APPENDIX C
THE GERMAN CODE OF CRIMINAL PROCEDURE (*STRAFPROZESSORDNUNG (STPO)*)

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PART I
GENERAL PROVISIONS (*ALLGEMEINE VORSCHRIFTEN*)

CHAPTER ONE
JURISDICTION OF THE COURTS OVER THE SUBJECT MATTER

SECTION 1. DEFINITION OF JURISDICTION AS TO SUBJECT MATTER

The jurisdiction of courts over the subject matter is determined by the Law Concerning the Constitution of Courts (*Gerichtsverfassungsgesetz*).

SECTION 2. JOINDER AND SEVERANCE OF INTERCONNECTED MATTERS

(1) Connected criminal cases that individually would be under the jurisdiction of courts of different categories may be tried jointly by the court of superior jurisdiction. Connected criminal cases of which several would be under the jurisdiction of special penal chambers pursuant to section 74, paragraph (2), section 74a, or section 74c of the Law Concerning the Constitution of Courts, may be tried jointly by the penal chamber that has priority according to section 74e of the Law Concerning the Constitution of Courts.

(2) Such higher court may, by order, separate joint criminal cases for reasons of convenience.

SECTION 3. MATTERS INTERCONNECTED AS TO PERSONS OR SUBJECT MATTER

Cases are connected when a person is accused of several criminal acts or when in case of one act, several persons are accused as perpetrators, participants, or are charged with aiding and abetting, misprision of a felony, or receiving stolen goods.

SECTION 4. SUBSEQUENT JOINDER OR SEVERANCE

(1) The court may, by judicial order, direct the joinder of connected or the severance of joint criminal cases even after the opening of the main proceedings on motion of the public prosecutor, the accused, or *ex officio*.

(2) The court of higher category to whose district the other courts belong is competent to give such order. If there is no such court, the common superior court decides.

SECTION 5. JURISDICTION FOR INTERCONNECTED MATTERS

For the duration of the joinder, the proceedings will be determined by the criminal case related to the court of superior jurisdiction.

SECTION 6. EXAMINATION OF THE COURT'S OWN MOTION

The court shall, *ex officio*, examine its jurisdiction over the subject matter at any stage of the proceedings.

SECTION 6A. JURISDICTION OF SPECIAL CRIMINAL CHAMBERS

The court will, *ex officio*, examine the competence of special criminal chambers according to the provisions of the Law Concerning the Constitution of Courts (sec 74, para (2); secs 74a and 74c of the Law Concerning the Constitution of Courts) prior to the opening of the main proceedings. After that time it may attend to its incompetence only on the objection of the accused. The accused may file the objection at the trial only prior to the commencement of his examination on the charge.

CHAPTER TWO
VENUE

SECTION 7. PLACE OF THE COMMISSION OF THE ACT

(1) Venue is vested in the court in whose district the criminal act was committed.

(2) If essential elements of an offense are established by the contents of a publication appearing within the territorial scope of this Federal law, only the court in whose district the publication appeared shall be considered to have jurisdiction pursuant to paragraph (1). However, in the case of insult, insofar as the prosecution takes place on private complaint, the court in whose district the publication was distributed shall also have jurisdiction when the insulted per-son has his domicile or ordinary place of residence in this district.

SECTION 8. PLACE OF RESIDENCE, PLACE OF ABODE

(1) Venue is also vested in the court in whose district the accused has his place of abode at the time the charges are preferred.

(2) If the accused has no place of abode within the territorial scope of this Federal law, the venue is also determined by his usual place of residence and, when such place of residence is not known, by his last place of abode.

SECTION 9. PLACE OF APPREHENSION

Venue is also vested in the court in whose district the accused was apprehended.

SECTION 10. CRIMINAL ACTS ON GERMAN SHIPS OR AIRCRAFT

(1) If the criminal act was committed on a ship authorized to fly the Federal flag outside the territorial scope of this law, the competent court is the court in whose district the ship's home port is located, or the port within the territorial scope of this law first reached by the ship after the commission of the offense.

(2) Paragraph (1) applies accordingly to aircraft authorized to bear the nationality sign of Germany.

SECTION 10A. ENVIRONMENTAL CRIMES

If no venue has been established for an offense committed within the region of the sea, outside the territorial application of this law, the venue will be Hamburg; the competent district court (*Amtsgericht*) will be the District Court Hamburg.

SECTION 11. GERMAN OFFICIALS ABROAD

(1) In the case of Germans who enjoy the right of ex-territoriality, as well as of officials of the Federal Republic or of a German *Land*, employed abroad, venue is determined by the domicile that they had in Germany. If they had no such domicile, the seat of the Federal Government will be considered their domicile.

(2) These provisions shall not be applied to honorary consuls.

SECTION 12. CONFLICT OF TERRITORIAL COMPETENCE

(1) If several courts have venue according to the provisions of sections 7 through 11, the court that first opened the investigation has priority.

(2) However, the common superior court may assign investigation and decision to another competent court.

SECTION 13. TERRITORIAL COMPETENCE OVER INTERCONNECTED CRIMINAL MATTERS

(1) For connected criminal cases each of which, according to the provisions of sections 7 through 11, would be under the jurisdiction of different courts, venue is vested in each court having jurisdiction over one of the criminal cases.

(2) When several connected criminal cases are pending in different courts, they may be joined in whole or in part in one of the courts by an agreement of these courts on motion of the office of the public prosecutor. When such agreement is not reached, the common superior court, on motion of the public prosecutor or accused, will decide whether and in which court the cases shall be joined.

(3) Cases that have been joined may be separated in the same manner.

SECTION 13A. DETERMINATION OF THE COMPETENT COURT BY THE FEDERAL SUPREME COURT

When venue cannot be vested in any court within the territorial scope of this Federal law, or when such court cannot be ascertained, the Federal Supreme Court (*Bundesgerichtshof*) will decide which court shall have jurisdiction.

SECTION 14. DISPUTES REGARDING COMPETENCE

If there is a controversy concerning the jurisdiction between several courts, the common superior court will decide which court shall conduct the investigation and render the decision.

SECTION 15. IMPEDIMENT OF THE COMPETENT COURT

When a competent court is, in an individual case, legally or factually hindered from exercising its judicial authority or when it is feared that a trial before such a court might endanger the public security, the next superior court shall assign the investigation and decision to an equivalent court of another district.

SECTION 16. OBJECTION OF INCOMPETENCE

The court shall, *ex officio*, examine its local jurisdiction prior to the opening of the main proceedings. After that time it may state its incompetence only on the accused's objection. The accused may file his objection at the trial only prior to the commencement of his examination on the charge.

SECTION 17. (DELETED)

SECTION 18. (DELETED)

SECTION 19. CONFLICTING JUDGMENTS DENYING COMPETENCE

In case several courts (of which one has jurisdiction) have stated in decisions no longer subject to appeal that they lack venue, the common superior court will designate the competent court.

SECTION 20. INDIVIDUAL ACTS OF AN INCOMPETENT COURT

Lack of venue alone is not sufficient to void individual acts of investigation by such a court.

SECTION 21. EMERGENCY POWERS

When there is a danger in delay, a court lacking venue must make preliminary investigations in its district.

CHAPTER THREE
EXCLUSION AND CHALLENGE OF COURT MEMBERS (*AUSSCHLIESSUNG UND ABLEHNUNG DER GERICHTSPERSONEN*)

SECTION 22. DISQUALIFICATION OF A JUDGE

A judge is, by law, barred from exercising judicial authority when he—

1. Himself was injured by the criminal act;

2. Is or was the spouse, life partner, or the guardian of the accused or injured party;

3. Is lineally related, related by marriage; collaterally related to the third degree or related by marriage to the second degree with the accused or the injured party, even if the marriage whereby the relationship by marriage was established no longer exists;

4. Acted in the case as a member of the office of the public prosecutor as a police official, as attorney of the injured party, or as defense counsel;

5. Was heard in the case as a witness or expert.

SECTION 23. DISQUALIFICATION OF JUDGES WHO PARTICIPATED IN PREVIOUS PROCEEDINGS

(1) A judge who participated in a decision that has been contested by way of review (*Rechtsmittel*) is, by law, barred from participating in the decision of a higher court.

(2) A judge who has participated in a decision contested by motion for reopening of the proceedings is, by law, barred from participating in decisions in the reopening proceedings. When the contested decision has been rendered at a court of higher instance, a judge who has participated in an original decision of a lower court is barred. Sentences 1 and 2 apply accordingly to the participation in decisions to prepare the reopening of the proceedings.

SECTION 24. CHALLENGE OF A JUDGE

(1) A judge may be challenged for fear of bias, as well as when he is barred by law from exercising judicial authority.

(2) Challenge for fear of bias is proper when there is reason to distrust the impartiality of a judge.

(3) The office of the public prosecutor, the private complainant, and the accused may exercise the right of challenge. The court members appointed to participate in the decision shall be named on the request of the party entitled to challenge.

SECTION 25. PERIOD DURING WHICH TO CHALLENGE

(1) A judge may be challenged for fear of bias prior to the commencement of the examination of the first accused concerning his personal circumstances; and, in the main hearing on the appeal, or on the appeal on issues of law (*Revision*), prior to the statements of the reporting judge. All reasons for challenge shall be stated at the same time.

(2) After this time, a judge may be challenged only when the—

1. Circumstances on which the challenge is based have occurred later or have become known to the person entitled to challenge at a later date; and

2. Challenge is claimed immediately.

After the last word of the accused, a challenge is no longer permissible.

SECTION 26. PROCEDURE CONCERNING CHALLENGING

(1) The motion for challenge shall be filed with the court of which the judge is a member; it may be made orally to be recorded by the court registry; section 257a does not apply.

(2) The grounds for challenge, and in the cases of section 25, paragraph (2), the conditions for submitting the request in due time must be substantiated. The taking of an oath to support a challenge is not permitted. To support a challenge, reference may be made to the testimony of the challenged judge.

(3) The challenged judge shall give his official comments on the grounds for challenge.

SECTION 26A. IMPROPER CHALLENGE

(1) The challenge of a judge shall be denied by the court as being inadmissible when—

1. The challenge is not timely;

2. There is no disclosure of the reason for the challenge or of the means by which the grounds for the challenge could be substantiated, or

3. It is obvious that the challenge is made just to delay the proceedings or for purposes that are irrelevant to the proceedings.

(2) The court shall render the decision with respect to a denial pursuant to paragraph (1) without the challenged judge being excluded. In a case under paragraph (1), number 3, a unanimous decision and a disclosure of the circumstances that constitute the grounds for the denial are required. When a designated or requested magistrate, an inquiring magistrate in preliminary proceedings, or a criminal court judge sitting alone is challenged, he shall, himself, decide whether the challenge shall be denied as improper.

SECTION 27. ACCEPTANCE OF THE CHALLENGE

(1) When the challenge is not denied as improper, the court of which the challenged person is a member will decide on the petition for challenge without the challenged person's participation.

(2) When a judge of the penal chamber (*Strafkammer*) of the state court (*Landgericht*) deciding on the case is challenged, the penal chamber, as organized for decisions made outside the trial, will decide the issue.

(3) When a judge at the district court is challenged, another judge of this court will rule. A decision is not required when the person challenged considers the request for challenge to be substantiated.

(4) When the court that is to rule lacks a quorum after retirement of the challenged judge, the next superior court will decide.

SECTION 28. REVIEW

(1) An order declaring a challenge well-founded is not subject to appeal.

(2) Immediate recourse (*sofortige Beschwerde*) may be taken from an order rejecting the challenge as inadmissible or unfounded. When the order concerns a deciding judge, it can be contested only with the judgment.

SECTION 29. URGENT ACTS OF THE CHALLENGED PERSON

(1) A challenged judge shall, prior to the decision on the motion for challenge, perform only such acts which may not be delayed.

(2) When a judge is challenged at the trial and when the decision on the challenge (secs 26a and 27) would require an interruption of the trial, it may be continued as long as a decision on the challenge is possible without delaying the trial; a decision on the challenge shall be made at the latest until the commencement of the day following the next trial day, and always prior to the commencement of the final arguments. When the challenge is declared to be well-founded and when the trial must not be suspended for this reason, that part of the trial completed after submission of the request for challenge shall be repeated; this does not apply to such acts that do not permit a delay. After submission of the request for challenge, decisions that may also be made outside the trial may be rendered with the participation of the challenged person only when they do not permit any delay.

SECTION 30. REPORT BY THE JUDGE

The court competent for the decision on a motion for challenge shall decide also in cases in which, although a motion for challenge has not been made, a judge reports circumstances that might justify being challenged or when for other reasons doubts arise as to whether a judge is barred by law.

SECTION 31. LAY JUDGES, COURT CLERKS, AND OTHERS

(1) The provisions of this chapter are correspondingly applicable to lay judges (*Schöffen*) as well as to clerks of the court registry and to other persons assisting as recorders.

(2) The decision will be made by the presiding judge. In the major penal chamber (*Große Strafkammer*) of the state court and the criminal court sitting with 3 professional judges and 2 lay judges (*Schwurgericht*), the judges will rule. When a recorder has been assigned to a judge, the latter will decide on his challenge or disqualification.

SECTION 32. (DELETED)

CHAPTER FOUR
COURT DECISIONS AND COMMUNICATION BETWEEN THE PARTIES INVOLVED

SECTION 33. HEARING THE PERSONS INVOLVED

(1) A decision of the court rendered in the course of the trial shall be issued after hearing the persons involved.

(2) A decision of the court rendered outside a trial shall be issued after written or oral declaration of the office of the public prosecutor.

(3) When a decision has been made pursuant to paragraph (2), another person involved shall be heard before facts or evidentiary conclusions about which he has not yet been heard are used to his detriment.

(4) When pretrial detention, confiscation, or other measures have been ordered, paragraph (3) is not applicable if the prior hearing would endanger the purpose of such an order. Provisions that govern the hearing of the persons concerned are not affected by paragraph (3).

SECTION 33A. BELATED HEARING

If the court has violated the right of a person concerned to be heard before the court in a way relevant to the issues of the case, and he is not entitled to recourse (*Beschwerde*) or to any other legal remedy against the decision, the court shall, in case the person concerned is still adversely affected by it, either ex officio or upon motion issue a decision reinstating the proceedings to the condition which existed prior to the decision. Section 47 shall apply accordingly.

SECTION 34. GROUNDS FOR DECISION

Decisions that are subject to attack by way of review, as well as those denying a motion, shall include the reasons therefore.

SECTION 34A. EFFECTIVENESS BY ORDER

When, after recourse taken in due time the contested decision becomes immediately effective by an order, the effectiveness is considered to have occurred with the expiration of the day on which the order was given.

SECTION 35. ANNOUNCEMENT OF DECISION

(1) Decisions that are made in the presence of the person to whom they refer shall be announced to him orally. On request a copy shall be given to him.

(2) Other decisions will be made known by service thereof. If the announcement of a decision does not cause a period of limitation to run, an informal notification is sufficient.

(3) The served writ shall be read to a person in confinement on his request.

SECTION 35A. INSTRUCTIONS AS TO MODES OF REVIEW

On notification of a decision that is subject to appeal by way of review within a limited period of time, the person concerned shall be instructed of the possibilities to contest such decision and of time limits and forms provided therefor. When appeal is permissible against a judgment, the accused on trial shall also be instructed regarding the legal consequences of section 40, paragraph (3), and sections 329 and 330. If prior to the judgment an agreement was reached (sec 257c) the person concerned shall also be instructed that he is nonetheless independent in his decision to file an appeal.

SECTION 36. SERVICE AND EXECUTION OF DECISIONS

(1) The service of decisions is ordered by the presiding judge. The court registry takes care that service is effected.

(2) Decisions requiring execution shall be submitted to the office of the public prosecutor, which will take necessary action. This does not apply to decisions that concern the order at the sessions.

SECTION 37. PROCEDURE CONCERNING SERVICE

(1) The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly to the procedure for service.

(2) When service intended for one person involved is effected on several persons entitled to receipt, the period will be fixed according to the service last effected.

SECTION 38. DIRECT SUMMONS

Persons participating in criminal proceedings who have the authority to summon witnesses and experts directly shall charge the bailiff with the service of the summons.

SECTION 39. (DELETED)

SECTION 40. SERVICE BY PUBLICATION

(1) If service on an accused, who has not yet been served a summons for the main trial, cannot be effected in Germany in the prescribed manner and compliance with the provisions for service abroad appears impracticable or presumably unsuccessful, service by publication is permissible. Service is considered completed if two weeks have passed since the notification was posted.

(2) If the summons for the main trial was already previously served on the accused, service by publication on him is permissible if it cannot be effected in Germany in the prescribed manner.

(3) In appellate proceedings initiated by the accused, service by publication is already admissible when service cannot be effected at the address where service was last effected or that was last indicated by the accused.

SECTION 41. SERVICE ON THE OFFICE OF THE PUBLIC PROSECUTOR

Service on the office of the public prosecutor shall be made by submittal of the original writ to be served. When a period of limitation begins to run on the service, the public prosecutor shall note the day of submittal on the original.

SECTION 41A. ELECTRONIC DOCUMENT

(1) Statements, motions or their justification submitted to the court or the office of the public prosecutor which, in accordance with this law, must be expressly in writing or be signed, may be submitted as electronic documents if they are provided with a qualified electronic signature pursuant to the Law on Signatures (*Signaturgesetz*) and are suitable for processing by the court or the office of the public prosecutor. Beside the qualified electronic signature the statutory order pursuant to paragraph (2) may provide for another secure procedure ensuring the authenticity and integrity of the document. An electronic document is considered received as soon as the office of the court or office of the public prosecutor identified as recipient has recorded it. If a transmitted electronic document cannot be processed, the sender shall be informed immediately with statement of the applicable technical conditions. A copy for the files shall be made immediately of the electronic document.

(2) By statutory order, the Federal government and the governments of the *Länder* shall determine for their area of responsibility the point in time from which the courts and public prosecutor's offices will start to accept electronic documents, as well as the format suitable for processing of the documents. The *Länder* governments may confer the authorization by statutory order to the judicial administration agencies. Acceptance of electronic documents may be limited to individual courts, or public prosecutor's offices, or proceedings.

CHAPTER FIVE
PERIODS OF LIMITATION AND *RESTITUTIO IN INTEGRUM* (REINSTATEMENT INTO THE *STATUS QUO ANTE*)

SECTION 42. PERIODS FIXED BY DAYS

In calculating a period of limitation fixed by days, the day on which the date or the event falls designating the beginning of the period will not be counted.

SECTION 43. PERIODS OF LIMITATION FIXED BY WEEKS AND MONTHS

(1) A period of limitation fixed by weeks or months ends with the close of the day of the last week or the last month that, by its name or number, corresponds with the day on which the period began; if the last month is lacking this day, the period ends with the close of the last day of this month.

(2) If the end of a period of limitation falls on a Sunday or a public holiday, or a Saturday, the period ends with the close of the next workday.

SECTION 44. REINSTATEMENT

When a person was prevented from observing a period without fault of his own, he shall be granted *restitutio in integrum* (reinstatement in the status quo ante) on request. The failure to observe the period for filing an appeal shall not be considered a fault when instructions pursuant to section 35a, sentences 1 and 2, section 319, paragraph (2), third sentence, or pursuant to section 346, paragraph (2), third sentence, have not been given.

SECTION 45. PETITION FOR REINSTATEMENT

(1) The motion for *restitutio in integrum* shall be filed within 1 week after the termination of the reason for non compliance with the court where the period should have been observed. The period is considered observed, if the motion is filed in due time with the court that decides on the request.

(2) The facts justifying the motion shall be substantiated when the motion is filed or in the proceedings concerning the motion. The omitted act shall be completed within the period the motion may be filed. When this has been done, *restitutio in integrum* may also be granted without a motion.

SECTION 46. DECISION AND REVIEW

(1) The motion shall be decided by the court that would have been compete tent to decide on the case itself if action had been taken within the specified time.

(2) A decision in favor of the motion is not subject to appeal.

(3) Immediate recourse may be taken from a decision against a motion.

SECTION 47. NO DELAY OF EXECUTION

(1) The motion for *restitutio in integrum* does not suspend the execution of a court decision.

(2) The court, however, may order postponement of the execution.

(3) If the reinstatement interferes with the finality of a court decision, orders of arrest and orders of commitment as well as other orders which existed at the time the decision became final will become effective again. In case of an order of arrest or commitment, the court granting reinstatement to the status quo ante shall order the revocation of such order if it turns out ipso jure that its prerequisites no longer exist. Otherwise, the court competent pursuant to section 126, paragraph (2), shall immediately initiate a review under writ of habeas corpus/of the detention order.

CHAPTER SIX
WITNESSES

SECTION 48. SUMMONS OF WITNESSES

(1) It is the duty of witnesses to appear before the judge at the date set for their examination. It is their duty to testify, unless there is an exception permitted by law.

(2) Summons of witnesses shall include information regarding procedural provisions serving the interest of the witness, available offers for witness care and the legal consequences of nonappearance.

SECTION 49. EXAMINATION OF THE FEDERAL PRESIDENT

The president of the Federal Republic will be heard in his residence. He will not be summoned to the trial. His questioning by the court shall be read at the trial.

SECTION 50. EXAMINATIONS OF MEMBERS OF THE GOVERNMENT OR OF PARLIAMENT

(1) Members of the Federal Parliament (*Bundestag)*, Federal Council (*Bundesrat*), State parliament *(Landtag)* or a second house will be heard at the place of assembly when actually present there.

(2) Members of the Federal Government or of a *Land* government will be heard at the seat of their government office or, if they are away from there, at their place of abode.

(3) Deviations from the foregoing provisions in case of members of—

- A body mentioned in paragraph (1), are subject to the approval of that body;

- The Federal Government, are subject to the approval of the Federal Government;

- A *Land* government, are subject to the approval of the *Land* government.

(4) Members of the legislative bodies mentioned in paragraph (1) and members of the Federal Government or of a *Land* government, if they were heard outside the trial, will not be summoned to it. Their questioning by the court shall be read at the trial.

SECTION 51. CONSEQUENCES OF NONAPPEARANCE

(1) A witness who fails to appear although he was properly summoned shall be charged with the costs attributable to his failure to appear. At the same time, a fine will be imposed on him and, in case the fine cannot be collected, arrest will be ordered. A witness may also be brought before the court by force. Section 135 applies accordingly. In case of repeated nonappearance the penalty may be imposed a second time.

(2) Costs will not be imposed and a fine will not be assessed if the witness has a sufficient excuse for his nonappearance. If such excuse is not made in time pursuant to first sentence, the imposition of the costs and the assessment of a fine will be

revoked only when it is made credible that the delay of the excuse is not attributable to the fault of the witness. If the witness will be sufficiently excused afterwards, the orders given will be revoked under the prerequisites of second sentence.

(3) The authority to order such measures is also vested in the judge in the preliminary proceedings as well as in a commissioned or requested judge (*beauftragter und ersuchter Richter*).

SECTION 52. RIGHT TO REFUSE TESTIMONY ON THE PART OF RELATIVES

(1) The following persons may refuse to testify:

1. The fiancé (or fiancée) of the accused or the person to whom the accused has made the promise to establish a partnership for life;

2. The spouse of the accused, even if the marriage no longer exists;

2a. The life partner of the accused, even if the life partnership no longer exists;

3. A person who is lineally related, related by marriage, collaterally related to the third degree, or related by marriage to the second degree with the accused.

(2) If minors due to lack of maturity or minors or persons placed under guardianship for mental illness or mental deficiency have no sufficient understanding of the importance of their right to refuse testimony, testimony may be taken from those persons only when they are willing to testify and when their legal representative also agrees. If the legal representative is the defendant himself he may not decide on the exercise of the right to refuse testimony; the same applies to the parent who is not accused, when both parents are entitled to legal representation.

(3) Persons entitled to refuse to testify, in the cases of paragraph (2) also their representatives authorized to decide on the exercise of the right of a witness to decline testimony, shall be instructed concerning their right prior to each hearing. They may recall the waiver of this right during the interrogation.

SECTION 53. RIGHT TO REFUSE TESTIMONY FOR PROFESSIONAL REASONS

(1) The following categories of persons may also decline to testify:

1. Clergymen, concerning the information that was entrusted to them or became known to them in their capacity as spiritual advisers;

2. Defense counsels of the accused, concerning the information that was entrusted to them or became known to them in this capacity;

3. Attorneys-at-law, patent attorneys, notaries, economic advisors, sworn certified accountants (sworn auditors), and tax advisers, doctors, dentists, psychological psychotherapists, psychotherapists for children and juveniles, pharmacists, and midwives, concerning the information that was entrusted to them or became known to them in their professional capacity; other members of a bar association are equal to attorneys.

3a. Members or representatives of a recognized advisory agency pursuant to sections 2 and 8 of the Law on Conflict Situations in Connection with a Pregnancy (*Schwangerschaftskonfliktgesetz*), concerning the information that was entrusted or became known to them in their professional capacity;

3b. Advisers on questions of drug addiction in an advisory office recognized or established by an authority, corporation, institution, or foundation under public law, concerning the information that was entrusted to them or became known to them in their capacity as advisers.

4. Members of the German Federal Parliament, the Federal Assembly (*Bundesversammlung*), the European Parliament from the Federal Republic of Germany, or members of a State parliament, concerning persons who entrusted to them facts in their capacity as members of these bodies or to whom they entrusted facts in this particular capacity, as well as concerning the facts themselves;

5. Persons who, due to their profession, participate or have participated in the preparation, production or dissemination of printed work, radio broadcasts, telephone reports or information and communication services with the purpose to provide information and form opinions.

The persons designated in sentence 1, number 5 may refuse to give testimony on the person of the author or sender of contributions and documents or of any other informant, as well as on the information provided to them in consideration of their profession, on their contents as well as on the contents of materials they prepared themselves and the subject-matter of profession-related observations. This applies only if these are contributions, documents, information and material for the editorial part or information and communication services reviewed by an editor.

(2) The persons specified in paragraph (1), sentence 1, numbers 2 to 3b, may not refuse to testify if they are released from their obligation of secrecy. The privilege from testifying of those persons designated in paragraph 1, sentence 1, number 5 about the contents of materials prepared by them and the subject matter of pertinent observations does not apply if the testimony is to contribute to the detection of a criminal act or if the subject matter of the investigation is:

1. A criminal act of treasonable endangerment of peace and endangerment of the democratic constitutional state, or an act of treason and endangerment of the external security (secs 80a, 85, 87, 88, 95, also in conjunction with secs 97b, 97a, 98 to 100a of the German Criminal Code (*Strafgesetzbuch*)),

2. A criminal act against sexual self-determination pursuant to sections 174 to 176 and 179 of the German Criminal Code, or

3. Money laundering, concealing of illegally obtained assets pursuant to section 261, paragraphs (1) to (4) of the German Criminal Code

and the investigation of the facts or determination of the place of abode of the accused would be futile or much more difficult if other means were used. The witness may, however, also in these cases refuse to give testimony if it would result in the disclosure of the person of the author or sender of contributions and documents or of the other informant, or of the information or its contents provided to him based on his profession pursuant to paragraph (1), sentence 1, number 5.

SECTION 53A. RIGHT TO REFUSE TESTIMONY ON THE PART OF ASSISTANTS

(1) Assistants and persons being trained for their profession who participate in their respective professional activities will be considered equivalent to the persons specified in section 53, paragraph (1), sentence 1, numbers 1 to 4. The persons specified in section 53, paragraph (1), sentence 1, numbers1 to 4, will decide whether these assistants should exercise their right to refuse to testify, except when such a decision cannot be obtained within a reasonable length of time.

(2) The release from the obligation of secrecy (sec 53, para (2), sent 1) will also apply to the assistants.

SECTION 54. OFFICIALS' DUTY TO OBSERVE SECRECY

(1) The special provisions of law concerning public officials will apply to the hearing of judges, officials, and other persons of the civil service as witnesses concerning circumstances covered by their official obligation of secrecy, as well as to the permission to testify.

(2) Members of the Federal Parliament, a Land parliament, the Federal Government (*Bundesregierung*), or a State government (*Landesregierung*) as well as the employees of a parliamentary group of the Federal Parliament or a State parliament are subject to the special provisions provided for them.

(3) The Federal President (*Bundespräsident*) may refuse to testify if his testimony would be disadvantageous to the welfare of the Federal Republic or of a German *Land*.

(4) These provisions shall apply also in the event the above mentioned persons are no longer in the civil service or employees of a parliamentary group, insofar as the pertinent facts occurred during their time of service or employment or as member of parliament or became known to them during such time.

SECTION 55. RIGHT TO REFUSAL OF INFORMATION

(1) Any witness may refuse to answer any questions the reply to which would subject him or one of the relatives specified in section 52, paragraph (1), to prosecution for an offense or a violation of good order.

(2) The witness shall be informed of his right to refuse to answer.

SECTION 56. SHOWING PROBABILITY OF REASONS FOR REFUSAL

The reason for which the witness in the cases of sections 52, 53, and 55 refuses to testify shall be substantiated on request. An assurance of the witness confirmed by oath will be sufficient.

SECTION 57. INSTRUCTION REGARDING OATH

Before the interrogation, witnesses shall be admonished to tell the truth and advised of the legal consequences under criminal law if they make an incorrect or incomplete statement. They will be informed of the possibility to administer an oath to them. In case an oath is administered they shall be advised of the importance of the oath as well as of the option to choose between the oath with religious affirmation or without religious affirmation.

SECTION 58. EXAMINATION, CONFRONTATION

(1) Witnesses will be heard individually and in the absence of those witnesses who will be heard later.

(2) A confrontation with other witnesses or with the accused in the preliminary proceedings is permitted if this is required for the further proceedings.

SECTION 58A. RECORDING OF THE EXAMINATION

(1) The hearing of witnesses can be recorded on video or audio tapes. It shall be recorded if—

1. This is required in case of persons under 18 years of age who were injured by the criminal act, in order to safeguard their interests worthy of protection, or

2. It must be expected that the witness cannot testify at the main trial and the recording is necessary to try to ascertain the truth.

(2) Video and audio recordings may only be used for the purpose of criminal prosecution and only to the extent necessary to ascertain the truth. Section 101, paragraph (8), shall apply accordingly. Sections 147 and 406e shall apply accordingly with the proviso that copies of the recording may be provided to persons entitled to inspect files. The copies may neither be duplicated nor passed on. They shall be handed over to the office of the public prosecutor as soon as there is no legitimate interest in their further use. Making available of the recording or providing of copies to any other than the above designated agencies requires the consent of the witness.

(3) If a witness objects to making available a copy of the recording of his examination pursuant to paragraph (2), sentence 3, a written transcript will be made available to the persons entitled to inspect files in accordance with sections 147 and 406e instead. The person preparing the transcript shall certify the correctness of the transcript in addition to signing it. The right to view the recording in accordance with sections 147 and 406e shall remain unaffected. The witness shall be advised of his right to object pursuant to sentence 1.

SECTION 59. OATH

(1) Witnesses will only be put under oath if the court at its discretion considers it necessary due to the decisive relevance of the statement or in order to obtain a true statement. The reason why the oath is administered to a witness must not be stated in the record, unless the witness is interrogated outside the main trial.

(2) An oath will be administered to witnesses individually and after they have been heard. Unless provided otherwise, the oath will be administered in the course of the main trial.

SECTION 60. PROHIBITION OF OATH

An oath shall not be administered to persons who—

1. At the time of the hearing, have not yet completed the age of 18 or who do not have a sufficient concept of the essence and importance of the oath due to their deficient intellectual maturity, a mental illness or a mental or psychological handicap.

2. Are suspected of having committed the act that forms the subject of the investigation, of having participated in it, or who are suspected of aiding and abetting, misprision of felony, or receiving stolen goods or who were already sentenced for such acts.

SECTION 61. RIGHT OF REFUSAL TO TAKE AN OATH

The relatives of the accused designated in section 52, paragraph (1), have the right to refuse confirming their testimony by oath; they shall be advised accordingly.

SECTION 62. ADMINISTERING AN OATH IN PRELIMINARY PROCEEDINGS

An oath shall be administered in the preliminary proceedings only if—

1. There is danger in delay, or

2. It can be expected that the witness will be unavailable at the trial

and the prerequisites of section 59, paragraph (1), exist.

SECTION 63. OATH ADMINISTERED IN AN INTERROGATION BY A COMMISSIONED JUDGE

If a witness is interrogated by a commissioned or requested judge, the oath shall be administered to the extent this is permissible if it is so requested in the commission or request of the court.

SECTION 64. WORDING OF OATH

(1) An oath with religious affirmation is administered in such a way that the judge addresses the following words to the witness:

"You swear by God the Almighty and Omniscient that you have spoken the pure truth to the best of your knowledge and have not concealed anything"

whereupon the witness says the words:

"I do swear it, so help me God."

(2) The oath without religious affirmation is administered in such a way that the judge addresses the following words to the witness:

"You swear that you have spoken the pure truth to the best of your knowledge and have not concealed anything"

whereupon the witness says the words:

"I do swear it."

(3) If a witness indicates that as a member of a religious society or congregation he wants to use a solemn affirmation of such society or congregation, he may add it to the oath.

(4) The person swearing the oath shall raise his right hand when speaking the oath.

SECTION 65. SOLEMN AFFIRMATION DEEMED EQUIVALENT TO AN OATH

(1) If the witness states that he does not want to swear an oath for reasons of faith or conscience, he shall affirm the truth of the testimony. The affirmation is equivalent to the oath; the witness shall be advised of this fact.

(2) The truth of the testimony is affirmed in such a way that the judge addresses the following words to the witness:

"You are aware of your responsibility before court and affirm that you have spoken the pure truth to the best of your knowledge and have not concealed anything"

whereupon the witness says: "Yes."

(3) Section 64, paragraph (3), applies accordingly.

SECTION 66. OATH TAKEN BY A PERSON WITH A HEARING OR SPEECH IMPEDIMENT

(1) A person with a hearing or speech impediment may take the oath according to his choice by speaking the wording of oath, by writing down the wording of oath and signing it, or with the assistance of a person who ensures communication and is provided by the court. The court shall make available the necessary technical devices. The person with the hearing or speech impediment shall be advised of his right to choose.

(2) The court may demand that the oath be taken in writing or order the assistance of a person ensuring communication if the person with a hearing or speech impediment has failed to make use of his right to choose pursuant to paragraph (1) or taking of an oath in the form selected pursuant to paragraph (1) is not possible at all or only with a disproportionate effort.

(3) Sections 64 and 65 apply accordingly.

SECTION 67. RELIANCE ON PRIOR OATH

If a witness, after having been heard under oath, is heard a second time in the same preliminary proceedings or main proceedings, the judge, instead of administering a second oath, may have the witness confirm the correctness of his statement by reference to the oath previously taken.

SECTION 68. EXAMINATION AS TO WITNESS IDENTITY AND PERSONAL CIRCUMSTANCES

(1) The examination starts with the witness being asked to state his first name, last name, name at birth, age, profession and place of residence. A witness who made observations in an official capacity may state the place of office instead of the place of residence.

(2) Also, a witness shall be permitted to state the place of business or office or another address for service of a court summons if there is substantial reason for concern that by stating the place of residence a legally protected interest of the witness or another person will be jeopardized or that witnesses or another person will be influenced in a dishonest manner. In the main trial, the presiding judge shall permit the witness not to state his place of residence, if the prerequisites stated in sentence 1 are fulfilled.

(3) If there is substantial reason for concern that the life, limb or freedom of the witness or another person will be jeopardized by disclosing his identity, place of residence, or place of abode, the witness may be permitted to make no statement on his personal data or only about a previous identity. However, when asked in the main trial, he must state in which capacity he learned about the facts that he is testifying to.

(4) If there is evidence to indicate that the prerequisites of paragraph (2) or (3) are fulfilled, the witness shall be informed about the authorizations provided in those paragraphs. In case of paragraph (2) the witness shall be rendered assistance in naming an address for service. The documents by which establishment of the place of residence or identity of the witness is ensured will be kept in custody of the public prosecutor's office. They shall be included in the files only when the concern about the endangerment no longer exists.

(5) Paragraphs (2) through (4) also apply after completion of the witness examination. To the extent the witness was permitted not to disclose data, it shall be ensured in case of information provided from or inspection of the files, that these data are not made known to other persons, unless it appears that an endangerment as described in paragraphs (2) and (3) can be excluded.

SECTION 68A. QUESTIONS CONCERNING DISHONORING FACTS AND PREVIOUS CONVICTIONS

(1) Questions concerning facts that might dishonor the witness or a person who is his relative within the meaning of section 52, paragraph (1), or that concern their personal sphere of life should be asked only if essential.

(2) To the extent it is necessary, questions concerning credibility of the witness in the subject matter, in particular concerning his relationship to the accused or the injured person shall be asked. A witness should only be questioned about any previous punishments if their determination is necessary to decide whether the prerequisites of section 60, number 2, exist or in order to judge his credibility.

SECTION 68B. ASSIGNMENT OF COUNSEL

(1) Witnesses may obtain assistance from an attorney. A legal counsel who appeared for the examination of the witness is allowed to be present. He can be excluded from the examination if certain facts indicate that his presence would substantially impair the proper taking of evidence. This is normally the case if, based on particular facts, it must be assumed that the—

1. Counsel is involved in the offense to be examined or in acting as an accessory after the fact, obstruction of criminal prosecution or receiving of stolen property in connection with the act,

2. Testimony of the witness is influenced by the fact that the counsel appears not to be exclusively committed to the interests of the witness, or

3. Counsel uses the knowledge obtained in the course of the examination for acts of collusion within the meaning of section 112, paragraph (2), number 3, or passes it on so that the purpose of the investigation is jeopardized.

(2) A witness who does not have a legal counsel for his examination and whose interests worthy of protection cannot be taken into account in any other way shall be assigned a counsel for the duration of the examination if special conditions exist leading to an incapacity of the witness to safeguard his rights during the examination. Section 142, paragraph (1), applies accordingly.

(3) Decisions based upon paragraph (1), sentence 3, and paragraph (2), sentence (1), cannot be appealed. The reasons for them shall be documented in the file if this does not jeopardize the purpose of the investigation.

SECTION 69. EXAMINATION AS TO SUBJECT MATTER

(1) The witness shall be directed to state coherently all he knows about the subject of his questioning. The subject of the investigation and the person of the accused, if there is an accused, shall be specified to the witness before his examination.

(2) If so required, further questions shall be asked in order to clarify and complete the statement, as well as to explore the grounds on which the knowledge of the witness is based.

(3) The provisions of section 136a are correspondingly applicable to the examination of a witness.

SECTION 70. REFUSAL WITHOUT REASON TO TESTIFY OR TAKE OATH

(1) A witness who without legal reasons refuses to testify or to take an oath shall be sentenced to pay the costs caused by this refusal. At the same time a disciplinary fine (*Ordnungsgeld*) will be imposed on him and in case the fine cannot be collected, detention will be ordered.

(2) Detention may also be ordered to force a witness to testify; however, such detention shall not extend beyond the particular proceeding, or the time of 6 months.

(3) The judge in the preliminary proceedings and any commissioned or requested judge also have the authority to take these measures.

(4) If these measures were once taken, they may not be repeated in the same proceedings or in other proceedings when the same act is the subject of these proceedings.

SECTION 71. WITNESS FEES

The witness will be compensated pursuant to the Law on Remuneration and Compensation in Connection with Court Proceedings (*Justizvergütungs- und -entschädigungsgesetz)*.

CHAPTER SEVEN
EXPERTS AND INSPECTION (*SACHVERSTÄNDIGE UND AUGENSCHEIN*)

SECTION 72. APPLICATION OF PROVISIONS CONCERNING WITNESSES

Chapter six concerning witnesses shall be correspondingly applicable to experts, except as otherwise provided by the following sections.

SECTION 73. SELECTION OF EXPERTS

(1) The judge shall select the experts to be consulted and shall determine their number. He shall agree with them on a period within which the opinions may be rendered.

(2) If experts are officially appointed for certain kinds of opinions, other persons should be selected only if this is required by special circumstances.

SECTION 74. CHALLENGE

(1) An expert may be challenged for the same reasons that justify the challenge of a judge. The fact, however, that the expert was heard as a witness shall not be a reason for challenge.

(2) The office of the public prosecutor, the private complainant, and the accused have the right to challenge. The appointed experts shall be made known to the person entitled to challenge if there are no opposing circumstances.

(3) The ground for challenge shall be substantiated; taking of an oath to support a challenge is not permitted.

SECTION 75. DUTY TO RENDER OPINION

(1) The person appointed as an expert must comply with the appointment: if he has been officially appointed to render opinions of the required kind; or if he publicly and professionally exercises a science, art, or trade, the knowledge of which is a prerequisite for the opinion; or if he is officially appointed or authorized to exercise such profession.

(2) The obligation to render an opinion is also incumbent on a person who stated his willingness to do so before the court.

SECTION 76. PRIVILEGE TO REFUSE TO RENDER OPINION

(1) An expert may refuse to render an opinion for the same reasons for which a witness may refuse to testify. An expert may also be released for other reasons from his obligation to render an opinion.

(2) The special provisions of law concerning civil servants will apply to the hearing of judges, officials, and other persons of the civil service as experts. Members of the Federal Government or of a *Land* government are subject to the special provisions provided for them.

SECTION 77. CONSEQUENCES OF DISOBEDIENCE

(1) In case of nonappearance or refusal of an expert obligated to render an expert opinion he will be required to pay the costs caused by his nonappearance or refusal. At the same time a disciplinary fine will be imposed on him. In case of repeated disobedience the fine may be assessed a second time in addition to the costs.

(2) If an expert obligated to render the opinion refuses to agree on an adequate period pursuant to section 73, paragraph (1), second sentence, or if he fails to observe the period agreed on, a disciplinary fine may be imposed on him. The assessment of a disciplinary fine must be preceded by an admonition assessing an extension of a period. In case of repeated failure to observe the period the disciplinary fine may be assessed again.

SECTION 78. JUDICIAL DIRECTION

The judge shall guide the experts in preparing their opinions so far as deemed necessary by him.

SECTION 79. OATH OF EXPERT

(1) Administration of an oath to an expert is left to the discretion of the court.

(2) The oath will be given after the opinion was given; it will contain the assurance that the expert gave his opinion impartially and to the best of his knowledge and belief.

(3) If the expert is generally sworn to give opinions of the kind concerned, a reference to his oath will be sufficient.

SECTION 80. PREPARATION OF OPINION

(1) The expert may, on his demand, be given further details for the preparation of his opinion by examining witnesses or the accused.

(2) For the same purpose, he may be allowed to examine the file, to be present at the hearing of the witnesses or of the accused, and to address questions to them directly.

SECTION 80A. CONSULTATION DURING THE PREPARATORY PROCEEDINGS

An expert should be given the opportunity to prepare his opinion to be rendered at the main trial during the course of the preparatory proceedings if it is expected that the commitment of the accused to a psychiatric hospital, to an institution for the cure of alcoholics or drug addicts or security detention will be ordered.

SECTION 81. OBSERVATIONS FOR THE DETERMINATION OF THE ACCUSED'S MENTAL CONDITION

(1) For the preparation of an opinion on the mental condition of the accused, the court may, after hearing an expert and the defense counsel, order that the accused be brought to a public psychiatric hospital for observation.

(2) The court will issue the order pursuant to paragraph (1) only if the accused is strongly suspected of the act. The court may not issue this order if it is out of proportion to the importance of the matter or to the punishment or to the measure of reform and prevention to be expected.

(3) In the preliminary proceedings that court will decide which would be competent for the opening of the trial.

(4) Immediate recourse from the decision is permitted. It has a delaying effect.

(5) The commitment to a psychiatric hospital pursuant to paragraph (1) may not exceed a total period of 6 weeks.

SECTION 81A. PHYSICAL EXAMINATION, BLOOD TEST

(1) A physical examination of the accused may be ordered in order to obtain facts, which are relevant for the proceedings. For this purpose, the taking of blood samples and other bodily interventions that are made by a physician according to the rules of medical science for the purpose of examination are permitted without the consent of the accused provided his health is not endangered thereby.

(2) The authority to give such order is vested in the judge and, if delay would endanger the success of the examination, also in the public prosecutor and his investigating personnel (sec 152 of Law Concerning the Constitution of Courts).

SECTION 81B. PHOTOGRAPHS AND FINGERPRINTS

Photographs and fingerprints of the accused, as well as measurements and similar measures, may be taken even against his will to the extent that they are required for the purpose of the criminal proceedings or identification.

SECTION 81C. PHYSICAL EXAMINATION OF OTHER PERSONS

(1) Persons other than the accused, if they are potential witnesses, may be examined without their consent if for establishment of the truth it is required to ascertain that their body shows a certain trace or result of a criminal act.

(2) Examinations for the ascertainment of descent and the taking of blood samples of persons other than the accused are permitted without the consent of the person who is to be examined provided his health is not endangered thereby and the action is indispensable for determining the truth. The examinations and taking of blood samples may only be made by a physician.

(3) Examinations or taking of blood samples may be refused for the same reasons as giving testimony. If minors due to a lack of maturity, or minors or persons placed under guardianship due to a mental illness or mental deficiency have no sufficient understanding of the significance of their right of refusal, the legal representative will decide; section 52, paragraph (2), second sentence, and paragraph (3), of this Law are accordingly applicable. If the legal representative is precluded from rendering a decision (sec 52, para (2), sent 2) or is prevented from rendering a decision in due time for other reasons, and the immediate examination or taking of blood samples for securing evidence appears necessary, these measures are permitted only on special order by the court, and if it cannot be contacted in time, by the public prosecutor's office. The decision ordering the measures cannot be appealed. The evidence taken according to sentence three above may be used in further proceedings only with the consent of the authorized legal representative.

(4) Measures according to paragraphs (1) and (2) are not permitted if, after evaluation of all circumstances, the person concerned cannot be expected to tolerate such measures.

(5) The authority to give such order is vested in the court and, in the event a delay would endanger the success of the examination, also in the public prosecutor including his investigating personnel (sec 152 of the Law Concerning the Constitution of Courts); paragraph (3), sentence 3, shall remain unaffected.

(6) The provisions of section 70 shall apply correspondingly to cases where a person involved refuses to undergo an examination. Direct force may be used only on special order of the judge. Such an order presupposes that the person involved insists on the refusal despite the imposition of an administrative fine or there is a risk that further delay may frustrate the trial.

SECTION 81D. PHYSICAL EXAMINATION OF WOMEN

(1) If the physical examination is likely to violate a person's sense of shame, the examination shall be made by a person of the same sex or by a female physician or male physician. If there is a legitimate interest, the request to have the examination performed by a person or physician of a specific sex shall be honored. Upon request of the person concerned, a person enjoying his confidence shall be allowed to be present. The person concerned shall be advised of the regulations in sentences 2 and 3.

(2) This provision is also applicable to cases where the person concerned consents to the examination.

SECTION 81E. MOLECULAR-GENETIC TESTING

(1) Molecular-genetic tests may also be performed on material obtained by measures according to section 81a, paragraph (1), to the extent that they are necessary in determining the descent or the fact, whether found trace material belongs to the accused or the injured person; the sex may also be determined within the scope of these tests. In order to make such determinations, tests pursuant to sentence 1 are also permissible on material obtained by measures according to section 81c. Determination of other facts than those designated in sentence 1 may not be made; tests directed towards that purpose are not permissible.

(2) Tests permissible according to paragraph 1 may also be performed on trace material which was found, seized or confiscated. Paragraph (1), sentence 3, and section 81a, paragraph (3), first half of the sentence, apply accordingly.

SECTION 81F. ORDERING OF TEST BY THE JUDGE

(1) Without written consent by the affected person, tests pursuant to section 81e may only be ordered by the court, in case of danger in delay also by the public prosecutor's office and its investigating officers (sec 152 of the Law on the Constitution of Courts). The consenting person shall be advised of the purpose for which the data to be collected will be used.

(2) In the written order, tests pursuant to section 81e shall be assigned to experts who are officially appointed or have an obligation pursuant to the Law on the Official Obligation of Persons Who are not in the Civil Service (*Verpflichtungsgesetz*), or are office holders who do not belong to the authorities conducting the investigation, or who belong to a subdivision of those authorities, which is organizationally and factually separated from the agency conducting the investigation. These experts shall take technical and organizational measures to ensure that inadmissible molecular-genetic tests and unauthorized taking of notice by third parties are excluded. The test material shall be submitted to the expert without statement of the name, address, day and month of birth of the person involved. If the expert is a private agency, section 38 of the Federal Data Protection Act (*Bundesdatenschutzgesetz)* applies under the proviso that the supervisory authority monitors implementation of the provisions on data protection, even if there is not sufficient evidence for a violation of these provisions and the expert does not process the personal data in an automated data file.

SECTION 81G. ESTABLISHMENT OF IDENTITY BY DNA-TESTING

(1) If the person charged with a crime is suspected of having committed a serious criminal act or an offense against sexual self-determination, body cells may be taken from him for the establishment of identity in future criminal proceedings, which may be examined by molecular-genetic methods to determine the DNA-identification pattern and the sex, if, based on the type of the act or the way it was committed, the person charged with a crime, or based on other findings there is reason to assume that criminal proceedings will have to be initiated against him in the future because of serious criminal acts. Repeated committing of other offenses may be considered equal to one serious criminal act as far as the wrongfulness is concerned.

(2) The body cells, which were taken may only be used for the molecular-genetic examination mentioned in paragraph (1); they shall be destroyed immediately when they are no longer needed for this purpose. In the course of the testing other determinations than the ones necessary to establish the DNA-identification pattern and the sex may not be made; such tests are not permissible.

(3) Without written consent by the person charged with a crime, taking of body cells may only be ordered by the court, in case of danger in delay also by the public prosecutor's office and its investigating officers (sec 152 of the Law on the Constitution of Courts). Without written consent by the person charged with a crime, examination of body cells by molecular-genetic methods may only be ordered by the court. The consenting person shall be advised of the purpose for which the data to be collected will be used. Section 81f, paragraph (2), shall apply accordingly. With reference to the individual case, the written justification by the court shall state the—

1. Facts relevant for the assessment of the severity of the crime,

2. Findings based on which there is reason to presume that criminal proceedings for serious crimes will have to be conducted against the person charged with a crime in the future, as well as

3. Weighing of the decisive circumstances of each case.

(4) Paragraphs (1) through (3) shall apply accordingly if the affected person was finally convicted for the offense or was not convicted only because—

1. It is proven or cannot be excluded that he lacks criminal responsibility,

2. He cannot stand trial based on a mental illness, or

3. He lacks responsibility or such lack cannot be excluded (sec 3 of the Youth Court Law (*Jugendgerichtsgesetz*))

and a corresponding entry in the Federal Central Register for Criminal Offenses (*Bundeszentralregister*) or in the Correctional Register of Juvenile Delinquents (*Erziehungsregister*) has not yet been deleted.

(5) The collected data may be stored at the Federal Criminal Investigation Office (*Bundeskriminalamt*) and used in accordance with the Law concerning the Federal Criminal Investigation Office. The same applies—

1. Under the prerequisites stated in paragraph (1) for the data of a person charged with an offense collected pursuant to section 81e, paragraph (1), as well as

2. For the data collected pursuant to section 81e, paragraph (2).

The data may only be transferred for use in criminal proceedings, in order to avert danger and within the scope of international legal assistance for both. In case of sentence 2, number 1, the person charged with an offense shall be immediately informed that the data have been stored and shall be advised that he may request a court decision.

SECTION 81H. SERIAL GENETIC TESTING

(1) If certain facts give reason to suspect that a criminal act against life, physical well-being, personal liberty, or sexual self-determination has been committed—

1. Body cells may be taken,

2. These cells may be examined by molecular-genetic method in order to determine the DNA identification pattern and the sex, and

3. The determined DNA identification patterns may automatically be compared to DNA identification patterns of trace material

with the written consent from persons who match certain test criteria which probably apply to the perpetrator to the extent that this is necessary in order to determine whether this trace material originates from these persons, and the measure, in particular with regard to the number of persons affected, is not out of proportion to the severity of the offense.

(2) A measure pursuant to paragraph (1) requires an order by the court. It shall be issued in writing. It shall describe the affected persons on the basis of certain test criteria and shall be justified. A previous hearing of the affected persons is not required. The decision by which the measure is ordered cannot be appealed.

(3) Sections 81f, paragraph (2), and section 81g, paragraph (2), shall apply accordingly for performance of the measure. As soon as the recordings of the DNA identification patterns determined by means of the measure are no longer necessary in order to solve the crime they shall be deleted immediately. The deletion shall be documented.

(4) The persons affected shall be informed in writing that the measure may only be taken subject to their approval. In this connection, they shall also be advised that the—

1. Taken body cells are exclusively used for the test pursuant to paragraph 1 and are destroyed immediately if they are no longer needed for that purpose,

2. Determined DNA identification patterns will not be stored by the Federal Criminal Investigation Office for determination of identity in future criminal proceedings.

SECTION 82. RENDERING OPINION IN PRELIMINARY PROCEEDINGS

In the preliminary proceedings, the judge will decide whether the experts shall render their opinion in writing or verbally.

SECTION 83. RENDERING FURTHER OPINION

(1) The judge may order that a new opinion be given by the same or by other experts if he considers the opinion insufficient.

(2) The judge may order that an opinion be rendered by another expert if the first expert was successfully challenged after giving his opinion.

(3) In important cases the opinion of a professional authority may be obtained.

SECTION 84. FEES FOR EXPERTS

The expert will receive remuneration in accordance with the Law on the Remuneration and Compensation in Connection With Court Proceedings.

SECTION 85. EXPERT WITNESSES

The provisions concerning witnesses will apply in the event experienced persons must be heard to prove past facts or situations the observation of which required a special professional knowledge.

SECTION 86. JUDICIAL INSPECTION

If a judicial inspection takes place the facts as found shall be stated in the record and such record shall reflect what traces or signs were missing, although their presence could have been presumed according to the special nature of the case.

SECTION 87. POST MORTEM EXAMINATION, AUTOPSY

(1) The post mortem examination will be made by the office of the public prosecutor, and, at the request of the public prosecutor by the judge with the assistance of a physician. The assistance of a physician may be dispensed with, if it is obviously not deemed necessary for the clarification of the facts.

(2) The autopsy will be performed by two physicians. One of them must be a court physician or the chief of a public forensic or pathology institute or a physician of the institute entrusted with this task and having knowledge of forensic medicine. The autopsy shall not be performed by the physician who treated the deceased person during his illness directly preceding his death. However, this physician may be requested to be present at the autopsy to give information from the medical records. The office of the public prosecutor may be present during the autopsy. Upon request of the latter, the autopsy will be performed in the presence of the judge.

(3) The exhumation of a buried corpse for examination or autopsy is permissible.

(4) The autopsy and exhumation of a buried corpse is ordered by the judge; the public prosecutor is authorized to order such action if the success of the investigation would be endangered by a delay. If the exhumation is ordered, notification of a

dependent of the deceased person has to be ordered at the same time, if the dependent may be located without special difficulties and the purpose of the investigation is not endangered by such notification.

SECTION 88. IDENTIFICATION

(1) Prior to the autopsy the identity of the deceased shall be determined. For this purpose, in particular persons who knew the deceased may be interrogated and police identification measures may be taken. For determination of the identity and the sex it is permitted to take body cells and perform molecular-genetic examinations on them; section 81f, paragraph (2), applies accordingly to the molecular-genetic examination.

(2) If there is an accused he shall be shown the corpse for recognition.

SECTION 89. EXTENT OF AUTOPSIES

The autopsy shall extend, if the condition of the corpse permits, to the opening of the head and chest cavity and of the abdomen.

SECTION 90. AUTOPSIES OF NEWBORN CHILDREN

When opening the corpse of a newborn child, the examination shall be directed in particular to the question whether it has lived after or during the birth and whether it was mature or at least capable of continuing its life outside the womb.

SECTION 91. TOXICOLOGICAL EXAMINATIONS

(1) If there is suspicion of poisoning, the examination of the suspicious substance found in the corpse, or elsewhere, shall be made by a chemist or by a professional authority appointed for such examination.

(2) It may be ordered that this examination be made with the assistance, or under the direction, of a physician.

SECTION 92. OPINIONS IN COUNTERFEITING CASES

(1) If there is a suspicion that coins or paper money were counterfeit the coins or the paper money, if so required, shall be submitted to the authority which brings the genuine coins or paper money into circulation. The opinion of this agency concerning spuriousness or falsification, as well as concerning the probable method of the forgery, shall be obtained.

(2) If coins or paper money of a foreign currency are involved, the opinion of a German authority may be requested in lieu of an opinion by the respective foreign authority.

SECTION 93. COMPARISON OF HANDWRITING

To ascertain the authenticity or spuriousness of a document, as well as to ascertain the author of a script, a handwriting test may be conducted with the assistance of experts.

CHAPTER EIGHT
SEIZURE, CONTROL OF TELECOMMUNICATIONS, SEARCH BY SCANNING DEVICES, USE OF TECHNICAL DEVICES, EMPLOYMENT OF UNDERCOVER INVESTIGATORS, AND SEARCH

SECTION 94. OBJECTS WHICH MAY BE SEIZED

(1) Objects that may have importance as evidence for the investigation shall be taken in custody or be secured in another manner.

(2) Such objects shall be seized if in the custody of a person and not delivered voluntarily.

(3) Paragraphs (1) and (2) also apply to driver's licenses which are subject to confiscation.

SECTION 95. OBLIGATION TO SURRENDER

(1) A person who has an object of the above-mentioned kind in his custody is obliged to produce or to deliver it upon request.

(2) In case of noncompliance, the disciplinary fines and coercive measures provided by section 70 may be used against such person. This does not apply to persons entitled to refuse to testify.

SECTION 96. OFFICIAL DOCUMENTS

Submission or delivery of files or of other documents in official custody of authorities or public officials shall not be requested in the event their highest administrative authority declares that the publication of the contents of these files or documents would be disadvantageous for the welfare of the Federal Republic or of a German *Land*. Sentence 1 applies accordingly to files and other documents in the custody of a member of the Federal parliament or *Land* parliament or an employee of a parliamentary group in the Federal Parliament if the agency responsible to give approval to testify makes such a statement.

SECTION 97. OBJECTS NOT SUBJECT TO SEIZURE

(1) The following objects are not subject to seizure:

1. Written communications between the accused and the persons who, according to section 52 or section 53, paragraph (1), sentence 1, numbers 1 through 3b, may refuse to testify;

2. Notes made by persons specified in section 53, paragraph (1), sentence 1, numbers 1 through 3b, concerning confidential information received from the accused or concerning other circumstances covered by the right to refuse to testify;

3. Other objects, including the findings of medical examination, covered by the right of the persons specified in, section 53, sentence 1, numbers 1 through 3b to refuse to testify.

(2) These restrictions apply only if these objects are in the custody of a person who may refuse to testify, unless it is an electronic health insurance card (*Gesundheitskarte*) within the meaning of section 291a of the Fifth Book of the Code of Social Law (*Sozialgesetzbuch*). Objects covered by the right of physicians, dentists, psychological psychotherapists, psychotherapists for children and juveniles, pharmacists, and midwives to refuse to testify are not subject to seizure, if they are in the custody of a hospital or of a service provider collecting, processing or using personal data for the designated persons, as well as objects to which the right of the persons to refuse to testify mentioned in section 53, paragraph (1), sentence 1, numbers 3a and 3b, extends, if they are in the custody of the advisory agency designated in the provision above. Restrictions of seizure do not apply if certain facts support the suspicion that the person privileged from testifying is involved in the criminal act, in aiding the perpetrator, frustration of punishment, or receiving of stolen property, or if objects are concerned which resulted from a criminal offense or are used or designated for committing a criminal offense or that originate from a criminal offense.

(3) Paragraphs (1) and (2) shall apply accordingly to the extent that the assistants (sec 53a) of the persons designated in section 53, paragraph (1), sentence 1, numbers 1 through 3b, may refuse to give evidence.

(4) To the extent the right to refuse to give evidence applies to the persons stated in section 53, paragraph (1), sentence 1, number 4, the seizure of objects is not permitted. The protection from seizure also extends to objects which are entrusted by the persons stated in section 53, paragraph (1), sentence 1, number 4, to their assistants (sec 53a). Sentence 1 shall apply accordingly to the extent that the assistants (sec 53a) of the persons stated in section 53, paragraph (1), sentence 1, number 4, would have the right to refuse to give evidence.

(5) Written documents; sound, visual, and data media; pictures; and other illustrations shall not be seized in as far as they are covered by the right of the persons designated in section 53, paragraph (1), sentence 1, number 5, to refuse to testify if they are in the custody of such persons or the editor, the publisher, the printing company, or the broadcasting company. Paragraph (2), sentence 3, and section 160a, paragraph (4), sentence 2, apply accordingly. The rule concerning persons involved in the criminal act stipulated in paragraph (2), sentence 3, only applies if the determined facts strongly support a suspicion of involvement; however, seizure is only authorized even in these cases if, in consideration of the basic rights stipulated in Article 5, paragraph (1), sentence 2, of the Basic Law (*Grundgesetz*), seizure is not out of proportion in relation to the importance of the matter and an investigation of the facts or determination of the place of abode of the accused would otherwise be futile or much more difficult.

SECTION 98. ORDER OF SEIZURE

(1) Seizures will only be ordered by the court and, if there is danger in delay, also by the public prosecutor's office and its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts). Seizure in the rooms of an editor, a publisher, a printing company, or a broadcasting company pursuant to section 97, paragraph (5), second sentence, will only be ordered by the court.

(2) An official who seized an object without court order should request court approval within 3 days if neither the person involved nor an adult relative of the person involved was present at the seizure, or if the person involved and, in the event he was absent, an adult relative of the person involved expressly raised objections to the seizure. The involved person may at any time request a court ruling. Competence of the court shall be governed by section 162. The person involved may also submit the request to the district court in whose district the seizure occurred; it will transmit the request to the competent court.

(3) The court shall be notified of the seizure within 3 days if it was effected by the public prosecutor or by a member of his investigating personnel after the public charges were preferred; the objects seized shall be made available to him.

(4) If it is necessary to make a seizure in a public building or an installation or facility of the Federal Armed Forces which is not open to the general public, the superior agency of the Federal armed forces will be requested to carry out such seizure. The requesting agency is entitled to participate. No such request is necessary if the seizure is to be made in places that are inhabited exclusively by persons other than soldiers.

SECTION 98A. AUTOMATIC COMPARISON AND TRANSMISSION OF PERSONAL DATA

(1) If there are sufficient factual grounds to infer that a criminal act of considerable significance—

1. In the field of illegal trade with narcotics or weapons, counterfeiting of money or stamps,

2. In the field of state security (secs 74a and 120 of the Law on the Constitution of Courts),

3. In the field of offenses causing public danger,

4. Against life and limb, sexual self-determination, or personal freedom,

5. On a commercial basis or habitually, or

6. Organized by a member of a gang or otherwise organized,

has been committed, personal data of individuals showing particular features which are presumably characteristic of the perpetrator, may be compared by computer, notwithstanding sections 94, 110, and 161, in order to exclude non-suspects or to identify persons who have more characteristics significant for the investigation. The measure may only be ordered if implementation of another method to investigate the facts or determine the perpetrator's whereabouts would be considerably less promising or much more difficult.

(2) For the purpose designated in paragraph (1), the agency that stores the data shall screen the data needed for the comparison and transmit them to the prosecuting authorities.

(3) Insofar as the data to be transmitted can only be separated from other data by extraordinary efforts, the other data shall also be transmitted if so ordered. Their use is not permissible.

(4) Upon request of the public prosecutor's office, the agency storing the data shall assist the agency which carries out the comparison.

(5) Section 95, paragraph (2), applies accordingly.

SECTION 98B. COMPETENCE; RETURN AND DELETION OF DATA

(1) Comparison and transmittal of data may only be ordered by a court, in case of danger in delay also by the public prosecutor's office. If the order was issued by the office of the public prosecutor, confirmation by the court shall immediately be requested. The order shall cease to have effect if it is not confirmed by the court within 3 working days. The order shall be issued in writing. It shall designate the person responsible for the transmittal and shall be restricted to the data and the characteristics necessary in the specific case. Transmittal of data which are subject to special federal or *Land* provisions concerning their use may not be ordered. Sections 96, 97, and 98, paragraph (1), sentence 2, apply accordingly.

(2) Disciplinary means and coercive measures (sec 95, para (2)) may only be ordered by a court, in case of danger in delay also by the public prosecutor's office; the right to order arrest shall be reserved to the court.

(3) If the data have been transmitted on data carriers, those shall be returned immediately upon completion of the comparison. Personal data which were transmitted to other data carriers shall be immediately deleted as soon as they are no longer needed for the criminal proceedings.

(4) Upon completion of a measure pursuant to section 98a, the agency which is responsible to monitor compliance with the provisions on data protection in public agencies shall be notified.

SECTION 98C. COMPARISON OF DATA TO INVESTIGATE A CRIME

In order to detect a criminal offense or to determine the whereabouts of a person wanted for the purpose of criminal proceedings, personal data from criminal proceedings may be compared by computer with other data stored for the prosecution of a criminal act or execution of a sentence or to ward off a danger. Specific adverse federal or *Land* provisions concerning their use shall remain unaffected.

SECTION 99. SEIZURE OF MAIL

Mail and cables addressed to the accused which are in custody of persons or companies providing mail and telecommunication services on a commercial basis or participate in such services may be seized. Mail and cables where facts exist, from which it may be concluded that they originate from the accused or are destined to him and whose content is important for the investigation may also be seized.

SECTION 100. COMPETENCE

(1) Only the court is authorized to order a seizure (sec 99); if there is danger in delay, also the public prosecutor is authorized.

(2) A seizure ordered by the office of the public prosecutor (*Staatsanwaltschaft*) even if it has not yet resulted in a delivery, ceases to have effect if not approved by the court within 3 working days.

(3) The court is entitled to open the delivered postal items. It may confer this authority to the public prosecutor as far as this is required in order not to endanger the success of the investigation by a delay. The conferring of the authority may not be contested; it may be revoked at any time. As long as an order has not been given pursuant to sentence 2, the office of the public prosecutor will immediately submit to the court the delivered postal items (for example, mail, unopened).

(4) The court competent pursuant to section 98 decides on a seizure ordered by the public prosecutor. The court that ordered or confirmed the seizure decides on the unsealing of a delivered postal item.

(5) Postal items whose opening was not ordered shall be passed on immediately to the designated addressee. The same applies if after it has been opened retention of the postal item is not necessary.

(6) That part of the retained postal item whose withholding does not appear necessary with regard to the investigation shall be provided to the designated addressee in form of a copy.

SECTION 100A. MONITORING OF TELECOMMUNICATIONS

(1) Telecommunication may be monitored and recorded even without the knowledge of the persons concerned if—

1. Certain facts provide grounds for the suspicion that a person, as perpetrator or participant, has committed a serious crime designated in paragraph (2), has attempted to commit such crime in cases where the attempt is punishable, or prepared it by another criminal act,

2. The act is also serious in an individual case,

3. Determination of the facts or of the place of abode of the accused by other methods would be much more difficult or futile.

(2) Serious crimes as defined by paragraph (1), number 1, are—

1. From the German Criminal Code:

a) Criminal acts of treasonably endangering the pacific status, high treason, and endangering the democratic constitutional state or treason and endangering external security pursuant to sections 80 to 82, 84 to 86, 87 to 89a, 94 to 100a;

b) Bribing a member of parliament pursuant to section 108e;

c) Criminal acts against national defense pursuant to sections 109d to 109h;

d) Criminal acts against public order pursuant to sections 129 to 130;

e) Counterfeiting of money and official stamps pursuant to sections 146 and 151, both also in connection with section 152, as well as pursuant to section 152a, paragraph (3), and section 152b, paragraphs (1) through (4);

f) Criminal acts against sexual self-determination in the cases of sections 176a, 176b, 177, paragraph (2), number 2, and of section 179, paragraph (5), number 2;

g) Dissemination, purchase and possession of child- and youth-pornographic writings pursuant to section 184b, paragraphs (1) through (3), section 184c, paragraph (3);

h) Murder and manslaughter pursuant to sections 211 and 212;

i) Criminal acts against personal liberty pursuant to sections 232 through 233a, 234, 234a, 239a, and 239b;

j) Gang larceny pursuant to section 244, paragraph (1), number 2, and grand gang larceny pursuant to section 244a;

k) Criminal acts of robbery and extortion pursuant to sections 249 to 255;

l) Professional receiving of stolen goods, receiving of stolen goods by gangs and professional receiving of stolen goods by a gang pursuant to sections 260 and 260a;

m) Money laundering and concealment of unlawfully acquired assets pursuant to section 261, paragraphs (1), (2), and (4);

n) Fraud and computer fraud under the conditions designated in section 263, paragraph (3), sentence 2, and in case of section 263, paragraph (5), both also in connection with section 263a, paragraph (2);

o) Fraud regarding eligibility for a subsidy under the conditions designated in section 264, paragraph (2), sentence 2, and in case of section 264, paragraph (3), in connection with section 263, paragraph (5);

p) Criminal acts of falsification of documents under the conditions designated in section 267, paragraph (3), sentence 2, and in case of section 267, paragraph (4), both also in connection with section 268, paragraph (5), or section 269, paragraph (3), as well as pursuant to section 275, paragraph (2), and section 276, paragraph (2);

q) Bankruptcy under the conditions designated in section 283a, sentence 2;

r) Criminal acts against competition pursuant to section 298 and, under the conditions designated in section 300, sentence 2, pursuant to section 299;

s) Criminal acts dangerous to the public in the cases of sections 306 through 306c, 307, paragraphs (1) through (3), of section 308, paragraphs (1) through (3), of section 309, paragraphs (1) through (4), of section 310, paragraph (1), of sections 313, 314, 315, paragraph (3), of section 315b, paragraph (3), as well as sections 316a and 316c;

t) Corruptibility and bribery pursuant to sections 332 and 334;

2. From the Revenue Code (*Abgabenordnung*):

a) Tax evasion under the conditions designated in section 370, paragraph (3), sentence 2, number 5;

b) Professional, violent, and organized smuggling pursuant to section 373;

c) Receiving, concealing or selling property obtained by tax evasion in the case of section 374, paragraph (2);

3. From the Medical Preparations Act (*Arzneimittelgesetz*):

Criminal acts pursuant to section 95, paragraph (1), number 2a, under the conditions designated in section 95, paragraph (3), sentence 2, number 2, letter b;

4. From the Law on Asylum Seeking Proceedings (*Asylverfahrensgesetz*):

a) Inducement of abusive application for political asylum pursuant to section 84, paragraph (3);

b) Professional and organized inducement of abusive application for political asylum pursuant to section 84a;

5. From the Residence Law (*Aufenthaltsgesetz*):

a) Smuggling of foreigners into the country pursuant to section 96, paragraph (2);

b) Smuggling of foreigners resulting in death and professional and organized smuggling of foreigners pursuant to section 97;

6. From the Foreign Trade and Payments Law (*Außenwirtschaftsgesetz*):

Criminal acts pursuant to section 34, paragraphs (1) to (6);

7. From the Narcotics Law (*Betäubungsmittelgesetz*):

a) Criminal acts pursuant to a provision referred to in section 29, paragraph (3), sentence 2, number 1, under the prerequisites stated therein;

b) Criminal acts pursuant to sections 29a, 30, paragraph (1), numbers 1, 2, and 4, as well as sections 30a and 30b;

8. From the Raw Material Control Act (*Grundstoffüberwachungsgesetz*):

Criminal acts pursuant to section 19, paragraph (1), under the conditions designated in section 19, paragraph (3), sentence 2;

9. From the Law on the Control of Weapons of War (*Gesetz über die Kontrolle von Kriegswaffen*):

a) Criminal acts pursuant to section 19, paragraphs (1) to (3), and section 20, paragraphs (1) and (2), as well as section 20a, paragraphs (1) to (3); each in connection with section 21;

b) Criminal acts pursuant to section 22a, paragraphs (1) to (3);

10. From the Law Concerning Crimes Against International Public Law (*Völkerstrafgesetzbuch*):

a) Genocide pursuant to section 6;

b) Crimes against humanity pursuant to section 7;

c) War crimes pursuant to sections 8 to 12;

11. From the Weapons Law (*Waffengesetz*):

a) Criminal acts pursuant to section 51, paragraphs (1) to (3);

b) Criminal acts pursuant to section 52, paragraph (1), numbers 1 and 2, letters c and d, as well as paragraphs (5) and (6).

(3) The order may only be directed against the accused or against individuals who, based on certain facts, can be assumed to receive or pass on information for the accused or from the accused or that the accused uses their telephone connection.

(4) If there are facts which indicate that by a measure pursuant to paragraph (1) only knowledge about very private aspects of a person's life would be gained, the measure is not permissible. Knowledge about the very private aspects of a

person's life gained through a measure pursuant to paragraph (1) may not be used. Records of this shall be deleted immediately. The fact that such information was obtained and its deletion shall be placed on the record.

SECTION 100B. ORDER TO MONITOR TELEPHONE CALLS, EXECUTION

(1) Measures pursuant to section 100a may only be ordered by the court upon request of the public prosecutor. When there is danger in delay the order may be issued by the office of the public prosecutor. If the order of the public prosecutor is not confirmed by the court within 3 working days it shall become ineffective. The order shall be limited to a maximum period of 3 months. An extension by a maximum of 3 months at a time is permissible, if, with due regard to the investigation results, the prerequisites for maintaining the order continue to exist.

(2) The order is issued in writing. The decision clause shall indicate—

1. To the extent possible, the name and address of the person against whom the measure is directed,

2. The call number or another identification of the telephone connection to be monitored or of the terminal unit, unless certain facts reveal that the extension is at the same time assigned to another terminal unit,

3. The type, extent of the measure and when it will end.

(3) Based on the order, each person providing or participating in providing telecommunication services must render it possible for the court, the office of the public prosecutor, and their investigating personnel working for the police (sec 152 of the Law Concerning the Constitution of Courts) to take the measures pursuant to section 100a and must provide the necessary information immediately. If and to what extent prior arrangements must be made is stipulated in the Law on Telecommunications (*Telekommunikationsgesetz*) and the Ordinance on the Monitoring of Telecommunications (*Telekommunikations-Überwachungsverordnung*). Section 95, paragraph (2), applies accordingly.

(4) If the prerequisites for the order no longer exist, the measures taken on the basis of the order must be terminated immediately. After termination of the measure the court that ordered it shall be informed about its result.

(5) Each calendar year by 30 June of the year following the year under report, the *Länder* and the Federal Prosecutor General (*Generalbundesanwalt*) shall report to the Federal Justice Office (*Bundesamt für Justiz*) about measures pursuant to section 100a ordered in their area of jurisdiction. The Federal Justice Office prepares an overview of the measures ordered throughout Germany in the year under report and shall publish it on the internet.

(6) The reports pursuant to paragraph (5) shall state the—

1. Number of proceedings by which measures pursuant to section 100a, paragraph (1), were ordered;

2. Number of monitoring orders pursuant to section 100a, paragraph (1), broken down according to—

a) Initial orders and extension orders as well as

b) Fixed network, mobile phone and internet telecommunication;

3. Criminal act on which the order is based in accordance with the subdivision in section 100a, paragraph (2).

SECTION 100C. MEASURES TAKEN WITHOUT KNOWLEDGE OF THE AFFECTED PERSON

(1) Even without knowledge of the persons concerned, the word privately spoken in an apartment may be monitored and recorded by technical devices if:

1. Certain facts give rise to the suspicion that a person, as perpetrator or accomplice has committed a serious offense of the type designated in paragraph (2), or has attempted to commit such offense, in cases where the attempt is punishable,

2. The offense is particularly serious even in an individual case,

3. Based on actual evidence, it must be assumed that by monitoring statements made by the accused are recorded, which are essential for investigation of the facts of a case or for the determination of the place of abode of a co-accused, and

4. Investigation of the facts of a case or determination of the place of abode of a co-accused by any other means would be disproportionately difficult or futile.

(2) Particularly serious offenses within the meaning of paragraph (1), number 1, are—

1. From the German Criminal Code:

a) Criminal acts of high treason, treachery, as well as endangering the democratic constitutional state, or treason and endangering external security pursuant to sections 80, 81, 82, and 89a, pursuant to sections 94, 95, paragraph (3), and section 96, paragraph (1), also in conjunction with section 97b, as well as sections 97a, 98, paragraph (1), sentence 2, section 99, paragraph (2), and sections 100, 100a, paragraph (4),

b) Formation of criminal associations pursuant to section 129, paragraph (1), in conjunction with paragraph (4), second half sentence, and formation of terrorist associations pursuant to section 129a, paragraphs (1), (2), (4), and (5), sentence 1, alternative 1, all in connection with section 129b, paragraph (1),

c) Counterfeiting of money and official stamps pursuant to sections 146 and 151, both also in conjunction with section 152, as well as pursuant to section 152a, paragraph (3), and 152b, paragraphs (1) to (4),

d) Criminal acts against sexual self-determination in the cases of section 176a, paragraph (2), number 2, or paragraph (3), section 177, paragraph (2), number 2, or section 179, paragraph (5), number 2,

e) Dissemination, acquisition and possession of child pornography writings in the cases of section 184b, paragraph (3),

f) Murder and homicide pursuant to sections 211 and 212,

g) Criminal acts against personal freedom in the cases of sections 234, 234a, paragraphs (1) and (2), sections 239a and 239b, and slave trade for the purpose of sexual exploitation and for exploitation of labor pursuant to section 232, paragraph (3), (4), or (5),and section 233, paragraph (3), to the extent that they are criminal offenses,

h) Gang larceny pursuant to section 244, paragraph (1), number 2, and grand gang larceny pursuant to section 244a,

i) Aggravated robbery and robbery resulting in death pursuant to section 250, paragraph (1) or (2), and section 251,

j) Robberlike extortion pursuant to section 255 and a particularly severe case of extortion pursuant to section 253 under the prerequisites stated in section 253, paragraph (4), sentence 2,

k) Professional receiving of stolen goods, receiving of stolen goods by gangs, and professional receiving of stolen goods by a gang pursuant to sections 260 and 260a,

l) Particularly severe case of money laundering, concealment of unlawfully acquired assets pursuant to section 261, under the prerequisites stated in section 261, paragraph (4), sentence 2,

m) A particularly severe case of receiving bribes and offering bribes pursuant to section 335, paragraph (1), under the prerequisites stated in section 335, paragraph (2), numbers 1 to 3,

2. From the Law on Asylum Seeking Procedures:

a) Inducing a person to improper use of asylum seeking applications pursuant to section 84, paragraph (3),

b) Professional inducing to improper use of asylum seeking applications and inducing to improper use of asylum seeking applications by gangs pursuant to section 84a, paragraph (1),

3. From the Residence Act:

a) Smuggling of foreigners into country pursuant to section 96, paragraph (2),

b) Smuggling of persons resulting in death or professional and gang smuggling pursuant to section 97,

4. From the Narcotics Law:

a) A particularly serious case of an offense pursuant to section 29, paragraph (1), sentence 1, number 1, 5, 6, 10, 11, or 13, paragraph (3) under the prerequisite stated in section 29, paragraph (3), sentence 2, number 1,

b) A criminal act pursuant to sections 29a, 30, paragraph (1), numbers 1, 2, and 4, section 30a,

5. From the Law on the Control of Weapons of War:

a) A criminal act pursuant to section 19, paragraph (2), or section 20, paragraph (1), both also in conjunction with section 21,

b) A particularly serious case of an offense pursuant to section 22a, paragraph (1), in conjunction with paragraph (2),

6. From the Code Concerning Crimes against International Public Law:

a) Genocide pursuant to section 6,

b) Crimes against humanity pursuant to section 7,

c) War crimes pursuant to sections 8 to 12,

7. From the Weapons Law:

a) A particularly serious case of an offense pursuant to section 51, paragraph (1), in conjunction with paragraph (2),

b) A particularly serious case of an offense pursuant to section 52, paragraph (1), number 1, in conjunction with paragraph (5).

(3) The measure may only be directed against the accused and may only take place in the apartments of the accused. It is only authorized in apartments of other persons if, based on certain facts, it must be assumed that:

1. The accused designated in section 100d, paragraph (2), is staying at such place, and

2. The measure, if only carried out in the apartments of the accused, does not lead to an investigation of the facts of a case or to a determination of the place of abode of a co-accused.

The measure may also be taken if it cannot be avoided that third parties are involved.

(4) The measure may only be ordered if, on the basis of actual evidence, in particular regarding the type of rooms to be surveyed and the relationship of the persons to be surveyed to each other, it must be assumed that by the surveillance statements which must be considered as part of the very private conduct of life, are not recorded. Conversations held in offices of companies or businesses are as a rule not considered as part of the very private conduct of life. The same applies to conversations concerning committed criminal acts and statements by which criminal acts are committed.

(5) The monitoring and recording shall be interrupted immediately if, in the course of surveillance it becomes obvious that statements concerning the very private conduct of life are recorded. Recordings of such statements shall be erased immediately. Findings obtained from such statements may not be used. The recording of such data and their deletion shall be documented. If a measure pursuant to sentence 1 has been interrupted it may be continued under the prerequisites described in paragraph (4). In case of doubt, a court decision shall immediately be obtained on the interruption or continuance of the measure; section 100d, paragraph (4), applies accordingly.

(6) In the cases of section 53 a measure pursuant to paragraph 1 is inadmissible; if in the course or after taking the measure it turns out that section 53 applies, paragraph (5), sentences 2 to 4, shall apply accordingly. In the cases of sections 52 and 53a findings obtained from a measure pursuant to paragraph (1) may only be used, if, in consideration of the

importance of the established confidential relationship, this is not disproportionate to the interest in investigating the facts of a case or in determining the accused's place of abode. Section 160a, paragraph (4), shall apply accordingly.

(7) If a prohibition to use findings pursuant to paragraph (5) must be considered, the office of the public prosecutor shall immediately obtain a decision on the permission to use the findings from the ordering court. If the court denies use of the findings this will be binding for the continuing proceedings.

SECTION 100D. COMPETENCE

(1) Measures pursuant to section 100c may only be ordered upon request of the public prosecutor's office by the criminal panel of the State Court designated in section 74a of the Law Concerning the Constitution of Courts in whose district the public prosecutor's office has its seat. If there is danger in delay, the order may also be issued by the presiding judge. His order shall cease to have effect if it is not confirmed by the criminal court within three working days. The order shall be limited to a maximum of one month. An extension by just one more month at a time is admissible if the prerequisites continue to exist in consideration of the investigation findings. If the order has been extended to a total of 6 months, the Superior State Court shall decide upon further extensions.

(2) The order shall be issued in writing. It shall contain the following information:

1. If possible, the name and address of the accused against whom the measure is taken.

2. The alleged offense based on which the measure is ordered,

3. The apartment to be surveyed or the residential rooms to be surveyed,

4. Type, extent, and duration of the measure,

5. The type of information to be collected by the measure and its importance for the proceedings.

(3) The justification of the order or its extension shall state the prerequisites and the essential aspects considered. Concerning the individual case the following shall be stated in particular: The—

1. Actual facts giving reasons for the suspicion,

2. Main considerations regarding the necessity and proportionality of the measure,

3. Actual evidence within the meaning of section 100c, paragraph (4), sentence 1.

(4) The court issuing the order shall be informed about the course and the results of the measure. If the prerequisites for the order no longer exist, the court shall order termination of the measure, if such termination has not already been effected by the office of the public prosecutor. An order to terminate the measure may also be issued by the presiding judge.

(5) Personal data obtained by monitoring rooms of an apartment with acoustical devices may only be used for other purposes under the following provisions:

1. The useful personal data obtained through a measure pursuant to section 100c may only be used in other criminal proceedings without approval of the monitored person for the purpose of solving a crime, based on which a measure pursuant to section 100c could be ordered or in order to determine the place of abode of a person accused of such a criminal act.

2. Use of personal data obtained by a measure pursuant to section 100c, also such data pursuant to section 100c, paragraph (6), sentence 1, second half sentence, to ward off danger, is only admissible for warding off a danger to life in an individual case or an imminent danger to life and freedom of a person or to objects of considerable value, which serve the supply of the population, or are of exceptional cultural value, or are stated in section 305 of the German Criminal Code. The useful personal data obtained through a measure pursuant to section 100c may also be used to ward off an imminent danger to other important assets in a specific case. If the data are no longer needed to ward off a danger or for a pre-trial review or review by court of the measures taken to ward off danger, recordings of these data shall be deleted immediately by the agency responsible for warding off the danger. The deletion shall be placed on record. If the deletion is only postponed for a possible pre-trial review or review by court, the data may only be used for such purpose; they shall be blocked for any other use.

3. If useful personal data were obtained by a respective police measure, they may only be used in criminal proceedings without the approval of the monitored persons for solving a criminal act based on which the measure could have been ordered pursuant to section 100c, or to determine the place of abode of a person accused of such a criminal act.

SECTION 100E. REPORTING TO THE HIGHEST JUDICIAL AUTHORITY; INFORMATION OF THE FEDERAL PARLIAMENT

(1) Section 100b, paragraph (5), shall apply accordingly to the measures ordered pursuant to section 100c. Prior to publication on the internet the Federal Government shall report to the Federal Parliament on the measures ordered pursuant to section 100c in the respective preceding calendar year.

(2) The reports pursuant to paragraph (1) shall specify—

1. The number of proceedings for which measures pursuant to section 100c, paragraph (1), were ordered;

2. The criminal act based on which the measure was taken, in accordance with the subdivision provided in section 100c, paragraph (2);

3. Whether or not the proceedings show a connection to the prosecution of organized crime;

4. The number of objects under surveillance per proceedings divided in private apartments and other apartments as well as apartments of the accused and apartments of third persons.

5. The number of persons under surveillance per proceeding divided in accused persons and non-accused persons;

6. The duration of the individual surveillance, divided in duration of order, duration of extension, and duration of monitoring;

7. The frequency of interruptions and stopping of a measure pursuant to section 100c, paragraph (5), and section 100d, paragraph (4);

8. Whether or not the persons concerned (sec 101, paras (4) to (6)) were notified, or the reasons why notification was refrained from;

9. Whether or not the surveillance showed results which are or are likely to be relevant for the proceedings;

10. Whether or not the surveillance showed results which are or are likely to be relevant for other criminal proceedings;

11. Whether or not the surveillance failed to show relevant results: statement of the reasons divided in technical reasons and other reasons;

12. The costs of the measure, split up in costs for translation services and other costs.

SECTION 100F. USE OF PERSONAL DATA

(1) Even without knowledge of the persons concerned, the privately spoken word outside of apartments may be monitored with technical devices and recorded if certain facts give reason to suspect that a person, as perpetrator or accessory, has committed a serious offense designated in section 100a, paragraph (2), which is also serious in an individual case, or has attempted to commit the offense in cases where the attempt is punishable, and the investigation of the facts or the determination of the place of abode of the accused by other methods would be futile or much more difficult.

(2) The measure may only be directed against one accused person. The measure may only be ordered against other persons if it must be assumed based on certain facts that they are in contact with an accused person or such contact will be made, that the measure will lead to the investigation of the facts of the case or to the determination of the place of abode of an accused person and this would be futile or much more difficult by use of any other method.

(3) The measure may also be taken, if it is unavoidable that other persons are affected.

(4) Section 100b, paragraphs (1) and (4), sentence 1, and section 100d, paragraph (2), apply accordingly.

SECTION 100G. PROVIDING INFORMATION ON TELECOMMUNICATION CONNECTION DATA

(1) If certain facts give reason to suspect that a person, asa perpetrator or accessory, has committed—

1. Also in an individual case, a serious offense, in particular one designated in section 100a, paragraph (2), has attempted to commit the offense in cases where the attempt is punishable, or has prepared it by another criminal act, or

2. A crime by means of telecommunication,

traffic data (sec 96, para (1), and sec 113a of the Telecommunications Law) may be collected without knowledge of the affected person, if this is necessary for the investigation of the facts or the determination of the accused person's place of abode. In the case of sentence 1, number 2, the measure is only authorized if the investigation of the facts or the determination of the accused person's place of abode would be futile by use of any other method and collection of data is in reasonable relation to the importance of the case. The collection of site data in real time is only authorized in case of sentence 1, number 1.

(2) Section 100a, paragraph (3), and section 100b paragraphs (1) to (4), sentence 1, apply accordingly. In deviation from section 100b, paragraph (2), sentence 2, number 2, it is sufficient, in case of a serious offense, that telecommunication is reasonably specified regarding location and time if the investigation of the facts or the determination of the accused person's place of abode would be futile or much more difficult if other methods were used.

(3) If traffic data are not collected at the telecommunications service company, it is subject to the general provisions upon completion of the communication process.

(4) In accordance with section 100b, paragraph (5), an annual overview of measures pursuant to paragraph (1) shall be prepared containing the following information: The—

1. Number of proceedings in which measures pursuant to paragraph (1) were taken;

2. Number of orders to take measures pursuant to paragraph (1), broken down into initial and extension orders;

3. Offense on which the order was based broken down pursuant to paragraph (1), sentence 1, numbers 1 and 2;

4. Number of past months for which traffic data pursuant to paragraph (1) where requested, starting from the date of the order;

5. Number of measures which brought no results because the requested data were not at all or only partially available.

SECTION 100H. FORM OF THE ORDER REQUESTING INFORMATION ON TELECOMMUNICATION CONNECTION DATA

(1) Even without the knowledge of the affected persons—

1. Image recordings may be made,

2. Other special technical means suitable for surveillance may be used

outside of apartments if an investigation of the facts or determination of an accused person's place of abode would be less promising or more difficult by use of other methods. A measure pursuant to sentence 1, number 2 is only authorized if the subject matter of the investigation is a serious offense.

(2) The measures may be directed only against the accused person. Against other persons—

1. Measures pursuant to paragraph (1), number 1, are only authorized if an investigation of the facts or determination of an accused person's place of abode would be considerably less promising or much more difficult by use of other methods,

2. Measures pursuant to section 1, number 2, are only authorized if based on certain facts it can be assumed that they are in contact with an accused person or such contact will be made, the measure will lead to an investigation of the facts or determination of an accused person's place of abode and this would be futile or much more difficult if other methods were used.

(3) The measures may also be taken if third persons are inevitably affected.

SECTION 100I. MEASURES IN CASE OF MOBILE TELEPHONES

(1) If specific facts give reasonable grounds for the suspicion that a person, as perpetrator or accessory has committed a serious offense, also in an individual case, in particular an offense designated in section 100a, paragraph (2), that he has attempted to commit an offense in cases where the attempt is punishable, or has prepared it by another criminal act, technical means may be used to establish the—

1. Device number of the mobile phone terminal and the card number of the card used with it, as well as

2. Location of the mobile phone terminal

to the extent this is necessary for the investigation of the facts or the determination of the accused person's place of abode.

(2) Personal data of third persons may only be collected within the scope of such measures if this is inevitable for technical reasons in order to meet the purpose pursuant to paragraph (1). They may only be used to counter-check data so that the device and card number can be established and must be deleted immediately after completion of the measure.

(3) Sections 100a, paragraph (3), and section 100b, paragraph (1), sentences 1 through 3, paragraph (2), sentence 1, and paragraph (4), sentence 1, shall apply accordingly. The order shall be limited to a maximum period of 6 months. An extension by not more than six more months each time is authorized if the prerequisites described in paragraph (1) continue to exist.

SECTION 101. NOTIFICATION

(1) Unless provided otherwise, the following rules shall apply to measures pursuant to sections 98a, 99, 100a, 100c through 100i, 110a, and 163d through 163f.

(2) Decisions and other documents concerning measures pursuant to sections 100c, 100f, 100h, paragraph (1), number 2, and section 110a will be kept at the office of the public prosecutor. They shall be taken on file only when the prerequisites for a notification pursuant to paragraph (5) are fulfilled.

(3) Personal data collected through measures pursuant to paragraph (1) shall be identified accordingly. After transmittal to another agency the identification shall be maintained by such agency.

(4) Notification of the measures designated in paragraph (1) shall be provided in case of—

1. Section 98a to the affected persons against whom further investigations were conducted after analysis of the data;

2. Section 99 to the sender and the addressee of the postal item;

3. Section 100a to the persons involved in the monitored telecommunication;

4. Section 100c to—

a) The accused person against whom the measure was directed;

b) Other persons under surveillance;

c) Persons who occupied or lived in the monitored apartment at the time the measure was executed;

5. Section 100f to the target person as well as other persons who were considerably affected;

6. Section 100g to the persons involved in the affected telecommunication;

7. Section 100h, paragraph (1), to the target person as well as other persons who were considerably affected;

8. Section 100i to the target person;

9. Section 110a to—

a) Target person;

b) Other persons who were considerably affected;

c) Persons whose private apartment was entered by the undercover agent;

10. Section 163d to the affected persons against whom further investigations were conducted after analysis of the data;

11. Section 163e to the target person and the person whose personal data were reported;

12. Section 163f to the target person as well as other persons who are also considerably affected.

The option of subsequent legal protection pursuant to paragraph (7) and the stipulated time limit to apply for it shall be pointed out. The notification shall not be made if it is outweighed by concerns of an affected person which are worthy of protection. In addition, notification of a person designated in sentence 1, numbers 2, 3, and 6, against whom the measure was not directed, may be refrained from if that person was only slightly affected by the measure and it can be assumed that he is not interested in a notification. Investigations to establish the identity of a person designated in sentence 1shall only be made if this is required, with due consideration given to the impact of intrusion this measure has on this person, the effort needed to establish his identity as well as the resulting impairment of this or other persons.

(5) The notification shall occur as soon as this is possible without jeopardizing the purpose of the investigation, the life, the physical integrity and personal liberty of a person and of important assets, in case of section 110a also the possibility to further use the undercover agent. If notification pursuant to sentence 1 is deferred, the reasons shall placed on the record.

(6) If the notification deferred pursuant to paragraph (5) is not made within 12 months upon completion of the measure, further deferment requires the approval by a court. The court shall determine the time period of further deferments. It may consent to finally refrain from the notification, if it is more than likely that the prerequisites for a notification will also not be fulfilled in the future. If several measures were taken within a short time frame, the period stipulated in sentence 1 starts to run upon completion of the last measure. In case of section 100c, the period designated in sentence 1 shall be 6 months.

(7) Court decisions pursuant to paragraph (6) shall be issued by the court competent for ordering the measure, otherwise the court which is located at the responsible office of the public prosecutor. Even after completion of the measure, the persons designated in paragraph (4), sentence 1, may request up to 2 weeks after their notification that the court competent pursuant to sentence 1 review the legality of the measure as well as of the way it was executed. An immediate complaint against the decision is admissible. If public charges have been preferred and the accused person notified, the court dealing with the merits shall decide upon the request in the decision concluding the proceedings.

(8) If the personal data obtained by the measure are no longer needed for criminal prosecution and for a possible review of the measure by court they shall be deleted immediately. The deletion shall be taken on record. If deletion is deferred only for a possible review of the measure by court the data may be used without approval of the affected persons only for such purpose; they shall be blocked accordingly.

SECTION 102. SEARCH OF SUSPECTS

In case of a person who is suspected as perpetrator of, or participant in a criminal act, or of aiding and abetting, preventing prosecution of an offense, or receiving of stolen goods a search of the residence and other rooms as well as of his body and of the property belonging to him, may be made, for the purpose of his apprehension and in the cases where it may be presumed that the search will lead to the discovery of evidence.

SECTION 103. SEARCHES OF OTHER PERSONS

(1) Searches of other persons are permitted only for the purpose of apprehending the accused or to pursue the traces of a criminal act or to seize certain objects and only if facts are present that support the conclusion that the person, trace, or object

looked for is in the rooms which are to be searched. For the purposes of apprehending an accused who is strongly suspected of having committed an offense pursuant to section 89a of the German Criminal Code or pursuant to section 129a also in conjunction with section 129b, paragraph (1), of the German Criminal Code or one of the offenses designated in this provision, a search of apartments and other rooms is also permitted if those are in a building where, on the basis of certain facts, the accused is presumed to be.

(2) The restrictions of paragraph (1), first sentence, do not apply to rooms where the accused was apprehended or which he entered during the pursuit.

SECTION 104. HOUSE SEARCHES DURING NIGHTTIME

(1) Apartments, business rooms, and fenced-in property may be searched at nighttime only in pursuit of a person found in the act, or if there is danger in delay, or in the case of recapturing an escaped prisoner.

(2) This restriction does not apply to rooms that are accessible at nighttime to anyone or that are known to the police as shelters or gathering places of offenders, as depots of property obtained through criminal acts, or as hiding places for gambling, prohibited trade with narcotics or weapons, or professional prostitution.

(3) The nighttime includes, during the period from 1 April to 30 September: the hours from 9 o' clock in the evening to 4 o'clock in the morning; and during the period from 1 October to 31 March: the hours from 9 o' clock in the evening to 6 o'clock in the morning.

SECTION 105. ORDER TO SEARCH, EXECUTION

(1) Searches will be ordered only by the judge and, if there is danger in delay, also by the public prosecutor and his investigating personnel (sec 152 of the Law Concerning the Constitution of Courts). Searches pursuant to section 103, paragraph (1), second sentence, are ordered by the judge; the office of the public prosecutor is authorized to order searches if there is danger in delay.

(2) A municipal official or two members of the community in the district where the search is made shall be called in if possible to assist if apartments, business rooms, or fenced-in property are to be searched without the judge or the public prosecutor being present. The persons called in as members of the community shall not be police officials or investigating personnel of the office of the public prosecutor.

(3) If it is necessary to make a search in a public building or an installation or establishment of the Federal Armed Forces that is not open to general public, the superior agency of the Federal Armed Forces will be requested to carry out such search. The requesting agency is entitled to participate. No such request is necessary if the search is to be made in places that are inhabited exclusively by persons other than soldiers.

SECTION 106. CALLING IN THE OWNER

(1) The owner of the rooms or objects to be searched may be present at the search. In the event he is absent, his representative or an adult relative, fellow-lodger, or neighbor shall, if possible, be called in to assist.

(2) In the cases of section 103, paragraph (1), the owner or the person called in his absence shall be informed about the purpose before the search begins. This provision shall not apply to the owners of the rooms designated in section 104, paragraph (2).

SECTION 107. NOTIFICATION, LIST

On conclusion of the search, the person involved therein shall, on his request, be given written notification specifying the reasons for the search (secs 102 and 103) and, in the case of section 102 the criminal act. On request he shall also be given a list of the objects that were taken into custody or seized; in the event nothing suspicious was found, a certificate showing this fact will be given to him.

SECTION 108. SEIZURE OF OTHER OBJECTS

(1) Objects found by a search that, though not connected with the inquiry, indicate the commission of another criminal act, shall be temporarily seized. The office of the public prosecutor shall be informed thereof. Sentence 1 shall not be applicable if a search pursuant to section 103, paragraph (1), second sentence, is made.

(2) If objects as defined in paragraph (1), sentence 1, are found at a physician's place which concern termination of pregnancy, their use as evidence in criminal proceedings against the female patient based on an offense pursuant to section 218 of the German Criminal Code is inadmissible.

(3) If objects as defined in paragraph (1), sentence 1, are found with a person designated in section 53, paragraph (1), sentence 1, number 5, to which the designated person's right to refuse to give evidence applies, the use of the object for evidence purposes in criminal proceedings is only admissible if the subject matter of these criminal proceedings is a criminal act for which a maximum of at least five years imprisonment will be imposed and which is not a criminal act pursuant to section 353b of the German Criminal Code.

SECTION 109. MARKING SEIZED OBJECTS

Objects taken into custody or seized shall be exactly listed and, in order to prevent confusion, shall be marked with an official seal or in another adequate manner.

SECTION 110. EXAMINATION OF PAPERS

(1) The office of the public prosecutor, and, if ordered by that office, its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) have the authority to examine the papers of the person with respect to whom the search was made.

(2) Otherwise, officials are authorized to examine papers found by them only if the owner allows such examination. In all other cases they will deliver any papers the examination of which they consider required, to the office of the public prosecutor in an envelope that shall be closed with the official seal in the presence of the owner.

(3) Checking of an electronic storage medium belonging to the person affected by the search may also be extended to storage media which are located separately from it if access to the latter is possible from the storage medium, and if otherwise a loss of the data searched for must be expected. Data which may be of relevance for the investigation may be stored; section 98, paragraph (2), applies accordingly.

SECTION 110A. UNDERCOVER INVESTIGATOR

(1) Undercover investigators may be employed for the detection of criminal acts if there is sufficient factual evidence to indicate that a criminal act of considerable significance was committed—

1. In the field of illegal trade with narcotics or weapons, of counterfeiting money or stamps,

2. In the field of state security (secs 74a and 120 of the Law Concerning the Constitution of Courts),

3. On a commercial basis or habitually,

4. By a member of a gang or in any other organized way.

Undercover investigators may also be employed in the detection of crimes if, based on certain facts, the danger of repetition exists. Their employment is only permissible insofar as detection would be unsuccessful or much more difficult by use of any other method. Undercover investigators may also be employed if the special importance of the act calls for it and other measures would be unsuccessful.

(2) Undercover investigators are officials in the police service who investigate under the cover of a changed identity provided to them on a permanent basis. Under this identity they may participate in legally binding transactions.

(3) Insofar as it is indispensable for the setting up or maintenance of the identity, respective certificates may be issued, changed, and used.

SECTION 110B. APPROVAL OF PUBLIC PROSECUTOR, COURT; SECRECY OF IDENTITY

(1) The employment of an undercover investigator is only permissible upon approval of the office of the public prosecutor. If there is danger in delay and a decision by the office of the public prosecutor cannot be obtained in due time, it shall be brought about without delay; the measure shall be discontinued if the office of the public prosecutor does not give approval within 3 working days. The approval shall be issued in writing and for a limited period. An extension is permissible as long as the prerequisites for the employment continue to exist.

(2) Actions—

1. That are directed against a particular accused, or

2. Where the undercover investigator enters an apartment which is not publicly accessible,

require the approval of the court. In case of danger in delay, the approval of the office of the public prosecutor is sufficient. If the decision of the public prosecutor cannot be obtained in due time, it shall be brought about without delay. The measure shall be discontinued if the court does not give approval within 3 working days. Paragraph (1), sentences 3 and 4, shall apply accordingly.

(3) The identity of the undercover investigator may be kept secret after completion of the action. The office of the public prosecutor and the court that are competent to decide about the approval of the action may demand that the identity be revealed to them. Otherwise, keeping the identity secret in criminal proceedings is permissible subject to section 96, especially if there is a reason to assume that its disclosure would jeopardize life, limb, or freedom of the undercover investigator or of another person, or the possibility of further employment of the undercover investigator.

SECTION 110C. ENTERING A RESIDENCE

By use of their identity, undercover investigators may enter an apartment with the consent of the entitled person. The consent may not be brought about feigning a right of access exceeding the use of the identity. Otherwise, the powers of the undercover investigator are determined by this law and other legal provisions.

SECTION 110D. (DELETED)

SECTION 110E. (DELETED)

SECTION 111. CHECKPOINTS

(1) If certain facts substantiate the suspicion that an offense pursuant to section 89a of the German Criminal Code or pursuant to section 129a also in conjunction with section 129b, paragraph (1), of the German Criminal Code, one of the offenses designated in this provision or an offense pursuant to section 250, paragraph (1), number 1, of the German Criminal Code has been committed, checkpoints may be established on public roads, squares, and at other publicly accessible localities if facts justify the assumption that this measure will lead to the apprehension of the perpetrator or to the securing of evidence, that may serve to solve the offense. At a checkpoint all persons are obligated to establish their identity and to subject themselves or objects found by them to a search.

(2) The order to establish a checkpoint is given by the judge; the office of the public prosecutor and its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) are authorized to give such order if there is danger in delay.

(3) Section 106, paragraph (2), first sentence, and section 107, first half of second sentence, are applicable to the search and establishment of the identity pursuant to paragraph (1), sections 108, 109, and 110, paragraphs (1) and (2), as well as sections 163b and 163c apply accordingly.

SECTION 111A. PROVISIONAL WITHDRAWAL OF PERMISSION TO DRIVE MOTOR VEHICLES

(1) If there are cogent reasons for the assumption that a driver's license will be withdrawn (sec 69 of the German Criminal Code), the judge may, by order, preliminarily withdraw the permission to operate a motor vehicle from the accused. Certain types of motor vehicles may be excepted from the withdrawal of permission to operate a motor vehicle if special circumstances justify the assumption that the purpose of the measure will not be jeopardized thereby.

(2) The provisional withdrawal of the driver's license shall be set aside if the reason for it ceased or if the court does not withdraw the driver's license in the judgment.

(3) The provisional withdrawal of the driver's license has the effect of an order or confirmation of the confiscation of the driver's license issued by a German agency. The same applies if the driver's license was issued by an authority of a member state of the European Union or another contracting state to the Agreement on the European Economic Area, if the license holder is ordinarily resident in Germany.

(4) If a driver's license has been confiscated because it may be withdrawn pursuant to section 69, paragraph (3), sentence 2, of the German Criminal Code, and if a judicial decision concerning confiscation is required, it is replaced by the decision concerning the provisional withdrawal of the driver's license.

(5) A driver's license that is held in custody, safe-guarded, or confiscated, because it may be withdrawn pursuant to section 69, paragraph (3), sentence 2, of the German Criminal Code, shall be returned to the accused if the judge objects the provisional withdrawal of the driver's license due to lack of the prerequisites designated in paragraph (1), revokes it, or if the court does not withdraw the driver's license in the judgment. However, if a prohibition to drive is imposed in the judgment pursuant to section 44, German Criminal Code, the return of the driver's license may be postponed if the accused does not protest.

(6) The provisional withdrawal of the driver's license shall be noted in foreign driver's licenses other than those ordered in paragraph (3), sentence 2. Pending the entry of this note the driver's license may be confiscated (sec 94, para (3), and sec 98).

SECTION 111B. SECURING OBJECTS

(1) Objects may be secured if there are reasons for the assumption that the prerequisites for their forfeiture or seizure exist. Section 94, paragraph (3), remains unaffected.

(2) If there are reasons for the assumption that the prerequisites for the forfeiture of a substitute value or seizure of a substitute value exit, attachment can be ordered to secure the amount pursuant to section 111d.

(3) If there are no urgent reasons, the court shall revoke the ordered measures designated in paragraph (1), sentence 1, and paragraph (2) after 6 months at the latest. If certain facts give reason for suspicion of a criminal act and if the period stated in sentence 1 is not sufficient because investigations are particularly difficult or extensive, or because of another important reason, the court may, upon request of the public prosecutor, extend the measure if the given reasons justify its continuation. The measure may not be maintained for more than twelve months without urgent reasons.

(4) Sections 102 to 110 apply accordingly.

(5) Sentences 1 to 4 apply accordingly if forfeiture cannot be ordered only because the prerequisites of section 73, paragraph (1), sentence 2, of the German Criminal Code prevail.

SECTION 111C. CONFISCATION

(1) Confiscation of a movable object will be effected in the cases of section 111b by taking the object into custody or by making recognizable the confiscation by seal or in any other manner.

(2) Confiscation of a real estate or a title, subject to the provisions concerning execution on immovable property, is effected by making an entry into the land register concerning the confiscation. The provisions of the law governing execution and sequestration with regard to the extent of confiscation in case of execution apply accordingly.

(3) Confiscation of a claim or of any other property title, not subject to the provisions concerning execution on immovable property, is effected by seizure. The provisions of the Code of Civil Procedure governing execution on claims and other property titles are accordingly applicable. With the confiscation the request shall be made to furnish the statements designated in section 840, paragraph (1), Code of Civil Procedure.

(4) Confiscation of ships, ship constructions, and aircraft is effected pursuant to paragraph (1). Confiscation of such ships, ship constructions, and aircraft that are entered in the ship register, ship construction register, or register for liens on aircraft shall be entered in the register. Ship construction or aircraft not recorded but eligible to be recorded may be reported for entry for this purpose; the provisions that shall be applicable when a person entitled to request an entry in the register based on an executable title makes such report apply accordingly.

(5) Confiscation of an object pursuant to paragraphs (1) through (4) has the effect of a prohibition for sale within the meaning of section 136 of the Civil Code; the prohibition also comprises orders other than sales.

(6) Confiscated movable property may be—

1. Returned to the person concerned against immediate substitute of the value, or

2. Left to the person concerned with the reservation of revocation at any time for temporary further use until the proceedings are terminated.

The amount deposited according to sentence 1, number 1, replaces the object. The measures according to sentence 1, number 2, may be made dependent on the security furnished by the person concerned or on compliance with specific conditions.

SECTION 111D. ATTACHMENT

(1) Attachment may be ordered because of the forfeiture or confiscation of the substitute value, because of a fine or the presumably arising costs of the criminal proceedings. Attachment may be ordered because of a fine and presumably arising costs only when a judgment has been rendered against the accused pronouncing a punishment. No attachment will be ordered to secure execution costs or minor amounts.

(2) Sections 917; 920, paragraph (1); 923; 928; 930 to 932; 934, paragraph (1); of the Code of Civil Procedure, apply accordingly.

(3) If attachment has been ordered because of a fine or presumably arising costs, an execution measure shall be canceled at the request of the accused, as far as the accused needs the sizable object to pay the costs for his defense, his own support, or the support of his family.

SECTION 111E. COMPETENCE TO ISSUE ORDERS

(1) Only the court is authorized to order confiscation (sec 111c) and attachment (sec 111d); if danger is in delay, also the office of the public prosecutor is authorized. The investigating personnel of the office of the public prosecutor are also authorized to order the seizure of movable property (sec 111c, para (1)) if there is danger in delay (sec 152 of the Law Concerning the Constitution of Courts).

(2) If the office of the public prosecutor has ordered the seizure or attachment, it requests confirmation of the order by the court within 1 week. This does not apply if the seizure of movable property has been ordered. The person concerned may in all cases request the decision by the court.

(3) The enforcement of seizure and attachment shall be immediately communicated by the office of the public prosecutor to the person injured by the act as far as he is known, or becomes known in the course of the proceedings.

(4) The information may be provided by a non-recurring announcement in the Federal Bulletin (*Bundesanzeiger*) if information of each individual injured party would require considerable expenses or if it is assumed that unknown injured persons have claims arising from the act. The information may also be published in a different appropriate manner. Personal data may only be published if they are indispensable for the injured parties to obtain access to the secured assets for assertion of their claims. After completion of the securing measures, the office of the public prosecutor shall have the publication made in the Federal Bulletin deleted.

SECTION 111F. COMPETENCE TO ORDER EXECUTION

(1) Execution of the seizure (sec 111c) is incumbent on the office of the public prosecutor, in case of movable property (sec 111c, para (1)) also on its investigating personnel. Section 98, paragraph (4), applies accordingly.

(2) The required entries into the real property register as well as into the registers designated in section 111c, paragraph (4), are effected at the request of the office of the public prosecutor or the court that ordered the seizure. The same applies to the reports mentioned in section 111c, paragraph (4).

(3) If an attachment pursuant to the provisions on the seizure of movable property is to be executed, this can be effected by the authority designated in section 2 of the Ordinance Concerning the Collection of Judicial Fees (*Justizbeitreibungsordnung*), the bailiff, the office of the public prosecutor, or their investigating personnel (sec 152 of the Law Concerning the Constitution of Courts). Paragraph (2) applies accordingly. The office of the public prosecutor is responsible for ordering the seizure of a registered ship or ship under construction as well as the garnishment of a claim based on the attachment pursuant to section 111d, or upon the public prosecutor's request the court that ordered the arrest is responsible.

(4) Section 37, paragraph (1), shall apply for service of process under the proviso that the investigating personnel of the public prosecutor's office (sec 152 of the Law Concerning the Constitution of Courts) may be assigned the implementation.

(5) The person concerned may at any time request a decision by the court against the measures taken to execute the seizure or the attachment.

SECTION 111G. PRIORITY OF THE INJURED PERSON IN CASE OF OBJECTS SUBJECT TO CONFISCATION

(1) The seizure of an object pursuant to section 111c and the execution of an attachment pursuant to section 111d do not oppose an injured person's order, which is issued by way of execution or attachment on the basis of a claim resulting from the criminal act.

(2) Execution or attachment pursuant to paragraph (1) requires permission by the court which is competent for the seizure (sec 111c) or the attachment (sec 111d). The decision is rendered by an order from which immediate recourse may be taken by the prosecution, the accused, and the injured person. The consent shall not be given if the injured person does not make credible that the claim has resulted from the criminal act. Section 294 of the Code of Civil Procedure is applicable.

(3) The prohibition for sale pursuant to section 111c, paragraph (5), is effective from the time of the seizure also in favor of the injured persons who, during the seizure of the confiscated object, effect execution or attachment. The entry of the prohibition for sale into the real property register in favor of the State applies to the use of section 892, paragraph (1), second sentence, of the Civil Code (*Bürgerliches Gesetzbuch*) also as entry in favor of such injured persons who during the seizure are listed in the real property register as beneficiaries as a result of the prohibition for sale. The proof that the claim resulted from the criminal act may be furnished to the real property register office by presenting the decision concerning the consent. Sentences 2 and 3 apply accordingly to the prohibition for sale in case of ships, ship constructions, and aircraft designated in section 111c, paragraph (4). The effectiveness of the prohibition for sale in favor of the injured person is not affected by the cancellation of the seizure. Sentences 1 and 5 apply accordingly regarding the effect of the right of lien which resulted from effecting the attachment (sec 111d) of movable property.

(4) If the object, which was seized or seized in execution based on the attachment, is not subject to forfeiture for reasons other than those designated in section 73, paragraph (1), sentence 2, of the German Criminal Code, or if the permission was given unjustly, the injured person is obligated to third persons to compensate the damage caused to them due to the fact that the prohibition for sale pursuant to paragraph (3) is to his advantage.

(5) Paragraphs (1) through (4) apply accordingly if the forfeiture of an object has been ordered, however, the order is not yet effective. They do not apply if the object is subject to seizure.

SECTION 111H. PRIORITY OF THE INJURED PERSON IN CASE OF SECURITY MORTGAGE

(1) If the injured person requests execution with regard to a claim resulting from a criminal act or if he effects attachment of real estate on which attachment has been effected pursuant to section 111d, he may request that his right has priority over the security mortgage established by the seizure. The priority of such right is not forfeited by the cancellation of attachment. The approval of the owner to change the priority is not required. Otherwise, section 880 of the Civil Code applies accordingly.

(2) The change of priority requires the permission of the judge who is responsible for the attachment (sec 111d). Section 111g, paragraph (2), sentences 2 to 4, and paragraph (3), sentence 3, apply accordingly.

(3) If the permission is given unjustly the injured person is obliged to compensate third persons for the damage caused to them due to the change of priority.

(4) Paragraphs (1) through (3) shall apply accordingly if the attachment pursuant to section 111d of a ship, a ship under construction, or aircraft within the meaning of section 111c, paragraph (4), sentence 2, was effected.

SECTION 111I. EXTENSION OF PERIOD OF CONFISCATION FOR A LIMITED PERIOD

(1) The court may order that confiscation pursuant to section 111c or attachment pursuant to section 111d is maintained for a maximum period of 3 months, if the proceedings have been limited to the other legal consequences pursuant to sections 430 or 442, paragraph (1), and the immediate revocation would be unfair to the injured person.

(2) If the court has not ordered forfeiture only because of conflicting claims of one injured party within the meaning of section 73, paragraph (1), sentence 2, of the German Criminal Code, it may state so in the judgment. In such a case, it shall

designate the recovered item. If the prerequisites of section 73a of the German Criminal Code apply, it shall state in the judgment the monetary amount corresponding to the value of the recovered item. To the extent that—

1. The injured party has already disposed by way of execution or effected attachment,

2. It is proven that the injured person was already satisfied from the assets which were not confiscated or confiscated by execution through effecting attachment, or

3. The injured person has been handed the recovered item pursuant to section 111k

this shall be deducted within the scope of the statements to be made according to sentences 2 and 3.

(3) If the court proceeds pursuant to paragraph (2), it shall maintain the confiscation (sec 111c) of the item recovered within the meaning of paragraph (2), sentences 2 and 4, as well as the attachment (sec 111d) up to the amount of the amount stated pursuant to paragraph (2), sentences 3 and 4, by court order for three years. The period starts to run when the judgment is final. Secured assets shall be designated in the judgment. Section 917 of the Code of Civil Procedure shall not be applied. If it is proven that, within this period, the injured party is satisfied from assets which were not confiscated or seized by execution through effecting the attachment, the court shall revoke the confiscation (sec 111c) or the attachment (sec 111d) upon request of the affected person.

(4) The court order pursuant to paragraph (3) as well as the becoming final of the judgment shall be immediately communicated by the court to the person injured by the act. The notification shall be combined with a reference to the consequences stated in paragraph (5) and the option to assert claims by means of execution or effecting of attachment. Section 111e, paragraph (4), sentences 1 to 3, shall apply accordingly.

(5) When the period stated in paragraph (3) has run, the State acquires the assets designated pursuant to paragraph (2) in accordance with section 73a, paragraph (1), of the German Criminal Code as well as a payment claim in the amount stated pursuant to paragraph (2), unless—

1. In the meantime, the injured party has disposed by way of execution or effected attachment,

2. It has been proven that the injured party was satisfied from assets which were not confiscated or seized by execution through effected attachment,

3. In the meantime, items were handed to the injured party or deposited in accordance with section 111k, or

4. Items would have to be handed to the injured party pursuant to section 111k and he requested such handing over prior to the expiration of the period stated in paragraph (3).

In accordance with the provisions of the 8th Book of the Code of Civil Procedure, the State may, at the same time, enforce the lien substantiated by effecting the attachment. The proceeds as well as deposited money shall go to the State. With the enforcement the arising payment claim pursuant to sentence 1 also becomes extinct to the extent that the proceeds from the enforcement lag behind the amount of the claim.

(6) By court order, the court of first instance shall decide on the occurrence and the extent of the acquisition of the title by the State pursuant to paragraph (5), sentence 1. Section 111l, paragraph (4), shall apply accordingly. The court order may be appealed by immediate complaint. Once the court order has become final the court shall initiate deletion of the publications made in the Federal Bulletin according to paragraph (4).

(7) If the convicted person or the person affected by the confiscation or the attachment satisfies the claims of the injured person secured thereby upon expiration of the period stated in paragraph (3) he may request compensation in the amount of the proceeds from the enforcement which went to the State. Compensation is excluded –

1. In case of a conflicting or adverse payment claim of the State pursuant to paragraph (5), sentence 1, setting off the amount of the proceeds collected by the State, or

2. If 3 years have passed since the period stated in paragraph (3) has elapsed.

(8) Paragraphs (2) through (7) shall be applied accordingly to the procedure pursuant to sections 440 and 441 in conjunction with section 442, paragraph (1), in the cases of section 76a, paragraph (1) or (3), of the German Criminal Code.

SECTION 111K. RETURNING CONFISCATED OBJECTS

Movable property that has been seized pursuant to section 94 or otherwise secured, or that has been confiscated pursuant to section 111c, paragraph 1, shall be returned the injured person from whom it was withdrawn by the criminal act if it is no longer needed for the criminal proceedings, if that person is known and there are no adverse third party claims. Section 111f, paragraph (5), shall be applied. The office of the public prosecutor may bring about the decision of the court if the right of the injured person is not obvious.

SECTION 111L. EMERGENCY SALE

(1) Assets that were seized pursuant to section 111c or attached on the basis of an execution (sec 111d) may be sold before the judgment becomes final if they are subject to perishing or substantial reduction of their value or if their storage, maintenance, or preservation is disproportionately expensive or difficult. In the cases of section 111i, paragraph (2), assets attached on the basis of an execution (sec 111d) may be sold after the judgment has become final, if this appears reasonable. The proceeds shall take their place.

(2) The emergency sale is ordered by the public prosecutor in the preliminary proceedings and after the judgment has become final. His investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) are entitled to order such sale if the object is subject to deterioration before the decision of the public prosecutor can be rendered.

(3) On preferring public charges, the order is given by the court concerned with the subject matter. The office of the public prosecutor is entitled to do so if the object is subject to deterioration before the decision of the court can be rendered; paragraph (2), sentence 2, applies accordingly.

(4) The accused, the owner, and other persons who are entitled to the object shall be heard prior to the order. The order, as well as time and place of the sale, shall be made known to them as far as this appears to be practicable.

(5) The emergency sale will be made according to the provisions of the Code of Civil Procedure concerning the use of an attached object. The office of the public prosecutor takes the place of the court of execution (sec 764 of the Code of Civil Procedure) in the cases of paragraphs (2) and (3), sentence 2; in the cases of paragraph (3), sentence 1, the court that is concerned with the subject matter takes the place of the court of execution. The use permitted pursuant to section 825 of the Code of Civil Procedure may be ordered *ex officio* at the same time with the emergency sale or subsequently at the request of the persons designated in paragraph (4), in the case of paragraph (3), sentence 1, also on request of the office of the public prosecutor. If it appears reasonable, the emergency sale may also be made by use of a different procedure and by another person than the bailiff.

(6) The person concerned may request a decision by the court competent pursuant to section 162 regarding the orders by the public prosecutor or his investigating personnel. Sections 297 to 300, 302, 306 to 309, 311a, and 473a apply accordingly. The court, in urgent cases the presiding judge, may order suspension of the sale.

SECTION 111M. CONFISCATION OF PRINTED PUBLICATIONS OR OTHER WRITINGS

(1) Confiscation of printed publications, of any other writing or object within the meaning of section 74d of the German Criminal Code may not be ordered pursuant to section 111b, paragraph (1), if its prejudicial consequences, especially endangering public interest in immediate dissemination is obviously out of proportion to the importance of the matter.

(2) Separable parts of the writing, the contents of which is not subject to punishment shall be precluded from confiscation. Confiscation may be further restricted in the order.

(3) In the order for confiscation those passages of the writing, giving rise to confiscation, shall be designated.

(4) Confiscation may be averted if the person concerned precludes that part of the writing from reproduction or dissemination that gives rise to confiscation.

SECTION 111N. ORDERING AND SUSPENSION OF CONFISCATION OF A PRINTED PUBLICATION

(1) Confiscation of a periodic printed publication or an object equal to such item within the meaning of section 74d of the German Criminal Code may be ordered by the judge only. Confiscation of another printed publication or other object within

the meaning of section 74d of the German Criminal Code may (in case of danger in delay) also be ordered by the office of the public prosecutor. The order of the public prosecutor becomes invalid if it is not confirmed by the judge within 3 days.

(2) Confiscation shall be suspended if public charges have not been preferred within 2 months or the independent confiscation has not been requested. If the period set in first sentence is not sufficient due to the exceptional scope of the investigations the court may, at the request of the office of the public prosecutor, extend the period by another 2 months. The request may be repeated once.

(3) As long as public charges have not been preferred and independent confiscation not been requested, confiscation shall be suspended if so requested by the office of the public prosecutor.

SECTION 111O. ATTACHMENT DUE TO FINES LEVIED ON PROPERTY

(1) If there are strong reasons to assume that the prerequisites for the imposition of a fine on property exist, attachment may be ordered on that basis.

(2) Sections 917, 928, 930 to 932, and 934, paragraph (1), of the Code of Civil Procedure, apply accordingly. In the order of attachment an amount of money shall be determined, the deposit of which suspends the execution of the attachment and entitles the debtor to file a motion to set aside the executed attachment. The amount is determined by the circumstances of the specific case, i.e. by the expected amount of the fine on property. That amount may be estimated. The motion for remission of the attachment shall include the facts required for the determination of the amount of money.

(3) Only the judge is authorized to order attachment on the basis of a fine on property, in case of danger in delay, also the office of the public prosecutor. If the order was issued by the public prosecutor he shall request its confirmation by the judge within 1 week. The accused may move for a decision by the judge at any time.

(4) If, due to a fine on property, execution of the attachment of movable property is to be effected, section 111f, paragraph (1), shall apply accordingly.

(5) Otherwise, section 111b, paragraph (3), and section 111e, paragraphs (3) and (4), section 111f, paragraphs (2) and (3), sentences 2 and 3, as well as sections 111g and 111h shall be applied.

SECTION 111P. SEIZURE OF PROPERTY

(1) The property of the accused may be attached under the prerequisites of section 111o, paragraph (1), if the execution of the expected fine on property does not appear to be secured by an order of attachment pursuant to section 111o with regard to the nature or scope of the property or for other reasons.

(2) Attachment shall be restricted to single items of property, if this is sufficient according to the circumstances, i.e., according to the expected amount of fine on property to secure its execution.

(3) By issuance of the order for attachment of property, the accused loses his right to administer the attached property and to dispose of it *inter vivos*. The hour of attachment shall be stipulated in the order.

(4) Section 111b, paragraph (3), section 111o, paragraph (3), section 291, section 292, paragraph (2), and section 293 shall apply accordingly.

(5) The property administrator shall notify the office of the public prosecutor and the court of all findings gained within the scope of property administration which serve the purpose of the attachment.

CHAPTER NINE
ARREST AND TEMPORARY APPREHENSION (*VERHAFTUNG UND VORLÄUFIGE FESTNAHME*)

SECTION 112. PERMISSIBILITY OF PRETRIAL CONFINEMENT; REASONS FOR CONFINEMENT

(1) Pretrial confinement may be ordered against the accused if he is strongly suspected of the act and if there exists a reason for arrest. It may not be ordered if it is disproportionate to the significance of the case or to the punishment or measure of reform and prevention likely to be imposed.

(2) A reason for arrest exists if, on the basis of certain facts—

1. It is established that the accused has fled or is hiding;

2. Considering the circumstances of the individual case, there is a danger that the accused will evade the proceedings against him (danger of flight); or

3. The accused's conduct gives rise to the strong suspicion that he will—

a. Destroy, alter, remove, suppress, or falsify evidence,

b. Improperly influence codefendants, witnesses, or experts, or

c. Cause others to do so,

and if, therefore, the danger exists that the ascertainment of the truth will be impeded (danger of obscuring the evidence).

(3) Pretrial confinement may be ordered against an accused strongly suspected of an offense pursuant to section 6, paragraph (1), number 1, of the Code concerning Crimes against International Public Law or section 129a, paragraph (1) or (2), also in conjunction with section 129b, paragraph (1), or pursuant to sections 211, 212, or 226, 306b or 306c of the German Criminal Code, or if life and limb of another have been endangered by the act pursuant to section 308, paragraphs (1) to (3), of the German Criminal Code, even if there is no reason for arrest pursuant to paragraph (2).

SECTION 112A. OTHER REASONS FOR CONFINEMENT

(1) A reason for detention also exists when the accused is strongly suspected of having—

1. Committed a criminal act pursuant to sections 174, 174a, 176 to 179, or pursuant to section 238, paragraphs (2) and (3), of the German Criminal Code, or

2. Repeatedly or constantly committed a criminal act seriously prejudicing the legal order pursuant to section 89a, set forth in sections 125a, 224 to 227, set forth in sections 243, 244, 249 to 255, 260; set forth in section 263, set forth in sections 306 to 306c, or 316a of the German Criminal Code; or set forth in section 29, paragraph (1), number 1, 4, or 10, paragraph (3), section 29a, paragraph (1), section 30, paragraph (1), or section 30a, paragraph (1), of the Narcotics Law,

and certain facts substantiate the assumption that he will commit further serious criminal acts of the same nature or will continue the criminal act prior to final conviction if detention is required to avert the imminent danger and in the cases of number 2 a penalty of imprisonment exceeding 1 year is to be expected. When assessing the strong suspicion of commitment of an offence within the meaning of sentence 1, number 2, also such acts shall be considered that are or were the subject matter of other, also finally concluded proceedings.

(2) Paragraph (1) is not applicable if the prerequisites for the issuance of a warrant of arrest prevail pursuant to section 112 and the prerequisites for the suspension of execution of the warrant of arrest pursuant to section 116, paragraphs (1) and (2), do not prevail.

SECTION 113. LIMITATION OF PRETRIAL CONFINEMENT

(1) If the act is punishable only by imprisonment up to 6 months or by a fine up to 180 daily rates, pretrial confinement may not be ordered by reason of danger of obscuring the evidence.

(2) In such cases, pretrial confinement by reason of danger of flight may only be imposed if the accused—

1. Has previously evaded the proceedings against him or has made preparations for flight;

2. Has no permanent place of residence or abode within the territorial scope of this law, or

3. Cannot identify himself.

SECTION 114. WARRANT OF ARREST

(1) Pretrial confinement is imposed by a written warrant of arrest (*Haftbefehl*) of the judge.

(2) The warrant of arrest shall indicate the—

1. Accused;

2. Act of which he is strongly suspected, the time and place of its commission, the legal characteristics of the criminal act, and the penal provisions to be applied;

3. Reason for arrest, as well as

4. Facts on which the strong suspicion of the act and the reason for arrest is based unless the security of the state is endangered thereby.

(3) If the application of section 112, paragraph (1), sentence 2, is obvious or if the accused refers to this provision, the grounds for not applying it must be stated.

SECTION 114A. NOTIFICATION OF ACCUSED

At the time of his arrest, the accused shall be handed a copy of the arrest warrant. If his command of the German language is insufficient, he shall also be provided a translation in a language he understands. If providing of a copy and a translation that might be required is not possible, he must immediately be informed in a language he can understand, of the reasons for the arrest and the charges raised against him. In such a case, the arrest warrant and a translation, if required, must be handed over at a later point in time without delay.

SECTION 114B.

(1) The arrested accused shall be instructed about his rights immediately and in writing in a language he understands. If it is obvious that a written instruction is not sufficient a verbal instruction shall be provided in addition. The same applies if a written instruction is not possible; however, it shall be provided at a later point in time if this is reasonably manageable. The accused must confirm in writing that he received the instruction; in case he refuses to do so it shall be documented.

(2) During the instruction pursuant to paragraph (1), the accused shall be advised that—

1. Immediately, at the latest on the day following the apprehension, he must be brought before the court, which must interrogate him and decide on his continued detention,

2. He has the right to make a statement regarding the charges or not to make a statement on the matter,

3. He may request that specific evidence be taken in his defense,

4. At any time, even prior to his interrogation, he may consult a defense counsel of his choice,

5. He has the right to request an examination by a physician of his choice,

6. He may notify a relative or a trusted person provided that this does not endanger the purpose of the investigation

An accused who does not have a sufficient command of the German language shall be informed that during the proceedings he may request the assistance of an interpreter at no cost. A foreign national shall be advised that he may request notification of the consular representation of his home country and that he may provide them information.

SECTION 114C.

(1) An arrested accused shall be given immediate opportunity to notify a relative or a trusted person if this does not jeopardize the purpose of the investigation.

(2) If imprisonment is executed after the arrested accused was brought before the court, the court shall order immediate notification of one of his relatives or of a trusted person. The same obligation exists for each further decision on the continuance of confinement.

SECTION 114D.

(1) Together with the request for admission, the court shall transmit a copy of the arrest warrant to the confinement facility responsible for the accused. In addition the court shall provide the following information:

1. The office of the public prosecutor conducting the proceedings and the court competent pursuant to section 126,

2. The persons that have been notified pursuant to section 114c,

3. Decisions and other measures pursuant to section 119, paragraphs (1) and (2),

4. Further decisions issued in the proceedings, to the extent this is necessary for the fulfillment of the duties of the confinement facility,

5. Main trial dates and resulting findings which are relevant for the fulfillment of the duties of the confinement facilities,

6. Date of finality of the judgment, as well as

7. Other personal data of the accused which are required for the fulfillment of the duties of the confinement facility, in particular information about his personality and other relevant criminal proceedings.

Sentences 1 and 2 shall apply accordingly in case the provided information changes. There will be no notifications if the facts have already become known to the confinement facility from other sources.

(2) The office of the public prosecutor assists the court in fulfilling its duties pursuant to paragraph (1) and provides the confinement facility information ex officio in particular pursuant to paragraph (1), sentence 2, number 7, as well as about decisions it has made and other measures pursuant to section 119, paragraphs (1) and (2). In addition, the public prosecutor's office shall transmit a copy of the bill of indictment to the confinement facility and informs the court competent pursuant to section 126, paragraph (1), about the preferring of charges.

SECTION 114E.

The confinement facility shall provide to the court and the public prosecutor's office ex officio findings obtained during the execution of the pretrial confinement, if the confinement facility finds that they are relevant for the fulfillment of the recipients' duties and were not already brought to their attention by other sources. Other competence of the confinement facility to inform the court or the public prosecutor's office about findings shall remain unaffected.

SECTION 115. BRINGING THE ACCUSED BEFORE THE COMPETENT COURT

(1) If the accused is apprehended on the basis of the warrant of arrest, he shall be brought before the competent court without delay.

(2) Immediately after having been brought before the court and at the latest on the following day the court shall examine the accused concerning the subject of the accusation.

(3) During the examination, the incriminating circumstances shall be pointed out to the accused and he shall be informed of his right to reply to the accusation or to remain silent. He shall be given an opportunity to remove grounds for suspicion and arrest and to present those facts that speak in his favor.

(4) If confinement is continued, the accused shall be instructed about the right of recourse and the other legal remedies (sec 117, paras (1) and (2), sec 118, paras (1) and (2), sec 119, para (5), and sec 119a, para (1)). Section 304, paragraphs (4) and (5), shall remain unaffected.

SECTION 115A. BRINGING THE ACCUSED BEFORE THE NEAREST DISTRICT COURT

(1) If the accused cannot be brought before the competent court at the latest on the day after his apprehension, he shall be brought before the nearest district court without delay, however, at the latest on the day after his apprehension.

(2) The court shall interrogate the accused immediately after he was brought before the court, and at the latest on the following day. At this examination, section 115, paragraph (3), will be applied to the extent possible. If it turns out during the examination that the warrant of arrest has been revoked, its revocation has been requested by the public prosecutor's office (sec 120, para (3)), or that the person apprehended is not the person designated in the warrant of arrest, the apprehended person shall be released. If the apprehended person raises other objections against the warrant of arrest or against its execution that are obviously not unfounded or if the court has doubts regarding the continuation of confinement, it shall report them to the competent court and the competent public prosecutor's office without delay and by the fastest means indicated according to the circumstances; the competent court shall review immediately if the warrant of arrest is to be revoked or its execution suspended.

(3) If the accused is not released, he must, at his request, be brought before the competent court for examination according to section 115. The accused shall be informed of this right and shall be instructed pursuant to section 115, paragraph (4).

SECTION 116. SUSPENSION OF EXECUTION OF THE WARRANT OF ARREST

(1) The judge will suspend execution of a warrant of arrest that had been issued only for danger of flight if less incisive measures sufficiently support the expectation that the purpose of pretrial confinement can thereby be reached. In particular, the following measures may be considered:

1. An order to report at certain times to the office of the judge, the prosecuting authority, or to a specific office to be designated by them;

2. An order not to leave the place of residence or abode, or a certain area, without permission of the judge or the prosecuting authority;

3. An order not to leave the residence except under the supervision of a designated person;

4. The furnishing of an adequate security by the accused or another person.

(2) The judge may also suspend execution of a warrant of arrest that is justified for danger of obscuring the evidence if less incisive measures sufficiently support the expectation that they will substantially lessen such danger. In particular, an order not to have contact with codefendants, witnesses, or experts may be considered.

(3) The judge may suspend execution of a warrant of arrest that had been issued according to section 112a if it can be expected that the accused follows certain instructions and that the purpose of detention is reached thereby.

(4) In the cases of paragraphs (1) through (3), the judge shall order execution of the warrant of arrest when—

1. The accused seriously violates the duties and restrictions imposed on him;

2. The accused makes preparations for flight, remains absent without sufficient excuse on proper summons to appear or in any other manner shows that the confidence on him was not justified; or

3. New circumstances make the arrest necessary.

SECTION 116A. SECURITY (BAIL)

(1) Security shall be furnished by depositing cash or bonds, by pledging property, or by furnishing persons as sureties. Deviating provisions in a statutory order issued on the basis of the Law on Payment Transactions with Courts and Judicial Authorities (*Gesetz über den Zahlungsverkehr mit Gerichten und Justizbehörden*) shall remain unaffected

(2) The judge determines the amount and type of security at his discretion.

(3) The accused who moves for the suspension of execution of the warrant of arrest on furnishing security and who does not reside within the territorial purview of this law is obligated to authorize a person living in the district of the competent court to receive service on his behalf.

SECTION 116B.

Execution of pretrial confinement takes precedence over execution of arrest pending extradition, provisional arrest, detention for deportation, and detention because of refusal to allow entry into the country. Execution of other types of

deprivation of liberty takes priority over the execution of pretrial confinement unless the court takes a diverging decision, because the purpose of the pretrial confinement so requires.

SECTION 117. REVIEW OF CONFINEMENT

(1) As long as the accused is in pretrial confinement, he may at any time move for a judicial hearing as to whether the warrant of arrest should be canceled or whether its execution should be suspended according to section 116 (review of confinement).

(2) In addition to a motion for a review of confinement, recourse is not permissible. The right of recourse from the decision following the motion remains unaffected.

(3) The judge may order specific investigations that may be important for the subsequent decision about the continuation of pretrial detention, and he may make a further review after the completion of such investigations.

(4) (Rescinded).

(5) (Rescinded).

SECTION 118. ORAL HEARING

(1) In case of review of confinement, a decision shall be rendered after an oral hearing on motion of the accused or at the discretion of the court, on its own motion.

(2) If recourse has been initiated against the warrant of arrest, a decision may also be rendered after an oral hearing on the motion of the accused or on the court's own motion in the recourse proceedings.

(3) If after an oral hearing it has been ordered that pretrial confinement be continued, the accused has a right to another oral hearing only if pretrial confinement has lasted for at least 3 months and at least 2 months of pretrial confinement have elapsed since the last oral hearing.

(4) A right to an oral hearing does not exist as long as the trial is in process or after a judgment has been pronounced that imposes imprisonment or a measure of reform and prevention entailing deprivation of liberty.

(5) The oral hearing must be held immediately; in the absence of the consent of the accused, it may not be scheduled more than 2 weeks after receipt of the motion.

SECTION 118A. PROCEEDINGS CONCERNING THE ORAL HEARING

(1) The office of the public prosecutor as well as the accused and the defense counsel shall be notified of the place and time of the oral hearing.

(2) The accused shall be brought to the hearing unless he has waived his right to be present at the hearing or unless great distance or sickness of the accused or other irremovable impediments prevent his being brought to the hearing. If the accused is not brought to the oral hearing, the defense counsel shall see that his rights are protected at the hearing. In that case, a defense counsel shall be assigned for the oral hearing if the accused does not yet have one. Sections 142, 143, and 145 apply accordingly.

(3) The participants present shall be heard during the oral hearing. The court determines the kind of evidence and to which extent such evidence is to be taken. A record shall be made of the hearing; the provisions of sections 271 to 273 apply accordingly.

(4) The decision shall be announced at the end of the oral hearing. If this is not possible, the decision shall at least be rendered within 1 week.

SECTION 118B. CROSS-REFERENCE PROVISION

Sections 297 through 300, and section 302, paragraph (2), apply accordingly to the motion for review of confinement (sec 117, para (1)) and to the motion for an oral hearing.

SECTION 119.

(1) In case it is necessary to avoid the risk of escape, collusion, or repetition (secs 112 and 112a), restrictions may be imposed on the confined accused persons. In particular, it may be ordered that—

1. Receiving visitors and telecommunication require a permit,

2. Visits, telecommunication as well as sending and receiving parcels must be monitored,

3. Handing over of items at visits is subject to a permit,

4. The accused is separated from individual or all prisoners,

5. Joint accommodation and joint leisure time with other prisoners is to be restricted or excluded.

The orders will be issued by the court. If an order by the court cannot be obtained in time, the office of the public prosecutor or the confinement facility may issue a preliminary order. Such an order shall be submitted to the court for approval within three working days, unless the matter has been resolved in the meantime. The accused shall be informed of the orders. The order under sentence 2, number 2, includes the authorization to discontinue visits and telecommunication and to stop letters and parcels.

(2) Enforcement of the orders is incumbent upon the agency issuing the orders. Subject to revocation, the court may transfer enforcement of the orders to the public prosecutor's office, which may obtain assistance in the enforcement from its investigating personnel and the confinement facility. The transfer is unappealable.

(3) If monitoring of telecommunication has been ordered pursuant to paragraph (1), sentence 2, number 2, the intended monitoring shall be pointed out to the interlocutors of the accused immediately after the connection was made. The information may be provided by the accused himself. The accused shall be advised of the requirement to inform about the monitoring in due time prior to the commencement of the telecommunication.

(4) Sections 148 and 148a shall remain unaffected. They shall apply accordingly to the contact of the accused with—

1. The probation agency responsible for him,

2. The agency responsible to supervise his conduct,

3. The court assistance agency responsible for him,

4. The Federal and State parliaments,

5. The Federal Constitutional Court (*Bundesverfassungsgericht*) and the State constitutional court responsible (*Landesverfassungsgericht*) for him,

6. The State citizen representative responsible for him,

7. The Federal Commissioner for Data Protection and Freedom of Information (*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit*), the State agencies in charge of supervising compliance with data protection regulations in the Federal States and the supervisory authorities pursuant to section 38 of the Federal Data Protection Act,

8. The European Parliament,

9. The European Court of Human Rights,

10. The European Court of Justice,

11. The European Commissioner for Data Protection,

12. The European citizen representative,

13. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

14. The European Committee against Racism and Intolerance,

15. The United Nations Human Rights Committee,

16. The United Nations Committees on the Elimination of Race Discrimination and the Elimination of Discrimination against Women,

17. The United Nations Committee against Torture, its corresponding Subcommittee for the Prevention of Torture and the corresponding national prevention mechanisms,

18. The persons designated in section 53, paragraph (1), sentence 1, numbers 1 and 4, in reference to the issues mentioned therein,

19. Unless ordered otherwise by the Court,

a) The advisors of the confinement facilities, and

b) The consular representation of his home country.

The agency responsible pursuant to paragraph (2) shall take the measures necessary to determine existence of the prerequisites in accordance with sentences 1 and 2.

(5) A court decision may be requested against decisions or other measures issued in accordance with this provision unless the remedy of complaint is admissible. The request has no suspensive effect. However, the court may issue preliminary orders.

(6) Paragraphs (1) through (5) shall also apply if another confinement measure is executed (sec 116b) against the accused against whom pretrial confinement has been ordered. Also in this case, competence of the court is determined by section 126.

SECTION 119A.

(1) A court decision may be requested against an official decision or measure taken during execution of pretrial confinement. A court decision may also be requested if an official decision requested during execution of pretrial confinement is not issued within 3 weeks.

(2) The request for a court decision has no suspensive effect. However, the court may issue preliminary orders.

(3) The agency responsible for the decision or the measure to be executed may also file a complaint against the decision by the court.

SECTION 120. CANCELLATION OF WARRANT OF ARREST

(1) The warrant of arrest shall be revoked as soon as the conditions for pretrial confinement no longer exist or if the continued pretrial custody would be disproportionate to the significance of the case or to the punishment or measure of reform and prevention likely to be imposed. In particular, it is to be revoked if the accused is acquitted or if the opening of the main proceedings is refused or if the proceedings are discontinued other than temporarily.

(2) The release of the accused must not be delayed by the fact that proceedings for review are initiated.

(3) The warrant of arrest shall also be revoked if the office of the public prosecutor so moves before the public charges are preferred. Simultaneously with this motion, the office of the public prosecutor may order the release of the accused.

SECTION 121. PRETRIAL CONFINEMENT FOR MORE THAN 6 MONTHS

(1) As long as a judgment has not been rendered that imposes confinement or a measure of reform or prevention that embodies a deprivation of liberty, pretrial confinement for one and the same act exceeding a period of 6 months shall be executed only if the unusual difficulties or the unusual extent of the investigation or some other important reason do not yet permit the rendering of a judgment and justify continuation of pretrial confinement.

(2) In the cases of paragraph (1), the arrest warrant shall be revoked on expiration of the 6-month period unless execution of the arrest warrant is suspended pursuant to section 116, or the superior state court orders pretrial confinement to continue.

(3) If the case file is submitted to the superior state court prior to the expiration of the time period established in paragraph (2), the running of the limitation period shall be tolled until that court renders a decision. If the main proceedings commenced prior to the expiration of the limitation period, the running of the limitation period shall be tolled until announcement of the judgment. If the main proceedings are stayed and the case file is forwarded to the superior state court promptly on the staying of the proceedings, the running of the limitation period shall likewise be tolled pending that court's decision.

(4) In cases over which a penal chamber has jurisdiction pursuant to section 74a of the Law Concerning the Constitution of Courts, the decision shall be rendered by the superior state court competent under the provisions of section 120 of the Law Concerning the Constitution of Courts. In cases over which a superior state court has jurisdiction pursuant to section 120 of the Law Concerning the Constitution of Courts, the Federal Supreme Court shall assume its functions.

SECTION 122. DECISION OF THE SUPERIOR STATE COURT

(1) In the cases of section 121, the competent court shall submit the files through the office of the public prosecutor to the Superior State Court (*Oberlandesgericht*) for decision if it deems the continuation of pretrial confinement necessary or if the office of the public prosecutor requests so.

(2) The accused and his defense counsel shall be heard prior to the decision. The Superior State Court may decide about the continuation of pretrial confinement after oral hearing; if this takes place, section 118a applies accordingly.

(3) If the Superior State Court orders the continuation of pretrial confinement section 114, paragraph (2), number 4, applies correspondingly. For the further review of pretrial confinement (sec 117, para (1)), the Superior State Court has jurisdiction until a judgment is rendered imposing imprisonment or a measure of reform and prevention entailing a deprivation of liberty. It may transfer the review of pretrial confinement to the court that is competent for this according to the general provisions for a period not to exceed 3 months. In the cases of section 118, paragraph (1), the Superior State Court decides on motions for an oral hearing at its discretion.

(4) The review of the prerequisites under section 121, paragraph (1), remains within the jurisdiction of the Superior State Court even during further proceedings. This review must always be repeated after 3 months at the latest.

(5) The Superior State Court may suspend execution of the warrant of arrest according to section 116.

(6) If in the same case several accused persons are in pretrial confinement the Superior State Court may decide about the continuation of pretrial confinement even of those accused persons for whom it would not yet be competent pursuant to section 121 and the aforementioned provisions.

(7) If the Federal Supreme Court has jurisdiction to render a decision it will replace the Superior State Court.

SECTION 122A. MAXIMUM PERIOD OF CUSTODY FOR RECIDIVISM

(1) In the cases of section 121, paragraph (1), execution of the sentence may not be maintained longer than 1 year if it is based on the reasons for detention under section 112a.

SECTION 123. REVOCATION OF MEASURES SERVING SUSPENSION AND SECURITY

(1) A measure that serves the suspension of the execution of the sentence (sec 116) shall be canceled if—

1. The warrant of arrest has been revoked; or

2. Pretrial confinement or imprisonment or the measure of reform and prevention entailing deprivation of liberty, actually imposed, is being executed.

(2) Under the same conditions, a security not yet forfeited is released.

(3) Anybody who has furnished security for the accused may bring about its release either by causing the accused to surrender within a period to be fixed by the court or by reporting facts that warrant a suspicion that the accused intends to flee in due time so that the accused may be arrested.

SECTION 124. FORFEITURE OF SECURITY

(1) A security not yet released is forfeited to the state treasury if the accused evades the investigation or the imposed punishment or measure of reform and prevention entailing deprivation of liberty.

(2) Prior to the decision, the accused as well as the person who has furnished security for the accused shall be requested to make a statement. They are entitled only to immediate recourse against the decision. Before a decision is rendered concerning the recourse, those persons and the office of the public prosecutor shall be given an opportunity to support their motions orally and to discuss the investigations that were made.

(3) Regarding the person who has furnished security for the accused, the decision declaring forfeiture has the effect of a concluding judgment passed by a civil judge and declared provisionally executable. After the period for initiating recourse has elapsed, it has the effect of a final civil judgment.

SECTION 125. COMPETENCE TO ISSUE WARRANT OF ARREST

(1) Before preferring public charges, the judge at the district court within whose district jurisdiction is founded or where the accused is present issues the warrant of arrest upon request of the office of the public prosecutor or if a public prosecutor cannot be reached and there is danger in delay on his own motion.

(2) After the public charges have been preferred, the warrant of arrest shall be issued by the court where the case is pending and, if further appeal proceedings have been initiated, by the court whose judgment is being appealed. In urgent cases the presiding judge may issue the warrant of arrest.

SECTION 126. SUBSEQUENT COMPETENCE

(1) Before public charges are preferred, the court that has issued the warrant of arrest is competent as to further court decisions and measures which concern pretrial confinement, suspension of its execution (sec 116), its execution (sec 116b) as well as requests pursuant to section 119a. If the warrant of arrest has been issued by a court of recourse (*Beschwerdegericht*), the competence rests with the court that took the preceding decision. If the preparatory proceedings are conducted at a different location or if pretrial confinement is executed at a different location, the court may transfer its jurisdiction to the district court responsible for this location upon request of the public prosecutor. If that place is divided into several judicial districts, the *Land* government, by statutory order, shall determine which district court is to be competent. The *Land* government may confer this power to the *Land* administration of justice.

(2) After the public charges have been preferred, the court at which the case is pending has jurisdiction. In the course of further appeal proceedings, the court whose judgment is appealed has jurisdiction. Specific measures, especially those according to section 119, are ordered by the presiding judge. In urgent cases he may revoke the warrant of arrest or suspend execution of pretrial confinement (sec 116) if the office of the public prosecutor consents; otherwise the decision of the court may be obtained immediately.

(3) The appellate court (*Revisionsgericht*) may withdraw the warrant of arrest if it vacates the contested judgment and if it clearly follows from this decision that the prerequisites of section 120, paragraph (1), are present.

(4) Sections 121 and 122 remain unaffected.

SECTION 126A. TEMPORARY COMMITMENT

(1) If there are strong reasons to assume that while in a condition of lack of criminal responsibility or of reduced criminal responsibility (secs 20 and 21 of the German Criminal Code) someone has committed an unlawful act and that his commitment to a psychiatric hospital or to an institution for the treatment of alcoholics or drug addicts will be ordered, the court may, by an order of commitment, direct that he be temporarily committed to one of these institutions, if public safety so requires.

(2) Sections 114 to 115a, 116, paragraphs (3) and (4), sections 117 to 119a, 123, 125, and 126 apply correspondingly with respect to temporary commitment. Sections 121 and 122 apply accordingly under the proviso that the superior state court reviews, whether the prerequisites for a temporary commitment continue to exist.

(3) The order of commitment shall be revoked if the conditions for the temporary commitment no longer exist or if the court does not order commitment to a psychiatric hospital or to an institution for the treatment of alcoholics or drug addicts in its judgment. The release must not be delayed by the fact that review proceedings are initiated. Section 120, paragraph (3), applies correspondingly.

(4) If the person committed to an institution has a legal representative or an agent within the meaning of section 1906, paragraph (5), of the Civil Code, decisions pursuant to paragraphs (1) to (3) shall also be made known to him.

SECTION 127. PROVISIONAL APPREHENSION

(1) In the event a person is caught in the very act or pursued subsequently to the act, anyone is authorized to apprehend him provisionally (*vorläufig festnehmen*), even without judicial order, if there is reason to suspect flight or if his identity cannot be immediately ascertained. The establishment of the identity of a person by the office of the public prosecutor or the officials of the police service is determined by section 163b, paragraph (1).

(2) If there is danger in delay the office of the public prosecutor and the officials of the police service are also authorized to make a provisional apprehension if the conditions for the issuance of a warrant of arrest or of an order of commitment (*Unterbringungsbefehl*) exist.

(3) In the case of a punishable act that is prosecuted on request only, provisional apprehension is also permitted if a motion has not yet been made. This applies accordingly if a criminal act may be prosecuted only with authorization or on request for prosecution by a foreign country.

(4) Sections 114a to 114c shall apply accordingly to the provisional apprehension by the public prosecutor' s office and the officers of the police service.

SECTION 127A. FURNISHING SECURITY

(1) If the accused has no permanent residence or place of abode within the territorial scope of this law and if the conditions for a warrant of arrest are present only because of danger of flight, the court may abstain from ordering or maintaining his apprehension if—

1. It is not expected that imprisonment or another measure of reform and prevention depriving his liberty be ordered on account of the act, and

2. The accused furnishes adequate security for the fine to be expected and the costs of the proceedings.

(2) Section 116a, paragraphs (1) and (3), apply accordingly.

SECTION 127B. CONFINEMENT UNTIL DATE OF MAIN TRIAL

(1) The public prosecutor and the officers in police service are also authorized to make a provisional apprehension of a person caught in the act or in pursuit if—

1. It is likely that an immediate decision in expedited proceedings will be made, and

2. Based on certain facts, there is a risk that the apprehended person will not be present at the main trial.

Sections 114a to 114c shall apply accordingly.

(2) A warrant of arrest (sec 128, para (2), sent 2) based on reasons stated in paragraph (1) may only be issued against the person strongly suspected of having committed the offense, if conducting of the main trial is expected within one week after the arrest. The warrant of arrest shall be limited to a maximum period of one week from the day of the arrest.

(3) The judge responsible to conduct the expedited proceedings shall make the decision about the issuance of the warrant of arrest.

SECTION 128. APPEARANCE BEFORE THE DISTRICT COURT JUDGE

(1) The apprehended person shall, without delay, be brought before the judge of the district court in the district of which he was arrested at the latest on the day after the apprehension unless he is released earlier. The judge will examine the person brought before him according to section 115, paragraph (3).

(2) If the judge does not consider the apprehension justified or if he considers that the reasons for such measure no longer exist, he shall order the release. Otherwise he may issue a warrant of arrest or an order of commitment on motion of the office of the public prosecutor or, if the public prosecutor cannot be reached, ex officio. Section 115, paragraph (4), applies correspondingly.

SECTION 129. BRINGING BEFORE THE JUDGE AFTER PREFERRING PUBLIC CHARGES

If public charges have already been preferred against the apprehended person, he shall be brought before the competent court either immediately or on order of the judge before whom he was first brought; this court shall, at the latest, on the day after the apprehension decide with respect to release, arrest, or temporary commitment of the person apprehended.

SECTION 130. WARRANT OF ARREST BEFORE MOTION FOR PROSECUTION IS MADE

If a warrant of arrest is issued because of a suspected punishable act that is prosecuted on motion only before the motion is made, the person entitled to make such motion- and if there are more than one-at least one of them shall be immediately informed of the issuance of the warrant of arrest and be notified that the warrant of arrest will be canceled if the motion is not filed within a period to be determined by the judge, not to exceed 1 week. If, within such period a motion for prosecution is not filed, the warrant of arrest shall be canceled. This applies accordingly if a criminal act may be prosecuted only with authorization or on request for prosecution. Section 120, paragraph (3), shall be applied.

CHAPTER NINE A
FURTHER MEASURES TO ENSURE PROSECUTION AND EXECUTION OF PUNISHMENT (*SONSTIGE MASSNAHMEN ZUR SICHERSTELLUNG DER STRAFVERFOLGUNG UND STRAFVOLLSTRECKUNG*)

SECTION 131. ORDER TO ARREST

(1) On the basis of a warrant of arrest or an order for commitment, the judge or the office of the public prosecutor, and, in case of danger in delay, their investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) may issue a wanted notice.

(2) If the prerequisites of a warrant of arrest or order for commitment exist and issue thereof cannot be awaited without jeopardizing a successful search, the office of the public prosecutor and its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) may take measures pursuant to paragraph 1 if this is required for a temporary detention. The decision about the issuance of a warrant of arrest or order for commitment shall be made immediately, and at the latest within one week.

(3) In case of a particularly serious offense the judge and the office of the public prosecutor may, in the cases of paragraphs (1) and (2), also initiate a public search, if other methods to determine the place of abode would be considerably less successful or much more difficult. Under the same prerequisites, the investigating personnel of the public prosecutor (sec 152 of the Law Concerning the Constitution of Courts) have the same authority if the judge or the public prosecutor cannot be contacted in time. In the cases of sentence 2, the decision of the office of the public prosecutor shall be initiated immediately. The order ceases to have effect if the confirmation is not given within 24 hours.

(4) The accused shall be designated as exactly as possible and be described as far as this is possible; a photo may be attached. The act of which he is suspected as well as the place and time of its commission and the circumstances, which might be important for his arrest, may be stated.

(5) Sections 115 and 115a apply accordingly.

SECTION 131A. SEARCH ORDER TO DETERMINE PLACE OF ABODE

(1) A search order to determine the place of abode of an accused or a witness may be issued if his place of abode is unknown.

(2) Paragraph (1) also applies for searches of an accused if they are necessary in order to confiscate a driver's license, to establish a police identification record, to make a DNA analysis, or to establish his identity.

(3) Based on a search to determine the place of abode of an accused or a witness, a public search may be ordered in case of a serious offense if the accused is strongly suspected of having committed the offense and determination of his place of abode by another method would be considerably less successful or much more difficult.

(4) Section 131, paragraph (4), applies accordingly. When determining the place of abode of a witness it must be made clear that the person looked for is not the accused. A public search for a witness shall be refrained from in case of conflicting predominant interests of the witness, which are worthy of protection.

(5) Searches pursuant to paragraphs (1) and (2) may be made by means of all search aids available to the prosecuting authorities.

SECTION 131B. PUBLICATION OF PICTURES

(1) A publication of pictures of an accused who is suspected of having committed a serious offense is also allowed if solving of a criminal offense, in particular the establishment of the identity of an unknown offender by use of any other method would be less successful or much more difficult.

(2) A publication of pictures of a witness and references to the criminal proceedings on which the publication is based are also permitted if the solving of a particularly serious criminal offense and in particular establishment of the identity of the witness by another method would not be successful or much more difficult. The publication shall indicate that the depicted person is not an accused.

(3) Section 131, paragraph (4), first half sentence, and sentence 2, apply accordingly.

SECTION 131C. ORDERING AND CONFIRMATION OF SEARCH MEASURES

(1) Searches pursuant to section 131a, paragraph (3), and section 131b may only be ordered by the judge; in case of danger in delay, also by the office of the public prosecutor or its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts). Searches pursuant to section 131a, paragraphs (1) and (2), require an order by the office of the public prosecutor; in case of danger in delay they may also be ordered by its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts).

(2) In cases of permanent publication in electronic media as well as in case of a repeated publication on television or periodical printed publications the order issued by the office of the public prosecutor and its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) pursuant to paragraph (1), sentence 1, ceases to have effect if it is not confirmed by a judge within one week. In addition, orders for searches issued by investigating personnel (sec 152 of the Law Concerning the Constitution of Courts) become inoperative if they are not confirmed by the public prosecutor within one week.

SECTION 132. OTHER MEASURES

(1) If an accused who is strongly suspected of a criminal act has no permanent residence or place of abode within the scope of this law and the conditions for a warrant of arrest do not prevail, an order may be issued to secure the completion of the criminal proceedings to the effect that the accused—

1. Provides an adequate security for the fine to be expected and the costs of the proceedings, and

2. Authorizes a person residing in the district of the competent court to receive service of documents.

Section 116a, paragraph (1), applies accordingly.

(2) This order may be issued only by the judge; if there is a danger in delay, also the public prosecutor and his investigating personnel may issue the order (sec 152 of the Law Concerning the Constitution of Courts).

(3) If the accused fails to comply with the order, means of transportation, and other objects that the accused brings along and that belong to him may be confiscated. The provisions of sections 94 and 98 apply accordingly.

CHAPTER NINE B
TEMPORARY PROHIBITION TO EXERCISE A PROFESSION (*VORLÄUFIGES BERUFSVERBOT*)

SECTION 132A. TEMPORARY PROHIBITION TO EXERCISE A PROFESSION

(1) If there are cogent reasons for the assumption that a prohibition to exercise a profession will be ordered (sec 70 of the German Criminal Code), the judge may, by decision, temporarily prohibit the accused to exercise his profession, branch of profession, trade or branch of trade. Section 70, paragraph (3), of the German Criminal Code, applies accordingly.

(2) The temporary prohibition to exercise a profession shall be revoked when the reason for this measure no longer exists or when the court does not order the prohibition to exercise a profession in its judgment.

CHAPTER TEN
EXAMINATION OF THE ACCUSED (*VERNEHMUNG DES BESCHULDIGTEN*)

SECTION 133. WRITTEN SUMMONS

(1) The accused shall be summoned to the examination in writing.

(2) The summons may provide that the accused will be brought before the court in the case of noncompliance.

SECTION 134. BRINGING THE ACCUSED BEFORE THE COURT

(1) It may be ordered that the accused be brought before the court immediately if reasons exist that would justify the issuance of a warrant of arrest.

(2) The accused and the criminal act with which he is charged shall be exactly specified in this order; the reason for his being brought before the court shall be indicated.

SECTION 135. IMMEDIATE EXAMINATION
An accused shall be immediately brought before the judge and be examined by him. Based on the order he may only be kept in custody until the end of the day which follows the beginning of his being brought before the judge.

SECTION 136. FIRST EXAMINATION

(1) At the commencement of the first examination, the accused shall be informed of the act with which he is charged and of the applicable penal provisions. He shall be advised that the law grants him the right to respond to the accusation or not to make any statements regarding the subject matter and consult with a defense counsel of his choice at any time, even prior to his examination. He shall further be instructed that he may request the taking of evidence for his exoneration. In appropriate cases the accused shall also be advised that he may provide a written statement and that the perpetrator has the opportunity to compensate his victim.

(2) The examination should give the accused an opportunity to dispel the reasons for suspicion existing against him and to assert the facts that are in his favor.

(3) At the first examination of the accused his personal situation should also be ascertained.

SECTION 136A. PROHIBITED METHODS OF EXAMINATION

(1) The freedom of decision and voluntary manifestation of the accused's will shall not be impaired by ill-treatment, fatigue, bodily interference, drugs, torture, deception, or hypnosis. Force may be used only as far as this is permitted by the criminal procedural law (*Strafverfahrensrecht*). Threatening with measures not permitted according to the procedural provisions or promise of an advantage not provided by the law are prohibited.

(2) Measures which impair the accused's memory or his capacity of judgment are not permitted.

(3) The prohibition of paragraphs (1) and (2) applies irrespective of the consent of the accused. Statements that were obtained by violation of this prohibition shall not be used, even if the accused agrees to their use.

CHAPTER ELEVEN
DEFENSE

SECTION 137. DEFENSE COUNSEL

(1) The accused may have the assistance of a defense counsel at any stage of the proceedings. Not more than three defense counsels may be selected.

(2) If the accused has a legal representative, the latter may also engage a defense counsel independently. Paragraph (1), second sentence, applies accordingly.

SECTION 138. CHOSEN DEFENSE COUNSEL

(1) Attorneys at law as well as professors of law at German universities within the meaning of the Basic University Law (*Hochschulrahmengesetz*) who are qualified to hold judicial office may be engaged as defense counsels.

(2) Other persons may only be chosen with the approval of the court. If, in cases of mandatory defense, the person chosen is not among the persons who may be appointed as defense counsel, such person may be admitted as chosen defense counsel only together with one who may be so appointed.

(3) Witnesses, plaintiffs in a private action, joint plaintiffs, persons authorized to become joint plaintiffs and injured parties who may seek the assistance of an attorney or may be represented by one, may, in accordance with paragraphs (1) and (2), sentence 1, also choose the other persons designated in these paragraphs.

SECTION 138A. EXCLUSION OF A DEFENSE COUNSEL

(1) A defense counsel shall be precluded from his participation in proceedings if he is strongly suspected or suspected to a degree justifying the opening of the main trial of—

1. Being involved in the act that constitutes the subject of investigation,

2. Abusing the communication with the accused not at liberty to commit criminal acts or to substantially endanger the security of a penal institution, or

3. Having committed an act that in case of the conviction of the accused, would be aiding and abetting, misprision of a felony, or receiving of stolen goods.

(2) A defense counsel shall also be precluded from participation in proceedings the subject of which is an offense pursuant to section 129a also in conjunction with section 129b, paragraph (1), of the German Criminal Code when certain facts substantiate the suspicion that he committed or commits one of the acts designated in paragraph (1), numbers 1 and 2.

(3) The preclusion shall be canceled—

1. As soon as its prerequisites no longer exist, however, not only because the accused has been set at liberty;

2. If the defense counsel is acquitted in the opened main proceedings for facts that resulted in the preclusion or if in a judgment of the court of honor a culpable violation of the official duties in view of these facts is not determined;

3. If at the latest 1 year after the preclusion, no trial has been opened based on the facts leading to the preclusion in the criminal proceedings or in the proceedings before the court of honor, or if no order imposing punishment has been issued.

A preclusion that, according to number 3, is to be canceled may be limited as to time, however, at the most be maintained for the total period of another year if the particular difficulty or the particular extent of the matter or another important reason do not yet permit, the decision on the opening of the main proceedings.

(4) As long as a defense counsel is precluded, he may not defend the accused in other proceedings regulated by law. He may not visit the accused who is not at large for other reasons.

(5) A defense counsel who is precluded may not defend other accused in the same proceedings nor in other proceedings involving an offense pursuant to section 129a also in conjunction with section 129b, paragraph (1), of the German Criminal Code and preclusion was enforced in the course of proceedings where such a criminal act was the subject matter.

SECTION 138B. EXCLUSION IF THE SECURITY OF GERMANY IS JEOPARDIZED

A defense counsel shall also be precluded from participating in proceedings the subject of which are criminal acts designated under section 74a, paragraph (1), number 3, and section 120, paragraph (1), number 3, of the Law Concerning the

Constitution of Courts or noncompliance with the duties pursuant to section 138 of the German Criminal Code regarding the criminal acts of high treason or jeopardizing the external security pursuant to sections 94 to 96, 97a, and 100 of the German Criminal Code if, based on certain facts, it can be assumed that his participation would jeopardize the security of Germany. Section 138a, paragraph (3), first sentence, number 1, applies accordingly.

SECTION 138C. COMPETENCE IN CASE OF EXCLUSION

(1) The decisions pursuant to sections 138a, 138b are rendered by the superior state court. If, in the preliminary proceedings, the investigations are conducted by the Federal Prosecutor General (*Generalbundesanwalt*), or if the proceedings are pending before the Federal Supreme Court, the federal supreme court shall render the decision. If the proceedings are pending before a senate of the superior state court or the Federal Supreme Court, another senate shall decide.

(2) The court competent pursuant to paragraph (1) shall decide in the period between preferring of public charges and the final completion of the proceedings on submission by the court before which the proceedings are pending, otherwise upon motion of the office of the public prosecutor. The submission is made at the request of the office of the public prosecutor or *ex officio* through intervention of the office of the public prosecutor. If a defense counsel who is a member of a Bar Association is to be excluded, a copy of the request by the office of the public prosecutor according to sentence 1 or the submission by the court shall be communicated to the president of the competent bar association. The president may make his comments in the course of the proceedings.

(3) The court before which the proceedings are pending may order that the rights of the defense counsel resulting from sections 147 and 148 are suspended until a decision on the preclusion is made by the court competent according to paragraph (1); it may order the suspension of these rights also with respect to the cases designated under section 138a, paragraphs (4) and (5). Prior to preferring public charges and after termination of the proceedings with final effect the order pursuant to sentence 1 is given by that court which has to decide on the preclusion of the defense counsel. The order is given by decision that cannot be contested. For the duration of the order the court shall appoint another defense counsel to safeguard the rights resulting from section 147 and 148. Section 142 applies accordingly.

(4) If the court before which the proceedings are pending effects submission during the trial pursuant to paragraph (2), it shall at the same time with the submission interrupt or suspend the trial until decision by the court competent pursuant to paragraph (1). The trial may be interrupted up to 30 days.

(5) If the defense counsel, on his own initiative or at the request of the accused withdraws from the participation in proceedings after a request for his preclusion has been made pursuant to paragraph (2), or the matter has been submitted to the court competent to render a decision this court may continue the preclusion proceedings with the aim to determine whether the participation of the precluded defense counsel in the proceedings is permitted. The determination of inadmissibility is equal to the preclusion within the meaning of sections 138a, 138b, and 138d.

(6) If the defense counsel has been barred from participation in the proceedings he can be charged with the costs caused by the bar. The decision thereon is rendered by the court before which proceedings are pending.

SECTION 138D. PROCEDURE IN CASE OF EXCLUSION OF DEFENSE COUNSEL

(1) A decision on the preclusion of the defense counsel is made after a hearing.

(2) The defense counsel shall be summoned to the hearing. The period for the summons is 1 week; it may be reduced to 3 days. The office of the public prosecutor, the accused, and in the cases of section 138c, paragraph (2), third sentence, the president of the bar association shall be notified of the hearing date.

(3) The hearing may be held without the defense counsel if he has been properly summoned and referred to the fact in the summons that the hearing may be held in his absence.

(4) At the hearing, the persons present shall be heard. The extent of evidence to be heard is determined by the court at its discretion conformable to duty. Minutes of the hearing shall be prepared; sections 271 to 273 apply accordingly.

(5) The decision shall be pronounced at the end of the hearing. When this is not possible, the decision shall be made no later than within 1 week.

(6) Immediate appeal against the decision by which a defense counsel is precluded for reasons designated in section 138a or which concern a case of section 138b is permitted. The president of the bar association is not entitled to file an appeal. A decision rejecting the preclusion of the defense counsel pursuant to section 138a cannot be contested.

SECTION 139. TRAINEE AS DEFENSE COUNSEL

The attorney engaged as a defense counsel may, with the consent of whoever selected him, entrust the defense to a junior attorney who has passed the first bar examination and has been practicing for at least 1 year and 3 months.

SECTION 140. MANDATORY DEFENSE

(1) The assistance of a defense counsel is mandatory if—

1. The trial is held in the first instance at the superior state court or at the state court;

2. The accused is charged with a major crime;

3. The proceedings may result in an order prohibiting the exercise of an occupation;

4. Pretrial confinement pursuant to sections 112, 112a or temporary commitment pursuant to section 126a or 275a, paragraph (6), is executed against the accused.

5. The accused has been in an institution for at least 3 months based on judicial order or with the approval of the judge and will not be released from such institution at least 2 weeks prior to the commencement of the trial.

6. For the preparation of an expert opinion on his mental condition the commitment of the accused pursuant to section 81 becomes likely;

7. Proceedings for protective internment will be conducted.

8. The former defense counsel is precluded from participation in the proceedings based on a decision.

(2) In other cases the presiding judge will appoint a defense counsel on motion or *ex officio* if the assistance of a defense counsel appears necessary because of the seriousness of the act, or because of the difficult factual or legal situation, or if it is evident that the accused cannot defend himself, especially because an attorney has been assigned to the injured person pursuant to sections 397a and 406g, paragraphs (3) and (4). The motion of an accused who has a hearing or speech impediment shall be granted.

(3) The appointment of a defense counsel pursuant to paragraph (1), number 5, may be rescinded when the accused is released from the institution at least 2 weeks prior to the commencement of the trial. The appointment of the defense counsel pursuant to paragraph (1), number 4, remains effective for the subsequent proceedings under the prerequisites delineated in paragraph (1), number 5, unless another defense counsel is appointed.

SECTION 141. APPOINTMENT OF DEFENSE COUNSEL

(1) In the cases of section 140, paragraph (1), numbers 1 to 3 and 5 to 8, and paragraph (2), as soon as the accused has been requested according to section 201 to reply to the bill of indictment, a defense counsel will be appointed if he does not yet have one.

(2) If it only later appears that the assistance of a defense counsel is necessary, he shall be appointed immediately.

(3) The defense counsel may be appointed already during the preliminary proceedings. The office of the public prosecutor requests such appointment if, according to its opinion, the assistance of a defense counsel pursuant to section 140, paragraph (1) or (2), will be necessary. On termination of the investigations (sec 169a) he shall be appointed at the request of the office of the public prosecutor. In case of section 140, paragraph (1), number 4, the defense counsel will be appointed immediately after commencement of execution.

(4) The presiding judge of the court competent for the trial or of the court at which the case is pending will decide about the appointment; in case of section 140, paragraph (1), number 4, the court responsible pursuant to section 126 or section 275a, paragraph (6), shall will decide.

SECTION 142. SELECTION OF DEFENSE COUNSEL

(1) Prior to the appointment of a defense counsel the defendant shall be given the opportunity to name an attorney-at-law of his choice within a period of time to be determined. If there is no important reason for objection, the presiding judge shall appoint the defense counsel named by the defendant.

(2) In the cases of section 140, paragraph (1), numbers 2 and 5, as well as section 140, paragraph (2), junior attorneys who have passed the first examination for judicial service and who have been practicing for at least 1 year and 3 months may be appointed as defense counsel in proceedings in the first instance but not before the court to whose judges they have been assigned for training.

SECTION 143. REVOCATION OF APPOINTMENT

The appointment shall be revoked if, subsequently, another defense counsel is engaged who accepts the engagement.

SECTION 144. (DELETED)

SECTION 145. ABSENCE OF DEFENSE COUNSEL

(1) The president must immediately appoint another defense counsel for the accused if, in a case where such assistance is mandatory, counsel fails to appear at the trial, leaves untimely, or refuses to carry on the defense. However, the court may also decide to suspend the trial.

(2) If mandatory defense counsel is appointed only during the trial according to section 141, paragraph (2), the court may decide to suspend the trial.

(3) The trial shall be interrupted or suspended if the newly appointed defense counsel declares that he does not have time to prepare the defense.

(4) If a suspension becomes necessary through the fault of the defense counsel, he shall be charged with the costs caused thereby.

SECTION 145A. SERVICE ON DEFENSE COUNSEL

(1) The selected defense counsel whose power of attorney is recorded in the files, as well as the appointed counsel, are considered authorized to receive service of documents on behalf of the accused.

(2) A summons for the accused may be served on the defense counsel only if he is particularly authorized to receive summons by power of attorney recorded in the files. Section 116a, paragraph (3), remains unaffected.

(3) If pursuant to paragraph (1), a decision is served on the defense counsel, the accused shall be informed thereof; at the same time he will be provided an informal copy of the decision. If a decision is served on the accused, the defense counsel shall be informed about it at the same time even if a written power of attorney is not contained in the file; he will be provided an informal copy of the decision.

SECTION 146. COMMON DEFENSE COUNSEL PROHIBITED

The defense of several persons accused of the same offence by a common defense counsel is not permitted. The defense of several persons accused of different offenses in the same proceedings by a common counsel is also not permitted.

SECTION 146A. REJECTION OF DEFENSE COUNSEL

(1) If someone has been selected as defense counsel although the prerequisites stated in section 137, paragraph (1), sentence 2, or section 146 prevail, he shall be rejected as defense counsel as soon as this becomes obvious; the same shall apply if prerequisites stated in section 146 arise after selection. If, under the conditions of section 137, paragraph (1), sentence 2, several defense counsel simultaneously announce their selection, and if the maximum number of defense counsel allowed is thereby exceeded, they shall all be rejected. The decision on rejection is rendered by the court before which the proceedings are pending or the court competent for trial.

(2) Actions taken by a defense counsel prior to his rejection are not invalid only because the prerequisites stated in section 137, paragraph (1), sentence 2, or section 146 were fulfilled.

SECTION 147. INSPECTION OF CASE FILES

(1) The defense counsel is entitled to inspect those files that are available to the court, those that would have to be submitted to the court if charges were preferred, and to inspect officially secured pieces of evidence.

(2) If the completion of the investigations has not yet been entered in the file, the defense counsel may be denied inspection of the files or individual parts of it, as well as the inspection of officially secured pieces of evidence, if this is likely to jeopardize the purpose of the investigation. If the prerequisites described in sentence 1 are fulfilled and if the accused is in pretrial confinement or if such confinement has been requested after temporary detention, the defense counsel shall be granted access to the pertinent information so that he can appropriately assess the lawfulness of the confinement; as a rule, inspection of files shall be granted for such purpose.

(3) At no stage of the proceedings may the defense counsel be denied the inspection of the minutes concerning the examination of the accused or of such judicial acts of investigation to which the defense counsel has been or should have been admitted as well as the inspection of expert opinions.

(4) On motion the defense counsel shall be permitted to take the files, with the exception of pieces of evidence, to his office or to his apartment for review, unless there are significant reasons to the contrary. The decision is not contestable.

(5) The public prosecutor will decide on the permission to inspect files during the preliminary proceedings and after proceedings are completed and have become final; otherwise the decision will be made by the presiding judge of the court before which the case is pending. If the office of the public prosecutor denies inspection of files after he noted completion of the investigations in the files, if he denies inspection pursuant to paragraph (3), or if the accused is under arrest, a decision by the court competent pursuant to section 162 may be requested. Sections 297 to 300, 302, 306 to 309, 311a, and 473a shall apply accordingly. Such decisions shall not be provided with reasons if their disclosure would jeopardize the purpose of the investigation.

(6) If the reason denying the inspection of the files has not ceased to exist before, the office of the public prosecutor must rescind the order no later than on completion of the investigation. The defense counsel shall be notified as soon as the unlimited right to inspect the records is reinstated.

(7) Upon his request, the accused, who does not have a defense counsel, can be provided information and copies from the files if this is necessary for an adequate defense, if it would not jeopardize the purpose of the investigation, also in other criminal proceedings, and if there are no conflicting predominant interests of third parties which are worthy of protection. Paragraph (2), sentence 2, first half sentence, paragraph (5), and section 477, paragraph (5), apply accordingly.

SECTION 148. ATTORNEY-CLIENT COMMUNICATION

(1) The accused, even if not at large, is entitled to communicate with the defense counsel in writing as well as orally.

(2) If an accused, who is not at large, is strongly suspected of having committed an offense pursuant to section 129a, also in conjunction with section 129b, paragraph (1), of the German Criminal Code, the court shall order rejection of documents and other items in connection with communication with the defense counsel, if the sender does not agree to their being first submitted to the court competent pursuant to section 148a. If no warrant of arrest has been issued based on a criminal act pursuant to section 129a, also in conjunction with section 129b, paragraph (1), of the German Criminal Code, the decision will be made by the court which would be responsible for issuance of an arrest warrant. If written communication pursuant to sentence 1 must be monitored, devices shall be provided which prevent that documents and other items can be handed over during conversations with the defense counsel.

SECTION 148A. EXECUTION OF CONTROL MEASURES

(1) The judge of the district court in the district where the penal institution is located is competent to carry through control measures pursuant to section 148, paragraph (2). If a report has to be made pursuant to section 138 of the German Criminal Code, documents or other items obligating to make a report shall be safeguarded temporarily; the provisions concerning confiscation remain unaffected.

(2) The judge who is entrusted with exercising control measures may not be concerned with the subject of the investigation. The judge shall keep secret any knowledge that he obtains during his control activity. Section 138 of the German Criminal Code remains unaffected.

SECTION 149. ADMISSION OF ADVISORS

(1) The spouse or life partner of an accused shall be admitted to the trial to give assistance in the defense and shall be heard on his (her) request. Time and place of the trial should be communicated to him (her) in due time.

(2) The same rule applies to the legal representative of the accused.

(3) In preliminary proceedings the admittance of such assistance is left to judicial discretion.

SECTION 150. (DELETED)

PART II
PROCEEDINGS OF FIRST INSTANCE (*VERFAHREN IM ERSTEN RECHTSZUG*)

CHAPTER ONE
PUBLIC CHARGES (*ÖFFENTLICHE KLAGE*)

SECTION 151. INITIATION OF PROCEEDINGS BY PREFERRING CHARGES
The opening of a judicial investigation is based on the preferring of charges.

SECTION 152. AUTHORITY COMPETENT TO PREFER PUBLIC CHARGES; MANDATORY PROSECUTION (*LEGALITÄTSGRUNDSATZ*)

(1) The public prosecutor has the authority to prefer public charges.

(2) Except as otherwise provided by law, the office of the public prosecutor is obliged to take action in case of all criminal acts which may be prosecuted, provided there is sufficient factual evidence.

SECTION 152A. PROSECUTION OF MEMBERS OF PARLIAMENT
The law of a *Land* concerning the conditions under which criminal proceedings may be instituted or continued against members of a legislative body are also applicable to the other *Länder* of Germany and to the Federal Republic itself.

SECTION 153. DISCONTINUANCE OF PROSECUTION BY REASON OF MINOR GUILT

(1) If a minor crime is the subject of the proceedings, the office of the public prosecutor may abstain from prosecuting with the approval of the court competent for the opening of the main trial if the guilt of the perpetrator is considered to be of a minor nature and no public interest in the prosecution exists. The consent of the court is not required in case of a minor crime that is not subject to an increased minimum punishment* when the consequences caused by the act are of a minor nature.

***[Translator's Note:** The meaning of the phrase "increased minimum punishment" may best be illustrated by comparing the sections of the German Criminal Code relating to larceny. Section 242 of the German Criminal Code (simple larceny) provides for a sentence of up to 5 years (for example, no minimum punishment). Section 243 of the German Criminal Code (especially aggravated larceny) provides for a sentence of from 3 months to 10 years (for example, a minimum punishment). Section 244 of the German Criminal Code (larceny with a weapon) provides for punishment of from 6 months to 10 years (for example, an increased minimum punishment.]

(2) If charges have already been preferred, the court, with the consent of the office of the public prosecutor and the accused, may stop the proceedings at any stage under the prerequisites of paragraph (1). The consent of the accused is not required if the main trial cannot be conducted for the reasons designated in section 205 or in the cases of section 231, paragraph (2), and sections 232 and 233 is conducted in his absence. The decision is rendered by order. The order may not be contested.

SECTION 153A. DISCONTINUANCE OF PROCEEDINGS FOLLOWING FULFILLMENT OF TERMS AND CONDITIONS, AND DIRECTIVES

(1) With the approval of the court competent to order the opening of the main proceedings and of the accused, the public prosecutor may, in case of a minor crime, refrain from preferring public charges and at the same time impose terms and conditions or directives on the accused, if such conditions are appropriate to eliminate the public interest in a criminal

prosecution and is not in conflict with the severity of the guilt. Terms and conditions or directives to be particularly considered are—

1. Making of a certain contribution towards restitution for damage caused by the act,

2. Payment of an amount of money to a charitable institution or to the state treasury,

3. Performance of other services benefiting public welfare,

4. Payment of support in a certain amount,

5. A serious effort to reach compensation of the injured person (offenders compensation of victim) by which the perpetrator tries to make good for his act in whole or to a major part or to try to attain indemnification, or

6. Participation in educational training according to section 2b, paragraph (2), sentence 2, or section 4, paragraph (8), sentence 4, of the Road Traffic Law (*Straßenverkehrsgesetz)*.

The office of the public prosecutor shall fix a time period within which the accused is to comply with such terms and conditions and directives, and which, in the cases of sentence 2, numbers 1 through 3, 5, and 6, shall be a maximum of 6 months and, with in the cases of sentence 2, number 4, a maximum of 1 year. The office of the public prosecutor may subsequently revoke the terms and conditions and directives and may extend the time period once for a period of 3 months; with the consent of the accused it may subsequently impose or change the terms and conditions and directives. If the accused complies with the terms and conditions and directives, the act can no longer be prosecuted as a minor crime. If the accused fails to comply with the terms and conditions and directives, there shall be no reimbursement for such contribution as he has made towards compliance. In the cases of sentence 2, numbers 1 to 5, section 153, paragraph (1), second sentence, applies accordingly.

(2) If charges have already been preferred, the court may, until conclusion of these main proceedings in which the factual determinations can last be examined, with the consent of the office of the public prosecutor and the consent of the accused provisionally discontinue the proceedings and concurrently impose the terms and conditions and directives described in sentence 1 and 2 of paragraph (1). Paragraph (1), sentences 3 through 6, apply accordingly. The decision pursuant to the provisions of sentence 1 shall be rendered in the form of an order. The order is not subject to appeal. Sentence 4 also applies for a determination that terms and conditions and directives imposed according to sentence 1 were complied with.

(3) The running of the statute of limitations is tolled for the duration of the time period set for compliance with the terms and conditions and directives.

SECTION 153B. DISCONTINUANCE OF PROCEEDINGS IN CASE NO PUNISHMENT IS IMPOSED

(1) If the conditions exist under which the court may abstain from imposing a punishment, the public prosecutor may, with the consent of the court that would have jurisdiction over the trial, abstain from preferring the public charges.

(2) If charges have already been preferred the court may, with the consent of the public prosecutor and of the accused, stop the proceedings prior to the beginning of the trial.

SECTION 153C. NONPROSECUTION OF ACTS COMMITTED ABROAD

(1) The public prosecutor may desist from prosecuting criminal acts—

1. That have been committed outside the territorial purview of this law or which a participant in an act committed outside the territorial purview of this law committed in this area;

2. That a foreigner committed in Germany on a foreign ship or aircraft. Section 153f shall be applicable to offenses which are punishable pursuant to the International Criminal Code.

3. If in the cases of sections 129 and 129a, both also in conjunction with section 129b, paragraph (1) of the German Criminal Code, the association does not or not mainly exist in Germany and the participating acts committed in Germany are of secondary importance or are only restricted to membership.

(2) The office of the public prosecutor may refrain from prosecution of a criminal act if punishment for the act was already executed against the accused abroad, and the punishment that is to be expected in Germany, after the amount of the foreign punishment is deducted, would be negligible, or if the accused has already been acquitted because of the act abroad by final judgment.

(3) The office of the public prosecutor may abstain from prosecuting criminal acts that are within the purview of this law but are committed outside the territorial scope of this law, if the completion of the proceedings would bring about the danger of a serious disadvantage to Germany or if prosecution is opposed to predominant other public interests.

(4) If charges have already been preferred the office of the public prosecutor may in the cases of paragraph (1), numbers 1 and 2, and of paragraph (3), withdraw the charges at any stage of the proceedings and discontinue the proceedings if the completion of the proceedings would bring about the danger of a serious disadvantage to Germany or if prosecution is opposed to other predominant public interests.

(5) If criminal acts of the nature designated under section 74a, paragraph (1), numbers 2 to 6, and under section 120, paragraph (1), numbers 2 through 7, of the Law Concerning the Constitution of Courts, are the subject of the proceedings, the Federal Public Prosecutor has these powers.

SECTION 153D. NONPROSECUTION OF POLITICAL OFFENSES

(1) The Federal Public Prosecutor may abstain from prosecuting the criminal acts of the nature designated under section 74a, paragraph (1), numbers 2 to 6, and under section 120, paragraph (1), numbers 2 through 7, of the Law Concerning the Constitution of Courts, if completion of the proceedings would bring about a serious disadvantage to the Federal Republic of Germany or if prosecution is opposed to predominant public interests.

(2) If charges have already been preferred, the Federal Public Prosecutor may withdraw the charges under the conditions designated in paragraph (1) at any stage of the proceedings and discontinue the proceedings.

SECTION 153E. NONPROSECUTION IN CASE OF ACTIVE REGRET

(1) If criminal acts of the nature designated under section 74a, paragraph (1), numbers 2 through 4, and section 120, paragraph (1), numbers 2 through 7, of the Law Concerning the Constitution of Courts, are the subject of the proceedings, the Federal Public Prosecutor, with the approval of the superior state court competent pursuant to section 120 of the Law Concerning the Constitution of Courts may abstain from prosecuting such an act if the perpetrator, subsequently to the act, and before he has learned of the discovery thereof, contributed to avert a danger to the existence or the security of Germany or its constitutional order. The same applies if the perpetrator has contributed, by disclosing to an agency after the act, such knowledge he had with respect to attempts involving high treason, endangering the democratic constitutional state, high treason, and endangering the external security.

(2) If charges have already been preferred, the superior state court competent pursuant to section 120 of the Law Concerning the Constitution of Courts, may, with the approval of the Federal Public Prosecutor, discontinue the proceedings if the conditions designated under paragraph (1) are met.

SECTION 153F. REFRAINING FROM PROSECUTION IN CASE OF OFFENSES PUNISHABLE UNDER THE INTERNATIONAL CRIMINAL CODE

(1) In the cases of section 153c, paragraph (1), numbers 1 and 2, the office of the public prosecutor may refrain from prosecution of an offense which is punishable pursuant to section 6 through 14 of the International Criminal Code if the accused does not stay in Germany and such a stay is not to be expected. If in the cases of section 153c, paragraph (1), number 1, the accused is a German national, this does however, only apply if the offense is prosecuted before an international court of justice or by a country on whose territory the act was committed or if a national of that country was injured by the act.

(2) In the cases of section 153c, paragraph (1), numbers 1 and 2, the office of the public prosecutor may in particular refrain from prosecution of an offense which is punishable pursuant to sections 6 to 14 of the International Criminal Code if—

1. There is no suspicion of a criminal act against a German national.

2. The offense was not committed against a German national.

3. A person suspected of having committed a criminal act does not stay in Germany and such a stay is not to be expected.

4. The offense is prosecuted before an international court of justice or by a country on whose territory the act was committed, a national of that country is suspected of having committed the offense or a national of that country was injured by the offense.

The same applies if a foreign national accused of having committed a criminal act abroad stays in Germany, however, the prerequisites according to sentence 1, numbers 2 and 4, are fulfilled and a transfer to an international court of justice or the extradition to the prosecuting state is authorized and intended.

(3) If, in the cases of paragraph (1) or (2), public charges have already been preferred, the office of the public prosecutor may withdraw the charges at each stage of the proceedings and dismiss the proceedings.

SECTION 154. UNIMPORTANT COLLATERAL OFFENSES

(1) The office of the public prosecutor may abstain from prosecuting an act—

1. If the penalty or the measure of reform and prevention in which the prosecution might result is negligible in comparison to a penalty or measure of reform and prevention that was imposed on the accused by final judgment for another act or which he has to expect for another act, or

2. Beyond that, if a judgment is not to be expected for such act within an adequate period and if a punishment of measure of reform and prevention which was imposed on the accused by final judgment or which he has to expect for another act appears sufficient to have an influence on the perpetrator and to defend the legal order.

(2) If the public charges have already been preferred, the court, on the public prosecutor's motion, may suspend the proceedings at any stage.

(3) If the proceedings were suspended on account of a punishment or measure of reform and prevention already imposed for another act by final judgment, the proceedings may be resumed, unless barred by limitation in the meantime, if the punishment or measure of reform and prevention imposed by final judgment is subsequently not executed.

(4) If the proceedings were suspended on account of a punishment or measure of reform and prevention which is to be expected for another act, the proceedings may be resumed, unless barred by limitation in the meantime within 3 months after the judgment imposed for the other act has become final.

(5) If the court suspended the proceedings, a court ruling is required for their resumption.

SECTION 154A. LIMITATION OF PROSECUTION

(1) If individual separable parts of an act or some out of several violations of law, committed by the same act are not of great importance—

1. For the penalty to be expected or measure of reform and prevention, or

2. In addition to a penalty or measure of reform and prevention which has been imposed by final judgment on the accused for another act or which he has to expect for another act,

prosecution may be limited to the other parts of the act or to the other violations of law. Section 154, paragraph (1), number 2, applies accordingly. The limitation shall be included in the records.

(2) After filing of the bill of indictment, the court, with the consent of the office of the public prosecutor, may make this limitation at any stage of the proceedings.

(3) At any stage of the proceedings the court may reintroduce into the proceedings those portions of the act or violations of law which were dropped. A motion by the public prosecutor for reintroduction shall be granted. If eliminated parts of an act are reintroduced section 265, paragraph (4), shall apply correspondingly.

SECTION 154B. EXTRADITION AND EXPULSION

(1) Preferring the public charges may be dispensed with if the accused is to be extradited to a foreign country because of the act.

(2) The same rule applies if he is to be extradited to a foreign government or transferred to an international criminal court because of another act and the punishment or the measure of reform and prevention in which the domestic prosecution might result is negligible in comparison to the punishment or measure of reform and prevention which was imposed by final judgment on him abroad or which he must expect abroad.

(3) Preferring the public charges may be dispensed with if the accused is to be expelled from the territorial scope of this federal law.

(4) If, in the cases of paragraphs (1) through (3), the public charges have already been preferred, the court, on the motion of the public prosecutor, will suspend the proceedings. Section 154, paragraphs (3) through (5), is correspondingly applicable, provided that the period in paragraph (4) amounts to 1 year.

SECTION 154C. DISCRETION IN CASE OF COERCION OR EXTORTION

(1) If coercion or extortion (secs 240 and 253 of the German Criminal Code) was committed by threats to reveal a criminal act, the public prosecutor may abstain from prosecuting the act, the disclosure of which was threatened, unless the seriousness of the act requires punishment.

(2) If the victim of a coercion or extortion (secs 240 and 253 of the German Criminal Code) reports such act (sec 158) and if thereby an offense committed by the victim becomes known, the office of the public prosecutor may abstain from prosecuting the offense unless the seriousness of the act requires atonement.

SECTION 154D. DECISION OF A COLLATERAL ISSUE INVOLVING CIVIL LAW OR ADMINISTRATIVE LAW

If the preferring of public charges for a minor crime depends on the evaluation of a question that must be determined according to civil law or administrative law, the office of the public prosecutor may fix a period to decide the question in civil proceedings or in administrative proceedings. The person having reported the punishable act shall be notified thereof. After this period has expired without success, the office of the public prosecutor may stop the proceedings.

SECTION 154E. FALSE SUSPICION, INSULT

(1) Public charges shall not be preferred in case of a false suspicion or insult (secs 164 and 185 through 187a of the German Criminal Code) as long as criminal or disciplinary proceedings are pending for the reported or alleged act.

(2) If public charges have already been preferred or a private criminal action has been filed, the court will stop the proceedings until the criminal or disciplinary proceedings for the reported or alleged act are terminated.

(3) Pending the termination of the criminal or disciplinary proceedings for the reported or alleged act, the period of limitation concerning prosecution of false suspicion or insult is not running.

SECTION 154F.

If the opening or conducting of the main proceedings is obstructed for a longer period of time by the absence of the accused or by another obstacle in connection with him as a person, and if public charges have not yet been preferred, the public prosecutor's office may suspend the proceedings after the facts have been clarified to the extent possible and evidence was preserved to the extent necessary.

SECTION 155. LIMITS OF THE INVESTIGATION

(1) The investigation and decision extend only to the act specified in the charge and to the persons accused by the charge.

(2) Within these limits, the courts are authorized and obliged to act independently; in particular, they are not bound by the parties' motions when applying criminal law.

SECTION 155A. COMPENSATION BETWEEN PERPETRATOR AND VICTIM

At each stage of the proceedings the office of the public prosecutor and the court shall examine the possibilities to reach compensation between the accused and the injured person. In suitable cases they shall work towards that goal. The case may not be regarded as suitable against the express will of the injured person.

SECTION 155B. EXECUTION OF COMPENSATION

(1) For the purpose of a compensation of the victim by the offender or for compensation of damage the public prosecutor and the court may transmit the necessary personal data to the agency assigned with the performance either *ex officio* or upon request of that agency. The files may also be sent for review by the agency in charge if transmittal of information would require disproportionate efforts. A nonpublic agency shall be advised that it may use the transmitted data only for the purpose of compensation of the victim by the offender or for damage compensation.

(2) The agency in charge may process and use the personal data transmitted pursuant to paragraph (1) only to the extent necessary for compensation of the victim by the offender or for damage compensation and if this does not conflict with interests of the person concerned which are worthy of protection. It may only obtain personal data and process or use such obtained data if the person concerned agrees and this is necessary for a compensation of the victim by the offender or for damage compensation. Upon completion of its activities, the agency shall report to the office of the public prosecutor or the court to the extent necessary.

(3) If the agency in charge is a nonpublic agency the provisions of the third part of the Federal Privacy Act shall also apply if the data are not processed in or from data files.

(4) The documents containing the personal data designated in paragraph (2), sentences 1 and 2, shall be destroyed by the agency in charge after 1 year has elapsed since completion of the criminal proceedings. The office of the public prosecutor or the court shall immediately inform the agency in charge ex officio of the date of completion of the proceedings.

SECTION 156. NO WITHDRAWAL OF THE CHARGES

The public charges may not be withdrawn after the opening of the trial.

SECTION 157. ACCUSED BEFORE TRIAL (*ANGESCHULDIGTER*) AND ACCUSED ON TRIAL (*ANGEKLAGTER*)

Within the meaning of this law—

The accused before trial (*Angeschuldigter*) is a person against whom public charges have been preferred.

The accused on trial (*Angeklagter*) is the word used for the accused once the opening of the trial has been decreed by the court.

CHAPTER TWO
PREPARATION OF THE PUBLIC CHARGES (*VORBEREITUNG DER ÖFFENTLICHEN KLAGE*)

SECTION 158. REPORTS OF PUNISHABLE ACTS AND FORMAL DEMAND FOR CRIMINAL PROSECUTION

(1) Reporting of a criminal act or a formal demand for criminal prosecution may be made to the office of the public prosecutor, to agencies and officials of the police, and to the district courts. An oral accusation shall be certified.

(2) In the case of criminal acts which will only be prosecuted on request, the request shall be made in writing or orally for the records to a court or to the office of the public prosecutor; if the motion is made to any other agency it shall be made in writing.

(3) If an injured party who is resident in Germany reports a criminal act committed in another member state of the European Union, the office of the public prosecutor shall transmit the report to the responsible prosecuting authority of the other member state upon request of the injured party, if German criminal law does not apply to the act or prosecution of the act is refrained from in accordance with section 153c, paragraph (1), sentence 1, number 1, also in connection with section 153f. Transmittal may be refrained from if the—

1. Offense and the circumstances relevant for its prosecution are already known to the competent foreign authority, or

2. Wrongfulness of the act is minor and the injured person would have had the option to report the act abroad.

SECTION 159. UNNATURAL DEATH

(1) If there is evidence to indicate that a person has died an unnatural death or if the corpse of an unknown person is found, the police and municipal authorities are obliged to inform the public prosecutor or the district court immediately.

(2) The written permission of the public prosecutor is required for the burial.

SECTION 160. INVESTIGATION PROCEEDINGS

(1) As soon as the office of the public prosecutor obtains knowledge of a suspected criminal act either by reporting or in another manner it shall investigate the facts in order to decide whether charges should be preferred.

(2) The office of the public prosecutor shall ascertain not only incriminating but also exonerating circumstances and shall take such evidence the loss of which is feared.

(3) The investigations of the office of the public prosecutor should also extend to the circumstances that are important for the determination of the legal consequences of the act. For this purpose it may turn to the court for assistance.

(4) A measure is not permitted if it violates special federal or respective state provisions on use.

SECTION 160A.

(1) An investigation measure that is directed against a person designated in section 53, paragraph (1), sentence 1, number 1, 2, or 4, an attorney, a person admitted to a bar association pursuant to section 206 of the Federal Rules on Attorneys (*Bundesrechtsanwaltsordnung*), or a member of a bar association authorized to provide legal services on a commecial basis (*Kammerrechtsbeistand*), and that would likely produce findings about which that person would have the right to refuse to testify, is inadmissible. Findings that were obtained anyway may not be used. Respective recordings shall be deleted immediately. The fact that these findings were obtained and the deletion of the recordings shall be placed on the record. Sentences 2 to 4 apply accordingly if, by means of an investigation measure that is not directed against a person referred to in sentence 1, findings about that person are obtained, about which he would have the right to refuse to testify.

(2) If by an investigation measure a person designated in section 53, paragraph (1), sentence 1, numbers 3 to 3b or number 5, would be affected and it can be expected that findings may be obtained, about which this person would have the right to refuse to testify, this fact shall be particularly considered when the proportionality of the measure is reviewed; if the proceedings do not concern a serious criminal act, it shall, as a rule be assumed that the interest in a criminal prosecution is not predominant. If it is required the measure shall be refrained from, or if this is possible based on the type of measure it shall be limited. Sentence 1 shall apply accordingly to the use of findings as evidence. Sentences 1 to 3 do not apply to attorneys, persons admitted to a bar association pursuant to section 206 of the Federal Rules on Attorneys, and members of a bar association authorized to provide legal services on a commercial basis.

(3) Paragraphs (1) and (2) shall be applied accordingly if the persons designated in section 53a may refuse to testify.

(4) Paragraphs (1) through (3) shall not be applied if certain facts give rise to the suspicion that the person having the right to refuse testimony is involved in the act or in aiding the perpetrator, aiding the perpetrator after the fact or receiving of stolen goods. If the offense can only be prosecuted upon request or with authorization sentence 1 shall be applied in the cases of section 53, paragraph (1), number 5, as soon as the request for prosecution was filed or the authorization was given.

(5) Sections 97 and 100c, paragraph (6), shall remain unaffected.

SECTION 160B.

The public prosecutor may discuss the state of the proceedings with the parties involved if this appears suitable to advance the proceedings. The main contents of this discussion shall be put on the record.

SECTION 161. INVESTIGATIONS

(1) The office of the public prosecutor may request information for the purpose indicated in section 160, paragraphs (1) through (3), from all authorities and may conduct investigations of any kind either directly or through officers of the police service, unless its powers are governed by other legal provisions. The authorities and officers of the police are obliged to comply with the request or order of the office of the public prosecutor and, in this case, are authorized to request information from all authorities.

(2) If a measure pursuant to this law is only admissible in case of suspicion of specific criminal acts, the personal data obtained on the basis of a corresponding measure pursuant to other laws may only be used as evidence in criminal proceedings without the consent of the persons affected by the measure to solve such criminal acts, whose solving would have prompted the ordering of such a measure pursuant to this law. Section 100d, paragraph (5), number 3, shall remain unaffected.

(3) Personal data obtained in or from an apartment by use of technical means for an individual's protection in the course of undercover investigations on the basis of police law may, in compliance with the principle of proportionality, only be used as evidence (Art 13, para (5), of the Basic Law) if the district court (sec 162, para (1)) in whose district the agency which ordered the measure has its seat, determined that the measure was legal; in case of danger in delay the judicial decision shall be obtained immediately afterwards.

SECTION 161A. EXAMINATION OF WITNESSES AND EXPERTS BY THE PUBLIC PROSECUTOR

(1) Witnesses and experts are obligated to appear before the office of the public prosecutor when being summoned and to make statements regarding subject matter or to render their opinion. If not otherwise provided, the provisions of chapters six and seven of the First Book Concerning Witnesses and Experts (*Erstes Buch über Zeugen und Sachverständige*) apply accordingly. The examination under oath is reserved to the judge.

(2) If a witness or expert fails or refuses to appear without authorization, the public prosecutor has the authority to take the disciplinary measures provided in sections 51, 70, and 77. However, the ordering of custody is reserved to the court competent pursuant to section 162.

(3) Decisions issued by the public prosecutor's office pursuant to paragraph (2), sentence 1, may be challenged by motion for a court decision by the court competent pursuant to section 162. The same applies if the office of the public prosecutor has made decisions within the meaning of section 68b. Sections 297 to 300, 302, 306 to 309, 311a, and 473a apply accordingly. Court decisions pursuant to sentences 1 and 2 are unappealable.

(4) If one public prosecutor requests another office of the public prosecutor to examine a witness or expert, the authorities pursuant to paragraph (2), first sentence, are also vested in the office of the public prosecutor to which the request was made.

SECTION 162. INVESTIGATING COURT

(1) If the public prosecutor's office considers it necessary to conduct a court investigation it will file the requests, prior to preferring public charges, with the district court in whose district the prosecutor's office itself or its requesting branch office is located. If, in addition, it considers issuing of a warrant of arrest or order of commitment necessary, it may, notwithstanding sections 125 and 126a also file such a request with the court designated in sentence 1. For court interrogations and inspections that district court is competent in whose district these investigating acts are to be conducted, if the office of the public prosecutor so requests in order to expedite the proceedings or to avoid burdening of persons concerned.

(2) The court shall review whether the requested act is legally admissible in consideration of the case's circumstances.

(3) After public charges have been preferred, the court which handles the matter, is competent. During appeal proceedings, the court whose judgment is appealed is competent. After final completion of the proceedings, sentences 1 and 2 shall apply accordingly. After a motion to reopen the case, the court responsible for the decisions in the new trial shall be competent.

SECTION 163. DUTIES OF THE POLICE

(1) The authorities and officials of the police shall investigate criminal acts and, in order to prevent prejudice to the course of justice, shall take all measures which allow no delay. For this purpose they are authorized to request information from all authorities, in case of danger in delay, they can also demand information and conduct investigations of any kind, unless other legal provisions specifically govern their powers.

(2) The authorities and officials of the police will transmit without delay their minutes to the office of the public prosecutor. The transmittal may be made directly to the district court when it seems that a judicial investigation must be expeditiously performed.

(3) Section 52, paragraph (3), section 55, paragraph (2), section 57, sentence 1, and sections 58, 58a, 68 through 69 must be applied accordingly when witnesses are examined by officers of the police service. The office of the public prosecutor decides on a permit pursuant to section 68, paragraph (3), sentence 1, and on the assigning of a witness counsel; otherwise the necessary decisions shall be taken by the person in charge of the examination. Section 161a, paragraph (3), sentences 2 through 4, shall apply accordingly in case of decisions taken by officers of the police service pursuant to section 68b, paragraph (1), sentence 3. Section 52, paragraph (3), and section 55, paragraph (2), apply accordingly to instructions given to experts by officers of the police service. Section 52, paragraph (3), shall also apply accordingly in the cases of section 81c, paragraph (3), sentences 1 and 2, for examinations by officers of the police service.

SECTION 163A. EXAMINATION DURING INVESTIGATION PROCEEDINGS

(1) The accused shall be examined, at the latest, prior to the termination of the investigations, unless the proceedings will be discontinued. In simple matters it is sufficient that he be given an opportunity to respond in writing.

(2) When the accused moves for the taking of evidence in his defense, such evidence must be taken if it is considered to be of significance.

(3) The accused is obliged to appear before the office of the public prosecutor when being summoned. Sections 133 through 136a, and 168c, paragraphs (1) and (5), apply accordingly. At the request of the accused, the court competent in accordance with section 162 will decide on the lawfulness of ordering the appearance. Sections 297 through 300, 302, 306 through 309, 311a, and 473a shall apply accordingly. The decision by the court cannot be appealed.

(4) During the accused's first examination by officers of the police, he should be informed of the act he is charged with. Section 136, paragraph (1), sentences 2 through 4, and paragraphs (2) and (3), and section 136a shall apply to the examination of the accused by police officers.

SECTION 163B. ESTABLISHMENT OF IDENTITY

(1) When somebody is suspected of an offense, the office of the public prosecutor and the officials of the police service may take the measures that are necessary to establish his identity; section 163a, paragraph (4), first sentence, applies accordingly. The suspected person may be kept in custody when the identity cannot be established in any other way or involves considerable difficulties. Under the prerequisites of the second sentence, the search of the suspected person and of objects taken along by him as well as the carrying through of measures of the police records department are also permitted.

(2) If, and to the extent this is imperative for the clarification of an offense also, the identity of a person may be established who is not suspected of an offense; section 69, paragraph (1), second sentence, applies accordingly. Measures of the kind designated in paragraph (1), second sentence, may not be taken when they are out of proportion to the importance of the matter; measures of the kind designated in paragraph (1), third sentence, may not be taken against the will of the person concerned.

SECTION 163C. CUSTODY FOR ESTABLISHMENT OF IDENTITY

(1) A person affected by a measure pursuant to section 163b may in no case be kept in custody longer than is necessary to establish his identity. The arrested person shall be brought immediately before the judge at the district court in the district where he has been apprehended for the purpose of deciding on the permissibility and continuation of the deprivation of liberty, unless it would take longer to bring about a judicial decision than to establish his identity. Sections 114a through 114c shall apply accordingly.

(2) A deprivation of liberty for the purpose of establishing the identity may not exceed a maximum period of 12 hours.

(3) When the identity has been established, the records prepared in connection with the establishment shall be destroyed in the cases of section 163b, paragraph (2).

SECTION 163D. ELECTRONICAL STORAGE OF DATA

(1) When certain facts substantiate the suspicion that one of the offenses designated in—

1. Section 111, or

2. Section 100a, paragraph (2), numbers 6 through 9 and 11

has been committed, the data concerning the identity of persons obtained at a check by the border police, in case of number 1 also data obtained at check points pursuant to section 111, as well as circumstances that may be important for the clarification of the offense or for the apprehension of the perpetrator may be electronically stored if facts justify the assumption that the evaluation of the data may lead to the apprehension of the perpetrator, or to the clarification of the offense and the measure is not out of proportion to the importance of the matter. This also applies if, in the case of sentence 1, passports and identity cards are read automatically. The data may be transmitted only to prosecution authorities.

(2) Measures of the nature designated in paragraph (1) may be ordered only by the judge, in case of imminent danger also by the office of the public prosecutor and its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts). If the office of the public prosecutor or a member of its investigating personnel has given the order, the prosecution will request the judge's confirmation of the order without delay. Section 100b, paragraph (1), sentence 3, shall apply accordingly.

(3) The order will be given in writing. It must describe the persons whose data are to be stored as precisely as possible by certain characteristics or qualities according to the information which was available at the time of the order about the person or persons suspected of an offense. Kind and duration of the measure shall be determined. The order shall be limited with regard to territorial application and not exceed 3 months. A nonrecurring extension by not more than 3 additional months is permitted as far as the conditions designated in paragraph (1) continue to exist.

(4) If the conditions for the issuance of the order no longer exist, or if the purpose of the measures resulting from the order has been fulfilled, they shall immediately be terminated. The personal data obtained by the measures shall be immediately deleted as soon as they are not, or no longer, required for the criminal proceedings; storage of the data exceeding the duration of the measures (para (3)) by more than 3 months, is not permitted. The office of the public prosecutor shall be notified about the deletion.

SECTION 163E. ORDERING OBSERVATION OF THE ACCUSED BY THE POLICE

(1) The order for observation on the occasion of police checks, which permit the establishment of personal data, may be issued if there is sufficient factual evidence to indicate that a criminal act of considerable importance was committed. The order may only be directed against the accused and only be issued if the investigation of the facts or the determination of the perpetrator's whereabouts would be considerably less promising or much more difficult by use of any other method. It is permissible to take the measure against other persons if, based on certain facts, it can be assumed that they are in contact with the perpetrator or will get into contact with him, that the measure will lead to the investigation of the facts or the determination of the perpetrator's whereabouts which would be considerably less promising or much more difficult by use of any other method.

(2) The license number of a motor vehicle, the identification number or the marking on the outside of a vessel, aircraft or container can be put on the "wanted" list if the vehicle is registered with a "wanted" person pursuant to paragraph (1), or the vehicle or the container is used by such person or by a person so far of unknown identity, who is suspected of a criminal act of considerable importance.

(3) In case the person is found, the personal data of a person accompanying the wanted person, or of the operator of a vehicle on the wanted list as described in paragraph (2), or of the user of a container on the wanted list pursuant to paragraph (2), may be reported.

(4) The order for observation by the police may only be issued by the court. In case of danger in delay the order may also be issued by the office of the public prosecutor. If the order was issued by the office of the public prosecutor, immediate confirmation of the order by the court shall be requested. Section 100b, paragraph (1), sentence 3, shall apply accordingly. The order shall be limited to a maximum period of 1 year. An extension by a maximum period of three months each time is authorized if the prerequisites for the order continue to exist.

SECTION 163F. LONGTERM OBSERVATION

(1) If there are sufficient factual grounds to indicate that a serious criminal offense has been committed, a regular surveillance of the accused may be ordered, which is intended to—

1. Last longer than 24 continuous hours, or

2. Take place on more than two days

(long-term surveillance).

This measure may only be ordered if investigation of the facts or determination of the offender's place of abode would be considerably less successful or much more difficult by use of any other method. The measure is permitted against other persons if, on the basis of certain facts, it can be assumed that they have contact with the perpetrator or that such contact will be made, that the measure will lead to clarification of the facts or to determination of the offender's place of abode and if this would be considerably less successful or much more difficult by use of a different method.

(2) This measure may also be taken if third parties are unavoidably affected.

(3) The measure may only be ordered by the court, in case of danger in delay also by the office of the public prosecutor and its investigating personnel (sec 152 of the Law Concerning the Constitution of Courts). The order by the public prosecutor's office or its investigating personnel becomes ineffective if it is not confirmed by the court within three working days. Section 100b, paragraph (1), sentences 4 and 5, and paragraph (2), sentence 1, apply accordingly.

SECTION 164. APPREHENSION OF PERSONS INTERFERING

The official who conducts official activities on the spot is authorized to apprehend persons who willfully disturb his official activity or oppose orders given by him within the scope of his authority and to have them kept in arrest until the termination of his official duties, however, not beyond the next day.

SECTION 165. ACTS OF THE DISTRICT JUDGE IN CASE OF EMERGENCY

The judge shall, even without a motion, undertake the required investigations when there is danger in delay and a public prosecutor cannot be reached.

SECTION 166. MOTIONS OF THE ACCUSED TO OBTAIN EVIDENCE

(1) If the accused is heard by the judge and if, at this hearing, he moves for the taking of certain evidence in exoneration, the judge shall, if he considers it to be important, comply with the motion if loss of evidence is feared or if the taking of the evidence may result in the release of the accused.

(2) If the evidence is to be taken in another court district, the judge may request the district judge of that district to take this evidence.

SECTION 167. DISPOSITION BY THE OFFICE OF THE PUBLIC PROSECUTOR

In the cases of sections 165 and 166, the authority for further action rests with the office of the public prosecutor.

SECTION 168. RECORD OFFICER

Minutes shall be taken of each judicial examination. A court clerk of the court registry shall be called in to prepare the minutes; the judge may refrain from doing so when he considers the presence of a recording clerk not to be necessary. In urgent cases the judge may call in a person to be sworn by him as recording clerk.

SECTION 168A. RECORDING

(1) The minutes must indicate place and date of the hearing as well as the names of the participating persons or persons involved and must state whether the substantial formalities of the proceedings are complied with. Section 68, paragraphs (2) and (3), remain unaffected.

(2) The contents of the minutes may be preliminarily recorded in regular shorthand, by stenotype, or tape recorder, or by comprehensible abbreviations. In this case the minutes shall be prepared immediately upon termination of the hearing. The provisional recordings shall be included in the records or, if they are not suitable for such purpose, they shall be kept with the records at the court registry. Tape recordings may be erased when the proceedings are terminated by final judgment or are terminated in another way.

(3) The minutes shall be read to the persons participating in the hearing for their approval to the extent they concern them or submitted to them for review. The approval shall be recorded. The minutes shall be signed by the persons involved or a note be made as to why they do not bear a signature. If the contents of the minutes have been recorded just preliminarily, it is sufficient when the recordings are read or played back. The minutes shall indicate that this happened and that the approval was given or that objections have been raised. The reading or submission for review or play back may be omitted when the persons involved, as far as they are concerned, dispense with it after the recording; the minutes shall indicate that the waiver has been pronounced.

(4) The minutes shall be signed by the judge as well as by the recording clerk. If the contents of the minutes have been recorded in whole or in part by tape recorder without the presence of a recording clerk, the judge and the person who prepared the minutes will sign. The latter will add to his signature a note certifying the correctness of the transcription. Proof of incorrectness of the transcription is admissible.

SECTION 168B. RECORDS OF THE PUBLIC PROSECUTOR

(1) The result of investigation acts by the office of the public prosecutor shall be made part of the records.

(2) The examination of the accused, the witnesses, and experts shall be recorded pursuant to sections 168 and 168a as far as this can be made without a considerable delay of the investigations.

SECTION 168C. RIGHT TO BE PRESENT

(1) The prosecutor and the defense counsel are permitted to be present during the judicial examination of the accused.

(2) The prosecutor, the accused, and the defense counsel are permitted to be present during the judicial examination of a witness or expert.

(3) The judge may preclude an accused from being present at the hearing if his presence would endanger the purpose of the investigation. This especially applies when it is expected that a witness will not tell the truth in the presence of the accused.

(4) If an accused, not being at liberty, has a defense counsel he is entitled to be present only at such hearings held at the court of that place where he is in custody.

(5) The persons entitled to be present shall be previously notified of the hearing date. The notification is not made if it would endanger the success of the investigation. The persons entitled to be present are not entitled to postponement of a hearing when they are prevented from being present.

SECTION 168D. JUDICIAL INSPECTION

(1) The prosecutor, the accused, and the defense counsel are permitted to be present at the hearing when a judicial inspection is made. Section 168c, paragraph (3), first sentence, and paragraphs (4) and (5), apply accordingly.

(2) If, at the judicial inspection, experts are consulted, the accused may request that the experts to be recommended by him for the trial be summoned to the hearing and, if the judge rejects the request, the accused can initiate their summons. The experts named by the accused are permitted participation in the inspection and the required investigation to the extent that the activity of the experts appointed by the judge is not impeded thereby.

SECTION 168E. SEPARATE INVESTIGATION OF WITNESSES

If there is an imminent risk for the witness to suffer a serious prejudice to his well-being if he is examined in the presence of the persons entitled to attend a hearing, and if this cannot be avoided in any other way, the judge shall examine the witness in the absence of the persons entitled to attend the hearing. At the time of its occurrence the examination will be transmitted to them by means of audio and video equipment. Otherwise, the participation rights of the persons entitled to attend the hearing shall remain unaffected. Sections 58a and 241a shall apply accordingly. A decision pursuant to sentence 1 is not appealable.

SECTION 169. INVESTIGATING JUDGES OF THE SUPERIOR STATE COURT AND THE FEDERAL SUPREME COURT

(1) In cases under jurisdiction of the superior state court as court of first instance pursuant to section 120 of the Law Concerning the Constitution of Courts, the duties incumbent on the judge at the district court in the preparatory proceedings may be performed also by investigating judges of this superior state court. If the Federal Public Prosecutor conducts the investigations, investigating judges of the Federal Supreme Court will take their place.

(2) The investigating judge of the superior state court competent for a case also may order investigating acts if they are not performed in the district of this court.

SECTION 169A. COMPLETION OF INVESTIGATION

If the office of the public prosecutor decides to prefer public charges, it shall note the completion of the investigation in the files.

SECTION 170. PREFERRING PUBLIC CHARGES, DISCONTINUANCE OF PROCEEDINGS

(1) If the investigations produce sufficient reason for preferring public charges, the office of the public prosecutor will prefer them by submitting a bill of indictment to the competent court.

(2) In all other cases the office of the public prosecutor shall discontinue the proceedings. The accused will be notified thereof if he was heard as such or a warrant of arrest was issued against him; the same rule applies if he requested a notification or if there is a particular interest in the notification.

SECTION 171. NOTIFICATION OF THE MOVING PARTY

When the office of the public prosecutor does not comply with a motion for preferring the public charges or, after close of the investigation, it orders the proceedings to be stopped, it shall notify the moving party by indicating the reasons. In the decision the moving party who is at the same time the injured party shall be advised of the possibility to contest the decision and of the limited period provided for it (sec 172, para (1)).

SECTION 172. MOTION FOR JUDICIAL DECISION

(1) When the moving party is, at the same time, the injured party, he is entitled according to section 171 to make a complaint against the decision to the chief of the office of the public prosecutor within 2 weeks after he was notified thereof. The period of limitation is complied with when the complaint is filed with the office of the public prosecutor. It does not run if the instruction according to section 171, sentence 2, was omitted.

(2) In the event the chief of the office of the public prosecutor denies the complaint the moving party may file a motion for a judicial decision within a month after he was notified of the denial. He shall be instructed of this right and of the form required for such motion; the period of limitation does not run if the instruction was omitted. The motion is not permitted when the subject of the proceedings is solely a criminal act that may be pursued by the injured party by way of a private complaint or if the public prosecutor abstained from preferring the public charges according to section 153, paragraph (1); section 153a, paragraph (1), sentences 1 and 7; or section 153b, paragraph (1); the same rule applies to the cases of sections 153c through 154, paragraph (1), as well as sections 154b, and 154c.

(3) The motion for a judicial decision shall indicate the facts that offer reasons for preferring the public charges and the evidence. The motion must be signed by an attorney; the aid for litigation costs is governed by the same provisions as in civil litigation. The motion shall be submitted to the court competent for the decision.

(4) The Superior State Court is competent for the decision on the motion; section 120 of the Law Concerning the Constitution of Courts applies accordingly.

SECTION 173. POWERS OF THE COURT

(1) On request of the court the office of the public prosecutor shall submit to the court the records of the hearings carried on so far.

(2) The court may communicate the motion to the accused by fixing a period for making a statement in reply.

(3) The court may order investigations for the preparation of its decision and may assign a commissioned or requested judge to make these investigations.

SECTION 174. DISMISSING THE MOTION

(1) The court will dismiss the motion when there is not sufficient reason to justify the preferring of public charges and will notify the moving party, the office of the public prosecutor, and the accused of the dismissal.

(2) If the motion was dismissed, the public charges may be preferred only on the basis of new facts or evidence.

SECTION 175. ORDER TO PREFER THE CHARGES

If, after hearing the accused, the court considers the motion to be well founded, it will order that public charges be preferred. The office of the public prosecutor is obligated to carry out this order.

SECTION 176. FURNISHING SECURITY

(1) Prior to a decision on the motion, the court, by order, may request the moving party to furnish security for the costs that due to the proceedings on the motion, will presumably be caused to the treasury and to the accused. Security is to be furnished by depositing cash money or bonds. Deviating provisions in a statutory order issued on the basis of the Law on Payment Transfers with Courts and Judicial Authorities shall remain unaffected. The court shall fix the amount of security to be furnished at its discretion. At the same time the court shall fix the period within which the security must be furnished.

(2) If the security is not furnished within the fixed period, the court shall declare the motion withdrawn.

SECTION 177. COSTS

The costs caused by the proceedings on the motion shall be imposed on the moving party in the cases of section 174 and section 176, paragraph (2).

CHAPTER THREE (DELETED)

SECTIONS 178 THROUGH 197 (DELETED)

CHAPTER FOUR
DECISION CONCERNING THE OPENING OF THE MAIN PROCEEDINGS (*ENTSCHEIDUNG ÜBER DIE ERÖFFNUNG DES HAUPTVERFAHRENS*)

SECTION 198. (DELETED)

SECTION 199. DECISION CONCERNING THE OPENING OF MAIN PROCEEDINGS

(1) The court competent for the trial shall decide whether the main proceedings should be opened or the proceedings should be suspended.

(2) The bill of indictment will contain the motion to open the main proceedings. The file will be submitted to the court with the bill of indictment.

SECTION 200. CONTENTS OF BILL OF INDICTMENT

(1) The bill of indictment shall indicate the accused, the criminal act with which he is charged, time and place of its commission, its legal characteristics, and the penal provisions that are to be applied. In addition, the evidence, the court before which the trial is to be held, and the defense counsel shall be indicated. When a person is called as a witness his place of residence or place of abode shall be stated, however, stating the full address is not required. In the cases of section 68, paragraph (1), sentence 2, and paragraph (2), sentence 1,it is sufficient to state the name of the witness. If a person is called as a witness whose identity shall not be disclosed in whole or in part, this shall be indicated; the same applies to the secrecy of the residence of the witness or his place of abode.

(2) The essential result of the investigation will also be presented in the bill of indictment. This may be omitted in the event the charges are preferred before the criminal judge.

SECTION 201. COMMUNICATION OF THE BILL OF INDICTMENT

(1) The presiding judge shall communicate the bill of indictment to the accused and at the same time shall summon him to state within a period of time to be fixed whether he wants to move for taking certain evidence prior to the decision concerning the opening of the main proceedings or raise objections against the opening of the main proceedings. The bill of indictment shall also be sent to the joint plaintiff and the person entitled to act as joint plaintiff, if so requested by him; section 145a, paragraphs (1) and (3), apply accordingly.

(2) The court will decide on the motions and objections. The decision cannot be contested.

SECTION 202. FURTHER CLARIFICATION

For a better clarification of the case, the court may order the taking of certain evidence before it decides on the opening of the main proceedings. The decision may not be contested.

SECTION 202A.

If the court considers opening of the main proceedings, it may discuss the state of the proceedings with the parties involved, if this appears suitable to advance the proceedings. The main contents of this discussion shall be put on the record.

SECTION 203. ORDER OPENING THE MAIN PROCEEDINGS

The court will decide on the opening of the main proceedings if the results of the preparatory proceedings indicate that the accused is sufficiently suspected of a criminal act.

SECTION 204. REFUSAL TO OPEN THE MAIN PROCEEDINGS

(1) If the court decides not to open the main proceedings, the order must show whether it is based on factual or on legal grounds.

(2) The accused shall be notified of the order.

SECTION 205. TEMPORARY DISCONTINUANCE

The court may order temporary discontinuance of the proceedings if a longtime absence of the accused or other personal impediment would prevent the holding of the (main) trial. The presiding judge will secure the evidence to the extent necessary.

SECTION 206. COURT'S DISCRETION

The court is not bound in its decision by the public prosecutor's motions.

SECTION 206A. DISCONTINUANCE IN CASE OF IMPEDIMENTS

The court may stop the main proceedings by an order issued outside the (main) trial if a procedural impediment arises after the opening of the main proceedings. The order is subject to attack by immediate recourse.

SECTION 206B. DISCONTINUANCE IN CASE OF AMENDMENT OF LAW

If a penal provision applicable at the termination of the act is amended prior to the decision and an act punishable according to the former law but no longer punishable pursuant to the new law is the subject of legal proceedings pending before a court, the court will stop the proceedings by an order issued outside the (main) trial. The order may be contested by immediate recourse.

SECTION 207. CONTENTS OF THE ORDER OPENING THE MAIN PROCEEDINGS

(1) In the order opening the main proceedings, the court will allow the complaint for trial and designate the court before which the trial is to take place.

(2) The court will specify in the order the changes on the basis of which it will allow the charge for trial if—

1. Charges have been preferred for several acts and for some of them the opening of the main proceedings is refused,

2. According to section 154a, prosecution is limited to individual separable parts of an act or such parts are reintroduced into the proceedings,

3. The act is considered legally different than in the bill of indictment, or,

4. According to section 154a, prosecution is limited to some of several violations of law committed by the same criminal act or such violations of law are reintroduced into the proceedings.

(3) In the cases of paragraph (2), numbers 1 and 2, the office of the public prosecutor will submit a new bill of indictment according to the order. The presentation of the essential results of the investigation may be omitted.

(4) At the same time the court will decide ex officio whether pretrial confinement or temporary commitment shall be ordered or continued.

SECTION 208. (DELETED)

SECTION 209. COMPETENT COURT

(1) If the court with which the bill of indictment has been filed considers the competence of a court of lower category of its district to be well-founded, it will open the main proceedings before such court.

(2) If the court with which the bill of indictment has been filed considers the competence of a court of higher category of its district to be well-founded, it will submit the records through the office of the public prosecutor to this court for decision.

SECTION 209A. SPECIAL CRIMINAL CHAMBERS

Within the meaning of section 4, paragraph (2), section 209, as well as section 210, paragraph (2)—

1. The special criminal chambers, pursuant to section 74, paragraph (2), sections 74a, and 74c of the Law Concerning the Constitution of Courts, - as compared with the general criminal chambers and among each other in their district,- in the order as designated in section 74e of the Law Concerning the Constitution of Courts, and

2. The youth courts for the decision whether cases—

a) Under section 33, paragraph (1); section 103, paragraph (2), first sentence; and section 107 of the Youth Court Law, or

b) As cases involving protection of the youth (sec 26, para 1, first sentence; sec 74b, first sentence, of the Law Concerning the Constitution of Courts),

should be tried before the youth courts as compared with the courts competent for general criminal cases of the same category

are equal to courts of a higher category.

SECTION 210. MODES OF REVIEW

(1) The order by which the main proceedings were opened is not subject to appeal by the accused.

(2) The public prosecutor is entitled to initiate immediate recourse against an order denying the opening of the main proceedings or an order by which, in deviation of the motion of the office of the public prosecutor, the proceedings have been referred to a court of lower category.

(3) If the court of recourse grants the recourse, it may at the same time decide that the trial shall be held by another chamber (*Kammer*) of the court that issued the order according to paragraph (2) or by a neighboring court of the same category and in the same *Land*. In proceedings in which a superior state court has decided in the first instance, the Federal Supreme Court may decide that the (main) trial shall be held before another senate of this court.

SECTION 211. EFFECT OF DECISION NOT TO OPEN MAIN PROCEEDINGS

If the opening of the main proceedings was denied by a decision no longer subject to appeal, the charges may be resumed only on the basis of new facts or evidence.

CHAPTER FIVE
PREPARATION OF THE TRIAL (*VORBEREITUNG DER HAUPTVERHANDLUNG*)

SECTION 212.

Section 202a shall apply accordingly after opening of the main proceedings.

SECTION 213. FIXING THE TRIAL DATE

The date for trial will be fixed by the presiding judge.

SECTION 214. SUMMONS

(1) The presiding judge shall order the summonses required for the main trial. At the same time, he shall cause issuance of the notifications of the trial date as required pursuant to section 397, paragraph (2), sentence 3, and section 406g, paragraph (1), sentence 4, paragraph (2), sentence 2; section 406d, paragraph (3), shall apply accordingly. The court registry makes sure that the summonses are effected and the notifications are sent out.

(2) If it is expected that the trial will last a long time, the presiding judge will decide that all or individual witnesses and experts be summoned for a later date than the beginning of the trial.

(3) The office of the public prosecutor is entitled to directly summon other persons.

(4) The office of the public prosecutor effects the production (*Herbeischaffung*) of the items serving as evidence. It may also be effected by the court.

SECTION 215. SERVICE OF THE ORDER OPENING THE MAIN PROCEEDINGS

The order concerning the opening of the main proceedings shall be served on the accused at the latest with the summons. In the cases of section 207, paragraph (3), this shall apply correspondingly to the subsequently submitted bill of indictment.

SECTION 216. SUMMONING THE ACCUSED

(1) The summoning of an accused who is at liberty will be made in writing with the warning that he will be arrested or brought before the court in case of his unexcused failure to appear. The warning may be omitted in the cases of section 232.

(2) An accused who is not at liberty will be summoned by being notified of the trial date according to section 35. The accused shall be asked at this time whether and what motions he wants to make for his defense at the trial.

SECTION 217. PERIOD BETWEEN SUMMONS AND TRIAL

(1) A period of at least 1 week shall be left between the service of the summons (sec 216) and the day of the trial.

(2) If this period is not observed, the accused may request suspension of the trial at any time prior to the commencement of his examination on the charge.

(3) The accused may waive the observance of this period.

SECTION 218. SUMMONING OF DEFENSE COUNSEL

In addition to the accused, a court-appointed defense counsel shall always be summoned; a chosen defense counsel shall be summoned if the court was notified of his selection. Section 217 applies accordingly.

SECTION 219. MOTIONS OF ACCUSED TO OBTAIN EVIDENCE

(1) If the accused requests that witnesses or experts be summoned or that other evidence be produced for the trial, he shall make his motions to the presiding judge indicating the facts on which evidence should be taken. He shall be notified of the decisions taken on this request.

(2) If the accused's motions concerning evidence are granted, they shall be communicated to the office of the public prosecutor.

SECTION 220. SUMMONS BY ACCUSED

(1) If the presiding judge rejects the motion for summoning a person, the accused may have him summoned directly. He is authorized to do so even without a previous motion.

(2) A person directly summoned is obliged to appear only in the event statutory compensation for travel expenses and absence from work is offered him in cash at the time of the summons or if it is proven that it is deposited at the court registry.

(3) If it turns out at the trial that the hearing of a directly summoned person was useful for the clarification of the case, the court shall, on motion, order that a statutory compensation from the state treasury be granted to such person.

SECTION 221. PRODUCTION OF ITEMS SERVING AS EVIDENCE

The presiding judge of the court may also, ex officio, order the production of further items serving as evidence.

SECTION 222. NAMING WITNESSES AND EXPERTS

(1) The court shall name the summoned witnesses and experts to the office of the public prosecutor and to the accused in due time and indicate their place of residence or place of abode. If the office of the public prosecutor makes use of its right pursuant to section 214, paragraph (3), it shall name the summoned witnesses and experts to the court and to the accused in due time and indicate their place of residence or place of abode. Section 200, paragraph (1), sentences 3 through 5, apply correspondingly.

(2) The accused shall, in due time, name to the court and to the office of the public prosecutor those witnesses and experts directly summoned by him or to be produced for the main trial and indicate their place of residence or place of abode.

SECTION 222A. COMMUNICATING THE CONSTITUTION OF THE COURT

(1) If the trial of the first instance is held before the state court or the superior state court the composition of the court shall be communicated at the latest at the commencement of the trial by naming the presiding judge and the additional judges and lay judges called in. The composition may, on order of the presiding judge, already be communicated prior to the trial; the communication for the accused shall be made to his defense counsel. If the composition as communicated should change, this shall be indicated no later than with the commencement of the trial.

(2) If the communication about the composition or a change of composition has been received later than 1 week prior to the commencement of the trial the court may, at the request of the accused, the defense counsel or the office of the public prosecutor interrupt the trial to examine the com-position if this is requested, at the latest prior to the commencement of the examination of the first accused on the charge.

(3) For the accused only his defense counsel or an attorney may examine the papers that are decisive for the composition; for the co-plaintiff, only an attorney may make such examination.

SECTION 222B. OBJECTION TO THE CONSTITUTION OF THE COURT

(1) If the composition of the court has been communicated pursuant to section 222a, the objection that the court is composed contrary to regulations may be raised only prior to the commencement of the examination of the first accused on the charge at the trial. The facts which allegedly resulted in the composition contrary to regulations shall be indicated. All objections shall be raised at the same time. Outside the trial the objection shall be raised in writing; Section 345, paragraph (2), and for the co-plaintiff, section 390, paragraph (2), apply accordingly.

(2) The court being composed as required for decisions made outside the trial shall decide on the objection. If it considers the objection to be well-founded it will state that it is not composed according to regulations. If an objection results in a change of the composition, section 222a shall not be applicable to the new composition.

SECTION 223. EXAMINATION BY COMMISSIONED OR REQUESTED JUDGE

(1) The court may order that a witness or expert be heard by a commissioned or requested judge if illness or infirmity or other non-removable impediments prevent him from appearing at the trial for a long or indefinite period of time.

(2) The same rule applies if a witness or an expert cannot be expected to appear because of the great distance.

SECTION 224. NOTIFICATION OF PARTIES INVOLVED

(1) The office of the public prosecutor, the accused, and the defense counsel shall be notified in advance of the date fixed for such examination; their presence at the examination is not required. The notification is not made if it would endanger the success of the investigation. The prepared minutes shall be submitted to the public prosecutor and the defense counsel.

(2) If an accused who is not at liberty has a defense counsel, he is entitled to be present only at such hearings which are held at the court of the place of his custody.

SECTION 225. JUDICIAL INSPECTION
The provisions of section 224 shall be applied if a judicial inspection is to be made for the preparation of the trial.

SECTION 225A. REFERRAL TO A HIGHER COURT PRIOR TO COMMENCEMENT OF TRIAL

(1) If a court, prior to the commencement of a trial, considers the jurisdiction over subject matter of a court of higher category to be well-founded, it shall submit the files to this court through the office of the public prosecutor; section 209a, number 2a, applies accordingly. The court to which the matter has been referred will decide by order whether it will accept the case.

(2) If the files are submitted to a court of higher category by a criminal judge or a lay judges' court, the accused may request the taking of specific evidence within a certain period to be determined with the submission. The presiding judge of the court to which the case has been referred will decide on the motion.

(3) In the decision on the acceptance of the case the accused and the court before which the trial is to be held shall be designated. Section 207, paragraph (2), numbers 2 through 4; and paragraphs (3) and (4), apply accordingly. The possibility to appeal the decision is determined pursuant to section 210.

(4) Paragraphs (1) through (3) shall also be applied if the court, prior to the commencement of the trial, considers an objection of the accused pursuant to section 6a to be well-founded and a special criminal chamber that has priority pursuant to section 74e of the Law Concerning the Constitution of Courts would be competent. If the court that considers the competence of another criminal chamber to be well-founded has priority over this criminal chamber pursuant to section 74e of the Law Concerning the Constitution of Courts, it will remand the case to this chamber with binding effect; the possibility to appeal the decision on the referral is determined pursuant to section 210.

CHAPTER SIX
TRIAL (*HAUPTVERHANDLUNG*)

SECTION 226. UNINTERRUPTED PRESENCE

(1) The (main) trial will be held during the uninterrupted presence of the persons qualified to pass judgment, as well as of the public prosecutor and a recording clerk of the court registry.

(2) The judge at the criminal court may refrain from having a recording clerk from the court registry present during the main hearing. The decision cannot be appealed.

SECTION 227. SEVERAL PUBLIC PROSECUTORS AND DEFENSE COUNSELS

Several officials of the office of the public prosecutor and several defense counsels may participate in the (main) trial and divide their activities among themselves.

SECTION 228. POSTPONEMENT AND INTERRUPTION

(1) The court will decide on the suspension of a (main) trial and its interruption pursuant to section 229, paragraph (2). Short interruptions may be ordered by the presiding judge.

(2) An impediment to the defense counsel's appearance will, notwithstanding the provisions of section 145, give no right to the accused to request suspension of the trial.

(3) If the period provided for in section 217, paragraph (1), was not observed, the presiding judge should inform the accused of his right to request suspension of the trial.

SECTION 229. TIME LIMITATIONS FOR INTERRUPTIONS

(1) The trial may be interrupted for a period of up to 3 weeks.

(2) A trial may also be interrupted for a period of up to 1 month if it was held at least for 10 days beforehand.

(3) If, due to sickness, the accused or a person assigned to pass a judgment fails to appear at the trial which has already been conducted for at least ten days, the running of the time limitation established in paragraphs (1) and (2) will be suspended for the duration of his inability to attend, however, at a maximum for a period of 6 weeks; these time limitations expire no earlier than 10 days after expiration of the inability to attend. Beginning and ending of the inability to attend is determined by the court by a final order which cannot be contested.

(4) Unless the (main) trial is resumed not later than on the day following the expiration of the time limitation established in paragraph (1) or (2), the case shall be tried *de novo*. If the day following the expiration of the time limitation is a Sunday, a public holiday, or a Saturday, the (main) trial may be resumed on the following workday.

SECTION 230. FAILURE OF ACCUSED TO APPEAR

(1) No (main) trial will be held against an accused who failed to appear.

(2) If the accused's failure to appear has not been sufficiently excused, it shall be ordered that he be brought before the court or a warrant of arrest shall be issued against him.

SECTION 231. ACCUSED'S DUTY TO BE PRESENT

(1) An accused who has appeared may not absent himself from the trial. The presiding judge may take proper measure to prevent him from absenting himself; he may also have the accused kept in custody during an interruption of the trial.

(2) If the accused nevertheless absents himself or fails to appear when an interrupted (main) trial is continued, the (main) trial may be concluded during his absence if he was already heard on the charges and the court does not consider his further presence to be necessary.

SECTION 231A. INTENTIONALLY CAUSED INABILITY TO FOLLOW THE TRIAL

(1) If the accused intentionally and through his guilt placed himself in a condition precluding his ability to follow the trial and if he knowingly prevents the proper carrying through or continuation of the trial in his presence, the trial is conducted in his absence if he had not yet been heard concerning the charges, as far as the court considers his presence not to be indispensable. Sentence 1 shall be applied only if the accused after opening of the (main) trial had the opportunity to make statements concerning the charges before a court or a designated judge.

(2) As soon as the accused is able again to follow the trial, the presiding judge shall inform him of the essential contents of the matter tried in his absence as long as the pronouncing of the judgment has not yet commenced.

(3) The court shall decide to hold the trial in the absence of the accused pursuant to paragraph (1) is decided by the court after having heard a physician as an expert. The decision may already be rendered prior to the beginning of the main trial. Immediate recourse against the decision is permitted; it has a delaying effect. A trial that has already been commenced shall be interrupted until a decision on the immediate re-course is made; the interruption may last up to 30 days even if the prerequisites of section 229, paragraph (2), do not prevail.

(4) A defense counsel shall be retained for the accused who is not represented by counsel as soon as a hearing without the accused pursuant to paragraph (1) is likely.

SECTION 231B. ABSENCE FOR IMPROPER CONDUCT

(1) If the accused, due to an improper conduct, is removed from the court room or committed for detention (sec 177 of the Law Concerning the Constitution of Courts), a hearing may be held in his absence, if the court considers his further presence not to be indispensable and as long as it is to be feared that the presence of the accused would considerably prejudice the course of the trial. In any case the accused shall be given the opportunity to make statements concerning the charges.

(2) As soon as the accused may be present again it shall be proceeded pursuant to section 231a, paragraph (2).

SECTION 231C. PERMITTED ABSENCE OF THE ACCUSED

If the trial is held against several accused, the court may order that individual accused, in case of necessary defense also their defense counsels, be permitted on request to absent themselves during individual parts of the trial unless they are affected by these parts of the trial. The order shall indicate those parts of the trial for which the permission is given. The permission may be revoked at any time.

SECTION 232. TRIAL IN SPITE OF ACCUSED'S FAILURE TO APPEAR

(1) The (main) trial may be held in the absence of the accused if he was duly summoned and has been referred to the fact that the trial may take place in his absence and if a fine up to 180 daily rates, a warning reserving imposition of a punishment, a prohibition to drive, forfeiture, confiscation, destruction, or rendering unserviceable, or a combination thereof, is to be expected. A higher punishment or a measure of reform and prevention may not be inflicted in these proceedings. The withdrawal of a driver's license is permitted if the accused has been advised of this possibility in the summons.

(2) The (main) trial without the accused will not take place on the basis of official publication of the summons.

(3) The record concerning a judicial hearing of the accused shall be read at the trial.

(4) The judgment including the reasons for the judgment rendered in the absence of the accused must be served on him by delivery unless it is served on his defense counsel pursuant to section 145a, paragraph (1).

SECTION 233. RELEASE FROM APPEARING AT THE TRIAL

(1) The accused may, at his request, be released from the obligation to appear at the (main) trial if only imprisonment up to 6 months, a fine up to 180 daily rates, a warning with the reservation that a punishment may be imposed, a prohibition to drive, forfeiture, confiscation, destruction or rendering unserviceable, or a combination thereof is to be expected. A higher punishment or a measure of reform and prevention may not be imposed in his absence. The withdrawal of the driver's license is permitted.

(2) If the accused is released from the obligation to appear at the (main) trial, he must be examined on the charges by a designated or requested judge. In this connection he will be advised of the legal consequences permitted at the trial in his absence and be asked whether he maintains his motion for being released to appear at the trial.

(3) The office of the public prosecutor and the defense counsel shall be informed of the date fixed for the examination; their presence at the examination is not required. The minutes of the examination shall be read at the trial.

SECTION 234. REPRESENTATION OF ABSENT ACCUSED

If the (main) trial may be held without the accused, he has the right to be represented by a defense counsel provided with a written power of attorney.

SECTION 234A. POWER OF DEFENSE COUNSEL AT TRIAL CONDUCTED IN ABSENCE OF THE ACCUSED

If the (main) trial is held without the accused, it is sufficient to provide to the defense counsel references required pursuant to section 265, paragraphs (1) and (2); if a defense counsel is present at the (main) trial, the consent of the accused pursuant to section 245, paragraph (1), sentence 2, and pursuant to section 251, paragraph (1), number 1, paragraph (2), number 3, is not necessary.

SECTION 235. REINSTATEMENT INTO THE *STATUS QUO ANTE*

If, according to section 232, the (main) trial was held without the accused, he may apply for *restitutio in integrum* within a week after the judgment was served on him, under the same conditions as in a case of failure to meet a prescribed period of limitation; he may at any time claim for *restitutio in integrum* if he did not obtain knowledge of the summons for trial. The accused shall be instructed of this right when the judgment is served on him.

SECTION 236. ORDERING ACCUSED'S PERSONAL APPEARANCE

The court has the right at any time to order the personal appearance of the accused and to enforce it by an order to bring him before the court (*Vorführungsbefehl*) or by a warrant of arrest.

SECTION 237. JOINDER OF SEVERAL CRIMINAL MATTERS

If there is a connection among several criminal cases pending at the same court, the court may order that they be joined for the purpose of a simultaneous trial, even if this connection is not the one specified in section 3.

SECTION 238. CONDUCT OF TRIAL

(1) The presiding judge will conduct the trial, examine the accused, and take the evidence.

(2) In the event a person participating in the trial objects to an order of the presiding judge relative to the conduct of the case as not being permissible, the court will decide.

SECTION 239. CROSS-EXAMINATION

(1) The presiding judge will leave the examination of witnesses and experts named by the public prosecutor and by the accused to the public prosecutor and the defense counsel on their joint motion. Witnesses and experts named by the office of the public prosecutor will first be examined by the public prosecutor, those named by the accused will first be examined by the defense counsel.

(2) Even after this examination, the presiding judge shall ask the witnesses and experts such questions as he deems necessary for a further clarification of the case.

SECTION 240. RIGHT TO ASK QUESTIONS

(1) On request, the presiding judge shall permit the associate judges to address questions to the accused, witnesses, and the experts.

(2) The presiding judge shall give the same permission to the public prosecutor, to the accused, and to the defense counsel, as well as to the lay judges. Direct interrogation of an accused by a co accused is not permitted.

SECTION 241. WITHDRAWAL OF RIGHT TO EXAMINE WITNESSES

(1) A person who, in the case of section 239, paragraph (1), abuses his right to examine may be deprived of this right by the presiding judge.

(2) In the cases of section 239, paragraph (1), and section 240, paragraph (2), the presiding judge may reject improper or irrelevant questions.

SECTION 241A. WITNESSES OF UNDER 16 YEARS OF AGE

(1) The examination of witnesses under 18 years of age is exclusively made by the presiding judge.

(2) The persons designated in section 240, paragraphs (1) and (2), first sentence, may request that the presiding judge asks the witnesses further questions. The presiding judge may permit these persons to ask witnesses directly if, according to his discretion conformable to duty, no prejudice to the well-being of the witness is expected.

(3) Section 241, paragraph (2), applies accordingly.

SECTION 242. ADMISSIBILITY OF QUESTIONS

Doubts concerning the admissibility of a question will be decided by the court in all cases.

SECTION 243. COURSE OF THE TRIAL

(1) The trial will begin with the calling up of the case. The presiding judge determines whether the accused and the defense counsel are present and whether the evidence has been produced, especially whether the summoned witnesses and experts have appeared.

(2) The witnesses will leave the courtroom. Section 406g, paragraph (1), sentence 1, shall remain unaffected.

(3) Thereupon the public prosecutor reads the accusation. In the case of section 207, paragraph (3), he shall use the new bill of indictment for this purpose. In the cases of section 207, paragraph (2), number 3, the public prosecutor will present the accusation with the legal evaluation on which the order to open the main trial has been based; moreover, he may express his differing legal opinion. In the cases of section 207, paragraph (2), number 4, he will consider the changes that the court had decided in admitting the charges for main trial.

(4) The presiding judge shall state, whether discussions pursuant to sections 202a and 212 took place, if the subject of such discussions was the option to reach an agreement (sec 257c) and if so, its main contents. This obligation continues to exist in the course of the main trial if changes occur which were not included in the statement made at the beginning of the main trial.

(5) Then the accused will be informed that he may, but need not, respond to the charge or not to make any statements concerning subject matter. If the accused is ready to respond he will be examined on the charge pursuant to section 136, paragraph (2). Previous convictions of the accused shall be made a matter of record only insofar as they are relevant for the decision. The presiding judge decides when these are to be made a matter of record.

SECTION 244. TAKING OF EVIDENCE

(1) The taking of evidence follows the hearing of the accused.

(2) In order to determine the truth, the court shall, *ex officio*, extend the taking of evidence to all facts and evidence that are important for the decision.

(3) A motion for the admission of evidence (*Beweisantrag*) shall be rejected if the taking of such evidence is not permitted. In all other cases, a motion for the admission of evidence may be rejected only if the taking of evidence is superfluous because of common knowledge, if the fact that is to be proved is irrelevant for the decision or proof has already

been provided, if the evidence is entirely improper or unattainable, if the motion is made to protract the proceedings or if an important allegation which should be proved for the exoneration of the accused can be treated as if the alleged fact were true.

(4) Except as otherwise provided, a motion for the admission of evidence by hearing an expert may also be rejected if the court itself possesses the necessary technical knowledge. Hearing another expert may also be refused in the event the opposite of the alleged fact has already been proved by the former opinion; this rule does not apply to cases where the professional competence of the former expert is dubious, where his opinion is based on false factual suppositions, where the opinion contains contradictions, or where the new expert has means of research at his disposal that seem to be superior to the ones of a former expert.

(5) A motion for the admission of evidence by making an inspection may be rejected in the event the court reasonably deems the inspection unnecessary for determining the truth. Under the same prerequisite, a motion for the admission of evidence by hearing of a witness can be denied if the witness had to be summoned abroad.

(6) An order of the court is required to reject a motion for the admission of evidence.

SECTION 245. EXTENT OF TAKING OF EVIDENCE

(1) The taking of evidence shall be extended to all witnesses and experts who were summoned by the court and appeared, as well as to other evidence produced by the court or the office of the public prosecutor pursuant to section 214, paragraph (4), unless the taking of evidence is not permissible. It may be refrained from taking certain evidence if the office of the public prosecutor, the defense counsel, and the accused agree.

(2) The court is obligated to extend the taking of evidence to the witnesses and experts who appeared on being summoned by the accused or the office of the public prosecutor, as well as to other evidence produced only, if a motion for the admission of evidence is submitted. The motion shall be rejected if the taking of evidence is not permissible. Otherwise, it may be rejected only if the fact for which evidence shall be furnished has already been proved or is apparent, if there is no connection between the fact and the findings, if the evidence is unsuitable, or if the motion has been filed for the purpose of delaying the proceedings.

SECTION 246. BELATED MOTION FOR ADMISSION OF EVIDENCE

(1) The taking of evidence may not be refused on the grounds that the evidence or the fact that is to be proved was presented too late.

(2) The opponent of the moving party, however, may move for suspension of the trial for the purpose of collecting information before the taking of evidence is closed if a witness or expert who is to be heard was named so late or a fact that is to be proved was presented so late that the opposing party lacked the time required to collect information.

(3) The public prosecutor and the accused have the same rights concerning witnesses and experts summoned on order of the presiding judge.

(4) The court within its own discretion will decide on these motions.

SECTION 246A. CALLING IN A MEDICAL EXPERT

If commitment of the accused to a psychiatric hospital or order of preventive custody is considered or reserved, an expert shall be heard at the main trial regarding the condition of the accused and the success of a treatment. The same applies if the court considers committing the accused to an institution for the treatment of alcoholics or drug addicts.

SECTION 247. TEMPORARY REMOVAL OF THE ACCUSED FROM COURTROOM

The court may order that the accused leaves the courtroom during an examination, if it is expected that a co-accused or a witness when heard in the presence of the accused will not tell the truth. The same applies if it is feared that an examination of a person under 18 years as a witness in the presence of the accused would result in a considerable prejudice to the well-being of such witness or if an examination of another person as a witness in the presence of the accused presents an imminent danger of a serious prejudice to his or her health. The removal of the accused may be ordered for the duration of discussions concerning the condition of the accused and the prospects of the treatment if a substantial prejudice to his health is to be feared. As soon as the accused is present again, the presiding judge shall inform him of the essential contents of the statements made or the subject tried during his absence.

SECTION 247A. EXAMINATION OF WITNESS AT A DIFFERENT LOCATION

If there is an imminent risk for the witness to suffer a serious prejudice to his well-being if he is examined in the presence of the persons attending the main trial, the court may order that the witness will be at a different location during his testimony; such an order is also permissible under the prerequisites of section 251, paragraph (2), if it is necessary to ascertain the truth. The decision is not appealable. At the time of its occurrence the testimony will be transmitted by means of audio or video equipment to the courtroom. It shall be recorded if it must be expected that the witness cannot be examined in another trial hearing and the recording is necessary to ascertain the truth. Section 58a, paragraph (2), applies accordingly.

SECTION 248. DISMISSAL OF WITNESSES AND EXPERTS

The witnesses and experts who were heard may absent themselves from the court only with the permission or on the instruction of the presiding judge. The public prosecutor and the accused shall be heard before.

SECTION 249. READING OF DOCUMENTS

(1) Documents and other writings serving as evidence will be read at the (main) trial. This rule applies in particular to sentences previously passed, criminal records and extracts from parish registers, and registers of vital statistics and to written records of a judicial inspection.

(2) Except for the cases of sections 253a and 254, it may be refrained from reading documents serving as evidence if the judges and lay judges have been informed about the contents of the deed or document and the other parties involved had an opportunity to obtain information about the contents. If the public prosecutor, the accused or the defense counsel immediately objects to the order of the presiding judge to proceed pursuant to sentence 1, the court shall make a decision. The order of the presiding judge, the statements regarding the obtaining of information about the contents of documents, and the opportunity to do so as well as the objection shall be stated in the minutes.

SECTION 250. PRINCIPLE OF PERSONAL EXAMINATION

If the proof of a fact is based on the observation of a person, such person shall be examined at the (main) trial. The examination may not be replaced by reading the record of a previous examination or reading a written statement.

SECTION 251. EXCEPTIONS

(1) The questioning of a witness, expert, or co-accused may be replaced by reading the minutes of a questioning or a by a certified document containing a statement written by him—

1. If the accused has a defense counsel and the public prosecutor, the defense counsel and the accused agree to that;

2. If the witness, expert, or co-accused died or cannot be questioned by the court within a foreseeable period of time for any other reason;

3. To the extent that the minutes or document concern the existence or amount of a financial loss;

(2) Questioning of a witness, expert, or co-accused may also be replaced by reading of the minutes of his previous questioning by the court , if—

1. Due to illness, infirmity or other obstacles which cannot be eliminated, the witness, expert or co-accused is unable to appear for the main trial for a long or uncertain period of time;

2. The witness or expert cannot be expected to appear at the main trial considering the importance of his statement in relation to the large travel distance;

3. The public prosecutor, the defense counsel and the accused agree to the reading.

(3) Minutes of examinations, documents, and other writings serving as evidence may also be read in other cases if the reading is for purposes other than directly passing the judgment, in particular if it is to serve the preparation of the decision as to whether a person should be summoned and examined.

(4) In cases of paragraphs (1) and (2), the court will decide whether the reading shall be ordered. The reason for the reading shall be stated. If the minutes of a judicial examination are read, it will be stated whether the person heard was sworn. The oath will be administered subsequently when it seems necessary to the court and can still be administered.

SECTION 252. PROHIBITION TO READ A STATEMENT AFTER REFUSAL OF TESTIMONY

The statement of a witness examined prior to the trial, who only at the trial makes use of his right to refuse to testify, may not be read.

SECTION 253. READING OF STATEMENT TO SUPPORT MEMORY

(1) When a witness or an expert states that he cannot remember a fact, the pertinent part of the written record of his former hearing may be read to support his memory.

(2) The same procedure may be followed in the event a contradiction to the former statement appears at the hearing and cannot otherwise be ascertained or eliminated without an interruption of the trial.

SECTION 254. READING OF CONFESSIONS - CONTRADICTIONS

(1) Statements of the accused that are contained in the judicial record may be read for the purpose of taking of evidence concerning a confession.

(2) The same procedure may be followed in the event a contradiction to the former statement appears at the examination and cannot otherwise be ascertained or eliminated without an interruption of the trial.

SECTION 255. RECORDING READING OF STATEMENTS

In the cases of sections 253 and 254, on motion of the public prosecutor or of the accused, the reading and the reason for it is to be mentioned in the record.

SECTION 255A. PRESENTING A VIDEOTAPED EXAMINATION OF A WITNESS

(1) The provisions on the reading of the minutes of an examination pursuant to sections 251, 252, 253, and 255 shall apply accordingly to the showing of the audio-video recording of an examination of a witness.

(2) In proceedings concerning criminal acts against sexual self-determination (secs 174 through 184g of the German Criminal Code), or against life (secs 211 through 222 of the Criminal Code), concerning mistreatment of wards (sec 225 of the German Criminal Code) or concerning criminal acts against personal freedom pursuant to sections 232 to 233a of the German Criminal Code, the examination of witnesses under eighteen years of age can be replaced by showing the audio-video recording of his previous examination by the judge, if the accused and his defense counsel were given the opportunity to participate in the examination. A supplementary examination of the witness is permissible.

SECTION 256. READING OF OFFICIAL STATEMENTS AND MEDICAL OPINIONS

(1) The following documents can be read:

1. Statements containing testimony or an expert opinion from—

   a. Public authorities,

   b. Experts who are generally sworn for the preparation of opinions of a certain type, as well as

   c. Physicians of the medical expert court service with the exception of certificates of good conduct,

2. Medical certificates concerning minor bodily injuries

3. Medical reports on the taking of blood samples

4. Expert opinions on the evaluation of a tachograph, the determination of the blood group, or the blood alcohol contents including its back calculation, and

5. Minutes as well as statements of the prosecuting authorities regarding investigation actions contained in a certified document, unless their subject matter is an interrogation.

(2) If the opinion of a court-ordered group of experts was obtained, the court may request the authority to appoint one of its members to present this opinion at the main trial and to designate him to the court.

SECTION 257. HEARING THE ACCUSED; RIGHT OF PUBLIC PROSECUTOR AND DEFENSE COUNSEL TO MAKE A STATEMENT

(1) After hearing each co-accused as well as after each individual taking of evidence, the accused should be asked whether he wants to make a statement.

(2) On request also the public prosecutor and the defense counsel shall be given the opportunity to make their statements after the examination of the accused and after each individual taking of evidence.

(3) The statements may not replace the closing arguments.

SECTION 257A. WRITTEN MOTIONS; PROCEDURAL ISSUES

The court may order the participants in the proceedings to submit motions and proposals regarding procedural issues in writing. This does not apply to the motions designated in section 258. Section 249 applies accordingly.

SECTION 257B.

During the main trial the court may discuss the state of the proceedings with the parties involved, if this appears suitable to advance the proceedings.

SECTION 257C.

(1) If appropriate, the court may agree with the parties concerned on the progress and the outcome of the proceedings in accordance with the paragraphs below. Section 244, paragraph (2), shall remain unaffected.

(2) The subject-matter of such an agreement may only be the legal consequences, which may be the contents of the judgment and the pertinent decisions, other proceedings-related measures in the decision process as well as the conduct at trial of the parties involved. A confession must be part of any agreement. The verdict of guilty and measures of reform and prevention may not be the subject-matter of an agreement.

(3) The court shall announce the possible contents of the agreement. Upon complete assessment of all circumstances of the case as well as of the general considerations regarding the determination of punishment, the court may also announce a maximum and minimum punishment. The parties involved in the proceedings will be provided the opportunity to make comments. The agreement will be concluded if the accused and the public prosecutor agree to the proposal made by the court.

(4) The binding effect of an agreement for the court will be eliminated if important legal or factual circumstances were disregarded or have newly occurred and therefore the court finds that the considered range of punishment is no longer appropriate for the offense or the degree of guilt. The same applies if the accused's further conduct in court does not correspond to the conduct on which the court's prognosis was based. In such cases the confession of the accused may not be used. The court shall announce a deviation without delay.

(5) The accused shall be advised of the prerequisites and consequences if the court deviates from the proposed results as specified in paragraph (4).

SECTION 258. CLOSING ARGUMENTS

(1) After the taking of evidence is terminated, the public prosecutor and, subsequently, the accused will be given the opportunity to present their arguments and to make motions.

(2) The public prosecutor has the right to reply; the accused is entitled to the last word.

(3) The accused shall be asked, even if a defense counsel has spoken for him, whether he himself has something to add to his defense.

SECTION 259. INTERPRETER

(1) An accused who has no command of the language used in court must be informed by an interpreter at least of the motions of the public prosecutor and of the defense counsel in the closing arguments (*Schlußvortrag*).

(2) The same applies in accordance with section 186 of the Law Concerning the Constitution of Courts for an accused with a hearing or speech impediment.

SECTION 260. JUDGMENT

(1) The (main) trial will close with the pronouncement of the judgment following the deliberation.

(2) If a prohibition to exercise a profession is ordered, the profession, branch of profession, trade or branch of trade the exercise of which is prohibited, shall be exactly specified in the judgment.

(3) The discontinuance of the proceedings shall be pronounced in the judgment if a procedural impediment exists.

(4) The operative part of the judgment indicates the legal designation of the act the accused on trial is found guilty of. If a statutory offense has a legal heading, it shall be used for the legal designation of the act. If a fine is imposed, number and amount of daily rates shall be included in the operative part of the judgment. If the decision on commitment to preventive custody is reserved, the fine or the measure of reform and prevention is suspended on probation and the accused has been admonished with the reservation that a punishment may be imposed or, if it is refrained from imposing a punishment, this shall be mentioned in the operative part of the judgment. Otherwise, the wording of the operative part of the judgment is left to the discretion of the court.

(5) Following the operative part of the judgment, the provisions applied shall be listed according to section, paragraph, number, and letter to include the law. If, in case of a conviction imposing a sentence of imprisonment or a total penalty not exceeding 2 years, the act or the predominant part of the acts according to their importance have been committed on the basis of a drug addiction, also section 17, paragraph (2), of the Federal Central Register Law (*Bundeszentralregistergesetz*) must be indicated.

SECTION 261. FREE EVALUATION OF EVIDENCE

The court will decide on the result of the taking of evidence according to its own conviction based on the essence of the entire trial.

SECTION 262. PRELIMINARY CIVIL LAW QUESTIONS

(1) If the imposition of penalty for an act depends on a legal relationship based on civil law, the criminal court will also decide the latter according to the provisions applicable to the proceedings and evidence in criminal cases.

(2) The court, however, has the right to suspend the investigation and to fix a period within which one of the parties involved is to bring a civil action or to await the judgment of the civil court.

SECTION 263. VOTING

(1) A majority of two-thirds of the votes is required for any decision against an accused that concerns the question of guilt and the legal consequences of the act.

(2) The question of guilt includes also such special circumstances provided by the criminal law that exclude, diminish, or increase the penalty.

(3) The issue of guilt does not include the conditions of the statute of limitations.

SECTION 264. SUBJECT MATTER OF THE JUDGMENT

(1) The subject of the findings (*Urteilsfindung*) is the act specified in the charges as it presents itself according to the result of the trial.

(2) The court is not bound by the evaluation of the act which forms the basis of the order for the opening of the main proceedings.

SECTION 265. CHANGE IN LEGAL CLASSIFICATION

(1) The accused may not be convicted on the basis of a criminal statute other than the one cited in the charge opening the main proceedings without first being especially referred to the change in the legal aspect and without having been afforded an opportunity to defend himself.

(2) The same procedure will be followed if special circumstances appear only at the trial that according to the criminal law, increase the penalty or justify the order for a measure of reform and prevention.

(3) The trial shall be suspended on motion of the accused if, alleging insufficient preparation for defense, he contests newly discovered circumstances that permit the application of a more severe criminal statute against the accused than the one quoted in the order concerning opening of the main proceedings or that belong to the circumstances indicated in paragraph (2).

(4) The court shall, even in other cases, suspend the trial on a motion or *ex officio* if, in consequence of the changed factual situation it appears appropriate for the preparation of the charges or of the defense.

SECTION 265A. TERMS AND CONDITIONS, DIRECTIVES

If terms and conditions or directives (secs 56b, 56c, and 59a, para (2) of the German Criminal Code) are considered, the accused shall be asked in appropriate cases whether he will make contributions toward restitution for the wrong committed by him or make promises for his future conduct of life. If the directive to subject the accused to a treatment in an institution for cure and care or in an institution for the treatment of alcoholics or drug addicts or to commit him to an appropriate home or institution is taken into consideration, he shall be heard if he consents thereto.

SECTION 266. SUPPLEMENTARY CHARGE

(1) If the public prosecutor at the trial adds new charges of further criminal acts committed by the accused, the court may include them in the proceedings by decision if it has jurisdiction over them and the accused consents thereto.

(2) The supplemental charges may be preferred orally. Their contents corresponds to section 200, paragraph (1). They will be included in the minutes of the session. The presiding judge will give the accused the opportunity to defend himself.

(3) The trial will be interrupted if the presiding judge considers it necessary or if the accused so moves and the motion is not patently frivolous or solely dilatory. The accused will be advised of his right to move for an interruption.

SECTION 267. GROUNDS FOR THE JUDGMENT

(1) If the accused is convicted, the reasons for judgment must show the facts that are considered proved in which the legal characteristics of the criminal act are found. Insofar as the evidence is inferred from other facts, these facts should also be shown. With regard to details, reference may be made to pictures that are included in the records.

(2) If special circumstances provided by the criminal law were alleged at the trial that exclude, diminish, or increase the punishability, the reasons for judgment must indicate whether or not these facts are considered established or not established.

(3) The reasons for the judgment in a criminal case must further specify the criminal law that was applied and show the circumstances that were decisive in assessing the punishment. If the criminal law makes mitigations dependent on the existence of less severe cases, the reasons for judgment must indicate why these circumstances are accepted or are denied contrary to a motion filed at the trial; this applies accordingly to the imposition of sentence involving imprisonment in the cases of section 47 of the German Criminal Code. The grounds for the judgment must also indicate why an especially serious case is not assumed when the prerequisites are met, according to which, as a rule, such a case exists pursuant to the criminal law; if these prerequisites are not present, however, an especially serious case is assumed, sentence 2 applies accordingly. The reasons for judgment must further indicate why the punishment was suspended on probation or was not suspended despite a motion made at the trial; this applies accordingly to the warning with the reservation to impose punishment and to the refraining from imposing a punishment. If the judgment was preceded by an agreement (sec 257c) this shall also be stated in the reasons for the judgment.

(4) If all parties entitled to appeal waive the right to appeal or if no appeal is filed within a certain period, the proved facts in which the legal characteristics of the criminal act are found and the applied criminal law must be indicated; in case of judgments imposing a fine only or ordering a prohibition to drive or a withdrawal of the permission to drive in addition to a fine (altogether ordering the withdrawal of the driver's license), or in case of warnings with the reservation to impose punishment, reference may be made to the permitted bill of indictment (*Anklagesatz*), to the charges pursuant to section 418, paragraph (3), sentence 2, or the order imposing punishment as well as to the request for issuance of a order imposing punishment. Paragraph (3), sentence 5, shall apply accordingly. The further contents of the reasons for judgment are determined by the court taking into consideration at its discretion the circumstances of the individual case. The reasons of the judgment may be supplemented within the period provided in section 275, paragraph (1), second sentence, if, against the neglect of the period to take recourse, reinstatement in the status quo ante is granted.

(5) If the accused is acquitted, the reasons for the judgment shall show whether the guilt of the accused was considered not proven or whether and for what reasons the act accepted as proven was considered not punishable. If all parties entitled to appeal waive the right to appeal or if, within the prescribed period no appeal is filed, it must only to be indicated whether the criminal act the accused is charged with was not determined for factual or legal reasons. Paragraph (4), sentence 3, is to be applied.

(6) The grounds for the judgment must also show why a measure of reform and prevention was ordered, a decision on preventive custody was reserved, or why it was not ordered or reserved contrary to a motion filed during the hearing. If the permission to drive has not been withdrawn or a bar (*Sperre*) pursuant to section 69a, paragraph (1), third sentence, of the German Criminal Code, has not been ordered although, according to the nature of the criminal act such measure was required, the reasons for the judgment must always state why such measure has not been ordered.

SECTION 268. PRONOUNCEMENT OF THE JUDGMENT

(1) The judgment is passed in the name of the people.

(2) Pronouncement of the judgment is made by reading the operative part of the judgment and disclosing the reasons for judgment. Disclosure of the reasons for judgment is made by reading or by oral notification of its essential contents. Reading the operative part of the judgment shall in any case precede the notification of the reasons for judgment.

(3) The judgment shall be announced at the end of the trial. It must be announced at the latest on the 11th day thereafter, otherwise the trial is to be commenced all over again. Section 229, paragraph (3), and paragraph (4), sentence 2, applies accordingly.

(4) If the announcement of the judgment was suspended, the reasons for judgment shall be stated previously in writing, if feasible.

SECTION 268A. SUSPENSION OF PUNISHMENT ON PROBATION

(1) If a judgment provides for the suspension of punishment on probation or if the accused on trial is admonished with the reservation that a punishment may be imposed, the court will render the decisions designated in sections 56a through 56d and 59a of the German Criminal Code, by order, which shall be pronounced together with the judgment.

(2) Paragraph (1) applies accordingly if a measure of reform and prevention has been suspended on probation in the judgment or if, besides the punishment, supervisory guidance is ordered and the court renders decisions pursuant to sections 68a through 68c of the German Criminal Code.

(3) The presiding judge advises the accused about the importance of suspension of the punishment or the measure on probation, the admonition with the reservation to impose punishment, or supervisory guidance, about the duration of the probation period or the supervisory guidance, about terms and conditions and directives as well as about the possibility of the revocation of suspension or sentencing to the reserved penalty (sec 56f, para (1), sec 59b, and sec 67g, para (1), of the German Criminal Code). If the court gives the accused directives pursuant to section 68b, paragraph (1), of the German Criminal Code, the presiding judge also advises him about the possibility of a punishment pursuant to section 145a of the German Criminal Code. The instruction, as a rule, shall be given following the pronouncement of the decision pursuant to paragraphs (1) and (2). If commitment to a psychiatric hospital is suspended on probation, the presiding judge may abstain from giving instructions about the possibility of revoking suspension.

SECTION 268B. CONTINUATION OF PRETRIAL CONFINEMENT

When passing the judgment, the court shall at the same time decide *ex officio* on the continuation of pretrial confinement or temporary internment. The order shall be announced together with the judgment.

SECTION 268C. INSTRUCTION OF ACCUSED IN CASE OF PROHIBITION TO DRIVE A MOTOR VEHICLE

If a prohibition to drive a motor vehicle is ordered in the judgment, the presiding judge will advise the accused concerning the commencement of the period of prohibition (sec 44, para (4), first sentence, of the German Criminal Code). The instruction will be given subsequently to the pronouncement of the judgment. If the judgment is pronounced in the absence of the accused, he must be instructed in writing.

SECTION 268D. INSTRUCTION OF ACCUSED IN CASE OF RESERVED DECISION ON PREVENTIVE CUSTODY

If in the judgment ordering of preventive custody pursuant to section 66a, paragraph (1) or (2), of the German Criminal Code is reserved, the presiding judge shall advise the accused on the importance of the reservation and on the period of time to which the reservation applies.

SECTION 269. COMPETENCE OF A COURT OF LOWER CATEGORY

The court may not decline jurisdiction on the grounds that the case belongs to a court of lower category.

SECTION 270. REFERRING THE CASE TO THE COMPETENT HIGHER COURT

(1) If, after the commencement of a trial, a court considers the jurisdiction over subject matter of a court of higher category to be well-founded, it will, by order, refer the matter to the competent court; section 209a, number 2a, applies accordingly. The same procedure applies if the court considers a timely objection of the accused pursuant to section 6a to be well-founded.

(2) In the order the court shall name the accused and the act pursuant to section 200, paragraph (1), first sentence.

(3) The order has the effect of a decision opening the main proceedings. The void ability of the order is governed by the provision of section 210.

(4) In the event the order referring the case to a higher court was made by a criminal court judge or a lay judges court (*Schöffengericht*), the accused may move within a period to be fixed when notified of the order that certain evidence be taken prior to the trial. The presiding judge of the court to which the case has been referred will decide on the motion.

SECTION 271. RECORD OF THE TRIAL

(1) A record shall be made of the trial and be signed by the presiding judge and the records clerk of the court registry, if he was present during the main trial. The date of its completion must be stated therein.

(2) If the presiding judge is prevented from doing so, the senior associate judge will sign for him. In a case where the presiding judge is the only judge of the court, the signature of the records clerk of the court registry will suffice if the former is prevented from signing.

SECTION 272. CONTENTS OF THE RECORD

The record of the trial will contain—

1. The place and day of the trial;

2. The names of the judges and lay judges, the official of the office of the public prosecutor, the recording clerk of the court registry, and the assisting interpreter;

3. The designation of the criminal act according to the charges;

4. The names of the accused, their defense counsel, plaintiff in a private complaint, interveners, injured persons who assert claims arising from the criminal act, other parties involved, legal representatives, authorized agents and assistants;

5. An indication that the trial is public or that the public is excluded.

SECTION 273. RECORDING OF THE TRIAL

(1) The record must show the course and the results of the trial in essence and make evident the compliance with all essential formalities; it must also specify the documents read or those the reading of which has been refrained from pursuant to section 249, paragraph (2), as well as the motions filed during the course of the trial, the rulings, and the operative part of the judgment. The record must also reflect in substance the course and contents of a discussion pursuant to section 257b.

(1a) The record must also reflect in substance the course and contents as well as the result of an agreement pursuant to section 257c. The same applies to compliance with providing of information and instructions as required by section 243, paragraph (4), section 257c, paragraph (4), sentence 4, and paragraph (5). If no agreement was reached this shall also be noted in the record.

(2) Further, the essential results of the examinations at the (main) trial before the criminal court judge and the lay judges court shall be included in the record; this does not apply if all persons entitled to appeal waive the appeal or if no appeal is filed within the time limit. Instead of including the essential results of an interrogation in the record, the presiding judge may order to have individual interrogations entirely recorded on audio tape recorder. The audio tape shall be placed on file or retained with the files by the court registry. Section 58a, paragraph (2), sentences 1 and 3 through 6, apply accordingly.

(3) If it is important that an incident at the (main) trial or the wording of testimony or an assertion be determined, the presiding judge shall order a complete recording and reading *ex officio* or on the motion of a person involved in the proceedings. If the presiding judge rejects the order, the court shall make the decision on the motion of a person involved in the proceedings. It shall be noted in the minutes that the reading took place and approval was given or what objections were raised.

(4) The judgment may not be served until the minutes have been completed.

SECTION 274. EVIDENTIARY VALUE OF THE RECORD

Compliance with the formalities prescribed for the (main) trial may only be proved by means of the record. The contents of the record regarding these formalities may only be attacked by proof of falsification.

SECTION 275. WRITTEN JUDGMENT, OFFICIAL COPY

(1) If the judgment including reasons has not been fully incorporated in the record, it shall be included in the case file immediately. This must be done at least 5 weeks after the pronouncement; this period is extended by 2 weeks if the (main) trial has lasted longer than 3 days, and if the trial has lasted longer than 10 days, by another 2 weeks for each started period of ten trial days. On expiration of the period, the reasons of the judgment may no longer be changed. The period may be exceeded only if and as long as the court, due to a circumstance which cannot be anticipated or averted in an individual case, has been prevented from its observance. The date of receipt and a change of the reasons shall be noted by the court registry.

(2) The judgment shall be signed by the judges who participated in the decision. If a judge is prevented from adding his signature, this fact, with the reason for it, will be noted under the judgment by the presiding judge and, if he is prevented from doing so, by the senior associate judge. The signatures of the lay judges are not required.

(3) The day specified for the hearing as well as the names of the judges, lay judges, official of the office of the public prosecutor, the defense counsel, and recording clerk of the court registry who took part in the hearing shall be included in the judgment.

(4) Official copies and extracts of judgments shall be signed by the records clerk of the court registry and shall be provided with the court's seal.

CHAPTER SEVEN
DECISION ON THE IMPOSITION OF PREVENTIVE CUSTODY RESERVED IN THE JUDGMENT OR ON SUBSEQUENT ORDERING OF PREVENTIVE CUSTODY

SECTION 275A. DECISION ON PREVENTIVE CUSTODY RESERVED IN THE JUDGMENT OR ITS SUBSEQUENT ORDERING

(1) If the judgement reserves the right to order preventive custody (sec 66a of the German Criminal Code), the authority in charge of executing the sentence shall send the files to the public prosecutor's office of the competent court in due time. The public prosecutor submits the files to the presiding judge of the court in time for a decision to be made by the point in time provided for in paragraph (5). If commitment to a psychiatric hospital pursuant to section 67d, paragraph (6), sentence 1, of the German Criminal Code was declared completed, the authority in charge of the execution of the sentence immediately sends the files to the public prosecutor's office at the court competent to order subsequent preventive custody (sec 66b of the German Criminal Code). If the public prosecutor intends to request a subsequent ordering of preventive custody, he will inform the person concerned accordingly. The public prosecutor must file the request for subsequent ordering of preventive custody immediately and submit it with the files to the presiding judge of the court.

(2) Unless otherwise provided below, sections 213 through 275 shall apply accordingly to the preparation and conducting of the main hearing.

(3) After the main hearing has started in accordance with section 243, paragraph (1), a reporter will present the results of the previous proceedings in the absence of the witnesses. The presiding judge shall read the previous judgment to the extent

that it is essential for the decision on the reserved or subsequent ordering of preventive custody. This is followed by an interrogation of the accused and the taking of evidence.

(4) Before the decision the court shall obtain an opinion from an expert. If the decision concerns subsequent ordering of preventive custody opinions from two experts must be obtained. The experts must not have been involved with the treatment of the convicted person in the course of the execution of the sentence or the execution of the commitment to an institution.

(5) The court must render a decision on the reserved order to preventive custody at the latest 6 months before the complete execution of the prison sentence.

(6) If there are strong reasons to assume that subsequent preventive custody will be ordered, the court may issue a commitment order for the time until the judgment is final. The court competent for the decision pursuant to section 67d, paragraph (6), of the German Criminal Code is competent for the issuance of the commitment order until the request to order subsequent preventive custody is received by the court competent to make this decision. In the cases of section 66a of the German Criminal Code the court may issue a commitment order for the time until the judgment becomes final, if it has ordered the reserved preventive custody in the first instance by the point in time determined in section 66a, paragraph (3), sentence 1, of the German Criminal Code. Sections 114 through 115a, 117 through 119a, and section 126a, paragraph (3), apply accordingly.

CHAPTER EIGHT
PROCEEDINGS AGAINST ABSENTEES (*VERFAHREN GEGEN ABWESENDE*)

SECTION 276. ABSENT ACCUSED

An accused is considered absent if his place of abode is unknown or if he is abroad and his presence at the competent court appears not to be feasible or appropriate.

SECTION 277 THROUGH SECTION 284. (DELETED)

SECTION 285. SECURING EVIDENCE

(1) A trial against an absentee will not be held. The proceedings initiated against the absentee will serve the purpose of securing evidence in case of his future presence in court.

(2) The provisions of sections 286 through 294 apply to these proceedings.

SECTION 286. DEFENSE COUNSEL

A defense counsel may act for the accused. Relatives of the accused are also permitted to act as representatives, even without a power of attorney.

SECTION 287. NOTIFICATION OF THE ACCUSED

(1) The absent accused is not entitled to notifications about the course of the proceedings.

(2) The judge, however, is authorized to have notifications sent to an absentee whose place of abode is known.

SECTION 288. INVITATION TO APPEAR

An absentee whose place of abode is unknown may, through one or several newspapers, be summoned to appear before the court or to report his place of abode.

SECTION 289. TAKING OF EVIDENCE

If it appears only after opening of the main proceedings that the accused is absent, the evidence still required will be taken by a designated or requested judge.

SECTION 290. SEIZURE OF PROPERTY

(1) The property owned by an absentee against whom charges were preferred, that is located within the territorial scope of this Federal Law may be seized by order of the court when there are grounds for suspicion against him which would justify the issue of a warrant of arrest.

(2) There will be no attachment of property in case of criminal acts which are only punished by imprisonment not exceeding 6 months or by a fine not exceeding 180 daily rates.

SECTION 291. PUBLICATION OF THE ORDER OF SEIZURE

The order to seize shall be published in the Federal Bulletin and, at the discretion of the court, may be published in any other appropriate manner.

SECTION 292. EFFECT OF PUBLICATION

(1) The accused loses the right to dispose *inter vivos* of the seized property at the date of the first publication in the Federal Bulletin .

(2) The ruling that orders the seizure shall be communicated to the authority competent to institute a curatorship for absentees. This authority shall institute a curatorship.

SECTION 293. TERMINATION OF SEIZURE

(1) The seizure shall be withdrawn if the reason for it ends.

(2) Revocation of the seizure shall be made public in the same manner the seizure was published. If the publication pursuant to section 291 was made in the Federal Bulletin, its deletion shall also be initiated; publication of the revocation in the electronic Federal Bulletin shall be deleted after expiration of one month.

SECTION 294. PROCEEDINGS AFTER PREFERRING CHARGE

(1) The provisions concerning the opening of the (main) trial are otherwise accordingly applicable to the proceedings which follow the preferring of the public charges.

(2) In the order issued after the termination of these proceedings (sec 199), a decision shall at the same time be made on the continuation or withdrawal of the seizure.

SECTION 295. SAFE CONDUCT

(1) The court may grant safe conduct to an absent accused; granting may be subject to conditions.

(2) The safe conduct grants immunity from pretrial confinement, however, only as regards the criminal act for which it is granted.

(3) It expires in the event a sentence to imprisonment is passed, or if the accused makes arrangements to flee, or if he does not fulfill the conditions under which he was granted the safe conduct.

PART III
APPEAL

CHAPTER ONE
GENERAL PROVISIONS

SECTION 296. PERSONS ENTITLED TO APPEAL

(1) The permissible appeal of judicial decisions is available to the prosecution and the accused.

(2) The public prosecutor may make use of them even in favor of the accused.

SECTION 297. DEFENSE COUNSEL

The defense counsel may initiate appellate proceedings on behalf of the accused but not against the latter's express will.

SECTION 298. LEGAL REPRESENTATIVE

(1) The legal representative of an accused may independently make use of the permissible appeal within the time limit allowed to the accused.

(2) The provisions applicable to the appeal available to the accused shall be correspondingly applied to such appeal and to the proceedings.

SECTION 299. ARRESTED ACCUSED

(1) An accused in confinement may make oral statements regarding the appeal to be placed on the record by the court registry of the district court in whose district the confinement facility is located where he is detained on official order.

(2) The time limit is met if the minutes are prepared within the time limit.

SECTION 300. IMPROPER DESIGNATION

An error in the designation of the admissible appeal is not prejudicial.

SECTION 301. APPEAL BY THE PUBLIC PROSECUTOR

Any appeal initiated by the office of the public prosecutor has the effect of permitting the appealed decision to be changed or reversed even in favor of the accused.

SECTION 302. WITHDRAWAL, WAIVER

(1) Withdrawal of an appeal as well as the waiver of the right to appeal may be effectively made even before the period of limitation for filing has lapsed. A waiver is excluded if prior to the judgment an agreement (sec 257c) was reached. An appeal initiated by the office of the public prosecutor in favor of the accused cannot be withdrawn without his consent.

(2) The defense counsel is required to have an express authorization for such withdrawal.

SECTION 303. CONSENT OF THE OPPOSING PARTY

When the decision on the appeal is to be made on the basis of a previous oral hearing, a withdrawal after commencement of the trial may be made only with the consent of the opposing party. However, withdrawal of an appeal of the accused does not require the consent of the intervener.

CHAPTER TWO
APPEAL

SECTION 304. PERMISSIBILITY

(1) Appeal may be taken from all rulings made by the courts in the first instance or in appellate proceedings (*Berufungsverfahren)* and from orders (*Verfügungen*) of the presiding judge, of the judge concerned with the preliminary proceedings, and of a designated or requested judge, unless specifically exempt from appeal by law.

(2) Witnesses, experts, and other persons may also appeal rulings and orders by which they are affected.

(3) Appeal from decisions concerning costs or necessary expenses is only permitted if the value of the issue on appeal exceeds 200 euros.

(4) Appeal may not be taken from rulings and orders of the Federal Supreme Court. The same applies to rulings and orders of the superior state courts; in cases in which the superior state courts have jurisdiction in the first instance, appeal may be taken from rulings and orders that—

1. Concern arrest, temporary commitment, commitment for observation, confiscation, search or the measures designated in section 101, paragraph (1);

2. Decline the opening of the (main) trial or discontinue the proceedings because of a procedural impediment;

3. Order the (main) trial in the absence of the accused on trial (sec 231a) or pronounce the remission to a court of lower instance;

4. Concern review of the case file, or

5. Concern the revocation of the suspension of the punishment, revocation of the remittance of punishment and the sentencing to a reserved punishment (sec 453, para (2), third sent), the order for temporary measures to secure revocation (sec

453c), suspension of the remaining punishment and its revocation (sec 454, paras (2) and (3)), the reopening of the proceedings (sec 372, first sent), or forfeiture, confiscation or rendering unserviceable pursuant to section 440, section 441, paragraph (2), and section 442.

Section 138, paragraph (6), remains unaffected.

(5) Appeal from orders of the investigating judge of the Federal Supreme Court and the superior state court (sec 169, para (1)) is admissible only when it concerns apprehension, temporary commitment to an institution, confiscation, search or the measures designated in section 101, paragraph (1).

SECTION 305. NONPERMISSIBILITY

Decisions of the trial courts that precede the judgment are not subject to appeal. Excepted are decisions concerning arrest, temporary commitment, confiscations, temporary withdrawal of the permission to drive, temporary prohibition to exercise a profession, or imposition of a fine or coercive measures, as well as all decisions by which third parties are affected.

SECTION 305A. LIMITED APPEAL FROM SUSPENSION OF PUNISHMENT

(1) Appeal may be taken from an order given according to section 268a, paragraphs (1) and (2). It may only be based on the fact that an order issued is illegal.

(2) In the event an appeal is initiated against an order and an admissible appeal on issues of law is initiated against the judgment, the appellate court is also competent to decide on the appeal.

SECTION 306. INITIATING AN APPEAL

(1) The appeal shall be filed to be placed on the record of the court registry of the court or its presiding judge having rendered the contested decision or in writing.

(2) If the court or the presiding judge whose decision is contested considers the appeal well-founded, the court or the president shall grant redress; in all other cases the motion for appeal shall be submitted immediately, at the latest within 3 days, to the court of appeal.

(3) These provisions are also applicable to the decisions of the judge concerned with the preliminary proceedings and the designated or requested judge.

SECTION 307. EXECUTION NOT SUSPENDED

(1) The initiation of an appeal does not suspend execution of the contested decision.

(2) However, the court, the presiding judge, or the judge whose decision is contested, as well as the court of appeal, may order that execution of the contested decision be suspended.

SECTION 308. POWERS OF COURT OF APPEAL

(1) The court of appeal may not change the contested decision to the detriment of the party opposing the appellant without communicating the appeal to him for a counterstatement. This does not apply in the cases of section 33, paragraph (4), sentence 1.

(2) The court of appeal may order investigations or conduct them itself.

SECTION 309. DECISION

(1) The decision concerning the appeal will be made without oral hearing, in appropriate cases after hearing the public prosecutor.

(2) If the appeal proceeding is considered well-founded, the court of appeal will at the same time make the decision required in the case.

SECTION 310. FURTHER APPEAL

(1) Decisions on the appeal rendered by the State court or by the superior State court competent pursuant to section 120, paragraph (3), of the Law Concerning the Constitution of Courts, may be contested by further appeal if they concern—

1. An arrest,

2. A temporary commitment,

3. The ordering of an attachment pursuant to section 111b, paragraph (2), in connection with section 111d of an amount of more than 20,000 euros.

(2) In all other cases, the decisions rendered on an appeal are not subject to further appeal.

SECTION 311. SPECIAL APPEAL SUBJECT TO A TIME LIMIT

(1) The following special provisions are applicable in case of a special appeal subject to a time limit.

(2) The appeal shall be initiated within 1 week; the period of limitation begins with the announcement (sec 35) of the decision.

(3) The court is not authorized to change a decision contested by an appeal. But it will grant redress if it has used facts or evidentiary conclusions to the detriment of the party initiating the appeal to which he has not yet been heard and if, as a consequence of the subsequent initiation of the appeal, the court considers the appeal well-founded.

SECTION 311A. HEARING FOLLOWING SUCCESSFUL APPEAL

(1) If the court of appeal has granted relief without hearing the opponent of the party initiating the appeal, and if its decision is not subject to appeal and the detriment caused to him thereby still exists, the court shall *ex officio* or on motion grant a belated hearing and decide on a motion. The court of appeal may change its decision even without a motion.

(2) Section 307, section 308, paragraph (2), and section 309, paragraph (2), shall apply accordingly to the proceedings.

CHAPTER THREE
APPEAL ON ISSUES OF FACT AND LAW (*BERUFUNG*)

SECTION 312. PERMISSIBILITY

An appeal is admissible against the judgments of the criminal court judge and of the lay-judges court.

SECTION 313. GRANTING THE APPEAL

(1) If the accused has been sentenced to pay a fine not exceeding 15 daily rates, the reserved punishment, in case of an admonition shall not exceed 15 daily rates, or if a fine was imposed, an appeal is only permissible if it is accepted. The same applies if the accused was acquitted or the proceedings were discontinued and the office of the public prosecutor had filed a motion for imposition of a fine not exceeding 30 daily rates.

(2) The appeal is accepted if it is obvious that it is not unfounded. Otherwise, it will be dismissed as inadmissible.

(3) The appeal from a judgment for having committed an administrative offense by which a fine is imposed, an acquittal is pronounced, or the proceedings are discontinued shall always be accepted if the appeal is permissible pursuant to section 79, paragraph (1), of the Administrative Offenses Act (*Ordnungswidrigkeitengesetz*), or would be permissible pursuant to section 80, paragraphs (1) and (2), of the Administrative Offenses Act. Otherwise, paragraph (2), shall apply.

SECTION 314. PRESCRIBED FORM AND TIME LIMIT

(1) The appeal shall be initiated to be placed on the record by the court registry or in writing with the court of the first instance within 1 week after the pronouncement of the judgment.

(2) If the pronouncement of the judgment was not made in the presence of the accused, the period of limitation begins to run for him with the service of the judgment, unless in the cases of section 234, section 387, paragraph (1), section 411, paragraph (2), and section 434, paragraph (1), sentence 1, the pronouncement has taken place in the presence of the defense counsel who was in possession of a written power of attorney.

SECTION 315. APPEAL AND MOTION FOR REINSTATEMENT

(1) The beginning of the time period for initiating an appeal is not excluded by the possibility of a request for *restitutio in integrum* against a judgment for failure of the accused to appear.

(2) When the accused makes a request for *restitutio in integrum*, the appeal is preserved if initiated in due time, contingent on the event that the petition is denied. Further disposition regarding the appeal will then be suspended until the decision on the request for *restitutio in integrum* has been made.

(3) Initiating an appeal without a request for *restitution in integrum* is considered a waiver of the latter.

SECTION 316. FINALITY OF JUDGMENT SUSPENDED

(1) Initiating an appeal in due time suspends the finality of the judgment insofar as it is contested.

(2) If the judgment with reasons has not yet been served on the person initiating the appeal, it shall immediately be served on him after initiation of the appeal.

SECTION 317. JUSTIFICATION OF APPEAL

Justification of the appeal may be submitted to the court of first instance by placing it on the record of the court registry or by a notice of appeal (*Beschwerdeschrift*) within a further week after the expiration of the time limit for initiating the appeal or, if at this time the judgment has not yet been served, after the service thereof.

SECTION 318. EXTENT OF APPEAL

The appeal may be restricted to certain points of complaint. If this was not done or no supporting reasons were given, the entire judgment is considered contested.

SECTION 319. APPEAL INITIATED TOO LATE

(1) If the appeal was belatedly initiated, the court of the first instance will reject the appeal as inadmissible.

(2) Within 1 week after the service of the order, the person initiating the appeal may move for a decision of the court of appeal. In this case, the files shall be sent to the court of appeal; however, this does not impede execution of the judgment. The provision of section 35a applies accordingly.

SECTION 320. SUBMITTING FILES TO PUBLIC PROSECUTOR

If the appeal was initiated in due time, the court registry will submit the file to the office of the public prosecutor after expiration of the period for submission of a justification, regardless whether a justification was provided or not. In the event the appeal was initiated by the office of the public prosecutor, it will serve on the accused the documents concerning the initiation and justification of the appeal.

SECTION 321. TRANSMITTAL OF FILES TO COURT OF APPEAL (*BERUFUNGSGERICHT*)

The office of the public prosecutor will transmit the case file to the public prosecutor at the court of appeal. The latter will turn over the file to the presiding judge of the court within one week.

SECTION 322. DISMISSAL BECAUSE OF NONPERMISSIBILITY

(1) If the court of appeal is of the opinion that the provisions concerning initiation of the appeal were not observed, it may reject the appeal as inadmissible. In all other cases, it will decide by judgment; section 322a remains unaffected.

(2) The order can be contested by a special appeal subject to a time limit.

SECTION 322A. DECISION ON ACCEPTANCE OF APPEAL

The appellate court will render a decision concerning the acceptance of an appeal (sec 313). The decision cannot be contested. The decision by which the appeal was accepted does not require justification.

SECTION 323. PREPARATION OF TRIAL

(1) The provisions of sections 214 and 216 through 225 apply to the preparation of the trial. The summons shall expressly inform the accused of the consequences of nonappearance.

(2) Summons of the witnesses and experts heard in the first instance may be omitted only when their repeated hearing does not seem required for the clarification of the case. If it appears necessary, the court of appeal shall order transcription of a tape recorded interrogation pursuant to section 273, paragraph (2), sentence 2, into a written record. The person preparing the transcription shall add to his signature a phrase certifying the correctness of the transcript. The office of the public prosecutor, the defense counsel and the accused shall be provided a copy of the written record. Proof of incorrectness of the transcript is permitted. The written record may be read in accordance with section 325.

(3) Presentation of new evidence is permitted.

(4) In the selection of witnesses and experts to be summoned, consideration is to be given to the persons named by the accused in support of the appeal.

SECTION 324. PROCEDURE CONCERNING TRIAL

(1) After the beginning of the (main) trial, according to the provision of section 243, paragraph (1), a reporting judge (*Berichterstatter*) will present the results of the previous proceedings in the absence of the witnesses. The judgment of the court of first instance shall be read to the extent that it is significant to the appeal; it may be refrained from reading the grounds for the judgment insofar as the office of the public prosecutor, the defense counsel, and the accused dispense with it.

(2) Thereafter, the accused shall be heard and evidence be taken.

SECTION 325. READING OF DOCUMENTS

Documents may be read when the reporting judge makes his statements and during the taking of evidence; except for the cases of sections 251 and 253, records concerning statements of the witnesses and experts heard at the trial in first instance may not be read without the consent of the public prosecutor and of the accused, if the witnesses or experts were summoned again or a motion to do so was filed by the accused in due time before the trial.

SECTION 326. CLOSING ARGUMENTS

After closing the taking of evidence, the office of the public prosecutor as well as the accused and his defense counsel will be heard with their arguments and motions, the person initiating the appeal will be heard first. The accused is entitled to the last word.

SECTION 327. EXAMINATION BY THE COURT

The judgment is subject to the examination by the court only insofar as it is contested.

SECTION 328. TERMS OF A JUDGMENT ON APPEAL (*BERUFUNGSURTEIL*)

(1) If the appeal is substantiated, the court of appeal will reverse the judgment and make a decision itself.

(2) If the court of the first instance unlawfully assumed jurisdiction, the court of appeal will reverse the judgment and refer the case to the competent court.

SECTION 329. FAILURE OF ACCUSED TO APPEAR

(1) If, at the commencement of a (main) trial, neither the accused nor , in those cases in which this is permitted, a representative of the accused appeared and no sufficient excuse is provided for failure to appear, the court shall reject an appeal of the accused without hearing subject matter. This does not apply if the court of appeal holds a new hearing after the matter has been remanded by the appellate court dealing with appeals on questions of law. If there is no conviction for individual acts out of several others, the contents of the maintained judgment shall be clarified when the appeal is dismissed; the imposed punishments may be based on a new total penalty by the court of appeal.

(2) Under the conditions of paragraph (1), first sentence, a hearing on an appeal of the office of the public prosecutor may also be held without the accused. An appeal of the office of the public prosecutor may in these cases also be withdrawn without the approval of the accused unless the prerequisites of paragraph (1), second sentence, prevail.

(3) Within 1 week after service of the judgment, the accused may request *restitutio in integrum* under the prerequisites specified in sections 44 and 45.

(4) If it is not proceeded pursuant to paragraph (1) or (2), it shall be ordered that the accused be brought before the judge or apprehended. It shall be refrained there from if it is expected that he will appear on the newly scheduled trial date without coercive measures to be taken.

SECTION 330. INITIATION OF APPEAL BY LEGAL REPRESENTATIVE

(1) If the appeal was initiated by a legal representative, the court shall also summon the accused to the trial and may have him forcibly brought before the court in case of failure to appear.

(2) If only the legal representative is not present at the trial, the trial shall be conducted without him. If, at the beginning of a trial, neither the legal representative nor the accused appeared, section 329, paragraph (1), applies accordingly; if only the accused has not appeared, section 329, paragraph (2), first sentence, applies accordingly.

SECTION 331. *REFORMATIO IN PEIUS* PROHIBITED

(1) The judgment, as to kind and extent of the legal consequences of the act may not be changed to the detriment of the accused if only the accused, or the office of the public prosecutor or his legal representative initiated the appeal in his favor.

(2) This provision does not prevent ordering commitment to a psychiatric hospital or an institution for the treatment of drug addicts and alcoholics.

SECTION 332. PROCEDURAL PROVISIONS

The provisions concerning trial, set forth in chapter VI, part II, are otherwise applicable.

CHAPTER FOUR
APPEAL ON ISSUES OF LAW (*REVISION*)

SECTION 333. PERMISSIBILITY

An appeal on issues of law may be lodged from the judgments of the penal chambers and criminal courts sitting with three professional judges and two lay judges as well as from first instance judgments passed by the superior state courts.

SECTION 334. (DELETED)

SECTION 335. DIRECT APPEAL ON ISSUES OF LAW (*SPRUNGREVISION*)

(1) A judgment against which an appeal is admissible can be contested by an appeal on issues of law instead by appeal on issues of fact and law.

(2) The court that would be competent to decide in the event the appeal on issues of law had been initiated after an appeal on issues of fact and law was disposed of will decide on the appeal on issues of law.

(3) If one of the parties involved initiates an appeal on issues of law against the judgment and another one initiates an appeal on issues of fact and law, the appeal on issues of law initiated in due time and in the prescribed form will be treated as an appeal on issues of fact and law as long as the appeal on issues of fact and law is not withdrawn or rejected as inadmissible. The motions for appeal on issues of law and their reasons shall nevertheless be submitted in the form and within the period required for and be served on the opposing party (secs 344 through 347). An appeal on issues of law against the judgment of appeal on issues of fact and law is admissible pursuant to the generally applicable provisions.

SECTION 336. REVIEW OF DECISIONS PRECEDING THE JUDGMENT

Decisions that precede the judgment, insofar as the judgment is based on them, are also subject to examination by the appellate court. This does not apply to decisions that were expressly declared incontestable or that may be contested by special appeal subject to a time limit.

SECTION 337. GROUNDS FOR APPEAL ON ISSUES OF LAW

(1) Appeal on issues of law may be brought only on the ground that the judgment is based on a violation of the law.

(2) The law is violated when a legal rule was not or was incorrectly applied.

SECTION 338. ABSOLUTE GROUNDS FOR APPEAL ON ISSUES OF LAW

A judgment shall always be considered as being based on a violation of the law in the event—

(1) The adjudging court was not composed according to regulations; if the communication about the composition was required pursuant to section 222a, the appeal on issues of law can only be based on the composition being contrary to regulations only as far as the—

1. Provisions governing the communication have been violated,

2. Timely objection that the composition was contrary to regulations submitted in the prescribed form has been disregarded or rejected,

3. Trial has not been interrupted pursuant to section 222a, paragraph (2), for review of the composition, or

4. Deciding court was composed contrary to regulations and has determined that it was composed contrary to regulations pursuant to section 222b, paragraph (2), second sentence;

(2) A judge or lay judge who was barred by virtue of the law from being a judge participated in passing the judgment;

(3) A judge or lay judge participated in passing the judgment after he was challenged for bias and the challenge was either accepted as founded or was unlawfully rejected;

(4) In the event the court unlawfully assumed jurisdiction;

(5) The trial was held in the absence of the public prosecutor or of a person whose presence is prescribed by law;

(6) The judgment was passed on the basis of an oral hearing and the provisions concerning the proceedings in open court were violated;

(7) The judgment does not contain the reasons for the decision or those reasons have not been included in the records within a period according to section 275, paragraph (1), second and fourth sentences;

(8) The defense counsel was unduly restricted by a ruling of the court on a question important for the decision.

SECTION 339. LEGAL NORMS IN FAVOR OF ACCUSED

The violation of legal rules that are provided only in favor of the accused may not be asserted by the public prosecutor in order to obtain a reversal of the judgment to the detriment of the accused.

SECTION 340. (DELETED)

SECTION 341. PRESCRIBED FORM AND PERIOD

(1) The appeal on issues of law shall be initiated with the court whose judgment is being attacked either to be placed on the record of the court registry or in writing within 1 week after pronouncement of the judgment.

(2) If pronouncement of the judgment was not made in the presence of the accused, the period of limitation begins to run with the service of the judgment, unless in the cases of section 234, section 387, paragraph (1), section 411, paragraph (2), and section 434, paragraph (1), sentence 1, the pronouncement has taken place in the presence of the defense counsel who was in possession of a written power of attorney.

SECTION 342. APPEAL ON ISSUES OF LAW AND MOTION FOR REINSTATEMENT

(1) The beginning of the period of limitation for initiating the appeal on issues of law is not impeded by the possibility of a request for r*estitutio in integrum* against a judgment passed on failure of the accused to appear.

(2) If the accused petitions for *restitutio in integrum*, the appeal on issues of law is preserved when immediately initiated and substantiated in due time, contingent on the event the petition is denied. Further disposition in regard to the appeal on issues of law will then be suspended until the decision on the petition for *restitutio in integrum*.

(3) Initiation of appeal on issues of law without simultaneously petitioning for *restitutio in integrum* is considered a waiver of the latter.

SECTION 343. FINALITY OF JUDGMENT SUSPENDED

(1) Initiation of the appeal on issues of law in due time suspends the finality of the judgment insofar as it is contested.

(2) If the judgment (including reasons) has not yet been served on the person initiating appeal on issues of law, it shall be immediately served on him after he has initiated the appeal on points of law.

SECTION 344. MOTIONS FOR APPEAL ON ISSUES OF LAW AND GROUNDS THEREFOR

(1) The person initiating the appeal on issues of law shall make a statement to what extent he contests the judgment and moves for a reversal thereof (motions for appeal on issues of law), and he shall state the reasons for such motions.

(2) The reasons for the motions must show whether the judgment is contested because of a violation of a legal rule concerning the proceedings or because of a violation of another legal rule. In the first case the facts constituting the defect shall be indicated.

SECTION 345. PERIOD FOR STATING GROUNDS AND PRESCRIBED FORM

(1) The motions for appeal on issues of law and their reasons shall be submitted to the court whose judgment is being contested no later than 1 month after the period allowed for initiating the appeal has lapsed. In the event the judgment has not yet been served at that time, the period commences with the service.

(2) The accused may only file such motions by way of a written statement signed by the defense counsel or by an attorney-at-law or by placing it on the record of the court registry.

SECTION 346. NONCOMPLIANCE WITH PRESCRIBED FORM AND PERIOD

(1) The court whose judgment is being contested shall, by order, reject the appeal on issues of law as inadmissible if it was belatedly initiated or the motions for the appeal on issues of law were not submitted in due time or not in the form provided for in section 345, paragraph (2).

(2) The person initiating the appeal on issues of law may move for a decision of the appellate court within 1 week after the service of the order. In this case the records shall be sent to the appellate court; however, execution of the judgment is hereby not suspended. The provision of section 35a is correspondingly applicable.

SECTION 347. SERVICE, COUNTERSTATEMENT, SUBMISSION OF FILES

(1) The notice of appeal on issues of law shall be served on the party opposing the person who initiated the appeal on issues of law if the appeal on issues of law and the motions for appeal on issues of law were submitted in due time and in the provided form. The opposing party may submit a written counterstatement within 1 week. The accused may also make such counterstatement by placing it on the record of the court registry.

(2) The office of the public prosecutor will send the file to the appellate court after receipt of the counterstatement or after expiration of the specified period.

SECTION 348. INCOMPETENCE OF COURT

(1) The court to which the case file was sent will, by order, state that it is not competent if it finds that hearing and decision on the review proceeding fall under the jurisdiction of another court.

(2) This order, which must indicate the competent appellate court, is not subject to appeal and is binding for the court specified in it.

(3) Transmittal of the case file will be made by the office of the public prosecutor.

SECTION 349. DISMISSAL BECAUSE OF NONPERMISSIBILITY

(1) The appellate court may, by order, dismiss the review as inadmissible if it is of the opinion that the provisions concerning initiation of appeal on issues of law or those concerning submission of the motions for appeal on issues of law were not observed.

(2) The appellate court, on a motion of the public prosecutor which must be substantiated, may decide by order even if it unanimously regards the appeal on issues of law as obviously unfounded.

(3) The office of the public prosecutor will inform the person who has initiated the appeal on issues of law of its motion pursuant to paragraph (2) and the reasons. Within 2 weeks the person who has initiated the appeal on issues of law may file a written counterstatement with the appellate court.

(4) If the appellate court unanimously regards an appeal on issues of law filed in favor of the accused as well-founded, it may set aside the contested judgment by decision.

(5) If the appellate court does not apply paragraph (1), (2), or (4), it shall decide about the appeal by judgment.

SECTION 350. NOTIFICATION OF THE ACCUSED

(1) The place and time of the trial shall be communicated to the accused and to the defense counsel. If communication to the accused is not feasible, notification of the defense counsel will be sufficient.

(2) The accused may appear at the trial or be represented by a defense counsel who has been provided with a written power of attorney. An accused not at liberty is not entitled to be present.

(3) If the accused who is not at liberty and who is not brought to trial has not chosen a defense counsel, the presiding judge, on motion of the accused, shall assign one to him for the trial. The motion shall be made within 1 week after the accused has been notified of the date and time of the trial by referring him to his right to have a defense counsel retained.

SECTION 351. TRIAL

(1) The trial begins with the report of a reporting judge.

(2) Following that the public prosecutor as well as the accused and his defense counsel will be heard with their arguments and motions; the appellant is heard first. The accused is entitled to the last word.

SECTION 352. EXTENT OF REVIEW

(1) Only the motions for appeal on issues of law are subject to the examination of the appellate court and -in the event the appeal on issues of law is based on defects in the proceedings- only the facts that were specified when submitting the motions for appeal on issues of law.

(2) A further substantiation of the motions for appeal on issues of law other than the one provided in section 344, paragraph (2), is not required and, if incorrect, is not prejudicial.

SECTION 353. REVERSAL OF JUDGMENT ATTACKED

(1) The contested judgment shall be reversed insofar as the appeal on issues of law is considered well-founded.

(2) At the same time, the findings on which the judgment is based shall be reversed insofar as they are affected by the legal defect because of which the judgment is reversed.

SECTION 354. DECISION BY THE APPELLATE COURT, REMAND

(1) In the event the judgment is reversed because the law was violated when applied to the factual findings on which the judgment is based, the appellate court shall make a decision in the case itself if, without further discussion of facts, an acquittal or stay of proceedings or imposition of a punishment finally determined is decided on or if the appellate court,

according to the public prosecutor's motion, considers the minimum punishment or an abstention from the imposition of any punishment to be appropriate.

(1a) The appellate court may refrain from reversing the appealed judgment if the law was violated only in connection with the assessment of the legal consequences, if the imposed legal consequence is appropriate. Upon motion of the public prosecutor the court may appropriately reduce the legal consequences.

(1b) If the court reverses the judgment only because of a violation of law in connection with the establishment of a cumulative punishment (secs 53, 54, and 55, of the German Criminal Code), this can be done with the proviso that a subsequent court decision on the cumulative punishment in accordance with sections 460 and 462 must be made. Sentence 1 applies accordingly if the appellate court itself issues a decision pursuant to paragraph (1) or 1a regarding an individual punishment. Otherwise, paragraphs (1) and (1a) shall remain unaffected.

(2) In cases other than above, the case shall be referred to the section or chamber of the court whose judgment is being reversed or shall be referred to another court of the same category, located in the same *Land*. In proceedings in which a superior state court of the first instance has decided, the matter shall be referred to another senate of this court.

(3) The case may be referred to a court of a lower category if the criminal act still to be decided is under its jurisdiction.

SECTION 354A. SIMILAR PROCEEDINGS IN CASE OF AMENDMENT OF LAW

The appellate court shall also proceed according to section 354 in the event it reverses the judgment because of the fact that another law is applicable at the time of the decision of the appellate court than at the time when the contested decision was made.

SECTION 355. REFERRAL TO THE COMPETENT COURT

If a judgment is reversed because the court of the foregoing instance unlawfully assumed jurisdiction, the appellate court will refer the case at the same time to the court that has jurisdiction.

SECTION 356. PRONOUNCEMENT OF JUDGMENT

The judgment will be pronounced according to the provisions of section 268.

SECTION 356A. VIOLATION OF RIGHT TO BE HEARD BEFORE THE COURT

If, in a decision on an appeal on issues of law, the court has violated the right of a person concerned to be heard before the court in a way affecting the issues of the case, it shall, upon motion, issue a decision to reinstate the proceedings to the condition before the decision. The motion shall be submitted within one week upon knowledge of the violation of the right to be heard before the court in writing or to the record of the court clerk at the appellate court with reasons. The point in time knowledge was obtained shall be proven. Section 47 shall apply accordingly.

SECTION 357. EFFECT ON PERSONS CONVICTED IN SAME PROCEEDINGS

If the judgment is reversed in favor of one accused because of a violation of law when applying the criminal law and the judgment, insofar as reversed, extends to other accused persons who have not initiated an appeal on issues of law, the court shall make its decision as if these persons also initiated an appeal on issues of law. Section 47, paragraph (3), shall apply accordingly.

SECTION 358. BINDING EFFECT ON LOWER COURT; *REFORMATIO IN PEIUS* PROHIBITED

(1) The court to which the case was referred for another trial and decision shall base its decision on the legal consideration that serves as a basis for the reversal of the judgment.

PART IV
REOPENING OF PROCEEDINGS TERMINATED BY A FINAL JUDGMENT (*WIEDERAUFNAHME EINES DURCH RECHTSKRÄFTIGES URTEIL ABGESCHLOSSENEN VERFAHRENS*)

SECTION 359. REOPENING IN FAVOR OF THE PERSON CONVICTED

Reopening of proceedings terminated by final judgment is admissible in favor of the convicted person in the event—

1. A document produced at the trial to his disadvantage as authentic was false or forged;

2. A witness or expert, during testimony made or while giving an opinion to the detriment a convicted person, was guilty of willful or negligent violation of the duty imposed by the oath or of willfully making a false, unsworn statement;

3. A judge or lay judge participated in passing the judgment who, in the case involved, was guilty of a violation of his official duties subject to punishment as far as such violation was not caused by the convicted person himself;

4. A judgment by a civil court, on which the criminal court judgment is based, is reversed by another final judgment.

5. New facts or evidence were produced that, independently or in connection with the evidence previously taken, tend to support an acquittal of the accused, or by application of a less serious criminal statute permit a lower punishment or a considerably different decision on a measure of reform and prevention.

6. The European Court for the Protection of Human Rights has determined a violation of the European Convention for the Protection of Human Rights and Basic Rights or its Protocols, and the judgment is based on such violation.

SECTION 360. NO SUSPENSION OF EXECUTION

(1) The execution of the judgment is not suspended by a motion for reopening the proceedings.

(2) The court, however, may order a postponement as well as an interruption of the execution.

SECTION 361. EXECUTION AND DEATH NO BAR TO REOPENING

(1) A motion for reopening the proceedings is neither barred by the fact that the punishment was executed nor by the death of the convicted person.

(2) In the event of his death, the spouse, the life partner, relatives in ascending and descending line, as well as the siblings of the deceased are authorized to make the motion.

SECTION 362. REOPENING TO THE DETRIMENT OF ACCUSED

Reopening of proceedings terminated by final judgment is admissible against the accused in the event—

1. A document produced at the trial in his favor as authentic was false or forged;

2. A witness or expert, during testimony made or while giving an opinion in favor of the accused, was guilty of willful or negligent violation of the duty imposed by the oath or of willfully making a false unsworn statement;

3. A judge or lay judge participated in passing the judgment who, in the case involved, was guilty of a violation of his official duties subject to punishment;

4. The person acquitted made a credible confession in or outside the court of having committed the criminal act.

SECTION 363. IMPERMISSIBILITY

(1) Reopening of the proceedings is not permissible in order to bring about a different measure of punishment on the basis of the same criminal law.

(2) The proceedings may not be reopened to mitigate the punishment because of diminished criminal responsibility for one's acts (sec 21 of the German Criminal Code).

SECTION 364. ALLEGING A CRIMINAL ACT

A motion to reopen the proceedings based on an allegation of a criminal act is admissible only if a valid conviction was adjudged for this act or if the institution or completion of the criminal proceedings may not take place for reasons other than the lack of evidence. This rule does not apply in the case of section 359, number 5.

SECTION 364A. APPOINTMENT OF A DEFENSE COUNSEL FOR RETRIAL

The court competent for the decisions in the retrial will retain for the accused who is not legally represented a defense counsel for the retrial on request if, due to the difficulty of the factual or legal situation, participation of a defense counsel appears to be necessary.

SECTION 364B. DEFENSE COUNSEL FOR THE PREPARATION OF RETRIAL

(1) On request, the court competent for decisions in the retrial retains a defense counsel for the accused who is not legally represented already for the preparation of a retrial if—

1. There are actually sufficient criteria for the assumption that certain investigations result in facts or evidence that may substantiate the admissibility of a request for the reopening of the proceedings;

2. Due to the difficulty of the factual or legal situation, participation of a defense counsel appears to be necessary, and

3. The accused is unable to retain a defense counsel at his costs without prejudice to the support that he and his family own.

If a defense counsel has already been retained for the accused, the court, on request, determines by ruling that the prerequisites of numbers 1 to 3 of sentence 1 prevail.

(2) Section 117, paragraphs (2) through (4), and section 118, paragraph (2), first, second, and fourth sentence of the German Code of Civil Procedure, apply accordingly to the procedure of establishing the prerequisites of paragraph (1), first sentence, number 3.

SECTION 365. REQUIREMENTS OF MOTION

The general provisions concerning appeal are also applicable to the motion for reopening the proceedings.

SECTION 366. CONTENTS AND FORM OF THE MOTION

(1) The motion shall show the legal grounds for reopening of the proceedings as well as the evidence.

(2) The accused and the persons specified in section 361, paragraph (2), may submit the motion for reopening only by way of a written statement signed by the defense counsel or by an attorney-at-law or orally to be placed on the record by the court registry.

SECTION 367. COMPETENCE

(1) The competence of the court for the decisions in the retrial and on the motion to prepare a retrial is dependent on the special provisions of the Law Concerning the Constitution of Courts. The convicted person may submit requests pursuant to sections 364a and 364b or a motion for granting the reopening of the proceedings also to the court whose judgment is appealed; it will forward the motion to the appropriate court.

(2) The decisions on requests pursuant to section 364a, section 364b, and the motion for granting the reopening of the proceedings are rendered without an oral hearing.

SECTION 368. DECISION ON PERMISSIBILITY

(1) The motion shall be rejected as inadmissible if it is not submitted in the provided form or a legal ground for reopening is not asserted or suitable evidence is not indicated in it.

(2) In all other cases, it shall be served on the opponent of the moving party, fixing a time limit for a statement in reply.

SECTION 369. TAKING OF EVIDENCE TO DETERMINE IF MOTION IS WELL-FOUNDED

(1) If the motion is found to be admissible, the court shall appoint a judge to take the evidence offered to the extent that this is required.

(2) It is left to the discretion of the court whether the witnesses and experts should be heard under oath.

(3) The public prosecutor, the accused, and the defense counsel shall be admitted to the examination of a witness or expert and to a judicial inspection. Section 168c, paragraph (3), section 224, paragraph (1), and section 225 apply accordingly. If the accused is not at liberty, he is not entitled to be present unless the hearing is held at the court of the place of his custody and his assistance does not serve the clarification being the purpose of the taking of evidence.

(4) After the taking of evidence has been concluded, the public prosecutor and the accused shall be summoned to make further statements within a fixed period.

SECTION 370. DECISION AS TO WHETHER MOTION IS WELL-FOUNDED

(1) Without an oral hearing, the motion for reopening of the proceedings will be rejected as unfounded in the event the allegations made therein are not sufficiently proved or if in the cases of section 359, numbers 1 and 2, or section 362, numbers 1 and 2, according to the circumstances of the case, the assumption is precluded that the act specified in these provisions had influence on the decision.

(2) In all other cases, the court will order reopening of the proceedings and renewal of the trial.

SECTION 371. ACQUITTAL WITHOUT TRIAL

(1) If the convicted person died in the meantime, the court will either decide that he is to be acquitted or will reject the motion for reopening, without trial, after taking the evidence that may still be required.

(2) Even in other cases, the court may acquit the convicted person immediately when sufficient evidence is already available; in the case of public charges, however, it may do so only with the consent of the public prosecutor.

(3) The acquittal shall include reversal of the former judgment. If only a measure of reform and prevention was ordered, reversal of the former judgment will substitute the acquittal.

(4) Upon request of the petitioner, the revocation shall be announced in the Federal Bulletin and, at the discretion of the court, may also be published in any other appropriate manner.

SECTION 372. SPECIAL APPEAL SUBJECT TO A TIME LIMIT

All decisions made by the court in the first instance in connection with a motion for reopening of the proceedings are subject to a special appeal subject to a time limit. The decision of the court ordering the reopening of the proceedings and the reopening of the trial is not subject to appeal by the office of the public prosecutor.

SECTION 373. JUDGMENT AFTER RENEWED TRIAL; NO *REFORMATIO IN PEIUS*

(1) In the reopened trial, the former judgment will either be upheld or, if reversed, another decision will be rendered in the case.

(2) The former judgment, as to kind and extent of the legal consequences of the act, may not be changed to the detriment of the convicted person if only the convicted person, or in his favor the public prosecutor, or his legal representative moved for reopening of the proceedings. This provision does not prevent ordering commitment to a psychiatric hospital or an institution for the treatment of alcoholics and drug addicts.

SECTION 373A. ORDER IMPOSING PUNISHMENT (*STRAFBEFEHL*)

(1) Reopening of a trial terminated by final order imposing punishment to the detriment of the convicted person is also admissible, if new facts or proof have been furnished that, alone or in connection with former proof, are capable of justifying a conviction due to a crime.

(2) In addition, the provisions of sections 359 through 373 are correspondingly applicable to the reopening of the proceedings terminated by a final order imposing punishment.

PART V
PARTICIPATION OF THE INJURED PERSON IN THE PROCEEDINGS (*BETEILIGUNG DES VERLETZTEN AM VERFAHREN*)

CHAPTER ONE
PRIVATE PROSECUTION (*PRIVATKLAGE*)

SECTION 374. PERMISSIBILITY, RIGHT TO PREFER CHARGES

(1) An injured party may prosecute by bringing a private prosecution without first being required to call on the office of the public prosecutor in the following cases:

1. Trespass (sec 123 of the German Criminal Code).

2. Insult (secs 185 to 189 of the German Criminal Code) unless it is directed against one of the political bodies specified in section 194, paragraph (4), of the German Criminal Code.

3. A violation of the secrecy of mail (sec 202 of the German Criminal Code).

4. Bodily injury (secs 223 and 229 of the German Criminal Code).

5. Stalking (sec 238, para (1), of the German Criminal Code) or threat (sec 241 of the German Criminal Code).

5a. Corruptibility and bribery in business transactions (sec 299 of the German Criminal Code)

6. Damage to property (sec 303 of the German Criminal Code).

6a. A criminal act pursuant to section 323a of the German Criminal Code, if the act committed while intoxicated, is one of the offenses designated in numbers 1 to 6.

7. A criminal act pursuant to sections 16 through 19 of the Law Against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb*).

8. A criminal act pursuant to section 142, paragraph (1), of the Law Concerning Patent Rights (*Patentgesetz*); section 25, paragraph (1), of the Utility Model Act (*Gebrauchsmustergesetz*); section 10, paragraph (1), of the Semiconductor Protection Act (*Halbleiterschutzgesetz*); section 39, paragraph (1), of the Plant Varieties Protection Act (*Sortenschutzgesetz*); section 143, paragraph (1), section 143a, paragraph (1), and section 144, paragraphs (1) and (2), of the Law Concerning Trademarks (*Markengesetz*); section 51, paragraph (1), and section 65, paragraph (1), of the Design Act (*Geschmacksmustergesetz*); sections 106 through 108, as well as section 108b, paragraphs (1) and (2), of the Copyright Law (*Urheberrechtsgesetz*); and section 33 of the Law Concerning the Copyright of Works of Fine Arts and Photography (*Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie*).

(2) The person who, in addition to the injured person or on his behalf, is entitled to file a request for criminal prosecution may also file a private prosecution. The persons designated in section 77, paragraph (2), of the German Criminal Code, may also file the private prosecution if the person entitled prior to them has filed the motion for criminal prosecution.

(3) If the injured person has a legal representative, the authority to initiate a private prosecution will be exercised by the latter and, in the event the injured parties are corporations, companies, or other associations which as such may sue in civil lawsuits, by the same persons who represent them in civil litigation.

SECTION 375. SEVERAL PERSONS ENTITLED TO PREFER CHARGES

(1) If several persons are entitled to initiate a private prosecution because of the same criminal act, each will be independent from the others in exercising this right.

(2) However, if, one of the entitled parties has initiated the private prosecution, the others may act only by joining the initiated proceedings at the stage in which they are at the time the joinder is declared.

(3) Any decision rendered in the case itself favoring the accused also binds such entitled parties who did not initiate a private prosecution.

SECTION 376. PREFERRING PUBLIC CHARGES

With respect to criminal acts specified in section 374, the public charge will be preferred by the office of the public prosecutor only if it is in public interest.

SECTION 377. PARTICIPATION OF THE PUBLIC PROSECUTOR ASSUMING CONTROL OF CASE

(1) The public prosecutor is not obliged to participate in proceedings initiated by a private prosecution. The court will submit the case file to him if it is of the opinion that he should prosecute the case.

(2) The office of the public prosecutor may assume control of the case by an express statement at any stage of the case before the judgment becomes final. Initiation of an appeal constitutes assumption of control of the case.

SECTION 378. ASSISTANCE AND REPRESENTATION OF PLAINTIFF IN A PRIVATE PROSECUTION

The plaintiff in a private prosecution may be assisted by an attorney or may have himself represented by an attorney provided with a written power of attorney. In the latter case, service for the plaintiff in a private prosecution may be legally effected on the attorney.

SECTION 379. FURNISHING SECURITY-AID FOR LITIGATION COSTS

(1) The plaintiff in a private prosecution shall furnish security for the costs presumably arising for the defendant under the same conditions according to which, in civil litigation, the plaintiff, on the defendant's request, must furnish security for the costs of the lawsuit.

(2) Security shall be furnished by deposit of cash or bonds. Deviating provisions in a statutory order issued on the basis of the Law on Payment Transactions with Courts and Judicial Authorities shall remain unaffected.

(3) The same provisions as in civil litigation apply to the amount of the security and the time limit for furnishing the security, as well as to the aid for litigation costs.

SECTION 379A. ADVANCE PAYMENT OF FEES

(1) The court will fix a time limit for the advance payment of fees pursuant to section 16, paragraph (1), of the Law Concerning Court Fees (*Gerichtskostengesetz*) if the aid for litigation costs was not granted to the plaintiff in a private prosecution or if he is not entitled to sue free of charge; at the same time the consequences under paragraph (3) will be pointed out.

(2) No judicial action should be taken before the advance payment is made unless it is reasonably shown that the delay would cause the plaintiff in a private prosecution a disadvantage that cannot be undone or only be undone with difficulty.

(3) The plaintiff in a private prosecution will be rejected after the period fixed according to paragraph (1) has elapsed without avail. The order is subject to attack by special appeal subject to a time limit. The court that issued the order shall reverse it *ex officio* if the payment was received within the fixed period.

SECTION 380. RECONCILIATION

(1) A prosecution for trespass, insult, violation of secrecy of correspondence, bodily injury (secs 223 and 229 of the German Criminal Code), threats, and property damage may be brought only after a conciliation board, which is to be designated by the *Land* administration of justice (*Landesjustizverwaltung*), has made an attempt at reconciliation which was not successful. The same applies for a criminal act pursuant to section 323a of the German Criminal Code, if the act, which was committed while intoxicated, is one of the offenses designated in sentence 1. The plaintiff shall submit a certificate about this together with the complaint.

(2) The *Land* administration of justice may allow the conciliation board to take action only on an appropriate advance payment.

(3) The provisions of paragraphs (1) and (2) do not apply in the event the chief of an office has the authority to request criminal prosecution according to section 194, paragraph (3), or section 230, paragraph (2), of the German Criminal Code.

(4) If the parties do not live in the same municipal district, an attempt at conciliation may be dispensed with by special order of the *Land* administration of justice.

SECTION 381. PREFERRING THE CHARGE

The charge will be preferred by placing it on the record of the court registry or by submitting a bill of indictment. The complaint must satisfy the requirements specified in section 200, paragraph (1); the bill of indictment shall be submitted with two copies.

SECTION 382. COMMUNICATION OF THE CHARGE

If the charge was properly brought, the court will communicate it to the accused, setting a time limit for a statement in reply.

SECTION 383. OPENING ORDER, REJECTION, DISCONTINUANCE

(1) After receiving the statement of the accused or after the period has elapsed, the court will decide on the question of whether the main proceedings should be opened or the complaint be rejected according to the provisions to be applied when the charges are directly preferred by the public prosecutor. In the decision opening the main proceedings, the court shall specify the accused on trial and the act pursuant to section 200, paragraph (1), sentence 1.

(2) The court may discontinue the proceedings if the guilt of the perpetrator is minor. The proceedings may be stopped even during the trial. The ruling is subject to special appeal subject to a time limit.

SECTION 384. FURTHER PROCEDURE

(1) The further procedure shall be guided by the provisions concerning the procedure on preferred public charges. Measures of reform and prevention, however, may not be ordered.

(2) Section 243 shall be applied with the proviso that the presiding judge reads the decision opening the trial.

(3) The court will determine the extent of the taking of evidence without prejudice to section 244, paragraph (2).

(4) The provision of section 265, paragraph (3), concerning the right to request a suspension of the (main) trial is not applicable.

(5) At the criminal court sitting with three professional judges and two lay judges, a case initiated by private complaint may not be tried at the same time with a case brought on public charges.

SECTION 385. POSITION OF THE PRIVATE PROSECUTION, SUMMONS, INSPECTION OF FILES

(1) To the extent that the public prosecutor must assist and be heard in the proceedings on preferred public charges, the plaintiff in a private prosecution will assist and be heard in the proceedings on private prosecution. All decisions that are brought to the attention of the office of the public prosecutor in the former case shall be brought to the attention of the plaintiff in a private prosecution in the latter case.

(2) A period of at least 1 week shall be observed between the service of the summons for trial on the plaintiff in a private prosecution and the day of the trial.

(3) The plaintiff in a private prosecution may exercise the right to review the case file only through an attorney. Section 147, paragraphs (4) and (7), as well as section 477, paragraph (5), shall apply accordingly.

(4) In the cases of sections 154a and 430, their paragraph (3), sentence 2, shall not apply.

(5) In appeal proceedings on issues of law, a motion of the plaintiff in a private prosecution pursuant to section 349, paragraph (2), is not required. Section 349, paragraph (3), shall not apply.

SECTION 386. SUMMONING WITNESSES AND EXPERTS

(1) The presiding judge will decide which persons should be summoned to the trial as witnesses or experts.

(2) The plaintiff in a private prosecution as well as the accused on trial has the right to summon such persons directly.

SECTION 387. APPEARANCE AND REPRESENTATION AT THE TRIAL

(1) The accused on trial may be assisted by an attorney at the trial or may be represented by an attorney on the basis of a written power of attorney.

(2) The provision of section 139 applies to the attorney of the plaintiff as well as to the attorney of the accused on trial.

(3) The court has the authority to order the personal appearance of the plaintiff as well as of the accused on trial, it also has the authority to have the accused on trial brought before the court.

SECTION 388. COUNTERCLAIM

(1) In the event the private prosecution was brought by the injured person, the accused, before the closing arguments (sec 258, para (2), 2nd part of sent 2) in the trial of the first instance, may move by a counterclaim for punishment of the plaintiff if the accused was injured by the latter's commission of a criminal act that may also be pursued on private prosecution and is connected with the criminal act which forms the subject of the complaint.

(2) In the event the plaintiff is not the person injured (sec 374, para (2)), the accused may bring a counterclaim against the injured person. In this case, the counterclaim shall be served on the injured party and he shall be summoned to the trial if the counterclaim is not preferred at the main trial in the presence of the injured person.

(3) The decision on the complaint and the counterclaim will be made at the same time.

(4) Withdrawal of the complaint will not affect the proceedings on the counterclaim.

SECTION 389. JUDGMENT DISCONTINUING PROCEEDINGS

(1) If, after trying of the case, the court finds that the facts as they were stated form a criminal act to which the procedure provided in this chapter is not applicable, the court, by judgment, shall order the discontinuance of the proceedings. These facts shall be shown in the judgment.

(2) In this case, the records shall be communicated to the office of the public prosecutor.

SECTION 390. APPEAL OF A PLAINTIFF IN A PRIVATE PROSECUTION

(1) The plaintiff in a private prosecution may avail himself of the same appeal procedures as the public prosecutor in the proceedings on preferred public charges. The same rules apply to the motion for reopening the proceedings in the cases of section 362. The provision of section 301 shall be applied to the appeal of the private prosecution.

(2) Motions for appeal on issues of law and motions for reopening of the proceedings terminated by a final judgment may be made by the plaintiff in a private prosecution only through a written statement signed by an attorney.

(3) Submission and transmittal of the case file provided in sections 320, 321, and 347 will be made - as in the proceedings on preferred public charges - to and by the public prosecutor. Service of the notices of appeal and appeal on issues of law on the party opposing the appellant (*Beschwerdeführer*) will be effected by the court registry.

(4) The provision of section 379a concerning advance payment of fees and the consequences of late payment is correspondingly applicable.

(5) The provision of section 383, paragraph (2), sentences 1 and 2, concerning the discontinuance of the proceedings in petty cases also applies to the appeal proceedings. The order is not subject to attack.

SECTION 391. WITHDRAWAL OF CHARGE; FAILURE OF PLAINTIFF IN A PRIVATE PROSECUTION TO APPEAR; REINSTATEMENT

(1) The private prosecution may be withdrawn at any stage of the proceedings. The consent of the accused on trial is required for the withdrawal after his examination has begun at the (main) trial of the first instance.

(2) If in the proceedings at first instance and, in case the accused on trial initiated an appeal, in the proceedings at second instance the plaintiff in a private prosecution does not appear at the trial or is not represented by an attorney, or if he fails to appear at another hearing although ordered to appear by the court, or disregards a time of limitation fixed for him under pain of a discontinuance of the proceedings, the complaint will be considered withdrawn.

(3) If the appeal was initiated by the plaintiff in a private prosecution it shall be immediately rejected in case of the aforementioned defaults, however, notwithstanding the provision of section 301.

(4) The plaintiff in a private prosecution may request *restitutio in integrum* within 1 week after the default, under the conditions specified in sections 44 and 45.

SECTION 392. EFFECT OF WITHDRAWAL

A private prosecution once withdrawn may not be brought a second time.

SECTION 393. DEATH OF PLAINTIFF IN A PRIVATE PROSECUTION

(1) A discontinuance of the proceedings will be ordered if the private complainant dies.

(2) A private complaint, however, may be continued after the death of the complainant by the persons entitled to bring a private complaint pursuant to section 374, paragraph (2).

(3) The court shall be notified of a continuation by the person entitled to act within 2 months after the death of a private complainant under penalty of the loss of this right.

SECTION 394. NOTIFICATION OF THE ACCUSED

The accused shall be notified of the withdrawal of the private complaint and the death of the private complainant, as well as of the continuation of the private complaint.

CHAPTER TWO
INTERVENTION (*NEBENKLAGE*)

SECTION 395. PERMISSIBILITY TO JOIN

(1) The preferred public charges or the motion in confinement proceedings may be joined by a person as an intervener if that person has been injured by an unlawful act pursuant to—

1. Sections 174 to 182 of the German Criminal Code,

2. Sections 211 and 212 of the German Criminal Code, if the act was attempted

3. Sections 221, 223 to 226 and 340 of the German Criminal Code,

4. Sections 232 to 238, 239, paragraph (3), sections 239a, 239b and 240, paragraph (4), of the German Criminal Code,

5. Section 4 of the Law on the Protection against Acts of Violence (*Gewaltschutzgesetz*)

6. Section 142of the Law Concerning Patent Rights; section 25 of the Utility Model Act, section 10 of the Semiconductor Protection Act; section 39 of the Plant Varieties Protection Act; sections 143 and 144 of the Law Concerning Trademarks; sections 51 and 65 of the Design Act, sections 106 to 108b of the Copyright Law, section 33of Law Concerning the Copyright of Works of Fine Arts and Photography and sections 16 through 19 of the Law Against Unfair Competition.

(2) The same right is vested in persons—

1. Whose children, parents, siblings, spouses or life partners were killed through an unlawful act, or

2. Who caused preferring of public charges by motion for a court decision (sec 172).

(3) A person who has been injured by a different unlawful act in particular pursuant to sections 185 through 189, section 229, section 244, paragraph (1), number 3, sections 249 through 255, and section 316a of the German Criminal Code may join the public charges as an intervener if this seems imperative in order to safeguard his interests for special reasons, especially because of the serious consequences of the act,

(4) The joinder is permitted at any stage of the proceedings. It may also be made for the purpose of filing an appeal after the sentence has been passed.

(5) If prosecution is limited pursuant to section 154a, this does not affect the right to join the public charges as an intervener. If the intervener is admitted to join the proceedings a limitation pursuant to section 154a, paragraph (1) or (2), does not take effect if it concerns the intervention.

SECTION 396. DECLARATION OF JOINDER

(1) The declaration of joinder shall be submitted to the court in writing. A declaration of joinder received by office of the public prosecutor or the court prior to the preferring public charges becomes effective with the preferring of the public charges. In the proceedings involving order imposing punishments, the joinder becomes effective if a trial date has been fixed (sec 408, para (3), sent 2; sec 411, para (1)) or the motion for issuance of an order imposing punishment has been denied.

(2) After hearing the prosecution, the court will decide on the right of the intervener to joinder. In the cases of section 395, paragraph (3), after also hearing the accused before trial thereon, it will decide whether the joinder is imperative for the reasons mentioned in the above provision; this decision cannot be contested.

(3) If the court considers the discontinuance of the proceedings pursuant to section 153, paragraph (2), section 153a, paragraph (2), section 153b, paragraph (2), or section 154, paragraph (2), it first decides on the permissibility of the joinder.

SECTION 397. RIGHTS OF INTERVENER

(1) The intervener has the right to be present at the trial even if he will be called as a witness. He shall be summoned for the main trial.; section 145a, paragraph (2), sentence 1, and section 217, paragraphs (1) and (3), apply accordingly. Also the intervener has the right to challenge a judge (secs 24 and 31) or expert (sec 74), to ask questions (sec 240, para (2)), he has the right to object to orders of the presiding judge (sec 238, para (2)), and to object to questions (sec 242), the right to move for taking of evidence (sec 244, paras (3) through (6)), as well as the right to make statements (secs 257 and 258). Unless otherwise stipulated by law, the intervener shall be involved and heard to the same extent as the public prosecutor. Decisions notified to the public prosecutor's office shall also be notified to the intervener; section 145a, paragraphs (1) and (3), applies accordingly.

(2) The intervener may seek the assistance of an attorney or have himself represented by one. The attorney has the right to be present during the main trial. He shall be informed about the trial date, if the court was informed about his selection or he was appointed as counsel.

SECTION 397A. AID FOR LITIGATION COSTS

(1) Upon request of the intervener, he shall be assigned an attorney as counsel if he was injured by—

1. An illegal act pursuant to sections 176a, 177, 179, 232, and 233 of the German Criminal Code,

2. An attempted illegal act pursuant to sections 211 and 212 of the German Criminal Code or if he is a relative of a person who was killed by an illegal act as stipulated in section 395, paragraph (2), number 1,

3. A felony pursuant to sections 226, 234 through 235, 238 through 239b, 249, 250, 252, 255, and 316a of the German Criminal Code, which resulted in his suffering from severe physical or mental damage or will very likely result in such damage, or

4. An illegal act pursuant to sections 174 through 182, 221, 225, 226, 232 through 235, 237, 238, paragraphs (2) and (3), sections 239a, 239b, 240, paragraph (4), sections 249, 250, 252, 255, and 316a of the German Criminal Code and , if, at the time of the request, he is not yet 18 years old, or cannot sufficiently safeguard his interests.

(2) If the prerequisites for an assignment pursuant to paragraph (1) are not fulfilled, the intervener shall, upon request, be granted aid for litigation costs for the consultation of an attorney under the same provisions as in civil litigation, if he cannot safeguard his own interests sufficiently, or if this cannot be reasonably expected of him. Section 114, sentence 1, second half of sentence, and section 121, paragraphs (1) through (3), of the Code of Civil Procedure shall not apply.

(3) Motions pursuant to paragraphs (1) and (2) may already be filed prior to the statement to join as intervener. The presiding judge of the court dealing with the case shall decide on the assignment of counsel, to which section 142 applies accordingly, and on the granting of aid for litigation. In the cases of paragraph (2) the decision is not appealable.

SECTION 398. PROCEDURE

(1) The course of the proceedings will not be held up by the joinder.

(2) The (main) trial which is scheduled as well as other scheduled hearings are held on the dates fixed even if the intervener could not be summoned or notified due to lack of time.

SECTION 399. NOTIFICATION OF PRIOR DECISIONS

(1) Notice to the intervener of the decisions made and brought to the attention of the public prosecutor prior to the joinder is not required except in the cases of section 401, paragraph (1), sentence 2.

(2) The intervener does not have the right to take an appeal from such decisions if the period of time during which the public prosecutor takes an appeal has expired.

SECTION 400. LIMITED RIGHT TO CONTEST

(1) The intervener may not contest the judgment with the objective that another legal consequence of the act be imposed or that the accused on trial be sentenced for a violation of the law which does not justify the joinder of the intervener.

(2) The intervener has the right to initiate a special appeal subject to a time limit against the decision through which the opening of the main proceedings is declined or the proceedings are discontinued pursuant to sections 206a and 206b insofar as the decision concerns the act on the basis of which the intervener is entitled to joinder. Otherwise, the decision by which the proceedings are discontinued is incontestable for the intervener.

SECTION 401. INTERVENER'S APPEAL

(1) The intervener may avail himself of appeal procedures independently of the office of the public prosecutor. If, after rendering of the judgment, the joinder is made for filing an appeal, the appealed judgment shall be served on the intervener without delay. The period to substantiate the appeal begins with the expiration of the period to be observed by the office of the public prosecutor for filing an appeal, or, if the judgment has not yet been served on the intervener, it begins with the service of the judgment on him even if a decision on the entitlement of the intervener for a joinder has not yet been made.

(2) If the intervener was present at the trial or was represented by an attorney, the time limit for filing an appeal begins for him with the pronouncement of the judgment even if he was no longer present or represented at that point in time; he may not claim *restitutio in integrum* against default of the time limit for the lack of instructions concerning the right to appeal. If the intervener was not present or represented at the trial, the period begins with the service of the operative provisions of the judgment on him.

(3) If only the intervener has filed an appeal, it shall be immediately rejected notwithstanding the provision of section 301 if, at the commencement of a trial, neither the intervener nor the attorney for him has appeared. The intervener may, within 1 week after the default, claim *restitutio in integrum* under the prerequisites of sections 44 and 45.

(4) Further action in the case will be incumbent on the public prosecutor if the attacked decision is reversed on the basis of an appeal to review initiated by the intervener alone.

SECTION 402. REVOCATION, DEATH OF INTERVENER
The declaration of joinder loses its effect by withdrawal, as well as by the death of the intervener.

CHAPTER THREE
INDEMNIFICATION OF THE INJURED PERSON (*ENTSCHÄDIGUNG DES VERLETZTEN*)

SECTION 403. PERMISSIBILITY

The injured person or his heir may, in criminal proceedings, assert a claim against the accused for property damages arising out of the criminal act if the claim is under the jurisdiction of the ordinary courts and is not yet pending before another court in proceedings before the district court regardless of the value of the matter in dispute.

SECTION 404. MOTION OF THE INJURED PERSON

(1) The motion by which the claim is asserted may be made in writing or by placing it on the record of the recording clerk, or orally at the trial, before the beginning of the closing arguments. The motion must exactly specify the subject and the grounds of the claim and should set forth the evidence. If the motion is not made at the (main) trial, it will be served on the accused.

(2) Filing the motion has the same effects as bringing an action in civil litigation. They apply at the time the motion is received by the court.

(3) The moving party will be notified of the place and time of the trial if the motion is filed before beginning of the trial. The moving party, his legal representative, and the spouse or life partner of the person entitled to file the motion may take part in the trial.

(4) The motion may be withdrawn prior to the announcement of the judgment.

(5) On request, the moving party and the accused before trial shall be granted aid for litigation costs under the same provisions as in civil litigation as soon as the charges have been preferred. Section 121, paragraph (2), of the Code of Civil Procedure, is applicable with the proviso that, if the accused before trial has a defense counsel, such defense counsel will be assigned to him; if the moving party avails himself of the assistance of a counsel at the trial, such counsel shall be assigned to him. The court dealing with the matter is competent for the decision; the decision cannot be contested.

SECTION 405. REFRAINING FROM MAKING A DECISION

(1) Upon motion of the injured person or his heir and the accused the court shall include a settlement on the claims arising from the criminal act in the record. Upon motion, to which all of the parties stated in sentence 1 have agreed, the court will make a settlement proposal.

(2) The court of civil justice in whose district the criminal law of first instance has its seat is responsible for the decision on objections against the legal effectiveness of the settlement.

SECTION 406. DECISION

(1)The court will grant the motion in the judgment by which the accused is found guilty of a criminal act or by which a measure of reform and prevention is ordered against him if the motion is justified in case of this criminal act. The decision may be limited to the reason or to a part of the asserted claim; section 318 of the Code of Civil Procedure applies accordingly. The court shall refrain from a decision if the motion is not permissible or if it appears to be unfounded. Otherwise, the court may only refrain from a decision if the motion is not suitable to be dealt with in criminal proceedings, even in consideration of the legitimate interests of the petitioner. The motion is in particular not suitable to be dealt with in criminal proceedings, if its further review would cause a considerable delay of the proceedings, even if it would only involve a decision on the ground or a part of the claim. If the petitioner asserts a claim for damages for pain and sufferings (sec 253, para (2), of the Civil Code) refraining from a decision is only permissible pursuant to sentence 3.

(2) If the accused recognizes the claim asserted against him by the petitioner fully or in part he shall be convicted according to the recognition.

(3) The decision on the motion is equivalent to a judgment passed in civil litigation. The court declares the decision as provisionally enforceable; sections 708 through 712 as well as sections 714 and 716 of the Code of Civil Procedure apply accordingly. If the claim has not been awarded, it may be asserted elsewhere. If a final decision has been made on the grounds of the claim, the hearing on the amount will be held before the competent civil court pursuant to section 304, paragraph (2), of the Code of Civil Procedure.

(4) The moving party will be provided a copy of the judgment and reasons or an extract thereof.

(5) If the court considers to abstain from a decision on the motion it shall advise the parties to the proceedings accordingly as early as possible. As soon as the court, after hearing the petitioner, decides that the prerequisites for a decision on the motion do not exist, it shall pass a decision indicating that it will abstain from a decision on the motion.

SECTION 406A. APPEAL

(1) Immediate appeal is permissible against the decision by which a decision on the motion is refrained from pursuant to section 406, paragraph (5), sentence 2, if the motion was filed prior to commencement of the main trial and as long no final decision in that instance was passed. Otherwise the petitioner is not entitled to appeal.

(2) If the court grants the motion, the accused on trial may contest the decision by appeal otherwise permitted, even without contesting that part of the judgment concerning the criminal act. In such case, the decision on the appeal may be made in a closed session. If the permissible remedy is an appeal on facts and law, a hearing with the parties involved shall take place upon request of the accused or the petitioner.

(3) The decision granting the motion must be reversed, if, through reversal of the conviction for the criminal act, on which the decision on the motion was based, the accused is neither declared guilty nor is a measure of reform and prevention ordered against him. This applies also if the judgment has not been contested in this respect

SECTION 406B. EXECUTION

Execution is governed by the provisions that apply to the execution of judgments and settlements in court in civil litigations. The court of civil jurisdiction in whose district the criminal court of the first instance is located is competent to act in these proceedings according to sections 323, 731, 767, 768, and 887 to 890 of the Code of Civil Procedure. Objections that concern the claim sustained in the judgment itself are admissible only insofar as the reasons on which they are based occurred after closing the trial in first instance and, in the event the court of appeal decided the case, after closing of the trial on appeal.

SECTION 406C. REOPENING

(1) The accused on trial may limit the motion for reopening of the proceedings to the point of obtaining an essentially different decision on the claim. The court will decide such a case by order without renewal of the trial.

(2) Section 406a, paragraph (3), applies accordingly, if the motion for reopening of the proceedings is directed only against that part of the judgment that concerns the criminal act.

CHAPTER FOUR
OTHER RIGHTS OF THE INJURED PERSON (*SONSTIGE BEFUGNISSE DES VERLETZTEN*)

SECTION 406D. OBLIGATION OF NOTIFICATION

(1) Upon request, the injured person shall be notified of the discontinuance of the proceedings and the outcome of the court proceedings to the extent that he is concerned.

(2) Upon request, the injured person shall be informed whether—

1. A directive was issued for the convicted person not to contact the injured person or associate with him;

2. Measures involving deprivation of liberty against the accused or convicted person have been ordered or completed, or if he is granted relaxation of enforcement conditions or leave from prison for the first time, if the injured person states a legitimate interest which is not outweighed by the interest of the person affected to deny this information which is worthy of protection; in the cases stated in section 395, paragraph (1), numbers 1 through 5, as well as in the cases of section 395, paragraph (3), where the injured person was authorized to act as intervener, statement of a legitimate interest is not required.

(3) Notifications may be omitted if delivery is not possible under an address provided by the injured person. Section 145a applies accordingly if the injured person has selected an attorney as counsel, if such counsel has been assigned to him, or if he is represented by counsel.

SECTION 406E. INSPECTION OF FILES

(1) An attorney may inspect, for the injured person, the case file that is available to the court, or if public charges are preferred, would have to be submitted to it as well as examine evidence kept in official custody insofar as he states a justified interest. In the cases mentioned in section 395, such justified interest need not be stated.

(2) The review of the case file shall be denied insofar as predominant interests worthy of protection, either of the accused or another person, oppose. It may be denied if the purpose of the investigation, also in other criminal proceedings, is likely to be jeopardized. It may also be denied if it would result in a considerable delay of the proceedings, unless the office of the public prosecutor has noted completion of the investigations in the files in the cases designated in section 395.

(3) On request and unless important reasons contradict, the case file, except the evidence, may be turned over to the attorney to take them to his office or place of residence. The decision cannot be appealed.

(4) The prosecution will decide on the granting of the inspection of the records in preparatory proceedings and after final termination of the proceedings, otherwise the presiding judge of the court dealing with the matter. The decision of the public prosecutor pursuant to sentence 1 can be appealed to the court responsible pursuant to section 162. Sections 297 through 300, 302, 306 through 309, 311a, and 473a shall apply accordingly. The decision of the court cannot be contested as long as the

investigations are not concluded. The grounds for such decisions will not be provided if their disclosure would jeopardize the purpose of the investigation.

(5) Under the conditions of paragraph (1), the injured person may be given information from the files and copies thereof; paragraphs (2) and (4), as well as section 478, paragraph (1), sentences 3 and 4, apply accordingly.

(6) Section 477, paragraph (5), applies accordingly.

SECTION 406F. ASSISTANCE OF ATTORNEY FOR THE INJURED PERSON NOT ENTITLED TO JOIN PUBLIC CHARGES AS INTERVENER

(1) Injured persons may avail themselves of the assistance of an attorney or have themselves represented by one. A lawyer who appeared for the interrogation of an injured person is allowed to be present.

(2) During the interrogation of injured persons, and if so requested by them, a person of their confidence who appeared for the interrogation shall be allowed to be present, unless this would jeopardize the purpose of the investigation. The person conducting the interrogation shall make that decision; the decision cannot be contested. The reasons of an objection shall be noted in the files.

SECTION 406G. INJURED PERSON ENTITLED TO JOIN PUBLIC CHARGES AS INTERVENER

(1) Persons entitled to join the public charges as interveners pursuant to section 395 may avail themselves of the assistance by an attorney or have themselves represented by one even before public charges are preferred and without stating their intention to join as interveners. They are authorized to be present during the main trial even if they are to be heard as witnesses. If there is doubt about a person's right to join as intervener, the court shall render a decision on his right to be present after hearing the person concerned and the public prosecutor; the decision cannot be appealed. Persons entitled to join as interveners shall be notified of the date of the main trial, if they so requested.

(2) The attorney of the person entitled to join as intervener is authorized to be present at the main trial. He is to be notified of the main trial date if his selection was notified to the court or he was appointed as counsel. Sentences 1 and 2 shall apply accordingly for judicial interrogations and a judicial inspection, unless the presence or notification of the attorney is likely to jeopardize the purpose of the investigation.

(3) Section 397a applies accordingly to the—

1. Appointment of an attorney, and

2. Granting of aid for litigation costs for the consultation of an attorney.

In preliminary proceedings, the court competent pursuant to section 162 will make the decision.

(4) At the request of the person entitled to join the public charges as an intervener, an attorney may be appointed as counsel temporarily in the cases of section 397a, paragraph (2), if—

1. This is imperative for special reasons,

2. The assistance of a counsel is urgently required, and

3. The granting of aid for litigation costs appears to be possible, but a timely decision on it cannot be expected.

Section 142, paragraph (1), and section 162 apply accordingly to the appointment. The appointment ends unless a motion for granting aid for litigation costs is filed within a certain period to be determined or if the granting of aid for litigation costs is denied.

SECTION 406H. OBLIGATION TO INFORM

(1) Injured person shall be advised of their rights ensuing from sections 406d through 406g as early as possible, always in writing, and if possible in a language they can understand and they shall be advised in particular that—

1. Under the prerequisites of sections 395 and 396 of this law or of section 80, paragraph (3), of the Youth Court Law they may join the preferred public charges as interveners and in this connection may request the appointment of an attorney or the granting of aid for litigation costs to pay for his services in accordance with section 397a,

2. In accordance with sections 403 to 406c of this law and section 81 of the Youth Court Law they may assert a pecuniary claim arising from the criminal act in the criminal proceedings,

3. In accordance with the Crime Victims Compensation Act (*Opferentschädigungsgesetz*) may claim entitlement to a pension,

4. In accordance with Law on the Protection against Acts of Violence they may move for orders to be issued against the accused,

5. They may obtain assistance and help from crime victim assistance organizations, in the form of consultation or provided psychological and social assistance during the course of the proceedings.

If the prerequisites for one specific right are obviously not fulfilled for a particular case, the respective notification may be omitted. In case of injured persons who did not provide a proper address for service there is no obligation of notification. Sentences 1 and 3 also apply to relatives and heirs of injured persons, to the extent they have the respective rights.

PART VI
SPECIAL PROCEDURES (*BESONDERE ARTEN DES VERFAHRENS*)

CHAPTER ONE
PROCEDURE FOR ORDERS IMPOSING PUNISHMENT (*VERFAHREN BEI STRAFBEFEHLEN*)

SECTION 407. PERMISSIBILITY

(1) In proceedings before the criminal court judge and in proceedings under the jurisdiction of a criminal court sitting with three professional and two lay judges, the penalty in case of minor crimes may be assessed by written order imposing punishment without a trial if the office of the public prosecutor requests so in writing. The office of the public prosecutor makes this request if, following the results of the investigations, a trial is not considered necessary by the public prosecutor. The motion shall be directed towards specific legal consequences. By this motion public charges are preferred.

(2) By an order imposing punishment only the following legal consequences of the act may be determined either individually or in combination with each other:

1. Fine, warning with the reservation that a punishment may be imposed, prohibition to drive a motor vehicle, forfeiture, confiscation, destruction, rendering unserviceable, announcement of the decision, and imposition of a fine against a legal person or association,

2. Withdrawal of the permission to drive a motor vehicle, with ban on grant of new driver's license not exceeding 2 years, as well as

3. Abstaining from punishment.

If the accused has a defense counsel, imprisonment up to 1 year may be imposed, if its execution is suspended on probation.

(3) The previous hearing of the accused before trial by the court (sec 33, para (3)) is not required.

SECTION 408. DECISION ON MOTION

(1) If the presiding judge of the criminal court sitting with three professional and two lay judges considers the competence of the criminal court judge to be well-founded, he will refer the case to him through the office of the public prosecutor; the order is binding on the criminal court judge; the office of the public prosecutor is entitled to special appeal subject to a time limit. If the criminal court judge considers the competence of the criminal court sitting with three professional and two lay judges to be well-founded, he submits the case file through the office of public prosecutor to its presiding judge for decision.

(2) If the judge considers the suspicion against the accused on trial not sufficient, he will reject the issuance of an order imposing punishment. The decision is equivalent to the order by which the opening of the (main) trail was rejected (secs 204, 210, para (2); sec 211).

(3) The judge shall comply with the motion of the public prosecutor if no concern exists against the issuance of an order imposing punishment. He shall fix a date for the trial if he has concerns about deciding the case without a trial or if he intends to deviate from the legal assessment stated in the motion for order imposing punishment or intends to fix a legal consequence other than the one requested and the public prosecutor insists on his motion. Together with the summons the accused on trial shall receive a copy of the motion for order imposing punishment without stating the requested legal consequence.

SECTION 408A. ORDER IMPOSING PUNISHMENT AFTER OPENING OF TRIAL

(1) If the main proceedings have already been opened, the public prosecutor may, in a case before the criminal court judge and the criminal court sitting with three professional and two lay judges, file a motion for order imposing punishment if the provisions of section 407, paragraph (1), sentences 1 and 2, are fulfilled and if the conduct of a trial is impaired by nonappearance or absence of the accused on trial or some other important reason. In the main proceedings the public prosecutor may file the motion orally; the essential contents of the motion for an order imposing punishment shall be included in the minutes of the hearing. Section 407, paragraph (1), sentence 4, and section 408 do not apply.

(2) The judge shall comply with the motion if the provisions of section 408, paragraph (3), sentence 1, are fulfilled. Otherwise he shall reject the motion by order that cannot be contested and proceed with the trial.

SECTION 408B. APPOINTMENT OF DEFENSE COUNSEL BY THE JUDGE

If the judge considers granting the motion of the prosecution for issuance of an order imposing punishment with the legal consequence stated in section 407, paragraph (2), sentence 2, he will appoint a defense counsel for a defendant who is not yet represented by a defense counsel. Section 141, paragraph (3), shall be applied accordingly.

SECTION 409. CONTENTS OF THE ORDER IMPOSING PUNISHMENT; PERIOD FOR RAISING OBJECTIONS

(1) The order imposing punishment contains the—

1. Personal data of the accused on trial and of any other persons involved,

2. Name of the defense counsel,

3. Designation of the act the accused on trial is charged with, time and place of commission, and designation of the legal characteristics of the criminal act,

4. Applicable provisions by section, paragraph, number, letter, and designation of the statute,

5. Evidence,

6. Determination of the legal consequences,

7. Advice of the possibility to file an objection and the time limit and form prescribed for such objections and the indication that the order imposing punishment becomes final and enforceable unless an objection is filed pursuant to section 410.

If a sentence to confinement is imposed on the accused, if he is admonished with the reservation that a punishment might be imposed, or if a prohibition to drive a motor vehicle is imposed, he shall at the same time be advised according to section 268a, paragraph (3), or section 268c, sentence 1. Section 111i, paragraph (2), as well as section 267, paragraph (6), sentence 2, shall apply accordingly.

(2) The order imposing punishment will also be communicated to the legal representative of the accused on trial.

SECTION 410. OBJECTION AGAINST THE ORDER IMPOSING PUNISHMENT; FINALITY

(1) Within 2 weeks of service, the accused on trial may, with the court that issued the order imposing punishment, file an objection against it, either in writing or by placing it on the records of the court. Sections 297 to 300 and section 302, paragraph (1), sentence 1, and paragraph (2), apply accordingly.

(2) The objection may be restricted to certain issues of complaint.

(3) An order imposing punishment is equivalent to a final judgment when objections are not raised in due time.

SECTION 411. DECISION BY ORDER

(1) In the event objections were not raised in time or are otherwise inadmissible, they will be rejected by order without trial; this order is subject to a special appeal subject to a time limit. Otherwise the date for the trial will be fixed. If the accused limited his objection to the amount of the daily rates of an imposed fine, the court may decide the matter by order without a main hearing if the accused, the defense counsel and the public prosecutor consent; the deviation from the assessment in the order imposing punishment may not be to the disadvantage of the accused; immediate objection is permissible against the order.

(2) The accused on trial may be represented at the trial by a defense counsel provided with a written power of attorney. Section 420 shall be applied.

(3) The complaint and the objection may be withdrawn prior to pronouncement of the judgment by the court of first instance. Section 303 applies accordingly. If the order imposing punishment was issued during proceedings pursuant to section 408a, the complaint cannot be withdrawn.

(4) The court when passing the judgment is not bound by the decision contained in the order imposing punishment in case objections were raised.

SECTION 412. NONAPPEARANCE OF ACCUSED ON TRIAL

If at the beginning of the trial, the accused on trial has neither appeared nor is he represented by a defense counsel and has no sufficient excuse for his failure to appear, section 329, paragraphs (1), (3), and (4), shall apply accordingly. If the legal representative has raised objections, section 330 shall also be applied accordingly.

CHAPTER TWO
PROCEDURE FOR PROTECTIVE INTERNMENT (*SICHERUNGSVERFAHREN*)

SECTION 413. MOTION OF THE PUBLIC PROSECUTOR

If the office of the public prosecutor does not conduct criminal proceedings because of the incapability of the accused's lack of criminal responsibility or incapability to follow the trial, it may file a motion to independently order measures of reform and prevention when this is legally admissible and the order is expected according to the result of the investigations (procedure for protective internment).

SECTION 414. PROCEEDINGS

(1) The provisions concerning criminal proceedings shall be applied correspondingly to the procedure concerning protective internment unless otherwise provided.

(2) The motion is equal to public charges. The bill of indictment is replaced by a motion that must comply with the requirements of the bill of indictment. The motion must contain the measure of reform and prevention ordering of which is requested by the office of the public prosecutor. If the judgment does not impose a measure of reform and prevention, the motion shall be denied.

(3) In the preliminary proceedings, an expert shall be given the opportunity to prepare the opinion to be rendered at the trial.

SECTION 415. TRIAL WITHOUT THE ACCUSED

(1) If, in the proceedings for protective internment, the attendance of the accused at court is impossible due to his condition or is inappropriate for reasons of public safety or order, the court may conduct the trial without the accused being present.

(2) In this case the accused shall be interrogated prior to the trial by a commissioned judge with the assistance of an expert. The office of the public prosecutor, the accused, the defense counsel, and the legal representative shall be informed of

the date of the hearing. The presence of the public prosecutor, the defense counsel, and the legal representative is not required at the hearing.

(3) If the condition of the accused so requires or if a proper carrying through of the trial is otherwise not possible, the court may conduct the trial in the proceedings for protective internment after the interrogation of the accused concerning the subject matter even if the accused is not or is only temporarily present.

(4) When a trial takes place without the accused, his previous statements that are contained in judicial minutes may be read. The minutes of the preliminary examination pursuant to paragraph (2), sentence 1, shall be read.

(5) At the trial, an expert shall be heard concerning the condition of the accused. If the expert has not previously examined the accused, he shall be given the opportunity for an examination prior to the trial.

SECTION 416. TRANSITION TO CRIMINAL PROCEEDINGS

(1) If the procedure for protective internment reveals the accused's criminal responsibility after the opening of the trial and if the court is not competent for the criminal proceedings, it pronounces its lack of jurisdiction by decision and refers the matter to the competent court. Section 270, paragraphs (2) and (3), apply accordingly.

(2) If the procedure for protective internment reveals the accused's criminal responsibility after the opening of the trial and if the court is also competent for the criminal proceedings, the accused shall be advised of the new legal situation and shall be given the opportunity for his defense. If he alleges not to be sufficiently prepared for his defense, the trial shall be suspended at his request. If according to section 415, the trial has been held in the absence of the accused those parts of the trial shall be repeated at which the accused was not present.

(3) Paragraphs (1) and (2) apply accordingly if the procedure for protective internment reveals after the opening of the trial that the accused is capable of following the trial and that the procedure for preventive internment is carried through because of his incapability to follow the trial.

CHAPTER TWO A
EXPEDITED PROCEDURE

SECTION 417. PREREQUISITES FOR EXPEDITED PROCEDURE

In proceedings before the criminal judge and the criminal court sitting with three professional and two lay judges the public prosecutor shall file a written motion to decide the case in an expedited procedure if the matter is suitable to be heard immediately due to the same facts or clear evidence.

SECTION 418. MAIN TRIAL; SUMMONS; BILL OF INDICTMENT

(1) If the office of the public prosecutor files the motion, the (main) trial will be carried out immediately or within a short period of time, without a decision on the opening of the (main) trial being necessary. The period of time between receipt of the motion by the court and the beginning of the main proceedings shall not exceed 6 weeks.

(2) The accused shall only be summoned if he does not attend the main trial voluntarily or if he is not brought before the court. In the summons he will be informed of the charge. The time limit for the summons is 24 hours.

(3) Submittal of a bill of indictment is not required. In case such a bill of indictment is not submitted the charge will be preferred orally at commencement of the main trial and its essential contents be placed on the record of the hearing. Section 408a shall apply accordingly.

(4) If an imprisonment of at least 6 months is to be expected a defense counsel shall be appointed for the accused who does not have one, for the expedited procedure before the district court.

SECTION 419. COURT DECISION; PUNISHMENT

(1) The criminal court judge or the criminal court sitting with 3 professional and 2 lay judges shall grant the motion if the matter is suitable to be dealt with in such proceedings. Punishment exceeding 1 year of imprisonment or a measure of reform and prevention may not be imposed in such proceedings. Withdrawal of the permission to drive a motor vehicle is permissible.

(2) The decision in expedited proceedings can also be objected to at the (main) trial before the pronouncement of the judgment. The decision is not subject to appeal.

(3) If the decision in expedited proceedings is objected to the court shall rule on the opening of the main proceedings if there appears to be sufficient suspicion that the accused committed a criminal act (sec 203); if the main trial is not opened and the decision from the expedited proceedings is objected to, submittal of a new bill of indictment can be refrained from.

SECTION 420. TAKING OF EVIDENCE

(1) Examination of witnesses, experts, or co-accused may be replaced by reading of minutes of prior examinations or documents containing written statements made by them.

(2) Statements by authorities and other agencies regarding their official observations, investigations and findings as well as those of their members may also be read if the prerequisites of section 256 do not exist.

(3) The proceedings pursuant to paragraphs (1) and (2) require the approval of the accused, the defense counsel, and the public prosecutor if they are present at the main trial.

(4) Notwithstanding section 244, paragraph (2), the criminal court judge shall, in proceedings before him, determine the extent of evidence to be taken.

SECTIONS 421 THROUGH 429. (DELETED)

CHAPTER THREE
PROCEDURE CONCERNING CONFISCATION AND SEIZURE OF PROPERTY (*VERFAHREN BEI EIN-ZIEHUNGEN UND VERMÖGENSBESCHLAGNAHMEN*)

SECTION 430. LIMITATION OF PROSECUTION

(1) If confiscation, in addition to the punishment or measure of reform and prevention to be expected, is not of great importance and if the confiscation procedure would involve disproportionate expenditure or render difficult a decision concerning other legal consequences of the act, the court may, with the approval of the public prosecutor, at any stage of the proceedings, limit prosecution of the act to the other legal consequences.

(2) In the preparatory proceedings, the public prosecutor may determine the above mentioned limitation. Such limitation must be included in the records.

(3) The court may cancel such limitation at any stage of the proceedings. A pertinent request from the office of the public prosecutor is to be complied with. If the limitation is canceled again, section 265 applies accordingly.

SECTION 431. TRIAL AND DECISION

(1) If, in the criminal proceedings, a decision has to be made concerning confiscation of an object and it appears to be credible that—

1. The object belongs to or is due to another person and not to the accused on trial, or

2. Another person has some other right to the object the forfeiture of which could be ordered in case of confiscation (sec 74e, para (2), sentences 2 and 3, of the German Criminal Code),

the court will order that the other person participates in the proceedings insofar as confiscation is concerned (person with an interest in the confiscation). The court may refrain from issuing the order if, due to certain facts, it can be assumed that the participation is not possible. The court may also refrain from issuing the order if a party, association, or institution outside the territorial scope of this law would have to be involved which pursues attempts against the existence or security of Germany or any constitutional principles designated in section 92, paragraph (2), of the German Criminal Code, and if it is to be assumed in view of the circumstances that this party, association or institution or one of their agents, made available the object to promote their attempts; in this case it is sufficient to hear the owner of the object or the person authorized to exercise the right prior to the decision concerning confiscation of the object, if this is possible.

(2) The court may order that the participation does not extend to the question of guilt of the accused before trial if—

1. Confiscation in case of paragraph (1), number 1, is considered only under the condition that the object belongs or is due to the accused before trial; or

2. The object, according to the circumstances that may substantiate confiscation, can also be withdrawn permanently from those persons with an interest in the confiscated object on the basis of legal provisions outside the criminal law without compensation.

(3) If a decision has to be made against a legal person or association (sec 75 in connection with sec 74c of the German Criminal Code) concerning confiscation of a certain sum of money substituting the object, the court will order their participation.

(4) The participation in the proceedings may be ordered prior to the pronouncement of confiscation and if an admissible appeal has been filed prior to the termination of the closing arguments in the appeal proceedings.

(5) The decision by which participation in the proceedings is ordered cannot be contested. If participation in the proceedings is rejected or an order pursuant to paragraph (2) has been issued, special appeal subject to a time limit is admissible.

(6) If a person states at the court or at the office of the public prosecutor in writing or orally for the record or before any other authority that he does not intend to object to the confiscation of the object, his participation in the proceedings will not be ordered or the order will be canceled.

(7) The continuation of the proceedings will not be delayed by participation in the proceedings.

SECTION 432. HEARING IN PREPARATORY PROCEEDINGS

(1) If the preparatory proceedings reveal any reasons indicating that a person has an interest in the confiscated object, he should be heard if it appears practicable. Section 431, paragraph (1), sentence 3, applies accordingly.

(2) If the person who is considered to have an interest in the confiscated object states that he will object to the confiscation and if it appears credible that he is entitled to the object, the provisions regarding the interrogation of the accused, in case he is heard, are applicable to the extent to which his participation in the proceedings is taken into consideration.

SECTION 433. RIGHTS IN MAIN PROCEEDINGS

(1) With the opening of the main proceedings, a person with an interest in the confiscated object has the same rights as an accused on trial unless otherwise provided by this law. In expedited proceedings this applies from the beginning of the main trial, in proceedings based on orders imposing punishment from the issuance of the order imposing punishment.

(2) The court may order the personal appearance of a person with an interest in the confiscated object to clarify the facts of the case. If such person's personal appearance has been ordered and he fails to appear without a reasonable excuse, the court may order that he be brought before the proper authority if a summons has been served on him referring to this possibility.

SECTION 434. LEGAL REPRESENTATIVE

(1) A person with an interest in the confiscated object may at any stage of the proceedings be represented by an attorney or any other person who may be selected as defense counsel on the basis of a written power of attorney. The provisions of sections 137 through 139, 145a through 149, and 218, that apply to the defense shall be applied accordingly.

(2) The court may appoint for a person with an interest in the confiscated object an attorney or any other person who may be retained as defense counsel if the factual or legal situation is difficult or if he cannot safeguard his rights himself.

SECTION 435. NOTIFICATION REGARDING TRIAL DATE

(1) A notification regarding the trial date will be served on such persons with an interest in the confiscated object; section 40 applies accordingly.

(2) With the notification of the trial date, such persons will receive the bill of indictment as far as they are involved in the proceedings; and, in the cases of section 207, paragraph (2), they will be informed of the opening decision.

(3) At the same time, persons with an interest in the confiscated object will be advised of the fact that—

1. The hearing may be conducted in their absence, and

2. A decision will be made regarding the confiscation to the extent to which they are concerned.

SECTION 436. TRIAL

(1) If a person with an interest in the confiscated object fails to appear at the trial despite proper notification of the trial date, the hearing can be conducted in his absence; section 235 is not applicable.

(2) Section 244, paragraph (3), sentence 2, paragraphs (4) through (6), is not applicable to requests for taking of evidence submitted by a person with an interest in the confiscated object regarding the question of guilt of the accused on trial.

(3) If the court orders confiscation on the basis of circumstances opposing a compensation of the person with an interest in the confiscated object, it will state at the same time that such person is not entitled to compensation. This does not apply if the court considers compensation of such person to be necessary because it would be an undue hardship to deny such compensation; in this case the court will decide at the same time on the amount of compensation (sec 74f, para (3), of the German Criminal Code). The court will advise the person with an interest in the confiscation of the possibility of such a decision and will give him the opportunity to make statements.

(4) If a person with an interest in the confiscated object was neither present nor represented when the judgment was pronounced, the judgment will be served on him. The court may order parts of the judgment that do not concern the confiscation to be eliminated.

SECTION 437. APPEAL

(1) In appellate proceedings the examination as to whether confiscation is justified with respect to a person interested in the confiscated object will extend only to the question of guilt of the contested judgment if such person raises objections to that extent and, without his fault, has not been heard in the preceding proceedings concerning the question of guilt. If the examination also extends to the question of guilt, the court will consider the determinations made with regard to the guilt as the basis unless the statement of such person requires a new examination.

(2) Paragraph (1) is not applicable in appeal proceedings if, at the same time, a decision must be made with respect to the question of guilt on another person involved.

(3) In proceedings on appeal on issues of law, the objections against the verdict of guilt must be filed within the period set for the substantiation.

(4) If only the decision regarding the amount of compensation is contested, a decision can be made concerning the appeal when the persons involved do not object. The court will advise them of the possibility of such proceedings and the filing of an objection and will give them the opportunity to make a statement.

SECTION 438. ORDER IMPOSING PUNISHMENT

(1) When confiscation is ordered by an order imposing punishment, that order will also be served on persons with an interest in the confiscated object; section 435, paragraph (3), number 2, applies accordingly.

(2) If a decision must only be made on the objection of the person with an interest in the confiscated object, section 439, paragraph (3), sentence 1; and section 441, paragraphs (2) and (3), apply accordingly.

SECTION 439. SUBSEQUENT PROCEEDINGS

(1) If confiscation of an object has been legally ordered and if a person makes credible that—

1. At the time when the decision became final, he had a right to the object that is prejudiced due to the decision or that does no longer exist; and

2. He could not observe the rights of a person with an interest in the confiscated object without his fault, neither in the proceedings of the first instance nor in the appeal proceedings,

he may assert in subsequent proceedings that confiscation, as far as he is concerned, is not justified; section 360 will apply accordingly.

(2) The subsequent proceedings must be requested within 1 month after expiration of the day on which the requesting person received knowledge of the final decision. The request is inadmissible if 2 years have passed since the decision has become final and execution is terminated.

(3) The court will not review the determination of guilt if, according to the circumstances that substantiated confiscation, an order pursuant to section 431, paragraph (2), would have been permitted in the criminal proceedings. Otherwise section 437, paragraph (1), applies accordingly.

(4) If the right asserted by the requesting person is not proved, the request is unfounded.

(5) Prior to the decision, the court may cancel the confiscation with the approval of the office of the public prosecutor, when the subsequent proceedings would require disproportional expenditure.

(6) Reopening of the proceedings pursuant to section 359, number 5, for the purpose of asserting objections according to paragraph (1) is precluded.

SECTION 440. INDEPENDENT CONFISCATION PROCEEDINGS

(1) The office of the public prosecutor and the complainant in a private complaint may submit the request to order confiscation independently when this is permitted under the law and the order is to be expected in view of the result of the investigation.

(2) The object must be designated in the request. Further indicated must be the facts substantiating the admissibility of the independent confiscation. In all other cases, section 200 applies accordingly.

(3) Sections 431 through 436 and section 439 apply accordingly.

SECTION 441. COMPETENCE AND PROCEDURE IN CASE OF SUBSEQUENT AND INDEPENDENT CONFISCATION

(1) The decision regarding confiscation in the subsequent proceedings (sec 439) will be made by the court of first instance; the decision regarding independent confiscation (sec 440) will be made by the court competent in the case of criminal prosecution of a particular person. For the decision on the independent confiscation, also the court in whose district the object has been secured has local jurisdiction.

(2) The court shall render a decision from which a special appeal subject to a time limit is admissible.

(3) However, a decision on a permissible petition shall be made by judgment on the basis of a hearing if the public prosecutor or any other person involved so requests or if ordered by the court; the provisions governing the trial apply accordingly. Whoever filed an admissible appeal against the judgment may not file an appeal on issues of law against the decision of the appellate court.

(4) If the decision has been made by judgment, section 437, paragraph (4), will apply accordingly.

SECTION 442. LEGAL CONSEQUENCES EQUAL TO CONFISCATION

(1) Forfeiture, destruction, rendering unserviceable, and removal of an illegal condition are equal to confiscation within the meaning of sections 430 through 441.

(2) If the forfeiture pursuant to section 73, paragraph (3), or section 73a, of the German Criminal Code, is directed against a person other than the accused before trial, the court orders that such person will participate in the proceedings. He may state his objections to the order of forfeiture in subsequent proceedings if, without his fault, neither in the proceedings of first instance nor in appeal proceedings he was able to observe the rights of the person involved in the proceedings. If, under

these conditions subsequent proceedings are requested, execution measures shall not be taken against the requesting party prior to the termination of such proceedings.

SECTION 443. CONFISCATION OF PROPERTY

(1) Property or single items of property within the territorial scope of this law of an accused person against whom public charges have been preferred or warrant of arrest has been issued for the commission of a criminal act set forth in—

1. Sections 81 to 83, paragraph (1); section 89a; section 94 or 96, paragraph (1); section 97a or 100, sections 129 or 129a, also in conjunction with section 129b, paragraph (1), of the German Criminal Code;

2. A provision referenced in section 330, paragraph (1), sentence 1, of the German Criminal Code, under the prerequisite that the accused is suspected of having intentionally endangered the life and limb of a person or objects belonging to another person which are of considerable value, or under one of the prerequisites stated in section 330, paragraph (1), sentence 2, numbers 1 through 3, of the German Criminal Code, or pursuant to section 330, paragraph (2), section 330a, paragraphs (1) and (2), of the German Criminal Code;

3. Sections 51, 52, paragraph (1), numbers 1 and 2, letters c and d, paragraphs (5) and (6), of the Weapons Law; section 34, paragraphs (1) through (6), of the Law on Foreign Trade and Payments; or set forth in section 19, paragraphs (1) through (3); and section 20, paragraph (1) or (2), both also in conjunction with section 21 or section 22a, paragraphs (1) through (3), of the Law on the Control of Weapons of War, or

4. A provision referred to in section 29, paragraph (3), sentence 2, number 1, of the Narcotics Law under the prerequisites described therein, or a criminal act set forth in section 29a; 30, paragraph (1), numbers 1, 2, and 4; section 30a, or section 30b of the Narcotics Law,

may be attached. The seizure also comprises assets awarded to the accused later. Confiscation shall be discontinued at the latest after termination of the main trial of first instance.

(2) The seizure will be ordered by the judge. The public prosecutor may provisionally order the seizure if there is danger in delay, but the provisional order becomes void unless confirmed by the judge within 3 days.

(3) The provisions of sections 291 through 293 apply accordingly.

CHAPTER FOUR
PROCEEDINGS CONCERNING THE ASSESSMENT OF FINES AGAINST LEGAL PERSONS AND ASSOCIATIONS (*VERFAHREN BEI FESTSETZUNG VON GELDBUSSEN GEGEN JURISTISCHE PERSONEN UND PERSONENVEREINIGUNGEN*)

SECTION 444. (UNTITLED)

(1) If, in the criminal proceedings, a decision must be made regarding the assessment of a fine against a legal person or association (sec 30 of the Administrative Offenses Act), the court will order their participation in the proceedings insofar as they concern the act. Section 431, paragraphs (4) and (5), applies accordingly.

(2) The legal person or association will be summoned to the trial; if their representative fails to appear without a reasonable excuse, the hearing may be conducted in their absence. Sections 432 to 434, section 435, paragraphs (2) and (3), number 1; section 436, paragraphs (2) and (4); section 437, paragraphs (1) through (3); section 438, paragraph (1), apply to their participation in the proceedings, section 441, paragraphs (2) and (3), apply accordingly only insofar as a decision has to be made on their appeal.

(3) Sections 440 and 441, paragraphs (1) through (3), apply accordingly to the independent proceedings. The court in whose district the legal person or association or a branch establishment has its seat is locally competent.

SECTIONS 445 TO 448. (DELETED)

PART VII
EXECUTION OF THE SENTENCE AND COSTS OF THE PROCEEDINGS

CHAPTER ONE

EXECUTION OF SENTENCE (*STRAFVOLLSTRECKUNG*)

SECTION 449. ENFORCEABILITY

Criminal judgments cannot be executed before they have become final.

SECTION 450. CREDITING PRETRIAL CONFINEMENT AND WITHDRAWAL OF PERMISSION TO DRIVE A MOTOR VEHICLE

(1) Pretrial confinement of an accused on trial served after he waived the right to initiate an appeal or after he has withdrawn an appeal previously initiated or after the period for initiating an appeal to review has lapsed without the accused having stated his intention, shall be deducted in full from a sentence of imprisonment that is to be executed.

(2) If, according to the judgment, the custody, safe-guarding, or confiscation of the driver's license pursuant to section 111a, paragraph (5), sentence 2, has continued, this period shall be deducted in full from the period of prohibition to drive a motor vehicle (sec 44 of the German Criminal Code).

SECTION 450A. EXTRADITION FOR CRIMINAL PROSECUTION

(1) The deprivation of liberty imposed on the accused abroad in extradition proceedings for the purpose of executing the punishment shall be credited against the punishment of imprisonment to be executed. This applies even if the convicted person has been extradited at the same time for the purpose of criminal prosecution.

(2) In the event of extradition for the purpose of executing several punishments, the deprivation of liberty imposed in a foreign country shall be credited against the highest punishment, in case of equal punishments against the punishment that is first executed after commitment of the convicted person.

(3) At the request of the office of the public prosecutor, the court may order that credit is entirely or partly denied if it is not justified in view of the conduct of the convicted person after pronouncement of the judgment in which the real determinations being the basis of the judgment could be examined for the last time. If the court issues such an order, deprivation of liberty imposed in a foreign country, insofar as its duration does not exceed the punishment, is not credited against the punishment in another proceeding.

SECTION 451. AGENCIES OF EXECUTION

(1) The sentence will be executed by the office of the public prosecutor as the executing agency on the basis of a certified copy of the operative provisions of the judgment to be issued by the recording clerk of the court office together with a certification that such judgment can be executed.

(2) The prosecutors before the district courts (*Amtsanwälte*) are authorized to execute a sentence only insofar as such authority was transferred to them by the *Land* administration of justice.

(3) The office of the public prosecutor which is the executing agency also observes tasks vis-à-vis the execution panel at another state district court. It may assign its tasks to the office of the public prosecutor competent for this court when this appears to be imperative in the interest of the convicted person and if the office of the public prosecutor at the place of the execution panel consents.

SECTION 452. POWER OF PARDON

The right to exercise clemency is vested in the Federal Republic in cases decided in the first instance in the exercise of jurisdiction by the Federation; in all other cases, it is vested in the Federal States.

SECTION 453. SUPPLEMENTAL DECISIONS CONCERNING SUSPENSION OF PUNISHMENT ON PROBATION

(1) The supplemental decisions concerning the suspension of punishment on probation or an admonition with the reservation that a punishment may be imposed (secs 56a through 56g, 58, 59a, and 59b of the German Criminal Code) will be made on the basis of a court order without an oral hearing. The public prosecutor and the accused on trial shall be heard. If the court has to decide on a revocation of suspension of the sentence for a violation of conditions and directives, it shall give the convicted person an opportunity to be heard. If a probation officer has been appointed, the court will inform him when a decision on the revocation of suspension of the sentence or remittance of punishment is considered; the court shall inform him of findings which became known to the court from other criminal proceedings if this appears necessary for the purpose of the supervision of probation.

(2) Appeal may be taken from the decision according to paragraph (1). The appeal may be based only on the grounds that an order that was issued is unlawful or that the period of probation has been subsequently extended. Revocation of suspension, remittance of punishment, revocation of remittance, conviction to the reserved punishment, and the determination that an admonition will be sufficient (secs 56f, 56g, and 59b of the German Criminal Code) may be contested by special appeal subject to a time limit.

SECTION 453A. SUBSEQUENT INSTRUCTION

(1) If the accused on trial was not instructed according to section 268a, paragraph (3), such instruction will be given by the court competent for the decisions according to section 453. The presiding judge may entrust a commissioned or requested judge with giving the instructions.

(2) The instruction shall be given orally except in cases of minor significance.

(3) The accused on trial should also be instructed of the supplemental decisions. Paragraph (1) applies accordingly.

SECTION 453B. SUPERVISION DURING THE PERIOD OF PROBATION

(1) The court will survey the conduct of the convicted person during the period of probation, especially the compliance with terms and conditions and directives as well as offers and promises.

(2) The survey is made by the court competent to render decisions pursuant to section 453.

SECTION 453C. WARRANT OF ARREST TO SECURE CONVICTED PERSON

(1) When sufficient reasons exist for the assumption that the suspension will be revoked the court may, until the decision of revocation becomes final take temporary measures to secure the convicted person, if necessary, or when certain facts give rise to assume that the convicted person will commit substantial offenses, issue an arrest warrant under the prerequisites of section 112, paragraph (2), number 1 or 2.

(2) The custody served on the basis of a warrant of arrest pursuant to paragraph (1) is credited against the punishment of imprisonment to be executed. Section 33, paragraph (4), sentence 1; sections 114 through 115a,119, and 119a apply accordingly.

SECTION 454. SUSPENSION OF REMAINDER OF THE SENTENCE

(1) The decision whether execution of the remaining part of a sentence of imprisonment shall be suspended on probation (secs 57 through 58 of the German Criminal Code) as well as the decision that prior to the expiration of a certain period such a request of the convicted person is not permitted, is rendered by the court without an oral hearing. The office of the public prosecutor, the convicted person, and the confinement facility shall be heard. The convicted person is to be heard orally. The oral hearing of the convicted person can be dispensed with if the—

1. Office of the public prosecutor and the confinement facility approve the suspension of a sentence imprisonment for a term and the court provides for suspension;

2. Convicted person has requested suspension and, at the time of the request, has served—

a. Not yet half or less than 2 months of a sentence to imprisonment for a term,

b. Less than 13 years of a sentence to imprisonment for life,

and the court rejects the request because it has been submitted prematurely, or

3. Request of the convicted person is inadmissible (sec 57, para (7), and sec 57a, para (4), of the German Criminal Code).

The court shall decide at the same time whether a crediting pursuant to section 43, paragraph (10), number 3, of the Prison Act (*Strafvollzugsgesetz)* is to be ruled out.

(2) The court shall obtain an opinion from an expert on the convicted person if it considers to suspend the remainder of:

1. A life sentence on probation,

2. An imprisonment for a term of more than 2 years because of a criminal act of the type designated in section 66, paragraph (3), sentence 1, of the German Criminal Code and it cannot be excluded that public safety reasons speak against a premature release of the convicted person.

The expert opinion shall explicitly focus on the issue whether it can be expected that the dangerousness revealed by the convicted person in the act no longer continues to exist. The expert shall be heard in an oral statement, however, the office of the public prosecutor, the convicted person, his defense counsel, and the confinement facility shall be given the opportunity to participate. The court may refrain from an oral hearing of the expert if the convicted person, his defense counsel, and the public prosecutor waive such hearing.

(3) Special appeal subject to a time limit is admissible against the decisions pursuant to paragraph (1). Appeal initiated by the office of the public prosecutor taken from the decision by which suspension of the remaining part of the sentence is ordered has a delaying effect.

(4) Otherwise, section 268a, paragraph (3), section 268d, section 453, section 453a, paragraphs (1) and (3), as well as sections 453b and 453c shall apply accordingly. The instruction concerning the suspension of the remaining part of the sentence will be given verbally; the duty to furnish instruction may also be assigned to the confinement facility. The instruction shall be given immediately prior to the release.

SECTION 454A. EARLY DECISION ON SUSPENSION OF REMAINDER OF SENTENCE

(1) If the court decides that execution of the remaining portion of a sentence to imprisonment be suspended at least 3 months before the release date, the period of probation will be extended by the time between finality of the decision on suspension and the release.

(2) The court may reverse suspension of execution of the remaining portion of a sentence to imprisonment again until the convicted person's release if, due to new facts or facts which become known, suspension can no longer be justified in consideration of the safety interest of the general public. Section 454, paragraph (1), sentences 1 and 2, as well as paragraph (3), sentence 1, apply accordingly. Section 57, paragraph (5), of the German Criminal Code shall remain unaffected.

SECTION 454B. SUSPENSION OF PUNISHMENT IN CASE OF IMMEDIATE EXECUTION

(1) Sentences of imprisonment and imprisonment for failure to pay a fine shall be executed immediately following one another.

(2) If several sentences of imprisonment or sentences of imprisonment and imprisonment for failure to pay a fine have to be executed one after the other, the execution authority will interrupt execution of the sentence of imprisonment first to be executed if –

1. Under the conditions of section 57, paragraph (2), number 1, of the German Criminal Code one half, but at least 6 months,

2. In case of a sentence of imprisonment for a term two thirds, however, at least 2 months, or

3. In case of a sentence of imprisonment for life 15 years

of the sentence have been served. This does not apply to remaining parts of sentences that are executed because their suspension has been revoked. If the prerequisites for an interruption of the prison sentence first to be executed already occur prior to the enforceability of the prison sentence to be executed later, the interruption shall be retroactive starting at the time when enforceability becomes effective.

(3) If the execution authority has interrupted execution pursuant to paragraph (2), the court will render the decisions pursuant to sections 57 and 57a of the German Criminal Code only when a decision can be made on the suspension of execution of the remaining parts of all penalties on at the same time.

SECTION 455. POSTPONEMENT OF EXECUTION OF A PRISON SENTENCE

(1) Execution of a sentence of imprisonment shall be postponed if the convicted person falls mentally ill.

(2) The same applies with respect to any other illness if imminent danger to the life of a convicted person is to be feared in case of execution.

(3) Execution of the sentence can also be postponed in the event that the convicted person is in such physical condition as would in case of immediate execution be incompatible with the facilities of the prison.

(4) The execution authority may interrupt execution of a sentence of imprisonment if—

1. The convicted person turns insane,

2. Due to an illness, imminent danger to the life of a convicted person is to be feared in case of execution, or

3. The convicted person falls seriously ill and the illness cannot be recognized or be treated at a confinement facility or prison hospital,

and when it is to be expected that the illness will presumably continue to exist for quite some time. Execution may not be interrupted if predominant reasons, especially reasons of public safety, so dictate.

SECTION 455A. OTHER REASONS FOR POSTPONEMENT AND INTERRUPTION

(1) The execution authority may postpone execution of a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty or interrupt it without the consent of the prisoner when this is necessary for execution purposes and if predominant reasons of public safety do not speak against it.

(2) If the decision of the execution authority may not be obtained in due time, the director of the confinement facility may temporarily interrupt execution under the prerequisites of paragraph (1) without the consent of the prisoner.

SECTION 456. POSTPONEMENT ON MOTION OF CONVICTED PERSON

(1) Execution may be postponed on motion of the convicted person if immediate execution would cause substantial disadvantages to him or his family that were unintended by the punishment.

(2) The postponement of the punishment may not exceed a period of 4 months.

(3) The permission may be subject to furnishing security or to other conditions.

SECTION 456A. REFRAINING FROM EXECUTION IN CASE OF EXTRADITION OR EXPULSION

(1) The execution authority may abstain from executing a sentence of imprisonment, a prison sentence for failure to pay a fine, or a measure of reform and prevention if the convicted person is to be extradited to a foreign government for another act, transferred to an international criminal court or if he is expelled from the territorial scope of this Federal Law.

(2) The execution may take place subsequently if the person who was extradited, transferred or expelled returns. Section 67c, paragraph (2), of the German Criminal Code, applies accordingly to a subsequent execution of measures of reform and prevention. When the execution authority abstains from execution it may, at the same time, order execution to take place subsequently in case the person who was extradited, transferred or expelled, returns, and it may issue a warrant of arrest, a placement order, or a wanted notice for such purpose. When the execution authority abstains from execution it may at the same time order subsequent execution in case the extradited or expelled person returns, and for this purpose it may issue a warrant of arrest or commitment order and the necessary search measures in particular the wanted notice; section 131, paragraph (4), and section 131a, paragraph (3), apply accordingly.

SECTION 456B. (DELETED)

SECTION 456C. POSTPONEMENT AND SUSPENSION OF PROHIBITION TO EXERCISE A PROFESSION

(1) When passing the judgment, the court, on motion or with the consent of the convicted person, may, by order, postpone the enforcement of the prohibition to exercise a profession if immediate enforcement would mean a considerable hardship for the convicted person or his dependents that exceeds the purpose of the prohibition and can be avoided by this postponement. If the convicted person has a legal representative, his consent will be required. Section 462, paragraph (3), applies accordingly.

(2) Under the same conditions the execution authority may suspend the prohibition to exercise a profession.

(3) Postponement and suspension may be subject to furnishing of security or to other conditions. Postponement and suspension may not exceed a period of 6 months.

(4) The period of postponement or suspension will not be deducted from the period fixed for the prohibition to exercise a profession.

SECTION 457. WARRANT OF ARREST; WANTED NOTICE

(1) Section 161 applies correspondingly for the purposes designated in this chapter.

(2) The execution authority is authorized to issue an order to the effect that the convicted person be brought before the proper authority (*Vorführungsbefehl*) or a warrant of arrest for the execution of a sentence of imprisonment in the event the convicted person, after being summoned, does not appear to serve the punishment or if he is suspected of fleeing. It may also issue an order that the convicted person be brought before the proper authority or a warrant of arrest if a prisoner escapes or otherwise evades serving of the sentence.

(3) Otherwise, the executing authority has the same powers as the prosecuting authority in the cases of paragraph (2) if the measures are intended and suitable to arrest the convicted person. When considering the reasonableness, special thought shall be given to the time of imprisonment that remains to be executed. The necessary court decisions shall be taken by the court of first instance.

SECTION 458. JUDICIAL DECISIONS CONCERNING EXECUTION

(1) A decision by the court shall be obtained if there are doubts concerning the interpretation of a criminal court judgment or the computation of an imposed punishment or if objections are raised against the legality of executing the sentence.

(2) The court shall also decide on objections raised in the cases of section 454b, paragraphs (1) and (2), as well as of sections 455, 456, and 456c, paragraph (2), against the decisions of the execution authority or on objections raised against an order of the execution authority that a punishment or a measure of reform and prevention is to be executed subsequently against an extradited or expelled person.

(3) The course of execution is not hindered by such an objection; however, the court may order postponement or suspension of the execution. In the cases of section 456c, paragraph (2), the court may issue a provisional order.

SECTION 459. EXECUTION OF FINE

The provisions of the Ordinance Concerning the Collection of Court Fees apply to the execution of a fine unless otherwise provided for by this law.

SECTION 459A. FACILITIES OF PAYMENT

(1) After the judgment has become final, the execution authority will decide on the granting of facilities of payment when a fine has been imposed (sec 42 of the German Criminal Code).

(2) The execution authority may subsequently change or cancel a decision concerning facilities of payment pursuant to paragraph (1) or section 42 of the German Criminal Code. In this case it may deviate from a preceding decision to the detriment of the convicted person only on the basis of new facts or evidence.

(3) If the permission to pay the fine by installments pursuant to section 42, sentence 2, of the German Criminal Code, is canceled, this shall be noted in the case file. The execution authority may again grant facility of payment.

(4) The decision concerning facilities of payment also extends to the costs of the proceedings. It may also be rendered alone with regard to the costs.

SECTION 459B. INSTALLMENTS

Installments are first set off against the fine, then against eventual incidental consequences that obligate to a payment, and finally against the costs of the proceedings if the convicted person does not provide for other dispositions regarding payment.

SECTION 459C. COLLECTION OF FINE

(1) The fine or the partial amount of the fine will be collected prior to expiration of 2 weeks after the amount became due if, on the basis of certain facts, it is assumed that the convicted person intends to evade payment.

(2) Execution may not take place if it is expected that it will not lead to a success within a measurable period of time.

(3) The fine may not be executed into the estate of the convicted person.

SECTION 459D. REFRAINING FROM EXECUTION

(1) The court may order that collection of the fine, in whole or in part, does not take place if a sentence of imprisonement has been—

1. Executed or suspended on probation in the same proceedings, or

2. Imposed in other proceedings and the prerequisites of section 55 of the German Criminal Code do not prevail,

and collection of the fine may render the reintegration of the convicted person difficult.

(2) The court may render a decision pursuant to paragraph (1) also with regard to the costs of the proceedings.

SECTION 459E. EXECUTION OF IMPRISONMENT FOR FAILURE TO PAY A FINE

(1) Imprisonment for failure to pay a fine is executed on order of the execution authority.

(2) The execution order presupposes that the fine cannot be collected or that execution pursuant to section 459c, paragraph (2), will not take place.

(3) Execution of imprisonment for failure to pay a fine may not be ordered for an installment that does not correspond to 1 full day of imprisonment.

(4) Imprisonment for failure to pay a fine is not executed insofar as the fine is paid or collected or execution pursuant to section 459d will not take place. Paragraph (3) applies accordingly.

SECTION 459F. HARDSHIP CLAUSE

The court orders that execution of imprisonment as a substitute for a fine will not take place, if execution would be an undue hardship for the convicted person.

SECTION 459G. EXECUTION OF ADDITIONAL CONSEQUENCES

(1) If forfeiture, confiscation or rendering unserviceable of an object has been ordered, the order will be executed by withdrawing the object from the convicted person or from the person involved in the forfeiture or confiscation procedure. The execution shall be carried out according to the provisions of the Ordinance Concerning the Collection of Court Fees.

(2) Sections 459, 459a, 459c, paragraphs (1) and (2), and section 459d apply accordingly concerning execution of additional consequences that obligate to payment.

SECTION 459H. OBJECTIONS

The court will decide on objections against decisions of the execution authority pursuant to section 459a, 459c, 459e, and 459g.

SECTION 459I. EXECUTION OF FINES LEVIED ON PROPERTY

(1) Sections 459, 459a, 459b, 459c, 459e, 459f, and 459h apply correspondingly for the execution of a fine levied on property (sec 43a of the German Criminal Code).

(2) In the cases of sections 111o and 111p the measure shall only be set aside upon completion of the execution.

SECTION 460. SUBSEQUENT CUMULATIVE PUNISHMENT

The punishment imposed shall be reduced to a cumulative punishment by a supplemental court decision if by different final judgments punishments were imposed on a person and the provisions concerning imposition of cumulative punishment (sec 55 of the German Criminal Code) were not considered. If several fines on property are reduced to one total fine on

property, the latter may not be less than the highest penalty imposed, even if it exceeds the value of the property of the convicted person at the time of the subsequent court decision.

SECTION 461. CREDIT FOR CONFINEMENT IN HOSPITAL

(1) A stay in the hospital shall be considered as part of the time served if the convicted person, after he has begun to serve the sentence, because of a sickness was brought to a hospital that is separated from the prison, unless the sickness is due to malingering intended to interrupt the execution of the sentence.

(2) The office of the public prosecutor shall obtain a decision from the court in the latter case.

SECTION 462. PROCEDURE IN CASE OF JUDICIAL DECISION; SPECIAL APPEAL SUBJECT TO A TIME LIMIT

(1) The judicial decisions required pursuant to section 450a, paragraph (3), sentence 1, and sections 458 through 461 are rendered by order of the court without an oral hearing. This also applies to the restoration of lost capabilities and rights (sec 45b of the German Criminal Code), to the cancellation of the reservation of confiscation and the subsequent order of confiscation of an object (sec 74b, para (2), sent 3, of the German Criminal Code), to the subsequent order of forfeiture or confiscation of the substitute value (sec 76 of the German Criminal Code), as well as to the extension of the period of limitation (sec 79b of the German Criminal Code).

(2) Prior to the decision, the office of the public prosecutor and the convicted person shall be heard. The court may refrain from hearing the convicted person in the cases of a decision pursuant to section 79b of the German Criminal Code when, due to certain facts, it is assumed that the hearing is not feasible.

(3) Special appeal subject to a time limit may be taken from this decision. Special appeal subject to a time limit initiated by the office of the public prosecutor from this decision, which orders interruption of execution, has a delaying effect.

SECTION 462A. COMPETENCE OF PANEL IN CHARGE OF THE ENFORCEMENT OF THE PUNISHMENT

(1) When a sentence of imprisonment is executed against the convicted person, the execution panel in whose district the confinement facility is located and where the convicted person is confined at the time the court is concerned with the matter is competent to render the decisions pursuant to sections 453, 454, 454a, and 462. This execution panel also remains competent for decisions that shall be rendered after execution of a sentence of imprisonment has been interrupted or execution of the remaining part of the sentence has been suspended on probation. The execution panel may transfer individual decisions pursuant to section 462 in connection with section 458, paragraph (1), to the court of first instance; the transfer is binding.

(2) In cases other than those designated in paragraph 1, the court of first instance is competent. The court may entirely or partly transfer the decisions to be rendered pursuant to Section 453 to the district court in whose district the convicted person has his domicile or for want of a domicile, his usual place of abode; the transfer is binding. Notwithstanding paragraph (1), the court of first instance is competent in the cases designated in that paragraph if it has reserved ordering of preventive custody and a respective decision pursuant to section 66a, paragraph (3), sentence 1, of the Code of Criminal Procedure is still possible.

(3) In the cases of section 460, the court of first instance decides. If the judgments were passed by various courts, the decision shall be made by that court that imposed the severest penalty or, in case of penalties of the same kind, imposed the highest penalty, and if in such a case several courts would be competent, it shall be made by the court which pronounced the last judgment. If the decisive judgment has been pronounced by a court of higher instance, the court of first instance fixes the total penalty; if one of the judgments has been pronounced by a superior state court in the first instance, the superior state court assesses the total penalty. If a district court would be competent to form the total penalty and if it has no sufficient authority to assess the penalty, the criminal panel of the superior state court will decide.

(4) If various courts imposed a sentence on the convicted person in cases other than those described in section 460 and the sentences became final or if he has been admonished with the reservation that a penalty may be imposed, only one of them is competent for the decisions to be rendered pursuant to sections 453, 454, 454a, and 462. Paragraph (3), sentences 2 and 3, apply accordingly. In cases of paragraph (1), the execution panel will decide; paragraph (1), sentence 3, remains unaffected.

(5) In lieu of the execution panel the court of first instance will decide if the judgment has been rendered by a superior state court in the first instance. The superior state court may entirely or partly transfer the decision to be rendered pursuant to

paragraphs (1) through (3) to the execution panel. The transfer is binding; however, it may be revoked by the superior state court.

(6) Court of first instance in the cases of section 354, paragraph (2), and section 355 is that court to which the case has been remanded, and in the cases in which a decision has been rendered in the retrial pursuant to section 373, the court that has rendered the decision.

SECTION 463. EXECUTION OF MEASURES OF REFORM AND PREVENTION

(1) The provisions concerning execution of the sentence are accordingly applicable to execution of measures of reform and prevention unless otherwise provided for.

(2) Section 453 is also applicable to the decisions to be rendered pursuant to sections 68a through 68d of the German Criminal Code.

(3) Section 454, paragraphs (1), (2), and (4), are also applicable to the decisions to be rendered pursuant to section 67c, paragraph (1), section 67d, paragraphs (2) and (3), section 67e, paragraph (3), section 68e, section 68f, paragraph (2), and section 72, paragraph (3), of the German Criminal Code. In the cases of section 68e of the German Criminal Code, an oral hearing of the convicted person is not required. Section 454, paragraph (2), shall apply accordingly in the cases of section 67d, paragraphs (2) and (3), section 67c, paragraph (1), and section 72, paragraph (3), of the German Criminal Code, independent of the criminal acts designated there to the extent that the court must render a decision on the execution of preventive custody; otherwise section 454 paragraph (2), shall apply to the criminal acts designated there. For the preparation of a decision pursuant to section 67d, paragraph (3), of the German Criminal Code as well as of the subsequent decisions pursuant to section 67d, paragraph (2), of the German Criminal Code the court shall obtain an opinion from an expert on the question whether the convicted person must be expected to continue to commit serious criminal acts. For the proceedings pursuant to sentence 4 the court shall assign a defense counsel to a convicted person who does not have a defense counsel.

(4) Within the scope of the reviews pursuant to section 67e of the German Criminal Code the court will obtain an opinion of an expert after 5 years of executed commitment to a psychiatric hospital. The expert may neither have been involved with the treatment of the committed person within the scope of the execution of the commitment nor work in the psychiatric hospital where the committed person stays. The expert shall be granted access to the committed person's patient data kept by the hospital. Section 454, paragraph (2), applies accordingly. The committed person who does not have a defense counsel shall be assigned a defense counsel by the court for the procedure pursuant to sentence 1.

(5) Section 455, paragraph (1), is not applicable if commitment to a psychiatric hospital has been ordered. When commitment to an institution for the treatment of drug addicts and alcoholics or security detention has been ordered and when the convicted person falls mentally ill, execution of the measure may be delayed. Section 456 is not applicable if commitment of the convicted person to security detention has been ordered.

(6) Section 462 is also applicable to decisions to be rendered pursuant to section 67, paragraph (3), and paragraph (5), sentence 2; sections 67a and 67c, paragraph (2); section 67d, paragraphs (5) and (6); sections 67g, 67h, and 69a, paragraph (7); as well as sections 70a and 70b of the German Criminal Code. The court shall declare the ordering of measures pursuant to section 67h, paragraph (1), sentences 1 and 2, of the German Criminal Code as immediately enforceable, if there is a danger that serious illegal acts will be committed by the convicted person .

(7) Supervisory guidance in the cases of section 67c, paragraph (1), section 67d, paragraphs (2) through (6), and section 68f of the German Criminal Code is equal to suspension of a remaining part of a sentence for the application of section 462a, paragraph (1).

SECTION 463A. SUPERVISORY AGENCIES CONCERNING SUPERVISION OF CONDUCT

(1) The supervisory agencies (sec 68a of the German Criminal Code) may request information from all public authorities for the supervision of conduct of the convicted person and compliance with directives and make investigations of any kind, excluding sworn statements, or have them made by other governmental agencies within the framework of their competence. If the convicted person's place of abode is not known the head of the agency in charge of the supervision of conduct may order issuance of a search order to determine his place of abode (sec 131a, para (1)).

(2) For the duration of the supervision of conduct or for a shorter period of time, the supervisory agency may order that the convicted person be put on the "wanted" list for observation on the occasion of police checks which allow for the

establishment of personal data. Section 163e, paragraph (2), applies accordingly. The order is issued by the chief of the supervisory agency. The necessity to continue the measure shall be reviewed at least once a year.

(3) Upon request of the supervisory agency, the court may issue a warrant for appearance before the court if the convicted person failed to comply with a directive pursuant to section 68b, paragraph (1), sentence 1, number 7 or 11, of the German Criminal Code without sufficient excuse, and he was advised in the summons that in such a case his ordered appearance is admissible. If the court of first instance is competent, the presiding judge shall decide.

(4) In case of a directive issued pursuant to section 68b, paragraph (1), sentence 1, number 12, of the German Criminal Code, the supervisory agency shall collect and store data by automated procedure by means of the technical devices carried by the convicted person on that person's place of abode and on any impairment during data collection; to the extent this is technically possible, it must be ensured that, inside the convicted person's home, no data on the abode is collected that goes beyond the fact of his presence. Without consent of the person concerned, the data may only be used if this is necessary for the following purposes: To—

1. Determine a violation against a directive pursuant to section 68b, paragraph (1), sentence 1, number 1, 2, or 12, of the German Criminal Code,

2. Take measures of supervision of conduct, which may follow a violation of a directive pursuant to section 68b, paragraph (1), sentence 1, number 1, 2, or 12, of the German Criminal Code,

3. Punish a violation of a directive pursuant to section 68b, paragraph (1), sentence1, number 1,2, or 12, of the German Criminal Code,

4. Avert a considerable actual danger for the life, physical integrity, personal liberty, or sexual self-determination of third parties, or

5. Prosecute a criminal act of the type designated in section 66, paragraph (3), sentence 1, of the German Criminal Code.

In order to ensure compliance with the purposes indicated in sentence 2, the data to determine violations pursuant to sentence 2, number 1, in connection with section 68b, paragraph (1), sentence 1, number 1 or 2, of the German Criminal Code, must be processed by automated procedure, and the data must be specifically secured against unauthorized taking of notice. The supervisory agency may request that the authorities and officers of the police service collect and process the data; the authorities and police officers are obliged to comply with the request of the supervisory agency. The data mentioned in sentence 1 shall be deleted at the latest 2 months after its collection unless it is used for the purposes stated in sentence 2. Each time data is retrieved at least the time, the data retrieved, and the person processing the data shall be recorded; section 488, paragraph (3), sentence 5, shall apply accordingly. In case data on the abode is collected inside the home of the convicted person that goes beyond the fact of the person's presence, such data may not be used and must be deleted immediately after its acknowledgement. The fact that data was acknowledged and deleted must be documented.

(5) Locally competent is the supervisory agency in whose district the convicted person has his place of residence. If the convicted person has no place of residence within the territorial scope of this law, the supervisory agency is locally competent in whose district he has his place of abode and, if such place of residence is unknown, his last place of residence or place of abode.

SECTION 463B. CONFISCATION OF DRIVER'S LICENSES AND FOREIGN DRIVING PERMITS

(1) If a driver's license is to be officially held in custody pursuant to section 44, paragraph (2), sentences 2 and 3, of the Criminal Code, and if it is not voluntarily handed over, it shall be confiscated.

(2) Foreign driving permits may be confiscated for making an entry concerning the prohibition to drive a motor vehicle or the withdrawal of the permission to drive and the ban on grant of new driver's license (sec 44, para (2), sent 4, and sec 69b, para (2), of the German Criminal Code).

(3) If the driver's license is not found with the convicted person, he shall, on request of the law enforcement authorities, make a statement in lieu of an oath on the whereabouts before the district court. Section 883, paragraphs (2) and (3), of the Code of Civil Procedure, applies accordingly.

SECTION 463C. ANNOUNCEMENT OF SENTENCE

(1) If public announcement of the sentence has been ordered, the decision will be served on the person concerned.

(2) The order pursuant to paragraph (1) is executed only if the requesting person or a person entitled to file a request in his place requests so within 1 month after service of the final decision.

(3) If a publisher or responsible editor of a periodically published paper fails to comply with his obligation to include such an announcement in his paper, the court at request of the execution authority induces him to do so by assessing a fine not exceeding 25,000 euros or imposing coercive detention not exceeding 6 weeks. A fine may be assessed repeatedly. Section 462 applies accordingly.

(4) Paragraph (3) applies accordingly to the publication by radio if the party responsible for the program fails to comply with his obligation.

SECTION 463D. ASSISTANCE OF COURT

To prepare the decisions to be rendered pursuant to sections 453 to 461, the court or the execution authority may avail itself of the assistance of the court; this is particularly likely before a decision on the revocation of suspension of sentence or suspension of the remaining portion of the sentence unless a probation officer is appointed.

CHAPTER TWO
COSTS OF THE PROCEEDINGS (*KOSTEN DES VERFAHRENS*)

SECTION 464. DECISION AS TO COSTS; FIXING COSTS

(1) Any judgment, any order imposing punishment, and any decision discontinuing an investigation shall contain a provision as to who must bear the costs of the proceedings.

(2) The decision as to who will bear the necessary expenses will be rendered by the court in the judgment or the order that terminates the proceedings.

(3) Special appeal subject to a time limit against the decision regarding costs and the necessary expenses is permitted; it is not permissible if challenging of the main decision specified in paragraph (1) by the appellant is not permitted. The court of appeal is bound by the actual findings on which the decision is based. If a special appeal subject to a time limit is filed against the judgment insofar as it refers to the decision regarding costs and the necessary expenses, and otherwise appeal or appeal on issues of law is filed the court of appeal or appellate court' as long as it deals with the appeal or appeal on issues of law, is also competent for the decision on the special appeal subject to a time limit.

SECTION 464A. COSTS OF THE PROCEEDINGS; NECESSARY EXPENSES

(1) Costs of the proceedings are the fees and expenditures of the treasury. They also include the costs arising for the preparation of public charges as well as the costs regarding execution of a legal consequence of the act. The costs of a motion for reopening of the proceedings terminated by final judgment also include the costs arising for the preparation of reopening of the proceedings (secs 364a and 364b) insofar as they were caused by a motion of the convicted person.

(2) The required expenditures of a person involved also include the—

1. Compensation for failure to observe a required period of time pursuant to the provisions that apply to the compensation of witnesses; and

2. Fees and expenditures of an attorney insofar as they have to be reimbursed according to section 91, paragraph (2), of the Code of Civil Procedure.

SECTION 464B. ASSESSMENT OF COSTS

The amount of the costs and expenses for which a party involved must reimburse another party involved will, on motion of a party concerned, be fixed by the recording clerk of the court office. Upon motion it shall be pronounced that interest will be paid on the assessed costs and expenses from the time the motion for assessment was submitted. The provision of the Code of Civil Procedure shall be applied accordingly to the amount of the interest rate, the proceedings, and the execution of the decision.

SECTION 464C. EXPENSES FOR INTERPRETER OR TRANSLATOR

If an interpreter or translator was called in for an accused before trial who has no command of the German language or has a hearing or speech impediment , the expenses incurred thereby are imposed on the accused before trial insofar as he has needlessly caused them by culpable default or in some other culpable way; this has to be expressly pronounced with the exception of a case pursuant to section 467, paragraph (2).

SECTION 464D. DISTRIBUTION OF EXPENSES IN FRACTIONS

The expense of the treasury and the necessary expense of the parties involved can be distributed in fractions.

SECTION 465. DUTY OF CONVICTED PERSON TO PAY COSTS

(1) The accused on trial shall bear the costs of the proceedings insofar as they were incurred by proceedings for an act of which he is convicted or for which a measure of reform and prevention is ordered against him. A conviction in the sense of this provision exists also if the accused on trial is admonished with the reservation that punishment may be imposed or if the court abstains from imposing a punishment.

(2) If special expenditures incurred by investigations conducted to clarify certain aggravating or exonerating circumstances and if these investigations resulted in favor of the accused on trial, the court has to impose the expenditures partly or even entirely on the treasury if it would be unfair to charge them to the accused on trial. This applies particularly if the accused on trial is not sentenced because of specific parts that can be separated from an act or on account of several of a number of infringements. Sentences 1 and 2 apply accordingly to the required expenditures of the accused on trial.

(3) The estate of a convicted person who dies before the judgment comes into force is not liable for the costs.

SECTION 466. LIABILITY OF CO-ACCUSED ON TRIAL

Co-accused on trial, who are sentenced to punishment or against whom a measure of reform and prevention has been ordered for the same act, are liable for the expenses as joint debtors. This does not apply to the costs incurred due to the services of an appointed defense counsel or an interpreter and to the costs for execution, temporary placement, or pretrial confinement as well as to expenses that were caused by investigations directed exclusively against a co-accused on trial.

SECTION 467. DUTY TO PAY COSTS AND CLAIMS OF ACQUITTED PERSONS

(1) If the accused before trial is acquitted or the opening of the trial against him is denied or if the proceedings against him are discontinued, the costs of the proceedings and the necessary expenses incurred by the accused before trial shall be borne by the treasury.

(2) The costs of the proceedings caused by the accused's culpable default shall be borne by him. To this extent, the necessary expenses incurred by the accused before trial are not borne by the treasury.

(3) The necessary expenses incurred by the accused before trial are not borne by the treasury if the accused before trial caused the preferring of public charges by making a report in which he pretends to have committed the act he is charged with. The court may refrain from imposing on the treasury the necessary expenses incurred by the accused before trial if –

1. He caused the preferring of the public charges by making false statements with regard to material points contradictory to his later statements or if he failed to state substantial exonerating circumstances although he made a statement concerning the accusation; or

2. He is not sentenced for a criminal act only because there is an impediment to the proceedings.

(4) If the court discontinues the proceedings pursuant to a provision permitting such action in its discretion, it may refrain from imposing on the treasury the necessary expenses incurred by the accused before trial.

(5) The necessary expenses of the accused before trial are not charged to the treasury if the proceedings are discontinued with final effect after a preceding temporary suspension (sec 153a).

SECTION 467A. TRANSFER OF COSTS

(1) If the office of the public prosecutor withdraws the public charges and discontinues the proceedings, the court where the public charges have been preferred, shall impose on the treasury the necessary expenses incurred by the accused before trial at the request of either the public prosecutor or of the accused before trial. Section 467, paragraphs (2) to (5), apply accordingly.

(2) In the cases of paragraph (1), sentence 1, the court may charge the expenses incurred by a person incidentally involved (sec 431, para (1), sent 1; sec 442; sec 444, para (1), sent 1) to the treasury or another person involved on motion of the office of the public prosecutor or of the person incidentally involved.

(3) The decision pursuant to paragraphs (1) and (2) is final.

SECTION 468. DECLARING ACCUSED FREE FROM PUNISHMENT

In the cases of mutual insults, adjudging costs against one or both parties is not excluded by the fact that one or both of them are acquitted.

SECTION 469. DUTY OF PERSON REPORTING ALLEGED CRIME TO PAY COSTS

(1) If proceedings, even out-of-court proceedings, were caused by intentionally or negligently filing an untrue information, the court shall impose on the informant, after he has been heard, the costs of the proceedings and the necessary expenses incurred by the defendant. The court may charge the expenses incurred by a person incidentally involved (sec 431, para (1), sent 1; sec 442; sec 444, para (1), sent 1) to the informant.

(2) If a court has not yet acted in the case, the decision will be made on motion of the office of the public prosecutor by the court that would have been competent for the opening of the main proceedings.

(3) The decision pursuant to paragraphs (1) and (2) is incontestable.

SECTION 470. COSTS WHEN MOTION FOR PROSECUTION IS WITHDRAWN

If the proceedings are stayed due to the withdrawal of the motion by which they have been initiated, the petitioner shall bear the costs as well as the expenses incurred by the defendant and a person incidentally involved (sec 431, para (1), sent 1; sec 442; sec 444, para (1), sent 1). They may be imposed on the accused on trial or a person incidentally involved insofar as he indicates his willingness to pay them or on the treasury insofar as it would be unfair to charge the participants with those costs.

SECTION 471. COSTS IN CASE OF PRIVATE PROSECUTION

(1) The person convicted in proceedings of private complaint shall reimburse the private complainant for necessary expenses incurred.

(2) If the charges against the defendant are dismissed or if he is acquitted or the proceedings are stopped, the private complainant shall be charged with the costs of the proceedings and the necessary expenses incurred by the defendant.

(3) The court may properly distribute or, according to due discretion, charge to one of the persons involved the costs of the proceedings and the necessary expenses of the persons involved if—

1. The court only in part granted the motions of the private complainant;

2. It discontinued the proceedings according to section 383, paragraph (2) (sec 390, para (5)) because of insignificance;

3. A countercharge was preferred.

(4) Several private complainants are liable as joint debtors. The same applies with respect to the liability of several defendants for the necessary expenses incurred by the private complainant.

SECTION 472. NECESSARY EXPENSES OF THE INTERVENER

(1) The necessary expenses that have arisen for the intervener shall be imposed on the accused on trial if he is convicted for an act that concerns the intervener. Such may be entirely or partially dispensed with if it would be unfair to charge the accused on trial with such expenses.

(2) If the court suspends the proceedings according to a provision permitting this in its discretion, it may partially or entirely impose the necessary expenses designated in paragraph (1) on the accused as seems fair and equitable for special

reasons. Paragraph 1 applies accordingly if the court finally discontinues the proceedings after a preceding temporary suspension (sec 153a).

(3) Paragraphs (1) and (2) apply accordingly to the necessary expenses that have arisen for a person entitled to join the public charges as an intervener in safeguarding his rights pursuant to section 406g. The same applies to the necessary expenses of a private complainant if the office of the public prosecutor has assumed prosecution pursuant to section 377, paragraph (2).

(4) Section 471, paragraph (4), sentence 2, applies accordingly.

SECTION 472A. INDEMNIFICATION OF THE INJURED PERSON

(1) If the motion for adjudication of a claim arising from the criminal act is accepted, the accused on trial shall bear also the special costs arising thereby, as well as the necessary expenses of the injured person.

(2) If the court does not decide on such a motion or if part of the claim of the injured person is not approved or the injured person withdraws his motion, the court shall decide free after a due assessment of the circumstances who is to bear the court costs and the necessary expenses incurred by the persons involved. The court costs may be imposed on the treasury if it would be unjust to charge them to the persons involved.

SECTION 472B. COSTS IN CASE OF OTHER PERSONS INVOLVED

(1) If forfeiture, confiscation, reservation of confiscation, destruction, rendering unserviceable, or abatement of an illegal situation is ordered the person incidentally involved may be charged with special costs incurred by him due to his participation. The required expenditures incurred by the person incidentally involved may for reasons of fairness be imposed on the accused on trial; in independent proceedings also on another person incidentally involved.

(2) If a fine is assessed on a legal person or association this person or association has to bear the costs according to sections 465 and 466.

(3) If no additional consequence as designated in paragraph (1), sentence 1, is ordered and assessment of a fine against a legal person or association is refrained from, the necessary expenses arising for a person incidentally involved may be imposed on the treasury or on another person involved.

SECTION 473. COSTS AND EXPENSES FOR APPEAL

(1) The costs of a means of appeal that has been withdrawn or that proved to be unsuccessful shall be borne by the person who initiated it. If the appeal initiated by the defendant has proved to be unsuccessful or has been withdrawn, the necessary expenses incurred by the intervener or the person entitled to join the public charges as an intervener in safeguarding his rights pursuant to section 406g shall be imposed on him. If, in the case of sentence 1, the intervener alone has initiated or carried through the appeal, the necessary expenses incurred by the defendant shall be imposed on him. Section 472a, paragraph (2), applies accordingly to the costs of the appeal and the necessary expenses of the persons involved if a filed permissible immediate appeal pursuant to section 406a, paragraph (1), sentence 1, has become inadmissible by a final decision in that instance.

(2) If, in the case of paragraph (1), the office of the public prosecutor initiates the appeal to the detriment of the defendant or a person incidentally involved (sec 431, para (1), sent 1; sec 442; sec 444, para (1), sent 1), the required costs arising for him shall be borne by the treasury. The same applies if the appeal initiated by the public prosecutor in favor of the defendant or a person incidentally involved proved to be successful.

(3) If the defendant or another person involved limited the appeal to certain points of complaint and if such an appeal is successful, the required expenditures of the person involved shall be charged to the treasury.

(4) If the appeal is partly successful, the court shall reduce the fees and impose partly or entirely the costs on the treasury if it would be unfair to charge them to the persons involved. This applies accordingly to the necessary expenses of the persons involved.

(5) An appeal is considered unsuccessful if an order pursuant to section 69, paragraph (1), or section 69b, paragraph (1), of the German Criminal Code, is no longer maintained only for the reason that its prerequisites are no longer fulfilled due to

the duration of a temporary withdrawal of a driving permit (sec 111a, para (1)), or the holding in custody, safeguarding, or confiscation of the driver's license (sec 69a, para (6), of the German Criminal Code).

(6) Paragraphs (1) through (4) apply accordingly to the costs and the necessary expenses which have been caused by a motion for—

1. The reopening of the proceedings terminated by final judgment, or

2. Subsequent proceedings (sec 439).

(7) The costs for *restitutio in integrum* shall be borne by the petitioner unless they were caused by an unfounded objection of the opposing party.

SECTION 473A.

If, upon request of the person concerned, the court must rule in a separate decision on the legality of an investigation measure or its execution, the court shall determine at the same time which party has to bear the costs and the necessary expenses of the persons involved. If the measure or its execution is declared illegal, the costs shall be borne by the State treasury, otherwise by the petitioner. Section 304, paragraph (3), and section 464, paragraph (3), sentence 1, shall apply accordingly.

PART VIII
FURNISHING INFORMATION AND INSPECTION OF FILES, OTHER USE OF DATA FOR PURPOSES EXTENDING TO OTHER PROCEEDINGS, REGULATIONS ON DATA FILES, NATIONWIDE RECORD OF PROCEEDINGS ESTABLISHED BY THE PUBLIC PROSECUTOR'S OFFICE

CHAPTER ONE
FURNISHING INFORMATION AND INSPECTION OF FILES, OTHER USE OF DATA FOR PURPOSES EXTENDING TO OTHER PROCEEDINGS

SECTION 474. INFORMATION AND INSPECTION OF FILES FOR JUDICIAL AUTHORITIES AND OTHER PUBLIC AGENCIES

(1) Courts, public prosecutors' offices and other judicial authorities may inspect files if this is necessary for the course of justice.

(2) Otherwise information from files can be furnished to public agencies if—

1. Information is needed to assess, enforce or contest a legal claim in connection with a criminal offense,

2. In other cases, personal data from criminal proceedings may be transmitted to these agencies ex officio on the basis of a special provision, or if after an ex officio transmittal a transmittal of additional personal data is necessary to fulfill a task, or

3. Information is required to prepare measures whose issuance allows the transmittal of personal data from criminal proceedings to these agencies ex officio on the basis of a special provision.

Providing of information to the intelligence services is subject to section 18 of the Law on the Protection of the Federal Constitution (*Bundesverfassungsschutzgesetz*), section 10 of the Law on the Military Counter Intelligence Service (*Gesetz über den Militärischen Abschirmdienst*), and section 8 of the Law on the Federal Intelligence Service (*Gesetz über den Bundesnachrichtendienst)* and respective legal provisions of the *Länder*.

(3) Review of files may be granted under the prerequisites of paragraph (2) if furnishing of information would require a disproportionate effort or the requesting agency states with reasons that providing of information is not sufficient to fulfill its task.

(4) Evidence kept in official custody may be inspected under the prerequisites of paragraph (1) or (3).

(5) In the cases of paragraphs (1) and (3) files can be sent over for review.

(6) *Land* regulations granting parliamentary committees the right to inspect files remain unaffected.

SECTION 475. INFORMATION AND INSPECTION OF FILES ON BEHALF OF PRIVATE PERSONS

(1) Notwithstanding the provisions of section 406e, an attorney may obtain information on behalf of a private person and for other agencies from files available to the court or which would have to be submitted to the court in case public charges were preferred, if he states a valid interest. Information shall be denied if the affected person has an interest in the denial, which is worthy of protection.

(2) Inspection of files can be granted under the prerequisites of paragraph (1) if furnishing of information would require a disproportionate effort or, according to the requesting party, would not be sufficient to protect the legitimate interest.

(3) Evidence kept in official custody may be inspected under the prerequisites of paragraph (2). Upon request, the attorney can be given permission to take files, with the exception of evidence, to his office or his apartment, if inspection of files is granted and no conflicting important reasons exist. The decision cannot be contested.

(4) Private persons and other agencies may also obtain information from the files under the prerequisites of paragraph (1).

SECTION 476. TRANSMITTAL OF PERSONAL DATA FOR PURPOSES OF RESEARCH

(1) Transmittal of personal data from files to universities, other institutes doing scientific research, and public agencies is permitted, if—

1. It is necessary to conduct certain scientific research,

2. Use of anonymous data for this purpose is not possible or rendering the data anonymous would take a disproportionate effort, and

3. Public interest in the research project considerably outweighs the interest of the affected person to exclude transmittal, which is worthy of protection.

When balancing the interests pursuant to sentence 1, number 3 the scientific interest in the research project within the scope of the public interest shall be particularly considered.

(2) Transmittal of data is performed by furnishing of information if this serves the purpose of the research project and furnishing of information does not require an extraordinary effort. Otherwise review of files may be granted. Files can be sent over for inspection.

(3) Personal data will only be transmitted to persons holding an office, or persons who have a formal obligation towards the civil service, or who have a duty to observe secrecy. Section 1, paragraphs (2), (3), and (4), number 2, of the Law on the Formal Obligation of Persons Who Are Not in the Civil Service (*Verpflichtungsgesetz*) applies accordingly to the duty to observe secrecy.

(4) Personal data may only be used for the research purposes for which they were transmitted. Their use for other research projects or their further transmittal are subject to paragraphs (1) to (3) and require approval of the agency which ordered transmittal of the data.

(5) Data shall be protected against unauthorized access by third parties. The agency doing the research work must ensure that the use of personal data is physically and organizationally separated from the fulfillment of such administrative duties or business procedures for which such data could also be of importance.

(6) As soon as the purpose of the research permits, the personal data shall be rendered anonymous. As long as this is not possible, the characteristics by means of which detailed information about personal or factual circumstances can be attributed to a particular or identifiable person shall be stored separately. They may only be combined with the detailed information to the extent required by the purpose of the research project.

(7) Whoever received personal data pursuant to paragraphs (1) to (3) may only publish them if this is necessary for the presentation of research results on contemporary history events. Publication requires approval of the agency which transmitted the data.

(8) If the recipient is a non-public agency, the provisions of the third chapter of the Data Protection Act shall also apply if the data are not processed in or out of files.

SECTION 477. AUTHORIZATION TO TRANSMIT INFORMATION

(1) Information can also be furnished by providing copies from the files.

(2) Information from files and inspection of files shall be denied if a transmittal is conflicting with the purposes of the criminal proceedings, also in case the purpose of an investigation in other criminal proceedings is jeopardized, or is conflicting with special federal or *Land* legislation regarding the use of data. If a measure pursuant to this law is only authorized if commitment of specific criminal acts is suspected, the personal data obtained on the basis of such a measure may be used in other criminal proceedings as evidence without the consent of the persons affected by the measure only in order to solve such criminal acts for the solving of which such a measure would have been ordered pursuant to this law. Otherwise personal data obtained by a measure of the type designated in sentence 2 may only be used without consent of the persons affected by the measure—

1. To avert a substantial danger for public safety,

2. For the purposes for which a transmittal pursuant to section 18 of the Law on the Protection of the Federal Constitution is authorized, as well as

3. In accordance with section 476.

Section 100d, paragraph (5), section 100i, paragraph (2), sentence 2, and section 108, paragraphs (2) and (3), shall remain unaffected.

(3) In case of proceedings by which the—

1. Accused is dismissed, opening of main proceedings is denied or the proceedings were discontinued, or

2. Conviction is not entered in a certificate of good conduct for authorities and where more than two years have passed since the decision became final,

information from files and inspection of files by non-public agencies may only be granted if probable cause has been shown that there is a legal interest in obtaining the information and the former accused has no interest in its denial which is worthy of protection.

(4) The recipient of the data shall be responsible for the permissibility of the data, if the recipient is a public agency or an attorney. In such a case, the agency transmitting the data only checks, whether the request for transmittal is within the scope of the recipient's duties, unless there is a special reason to further check into the permissibility of the transmittal.

(5) Personal data obtained pursuant to sections 474 and 475 may only be used for the purpose for which information was provided or inspection of files was granted. Use for other purposes is permitted if information or inspection of files could have been granted for such purposes and in case of section 475, the agency having granted information or inspection of files gives its approval. If information is provided without participation of an attorney the specific use shall be pointed out.

SECTION 478. DECISION ON DISCLOSURE OF INFORMATION AND INSPECTION OF FILES; REQUESTED TRANSMITTAL OF FILES

(1) The office of the public prosecutor shall decide on the furnishing of information and inspection of files in the preliminary proceedings and after the final completion of the proceedings, otherwise the decision shall be made by the presiding judge of the court where the case is pending. The office of the public prosecutor is also authorized to provide information after public charges have been preferred. The office of the public prosecutor may authorize the authorities of the police service that have conducted or are conducting the investigations to grant inspection of files and give information in the cases of section 475. Their decision can be contested by requesting a decision by the public prosecutor. Transmittal of personal data between authorities of the police service or a corresponding inspection of files is permitted without a decision pursuant to sentence 1, unless there are doubts regarding the permissibility of the transmittal or the inspection of files.

(2) Information from files from other courts or agencies which are not a part of the case files may only be provided if the requesting party proves that the agency owning the files has given consent; the same applies to the inspection of files.

(3) In the cases of section 475, a decision by the court competent pursuant to section 162 can be requested against the decision of the public prosecutor pursuant to paragraph (1). Sections 297 to 300, 302, 306 to 309, 311a, and 473a shall apply accordingly. The decision by the court cannot be contested as long as the investigations are not concluded. The reasons for such decisions shall not be given if their disclosure would jeopardize the purpose of the investigation.

SECTION 479. TRANSMITTAL OF INFORMATION *EX OFFICIO*

(1) Personal data from criminal proceedings may be transmitted ex officio to prosecution authorities and criminal courts for prosecution purposes as well as to the competent authorities and courts for prosecution of administrative offenses in so far as the transmitting agency considers these data necessary for such purposes.

(2) Transmittal of personal data from criminal proceedings *ex officio* is also permitted if the transmitting agency considers knowledge of these data necessary to—

1. Execute punishments or measures within the meaning of section 11, paragraph (1), number 8, of the German Criminal Code, or to execute or enforce corrective measures or disciplinary means within the meaning of the Youth Court Law,

2. Execute measures involving deprivation of liberty,

3. Make decisions in criminal cases in particular regarding suspension of punishment on probation or its revocation in administrative fine proceedings or clemency cases.

(3) Section 477, paragraphs (1), (2), and (5), as well as section 478, paragraphs (1) and (2), apply accordingly; the transmitting agency shall be responsible for the permissibility of the transmittal.

SECTION 480. LEGAL PROVISIONS UNAFFECTED

Special legal provisions ordering or permitting transmittal of personal data from criminal proceedings shall remain unaffected.

SECTION 481. USE OF PERSONAL DATA BY POLICE AUTHORITIES

(1) Police authorities and may use personal data from criminal proceedings according to police statutes. For the purposes stated therein, prosecuting authorities and courts may transmit personal data from criminal proceedings to the police authorities or grant inspection of files. Sentences 1 and 2 do not apply in such cases where the police only take action in order to protect private rights.

(2) Use of data is not permitted in case of conflicting special Federal or respective *Land* legal provisions regulating the use.

(3) Section 478, paragraph (1), sentences 1 and 2, shall apply accordingly if the police authority is in doubt whether the use of personal data in accordance with this provision is permissible.

SECTION 482. INFORMATION PROVIDED BY THE PUBLIC PROSECUTOR'S OFFICE TO THE POLICE AUTHORITY IN CHARGE OF THE MATTER

(1) The office of the public prosecutor shall inform the police authority which handled the issue about its file number.

(2) The office of the public prosecutor shall inform the police authority in the cases of paragraph (1) about the outcome of the proceedings by communication of the operative part of the decision, the decision-making agency and the date and type of decision. Sending of a copy of the communication to the Federal Central Register of Criminal Offenses is permitted, if required, also of the judgment or a decision to discontinue the proceedings with reasons.

(3) In proceedings against an unknown person and in case of criminal offenses in connection with road traffic, to the extent that they are not subject to the provisions of sections 142 and 315 through 315c of the German Criminal Code, the outcome of the proceedings will not be communicated ex officio pursuant to paragraph (2).

(4) If a judgment which has been appealed is transmitted it shall be stated who filed the appeal.

CHAPTER TWO
REGULATIONS ON DATA FILES

SECTION 483. PROCESSING OF DATA FOR THE PURPOSES OF CRIMINAL PROCEEDINGS

(1) Courts, prosecuting authorities, including authorities responsible for the execution of punishments, probation officers, supervisory agencies in case of supervision of conduct, and assisting personnel to the court may store data in data files, change and use them to the extent necessary for the purposes of the criminal proceedings.

(2) Data may also be used for other criminal proceedings, international mutual assistance in criminal matters, and clemency cases.

(3) If in a police data file, storage of data is combined with data whose storage is subject to police statutes, the law effective for the agency storing the data shall apply to the processing and utilization of personal data and to the rights of the persons affected.

SECTION 484. PROCESSING OF DATA FOR THE PURPOSES OF FUTURE CRIMINAL PROCEEDINGS

(1) Prosecuting authorities may store in data files, change and use the following data for the purposes of future criminal proceedings:

1. Personal data of the accused and, if necessary, other characteristics suitable for an identification,

2. The competent agency and the file number,

3. The detailed specification of the criminal acts, in particular the time of the offense, the place of the offense and the amount of any damage,

4. The charges by stating the legal provisions,

5. Initiation of the proceedings as well as discontinuance of proceedings by the office of the public prosecutor and the court with statement of the legal provisions.

(2) Other personal data of accused persons and persons participating in the offense may only be stored in data files, changed and used if this is necessary because, due to the type of the offense or the way it was committed, the personality of the perpetrator or of the person aiding in the offenses or other findings, it must be assumed that further criminal proceedings will have to be conducted against the accused. If the accused is dismissed by final decision, opening of main proceedings against him is finally denied or the proceedings have been permanently discontinued, storage, changing or use of data pursuant to sentence 1 is not permitted if the reasons for the decision show that the affected person did not commit the offense or did not violate any laws by committing it.

(3) The Federal Ministry of Justice and the State governments shall determine, by statutory order, for their respective area of responsibility further details regarding the type of data which may be stored pursuant to paragraph (2) for future criminal proceedings. This does not apply for data which may only be kept temporarily and must be deleted within three months of their compilation. The State governments may transfer the authority to the competent state ministries by statutory order.

(4) The use of personal data which are or will be stored in police data files for purposes of future criminal proceedings is subject to the police statutes except for their use for purposes of criminal proceedings.

SECTION 485. PROCESSING OF DATA FOR THE ADMINISTRATION OF RECORDS

Courts, prosecuting authorities, including authorities responsible for the execution of punishment, probation officers, supervisory agencies in case of supervision of conduct, and personnel assisting the court may store, change and use personal data in data files if this is necessary for the administration of the records. Use for purposes designated in section 484 is permissible if storage would also be permissible pursuant to this provision. Section 483, paragraph (3), shall apply accordingly.

SECTION 486. SHARED DATA FILES

(1) Personal data may be stored in shared data files for the agencies designated in sections 483 through 485.

(2) In case of national shared data files section 8 of the Federal Data Protection Act shall apply accordingly to damage claims of an affected person.

SECTION 487. TRANSMITTAL OF STORED DATA

(1) The data stored pursuant to sections 483 to 485 may be transmitted to the competent agencies if this is necessary for the purposes stated in these provisions, for purposes of clemency cases, or international mutual assistance in criminal matters. Section 477, paragraph (2), and section 485, sentence 3, apply accordingly.

(2) Also, information from a data file can be furnished if pursuant to the provisions of this law inspection of files or furnishing of information from the files could be granted. Corresponding provisions apply for communications pursuant to sections 479, 480, and 481, paragraph (1), sentence 2.

(3) The transmitting agency is responsible for the permissibility of the transmittal. If transmittal is effected upon request of the recipient, the latter shall be responsible. In such a case, the transmitting agency only checks if the request for transmittal lies within the scope of duties of the recipient, unless a special reason to further check the permissibility of the transmittal exists.

(4) Data stored pursuant to sections 483 through 485 may be transmitted for scientific purposes. Section 476 applies accordingly.

(5) Special legal provisions ordering or permitting the transmittal of data from criminal proceedings remain unaffected.

(6) Data may only be used for the purpose for which they were transmitted. Use for other purposes is permitted, if transmittal of data would also have been permitted for such purposes.

SECTION 488. AUTOMATED TRANSMITTAL OF DATA

(1) Establishment of a procedure allowing transmittal of data by automated retrieval or of an automated inquiry and information procedure is permitted for transmittals pursuant to section 487, paragraph (1), between the agencies designated in section 483, paragraph (1), if this method of data transmittal is appropriate because of the high number of transmittals or their urgency, with due consideration of the interests of the affected persons which are worthy of protection. The agencies involved shall ensure that state of the art measures for data protection and data security are taken, ensuring in particular the confidentiality and integrity of the data; in case generally accessible networks are used, state of the art encryption measures shall applied.

(2) Section 10, paragraph (2), of the Federal Data Protection Act applies accordingly to the determination to establish a procedure for automated data retrieval. It requires the approval of the respective Federal and *Land* ministries responsible for the agency storing the data and the agency retrieving the data. The agency storing the data shall sent the determinations to the agency in charge of monitoring compliance with the provisions on data protection in public agencies.

(3) The recipient shall be responsible for the permissibility of the individual retrieval. The agency storing the data only checks permissibility of retrievals if there is a reason for it. The agency storing the data must ensure that the transmittal of personal data can be determined and checked at least by an appropriate method of random checks. At each tenth retrieval it must at least record the time, the data retrieved, the identification of the retrieving agency, and the file number of the recipient. The recorded data may only be used to check permissibility of the retrievals and must be deleted after twelve months.

SECTION 489. CORRECTION, DELETION, AND BLOCKING OF STORED DATA

(1) Personal data in data files shall be corrected when they are incorrect.

(2) They shall be deleted when their storage is not permitted or working of an individual case shows that the knowledge of the data is no longer necessary for the purposes stated in sections 483, 484, and 485. It is further required to delete:

1. Data stored pursuant to section 483 when the proceedings are completed, if their storage is not permitted pursuant to sections 484 and 485,

2. Data stored pursuant to section 484 if a check according to paragraph (4) shows that knowledge of the data for the purpose designated in section 484 is no longer necessary and their storage pursuant to section 485 is not permitted,

3. Data stored pursuant to section 485 as soon as their storage is no longer necessary for the administration of cases.

(3) Completion of proceedings is completion by the office of the public prosecutor, or, if public charges were preferred, by the court. If a punishment or other sanctions were imposed, the completion of the execution or the decree is decisive. If the proceedings are discontinued and if discontinuance does not hinder resumption of prosecution, the proceedings shall be considered terminated when the period of limitation has run.

(4) The agency storing the data shall check on the basis of fixed periods whether data stored pursuant to section 484 must be deleted. The period is—

1. Ten years in case of accused persons who were 18 years old at the time of the offense,

2. Five years in case of juveniles,

3. Three years in the cases of final dismissal, uncontestable denial to open main proceedings and of permanent discontinuance of proceedings,

4. Two years in the cases of persons whose data were stored pursuant to section 484, paragraph (1), and who had not reached the age of criminal responsibility at the time of the offense.

(5) The agency storing the data may determine shorter review periods in the order to establish the database.

(6) If a person's data are stored in the data file for other proceedings, the data shall not be deleted until the prerequisites to delete exist for all entries. Paragraph (2), sentence 1, remains unaffected.

(7) Instead of a deletion data shall be blocked if—

1. There is reason to assume that interests of an affected person which are worthy of protection might be impaired.

2. The data are needed for ongoing research projects, or

3. Deletion is not possible or would require extraordinary efforts due to the special type of storage.

Personal data shall also be barred if they were only stored for securing of data or monitoring of data protection. Barred data may only be used for the purpose which was the reason for not deleting them. They may also be used if this is indispensable to remedy an existing lack of evidence.

(8) If the agency storing the data discovers that incorrect personal data, personal data which were to be deleted or barred were transmitted, the recipient shall be notified of the correction, deletion or bar, if this is necessary to safeguard interests of the affected person which are worthy of protection.

(9) Instead of deleting the data, the data carriers shall be turned in to a state archive if special archiving provisions so require.

SECTION 490. DIRECTION CONCERNING THE ESTABLISHMENT OF AUTOMATED DATA FILES

The agency storing the data shall determine in a direction concerning the establishment of data files for each automated file the—

1. Name of the file,

2. Legal basis and the purpose of the file,

3. Group of persons whose data are processed in the file,

4. Type of data to be processed,

5. Supply or entry of the data to be processed,

6. Prerequisites under which the data processed in the file are transmitted to certain recipients and which method of transmittal is to be used,

7. Control periods and duration of storage.

This does not apply to data which are only kept temporarily and are deleted within 3 months after their compilation.

SECTION 491. INFORMATION OF THE PERSON AFFECTED

(1) The affected person shall be informed according to section 19 of the Federal Data Protection Act, unless providing of information or its denial is specifically regulated by this law. Information on proceedings shall not be provided if, at the time of the request for information, less than 6 months have passed since the initiation of the proceedings by the office of the public prosecutor. The office of the public prosecutor may extend the period stated in sentence 2 up to 24 months, if due to the difficult or comprehensive investigation in a particular case, a requirement of confidentiality continues to exist. The chief public prosecutor shall decide on a further extension of the period; in proceedings handled by the Office of the Federal Attorney General, the Federal Attorney General shall decide. Decisions pursuant to sentences 3 and 4 and their reasons shall be documented. The requester shall be made aware of the requirements in sentences 2 through 5 regardless whether proceedings are conducted against him.

(2) If, in case of a joint data file, the affected person is not able to determine the agency which stored the data, he can contact any involved agency entitled to store data. That agency will decide on furnishing the information in agreement with the agency which entered the data.

CHAPTER THREE
NATIONWIDE RECORD OF PROCEEDINGS ESTABLISHED BY THE PUBLIC PROSECUTOR'S OFFICE

SECTION 492. SCOPE OF RECORD; USAGE OF DATA

(1) The Federal Justice Office (registry authority) maintains a central register of preliminary criminal investigation proceedings by the public prosecutor's office.

(2) The following shall be entered into the register: The—

1. Personal data of the accused and, to the extent necessary, other characteristics helpful for identification.

2. Responsible agency and file number.

3. Detailed specification of the criminal acts, in particular the time of the offenses, the place of the offenses, and the amount of any damage.

4. Charges by stating the legal provisions.

5. Establishment of proceedings as well as completion of proceedings at the office of the public prosecutor and at the court in addition to statement of legal provisions.

The data may only be stored and modified for criminal proceedings.

(3) The public prosecutor's offices provide the data to be entered to the registration agency for the purpose stated in paragraph (2), sentence 2. Information from the register of criminal proceedings may only be provided to prosecuting authorities for the purpose of criminal proceedings. Section 5, paragraph (5), sentence 1, number 2, of the Weapons Law and section 8a, paragraph (5), sentence 1, number 2, of the Explosives Act (*Sprengstoffgesetz*) remain unaffected; information on the entry will be provided in agreement with the public prosecutor's office which disclosed the personal data for entry into the register of proceedings, to the extent that the purpose of the investigation is not jeopardized thereby.

(4) Upon request, the data listed in paragraph (2), numbers 1 and 2, may, according to section 18, paragraph (3), of the Law on the Protection of the Federal Constitution also in conjunction with section 10, paragraph (2), of the Law on the Military Counter-Intelligence Service, and section 8 paragraph (3), of the Law on the Federal Intelligence Service, also be transmitted to the authorities responsible for the protection of the Federal constitution on Federal and State level, the Military Counter-Intelligence Service, and the Federal Intelligence Service. Section 18, paragraph (5), sentence 2, of the Law on Protection of the Federal Constitution applies accordingly.

(4a) If the registration authority is unable to clearly attribute information or a request to a set of data, it shall transfer to the requesting authority sets of data on persons with similar personal data in order to establish identity. After identification, the requesting authority shall immediately delete all data which do not refer to the person concerned. If identification is not possible, all transmitted data shall be deleted. In the statutory order pursuant to section 494, paragraph (4), the number of data sets which may be transferred upon one request shall be limited to an extent necessary for identification.

(5) The recipient of the data is responsible for the permissibility of their transmittal. The registration agency only checks the permissibility of the transmittal if there is specific reason for it.

(6) Notwithstanding paragraph (3), sentence 3, and paragraph (4), the data may only be used in criminal proceedings.

SECTION 493. AUTOMATED RETRIEVAL

(1) Transfer of data shall be performed by means of automated retrieval procedure or by automated request and information transmission procedure, in case of a breakdown of the remote data transmission, or in case of exceptional urgency over the telephone or by telefax. The agencies involved shall ensure that state of the art measures for data protection and data security are taken ensuring in particular confidentiality and integrity of the data; in case of use of generally accessible networks; state of the art encryption procedures shall be applied.

(2) Section 10, paragraph (2), of the Federal Privacy Act applies to the determinations regarding the establishment of an automated data retrieval procedure. The registration agency forwards the determinations to the federal commissioner for data protection.

(3) The recipient is responsible for the permissibility of the individual automated retrieval. The registration agency checks permissibility of the retrievals only if there is specific reason for it. At each tenth retrieval of data it shall at least record the time, the data retrieved, the identification of the retrieving agency and the file number of the recipient. The recorded data may only be used to check permissibility of retrievals and shall be deleted after 6 months.

(4) Paragraphs (2) and (3) apply accordingly to the automated request and information transmission procedure.

SECTION 494. CORRECTION OF DATA; DELETION; DENYING ACCESS; NOTIFICATION OF RECIPIENT; ORDER TO ESTABLISH SYSTEM

(1) Data shall be corrected if they are incorrect. The competent agency shall inform the registration agency immediately of the incorrectness; it shall be responsible for the correctness of the data and see to it that they are up to date.

(2) The data shall be deleted—

1. If their storage is not permissible, or

2. As soon as it can be seen from the federal central register that in the criminal proceedings from which data were transmitted a court decision or decree by the prosecuting authority has been issued, which must be reported pursuant to section 20 of the Law on the Federal Central Register for Criminal Offenses (*Bundeszentralregistergesetz*).

If the accused is finally acquitted, opening of main proceedings against him has been denied and the decision cannot be contested, or if the proceedings against him were permanently discontinued, the data shall be deleted two years after completion of the proceedings, unless new proceedings are reported for registration prior to commencement of the deadline for deletion. In such a case, the data remain stored until the prerequisites for deletion are fulfilled for all data. The office of the public prosecutor shall inform the registration agency immediately if the prerequisites for deletion are fulfilled or of the commencement of the deadline for deletion pursuant to sentence 2.

(3) Section 489, paragraphs (7) and (8), apply accordingly.

(4) With the consent of the Federal Council, the Federal Ministry of Justice (*Bundesministerium der Justiz*) shall determine the specific details by statutory order, in particular the—

1. Type of data to be processed,

2. Furnishing of the data to be processed,

3. Prerequisites, under which data, which have been processed in a file, are transmitted to which recipient and with which procedure,

4. Establishment of an automated retrieval system,

5. Technical and organizational measures necessary pursuant to section 9 of the Federal Data Protection Act.

SECTION 495. DECISION ON PROVIDING OF DATA

The person concerned shall be provided information from the register of proceedings pursuant to section 19 of the Federal Privacy Act; section 491, paragraph (1), sentences 2 to 6, shall apply accordingly. The registration authority shall decide on the transmittal of information upon coordination with the office of the public prosecutor, which submitted the personal data for entry into the register of proceedings. If information from the register of proceedings was provided to a public agency and the person concerned requests information on the data collected in such a manner, that agency shall decide on the request upon coordination with the office of the public prosecutor which submitted the personal data for entry into the register of proceedings.