

WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS

Germany

by

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GENERAL OVERVIEW

1. Political system.

The Federal Republic of Germany is a federal state created by the German Federal Constitution (Grundgesetz, Art. 20 (1)). Germany consists of 16 states (Länder) each with their own constitution. Articles 70 et seq. of the constitution allocate legislative powers between the federal government and the states. The general rule is that a power not expressly granted the federal government (expressed in Articles 70, 71 and 73 of the Grundgesetz) is retained by the state, making the states relatively autonomous.

The federal government and the states have concurrent jurisdiction (police powers, cultural issues, local government matters, the application of civil and criminal law). Federal laws establish a framework for the individual states. For instance, the federal law concerning the correctional system and its administration (Strafvollzugsgesetz) serves as a model to the states. The states that have not adopted their own correctional law use the federal law as their guideline. If any conflict arises between a federal law and that of a State (Article 31 of the constitution) the federal law prevails. Germany's Federal Constitutional Court, the highest court on constitutional matters, has held that the States have limited sovereign powers of their own that are not derived from the powers of the constitution.

Members of parliament and the chancellor are elected officials. The chancellor defines the

country's political strategies. While the Federal Republic of Germany also has a president who serves as head of the state, this role more nearly resembles that of a dignitary, with little political power. However, the president does maintain power to veto legislative bills. The constitution, also referred to as the Basic Law, divides the powers of the judiciary, legislative and executive branches.

There are numerous political parties and alliances in German politics. The two major parties include the CDU (Christian Democratic Union), and the SPD (Social Democratic Party). Others of lesser significance in terms of their representative strength in parliament are the FDP (Free Democratic Party) and the Greens (Alternative-List). Within the last few years right-wing political parties have also gained in strength.

While the Penal Code, Strafgesetzbuch, herein referred to as the StGB, and the Code of Criminal Procedure Strafprozeßordnung, herein referred to as the StPO, are federal codes, making their application consistent nationwide, the administration of the criminal justice system (police, courts and correctional institutions) are matters left to the individual states. 1 Special state laws govern the regulation of police matters as well as the prosecution of cases. 2 German law requires the prosecutor to play a neutral role. The prosecutor is obliged to consider evidence which will both incriminate and exonerate the accused. The appointment of judges also differs from state to state, keeping within the concept of state autonomy in regards to criminal and juvenile justice administration. (Karstedt, 1992).

2. Legal system.

Laws are created by the Bundestag or Lower House of the German parliament. The upper house (Bundesrat) is a representative body of the states based on their population. The upper house must approve the laws made by the lower house and has veto power in matters concerning the states (for instance, taxes). The legal system is guided by federal laws which apply nationwide. Those specifically applicable to the criminal justice system are the Penal Code (StGB) and the Code of Criminal Procedure (StPO). Other laws which concern the criminal justice system are the Betäubungsmittelgesetz or BtMG (drug statutes), the Betäubungsmittel-Verschreibungsverordnung (drug prescription regulation) (BtMVV), Straßenverkehrsgesetz (StVG) or traffic laws, and the Gesetz über Ordnungswidrigkeiten (OWiG) or

laws governing administrative or regulatory offenses. A further fundamental source of law is the Constitution or Grundgesetz, herein referred to as the GG.

The Federal Constitutional Court, the highest court in the land, can review and challenge the constitutionality of all statutes, including those that incorporate international treaties into German law (Heinz, 1992; 2).

The German constitution reflects a mixed dualist/monist approach. Federal constitutional law supersedes all other laws. International treaties may only be incorporated into domestic law by a statute adopted by the Federal Parliament (Article 59(2) of the Federal Constitution). They then become binding law in Germany which will supersede state laws and have the same force as all other federal laws except the constitution. European Community law is directly binding within the Federal Republic of Germany without the necessity of further incorporation acts. The European Community institutions' "Decisions" and "Regulations" are directly applicable (Heinz, 1992; 2-3).

3. History of criminal justice system.

The Federal Republic of Germany was founded on May 23, 1949 with the declaration of the Constitution. Germany remained divided into eastern and western sectors under allied control until it regained total sovereignty with unification on October 3, 1990.

The basis for Germany's modern day statutory law is the "Penal Code for the German Empire" codified in 1871. 3 Prior to the establishment of the German Empire in 1871, each German state had its own penal code. The 1871 penal code was influenced by the French Penal Code of 1810, the Bavarian Penal Code of 1813 as well as the Prussian Penal Code of 1851. Retribution was the dominant philosophy and heavy emphasis was placed upon prevention through punishment. Satisfaction with the penal code was short-lived and as early as 1882 F. v. Liszt in his "Marburg Programme" called for reform of criminal sanctions with an emphasis on prevention through special deterrence which emphasizes deterring the offender, not the offense. (Eser, 1989; 3).

While the Penal Code of 1871 remained relatively intact for over 100 years, it did undergo substantial modifications and reforms such as the registering of served sentences (1920), the creation of a special juvenile criminal law (1923), and the introduction of fines to suppress short-term prison sentences (1921-1924).

The Nazi era introduced sweeping and harsh

reforms with an emphasis upon general deterrence through extreme severity (the death penalty). These reforms left the basic penal code intact but introduced punishment on order of the Führer.

After the war and during the time that Germany remained divided into allied sectors, the new Federal Republic of Germany, created in 1949, began the task of overhauling the legal system. A serious attempt was made by the "Grand Criminal Law Commission" whose membership consisted of legal scholars, practitioners and politicians. They created a reform draft, "Draft of a Penal Code," in 1962 which failed to secure adoption by the Federal Assembly because of its weakness in formulating a criminal policy with regard to the sanctioning system. The major failure lay in its emphasis on punishment and retribution and its conservative view and rigidity on sexual mores.

This failed attempt to pass a penal code by the Federal Assembly led to the creation of a second reform group, the Special Committee on Criminal Law Reform, comprised of German and Swiss legal scholars and criminologists. This more successful attempt, presented as the "Alternative Draft of a Penal Code", recommended restricting the application of criminal law to socially harmful conduct and emphasized restructuring the sanction system to fit the philosophy of rehabilitation. Legal reforms introduced the notion that general deterrence could never be used as a philosophical basis for individual punishment. (Eser, 1989; 8).

Significant legislation introduced reform in partial steps, the main elements contained in five Criminal Law Reform Acts beginning in 1969. The Criminal Law Reform Acts emphasized restructuring the sanctions to make them more conducive to the rationale of rehabilitation. Certain acts were decriminalized and others replaced with a more practical working definition. A second major reform was the permanent restriction on short-term prison sentences and the introduction of the fine. Additionally, changes were introduced in the general law as well as in the alternative sanctions which could be applied. Due to societal change and emphasis upon certain acts, the German government also passed legislation concerning environmental and economic crimes, hostage-taking and aircraft hijacking (Eser, 1989; 23).

One last significant piece of legislation was the Act on the Treaty of 31 August 1990 between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity. The Unification Treaty Act of August 31, 1990 (Einigungsvertragsgesetz) replaced, in large part, the laws of the former German Democratic Republic with those of the Federal Republic of

Germany. Limited exceptions, however, allowed laws from the former East German penal code to exist in the former eastern states (Council of Europe, 1992:32; Jescheck, 1991; X).

CRIME

1. Classification of crimes.

* Legal classification. Criminal offenses can be categorized as Verbrechen, crimes or felonies, and Vergehen, misdemeanors. Less serious offenses have, through a lengthy reform process, either been decriminalized, upgraded into misdemeanors, or reclassified as Ordnungswidrigkeiten, regulatory or administrative offenses. A Verbrechen is an act which is punishable by a minimum prison sentence of 1 year. A Vergehen is punishable by a sentence of less than one year or a fine. Verbrechen comprise serious crimes involving severe injury or extensive property damage or loss (for instance, homicide, rape, robbery, arson) while Vergehen are offenses such as simple assault, theft, vandalism. Ordnungswidrigkeiten include disturbing the peace, illegal practice of prostitution, illegal assembly, possession of materials to make and distribute forged documents or money.

* Age of criminal responsibility. Persons who commit an offense while under the age of 14 are not held criminally liable for their offense. Criminal liability attaches at the age of 14. A juvenile is one who, at the time of the act, has reached the age of 14 but is not yet 18. A separate category exists for young adults between the ages of 18 and not yet 21 (JGG, 1(2)). A young adult, based upon mitigating circumstances, may be dealt with by a juvenile court.

* Drug offenses. Drug statutes and regulations specifically spell out the drugs which are prohibited or controlled by German law because of their potentially addictive effects or danger to the population. 4 By law, the Federal Minister for Youth, Family and Health may, without confirmation from the Bundestag, alter the current list of drugs. 5 Anyone not licensed, who cultivates, imports, buys or sells, prescribes, manufactures or possesses an illegal drug is subject to punishment under the BtMG (punishment may range from a fine or probation to incarceration usually for a period of not less than 2 but not more than 4 years) (BtMG, ss 29-36). Federal statistics on drug violations are collected for the following drugs: heroin, cocaine, LSD, amphetamines, cannabis and its

derivatives, and a last category for other drugs. (Polizeiliche Kriminalstatistik, Police Crime Statistics 1991; 184).

2. Crime statistics.

Official police statistics are "administrative" definitions which expand the legal definitions found in the Federal penal code. In the national Police Crime Statistics crimes are organized according to numbers or keys.

* Murder. In 1991 the Federal Bundeskriminalamt, the national organization which compiles crime statistics, reported a total of 962 murders and 1,746 acts of manslaughter. These numbers exclude attempts and include both old and new federal states. This represents 3.4 homicides per 100,000 population. 7

The definition of murder used by the police for classification purposes is the legal statutory definition (StGB, s 221) which involves the killing of a human being through dangerous means, in a malicious, treacherous or heinous way in order to conceal or further a crime, or for sexual satisfaction, the enjoyment of killing, or out of greed or avarice. The criminal statistics further sub-categorize murders into robbery-murders and sexual-murders. Manslaughter (StGB, s 212) is the killing of a human being under circumstances which do not meet the standards of murder. (Polizeiliche Kriminalstatistik or PKS 1991, 105: Table 01, and 107: second table; PKS 1991, 1992; 105).

* Theft. In 1991 there were 1,863,753 cases of theft under aggravating circumstances reported throughout Germany for a rate of 2,337 per 100,000 population. Of these, 16.3% were attempts. (PKS 1991, 1992; 140: Table 01: 142: first table).

The category of theft under aggravating circumstances is based upon statutes 243 and 244 of the penal code (StGB) and includes taking advantage of the helplessness, injury, accident of another, or a situation of danger to commit a theft; the stealing of a firearm; the carrying of a firearm for the purpose of threat; and the commission of theft by a gang. 8 Other offenses which may be included are the breaking and entering of a locked building or apartment, the use of force against an object or building to commit the theft, the stealing of religious objects or those which have scientific or historical value. If the monetary value of the object in the aforementioned categories is minimal, the offense may be reclassified as a theft without aggravating circumstances.

* Rape. According to the PKS, of the 5,821 cases reported nationwide, 2,289 (39.3%) were attempts. 9 This reflects a rate of 7.3 rapes per 100,000 inhabitants (PKS 1991, 1992; 109: Table 01; PKS 1991, 1992: 112: first table).

Rape falls under a broader category in the police statistics of offenses against sexual self-determination. Rape is based upon the penal code definition (StGB, s 177) and involves the use of force or threat of immediate bodily harm or death, to cause a woman to have sexual intercourse outside of marriage with the accused or a third party.

* Drug offenses. The BKA registered 117,204 cases of drug violations for a rate of 147 per 100,000 population. The BKA bases their definition of drug-related offenses on violations of statutes 29 and 30 of the Narcotic Drug Law. These offenses involve the illegal dealing in, importation, cultivation, buying or selling, prescription, manufacture, advertisement for or possession of an illegal drug. (PKS 1991, 1992; 185: Table 01; PKS 1991, 1992; 187: 2nd table).

* Crime regions. While cities with a population of over 500,000 accounted for 18.3% of the crime compared to communities with a population under 20,000 (40.4%), the crime rates were higher in larger cities (13,560 per 100,000 population compared to 3,667 per 100,000 population in small communities) (PKS 1991, 1992; 27: first table).

The cities with populations over 100,000 with the highest rates of crime are Frankfurt (20,239 crimes per 100,000), Bremen (18,174), L \ddot{u} beck (16,896), Hamburg (16,644), Hannover (14,620) and Berlin (14,617) (PKS 1991, 1992; 49). 10

VICTIMS

1. Groups most victimized by crime.

Information on German crime victimization is collected by the police and various victimization studies. 11 Victimization studies are conducted on a limited, irregular, and often regional basis (Boers, 1991; 34).

Official police statistics provide information on victims according to sex and age (age groups are divided into children (Kinder, under 14), youths (Jugendliche, 14-18), young adults (Heranwachsende, 18-21) and adults (Erwachsene, 21-60, and 60 and over). The age group 21-60 categorically accounts for the highest percentage of victims. (PKS 1991, 1992; 53).

Males outnumber females as victims for the

crimes of murder, manslaughter, robbery, battery, and battery resulting in death. Female victims outnumbered males in the categories of sexual offenses. While the age group 21 to 60 accounted for the most victimizations for murder, manslaughter and robbery, the rates for youths and young adult victims increased dramatically in the crime categories of rape and unlawful sexual acts. Elderly victims (60 and older) accounted for a higher percentage (even compared to youths and young adults) for the categories of murder, manslaughter and robbery and aggravated battery resulting in death. While offender statistics are available for ethnic minorities, no such victimization statistics are available.

2. Victims' assistance agencies 12

a. Weisser-Ring (White Ring) is a national victims' assistance agency providing a victims toll-free hotline and 300 satellite offices nationwide. The organization provides advice, assistance and financial support to aid in the legal situation and social restoration of crime victims. It is supported through voluntary workers and financed through membership fees, contributions and money from fines (Weisser Ring, Presseinfo, Helmut Roster, Pressesprecher, Weisser Ring, Weberstraße 16, 6500 Mainz-Weisenau, Deutschland; information packet sent by the Public Relations Officer of the Weisser Ring).

b. Opferhilfe e. V., the Victims' Assistance Organization, a national organization, is concerned with assisting the crime victim. However, emphasis is placed on reaching an agreement between the offender and victim (restitution) and assisting in resocialization.

c. Victims of traffic accidents in which the offender has fled are assisted by the national Verkehrsofferhilfe e. V., the Traffic Victims' Assistance Organization, which is funded through sources from mandatory car insurance (Kerner, 1992; 36).

d. Individual jurisdictions have established houses for battered women, crisis centers for rape victims, womens' self-help groups, and Kinderschutzzentren (Centers for the Protection of Children) where children who are the victims of personal crimes can turn for assistance.

By order of German law, all people have health insurance. In cases of victimization, health insurance pays for medical costs. In addition, the insurance companies may also be made to pay for emotional damages (Schmerzensgeld).

Additionally, restitution provides another opportunity to compensate the victim. 13

3. Role of victim in prosecution and sentencing.

The victim's role is limited to the ability to act as an accessory to the prosecution in situations in which the prosecutor would not normally bring a case to court. In limited cases (libel, slander, trespass, simple assault and battery) the injured party may seek an indictment without having to rely on the prosecutor's office. In fact, if the victim fails to initiate action, no action will be taken by the prosecutor's office. The injured party takes over the role of the Public Prosecutor's Office (StPO, ss 395 et seq). The victim plays no role in the sentencing of the offender.

4. Victim's rights legislation.

Legislation which considers the role of the victim in the criminal justice system includes:

a. The Federal War Victim's Maintenance Act (Bundesversorgungsgesetz), designed to financially compensate victims of war for medical problems, loss of work, or loss of living quarters. Victims of violent acts are entitled to the same compensation under this law as are victims of war. It has largely been expanded by the Victim Compensation Act (Bundesministerium für Arbeit und Sozialordnung, 1992; 2).

b. The Victim Compensation Act (Opferentschädigungsgesetz), provides financial awards to victims of violent crimes who have suffered lasting physical and financial hardships. Monthly pensions are paid which provide for medical treatment and vocational rehabilitation (Villmow, 1991; 69).

c. The Victim Protection Law (Opferschutzgesetz) (BGBI. I S. 2496), passed by the government in 1986, requires judges to consider the attempt made by the offender in providing restitution to the victim when contemplating the severity of the sentence (Jescheck, 1991; XIV).

POLICE

1. Administration.

Germany has an extremely limited federal police force. Basically all police functions are the responsibility of the state police departments. Their jurisdictions are strictly

divided and autonomous, and almost all police activity takes place at the local levels, or in cases of rural settlements, by the state police. Administration of the police falls under the control of the State Ministry of the Interior. While the federal constitution provides for mutual assistance between the federal and regional police, the Federal Minister of the Interior and the chief executive of the Federal police, may not issue instructions to the state Ministers of the Interior.

The Federal Police consist of 1) the Railway Police; 2) the Federal Border Police and a special federal anti-terrorist group (GSG 9) 15; 3) the Police of the administrative departments of the Federal Parliament; 4) Customs officers and the Customs Investigative Branch (under the jurisdiction of the Federal Minister of Finance); and 5) the Federal Crime Investigation Office.

The main role of the Federal Crime Investigation Police is to act as a central clearinghouse for information and communications of all Federal police forces and to combat crime through such means as collection and analysis of police intelligence, compilation of statistics, research, identification and forensic science laboratory services. The FCI also conducts limited investigations in specific areas (for example, counterfeiting, drugs, arms and explosives -- if there are international aspects to the case, terrorism and political crimes). They may be ordered or requested to conduct investigations to aid local authorities (International Criminal Police Review, 1987; 10).

The Security Program adopted by the Ministers of the Interior of the states provides for a relatively uniform police organization throughout the states. The chief executive is the Minister of the Interior of the State. Each state has a Crime Investigating Office which serves the same function at the state level that the Federal Crime Investigating Office serves at the federal level.

Each state has the following police components: 1) uniformed police, including special emergency units such as those for crowd or riot control, as well as marine police units responsible for policing rivers, harbors and coastal areas; 2) Detective Branch or Criminal Police. Barring specific criminal activities mentioned above, criminal investigations are carried out at the local level by the detective branch.; and 3) a Police Academy. The Police Academy, River Police Office, Central Crime Investigation Office, Telecommunications Center, Payments Office, and Mobile Police fall within the state police administrative structure, but outside of the immediate chain of command.

The Police Directorate is at the lower level and consists of uniformed officers and the detective branch. This is directed by the Common Chief Officer who maintains a central command and control function. At the higher level is the District Police Department, which is responsible for several police directorates as well as for specialty functions such as special operational units, motorway police stations, and the forensic laboratory.

2. Resources.

* Expenditures. In 1992, expenditures for the federal and state police, including new construction and other purchases, totaled approximately 19 billion German marks. (Zimmermann, 1993; 1).

* Number of Police. As of October 15, 1992, there were 219,887 state police and 26,424 federal police, for a total of 246,311 police. Of that total, 152,884 were patrol officers, 28,616 were detectives, 30,079 were mobile police, 2,802 were located in police schools, and 5,506 police operated in other capacities. 15 16 (Zimmermann, 1993)

Gender information is limited. The percentage of female officers at the lower levels of the organization may reach as high as or even exceed 50%. This percentage declines in the higher levels of the police hierarchy. Since all police officers must have German citizenship and are therefore considered German, no further information is available on ethnic origin. (Zimmermann, 1993; 3).

3. Technology.

* Availability of police automobiles. As of October 15, 1992, the state police reported a total of 45,646 police vehicles, with an additional 5,937 vehicles in federal police use, for a total of 51,583 vehicles. This averages 21 vehicles per 100 officers at the state level, and 22 vehicles per 100 federal officers. 17 (Zimmermann, 1993)

* Electronic equipment. In addition to computer aided dispatch, radar and radio communications, the German police have available to them a national computerized information system, INPOL, which links all state and federal police in Germany. This system facilitates police in their identification of those sought by the police or missing persons and property. Further information is provided on incarceration data, criminal files,

information on specific crimes of interest to the police on a national level, documentary evidence on specific cases, police crime statistics, an automated fingerprint system, literature documentation, PIOS-Data (data collection on persons, organizations or objects which support and facilitate organized crime), and the INPOL-Land-Data (data on modus- operandi of persons or cases) (Zimmermann, 1993; 4-6).

* Weapons. In general, police officers carry on their persons a baton, a chemical spray (CN or CS), handcuffs, and a 9mm Luger pistol. Machine guns may be found in the car and on special patrol (for instance at airports) or at the station. Bullet- proof vests are carried in the patrol car. In special circumstances police will be outfitted with riot gear such as protective clothing, a helmet, a shield and possibly a battering ram. (Zimmermann, 1993).

4. Training and qualifications.

* Training. While training in each state is done both at academies and on-the-job, the content and length of the training varies from state to state. In general, the training takes 2 1/2 years with a 6-month internship and another 6-month course of study in criminology. In Berlin, for example, training for a police officer involves a 3-year period, with classes in psychology, law, political science, English, criminology, sports, martial arts, work ethics, and a short seminar on conflict management and stress reduction. Three examinations are administered throughout the training period. (der Polizeipräsident in Berlin, 1992; Zimmermann, 1993; 6).

* Selection and qualifications. The states differ in their selection criteria. A school completion of the middle level is generally required to become a police officer. A recruit enters the police department and trains to become either a patrol officer or a detective. To become a detective, some states require the applicant to have graduated from a 'gymnasium' or college preparatory high school before attending the academy. Some states also require an examination to transfer from the police officer position to detective (Zimmermann, 1993; 7). The education and training for police officers and detectives run parallel. The main difference is that detectives receive more training in criminology and criminalistics while the patrol officers receive more training in traffic administration and traffic law (Zimmermann, 1993; 7). To become a police patrol officer in Berlin, the applicant

must be German and be between the ages of 16 and 24, although older recruits may be taken if certain requirements are met. In addition to height and health requirements, the applicant must also pass a written, a verbal, and a sports test, must be able to swim, and cannot have a criminal conviction. To be promoted to the upper ranks of inspector or some other rank requires 2 years of additional schooling. The first year is completed at the respective state training academy and all applicants spend the last year at a special national academy, the Police Leadership Academy (Polizei F hrungsakademie) (der Polizeiپر،sident in Berlin, 1992; Gedaschke, 1993; Zimmermann, 1993; 6).

5. Discretion.

* Use of deadly force. The use of force is dictated by police laws which share some similarities between states, the general principle being that minimal force shall be used in all circumstances. Police laws ("Polizeigesetze") dictate specific circumstances under which escalating force can be employed by police (to include warning shots, shots fired into crowds, the use of machine guns and hand grenades) (Polizeiaufgabengesetz des Landes Bayern, 1990, C01; 33-35; Polizeigesetz des Landes Nordrhein-Westfalen, 1990, H02; 37- 38).

Bavaria is the only state in which the police law specifically provides for police use of deadly force. For example, in hostage situations, police can aim to kill the hostage-taker. This is known as the "final saving shot" or finalen Rettungsschu . In other states and in other cases in which deadly force is used, an internal police investigation will occur to determine if the officer was acting in self defense or defense of others. (Erich, 1993 and Gadeschke, 1993)

* Stop/apprehend a suspect. Police may stop or apprehend a suspect upon suspicion of violation of a criminal or administrative statute. (Gedaschke, 1993).

* The Decision to arrest. The police are required by procedural criminal law (StPO, s 163) to investigate any criminal offense or administrative procedural violation. The results of the investigation are to be turned over to the prosecutor's office without delay. If it is necessary to expedite the judicial examination of a case, the prosecutor's office may be bypassed and the case can be sent directly to the court. The "Principle of Legality" governs police responsibilities and by law police have no

discretionary powers. This is especially true for violations of criminal law; a certain degree of latitude is available when regulatory offenses are involved, which are governed by the "Principle of Opportunity". All law violators must be turned over to the Prosecutor's office. Violation of statute 163 could make a police officer liable to criminal prosecution for dereliction of duty (Erich, 1993). In practice, however, police do exercise discretion. As police are required by law to officially intervene, there are no departmental guidelines directing discretion. Discretion is an individual choice exercised by the officer. Police intervention will vary depending on the following circumstances: whether the individual is under suspicion for an offense; whether the offense is of a petty nature; whether the offense is widely socially acceptable; whether the workload of the police is disproportionate to the disposition likely handed down to the offender; the degree of social closeness; and whether the intervention will likely result in a successful prosecution. 18 Information concerning the number of arrests made without a warrant is not available. (Bruckmeier, et al., 1984; Krause, 1993).

* Searches and seizures. Article 13 of the Constitution permits police to conduct searches and seizures of persons and private property only with judicial endorsement. In cases of imminent danger, permission may be given by the public prosecutor's office and/or its auxiliary officials without judicial approval. Within 3 days after a search based upon a decision by the prosecutor or police, judicial confirmation must be obtained to validate the search. Further entrance into a residence and restriction of its inhabitants are permitted only in situations concerning the protection of a youth, control of epidemics, prohibiting life-threatening situations to an individual, or preventing an immediate danger to the public safety and order. (Friedrich, 1987; 72).

* Confessions. Police interrogations of a suspect are governed by procedural law (StPO s 136, 136a). At the initial interrogation, the accused must be told of the charges against him and of his right to consult with an attorney. Statements made during the interrogation will be admitted into court providing they have been obtained without the following disqualifiers: the use of force, trickery or deceit, threats, drugs, hypnosis or exhaustion. (Friedrich, 1987; 57).

* Complaints against police behavior. Complaints

against police officers are handled internally by a police review commission. Civilians are not privy to reviews. If the complaints involve a criminal offense, the information is turned over to the public prosecutor's office to determine if the officer can be charged with a criminal offense. Any killing by a police officer, even in the line of duty, will automatically be turned over to the homicide division for further investigation. (Erich, 1993).

PROSECUTORIAL AND JUDICIAL PROCESS

1. Rights of the accused.

* Rights of the accused at trial. Prior to and during the trial, the accused has the following rights, which are, in part, laid forth by the Code of Criminal Procedure: 1)The suspect has the right to be heard and can request that evidence be taken before a writ of indictment is issued (StPO, s 163a(1)); 2)If the suspect is interrogated by police, the suspect must be told of the charges against him/her (StPO, s 163a(4)); and 3)Once the Public Prosecutor's Office has completed its inquiry, the writ of indictment will be communicated to the accused before the court decides to open the main proceedings. Counsel for the accused has an absolute right to inspect all evidence against the accused (StPO, s 201). In addition, the defendant may plea guilty to a lesser offense. 19 A guilty plea, however, does not automatically end the trial and more often than not the court will review the evidence presented by the prosecutor to determine if it supports the guilty plea. A guilty plea can be changed at any time, whereby the court would weigh the evidence presented to it to determine if a change in plea can be supported. At the district court level, where the defendant can receive up to a maximum sentence of 3 years of incarceration, the defendant can be tried either by a single judge or by a judicial panel consisting of one professional judge and 2 lay judges. There is no jury system in German courts. (GVG 24(1), GVG 25, and GVG 28 et seq.)(Heinz, 1992; 40, 41.)

* Assistance to the accused. The accused must be provided with legal representation under the following circumstances (StPO, s 140): 1)where the defendant is facing a trial in the regional court or higher regional court; 2)where the defendant is charged with a serious crime; 3)where the defendant may be prohibited from practicing a profession; or 4)where the defendant has been incarcerated for at least 3 months and is not expected to be released until 2 weeks prior to the

trial.

The defendant may choose up to three attorneys (StPO, s 137). Since legal representation under these circumstances is compulsory, it is provided by the state if the defendant cannot afford an attorney. Attorneys are obliged to provide legal services for the accused and are paid a fixed salary by the state for their services.

2. Procedures.

* Preparatory procedures for bringing a suspect to trial. The investigatory procedures for bringing an accused to trial are usually initiated by either the police or the Public Prosecutor's Office or both. When sufficient evidence exists to indicate a criminal offense has occurred, the prosecutor will initiate an inquiry. If the inquiry suggests an indictment should be issued, the prosecutor's office will issue the indictment (StPO, s 170(1)). The power to indict is vested in the Public Prosecutor's Office. If the prosecutor refuses to indict, an injured party can turn to the courts to appeal the decision (Heinz, 1992; 39).

The indictment will then be reviewed by the relevant court. If sufficient grounds to proceed exist, the court moves the case on to the main proceedings. If insufficient evidence exists, the court issues an order refusing to open the main proceedings (StPO, s 204(1)).

* Official who conducts prosecution. The Public Prosecutor's office is legally obligated to investigate any criminal offense, providing sufficient evidence exists to support the allegation that a crime has occurred (that is a police investigation, citizen's complaint, or press report). This is the "Principle of Legality" (StPO, s 152(2)). (Friedrich, 1987; 57).

Although in most cases offenses are prosecuted by the Public Prosecutor's Office in the court of appropriate jurisdiction, there are limited exceptions to this rule. For instance, tax authorities may apply directly to the court to impose fines, bypassing the prosecutor's office, in criminal tax offenses (Heinz, 1992; 39).

In some cases, such as libel, slander, trespass, and simple assault and battery, the injured party may seek an indictment without having to rely on the prosecutor's office. The injured party takes the role of the Public Prosecutor's Office. If in such cases the prosecutor's office files an indictment, the injured party may join the public proceedings as an accessory to the prosecution. This role grants

the injured party specific rights in reviewing defense material, calling witnesses, rejecting a judge and the right to be heard in court. (StPO, s 395 to 402).

* Alternatives to going to trial. There are various options to trial which exist for certain cases of minor offenses, such as when the prosecutor asks for a punishment order (StPO, s 407) to be granted by the court. This out-of-court settlement occurs when the judge allows the defendant to make payments or forfeit a driver's license rather than face trial. The accused then has the option of refusing the order and requesting a hearing at which time the main hearing will resume.

The prosecutor can also exercise discretion and drop the charges against the accused under the following conditions: a) the suspect's role is limited and prosecution serves no public function or interest; b) the defendant is being tried for another more serious crime; or c) in the case of a minor offense, the prosecutor moves for a conditional waiver and the judge and the accused must agree to the conditions and orders which are sufficient to accommodate the public interest in a prosecution (StPO, s 153a). 20

* What proportion of prosecuted cases go to trial? The limited capacity of police and the justice system demand a filtering process whereby not all cases will result in arrest, processing, formal trial or penal sanctioning. While specific figures concerning the number of prosecuted cases which actually go to trial are unavailable, the variables which influence a prosecutor's decision are the nature of the offense, relationship between victim and offender, the presence of a confession, the degree of injury to the victim and the criminal record of the accused. (Kaiser, 1989; 184).

* Pre-trial incarceration conditions. A suspect may be detained by either the police or the prosecutor's office but only until the end of the day following arrest (GG, article 104 (2)) and must then be brought before a judge (StPO, s 128, 115). Only a judge has the authority to determine whether a detention is warranted. Further detention may be judicially mandated indefinitely, in 4 week increments, until a suspect is either charged or released (Cannings, 1990; 229). A suspect who is being held during the course of an investigative inquiry may at any time request a judicial review of the initial decision on the continuance of the detention. A special hearing before the Higher Regional Court

(Oberlandesgericht) is held if the detention has lasted more than 6 months and the decision to detain must be reviewed every three months (StPO, s 122). The Principle of Commensurability governs decisions to incarcerate individuals prior to trial. Individuals who commit offenses for which a sentence of probation or a fine are anticipated will generally not be held in pretrial detention. Violators facing a maximum sentence of 6 months incarceration or a fine consisting of 180 day-fines may be detained under the following prerequisites (Friedrich, 1987; 61-62): 1)there is great likelihood that the accused under suspicion has committed the criminal offense; 2. the detainee is a flight risk, for instance, he has failed to show for a previous hearing; 3)the individual has no permanent place of residence; 4)there is a great likelihood that the suspect will commit another crime if detention is not ordered; 5)there is a great risk that evidence will be destroyed ("Verdunklungsgefahr"); and/or 6)the crime involved a life-threatening offense.

* Bail procedure. There is no absolute right to bail. Although an application for bail may be made at any time, the court can exercise unlimited discretion in fixing the amount of bail (StPO, s 116a). National statistics are not available on the proportion of pretrial offenders incarcerated (Tolzmann, 1993).

JUDICIAL SYSTEM

1. Administration.

Courts in Germany deal with both civil and criminal matters. There are four levels of courts that deal with criminal matters: 1)local courts (Amtsgerichte). These court are competent in all criminal matters where a punishment of not more than 3 years imprisonment can be imposed; 2)regional courts (Landgerichte). Both Amtsgerichte and Landgerichte are courts of first instance. The regional courts, furthermore, may serve as a court of general appeal (Berufung), along with the higher regional courts; 3)higher regional courts (Oberlandesgerichte) or courts of appeal for both the Amtsgericht and the Landgericht; they may also hear cases at first instance ; 4)the Federal High Court (Bundesgerichtshof). The Federal High Court hears appeals on questions of law; it is divided into various panels each occupied by 5 professional judges; 5)the Federal Constitutional Court is the highest court in the land and considers only cases involving violations of constitutional law. It serves both as a court of first instance and a

court of appeal. (Heinz, 1992; 39) A case may be heard for the first time in any of the first three courts, depending upon the type of offense. It may be taken to one or two more on appeal or revision on a legal point. 21

A separate court for juveniles has jurisdiction for those persons between 14 and 18 years of age. Young adults between the ages of 18 and 21 may be dealt with in Juvenile Court and may also be institutionalized in juvenile facilities up to the age of 25. Juvenile courts use the same penal codes but employ different sanctions and procedures than those used for adults. Jugendgerichtsgesetz or JGG is the Juvenile Court Act which determines the court's handling of juveniles and young adults.

2. Judges.

At the district court level, a single professional judge will preside. It is also possible for a professional judge and 2 lay judges to preside. The votes of lay judges carry the same weight as that of professional judges. They determine guilt or innocence as well as the sentence. While a unanimous decision is not required, a two-thirds majority of judges, both lay and professional, is necessary for a decision against the accused. Lay judges are chosen by the lay judge election committee and serve for a period of 4 years. Lots are drawn to determine the days on which lay judges will preside (Heinz, 1992; 41; Gerichtsverfassungsgesetz or GVG, s 40).

In the Regional Courts, a chamber consisting of 3 professional judges and 2 lay judges hands down decisions concerning serious crimes at first instance (GVG 76) or may rule on appeals against judgments of the judicial panel at the District Court (Schöffengericht). The Small Criminal Chamber (Kleine Strafkammer), consisting of one professional judge and two lay judges, makes the determination in cases involving hearing an appeal of a decision made by the professional judge. In their appellate function the Criminal Panels of the Higher Regional Courts sit as panels of three professional judges. If sitting as a court of first instance, the panel sits as a panel of 5 professional judges (GVG, s 122). The Criminal Panels of the Federal Supreme Court are composed of 5 professional judges (GVG, s 139).

* Number of judges. In 1991 there were 13,371 judges in state courts and 281 in federal service. 22 Of these, 2,599 (19.4%) female judges sat in state courts and 20 (7.1%) on federal court benches. All judges are civil servants and must therefore be German citizens. No information is

available on ethnic background. (Statistisches Jahrbuch 1992 für die Bundesrepublik Deutschland, Statistisches Bundesamt, Wiesbaden, 1992; Table 15.2; p. 391.)

* Appointment, training and qualifications. After studying law, completing an 18-month internship in various branches of the legal field such as public administration, courts, prosecutor's office, or a law firm, and passing the second state exam for juridical studies, a lawyer may apply for selection as a judge to the Electoral Committee for Judges made up of parliamentary representatives. 23 For appointment to the Federal Constitutional Court, judges must have at least 3 years experience in a high court and must submit their names for consideration. They may not hold political office in state or federal government. There are two panels of judges for this court, each consisting of eight judges. About half of the appointments to the panels are made by the Bundestag's 12-member electoral committee. Eight votes of this electoral committee are needed to make the appointment to the Court. The other half of the judges are elected by members of the Bundesrat. A two-thirds vote is necessary to win an appointment. Judges serve a 12-year term on the Federal Constitutional Court, unless they reach the mandatory retirement age of 68. Judges may not be reelected. (BVerfGG s 2, 4-7).

3. Special Courts.

The only other court which deals with criminal matters is the juvenile court, which maintains jurisdiction over individuals between the ages of 14 and 21. Immigration offenses are handled in regional courts that deal with criminal matters. Article 101 of the Federal Constitution prohibits the existence of special tribunals. Courts dealing with specific problems can only be created by law.

4. Procedure.

Cases may be filtered out of the system with an informal punishment order whereby the judge allows the defendant to make payments rather than face trial. All other cases, even those in which the defendant has made a confession and entered a guilty plea, will be moved to the main hearing for trial. Plea-bargaining, entering a guilty plea in exchange for a lighter sentence, exists on a very limited basis in Germany.

PENALTIES AND SENTENCING

1. Sentencing Process.

* Who determines the sentence? Sentences are handed down either by the single professional judge or the judicial panel. There must be at least a two-thirds majority vote to determine the sentence.

* Is there a special sentencing hearing?
Information not available.

* Which persons have input into the sentencing process? During the main hearing, information is collected by the presiding judge about the defendant's personal life, problems, and financial means. If deemed necessary by the court, a psychological or psychiatric evaluation may be conducted to aid the court in the determination of guilt or innocence as well as the sentence and placement of the accused. As an aid to the court, the Gerichtshilfe, also found in the Juvenile Court as the Jugendgerichtshilfe, will conduct an examination of the individual's personality, home environment, and school or work performance to make recommendations to the court on the appropriate adjudication and disposition. Criminal responsibility can be mitigated as a result of the mental state of the offender. This may include acts committed under the influence of alcohol or drugs. These factors are spelled out in the Criminal Code (StGB, s 21).

The court imposing the sentence must ensure that the sentence has been executed. This may be done in the offender's home town by the Amtsgericht or the court may appoint a probation officer to supervise the individual sentenced.

2. Types of penalties.

* Range of penalties. The criminal law mainly provides fines and incarceration. Fines are day fines based upon the offender's income and calculated on a day rate of between 2 and 10,000 German marks (StGB, s 40). Incarceration can range from 6 months to 15 years (StGB, s 38, 39). 24 A life prison sentence is imposed for murder and may be imposed for other crimes such as manslaughter or treason. Certain crimes (murder, manslaughter, rape and robbery) carry a mandatory sentence of incarceration. Property crimes (battery, theft) carry a sentence of incarceration or fine. Fines and probation are often levied in non-serious property and non-violent personal offenses. While fines and incarceration are viewed by the court as punishments, the court can also hand down other

orders (forfeiture to the state of proceeds of crime; loss of the privilege to drive (StGB, s 44)), which are considered supplementary punishments.

The introduction of legal reform has provided other types of penalties such as the suspended sentence; Weisungen (instructions); Auflagen (orders); declaration of guilt without imposition of sentence; community service and probation. 25, 26, 27, 28, 29, 30

In addition to the concept of penalties, the penal code also contains measures for the prevention of crime and the rehabilitation of offenders (StPO, s 61 to 72). Among these are commitment to a psychiatric hospital, commitment to a drug or alcohol clinic, supervision of conduct, suspension of the driver's license, or prohibition to practice a profession. Preventive detention of habitual offenders exists in the adult criminal justice system. This measure, also designed for the prevention of crime and the rehabilitation of an offender, allows a judge to further detain in an institution an individual who has already served his/her penal sentence.

* Death penalty. The death penalty was outlawed in Germany on May 23, 1949 by Article 102 of the Grundgesetz (Constitution) of the Federal Republic of Germany.

PRISON

1. Description.

* Number of prisons and type. Prisons are classified as either open or closed institutions. Open institutions are characterized by minimal restrictions and lack of high security walls, fences, or armed guards at the perimeter. Open institutions house non-violent offenders with relatively short sentences. Closed institutions are characterized by high security at the perimeter as well as within the institutions. However, within closed institutions it is not uncommon to find low-security tracts, particularly in womens' prisons, where young mothers are often allowed to keep their children with them in the prison until the child reaches a designated age (Kaiser, et al., 1992; 180). As of September 1992, there were 25 open institutions (11.2% of the total) and 199 closed institutions. (Tolzmann, 1993).

* Number of prison beds. On September 30, 1992, there were 224 correctional facilities with approximately 70,354 beds, of which 59,579 were occupied (84.7% occupancy) (Tolzmann, 1993).

* Average daily population/Number of prisoners. The average number of prisoners as of September 30, 1992 was 59,579.32. . On 31 March, 1991, the total number of prisoners was 37,281, of which 35,787 (96%) were male and 1,494 (4%) were female. There was a total number of 37,281 persons in adult correctional facilities, of which 1,390 (95.8%) were male and 1,390 (4.2%) were female. Juvenile correctional facilities had a total of 3,889 persons, of which 3,785 (97.3%) and 104 (2.7%) was female. Information is not available on ethnic origin. (Tolzmann, 1993). 32

* Number of annual admissions. In 1989, there were 519,084 admissions into correctional institutions. Of this total, 23,668 (4.56%) were women. These figures also include transfers between institutions. 33

* Actual or estimated proportions of inmates incarcerated. The estimated yearly percentages for prison inmates by crime type on March 31, 1989 are as follows: 34

Drug Crimes	9.1%
Violent Crimes	35.2%
Property Crimes	44.3%
Other Crimes	11.4%

2. Administration.

Prisons are administered at the state level. There are neither federal prisons nor private prisons in Germany.

* Prison guards. In 1992 there were 21,500 uniformed personnel in the 13 states that reported. 36 There were 31,882 positions at all levels in correctional institutions in the 13 reporting states (Gem.,hlich, 1993).

* Training and qualifications. The training of guards is fairly consistent in each of the federal states. All guards attend a school designed to train prison personnel called the Justizvollzugsschule. A school is located in each of the larger states. Smaller states combine resources and train their personnel at the same school. The training period, which lasts approximately two years, combines practical training in the institutions coupled with classes in psychology, sociology, and criminological theory. (Gem.,hlich, 1993).

* Expenditure on the prison system. Because the administration of the prison which includes the

training of guards, building, operation and maintenance, is done at the state level, statistics concerning these matters are not available from the Federal Ministry of Justice. (Tolzman, 1993).

* Number of prisoners awaiting trial. As of September 30, 1992, there were 18,82336 prisoners (31.6% of the total prison population) awaiting trial (Tolzmann, 1993).

3. Prison Conditions.

* Remissions. In cases where a determinate sentence has been imposed, conditional release for good behavior may be granted an inmate after having served two-thirds of his/her sentence (StPO, s 57). In special cases, an individual may be released after half the sentence is served. Where an individual has received a life sentence, the court may consider conditional release after the individual has served at least 15 years (StPO, s 57a). The decision is made by a criminal law judge of the Landgericht. 37 Supervisory assistance in the form of a parole officer is available to inmates released early from prison.

* Work/Education. Inmates are required to work when work is available. Educational opportunities in the prison are voluntary. Inmates are often given vocational training and allowed to complete their apprenticeship in prison workshops and are then given certificates, which allows them to practice their profession on the outside upon release from the institution. Heavy emphasis is placed upon education in juvenile institutions.

* Amenities/privileges. Several amenities are provided the German prisoner. They are listed below. 1)Work release: The individual under certain circumstances is allowed to work outside of the prison and return to the prison after work. Some institutions have established a separate wing or separate quarters outside of the prison for those on work release; 2)Temporary (day basis) release: Prisoners are allowed to leave the prison either with or without supervision by a staff member. Emergency leave may also be granted in life-threatening situations involving a family member; 3)Vacation. This involves release of an inmate for a period of anywhere between 6 to 21 days depending upon the circumstances and the particular inmate. 4)Correspondence: Inmates have the right to correspond with individuals outside of the institution and the institutions have the responsibility to facilitate this contact; 5)Visitation: Inmates have a right to visitors.

Visitors are not restricted to family members or specific individuals. Inmates do not have a right to sexual contact with spouses or partners in prison (Higher Regional court decision 1967). However, the court did not prohibit individual prisons from providing such an opportunity.

6) Education: School classes may be offered with the intention of providing a graduation certificate for elementary school. (Kaiser, et al., 1992: 187-188, 192).

The prison is responsible for providing for the physical and mental well-being of the inmate. Religious services and other religious events or meetings are a right. The prison must provide for medical and dental care of inmates. Additionally, many prisons offer drug and alcohol rehabilitation programs to inmates. (Kaiser, et al., 1992: 223.) The inmate also has the right to financial assistance from the prison upon his release. The money can be used to pay for transportation, clothes, and generally to get established in a residence. The released prisoner is not obliged to repay the prison. (Kaiser, et al., 1992; 233).

EXTRADITION AND TREATIES

* Extradition. The Act for International Legal Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen (IRG)) contains the rules governing extradition in Germany. The European Convention on Extradition (ETS No. 24), a multilateral agreement between member countries, provides for extradition between Germany and each of the following countries: Austria, Belgium, Cyprus, Denmark, Finland (by accession), France, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein (by accession), Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and with Israel (a non-member state by accession) (E.T.S. No. 24 - European Convention on Extradition; in Möller-Rappard and Bassiorni, 1991; 247).

* Exchange of prisoners. The exchange of prisoners is governed by the Convention on the Transfer of Sentenced Persons (ETS No. 112), entered into force in 1985. This multilateral agreement provides for the transfer of sentenced persons between Germany and the following countries: Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the non-member states of the Bahamas, Canada, and the United States (Möller-Rappard and Bassiorni, 1991).

* Specified conditions. In both of the aforementioned treaties, many countries have specified conditions under which they will or will not abide by the treaty. Germany adheres to the following disclaimers: A German national will not be extradited to a foreign country (prohibited by Article 16 subsection 2 of the Federal Constitution); those facing political oppression or the death penalty in their own country will not be extradited; a prisoner will not be extradited if the requesting country does not provide for early release on parole for a prisoner sentenced to life imprisonment. The decision to extradite lies with the Higher Regional Court (IRG, ss 12-14).

FOOTNOTES

1. The following abbreviations will be used throughout this paper:

StPO or Strafprozeßordnung -- Code of Criminal Procedure

StGB or Strafgesetzbuch -- German Penal Code

GG or Grundgesetz -- German Constitution or Basic Law

GVG or Gerichtsverfassungsgesetz -- Constitution of Courts Act or law governing court jurisdiction and organization

JGG or Jugendgerichtsgesetz -- Juvenile Court Act

2. The Federal Prosecutor is involved in the prosecution of limited types of offenses, such as treason.

3. The "Constitutio Criminalis Carolina" of 1532 was its predecessor.

4. The Betäubungsmittelgesetz or BtMG (drug statutes) (BtMG, s 1) and the Betäubungsmittel-Verschreibungsverordnung (drug prescription regulation) (BtMVV, ss 2,3,4).

5. Youth, Family and Health translated into: Bundesminister für Jugend, Familie und Gesundheit.

6. The most recent police statistics for Germany are reported for and divided along the lines of the old and new federal states. The old federal states consist of 8 states or Länders and the city-states of Hamburg, Bremen and Berlin. The new federal states total 5. Up until 1990 the Berlin

statistics were divided into statistics for the eastern and western sector. However, beginning with the 1991 statistics, Berlin statistics are reported for the entire city and are included in the statistics for the old federal states, making comparisons with previous years impossible.

7. Firearms were rarely used in robbery-murders; firearms were used in every 7th murder and every 12th manslaughter.

8. The Police Crime Statistics (PKS) categorize theft into "Theft without aggravating circumstances" and "Theft under aggravating circumstances".

9. In 1.8% of the cases the victim was threatened with a firearm and in 0.1% of the cases a firearm was discharged.

10. In comparing the population and crime distribution between the old federal states (former "West" Germany, including Berlin) and the new federal states, one can note that the old states had a crime rate of 7,311 per 100,000 population (with total inhabitants equalling 65,001,379 with 261 inhabitants per square kilometer) while the new states have a crime rate of 3,733 per 100,000 (with total inhabitants equalling 14,751,848 with 137 inhabitants per square kilometer) (PKS 1991, 1992; 32).

11. The results of a nationwide victimization study conducted by the Criminological Research Institute in Niedersachsen are expected to be published by 1995. Pitsela (1988) has conducted one of few victimization studies comparing victimization rates between Germans and Greek inhabitants.

12. See Eisenberg, pages 1003 and 1004 for a more detailed description of victims' assistance agencies.

13. Restitution ("Täter-Opfer Ausgleich") is a sentence handed down by the court requiring the payment by the offender to the victim to compensate the victim for losses suffered.

14. GSG 9, the federal anti-terrorist unit was formed after the massacre of the Israeli athletes at the 1972 Munich Olympics (Cannings, 92).

15. These include the Border Police and the Air Security Police, the Federal Railway Police, those police protecting the German Parliament, as well as employees at the Federal Criminal Investigation

Office.

16. This figure does not reflect the actual total number of detective officers. The German states of Brandenburg and Sachsen-Anhalt did not report figures for this category.

17. This figure excludes 5 boot trailers and 25 water spraying wagons.

18. Findings are indicated in Bruckmeier, et al. (1984) which cites an earlier (1972) study of police discretion by Feest and Blankenburg.

19. The Federal Constitutional Court or Bundesverfassungsgericht has held that within certain limits plea bargaining is permissible (Bundesverfassungsgericht, NJW 1987, 2662, cited in Heinz, 1992; 41).

20. Conditional waivers often include the following: a) restoration of damage resulting from the offense; b) financial payment to the Treasury or community institution; c) community service to benefit community; and/or d) payment of maintenance money (Kalmthout and Tak, 457).

21. German lawyers may appeal through a "Revision" which involves an appeal on a point of law or error in proceedings or through a "Berufung" which involves an appeal on a point of fact.

22. These courts are classified in the Statistical Yearbook as ordinary courts dealing with criminal and civil matters, but excluding special courts dealing with social matters, financial matters, professional and disciplinary matters, administrative matters, work arbitration matters.

23. Article 98 of the Federal Constitution (GG, s 98) provides for the appointment and removal of judges. Subsection 3 provides for the individual states (Länder) to pass laws concerning the appointment of judges, while subsection 4 provides that the states may allow for the appointment of judges to be made in a cooperative effort between the "Richterwahlausschuß" and the state's Minister of Justice. Appointment to the Federal Constitutional Court ("Bundesverfassungsgericht") is spelled out in the Law of the Federal Constitutional Court (BVerfGG or "Gesetz über das Bundesverfassungsgericht").

24. Sentences of incarceration under six months are always suspended and the offender is placed on

probation.

25. The suspended sentence, introduced in adult penal law in Germany in 1953, allows for the suspension of a custodial sentence for up to two years. The judge must place the individual under probationary care for a period between two to five years. Fines may not be suspended (Kalmthout and Tak, 447).

26. Instructions are made to help support the convicted person so that he/she does not reoffend. These instructions usually concern place of residence, work, education, financial matters (StPO, s 68b). There is no conclusive list in the penal code (Kalmthout and Tak, 448).

27. Penal Code Section 56b, subsection 2, deals with orders. In order to force the accused to correct the wrong-doing, he/she may be required to pay a fine to the state or a public agency, or may be required to perform a useful service to the community (Kalmthout and Tak, 448).

28. Independent of the guilt or the severity of the sentence, this sanctioning alternative allows judges to refrain from prosecution or sentencing under specified conditions (offender so seriously affected by the consequences of his/her act that the imposition of a penalty would be detrimental to the accused) (Kalmthout and Tak, 454).

29. Community service has a long history as a sanctioning option to replace both the fine and the sentence of incarceration. It can be imposed under the following circumstances: as a special condition of a suspended sentence, parole, a caution with conditional deferral of sentencing, a conditional waiver and a conditional pardon or as an alternative to fine default detention (for a more thorough explanation see, Kalmthout and Tak: 459-517).

30. Probation is only handed down as a sentence in the case of a suspended sentence of incarceration. It involves supervision of the individual while in the community. The probation officer is assigned to the probationer by the court.

31. As of September 30, 1992, the average number of prisoners in pretrial detention were 18,823 (31.6%); the average number of incarcerated juveniles were 3,668 (6.2%); the average number of prison incarcerated persons were 34,375 (57.7%), and the average number of "other" types of incarcerations (for instance, preventive detention

of habitual offenders, deportation detention) was 2,713 (4.5%), making for a total of 59,579 persons incarcerated on a daily basis. (Tolzmann, 1993).

32. Source: Table 3 Strafgefangene am 31. März 1991; Strafvollzug-Demographische und kriminologische Merkmale der Strafgefangenen am 31.3.1991 (Correctional Facilities- Demographic and Criminological Characteristics of Inmates on March 31, 1991) Rechtspflege; Rechtspflege Reihe 4.1 Fachserie 10; (Administration of Justice Series 4.1 Subject Series 10) Wiesbaden: Statistisches Bundesamt, (Federal Bureau of Statistics) 1993; 10.

33. Source: Table 4.2 Art der Zugänge und Art der Abgänge; Types of Admissions and Releases), Ausgewählte Zahlen für die Rechtspflege 1989; (Selected Statistics for the Administration of Justice; Wiesbaden: Statistisches Bundesamt, (Federal Bureau of Statistics) 1992: 43).

34. Source: (Rechtspflege, Fachserie 10, Reihe 4, Strafvollzug 1989; The Administration of Justice, Subject Series 10; Series 4, Prisons 1989; Wiesbaden: Federal Bureau of Statistics, 1992; 43. Statistisches Bundesamt 1992; sent per FAX from Mrs. Tolzmann, the Federal Ministry of Justice, June 24, 1993).

35. Other crimes include traffic offenses, offenses against the state, environmental offenses, and offenses against other laws of the state (excluding the Federal Penal Code, the Federal Traffic Violations Code and the Federal Drug Code).

36. Statistics were not reported by three of the new federal states.

37. See Kalmthout and Tak, 1992; 451, 452 for other conditions for conditional release considered by the courts.

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