Court Sentences to Forensic-Psychiatric Treatment and Imprisonment in Germany: Types of Crimes and Changes from 1995 to 2009

HANS-JOACHIM TRAUB[1] | JACK TOMLIN[2] | GERD WEITHMANN[1] | ERICH FLAMMER[1] | BIRGIT VÖLLM[2]

[1] Zentrum für Psychiatrie, Weissenau-Ravensburg—Germany

[2] Department of Forensic Psychiatry, University of Rostock—Germany

Correspondence

Birgit Völlm, Klinik für Forensische Psychiatrie, Gehlsheimer Straße 20, 18147, Rostock, Germany. Email: Birgit.voellm@med.uni-rostock.de

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forensic mental health, Germany, incarceration, mentally disordered offender, offending

Abstract

The management of mentally disordered offenders varies widely across countries. Given the high prevalence of individuals with mental disorders throughout the criminal justice system, it is not always clear why some people receive forensic treatment and others a prison sentence. This project investigated trends in criminal justice sentencing practices in Germany from 1995 to 2009. We analysed officially recorded data taken from 14,100,329 court rulings to describe differences in the index offences committed by individuals sentenced to prison of at least two years and those given a forensic treatment order. The distribution of offence types differed substantially. Forensic patients committed 6.6% of all severe crimes. There was a 50% increase in the number of forensic treatment orders compared to a 11.6% increase in the group of individuals sentenced for crimes of a similar severity. Forensic patients were more likely to have committed a serious offence. This paper provides key epidemiological data and offers a basis for future comparative research. It also concludes that these trends are indicative of a moderate

penal policy, without a drift towards penal populism arguably visible in other jurisdictions. Instead, it is argued that the findings are consistent with actuarial social control policies oriented towards risk prediction and crime prevention of high-risk offender groups.

1. INTRODUCTION

1.1. Theorizing Crime Trends

Criminology scholars attempt to explain crime trends through macro-level theory. One of the most influential is Garland's (2001) treatise on social control in late modern society. He posits that governmental and societal responses to crime since the 1970s can fall within two broad schools of thoughts. The first of these, 'criminologies of the other' resonates with other criminological accounts that a penal populism dominates the contemporary zeitgeist (Goshe, 2017). Here, crime is construed as the act of social outsiders, minority groups that have transgressed social norms (Bauman, 2000). Popular and policy response is one of punishment, deterrence and expression. Commentators have suggested that these approaches to social control are rooted in neoliberalist thinking in Anglo-Saxon politics, the rise of which coincided with rising crime rates and public dissatisfaction in governmental responses to crime (Loader & Sparks, 2004).

In this formulation, crime is a rational activity in which the benefits of success and risk of sanction are weighed by potential offenders. Punishment is legitimized as 'just' consequence, the expression of popular censure (Goshe, 2017). Numerous examples are given as evidence of a growing public desire and policy orientation for harsh criminal justice responses: three strikes and you're out laws, boot camps, rising prison populations in certain countries, lengthier sentences for offences, and 'tough love' political discourse, are a handful (Grimshaw, 2004; Simon, 1998).

The second variant of responses described by Garland are described as 'criminologies of the everyday'. Criminal justice policy in this vein is actuarial, treating crime as quantifiable and predictable (Hannah-Moffat, 2005). Responding to crime is too late; the risk of crime is calculated, and preventive measures targeting empirically-derived victim profiles are implemented. Here too neoliberal thought is a driver; social actors are encouraged to take individual responsibility and prepare measures to reduce their risk of victimization (Rose, 2000).

Lianos and Douglas (2000) describe this *'the tendency to perceive and analyse the world through categories of menace … It leads to the continuous detection of threats and assessment of adverse probabilities, to the prevalence of defensive perceptions over optimistic ones and to the dominance of fear and anxiety over ambition and desire'* (p. 110-111). Individuals designated at high risk of committing harm are isolated from societal circuitry (housing, accommodation, credit) or in extremis placed in prisons and forensic hospitals indefinitely (Feeley & Simon, 1992; Lianos & Douglas, 2000; Rose, 2000). Efforts to measure and predict risk can be seen as a characteristically 'modern' endeavour as data are used to inform social policy.

The bifurcation of social control responses described here have been highly influential in the international literature. However, Garland's (2001) account was derived from observation of the U.S.A and the U.K. Scholars are sceptical of its utility to help explain crime trends in general (Matthews, 2005) and on continental Europe specifically (Snacken, 2010). They point to consensual governance structures, stronger social welfare systems, generally lower prison rates, and fewer retributive tabloid media as key points of divergence from their Anglo-Saxon counterparts.

Germany has been described by some to demonstrate a 'German Exceptionalism' by avoiding a drift towards penal populism (Wenzelburger & Staff, 2016). Its prison population is comparatively low and has been falling (Boers, Walburg, & Kanz, 2017), it governs through coalition partnerships that necessitate debate and compromise (Wenzelburger & Staff, 2016), has a strong commitment to human rights and legal mechanisms (Snacken, 2010), and a welfare system to support social groups that might be neglected in neoliberal social structures (see for instance, Wacquant, 2010).

Mentally disordered offenders are an interesting case study of trends in social control. This is because they represent the tension between retributive, punitive crime control policies and rehabilitative, social welfare approaches (Rose, 1998; Simon, 1998). This nexus also reflects divergences in wider social structuring: neoliberal individualism and social democratic collectivism (Reiner, 2012), and criminological schools: neoclassical and psychopathological. In the following sections, we explore this further by describing trends in crime, incarceration, and general and forensic psychiatry in Germany.

1.2. Crime rates, incarceration and general and forensic psychiatry in Germany

Total police recorded crime rates have been falling in Germany since 2002 (despite an increase between 2014-2016) (Boers et al., 2017; Bundeskriminalamt, 2018b). This decrease is not uniform; some crimes have increased as others decreased. Germany's police recorded statistics report that between 2017 and 2018 there was a 6% decrease in 'street crime', and an 18.2% decrease in rape, sexual coercion and especially serious sexual assaults (Bundeskriminalamt, 2018b). There was a 3.9% increase in murder, manslaughter and killing another at his/her own request; and the sexual abuse of children increased by 6.7%. Despite these differences, the longitudinal trend towards less crime reflects patterns of victimization in other developed nations such as the U.K. (Office for National Statistics, 2019).

Concurrent to this, the rate of individuals in prison remained constant or has decreased since 2005. For every 100,000 individuals in 2005, 95 were in prison; in 2018 this figure was 75 (International Centre for Prison Studies, 2018). For comparison, in the U.K in 2018, 124 out of 100,000 individuals were in prison; in the U.S. this number was 644 (International Centre for Prison Studies, 2018). Over a similar period, the rate of general psychiatric beds has slowly increased since 2002 (Chow & Priebe, 2016). This followed several decades of decline in the total number of beds in what was West Germany until reunification in 1990 (Federal Republic of Germany; total bed numbers decreased from 117,596 in 1970 to 63,807 in 1990; Konrad & Lau, 2010). The slight upward trend in general psychiatric bed numbers is divergent from many other

European states that have largely seen reductions in rates of general psychiatric beds – the phenomenon of deinstitutionalization (Priebe et al., 2005, 2008).

Germany has also experienced a growth in the number of forensic psychiatric beds (Chow & Priebe, 2016). Between 1995 and 2012 the number of forensic beds per 100,000 increased from approximately 3.5 and 8. This is largely in keeping with European and North American trends (Jansman-Hart, Seto, Crocker, Nicholls, & Côté, 2011). The literature refers to this increase, especially where the increase in forensic beds outpaces general psychiatric beds, as reinstitutionalization or 'forensification' (Jansman-Hart et al., 2011; Prins, 2011).

1.3. Criminal justice, mental health and responsibility

Prison, mental health and forensic services are interconnected. This is in large part attributable to the prevalence of individuals with (symptoms of) mental disorder in the criminal justice system. Studies report finding evidence of symptoms of psychosis, depression, anxiety, substance abuse disorders in inmates internationally (Otte et al., 2017). In a meta-analysis of the prevalence of severe mental illness in prisoners, Fazel & Seewald (2012) found that of 33,588 individuals included, 3.7% met the diagnostic criteria for psychosis and 11.4% for major depression. Other studies suggest that self-reported symptoms of mental disorder are much higher (Otte et al., 2017).

In light of the intersection between mental disorder and the criminal justice system, it is not always clear why some individuals are treated in forensic mental health settings and others are sentenced to a period in prison. In Germany, forensic psychiatrists are consulted by the courts when deciding upon issues of criminal responsibility. In cases not concerning substance use disorders, which are treated slightly differently under German law, experts are asked to provide evidence on: the nexus between mental disorder and crime, the duration of the disorder, and the degree of probability and nature of future harm (Konrad & Lau, 2010). These are to some degree subjective and different conclusions might be arrived at by different experts.

In Germany, adult offenders held not fully responsible for the commission of a criminal act are divided into two groups:

1. Diminished responsibility. Individuals with diminished capacity (due to a pathological mental disorder, a profound consciousness disorder, debility or any other serious mental abnormality) to understand the wrongfulness of their actions or to act accordingly (§21, German Penal Code) receive a (mitigated) prison sentence and/or are given a forensic treatment order (§63, German Penal Code).
2. Insanity: Offenders who lack the capacity to appreciate the wrongfulness of their actions or to act accordingly (also due to a pathological mental disorder, a profound consciousness disorder, debility or any other serious mental abnormality) (§20, German penal law) are not convicted but sentenced to forensic-psychiatric treatment if the risk of serious reoffending cannot be excluded (§63, German penal law).

If an individual is accused of a criminal act in relation to a substance use disorder, then only diminished responsibility (not insanity) can be ruled. Even those with full criminal responsibility, however, can be sentenced to a two-year limited forensic treatment order (§64, German Penal Code), usually given concurrent to a prison sentence. Dressing, Salize and Gordon (2007) and Konrad and Lau (2010) provide good summaries of mentally disordered offenders and the German criminal justice system.

1.4. Rationale and Research Questions

Our understanding of what kind of patient receives a forensic treatment order is crucial in light of research suggesting that placement in forensic care is associated with better outcomes (e.g. lower recidivism rates) than in prison (Fazel, Fimińska, Cocks, & Coid, 2016; Igoumenou et al., 2019). The present study therefore sought to better our understanding of the differences between individuals given a forensic treatment order and those sent to prison by investigating the index offences of these groups between 1995 to 2009. The findings further nuance our

understanding of social control trends in Germany by focusing upon mentally disordered offenders who are arguably situated between punitive and rehabilitative models.

Specifically, we investigated:

1. How frequently forensic treatment orders were given in comparison to penal sentences
2. The distribution of different index offence types between both groups and overall
3. What the proportion of key offences to non-key offences was in both groups
4. Whether the types of index offences changed over time for both groups and to what extent this differed between groups
5. Whether there were changes in the proportion of attempted and completed offences over time and whether this differed between groups

2. Material and Methods

2.1. Data Collection

The methods of data collection described here are the same as those used in another publication resulting from the same project (Weithmann, Traub, Flammer, & Völlm, 2019). Data were collected from all judicial decisions made by courts in the eleven federal states (‘Bundesländer’) of former West Germany between the years 1995 and 2009. We extracted data on all forensic treatment orders and prison sentences. The data were requested from the Federal Statistics Office and were made available to the researchers in accordance with lawful data protection requirements.

To ensure a robust study design and enable a meaningful investigation into the index offences of these two groups, we undertook the following steps:

1. Only official data of the Federal Statistical Office (‘Statistisches Bundesamt’) were used. This enabled a large degree of data reliability and accuracy.

2. Instead of the number of occupied forensic beds, we used the number of forensic treatment orders per year. This was because the number of occupied forensic beds (‘prevalence’) is an unreliable indicator of variation in the number of forensic patients, as the number of occupied forensic beds is itself influenced by both the number of forensic treatment orders (‘incidence’) and patients’ length of stay in forensic clinics. These factors are contingent on further variables including social/political need for security, general mental health structures, and legal requirements.
3. Our analysis presents the total number of forensic treatment orders issued between 1995 and 2009 alongside the total number of prison sentences. This is to allow investigation into any associations between general trends in criminal behaviour, sentencing practices of the criminal justice system, and the frequency of crimes committed mentally disordered individuals.
4. We distinguish between different types of index offences.
5. We present both frequencies and incidences of court decisions.

The following data were extracted from each case:

1. Year of the court sentence.
2. Types of offences leading to the sentence.
3. Whether a forensic treatment order or prison sentence was issued.
4. Whether the offence was attempted or accomplished.

2.2. Types of Crimes Investigated in the Study

As official police crime statistics report 1070 ‘offences or offence categories’ and 22 ‘aggregate categories of offence categories’ (Bundeskriminalamt, 2018a) we sought a more parsimonious means of index offence categorisation. We categorised offences into eleven categories. Categories one to nine derive from German penal law categories:

1. Homicide (including murder and manslaughter).

2. Bodily harm (e.g. grievous bodily harm but excluding homicide).
3. Other violent offences (e.g. affray, robbery).
4. ‘Structural’ violent offences (e.g. procuration, incitement to commit criminal offences).
5. Arson.
6. Sexual offences against adults.
7. Sexual offences against children or adolescents.
8. Property offences (e.g. theft, fraud).
9. Other offences pertaining to German penal law.
10. Drug offences.
11. All offences pertaining to other German law codes.

German law necessitates the commission of a serious crime by the mentally disordered person before a forensic treatment order can be issued. By excluding typically less serious crime categories which rarely lead to a forensic treatment order pursuant to §63 StGB (<5% of all cases), we generated ‘key offence categories’ relevant to the majority of offenders in forensic treatment. This resulted in six categories of crimes:

1. Homicide
2. Bodily harm
3. Other violent offences
4. Arson
5. Sexual offences against adults
6. Sexual offences against children or adolescents

For a meaningful comparison of forensic patients with prison inmates, we excluded from the analysis any prison sentence with a duration of less two years. This enabled a meaningful comparison of crimes with a similar level of severity. In German penal law, sentences above two years cannot be suspended on probation (Dünkel, 2019).

The anonymisation of the available data records does not allow any conclusions to be drawn about individual cases. In principle, the data records are publicly accessible via the Federal Statistical Office of Germany. The necessity of individual consent for ethical reasons is not apparent. Therefore, it was not deemed necessary to seek institutional ethical approval for this project.

2.3. Data Analysis

Between the years 1995 to 2009 the courts rendered verdicts in 14,100,329 cases. Given that the results presented in this paper describe the whole population and not a sample thereof, no inferential statistics were used; only descriptive statistics (frequencies, percentages, means) are reported. When describing long-term trends, linear distribution fittings were used to represent trends over time and values for 1995 and 2009. Visual inspection of the temporal frequencies of index offence types revealed no abrupt rises or declines, supporting the appropriateness of linear distribution fittings to represent trends over time and values for 1995 and 2009.

Figure 1 about here

The incidences (per 100.000) of the different offence types were calculated according to yearly population numbers of the criminally responsible population. We used population data from the Federal Statistics Office. From 1995 to 2009 the criminally responsible population increased from 51.6 million to 53.8 million. For the year 1995 data on court sentences were missing from two smaller states (“Bundesländer”): Hamburg (approx. 1.7 m inhabitants) and Saarland (approx. 1.0 m inhabitants). For the year 1996 data were missing for Hamburg only. The absolute number of offences for years 1995 and 1996 was extrapolated and completed.
Data on attempted offences were only available for years 1995 to 2006.

3. RESULTS

3.1. Court Rulings

Of all 14,100,329 court decisions from the years 1995 to 2009, 12,019 cases (0.09 per cent) received an order of forensic treatment. Sentences of at least two years of imprisonment occurred in 1.2 per cent of all court decision (170,182 cases) (14.2 times greater). Figure 2 shows the frequencies of the various sentences. The shaded boxes contain the groups upon which the following comparisons are based (i.e. offenders sentenced to forensic treatment and offenders with prison sentences exceeding two years of imprisonment). Following the approach described previously, the offence categories “property crimes”, “structural violence”, “other offences”, and all offences pertaining to narcotics law or other statute books were excluded. The average values of yearly incidences (court sentences) of forensic treatment and prison orders for 1995 to 2009 are shown in Table 1.

Figure 2 about here

Table 1 about here

3.2. Offence Types: Key Offences Vs. Non-Key Offences

On the whole, about 45 per cent of all severe offences committed in Germany are classified as “key offences” (Table 2, column “All convictions”). For comparing the distribution of individual offences in forensic treatment and in prison, Table 2 shows the per cent proportions of the respective individual offences. By definition, in forensic treatment key offences were most commonly found. Offences not classified as key offences comprise only about 14 per cent of all forensic treatment orders, while in prison more than half of convictions are caused by non-key offences. Excluding key offences, prison sentences of more than two years were most commonly violations of narcotics law and property offences.

Table 2 about here

3.3. Individual Key Offences

Table 3 shows the proportions of key offences across prison and forensic sentences and compared to overall severe criminal offences. The distributions of key offences are observably different in the forensic treatment and prison groups. In prison, other violent offences are most frequent; in forensic treatment, bodily harm offences (key offences) are most frequent. The proportion of individuals convicted of homicide is nearly threefold higher in forensic treatment than in prison.

Table 3 about here

Table 4A contains the absolute frequencies of offences (decimals result from approximations for years 1995 and 1996). Overall, 12.6 per cent of all key offences led to forensic treatment and 87.4 per cent to imprisonment (Table 4A). Some of the individual offences deviate from this distribution. Bodily harm offences were overrepresented in forensic treatment including nearly one quarter (23.5%) of severe bodily harm offences. Homicides (ca. 17%) and arson offences (ca. 41%) were overrepresented in forensic treatment, but other violent offences rarely led to forensic treatment (5.1% of all other violence offences).

Table 4A about here

3.4. Changes in The Frequencies of Offence Types

When all offences are considered (not only key offences) there is a clear increase of sentences between the years 1995 and 2009. Prison sentences (>2 years imprisonment) increased by 11.6 per cent (1995: 10.724 sentences; 2009: 11.967 sentences; endpoints of linear distribution fitting). The increase of forensic treatment orders is even higher amounting to 50 per cent (1995: 641 forensic orders; 2009: 961 forensic orders).

Bodily harm offences increased significantly in both forms of enforcement. The total increase of forensic treatment orders is mostly caused by bodily harm offences (82% of the increase). Also increasing in both enforcement groups were arson offences, again more pronounced in the forensic group. Sexual offences against adults decreased in both enforcement groups in similar relative frequency. Homicide, other violence and sexual offences against children or adolescents showed opposing trends.

Table 4B about here

3.5. Attempted Offences

For all key offences in the period 1995 to 2006, the proportion of attempted offences was higher in forensic treatment than in prison (17.8% vs. 11.0%). This was also true for each of individual offence type (Table 5A). In both groups, the highest proportions of attempted offences were homicide and arson. The proportion of attempted sexual offences in forensic treatment was more than twice as large as in prison.

Table 5A about here

Table 5B shows the absolute numbers of accomplished and attempted offences for the years 1995 and 2006 (Table 5B). Overall there was a 25 per cent decrease in attempted offences in prison, while the corresponding number in forensic treatment remained nearly constant. From 1995 to 2006, the amount of attempted offences as a portion of the total number of offences decreased in forensic treatment (1995: 22% of all offences were attempts; 2006: 15%) and in prison (1995: 14%; 2006: 9%).

In prison, only convictions of attempted bodily harm offences increased; in forensic treatment this also included arson offences. While the absolute numbers of accomplished and of attempted homicides decreased in prison, in forensic treatment attempted homicides decreased

and accomplished homicides increased. It should be taken into account that information on attempted sexual offences against children or adolescents are based on low yearly frequencies (1995: Forensic treatment: 3.4 cases; prison: 7.5 cases).

Table 5B about here

4. DISCUSSION

This study found several key differences across the index offences committed by individuals given forensic treatment orders or prison sentences greater than two years. Data covered 14,100,329 rulings in Germany between 1996 and 2009. Individuals receiving forensic treatment orders were overrepresented. On average, 6.6 per cent of all convictions concerning severe offences were related to mentally disordered offenders. However, this proportion is much higher for particular offences. A considerable amount of all convicted severe arson (approx. 41%), bodily harm (approx. 24%) and homicide offences (approx. 17%) were committed by offenders with a mental disorder given a forensic treatment order.

There are no conclusive data on the prevalence rates of severe mental illness available for Germany, so it is hard to contextualise these findings. However, after a systematic search for the prevalence of severe mental illness in the general population, Gühne et al. (2015) proposed a prevalence rate of 1-2% of adults between 16 and 65 years. Using these estimates, the proportion of individuals with a severe mental illness that committed any type of severe offence in the present project was 3-6 times greater than the proportion of individuals with a severe mental illness in the general population. Thus, our data are in line with the postulated general increased risk of offending for persons with a severe mental disorder (Hodgins & Janson, 2002; Torrey et al., 2008; Fazel et al., 2009; Fazel & Yu, 2011; Stevens et al. 2015).

The distribution of offence types was significantly different in the forensic treatment and the imprisonment groups. While 86% of the offences leading to forensic treatment were one of the

six key (more severe) offences, this figure was 42% for individuals punished with more than two years of imprisonment. The relationship between key offences and other (non-key) offences remained quite stable over the studied period. For each year, the proportion of key offences ranged from 82% to 89% in the forensic treatment group and from 40% to 44% in the prison group. It would appear that conviction for a key offence has been a consistent and prominent antecedent to forensic treatment orders in Germany.

Offending patterns changed over the period studied. The number of prison sentences issued following key (severe) offences remained almost stable (+4%) over the years, while forensic treatment sentences increased by 54 per cent. Looking at individual offences, the picture is more complex: while bodily harm offences more than doubled in both groups, homicides demonstrated a 29 per cent decrease in prison and a 3 per cent increase in forensic treatment orders. Other key offences showed similar patterns.

Two overall trends need further explanation. First, the data suggest forensic patients were more likely to commit serious (i.e. violent and sexual) offences. This is in part definitional as forensic treatment orders are given on the condition of presence of risk of future harm, the assessment of which is informed by the type and seriousness of one's offence. It may also be that less serious antisocial behaviour exhibited by individuals with a mental disorder is treated earlier within non forensic services and more aggressive behaviour is not (Hodgins, Müller-Isberner, & Allaire, 2006). It is also likely that some individuals sent to prison for less serious offences have a mental illness that has not been acknowledged in the criminal justice system; this is likely given the high prevalence of mental disorder in prisons (Fazel & Seewald, 2012; Otte et al., 2017). Finally, these differences might be explained by variables that were not investigated in the present study, including individual characteristics of offenders, in particular diagnoses (Coid et al., 2015), sociodemographic data, and regional characteristics (e.g. urban or rural environment, local health care provision).

A second overall trend concerns the number of forensic treatment orders, which increased disproportionately. The total number of forensic treatment orders increased by 50%. This is 4.3 times greater than the increase in the total number of prison sentences greater than 2 years. This increase is reflected in studies of forensic bed numbers in Europe and North America that have shown trends of increasing numbers of forensic beds (Chow & Priebe, 2016; Jansman-Hart et al., 2011). Suggestions that a greater number of individuals are becoming mentally unwell or that individuals with severe mental illness are becoming more violent have been proposed (Priebe et al., 2005) but lack consistent empirical support (Jansman-Hart et al., 2011).

More convincing arguments suggest that trends in deinstitutionalization left a vulnerable and severely mentally unwell population without appropriate support, in conditions conducive to criminality or mental health deterioration (Jansman-Hart et al., 2011; Prins, 2011). Others propose that these increases are due to the inability of general mental health services to manage violent and aggressive behaviour in male patients with psychosis, indirectly assigning forensic services as the last port of call to accommodate these patients (Hodgins et al., 2006).

Revisiting the macro-level theories of social control described by Garland (2001) is also helpful for contextualising our findings. It was suggested that Germany demonstrates a penal ‘exceptionalism’ by not drifting towards punitive policy (Wenzelburger & Staff, 2016). This ‘exceptionalism’ describes that the political, legislative and judicial framework constituting German criminal policy, which ameliorates political efforts to expand state punitiveness. It comprises the myriad veto powers held by actors with the federal Bundestag (Lower Chamber of Parliament), state governments in the Bundesrat (Upper Chamber), coalition politics, and the Constitutional Court (Bundesverfassungsgericht). Coupled with a monist legal system giving direct effect to the European Convention on Human Rights and other international human rights instruments, this system of checks and balances decreases the likelihood of reactive, ‘populist’ policy (Snacken, 2010).

Empirical research supports the characterisation of German policy as ‘moderate’ instead of overly punitive (Wenzelburger & Staff, 2016). Criminal justice policy has demonstrated moderate tendencies over the past decades (Dünkel, 2019). The country has widely expanded diversion programmes since legal reforms in 1975; in adult criminal procedures, the rate of dismissals have almost doubled between 1981 and 2015 (Dünkel, 2019). A similar rise has been noted for suspended sentences involving probation: 30 and later 70% of all prison sentences between 1954 and 2015 were suspended (Dünkel, 2019). Dünkel (2019) describes the German sanctions landscape as ‘a rational evidence-based strategy, which at the same time serves to prevent crime and protect (future) victims’ (p. 48).

This rational evidence-based strategy would situate German policy responses in the second school of approaches described by Garland, ‘criminologies of the everyday’ (Garland, 2001). A recent overview of German crime control suggested that the penal system is becoming more oriented towards the identification and incapacitation of high risk offenders (Boers et al., 2017). This is evidenced in two ways: first, laws implemented within the past 20 years are primarily preventive, resulting in a widening of the social control ‘net’. These include surveillance measures in both private residences (§100(c) Code of Criminal Procedure (StPO)) and computer networks (§100(b) StPO), the storage of telecommunications data (§100(g) (StPO)), and post-sentencing preventive detention (§66 Criminal Code (StGB)). Secondly, harsher punishments have been introduced for sexual offences, burglary and resisting police officers (Wenzelburger & Staff, 2016).

The rise in the number of forensic treatment orders and the increase in the proportion of severe (key) offences committed by the mentally disordered offender group reported in the present paper is consistent with these trends. The placement of a larger number of high-risk mentally disordered offenders in forensic treatment is in conformity with a social control orientation characterised by a less punitive attitude towards offenders as these individuals are increasingly placed within treatment settings for care instead of prisons for punishment. This is however, not

mutually exclusive to the second observation that this high-risk group are given treatment orders that intend to rehabilitate and through expert medical care reorient patients into a less criminogenic lifestyle (Holmes & Murray, 2011). This order is predicated on a calculation of risk and the patient is then removed from society until this risk is measurably reduced (Feeley & Simon, 1992). This is supported by findings that the average length of stay in forensic hospitals has increased in the past decades (Traub & Schalast, 2017). German social control policies may therefore be largely moderate but in relation to mentally disordered and high-risk offenders, characteristic of actuarial accounts described in the literature.

4.1. Limitations

A number of limitations should to be mentioned. Most notably, our data were restricted to a limited number of offender characteristics. Future studies would benefit from a more comprehensive characterisation of offenders, especially with regards to diagnoses and other disorder-related data (such as severity and duration of the disorder, and previous treatments) as exemplarily set by the Canadian National Trajectory Project (Crocker et al., 2015). This would be helpful to identify national and regional changes in the offence-risk of mentally disordered persons and to target and adjust the scope of mental health services. Second, the data collected did not allow description of the trajectories of specific individuals. Longitudinal research would be required to achieve this. Third, it should be noted that our method of using linear distribution fitting for the frequencies of the years 1995 and 2009 led to data that should be interpreted cautiously in cases of low absolute offence frequencies per year.

5. CONCLUSIONS

This project investigated trends in criminal justice sentencing practices in Germany from 1995 to 2009. It analysed officially recorded data taken from 14,100,329 court rulings to describe differences in the index offences committed by individuals sentenced to prison and those given a forensic treatment order. The findings demonstrate that forensic patients committed 6.6% of all severe crimes over the time period. There was a 50% increase in the number of forensic

treatment orders compared to an 11.6% increase in the group of individuals sentenced for crimes of a similar severity. Individual offences types differed substantially between the groups, with forensic patients approximately three times more likely to have committed a homicide offence and 4 ½ times more likely to have committed a bodily harm offence. This paper provides key epidemiological data on the offences committed by individuals in the penal and forensic system of Germany. It also concludes that these trends are indicative of a moderate penal policy, without a drift towards penal populism arguably visible in other jurisdictions. Instead, it is argued that the findings are consistent with actuarial social control policies oriented towards risk prediction and crime prevention of high-risk offender groups.

CONFLICT OF INTERESTS

None.

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TABLE 1. Incidences[a] of crime categories, years 1995 - 2009

Crime categories	Forensic Mean (SD)	Prison[b] Mean (SD)
Homicide	0,23 (0,02)	1,12 (0,16)
Bodily harm	0,47 (0,15)	1,53 (0,39)
Other violence	0,22 (0,02)	4,18 (0,33)
Arson	0,16 (0,04)	0,23 (0,04)
Sexual offence (adult)	0,14 (0,03)	1,24 (0,14)
Sexual offence (children/young adults)	0,10 (0,02)	0,78 (0,09)
All key offences	1,31 (0,20)	9,07 (0,48)
All offences	1,52 (0,20)	21,61 (1,19)

[a] per 100.000 criminally responsible inhabitants per year

[b] only prison sentences ≥ 2 years

TABLE 2. Proportions of types of offences

	Proportion of offences [a] (Per cent)		
	All convictions (100%=182.201 offences[a])	Forensic (100%=12.019 offences)	Prison (100%=170.182 offences[a])
„Key offences“ (StGB)	44,9	86,1	42,0
„Non Key offences“			
- Structural violence (StGB)	1,0	1,4	0,9
- Property offences (StGB)	13,4	5,2	13,9
- Other offences (StGB)	12,3	6,2	12,8
- Narcotic law (BtMG)	26,8	0,7	28,6
- Other codes of law	1,7	0,5	1,8

[a] only prison sentences ≥ 2 years

TABLE 3. Proportions (per cent) of individual key offences [a]

	All convictions (100%=182.201 offences[a])	Forensic treatment (100%=12.019 offences)	Prison (100%=170.182 offences[a])
Homicide	5,8	14,8	5,2
Bodily harm	8,7	30,9	7,1
Other violence	19,0	14,7	19,3
Arson	1,7	10,4	1,1
Sexual offence (adult)	5,9	8,9	5,7
Sexual offence (children/adolescents)	3,8	6,5	3,6
Non-key offences	55,1	13,9	58,0

[a] In prison: only sentences with more than 2 yrs. of imprisonment

TABLE 4A. Absolute and relative cumulative frequencies[a] of key offences in Forensic Treatment and in Prison, 1995 – 2009

	Homicide	Bodily harm	Other violence	Arson	Sexual offences agst. adults	Sexual offences agst. Children/ adolescents	All key offences
Forensic Treatment	1783,4 17,2% 16,8%	3721,2 35,9% 23,5%	1770,2 17,1% ***5,1%***	1252,6 12,1% 40,8%	1069,1 10,3% 9,9%	782,8 7,5% 11,2%	10379,2 100,0% 12,6%
Prison	8836,6 12,3% 83,2%	12102,7 16,9% 76,5%	32996,4 46,0% 94,9%	1815,7 2,5% 59,2%	9775,0 13,6% 90,1%	6195,3 8,6% 88,8%	71721,7 100,0% 87,4%
∑	10620,0 12,9% 100,0%	15823,9 19,3% 100,0%	34766,6 42,3% 100,0%	3068,3 3,7% 100,0%	10844,1 13,2% 100,0%	6978,1 8,5% 100,0%	82100,9 100,0% 100,0%

(Row-%; ***column-%***)

[a] rounded estimates for two countries in 1995 and 1996

TABLE 4B. Absolute frequencies[a] of offences 1995 and 2009 and relative changes

		Absolute Frequency of offences [a] 1995 and 2009	Change ± %
All key offences	Prison	4687.9/4875.0	+4.0%
	Forensic treatment	545.0/838.9	+53.9%
Homicide	Prison	687.6/490.6	-28.6%
	Forensic treatment	116.9/120.8	+3.3%
Bodily harm	Prison	480.0/1133.7	+136.2%
	Forensic treatment	127.6/368.5	+188.7%
Other violence	Prison	2332.3/2067.2	-11.4%
	Forensic treatment	104.9/131.1	+25.0%
Arson	Prison	107.2/134.9	+25.8%
	Forensic treatment	60.3/106.7	+77.1%
Sexual offence agst. Adult	Prison	710.4/592.9	-16.5%
	Forensic treatment	76.3/66.2	-13.3%
Sexual offence agst. Child/adolescent	Prison	370.4/455.6	+23.0%
	Forensic treatment	58.9/45.5	-22.9%

[a] Absolute frequencies: endpoints of linear distribution fitting

TABLE 5A. Proportions of attempted offences, 1995 to 2006

	Forensic treatment	Prison
All key offences	17.8%	11.0%
Homicide	43.4%	34.2%
Bodily harm	6.6%	3.9%
Other violence	16,8%	10,0%
Arson	24,5%	18,2%
Sexual offence agst. adult	15,1%	5,9%
Sexual offence agst. child/adolescent	4,0%	1,8%

TABLE 5B. Accomplished and attempted offences 1995 [a] and 2006 [a]; per cent changes

	Forensic treatment						Prison					
	Accomplished			Attempted			Accomplished			Attempted		
	1995	2006	± %	1995	2006	± %	1995	2006	± %	1995	2006	± %
All key offences	408.4	679.4	+66	115.3	119.7	+4	3857.6	4670.4	-21	605.3	453.7	-25
Homicide	61,9	70,3	+13	55,4	45,9	-17	423,6	375,8	-12	248,6	166,5	-33
Bodily harm	115,1	300,4	+161	6,3	23,0	+264	458,3	954,7	+102	13,1	43,9	+235
Other violence	86,2	102,3	+19	19,3	18,8	-3	1978,0	2062,0	+5	246,2	201,6	-18
Arson	37,3	84,7	+127	16,0	23,5	+46	72,4	123,4	+70	26,8	16.8	-37
Sexual offence agst. Adult	55,6	69,9	+26	14,9	7,5	-50	588,9	687,8	+17	63,1	17,4	-72
Sexual offence agst. Child/adolescent	52,3	51,8	-1	3,4	1,0	-71	336,4	466,7	+39	7,5	7,5	+1

[a] Per endpoints of linear distribution fitti