case conferences, which are increasingly being discussed and trialled in the north German federal states and in Baden-Württemberg. The underlying idea of case conferences is that case-related practitioners from the police, the child and youth services, schools, and possibly – depending on the model used – other institutions, come together to exchange information and consider potentially suitable programmes and measures. The young people themselves and their legal guardians are only included in these conferences to a limited extent.¹⁹

If the police lists of potential "intensive offenders" include children under 14, i.e. below the age of criminal responsibility, it is mainly up to child and youth services to respond. The justice system is not responsible here, and sanctions based on criminal law cannot be imposed. The task of child and youth services is to work with the affected children and their legal guardians, dealing with the problems within the framework of the Social Code Book (SGB VIII). In cases where the parents are not prepared to cooperate, the child and youth services may need the support of the family courts. Also of considerable importance for child and youth services, as shown by a DJI research project on children under the age of criminal responsibility who were frequently in trouble with the police,²⁰ are police reports to the youth office about deviant behaviour by children. If a child comes to the attention of the police – perhaps on multiple occasions – as a result of delinquency, or due to violations of the *Jugendschutzgesetz* (Law for the Protection of Youth), or in a missing persons report, or, for example, as a witness to domestic violence, this is the trigger for youth services to offer advice or counselling to the parents, to check whether socio-educational assistance is required, and to offer suitable provision if necessary. The focus here is on the socio-educational needs of the child, and not on his or her delinquency. Children between 8 and 15 who repeatedly get in trouble are also the target group of the project "Kurve kriegen" ("Getting our act together"), which was initiated by the Ministry of the Interior for North Rhine-Westphalia.²¹ The aim is to intervene early with educational measures to prevent potential criminal careers. These measures are to be provided by pedagogical practitioners who are employed specifically for this purpose via the police, and are then expected to establish connections with the youth office and the support system.

VI. Conclusion and challenges

"Intensive offenders" are a key focus for the public debate about juvenile crime. Media reports about spectacular acts of violence by young people regularly lead – and not only in Germany – to calls for a tightening of the *Jugendstrafrecht* (Juvenile Penal Law), a lowering of the age of criminal

¹⁹ There has also been critical discussion of these approaches in professional and academic debates: see the position paper of the chair of the DVJJ (Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen – German Association for Juvenile Courts and Juvenile Court Support Services: "*Häuser des Jugendrechts*" – *Risiken und Nebenwirkungen beachten!* www.dvjj.de/veroeffentlichungen/stellungnahmen/haeuser-des-jugendrechts-risiken-und-nebenwirkungen-beachten [accessed 2 August 2013]. For other projects and attempts at cooperation between youth services and the police, see Möller, *Dasselbe in grün? Aktuelle Perspektiven auf das Verhältnis von Polizei und Sozialer Arbeit*, 2010.

²⁰ See Holthusen, *Projekt: Polizeilich mehrfach auffällige Strafunmündige*, 2011.

²¹ See www.kurve-kriegen.nrw.de [accessed 2 August 2013].

responsibility, or increased use of secure accommodation. Even if these demands are largely rejected in the relevant professional and academic discourse, the existence of “intensive offenders” means that all the institutions dealing with delinquency in childhood and youth, especially the police, face considerable pressure to prove their legitimacy – since it seems that they are unable to protect the public from these “dangerous” young people. “Intensive” youth offenders are thus a particular challenge for the police, and the object of considerable attention. Here there is evidence of a tendency to bring forward the threshold for intervention, the aim being to step in before young people become “intensive offenders”, and prevent this from happening. Special programmes are therefore extended to “threshold offenders” or, as in Berlin, “neighbourhood-oriented multiple offenders”.²²

Because criminal careers in childhood and youth cannot be predicted with sufficient reliability, it is necessary to weigh up interventions critically. Particularly in childhood and youth, early stigmatization must be avoided, as this might potentially lead to the criminal career which the intervention was intended to prevent. Against this background, I believe that terms like “threshold offender” or “intensive offender” should if possible be avoided for children and young people.²³ This applies to an even greater extent for children under the age of criminal responsibility. If these children are included in the relevant police lists, it is also to be feared that – once they have reached the age of criminal responsibility – their previous, precisely documented delinquent behaviour may be mentioned in later criminal proceedings, and may lead to harsher sanctions.

If negative careers for children and young people are to be avoided, it is wrong to consider only the number and severity of the alleged offences; instead we must focus on the underlying problems. What is needed is greater cooperation between schools, child and youth services, the police and the justice system (juvenile and family courts) and potentially child and adolescent psychiatric services – though the laws protecting personal social security information obviously have to be respected. Child and youth services must make early use of opportunities to develop support services for children, young people and their families, tailored to their specific problems. For this, participation – the active involvement of the children, young people and their families – is essential, even if it is particularly challenging in such cases.

These young people, especially the children, must not be written off as “hopeless cases”. However difficult the processes are, there are always turning points, at which incipient criminal careers could potentially be interrupted. The key is to use these opportunities.

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²² German: *Kiezorientierte Mehrfachtäter (KoMT)*. This is used by the police in Berlin, in the context of offender-oriented investigations, to refer to offenders “who, in the area where they live, commit less severe offences, which nonetheless have a negative impact on the [public] sense of security”. See *Der Polizeipräsident in Berlin* (footnote 8), p. 148.

²³ This is why these terms have been placed in quotation marks in this paper.