Criminology Symposium
Stockholm, June 9th 2015

“King’s Evidence – a controversial instrument in contemporary European criminal policy”
I. The German “King’s Evidence Act” (Sec. 46b CC)

II. Main Points of Criticism

III. The Augsburg Study Regarding the Application of the „King‘s Evidence Act“
The „King‘s Evidence Act“  
(Sec. 46b CC)
The „King’s Evidence Act“ (Sec. 46b CC)

Sec. 46b CC

Offence, punishable by an increased minimum sentence of imprisonment or of life imprisonment

Substantial contribution to the discovery or prevention of a crime under Sec. 100a CCP

Connection between the offence committed by the witness and the disclosed offences

Contribution „in time“ (Sec. 46b (3) CC)

Possibilities for the judge
- Reduction of sentence
- Refrain from punishment
- No application of Sec. 46 b CC
Main Points of Criticism
Main Points of Criticism

- Conflicts with legal principles of sentencing
- Moral and ethical problems
- Practical problems
- Danger of false accusations and misguidance of the justice

King’s Evidence (Sec. 46b)
The Augsburg Study Regarding the Application of the „King‘s Evidence Act“ in Sec. 46b CC
Key Elements of the „Augsburg Study“

Survey addressed to judges, state’s attorneys, defense attorneys and the police

Survey addressed to students

Analyses of judgements in which King’s Evidence was applied

Interviews with experts about the application of Sec. 46b CC
Some Results of the Study
Do you think Sec. 46b CC has proven its worth?

- Judges (n = 102):
  - Yes: 18.6%
  - No: 17.6%
  - Don't know: 63.7%

- State's attorneys (n = 106):
  - Yes: 28.3%
  - No: 16.0%
  - Don't know: 55.7%

- Police (n = 73):
  - Yes: 28.8%
  - No: 5.5%
  - Don't know: 65.8%

- Defense attorneys (n = 106):
  - Yes: 17.9%
  - No: 33.0%
  - Don't know: 49.1%
Some Results

Do you think Sec. 46b CC has proven its worth? (Participants „with experiences“)

- **Judges (n = 41)**
  - Yes: 36.6%
  - No: 29.3%
  - Don't know: 34.1%

- **State's attorneys (n = 41)**
  - Yes: 63.4%
  - No: 12.2%
  - Don't know: 24.4%

- **Police (n = 23)**
  - Yes: 69.6%
  - No: 0.0%
  - Don't know: 30.4%

- **Defense attorneys (n = 49)**
  - Yes: 53.1%
  - No: 24.5%
  - Don't know: 22.4%
To what extent has Sec. 46b CC been applied so far? (Participants „with experiences“)
Some Results

Effects of the support by supergrasses (n = 166)

- The incriminated person was sentenced in a later trial: 45.8% (Yes, always), 41.6% (Partly), 2.4% (No, never), 10.2% (Don't know).
- The supergrass facilitated the investigations significantly: 48.8% (Yes, always), 47.0% (Partly), 2.4% (No, never), 1.8% (Don't know).
- Without the supergrass, the revealed crime wouldn't have been charged: 57.2% (Yes, always), 18.7% (Partly), 15.1% (No, never), 6.0% (Don't know).
Some Results

Reasons for the non-application of Sec. 46b:

*Reasons related to the regulation itself*

- Sec. 46b is still very new and quite unknown
- Sec. 31 Narcotics Act is easier to handle for the police
- Other possibilities for appropriate rewards

*Reasons concerning the motivation of the supergrass*

- Fear
- Uncertainty concerning the application of Sec. 46b and the amount of mitigation
- „Moral Reasons“ – No snitching about „friends“
- Mistrust of investigating authorities
Supergrasses aren’t reliable!? (n = 387)
The application of Sec. 46b contravenes people’s sense of justice!? (n = 387)

Mitigation (judges):
- Average = 30.1%
- Max. = 50.0%
- $P_{75}$ = 38.3%
- Median = 27.5%
- $P_{25}$ = 21.3%
- Min. = 15.0%

Mitigation (students):
- Average = 26.3%
- Max. = 100.0%
- $P_{75}$ = 38.2%
- Median = 24.4%
- $P_{25}$ = 12.5%
- Min. = 0.0%
Should Sec. 46b CC be deleted without any substitution?

- Judges (n = 102):
  - Yes: 12.7%
  - No: 80.4%
  - Don't know: 6.9%

- State's attorneys (n = 106):
  - Yes: 14.2%
  - No: 72.6%
  - Don't know: 13.2%

- Police (n = 73):
  - Yes: 0.0%
  - No: 91.8%
  - Don't know: 8.2%

- Defense attorneys (n = 106):
  - Yes: 40.6%
  - No: 48.1%
  - Don't know: 11.3%
Should Sec. 46b CC remain as it is at the moment?

- Judges (n = 102)
  - I agree: 7.8%
  - I disagree: 31.4%
  - Don't know: 60.8%

- State's attorneys (n = 106)
  - I agree: 11.3%
  - I disagree: 27.4%
  - Don't know: 61.3%

- Police (n = 73)
  - I agree: 5.5%
  - I disagree: 28.8%
  - Don't know: 65.8%

- Defense attorneys (n = 106)
  - I agree: 3.8%
  - I disagree: 25.5%
  - Don't know: 70.8%
Some Results

Most famous suggestions for improvements:

All participants:

- New possibilities for a resumption of proceedings against the supergrass in case of false accusations committed by the supergrass

Especially judges + state’s attorneys:

- Higher sanctions for false accusations or a misguidance of investigating authorities

Especially police + defense attorneys:

- Measures in order to improve the applicability of Sec. 46b (p.ex. additional regulations) and the predictability of its application