Fallanalysen bei Fehlschlägen im Kinderschutz
Case Review in Child Protection
Rechtliche Rahmenbedingungen in Deutschland
Law Issues

Lernen aus Fehlern – nationale und internationale Erfahrungen
Nationales Zentrum Frühe Hilfen
Dr. Thomas Meysen
German Institute for Youth Human Services and Family Law
Munich, 9 July 2010

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Legislative Competencies in the German Federalism
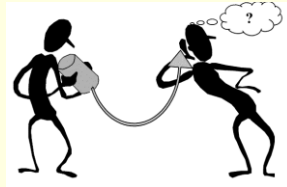
- local authorities
    - local self-administration:
        - no guidelines on a federal or state level possible
        - obligatory case review by law
- federal government and legislation
    - law: Youth Welfare Act
        - goals and tasks stated by law?
        - involving only youth welfare system
        - link from local to federal level
    - pilot projects
- state government and legislation
    - law: School Act, Health System
    - practice development

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Data Protection – Confidentiality

- Flow of Information
  - providing data to the case reviewers (data transmission)
  - collecting data by the case reviewers

- Prosecution
  - right of refusal to give evidence for the case reviewers?

Data Protection – Confidentiality
Duty to Report/Notify

- **Reporting to administrative body responsible for child protection** (n=27) mandatory for

all	professionals	nobody
8: BG, DK, EE, LT, LU*, PL, RO, SK	**13:** AT, CY, CZ, EL*, FI, HU, IT, LV, MT, PT, SE, SI**, UK***	**6:** BE, DE*, ES, FR**, IE, NL
• Witnesses	* private persons *should* report	* mandatory for child and youth welfare personal under certain circumstances
	** private individuals unclear	** exception for felonies
■	*** professional duty	

- all States that have no duty to make reference are in the group of the prevention including States

Data Protection - Confidentiality
Mandatory Reporting

- **to police/criminal justice system**
  mandatory for (n=24)

all	professionals	child protection service	nobody
2: PL, SK	**4**: CY, EL, LV, MT	**8**: BG, CZ, EE, ES, FR*, IT, LT**, RO * only felonies ** sexual assault, severe damage to health	**10**: AT*, BE, DE, DK, FI*, HU, IE, LUX, NL, SI, UK * mandatory if not overruled by needs of convidentialit

- mandatory reporting to police/criminal justice system only in underdeveloped countries

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Prosecution

- give evidence in criminal proceedings
  - refusal to give evidence (§ 53 StGB)
  - no such right for case reviewers
    - involving of family members does not solve the legislative lack of protected confidentiality
    - precondition for more or less binding implementation of a case review system

- serious good case review must not be doing the work for the prosecutors/investigators and other law enforcement agencies

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Data Transmission

- **Authorisation** to provide Data to the Case Reviewers
  - for reasons of research or planning (§ 75 SGB X)?
    - case review as scientific research on social service policy? (wissenschaftliche Forschung im Sozialleistungsbereich)
    - case review as social service policy planning by a public body? (Planung im Sozialleistungsbereich durch eine öffentliche Stelle)

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Data Transmission

- § 75 SGB X as authorisation after legislation amendment
  - ... if yes:
    - permit by the federal or state ministry (Genehmigung durch die oberste Bundes- oder Landesbehörde)
    - anonymisation and/or pseudonymisation? – How realistic is this?

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Data Collection

- Authorisation (§ 67a SGB X)
  - public body or a private body who examines an organisation
  - allowed for the purpose of fulfilling a duty or task of the collecting body

- duties and tasks of the case reviewing bodies should/must be defined by law
- duty to initiate (and fund) „serious good case reviews"?

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Thanks for Listening

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