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Compilation of Selected German Laws

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Summary. This pamphlet is a compilation of translations of selected German laws. Throughout this pamphlet, references to he (his, him) should be read as he and she (his and her, him and her).

Summary of Change. This revision updates appendixes A, B, C, D, E, F, G, H, I, J, K, L, M, and O.

Applicability. This pamphlet applies to U.S. commanders, law-enforcement agencies, and legal authorities in Germany.

Records Management. Records created as a result of processes prescribed by this pamphlet must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System website at *https://www.arims.army.mil*.

Suggested Improvements. The proponent of this pamphlet is the International Law and Operations Division, Office of the Judge Advocate, HQ USAREUR (DSN 370-6980). Users may send suggested improvements to this pamphlet by e-mail to the USAREUR JA (AEJA-ILO) at usarmy.wiesbaden.usareur.mbx.oja-webmaster@mail.mil.

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SECTION I
GENERAL

1. INTRODUCTION
This pamphlet is a compilation of translations of selected German laws. The publication date of this pamphlet will be changed when parts are added or revised. The appendixes will show the dates the laws are published or amended.

2. SCOPE

a. The German Criminal Code and German Youth Court Law contain the main body of German substantive criminal law. Appendix A is a translation of the German Criminal Code. The German judicial system also provides criminal sanctions for violations of laws that are not in the field of general criminal law.

b. Criminal sanctions normally are in the concluding portions of ordinary German law and are referred to as supplementary criminal laws (*strafrechtliche Nebengesetze*). There are penal provisions in the laws governing hunting and fishing, narcotics, press, pure food, traffic, tobacco tax, venereal disease, and many other areas.

SECTION II
GERMAN LAWS

3. AUTHORITATIVENESS AND INTERPRETATION OF TEXT

The translations have been made to ensure clarity of English expression without distorting the original German text. The translated text is not official. The original German text will be consulted when the interpretation of a provision is in doubt. The German text is decisive in any question concerning the law.

4. TECHNICAL WORDS

a. Certain words and concepts in the original German texts could not be translated exactly because of the lack of precise English equivalents. Consistency in terminology has been attempted throughout. Below is a selection of original German words with their English equivalents:

(1) *Antrag*. Request.

(2) *Berufung*. Appeal (on the facts; *trial de novo*).

(3) *Dauerarrest*. Long-term detention.

(4) *Einschließung*. Incarceration.

(5) *Erziehungsbeistandsschaft*. Disciplinary guidance.

(6) *Erziehungshilfe*. Corrective guidance.

(7) *Erziehungsmaßregeln*. Corrective measures.

(8) *Freizeitarrest*. Detention of a juvenile during his weekly leisure time.

(9) *Freiheitsstrafe*. Imprisonment.

(10) *Haft*. Detention.

(11) *Heranwachsender*. Adolescent.

(12) *Kurzarrest*. Short-term detention.

(13) *Jugendarrest*. Youth detention.

(14) *Jugendlicher*. Juvenile.

(15) *Jugendstrafe*. Juvenile confinement (punishment).

(16) *Nebenstrafe*. Additional punishment.

(17) *Revision*. Appeal (on the law).

(18) *Verbrechen*. Major crime.

(19) *Vergehen*. Minor crime.

(20) *Vorsätzlich*. Intentional or intentionally.

(21) *Zuchtmittel*. Disciplinary means.

b. German words difficult to translate have been inserted in parentheses following the English translation. Titles of individual sections and explanatory comments that are not part of the original texts also have been put in parentheses.

SECTION III
THE GERMAN COURT SYSTEM

5. DISCUSSION
As the German judicial system is substantially different from the American system, the English names of German courts used throughout the translations are approximations. Users should not assume a direct correspondence of function, power, or composition of the two systems.

6. THE COURTS AND JURISDICTIONS
The list below, in ascending order, includes an explanation of the composition of German courts and their jurisdiction in criminal cases.

a. *Amtsgericht* (District Court).

(1) This court is the lowest court having criminal jurisdiction over less serious cases. When sitting as a single judge (*Einzelrichter*), the judge may not assess a punishment exceeding imprisonment for 2 years (Law on the Constitution of Courts (*Gerichtsverfassungsgesetz* (*GVG*)), sec 25(2)). In this capacity, the judge of the district court (*Richter beim Amtsgericht*) is called a penal judge (*Strafrichter*).

(2) When the sentence expected to be imposed exceeds the authority of the *Strafrichter* sitting alone, the court may be constituted as a Lay Assessors Court (*Schöffengericht*). This court consists of a professional judge and two lay judges (*Schöffen*). The professional judge may assess a sentence not exceeding imprisonment for 3 years.

(3) When sitting as a youth court (*Jugendgericht*), the *Amtsgericht* may be constituted as a single-judge (*Jugendrichter*) court or as a Youth Lay Assessors Court (*Jugendschöffengericht*). The *Jugendrichter* sitting alone may not assess a penalty exceeding 1 year juvenile punishment (confinement) (*Jugendstrafe*) (German Youth Court Law (*Jugendgerichtsgesetz* (*JGG*), sec 39(2)). The judge may not assess a *Jugendstrafe* for an indefinite period or order placement in a psychiatric hospital (*JGG*, sec 39(2)). When the court is constituted as a *Jugendschöffengericht*, the judge may not impose a sentence exceeding 3 years of imprisonment. This limitation does not apply to *Jugendstrafe*. In cases over which the *Jugendschöffengericht* has jurisdiction, the judge may not impose a *Jugendstrafe*

exceeding 5 years. If the offense is punishable under the general law with imprisonment exceeding 10 years, the judge may not impose a sentence exceeding 10 years (*JGG*, sec 18(1)).

b. *Landgericht* (State Court).

(1) This court sits as a penal chamber (*Strafkammer*) and exercises original jurisdiction on serious cases and appellate jurisdiction on *Amtsgericht* decisions. The *Landgericht* exercises original jurisdiction over—

(a) Major offenses (*Verbrechen*) that do not fall under the jurisdiction of the *Amtsgericht* or *Bundesgerichtshof* (Federal Supreme Court).

(b) Cases in which imprisonment exceeding 3 years is to be expected.

(c) Cases in which commitment to a psychiatric hospital or security detention is to be expected.

(2) Under its criminal jurisdiction, the *Landgericht* may be constituted as a *Kleine Strafkammer* (Minor Penal Chamber), a *Große Strafkammer* (Major Penal Chamber), or as a *Schwurgericht*. The composition and jurisdiction of each court are as follows:

(a) The *Kleine Strafkammer* sits with one professional judge and two lay judges. Constituted in this way, the court has appellate jurisdiction to hear an appeal (*Berufung*) from the judgment of a *Strafrichter* (*GVG*, secs 74(3) and 76(2), sent 1).

(b) The *Große Strafkammer* consists of three judges and two lay assessors. Constituted in this way, the court has original criminal jurisdiction over major crimes that do not fall within the jurisdiction of the *Amtsgericht* or *Bundesgerichtshof* and over crimes for which imprisonment exceeding 3 years is expected. The court also has appellate jurisdiction to hear an appeal (*Berufung*) on a *Schöffengericht* judgment (*GVG*, secs 74(1) and 76(2), sent 2).

(c) The *Schwurgericht* (criminal court sitting with three professional judges and two lay judges) has original criminal jurisdiction in the most serious cases, primarily major crimes resulting in death (*GVG*, secs 74(2) and 76(2), sent 2).

c. *Oberlandesgericht* (Superior State Court). This court is composed of one or more civil or criminal panels (*Zivil- oder Strafsenate*) (*GVG*, sec 116). Sitting as a *Strafsenat*, the court has original criminal jurisdiction over political offenses (for example, treason, endangering State security), over offenses of an international character (for example, offenses against foreign States, genocide), or over offenses within the jurisdiction of the *Landgericht,* in which the Federal Attorney General (*Generalbundesanwalt*), because of their special importance, assumes jurisdiction (*GVG*, sec 120). The *Strafsenat* also has appellate jurisdiction, including authority to hear an appeal on points of law (*Revision*) from an appellate judgment (*Berufungsurteil*) of a *Kleine* or *Große Strafkammer*. The *Strafsenat* is composed of five judges (*GVG*, sec 122).

d. *Bundesgerichtshof* (Federal Supreme Court). This court is composed of one or more civil or criminal panels (*Zivil- oder Strafsenate*). The number of panels is determined by the Federal Minister of Justice (*GVG*, sec 130). Each panel is composed of five judges (*GVG*, sec 139). Also constituted are a grand panel for civil matters (*Großer Senat für Zivilsachen*) and a grand panel for criminal matters (*Großer Senat für Strafsachen*). Each grand panel is composed of a presiding judge and eight members

(nine judges). Further constituted are the united grand panels (*Vereinigte Große Senate*), each of which is composed of a presiding judge and all members of the grand senates (*GVG*, sec 132). In criminal matters, the *Bundesgerichtshof* has jurisdiction over an appeal on points of law (*Revision*) from a judgment of the *Landgericht*, except in those cases when the *Oberlandesgericht* has jurisdiction. Essentially, the *Bundesgerichtshof* has jurisdiction over all appeals from judgments of first instance in cases tried in the *Landgericht* (*GVG*, sec 135). If it appears that one *Strafsenat* intends to decide a question of law differently from the precedent established by another *Strafsenat*, the case will be referred to a *Großer Senat für Strafsachen* for decision. Similarly, if it appears that one *Großer Senat* intends to decide a question of law differently from the precedent established by another *Großer Senat*, the case will be referred to a *Vereinigter Großer Senat* for decision (*GVG*, sec 132b).

e. *Bundesverfassungsgericht* (Federal Constitutional Court). This court has no criminal or civil jurisdiction as such. Rather, it decides, *inter alia*, if laws or decisions of courts or other agencies are compatible with the Basic Law (*Grundgesetz*), the German Constitution. The court would decide, therefore, if a criminal judgment violated a right of the accused guaranteed to the accused by the Basic Law (*BVerfGG-Gesetz über das Bundesverfassungsgericht* (Federal Constitutional Court Law), sec 13, Nr. 4a GG, art 93(1)).