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## **Evidence-Based Principles for Successful Juvenile Justice Systems in the United States**

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Evidence-Based Principles for Successful Juvenile Justice Systems in the United States

An Honors College Project Thesis

Presented to

The Department of Language and Literature

Abilene Christian University

In Partial Fulfillment

of the Requirements for

Honors Scholar

by

Elizabeth Miller

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This Project Thesis, directed and approved by the candidate's committee,  
has been accepted by the Honors College of Abilene Christian University  
in partial fulfillment of the requirements for the distinction

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### Abstract

The state of the juvenile justice system in a society significantly impacts every member of that society. At present, research regarding the juvenile justice systems in the United States focuses primarily on two areas: (a) deterrence of crime by juveniles and (b) methods for measurement and assessment to determine the success of interventions related to juvenile crime. Further, most of the existing evidence-backed practices available are based on recidivism as the primary or even sole standard of success, which recent research has shown is an insufficient evaluative method. Thus, there exists little research that both utilizes effective evaluative methods and puts forth best practices for responding to juvenile offenders—especially those who have committed serious offenses. This paper seeks to close that gap by analyzing policies regarding age of accountability, restorative justice, and juvenile detention and incarceration in Massachusetts, Germany, and the Netherlands. It concludes with applications for the United States based on my analysis and further research: (a) utilizing better data collection and distribution methods, (b) adopting policies that increase the upper age limits on juvenile court jurisdiction, (c) implementing restorative justice measures on a broader scale within the United States, (d) reducing the use of juvenile detention and incarceration, and (e) taking steps to mitigate the harmful effects of secure confinement when incarceration is utilized.

*Keywords:* juvenile justice, markers of desistance, criminal responsibility, restorative justice, rehabilitation, detention, incarceration, United States, Germany, The Netherlands





## **Evidence-Based Principles for Successful Juvenile Justice Systems in the United States**

The state of the juvenile justice system in a society significantly impacts every member of that society. An effective juvenile justice system reduces juvenile crime rate, prevents the mass transfer of adolescents from the juvenile system into the adult system, and results in safer communities for everyone. At present, research regarding the juvenile justice systems in the United States focuses primarily on two areas: (a) deterrence of crime by juveniles and (b) methods for measurement and assessment to determine the success of interventions related to juvenile crime. Further, most of the existing evidence-backed practices available are based on recidivism as the primary or even sole standard of success, which recent research has shown is an insufficient evaluative method. Thus, there exists little research that both utilizes effective evaluative methods and puts forth best practices for responding to juvenile offenders—especially those who have committed serious offenses.

To begin closing this gap, I identify three of the most common practices in juvenile justice worldwide; evaluate their applications and effectiveness in the United States, Germany, and the Netherlands; and draw conclusions regarding further application in the United States, taking into consideration the differences between the three countries. The purpose of this paper is to take principles in juvenile justice that are conventionally successful and contextualize them to the United States. While plenty of existing literature provides best practices for juvenile justice in general, few resources are evidence-based (rather than ethics-based) and also discuss how such practices might interact with the unique governmental, political, economic, cultural, and social contexts



within the United States. My goal is to do both, as I will gather evidence to support the principles I put forth while also considering how they would actually work in the United States.

### **Methodology**

In policy, evaluative methods, designed to measure the effectiveness of a program, must be carefully chosen to reflect the program's goals. In the United States, recidivism has become a popular standard by which to measure a program's success, but it may not be the most appropriate statistic to whether specific policies or programs are achieving the goals set forth by federal agencies. To select suitable evaluative methods for this project, I will first lay out the goals for the American juvenile justice system provided by federal agencies, then outline which measures are most fitting to evaluate those goals, and finally choose measures for this paper based on what data is actually available for analysis.

### **Policy Goals**

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Juvenile Justice and Delinquency Prevention Act Reauthorization 2018, and youth.gov offer similar goals. An office within the Department of Justice, OJJDP is the primary federal entity dedicated specifically to juvenile justice and sponsors research, sets goals, distributes information, and awards grants regarding juvenile justice. According to OJJDP's vision statement, "The Office of Juvenile Justice and Delinquency Prevention (OJJDP) envisions a nation where *our children are free from crime and violence*. If they come into contact with the justice system, the contact should be both *just and beneficial to them*" (emphasis added). Its mission statement echoes the desirability of justice and



empowerment of children: “OJJDP provides national leadership, coordination, and resources to prevent and respond to juvenile delinquency and victimization. OJJDP supports the efforts of states, tribes, and communities to develop and implement effective and equitable juvenile justice systems that *enhance public safety, ensure youth are held appropriately accountable to both crime victims and communities, and empower youth to live productive, law-abiding lives.*” Through these two statements, OJJDP emphasizes the importance of reducing crime, promoting accountability of juveniles who encounter the justice system, and providing those juveniles with the best possible opportunities for future law-abiding lives.

The Juvenile Justice and Delinquency Prevention Act Reauthorization 2018, a renewed and amended version of the Act in 1974 that established OJJDP, delineates even more specific goals:

- (1) to support State, tribal, and local programs that *prevent juvenile involvement in delinquent behavior;*
- (2) to assist State, tribal, and local governments in *promoting public safety by encouraging accountability for acts of juvenile delinquency;*
- (3) to assist State, tribal, and local governments in *addressing juvenile crime* through the provision of technical assistance, research, training, evaluation, and the dissemination of current and relevant information on *effective and evidence-based programs and practices for combating juvenile delinquency;* and
- (4) to *support a continuum of evidence-based or promising programs* (including delinquency prevention, intervention, mental health, behavioral health and substance abuse treatment, family services, and services for children exposed to



violence) *that are trauma informed, reflect the science of adolescent development, and are designed to meet the needs of at-risk youth and youth who come into contact with the justice system.* (p. 3)

This Act, like OJJDP, seeks to reduce crime and promote accountability. Its proposals to preserve the potential for future success of the juveniles that enter the system, however, are more specific; it highlights utilizing “evidence-based programs” that are responsive to both developmental psychology and the individual needs of each delinquent juvenile. A successful program, then, would likely offer law enforcement and justice systems several options for diversions and dispositions, and sentences and mandates should be highly individualized.

Finally, youth.gov, created by the Interagency Working Group on Youth Programs, focuses on American youth in general. Its statement on juvenile justice is much broader but is still an important perspective on its purpose from the distinct viewpoint of youth empowerment. “The primary goals of the juvenile justice system,” it posits, “in addition to *maintaining public safety*, are *skill development, habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth* into the community.” Like the previous two, this organization proposes reducing crime as essential to an effective juvenile justice system, but it also stresses meeting the needs of the juvenile offender in order to facilitate “successful reintegration of youth into the community”—in other words, guiding youth toward leading law-abiding lives. Thus, maintaining individualized approaches to each offender is, once again, a crucial element to the success of a program by the standards set forth by these three federal entities.





Based on the statements from OJJDP, the Juvenile Justice and Delinquency Prevention Act Reauthorization 2018, and youth.gov, the goals of a successful juvenile justice system would be to reduce crimes committed by juveniles, hold juveniles who encounter the justice system accountable, treat each offender fairly and justly, meet the individual needs of those juveniles through science-backed approaches, and preserve their potential to lead law-abiding lives after their encounters with the justice system.

### **Best Practices**

In this section, I will outline best practices for research under ideal conditions—an important discussion for framing future research endeavors. In the following sections, I will address the currently existing research conditions and their implications for this project.

With the above policy goals established, it becomes clear that recidivism alone could not possibly measure success effectively. There are many more components to success of a juvenile justice system than whether a juvenile reoffends. Reducing crime, for example, can take form in reducing the frequency with which juveniles offend, or by reducing crime severity. Further, measuring success by recidivism implies that behavior change is an event, not a process, and that someone who is unsuccessful in the first attempt is a failure (Klinge, 2018). Thus, while recidivism can be a helpful tool, under ideal research conditions, it would not be used in isolation or even necessarily as a primary tool for measuring effectiveness.

I propose a public health approach to evaluating juvenile justice systems for two reasons. First, it offers a scientific perspective that focuses on the individual—one of the goals specified in the “Policy Goals” section. Second, it provides a more realistic



understanding of desistance from crime, which is key to accurately measuring the reduction of juvenile crime.

From a public health approach, “the abandonment of any maladaptive behavior” (in this case, criminal behavior) follows the six stages of the transtheoretical model: (1) precontemplation, (2) contemplation, (3) preparation, (4) action, (5) maintenance, and (6) termination (Klingele, 2018, p. 796). In the precontemplation stage, people have no interest in changing the behavior in question. Delinquent juveniles in this stage would need to not only be held accountable for their crimes, but also begin the process of accepting responsibility for those crimes. In the contemplation stage, people begin to consider the feasibility and desirability of behavioral change. Juveniles in the contemplation stage, while still likely to reoffend, would be open to considering abandoning delinquency. The preparation stage involves developing the will and a plan to change the behavior in questions. For juveniles, this would be evidenced by a willingness to accept responsibility for their crimes and consider reparative measures. The action stage is characterized by change—albeit most likely not entirely successful—and juveniles in the stage would willingly accept fair sentences and actively participate in any mandated programs. Maintenance is the ongoing act of forming new behaviors to replace the old, which can last for years, until the person finally reaches the termination stage, in which the maladaptive behavior is abandoned completely. For juvenile offenders, the maintenance stage would likely be characterized by increasing lengths of time between offenses.

The natural curve of the rates of crime for less serious offenses—mostly property crimes and arson—suggests that this process occurs naturally for most adolescent



offenders. Such crimes follow “a phase-specific pattern, where the levels of a crime during adolescence are much higher than later in the life cycle” (Zimring & Fagan, 2005, p. 94). Their rates rise in early adolescence, peak during the teen years, and fall to nearly zero in adulthood. Most of these offenders abandon delinquent behavior after their teenage years. An effective juvenile justice system, then, would hold these adolescents accountable and reduce those crimes, but also avoid imposing sentences harsh enough to impede the juveniles’ ability to participate in the community or lead crime-free lives in the future, as some sentences have been proven to do.

Some offenders, instead of following the more common phase-specific pattern, exhibit “transitional to adult patterns,” which are characterized by a rise in violent crime in the late teenage years (Zimring & Fagan, 2005, p. 94). These juveniles are more likely to continue committing crimes into adulthood rather than cease delinquent behavior independently of the justice system. Because of the likelihood of not only reoffense but persistent and continued offending, intervention by the juvenile justice system in these cases is more crucial to reducing criminal behavior. Even so, as suggested by the goals set forth by the federal government, sentences imposed upon juveniles following this pattern should focus on meeting the needs of the offender and preserving the potential for them to lead a law-abiding life, not only preventing them from committing future crimes, especially when using detention as a means for incapacitation. Regardless of which pattern a juvenile offender appears to be following, meeting their needs in a scientifically supported way necessitates the facilitation of their progress along the stages of the transtheoretical model of behavior change. Measuring the effectiveness of a juvenile justice system, then, should include measuring the system’s facilitation of that process.



### *Markers of Desistance*

Markers of desistance, or indicators that a person is in the process of ceasing to commit crime, can measure such progress. Ryan King and Brian Elderbroom, researchers from the Urban Institute (2014, as cited in Klingele, 2018), propose “time to failure, crime severity, and behavior changes as indicators of success” (p. 804). Tracking time to failure, or the amount of time between offenses, provides researchers and justice systems with the opportunity to assess a juvenile offender’s progress along the stages of behavioral change. An adolescent who goes eight months without reoffending is likely more committed to desisting from crime than one who reoffends within a week, and if a particular intervention consistently results in greater lengths of time to failure, it is at least partially successful in leading delinquent juveniles toward desistance. Crime severity, the second indicator of success, can signal which pattern of criminal behavior the juvenile offender may be following, but a progression from violent crime to lesser crimes may also indicate desistance. Such a transition would suggest that they are developing a heightened awareness of the consequences of their crimes and thus resisting more serious offenses. Finally, behavioral changes, the third indicator, can take place in many contexts, including familial, social, and educational. Prosocial behavior in these contexts often indicates a more general rise in prosocial behavior, which usually accompanies desistance from crime.

### *Measuring Desistance*

Most of the identified policy goals can be measured through quantitative data alone, though the inclusion of qualitative data often brings richer insight. The reduction of crime can be evaluated by rates of time to reoffense, measured longitudinally—ideally,





throughout a juvenile's entire time in the juvenile justice system, or even including time spent in the adult criminal justice system as well—rather than over a set, short period of time, as recidivism is measured. Tracking crime severity would likewise measure a system's impact on crime, but rather than reducing only the incidence of crime, data may reveal that a successful system would also reduce the severity of crime. Reducing violent crime, for example, even if property crime rates remained stable, should be seen as an overall success from the perspective of public safety. These two measures would also be helpful in evaluating the preservation of a juvenile's potential for a law-abiding life; programs that generally lead to desistance successfully preserve that potential, while interventions that increase criminal or antisocial behavior do not.

Measuring behavioral change, another marker of desistance that can indicate an offender's progress along the transtheoretical model, would require a more nuanced and involved approach, and to be successful, it would likely necessitate participation from family and teachers. Change can be tracked and quantified in familial and social relations through surveys administered to the juvenile as well as parents and even siblings, and school behavior can be tracked through surveys of teachers, school attendance, and academic achievement. If successfully measured, behavioral change would provide evidence that the juvenile's developmental needs were being met and their progress within the transtheoretical model of behavioral change was being facilitated.

Measuring the effectiveness of juvenile justice systems in holding offenders accountable and treating them justly and fairly would require slightly different measures. Determining whether juveniles are being held accountable for their crimes would be more difficult than measuring the achievement of other goals partially because it may be the



most subjective of the goals. Holding youth “accountable” may be interpreted as punishing them or producing a criminal record, mandating that they perform reparation of some kind, or simply requiring that they attend therapy or any other program deemed necessary by the court. Ultimately, without this goal being defined in greater specificity in legislation, measuring its success must be left to the discretion of local juvenile courts.

Measuring justice and fairness in juvenile justice systems requires, by nature, comparison. This may include comparison to other systems—such as whether one court punishes its juveniles much more harshly than another—or comparing the outcomes of specific offenders to others within the same system and identifying discrimination in arrests, charges, convictions, and sentencing. Discrimination can and does take shape as racism, but may also vary based on class, gender, crime severity, and so on. Measurement of justice and fairness requires very specific and detailed data on the participants of juvenile justice systems.

### **Evaluative Methods for this Project**

All of the measures proposed above more effectively evaluate the achievement of the United States’ goals regarding juvenile justice than recidivism alone can, and some of them can even be analyzed from the raw data collected on recidivism. Unfortunately, these measures rarely make their way into published reports, and such raw data is usually not available to the general public. Further, the data necessary to evaluate behavioral change independent of criminal behavior is almost never collected by government entities, so evaluations of whether interventions encourage prosocial behavior are even harder to find. Thus, markers of desistance beyond recidivism seldom appear in reviews of juvenile justice systems.



As a result, the majority of the data necessary to evaluate the policy goals of the American juvenile justice system according to best practices is unavailable. Thus, recidivism, crime rates, crime severity, empirical evidence (gathered from research conducted worldwide), and consistency with developmental psychology are my evaluative methods for this paper.

I am evaluating the juvenile justice systems of Massachusetts (representing the United States), Germany, and the Netherlands. I chose these specific locations because they share some key commonalities: they have all recently implemented progressive juvenile justice reforms, and crime rates have been falling at each location for several years. Because statistics in several key areas, such as recidivism and racial data, are not regularly published by Germany or the Netherlands (which is not unusual outside of the United States), the evaluation of each practice's effectiveness will be limited to correlations and contextual assumptions. The practices I will examine are age of accountability, restorative justice, and juvenile detention and incarceration.

### **Limitations**

Because the in-depth data necessary to make direct comparisons between the countries is unavailable, establishing causation in this paper will not be possible. Instead, I will rely on conditions that suggest that a given practice is at least not *harming* the justice system. For example, falling levels of incarceration coinciding with falling levels of crime suggests that decreasing the share of convicted criminals who are sentenced to imprisonment will not lead to raised levels of crime.

Additionally, demographic data like race—a prominent issue within the justice systems across the United States—is not collected or reported by the federal governments



of Germany and the Netherlands. Thus, an effective comparison of the interactions between the practices in their juvenile justice systems and their social contexts is likely not feasible. Some of these limitations will be mitigated through the inclusion of Massachusetts in the study, as an example of each practice will be analyzed in the context of the United States.

### **Evaluations of Prominent Juvenile Justice Practices**

#### **Age of Accountability**

The age of accountability, also known as the age of competence or responsibility, is the minimum age at which an individual can be held criminally liable for illegal behavior. This age varies by country, and in many nations, such as the United States, by state. Most developed countries try minors and sometimes young adults in a juvenile justice system, administered either as part of an established criminal justice system or as a separate entity. The result is several stages of criminal liability: infancy, juvenility, and adulthood. During infancy, a minor is legally too young to be held criminally liable, and thus cannot be tried or convicted for illegal behavior in any court. As a juvenile, an individual can be held criminally liable, but because of their immaturity and lack of development, they are usually subject to more lenient sentences and offered more developmentally appropriate services. In the final stage, adulthood, an individual is recognized as a legal adult and may be prosecuted and sentenced to the fullest extent of the law, barring other issues related to competence (such as severe mental illness). These stages are separated by minimum and maximum ages of juvenile accountability. For example, in Texas, a child must be at least 10 and no older than 16 years old to be tried as a juvenile (Teigen, 2019).





In many juvenile justice systems, minors can be transferred to adult court, tried as an adult, and sentenced according to the criminal—not juvenile—justice system guidelines. All states in the United States allow for such a transfer for reasons including crime severity and prosecutorial or court discretion (Teigen, 2019). This is called the flexible model, under which those who fall within the juvenile age range can enter the adult criminal justice system (Matthews et al., 2018, p. 63). Other countries employ the strict model, under which a juvenile cannot, for any reason, be transferred to the adult system (Matthews et al., 2018, p. 63).

Recently, a new stage between juvenility and adulthood called young adulthood has emerged in the legal systems of several countries and is most popular in Europe. It is handled differently in each country in which it is utilized, but usually, the provision allows for young adults to be tried as juveniles or receive juvenile sentences instead of those for adults. This modern practice is founded in developmental psychology, backed by research suggesting “that the cognitive skills and emotional intelligence that mark the transition from childhood to adulthood continue to develop at least into a person’s mid-20s” (Matthews et al., 2018, p. 60). It is further reinforced by “recent findings in neuroscience indicating that maturity and psycho-social abilities are not fully developed until the third decade of life” (Matthews et al., 2018, p. 64). Because young adults, a term that typically refers to individuals 18 to 25 years of age, are psychologically nearly identical to adolescents under 18, some countries allow for them to be treated as juveniles by their justice systems.

Another common rationale for trying young adults as juveniles, especially within the United States, is that they are not truly treated as adults in all aspects of the criminal



justice system. A 20-year-old, for example, can be tried as an adult for any state or federal crime, but cannot buy alcohol, marijuana, or, in some states, even tobacco. The same developmental psychology supporting the minimum ages for purchasing controlled substances such as alcohol, marijuana, and tobacco is often cited to advocate for higher maximum ages to be tried as a juvenile. Proponents of including young adults in the juvenile justice system point out the irony of a teenager or 20-year-old being held criminally liable and sentenced as an adult for possessing a substance that they are deemed too young to access.

### *United States*

In the United States, the codified minimum age for a minor to be prosecuted ranges from 6 to 12 years of age; however, 29 states specify no minimum age for prosecution (National Juvenile Defender Center [NJDC], 2020). In most states, the maximum age of juvenile court jurisdiction is 17 years old, although, as previously mentioned, all states allow juveniles to be transferred to adult court (Teigen, 2019). Due to the variety (and sometimes lack) of data collected and reported by states, there is no clear number or percentage of juvenile offenders who are transferred to adult court in the United States, so an evaluation of the practice at the national scale will be difficult until better data collection and storage methods are utilized (Carmichael & Sigouin, 2018).

Massachusetts operates under the flexible model. In Massachusetts, juvenile courts have jurisdiction over any individual who has allegedly committed a crime before their 18<sup>th</sup> birthday until, at the latest, that individual reaches their 21<sup>st</sup> birthday (NJDC, 2018). Thus, a 17-year-old may receive a two-year sentence for a crime committed and remain under the jurisdiction of the juvenile court for that crime until they are 19 years



old. An individual who commits a crime as an 18-year-old, however, would be tried as an adult in the state's criminal justice system. Recently, though, reform efforts in Massachusetts have led to the formation of a task force to consider raising the juvenile court's jurisdiction to all individuals under 21 years old (Citizens for Juvenile Justice [CFJJ], 2018). Any child at least 14 years old convicted of murder is automatically sentenced according to the adult criminal code, but such an offender must be incarcerated separately from and cannot be exposed to any incarcerated adults until they turn 18 (NDJC, 2018; Mass. Gen. Laws Ann. ch. 119, § 72B).

The age of legal adult liability in Massachusetts only recently changed to 18 years from 17 years in September of 2013. Notably, between introducing 17-year-olds into the juvenile justice system in 2013 and more recent reforms in 2018, the number of cases in the juvenile courts fell 16%, from 19,712 to 16,627 in FY2018 (CFJJ, 2020). Youthful offender arraignments likewise decreased during this time period. This data would suggest that raising the age at which individuals are tried as adults does not necessarily increase the caseload for juvenile courts, and in Massachusetts, is actually correlated with decreasing crime rates. Naturally, such a small sample cannot establish causation, but the reform was nonetheless beneficial in Massachusetts.

### *Germany*

Germany operates under the strict model with a caveat. The age of juvenile criminal responsibility set to 14 years old, and the age of adult criminal responsibility is set to 18 years (Matthews et al., 2018). While adolescents from 14 to 17 years old must stay within the juvenile justice system regardless of the crime they are charged with, young adults who are 18 to 20 years old are also processed by the youth court and may



receive either “a sentence according to juvenile law or a (mitigated) sentence according to adult criminal law” (Matthews et al., 2018, p. 66). This provision is utilized frequently, especially in cases of violent crime. In 2012, two-thirds of young adult offenders in Germany received juvenile sanctions, but over 90% of those charged with violent crimes were sentenced under juvenile law (Matthews et al., 2018). This approach lies in stark contrast with even the most progressive states in the United States, including Massachusetts, where any child 14 years or older being charged with murder is automatically sentenced as an adult. Germany, like the United States, is focused on preventing delinquent juveniles and young adults from reoffending, but Germany emphasizes preventing recidivism through rehabilitation, not incapacitation (such as incarceration).

Due to multiple methodological changes to Germany’s data collection system within the past 15 years, tracking outcomes following the implementation of their age-of-accountability policies to the present day is difficult. In addition, although crime rates are falling in Germany, this can be at least partially attributed to the country’s falling birth rate and shrinking general population (Federal Republic of Germany, 2018). Finally, Germany does not publish data on recidivism (juvenile or general), so statistics on recidivism in Germany are published exclusively by researchers and other non-government organizations and are usually data sets 10 to 15 years old reporting on general recidivism (not juvenile), making a comparison of recidivism rates impossible.

It is noteworthy, however, that the number of apprehended suspects who are juveniles and young adults are falling. For example, from 2016 to 2017, the number of overall suspects decreased by 10.5%, but young adult suspects decreased by 15.8%,





though juvenile suspects only decreased by 9.3% (Federal Republic of Germany, 2017). The percentage of juvenile suspects apprehended for bodily injury (the only violent crime for which Germany has published juvenile-specific data) also fell slightly from 21.98% in 2016 to 21.17% in 2017 (Federal Republic of Germany, 2017).

Additionally, Germany's approach to juvenile justice is well-backed by developmental psychology and neuroscience, and it allows for progress along the transtheoretical model as an adolescent ages. By delaying the full penalty of the criminal law in many cases—especially in those involving violent crime—until the age of 21, the potential for apprehended and convicted youth to successfully pursue crime-free lives following their sentences is likely better preserved than it is in the United States. Thus, even without comparable statistics to prove the success of the German model, it can be reasonably concluded that its approach to the age of accountability furthers the ambitions of the American juvenile justice system.

### *The Netherlands*

The Netherlands employs a flexible model and sets its minimum age of criminal responsibility at 12 years old (Matthews et al., 2018). All cases against individuals under 18 years old are adjudicated by the youth court, and, unlike those in Germany, all cases against individuals 18 or older are adjudicated by the adult criminal court. Those aged 16 to 22 years old, however, are eligible to be sentenced according to juvenile or adult criminal law based on factors such as “the seriousness of the offense, the personality of the defendant, or the circumstances under which the offense has been committed” (Matthews et al., 2018, p. 70). Despite the availability of adult sentences for juveniles and young adults, however, “research has shown that adult custodial sanctions imposed on



minors rarely exceed the maximum youth imprisonment sentence...and for very serious offenses hardly ever exceed eight years imprisonment” (Matthews et al., 2018, p. 70).

This approach represents a blend of American and German policies. Juveniles are always adjudicated in juvenile court, just as they are in Germany, and adults are always adjudicated in adult court, as they are in the United States. The Dutch approach is unique in the freedom offered to both courts—juvenile and adult courts alike have the right and responsibility to determine which code they should follow for each young adult they sentence, making the system highly individualized to each offender.

The inclusion of juvenile sentencing options for young adults, known as *adolescentenstrafrecht* (adolescent criminal law), was enacted in the Netherlands in 2014 (Matthews et al., 2018). There is not much published concrete data to examine the effects of this law since then, but “the total number of criminal cases against 18- to 23-year-olds” has been decreasing for over a decade (Matthews et al., 2018, p. 72; Ministry of Health, Welfare and Sport, 2019). More specifically, the share of young people (those aged 12 to 24) registered as suspects for a crime shrank from 4.5% in 2007 to 2.0% in 2016, then further to 1.7% in 2018 (Ministry of Health, Welfare and Sport, 2017, 2019). These changes cannot be directly or solely attributed to youth justice policies in the Netherlands, especially considering that the downward trend in youth crime began before the most recent reforms, but they are evidence nonetheless of the holistic success of the justice system in general.

The laws regarding youth in the Netherlands are less protective of juveniles aged 16 and 17, but their inclusion of juvenile sentencing options for adolescents up to 22 years old is representative of the value placed on addressing the developmental roots of



the delinquency of young people. Combined with the relatively lenient sentencing for those youth who do receive adult sanctions, the Dutch approach to juvenile justice is also well-backed by developmental psychology and neuroscience, and thus furthers the goals of American juvenile justice.

### **Restorative Justice**

Restorative justice is an increasingly popular community-based response to crime. It is often used as a diversion, which is “a way to process offenders as an alternative to formal sanctioning,” but can also be carried out as a sentence following an adjudication of delinquency (Kremser, 2018, p. 263). A diversion can occur at any point until a formal adjudication is made. While diversions usually require a youth to take responsibility for the crime committed, a case not charged by police or dismissed by a prosecutor or court would also count as a diversion. The purpose is generally to avoid labeling a child delinquent and encourage more beneficial treatments, though they are also sometimes utilized due to overcrowding of detention centers or a high caseload in general, especially if the infraction is minor (Kremser, 2018).

Restorative justice methods, while centered around the goals of encouraging acceptance of responsibility, including the community, and restitution to victims, vary widely in their administration. Unlike traditional justice systems that emphasize retribution for wrongdoing, restorative justice “ask[s] what needs have been created and who is responsible for meeting those needs” after a crime is committed (Ruth-Heffelbower, 2018, p. 718). The most popular and effective restorative justice programs include victim-offender conferencing and family group conferencing. Both practices “are a form of mediated reconciliation in which victims, offenders, and members of the larger



community”—that is, anyone indirectly affected by the behavior in question, potentially including community leaders, teachers, or family members—“are involved in a reparative discussion and negotiation process to promote offender accountability, competency development, and public safety” (Sellers, 2018, p. 167).

Proponents of restorative justice posit that these practices not only meet the needs of the victims, thereby at least partially rectifying the wrongs done, but also encourage young offenders to accept responsibility for and develop an awareness of the consequences of their criminal behavior. Direct interaction with victims and other community members an offender has not even considered, along with learning about the consequences of crimes they have committed and the steps necessary to restore peace, can be eye-opening and encourages an adolescent’s progress to the contemplation, preparation, and action stages of the transtheoretical model.

### *United States*

Given the broad definition of restorative justice and, consequently, its diversity in practice, the effectiveness of restorative justice is difficult to ascertain at times. Its effectiveness in practice lies in a system’s abilities to adapt the core philosophies and common practices to the needs of the individual community and the people involved with the justice system, so measuring the success of restorative justice implementation can be highly contextual. Even so, in studies regarding its effectiveness, “the usual result identified is a decrease in recidivism,” as well as a decrease in crime severity when a convicted individual does reoffend (Ruth-Heffelbower, 2018, p. 719). Additionally, research shows that victim-offender dialogue, a particular form of restorative justice





conferencing, typically yields high participant satisfaction scores (Ruth-Heffelbower, 2018).

In Massachusetts, the first major experiment with restorative justice for juveniles began in 2017 in Suffolk County. Formed by the collaborative efforts of the Suffolk County District Attorney's Office, community youth service organizations, and local crime-survivor groups, the Restorative Justice Juvenile Mediation Project (RJUMP) serves as a diversion program (University of Massachusetts Boston, Center for Peace, Democracy, and Development [UMB], n.d.). If a youth successfully completes the diversion plan offered by RJUMP, they will not be charged with a crime and will avoid acquiring a criminal record.

The services offered in Suffolk County include victim-offender dialogue, family conferencing, parent-child mediation, restorative youth dialogue, and mentorship (UMB, n.d.). Successful victim-offender dialogue leads to reparation agreements, which can take the form of financial compensation, unpaid work as compensation (such as property clean-up in cases of vandalism), community service, apologies, rehabilitation programs, or any other action plan agreed upon by the members of the group, including the offender. Family conferencing and parent-child mediation are employed when RJUMP leaders believe juvenile delinquency is clearly stemming from familial conflicts, abuse or neglect, or another home-related issue, and both methods utilize the voluntary, active, and ongoing participation and support from family members to address relational problems in a healing, constructive manner. Youth dialogue allows young offenders to interact with peers in a group, and the structured, narrative-style conversation encourages "a sense of compassion for the self and others and remorse for the hurt they have caused" (UMB,



n.d.). Finally, mentorship is designed as a more supportive form of supervision, during which a mentor regularly contacts the young offender and provides assistance in the offender's academics, search for employment, and personal life (UMB, n.d.).

The reforms in Massachusetts are too recent to be examined properly for their effectiveness, but as discussed above, empirical evidence has shown that restorative justice measures are typically effective. The effectiveness of the new restorative justice measures in Suffolk County will depend more on their implementation than the measures themselves, which are among the most popular and well-supported practices. The effectiveness of restorative justice is generally affirmed by research elsewhere in reducing recidivism, and its practices are solidly rooted in developmental psychology and neuroscience. In terms of American juvenile justice goals, restorative justice holds young offenders accountable, is likely to result in the fair and just treatment of system-involved youth, better meets the needs of individual young offenders due to its highly contextual approach, and encourages those offenders to accept responsibility and make progress along the transtheoretical model, which, if successful, would reduce crime.

### ***Germany***

The German juvenile justice structure “is characterized by the approach of *minimum intervention* with priority given to diversion” (Matthews et al., 2018, p. 68). In 2016, some form of diversion was used in the cases of about 70% of young offenders; incarceration, on the other hand, was used for only 2% (Matthews et al., 2018). Diversions in Germany have led to the population of convicted defendants being only 3.4% comprised of juveniles and 7% comprised of young adults in 2017, even though they represented 9% and 9.3% of apprehended offenders respectively (Statistisches



Bundesamt, 2017; Federal Republic of Germany, 2017). The country's approach, in general, is to use the juvenile system as an educational and rehabilitative tool for wayward youth, rather than as a means for punishment or punitiveness. As a result, restorative justice has become particularly popular in Germany.

Like Suffolk County, Germany requires the consent of the prosecutor to divert a case from adjudication. The prosecutor may decide to dismiss the case, ask the youth court judge to "impose a minor sanction," or bring the young offender to court for full prosecution (Matthews et al., 2018, p. 68). Minor sanctions include warnings, fines, and social training courses, but they also include restorative justice measures such as victim-offender dialogue, community service, and even direct compensation to victims for damages. Over one-third of young offenders' cases result in one of these restorative justice measures, signaling Germany's commitment to avoiding punitiveness in favor of restitution (Matthews et al., 2018).

Again, statistical evidence for or against the effectiveness of restorative justice specifically in Germany cannot be established with the data available. As in Massachusetts, though, Germany's restorative justice practices generally meet the policy goals of the American juvenile justice system by individualizing sentences to encourage accountability while offering fair treatment and meeting offenders' needs, as well as facilitating progress along the transtheoretical model for change. Restorative justice has also been broadly established as effective by research conducted worldwide. The German implementation of restorative justice among juveniles remains a promising option for American systems, though more advanced data collection would be necessary to test its effectiveness in the United States.



### *The Netherlands*

The Netherlands has adopted a similarly restoration- and rehabilitation-based model. The public prosecutor, who decides whether to dismiss a case, otherwise divert it, or pursue prosecution, “relies on a social inquiry report into the system-involved youth prepared by the Dutch probation service on the social, emotional, and cognitive development of [a] young adult” when deciding whether to impose juvenile or adult sanctions upon adolescents (Matthews et al., 2018, p. 71). Unlike Suffolk County and Germany, the Netherlands allows both its prosecutors and police to legally dispose of a case through diversion. Police may dismiss a case and send a child to a voluntary social services program or the Child Care and Protection Board for investigation, issue a warning, impose a small fine, or refer juvenile offenders to HALT, a community service and restorative justice program (Matthews et al., 2018). Prosecutors, on the other hand, are responsible for dismissing the case, establishing guilt and imposing a minor sanction (which can be appealed to a judge), or initiating court proceedings. Additional sanctions available to the prosecutor include conditionally discharging cases (a practice similar to deferred adjudication) and ordering traditional probation. Youth courts may order incarceration, fines, community service, or commitment to a behavioral institution (Matthews et al., 2018).

As discussed earlier, crime rates (including youth crime) are falling in the Netherlands. While this cannot be attributed to any one practice by the criminal justice system, used as an alternative to imprisonment in conjunction with processing older adolescents and young adults as juveniles, Dutch applications of restorative justice for youth appear to be working well.





## **Juvenile Detention and Incarceration**

Detention is the act of keeping an individual in custody, usually following arrest, before guilt is established and the individual is sentenced. Its primary purpose is to guarantee the individual's presence at court hearings. Secure confinement, also known as imprisonment or incarceration, is, for most countries, the harshest sentence a convicted juvenile offender can receive. It is usually chosen when young offenders are "deemed a danger to themselves and society" due to the frequency with which they offend, increasing crime severity, or, in particularly critical cases, the nature of a single offense (Sellers, 2018, p. 165). It is most frequently employed in systems with an emphasis on retribution and deterrence, as recent research reveals that punitive approaches like incarceration actually increase recidivism and sometimes enhance the severity of crimes committed by young offenders post-release (Sellers, 2018). Thus, as restorative justice begins to grow in popularity, many states and countries are moving away from imprisoning youth.

### ***United States***

Given the growing body of research indicating that detention and incarceration are harmful to youth and often even counterproductive, Massachusetts has joined other states in reducing detention and incarceration rates. Between 2014 and 2018, the state's Department of Youth Services observed a 60% decrease in youth detention, and juvenile secure confinement likewise fell 36% from 2014 to 2019 (CFJJ, 2020). Some states, including Texas, allow minors to be detained or incarcerated with adults if said minor is tried as an adult. Massachusetts, however, prohibits any contact between juvenile and adult detainees or inmates, even if a juvenile is found guilty of murder and receives an



adult sentence (Mass. Gen. Laws Ann. ch. 119, § 87B). The same law, passed in 2018, prohibits the detention or incarceration of status offenders, or minors who have been given the “status” of delinquent for committing offenses such as truancy, running away from home, curfew violations, or other acts that “would not be criminal if committed by an adult.” Such offenses are nonviolent in nature and legal for adults; thus, children should not be treated as criminals for such behavior.

The overarching attitude of Massachusetts toward its youth, especially regarding juvenile imprisonment, is a protective one. Young offenders are to be protected from the negative influence of and potential abuse by adult offenders, and the potential these young people possess to lead law-abiding lives is to be protected from unnecessary harms suffered through incarceration. As the rate of crimes committed by young offenders continues to fall along with juvenile detention and incarceration rates in Massachusetts, it becomes increasingly clear that imprisonment is not necessary for public safety in most instances. In fact, the recent reforms appear to have further benefited the state and juvenile justice system.

### *Germany*

The process of a juvenile being sentenced to secure confinement in Germany is similar to that in the United States, but the youth court before which the juvenile must appear is organized differently than most American juvenile courts. German youth courts are comprised of “one professional judge and two lay judges”—that is, one male and one female member of the public—or, in more serious cases, three professional judges and two lay judges (Matthews et al., 2018, p. 68). Each member of the panel has equal voting rights as to the guilt and sanction of the defendant. By using lay judges on the panel, the



youth court resembles a jury, which not all states guarantee juvenile defendants in the United States. Additionally, like the Netherlands, Germany also requires a social inquiry report to be provided to the youth court beforehand, and social workers must be involved in each trial to ensure the offender's personal background and any mitigating circumstances are considered (Matthews et al., 2018).

Juveniles may not, under any circumstances, be placed in an adult prison, though a young adult (under 24 years old) may serve a period of imprisonment in a youth facility. If a young offender is sentenced to secure confinement, the *Jugendgerichtsgesetz* (JGG, or Youth Courts Law) states that it should "arouse the youth's sense of self respect," "be structured in an educational manner," and "help the youth to overcome those difficulties which contributed to his commission of the criminal offense" (as cited in Matthews et al., 2018, pp. 68-69). Thus, the emphasis even within juvenile confinement facilities is on rehabilitation above all else. This is evidenced by the highly normalized living conditions that mirror the outside world: inmates can take part in "an extensive vocational program including professional woodworking, metal working, culinary instruction and farming, with no use of solitary confinement or strip searching" (Matthews et al., 2018, p. 69). Any incarceration period is designed to prepare youth to reenter society and live in a law-abiding manner upon release.

Although a direct link between German juvenile justice policies and falling adolescent crime rates cannot be made because of the mitigating demographic factors, it is worth noting that amid consistently low juvenile incarceration rates, the crime rates in Germany have decreased over the past two decades. This suggests, as does the falling juvenile crime rate in Massachusetts, that the incarceration of youth is less necessary than



Americans may think to ensure public safety. Additionally, the rigorous commitment to making life inside juvenile facilities mirror life outside of one as closely as possible furthers the American juvenile justice goals of treating youth fairly and justly and protecting their ability to adjust to a crime-free life post-release.

### *The Netherlands*

The process of juvenile incarceration in the Netherlands is similar to that of Germany; the minor appears before a judge for prosecution or a panel of three judges for more serious offenses (Matthews et al., 2018). If that minor is sentenced to secure confinement, it may not exceed one or two years, depending on the juvenile's age. In Dutch juvenile facilities, the young inmates "spend most of their day in school and in small groups, based on a pedagogical system of supervision" (Matthews et al., 2018, p. 73). Young adults aged 18 to 22 years old may also be sentenced to a juvenile facility. To protect the rehabilitative and educational nature of these facilities, only management—not correctional officers—may make disciplinary decisions regarding the inmates, including the imposition of solitary confinement (Matthews et al., 2018). Like the German system, it meets the rehabilitative goals of the American system, and it does not prevent an individual from accessing education while incarcerated.

## **Applications for the United States**

### **Data Collection and Publication**

Any policy reform efforts should be firmly grounded in reliable data, and in the United States, the data collection and publication methods in practice regarding juvenile justice are seriously lacking. An overemphasis on recidivism, paired with widely varying and sometimes deficient measurement practices among states, has led to the near





impossibility of successfully evaluating the effectiveness of local juvenile justice systems across the nation according to the outlined American policy goals. Without reliable data that can provide insight into the ongoing process of juvenile desistance within local American systems, those systems cannot truly be deemed successful or unsuccessful, and the need for reform cannot be accurately assessed.

This is not a uniquely American issue; many European governments, including Germany and the Netherlands, do not regularly publish recidivism data on the national level, and like the United States, they provide little to no data regarding markers of desistance. The literature available on markers of desistance is mostly produced by independent researchers, and even those studies are usually limited to small populations.

Ideally, all states would collect and publish data regarding markers of desistance—time to failure, crime severity, and behavioral changes—making meaningful systematic policy analyses of juvenile justice systems in the United States more feasible. That, however, is unlikely to occur without significant incentives. Due to the fragmented and decentralized structure of the country, such data collection would have to be conducted at the state level, but it could be incentivized through federal funding. If states begin collecting and publishing such data or fund research organizations to do so on a mass scale, projects like this one will find much more success in identifying truly evidence-based practices to encourage and implement nationwide.

### **Juvenile Justice Practices**

Raising the age of adult criminal responsibility to 18 years or older in every state, applying restorative justice to American juvenile justice systems, and reducing juvenile detention and incarceration all hold promise for application in the United States. Each



method is currently in practice in Massachusetts, and each one is either associated with positive outcomes or at least not associated with negative outcomes. Again, the goals of a successful juvenile justice system would be to reduce crimes committed by juveniles, hold juveniles who encounter the justice system accountable, sentence or otherwise treat each offender fairly and justly, meet the individual needs of those juveniles through science-backed approaches, and preserve the potential for them to lead law-abiding lives after their encounters with the justice system.

### *Age of Accountability*

Given the success of raising the ages at which young adults can be tried or sentenced as juveniles in Germany and the Netherlands, combined with the backing by developmental psychology and neuroscience, raising the minimum ages of juveniles to be tried as adults and expanding eligibility for juvenile sanctions to young adults are worth considering in the United States. Both of these practices encourage the fair and just sentencing of young adults, meeting the needs of justice-involved youth through science-backed methods, and preserving the potential for those young offenders to successfully desist from crime. The apparent success in Massachusetts of raising the age of adult criminal responsibility from 17 to 18 years old further supports this.

### *Restorative Justice*

The similar levels of success of restorative justice practices in Germany and the Netherlands, their backing in developmental psychology and neurobiology, and the empirical evidence of the typical decrease of recidivism accomplished through restorative justice in the United States all suggest that more widespread implementation of such practices in the United States would be beneficial for system-involved youth. Further,



even though the results of implementing restorative justice in Suffolk County are not yet clear, based on empirical evidence, the practices being tested are likely to reduce crimes committed by juveniles, decrease crime severity in those who do reoffend, hold juveniles accountable to victims and community members, result in fairer sentences, meet the needs of offenders and community members, avoid the detrimental impacts of incarceration, and, in many cases, facilitate rehabilitation for the offenders.

### ***Juvenile Detention and Incarceration***

The negative impacts of juvenile detention and incarceration, as discussed above, have already been made clear by existing research. Each of the three locations examined for this paper simultaneously experienced a decrease in juvenile incarceration and a decrease in juvenile crime, suggesting that in the majority of cases, juvenile incarceration is not as vital to public safety as Americans once believed. Among the measures that can be employed to protect youth are unconditionally housing juveniles separately from adults, as Massachusetts does, and reducing the rates of juvenile incarceration, especially for status offenses. Additionally, making juvenile secure confinement facilities more closely mirror the outside world, as Germany and the Netherlands do, provides more opportunities for education and vocational training during imprisonment, thereby encouraging rehabilitative measures, meeting the needs of young offenders, and better preserving the offenders' life potential post-release.

### **Conclusion**

The progressive measures taken in Germany and the Netherlands and the reforms being considered in Massachusetts related to age of accountability, restorative justice, and juvenile detention and incarceration are supported by empirical evidence, success



within their contexts, and developmental psychology and neuroscience. Although the statistics necessary to establish causation are not available for all three of the locations I examined, the successful outcomes of the three systems in general and their use of similar practices suggest potential for effective implementation across the United States.

More research can address the gap in research I identified in the introduction if statistics regarding markers of desistance are better collected and distributed. Then, an effective comparative policy analysis will be feasible, and juvenile justice systems will be much better equipped to measure their own success. Until then, hopefully, more local juvenile justice systems like that in Suffolk County will begin their own pilot programs implementing the measures discussed here.





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