

# TEMPLATE POLICY PAGE

<b>Category:</b>	<b>Sexual Crime</b>
<b>Country:</b>	<b>Germany</b>
<b>Year:</b>	<b>2016</b>

<b>Main policy page:</b>	Policy in attachment
<b>Relevant legislation:</b>	<p style="text-align: center;"><b>Excerpts from the GERMAN CRIMINAL CODE – provisions potentially applicable to cases of sexual violence – Unofficial translation</b></p> <p><b>CHAPTER THIRTEEN CRIMES AGAINST SEXUAL SELF-DETERMINATION</b></p> <p><b>Section 174</b> Abuse of position of trust</p> <p>(1) Whosoever engages in sexual activity</p> <ol style="list-style-type: none"><li>1. with a person under sixteen years of age who is entrusted to him for upbringing, education or care;</li><li>2. with 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; or</li><li>3. with a person under eighteen years of age who is his biological or adopted child, or that of his spouse, his life partner, or a person living with him in a relationship akin to marriage or life partnership,</li></ol> <p>or allows the ward to engage in sexual activity with himself, shall be liable to imprisonment from three months to five years.</p> <p>(2) Whosoever is entrusted with the upbringing, education or care of persons under eighteen years of age in an institution specified for this purpose, and who</p> <ol style="list-style-type: none"><li>1. engages in sexual activity with a person under sixteen years of age whose legal relationship with the institution serves the person's upbringing, education, or care, or who allows the person to engage in sexual activity with himself; or</li></ol>

2. by exploiting his position, engages in sexual activity with a person under eighteen years of age whose legal relationship with the institution serves the person's upbringing, education, or care, or who allows the person to engage in sexual activity with himself,

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

(3) Whosoever, under the conditions of subsections (1) or (2),

1. engages in sexual activity in the presence of the ward; or
2. induces the ward to engage in sexual activity in his presence,

in order to obtain sexual gratification for himself or for the ward shall be liable to imprisonment of not more than three years or a fine.

(4) The attempt shall be punishable.

(5) In cases under subsection (1) no. 1, or subsection (2) no. 1, or subsection (3) in conjunction with subsection (1) no. 1 or subsection (2) no. 1, the court may order a discharge under this provision if, taking into consideration the conduct of the offender, the harm of the offence is of a minor nature.

#### **Section 176 Child abuse**

(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.

(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.

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

(4) Whosoever

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
  - 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 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 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 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 juvenile person or allowing the juvenile person to engage in sexual activity with himself; or
2. inducing the juvenile person to engage in sexual activity with a third person or to suffer sexual activity performed by a third person,

and thereby exploits the juvenile victim's lack of capacity for sexual self-determination shall be liable to imprisonment of not more than 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 proprio 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.
<b>Trends:</b>	/

<b>Contacts:</b>	/
------------------	---

**Completed template to be sent to the EUCPN Secretariat at [eucpn@ibz.eu](mailto:eucpn@ibz.eu).**