

# Criminal Code (Strafgesetzbuch, StGB)

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## **General Part**

### **Chapter One The Criminal Law**

#### **Title One Area of Applicability**

##### **Section 1 No Punishment Without a Law**

An act may only be punished if its punishability was determined by law before the act was committed.

##### **Section 2 Temporal Applicability**



- (1) The punishment and its collateral consequences are determined by the law which is in force at the time of the act.
- (2) If the threatened punishment is amended during the commission of the act, then the law shall be applicable which is in force at the time the act is completed.
- (3) If the law in force upon the completion of the act is amended before judgment, then the most lenient law shall be applicable.
- (4) A law, which was intended to be in force only for a determinate time, shall be applicable to acts committed while it was in force, even if it is no longer in force. This shall not apply to the extent a law provides otherwise.
- (5) Subsections (1) through (4) shall apply, correspondingly, to forfeiture, confiscation and rendering unusable.
- (6) Unless the law provides otherwise, decisions as to measures of reform and prevention shall be according to the law which is in force at the time of judgment.

### **Section 3 Applicability to Domestic Acts**

German criminal law shall apply to acts, which were committed domestically.

### **Section 4 Applicability to Acts on German Ships and Aircraft**

German criminal law shall apply, regardless of the law of the place where the act was committed, to acts which are committed on a ship or in an aircraft, which is entitled to fly the federal flag or the national insignia of the Federal Republic of Germany.

### **Section 5 Acts Abroad Against Domestic Legal Interests**

German criminal law shall apply, regardless of the law of the place the act was committed, to the following acts committed abroad:

1. preparation of a war of aggression (Section 80);
2. high treason (Sections 81 to 83);
3. endangering the democratic rule of law:
  - (a) in cases under Sections 89 and 90a subsection (1), and Section 90b, if the perpetrator is a German and has his livelihood in the territorial area of applicability of this law; and
  - (b) in cases under Sections 90 and 90a subsection (2);
4. treason and endangering external security (Sections 94 to 100a);

5. crimes against the national defense:

(a) in cases under Sections 109 and 109e to 109g; and

(b) in cases under Sections 109a, 109d and 109h, if the perpetrator is a German and has his livelihood in the territorial area of applicability of this law;

6. abduction and casting political suspicion on another (Sections 234a, 241a), if the act is directed against a person who has his domicile or usual residence in Germany;

6a. child stealing in cases under Section 235 subsection (2), no. 2, if the act is directed against a person who has his domicile or usual residence in Germany;

7. violation of business or trade secrets of a business located within the territorial area of applicability of this law, an enterprise, which has its registered place of business there, or an enterprise with its registered place of business abroad, which is dependent on an enterprise with its registered place of business within the territorial area of applicability of this law and constitutes with it a group;

8. crimes against sexual self-determination:

(a) in cases under Section 174 subsections (1) and (3), if the perpetrator and the person, against whom the act was committed are Germans at the time of the act and have their livelihoods in Germany; and

(b) in cases under Sections 176 to 176b and 182, if the perpetrator is a German;

9. termination of pregnancy (Section 218), if the perpetrator at the time of the act is a German and has his livelihood in the territorial area of applicability of this law;

10. false unsworn testimony, perjury and false affirmations in lieu of an oath (Sections 153 to 156) in a proceeding pending before a court or other German agency within the territorial area of applicability of this law, which is competent to administer oaths or affirmations in lieu of an oath;

11. crimes against the environment in cases under Sections 324, 326, 330 and 330a, which were committed in the area of Germany's exclusive economic zone, to the extent that international conventions on the protection of the sea permit their prosecution as crimes;

11a. crimes under Section 328 subsection (2), nos. 3 and 4 subsections (4) and (5), also in conjunction with Section 330, if the perpetrator is a German at the time of the act;

12. acts, which a German public official or a person with special public service obligations commits during his official stay or in connection with his duties;

13. acts committed by a foreigner as a public official or as a person with special public service obligations;

14. acts which someone commits against a public official, a person with special public service obligations, or a soldier in the Federal Armed Forces during the discharge of his duties or in connection with his duties;

14a. bribery of a member of parliament (Section 108e) if the perpetrator is a German at the time of the act or the act was committed in relation to a German;

15. trafficking in organs (section 18 of the Transplantation Law), if the perpetrator is a German at the time of the act.

### **Section 6 Acts Abroad Against Internationally Protected Legal Interests**

German criminal law shall further apply, regardless of the law of the place of their commission, to the following acts committed abroad:

1. genocide (Section 220a);

2. serious criminal offenses involving nuclear energy, explosives and radiation in cases under Sections 307 and 308 subsections (1) to (4), Section 309 subsection (2) and Section 310;

3. assaults against air and sea traffic (Section 316c);

4. trafficking in human beings (Section 180b) and serious trafficking in human beings (Section 181);

5. unauthorized distribution of narcotics;

6. dissemination of pornographic writings in cases under Section 184 subsection (3) and (4);

7. counterfeiting of money and securities (Sections 146, 151 and 152), payment cards and blank Eurochecks (Section 152a subsections (1) to (4), as well as their preparation (Sections 149, 151, 152 and 152a subsection (5);

8. subsidy fraud (Section 264);

9. acts which, on the basis of an international agreement binding on the Federal Republic of Germany, shall also be prosecuted if they are committed abroad.

### **Section 7 Applicability to Acts Abroad in Other Cases**

(1) German criminal law shall apply to acts, which were committed abroad against a German, if the act is punishable at the place of its commission or the place of its commission is subject to no criminal law enforcement.

(2) German criminal law shall apply to other acts, which were committed abroad if the act is punishable at the place of its commission or the place of its commission is subject to no criminal law enforcement and if the perpetrator:

1. was a German at the time of the act or became one after the act; or
2. was a foreigner at the time of the act, was found to be in Germany and, although the Extradition Act would permit extradition for such an act, is not extradited, because a request for extradition is not made, is rejected, or the extradition is not practicable.

### **Section 8 Time of the Act**

An act is committed at the time the perpetrator or the inciter or accessory acted, or in case of an omission, should have acted. The time when the result occurs is not determinative.

### **Section 9 Place of the Act**

- (1) An act is committed at every place the perpetrator acted or, in case of an omission, should have acted, or at which the result, which is an element of the offense, occurs or should occur according to the understanding of the perpetrator.
- (2) Incitement or accessoryship is committed not only at the place where the act was committed, but also at every place where the inciter or accessory acted or, in case of an omission, should have acted or where, according to his understanding, the act should have been committed. If the inciter or accessory in an act abroad acted domestically, then German criminal law shall apply to the incitement or accessoryship, even if the act is not punishable according to the law of the place of its commission.

### **Section 10 Special Provisions for Juveniles and Young Adults**

This law shall apply to the acts of juveniles and young adults only to the extent that the Juvenile Court Law does not provide otherwise.

## **Title Two Terminology**

### **Section 11 Terms Relating to Persons and Subject Matter**

- (1) Within the meaning of this law:
  1. a relative is whoever belongs among the following persons:
    - (a) relations by blood or marriage in direct line, the spouse, the fiancé, siblings, the spouses of siblings, siblings of spouses, even if the marriage upon which the relationship was based no longer exists, or when the relationship by blood or marriage has ceased to exist;

(b) foster parents and foster children;

2. a public official is whoever, under German law:

(a) is a civil servant or judge;

(b) otherwise has an official relationship with public law functions or;

(c) has been appointed to a public authority or other agency or has been commissioned to perform duties of public administration without prejudice to the organizational form chosen to fulfill such duties;

3. a judge is, whoever under German law is a professional or honorary judge;

4. a person with special public service obligations is whoever, without being a public official, s employed by, or is active for:

(a) a public authority or other agency, which performs duties of public administration; or

(b) an association or other union, business or enterprise, which carries out duties of public administration for a public authority or other agency, and is formally obligated by law to fulfill duties in a conscientious manner;

5. an unlawful act is only one which fulfills all the elements of a penal norm;

6. the undertaking of an act is its attempt and completion;

7. a public authority is also a court;

8. a measure is every measure of reform and prevention, forfeiture, confiscation and rendering unusable;

9. compensation is every consideration consisting of a material benefit;

(2) An act is also intentional within the meaning of this law, if it fulfills the statutory elements of an offense, which requires intent in relation to the conduct, even if only negligence is required as to the specific result caused thereby.

(3) Audio and visual recording media, data storage media, illustrations and other images shall be the equivalent of writings in those provisions which refer to this subsection.

## **Section 12 Serious Criminal Offenses and Less Serious Criminal Offenses**

(1) Serious criminal offenses are unlawful acts that are punishable by a minimum of imprisonment for one year or more.

(2) Less serious criminal offenses are unlawful acts that are punishable by a minimum of a lesser term of imprisonment or a fine.

(3) Aggravation or mitigation, which are provided under the provisions of the General Part or for especially serious or less serious cases, shall be irrelevant to this classification.

## **Chapter Two The Act**

### **Title One Bases of Punishability**

#### **Section 13 Commission by Omission**

(1) Whoever fails to avert a result, which is an element of a penal norm, shall only be punishable under this law, if he is legally responsible for the fact that the result does not occur, and if the omission is equivalent to the realization of the statutory elements of the crime through action.

(2) The punishment may be mitigated pursuant to Section 49 subsection (1).

#### **Section 14 Acting for Another**

(1) If someone acts:

1. as an entity authorized to represent a legal person or as a member of such an entity;
2. as a partner authorized to represent a commercial partnership; or
3. as a statutory representative of another,

then a law, according to which special personal attributes, relationships or circumstances (special personal characteristics) forms the basis of punishability, shall also be applicable to the representative, if these characteristics do not, in deed, pertain to him, but exist as to the person represented.

(2) If the owner of a business or someone otherwise so authorized:

1. commissions a person to manage a business, in whole or in part; or
2. expressly commissions a person to perform on his own responsibility duties which are incumbent on the owner of the business,

and if this person acts on the basis of this commission, then a law, according to which special personal characteristics are the basis of punishability shall also be applicable to the person commissioned, if these characteristics do not, indeed, pertain to him, but exist as to the owner of the business. Within the meaning of Sentence 1, an enterprise is the equivalent of a business. If someone acts on the basis of a corresponding commission for an agency which performs duties of public administration, then Sentence 1 (3) Subsections (1) and (2) shall also be applicable if

the legal act which was intended to form the basis of the power of representation or the agency is void.

### **Section 15 Intentional and Negligent Conduct**

Only intentional conduct is punishable, unless the law expressly provides punishment for negligent conduct.

### **Section 16 Mistake about Circumstances of the Act**

(1) Whoever upon commission of the act is unaware of a circumstance which is a statutory element of the offense does not act intentionally. Punishability for negligent commission remains unaffected.

(2) Whoever upon commission of the act mistakenly assumes the existence of circumstances which would satisfy the elements of a more lenient norm, may only be punished for intentional commission under the more lenient norm.

### **Section 17 Mistake of Law**

If upon commission of the act the perpetrator lacks the appreciation that he is doing something wrong, he acts without guilt if he was unable to avoid this mistake. If the perpetrator could have avoided the mistake, the punishment may be mitigated pursuant to Section 49 subsection (1).

### **Section 18 More Serious Punishment Due to Particular Results of the Act**

If the law links a more serious punishment to a particular result of the act, it affects the perpetrator or the inciter or accessory only if he can at least be charged with negligence in relation to the result.

### **Section 19 A Child's Lack of Capacity to be Adjudged Guilty**

Whoever upon commission of the act is under fourteen years of age lacks capacity to be adjudged guilty.

### **Section 20 Lack of Capacity to be Adjudged Guilty due to Emotional Disorders**

Whoever upon commission of the act is incapable of appreciating the wrongfulness of the act or acting in accordance with such appreciation due to a pathological emotional disorder, profound consciousness disorder, mental defect or any other serious emotional abnormality, acts without guilt.

### **Section 21 Diminished Capacity to be Adjudged Guilty**

If the capacity of the perpetrator to appreciate the wrongfulness of the act or to act in accordance with such appreciation is substantially diminished upon commission of the act due to one of the

reasons indicated in Section 20, then the punishment may be mitigated pursuant to Section 49 subsection (1).

## **Title Two Attempt**

### **Section 22 Definition of Terms**

Whoever, in accordance with his understanding of the act, takes an immediate step towards the realization of the elements of the offense, attempts to commit a crime.

### **Section 23 Punishability for an Attempt**

(1) An attempt to commit a serious criminal offense is always punishable, while an attempt to commit a less serious criminal offense is only punishable if expressly provided by law.

(2) An attempt may be punished more leniently than the completed act (Section 49a subsection (1)).

(3) If the perpetrator, due to a gross lack of understanding, fails to recognize that the attempt could not possibly lead to completion due to the nature of the object on which, or the means with which it was to be committed, the court may withhold punishment or in its own discretion mitigate the punishment (Section 49 subsection(2)).

### **Section 24 Abandonment**

(1) Whoever voluntarily renounces further execution of the act or prevents its completion shall not be punished for an attempt. If the act is not completed due in no part to the contribution of the abandoning party he shall not be punished if he makes voluntary and earnest efforts to prevent its completion.

(2) If more than one person participate in the act, whoever voluntarily prevents its completion will not be punished for an attempt. However his voluntary and earnest efforts to prevent the completion of the act shall suffice for exemption from punishment, if the act is not completed due in no part to his contribution or is committed independently of his earlier contribution to the act.

## **Title Three Perpetration And Incitement Or Accessoryship**

### **Section 25 Perpetration**

(1) Whoever commits the crime himself or through another shall be punished as a perpetrator.

(2) If more than one person commit the crime jointly, each shall be punished as a perpetrator (co-perpetrator).

### **Section 26 Incitement**



Whoever intentionally induces another to intentionally commit an unlawful act, shall, as an inciter, be punished the same as a perpetrator.

### **Section 27 Accessoryship**

(1) Whoever intentionally renders aid to another in that person's intentional commission of an unlawful act shall be punished as an accessory. (2) The punishment for the accessory corresponds to the punishment threatened for the perpetrator. It shall be mitigated pursuant to Section 49 subsection (1).

### **Section 28 Special Personal Characteristics**

(1) If special personal characteristics (Section 14 subsection(1)) establishing the perpetrator's punishability are not present in relation to the inciter or accessory, then his punishment shall be mitigated pursuant to Section 49 subsection(1). (2) If the law provides that special personal characteristics aggravate, mitigate or exclude punishment, then this shall apply only to the participants (the perpetrator or the inciter or accessory) as to whom they exist.

### **Section 29 Independent Punishability of the Participant**

Every participant shall be punished according to his own guilt irrespective of the guilt of the other.

### **Section 30 Attempted Participation**

(1) Whoever attempts to induce or incite another to commit a serious criminal offense shall be punished according to the provisions governing serious criminal offense attempt. However the punishment shall be mitigated pursuant to Section 49 subsection (1). Section 23 subsection (3) shall apply accordingly.

(2) Whoever declares his willingness, whoever accepts the offer of another, or whoever agrees with another to commit or incite the commission of a serious criminal offense, shall be similarly punished.

### **Section 31 Abandonment of Attempted Participation**

(1) Whoever voluntarily:

1. renounces the attempt to induce another to commit a serious criminal offense, and averts any existing danger that the other may commit the act;
2. after he has declared his willingness to commit a serious criminal offense, renounces his plan;  
or
3. after he agrees to commit a serious criminal offense, or accepts the offer of another to commit a serious criminal offense, prevents the commission of the act,

shall not be punished under Section 30.

(2) If the act does not take place due in no part to the contribution of the abandoning party, or if it is committed independently of his previous conduct, then his voluntary and earnest efforts to prevent the act suffice for exemption from punishment.

## **Title Four Necessary Defense And Necessity**

### **Section 32 Necessary Defense**

(1) Whoever commits an act, required as necessary defense, does not act unlawfully.

(2) Necessary defense is the defense which is required to avert an imminent unlawful assault from oneself or another.

### **Section 33 Excessive Necessary Defense**

If the perpetrator exceeds the limits of necessary defense due to confusion, fear or fright, then he shall not be punished.

### **Section 34 Necessity as Justification**

Whoever, faced with an imminent danger to life, limb, freedom, honor, property or another legal interest which cannot otherwise be averted, commits an act to avert the danger from himself or another, does not act unlawfully, if, upon weighing the conflicting interests, in particular the affected legal interests and the degree of danger threatening them, the protected interest substantially outweighs the one interfered with. This shall apply, however, only to the extent that the act is a proportionate means to avert the danger.

### **Section 35 Necessity as Excuse**

(1) Whoever, faced with an imminent danger to life, limb or freedom which cannot otherwise be averted, commits an unlawful act to avert the danger from himself, a relative or person close to him, acts without guilt. This shall not apply to the extent that the perpetrator could be expected under the circumstances to assume the risk, in particular, because he himself caused the danger or stood in a special legal relationship; however the punishment may be mitigated pursuant to Section 49 subsection

(1), if the perpetrator was not required to assume the risk with respect to a special legal relationship.

(2) If upon commission of the act the perpetrator mistakenly assumes that circumstances exist, which would excuse him under subsection (1), he will only be punished, if he could have avoided the mistake. The punishment shall be mitigated pursuant to Section 49 subsection (1).

## **Title Five Immunity For Parliamentary Utterances And Reports**

## **Section 36 Parliamentary Utterances**

Members of the Bundestag (Federal Parliament), the Federal Assembly or a legislative body of a Land (constituent state), may at no time be subject to liability outside of the body because of their vote or an utterance which they made within the body or one of its committees. This shall not apply to slanderous insults.

## **Section 37 Parliamentary Reports**

Truthful reports about the public sessions of the bodies indicated in Section 36 or their committees remain exempt from any liability.

# **Chapter Three Legal Consequences of The Act**

## **Title One Punishments**

### **Imprisonment**

#### **Section 38 Length of Imprisonment**

- (1) Imprisonment is for a fixed term if the law does not provide for imprisonment for life.
- (2) The maximum fixed term of imprisonment is fifteen years, the minimum, one month.

#### **Section 39 Determination of Terms of Imprisonment**

Imprisonment for less than a year shall be determined in full weeks and months, imprisonment for a longer period, in full months and years.

### **Fine**

#### **Section 40 Imposition in Daily Rates**

- (1) A fine shall be imposed in daily rates. It shall amount to at least five and, if the law does not provide otherwise, at most three hundred and sixty full daily rates.
- (2) The court determines the amount of the daily rate, taking into consideration the personal and financial circumstances of the perpetrator. In doing so, it takes as a rule the average net income which the perpetrator has, or could have, in one day as its starting point. A daily rate shall be fixed at a minimum of two and a maximum of ten thousand German marks.
- (3) In determining the daily rate the income of the perpetrator, his assets and other bases may be estimated.
- (4) The number and amount of the daily rates shall be indicated in the decision.

## **Section 41 Fine Collateral to Imprisonment**

If by the act the perpetrator enriched, or tried to enrich himself, then a fine, which otherwise would have been inapplicable or only optional, may be imposed collateral to imprisonment, if it is appropriate, taking into consideration the personal and financial circumstances of the perpetrator. This shall not apply if the court imposes a property fine pursuant to Section 43a.

## **Section 42 Facilitation of Payment**

If the convicted person, due to his personal or financial circumstances, cannot be expected to pay the fine immediately, the court shall grant him a payment deadline or allow him to pay in specified instalments. The court may also order that the privilege of paying the fine in fixed instalments be withdrawn if the convicted person fails to pay an instalment in time.

## **Section 43 Default Imprisonment**

Imprisonment is substituted for an uncollectible fine. One daily rate corresponds to one day of imprisonment. The minimum term of default imprisonment shall be one day.

## **Property Fine**

### **Section 43a Imposition of Property Fine**

(1) If the law refers to this provision, then the court may, collateral to imprisonment for life or for a fixed term of more than two years, impose payment of a sum of money, the amount of which is limited by the value of the perpetrator's assets (property fine). Material benefits which have been ordered forfeited shall be excluded in assessing the value of the assets. The value of the assets may be estimated.

(2) Section 42 shall apply accordingly.

(3) The court shall indicate a term of imprisonment, which shall be substituted for the property fine if it is uncollectible (default imprisonment). The maximum term of default imprisonment shall be two years, the minimum, one month.

## **Collateral Punishment**

### **Section 44 Driving Ban**

(1) If someone has been sentenced to imprisonment or a fine for a crime which he committed in connection with the driving of a motor vehicle or in violation of the duties of a driver of a motor vehicle, then the court may prohibit him from driving all motor vehicles, or any specific type, in road traffic for a period of from one month to three months. A driving ban shall be ordered, as a rule, in cases of a conviction under Sections 315c subsection (1), no. 1, letter (a) subsection (3), or Section 316 if there has been no withdrawal of permission to drive pursuant to Section 69.

(2) A driving ban shall take effect when the judgment becomes final. National and international driver's licenses issued by a German public authority shall be kept in official custody for its duration. This shall also apply if the driver's license was issued by a public authority of a member state of the European Union or another signatory state of the Convention on the European Economic Area, as long as the holder has his ordinary residence in Germany. The driving ban shall be endorsed on other foreign driver's licenses.

(3) If a driver's license is to be kept in official custody or the driving ban endorsed on a foreign driver's license, then the term of prohibition shall be calculated from the day that this takes place. The time in which the perpetrator is held in custody in an institution pursuant to an order of a public authority shall not be calculated into the term of the prohibition.

### **Collateral Consequences**

#### **Section 45 Loss of the Capacity to Hold, or be Elected to Public Office and the Right to Vote**

(1) Whoever is sentenced for a serious criminal offense to imprisonment for at least one year shall lose for a period of five years the capacity to hold public office and attain public electoral rights.

(2) The court may deprive the convicted person of the capacities indicated in subsection (1) for a period of from two to five years, to the extent the law specifically so provides.

(3) With the loss of the capacity to hold public office the convicted person shall simultaneously lose the corresponding legal statuses and rights he possesses.

(4) With the loss of the capacity to attain public electoral rights, the convicted person shall simultaneously lose the corresponding legal statuses and rights he possesses to the extent the law does not otherwise provide.

(5) The court may deprive the convicted person of the right to elect or vote in public matters for a period of from two to five years, to the extent the law specifically so provides.

#### **Section 45a Entry into Force and Calculation of the Period of Loss**

(1) The loss of the capacities, legal statuses and rights shall take effect when the judgment becomes final.

(2) The period of the loss of a capacity or a right shall be calculated from the day the term of imprisonment has been served, barred by the statute of limitations or remitted. If a measure of reform and prevention involving deprivation of liberty was ordered collateral to imprisonment, the term shall be calculated beginning on the day the measure was completed.

(3) If the execution of the punishment, the remainder thereof, or the measure has been suspended through a grant of probation or an act of clemency, then the term shall include the probationary

period, if, after its expiration, the punishment, the remainder thereof, or the measure has been completed.

### **Section 45b Restoration of Capacities and Rights**

(1) The court may restore capacities lost pursuant to Section 45 subsections (1) and (2), and rights lost pursuant to Section 45 subsection (5), if:

1. the loss was in effect for half of the time it should have lasted; and
2. it is to be expected that the convicted person will not commit any intentional crimes in the future.

(2) The time in which the convicted person is held in custody in an institution pursuant to an order of a public authority shall not be calculated into the terms.

## **Title Two Determination of Punishment**

### **Section 46 Principles for Determining Punishment**

(1) The guilt of the perpetrator is the foundation for determining punishment. The effects which the punishment will be expected to have on the perpetrator's future life in society shall be considered.

(2) In its determination the court shall counterbalance the circumstances which speak for and against the perpetrator. In doing so consideration shall be given in particular to:

the motives and aims of the perpetrator;

the state of mind reflected in the act and the willfulness involved in its commission;

the extent of breach of any duties;

the manner of execution and the culpable consequences of the act;

the perpetrator's prior history, his personal and financial circumstances; as well as

his conduct after the act, particularly his efforts to make restitution for the harm caused as well as the perpetrator's efforts to achieve mediation with the aggrieved party.

(3) Circumstances which are already statutory elements of the offense may not be considered.

### **Section 46a Mediation Between the Perpetrator and the Victim, Restitution for Harm Caused**

If the perpetrator has:

1. in an effort to achieve mediation with the aggrieved party (mediation between perpetrator and victim), completely or substantially made restitution for his act or earnestly strived to make restitution; or
2. in a case in which the restitution for the harm caused required substantial personal accomplishments or personal sacrifice on his part, completely or substantially compensated the victim,

then the court may mitigate the punishment pursuant to Section 49 subsection (1), or, if the maximum punishment which may be incurred is imprisonment for not more than one year or a fine of not more than three hundred sixty daily rates, dispense with punishment.

#### **Section 47 Short Terms of Imprisonment only in Exceptional Cases**

(1) A court may impose imprisonment for less than six months only when special circumstances exist, either in the act or the personality of the perpetrator, which make the imposition of imprisonment indispensable to exert influence on the perpetrator or to defend the legal order.

(2) If the law does not provide for a fine and a term of imprisonment of six months or more has been ruled out, the court shall impose a fine if the imposition of imprisonment is not indispensable pursuant to subsection (1). If the law provides for an increased minimum term of imprisonment, the minimum fine in cases covered by sentence 1 is determined by the minimum prescribed term of imprisonment; thirty daily rates shall thus correspond to one month imprisonment.

#### **Section 48 (Repealed)**

#### **Section 49 Special Statutory Mitigating Circumstances**

(1) If mitigation is prescribed or permitted under this provision, then the following shall apply to such mitigation:

1. Imprisonment for not less than three years shall take the place of imprisonment for life;

2. In cases of imprisonment for a fixed term, at most three-fourths of the maximum term

provided may be imposed. In case of a fine the same shall apply to the maximum number of daily rates;

3. An increased minimum term of imprisonment shall be reduced:

in the case of a minimum term of ten or five years, to two years;

in case of a minimum term of three or two years, to six months;

in case of a minimum term of one year, to three months;

in other cases to the statutory minimum.

(2) If the court may in its discretion mitigate the punishment pursuant to a norm which refers to this provision, then it may reduce the punishment to the statutory minimum or impose a fine instead of imprisonment.

### **Section 50 Concurrence of Mitigating Circumstances**

A circumstance which alone or together with other circumstances justifies the assumption that the case is less serious and is simultaneously a special statutory mitigating circumstance under Section 49, may only be considered once.

### **Section 51 Crediting**

(1) If a convicted person has undergone remand detention or other deprivation of liberty because of an act which is or was the object of the proceedings, the time served shall be credited towards any fixed term of imprisonment or fine. However the court may order that the credit be withheld in whole or in part if it is not justified in light of the conduct of the convicted person after the act.

(2) If in a later proceeding another punishment is substituted for a previously imposed punishment which became final, then the earlier punishment shall be credited against it to the extent it was executed or satisfied through crediting.

(3) If the convicted person has been punished abroad for the same act, then the foreign punishment, to the extent it has been executed, shall be credited towards the new one. Subsection (1) shall correspondingly apply to any other deprivation of liberty undergone abroad.

(4) When a fine is credited against deprivation of liberty, or vice versa, one day of the latter shall correspond to one daily rate. If a foreign punishment or deprivation of liberty is to be credited, the court shall determine the rate in its discretion.

(5) In crediting the period of provisional withdrawal of permission to drive (Section 111a of the Code of Criminal Procedure) against the driving ban under Section 44 subsection (1) shall apply accordingly. In this respect the taking or holding of a driver's license in custody or its seizure (Section 94 Code of Criminal Procedure) shall be equivalent to provisional withdrawal of permission to drive.

## **Title Three Determining Punishment For More Than One Violation of The Law**

### **Section 52 Act Constituting More than One Violation**

(1) If the same act violates more than one penal norm or the same penal norm repeatedly, then only one punishment shall be imposed.



(2) If more than one penal norm has been violated, then the punishment shall be determined according to the norm that provides for the most severe punishment. It may not be more lenient than the other applicable norms permit.

(3) The court may impose a fine under the provisions of Section 41 separately, collateral to imprisonment.

(4) If one of the applicable norms allows imposition of a property fine, then the court may impose it separately collateral to imprisonment for life or a fixed term of more than two years. In addition, collateral punishments or consequences and measures (Section 11 subsection (1), no. 8) must or may be imposed if one of the applicable norms prescribes or so permits.

### **Section 53 Commission of More than One Violation**

(1) If someone has committed more than one crime, as to which judgment will be simultaneously rendered, and incurred more than one term of imprisonment or more than one fine, an aggregate punishment shall be imposed.

(2) If a term of imprisonment concurs with a fine, then an aggregate punishment shall be imposed. However, the court may also separately impose a fine; if in such cases a fine is to be imposed for more than one crime, then an aggregate fine should to that extent be imposed.

(3) If the perpetrator, pursuant to the law according to which Section 43a is applicable or under the terms of Section 52 subsection (4), has incurred as an individual punishment imprisonment for life or a fixed term of more than two years, then the court may separately impose a property fine collateral to the aggregate punishment formed pursuant to subsections (1) or (2); if in such cases a property fine is to be imposed for more than one crime, then an aggregate property fine shall to that extent be imposed.

Section 43 subsection (3), shall apply accordingly.

(4) Section 52 subsection (3) and Section 52 subsections (4) and (2) apply by analogy.

### **Section 54 Formation of the Aggregate Punishment**

(1) If one of the individual punishments is imprisonment for life, then an aggregate punishment of imprisonment for life shall be imposed. In all other cases the aggregate punishment shall be formed by increasing the highest punishment incurred and, in the case of different kinds of punishment, by increasing the punishment most severe in nature. In doing so, the personal characteristics of the perpetrator and the individual crimes shall be comprehensively evaluated.

(2) The aggregate punishment must be less than the sum of the individual punishments. It should not exceed, in the case of imprisonment for a fixed term, fifteen years, in the case of a property fine, the value of the perpetrator's assets, and in the case of a fine, seven hundred twenty daily rates;

Section 43 subsection (1), sent. 3, shall apply accordingly.

(3) If an aggregate punishment is to be formed from imprisonment and a fine, then one daily rate corresponds to one day imprisonment in determining the sum of the individual punishments.

### **Section 55 Subsequent Formation of the Aggregate Punishment**

(1) Sections 53 and 54 shall also be applicable if a convicted person, as to whom a punishment imposed pursuant to a final judgment has neither been executed, barred by the statute of limitations or remitted, is convicted of another crime which he committed before the previous conviction. A previous conviction shall be deemed to be the judgment in the previous proceeding in which the underlying factual findings could last be reviewed.

(2) Property fines, collateral punishments, collateral consequences and measures (Section 11 subsection (1), no. 8 which were imposed in the previous sentence should be maintained to the extent they have not been rendered superfluous by the new sentence. This also applies when the amount of the property fine which was imposed in the previous sentence exceeds the value of the perpetrator's assets at the time of the new sentence.

## **Title Four Suspended Execution of Punishment And Probation**

### **Section 56 Suspended Execution of Punishment**

(1) Upon a sentence of imprisonment of no more than one year the court shall suspend the execution of the punishment and grant probation if it can be expected that the sentence will serve the convicted person as a warning and he will commit no further crimes in the future even without the influence exerted by serving the sentence. Particularly to be considered are the personality of the convicted person, his previous history, the circumstances of his act, his conduct after the act, his living conditions and the effects which can be expected as a result of the suspension.

(2) The court may also suspend the execution of a longer term of imprisonment which does not exceed two years under the provisions of subsection (1) and grant probation if a comprehensive evaluation of the act and personality of the convicted person reveals the existence of special circumstances. In making the decision the efforts of the convicted person to make restitution for the harm caused by the act should particularly be considered.

(3) The execution of a sentence of imprisonment of no less than six months shall not be suspended when defense of the legal order so requires. (4) A suspended execution of punishment may not be limited to a part of the punishment. It shall not be excluded by the crediting of time served in remand detention or any other deprivation of liberty.

### **Section 56a Term of Probation**

(1) The court shall determine the length of the term of probation. It may not exceed five years nor be less than two years.

(2) The term of probation shall begin when the decision to suspend execution of punishment becomes final. It may subsequently be reduced to the minimum or prolonged to the maximum before its expiration.

### **Section 56b Conditions**

(1) The court may impose conditions on the convicted person to the end of making amends for the wrong committed. No unreasonable demands should thereby be made on the convicted person.

(2) The court may order the convicted person:

1. to make restitution to the best of his ability for the harm caused by the act;
2. to pay a sum of money to a non-profit-making institution if this is appropriate in light of the act and the personality of the perpetrator;
3. to render some other community service; or
4. to pay a sum of money to the public treasury.

The court should impose a condition pursuant to sentence 1, nos. 2 to 4, only to the extent that the fulfilment of the condition does not impede making restitution for the harm caused.

(3) If the convicted person offers to perform appropriate tasks to the end of making amends for the wrong committed, then the court shall, as a rule, temporarily refrain from imposing conditions if it can be expected that the offer will be fulfilled.

### **Section 56c Instructions**

(1) The court shall issue instructions to the convicted person for the duration of his term of probation, if he requires such assistance to cease committing crimes. No unreasonable demands should thereby be made on the way the convicted person conducts his life.

(2) In particular, the court may instruct the convicted person:

1. to follow orders which relate to residence, education, work or leisure, or to the ordering of his financial affairs;
2. to report at specified times to the court or some other agency;
3. not to associate with, employ, train or shelter particular persons or persons of a particular group, who can offer him the opportunity or stimulus to commit further crimes;

4. not to possess, carry or entrust to another for safekeeping, particular objects which could provide him with the opportunity or stimulus to commit further crimes; or

5. to meet maintenance obligations.

(3) An instruction:

1. to undergo curative treatment which involves a bodily intrusion or treatment for addiction; or

2. to reside in a suitable home or institution,

may only be issued with the consent of the convicted person.

(4) If the convicted person makes corresponding promises relating to the future conduct of his life, then the court shall, as a rule, temporarily refrain from issuing instructions if it can be expected that the promise will be kept.

### **Section 56d Probation Assistance**

(1) The court shall place the convicted person under the supervision and guidance of a probation officer for all or part of the term of probation when advisable to prevent him from committing crimes.

(2) The court shall issue an instruction pursuant to subsection (1), as a rule, if it suspends a term of imprisonment of more than nine months and the convicted person is less than twenty-seven years of age.

(3) The probation officer shall assist and care for the convicted person. With the approval of the court he shall supervise the fulfillment of the conditions and instructions as well as the offers and promises. He shall report on the way the convicted person is conducting his life at intervals determined by the court. He shall inform the court as to gross or persistent violations of the conditions, instructions, offers or promises.

(4) The probation officer shall be appointed by the court. It may give him instructions concerning his functions under subsection (3).

(5) The functions of the probation officer shall be exercised on a full-time official or honorary basis.

### **Section 56e Subsequent Decisions**

The court may also make, modify or vacate decisions pursuant to Sections 56b to 56d.

### **Section 56f Revocation of Suspended Execution of Punishment**

(1) The court shall revoke the suspended execution of punishment if the convicted person:

1. commits a crime during the term of probation and thereby shows that the expectation on which the suspended execution of punishment was based, was not fulfilled;
2. grossly and persistently violates instructions or persistently evades the supervision and guidance of the probation officer and thereby gives reason for fear that he will again commit crimes; or
3. grossly and persistently violates conditions.

Sentence 1, no. 1, shall correspondingly apply if the act was committed in the interim period between the decision suspending the execution of punishment and its becoming final.

(2) The court shall, however, refrain from revocation when it suffices:

1. to impose further conditions or instructions, in particular to place the convicted person under the supervision of a probation officer; or
2. to prolong the term of probation or placement.

In cases pursuant to no. 2 the term of probation may not be prolonged for more than one-half of the originally imposed term of probation.

(3) The convicted person shall not be compensated for accomplishments rendered in fulfillment of conditions, offers, instructions or promises. If a suspended execution of punishment is revoked, however, the court can credit accomplishments, which the convicted person has rendered in fulfillment of conditions under Section 56b subsection (2), sent. 1, nos. 2 to 4, or corresponding offers under Section 56b subsection (3), towards the punishment.

### **Section 56g Remission of Punishment**

(1) If the court does not revoke a suspended execution of punishment, it shall remit the punishment after expiration of the term of probation. Section 56f subsection (3), sent. 1, shall be applicable.

(2) The court may revoke a remission of punishment if the convicted person was sentenced to imprisonment for at least six months within the territorial area of application of this law for an intentional crime committed during the term of probation. The revocation shall only be permissible within one year after the expiration of the term of probation and six months after the judgment becomes final.

Section 56f subsection (1), sent. 2, and subsection (3) shall apply correspondingly.

### **Section 57 Suspension of the Remainder of a Fixed Term of Imprisonment**

(1) The court shall suspend the execution of the remainder of a fixed term of imprisonment and grant probation, if:

1. two-thirds of the imposed punishment, but not less than two months, have been served;
2. this can be justified upon consideration of the security interests of the general public; and
3. the convicted person consents.

To be considered in making the decision shall be, in particular, the personality of the convicted person, his previous history, the circumstances of his act, the importance of the legal interest threatened in case of recidivism, the conduct of the convicted person while serving his sentence, his living conditions and the effects which can be expected as a result of the suspension.

(2) After half of a fixed term of imprisonment has been served, but not less than six months, the court may suspend execution of the remainder and grant probation, if:

1. the convicted person is serving his first term of imprisonment and it does not exceed two years;

or

2. a comprehensive evaluation of the act, the personality of the convicted person and his development while serving the sentence reveals that special circumstances exist, and the remaining requirements of subsection (1) have been fulfilled.

(3) Sections 56a to 56g shall apply accordingly; the term of probation, even if subsequently reduced, may not be less than the remainder of the punishment. If the convicted person has served at least one year of his punishment before the remainder is suspended and probation granted, then the court shall, as a rule, place him under the supervision and guidance of a probation officer for all or a part of the term of probation.

(4) To the extent a term of imprisonment has been completed through crediting it shall qualify as having been served within the meaning of subsections (1) to (3).

(5) The court may refrain from suspending the execution of the remainder of a fixed term of imprisonment and granting probation, if the convicted person makes insufficient or false statements concerning the whereabouts of objects which are subject to forfeiture, or are only not subject thereto because the act has given rise to a claim by the aggrieved party of the type indicated in Section 73 subsection (1), sent. 2.

(6) The court may fix a term not exceeding six months, before the expiration of which an application by the convicted person to suspend the remainder of punishment and grant probation shall be inadmissible.

### **Section 57a Suspension of the Remainder of a Punishment of Imprisonment for Life**

(1) The court shall suspend execution of the remainder of a punishment of imprisonment for life and grant probation, if:

1. fifteen years of the punishment have been served;
2. the particular gravity of the convicted person's guilt does not require its continued execution;  
and
3. the requirements of Section 57 subsection (1), sent. 1, nos. 1 and 3 are present.

Section 57 subsection (1), sent. 2 and subsection (5) shall apply accordingly.

(2) Any deprivation of liberty undergone by the convicted person as a result of the act shall qualify as punishment served within the meaning of subsection (1), sentence 1, no. 1.

(3) The term of probation shall be five years. Sections 56a subsection (2), sent. 1, 56b to 56g and 57 subsection (3), sent. 2, shall apply accordingly.

(4) The court may fix terms not exceeding two years, before the expiration of which an application by the convicted person to suspend the remainder of the punishment and grant probation shall be inadmissible.

### **Section 57b Suspension of the Remainder of a Punishment of Imprisonment for Life as an Aggregate Punishment**

If imprisonment for life has been imposed as an aggregate punishment, then the individual crimes shall be comprehensively evaluated in determining the particular gravity of the guilt (Section 57a subsection (1), sent. 1, no. 2).

### **Section 58 Aggregate Punishment and Suspended Execution of Punishment**

(1) If someone has committed more than one crime, then the amount of the aggregate punishment shall be controlling for the suspended execution of punishment under Section 56.

(2) If in cases under Section 55 subsection (1), the execution of all, or the remainder of the imprisonment imposed in the previous sentence has been suspended and probation granted and if the aggregate punishment has also been suspended and probation granted, then the minimum length of the new probation term shall be reduced by the already expired term of probation, but not to less than one year. If the aggregate punishment is not suspended and probation granted, then Section 56f subsection (3), shall apply accordingly.

### **Title Five Warning With Punishment Reserved; Dispensing With Punishment**

#### **Section 59 Prerequisites for Warning with Punishment Reserved**

(1) If someone has incurred a fine of not more than one hundred eighty daily rates, the court may warn him at the time of conviction, indicate the punishment and reserve imposition of this punishment, if:

1. it can be expected that the perpetrator will commit no further crimes in the future even without imposition of punishment;
2. a comprehensive evaluation of the act and the personality of the perpetrator reveals special circumstances, which make it advisable to exempt him from the imposition of punishment; and
3. the defense of the legal order does not require the imposition of punishment.

Section 56 subsection (1), second sentence, shall apply accordingly.

(2) A warning with punishment reserved shall be excluded, as a rule, if the perpetrator has been warned with punishment reserved or sentenced to punishment during the three years preceding the act.

(3) Forfeiture, confiscation or rendering unusable may be imposed collaterally to a warning. A warning with punishment reserved shall not be permissible collaterally to measures of reform and prevention.

### **Section 59a Term of Probation, Conditions and Instructions**

(1) The court shall determine the length of the term of probation. It may not exceed three years nor be less than one year.

(2) The court may instruct the warned person:

1. to make efforts to achieve mediation with the aggrieved party or otherwise make restitution for the harm caused by the act;
2. to meet his maintenance obligations;
3. to pay a sum of money to a non-profit-making institution or the public treasury;
4. to undergo ambulatory curative treatment or an ambulatory treatment for addiction; or
5. to participate in traffic school.

No unreasonable demands may thereby be made on the way the warned person conducts his life; the conditions and instructions under sentence 1, nos. 3 to 5 should not be disproportionate to the significance of the act committed by the perpetrator. Sections 56c subsections (3) and (4), and Section 56e shall apply accordingly.

### **Section 59b Imposition of Reserved Punishment**

(1) For the imposition of reserved punishment Section 56f shall apply accordingly.



(2) If reserved punishment is not imposed against the reprimanded person, then the court shall, upon the expiration of the term of probation, declare that, with the reprimand, the case is closed.

### **Section 59c Aggregate Punishment and Warning with Punishment Reserved**

(1) If someone has committed more than one crime, then in indicating the punishment in cases of a warning with punishment reserved, Sections 53 to 55 shall be applicable accordingly.

(2) If the warned person is subsequently sentenced to punishment for a crime committed before the warning was given, then the provisions for the formation of an aggregate punishment (Sections 53 to 55, 58) shall be applicable, providing that the reserved punishment in cases of Section 55 is equivalent to an imposed punishment.

### **Section 60 Dispensing with Punishment**

The court shall dispense with punishment when the consequences of the act which have befallen the perpetrator are so serious that the imposition of punishment would be obviously inappropriate. This shall not apply when the perpetrator has incurred imprisonment of more than one year for the act.

## **Title Six Measures of Reform And Prevention**

### **Section 61 Summary**

Measures of reform and prevention are:

1. placement in a psychiatric hospital;
2. placement in an institution for withdrawal treatment;
3. placement in preventive detention;
4. supervision of conduct;
5. withdrawal of permission to drive;
6. prohibition of engagement in a profession.

### **Section 62 Principle of Proportionality**

A measure of reform and prevention may not be ordered when it is disproportionate to the significance of the acts committed by, or expected to be committed by the perpetrator, as well as to the degree of danger he poses.

### **Measures Involving Deprivation of Liberty**

## **Section 63 Placement in a Psychiatric Hospital**

If someone committed an unlawful act and at the time lacked capacity to be adjudged guilty (Section 20) or was in a state of diminished capacity (Section 21), the court shall order placement in a psychiatric hospital if a comprehensive evaluation of the perpetrator and his act reveals that, as a result of his condition serious unlawful acts can be expected of him and he therefore presents a danger to the general public.

## **Section 64<sup>1</sup> Placement in an Institution for Withdrawal Treatment**

(1) If someone has a proclivity to consume alcoholic beverages or other intoxicants to excess and is convicted of an unlawful act which he committed while intoxicated or as a result of his proclivity, or is not convicted only because his lack of capacity to be adjudged guilty has been proved or may not be excluded, then the court shall order placement in an institution for withdrawal treatment if there is a danger that he will commit serious unlawful acts as a consequence of his proclivity.

(2) No order shall be issued if withdrawal treatment appears to be without prospects from the outset.

## **Section 65 (repealed)**

## **Section 66 Placement in Preventive Detention**

(1) If someone is sentenced for an intentional crime to a fixed term of imprisonment of at least two years, then the court shall order preventive detention collateral to the punishment, if:

1. the perpetrator has already been sentenced twice, respectively, to imprisonment for at least one year for intentional crimes which he committed prior to the new act;
2. as a result of one or more of these acts prior to the new act he has served a term of imprisonment or deprivation of liberty pursuant to a measure of reform and prevention for a period of at least two years; and
3. comprehensive evaluation of the perpetrator and his acts reveals that, due to his proclivity to commit serious crimes, particularly those as a result of which the victim suffers serious emotional or physical injury, or serious financial loss is caused, he presents a danger to the general public.

(2) If someone has committed three intentional crimes for which he incurred, respectively, imprisonment for at least one year, and if he is sentenced to a fixed term of imprisonment of at least three years for one or more of these acts, then the court may under the provision indicated in subsection (1), no. 3, order preventive detention collateral to the punishment even without a prior sentence or deprivation of liberty (subsection (1), nos. 1 and 2).

(3) If someone is sentenced to a fixed term of imprisonment of at least two years for a serious criminal offense or a crime under Sections 174 to 174c, 176, 179 subsections (1) to (3), 180, 182, 224, 225 subsections (1) or (2), or 323a, as long as the act committed while intoxicated is a serious criminal offense or one of the aforementioned unlawful acts, then the court may order preventive detention collateral to the punishment if the perpetrator has already been once sentenced to imprisonment of at least three years for one or more such crimes which he committed prior to the new act and the requirements indicated in subsection (1), nos. 2 and 3, have been fulfilled. If someone has committed two crimes of the type indicated in sentence 1, as a result of which he has incurred, respectively, imprisonment for at least two years, and if he is sentenced for one or more of these acts to a fixed term of imprisonment of at least three years, then the court may, under the provision indicated in subsection (1), no. 3, order preventive detention collateral to the punishment even without a prior sentence or deprivation of liberty (subsection (1), nos. 1 and 2). Subsections (1) and (2) shall remain unaffected.

(4) Within the meaning of subsection (1), no. 1, a sentence to an aggregate punishment shall qualify as a single sentence. If remand detention or another deprivation of liberty is credited against a term of imprisonment, it shall qualify as a served punishment within the meaning of subsection (1), no. 2. A prior act shall not be considered if more than five years have passed between it and the subsequent act. Time in which the perpetrator has been held in custody in an institution by order of a public authority shall not be included in the term. An act upon which judgment was passed outside of the territorial area of application of this law shall be equivalent to an act upon which judgment is passed within this area if it would be an intentional act under the German criminal law, or, in cases under subsection (3), it would be one of the crimes of the type indicated in subsection (3), sentence 1.

## **Section 67 Sequence of Execution**

(1) If placement in an institution pursuant to Sections 63 and 64 is ordered collaterally to imprisonment, then the measure shall be executed before the punishment.

(2) The court shall indicate, however, that all or part of the punishment be executed before the measure, if the objective of the measure will thereby be more easily attained.

(3) The court may subsequently make, modify or vacate an order pursuant to subsection (2), if the personal circumstances of the convicted person make it seem advisable.

(4) <sup>2</sup> If the measure is executed in whole or in part before the punishment, then the time of execution of the measure shall be credited to the punishment until two-thirds of the punishment has been completed. This shall not apply if the court has made an order pursuant to Section 67d subsection (5), sent. 1.

(5) If the measure is executed before the punishment, then the court may suspend the execution of the remainder of punishment and grant probation under the provisions of Section 57 subsection (1), sent. 1, no. 2, if half of the punishment has been completed. If the remainder of punishment is not suspended, the execution of the measure shall continue; the court may

nevertheless order the execution of the punishment if circumstances relating to the convicted person make it seem advisable.

### **Section 67a Transfer for the Purpose of Executing Another Measure**

(1) If placement in a psychiatric hospital or an institution for withdrawal treatment has been ordered, then the court may subsequently transfer the perpetrator for the purpose of executing another measure if the resocialization of the perpetrator can be better promoted thereby.

(2) Under the provisions of subsection (1) the court may subsequently transfer a perpetrator, as to whom preventive detention has been ordered, for the purpose of executing one of the measures named in subsection (1).

(3) The court may modify or vacate a decision under subsections (1) and (2), if it subsequently appears that the resocialization of the perpetrator can be better promoted thereby. The court may further vacate a decision under subsection (2), if it subsequently appears that no success will be achieved with the execution of the measures named in subsection (1).

(4) The length of the terms of placement and review shall be determined by the provisions which apply for the placement ordered in the judgment.

### **Section 67b Suspension Simultaneous with the Order**

(1) If the court orders placement in a psychiatric hospital or an institution for withdrawal treatment, it shall simultaneously suspend its execution and grant probation, if special circumstances justify the expectation that the objective of the measure may also be attained thereby. There shall be no suspension if the perpetrator still must serve a term of imprisonment which was imposed at the same time as the measure and not suspended with a grant of probation.

(2) Supervision of conduct shall commence with the suspension.

### **Section 67c Delayed Commencement of the Placement**

(1) If a term of imprisonment is executed prior to a simultaneously ordered placement, the court shall review, before execution of the punishment has been completed, whether the objective of the measure still requires the placement. If that is not the case, it suspends the execution of the placement and grants probation; supervision of conduct shall commence with the suspension.

(2) If the execution of the placement has not commenced within three years of the order becoming final, and if no case exists under subsection (1) or Section 67b, then the placement may only be executed if the court orders it. Time in which the perpetrator has been held in custody in an institution by order of a public authority shall not be credited to the term. The court shall order its execution if the objective of the measure still requires the placement. If the objective of the measure has not been attained but special circumstances justify the expectation that it may also be attained by suspension, then the court shall suspend execution of the

placement and grant probation; supervision of conduct shall commence with the suspension. If the objective of the measure has been attained, the court shall declare it as having been satisfied.

### **Section 67d Length of Placement**

(1) Placement in an institution for withdrawal treatment may not exceed two years. The term runs from the commencement of the placement. If a measure involving deprivation of liberty is executed before a collaterally ordered term of imprisonment, then the maximum term shall be extended by the length of the term of imprisonment to the extent the time of execution of the measure is credited towards the punishment.

(2) If no maximum term has been provided or the term has not yet expired, then the court shall suspend the further execution of the placement and grant probation if it can be expected that the person under placement will not commit any more unlawful acts if released from execution of the measure. Supervision of conduct shall commence with the suspension.

(3) If ten years of placement in preventive detention have been executed, the court shall declare the measure satisfied if there is no danger that the person under placement will, due to his proclivity, commit serious crimes, as a result of which the victim is seriously harmed emotionally or physically. Supervision of conduct shall commence upon satisfaction of the measure.

(4) If the maximum term has expired, then the person under placement shall be released. The measure has thereby been satisfied.

(5) <sup>3</sup> If placement in an institution for withdrawal treatment has been executed for at least one year, then the court may subsequently determine that it not be further executed, if its objective cannot be attained due to reasons relating to the person under placement. Supervision of conduct shall commence upon release from the execution of the placement.

### **Section 67e Review**

(1) The court may review at any time whether the further execution of the placement should be suspended and probation granted. It shall make this review before the expiration of specified terms.

(2) With respect to the various placements, these terms shall be:

six months, if in an institution for withdrawal treatment;

one year, if in a psychiatric hospital;

two years, if in preventive detention.

(3) The court may shorten the terms. It may also set terms within the statutory limits for review, before the expiration of which an application for review shall be inadmissible.

(4) The terms run from the commencement of the placement. If the court refuses the suspension, the terms shall commence anew with this decision.

### **Section 67f Multiple Orders of a Measure**

If the court orders placement in an institution for withdrawal treatment, then any previous order of the measure shall be considered satisfied.

### **Section 67g Revocation of Suspension**

(1) The court shall revoke the suspension of a placement if the convicted person:

1. commits an unlawful act during the period of supervision of conduct;
2. grossly and persistently violates instructions; or
3. persistently evades the supervision and guidance of the probation officer or the supervisory agency,

and it is thereby revealed that the objective of the measure requires his placement.

(2) The court shall also revoke the suspension of a placement pursuant to Sections 63 and 64 when it is revealed during the period of supervision of conduct that unlawful acts are to be expected from the convicted person as a result of his condition and the objective of the measure therefore requires his placement.

(3) The court shall further revoke the suspension if circumstances made known to it during the period of supervision of conduct, which would have led to refusal of the suspension, show that the objective of the measure requires placement of the convicted person.

(4) The period of placement before and after the revocation may not in its totality exceed the maximum statutory term for the measure.

(5) If the court does not revoke the suspension of the placement, then the measure shall be satisfied at the conclusion of the supervision of conduct.

(6) Payments which the convicted person has rendered in fulfillment of instructions shall not be reimbursed.

### **Supervision of Conduct**

### **Section 68 Prerequisites for Supervision of Conduct**

(1) If someone has incurred a fixed term of imprisonment of at least six months for a crime, in relation to which the law specifically provides for supervision of conduct, then the court may order supervision of conduct collateral to the punishment if there is a danger that he will commit further crimes.

(2) Statutory provisions concerning supervision of conduct (Sections 67b, 67c, 67d subsections (2), (3) and (5), and 68f) shall remain unaffected.

### **Section 68a Supervisory Agency, Probation Officer**

(1) The convicted person shall be assigned to a supervisory agency; the court shall appoint a probation officer for him for the period of supervision of conduct.

(2) Probation officer and supervisory agency shall act in concert with each other to assist and care for the convicted person.

(3) The supervisory agency shall supervise the conduct of the convicted person and the fulfillment of the instructions in concert with the court and with the support of the probation officer.

(4) If there is no agreement between the supervisory agency and the probation officer as to questions which affect the assistance for the convicted person and his care, then the court shall decide.

(5) The court may give instructions to the supervisory agency and the probation officer concerning their functions.

(6) Before filing an application under Section 145a, sent. 2, the supervisory agency shall hear the opinion of the probation officer; subsection (4) shall not be applicable.

### **Section 68b Instructions**

(1) The court may, for the duration of the supervision of conduct or for a shorter time, instruct the convicted person:

1. not to leave his place of residence or wherever he happens to be or a specified area without the permission of the supervisory agency;

2. not to frequent specified places which can offer him the opportunity or stimulus to commit further crimes;

3. not to employ, train or shelter particular persons or persons of a particular group, who can offer him the opportunity or stimulus to commit further crimes;

4. not to engage in particular activities which under circumstances can be exploited for criminal purposes;
5. not to possess, carry or entrust to another for safekeeping, particular objects which can provide him with the opportunity or stimulus to commit further crimes;
6. not to keep or drive motor vehicles or particular types of motor vehicles or other vehicles, which he can under circumstances misuse for criminal purposes;
7. to report at particular times to the supervisory agency or to a particular government agency;
8. to report promptly every change in the place of residence or work to the supervisory agency;  
or
9. to report in the case of unemployment to the competent employment office or to another authorized employment agency.

The court shall precisely indicate the prohibited or required conduct in its instruction.

(2) The court may, for the duration of the supervision of conduct or for a shorter time, give the convicted person further instructions, particularly those which relate to education, work, leisure, the ordering of his financial affairs, or the fulfillment of maintenance obligations. Section 56c subsection (3), shall be applicable.

(3) No unreasonable demands may be made in the instructions on the way the convicted person conducts his life.

### **Section 68c Length of Supervision of Conduct**

(1) Supervision of conduct shall last at least two and at most five years. The court may shorten the maximum length.

(2) The court may order supervision of conduct which exceeds the maximum length set in subsection (1), sentence 1, without fixing a term, if the convicted person:

1. does not consent to an instruction under Section 56c subsection (3), no.1; or
2. does not comply with an instruction to undergo curative treatment or treatment for addiction, and endangerment of the general public through the commission of further serious crimes is to be expected. If the convicted person subsequently declares his consent, then the court shall fix the further duration of the supervision of conduct. Section 68e subsection (4), shall otherwise apply.



(3) Supervision of conduct shall begin when the order becomes final. Time, during which the convicted person is a fugitive, is hiding, or is held in custody in an institution by order of a public authority, shall not be credited against its length.

### **Section 68d Subsequent Decisions**

The court may subsequently make, modify or vacate decisions pursuant to Sections 68a subsections (1) and (5), 68b, 68c subsection (1), sent. 2, and subsection (2).

### **Section 68e Termination of Supervision of Conduct**

(1) The court shall terminate supervision of conduct if it can be expected that, even without it, the convicted person will commit no more crimes. Termination shall be permissible at the earliest after expiration of the minimum statutory period.

(2) The court may fix terms of at most six months, before the expiration of which an application to terminate supervision of conduct shall be inadmissible.

(3) Supervision of conduct shall terminate if placement in preventive detention is ordered and its execution commences.

(4) If the court has ordered supervision of conduct pursuant to Section 68c subsection (2), without fixing a term, then it shall examine, at the latest upon expiration of the maximum term pursuant to Section 68c subsection (1), sent. 1, whether a decision pursuant to subsection (1), sentence 1 is required. If the court refuses to terminate supervision of conduct, then the term shall commence anew with the decision.

### **Section 68f Supervision of Conduct without Suspension of the Remainder of Punishment**

(1) If imprisonment for at least two years for an intentional crime or imprisonment for at least one year for a crime named in Section 181b has been fully executed, then supervision of conduct enters into force upon the release of the convicted person from serving his sentence. This shall not apply when a measure of reform and prevention involving deprivation of liberty is executed immediately following the service of the sentence.

(2) If it can be expected that the convicted person will commit no more crimes even without supervision of conduct, then the court shall order that the measure be waived.

### **Section 68g Supervision of Conduct, Suspension of Sentence and Probation**

(1) If suspension of the execution of all or the remainder of punishment has been ordered or prohibition of engagement in a profession has been suspended and probation granted and the convicted person is subject at the same time to supervision of conduct because of the same or another act, then only Sections 68a and 68b shall apply in relation to supervision and the issuance of instructions. Supervision of conduct shall not terminate before the expiration of the term of probation.

(2) If the suspension of sentence and grant of probation and the supervision of conduct are ordered on the basis of the same act, the court may nevertheless determine that the supervision of conduct shall be suspended until the expiration of the term of probation. The term of probation shall not then be credited to the period of supervision of conduct.

(3) If after the expiration of the term of probation the punishment or the remainder thereof has been remitted or the prohibition of engagement in a profession has been declared to have been terminated, then supervision of conduct ordered because of the same act shall also terminate therewith.

## **Withdrawal of Permission to Drive**

### **Section 69 Withdrawal of Permission to Drive**

(1) If someone is convicted of an unlawful act which he committed in connection with the driving of a motor vehicle or in violation of the duties of a driver of a motor vehicle, or is not convicted only because his lack of capacity to be adjudged guilty has been proved or may not be excluded, then the court shall withdraw his permission to drive if the act reveals that he is unfit to drive a motor vehicle. Further review pursuant to Section 62 shall not be required.

(2) If the unlawful act in cases under subsection (1) is a less serious criminal offense of:

1. endangerment of road traffic (Section 315c);
2. drunkenness in traffic (Section 316);
3. unauthorized leaving of the scene of an accident (Section 142), although the perpetrator knows or is capable of knowing that a person was killed, seriously injured or significant damage has been caused to the property of others; or
4. total intoxication (Section 323a) which relates to one of the acts in numbers 1 through 3, then the perpetrator shall, as a rule, be deemed unfit to drive motor vehicles.

(3) Permission to drive shall be forfeited when the judgment becomes final. A driver's license issued by a German public authority shall be confiscated in the judgment.

### **Section 69a Bar to Granting Permission to Drive**

(1) If the court withdraws the permission to drive, then it shall simultaneously provide that no new permission to drive may be granted for a period of from six months to five years (bar). A permanent bar may be ordered if it can be expected that the statutory maximum term will not suffice to avert the danger posed by the perpetrator. If the perpetrator has no permission to drive, then only a bar shall be ordered.

(2) The court may exempt particular types of motor vehicles from the bar if special circumstances justify the assumption that the objective of the measure will not be thereby

endangered. (3) The minimum bar shall be for one year if a bar has already been ordered against the

perpetrator in the last three years before the act.

(4) If the perpetrator's permission to drive has been provisionally withdrawn because of

the act (section 111a of the Code of Criminal Procedure), then the minimum bar shall be reduced by the

time during which provisional withdrawal was in effect. However, it may not be less than three months.

(5) The bar shall commence when the judgment becomes final. The time of a provisional withdrawal ordered because of the act shall be credited to the term of the bar, to the extent it has run following the pronouncement of the judgment in which the factual determinations on which the measure is based could last be reviewed.

(6) Within the meaning of subsections (4) and (5) the taking or holding of a driver's license in custody or its confiscation (Section 94 Code of Criminal Procedure) shall be equivalent to provisional withdrawal of permission to drive.

(7) If there are grounds for the assumption that the perpetrator is no longer unfit to drive motor vehicles, then the court may lift the bar early. This action shall be permissible at the earliest when the bar has been in effect three months, or a year in cases pursuant to subsection (3); subsection (5), sentence 2 and subsection (6) shall apply accordingly.

### **Section 69b Effect of Withdrawal on Foreign Permission to Drive**

(1) If the perpetrator is permitted to drive motor vehicles in Germany on the basis of permission to drive granted abroad, without having been granted permission to drive by a German public authority, then the withdrawal of permission to drive has the effect of a deprivation of the right to make use of permission to drive in Germany. The right to drive motor vehicles in Germany is forfeited when the decision becomes final. During the bar neither domestic permission to drive, nor the right to make use of foreign permission to drive, may be granted.

(2) If the foreign driver's license has been issued by a public authority of a member state of the European Union or another signatory state of the Convention on the European Economic Area and the holder has his ordinary residence in Germany, then the driver's license shall be confiscated in the judgment and sent back to the issuing public authority. In other cases, the withdrawal of permission to drive and the bar shall be endorsed on the foreign driver's licenses.

Prohibition of Engagement in a Profession

### **Section 70 Order of Prohibition of Engagement in a Profession**

(1) If someone is convicted of an unlawful act, which he committed in abuse of his profession or trade or in gross violation of the duties associated therewith, or is not convicted only because his lack of capacity to be adjudged guilty has been proved or may not be excluded, then the court may prohibit him from engaging in the profession, branch of profession, occupation, trade or branch of trade, for a period of from one year to five years, if a comprehensive evaluation of the perpetrator and the act reveals a danger, that by further engagement in the profession, branch of profession, occupation, trade or branch of trade he will commit serious unlawful acts of the type indicated. The order of prohibition of engagement in a profession may be permanent if it can be expected that the statutory maximum term will not suffice to avert the danger posed by the perpetrator.

(2) If the perpetrator has been provisionally prohibited from engaging in a profession, branch of profession, occupation, trade or branch of trade (section 132a of the Code of Criminal Procedure), then the minimum term of prohibition shall be reduced by the time during which the provisional prohibition of engagement in a profession was in effect. It may, however, not be less than three months.

(3) As long as the prohibition is in effect the perpetrator may not engage in the profession, branch of profession, occupation, trade or branch of trade on behalf of another or have a person dependent on his instructions engage in it on his behalf.

(4) The prohibition of engagement in a profession takes effect when the judgment becomes final. The time of a provisional prohibition of engagement in a profession ordered because of the act shall be credited to the term of prohibition, to the extent it has run following the pronouncement of the judgment in which the factual determinations on which the measure is based could last be examined. Time during which the perpetrator is held in custody in an institution by order of a public authority shall not be credited.

### **Section 70a Suspension of the Prohibition of Engagement in a Profession**

(1) If, after an order of prohibition of engagement in a profession, there appear grounds for the assumption that the danger no longer exists that the perpetrator will commit serious unlawful acts of the type indicated in Section 70 subsection (1), then the court may suspend the prohibition and grant probation.

(2) The order shall be permissible at the earliest when the prohibition has been in effect for one year. The time of a provisional prohibition of engagement in a profession shall be credited to the term of prohibition within the framework of Section 70 subsection (4), sent. 2. Time during which the perpetrator is held in custody in an institution by order of a public authority shall not be credited.

(3) If the prohibition of engagement in a profession is suspended and probation granted, then Sections 56a and 56c to 56e shall apply accordingly. The term of probation shall be extended, however, by the time in which a term of imprisonment or a measure involving deprivation of liberty is executed, which was imposed or ordered against the convicted person because of the act.

## **Section 70b Revocation of the Suspension and Termination of the Prohibition of Engagement in a Profession**

(1) The court shall revoke the suspension of the prohibition of engagement in a profession, if the convicted person:

1. commits an unlawful act in abuse of his profession, occupation or trade or of the duties associated therewith during the term of probation;

2. grossly and persistently violates an instruction; or

3. persistently evades the supervision and guidance of the probation officer,

and it is thereby revealed that the objective of the prohibition of engagement in a profession requires its continued application.

(2) The court shall also revoke suspension of the prohibition of engagement in a profession, if circumstances made known to it during the term of probation, which would have led to refusal of the suspension, show that the objective of the measure requires the continued application of the prohibition of engagement in a profession.

(3) The time of the suspension of the prohibition of engagement in a profession shall not be credited to the term of prohibition.

(4) Payments which the convicted person has rendered in fulfillment of instructions and promises shall not be reimbursed.

(5) After expiration of the term of probation the court shall declare the prohibition of engagement in a profession terminated.

## **Common Provisions**

### **Section 71 Independent Orders**

(1) The court may also independently order placement in a psychiatric hospital or in an institution for withdrawal treatment when criminal proceedings are impracticable due to the perpetrator's lack of capacity to be adjudged guilty or to stand trial.

(2) The same shall apply to withdrawal of permission to drive and to the prohibition of engagement in a profession.

### **Section 72 Combination of Measures**

(1) If the prerequisites for more than one measure are fulfilled, yet the desired objective may be attained through individual measures, then only those shall be ordered. In this respect priority shall be given among a number of suitable measures to those which least burden the perpetrator.

(2) Measures shall in other respects be ordered concurrently unless the law provides otherwise.

(3) If more than one measure involving deprivation of liberty are ordered, then the court shall determine the sequence of their execution. Before the conclusion of the execution of a measure the court shall order the execution of the next, respectively, if its objective still requires the placement. Section 67c subsection (2), sentences 4 and 5 shall be applicable.

## **Title Seven Forfeiture And Confiscation**

### **Section 73 Prerequisites for Forfeiture**

(1) If an unlawful act has been committed and the perpetrator or inciter or accessory has acquired something as a result thereof or for the purpose of committing it, then the court shall order its forfeiture. This shall not apply to the extent that a claim by the aggrieved party has arisen out of the act the satisfaction of which would deprive the perpetrator or inciter or accessory of the value of that which was acquired by virtue of the act.

(2) The order of forfeiture shall extend to derived benefits. It may also extend to objects which the perpetrator or inciter or accessory has acquired through alienation of an acquired object, as a replacement for its destruction, damage or seizure or on the basis of an acquired right.

(3) If the perpetrator or inciter or accessory acted for another and the latter acquired something thereby, then the order of forfeiture under subsections (1) and (2) shall be directed at him.

(4) Forfeiture of an object shall also be ordered if it is owned or claimed by a third party, who furnished it for the act or otherwise with knowledge of the attendant circumstances of the act.

### **Section 73a Forfeiture of the Replacement Value**

To the extent that the forfeiture of a particular object is impossible due to the nature of what was acquired or for some other reason or because forfeiture of a replacement object pursuant to Section 73 subsection (2), sent. 2, has not been ordered, the court shall order the forfeiture of a sum of money which corresponds to the value of that which was acquired. The court shall also make such an order collateral to the forfeiture of an object to the extent its value falls short of the value of that which was originally acquired.

### **Section 73b Estimation**

The extent of what has been acquired and its value, as well as the amount of the claim the satisfaction of which would deprive the perpetrator or inciter or accessory of that which was acquired, may be estimated.

### **Section 73c Hardship Provision**

(1) Forfeiture shall not be ordered to the extent it would constitute an undue hardship for the person affected. The order need not be made to the extent the value of that which was acquired is

no longer part of the affected person's assets at the time of the order or if that which was acquired is only of slight value.

(2) In approving facilitation of payment Section 42 shall apply accordingly.

### **Section 73d Extended Forfeiture**

(1) If an unlawful act has been committed pursuant to a law which refers to this provision, then the court shall also order the forfeiture of objects of the perpetrator or inciter or accessory if the circumstances justify the assumption that these objects were acquired as a result of unlawful acts, or for the purpose of committing them. Sentence 1 shall also be applicable if the perpetrator or inciter or accessory does not own or have a claim to the object only because he acquired the object as a result of an unlawful act or for the purpose of committing it. Section 73 subsection (2), shall apply accordingly.

(2) If forfeiture of a particular object after the act has become impossible in whole or in part, then Sections 73a and 73b shall to that extent be applied by analogy.

(3) If, after an order of forfeiture pursuant to subsection (1) due to another unlawful act which the perpetrator or inciter or accessory committed before the order, a decision must again be made as to the forfeiture of objects of the perpetrator or inciter or accessory, then the court, in so doing, shall consider the order already issued.

(4) Section 73c shall apply accordingly.

### **Section 73e Effect of Forfeiture**

(1) If forfeiture of an object is ordered, then ownership of the property or the right forfeited shall pass to the state when the decision becomes final, if the person affected by the order has a claim thereto at the time. The rights of third parties in the object shall remain intact.

(2) Before it becomes final the order shall have the effect of prohibiting alienation within the meaning of section 136 of the Civil Code; the prohibition shall also encompass dispositions other than alienations.

### **Section 74 Prerequisites for Confiscation**

(1) If an intentional crime has been committed, then objects which were generated thereby or used or intended for use in its commission or preparation may be confiscated.

(2) Confiscation shall only be permissible if:

1. the perpetrator or inciter or accessory owns or has a claim to the objects at the time of the decision; or

2. the objects, due to their nature and the circumstances, endanger the general public or there exists a danger that they will be used for the commission of unlawful acts.

(3) Under the provisions of subsection (2), no. 2, confiscation of objects shall also be permissible if the perpetrator acted without guilt.

(4) If confiscation is prescribed or permitted by a special provision over and above subsection (1), then subsections (2) and (3) shall apply accordingly.

### **Section 74a Extended Prerequisites for Confiscation**

If the law refers to this provision, then objects may also be confiscated, as an exception to Section 74 subsection (2), no. 1, if at the time of the decision the person who owns or has a claim to them:

1. has at least recklessly contributed to the fact that the property or the right thereto has been the object or instrumentality of the act or its preparation; or
2. has acquired the objects in a reprehensible manner with knowledge of the circumstances which would have permitted their confiscation.

### **Section 74b Principle of Proportionality**

(1) If confiscation is not prescribed, then it may not be ordered in cases under Sections 74 subsection (2), no. 1 and 74a when it is disproportionate to the significance of the act committed or the reproach attaching to the perpetrator or inciter or accessory or the third party in cases of Section 74a affected by the confiscation.

(2) In cases under Sections 74 and 74a the court shall order that the confiscation be reserved and shall impose a less incisive measure if the objective of the confiscation can also be thereby attained. Particular consideration shall be given to instructions:

1. to render the objects unusable;
2. to remove particular fittings or distinguishing marks or otherwise modify the objects; or
3. to deal with the objects in a specified manner. If the instructions are followed, the reservation on confiscation shall be lifted; otherwise the court shall subsequently order the confiscation.

(3) If the confiscation is not prescribed, then it may be limited to a part of the objects.

### **Section 74c Confiscation of Replacement Value**

(1) If the perpetrator or inciter or accessory has used, particularly through alienation or consumption, the object which he owned or had a claim to at the time of the act and which could have been subject to confiscation, or if he has otherwise obstructed the confiscation of the object,



then the court may order the confiscation from the perpetrator or inciter or accessory of a sum of money no greater than an amount equivalent to the value of the object.

(2) The court may also make such an order collateral to the confiscation of an object or in place thereof, if the perpetrator or inciter or accessory has, prior to the decision on confiscation, encumbered it with the right of a third party, the extinguishment of which cannot be ordered without compensation or could not be ordered in the case of confiscation (Sections 74e subsection (2), and 74f); if the court makes the order collateral to the confiscation, then the amount of the replacement value shall be measured according to the value of the encumbrance on the object.

(3) The value of the object and the encumbrance may be estimated.

(4) In approving facilitation of payment Section 42 shall apply.

### **Section 74d Confiscation of Writings and Rendering Unusable**

(1) Writings (Section 11 subsection (3)), which have a content such that every intentional dissemination with knowledge of their content would satisfy the elements of a penal norm, shall be confiscated if at least one copy was disseminated by means of an unlawful act or was intended for such dissemination. It shall simultaneously be ordered that the equipment used or intended for the production of the writings, such as plates, frames, type, blocks, negatives or stencils, be rendered unusable.

(2) The confiscation shall extend only to copies which are in the possession of the persons involved in their dissemination or preparation or which have been publicly displayed or, having been forwarded for dissemination, have not yet been distributed to the recipient.

(3) Subsection (1) shall correspondingly apply to writings (Section 11 subsection (3)) which have a content such that intentional dissemination with knowledge of their content would satisfy the elements of a penal norm only when additional attendant circumstances of the act are present. Confiscation and rendering unusable shall, however, only be ordered to the extent that:

1. the copies and the objects indicated in subsection (1), sentence 2 are in the possession of the perpetrator, inciter or accessory or another on whose behalf the perpetrator or inciter or accessory acted, or are intended by these people for dissemination; and

2. the measures are required to prevent unlawful dissemination by these persons.

(4) It shall be deemed equivalent to dissemination within the meaning of subsections (1) to (3), if a writing (Section 11 subsection (3)) or at least one copy of the writing has been made accessible to the public by display, posting, presentation or other means.

(5) Section 74b subsections (2) and (3), shall apply accordingly.

### **Section 74e Effect of Confiscation**

(1) If an object is confiscated, then ownership of the property or the right confiscated shall pass to the state when the decision becomes final.

(2) The rights of third parties in the object shall remain intact. However, the court shall order the extinguishment of these rights if it bases confiscation on the fact that the conditions of Section 74 subsection (2), no. 2, exist. It may also order the extinguishment of the rights of a third party if he may not be granted compensation pursuant to Section 74f subsection (2), nos. 1 or 2.

(3) Section 73e subsection (2), shall apply accordingly for the order of confiscation and the order reserving confiscation, even when it has not yet become final.

### **Section 74f Compensation**

(1) If a third party had a claim of ownership in the property or the confiscated right at the time the decision on confiscation or rendering unusable became final or if the object was encumbered by a right of a third party which was extinguished or interfered with by the decision, then the third party shall be appropriately compensated in money from the public treasury taking into consideration the fair market value.

(2) Compensation shall not be granted, if:

1. the third party has at least recklessly contributed to the fact that the property or the right thereto has been the object or instrumentality of the act or its preparation;

2. the third party has acquired the object or the right in the object in a reprehensible manner with knowledge of the circumstances which permit its confiscation or rendering unusable; or

3. it would be permissible, under the circumstances which justify the confiscation or rendering unusable, to confiscate the object from the third party permanently and without compensation on the basis of legal provisions outside of the criminal law.

(3) In cases under subsection (2) compensation may be granted to the extent it would constitute an undue hardship to refuse it.

### **Section 75 Special Provision for Entities and Representatives**

If someone commits an act:

1. as an entity authorized to represent a legal person or as a member of such an entity;

2. as chairman of the executive committee of an association without legal capacity or as a member of such committee;

3. as a partner authorized to represent a commercial partnership; or

4. as authorized representative with full power of attorney or in a management position as general agent or authorized representative with a commercial power of attorney of a legal person or an association of persons named in numbers 2 or 3, which in relation to him and under the other prerequisites of Sections 74 to 74c and 74f would permit the confiscation of an object or its replacement value or justify the exclusion of compensation, then his act shall be attributed by application of these provisions to the person represented. Section 14 subsection (3), shall apply accordingly.

## **Common Provisions**

### **Section 76 Subsequent Order of Forfeiture or Confiscation of Replacement Value**

If an order of forfeiture or confiscation of an object is not practicable or insufficient because one of the preconditions indicated in Sections 73a, 73d subsection (2), or 74c has occurred or become known, then the court may subsequently order the forfeiture or confiscation of the replacement value.

### **Section 76a Independent Orders**

(1) If for factual reasons no particular person may be prosecuted or convicted of the crime, then forfeiture or confiscation of the object or the replacement value or its rendering unusable may be independently ordered if the preconditions under which the measure is prescribed or permitted otherwise exist.

(2) Subsection (1) shall also be applicable under the provisions of Sections 74 subsection (2), no. 2 subsection (3) and 74d, if:

1. prosecution of the crime is barred by the statute of limitations; or

2. for legal reasons no particular person may be prosecuted and the law does not provide otherwise. Confiscation or rendering unusable may not, however, be ordered in the absence of a complaint, authorization, or request for prosecution.

(3) Subsection (1) shall also be applicable if the court dispenses with punishment or if the proceeding is terminated pursuant to a provision which permits this in the discretion of the public prosecution office or the court or with the agreement of both.

## **Chapter Four Criminal Complaint, Authorization, Request For Prosecution**

### **Section 77 Persons Entitled to File a Complaint**

(1) If the act may only be prosecuted upon complaint, then, to the extent the law does not provide otherwise, the aggrieved party may file a complaint.

(2) If the aggrieved party dies, then his right to file a complaint passes in cases where the law so provides to his spouse and children. If the aggrieved party has left neither a spouse nor children

or if they have died before the expiration of the period for filing the complaint, then the right to file the complaint passes to the parents and, if they have also died before the expiration of the period for filing the complaint, to the siblings and grandchildren. If a relative has participated in the act or his relationship with the aggrieved party has ceased to exist, then he is excluded from those to whom the right to file the complaint may pass. The right to file the complaint does not pass if prosecution is at variance with the expressed desire of the aggrieved party.

(3) If the person entitled to file a complaint has no legal capacity or only has limited legal capacity, then the statutory representative for his personal affairs and the person responsible for the care of the person entitled to file a complaint may file a complaint.

(4) If more than one person is entitled to file a complaint, then each may file a complaint independently.

### **Section 77a Complaint by a Superior in the Public Service**

(1) If the act has been committed by or against a public official, a person with special public service obligations, or a soldier in the Federal Armed Forces and may be prosecuted upon complaint by his superior in the public service under whom the concerned person served at the time of the act, then that superior in the public service is entitled to file the complaint.

(2) In the case of professional judges, whoever exercises official supervision over the judge shall be entitled to file the complaint in place of the superior in the public service. In the case of soldiers the superior in the public service shall be the superior in disciplinary matters.

(3) In the case of a public official or a person with special public service obligations, who does not or did not have a superior in the public service, the public agency for which he worked may file the complaint. If the public official or the person with obligations himself manages this public agency, then the state supervisory authority is entitled to file the complaint.

(4) In the case of members of the Federal Government or members of a Land government, the Federal Government and Land government, respectively, shall be entitled to file the complaint.

### **Section 77b Period for Filing a Complaint**

(1) An act, which may only be prosecuted upon complaint, shall not be prosecuted if the person entitled to file the complaint fails to file the complaint before the expiration of a three-month period. If the end of the period falls on a Sunday, a general holiday or a Saturday, then the period shall end with the expiration of the next workday.

(2) The period shall begin upon the expiration of the day on which the entitled person acquired knowledge of the act and the identity of the perpetrator. If prosecution of the act is also dependent on a decision as to the nullity or dissolution of a marriage, then the period shall not begin before the expiration of the day on which the entitled person acquires knowledge of the finality of the decision. For a complaint by the statutory representative or the person responsible for the care of the person, their knowledge is decisive.

(3) If more than one person is entitled to file a complaint or more than one person participated in the act, then the period shall run separately for and against each person.

(4) If as a result of the death of the aggrieved party the right to file a complaint has passed to relatives, then the period shall end at the earliest three months and at the latest six months after the death of the aggrieved party.

(5) The running of the period shall be tolled if an application has been received at a settlement board to conduct a conciliation attempt pursuant to section 380 of the Code of Criminal Procedure until the issuance of the certificate pursuant to section 380 subsection (1), sent. 2, of the Code of Criminal Procedure.

### **Section 77c Acts Committed Reciprocally**

In the case of acts committed reciprocally which are connected with one another and may only be prosecuted upon complaint, if one entitled person has filed for criminal prosecution of the other, then the other's right to file a complaint is extinguished if he has not exercised it before the completion of his last word in the proceedings at first instance. He may still file the complaint even if, for him, the period for filing the complaint has expired.

### **Section 77d Withdrawal of the Complaint**

(1) The complaint may be withdrawn. The withdrawal may be declared up until the conclusion of criminal proceedings has become final. A withdrawn complaint may not be refiled.

(2) If the aggrieved party, or, in the case of his death, the person entitled, dies after he has filed the complaint, then the spouse, children, parents, siblings or grandchildren of the aggrieved party may withdraw the complaint in the order indicated in Section 77 subsection (2). More than one relative of equal rank may only exercise the right jointly. Whoever participated in the act may not withdraw the complaint.

### **Section 77e Authorization and Request for Prosecution**

If the act may be prosecuted only with authorization or upon a request for prosecution, then Sections 77 and 77d shall apply accordingly.

## **Chapter Five Statutes of Limitations**

### **Title One Statute of Limitations For Prosecution**

#### **Section 78 Period of Limitation**

(1) The imposition of punishment and the ordering of measures (Section 11 subsection (1), no. 8) shall be excluded on expiry of the period of the statute of limitations. Section 76a subsection (2), sent. 1, no. 1, shall remain unaffected.

(2) Serious criminal offenses under Section 220a (genocide) and Section 211 (murder) are not subject to a statute of limitations.

(3) To the extent that prosecution is subject to a statute of limitations, the period of limitation shall be:

1. thirty years in the case of acts punishable by imprisonment for life;
2. twenty years in the case of acts punishable by a maximum term of imprisonment of more than ten years;
3. ten years in the case of acts punishable by a maximum term of imprisonment of more than five years but not more than 10 years;
4. five years in the case of acts punishable by a maximum term of imprisonment of more than one year but not more than five years;
5. three years in the case of other acts.

(4) The period shall conform to the punishment threatened by the norm defining the elements of the offense fulfilled by the act, irrespective of aggravating or mitigating circumstances provided for in the provisions of the General Part or for especially serious or less serious cases.

### **Section 78a Commencement**

The statute of limitations shall commence to run as soon as the act is completed. If a result constituting an element of the offense only occurs later, then the statute of limitations shall commence to run at that time.

### **Section 78b Tolling**

(1) The statute of limitations shall be tolled:

1. until the victim of crimes under Sections 176 to 179 is eighteen years of age;
2. as long as the prosecution may, according to the law, not be commenced or continued; this shall not apply if the act may not be prosecuted only because complaint, authorization or request for prosecution are lacking.

(2) If prosecution is not possible because the perpetrator is a member of the Bundestag or a legislative body of a Land, then the tolling of the statute of limitations shall commence upon expiration of the day on which:

1. the public prosecutor or a public authority or a police officer acquires knowledge of the act and the identity of the perpetrator; or

2. a criminal information or criminal complaint has been lodged against the perpetrator (section 158 Code of Criminal Procedure).

(3) If a judgment has been rendered in the proceedings at first instance before the expiration of the period of limitation, then the period of limitation shall not expire before the time the proceedings have been concluded with finality.

(4) If the law provides for imprisonment for more than five years in aggravation in especially serious cases and trial proceedings have been instituted in the Landgericht (Regional Court), then the statute of limitations shall be tolled in cases under Section 78 subsection (3), no. 4, from the opening of proceedings in the trial court, but at most for a period of five years; subsection (3) remains unaffected.

### **Section 78c Interruption**

(1) The running of the statute of limitations shall be interrupted by:

1. the first interrogation of the accused, notice that investigative proceedings have been initiated against him, or the order for such interrogation or notice;

2. any judicial interrogation of the accused or the order thereof;

3. any commissioning of an expert by the judge or public prosecutor if the accused has previously been interrogated or he has been given notice of the initiation of investigative proceedings;

4. any judicial seizure or search order and judicial decisions which uphold them;

5. an arrest warrant, placement order, order to be brought before a judge for interrogation and judicial decisions which uphold them;

6. the preferment of a public indictment;

7. the institution of proceedings in the trial court;

8. any setting of a trial date;

9. a penal order or another decision equivalent to a judgment;

10. the provisional judicial dismissal of the proceedings due to the absence of the indicted accused as well as any order of the judge or public prosecutor which issues after such a dismissal of the proceedings or in proceedings in absentia to ascertain the whereabouts of the indicted accused or to secure evidence;

11. the provisional judicial dismissal of the proceedings due to the lack of capacity of the indicted accused to stand trial as well as any order of the judge or public prosecutor which issues

after such a dismissal of the proceedings to review the fitness of the indicted accused to stand trial; or

12. any judicial request to undertake an investigative act abroad. In a preventive detention proceeding and in an independent proceeding, the running of the statute of limitations shall be interrupted by acts in the conduct of a preventive detention proceeding or an independent proceeding which correspond to those in sentence 1.

(2) The running of the statute of limitations shall be interrupted by a written order or decision at the time at which the order or decision is signed. If the document is not immediately processed after signing, then the time it is actually submitted for processing shall be decisive.

(3) After each interruption the statute of limitations shall commence to run anew. Prosecution shall be barred at the latest by the statute of limitations, however, when twice the statutory period of limitation has elapsed since the time indicated in Section 78a, or three years, if the period of limitation is shorter than three years. Section 78b shall remain unaffected.

(4) The interruption shall have effect only in relation to the person to whom the act relates.

(5) If a norm which applies at the time the act is completed is amended before the decision and the period of limitation is thereby shortened, then acts triggering an interruption, which have been undertaken before the entry into force of the new law, shall maintain their effect, even if at the time of the interruption the prosecution would already have been barred by the statute of limitations under the new law.

## **Title Two Statute of Limitations For Execution**

### **Section 79 Period of Limitation**

(1) An imposed punishment or measure (Section 11 subsection (1), no. 8) which has become final may no longer be executed after the expiration of the period of limitation.

(2) The execution of punishments for genocide (Section 220a) and of imprisonment for life are not subject to a statute of limitations.

(3) The period of limitation shall be:

1. twenty-five years for a term of imprisonment of more than ten years;
2. twenty years for a term of imprisonment of more than five years but not more than ten years;
3. ten years for a term of imprisonment of more than one year but not more than five years;
4. five years for a term of imprisonment of not more than one year and fines of more than thirty daily rates;



5. three years for fines of not more than thirty daily rates.

(4) The execution of preventive detention shall not be subject to a statute of limitations. In the case of other measures the period of limitations shall be ten years. If, however, supervision of conduct or a first placement in an institution for withdrawal treatment has been ordered, then the period shall be five years.

(5) If imprisonment and a fine are simultaneously imposed or if, collateral to a punishment, a measure involving deprivation of liberty, forfeiture, confiscation or rendering unusable is ordered, then the execution of the punishment or the measure shall not be barred by the statute of limitations before the execution of the other. However, a simultaneous order of preventive detention shall not prevent the running of the statute of limitations for the execution of punishments or other measures.

(6) The statute of limitations shall commence to run when the decision becomes final.

### **Section 79a Tolling**

The statute of limitations shall be tolled:

1. as long as the execution may not, according to law, be commenced or continued;
2. as long as the convicted person is granted: (a) a deferment or interruption of the execution; (b) suspension of sentence and probation by judicial decision or by act of clemency; or (c) facilitation of payment in the case of a fine, forfeiture or confiscation.
3. as long as the convicted person is held in custody in an institution by order of a public authority in Germany or abroad.

### **Section 79b Extension**

The court may, upon application of the executing authority, extend the period of limitation once before its expiration by one half of the statutory period of limitation, if the convicted person is staying in a territory from which his extradition or transfer can not be obtained.

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## **Special Part**

### **Chapter One Crimes Against Peace, High Treason And Endangering The Democratic Rule of Law**

#### **Title One Crimes Against Peace**

#### **Section 80 Preparation of a War of Aggression**

Whoever prepares a war of aggression (Article 26 subsection (1), of the Basic Law) in which the Federal Republic of Germany is supposed to participate and thereby creates a danger of war for the Federal Republic of Germany, shall be punished with imprisonment for life or for not less than ten years.

### **Section 80a Incitement to a War of Aggression**

Whoever publicly incites to a war of aggression (Section 80) in a meeting or through the dissemination of writings (Section 11 subsection (3)) in the territorial area of application of this law shall be punished with imprisonment from three months to five years.

## **Title Two High Treason**

### **Section 81 High Treason Against the Federation**

(1) Whoever undertakes with force or through threat of force:

1. to undermine the continued existence of the Federal Republic of Germany; or
2. to change the constitutional order based on the Basic Law of the Federal Republic of Germany,

shall be punished with imprisonment for life or for not less than ten years.

(2) In less serious cases the punishment shall be imprisonment from one year to ten years.

### **Section 82 High Treason Against a Land**

(1) Whoever undertakes with force or through threat of force:

1. to incorporate the territory of one Land in whole or in part into another Land of the Federal Republic of Germany or to separate a part of a Land from it; or
2. to change the constitutional order based on the constitution of a Land,

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 83 Preparation of a High Treasonous Undertaking**

(1) Whoever prepares a specific high treasonous undertaking against the federal government shall be punished with imprisonment from one year to ten years, in less serious cases with imprisonment from one year to five years.

(2) Whoever prepares a specific high treasonous undertaking against a Land shall be punished with imprisonment from three months to five years.

### **Section 83a Active Remorse**

(1) In cases under Sections 81 and 82 the court in its discretion may mitigate the punishment (Section 49 subsection (2)) or refrain from the imposition of punishment pursuant to these provisions, if the perpetrator voluntarily renounces the further execution of the act and averts or substantially lessens a known danger that others will further execute the undertaking, or if he voluntarily prevents the completion of the act.

(2) In cases under Section 83 the court may proceed according to subsection (1) if the perpetrator voluntarily renounces his plan and averts or substantially lessens a known danger caused by him that others will further prepare or execute the undertaking or if he voluntarily prevents the completion of the act.

(3) If the indicated danger is averted or substantially lessened or the completion of the act is prevented due in no part to the contribution of the perpetrator, then his voluntary and earnest efforts to attain this goal shall suffice.

## **Title Three Endangering The Democratic Rule of Law**

### **Section 84 Continuation of a Party Which Has Been Declared to be Unconstitutional**

(1) Whoever, within the territorial area of application of this law, as ringleader or supporter, maintains the organizational cohesion of:

1. a party which has been declared to be unconstitutional by the Federal Constitutional Court; or
2. a party, which the Federal Constitutional Court has determined to be a substitute organization for a banned party,

shall be punished with imprisonment from three months to five years. An attempt shall be punishable.

(2) Whoever is active as a member in a party of the type indicated in subsection (1) or whoever supports its organizational cohesion, shall be punished with imprisonment for not more than five years or a fine.

(3) Whoever contravenes a decision on the merits of the Federal Constitutional Court handed down in a proceeding pursuant to Article 21 subsection (2), of the Basic Law or in a proceeding pursuant to Section 33 subsection (2), of the Law on Political Parties or an enforceable measure imposed in execution of a decision on the merits issued in such proceedings, shall be punished with imprisonment for not more than five years or a fine. A proceeding pursuant to Article 18 of the Basic Law shall be the equivalent of the proceedings indicated in sentence 1.

(4) In cases under subsection (1), sentence 2 and subsections (2) and (3), sentence 1, the court in its discretion may mitigate the sentence (Section 49 subsection (2)) or refrain from the imposition of punishment pursuant to these provisions in the case of participants whose guilt is slight and whose participation is of minor significance.

(5) In cases under subsections (1) and (3), sentence 1, the court in its discretion may mitigate the sentence (Section 49 subsection (2)) or refrain from the imposition of punishment pursuant to these provisions, if the perpetrator makes a voluntarily and earnest effort to prevent the continued existence of the party; if he attains this goal or if it is attained due in no part to his efforts, then the perpetrator shall not be punished.

### **Section 85 Violation of a Ban of an Organization**

(1) Whoever, within the territorial area of application of this law, as ringleader or supporter, maintains the organizational cohesion of:

1. a party or organization, as to which it has been determined, no longer subject to appeal, that it is a substitute organization of a banned party in a proceeding pursuant to Section 33 subsection (3), of the Law on Political Parties; or

2. an organization, which has been banned, no longer subject to appeal, because it is directed against the constitutional order or against the idea of international understanding, or as to which it has been determined, no longer subject to appeal, that it is a substitute organization of such a banned organization, shall be punished with imprisonment for not more than five years or a fine. An attempt shall be punishable.

(2) Whoever is active as a member in a party or organization of the type indicated in subsection (1) or whoever supports its organizational cohesion, shall be punished with imprisonment for not more than three years or a fine.

(3) Section 84 subsections (4) and (5), shall apply accordingly.

### **Section 86 Dissemination of Means of Propaganda of Unconstitutional Organizations**

(1) Whoever domestically disseminates or produces, stocks, imports or exports or makes publicly accessible through data storage media for dissemination domestically or abroad, means of propaganda:

1. of a party which has been declared to be unconstitutional by the Federal Constitutional Court or a party or organization, as to which it has been determined, no longer subject to appeal, that it is a substitute organization of such a party;

2. of an organization, which has been banned, no longer subject to appeal, because it is directed against the constitutional order or against the idea of international understanding, or as to which it has been determined, no longer subject to appeal, that it is a substitute organization of such a banned organization;

3. of a government, organization or institution outside of the territorial area of application of this law which is active in pursuing the objectives of one of the parties or organizations indicated in numbers 1 and 2; or

4. means of propaganda, the contents of which are intended to further the aims of a former National Socialist organization,

shall be punished with imprisonment for not more than three years or a fine.

(2) Means of propaganda within the meaning of subsection (1) shall only be those writings (Section 11 subsection (3)) the content of which is directed against the free, democratic constitutional order or the idea of international understanding.

(3) Subsection (1) shall not be applicable if the means of propaganda or the act serves to further civil enlightenment, to avert unconstitutional aims, to promote art or science, research or teaching, reporting about current historical events or similar purposes.

(4) If guilt is slight, the court may refrain from imposition of punishment pursuant to this provision.

### **Section 86a Use of Symbols of Unconstitutional Organizations**

(1) Whoever:

1. domestically distributes or publicly uses, in a meeting or in writings (Section 11 subsection (3)) disseminated by him, symbols of one of the parties or organizations indicated in Section 86 subsection (1), nos. 1, 2 and 4; or

2. produces, stocks, imports or exports objects which depict or contain such symbols for distribution or use domestically or abroad, in the manner indicated in number 1,

shall be punished with imprisonment for not more than three years or a fine.

(2) Symbols, within the meaning of subsection (1), shall be, in particular, flags, insignia, uniforms, slogans and forms of greeting. Symbols which are so similar as to be mistaken for those named in sentence 1 shall be deemed to be equivalent thereto.

(3) Section 86 subsections (3) and (4), shall apply accordingly.

### **Section 87 Activity as an Agent for the Purpose of Sabotage**

(1) Whoever carries out a commission of a government, organization or institution outside of the territorial area of application of this law in preparation of acts of sabotage which are to be committed in this area of application, by:

1. maintaining readiness to commit such acts upon instructions of one of the indicated agencies;

2. gathering information about objects of sabotage;
3. producing, procuring for oneself or another, storing, giving to another or importing into this area means for sabotage;
4. establishing, maintaining or inspecting depots for the receiving of means of sabotage or bases for sabotage activity;
5. accepting or giving instructions to others in how to commit acts of sabotage; or
6. establishing or maintaining the link between one of the agents of sabotage (numbers 1 to 5) and one of the indicated agencies, and thereby intentionally or knowingly gives his support to efforts against the continued existence or security of the Federal Republic of Germany or against its constitutional principles,

shall be punished with imprisonment for not more than five years or a fine.

(2) Acts of sabotage within the meaning of subsection (1) shall be:

1. acts which fulfill the elements of any of the following offenses: Sections 109e, 305, 306 to 306c, 307 to 309, 313, 315, 315b, 316b, 316c subsection (1), no. 2, 317 or 318; and
  2. other acts which thereby obstruct or disturb the operation of an enterprise which is vital for the national defense, the protection of the civilian population from the dangers of war, or the national economy by destroying, damaging, removing, altering or rendering unusable a thing of use to the operation or depriving the operation of its allocated energy.
- (3) The court may dispense with punishment pursuant to these provisions, if the perpetrator renounces his conduct and discloses his knowledge to a government agency in time so that the acts of sabotage, the planning of which he is aware, may still be prevented.

## **Section 88 Anti-Constitutional Sabotage**

(1) Whoever, as ringleader or supporter of a group or individually, without acting with or for such a group, intentionally causes, by acts of interference within the territorial area of application of this law, that:

1. enterprises or facilities which provide public mail services or public transportation;
2. telecommunications facilities, which serve public objectives;
3. enterprises or facilities which provide the public with water, light, heat or power or are otherwise vital for the maintenance of the population;
4. government agencies, facilities, installations or objects which entirely or predominantly contribute to public safety or order, cease to function, in whole or in part, or are deprived of their

legally determined purposes, and thereby intentionally gives his support to efforts against the continued existence or security of the Federal Republic of Germany or against its constitutional principles,

shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 89 Anti-Constitutional Influence on the Federal Armed Forces and Public Security Organs**

(1) Whoever systematically exerts influence on members of the Federal Armed Forces or of a public security organ in order to undermine their duty-bound readiness to protect the security of the Federal Republic of Germany or the constitutional order and thereby intentionally gives support to efforts against the continued existence or security of the Federal Republic of Germany or against its constitutional principles, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Section 86 subsection (4), shall apply accordingly.

### **Section 90 Disparagement of the Federal President**

(1) Whoever publicly disparages the Federal President in a meeting or through the dissemination of writings (Section 11 subsection (3)) shall be punished with imprisonment from three months to five years.

(2) In less serious cases the court in its discretion may mitigate the punishment (Section 49 subsection (2)) if the requirements of Section 188 have not been fulfilled.

(3) The punishment shall be imprisonment from six months to five years if the act constitutes a defamation (Section 187) or if the perpetrator by the act intentionally gives his support to efforts against the continued existence of the Federal Republic of Germany or against its constitutional principles.

(4) The act shall be prosecuted only with the authorization of the Federal President.

### **Section 90a Disparagement of the State and its Symbols**

(1) Whoever publicly, in a meeting or through the dissemination of writings (Section 11 subsection (3)):

1. insults or maliciously maligns the Federal Republic of Germany or one of its Lands or its constitutional order; or

2. disparages the colors, flag, coat of arms or the anthem of the Federal Republic of Germany or one of its Lands,

shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever removes, destroys, damages, renders unusable or unrecognizable, or commits insulting mischief upon a publicly displayed flag of the Federal Republic of Germany or one of its Lands or a national emblem installed by a public authority of the Federal Republic of Germany or one of its Lands shall be similarly punished. An attempt shall be punishable.

(3) The punishment shall be imprisonment for not more than five years or a fine if the perpetrator by the act intentionally gives support to efforts against the continued existence of the Federal Republic of Germany or against its constitutional principles.

### **Section 90b Anti-Constitutional Disparagement of Constitutional Organs**

(1) Whoever publicly, in a meeting or through the dissemination of writings (Section 11 subsection (3)) disparages a constitutional organ, the government or the constitutional court of the Federation or of a Land or one of their members in this capacity in a manner endangering respect for the state and thereby intentionally gives support to efforts against the continued existence of the Federal Republic of Germany or against its constitutional principles, shall be punished with imprisonment from three months to five years.

(2) The act shall be prosecuted only with the authorization of the constitutional organ or member affected.

### **Section 91 Area of Application**

Sections 84, 85 and 87 shall only apply for acts which are committed in the course of conduct engaged in within the territorial area of application of this law.

## **Title Four Common Provisions**

### **Section 92 Definition of Terms**

(1) Within the meaning of this law, a person undermines the continued existence of the Federal Republic of Germany if he causes the abolition of its freedom from foreign domination, the destruction of its national unity, or the separation of one of its constituent territories.

(2) Constitutional principles, within the meaning of this law, shall be:

1. the right of the people to exercise state power in elections and ballots and through particular organs of legislative, executive and judicial power and to elect parliament in general, direct, free, equal and secret elections;



2. the subjection of legislation to the constitutional order and the subjection of the executive and judicial power to law and justice;
3. the right to form and exercise a parliamentary opposition;
4. the replaceability of the government and its responsibility to parliament;
5. the independence of the courts; and
6. the exclusion of any rule by force and decree.

(3) Within the meaning of this law:

1. efforts against the continued existence of the Federal Republic of Germany shall be such efforts, the supporters of which work toward undermining the continued existence of the Federal Republic of Germany (subsection (1));
2. efforts against the security of the Federal Republic of Germany shall be such efforts, the supporters of which work toward undermining the external or internal security of the Federal Republic of Germany;
3. efforts against constitutional principles shall be such efforts, the supporters of which work toward destroying, invalidating or undermining a constitutional principle (subsection (2)).

### **Section 92a Collateral Consequences**

Collateral to imprisonment of at least six months for a crime under this section, the court may deprive the person of the capacity to hold public office, the capacity to attain public electoral rights, and the right to elect or vote in public matters (Section 45 subsections (2) and (5)).

### **Section 92b Confiscation**

If a crime in this section has been committed, then:

1. objects, which were generated by the act or used or intended for use in its commission or preparation; and
2. objects, to which a crime under Sections 80a, 86, 86a, 90 to 90b relates, may be confiscated. Section 74 shall be applicable.

## **Chapter Two Treason And Endangering External Security**

### **Section 93 Definition of State Secret**

(1) State secrets are facts, objects or knowledge which are only accessible to a limited category of persons and must be kept secret from foreign powers in order to avert a danger of serious prejudice to the external security of the Federal Republic of Germany.

(2) Facts which constitute violations of the independent, democratic constitutional order or of international arms control agreements by virtue of having been kept secret from the treaty partners of the Federal Republic of Germany, are not state secrets.

## **Section 94 Treason**

(1) Whoever:

1. communicates a state secret to a foreign power or one of its intermediaries; or
2. otherwise allows a state secret to come to the attention of an unauthorized person or to become known to the public in order to prejudice the Federal Republic of Germany or benefit a foreign power, and thereby creates a danger of serious prejudice to the external security of the Federal Republic of Germany,

shall be punished with imprisonment for not less than one year.

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

1. abuses a position of responsibility which especially obligates him to safeguard state secrets; or
2. creates by the act the danger of an especially serious prejudice to the external security of the Federal Republic of Germany.

## **Section 95 Disclosure of State Secrets**

(1) Whoever allows a state secret, which has been kept secret by an official agency or at its behest, to come to the attention of an unauthorized person or become known to the public, and thereby creates the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be punished with imprisonment from six months to five years if the act is not punishable under Section 94.

(2) An attempt shall be punishable.

(3) In especially serious cases the punishment shall be imprisonment from one year to ten years. Section 94 subsection (2), shall be applicable.

## **Section 96 Treasonous Espionage; Gathering Information About State Secrets**

(1) Whoever obtain a state secret in order to betray it (Section 94), shall be punished with imprisonment from one year to ten years.

(2) Whoever obtains a state secret, which has been kept secret by an official agency or at its behest, in order to disclose it (Section 95), shall be punished with imprisonment from six months to five years. An attempt shall be punishable.

### **Section 97 Revelation of State Secrets**

(1) Whoever allows a state secret, which has been kept secret by an official agency or at its behest, to come to the attention of an unauthorized person or become known to the public, and thereby negligently causes the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever recklessly allows a state secret, which has been kept secret by an official agency or at its behest and which was accessible to him by reason of his public office, government position, or assignment given by an official agency, to come to the attention of an unauthorized person, and thereby negligently causes the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be punished with imprisonment for not more than three years or a fine.

(3) The act shall be prosecuted only with the authorization of the federal government.

### **Section 97a Betrayal of Illegal Secrets**

Whoever communicates a secret, which is not a state secret because of one of the violations indicated in Section 93 subsection (2), to a foreign power or one of its intermediaries and thereby creates the danger of serious prejudice to the external security of the Federal Republic of Germany, shall be punished as a traitor (Section 94). Section 96 subsection (1), in conjunction with Section 94 subsection (1), no. 1, shall be correspondingly applicable to secrets of the type indicated in sentence 1.

### **Section 97b Mistaken Assumption of Betrayal of an Illegal Secret**

(1) If the perpetrator acts in cases under Sections 94 to 97 in the mistaken assumption that a state secret is a secret of the type indicated in Section 97a, then he shall be punished pursuant to the indicated provisions, when:

1. he may be reproached for the mistake;
2. he does not act with the intent of preventing the presumed violation; or
3. the act is, under the circumstances, not an appropriate means to accomplish the objective. The act is as a rule not an appropriate means if the perpetrator did not previously appeal to a member of the Bundestag for remedial action.

(2) If the state secret was officially confided or made accessible to the perpetrator in his capacity as a public official or soldier in the Federal Armed Forces, then he shall also be punished if the

public official did not previously appeal to a superior in government service, or the soldier to a superior in disciplinary matters, for remedial action. This shall apply to persons with special public service obligations and to persons who are obligated within the meaning of Section 353b subsection (2), by analogy.

### **Section 98 Treasonous Activity as an Agent**

(1) Whoever:

1. engages in activity for a foreign power which is directed towards the acquisition or communication of state secrets; or

2. declares to a foreign power or one of its intermediaries his willingness to engage in such activity, shall be punished with imprisonment for not more than five years or a fine if the act is not punishable pursuant to Sections 94 or 96

(1). In especially serious cases the punishment shall be imprisonment from one year to ten years; Section 94 subsection (2), sent.2, no. 1, shall apply accordingly.

(2) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) or dispense with punishment under these provisions if the perpetrator voluntarily renounces his conduct and discloses his knowledge to a government agency. If the perpetrator, in cases under subsection (2), sentence 1, has been pressured into the conduct by the foreign power or its intermediaries, then he shall not be punished under this provision if he voluntarily renounces his conduct and discloses his knowledge promptly to a government agency.

### **Section 99 Activity as an Agent for an Intelligence Service**

(1) Whoever:

1. engages in intelligence activity for the intelligence service of a foreign power against the Federal Republic of Germany which is directed toward communication or supply of facts, objects or knowledge; or

2. declares to the intelligence service of a foreign power or one of its intermediaries his willingness to engage in such activity,

shall be punished with imprisonment for not more than five years or a fine if the act is punishable neither under Sections 94, 96(1), 97a, nor under Section 97b in conjunction with Section 94 or Section 96 subsection (1).

(2) In especially serious cases the punishment shall be from one year to ten years. An especially serious case exists as a rule, if the perpetrator communicates or supplies facts, objects or knowledge which have been kept secret by an official agency or at its behest, and he:

1. abuses a position of responsibility which especially obligates him to safeguard such secrets; or

2. creates by the act the danger of serious prejudice to the Federal Republic of Germany.

(3) Section 98 subsection (2), shall apply accordingly.

### **Section 100 Peace-endangering Relationships**

(1) Whoever, as a German, who has his livelihood in the territorial area of application of this law, with the intent of starting a war or armed action against the Federal Republic of Germany, establishes or maintains relationships with a government, organization or institution outside of the territorial area of application of this law or one of its intermediaries, shall be punished with imprisonment for not less than one year.

(2) In especially serious cases the punishment shall be imprisonment for life or not less than five years. An especially serious case exists as a rule, if the perpetrator creates by the act a serious danger to the continued existence of the Federal Republic of Germany.

(3) In less serious cases the punishment shall be imprisonment from one year to five years.

### **Section 100a Treasonous Falsification**

(1) Whoever, against his better judgment, allows falsified or altered objects, reports concerning them or untrue assertions of a factual nature to come to the attention of another or become known to the public, which, in the case of their being genuine or true would be of significance for the external security of the Federal Republic Germany or its relationships with a foreign power, in order to deceive a foreign power into believing they are genuine objects or facts, and thereby causes the danger of serious prejudice to the external security of the Federal Republic of Germany or its relationship to a foreign power, shall be punished with imprisonment from six months to five years.

(2) Whoever produces such objects through falsification or alteration or procures them, in order to allow them in the manner indicated in subsection (1) to come to the attention of another or become known to the public to deceive a foreign power and thereby causes the danger of serious prejudice to the external security of the Federal Republic of Germany or its relationship to a foreign power, shall be similarly punished.

(3) An attempt shall be punishable.

(4) In especially serious cases the punishment shall be imprisonment for not less than one year. An especially serious case exists as a rule, if the perpetrator creates an especially serious prejudice to the external security of the Federal Republic of Germany or to its relations with a foreign power.

### **Section 101 Collateral Consequences**

Collateral to imprisonment of at least six months for an intentional crime in this section, the court may deprive the person of the capacity to hold public office, the capacity to attain public

electoral rights, and the right to elect or vote in public matters (Section 45 subsections (2) and (5)).

### **Section 101a Confiscation**

If a crime under this section has been committed, then:

1. objects, which were generated by the act or used or intended for use in its commission or preparation; and
2. objects, which are state secrets, and objects of the type indicated in Section 100a, to which the act relates, may be confiscated. Section 74 shall be applicable. Objects of the type indicated in sentence 1, number 2, shall be confiscated even in the absence of the prerequisites of Section 74 subsection (2), if this is required in order to avert the danger of a serious prejudice to the external security of the Federal Republic of Germany; this shall also apply if the perpetrator acted without guilt.

## **Chapter Three Crimes Against Foreign States**

### **Section 102 Assault Against Organs and Representatives of Foreign States**

(1) Whoever commits an assault against the life or limb of a foreign head of state, a member of a foreign government or the head of a foreign diplomatic mission who is accredited in the federal territory, while the assaulted person is in Germany in his official capacity, shall be punished with imprisonment for not more than five years or a fine, in especially serious cases with imprisonment for not less one year.

(2) Collateral to imprisonment of at least six months, the court may deprive the person of the capacity to hold public office, the capacity to attain public electoral rights, and the right to elect or vote in public matters (Section 45 subsections (2) and (5)).

### **Section 103 Insult to Organs and Representatives of Foreign States**

(1) Whoever insults a foreign head of state, or, with respect to his position, a member of a foreign government, who is in Germany in official capacity, or a head of a foreign diplomatic mission who is accredited in the federal territory, shall be punished with imprisonment for not more than three years or a fine, in case of a slanderous insult, with imprisonment from three months to five years.

(2) If the act was committed publicly, in a meeting or through the dissemination of writings (Section 11, subsection (3)), then Section 200 shall be applicable. The public prosecutor may also file an application for publication of the conviction.

### **Section 104 Injury to Flags or National Emblems of Foreign States**

(1) Whoever removes, destroys, damages, renders unrecognizable, or commits insulting mischief with a flag of a foreign state, which is displayed according to legal provisions or recognized custom, or a national emblem of such a state which has been publicly installed by a recognized mission of such state, shall be punished with imprisonment for not more than two years or a fine.

(2) An attempt shall be punishable.

#### **Section 104a Prerequisites for Criminal Prosecution**

Crimes under this section shall only be prosecuted if the Federal Republic of Germany maintains diplomatic relations with the other state, reciprocity is guaranteed and was also guaranteed at the time of the act, a request for prosecution by the foreign government exists, and the federal government gives authorization for criminal prosecution.

### **Chapter Four Crimes Against Constitutional Organs As Well As During Elections And Ballots**

#### **Section 105 Coercion of Constitutional Organs**

(1) Whoever, by force or threat of force, unlawfully coerces:

1. a legislative body of the Federation or a Land or one of its committees;
2. the federal assembly or one of its committees; or
3. the government or the constitutional court of the Federation or of a Land,

not to exercise their powers or to exercise them in a particular manner, 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 106 Coercion of the Federal President and Members of Constitutional Organs**

(1) Whoever, by force or threat of appreciable harm, unlawfully coerces:

1. the federal president; or
2. a member:
  - a) of a legislative body of the Federation or a Land;
  - b) of the federal assembly; or
  - c) of the government or the constitutional court of the Federation or a Land,

not to exercise their powers or to exercise them in a particular manner, shall be punished with imprisonment from three months to five years.

(2) An attempt shall be punishable.

(3) In especially serious cases the punishment shall be imprisonment from one year to ten years.

### **Section 106a Violation of a Protected Zone**

(1) Whoever participates in public open-air meetings or processions within the posted protected zone around the building of a legislative body of the Federation or a Land as well as of the Federal Constitutional Court, and thereby violates regulations issued in relation to the protected zone, shall be punished with imprisonment for not more than six months or a fine of not more than one hundred eighty daily rates.

(2) Whoever calls for meetings or processions which are intended to take place within a posted protected zone in violation of the provisions named in subsection (1), shall be punished with imprisonment for not more than two years or a fine.

### **Section 106b Disturbing the Activity of a Legislative Body**

(1) Whoever violates regulations issued either generally or in a particular case by a legislative body of the Federation or a Land or its President relating to security and order in the building of the legislative body or its appurtenant grounds and thereby hinders or disturbs the activity of the legislative body, shall be punished with imprisonment for not more than one year or a fine.

(2) The penal provision of subsection (1) shall apply, in the case of regulations of a legislative body of the Federation or its President, neither to members of the Bundestag nor to members of the Federal Council (Bundesrat) and the federal government, nor to their agents, and in the case of regulations of a Land or its President, neither to the members of the legislative bodies of this Land, nor to the members of the government of the Land or its agents.

### **Section 107 Obstruction of an Election**

(1) Whoever, by force or threat of force, obstructs or disturbs an election or the determination of its results, shall be punished with imprisonment for not more than five years or a fine, in particularly serious cases with imprisonment for not less than one year.

(2) An attempt shall be punishable.

### **Section 107a Election Fraud**

(1) Whoever votes without being entitled thereto or otherwise causes an incorrect election result or falsifies the result, shall be punished with imprisonment for not more than five years or a fine.



(2) Whoever incorrectly announces an election result or causes it to be incorrectly announced, shall be similarly punished.

(3) An attempt shall be punishable.

### **Section 107b Falsification of Election Papers**

(1) Whoever:

1. secures his registration in the voter rolls (election register) by means of false statements;
2. registers another as a voter, whom he knows has no right to be registered;
3. prevents the registration of an eligible voter though he knows of his eligibility to vote;
4. permits himself to be nominated as a candidate in an election, although he is ineligible,

shall be punished with imprisonment for not more than six months or a fine of not more than one hundred eighty daily rates if the act is not subject to more severe punishment under other provisions.

(2) The issuance of election papers for direct elections in the social security system shall be equivalent to registration in the voter rolls as a voter.

### **Section 107c Violation of the Secrecy of Elections**

Whoever contravenes a provision which serves to protect the secrecy of elections with the intent of obtaining for himself or another knowledge as to how someone voted, shall be punished with imprisonment for not more than two years or a fine.

### **Section 108 Coercion of Voters**

(1) Whoever unlawfully, by force, threat of appreciable harm, abuse of a professional or financial relation of dependence or other financial pressure, coerces another into, or prevents him from voting or exercising his right to vote in a particular manner, shall be punished with imprisonment for not more than five years or a fine, in particularly serious cases with imprisonment from one year to ten years.

(2) An attempt shall be punishable.

### **Section 108a Deception of Voters**

(1) Whoever through deception causes another to be mistaken as to the content of his declaration upon casting his vote or to vote against his will or invalidly, shall be punished with imprisonment for not more than two years or a fine.

(2) An attempt is punishable.

### **Section 108b Bribery of Voters**

(1) Whoever offers, promises or furnishes another gifts or other benefits for not voting or for voting in a particular manner, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever requests, is promised or accepts gifts or other benefits in exchange for not voting or voting in a particular manner, shall be similarly punished.

### **Section 108c Collateral Consequences**

Collateral to imprisonment of at least six months for a crime pursuant to Sections 107, 107a, 108 and 108b, the court may deprive the person of the capacity to attain public electoral rights, and the right to elect or vote in public matters (Section 45 subsections (2) and (5)).

### **Section 108d Area of Application**

Sections 107 to 108c shall apply to elections to the parliaments, election of members of the European Parliament, other popular elections and ballots in the Federation, the Lands, municipalities and municipal associations, as well as direct elections in the social security system. The signing of nomination papers or the signing of a popular initiative shall be equivalent to an election or ballots.

### **Section 108e Bribery of Members of Parliament**

(1) Whoever undertakes to buy or sell a vote for an election or ballot in the European Parliament or in a parliament of the Federation, the Lands, municipalities or municipal associations, shall be punished with imprisonment for not more than five years or a fine.

(2) Collateral to imprisonment of at least six months for a crime pursuant to subsection (1), the court may deprive the person of the capacity to attain public electoral rights, and the right to elect or vote in public matters.

## **Chapter Five Crimes Against The National Defense**

### **Section 109 Evasion of Military Service through Maiming**

(1) Whoever, through maiming or by other means, makes himself or another with that person's consent, or causes himself or another to be made unfit for military service, shall be punished with imprisonment from three months to five years.

(2) If the perpetrator causes the unfitness only for a certain period of time or for a single type of duty, then the punishment shall be imprisonment for not more than five years or a fine.

(3) An attempt shall be punishable.

### **Section 109a Evasion of Military Service through Deception**

(1) Whoever, through deceitful machinations based on calculated deception, evades, or causes another to evade fulfillment of military service permanently or for a certain period of time, completely, or for a single type of duty, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Sections 109b and 109c (repealed)**

### **Section 109d Disruptive Propaganda against the Federal Armed Forces**

(1) Whoever, against his better judgment and for the purpose of dissemination, makes grossly distorted assertions of a factual nature, the dissemination of which is capable of disrupting the activities of the Federal Armed Forces, or disseminates such assertions with knowledge of their untruthfulness in order to obstruct the Federal Armed Forces in the fulfillment of its duty of national defense, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 109e Acts of Sabotage against Means of Defense**

(1) Whoever without authorization destroys, damages, alters, renders unusable or removes military resources or an installation or facility, which is used entirely or predominantly for national defense or protection of the civilian population from the dangers of war, and thereby endangers the security of the Federal Republic of Germany, the fighting strength of its troops, or human life, shall be punished with imprisonment from three months to five years.

(2) Anyone who knowingly produces or supplies such an object or the raw material required therefor defectively and thereby knowingly causes the danger indicated in subsection (1), shall be similarly punished.

(3) An attempt shall be punishable.

(4) In especially serious cases the punishment shall be imprisonment from one year to ten years.

(5) Whoever causes the danger in the cases under subsection (1) negligently, or in cases under subsection (2) unknowingly but intentionally or negligently, shall be punished with imprisonment for not more than five years or a fine if the act is not subject to a more severe punishment under other provisions.

### **Section 109f Security-Endangering Intelligence Activities**

(1) Whoever, on behalf of a government agency, a party or another organization outside of the territorial area of application of this law, or for a banned organization or one of its intermediaries:

1. collects information about national defense matters;
2. operates an intelligence service which has national defense matters as its object;
3. recruits for or supports one of these activities,

and thereby aids efforts which are directed against the security of the Federal Republic of Germany or the fighting strength of its troops, shall be punished with imprisonment for not more than five years or a fine if the act is not subject to a more severe punishment under other provisions. Excepted shall be activity engaged in to inform the public within the framework of usual press or radio reporting.

(2) An attempt shall be punishable.

### **Section 109g Security-Endangering Illustrations**

(1) Whoever makes an illustration or description of military resources, a military installation or facility, or a military operation or allows another to obtain such an illustration or description, and thereby knowingly endangers the security of the Federal Republic of Germany or the fighting strength of its troops, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever takes a photograph of a territory or object within the territorial area of application of this law, or allows another to obtain such photograph or an illustration produced therefrom, and thereby knowingly endangers the security of the Federal Republic of Germany or the fighting strength of its troops, shall be punished with imprisonment for not more than two years or a fine if the act is not subject to punishment in subsection (1).

(3) An attempt shall be punishable.

(4) Whoever in cases under subsection (1) allows another to obtain the illustration or description and thereby not knowingly, but intentionally or recklessly causes the danger, shall be punished with imprisonment for not more than two years or a fine. The act shall not be punishable, however, if the perpetrator acted with the permission of the competent government agency.

### **Section 109h Recruiting for Foreign Military Service**

(1) Whoever on behalf of a foreign power recruits a German for military service in a military or paramilitary organization or introduces him to their recruiters or to the military service of such an organization, shall be punished with imprisonment from three months to five years.

(2) An attempt is punishable.

## **Section 109i Collateral Consequences**

Collateral to imprisonment of at least one year for a crime pursuant to Sections 109e and 109f, the court may deprive the person of the capacity to hold public office, the capacity to attain public electoral rights, and the right to elect or vote in public matters (Section 45 subsections 2 and 5).

## **Section 109k Confiscation**

If a crime under Sections 109d to 109g has been committed, then:

1. objects, which were generated by the act or used or intended for use in its commission or preparation; and
2. illustrations, descriptions and photographs to which a crime under Section 109g relate, may be confiscated. Section 74 shall be applicable. Objects of the type indicated in sentence 1, number 2, shall be confiscated even in the absence of the prerequisites of Section 74 subsection (2), if required by national defense interests; this shall also apply if the perpetrator acted without guilt.

## **Chapter Six Resistance to State Authority**

### **Section 110 (repealed)**

### **Section 111 Public Incitement to Crime**

- (1) Whoever publicly, in a meeting or through the dissemination of writings (Section 11 subsection (3)), incites an unlawful act, shall be punished as an inciter (Section 26).
- (2) If the incitement is unsuccessful, then the punishment shall be imprisonment for not more than five years or a fine. The punishment may not be more severe than that provided in a case in which the incitement is successful (subsection (1)); Section 49 subsection (1), no.2, shall be applicable.

### **Section 112 (repealed)**

### **Section 113 Resistance to Law Enforcement Officials**

- (1) Whoever, by force or threat of force, offers resistance to or violently assaults a public official or soldier of the Federal Armed Forces, who is charged with the enforcement of laws, ordinances, judgments, judicial rulings or orders, while in the performance of such an official act, shall be punished with imprisonment for not more than two years or a fine.
- (2) In especially serious cases the punishment shall be imprisonment from six months to five years. An especially serious case exists, as a rule, if:
  1. the perpetrator or another participant carries a weapon in order to use it during the act; or

2. the perpetrator, through an act of violence, places the person assaulted in danger of death or serious health damage.

(3) The act shall not be punishable under this provision if the official act is unlawful. This shall also apply if the perpetrator mistakenly assumes that the official act is lawful.

(4) If the perpetrator during the commission of the act mistakenly assumes that the official act is unlawful and if he could have avoided the mistake, then the court may mitigate the punishment in its discretion (Section 49 subsection (2)) or dispense with punishment under this provision where guilt is slight. If the perpetrator could not have avoided the mistake and under the circumstances known to him he could not have been expected to use legal remedies to defend himself against the presumed unlawful official act, then the act shall not be punishable under this provision; if he could have thus been expected, then the court may mitigate the punishment in its discretion (Section 49 subsection (2)) or dispense with punishment under this provision.

### **Section 114 Resistance to Persons Equivalent to Law Enforcement Officials**

(1) Acts of law enforcement by persons who have the rights and duties of police officers or are auxiliary officials of the public prosecutor, without being public officials, shall be equivalent to the official act of a public official within the meaning of Section 113.

(2) Section 113 shall correspondingly apply to protect persons, who are enlisted to assist in the official act.

### **Sections 115 to 119 (repealed)**

### **Section 120 Freeing of Prisoners**

(1) Whoever frees a prisoner, or inveigles or encourages him to escape, shall be punished with imprisonment for not more than three years or a fine.

(2) If the perpetrator is duty-bound as a public official or a person with special public service obligations, to prevent the escape of the prisoner, then the punishment shall be imprisonment for not more than five years or a fine.

(3) An attempt shall be punishable.

(4) Whoever is otherwise in custody in an institution upon order of a public authority shall be equivalent to a prisoner within the meaning of subsections (1) and (2).

### **Section 121 Mutiny by Prisoners**

(1) Prisoners who rout, join forces and:

1. coerce (Section 240) or violently assault an official of an institution, another public official or one who is charged with their supervision, care or investigation;

2. forcibly break out; or

3. forcibly aid one of them or another prisoner to break out,

shall be punished with imprisonment from three months to five years.

(2) An attempt shall be punishable.

(3) In especially serious cases mutiny shall be punished with imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator or another participant:

1. carries a firearm;

2. carries another weapon, in order to use it during the act; or

3. through an act of violence, places another in danger of death or serious health damage.

(4) Whoever has been placed in preventive detention shall be equivalent to a prisoner within the meaning of subsections (1) to (3).

## **Section 122 (repealed)**

## **Chapter Seven Crimes Against Public Order**

### **Section 123 Breach of the Peace of the Home**

(1) Whoever unlawfully intrudes into the dwelling, business premises or other enclosed property of another, or into closed premises designated for public service or transportation, or whoever remains therein without authorization and does not leave when requested to do so by the authorized person, shall be punished with imprisonment for not more than a year or a fine.

(2) The act shall only be prosecuted upon complaint.

### **Section 124 Serious Breach of the Peace of the Home**

When a crowd of people publicly routs with intent to join forces to commit acts of violence against persons or things and unlawfully intrudes into the dwelling, business premises, or other enclosed property of another, or into closed premises designated for public service, then anyone who takes part in these acts shall be punished with imprisonment for not more than two years or a fine.

### **Section 125 Breach of the Peace**

(1) Whoever, as perpetrator or inciter or accessory, participates in:

1. acts of violence against persons or things; or

2. threats to persons to commit acts of violence,

which are committed by a crowd of people who have joined forces in a manner which endangers public safety, or whoever influences a crowd of people to encourage their readiness to commit such acts, shall be punished with imprisonment for not more than three years or a fine if the act is not subject to a more severe punishment under other provisions.

(2) To the extent the acts indicated in subsection (1), numbers 1,2 are punishable in Section 113, Section 113 subsections (3),4 shall apply by analogy.

### **Section 125a Especially Serious Case of Breach of the Peace**

(1) In especially serious cases of Section 125 subsection (1), the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. carries a firearm;
2. carries another weapon, in order to use it during the act;
3. through an act of violence, places another in danger of death or serious health damage; or
4. plunders or causes significant damage to property of another.

### **Section 126 Disturbance of the Public Peace by Threatening to Commit Crimes**

(1) Whoever, in a manner capable of disturbing the public piece, threatens to commit:

1. one of the cases of breach of the peace indicated in Section 125a, sent. 2, nos. 1 to 4;
2. murder, manslaughter or genocide (Sections 211,212 or 220a);
3. serious bodily injury (Section226);
4. a crime against personal freedom in cases under Sections 234, 234a, 239a or 239b;
5. a robbery or robbery-like extortion (Sections 249 to 251 or 255);
6. a serious criminal offense dangerous to the public in cases under Sections 306 to 306c or 307 subsections (1) to (3), 308 subsections (1) to (3), 309 subsections (1) to (4), 313, 314 or 315 subsection (3), 315b subsection (3), 316a subsections (1) or (3), 316c subsections (1) or (3), or 318 subsections (3) or (4); or
7. a less serious criminal offense dangerous to the public in cases under Sections 309 subsection (6), 311 subsection (1), 316b subsection (1), 317 subsection (1) or 318 subsection (1),



shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever against his better judgment and in a manner capable of disturbing the public peace feigns that the realization of one of the unlawful acts named in subsection (1) is imminent, shall be similarly punished.

### **Section 127 Formation of Armed Groups**

Whoever, without authorization, forms or commands a group which has weapons or other dangerous tools at its disposal, or joins such a group, provides it with weapons or money or otherwise supports it, shall be punished with imprisonment for not more than two years or a fine.

### **Section 128 (repealed)**

### **Section 129 Formation of Criminal Organizations**

(1) Whoever forms an organization, the objectives or activity of which are directed towards the commission of crimes, or whoever participates in such an organization as a member, recruits for it or supports it, shall be punished with imprisonment for not more than five years or a fine.

(2) Subsection (2) shall not be applied:

1. if the organization is a political party, which the Federal Constitutional Court has not declared to be unconstitutional;
2. if the commission of crimes is only an objective or activity of minor significance; or
3. to the extent that the purposes or activity of the organization relate to crimes under Sections 84 to 87.

(3) An attempt to form an organization indicated in subsection (1) shall be punishable.

(4) If the perpetrator is one of the ringleaders or supporters or there exists an especially serious case, then imprisonment from six months to five years shall be imposed.

(5) The court may dispense with punishment under subsections (1) and (3) in the case of participants whose guilt is slight or whose involvement is of minor significance.

(6) The court may in its discretion mitigate the punishment (Section 49 subsection (2)) or dispense with punishment under these provisions if the perpetrator:

1. voluntarily and earnestly makes efforts to prevent the continued existence of the organization or the commission of a crime consistent with its goals; or
2. voluntarily discloses his knowledge to a government agency in time, so that crimes, the planning of which he is aware, may still be prevented; if the perpetrator attains his goal of

preventing the continued existence of the organization or if it is attained without his efforts, then he shall not be punished.

### **Section 129a Formation of Terrorist Organizations**

(1) Whoever forms an organization, the objectives or activity of which are directed towards the commission of:

1. murder, manslaughter or genocide (Sections 211,212 or 220a);
2. crimes against personal liberty in cases under Sections 239a or 239b; or
3. crimes under Section 305a or crimes dangerous to the public in cases under Sections 306 to 306c or 307 subsections (1) to (3), 308 subsections (1) to (4), 309 subsections (1) to (5), 313, 314 or 315 subsections (1),3 or 4, 316b subsections (1) or (3), or 316c subsections (1) to (3), or whoever participates in such an organization as a member,

shall be punished with imprisonment from one year to ten years.

(2) If the perpetrator is one of the ringleaders or supporters, then imprisonment for no less than three years shall be imposed.

(3) Whoever supports an organization indicated in subsection (1) or recruits for it, shall be punished with imprisonment from six months to five years.

(4) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) in cases under subsections (1) and (3) in the case of participants whose guilt is slight or whose participation is of minor significance.

(5) Section 129 subsection (6), shall apply accordingly.

(6) Collateral to imprisonment for at least six months, the court may deprive the person of the capacity to hold public office and the capacity to attain public electoral rights (Section 45 subsection (2)). (7) In cases under subsections (1) and (2) the court may order supervision of conduct (Section 68 subsection (1)).

### **Section 130 Agitation of the People**

(1) Whoever, in a manner that is capable of disturbing the public peace:

1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or
2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population,

shall be punished with imprisonment from three months to five years.

(2) Whoever:

1. with respect to writings (Section 11 subsection (3)), which incite hatred against segments of the population or a national, racial or religious group, or one characterized by its folk customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group:

a) disseminates them;

b) publicly displays, posts, presents, or otherwise makes them accessible;

c) offers, gives or makes accessible to a person under eighteen years; or

(d) produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of numbers a through c or facilitate such use by another; or

2. disseminates a presentation of the content indicated in number 1 by radio,

shall be punished with imprisonment for not more than three years or a fine.

(3) Whoever publicly or in a meeting approves of, denies or renders harmless an act committed under the rule of National Socialism of the type indicated in Section 220a subsection (1), in a manner capable of disturbing the public peace shall be punished with imprisonment for not more than five years or a fine.

(4) Subsection (2) shall also apply to writings (Section 11 subsection (3)) with content such as is indicated in subsection (3).

(5) In cases under subsection (2), also in conjunction with subsection (4), and in cases of subsection (3), Section 86 subsection (3), shall apply correspondingly.

### **Section 130a Instructions for Crimes**

(1) Whoever disseminates, publicly displays, posts, presents, or otherwise makes accessible a writing (Section 11 subsection (3)) which is capable of serving as instructions for an unlawful act named in Section 126 subsection (1), and is intended by its content to encourage or awaken the readiness of others to commit such an act, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever:

1. disseminates, publicly displays, posts, presents, or otherwise makes accessible a writing (Section 11 subsection (3)) which is capable of serving as instructions for an unlawful act named in Section 126 subsection (1); or

2. gives instructions for an unlawful act named in Section 126 subsection (1), publicly or in a meeting, in order to encourage or awaken the readiness of others to commit such an act,

shall be similarly punished.

(3) Section 86 subsection (3), shall apply correspondingly.

### **Section 131 Representation of Violence**

(1) Whoever, in relation to writings (Section 11 subsection (3)), which describe cruel or otherwise inhuman acts of violence against human beings in a manner which expresses a glorification or rendering harmless of such acts of violence or which represents the cruel or inhuman aspects of the event in a manner which injures human dignity:

1. disseminates them;

2. publicly displays, posts, presents, or otherwise makes them accessible;

3. offers, gives or makes them accessible to a person under eighteen years; or

4. produces, obtains, supplies, stocks, offers, announces, commends, undertakes to import or export them, in order to use them or copies obtained from them within the meaning of numbers 1 through 3 or facilitate such use by another,

shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever disseminates a presentation of the content indicated in subsection (1) by radio, shall be similarly punished.

(3) Subsections (1) and (2) shall not apply if the act serves as reporting about current or historical events.

(4) Subsection (1), number 3 shall not be applicable if the person authorized to care for the person acts.

### **Section 132 Usurpation of Office**

Whoever without authorization engages in the exercise of a public office or undertakes an act which may only be undertaken with the authority of a public office, shall be punished with imprisonment for not more than two years or a fine.

### **Section 132a Misuse of Titles, Professional Designations and Insignia**

(1) Whoever, without authorization:

1. uses domestic or foreign designations of office or government service, academic degrees, titles or public honors;
2. uses the professional designation physician, dentist, psychological psychotherapist, child or youth psychotherapist, psychotherapist, veterinarian, pharmacist, lawyer, patent attorney, certified public accountant, sworn auditor, tax consultant or tax agent;
3. uses the designation of publicly appointed experts; or
4. wears domestic or foreign uniforms, official dress or official insignia,

shall be punished with imprisonment for not more than one year or a fine.

(2) Equivalent to the designations, academic degrees, titles, honors, uniforms, official dress or official insignia named in subsection (1) shall be those which are confusingly similar to them.

(3) Subsections (1) and (2) shall also apply to official designations, titles, honors, official dress and official insignia of churches and other religious societies under public law.

(4) Objects to which a crime under subsection (1), number 4, alone, or in conjunction with subsections (2) or (3), relate, may be confiscated.

### **Section 133 Breach of Official Custody**

(1) Whoever destroys, damages, renders useless or withdraws from official disposition documents or other moveable things which are in official custody or have been officially placed in his or another's custody, shall be punished with imprisonment for not more than two years or a fine.

(2) The same shall apply to documents or other moveable things which are in the official custody of a church or another religious society under public law or have been officially placed by them in the custody of the perpetrator.

(3) Whoever commits the act in relation to a thing which has been entrusted to or made accessible to him as a public official or a person with special public service obligations, shall be punished with imprisonment for not more than five years or a fine.

### **Section 134 Tampering with Official Announcements**

Whoever knowingly destroys, removes, disfigures, renders unrecognizable or distorts the meaning of an official document that has been publicly posted or displayed as an announcement, shall be punished with imprisonment for not more than one year or a fine.

### **Section 135 (repealed)**

### **Section 136 Breach of Attachment; Breach of Seals**

(1) Whoever destroys, damages, renders useless or entirely or in part withdraws from attachment a thing that has been levied upon or otherwise officially seized, shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever damages, replaces or renders unrecognizable an official seal which is applied in order to seize, officially seal or mark things, or whoever entirely or in part renders the seal produced by the seal ineffective, shall be similarly punished.

(3) The act shall not be punishable under subsections (1) and (2) if the levy, the seizure or the application of the seal was not executed through a lawful official act. This shall also apply if the perpetrator mistakenly assumes that the official act was lawful.

(4) Section 113 subsection (4), shall apply by analogy.

### **Section 137 (repealed)**

### **Section 138 Failure to Report Planned Crimes**

(1) Whoever credibly learns of the planning or the execution of:

1. a preparation of a war of aggression (Section 80);
2. high treason in cases under Sections 81 to 83 subsection (1);
3. treason or an endangerment of external security in cases under Sections 94 to 96, 97a or 100;
4. a counterfeiting of money or securities in cases under Sections 146, 151, 152 or the counterfeiting of payment cards and blank Eurochecks in cases under Section 152a subsections (1) to (3);
5. serious trafficking in human beings in cases under Section 181 subsection (1), nos. 2 or 3;
6. a murder, manslaughter or genocide (Sections 211, 212 or 220a);
7. a crime against personal liberty in cases under Sections 234, 234a, 239a or 239b;
8. a robbery or robbery-like extortion (Sections 249 to 251 or 255); or
9. a crime dangerous to the public in cases under Sections 306 to 306c, 307 subsections (1) to (3), 308 subsections (1) to (4), 309 subsections (1) to (5), 301, 313, 314, 315 subsection (3), 315b subsection (3), 316a, or 316c,

at a time when the execution or result can still be averted, and fails to make a report in time to the public authorities or the person threatened, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever credibly learns of the planning or execution of a crime under Section 129a at a time when the execution can still be averted, and fails to make a report promptly to the public authorities, shall be similarly punished.

(3) Whoever recklessly fails to make a report although he has credibly learned of the planning or the execution of an unlawful act, shall be punished with imprisonment for not more than one year or a fine.

### **Section 139 Exemption from Punishment for Failure to Report Planned Crimes**

(1) If in cases under Section 138 the act is not attempted, then punishment may be dispensed with.

(2) A clergyman shall not be obligated to report what has been confided to him in his capacity as a spiritual counselor.

(3) Whoever fails to report a crime, which he should have reported against a relative, shall be exempt from punishment if he earnestly made efforts to prevent him from committing the act or to avert the result, unless it is a question of:

1. murder or manslaughter (Sections 211 or 212);
2. genocide in cases under Section 220a subsection (1), no. 1; or
3. extortionate kidnapping (Section 239a subsection (1)), hostage taking (Section 239b subsection (1)) or an assault against air or sea traffic (Section 316c subsection (1)) by a terrorist organization (Section 129a). Pursuant to the same prerequisites, a lawyer, defense counsel or physician shall not be obligated to report what was confided to him in this capacity.

(4) Whoever averts the execution or the result of the act other than by report, shall also be exempt from punishment. If the execution or result of the act does not take place due in no part to the contribution of the person obligated to report, then his earnest efforts to avert the result suffice for exemption from punishment.

### **Section 140 Rewarding and Approving Crimes**

Whoever:

1. rewards; or
2. publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)), and in a manner that is capable of disturbing the public peace, approves of one of the unlawful acts

named in Sections 138 subsection (1), nos. 1 to 5 and 126 subsection (1), after it has been committed or attempted in a punishable manner,

shall be punished with imprisonment for not more than three years or a fine.

#### **Section 141 (repealed)**

#### **Section 142 Unauthorized Leaving of the Scene of an Accident**

(1) A participant in an accident who, after an accident in road traffic, leaves the scene of the accident before he:

1. has made possible, on behalf of the other participants in the accident and the persons suffering damages, the determination of his identity, his vehicle and the nature of his participation through his presence and a statement that he participated in the accident; or

2. has waited an appropriate period of time under the circumstances, during which no one was willing to make such determinations,

shall be punished with imprisonment for not more than three years or a fine.

(2) A participant in an accident shall also be punished under subsection (1), if he:

1. after expiry of the waiting period (subsection (1), number 2); or

2. justifiably or excusably left the scene of the accident and subsequently does not promptly make the determinations possible.

(3) The participant in the accident satisfies the obligation to subsequently make the determinations possible, if he informs the authorized persons (subsection (1), number 1) or a nearby police station, that he participated in the accident, and if he states his address, whereabouts, as well as the license plate and location of his vehicle, and makes it available for prompt determinations for a reasonable time. This shall not apply if he intentionally obstructs the determinations by his conduct.

(4) The court shall mitigate the punishment (Section 49 subsection (1)) in cases under subsections (1) and (2) or may dispense with punishment under these provisions if the participant in the accident subsequently voluntarily makes the determinations possible (subsection (3)) within twenty-four hours after an accident which did not take place in flowing traffic and which resulted exclusively in insignificant property damage.

(5) A participant in an accident shall be deemed to be anyone whose conduct under the circumstances could have contributed to causing the accident.

#### **Sections 143 and 144 (repealed)**



## **Section 145 Misuse of Emergency Calls and Impairment of Means for Emergency Assistance and Preventing Accidents**

(1) Whoever intentionally or knowingly:

1. misuses emergency calls or distress signals; or
2. feigns that assistance for others is required due to an accident or a common danger or emergency,

shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever intentionally or knowingly:

1. removes, renders unrecognizable or distorts the meaning of warning or prohibitory signs which serve to prevent accidents or common danger; or
2. removes, alters or renders useless protective equipment which serves to prevent accidents or common danger, or rescue equipment designed for rendering assistance during accidents or common danger,

shall be punished with imprisonment for not more than two years or a fine if the act is not punishable under Sections 303 or 304.

## **Section 145a Violation of Instructions during Supervision of Conduct**

Whoever violates a particular instruction of the type indicated in Section 68b subsection (1), during supervision of conduct and thereby endangers the objective of the measure, shall be punished with imprisonment for not more than one year or a fine. The act shall only be prosecuted upon complaint of the supervisory agency (Section 68a).

## **Section 145b (repealed)**

## **Section 145c Violation of a Prohibition of Engagement in a Profession**

Whoever engages in a profession, branch of profession, trade or branch of trade for himself or another or allows another to engage in it for him, although he or the other has been prohibited to do so by a criminal court, shall be punished with imprisonment for not more than one year or a fine.

## **Section 145d Feigning a Crime**

(1) Whoever against his better judgment feigns to a public authority or an agency competent to receive criminal information:

1. that an unlawful act has been committed; or

2. that the realization of one of the unlawful acts named in Section 126 subsection (1), is imminent,

shall be punished with imprisonment for not more than three years or a fine if the act is not punishable under Sections 164, 258 or 258a.

(2) Whoever, against his better judgment, attempts to deceive one of the agencies indicated in subsection (1) about the participants:

1. in an unlawful act; or

2. in an imminent unlawful act named in Section 126 subsection (1),

shall be similarly punished.

## **Chapter Eight Counterfeiting of Money and Stamps**

### **Section 146 Counterfeiting of Money**

(1) Whoever:

1. counterfeits money with the intent that it be brought into circulation as genuine or that such bringing into circulation be made possible, or alters money with such intent, so that the appearance of a higher value is evoked;

2. procures counterfeit money with such intent; or

3. brings counterfeit money as genuine into circulation, that he counterfeited, altered or procured under the provisions of numbers 1 or 2,

shall be punished with imprisonment for not less than one year.

(2) If the perpetrator acts professionally or as a member of a gang which has combined for the continued commission of money counterfeiting, then the punishment shall be imprisonment for not less than two years.

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

### **Section 147 Bringing Counterfeit Money into Circulation**

(1) Whoever brings counterfeit money into circulation other than in cases under Section 146 shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

## **Section 148 Counterfeiting of Stamps**

(1) Whoever:

1. counterfeits official stamps with the intent that they be used or brought into circulation as genuine or that such use or bringing into circulation be made possible, or alters official stamps with such intent, so that the appearance of a higher value is evoked;

2. procures counterfeit official stamps with such intent; or

3. uses, offers for sale or brings into circulation counterfeit official stamps as genuine,

shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever uses or brings into circulation as valid already used official stamps from which the cancellation mark has been removed, shall be punished with imprisonment for not more than one year or a fine.

(3) An attempt shall be punishable.

## **Section 149 Preparation of the Counterfeiting of Money and Stamps**

(1) Whoever prepares a counterfeiting of money or stamps by producing, procuring for himself or another, offering for sale, storing or giving to another:

1. plates, frames, type, blocks, negatives, stencils or similar equipment which by its nature is suited to the commission of the act; or

2. paper, which is identical or confusingly similar to the type of paper which is designated for the production of money or official stamps and specially protected against imitation,

shall be punished with imprisonment for not more than five years or a fine if he prepared the counterfeiting of money, otherwise with imprisonment for not more than two years or a fine.

(2) Whoever voluntarily:

1. renounces the execution of the prepared act and averts a danger caused by him that others continue to prepare the act or execute it, or prevents the completion of the act; and

2. destroys or renders useless the means for counterfeiting, to the extent they still exist and are useful for counterfeiting, or reports their existence to a public authority or surrenders them there, shall not be punished under subsection (1).

(3) If the danger that others continue to prepare or execute the act is averted, or the completion of the act prevented due in no part to the contribution of the perpetrator, then the voluntary and

earnest efforts of the perpetrator to attain this goal shall suffice in lieu of the prerequisites of subsection (2), number 1.

### **Section 150 Property Fine, Extended Forfeiture and Confiscation**

(1) In cases under Sections 146, 148 subsection (1), of the preparation of money counterfeiting under Sections 149 subsection (1), and 152a, Sections 43a, 73d shall be applicable if the perpetrator acts as the member of a gang which has combined for the continued commission of such acts. Section 73d shall also be applied if the perpetrator acts professionally.

(2) If a crime under this Section has been committed, then the counterfeit money, the counterfeit or canceled stamps and the means of counterfeiting indicated in Section 149 shall be confiscated.

### **Section 151 Securities**

The following securities shall be equivalent to money within the meaning of Sections 146, 147, 149 and 150 if they are specially protected against imitation by print and type of paper:

1. bearer and order bonds which are parts of an entire issue, if the payment of a specified sum of money is promised in the bonds;
2. shares of stock;
3. share certificates issued by capital investment companies;
4. interest, dividend and renewal coupons of the type of securities indicated in numbers 1 through 3 as well as certificates of delivery of such securities;
5. traveler's checks, when the blank forms of the security are already payable in a specified sum of money.

### **Section 152 Money, Stamps and Securities of a Foreign Currency Area**

Sections 146 through 151 shall also be applicable to money, stamps and securities of a foreign currency area.

### **Section 152a Counterfeiting of Eurocheck Guarantee Cards and Blank Checks**

(1) Whoever, for the purpose of deception in legal relations or to make such deception possible:

1. counterfeits or alters domestic or foreign payment cards or blank Eurochecks; or
2. procures for himself or another, offers for sale, gives to another or uses such counterfeit cards or blank checks,

shall be punished with imprisonment from one year to ten years.

(2) If the perpetrator acts within the context of a commercial enterprise or as a member of a gang which has combined for the continued commission of crimes under subsection (1), then the punishment shall be 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, and in less serious cases under subsection (2), imprisonment from one year to ten years.

(4) Payment cards within the meaning of subsection (1) shall be credit cards, Eurocheck cards or other cards:

1. which make it possible to induce the issuer to make a guaranteed payment by money transfer; and

2. which are specially protected against imitation through design or coding.

(5) Section 149, to the extent it refers to the counterfeiting of money, and Section 150 subsection (2), shall apply accordingly.

## **Chapter Nine False Unsworn Testimony And Perjury**

### **Section 153 False Unsworn Testimony**

Whoever as a witness or expert gives false unsworn testimony before a court or other agency competent to examine witnesses and experts under oath shall be punished with imprisonment from three months to five years.

### **Section 154 Perjury**

(1) Whoever falsely takes an oath before a court or another agency competent to administer oaths, shall be punished with imprisonment for no less than one year.

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

### **Section 155 Affirmations Equivalent to an Oath**

Equivalent to an oath shall be:

1. an affirmation which takes the place of an oath;

2. a reference to a previous oath or a previous affirmation.

### **Section 156 False Affirmations in Lieu of an Oath**

Whoever, before a public authority competent to administer affirmations in lieu of an oath, falsely makes such an affirmation or falsely testifies while referring to such an affirmation, shall be punished with imprisonment for not more than three years or a fine.

### **Section 157 Testimonial Necessity**

(1) If a witness or an expert has made himself guilty of perjury or false unsworn testimony, then the court in its discretion may mitigate the punishment (Section 49 subsection (2)) and completely dispense with punishment in case of unsworn testimony if the perpetrator told an untruth in order to avert a danger to a relative or himself of being punished or subjected to a measure of reform and prevention involving deprivation of liberty.

(2) The court in its discretion may also mitigate the punishment (Section 49 subsection (2)) or completely dispense with punishment if a person not yet competent to take an oath has given false unsworn testimony.

### **Section 158 Rectification of a False Statement**

(1) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) for perjury, false affirmation in lieu of an oath or false unsworn testimony or dispense with punishment if the perpetrator makes a timely rectification of the false statement.

(2) The rectification is too late if it can no longer be used as evidence in reaching the decision, if detriment to another has arisen from the act, or if a crime has already been reported against the perpetrator or an investigation has been initiated.

(3) The rectification may be made at the agency where the false statement was made or where it is to be procedurally reviewed, as well as to a court, a public prosecutor or a police authority.

### **Section 159 Attempted Incitement of False Testimony**

Sections 30 subsection (1), 31 subsection (1), no. 1, shall apply accordingly to attempted incitement of false unsworn testimony (Section 153) and of a false affirmation in lieu of an oath (Section 156).

### **Section 160 Subornation of False Testimony**

(1) Whoever suborns another to take a false oath shall be punished with imprisonment for not more than two years or a fine; whoever suborns another to make a false affirmation in lieu of oath or false unsworn testimony shall be punished with imprisonment for not more than six months or a fine of not more than one hundred eighty daily rates.

(2) An attempt shall be punishable.

### **Section 161 and 162 (repealed)**

## **Section 163 Negligent False Oath; Negligent False Affirmation in Lieu of an Oath**

(1) If someone commits one of the acts indicated in Sections 154 to 156 out of negligence, then imprisonment for not more than one year or a fine shall be imposed.

(2) Exemption from punishment shall occur if the perpetrator makes a timely rectification of the false statement. The provisions of Section 158 subsections (2) and (3), shall apply accordingly.

## **Chapter Ten Casting False Suspicion**

### **Section 164 Casting False Suspicion**

(1) Whoever, with the intent that proceedings or other measures be brought or be continued against another before a public authority, casts suspicion against his better judgment before a public authority or a public official competent to receive criminal information, or publicly, that that person has committed an unlawful act or a violation of an official duty, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever, with the same intent, makes another kind of assertion of a factual nature about another against his better judgment before one of the agencies indicated in subsection (1) or publicly, which is capable of causing proceedings or other measures to be brought or continued against him before a public authority, shall be similarly punished.

### **Section 165 Publication of the Conviction**

(1) If the act under Section 164 was committed publicly or through dissemination of writings (Section 11 subsection (3)) and if punishment was imposed because of it, then it shall be ordered, upon application of the aggrieved party, that the conviction for casting false suspicion be publicly announced upon request. If the aggrieved party dies, then the right to file the application passes to the relatives indicated in Section 77 subsection (2). Section 77 subsections (2) to (4), shall apply accordingly.

(2) As to the type of announcement, Section 200 subsection (2), shall apply accordingly.

## **Chapter Eleven Crimes Which Relate to Religion And Philosophy of Life**

### **Section 166 Insulting of Faiths, Religious Societies and Organizations Dedicated to a Philosophy of Life**

(1) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults the content of others' religious faith or faith related to a philosophy of life in a manner that is capable of disturbing the public peace, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever publicly or through dissemination of writings (Section 11 subsection (3)) insults a church, other religious society, or organization dedicated to a philosophy of life located in

Germany, or their institutions or customs in a manner that is capable of disturbing the public peace, shall be similarly punished.

### **Section 167 Disturbing the Practice of Religion**

(1) Whoever:

1. intentionally and in a gross manner disturbs a religious service or an act of a religious service of a church or other religious society located in Germany; or

2. commits insulting mischief at a place dedicated to the religious services of such a religious society,

shall be punished with imprisonment for not more than three years or a fine.

(2) Corresponding celebrations of an organization dedicated to a philosophy of life located in Germany shall be the equivalent of religious services.

### **Section 167a Disturbing a Funeral Service**

Whoever intentionally or knowingly disturbs a funeral service shall be punished with imprisonment for not more than three years or a fine.

### **Section 168 Disturbing the Peace of the Dead**

(1) Whoever, without authorization, takes away the body or parts of the body of a deceased person, a dead fetus or parts thereof or the ashes of a deceased person from the custody of the person entitled thereto, or whoever commits insulting mischief thereon, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever destroys or damages a place for laying-in-state, burial site or public place for remembering the dead, or whoever commits insulting mischief there, shall be similarly punished.

(3) An attempt shall be punishable.

## **Chapter Twelve Crimes Against Personal Status, Marriage And The Family**

### **Section 169 Falsification of Personal Status**

(1) Whoever substitutes a child or falsely gives or suppresses the personal status of another to a public authority responsible for the maintenance of personal status registers or the determination of personal status, shall be punished with imprisonment for not more than two years or a fine.

(2) An attempt shall be punishable.

### **Section 170 Violation of Maintenance Obligations**



(1) Whoever evades a statutory maintenance obligation so that the life necessities of the person entitled to maintenance are endangered or would be endangered without the assistance of others, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever is obligated to maintain a pregnant woman and withholds this maintenance in a reprehensible manner and thereby causes a termination of the pregnancy, shall be punished with imprisonment for not more than five years or a fine.

### **Section 171 Violation of the Duty to Provide Care or Upbringing**

Whoever grossly violates his duty to provide care or upbringing for a person under sixteen years and thereby creates a danger for the ward, that his physical or psychic development could be seriously damaged, that he will lead a criminal life or engage in prostitution, shall be punished with imprisonment for not more than three years or a fine.

### **Section 172 Bigamy**

Whoever contracts a marriage although he is already married, or whoever contracts a marriage with a married person, shall be punished with imprisonment for not more than three years or a fine.

### **Section 173 Sexual Intercourse between Relatives**

(1) Whoever completes an act of sexual intercourse with a consanguine descendant shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever completes an act of sexual intercourse with a consanguine relative in an ascending line shall be punished with imprisonment for not more than two years or a fine; this shall also apply if the relationship as a relative has ceased to exist. Consanguine siblings who complete an act of sexual intercourse with each other shall be similarly punished.

(3) Descendants and siblings shall not be punished pursuant to this provision if they were not yet eighteen years of age at the time of the act.

## **Chapter Thirteen Crimes Against Sexual Self-determination**

### **Section 174 Sexual Abuse of Wards**

(1) Whoever commits sexual acts:

1. on a person under sixteen years of age who is entrusted to him for upbringing, education or care in leading his life;

2. on a person under eighteen years of age who is entrusted to him for upbringing, education or care in leading his life or who is a subordinate within the framework of an employment or a work

relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship; or

3. on his natural or adopted child who is not yet eighteen years of age,

or allows them to be committed on himself by the ward, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever, under the prerequisites of subsection (1), numbers 1 to 3:

1. commits sexual acts in front of the ward; or

2. induces the ward to commit sexual acts in front of him,

in order to thereby sexually arouse himself or the ward, shall be punished with imprisonment for not more than three years or a fine.

(3) An attempt shall be punishable.

(4) In cases under subsection (1), number 1 or subsection (2) in conjunction with subsection (1), number 1, the court may dispense with punishment pursuant to this provision, if, taking into consideration the conduct of the ward, the wrongfulness of the act is slight.

#### **Section 174a Sexual Abuse of Prisoners, Persons in the Custody of a Public Authority, and Persons in Institutions Who are Ill or in Need of Assistance**

(1) Whoever commits sexual acts on a prisoner or a person in custody upon order of a public authority, who is entrusted to him for upbringing, education, supervision or care, by abusing his position, or allows them to be committed on himself by the prisoner or person in custody, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever abuses a person who has been admitted as an in-patient to an institution for persons who are ill or in need of assistance and entrusted to him for supervision or care, in that he commits sexual acts on the person by exploiting the person's illness or need of assistance, or allows them to be committed on himself by the person, shall be similarly punished.

(3) An attempt shall be punishable.

#### **Section 174b Sexual Abuse By Exploiting a Position in a Public Office**

(1) Whoever, as a public official who is charged with participation in a criminal proceeding or a proceeding to order a measure of reform and prevention involving deprivation of liberty or custody imposed by a public authority, and by abusing the dependency caused by the proceedings, commits sexual acts on the person against whom the proceedings are directed, or allows them to be committed on himself by the person, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 174c Sexual Abuse By Exploiting a Counseling, Treatment or Care Relationship**

(1) Whoever commits sexual acts on a person who is entrusted to him for counseling, treatment or care due to a mental or an emotional illness or disability including an addiction, by abusing the counseling, treatment or care relationship, or allows them to be committed on himself by the person, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever commits sexual acts on a person entrusted to him for psychotherapeutic treatment by abusing the treatment relationship, or allows them to be committed on himself by the person, shall be similarly punished.

(3) An attempt shall be punishable.

### **Section 175 (repealed)**

### **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:

1. because of a mental or emotional illness or disability, including an addiction or because of a profound consciousness disorder; or

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 180 Promoting Sexual Acts by Minors**

(1) Whoever abets the commission of sexual acts of a person under sixteen years of age on or in front of a third person or sexual acts of a third person on a person under sixteen years of age:

1. by acting as an intermediary; or

2. by furnishing or creating an opportunity,

shall be punished with imprisonment for not more than three years or a fine. Sentence 1, Number 2 shall not be applicable if the person responsible for the care of the person acts; this shall not apply if the person responsible for the care of the person grossly violates a duty to provide upbringing in thus abetting.

(2) Whoever induces a person under eighteen years of age to commit sexual acts on or in front of a third person for compensation, or allows them to be committed on the person by a third person, or whoever abets such acts by acting as an intermediary, shall be punished with imprisonment for not more than five years or a fine.

(3) Whoever induces a person under eighteen years of age, who is entrusted to him for upbringing, education or care in leading his life, or who is subordinated to him within the framework of an employment or work relationship, to commit sexual acts on or in front of a third person, or to allow them to be committed on the person by a third person, while abusing a dependency connected with the upbringing, education, care, employment or work relationship, shall be punished by imprisonment for not more than five years or a fine.

(4) In cases under subsections (2) and (3) an attempt shall be punishable.

### **Section 180a Promoting Prostitution**

(1) Whoever professionally maintains or manages an operation in which persons engage in prostitution and in which:

1. they are held in personal or financial dependency; or
2. the exercise of prostitution is promoted by measures which go beyond merely furnishing a dwelling, a place to stay or a residence and the additional services normally associated therewith,

shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever:

1. furnishes a dwelling, or a place to stay or residence for professional use to a person under eighteen years of age for the exercise of prostitution; or
2. urges another person, for whom he has furnished a dwelling for the exercise of prostitution, to engage in prostitution or exploits the person in relation thereto, shall be similarly punished.

### **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**

(1) Whoever:

1. exploits another person who engages in prostitution; or

2. for a material benefit supervises another person's engagement in prostitution, determines the place, time, extent or other circumstances of the engagement in prostitution, or takes measures to prevent the person from giving up prostitution, and in that regard maintains a relationship with the person which goes beyond a particular case,

shall be punished with imprisonment from six months to five years.

(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)).

### **Section 181c Property Fine and Extended Forfeiture**

Sections 43a, 73d shall be applicable in cases under Sections 181 and 181a subsections (1) and (2), if the perpetrator acts as a member of a gang which has combined for the continued commission of such acts. Section 73d shall also be applicable if the perpetrator acted professionally.

### **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.

### **Section 183 Exhibitionist Acts**

(1) A man who annoys another person by an exhibitionist act shall be punished with imprisonment for not more than one year or a fine.

(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.

(3) The court may suspend the execution of imprisonment and impose probation if it can be expected that the perpetrator will only cease to commit exhibitionist acts after lengthy curative treatment.

(4) Subsection (3) shall also apply if a man or a woman is punished because of an exhibitionist act:

1. under another provision, which is punishable by a maximum term of imprisonment of no more than one year; or

2. under Sections 174 subsection (2), no. 1, or 176 subsection (3), no. 1.

### **Section 183a Creating a Public Nuisance**

Whoever publicly commits sexual acts and thereby intentionally or knowingly creates a nuisance, shall be punished with imprisonment for not more than one year or a fine, if the act is not punishable under Section 183.

### **Section 184 Dissemination of Pornographic Writings**

(1) Whoever, in relation to pornographic writings (Section 11 subsection (3)):

1. offers, gives or makes them accessible to a person under eighteen years of age;

2. displays, posts, presents or otherwise makes them accessible at a place accessible to persons under eighteen years of age, or into which they can see;

3. offers or gives them to another in retail trade outside of the business premises, in kiosks or other sales areas which the customer usually does not enter, through a mail-order business or in commercial lending libraries or reading circles; 3a. offers or gives them to another by means of commercial rental or comparable commercial furnishing for use, except for shops which are not accessible to persons under eighteen years of age and into which they cannot see;

4. undertakes to import them by means of a mail-order business;

5. publicly offers, announces, or commends them at a place accessible to persons under eighteen years of age or into which they can see, or through dissemination of writings outside of business transactions through normal trade outlets;
6. allows another to obtain them without having been requested to do by him;
7. shows them at a public film showing for compensation requested completely or predominantly for this showing;
8. produces, obtains, supplies, stocks, or undertakes to import them in order to use them or copies made from them within the meaning of numbers 1 through 7 or to make such use possible by another; or
9. undertakes to export them in order to disseminate them or copies made from them abroad in violation of the applicable penal provisions there or to make them publicly accessible or to make such use possible,

shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever disseminates a pornographic presentation by radio shall be similarly punished.

(3) Whoever, in relation to pornographic writings (Section 11 subsection (3)), which have as their object acts of violence, the sexual abuse of children or sexual acts of human beings with animals:

1. disseminates them;
2. publicly displays, posts, presents or otherwise makes them accessible; or
3. produces, obtains, supplies, stocks, offers, announces, commends, or undertakes to import or export them, in order to use them or copies made from them within the meaning of numbers 1 or 2 or makes such use possible by another,

shall be punished, if the pornographic writings have as their object the sexual abuse of children, with imprisonment from three months to five years, and otherwise with imprisonment for not more than three years or a fine.

(4) If the pornographic writings (Section 11 subsection (3)) in cases under subsection (3) have as their object the sexual abuse of children and reproduce an actual or true-to-life event, then the punishment shall be imprisonment from six months to ten years if the perpetrator acted professionally or as a member of a gang which has combined for the continued commission of such acts.

(5) Whoever undertakes to gain possession of pornographic writings (Section 11 subsection (3)) for himself or a third person, which have as their object the sexual abuse of children, shall, if the writings reproduce an actual or true-to-life event, be punished with imprisonment for not more

than one year or a fine. Whoever possesses the writings indicated in sentence 1 shall be similarly punished.

(6) Subsection (1), number 1 shall not be applicable if the person responsible for the care of the person acts. Subsection (1), number 3a, shall not apply if the act takes place in business transactions with commercial borrowers. Subsection (5) shall not apply to acts, which serve exclusively to fulfill legal, official or professional duties. (7) In cases under subsection (4), Section 73d shall be applicable. Objects, to which a crime under subsection (5) relates, shall be confiscated. Section 74a shall be applicable.

### **Section 184a Engaging in Prohibited Prostitution**

Whoever persistently contravenes a prohibition enacted by ordinance against engaging in prostitution at particular places at any time or during particular times of the day, shall be punished with imprisonment for not more than six months or a fine of not more than one hundred eighty daily rates.

### **Section 184b Youth-Endangering Prostitution**

Whoever engages in prostitution:

1. in the vicinity of a school or other locality which is intended to be visited by persons under eighteen years of age; or
2. in a house in which persons under eighteen years of age live,

in a way which morally endangers these persons, shall be punished with imprisonment for not more than one year or a fine.

### **Section 184c Definition of Terms**

Within the meaning of this law:

1. sexual acts shall only be those which are of some relevance in relation to the respective legal interest protected;
2. sexual acts in front of another shall be those which are committed in front of another, who observes the event.

## **Chapter Fourteen Insult**

### **Section 185 Insult**

Insult shall be punished with imprisonment for not more than one year or a fine and, if the insult is committed by means of violence, with imprisonment for not more than two years or a fine.

### **Section 186 Malicious Gossip**

Whoever asserts or disseminates a fact in relation to another, which is capable of maligning him or disparaging him in the public opinion, shall, if this fact is not demonstrably true, be punished with imprisonment for not more than one year or a fine and, if the act was committed publicly or through the dissemination of writings (Section 11 subsection (3)), with imprisonment for not more than two years or a fine.

### **Section 187 Defamation**

Whoever, against his better judgment, asserts or disseminates an untrue fact in relation to another, which maligns him or disparages him in the public opinion or is capable of endangering his credit, shall be punished with imprisonment for not more than two years or a fine, and, if the act was committed publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)), with imprisonment for not more than five years or a fine.

### **Section 188 Malicious Gossip and Defamation Against Persons in Political Life**

(1) If malicious gossip (Section 186) is committed publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)) against a person involved in the political life of the people with a motive connected with the position of the insulted person in public life, and the act is capable of making his public work substantially more difficult, then the punishment shall be imprisonment from three months to five years.

(2) A defamation (Section 187) under the same prerequisites shall be punished with imprisonment from six months to five years.

### **Section 189 Disparagement of the Memory of Deceased Persons**

Whoever disparages the memory of a deceased person shall be punished with imprisonment for not more than two years or a fine.

### **Section 190 Judgment of Conviction as Proof of Truth**

If the asserted or disseminated fact is a crime, then the proof of the truth thereof shall be considered to have been provided, if a final judgment of conviction for the act has been entered against the person insulted. The proof of the truth is, on the other hand, excluded, if the insulted person had been acquitted in a final judgment before the assertion or dissemination.

### **Section 191 (repealed)**

### **Section 192 Insult Despite Proof of Truth**

The proof of the truth of the asserted or disseminated fact shall not exclude punishment under Section 185, if the existence of an insult results from the form of the assertion or dissemination or the circumstances under which it occurred.

## **Section 193 Safeguarding Legitimate Interests**

Critical judgments about scientific, artistic or commercial achievements, similar utterances which are made in order to exercise or protect rights or to safeguard legitimate interests, as well as remonstrances and reprimands of superiors to their subordinates, official reports or judgments by a civil servant and similar cases are only punishable to the extent that the existence of an insult results from the form of the utterance of the circumstances under which it occurred.

## **Section 194 Application for Criminal Prosecution**

(1) An insult shall be prosecuted only upon complaint. If the act was committed through dissemination of writings (Section 11 subsection (3)) or making them publicly accessible in a meeting or through a presentation by radio, then a complaint is not required if the aggrieved party was persecuted as a member of a group under the National Socialist or another rule by force and decree, this group is a part of the population and the insult is connected with this persecution. The act may not, however, be prosecuted ex officio if the aggrieved party objects. The objection may not be withdrawn. If the aggrieved party dies, then the right to file a complaint and the right to object pass to the relatives indicated in Section 77 subsection (2).

(2) If the memory of a deceased person has been disparaged, then the relatives indicated in Section 77, par. 2, are entitled to file a complaint. If the act was committed through dissemination of writings (Section 11 subsection (3)) or making them publicly accessible in a meeting or through a presentation by radio, then a complaint is not required if the deceased person lost his life as a victim of the National Socialist or another rule by force and decree and the disparagement is connected therewith. The act may not, however, be prosecuted ex officio if a person entitled to file a complaint objects. The objection may not be withdrawn.

(3) If the insult has been committed against a public official, a person with special public service obligations, or a soldier of the Federal Armed Forces while discharging his duties or in relation to his duties, then it may also be prosecuted upon complaint of his superior in government service. If the act is directed against a public authority or other agency, which performs duties of public administration, then it may be prosecuted upon complaint of the head of the public authority or the head of the public supervisory authority. The same applies to public officials and public authorities of churches and other religious societies under public law.

(4) If the act is directed against a legislative body of the Federation or a Land or another political body within the territorial area of application of this law, then it may be prosecuted only with authorization of the affected body.

## **Section 195 to 198 (repealed)**

## **Section 199 Insults Committed Reciprocally**

If an insult is immediately reciprocated, then the judge may declare both insulters or one of them to be exempt from punishment.

## **Section 200 Publication of the Conviction**

(1) If the insult was committed publicly or through dissemination of writings (Section 11 subsection (3)) and if punishment is imposed as a result, then it shall be ordered, upon application of the aggrieved party or a person otherwise entitled to file a complaint, that the conviction for insult be publicly announced upon request.

(2) The manner of publication shall be indicated in the judgment. If the insult was committed through publication in a newspaper or magazine, then the publication shall also be included in a newspaper or magazine and, if possible, indeed, in the same one which contained the insult; this shall apply accordingly if the insult was committed through publication by radio.

## **Chapter Fifteen Violation of The Realm of Personal Privacy And Confidentiality**

### **Section 201 Violation of the Confidentiality of the Spoken Word**

(1) Whoever, without authorization:

1. makes an audio recording of the privately spoken words of another; or
2. uses, or makes a recording thus produced accessible to a third party,

shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever, without authorization:

1. listens with an eavesdropping device to privately spoken words not intended to come to his attention; or
2. publicly communicates, verbatim, or the essential content of the privately spoken words of another recorded pursuant to subsection (1), number 1, or listened to pursuant to subsection (2), number 1, shall be similarly punished. The act under sentence 1, number 2, shall only be punishable if the public communication is capable of interfering with the legitimate interests of another. It is not unlawful if the public communication was made for the purpose of safeguarding preeminent public interests.

(3) Whoever, as a public official or a person with special public service obligations, violates the confidentiality of the spoken word (subsections (1) and (2)), shall be punished with imprisonment for not more than five years or a fine.

(4) An attempt shall be punishable.

(5) The audio recording media and eavesdropping devices which the perpetrator or the inciter or accessory used may be confiscated. Section 74a shall be applicable.

### **Section 202 Violation of the Confidentiality of Letters**

(1) Whoever, without authorization:

1. opens a sealed letter or another sealed document that was not intended to come to his attention; or
2. obtains knowledge of the content of such a document without opening the seal by using technical means,

shall be punished with imprisonment for not more than one year or a fine if the act is not punishable under Section 206.

(2) Whoever, without authorization, obtains knowledge of the contents of a document, that was not intended to come to his attention and which was specially protected by means of a sealed container from coming to someone's attention, after opening the container, shall be similarly punished.

(3) An illustration shall be the equivalent of a document within the meaning of subsections (1) and (2).

### **Section 202a Data Espionage**

(1) Whoever, without authorization, obtains data for himself or another, which was not intended for him and was specially protected against unauthorized access, shall be punished with imprisonment for not more than three years or a fine.

(2) Within the meaning of subsection (1), data shall only be those which stored or transmitted electronically or magnetically or otherwise in a not immediately perceivable manner.

### **Section 203 Violation of Private Secrets**

(1) Whoever, without authorization, discloses a the secret of another, in particular, a secret which belongs to the realm of personal privacy or a business or trade secret, which was confided to, or otherwise made known to him in his capacity as a:

1. physician, dentist, veterinarian, pharmacist or member of another healing profession which requires state-regulated education for engaging in the profession or to use the professional designation;
2. professional psychologist with a final scientific examination recognized by the State;
3. lawyer, patent attorney, notary, defense counsel in a statutorily regulated proceeding, certified public accountant, sworn auditor, tax consultant, tax agent, or organ or member of an organ of a law, patent law, accounting, auditing or tax consulting firm;
4. marriage, family, upbringing or youth counselor as well as counselor in matters of addiction at a counseling agency which is recognized by a public authority or body, institution or foundation



under public law; 4a. member or agent of a counseling agency recognized under Sections 3 and 8 of the Act on Pregnancies in Conflict Situations;

5. a state-recognized social worker or state-recognized social education worker; or

6. member of a private health, accident or life insurance company or a private medical clearing house,

shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever, without authorization, discloses a the secret of another, in particular, a secret which belongs to the realm of personal privacy or a business or trade secret, which was confided to, or otherwise made known to him in his capacity as a:

1. public official;

2. person with special public service obligations;

3. person who exercises duties or powers under the law on staff representation;

4. member of an investigative committee working for a legislative body of the Federation or a Land, another committee or council which is not itself a member of the legislative body, or as an assistant for such a committee or council; or

5. publicly appointed expert who is formally obligated by law to conscientiously fulfill his duties, shall be similarly punished. Particular statements about personal or material relationships of another which have been collected for public administration purposes, shall be deemed to be the equivalent of a secret within the meaning of sentence 1; sentence 1 shall not, however, be applicable to the extent that such particular statements have been made known to other public authorities or other agencies for public administration purposes and the law does not prohibit it.

(3) Other members of a bar association shall be deemed to be the equivalent of a lawyer named in subsection (1), number

3. Equivalent of the persons named in subsection (1) and sentence 1 shall be their professionally active assistants and those persons who work with them in preparation for exercise of the profession. After the death of the person obligated to safeguard the secret, whoever acquired the secret from the deceased or from his estate shall, furthermore, be the equivalent of the persons named in subsection (1) and in sentences 1 and 2.

(4) Subsections (1) to (3) shall also be applicable if the perpetrator, without authorization, discloses the secret of another after the death of the affected person.

(5) If the perpetrator acts for compensation or with the intent of enriching himself or another or of harming another, then the punishment shall be imprisonment for not more than two years or a fine.

## **Section 204 Exploitation of Secrets of Another**

(1) Whoever, without authorization, exploits the secret of another, in particular a business or trade secret, which he is obligated to keep secret pursuant to Section 203, shall be punished with imprisonment for not more than two years or a fine.

(2) Section 203 subsection (4), shall apply accordingly.

## **Section 205 Application for Criminal Prosecution**

(1) In cases under Sections 201 subsections (1) and (2), and 202 to 204, the act shall only be prosecuted upon complaint.

(2) If the aggrieved party dies then the right to file a complaint passes to the relatives pursuant to Section 77 subsection (2); this shall not apply in cases under Section 202a. If the secret does not relate to the realm of personal privacy of the aggrieved party, then the right to file a complaint for crimes under Sections 203 and 204 passes to the heirs. If the perpetrator discloses or exploits the secret after the death of the person affected in cases under Sections 203 and 204, then sentences 1 and 2 shall apply by analogy.

## **Section 206 Violation of the Postal or Telecommunications Confidentiality**

(1) Whoever, without authorization, makes a communication to another person about facts which are subject to postal or telecommunications confidentiality and which became known to him as the owner or employee of an enterprise in the business of providing postal or telecommunications services, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever, as an owner or employee of an enterprise indicated in subsection (1) and without authorization:

1. opens a piece of mail which has been entrusted to such an enterprise for transmission and is sealed, or gains knowledge of its content without breaking the seal by using technical means;
2. suppresses a piece of mail entrusted to such an enterprise for transmission; or
3. permits or encourages one of the acts indicated in subsection (1) or in numbers 1 or 2, shall be similarly punished.

(3) Subsections (1) and (2) shall also apply to persons who:

1. perform tasks of supervision over an enterprise indicated in subsection (1);
2. are entrusted by such an enterprise or with its authorization to provide postal or telecommunications services; or

3. are entrusted with the establishment of facilities serving the operation of such an enterprise or with performing work thereon.

(4) Whoever, without authorization, makes a communication to another person about facts which became known to him as a public official active outside of the postal or telecommunications area on the basis of an authorized or unauthorized infringement of postal or telecommunications confidentiality, shall be punished with imprisonment for not more than two years or a fine.

(5) The immediate circumstances of the postal operations of particular persons as well as the content of pieces of mail are subject to postal confidentiality. The content of telecommunications and their immediate circumstances, especially the fact, whether someone has participated in, or is participating in a telecommunications event, are subject to telecommunications confidentiality. Telecommunications confidentiality also extends to the immediate circumstances of unsuccessful attempt to make a connection.

## **Sections 207 to 210 (repealed)**

## **Chapter Sixteen Crimes Against Life**

### **Section 211 Murder**

(1) The murderer shall be punished with imprisonment for life.

(2) A murderer is, whoever kills a human being out of murderous lust, to satisfy his sexual desires, from greed or otherwise base motives, treacherously or cruelly or with means dangerous to the public or in order to make another crime possible or cover it up.

### **Section 212 Manslaughter**

(1) Whoever kills a human being without being a murderer, shall be punished for manslaughter with imprisonment for not less than five years.

(2) In especially serious cases imprisonment for life shall be imposed.

### **Section 213 Less Serious Case of Manslaughter**

If the person committing manslaughter was provoked to rage by maltreatment inflicted on him or a relative or a serious insult by the person killed and was thereby immediately torn to commit the act, or in the event of an otherwise less serious case, the punishment shall be imprisonment from one year to ten years.

### **Section 214, 215 (repealed)**

### **Section 216 Homicide upon Request**

(1) If someone is induced to homicide by the express and earnest request of the person killed, then imprisonment from six months to five years shall be imposed.

(2) An attempt shall be punishable.

### **Section 217 (repealed)**

### **Section 218 Termination of Pregnancy**

(1) Whoever terminates a pregnancy shall be punished with imprisonment for not more than three years or a fine. Acts, the effects of which occur before the conclusion of the nesting of the fertilized egg in the uterus, shall not qualify as termination of pregnancy within the meaning of this law.

(2) 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. acts against the will of the pregnant woman; or
2. recklessly causes the danger of death or serious health damage of the pregnant woman.

(3) If the act is committed by the pregnant woman, then the punishment shall be imprisonment for not more than one year or a fine.

(4) An attempt shall be punishable. The pregnant woman shall not be punished for attempt.

### **Section 218a Exemption from Punishment for Termination of Pregnancy**

(1) The elements of the offense under Section 218 have not been fulfilled, if:

1. the pregnant woman requests the termination of pregnancy and demonstrated to the physician with a certificate pursuant to Section 219 subsection (2), sent. 2, that she had counseling at least three days before the operation;
2. the termination of pregnancy was performed by a physician; and
3. not more than twelve weeks have elapsed since conception.

(2) The termination of pregnancy performed by a physician with the consent of the pregnant woman shall not be unlawful, if, considering the present and future living conditions of the pregnant woman, the termination of the pregnancy is advisable to avert a danger to life or the danger of a grave impairment of the physical or emotional state of health of the pregnant woman and the danger cannot be averted in another way which is reasonable for her.

(3) The prerequisites of subsection (2) shall also be deemed fulfilled with relation to a termination of pregnancy performed by a physician with the consent of the pregnant woman, if

according to medical opinion an unlawful act has been committed against the pregnant woman under Sections 176 to 179 of the Penal Code, strong reasons support the assumption that the pregnancy is based on the act, and not more than twelve weeks have elapsed since conception.

(4) The pregnant woman shall not be punishable under Section 218a, if the termination of pregnancy was performed by a physician after counseling (Section 218) and not more than twenty-two weeks have elapsed since conception. The court may dispense with punishment under Section 218 if the pregnant woman was in exceptional distress at the time of the operation.

### **Section 218b Termination of Pregnancy Without a Medical Determination; Incorrect Medical Determination**

(1) Whoever terminates a pregnancy in cases under Section 218a subsections (2) or (3), without there having been a written determination of a physician, who did not himself perform the termination of pregnancy, as to whether the prerequisites of Section 218a subsections (2) or (3), existed, shall be punished with imprisonment for not more than one year or with a fine if the act is not punishable under Section 218. Whoever as a physician makes an incorrect determination, against his better judgment, as to the prerequisites of Section 218a subsections (2) or (3), for presentation under sentence 1, shall be punished with imprisonment for not more than two years or a fine if the act is not punishable under Section 21

8. The pregnant woman shall not be punishable under sentences 1 or 2.

(2) A physician may not make determinations pursuant to Section 218a subsections (2) or (3), if a competent agency has prohibited him from doing so because he has undergone a final judgment of conviction for an unlawful act under subsection (1), or under Sections 218, 219a or 219b or for another unlawful act which he committed in connection with a termination of pregnancy. The competent agency may provisionally prohibit a physician from making determinations under Section 218a subsections (2) and (3), if proceedings in the trial court have been instituted against him due to suspicion that he committed unlawful acts indicated in sentence 1.

### **Section 218c Breach of Medical Duties During a Termination of Pregnancy**

(1) Whoever terminates a pregnancy:

1. without having given the woman an opportunity to explain the reasons for her request for a termination of pregnancy;

2. without having given the pregnant woman medical advice about the significance of the intervention, especially about the order of events, aftereffects, risks, possible physical or psychic consequences;

3. in cases under Section 218a subsections (1) and (3), without having previously convinced himself on the basis of a medical examination as to the length of the pregnancy; or

4. although he counseled the woman in a case under Section 218a subsection (1), pursuant to Section 219,

shall be punished with imprisonment for not more than one year or a fine if the act is not punishable under Section 218.

(2) The pregnant woman shall not be punishable under subsection (1).

### **Section 219 Counseling of Pregnant Women in an Emergency or Conflict Situation**

(1) The counseling serves to protect unborn life. It should be guided by efforts to encourage the woman to continue the pregnancy and to open her to the prospects of a life with the child; it should help her to make a responsible and conscientious decision. The woman must thereby be aware, that the unborn child has its own right to life with respect to her at every stage of the pregnancy and that a termination of pregnancy can therefore only be considered under the legal order in exceptional situations, when carrying the child to term would give rise to a burden for the woman which is so serious and extraordinary that it exceeds the reasonable limits of sacrifice. The counseling should, through advice and assistance, contribute to overcoming the conflict situation which exists in connection with the pregnancy and remedying an emergency situation. Further details shall be regulated by the Act on Pregnancies in Conflict Situations.

(2) The counseling must take place pursuant to the Act on Pregnancies in Conflict Situations through a recognized Pregnancy Conflict Counseling Agency. After the conclusion of the counseling on the subject, the counseling agency must issue the pregnant woman a certificate including the date of the last counseling session and the name of the pregnant woman in accordance with the Act on Pregnancies in Conflict Situations. The physician who performs the termination of pregnancy is excluded from being a counselor.

### **Section 219a Advertising for Termination of Pregnancy**

(1) Whoever publicly, in a meeting or through dissemination of writings (Section 11 subsection (3)), for material gain or in a grossly objectionable manner, offers, announces, commends, or makes known explanations of the content of:

1. his own services for performing or promotion of terminations of pregnancy, or those of another;
2. means, objects or procedures capable of terminating pregnancy, with reference to this capacity,

shall be punished with imprisonment for not more than two years or a fine.

(2) Subsection (1), number 1 shall not apply when physicians or statutorily recognized counseling agencies provide information about which physicians, hospitals or institutions are prepared to perform a termination of pregnancy under the prerequisites of Section 218a subsections (1) to (3).

(3) Subsection (1), number 2 shall not apply if the act was committed in relation to physicians or persons who are authorized to trade in the means or objects mentioned in subsection (1), number 2, or through a publication in professional medical or pharmaceutical journals.

### **Section 219b Bringing Means for Termination of Pregnancy into Circulation**

(1) Whoever, with intent to encourage unlawful acts under Section 218, brings means or objects into circulation which are capable of terminating a pregnancy, shall be punished with imprisonment for not more than two years or a fine.

(2) The incitement or accessoryship of the woman who prepares the termination of her own pregnancy, shall not be punishable under subsection (1).

(3) Means or objects, to which the act relates, may be confiscated.

### **Section 220 (repealed)**

#### **Section 220a Genocide**

(1) Whoever, with the intent of destroying as such, in whole or in part, a national, racial or religious group or one characterized by its folk customs by:

1. killing members of the group;
2. inflicting serious physical or emotional harm, especially of the type indicated in Section 226 on members of the group;
3. placing the group in living conditions capable of leading, in whole or in part, to their physical destruction;
4. imposing measures which are intended to prevent births within the group;
5. forcibly transferring children of the group into another group,

shall be punished with imprisonment for life.

(2) In less serious cases under subsection (1), numbers 2 to 5, the punishment shall be imprisonment for not less than five years.

### **Section 221 Abandonment**

(1) Whoever:

1. places a human being in a helpless situation; or

2. abandons a human being in a helpless situation, although he had him in his custody or was otherwise obligated to give him support,

and thereby exposes him to a danger of death or serious health damage, shall be punished with imprisonment from three months to five years.

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

1. commits the act against his own child or a person entrusted to him for upbringing or care in leading his life; or

2. causes by the act serious health damage to the victim.

(3) If the perpetrator by the act causes the death of the victim, then the punishment shall be imprisonment for not less than three years.

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

## **Section 222 Negligent Homicide**

Whoever through negligence causes the death of a human being, shall be punished with imprisonment for not more than five years or a fine.

## **Chapter Seventeen Crimes Against Bodily Integrity**

### **Section 223 Bodily Injury**

(1) Whoever physically maltreats or harms the health of another person, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 224 Dangerous Bodily Injury**

(1) Whoever commits bodily harm:

1. through the administration of poison or other substances dangerous to health;

2. by means of a weapon or other dangerous tool;

3. by means of a sneak attack;

4. jointly with another participant; or

5. by means of a treatment dangerous to life,



shall be punished with imprisonment from six months to ten years, in less serious cases with imprisonment from three months to five years.

(2) An attempt shall be punishable.

### **Section 225 Maltreatment of Wards**

(1) Whoever torments or roughly maltreats or, through a malicious neglect of his duty to care for the person, harms the health of a person under eighteen years of age or a person who is defenseless due to frailty or illness, who:

1. is under his care or custody;
2. belongs to his household;
3. has been placed under his control by the person obligated to provide care; or
4. is subordinated to him with the framework of an employment or work relationship,

shall be punished with imprisonment from six months to ten years.

(2) An attempt shall be punishable.

(3) Imprisonment for not less than one year shall be imposed, if the perpetrator by the act places the ward in danger of:

1. death or serious health damage; or
2. a substantial impairment of his physical or emotional development.

(4) In less serious cases under subsection (2), imprisonment from three months to five years shall be imposed, in less serious cases under subsection (3), imprisonment from six months to five years.

### **Section 226 Serious Bodily Injury**

(1) If the bodily injury has, as a result, that the injured person:

1. loses his sight in one eye or in both eyes, his hearing, his speech or his procreative capacity;
2. loses or permanently can no longer use an important bodily member;
3. is permanently disfigured in a substantial way or becomes infirm, paralyzed, mentally ill or disabled, then the punishment shall be imprisonment from one year to ten years.

(2) If the perpetrator intentionally or knowingly causes one of the results indicated in subsection (1), then the punishment shall be imprisonment for not less than three years.

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

### **Section 227 Bodily Injury Resulting in Death**

(1) If the perpetrator causes the death of the injured person through the infliction of bodily injury (Sections 223 to 226), then the punishment shall be imprisonment for not less than three years.

(2) In less serious cases imprisonment from one year to ten years shall be imposed.

### **Section 228 Consent**

Whoever commits bodily injury with the consent of the injured person only acts unlawfully if the act is, despite the consent, contrary to good morals.

### **Section 229 Negligent Bodily Injury**

Whoever negligently causes bodily injury to another person shall be punished with imprisonment for not more than three years or a fine.

### **Section 230 Application for Criminal Prosecution**

(1) Intentional bodily injury under Section 223 and negligent bodily injury under Section 229 shall only be prosecuted upon complaint, unless the authority considers ex officio that it is required to enter the case because of the special public interest therein. If the injured person dies, then the right to file a complaint passes, in cases of intentional bodily injury, to the relatives pursuant to Section 77 subsection (2).

(2) If the act has been committed against a public official, a person with special public service obligations, or a soldier of the Federal Armed Forces during the discharge of his duties or in relation to his duties, then it may also be prosecuted upon complaint of his superior in government service. The same shall apply to public officials of churches and other religious societies under public law.

### **Section 231 Participation in a Brawl**

(1) Whoever participates in a brawl or an assault committed on one person by more than one person, shall be punished because of this participation with imprisonment for not more than three years or a fine if the death of a human being or serious bodily injury (Section 226) was caused by the brawl or the assault.

(2) Whoever participated in the brawl or the assault for reasons beyond reproach shall not be punishable under subsection (1).

## **Sections 232 and 233 (repealed)**

## **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.

### **Section 235 Child Stealing**

(1) Whoever takes away or withholds from the parents, one of the parents, the legal or other guardian:

1. a person under eighteen years of age by force, threat of appreciable harm or trickery; or
2. a child, without being its relative,

shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever:

1. takes a child away from the parents, one of the parents, or the legal or other guardian, in order to take it abroad; or
2. withholds it abroad after it had been taken or had gone there, shall be similarly punished.

(3) In cases under subsection (1), number 2 and subsection (2), number 1, an attempt shall be punishable.

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

1. by the act places the victim in danger of death or serious health damage or a substantial impairment of his physical or emotional development; or

2. commits the act for compensation or with the intent of enriching himself or a third person.

(5) If by the act the perpetrator causes the death of the victim, then the punishment shall be imprisonment for not less than three years.

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

(7) Child stealing shall only be prosecuted upon complaint in cases under subsections (1) to (3), unless the authority considers ex officio that it is required to enter the case because of the special public interest therein.

## **Section 236 Trafficking in Children**

(1) Whoever, with gross neglect of his duties of care and upbringing, leaves his child under fourteen years of age with another indefinitely for compensation, or with the intent of enriching himself or a third person, shall be punished with imprisonment for not more than five years or a fine. Whoever, in cases under sentence 1, takes the child in indefinitely and gives compensation therefor, shall be similarly punished.

(2) Whoever, without authorization:

1. procures the adoption of a person under eighteen years of age; or

2. engages in procurement activity which has as its goal that a third person takes in a person under eighteen years of age indefinitely,

and thereby acts for compensation or with the intent of enriching himself or a third person, shall be punished with imprisonment for not more than three years or a fine. If the perpetrator in cases under sentence 1 causes the procured person to be brought into Germany or abroad, then the punishment shall be imprisonment for not more than five years or a fine.

(3) An attempt shall be punishable.

(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.

(5) The court may in its discretion mitigate the punishment (Section 49 subsection (2)) or dispense with punishment under subsections (1) to (3) of participants, in cases under subsection (1), and of inciters or accessories, in cases under subsection (2), whose guilt, taking into consideration the physical or emotional welfare of the child or the procured person, is slight.

### **Sections 237 and 238 (repealed)**

### **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 239a Extortionate Kidnapping**

(1) Whoever abducts or seizes a human being in order to exploit for purposes of extortion (Section 253) the victim's concern for his own welfare or the concern of a third person for the welfare of the victim, or whoever exploits for purposes of such extortion a human being's situation created by such an act, shall be punished by imprisonment for not less than five years.

(2) In less serious cases the punishment shall be imprisonment for not less than one year.

(3) If by the act the perpetrator at least recklessly causes the death of the victim, then the punishment shall be imprisonment for life or for not less than ten years.

(4) The court may mitigate the punishment pursuant to Section 49 subsection (1), if the perpetrator renounces the desired result and allows the victim to get back to his normal surroundings. If this result occurs due in no part to the contribution of the perpetrator, then his earnest efforts to attain this result shall suffice.

### **Section 239b Hostage Taking**

(1) Whoever abducts or seizes a human being in order to coerce him or a third person, by threats of death or serious bodily injury (Section 226) to the victim or of his deprivation of liberty for longer than one week, to commit, acquiesce in or omit an act, or whoever exploits for purposes of such coercion a human being's situation created by such an act, shall be punished with imprisonment for not less than five years.

(2) Section 239a subsections (2) to (4), shall apply accordingly.

### **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.

### **Section 241 Threat**

(1) Whoever threatens a human being with the commission of a serious criminal offense directed against him or someone close to him, shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever against his better judgment feigns to another person that the realization of a serious criminal offense directed against him or a person close to him is imminent, shall be similarly punished.

### **Section 241a Casting Political Suspicion**

(1) Whoever, through a report or by casting suspicion, exposes another 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 more than five years or a fine.

(2) Whoever makes or transmits a communication about an another and thereby exposes him to the danger of political persecution indicated in subsection (1), shall be similarly punished.

(3) An attempt shall be punishable.

(4) If an untrue assertion is made in the report, the casting of suspicion or the communication against another or if the act is committed with the intent of bringing about the results indicated in subsection (1), or if there otherwise exists an especially serious case, then imprisonment from one year to ten years may be imposed.

## **Chapter Nineteen Theft And Misappropriation**

### **Section 242 Theft**

(1) Whoever takes moveable property not his own away from another with the intent of unlawfully appropriating the property for himself or a third person, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 243 Especially Serious Case of Theft**

(1) In especially serious cases theft shall be punished with imprisonment from three months to ten years. An especially serious cases exists as a rule, if the perpetrator:

1. in executing the act breaks or climbs into a building, official or business premises or another enclosed space or intrudes therein by using a skeleton key or other tool not regularly used for entry or hides in the space;

2. steals property which is specially protected against taking by a sealed container or other protective equipment;

3. steals professionally;

4. steals property which is used in religious services or for religious veneration from a church or other building or space used for the practice of religion;

5. steals property of significance for science, art or history or for technical development which is located in a generally accessible collection or is publicly exhibited;

6. steals by exploiting the helplessness of another person, an accident or a common danger; or
  7. steals a handgun, for the acquisition of which a license is required under the Weapons Law, a machine gun, a submachine gun, a fully or semi-automatic rifle or a military weapon containing an explosive within the meaning of the Military Weapons Control Law, or an explosive.
- (2) In cases under subsection (1), sentence 2, numbers 1 to 6, an especially serious case shall be excluded if the act relates to property of slight value.

### **Section 244 Armed Theft; Theft by a Gang; Theft by Burglary of a Dwelling**

(1) Whoever:

1. commits a theft, during which he or another participant: a) carries a weapon or another dangerous tool; b) otherwise carries a tool or means in order to prevent or overcome the resistance of another person through force or threat of force;
2. steals as a member of a gang, which has combined for the continued commission of robbery or theft, with the participation of another member of the gang; or
3. commits a theft, whereby in the execution of the act he breaks or climbs into a dwelling or intrudes therein by using a skeleton key or other tool not regularly used for entry or hides in the dwelling,

shall be punished by imprisonment from six months to ten years.

(2) An attempt shall be punishable.

(3) In cases under subsection (1), number 2, Sections 43a, 73d shall be applicable.

### **Section 244a Serious Theft by a Gang**

(1) Whoever commits the theft under the prerequisites named in Section 243 subsection (1), sent. 2, or in the cases under Section 244 subsection (1), nos. 1 or 3, as a member of a gang, which has combined for the continued commission of robbery or theft, with the participation of another member of the gang.

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

(3) Sections 43a, 73d shall be applicable.

### **Section 245 Supervision of Conduct**

In cases under Sections 242 to 244a the court may order supervision of conduct (Section 68 subsection (1)).



## **Section 246 Misappropriation**

(1) Whoever unlawfully appropriates moveable property of another for himself or a third person, shall be punished with imprisonment for not more than three years or a fine if the act is not subject to more severe punishment under other provisions.

(2) If in cases under subsection (1) the property was entrusted to the perpetrator, then the punishment shall be imprisonment for not more than five years or a fine.

(3) An attempt is punishable.

## **Section 247 Theft from Home and Family**

If a relative, the legal guardian or a person who takes care of the perpetrator aggrieved by the theft or if the injured person lives with the perpetrator in the same household, then the act shall only be prosecuted upon complaint.

## **Section 248 (repealed)**

## **Section 248a Theft and Misappropriation of Things of Slight Value**

The theft and misappropriation of property of slight value shall be prosecuted only upon complaint in cases under Sections 242 and 246, unless the prosecuting authority considers ex officio that it is required to enter the case because of the special public interest therein.

## **Section 248b Unauthorized Use of a Vehicle**

(1) Whoever makes use of a motor vehicle or a bicycle against the will of the authorized person, shall be punished with imprisonment for not more than three years or a fine if the act is not subject to more severe punishment under other provisions.

(2) An attempt shall be punishable.

(3) The act shall only be prosecuted upon complaint.

(4) Motor vehicles within the meaning of this provision are vehicles which are driven by machine power and terrestrial motor vehicles only to the extent that they are not restricted to rails.

## **Section 248c Tapping of Electrical Energy**

(1) Whoever taps the electrical energy of another from an electrical facility or installation by means of a conductor which is not intended for the regular withdrawal of energy from the facility or installation, shall, if the act was committed with the intent of appropriating the electrical energy for himself or a third person, be punished by imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Sections 247 and 248a shall apply accordingly.

(4) If the act indicated in subsection (1) is committed with the intent of inflicting unlawful damage on another, then the punishment shall be imprisonment for not more than two years or a fine. The act shall only be prosecuted upon complaint.

## **Chapter Twenty Robbery and Extortion**

### **Section 249 Robbery**

(1) Whoever, by force against a person or the use of threats of imminent danger to life or limb, takes moveable property not his own from another with the intent of appropriating the property for himself or a third person, 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 250 Serious Robbery**

(1) Imprisonment for not less than three years shall be imposed, if:

1. the perpetrator or another participant in the robbery: a). carries a weapon or other dangerous tool; b) otherwise carries a tool or means in order to prevent or overcome the resistance of another person through force or threat force; c) by the act places another person in danger of serious health damage; or

2. the perpetrator commits the robbery as a member of a band which has combined for the continued commission of robbery or theft with the participation of another member of the gang.

(2) Imprisonment for not less than five years shall be imposed, if the perpetrator or another participant in the robbery:

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

2. carries a weapon in cases under subsection (1), number 2; or

3. during or by the act: a) seriously physically maltreats another person; or b) places another person in danger of death.

(3) In less serious cases under subsections (1) and (2) the punishment shall be imprisonment from one year to ten years.

### **Section 251 Robbery Resulting in Death**

If by the robbery (Sections 249 and 250), the perpetrator at least recklessly causes the death of another human being, then the punishment shall be imprisonment for life or for not less than ten years.

### **Section 252 Robbery-Like Theft**

Whoever, when caught in the act during a theft, uses force against a person or threats of imminent danger to life and limb, in order to retain possession of the stolen property, shall be punished the same as a robber.

### **Section 253 Extortion**

(1) Whoever unlawfully with force or threat of appreciable harm coerces a human being to commit, acquiesce in or omit an act and thereby cause detriment to the assets of the person coerced or another, in order to wrongfully enrich himself or a third person, shall be punished with imprisonment for not more than five years or a fine.

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

(3) An attempt shall be punishable.

(4) In especially serious cases the punishment shall be imprisonment for not less than one year. An especially serious case exists as a rule if the perpetrator acts professionally or as a member of a gang which has combined for the continued commission of extortion.

### **Section 254 (repealed)**

### **Section 255 Robbery-Like Extortion**

If the extortion is committed by using force against a person or threats of imminent danger to life or limb, then the perpetrator shall be punished the same as a robber.

### **Section 256 Supervision of Conduct, Property Fine and Extended Forfeiture**

(1) In cases under Sections 249 to 255 the court may order supervision of conduct (Section 68 subsection (1)).

(2) In cases under Sections 253 and 255, Sections 43a, 73d shall be applicable if the perpetrator acts as member of a gang which has combined for the continued commission of such acts. Section 73d shall also be applicable if the perpetrator acted professionally.

## **Chapter Twenty-one Accessory After the Fact and Receiving Stolen Property**

### **Section 257 Accessory After the Fact**

(1) Whoever renders assistance to another, who has committed an unlawful act, with the intent of securing for him the benefits of the act, shall be punished with imprisonment for not more than five years or a fine.

(2) The punishment may not be more severe than the punishment provided for the antecedent act.

(3) Whoever is punishable for his participation in the antecedent act may not be punished as an accessory after the fact. This shall not apply to one who incites a non-participant in the antecedent act to be an accessory after the fact.

(4) Prosecution for being an accessory after the fact shall only be upon complaint, with authorization, or upon request for prosecution, if the perpetrator or inciter or accessory of the antecedent act could only be prosecuted upon complaint, with authorization, or upon request for prosecution. Section 248 shall apply by analogy.

### **Section 258 Obstruction of Punishment**

(1) Whoever intentionally or knowingly obstructs in whole or in part the punishment of another in accordance with the Penal Code because of an unlawful act or his being subjected to a measure (Section 11 subsection (1), no. 8), shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever intentionally or knowingly obstructs in whole or in part the execution of a punishment or measure imposed against another shall be similarly punished.

(3) The punishment shall not be more severe than the punishment provided for the antecedent act.

(4) An attempt shall be punishable.

(5) Whoever by the act simultaneously intends to obstruct, in whole or in part, that he himself be punished or subjected to a measure or that a punishment or measure imposed against him be executed, shall not be punished for obstruction of punishment.

(6) Whoever commits the act on behalf of a relative shall be exempt from punishment.

### **Section 258a Obstruction of Punishment in a Public Office**

(1) If the perpetrator is charged in cases under Section 258 subsection (1), as a public official with participation in the criminal proceedings or the proceedings for ordering the measure (Section 11 subsection (1), no. 8), or in cases under Section 258 subsection (2), as a public official with participation in the execution of the punishment or measure, then the punishment shall be imprisonment from six months to five years, in less serious cases, imprisonment for not more than three years or a fine.

(2) An attempt shall be punishable.

(3) Section 258 subsections (3) and (6), shall not be applicable.

### **Section 259 Receiving Stolen Property**

(1) Whoever, in order to enrich himself or a third person, buys, otherwise procures for himself or a third person, disposes of, or assists in disposing of property that another has stolen or otherwise acquired by an unlawful act directed against the assets of another, shall be punished with imprisonment for not more than five years or a fine.

(2) Sections 247, 248a shall apply by analogy.

(3) An attempt shall be punishable.

### **Section 260 Professional Receiving Stolen Property; Receiving Stolen Property by a Gang**

(1) Whoever commits receiving stolen property:

1. professionally; or

2. as a member of a gang, which has combined for the continued commission of robbery, theft or receiving stolen property,

shall be punished with imprisonment from six months to ten years.

(2) An attempt shall be punishable.

(3) In cases under subsection (1), number 2, Sections 43a, 73d shall be applicable. Section 73d shall also be applicable in cases under subsection (1), number 1.

### **Section 260a Professional Receiving Stolen Property by a Gang**

(1) Whoever professionally commits receiving stolen property as a member of a gang, which has combined for the continued commission of robbery, theft or receiving stolen property, 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.

(3) Sections 43a, 73d shall be applicable.

### **Section 261 Money Laundering; Concealment of Unlawfully Acquired Assets**

(1) Whoever hides an object which is derived from an unlawful act named in sentence 2, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its forfeiture, its confiscation or its being taken into custody, shall be punished with imprisonment from three months to five years. Unlawful acts within the meaning of sentence 1 shall be:

1. serious criminal offenses;
2. less serious criminal offenses under: a) Section 332 subsection (1), also in conjunction with subsection (3), and Section 334; b) Section 29 subsection (1), sent. 1, no. 1, of the Narcotics Law and Section 29 subsection (1), no. 1, of the Precursors Control Law;
3. less serious criminal offenses under Section 373 and, if the perpetrator acted professionally, under Section 374 of the Fiscal Code, and also in conjunction with Section 12 subsection (1), of the Law to Implement the Common Market Organizations respectively;
4. less serious criminal offenses: a) under Sections 180b, 181a, 242, 246, 253, 259, 263 to 264, 266, 267, 269, 284, 326 subsections (1), 2 and 4, and 328 subsections (1), 2 and 4; b) under Section 92a of the Aliens Law and Section 84 of the Asylum Procedure Law, which were committed professionally or by a member of a gang which has combined for the continued commission of such acts; and
5. less serious criminal offenses committed by a member of a criminal organization (Section 129). In cases under sentence 1, number 3, sentence 1 shall also apply to an object in relation to which fiscal charges have been evaded.

(2) Whoever:

1. procures an object indicated in subsection (1) for himself or a third person; or
2. keeps an object indicated in subsection (1) in his custody or uses it for himself or a third person, shall be similarly punished.

(3) An attempt shall be punishable.

(4) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator acts professionally or as a member of a gang, which has combined for the continued commission of money laundering.

(5) Whoever, in cases under subsections (1) or (2), is recklessly unaware, that the object is derived from an unlawful act named in subsection (1), shall be punished with imprisonment for not more than two years or a fine.

(6) The act shall not be punishable under subsection (2), if a third person previously acquired the object without having thereby committed a crime. (7) Objects to which the crime relates may be confiscated. Section 74a shall be applicable. Sections 43a, 73d shall be applicable if the perpetrator acts as a member of a gang which has combined for the continued commission of money laundering. Section 73d shall also be applicable if the perpetrator acts professionally. (8) Objects which are derived from an act of the type indicated in subsection (1) committed overseas shall be the equivalent of the objects indicated in subsections (1), 2, and 5, if the act is also punishable at the place of commission of the act. (9) Whoever:

1. voluntarily reports the act to the competent public authority or voluntarily causes such a report to be made, if the act was not already discovered in whole or in part at the time and the perpetrator knew this or should have taken this into account upon a reasonable evaluation of the factual situation; and

2. in cases under subsections (1) or (2) under the prerequisites named in number 1, causes the object to which the crime relates to be taken into custody, shall not be punished under subsections (1) to (5). Whoever is punishable because of participation in the antecedent act shall also not be punished under subsections (1) to (5). (10) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) in cases under subsections (1) to (5) or dispense with punishment under these provisions, if the perpetrator through voluntary disclosure of his knowledge has substantially contributed, so that the act, beyond his own contribution thereto, or an unlawful act of another named in subsection (1), could be uncovered.

## **Section 262 Supervision of Conduct**

In cases under Sections 259 to 161 the court may order supervision of conduct (Section 68 subsection (1)).

## **Chapter Twenty-two Fraud And Breach of Trust**

### **Section 263 Fraud**

(1) Whoever, with the intent of obtaining for himself or a third person an unlawful material benefit, damages the assets of another, by provoking or affirming a mistake by pretending that false facts exist or by distorting or suppressing true facts, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. acts professionally or as a member of a gang which has combined for the continued commission of falsification of documents or fraud;

2. causes an asset loss of great magnitude or by the continued commission of fraud acts with the intent of placing a large number of human beings in danger of loss of assets;

3. places another person in financial need;

4. abuses his powers or his position as a public official; or

5. feigns an insured event after he or another have, to this end, set fire to a thing of significant value or destroyed it, in whole or in part, through the setting of a fire or caused the sinking or wrecking of a ship.

(4) Section 243 subsection (2), as well as Sections 247 and 248a shall apply accordingly.

(5) Whoever professionally commits fraud as a member of a gang, which has combined for the continued commission of crimes under Sections 263 to 264 or 267 to 269, shall be punished with imprisonment from one year to ten years, in less serious cases with imprisonment from six months to five years.

(6) The court may order supervision of conduct (Section 68 subsection (1)). (7) Sections 43a, 73d shall be applicable if the perpetrator acted as a member of a gang which has combined for the continued commission of crimes under Sections 263 to 264 or 267 to 269.

9. Section 73d shall also be applicable if the perpetrator acted professionally.

### **Section 263a Computer Fraud**

(1) Whoever, with the intent of obtaining for himself or a third person an unlawful material benefit, damages the assets of another by influencing the result of a data processing operation through incorrect configuration of a program, use of incorrect or incomplete data, unauthorized use of data or other unauthorized influence on the order of events, shall be punished with imprisonment for not more than five years or a fine.

(2) Section 263 subsections (2) to (7), shall apply accordingly.

### **Section 264 Subsidy Fraud**

(1) Whoever:

1. makes incorrect or incomplete statements about facts relevant to a subsidy for himself or another, that are advantageous for himself or the other, to a public authority competent to approve a subsidy or to another agency or person (subsidy giver) which has intervened in the subsidy procedure;
2. uses an object or cash benefit, the use of which is limited by legal provisions or by the subsidy giver in relation to a subsidy, contrary to the use-limitation;
3. leaves the subsidy giver, contrary to legal provisions relating to the subsidy grant, in ignorance about facts relevant to the subsidy; or
4. uses a certificate of subsidy entitlement or about facts relevant to a subsidy which was acquired by reason of incorrect or incomplete statements in subsidy proceeding,

shall be punished with imprisonment for not more than five years or a fine.

(2) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:



1. acquires, out of gross selfishness or by using counterfeit or falsified documentation, an unjustified subsidy of great magnitude for himself or another;

2. abuses his powers or his position as a public official; or

3. exploits the assistance of a public official who abuses his powers or his position.

(3) Section 263 subsection (5), shall apply accordingly.

(4) Whoever acts recklessly in cases under subsection (1), numbers 1 to 3, shall be punished with imprisonment for not more than three years or a fine.

(5) Whoever voluntarily prevents the granting of a subsidy on the basis of the act, shall not be punished pursuant to subsections (1) and (4). If the subsidy is not granted due in no part to the contribution of the perpetrator, then he will be exempt from punishment if he voluntarily and earnestly makes efforts to prevent the granting of the subsidy.

(6) Collateral to imprisonment of at least one year for a crime under subsections (1) to (3), the court may deprive the person of the capacity to hold public office and the capacity to attain public electoral rights (Section 45 subsection (2)). Objects to which the act relates may be confiscated; Section 74a shall be applicable.

(7) A subsidy within the meaning of this provision shall be:

1. a benefit from public funds under federal or Land law for businesses or enterprises, which, at least in part: a) is granted without market-related consideration; and b) should aid in stimulating the economy;

2. a benefit from public funds under the law of the European Communities, which is granted, at least in part, without market-related consideration. A public enterprise shall also be deemed to be a business or enterprise within the meaning of sentence 1, number 1.

(8) Relevant to a subsidy within the meaning of subsection (1) shall be facts:

1. which are designated as being relevant to a subsidy by law or by the subsidy giver on the basis of a statute; or

2. upon which the approval, grant, reclaiming, renewal or continuation of a subsidy are statutorily dependent.

## **Section 264a Capital Investment Fraud**

(1) Whoever, in connection with:

1. the sale of securities, subscription rights or shares intended to grant participation in the yield of an enterprise; or

2. an offer to increase the capital investment in such shares,

makes incorrect favorable statements or keeps unfavorable facts secret in prospectuses or in representations or surveys to a considerable circle of persons about the net assets in relation to circumstances relevant to the decision about acquisition or increase, shall be punished with imprisonment for not more than three years or a fine.

(2) Subsection (1) shall apply accordingly if the act is related to shares in assets which an enterprise administers in its own name, yet for the account of a third party.

(3) Whoever voluntarily prevents that the benefit contingent upon the acquisition or the increase is produced on the basis of the act shall not be punished pursuant to subsections (1) and (2). If the benefit is not produced due in no part to the contribution of the perpetrator, then he will be exempt from punishment if he voluntarily and earnestly makes efforts to prevent the production of the benefit.

### **Section 265 Abuse of Insurance**

(1) Whoever damages, destroys, impairs the usefulness of, gets rid of or gives to another a thing which is insured against destruction, damage, impairment of use, loss or theft, in order to obtain for oneself or a third party insurance benefits, shall be punished with imprisonment for not more than three years or a fine if the act is not punishable under Section 263.

(2) An attempt shall be punishable.

### **Section 265a Obtaining Benefits by Devious Means**

(1) Whoever obtains the benefits of an automat or a telecommunications network serving public purposes, conveyance by a means of transportation or entrance to an event or institution by devious means, with the intent of not paying the price, shall be punished with imprisonment for not more than one year or a fine if the act is not punishable under other provisions with a more severe punishment.

(2) An attempt shall be punishable.

(3) Sections 247 and 248a shall apply accordingly.

### **Section 265b Credit Fraud**

(1) Whoever, in connection with an application for the grant, continuance or modification of the terms of credit for a business or enterprise or for a fictitious business or enterprise:

1. as to financial circumstances: a) submits incorrect or incomplete documentation, in particular, calculations of balance, profit and losses, summaries of assets and liabilities or appraisal reports; or b) makes incorrect or incomplete written statements, to a business or enterprise, which are favorable to the credit applicant and relevant to the decision on such an application; or

2. does not inform a business or enterprise in the submission about such deterioration of the financial circumstances represented in the documentation or statements, which are relevant to the decision on such an application,

shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever voluntarily prevents the extender of credit from providing the benefit applied for on the basis of the act shall not be punished pursuant to subsection (1). If the benefit is not provided due in no part to the contribution of the perpetrator, then he will be exempt from punishment if he voluntarily and earnestly makes efforts to prevent the provision of the benefit.

(3) Within the meaning of subsection (1):

1. businesses and enterprises shall be those which require by their nature and size, yet regardless of their objects, that their conduct of business be established on a commercial basis;

2. credits shall be money loans of all kinds, acceptance credits, the acquisition for consideration or deferment of monetary claims, the discounting of promissory notes and checks and the assumption of suretyships, guarantees and other warranties.

### **Section 266 Breach of Trust**

(1) Whoever abuses the power accorded him by statute, by commission of a public authority or legal transaction to dispose of assets of another or to obligate another, or violates the duty to safeguard the property interests of another incumbent upon him by reason of statute, commission of a public authority, legal transaction or fiduciary relationship, and thereby causes detriment to the person, whose property interests he was responsible for, shall be punished with imprisonment for not more than five years or a fine.

(2) Sections 243 subsection (2), 247, 248a and 263 subsection (3), shall apply accordingly.

### **Section 266a Withholding and Embezzlement of Wages or Salaries**

(1) Whoever, as an employer, withholds contributions of an employee to the social security system or to the Federal Labor Office, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever, as an employer, otherwise withholds parts of wages or salaries which he must pay to another on behalf of the employee, yet does not pay them to the other and fails to inform the employee about the failure to make the payment no later than the due date or promptly thereafter, shall be similarly punished. Sentence 1 shall not apply to the parts of the wage or salary which are withheld as income tax on wages and salaries.

(3) Whoever, as a member of a health insurance institution, withholds from the collecting agency contributions to the social security system or to the Federal Labor Office, which he received from his employer, shall be punished with imprisonment for not more than one year or a fine.

(4) The person who hires persons who work or conduct a business in their own homes or are in the same category within the meaning of the Law on Work in the Home, as well as the intermediate master, shall be equivalent to an employer.

(5) In cases under subsection (1) the court may dispense with punishment pursuant to this provision if the employer, no later than the due date or promptly thereafter:

1. informs the collecting agency in writing of the amount of the withheld contributions; and
2. explains why payment on time is not possible although he has made earnest efforts to do so. If the prerequisites of sentence 1 exist and the contributions are subsequently paid within the appropriate period determined by the collecting agency, the perpetrator shall to that extent not be punished. In cases under subsection (3), sentences 1 and 2 shall apply correspondingly.

### **Section 266b Misuse of Check and Credit Cards**

(1) Whoever abuses the possibility accorded him through delivery of a check or credit card of obligating the issuer to make a payment and thereby harms him, shall be punished with imprisonment for not more than three years or a fine.

(2) Section 248a shall apply accordingly.

## **Chapter Twenty-three Falsification of Documents**

### **Section 267 Falsification of Documents**

(1) Whoever, for the purpose of deception in legal relations, produces a counterfeit document, falsifies a genuine document or uses a counterfeit or a falsified document, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. acts professionally or as a member of a gang which has combined for the continued commission of fraud or falsification of documents;
2. causes an asset loss of great magnitude;
3. substantially endangers the security of legal relations through a large number of counterfeit or falsified documents; or
4. abuses his powers or his position as a public official.

(4) Whoever commits the falsification of documents professionally as a member of a gang which has combined for the continued commission of crimes under Sections 263 to 264 or 267 to 269, shall be punished with imprisonment from one year to ten years, in less serious cases with imprisonment from six months to five years.

### **Section 268 Falsification of Technical Recordings**

(1) Whoever, for purposes of deception in legal relations:

1. produces a counterfeit technical recording or falsifies a technical recording; or
2. uses a counterfeit or falsified technical recording,

shall be punished with imprisonment for not more than five years or a fine.

(2) A technical recording shall be a representation of data, measurements or calculations, conditions or sequences of events, which, in whole or in part, is produced automatically by a technical device, allows the object of the recording to be recognized either generally or by insiders and is intended as proof of a legally relevant fact, regardless of whether this was already the purpose of the representation when it was produced or only later became so.

(3) It shall be the equivalent of the production of a counterfeit technical recording if the perpetrator influences the result of the recording by interfering with the recording operation.

(4) An attempt shall be punishable.

(5) Section 267 subsections (3) and (4), shall apply accordingly.

### **Section 269 Falsification of Legally Relevant Data**

(1) Whoever, for purposes of deception in legal relations, stores or modifies legally relevant data in such a way that a counterfeit or falsified document would exist upon its retrieval, or uses data stored or modified in such a manner, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Section 267 subsections (3) and (4), shall apply accordingly.

### **Section 270 Deception in Legal Relations through Data Processing**

Falsely influencing data processing in legal relations shall be the equivalent of deception in legal relations.

### **Section 271 Constructive False Certification**

(1) Whoever causes declarations, hearings or facts, which are of relevance for rights or legal relationships, to be recorded or stored in public documents, books, data storage media or registers as if they had been made or had occurred, when they either were never made or never occurred at all, or, if so, then in another manner or by a person in an improper capacity or by different person, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever, for purposes of deception in legal relations, uses a false certification or stored data of the type indicated in subsection (1), shall be similarly punished.

(3) If the perpetrator acts for compensation, or with the intent of enriching himself or a third person or of harming another person, then the punishment shall be imprisonment from three months to five years.

(4) An attempt shall be punishable.

### **Section 272 (repealed)**

### **Section 273 Modification of Official Identification Documents**

(1) Whoever, for purposes of deception in legal relations:

1. removes, renders unrecognizable, covers up or suppresses an entry in an official identification document or removes a single page from an official identification document; or

2. uses an official identification document altered in such a way,

shall be punished with imprisonment for not more than three years or a fine if the act is not punishable under Sections 267 or 274.

(2) An attempt shall be punishable.

### **Section 274 Suppression of Documents; Alteration of a Boundary Marker**

(1) Whoever:

1. destroys, damages or suppresses a document or a technical recording which does not belong to him at all or not exclusively, with the intent of causing detriment to another;

2. deletes, suppresses, renders unusable or alters legally relevant data (Section 202a subsection (2)), which is either not, or not exclusively at his disposal, with the intent of causing detriment to another; or

3. takes away, destroys, renders unrecognizable, moves or falsely places a boundary stone or another sign intended as a designation of a boundary or water level, with the intent of causing detriment to another,

shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 275 Preparation for Counterfeiting of Official Identification Documents**

(1) Whoever prepares a counterfeiting of official identification documents by producing, procuring for himself or another, offering for sale, storing, giving to another, or undertaking to import or export:

1. plates, frames, type, blocks, negatives, stencils or similar equipment which by its nature is suited to the commission of the act; or
2. paper, which is identical or confusingly similar to the type of paper which is designated for the production of official identification documents and specially protected against imitation; or
3. blank forms for official identification documents,

shall be punished with imprisonment for not more than two years or a fine.

(2) If the perpetrator acts professionally or as a member of a gang which has combined for the continued commission of crimes under subsection (1), then the punishment shall be imprisonment from three months to five years.

(3) Section 149 subsections (2) and (3), shall apply accordingly.

### **Section 276 Procuring False Official Identification Documents**

(1) Whoever:

1. undertakes to import or export; or,
2. with the intent of using it to make deception in legal relations possible, procures for himself or another, stores or gives to another

a counterfeit or falsified official identification document or an official identification document which contains a false certification of the type indicated in Sections 271 and 348, shall be punished with imprisonment for not more than two years or a fine.

(2) If the perpetrator acts professionally or as a member of a gang, which has combined for the continued commission of crimes under subsection (1), then the punishment shall be imprisonment from three months to five years.

### **Section 276a Residence Status Documents; Vehicle Documents**

Sections 275 and 276 shall also apply for residence status documents, in particular residence permits and documents certifying a temporary stay of deportation, as well as vehicle documents, in particular vehicle registration and vehicle ownership certificates.

### **Section 277 Falsification of Health Certificates**

Whoever, using the designation of physician or another qualified person in the field of medicine to which he is not entitled or illegitimately using the name of such persons, issues a certificate relating to his own state of health or that of another, or falsifies a genuine certificate of the same type, and makes use of it in order to deceive public authorities or insurance companies, shall be punished with imprisonment for not more than one year or a fine.

### **Section 278 Issuing Incorrect Health Certificates**

Physicians and other qualified persons in the field of medicine who, against their better judgment, issue an incorrect certificate relating to the state of health of a human being for use by a public authority or insurance company, shall be punished with imprisonment for not more than two years or a fine.

### **Section 279 Use of Incorrect Health Certificates**

Whoever, in order to deceive a public authority or an insurance company about his own state of health or that of another, makes use of a certificate of the type indicated in Sections 277 and 278, shall be punished with imprisonment for not more than one year or a fine.

### **Section 280 (repealed)**

### **Section 281 Misuse of Identification Papers**

(1) Whoever, for the purpose of deception in legal relations, uses an identification paper which was issued to another, or whoever, for the purpose of deception in legal relations, gives another an identification paper that was not issued to that person, shall be punished with imprisonment for not more than one year or a fine. An attempt shall be punishable.

(2) Certificates and other documents which are used as identification documents in transactions shall be equivalent to an identification paper.

### **Section 282 Property Fine, Extended Forfeiture and Confiscation**

(1) In cases under Sections 267 to 269, 275 and 276, Sections 43a and 73d shall be applicable if the perpetrator acts as a member of a gang which has combined for the continued commission of such acts. Section 73d shall also be applicable if the perpetrator acts professionally.

(2) Objects, to which a crime under Sections 267, 268, 271 subsections (2) and (3), 273 or 276, the latter also in conjunction with Section 276a, or under Section 269, relate, may be confiscated.



In cases under Section 275, also in conjunction with Section 276a, the means of falsification indicated therein shall be confiscated.

## **Chapter Twenty-four Crimes of Insolvency**

### **Section 283 Bankruptcy**

(1) Whoever, due to excessive indebtedness or current or impending insolvency:

1. gets rid of or hides, or, in a manner contrary to regular business standards, destroys, damages or renders unusable parts of his assets, which in the case of institution of insolvency proceedings would belong to the bankrupt's estate;

2. in a manner contrary to regular business standards, enters into losing or speculative ventures or futures trading in goods or securities or consumes excessive sums or becomes indebted through uneconomical expenditures, gambling or wagering;

3. procures goods or securities on credit and alienates or otherwise distributes them or things produced from these goods substantially under their value in a manner contrary to regular business standards;

4. feigns the existence of another's rights or recognizes fabricated rights;

5. fails to keep books of account, which he is statutorily obligated to keep, or keeps or modifies them such that a survey of his net assets is made more difficult;

6. gets rid of, hides, destroys or damages books of account or other documentation, which a merchant is obligated by commercial law to keep, before expiry of the retention periods which exist for those obligated to keep books, and thereby makes a survey of his net assets more difficult;

7. contrary to commercial law:

a) draws up balance sheets such that a survey of his net assets is made more difficult; or

b) fails to draw up a balance sheet on his assets or the inventory in the prescribed time; or

8. in another manner which is grossly contrary to regular business standards diminishes his net assets or hides or conceals his actual business relationships,

shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever causes his excessive indebtedness or insolvency by one of the acts indicated in subsection (1) shall be similarly punished.

(3) An attempt shall be punishable.

(4) Whoever, in cases:

1. under subsection (1) negligently fails to be aware of the excessive indebtedness or the impending or current insolvency; or

2. under subsection (2) recklessly causes the excessive indebtedness or insolvency,

shall be punished with imprisonment for not more than two years or a fine.

(5) Whoever, in cases:

1. under subsection (2), numbers 2, 5 or 7 acts negligently and at least negligently fails to be aware of the excessive indebtedness or the impending or current insolvency; or

2. under subsection (2) in conjunction with subsection (1), numbers 2, 5 or 7, acts negligently and at least recklessly causes the excessive indebtedness or insolvency,

shall be punished with imprisonment for not more than two years or a fine.

(6) The act shall only be punishable if the perpetrator suspended payments or if insolvency proceedings have been instituted in relation to his assets or the application to institute proceedings has been rejected due to lack of an estate.

### **Section 283a Especially Serious Case of Bankruptcy**

In especially serious cases under Section 283 subsections (1) to (3), bankruptcy shall be punished with imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. acts for profit; or

2. knowingly places many persons in danger of loss of assets that have been entrusted to him or in financial need.

### **Section 283b Violation of the Duty to Keep Books**

(1) Whoever:

1. fails to keep books of account, which he is statutorily obligated to keep, or keeps or alters them such that a survey of his net assets is made more difficult;

2. gets rid of, hides, destroys or damages books of account or other documentation, which he is obligated by commercial law to keep, before expiry of the statutory retention periods and thereby makes a survey of his net assets more difficult;

3. contrary to commercial law: a) draws up balance sheets such that a survey of his net assets is made more difficult; or b) fails to draw up a balance sheet on his assets or the inventory in the prescribed time,

shall be punished with imprisonment for not more than two years or a fine.

(2) Whoever acts negligently in cases under subsection (1), numbers 1 or 3, shall be punished with imprisonment for not more than one year or a fine.

(3) Section 283 subsection (6), shall apply accordingly.

### **Section 283c Preferential Treatment for a Creditor**

(1) Whoever, with knowledge of his own insolvency, grants a creditor a security or satisfaction, to which he is not entitled, either at all or in such manner or at such time, and thereby intentionally or knowingly gives him preferential treatment over the other creditors, shall be punished with imprisonment for not more than two years or a fine.

(2) An attempt shall be punishable.

(3) Section 283 subsection (6), shall apply accordingly.

### **Section 283d Preferential Treatment for a Debtor**

(1) Whoever:

1. with knowledge of the impending insolvency of another; or

2. after the suspension of payments, in an insolvency proceeding or in a proceeding to reach a decision as to whether to institute insolvency proceedings of another,

gets rid of or hides, or, in a manner contrary to regular financial standards destroys, damages or renders unusable parts of the assets of another with his consent or on his behalf, which in the case of institution of insolvency proceedings would belong to the bankrupt's estate, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. acts for profit; or

2. knowingly places many persons in danger of loss of assets that they have entrusted to the other person or in financial need.

(4) The act shall only be punishable if the other person suspended his payments or if insolvency proceedings have been instituted in relation to his assets or the application to institute proceedings has been rejected due to lack of an estate.

## **Chapter Twenty-five Punishable Greed**

### **Section 284 Unauthorized Organization of a Game of Chance**

(1) Whoever, without the permission of a public authority, publicly organizes or runs a game of chance or makes the equipment therefor available, shall be punished with imprisonment for not more than two years or a fine.

(2) Games of chance in clubs or private parties in which games of chance are regularly organized shall qualify as publicly organized.

(3) Whoever, in cases under subsection (1), acts:

1. professionally; or

2. as a member of a gang which has combined for the continued commission of such acts,

shall be punished with imprisonment from three months to five years.

(4) Whoever recruits for a public game of chance (subsections (1) and (2)), shall be punished with imprisonment for not more than one year or a fine.

### **Section 285 Participation in an Unauthorized Game of Chance**

Whoever participates in a public game of chance (Section 284) shall be punished with imprisonment for not more than six months or a fine of not more than one hundred eighty daily rates.

### **Section 286 Property Fine, Extended Forfeiture and Confiscation**

(1) In cases under Section 284 subsection (3), no. 2, Sections 43a, 73d shall be applicable. Section 73d shall also be applicable in cases under Section 284 subsection (3), no. 1.

(2) In cases under Sections 284 and 285 the gambling equipment and the money found on the gaming table or in the bank shall be confiscated if they belong to the perpetrator or inciter or accessory at the time of the decision. In other cases the objects may be confiscated; Section 74a shall be applicable.

### **Section 287 Unauthorized Organization of a Lottery or Raffle**

(1) Whoever, without permission of a public authority, organizes public lotteries or raffles of moveable or immovable property, in particular, offers to conclude gambling contracts for a

public lottery or raffle or accepts offers directed toward the conclusion of such gambling contracts, shall be punished with imprisonment for not more than two years or a fine.

(2) Whoever recruits for public lotteries or raffles (subsection (1)), shall be punished with imprisonment for not more than one year or a fine.

### **Section 288 Obstruction of the Execution of Judgment**

(1) Whoever, at the time of an impending execution of judgment and with the intent of obstructing satisfaction of the creditor, alienates or gets rid of parts of his assets, shall be punished with imprisonment for not more than two years or a fine.

(2) The act shall be prosecuted only upon complaint.

### **Section 289 Recovery of the Pledge**

(1) Whoever, with unlawful intent, takes away his own moveable property, or the moveable property of another for the benefit of the owner, from the usufructuary, pledgee, or other person who has a right to use or to retain the property, shall be punished with imprisonment for not more than three years or a fine.

(2) An attempt shall be punishable.

(3) The act shall only be prosecuted upon complaint.

### **Section 290 Unauthorized Use of Pledged Property**

Public pawnbrokers, who make unauthorized use of the objects which they have taken as a pledge, shall be punished with imprisonment for not more than one year or a fine.

### **Section 291 Usury**

(1) Whoever exploits the predicament, lack of experience, lack of judgment or substantial weakness of will of another, by allowing material benefits to be promised or granted himself or a third person:

1. for the rental of living space or additional services connected therewith;
2. for the granting of credit;
3. for any other benefit; or
4. for the procurement of one of the previously indicated benefits,

which are in striking disproportion to the benefit or its procurement, shall be punished with imprisonment for not more than three years or a fine. If more than one person contribute as

providers of benefits, procurers or in other ways, and if the result is thereby a striking disproportion between all of the material benefits and all the quid pro quo, then sentence 1 shall apply to everyone who exploits the predicament or other weakness of the other for himself or a third person in order to attain excessive material benefits.

(2) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. by the act places the other in financial need;
2. commits the act professionally;
3. through promissory notes allows himself to be promised usurious material benefits.

### **Section 292 Game Poaching**

(1) Whoever, in violation of another's hunting rights or rights granted by a hunting license:

1. hunts for, traps, shoots or appropriates game for himself or a third person; or
2. appropriates for himself or a third person, damages or destroys property which is subject to the hunting laws,

shall be punished with imprisonment for not more than three years or a fine.

(2) In especially serious cases the punishment shall be imprisonment from three months to five years. An especially serious case exists, as a rule, if the act is committed:

1. professionally or regularly;
2. in the nighttime, in closed season, by the use of snares or in any manner that is not customary amongst huntsmen; or
3. jointly by more than one participant armed with firearms.

### **Section 293 Fish Poaching**

Whoever, in violation of another's fishing rights or rights granted by a fishing license:

1. fishes; or
2. appropriates for himself or a third person, damages or destroys property which is subject to the fishing laws,

shall be punished by imprisonment for not more than two years or a fine.

## **Section 294 Application for Criminal Prosecution**

In cases under Sections 292 subsection (1), and 293 the act shall only be prosecuted upon complaint of the aggrieved party if it was committed by a relative or at a place where the perpetrator was permitted to engage in hunting or fishing to a limited extent.

## **Section 295 Confiscation**

Hunting and fishing equipment, dogs and other animals that the perpetrator or inciter or accessory had with them or used during the act, may be confiscated. Section 74a shall be applicable.

## **Section 296 (repealed)**

## **Section 297 Endangering Ships, Motor Vehicles or Aircraft with Banned Goods**

(1) Whoever, without the knowledge of the owner or the captain of the ship or as captain without the knowledge of the owner, brings or takes property on board of a German ship, the transport of which causes:

1. the danger of seizure or confiscation of the ship or its cargo; or
2. the danger of punishment for the owner or the captain of the ship,

shall be punished with imprisonment for not more than two years or a fine.

(2) Whoever as owner of a ship, without the knowledge of the ship's captain, brings or takes property on board a German ship, the transport of which causes the danger of punishment for the captain, shall be similarly punished.

(3) Subsection (1), number 1, shall also apply to foreign ships which have taken their cargo in whole or in part in Germany.

(4) Subsections (1) to (3) shall be correspondingly applicable, if property is brought or taken into motor vehicles or aircraft. The registered user and the driver of the motor vehicle or the aircraft shall take the place of the owner and the captain of the ship.

## **Chapter Twenty-six Crimes Against Competition**

### **Section 298 Agreements in Restriction of Competition upon Invitations to Tender**

(1) Whoever, upon an invitation to tender in relation to goods or commercial services, makes an offer based on an unlawful agreement which has as its aim to cause the organizer to accept a particular offer, shall be punished with imprisonment for not more than five years or a fine.

(2) The private awarding of a contract after previous participation in a competition shall be the equivalent of an invitation to tender within the meaning of subsection (1).

(3) Whoever voluntarily prevents the organizer from accepting the offer or from providing his service, shall not be punished under subsection (1), also in conjunction with subsection (2). If the offer is not accepted or the service of the organizer not provided due in no part to the contribution of the perpetrator, then he will be exempt from punishment if he voluntarily and earnestly makes efforts to prevent the acceptance of the offer or the providing of the service.

### **Section 299 Taking and Offering a Bribe in Business Transactions**

(1) Whoever, as an employee or agent of a business, demands, allows himself to be promised, or accepts a benefit for himself or another in a business transaction as consideration for giving a preference in an unfair manner to another in the competitive purchase of goods or commercial services, shall be punished by imprisonment for not more than three years or a fine.

(2) Whoever, for competitive purposes, offers, promises or grants an employee or agent of a business a benefit for himself or for a third person in a business transaction as consideration, for his giving him or another a preference in an unfair manner in the purchase of goods or commercial services, shall be similarly punished.

### **Section 300 Especially Serious Cases of Taking and Offering a Bribe in Business Transactions**

In especially serious cases an act under Section 299 shall be punished with imprisonment from three months to five years. An especially serious case exists, as a rule, if:

1. the act relates to a benefit of great magnitude; or
2. the perpetrator acted professionally or as a member of a gang which has combined for the continued commission of such acts.

### **Section 301 Application for Criminal Prosecution**

(1) Taking and offering a bribe in business transactions under Section 299 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.

(2) The right to file the complaint under subsection (1) belongs, in addition to the aggrieved party, to all of the business persons, associations and chambers indicated in Section 13 subsection (2), nos. 1, 2, and 4, of the Law Against Unfair Competition.

### **Section 302 Property Fine and Extended Forfeiture**



(1) In cases under Section 299 subsection (1), Section 73d shall be applicable if the perpetrator acted professionally or as a member of a gang which has combined for the continued commission of such acts.

(2) In cases under Section 299 subsection (2), Sections 43a, 73d shall be applicable, if the perpetrator acted as a member of a gang which has combined for the continued commission of such acts. Section 73d shall also be applicable if the perpetrator acted professionally.

## **Chapter Twenty-seven Damaging Property**

### **Section 303 Damaging Property**

(1) Whoever unlawfully damages or destroys the property of another shall be punished with imprisonment for not more than two years or a fine.

(2) An attempt shall be punishable.

### **Section 303a Alteration of Data**

(1) Whoever unlawfully deletes, suppresses, renders unusable or alters data (Section 202a subsection (2)), shall be punished with imprisonment for not more than two years or a fine.

(2) An attempt shall be punishable.

### **Section 303b Computer Sabotage**

(1) Whoever interferes with data processing which is of substantial significance to the business or enterprise of another or a public authority by:

1. committing an act under Section 303a subsection (1); or
2. destroying, damaging, rendering unusable, removing or altering a data processing system or a data carrier,

shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 303c Application for Criminal Prosecution**

In cases under Sections 303 to 303b 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.

### **Section 304 Damaging Property Which Is Harmful to the Public**

(1) Whoever unlawfully damages or destroys objects of veneration of a religious society existing in the state or property dedicated to religious service, or tombstones, public monuments, natural monuments, objects of art, science or craft which are kept in public collections or publicly exhibited, or objects which serve a public need or beautify public ways, squares or parks, shall be punished with imprisonment for not more than three years or a fine.

(2) An attempt shall be punishable.

### **Section 305 Destruction of Structures**

(1) Whoever unlawfully destroys, in whole or in part, a building, ship, bridge, dam, a constructed road, a railroad or another structure, which is the property of another, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

### **Section 305a Destruction of Important Means of Work**

(1) Whoever unlawfully destroys, in whole or in part:

1. a technical means of work of another of significant value, which is of substantial significance for the construction of a facility or an enterprise within the meaning of Section 316b subsection (1), nos. 1 or 2, or which serves the operation or the waste disposal of such facility or enterprise; or

2. a motor vehicle of the police or the Federal Armed Forces,

shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

## **Chapter Twenty-eight Crimes Dangerous to The Public**

### **Section 306 Arson**

(1) Whoever sets fire to or, as a result of setting a fire, destroys in whole or in part:

1. buildings or huts;

2. plants or technical equipment, in particular machines;

3. warehouses or stocked goods;

4. motor vehicles, rail vehicles, aircraft or watercraft;

5. forests, heaths or moors;

6. agricultural, nutritional or forestry facilities or products,

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 306a Serious Arson**

(1) Whoever sets fire to, or, as a result of setting a fire, or destroys, in whole or in part:

1. a building, ship, hut or other premises which serves as a dwelling of human beings;
2. a church or another building which serves for the practice of religion;
3. a premises which serves temporarily as a residence for human beings at a time in which human beings usually reside there,

shall be punished with imprisonment for not less than one year.

(2) Whoever sets fire to a thing indicated in Section 306 subsection (1), nos. 1 to 6, or destroys it in whole or in part as a result of setting a fire and thereby places another human being in danger of health damage shall be similarly punished.

(3) In less serious cases under subsections (1) and (2) the punishment shall be imprisonment from six months to five years.

### **Section 306b Especially Serious Arson**

(1) Whoever, as a result of an arson under Sections 306 or 306a, causes serious health damage to another human being or health damage to a large number of human beings, shall be punished with imprisonment for not less than two years.

(2) Imprisonment for not less than five years shall be imposed, if the perpetrator, in cases under Section 306a:

1. by the act places another human being in danger of death;
2. acts with the intent of making possible or covering up another crime; or
3. prevents or makes more difficult the extinguishing of the fire.

### **Section 306c Arson Resulting in Death**

If the perpetrator, as a result of an arson under Sections 306 to 306b, at least recklessly causes the death of another human being, then the punishment shall be imprisonment for life or for not less than ten years.

### **Section 306d Negligent Arson**

(1) Whoever acts negligently in cases under Sections 306 subsection (1), or 306a subsection (1), or negligently causes the danger in cases under Section 306a subsection (2), shall be punished with imprisonment for not more than five years.

(2) Whoever acts negligently in cases under Section 306a subsection (2), and negligently causes the danger, shall be punished with imprisonment for not more than three years or a fine.

### **Section 306e Active Remorse**

(1) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) in cases under Sections 306, 306a and 306b, or dispense with punishment pursuant to these provisions if the perpetrator voluntarily extinguishes the fire before substantial damage results.

(2) Whoever voluntarily extinguishes the fire before substantial damage results shall not be punished under Section 306d.

(3) If the fire is extinguished due in no part to the contribution of the perpetrator before substantial damage results, then it suffices if he voluntarily and earnestly makes efforts to attain this goal.

### **Section 306f Causing a Danger of Fire**

(1) Whoever, by smoking, by an open fire or light, by throwing away burning or smouldering objects or otherwise causes a danger that:

1. inflammable businesses or facilities;
2. agricultural or nutritional facilities and businesses in which their products are located;
3. forests, heaths or moors; or
4. cultivated fields or easily flammable agricultural products stored in fields,

will catch fire, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever causes a danger that property indicated in subsection (1), numbers 1 to 4 will catch fire and thereby endangers the life or limb of another human being or property of another of significant value, shall be similarly punished.

(3) Whoever acts negligently in cases under subsection (1) or causes the danger negligently in cases under subsection (2) shall be punished with imprisonment for not more than one year or a fine.

### **Section 307 Causing an Explosion by Nuclear Power**

(1) Whoever undertakes to cause an explosion by the release of nuclear energy and thereby endangers the life or limb of another human being or property of another of significant value, shall be punished with imprisonment for not less than five years.

(2) Whoever causes an explosion by the release of nuclear energy and thereby negligently endangers the life or limb of another human being or property of another of significant value, shall be punished with imprisonment from one year to ten years.

(3) If by the act the perpetrator at least recklessly causes the death of another human being, then the punishment shall be:

1. in cases under subsection (1), imprisonment for life or for not less than ten years;

2. in cases under subsection (2), imprisonment for not less than five years.

(4) Whoever acts negligently in cases under subsection (2) and negligently causes the danger, shall be punished with imprisonment for not more than three years or a fine.

### **Section 308 Causing an Explosion by Use of Explosives**

(1) Whoever causes an explosion other than by the release of nuclear energy, in particular by use of explosives, and thereby endangers the life or limb of another human being or property of another of significant value, shall be punished with imprisonment for not less than one year.

(2) If by the act the perpetrator causes serious health damage to another human being or health damage to a large number of human beings, then punishment of not less than two years shall be imposed.

(3) If by the act the perpetrator at least recklessly causes the death of another human being, then the punishment shall be imprisonment for life or for not less than ten years.

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

(5) Whoever negligently causes the danger in cases under subsection (1) shall be punished with imprisonment for not more than five years or a fine.

(6) Whoever acts negligently in cases under subsection (1) and negligently causes the danger, shall be punished with imprisonment for not more than three years or a fine.

### **Section 309 Misuse of Ionizing Radiation**

(1) Whoever, with the intent of harming the health of another human being, undertakes to expose him to ionizing radiation which is capable of harming his health, shall be punished with imprisonment from one year to ten years.

(2) If the perpetrator undertakes to expose a vast number of human beings to such radiation, then the punishment shall be imprisonment for not less than five years.

(3) If by the act the perpetrator causes serious health damage to another human being in cases under subsection (1) or health damage to a large number of human beings, then imprisonment for not less than two years shall be imposed.

(4) If by the act the perpetrator at least recklessly causes the death of another human being, then the punishment shall be imprisonment for life or for not less than ten years.

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

(6) Whoever, with the intent of impairing the usefulness of property of another of significant value, exposes it to ionizing radiation which is capable of impairing the usefulness of the property, shall be punished with imprisonment for not more than five years or a fine. An attempt shall be punishable.

### **Section 310 Preparation of a Serious Criminal Offense involving an Explosion or Radiation**

(1) Whoever, in preparation of:

1. a particular undertaking within the meaning of Sections 307 subsection (1), or 309 subsection (2); or

2. a crime under Section 308 subsection (1), which is to be committed with explosives, produces, procures for himself or another, stores or gives to another nuclear fuel, other radioactive materials, explosives or the equipment required for the execution of the act, shall in cases under number 1 be punished with imprisonment from one year to ten years, in cases under number 2 with imprisonment from six months to five years.

(2) In less serious cases under subsection (1), number 1, the punishment shall be imprisonment from six months to five years.

### **Section 311 Release of Ionizing Radiation**

(1) Whoever, in violation of duties under administrative law (Section 330d, nos. 4,5):

1. releases ionizing radiation; or

2. produces incidents of nuclear fission,

which are capable of harming the life or limb of another human being or property of another of significant value, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Whoever negligently:

1. in operating a facility, especially a plant, commits an act within the meaning of subsection (1) in a manner which is capable of causing damage outside of the area belonging to the facility; or

2. in other cases under subsection (1) acts in gross violation of duties under administrative law,

shall be punished with imprisonment for not more than two years or a fine.

### **Section 312 Defective Construction of a Nuclear Facility**

(1) Whoever defectively constructs or delivers a nuclear facility (Section 330d, no. 2) or objects which are intended for the construction or operation of such a facility, and thereby causes a danger for the life or limb of another human being or for property of another of significant value which is connected with the effects of an incident of nuclear fission or radiation from radioactive materials, shall be punished with imprisonment from three months to five years.

(2) An attempt shall be punishable.

(3) If by the act the perpetrator causes serious health damage to another human being or health damage to a large number of human beings, then punishment from one year to ten years shall be imposed.

(4) If by the act the perpetrator causes the death of another human being, 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.

(6) Whoever, in cases under subsection (1):

1. negligently causes the danger; or

2. acts recklessly and negligently causes the danger,

shall be punished with imprisonment for not more than three years or a fine.

### **Section 313 Causing a Flood**

(1) Whoever causes a flood and thereby endangers the life or limb of another human being or property of another of significant value, shall be punished with imprisonment from one year to ten years.

(2) Section 308 subsections (2) to (6), shall apply accordingly.

### **Section 314 Poisoning Dangerous to the Public**

(1) Whoever poisons, or mixes materials which are dangerous to health into:

1. water in contained springs, wells, pipes or drinking water storage facilities; or

2. objects which are intended for public sale or use,

or sells, offers for sale or otherwise brings into circulation poisoned objects or those mixed with materials dangerous to health within the meaning of number 2, shall be punished with imprisonment from one year to ten years.

(2) Section 308 subsections (2) to (4), shall apply accordingly.

### **Section 314a Active Remorse**

(1) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) in cases under Sections 307 subsection (2), and 309 subsection (2), if the perpetrator voluntarily renounces the further execution of the act or otherwise averts the danger.

(2) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) provided in the following provisions or dispense with punishment pursuant to these provisions, if the perpetrator:

1. in cases under Sections 309 subsection (1), or 314 subsection (1), voluntarily renounces the further execution of the act or otherwise averts the danger; or

2. in cases under: a) Section 307 subsection (2); b) Section 308 subsections (1) and (5); c) Section 309 subsection (6); d) Section 311 subsection (1); e) Section 312 subsections (1) and (6), no. 1; f) Section 313, also in conjunction with Section 308 subsection (5), voluntarily averts the danger before substantial damage results.

(3) Whoever:

1. in cases under: a) Section 307 subsection (4); b) Section 308 subsection (6); c) Section 311 subsection (3); d) Section 312 subsection (6), no. 2; e) Section 313 subsection (2), in conjunction with Section 308 subsection (6), voluntarily averts the danger before substantial damage results; or

2. in cases under Section 310 voluntarily renounces the further execution of the act or otherwise averts the danger, shall not be punished under the preceding provisions.

(4) If the danger is averted due in no part to the contribution of the perpetrator, then it suffices if he voluntarily and earnestly makes efforts to attain this goal.

### **Section 315 Dangerous Interference with Rail, Ship and Air Traffic**

(1) Whoever interferes with the safety of rail, suspension rail, ship or air traffic by:



1. destroying, damaging or removing facilities or means of transport;
2. setting up obstacles;
3. giving false signs or signals; or
4. undertaking a similar act of intervention which is just as dangerous,

and thereby endangers the life or limb of another human being or property of another of significant value, shall be punished with imprisonment from six months to ten years.

(2) An attempt shall be punishable.

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

1. acts with the intent of: a) causing an accident; b) making possible or covering up another crime; or
2. by the act causes serious health damage to another human being or health damage to a large number of human beings.

(4) In less serious cases under subsection (1) imprisonment from three months to five years shall be imposed, in less serious cases under subsection (3), imprisonment from six months to five years.

(5) Whoever negligently causes the danger in cases under subsection (1) shall be punished with imprisonment for not more than five years or a fine.

(6) Whoever acts negligently in cases under subsection (1) and negligently causes the danger, shall be punished with imprisonment for not more than two years or a fine.

### **Section 315a Endangering Rail, Ship and Air Traffic**

(1) Whoever:

1. drives a rail or suspension vehicle, a ship or an aircraft, although, due to the consumption of alcoholic beverages or other intoxicants or due to mental or physical defects, he is not in a condition to drive the vehicle safely; or
2. as driver of such a vehicle or otherwise as a person responsible for safety, violates legal provisions relating to the safety of rail, suspension rail, ship or air traffic by conduct which is grossly in breach of his duties,

and thereby endangers the life or limb of another human being or property of another of significant value, shall be punished with imprisonment for not more than five years or a fine.

(2) In cases under subsection (1), number 1, an attempt shall be punishable. (3) Whoever, in cases under subsection (1):

1. negligently causes the danger; or

2. acts negligently and negligently causes the danger,

shall be punished with imprisonment for not more than two years or a fine.

### **Section 315b Dangerous Interference with Road Traffic**

(1) Whoever interferes with the safety of road traffic by:

1. destroying, damaging or removing facilities or vehicles;

2. setting up obstacles; or

3. undertaking a similar act of interference which is just as dangerous,

and thereby endangers the life or limb of another human being or property of others of significant value, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) If the perpetrator acts pursuant to the prerequisites of Section 315 subsection (3), then the punishment shall be imprisonment from one year to ten years, in less serious cases, imprisonment from six months to five years.

(4) Whoever negligently causes the danger in cases under subsection (1) shall be punished with imprisonment for not more than three years or a fine.

(5) Whoever acts negligently in cases under subsection (1) and negligently causes the danger shall be punished with imprisonment for not more than two years or a fine.

### **Section 315c Endangering Road Traffic**

(1) Whoever in road traffic:

1. drives a vehicle, although he: a) due to consumption of alcoholic beverages or other intoxicants; or b) due to mental or physical defects, is not in a condition to drive the vehicle safely; or

2. in gross violation of traffic regulations and recklessly:

a) does not observe the right-of-way;

- b) improperly passes or drives improperly in the process of passing;
- c) improperly drives over pedestrian crosswalks;
- d) drives too fast in places with poor visibility, at road crossings or junctions or railroad crossings;
- e) fails to keep to the right-hand side of the road at places with poor visibility;
- f) turns, drives backwards or contrary to the direction of traffic, or attempts to do so, on a highway or motorway; or
- g) fails to make vehicles which are stopped or have broken down recognizable for a sufficient distance, although it is required for traffic safety, and thereby endangers the life or limb of another human being or property of another of significant value,

shall be punished with imprisonment for not more than five years or a fine.

(2) In cases under subsection (1), number 1, an attempt shall be punishable.

(3) Whoever, in cases under subsection (1):

- 1. negligently causes the danger; or
- 2. acts negligently and negligently causes the danger, shall be punished with imprisonment for not more than two years or a fine.

### **Section 315d Rail Transport in Road Traffic**

To the extent that rail transport participates in road traffic, only the provisions for protection of road traffic (Sections 315b and 315c) shall be applicable.

### **Section 316 Drunkenness in Traffic**

(1) Whoever drives a vehicle in traffic (Sections 315 to 315d) although, due to consumption of alcoholic beverages or other intoxicants, he is not in a condition to drive the vehicle safely, shall be punished with imprisonment for not more than one year or a fine if the act is not punishable under Sections 315a or 315c.

(2) Whoever commits the act negligently shall also be punished under subsection (1).

### **Section 316a Robbery-Like Assault on the Driver of a Motor Vehicle**

(1) Whoever, in the commission of a robbery (Sections 249 or 250), a robbery-like theft (Section 252) or a robbery-like extortion (Section 255), commits an assault against the life or limb or the freedom of decision of the driver of a motor vehicle or a passenger and thereby exploits the

particular conditions of road traffic, shall be punished with imprisonment for not less than five years.

(2) In less serious cases the punishment shall be imprisonment from one year to ten years.

(3) If by the act the perpetrator at least recklessly causes the death of another human being, then the punishment shall be imprisonment for life or for not less than ten years.

### **Section 316b Interference with Public Operations**

(1) Whoever prevents or interferes with the operation of:

1. enterprises or facilities which serve the public provision of postal services or public transportation;

2. a facility which serves the public provision of water, light, heat or power or an enterprise which satisfies the vital needs of the population; or

3. an installation or a facility serving public order and safety,

by destroying, damaging, removing, altering or rendering unusable a thing of use in its operation or taps electrical power intended for its operation, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if by the act the perpetrator interferes with the provision of vital goods for the population, in particular, with water, light, heat or power.

### **Section 316c Assaults on Air and Sea Traffic**

(1) Whoever:

1. applies force to or assaults the freedom of decision of a person or engages in other machinations in order to thereby gain control of, or influence the navigation of:

a) an aircraft employed in civil air traffic which is in flight; or

b) a ship employed in civil sea traffic; or

2. uses firearms or undertakes to cause an explosion or a fire, in order to destroy or damage such an aircraft or ship or the cargo which exists on board thereof,

shall be punished with imprisonment for not less than five years. An aircraft which has already been boarded by members of the crew or air passengers or the loading of the cargo of which has

already begun or which has not yet been debarked regularly by members of the crew or air passengers or the unloading of the cargo of which has not been completed, shall be the equivalent of an aircraft in flight.

(2) In less serious cases the punishment shall be imprisonment from one year to ten years.

(3) If by the act the perpetrator at least recklessly causes the death of another human being, then the punishment shall be imprisonment for life or for not less than ten years.

(4) Whoever, in preparation of a crime under subsection (1), produces, procures for himself or another, stores or give to another firearms, explosives or other materials designed to cause an explosion or a fire, shall be punished with imprisonment from six months to five years.

### **Section 317 Interference with Telecommunications Facilities**

(1) Whoever prevents or endangers the operation of a telecommunications facility which serves public purposes by destroying, damaging, removing, altering or rendering unusable a thing which serves in its operation, or taps electrical power intended for its operation, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Whoever commits the act negligently shall be punished with imprisonment for not more than one year or a fine.

### **Section 318 Damaging Important Facilities**

(1) Whoever damages or destroys water pipes, sluices, weirs, dikes, dams or other water works, or bridges, ferries, roads or bulwarks or equipment used in mining operations for water control, ventilation or for driving employees in and out, and thereby endangers the life or limb of another human being, shall be punished with imprisonment from three months to five years.

(2) An attempt shall be punishable.

(3) If by the act the perpetrator causes serious health damage to another human being or health damage to a large number of human beings, then imprisonment from one year to ten years shall be imposed.

(4) If by the act the perpetrator causes the death of another human being, 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.

(6) Whoever, in cases under subsection (1):

1. negligently causes the danger; or

2. acts negligently and negligently causes the danger,

shall be punished with imprisonment for not more than three years or a fine.

### **Section 319 Endangerment in Construction**

(1) Whoever, in the planning, management or execution of a construction or the demolition of a structure, violates generally accepted engineering standards, and thereby endangers the life or limb of another human being, shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever, in engaging in a profession or trade, violates generally accepted engineering standards in the planning, management or execution of a project to install technical fixtures in a structure or to modify installed fixtures of this nature, and thereby endangers the life or limb of another human being, shall be similarly punished.

(3) Whoever causes the danger negligently, shall be punished with imprisonment for not more than three years or a fine.

(4) Whoever in cases under subsections (1) and (2) acts negligently and causes the danger negligently, shall be punished with imprisonment for not more than two years or a fine.

### **Section 320 Active Remorse**

(1) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) in cases under Section 316c subsection (1), if the perpetrator voluntarily renounces the further execution of the act or otherwise averts the result.

(2) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) provided in the following provisions or dispense with punishment under these provisions, if the perpetrator in cases under:

1. Section 315 subsections (1), 3, no. 1, or 5;

2. Section 315b subsections (1), 3, or 4 subsection (3) in conjunction with 315 subsection (3), no. 1;

3. Section 318 subsections (1) or 6, no. 1;

4. Section 319 subsections (1) to (3), voluntarily averts the danger before substantial damage results.

(3) Whoever:

1. in cases under: a) Section 315 subsection (6); b) Section 315b subsection (5); c) Section 318 subsection (6), no. 2; d) Section 319 subsection (4), voluntarily averts the danger before substantial damage results; or

2. in cases under Section 316c subsection (4), voluntarily renounces the further execution of the act or otherwise averts the danger, shall not be punished under the preceding provisions.

(4) If the danger or the result is averted due in no part to the contribution of the perpetrator before substantial damage results, then it suffices if he voluntarily and earnestly makes efforts to attain this goal.

### **Section 321 Supervision of Conduct**

In cases under Sections 306 to 306c, 307 subsections (1) to (3), 308 subsections (1) to (3), 309 subsections (1) to (4), 310 subsection (1), and 316c subsection (1), no. 2, the court may order supervision of conduct (Section 68 subsection (1)).

### **Section 322 Confiscation**

If a crime under Sections 306 to 306c, 307 to 314, or 316c has been committed, then:

1. objects that were generated by the act or used or intended for use in its commission or preparation; and

2. objects, to which a crime under Sections 310 to 312, 314 or 316c relates, may be confiscated.

### **Section 323 (repealed)**

### **Section 323a Total Intoxication**

(1) Whoever intentionally or negligently get intoxicated with alcoholic beverages or other intoxicants, shall be punished with imprisonment for not more than five years or a fine, if he commits an unlawful act while in this condition and may not be punished because of it because he lacked the capacity to be adjudged guilty due to the intoxication, or this cannot be excluded.

(2) The punishment may not be more severe than the punishment provided for the act which was committed while intoxicated.

(3) The act shall only be prosecuted upon complaint, with authorization or upon request for prosecution if the act committed while intoxicated may only be prosecuted upon complaint, with authorization, or upon request for prosecution.

### **Section 323b Endangering Withdrawal Treatment**

Whoever knowingly, without the permission of the director of the institution or his agent, procures for, or gives alcoholic beverages or other intoxicants to another, who has been placed in

an institution for withdrawal treatment on the basis of an order of a public authority or without his consent, or inveigles him to consume such substances, shall be punished with imprisonment for not more than one year or a fine.

### **Section 323c Failure to Render Assistance**

Whoever does not render assistance during accidents or common danger or need, although it is required and can be expected of him under the circumstances and, especially, is possible without substantial danger to himself and without violation of other important duties, shall be punished with imprisonment for not more than one year or a fine.

## **Chapter Twenty-nine Crimes Against The Environment**

### **Section 324 Water Pollution**

(1) Whoever, without authorization, pollutes a body of water or otherwise detrimentally alters its qualities, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) If the perpetrator acts negligently, then the punishment shall be imprisonment for not more than three years or a fine.

### **Section 324a Soil Pollution**

(1) Whoever, in violation of duties under administrative law, introduces, allows to penetrate or releases substances into the soil and thereby pollutes it or otherwise detrimentally alters it:

1. in a manner that is capable of harming the health of another, animals, plants, other property of significant value or a body of water; or

2. to a significant extent,

shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) If the perpetrator acts negligently, then the punishment shall be imprisonment for not more than three years or a fine.

### **Section 325 Air Pollution**

(1) Whoever, in the operation of a facility, especially a plant or machine, in violation of duties under administrative law, causes alterations of the air which are capable of harming the health of another, animals, plants or other property of significant value outside of the area belonging to the



facility, shall be punished with imprisonment for not more than five years or a fine. An attempt shall be punishable.

(2) Whoever, in the operation of a facility, especially a plant or machine, in gross violation of duties under administrative law, releases harmful substances in significant amounts into the air outside of the grounds of the facility, shall be punished with imprisonment for not more than five years or a fine.

(3) If the perpetrator acts negligently, then the punishment shall be imprisonment for not more than three years or a fine.

(4) Harmful substances within the meaning of subsection (2) are substances, which are capable of:

1. harming the health of another, animals, plants or other property of significant value; or
2. polluting or otherwise detrimentally altering a body of water, the air or the soil in a lasting way.

(5) Subsections (1) to (3) shall not apply to motor vehicles, rail vehicles, aircraft or watercraft.

### **Section 325a Causing Noise, Vibrations and Non-ionizing Radiation**

(1) Whoever, in the operation of a facility, especially a plant or machine, in violation of duties under administrative law, causes noise which is capable of harming the health of another outside of the area belonging to the facility, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever, in the operation of a facility, especially a plant or machine, in violation of duties under administrative law which serve to protect against noise, vibrations or non-ionizing radiation, endangers the health of another, animals which do not belong to him or property of another of significant value, shall be punished with imprisonment for not more than five years or a fine.

(3) If the perpetrator acts negligently, then the punishment shall be:

1. in cases under subsection (1), imprisonment for not more than two years or a fine;
2. in cases under subsection (2), imprisonment for not more than three years or a fine.

(4) Subsections (1) to (3) shall not apply to motor vehicles, rail vehicles, aircraft or watercraft.

### **Section 326 Unauthorized Dealing with Dangerous Wastes**

(1) Whoever, outside of the facility authorized therefor or in substantial deviation from the prescribed or authorized procedure, treats, stores, dumps, discharges or otherwise disposes of wastes, which:

1. contain or can generate poisons or carriers of diseases which are dangerous to the public and are communicable to human beings or animals;

2. are, for human beings, carcinogenic, harmful to the fetus or can cause alterations in genetic make-up;

3. are dangerously explosive, spontaneously combustible, or not merely slightly radioactive; or

4. because of their nature, composition or quantity are capable of:

a) polluting or otherwise detrimentally altering a body of water, the air or the soil in a lasting way; or

b) endangering an existing population of animals or plants,

shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever, contrary to a prohibition or without the required permit, brings wastes within the meaning of subsection (1) into, out of or through the territorial area of application of this law, shall be similarly punished.

(3) Whoever, in violation of duties under administrative law, fails to deliver radioactive wastes, shall be punished with imprisonment for not more than three years or a fine.

(4) In cases under subsections (1) and (2) an attempt shall be punishable.

(5) If the perpetrator acts negligently, then the punishment shall be:

1. in cases under subsections (1) and (2), imprisonment for not more than three years or a fine;

2. in cases under subsection (3), imprisonment for not more than one year or a fine.

(6) The act shall not be punishable, if harmful effects on the environment, especially on human beings, bodies of water, the air, the soil, useful animals or useful plants, are obviously excluded due to the small quantity of wastes.

### **Section 327 Unauthorized Operation of Facilities**

(1) Whoever, without the required permit or contrary to an enforceable prohibition:

1. operates a nuclear facility, possesses an operational or idle nuclear facility or in whole or in part dismantles such a facility or substantially modifies its operation; or

2. substantially modifies a plant in which nuclear fuels are used or its location,

shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever operates:

1. a facility which requires a permit or any other facility within the meaning of the Federal Immission Control Law, the operation of which has been prohibited in order to protect against danger;

2. a pipeline facility for the transportation of water-endangering substances within the meaning of the Water Resources Law which requires a permit or is subject to a duty to report; or

3. a waste disposal facility within the meaning of the Recycling and Waste Law, without the permit or plan approval required by the respective statute or contrary to an enforceable prohibition based on the respective statute,

shall be punished with imprisonment for not more than three years or a fine.

(3) If the perpetrator acts negligently, then the punishment shall be:

1. in cases under subsection (1), imprisonment for not more than three years or a fine;

2. in cases under subsection (2), imprisonment for not more than two years or a fine.

### **Section 328 Unauthorized Dealing with Radioactive Substances and Other Dangerous Substances and Goods**

(1) Whoever keeps, transports, treats, processes or otherwise uses, imports or exports:

1. nuclear fuels without the required permit or contrary to an enforceable prohibition; or

2. other radioactive substances, which because of their nature, composition or quantity are capable of causing death or serious health damage of another by ionizing radiation, in gross breach of duty, without the required permit or contrary to an enforceable prohibition,

shall be punished with imprisonment for not more than five years or a fine.

(2) Whoever:

1. fails to promptly deliver nuclear fuels, which he is obligated to deliver on the basis of the Nuclear Law;

2. delivers nuclear fuels or substances indicated in subsection (1), number 2, to unauthorized persons or procures the distribution thereof to unauthorized persons;

3. causes a nuclear explosion; or

4. inveigles another to commit an act indicated in number 3, or encourages such an act, shall be similarly punished.

(3) Whoever, in gross violation of duties under administrative law:

1. in the operation of a facility, especially a plant or technical installation, stores, treats, processes, or otherwise uses radioactive substances or dangerous substances within the meaning of the Chemicals Law; or

2. transports, forwards, packs, unpacks, loads or unloads, receives or gives to another dangerous goods,

and thereby endangers the health of another, animals that do not belong to him or property of others of significant value, shall be punished with imprisonment for not more than five years or a fine.

(4) An attempt shall be punishable.

(5) If the perpetrator acts negligently, then the punishment shall be imprisonment for not more than three years or a fine.

(6) Subsections (4) and (5) shall not apply to acts under subsection (2), number 4.

### **Section 329 Endangering Areas Requiring Protection**

(1) Whoever, contrary to a ordinance enacted on the basis of the Federal Immission Control Law relating to an area which requires special protection against harmful environmental effects of air pollution or noises or in which a great increase in harmful environmental effects can be expected during periods of thermal inversion, operates facilities within the area, shall be punished with imprisonment for not more than three years or a fine. Whoever operates facilities in such an area contrary to an enforceable order, which was issued on the basis of an ordinance indicated in sentence 1, shall be similarly punished. Sentences 1 and 2 shall not apply to motor vehicles, rail vehicles, aircraft or watercraft.

(2) Whoever, contrary to an ordinance or an enforceable prohibition enacted to protect a water or mineral spring conservation area:

1. operates in-plant facilities dealing with water-endangering substances;

2. operates pipeline facilities to transport water-endangering substances or transports such substances; or

3. mines gravel, sand, clay or other solid substances within the framework of a commercial operation,

shall be punished with imprisonment for not more than three years or a fine. The facility of a public enterprise is also an in-plant facility within the meaning of sentence 1.

(3) Whoever, contrary to an ordinance or an enforceable prohibition enacted to protect a nature conservation area, an area provisionally set aside as a nature conservation area, or a national park:

1. mines or extracts mineral resources or other soil components;
2. makes excavations or heaps;
3. creates, alters or removes bodies of water;
4. drains moors, swamps, marshes or other wetlands;
5. clears a forest;
6. kills, traps, hunts or in whole or in part destroys or removes the eggs of animals of a specially protected species within the meaning of the Federal Nature Conservation Law;
7. damages or removes plants of a specially protected species within the meaning of the Federal Nature Conservation Law; or
8. erects a building,

and thereby interferes not insubstantially with the respective protected interest, shall be punished with imprisonment for not more than five years or a fine.

(4) If the perpetrator acts negligently, then the punishment shall be:

1. in cases under subsections (1) and (2), imprisonment for not more than two years or a fine;
2. in cases under subsection (3), imprisonment for not more than three years or a fine.

### **Section 330 Especially Serious Case of an Environmental Crime**

(1) In especially serious cases an intentional act under Sections 324 to 329 shall be punished with imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator:

1. harms a body of water, the soil or a conservation area within the meaning of Section 329 subsection (3), such that the harm cannot be eliminated, or, if so, only at extraordinary expense or after a lengthy period of time;
2. endangers the public water supply;

3. harms in a lasting way an existing population of animals or plants of species that are threatened with extinction;

4. acts for profit.

(2) Whoever, by an intentional act under Sections 324 to 329:

1. places another human being in danger of death or serious health damage or a large number of human beings in danger of health damage; or

2. causes the death of another human being, shall in cases under number 1, be punished with imprisonment from one year to ten years, in cases under number 2, with imprisonment for not less than three years if the act is not punishable under Section 330a subsections (1) to (3).

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

### **Section 330a Serious Endangerment by Release of Poisons**

(1) Whoever diffuses or releases substances which contain or can generate poisons and thereby causes the danger of death or serious health damage to another human being or the danger of health damage to a large number of human beings, shall be punished with imprisonment from one year to ten years.

(2) If by the act the perpetrator causes the death of another human being, then the punishment shall be imprisonment for not less than three years.

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

(4) Whoever causes the danger negligently in cases under subsection (1) shall be punished with imprisonment for not more than five years or a fine.

(5) Whoever acts negligently in cases under subsection (1) and negligently causes the danger, shall be punished with imprisonment for not more than three years or a fine.

### **Section 330b Active Remorse**

(1) The court, in cases under Sections 325a subsection (2), 326 subsections (1) to (3), 328 subsections (1) to (3), and 330a subsections (1), 3, and 4, may in its own discretion mitigate the punishment (Section 49 subsection (2)) or dispense with punishment under these provisions, if the perpetrator voluntarily averts the danger or eliminates the condition he caused before substantial damage results. Under the same prerequisites the perpetrator shall not be punished under Sections 325a subsection (3), no. 2, 326 subsection (5), 328 subsection (5) and 330a subsection (5).

(2) If the danger is averted or the unlawfully caused condition is eliminated due in no part to the contribution of the perpetrator, then it suffices if he voluntarily and earnestly makes efforts to attain this goal.

### **Section 330c Confiscation**

If a crime under Sections 326, 327 subsections (1) or (2), 328, 329 subsections (1), (2) or (3), the latter also in conjunction with subsection (4), then:

1. objects, which were generated by the act or used or intended for use in its commission or preparation; and
2. objects, to which the act relates, may be confiscated. Section 74a shall be applicable.

### **Section 330d Definition of Terms**

Within the meaning of this Section:

1. a body of water shall be surface water, ground water and the sea;
2. a nuclear facility shall be a facility for the production or treatment or processing or fission of nuclear fuels or for the enrichment of irradiated nuclear fuels;
3. dangerous goods shall be goods within the meaning of the Law on the Transportation of Dangerous Goods or an ordinance which is based thereon and within the meaning of the legal provisions relating to the international transportation of dangerous goods in the respective area of application;
4. a duty under administrative law shall be a duty which arises from: a) a legal provision; b) a judicial decision; c) an enforceable administrative act; d) an enforceable condition; or e) a contract under public law, to the extent that the duty could also have been imposed by an administrative act; and serves to protect against dangers or harmful effect on the environment, especially on human beings, animals or plants, bodies of water, the air or the soil;
5. an act without a permit, plan approval or other permission shall be also an act on the basis of a permit, plan approval or other permission which was secured by threats, bribery or collusion or obtained by devious means through incorrect or incomplete statements.

## **Chapter Thirty Crimes in Public Office**

### **Section 331 Acceptance of a Benefit**

(1) A public official or a person with special public service obligations who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of a duty, shall be punished with imprisonment for not more than three years or a fine.

(2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed, or would in the future perform a judicial act, shall be punished with imprisonment for not more than five years or a fine. An attempt shall be punishable.

(3) The act shall not be punishable under subsection (1), if the perpetrator allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorizes the acceptance, or the perpetrator promptly makes a report to it and it authorizes the acceptance.

### **Section 332 Taking a Bribe**

(1) A public official or person with special public service obligations who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or would in the future perform an official act, and thereby violated or would violate his official duties, shall be punished with imprisonment from six months to five years. In less serious cases the punishment shall be imprisonment for not more than three years or a fine. An attempt shall be punishable.

(2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or would in the future perform a judicial act, and thereby violates or would violate his judicial duties, shall be punished with imprisonment from one year to ten years. In less serious cases the punishment shall be imprisonment from six months to five years.

(3) If the perpetrator demands, allows himself to be promised or accepts a benefit in return for a future act, then subsections (1) and (2) shall already be applicable if he has indicated to the other his willingness to:

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

### **Section 333 Granting a Benefit**

(1) Whoever offers, promises or grants a benefit to a public official, a person with special public service obligations or a soldier in the Federal Armed Forces, for that person or a third person, for the discharge of a duty, shall be punished with imprisonment for not more than three years or a fine.

(2) Whoever offers promises or grants a benefit to a judge or an arbitrator, for that person or a third person, in return for the fact that he performed or would in the future perform a judicial act, shall be punished with imprisonment for not more than five years or a fine.



(3) The act shall not be punishable under subsection (1), if the competent public authority, within the scope of its powers, either previously authorizes the acceptance of the benefit by the recipient or authorizes it upon prompt report by the recipient.

### **Section 334 Offering a Bribe**

(1) Whoever offers, promises or grants a benefit to a public official, a person with special public service obligations, or a soldier of the Federal Armed Forces, for that person or a third person, in return for the fact that he performed or would in the future perform an official act and thereby violates or would violate his official duties, shall be punished with imprisonment from three months to five years. In less serious cases the punishment shall be imprisonment for not more than two years or a fine.

(2) Whoever offers, promises or grants a benefit to a judge or an arbitrator, for that person or a third person, in return for the fact that he:

1. performed a judicial act and thereby violated his judicial duties; or
2. would in the future perform a judicial act and would thereby violate his judicial duties,

shall be punished in cases under number 1 with imprisonment from three months to five years, in cases under number 2 with imprisonment from six months to five years. An attempt shall be punishable.

(3) If the perpetrator offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) shall already be applicable if he attempts to induce the other to:

1. violate his duties by the act; or
2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

### **Section 335 Especially Serious Cases of Taking or Offering Bribes**

(1) In especially serious cases:

1. an act under: a) Section 332 subsection (1), sent. 1, also in conjunction with subsection (3); and b) Section 334 subsection (1), sent. 1, and subsection (2), respectively also in conjunction with subsection (3), shall be punished with imprisonment from one year to ten years; and
2. an act under Section 332 subsection (2), also in conjunction with subsection (3), shall be punished with imprisonment for not less than two years.

(2) An especially serious case within the meaning of subsection (1) exists, as a rule, when:

1. the act relates to a benefit of great magnitude;

2. the perpetrator continuously accepts benefits which he demanded in return for the fact that he would perform an official act in the future; or

3. the perpetrator acts professionally or as a member of a gang which has combined for the continued commission of such acts.

### **Section 336 Failure to Perform an Official Act**

The failure to act shall be equivalent to the performance of an official act or a judicial act within the meaning of Sections 331 to 335.

### **Section 337 Compensation of Arbitrators**

The compensation of an arbitrator shall only be a benefit within the meaning of Sections 331 to 335, if the arbitrator demands it, allows it to be promised him or accepts it from a party behind the back of the other or if a party offers, promises or grants it to him behind the back of the other.

### **Section 338 Property Fine and Extended Forfeiture**

(1) In cases under Section 332, also in conjunction with Sections 336 and 337, Section 73d shall be applicable if the perpetrator acted professionally or as a member of a gang which has combined for the continued commission of such acts.

(2) In cases under Section 334, also in conjunction with Sections 336 and 337, Sections 43a, 73d shall be applicable if the perpetrator acts as a member of a gang which has combined for the continued commission of such acts. Section 73d shall also be applicable if the perpetrator acted professionally.

### **Section 339 Perversion of the Course of Justice**

A judge, another public official or an arbitrator, who in conducting or deciding a legal matter makes himself guilty of a perversion of the course of justice for the benefit, or to the detriment, of a party, shall be punished with imprisonment from one year to five years.

### **Section 340 Bodily Injury in Public Office**

(1) A public official, who during the discharge of his duties commits or allows to be committed bodily injury, shall be punished with imprisonment from three months to five years. In less serious cases the punishment shall be imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

(3) Sections 224 to 229 shall apply accordingly to crimes under subsection (1), sentence 1.

### **Sections 341 and 342 (repealed)**

### **Section 343 Extortion of Testimony**

(1) Whoever, as a public official charged with participation in:

1. a criminal proceeding, a proceeding to order custody of a public authority;
2. a proceeding to impose a civil penalty; or
3. a disciplinary proceeding, disciplinary court or professional disciplinary proceeding,

physically maltreats another, otherwise uses force against him, threatens him with force or torments him emotionally, in order to coerce him to testify to or declare something in the proceeding or to fail to do so, 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 344 Prosecution of the Innocent**

(1) Whoever, as a public official charged with participation in a criminal proceeding other than a proceeding to order a measure not involving deprivation of liberty (Section 11 subsection (1), no. 8), intentionally or knowingly criminally prosecutes an innocent person or someone who otherwise may not by law be criminally prosecuted or works towards such a prosecution, shall be punished with imprisonment from one year to ten years, in less serious cases with imprisonment from three months to five years. Sentence 1 shall apply by analogy to a public official who is charged with participation in a proceeding to order custody of a public authority.

(2) Whoever, as a public official charged with participation in a proceeding to order a measure not involving deprivation of liberty (Section 11 subsection (1), no. 8), intentionally or knowingly criminally prosecutes someone who may not by law be prosecuted, or works toward such prosecution, shall be punished with imprisonment from three months to five years. Sentence 1 shall apply by analogy to a public official charged with participation in:

1. a proceeding to impose a civil penalty; or
2. a disciplinary proceeding, disciplinary court or professional disciplinary proceeding. An attempt shall be punishable.

### **Section 345 Execution against the Innocent**

(1) Whoever, as a public official charged with participation in the execution of a sentence of imprisonment, a measure of reform and prevention involving deprivation of liberty or custody of a public authority, executes such a punishment, measure or custody although it may not by law be executed, shall be punished with imprisonment from one year to ten years, in less serious cases with imprisonment from three months to five years.

(2) If the perpetrator acts recklessly, then the punishment shall be imprisonment for not more than one year or a fine.

(3) Whoever, as a public official charged with participation in the execution of a punishment or a measure (Section 11 subsection (1), no. 8), apart from cases under subsection (1), executes a punishment or measure although it may not by law be executed, shall be punished with imprisonment from three months to five years. Whoever, as a public official charged with participation in the execution of:

1. the detention of a juvenile;
2. a civil penalty or collateral consequence under the law on administrative violations;
3. an administrative fine or administrative detention; or
4. a disciplinary proceeding, disciplinary court or professional disciplinary proceeding, executes such a legal consequence although it may not by law be executed, shall be similarly punished. An attempt shall be punishable.

#### **Sections 346 and 347 (repealed)**

#### **Section 348 False Certification in Public Office**

(1) A public official who, authorized to record public documents, within his competence falsely records a legally relevant fact or falsely registers or enters it into public registers, books or data storage media, shall be punished with imprisonment for not more than five years or a fine.

(2) An attempt shall be punishable.

#### **Sections 349 to 351 (repealed)**

#### **Section 352 Overcharging of Fees**

(1) A public official, attorney or other person rendering legal assistance, who has to charge fees or other compensation on his own behalf for the discharge of official functions, shall, when he charges fees or compensation, which he knows the person paying either does not owe at all or only owes in a lesser amount, be punished with imprisonment for not more than one year or a fine.

(2) An attempt shall be punishable.

#### **Section 353 Fiscal Overcharging; Curtailment of Benefits**

(1) A public official who has to collect taxes, fees or other fiscal charges for a public treasury shall, if he collects fiscal charges which he knows the person paying does not owe at all or only

owes in a lesser amount and, in whole or in part, does not deposit the unlawfully collected amount in the treasury, be punished with imprisonment from three months to five years.

(2) Whoever, as a public official in the course of official disbursements of money or in kind, unlawfully withholds amounts from the recipient and charges the account as if the disbursements had been paid in full, shall be similarly punished.

### **Section 353a Breach of Trust in the Foreign Service**

(1) Whoever, while representing the Federal Republic of Germany to a foreign government, a community of states or an intergovernmental institution, contravenes an official instruction or, with the intent of misleading the Federal Government, files untrue reports of a factual nature, shall be punished with imprisonment for not more than five years or a fine.

(2) The act shall only be prosecuted with authorization of the Federal Government.

### **Section 353b Violation of Official Secrecy and of a Special Duty of Secrecy**

(1) Whoever, without authorization, discloses a secret which has been confided, or become known to him as:

1. a public official;
2. a person with special public service obligations; or
3. a person who exercises duties or powers under the law on staff representation,

and thereby endangers important public interests, shall be punished with imprisonment for not more than five years or a fine. If by the act the perpetrator has negligently endangered important public interests, then he shall be punished with imprisonment for not more than one year or a fine.

(2) Whoever, apart from cases under subsection (1), without authorization, allows to come to the attention of another or makes publicly known an object or information:

1. which he is obligated to keep secret on the basis of a resolution of a legislative body of the Federation or a Land or one of their committees; or
2. which he has been formally obligated to keep secret by another official agency upon notice of the punishability for a violation of the duty of secrecy,

and thereby endangers important public interests, shall be punished with imprisonment for not more than three years or a fine.

(3) An attempt shall be punishable.

(4) The act shall be prosecuted only with authorization. The authorization shall be granted:

1. by the President of the legislative body: a) in cases under subsection (1), if the secret became known to the perpetrator during his activity in or for a legislative body of the Federation or a Land; b) in cases under subsection (2), number 1;
2. by the highest federal public authority: a) in cases under subsection (1), if the secret became known to the perpetrator during his activity otherwise in or for a public authority or in another official agency of the Federation or for such an agency; b) in cases under subsection (2), number 2, if the perpetrator was under obligation of an official agency of the Federation;
3. by the highest Land public authority in all other cases under subsections (1) and (2), number 2.

### **Section 353c (repealed)**

### **Section 353d Forbidden Communications about Judicial Hearings**

Whoever:

1. publicly makes a communication contrary to a statutory prohibition about a judicial hearing from which the public was excluded or about the content of an official document which concerns the matter;
2. without authorization and contrary to a duty of silence imposed by the court on the basis of a statute, discloses facts which came to his attention in a non-public judicial hearing or through an official document which concerns the matter; or
3. publicly communicates, verbatim, essential parts or all of the accusatory pleading or other official documents of a criminal proceeding, a proceeding to impose a civil penalty or a disciplinary proceeding, before they have been argued in a public hearing or the proceeding has been concluded,

shall be punished with imprisonment for not more than one year or a fine.

### **Section 354 (repealed)**

### **Section 355 Violation of Tax Secrecy**

(1) Whoever, without authorization, discloses or uses:

1. circumstances of another which became known to him as a public official:
  - a) in an administrative proceeding or a judicial proceeding in tax matters;
  - b) in a criminal proceeding because of a tax crime or in a proceeding to impose a civil penalty because of an administrative tax violation;

c) on another occasion through a communication of a revenue authority or through the statutorily prescribed submission of a tax-assessment notice or a certificate concerning the findings made at the time of taxation; or

2. the business or trade secret of another that became known to him as a public official in one of the proceedings named in number 1,

shall be punished with imprisonment for not more than two years or a fine.

(2) The following shall be the equivalent of a public official within the meaning of subsection (1):

1. persons with special public service obligations;

2. officially consulted experts; and

3. those who hold offices in churches and other religious societies under public law.

(3) The act shall only be prosecuted upon complaint of the superior in government service or the aggrieved party. In the case of acts by officially consulted experts, the head of the public authority whose proceeding has been affected shall be entitled to file a complaint collateral to the aggrieved party.

### **Section 356 Betrayal of a Party**

(1) An attorney or other person rendering legal assistance, who, in relation to matters confided to him in this capacity in the same legal matter, serves both parties with counsel and assistance in breach of duty, shall be punished with imprisonment from three months to five years.

(2) If the same person acts in collusion with the opposing party to the detriment of his party, then imprisonment from one year to five years shall be imposed.

### **Section 357 Subornation of a Subordinate to Commit a Crime**

(1) A superior who suborns or undertakes to suborn a subordinate to commit an unlawful act in public office or allows such an unlawful act of his subordinate to happen, has incurred the punishment provided for this unlawful act.

(2) The same rule shall be applied to a public official, to whom supervision or control over the official business of another public official has been transferred to the extent that the unlawful act committed by the latter public official concerns the business subject to the supervision or control.

### **Section 358 Collateral Consequences**

Collateral to imprisonment for at least six months for a crime under Sections 332, 335, 339, 340, 343, 344, 345 subsections (1) and (3), 348, 352 to 353b subsection (1), 355 and 357, the court may deprive the person of the capacity to hold public office (Section 45 subsection (2)).

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## Endnotes

1. Pursuant to the decision of the Federal Constitutional Court of March 16, 1994 (BGBl. I S. 3012), the following shall apply:

'Section 64 is incompatible with Art. 2 subsection (1) and subsection (2), sentence 2 of the Basic Law and is void, because it also provides for an order of placement under the provisions of its first subsection when there is no sufficiently concrete prospect for successful treatment.'

2. Pursuant to the decision of the Federal Constitutional Court of March 16, 1994 (BGBl. I S. 3012), the following shall apply:

'1. Section 67(4)(1) is compatible with the Basic Law within the scope of application of section 64.

2. Section 67(4)(2) is incompatible with Art. 2(2)(2) of the Basic Law to the extent it refers in general to orders of the court pursuant to Section 67d(5)(1); it is void in its totality. '

3. Pursuant to the decision of the Federal Constitutional Court of March 16, 1994 (BGBl. I S. 3012), the following shall apply:

'67d(5)(1) is incompatible with Art. 2(1)(2)(2) of the Basic Law and void to the extent that pursuant thereto at least one year of placement in an institution for withdrawal treatment must be executed before the court can determine that it not be further executed.'

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