

GERMANY

Penal Code (1998) (excerpts)

Unofficial Translation (as of 15 August 1998)

GERMAN PENAL CODE
GENERAL PART
CHAPTER THIRTEEN
CRIMES AGAINST SEXUAL SELF-DETERMINATION
Section 176 Sexual Abuse of Children

(1) Whoever commits sexual acts on a person under fourteen years of age (a child), or allows them to be committed on himself by the child, shall be punished with imprisonment from six months to ten years, and in less serious cases with imprisonment for not more than five years or a fine.

(2) Whoever induces a child to commit sexual acts on a third person, or to have them committed on the child by a third person, shall be similarly punished.

(3) Whoever:

1. commits sexual acts in front of a child;

2. induces the child to commit sexual acts on his own body; or

3. exerts influence on a child by showing him pornographic illustrations or images, by playing him audio recording media with pornographic content or by corresponding speech, shall be punished with imprisonment for not more than five years or a fine.

(4) An attempt shall be punishable; this shall not apply for acts under subsection (3), number 3.

Section 176a Serious Sexual Abuse of Children

(1) The sexual abuse of children shall be punished with imprisonment for no less than one year in cases under Section 176 subsections (1) and (2), if:

1. a person over eighteen years of age completes an act of sexual intercourse or similar sexual acts with the child, which are combined with a penetration of the body, or allows them to be committed on himself by the child;

2. the act is committed jointly by more than one person;

3. the perpetrator by the act places the child in danger of serious health damage or substantial impairment of his physical or emotional development; or

4. the perpetrator has undergone a final judgment of conviction for such a crime within the previous five years.

(2) Whoever, in cases under Section 176 subsections (1) to (4), acts as a perpetrator or other participant with the intent of making the act the object of a pornographic writing (Section 11 subsection (3)), which is to be disseminated pursuant to Section 184 subsections (3) or (4), shall be punished with imprisonment for not less than two years.

(3) In less serious cases under subsection (1), imprisonment from three months to five years shall be imposed, in less serious cases under subsection (2), imprisonment from one year to ten years.

(4) Whoever, in cases under Section 176 subsections (1) and (2):

1. by the act seriously physically maltreats the child; or
2. by the act places the child in danger of death, shall be punished with imprisonment for not less than five years.

(5) The time in which the perpetrator is in custody in an institution pursuant to order of a public authority shall not be credited to the term indicated in subsection (1), number 4. An act as to which judgment was rendered abroad shall be deemed equivalent in cases under subsection (1), number 4, to an act as to which judgment was rendered domestically, if under German criminal law it would have been such an act under Section 176 subsections (1) or (2).

Section 176b Sexual Abuse of Children Resulting in Death

If by the sexual abuse (Sections 176 and 176a) the perpetrator at least recklessly causes the death of the child, then the punishment shall be imprisonment for life or for not less than ten years.

Section 177 Sexual Coercion; Rape

(1) Whoever coerces another person:

1. with force;
2. by a threat of imminent danger to life or limb; or
3. by exploiting a situation in which the victim is unprotected and at the mercy of the perpetrator's influence, to suffer the commission of sexual acts of the perpetrator or a third person on himself or to commit them on the perpetrator or a third person, shall be punished with imprisonment for not less than one year.

(2) In especially serious cases the punishment shall be imprisonment for not less than two years. An especially serious case exists, as a rule, if:

1. the perpetrator completes an act of sexual intercourse with the victim or commits similar sexual acts on the victim, or allows them to be committed on himself by the victim, which especially degrade the latter, especially if they are combined with penetration of the body (rape); or
2. the act is committed jointly by more than one person.

(3) Imprisonment for not less than three years shall be imposed, if the perpetrator:

1. carries a weapon or another dangerous tool;
2. otherwise carries a tool or means in order to prevent or overcome the resistance of another person through force or threat of force; or
3. places the victim by the act in danger of serious health damage.

(4) Imprisonment for not less than five years shall be imposed, if:

1. the perpetrator uses a weapon or another dangerous tool during the act; or

2. the perpetrator:

a) seriously physically maltreats the victim through the act; or

b) places the victim in danger of death through the act.

(5) In less serious cases under subsection (1), imprisonment from six months to five years shall be imposed, in less serious cases under subsections (3) and (4), imprisonment from one year to ten years.

Section 178 Sexual Coercion and Rape Resulting in Death

If the perpetrator through sexual coercion or rape (Section 177) at least recklessly causes the death of the victim, then the punishment shall be imprisonment for life or for not less than ten years.

Section 179 Sexual Abuse of Persons Incapable of Resisting

(1) Whoever abuses another person who is incapable of resisting:

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2. physically, in that he, by exploiting the incapability of resisting, commits sexual acts on the person, or allows them to be committed on himself by the person, shall be punished with imprisonment from six months to ten years.

(2) Whoever abuses a person incapable of resisting (subsection (1)), in that he induces the person, by exploiting the incapability of resisting, to commit sexual acts on a third person, or to allow them to be committed on the person by a third person, shall be similarly punished.

(3) An attempt shall be punishable.

(4) Imprisonment for no less than one year shall be imposed, if:

1. the perpetrator completes an act of sexual intercourse or similar sexual acts with the victim, which are combined with a penetration of the body, or allows them to be committed on himself by the victim;

2. the act is committed jointly by more than one person; or

3. by the act the perpetrator places the victim in danger of serious health damage or substantial impairment of his physical or emotional development.

(5) In less serious cases under subsections (1), 2 and 4, imprisonment from three months to five years shall be imposed.

(6) Sections 176a subsection (4), and 176b shall apply correspondingly.

Section 180b Trafficking in Human Beings

(1) Whoever, for his own material benefit, exerts influence on another person, with knowledge of a coercive situation, to induce the person to take up or continue in prostitution, shall be punished with imprisonment for not more than five years or a fine. Whoever, for his own material benefit, exerts influence on another person, with knowledge of the helplessness associated with the person's stay in a foreign country, to get the person to engage in sexual acts, which the person commits on or in front of a third person or allows to be committed on the person by the third person, shall be similarly punished.

(2) Whoever exerts influence:

1. on another person with knowledge of the helplessness associated with the person's stay in a foreign country; or
2. on a person under twenty-one years of age, to induce the person to take up or continue prostitution or to get the person to take it up or continue it, shall be punished with imprisonment from six months to ten years.

(3) In cases under subsection (2) an attempt shall be punishable.

Section 181 Serious Trafficking in Human Beings

(1) Whoever:

1. with force, threat of appreciable harm or trickery induces another person to take up or continue prostitution;
2. recruits another person through trickery or abducts person against the person's will by threat of appreciable harm or trickery, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to get the person to commit sexual acts on or in front of a third person, to allow them to be committed on the person by a third person; or
3. professionally recruits another person, with knowledge of the helplessness associated with the person's stay in a foreign country, in order to induce the person to take up or continue prostitution, shall be punished with imprisonment from one year to ten years.

(2) In less serious cases the punishment shall be imprisonment from six months to five years.

Section 181a Pimping

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(2) Whoever professionally promotes another person's engagement in prostitution by procuring sexual traffic, and in that regard maintains a relationship with the person which goes beyond the particular case, shall be punished with imprisonment for not more than three years or a fine.

(3) Whoever commits the acts named in subsection (1), numbers 1 and 2 or the promoting indicated in subsection (2) in relation to his spouse, shall also be punished pursuant to subsections (1) and (2).

Section 181b Supervision of Conduct

In cases under Sections 174 to 174c, 176 to 180, 180b to 181a, and 182 the court may order supervision of conduct (Section 68 subsection (1)).

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Section 182 Sexual Abuse of Youths

(1) A person over eighteen years of age who abuses a person under sixteen years of age, in that he:

1. commits sexual acts on the person by exploiting a coercive situation or for compensation, or allows them to be committed on himself by the person; or
2. by exploiting a coercive situation induces the person to commit sexual acts on a third person or to allow them to be committed on the person by a third person, shall be punished with imprisonment for not more than five years or a fine.

(2) A person over twenty-one years of age who abuses a person under sixteen years of age, in that he:

1. commits sexual acts on the person or allows them to be committed on himself by the person; or
2. induces the person to commit sexual acts on a third person or to allow them to be committed on the person by a third person, and thereby exploits the victim's lack of capacity for sexual self-determination, shall be punished with imprisonment for not more than three years or a fine.

(3) In cases under subsection (2) the act shall only be prosecuted upon complaint, unless the prosecuting authority considers ex officio that it is required to enter the case because of the special public interest therein.

(4) In cases under subsections (1) and (2) the court may dispense with punishment pursuant to these provisions if, in consideration of the conduct of the person against whom the act was directed, the wrongfulness of the act is slight.

CHAPTER EIGHTEEN CRIMES AGAINST PERSONAL FREEDOM Section 234 Kidnapping

(1) Whoever seizes a human being by force, threat of appreciable harm or trickery, in order to abandon him in a helpless situation, place him in slavery or bondage or introduce him to service in a military or paramilitary institution abroad, shall be punished with imprisonment for not less than one year.

(2) In less serious cases the punishment shall be imprisonment from six months to five years.

Section 234a Abduction

(1) Whoever brings another by trickery, threat or force into a territory beyond the territorial area of application of this law, or causes him to go there, or prevents him from returning therefrom, and thereby exposes him to the danger of being persecuted for political reasons and thus, at variance with principles of the rule of law, to suffer harm to life and limb through violent or arbitrary measures, to be deprived of his freedom or to be appreciably prejudiced in his professional or financial position, shall be punished with imprisonment for not less than one year.

(2) In less serious cases the punishment shall be imprisonment from three months to five years.

(3) Whoever prepares such an act shall be punished with imprisonment for not more than five years or a fine.

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Section 236 Trafficking in Children ...

(4) Imprisonment from six months to ten years shall be imposed, if the perpetrator:

1. acts for profit, professionally or as a member of a gang, which has combined for the continued commission of trafficking in children; or
2. by the act places the child or the procured person in danger of a substantial impairment of his physical or emotional development. ...

Section 239 Deprivation of Liberty

(1) Whoever locks up a human being or otherwise deprives him of his liberty, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Imprisonment from one year to ten years shall be imposed, if the perpetrator:

1. deprives the victim of his liberty for longer than one week; or
2. by the act or something he did during the act causes serious health damage to the victim.

(4) If by the act or something he did during the act the perpetrator causes the death of the victim, then the punishment shall be imprisonment for not less than three years.

(5) In less serious cases under subsection (3) imprisonment from six months to five years shall be imposed, in less serious cases under subsection (4), imprisonment from one year to ten years.

Section 239c Supervision of Conduct

In cases under Sections 239a and 239b the court may order supervision of conduct (Section 68 subsection (1)).

Section 240 Coercion

(1) Whoever unlawfully with force or threat of an appreciable harm compels a human being to commit, acquiesce in or omit an act, shall be punished with imprisonment for not more than three years or a fine.

(2) The act shall be unlawful if the use of force or the threat of harm is deemed reprehensible in relation to the desired objective.

(3) An attempt shall be punishable.

(4) In especially serious cases the punishment shall be imprisonment from six months to five years. An especially serious case exists as a rule, if the perpetrator: 1. coerces another person to commit a sexual act; 2. coerces a pregnant woman to terminate the pregnancy; or

3. abuses his powers or position as a public official.