

TEMPLATE POLICY PAGE

Category:	Prostitution and Trafficking for Sexual Exploitation
Country:	Germany
Year:	2016

Main policy page:	Policies in attachments.
Relevant legislation:	<p style="text-align: center;">Excerpts from the GERMAN CRIMINAL CODE – provisions potentially applicable to cases of trafficking for the purpose of sexual exploitation –</p> <p style="text-align: center;">Unofficial Translation</p> <p>CHAPTER THIRTEEN</p> <p>CRIMES AGAINST SEXUAL SELF-DETERMINATION</p> <p>Section 176 Child abuse</p> <p>(1) Whosoever engages in sexual activity with a person under fourteen years of age (child) or allows the child to engage in sexual activity with himself shall be liable to imprisonment from six months to ten years.</p> <p>(2) Whosoever induces a child to engage in sexual activity with a third person or to allow third persons to engage in sexual activity with the child shall incur the same penalty.</p> <p>(3) In especially serious cases the penalty shall be imprisonment of not less than one year.</p> <p>(4) Whosoever</p> <ol style="list-style-type: none">1. engages in sexual activity in the presence of a child;2. induces the child to engage in sexual activity, unless the act is punishable under subsection (1) or subsection (2) above;3. influences a child with by way of written materials (section 11 subsection (3)) or information or communication technology in order to<ol style="list-style-type: none">a) induce the child to engage in sexual activity with or in the presence of the offender or a third person, or to allow the offender or a third person to engage in sexual activity with the child; or

b) commit an offence pursuant to section 184b subsection (1) no. 3 or pursuant to section 184b subsection (3), or

4. influences a child by showing pornographic illustrations or images, by playing audio recordings with pornographic content, by making pornographic content accessible by way of information and communication technology, or by corresponding speech,

shall be liable to imprisonment from three months to five years.

(5) Whosoever supplies or promises to supply a child for an offence under subsections (1) to (4) above or who agrees with another to commit such an offence shall be liable to imprisonment from three months to five years.

(6) The attempt shall be punishable; this shall not apply to offences under subsection (4) Nos 3 and 4 and subsection (5) above.

Section 176a Aggravated child abuse

(1) The sexual abuse of children under section 176 (1) and (2) shall entail a sentence of imprisonment of not less than one year if the offender was convicted of such an offence by final judgment within the previous five years.

(2) The sexual abuse of children under section 176 (1) and (2) shall entail a sentence of imprisonment of not less than two years if

1. a person over eighteen years of age performs sexual intercourse or similar sexual acts with the child which include a penetration of the body, or allows them to be performed on himself by the child;
2. the offence is committed jointly by more than one person; or
3. the offender by the offence places the child in danger of serious injury or substantial impairment of his physical or emotional development.

(3) Whosoever under section 176 (1) to (3), (4) Nos 1 or 2 or section 176 (6) acts as a principal or secondary participant with the intent of making the act the object of a pornographic medium (section 11(3)) which is to be disseminated pursuant to section 184b (1) or (2) shall be liable to imprisonment of not less than two years.

(4) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsection (2) above imprisonment from one to ten years.

(5) Whosoever under section 176 (1) to (3) seriously physically abuses the child or places the child in danger of death shall be liable to

imprisonment of not less than five years.

(6) Any period during which the offender was detained in an institution pursuant to an order of a public authority shall not be credited to the term indicated in subsection (1) above. An offence resulting in a conviction abroad shall be equivalent, under subsection (1) above, to an offence resulting in a domestic conviction if under German criminal law it would have been an offence under section 176 (1) or (2).

Section 177 Sexual assault by use of force or threats; rape

(1) Whosoever coerces another person

1. by force;
2. by 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 offender,

to suffer sexual acts by the offender or a third person on their own person or to engage actively in sexual activity with the offender or a third person, shall be liable to imprisonment of not less than one year.

(2) In especially serious cases the penalty shall be imprisonment of not less than two years. An especially serious case typically occurs if

1. the offender performs sexual intercourse with the victim or performs similar sexual acts with the victim, or allows them to be performed on himself by the victim, especially if they degrade the victim or if they entail penetration of the body (rape); or
2. the offence is committed jointly by more than one person.

(3) The penalty shall be imprisonment of not less than three years if the offender

1. carries a weapon or another dangerous instrument;
2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person through force or threat of force; or
3. by the offence places the victim in danger of serious injury.

(4) The penalty shall be imprisonment of not less than five years if

1. the offender uses a weapon or another dangerous instrument during the commission of the offence; or if
2. the offender

- a) seriously physically abuses the victim during the offence; or
- b) by the offence places the victim in danger of death.

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

Section 178 Sexual assault by use of force or threat of force and rape causing death

If the offender through sexual assault or rape (section 177) causes the death of the victim at least by gross negligence the penalty shall be imprisonment for life or not less than ten years.

Section 179 Abuse of persons who are incapable of resistance

(1) Whosoever abuses another person who is incapable of resistance

1. because of a mental illness or disability including an addiction or because of a profound consciousness disorder; or
2. is physically incapable,

and by exploiting the incapability to resist engages in sexual activity with the person or allows them actively to engage in sexual activity on his person shall be liable to imprisonment from six months to ten years.

(2) Whosoever abuses a person incapable of resistance (subsection (1) above), by inducing the person, under exploitation of the incapability of resistance, to engage actively in sexual activity with a third person or to allow a third person to engage in sexual activity with them, shall incur the same penalty.

(3) In especially serious cases the penalty shall be imprisonment of not less than one year.

(4) The attempt shall be punishable.

(5) The penalty shall be imprisonment of not less than two years if

1. the offender performs sexual intercourse or similar sexual acts with the victim which include penetration of the body, or allows them to be committed on himself by the victim;
2. the offence is committed jointly by more than one person; or
3. by the offence the offender places the victim in danger of serious injury or substantial impairment of his physical or emotional

development.

(6) In less serious cases under subsection (5) above the penalty shall be imprisonment from one to ten years.

(7) Section 177(4) No 2 and section 178 shall apply mutatis mutandis.

Section 180 Causing minors to engage in sexual activity

(1) Whosoever encourages a person under sixteen years of age to engage in sexual activity with or in the presence of a third person or whosoever encourages sexual acts of a third person on a person under sixteen years of age

1. by acting as an intermediary; or
2. by creating an opportunity,

shall be liable to imprisonment not exceeding three years or a fine. The 1st sentence No 2 above shall not apply if the offender is the person responsible for the care of the minor unless the offender, if responsible for the care of the minor, grossly violates his duty of education.

(2) Whosoever induces a person under eighteen years of age to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person for a financial reward, or whosoever encourages such acts by acting as an intermediary, shall be liable to imprisonment not exceeding five years or a fine.

(3) Whosoever induces a person under eighteen years of age who is entrusted to him for upbringing, education or care or who is his subordinate within an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person shall be liable to imprisonment not exceeding five years or a fine.

(4) In cases under subsections (2) and (3) above the attempt shall be punishable.

Section 180a Exploitation of prostitutes

(1) Whosoever on a commercial basis maintains or manages an operation in which persons engage in prostitution and in which they are held in personal or financial dependency shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever

1. provides a dwelling or on a commercial basis an abode or a

residence to a person under eighteen years of age for the exercise of prostitution; or

2. urges another person to whom he has furnished a dwelling for the exercise of prostitution to engage in prostitution or exploits the person in that respect,

shall incur the same penalty.

Section 181a Controlling prostitution

(1) Whosoever

1. exploits another person who engages in prostitution; or
2. for his own 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 for that purpose maintains a general relationship with the person beyond a particular occasion shall be liable to imprisonment from six months to five years.

(2) Whosoever impairs another person's personal or financial independence by promoting that person's engagement in prostitution, by procuring sexual relations on a commercial basis, and for that purpose maintains a general relationship with the person beyond a particular occasion shall be liable to imprisonment not exceeding three years or a fine.

(3) Whosoever commits the offences under subsection (1) Nos 1 and 2 above or the promotion under subsection (2) above in relation to his spouse shall incur the penalty under subsections (1) and (2) above.

Section 182 Abuse of juveniles

(1) Whosoever abuses a person under eighteen years of age by taking advantage of an exploitative situation by

1. engaging in sexual activity with the person or suffering the person to engage actively in sexual activity with him or
2. inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on their own body by a third person,

shall be liable to imprisonment not exceeding five years.

(2) The same penalty shall apply to a person over eighteen years of age who abuses a person under eighteen years of age by engaging in

sexual activity with him or to by inducing the person to suffer sexual acts committed by him on their own body for a financial reward.

(3) A person over twenty-one years of age who abuses a person under sixteen years of age by

1. engaging in sexual activity with the person or causing the person to engage actively in sexual activity with him or
2. inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on their own body by a third person,

and thereby exploits the victims lack of capacity for sexual self-determination shall be liable to imprisonment not exceeding three years or a fine.

(4) The attempt shall be punishable.

(5) In cases under subsection (3) above the offence may only be prosecuted upon request unless the prosecuting authority considers *propio motu* that prosecution is required out of special public interest.

(6) In cases under subsections (1) to (3) above the court may order a discharge under these provisions if in consideration of the conduct of the person against whom the offence was committed the harm of the offence is of a minor nature.

Section 184e Unlawful prostitution

Whosoever persistently contravenes a prohibition enacted by ordinance against engaging in prostitution in particular places at all or during particular times of the day, shall be liable to imprisonment not exceeding six months or a fine not exceeding one hundred and eighty daily units.

Section 184f Prostitution likely to corrupt juveniles

Whosoever 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 is likely to morally corrupt these persons, shall be liable to imprisonment not exceeding one year or a fine.

Section 184g Definitions

Within the meaning of this law

1. sexual acts and activities shall only be those which are of some relevance in relation to the protected legal interest in question;
2. sexual acts and activities in the presence of another shall be those which are committed in the presence of another who observes them.

CHAPTER EIGHTEEN

CRIMES AGAINST PERSONAL FREEDOM

Section 232 Human trafficking for the purpose of sexual exploitation

(1) Whosoever exploits another person's predicament or helplessness arising from being in a foreign country in order to induce them to engage in or continue to engage in prostitution, to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on his own person by the offender or a third person shall be liable to imprisonment from six months to ten years. Whosoever induces a person under twenty-one years of age to engage in or continue to engage in prostitution or any of the sexual activity mentioned in the 1st sentence above shall incur the same penalty.

(2) The attempt shall be punishable.

(3) The penalty shall be imprisonment from one to ten years if

1. the victim is a child (section 176(1));
2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(4) The penalty under subsection (3) above shall be imposed on any person who

1. induces another person by force, threat of serious harm or by deception to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above or
2. gains physical control of another person by force, threat of serious harm or deception to induce them to engage in or continue to engage in prostitution or any of the sexual activity mentioned in subsection (1) 1st sentence above.

(5) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsections (3) and (4) above imprisonment from six months to five years.

Section 233a Assisting in human trafficking

(1) Whosoever assists in human trafficking under section 232 or section 233 by recruiting, transporting, referring, harbouring or sheltering another person shall be liable to imprisonment from three months to five years.

(2) The penalty shall be imprisonment from six months to ten years if

1. the victim is a child (section 176(1));
2. the offender through the act seriously physically abuses the victim or places the victim in danger of death; or
3. the offender commits the offence on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

(3) The attempt shall be punishable.

Section 234 Abduction for the purpose of abandonment or facilitating service in foreign military or para-military forces

(1) Whosoever gains physical control of another person by force, threat of serious harm, or deception in order to abandon them in a helpless situation or to introduce them into military or para-military service abroad shall be liable to imprisonment from one to ten years.

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

Section 234a Causing a danger of political persecution through use of force, threats or deception

(1) Whosoever by deception, threat or force transports another into a territory outside the Federal Republic of Germany or causes him to go abroad, or prevents him from returning from abroad and thereby exposes him to the danger of being persecuted for political reasons and, in violation of the principles of the rule of law, of suffering harm to life and limb through violence or arbitrary measures, of being deprived of his freedom or of being seriously prejudiced in his professional or financial circumstances shall be liable to imprisonment of not less than one year.

(2) In less serious cases the penalty shall be imprisonment from three

months to five years.

(3) Whosoever prepares the commission of such an offence shall be liable to imprisonment not exceeding five years or a fine.

Section 235 Abduction of minors from the care of their parents etc.

(1) Whosoever removes from the custody of one or both of his parents or his guardian or denies them access to

1. a person under eighteen years of age by force, threat of serious harm or deception; or
2. a child, without being a relative,

shall be liable to imprisonment not exceeding five years or a fine.

(2) Whosoever

1. removes a child from the custody of one or both of his parents or his guardian in order to take him abroad; or
2. denies access to him abroad after having removed him there or the child having gone there,

shall incur the same penalty.

(3) In cases under subsection (1) No 2 and subsection (2) No 1 above the attempt shall be punishable.

(4) The penalty shall be imprisonment from one to ten years if the offender

1. by the offence places the victim in danger of death or serious injury or of a substantial impairment of his physical or mental development; or
2. commits the offence for material gain or with the intent of enriching himself or a third person.

(5) If by the offence the offender causes the death of the victim the penalty shall be imprisonment of not less than three years.

(6) In less serious cases under subsection (4) above the penalty shall be imprisonment from six months to five years, in less serious cases under subsection (5) above imprisonment from one to ten years.

(7) The abduction may only be prosecuted upon request in cases under subsections (1) to (3) above unless the prosecuting authority considers *proprio motu* that prosecution is required because of special public interest.

Section 236 Child trafficking

(1) Whosoever in gross neglect of his duties of care and education leaves his child, ward or foster child under eighteen years of age with another for an indefinite period for material gain or with the intent of enriching himself or a third person shall be liable to imprisonment not exceeding five years or a fine. Whosoever in cases under the 1st sentence above takes the child, ward or foster child into his home for an indefinite period and awards compensation for it shall incur the same penalty.

(2) Whosoever unlawfully

1. procures the adoption of a person under eighteen years of age; or
2. engages in procurement activity with the aim of a third person taking a person under eighteen years of age into his home for an indefinite period,

and acts for consideration or with the intent of enriching himself or a third person shall be liable to imprisonment not exceeding three years or a fine. Whosoever, as an agent for the adoption of a person under eighteen years of age, grants a financial reward to a person in exchange for the required consent to the adoption shall incur the same penalty. If the offender in cases under the 1st sentence above causes the procured person to be brought into Germany or abroad the penalty shall be imprisonment not exceeding five years or a fine.

(3) The attempt shall be punishable.

(4) The penalty shall be imprisonment from six months to ten years if the offender

1. seeks profit or acts on a commercial basis or as a member of a gang whose purpose is the continued commission of child trafficking or
2. by the act places the child or the procured person in danger of a substantial impairment of his physical or mental development.

(5) The court may in its discretion mitigate the sentence (section 49(2)) for accomplices in cases under subsections (1) and (3) above and for secondary participants in cases under subsections (2) and (3) above, or order a discharge under subsections (1) to (3), if their guilt, taking into consideration the physical or mental welfare of the child or the procured person, is of a minor nature.

Section 237 Forced marriage

(1) Whosoever unlawfully with force or threat of serious harm causes a person to enter into a marriage shall be liable to imprisonment from six months to five years. The act shall be unlawful if the use of force or the threat of harm is deemed inappropriate for the purpose of achieving the desired outcome.

(2) The same penalty shall apply to a person who, for the purposes of committing an offence under subsection (1) above, with force or threat of serious harm or through deception, transports that person, or causes that person to travel, to a territory outside the Federal Republic of Germany, or prevents that person from returning from there.

(3) The attempt shall be punishable.

(4) In less serious cases the penalty shall be imprisonment not exceeding three years or a fine.

Section 239 Unlawful imprisonment

(1) Whosoever imprisons a person or otherwise deprives him of his freedom shall be liable to imprisonment not exceeding five years or a fine.

(2) The attempt shall be punishable.

(3) The penalty shall be imprisonment from one to ten years if the offender

1. deprives the victim of his freedom for more than a week; or
2. by the offence or an act committed during the offence causes serious injury to the victim.

(4) If by the offence or an act committed during the offence the offender causes the death of the victim the penalty shall be imprisonment of not less than three years.

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

Trends:

Since 1995 the Federal Criminal Police Office (Bundeskriminalamt, BKA) has been publishing an annual situation report "Trafficking in Human Beings" (THB).

In 2014, 392 investigations into human trafficking for the purpose of sexual exploitation were concluded, which was about 8 per cent less than in the previous year. The number of investigations is thus clearly below the average value for the last five years (452 investigations). In the course of investigations concluded by the police in 2014, 507 suspects were recorded, i.e. 19 % less than during the previous year (625 suspects).

As in the previous year (28 %), German suspects made up the largest share (24 %). In 2014, 557 victims of human trafficking for the purpose of sexual exploitation were identified, i.e. nearly 3% more than the previous year. The victims were almost exclusively female (95 %).

As in previous years, the lion's share of the victims (90 %) was from Europe. More than two-thirds of all victims were from Eastern and Southeastern Europe, especially from Bulgaria and Romania.

Most of the identified victims of human trafficking from Eastern Europe (mainly Romania and Bulgaria) have a poor economic background and are often members of a family or regional clan structure. Frequently, members of these structures take over the recruitment of the victims and the further logistics. The close association of the victims with these structures, various threat scenarios or the prospect of even a small income are often the main reasons for the victims' refusal to make a statement.

However, the area of trafficking for the purpose of sexual exploitation has a large dark field.

Source: Bundeslagebilder Menschenhandel – 1999-2014, available for download on www.bka.de, but only in German

Contacts:

The Coordination Group Combating Trafficking in Human Beings (Koordinierungskreis gegen Menschenhandel, KOK) is a German NGO network and coordination office against trafficking in human beings. Currently, KOK consists of 37 member organisations across Germany. This is a unique network as it represents a broad variety of different groups, including faith-based organisations and sex workers' rights groups.

KOK coordinates the endeavours and efforts of its member organisations and other stake-holders involved in the issue of human trafficking. It transforms the experiences gained in grassroot counselling centres into political strategies. KOK informs policy makers, scientists, civil society and governmental and intergovernmental stakeholders on the complexity of anti-trafficking policies, and guarantees knowledge sharing across different levels.

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