

## National Laws

Legislation of Interpol member states on sexual offences against children

# Germany - Allemagne (Rép. féd.) - Alemania (Rep. Fed. de)

Wiesbaden

The information on this page is up to date as of spring 2006

## I. Ages for legal purposes

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### Age of consent for marriage

The age of consent for marriage, according to the article 1303 of the German Civil Code is the age of majority: eighteen (18) years accomplished.

## II. Rape

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### Section 177 'Sexual coercion; Rape'

'(1) Whoever coerces another person

1. by force,
2. by the threat of immediate danger to life or limb, or
3. by exploiting a situation in which the victim is defenceless and at the mercy of the actions of the perpetrator

into submitting to sexual acts performed by the perpetrator or by a third person or into performing such acts on the perpetrator or on the third person, shall be punished by imprisonment of not less than one year.

(2) In particularly serious cases, the punishment shall be imprisonment of not less than two years. A particularly serious case shall normally be deemed to exist if

1. the perpetrator has full sexual intercourse with the victim or performs similar sexual acts on the victim or allows the victim to perform such acts on him or her, which are particularly degrading to the victim, especially if they involve physical penetration (rape), or

2. the offence is committed jointly by several persons.

(3) Imprisonment of not less than three years shall be imposed in cases where the perpetrator

1. carries a firearm or another dangerous implement,

2. otherwise carries an implement or device in order to prevent or overcome the resistance of another person by force or the threat of force, or

3. through the offence exposes the victim's health to the risk of severe impairment.

(4) Imprisonment of not less than five years shall be imposed in cases where the perpetrator

1. in committing the offence uses a firearm or another dangerous implement, or

2. i) in committing the offence seriously physically maltreats the victim, or

ii) through the offence places the victim in mortal danger.

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

### **III. Other forms of child sex abuse**

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#### **'Sexual intercourse between relatives' Section 173 of the German Penal Code**

'(1) Whoever has full sexual intercourse with a consanguine descendant shall be punished by imprisonment not exceeding three years or by a fine.

(2) Whoever has sexual intercourse with a consanguine relative in the ascending line shall be punished by imprisonment not exceeding two years or by a fine; this shall apply even if the legal family relationship has ceased to exist. Siblings who have full sexual intercourse with each other shall be punished in the same way.

(3) Descendants and siblings who had not reached the age of eighteen at the time of the offence shall not be punished under this provision.'

#### **Section 174**

(1) 'Whoever performs sexual acts

1. on a person of less than sixteen years of age who has been entrusted to him or her for upbringing, education or care concerning that person's way of life,
2. on a person of less than eighteen years of age who either has been entrusted to him or her for upbringing, education or care concerning that person's way of life or who is subordinate to him or her in a service or employment relationship, by abusing a dependency in connection with the relationship of upbringing, education, care, service or employment, or
3. on his or her own natural or adopted child of less than eighteen years of age

or allows such a person in his or her charge to perform sexual acts on him or her, shall be punished by imprisonment not exceeding five years or by a fine.

(2) Whoever, under the prerequisites laid down in subsection 1 nos. 1 to 3

1. performs sexual acts in the presence of the person in his or her charge or
2. allows the person in his or her charge to perform sexual acts in his or her presence

in order to thereby sexually arouse either him- or herself or the person in his or her charge, shall be punished by imprisonment not exceeding three years or by a fine.

(3) An attempt shall incur criminal liability.

(4) In the cases referred to under subsection 1 no. 1 or subsection 2 in conjunction with subsection 1 no. 1, the court may refrain from imposing punishment pursuant to this provision if, taking the behaviour of the person in his or her charge into consideration, the wrongfulness of the act is insignificant.'

#### **'Sexual abuse of children', § 176 of the German Penal Code**

'(1) Whoever commits sex acts on a person under fourteen (14) years of age (a child) or whoever permits to do the same to him, shall be punished by imprisonment from six months to ten years or, in less serious cases, by up to five years imprisonment or by fine.

(2) Similar punishment shall be imposed on anyone who induces a child to commit sex acts on a third person or to permit a third person to do the same to the child.

(3) Imprisonment from one to ten years shall be imposed in especially serious cases. As a general rule, an especially serious case shall be deemed to exist if the offender:

1. has sexual intercourse with the child; or
2. in committing the act grossly abuses the child.

(4) If, in committing the act, the offender recklessly caused the death of the child, not less than five years' imprisonment shall be imposed.

(5) Up to three years' imprisonment or fine shall be imposed on anyone who -

1. commits sex acts in front of a child;
2. induces a child to commit sex acts in front of him or a third person; or
3. exerts influence on a child, by showing him pornographic illustrations or representations, by playing recordings of pornographic content, or by suggestive speech of the same nature,  
- in order to thereby sexually arouse himself, the child or a third person.

The attempt is punishable.

This rule shall not apply to offences falling under subparagraph (5) number 3.'

### **Section 176a. Aggravated sexual abuse of children**

'(1) Sexual abuse of children in the cases referred to under section 176 subsections 1 and 2 shall be punished by imprisonment of not less than one year where

1. a person of more than eighteen years of age has full sexual intercourse with the child or performs similar sexual acts on the child or allows the child to perform such acts on him or her which involve physical penetration,
2. the offence is committed jointly by several persons,
3. the perpetrator through the offence exposes the child's health to the risk of severe impairment or exposes the child's physical or emotional development to the risk of serious damage, or
4. the perpetrator has been convicted of such a criminal offence with legal force in the past five years.

(2) Imprisonment of not less than two years shall be imposed on anyone who, in the cases referred to under section 176 subsections 1 to 4, acts as a perpetrator or other participant with intent to make the offence the subject of a pornographic writing (section 11 subsection 3) which is intended to be disseminated pursuant to section 184 subsection 3 or 4.

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

(4) Imprisonment of not less than five years shall be imposed on anyone who, in the cases referred to under section 176 subsections 1 and 2

1. seriously physically maltreats the child in committing the offence, or

2. through the offence places the child in mortal danger.'

#### **IV. Child prostitution**

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##### **'Promoting the engagement of minors in sex', § 180 of the German Penal Code**

'(1) Whoever -

1. by his mediation; or

2. by affording or creating an opportunity,

- promotes the commission of sex acts by a person less than sixteen (16) years of age on or before a third person, or the commission of sex acts by a third person on a person less than sixteen (16) years of age, shall be punished by up to three years' imprisonment or by fine. Sentence one, number two of the paragraph shall not be applied to the acts of a person who is lawfully entitled to care for another. This rule shall not apply if, by his promotional activity, the person lawfully entitled to care for another flagrantly violated his duties with respect to the upbringing of the other person.

(2) Whoever entices a person less than eighteen (18) years of age to commit sex acts for remuneration on or in front of a third person, or to permit a third person to do the same on him, or whoever sees as intermediary in promoting such conduct, shall be punished by up to five years' imprisonment or by fine.

(3) Whoever, by abusing an upbringing, educational, care, work or employment dependency relationship, induces a person less than eighteen (18) years of age who either has been entrusted to him for upbringing, education or care, or who is subordinate to him in a work or employment relationship, to commit sex acts on or in front of a third person, or to permit a third person to commit such acts on him, shall be punished by up to five years' imprisonment or by fine.

(4) The attempt is punishable in cases falling under subparagraphs (2) and (3)'

##### **'Encouraging prostitution', § 180a of the German Penal Code**

'(1) Whoever, on a commercial basis, maintains or manages a house of prostitution in which-

1. prostitutes are kept in a state of personal or economic dependency ;

2. prostitution is encouraged by means which go beyond simply providing a place of residence, temporary quarters or reception rooms and the accoutrements which are normally associated therewith,

- shall be punished by up to three years' imprisonment or by fine.

(2) Similar punishment shall be imposed on anyone who:

1. provides, in connection with prostitution, to a person less than eighteen (18) years of age, a place of residence or, on a commercial basis, temporary quarters or reception rooms ; or

2. provides a place of residence for the purpose of prostitution to another person whom he induces to be a prostitute or whom he is exploiting as a prostitute.

(3) Whoever, on a commercial basis, recruits another to become a prostitute or to engage in prostitution in a foreign country, shall be punished by up to five years' imprisonment or by fine.

(4) Whoever entices a person less than twenty-one (21) years of age to engage in prostitution or exerts influence on such a person for the purpose of persuading him to become or to continue to work as a prostitute, shall be punished by imprisonment from six months to ten years.

(5) The attempt is punishable in cases falling under subparagraphs (3) and (4)'

#### **'White slave traffic', § 181 of the German Penal Code**

'Whoever -

1. by force or the threat of perpetrating grievous wrong, or by trick and device, induces another to become a prostitute: or

2. recruits or, by trick and device, threats or force, abducts another in order to exploit the helplessness connected with his being in a foreign country to get him to commit sex acts on or in front of a third person or to permit a third person to do the same to him,

- shall be punished by imprisonment from one to ten years or, in less serious cases, by imprisonment from three months to five years.'

#### **'Seduction', § of the German Penal Code**

'(1) Whoever seduces a girl less than sixteen (16) years of age to have sexual intercourse with him shall be punished by up to one year imprisonment or by fine.

(2) The act shall be prosecuted only on formal complaint. No prosecution shall take place if the perpetrator marries the person seduced.

(3) The court may refrain from imposing any punishment under these provisions if , at the time of the act, the perpetrator was less than twenty-one (21) years of age.'

## V. Child pornography

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### **Section 6. Offences committed abroad against internationally protected interests**

'German criminal law shall also apply, regardless of the law of the place of commission, to the following offences committed abroad:

a. ... 3.trafficking in human beings (section 180b) and aggravated trafficking in human beings (section 181);

d. ...

dissemination of pornographic writings in the cases referred to under section 184 subsections 3 and 4;'

### **Section 184 'Dissemination of pornographic writings'**

'(1) Whoever

1. offers, hands over or makes accessible to a person of less than eighteen years of age,

displays, puts up, presents or otherwise makes accessible at a place accessible or visible to persons of less than eighteen years of age,

2. offers to or hands over to another in retail trade outside business premises, in kiosks or other sales outlets which the customer does not usually frequent, by mail order, or through commercial lending libraries or magazine loan services,

3. offers to or hands over to another, by means of a commercial lease or by comparable commercial granting of use, except in stores which are not accessible and not visible to persons of less than eighteen years of age,

4. undertakes to import by means of mail order,

5. publicly offers, announces, or commends at a place accessible or visible to persons of less than eighteen years of age, or by the dissemination of writings outside the normal course of business,

6. without being requested beforehand to do so, allows a person to acquire,

7. shows in a public film presentation for a fee which is demanded entirely or primarily for this presentation,

8. produces, obtains, supplies, keeps in stock or undertakes to import, in order to use or to enable another to use them or copies made from them within the meaning of nos. 1 to 7, or

9. undertakes to export, in order to disseminate them or copies made from them, or make publicly accessible, or make such use possible, abroad, in violation of the criminal law provisions in force there,

pornographic writings (section 11 subsection 3), shall be punished by imprisonment not exceeding one year or by a fine.

(2). The same punishment shall be imposed on anyone who disseminates a pornographic presentation by radio broadcasting.

(3) Whoever

1. disseminates,

2. publicly displays, puts up, presents or otherwise makes accessible, or produces, obtains, supplies, keeps in stock, offers, announces, commends or undertakes to import or to export, in order to use or enable another to use them or copies made from them within the meaning of nos. 1 and 2,

pornographic writings (section 11 subsection 3), the subject of which are violent acts, sexual abuse of children or sexual acts between human beings and animals, shall, where the pornographic writings have the sexual abuse of children as their subject, be punished by imprisonment from three months to five years, otherwise be punished by imprisonment not exceeding three years or by a fine.

(4) Where the pornographic writings (section 11 subsection 3) in the cases referred to under subsection 3 have the sexual abuse of children as their subject matter, and where they show real or realistic action, the punishment shall be imprisonment from six months to ten years if the perpetrator is acting on a commercial basis or as a member of a gang which has been formed in order to commit such acts repeatedly.

(5) Whoever undertakes to obtain pornographic writings (section 11 subsection 3) for him or herself or for a third person, which have sexual abuse of children as their subject matter, shall be punished by imprisonment not exceeding one year or by a fine if the writings show real or realistic action. The same punishment shall be imposed on anyone who is in possession of such writings as described under sentence 1.

(6) Subsection 1 no. 1 shall not be applied where the person who acts is entitled to custody of the other person. Subsection 1 no. 3a shall not apply where the act is committed in the course of business with commercial borrowers. Subsection 5 shall not apply to acts which exclusively serve the purpose of fulfilling legal official or professional obligations.

(7) Section 73d shall be applied in the cases referred to under subsection 4. Items to which a criminal offence pursuant to subsection 5 relates shall be confiscated. Section 74a shall be applied.'